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Exploring the fairness of new legislation and legal proceedings through the use of a theatricalised court

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Testing legislation through theatre – a bilingual Tribunal case study

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Catrin Fflur Huws

Abstract

This article explores how theatre, particularly forum theatre, may be used as a means of testing new legislation. This article documents a workshop involving a theatricalized bilingual Tribunal and uses this as a case study of how theatre may be used to explore the implications of new legislation in order to gain an understanding of its potential problems and weaknesses. The article concludes by exploring other ways in which theatre may be used to explore new legislation.

Keywords

Legal research – verbatim theatre – applied theatre – bilingual – Welsh language

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Introduction

The purpose of this paper is to explain the cope of using theatre as a tool to explore the impact of legislation on those whose conduct is regulates using a theatricalized bilingual Tribunal as a case study. Based on the findings of the case study, this paper concludes by making tentative suggestions on how theatre may be used to explore the operation of legislation, with particular reference to bilingual legal proceedings.

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Context

One of the key theatrical innovations of the twentieth century was theatre of the real. This approach to theatre focuses on recreating real events using the words of the people involved, whereby drama is used as a form of truth - to recreate what 'really' happened. Caution must however be exercised before one accepts the theatre of the real as truth. Despite its claims to objectivity, the selection and crafting of the material can be influential. Nevertheless, theatre has considerable potential as an exploratory tool¹ in that it is possible to explore areas of conflict, to critique justice, to create additional accounts, to reconstruct an event² and to create a sense of distance and objectivity that may encourage a better understanding of problems that are evident when experienced, but which may remain unconsidered in the abstract. Often, power structures and imbalances are brought to people's attention when they watch a dramatic reconstruction.³ By theatricalising aspects of the legal process therefore, it is possible to research procedural matters such as the adversarial legal process, and the extent to which a judge or a jury's emotional response to a witness impacts upon their decision-making. Theatrical reconstructions may also be used to test new legislation, in order to explore what contradictions may appear in practice, and what inequalities only become apparent when the legislation is put into practice. For example, in relation to the mental Health Units (Use of Force Act) 2018, theatrical reconstructions may be used as a training tool to enable practitioners to visualise what is considered to be a

¹ H. Derbyshire and L. Hodson, L. "Performing Injustice: Human Rights and Verbatim Theatre." (2008) 2(2) *Law and Humanities* 191-211.

² C. Martin. "Bodies of Evidence." (2006) 50(3) *The Drama Review* 8.

³ R. Norton-Taylor, R. *Bloody Sunday: Scenes from the Saville Inquiry*. (Oberon Books, 2005).

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disproportionate use of force in specific contexts in order to understand more clearly when the provisions of the Act should be applied.

The advantage of a theatricalized approach over methodologies such as participant observation of real court proceedings or interviews is that it is possible to use the forum theatre techniques developed by political theatre practitioners such as Augusto Boal⁴ to allow the spectators and participants to suggest different behaviours and to test them in order to evaluate their impact. The fictionalized setting makes it possible for participants to express a more emotive response regarding where their sympathies – and indeed their prejudices lie – in a way that would not be acceptable, in a real court setting. As Boal explains, the theatricalized process gives participants more scope to realise that what is, is not necessarily what must be. Therefore participants are able to consider different responses without assuming that anything is impossible.⁵ Also, it enables participants to explore possibly controversial views or attitudes that may offend or upset others that they may suppress in a ‘real’ setting.⁶ This article explores the use of a theatricalized court within a setting where inequality may be operative, and which the institution may, through inadvertence exacerbate. It uses as its context a bilingual court, where accommodating the requirements of one party may exclude the other, and the inter-relationship of the parties between each other, and with the adjudicators is changed by the involvement of an interpreter. The Welsh experience of bilingualism therefore provides a valuable context for this discussion.

Materials and methods

⁴ A. Boal *Theatre of the Oppressed*. 3rd ed. (Pluto, 2000).

⁵ A. Boal *The Rainbow of Desire* (Routledge, 1995).

⁶ A. Boal *The Rainbow of Desire* (Routledge, 1995).

