

LAW AND PERFORMANCE

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CHAPTER 4

Statements before and after Arrests

Performing at Law's Edge in Apartheid South Africa

CATHERINE M. COLE

The field of “law and literature” is by now well established, having formed a professional society, launched a journal, gestated an ample bibliography, convened regular conferences, and even become, in the words of one critic, “quaint.”¹ “Law and performance,” by way of contrast, has been a far more nascent, embryonic, and fractured conversation, moving in fits and starts over time, migrating from legal studies to literary studies to medieval and Renaissance studies to theater studies, rhetoric, history, and performance studies. It has not, as of yet, congealed into a coherent conversation much less a well-defined “field,” despite the fact that some of its key interventions extend back at least fifty years—and much longer if we care to consider the ancients.²

“Despite the persistence of the trope likening law to theater, despite the vast body of critical writing on ‘law and literature,’ the rise of ‘Performance Studies’ and the more general proliferation of the term ‘performance’ in critical studies,” wrote Julie Stone Peters in 2005, “there has been no sustained theoretical articulation of the nature of legal performance or the meaning of legal theatricality in the critical literature.”³ Two years later Dennis Kezar echoed these sentiments when he said that theater remains a “perennial blind spot” in the larger law and literature movement, even though theater and law in the early modern period were not just relevant to each other but were actually defined by an institutional co-presence.⁴ Henning Grunwald expressed a similar opinion in 2012: “Despite—or perhaps partly because of—manifest structural similarities between

theater and courtroom, between stage and tribunal, scholars of politics, law and culture have been slow to take seriously the performativity of law."⁵ Perhaps only now, with the publication of this edited collection *Law and Performance*, is the question of the relationship of law and performance coming clearly into view.

Two superb literature reviews on "law and literature" and "law and performance" written by Julie Stone Peters and published in 2005 and 2008 respectively provide excellent introductions to each field, rich in citations and pithy in their identification of key problematics, with insights that remain relevant today.⁶ Interestingly, mirrors emerge as a key metaphor in both essays. Of law and literature, Peters writes:

In effect, through this double desire for the other and for the other's projection of the self, each discipline [law and literature] came to desire in itself what the other discipline had put there. In the disciplinary hall of mirrors, they met in the shared space of mutual projection, in work that acted out both sets of anxieties while repressing some of the most important insights of each discipline.⁷

Mirrors also figure in Peters's characterization of the relationship between law and performance, but here the cross-disciplinary conversation is not figured as a co-equal gazing down a hallway of reflections. Rather, Peters sees theater as "law's twisted mirror, its funhouse double: ever-present, substantiating, mocking, reinforcing, undermining."⁸ Theater is the object that seems to simultaneously fascinate and disorient, reflect and distort, entice and repel those who think about the law. The twisted mirror may incite vertigo, or perhaps simply exhaust with novelty. For this and other reasons, the pace of the conversation has been slow. Perhaps the most inhibiting obstacle has been a set of pernicious polarities. On the one hand is the proclivity to extoll the "good" (which can be, for instance, theater's "truth," a naïve embrace of its utopian potential for transformation, or similarly, an uncritical faith in a legal liberal humanist rights discourse). On the other hand, we also see haughty (and hasty) disavowals of the "bad" (such as theater's artifice and insincerity, or law's normativity). We would do well to curb kneejerk reactions and pejorative dismissals, as these have demonstrably inhibited a scholarly conversation that has long been identified as compelling, necessary, and important.

Perhaps it is time to move beyond the "mirror stage" in the law and performance conversation, with its distortions, projections, misrecognitions, narcissisms, and innate two-dimensionality. The common mode of analysis has been analogy: metaphoric and comparative work on law and

theater. This remains a valid line of inquiry, with many important explorations yet still to be done on topics such as law's space, acoustics, costume, gesture, comportment, presence, affect, voice, interactivity, spectatorship, ritual, and liveness in relation to theater. The vocabulary and theories of performativity and theatricality that arose in the 1990s and 2000s have pushed the law and performance discourse inaugurated by Milner Ball and others in the 1960s and 1970s into a far more complex theoretical register.⁹ So where are we now? What avenues are most likely to advance the law and performance conversation in substantive ways?

I want to advocate for a deeper understanding of the performativity of the law, the way in which one becomes a subject before the law through performative acts, and how the law itself performs especially as it intersects with theater's simultaneous ontic and mimetic dimensions. I agree with Martha Merrill Umphrey that the full implications of Judith Butler's scholarship on performativity and the law have yet to be seriously understood, much less explored, especially in more empirically grounded ways. Among the questions that Butler's work prompts Umphrey to ask are: How do trials "do" law? How are trials "law-making (and not just law-applying or law interpreting) events *because of their performativity*?"¹⁰ Joshua Takano Chambers-Letson's recent book *A Race So Different: Performance and Law in Asian America* provides a sophisticated navigation of the "slippery ground between performativity and performance," a nuanced appreciation of how law is situational and realized through legal habitus and aesthetic performances.¹¹ I appreciate his distinction between quotidian and aesthetic arenas, as well as the insistence that these are not binary oppositions. There is great value in examining the aesthetic representations of the law in relationship to "everyday" legal habitus.¹² What I propose is a course correction that balances our disproportionate focus on trials (and related legal "events" such as truth commissions and hearings) as the primary venues for exploring the relationship between law and performance.¹³ We need to think more expansively about legal habitus, the performativity of law in arenas and spaces outside of the trial. If we think about law as a set of contingent enunciations performed in many locations, including, in Martha Merrill Umphrey's words, "the street corner, the interrogation room, the district attorney's office, a lynching scene and, of course, the trial," what new lines of scholarly research does this open up?¹⁴

My focus here is on the arrest as a situational space where the law asserts itself overtly, hailing subjects—seizing, capturing, charging, and detaining them. Louis Althusser long ago showed us that subjects are

“always already” interpellated by the law. The scene of the arrest or a hailing by a police officer are merely instances that make explicit what is otherwise implicit: the law’s pervasive reach as well as law’s dependence upon subjects to affirm its legitimacy. That said, arrests are highly performative iterations of the law; three-dimensional, durational, visceral, and kinetic. Arrests fundamentally change the status of the person apprehended. Things are “done” with words in the course of the arrest, to use J. L. Austin’s theorization of the performative.¹⁵ In the moment of arrest, one sees the paradigmatic trope of interpellation, as theorized by Althusser:

I shall then suggest that ideology “acts” or “functions” in such a way that it “recruits” subjects among the individuals (it recruits them all), or “transforms” the individuals into subjects (it transforms them all) by that very precise operation which I have called interpellation or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: “Hey, you there!” [Note: Hailing as an everyday practice subject to a precise ritual takes a quite “special” form in the policeman’s practice of “hailing” which concerns the hailing of “suspects.”]

Assuming that the theoretical scene I have imagined takes place in the street, the hailed individual will turn round. By this mere one-hundred-and-eighty-degree physical conversion, he becomes a subject. Why?¹⁶

Sometimes the arrest is witnessed by others; other times it is seen only by the officer(s) effecting the arrest and the accused. Today many arrests include witnesses who wield cell phone cameras, and these documents become additional witnesses with capacity to circulate across space and time, providing the basis for other narratives and truth claims. They provide both a proliferation of perspectives and potentially a narrowing of the range of permissible lies. Yet many arrests are unseen by witnesses, and rarely are they understood from a position that provides intimate insight into the intersubjective encounter of the arrest, the interiorized experience of an interpellation, *how* one becomes a very particular subject before the law, how it feels to be arrested. In particular, I am interested in the subjective experience of a *racialized* subject standing before the law. What is the psychic life of power for those who are arrested—or living with the perpetual threat of imminent arrest—within the domain of a racist regime?

Scholars such as Mladen Dolar and Judith Butler, among others, have taken up the concept of interpellation after Althusser.¹⁷ Dolar’s critique of Althusser asks us to consider the role of subjectivity, and specifically he questions whether there is a “kernel of interiority” that is outside of subjection, an inner register of the subject that is beyond interpellation.¹⁸

Dolar asks provocatively, "Could one say that love is what we find beyond interpellation?"¹⁹ Judith Butler responds to this question by asserting that, in fact, the scene of subjection involves a passionate attachment to the law, a "strange scene of love," as the subject comes to embrace the very conditions of subjection. She says, "That the subject turns round toward the law suggests that the subject lives in passionate expectation of the law. Such love is not beyond interpellation; rather it forms the passionate circle in which the subject becomes ensnared by its own state."²⁰ Mary Bunch's more recent intervention introduces the concept of "unbecoming"—not only what it means to behave in ways that are, for instance, "unbecoming of a woman," but also theoretically to consider "unbecoming" as a space of resistance to the law because, as she argues, "one is also always already something other than the subject one is expected to be."²¹ Bunch puts forth for queer theory the concept of an "unbecoming subject," one that inherently exposes subjectivity as a double performative—both law and the subject each granting the other the conditions of its possibility and threatening the withdrawal of those conditions.²²

