

Brecht's 'Threepenny Lawsuit' and the Culture of the Case

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I

Bertolt Brecht was fascinated by court cases. Legal proceedings of various kinds appear in many of his works—in *Mahagonny* (1930), *Die Maßnahme* (The measures taken, 1930) the film *Kuhle Wampe* (1932), and others. Sergei Tretyakov described him as ‘obsessed with goings-on at court’ and ‘a skilled and cunning casuist’.¹ ‘In 1932, when Brecht was in Moscow’, Tretyakov recounts further,

he told me of his idea of establishing in Berlin a sort of panopticon-theatre, where he would stage the most interesting trials from the history of mankind. ‘The theatre must be set up like a courtroom. Two trials every evening, an hour and a quarter each. For example the trial of Socrates. Or a witch trial. The trial against Karl Marx’s *Neue Rheinische Zeitung*. George Grosz’s blasphemy trial for his caricature *Christ with a Gas Mask*.’²

As Brecht indicates, artists and writers often had to defend themselves before a court of law—for blasphemy, like Grosz and Carl Einstein, or for indecency.³ And also, like Marx, for political reasons: the Weimar years saw many trials for the new offence of ‘literary treason’.⁴ In 1926, for example, Johannes R. Becher’s recently published political novel *Levisite* was confiscated by authorities in Berlin and the author charged with this crime.⁵ It was a serious matter until the charges were dropped two years later, but there was a lighter side. Walter Benjamin reported to Siegfried Kracauer in a letter as follows:

I recently participated in a quite curious private event. The members of the *Schriftstellergruppe 1925* convened a meeting in which Becher’s recent book *Levisite*

was debated in the form of a court proceeding, with [Alfred] Döblin prosecuting and [Egon Erwin] Kisch as counsel for the defence.⁶

Benjamin tells us no more, but fortunately minutes of the proceedings were taken and circulated to the group. Brecht, it turns out, served as chief judge, with the writers Klabund (Alfred Henschke) and Rudolf Leonhard as jurors and Leonhard Frank as expert witness.⁷ Becher was found innocent as he had not 'abused' the form of the novel, merely 'used it poorly'.⁸ It is a nice legalistic distinction.

All of this must be borne in mind when considering Brecht's most ambitious engagement with the law: his unsuccessful court action of 1930 against the Nero Film company, with whom he had a contract to supply the screenplay for the film of the *Threepenny Opera* to be directed by G.W. Pabst, and his essay 'The *Threepenny Lawsuit*' (Fig. 1), an analysis of the proceedings.⁹ Brecht had negotiated the right to 'co-determination' of the final film, and did in fact write a sketch for the screenplay.¹⁰ But he finished this late and never properly delivered it to Nero; he also rewrote the play considerably, giving it a new and sharp political edge. He even gave it a new title: *Die Beule* (The bruise).¹¹ Not surprisingly, the film company, facing the complete disruption of their production schedule, simply proceeded without Brecht's treatment. While the details of the case are well known, what interests me here is Brecht's claim that the legal action to assert his authorial rights was carried out not for personal gain but as a 'sociological experiment', a stratagem by which Brecht could stage a battle between artistic freedom and capital in the public forum of the court of law. The case showed, he wrote, the inevitable result: that laws protecting artists were mere ideology, and that legal contracts concerning artistic rights would, when push came to shove, be found null and void before the power of big business. Beyond discussing the legal judgement per se, Brecht explored the press coverage to show that the case generated conflicting notions in the

public sphere about art, business and capitalism more generally. Using the seemingly public realms of the courts and the press, Brecht sought to show both how these institutions failed in their task of revealing and properly regulating the relations between subjects and larger social institutions, and also how they might after all do so, even as such relations were becoming increasingly opaque.

I would like to put these examples into a larger context, one I call the 'culture of the case'. The argument developed here and in the larger project of which this is a part is that cases of many kinds, in the late nineteenth and early twentieth centuries, functioned as key, indeed crucial, sites for the public production of knowledge; and that focussing on practices of the case in Germany and Austria can do much to illuminate a diverse array of artistic phenomena.¹² In these 'cases', a number of elements coalesced: legal process, often medical knowledge, and finally a fragile, volatile public sphere. This confluence was a consistent reference point for many artists of the time, the site of a set of practices that are themselves not necessarily purely visual or literary, but that nonetheless had a profound effect on how artists of different kinds negotiated their political, economic and in fact medial contexts. My argument here is that this literary episode draws terms from matters of the visual arts, and the visual more generally in modernity, and that it casts light on practices of montage, both avant-garde and vernacular. Yet practices of the kind I am referring to here are hard to grasp: they move promiscuously between genres, media and institutions, all of which have their own histories, and they take place in varying and often incommensurate registers of the social and the cultural. These practices are not consistent or even much theorised—and here Brecht is an exception. Instead they were more like instincts, gestures, even reflexes that crossed lines of discourse, style, ideology and medium. A look at how some of these practices functioned gives us a better sense of the breadth of issues at stake in the legal action as 'experiment'.

II

The 'Threepenny Lawsuit' is usually treated as a critique of the ideology of culture in advanced capitalism or as a founding text of media theory. It is here that Brecht developed his notion of the 'apparatus', and it is the source of many quotable insights. One is particularly well-known: 'The situation has become so complicated', writes Brecht, 'because the simple "reproduction of reality" says less than ever about that reality. A photograph of the Krupp works or the AEG reveals almost nothing about these institutions. Reality as such has slipped into the domain of the functional.'¹³ Brecht's remarks are usually considered in terms of the necessity of montage, of the *construction* of reality.¹⁴ The point is an important one that emerged out of his discussions with the Marxist economist Fritz Sternberg about the difficulty of *seeing* the social under capitalism.¹⁵ But the 'Threepenny Lawsuit' address another, less frequently noted issue beyond the one about vision and the problems of materialist epistemology; it concerns the relation of knowledge to the spaces of representation in modernity. For any such epistemology must also be social. Brecht described this later in his 'Five Difficulties in Writing the Truth' as the necessity of '*cunning* to spread the truth amongst many'.¹⁶

How, then, do you reveal the 'functional'? What sort of 'cunning' is required? The 'case', I think, provides one answer. It was not only a form by which to assemble evidence and construct a social totality in which isolated or reified instances of modern life could reveal their logic and necessity; as such it was, in fact, quite imperfect. But more importantly, the case was a site at which this could be attempted in public. Brecht's 'Threepenny Lawsuit' needs to be seen as part of a complex and shared project of using law as a medium, of using its procedures and discourses, its authority as well as its spectacularisation in the press, as a

way of condensing the complex workings of the social field in a tangible way and bringing them before the public eye. At issue here are not so much the ostensible matters of artistic freedom and authorial control. They concern the obscure technical and legal structures that might lie behind the making of a film, or business practices and their human effects that he then explored in *The Threepenny Novel* (1934),¹⁷ or the invisible social configurations of *The Threepenny Opera*. And they concern the establishment of something like a public sphere—punctual and fleeting—when the traditional spaces for reasoned discussion and debate, for the reliable establishment of consensus or public opinion, were no longer serving these purposes—if, indeed, they ever did.¹⁸

So: a lawsuit as a 'sociological experiment'. Brecht claims to have known that the case would be decided against him, but that he pursued it in order to reveal the way the institutions of the judiciary worked under conditions of late capitalism. This is hard to take at face value. Certainly victory would have set a valuable precedent for artists, and moreover have yielded a substantial settlement. But few people without substantial funds enter the notoriously unpredictable institutions of legal justice speculatively, and those who did so were both more circumspect and more expert. He might have known his case was weak, but more likely he thought his contract was watertight. The lawsuit as experiment was almost certainly an *ex post facto* rationale, one that could be called upon to justify an otherwise trivial and self-serving case and to provide material for another part of what was turning into his extraordinarily productive *Threepenny* complex. The terminology also situates this in a specific phase of Brecht's interests: claiming it was an 'experiment' seeks to turn the spaces of justice into a laboratory in line with his interest in behaviourist psychology and logical positivism and implying a scientific model for the establishment of social truth.¹⁹ But this invocation of the natural sciences might blind us to the fact that the speculative,

'experimental' turn to the courts had many precedents at the time, that it was hardly novel, that it was indeed a commonplace.

Criminal trials, civil lawsuits and their public reporting were at the centre of the German press from the turn of the century. It is here, where something went wrong, when someone broke the law or when the law itself turned out to be broken, that matters of general concern could be drawn into public discussion, from miscarriages of justice to laws in need of reform and even to fights over political influence. But this was not Habermas's ideal type of the public sphere. The practices here involved raising the ante in often unpredictable ways, working in public with the very means of spectacle and sensation, the forms of a commodified market for news and images that represented in fact as great a threat to reasoned debate and consensus as did censorship. This culture of the case had its maestros. Maximilian Harden, main author and editor of the Berlin journal *Die Zukunft* from 1892 to 1922, was one of the greatest.²⁰ At times self-destructively he drove a series of court actions to combat what he saw as the disastrous policies of Wilhelm II. He flirted with the strictures against *lèse-majesté* and faced trial in 1893, 1898 and 1900. Sometimes he could establish his claims as fact and was acquitted, other times he ended up in prison; his average was about fifty-fifty. To counter the influence of certain circles over the monarch, he maliciously exposed the homosexuality of some of the Kaiser's advisors—the so-called Eulenburg Affair.²¹ Harden called such use, or abuse, of the press and courts his '*Flucht in die Öffentlichkeit*', the risky, go-for-broke flight to the public stage.²² It could go wrong and often did, but it opened up a different sort of manoeuvring room in the tactics of any cause. He even developed his own literary form for this kind of *forensis* as a key to political or historical life. The third and final volume of his popular *Köpfe*—a series of extended historical character studies—was titled *Prozesse* (Trials), and included chapters on Carl Hau,

the charismatic jurist convicted on circumstantial evidence in 1907 of the so-called Molitor murder; on the private tutor Andreas Dippold, convicted of excessive discipline leading to the death of his charge; even on Pontius Pilate considered in terms of the legal proceedings leading to the crucifixion of Christ.²³ Harden's one-time protégé Karl Kraus was another master of the case, generating much of the copy of his journal *Die Fackel* with documents of Viennese legal proceedings.²⁴ The courtroom was one of the main sites of his work. Beyond merely responding to every misrepresentation of his own position or person by legal means, he made a habit of issuing insulting or potentially libellous statements with the intention of provoking prosecution or litigation from those he had insulted. The technique was to force the discussion of the actions of prominent people into the public—problematically public—zone of the courts and their coverage in the press. In 1927 he travelled especially to Berlin to call one of his favourite targets, the theatre critic Alfred Kerr, 'the biggest crook in the country', forcing Kerr to defend various aspects of his behaviour over two decades before the courts and the public. The annotated files of Kraus's many court cases have been published and fill four thick volumes.²⁵

There was, in other words, a thriving and recognised culture of the case. It had various literary forms as well. Beyond the crime novel, the Pitaval tradition of published criminal cases found a readership in a significant literary public from the beginning of the nineteenth century.²⁶ In the early twentieth century, Hugo Friedlaender's series *Interessante Kriminal-Prozesse von kulturhistorischer Bedeutung* (Interesting criminal trials of cultural-historical significance) had a wide following.²⁷ These appeared in the format of colportage, of the penny dreadful or dime novel: cheap paper, orange or red cover, and purchased by mail order or travelling colporteur (Fig. 2). The tradition was given new life in a particularly ambitious literary project starting in 1924: the series *Außenseiter der Gesellschaft: Die Verbrechen der*

Gegenwart (Outsiders of society: crimes of the present) published under the editorship of Rudolf Leonhard, where prominent cases such as the Austrian spy Colonel Alfred Redl, the mass murderer Fritz Haarmann and others were treated.²⁸ Some of the finest writers of the time contributed to the series: Alfred Döblin, Egon Erwin Kisch, Theodor Lessing, Hermann Unger and Ernst Weiß. The series ceased publication with the bankruptcy of the press before announced volumes by Arnolt Bronnen, Max Brod, Thomas Mann, Walter Hasenclever and Joseph Roth appeared. The level was high, despite the deliberate reference to the colportage format in the volumes' bright red covers (Fig. 3), and the series has been studied in its contribution to the intersection of literary modernism and the case study. Where the series departs from earlier precedents is in its focus on the courts as the site of an important form of reciprocity: in studying how criminals were subject to the machinery of justice, that system itself was held up for inspection.²⁹ Not only crimes but the intricacies of their treatment by the criminal justice system were to be brought into the public eye; the justice system was used as a lens through which the problems of the present were to be brought into a new and sharp focus.