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In Wales, Welsh may be used in any legal proceedings by any party who desires to use it.⁷ Also, the Welsh Language (Wales) Measure 2011 requires that certain bodies must comply with standards regarding the level of bilingual provision a service-user is entitled to expect. These standards are enforced by the Welsh Language Commissioner, but there are rights of challenge and appeal to the Welsh Language Tribunal against the Welsh Language Commissioner's decisions. In such appeals, the proceedings will necessarily take place bilingually because the Welsh Language Commissioner is likely to conduct her case in Welsh, but, although public body may also do so, it is probable that it will conduct the proceedings in English because its application to the Tribunal is predicated upon the fact that the Commissioner's expectations regarding compliance with a Welsh Language Standard are unreasonable.⁸ The case of *R (on the Application of the Welsh Language Commissioner) v National Savings and Investments*⁹ was precisely this type of situation as the Welsh Language Commissioner was making her submissions in Welsh and National Savings and Investments (hereafter NS&I) was making its submissions in English. It is therefore a case where the operation of bilingual legal proceedings may therefore be explored. This case formed the basis of the case-study discussed in this article.

The hypothesis of this article is to explore the potential of theatre as a legislative research tool. Nevertheless, certain limitations of the case study must be acknowledged. Firstly, the small scale of the workshop, and the fact that it took place within a context that was clearly educational (a university seminar room) may have meant that opinions may have been less diverse than might otherwise have been the case, and may have caused the participants to conform to habituated behaviours (the lecturer, the student etc.) within those roles. The pure

⁷ Welsh Language Act 1993 s.22.

⁸ Welsh Language (Wales) Measure 2011 ss 58, 95 and 99.

⁹ [2014] EWHC 488

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form of the Boalian technique allows the scene to be replayed differently, with different actors. However, given the legal (the presentation of the case) and interpretative expertise (the skill of simultaneous interpretation) involved in this particular case study, this was not considered appropriate. However, the case study provides an insight into the potential of verbatim theatre, and the types of variables that may be changed in order to conduct a deeper and more generalizable study.

a. The verbatim script

Boal explains that one of the cornerstones of his technique is to emphasise the theatricality of the situation,¹⁰ and therefore the preparation for the case study involved creating a distance between the theatricalized case study, and the real case that had preceded it. For this reason, the case study comprised of two stages. Firstly, the bilingual case report was used to create a verbatim script of the proceedings. The verbatim material was the official report of the case, which for the first time ever, was produced as a bilingual report. Richard Norton-Taylor's approach to theatre of the real has been to create 'Tribunal plays', edited from the transcripts of high profile public inquiries in the United Kingdom. These have included theatricalized versions of the Chilcot inquiry into the UK's role in the Iraq war,¹¹ and the MacPherson inquiry into the death of Stephen Lawrence.¹² This study therefore replicates that technique by editing, but not changing the transcript of *R (on the Application of the Welsh Language Commissioner) v National Savings and Investments*.¹³

However, for the purposes of the case study, two important changes were made. These are only very minor amendments that do not materially affect the meaning of the words reported, but are important to mention in the interests of accuracy.

¹⁰ A. Boal *The Rainbow of Desire* (Routledge, 1995).

¹¹ R. Norton-Taylor and M. Woodhead *Chilcot* (Oberon Books, 2016).

¹² R. Norton-Taylor *The Colour of Justice*. (Oberon Books 1999).

¹³ [2014] EWHC 488

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Firstly, while the words in the report are the words of the judgment of Hickinbottom J and quoted from the written correspondence between the Welsh Language Commissioner and NS & I, they were represented in the study as spoken dialogue between the Commissioner and the defendant company, and with Law and Y Gyfraith appearing as characters rather than as written material. The only actual changes made to the words however were to transpose the past tense to the present tense.

