

Acting Law | Law Acting: A Conversation with Dr Felix Nobis and Professor Gary Watt

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Abstract *Dr Felix Nobis is a senior lecturer with the Centre for Theatre and Performance at Monash University. He has worked as a professional actor for many years. He previously played an assistant to the Crown Prosecutor in the Australian television series, Janus, which was set in Melbourne, Victoria and based on the true story of a criminal family allegedly responsible for police shootings. He also played an advisor to a medical defence firm in the Australian television series MDA. He is a writer and professional storyteller. He has toured his one-person adaptation of Beowulf (2004) and one-person show Once Upon a Barstool (2006) internationally and has written on these experiences. His most recent work Boy Out of the Country (2016) is written in an Australian verse style and has just completed a tour of regional Victoria.*

Professor Gary Watt is an academic in the School of Law at the University of Warwick where his teaching includes advocacy and mootings. He also regularly leads rhetoric workshops at the Royal Shakespeare Company. He is the author of Dress, Law and Naked Truth (2013) and, most recently, Shakespeare's Acts of Will: Law, Testament and Properties of Performance (2016), which explores rhetoric in law and theatre. He also co-wrote A Strange Eventful History, which he performed with Australian choral ensemble, The Song Company, to mark the 400th anniversary of Shakespeare's death.

Keywords: law, justice, theatre, performance, acting, drama

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Law is often a feature of theatrical productions and it is has frequently been observed that legal proceedings are inherently theatrical in nature. The accompanying image of the former Liverpool Crown Court depicts the relationship between law and theatre visually. The image is taken from the vantage of the judge's bench facing the back wall that is lined with ionic columns and a grey curtain behind which is a grand concert

hall. The courtroom and concert hall open up to one another, suggesting a symbiotic relationship between the spaces.

This interview is an attempt to understand law's performance and the performance of law through dialogue between an actor who has sometimes played lawyers and a law professor who has sometimes acted. The dialogue bridges the scholarly divide between the study of law and the study of theatre and performance, bringing new insights to law and performance.

SM: I will kick off with the first question to Felix. Camryn Manheim who also played a lawyer on The Practice suggests that people's opinions about law are shaped as much by television as by reality (2012: 111). Do you agree and do you think this imposes some moral obligations on the actor?

FN: I agree. In Australia, many of the views of the law are shaped by American television. There's an assumption for many people when they walk into the courtroom that it's going to be just like *LA Law* or that it's going to be just like a certain law programme and that the barrister can walk around and that they can shout 'objection' and things. There's strength and also an inherent risk in that. As far as the actor's moral obligation, I honestly don't think so. An actor's obligation is to learn the script and to understand the situation and to play her or his role in the bigger story being told by the writer and by the director and by the producer and the many people who are involved in putting together this kind of storytelling. The actor has an obligation to help tell that story and to help communicate the complexities inherent within that story. There may be a nuance there where the actor has as an obligation. But in the same way that in a medical drama playing a doctor I don't feel I have an obligation to the medical field, as an actor I couldn't say that there's a moral obligation beyond doing justice to the script as it's put together by the by the writer and the director.

SM: Gary, you've suggested that, 'It is sometimes said that courtroom lawyers are pretending to be actors in the theatre, but the truth is the other way around. Stage actors are pretending to be lawyers' (2013: 101). What do you mean by that?

GW: The idea of a hearing to a live audience is one that goes back a long way in law, so far back that on the shield of Achilles as described by Homer there is a scene at the centre of lawyers debating in the public marketplace for each side of an argument for the prize of money. This shows us the very ancient tradition of disputing in a rhetorical way for a prize that was not just the prize of the issue at stake but also the prize of

audience approval and payment. Lawyers have been performing for pay and for applause, as it were, since the earliest times. The suggestion sometimes made that courtroom lawyers are pretending to be actors alludes to lawyers playing to the gallery or putting on a show as if that were something undignified. Lawyers ever since the Enlightenment and the scientific paradigm of medical practice have felt that the more theatrical or rhetorical aspects of their art were, in some sense, lacking in dignity. I want to suggest that lawyers shouldn't deny the rhetorical source of their art and that they might learn a great deal about the artistic reality of what they're doing if they were to acknowledge this rather than deny it. Conversely, the idea that stage actors are pretending to be lawyers is suggesting that part of what an actor is doing when they're on stage is trying to move the present audience – to some extent that's the people within the immediate space but it's also those people as representative of society at large. What actors want is to have a real impact, to have a real effect... on society of the sort that lawyers can claim.