The overlap of literature and law was a significant one in the second and third decades of the twentieth century. This was a period of the so-called 'crisis of justice', one of many perceived crises in a period of accelerated change. And while the historiographic model of 'crisis' has been justifiably challenged in recent years,³⁰ the problems of judicature were both very public and very real. The legal positivism (attention to the letter of the law and limiting of the discretion of the judge) that had accompanied the formation of the German legal code in the nineteenth century led to an increasing distance between the judiciary and public under changing social conditions; the continuity of personnel in the legal bureaucracy from the Kaiserreich into the Weimar years combined with the independence of judges from political

oversight turned what was once a modernising approach into an increasingly conservative, indeed reactionary political form of justice; and the many incompatibilities between the new Weimar constitution and the existing legal codes undermined the achievements of the former.³¹ The administration of justice was a site at which the various nonsimultaneities of a changing society were seen to be figured. The bestsellers of the time included many 'cases' or *Fälle*, fictional and otherwise (Ricarda Huch's *Der Fall Deruga* (1917) and Jakob Wassermann's extraordinary *Der Fall Maurizius* (1928), to name just two). The court was a *topos* as well in literary Expressionism. And if important works by Kafka, for example, can be seamlessly subsumed under this phenomenon, we might better think of them as commentaries on it as well—an attempt, among other things, to come to terms with the relationship between the archaic concerns of justice and the bureaucratic and often opaque administration of contemporary law.

It was thus a truism that the law was a sensitive site, a place where the skin of administered modernity wore thin and the pulse of the contemporary could be felt. While court reporting had a history, its practitioners were now celebrities.³² The most prominent was Paul Schlesinger, who covered the Berlin court at Moabit under the pseudonym 'Sling' for the prestigious *Vossische Zeitung*.³³ Court reporting was the *métier* of the famous *rasende Reporter*, the racing reporter Egon Erwin Kisch, who was famous for both his tattoos (with their criminal resonance) and his vast criminological library.³⁴ Sling's protégée Gabriele Tergit achieved fame as the court reporter for the *Berliner Tageblatt* (Fig. 4). She sums up the cliché:

Better than the work of our authors, poets and historians, the original sources—the letter, the diary, the notes after a chance conversation—tell us the essence of the era.

Beyond the usual formalities, the files of a criminal case consist of these original sources in which we gain insight (*Erkenntnis*) into the typical feelings of an epoch.³⁵

The other side of the epistemological potential of the criminal case is, of course, its spectacularisation, as legal matters came to be selected, packaged, dramatised and distributed in a commercial press drawing energies from, and feeding into, a well-supplied public fascination with crime in literature, film and crime magazines, the commodified forms through which representations of crime circulated. And it is here that the *Außenseiter der Gesellschaft* series was notable. It often drew attention to the intersection of the courts with other institutions. The press was seen as a constituent element of the cases, despite its seemingly subordinate, supplementary status. It was clear in these volumes that the newspapers did not simply report on and react to what happened in court: the press was shown to be the site of an event every bit as 'real' as the acts that precipitated the reportage. The focus is shifted from crime scene and the scenography of justice to the site of their mediation. And the books of the series drew attention to wider phenomena in their forensic forms, for example to the natural sciences in the form of criminalistics, and to the rapidly changing and professionalising field of psychiatry. The books not only reflected but reflected upon the nuts and bolts that held together the edifice of modern justice.

Involved in this series were the likes of Döblin, Kisch, Leonhard: this was the circle of the radical *Gruppe 1925*, in which Brecht was active—indeed as judge in the mock trial of one of its members, Johannes R. Becher. In his 'experiment' that turned legal proceedings into a literary text, one with exemplary ambitions of public representation, Brecht was knowingly working within an established model, one of the most prominent and ambitious of the culture of the case.

For cases and their documentation were also the site of exploring the radical possibilities of literary form. In his *Die beiden Freundinnen und ihr Giftmord* (The two girlfriends and their murder by poisoning), Döblin wrote an extraordinary book out of the files of a famous murder trial (which he did not attend);³⁶ in *Berliner Alexanderplatz*, he incorporated medical, legal and press documents.³⁷ These were part of his project of 'epic' writing: his way of making writing 'a public matter',³⁸ of achieving a 'closeness to everyday communication',³⁹ of incorporating documents and pre-existing material into writing. Döblin could, he wrote in 1928, 'hardly prevent [himself] from simply transcribing entire documents from files (*Aktenstücke*).'⁴⁰ The case was one way of achieving the '*Konnex mit dem Publikum*' he sought.⁴¹ It represented a crucial intersection of daily life with the actual dramas of the present, with the fates of contemporary subjects, however mundane. 'Life writes in an unsurpassed way', he wrote, and the case and its documentation was one place to find history writing itself.⁴² It was a ground of epic literature.

III

Back to the '*Threepenny Lawsuit*': it is a complex, rich and rewarding text. But it is also problematic at many levels, and this is no doubt the reason for the strange lack of sustained engagement with it in critical theory, its relegation to the status of a source for a few key passages of media theory and a treasure trove for useful aphorisms. It is worthwhile, I think, to pursue a few of these problems for the light they shed on what is at stake in the lawsuit itself and in the larger culture of the case.

Indeed, the very premise of the text is questionable. Brecht takes for granted that the film company's termination of his contract allowing co-determination of the screenplay for the *Threepenny* film was an 'intolerable injustice',⁴³ that the fundamental legal battle was not between different positions or sides of a contract but simply a matter of the interests of those

with a million marks at stake against a single, isolated artist. The legal victory of the side with greater financial power was 'only a question of time'⁴⁴ and showed that 'intellectual interests can be protected only as long as they are not too expensive. Any further than this and they lose their claim for justice.'⁴⁵ 'When the court decided against us in the suit, it proved the flexibility of the laws, gave the rights to the crude forces of [economic] reality,' and was simply 'an all-too-obvious confirmation of the power of capital.'⁴⁶ The logic is circular: this state of affairs is both starting point and conclusion. And we ignore at our peril the fact that Brecht had a very feeble case indeed. In his invaluable and authoritative study of the '*Threepenny Lawsuit*', Steve Giles has looked into all aspects of the case and shown Brecht's overestimation of the right of 'co-determination' he had negotiated, his misunderstanding of the law, his failure to deliver on his obligations and his frequent signs of bad faith. Brecht also overlooks the fact that at stake was not the huge issue of what rights an artist had in late capitalism, but a single contract. And it was a contract of a kind with which Brecht had little experience but which already had precedents and customary usage. Cases such as these were important, for they concerned the nature of the contracts that would govern this kind of economic exchange, what could and could not be assumed in them. The legal models for these relations were crucial for authors whose texts were to be turned into films, for screenwriters, composers and others whose creative work was part of the machinery of production in the new technical media such as film. Brecht's case on its own, however, could hardly carry the weight and exemplary status he ascribed to it in his polemical account.

Further problems emerge from Brecht's naïve assumptions concerning the rights historically granted to authors in traditional media and genres (fiction, poetry and drama in print; the visual arts of painting, drawing and sculpture; musical composition; etc.), as if the law in fact

reflected and enforced the very fetishized notion of art Brecht himself rejected. He writes as if great privileges were given to these producers of intellectual (*geistige*) goods that distinguished them from matters of 'material' or monetary concerns, in line with Enlightenment and Romantic notions of individuality, personality and genius. Yet the very category of 'intellectual property' did nothing of the sort. It simply identified products of a specific, non-tangible type whose status as commodity needed different rules. Without protections of property of a generally 'cultural' kind, the fundamentally economic activity of literary authorship and publishing could not proceed in a consistent and stable way, nor could the production of images be successfully exploited by artists and their publishers. Laws such as copyright were always already about economic exploitation, and the privileges accorded to artists—though inflected by and framed within the bourgeois discourse of autonomous art—existed in order to protect property of different kinds and to allow them to be integrated into the larger economy in which they functioned. The logic of such statutes was not to protect but rather to take something intangible and render it saleable and tradeable nonetheless. As Molly Nesbit and others have shown, new media and production technology were always a problem for the law (indeed, copyright was the result of negotiating the economic conditions created by the printing press).⁴⁷ The law was always playing catch-up with such developments, needing to redefine the nature of both labour and saleable commodities (including immaterial ones) in order to keep the wheels of social production turning. In writing that 'the court must make production possible', as if that were a development of industrial capitalism, Brecht fails to understand that ensuring the smooth production and distribution of works of art was a legislative and juridical imperative already in the age of artisanal technique. In writing of the assumption that 'incorporeal rights must be protected', he neglects to say that this was a matter of *commercial* law; and in writing that 'the rights of the individual must be protected', he could not find the passage in the Civil Code (BGB, *Bürgerliches Gesetzbuch*) he cites, for

it simply is not there; nor could he have explained why that has any bearing on economic activity of a cultural kind. There is a fundamental mismatch between his polemics and the mundane context of the minutiae of commercial law. And when we look at other examples of the culture of the case—court reportage, the *Neue Pitaval*, Egon Erwin Kisch's *Kriminalistisches Reisebuch*, Carl Hau's *Das Todesurteil*, films such as Fritz Lang's *M*—very few indeed address issues of commercial law (unless, of course, business matters took on human interest or precipitated more spectacular crimes).⁴⁸

In the second strand of Brecht's argument, it is not the legal decision per se but the *Vorstellungen*—the ideas or notions about the case, about law and art that prevail in society—that are the object of study. Here Brecht's sources are not the legal arguments, positions and judgements but less expert examples from the extensive reporting of the case in the German cultural, business and general press (Fig. 5). If the axis defining the first part of the argument separated the artist from capital, the axis around which these texts are now disposed is a different one. On the one side, there are those who recognise the modern conditions under which artists work: the inevitable commodification of the work, its lost autonomy and aura, its separation from the subjectivity and personality of the individual creator, the role of capital in its production, the commercial pressures on taste, the division of labour within the production. Even when such analyses come from those opposed to Brecht in the case, Brecht sides with their clear-sighted recognition of the nature of modern media and their economic conditions. Thus he has nothing but praise for some of the subtle accounts contained in the legal opinion *against* him; these represent, in their materialist and 'dialectical' analysis, a 'progressive' position in their analysis of the apparatus of film production and their recognition of the principles organising it. On the other side are those whom he criticises as behind the times, who support his *legal* position in the name of justice,

out of reverence for the artist and out of belief in the autonomy and the sanctity of art.⁴⁹ In the cultural press Brecht finds elements of both views combined: the recognition of the 'weight of economic facts' and the critical disenchantment with them. In both camps, pro- and contra-Brecht, he finds the 'ideological schizophrenia of the petty-bourgeois journalist', which manifests itself in the cohabitation in his consciousness of different realms of ideas, in their gradual shifting towards one another. At one and the same time he has at least two ideas about the same thing: he derives one from upper-class idealism, which will impose Individuality, Justice, Freedom, etc. on reality and the other from reality itself, which prevails in all its tendencies against the idealism, deflects it, domesticates it, *but also lets it exist.*⁵⁰