The second – and more significant – change was that the report referred to six complaints about the withdrawal of the Welsh Language Scheme. These were not directly quoted in the report, and therefore the verbatim script constructed these six letters of complaint as an overlapping chorus of letters. This script therefore formed a bilingual theatricalized version of the combined case reports and this was performed to the participants during the first part of the workshop that formed the second phase of the case study.

b. The workshop

The workshop took the form of a 2 hour workshop that was made available to the public, as well as to university staff and students. Individuals and groups with a specific interest in law, theatre, and the Welsh language were also invited. Postgraduate law students enrolled on a module titled ‘Interpretation of Texts and Media’ were asked to prepare the submissions made to the court in the form of a moot, again drawing extensively on the material from the court reports. Counsel for the Welsh Language Commissioner presented their submissions in Welsh, while NS&I’s representative presented their submissions in English. Two interpreters with experience in interpreting legal proceedings were engaged to interpret the proceedings using simultaneous interpretation equipment. One translated the submissions in Welsh into English while the other translated the English submissions into

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Welsh. The participants, comprising of 20 people that included university students and staff, solicitors, and members of the public and the third sector, were invited to listen to the hearing, and were allowed to choose how they wished to hear the proceedings. Some therefore chose to listen to the submissions in English directly, while using the interpreter for the submissions made in Welsh. Other participants chose to listen to both speakers directly. A third group chose to listen to both sets of submissions via the interpreter. They were advised that this workshop was an experiment into how bilingual legal proceedings were conducted, and that there were no expectations of right or wrong answers.

Following the performance of the verbatim script and the submissions, the workshop was then conducted as a forum theatre workshop in the tradition of Augusto Boal¹⁴ and led by a theatre director (the facilitator). By eschewing the facilitation of the workshop by a lawyer, the aim of instructing a theatre director to act as the facilitator was to create a distancing effect between the workshop and a legal seminar. Boal's technique seeks to empower the spectator who is encouraged to try out different solutions and to comment on the appropriateness of the behaviours. The purpose of Boal's forum theatre is not to define right and wrong but rather to encapsulate '*what a roomful of people believe at a particular moment in time.*'¹⁵ Its immediacy means that participants are able to provide intuitive, uncensored answers. The Joker is also an important facet of the Boalian system in that it is the joker's role to incite the participants, and enable them to express what might otherwise be viewed as taboos: '*the joker's function is not that of facilitator, the joker is (in Boal-speak 'difficultator' undermining easy judgements, reinforcing our grasp of the complexity of a situation, but not letting that complexity get in the way of action*'¹⁶. The role of the Joker in the context of the workshop was fulfilled by the facilitator, who being someone from outside

¹⁴ A. Boal *The Aesthetics of the Oppressed*. (Routledge, 2006).

¹⁵ A. Boal *The Rainbow of Desire* (Routledge 1995).

¹⁶ Jackson A. 'Translator's Introduction.' In A. Boal *The Rainbow of Desire* (Routledge 1995) p.xix.

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the sphere of law was therefore more freely able to challenge and to question the assumptions and the practices of the legal system. The Joker's role is *inter alia*; to break up the scene, to multiply the perspectives, to question the participants, and to suggest different variants for the purposes of comparison.¹⁷ Some features of the Boalian method include the distancing effect of recreating a situation, that enables participants to comment more freely because they are not commenting on an individual's lived experience, but on a staged version of that. It also allows for different participants to read the situation differently, and to encourage students not to accept situations as unquestionable norms.

The audience were then asked to respond to what they had heard and seen. In particular, the participants were invited to consider how they responded to the parties speaking directly (i.e. without an interpreter) and how they responded to the parties who communicated via an interpreter. In particular, the parties were asked about which party they felt was more deserving according to the law, and whether this was consistent with which party they felt the greater empathy with. They were also asked to comment on which of the Tribunal participants (of the two counsel and the two interpreters) drew their attention and which participants they overlooked. Also the participants were asked to comment on whether they felt that the speaker was communicating with them, or whether the interpreter was communicating with them, and in particular, the disjuncture between who they could see speaking, and who they could hear. The participants were reminded that this was a theatricalized process and that therefore their responses need not be confined to the legal detail, and that they could give an emotive response. Participants were also invited to write any comments, and were instructed that they did not need to censor themselves as to their responses. A number of interesting matters were drawn out of the discussion, which are highly pertinent to the conduct of bilingual legal proceedings, as the participants commented

¹⁷ A. Boal *Theatre of the Oppressed*. (Pluto, 2000)

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on matters such as how they responded to the speaker and the interpreter, how they felt about hearing proceedings in a language they did not understand, and how they felt the presence of the interpreters affected the flow of the proceedings.