SM: You've previously written about how 'insiders seem dead set in their denial of law's imaginative dimension' (2016: 2). Why do you think that lawyers and legal insiders want to deny law's imaginative, its rhetorical and even its creative dimensions?

GW: I think it is linked to the dominance of the post-Enlightenment professional paradigm, which is that of science and particularly medical science. Lawyers, as a group and professional entity, are keen to be considered on a par with medical doctors who have the respectability of a scientific basis for what they do and a reputation for surgical precision... Lawyers also deny the art because of the lawyers' reputation for dishonest artifice. Whereas if one takes the view that art is true and that law is socially real even though it is completely man-made, we can then acknowledge and accept the process of reality-making through art. That's certainly my approach to it. Lawyers as a profession are driven by the need to convince paying people that what they're offering is something certain and scientifically predictable. Of course, it's complete myth. Barristers only offer opinions; that's the nature of their advice, it's always an opinion. Judges' judgments may be reversed on appeal and then reinstated on subsequent higher appeal. So we've bought into this complete myth of the scientific predictability of law, whereas in fact it is art all the way through – the human actors in law aim for scientific precision and predictability but have to fail because of the contingency of what they're doing.

SM: I might move on to talk about some of the performative dimensions of law. The first of which is around the question of voice in law... How do you think a study of voice, sound and rhetoric has helped shape your understanding of law or performance or both?

FN: We 'read' people from their voice a great deal. One of the things that actors do is try to train their voice to sound convincing... because what actors are doing most of the time is telling somebody's lie in the guise of truth. The cracks in that truth can become apparent through vocal performance... It's a mystery to me that law even needs to still happen somehow, that it can't all be done by computer, that we can't just put all the information in and press a button. I'm joking of course, but it seems extraordinary to me that in this day and age we still have to all meet and listen to and perform for each other and that there is such a weight on such a flawed and manipulative thing as voice. The notion that justice is blind [suggests] we shouldn't be influenced by what we see visually, but there seems to be no suggestion that we shouldn't be influenced aurally. We are influenced aurally a great deal more than most of us are aware...

GW: ... There is something distinct about the word on the page and the word spoken. When I teach my student advocates how to speak well, I'm often emphasising the musicality of good speech and the moderation – indeed, the modulation – of the voice, which produces the sense of pleasing ease of speech. As a counterpoint to what Felix was saying about computerised or mechanised justice, we should acknowledge that the other thing people love their computers for nowadays, and their smart phones, is to listen to music. There is such a deep appeal to human wellbeing and the human psyche in pleasing sound... that I wonder if justice silenced would actually be justice lost, in that we wouldn't have our day in court, we wouldn't have our hearing, we wouldn't have the sense that our voice has been heard... There might be something absolutely essential to justice in society to having the sound heard.

FN: Just to pick up from what Gary was saying, the musicality and the pleasure that we take from aurally receiving words or news is interesting but it doesn't necessarily correlate to truth, if something sounds pleasant it doesn't make it true. If the glove doesn't fit, it doesn't necessarily mean we must acquit... It's the same as when writing verse. When you find that magic rhyme, you find the rhythm, it just fits together and it's just right. That doesn't make it true. I've just written a play in verse and I know that sometimes the rhyme is too good to surrender so you change the story and the truth that's being represented through the writing. But I think there is a truth in voice, that voice betrays us... [What actors are concerned] about is finding a connection between internal truth, what

we find to be true and the vocal delivery of that. That internal truth is a very different kind of truth to a socially constructed truth.

SM: Gary, do you want to pick up on this question of truth – what is the truth that's sought to be represented in law?

GW: If we're talking about law – I'm thinking here about the judicial process where you have two parties coming to court in an adversarial system with competing ideas of the truth, a judge accepting one of those accounts or producing a compromised third idea of truth, and the appeal court coming up with perhaps a fourth – we get the strong sense that the process isn't actually seeking any kind of truth that exists outside of the process. What we have, in fact, is a process that is designed to perform a satisfactory outcome. The process of a trial is to present and prove evidence and when that evidence can resist critique and probing we say that the trial has produced proof. It is not a process of revealing truth, but a process of manufacturing proof. Just as we might say that we have manufactured waterproof clothing when it satisfactorily resists the probing of rain. It is the fact that the proof produced by the process of trial is sufficient to deflect doubt that we call it a satisfactory outcome, it is not required that the outcome should also qualify as truth distinct from the truth inherent in the evidential process itself. Lawyers cannot and do not give the name of abstract or absolute truth to the outcome of a legal trial. It's a comfort to me that I don't have to claim that a legal trial produces truth – and it's probably a comfort to practicing lawyers as well that they don't have to ascribe any abstract truth to what they're doing... It seems to me that if lawyers can acknowledge that what they're doing is performing proof rather than arguing for truth in an abstract way, they can get on with their job. This is not to say that lawyers should be unconcerned with morality, ethics and the aspiration for true justice, only that they should not rely upon the trial process to provide these things.