Those whose views emerge from 'reality', which Brecht affirms, fail to use this perspective to criticise the bourgeois ideology of art; and those working from this 'ideology' refuse to challenge the reality that destroys these ideals. The juxtaposition of different views shows two sides of a false coin, in Barthes's terms a 'myth' that holds competing and irreconcilable views in tension. The radically different views—espoused on all sides—are not separate but part of a whole, albeit a false one. The bourgeois press recognises precisely what is happening in the arena of culture in a society whose production is based on industrial capitalism, but it neither draws (progressive) conclusions about the nature of the work of art under these conditions, nor does it challenge these conditions. It is the situation Peter Sloterdijk has influentially called 'cynicism' and has defined as 'enlightened false consciousness'.⁵¹

It is a tour-de-force: in pursuing aims he himself ultimately finds untenable, Brecht erects a screen on which he can project a large array of comments, judgements and analyses to be studied, compared and investigated. With this distance, he dismisses critics who supported

him (most significant, perhaps, is Siegfried Kracauer⁵²) and draws happily for support from those who opposed him. That this also serves to justify, *ex post facto*, his own disingenuous actions and deflects criticism of those who saw him as compromised by accepting a settlement from the film company to end the case, is only in keeping with the extraordinary potential of the *Threepenny* project, which started with an opera (which prompted accusations of plagiarism of its materials, and indeed lawsuits over this⁵³) and resulted in an additional film treatment, a novel and a theoretical monument of his turn to Marx—not to mention a film at Nero's expense that ultimately did little to harm Brecht's popularity.

But when faced with Brecht's text, the legal experts could only have shrugged their shoulders. For this is ideology critique, based on the firm bed of what Brecht called 'reality' and demonstrating conflicting and contradictory beliefs about it. The law approached things rather differently. Though it could support sophisticated philosophical thinking, in practice its ontologies were rather more inductive and emerged *ad hoc*. Its epistemology looked quite different too. There the logic was of determining the facts of the case (the *Tatbestand* that is the start of any legal judgement in German courts) and the *Subsumtion* under the most appropriate law. Though its legal casuistry was the very opposite of dialectics, it was a method that worked well; indeed, the legal acuity in evidence in the attempts to define the nature of cultural contracts in an age of rapidly emergent media is nothing if not impressive (if produced under urgent commercial pressures).

Perhaps this is all beside the point. In the use of the institutions of legal process as a medium of a public sphere, in conjuring a space for debate in an oversaturated print culture, as the site for the public production of knowledge, Brecht's 'case' is a monument. He understood the

inadequacy of the press as the site of necessary and rational debate. 'The public had the right to our pursuit of justice,' he wrote, perhaps disingenuously. But he recognised that

the public had not made this claim for quite some time... We had to furnish the public with a claim which they were no longer in a position to make themselves but were nonetheless still obliged to make. The speculative quality of our suit soon receded behind these possibilities of bringing into view social attitudes (the press, the cinema and the courts), that is, of staging an experiment in collaboration with players who otherwise are difficult to engage.⁵⁴

Brecht grasped the potential for reciprocity inherent in the case, the possibility of bringing into the public eye and putting on trial the very institutions of social order and discipline. In the course of such a case,

the court becomes the defendant, whose defence is the social order, which then also becomes the defendant. For the court, which in the beginning was permitted to apply the law, is soon forced to state something about the law itself. The legal case becomes unimportant and the case of the law becomes acute.⁵⁵

He translated the instincts, habits and projects of many other practitioners of the case into a programme:

*The courts, and with them the press, must systematically and on a large scale be drawn into the organisation of sociological experiments. Since the public prosecutor in the bourgeois state in no way represents the interests of the entirety, the interests of the individual injured party being also those of the masses, court lawsuits can be used precisely to bring into the public consciousness the deeper, less noticeable social processes that constantly transpire... Discussion methods are needed that resemble more closely collective thinking processes.*⁵⁶

From a case played out in public, an attempt at the public production of knowledge, Brecht leaves us with many conclusions in the conditional tense. He might have had a poor grasp of the law. He might have convinced no one with his text at the time. He might have at first missed his target (the film company Nero) before finding another he could hit (petty bourgeois ideology). He might have only followed the example of prominent figures such as Alfred Apfel, George Grosz's lawyer, in mobilising the press as an extension of the courtroom.⁵⁷ He probably played very dirty indeed, starting legal action against critical voices who threatened to steal his thunder.⁵⁸ He might have extracted himself from his self-inflicted legal difficulties only by the seat of his pants. Like many practices of the case, his was a deeply ambivalent endeavour. But Brecht filled a courtroom and turned it into 'an auditorium full of writers listening attentively to the lawyers' words',⁵⁹ he generated public discussion, and he left a text thoroughly mining the events and their written representations in different genres and discourses for their complex and contested potential for social knowledge.

IV

Turning legal proceedings into a medium of *Öffentlichkeit* was, as I have described it, a sort of reflex, an instinct, but as we have seen it has its complexities. Yet there is a logic that connects the practices of the case and its practitioners. It involved opening up a space between three social entities: the institution of the press, the institution of the law and the new demographic constellation of artists and intellectuals without a secure economic base for their work and for their lives, who started with concerns essentially cultural but tended toward political radicalisation (left or right) due to their proletarianisation. That constellation was called at the time the group of *geistige Arbeiter* (intellectual workers); we can consider a smaller section of it and call it the avant-garde. They were not lawyers—though surprisingly many of the writers among them had studied law or otherwise knew its workings intimately,

something indicative of the class backgrounds and high level of education of this group.⁶⁰ As a radicalised group of intellectuals outside the university and art academies, it produced much of what we consider the important criticism of the time (and included the likes of Walter Benjamin and Siegfried Kracauer, though neither of them had, in fact, studied law). But we need to separate their work from what Brecht called the 'apparatus', here the medial venues of the press which provided the intellectuals of the word with concrete possibilities for publication (to the extent that it could be absorbed into the model of journalism). Or, in Brecht's case, we need to recognise that his work involved but was not identical with the theatre, where avant-garde practices could develop in non-simultaneous, potentially obsolete media due to the fact that their productions were based on limited investment and therefore limited capital risk.⁶¹ Publishing too could sustain this work, having similar corners of insignificant risk. In the interchanges between the precarious social group and the improvised, occasionally incidental institutions that offered concrete supports for it, we might also identify the zone of extra-academic *theory*. And created in this space in-between, the invoked, interpellated, artificially created public sphere cannot be equated with pre-existing (if themselves changing) institutions such as the press and its readers alone, nor with the formally public procedures of the courts, nor with the small group that mobilised both. For historians, institutions and venues seem, perhaps, relatively stable, and histories can attach to them. But I think the practices of the case were more fragile, messy, unpredictable and contingent than such traditional objects of social and historical study, as was the space in which a public could form; and the practitioners of the case, as 'free-floating intellectuals',⁶² were also always in-between and improvising. Their work with the press had shown them that despite the lack of pre-publication censorship, this area was not transparent but needed to be activated by practices of publicity (of which the case was one). It thus made sense for Brecht to open this space in-between, and it would have resonated with those like him. It was

a reflex, and this explains some of the contradictions of Brecht's text: the traces of improvisation, the sense of meddling and gambling, the tendency toward disingenuousness and dissimulation that characterise the 'experiment'. As a *Flucht in die Öffentlichkeit*, a reckless rush to the public, Brecht did not have to orchestrate his case as carefully as he claimed: according to the rules of this game, that could happen retrospectively.

In discursive terms, the move involved written interventions that prised open an area between different discourses and genres: between court reporting, legal texts and the new forms of the proletarianised intellectual turned avant-garde: the essay, the aphorism, the miniature or the fragment. Medially, all these involved print, but here too the avant-garde made up its own rules. And here we can identify a crucial distinction between Brecht's essay 'The *Threepenny Lawsuit*' and some other examples of the culture of the case. Brecht's use of print media was distinctive: it was the practice of *montage*.

As printed and bound prose, a page from the '*Threepenny Lawsuit*' does not look that different from, say, a published legal decision (Figs. 6 and 7). Each is read from the first page to the last; each works with quotes. Both have a clear order: the legal case with the judgement (*Urteil*), facts of the case (*Tatbestand*) and the reasons for the decision (*Entscheidungsgründe*); in Brecht's text an ad hoc but logical, intuitive and clearly indicated set of sections. But Brecht's 'Case' section differs from the legal 'facts of the case', though both call on a mix of authorial voices and inserted documents. Though the *Tatbestand* mixes, like Brecht, different sources—narrative, contracts, letters, precedents and so on—the point is to create a coherent overview of facts deemed relevant. Brecht's section on the case starts similarly but then changes tack. After a brief introductory narrative and quotations from the contract, followed by the court's decision, the text shifts to a kaleidoscope of extracts from

the press, identified by the source periodical but not by date or author, representing contradictory views and divided into sections preceded by short, ironic phrases that mimic headlines or adverts, rather like the sections of Benjamin's *Einbahnstraße* (One-way street). Instead of a clear or ironed-out narrative, we have a cacophony of differing views which do not resolve into a clear image. The case is exploded, reversing the usual labour of a legal document, and Brecht's work in the following sections becomes that of drawing out the contradictions, pointing up the gaps, stressing not only the heterogeneity of the incorporated documentary material but the confusion of the different positions, the mutual exclusivity of views often expressed in the same text.

Brecht incorporates foreign material, often documentary in nature, highlights its heterogeneity, stresses contradictions and refuses narrative or logical harmony: it is an avant-garde technique. His working method evokes that of both visual artists such as Raoul Hausmann, Hannah Höch and John Heartfield and writers such as Döblin. Werner Mittenzwei describes it: Brecht

usually wrote with a typewriter. Corrections were carried out with scissors and paste. After reviewing the manuscript, he cut the text apart and montaged (*montierte*) it anew. He cut out even short sections of a few lines and pasted them on [to the paper], even when rewriting them would have been far more rational. Montaging the sentences was fun and increased his pleasure in the task. He operated here like a cutter or editor (*Schnittmeister*) with a film.⁶³

Brecht's use of this technique in the context of the case would have made sense, certainly to his colleagues from the *Gruppe 1925*. As we have seen, for Döblin and others the law looked 'epic': it showed how heterogeneous elements of contemporary experience came together, and it was an important source of material for their own use. But how were materials in fact

used in the administrative forms of the case? Was the avant-garde instinct a logical response to the sites and practices of judicature? And what of the spectacularisation of the 'case' in the newspapers, illustrated weeklies, in novels, theatre dramas and film? It is worth reconsidering the '*Threepenny Lawsuit*' text again in the light of such questions. Instead of asking how Brecht used the case as a medium, we can ask in reverse: how did he use the media of the case? For the manipulation of texts on paper was central to many aspects of the culture of the case.

