

INFAMES, ROMAN JUDICIAL THEATRE, AND THE MIMESIS OF PROCESS

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*I argue that the underlying criterion for the list of professions that fall under the Roman legal category of *Infamia* was not moral, as scholars have argued, but rather aesthetic-ontological. Revisiting Greco-Roman philosophy of mimesis and consulting Edwards's analysis of infames-elite role exchange as well as Hell's research into Roman "judicial theatre," I argue that infames were disqualified from legal testimony because their trades involved professional dramatic mimesis. They were thus conceived to be prone to sacrifice the specificity of events for pre-established aesthetic forms, which undermines the pursuit of truth in a court of law. However, far from excluding mimesis, the Roman court deployed what Hutcheon has called "mimesis of process," which, despite being self-referential, encouraged the depiction of the pure, naked event—what Blanchot (following Levinas) has termed *il y a* — prior to being reduced to pre-established aesthetic, moral, epistemological, and even linguistic forms and ideals.*

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INFAMIA AND MORALITY

Orit Malka (2019) has recently compared the seemingly eclectic collection of occupations and persons who, according to Tannaitic corpora, are declared ineligible to testify or to represent persons in a courtroom to the class of individuals designated as *infames* in Ancient Roman law.¹ The Tannaitic list, argues Malka (2019, 907), is a case of a "legal transplant": the Roman legal mechanism of *infamia* was transformed and transmuted into a new Jewish form. *Infamia*, specified in the Digest and Lex Julia, was a form of condemnation that incurred specific legal consequences—not penalties, but rather the loss of social standing and certain political and legal rights. Notably, those labeled *infames* were barred (though there was no blanket exclusion; see du Plessis 2019, 952–53) from speaking on behalf of others in a court of law and were declared ineligible to serve as witnesses. The label *infamia* was mostly applied to certain occupations or ways of earning a living, which included appearing on a public stage as an actor, engaging in gladiatorial activities, and participating in the sex

business as a prostitute or brothel keeper. Indeed, legal and literary sources repeatedly group these professions together.

Malka examines three lists of dishonorable occupations compiled by Greek and Roman authors, namely Aristotle, Cicero, and Plutarch. She then demonstrates their (partial) correspondence with the Roman and Tannaic lists of those disqualified from testifying and claims that they are all discussed in a particular ethical context and portrayed as persons who lack self-control, that is, the ability to resist the influence of emotions and temptations. Malka is drawing on Catharine Edwards (though selectively, I immediately argue) in order to show that these occupations are closely connected with pleasure, and that their inherent disgrace and dishonor result from their association with femininity, slavishness, and susceptibility to temptation. *Infames*, writes Malka (extrapolating from the Tannaic case), were suspected of lying because they might have been influenced by an interested party, and their perceived levity or lightheartedness ostensibly prevented them from making sound and solid judgments. Self-control, which the *infames* lacked, was important not only for evaluating the accuracy of witnesses' testimony but also as a means for establishing their authority. Correspondingly, an ethic of self-control informed the design of the Tannaic rules concerning disqualified witnesses, as well as the equation of their incapacity to testify with that of slaves and women.

Regarding the Tannaic list, I save my reading of it for a future paper. Here, I criticize Malka's analysis of the correlation between *infamia* and the discourse of self-control. Malka herself admits that scholars of Roman law have been hesitant to state that failure of self-control was a guiding rationale for the legal institution of *infamia* as a whole, and that it is rather the Tannaic reception of *infamia* itself that exposes this rationale: in the eyes of the rabbis, Malka (2019, 934) argues, self-control ethics played a central role in the Roman institution of legal *infamia*. I argue that no moral deficiency can be singled out as the primary defining feature of *infamia*, at least not primarily.² Instead, what distinguishes the *infames* is their participation in professions defined by dramatic mimetic practices. Actors epitomize this element, but gladiators and prostitutes share it too. But the interesting point here is that in practice, the Roman elite, particularly Roman courts, were intensively engaged with dramatic mimesis as well. Analyzing the pervasive correspondence with the *infames* that this elite mimesis entailed, I stress that the watershed dividing *infames* from the elite was first and foremost aesthetic-ontological and that the political clash between them grew out of two different conceptions of mimesis—a case of the narcissism of small differences, if you will. Specifically, the “mimesis of process,” to use Linda Hutcheon's terminology (1980), was championed by the elite, as against the “mimesis of product” allegedly practiced by the *infames*, conceived to be incompatible with the truth sought in court.

ACTING EMPERORS AND POWER PLAY: EDWARDS' ACTUAL THESIS

Catherine Edwards is key to Malka's argument. To paraphrase Malka, if the occupations listed by Plutarch and other Greco-Roman thinkers are characterized by a

lack of self-control, then Edwards shows this lack to underlie the category of *infamia* as well. The central argument of Edwards's paper "Unspeakable Professions" (1997), writes Malka (2019, 928), is that the occupations of the *infames* were closely connected with pleasure, and that their inherent disgrace and dishonor resulted from their association with femininity, slavishness, and succumbing to temptation. I agree with Malka that Edwards's study is the key to understanding the deep rationale underlying *infamia*, but the problem is that the argument Malka ascribes to Edwards is not Edwards's at all. In her book *The Politics of Immorality* (1993), Edwards indeed discusses the Roman discourse of "self-control" and its lack, but only with regard to women, slaves, and political opponents, and not with regard to *infames*. More important, however, is that in Edwards's paper "Unspeakable Professions," dedicated to *infamia*, which Malka studies more thoroughly, Edwards presents a thesis contrary to what Malka ascribes to her. She argues that the problem with *infamia*, according to the Roman mindset, was not the lack of self-control of the *infamis*, or his succumbing to base pleasures, but rather the fact that his body, being public, was *the object* of those pleasures. In other words, the problem was not that the *infamis* succumbed to low pleasures but that he, as a gladiator, for example, fulfilled those pleasures for other people, namely the Roman crowd in the stadium. A striking aspect of the legal situation of those labeled *infames*, writes Edwards, was their liability to corporal punishment - one of the most vivid symbols of the distinction between free and slave in Rome. But this liability derived from the more general "publicness" of the body of the *infamis*, which was sold and exhibited for the pleasure of the public: "All professions that incurred *infamia* were the objects of other people's desires. They served the pleasure of others. They were tarnished by exposure to the public gaze" (Edwards 1997, 68). What was shameful about professional gladiators was not that they fought but that they did so for money and in public (Edwards 1997, 85). Similarly, actors and actresses were regularly assumed to be prostitutes, not necessarily because they sold their sexual services, but rather because they made their living exposing themselves to public view, rendering their bodies objects of fascination and desire. Like prostitutes and gladiators, their bodies were the source of pleasure for others (Edwards 1997, 81).