Discoveries

a. The Composition of the Tribunal

One issue that arose from the workshop is the composition of a language Tribunal. On the one hand there needs to be a guarantee of fairness in terms of the composition of the Tribunal, by ensuring that the Tribunal is not constituted in a way that favours one party's interests. Thus a Tribunal comprising of persons who only speak English might be perceived as undermining the scope for those who wish to use Welsh in day to day life are able to do so. On the other hand, a Tribunal comprising of only Welsh-speakers might be perceived (accurately or otherwise) as having a personal motivation in ensuring that more services are provided in Welsh.

b. Simultaneous interpretation

Irrespective of the composition of the Tribunal, it is almost inevitable that interpretation will be used to some extent in Welsh Language Tribunal proceedings, because the services of an interpreter will be required in order to facilitate communication and understanding between the parties, even if the Tribunal panel is able to understand the proceedings directly without interpretation.

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Generally, in court proceedings, interpretation occurs on a one-way basis (Welsh to English)¹⁸ on the basis that all Welsh-speakers are able to understand English, and therefore it is assumed that there is no need for translation from English into Welsh. The contention in this article is that without such safeguards, there may be an imbalance in terms of the fairness of the proceedings for the party whose words are being interpreted. Firstly, one-way interpretation may Anglicise the proceedings in that where a person is asked a question in English, they are likely to respond in that language.¹⁹ In legal proceedings therefore, the panel must be aware of the likelihood of this type of linguistic shift and to manage it appropriately.

Secondly, one-way interpretation creates a situation where English is perceived to be the ‘normal’ language of the proceedings. Thirdly, the effect of communicating with a person who is wearing earphones can be very unsettling, in that the impression given is that the hearer is not listening or hearing the words spoken. The workshop participants commented for example that the intimacy of hearing a person speaking through headphones minimizes the impact of other visual and auditory stimuli, and that their inclination was therefore to listen only to the interpreter, leaving the direct speaker with no-one to communicate with.

Furthermore, interpretation affects the fluidity of the submission, in that a person who is speaking via an interpreter must speak more slowly than the person who is speaking directly, because where an interpreter is involved, they must be given time to receive and process the input (the submissions in Welsh) and deliver the output (the translation into English). This can cause a delay in the relaying of the information, and interfere with the flow

¹⁸ G.W. Parry. “Anerchiad .” Eisteddfod Sir Fynwy: (Cymdeithas Cyfieithwyr Cymru, 2016).

¹⁹ E. Loos . “Language Choice, Linguistic Capital and Symbolic Domination in the European Union.” (2000) 24(1) *Language Problems and Language Planning* 37.

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of the argument and the effectiveness of its delivery. Interpretation also causes a distancing effect – the speaker’s words are not heard because the listener is listening to the interpreter.

In the workshop, when the parties spoke via the interpreter, they found themselves having to slow the pace of the submissions down significantly and communicate with the interpreter in order for the interpretation to maintain pace with the original submission. Those who heard the submissions via the interpreter felt that the slowed-down pace of the submission and the need to ask the speaker to slow down or repeat what they had said impeded the flow of the process, and made it more difficult to understand.

The role of the interpreter added another dimension however, as some of the participants commented that they listened more intently to the interpreter than to the speaker speaking directly because the act of listening through headphones made the communication between the interpreter and the listener more intimate and personal. The disadvantage of this however is that it renders the interpreter more important than the speakers, and some of the participants felt that the presence of the interpreter created a distancing effect between them and the speaker, and that the speaker was disregarded in the process – some commented that the presence of the interpreter caused them to feel that the original speaker was not in fact a part of the process at all. Some commented that the headphones created a soporific effect because of the greater spatial and emotional distance between the speaker and the listener.

c. Locating the interpreter within the Tribunal

Linked to the issue of the speaker’s relationship with the interpreter, a further issue that emerged in the context of the workshop is the placing of the interpreter within the court or Tribunal setting. It became apparent in the course of the workshop that the speaker and the

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interpreter need to communicate with each other in order to ensure that, for example, that the speaker is not speaking too quickly for the interpreter to interpret the proceedings. Often, in courts, the interpreter is positioned to that he or she is not in a prominent position in the room - behind and at some distance away from the speaker for example. This has some advantages in that the interpreter's whispering into the microphone does not distract the speaker. Accordingly, in the workshop, the interpreters positioned themselves outside the group of participants, and behind the facilitator, with the result that the speakers could not easily see the interpreters. Positioning the interpreter within the speaker's line of sight, and at a distance short enough to facilitate eye contact and other non-verbal communication may therefore be advantageous.

