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Trials and Traumas in Twentieth-Century American Drama

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Declaration of Originality

I hereby certify that this thesis entitled “Trials and Traumas in Twentieth-Century American Drama” is my own work and the result of my own compiled research. I also confirm, to the best of my knowledge, that it contains no material previously published or written by another person, nor has it been submitted previously, in whole or in part, to qualify for any other academic institution, except where due acknowledgment is made in the thesis.

Signed: Brahimi Nassima

Date:

Dedication

To my beloved mother Nouara and devoted father Abdelkader to whom I owe a life-long sacrificing living.

To my dear uncle Dr. Mohamed Boussag.

To my sisters, brothers and nephews.

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Abstract

This study addresses the conflictual relationship between trials and traumas in twentieth-century American drama. By drawing on an interdisciplinary approach that includes mainly legal scholarships, political studies, trauma studies, sociology, history, and literary studies as well as adapting Felman's concept of legal trauma, I argue that Miller's *The Crucible*, Berrigan's *The Trial of the Catonsville Nine*, and Smith's *Twilight: Los Angles 1992* serve as lucid expositions and critical appraisal of the justice system's traumatic failure. The three chapters of this study move through such conception by exploring instances in which the justice system would resort to violence, blindness and silence in its process to resolve, respectively, three legal crises or traumas. I begin with a discussion of the roots of the legacy of Salem witch trials' legal trauma and its reappearance in the modern Communist witch-hunts. I then argue that the reluctance of the law institutions to situate the trauma of the Vietnam War within an effective and comprehensible legal language features a case of traumatic legal failure. I conclude by discussing how the process of institutionalizing racism and dismissing a whole community's collective traumatic memory registers indeed the justice system's striking, inexplicable legal drama and trauma.

Keywords: American Drama, blindness, justice, law, legal trauma, silence, violence, trial.

List of Abbreviations

HUAC	House of Un-American Activities Committee
FBI	Federal Bureau of Investigation
KKK	Ku Klux Klan
The Trial	*The Trial of the Catonsville Nine*
Twilight	*Twilight: Los Angeles, 1992*

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General Introduction

General Introduction

This study is concerned with the representation of some traumatic legal events and their aftermath in twentieth-century American drama. Particularly, it focuses on legal issues through undertaking research into cases in which the law institution appears not to effectively deal with the traumatic conditions of the time and their corresponding legal cases. That is to say, this study addresses the conflictual relationship between trauma and trial as depicted in three dramatic works. The role of drama in exposing the law's traumatic failure is of paramount importance. It essentially takes its readers' or audiences' attention to some hidden aspects of miscarriage of justice and the law's shortcoming. In order to show how a dramatic text can serve as a lucid exposition of the legal failure, one will draw on an interdisciplinary approach that includes mainly legal scholarships, political studies, trauma studies, sociology, history and literary studies. At the same time, what Shoshana Felman calls "legal trauma" will be adapted to better display the "missed encounter" between law and trauma.

The representation of law and justice, or more specifically trials, has always attracted the attention of writers and playwrights through different times. In twentieth-century American history and due to its multiple critical and traumatic events, there were several legal cases that have characterized the national landscape, leaving a bold mark and raising debatable questions over the proceedings of law and the fulfillment of justice. And because of the competing questions, high tensions, and remarkable divisions caused by some of these trials, they have become associated with the nation's collective memory.[1] Drawing inference from existing legal documents and people's testimonies, some American playwrights such as Arthur Miller, Daniel Berrigan, and Anna Deavere Smith contributed actively to the debate of

[1.] Some famous trials may hold different connotations such as public trials, trials of the century, high-profile trials, and historical trials. These trials can take different forms whether religious as the Salem witch trials, political as the trial of the Rosenbergs and the Catonsville nine, or ordinary criminal case such as the beating of Rodney King.

the century's traumatic events through the reconstruction of some of those polemical legal cases and their aftermath.

However, despite the recent upsurge of scholarly studies that discuss the representation of legal issues in dramatic works, many other close readings of the manifestation of legal injustice remain prerequisite. This study tries to show how the law institution (the legal system, the criminal justice system, or the law) handles some urgent questions: the communist witch-hunt, the Vietnam War and racial injustice in three dramatic works in which a trauma and a subsequent trial feature blatantly. In other words, the conflictual relationship between trauma and trial in twentieth-century American drama is explored. In order to study such knotty relationship, one central question could be asked:

- ✓ What may lead to the traumatic failure of the law institution to establish justice and resolve the standing legal crisis according to twentieth- century American drama?

Besides, some subsidiary questions should be asked to help develop and answer the main research question.

1. To what extent was the American criminal justice system capable of extracting reasonable and fair solutions from some traumatic events of the twentieth century?
2. How did some twentieth-century American playwrights reconstruct these trials and their aftermath?
3. What can a dramatic work reveal about, or achieve through, the process of reconstructing/re-narrating a trial and/or its aftermath and its surrounding traumatic events?

In reality one would state that:

- ✓ In its essence, the legal system is generally regarded as a means for settling conflicts and establishing justice, yet this is not always achievable owing to the interference of some elements in legal processes.

- ✓ Commenting on or criticizing judicial practices has always been a prevalent undertaking for playwrights, but the playwrights mentioned in this study may illuminate about both the condition of legal trauma and the ways to avoid it.

In order to discuss these hypotheses, an interdisciplinary approach is inevitably needed. It is used so as to be representative; it is not meant to be exhaustive. Also, to account for the conflictual relationship between law and trauma in twentieth-century American drama, one has to refer to Shoshana Felman's concept of *legal trauma*. This reference would help to reveal aspects of the traumatic failure of the law institution.

Undoubtedly, the twentieth century has manifested as a traumatic age, leaving a special impact on human history, including its legal history or more precisely its legal proceedings. As Felman puts it, the many historical trials and the various changes in human conditions like the "holocaust" of the First and Second World Wars, the Vietnam War and the emergence of novel political oppression that were all decoded into legal claims "brought to the fore the hidden link between trauma and the law," definitely marking this century as a "century of trauma." Hence, the law institution, with its multiple forms, has been invaded by these traumas (1-2). Notably, from the second half of the twentieth century, the legal institutions faced the challenge of dealing with a considerable number of delicate or traumatic questions. However, the law failed to resolve the century's traumas for the law has its own weaknesses or, as Felman articulates, its abyss/ gap/or chasm. With such shortcomings, trauma is less likely to be treated or resolved, reducing thereby the possibility of hammering out fair legal decisions.

In seeking to explore the conflictual relationship between trial and trauma, Felman—in her study dubbed *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*— treats the condition of the limitation of law to enclose a traumatic situation for this latter would forcibly enforce itself into legal proceedings. She argues that the law attempts to

contain the trauma and to translate it into the terminology of legal-conscious, thus reducing its strange interruption; uncannily, however, while the law struggles to contain the trauma, it often is in fact the trauma that takes over and whose surreptitious logic reclaims the trial in the end (5). She then proposes that it is "because of what the law cannot and does not see that a judicial case becomes a legal trauma in its own right and is therefore bound to repeat itself through a traumatic legal repetition" (57).

Behind legal proceedings, there almost always dwells an inherent trauma that refuses to be closed or, if one might say, to be accommodated. This means that legal remedy in its own right cannot be immune to the impact of trauma. Trauma will often have the final word upon legal proceedings or the word of law. One can assume that in its process to resolve trauma the legal system would be somewhat resistant to it, or overwhelmed by its elusive nature. Thus, the capacity of the law institution to comprehend then to resolve some traumatic conditions would be often complicated if not misguided. The idea that law cannot contain trauma may also suggest that the law cannot directly experience trauma in the sense that in its confrontation with some traumatic conditions, the law would often react inadequately. However, as one would suggest, this does not mean that legal trauma is necessarily unavoidable; rather, and with considering the influence of traumatic situations, there are instances in which legal systems would act in a manner that would forcibly lead to their traumatic legal failure.

Felman's conceptualization of legal trauma corresponds indeed to one accepted notion in trauma studies that of trauma[2] in its very nature defies comprehension. As recorded by Cathy Caruth, "trauma is the confrontation with an event that, in its unexpectedness or horror, cannot be placed within the schemes of prior knowledge" (*Exploration in Memory* 153). It should be noted that trauma is generally designated to be unexpected, extraordinary, painful

[2] · Starting from its etymological origin which means wound or external injury, the meaning of trauma developed to different medical uses and then its use shifted to modern implication and extension to the social sciences and humanities. Trauma in this study means a crisis and an event that is overwhelming, disrupting and painful.

and shocking (Neal 3). The concept of trauma may also be applied to multiple human experiences ranging from individual to collective experiences whose influence may grow more profound as to disrupt the normal social life (3-4). Traumas can manifest in the course of daily life or different human experiences; yet, they can cause severe consequences. Traumas can be ambiguous and complex. That being said, even the ability of the law (or the justice system) to deal with trauma can also be affected and occluded.

Felman's insight about the relationship between law and trauma embodied in the concept of *legal trauma* forms, indeed, a fundamental departure for this study and this for some reasons. First, such a concept provides me with a framework that combines trauma and trial (or legal issues) within which one intends to read the selected dramatic works, precisely the point of reading the plays with their corresponding or parallel legal cases. Second, by referring to the concept of legal trauma, one can expose the problematic relationship between law and trauma, a crucial point that allows me to have a different take on the discussed plays. Finally, in integrating such a concept, one can highlight the impact of trauma not only on the justice system but also on communities' common sense, whilst simultaneously stressing on the role of drama in exposing the legal failure.

Accordingly, and at the outset, it should be noted that the term *legal trauma* that I seek to identify and explore both reflects and extends Felman's conceptualization. In this study, legal trauma is to be understood as the law's inability or more precisely failure to handle traumatic events which is to say the shortcoming of the justice system to give an adequate and fair judgment to the raised legal case mostly in a particularly traumatic, hostile or agitated political and social circumstance. Although Felman's conceptualization is highly adapted, the primary foci in this study are the ways in which legal trauma can be manifested by considering three aspects, mainly the law's violence, blindness, and silence. Also, legal trauma, as one would argue, does not always entail the meaning of unintentional blindness,

violence or silence. In fact, more often, the justice system may behave in a deliberate process toward its traumatic legal failure.

To discuss the conflictual relationship between traumas and trials, three dramatic works have been chosen, all written in the second half of the twentieth century: *The Crucible* (1953) by Arthur Miller, *The Trial of the Catonsville Nine* (1971) by Daniel Berrigan, and *Twilight: Los Angeles, 1992* (1994) by Anna Deavere Smith. Though dealing with different legal cases and different traumatic events, the three plays have some shared aspects. Besides the fact of basing on real trials and real events, one key point that underlies the three works is the representation of some highly critical events whose impact has been so prevalent not only socially and politically but most importantly legally.

Because Miller's, Berrigan's and Smith's works are informed by the traumatic conditions of their times (the Communist hysteria, the Vietnam War, and the King's verdict and the subsequent 1992 Los Angeles urban riots, all of which have caused a disruption in the normal social life), they are also concerned with the larger issue of the law's flaws or the legal failure. The plays, using Felman's words, do reveal forms of "judicial blindness" (54). As will be discussed, legal trauma can be manifested in the very form of polemical legal verdicts that the three playwrights explicitly interrogate. The legal failure, as it will be discussed, features when legal proceedings are controlled by national fear (or hysteria), political agendas or influences, and tense race relations.

Since this study is an attempt to shed light on some blemishes in the law or the legal institution, referring to issues related to guilt and innocence, law, justice and punishment, the role of judges and jurors, the connection of law to collective memory and some other legal proceedings is crucially necessary. At the same time, one can understand why it is inevitable to use the set of studies already listed. They are indeed needed for the discussion of the complex encounter between trauma and law (or trial) as well as the concept of legal trauma.

In other words, to apply such conceptualization, one needs to situate this study within the current studies that would help build a greater understanding of the plays' dramatic and traumatic points.

What moved me to the study of the representation of trials or legal issues in dramatic literature is due to a number of reasons. Personally speaking, my tendencies toward issues of justice and law have been of a great push to undertake such an interdisciplinary study. Knowing about trials is also exciting because of the high impact they do usually exercise. Trials, as Barbara Falk writes, are public accounts *par excellence*, stories of societal and individual conflict great and small, ritualized and state- structured exercises in adversarial struggle (5). Falk also says that trials can educate, excite, and pontificate; they are exhausting and compelling in equal measure and have long been reality entertainment because courtrooms offer a stage for the important dramas of life, "with the various players making their Shakespearian entrances and exits" (5).

My interest in legal issues and dramatic works is also due to the fact that both speak real lived experiences. As Theo Wilson notes, memorable trials and great theater have the same impact: both are filled "with revelations of human weaknesses and folly, with violence and sorrow and humor and pity and passion, all the more fascinating because these are real people, real life" (qtd. in Deutsch 743-44). It is worth mentioning that it has been stated that one growing interest in the study of law in literature centers on the human factor, that is, human experiences under the law (Ledwon x-xi). However, the ability of drama to speak human experiences seems to exceed that of a trial. This does not mean that drama is more effective than law; indeed, one could claim that drama has its own way of representing some obvious transgressions in law institutions.

It is understandable why Felman attributes an additional quality or privilege to literature (and by extension to drama) regarding its power to reveal the limits or the

deficiency of the law. She says that in their attempt to bridge over and resolve the abyss, legal cases or high- profile trials try to give closure or finality while literary works function to reveal that kind of unresolved conflict (95). What is suggested here is somehow the disjunction between stories told by the law and those told by or reconstructed in literature. In other words, literature and/or drama can better speak traumatic wounds and experiences.[3] At the very least, dramatic (or literary) representations can go deep into personal and collective judicial experiences.

The process of discussing human experiences under the law and undertaking an investigation of the relationship between trial and trauma has not been an easy task because of a number of points. To talk about such a subject is, in the first instance, undoubtedly challenging as well as multilayered for the fact that it raises huge debates over many abstract conceptions, chiefly those of law and justice, including their nature and purpose and their relation to each other. The examination of some important and complex issues (such as legal alienation and collective memory) in dramatic literature, particularly within a traumatic context, would also demand the venture into many disciplines due to the necessity to look at multiple ideas which is to say the endeavor to give insightful contributions has been very crucial.

A number of scholarly studies have analyzed the psychological impact of trauma on many people caused because of the multiple wars in the twentieth century. Actually, the concept of Post-traumatic Stress Disorder (PTSD) became widely known after the Vietnam War and was then employed by the American Psychiatric Association to describe the common incidence of the psychic disorder and mental breakdown of the returned soldiers. Furthermore, the concept of collective memory (and cultural trauma) has also been subject to many studies, mainly those exposing some collective wounds and traumatic experiences.

[3.] Quéma says that Felman has inscribed to literature a "subversive function" for having the "capacity to upset the law and its repressive effects" (6-7).

This study, however, is concerned neither with the psychological impact of traumas nor with performing or studying psychic traumas, but it is limited to how the three aforementioned dramatic texts reveal instances and aspects of legal trauma with a specific focus on trials and their impact on the legal status of individuals and also their significance to the nation. In other words, this project studies instances in which the law institution dramatically and traumatically fails to deal with some urgent or critical legal events, engendering in its own right a striking miscarriage of justice. It should be noted that a review of the literature will be provided in the introduction to the plays in their corresponding chapters.

In order to expose the conflictual relationship between law and trauma, this study is divided into three chapters. In Chapter One and through Arthur Miller's *The Crucible*, the focus will be on Felman's theory of repetitive legal trauma. The Salem witchcraft trials will be studied with their parallel or contemporary Communist hysteria and the subsequent legal hearings, alongside with one famous criminal legal case, the Rosenbergs.' In this chapter, one will be concerned with how the Salem legal trauma came out to birth, trying at the same time to trace some fixed clues which would later become a kind of rituals doomed to be practiced when cases of hysteria would overwhelm the American nation. The chapter will conclude with the notion that it is often hard to come to terms with legal injustice and violence when the justice system insists in creating a kind of trauma trial that would unconsciously force itself into legal consciousness, whenever suitable.

Chapter Two is concerned with another traumatic event that highly reverberated in the twentieth century: the Vietnam War. Through Daniel Berrigan's *The Trial of the Catonsville Nine*, the war will be looked at in accordance with one related legal case that of the trial of nine anti-war activists known as the Catonsville Nine. In the attempt to demonstrate aspects of the play's legal trauma, the focus will be on the Playwright's aim to defend anti-Vietnam

War protesters, strongly standing to prove their moral innocence, whilst simultaneously undertaking an investigation of how the play's rhetoric is compatible with well-established conventional and philosophical ideas. The conclusion of the chapter will be about the necessity to challenge the war atrocities and its supporting laws that defy any rational language or comprehension.

In Chapter Three, the problem of racial trauma and its endurance in modern American history will be discussed. Through Smith's *Twilight: Los Angeles, 1992*, I will explore the legal significance of the King's trial (1991) and its aftermath (the 1992 Los Angeles riots). And although Smith does not refer to legal records or transcripts regarding the Rodney King case, her play can be appreciated for its multilayered and complex portrayal of the race problem. In this chapter, the focus will be on the role of the law institution in engendering legal trauma and this in terms of constructing and perpetuating racial tension and injustice. The conclusion of the chapter will be about the idea that the Los Angeles riots in the aftermath of the King's verdict are but a revolutionary cry against the law's refusal to acknowledge, or the legal oblivion of some traumatic realities and collective traumatic memories.

Chapter One

A Trauma Trial in Arthur Miller's *The Crucible*

Introduction

Reading Arthur Miller's play *The Crucible* seems always to leave a sense of nonending. This sense is not only because the legal system appears to be the primary antagonist of the executed innocent victims, but because the justice system in its own right appears to fall prey to the trauma for which it intends to find a remedy. Whether referring to the Salem witchcraft hysteria of 1692 or to the Communist witch-hunt of the 1950s, Miller highlights some shared aspects of traumatic legal proceedings that overwhelm the two historical scenes. Taking into consideration the point that one element of strength of Miller's play stems from the significant analogy between past and modern traumatic experiences, another equally powerful aspect of *The Crucible* stems from the probability of the occurrence of legal trauma and its inevitable forthcoming repetition. This may happen in case the law institution resorts mainly to violence and blindness.

Uncovering the resemblance of traumatic legal experiences and their outcomes in both the past events of Salem witchcraft trials and their corresponding anti-communist hysteria will be a major task in this chapter. What Miller seems to convey is that what happened in the Salem trials, which resulted in guilty verdicts and executions, reflects— besides a collective memory of persecutions and injustice— a sense of the inability of the criminal justice system to adequately resolve the standing trauma. Consequently, the witchcraft hysteria, though remote in time, could not be completely wiped out from the nation's collective consciousness. More importantly, in its encounter with the law, a hysterical traumatic condition, as Miller stresses in his play, is doomed to be reenacted in the legal arena, causing a trauma trial. One answer to such a trauma trial is about the way the fear of Communism had been articulated within the legal stage. As will be demonstrated, the judicial hearings and some trials of the mid-twentieth century are remarkably another repeated version of the previous Salem misguided judgment or more precisely legal trauma.

Indeed, it is necessary to investigate the historical context of Salem trials in order to explore the notion of legal trauma. This would be done by discussing how the trauma of witchery and persecution took place, focusing primarily on the legal measure of confession and (or testimony) and the different participants in the legal institution. Also, to discuss how Salem's shadow of legal trauma recurred in the mid-twentieth century— becoming, then, a kind of haunting experience destined to reappear when a similar threat would emerge— the judicial hearings of the heyday of anti-Communism and the Rosenberg trial will form an example of modern cases of repetitive legal trauma. In other words, in this chapter, the intention is to apply Felman's theory of repetitive legal trauma to *The Crucible* and its corresponding judicial practices. Before embarking on an analysis of such conceptualization, one needs first to introduce Miller's play.

1.2. Miller's *The Crucible*

The Crucible is based on Salem trials' transcripts which Miller had examined and from which he constructed his plot. The story of the trials is about the execution of a number of innocent people falsely accused of being witches due to the witch-hunt hysteria that swept Salem, Massachusetts in 1692. In his autobiography, *Timebends,* Miller points that he came across the Salem witchcraft phenomenon during the time he was an undergraduate at the University of Michigan. He says that the story remained in his mind as one of the most inexplicable mystifications of the long-dead past when people did believe in the power of spirits. Then, the story came back with Marion Starkey's book *The Devil in Massachusetts* which inspired him to write the events in a "well-organized detail" (330). Miller also recalls that he visited Salem in 1952 where he researched the records of the trials at the Historical Society "Witch Museum" where he could feel and re-picture the Salem people of 1692 and their tragedy (42).

Miller's personal sympathy for the characters and themes he found in the historical records, adding to it the imposing political realities of the late 1940s and early 1950s, fused together to form the matrix of what has become his most performed play as well as one of the most frequently staged works in modern drama (Otten 62). In fact, the play is generally discussed as a historical drama in which Miller, and by using the historical context of the Salem witch trial, appears like a Greek dramatist who exploits the mythic past, reconstructing the historical moment in the present, and transforming documentary records to modern tragedy (63). By inferring to past traumatic events to project on similar present conditions, Miller, indeed, marks his dramatic work with a historicity undeniable to both his contemporary audiences and future ones.

Moreover, because the plot of *The Crucible* is constructed like a trial, something similar to a court case (Popkin 142), and because of its reconstruction of past trials, the play is also seen as belonging to the frame of courtroom drama.[4] In *The Oxford Handbook of American Drama*, Stephen Watt considers *The Crucible* as essentially a courtroom drama, which has accrued new relevance in the twenty first century (475). Also, Thomas Porter classifies *The Crucible* within the traditional courtroom drama as found in television and/or theater, a favored popular form that ranks with the leaders (75). Porter also writes that:

> This format has inherent qualities that attract the playwright of any age: a clear division between protagonist and antagonist, gradual revelation of the facts, application of facts to principles, suspense leading to the climax of verdict….the formula… is most favored in democracies, where the law is venerable and the Court the principle instrument of justice….The courtroom has become the sanctuary of modern secularized society and the trial the only true ritual it has left. (75)

[4.] The concept docudrama (or courtroom drama) is often used to refer to documentary drama. However, Dawson Fisher contends that, by considering the history of documentary drama, this blurring is inadequate. He essentially asserts that the two concepts are antithetical and adversarial in terms of truth, factuality and objectivity. Docudrama is more associated with those TV dramas based on true-story or fact-based; meanwhile, documentary theater is a specific term playwrights do associate with factual authenticity (161). That is, the distinction is based on the claim to veracity. And it is worth mentioning that Miller in his introduction to his play acknowledges that he made some modifications for more dramatic impact.

Reshaping some critical or legal cases into courtroom dramas certainly provides playwrights with different dramatic and theatrical elements needed to stimulate their audiences' awareness of how law and drama are somewhat similar. In addition, though such artistic recreation appears to be compatible with the ideals of democracies for staged trials can greatly affect the emotions of spectators by raising their sense of respect for justice and the rule of law, the power of Miller's play also chiefly stems from its analogy to contemporary events.

By placing past traumatic trials within the contemporary setting, Miller identifies a set of patterns by which the legal system would act traumatically. As one would argue, Miller's objective is to show how some trial rituals also signify the rites of repeating past legal traumas. Such rituals, which would reappear in the twentieth century, left a profound impact both on individuals and the nation as a whole, reminding Americans that injustice can simply inhabit a courtroom procedural techniques. It is worth mentioning that Miller, in his article to *The New Yorker*, says that his play "seems to present the same primeval structure of human sacrifice to the furies of fanaticism and paranoia that goes on repeating itself forever as though imbedded in the brain of social man" (*Why I Wrote The Crucible*). Effectively, in *The Crucible*, Miller inscribes a model of traumatic recurrences which proved to be inevitable and very imposing in times of extreme national fear.

As for the scholarly literature that has dealt with *The Crucible*, a massive number of these works have analyzed *The Crucible* from different approaches. Generally, the focus has been primarily on the notion of miscarriage of justice, regarding the ostensible injustice imposed on both the accused of witchcraft in 1692 and those accused of being Communists in the 1950s. One of the earliest analyses of *The Crucible* is that of Thomas Porter. In his seminal essay, *The Long Shadow of The Law*, Porter remarks that one of Miller's central objectives is to address a solution to the deficiency of the law through raising the question of the letter and of the humane view of the law. He also notes that because of the hysterical

atmosphere in Salem, the realization of justice is bound to different conceptions and mechanisms; therefore, "the law itself becomes the instrument of perversion" (88).

In his analysis of *The Crucible,* Porter is concerned primarily with the general impact of the law's persecution of innocent victims. Though Porter's discussion seems to correspond with well-established tenets in legal theory (the question of the spirit and the letter of the law), he bases his study mainly on literary analysis. The question of the antagonism between the law's representatives and the law's subjects is, in fact, one facet of the play's legal trauma. Indeed, there is more to be gleaned from the play when reading it through the lens of particularly legal studies and trauma studies.

In his book called *Cold War American Literature and the Rise of the Youth Culture: Children of Empire,* Denis Jonnes says that no other writer of the post-war period was consistently preoccupied with the issues of law, justice, and the protection of individuals' legal rights more than Arthur Miller. Jonnes writes that, in *The Crucible,* Miller shows interest in judicial proceedings and "the challenge of preserving principles of justice in an era fraught with conflict and violence" (76). In *The Crucible,* Miller simply stages a travesty of justice brought about by a judicial process gone viciously awry, as Jonnes further notes (76). Likewise, Susan Abbotson clarifies that Miller draws attentions to the ways in which the law, when used for political and private ends, can destroy the lives of others (164).

Such conceptions help to grasp that kind of disagreements that may occur between the law (or the justice system) and its subjects. Indeed, both Jonnes and Abbotson point to the disrupting relationship between the notions of the fulfilling justice and individual rights. One would align with such views; but, by focusing intensely on the point of the unsettling connection, one can deduce another or additional fact that of the element of the legal system striking traumatic failure. The legal failure is attributed to willful blindness and inherent weakness to see the lucid signs of injustice and the underlying hysterical conditions.

Another interesting reading of Miller's exposition of the relationship of the judicial authority to its subjects is that of Arthur Redding's. He points out that, for Miller, "legal power" does not center on issues of guilt and innocence, even if it does much less on the communal security and rehabilitation, which are all just "alibis or retrospective rationalization for law itself." Redding and by alluding to Walter Benjamin and his conception of violence explains that by aiming at preserving itself, the law incessantly repeats its founding act of violence "through instituting guilt as the binding mechanism between the legal subject (defined by his or her relationship to law) and the state" (94). The law can operate in a dicey way to the point of achieving its repetitive purpose or nature: violence. However, Redding does not give detailed aspects of the law's violence and this will be one major objective of this chapter. Legal violence is but another important element that would help to apply Felman's concepts of legal trauma and repetitive legal trauma to the context of *The Crucible*.

In fact, not all studies have put the blame on the Salem judiciary for the miscarriage of justice. Legal professor Davis Samuelson, for instance, in his article '"*I Quit This Court.": Is Justice Denied in Arthur Miller's The Crucible?*, gives a different explanation of the tragic ending of the play's protagonist, John Proctor and some of his countrymen, which triggered many critics to scrutinize the Salem judicial system and eventually described it as unjust (619). Samuelson refutes such interpretations and claims, saying that *The Crucible*— as "a commentary on the law"— does not necessarily entail unjust legal proceedings. As he explains, what happens during the trial is that the Salem villagers "attach to their system of law and from the straightforward deductive application of accepted norms to adduced facts, even facts of the spectral variety" (620).

What can be understood from Samuelson's view is that allegations of miscarriage of justice in the Salem episode can be challenged and refuted by the norms of the time. However, even with accepting Samuelson's argument, it is still clear that the trials mark a

traumatic legal failure in their attempts to establish justice for, as Felman would argue, there is probably a kind of "missed encounter" (40; 144) between law and justice. Apparently, this missed encounter can happen when order is achieved at the expense of the principle of justice. This can be further proved when discussing the parallel between the Salem trials and the modern witch-hunt for Communists and some related legal practices, all of which will be discussed as examples of the discrepancy between the rule of law and the principle of justice. Before proceeding further, it seems compelling to begin with how Salem's legal trauma came to birth.

1. 3. The Salem Witch Trials: The Birth of a Legal Trauma

In the late seventeenth century, the new colonial America witnessed one of its earliest remarkable traumas, the Salem witchcraft hysteria and its corresponding trials. The hysterical trials touched the lives of many people. Twenty lost their lives because of accusations of the crime of compacting with the devil (or simply witchery). It is generally accepted that these trials "have become a metaphor for miscarriage of justice, superstitions, and credulity. Mere mention of them calls up the specter of unprovable aspersions, the presumption of guilt, and the destruction of family and community" (Hoffer 7). The trials still continue to be a strong cultural reminder of a dark history, an example of any case of injustice, violence and scapegoating. Overall, the Salem witch-hunting marked the beginning, or the birth, of a critical legal event, as Shoshana Felman would contend, becoming a cultural metaphor whose impact has stimulated, and still does, extensive scholarly discussions due to the specificity and gravity of the trials.

It would be fair to say that the Salem witch trials suggested that courts of law are not always a sanctuary to secure truth for trauma itself can simply undermine or dismay fair

proceedings. Although the phenomenon of witchery was not new in Western societies[5]— including British colonies of North America— the Salem village in Massachusetts Bay Colony witnessed the highest number of convictions. Gretchen Adams notes that in the whole period before 1692 the crime of witchcraft was something rare that touched only a small number of individuals. He recapitulates that among the few one hundred people who were prosecuted only sixteen were executed; however, in the sole year of the Salem witchcraft torment two hundred people were imprisoned and nineteen people were hanged and one person, Giles Corey, was pressed to death for refusing to confess (11-12). This means that the Salem witch trials were a kind of an unprecedented incident, forcibly urging one to discuss the causes of such a unique and traumatic outbreak.

Confronted with the difficulty of determining direct causes of the Salem witch trials, for multiple triggers were behind their outbreak, many scholars have tried to offer some obvious reasons. Actually, historians have widely discussed the causes of the Salem trials' outbreak, ascribing a plethora of reasons and interpretations. Bernard Rosenthal, for instance, attributes these reasons to some factors, particularly those related to political and social turmoil. He explains that the charter of the colony, which was canceled in 1684, helped to spread a situation of instability and anxiety, besides the endless menaces coming from the Indians and the decline of power among the orthodox clergy. Rosenthal then summarizes that it is the fact of being in such conditions that led the citizens of the colony to found the ground for the need to invent "enemies in the invisible world" (3-4). However, the pretext of creating

[5.] As one scholar points, most witch hunts' prosecutions that took place in early modern Europe were the result of a number of causes relating to some changes in the nature of witch beliefs themselves, the growing awareness in all segments of society and the possibility of successful legal prosecution. However, one major motive was associated with the sense of "the anxiety engendered by rapid social change" (Levack 137). It is the fear of any coming change precisely that could threaten Puritan charity as mentioned by many scholars that stirred up the trials in Salem.

invisible enemies to rescue the sense of the shattered security would engender hurtful consequences on the colony.

What happened is that the New Englanders strengthened and developed a culture of fear and skepticism. This resulted in breaking down the ties between the individuals themselves and also a sense of insecurity toward the judiciary due to its conduct with the question of the invisible enemy. Emerson Baker, in his novel historical study of the Salem witchcraft trials, explains that because of the surrounding conditions—almost the same offered by Rosenthal—people of Massachusetts Bay Colony were afraid of as well as angry about such deterioration. As he notes, "[the] accused of witchcraft were perceived as a threat, directly or indirectly, or as somehow related to a threat to the spiritual, political, or military stability and well-being of the community or the colony" (125). It was within such disturbing conditions that the accusations of witchcraft emerged. Ironically, some teenage girls orchestrated the deadly symphony of false accusations in the tiny village of Salem, where some highly respectful citizens could not escape the power of their rhythmic, bloody allegations.

Historically, the Salem trauma began in the household of a local minister named Samuel Parris whose own daughter, Betty, and his niece, Abigail, were among the girls who behaved strangely. After consulting a local doctor, "all considered and learned opinion concluded that witchcraft was at the root of the children's suffering" (Adams 12). That is, diabolic possessions were the sole answer to the girls' comportment. Under the pressure of Reverend Parris and other ministers, the girls had to reveal the names of their tormentors; these were a slave from Barbados named Tituba, and other two women, Sarah Osburne and Sarah Good. The girls' accusations followed by warrants of arrest of the named women. And then the episode of the Salem witch trials ensued, opening up a chain of untrue accusations by

which the first victims were outcasts and people who were perceived as a threat to the Puritan beliefs. In this vein, Baker illustrates:

> If any one factor links virtually all of the accused, it has to be religion. The trials were largely an effort to bolster Puritanism—an orthodoxy under attack on multiple fronts, for in Massachusetts Bay religion was the fabric that held the polity and society together. Many of those accused were perceived as posing a threat to the religious order, either because they were true outsiders, were Puritan saints who stood in the way of moral reformation, challenged [the]... effort to build a community of true believers, or were associated somehow with non-Puritan religious practitioners, including Quakers, Baptists, Catholics, and Native Americans. A number of them were authority figures—ministers, politicians, militia officers. (126)

Any sign of religious dissent had been viewed as an ultimate reference point for any considerable potential threat. The Salem witchcraft trials thus were directed toward strengthening Puritanism; a creed that supposedly meant to reinforce the ties between the townspeople as well as to preserve the colony's social order. However, what happened in Salem, Massachusetts, 1692 is that the challenge of preserving the social order exceeded that of achieving justice. When the pursuit of establishing order becomes the primary and the sole objective of laws and states, the pursuit of justice will often be diminished if not damaged. The achievement of justice is most likely to lose its credibility and sensibility in case the relationship between the two concepts (law and justice) develops to be conflictual.

Relying mainly on Greek literature and mythology, David Luban argues that the tension between law as an instrument of order, which may only be achievable at the expense of justice, and law as an upholder of justice, which may be purchased at the cost of social instability or dislocation, is of massive contemporary significance (284). Luban further says that "amity or social stability is more important than equity or justice" (284). It occurs that justice can be placed as secondary to issues of security. Such contradiction between the need to establish justice and to maintain order could help to talk about the legal system's failure with regard to some cases in which courtrooms cannot interpret the law but as "an instrument

of order," putting then the ideal of justice in jeopardy. The same thing can be said of the Salem witch trials and their parallel modern legal proceedings. This can be further ascertained when looking at the point of the direct role of the law institution in prompting some dramatic events and their consequences.

Under such a situation, the relationship between the State institutions (namely the judiciary) and its citizenry is greatly problematized or tensioned in terms of the inability of authority to effectively recognize trauma and to deal with it. Apparently, the legal institution can also fall into confusion if not blindness when facing situations of overwhelming fear and insecurity (not only in cases of great hysteria such as witch- hunt, but also wars and enduring, unresolved trauma like racial violence and prejudice as will be discussed in this study). There is the potential of falling within the complex webs of trauma. As such, the legal system would lose its ability to disclose traumatic encounters, and to settle the problem in a fair manner.

Considering the historical fact that the Salem's teenage girls lit the wick of witchcraft hysteria in the colony, it has been argued that the Salem authorities were responsible for the executions, regarding their prior knowledge of the girls' pretense of bewitchment. In this vein, Julian Franklyn maintains that the girls had been involved in a mindful deception, and that they "found themselves mistresses of a gratifying situation whereby they held the whole adult world of their environment at their mercy, and they were too glad to wield the power thus conferred upon them" (60). If the young girls were the primary kernel that led to Salem's legal trauma, their empowerment was the outcome of the assistance of the authorities through their excessive insistence on keeping order and the fear of destabilizing the status quo. As will be discussed later through Miller's play, the young girls will inscribe their own distorted narrative into real legal proceedings.

Similarly, for Adams, the essential motive behind the tragic enfoldment of Salem's trials lies primarily on the shoulders of the authorities. He explains that though some

adolescent girls and children did bring the charges of witchcraft to their community, yet the ultimate word was at the hand of the adults, not the children (13). The Salem trauma was prompted by conscious institutional endorsement. It comes as no surprise then that the Salem witchcraft hysteria, which was "regulated by England law and custom," was also seen as the direct "practice of the courts" (qtd. in Adams 57). While the witch panic can be attributed to the existing beliefs in the dark world, the points of the nature and the process of colonial jurisprudence– deeply matching British common law– were also vital in aggravating the hysterical climate. These two elements tremendously boosted the trials' dramatic effects. Such conceptions will be further illustrated when the issue of coerced confessions is discussed.

It can be argued that instead of functioning as an instrument of justice and trying to decipher the causes of the crisis, the Salem court operated in a way that would lead forcibly to legally institutionalize the myth of witchery. One can understand why it has been argued that the Salem trials have been considered not as a practice of the law, but a practice that "deserv [ed] the name of Salem superstition and sorcery" (qtd. in Adams 29). What happened is that the Salem court of law was unable to translate the real motives behind such critical outburst. The law institution, hence, as Felman would perhaps contend, found itself in a situation of abyss that impeded it to settle trauma in its earliest birth. To better understand the birth of the Salem hysteria, it is essential to look at the legal proceedings that led to the creation of legal trauma whose first clues can be detected from some legal measures and also the attitudes and practices of the authorities.

It should be noted that the Salem authority set up a special Court of Oyer and Terminer to contain the coming danger. Rosenthal points out that most of the interpretations about not using the normal judicial proceedings and the recourse to a special court might be imputed to the disorder in Massachusetts Bay, which resulted primarily from its lack of a

charter. He says that the lack of the colony charter helped to create a "situation of great uncertainty that led to instability in the colony, or as creating a form of legal limbo where the authority to execute witches did not exist" (29). Rosenthal goes on to say that this special court was established not because of the absence of a legal basis but because it "represented a public statement on the gravity of the situation" (194). The Salem witch trials, borrowing Felman's words, represented a "*critical* legal event...and highly traumatic...*cultural crisis*" (4; emphasis in original) that needed the establishment of a special court to handle the prodigious fear and the coming danger.

Although the creation of this special court attempted to use extensive and very formal procedures to judge the presumed witches (Adams 15), those measures were anything but fair. The court did not handle the witchcraft crisis fairly and reasonably. This is mostly apparent with the fact that it was this court that bestowed upon the measure of spectral evidence "an unprecedented status in the judicial process" (Rosenthal 67). In fact, the measure of spectral evidence was a sufficient proof to drive the accused to the gallows if they would not confess their contract with the devil. Resorting to spectral evidence, also "allowed witnesses to testify about what ghosts or spirits, which only they could see, allegedly did to them. Thus witnesses could invalidate an accused person's alibi, because a spirit could appear in one place while the body was in another" (Pavlac 133). Therefore, it was easy to accuse any person of being a witch for there were no strict regulations concerning the accusations. And this may explain the traumatic nature of the Salem trials as the law tried to define something that could be reducible neither to a meaningful language nor to a legal comprehension.

More importantly, the implementation of spectral evidence meant that legal measures had to be applied violently since any accusation consisted of no concrete proof that would endow the accused with the power or the means to stand against the heinous crime of witchery. Also, the recourse to spectral evidence paved the way to the implication of a large

group of people who would use the witch trials for many purposes. In doing so, the corresponding legal procedures served to worsen the situation as the sense of collective conspiracy ultimately found a fertile ground. In this context, Rosenthal contends that the new component that ensued from these trials "concerned the spread of charges and the credibility given by the judiciary to claims of a broad conspiracy of witness" (3). The judiciary in Salem played, in fact, a significant role in enhancing the climate of fear and accusations, adding fuel to the flame of witchery.

In this vein, Bryan Le Beau asserts that the atmosphere in which the trials and the hearings took place was undoubtedly prejudicial. He explains that the number of witnesses and the nature of depositions placed before the courtroom were actually frightening; and, as a whole, they mirrored and exacerbated the intense fear that had come to seize people's lives in and around the Salem village. And that such intense fear, if not near panic, spilled over into the courtroom (183). Consequently, the established special court was highly predisposed to undertake guilt instead of innocence, that is to say, assumptions of guilt were the unofficial rule (183). Because the general mood left no room for any counter-narrative, any accused was forcibly vested with an inescapable association with diabolic practices.

Besides, one of the most pernicious measurements, which enhanced the fatal ending of the Salem accused, can be detected from the attitudes of the court of law toward the helpless defendants who were totally dispossessed of their right to have legal counsels. Apparently, the Salem legal system, in its own right, functioned in a way that made the realization of justice somehow challenging, or more precisely impossible. In this context, Peter Charles Hoffer points out that although there were juries and the government was in charge of the prosecution, however, there were no lawyers for the defendants, and that the ideal of fair trial was overwhelmed by superstition and rumor. Hoffer also contends that the legal cases were dominated not by the book of law, that is, by written rules scrupulously followed by

professional officials of the court, but by folk beliefs shared by judges, jurors, witnesses, and even the accused[6] (vii).

The underlying court structure worked directly to open access to deadly accusations and then executions. That is why the Salem courtroom was described as a theatrical model, a definitely dramatic or misguided one. As Hoffer contends, the real Salem trials were a kind of "dramatic performance," that is, the courtroom was a stage in which the chief characters were "moving about as though they were characters in a play. The judge and jury are the audience and the accusers, accused, and witnesses are the players" (6). One finds that Miller illustrates this kind of performance, particularly in Act Three. In this act, Miller narrates how the girls' show of being bewitched would overpower the defense of the accused, ending up by convincing the judges of the righteousness of the girls' story, or their false accusations. This kind of vivid dramatic and traumatic performance effectively participated in expanding and aggravating the outcomes of the trials, as will be later demonstrated.

Moreover, being in a state of legal trauma the Salem judiciary, and even after the end of the trials, was caught up in another dilemma: that of how to deal with, or to finish, the ongoing prosecutions. Rosenthal describes how the real trials circulated by the end of the hysteria. He says:

> [T]he episode had changed from one active prosecution by the state to a seemingly indifferent bureaucracy processing the remaining victims. People in irons enduring the harsh winter in prison were the residue of the witch-hunt, but the commitment to secure convictions had ended. The traditional skepticism regarding witchcraft charges had reemerged, and the reassessments of what had happened began. (184)

[6.] This can stand as a reminder of the role of the law in dealing with the detainees associated with the attacks of September 11, 2001. In this vein, Judith Butler argues that "What has been striking about theses detentions from the start and continues to be alarming, is that the right to legal counsel and, indeed, the right to a trial has not been granted to most of these detainees"(*Precarious Life* 50). This indeed may point to the sameness of legal rituals in times of great fear.

Having no clue of how to deal with the standing trials for some time can be described as a kind of negative silence of the law institution. Because false accusations and executions had lost their significance and power, the justice system was put at a stalemate. The court was uncertain about the appropriate legal measures that must be taken. This legal uncertainty may significantly point again to the fact of the law's inability to firmly resolve the standing legal cases. And as the law institution had to finish the prosecutions with uncertainty regarding the witchcraft hysteria, this latter— which was unleashed by the motives of insecurity, as already stated— also in its beginning imposed the use of careless proceedings. One of these proceedings was coercive confessions that had to be taken from both the witnesses and the accused.

1.4. *The Crucible* and Traumatic Confessions

Actually, the Salem legal trauma can be disclosed through the discussion of a number of legal measures used to prosecute the accused witches. In an attempt to define the trauma of witchcraft in legal terms and to prove the existence of the unseen enemy, the Salemites made recourse to some proofs and procedures. These included physical evidence such as poppets, the evil eye and touch test, and also hard confessions (Baker 187). In what follows, the discussion will be devoted to the issue of coerced confessions, in order to see a range of false and contradictory testimonies, as well as the implication of other extra-legal motives, such as some hidden personal wishes and political objectives. Such elements will help to shed light on the points of the legal failure, violence, and blindness. However, before proceeding further, it is worth attempting to give a summary of the play.

In short, the story of *The Crucible* starts all with some teenage girls who intend to experience some folk magic in the forest through dancing and conjuring spirits with the black slave Tituba. Their aim is simply to predict their future husbands and fulfill some hidden wishes. Soon, after being caught by the local minister Reverend Parris, whose own child

Betty is among the participants, things turn out to be dramatically different from what was initially expected. The girls start behaving strangely, particularly for not knowing how to explain their deeds. Explanations headed then toward the potential manifestation of the devil, to accusation of witchcraft, to trial, and finally to conviction and execution.

