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# Censorship as the Formative Mechanism of Neoliberal Culture?: The Productive Function of Prohibition

Censorship is a productive form of power: it is not merely privative, but formative as well.<sup>1</sup>—Judith Butler

In Poland today, censorship is a topic revived in several contexts - theatre is only one of them, but may be the most spectacular. Protests against *Kl twa* [*The Curse*], production directed by Olivier Frijlic at the Powszechny Theatre in Warsaw, the cancelling of planned productions in Kraków, Poznań and other cities, a contest for theatre-director positions thrown open in Wrocław, Bydgoszcz, Warsaw and other cities - these incidents contribute to an alarming image of Polish theatre at risk of various forms of censorship.<sup>2</sup> On the other hand, though, the community affiliated with these specific institutions and, at times, the general Polish theatre audience engage in actions supporting threatened productions, artists and institutions, as was clearly visible in the case of events related to the Rodrigo Garcia production in Poznań in 2014 of his *Golgota Picnic*, which will be discussed below. Given such situations, growing interest in issues of censorship and its various contemporary forms seems obvious, as does the political agency of theatre, its vulnerability and activity, etc.

In summer 2016, the theatre journal *Dialog* published a text by Maciej Nowak, a prominent figure in Polish public life and its theatre community, in which Nowak presented his project of 'popular theatre'.<sup>3</sup> I read of this project with great emotion. At first impulse, it even seemed an interesting attempt at resolving the stalemate and schism faced by contemporary Polish theatre, which has been attacked and censored for an alleged iconoclasm on one hand, while on the other it is criticised for conservative and rather classical repertoire choices, means of expression and methods. Nowak, the former director of the Wybrzeże Theatre in Gdańsk, and the Theatre Institute in Warsaw and now artistic director of the Polski Theatre in Poznań, to name several functions he's performed, calls for opening theatre to the widest possible audience, understood in egalitarian terms. In my opinion, Nowak's proposal is important especially because it offers a self-critical, reflective and also progressive approach to culture, while at the same time inviting discussion on ways in which theatre may become an element of the common sphere.

This proposal is, however, based on oppositions and divisions that must be transcended if we are to find a solution to the deadlock Nowak notes. By perceiving

theatre as a space providing these kinds of experiences to its audiences, carefully separated from its workers, Nowak repeats precisely the contradiction which must be destroyed in contemporary theatre and which is fundamental for the formation of the real 'public theatre' he describes in his article. Though the competence and cultural capital of people working in theatres often constitute necessary resources for building a meaningful repertoire, we can still speculate on whether that capital is totally absent on the part of the audience and, especially, whether theatre as a public commons can remain founded on the division between artists and their audience. We should remember that the oldest theatre in Rome, Teatro Valle, occupied in recent years, became a pretext for renegotiating the notion of property and the common good. Its occupation, by the Teatro Valle foundation, led to acknowledgement of theatre as a common good, effectively preventing its privatization, destruction and deepening gentrification of the city.<sup>4</sup> By sustaining the rigid institutional division between the state as the patron, theatre as the provider of art and audience as its passive consumers, Nowak's article does not, in fact, offer any new formula for theatre. However – and in my opinion this is important – his input initiates a discussion which I believe may take an interesting turn, and in this sense it seems valuable.

Nowak's proposal, despite all its limitations, is a part of an ongoing debate over recent years concerning the public sphere and its institutions, which has been especially important for Antonio Negri and Michael Hardt, along with public institutions discussed by Gerald Raunig and Krystian Szadkowski, and more general issues of the public sphere, counter-audience and community discussed for years by Habermas, Fraser, Kluge, Negt, and in Poland by Nawrotek, Pluciński, Marzec and in part by me.<sup>5</sup> In my opinion, the problem of censorship and artistic freedom should be considered in precisely this wide context of public and common spheres, otherwise it may become bogged down by classic liberal or neoliberal absolutization and fetishization of individual freedom, which doesn't broaden freedom but often becomes the main reason for its absence.

The fetishization of individual artistic freedom is in many aspects similar to the absolutization of privacy characteristic in some groups struggling for transparency and freedom from control in our times of contemporary surveillance, especially digital surveillance. Lauren Berlant once wrote that privacy is the Oz of today, and Moira Gatens argued convincingly that broad social groups worldwide have never had any privacy, including slaves and indigenous peoples.<sup>6</sup> Feminist philosopher Isabell Lorey dismantles the 'I' by claiming that the individual autonomous Western subject has always required downgrading broad layers of society into poverty and instability – into the state of precarity – for its own existence.<sup>7</sup> Privacy and autonomy today are no longer values but have turned into problems, not merely because of conservative criticism against including social masses, but also as a result of their feminist revisions. Feminist authors such as Carole Pateman, who diagnoses philosophical and political projects of social contract as brotherly, because they were based on excluding women,<sup>8</sup> and Nancy Fraser, who systematically criticises the Habermasian

project of the public sphere as gender blind,<sup>9</sup> and Susan Buck-Morss, who indicates the constant presence of plantations not only in the Hegelian dialectics of domination and subordination, but also in the past and contemporary daily practices,<sup>10</sup> have shown a number of reasons why the philosophical and political tradition of the Enlightenment has to be revised if we still want to keep it as a project.