Even this correction does not do justice to Edwards's thesis, as it forms but one side of a dynamic and complementary relation, bordering on role-reversal, that Edwards draws between *infames* and the elite. This relation is fueled by a peculiar affinity between the publicness of the *infamis*'s body and that of the juror or politician. Ironically, being the object of uninhibited public gaze was something *infames* shared with the elite. First and foremost is the case of actors, which Edwards discusses in greater depth in *The Politics of Immorality*. Few citizens, writes Edwards, even under the republic, are likely to have spoken in public or in the courts. Only the words of magistrates and orators, men of wealth and established positions, carried public authority. The speech of actors was, of course, very different from the speech of magistrates. Actors were known to be dissemblers, speaking words that carried no legitimate weight. Yet, Edwards (1993, 118) writes, "Actors still had an opportunity to command the attention of the Roman people with the words they spoke, an opportunity otherwise denied to all but the governing class. It was perhaps in recognition of the peculiar power of actors that they were branded as *infames* in Roman law." The interchangeability between the speech of actors and that of

the elite kindled a fascination that eventually caused members of the elite themselves to appear on stage. Senatorial and equestrian actors are alleged to have willingly appeared in the games given by Augustus's son-in-law Marcellus in 23 BCE and also in games organized by a magistrate, Domitius Ahenobarbus - the latter prefiguring the behavior of his descendant, the emperor Nero. In his account of games given in 2 BCE, Dio Cassius mentions that equites and distinguished women appeared on the stage. Nero, besides compelling members of the elite to appear in public, took to the stage himself. He made his debut in the city of Neapolis, but soon he even dared to perform as an actor in the city of Rome (Edwards 1993, 134). Some emperors attempted to prevent members of the senatorial and equestrian elite from embracing these forms of conspicuous degradation, and there are numerous references to legislation with this purpose passed during the first century of the Principate (Edwards 1993, 132).

Likewise, members of Rome's elite voluntarily and involuntarily took on the roles of gladiators and even prostitutes. This humiliation of the rich and privileged was said to be a source of enormous pleasure to the common people. Several emperors reputedly compelled members of the elite to appear in the public games or to take on the role of a prostitute, but many chose to undergo this humiliation without compulsion. The imposition of a degraded legal status contributed to the frisson aroused by the spectacle of Rome's most honorable citizens engaging in one of Rome's least honorable professions. Suetonius lists measures to prevent elite women from taking on the role of prostitutes alongside measures to prevent the appearance of members of the elite onstage and in the arena. The measure barring women from acting like prostitutes is also referred to by Tacitus, who reports that it was specifically aimed at women of senatorial and equestrian families (Edwards 1997, 86–89). Interestingly, female prostitutes distinguished themselves by wearing the toga, that uncomfortable garment otherwise worn only by male Roman citizens - a blatant display of their exclusion from the respectable social hierarchy: The female prostitute was antithetical to and mimical of the male Roman citizen at one and the same time (Edwards 1997, 81).

Some emperors are praised for taking seriously their moral responsibilities and attempting to limit the disruption to the symbolic order wrought by aristocratic renegades. Others, however, appeared onstage and in the arena; the emperor Commodus is said to have been assassinated when he planned to be inaugurated as consul for 193 C.E. dressed as a gladiator. Caligula reputedly kept a brothel on the Palatine, and Nero, too, was alleged to have provided elite women and children for the sexual gratification of the people of Rome (Edwards 1997, 89–90).

One way that Edwards (1997, 68) explains this puzzling near-exchangeability of social and political status between *infames* and the elite is by invoking what she views as Foucault's pervasive economics of power, compared to which, she implies, the rhetoric of morality and dishonor is but derivative. There was slippage, she writes, between the officially sanctioned socio-political hierarchy and other perceptions of where power might lie. Official attempts to marginalize actors could be seen as a recognition, and consequently a reinforcement, of their power to disrupt. By becoming an actor or a gladiator, a Roman senator or equestrian was questioning the value of the

official hierarchy the emperor controlled, even questioning the emperor's authority to control it (Edwards 1993, 133). Senators and equestrians took advantage of the potential offered by public humiliation to parade their disempowerment under the autocratic regime of the emperors, while emperors, on the other hand, displayed their power over the Roman social hierarchy by disrupting it themselves. Hence emperors are represented as profiting from the traffic in the bodies of Roman citizens and aristocrats. The emperor's position as the legitimate ruler was underwritten by the ordered nature of the rest of the social hierarchy (Edwards 1997, 86–89).

INFAMIA AND THE DISSIMULATION OF REALITY

Let us take the power-economics explanation that Edwards advanced mainly in “Unspeaking Professions” in conjunction with and as intrinsically related to, her analysis of body-publicness in *The Politics of Immorality*. If the public status of the actor's body and the actor's opportunity to command the attention of the Roman people with the words they spoke established actors as rivals of the governing class, then the participation of the elite in a distortion of hierarchy seems to have reciprocated a distortion of hierarchy caused by the *infames*, to begin with, which derived from the peculiarities of dramatic mimesis—namely, the bimodality of acting, or exchangeability between the real and the fictional. Discussing the emperor Nero in “The Politics of Immorality,” Edwards (1993, 134) starts by applying the power-economics explanation: “When the emperor himself appeared on stage, he demonstrated his own power to transcend the social constraints that bound the rest of society.” But elaborating on this explanation, she (1993, 135) implicitly portrays the emperor's action as secondary to the bimodality of acting:

The emperor's stage appearances were deeply disruptive. When the emperor became an actor, appearance was inextricably confused with reality: “He also wore a mask and sang tragedies in the character of gods and heroes and even of heroines and goddesses, having the masks made so that they resembled him or else whatever woman he was in love with at the time” (Suet. Nero 21.3). If masks had originally been intended to protect the identity and honor of those wearing them, Nero inverted their function, using them to make a spectacle of his degradation. The mask represented the face behind it. The emperor acted himself. Suetonius goes on to relate that a young soldier in the audience was said to have been so confused that he failed to comprehend the dramatic conventions. He mistook illusion for reality and: “seeing the emperor in rags and bound with chains, as the play [*The frenzy of Hercules*] required, rushed forward to render assistance.”

Here Edwards treats the disruption of appearance and reality as an effect of Nero's demonstration of his power to transcend social constraint. But reading critically, this paragraph reveals the two to be independent phenomena. Nero's demonstration of his power to transcend the line separating the elite from actors would have succeeded regardless of the character he played. The spectacle of his

degradation to the status of an actor would have played out in the same way. Therefore, if Nero chooses to act himself and, moreover, to invert the function of the mask, this excess in meaning exceeds the function of power. If play is first and foremost “a sphere distinct from ordinary life both as to locality and duration” (Huizinga 1949, 9), bracketing out the variety of pragmatic factors present in the immediate context of actors in a drama, then wearing a mask that represents the face behind it only serves to bring these factors to the forefront. Nero acts not as himself, properly speaking, but as an actor acting Nero, in order “to confuse appearance with reality,” as Edwards says, or rather in order to lay bare the fictional illusion, to switch the focus to the process of production rather than its product. To switch the focus to the process of production means, as we will develop in more detail below, championing a “mimesis of process,” but before that, it more minimally explicates, as an act of power, the alleged essence of the *infames*, for which they were censured: Their involvement with dramatic mimesis. The elite’s involvement with infamous activities—as described by Edwards, with Nero acting as the epitome—disrupted the hierarchy between reality and fiction, but it also reciprocated or perhaps took over through reciprocation, the disruption inherent to the activity to which actors dedicated their life. The underlying criterion for *infamia*, the cause for their being deemed conspicuously disgraced, has to do, at the minimum, with their mimetical lifestyle, the dissimulation of reality their trade involved.