Abigail Williams, a seventeen-year old orphan,[7] who has worked as a servant in the Proctors' house and who leads the girls to the nightfall game, asserts, at the beginning, that her (and the others girls) deeds were mere sports and that Betty fainted when caught dancing because of shock, not out of witchcraft. However, with Parris' fears that his enemies will use the scandal to drive him out of his ministerial office, the situation is going to develop beyond judicious upholding. And under the fear of being labeled witches— a rumor which is already circulating in the neighboring villages— and in order to escape the charges of their concocted story, the young Abigail finds herself obliged to shift the blame to the slave Tituba.

Tituba, similarly, finds herself in a very desperate situation. She is accused by the summoned minister John Hale that she "[has] sent [her] spirit out upon [Betty]," asking her to wake the child and to confess her compact with the devil (Miller, *The Crucible* 40-41). Tituba first tries, hopelessly, to withstand and to deny all of these accusations, affirming that she has "no power on this child" (41). However, when threatened with death, she could not find any solution but to confess something that does not exist and more severely she has not done. Dramatically, her confession is about to start Salem's legal prosecution. This quote, which is given almost at length, illustrates the kind of harsh questions Tituba receive:

[7.] In *The Crucible*, Miller rises the age of Abigail to 17 instead of her real age which is 11. He also waves for an adulterous affair between Abigail and the play's protagonist John Proctor for more dramatic and traumatic significance. This mostly appears when Abigail accuses John's wife of witchery as an act of revenge after being fired from the Proctor's house next the discovery of her affair with the husband.

PARRIS: You will confess yourself or I will take you out and/whip you to your death, Tituba!
PUTNAM: This woman must be hanged! She must be taken and/hanged!
TITUBA, *terrified, falls to her knees*: No, no, don't hang Tituba. / I tell him I don't desire to work for him, sir.
PARRIS: The Devil?
HALE: Then you saw him! *Tituba weeps.* Now, Tituba, I know/that when we bind ourselves to Hell it is very hard to break/with it. We are going to help you tear yourself free—
TITUBA, *frightened by the coming process*: Mister Reverend, I/do believe somebody else be witchin' these children.
HALE: Who?
TITUBA: I don't know, sir, but the Devil got him numerous/witches.
HALE: When the devil comes to you does he ever come—with/ another person? *She stares up into his face.* Perhaps another/person in the village? Someone you know.
PARRIS: Who came with him?
PUTNAM: Sarah Good? Did you ever see Sarah Good with/him? Or Osburn?.../
HALE, *kindly*: Who came to you with the Devil? Two? Three?/Four? How many?
TITUBA: There was four. There was four.
PARRIS, *pressing in on her*: Who? Who? Their names, their/ names!
TITUBA, *suddenly bursting out*: Oh, how many times he bid me/ kill you, Mr. Parris!
PARRIS: Kill me!
TITUBA, *in a fury*: He say Mister Parris must be kill! . . . And I/ look—and there was Goody Good.
PARRIS: Sarah Good!
TITUBA, *rocking and weeping*: Aye, sir, and Goody Osburn.
MRS. PUTNAM: I knew it! Goody Osburn were midwife to me/ three times. I begged you, Thomas, did I not? I begged him not/ to call Osburn because I feared her. My babies always/ shriveled in her hands!. (42- 43-44)

Before discussing Tituba's response to the interrogations, it is useful to shed light on some of the characters that appear in this passage. Such illustrations are vital because Miller displays the prejudices of some Salem villagers behind instructing confessions from Tituba. Apparently, these people would use the motif of hysteria to fulfill some needs and to satisfy some inexplicable misfortunes. For instance, Reverend Parris is described as an anxious person who believes that there is a concocted plan against him to make him leave his position as a minister in a community that does not like his leadership. Thus, the witch hysteria provides him with a suitable occasion to secure his position through the trial proceedings.

Another character in *The Crucible* is Thomas Putnam who because of his search for personal interest, finds in the rising hysteria a way to accuse other villagers, particularly those with whom he is engaged in land disputes, such as George Jacobs. Also, for Mrs. Putnam, it must be an act of witchcraft that is responsible for her seven babies' death. She thus turns to accusation to explain what she considers as inexplicable death of "hearty babies" who died just "at the very night of their birth" (Miller, *The Crucible* 15). Mrs. Putnam is not against sending her daughter to participate in the girls' folk in that she might get an answer by conjuring the dead spirits. And that is why accusing even the old goody Rebecca Nurse, who has a highly good reputation, of the inexplicable murder of the babies seems to find a solid ground that satisfies the family own trauma of children loss.

That being said, the witchcraft accusation becomes for some factions a good opportunity to obtain selfish and personal wishes. What can be learned from these characters is that Miller points to the very abyss of law with regard to its inability to see and detect the hidden motives of some villagers. To borrow Judith Butler's expression, the justice system failed to see "human vulnerability" (19 *Precarious Life*) toward insecurity as is the case of Reverend Parris and "vulnerability to loss" (19) as is the case of Mrs. Putnam. One might argue that it is this unseen or unacknowledged vulnerability that also helped to unleash the Salem tragedy. That is why Miller tries to give a detailed picture of what happened in Salem as much as possible. In doing so, Miller, in one way or another, urges his readers/audiences to think about the impact of hysterical circumstances. More importantly, one finds that the playwright offers some heightened patterns of legal trauma, particularly the issue of coerced confessions.

Indeed, it was under the pressure of the Salem villagers and under the massive threat of being hanged[8] that the slave's (Tituba) testimony turns out to be fragmentary,

[8.] Indeed, Tituba had never been tried by the special court, though she remained in jail for some months for the purpose that she might accuse more witches (Baker 191).

contradictory, and traumatic. As it appears from her testimony, Tituba is obliged to deliver answers that would suit her questioners. In doing so, Tituba, as Felman would describe, is the "failed eyewitness" (81) regarding her inability to narrate that the whole story of what happened in the wood and what the girls are now experiencing is just deceptive acts. With this in mind, one might say that Tituba is Miller's example of a situation of a witness who cannot give a real account of the real events. Tituba, after all, to use Caruth's words, shows her "inability[to] fully witness the event as it occur[ed]" (*Exploration in Memory* 7). Accordingly, one of the Salem legal procedures that may feature the presence of legal trauma emerges from the process of testimony itself.

According to Giorgio Agamben, the word *witness*, which stems from Latin origin, has in fact a double genesis. The first is "testis," which refers to a "person who, in trial or lawsuit between two rival parties, is in the position of a third party." The second meaning refers to any person who "has lived through something, who has experienced an event from beginning to end and can therefore bear witness to it" (17). Although Tituba has witnessed the events from the beginning, she does not embody or perform the real meaning of witnessing. While it is generally accepted that every criminal procedure, or indictment, is supposedly "contingent upon the act of seeing" (Felman 81), however, Tituba is the witness who cannot in any way make the events, in Caruth's terms, "fully known" (*Exploration in Memory* 6). Such inability to deliver an accurate account of the fabricated story of the young girls is what marks the impossibility of establishing justice, launching, thereby, the beginning of one clue of Salem's legal trauma: coercive confession.

Indeed, the black slave coercive confession would contribute to no fair resolution; rather, it would lead to a more coming ordeal that of inflicting punishment on innocent scapegoats. These are people who refused to confess having diabolical possession or

allegiance or refused to cooperate with the court, as is the case of Giles Corey.[9] This person would face a real physical torture for deciding to keep silent and then being pressed by stones until death instead of losing his lands.[10] Miller lets his readers/ audiences to know that the Salem court arrests Giles Corey because of a deposition he has handled to the court. In this deposition, he accuses Thomas Putnam of using his daughter to accuse George Jacobs of witchcraft as an attempt to arrest and incarcerate him in order to fortify his land and sell it to the state at auction.

However, when asked by judge Danforth and judge Hathorne to name the person who delivered him such information, Giles Corey refuses to answer, afraid that his friend will be jailed. The court thus decides that Giles Corey's act is a "contempt of the court" and orders his arrest (Miller, *The Crucible* 89-90). Miller further narrates that Giles Corey would not answer aye or nay to his indictment for if he denied the charge, they would hang him surely and auction out his property. Giles Corey therefore stands mute, and dies Christian under the law. In this way, his sons will have his farm. Miller then concludes that it is because of the law that this man dies "for he could not be condemned a wizard without he answer the indictment, aye or nay" (125).

It should be noted that there were many irregularities in the proceedings in the case of Giles Corey (Le Beau 159). These include mainly the question or the measure of *peine forte et dure*. Such kind of punishment was considered as illegal for there were no laws that expressly provided it; thus, the torture Corey endured was dubbed as cruel and unusual punishment (159). As Baker points out, judicial torture was declared illegal by the General Court in 1641 (33). The case of Giles Corey exemplifies the issue of an illegal measure that

[9.] It has been argued that what makes the Salem witch trials as unique among the annals of witchcraft trials in Western civilization is their response to the issue of confession. What happened in Salem is that the traditional rules whereby confessing witches were executed had been reversed; that is, only those who refused to confess were executed (Rosenthal 28-29).

[10.] Samuelson explains that under the operation of the old common law it was not possible to try any person who would refuse to answer a charge, making the power to confiscate the accused's property unattainable. Therefore, as in the case of Giles Corey, the state could resort to peine forte et dure to induce a confession (628).

was conjured up and manipulated to extract a confession from the accused, leading to his fatal fate.

In his discussion of judicial torture, Brian Levack also explains that this measure —which dates back to Ancient Greece and the Roman Empire— was not always used by courts as a punishment for a given crime. However, as he explains, judicial torture was often used to coerce information from the accused or headstrong witnesses. This type of torture is known as "interrogatory" torture as opposed to another type: "retributive or punitive torture" (80-81). Resorting to such procedure entails, indeed, the inability of law to effectively deal with the witchcraft accusations as legal torture was used beyond its real purposes. This also implies that the more unstable and insecure the country (as was the case in Salem), the more legal torture it would use (on nonconformists) as a way to establish order and security.

The whole procedure of putting the accused under violent torture (including psychological one) is problematic. What makes the case of Giles Corey so traumatic is that his guilt was never decoded. In Corey's case, the infliction of pain is a kind of extreme violence in the sense that legal torment has little or nothing to do with the guilt or innocence of the accused. Indeed, the main purpose centers on oppressing nonconformists. As will be shown, the Salem court would punish those who would show deviance. The application of the law does not always seem to serve the ideal of justice. Accordingly, one could say that Giles Corey is a salient victim of the criminal justice system which presses him to death under the demands of a nullified law. The tragic death of this character may point to how the law itself can be a kind of inexplicable vehemence. Corey's case presents a lucid example of the notion of the violence of law.

It should be noted that legal scholar Robert Cover contends that violence is inherently attached to the practice of law, especially that of legal interpretation or the process of judging. He clearly writes that judicial pronouncement or interpretation "takes place in a field of pain

and death. This is true in several senses. Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, and even his life" (1601). According to Cover, violence is a common element of laws' interpretations. It is the inherent legal mechanism that often results in real physical pain and concrete loss. In other words, a legal interpretation can be extremely traumatic.

Felman notes that trauma theory has an important relation to legal studies. Following Sigmund Freud, she explains that trauma, both individual and collective, is "the underlying reality of the law" (172). She goes on to say that every criminal offense, as well as its legal remedy, is literally a trauma since the legal consequences are always about death, loss of property, loss of freedom, fear, shock, physical and emotional destruction (172). Trauma cannot be separated from the law for the reason that legal processes can be in themselves violent as well as injurious. One could definitely notice the extent to which Giles Corey's imprisonment, torture and then death epitomize and capture the idea of the legal violence, let alone the psychological pain he first endures before he dies regarding the burden of keeping his land for his sons. Yet, against the law's damaging power, Giles Corey chooses not to harm his family or sons. In doing so, he does justice to them by preserving their inheritance.

It is worth mentioning that Cover— by referring to Victor Navasky—also writes that the use of torture as an interrogation measure is in fact hardly designed to stimulate information. The measure of torture is, more usually, intended to reveal the end of "the normative world of the victim," that is, the end of what the victim does most value, ending or disintegrating by that not only the victim world but also the bonds that hold the community together (1603). According to this assumption, the use of both torture and coerced confession

as legal processes to extract information or confessions from the accused, as depicted in *The Crucible*, is a way to destroy the very sense of the Salem community itself.[11]

With regard to the notion of physical pain that Giles Corey endured, as one brutal act which can be committed against a human body, and also the issue of coerced confessions, the reference to such violent measures, in *The Crucible*, indicates the frailty of the law itself. The violence of law is also attached to some extent with an inexplicable level of weakness, at least in this case, for the harsh legal procedures were imposed without insight and ended up without resolution. The law did not succeed in taking a word from Corey, and it is this personage who dominated at the end; Corey consciously decided to die as a hero. The court, however, showed its weakness. It is this weakness to fairly handle the witchcraft hysteria which would lead to a web of many breakdowns, uncontrolled fear, and many other irregularities. As will be demonstrated, punishing the accused of witchcraft is not going to be traumatic to the victims alone; rather it would affect the whole members of the community, including some legal agents.

1.4.1. The Law Nature and its Representatives

In this part, and in order to further expose the idea of Salem's legal trauma, a discussion of some of the legal representatives (those who are directly involved in the pronouncement of the law) seems necessary. The objective is to shed light on how and in which ways the witchcraft hysteria affects both the bearers of law and also the legal proceedings. Particularly, this will be done by investigating two important legal figures in Salem's courthouse: Reverend John Hale and Judge Danforth. The two men, who stand to represent two conflicting views and competing narratives in the same court of law, do draw an image of a legal crisis or dilemma.

[11.] As Miller notes, the Salem trials are characterized by their "most common experience of humanity, the shifts of interest that turned loving husbands and wives into stony enemies, loving parents into indifferent supervisors or even exploiters of their children", that is, the breaking of charity with one another (*Timebends* 335).

Reverend John Hale comes at the beginning of the Salem hysteria with great confidence in the power of his knowledge of the dark world and in his ability to evaluate whether witchcraft is running in the village; however, his voice and mission to detect the presumed witches will soon fade. This happens when the trials unfold, and the prosecutions start to take illogical and dramatic schemes. Miller describes Hale as a man who enters Salem armed with his loaded books which are so because "they must be; they are weighted with authority" (*The Crucible* 36). But the knowledge of Hale (and his heavy books) offers no help to the miserable innocent accused. His help will participate in condemning them as his investigation first launches the trials and then enlarges the scope of accusations. Actually, the heavy books forestall the heavy bulk of Salem legal trauma. The question that one should pose here is: Does the law in Salem (through the figure of Hale) have only a symbolic connotation?

Clearly, the answer can be strongly positive, especially in view of the fact that the Salem legal institution operates violently and blindly. As already stated, some laws in Salem are not applied with, and enforced by, judicious testimonies and evidence. Stephen Marino rightly observes that ironically the word *weight*, in the whole play "never directly describes the law," especially with Hale's recognition that "the weight of the court and law is now outweighing the weight of his authority" (176). Marino further explains that the law in Salem is now operating on its own without the benefit of the "religious truth," that is, without the religious authority and knowledge of Hale, suggesting that there must be a balance between law and religion in the theocratic Salem or the result will be tragic (176). Hale has been summoned by the Salem authorities to benefit from his insight to discover the truth and help the justice system. But, this system chooses rather to diverge from the existing norms. As such, in Salem, the application of the law is nothing more than a fragile or an empty rhetoric, that is, a way to serve some agendas.

As noted earlier, it was under Hale's severe questioning and threatening voice that Tituba admitted to having compacted with the devil, which led her to accuse others of signing the book of the devil. However, because of the crisis of witchery and its consequences, and after detecting the falseness of the girls, Hale comes out “to question his own beliefs” (Mason 119). This appears when he finds himself compelled to try to make the accused confess. And he does so not because he is the servant of the law or the man of God, but to save innocent lives. By the end of the play, Miller narrates how Hale ends up realizing his blind-misguided investigations, through two occasions. The first one is when he fails to reveal the girls’ false testimonies; the second one is when he fails to detect the villagers’ multiple hidden objectives. Within such dynamics of personal and professional failure, it is the truth that has been severely damaged. And, for Reverend Hale, this is but a further failure and great pain for not being clever at detecting the real motives of the accusers from the beginning.

In this respect, Jeffrey Mason comments that “Hale suffers because, in his zealous innocence, he fails to perceive that disagreement and contention derive the life of the community and that villagers have displaced much of their antagonism toward each other by making the devil their scapegoat” (120). What Hale recognizes, extremely belatedly, is his inability to distinguish between victim and offender. Hale also fails to recognize that the law can be used viciously to achieve selfish and greedy desires. It is his investigations that helped to raise some voices that would create and bring about a legal trauma whose features first appear through covered scapegoating. Hale’s misguided investigations point to the tragic failure of his presumed knowledge. And this would lead to dire consequences as wrong convictions would cost the lives of innocent people. Hale, the keen knowledgeable man, turns out to a suffering person who loses faith even in the very logic of the institution of law: delivering truth and following due process.

Miller— by the end of his play— points to how Hale tries to urge Elizabeth Proctor (and also the other accused) to convince her husband to give a false confession in order to escape death. He opines her: “cleave to no faith when faith brings blood. It is a mistaken law that leads you to sacrifice….Life, woman, life is God’s most precious gift; no principle however glorious may justify the taking of it” (*The Crucible* 83). Demanding false confessions from the convicted is Hale’s only means to apologize. It is also his sole way to seek a kind of reparation. Being trapped in such psychological torment Hale goes further to consider the nonexistence of any moral law which might force a person to risk his / her own life. In trying to convince himself and the others that the belief in some moral laws is definitely useless when traumatic consequences triumph, Hale falls prey to the very legal trauma he has just become aware of.

Commenting on the unsettling status of Hale, Mason argues that the appeal of Hale to Elizabeth is an expression of guilt (132). The minister’s admission of his own guilt alludes to both his personal ordeal as well as to the Salem legal trauma. Hale painfully realizes that his knowledge of the existence of the dark world in Salem is meaningless. The heavy books of the well-skilled in demonic sciences, which seem to give no help in trauma resolution, are indeed deprived of any moral and legal consideration. Besides, Hale recognizes the fact that the judiciary is prone to enact and reenact traumatic consequences as much as the fraud accusers. It might be argued that the impact of the Salem legal trauma succeeded in casting its heavy shadow on the man’s God. Once again, in finding no solution to the traumatic proceedings of the court, which Danforth’s court is absolutely fashioning, Hale desperately tries to save the accused who refused to confess by pleading Judge Danforth to forgive them.

Judge Danforth, however, one major figure in Salem courthouse, is determined to go as further as he could to enforce his authority regardless of the extent to which dramatic

consequences his court might engender. To Hals's clamors for forgiving the accused, the judge sharply responds:

> Now hear me, and beguile yourselves no more. I will not receive a single plea for pardon or postponement. Them that will not confess will hang. Twelve are already executed; the names of these seven are given out, and the village expects to see them die this morning. Postponement now speaks a floundering on my part; reprieve or pardon must cast doubt upon the guilt of them that died till now. While I speak God's law, I will not crack its voice with whimpering. (Miller, *The Crucible* 119)

In Danforth's reasoning, speaking God's law resists any alternative reassessment of the cases, and nothing would and could dissolve his own resolution. His understanding of the law comes certainly at the expense of justice.

Moreover, Judge Danforth (earlier in the play) confidently reminds his audience that "near to four hundred are in the jails from Marblehead to Lynn, and upon my signature... . And seventy-two condemned to hang by that signature" (81). Judge Danforth's words do painfully exercise violence and engender death as he, to use Cover's words, transforms "language into action" and "word into deed" (1612). The judge, in other words, is determined to advance his power, dangerously boosting his misguided and violent judgments. Acting as such, Judge Danforth affirms again that his court of law is definitely "grounded in the sanctioned legal violence it has the power (and sometimes the duty) to enact" (Felman 152). Whether the Salem judge is aware of his legal violence or not, his court of law is deeply associated with pain and death. This clearly appears when he admonishes: "I should hang ten thousand that dared to rise against the law, and an ocean of salt tears could not melt the resolution of the statutes" (Miller, *The Crucible* 119). The judge is willing to sacrifice countless lives just in order to popularize for and legitimate his authority. The effort of the judge to solidify his power by extending his deadly verdicts is in fact an unquestionable enforceability of the word of law.

In other words, Judge Danforth is indomitable to advance and apply blind procedures. The Salem judge believes that law, to use Jacques Derrida's words, is "always an authorized force, a force that justifies itself or is justified in applying, even if this justification may be judged from elsewhere to be unjust or unjustifiable" (5). Actually, for Derrida, the institution of law has a crucial link to force, violence, and power (6-13). As he declares, even though there are some laws that are not imposed,[12] basically any law is endorsed with a certain force be it "direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative" (6). According to such assumptions, Danforth's act of enforcing his authority is in fact a process of institutionalizing and validating the violence of the law with all the possible outcomes. However, the problem in Salem is that judge Danforth deliberately decides to endow his court of law and his authority with an unchallenged and inexplicable force.

Actually, another image of Judge Danforth's sanctioned violence and blindness on the accused of Salem, representing a clear case of miscarriage of justice, appears in Act Three. While critically alluding to the "prodigious fear," which is overwhelming the court as well as the whole country (Miller, *The Crucible* 90), Hale begs judge Danforth to let John Proctor have a lawyer. According to Hale, the accused cannot handle the weight of witchcraft accusations. Yet, the plea of Hale for legal counsel falls on deaf ears. After reminding Hale of his long-serving duty as a judge, judge Danforth replies with an extended statement, preaching about the uselessness of having a lawyer in such a crime. The judge confidently says:

[12.] Such conceptualization seems to find substantial meaning in the case of Giles Corey.

> [W]itchcraft is *ipso facto*, on its face and by its nature, an invisible crime, is it not? Therefore, who may possibly be witnesses to it? The witch and the victim. None other. No we cannot hope the witch will accuse herself; granted? Therefore, we must rely upon her victims-and they do testify, the children certainly do testify. As for the witches, none will deny that we are most eager for all their confessions. Therefore, what is left for a lawyer to bring out? I think I have made my point. Have I not?. (Miller, *The Crucible* 93)

If the Salemites accused of witchcraft had granted legal help, the Salem court could have in effect saved due process and established a little amount of justice. That being said, the function of the Salem court of law is again problematic as it denied any chance for innocence, and this leads one to pose hard questions about its proceedings, particularly when considering the traumatic fate inflicted on the accused.

1.4.2. The Accused versus the Law Objectives

In *The Crucible*, Miller draws attentions to how the Salem trials unfold in order to indict the accused blindly and violently. Miller's narrative is firm and clear: the Salem courthouse does not intend to punish the accused for being basically alleged witches, yet for showing emblems of dissent. Miller notes to his play overture the motives behind the Salem trials. As he writes, "Evidently the time came in New England when the repressions of order were heavier than seemed warranted by the dangers against which the order was organized. The witch-hunt was a preserve manifestation of the panic which set in among all classes when the balance began to turn toward greater individual freedom" (*The Crucible* 6). In Salem, the law is going to be not an asylum to secure fair proceedings rather a crucible by which to eliminate nonconformists.[13] It is the tension between the need to keep the established order and the demand for securing individual freedom that triggered the Salem tragedy.

Regarding the relationship of individuals to their society, Barry Schaller mentions two important dimensions that govern such a connection. The first involves the balance of power

[13.] Ronald Christenson classifies the Salem witch trials within the category of potential political trials (*Gordian Knot* 305). He also reports that the Watergate events and the Salem trials are somehow identical since the punished and the defamed were innocent (87).

between the two parties; the second is the simultaneous attraction- rejection between the two identities of individuals: independents and conformists (12). The main objective of any government is to keep the status quo through maintaining a kind of balance toward its citizens. Thus, problems may surface when authorities assume that something is going to shake that order or balance. Tensions may escalate when nonconformists appear to represent a certain level of potential threat that could or might shake or imperil the existing norms or order. In Salem, the accused and their prosecutors significantly reflect these two types of independents and conformists. Such an antagonistic relationship leaves no room for another alternative to consider the innocence of the accused as Miller highlights.

Through the character of John Proctor, Miller exhibits a strong example of the spirit of dissension, and also stresses the amount of injustice that nonconformists may receive from the law institution. John Proctor's personal conviction and resistance put him in direct threat with the web of order and power, already shaken. In *The Crucible*, the idea of the intention of the accused to overthrow the court is so much often raised. For instance, the minister Parris asserts that "They've [the accused] come to overthrow the court" (82), and that "He's [Proctor] come to overthrow this court" (85). Similarly, Danforth insists on asking John Proctor of whether he has "any desire to undermine this court" (83). However the fact that the charges of witchery can dangerously put innocent lives at the edge of the noose, all that troubles judge Danforth is the potential outcome the trials may have on the credibility of his standing court.

This, in fact, explains the judge's refusal to see or to reconsider any evidence or new testimony against the given accusations, creating and enhancing therefore the notion of legal trauma. Legal trauma is perhaps mostly apparent when John Proctor approaches the court with a written deposition signed by ninety- one villager. In this "sort of testament" all these people, ranging from landholding farmers to members of the church, declare their good

opinion about his wife, Rebecca, and Corey's wife (Miller, *The Crucible* 86). However, this piece of testimony which is, according to Hale, kind of "defense" and not necessarily "a clear attack upon the court" (87) and though the court initially approves Hale's view, judge Danforth chooses to opt for a different view.

The Salem judge finishes by saying that one "must understand... that a person is either with this court or he must be counted against it, there be no road between" [14] (87). Through this statement, judge Danforth, in fact, lays out the reasoning for his court of law: there is no other testimony that can stand against the girls' accusations. Therefore, no deposition can overweight the word of the accusers. In other words, any person who might dare challenge or destabilize the court's reasoning— or the credibility of the girls' testimonies— is unquestionably under legal prosecution. The judge cannot see versatile forms of facts or pleas, hindering and endangering thereby his ability to objectively see the very truth behind the conflict.

In this respect, Marino explains that, as a chief magistrate, judge Danforth has the power to decide guilt from innocence; yet, his burning fire is not that of "a crucible of truth and religious purity, but rather for the political punishment of innocent people unwilling to bend to the will of the state" (167-168). As Danforth's burning fire is not directed in favor of establishing justice and seeking the truth, a blind justice will ultimately result. And more importantly, legal trauma will prevail. Indeed, the motives of incriminating the presumed witches extend to be extremely violent intended only to remove voices that do not match the court's language, reasoning, and objectives. Therefore, and because "his chief concern is perpetuating his political power" (McConachie 269), any procedure that will help judge Danforth in that endeavor is not to be missed.

[14.] Danforth's binarism still strongly reverberates in modern times. It has prompted Richard Eyre (British director of the 2002 Broadway revival of *The Crucible*) to say that Danforth's statement is similar to attorney general John Ashcroft's commenting on the Patriot Act after 9⁄11 that "civil-rights activists who question or oppose the legislation are giving aid and comfort to the terrorists" (qtd. in Polster 138).

In Salem, the mere refusal to acquiesce to the letter of the law, which imposes enforced confessions, constitutes, in its own right, a danger to the standing authority. And this again explains Danforth's continuous, oppressive requests to take a confession from the defendants who, by rebuffing to do so, stand apart from the dominant juridical apparatus and political authority. However, as a call for the necessity to withstand such violence, one finds that Miller traces how his protagonist, John Proctor, defies the court's authority. Miller makes of John Proctor that kind of a witness who firmly refuses to be part of the court's inflicted injustice, mainly that of confessing and incriminating others. In doing so, John Proctor not only resists oppression but he also stands as a conscientious dissenter (such is the case of the Catonsville Nine, as will be discussed in the second chapter).

Nevertheless, John Proctor's decision to break the chain of lies and their underlying measure has not been an easy journey. This can be seen through his ordeal to give the court a false confession, the only *legal* means that allows him to escape the gallows. It should be noted that under many pressures John Proctor confesses to having compacted with the Devil. As he says, "Nothing's spoiled by giving them this lie that were not rotten long before," and then he adds "It is hard to give a lie to dogs" (Miller, *The Crucible* 126). The play's protagonist in a moment of despair and weakness confesses the imposed crime, helplessly trying to find a way that would fit the language of injustice and of the law's treatment of nonconformists. But, to give a written confession that will be put on the church's door is unquestionably beyond John Proctor's moral abilities.

By deciding not to succumb to the court's irrationality, John Proctor finally cries out: "Because it is my name! Because I cannot have another in my life! Because I lie and sign myself to lies! Because I am not worth the dust on the feet of them that hang! How may I live without my name? I have given you my soul; leave me my name!"(Miller, *The Crucible* 143). This character— including the other innocent accused who refused to confess— courageously

decides to die according to his own laws. One might argue that by choosing to sacrifice his life, John Proctor, as a martyr, accentuates that "in the face of overwhelming force that if there is to be continuing life, it will not be on the terms of the tyrant's law" (Cover 1604). In other words the play's protagonist chooses his own death instead of being prejudiced by a violent law and blind legal proceedings.

What is, indeed, noticeable about the attitude of Miller's hero is his premature awareness and understanding of the condition of legal trauma in the Salem courthouse. This can be grasped in the instance in which he strongly and angrily addresses judge Danforth by saying:

> A fire, a fire is burning! I hear the boot of Lucifer, I see his filthy face! And it is my face, and yours, Danforth! For them that quail to bring men out of ignorance, as I have quailed, and as you quail now when you know in all your black hearts that this be fraud- God damns our kind especially, and we will burn, we will burn together!. (Miller, *The Crucible* 111)

Ironically and metaphorically, the protagonist of *The Crucible* can now hear and see the devil, a claim he has long denied. To borrow Felman's words, one might ask: "What is this insight [Proctor] tries desperately to articulate, but which remains deprived of legal language, this speechless, inarticulate, unheard, excessive truth, which remains outside the hearing of the court…?" (86). Obviously, John Proctor hopelessly attempts to remind the Salem judge of the dangerousness of being a participant in enhancing hysteria and dismissing truth, an act that should be in itself associated with the devil. Although John Proctor's statement reflects a self-conscious blaming, it also calls for self- searching so as to be able to clearly see truth and then to establish justice. One can realize here how powerful legal trauma is, especially when regarding its impact even on the well-endorsed in witchcraft issues: Reverend Hale.

Apparently, hysterical conditions may lead to incomprehensible realities or more precisely difficult choices. As Arthur Neal puts it, traumatic conditions can damage the moral

and ethical foundations of citizens (80). Therefore, truth and justice can be easily destroyed if there are no persistent, sincere questionings of one's ethical choices. Miller, indeed, exposes in his dramatic work such kind of moral dilemma through John Proctor who undergoes two real tests. The first one is his severe crucible when confronting the colony's unfair norms that oblige him to confess the crime of witchcraft, an act he did not commit. The second test is his struggle to apply his own conception of justice and truth, conclusively determining his personal integrity (as well as of other people). But, John Proctor's decision not to tarnish justice and obscure truth has been a real torment.

John Proctor's painful decision to resist the violence of law—in choosing between whether to give the court a false confession and survive or to maintain his innocence and die tragically— has been a real moral dilemma. What Proctor eventually realizes, as his wife Elizabeth addresses him, is that there is none magistrate, but that sitting in his heart (Miller, *The Crucible* 52). John Proctor consciously decides to step aside from the Salem court's application of a blind and violent law. Although his guilt is legally admitted, which is foreign to any sense of justice, Proctor refuses to surrender to the law's transgressions. And although the word of law imposes the hanging of the accused (those who refused to subscribe to the court's condition) — which is incontestably oppressive—John Proctor's choice to follow his own mind and moral law ultimately frees his name and soul. "He have his goodness now" (134), as Elizabeth Proctor honorably describes her husband's choice to die. Yet, the tragic death of the play's protagonist reflects the trial's process deficiency, that is, the court's inability to fairly handle and contain the issue of the witchcraft hysteria.

Accordingly, it might be tempting to say that John Proctor "ends up being himself a murdered victim of a persecutory culture that masquerades itself as trial and of a law that masquerades its crimes as questions or procedural legalities and legal technicalities" (Felman 17-18). With the fact that legal rules can be blindly applied to some realities, nevertheless,

Miller defends the idea of the existence of some moral laws that must govern and determine human actions, transcending thus some unjust laws, even at the expense of risking one's own liberty or life. In refusing to be part of the chain of lies, false confession and violent law, Proctor's martyrdom, as Bruce McConachie advocates, "encourages the audience to identify with this group of witnesses," and opposing Salem corrupted members (269). In fact, Salem's legal trauma, to some extent, has been challenged through the resistance of the executed innocent. Their death symbolizes not only legal drama and trauma but much significantly an emblem of martyrdom; this latter is in fact "an extreme form of resistance to domination" (Cover 1605). Through John Proctor's resistance, Miller highlights the importance of measuring one's own consciousness in the midst of political and social turmoil in which taking sides will be extremely imposing and traumatic.

In fact, one becomes able to discern between different types of people through the tragedy of Miller. First, John Proctor and the other accused, who refused to give up their conscience to their witch-hunters, are the ones who stood against the court's legal trauma. Second, the law's representatives like Deputy Governor Danforth and Reverend Parris chose to undermine the law instead of serving it. And since the position of the two adult groups has been discussed, it is necessary to shed light on the position as well as the role of the girls, or, as McConachie designs them, the "protofascist bund" (270) regarding their considerable role in launching Salem's legal trauma.

1.4.3. The Law Blindness to the Accusers' Fraud

Usually, in colonial New England and under the English colonial law, only free white Christian men were permitted to exercise the various aspects of social life (Wolcott and Head 9). And there were certainly other oppressed classes, chiefly women who were "excluded from participation in most government functions and subject to their husbands in most legal matters" (9). So, by the norms of the time, women were voiceless and disempowered in this

religious community. And more dramatically, some crimes, specifically witchcraft, were essentially linked to women. Lawrence Friedman points to the law's gendered implication of the issue of witchcraft. He explains that most of the accused were female, adding that the war against witches was also a war against women (55). Friedman also notes that the burden fell most heavily on the lower orders: servants, slaves, and the young (31). In addition to being voiceless, women, slave, and the young rendered vulnerable by the law and this by having the stigma of potential offenders. Aware of such oppressive conditions, one can understand why a necessary demeanor for these factions during the outbreak of Salem witch trials was how to be immune to accusations as much as possible.

This oppressive image can be grasped in Miller's play through the characters of the young girls. Miller's female characters are portrayed within the Puritan framework of a firm, oppressive society. He describes the young girls through Parris's eyes as children who should be "anything but thankful for being permitted to walk straight, eyes slightly lowered, arms at the sides, and mouths shut until bidden to speak" (*The Crucible* 3). But, the image will soon alter with the rise of the witchcraft hysteria. Giving them the grade of witnesses, which is a major procedure in any criminal case, the young girls would seize the opportunity to overthrow their miserable conditions, however violent it might be.

As Miller explains, the witchcraft hysteria is "a long overdue opportunity for every-one so inclined to express publicly her/his guilt and sins [and vulnerability], under the cover of accusations against the victims" (*The Crucible* 7). The young girls swiftly understand the power of accusations. They would make use of the nature of the colonial criminal justice system that used to oppress and neglect them to cast away the shadow of their weakness by accusing others. Because of the witchcraft hysteria, the young girls would become both *holy* unquestionable accusers as well as witnesses. More remarkably, the rise of the Salem hysteria is at the edge of changing the position of these voiceless young adolescents— who are seen as

measly children— to a prestigious and unprecedented status, leading them to taste the sense of power that they have never experienced.

Two exemplary scenes can serve as an illustration of the girls' change in position. The first one is about Mary Warren (a servant who replaces Abigail in the Proctors' house). Miller describes how Mary daringly refuses to obey her employer's order (Elizabeth Proctor) not to leave the house. Elizabeth explains to her husband, John, Mary's reaction and the power she is now enjoying saying that "It is a mouse no more. I forbid her to go, and she raises up her chin like the daughter of a prince and says to me, '"I must go to Salem, Goody Proctor, I am an official of the court!" (*The Crucible* 50). If the law is king, Mary is now a princess and an officer by the power of the same law that used to oppress her voice. It is, indeed, to a some degree, sardonic that the oppressed and silenced girls are now given a voice and holding a privileged status by the same legal system, a total contradicting image to the norms of the age.

The second example is also related to Mary Warren. On being asked by Elizabeth about the person who has accused her of witchery, Mary fearlessly responds by saying: "I am bound to law, I cannot tell it," adding that "Four judges and the king's deputy sat to dinner with us but an hour ago. I would have you speak civilly to me, from this out" (Miller, *The Crucible* 57). Mary demands by the name of the law to be regarded differently for the fact that she is now sitting with the law's bearers. This girl is now better equipped to self-confidently address her mistress because she has been accorded a status by which she feels self-worth and self-secure. Mary comes, in other words, to realize that "Power and safety rest in the established legal authority of the theocracy, so the closer a citizen can come to the judge's seat, the more securely he'll sleep at night" (Mason 116). Being in close position to official leaders will heavily underscore the girls' testimony over any accused's word. More than that, the girls' voice will be considered as the absolute truth.

This is strikingly apparent in Act Three when judge Danforth announces that "the entire contention of the state in these trials is that the voice of heaven is speaking through the children" (Miller, *The Crucible* 82). Such pronouncement from the judge is in fact reckless and generalized. Moreover, not only is the judge's statement blind, but it is also a direct encouragement to the girls to pursue their fraud. However, if the Salem legal system fashions the young adolescents as legal agents whose words unquestionably hold the voice of heaven, it dramatically triumphs a voice of fire and death. It is in fact the status of the court toward the young girls' story that features its own crisis or traumatic failure.

One instance that demonstrates this claim is the element of using testimonies according to some personal prejudices, not according to the voice of reason and impartiality. In hope of finishing the illogical allegations and state the facts, John Proctor tries to address the court with the evidence of the girls' false claims through Marry Warren's signed deposition. In this deposition, Mary tells the verity, confirming that she has never seen spirits and she and the other girls have been just pretending. That is to say, a new testimony by one of the very accusers emerges to be highly reconsidered. This testimony powerfully contests the other girls' voices, remarkably exposing a statement which is contradictory to the previous one. However, judge Danforth replies by saying: "Now, Mr. Proctor, before I decide whether I shall hear you or not, it is my duty to tell you this. We burn a hot fire here; it melts down all concealment" (Miller, *The Crucible* 83). The judge's willingness to melt down any concealment is not directed at the constructed lies of the accusers, but typically against the benefits of the accused. As such, the court dissolves and violates one of the accused's major rights: to be in equal position to their accusers.

It can be argued that at this juncture of over-posing the word of the accusers upon that of the accused any "effort to obtain both light and sight" (Felman 89), in Salem's courthouse, is impossible. Being unable to impartially decide on contradictory testimonies does indeed

feature and further the weakness of the justice system. And always within Felman's terms, this can be interpreted as a *flaw* or an *abyss* that "dynamically resists the trial's search for legal visibility" (89). This kind of abyss of legal invisibility would indeed prompt the court's ineffectiveness to deal with the girls' pretense, putting the law in a fragile position toward the imposing trauma and its outcome. It should be noted that although Deputy Danforth shows some consideration to the announcement of Mary's new testimony, he does nothing to help contain or stop the allegations, or at least make a review of the facts. The judge refuses to take any step to investigate the possibility of the deception of the girls. Miller describes the scene through the mouth of Danforth as follows:

> Now, children, this is a court of law. The law, based upon the Bible....children, the law and Bible damn all bearers of false witness. *(Slight pause.*) Now then. It does not escape me that this deposition may be devised to blind us; it may well be that Mary Warren has been conquered by Satan, who sends her here to distract our sacred purpose. If so, her neck will break for it. But if she speak true, I bid you now drop your guile and confess your pretense, for a quick confession will go easier with you. *(Pause)* Abigail Williams, rise. *(Abigail slowly rises.)* Is there any truth in this? (*The Crucible* 95)

What can be implicitly understood from this statement is that judge Danforth's court of law does not and will not accept any testimony other than already given. Though the judge alludes to the possibility of Mary's new testimony truthfulness, he, at the same time, urges the girls to consider the horror and the consequences of their allegations. In other words, Danforth's demand is paradoxical for it encompasses a clamor for telling the truth and a clamor that prohibits it. The judge willingly refrains from investigating the girls' possible perjury. In fact, to admit that the girls are lying is tantamount to acknowledging his misguided judgments or more precisely his blind reasoning, a step Danforth would never risk to take.

After reaching the conclusion that hysteria in Salem has been deeply entrenched, becoming uncontrollable and incommensurable, Abigail— who now possesses the power of being a generator of hysteria (and somewhat legal trauma) and who has also come to notice

the weakness of the judiciary structure—responds strongly to judge Danforth's warning with the same tone or more precisely with a sense of retaliation. This is apparent when this young girl considers the potential threat Mary's new testimony may have on the court's decision. Miller narrates:

> ABIGAIL: I have been hurt, Mr. Danforth…— and this is my reward? To be mistrusted, denied, questioned like a—Danforth, *weakening*: Child, I do not mistrust you— Abigail, *in an open threat*: Let you beware, Mr. Danforth. Think you to be so mighty that the power of Hell may not turn your wits? Beware of it!. (*The Crucible* 100)

Having savored the sense of power, Abigail is subsequently able to go far and defend her lies until the end. She tries to master the court's process and scheme, determined to resist any counter-narrative. Therefore, this young woman inevitably finds herself in the prerequisite of performing the trauma she has already inaugurated with her peers. In what follows, Miller displays a compelling bewitchment spectacle executed in the court of law by Abigail and her accomplices. It is such a strong performance that not only leads Mary to succumb to it, but it makes of the judiciary itself to be a place of trauma rehearsal. Miller illustrates the playing-act of Abigail:

> There is— *suddenly, from an accusatory attitude, her face turns, looking into the air above— it is truly frightened*.
> DANFORTH, *apprehensively*: What is it, child?
> ABIGAIl, *looking about in the air, clasping her arms about her as though cold*. I—I know not. A wind, a cold wind, has come. *Her eyes fall on Mary Warren*… The wings! Her Wings are spreading! Mary, please, don't, don't!... She's going to come down! She's walking the beam!. (*The Crucible* 100, 101,109)

In seeing her lies coming to disintegration and then performing a strong act the girl successfully overrules any rivalry. Her act comes to be considered as an irrefutable proof of the presence of Devil, leading Marry to collapse— after her attempts to convince the court of, and to resist, the girls' pretense. In a following dramatic scene, Mary accuses John Proctor of witchcraft, yelling at him: "You are the Devil's man." Mary then continues her accusations saying that John wants her name and that he threatened her with death if his wife is to be

hanged, urging her to go and overthrow the court. (Miller, *The Crucible* 110). At this moment, judge Danforth considers the words of Mary and the whole unfolding performance of the other girls as the final truth or evidence. The Salem court deliberately chooses to suffocate justice, falling thereby prey to that kind of misguided judgment and to legal blindness.

Not surprisingly then that such legal blindness leads John Proctor to achingly cry "God is dead!" (*The Crucible* 111). What is obviously dead in Salem village is justice itself. Justice is dead because the law's representatives could not see, first, the great fear and hidden motivations behind accusations and, second, the girls' pretended show. It is through the process of the trials that the whole fictitious witchcraft story has been validated. A story dramatically and fully based on unreliable testimonies, and at the same time deprived of any fair or reasonable closure. One might argue that in its attempt to judge between opposed testimonies, the Salem court eventually "submits to the effect of trauma instead of remedying it" (Felman 122). The court could neither handle nor accept the fact that the witchcraft hysteria or trauma has been given much more weight, getting thereby the superior word, undermining any reasonable reassessments or fair proceedings, and radically leading a small group of teenagers to become major players in the legal pronouncement.