Such criticism is reflected nowadays in the visual arts and theatre, where the primacy of linear narrative has been replaced by rhizomatic structures and the figure of the director effectively disrupted by strengthening the figure of the dramatist, on one hand, and the audience, on the other. The performative revolution revealed the body and its agency, whereas gender and social revolutions has enabled previously excluded topics, problems and objects to enter the stage.<sup>11</sup> The emergence of neoliberalism and the dismantlement of central, state-mandated social security led to the development and reinforcement of mechanisms of cooperation or even occupation. The oldest theatre in Rome, Teatro Valle, was not only occupied by its employees and audience, but the occupation was sanctioned by the court and municipal authorities as a legitimate model of action in the context of the common good, which in their constitution includes culture.<sup>12</sup> The occupation, lasting since 2011 and legally sanctioned in 2013, has become the precedent opening the way to several other theatres in Italy which, following Teatro Valle, registered affiliated foundations and experimented with horizontal management including the participation of their audiences.

Polish theatres are not that open to experimenting with theatre formulas. They still function within the framework of the repertory-theatre model – and, as should be noted, a rather old-fashioned model – but they could evolve towards the institutions of the common good. I will show that this is sometimes forced by people and situations usually regarded as hostile towards theatre, such as heartless clerks or traditionalists attacking artists' creative freedom. The case of Teatro Valle is similar in this respect, because the change in the paradigm of theatre production was brought about not only by social and cultural radicals but in the first place by developers and some municipal officials who wanted to privatize the theatre.<sup>13</sup> In the Polish context as well, the broadest opening of theatres to their audiences and other external supporters usually takes place in situations of such assaults, as occurred during incident surrounding censoring of the production by director Rodrigo Garcia's *Golgota Picnic*, planned for the Malta Festival Poznań in 2014, and censored by the festival director, who conceded to demands of the Polish clergy, which generated a veritable 'festival of solidarity' across the country, and after the Marshal of the Kuyavian-Pomeranian Voivodeship Marshal and others attacked the Polski Theatre in Bydgoszcz, leading to acts of solidarity among creative communities, public institutions (the municipal authorities in Bydgoszcz, the Commissioner for Human Rights) and the media.

The perspective proposed here for analysing censorship places it in the wider social context, reading its acts not only as instances of destructive invasion in the field of

culture but also as interventions forcing artists and supporters of their work to create new alliances, strategies and forms of acting, constituting theatre not only as an element of the social sphere, since by definition it is one, but also as the common good, which it becomes only occasionally – and I am convinced that it sometimes becomes one as a result of intervening censorship. How else to interpret mass readings of the *Golgota Picnic* script, from a production cancelled through the self-censoring decision of the Malta Festival director, if not as the constitution common through the act of protest?<sup>14</sup>

The idea originating from Michel Foucault's thought that prohibition can be analysed, not as a mere deprivation or annihilation, but rather as a productive mechanism of creating culture, is an important element in my reflections.<sup>15</sup> From this point of view, censorship doesn't work as a metaphysical erasing machine, but is rather a complex mechanism bringing into existence numerous forms of culture (offices, bureaus, practices, etc.), its functionaries (censors, clerks, secret informers, defenders, activists, etc.) and various forms of what Foucault accurately called 'governmentality': internalised mechanisms of self-censorship and control that participants of culture generate in their own lives in order to be able to function in the culture of defined prohibitions and laws. As Butler writes:

Censorship is most often referred to as that which is directed against persons or against the content of their speech. If censorship, however, is a way of *producing* speech, constraining in advance what will and will not become acceptable speech, then it cannot be understood exclusively in terms of juridical power. [...] Censorship precedes the text [...], and is in some sense responsible for its production.<sup>16</sup>

From such a perspective, the analysis of 'censorship mishaps' – as I'd like to call them, following Izabela Kowalczyk – those recent attempts at limiting creative freedom in Polish theatre and more widely in Polish culture, becomes not merely a complaint about losing our freedoms, which could suggest the existence of free culture to which we should allegedly aspire, but rather the analysis of strategies typical of the nation's current government of building mechanisms and instruments of control, forms of their legitimisation, institutional support for their implementation and internalisation by individuals.<sup>17</sup>