In writing the '*Threepenny Lawsuit*', Brecht worked with *newspaper clippings* (Fig. 8). Anke te Heesen has described in great detail the function of newspaper clippings in the cultural and knowledge production of the late nineteenth and early twentieth century.⁶⁴ The practices drew upon long traditions of both scholarly excerpting by longhand and women's scrapbooking. In the former, practitioners sought to compile and store text data for later use at a time when books were expensive and scarce; in the latter, women sought to select textual and visual evidence of events they found meaningful, drawing from an increasing flood of impersonal news and assembling a set of subjectively meaningful items.⁶⁵ The establishment of newspaper clipping agencies commercialised and rationalised the practices of extracting meaningful data. Customers of various kinds could contract out the work of scouring scores of newspapers for items on a single topic. Artists, for example, would subscribe to such a service and receive published reviews or mentions of their exhibitions; scientists could keep track of public reports of developments across the world; and those in the public eye kept track of their representation in the press. Subscribers were spared the time and expense of finding these clippings themselves, which was, in any case, impossible for a single person. The clipping services allowed for a universe of print now beyond survey to be scanned by employees with scissors, paste and instructions to find clippings of a constantly changing set

of topics. It was a method of overseeing the daily flood of public texts from newspapers and journals, managing the data and archiving it. In montaging accounts of his own court case, Brecht might well have engaged the services of one or more clipping agency; and in doing so, he would have been following a thoroughly normal practice of the time.

The newspaper clipping had a past that was scholarly and learned, and a contemporary resonance that was up-to-date, bureaucratically organised and invoked the practices of commerce and industry. And, as te Heesen has explored, it was also central to the practices of the avant-garde. But it also continued the scrapbook tradition of the personal management of public representations. And the use of the newspaper clipping was contemporary with, and embedded in, documentary practices of the culture of the case. Consider a literary genre of the time: the edited diaries, journals or memoirs of those at the centre of cases—legal, medical or publicistic. There was no shortage of such books. One of the most famous was *Tagebuch einer Verlorenen: Von einer Toten* (Diary of a lost girl: by one now dead) of 1905.⁶⁶ It is a diary, the account of a young girl's life from a middle-class upbringing to prostitution and death, told with a remarkable candour, self-awareness and touching humanity, in an at times awkward and changing style as the girl grows into an adult. Pages were missing, and the central events they apparently recount need to be reconstructed by the reader. The book showed a thoroughly typical case, a fate that could be that of many women. The documentary material was published with an introduction by the popular novelist Margarete Böhme, who writes that she is merely the 'editor' and explains how the (incomplete) manuscript has come into her hands. A facsimile of two pages of the original, handwritten diary is included in early editions to vouch for the book's authenticity (Fig. 9). But it was in fact a fabrication by Böhme, though she never admitted it.⁶⁷ And since practices of the case moved across media with great energy (if not always ease), it is no surprise that

the bestseller was turned into a theatre drama and adapted as a film three times (the last was the famous film by G.W. Pabst, starring Louise Brooks).⁶⁸

From the medical-psychiatric side, we could point to books such as the anonymous *Tagebuch einer männlichen Braut* (Diary of a male bride), the journal of a hermaphrodite 'edited' by one Walter Homann.⁶⁹ Or indeed, from the time of the *Threepenny Opera*, the sensational *Vom Leben getötet: Bekenntnisse eines Kindes* (Killed by life: confessions of a child), edited by M.I. Breme.⁷⁰ It is a complicated case, full of deception; but then, media store and distribute data, not 'truth' (though certain genres spoke the rhetoric of documentary authenticity: the facsimile showing the fallen girl's handwritten diary). Here the story is of a Bremen girl's two-year descent from innocence to death, and it is a powerful indictment of the hypocrisy of civil authorities in dealing with women suspected of prostitution, and of the inhumane penal and medical treatment to which they were subjected while forcibly separated from family, friends or legal advice. It is a dated diary in the young girl's own voice. The book was a bestseller: 5000 copies were sold in the first three weeks of its appearance, and it went through many more editions. The case became even more notorious when the victim's mother, Elisabeth Kolomak, was exposed as author, and with that she became the author of a whole series of crimes. Procurement was the one for which she stood trial. The shift transformed her from the bereaved to the accused. But the claims of shocking brutality on the part of the Bremen police turned out to be as true as the original authorship was false. It was a typical case in that the publication and trial opened view into the actions of authorities, and typical in that the roles of accuser and accused, victim and offender switched, exposing the problems of youth and of class sexuality, the plight of women and the institutions of social discipline alike to unwelcome but breathless public view. The celebrity court reporters of the

time were despatched to Bremen and reported on the steady flow of revelations and competing allegations.

But it is the practice of the case on the side of the *readers* that interests me. One reader turned her copy of the book into an album of newspaper clippings, leaving evidence of (presumably) her close concern with the case and attention to its development and reporting (Figs. 10 to 12). Photographic portraits from an unidentified illustrated newspaper are pasted in to make a frontispiece; a small notebook is titled with a clipped headline and contains newspaper reports, including the court decision (only the judgement and legal reasoning, as the 'facts of the case' were well known). Perhaps it was someone with familiarity with the conditions described, perhaps someone who knew one of the protagonists. The clipping of the theatre listings from the *Hamburger Fremdenblatt* (Fig. 13, second from bottom) show how the case crossed media and genres, turning from court case and documentary to spectacle in a melodramatic drama by June 1927 ('age restricted'); by the end of the year it had also been made into a film.⁷¹ The inside back cover expands the scope with an article comparing Frau Kolomak to an eighteen-year-old woman who stood before a court in Duisburg accused of the murder of two children, a court reportage concerning 'sensational trials'. The object shows both the entropic energy of the case, the new relationships into which it could be brought, and one reader's attempt to draw together paper traces of it, to make sense of the story and to preserve evidence of it.

The book, the court case, the clippings, the scrapbook, the theatre play and the film trace a social, legal and also a medial narrative. But though a practice of cutting and pasting, though an engagement with modern, spectacularised forms of information and entertainment, the scrapbook is a kind of montage very different from Brecht's. It shows not observation but

emotional investment, not distance but involvement. The insertion of heterogeneous material does not estrange; instead the differences between the documentary texts, the commentary and the images are played down. Any shocks or jolts come from the human drama contained in the collaged materials, not the physical, spatial juxtaposition of them. It leaves the texts uncommented (beside the editorial acts of their selection and placement) instead of subjecting them to further analysis. While in Döblin's terms the incorporation of the familiar, the everyday, the documentary makes it an 'epic' practice, it is not Brecht's form of epic. The collaged book revels in the ambiguity of the case, its twists and turns. It makes of the case not a social-scientific experiment but a melodrama.⁷² In the attention to scandal, tragedy, injustice and their spectacular traces in print culture, however, it too is a practice of the case and a manipulation of its modern media.

Similar practices used to rather different ends from Brecht's emerge from a look at another medium of the case, the administrative-technical form of its documents: the records or 'files'. These similarly involve paper. Instead of scissors and glue, however, the tools are mostly the hole-punch, staples, string, horizontal stacks of files or rows of vertical lever-arch files.⁷³ The files of a criminal case might mix handwritten text, typed pages and photographs. In one example (Figs. 14 to 17), we find also the printed and distributed arrest warrant, affidavits from experts of various kinds, letters to the accused and his own letters to others, court transcripts, correspondence with the lawyers, sworn statements, newspaper clippings and the pre-printed forms that expedited the office work of the machinery of justice.⁷⁴

The volumes of the *Außenseiter der Gesellschaft* series replicate these practices of legal files. There are the authors' narrative and analysis, photographs and biographies of the principals in the case, handwriting samples and graphological analyses, transcripts of the court

proceedings and the legal judgements, newspaper clippings and reports showing the press coverage, excerpted passages from the expert medico-forensic literature, crime scene maps, and witness lists (Fig. 18). Here too we see the physical elements of the *Threepenny* lawsuit, but with a very different texture, organisation and phenomenology of production.

In other words, Brecht's lawsuit was about media, but it was also negotiated *through* media.

His manipulation of them looks, on the surface, rather like other practices of the case.

Foucault would consider these manipulations to be work with the "dossier", that is to say, a case, an affair, an event that provided the intersection of discourses that differed in origin, form, organization, and function' that would allow one 'to draw a map, so to speak, of those combats, to reconstruct those confrontations and battles, to rediscover the interaction of those discourses as weapons of attack and defense in the relations of power and knowledge.'⁷⁵ In general, however, I prefer to name these accumulations by the specific media of the case used, not only to point to the space at which various discourses and dispositives meet but to insist upon the materiality and the specific practices they entail. For as we have seen, these practices were not only those of apparatuses of power; their practitioners were not always authorised to enter the dossier; their intersections were material and embodied. Moreover, the differences between Brecht's use of these media, and both popular and administrative uses of them, are significant: they point to a sort of mismatch between Brecht's experiment and the more common texture of the case. Perhaps this might go some way towards explaining the problematic status of Brecht's text, its eccentric position in the culture, its failure to convince as a whole.

Brecht's montage is that of the avant-garde. It is diacritical and dialectical; it works by juxtaposition and surprise; it generates meaning by difference. The cutting, pasting, binding

and archiving in the more widespread medial practices of the case have a different principle. Instead of juxtaposition, they work by *accumulation*. They grow inexorably and organically, and they stop only arbitrarily, not with a conclusion but with the end of proceedings or press coverage, or indeed with the end of interest, perhaps even by the statute of limitations. They have an air of tedium about them, of melancholy and indeed helplessness that contrasts with Brecht's sovereign and playful approach. The usual practices of the case involve immersion, absorption or the danger of getting utterly lost in the endlessly accumulating documentary material. They are not agile: instead they involve the risks of obsession or compulsion or complete loss of overview and perspective.

The different practices imply different epistemologies. The 'experiment' elaborates its methodology, moves its objects around and exposes contradiction. These lead to conclusions, a tidy taxonomy of attitudes toward media and law that can be classified as progressive or regressive, up-to-date or obsolete, a clear view of reality or ideology. The text is filled with gestures that say '*Q.E.D.*'. Scrapbooks and records yield a different kind of knowledge, one a little less secure and satisfying. Evidence is piled on evidence; expert opinions clarify or fail to clarify any of a myriad of questions, and then they raise new ones. The facts of the case may be disputed and need to be established, often by fiat. Evidence is laboriously altered in its media: photographs, for example, need to be transposed into words, and written words into oral ones in a criminal trial. The case needs to be pieced together as a narrative, and this story or picture of the world is always incomplete and imperfect. Conclusions emerge on the balance of evidence, from the laborious and often contested determination of relevant laws under which the facts of the case, as they have been laid out in the decision, can be subsumed. Formulations are sober and quick wit is scarce. Decisions emerge by weight and accretion of evidence rather than bolder jumps of reasoning. Meaning is often absent, and the

things often signify nothing but themselves. In contrast, Brecht sought to do something most practitioners of the case were trained to avoid. His intention was to generalise; from the beginning, he tried to draw out of the case not a contingent and limited decision but an overall truth.