Finding themselves at the end of the chain, and because of the heaviness of the witchcraft charges and the need for spectral evidence, the young teenagers became participants in the judicial process, carrying with them their own psychological prejudice of fear and vulnerability. Again, to relate this to an insight offered by Butler, one could argue that through the court proceedings the Salem's girls finally found the "possibility of appearing impermeable, of repudiating vulnerability itself" (*Precarious Life* 42), and much more importantly, they seized the opportunity for "becoming violent" (42) themselves. In an atmosphere in which accusations depend merely on spectral evidence or simple verbal utterances, the afflicted young girls and by the pronouncement of the law translated the

witchcraft hysteria into genuine performance. This latter come to be considered as an unchallenged reality, influencing and convincing the Salem court of law of their fabricated story.

The Salem court of law symbolizes a justice system trapped in its own legal ordeal regarding its inability and unwillingness to read properly, and to melt down, the young girls' deception. Moreover, and in Felman's term, one might argue that the justice system in Salem "compromised not only the integrity of the [accused], and not only the integrity of the legal process, but also the integrity of truth itself" (92). Apparently, for Miller, because the justice system in Salem was unable to see the truth that of detecting the fraud of the accusers or, at least, to even reconsider the possibility of the defendants' innocence, the Salem court certainly created its own traumatic legal experience.

As Miller implies in his play, by becoming the sole legitimate and authoritative voice, the girls did not only seize and control the word of the law. More importantly, the engendered legal trauma will become often doomed to appear in the years to come in American history. And this whenever the idea of evil or enemy arises, regardless of any other shape or form and no matter what path it takes. In other words, the specter of the Salem trials has become somehow bound to reappear when traumatic conditions, particularly of fear, loom, as Miller wants directly to say through his play. Indeed, one could say that it is within such similar context that Felman advocates for both the concept of legal trauma and her theory of the traumatic legal repetition.

Considering the fact that Miller addresses his contemporary conditions he not only makes a historical-political parallel between the Salem and the Communist witch-hunts, but he also reveals the analogy between a past legal trauma and its potential repetition in different times. Through mainly a historical, legal, and a political new reading of *The Crucible*, one can deduce how Miller describes the repetitive version of Salem's legal trauma. The persecution

of citizens in both historical periods and their corresponding critical legal events deeply affected the judiciary's due process, breeding innocent victims, and terrorizing the whole society. In the following sections, one will try to decipher some aspects of modern repetitive legal trauma.

1. 5. The Communist Witch-hunt within the Concept of Trauma Trial

One of Miller's play well-agreed elements of strength and endurance lies in its parallel to contemporary events of America's Cold War hysteria or as it was known as the Red Scare or the Red Terror. Assembling the events of the conflicting Salem witchcraft trials of 1692 with the 1950s Communist witch-hunts with all their political, social, cultural implications, and legal regulations is what makes *The Crucible* one of the most acclaimed dramatic works. The play is indeed very significant, particularly when it comes to issues of injustice and victimhood. It should be noted that most reviews and scholarly criticism of the play, throughout its earliest productions until recent times, have mostly highlighted its powerful allegory to mid-twentieth-century hysterical conditions. And this parallel between the two historical events will be at the core of the discussion of Felman's theory of repetitive legal trauma.

By situating her study or concept of trauma within the realm of the legal and the literary, in which she confronts evidence in law and evidence in art, Felman introduces her repetitive legal trauma theory. In her distinguished comparison between a modern murder case, the O.J. Simpson trial (1991), which has captured the attention of millions of television viewers, and a literary text, Leo Tolstoy's novella *The Kreutzer Sonata* (1889), Felman sets the ground for her theory. She argues that it is "because of what the law cannot and does not see that a judicial case becomes a legal trauma in its own right and is therefore bound to repeat itself through a traumatic legal repetition." She then adds that legal memory is instituted, in effect, not only by the chain of law or by the conscious repetition of precedents,

but also by a forgotten chain of cultural wounds and by compulsive or unconscious legal repetitions of traumatic and wounding legal cases (57).

According to Felman, law is inherently trauma blind. Therefore, when law is asked to treat a traumatic case, it will inevitably and paradoxically repeat the structure of a previous similar case. And this is what Felman refers to as trauma trial. Felman essentially sees the process of historical trials as being essentially repetitive. Previous traumatic experiences are fated to reappear because they are engraved into the law's unconscious. In this vein, Anne Quéma explains that Felman considers the laws to be complicit with the history of individual and collective traumas and this through forgetting the affective conditions surrounding the legal decisions upheld in the past and which do now constitute legal proceedings as a basis for future cases (80). One major point to be made in the following subsections is how the legacy of Salem witchcraft trials, which seems to be inherited in American history, affected and shaped the modern criminal justice system. Before exploring aspects of the judiciary repetitive legal trauma in the modern times, one needs to situate the play within its current context.

1. 5.1. A Historical Parallel

The Crucible was written in 1952 and performed first in Broadway in 1953 at the height of the great national fear of Communism of the late 1940s and early 1950s in which the government launched an ardent hunt against suspected Communist partisans. As the Salemites faced the threat and punishment of the crime of connecting with the devil, so many Americans in the mid-twentieth century faced a similar position and threat: connection with Communism. Significantly, for Miller the adjacent event that may genuinely translate the American anti-Communist hysteria is the paranoia that raged Salem, Massachusetts. More importantly, and in the context of this study, what is significant about Miller's play is its earliest recognition of the reemergence of the specter of the Salem legal trauma in mid-

twentieth-century American history. In fact, the Salem specter appears to be consistently prone to disturb not only the present but also the future.

As Amy *Ronner* observes, most studies that have revised the red hunters, spawning the government-sponsored terrorism, do also link it to post- September 11, 2001, during which the new restrictions of the Bush administration shackled civil liberties and birthed the mutant USA patriotic Act as the centerpiece of anti-terrorism strategy. Ronner further writes that Miller would probably not contend with the notion that the post- 9/11 paranoia— along with the Executive's craving for debilitating the American Constitution and augmenting state power to investigate, detain and interrogate— mirrors the Salem hysteria and the anti-Communist persecution (220). Likewise, it has been asserted that "[f]rom the Salem witchcraft trial to the HUAC hearings to the military tribunals implemented by the USA Patriot Act, there have always been efforts to compromise civil liberties in the name of national security" (Polster 130). It seems that hysterical conditions are informed by their similar strategies or signs and repetitive scheme. And this is unerringly what Miller in his allegorical comparison to the Communist witch-hunts (or any other paranoia) stands firmly to expose.

In her distinguished study of *The Crucible* as an allegory of McCarthyism,[15] Erin Graff Zivin argues that Miller turns to allegory precisely so as to haunt the contemporary viewer (59). Zivin goes on to quote Idelber Avelar's insight as to why writers usually tend to lean to allegorical narratives. She reports that the cause is not only to escape censorship but "the petrified images of ruins, in their immanence, bear the only possibility of narrating the defeat" (61). Through regenerating the Salem witchcraft events in his play— as a past script

15. McCarthyism refers to Senator Joseph McCarthy's role and influence during the Red-scare hysteria. Many commentators depicted him as a greedy person who sought fame and power and seized the opportunity of the nation's hysteria to fulfill personal desires, rising through his status as a congressman. Neal mentions that the judgment of history reveals that Joseph McCarthy was a little man with immense political ambitions who drew upon collective fears and anxieties in order to build a political constituency as no other man had done in the history of the United States (79).

that demonstrates the court's failure to find the truth and establish justice— Miller wants to say that a similar contemporary legal trauma can also steadily and vividly stand within allegory. And this is exactly what Miller has succeeded in doing. At this stage, and since one initial argument of this study is to expose the problematic relationship between trauma and trial, one could argue that as "law has quite conspicuously and remarkably its own structural... unconscious" (Felman 5), it is the role of drama to uncover the aspects and consequences of such legal unconscious.

It is clear that there is something shared between the witchcraft hysteria of the late seventeenth century and the modern witch-hunt of the mid- twentieth century: the justice (or the judicial) system in both instances was trapped in its own trauma regarding its deficiency in dealing with the imposing threats. Fundamentally, these threats had been interpreted within the scope of national security. The core of the problem is about an evil threatening the American liberal values and way of life. Such belief deeply left tremendous impacts on the American nation, leading to the rise of great questions about the significance of law and the principles of justice in the democratic and liberal United States. Thus, the point of summoning up previous trials ― that symbolize an earliest cultural and legal crisis― to contemporary audiences through a dramatic work has been in fact a substance of wide discussions.

Overall, many scholars agree that the analogy between the Salem trials and the modern judicial hearings and trials of the fifties is politically and aesthetically considerable. For instance, Harold Clurman remarks that *The Crucible* is obviously an outcry against the peculiarity of McCarthyism, highlighting that both the Salem and the Communist witch-hunts are two close and identical events (147). Clurman also explains that, in *The Crucible*, Miller does really "show us a community terrorized into a savagely hysterical fury that is reprehensible whether it is based on fact or on falsehood. The play asks, "Is the accuser always holy now? A question all together suitable to the situation of the fifties. 'Vengeance is

walking Salem' had become almost literally exact" (147). During the traumatic events of the seventeenth and mid-twentieth-centuries, the hysterical climate mounted the process of rancorous accusations to a powerful implication of culpability and then to a high potential for conviction, even a moral one, as will be later indicated.

For Otten, the process by which the records of Salem documentary trial were incorporated into *The Crucible* helps to recreate the past into the present, creating a "modern tragedy" that resembles the Greek one (61). Otten also clarifies that what attracted Miller to the Salem trials is that he found in them a kind of "objective correlative."[16] Trials are a kind of a device to comment on two strains. The first is the modern politics of McCarthyism; and the second, which is more profound, is the issue of Puritanism that runs across American literature since the rise of the republic (62). By means of the political and cultural commentary of previous trials, one can also say that there is an indicator of what it might mean to refer to previous historical events or conditions as a mechanism for traumatic legal repetition.

The Salem witch trials were surely among the most traumatic experiences that left enduring traces. Although these trials are far remote in time, their reconstruction in a dramatic work— borrowing sociologist Jeffrey Alexander's words— can be described as "imagined events" that "can be as traumatizing as events that [are]actually occurr[ing]"(8). One could argue that in *The Crucible* Miller provides for his modern readers/ audiences a framework by which to uncover a real past trauma whose impact can be so much concrete and felt as the traumatic present. And while readers/ audiences might not be fully aware of the events' traumatic legal repetition, Miller nevertheless tries to make them feel sensitive to the issue.

16. A term revived by T.S. Eliot, expressing "a set of objects, a situation, a chain of events which shall be the formula of that particular emotion, such that when the external facts, which must terminate in sensory experience, are given, the emotion is immediately evoked" (Cuddon 485).

This is achieved by taking their attention to the possibility of one's role in advancing, somehow, the hysterical function of the authorities and the criminal justice system.

In this sense, Edmund Morgan asserts that even though there is no overt comparison between Salem and McCarthyism, Miller aims to say that modern Americans were behaving, or allowing their authorized representatives to behave, as badly as the authorities in Salem (44). If Miller alludes to how Puritans relied on religious and civil authorities to achieve justice, validating deceiving testimonies, he also projects on twentieth-century Americans and their dependence on the inquisitions of some institutions like the House of Un-American Activities Committee (HUAC). Regarding what happened in 1692 Puritan Salem and 1950s democratic America both historical periods are characterized by their hysterical or traumatic atmosphere in which the realities of intimidation and scapegoating had been strikingly exercised.

In defending Miller's convenient historical parallel, William McGill, in *The Crucible of History: Arthur Miller's John Proctor*, strongly asserts that Miller certainly intends to address his contemporary audience. He further admits that:

> John Proctor is not Alger hiss, Julius Rosenberg, or Owen Lattimore, but the fates of John Proctor, Giles Corey, and Rebecca Nurse do tell us about the dangers of public terror in any age when it overthrows social conventions. Whatever view one takes of the guilt or innocence of those celebrated figures of the Cold War, one must acknowledge that all hysteria produce injustice because hysteria denies the individual conscience and destroys the standards of rational proof. (263)

The implication here is that hysteria has an elusive nature that resists any meaningful, legal language or rational explanation. Hysteria is often surrounded by recurrent and endless legal crises that could easily destroy fundamental principles. McGill's statement thus discloses a conflictual relationship between the concepts of hysteria versus justice, individual's conscience and right versus the law's imperatives. Since any hysteria could actively generate injustice, individuals' rights could easily be under the direct threat to the demands of politics.

The government and the justice system of the 1950s urgently stood in a confrontation with the traditional-modern conflict of state versus individuals' rights and freedom, leading, again, to the re-questioning of American democratic values as well as the fundamental nature and function of the law.

Actually, what Miller emphasizes in his play is the idea of the universality of hysteria outcomes. In order to prove this, he tries to expose to his readers the forces that underlie all witch hunts and this by identifying the kind of accusers and judges who indulge in such irrational persecutions and exposing the destructive aftermath of such brutal purges (Ronner 221). Whether during colonial Salem or Cold War America, trauma inscribed its power on the psyche of the American nation, manifesting specifically and consciously into the function of the legal system. As will be shown, what happened to the accused of witchcraft in Salem was not a remote, forgotten traumatic memory for the reason that the modern accused of being Communists would face almost the same traumatic legal conditions. In other words, legal trauma is destined to haunt whenever similar conditions would arise. One crucial element of these dramatic conditions is fear. Apparently, fear often supersedes and overwhelms the voice of logic, impartiality and common sense.

1.5.2. Modern Trauma and the Rhetoric of Fear

Generally, the issue of *fear* in American life is such a delicate issue and also one of the most discussed subjects. Peter Stearns, for instance, speaks of the motives, characteristics, and the results of fear in the United States. He says that fear is "one of the dominant emotions in contemporary American public life" (3). He also explains that though it is somehow tough to discuss such a topic in an open, democratic society for usually people think that "manipulated fear" does not have room in a culture whose citizens are known as law- abiding; nevertheless, the issue of fear is a reality in the United States (18). It seems that fear may haunt at any time, breeding adjacent traumatic consequences and experiences. Americans' fear of Communism

led to the restaging and the repetition of America's previous experience with mass panic, comprising its political, social, legal and also psychological imports.

In his mention to the psychological impact of the Communist witch-hunt, Miller writes that the witch hunt was not just against subversive people, but against an idea and even a suspect language. He goes on to describe the era as an "ideological war" in which the enemy was an idea whose proponents were not in uniform but were disguised as ordinary, a situation that can scare a lot of people to death (*Are You*). The Communist witch-hunt certainly embedded one notorious example of fear in the modern history of the United States. Again, Miller asserts how difficult it was to properly express the fears that marked that period of time. As he says, the problem was not only about "physical fear" but also "the sense of impotence"; that is, the failure to speak accurately of the very recent past when being a left wing in America (*Are You*). Miller's statement suggests the extent to which the simple act of showing one's own personal and/or political tendencies can be so traumatic at that time, indubitably imposing a heavy sense of moral guilt.

At this stage, it seems useful to refer again to Robert Cover. He explains that whereas pain represents the extreme form of world destruction, fear can also be so potent, even if not related to physical pain and torture. He further writes that "The fact of answering and the necessity for 'world destruction' through betrayal were also central to the reign of fear of McCarthyism" (1603). This relationship between McCarthyism and "world destruction" resembles the Salem witch trials paranoia in that some persons could destroy the lives of highly respected townsfolk. Historically speaking, America had already known some cases of anti-Communist crusade long before the rise of McCarthyism upheaval, putting issues of

individuals' liberty, freedom, and democracy in danger.[17] Indeed, the 1950s witch-hunts opened up not only the remote Salem witch-hunts but also some modern wounds.

One case that bespeaks America's earliest example of fear of Communism, as well as the state's commitment to eliminate dissenting voices, particularly foreign ones, is the trial of Sacco and Vanzetti. This case which was dubbed as the trial of the century can be indeed read as one famous tragedy in American political and legal history. Nicola Sacco and Bartolommeo Vanzetti, two immigrants from Italian origin, were executed for a murder case in 1927. Their execution occurred "despite the insubstantial evidence against them" (Gholamreza 44), and despite the differing testimonies (Russell 396). One can understand why this case has been described as "a case of injustice that undermined American liberal and individualistic values," revealing "the inadequacy of individuals in the face of authority and mass-realities" (Gholamreza 45). Perhaps this case reflects some of the legal system's most obvious bias and exagerated fear toward outsiders, a condition that is not far from those being accused of witchcraft.

As already noted that some scholars have argued that the Salem court tried to behave according to the norms of the time, one finds that some commentators also see that the court in the Sacco and Vanzetti case tried to behave fairly and that there was no plot of evil, but "fate" that was the essential mover[18] (Russell 398). Yet, other explanations can be raised here. In fact, when considering the prodigious fear that dominated the decades, it becomes obvious why this trial is so problematic. In the context of this study, one can argue that the Sacco and Vanzetti case represents or reveals an earlier case of legal trauma in twentieth- century

[17.] Historically, the origins of American's fear of Communism, which is an offshoot of the Red Scare that strongly appeared in the twenties and later on climaxed in the shape of fanatical McCarthyism, dates back to the late nineteenth century i.e., before the Bolshevik Revolution of 1917 (Detweiler 14).

[18.] This case has received the attention of dramatic theater. *Winterset* is a verse play written in 1935 by Maxwell Anderson aiming to mirror, as Christopher Bigsby notes, "less the hysterical politics of his own period than the fact of injustice and the eternal struggle to oppose it" (150). Commenting always on Anderson's play, David Eldridge says that the play reflects on the "tragic consequences of justice perverted by political expediency, prejudice and brute power" (37).

American history because fear and prejudice—not fate— that fundamentally played a huge role in convicting the two anarchists.

The 1930s engendered many epithets such as the "Fervent Years," the "Angry Decade," and the "Years of Protest," alluding to narratives of conflict (Eldridge 4), the Sacco-Vanzetti trial was among the kind of cases that became part of the public debate. As Francis Russell puts it, the case appeared, in the end, to be much more than a simple trial but a case or an event that deeply divided the American society (387). This fundamental national divide the Sacco and Vanzetti case produced was because the criminal justice system, in Felman's terms, chose to "look" but not "see" political considerations. This case, after all, symbolizes the failure in the application of justice that underlines racial intolerance against foreign workers, embodying the efforts of the military, federal, and judiciary authorities to suppress individualists and radical rebels who thought to be posing a threat to the status quo (Gholamreza 45).

By the end of World War II and the beginning of the Cold War, an antagonistic discourse against Communism started to take a wide scope by invading many institutions. Particularly, judicial hearings and some trials shaped the general atmosphere. In order to show the dangerous nature of the Communist ideology, the government endorsed a certain kind of rhetoric or discourse, working to enforce it by different means. In this regard, Robert Detweiler observes that the rhetoric of fear took the form of a "hyperbolic, sometimes apocalyptic language" (17). Detweiler also quotes Dwight Eisenhower's speech during his inauguration as president at Columbia University. As he reports, '"Ignorance of Communism, fascism, or any other police-state philosophy is far more dangerous than ignorance of the most virulent disease" (qtd. in Detweiler 17). What can be said is that the fact of ignoring a virulent disease, whose dangerous impact is not to be underestimated, is less dangerous than the issue of when a nation ignores the impact of the Communist ideology.

What is significant, here, is that the President's speech on the importance of knowing some evil and antagonistic ideologies raises a similar attitude on the importance of knowing witches, or the dark world, in Salem. The President's statement resembles to a great extent Reverend Hale's insistence on his capacity to detect, and ones' duty to believe in, the presence of evil when he opines: "The Devil is precise; the marks of his presence are definite as stone" (Miller, *The Crucible* 35-36). Hale then goes to illustrate the patterns of the Devil (evil or enemy) by preaching: "the Devil stands stripped of all his brute disguises. Here are all your familiar spirits—your incubi and succubi; your witches that go by land, by air, by sea; your wizards of the night and of the day" (37). As evil in Salem could take different shapes, as was the case in modern America in which evil (or enemy) could take the form of foreign, antagonistic ideologies. But, such claims to full knowledge of the nature and the presence of the enemy in mid-twentieth- century America seemed to lead not only to misguided judgments but also to an overwhelming impact.

By virtue of its deceptive and malicious nature, the idea of the evilness of the Communist ideology would supervise on and impact all aspects of American life. This appears in the view of J. Edgar Hoover, former director of the Federal Bureau of Investigation (FBI). He contends that Communism, in reality, is not just a political party, but it is a way of life, an evil and malignant way of life. Communism reveals a condition akin to a disease that spreads like an epidemic; and like any epidemic, quarantine is required to keep it from infecting the nation (qtd. in Michaels 252). Anything that was associated with Communism had to be translated into a form of dangerous offenses and real wickedness that should be immediately contained and stopped by any necessary means.

However, the question that might be posed here: Was it possible to contain and to detect such wickedness in a climate overwhelmed by fear? In his reflections on the notion of trauma, Neal argues that under "conditions of national trauma the boundaries between order

and chaos, between the sacred and the profane, between good and evil, between life and death become fragile" (4-5). Trauma can shake some fundamental values and tenets. And since fear of Communism in the 1950s was certainly a national trauma, it was highly implemented into political and legal agendas, presumably aiming at securing American liberal values. The perils of the Communist ideology and the need to know about its travels became in its own right a hysterical struggle for the government whose power "has never been more destructive than it is at this moment of history" (O'Connor 69). The fact of being a Communist had to be legally defined as a crime to which the American government had to take severe measures against any suspect, putting many lives and careers in real jeopardy.

1.5.3 The HUAC Hearings: Guilty until Proven Innocent

Shivering in its attempt to eliminate the country's enemies, the American government turned to some harsh processes. O'Connor discusses the legal and cultural conditions created in mid-twentieth- century American history, concerning people's position to accusation of being Communists. She posits that the institution of law, though temporarily, undertook an increased power that effectively placed the interest of justice above the values of due process, undermining and working against the prospects that the accused is to be considered innocent until proven guilty. She further notes that the level of threat perceived by the American nation from both internal and external forces, however real or apparent, was sufficient to account for the judged culpability and vulnerability of the accused (65). The violation of the principle of the presumption of innocence in mid-fifties can be read not solely as the law increased power nurtured by the fear of Communism, but also as the violent legal function regarding the fact that people's rights were considered as secondary to political agendas.

Actually, it has been argued that the witch-hunts of 1692 and of the 1950s resembled each other most closely in the area of the criminal procedures. As a special court was set up to hear the cases of witchcraft in Salem, special congressional committees such as the HUAC

and the Senate Committee were set up to deal with the Communist threat, exercising special powers of summons and questioning what regular courts were unable to do (Levack 293). In certain conditions, it seems that there is always a need for imposing some legal rituals, although to the extent they would differ from the usual norms; and this would probably lead to similar traumatic experiences, as well as results. The effects of such violent legal procedures are certainly crucial for both individuals and communities. Indeed, the HUAC[19] was such an infamous institution associated with the violation of procedural due process, that is to say, it was a kind of a major oppressive weapon.

The Salem trials were not a unique traumatic experience. As has been commented, most of the HUAC's hearings overturned procedural due process; hence a striking miscarriage of justice overwhelmed the Committee's function for:

> The fact that the hearings even took place in a courtroom was something of a fraud, a conscious effort by the committee to give the proceedings the appearance of due process. In fact, there were few rules regarding how the hearings were to be conducted except those set by the committee itself. Under the color of law, due process would become its opposite...[the accused] were deemed guilty until they proved their innocence; accusers remained anonymous; hearsay became hard evidence; cross-examination of informants was prohibited; defense attorneys were not to speak above a whisper; there was no appeal process; there weren't' even criminal or civil charges brought—just exposure or ones' "un-American" beliefs and associations to the community... . (Babson et al. 209)

Without any chance to be properly heard, supposed to be innocent, to be fairly cross-examined, to have any second opportunity to review ones' case, and without being accused of any precise charge, the victims were undoubtedly harmed for the lack of any meaningful and justified criminal procedures. In other words, there were no real and fair judicial measures to determine ones' culpability. And even worse, the victims did not have any power to withstand the given accusations, in other words, the victims did not have any effective or heard voice.

[19.] The HUAC was a congressional meeting set up by the House of Representatives which upheld the authority of investigating those who might have connection with Communists. This institution essentially "tracked Communists party members and other proponents of foreign "ism" for thirty seven years (1938-75)" (Christenson, *Political Trials* 206).

Although the HUAC's hearings violated due process, actively working to destroy individuals' rights, they also helped to bring about the culture of imputation. In his comparison between the processes of scapegoating in Salem 1692 and those in the 1950s Communist witch-hunts, Miller admits that both circumstances represent almost the same practices. As he says, "If he [Proctor] gave them a couple of names he could go home. And if he didn't he was going to hang for it. It was quite the same excepting we weren't hanged, but the ritual was exactly the same" (*The Crucible* xvi). The sameness and recurrence of the rituals in contemporary America alludes to the likelihood of the reappearance of Salem's legal trauma. Such specter has the potential to be transmitted to different times, breeding the same unfair, violent measures.

To stay with the same comparison, one finds that Miller again compares the Salem witch trials to twentieth-century judicial hearings (precisely those of the HUAC). He declares that the prosecution in Salem was actually on more strong legal ground since the defendants, if found guilty of familiarity with the Unclean one, had broken a law against the practice of witchcraft, a civil as well as a religious offense; whereas, the offenders against HUAC could not be accused of any such violation but only of a spiritual crime, that is, being subversive to a political enemy's desires and ideology. These offenders were summoned before the Committee to be called a bad name, but one that could destroy careers (*Timebends* 331).

The Salem law's imperatives of considering the act of witchery as a crime whose punishment is death could give the government and the prosecutors the power and a solid legal ground, to impose the letter of the law under the frame of reestablishing order. It is worth noting that *The Massachusetts* Body of *Liberties* of 1641 declares that "If any man or woman be a witch (that is, hath or consulteth with a familiar spirit), they shall be put to death" (qtd. in Wolcott and Head 296). However, the likelihood of adhering to another political ideology which was designed as "a spiritual crime" put the state as well as the judiciary in a

very vague, ambiguous position with its citizens since there was no prescribed law that abolishes such political tendencies. The question that one should pose here is: What was the reaction of the justice system to the Committee's practices?

Law professor Jeffrey Shaman, in his analysis of the HAUC's hearings and their relation to people's constitutional rights, mainly the First Amendment— which postulates freedom of speech and association— argues that the Supreme Court took to some extent a passive or a timid attitude toward anti-Communist hysteria. As he notes, the Court acquiesced to congressional subpoenas, investigations, and compelled testimony, with making it a crime to belong to the Communist Party (131). Shaman further illustrates that the Court swept along with the tide of the Communist witch-hunt, emerging as satisfied to turn its back on the freedoms of the First Amendment, when they were most in need of support (141). While it was meant to remain unaffected by the nation's hysteria, the Supreme Court chose rather to side with it. In other words, the highest Court in the United States functioned in a way that validated the HUAC's acts. One might argue then that the Court somehow blindly subscribed to the violent procedures and the hysterical climate.

Legally speaking, the Supreme Court's role is not to be ignored or underestimated, particularly when regarding the point of establishing precedents. To better understand this point one needs to refer to Jonathan Michaels's dicussion of the Hollywood Ten.[20] This group of people called on the First Amendment as a mechanism of defense, but the Court denied them this right. The implication of such decision is paramount as it meant that any future witnesses or accused of Communism who might stand before Congressional and other committees and who might refuse to testify "would have to fall back on the Fifth Amendment's protections against self-incrimination" (126). The endeavor to deprive the

[20.] The Hollywood Ten was a group of entertainment industry writers and directors who refused to cooperate with the HUAC in the fall of 1947. The group cited First Amendment guarantee of free speech and association, but were quickly indicted for contempt of Congress. The Ten found themselves blacklisted and embroiled over the right of the American government to inquire into the political beliefs of its citizens (Christenson, *Political Trials* 204).

accused of an important legal mechanism is undoubtedly problematic as well as traumatic (a situation, somehow, similar to Salem trials where the accused were denied the right to have legal counsels).

Michaels further says that while this might protect or save future accused from punishment by courts, it automatically branded them as "Fifth Amendment Communists." The idea is that according to the Court's reasoning, what might impede the suspects from testifying if they had nothing to hide? In addition, the Supreme Court decided that witnesses who were willing to discuss their past associations could not invoke the Fifth Amendment selectively in order to avoid incriminating others. Such an act was, as Michaels notes, deemed profoundly morally repugnant by many people (126). In brief, the supposed Communists did not have escapes from the imposed logic of allegations for there were no legal guarantees, except naming names or making confessions. These are the only means by which the alleged Communists were able to escape the traumatic logic of incrimination.

The fact of being in such conditions extremely impacted many individuals (the presumed Communists) who were perceived as wrongdoers by the law institution which came to dictate their freedom of speech and association. More dramatically, the mere act of accusation entailed an inherent personal trauma whose aggressive feature was to be incarnated not only legally or politically but also socially. In fact, a public judgment of subversion also exercised a great impact on many Americans. As Brenda Murphy asserts, the fact of just being called before the HUAC implied already a sealed destiny and "recrimination of a populace" (9-10). The very simple presence within the Committee's hearings featured moral guilt and an outrageous status, even without any explicit legal verdict that would incriminate the suspects. Therefore, the universal legal principle of one's right to be presumed innocent until proven guilty lost its meaning and effectiveness as a protective measure for individuals against criminal accusations.

Indeed, this legal violation represents an example similar to those of the Salem trials. This appears in John Proctor's helpless exclamation "Is the accuser always holy now?" (Miller, *The Crucible* 73). The stigma of being accused of subversion, or perceived as a Communist, jeopardized the full meaning of justice because the law was intended to be applied without its spirit. Both the accused of witchcraft and of Communism did have neither a chance to a fair trial nor an escape from the imposed stigma of guilt. Actually, the issue of guilt is of paramount importance for Miller. In his autobiography, He strongly relates the causes of mid-twentieth- century hysteria to the factor of guilt. By giving a kind of psychological explanation to the era's general mood, Miller says:

> Without guilt the 1950s Red-hunt could never have generated such power. Once it was conceded that absolutely any idea remotely similar to a Marxist position was not only politically but morally illicit….The former Communist was guilty because he had in fact believed the Soviets were developing the system of the future, without human exploitation and irrational waste. Even his naiveté in seeing Russia not as an earthly empire but rather as a kind of spiritual condition was now a source of guilt and shame. (*Timebends* 341)

The Communist hysteria did, in fact, make of guilt a socially and politically constructed concept. In this regard, Detweiler contends that if the Calvinist theocracy urged people to believe in the notion of being guilty via original sin, the same sense of guilt remains strong in the modern era, even though it lost its theological basis and found instead psychological, existential, and historical-economic justifications (27). A *consciousness of guilt* which is deeply rooted in the American psyche has been engraved indelibly in the juridical unconscious of the modern criminal justice system as well. Thus, to manipulate people's sense of guilt under whatever motive is to generate the most destructive results, especially when the concept of guilt becomes a synonym for crime of conscience. And this is what the justice system and the Supreme Court did help confirm through their passive dealing with the anti-Communist hysteria.

One further argument that can enhance a central claim in this chapter about the point of traumatic legal repetition can also be identified in the instance of the modern hearings' biased and hidden objectives. In his discussion on the role of the Committee in investigating Communism in the motion picture industry, Shaman says that apparently the investigators were much less interested in gaining any information about the presence of subversives in the motion picture industry. Instead, their aim was just to belittle the individuals who were summoned up to testify (137). He also notes that those who named names did this only "to save their careers, and not for any high-minded ethical or political considerations" (193-140). This brings one back to the point of the violence of the law as being the extreme form of world destruction. The Committee, eventually, exercised its part of violence, a kind of psychological torture inflicted on the witnesses and/or the victims, not to mention the physical pain as the HUAC's hearings led, for instance, to the imprisonment of the Hollywood Ten.

The legacy of the Salem witch trials greatly impacted modern America. Such impact did touch not only its socio-cultural history, but also legal memory. The *specter* of the Salem trials dramatically penetrated the legal branch. As Felman proclaims, "legal memory is constituted… by the chain of law and by the conscious repetition of precedents… and by compulsive or unconscious legal repetitions of traumatic, wounding legal cases" (57). What occurred in mid-twentieth century modern America in terms of the reopening of the discourse of witch-hunt and the proceedings that followed to incriminate the supposed subversives may intensely correspond Felman's proposition of the traumatic legal repetition. As the accused of Salem were seen as a direct threat to the order of the theocratic state, as was the case of the alleged Communists who were perceived as a threat to national security. More dangerously, the Red Scare hysteria escalated to some severe levels as real executions did really take place.

One famous legal case whose waves still echo in the contemporary time and has a deep connection to the Communist paranoia is the Rosenberg trial. In this study, the aim is not

only to flesh out some similarities between the accused of witchcraft in Salem and the Rosenberg case, but also to expose the hidden link between law and trauma. In other words, and always in Felman's terms, one would like to discuss the two historical trials as being two critical legal events. Besides, and since one major intention in this study is to investigate the impact of a given trauma on legal proceedings, the famous trial of the Rosenbergs has been picked up to be one modern and lucid example or case of the justice system's inability to effectively resolve the standing trauma and its legal case.

1.6. The Rosenberg Trial: A Crisis in the Law

If Miller, in *The Crucible*, draws his readers' or audiences' attention to how the Salem courthouse struggles to reach the truth "from deeply rooted anxiety" (Mason 123), he also alludes to the contemporaneous judicial handling of the Cold War Communist witch-hunt and the great fear and injustice that surrounded the ensuing legal and procedural forms. One controversial case and one of the most resonating political trials in the modern history of the United States is the Rosenberg case. Although the apparent analogy of Miller's play to its current events has already been stated, it is crucial to ask again what kind of connection or parallel may combine the Rosenberg trial to the play's core issue, the Salem witch trials. Before proceeding further, it seems crucial to begin with a brief overview of the couple's case.

Julius and Ethel Rosenberg were arrested in 1951, sentenced on April 5, 1951, and electrocuted on June 19, 1953, under the Espionage Act of 1917, for being found guilty of conspiring to commit espionage for the Soviet Union. David Greenglass, Ethel's own brother, among other witnesses including his wife, testified against his sister and his brother in law. And though exaggeration, vituperation, and mutual suspicion dominated all aspects of the case (Ferguson 237), the United States District Court for the Southern District of New York under the presidency of judge Irving Kaufman concluded that the crime of the Rosenberg was

"worse than murder" for being a '"diabolical conspiracy to destroy God-fearing nation"(qtd. in Ferguson 239-240). This suggests that America's national security is thought to be always under a kind of a diabolic danger, forcing the nation and the legal institution to make severe decisions.

Overall, the case has divided the nation into two factions. The first one viewed Julius and Ethel as guilty. The second one saw them as innocent and victims of the great hysteria of the era, whose case "had distilled all the hostilities and fears of the Cold War into one espionage scandal" (Carlston 214). The couple's trial and execution have been a substance to extensive scholarly investigations, and much ink has been spilled over. The case left a huge resonance not simply because it was an incident that distilled the age's hostilities but because it also embodied one clear example of the decades' most conflictual legal cases. It is worth referring here to Emanuel Bloch, the Rosenbergs' defense attorney, who addressed the jurors by saying:

> You have been fortunate because you have seen unfolded before you one of the most moving dramas that any human being could concoct. You have seen a brother testify against his sister, in a case where her life might be at stake. You have seen issues dealing with the atomic bomb, the most terrible and destructive weapon yet invented by man. This case is packed with drama playwrights and movie script writers could do a lot with a case like this. You have been fortunate. You had a front seat. (qtd. in Carlston 215-216)

Actually, not only the jurors in the Rosenbergs case who had been "fortunate" to have witnessed such a dramatic piece but Miller's audiences too, though the perceptions were somehow different. One of Broadway productions of *The Crucible* greatly impacted its audiences, in terms of stimulating their sense of great emotional connection to current events. Miller writes that "after one performance …the audience, upon John Proctor's execution, stood up and remained silent for a couple of minutes, with heads bowed. The Rosenbergs were at that moment being electrocuted in Sing Sing" (*Timebends* 347). Miller's audiences

could not escape that feeling of dramatic catharsis and also anguish that the play succeeded in creating.

By invoking such a dramatic incident, Miller wants to highlight peoples' awareness about the sameness of some traumatic incidents or rituals. Both John Proctor's and the Rosenbergs' death seems to replicate the same trajectory traumatic fate, leaving the audience with the enigma of whether or not justice was achieved. In fact, that one of the play's productions coincided with the moment of the execution of the Rosenbergs the "objective correlative," as mentioned by Otten, may also be read as the shared element of the legal proceedings that led to the dramatic fate of the executed Salemites and the executed couple. *The Crucible* is a kind of reference to any similar process of legal memory. In other words, the play is significant in revealing the hidden link between trauma and law.

Essentially, what characterizes the Salem witch trials and their contemporary parallel trials or hearings is also the element of the function of the law. The law worked in hysterical conditions where the demands for maintaining order and national security resulted in traumatic legal proceedings. After all, whatever the context is, "paranoia breeds paranoia," as Miller cleverly affirms (*Are You*). Yet, in order to detect some of the similarities between the two historical trials of the Salemites and the Rosenbergs, one needs to disclose some clues that reveal miscarriage of justice in the Rosenberg case. Accordingly, the questions that will be discussed in this final section of this chapter are the following. How did the criminal justice system operate in the Rosenberg case to make it a case of repetitive legal trauma? And in its endeavor to adjudicate on the Rosenbergs and to contain the threat they purportedly presented, to what extent was the legal system successful in doing so?

1.6.1. Conviction in a Historical Trial

It has been argued that a key marker that relates the case of the Rosenberg to the Salem witch trials is the "uncertainty of conviction" (Detweiler 23). That doubts characterized

both legal events may crucially allude to the notions of the impossibility of full knowledge of real witches and the difficulty to know about Communists or subversives. Such failure poses hard questions about the effectiveness of legal measures in disturbing conditions. Indeed, despite the uncertainty of knowledge and conviction, verdicts of culpability were rendered, and death did eventually triumph whether regarding the executed Salemites or the Rosenbergs. Taking into consideration the fact that the law institution in the Rosenberg case worked in accordance with the logic of hysteria and not in accordance with the principles of justice, an instance similar to the Salem trials, the question one thus should ask at this stage is: How did the court of law reach such a verdict?

In order to answer this question, it should be mentioned that the Rosenberg case or trial— as with *The Crucible* — is discussed as a narrative of trauma and this in order to decode the legal failure. In fact, Felman proposes that both law and literature (trial and story) connect to each other not as reality to fiction or as empiricism to estheticism, but as two narratives of trauma, two conundrums of emotional and physical damage, two human answers to the shock of an insupportable reality of pain and death (56-57). The implication is that both law and literature do speak various human experiences, particularly painful ones. And since both pain and death are undoubtedly a defining feature in the Rosenberg case, this event can effectively serve as a model of trauma trial narrative. A narrative that can say a lot about the traumatic legal discourse and proceeding.

Indeed, many commentators agree that the couple's case had been held in a hysterical climate in which their execution was highly predictable. As mentioned in *The Columbia Law Review,* the court of law was more likely oriented to return a verdict of culpability (*The Rosenberg Case* 223). More dramatically, some argue that the Rosenbergs were "punished for a crime that never occurred" and that Ethel was put to death despite the fact that the government had no definitive, admissible proof against her. The principal reason she was

charged and convicted was to leverage a confession from her husband (Roberts). Like the crime of witchery did never take place in Salem, the crime of the Rosenbergs was also never fully decoded and proved during their trial. In a traumatic climate, truth can be constructed, manipulated and oriented toward predetermined objectives, as well as the nature of some crimes. Indeed, there are many studies that have discussed how the couple case was framed up in order to punish the couple for the crime of conspiracy. What matters from such discussions is that regardless of the extent of the Rosenbergs' culpability, the law was manipulated by the different partners in the justice system, primarily for political reasons and their underlying practical considerations.

As the Salem judge was blind to truth, determined to prove only the credibility of his court, the American government during the Rosenberg case also behaved in the same manner. Lori Clune argues that the government tried to win a propaganda victory by constructing a narrative of this Cold War case in which the guilt or the innocence of the couple was not the primary issue; that is to say, it was not the truth, but the perception of reality that was most important (2). In a hysterical atmosphere, the concepts of guilt and innocence would often lose their real meanings and appropriate significance, dramatically succumbing to the demands and pressure of politics.

Because the Rosenberg case is "the crime of the century" (qtd. in Ferguson 233), it is then a case that "situates itself precisely at the juncture… of the legal and of the political" (Felman 63). The law and its procedures felt prey to the impact of hysteria and of politics, dramatically stepping aside from the contour of justice. In his sense the Rosenberg case exemplifies the situation in which "courts eliminate a political foe of the regime according to some prearranged rules" (Kirchheimer 6). The significant task of eliminating potential enemies of the nation may also be an indicator of both political violence and legal violence.

The Rosenberg case informs that some offenders' culpability would be measured according to their political tendencies not according to their real transgressions or offensive deeds.

Eric Posner notes that in times of heightened tension and emergencies, when the nation highly demands security, the government can afford this security only through the process of detaining and even convicting people without strong evidence that they have committed serious crimes. He further adds that, usually, these people are targeted not because of the harm they have done, but because of the harm they may threaten (79). In its struggle to maintain security and stability, governments may deliberately swerve from the question of factual innocence to a more generalized and at the same time selective mode of enmity and guilt. This is quite obviously in the case of the Rosenbergs as they were executed for the presumed threat and wound they could have caused, and this under the impact of the Cold War politics. Throughout all the legal process, their culpability was remarkably determined by a deliberate, constructed narrative.

O'Connor writes that because the anti-Communist paranoia had undermined checks and balance of resistance to the law, the condemnation of the Rosenbergs was put into place; it was total and devastating, ultimately depriving them of life (75). As Miller's Salem courthouse executed the defendants under the mercy of high anxiety and unreliable testimonies, as did the court in the Rosenberg affair. The criminal justice system was not immune to such prejudices, operating and echoing somehow the Salem witch trials episodes. In speaking about his motives behind writing *The Crucible*, Miller refers to the role of politics in creating "not only a terror, but a new subjective reality, a veritable mystique which was gradually assuming even a holy resonance" (qtd. in Budick, 22). From this statement, a fundamental point can be raised concerning the credibility of the political and the justice systems. This is about the value of enacting an objective judgment within the constraints of the subjective reality of the Cold War era.

What appears from the Rosenberg case is that the Communist witch-hunt—as an existing subjective reality— imposed a dangerous and highly exaggerated reality in which sanctioned rituals had been enforced. Therefore, under such conditions, enacting an objective judgment would hardly be achievable, if not impossible. It was indeed within the Cold War *subjective* and *constructed* realities that the execution of the two alleged Communist spies took place. More importantly, the legal decision was not immune to the impact of these realities as well as their heavy shadows on due process. These subjective and constructed realities had to be accepted and imposed, no matter how much untruthfulness in what they may aver.

Ferguson discusses how the prosecution interpreted testimonies and how it struggled to prove the truthfulness of the witnesses. Ironically, those witnesses, who were themselves former Communist spies, became now cooperative with the state. Ferguson essentially points to how the government went on to persuade a nationalistic American jury that some Communists, all presumed to place the country under a nuclear threat, were indeed telling the truth this time, consciously ignoring the fact of their untrue or unreliable testimonies. Ferguson also refers to how the prosecution manipulated accounts "to make them believable than perhaps they were" (242). The implication is that some subjective realities can be easily changed, or reconstructed, but certainly not if favor of those accused of possibly inflicting a serious threat. Sometimes courts of law may partake in causing transgressions to validate some imposing claims.

It is not surprising then that the court chose to side with the younger Greenglass for it simply assumed "Why would a boy go to this great length to testify against his sister?" (qtd. in Ferguson 237). Greenglass's testimony was to be considered trustworthy not because facts implied such a conclusion but because his testimony would validate the government's diabolic scenario of conspiracy. This, in fact, resembles the Salem court's reasoning that of no

voice would outweigh the voice of young girls. In both historical trials, the justice system managed to obscure and jeopardize legal proceedings, by following the same processes, producing the same features and then creating similar traumatic legal consequences.