This form of government is understood here as the actions of the Law and Justice (PiS) party elected in the general elections in 2015, led by Jarosław Kaczyński, and their principal methodology, called by its executors a 'good change', which from the beginning of the PiS administration has been a strategy of transforming the democratic state into dictatorship, but in such a dispersed way that it is difficult to point out explicitly where this dictatorship begins. For some, such a dictatorial element would include the legal and decisional paralysis inflicted on the nation's highest court, the Constitutional Tribunal. For some, it would be regulations concerning foreigners that deprive them of many rights through an act concerning the police from January

2016, while for others the Rubicon was crossed during the actual elimination of equality between all citizens by a law on public assembly proposed in autumn 2016 which, in the version adopted by the Polish Sejm (parliament's lower house), distinguished the applicants registering for such assemblies between groups which are more entitled (the Catholic Church; groups affiliated with the PiS party) and less entitled (all other groups) to organise such assemblies. Though the Polish Senate repealed the regulation in that act giving priority treatment to the Church and to groups favouring the current administration, such priority treatment will most probably be present in practices of Polish offices where, for example, employees support the ruling PiS party. These changes have been followed by personnel changes in publically funded media and in the central courts, which results in turning these once-independent institutions into mere functionaries implementing the current political doctrine.<sup>18</sup>

In comparison, cultural changes seem more gentle. Only several directors at cultural institutions have been replaced but, unfortunately, this has been implemented in an awful manner, as evidenced in the case of the Polski Theatre in Wrocław, where a non-transparent competition procedure led to the appointment of a new director who was not accepted by the theatre's team and was incompetent but in excellent relations with local authorities and with the Ministry of Culture and National Heritage, which co-manages the theatre. Protests by theatre employees and audiences have been ongoing for months. In Gdańsk, the Museum of the Second World War, founded in 2009, was abruptly forced to merge with a newly announced Museum of Westerplatte as the former institution approached its opening, a merger which was probably expected to go unnoticed but provoked international protest. The worldwide network of Polish Cultural Institutes had the proper persons and cultural products to present to the public 'suggested' to them, and personal changes were imposed on an unprecedented scale including the replacement of many experienced directors. Most publicly funded theatres and art galleries have, however, retained their directors and continue to programme consistently. Financial support for contemporary art, however, was frozen unexpectedly in early 2016, with the threat of elimination, but fortunately by year's end this was changed by decision of the minister of culture, who allowed acquisitions by the four leading contemporary art museums.

All these 'disruptions', introducing a state of insecurity dangerous for culture but also for society in general, can of course be recognized in the model of implementing a state of exception formulated by Carl Schmidt in the 1920s and 1930s, which laid the foundation for instituting Germany's fascist regime and the Third Reich. This process has been thoroughly and critically analysed by Franciszek Ryszka in *Państwo stanu wyjtkowego* [*The State of Exception*, 1964], and more recent analysis can be found in Giorgio Agamben's *Homer Sacer* series, which are well known in Poland. Ryszka's perspective is historical and critical, while Agamben's reflections attempt to formulate

a contemporary interpretation of the politics of the state of exception and include more general assumptions concerning contemporary society, which merit critical analysis before using them interpreting contemporary political reality in Poland, for example.

The aspect of Agamben's analysis which makes it interesting for reflection on contemporary Polish politics or censorship, in my opinion, is of course its leaning towards the sovereign, attributed with all the political agency of contemporary politics. *Homo sacer*, as a theoretical matrix for contemporary forms of institutional exclusion, is material for acting political power but is itself devoid of political agency. Using the *Muselmann* figure from concentration camps, Agamben develops a rather useless analytic of the social body as solely a passive object of operations by the political power. Gayatri Spivak and Judith Butler subjected this concept to critical analysis and related reluctantly to it, as did as Negri and Hardt. All these thinkers assume that the agency or at least the possibility of resistance lies on the part of the oppressed, thereby following Walter Benjamin, at least to some extent, who emphasised the resurrectional, emancipatory potential of the oppressed: 'barbarians' and those excluded from class society.<sup>19</sup> Agamben's approach works very well in the critical analysis of the state of exception and its contemporary implications; however, by depriving the oppressed a potential for resistance in some sense, the philosopher in his theory condemns them by constant continuation of exclusion and inability to change the status quo. In the context of theatre and its evolution, Agamben's perspective would also condemn theatres to passive acceptance of oppressive reality, whereas the critical perspectives of Butler and Spivak enables an understanding of not only the mechanisms of oppression but also strategies of resistance.

Such metaphysical pessimism seems to accompany many analyses of contemporary culture in Poland, which keep repeating mantra-like that there is no freedom, that the walls will fall, etc. However, in such a situation, we must ask as Butler encourages us to do in her *Excitable Speech* – a very important publication on censorship and emancipation – about ways in which censorship and hate speech work and if they are always effective. What, after all, is the effective censorship? How is resistance possible? How does practising resistance translate into creative cultural activity? How does censorship reshape the relation between artists and their audiences? Can we talk about a culture-formative function of censorship?