And the different practices have their own differing temporalities. The shock of juxtaposition, of montage, generates meaning in a flash. Except in rare instances, the spark of illumination is foreign to the cases of the series *Außenseiter der Gesellschaft* or its lower-market, melodramatic contemporaries. Duration and exhaustion are the leitmotifs of contemporary literary accounts of the work of the courts.⁷⁶ Court cases are rarely seen to end correctly; they simply terminate and form the basis of a contingent form of knowledge that could start an endless series of appeals, ended only by the refusal to review judgements or accept new evidence, or by the decision of a higher court. And even then, the cases do not necessarily end. The text of Theodor Lessing's account of the crimes and trial of Haarmann, the 'werewolf of Hannover', does end with a conclusion: '*Unser aller Schuld*'—our own fault—words written, he says, in January 1925.⁷⁷ But between the delivery of the manuscript and its printing, Lessing added a nearly endless series of notes, epilogues, and accounts of new evidence. It shows the messiness of an open-ended process of publicity and knowledge, a montage with the glue never dry, with conclusions rarely final and seldom trustworthy.

In context, we can see that Brecht's montage has a shadow: not the work of an avant-garde, nor the intersection of apparatuses within the dossier, but a lower-order form of accumulation of paper materials that neither negotiates between institutions nor resolves into secure knowledge. Brecht's text thus involves a complex series of moves. First, Brecht remediates the contemporary practices of the popular interest in the case, the newspaper clippings and

scrapbooks. This is, in fact, remediation in reverse: Brecht takes the medial fragments that made up his evidence and smooths them out into a conventionally printable text, turning the occasionally compelling visual interest of the photographs and playlists, of the reader's reengagement with news at discrete moments in time, into a neat set of fifty-seven pages analysing a general state of affairs.⁷⁸ Second, he remediates the legal file, the court records, reorganises the untidy material of the older culture of the case into a neat series of juxtapositions and analyses. The cutting and pasting make the end product shorter, not longer. Brecht shows a kind of non-simultaneity of the law in relation to the new media, not only in its judgements on them but in its use, or not, of them, in its forms of utterance, its publicity, its often inadequate staging, its narrow, reifying focus on the *Sache*, matters relevant to the case, and the careful bracketing of *obiter dicta*. And though the older culture of the case, based on orality and the written word, the physical presence of the witnesses, judge and jury might seem obsolete in the age of new media, its rigid code of court procedure was still in effect and the definitive form of legal process.

V

Readers of the 'Threepenny Lawsuit' would have recognised its obvious but ambivalent position in the culture of the case, and somehow found it lacking. Those more familiar with legal casuistry than Brecht might simply have shrugged, appalled or amused by Brecht's dilettantism. For his part, Siegfried Kracauer found Brecht's grandstanding a misuse of an overstretched legal system, and a misuse of the sphere of publicity that could surround it:

Such a transformation from a naively instigated suit into a conscious experiment would have been extraordinarily useful if the experiment had disclosed certain social conditions and the ideas conditioned by them that could not have been achieved

otherwise. If, however, it only leads to results that could be achieved by other means, and without instigating a lawsuit, then it is at least superfluous. It *is* superfluous....

And beyond the fact that the 'Threepenny Lawsuit' has little meaning as an experiment—in its present stage, reality is so provocative that it hardly needs to be provoked through 'experiments'. On the contrary, the 'sociological experiments' that Brecht suggests be organised are harmful. In their very superfluity they damage what they claim to affirm: the necessary measures in the class struggle. Not only due to their superfluity, but also because they originate in an *individualistic* attitude. They have the wilful character of a private sport.⁷⁹

Others may have missed the ambiguity and ambivalence of both the law and human action for which the case provided the stage. For that, Brecht would have had to show how people of the time were exposed to the institutions of modern bureaucracy and the machinery of justice, or insight into how laws might not be fit for purpose. For this, perhaps, he would have had to be an 'outsider of society'. But he was an insider; he was in a position to bring legal action and not merely find himself exposed to it. Or if not an insider, he adapted himself to the machinery and protocols of social power, even if ironically; while prompted by the downward mobility of the intellectual, his starting point was the outmoded claim of the privilege of the cultural producer. The declassed 'cultural workers', the *geistige Arbeiter*, did not appreciate his solidarity; and those less politely proletarianised could hardly have recognised it.

But beyond that, I suspect most would have missed a compelling social concern brought to light, an understanding of the human dimension of the case, the access it offered to the daily life of many, their shared experiences and concerns. For the court reporter Gabriele Tergit,

the case, its media and genres—the letter, the diary, the notes after a chance conversation... the files of a criminal case—offered knowledge, but an ‘insight (*Erkenntnis*) into the typical *feelings* of an epoch’ that had to be found through experience.⁸⁰ Brecht, with a leap over experience to a sovereign view of the ‘functional’, the very totality that rendered individual experience an epistemological dead end, would have rejected this. But the public of the time was not so arid and devoid of the human, as there had to be a subject to piece together the whole picture, to ‘reveal [something] about these institutions’. The public sphere, the space for the social production of knowledge, was, to quote Oskar Negt and Alexander Kluge, a space for the ‘organisation of experience’,⁸¹ the making sense of what confronted the subject—gendered, embodied and classed. The solidarity it could produce was, in their terms, a ‘sensuously tangible’ one.⁸² Today we would talk in terms of affect, but the sensuous experience was also one of the manipulation of paper and image and the multiple possibilities of recognition and knowledge it could both mediate and produce. Here the widespread and immense archive of the lesser practices of accumulation and montage had their appeal and their use. Brecht manipulated a very familiar set of elements in an ironic, self-reflexive and virtuosic way, making clean copy and easy conclusions when most readers would have been sensitive to the fragility, disorder, ambiguity and utter contingency of these public media through which contemporaries sought to make sense of a bewildering and occasionally dangerous world.

Brecht, I think, realised this. After the ‘experiment’ or ‘essay’ (*Versuch*), he never again addressed the case in the form of its statutes and its procedures, its reified forms of institutionalised knowledge, bureaucracy and indeed literary culture. But the case as a cultural form and its epistemological potential continued to haunt him. Even as he wrote the ‘*Threepenny Lawsuit*’, he was exploring other forms of justice and collective decision-

making. Consider the contrasting proceedings of justice in the film *Kuhle Wampe*.⁸³ On the one hand, we see the bored and distracted judges whose eviction of the unemployed family Bönicke is a verdict they know to be unjust but make out of mere habit and lack of any alternative.⁸⁴ The landlord, the official at the housing office and the bailiff similarly shrug. The jurist's shrug is now a *gestus*, an embodied form of knowledge showing the uncomfortable enlightenment of false consciousness, or knowledge of the social world before the decision to change it. On the other is the improvised tribunal of fellow tenants who prevent by force such an eviction in the performance by the agit-prop group *Red Megaphone* later in the film.⁸⁵ Knowledge could be produced collectively and lead to social consensus in new forms: the traditional institutions of the courts, bailiffs and police, perhaps, no longer had the monopoly on the determination and execution of justice. Doubt now takes centre-stage in the revolutionary tribunals of the *Ja-Sager*, the *Nein-Sager* and *Die Maßnahme*. Indeed, ad-hoc tribunals take over from courts, a development usually considered with scepticism and fear as political forces bypassed traditional courts in moments of danger, real or imagined. Brecht shows their positive potential. The megaphone too implied a different medium, and Brecht would come to investigate it and its cognate forms to see if they could reinvest the cultural form of the case with the productive unpredictability that lay at its core.

This material was first presented at the Dutch Art Institute's Roaming Assembly #11: The Strange Case of the Case. My thanks to Sven Lütticken and Gabriëlle Schleijsen for their invitation to speak in Arnhem, and to Nikos Doulos for his assistance. Thanks also, for their invaluable comments and assistance of many kinds, to Simon Baker, Francesca Berry, Mark Carrington, Steve Edwards, Jenny Nachtigall, Nikos Pegioudis and Tom Wilkinson. The research for this article was generously funded by a Leverhulme Trust Research Fellowship.

Brecht's 'Threepenny Lawsuit' and the Culture of the Case

Illustrations

- Fig. 1 Bertolt Brecht, 'Der Dreigroschenprozeß', in *Versuche 1-12* (repr. Frankfurt a.M.: Suhrkamp, 1959), p. 243.
[No permission required. Need not be large.]
- Fig. 2 *Kolportage* booklets. Private collection. Photo: author.
[Author's collection and photo; all out of copyright; no permission required. These will be delivered as Fig. 2a, 2b, and 2c, but the separate labelling is probably not a good idea. These should be reproduced in colour, as this is noted in the article, with a white space to separate them. Together these should be largish.]
- Fig. 3 Books from the *Außenseiter der Gesellschaft* series. Private collection. Photo: author.
[No permission required as above. Please in colour. Largish?]
- Fig. 4 Gabriele Tergit, report on the Kolomak case. *Berliner Tageblatt*, 16 June 1927.
[Newspaper clipping, published in Germany. Under German law, reproduction of an artwork in a scholarly work is allowed as a 'Bildzitat' (image citation) if source is properly noted. The artist ('Kroll') cannot be identified. No permission required. Need not be too large.]
- Fig. 5 Press reports from the *Threepenny* lawsuit. From *Photo: Casparius*.
[No permission required. Need not be large.]
- Fig. 6 First page of the court's decision in the *Threepenny* lawsuit, as printed in *Archiv für Urheber-, Film-, und Theaterrecht*, vol. 4, no. 1 (1931).
[Published and publicly available legal decision: no copyright. Large enough to be legible?]
- Fig. 7 Brecht, 'Der Dreigroschenprozeß', pp. 248-9.
[No permission required: text will not be legible from reproduction, and a point is being made about the layout. Need not be large.]
- Fig. 8 Newspaper clippings. From Anke te Heesen, *Der Zeitungsausschnitt: Ein Papierobject der Moderne* (Frankfurt a.M.: Fischer, 2006).
[',Bildzitat': no permission required. These will be delivered as 8a and 8b but please print as in Fig. 2 above.]
- Fig. 9 Facsimile of 'original' manuscript for Margarete Böhme, *Tagebuch einer Verlorenen*.
[Need not be too large.]
- Fig. 10 M. J. Breme, *Vom Leben getötet*. Private collection. Photo: author.
[All these are from the author's collection. Colour? Medium size?]

- Fig. 11 M. J. Breme, *Vom Leben getötet*. Private collection. Photo: author.
[Colour? Medium size?]
- Fig. 12 M. J. Breme, *Vom Leben getötet*. Private collection. Photo: author.
[Colour. Medium size]
- Fig. 13 M. J. Breme, *Vom Leben getötet*. Private collection. Photo: author.
[Colour and fairly large?]
- Fig. 14 The file of a criminal case. Photo: author.
[Colour? Medium size]
- Fig. 15 From the file of a criminal case. Photo: author.
[Delivered as 15a and 15b. Need not be too large.]
- Fig. 16 From the file of a criminal case. Photo: author.
[Medium size]
- Fig. 17 From the file of a criminal case. Photo: author.
[Medium size]
- Fig. 18 Pages from Eduard Trautner, *Der Mord am Polizeiagenten Blau*, *Außenseiter der Gesellschaft*, vol. 3.
[Delivered as 18a and 18b. Large enough for the very different kinds of text to be visible]

 NOTES

Unless otherwise indicated, translations are mine.

¹ Sergej Tretjakow, *Lyrik, Dramatik, Prosa*, ed. and trans. Fritz Mierau (Leipzig: Reclam, 1972), p. 333. The only major study of Brecht and judicature is Yasco Horsman, 'Brecht on Trial: The Courtroom, the Theater, and *The Measures Taken*', in Horsman, *Theaters of Justice: Judging, Staging, and Working Through in Arendt, Brecht, and Delbo* (Stanford: Stanford University Press, 2011). Horsman, whose subtle account informs my argument here, discusses Tretjakov's comments on pp. 91-93. See also Fredric Jameson, *Brecht and Method* (London: Verso, 1998), pp. 28, 118-22 and Hildegard Emmel, *Das Gericht in der deutschen Literatur des 20. Jahrhunderts* (Bern: Francke, 1963), chap. 3.