One could possibly argue that within all this constructed narrative, the vital participation of the justice system in persecuting the couple for political consideration is what features the case as a dramatic and traumatic failure. The court had blindly constructed a scenario that excluded any other alternative that might help to consider the innocence of the couple. This scenario was violently crafted in order to fit the presumed claims or more precisely the government's objective and discourse. Thus, to rebut any noteworthy counter-defense, the legal system in the Rosenberg case had to resort to some mechanisms that might undermine the defendants' chance of escaping the electric chair.

In a discussion about the relevance of evidence in the Rosenberg case, it has been observed that despite the defendants' insistence on the exclusion of the element of being members of the Communist Party—even this act is not a crime—this evidence was admitted by the court and considered to be strong and relevant; and this to prove the alleged crime of conspiring "to overthrow the government by force and violence" (*The Rosenberg Case* 223-225). Likewise, in *The Crucible*, Miller traces the Salem's court insistence on the issue of order for the intention of proving John Proctor's willingness to overthrow the court of law, a claim strongly refuted by this defendant. Julius and Ethel Rosenberg also demonstrated their resentment at the government's "monstrous superstructure of inflammatory and prejudicial evidence" (223). The couple's legal trauma turned out to be a political language enforced and embodied in the very justice system. Indeed, the trial's scheme and narrative functioned dramatically and traumatically, validating the nation's trauma. Therefore, the Communist hysteria or trauma overwhelmed the justice system and its legal proceedings.

That trauma succeeded in getting the upper hand over legal proceedings in the Rosenberg case reflects more a crisis in the law. The case constitutes thus a critical legal event. In fact, through a reading of the case— and with its relation to the context of *The Crucible*— one can grasp the role of the judiciary in aggravating a traumatic condition. To put it simply, the nation's anxiety reached a high peak, marking the Rosenberg trial as a theater of injustice, defining the government and its laws as a mechanism of persecution, and raising serious interrogations about the role of law as well as people's perception of the judicial system. The norms of the time amplified the idea that any person could be vulnerable to, or under the threat of, accusation, miscarriage of justice, and also legal violence. If Cover's jurisprudential violence is to find real incarnation in the Rosenberg case, their execution constitutes one clear substance. Instead of judiciously treating the supposed threat, courts of law can deceptively recreate and reinforce the existing subjective political veracities. Given this fact, a final closure could not be found in the Rosenberg case.

1.6. 2. A Haunting Case

Undoubtedly, one of the most remembered trials of the Cold War Communist witch-hunt is the Rosenberg case. This latter is generally seen as part of the nation's cultural memory that still reverberates; a case that would always remind Americans that injustice can be readily imposed when a nation gets caught up in hysteria (*Remembering the Rosenbergs*). Unsurprisingly, it has been argued that, even with accepting the fact of the couple's guilt, it is quite clear that they were "victims of injustice" of a society in need of scapegoats to fund its "patriotic myth" (Orlov 112). The couples' dramatic fate was described as being a direct consequence of the mythical theme of conspiracy advanced by the whole society, the political and the criminal justice systems, each in its own way. In addition, the couple's dramatic fate strongly discloses that in a climate in which the idea of incrimination or culpability of suspects is deeply enforced, the usual due process will be often violated. And more

importantly, though the couple's execution was an individual case, their story became to a great extent Americans' preoccupied issue during both its fever-pitch, and long after it ended.

Perhaps it is the traumatic nature of the Rosenberg case that has led many scholars to show concerns about some identical issues. For instance, Atossa Alavi connects the Rosenberg case to the new war on terror and its ensuing wave of patriotism, its heightened secrecy surrounding issues of national security, as well as the government's logic of Good versus Evil, that is, conjuring up an atmosphere similar to the one during the Cold War Communist hysteria (1058). Likewise, commenting on Donald Freeds' play *Inquest*, which dramatizes the Rosenberg trial, O'Connor argues that the case epitomizes an injudicious governmental act about what constitutes right and wrong. She further explains that *Inquest* sheds light on the battle for national security versus the "guarantee of individual liberty," revealing the impact public opinion may engender in a culture already seeking conformity as a protective shield (66). The couple's trial features the constant controversial debate on the limits of individual rights and the role of government in defining what is right or wrong. It also shows the American public interests in legal issues or more precisely public trials.

It would be fair to mention here that Ferguson observes that the adversarial nature of the trial readily gives public voice to division. This system pits one side against another, and the greater the division, the more outside controversies a trial is likely to generate (1). In modern times and with the advent of media, the possibility of having full access to judicial practices has considerably widened, particularly when legal cases are about some highly controversial or sensitive matters. Such legal cases do not only share the element of the enormous public interest, but also the vibrating impact that they often have long after their time.

Ferguson writes that high-profile trials are a distinct phenomenon at the nexus of the public life and the legal system and that, though sporadic and powerful, these trials always

surprise by attracting massive attention beyond their local spaces and also by impacting social thinking (1). Trials that can reach far beyond their local settings, attracting mass viewers, are those raising some intense inquiries about the role of courts of law in dealing with some challenging issues, particularly in liberal democracies. These issues (and their corresponding trials) are so important because they can reflect the extent to which the justice system is capable of effectively dealing with, and reasonably translating, both individual and collective experiences with all their noticeable effects. Indeed, a public or a high-profile trial, or a trial of the century, like the Rosenberg case, has the power to generate huge debates.

According to Felman, one major characteristic of controversial trials is that they "immediately grow into public or political 'affairs' and whose symbolic impact is immediately perceived in the integrity with which they tend at once to *focus* public discourse and to *polarize* public opinion" (5; emphasis in original). This is exactly what the government and the judiciary accomplished through the Rosenberg trial. The public discourse was enormously directed toward the malicious presence of atomic spies and the urgent need to exterminate them. Such polarization may also allude to the extent to which some constructed, even real, threat can become a national duty and a deep matter linked to the whole nation's collective conscience. This very element of polarization that resulted from the couple's case may also foreshadow the nation's failure to come to terms with the couple's case.

Actually, there are still ongoing debates and emerging voices about the fulfillment of justice in the Rosenberg case, standing as a reminder of an unresolved trauma. Detweiler contends that one amazing element about the Rosenbergs' "dramatic and traumatic events" is that they "have not inspired more literary artistry than they have" (13). This implies that the legal trauma of the couple contains a number of traumatic impacts that are sufficient in themselves to the extent that no further literary reconstructions are needed. That is why such legal cases are always doomed to be sounding, particularly when new information or

documents appear.[21] This very scholarly reemergence is what characterizes the trial of Julius and Ethel Rosenberg. Their case represents not only a trauma trial, but also a traumatic event in its own right. The Rosenberg case is that kind of event that "registers a belated impact: it becomes precisely haunting, tends to historically return and to repeat itself ... to the precise extent that it remains *un- owned* and unavailable to knowledge and to consciousness" (Felman 174; emphasis in original).

Moreover, speaking about the O.J. Simpson trial, Felman argues that "the trial showed truth as an abyss between incommensurate ways of looking at the same fact" (92). The same can be said of the Rosenberg case, particularly when considering the constant emergence of new pieces of evidence, new interpretations, and new scholarly literature about the closed affair. This is in fact a kind of reconstruction of a trauma narrative that refuses to be culturally classified. The Rosenbergs case has not yet fully and really closed (at least in people's minds). It is a case that constantly needs to be re-questioned many times. And it is this very controversy about reaching an approximate understanding of the couple's case that makes it a historic trial. The Rosenberg case, in Felman's terms, is structured like a trauma not simply because of its own failure to provide a healing to the trauma it was meant to remedy, but in its historical relation to other trials, and to other traumas on whose legal pathos it picks up and whose different claims to justice it repeats (63).

Because the Salem witch trials and the Rosenberg trial have left a great impact on the United States' cultural and legal memory, it could be said that both represent two legal traumas and two historical trials in their own right. Great trials, as Felman observes, make history not merely because they are about traumas, but because they do constitute traumas in their own right; thus, they are also open to traumatic repetition (62). Accordingly, by invoking Felman's insight again, the Rosenberg case, which is apparently "structured by historical

[21.] This corresponds particularly with the opening of the classified documents from the Federal Bureau of Investigation in the 1970s, shedding another light on the whole process of the Rosenberg trial (Alavi 1064).

dualities," finally "reveals itself to be post-traumatic legal reenactment, or the deliberate historical reopening of a previous case or a different, finished, previous trial [that is, the Salem witch trials]" (62). If the Rosenberg case can be read as an adjacent legal case to the Salem witchcraft trials, that is, a "legal duplication" of a prior legal trauma, it is exactly because the two trials are based on similar hysterical circumstances. Both events are imbued with a miscarriage of justice in that the function of law and the meaning of justice have been a matter of intense scrutiny.

Indeed, the quandary of such legal events reveals the impact of legal traumas. The potential reappearance of cases of legal injustice in different times and the huge transgressions that usually come with them is what Miller really condemns. Such quandary appears particularly when the raised issues are about the notions of law and justice owing to their significance for any democratic society. One can further point out that when justice— as Miller displays in *The Crucible* — becomes highly related to the blind letter of the law, it can easily be damaged. Former Harvard law professor Justice Frankfurter notes in his dissent opinion of the couple's execution that the notion of justice in this case exemplifies "an incident in the long and unending effort to develop and enforce justice according to law" (qtd. in *The Rosenberg Case* 119). Such opinion reveals the conditions of the discrepancy between law and justice in a liberal democracy. It is a condition that may also allude to a kind of legal alienation, a subject that will be developed in more detail in the following chapter.

One important final point to be made here is that trauma, as Felman posits, is "the underlying reality of the law" (172), constituting "an essential dimension of historical experience" (173), also implying an "ethical dimension" which is "tightly related to the question of justice" (174). When trauma is elevated to the legal circle, there is an unconscious repetition of previous traumas and the remarkable conscious dimension of the legal proceedings. As such, the criminal justice system would probably fail to adjust between or

deal with the prerequisites of law and the ideal of justice. Thus, whether in the Salem witchcraft trials, the HUAC hearings, or the Rosenberg case, obviously the law institution operated within the general atmosphere of hysteria under the label of establishing order and national security. In doing so, the legal system generated real traumas. However, if trauma "inadvertently repeats itself as unconscious legal memory under the conscious legal process" (Felman 85), apparently, the legal system can also function without being infected by previous legal chains or legal memories, leading to new legal traumas, as Berrigan exposes in his work.

Conclusion

In this chapter, one has tried to address Miller's *The Crucible* as a narrative of past and present legal trauma. The focus has been mainly placed on adapting and adopting Felman's theory of repetitive legal trauma through the combination of a dramatic text and legal cases and issues. The Salem witch trials, the HUAC's hearings, and the Rosenbergs' case are not merely historical occurrences and legal cases but are, in their own right, critical legal events, inherently reflecting the cultural and legal crises of their current paranoiac conditions. In his play, Miller speaks so powerfully to modern audiences. He highlights that the law institution or authority, as an indispensable citadel for the administration of law and justice, can fall prey to the power of hysteria, with all its inherent personal motives or prejudices and political implications.

A trial can be used simply as an arena to eliminate nonconformists or political foes. As John Proctor exemplifies the spirit of dissent, that is, he represents a threat to the State's order and the court's authority as did the alleged Communists, the bearers of an 'evil' ideology. By standing blind to some people who would misuse their testimonies and attributed new power, justice will be severely damaged. This happens when the justice system implements the real meaning of legal violence, imposes an exaggerated rhetoric of fear under the pretext of the

protection of order, or national security, and presumes the pre-determined guilt of the accused, depriving them of just due processes. Thus, the legal system is anything but a fair application of its real purpose: achieving justice and seeking truth.

As such, the very *trauma* a trial aims to find a remedy will ultimately be reenacted through the legal process itself. Therefore, the trauma and its corresponding legal case will never be culturally closed since justice is not fully established even if the court of law does close the case legally. Justice would be then an impossible task, for political motives, the impact of mass hysteria, and the resulting feelings of guilt would only serve to control and direct the legal system. It appears that within the Salem witch trials, the judicial hearings of the HUAC, and the Rosenberg case, the legal institution proved its deficiency or limitation, with evidence that its claims to full knowledge, objective language, fair proceedings, and truth- seeking could be easily compromised and undermined. Consequently, a traumatic trial will always refuse to be closed. That is to say, it will often reverberate because law and justice will ultimately stand as paradoxical and not complementary as they are intended to be.

Chapter Two

The Challenge of the Law in *The Trial of the Catonsville Nine*

Introduction

In the previous chapter, it has been argued that Miller exposes the idea of legal trauma and its inevitable repetition. The focus there was about how justice can be perverted and due process violated in times of overwhelming fear. In such conditions, one's guilt or innocence would probably be under the mercy of seemingly traumatic proceedings. At the end of the chapter, one important idea has been reached that of the Rosenberg case, as one example of a trauma trial, exhibits the conflict between law and justice. This suggests that some urgent traumas can disrupt some fundamental principles, even in well-established democratic societies. And this urges one to further grasp the legal system's role in causing such disruption. In this chapter, through Daniel Berrigan's play *The Trial of the Catonsville Nine* (or *The Trial*), one will try to decode other aspects of legal trauma. This will be done by discussing one major conflict that emerges between the bearers and the breakers of law. This is about the different perceptions of the rule of law and the meaning of justice and the subsequent results that might result from such a quandary.

A central aspect of legal trauma may manifest in the form of conflicting arguments. The inability of the law institution to engage actively with the exigent question of the Vietnam War is a then major feature. By tracing the egregious impact of the Vietnam War and the conscientious engagement of anti-war protesters, Berrigan wishes his readers/ audiences to further explore the meaning of (and the relationship between) law and justice as well as some other issues, particularly the real significance of guilt and innocence in disturbing times. And in order to decode and develop the concept of legal trauma in Berrigan's work, the points that one would like to address in this chapter are primarily intertwined between some political and legal matters.

One will begin by shedding some light on the fractured relationship between the government and anti-war protesters (through the image of the Catonsville Nine), which

appears in the concept of political alienation. Also, how the playwright puts into relief the tensions between the protesters and the criminal justice system exemplified in the meaning of legal alienation will be discussed. In addition, the points of the legal system's weakness toward political agendas and technical legal rigidities will be investigated. Then the question of the reluctance of the justice system to have a say on the government's military actions and the war illegality will be highlighted. And before delving into Berrigan's treatment of these issues, it is necessary to introduce his play.

2.2 Berrigan's *The Trial of the Catonsville Nine*

The Trial is a dramatic piece in which Berrigan focuses on portraying the causes and consequences of the trauma of the Vietnam War through its multifaceted socio-political aspects and also legal implications. In a nutshell, the story is about the dissidence of a group of nine Catholic activists—seven men and two women, among them the playwright himself Reverend Daniel Berrigan and his brother Father Philip Berrigan. On May 17, 1968, after informing the media of their intentional act, these people entered the Local Selective Service Board outside Baltimore, Maryland, and put into fire some government's records, using homemade napalm. The nine activists, who became known as the Catonsville Nine, were put on trial that ended with their conviction with the charges of destroying government property. The Catonsville Nine were sentenced to serve a prison firm, ranging from three to seven years.

However, Berrigan's protest against the war and his challenge to the law did not stop with his (and his friends') conviction for a play depicting their struggle and trial came out. That is to say, to show his resentment against such verdicts and to continue his resistance, Berrigan turned on to theater. He reconstructed the Catonsville protesters' experience because of the further impact it might be attained from such a story, a story handed down in the form of a fact-based dramatic work. In *The Trial*, Berrigan takes account of the real events and the

subsequent legal procedures.[22] The play's dialogue is taken from the real trial transcripts. In addition to this technique, Berrigan includes quotes from ancient thinkers as Aristotle to modern European thinkers and writers such as Sartre, Camus, Brecht and Weiss. In doing so, it is argued that Berrigan has deliberately blurred the line between reality and theatrical fiction (Alter 41). The play, which was published in 1970 and premiered at Mark Taper Form in 1971 under the direction of Gordon Davidson, also inspired two other unpublished plays: *The Berrigans: A Question of Conscience* (1971) by Colin Cameron and *Heavenly Peace* (1973) by Derek Walcott and Gay Friedman (41).

In her preface to her book *Vietnam Protest Theatre: the Television War on Stage*, Nora Alter classifies plays dealing with the Vietnam War, including *The Trial*, as a specific genre. She calls it Vietnam Protest Theatre, acknowledging at the same time that theatrical response to, or representation of, Vietnam War "cannot be reduced to a single thesis" (xi). Despite both its diversity and cohesiveness, as Alter elucidates, most Vietnam protest theater or protest plays do share common themes: American involvement in Vietnam War, its origins and its aftermath (10). This genre aims to represent something about what happened during such a delicate moment in the history of the United States. The purpose is then to bring to light some of the era's pains, ambiguities, and intense conflicts. One might say that this form of theater gives rise to a kind of heightened urgency in order to consider the amount of trauma a war may cause.

Also, because of its authenticity, *The Trial* is seen as belonging to the genre of documentary theater or drama. Dan Isaac classifies Berrigan's play as "Theatre of Fact," noting that *The Trial* is somehow special in its "logic and rhetoric of argumentation" (124).

[22] As recorded by Richard Weisberg, "in each period, law has drawn the attention of… [scholars] because of its similarities to narrative act, not its differences. Law's manner of recreating and discussing reality strikes the artist as close… to what story-tellers themselves are in the business of doing" (qtd. in Morawetz 502). Through Berrigan's work one can come across the point of the law's failure in terms of giving final closure to some crises as will be shown.

Isaac also remarks that "Theatre of Fact" deals with one major problem facing the Western society: "the battle between the individual and the state" (134). However, Isaac excludes Berrigan's play from the idea of victimization of individuals by the state. As he writes, the playwright "sees his own action as a heroic celebration of the individual doing the right and Godly thing" (134). Berrigan envisioned a work with the aim of challenging some traumatic realities; it is a work that can have distancing effects. Indeed, such conception appears throughout the play's narrative whereby Berrigan's and his colleagues' truthful defense of their case and their motives is strongly observed.

Likewise, for Attolio Favorini, Berrigan's play (along with Peter Weiss' *The Investigation*) is a liturgy of fact. He asserts that *The Trial* functions "more overtly and less ambiguously as commemorative ceremonies to awaken religious fervor and stimulate ritual in the cause of political action" (79). The play has a mnemonic function. It is chiefly associated with promoting religious and ideological tendencies deployed in the service of memorizing the nine defendants' moral plea. Favorini also points to some general characteristics concomitant to documentary drama. He highlights that Berrigan's play script is an infusion of multiple elements ranging from the reconstruction of the Catonsville event, verbatim trial transcript, and confessional poetry (79). However, for theater scholar Dawson, Berrigan's work is a "semidocumentary" play for incorporating both factual and fictional narratives (140). Berrigan's play, one might say, has its own authenticity and aesthetic. However, and regardless of claims to authenticity, what is significant is the way Berrigan exposes one urgent conflict of the era.

Actually, most of the previous studies that have dealt with Berrigan's play concentrate on one central issue: the conflict between law and morality, or between law and conscience (O'Connor 40; Aritzi 35). It has also been noted that Berrigan's play brings into conflict an individual morality that stands in opposition to the state's constituted authority and the court's

authoritarian legalism (Fenn 76). For John Simon, the action of the Catonsville Nine is based on a reasoning and language totally different from the reasoning and language of the law (*Theatre Chronicle* 291). By going further, Simon sees that the play demonstrates the inhumanity of the law, eliciting the divorce of legal reason from human common sense (291-292). Moreover, some scholars contend that the play vacillates between the conflict of the letter of the law and the spirit of the law (Peters 151). The former, as Barbara Aritzi explains, is represented by the court's staff, while the latter is represented by the defendants who display the idea of the "right to renew the law with the question of conscience" (35).

Through these studies, it can be perceived the extent to which Berrigan tended to reconstruct the real trial with a special focus on the implication of legal proceedings and their role in ignoring crucial issues pertinent to the fulfillment of what might constitute the real meaning of justice and conscience. However, insufficient, if not any, attention was paid to the implication of the concepts of political and legal alienation as well as to the interaction between the nine defendants' arguments with some fundamental legal and political thoughts or principles. Indeed, one might argue that Berrigan's play stands as a judicial alternative, challenging and exceeding the logic of the court of law. Berrigan dexterously offers a special model of a court of conscience. In such a court, one major advocated idea is that anti-war protesters' motives and disobedience should be seen as a legal and moral obligatory path in order to withstand the law's rigidities and shortcomings.

For her part, O'Connor also writes that the play exposes an apparent "challenge to law's supremacy," drawing attention to "the skepticism about the law and the distrust of governmental processes" (29)**.** She further asserts that the play reflects the cynical national mood of the 1970s, representing a judicial trend that has continued to the present, criticizing the American justice system, staging the major courtroom battles of the past and the present, and enlightening the gap between the theory and the practice of American law as well as

between the ideal and the reality of equality and democracy (27). O'Connor in fact highlights the recurrent use of the structure of the law in this dramatic play as a means to provide a comprehensive narrative of the decade's cultural and legal crises. While O'Connor mentions the problem between the ideal of law and its practice or translation, she refrains from dealing with any detailed analysis particularly that related to legal studies and political discourse and practices.

2. 3. The Turbulent 1960s: From Alienation to Violation

One traumatic event that has marked the twentieth century and parceled out the American society and left a real distress was the Vietnam War. Neal classifies this war as one major national trauma in the history of the United States, not because of the causalities for, as he explains, if compared to the Korean War, the damage of this latter was vaster, exceeding 50.000 fatalities. Instead, what makes the Vietnam War a national trauma— alongside the point of deep polarization—is the fact that this war was waged with no clear objectives as was the case of the Korean War (8). Neal further explains that because the Vietnam War raised controversial debates over issues of foreign policy, many Americans saw it as unjust and immoral (8). With doubtful motivations coupled with some considerable political and legal polemics, the Vietnam War is featured as a national trauma, standing as one of the most exceptional and very distressing events.

Indeed, it is the nature of conditions and factors that surrounded the outbreak of the Vietnam War that distinguishes it as a national trauma. President Johnson, in early August 1964, used a murky set of excuses to launch full-scale war in Vietnam. This was precisely about the event in the Gulf of Tonkin, off the coast of North Vietnam. Johnson and his Secretary of Defense, Robert McNamara, told the American nation that North Vietnamese torpedo boats attacked American destroyers. It later turned out that the Gulf of Tonkin incidence was a fake and that the highest American officials had lied to the public (Zinn 466).

Nevertheless, with such an invented incident, the President secured a unanimous congressional resolution, giving him the power to use military acts in Southeast Asia. However, this resolution was ensued without a declaration of war by Congress as required by the Constitution. More importantly, when asked through a number of petitioners in the course of the war to declare the unconstitutionality of the Vietnam War, the Supreme Court, which is presumed to be the watchdog of the Constitution, simply refused even to consider the issue[23] (466).

Consequently, many Americans saw their country's military actions in Vietnam as illegal or unconstitutional. This can be certainly understandable when considering the war aftermaths. Indeed, "[b]y early 1968, the cruelty of the war began touching the conscience of many Americans. For many others, the problem was that the United States was unable to win the war, while 40,000 American soldiers were dead by this time, 250,000 wounded, with no end in sight" (Zinn 483). The general atmosphere was highly agitated. Feelings of frustration, disconnection and resentment embroiled the American nation. In addition, feelings of deep isolation and estrangement from the government's political decisions coupled with the sense of political powerlessness toward issues related to foreign policy were the dominant mood in the late 1960s. As a sign of public alienation, acts of protests characterized this particular era. In some instances, the government responded very severely to the tension and to people's outcry against its war in Indochina.

2.3.1. The Vietnam War and People's Alienation

In order to reflect on the trauma of the Vietnam War, one needs to speak about the social and political conditions of the time when many protests took place. One way of doing this is by discussing the theme of alienation. It should be noted that there are some psychiatric components of the encounter with traumatic events. These include, for instance, symptoms of

[23.] This point of the war legality or constitutionality will be further discussed in the final section of this chapter as one lucid clue of legal trauma.

intrusive recollections of the event, feelings of detachment and estrangement from other people, impaired memory, psychological numbing, feelings of helplessness, and crisis of meaning in individuals' personal lives (Neal 3). Trauma in its both mental and physical traits can severely shatter individuals' and collectives' comfort and stability. In traumatic situations, people can easily get alienated from their culture and society, as well as from political and legal institutions. And in this chapter, the focus will be on the concepts of political and legal alienation.

In their study entitled *Personal and Political Sources of Political Alienation*, Jack Citrin et al., argue that before the 1960s there was a strong sense of confidence in and attachment to the political institutions, order, and political leaders among most of the American citizens who, at that time, could be described as allegiant. However, this sense dramatically changed in the late of the decade as "protest, violence, disillusionment, estrangement, disloyalty and rebellion became major themes in American politics" (1). The violence and atrocities of the Vietnam War led to the destabilization of some fundamental meanings and practices. This shift in people's perception alludes certainly to what kind of breach or gap a war can exercise and engender; a gap that emerged in multiple forms and also through the sentiments of dissatisfaction and nihilism. In order to situate Berrigan's play in relation to the theme or concept of alienation, it is necessary to capture some of its defining characteristics.

By definition, alienation derives from the Latin word *alienus*, referring to a withdrawing and separation of a person (or a person's affections) from an object or position of former attachment (*Merriam Webster*). It should be noted that the concept of alienation has been widely discussed from a myriad of perspectives, from existentialism, psychology, Marxism and sociology. Since in this study one is concerned with the representation of trials (or law and justice) in drama and because the main subject of Berrigan's play is the trauma of

the Vietnam War, it seems helpful to deal, at this stage, with the concept within its sociological and political frame.

Mary Hanemann Lystad notes that concerns about alienation stem from a fundamental idea that of the responsiveness of society to the needs of its members. She defines alienation as "a sign of personal dissatisfaction with certain structural elements of society," particularly those linked to economic and political conditions. She also points to the recently emerged studies which often define such ensuing dissatisfaction "in terms of expressions by individuals of feelings of powerlessness, meaninglessness, normlessness, social isolation, and self-estrange" (90). Alienation is also defined as feelings that run deep, sufficiently disturbing to the extent that persons become predispose to some acts such as deviance, revolutionary activity and protest (Citrin et al. 4). To be alienated is to experience some negative feelings with a tendency to be somehow freed. Alienation is an inward feeling that might find expression into various acts, especially protests. These protests can be connected to a number of motives whether moral, political and even religious, as will be later discussed.

The government's policies during the turbulent 1960s in regard to its war in Vietnam and the resulting attitudes in the form of civil protests put the state and its citizens in an open, antagonistic position. Acts of civil disobedience reflect the general atmosphere of instability that shaped the decade; they reveal people's resentment toward some political decisions. According to many scholars, the protests that filled up the American landscape during the 1960s were in fact a way of expressing the sense of political alienation. Gary Stone, for instance, sees the year of 1967 as the most violent in American history, representing "an increasingly visible alienation of young people expressed in a rise of student protests" (143).

Following President Johnson's announcement of the government's plan to conquer Cambodia, the tension dangerously escalated as many people further reacted against these warfare strategies. The very rebellion against order expressed a deep gap between the

government and its citizens. The American nation fell then in a huge disturbance, which engendered some dramatic incidents. Indeed, the students' protests exemplified the most traumatic image. The conflicts with the government grew out so violently in some universities and college campuses, leading to deadly casualties. One famous instance was the authorities' response on May 4, 1970, to students' planned rally against the Cambodia campaign. The National Guard fired upon a crowd at Kent State University, killing four students and injuring nine.

In his study of civil rights and anti-war movements, Harrop Freeman describes these movements as the most important new moral-political force, openly indicating to the yearnings of man in the mid-twentieth century. He says that these anti-war, anti-injustice, equalitarian and nonviolent movements were but another image or an outcry of these young men who sought to avoid political alienation and find a fulcrum for political leverage. Freeman also notes that such protests reflected that kind of educative community expression, attempting to play its proper role in a developing society (228). This political opposition informed about the extent to which people were aware of the fact of being alienated from the current policy and also about their role as responsible citizens.

Not only could alienation be conceived as a loss of trust in government policies and societal patterns, but it could also be seen as a sign of a strong moral dimension. In his study dubbed *The Concept of Alienation in Recent American Thought*, Frederick Sontag points out that alienation is crucially associated with people who hold high values (168-169). It has also been generally observed that ideological orientations constitute a powerful determinant of political alienation (Citrin et al. 16). One can say that the feeling of alienation may indicate to people's need for social and political change. What is worth mentioning is that the sense of alienation and the need to take political actions had actually coincided with the rise of some intellectual influences during that time in American history.

What happened is that some writings about alienation among philosophers, sociologists and psychologists had left great impact. Sontag contends that Herbert Marcuse had been extensively read on college campuses during the 1960s and that his ideas about alienation seemed to strike a note of response in the youth of the time (167). The troubling events of the decade were the result of not only the anti-war sentiments, fueled by some emerging philosophical ideas and political ideologies. In fact, the considerable process of dissent can also be attributed to the many other and diverse social and political influences that generally characterized the modern age.

Such a forlorn situation (the sense of alienation) owes a lot to the impact of modernity on Western societies. In fact, many social scholars view the widespread sense of alienation as a significant development in modern life (Hanemann Lystad 90). Always in this respect, Fluck Winfried observes that as much as modernity has increased the individual freedom, it has also increased his anxiety (23). The expression of full consciousness of freedom and democracy that emerged from modernity could not overtake ones' feeling of disapproval or alienation. And one can understand why some acts of violence do constitute real traumas for many people as well as real dilemmas for political agents and legal institutions.

The 1960s multiple threats ranging from nuclear race to many conflicts in different foreign soils, under the Cold War imperatives, had undoubtedly intensified the feeling of alienation among American citizens. As Dori Laub says, "in the wake of the atrocities, and of the trauma that took place in the Second World War, cultural values, political conventions, social mores, national identities, investments, families and institutions have lost their meanings, have lost their context" (Felman and Laub 74). There is an abyss— whether political, social or psychological— that probably defined the modern life. Still, the debate over the meaning of justice is surely further raised in times of delicate conflicts. A strong

feeling of social injustice would ultimately overwhelm societies with an increasing sense of estrangement from the existing values and the enforced political realities or policies.

The nature of some events in the second half of the twentieth century reveals in fact some of the incongruences that happened in the American nation. The 1960s considerably generated one major issue: the significance of justice to modern Americans. In speaking about the value of justice in Western societies and the urging demands for individual justice in fiction and culture, Winfried provides two historical contexts from which justice stems: modernity and democracy. He explains that modernity ushers in a process of individualization by which an agitated individualism persistently searches for recognition that would provide distinction from others (26). This implies that man's growing sense of alienation is a distinctive feature of modern identity. Winfried further explains:

> For the restless individual there is ... a continuous and increased feeling of injustice emerging from democratic conditions which is constantly refueled by a sense of frustration that others do not make enough of an effort to appreciate one's own worth and that all appeals to public authorities to do something about this neglect are not sufficiently heeded. (26)

Although this statement refers much more to the extent to which modernity and democracy might prompt people's feelings of alienation and injustice, some realities do really impose some unsatisfying feelings. These feelings are undoubtedly inescapable, particularly in times of crises such as wars. In such a world, people's expectations and calls for concrete or meaningful change would be very high. The various elements of individual victimization, traumatization and the need for political and legal intervention are, indeed, of paramount importance to Berrigan and his activist comrades.

The Vietnam War affected not only people who were involved or took part in it, but also others who were not exposed to it, as is the case of the Catonsville Nine, and many other protesters of the time. The impact of the Vietnam War was huge and overwhelming regarding the violence and terror it caused. According to Jenny Edkins, "[w]itnessing violence done to

others and surviving can seem to be as traumatic as suffering brutality oneself. Here a sense of shame is paramount. The survivor feels complicit in the betrayal perpetrated by others" (4). Such an implication can be clearly seen in *The Trial*. Berrigan stresses on the point of the immense and unbearable violence of the Vietnam War. He also exhorts that the war is not, and should not be considered, an isolated experience, but a shared one among all individuals and institutions. Such a stance is indeed one crucial way to resist the terror of the war and to translate its trauma into real and critical insights.

For the purposes of this study, Berrigan's play can be thought of as containing two levels of alienation: political and legal. It is meant by political alienation the nine protesters' helplessness toward, and lack of trust in, government policies. And legal alienation—which is at the same time one feature of legal trauma— means the criminal justice system failure to understand the defendants' call for justified civil disobedience and hence its failure to consider their moral innocence. In the coming subsection, one will proceed with the playwright's depiction of political alienation while the concept of legal alienation will be introduced when discussing the concept of civil disobedience and its related issues.

2.3.2. *The Trial*: A Political Plea

As noted earlier, Berrigan's play embodies the struggle between the government and the citizens as a consequence of the country's military entanglement in Vietnam. The playwright effectively draws a full image that underlies people's reaction to the socio-political conditions during the war. Throughout all the play, one can notice how the nine defendants deliver their testimonies with proper emphasis on the gap existing between the anti- war protesters and the government. It can be argued that the play serves to highlight the impact of political alienation on protesters against the Vietnam War. *The Trial* is that kind of plea from which the nine protesters strive to defend their political stand; a stand that entails a challenge to some circumstances and also to the law.

One major idea in the play centers on how far many Americans have become so isolated from governmental and military institutions. The negative response of these institutions to people's demands has been the main cause behind law- breaking acts. It should be mentioned that the Catonsville Nine exemplify one image of the many popular oppositions of the time. Most of these acts took the form of war-protests, peace marchers, draft card burnings, or other forms of draft resisters as is the case of the play's nine activists. The nine defendants' act conforms to these many protests' objectives with an emphasis on the concept of alienation that many people faced or were embroiled in.

Berrigan concerns himself with the theme of alienation, though not explicitly stated, through describing the deteriorated conditions which primarily affected young people who are in his own words the nations' "only hope" and "only resource" (81). Berrigan brilliantly highlights the youth question because of two reasons. The first one is that young men were the first victims of the social and political conditions. The second one is that the youth voice could speak out some cultural and political values, which had also been under real test with the breaking out of the war in Vietnam. What Berrigan wants to denote is the very experience of political alienation which came to affect the young generation. At the same time, he raises serious questions about the country's basic democratic values.

Indeed, many citizens saw that what was happening in Vietnam run counter to the founding values of the American nation. That is why one finds that James Marsh contends that the main question that emerges from *The Trial* is: "How do we live as human beings, citizens, philosophers, and Christians of conscience in the midst of the most virulent empire in history?" (81). Marsh also writes that the playwright prophetically, religiously, and biblically answers a fundamental issue that of global domination is incompatible with American philosophical and Christian values. He goes on to explain that *The Trial* is visionary in terms of exposing the Vietnam War injustice and the dangerous scale the United States is turning

into in terms of becoming more materialistic, consumerist, exploitive, and imperialistic (81). That one fundamental idea that permeates the play is about the protesters' dissatisfaction with their country's broad policies reflects in fact the importance of not overlooking some violent ideologies and their corresponding experienced realities.

Perhaps this conception is best exemplified in the instance in which one of the Catonsville Nine, Thomas Lewis, draws a picture of his country' imperialistic project, saying that:

> We supply weaponry
> to more than 80 countries We have troops
> in more than 40 countries These troops
> are backed up with our weaponry
> So I was speaking not only of Vietnam
> I was speaking of other parts of the world
> The fact is
> the American system can flourish
> only if we expand our economy
> in these other countries
> The fact is
> we produce more goods than we are capable
> of consuming We must have new markets
> We must bring our industries our way of life
> Into Vietnam and Latin America
> We must protect our interests there. (Berrigan 45)

These words express the inescapable need to tell something about, or more precisely to criticize, the country's rapid industrial and economic expansions and their deleterious effects on other people's lives. The statement also explicitly alludes to what such objectives, if not obsession, may lead to, that is, waging other wars. By referring to his country's imperialistic policy, Thomas Lewis expresses his grief and resentment at such dire tendencies.

This kind of attitude could be perceived not only among the protesters but also among many citizens. A political statement of the time given by Senator Fulbright speaks volumes of, and pointedly summarizes, the costs the war in Vietnam was prompting, highlighting at the same time the general feeling of alienation. He declares:

> Can we afford the sacrifice of American lives in so dubious cause? Can we afford the horrors that are being inflicted on the people of a poor and backward land? Can we afford … the neglect of our own deep domestic problems, and the disillusionment of our youth? Can we afford the loss of confidence in our government and institutions, the fading of hope and optimism, and the betrayal of our traditional values. (qtd. in Stone 168)

Although this statement is a direct denunciation of political policies, it can also be read as an appeal to bridge the gap between the government and its citizens. Yet, though the facts were clear enough, the American government refused to see them. The Senator also censures the often dramatic incongruity between political ideology or discourse and citizens' aspirations and values.

In his play, Berrigan accentuates the point of the governments' carelessness and the nine protesters' sense of resentment against the authorities' refusal to measure the degree of violence the war is causing. The playwright also criticizes the political ideology, especially that of imperialism, a major factor that led the Catonsville Nine, and many others, to break the law. The testimonies found in the play disclose a sense of frustration and powerlessness; they show that feeling of injustice or unfairness experienced in the daily life where strident contradictions do really exist. David Darst, for instance, pronounces how socio-political policies are so unjust. He explains:

> I was living last year
> In a poor ghetto district
> I saw many little children
> Who did not have enough to eat
> This is an astonishing thing
> That our country
> Cannot command the energy
> To give bread and milk
> To children
> Yet it can rain/ fire and death
> On people/ ten thousand miles away
> For reason that are unclear
> To thoughtful men. (Berrigan 36)

Obviously, David Darst expresses his dissatisfaction with his government's actions regarding their negative effects both on the American citizens as well as foreigners. His words question

the national and foreign policies of his country. Moreover, by averring such facts, the aim is not only to criticize the current policies but rather to change or more exactly to stop those policies of fire and death, which do represent measures beyond any reasonable comprehension.

However, the authorities could not understand such demands. David Darst further informs about this reality when he says: “We have cried out on behalf of life/ The government has chosen/to see our cry/as anarchy and arrogance/Perhaps real anarchy lies/ in the acts of those/who loose this plague of war/ upon a proud people” (Berrigan 37). How can the American government be so impotent to the point of not seeing the chaos inflicted by the war? It is the question that preoccupies this defendant. To be politically alienated and having such a perception would ultimately provoke a sense of disrespect for one’s own government. This could be further intensified when people feel helpless in the process of making any adjustments. That is to say, not only would alienation be the direct outcomes, but even worse distrust of institutions may also result, particularly when coupled with the sense of powerlessness.

There are a number of shared features and dimensions of political alienation. These include mainly the concepts of cynicism, negativism, value rejection, and distrust (Citrin et al. 2). Remarkably, another major point that concerns the nine dissenters is the unclear perspective of the objectives of the political system. As Philip Berrigan declares, “We see no evidence that the institutions of this country, including our own churches, are able to provide the type of change that justice calls for, not only in this country, but around the world” (Berrigan 118). Though this statement entails a great sense of despair or cynicism, it also suggests that what preoccupies the authorities centers only on achieving some political agendas regardless of how much harm they may cause.

Also, another dimension of political alienation is associated with political powerlessness, among the other three dimensions: political meaninglessness, perceived political normlessness, and political isolation (Finifter 390-391). Political powerlessness is defined as the feeling that may happen to individuals when they recognize their inability to affect political decisions which in themselves are intended to be a reflection of societal attitudes and values (390). Essentially, Berrigan points to this level of political powerlessness. This latter is expressed through the defendants' unsuccessful attempts to keep in touch with political authorities, as well as through their unsuccessful efforts to convince their leaders to understand the real meaning and purpose behind their opposition.

In his attempt to reflect on such point, Philip Berrigan explains that the protesters' endeavor to contact the military authorities and to sit down with them as citizen to leader has not been fruitful because simply "The military were immune/from any citizen influence/ They were a law unto themselves" (Berrigan 26). Philip Berrigan also narrates his experience of trying to keep in touch with the Congress through a proposal to Senator Fullbright. This proposal was thought "be a good thing/to investigate the war/in light of the moral opinion of the nation," and though the Senator was "partial to the idea," however, "he never had political leverage" (27). One might argue that the play serves to highlight that the kind of breakdown the resulted over the war trauma is mainly due to the authorities' indifference and silence.

Once more, this image of political powerlessness can be best captured by Phillip Berrigan's words when he says:

> From those in power we have met
> little understanding much silence
> much scorn and punishment
> We have been accused of arrogance
> But what of the fantastic arrogance of our leaders
> What of their crimes against the people
> the poor and the powerless. (Berrigan 30)

Another issue that the playwright criticizes is related to how the Vietnam War could change the credibility of some humanitarian activities. Berrigan shows the costs of being a nonconformist in the 1960s. During this period, some peaceful activities could be easily rejected and dismissed. The playwright also criticizes the authorities for enlarging the gap between the governor and the governed. Again, Philip Berrigan recounts that kind of fierce opposition he and other demonstrators faced when trying to get a forum on the war, and how speaking out against the Vietnam War could lead one "to lose his coattails" as happened with him. Furthermore, the defendant points to the "distraught" of his Catholic superiors regarding his anti-war activities and how they ordered him to keep silent (Berrigan 25-26).

Given the acrimonious relationship between subjects and leaders, it comes as no surprise that the tension intensified in some cases. Peoples' dissatisfaction with the government's policies would become far worse to the extent that acts of burning did not stop on files but exceeded to burning one's own flesh. The playwright painfully recounts a story of a young boy who reached "a point of despair about the war," leading him to sacrifice his souls (Berrigan 91). This incident, which has become a kind of moving experience in the life of Berrigan urged him to "speak and act/against death" (92). Essentially, for Berrigan and his comrades, reacting against frustration, pain, and death should be considered all citizens' major responsibility. From this point of view, traumas and sacrifices should not be ignored or dismissed. However, since resorting to political avenues proved to have no concrete or positive results, one avenue that seemed somehow promising for getting a response, according to the Catonsville Nine, is to take their plea to another further step or alternative: the legal space.

In their struggle against the authorities' neglect or more exactly silence, the Catonsville Nine have one chief objective behind their trial: to obtain a verdict that would both affect or alter political decisions and reconsider the war atrocities and injustices. By

bringing their case to the legal stage, the defendants asserted themselves as politically speaking subjects for any frustrated individuals, with their intrinsic belief in their right to express their views.

Kirby Farrell remarks that the meaning of trauma also represents a cultural trope that can help account for a world in which power and authority may seem overwhelmingly unjust (23-24). He further writes that the trope can be a cry of protest, distress, and a tool grasped in hopes of some redress, adding that trauma may be invoked to "substantiate claims on empathy of others, as a plea for special treatment, or as demand for compensation" (24). The implication is that the effects of trauma (particularly when considering wounds and pains that usually emerge from critical events or violent conditions such as wars) cannot be separated from social life; and people's social life undoubtedly runs through with both politics and law.

One can say that more than thriving poetically on a rhetoric of political denunciation, Berrigan offers a philosophy of challenging insight. Although a kind of fragmented and disturbed individuals appeared in the turbulent decades of the Vietnam War, in his play, Berrigan tries to verify that in such a shaken world and order some certainties and principles should still be preserved and revived. Accordingly, in an atmosphere crowded with alienation or resentment, how should the justice system understand or deal with the motives of these anti-war protesters? And in what sense are the defendants' arguments compatible with some existing political and philosophical thoughts? In order to answer these questions, it seems important to refer to some political and legal thoughts pertaining to the concept of civil disobedience. These thoughts are indeed highly implemented and advocated by the playwright.

2.4. Berrigan's Play: On Civil Disobedience

One crucial philosophical and legal principle with underlying moral, legal, and political implications invoked in *The Trial*, calling for its use whenever required, is the very notion of civil disobedience. The play is based on the premise of the defendants' right to disobey a law if it proves to be in contrast with some higher and moral laws or some powerful decent impulses. As recorded by some scholars, people usually "engage in civil disobedience when they perceive a conflict between moral and legal obligation" (Loesch 1087). The language implemented in the play greatly conforms to well-established conventional legal and political thoughts on civil disobedience. Yet, before delving into the playwright's representation of these thoughts and the defendants' noncompliance, it is worth attempting to introduce the concept of civil disobedience.