Indeed, such a criterion—a life dedicated to mimesis—applies not only to actors but to all other infamous occupations. If we are to associate play and game, or stage and arena showmanship, gladiatorial games likewise entail both mimesis and a bimodality of play and reality. Huizinga (1949, 75) writes that play is older and more original than civilization. He (1949, 75) asserts that civilization evolved from the playful principle of Agon, fair strife, and strife-for-itself. In turn, in play, “the antithetical and agonistic basis of civilization is given from the start,” hence play is mimetic of civilization. Fink (1974) viewed this Agon, or dynamic dissimulation as unveiling the nature of Being as becoming, and hence game and play were mimetic of existence in its entirety, a “symbol of world.” Huizinga himself is writing specifically about gladiatorial games. It is of the utmost significance, he (1949, 74) states, “that these Roman gladiatorial combats, bloody, superstitious and illiberal as they were, nevertheless kept to the last the simple word ‘ludus’ with all its associations of freedom and joyousness.” The Latin language was right, he (1949, 75) says, to refer to sacred contests by the simple word “play” “because it expresses as purely as possible the unique nature of this civilizing force.”

There is an inherent dissimulation involved with prostitution as well, as it is never a mere body that the customer consumes in copulation; otherwise, brothels would simply offer plastic sex dolls. Instead, he hires a whole, autonomous subject, a dissimulation of a genuine romantic partner.

MIMESIS AND PSYCHIC VOLATILITY

If *infames* were debarred from court activities due to a lifestyle dedicated to dramatic mimesis, one possible explanation for this prejudice could be traced back to

Plato.³ Although there is more than one attitude toward mimesis to be found in Plato's writings, prominent among them is anxiety over the danger of mimesis as a producer of morally and psychologically deceptive pseudorealities (Halliwell 2002, 171). He speaks, for example, of the need to censor out from poetry scenes of heroic grief and similar behavior in order to prevent future Guardians from "acting like" such unworthy role models. The concept of mimesis for Plato (*Republic* 3.396a), as applied to both the poet and the recipient or reciter, entails "self-likening" or assimilation to the figures of poetry. The future Guardians must recognize and understand "deranged and evil characters," but they must "neither do nor even impersonate any such thing." The identification involved in performing or reciting dramatic poetry represents a threat to the soul's unity, because the operation of "self-likening," the enactment of experiences fictionally other than one's own, requires the mind to discover within itself, so Plato believes, the nature of what it is brought to imagine. If the *Republic's* model of the mind or soul, writes Halliwell (2002, 94), is one that makes unity the supreme condition of virtue and happiness, it is one that equally regards all forms of variety and versatility as subversive of virtue.

Perhaps, then, actors are inadequate to fulfill legal duties because, first, by engaging in the imitation of an unregulated cadre of persons and scenes, they might assume undesired moral qualities of their object of imitation; and second, they no longer possess an integral personality, presumably crucial both epistemologically and ethically for the pursuit of truth in court. If the truth established in court depends on trustworthy individuals to produce it, *infames* are untrustworthy ones, and quasi-individuals to begin with. It is here that involvement with mimesis is connected to the lack of "self-control," which Malka has pointed out. Psychological heterogeneity is the antithesis of what Plato calls "self-control" (*Republic* 3.404e). If the latter is the virtue that embodies integration and harmony, writes Halliwell (2002, 94), heterogeneity fosters the conditions in which each of us will continue to live not as one but as many people:

Nothing, as Plato sees it, is more characteristic of the poetic imagination than a fascination for, and an implicit invitation to, psychic volatility (and therefore instability). It is in the nature of the variety on which the imagination thrives that it can take us "outside ourselves," transposing us not only in terms of the physical and temporal settings of experience but also in terms of the emotional and ethical factors that partly constitute what that experience might mean for us.

THEATRE AND THE ROMAN COURT

To summarize, my first tentative explanation for the exclusion of the *infames* is that a life dedicated to dramatic mimesis results, according to ancient thought, in personality disintegration or psychic volatility, which is incompatible with the collective process of judgment and justice in court. This claim, however, might be undermined by the fact that dramatic mimesis prevailed among the elite not only as a sporadic allusion to the paradoxical glamour of the infamous, but also, and very intensively, in the Roman court itself.

The Roman court was, to cite the title of Jon Hall's 2014 book, a "judicial theatre." Orators in the forum appear to have enjoyed considerable freedom to engage in lively theatrics, and as the Romans themselves recognized, the orator needed—in part at least—to be an actor too. Cicero, for example, as a practicing advocate, recounted his integration of physical action into his pleas and entreaties, his deployment of tears in perorations, and the curious practice of individuals donning *sordes* (dirtied clothes) for their appearance in court. Various Roman sources depict such showmanship as being crucial to the outcome of certain judicial and deliberative proceedings in the forum (Hall 2014, 4). Theatrics already played a part in the Athenian courts, but a consideration of the wider social context in which Roman orators operated suggests that showmanship was, in fact, an integral part of life for many aristocrats (Hall 2014, 13–15) and although Roman courts were characterized by the same rigid formality and deferential restraint that define many modern judicial proceedings, various factors combined to create a rather chaotic and unpredictable environment overall. For example, the fact that most trials took place in the public space of the forum, open to the elements, made it difficult to impose the kind of control on events that we expect today. The physical layout of the court further contributed to the bustling and potentially unpredictable nature of proceedings. Events were typically organized around the raised tribunal of the presiding official, a temporary structure erected solely for the judicial business at hand. It seems likely that the jurors sat just in front of this tribunal on rows of benches. The number of jurors could vary between fifty and a hundred, according to the type of trial, and this created a context of performance very different from the modern courtroom. As any modern-day teacher or lecturer knows, writes Hall, the size of an audience considerably influences the dynamics of a presentation. The larger the crowd, the more expansive and forceful the style of delivery typically needs to be. It is also clear that the physical layout of the Roman court provided ample space for the enterprising orator to engage in theatrics. The jurors' benches seem to have formed one side of a roughly rectangular space in which the action of the court took place (Hall 2014, 22–23).