While conducting analysis of culture-formative aspects of censorship, we shouldn't forget that the shift towards the conservative outlook is an inevitable element of neoliberalism. Many feminist thinkers have argued for this thesis – Lisa Duggan, for example – accurately indicating that traditional restoration of classic values works as excellent compensation for budget cuts to crucial systems of social support and culture.<sup>20</sup> As such, this becomes a discursive remedy for uncertainty, offering guarantees of constancy at least in the realms of custom and morality in times when systems of public support are being dismantled. By initiating debate on values and

condition in Polish theatre, we can critically illuminate this entanglement that is dangerous for both culture and society, which becomes impossible when this debate automatically moves from theatre stage and magazine pages to quieter offices of the prosecutors and courts.

Even at the level of approaches classified by Plato and his philosophical followers as *doxa* – popular opinion – convictions regarding the creative power of prohibition is quite vivid. We're often confronted with the opinion that Polish culture maintains its vitality precisely through times of intensified prohibition, and that repression awakens artists' will to act against despotism, leading to the creation of better, more interesting works, etc. It's not my intention to decide the validity of that opinion, but I'd like to draw attention to the fact that a similar idea can be found in Butler's reflections on hate speech, sexism and censorship. She emphasises that not every attack on creative freedom through the means of hate speech or institutional censorship is effective, and suggests that some even bring about answers which enrich the culture. Butler explicitly stresses that, in her opinion, no culture is entirely free from censorship.

I think this belief is worth remembering in the Polish context of examining freedom, where we often fulminate against what's been taken from us without noticing how creative and inspiring society's reaction was to prohibitions enforced by the authorities. In Poland, a good example of a situation in which society reacted and critics noticed that reaction by meaningfully stressing its emancipatory dimension is the case of *Golgota Picnic*, mentioned above, the Rodrigo Garcia production censored during the Malta Festival in 2014. Society immediately responded with mass protests both defending that particular production through numerous public readings of its script, an unprecedented example of audience engagement in building a common, widespread, popular theatre across Poland. The right-wing petition against Malta's production was signed by sixty-five thousand people, the letter defending the production was signed by eight hundred people, several hundred people participated in public readings of the play in cities and towns across Poland.

Contrary to what Maciej Nowak wrote, following his otherwise justified call from the heart, in his appeal 'We, or the New Public Theatre, the mission of creating this new theatre isn't only the responsibility of its full-time and precarious employees. It's the mission of society if not a national duty and, moreover, a duty already in process of implementation, not just waiting to be planned by cultural elites. I believe the direction and objectives of this future theatre have been sensibly outlined by Nowak, but he is wrong about whether new public theatre has already been implemented – I believe it has, not only by artists but also by their audiences – and about the 'we' of his statement. The 'we' of new public theatre are definitely not just artists and critics but include the audience, as well as censoring authorities.

Audiences are not the only group engaging in contemporary theatre life. Local-authority members as well as individuals and organisations acting as defenders of people and values allegedly threatened by images and content presented in the theatre also engage in it with growing interest, if not necessarily with competence. Taking into account the number and intensity of these interventions since 1989 within the context of culture in general (not only theatre), we can speak today about a particular 'mass mobilisation' directed at preserving what are usually religious values and at times the protection of children, of reputations (of a person or company) and of copyrights. Protests organised by religious circles against visual artworks created by Katarzyna Kozyra and Dorota Nieznalska,<sup>21</sup> attempts to block productions at the Strykowski Theatre in Kraków, the Polski Theatre in Bydgoszcz and during the Malta Festival in Poznań are several examples from the entire wave of interventions. Writings of Izabela Kowalczyk and the archives of the Indeks 73 Initiative account for over a hundred interventions into various cultural productions, mainly in the domains of visual arts and theatre, aiming to block their presentations, which for ten years has been analysed as a form of censorship.<sup>22</sup>

It seems typical that, despite important cases won in courts (Nieznalska was acquitted in 2010; Jarosław Kuszej was acquitted in 2011) as well as reasonable, diligent interventions by human-rights institutions (including the Office of the Commissioner for Human Rights), artistic communities still become a 'victim' in witch hunts, with the sense of the vulnerability of their positions, and as if controversies concerning art and culture were an unwanted element in cultural life. Butler, quoted above, would disagree, and it seems to me that though her ideas are known and discussed in Poland, they aren't treated with sufficient seriousness. Yes, culture can be controversial and provoke dispute and doubts. Yes, the theatre's stages and quiet museum rooms can become spaces of heated debate about values. Though it's probably true that the majority of Polish censorship interventions are based on poor knowledge of art or theatre, it's also often motivated by mere prejudice and sometimes – the case with scandal surrounding director Oliver Friljic's production performed during the 2016 Festival of New Dramaturgies organised by the Polski Theatre in Bydgoszcz – it's about financial support, I believe we should remember that controversies have always accompanied and will accompany the production of culture: this lies in its very nature. It's an area of dispute not only because of formal choices made by artists or directors but also for the fact that contemporary art has a strong political component and this obviously provokes disputes in society. The position of victim and defence against assaults, adopted in such cases in the majority of controversial situations, results from a lack of understanding of the functions of culture, in my opinion. If we would agree that art's purpose is to move its audience and make them think – often at the cost of generating uncomfortable, unpleasant and controversial situations – such assaults on particular artists or on creative freedoms shouldn't in themselves come as a surprise and shouldn't be interpreted as such.