2.4.1. The Philosophy of Civil Disobedience

The idea of civil disobedience is not a new or a modern concept; rather, it stretches back to the ancient Greek classical period. The question of how individuals should respond, or what is the suitable way to react, to the supposed unjust laws or orders ensued by the government has been a problematic issue and debatable question since 399 BC. Such question started indeed with Socrates' and Crito's argument over the matter of escaping prison and unfair death sentence. The confrontation between one's own conception of justice and the existing established laws has always been such an old-new arena of conflict. Although the controversy about the notion of civil disobedience stretches back to very past times, the inherent philosophy and practice of civil disobedience still inspire different scholars, including many literary and dramatic writers.

Sophocles' *Antigone* is perhaps one of the most ancient and famous representations of cases of disobedience. The play's story is about the conflict between the obligation of obeying God's law and humans' law. Antigone struggles with the state's or the King's law for

forbidding her to bury her brother's body because according to Athenian law he is a traitor (a dissent). It has generally been argued that Antigone's sisterly feeling toward her brother Polynices stems from both moral and religious obligations. Although the binary of moral-religious obligations appears somehow universal, there are other conflicts or binaries of different purposes in other cases of civil disobedience. However, the scope of acts of disobedience entails not only the matter of setting some binaries, but it seems to touch even the meaning of civil disobedience itself.

Allen Schwartz notes that the difficulty one faces when dealing with the notion of civil disobedience is due to the appeal to the concept of conscience (or morality), such an imprecise or a too vague idea. He points out that to justify their civil disobedience, people, generally, would maintain that they are governed by the call of a higher law. This higher law would usually stand in contrast to a positive law. Therefore, for those who engage in civil disobedience, it is this higher law that imposes an obligation so compelling that no positive law can outweigh it (543). One fundamental question about disobedience centers on one's own conception of what constitutes basic moral values worth to be followed or more precisely obeyed. Disobedient people are often pushed by their conscience, which would ultimately put them in opposition to formal laws. That is why the questions of defining civil disobedience as well as finding its justified principles have always posed huge scholarly debates.

One interesting and most current definition of civil disobedience is that of John Rawls. In his seminal book, *A Theory of Justice*, Rawls forms his theory of civil disobedience based on his overall theory of justice. He defines civil disobedience as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of government" (320). Rawls also remarks that civil disobedience is primarily a public act, approaching not only public principles but also an act that should be practiced openly. Act of disobedience, as Rawls further maintains, should be

achieved in a nonviolent way; otherwise, it will be considered incompatible with being a mode of address (321). Civil disobedience is a public performance. It is performed with the intention of exposing individuals' peaceful- oriented act for the sake of impacting and altering existing policies and their corresponding laws. The act of disobedience should adhere to relevant and sufficient reasons or good, acceptable narratives.

For legal scholar Hugo Adam Bedau, acts of civil disobedience are those done within the frame of the rule of law with the condition of the protesters' willingness to accept the legal consequences of their behaviors (51). There is a strong connection between performing a disobedient act and one's personal motives and convictions. Also, civil disobedience entails both a personal and legal responsibility. Such responsibility defines people's status toward their criminal justice system (and implicitly toward the political system) as well as it defines their personal integrity (as will be shown through Berrigan's play)

If the concept of civil disobedience has been a matter of lesser disagreement about its definition, as Hugo Bedau writes, there is a noteworthy controversy over how civil disobedience should be justified (49). Essentially, Rawls sets up a number of conditions under which the aims of civil disobedience could be sufficiently important to the extent of being justified. Among these conditions, along with the condition of nonviolence, is that civil disobedience must be the "last resort." This means that all the available legal attempts to change the laws should have been failed (327). Disobedient people need a solid ground under which courts of law will be able to judge their acts. Those who challenge the law should show their end of means in their nonorthodox endeavor, proving that their dissent behavior has no other or additional form of expression.

Another crucial condition identified by Rawls is that civil disobedience should "address the sense of justice of the majority of the community" (320). At the core of the idea of civil disobedience is the concept of justice as accepted or understood by the majority of

people. Justice, by its very existence, implies a set of values that should be protected by laws. An act of civil disobedience must be in the defense of the broader concept of justice which appears to be violated or undermined. Put it differently, the broken law should be inadequate with a community's perception of justice, or common sense, causing thus a kind of discontent. It is within this logic that some acts would be considered as acts of civil disobedience. Civil disobedience should not only be accepted but also encouraged, particularly in times of crisis when nations would need to withstand and respond to cases of injustice. In such instances, civil disobedience and the corresponding legal procedures may stand as a sincere discourse and strong voice that can speak of some shared collective traumas.

2.4.2. The Disobedience of the Catonsville Nine

By putting official records on flame to protest the war in Vietnam, the Catonsville Nine overtly challenged the law. This challenge to authority suggests both an appeal to look at the government's policies in order to open up a dialogue with the citizenry and a call for establishing justice for all the people plagued by the war. In this sense, it could be said that, for the Catonsville Nine, not only dissenters or protesters who are brought to trial, but also the government or the state because "[w]hen dissenters are tried, so are the policies of the government" (Christenson, *Political Theory* 559). As *The Trial* depicts, by consciously deciding to break the law, the nine dissenters, who present themselves as speaking against the political machine, purposefully resorted to law to adjudicate on the war policies.

Having such a critical feature, the trial of the Catonsville Nine serves as a forum[24] to address subtle indictment of what many anti-war protesters perceived as incomprehensible political tendencies. At the same time, their trial reflects on the notion that "the right of resistance originally worked as the only important mechanism to make the authorities in

[24.] As Barbara Falk notes, political trials are "public narratives par excellence, stories of societal and individual conflict, ritualized and state-sanctioned exercises in adverbial struggle" (5).

power responsible, to reproach them for their abuses, and to prevent future excesses" (Gargarella 18). Civil disobedience offers a valuable framework to negotiate the authorities. It is therefore important that acts of protest should be valued as a communicative platform for indicting, resisting and standing up against any transgression by the government. Perceived as such, one major objective behind acting disobediently is to demonstrate that the process of breaking laws and then being on trial can be used both as a model for understanding and responding to an urgent trauma as well as establishing justice.

Some traumas like the Vietnam War should no longer be the confined case of politics. That is why the Catonsville Nine (and many other protesters) dissented to show both the trauma of the war and the unreasonable decisions of the political system. And the process of trial would mean that if the trauma of the war could disrupt the normal social life and order, a trial should be seen as a means that would help to restore such disruption. As Ferguson explains, function of trials is not limited, among other things, to resolving conflicts, protecting innocent, punishing the guilty, compensating for injury, and declaring the law. A trial can perform many other functions, "they publicize the available answers to a problem and guarding the status quo ante be seeking to return a community to its place" (19). A trial can, and should, work in a way that participates in restoring, or at least balancing, the shaking order because the law has the legitimate power to do so. Nonetheless, the legal system cannot always achieve this aim for it may also raise questions about a society's beliefs and principles.

Indeed, beyond the quandary of the disrupted social life and the challenge to reestablish it, what matters most to the nine protesters, as will be discussed, is to present their case to the legal institution in order to deliver its word and this according to the existing realities. That is why Berrigan and his comrades lifted the dialogue of protest existing in the streets to the legal arena. In doing so, they called upon, and stressed on the necessity of, the justice system to have a say on the current, disturbing issues. In Felman's terms, the nine

defendants intended to let the issue to be “legally articulated” (128). More importantly, the defendants’ objective is valuable in terms of informing about the idea that when democratic institutions or processes become unable to bridge the gap, or to reduce the sense of alienation, thus, civil disobedience is certainly a reasoned necessity.

Another interesting discussion of civil disobedience is that of Roberto Gargarella. He justifies acts of protests essentially within the condition of legal alienation. He defines this latter as a situation in which the law does not represent more or less faithful expression of the will of a community. Instead, law appears as a set of rules alien to the design and control of this community, affecting thereby the most basic interests of the majority of people that happen to be subjected to it (2). Civil disobedience can be justified in case its upholders would become able to articulate a bitter sense of disappointment and dissatisfaction with what most people may consider as the violation of their shared meaning of justice. Though such situation may open up different interpretations of the conception of laws, it essentially indicates how dissenters generally conceive the violated law. In other words, the situation of legal alienation may constitute a certain degree of antagonism between the law representatives and dissenters over the interpretation of laws and this regardless whether these laws are representing or reflecting a majority’s or a minority’s interests.

Daniel Markovits contends that political disobedience “may properly be directed against even democratic laws and policies, because liberalism imposes limits on the authority even of democratic governments” (1899). He also explains that American history shows some cases of disobedience that aimed at asserting some fundamental rights against overreaching majorities. He particularly refers to one noticeable historical case: the American civil rights movements that sought to ensure equal treatment and safeguard basic liberties of black Americans against white majorities that aimed to deny those fundamental rights (1899). Noticeably, the twentieth century marks a significant period in American democratic

tradition, generating abundant instances of cases of a minority that challenged the majority perception of the law.

Although one debate about the rule of law, especially in the 1960s, focused on the role of protecting minority rights in the face of majority rule, Berrigan keenly observes how some laws would function to protect a privileged minority. Berrigan emphasizes on the point that laws should embrace and protect the values of the majority will, including the minority rights. He also draws attention to how some laws can develop to be improperly an instrument for protecting and securing the businesses and the economic interests of "an elite minority." This elite minority, as Berrigan illustrates, is "gaining because of the war," due to the huge profits from the entire industrial weaponry (47). The concern of Berrigan is not only about some hidden objectives of the war but also the violation of the nature and purpose of laws.

In other words, Berrigan exposes the gap that distances between the anti-war protesters and the courts of law and the disagreement over political and legal matters. He effectively depicts how the Catonsville court could neither see nor admit the nine defendants' proposed arguments or rhetorical justification. And this is exactly what features the Catonsville court legal trauma (as will be discussed in the coming sections). However, before delving into the major theme of this study (the aspects of legal trauma), it is worth examining how the play's testimonies reflect some major legal and political theorizations about civil disobedience.

2.4.3. A Justified Defiance

As already noted, the principal relevance of the idea of civil disobedience gains support from as to whether the performed act can be justified. Aware of such a prerequisite Berrigan explicitly constructs a specific narrative in order to withstand as well as outweigh the abstract reasoning of court of the law. Though the word of law imposes legal guilt, the playwright assumes that the defendants' arguments fall smoothly within the boundaries of

justifiable civil disobedience. This seems to make much sense when considering the fact that Americans do acknowledge that civil disobedience has a legitimate place in the political culture of their community, conceding also that acts of disobedience did engage the collective moral sense of the American nation, as prominent legal scholar Ronald Dworkin contends (*Matter of Principle* 105). In this subsection, the aim is to answer the question of: How did the nine defendants anchor their act within the area of justified defiance?

To answer such a question, one needs to read the play in a way that goes with some well-established philosophical thoughts about civil disobedience. The Catonsville Nine adopt a conspicuous narrative that appeals for the necessity to acknowledge the historical, political, legal, and religious forces or motives behind civil disobedience. Although the concept of civil disobedience has been so much secularized as it appears from different studies, the Catonsville Nine defiance is greatly prompted by their religious beliefs. In explaining his motives for taking part in the Catonsville act, Thomas Lewis says:

> This is a legitimate form
> of social protest/It is well documented
> in Christianity
> Civil disobedience was practiced
> by the early Christians
> The spirit of the New Testament deals
> With a man's response to other men. (Berrigan 43)

The disobedience of the nine defendants is driven by the Christian faith and also by their humanistic tendency. Their defiance is, after all, an integral part and a primary motive of the Christian duty. In this regard, Marian Mollin contends that the story of the Catonsville Nine is an expedient point of access into the culture of the Catholic Left and Catholic resistance movement activities, due to its role in making the affair a public issue, as well as serving as a model for similar ensuing protests (31). Mollin goes on to claim that it is the Catholicity of this protest that most clearly stood out, defining the raid as unique compared to other anti-war protests of the time. Also, it is the protesters' Catholicity that appears in the use of dramatic religious symbols (the ceremonial draft burning and the saying of the lord's

prayers) that make their action difficult to be disregarded (32). Acting from a religious impulse is unquestionable for the Catonsville Nine.

This meaning is further defended through Berrigan's response to the court (when stating his motives behind acting in Baltimore). He says that if his religious beliefs are not accepted as a substantial part of his protest actions, so his conscientious objection is eviscerated of all meaning (83). Such a notion illustrates in fact the extent to which religious beliefs do constitute a major element of the dissidents' self-identity. For Berrigan, religion is an important mechanism for awakening one's ethical duty. It is a factor that helps strengthen a person's sense of responsibility. In this sense, the Christian faith is an undeniable path that can bridge between individuals and their government. *The Trial*, as a text, appears thus to provide answers as to the wrongness and rightness of some actions in times of critical conditions. Also, *The Trial* takes attention to the instances when laws would contradict one's personal and religious beliefs with the need to put them under scrutiny.

In this respect, John Mulder notes that all the nine persons involved in Catonsville came to their act of opposition and their celebration of life after measuring the policies of the government against what they saw as the dictates of the Christian faith. Mulder further explains that, through his play, Berrigan's and his fellow defendants' testimonies symbolize that kind of moral passion that seeks to make values explicit in deeds, that is, to incarnate them in the world (266). Berrigan wants to instigate thoughtful attentions of how Americans of the twentieth century should be. The Catonsville Nine testimonies are thus not merely symbolic, moving, and moral. They are indeed purposeful in a particular way for two reasons. The first one is related to the advocacy of venerating the importance of commemorating religious rituals.[25] The second one concerns the production of moral passions in the minds of

[25.] Favorini contends that documentary theatre, since its origins, is profoundly co(m)memorative, that, it is a kind of theater that engages in a project to hold and repeat the traditions of its represented community (74).

readers/audiences through redirecting their attention to issues related to law and its relation to justice (a point that will be discussed in some detail later).

Nevertheless, the playwright—as a religious figure— announces his concern not only for explicit theological beliefs but also for some prominent philosophical (both political and legal) thoughts. Before seeing evidence for this claim in Berrigan's play, one needs first to briefly shed light on what scholars have said about the importance of civil disobedience to modern societies. Rawls, for instance, confirms that civil disobedience is principally related to democratic states where citizens often recognize and admit the legality of the constitution. He also contends that his theory of justice (including his analysis of civil disobedience) is intended for what he terms "a nearly just society" in which some serious violations of justice do nevertheless take place (319).

With this line, Dworkin asserts that acts of disobedience are features of American political experience (*Matter of Principle* 105). Moreover, for Vinit Haksar, civil disobedience has direct consequence on democratic constitutions as "[t] he right to civil disobedience is a moral right and has important implications for the legal system" (408). It is for this reason any "just constitution ought to recognize the right to civil disobedience either explicitly in writing or at least in the way it is interpreted by judges and other state officials" (408). One can notice that civil disobedience is a practice that is not only governed by religious tendencies, but it is also a practice that is attached to democratic meanings. Thus, civil disobedience must be legally recognized and advanced. In particular, any form of civil disobedience that causes no harm can be highly justified.

As noted earlier, an act of disobedience should be exceptionally nonviolent. Indeed one important argument observed in the play is the defendants' focus on their nonviolent, symbolic act, particularly when compared to the government's violent military actions. The most telling instance of this deep and reasonable parallel comes from Berrigan. He eloquently

and drily addresses the court by saying: “Our apologies/ good friends/ for the fracture of good order/ the burning of paper instead of children/ the angering of the orderlies in the front parlor of the charnel house” (93). Berrigan emphasizes the point of the defendants’ emblematic act of burning some files. That is to say, if measured against the real pain, death and disorder inflicted by the war, there is an enormous difference between the Catonsville Nine ‘violence’ and that of the government’s.

Such a comparison, which seems so axiomatic, establishes a solid framework from which one can distinguish between the nine defendants’ justifiable action and the government’s unjustifiable decisions. This dichotomy may help redirect the attention of the court of law (and audiences too) to the real meaning of violence some acts do certainly and concretely entail and impose. The idea is that nonviolent protests should not be ignored or dismissed since they do resist the enlistment of young Americans in a destructive struggle. And so, any law that promotes killing or violence is in its essence irrational and unjust. Such a law is and should be considered inacceptable since it does not represent the will of the American nation as Gargarella would probably admit. It is precisely this kind of law that the defendants have disobeyed and according to which they are now establishing a plea to defend themselves.

Another example that exhibits the nine defendants’ attempt to defend their stand is also based on their intention in Catonsville. As one of them says, his aim was only to stop what he perceives as perpetual crimes and that all his hope is “to halt the machine of death” (Berrigan 35). Accordingly, by acting disobediently, a clear message is sent through: the act of opposing the state’s unreasonable and illegal policies is not a matter of expediency, but a necessity or more precisely a duty. This idea is further enhanced by the fact that nonviolent resistance is deeply entrenched in American history. Notably, the nine defendants did not

miss the opportunity to refer to prior events of civil disobedience in order to give credence to their disobedience.

Indeed, the process of convincing the Catonsville court to recognize the nine defendants' disobedience constitutes a major narrative in the play. One can perceive the playwright's attempts to situate the defendants' actions within the sphere of the inherent connection between acting disobediently with American democratic values. This appears through reminding the court of similar notorious historical dissent cases of people who determinedly decided to choose to obey their conscience. Philip Berrigan advisedly prompts the court to reconsider the integrity of civil disobedience as being a "serious fashion" in American democratic tradition (Berrigan 29). He says:

> There have been times in our history
> When in order to get redress
> In order to get a voice/ vox populi
> Arising from the roots
> People have so acted
> From the Boston Tea Party
> through the abolitionist and movements
> through World War I/ and World War II
> we have a rich tradition
> of civil disobedience. (29)

This defendant stresses the fact that Americans have always used peaceful objection as a way to oppose injustices and violence. This tradition has always aimed to get a heard voice and an adequate answer, advocating people's claims to protest, change and justice. One may say that the Catonsville Nine do not totally call for a new understanding of their plight. Civil disobedience has never been a new challenging discourse. In fact, resistance to authority is, de facto, engraved in the American's political and legal consciousness. In asserting this meaning, perhaps one major idea emerges that of in no way should the essence of civil disobedience be buried into the law's unconscious. Whatever else the historical dimension of civil disobedience may tell about people's veneration for this tradition, indeed, what it does also

communicate is the significance of this tradition as a means to uncover the condition of legal injustice.

Having already discussed the relationship between conscience and the rule of law, at this stage, it is necessary to make that vital relationship more precise. The main objective here is to show how civil disobedience is entirely entrenched in the spirit of laws. Freeman contends that conscientious objection does not forcibly contradict the rule of law. Rather, civil disobedience is, in fact, a kind of "obedience," in terms of being an expression of free speech, also embodying, in a certain way, the entire pattern of democratic tradition, not an anarchic or a totalitarian one (228). Moreover, by referring to instances such as Antigone and the American Revolution, Freeman explains that civil disobedience, or the right to challenge the illegality of a law, represents an American tradition. This tradition has its roots in, and extends from, the theory of natural law or the higher law. This latter which originates, its own right, from *logos* or divine law has effectively contributed to allow men to challenge the illegality of laws, has helped to keep rulers under the law, and has helped to deal with political crisis (237-238). Civil disobedience which is deeply connected to natural law ethics simply aims at establishing the real meanings of justice and fulfilling the real purpose of laws.

The idea is that civil disobedience can function as an affirmative action in order to enhance highly democratic principles. At the same time, civil disobedience can effectively reflect some fundamental shared values. That is why it has been observed that the fact of the continuous prosecution of those who engage in civil disobedience challenges, in fact, one important tradition and one major tenet of American society: freedom of conscience (Loesch 1070). One can easily observe that it is within such arguments and language that Berrigan's play unfolds. The Catonsville Nine staged their protest and broke the law in Baltimore in defense of their freedom of conscience (or more broadly justice); an act which also represents a revival of American political tradition.

Still, the playwright's exposition of the historical power of civil disobedience does not do away with the key idea of legal trauma. The philosophical debate about civil disobedience reveals the aspect of legal alienation. What Berrigan wants to say is that the more the criminal justice system understands and recognizes the basic idea behind dissidence, the closer the nation would become able to solve its problems. The refusal of the Catonsville court to admit the nine protesters' plea is thus denounced. It is a denunciation that censures the court's own flaws and limits because it is only through a judicial recognition that the logic of civil disobedience can take a concrete manifestation. After all, acts of civil disobedience are by no means to be denied as long as they do not contradict the spirit of laws.

Actually, one cannot help discussing the issue of civil disobedience without referring to Henry David Thoreau. In his famous essay, *On Civil Disobedience*, Thoreau asks some important questions about conscience and moral obligation when being inconsistent with laws. He states:

> Must the citizen ever for a moment, or in the last degree, resign his conscience to the legislator? Why has every men a conscience, then? I think we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right? The only obligation which I have the right to assume is to do at any time what I think right. (qtd. in Ledwon 190)

Here Thoreau overtly acknowledges people's right to disobey some laws in favor of their own conception of justice. He also conceives civil disobedience as a question of manhood and conscience. Though Thoreau shows that the tension of choosing conscience and the consequences of defiance people do often experience can be troubling and difficult, he still privileges the moral stand.

In explaining why immoral or unjust laws should not be obeyed, Vinit Haksar points directly to the apparent quandary between obeying such laws and the question of "one's self-respect" (410). Essentially, in *The Trial*, Berrigan raises a similar stand. He, indeed, appears to be highly influenced by Thoreau's ethical obligation in particular and the philosophy of

civil disobedience in general. It comes as no surprise that in explaining to the judge the motives behind acting against the established laws, Berrigan affirms that "because my brother was a man/ and I must be a man" (92). Notwithstanding the defendants' personal beliefs of manhood, righteousness, and conscience, these elements are not the only trigger behind their actions, whether in Catonsville or elsewhere.[26] Their stand aims at proving their moral innocence. How did the playwright embrace or call for a plea for the Catonsville Nine moral innocence? It is the question that will be investigated in the following section.

2.5. The *Trial*: A Rhetoric of Moral Innocence

For Berrigan, the practice of civil disobedience should not only be considered as a mode of opposing the government's policies, but its meaning should also be extended to how dissenters perceive and interpret the laws. The nine defendants candidly see the process of civil disobedience as essentially a means directed toward urging the court for more moral and humanistic considerations of anti-Vietnam War's protests cases. In other words, though aware of their legal positions as breakers of the law, the nine defendants nevertheless believe that the court of law should reconsider their moral innocence within concrete legal terms. In what follows, a discussion of how Berrigan cleverly defends such a plea will be set up. And in order to expose the justice system rigidities and shortcomings, three critical issues will be examined. These are the playwright's exposition of the court's dilemma, the notion of legal guilt, and the doctrine of nullification.

2.5.1. The Court Dilemma

As it appears from the previous discussion, the power of Berrigan's play rests on the moral significance of the arguments presented by the nine defendants. And this fact could not be passed unnoticed by the Catonsville court though at the end of the trial this same court refuses to underscore the nine defendants' moral innocence. Although Berrigan admits that

[26.] It should be noted that the playwright points that some of the nine protesters had already practiced some acts of dissents before the Catonsville events. For instance, four of them poured blood over Selective Service records at the Baltimore Customs House in 1967 (Berrigan 29).

the defendants "are not arguing from a purely legal stand point" and are speaking as part of the whole American nation (112), he nevertheless insists on challenging the court's reasoning. This is conceptualized through the defendants' raising of the question of the judge's ethico-juridical responsibilities, stressing on his "obligations to society," as well as those of the jurors' (112). Berrigan in fact draws an image of two opposing views, that of the dissidents and the court.

One most obvious example of this image is the instance Berrigan asks the judge to consider issues of conscience. The judge, however, assumes that the defendant's request entails two parts, and accordingly, he proposes two answers, reminding Berrigan that the duty of a judge cannot overpass the edge of personal affection. That is to say, as a judge, he is meant to decide on the basis of definite rules, articulating that he ought to behave only according to those rules. The judge pronounces:

> As a man, I would be a very funny sort if I were not moved by your sincerity on the stand and by your views. I agree with you completely, as a person. We can never accomplish what we would like to accomplish, or give a better life to people, if we are going to keep on spending so much money for war. But a variety of circumstances makes it most difficult to have your point of view presented. It is very unfortunate, but the issue of the war cannot be presented as sharply as you would like. The basic principle of our law is that we do things in an orderly fashion. People cannot take the law into their own hands. (Berrigan 115)

From this scattered passage, the judge's dilemma, or his oscillation between his personal conviction and his professional duties concerning the case and its underlying causes, is so obvious. At first glance, the judge seems to appreciate the broader arguments of anti-Vietnam War's protesters. Yet, at the same time, he positions moral values as secondary to the rule of law. One could say that the Catonsville judge himself is caught up in a kind of moral-legal dilemma.

To better expose this dilemma, it is useful to refer to a discussion about civil disobedience and its relation to moralism and legalism.[27] Alan Gewirth remarks that civil disobedience can impose a kind of dilemma. As he explains, civil disobedience brings to the fore some conflicting dualities such as the problem of absolute legalism versus absolute individualistic moralism, a situation which characterizes people who usually find themselves trapped in (536). This suggests that there are some moments when one's inability to choose between legal obligation and moral obligation becomes to a certain extent problematic; and the same thing can be said about the Catonsville judge.

By admitting the defendants' sincere moral beliefs and arguments and at the same time consciously excluding them, the Catonsville judge put himself and his court of law in the dualistic situation of moralism and legalism. On one hand, he behaves as an "absolute individualistic moralist" who sees that "civil disobedience is always justified, because such a moralist gives absolute priority to the demands of the individual's conscience" (Gewirth 536). And this may explain why the judge admits the sincerity of the defendants and their noble motives. On the other hand, the judge acts as an "absolute legalist" who believes that he cannot and should not exceed his legal duties, owing to the fact that "every law, no matter how bad or wrong it may be, ought to be obeyed" (536).

One might say that the moral attitude of the Catonsville judge, borrowing Judith Shklar's words, is "both strongly felt and widely shared" (1). Nevertheless, the playwright raises the argument that such an attitude must "express[e] itself not only in personal behavior but also in philosophical thought, in political ideologies, and in social institutions" (Shklar 1). Most significantly, what Berrigan wants to convey is that the judge's attitude must be expressed in legal decisions. After all, people define morality through their concept of justice and their justice system; together they make tangible ideas of morality as well as of good and

[27.] By definition, legalism is "the ethical attitude that holds moral conduct to be a matter of rule-following, and moral relationships to consist of duties and rights determined by rules" (Shklar 1).

bad conduct (Friedman and Squire 73). The core of the matter in the Catonsville case is that the idea of moral attitudes, concerning the war, should stand alongside legally enforced decisions. In other words, the playwright sees that moral conviction can only have a vital role in achieving justice in case it is concretized in legal language through practical judgment or at least practical instructions.

Another implication of the judge's dilemma can be deduced from his personal views. One finds that he admits that the war in Vietnam is, undoubtedly, a question "of life and death to all boys who are in it. It is a matter of life and death to people in Vietnam," (Berrigan116). Yet, he insists on instructing the jury not to consider the nine dissenters' call for implementing the spirit of the law (117). The judge's acknowledgment of the fact that the war is a matter of death and his persistence in applying the letter of the law, choosing thereby to ignore such a sounding trauma, is indeed an embarrassing attitude. The judge's standpoint is again dualistic. His position hints at what the defendants themselves believe in, that the war in Vietnam is unjustifiable, inexplicable, and unreasonable. At the same time, he considers that the governing laws are unchallengeable. The Judge cannot go a step further his personal affection though the war traumatic realities could not be totally ignored by his court of law.

It is worth mentioning that Berrigan portrays a kind of dilemma that troubles the prosecution, too. This latter conceives that what the nine defendants are proposing is really a matter of concern. As the playwright reports at the end of his play: "The government quite candidly admits that the position these defendants took is reasonable—as to the fact that the war is illegal, that it is immoral, that it is against religious principles, that any reasonable man could take that view" (100). Yet, the prosecution stands for the idea of enforcing the letter of the law, its unchallenged rhetoric. The government representative further says that "this prosecution is the government's response, the law's response, the people's response, to what the defendant did. And what they did was to take government property and throw flammable

material upon it and burn it beyond recognition. And this is what this case is about" (100). Believing that the moral standing of the defendants is considerable and that the rule of law should be unquestionably enforced also reveals the prosecution's fall within the moral-legal dilemma.

This insight of the court's dilemma is in fact critical in framing two points about the play's significance. First, *The Trial* truly demonstrates what one might term as the traumatic situation of the law's representatives (as is the case with Reverend Hale in Miller's *The Crucible*). Under such circumstances, an understanding of the real matters at stake will be greatly damaged; therefore, it becomes hard to perceive painful human conditions, let alone to resolve them. In other words, the play offers a tangible meaning of how courts of law may participate in depreciating and endangering human values and lives, particularly in times of traumatic conditions.

Second, *The Trial* exposes the sense of confusion that American citizens might experience in case of judicial disavowal of matters of conscience. The centrality of conscience is advocated as an ideal that may help to soften a traumatic situation. And this would help to inspire a good relationship between people and the authorities. However, the Catonsville court basic argument, like most other instances of civil disobedience cases of the time, was grounded on the principle of the rule of law. The case is all about settling law and order and punishing the transgressors no matter what their moral motives are or might denote. Yet, if the court of law upholds the narrative of regarding the Catonsville Nine as offenders, still the Berrigan insists on the defendants' moral innocence.

2.5.2. Moral Innocence versus Legal Guilt

While cognizant since the beginning that they are legally guilty for having burned official records, nonetheless, the nine dissenters certainly believe are not morally guilty for having opposed the violence of the war. As such, certain aspects of the defendants' arguments

seem to bear out Giorgio Agamben's claim, that of, ethically speaking, legal guilt is usually "less serious than moral guilt" (23). Philip Berrigan makes it clear that he does not wish that his actions as well, as those of his comrades, be reduced to questions of acquittal or conviction; rather, the whole of the case should be about his country's policies in the world (Berrigan 30). For the nine activists, what matters most is to go beyond the narrow boundaries of guilt and innocence in order to reflect on the current social and political inequities and traumatic realities. However, what preoccupies the authorities is the very act of dissent regardless of its context or the moral motives for which it is performed, as noted earlier. In other words, while the court prioritizes the rule of law and legal punishment, the Catonsville Nine advocate the precedence of their moral innocence.

But before turning to the play's dialogue, one would like to refer first to a legal argument related to the question of punishment of civil disobedient. In elaborating for a defense for disobedient people, particularly the case of those who disobey draft laws, Dworkin exposes some arguments according to which governments ought not to punish draft dissenters who act out of conscience. He argues that one of these good and obvious reasons is the fact that these people "act out of better motives than those who break the law out of greed or a desire to subvert government" (*On Not Prosecuting*). Dworkin also criticizes those "mindless" people who think that lawlessness and conscientious objection, or disobedience, are quite similar (*On Not Prosecuting*). Within this vision is the idea that the act of delivering guilty verdicts against dissidents who prove to have moral justification is in its own right ethically unacceptable and unjust.

Again, Berrigan raises the question of how the criminal justice system should deal with those who break laws out of moral motives. In trying to establish the plea by which the moral innocence of the nine defendants can and should be legally recognized, besides the play's rhetoric of defending moral-sounding values, the defense lawyer makes a subtle

distinction between the nature and impact of crimes. He says that the act committed by the Catonsville Nine is different from other ordinary offenses. He directly alludes to the point that civil disobedience should not to be put on equal footing with other criminal conducts. The defense attorney addresses the members of the jury by pointing to the good motives of the defendants as an attempt to affect their decision. He says:

> The defendants did not go to Catonsville to act as criminals, to frighten, or to annoy.... They were there to complete a symbolic act (first of all) which we claim is a free speech act. And secondly, they were there to impede and interfere with the operation of a system which they have concluded (and it is not an unreasonable belief, as the government has told you) is immoral, illegal, and is destroying innocent people around the world. (Berrigan 103)

At the heart of this statement lies an explicit clamor for considering the defendants' moral innocence. The essence of the idea is as follows: the nine co-defendants are not the kind of usual criminals with selfish or bad intentions. And it is for such reasons that the court should see their noble deed instead of its criminal side. The defense party reminisces the court that unjust laws are markedly questionable, thus if broken, they should not beseech the question of punitive measures. Here, an indication of what it means not to judge the defendants' dissidence, for their act is, after all, justified. And this is indeed in line with Rawls' argument that a justified noncompliance rests primarily on the extent to which the injustice of laws and institutions could be established (309).

However, considering that one condition of justified civil disobedience is bound to the willingness of the breakers of law to accept legal punishment, as stated earlier, and since the Catonsville judge champions the rule of law, excluding any claim to moral motives, one question should be asked here: What is hence the playwright's objective, and what are the implications, behind invoking the whole issue of the nine defendants' moral innocence if there is ultimately no room to escape the punishment of the law?

Apparently, the answer to this question seems to have some practical dimensions. As Haksar clarifies, by openly acquiescing to punishment, the civil disobedient goes some way

toward showing his/her sincere desire to engage in the search for true justice (411). Much more, the pain and anguish involved naturally in punishment, as Haksar further opines, will impress the whole society, including some opponents and this will help to promote truth by involving all the parties in a dialectical pursuit of this truth (411). The process of breaking a law has less to do with being just a means to testify the war's horrors; there is also a communicative aim by which truth can be critically questioned. In this sense, it would become possible to urge societies to revaluate the whole state measures as well as the role of the justice system in dealing with such measures.

Through such reasoning, one might say that the playwright's rhetoric of moral innocence has one major objective: to stimulate people's perception about issues of justice, law and truth. This can be crucially noticed through the words spoken, at the end of the play, by one of the audiences in the courtroom. His words may indeed summarize the whole issue when addressing the court: "Members of the jury, you have just found Jesus Christ guilty" (Berrigan 121). Through this powerful announcement, which denotes a kind of grief over the court decision of finding the nine protesters guilty, one can immediately feel the sense of denouncement against such a step. Maybe it is at this moment that the reader of Berrigan's dramatic work becomes fully aware of the court's legal trauma.

Seeing the Catonsville Nine as the figure of Chris defines indeed what kind of crisis the court of law does really face. In other words, to penalize the nine defendants is to confirm the justice system's blindness and this in terms of its refusal to see the real issue at hand. Although the nine defendants' sincere arguments and prospects of serving justice (for all people) and truth (about the war atrocities) are undoubtedly well-established, the court of law dramatically failed to see them. Berrigan (and his comrades) succeeded in engaging the present audiences with the conflict by urging them to take sides. Indeed, though the word of law finishes by ascribing guilty judgment on a striking blameless people, it certainly fails to

undermine their justifiable moral action, their moral strength, and also their sense of responsibility. The readers/audiences can further grasp this sense when regarding the point that *The Trial* is itself a fact-based piece.

Essentially, the defendants' objectives do not stop merely on whether accepting or refusing the law punishment but their aim is also much about one's responsibility toward defending the value of justice. Defendant Marjorie Melville again explains the defendants' engagement in acts of protests. She says that she is aware that such actions would certainly put them in direct confrontation with the rule of law. As she expresses: "I did not want to bring / hurt upon myself /but there comes a moment/when you decide/that things should not be/Then you have to act/to try to stop those things"(Berrigan 58). The idea is that though some urgent conditions do place mindful persons in a parlous situation, one should strongly refuse to be associated with some obnoxious wrongdoings. Berrigan asserts that one should not lose sight of visible violence, implicitly criticizing the Catonsville court for its inability to see such truth and then to act accordingly.

In the Catonsville Nine point of view, beyond the narrow question of temporary punishment, there lies the persistent notion of individuals' responsibility in regard to their government's action. The commitment to stop atrocities is definitely related to individuals' keen responsibility toward their country as well as their fellow citizens. The idea is that every person should voice his/her concern about the trauma of the war and dispose of the fetters of some enforced, unjust laws. This kind of narrative with resistance context, as found in the play, corresponds with what Robin West poses in *Narrative, Authority and Law*. In this book, West brilliantly asks whether the "goals and the laws we enact that reflect them well serve our best understanding of our true human needs, our true human aspirations, or our true social and individual potential..." (7).

One key point in *The Trial* is about the duty of people to reconsider these questions. As mentioned before, the nine protesters urge audiences to critically engage with some moral questions, especially in times when their nation seems to be floundering in mass violence and causing individual and collective traumas. After having noticed the need for opposing the war trauma, the nine dissenters do certainly believe in the notion that real violence should be revealed and communicated. They also recognize that when the question becomes associated with life and death, there is no reverence for abstract laws. In this sense, perhaps Berrigan wants to imply that:

> Obedience to legal rules to which we would have consented relieves us of the task of evaluating the morality and prudence of our actions... The impulse to legitimate our submission to imperative authority also has within it, of course, the seeds of tragedy. That impulse is the mean by which we most commonly victimize ourselves, and the means by which we allow ourselves to become tools that enable those who use us to destroy us. (West 73)

While there is a kind of a consistent and an imposed duty to follow the rules (due to their inherent force or authority, as already mentioned at the start of the first chapter), blind obedience can sometimes be extremely damaging. Though this damage cannot be immediately grasped, but its underlying outcomes cannot be ignored. This means that the blind adherence to the letter of the law can affect both law and individuals. On one hand, the legal system in itself can fall into its own trauma, becoming unable to serve the will of the citizenry. On the other hand, individuals can also fall into the sense of inexplicable unresponsiveness when relinquishing the duty to oppose unjust laws or policies.

Berrigan elucidates such meanings through his defense of civil disobedience. For him, civil disobedience, during the Vietnam War, is not just about challenging some laws, but rather about the nature of law and the various implications of guilt and innocence. Indeed, between obedience and resistance to laws, there centers the question of the role of legal decisions in particular or general cases. Thus, one should ask here about the possibility of

taking into account the legal innocence of people who resist laws that they do sincerely consider to be unjust. Indeed, Berrigan brilliantly justifies and defends the possibility to cast away the punishment of law on peaceful civil defiant. This can happen in the case the justice system decides to take into consideration some considerable jurisprudential matters, mainly the question of the doctrine of nullification. And because of its very significance, this doctrine will be thoroughly discussed.

2.5.3. The Jury Failure to Apply Nullification

As an effort to persuade the court of the nine dissenters' justifiable cause and with the same line that conscience is, and should be, attached to human actions and the rule of law, the defense attorney in the Catonsville case calls for the doctrine of nullification. This latter is an American legal principle founded on the jury members' ability to refuse to convict a defendant whose culpability has already been decided. The idea is that the jury can exercise "the right to say that the law violated by the defendants was an unjust law," hence, and with respect to that particular case, the jury may, at least, nullify that law (Gustainis 167). The logic behind nullification suggests that the jury members are qualified to question, reevaluate, and challenge a law whose directives would largely confront matters of conscience and justice, as well as society's common sense.

In American legal and democratic tradition, the jury's role of nullification is not a new procedure. The doctrine of nullification stretches back to the criminal procedures of the common law. In their study on this doctrine, Alan Scheflin and Jon Van Dyke write that, historically, jury nullification has been widely applied since the eighteenth century, but it started to wane in the twentieth century (*Right to Say No*169). They also argue that in modern times many scholars and defense lawyers attempted to keep a portion of this tradition alive by claiming for what they consider as a more candid, just, and democratic view of the role of the jury (*Contours of a Controversy* 54). The criminal proceedings of the common law bestow

upon the jury a considerable power. Jurors possess the ability to look beyond facts and rigid or positive laws. As such, their decisions may be expanded as to see and then to consider instances of moral innocence. Jurors, after all, can nullify some laws.

The courts have continued to hear arguments about the importance of allowing instructions and closing arguments about jury nullification since the time of the Vietnam War, during which many cases demanded nullification (McKnight 1118). The doctrine can be more encouraging as a means for defending morally or conscientious dissenters. It has also been argued that the doctrine still sounds "with significant frequency where the jury finds prescribed punishments excessively harsh, especially in cases of victimless crimes" (W. H. Simon 84). That the doctrine of jury nullification has always been raised, particularly in delicate times or special occasions, suggests a sustained determination to prove its efficiency and its legal ground.

In *The Trial*, the doctrine of nullification is clearly advocated in the instance the defense attorney tries to inform the jurors of their right to nullify the law that the defendants have violated. At this moment the judge interrupts the defense and declares that the jurors could not decide on the ground of the defendants' conscience. The judge further asserts that the jury has "to decide the case only on the basis of the facts presented" (Berrigan 105). In this sense, the judge's instruction to the jury not to use the doctrine of nullification can be read as another aspect of legal trauma. Although, once again, there is a chance to resolve the conflict between the government and the protesters, the sympathetic judge refuses this time, too, to take advantage of such an important occasion.

In their discussion of the point of the refusal of the court to instruct the jury of its power to endorse the doctrine of nullification in the Catonsville case, Scheflin and Van Dyke wonder why the court reacted as such though this process could be valuable to the administration of justice. By referring to the court answer, they explain that one major cause

centers on the belief that by allowing a decision of nullification, "lawlessness," or the negation of the rule of law, would be encouraged (*Right to Say No* 208-209). In other words, it is the assumption that chaos would result if the jurors were informed of their power of nullification (Loesch 1100) which oriented the Catonsville judge's instruction. However, as Scheflin and Van Dyke further contend, this assumption does not fit the functional and historical role that the jury can play in the judicial process in a democracy; therefore, the alleged reason of lawlessness can be adequately rebutted as well as challenged (*Right to Say No* 209).

Referring back to *The Trial*, one can easily see that the Catonsville judge's instruction to the jury is a weak claim. People are already protesting, reacting peacefully against the war. The judge indeed chooses to remain blind to the real traumatic conditions. For if chaos and lawlessness may result from allowing jurors to exercise a circumstantial judgment, what about the disorder the war does concretely cause? Actually, Berrigan alludes to what kind of issues the courts should normally be concerned with. In a section dubbed *The Day of Summation*, the defense attorney addresses the members of the jury by pointing to the broken law as a final attempt to stimulate their emotions so as to make the process of nullification possible. He says that "the Selective Service System is an arm of the Federal government, for the procurement of young men for military service, as decided by the authorities of the United States" (Berrigan 103). He, then, adds:

> [S]uch young men are to be used, as one defendant said, for cannon fodder, if the government so dictates. It is not a question of records which are independent of life. We are not talking about driving licenses or licenses to operate a brewery. We are speaking of one kind of records. No others so directly affect life and death on a mass scale, as do these. (103)

The argument used here calls on the jury, as the defendants' peers, to decide on whether the conditions that led the defendants to their trial and triggered their confrontation with the established law necessitate special reconsiderations. Saying it simply, the defense attorney

requests the jury to measure the inherent violence a law may entail when it prescribes the enlistment of young people in a deadly war. The defense explicitly incites the jury's own impulses of conscience in order to nullify such laws.

The defense also rationally asks the jurors to consider all the facts of the case before them, reminding them that "All the words, writing, marching, fasting, demonstrating" and all the peaceable deeds of the defendants, over a period of some years "had failed to change a single American decision in Vietnam" (Berrigan 105). The defense then goes on to add: "All their protests had failed to prevent a single innocent death, failed to end the anguish of napalm on human flesh, failed even momentarily to show the unnatural, senseless destruction of men, women, and children" (105). However, the appeal of the defense to the jury to look at the traumatic realities could not succeed in convincing "a faceless and imaginationless jury, whose members are admonished not to consult their conscience" (J. Simon, *Saints* 66).

It is worth mentioning that the process of nullification "is not a license to impose one's own views, but a duty to interpret what the law requires" (W. H. Simon 84). Through the process of nullification, the jurors have to decide on the justness of a given law with regard to their position as representing the conscience of the community. As such, there would be no need to raise the question of endangering the rule of law. By invoking the question of jury's nullification, Berrigan in fact affirms the ability of the justice system to react positively, selectively and urgently, always within the frame of the rule of law. Indeed, a vital element in the discussion of the playwright's exposition of legal trauma as the point of jury nullification is concerned will be revealed through three points.