This chapter explores the possibilities of an *unbecoming* subject, one who refuses subjection, particularly racialized subjection. Is it possible to refuse or disrupt the dual performativity of the subject and the law? In order to think through such a question, we must consider how the law as a technology of race is performatively realized in scenes of subjection. As Alexander G. Weheliye has argued, both Giorgio Agamben's work on "bare life" and Michel Foucault's theories of biopolitics, despite their enormously important and field-transforming implications, have been notably subdued on questions of race:

Bare life and biopolitics discourse not only misconstrues how profoundly race and racism shape the modern idea of the human, it also overlooks or perfunctorily writes off theorizations of race, subjection, and humanity found in black and ethnic studies, allowing bare life and biopolitics to imagine an indivisible biological substance anterior to racialization. The idea of racializing assemblages, in contrast, construes race not as a biological and cultural classification but as a set of sociopolitical processes that discipline humanity into full humans, not quite humans, and non-humans.²³

This echoes Judith Butler's meditations on the concept of "bare life." Within general claims that bare life underwrites the actual political arrangements in which we live, Butler argues, there is not yet clarity about *how* one becomes reduced to such a condition, nor *how* certain lives are singled out, treated differentially on the basis of ethnicity and race.²⁴ In answer to these questions, the moment of arrest and its legal interpellations, its

ontic reality and mimetic representation in performance, can give us a privileged and provocative vantage point to consider arrests as “scenes of subjection,” to use a phrase from Saidiya Hartman. What do arrests as scenes of subjection stage? And what can be learned from (re)staging them theatrically?²⁵ And what happens to theatrical events that themselves hail both artists and audiences to a scene that is illegal, where spectators themselves may be arrested?

“I Fuck, Therefore I Am”

The racialized legal habitus of the arrest has recently been brought spectacularly into public awareness in the United States through the “Hands Up, Don’t Shoot” and “Black Lives Matter” campaigns in the wake of the fatalities at the hands of police during the course of conducting arrests in Ferguson, Staten Island, Oakland, and Summerville, South Carolina—to name but a few in a long, disgraceful list. However, the arrest that commands my attention for this essay did not happen on August 9, 2014 (Michael Brown), or on July 17, 2014 (Eric Garner), or on January 1, 2009 (Oscar Grant), or in North Charleston on April 7, 2015 (Walter L. Scott). Rather, it happened in South Africa under apartheid. This fictionalized arrest appeared in a play written by Athol Fugard in 1972, *Statements after an Arrest under the Immorality Act*. Fugard’s inspiration for the play was an actual arrest the playwright recorded in his notebook in 1966:

Immorality Act case at De Aar [a town in Northern Cape]. Coloured Anglican missionary and a forty-year-old white woman, a librarian. The police caught them in bed, pulled back the sheets and took photographs.

Darkness. Suddenly a blinking flash of light like a photographer’s flash; a split second later a woman screams. Then stage lights up to reveal an office desk, chair and—to one side—a filing cabinet. Standing at the desk, examining a police file, Sergeant . . . He takes out a set of photographs—“They’ll get four months’ suspended.”

De Aar. Heat. Dust.

“Three statements after an arrest under the Immorality Act”—Woman Man Sergeant.²⁶

This shard of a dramatic idea from 1966 eventually became a one-act play that opened at the Space Theatre in Cape Town on March 27, 1972, starring Fugard himself as “Man” or “Errol” and Yvonne Bryceland as “Woman” or “Frieda.”

Statements after an Arrest under the Immorality Act is one of the so-called “Statement Plays,” first performed in Cape Town in 1972 and then published

together in 1974 as a trilogy along with two other scripts, *Sizwe Bansi Is Dead* and *The Island*, with the latter two collaboratively co-authored by Athol Fugard, John Kani, and Winston Ntshona.²⁷ What ties the three plays together is the law, for it serves as the fulcrum of each drama: Passbooks—the identity card system so crucial as an apartheid legal apparatus—are at the center *Sizwe Bansi Is Dead*; the ubiquitous incarceration of black lives in such notorious prisons as Robben Island is the focus of *The Island*; and the Immorality Act, the apartheid law banning interracial sex, is the legal construct that drives the action of *Statements after an Arrest under the Immorality Act*. What access can this play, as an aesthetic performance of the law, provide to the interior, subjective experience of racialization at the moment of arrest? And how should we think about the performativity of the apartheid legal prohibitions (nakedness on stage, mixed-race audiences without separate amenities, etc.) that had to be defied in order for this play to be staged in Cape Town in 1972?

Sizwe Bansi Is Dead and *The Island* are still widely performed in repertoire today, two of the most famous South African “struggle” plays. *Statements after an Arrest*, by way of contrast, is a relatively little known play. It is seen as one of Fugard’s “most ambitions and difficult works,” according to Albert Wertheim.²⁸ Highly stylized and experimental, the play when first presented in 1972 was an aberration both in terms of Fugard’s other dramatic works, as well as the aesthetics of South African theater generally. Perhaps it was because of its radical formal experimentation that South African critics didn’t know how to receive the play in 1972.²⁹ When the show traveled abroad in 1974, London audiences may have had context to understand and appreciate the play’s fractured, Brechtian style; however, they did not have an understanding of key context crucial to propelling the play’s action: specifically the Immorality Act and Group Areas Act. The play eluded Fugard himself, and in frustration after the 1972 opening, he described the script in his journal as being “at many levels, possibly unavoidably because of the circumstances, the most uncompleted, even careless, work I have yet done on a stage.”³⁰ The version of the play performed in Cape Town in 1972 was quite different from the one performed in London in 1974 and subsequently published, as evidenced by multiple script versions held at Indiana University’s Lilly Library. I would have to agree with Fugard’s self-reflection that the earlier version performed in Cape Town in 1972 comprised “notes for a play” rather than a well-crafted script. However, by the time the show got through the rehearsal process in London two years later, the underlying structure of the piece emerged with

great clarity, as had the play's center of gravity and enunciation of theme. While *Statements after an Arrest* has been seen as a minor work in Fugard's *oeuvre*, I would argue that it is far more sophisticated dramaturgically and thematically than has been previously understood.

Furthermore, *Statements after an Arrest under the Immorality Act* provides a provocative vantage point to consider questions of subjectivity and the racialized psychic life of power. It is also an opportunity to reflect upon the law's intrusion into intimate acts. The play depicts the clandestine relationship of a couple in a small town in the Karoo in the Eastern Cape: a forty-two-year-old unmarried white librarian named Frieda Joubert and a thirty-six-year-old married "coloured" (i.e., mixed-race) man, a school principal, named Errol Philander.³¹ They have an affair, one that involves Errol sneaking into the all-white neighborhood under cover of darkness to make love with Frieda on the floor of the library where she works. Together the couple creates a temporary sanctuary, a cherished yet fragile oasis where love and affection across racial lines could flourish.

The play is neatly divided into two parts: before and after an arrest, with each half radically diverging in style. The first part unfolds naturalistically, consistent with Athol Fugard's other works: realistic, quotidian dialogue between lovers conducted in the intimacy of a domestic space. However, halfway through the play, the action is radically interrupted, fractured in form at the very moment when a policeman intrudes. Just before he enters, the lovers have impulsively come together in an embrace:

[Against this image of the two lovers, a plain-clothes policeman, Detective Sergeant J. du Preez, walks on. He carries a police dossier and notebook. His statement is dictated to the audience.]

POLICEMAN: Frieda Joubert. Ten, Conradie Street. European. Errol Philander. Bontrug Location. Coloured.
Charge: Immorality Act.³²

The first thing the sergeant does is hail the lovers by name, address, and race, along with their alleged crime (and, of course, in apartheid South Africa, to hail by home address is to hail by race since the Group Areas Act proscribed where each race could live). The policeman seems to enter the same scene, the same space and time that the lovers had occupied earlier in the play, but he speaks from another time and place, narrating his experience in retrospect as he recites from his police report. He is the first character in the play to break the "fourth wall," to directly address

the audience, thereby interpellating spectators into the action, implicitly suggesting their complicity with the action. Have they, like he, been lurking in the shadows, surveilling the lover's clandestine relationship? Or perhaps the audience members, like Frieda's neighbor Mrs. Buys, have been spying on the couple, even summoning the police? Following the police raid of the "private" sanctuary created on the floor of the public library, the three characters—the Sergeant, Errol, and Frieda—all provide statements. Each of these is stylistically distinct, providing a window into how the scene of the arrest performs authority and subjection in ways that expose the uneven racialization of the law.

In his notebooks, Fugard describes *Statements after an Arrest* as being fundamentally about the loneliness and isolation of the lovers—a lonely white librarian living in the arid karoo and a downtrodden coloured teacher struggling to make ends meet and find human fulfillment within a world tightly circumscribed by poverty, lack of water, lack of books, and lack of respect. The play stages, as Fugard sees it, an "encounter between two totally different worlds—both experienced as a 'loneliness'—and the slow, painful building of a 'no-mans' land where they are briefly together."³³ Errol and Frieda's illicit relationship is provoked by desperation about their respective lives. Fugard writes:

Two people frightened of dying.

One fate inside the room, another outside.

The mistake of moving from being allies, to being lovers.

What is the first incident or remark that provokes Philander to his final bitter sense of self? . . . What moved Philander from the center of his life—where he was living with a hollow sense of self—to its perimeter—because that is how, as a lover, he finally faces Frieda, his back turned on all he really is, and why it cannot work (the relationship), why it progresses into a self-destructive sterility.