Cicero in *De Oratore* labels acting a trivial and inconsequential art, and its practitioners were often sneered at for adopting effeminate mannerisms on stage. When Cicero refers, for example, to the manly posture that the orator must adopt as he delivers a speech, he defines it in opposition to the way that actors typically present themselves in their performances. Yet this was only half the story. Cicero, in fact, appreciated that acting and oratorical performance had much in common. From a technical perspective, there was a good deal to be learned by observing how the best actors of the day manipulated their audience. Cicero evidently discussed such matters at length with the actor Roscius, who wrote a work comparing oratorical eloquence with the art of the actor. And in the first book of *De Oratore*, Cicero states explicitly that the orator needs both the vocal power of tragic performers and gestures similar to those of the best actors. Cicero thus clearly conceives of some sort of productive interplay between the two arts (Hall 2014, 27–28).

If the Roman trial itself consisted in theatre and mimesis, *infames* were perhaps debarred not due to their association with mimesis *per se*, but due to (i) the object of their mimesis; or (ii) the type of their mimesis. In either case, the debarring of the *infames* was not due to a trait binarily opposed to the elite but rather a trait the two shared in common. It was an example of the narcissism of small differences.

MIMESIS OF THE WORTHY

The first of the two options presented above, namely, that the underlying reason for barring the *infames* from court – itself marked by mimetic activity – was their object of mimesis, implies that in contrast to the elite, *infames* chose allegedly unworthy persons and situations to imitate. In classical Athens, writes Hörcher (2017, 87–88), the aesthetic machinery was exploited by the city for civic and educational functions. Dramas, and in particular tragedies, helped to articulate the city’s political expectations of its citizens, and the Aristotelian account of mimesis in *Poetics* is not only aesthetic but has a socio-cultural dimension: It is a theory of civic initiation through dramatic imitation. According to Aristotle, empathy helps humans to join each other’s company and create communities, and imitation has a major educational function: it is a natural capacity that helps individuals to learn about others, and about others’ experiences, by way of playing a substitution game (Hörcher 2017, 90–91). Hörcher (2017, 91–92) then compares this Greek cultural context with a similar context in Rome in the activity and writings of Cicero. Learning by imitation enables the citizen to enter the inner life of the city. The mode of education in law, according to Cicero, was, above all, to sit under, work with, and observe good lawyers in action, and, more germane to our subject, protagonists of the court proceedings were to affect the audience by offering, through dramatic actions, models for self-identification. As in the theatre, the masses who attended hearings of the law court would enjoy the performance by identifying with one of the protagonists, and the good lawyer and orator should bring them to identify with the worthy one. By imitating and honoring the traditional wisdom of the forefathers and by keeping their memory alive, lawyers would help fellow citizens to strengthen their civil status and to undertake their civic duties in a way that would safeguard the liberty of the political community (Hörcher 2017, 93).

Conversely, we may infer that by acting out disorderly or downright dishonorable conduct, professional actors might inject confusion or inconsistency into this process of edification, sabotaging the integrity of the citizens. If trials are dramas, if they follow a “script,” though one in the process of invention rather than a prepared one, the judicial process is less an analytic investigation into truth and more an improvisational questing after the correct narrative to perform. But persons who are skilled in rendering scripts authored by others and do not care whether they are false, fictional, or destructive might impact the course of the trial without giving any thought to its ethical purpose or correspondence with the truth. They might even maliciously influence the proceedings if we accept Plato’s view that imitating depraved persons makes one depraved. And even if their intentions were good, their actions would be haunted by other dramas involving allegedly destructive narratives in which they had participated as actors, gladiators, or prostitutes. What they said and did in court,

stamped by undesired past roles performed in theatre, might alter the course of the script-in-becoming, which a Roman trial, in fact, was.

META-THEATRE AND THE ROMAN “ONTOLOGICAL LANDSCAPE”

The explanation I offer in the remainder of this paper for the legal status of the *infames* develops the second of the two options mentioned above, namely that the *infames* were segregated neither for being professionally engaged in dramatic mimesis *per se* nor for the object of that mimesis, but rather due to the type of mimesis they practiced in their trades. This is my preferred explanation, as it is intrinsically related to the metafiction, or meta-theatre, so prominent in Nero’s performance, which led us to propose the mimesis thesis as an explanation for debarring the *infames* in the first place. I have argued, “minimally,” as I called it, that Nero’s engagement with meta-theatre – second-order acting, or acting of acting – combined with the role reversal of the elite with respect to the *infames* – reciprocally reveals mimesis to be the distinctive feature of *infamia*. I now argue further, beyond this minimum, that Nero’s intervention on the actors’ stage through performing self-referential acting not only signals the *infames*’ general lifestyle of mimesis but also their specific type of mimesis – mimesis of product – while celebrating another type, namely self-referential mimesis, or mimesis of process, to use Hutcheon’s terms, as the type of mimesis adequate for virtuous people and purposes.

In *The Narcissistic Narrative* (1980, 1-47), Hutcheon views “metafiction” or self-referential texts as serving to overcome communicational deferral and create it. Because readers of such texts are made aware of the linguistic and fictive nature of what is being read—and thereby distanced from any un-self-conscious identification on the level of character or plot—they are at the same time reminded of their active role in reading and in making the text mean. They are the distanced yet involved co-producers of the novel. The role of this paradox, argues Hutcheon (1980, 39), is ontological: it stimulates the production of fictional worlds that yet comprise actual, empirical resources: those invested by the co-producing recipient. Whereas in “traditional realism,” the act of reading is seen in passive terms, and the novel only seeks to provide an order and meaning to be recognized by the reader, the reflexive novel demands that the reader remain conscious of the work as a production that he too is undertaking. As opposed to poetics, who identified self-reference with a break from mimesis, Hutcheon (1980, 36–47) views all metafictional texts as mimetic. The mimesis they display, however, is “mimesis of process” rather than “mimesis of product.” In a mimesis of product, prevalent in nineteenth-century realism, the reader is required to identify the products being imitated—characters, actions, settings—and to recognize their similarity to those in empirical reality in order to validate their literary worth. In a process-mimesis, on the other hand, the work reflects its own creative processes, notably the reader’s input, as responsible for encoding the text. The art/life ambiguity of process-mimesis projects onto the “heterocosm,” the “universe” of the story, the coherent autonomous whole of form and content to which metafiction

refers. Though an absolute otherness, Hutcheon (1980, 88) states, it is not properly speaking “contra-factual” but “an effect to be experienced by the reader, to be created by him and in him.” Rather than comprising a “phantasm,” the heterocosm consists of the concrete emotional and intellectual resources that an active reader—intrigued by the work to respond “vitaly”—inputs.