SM: To go back to the performative dimensions in some more depth, you've written about how the body is connected to the voice and also to the movement within a space (2016: 1). How do you think lawyers connect their gesture and their movement with words?

GW: I know from when I teach student advocates that we wrestle with the extent to which a lawyer should gesture and move within space. There are limited opportunities to do so in the course of a trial. You will approach your desk, you may move to the lectern, you might rearrange props such books, and use your spectacles as a prop to certain gestures; there are costume props such as the lawyer's gown. I like to look at what lawyers are doing and to ask if even the smallest gestures might have significance. Silence is so much more eloquent than words very often.

Actors know that silence fills the performance space in a way that can hardly be attained by shouting. When you shout the sound immediately dies away, whereas silence gets louder and louder and louder the longer it lingers. It's not emptiness, but a solid thing that demands our attention. Now if that's the case with silence and sound, what about small gestures? What if you are incredibly still? Theatrical actors know that this produces a cinematic close up effect and that if you actually minimise your bodily movement you're drawing your viewer in to a tight focus of the sort that a cinematic camera might produce. Lawyers tend not to know any of these aspects of the actor's art and yet some of them are doing it well instinctively and others not so well. What if one could be alert to this? As a jury, as a judge, as a lawyer, as an advocate, what if one had some awareness of how body and sound and movement may all relate to produce a combined rhetorical effect?

SM: You brought up the point about silence and pause, which is an interesting device that actors use. Felix, do you have any thoughts on this idea of just what role silence or pause or the absence of voice plays in performance?

FN: I think [silence] can speak, it can recalibrate the listener, it can give the listener opportunity to find themselves again within the story. That's incredibly valuable. It can also give an audience an opportunity to adjust and scratch if they've been holding on to a moment. Doing a long one person show of 60-70 minutes, it's important to find those moments of allowing the audience to move or to cough if they've been holding that in for that long. It's a matter of timing, tuning in to the audience and then finding a moment to pull back, maybe having a little cough yourself even if you don't need it, to just shake things up a little bit and break the tension which couldn't possibly hold that long. There's an element of orchestrating that suspension of tension and then pulling it back. Silence can often work as a tool like that.

SM: The next dimension that I wanted to move on to talk about was dress in law and performance. Gary, having written a book about it, you've argued that the dress that lawyers wear operates both to deflect attention from their individual natures and their human qualities but also to generate a sense of reflection and introspection and to give lawyers cause to think about the ethical dilemmas inherent in their role (2013: ch 4). To what degree do you think dress plays a constitutive role in law?

GW: Dress plays a legislative role in society. It's not just symbolic; it's constitutive of our social idea of order. The lawyer's gown shields the lawyer and gives them a sense that they're coming forward as a member of a profession and a group that owes its first duty to social order; not to the client but to the court and to justice. These are the founding

constitutive ideas of the legal professional: I stand here and the first thing you see is my gown because the first thing you should see is an officer of the court not a partisan representative of my client. There is that shielding effect; it allows a lawyer to come forward in role. The provocation I posed in my book on dress was: do lawyers sit too comfortably in this role and how much of the person gets lost in this role? We see sometimes that lawyers, even barristers, carry an invisible gown with them everywhere; they're still performing, they're still separate from the common run of humanity. But lawyers should always feel uncomfortable in the gown. They should wear it but the itchiness of the horsehair wig, the discomfort of the waistcoat, everything should conspire to make the lawyer think: I shouldn't feel comfortable here, I should be feeling that I'm doing a necessary but often dirty job. Therefore, as well as deflecting other people's critique, the gown should also serve to irritate your own person and you should be always questioning and conscious of that. That has to happen, otherwise lawyers get subsumed and become empty gowns.

SM: Felix, having worn costumes before, what's the experience of putting on a costume like for you as an actor and how has the costume affected your performance in the role?