Frieda's sexual provocation (not by virtue of anything done deliberately, simply by being what she is) as the relationship develops. The initial affirmation of 'self' in an affair. Love = one of our useless defences against Death.

Two things happen to Philander. He wakes up in the middle of his life, and he falls in love with Frieda.

Frieda = charity, then excitement and admiration, then love.

Fear³⁴

If what propels Frieda and Errol together is a desperate realization that their lives are running out, what drives them apart is the law, the way it structures where each can live, where each can work, what access each has to resources, and who they can sleep with. Their after-hours library

“no-man’s land,” as Fugard calls it, is not actually a “no-man’s land” but rather one fully under apartheid sovereignty. But once the law formally intrudes, once the police burst in, their fragile, temporary sanctuary is utterly destroyed.

Frieda and Errol’s affair violates South Africa’s Immorality Act. This law—first created in 1927 and further amended in 1950, 1957, 1969, 1985, and 1988—prohibited “illicit carnal intercourse between Europeans and natives and other acts in relation thereto.”³⁵ The Act’s amendment of 1950 clarified its terms: “‘Illicit carnal intercourse’ means carnal intercourse other than between husband and wife,”³⁶ Section 20A of that amendment introduced that the “men at a party” clause, thereby conflating in one law a prohibition on heterosexual interracial with homosexual sex regardless of race, which should lead us to reflect on what it means to think of the legacy of the apartheid state’s regulation of both queer and hetero sexuality. The proliferation of amendments to the Immorality Act over many decades was symptomatic of the apartheid state’s attempt to control one of the basic human acts: skin on skin, the connection of Self and Other. Jeanne Colleran asserts that of all the many mechanisms of apartheid—including substandard Bantu “education, detentions, imprisonment, unwarranted searches, poverty, unemployment, housing and pass laws”—it was the prohibition against skin contact that went to the “very core of the heart of South African racism.”³⁷ The juridical obsession with interracial sex reflected, in Colleran’s words, “a fear of skin contact so immense that it became pathology.” While anti-apartheid theater in the 1970s and 1980s bravely took on a whole range of apartheid’s many pathologies and obsessions, Athol Fugard’s *Statements after an Arrest under the Immorality Act* is unique in its bold focus on interracial sex. In Fugard’s notebooks, he writes, “Sex provide[s] the most primitive experience of ‘self’—the double aspect/mystery of discovery and loss, both the self and ‘the other.’”³⁸ In his rehearsal notes for the 1974 London production of this play, he says, “Sex is one of the most primitive acts of self-assertion of ‘being’ in relation to ‘another.’ ‘I fuck, therefore I am.’”³⁹ So if one cannot fuck—and fuck the partner of one’s own desire—does one cease to be? And if one ceases to be, is one still a subject?

Statements before Arrest

The play begins with two lovers in near total darkness on a blanket, naked, on the floor in the stacks of a library. In a languid, tender scene of post-coital intimacy, the lovers converse. Soon the man will have to make a

furtive, dangerous, and what he describes as “shameful” trek back home to the township where his family resides. The script’s character list identifies the two by gender and race: “A White Woman” and “A Coloured Man.” In parentheses each is given greater personalization with a name: “Frieda Joubert” and “Errol Philander.”⁴⁰ Yet within the script, the dialogue lists them only as “MAN” and “WOMAN,” symbolic figures that some have read as alluding to a pre-lapsarian Adam and Eve.⁴¹ The opening stage directions read: “A *man* and a *woman* on a blanket on the floor. Both of them are naked. He is caressing her. Dim light.”⁴²

At the top of the show, the woman is the first to speak—a monologue about her hair drying in the sun, a somatic narrative describing how the texture of her hair changes as the water evaporates and the smell of shampoo intensifies. She describes a small breeze lifting a floating strand (the first clue about her racial identity). This is a phenomenological narrative outside of time, intensely sensual, spoken from a body in a space of safety and repose. And yet, these are two naked people of different races lying on a blanket in apartheid South Africa. There is nothing safe about that, even behind closed doors in privacy, and certainly not on a theatrical stage. Given the extraordinary legal constraints on South African theater in the 1960s and 1970s, it is remarkable that the playwright imagined the police and censors would allow two people of *any* race to be naked for the duration of this show, much less a mixed-race couple. The apartheid state stranglehold around theater tightened significantly after 1965 when, as Martin Orkin writes, the Group Areas act prohibited “racially mixed casts or audiences” from all public entertainments unless a permit was secured. Orkin has also written about how “theater practitioners were further inhibited by the rapid succession of wide-ranging laws intensifying the process of censorship in the country.”⁴³ Between 1974 and 1981, the censors considered 15,333 plays, and of these 9,819 were “declared undesirable.”⁴⁴ Beyond the censors, producers, playwrights and actors had to contend with police harassment, surveillance, interruptions of performances, and demands that all theaters have separate amenities for different races. In addition, artists were subject to harassment and personal intimidation with house raids, arrests, and confiscation of personal identity documents. Fugard’s *Notebooks* provided evidence of recurrent police raids on the rehearsals and performances by his company, multiple arrests and even imprisonment of actors, and intense censorship and withholding of permits. Notably, the two actors who performed the lovers in the original production were both white: Athol Fugard and Yvonne Bryceland. There

is no evidence the police interfered with the first production of *Statements after an Arrest*, though the show seems only to have had a very short run in Cape Town. Yet still, the performance broke the law: its audiences were interracial (but more on that later).

From the beginning of the play, the couple's conversation is intimate, familiar, and affectionate. She pronounces "I love you" in the first few moments of the play. Their repartee moves easily between everyday details and larger philosophical questions as they talk expansively about the origins of the universe, books they've read, daily encounters on the street, reminiscences about the early days of their relationship and playful imaginative digressions. Despite this calm and ease, threaded throughout the dialogue are recurring tensions. They are afraid of something, of an unidentified "them" outside of their oasis; they are afraid of being seen, of being exposed. There is a wedge in their relationship, and his marriage and family are only part of that wedge. Neither feels fully understood:

WOMAN: You don't understand.

MAN: Understand what? There is seeing, and being seen. Which one are you frightened of? Me or you?

WOMAN: It's not as simple as that!

MAN: Yes, it is!⁴⁵

The first half of the play narrates scenes of world making: discussion of an imaginary house, an imaginary day of spending the money in one's pocket, and expansive meditation on the creation of the world. But these idyllic moments are countered by disturbing stories of dismemberment, especially through animal motifs: She tells a story about two snakes that were caught in a neighbor's backyard while mating and were then killed. "Their . . . pieces kept moving . . . for a long time afterwards."⁴⁶ Errol remembers a story about his father bringing him a jackal's foot. "The animal had escaped that way . . . chewed off the foot caught in the trap. . . . I didn't know anything yet about being so frightened of something else, that you would do that to yourself. [*Pause*] That's what we're doing . . . chewing away, chewing away."⁴⁷ Disturbing images of dismemberments in the animal world are echoed by other disruptions in the natural world: the town where they live is experiencing a drought, one that threatens the livestock and the people, whose water is being rationed. In discussing the water scarcity, the conflict between Errol and Frieda, which had been, until then, subterranean and diffuse, finally ignites into a direct confrontation:

MAN: The location dam is empty. Little mud left for the goats. They're going to start bringing in for us on Monday. Got to be ready with our buckets at twelve. Two for each house.

WOMAN: Then why won't you let me send you some of mine? The borehole is still very strong. Please! It would be so easy.

MAN: Thanks, but I'll go along with Bontrug.

WOMAN: Don't thank me for something you won't take.

MAN: For the thought, then.

WOMAN: To hell with the thought! I'm not trying to be kind. It's only water, and you need it.

MAN: We all do.

WOMAN: Exactly! So your family must suffer because of your pride?

MAN [*Disbelief*]: Pride?

WOMAN: It sounds like it.

MAN: Pride doesn't use back doors!

WOMAN: Sssh, please!

MAN: Or wait until it's dark. You don't walk the way I do between the location and town with pride.⁴⁸

Errol and Frieda are separated by differences in who does and does not have access to water or the right to enter front versus back doors, or which member of the couple must do the work of transgressing the treacherous territory of segregated living spaces between her address in a white neighborhood and his in the coloured township. Once the submerged conflict arising from their unequal subject positions under apartheid law finally erupts, Errol bursts into one of the longest speeches in the play, a torrent of words, about pride and guilt, and shame and the difference between them, about solidarity with other people in the township who are suffering, who are so internally wrung out they are like "rags." Frieda finally confesses she doesn't understand anything, and Errol retorts, "Then you can't. Don't even try."⁴⁹

In the play's first half, dreams, reading, and learning emerge as an *oasis of possibility* for both characters. Errol recalls counseling a young boy playing in the sand to use his imagination to make a house not by replicating the constraints of his own small township home, but rather being more expansive: "If you're going to dream, give yourself five rooms, man."⁵⁰ Errol narrates how getting access to the library and books has opened his world and placed him in a larger universe, despite the severe constraints of the coloured township where he lives. Reading at night in his home, the words on the page remade him as a subject:

They weren't just words, it wasn't just that I understood that somebody had said . . . I'm expressing myself badly. It's hard to describe. It was almost like having a . . . No! . . . it was a 'comprehension'—*ja*, of life and time . . . and there in the middle of it . . . at that precise moment . . . in Bontrug, was me. Being me, just being me there in that little room was . . . [*choosing his words carefully*] . . . the most exciting thing that had ever happened to me. I wanted that moment to last forever! It was so intense it almost hurt. I couldn't sit still."⁵¹

Even as spoken words elude Errol in his attempt to express his inner transformation, it is clear that the discovery of the library has given him access to a new self, a change in subjectivity as radical as the impact of his budding love and relationship with Frieda. Through books, to which she has given him access (he is not part of the public given access to this "public" library), he gains a new sense of autonomy, personhood, self-possession—a subjectivity full of excitement, a sense of optimistic possibility. "I read, therefore I am." He lives also for Frieda, for the world of love to which she has opened him. But their relation is always fraught, undercut by her sense of entitlement to *her* water, her role as the one who initiates their sexual relationship, unlocks the door to *her* space. To access everything in this new world—the books and Frieda—he must turn his back on his own family and their life in the township.