I have previously shown (Dickmann 2019, 141–86) that metafiction or meta-theatre (as displayed by Nero), or more specifically, *mise en abyme*, a fiction containing a reproduction of itself within itself, has served post-structuralist philosophy as an ontological paradigm shift. An example of *mise en abyme* is Edward Albee’s play *Tiny Alice* (1965), where in a room in Miss Alice’s castle, there is an exact model of the castle that even includes a model of the model of the castle. Among other things, this school of philosophy substituted the ordinary mirror, which had served as a philosophical paradigm since Plato, for the double mirror, consisting of two mirrors facing each other, which poetics have long used to symbolize *mise en abyme*. In a static mirror, I can focus on my reflected image, or I can focus on the mirror itself—its tain, the actual reflecting surface behind the glass. However—like Jastrow’s rabbit-duck—the two options are mutually exclusive: I can only focus on one at a time. By contrast, in the case of the double mirror, an observer can grasp both the content of the reflection—himself—and the framing of that content—the mirror that embeds his image—simultaneously. *Mise en abyme* avoids bracketing out the pragmatic in favor of the semiotic. The pragmatic, what Blanchot (1995), following Levinas (e.g., 1978) – associating it with *mise en abyme* – would call “pure ontic” or *il ya*, “in-sists” throughout the entire process of signification. Metafiction is, ontologically speaking, a different “shepherd of Being,” to use Heidegger’s terminology, that raises a different question of being and outlines a different answer than those suggested by ordinary fiction. Performing a constant reversal of hierarchy between level and metalevel, they epitomize a type of Being where the acute ontological difference does not pass between the ontological and the ontic, but between the ontological and the ontic and their double – namely, the ontological and the ontic raised to the *n*th power. Consequently, it brings to the fore a “pure ontic” that is not “in service of” the ontological. Infames and the elite constituted together what Brian McHale (1987, 36–40), following Thomas Pavel, called an “ontological landscape”: communities of different fiction-making turned as such “different domains, populated by different kinds of beings.”

THE SPLIT ROLE OF ROMAN JURORS

To recapitulate, I have derived from the elite’s mimesis of *infames* (and vice versa) two points. First, that the issue involving *infamia* had to do with mimesis, and second, that the way to do mimesis properly (elite style) was to render it self-referential. This Roman discourse, however, does not stand for itself but alludes to two ways of doing mimesis in court. Yet, apart from the directive that Nero’s self-referential acting provided me, why would I ascribe self-reference to the Roman court? To rephrase, why should all those post-structuralist philosophical and literary theories apply to Classical conceptions of mimesis? The first reason emerges from asking the following question: If the Roman court involved both theatre and, at least in the case

of Cicero, extensive reflection on the theory of mimesis, what did it imitate? Cicero himself repeatedly states that he has imitated orators of the past. But there is little evidence that Cicero's audience and fellow jurists could identify the figures Cicero was attempting to imitate, and even if they did, a judicial scrutiny into the specific type of crime committed, the different number and identity of characters involved, and so on, would have quickly created a specific constellation that was irreducible to the historical trial Cicero was guided by. At best, then, Cicero only managed to transplant a figure from the past into a contemporary setting, like a drama depicting Napoleon Bonaparte dressed as a WWII general and commanding modern armies, which could hardly be said to revolve around the historical Napoleon, but rather around WWII. What, then, was the object of the Roman court's mimesis? Just like the war movie depicting WWII, rather than Napoleon, if Cicero was imitating a historical orator transplanted into and assimilated by Cicero's court, then rather than co-producing a remake of that historical drama, he was co-producing, or indeed remaking, Cicero's own court. The court was self-referential, imitating itself, or rather its own production.

There is some circumstantial evidence for self-referentiality in the Roman court in the following fact: Roman trials regularly involved expressions of high emotion. On some occasions, it was the advocate who shed tears, and on others, the defendant, relatives, friends, and witnesses. The skilled advocate knew how to elicit shouts, applause, and laughter from the assembled crowd as well. But perhaps more disturbing to our sensibilities, Hall observes, is that Roman jurors also wept openly in the course of an advocate's speech. As Andrew Riggsby has demonstrated, writes Hall (2014, 127–28),

Many Roman jurors probably took their seats at a trial intending to vote according to principles of justice and fairness. But this basic intent need not have precluded them from getting involved in the drama of the moment and showing their reactions to the unfolding situation. Like the members of the *corona* [i.e., non-participating observers of the trial], the jurors too—in the right conditions—seem to have felt a strong participatory impulse. Indeed, engaging closely with events may have been precisely what was expected of a conscientious member of the jury.

What could ground the split between voting according to principles of justice and fairness, on the one hand, and displaying a strong, biased, participatory impulse, on the other, and could also ensure that the two would occur at one and the same time was, perhaps, a double participation of the jurors: they imitated a trial, yet conducted it at one and the same time. On the first level, they partook in a court melodrama, where heart-rending and tear-soaked words could potentially compel jurors to acquit the defendant. On the second level, they were a real-life jury voting cool-headedly, give or take. This dual role enabled the jury “not to be themselves” during parts or even the whole of the trial or to oscillate between pathetic, emphatic, engagement, and graveness.

MIMESIS OF PROCESS IN CLASSICAL THOUGHT

Aristotle and dual-aspect mimesis

The second reason for attributing self-referential behavior to the Roman court is that this type of mimesis, namely of process or production, is by no means alien to Greco-Roman thought. Hutcheon (1980, 41) herself views Aristotle, where the instinct to imitate “is complemented by an equally strong impulse toward ordering,” as a proponent of mimesis of process. Aristotle’s account of mimesis as developed in the *Poetics*, writes Halliwell, is a “dual-aspect” one, a theoretical approach that acknowledges two complementary aspects of mimetic representation: on the one hand, its status as a created artifact, the product of an artistic shaping of artistic materials, and on the other hand, its capacity to signify and “enact” the patterns of supposed realities. In place of the “transparency” that Plato had sometimes identified with mimesis, aesthetic imitation involves production, the completed and harmonized integration of parts into an organic whole, and is never limited to a naïve copying at the level of product alone. A painting or a performance is mimetic qua the bearer of an identifiable and autonomous representational content. They communicate intelligible images of what it is reasonable, says Halliwell, to term a “possible world” – what Hutcheon has named a “heterocosm” – given Aristotle’s famous remark in *Poetics* 9 (1451a37–38), when contrasting poetry with history, that poetry is concerned with things which could be the case, and which are “possible in terms of probability or necessity.” If art is mimetic of a world always already transposed into a new, artistic setting, if it is mimetic of the heterocosm the work of art itself is, then this mimesis is self-referential.