FN: In *Janus*, I played an instructing solicitor not a barrister, so I was in a suit. More recently, in *MDA*, I was an adviser rather than a barrister. I was constantly amongst people in costumes. Gary makes an interesting point that an actor feels as well sometimes, that the costume emphasises the role but also works as a defence for the actor, works as an excuse for the actor to be acting in a certain way while also enhancing the character. They're two quite different things and yet they fit together very well. In a similar way, actors wear makeup if they're appearing on stage or even on television. In one way that's for the lights and so that the audience sees them better, but there is something about being allowed to perform a certain way once the makeup is on and once the costume is on... Actors grow into costumes. So if you're turning up on set and you're performing for a day or two and you're wearing a costume, usually it's going to feel awkward and strange, usually it's got somebody else's name stitched into it – for me, it's usually Richard Roxburgh who's worn that costume before me in something – but if it happens over a longer period, then you build a relationship with that costume. Gary's point was very interesting, that it's possible to become too comfortable with that relationship. I'm wondering whether there's any other profession that places such an emphasis on costume which isn't practical, which isn't to protect (e.g. from blood like a butcher's hat), which tell a story of their own and serve a function beyond the practicalities of protective clothing. Many actors say once they put on robes or once they

put on a crown, then it tells them how to how to speak. Stanislavski speaks of that. Instructing a young actor in *An Actor Prepares* (1936), he talks about taking the actor to the costume department and allowing the actor to find the character. Once they've found the costume, the character emerges from underneath. There is an element of truth that a costume brings with it some kind of inherent change or adjustment in behaviour. But on the other hand I am not convinced of the Stanislavskian notion that if you find the costume that it will then tell you how to perform and it will give you the character...

GW: ...There is a practical disciplining of the body that occurs sometimes through certain types of costume. Sometimes when we put on a suit – a suit is as much a legal costume as a gown – and cufflinks, or (for men) a tight tie, all of these things that we don't generally wear nowadays in general life, we're wanting not just to project an image of how we appear outwardly but to project inwards on ourselves a conformity to a role. To get your shirt on and do the cuffs up is a disciplining of the body that has an effect on the mind.

SM: Another dimension is the disciplining of the body in space and the role of the architecture of law plays in legal performance. We have spaces like courtrooms and parliament. If we take law away from those traditional buildings, how do you think that affects its performance?

GW: Let's for the sake of argument say that law's performance is always trying to persuade – persuade your client that you mean the best for them, persuade a witness that you will honour their account. If this is essentially what lawyers do, then I think that it can happen outside of traditional legal spaces. What we know more about is the traditional spaces. Linda Mulcahy (2011) and a number of other commentators have written about the operation of courtrooms and judicial spaces. They also point us towards some of those gateway or peripheral spaces such as the public waiting room to a court, the judicial chambers and the lawyers' robing rooms. A comparison may be made to the foyer of the theatre, the wings and the green room – all those places that lead you into the actual auditorium. Those marginal spaces are the architectural equivalent of dress, a sort of border zone. What an actor does in the green room or what the lawyer does in the robing room is deeply intrinsic to the performance and law. These are spaces in which you gather yourself and constitute yourself in a new costume but also in a new frame of mind.

SM: Felix, did you want to pick up on any of those points? You've had experiences of shooting on location in legal precincts and I'm interested in your views of what it was like to perform the lawyer's role in a court space.

FN: One thing that struck me when you say about filming in an actual courtroom [was] we filmed in the old Magistrates Court up by Russell Street opposite the police station, a fantastic sandstone building of Melbourne's history. Not many people have the opportunity to go into that; it's been replaced in the meantime. It struck me that the reason nobody goes in there except to film the occasional television drama is because it's useful for nothing else. Here it is, prime real estate in the middle of Melbourne, and it's good for nothing when it's not serving the function for which it is designed. Richard Schechner (2003: 8-19) speaks about theatre and sport and religion and games having a number of things in common. One of the things is space. All these things have a building, they take up real estate usually in the middle of a city, which can do nothing else than what it does and is empty most of the time, but when it's being used people flock to it. Think of the law in relation to that. Legal buildings are often prime locations. Often they tend to be quite busy on the day for a certain trial but empty otherwise. A law court like a theatre is built with a specific purpose in mind.

SM: Felix, you've written about the process of your warm-up routine before telling your story and how that is in itself a form of 'private performance' that affects the public performance and also the way that it is received by the audience (2010: 193). How do you think these routines that people undertake before telling stories affect the story and its reception?

FN: There are probably two things that happen with that routine and they are counter to each other. One is to prepare the performer to get into a place where they are ready to deal with anything that comes their way. The other is to be in tune with the space itself so that they're able to respond to the realities of what's happening around them. There's something there in relation to the balance between truth and the 'performance of truth'. There's a process of trying to touch base with truth and reality within oneself without losing touch with the truth that's around oneself. It has to do with aligning the performer's reality with the reality around them but holding true to both of them and not allowing one to hold sway entirely over the other. It has to do with touching base with where a performance is happening geographically and whom the audiences is and trying to find their truth and trying to find the truth of the location and aligning that with the truth of the performer.