² Tretjakow, *Lyrik, Dramatik, Prosa*, p. 336. Brecht's ideas for a 'Prozeßtheater' (trial theatre) are discussed in more detail in Manfred Wekwerth, *Notate: Zur Arbeit des Berliner Ensembles, 1956-1966* (Berlin and Weimar: Aufbau, 1967), pp. 163-64.

³ On the proceedings of 1928 to 1931 against Grosz for blasphemy, see Michael White, 'Not another Blasphemy Trial! The Prosecution of George Grosz and Political Justice in Weimar Germany', in *The Trials of Art*, ed. Daniel McClean (London: Ridinghouse, 2007), pp. 255-70; Wolfgang Hütt, *Hintergrund: Mit den Unzüchtigkeits- und Gotteslästerungsparagrafen des Strafgesetzbuches gegen Kunst und Künstler, 1900-1933* (Berlin: Henschelverlag, 1990), pp. 60-67 and the documentation on pp. 230-62; and on this and Grosz's trials for indecency, Rosamunde Neugebauer, *George Grosz: Macht und Ohnmacht satirischer Kunst* (Berlin: Gebr. Mann, 1993). Carl Einstein's unperformed drama *Die schlimme Botschaft* (Berlin: Rowohlt, 1921), about the arrival of Christ in contemporary Germany, was banned; Einstein and his publisher were convicted of blasphemy and given heavy fines, while unsold copies of

the book and the typeset plates were destroyed. See Heinrich Hubert Houben, *Verbotene Literatur von der klassischen Zeit bis zur Gegenwart* (Berlin: Rowohlt, 1924), pp. 137-74.

⁴ On *literarischer Hochverrat*, see Klaus Petersen, *Literatur und Justiz in der Weimarer Republik* (Stuttgart: Metzler, 1988), pp. 97-108.

⁵ The full title of the book, a dystopian account of a civil war in Germany following the horrors of the First World War, is *(CHCl=CH)3As (Levisite), oder Der einzig gerechte Krieg* (Vienna and Berlin: Agis-Verlag, 1926). See Johannes R. Becher *et al.*, *Der literarische Hochverrat von Joh. R. Becher* (Berlin: Mopr-Verlag, 1928); accounts in the contemporary press such as an article by his defence attorney: Alfred Apfel, 'Der Fall Becher', *Die Weltbühne*, 1926, vol. 2, pp. 22-23; and the documents in Friedrich Albrecht *et al.*, eds, *Aktionen, Bekenntnisse, Perspektiven: Berichte und Dokumente von Kampf um die Freiheit des literarischen Schaffens in der Weimarer Republik* (Berlin and Weimar: Aufbau, 1966), pp. 23-127.

⁶ Letter of 16 November 1926 to Siegfried Kracauer. Walter Benjamin, *Gesammelte Briefe*, ed. Christoph Gödde and Henri Lonitz (Frankfurt a.M.: Suhrkamp, 1995-2000), vol. 3, p. 214. The *Schriftstellergruppe 1925* was a loose union of roughly forty left-leaning authors founded in that year by Rudolf Leonhard; it included, among others, Brecht, Becher, Ernst Bloch, Alfred Döblin, Leonhard Frank, Ernst Toller and Kurt Tucholsky. The only study of the group is Klaus Petersen, *Die 'Gruppe 1925': Geschichte und Soziologie einer Schriftstellervereinigung* (Heidelberg: Carl Winter, 1981).

⁷ From the circular letter of 19 November 1926 to members of the group (these were written and circulated by Rudolf Leonhard or Alfred Döblin); portions are quoted in Petersen, *Die 'Gruppe 1925'*, pp. 168-69. The 'literary court' was held on 8 November in the Hotel Kaiserhof, Berlin. Petersen cites a copy of the minutes in the Literaturarchiv, Akademie der Künste, Berlin, Ernst-Toller-Sammlung, but this is missing from its place (Sig. Toller 150); a

copy remains in the Handschriftenabteilung of the Zentralbibliothek Zürich, Nachl. A. Turel 28. My thanks to Fr. Helga Neumann of the Literaturarchiv, Akademie der Künste, Berlin, for her help in determining the fate of this document.

⁸ Leonhard, letter of 19 November 1926; Petersen, p. 169.

⁹ Bertolt Brecht, 'Der Dreigroschenprozeß: Ein soziologisches Experiment', in Brecht, *Versuche*, no. 3 (Berlin: Kiepenheuer, 1931 [*recte*: 1932]), pp. 256-306. Citations here are from Brecht, *Werke: Große kommentierte Berliner und Frankfurter Ausgabe*, eds. Werner Hecht, Jan Knopf, Werner Mittenzwei and Klaus-Detlef Müller (Berlin and Weimar: Aufbau, and Frankfurt a.M.: Suhrkamp, 1988-2000), vol. 21, *Schriften I*, pp. 448-514; and from the English translation 'The Threepenny Lawsuit', in *Bertolt Brecht on Film and Radio*, ed. and trans. Marc Silberman (London: Methuen, 2000), pp. 147-99. The best account of the lawsuit and its background is Steve Giles, *Bertolt Brecht and Critical Theory: Marxism, Modernity and the Threepenny Lawsuit*, 2nd ed. (Bern: Peter Lang, 1998); see also the editors' notes in Brecht, *Werke*, vol. 21, pp. 769-787; the documents reproduced in *Photo: Casparius* (Berlin: Staatliche Kunsthalle and Stiftung Deutsche Kinemathek, 1978); Burkhardt Lindner, 'Der Dreigroschenprozeß', in Jan Knopf, ed., *Brecht-Handbuch* (Stuttgart: Metzler, 2001-3), vol. 4, *Schriften, Journale, Briefe*, pp. 134-55, as well as the sources in Lindner's bibliography, pp. 154-55.

¹⁰ Brecht's *Mitbestimmungsrecht* is discussed by Giles, *Bertolt Brecht and Critical Theory*, pp. 15, 22-23 and 31-32.

¹¹ Brecht, 'Die Beule: Ein Dreigroschenfilm', in Brecht, *Werke*, vol. 19, *Prosa 4*, pp. 307-20; 'The Bruise: A Threepenny Film', in *Bertolt Brecht on Film and Radio*, pp. 131-43.

¹² I explore these matters elsewhere in 'Architecture and Crime: Adolf Loos and the Culture of the "Case"', *Art Bulletin*, vol. 94, no. 3 (2012), pp. 437-57; and 'Entzauberte Bilder:

Gewalt, Illustration und Neue Sachlichkeit', in Inge Hinterwaldner, Michael Hagner and Vera Wolff, eds, *Einwegbilder* (Munich: Wilhelm Fink, 2016), pp. 131-53.

¹³ 'Der Dreigroschenprozeß', p. 469; 'The *Threepenny Lawsuit*', p. 164.

¹⁴ See for example Martin Brady's discussion in 'Brecht and Film', in Peter Thomson and Glendyr Sacks, eds, *The Cambridge Companion to Brecht*, second ed. (Cambridge: Cambridge University Press, 2006), pp. 302-3.

¹⁵ Fritz Sternberg, *Der Dichter und die Ratio: Erinnerungen an Bertolt Brecht* (Göttingen: Sachse & Pohl, 1963), pp. 14-15: 'Brecht was very critical about many of his own plays, and I said to him that he would have great difficulties, greater than Shakespeare. 'In the time when Shakespeare wrote... [s]ociety was clearly visible in its sociological character... Today, on the other hand', I tried to explain to Brecht, 'things are different in a decisive point. Today, in a modern, industrial society, one cannot simply see the various social strata with one's eyes. Go to a factory, watch what the businessmen, what the directors, the office staff, the workers do. When you've seen all that, you know nothing. The worker could be well paid or utterly exploited. Vision alone yields no answers, just as little as does intuition. First you need an analysis of today's society that can only be achieved through reason (*Ratio*) and not through intuition.' Or pp. 47-49: 'In antiquity and the middle ages, the fact of exploitation was considered by both sides... to be self-evident, indisputable and never to be eliminated. Precisely because both parts were aware of this, the relations of the classes were so clear; precisely because agriculture was the absolutely dominant production sector, one could 'see' the exploitation of the lower classes in all its clarity. I want to emphasise this expressly—it is so important for the later analysis—one could see this in the literal sense.... That is no longer the case for our epoch.... Thus there arose precisely that phenomenon that I described to Brecht as the 'sociology of repression (*Verdrängung*).' In contrast to the middle ages and antiquity, the fact of an exploitation was no longer recognised, and this 'sociological

repression' was made easier in that... this exploitation could no longer be immediately seen.'

On Sternberg and Brecht, see the material in the fine new edition of *Der Dichter und die Ratio* edited by Helga Grebing (Berlin: Suhrkamp, 2014).

¹⁶ Bertolt Brecht, 'Fünf Schwierigkeiten beim Schreiben der Wahrheit', in *Werke*, vol. 22, *Schriften 2*, p. 81; 'Five Difficulties in Writing the Truth', in *Brecht on Art and Politics*, ed. Tom Kuhn and Steve Giles (London: Methuen, 2003), p. 148 (emphasis added).

¹⁷ *Der Dreigroschenroman*, in *Werke*, vol. 16, *Prosa 1*; *The Threepenny Novel*, trans. Desmond I. Vesey and Christopher Isherwood (London: Granada, 1981). This work is discussed with great insight in Devin Fore, 'The Time of Capital: Brecht's *Threepenny Novel*', *nonsite.org*, no. 10 (2013).

¹⁸ The notion, or ideal, of the public sphere (*Öffentlichkeit*) as a more or less transparent realm in which public opinion could be formed is, of course, Jürgen Habermas's, and is described in his seminal *The Structural Transformation of the Public Sphere*, trans. Thomas Burger and Frederick Lawrence (Cambridge, MA: MIT Press, 1989). Some of the most important critiques of Habermas's argument can be found in Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1992).

¹⁹ On this aspect of Brecht's thought, see Giles, *Bertolt Brecht and Critical Theory*, chap. 3; and Todd Cronan. 'Art and Political Consequence: Brecht and the Problem of Affect', *nonsite.org*, no. 10 (2013).

²⁰ Considering his erstwhile prominence, literature on Harden is scarce. Still useful in English is Harry F. Young, *Maximilian Harden, Censor Germaniae: The Critic in Opposition from Bismarck to the Rise of Nazism* (The Hague: Martinus Nijhoff, 1959).

²¹ See most recently Norman Domeier, *Der Eulenburg-Skandal: Eine politische Kulturgeschichte des Kaiserreichs* (Frankfurt a.M.: Campus, 2010) and Frank Bösch,

Öffentliche Geheimnisse: Skandale, Politik und Medien in Deutschland und Grossbritannien, 1880-1914 (Munich: Oldenbourg, 2009), pp. 117-54.

²² Young, *Maximilian Harden*, p. 80.

²³ Maximilian Harden, *Prozesse: Köpfe, dritter Teil* (Berlin: Erich Reiss, 1913). The Hau case came to be the subject of two books by the accused (*Das Todesurteil: Die Geschichte meines Prozesses* and *Lebenslänglich: Erlebtes u. Erlittenes*, both Berlin: Ullstein, 1925) and of several films and semi-fictional accounts, most recently Bernd Schroeder, *Hau* (Munich: Hanser, 2006). On the Dippold case, see the exemplary study by Michael Hagner: *Der Hauslehrer: Die Geschichte eines Kriminalfalls. Erziehung, Sexualität und Medien um 1900* (Berlin: Suhrkamp, 2010).