Plato and self-likening

Plato developed a theory of self-referential mimesis too. He is not blind to the status of mimesis as a created artifact, despite subordinating it to his sense of the dangerous power of mimesis to draw the mind into and mold it in the image of its simulated visions of the world. Already in Plato, the beauty of a mimetic work depends not on its straightforward, one-to-one correspondence to a model but on a complex relationship in which a certain kind of purposiveness must be taken into account and in which mimetic imaging turns from a technical into an ethical activity – not just registering appearances, but actively construing, interpreting, and judging them (Halliwell 2002, 131–132). Works are highly charged bearers of meaning, whose projection and communication of human significance and ethical values can affect “even the best of us” (*Republic* 10.605c). But this effect is, in fact, poetic rather than ethical, and leads Plato to the self-referential reception theory we have mentioned, with regard to “psychic volatility”: The idea of mimesis as “self-assimilation” or “self-likening.” Plato’s vital premise is a refusal to accept that when the mind engages in (fictional) role-playing or dramatic impersonation, this is merely an external or superficial event. Rather, Plato wants to insist it is something that happens to and inside the mind of the role player (Halliwell 2002, 75). Mimesis, writes Halliwell (2002, 53), using terminology that might well allude to Hutcheon, “functions here as a process

whereby the world of the poem becomes the world of the mind imaginatively (re)enacting it.” To rephrase, the recipient enacts a work his own mind has always already enacted. Enacting is always already re-enacting. The recipient repeats no privileged first time, but rather any “first” or other time is always already, as in a double mirror, “split into two” and raised to the *n*th power.

An even more radical version of this reception theory is implied in the *Republic*, where Plato explains mimesis not only by reference to the poet himself but also to the recipients of poetry. We need to recognize, writes Halliwell (2002, 52), that in addition to stage performances and public recitals, “Plato takes for granted normal Greek practices of reading aloud and reciting poetry, practices that effectively make the ‘reader’ into a kind of performer.” Such “self-likening” to the figures of poetry thus leads Socrates to recommend that the decent man should not recite mimetic poetry depicting immoral behavior. In order to complement Halliwell’s point, antiquity knew not only written but also oral texts, disseminated and reproduced through memorization, and the oral book is a hybrid, “an assemblage with the outside,” in Deleuze’s (1987, 23) words. While the reception of an ordinary work consists in bracketing out the pragmatic level of the text (e.g., the font or type of ink) in favor of its semiotic, encoded meaning, and its pragmatic and semiotic levels are proportionally inverse (the recipient can focus only on one aspect at a time), in the case of the oral book, the “text” cannot be distinguished from its “flesh and blood” concretization. Its pragmatic level, the voice and lip movements of a concrete human body, “in-sists” even while its semiotic one is communicated and signifies as much as the semiotic. If the body and voices producing the text are part of the text, the oral book is a radical case of self-referential mimesis.

Cicero and aesthetic ambiguity

As a disciple of Plato and Aristotle, Cicero, in his own reflections on mimesis, also touches on the mimesis of process. The following statement of Cicero (*De orat.* 2.47) implies his association of truth with self-reference.

Do not, therefore, imagine that I, who had no desire to imitate or represent the calamities or fictitious sorrows of the heroes of antiquity in my speech, and was no actor of a foreign and personated part, but a supporter of my own, when Manius Aquilius, by my efforts, was to be maintained in his rights as a citizen, did that which I did in the peroration of that cause, without a strong feeling. For when I saw him whom I remembered to have been consul, and, as a general honored by the senate, to have marched up to the Capitol with the pomp of an ovation, afflicted, dejected, sorrowful, reduced to the last extremity of danger, I no sooner attempted to excite compassion in others, than I was myself moved with compassion. I observed, indeed, that the judges were wonderfully moved, when I brought forward the sorrowful old man habited in mourning, and

did what you, Crassus, commend, not with art (of which I know not what to say), but with great concern and emotion of mind, so that I tore open his garment and showed his scars ... This excitement of compassion, this adjuration of all gods and men, of citizens and allies, was not unaccompanied by my tears and extreme commiseration on my part; and if, from all the expressions which I then used, real concern of my own had been absent, my speech would not only have failed to excite commiseration but would have even deserved ridicule.

If Cicero attempts to excite compassion in others only while he himself is “moved with compassion,” his compassion is two-faced. On the one hand, it is authentic, spontaneous, and personal, having nothing to do with “fictitious” sorrows that imitate real ones. On the other hand, it is part of a strategy, a proactive plan to manipulate the audience’s feelings, and a manifestation of a theory regarding the ethical and effective deployment of emotive court behavior. He cries spontaneously while moved with compassion, and yet these spontaneous expressions only repeat a public, structured role.

What is the nature of this duality? While an actor, Cicero is “no actor of a foreign and personated part.” His imitation is not of some object out there, namely the sorrows of a real or fictional person. Instead, Cicero imitates a process, his own feeling of sorry. In terms of the Greek mimesis theory of self-likening, he cannot enact public feelings – that is, he cannot imitate sorrow – without it always already being a re-enactment. Cicero imitates Cicero, and his conception and practice of mimesis are self-referential. Indeed, Cicero’s (*De orat.* 2.59) adherence to a process-mimesis theory is implicit in the following assertion:

If the imitation is too extravagant, it becomes, like indecency, the part of players in pantomime and farce; the orator should be moderate in imitation, that the audience may conceive more than they can see represented by him.

Cicero here implicitly associates actors with “transparent” mimesis, which implies the self-sufficiency of the artwork’s internal properties, leaving little space for the recipient, as the agent of cultural norms, to fill in gaps. A mimesis of process, on the other hand, being a “dual-aspect” practice, hesitates between the aesthetic absolutism of the artwork and the artifact that it, in fact, is, and that means for Cicero a certain chivalric attitude with regard to acting, and dispense for a refined, professional attitude, associated perhaps with *infames* in general.

Hall accuses Cicero of a certain inconsistency. Energetically deploying theatrics in court, Cicero, in his oratorical delivery, relied on a good deal more than the careful exploitation of voice and gesture. On the other hand, Cicero disapproves of the use of theatrics by others in the political sphere. Presumably, believes Hall (2014, 31), “this double standard derives from his antipathy toward the radical populist goals of these orators. When oratorical theatrics are used in the service of such disreputable ends, they deserve (in Cicero’s view) little respect—and hence are not worthy of careful

analysis.” However, in light of the process or dual-aspect theory of mimesis, we ascribed to Cicero, we must argue that when Cicero calls out actors for overdoing things, it is not due to a double standard towards theatrics deriving from “antipathy toward the radical populist goals of these orators,” but rather due to the ambiguity of a positive aesthetic value, aiming to reciprocate the oscillation between the two aspects of self-referential or narcissistic drama, the product, and the production: the self-sufficient heterocosm that art is, and the recipient’s resources out of which it is nevertheless, and incompatibly, comprised. Similarly put, actors, and *infames* in general, follow the pole of “product,” whereas the elite should follow that of “production,” or, more precisely, the oscillation between the two poles.⁵

Dionysius of Halicarnassus: Testimony as mimesis

We have mainly discussed up till now legal representation in the Roman court of law, as practiced by Cicero and other advocates. However, court testimony might have been associated with mimesis too. Dionysius holds the conviction that human beings are mimetic by nature and that a mimetic instinct is one of the roots of language itself. In *De compositione* 20, where he explains these ideas illustrating onomatopoeic phenomena, he observes that people recounting events to which they were eyewitnesses find themselves naturally shaping their discourse (such as their word order) in ways that reflect or express the qualities of the events themselves: “they become mimetic of the things being narrated.”