In 2008 in Wrocław, controversy was generated around a work by visual artist Hubert Czerepok, *Nie tylko dobro przychodzi z góry* [*Not Only Good Comes from Above*]. The title, stylized to look like the infamous *Arbeit Macht Frei* motto above the Auschwitz gate, was placed above the gateway to the Wrocław synagogue. The rabbi of the local Jewish community immediately decided the work raised controversy among local Jews, offended the community, hurt the feelings of those Jews and could provoke negative emotions, therefore it should be removed. The project curator argued that the artwork was in accordance with standards of contemporary art, and interpreted attempts at removing it as an assault on creative freedoms. Adding fuel to the fire, local media immediately accused the rabbi of censorship, further polarizing the already heated situation. The rabbi declared his intention to push to limit financial support for the festival exhibiting the artwork.

Everything was leading towards a serious conflict, but fortunately the case reached the Indeks 73 organisation, members of which quite reasonably showed the will to mediate, offering to organise a discussion panel which would include all the interested parties. The debate took place and it turned out that there was a need for conflict. The discussion enabled all parties present to express their opinions and emotions related to Czerepok's work, but also to listen to motivations and opinions of others. The discussion process was moderated, mediated and multi-layered and therefore, in my opinion, became an important element of the artwork's agency and its results. Unfortunately, the artist didn't participate in the discussion, being already at work elsewhere on another project. The situation reached mutual agreements, which would be impossible without space for discussion and the opportunity to release fears and tensions caused not only by the particular work but related to the general situation of Jews in Poland, a lack of familiarity with the language of contemporary art, and the hermetic nature of some forms of artistic activity and fetishization of scandal that's typical in the media.

This Wrocław case is significant for the debate on creative freedom, and should be treated as a model of action in conflict situations. Public institutions exhibiting controversial works should find ways to discuss them as well, while people complaining about particular productions or artworks should make efforts to get acquainted with the actual works – Nieznalska was accused by people who admitted in court that they'd not seen her work – and with motivations of their creators, along with the state of debate and developments in contemporary art. Otherwise, conflicts around art will remain an ideal opportunity for political self-promotion and media appropriation, instead of turning into elements enriching social life and public sphere.

In Gerald Raunig's text concerning institutions of the commons, he emphasises that they should do more than the familiar social-democratic museums of the recent past.

The sole presentation of historical collections to social masses – even if it is an important aspect of activities of these institutions – should become their starting point, not their endpoint. Raunig writes:

The point is to reorganize remainders of the civil public sphere and of society conceived as social-democratic, in order to redirect the modulating institution and to transform the public into the common. In a certain way this implies no less than inventing the state anew, specifically because, while and where it still rudimentarily functions.<sup>23</sup>

However, Raunig also points out that institutions of the commons should learn how to overcome such hierarchies and become a part of their community's life. In the context of attempts to censor theatres, I would propose to understand this also as opening their resources for public debate even in situations which include conflicts in which artists are attacked and the attackers of those works are unwilling to discuss them but only attack them. It should be emphasized that this demands a much more open, horizontal and active attitude from institutions, many of which haven't undertaken any reforms and haven't adopted participatory methods as their own. However, if artists declare interest in contemporary art – which to a large extent, after all, is political, participatory and abolishes hierarchies – such engagement in the local community life which aims at also addressing people expressing negative attitudes towards contemporary art, it could be not only interesting but also necessary.

I consider such a strategy of reshaping the state through institutions of the commons as activity which of necessity forces various institutions – not only cultural ones – to collaborate and act reasonably in situations involving conflict. Artists have the right to their freedom of expression, guaranteed for example by Article 73 of the Polish Constitution. However, the same article grants citizens access to artistic, scientific and research achievements, which is often disregarded. Article 73 is, therefore, one of the legal protections of the common good, if we include culture in this category. After all, it protects not only creation, but also access to those results. On the other hand, Article 196 of the Penal Code guarantees protection of religious feelings. The opponents of contemporary art who demand protection – usually of the general public – from images allegedly disturbing such feelings refer to this article. It should be emphasised that the article clearly states that protection includes 'an object of religious worship or a place dedicated to the public celebration of religious rites'. Under the regulations of the Penal Code, one can also insult the nation or the Republic of Poland (Article 133 of the Penal Code). As was demonstrated by the case of Nergal, a musician who burnt a copy of the Bible during one of his concerts, under these regulations, the scriptures of the main religions are not considered 'an object of religious worship'.