SM: You talk about the process of going through an internal personal warm-up routine but then going off and chatting with others or going around and exploring the stage. You call this process a desire to 'seek to reconnect with the real and the actual' (2010: 189), which plays into this question again of truth. What do you think it is about going in and

grounding yourself in the space and having human interactions before going on stage that is real and actual to you?

FN: Storytelling performance relies entirely on the ability to tell the story to the audience. It's easy to slip a little bit too far into being caught up with the performance itself. If that happens, you can still tell a convincing story and you can still get a good round of applause at the end, but it misses that point of adjusting to the audience. It has to do with reminding the performer who the audience is, what the story is being told, what the value is of the story, what the importance is of the story, why this is happening, what the purpose of it is. In the same way that – again, to draw in Schechner – before beginning a ritual it's important to remember what the purpose of that ritual is rather than simply go through the ritual. Simply going through a ritual brings its own rewards but reminding oneself why this is happening, why this is important, why this is of value [is critical].

SM: That brings me to the last question around what role the audience plays in performance and how the audience plays a constitutive role in performance. Gary, did you want to pick up on that idea from Felix around how a particular element of the preparatory process before going to speak is thinking about the audience? What role do you think the audience plays within legal performance and what constitutive role do you think they play?

GW: Talking about live performance, I think audience is everything. When you're speaking to an actual live audience you have to have a sense of responsiveness, as Felix is saying, a sense of awareness of when the audience need to fidget or when you're losing them. It's essential to constituting your performance. How can it be that, a Shakespearean [play], a script that hasn't changed in 400 years and is often performed in repertoire for months on end, can produce a different performance day after day? Some performances are very palpably different to others. An actor will come off stage thinking that went badly, another time they think it went brilliantly. How? Why? A connection to the audience may be the biggest factor... If that's the case, then it just shows you how important it is, if lawyers are involved in any form of live performance, that they try to connect with the audience. Who is the audience for a lawyer is a nice question. For an advocate, more often than not their primary audience is the judge. or it may be a jury. A lawyer is also performing backwards to the people who are paying them. They want to be seen to be performing in a certain way. If a lawyer's performance is backwards-facing to the client who is paying, then of course the audience constitutes the performance genuinely. The lawyer's paying client is not like a theatrical audience who may have been tricked into paying for a

bad performance for one night only, a lawyer's paying audience is very often a client who might withdraw their instruction or decide that they're not going to (in the case of the instructing solicitor) instruct this barrister again in the future. For lawyers – and here we go back to the very first thing that I said about the shield of Achilles as Homer describes it – you're performing for payment. That's a very crude way of reducing what's going on, but professional actors and professional lawyers, as opposed to my students who moot, are constituted in a very pragmatic way by the pressure to perform professionally. That may be paid pressure, it may be reputational pressure, it may be your own dignity in your role, which is a pressure that's placed on you by a professional sense of vocation. Whatever it is – and you can be your own audience, of course – without an audience there is no relevant performance. The audience is entirely constitutive of what the law does. What, we might conjecture, is the difference between a real trial and a moot trial in which the facts are realistic, the legal question is real, the legal authorities are real, the judge is a real judge who has kindly agreed to come and decide the issues, and the proceedings are even held in an actual court building? If everything is real apart from the sense that there is pressure to perform for a certain kind of stake-holding audience, then that stake-holding audience is possibly what makes the difference between the real performance and the notional performance or, to put it another way, the difference between that which is real and socially-binding as opposed to that which is notional and playful.

SM: There was a really salient point there around the idea of 'without an audience there is no relevant performance.' I might shift that over to Felix. Having performed both on film and television as well as in theatre, what role do you think the audience plays and does it play a constitutive role in performance?

FN: In terms of what Gary said, I agree you can perform for yourself. But in terms of storytelling, it varies depending on the audience. What that then means is that the decisions that the performer makes depends on the audience. If we take a look at that in relation to law it suggests – I'll avoid using the word truth because I appreciate that's a problematic notion – that what is right, just or fair depends on the audience. Ultimately that's where the truth is – that someone who's had a crime committed against them feels vindicated or feels they've been listened to. The truth of it lies amongst the people being served somehow by the system. But it occurs to me that theatre is a more truthful trade than law. In theatre it is possible to acknowledge that some things don't have answers and that some things won't unfold in a certain way. Theatre delights in uncertainty and doubt. Theatre celebrates that while the law doesn't so much. The law is grappling toward some kind of proof until

eventually it gets to the point where something is found as proof. The audience is at the heart of it, but really at the heart of it is the people whose lives are being decided in these things. In theatre people's lives aren't changed. People are affected, but they aren't changed in the same way that they are in law.

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