However, a consideration of Dionysius’s admiration of Lysias’s oratory style will reveal that for Dionysius, as for Aristotle, true naturalistic mimesis is never transparent. Dionysius maintains that downplaying the element of artifice inherent in mimesis ironically ends up with over-representation, “exaggeration and amplification of the facts,” which makes for an artificial, unconvincing mimesis, “designed and contrived to mislead.” On the other hand, Dionysius (*Isaeus* 16), paralleling Cicero’s “chivalric” approach to dramatic mimesis, argues that “brevity” representing the choice of symbolic outlines – what Jakobson (1990) called the “selection” axis – which foregrounds as such the artificial aspect of mimesis, ironically results in a convincing one. Lysias’s ability to convey an impression of ordinary speech or the common language is attributed to an artifice creating the illusion of being wholly natural and “true,” a style that is only apparently artless but, in fact, the work of accomplished artistry. It is a verbal simulation of common speech, giving his representation a degree of credibility that deceives the hearer into taking it for reality itself (*Isaeus* 16). Dionysius (*Lysias* 8) himself symbolizes this dialectic in his suggestion that “anyone cultivating the truth, and wishing to be an expert in the mimesis of nature, would not go wrong by using Lysias’s style of composition—for he could not find a truer style.”

To understand the paradoxical status of this advice and its meaning, the question we should ask is whether there would have been a difference had Lysias simply used common speech rather than simulating it “naturally.” The answer would be yes, but not according to the Law of Identity of the Indiscernibles. What would cause changes

between the two variants is not some feature that one has and the other does not, which a correspondence test would reveal. The copy or heterocosm, rather differs situationally; it comes about through transposition of the original into a new context, incommensurable with the original one. Think of an *objet trouvé*, the change that an object, Duchamp's urinal for example, undergoes just by virtue of being displaced, or imagine the difference between everyday speech and the exact same speech and content once a film camera intervenes. Even if it remains formally unchanged, the original speech becomes different by force of repetition (with difference) in Gilles Deleuze's sense (1994), itself modeled on *mise en abyme* (Dickmann 2019, 105–40). Just like the double mirror, where A's reflecting B always already differs from itself, becoming, for example, B reflecting (A reflecting B); where the same reflection is performed in different logical and ontological levels at one and the same time, repetition with difference is not to be understood “mechanically,” that is, as governed by an organizing principle, but rather as repetition of repetition: the very organizing principle is “deterritorialized” or given to repetition. If (according to Dionysius) in order to achieve an effect of ‘the truth’ or of ‘nature,’ one must rather adopt the ‘true’ style of a writer who is a master of the artificial simulation of the natural (Halliwell 2002, 295), it is because the world and the heterocosm – which art as artifact is – are instances of one and the same world given to repetition. They are instances of repetition separated by infinitesimal difference rather than contradiction. The mimetic everyday speech that Dionysius appreciates, and, to extrapolate, the mimetic testimony in court, imitate no “origin” or privileged “first time.” Just like *mise en abyme*, where embedded story B cannot reflect embedding story A without always already reflecting the very embedding, it imitates a reality that is *always already* “split in two.”

CRUDE REALITY AND THE MIMESIS OF TRUTH

Guided by the explicit self-reference, or process-mimesis, in Nero's dramatic acting, we have unveiled process-mimesis to be dominant in the Roman courtroom drama and in Greco-Roman thought on mimesis, and a marker of power distinguishing between *infames* and the elite. The question to be tackled now is the possible epistemological advantage of process-mimesis: What did it contribute to the truth sought in Roman court? Testimony in court, writes Malka (2019, 935), was a public role, exceeding a narrow probative function of reporting the facts. *Infames* were debarred, she argues, because self-control was important not only for evaluating the accuracy of witnesses' testimony but also for establishing their authority. I argue the contrary: that the debarring of *infames* as propagators of object mimesis did indeed relate to a desired reporting of the facts and that mimesis of process was a means to generate knowledge for jurors regarding the actual state of affairs relevant to the judicial case at stake.

Rachel-Rafe Neis (2013) has already studied what she termed “homovisuality” in (Roman era) Tannaitic thought, which is practically self-referential witnessing of an event. Sight and eyewitnessing in Talmudic thought are a perception in which seeing an object has a mimetic effect upon the beholder. For example, by beholding a statue, the petrified viewer becomes one. Not only does like see like, but each is alike in its

very seeing (of the other), down to the eyes themselves. Given Greco-Roman theories of mimesis, it would be fair to speculate (although work remains to be done regarding historical evidence) that the “truth” the Roman court valued also involved self-referential sight of the event and self-referential communication of it in court. Such testimony, I believe, assured a thick description, rich with nuances and realistic to a level ordinary testimony could not achieve. The reason was that it conveys the pre-personal and pre-ontological ontic, ontic-for-itself, that Blanchot termed *il y a*.

Blanchot (1995, 323) cites Hegel’s assertion that Adam’s first act, which made him master of the animals, was to give them names, but he thus abolished their particularity as beings. Deprived of their “flesh and blood reality,” animals and all other signified entities entered language as universals and ideals. Language does not kill anyone, and yet: “When I say ‘This woman,’ real death has been announced and is already present in my language.” The word “woman” is not sufficient to designate a given woman, for it could refer to any woman at all. We could add more predicates, even an infinite number, but this gets us no further, as any designation, if it made sense, would always be too universal and repeatable. At the same time, death, introduced into language, functions as “absolute exterior.” If language murdered the specificity of things, it yet depends on the attempt to designate them. It comprises a (futile) quest of, or an attempt to leap towards its “absolute exterior.” This leap in Blanchot is modeled on *mise en abyme*. As in the double mirror, it means, in fact, a series of leaps generated by a mechanism of retroaction. Since the quest’s point of departure and its point of destination are discontinuous – that is to say, any common, interdimensional ground to bind them together is absent – it follows that any leap towards a pure exterior departing from X, if successful, is transformed by the very action. It takes place *ab initio* in the domain of its destination, Y: “[Whoever] purports to follow one slope is already on the other,” writes Blanchot (1995, 332). The attempt to leap toward the “outside” of X is always already another attempt—to leap toward the outside of Y, which, due to the discontinuity, hence irreversibility, between X and Y, can by no means be X. A leap toward the origin of language is at the same time an infinite, simultaneous series of re-crossings embedding one another, a *mise en abyme*. An interesting point in Blanchot is that the *il y a* prior to the “murder” committed by language can be revived, but not if we search for it in the “things” language heads toward or attempts to leap to. Instead, the very series of re-crossings towards the “origin of language,” the particular entities prior to their being “murdered” by language, precisely weave the network of those entities – the *il y a*. They entail *mise en abyme*, and *mise en abyme* entails the in-sistence of the pragmatic, or pure ontic, resisting being bracketed out by the semiotic (Dickmann 2019, 83–104).