²⁴ On Kraus and the case, see my 'Architecture and Crime'.

²⁵ Hermann Böhm, ed., *Karl Kraus contra...: Die Prozeßakten der Kanzlei Oskar Samek in der Wiener Stadt- und Landesbibliothek*, 4 vols. (Vienna: Wiener Stadt- und Landesbibliothek, 1995-97).

²⁶ Joachim Linder, 'Deutsche Pitavalgeschichten in der Mitte des 19. Jahrhunderts: Konkurrierende Formen der Wissensvermittlung und der Verbrechensdeutung', in Jörg Schönert, ed., *Erzählte Kriminalität: Zur Typologie und Funktion von narrativen Darstellungen in Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920* (Tübingen: Niemeyer, 1991), pp. 313-48; Todd Herzog, *Crime Stories: Criminalistic Fantasy and the Culture of Crisis in Weimar Germany* (New York and Oxford: Berghahn, 2009), pp. 37-41.

²⁷ Hugo Friedlaender, *Interessante Kriminal-Prozesse von kulturhistorischer Bedeutung: Darstellung merkwürdiger Strafrechtsfälle aus Gegenwart und Jüngstvergangenheit, nach eigenen Erlebnissen*, 12 vols (Berlin: Hermann Barsdorf Verlag, then Berliner Buchversand, 1911-21).

²⁸ See Joachim Lindner, 'Außenseiter der Gesellschaft. Die Verbrechen der Gegenwart: Straftäter und Strafverfahren in einer literarischen Reihe der Weimarer Republik', *Kriminologisches Journal*, vol. 26 (1994), pp. 190-227. Todd Herzog uses the series to develop the idea of a 'modernist' case history in 'Crime Stories: Criminal, Society, and the Modernist Case History', *Representations*, no. 80 (2002), pp. 34-61.

²⁹ The notion of the reciprocity of the case is developed most famously in André Jolles, *Einfache Formen: Legende, Sage, Mythe, Rätsel, Spruch, Kasus, Memorabile, Märchen, Witz* (Halle: Niemeyer, 1930), pp. 171-99; now in English as *Simple Forms*, trans. Peter J. Schwartz (London: Verso, 2017), chap. 6. Interestingly, Jolles explores this reciprocity using an example of the rich popular journalism discussing court cases and criminal law to appear at the time, in this case an article of 1928 by 'Balder' (probably the journalist Balder Olden) in the *Berliner Illustrierte Zeitung* (*Einfache Formen*, p. 173; *Simple Forms*, p. 139). See also the work of Fredric Jameson, who has long championed Jolles's book, e.g. *Brecht and Method*, pp. 118-22; and Herzog, 'Crime Stories', pp. 39-40.

³⁰ Most notably in Moritz Föllmer and Rüdiger Graf, eds, *Die 'Krise' der Weimarer Republik: Zur Kritik eines Deutungsmusters* (Frankfurt a.M.: Campus, 2005).

³¹ On the 'crisis of justice' in relation to the culture of the time, see Petersen, *Literatur und Justiz*, pp. 15-75.

³² See Daniel Siemens, *Metropole und Verbrechen: Die Gerichtsreportage in Berlin, Paris und Chicago, 1919-1933* (Stuttgart: Franz Steiner, 2007).

³³ After his death in 1928, a popular collection of Schlesinger's articles appeared as *Sling, Richter und Gerichtete* (Berlin: Ullstein, 1929). A more complete edition has recently been published: *Sling (Paul Schlesinger), Der Mensch, der schießt: Berichte aus dem Gerichtssaal*, ed. Axel von Ernst (Düsseldorf: Liliensfeld, 2013).

³⁴ See, for example, Kisch's collections *Kriminalistisches Reisebuch* (Berlin: Die Schmiede, 1927) and *Prager Pitaval* (Berlin: Erich Reiss, 1931).

³⁵ *Berliner Tageblatt*, 6 March 1931, quoted in Gabriele Tergit, *Wer schießt aus Liebe? Gerichtsreportagen*, ed. Jens Brüning (Berlin: Das Neue Berlin, 1999), p. 6.

³⁶ Alfred Döblin, *Die beiden Freundinnen und ihr Giftmord* (Außenseiter der Gesellschaft, vol. 1) (Berlin: Die Schmiede, 1924; repr. Düsseldorf: Artemis & Winkler, 2001). This is probably the volume of the series that has received most attention from scholars. See, for example, Walter Müller-Seidel, 'Alfred Döblin, *Die beiden Freundinnen und ihr Giftmord*: Psychiatrie, Strafrecht und moderne Literatur', in Ulrich Molk, ed., *Literatur und Recht: Literarische Rechtsfälle von der Antike bis in die Gegenwart* (Göttingen: Wallstein, 1996), pp. 356-69); Hania Siebenpfeiffer, *„Böse Lust“: Gewaltverbrechen in Diskursen der Weimarer Republik* (Cologne: Böhlau, 2005), pp. 117-22; and Devin Fore, 'Döblin's Epic: Sense, Document, and the Verbal World Picture', *New German Critique*, no. 99 (2006), pp. 171-207.

³⁷ Jürgen Stenzel, 'Mit Kleister und Schere: Zur Handschrift von Berlin Alexanderplatz', *Text und Kritik*, no. 13/14 (1966) and Harald Jähner, *Erzählter, montierter, soufflierter Text: Zur Konstruktion des Romans „Berlin Alexanderplatz“ von Alfred Döblin* (Frankfurt a.M.: Peter Lang, 1984).

³⁸ Alfred Döblin, 'An Romanautoren und ihre Kritiker (Berliner Programm, 1913)', in Döblin, *Schriften zu Ästhetik, Poetik und Literatur* (Frankfurt a.M.: Fischer, 2013), p. 119.

³⁹ Alfred Döblin, 'Bemerkungen zum Roman (1917)', in *Schriften zu Ästhetik, Poetik und Literatur*, p. 125.

⁴⁰ Alfred Döblin, 'Der Bau des epischen Werks (1928)', in *Schriften zu Ästhetik, Poetik und Literatur*, p. 226.

⁴¹ Döblin, 'Der Bau des epischen Werks', p. 229.

⁴² Döblin, 'Bemerkungen zum Roman', p. 125.

⁴³ 'Der Dreigroschenprozeß', p. 463; 'The *Threepenny Lawsuit*', p. 160.

⁴⁴ 'Der Dreigroschenprozeß', p. 460; 'The *Threepenny Lawsuit*', p. 158.

⁴⁵ 'Der Dreigroschenprozeß', p. 500; 'The *Threepenny Lawsuit*', p. 188 (trans. modified).

⁴⁶ 'Der Dreigroschenprozeß', pp. 462-63; 'The *Threepenny Lawsuit*', pp. 159-60 (trans. modified).

⁴⁷ On this, and copyright law generally, see Nesbit's classic essay 'What Was an Author?', *Yale French Studies*, no. 73 (Fall 1987), pp. 229-57, now reprinted in Nesbit, *Midnight—The Tempest Essays* (New York: Inventory Press, 2017). Steve Edwards engages critically with Nesbit's discussion in "'Beard Patentee': Daguerreotype Property and Authorship', *Oxford Art Journal*, vol. 36, no. 3 (2013).

⁴⁸ As in, for example, the *Threepenny Novel*.

⁴⁹ 'Der Dreigroschenprozeß', p. 500; 'The *Threepenny Lawsuit*', p. 188.

⁵⁰ 'Der Dreigroschenprozeß', pp. 489-90; 'The *Threepenny Lawsuit*', p. 180.

⁵¹ Peter Sloterdijk, *Critique of Cynical Reason*, trans. Michael Eldred (Minneapolis: University of Minnesota Press, 1987), p. 5. A reference to Sloterdijk might seem out of place in an argument situated within the terms of Critical Theory, but it is worth pointing out that his early work addressed issues of the public sphere with reference to the Frankfurt School: beyond the *Critique of Cynical Reason*, see Sloterdijk's first book: *Literatur und Lebenserfahrung: Autobiographien der Zwanziger Jahre* (Munich: Hanser, 1978), esp. pp. 5-13.

⁵² Kracauer had published an extensive résumé of the trial in the *Frankfurter Zeitung* on 9 November 1930 that was supportive of Brecht's claims for artistic control; Brecht then used Kracauer's writings from a different article against him in the '*Threepenny Lawsuit*'. See Kracauer, *Werke*, ed. Inke Mülder-Bach (Frankfurt a.M. and Berlin: Suhrkamp, 2004-2012),

vol. 6, *Kleine Schriften zum Film*, pt. 2, pp. 418-23 for Kracauers résumé; Kracauer, 'Asta Nielsen und die Filmbranche: Grundsätzliche Bemerkungen', *Werke*, vol. 6, pt. 2, pp. 482-86 for the text used by Brecht in 'Der Dreigroschenprozeß', pp. 467, 459-60; 'The Threepenny Lawsuit', pp. 163, 165-66.

⁵³ On these accusations and Brecht's self-confessed 'fundamental laxness in questions of intellectual property', see, among other accounts, Stephen Parker, *Bertolt Brecht: A Literary Life* (London: Bloomsbury, 2014), pp. 217, 247.

⁵⁴ 'Der Dreigroschenprozeß', p. 459; 'The Threepenny Lawsuit', p. 157 (trans. modified).

⁵⁵ 'Der Dreigroschenprozeß', p. 463; 'The Threepenny Lawsuit', p. 160 (trans. modified).

⁵⁶ 'Der Dreigroschenprozeß', p. 513; 'The Threepenny Lawsuit', pp. 198-99.

⁵⁷ Alfred Apfel, prominent defender of, among others, George Grosz, Max Hoelz and Johannes R. Becher, wrote regularly in the *Weltbühne* as a way of influencing public opinion on the cases in which he was involved. See Apfel, *Hinter den Kulissen der deutschen Justiz: Erinnerungen eines deutschen Rechtsanwalts, 1882-1933*, trans. Jan and Ursula Gehlsen (Berlin: Berliner Wissenschaftsverlag, 2013) and the very helpful recent edition of Apfel's writings: *Alfred Apfel: Sein Schriftwerk. Autobiografien, Publikationen*, ed. Heinrich Schwing (Berlin: epubli, 2014).

⁵⁸ The (sympathetic) critic Ludwig Marcuse had published a parody sketch of the *Threepenny* litigation in Stefan Großmann's journal *Das Tage-Buch* called 'Brecht ist Brecht' (Brecht is Brecht), accusing Brecht of mercenary motives. When Brecht's lawyer Paul Casper responded in the journal with a denial, Marcuse published another article titled 'Brecht ist doch nicht Brech' (Brecht isn't Brecht after all). Brecht instigated legal measures against Marcuse, in the course of which the two agreed to drop the matter. See Brecht, *Werke*, vol. 21, *Schriften 1*, pp. 779-780 and Marcuse's own account: 'Der arme Bertolt Brecht und der

wenige arme', in Marcuse, *Mein zwanzigstes Jahrhundert: Auf dem Wege zu einer Autobiographie* (Zurich: Diogenes, 1975), pp. 132-36.