The first point is related to the theme of conscience. Since the doctrine of nullification is recognized to be directly linked to a society's common sense or its collective conscience, this might help enlighten one central claim in this study, that of legal trauma. Essentially and among the many interpretations of jury nullification, it is argued that this process "allows the

community to say of a particular law that it is too oppressive or of a particular prosecution that it is too punitive or of a particular defendant that his conduct is too justified for the criminal sanction to be imposed" (Scheflin and Van Dyke, *Right to Say No* 193). The process of nullification can also help to provide an institutional mechanism for working out issues of conscience within the law institution (193). The process of nullification gives societies a legal space by which to decide on what constitutes basic or shared values. With regard to some traumatic instances, the process can have considerable impact. Juries can effectively express their communities' voice; thereby, they can participate in reducing the sense of legal alienation.

Once more, Berrigan invokes the issue of legal alienation. He confirms that all the defendants are facing huge difficulty for being unable to "adjust to the atmosphere of a court from which the world is excluded, and the events that brought [them] here are excluded deliberately, by the charge to the jury" (113). In fact, the playwright asks the judge to allow the jurors to use their power to redefine the defendants' moral motives in legal terms, as his instruction would ultimately lead to a dramatic exclusion of matters of significant importance. One might argue that the playwright criticizes the fact that the jury members who should work "as an ameliorating force tempering the rigidity of the law" (Scheflin and Van Dyke *Right to Say No* 192), thoughtlessly do not "contribute to a reasoned analysis of the problem in its contemporary context" (Loeb 323). The problem is that a national trauma in which human lives are at stake is not reasonably addressed. Fundamentally, the court's refusal to reconsider the possibility of interpreting the law within its current, problematic and traumatic context is what really features the court's shortcomings.

It is not surprising then that it has been conceived as "hypocritical" not to let jurors be informed of their "historic role" that has been supported long ago by the common law (Scheflin and Van Dyke, *Contours of a Controversy* 79). It is uncanny from the

understandable Catonsville judge to instruct the jury's members not to use their right of nullification. This process would have greatly helped to bridge the gap between the government and the protested citizenry. As Aaron McKnight notes, the jury's historic role of nullification is an important tool for balancing government interests with individual rights, and this is why courts should not repress its use (1123). Curbing the process of jury nullification can allude to the legal system's failure to create a kind of platform to balance the arguments of the anti-war protesters with political claims, and this always within the frame of the rule of law.

The second point that should be referred to is jury nullification and its relation to the rule of law. According to law professor Jenny Carroll, the conception of law itself under the notion of jury nullification may essentially result in saving the theory of the rule of law. As she explains, it would certainly be possible to recognize the true value of law that lies primarily "in its ability to be responsive to the citizens' own lives and to conform with the citizens' expectations and understanding of the law" (583). Relating this to the context of the play, one can assume that any law which conscribes young people to sacrifice their lives for an unjust and ambiguous war does match neither with American political values nor with the society's common sense. That being said, any reasonable person should properly consider the nature and the function of some laws and this by taking fair decisions.

The process of jury nullification can also offer an opportunity to exercise the real meaning of democracy. Speaking about the vitality of nullification to the process of democracy, Carroll explains that nullification can particularly help to define the nature of the law as well as determine its "proper sources." She also affirms that the jury's making decision within the American democracy is consistent with the rule of law as long as it works in parallel with the citizenry's lived experiences. The power of the jury does not threaten democracy; on the contrary, it can build "a bridge between the governed and the law" (586).

Accordingly, the exclusion of the nullification process can be read as the exclusion of one of the community's channels through which many voices can be expressed, missing hence the kind of available democratic process.

The third and final point one should discuss concerns the presupposed tremendous consequences that might result from adopting nullification. It is, in particular, the question of precedent which is strongly linked to nullification. In common law, previous legal decisions can become the basis for future decisions; that is to say, they can direct the ensuing verdicts. In this line, Gustainis explains that legal, political, social, rhetorical and other implications would have been of great significance in case the jury had resorted to its power to nullify the law under which the Catonsville Nine were charged. He adds that, in effect, through their appeal to precedents, forthcoming protesters might be approved nullification when brought to trial on charges of breaking and entering and damage of government properties (168). Through nullification, not only the current course of the war that might be indicted but future dissidents would be given a legitimate credibility and this by having an affirmative legal justification.

The refusal of the court to nullify the law was meant to enforce a kind of power over any future objectors who might consider similar forms of justified disobedience. However, in *The Trial*, one can immediately grasp the impact of such legal attitude or abstention, which is the condition of legal alienation. The idea is that while anti-war protesters aimed to integrate the law or the justice system into an urgent crisis, this system chose to react indifferently or more specifically blindly by ignoring the protesters' clamor and intention. In fact, if the Catonsville court had opted for nullification, it is, indeed, the legality of the Vietnam War that would have been called into question, hence, fulfilling exactly the nine defendants' objectives. Yet, according to the trial records, there was no "indication that the jury ever considered the question of setting aside the law in this case" (Gustainis 168).

The strategy of the defense behind invoking the doctrine of nullification has one specific aim: to prove that any law that defends or supports the war is illegal or more precisely unconstitutional. It was exactly this point of raising the question of the unconstitutionality of the Vietnam War that triggered most American courts to choose to step aside, refusing to endorse the jury's ability to nullify some laws. And this can be read as another element of the law's negative silence, a point that will be dealt with in the final section of this chapter. Berrigan's emphasis on the jury's refusal to act in accordance with its presumed role of nullification can be seen as a vehement criticism and at the same time a way to challenge the law. The playwright wants to define the nine protesters as legitimate agents against an unjust law.

Always within the notion of the legal failure (including the failure of the jury to apply nullification), there is another image to be exposed. Indeed, the court's abstention from upholding nullification points to a larger problem that faced the justice system during the Vietnam War. This is about how much politics could affect the legal system whose power is supposedly capable of bringing about practical changes according to the current circumstances, regardless of the underlying political prerequisites. Accordingly, in the following section, one fundamental question should be answered that of: How did the playwright describe the power of politics in determining the process of the Catonsville trial? Or what kind of justice can the justice system afford in traumatic conditions such as the Vietnam War?

2. 6. Political Trials and Politicized Justice

One of Berrigan's purposes behind (re)presenting and (re)constructing the Catonsville events and the ensuing trial is to comment on the court's proceedings and to criticize the legal system. Alter explains that Berrigan exposes the extent to which the war could corrupt the whole American system, including the judiciary. She makes a significant point about the

defendants' choice not to contest the jury selection (whose members are revealed to have, in one way or another, certain connections to the US war machine, whether being in former military services or having other close interests), purposefully aiming to show how biased the jury is (42). By reenacting the Catonsville trial, the playwright not only exposes the defendants' dissent due to the already existing political alienation, but he also exposes the dimension of legal alienation.

As political alienation may take the form of people's negative perception of the political system, the same thing can be said of the concept of legal alienation. One might say that legal alienation can also be defined as one's negative view of the justice system. This view may be so intense in periods of politically charged atmosphere in which the law institution would extensively be affected by politics. Apparently, the turbulent 1960s affected the domestic and foreign policies as well as the justice system. In *The Trial*, Berrigan draws a picture of how much the Vietnam War touched all aspects of the American nation. And the legal institutions also proved to be less resistant to the power of politics.

The point of the inexorable influence that the war policies could exercise on the justice system is explicitly and boldly set forth in the first moments of *The Trial*. Berrigan expresses his resentment at that kind of politicized judiciary, which to a greater or lesser degree weakens the justice system, when he opines: "The war machine, which has come to include the court process that serves it, is proving self-destructive. The courts, like the President … like the Congress, are turning to stone. The 'separation of powers' is proving a fiction; ball and joint, the functions of power are fusing like the bones of an aged body" (x). The playwright here deftly criticizes the law institution. This latter which is presumed to be an independent and impartial mechanism for settling conflicts turned out to have no role in stopping death and violence. Being as such, Berrigan openly condemns the court's role in dealing with and promoting the government's agendas. Moreover, by conjuring up the

question of the separation of powers, Berrigan indeed makes an effective argument about the inseparability of law and politics. However, is it possible to raise this question in a democratic country such as the United States?

Falk observes that law and politics are not as detached in liberal democracies as one might usually suppose (2). This being said, though, when laws become under the pressure of politics, they can be anything but an effective instrument for settling conflicts. Laws would not function properly when they succumb to the pressure of politics. As Shklar argues, if laws aim at justice, politics, however, looks only to expediency (111). There is a distinction between the function of law and the function of politics. Law is typically restricted to the pursuit of justice, while politics has its own conception of justice. It is worth stressing that, in her discussion of political trials, Shklar says that law is the other coin of politics, or as she says, "a political instrument" (144). She writes that a trial as "the supreme legalistic act, like all political acts, does not take place in a vacuum. It is part of a whole complex of other institutions, habits, and beliefs. …. Law in short, is politics, but not every form of politics is legalistic" (144). Although law and politics have practically specific goals, law is bound to various political demands or pressures. Therefore, in political trials when courts confront the question of higher law versus an established law, this latter would probably triumph.

In his attempt to comment on the subordination of the justice system to political agendas, Philip Berrigan alludes to such kind of relation and the subsequent miscarriage of justice that may result out of it. He essentially associates between the political authority and the judicial one, stressing at the same time on their supposed role in achieving justice. He proclaims:

> Lead us in justice/ and there will be no need to break the law/ Let the President do/ what his predecessors failed to do/ Let him obey the rich less/ and the people more/Let him think less of the privileged/ and more of the poor/ Less of America and more of the world/ Let Lawmakers/ judges/ and lawyers/ think less of the law/ more of justice/ less of legal ritual/ more of human rights. (Berrigan 30)

Philip Berrigan here raises fundamental challenges concerning the normative role of both political and legal agents. If politics is to be championed over justice, civil disobedience will constitute an inevitable path. For the nine dissenters, a democratic society's laws are envisioned to work in conformity with the need of all the citizens; otherwise, these laws are illegitimate and should be challenged particularly in cases when their enforcement, to use Gargarella words, "results in nothing more than an act of extraordinary dogmatism−pure injustice" (2). It is for this reason that Berrigan questions the point of the separation of powers and insists on its value. If this doctrine is maintained, the justice system will then function more justly and freely. More importantly, the judiciary will have the vision to look at dissenters as advocators of justice, not as anarchists or trouble makers.

At this stage, one issue should be mentioned that of the objectives of political trials. The general view that political trials are typical to authoritarian societies or regimes can be refuted. Indeed, these trials do frequently occur in well-established liberal and constitutional democracies where there is a commitment to the rule of law, freedom of speech and conscience. Otto Kirchheimer remarks that political trials are a feature of the modern era and that they are unavoidable. He says that these trials represent instances of both governments' and private groups' attempt to enlist the support of the courts of law for maintaining or shifting the balance of political power (47). Having access to the legal system to validate some claims is a crucial matter. And political trials often come out so as to involve political questions that need to be treated judicially.

But, as already mentioned, the Catonsville court refused to consider the moral arguments of the nine protesters, casting them as any ordinary criminals. As such, any act of

dissent is seen as a political threat that needs to be contained. In this regard, Christenson argues that political trials "can become a convenient way to eliminate the opposition" (*Gordian Knot* 11). The legal system might operate in a way that helps strengthen the power of politics.[28] However, as Derrida asserts, when justice is put in the service of social powers or forces, whether these powers are political, economic, or ideological, justice will be then bound to these forces whenever necessary (13). One can understand then why prior to the trial proceedings Philip Berrigan showed his dissatisfaction with the legal process. He confidently says that the defendants would have "no more chance under the law than a snow ball in hell" (qtd. in Peters 138).

Philip Berrigan's view about the legal decision heightens the existing tension between anti-war protesters and the justice system. His predictable negative opinion of the court process which presupposes an already unfair trial may strongly point to what Christenson calls "cynical position," that is, conceiving law to be the "will of the stronger" (*Gordian Knots* 4). In this sense, the guilty verdict in the Catonsville case had been already decided for politics did cast its shadows on the court process. For Philip Berrigan, one needs no effort to notice the influence of politics on the legal institution. Giving this interpretation, a sense of legal alienation would undoubtedly prevail among anti-war protesters. The perception that law can no longer be an instrument for resolving an urgent trauma implies falling short of its original function: serving justice.

However, if the court is obedient to the power of politics, the Catonsville Nine objective is to oppose such attitude. They do question how it is possible that the court can be so isolated from the traumatic realities, as do political authorities. Actually, the political

[28.] It should be noted that political trials can be used as a weapon for eliminating political opponents, as Otto Kirchheimer contends. He states that regimes "may want to gain, stabilize, or destroy political positions by manipulating opinion through the medium of a political trial", adding that, the resort "to political justice for that purpose is a matter of *convenience,* one of many channels in interpersonal and intergroup political warfare" (419).

nature of the Catonsville trial may help to understand how it was difficult for the legal system to cast away the influence of politics. This is exemplified in the court's call for establishing the rule of law and insisting on imposing legal punishment on the nine dissenters. Apparently, the demands of politics seem to have a greater priority. In this way, the efficacy of the whole trial would be undermined in the eyes of the citizenry.

This is exactly what leads one of the Catonsville Nine, Mary Molan, to ask the judge: "Your honor, I think you said previously that you had a great deal of respect for the law and the Constitution of the United States." She then adds: "I would like to call this respect into question, if you are unwilling to do anything about a war which is in violation of our legal tradition and the United States Constitution" (Berrigan 116). Law can be disappointing when it functions according to, and unfolds in, a process that politicizes justice, a process that undermines American's democratic and legal traditions. This defendant urges the judge to reconsider the influence of politics on judicial autonomy. This means that judges should not put themselves under the pressure of politics. The legal system, after all, has the power to withstand such pressure through practical decisions, an effective process, unfortunately, not taken by the court of law. In fact, the pressure of political agendas can be further deduced from the legal institution's refusal to discuss the constitutionality of the Vietnam War, dismissing thereby an effective way to work through an urgent trauma.

2.7. The Law Silence: A Dead End

In the previous chapter, the point of the negative silence of law has been explored. And it seems very crucial to return back to this theme of silence/silencing to ponder its relevance and consequences in Berrigan's play. This will be done through referring to the point of the refusal or the reluctance of the American justice system to deal with the question of the constitutionality of the Vietnam War. It should be noted that the emphasis on the connection between silence and disturbing realities can help further investigate the

relationship between law and trauma (always focusing on the notion of the legal failure). In short, the question one might address is: Could the justice system work to decrease the gap between the government and its citizens without defining basic issues related to the nature of the Vietnam War?

2.7.1. The Passivity of the Legal System

A number of scholars have discussed the justice system's silence on the question of the war legality or constitutionality, though, as one commentator writes, it was a key issue in American politics during the late 1960s and early 1970s (Strum 535). This problem led many to wonder about the Congress's silence, along the whole period, on the undeclared war in Indochina. Such silence raised fundamentally the question of whether the War was unconstitutional or whether the court's failure to reach a decision on the merits of the War's constitutionality merely meant that this issue did not exist at all. (D'Amato 64). With the outbreak of the war, a number of controversies as well as opacities over how to judge the war's legality ascended. That is to say, the complex issue of the constitutionality of the Vietnam War remained, as Felman would probably argue, politically and legally ungrasped.

One must remember that the actions of both Presidents Johnson and Nixon to deploy American forces in Vietnam without taking Congressional declaration elevated many political and legal questions, as well as disagreement. It has been argued that both Presidents proclaimed for themselves the unilateral right to identify enemies of the United States, and then to declare and wage war against them. In doing so, they had denied the Congress and the electorate the information that would have allowed those bodies to reach a substantive judgment about the presidential action (Strum 537). As a consequence, many protesters and litigants grounded their disobedience on this constitutional claim, criticizing the Presidents' domestic and international policies and stressing on the point that laws restrict such authority,

and the conclusion was that, in their conduct of the war, the Presidents seized powers not granted to them (Gottlieb 701).

If any reasonable decision concerning the war had been weakened or dismissed by a leaning toward a kind of authoritarianism (at least as viewed and understood by many people who stood against the war in Vietnam), still the question of the war put the authorities themselves in the position of enemies of the American people. In such a climate, the antagonism between the state and the citizenry became greatly complicated with a growing challenge to and questioning of all the various political and legal decisions. This idea of rooted enemies could not, in fact, deter people's feelings of distrust to the point that they refused to properly acknowledge any related procedures.

Indeed, another major argument raised by many dissenters about the illegality of the Vietnam War was related to the very question of conscriptions (one can understand why the Catonsville Nine burned draft conscriptions). As recorded by law professor Rodric Schoen, many of the legal cases concerning the war in Vietnam consisted mostly of arguments about the unconstitutionality (or the illegality) of conscription, basing on the absence of Congressional declaration of war. He also notes that some arguments were founded on the points of the violation of the international law and the participation in war crimes (304). Yet, despite these strong claims of dissidents, all their many attempts to challenge the legitimacy of the United States' action in Vietnam did not succeed (Gottlieb 706). It seems that political dissent during the Vietnam War was well-grounded, revealing, at the same time, how much contradictions and rift did exist between rulers and subjects. Despite the reasonable demands of war protesters, courts of law aborted their claims, refusing thereby to try to soften and restore the existing rift.

One finds that Berrigan wisely elaborates his reflection on anti-war protesters' tension with the political order and the justice system within the conceptual framework of the

question of the war unconstitutionality. The playwright raises this question through the defendants' request to the court to use its authority to overturn the President's unilateral decision. In this sense, the main idea is that the rule of law must also be a kind of procedural constraint on and valid instrument against some governmental actions, including those of the President himself. Defendant George Mische explains:

> It seemed to me that the war in Vietnam
> Was illegal/ because only Congress
> Can declare a war
> The President cannot legally
> Take us into a war
> We should never have let him
> He should be on trial here today. (Berrigan72)

If protesters are to be tried for burning draft records, the court of law should firmly assume its own responsibility and adjudicate too on presidential actions or decisions whenever necessary. Moreover, this defendant stresses the fact that the whole trial should be about determining the decision of the President to declare the war and whether or not, he, himself, has obeyed the law. A courtroom should not only be a device by which to suit dissidents, but also a means to evaluate the President's actions and to draw a line between his duties and those of the Congress.' This inquiry, however, seems to have no answer from the side of the Catonsville court.

To the nine defendants' claim, the Catonsville judge responds by giving an unsettling reply. He declares that "[i]f the President has not obeyed the law, there is very little that can be done" (Berrigan 115). While the judge admits his inability to magistrate the President's action, the Catonsville Nine— as well as many protesters of the time— consider the President's unilateral decision anything but legitimate. Berrigan alludes to how many protesters' allegations against the President had been confronted with a kind of indifference in the courtrooms. Berrigan's reference to the failed role of the court of law in having a statement on the President's actions clarifies, once again, the conflictual relationship between

law and trauma. Indeed, during the period of the war, many courts of law concluded that such inquiries do not drop within their judicial framework, basing particularly on some political and legal arguments.

In this regard, Edward Keynes explains that most Federal courts— unlike the Civil War cases— declined to decide whether or not the authority of the President to conduct an undeclared war was legal. And by providing a number of hindrances such as jurisdiction, sovereign immunity, standing to sue, and the political-question doctrine, Keynes notes that the federal courts refused "to dispose of the Vietnam cases on their substantive merits" (170). Basing on different explanations, the courts refused to discuss the discourse raised by anti-war protesters. In other words, the legal system chose to step aside, refraining from delving into what most citizens considered to be an urgent question. As such, one can argue that the justice system marked its legal trauma for its refusal to hear and to see the citizens' clamor.

Again, the facet of antagonism between the court and the dissidents is further intensified by the prosecution's attitude. This latter declares that the nature of the Vietnam War has nothing to do with the standing trial. The prosecutor decisively utters:

> First of all, I want it clearly understood that the government is not about to put itself in the position—has not heretofore and is not now—of conducting its policies at the end of a string tied to the conscience of these nine defendants. This trial does not include the issues of the Vietnam conflict. It does not include the issue of whether the United States ought to be in the conflict or out of it. (Berrigan 100)

Despite such negative response, the playwright insists on the defendants' rejection of the prosecution's stand by relentlessly trying to convince the court that adjudicating on the illegality of the war is a duty, not an appropriateness. For instance, one of defendant asks the judge to take a courageous attitude to review the whole issue and to have a say on the question of the war illegality, mentioning that the case will be subsequently lifted to the Supreme Court (Berrigan 116). It is, in fact, an appeal to the justice system not to let the matter goes without a survey for the further legal outcomes it might engender.

It should be noted that the Supreme Court declined to hear an appeal in the Catonsville case (Peters 262). Indeed, pondering on the potential impact of the Supreme Court's decision on the constitutionality of the war in the Catonsville case or elsewhere seems indispensable. To do this, one needs to show some legal discussions about this subject. One of the most interesting debates is that of Schoen. He meticulously describes the Supreme Court's reluctance to delve into this matter as a "strange silence" (277). He goes on to say that the existing review of cases dealing with whether or not the policies of the government were constitutional reveals actually that many occasions were available to the Supreme Court to resolve such a question. But, as Schoen contends, the Court refused to review all the petitions. As a consequence, this silence "denied guidance to the lower courts and denied the American people the Court's considered judgment on the constitutionality of this divisive military conflict" (277). The Supreme Court refused to use its judicial authority whereby it could have powerfully effected many lower courts' decisions. Indeed, if the Court had reviewed such cases, it would have undeniably satisfied or answered a highly mooted claim by the protesters.

According to Keynes, the Supreme Court's silence is a kind of denial of "an authoritative decision on the scope and boundaries of legislative and executive power in an important twilight zone of constitutional authority" (170). Keynes explains that the Court's silence did cast doubt on the judiciary's usefulness as an arbiter of the separation of powers (170). The Court is designated to solve high conflicts or disagreements; yet, it deviated from its alleged role, putting thus its function at severe denunciation. The Supreme Court chose to bury a file of a disputable and violent nature. It is as if in this incomprehensible silence the Court denied a decisive role and an important history. In other words, the Supreme Court refused to identify with the national trauma.

Also, another criticism of the federal courts' passive conduct centers on its failure to play a positive role, if a limited one, mainly that of "an arbiter between Congress and the

President" (170). And though the federal courts cannot decide on "the wisdom, propriety, or desirability" of military conflicts, they can nevertheless decide on "whether the President's military actions are within the scope of defensive authority that the Constitution vests in his office" (170). That is to say, to a certain extent, this silence paralyzed the whole American judicial system in such a decisive conflict and impelling trauma. The silence of the justice system is but a striking failure in terms of refusing to define the war issues as real crimes. Thus, the question needs to be asked here: What may explain the judicial silence on such an imperative question?

In order to explain the causes behind the Supreme Court silence from taking its power of judicial review, Schoen argues that this standpoint has double goals, holding considerable consequences. First, such silence has a "practical legal effect," in terms of working "to validate the Government's prosecution of the war from beginning to end" (308). Second, such silence matters because it effectively "produces no precedent" (309). The Court's silence produced both political and jurisprudential effects. These effects paradoxically worked to maintain and legalize the government's policies. More severely, the voice of any future dissent would be easily dismissed. This reluctance or refusal from the Supreme Court to uphold on the constitutionality of the war worked as a domino effect. In short, the law's silence did not only deprive guidance to lower courts, but it also declined the dissenters' intentions and voices.

Schoen contends that the Court silence did not only deny litigants the benefits of a "considered opinion and judgment on whether lower court judgments favoring the Government were correct" but also denied this measure to the general public and the political branches as well (308). That the Supreme Court should have presided over the justness of the war would have noticeably managed to temperate the general mood. Choosing the path of silence denied many litigants the process through which they could communicate their pleas

judicially. The institution of law thus failed to give an adequate and decisive response to a national fever when it was at its peak. And this further confirms that Berrigan shifted to dramatic representation in hopes of finding positive and more attainable response from the American public. Adopting a more realistic drama to carry on the task of addressing and questioning an urgent issue, is in fact Berrigan's way to reveal some gaps in the legal proceedings.

Therefore, the presence of legal trauma in the Catonsville case is so apparent because neither federal courts nor the Supreme Court had been able to see the real "issue at stake," which is in fact, "greater than war or peace, enormous as that issue is. It is human nobility, imagination, vision up against human blindness, bureaucratic legality and legalized butchery" (Simon, *Saints* 66). It can be, then, suggested that the law' silence and passivity during the Vietnam War, to borrow Felman's words, reflected how much "the *law itself ... [in such urgent]... moment loses consciousnes*s" (164; emphasis in original). The Catonsville court's loss of consciousness can be detected in two instances. The first is when the court considers that matters of morality and conscience do not concern it; and the second is when the court reclaims that the war constitutionality or legality is not an issue of legal debate altogether. What the court of law in each instance fulfills is excluding crucial matters from its legal *consciousness*.

In Felman's view, legal consciousness should be directed toward seeing lucid cases of traumas. As understood from Berrigan's dramatic work, the legal failure lies in the very inability to treat the war according to its real significance and real tragedy. That is why, almost from the beginning of his play, Berrigan insists on the role that the courts (and their agents), the political leaders, as well as other institutions, should uphold to reconsider even radically different means to protest and stand against the war and also to do something about illegitimate power (Berrigan 31). In stressing on the impact of the legal system's negativity to

address the question of the illegality of the war, Berrigan reflects on the justice system's recklessness to decide on a very urgent question. This being said, the justice system has also failed to go through the process of what many protesters saw as an obligatory path. One statement that may give an emphasis to this point is Derrida's notion of "undecidability." As he explains:

> The undecidable is not merely the oscillation or the tension between two decisions; it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged…A decision that didn't go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it would not be just. (24)

The legal system, apparently, during the Vietnam War could not go through a free decision by which to decide on what is just or unjust or more precisely what is legal and illegal. In other words, the justice system refused to make from the trial of dissenters a forum by which to challenge the calculable process of politics and other formalities. With taking into account the problem that justice is hardly achievable when trauma interferes, nevertheless justice, above all, should be measured outside some technicalities or inexplicable attitudes such as silence.

It is then Berrigan's attempt to break this chain of such a negative stand or more precisely inexplicable silence. He does so by pointing to the role the law's representatives can play in challenging the status quo that they do greatly maintain. As a call for taking a dissent position, Berrigan reports:

> To lawyers we say
> Defend draft resisters/ask no fees
> insist on justice/ risk contempt of court
> go to jail with your clients
> To the prosecution we say
> Refuse to indict
> opponents of the war
> prefer to resign...
> To Federal judges we say
> Give anti-war people/suspended sentences
> to work for justice and peace
> or resign your posts. (31)

By urging the legal representatives to be themselves rebellious, Berrigan draws their attention not to be themselves promoters of violence. Only with the practical help of all the legal agents can the war atrocities be at least addressed and at best stopped. The war is certainly a real Gordian knot that beseeches different interventions. In the nine defendants' view, in times of crisis, saving innocent lives, backing up the efforts of war's protesters, and defending justice and peace, should be the duty of every citizen. As such, always within Felman's terms, the Catonsville Nine aim is "not only to establish facts but to transmit[them]"; therefore, "The tool of law [can be]... used not only as a tool of *proof* … but, above all, as a compelling *medium of transmission* — as an effective tool of national and international *communication* of these thought-denying facts" (133; emphasis in original). By legally and publicly transmitting the illegality and unjustness of the Vietnam War, not only the current atrocities that will be acknowledged and stopped, rather future ones will be undoubtedly avoided.

2.7.2. Challenging Trauma Repetition

In *The Trial*, the idea that law or the justice system can be greatly responsible for creating a cycle of repetitive traumas is one crucial matter that should not be ignored. The readers/ audiences of Berrigan's work can easily grasp the issue of trauma repetition, albeit less apparent as it is in Miller's *The Crucible* or Smith's *Twilight* (as will be discussed). This notion is seen, again, through Berrigan's emphasis on his intent behind burning the draft files. He says that he "did not want the children/ or the grandchildren of the jury/ or of the judge/ to be burned with napalm" (82). According to Berrigan, without a serious legal interference, the American nation will be left to consistently repeat and then witness similar traumas. The question of trauma repetition compulsion is not only connected to witnessing some similar recurrences of painful and violent events but also to some disturbing legal procedures.

The playwright's emphasis on preventing future or similar injustices indicates the further impact of unresolved traumas and their corresponding legal cases whilst simultaneously pointing to the importance of protesters' fighting against any kind of injustice. It is through such challenge and struggle that violence can be avoided and thus a peaceful future can be reached. Indeed, it might be assumed that Berrigan employs the language of trauma. He also highlights the crisis in the law through stressing on the legal system's inability to perceive such striking and irrefutable truth: trauma repetition. Berrigan wants to point out that it is through its passive stand and guilty verdict that the Catonsville court proves its failure to really estimate the future dimensions of untreated violence.

Although one is reminded, here, of Caruth's conceptualization, which states that "in trauma the greatest confrontation with reality may also occur as an absolute numbing to it' (*Trauma and Experience* 6), nevertheless, for the nine defendants, such numbness can be anything but permanent and overlooked. For them, the law should not fall into such numbness and the issue of trauma repetition should not go unobserved. The justice system, after all, has the power or the mechanism to withstand and stop any kind of injustice and violence through its legal word. A word that definitely allows all the participants in the judicial pronouncement to confront the status of legal weaknesses, blindness and rigidities, with their major role in rethinking of some core issues such as the country's continuous inflicted violence.

As mentioned earlier, defendant Thomas Lewis addresses this point of trauma repetition by mentioning the project of American economic expansion when he testifies that the question is not only associated with the war in Vietnam, but also concerns, and extends to, other parts of the world that might be affected by this escalating military machine (Berrigan 45). Simply said, the Vietnam War is not the sole focus behind the Catonsville protest. The objective is also to stop any future atrocities. It is tempting to say that the Catonsville Nine

think that the court of law should confront the truth of trauma repetition for the righting of present wrongs would likely help to avoid future ones.

It can be stated that beyond the Catonsville Nine trial there indeed lies the crucial endeavor of making from the Vietnam War "a *legal process of translation* of thousands of private, [and present]… traumas into one collective, public, and communally acknowledged one" (Felman 124; emphasis in original). The implication is that if the war atrocities are not reflected in the broader light of public discourse, precisely, in an effective and practical legal language, private as well as collective traumas will never be recognized and then settled. What the playwright tries to display is that the court's failure to recognize the trauma of the Vietnam War alludes to a seemingly similar failure to give a final or decisive legal resolution to future crises. In taking silence, justice will hardly, if ever, be achieved, for the legal system will continue to ignore similar traumas. It is through the courts proceedings that individual and collective traumas can be confronted and then revealed. As to the court decision, Berrigan leaves his readers or audiences with what Loeb describes as "the uncomfortable feeling after a while that a dead end has been reached" (332).

With this condition of the reluctance of the court to deal with the legality of the Vietnam War, one can once more touch upon the notion of legal alienation. What can be assumed from the play's testimonies is the increasing awareness of the necessity of breaking the chain of disconnection, or the breach, between a person and her society's laws or more broadly some troubling personal and national concerns. This breach can be effectively restored when certain conditions can come across. Central to these conditions, in fact, is the mutual understanding that, in some instances, justice can and should be established, particularly when no concrete harm is inflicted. To better illustrate this point, it is crucial to refer to Judith Herman's insight when she says:

> Restoration of the breach between the traumatized person and the community depends, first, upon public acknowledgement of the traumatic event and, second, upon some form of community action. Once it is publicly recognized that a person has been harmed, the community must take action to assign responsibility for the harm and to repair the injury. These two responses – recognition and restitution – are necessary to rebuild the sense of order and justice. (70)

By applying such conceptualization to the context of *The Trial*, it appears that Berrigan and his comrades advocate that the legal system can be an appropriate mechanism for bridging the gap and restoring the broken trust between many Americans and their government. Yet, this can only happen if the nation, through its legal institutions, would use its authority and confront unjust policies, understand some justified arguments and go over legal rigidities. However, as *The Trial* shows, with the criminal justice system's refusal to judge on governmental policies, giving an answer to one of America's most violent traumas cannot be achieved.

It is hardly surprising then that by sliding into negative silence the criminal justice system fashions its legal failure and limitation to provide and maintain means of shared understanding, given that achieving justice is contingent upon the process of legal acknowledgment of violence. The role of the legal system, mainly through the process of trials, is in fact associated directly with the notion of memorizing some momentous traumatic events. After all, trials are seen as defining moments in human civilization and enlightened thought (Christenson, *Gordian Knots* 107). Also as Falk remarks, trials, mainly high-profile ones, are "lenses through which one can view the relationship between law and society; they are also broadly illustrative of the political regime and culture in which they are held" (9). Trials can be both a kind of real dramas and reflective history. And to extend on Falk's statement, one may argue that trials are lenses through which societies can avoid bad experiences or some wrongs and also legal traumas.

That is why it has been generally argued that from the trial of Socrates to the dozens of proceedings reported daily in the contemporary press, the popular trial has been active as a rhetorical form, a social practice, and a symptom of historical change (Hariman 1). Such multiple roles of trials are undoubtedly significant, particularly when considering the broad objectives they usually aim to achieve: seeking truth and establishing justice. In particular, criminal cases and their procedures are of great weight to the American audience due to the nature of the American justice system, that is, the Anglo- American adversarial tradition. It may be necessary to mention that people conventionally have been conditioned to believe, at least, according to the rationale of the jury system, that they are as qualified, or even more qualified, as any judge to determine the culpability of the accused (Schaller 13). The adversarial trial system sets the stage for competing narratives and structured scenarios, attracting many viewers for giving them an opportunity to personally evaluate judicial practices and decisions[29].

The ensuing decisions from trials may not always reveal what kinds of issues are truly relevant; trials also cannot always disclose some hidden factors that can touch the legal process. In short, as already discussed, the law institution can in itself act traumatically without being able to effectively read the real conditions, as *The Trial* shows. One can understand then the importance of dramatic representation of legal cases. Such representation provides readers/audiences with a good and additional opportunity to reevaluate the case and become somehow participants in the judicial process in terms of giving their own assessment after seeing various facts or sides of the whole story. A dramatic work, after all, has the power to critique the law in its own way. It can also show the interplay of different factors that may impact the law.

[29.] In this regard, Linda Deutsch observes that most of the sounding judicial cases have recurrently enforced the American nation to reconsider some central dilemmas (745).

And more importantly, whether this dramatic representation is based on political, ideological, ethical, religious, or cultural questions, it is significant as an instrument for revealing the conflictual relationship between trauma (or collective memory) and law. To return to trials, it is worth noting that "In their arbitrating function between contradictory facts and between conflicting versions of the truth, verdicts are decisions about what to admit and what to transmit of collective memory. Law is, in this way, an organizing force of the significance of history" (Felman 84). The law institution, in short, through its mechanism of trial, plays a vital role in creating, sustaining or subverting traumatic memories (this notion will be further explained in depth in the following chapter). Given this prestigious function, and as Berrigan asserts, it is crucial for the playwright to comment on the nature and the function of law and to challenge some legal procedures whenever needed.

Conclusion

In this chapter, one has tried to discuss how Berrigan's dramatic work depicts the process by which the Catonsville Nine come to break the law. In an atmosphere crowded with alienation and ambiguity, resorting to civil disobedience would be the sole path to withstand the government's policies. Defending a plea for justified civil disobedience appears to be compatible with well-established political and legal thinking as well as religious rituals. Indeed, the nine activists make a powerful rhetorical case for the workshop of moral motives, speaking against the apparent injustices inflicted by the Vietnam War, whilst also advocating for a plea to their moral innocence, basing on their understanding of the real meaning of law and justice. However, the Catonsville court refuses to endorse such a plea, featuring thereby its own dilemma.

Indeed, though the court of law can legally rule on the Catonsville Nine innocence through endorsing the doctrine of nullification, which presents an interesting opportunity to nullify unjust laws, the Catonsville court again refuses to implement it, thus engendering its

own legal trauma. As the playwright shows, the court's conduct is predictable when considering the complicity of politicized justice. Berrigan highlights the influence of politics in punishing the war nine dissenters. The testimonies delivered by the Catonsville Nine also stand as an outcry against this kind of political influence on cases of war protests, admittedly ignoring the consequences of an urgent trauma and the expanding rift between the government and the people. The playwright also vehemently criticizes the interference of politics in the Catonsville case (as in most political trials), causing the criminal justice system to become but a means of achieving political agendas. Berrigan shows that the Catonsville Nine trial, like most political trials, is used as another aspect of strengthening government policies, marking the legal system's dependence to politics.

The Trial is a visible stage against the legal silence. The playwright speaks out in defense of the Vietnam War protesters who refused to be complicit with the justice system's silence against great injustices. The narrative of protests in the late 1960s and early 1970s expressed an outcry against, and a challenge to, the government and the law's reluctance to interfere with issues regarding anti-war protesters' fundamental claim: the unconstitutionality of the Vietnam War. This marks a significant failure of the legal system to bring real offenses to an end. Indeed, a response from the justice system would have had an authoritative impact on the ultimate resolution not only of the present trauma (the Vietnam War), but also any future ones. The law, after all, has the capacity to memorize some acts or events as wrongs, and consequently to prevent their recurrences.

Chapter three

A Revolutionary Verdict in Anna Deavere Smith's *Twilight: Los Angeles 1992*

Introduction

In the previous chapter, one has discussed how the Catonsville Nine could not get a legal resolution that would exonerate them from the charges of breaking what they do believe to be unjust, immoral law. Although the nine defendants stimulated the sympathy of the court and used the courtroom as a forum to reinforce their moral innocence and political claims, they could not however take a decision that would design them as legally innocent or one that would decide on the illegality of the war. In attempting to decode the notion of legal trauma in *The Trial*, one has tried to outline a number of points, mainly the theme of legal alienation. At the end of the chapter, it has been concluded that the weakness of the justice system lies in its unwillingness to articulate the trauma of the war into any effective, reasonable and meaningful legal language. And in doing so, the legal system indeed fashions its own failure to memorize the trauma of the war as an event that contradicts the purpose of laws and the true meaning of justice.

Twilight: Los Angeles, 1992 is another dramatic text in which its core idea is failed justice. In this play, Anna Deavere Smith accentuates the critical role of the legal system in dealing with racial prejudice. While Berrigan explores the failure of the court to acknowledge an urgent trauma through building primarily on legal proceedings, Smith uses real people testimonies to comment on the aftermath of a famous legal case[30]. In this play, Smith also addresses the question of the difficulty of coming to terms with the enduring problem of racial trauma in the United States at the end of the twentieth century. In this chapter, by combining the plays' testimonies and the legal case of Rodney King, the idea of the missed encounter between law and trauma will be discussed. This means that in case the justice system refuses to recognize racial prejudice, settling this long traumatic history will be impossible. As will be

30. Smith uses the testimonies of only two jurors and this in her second version of her play published in 2003. In this study, I will chiefly base on the first version that of 1994, besides referring to some testimonies of the second one (read as a continuation to the first book).

demonstrated, any resolution and reconciliation is strongly contingent upon the process of recognizing collective traumatic memories of police violence and legal prejudice.

In order to show the missed encounter between law and trauma in *Twilight*, one will read the Los Angeles riots as an example of what Felman terms "a revolutionary seeing" (93), a call for real consideration of the existing and perpetuating racial trauma. To achieve this, one will first try to provide the necessary background for the point of racial conflict. And taking into account that Smith does not refer extensively to legal procedures (only through few testimonies), this gap will be filled by reading the Rodney King beating case against the play. One will also try to show how the Rodney King verdict is inherently dramatic as well as socially and legally constructed. Finally, the notion of how legal trauma (exemplifying in the trial verdict), is attached to African Americans' collective memory will be highlighted.

3.2. Smith's *Twilight: Los Angeles 1992*

In *Twilight*, Smith tries to piece together the mood that seized people's feelings and reactions after the infamous Rodney King verdict. In a nutshell, the background of the play is about the aftermath of the Simi Valley court verdict that acquitted four white police officers from the Los Angeles Police Department (LAPD) accused of severely beating a black motorist, named Rodney King. This man was arrested for excessive speeding in the highway then kicked severely and relentlessly by those police officers. In the meantime, a local citizen was filming the incident from his apartment. The videotape of the beating quickly became a vivid visual proof of police brutality watched by millions of people. However, in April 1992, when putting on trial and against people's expectations, the Simi Valley Court State, California, pronounced a not-guilty verdict for the four offenders.

The verdict would soon provoke traumatic riots in South Central Los Angeles. It essentially became a trigger element for rising social unrest considered by some scholars to be among the worst in recent American history (Oliver et al. 118). Unlike any previous major

civil unrest, including the Watts rebellion of the 1960s, the 1992 Los Angeles riots required a high level of emergency response. The Los Angeles riots resulted in the destruction of an estimated 4,000 businesses, fifty-two deaths, and 2,383 injuries (118). Regarding these outcomes, the Rodney King verdict was really traumatic, and that is why the verdict would provide a running dialogue about the questions of race, violence, and injustice.

As an African American playwright, director, and actress, Smith chose to make racial issues her main spotlight. In *On the Road* she presents her commitment to addressing questions of American identity. The process started first with *Fires in the Mirror* and then *Twilight: Los Angeles, 1992*. This latter came out as a direct response to the 1992 Los Angeles riots, following the outcome of the courtroom decision. Smith, herself, explains that her "predominant concern about the creation of *Twilight* was that [her] own history, which is a history of race as a black and white struggle" (*Twilight* 1994 ed., xxii). Smith intends to use theater as a way to comment on social unrest, an urban trauma that crucially reflects a critical part of the country's racial history. *Twilight* is fundamentally a documentation of the historical black/white binary; besides, Smith raises other existing ethnic conflicts, in particular, between Korean Americans and African Americans.

Though contested about its genre, Smith's *Twilight* is generally reconsidered as "a new… kind of documentary theatre which has the immediacy of live drama and the fluidity of film" (qtd. in Dawson 165). Smith also describes her work as a documentary book about what an actress heard in Los Angeles, considering her play as a call to the community to find solutions to social problems (*Twilight* 1994 ed., xxiv). In a broader sense, Smith's task is shared by some other women playwrights of the late twentieth century and early twenty-first century, such as Emily Mann. These playwrights use theater in non-traditional and burgeoning way to talk about and expose some critical issues.

Emily Mann for example created a form of theater that she calls theater-of testimony. This style of theater, which has developed into a unique blend that differs from the Piscatorian/ European model, has built a kind of documentary plays that capture private oral histories and testimonies, giving a platform to larger societal concerns in the public arena (Dawson 164). Likewise, Smith's "drama- vérité" style is completely taken "from primary source materials that also result from a collision between the extremely private and the extremely public, and from the oral histories of real people in real situations that have been collected and edited" (164-165). That is why Smith has been described as a "storyteller" and an "oral memorialist" (Favorini 269). Telling people's stories is certainly valuable. And, apparently, these stories can be more tempting when they do reflect issues of law and justice.

Indeed, in her play, Smith considers issues of law and justice as representing a kind of Gordian knot that needs to be spotlighted so that it can be earnestly viewed and then solved. The issues of failed justice and finding solution to the question of racial trauma (racial violence and legal bias) are very crucial for her as an African American playwright. One study that addresses the task of "racial healing" is that of Ann Anlin Cheng. Cheng writes that Smith's play is a "powerful dramatization of contemporary racial trauma" (169). Cheng also writes that Smith's work exposes a "multiethnic stage" in which the ethical question is crucially explored (170) and in which diverse characters move back and forth between grief and grievance, or between mourning for loss and a demand for justice (171). It is not surprising, then, that Smith's play "has been heralded by the media as a celebratory bringing-together of unheard voices" (170).

Narrating (and performing) a traumatic experience is generally considered as one major role of testimonial literature through which the process of given voice to the unheard or the voiceless is more attainable. In her analysis of some of the play's testimonies, Cheng says that these testimonies that inform about instances of racialization and subjection at the hands of

the law in fact can barely be addressed by law. Although the discriminated people could access that arena, there stands another barrier that of the legal sphere presents a distinctly rational and institutional space (172). If such literature alludes to how the legal system is a kind of inaccessible space for some minorities, it is not only because the issue of racial trauma is usually excluded from this arena, but also because the process of dismissing some voices is crucially pluralistic and legally and culturally constructed. Beyond the legal exclusion, there is a sanctioned violence and willful blindness, unfolding in a way that would forcibly lead to enhancing racial attitudes and legal bias.