Both Frieda and Errol profess love at different moments in the play. Clearly for both of them, the affair is a sanctuary to the deprivations each faces in their respective environments—whether material, emotional, or intellectual. Yet even love cannot shield them from the social distortions of race. Overt acknowledgment of race happens only once in the first half of the play, just before the policeman burst in and arrests them. Errol has just informed Frieda that he won't leave his wife, and she responds:

WOMAN: Go home. Take your conscience and your guilt and go back to Bontrug and look after your family. I've also got problems. I can't add your adultery to them. If you haven't got the courage to say

No . . . to anybody . . . to me or her . . . I'll do it for you. Go home.

MAN [*viciously*]: It would be better if I waited until it's dark . . . remember!

[*Pause*] My adultery? And yours? *Ja*. Yours! If that's true of me because of you and my wife, then just as much for you because of me and your white skin. Maybe you are married to that the way I am to Bontrug.⁵²

He insists that their respective fidelities to race (his to the coloured township where the Group Areas act prescribes that he live, hers to her white skin) are paramount over any fidelities based on choice or affection.⁵³

Depending upon how designers interpret the script's lighting directions, the stage may be lit so darkly in the first scene, before the arrest, that the racial difference between the characters would be visually imperceptible to the audience for the first half of the play. Without a visual cue, the inequality in their social status emerges only gradually, elliptically through dialogue, or sonically through voice and accent. Race is not mentioned explicitly until well into the first scene. *Statements after an Arrest's* bifurcated structure is also a sensorially divided one: the first half is about sound, the second half about seeing and being seen. The intrusion of the law, which happens in the middle of the play, brings exposure, light, and a sequence of six still photographic images—suggesting evidence to be used later in court. These frozen stop-action, two-dimensional images stand in contrast with the actors' continuous, embodied, three-dimensional live action before the audience.

After the Arrest

The police invasion incites a profound and thorough break in the play's style, character, tone, rhythm, and psychological representation. It is a violent disruption, though performed without violence. The Sergeant speaks initially in truncated partial sentences describing those he's arresting: "Been living here for six years." "Born here." As the representative and face of the law, he also ventriloquizes other voices: he recites a statement given by a neighbor, Mrs. Buys, who had been suspicious about the comings and goings of Errol to the back door of Frieda's library. He gives a cold and affectless speech that culminates in a description of the moment of the raid: "I saw Joubert and Philander lying side by side on a blanket on the floor. She was naked and he appeared to be wearing a vest. Sergeant Smitt started to take photographs."⁵⁴ Following this are the first of six surrealistic sequences with flashing lights and the wielding of torches (flashlights). The blinding exposures, meant to evoke camera flashes, pin the accused couple against the wall, startle them in their nakedness as they scurry about for blankets and clothing items to shield their vulnerability. Fugard had been inspired to write the play based upon newspaper stories about police raids on mixed-race couples' intimacy, and the role of photography in those raids. In his notebooks he wrote, "The

Immorality Act—at one level this country's one and unique contribution to the world of pornography. A guilt-ridden inversion of the celebration of the erect penis and moist vagina. . . . The camera flashes short-circuit the experience. . . . The point of view changes.”⁵⁵ Fugard sees these staged photographic stills as

the central image in their story—those six terrible photographs of Joubert and Philander scrambling around in the dark; twenty seconds of Hell which start with them together and end with them irrevocably apart; the twenty seconds that it takes to pass from an experience of life to an intimation of death. Those photographs were, and remain for me, the essence of the experience I wanted to explore. As I said repeatedly to Y. in Cape Town, and then again here [in London], the experience we ask an audience to share with us must be an exploration of the subtext to those photographs, and six scenes must in a sense be “Captions.”⁵⁶

Through the intrusion of the police and their flashes of light, Errol and Frieda are torn asunder; they become isolated individuals. The law becomes at times a voice, a light, a flash that intrudes on the subject and fixes both Frieda and Errol in preconceived assumptions, interpellations with which they must engage, dispute, concede, or contest. But there is no place to hide. The self is thoroughly interpellated by a state that forbids their sexuality and intimacy across racial lines. The intrusion of the camera creates a cinematic and Brechtian element in this play, freezing the action and precipitating a different point of identification for the audience.

There is no place to hide. Errol and Frieda scramble around. The torches (or flash lights) are “relentless, but we never see anything of the men behind them.”⁵⁷ The stage directions report: “These ‘flash-sequences’ are nightmare excursions into the split second of exposure and must be approached as ‘sub-text’ rather than ‘reality.’”⁵⁸ At first the man tries to speak, but his words fracture with desperation:

MAN [*terrified. Covering his genitals with his trousers he talks desperately to the torch shining on him.*]: Look . . . look—before you make up your mind let me tell you something . . . I’m . . . I’m Principal . . . I . . . I won’t do it again . . . I’m frightened. *Ja*, I’m frightened.⁵⁹

He asserts the legitimacy of his job and social role (school principal), assures he won’t “do it” again (commit adultery across racial lines), and then he simply confesses his present fright. As he continues to try to get his pants on without exposing himself, the whole operation becomes a “nightmare.” The woman then comes forward, trying to shield the man

with a blanket. The torches follow her as she speaks. Her response is rambling and almost incoherent, talking about biscuits and having tea. Her speech is fractured but not panicked. She does not feel compelled to assert her credentials or promise not to “do it” again. Instead her monologue becomes almost like a therapy session. She speaks of unhappiness, of being hurt, of feeling “sorry” for him. This is an accused who doesn’t feel the need to defend herself but rather wants to rationalize her behavior, to explain it. Her monologue soon begins to disclose far too much, becoming almost an erotic narrative: “We were whispering. Whispering makes you sweat. He loosened his tie and said. . . .”⁶⁰ The stage directions say that the man realizes this disclosure must stop, that he must “correct, this vein of intimate confession.” The stakes of such admissions are entirely different for him, as a coloured man; Frieda is clueless about that inequality. He tries to distract her from her overdisclosure, and his tactic is to play act the role of the deferential black supplicant pleading with a white woman for water. His performance desperately escalates and intensifies, eventually becoming what the stage directions describe as “a grotesque parody of the servile, cringing ‘Coloured,’” a bowing and scraping servitude haunted by minstrel “darkey” stereotypes.⁶¹ His sentences become staccato fragments: “Dam’s empty. Little mud left. For the goats.” He calls her “Miss Frieda” and gradually degenerates into begging. However, Frieda is completely unable to recognize or acknowledge Errol’s role-playing. She doesn’t recognize *what* this performance is, much less *why* he is doing it. She rejects his shift in character, seems irritated by it, and when he doesn’t obey her order to stop, she becomes hysterical.

Here, the play’s action is once again interrupted by a camera flash sequence, an interlude that inaugurates yet another attempt to tell what happened, another iteration of “statements” after the arrest. This one is told contrapuntally, with the two lovers speaking, overlapping, conveying more about the intersubjective discoveries of their unfolding relationship, how they shared the excitement of books and learning, found companionship through intellectual communion. They confess to a shared excitement about shared *learning* rather than shared sex. Their mutual confession pauses at one moment, abruptly, waiting for a response—from the sergeant? from the audience? The spectators are interpellated into *Statements after an Arrest* as Frieda and Errol seem to acknowledge the audience directly for the first time. There is an awkward pause. In this caesura, the playwright conveys that the intensity of the lovers’ fear of their interrogators is equal, if not greater, to the intensity of their desire

for each other. Implicitly the play performs a question: What is the audience's role in this scene? Are they witnesses? Spies? Conspirators?