However, this foregrounds the interpreter, and creates a situation where there may be a tendency to direct questions to the interpreter rather than the speaker, leaving the speaker rather isolated, especially in submission-based proceedings such as a Tribunal where the process is more likely to include lengthy segments where one person is speaking. The workshop interpreters commented that, unlike court proceedings, where the questioning of a witness would allow for pauses, and ensuring that the speed of delivery is not as problematic, the speed at which the speaker speaks at a single conversational turn without interjection is likely to be more problematic in Tribunal proceedings. In Tribunal proceedings and the more speech-focused segments of court proceedings, further consideration needs to be given therefore to where the interpreters are positioned in order to facilitate the process of proceedings conducted via an interpreter, especially where interpretation operates, as present, on a one-way basis. Again, a theatricalized setting may help with this, in that it may be possible to move the parties around and test out different seating arrangements to ensure the optimum way of enabling the speaker and the interpreter to communicate with each other without the latter distracting the former.

d. The role of the advocate in interpreted proceedings

Another difficulty inherent in the reliance on interpretation is the role of the advocate. An interpreter or a translator is likely to be a person with a background in languages, and is not usually legally trained. On the other hand, a solicitor – and in particular, a barrister is trained not only in the intricacies of the law, but also in the art of advocacy. The choice of words, the tone, and the phrasing of the question are all therefore very carefully chosen for maximum impact. The interpreter interprets the questions usually without having necessarily knowing why they are significant, or why they are asked in a particular manner. Furthermore, the immediacy of simultaneous interpretation means that the interpreter simply does not have time to consider the most appropriate interpretation to convey the questioner's intent. An advocate will also select the pace and the tone of the question very carefully, pausing over significant responses, or following one question with another in quick succession. This is something that may be something that is affected by simultaneous interpretation, and thus the skill of the advocate is lost.

e. Written evidence

The issue of transposing evidence across languages also raises questions in terms of the language used for the submission of written evidence. Some of the evidence (for example the standards applicable to the public body) will have been produced bilingually ab initio and will be available for both parties to consult in their preferred language. However, other material, such as evidence to substantiate the unreasonableness of the standards imposed by Welsh Language Commissioner on the applicant will be likely to be in one language or the other. The question is then whether the parties must submit all the evidence bilingually, or

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whether it should be submitted in the language in which it was produced, or in the parties' preferred language. Other than a statement in paragraph 6.4 of the Welsh Language Tribunal Rules 2015²⁰ states that '*When a document is issued by the Tribunal under these Rules in both languages, the English and Welsh texts must be treated equally*' the rules do not detail the precise procedure to be adopted, and therefore it is unclear whether equal treatment means submitting documentary evidence bilingually, or whether submitting the information in one language only is as valid as submitting it in the other.

Again, there are implications in terms of cost and fairness arising from the production of bilingual evidence. The cost imperative would suggest that evidence need only be supplied in the original language. However, the fairness imperative would require that each party's evidence is supplied in the other party's preferred language. Furthermore, the fairness imperative means that both parties should have an equal obligation as regards the submission of evidence. Given that the Welsh Language Commissioner is expected to be able to provide the evidence bilingually, there may be an expectation that the public body is also required to issue bilingual documentation. On the other hand, given that the public body's contention in such matters is, inter alia, that the standards imposed by the Welsh Language Commissioner are disproportionate, it may argue that it is not appropriate for it to supply written material bilingually.

Discussion

Theatre has of course been used extensively in an educational context, and has also been used in law. Frequently theatre has been used as a way of teaching educating law students in the art of public speaking in the form of moots and mock courts, or in negotiation exercises.

²⁰ Welsh Language Tribunal Rules 2015 (No.1028 W/76).