In her article, *Rodney King, Shifting Modes of Vision, and Anna Deavere Smith's Twilight: Los Angeles, 1992,* Robin Bernstein turns her attention to the discussion of the Rodney King videotape. She writes that the visual evidence demonstrated a rupture between what the jury saw and what television viewers saw (121). Bernstein also argues that Smith's play does resist this kind of "cybernetic mode of vision" which in the Rodney King case rendered the referent of the visual image and the subjectivity of the observer irrelevant. Bernstein's focus is on how the defense attorneys of the police officers framed the mode of vision in order to rub out the voice of Rodney King. With such detailed explanation, Bernstein, however, does not mention that such rupture and created mode of vision are but another image of the already established prejudicial norms and authoritative discourse existing within the American legal system. Through the text of *Twilight*, one can see indeed how Smith portrays the Rodney King as a litmus test for a racially prejudiced vision, alluding to the role of the legal system in constructing racial attitudes, meanings, and practices.

Indeed, one study that matches to a great extent Felman's articulation of the concept of the legal failure is that of Heidi Bollinger. Bollinger writes that Smith shows how "racial discrimination remains a fresh wound: a trauma that cannot be contained, articulated, or healed through legal narratives" (248). She also says that by re-voicing diverse and

contradictory testimonies, Smith achieves a kind of literary justice after the failure of the legal system to do so (289). Yet, despite such closeness to Felman's conception of the legal failure, Bollinger focuses only on the play's different testimonies, not on the significant role the justice system may exercise in terms of boosting and enduring racial trauma. By drawing on legal scholarship, trauma studies and sociology, one can read Smith's play as a piece of legal trauma narrative. A piece that critically and visionary reopens traumatic and unresolved wounds in order to attain legal recognition of collective traumatic memories.

3.3. The Los Angeles Riots: A Reflection of Minorities' Trauma

The issue of racial injustice and violence is unquestionably among the most discussed subjects in American history and literature. Though the struggle for social justice started long ago, since the rise of the American republic, to the issue of slavery, still "[t]he problem of the twentieth century is the problem of the color line," as W.E. B. Du Bois's famous phrase summarizes (21). In the whole history of the United States, apparently, no conflict has been subject to traumatic repetition more than the problem of racial violence and injustice. The issue exemplifies a dark side in the American justice system. It is a problem that is still stimulating calls for finding restorative ways to an unsettled national trauma. Thus, nor was the Rodney King state trial one dramatic event that caused squarely intense uprisings, it was also one traumatic incident that incited a huge debate.

In her dramatic representation, Smith appears to be very attendant to the larger problem of racial injustice, focusing on its recurrent process or cycle. In her introduction to *Twilight*, Smith begins by articulating the causes leading to the "[t]hree days of burning, looting, and killing [that] scared Los Angeles and captured the attention of the world" (1994 ed., xviii). She comments that there are multiple political, social, and economic factors behind one of America's most traumatic events. At the same time, she admits the difficulty of setting clear-cut definitions and interpretations of what really happened in Los Angeles because the

causes cannot be reduced to one single scenario or point of view. She also notes that there is no consensus even about the nature of whether what occurred should be described as a "riot," an "uprising," or a "rebellion," As she says:

> [B]eneath this surface explanation is a sea of associated causes. The worsening California economy and the deterioration of social services and public education in Los Angeles certainly paved the way to unrest. In 1968 President Lyndon Johnson convened the Kerner Commission to examine the causes of riots that shook more than 150 Americans cities in 1967. The commission's report highlighted urban ills and the plight of the urban poor. Yet more than twenty years later, living conditions for blacks and Latinos in Los Angeles have hardly improved, and Rodney King's beating was only the most visible example of years of police brutality toward people of color. (1994 ed., xviii)

In this passage, Smith significantly asserts one important point: the repetitive nature of urban riots in twentieth-century American history. She precisely points to the authorities' neglect of minorities' conditions.[31] Though these riots, in their own right, have become a symbol of growing disaster and unresolved trauma, they have also become a subject to many commissions' reports, all tried to locate the core of the problem in order to find solutions. However, things have not changed and the black community's confrontations with the police would reappear each time, always manifesting through different incidents.

In *Twilight* there is a kind of painful narrative that seeks to be truthfully addressed in order to be fully resolved. For instance, Congresswoman Maxine Waters addresses this problem of unchallenged and unchanged African Americans' circumstances and the repetitive, unresolved injustices. Her testimony summarizes to a great extent the whole traumatic picture. She says:

[31] In the previous chapters, it appeared that silence is one lucid form of legal trauma. Similarly, in this chapter, and at the outset, one would like to refer to this issue as much as it is reflected in *Twilight*. Many of the play's testimonies do actually tackle, in a way or another, some kind of silence, relating it to the tragedy that happened after the Rodney King verdict.

> There was an insurrection in this city before,
> and, if I remember correctly,
> it was sparked by police brutality.
> We had a Kerner Commission report.
> It talked about what was wrong with our society.
> It talked about institutionalized racism.
> It talked about a lack of services,
> lack of government responsiveness to the people./ Today,
> as we stand here in 1992,
> if you go back and read the report,
> it seems as though we are talking about what the report, / cited
> some twenty years ago, / still exists today. (Smith 1994 ed., xix)

Two important points related to the black community's frustration may be deduced from Maxine Waters' statement. The first point is about the unproved social and economic conditions, dating back to the 1960s. And this can be read as a reminder of the need to look seriously at the question of racism. It is a call for a real revolutionary change, not one that would uphold the same traditional schemes for they have already proved their inefficacy. The second point is related to the nonstop practice of police brutality, or the institutionalized racism (a point that will be dealt with in more detail in the following section). Such traumatic conditions may be read as a kind of passive silence from the part of the political authorities and the criminal justice system; a silence that stems from these systems' reluctance to handle such issues practically, effectively and justly.

To better understand the point of racial trauma, it is essential to refer to Glenn Loury's insight. Loury observes that even over the span of more than a century and a half since the destruction of the institution of slavery and half a century since the rise of the civil rights movement, one finds that the legacy of slavery and racial discrimination is still persisting in American social life. This reality is grasped through the striking racial disparities and stratifications existing between mainly white and black communities (3). Loury further solidifies his claim by what he terms the many indices of well-being, those are "wages, unemployment rates, income and wealth levels, ability test scores, prison enrolment and crime victimization rates, health and mortality statistics"(4). All these elements, which disclose the

considerable racial disparities and the disadvantage of blacks, have remained unchallenged or even worsened in some instances (4). The disadvantages of African Americans have been cyclical, representing not only their poor socio-economic conditions compared to the white community, but also their status in regard to other ethnic minorities.

In this respect, Janet Abu-Lughod explains that one important cause of the Los Angeles riots was due to the remarkable hostility between African Americans (and Latinos) and Korean shopkeepers. She explains that most property damages belonged to Koreans who in their turn accused the police department of "deserting them in their 'hour of need', leaving them to fight off 'invaders' with their own weapons" (244-245). Moreover, as Abu-Lughod notes, the shooting death of a black girl named Latasha Harlins, a year before the Rodney King trial, by a Korean shopkeeper was another trigger that "further inflamed the simmering animosities between South Central African Americans and Koreans" (245). What, indeed, distinguishes the Los Angeles uprising is its complex nature; and, at the same time, the riots allude to the complexity of the very problem of racism.

Though having occurred in the digital age, the late twentieth-century Los Angeles events and their accompanying terror have been described as "a postmodern kaleidoscope that defies simple narrative" (Abu-Lughod 236). The fact that the riots resist any consistent consensus and rational narrative may closely match Caruth's articulation of trauma effect. As she puts it, trauma "is always the story of a wound that cries out, that addresses us in the attempt to tell us of a reality or truth that is not otherwise available. This truth, in its delayed appearance and its belated address, cannot be linked only to what is known, but also to what remains unknown in our very actions and language" (*Unclaimed Experience* 4). If it is because of the multiracial and multiple socio-economic factors that the Los Angeles uprising cannot be fully conceptualized in one meaningful scenario, what can and should be

recognized is the bulk of shared traumatic realities of everyday life in the inner neighborhoods and their holistic impact.

Indeed, various institutions and social practices have fostered and expanded the feelings of victimization and alienation, especially among black people. The Los Angeles riots, as a narrative of minorities' trauma, were definitely an accumulation of racial bigotry which has become so rooted in American society. It comes as no surprise, then, that the riots have been described as the language of "frustration and alienation among the citizens of South Central Los Angeles over the last 20 years" (Oliver et al. 120). Moreover, they represented the authorities' failure to withstand "the community's angry despair" (Abu-Lughod 230). Indeed, to read the Los Angeles riots as a kind of "revolutionary seeing" is to reflect on people's perception in regard to what the government and the justice system ought to see and hear. After all, it is impossible to ignore their position as key contributors to such perpetuating conditions.

The Los Angeles riots came to express people's frustration, disappointment and hopelessness, bringing to the forefront all the social, economic, cultural disparities as well as legal injustice. Though these riots do not elevate to the strict meaning of revolution, nevertheless, they represent a severe civil disorder, properly unfolding with the concept of social injustice and cynicism. Essentially, Smith notes that the Rodney King videotape which looked to "tell all," seemingly did not tell enough, and the prosecution lost (as their lead attorney told her) '"the slam-dunk case of the century" and that the city of Los Angeles lost much more (1994 ed., xxi). Smith then adds that her play "is an attempt to explore the shades of that lost. It is not really an attempt to find causes or to show where responsibility was lacking. That would be the task of a commission report" (xxi). Yet, this latter, as mentioned earlier, proved to be unsuccessful when trying to effectively address the riots, let alone stop them. Indeed, not only were the Los Angeles unrests the voice of victimized African

Americans, but they also came out to draw an image of a collective traumatic narrative. This narrative expressed both the socio-economic conditions and an exasperated voice against law enforcement, that is, police violence.

3.4. The Law Enforcement: An Institutionalized Violence

In the United States, the relationship between African Americans (and other minorities) and the police department is vested within a dominant, stereotypical image: justice inequities, as many studies mention. For instance, in speaking about white police violence against racial and ethnic communities, Samuel Walker et al., argue that there are persistent noteworthy patterns regulating such an issue in the United States. They assert that African Americans and Hispanics, in particular, "rate the police lower than do white Americans" and that according to many credible proofs, minorities "are more likely than white Americans to be shot and killed, arrested, and victimized by excessive physical force" (181). Such highly critical relation certainly indicates the difficulty of controlling some conducts, precisely police comportments of excessive force and violence at different levels.

As Felman includes the Rodney King case within the scope of her discussion of historical traumatic trials, Hiroshi Fukurai et al., also note that the case can easily be compared to some previous incidents. These are the 1931 Scottsboro case, the 1968 Huey Newton case, and the 1980s Florida trials. The latter trials led to three urban riots and rebellion in the aftermath of the acquittal of officers charged with the death of three blacks. It has also been argued that the Florida trials prompted violence because they symbolized the continuation of racial inequities in the criminal justice and court system (73). The recurrence of similar traumatic events and their corresponding legal cases certainly says many things about the daily racial narratives in America.

If the question of race is constantly the main factor associated with police brutality, the verdict in the Rodney King case brought up to the surface all the hidden implications of the

unfriendly and prejudiced relationships between the police department and African Americans. The Rodney King trial exemplifies the real meaning of how much the pronouncement of not-guilty for the white offenders would affect and traumatize the black community, putting the American nation into highly open violence. However, if African Americans' relationship with the police, in particular, and the criminal justice system, in general, has always been antagonistic, at least, this time, for the black community, the videotape of the beating was certainly a sufficient piece of evidence. It was a vivid proof that could probably exercise some weight in the midst of the agitated atmosphere. Unfortunately, such evidence or the "incontrovertible evidence of police brutality, racism, and a police force out of control" (Fukurai et al. 74) turned out to be irrelevant to the court of law.

What happened is that the videotape which was supposed to be an unchallenged indicator of overt law enforcement brutalities toward blacks, and by extension to other minorities, proved to be devoid of meaning and unseen. In other words, with the magnitude of the visual evidence, it seemed that it could not speak out, let concretely interpret, police violence in any comprehensible language. And much more importantly, the key of the problem that posed its heavy shadows on African Americans is that the verdict presented another means in the process of validating African Americans' sense of racial injustice. The verdict simply meant that the four police officers' conduct constitutes anything but an unlawful act. What may explain the police officers' conduct toward Rodney King? It is the question that one will address in the following subsection.

3.4.1. *Twilight*: Law and Police Violence

Many scholars have pointed to judicial bigotry as being one major characteristic that shaped the twentieth century. Peter Davis, for instance, says that the exoneration of the four police officers in the Rodney King case is due to what he calls "de facto decriminalization" in the United States criminal justice system. This represents the situation of "an act, though still

deemed criminal by the legislature or common law, no longer results in sanction because the criminal justice system simply refuses to punish violations of law" (275). Davis explains why this conception is so frequently underrated. He says that one reason for this de facto decriminalization is the desensitization of the judicial system and the public to the realities of police criminal behavior (275). There is a whole process that dramatically works in order to both trivialize and legitimize some offensive acts, rendering them to be acceptable among the general populace, the very justice system itself, and particularly among police officers.

In her dramatic work, Smith tries to demonstrate such practices through the character of Sergeant Charles Duke. His testimony gives a picture of the magnitude of law enforcement and its consequences. As he describes, the results of "upper body control holds" in the period of about 1975-76 to 1982 had caused seventeen to twenty deaths, mostly associated with blacks (1994 ed., 62). Besides, the sergeant points to how some police officers have become resentful of the prohibition of this process and their explicit commitment to continue using it. As one declares, "I don't care, you beat em into submission, you break their bones, / you're not chokin' 'em anymore'" (63). While displaying his complaint against the practice which he himself has experienced through many incidents identical to Rodney King, Sergeant Charles Duke further reveals the attitude of one of his superiors. As he reports, "I am tired of hearing this shit./ We're gonna beat people into submission/and we're gonna break bones"... you took upper body control hold away from us—/ now we're really gonna show you what you're gonna get"(65). These testimonies are symptomatic of how much the criminal justice system is unable to control such transgressions or reckless conducts.

Even though Davis attributes such racial conducts to some political and administrative factors (282), he essentially stresses the fact that the Rodney King case is not an occasional example of police brutality against minorities. Rather, there is a constant and daily battering of African Americans as well as Latinos (284-285). In other words, for the police, brutality is

part of the routine regardless of how much harm it may cause as far as it is inflicted on non-white subjects, that is, on "them." It is worth mentioning that an issued report in July 1991[32] showed that this case was not uncommon (Wolcott and Head 247). Indeed, several shred of evidence of widespread racism, police brutality, and cold indifference were found among many supervisors; and also some recorded electronic police transmissions indicated everyday expressions of racial hatred (247).

Apparently, the institutionalization of race would become the ultimate outcome when the legal system would participate in defining as well as setting boundaries of race and racism. In his book *White by Law: The Legal Construction of Race*, Ian Haney Lopez argues that race is a social and legal construction. He stresses that law participates in racial formation regarding its role in constructing race at every level, changing the physical features borne by people in the United States, shaping the social meanings that define race, and rendering concrete the privileges and disadvantages justified by racial ideology (xv). Haney Lopez further explains that race is socially constructed because it is the law that assists in such construction. As he puts it, "to say race is socially constructed is to conclude that race is at least partially legally produced. Put most starkly, law constructs race" (7). To strengthen his claim, Haney Lopez notes that courts and legislatures have always served not only to fix the boundaries of race in the forms they are recognized today, but also to define the content of racial identities and to specify their relative privilege and disadvantage (7). Law is not merely a set of abstract codifications, but a powerful mechanism that helps shape biased meanings as well as practices in concrete terms.

The inability of the law to set fair meanings is undoubtedly traumatic, engendering all kinds of unjustified racial practices. Racial trauma thus emerges conceptually as the law's offshoot. Ironically, the role of justice system reveals a pervasive injustice insofar as it

[32.] The Independent Commission on the Los Angeles Police Department known as the Christopher Commission authorized by Mayor Tom Bradley which investigates the Rodney King incident (Wolcott and Head 247).

participates in no trauma resolution, but rather it creates real violence. In speaking about legal violence, Haney Lopez notes that such violence can be easily distinguished through many facets, that is, "in slavery, in Jim Crow segregation, in police brutality… [and] in the failure of the law to provide equal justice or to protect against discrimination." He, then, finishes by stating that through all these levels of violence, "the law not only relied on but also constructed racial distinctions" (85). To say that the law often fails to protect racial minorities is to say that the law often fails to remove violence and discrimination. Indeed, it is "through the promulgation and enforcement of rules that determine permissible behavior" (85). The law institution can participate in its own right in normalizing police violence. Accordingly, and following Haney Lopez's conceptualization, police brutality can be taken as one facet of constructed violence as it embodies the most obvious and current form of racial trauma and its underlying chauvinistic ideology as depicted in *Twilight*.

Significantly, Smith highlights that police violence has become a social reality, representing a kind of usual dramatic narrative and daily practice. One story of police violence is given by Michael Zinzun, a representative of the coalition against police abuse and a member of the Black Panther Party. He narrates a traumatic experience that happened to him when he once tried to stop a scene of brutal arrestment of a neighbor who was calling for help (1994 ed., 17). Michael Zinzun says that he was handcuffed, stomped on his back, and stuck in his head, leading him to lose sight in one eye (18). And after the incident, he did "get two officers fired" and "two officers had to go to trial"; so, the city "had to cough up one point two million dollars," as a compensation for his lost eye. He then explains how he has embarked upon a journey to stop such racial violence, and that the money he received is being now used to help him to keep his struggle against police offenses, through doing research and learning how to be organized (20).

Integrating the testimony of this character, in her play, Smith wants to say that, for some persons, experiencing violence may nurture one's sense of responsibility or struggle against discrimination and oppression. This seems to be the right thing to do. And this should indeed be the role or the position of the law institution as well. One might also argue that Michael Zinzun stands as a trauma witness who tries to turn that "experience into insight and whose innovative concepts [can give] new tools with which to think [the current] times" (Felman 8). In other words, Smith exposes that the incident of Rodney King can and should help to raise people's awareness of the necessity to bear witness to this "de facto decriminalization" or institutionalized and accepted violence. Only in this way can racialized practices be effectively dealt with, decreased and even erased.

Another character who throws light on violent police practices is Allen Cooper, or Big Al, an ex-gang member, an ex-convict and now an activist in the national truce movement. Big Al expresses his refusal to accept such preconceived notions of routinized police brutality against African Americans. As he explains, his mission now is to display "how/ a black person gets treated in his community" for although "… once brought to the light/and shown" /…, we see no belief. / because they never handled, from the top of the level, the/way it/ should have been handled, / because they handled like a soap opera / That's all" (1994 ed., 95-100). In the absence of serious handlings of vicious police practices, even the moment of truth which was brought to light with the videotape of the beating could not help to decriminalize such violent practices.

Indeed, it appears that such constructed and explicit police violence is made possible through and is reinforced by— and often working with— already social and cultural attitudes implicitly accepted toward ethnic communities. Regarding this point, John Clemons remarks that:

> [T]he most extensive empirical research demonstrating the effects of implicit racial bias on the American justice system concerns the individuals on its front lines: law enforcement officers. Police officers' patrol activities regularly demand the kinds of decisions most affected by implicit racial bias; officers must make lightning-quick, high-stakes judgments about individuals' propensity for criminality and violence with very little individuating information. (695)

This statement reveals the extent to which prejudiced police activity does really exist in that any suspicion of culpability is contingent directly upon racial accounts sometimes even without any reasonable reassessment. In other words, through the process of law enforcement, police officers do exercise a selective burden of proof. And this would result in violent rituals against people of color.

Under a section dubbed "Application of the Laws," Smith interviews New Jersey Senator Bill Bradley who speaks about a particular point related to police harassment: the presumption of black guilt. He narrates the story, which dates back to the nineteen sixties, of a second-year African American student at Harvard Law School. As an intern, this young man was invited to one of a law's firm partner home. While he was driving toward the neighborhood with another inter white woman, he suddenly got pulled out of the car by the police, thrown to the floor, and got handcuffed. And by "pointing a gun at him," the police headed toward the white woman asking her: "You're being/ held/against your will, aren't you, being held against you will." Bill Bradley, then, describes how this woman got hysterical, trying to convince the police that she and her colleague are law intern and in their way "to a meeting, partner's brunch." After being convinced, the police officers just went away "as if nothing happened," as the Senator concludes (Smith 1994 ed., 214-215-216).

What this story divulges is that because of his skin color, this young, educated African American was falsely and harshly arrested, finding himself chastened and under the direct accusation of kidnapping a white woman. If such humiliating experience of being unjustifiably stopped and accused is so common among black people, it is also because such

police practice is de facto decriminalized or more precisely tolerated by the law. Remarkably, this kind of practice leads to two consequences. First, it certainly contributes to the violation of minorities' rights, including the disrespect and humiliation that might result from this violation. Second, it amounts to instituting misconception of racial identities, setting strong-minded opinions on the inseparable connection between race and crime.

In his writing about race relations in the United States, Gunnar Myrdal notes that in police officers' view "practically every Negro man is a potential criminal" and that all the existing pejorative beliefs toward Negroes are extremely based on racial traits (541). Likewise, Haney Lopez asserts that race is a social system. He explains that the notion of race "can be understood as the historically contingent social systems of meaning that attach elements of morphology and ancestry" (10). He then goes on to say that race is not simply a matter of physical appearance and ancestry; rather, it is primarily a function of its meanings. (11). Thus, the problem that emerges from such conception is what leads police agents to use law inadequately and racially. And this might explain why the Harvard Law African American student was seen as a potential criminal whose potential threat to society should not be underestimated.

It comes as no surprise then that within such racial preconceived meanings and practices even black children are not immune to racialized practices. In a section called "Lightning But No Rain," Smith interviews Theresa Allison, founder of Mothers Reclaiming Our Children association. This woman recounts how police officers used to harass even black kids, among them her own son, for according to her, "It's the color, because we're Black" (1994 ed., 38). Most notably, Theresa Allison who gives a "well- documented racism" of the Los Angeles Police Department (Schueller 16) describes a real scene of the killing of her nephew. She says:

The woman that killed Tiny,
she had a big
plaque—woman of the year!
Yeah, she shot him in the face,…
how she use to go in an' pull these kids,
I mean from twelve years old,
And kick'em and hit their heads against trees
and stomp on the ground.
Why you got to do Black kids like that?
Why couldn't you handcuff'em and take'em to jail?
Why couldn't they handcuff my nephew Tiny
and just take him to jail?
After they done shot him down,
he couldn't move!*(she cries)*
Why they have to shoot him in the face?
Doesn't seem like they killin' him
to keep from him sayin' what they said to him.
(crying and an abrupt change)
They coverin' up!
'Cause they know they killed him wrong!. (1994 ed., 38-39)

The attempt to cover up the killing of the kid is just another form of silencing victims of racial violence. What this testimony denotes is the fact that though some police acts consist really of criminal nature, they are nevertheless hazardously tolerated and ignored by the legal system. This brings one back to Davis's comments about police violence. He points to the gravity of changing the real meaning of some concepts, precisely when the misconception of the term "police brutality" becomes somehow culturally admitted. This happens, as he explains, when people consciously or unconsciously hold judgment that such acts, or assaults, represent only brutality, not amounting to the level of full crimes. Davis then argues that the appropriate term one should be using is "police criminality" for it is perhaps this "pervasiveness and intractability of the problem of police brutality or criminality" that may explain the failure of the legal avenues to deter such conducts (286).

Though police violence against minorities is not solely reinforced and constructed institutionally, but also somehow culturally admitted and accepted, the most deal of responsibility lies on the shoulders of the whole justice system. Certainly, as the law institution has the power to construct racial meanings and practices, it has also the power to

reduce some of their effects and their imposed *legitimacy*. The system's role in imposing the legitimacy of an inexplicable violence can be grasped through its relevance as a tool of defining racial questions as well as its role in dealing with minorities, particularly African Americans. Indeed, one prevalent image of the law's sanctioned violence is strikingly apparent through the system of incarceration.

3.4.2. The Lockdown

Alongside the notion of institutionalized violence against black people there is another constructed reality that often imposes its heavy shadow on the normal interpretation and the application of laws: most black persons are former criminals whose conduct should be undoubtedly scrutinized. Accordingly, police violence against them is the ultimate process to face their threat. In this part of the study, one would like to speak about this idea in relation to the issue of incarceration while another reading of the white/black binary will be given an extensive reading in the segment about the role of the jury.

Haney Lopez states that the reason behind the high rates of incarcerated black people "partially stems from, and subsequently is used to confirm, the mythology of Black criminality and, by implication, White innocence" (99). He also writes that it is the law that makes these notions self-fulfilling prophecies that further establish racial differences (99). The question is not only about racial meanings, it is also about the real validation of these meanings. Without the sanctification of the law, racial practices would not be so highly implemented, leading to the negative outcomes of ethnic categorization. Such prejudiced conceptions or beliefs and their underlying or supportive laws do jeopardize not only the real meaning of democracy but also the meaning of a unified nation that should be ruled by equalitarian norms.

Similarly, in addressing one of the most enduring and living legacies of racial segregation, legal scholar Michelle Alexander— in her book *The New Jim Crow: Mass*

Incarceration in the Age of Colorblindness— discusses the issue of mass incarceration of African Americans in the contemporary United States of America. In this book, Michelle Alexander points to the police endless striving to imprison as much of African Americans and people of color in general as possible under the pretext of "the War on Drugs". She calls this process "The Lockdown." The so-called "War on Drugs" is a war in which the enemies are people of color who must be located or confined within the bars. Michelle Alexander also explains that the "Rules of the Game" of mass incarceration depends heavily upon understanding "unreasonable suspicion" (61). Founded on racial prejudice, the system of incarceration came uncannily to mobilize different forms of transgressions unmasked under the cover of procedural rules.

When the system of incarceration is seen to be a planned game designed to entrap people of color, one should wonder about the value of laws and their applications. Instead of rethinking of a politics that must dispose of past histories of racial violence and practices (that is, the legacy of Jim Crow), a system of blind lockdown has been further applied and advanced regardless of its future effects. It comes as no surprise then that the majority of young black males living in Los Angles, for instance, are more likely expected to spend time in the city's jails, detention centers, camps, or prisons as they passed over the years between adolescence and their thirties (J. Miller 4). With accepting the notion of prejudiced lockdown, one can also see that this system is designed to induce a state of inferiority as well as to enhance the denial of some rights.

The New Jim Crow, as Michelle Alexander further argues, is premised on the exclusion of African Americans from mainstream society, casting them with a "social stigma" of difference and inferiority. She explains that the New Jim Crow has long- lasting effects through its process of incarceration in that it keeps people of color in a situation of subordination as well as marginalization, though after release. This is achieved by the use of

"a web of laws, regulations, and informal rules" (4). The discourse of racial difference is crucially reinforced and maintained by laws and regulations whose prospects aim at stigmatizing the black community. Such stigma enforces upon African Americans a sense of insecurity, and it also increases an unremitting confrontation with the law and its agents.

In *Twilight*, the impact of racial categorization with all its hidden objective of incarcerating more black people is a well-established, and a very known, paradigm in daily life. Such traumatic reality is, again, expressed by Allen Cooper, who says:

> Anything is never a problem 'til the black man gets his
> hands on it.
> It was good for the NRA
> to have fully automatic weapons,
> but when the Afro-American people got hold of 'em,
> it was a crime!...
> He is a problem in the neighborhood;
> he has a AK-47 assault weapon.
> We didn't make up—
> they was put there for a reason:
> to entrap us!
> Point blank. (1994 ed., 101-102)

The interviewee, here, wants to say that what happens in the black areas is neatly planned. It means that it is not a random process but "for a reason," to help to classify black people as potential criminals and trouble-makers. Having weaponry is totally illegal for African Americans, whereas it is not for white people. Relating to this, Jerome Miller points out that there is "a bureaucracy for control and repression unparalleled in American history, having as its central, largely unuttered task, the apprehension, labeling, sorting, and managing of the absolute majority of young African American males" (68). The sole aim is to entrap black men, for they represent a real threat to society. Hence, they deserve punitive actions and firm decisions, that is, imprisonment.

Significantly, Michelle Alexander argues that the racial caste system which was used in the age of Jim Crow still exists in the present. The sole difference is that it has taken a new shape or a muted form as the new age forbids the explicit use of racism of the old Jim Crow.

All that has changed, as she further maintains, is the language to fit the process of segregation. Michelle Alexander firmly asserts that police brutality which has been used as the state tactic to suppress social movements from the Civil Rights Movement to anti-war protests during the Vietnam War is the new form of racialized social control. For her, such strategy is the new face of the racial caste system or as she dubbed it the New Jim Crow. She says:

> Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind. Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. One you' re labelled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from the jury service— are suddenly legal. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it. (2)

Under the incentives of the New Jim Crow, masses of African Americans, and other colored people, are locked behind bars. And once released they are classified as second- class citizens who are further denied some basic rights. If the aim behind creating such a constructed image is to incarcerate more and more people of color, what is clear is that the notion of black guilt is continuously reinforced through the law's apparatus, that is, through systemic racial practices. If the New Jim Crow is but a shift from explicit racial discrimination and bias to another aversive one, the issue of racial trauma becomes further problematized than it has already been. With regard to the notion of legal trauma and by taking up insight from Michelle Alexander's conceptualization, it appears that racial practices turn out to be more consciously implemented than to be unwillingly or blindly done. This being said, racial injustice would probably lead to more tragic consequences with much more African Americans' awareness of the fact of being under the law- sponsored injustice.

Targeting and harassing young black men in order to incarcerate them turns out to be institutionally imposed and planned. It is a process that consists not merely of uncovering potential criminal activities as much as it is about racial "lockdown." Through this system, violence is indeed further practiced. This can be grasped in *Twilight* through the testimony of Allen Cooper who says:

> If you put twenty hidden cameras/ in the country jail system,/you got people beat worse than that/ point blank./Some jails got things/called/the red room/and the blue room,/you get what they call an attitude adjustment./What Rodney King. . . /It been—/ it's been twenty, thirty years,/and people suffered beatings from law enforcement./ It ain't nothin' new./ It was just brought to the light this time./ But it showed what—/ it showed that it doesn't mean a thing. (Smith 1994 ed., 100-101)

Both incarceration and violence are part of the routine, that is, not outside African Americans' common or daily experiences. The Rodney King incident would become inevitable because there are many other similar cases. Violence against minorities is so frequent and it happens at all the levels of American institutions, including the penitentiary. Thus, the statement that the King incident "showed that it doesn't mean a thing" actually reveals to what extent the issue of racial trauma of law enforcement is so overwhelming. More importantly, the incident of Rodney King served in showing the magnitude of African Americans' social exclusion which appears in the system of mass incarceration.

It would seem fruitful to refer here to Lewis Herman's view about traumatic experiences. Traumatic events, as she explains, "are extraordinary, not because they occur rarely, but rather because they overwhelm the ordinary human adaptations to life" (33). However, although law enforcement against minorities is not rare or unusual, it strikingly shapes their basic daily lives, of course in an aggressive manner. Moreover, its psychological effect is also considerable. For instance, Rody Sallas, a Mexican American, narrates how a childish experience with the police caused him to develop hostile attitudes, that is, a great deal of hatred or as he calls it "insanity" toward policemen. He explains that this insanity that he

carries with him started when he took the beating from the police (Smith, 1994 ed., 2). What this kind of testimony exacerbates is the difficulty of forgiveness under persistent racial practices.

Again, the endless sequence or process of the law's sponsored violence is a form of wilful blindness. The Rodney King case, as one lucid example of racial trauma, not only represents a case of total invisibility or an unacknowledged trauma, but it also points to the role of the law institution in enduring racial meanings and practices. In doing so, the justice system would deliberately create constant legal dramas. In the next section, the focus will be on the trial processes and this in order to decode additional aspects of the play's legal trauma.

3.5. The Legal Drama of the Rodney King Trial

At a decisive moment in twentieth- century American history, the criminal justice system in the Rodney King case was asked to adjudicate on the issue of racial trauma. It was asked to pursue equal standards and to render a guilty verdict for the four police officers. The justice system was expected to give a fair answer to one of the country's most pertaining questions: the dilemma of white/black binary with its underlying issue of guilt and innocence. However, as "the judgment rendered [in the Rodney case] support[ed] the view that the law is about not truth but advocacy" (Wyatt 223), is what urges one to pose important interrogations about the role of the legal institution in the Rodney King case, particularly the jury system.

Apparently, problems arise when the justice system seems not to help reduce the trauma of racism, but rather functions in a way that creates and engenders more traumas. As noted earlier, the trauma of police brutality is highly contested in Smith's play. And, in this part of the chapter, one would like to investigate how the criminal justice system in the Rodney King case worked to deliver such a polemical verdict. The focus will be on the notion of the justice system's failure to see the offense inflicted upon the black motorist, begetting thereby a case of legal drama and trauma. It should be noted that it is meant by legal drama a

case that obstinately refuses to find a proper resolution because it is always hindered by legal violence and often willful blindness.

It is worth mentioning that the failure of the criminal justice system to see the pain, humiliation and violence Rodney King had been put through falls certainly within the line of legal blindness. It is from this perspective that Felman includes this case in the analysis of her theory of repetitive legal trauma, as part of the trauma of race and hatred. In this study, the objective is not merely to restate what has been already discussed by Felman; rather, besides the attempt to apply her insight to Smith's dramatic work, one objective is also to draw on some important legal and sociological studies as well as some philosophical insights to explore the meaning of legal trauma. This would help further explore the notion of legal failure.

Accordingly, in what follows, one will try to reveal and explain the competing narratives used in the courtroom and also as found in, or corresponds with, Smith's play. More importantly, some signs of legal trauma will be analyzed by revealing how the legal system in its own right may reinforce the meaning of racial difference, helping to create and perpetuate traumatic realities. And, since, in this study, one is also concerned with the theme of silence/silencing, it seems crucial to start with the issue of how the law institution silences people's voices.

3.5.1. Unheard Voices

In *Twilight*, one plain form of disconnection between the judicial processes and the citizens' views appears in one's inability to deliver his/her testimony, seemingly worthy of transmission. Being unheard and marginalized is what bothers one of the interviewees. Smith deploys the testimony of Josie Morales who witnessed the Rodney Kings' beating from her apartment. Josie Morales explains that though she tried to offer her testimony to the prosecutor, she was never called to the court of Simi Valley. This woman's testimony exposes

almost a full description of the Rodney King incident and her vain attempt to reach the court of law. Her testimony is quoted somehow at length:

> ten or twelve officers made a circle around him [Rodney King]/
> and they started to hit him/I remember/
> that they just not only hit him with sticks,
> they also kicked him,/and one guy,
> one police officer even pummeled his fit/into his face,
> and they were kicking him...
> and I was just watching…
> he was in danger there....
> it was such/an oppressive atmosphere/I knew it was wrong—/
> whatever he did—…
> I was scheduled to testify/and I was upset at the outcome
> because I had a lot to say/
> and during the trial I kept in touch with the/ prosecutor…
> and I was just very upset,/ and I um/I had received a subpoena
> and I told [the prosecutor], "When do you want me to go?"
> He says "I'll call you later and I'll give you a time."
> And the time came and went and he never called me.
> so I started calling him./ I said "Well are you going to call me or not?"
> And he says, "I can't really talk to you/
> and I don't think we're going to be using you... .(1994 ed., 66-67-68)

The inclusion of this testimony in *Twilight* solidifies Smith's belief that the play is "the voice of the unheard" (1994 ed., 162). It is a voice that would speak on behalf of the absent voice of the beating black motorist and would also stand for any other voiceless. The character's words express how much people may become helpless[33] in the process of either getting their voices heard or at least making them worthy of examination by means of delivering their own evidence. In this sense, there is a kind of rupture the justice system creates and deepens in the face of its citizens. The Los Angeles riots are then a strident image of the court's shortcoming regarding its refusal to open up a space to hear the voice of its community. Essentially, such rupture between citizens and the legal system raises the following question. What would be at stake if people are deprived of the legal channel by which they would be able to testify against what they conceive as wrong?

[33] Josie Morales's attempt to have access to the law which had never been realized can be compared, somehow, to Kafka's protagonist Joseph K. in *The Trial* who could not have access to the law.

Smith largely comments on the importance of having access to the legal space for it would certainly affect people's perception of the criminal justice system and its function. That one reason behind the minorities' fury over the Simi Valley verdict is that it shadowed only one side of the story, that is, the innocence of white perpetrators the legal process of hearing some voices would have certainly helped to mold racial prejudice. Through the testimony of Josie Morals, Smith transmits to its readers/audiences how people would feel toward their institution of law. In other words, the playwright interrogates whether justice could be better achieved when people conceive that the criminal justice system may oppress some relevant testimonies, standing only for the interest of one side of the conflict.

It comes as no surprise that the end of the story would be in favor of the white perpetrators. As Josie Morales proclaims, "those officers were going to be acquitted" since the prosecution "do not put witnesses,/... don't put one resident and testify to say what they saw"; hence, "those officers were going to be acquitted," because, as she concludes, the prosecution "was dead set"(Smith 1994 ed., 68). Basing on Josie Morals' point of view, one might argue that there are two related dimensions of the importance of her testimony. First, the act of seeing (or eyewitness), to use Naomi Mezey's conceptualization, has a place of privilege within the law, embodying the quintessential bearer of evidentiary information (7). The process of testifying in a court of law has a straightforward aim that of paving the path to truth. Second, the process of testimony also has a direct relation to memory. In fact, Felman, who blatantly binds testimony to the legal context, also points to the discursive connection between testimony and memory. As she argues:

> To bear witness is to take responsibility for truth: to speak, implicitly, from within the legal pledge and the juridical imperative of the witness's oath. To testify—before a court of law or before the court of history and of the future; to testify, likewise, before an audience of readers or spectators—is more than simply to report a fact or an event or to relate what has been lived, recorded and remembered. Memory is conjured here essentially in order to *address* another, to impress upon a listener, to *appeal* to a community. (Felman and Laub 204; emphasis in original)

To bear witness, then, raises questions as to truth, historicity and/or representation, and also one's duty to make others know, that is, to remind them of some events. The implication is that testimony is more than just a legal, historical or artistic narrative. It is in fact an ethical burden. And more importantly, it prompts a memorial activity whose objective is to make changes or at least meaningful, fitting reactions. In other words, to testify (and to remember) is to give concrete meaning to traumatic events. Practically, testimonies are more relevant, or have much valuable weight, once they are articulated within legal arenas.

But, since the videotape itself could not convince the jury of the police officers' culpability, would the testimony of one or more persons change the court's process or direction? In order to give an answer to this question, one should claim that justice (and here justice also includes the meaning of truth) might be better served if some witnesses, like Josie Morales, had been permitted to give their testimony, that is to say having a say in the legal proceedings. After all, any attempt to establish justice is bound to a plurality of voices from which truth can be easily distinguished and established. By eliminating some voices, or overlooking some testimonies, not just the process of justice that is endangered but the whole democratic process itself.

Within this line and from a legal perspective, it can be argued that such behavior from the prosecution, that is, using its "power to limit the number of voices that have access to justice," represents, in fact,[the] suppress[ion][of]the possibilities for communal participation in law-making" (Cook 1619). Hence, the playwright's concern is not so much about the fact of being unheard as it is about the very understatement of political participation. It is through

the opening of legal avenues to people and allowing them to have access to the law-making process that the legal construction of racial prejudice can be possibly addressed and revealed, thereby, most likely to be feasibly stopped. Simply said, refusing to hear people's testimonies is but the furtherance of the process of negative silence, which would help to reaffirm meanings of race and legal prejudice.

Apart from the relative reasoning of the prosecution in the Rodney king case, what is clear is that the criminal justice system as a fundamental social institution designed for settling quarrels was so distanced from people's perceptions and expectations. What lies behind the process of dismissing some eye-witnesses that might have been crucial in the case,[34] is the deprivation of the black minority of supportive voices, particularly those capable of exhibiting the image of black victimhood. In this sense, what Smith condemns is this affirmative action from the part of the prosecution that dismisses what people consider as necessary and objective testimonies.

If the court's failure centers on its unwillingness, using Smith words, "to hear more voices than that are closest to us in proximity" (1994 ed., xxv), *Twilight,* hence, can be read as an attempt to repair what the law institution could not do. As recorded by Felman, "Law is a discipline of limits and of consciousness.... Law distances the [trauma]. Art brings it closer" (107). Through her play, Smith opens up new possibilities for exposing and contesting some legal mechanisms that support racial practices. Once people's voices reach the theatrical space, their unheard testimonies may possibly hold much more weight, though extra-legal one, in terms of becoming exposed directly to mass audiences. And as Smith uses the testimony of Josie Morals, she also refers to two jurors' testimonies about the Rodney King case, depicting their considerable role in the judicial pronouncement.

[34.] Perhaps it is in her effort to fill this legal gap or silence that Smith chose the verbatim genre, a way that resembles somehow judicial hearings.

3.5.2. The Jury Role

In its essence, a trial is about advocacy. It is, as Felman contends, the traditional "calling for consciousness and cognition to arbitrate between opposing views, both of which are in principle available to consciousness" (4). In this process of arbitrating between opposing views, there are members of the jury who possess the ability to decide on which side of the story is more genuine. The role of jury rests on deciding which side of the conflict is closer to justice (and truth). After all, truth is envisioned to be the ultimate target for any court of law. However, since any trial is "technically… a search for a decision, and thus, in essence it seeks not simply truth but a finality: a force of resolution" (Felman 55), is what makes such resolution oftentimes questionable. This can indeed be the case when the legal system is seen to be unjustly handling some judicial processes, falling short in achieving the full meaning of justice, especially in the eyes of the citizenry.

Essentially, for the black community, the truth about the Rodney King verdict is that the four police officers engaged in a vicious beating and humiliation of a black man, clearly recorded on a videotape taken by a bystander. The truth is that the court of law refused to take this "incontrovertible evidence." Although the court verdict and the acquittal of the police officers certainly charted the reality of "the racial tensions imploding just below the surface in Los Angles" (Fukurai et al. 74), nevertheless one needs to ask how could the jury reach such a verdict? To answer this question, it is necessary to look at some points that are related to the jury system.

Notably, the jury system is seen as one important crucial democratic process, a constitutional right "deeply embedded in the American principle" (Fukurai et al. 75). Yet, as Fergusson articulates, the American jury system is one of the most controversial and one of the most discussed stereotypes of legal procedures. He notes that history often reveals disturbing instances of bad choices made by the jury, almost in every age. (52). With such a

fact and with a biased selection of the jury in the Rodney King case whose members were all white (six white men and four white women, one Hispanic woman and one Asian woman), the black community's engagement in acts of violence was the ultimate response to a justice system whose systemic function could not be tolerated. Subsequently, African Americans refused to accept the verdict. Simply said, the sense of resentment at the way Rodney King was arrested and the fact of the jury members' biased and blind judgment could not have been passed unchallenged.

3.5.2.1. The Failed Witnesses

As stated earlier, African Americans' response in Los Angeles came out as a kind of revolutionary call to the authorities in order to see their enduring trauma. Their violent reactions also expressed their dissatisfaction with the law's willful silence and blindness to racial realities. For many protesters, the criminal justice system simply refused to apply simple rules of evidence as witnessed by millions of viewers. This meant that the jurors' role as the voice of the community was fundamentally undermined. According to Davis, such instances— as is the case of Rodney King —reveal "a sense of cynicism" caused by the American criminal justice system, for adopting "a double standard of criminality," by implementing different rules to police than everyone else. Davis also writes that this kind of practice may effectively lead to civil disorder when properly fuelled, particularly among minorities (271). The feeling of cynicism toward the justice system can be steadfastly translated into violent protests. These acts are but the expression of peoples' breaking of trust in their criminal justice system.