Widely publicised in the media, the case of the Polski Theatre in Bydgoszcz serves as

an excellent example of a situation in which all possible instances were engaged. Controversy was raised by Oliver Frljic's production *Nasza przemoc i wasza przemoc* [*Our Violence and Your Violence*] performed during the Festival of New Dramaturgies. First to react was Marshal Piotr Całbecki of the Kuyavian-Pomeranian Voivodeship, who wrote a statement in which he declared the necessity to stop funding the festival from the voivodeship culture funds. Całbecki's statement is worth quoting in its entirety:

The Polski Theatre in Bydgoszcz applied for a status of a partner in the project related to supporting cultural events, to organise the Festival of New Dramaturgies. In view of the embarrassing quality of the festival and the fact that it compromises the fundamental values of the Polish Nation, insults human dignity, incites hatred between faiths and contempt for Christianity during one of its performances, at my request, at the next meeting of the Kuyavian-Pomeranian Voivodship Management Board the motion to exclude the Theatre from the group of project partners will be discussed. This would make any funding impossible. The borders of artistic freedom have been crossed.<sup>24</sup>

Całbecki speaks as an individual person about the quality of a major theatre festival, though he is no expert in this domain and his statement hardly suggests he had the opportunity to see at least an excerpt of the production he so radically criticises. Całbecki accuses the festival of 'compromising the fundamental values of the Polish Nation', which is not a crime according to Polish law, nor was it proven in the statement. This also applies to insulting human dignity. The accusation of 'inciting hatred between faiths' is in total contradiction with the festival's idea and intentions of artists engaged in preparing this production, developed in collaboration with prominent European theatres promoting intercultural dialogue. The same can be said about contempt for Christianity, allegedly incited by the performance. Całbecki's statement exhibits a total lack of professionalism, striking ignorance and thoughtlessness. It is obvious at first sight that the marshal responded to the Festival of New Dramaturgies with his own Festival of Ignorance. One could speculate whether it fits the criteria for Jacques Rancière's 'ignorant schoolmaster' project, or perhaps in this version, full of accusations and slander, ignorance doesn't bring about any educational effect after all.<sup>25</sup>

Even Polish ombudsman Adam Bodnar engaged in this case, addressing the prosecutor's office with a statement emphasising the need to protect constitutional freedoms guaranteed by Article 73 of the constitution. The ombudsman indicated various instances allowing accusations of violating rights and freedoms by artworks, then stipulated that none were found in the accused work of the Festival of New Dramaturgies. He also referred to the constitutional obligation on the part of local authorities to support arts, including financial support, and their responsibility for freedom of culture.

The case of the Festival of New Dramaturgies probably had the highest number of motions filed with the prosecutor's office against a theatre production in Poland. One of those trying to sue the theatre was a deputy, Anna Sobecka, who hadn't seen the production, as with Marshal Calbecki, who didn't file suit with the prosecutor's office. Other lawsuits were filed by the Kujawsko-Pomorski Voivode, three councilmen, a deputy from the political party Kukiz'15, the dark hero of the above-mentioned case against Nergal, Mr Nowak, engaged in fighting sects, and several private individuals. Seven of the lawsuits were immediately rejected by the prosecutor's office, namely those filed by people who hadn't seen the production. This is an encouraging change, as during the case against Nieznalska, the prosecutor's office in Gdańsk had conducted a criminal case against the artist based on suits filed by people who openly admitted that they'd not seen the artwork.

As we recall from Kafka's writing, the situation of the trial is not one of full transparency. It doesn't favour building the common or public debate, at least not at first glance. Jacques Derrida probably went the furthest with his diagnosis of the situation of impossibility resulting from the juridical context. In his essay 'Before the Law', Derrida developed a deconstructive mass of contradictions, which are not only unsolvable but can't be subjected to rational scrutiny.<sup>26</sup> Is the meaning of Derrida's consideration in fact limited to repetitions of petrification by virtue of the law which accompany our reading of Kafka's *The Trial*? I get the impression that in his analysis between law and literature, which I'd expand towards culture in general and theatre, Derrida offers many instruments enabling extensions beyond the seemingly impossible situation of a subject before the law. In his essay, Derrida writes:

In the fleeting moment when it plays the law, a literature passes literature. It is on both sides of the line that separates law from the outlaw, it splits the being-before-the-law, it is at once, like the man from the country, "before the law" and "prior to the law". Prior to the being-before-the-law which is also that of the doorkeeper. But within so unlikely a site, would it have taken place? Would it have been appropriate to name literature?<sup>27</sup>

At the symbolic level, which interests Derrida in this essay, relations between law and literature are read exclusively in the context of theoretical analysis. Is it, however, entirely detached from the social praxis, as the majority of commentators seem to suggest? I do not think so.