We next learn about the intimate moments when Frieda and Errol's sexual relationship first began—a relationship that she had to initiate, given the enormous stakes for Errol if he had read her amorous signals incorrectly. To her credit, Frieda is very clear on her role initiating the love affair, and without this confession, Errol's fate at the hands of the law would surely have become much worse. The action is once again cut through with camera flashes, this time trapping the woman. She seems to be unaware of the flashlights, unashamed of her nakedness, and she rather launches into a private and self-absorbed reverie: "Ugly feet. The soles have got hard patches. My legs are bandy. Good calf muscles . . . probably got them riding to school on my bicycle up a very steep hill each day. Skin around my knees is just starting to get slack. I enjoy making the muscles in my thighs move. Hair is very mousy."⁶² Like the opening monologue of the play about her drying hair in the sun, Frieda's speech conveys an embodied experience, intimately narrating what it means to be inside her body, a gendered body—one that is accustomed to being viewed. But her experience of surveillance is wholly unlike that of the coloured man. She is being appraised for beauty, not guilt; conformity to an ideal, not a negative stereotype. She may be concerned about her hair, or "ashamed" of her hands, and her skin may look "very old." But nevertheless, she says, "I think there is a whole lot of me in my hands somehow," a line in stark contrast with how Errol comes to perceive his own hands later in this scene.⁶³ Her internalization of the interpellative process is revealed in dialogue: she becomes both the interrogator asking questions and the one answering them. She asks herself about her own complicity, her guilt, and the possibility of coercion or shame. Her answers to her own questions are clipped, monosyllabic, until finally she begins to narrate the scene of seduction. For her, there is no fear in this statement of confession. She is a subject not in *subjection* but in *possession* of her body, her story, her self, and she is able to confess defiantly, even proudly: "So . . . so then . . . yes. . . . So then then we made love."⁶⁴

Errol's trajectory through the fractured interpellative process of the arrest rides a course that is entirely different from Frieda's. Near the end of the play the policeman once again speaks, reciting a statement and showing "Exhibit A" and "Exhibit B," which are presumably the photographs that are being captured and staged before our very eyes with all the camera flashes. He tells us that at the actual moment of arrest, Frieda spoke but a few choice

words: "I am not ashamed of myself," which she said she would repeat to anyone. She then apologized to Philander. But "Philander said nothing."⁶⁵ She is defiant, in possession of herself, fully present in her body, even as she has internalized the questions of her interrogator.

Errol, however, becomes increasingly desperate. He first asserts his good character, then performs the role of the bowing and scraping subservient. He gets one brief period in the interrogation where he can speak about how much it meant for him to go to the library "and use the encyclopedias, and read."⁶⁶ What is so remarkable about the final segment of Fugard's play is that Errol becomes a person before the law by becoming *not* a person at all. This is a drama of *unbecoming*. His dissolution throughout the scene is not even seen by his lover, so caught up is she in her own narcissistic reverie. Her final speech narrates what it means to lose him, how she must move autonomously now. "I must be my hands again, my eyes, my ears . . . all of me but now, without you. All of me that found you must now lose you."⁶⁷ The outcome of the arrest for her is that she must shed herself of him, wash his sweat from her body, his memory from her mind. By way of contrast, the outcome of the arrest for Errol is dismemberment, annihilation. Whereas the arrest prompts her to take possession of herself and rid herself of the Other, for him the arrest is a process of ridding himself of his very being:

Now I must understand it.
 If they take away your eyes you can't see.
 If they take away your tongue you can't taste.
 If they take away your hands you can't feel.
 If they take away your nose you can't smell.
 If they take away your ears you can't hear.
 I can see.
 I can taste.
 I can feel.
 I can smell.
 I can hear.
 [Pause.]
 I can't love.⁶⁸

This poetic sequence repeats again, rehearses what it would mean if "they" take away your legs, arms, and head. He can still walk, work, and think, but he cannot love. His journey would seem to contradict Dolar's

hypothesis that perhaps the interior register of love is beyond interpellation.⁶⁹ Next are the appetites: eating, drinking, and sleeping. Stripped of these, what is he? Here he shifts from saying he *can't* love to an assertion that he *won't* love. The speech compresses, narrows, and condenses. Broken, wounded language conveys his undoing as he is reduced to bare life, and even less than the bare life theorized by Agamben: he becomes a subject without a body, soul, or name:

An arm without a hand.
A leg without a foot.
A head without a body.
A man without name.⁷⁰

Who is this force—"they"—that takes limbs and body parts and locks one away? The adversary is unnamed. Gradually "they" becomes "God," a force of interpellation even greater than the law:

So, I tell God I don't smoke and I don't drink and I know the price of bread. But he says it makes no difference and that he wants back what is left. And then I start to give him the other parts. I give him my feet and my legs, I give him my head and body, I give him my arms, until at last there is nothing left, just my hands and they are empty. But he takes them back too. And then there is only the emptiness left. But he doesn't want that. Because it's me. It's all that is left of me.
They arrest it all the same.⁷¹

Errol's statements after the arrest divest him of everything. The law makes him less than human, less than animal, less than a sentient being. Even when reduced to a dismembered, disembodied emptiness, he still does not possess his own "emptiness" for "they" arrest his emptiness all the same.⁷²

Errol's monologue presciently prefigures Judith Butler's speculations about the possibility of agency for the slave through desubjectivization. Butler concludes her meditation on interpellation in *The Psychic Life of Power* by saying:

In a Nietzschean vein, such a slave morality may be predicated upon the sober calculation that it is better to "be" enslaved in such a way than not to "be" at all. But the terms that constrain the option to being versus no being "call for" another kind of response. Under what conditions does a law monopolize the

terms of existence in so thorough a way? Or is this a theological fantasy of the law? Is there a possibility of being elsewhere or otherwise, without denying our complicity in the law that we oppose? Such possibility would require a different kind of turn, one that, enabled by the law, turns away from the law, resisting its lure of identity, an agency that outruns and counters the conditions of its emergence. Such a turn demands a willingness *not* to be—a critical desubjectivation—in order to expose the law as less powerful than it seems. What forms might linguistic survival take in this desubjectivized domain? How would one know one's existence?⁷³

Errol's unbecoming performs the strategic calculation that it is better not to "be" at all than to "be" a coloured man arrested under the Immorality Act in apartheid South Africa.

Unseen and Unbecoming

Statements after an Arrest under the Immorality Act dramatizes the vastly different impact that the law's racialized interpellation has on each character. And yet it does not show us *how* that inequality is created, beyond the Sergeant's initial hailing of each suspect by race at the very moment of the arrest. Just as we never see the men behind the cameras and flashlights, we never see law enforcement in this play actually arresting anyone or conducting an interrogation. Nor do we see how apartheid's racialized law impacts these two suspects, one white, the other coloured. The psychic life of power for the oppressor, the Sergeant, also remains unseen. The playwright withholds this information. Why? The play raises the question of what is unseen. By withholding mimetic representation, the play may provide its most potent representation of all.

Elizabeth Maddock Dillon, in her book *New World Drama: The Performative Commons in the Atlantic World, 1649–1849*, asserts that "the signifying economy of the theater operates in two registers: one that is *ontic* (thingly, material, resolutely present) and one that is *mimetic* (referential, immaterial, gesturing toward a scene located elsewhere)".⁷⁴ Here she is amplifying on the pathbreaking work of theorist Bert O. States, who famously wrote, "There is a sense in which signs [in the theater] . . . achieve their vitality . . . not simply by signifying the world but by being of it."⁷⁵ The simultaneity of the mimetic and ontic is a defining quality of the theater, one that distinguishes it from, say, novels. Novels have received a far greater attention in recent scholarship on questions of human rights, law, and the literary. I am thinking here in particular of the work of Joseph Slaughter and Elizabeth S. Anker, both of whom focus

on human rights issues in relation to the novel.⁷⁶ How does the genre of theater compare with the novel in relationship to law and human rights? As a genre, theater (as opposed to “drama,” meaning only the script) “has the body” (*habeus corpus*). What does this body do? What does it reveal? What does it withhold? How does it function in both ontic and mimetic ways simultaneously, and what are the consequences of this fundamental instability between these two dimensions? How and what does theater’s ontic + mimetic perform?

Fugard’s *Statements after an Arrest* not only signifies a violation of the law through the couple’s mix-race affair; the performance of the play actually *was* a defiance of the law. Theater’s potency in apartheid South Africa was equaled by its vulnerability—a vulnerability that surely would have been felt as much by the audience at the opening of *Statements after an Arrest* as by the actors and producers. The Space, the Cape Town theater where *Statements* premiered in 1972, was a new fringe theater staging plays to mixed-race audiences in defiance of myriad prohibitions, pervasive censorship, and relentless police surveillance, raids, and harassment. In fact, *Statements* was the Space Theatre’s first production. The Space can be seen as a “white” institution inasmuch as white liberals funded it and dominated its artistic leadership. However, the founders deliberately decided to admit all races, and in this—its assembly of persons normally segregated, its fostering of forbidden intimacies across colour lines—the theater functioned as potent ontic instantiation of the transgressions mimetically represented by the characters Frieda and Errol in *Statements after an Arrest*. From its inception, the Space violated the law. According to the Separate Amenities Act of 1955 and also Proclamation R26 of 1965, both racially mixed audiences and racially mixed casts were prohibited in public entertainments without a permit.⁷⁷ In the unlikely event that a permit for mixed-race audiences was issued, then a theater had to have separate amenities for each race: separate entrances, seats, and restrooms. Furthermore, apartheid law stipulated that event spaces used by one race could not then be used by another. The first performance of *Statements after an Arrest* was cast with all-white actors, with the playwright himself playing the role of the coloured man, Errol Philander. So on the casting front, the producers were legally in the clear. However, the audience was racially mixed, and this was a calculated gamble. As founder of the Space, Brian Astbury recalls:

Then during the run [of *Statements*] our final problem arose. Those that—in this country—shouldn’t have been allowed entrance came to buy tickets.