⁵⁹ 'Der Dreigroschenprozeß', p. 454; 'The *Threepenny Lawsuit*', p. 153. Press reports confirm this: the *Film-Kurier* reported on 18 October 1930 as follows: 'Toward 2.00 p.m. the onslaught of the press and spectators was so great that the lawyers had to request more room to move. A rope was used to separate the spectators from the principals of the trial.' Repr. in *Photo: Casparius*, p. 202.

⁶⁰ In *Literatur und Justiz*, Klaus Petersen discusses many examples of writers who were lawyers or familiar with legal culture.

⁶¹ For an extraordinary contemporary account of artistic labour that stresses the separation of the intellectual or artist from the 'apparatus', see Peter Suhrkamp, 'Kunst und Künstler', in *Deutsche Berufskunde: Ein Querschnitt durch die Berufe und Arbeitskreise der Gegenwart*, eds. Ottoheinz von der Gablentz and Carl Mennicke (Leipzig: Bibliographisches Institut, 1930). Suhrkamp was working closely with Brecht at the time of this publication, and his ideas there certainly reflect their discussions. The text should also be seen in the context of the well-known 'Notes on the Opera *Rise and Fall of the City of Mahagonny*', which Suhrkamp co-wrote with Brecht: 'Anmerkungen zur Oper 'Aufstieg und Fall der Stadt Mahagonny'', Brecht, *Werke*, vol. 24, *Schriften 4*, pp. 74-84; on Suhrkamp's co-authorship, p. 476; 'Notes on the Opera *Rise and Fall of the City of Mahagonny*', *Brecht on Theatre*, third ed., eds. Marc Silberman, Steve Giles and Tom Kuhn (London: Bloomsbury, 2015), pp. 61-71. On *Deutsche Berufskunde* and the social epistemology of labour developed there, see my *Blind Spots: Critical Theory and the History of Art in Twentieth-Century Germany* (New Haven and London: Yale University Press, 2005), chap. 2, esp. pp. 95-96.

⁶² The problem of a socially 'free-floating intelligentsia' (*freischwebende Intelligenz*) is a crucial subtext in the works of the nineteenth- and twentieth-century avant-gardes. It emerged

in the discussions around the 'plight of the intellectual workers' (*die Not der geistigen Arbeiter*), the proletarianisation of intellectual labour as universities and academies produced more students than could be absorbed into the traditional professions and institutions. More than any specific social space ('Bohemia', etc.), this situation unified literature, the arts and potentially radical politics. For a classic statement of the problem, see Alfred Weber's *Die Not der geistigen Arbeiter* (Munich and Leipzig: Duncker und Humblot, 1923); an excerpt of this appears in translation in Anton Kaes, Martin Jay and Edward Dimendberg, eds., *The Weimar Republic Sourcebook* (Berkeley and Los Angeles: University of California Press, 1994), pp. 294-95. The idea of the free-floating intelligentsia was most famously taken up by Karl Mannheim, who turned the social contradiction into an epistemological advantage, seeing this group as tending towards immunity to ideologies. His mistake is to see the epistemological potential in isolation from the vacuum of social practice. See Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge*, trans. Louis Wirth and Edward Shils (1930; New York: Harcourt, Brace & Company, 1936), esp. pp. 136-46. Nikos Pegioudis reconsiders the history of the German avant-garde in the visual arts through the lens of the predicament of intellectual labour in 'Artists and Radicalism in Germany, 1890-1933: Reform, Politics and the Paradoxes of the Avant-Garde' (PhD thesis, University College London, 2014).

⁶³ Werner Mittenzwei, *Das Leben des Bertolt Brecht, oder Der Umgang mit den Welträtseln*, second ed. (Frankfurt a.M.: Suhrkamp, 1989), vol. 1, pp. 493-94.

⁶⁴ Anke te Heesen, *The Newspaper Clipping: A Modern Paper Object*, trans. Lori Lantz (Manchester: Manchester University Press, 2014)

⁶⁵ There is a substantial literature on the scrapbooking tradition; see, for example, Patrizia Di Bello, *Women's Albums and Photography in Victorian England: Ladies, Mothers and Flirts* (Aldershot: Ashgate, 2007).

⁶⁶ *Tagebuch einer Verlorenen: Von einer Toten*, ed. Margarete Böhme (Berlin: F. Fontane, 1905).

⁶⁷ The controversy over the book is discussed in Arno Bammé, *Margarete Böhme: Die Erfolgsschriftstellerin aus Husum* (Munich: Profil Verlag, 1994), pp. 16-36.

⁶⁸ The theatre production by Wolf von Metz-Schillbach premiered, after difficulties with the censor, in 1907. The screen adaptations were directed by Richard Oswald (1918, with Ema Morena and Conrad Veidt) and Pabst (1929, screenplay by Rudolf Leonhardt (not Leonhardt)): Bammé, *Margarete Böhme*, p. 48. There was apparently an earlier screen version from 1912: see [https://de.wikipedia.org/wiki/Tagebuch_einer_Verlorenen_\(1929\)](https://de.wikipedia.org/wiki/Tagebuch_einer_Verlorenen_(1929)) (accessed 6 February 2018).

⁶⁹ *Tagebuch einer männlichen Braut: Die Geschichte eines Doppelwesens. Bearbeitet von Walter Homann* (Berlin: D. Dreyer & Co., 1907; repr. Hamburg: Männerschwarm Verlag, 2010). There is an extensive and almost entirely unexplored quasi-documentary literature of such cases, by or about those falsely accused or convicted of crimes, suffering at the hands of the medical profession or involuntarily committed to insane asylums, and it is central to the culture of the case. The often fictional diaries of the kind discussed here drew upon this larger culture and ultimately became a part of it. The only discussion of the genre I have found focusses specifically on the issue of involuntary psychiatric institutionalisation and offers insight into the role of such publications in the public sphere: Anne Goldberg, 'A Reinvented Public: 'Lunatics' Rights' and Bourgeois Populism in the Kaiserreich', *German History*, vol. 21 (2003), pp. 159–82.

⁷⁰ *Vom Leben getötet: Bekenntnisse eines Kindes. Herausgegeben von M.I. Breme* (Freiburg i.B.: Herder & Co., 1927). This case was covered extensively by court reporters such as Gabriele Tergit; see Tergit, *Wer Schießt aus Liebe?*, pp. 70-79, 85-90. More recent discussions include Daniel Siemens, '„Vom Leben getötet“: Die Gerichtsreportage in der

liberaldemokratischen Presse im Berlin der 1920er Jahre', in Wolfgang Hardtwig (ed.), *Ordnungen in der Krise: Zur politischen Kulturgeschichte Deutschlands 1900-1933* (Munich: Oldenbourg, 2007), pp. 327-54 and Heidi Sack, *Moderne Jugend vor Gericht: Sensationsprozesse, ‚Sexualtragödien‘ und die Krise der Jugend in der Weimarer Republik* (Bielefeld: Transcript, 2016), pp. 325-66.

⁷¹ *Vom Leben getötet* (1927, dir. Franz Hofer, with Eva Speyer, Ernst Rückert and Gerdi Gerdt).

⁷² On melodrama, the female mass-market audience and women's modernity in early twentieth-century Germany, see Patrice Petro, *Joyless Streets: Women and Melodramatic Representation in Weimar Germany* (Princeton: Princeton University Press, 1989). Also relevant here is Miriam Hansen, 'Early Silent Cinema: Whose Public Sphere?', *New German Critique*, no. 29 (1983), pp. 147–84.

⁷³ See Cornelia Vismann, *Akten: Medientechnik und Recht* (Frankfurt a.M.: Fischer, 2000), and the slightly abridged English edition: *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (Stanford: Stanford University Press, 2008).

⁷⁴ My example here is the case of Theodor Beer in Vienna, 1905-6; see 'Architecture and Crime'.

⁷⁵ Michel Foucault, ed., *I, Pierre Rivière, having slaughtered my mother, my sister, and my brother...: A Case of Parricide in the 19th Century*, trans. Frank Jelinek (New York: Pantheon, 1975), pp. x-xi.

⁷⁶ See, for example, the judge's nervous breakdown in the final chapter of Ernst Ottwalt, *Denn sie wissen, was sie tun: Ein deutscher Justiz-Roman* (Berlin: Malik-Verlag, 1931). For its wide-ranging exploration of German legal culture, famous cases and the practical and theoretical problems of legal positivism, Klaus Petersen considers the book 'the most significant work of contemporary critique of justice in the literature of the Weimar period'

and suggests that it represents a fictionalisation of another important work, Ernst Fraenkel, *Zur Soziologie der Klassenjustiz* (Berlin: E. Laub, 1927); Petersen, *Literatur und Justiz*, pp. 159-61. Ottwalt (actually Ernst Gottwalt Nicolas) worked closely with Brecht at the time, as one of the authors' collective of the film *Kuhle Wampe* along with Slatan Dudow and Brecht.

⁷⁷ Theodor Lessing, *Haarmann: Die Geschichte eines Werwolfs* (Außenseiter der Gesellschaft, vol. 6) (Berlin: Die Schmiede, 1925; repr. Munich: Rogner & Bernhard, 1973), p. 217

⁷⁸ On the notion of 'mediation in reverse', see Andreas Huyssen, *Miniature Metropolis: Literature in an Age of Photography and Film* (Cambridge, MA: Harvard University Press, 2015), esp. pp. 7-10.

⁷⁹ Sigfried Kracauer, 'Ein soziologisches Experiment? Zu Bert Brechts Versuch: Der Dreigroschenprozeß', *Frankfurter Zeitung*, 28 February 1932, repr. in Kracauer, *Werke*, vol. 5, *Essays, Feuilletons, Rezensionen*, pt. 4, pp. 48-49.

⁸⁰ Tergit, *Wer schießt aus Liebe?*, p. 6 (emphasis added).

⁸¹ Oskar Negt and Alexander Kluge, *Öffentlichkeit und Erfahrung: Zur Organisationsanalyse von bürgerlicher und proletarischer Öffentlichkeit* (Frankfurt a.M.: Suhrkamp, 1972), pp. 20-28; trans. as *Public Sphere and Experience: Toward an Analysis of the Bourgeois and Proletarian Public Sphere*, trans. Peter Labanyi et al. (Minneapolis: University of Minnesota Press, 1993), pp. 1-8.

⁸² '[S]innlich faßbare Solidarität': *Öffentlichkeit und Erfahrung*, p. 75; *Public Sphere and Experience*, p. 38 (trans. modified).

⁸³ *Kuhle Wampe oder Wem gehört die Welt* (1932, dir. Slatan Dudow, screenplay Bertolt Brecht and Ernst Ottwalt, music Hanns Eisler).

⁸⁴ Bertolt Brecht, *Kuhle Wampe. Protokoll des Films und Materialien*, eds Wolfgang Gersch und Werner Hecht (Frankfurt a.M.: Suhrkamp, 1969), pp. 23-24 (shots 122-24); ‚Kuhle Wampe or Who Owns the World?‘, in *Bertolt Brecht on Film and Radio*, pp. 220-21.

⁸⁵ *Kuhle Wampe*, pp. 61-61 (shots 400-12); ‚Kuhle Wampe‘, pp. 243-44. On Brecht and the Red Megaphone, see Richard Bodek, *Proletarian Performance in Weimar Berlin: Agitprop, Chorus, and Brecht* (Columbia, SC: Camden House, 1997), chaps. 4 and 5 *passim*; on the Red Megaphone more generally, the extensive material in *Deutsches Arbeitertheater, 1918-1933: Eine Dokumentation*, eds. Ludwig Hoffmann and Daniel Hoffmann-Ostwald (Berlin: Henschelverlag, 1961).