Some arguments for such 'use of Derrida' may be found in Butler's *Gender Trouble*, where she appropriates his reflections from this essay for the benefit of chapters in her book where she explains how symbolic violence operates in the symbolic and cultural functioning of gender difference.<sup>28</sup> Butler also focuses on the impossibility of indicating 'the time before the law', which is related to her analysis of the cultural function of censorship and impossibility of indicating culture before censorship.<sup>29</sup> Such productions as *Golgota Picnic* and *Our Violence and Your Violence* are not exceptions to

this rule – they weren't created before cultural norms but appear within that framework, thus becoming elements in the cultural game of its time even if they were written by an Argentinian and a Croatian, respectively, and controversies related to them erupt in Poland. As Derrida argues in his essay, the law is prohibition. It is the impossibility, the accumulation of cultural norms, against which the subject can only crash while searching for one norm, one identity, one law or one interpretation. Butler elegantly intertwines the main motives from the essay with Foucault's reflections on power and its dispersion. Centres of power in the traditional sense no longer exist, and even if they managed to survive postmodern disintegration, they exist in dispersion. This doesn't mean they can't reintegrate. In many domains it turns out that, despite this dispersion, power can still operate as absolute power, as evidenced by the US government's attempt to control internet communication not only among its own citizens but among citizens of other countries such as Germany.<sup>30</sup> It would mean, however, that many forms and instruments for exercising power today take the dispersed rhizomatic form Foucault wrote about in *Discipline and Punish*, and Gilles Deleuze and Felix Guattari took up in *A Thousand Plateaus*.<sup>31</sup>

Perhaps we should wonder whether theatre as a public institution shouldn't react in the form of public debate about the production and festival, which could address all the controversies detailed above? Could the time of the prosecutor's office be streamlined and society enriched through knowledge and information about contemporary culture? The immediate forwarding of the issue to the court shuts down such debate while, as the case of Hubert Czerepok demonstrated, a mediated conversation sometimes facilitates the explanation of an artist's intentions along with fears of people suspecting that a particular production violates some standards, values or feelings. Such a debate would definitely have prevented the criminal trial Dorota Nieznalska faced for nearly ten years, and many other trials against artists.

The idea of 'institutions of the common' proposed by Gerald Raunig does not address such issues directly, but nevertheless encourages such extensions by indicating the importance of these institutions for the public debate and for the state. Before the case goes to court, there should be a public debate involving audience and experts, and it is the responsibility of public cultural institutions producing the artworks to provide such debates.

In the institution of the common – should theatre ever become one – trial circumstances shouldn't suppress debate. The situation of judicial process or investigation definitely restricts freedom of expression, as it generates fear of using explanations concerning a particular production in the public debate, as an argument against it in court. The question, however, is whether inviting opponents to the discussion then using the situation of conflict surrounding a particular production in the debate about contemporary art or theatre, about the needs of the audience and

creative freedom, isn't worth this risk?

If the voivodship marshal has the right to express his opinions about art in the name of freedom of speech, theatre has the right to respond to his opinions. As the Polish Ombudsman rightly emphasised in the case of the Festival of New Dramaturgies, the voivodship marshal could be accused of abuse, as his opinions about art weren't competent and were expressed a priori since the marshal hadn't seen the festival he contested – both in the public situation and in the office deciding about public finances. The marshal's statement, lacking any competence in theatre and of any knowledge of the criticised productions, could be interpreted as slander of Polski Theatre employees, which is illegal in Poland, after all. The ombudsman indicated the risk of exerting financial pressure on the theatre and of restricting creative freedom that resulted from Marshal Całbecki's statement. It's difficult to disagree with the ombudsman's position, and it should be added that official public expression of radical statements without knowing the criticised subject expose the person issuing such expressions to ridicule. The municipal authorities in Bydgoszcz concurred with that opinion, as in their official statement they strongly supported the Polski Theatre and demanded respect for creative freedom (in the Statement of the Bydgoszcz City Council, September 2016). Artistic communities supported the Polski Theatre with petitions and letters. The ombudsman also intervened, as has been mentioned. Media, local and national organisations and political parties are actively engaged in this case (the PiS party deputy and the Kukiz'15 party deputy filed lawsuits, and the National Council of the Razem social-democratic party issued a statement regarding restrictions of creative freedoms, including in this case).

We should also pay attention to the scale of this mobilization, instigated by one production, which can result in a criminal case against the Polski Theatre in Bydgoszcz or the loss of financial support by the Festival of New Dramaturgies. The mobilization calls to mind classic theories of the public sphere, in which public debate related to the commons is emphasised as creative and politically significant. Though from the perspective of the Polski Theatre the situation isn't at all easy, in part because its representatives wanted to include the Festival of New Dramaturgies into a wider project supported with financing from European Union funds, it should be emphasised that the theatre not only generated debate about politically significant issues, but also mobilised many groups and individuals to take a stand in issues related to culture, its public funding, content presented in theatres and the common good. This debate is not neutral, and in this sense it differs from what was recognised as debate in the public sphere by its classic philosophical proponents such as Jürgen Habermas.