And we had, at the beginning, determined that if we were going to have to turn people away we were going to have to be forced to do so by the full and visible weight of the law. So from the start, everybody was allowed in. And we waited for the law to stop us.⁷⁸

From its premier, *Statements after an Arrest* provoked the possibility that its title would become predictive—that the audience itself might end up giving statements after *their own* arrests for being in the theater that night. In the meantime, the theater waited—for the law in the form of the police or Special Branch to show up, for citations to be issued, for actual arrests of actors and spectators to be effected. Theater was a space for not just imagining but for doing what the law disallowed. Like the library after hours for Frieda and Errol, the Space Theatre was for many an oasis of possibility for imagining that which the law forbid; but it was nevertheless entirely subject to the law, which could intrude, overrule, and unmake things at any moment.

When policemen as characters burst into a dimly lit scene of love in *Statements after an Arrest* wielding cameras and blinding flashlights, law enforcement announced itself mimetically as light, exposure, a blinding glare. The police violently intrude on an intimate, domestic space, and in doing so they completely disrupt the artificial no-man's-land that Errol and Frieda have created. The police expose this affair as being fully subject to apartheid law. At the same time this mimetic reality within the play was paralleled, even more potently, by the ontic reality of the Space Theatre itself. Just as Errol and Frieda's were fully aware that their clandestine affair was never "outside" the law, South Africa theater audiences knew very well they risked arrest by attending this show, and this may well have added drama and anxiety to the moment of the police raid within the script. Was this a mimetic or ontic raid? There was likely to be confusion.

From the very beginning of the play, Frieda and Errol are spooked and anxious, despite their surface calm and equanimity. They are worried about exposure, about discovery, about who might be lighting a match that suddenly flares in the darkness. The two have created a bubble where a coloured man and a white woman can lie naked on a blanket in a tender embrace of love, but they know this private space is a play world that can be destroyed in an instant. Not unlike the imaginary house made of sand that Errol reports on early in the play when he describes a child at play, his relationship with Frieda is an imaginary house of sand. Yet, still, Errol's affair—like the coaching he gives the child—is expansive. ("If you're going to dream, give yourself five rooms, man," he had told the playing

child.)⁷⁹ In Frieda, he has given himself the equivalent of “five rooms.” Errol knows that fantasies and works of imagination are performative: they create *spaces of possibility*, potentialities for new dispensations, experiences of how things could be otherwise. So too did the Space Theatre. Like Errol and Frieda, Cape Town’s Space Theatre attempted to create a protected space that was a “no-man’s land” at law’s edge in apartheid South Africa—a space where many races could assemble together, be intimate with one another, bare their souls, sit together in a mixed-race audience sharing hope that such fraternity could be unmolested by the police. The Space was a place where one could hold—at least for an hour or two—the fantasy of being a subject not in complete subjection to apartheid law. To attend or not to attend the theater—that was a choice, an action of legal significance that the audience had to make. In light of the ontological reality of naked players and a mixed-race audience in their own act of infidelity to the state, the play and its production were together and separately acts of immorality. The simultaneity of the mimetic and ontic realms in theater means that, in the case of this play, immorality *acted*: the live performance of the play *did something* with words, and bodies, and time, and space, and light and darkness.

South African Minister of Justice Dullah once described apartheid as a dual state whereby whites enjoyed parliamentary democracy and blacks lived under dictatorship. This line of reasoning has been taken up at length by scholar Jens Meierhenrich.⁸⁰ The country’s “schizophrenic institutional structure,” in Meierhenrich’s words, created conditions whereby contrasting legal norms for whites and nonwhites had to be repeatedly instantiated, enacted, made performatively manifest. Especially in the wake of the Sharpeville massacre in 1960, the law became at once unstable and increasingly rigid, enforced in capricious ways through repeated declarations of states of emergency. One saw the suspension of normal legal procedures through states of exception, the authorization of ever-escalating periods of detention without trial, the proliferation of bannings and a whole host of other legal intrusions into daily life. The condition of the law in this period of apartheid South Africa was inherently unstable and dualistic. It was this very instability that created the potential for performative moments of intervention and defiance.

In terms of dramatic action, the law as depicted in *Statements* appears to treat Errol and Frieda equally. Other than hailing them by their race, the arresting officer doesn’t single out either Frieda or Errol, or treat them in different ways—at least that we *see*. We don’t see the actual arrest; it

is only narrated. We don't see the actual interrogation, but only snippets of it, particularly as the interrogator's voice is internalized by Frieda. In earlier early versions of the play—including the version performed in Cape Town in 1972—Fugard gave the police a far more prominent role. The play previously had not just one but two policemen, both introduced from the very beginning of the play rather than only entering halfway through. In this early version of the play, the police were as central as characters as Errol and Frieda became in the final version. What Fugard shows us in the revised script is rather how the two accused have internalized the stakes of this arrest in such radically different ways. Clarity about this focus emerged during the London rehearsals in 1974—when actor Ben Kingsley played Errol and Yvonne Bryceland, Fugard's long-time South African collaborator, played Frieda. Here Fugard discovered the play's final form. We see in revisions a telescoping of focus so that Frieda and Errol are clearly the center of the play—their relationship, subjectivity, intersubjectivity, and thwarted love.⁸¹ Errol's narrative of his de-subjectivization after his arrest becomes the play's true center of gravity. The choice to minimize representation of law enforcement intensified, implicitly, a questioning of the audience. Do the spectators become, in effect, aligned with the unseen wielders of the flashlights and cameras, the intruders on an act of intimacy, the interrogators, the judges to whom the two accused address their statements?

Fugard's notebooks reveal that he was most interested in the couple: their relationship, their interior lives, their loneliness, their thwarted attempt to connect with an Other, and the way a racist set of laws shape their individual characters and fracture their relationship. He dramatizes the police as an inciting incident, which is not to say that Fugard failed to grasp the perversion and gross immorality of the Immorality Act itself. If Fugard had been interested in focusing more on the police, *Statements* would most likely have been banned. As Martin Orkin reminds us, apartheid legislation forbade "any real discussion or representation of police and prison conditions in South Africa."⁸² This is likely why one never sees the guards or prison wardens Fugard's play *The Island*.

Instead, Fugard casts a light on Frieda and Errol. What does this light reveal? We see that Frieda stands before the law as a full person. She is defiant, confessional, introspective, free to disclose. For Errol, the arrest instigates a rapid devolution into panic, stereotype, and disintegration of self that reduces him to bare life, and even less—a subject with no body, no limbs, no soul, whose only possession is his own of emptiness, and

even that—that emptiness—can be incarcerated. Errol and Frieda begin the play with the appearance of Edenic purity and equality. Once caught in their act of love, there is a dual state of play. For her the way forward is that “all of me that found you must now lose you”; for him the way forward has nothing to do with dependence, or confession, or guilt, or even shame. For him, there is no place from which to speak, no role in which to be. His only possible strategy is a dissolution of his very being. He is reduced to pure will.

This is a devastating conclusion to a play that begins with such tender intimacy, a love story that began with nakedness, honest intimacy in a darkened room, a tender embrace. The intrusion of the policeman, his dictation, as well as the photographs, camera flashes, and flashlights wielded by unseen forces representing the law, violently annihilate a precarious bond. In the dual state, fragile moments of tenderness and equanimity across racial lines could exist, but law’s intrusion (magnified in the play’s bifurcated structure and style) violently tears the two apart. Performatively, the law strips Frieda of entanglement with the racial Other. She becomes again a solo being. Performatively, the law strips Errol of his very being. In all of this, the audience is ambiguously cast as witness, spy, accomplice interrogator, or fellow potential arrestees.

Two key ideas animated Fugard’s revisions of this manuscript after the play opened in 1972. First he said, “I want *their* [the couple’s] story to contain the policeman’s statement, rather than have the *policeman’s* statement contain their story.”⁸³ He also was exploring having the couple’s fear and apology and explanation to the audience be “equal, if not greater, to their relationship to each other.”⁸⁴ Fugard stages a reframing of the performative elements of interpellation during arrest. Rather than the law hailing the subject, the subjects (Frieda and Errol) hail the law through the “statement” of the play itself. Fugard wants *their* story to contain the policeman’s statement, rather than vice versa. This is a radical reframing—certainly in the context of apartheid South Africa where the law so routinely, pervasively, and insidiously subjected people’s lives to its force. Fugard also wanted the play to reframe the complicity and intersubjectivity of the lover’s relationship with each other. Their intimacy and infidelity becomes, in the course of the play, matched by the bond between audience and the two lovers, a bond both of intimacy and infidelity, as well as legal vulnerability. For the audience, this vulnerability is more real than anything represented on stage. They were hailed by the performance at the Space, and by attending, they broke the law.