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However, the objective of this workshop sought to consider how theatre might be used, not as a training tool (through the use of role play) but rather, how it might be used to explore the practical impact of a piece of legislation that would appear to be coherent in the abstract, paper terms of an Act of Parliament or a case judgment, much in the way that Barak²¹ advocates in relation to the development of critical consciousness on the part of social workers. However, what this case study demonstrates is that theatricalising the requirements of an Act of Parliament (or indeed a Bill) may also help the legal system and the legislature to understand how an Act might work before it is brought into force, and whether it works in the manner anticipated. For example, the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018, although intended to decriminalise retrospectively those convicted of homosexuality, may be explored in a theatrical context as a means to consider whether pardoning crimes retrospectively may be considered for other offences, and whether this has the effect of disregarding or changing the mores of the past to conform with contemporary values. This then enables us to question whether the converse may also be true, and whether there is scope to condemn, even if not overtly to criminalise conduct that was historically condoned, but which may offend modern sensibilities.

One of the advantages of the theatrical character of the workshop enabled the facilitator to explore the participants' emotional response to the discussion, and, for example their reaction to the disjuncture between the person being seen to speak and the voice being heard, especially as one of the submissions featured a male speaker being interpreted by a female interpreter. Because of this mismatch, and the effect of interpretation on the flow of the discussion, the proceedings disintegrated into humour as the listeners heard the interpreter

²¹ Barak, A. "Critical Consciousness in Social Work: Learning from the Theatre of the Oppressed. ." *British Journal of Social Work* 46(6) (2016): 1776.

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struggling to keep pace with the speaker. This has substantial implications for the fairness of the proceedings, because one party's submissions are regarded as easier to ridicule than the other. The simulated nature of the workshop also meant that participants were encouraged to talk through their thought processes in formulating their response to the submissions. Some explained that the situation caused them to see a disjuncture between what they considered to be morally right (that services should be available in Welsh) and what they considered to be required by the law (that NS&I could remove its Welsh language provision if it wished to do so, provided that the Welsh Language Commissioner was informed of this fact). In a real legal process, the two issues may be less readily separated, or less freely acknowledged, with the result that a moral viewpoint is used as a starting point, and the adjudicator then searching for a legal justification to substantiate the fact. The theatricalized court may therefore enable a better understanding of whether legal decisions are made according to what is correct in law, or according to what is emotively appropriate.

Issues of prejudice could also be explored. The theatrical nature of the situation meant that the participants were more willing to comment on how they reacted to the speakers, depending on whether they heard them directly or via the interpreter. Some commented therefore that they felt a degree of irritation at having to switch from direct listening to listening to the interpreter, and that the need for an interpreter was inconveniencing the proceedings. The participants also felt that they had much greater sympathy and empathy with the direct speaker – the participants had heard their story, whereas the story told by the person relying on the interpreter was far less engaging because it had been relayed by a third party intermediary. Such viewpoints clearly raise highly problematic issues in terms of the fairness of proceedings heard via an interpreter, in that there is a danger that the fact that the proceedings have to be conducted via an interpreter may prejudice the adjudicator to the merits of the individual case. The theatricalized court therefore allows us to explore where

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prejudices are encountered, that participants may not be aware of or which they may even suppress.

Furthermore, a mock-tribunal of this type may be a very valuable way of exploring the fairness of legal proceedings. This article has focused on questions of fairness and equality in proceedings involving an interpreter, and the relationship between the parties and the adjudicators may have a significant impact on the outcome of the proceedings if the matter is judged not on its merits, but because of the lack of connection between the person speaking via an interpreter and the listener, as compared with the that subsists between the person speaking directly and the listener. If one party is not heard, or their submissions are made farcical by the intervention of the interpreter, then a trial cannot be said to have been tried fairly. Nevertheless, mock legal proceedings of the type described in this article, may also be used to explore adjudicators' responses to particular parties, and to evaluate the extent to which assumptions and evaluations made regarding a person's credibility, trustworthiness or culpability are made not on the basis of what is said, but rather on the basis of what is seen. The mock tribunal or the mock court also aids our understanding of how legal decisions are made. Although lawyers would like to assume that decision-making is based on an appreciation of the relevant law, and the persuasiveness of the submissions in terms of applying the facts to that law, a theatricalized court proceeding enables the exploration of the extent to which decisions in legal proceedings are decided on the basis of what is morally right, with the law then being used to validate that judgment.