Discussion about the common good definitely assumes interests and relationships between participants. As feminist thinkers such as Nancy Fraser, emphasize, the

presence in culture is embodied and embedded in economical, gender, ethnic and cultural contexts.<sup>32</sup> Debate around a theatre scandal engaging clerks and politicians, audience, performers and producers, theoreticians and readers as well as the media is, of course, a debate that's not characterised by the 'disinterestedness' typical in the liberal public sphere. After all, it's not related to tastes but concerns content acceptable to be shown in theatre financed from public funds, and who has the right to decide about repertoire and the process of making these decisions. In this sense, such debate not only implements Butler's idea of 'excitable speech' – an engaged, 'interested' debate in which the rights of certain subjects to exist, be seen and have their space in the public discourse and to recognition are negotiated. But which is also not 'disinterested' in the sense this notion is given by Pierre Bourdieu in *Distinction: A Social Critique of the Judgement of Taste*, where he questioned the allegedly 'disinterested' character of judgements of taste and demonstrated their entanglement into class positions, networks of cultural dependence and privileges. In contrast to Bourdieu, however, Butler believes that emancipatory moments of insubordination are possible in culture, for example in situations of censorship and hate speech when their victims, instead of giving in to oppression and subjecting to supervision, sometimes generate beautiful or paradoxical responses, not fearing vulnerability but exploring it.<sup>33</sup>

Neither Raunig nor Negri write about this explicitly, but I have the impression that it is the logical consequence of their reflections, that the institutions of the common must take into account their weak position, or rather the weak positions of their participants. People engaging in institutions of the common are difficult to imagine in hegemonic roles, especially in view of their constant engagement in the context and community, the constant building and supporting of relations between elements within the social sphere. These are not strong, autonomous, liberal subjects emphasising only their own reasons and defending only their own interests, understood not only as detached from other people but also from the context and situatedness. Institutions of the common should treat this non-missionary, engaged activity as a problem, but also as their advantage.

Theatre that can allow this would not close itself by defending its own authority over the audience or its own reasons against other reasons. It becomes a space which is much more open to assault and hurt but, as a space of strengthening the common, it also becomes an institution people want to engage with and support. Isabel Lorey analyses neoliberal societies as those in which instability, a sense of danger and risk play fundamental roles.<sup>34</sup> The management of instability, so typical in neoliberal politics, results in huge damage in the domain of cultural production as well, but here, contrary to many other economic sectors, solidarity can become a successful strategy, also because the system of public funding for culture forces authorities to take into account not only the legal protection of creative freedom and the condition of contemporary culture, but also to include opinions and needs of audiences and artistic

communities. Raunig's suggestion that institutions of the commons should become the factor transforming the state is not absurd in the context of theatres, and of the system of their organization and funding available in Poland, if only for the simple reason that the very engagement into a debate on creative freedom transforms clerks, usually alienated in their functions, into participants in debates on culture.

I have attempted to demonstrate that attempts at censoring artworks and theatre repertoire can lead to inclusion of the 'obscene' – what is 'off the stage', as Lynda Nead has argued – into the sphere of visibility.<sup>35</sup> The 'obscene' often turns out to include elements which are simply excluded from culture, such as sexuality or economy, but sometimes it also includes religious and ethnic issues or even the audience itself, as an invisible element of cultural life in some theatre formulas. Bringing these into visibility often begins with labelling an issue, a group or a problem as 'obscene', in order to include it in the laborious process of social and cultural negotiations and in the process of cultural development of the canon. If we think about the complicated trajectories of such masterpieces of contemporary culture as James Joyce's *Ulysses* or Allen Ginsberg's *Howl*, scandals instigated by opening up theatre stages, painters' studios and institutions of higher education to women, perhaps we can stop interpreting today's censoring activities solely as assaults on freedom. Instead, we could regard them as a standard element of the process of cultural development – as expressions of anxiety and articulations of power which become gradually democratized by allowing visibility for more problems and people we would have never expected to see there only a few generations ago.

It is not my intention to accept a linear vision of the evolution of culture, but I would like to emphasise that the process of its creation is no bed of roses, to paraphrase Hegel, but is rather a sphere of conflict in which the roles of its agents often fail to meet those which they ascribe to themselves, especially in retrospect. Current maladies in contemporary theatre can, therefore, be regarded as a necessary element of its development – the resistance of traditionalist and conservative communities and groups to processes of emancipation, democratisation and participation, but often benefiting from opportunities brought about by these very processes.

*Translated by Monika Bokinić*

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