Conclusion: Laws of Probability

While the three "Statement" plays (*Sizwe Bansi Is Dead*, *The Island*, and *Statements after an Arrest under the Immorality Act*) are not generally performed as a trilogy, their publication together in one book suggests a trilogy. These plays *are* statements—uttered performances at law's edge between the human and the inhumane, aesthetic representations of moments of legal interpellation that give insight into legal habitus, the interiority of the psychic life of power, and the capacity of dreams, relationships, and imagination to carve out finite worlds of respite where agency is envisioned, and if not felicitously performed, at least *rehearsed*. Given that all three scripts were composed and premiered in a climate of intense censorship where the theater was routinely subjected to editorial interference, bannings, surveillance by spies, raids by the Special Branch, and arrests of playwrights and actors, the "Statement" trilogy provides a provocative point of entry for thinking about the way in which one becomes—and *unbecomes*—a subject before the law, and how the law and race were tightly imbricated in apartheid South Africa.

The most searing image of this play is the final monologue by Errol, after his arrest. Through extraordinary and poetically distilled language, we witness an implosion of self. He tells of the disintegration his body, the loss of limbs, the erasure of his entire material reality, his corporeal being. Yet all the while, Errol nevertheless asserts his will. Even when his limbs and all his body parts have been seized, when he is nothing but emptiness, and even then when that emptiness is arrested, he still says:

Now I'm here.

There is nothing here.

They can't interfere with God any more.⁸⁵

In these final moments, Errol's speech echoes, unwittingly, ideas of theorists who have wrestled with the paradoxes of interpellation. Does the divine provide a space outside interpellation? Does love or desire offer a sanctuary outside interpellation? In Errol's narrative we see several "turns," harkening back to Althusser's interpellation scene, the policeman's hail: Errol turns away from Frieda his lover, and we know that in turning *to* her previously, he had implicitly turned away from the rest of his life: his wife, family, and his community in the coloured township. Caught between these worlds at the moment of his arrest, Errol turns yet again, this time away from Frieda, away from his family, and away from the law. His refuge is to become an

unbecoming subject, a consciousness without flesh, a will without materiality. He says, "Now I'm here" and, at the same time, "There is nothing here." Errol's self-negation dramatizes a subject refusing interpellation within a racist state, an unbecoming, an attempt to become not a subject at all.

Sara Ahmed in *Willful Subjects* argues, "To queer the will is to show how the will has already been given a queer potential. . . . Willfulness might be a conversion point: How a potential is converted into a threat."⁸⁶ She also asserts, "Perhaps self-certainty is not how the will becomes what is given to a subject, but how a subject can become itself: 'I have a will' understood not only as a sign of existence, 'I will *therefore* I am' but as an impulse to existence: 'I will *then* I am.'"⁸⁷ Errol is a willful subject whose unbecoming performs rather "I am *not*—and yet still, *I will*." His disintegration can hardly be seen as liberation—this is a reduction of self, a distillation to a pure essence of will, devoid of body. However, we may nevertheless read in his final monologue an insistence on another way of being, one that preserves something of the epiphanies he experienced through his affair, through reading books, through using his imagination, through creating a no-man's land sanctuary in a darkened room on a library floor with a lover of his own choice, even if that choice destroys his life. Might Errol eventually, after the action of this play concludes, become something else altogether? He asserts, if not *agency*, then at least a *willfulness*, first through a becoming tied to sexuality, intimacy, and self-discovery, and then, when his becoming is arrested, literally stopped mid-stream by the invasion of apartheid law, his unbecoming does contain the seeds of something else, something not yet seen, known or understood, where "they" can no longer interfere. Errol's will at the end of *Statements* is all he has; it's all he is. Pushed, conscripted, reduced, annihilated, in a corner that is a space of non-being, his will lives on, makes a claim to agency beyond all sovereign forces. His will persists as a dematerialized essence that continues to exert a performative force after all else is gone.

Willfulness also drove the theater artists who ran the Space Theatre on Long Street in Cape Town, the venue that staged as its first production *Statements after an Arrest under the Immorality Act* in March 1972. The theater's ontic reality provided a mimetic space not only to represent the world of apartheid South Africa otherwise, but to hail and interpellate its apartheid-era audience into an aspired nonracist future. The theater operated in defiance of apartheid laws about segregation and separate amenities; it danced around prohibitions about freedom of assembly across racial lines; it willfully asserted freedom of expression.

In a one-man show entitled *No Space on Long Street* retrospectively celebrating in 1997 the twenty-fifth anniversary of the founding of the Space, actor, comedian, and Space founding veteran Pieter-Dirk Uys recalled the opening of the Space Theatre in 1972 (Uys served as one of the theater's core innovators and artists during its ten-year existence):

The Space / Die Ruimte opened round the 27th march 1972 with a new play by Athol Fugard: *Statements after an arrest under the Immorality Act*. The Space's colours were nailed to the mast.
The impossible was probable.
It was the beginning of freedom of expression in the theatre. . . .
The Space became the conscience of a generation.⁸⁸

There was much about the Space that was improbable: its fiscal viability, its production timelines, its lack of technical support, stable staffing, finalized scripts, adequate electricity, proper plumbing, or a living wage for its artists. Disruptions by security police and the censors were so pervasive and capricious the law almost became a kind of co-producing agent, inserting unpredictable provocations around which the theater producers and artists constantly improvised. As Uys recalls in *No Space on Long Street*:

We did a season of my plays: *Selle Ou Storie*—they banned the script but you could see the play; *Karnaval*—they banned the play but you could read the script; and *God's Forgotten* the play that should have been banned but wasn't. The pressures of three productions, no money, censorship and fear, exhaustion and the silly feeling of not being loved.⁸⁹

Of course, the apartheid state had full power and capacity to shut down the theater entirely at any time. But the censors and Security Police did not wish to make The Space into a political martyr. Their strategy seems to have been rather to tire the artists out, to undermine them slowly with a kind of "slow censorship," a bureaucratic bloodletting as a durational endurance act. As one censor says in Uys's 1997 retrospective play: "We will just ban you for 'obscenity' and 'blasphemy' and bankrupt you! We know how to do our job."⁹⁰ Slow oppression undermined the theater through exhaustion rather than outright extermination. John Vorster, the South African prime minister, tells Elsabe, a censor who routinely surveils the Space Theatre and is a key character in Uys's *No Space on Long Street*: "You see, Elsabe, we in power are also artists in what we do."⁹¹

Despite all that was improbable about the Space, the artists went forth making theater and breaking apartheid laws for ten years. The state, too, played its part—banning, raiding, spying, infiltrating, arresting, and undermining revenue streams. Raids were the most overt insertions of the law, and, just like the raid on Errol and Frieda in *Statements*, raids on the Space Theatre were usually prompted by a nosy neighbor. Elsabe in Uys's play *No Space on Long Street* recalls:

It was during the performance of Tennessee Williams's *Glass Menagerie*. One of my favourite plays. A wonderful production by Bill Tanner. I could've killed them! With Yvonne Bryceland at her most moving moment, suddenly like the Gestapo, these barbarians storm in. And why? Because some fool phoned them that there are blacks in the theatre and it is against the law!⁹²

The police burst into the Space Theatre's production of *Glass Menagerie*, just as the police burst in on Errol and Frieda in *Statements*: "The lights went on, and the magic was gone," Elsabe recalls.⁹³ Yet her own subject position was complicated: the character Elsabe in *No Space on Long Street* was actually a "prominent member" of the Censor board. It was her duty to attend the Space Theatre on a regular basis. What the state may not have realized, she confesses, is that they had put a "chocoholic in charge of a chocolate factory."⁹⁴ She loved and supported much of what the Space was doing. Theater is a volatile, capricious, and unpredictable zone: in performing some roles we may un-become them. The chief censor of the Space becomes one of its biggest fans. Her objection to the police interrupting the production of *Glass Menagerie* was at core a jurisdictional question—who has the authority to make such decisions, the police or the censors? Whose opinion about what infractions are tolerable and which are intolerable will prevail? The law has many agents with many different opinions.

The Space's willful defiance and improbable tenacity provided an incubation space for at least some people in South Africa to perform, to enact, to rehearse, and to "make belief" through the "make believe." Like Errol and Frieda, the Space artists created a temporary sanctuary, a cherished yet fragile oasis where love and affection across racial lines could flourish. Such a space, however vulnerable, was nevertheless potent. In this space alternate realities came to appear not just *possible* but *probable*. Uys recalled in 1997:

Twenty-five years ago. Before sanctions, before the Mandela t-shirts, before it was fashionable and right to be anti-apartheid, there was a dream that came true. It was called The Space Theatre and it started its journey in a sprawling warehouse off Long Street, between Bloem and Buiten. It was the place where the alphabet of South African Theatre was reinvented. It was poor and yet gave great riches to the community. It was one of the beginnings of freedom of expression. It was the end of apartheid in the arts.⁹⁵

Theater is a form that requires for its very existence freedom of assembly, freedom of expression, and the presence of the body. As such, theaters like the Space that pitch up at law's edge—that must defy the law in order to exist—have capacity to incubate potential futures, contingent realities that not only make visible the law's reach, but rehearse and reveal the law's limits. As such, theater has capacity to perform something else—something not yet seen, known, or understood.

NOTES

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1. Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120, no. 2 (2005): 442–53, at 451.