The theatricalized setting may also be helpful in terms of exploring how different groups hear submissions directly and through an interpreter, and what differences of meaning and nuance they identify when their evaluation of the material is compared. Much work has been

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done on exploring the process of interpretation for the interpreter²² but there is less by way into research into the effect of interpretation on the listener – the audience response work that is familiar in theatre, and especially film and television studies²³ Developing a research methodology whereby participants are given the opportunity to compare and contrast material produced in one language and material interpreted into that language would therefore be highly instructive, and matters to consider need to include, the legal expertise of the workshop facilitator, the opportunities for intervention by the spect-actors, and the validity of instinctive as opposed to reasoned responses.

Conclusion

Although this article describes a small-scale workshop whose participants were, to a large extent, self-selecting, and arguably insufficiently diverse in terms of background and outlook, the workshop setting and the theatricalized Tribunal have provided much scope for testing the law under which the Welsh Language Tribunal now operates. It demonstrates the scope for using theatre as a tool for testing new legislation and new policies, and allowing participants and decision-makers to explore where the weaknesses are, and where there are dangers of unconscious bias affecting the operation of the law. More rigorous testing of legislation in this way, using the theatrical audience's techniques of judgment, as well as the lawyer's logic is likely to result in fairer, more robust and less unequal legal processes.

²² F.H. Khani, and Y. Ashgar,. "A Comparative Study of Interpretation Strategies Applied by Tabriz Professional Simultaneous Interpreters in Dealing with Culture-bound Terms." (2016) 6(1) *Theory and Practice in Language Studies* 164.

S. Lambert, S. and B. Moysen-Mercer. *Bridging the Gap: Empirical Research in Simultaneous Interpretation*. (John Benjamins Publishing Company, 2004).

²³ Y Xiaohui, . *Politeness and audience response in Chinese-English subtitling*. (Peter Lang, 2012).

L. Csaszi, "Towards a Cultural Framework of Audience Response and Television Violence." (2008) 10(3) *CLCWeb: Comparative Literature and Culture*.

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References

- A, Barak. "Critical Consciousness in Social Work: Learning from the Theatre of the Oppressed. ." *British Journal of Social Work* 46(6) (2016): 1776.
- A Boal. *The Aesthetics of the Oppressed*. (Routledge, 2006).
- A Boal *Theatre of the Oppressed*. 3rd ed. (Pluto, 2000).
- A. Boal *The Rainbow of Desire* (Routledge, 1995).
- L. Csasz, "Towards a Cultural Framework of Audience Response and Television Violence." (2008) 10(3) *CLCWeb: Comparative Literature and Culture*.
- H. Derbyshire, and L. Hodson. "Performing Injustice: Human Rights and Verbatim Theatre." (2008) 2(2) *Law and Humanities* 191-211.
- F.H. Khani, and Y Ashgar, "A Comparative Study of Interpretation Strategies Applied by Tabriz Professional Simultaneous Interpreters in Dealing with Culture-bound Terms." (2016) 6(1) *Theory and Practice in Language Studies* 164.
- S. Lambert, S. and B. Moyser-Mercer, *Bridging the Gap: Empirical Research in Simultaneous Interpretation*. (John Benjamins Publishing Company, 2004).
- E. Loos, E. "Language Choice, Linguistic Capital and Symbolic Domination in the European Union." (2000) 24(1) *Language Problems and Language Planning* 37.
- C. Martin, "Bodies of Evidence." (2006) 50(3) *The Drama Review* 8.
- R (on the Application of the Welsh Language Commissioner) v National Savings and Investments* [2014] EWHC 488.
- R. Norton-Taylor *The Colour of Justice*. (Oberon Books 1999).
- R.Norton-Taylor and M. Woodhead *Chilcot* (Oberon Books, 2016).
- G.W. Parry. "Anerchiad ." *Eisteddfod Sir Fynwy*: (Cymdeithas Cyfieithwyr Cymru, 2016).
- Welsh Language Act 1993 (1993 c.38).
- Welsh Language (Wales) Measure 2011 (anaw 1).
- Welsh Language Tribunal Rules 2015 (No.1028 W/76).
- Y Xiaohui, *Politeness and audience response in Chinese-English subtitling*. (Peter Lang, 2012).