Homovisual, or self-referential witnessing, just like Blanchot’s re-crossings, involves what Deleuze has termed “repetition with difference.” A single crossing towards the exterior is performed at one and the same time at multiple logical and ontological levels. It thus both expresses and generates the Deleuzian differential, plural, and open reality, which Pavoni (2018) discusses in a legal context, the event potentially diffused into multiple and often opposing threads of memory. Like the

double mirror, whose object of reflection is neither mirror A nor mirror B, but the very act of reflection, the homo-visual witness, watching and being watched at one and the same time incarnates the “middle,” the impersonal gaze. He is not a subject gazing from without but part and parcel of the event he witnesses, a reincarnation of it. Reincarnation of the event into a witness means, first, that the plurality of the event becomes a saturated testimony rich with the nuances and ambiguities of reality itself, and second, that just as in Dionysius, his testimony resignifies rather than reports the event in court, rendering the jurors themselves witnesses.

If professionalism in dramatic mimesis, as held by *infames*, meant abuse of the mimesis of truth, its opposite was by no means the straightforward, common language of testimony but instead the mimesis of process. The latter brought pragmatic reality to the fore and endorsed the naked, unmediated state of affairs in a way that a drama-free court could not. Self-referential mimesis in court assured hyper-realism. It communicated instances of reality prior to their being engulfed by ideals, universals, and representations of language and mind. This “crude reality,” the pure pragmatic level of things, is more realistic, as it were, than realistic one, as the latter follows, in fact, the pre-established *topoi* and organizing principles we know from normative reality, thus allowing no voice to the pure ontic, prior to being retold. Mimesis of process means focusing on emerging rather than assumed reality – that is, the concreteness and individuality of things prior to their becoming clichés of a pre-established table of representations. Perhaps the Roman court itself, as a naturalistic drama, signified, like the hybrid book in Plato, with the pragmatic aspect of signs, as here-and-now bodies. The testimony it required from witnesses might have accordingly been of the pure, naked event preceding pre-established *topoi*. *Infames*, professionals skilled in aesthetic narration or in transposing pieces of reality into artistic constructs, could not fit into this ontological system.

CONCLUSION

According to Malka, Edwards’s argument was that the inherent dishonor of the occupations of the *infames* resulted from their association with succumbing to temptation. From this, Malka deduces that the list of occupations falling into the category of *infamia* is characterized by a lack of self-control. I have shown, however, that Edwards did not make the argument that Malka attributed to her. The problem with the *infamis* was not his tendency to succumb to base pleasures but rather the fact that his/her body, being public, was the object of these pleasures. Moreover, Edwards is not primarily concerned with the moral question. What she stresses instead is an aesthetic-ontological entanglement: the publicness of the *infamis*’s body, its unique association with that of the roles assumed by the elite. This resulted in role-switching that culminated in members of the elite, emperors included, assuming the roles of the *infames* as gladiators, prostitutes, and actors. I have argued that this phenomenon when viewed in conjunction with Nero’s meta-theatrical or self-referential acting, suggests that the key to understanding the disqualification of the *infames* was the dramatic mimesis their trades involved. The elite’s role-switching with the *infames* only reciprocated the trickery and illusion entailed in that mimesis.

I have consequently explored three hypotheses. The first pointed to the Greco-Roman belief according to which dramatic mimesis could cause psychic volatility, incompatible as such with service in a court of law. I rejected this hypothesis on the ground that the Roman court itself was heavily theatrical. According to the second hypothesis, it was not the *infames*' professional dedication to mimesis that was the reason for their exclusion from the court, but rather the objects of their mimesis – namely, unworthy persons and events. A witness's history of imitating such models could have a negative effect on the drama-based Roman trial, which was susceptible to being harmonized with narratives reeled off by those who were professionally engaged in reassembling pieces of reality into a drama. However, my revisiting of Nero's self-referential mimesis, together with my inference regarding the self-referential nature of the Roman court drama, and my exposition of the prominence of self-referential mimesis in the writings of Plato, Aristotle, Cicero, and Dionysius, all brought me to reject the second hypothesis as well.

Drawing on Hutcheon's distinction between mimesis of product, i.e., the mimesis of a person or event "external" to the drama to which the drama refers, and mimesis of process, i.e., the self-referential mimesis of the very production of the drama, I instead proposed a third hypothesis that differentiates between the types, rather than the objects of mimesis employed by the *infames* and the elite respectively. According to the third hypothesis, the *infames* were debarred from legal representation and testimony because they were associated with professional mimesis, which was itself associated with the mimesis of product. The latter entailed such pre-established ideals and phantasms so that the specificity of fragments of reality communicated through legal testimony was sacrificed in favor of aesthetic and narrative forms, resulting in impaired truth. The elite, on the other hand, employed mimesis of process, or self-referential mimesis, which – despite sounding abstract and experimental, and despite being designated as "introvert" and "narcissist" by Hutcheon herself – was, in fact, hyper-realistic, that is, realistic to a degree of intensity that prosaic common speech could not match. Process mimesis overcomes the dichotomy between the pragmatic and semiotic levels of the sign; it avoids bracketing out the former in favor of the latter throughout the entire process of signification. It is thus capable of retrieving and communicating "crude reality," or what Blanchot – associating it with self-referential drama or *mise en abyme* – called *il y a*: the pre-"personal," "flesh-and-blood" instances of reality, prior to their being reconstituted by or reduced to cultural, linguistic, and conceptual representations and forms.

NOTES

1. On *infamia*, see McGinn (1998, 21–69).

2. Du Plessis (2019, 954) doubts that the rhetoric that Malka takes for categories of morality was "anything more than aristocratic snobbery," and it actually "did not seem to have much impact in reality."

3. Throughout this paper, I reviewed both Plato's and Aristotle's concepts of mimesis in light of Stephen Halliwell's study (2002).

4. Cicero's discourse does perhaps imply a political conflict in addition to an aesthetic one, as Hall argues, but if so – and this is far from being my main claim regarding the reason for excluding the *infames* – the aesthetic mode of the conflict underpins the political, rather than vice versa. According to “dual-aspect” theories of mimetic art, such as Aristotle's, mimetic art extends and reshapes understanding, but it starts from and depends on already given possibilities and forms of meaning in its audiences' familiarity with the human world. In this regard, although the Roman court was somewhat “theatrical,” theatre's mimesis is built on normative forms of meaning, to begin with – in other words, culture, civilization, and by extension society, state, and court. Nero's imitation of an actor who acts Nero is perhaps a statement that the state precedes art even when it comes to imitation; that theatrical drama par excellence derives from court and state rather than vice versa. Nero, qua state casting power over the theatre, under this interpretation, only reclaims what was already his. The debarring of *infames* from court may thus signify, according to this explanation, a struggle over primacy in the generation of forms of meaning.

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