2. See Dennis Kezar's introduction to his edited volume *Solon and Thespis: Law and Theater in the English Renaissance* (Notre Dame: University of Notre Dame Press, 2007), 1–16.

3. Peters, "Law, Literature" and also "Legal Performance Good and Bad," *Law, Culture and the Humanities* 4 (2008): 179–200, at 181.

4. Kezar, *Solon and Thespis*, 2–3.

5. Henning Grunwald, "Justice as 'Performance'? The Historiography of Legal Procedure and Political Criminal Justice in Weimar Germany," *InterDisciplines* 2 (2012): 46–78, at 46.

6. Peters, "Law, Literature" and "Legal Performance Good and Bad." For a further elaboration of the questions of law and performance into human rights and transitional justice questions, see Catherine M. Cole, "Performance Transitional Justice, and the Law," *Theatre Journal* 59, no. 2 (2007): 167–87; and Julie Stone Peters, "'Literature,' the 'Rights of Man,' and Narratives of Atrocity: Historical Backgrounds to the Culture of Testimony," *Yale Journal of Law & the Humanities* 17, no. 2 (2005): 253–83.

7. Peters, "Law, Literature," 449.

8. Peters, "Legal Performance," 198.

9. This disciplinary history is well narrated by Julie Stone Peters as well as Andrew Parker and Eve Kosofsky Sedgwick, eds., *Performativity and Performance* (New York: Routledge, 1995); Marvin Carlson, "The Resistance to Theatricality," *SubStance* 31, nos. 2–3 (2002): 238–50; Tracy C. Davis and Thomas Postlewait, ed., *Theatricality* (Cambridge: Cambridge University Press, 2003); and Shannon Jackson, *Professing Performance: Theatre in the Academy from Philology to Performativity* (New York: Cambridge University Press, 2004).

10. Martha Merrill Umphrey, "Law in Drag: Trials and Legal Performativity," *Columbia Journal of Gender and Law* 22 (2011–2012): 114–29, at 120.

11. Joshua Takano Chambers-Letson, *A Race So Different: Performance and Law in Asian America* (New York: New York University Press, 2013), 16.

12. Ibid., 6. See also Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," translator's introduction by Richard Terdiman, *Hastings Law Journal* 38 (1987): 805–53.

13. I have contributed to this imbalance with my book *Performing South Africa's Truth Commission: Stages of Transition* (Bloomington: Indiana University Press, 2010).

14. Umphrey, "Law in Drag," 522–23.

15. J. L. Austin, *How to Do Things with Words*, 2nd ed. (Cambridge, MA: Harvard University Press, 1975).

16. Louis Althusser, "Ideology and Ideological State Apparatuses (Notes towards an Investigation)," in *Lenin and Philosophy, and Other Essays*, trans. Ben Brewster (New York: Monthly Review Press 1971), 85–126, at 118.

17. Mladen Dolar, "Beyond Interpellation," *Qui Parle* 6, no. 2 (Spring–Summer 1993): 75–96; Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford, CA: Stanford University Press, 1997), esp. chap. 4, "'Conscience Doth Make Subjects of Us All': Althusser's Subjection," 106–31.

18. Dolar, "Beyond Interpellation," 76.

19. Ibid., 87.

20. Butler, *Psychic Life of Power*, 129.

21. Mary Bunch, "The Unbecoming Subject of Sex: Performativity, Interpellation, and the Politics of Queer Theory," *Feminist Theory* 14, no. 1 (2013): 39–55, at 50.

22. Ibid., 53.

23. Alexander G. Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham, NC: Duke University Press, 2014), 4.

24. Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 68.

25. For more on "scenes of subjection," see Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997). Hartman's research on nineteenth-century America reveals how operations of terror could be found in quotidian practices where terror could hardly be discerned—self-fashioning, dancing in the slave quarters, or the comic inversions and exaggerated body contortions of the minstrel stage.

26. Athol Fugard, *Notebooks, 1960–1977* (New York: Theatre Communications Group, 1984), 132–33.
27. Athol Fugard, John Kani, and Winston Ntshona, *Statements: [Three Plays]* (Oxford: Oxford University Press, 1974); republished by Theatre Communications Group (New York) in 1986. All citations in this chapter refer to this latter republication.
28. Albert Wertheim, *The Dramatic Art of Athol Fugard: From South Africa to the World* (Bloomington: Indiana University Press, 2000), 69.
29. For summary of titles from theatrical reviews of this play in South African press, see *Athol Fugard: A Bibliography*, comp. John Read (Grahamstown, SA: National English Literary Museum, 1991). For instance: Owen Williams, “Honesty, Integrity, but Dullness in Play,” *Cape Times*, March 29, 1972, 17.
30. Fugard, *Notebooks*, 196.
31. “Coloured” in apartheid South Africa meant “mixed race.” Throughout my essay, South African spelling is used so as to draw attention to this historically and culturally specific usage.
32. Fugard, *Statements*, 81.
33. Papers of Athol Fugard, 1918–1997, at the Lilly Library, Indiana University, Bloomington, Indiana: Fugard mss., Box 1, Folder 28, Notebook 1971 to 1972/10. (All subsequent citations to the Lilly Library holdings are listed as “Fugard mss.”)
34. Fugard mss., Box 1, Folder 28, Notebook 1971 to 1972/10, May 7, 1972.
35. See https://en.wikisource.org/wiki/Immorality_Act,_1927.
36. See https://en.wikisource.org/wiki/Immorality_Amendment_Act,_1950.
37. Jeanne Colleran, “Re-situating Fugard; Re-thinking Revolutionary Theatre,” *South African Theatre Journal* 9, no. 2 (1995): 39–49, at 43.
38. Fugard mss., Box 1, Folder 30, Notebook 1972/11.
39. Fugard mss., Box 4, Folder 29, Typescript of draft of *Statements after an Arrest* with holograph insertions and changes. Handwritten note appears after page 13.
40. Fugard, *Statements*, 80.
41. Wertheim, *The Dramatic Art of Athol Fugard*, 72.
42. Fugard, *Statements*, 81.
43. Martin Orkin, *Drama and the South African State* (Manchester: Manchester University Press, 1991), 110.
44. Geoffrey V. Davis, *Voices of Justice and Reason: Apartheid and Beyond in South African Literature* (New York: Rodopi, 2003), 150.
45. Fugard, *Statements*, 82.
46. *Ibid.*, 85.
47. *Ibid.*, 93–94.
48. *Ibid.*, 89–90.
49. *Ibid.*, 91.
50. *Ibid.*, 82.
51. *Ibid.*, 84–85.
52. *Ibid.*, 93.
53. Just as Judith Butler rejects Mladen Dolar’s claim that love can be beyond interpellation, so too does Errol reject this idea. See Butler, *The Psychic Life of Power*, 127–31. On the relation of love and law, see also Paul W. Kahn, *Law and Love: The Trials of King Lear* (New Haven, CT: Yale University Press, 2000).
54. Fugard, *Statements*, 96.
55. Fugard mss., Box 1, File 30, Notebook 1972/11.
56. Fugard mss., Box 1, Folder 28, Notebook 1971 to 1972 /10. Entry for 8/8/72.
57. Fugard, *Statements*, 96.
58. *Ibid.*

59. Ibid.
60. Ibid., 98.
61. Ibid., 99.
62. Ibid., 101–2.
63. Ibid., 102.
64. Ibid., 103.
65. Ibid., 104.
66. Ibid., 101.
67. Ibid., 105.
68. Ibid., 105.
69. Dolar, “Beyond Interpellation,” 85.
70. Fugard, *Statements*, 106.
71. Ibid., 107–8.
72. Ibid., 108.
73. Ibid., 130.
74. Elizabeth Maddock Dillon, *New World Drama: The Performative Commons in the Atlantic World, 1649–1849* (Durham, NC: Duke University Press, 2014), 50.
75. Bert O. States, *Great Reckonings in Little Rooms: On the Phenomenology of Theater* (Berkeley: University of California Press, 1985), 20.
76. Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007), and Elizabeth S. Anker, *Fictions of Dignity: Embodying Human Rights in World Literature* (Ithaca, NY: Cornell University Press, 2012).
77. Davis, *Voices of Justice and Reason*, 145.
78. Quoted in Anne Fuchs, *Playing the Market: The Market Theatre, Johannesburg, 1976–1986* (Amsterdam: Rodopi, 2002), 30.
79. Fugard, *Statements*, 82.
80. Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652–2000* (Cambridge: Cambridge University Press, 2008), 112.
81. The Lilly Library at Indiana University, Bloomington, holds several versions of the play manuscript, and one can trace through these its evolving form.
82. Orkin, *Drama and the South African State*, 165.
83. Fugard, *Notebooks*, 196.
84. Ibid.
85. Fugard, *Statements*, 108.
86. Sara Ahmed, *Willful Subjects* (Durham, NC: Duke University Press, 2014), 11.
87. Ibid., 23.
88. Pieter-Dirk Uys, *No Space on Long Street* (unpublished playscript, 2000), 6–7. Available at <http://pdu.co.za/no%2ospace.html>.
89. Ibid., 26.
90. Ibid., 32.
91. Ibid., 33.
92. Ibid., 31.
93. Ibid., 31.
94. Ibid., 32.
95. Ibid., 29–30.