Edkins observes that to call an event traumatic, having then the symptom of trauma, does not only entail "a situation of utter powerlessness"; however, the meaning of trauma has to embroil something else that of "a betrayal of trust." She explains that one can talk about trauma when "the very powers that we are convinced will protect us and give us security

become our tormentors: when the community of which we considered ourselves members turns against us", that is, turning to be "a site of danger" (4). She further contends that the notion of trauma denotes a situation in which there is a mismatch between people's expectations and an experienced event, leading to a sense of betrayal (9). Accordingly, in the Rodney King case, the jury's refusal to recognize the culpability of the white police officers might be read as the divorce of law from people's logical expectations and interpretations. And the Los Angeles riots epitomize people's anguished reaction and their sense of distrust of the criminal justice system for delivering a verdict against the sense of reality.

It is not difficult to understand, then, why the Los Angeles riots have been described as "a violent grief for betrayed promises of equitable justice" (Friedman and Squire 76). Wishes of equitable justice were suffocated by the jury's willful denial of police violence, exemplified in the acquittal of the four perpetrators. Indeed, behind this suffocated justice, it is the truth that has been dangerously wiped out. What the subsequent riots did actually question was the validity of evidence in courts of law. The striking difference between the jurors' seeing and the citizens' seeing could not be reasonably understood. Moreover, the jury's verdict interrogated the extent to which the value of "eyewitness" can be an essential legal proof in criminal cases. In other words, the deliverance of such a verdict was shocking because it challenged people' common sense and also the salient truth.

Particularly, for the rioters, the striking truth as it appeared in the videotape became invalid and irrelevant because it was interpreted racially. In her analysis of the famous O. J. Simpson trial, Felman gives a powerful analogy between this case and that of Rodney King case. She contends that the jurors in the O. J. Simpson trial looked but did not see. They did not see the beaten body. They looked at the pictures of the woman's bruised countenance but declared they could see neither the husband's blows nor the wife's (the victim's) battered face; henceforth**,** they are themselves the trial's failed eyewitnesses (81). Felman then says

that the O. J. Simpson case "with an ironic symmetry" repeats "the history, the trauma, and the structure of the Rodney King case." This latter, in its own right, was specifically about beating, or more precisely an unseen beating, about an inexplicable, recalcitrant link between beating and blindness, beating and invisibility, an invisibility that cannot be dispelled in spite of the most probatory visual evidence (81). By proposing an insurgent relationship between beating and blindness or invisibility, Felman, in fact, alludes to the jurors' preconceived understanding concerning race relations, or more precisely their very personal attitudes.

In the Rodney King case, it seems that the jury members deliberately chose to uphold the path of engendering a legal drama. The Simi Valley jurors could not see the evidence of the beaten black body. They were color-blind, as Michelle Alexander would describe them. Commenting on Chief Justice John Roberts's statement that "[t] he way to stop discrimination on the basis of race is to stop discrimination on the basis of race," Clemens explains that these words hold the meaning that racial discrimination is "explicit and susceptible to conscious control" (689). This indeed begs one to wonder whether jurors can act as to stop racial discrimination since this latter may effectively be put under conscious control. In other words, one might ask: Was there any personal determination to exonerate the four police officers? To answer this question, one needs to delve into the notion of the jurors' role as witnesses to the problem of racial trauma.

In her study dubbed *The Call to Witness: Historical Divides, Literary Narrative, and the Power of Oath*, Nancy Cook remarkably bestows the quality of witnesses on lawyers, judges as well as jurors. She claims that the many agents of the criminal justice system "are well positioned to serve as witnesses to the operations of law and justice institutions in society," for they are "intimate observers of the legal system in operation" (1591). During a trial process, jurors are not to be considered as outsiders. Instead, their mere presence or

participation in the legal process bestows upon them a huge responsibility as well as a privileged status.

Moreover, Cook speaks about the relationship between truth (and knowledge) and the notion of witnessing. She says that in courtrooms witnesses are called upon to speak of what they have seen. However, what they have seen, and profess to know first-hand, is often understood in relation to what they previously knew. As she explains, courtrooms' witnesses in some sense own the truth before they are observers of legally significant events. In most cases, the testimonies or new knowledge would conform to the old, receptively to information, that is, dependent on and reflective of existing collective knowledge. She also adds that in performing their judicial roles, witnesses tend to draw on this accepted truth or knowledge, resulting, more often than not, in an affirmation or perpetuation of preexisting paradigms of knowledge (1589).

That the notion of witnessing an event is connected to one's prior knowledge reinforces, in fact, one's already-existing perception and beliefs. In other words, one's knowledge is essentially linked to the bulk of existing perceptions and experiences that would ultimately determine the scope of a legal case. It should be noted that using prior knowledge in a courtroom was the origin behind the foundation of the jury system. Ferguson points out that during the emergence of the common law tradition in England, the precursors to juries took the form of neighbors who used to be summoned to answer questions and swear an oath from their own knowledge (54). The whole issue then is about one's ability to provide a court of law with useful and reliable information about a given case.

Actually, the jury's knowledge about a case may be acquired first hand and directly during the trial proceeding, or in the courtroom itself. Remarkably, in an article to *The New York Times*, one commentator writes that the Simi Valley twelve jurors "who by viewing the videotape have in effect become witnesses to the incident" (Mydans). If jurors can be

considered witnesses to the operation of law and justice, besides being the conscious of the community as already discussed in the previous chapter, this means that jurors are more qualified to interpret their communities' voice because they are their undeniable eyewitnesses. Thus, when the jury's legal interpretation differs from that of the community's view, is what may lead to social tension. Indeed, this tension in its own right may reveal society's major cultural contradictions as happened in the events of Los Angeles 1992.

Failing to be an eyewitness is what may humiliate one of the white jurors in *Twilight*. Dubbed as the nameless juror who served in the Simi Valley court, this person narrates the disturbing moments of the verdict aftermath as follows:

> As soon as we went/into the courtroom with the verdicts/there were plain/clothes policemen everywhere/you know I knew that/there would be people unhappy with the verdict/but I didn't expect near/what happened./If I had known/what was going to happen/ I mean it's not/ it's not fair to say I would have voted a different/way/I wouldn't have,/that's not our justice system,/but I would have written a note to the judge saying/"I cant do this"/because of/what it put my family through. (Smith 2003 ed., 56)

At the heart of this juror's testimony lies an obvious sense of confusion, if not contradiction. On the one hand, he recognizes his ability to make a judgment according to his personal knowledge, conviction, and also the rule of law. On the other hand, he expresses his wish of not being part of the whole process altogether because of the impact such a verdict imposed on his own self-conception and his family. The juror's statement implicitly admits how much the ensuing not- guilty verdict would be predominantly contradictory to what most viewers expected. It is for this reason that many claims about the jury's bias had been directly translated into the form of severe disturbances.

Particularly, for African Americans, the Simi Valley verdict meant that the likelihood of making an unreasoned decision contradictory to people's expectation, or to their seeing, would often occur. Thus, their violent reactions are somewhat reasonable and predictable. This is very understandable in that people possess the right to have a view on a courtroom

verdict. As James Levine confirms, communities, like the litigants, "have a legitimate interest in trial outcomes" (213). The statement of the Simi Valley juror might be sufficiently read as a declaration of a botched eyewitness who could not see a clear evidence of guilt. Accordingly, in her play, Smith crucially raises the question of: How should jurors conduct themselves when racial tensions are unavoidable? Or one should pose the question somewhat differently by asking: To what extent should jurors be responsible for their own decision?

This question brings one back to the role of the jury system. Generally, the justice system presupposes that members of the jury should be completely neutral in their deliberations. Jurors should put aside any personal biases and be restricted to the parameters set only by the trial evidence; they are expected to combine their personal experiences about life in weighting or evaluating the evidence (Vidmir et al. 693). In doing so, jurors will be able to weigh "all aspects of the evidence for completeness and consistency, and consider alternative narratives that might be derived from the evidence before it renders its verdict" (693). The jury's role in reaching verdicts should be mechanical devoid of subjective choices. However, the reality is somewhat different. Indeed, a jury's role in the trial process is fraught with ethical questions that require judgment rather than formulaic processes (Levine and Kleining vii). According to many analytical studies, many jurors can be thwarted, to some degree, by the existing complexities, succumbing to some emotional factors; therefore, the decided cases cannot always be immune to some prejudices and sympathies (Fergusson 53).

Again, reading these views side by side with Smith's play, such prejudices are validated through the testimony of the sole interviewed juror from the Federal courtroom bench. Smith includes an important narrative of the jury deliberations through the testimony of Maria, designated as Juror number 7. From her testimony, one can effectively deduce how the first trial decision was delivered. Maria says that the jury's deliberation had gone through a grinding process for days, leading to some kind of quarrels between the jurors themselves.

That is why she had to address her peers by saying: “Why should we go through a case like this for a man like this? / If you felt that way you should have told the judge that at the/beginning, / You should not be bringing that up here!” (Smith 2003 ed., 161). By appearing as the leading juror, Maria, in fact, urges her peers not to fall into personal prejudice as did the Simi Valley jurors (a point that will be discussed later). Maria then determinedly reminds her peers of the necessity of casting away any biased judgment and “to look at the evidence” (164).

It followed that the court of law needed a strong-minded juror to direct its course, ending up by enlightening and facilitating its decision making. Maria explains that it was only after putting aside the personal guilt and the personal beliefs, after they were washed away, that members of the jury were able to look at the evidence and the testimony (Smith 2003 ed., 164). Eventually, the jury subscribed to Maria’s logic and voted against the police officers for violating King’s civil rights. Maria also accentuates the importance of recognizing and challenging one’s negative beliefs and cross over them for they could be little more than mythical prejudices. Nevertheless, her words draw another image that of “an extraordinary process that seems to have very little to do with issues of evidence and argument” (Nichols 156). The jury members may stand far from adhering to legal forms and procedures. The process that the jury of Simi Valley adopted was firmly attached to racial prejudice. And the jury emerged as the failed eyewitness. However, as Maria shows, such failure can be largely avoided if jurors would keep a certain space between their personal attitudes and the imposed case.

This leads one to refer to Paul Ricoeur’s insight about the “just distance” between the opposed parties in standing conflicts. The idea is that achieving justice must be bound to establishing a just distance between the offender and the victim (*Reflections* 89; 224). Ricoeur explains that this mission is attributed to a third party which is exemplified in the whole

judicial institutions, particularly judges who, as the mouthpiece of justice, can give flesh to it. The legal system has the task of promoting the word of justice in a concrete situation (226). This just distance that, as Ricoeur further remarks, "occupies a strategic place in the conceptual structure of a philosophy of law centered on the judicial function" is also essential for securing impartiality during the trial process, and more importantly, this would help to distinguish facts from emotions (89). It is only when such distance is maintained or respected that racial prejudice can be removed and rational decisions hammered out.

Relating such conceptualization to Smith's interviewed juror, it appears that one index of the Simi Valley jurors' failure centers on their inability to keep a just distance between the black victim and the white offenders. And it is precisely because of this loss of distance that they fashion themselves as failed eyewitnesses. Accordingly, the Los Angeles violent protests should be read as people's way to question the significance of legal procedures and of the role of the juries. The jury system presumably stands as a crucial mechanism in democratic societies where justice should be attained not according to a reasoning that is consistent with personal biases or beliefs as did the jury of Simi Valley. Indeed, falling short in keeping a just distance between the white police officers and the black motorist is perhaps one important clue of the miscarriage of justice and the shortcoming of the legal system.

The inability of the jury system to keep a just distance can be imputed to some reasons. Apparently, the Simi Valley verdict is unmistakably attached to the already existing paradigm of white innocence versus black guilt. For the black community, the Simi Valley jury's judgment- making is a product of, and tethered tightly to, the collective belief held in the United States about ethnic minorities, particularly African Americans. These beliefs, in fact, are anything but unprejudiced.

3.5.2.2 White Innocence versus Black Guilt

In the Rodney King incident, many criteria, as well as the general common sense, appeared powerfully urging the criminal justice system to reconsider seriously the issue of African Americans' racial injustice. It was indeed a legal case that could probably incite the need to see the other version of white offense and guilt. And more importantly, the Rodney King incident was an opportunity for the criminal justice system to revisit all kinds of previous racial injustices. Regardless of how the legal procedures and reasoning worked to reach the not-guilty verdict, for the black community, the Simi Valley court came out to forcibly validate and concretely evince a serious problem: the idea of black guilt. In other words, the law, which is supposed to, in whatever form or level, provide neutral protection to every person however his or her race is, dramatically spoiled in serving the rights of the black community.

The scenario imposed in the Simi Valley court divulges how much the court did not depart from the existing general paradigm of white innocence and black guilt. It comes as no surprise then that the acquittal of the four white officers in 1992 "was not an anomaly but an inevitable consequence of the jury system in which the position of racial and ethnic minorities in the social system in general and the court system in particular has been molded by socio-historical factors of subordination" (Fukurai et al. 74). The criminal justice system eventually mirrored and reaffirmed the reality of racial prejudice. To better understand how the jury came to exempt the police officers from their alleged crime, transcending by that the true meaning of fairness and justice and producing a deadly verdict, it is important to delve into the narrative used in the Simi Valley courtroom.

Indeed, this point has been addressed by Smith in her introduction to her play. She writes: "For jurors in Simi Valley, Rodney King appeared to be a threat to the police… he had been speeding. The officers were, as far as they were concerned, enforcing the law. Police

officers reportedly concluded that King was on the drug PCP, impervious to pain, and therefore not responding to the beating" (1994 ed., xix-xx). Smith then adds that the jury had a kind of trouble in hearing King's painful reaction to the blow and it was only after the federal jury concentrated on the audio and not the video picture that their view altered. Only after the physical image of Rodney King was taken away that the jury agreed that he was in pain and responding to the beating (xx). With recognizing the difficult role of a jury, this role, after all, also shows moments of disputes about fundamental legal procedures and society's basic social values and cultural contradictions.

Jennifer Griffiths asserts that the Simi Valley jury defined Rodney King according to a racialized scheme in which his black body must be read and re-read as a threat to the existing values (94). Similarly, Judith Butler also contends that such reading was possible through "reproducing the video within a racially saturated field of visibility" (*Endangered/Endangering* 15). Butler wonders once again how the jury could see the very body of the black motorist as a threat, challenging, by that, what is visible. She goes on to explain that what happened is that the court of law interpreted the photographic representation that shows the beaten black body under the batons of the policemen within the white racial frame. King was construed as an agent of violence "one whose agency is phantasmatically implied as the narrative precedent and antecedent to the frames that are shown" (16). The image of the beaten body was read within the binary of white innocence versus black guilt. As such, what the defense attorneys succeeded effectively in doing is the full conceptualization and reconfiguration of the phantasmatic idea of black instinctive violence within concrete legal terms.

By over-posing such a scenario, all that mattered to the court of law, that is, to the jury, is how to admit the black threat because, once again, racial trauma seems to have the upper hand. Consequently, racial prejudice would overwhelmingly dominate the scene with

its entire unreasonable dimension. Lawrence Vogelman discusses the extent to which the defense party successfully removed Rodney King, as a person, from the judicial situation. He explains that the defense framed the issue "not as to the propriety of the police conduct toward Rodney King, but as to the propriety of police conduct toward 'them'—the Big Black Men" (576). The black motorist was only conceived within the frame of the potential threat his black body represented. And once Rodney King was seen within this frame, his legal status could not be envisioned within the standard rules of humans' vulnerability to bodily pain and suffering.

In this line, one of the most sensitive interpretations of the deliberations of the jury members in the Rodney King case is that of Griffiths'. She contends that having regarded Rodney King as a large black man, the jurors could not see him "as a human being capable of suffering under the heavy, relentless blows." Moreover, even the interpretation of the scene had already been arranged and made before the jurors' deliberation. Ironically, as Griffiths adds, the process of seeing and believing still seem to hold evidentiary heaviness; however, in this instance, "the believing seems to have preceded the seeing" because the jurors, to a some degree, exclusively interpreted black body and black manhood within the meaning of aggression, that is, a real danger that society must control, manage, and tame (8).

The jury deliberately set aside the persona of Rodney King from the stronghold of justice in that it excluded the mere possibility that this person is a victim. In doing so, the criminal justice system violated the notion of the universality of justice, depriving Rodney King of the sense of equity: to be in the position of a helpless, hurt victim against his white aggressors. Instead of measuring the level of the possible threat the four police officers might have exercised on this black man, the court turned to the beaten victim himself to figure out the degree of his own culpability and potential threat. And since the jury concentrated only on

the already preconceived ideology of black guilt, the credibility of facts and the weight of evidence had only expanded against the victim's interest.

Yet, one might wonder if it was possible that the court of law would have endorsed another reading if the victim were not a black person. Perhaps the whole narrative may have taken another scheme, drastically shifting from its actual path. Bill Nichols writes that "were Mr. King white and in sports clothing, other conclusions might have been that he had the torso of an athlete or a body builder" (152). Moreover, "if Rodney King had been white, drunk and speeding, there may have been outrage at his beating by police officers. But there almost certainly would have been no riots after their acquittal in a state court" (Worthington). That the white community would not react to a verdict exonerating white offenders of another white person is because the verdict would probably be perceived as an exception, forcibly not bound to be repeated, that is, not part of the routine. What is not part of the routine, however, is to see black people beating a white person.

This is best illustrated through the testimony of Paul Parker, a chairperson of Free the LA Four Plus Defense Committee (in defense of the four black people accused of beating a white driver, Reginald Denny, during the riots as an act of retaliation). As he explains, "the bottom line" in accusing those four blacks is because Denny is a white person, for if "Denny was Latino, /Indian, or black, / they wouldn't give a damn, /they would not give a damn. / Because /many people got beat"; however, no one heard about them (Smith 1994 ed., 172). He then illustrates how the incident of "This one white boy" could steer the whole nation attention for it "paraded all around/ .../ to go do every talk show there is,/ get paid left and right./ Oh, Reginald Denny,/ this innocent white man" (172-173). Besides, Paul Parker wonders about this accepted or general consensus over the idea of feeling empathy and sympathy for one beaten white man, movingly probing what about being sympathetic for a black person or victim (173). Through this testimony, Smith invites her readers/ audiences to

consider the extent to which the version of similar stories of beating can be read and assessed differently.

Indeed, alongside the "phantasmatic" image of black threat and guilt and the set of racial conceptions and practices, black people are assumed to be responsible for their misfortunes because they are "serious and habitual offenders" (J. Miller 35), leading juries to act racially and exonerate white offenders. And though this belief poses questions about racial justice in the contemporary United States, the Rodney King verdict, after all, epitomized the fundamental values of the nation. That is to say, "the police officers acted toward Rodney King the way the jury wanted police officers to act" (Vogelman 573). The jury acted as though absorbing and then projecting the narrative of racial trauma already prescribed in American daily life in which there is a general acceptance of black threat against white persons.

Speaking about the Los Angeles riots, one of Smith's characters says:

> what disturbed me, / which I really . . . what I would wanna talk about the most/about that week, /was watching rich white people guard/ their houses/and send their children/out of L.A./ as if/ the devil was coming after them./And/ it wasn't realistic./It was/ I think, a media fest/ of making white people/scared/ of the African American community,/and, and/ nothing has changed. (Smith 1994 ed., 211)

As this person articulates, the conception of seeing blacks as dangerous does not necessarily present an accurate image. This image, in fact, is not immune to some other forces or preconceived ideas, not only those found in law's avenues but other social and cultural channels as media or fiction. Essentially, this kind of construed external image unfolds in a way in order to deliver one clear message: white innocence and black criminality.

Within this white/black dichotomy, the role of media cannot be ignored, regarding its role in motivating racial meanings and creating paradoxical realities. On the one hand, "crime has become a metaphor for race, hammered home nightly on TV news and exploitative crime shows replete with images of dark-skinned predators" (J. Miller 61). On the other hand, there

is a second image that serves to defend and honor police officers. Between these two images, however, the problem is that crime is always enmeshed with black people, portrayed in fiction and implemented in judicial practices. In this vein, and speaking about fictional crime dramas, Michelle Alexander makes an important parallel between fiction and law. She argues that the narrative of the contemporary American criminal justice system resembles that used in fictional dramas. These dramas often perpetuate the myth that the chief function of the system is to keep the streets safe and homes secure by rooting out dangerous criminals and punishing them (59).

To expose those constructed images, one could refer to the testimony of one of the law's representatives, District Attorney, Gil Garcetti. His explanation of how the Simi Valley jury came out with its decision works side by side with Michelle Alexander's insight. The district attorney does not question the jurors' genuine mission as well as the heavyweight of decision-making in criminal cases. He points to what he calls a kind of common compromise about the necessity of respecting the police even among those "people who are annoyed by police" (Smith 1994 ed., 74). He then proceeds to say that there is a kind of "magic" usually found in the courtrooms that urges people, particularly jurors, to believe in the sanctity of police officers, the helpful, law-abiding citizens, who are doing the difficult job to protect people's lives and wealth. He continues by saying:

> when an officer comes in/ and tells you/something from the witness stand/ there is something magic/that comes over that individual/ as opposed to you …/ I mean, if a cop, for example, comes in with a raid jacket/and guns bulging out/ he'll wipe himself out very quickly,/ because he'll look like he's a cowboy./Bu if you have a man coming in/or a woman coming in—/ you know, professionally dressed,/ polite/ with every one— the magic/ is there/ and it's a . . . /it's an aura,/ it's aye [sic] feeling/ that is conveyed to the jury:/ "I am here to help you,"/ and they want to believe that, especially today they want to believe it,/ because everything is living/ in a state of fear. (74-75)

While the magical image or the "aura" of the police officers sensitively affected the jury members, ironically the mundane image of the beaten black body could not do that. As

already mentioned, the Simi Valley courtroom took the body of Rodney King out of the narrative of victimization as if all the violent blows he suffered should have no value in front of the protective batons of the white police officers. One might contend that the victim's traumatic encounter with the police should by no means stand against the "magic" of the helpful and law-protectors' police officers. However, as Kirby Farrell contends, the police officers "are protectors when seen from the above, oppressors when seen from below," that is, from the eye of the black community, or the poor people (265). The nature of the role of police officers, as well as their integrity, is built upon multiple images and perceptions. As a result, when it comes to some practices of police officers, there is no unifying idea of what the real meaning of justice might be. However, between the conventional and conflictual image of police officers, the defense consciously adopted the aura of police officers as the protectors of peace, leading the jury to succumb to this one-sided image. This fact was at the heart of the rioters' anger.

Before finishing this part of white innocence and black guilt, it seems useful to go back briefly to how the defense party could convince the jury of the offenders' innocence. One of the most valuable answers to this inquiry is again that of Butler. She says that the jurors of Simi Valley were exposed to the videotape which was "not only violently decontextualized, but violently recontextualized" (*Endangered/Endangering* 20). Stated differently, away from any magic, Butler reveals the power of the court's proceeding to enforce some cultural conventions as the videotape needed an extra-legal narrative out of what it seems to convey.[35] The video was decontextualized and recontextualized in a way that would reinforce the already preconceived fears and prejudices. In short, the verdict could not

[35.] In her study of the significance of images or videotapes in law, law professor Mezey contends that the image cannot speak for itself, for it bears multiple points of view and an unnecessary credulity that may lead to injustices. She explains that to provide reliable information, videotapes, which are in themselves open to interpretive disputes", should "be critically examined like text or testimony" (7). However, in the Rodney case, the court relied solely on one narrative that of black guilt.

be delivered without the influence of the prejudiced idea of white innocence and black criminality.

Through the testimonies in *Twilight* one can understand why the Simi Valley white jury acquitted the four defendants. These testimonies can assist to shed some light on the general atmosphere of white people's fear of people of color, mainly blacks, and the need for having protection or taking cautions. This is best described through Elaine Young, a white female, with platinum blonde hair and expensive jewellery. Elaine Young narrates how, during the riots, she resorted to Beverly Hills Hotel, a place where she felt secure and safe from the deeds of the minority groups. At the hotel, as she utters, "No one can hurt us…/'cause it was like a fortress!" (2003 ed., 79). Being at the "fortress" (or the hotel) of the white people, the black threat, or the stereotypical image of the aggressive and criminal black body, could be somehow avoided. Young then portrays the general mood during the riots and says: "Here we are, /and we're alive'--/and, you know, / "We hope there'll be people alive/when we come out!"(79-80).

This white woman's testimony seems to clearly summarize the social disparity and the social- cultural crisis existing between the white community and the black one. It shows real incarnation of the system of social control as regard to the inevitable need of the white people to be protected from the dangerous Big Black Men. It could also be argued that some testimonies in *Twilight* correspond to what many scholars have discussed about the race-crime relationship. In other words, "black men embody society's greatest fears and suspicions about crime" (Johnson 629). However, against Elaine Young's fears and her mythical image which is certainly controlled by white imagination, most of the deaths in the Los Angeles riots were among the black community, not the white one.[36] Through the various testimonies of the play,

[36.] Actually, most of the dead were blacks and Hispanic, as reported by Michel Marriott (*Riots in Los Angeles*).

it appears that Smith intends to express how much subjective fear and fantasy about race do really exist.

What Smith portrays in *Twilight,* indeed, is more than the dilemma of the white/black binary. The issue is much more profound. It is about minorities' traumatic experiences that have been slipped out of legal comprehension and interpretation. The criminal justice system seems to cause civil disturbances due to its refusal to look earnestly at minorities' collective traumatic experiences or more precisely memories. In order to prove this claim, an inquiry into the association between the Simi Valley verdict and the issue of African-Americans' collective traumatic memories is necessary.

3.6. The Word of Law and Collective Memory

In the previous chapter, it has been pointed to how Berrigan stands to affirm that the practice of civil disobedience should be considered as an integral part of the collective moral sense of the American nation, aiming at defending the real purpose of laws and the true meaning of justice. In this chapter, one would like to discuss the notion of collective consciousness by referring to African Americans' collective traumatic memory and its relation to the law. According to what has been discussed previously in this chapter, it greatly appears that Smith is preoccupied with how the Los Angeles riots should be read as an indictment of America's most enduring traumas: police violence and racial injustice and discrimination, trying to show what values are still problematic or at stake at the end of the millennium.

In her discussion of the decision in the Rodney King case, Felman writes that the case "registers a legal failure to see trauma" because it has inherently been "reinforced, compounded, by an equal cultural failure to acknowledge hate" (82). The power of hatred, as Felman insightfully argues, is crucial. That is why she further explains that the act of beating remained out of seeing because "trauma is precisely what cannot be seen; it is something that

inherently, politically and psychoanalytically, defeats sight, even when it comes in contact with the rules of evidence and with the trial's legal search for visibility" (83). However, when racial trauma becomes repetitive, legally enforced and overwhelmingly persistent, there is no room or excuse for grounding on hatred, invisibility or blindness. And this is what people wanted to say in the Los Angeles riots.

From a number of testimonies in *Twilight*, it appears that the notion that people's fury at the court and the jurors' verdict is not merely an expression of the individual incident of Rodney King, but it is also a rebellion against any similar traumatic incident inflicted on the whole black community. As Abu-Lughod notes, the Simi Valley verdict nurtured the rioters' anger and sense of outrage because it just reminded many minority viewers and local blacks of the humiliations that they themselves had witnessed at the hands of what they regarded as a racist, militaristic police force (227). For African Americans, the justice system is the synonym for injustice with all its accompanying indignation and future implication.

How should the law institution deal with and understand African Americans' collective traumatic memories? It is the question one will try to give some answers in the next subsection. What will be discussed is the connection between the concepts of legal trauma and collective memory. The objective is to try to reveal how the law may metamorphose into the dominant cultural paradigms, assisting in creating injustices, promoting violence, perpetuating racial segregation and judicial bias, and consequently rising feelings of distrust and revenge. Accordingly, an exploration into how and the extent to which the justice system can play a massive role in affirming or denying African Americans' collective memories of racial violence and segregation is made. Before proceeding further, however, it is necessary to give some definitions.

3.6.1. Collective Memory: An Introduction

The term "collective memory" was first coined by the French philosopher and sociologist Maurice Halbwachs. Collective memory is defined as a shared, acknowledged, and reinforced past among social groups and nations. Collective memories are also understood to be "dependent on previous ways of remembering history" (Savelsberg and King 3). Collective memory is contingent on how communities recall (or remember) and reconstruct past events. Indeed, the concept of collective memory has become a central issue of debates, still not yet fully resolved. Collective memory is an eclectic term that may involve stories of a society's momentous events and "prominently includes wars, revolutions, economic depressions, large-scale strikes and riots, and genocide – as well as the legal proceedings often arising from such upheavals" (Osiel 19). One might say that collective memory is the bulk of shared disturbing events.

A clearer understanding of African Americans' collective traumatic memories (those of racial violence and discrimination) can be better attained when discussing their significance for the legal system. And as one objective of this part of this study is to investigate the connection between law and collective memory, it is important to mention that most scholarly literature that has dealt with such connection has been developed in the context of social sciences and particularly legal scholarships, particularly those dealing with the processes of recovery after mass atrocities and transitional justice. The main objective of such literature is to find ways to get over traumatic experiences or injuries for which law should play a considerable role in the processes of finding solutions.

In this respect, Mark Osiel writes that the best method to prevent the reappearance of genocide, as well as other forms of state's sponsored mass brutality, is to cultivate a shared and enduring memory of its horrors and to utilize the law self-consciously toward this end (6). The law institution can be a powerful tool of resistance to violence. It can work as a means to

reinforce memories related to that violence through making some memories amenable to legal considerations— that is, a matter of legal proceedings. Indeed, revealing the enduring and shared collective memory of minorities' trauma of racial violence, suffering and segregation is what the Simi Valley court failed to do, as will be illustrated.

Similarly, in their study of the connection between law and collective memory, sociologists Joachim Savelsberg and Ryan King suggest that there is a reciprocal association between law and collective memory, simultaneously influencing and affecting each other. Because law is highly ritualized, as they argue, it is a powerful establishment for the creation of collective memory [37](2). They also explain that while "legal proceedings construct images of the past directly, law affects collective memory indirectly when it regulates what information can be collected or accessed and what can be said about the past" (2). There is an intertwined and undeniable relationship between law and collective memory in that both of them are related to human experiences. Since law can shape, and is also shaped by collective memories, it can animate past memories as well as decide what type of memory can be legally included or excluded.

It should also be noted that collective memory is often related to many concepts such as social memory, public memory, collective conscience, and also cultural trauma. Significantly, a closer concept to collective memory is that of cultural trauma, as Savelsberg and King note (3). Some sociologists define cultural trauma as "a memory accepted and publicly given credence by a relevant membership group and evoking an event or situation" (Smelser 44). This memory is usually laden with negative affect, appearing as inedible, seen as a threat to a society's existence, or violating its cultural presuppositions (44). Cultural trauma is also defined as the situation of "when members of a collectivity feel they have been subjected to a horrendous event that leaves indelible marks upon their group consciousness,

[37.] This view is based on Durkheim's classical sociology which suggests that trials are highly ritualistic performances which affirm the norms and values of given collectivities

marking their memories forever and changing their future identity in fundamental and irrevocable ways" (J. C. Alexander 1).

Noticeably, the Los Angeles riots did not emerge after the release of the videotape, but after the ensuing verdict. As such, for African Americans, it is with the legal outcomes that their cultural trauma (or collective memory) would become really relevant because as members of a collectivity, they feel they have been subjected to a horrendous event that would leave inedible marks upon their collective consciousness. Obviously, it is the legal decision that dictated the outcomes of the Rodney King case. And by accepting that police violence constitutes an institutionalized practice (a system of social control) whose impact is observed not only individually but also collectively, police brutality is certainly part of black people's shared traumatic memories. Accordingly, some other questions should be addressed: Why did African Americans not react after seeing the videotape of the beating, though it was humiliating and traumatic in itself? Why did they wait until the law gave its word to act violently? Is there any relation between the trauma of the beating and the trauma of the verdict? If yes, to what extent is the justice system responsible for such a traumatic incident?

Before proceeding further, in this study, collective memory and cultural trauma are used interchangeably. They are understood as the shared memories of past and present traumatic experiences, mainly of racial violence and injustice, with the idea that the law institution is responsible for causing and enduring such traumatic realities. What is proposed is that being unable to legally acknowledge the shared memories that a group of community hold to be traumatic in their daily lives is what led to African Americans' anger and helplessness. In other words, the focus is on the legal system's engagement with some critical racial issues. Thus, in this section, one will try to expose how the concepts of collective memory and legal trauma are intertwined and this by referring always to *Twilight*.

3.6.2. *Twilight* and Collective Traumatic Memories

Taking into consideration the complexity of the problem of race and its relation to the law, the proliferation of racial beliefs in legal proceedings is an essential element of enduring racial trauma. This was the case of the Simi Valley court, which could not get over the power of racial prejudice, as already mentioned. After all, when racial prejudices are well established, they take on a legal coloring, codified in statutes and court rulings that justify inequality and sustain the status quo (Babson et al. vii). At this stage, one needs to refer again to the role of the prosecution in the Rodney King first trial to see how a whole collective memory can be dramatically dismissed. As discussed in the previous chapter, legal proceedings are often contingent upon rigidities and some technicalities. This means that it is not always possible to translate legal reasoning into a meaningful, rational language as individuals, victims and society would usually think.

Significantly, one finds that Vogelman criticizes the prosecution, saying that it miserably failed both in its analysis and in its execution of a strategy by which the "persona" of Rodney King was presented to the jury. He also explains that one major downfall committed by the prosecution is its faulty belief that "the trial was only about the police officer defendants and their conduct" (576). Yet, it was not. As he maintains, the case "was in great part about Rodney King and the Big Black Man Syndrome"; thus, the prosecutors unsuccessfully could not confront that their decision of not putting King on the stand was a fatal one (576). By focusing solely on whether or not the conduct of the police officers was appropriate, not only the beaten body of Rodney King per se that was ignored, but a whole inherent collective memory associated with the history of race and racism in the United States that passed unnoticed. In other words, what the prosecution failed to do is to provide the court of law with a readable scenario of racial trauma.

At this stage, it is important to note that the role of victims in trial proceedings is equally crucial. Fergusson remarks that, in trial performance, a victim's role can say as much about the culture as about the practice of law (62). The prosecution's failure to cunningly provide the court with a sufficient narrative in which the black victim should have been the major actor or at the center of the proceedings made the scenario of the defense much more legible, overwhelming thereby any other counter-narrative. It was easy, then, for the defense lawyers to convince the jury of the innocence of the police officers through excluding the history of racial violence, lying symbolically in the figure of Rodney King. The exclusion of his persona from the legal proceedings revealed how much it would impact on African Americans. This legal omission is but a dramatic failure to display the reality of racial trauma; a failure that led to enflaming bitter memories of historical injustice and then to urban violence.

Could it not be possible to avoid such critical outcomes? From what has just been mentioned about the role of the legal system in dealing with collective memory, it can be stated that there was a huge opportunity to prevent the outcomes of the Simi Valley verdict. To better illustrate this point, the discussion of the concepts of justification and excuse in the Rodney King case by legal scholar George Fletcher appears to be very helpful. He argues that because the court relied on the argument of "reasonable perception of danger," that is, "reasonable grounds to fear an assault," the subsequent not-guilty verdict put the four police officers into a situation that would ultimately exonerate them, with reaching the conclusion that their conduct was justifiable. Fletcher explains that the court was able to avoid the dramatic and painful consequences of its verdict if it had simply adopted a strategy that might be greatly logical or understandable to the public mind, lessening by that the social refusal. Such a strategy, as he notes, is about the jury's ability to declare that the conduct of the offenders was unjustified for it directly violated the victim's right and that their using of force

was wrong and unjustifiable, not falling thereby within the rubric of self-defense. Fletcher then concludes that the jury should have excused the defendants on the ground of "reasonable misperception of the danger" (202).

The implication is that by adhering to the defense interpretation, which suggests that the police act of using force was fully justified, the Simi Valley court participated in enflaming people's violent reactions. Through its verdict, the court appeared to contradict the sense of reality that the videotape clearly speaks, as already noted. And more importantly, the court has had an opportunity or a legal escape from which a justificatory rhetoric could be noticeably convincing and relieving to the populace. What can be agreed on is that the Simi Valley court had a chance to wisely refuse the scenario of the defense, rebuilding thereby the lost trust, cultivating the nation's unity and encouraging reconciliation. However, for not doing as such, the legal system failed to afford a robust platform from which a shared understanding of the nation's race problem could have been addressed quite easily. Simply said, it was possible to attain this understanding through a simple and an appropriate legal response to what African Americans perceive as a nonstop process of racial violence and bias.

Indeed, through adapting Fletcher's insight, two important points might be induced. The first is about the Simi Valley court's ability to rescue African Americans' collective memory of racial violence from slipping into legal oblivion. The second is about the responsibility of the criminal justice system for the verdict aftermath— that is, its role in rising painful feelings and violent reactions. Indeed, the two points are closely related regarding the court's power to strengthen national bounds and circumvent any national discordance. In other words, the focal question is about the law's ability to control people's reactions, particularly when putting into consideration the way it should deal with some collective memories that might deeply affect a group of people's understandings as well as behavior. A legal recognition of the persistent issue of racial trauma would certainly have

changed the course of the events. Had the Simi Valley court functioned in this manner or logic, it would considerably have acknowledged both the cultural trauma of police brutality and the whole collective memory of racial trauma. In other words, a whole traumatic history of race relations could have been legally recognized, becoming then judicially visible and treatable.

It is indeed against this judicial ignorance and blindness that the testimonies in *Twilight* stand as a counter-narrative to the Simi Valley verdict. The justice system's overlooking of some collective traumatic memories in Smith's play can be easily identified through the conveyed messages and structured images about law and racial violence as well as the whole socio-political conditions. For instance, commenting on the incident of Reginald Denny's beating, Paul Parker refers to the long history of racial violence without hiding his belief in the continuing influence of the legacy of slavery (Smith 1994 ed., 176). For him, what is happening is just the prevalence of racism in America. As he says:

> You know, like I said before, we innocent. Like I said,
> you kidnapped us, /you raped our women,
> you pull us over daily,/have us get out of our cars, sit down on the curb,
> you go through our cars,/ you say all right,
> take all our papers out, go through our trunk,
> all right,/ and drive off,
> don't even give us a ticket,
> You know we innocent,
> you know where's our justice,
> where's our self-respect. (1994 ed., 173-174)

In pointing to black innocence, Paul Parker wants to affirm that the Simi Valley verdict did not only silence one victim's voice, but also a whole collective traumatic history. And to return to the point that the riots translated people's dissatisfaction with this kind of judicial oblivion one can say that what the Rodney King trial exposed is the "blindspot" of both law and culture. In Felman's terms, what was revealed at the end of the Rodney King trial was not the fall of the curtain, not the closure of the case or a catharsis finally obtained by a legal resolution, but here again only the terrifying opening, only the emptiness of an

ungraspable abyss. An abyss between the races, an abyss between legality and justice, an abyss in perception between blacks and whites and between conflicting views or contradictory emotional perceptions of the verdict as a victory or an absolute defeat (90).

Opening up the abyss of racial hatred can be further seen in Smith's deployment of the testimony of her anonymous juror who tries to exonerate himself from any racial prejudice. He denies any connection to the infamous Ku Klux Klan (KKK), saying that:

> One of the most disturbing things and a lot of the jurors/said that/the thing that bothered them that they received in the mail/more/than anything else/more than the threats was a letter from the KKK/saying…/"We support you and if you need our help, if you want to join/our segregation. we'd welcome you into our fold." And we all just were/No oh! /God!. (2003 ed., 58)

The invocation of this story is crucially significant in a dramatic representation, regarding the historical part related to the struggle for civil rights. The inclusion of the KKK within the play's narrative alludes to the still existing racial tension in America at the turn of the century. Apparently, for the KKK members, the Simi Valley verdict came out to be seen as the assertion of victory for whiteness against blackness.

It goes without saying that, in the long history of the United States, one of the most infamous ethnic groups, associated with violence and linked to the collective memory of hatred is the KKK. This latter is a kind of vigilante group, symbolizing an act of "terrorism," directed against African Americans, as Neal puts it (163). Neal also explains that this kind of terrorism which "operates outside the legal framework of courts, legislative assemblies, and law enforcement agencies," not only aims at inflicting physical wounds but it carries messages to African Americans (167).

Accordingly, the letter from this racial group to the Simi Valley juror might in fact suggest an attempt to commemorate the history of brutal violence whose racial character revives a painful traumatic history of white hegemony, whilst also addressing the enduring tension between the black and white communities. Noticeably, this tension could be freely

communicated after the ensuing verdict through the letter to the jury who is considered as a racist by the KKK. More importantly, the clan's message reflects the extent to which the judicial system can be responsible for rising and/or dismissing racial beliefs, voices, and attitudes. One might say that it is through its polemical verdict that the court of law registers its failure to acknowledge the possibility of white guilt or more broadly hatred, for it ultimately would give the KKK members the context from which to express racial identity and racial solidarity.

In order to give a more comprehensive account of the role of the criminal justice system in overlooking collective memories, it seems useful to refer to Griffiths' description of the Simi Valley jury. She says that as "cultural forces" the jury members have an important role through "participating in the creation of a dominant narrative that has the potential either to reflect or to displace individual [and collective] memory" (9). Griffiths goes on to note that the jury created a narrative based on the scene of racial violence in which the black body always performs as the perpetrator; therefore, King's voice is never heard. She also states that it "follows a continuum of silenced testimony from people of color in the public sphere. King's body, captured on video, speaks for him. His memory alone has no credibility in the court of law" (9). Such statements can help in fact provide insight into the connection between legal trauma and collective memory.

With regard to the conception that jurors are powerful actors in the societal fabric, possessing the power to decide on racial attitudes, practices, as well as individual and collective traumatic memories, it might be argued that racial feelings and beliefs as depicted in *Twilight* have been easily mediated among the Simi Valley jurors. Jurors can advance or repress existing racial beliefs and practices inasmuch as they can control, or have a legal authority on, some underlying traumatic memories. More importantly, in the black community's view, the Simi Valley court embodied not only white supremacist ideology;

rather, it deliberately denied a long history of racial conflict, that is, a whole collective traumatic memory.

Always according to Felman's insight, it can be argued that though the legal system found itself compelled "to respond to claims that go far beyond the simple conscious and cognitive need to decide about" the legal issues of guilt and innocence; however, the problem was larger for it was also about the court's challenge to give a juridical answer to the whole historical experience of racial trauma as well as to confront it (4). The legal system's failure to acknowledge cultural trauma means its failure to recognize a long- lasting history of civil rights struggle as well as of the state's sponsored violence. In doing so, the court registers its failure to work as both a social institution designed for solving conflicts and as an institution of commemoration.

In regard to the role of trials as memorial sites and tools of consolidation, Osiel explains that trials have often become "secular rituals of commemorations," consolidating shared memories with growing sophistication and deliberateness (6). Osiel sees trials as constructive rituals attached to their specific role in unifying nations owing to their encouraging and active function in making a nation able to redefine its own history. Crucially, to make a history or a collective traumatic memory accountable within the legal avenues centers primarily on the willingness to memorize wrongdoings. As Reva Siegel comments, the process of memorizing wrongs means in itself the very symbolic practice of rectification "for when a community voices collective acknowledgment of collective wrongdoing, it defines itself in opposition to its own past practices" (179). The law's righting of some beliefs and practices may have fruitful outcomes once these beliefs and practices are memorized as wrongdoings. By functioning as a receiver of traumatic stories of African Americans, the justice system may assist in recognizing a historical memory, a collective one, of shared

painful events. That is to say, once a traumatic memory becomes accessible to the law's consciousness, it will become easily to detect its relevance and existence.

In the same line with Osiel, and speaking of legal institutions as "public instruments shaping public and private lives," Martha Minow notes that these institutions "affect the production of collective memories for a community or nation" (28). Minow remarks that there is a whole related cycle before the legal outcomes. She says that political and social decisions would eventually determine what can give rise to legal claim for these decisions not only articulate views about what is fair and right for individuals; "they also communicate narratives and values across broad audiences" (28). Courts of law are an important mechanism for both solving disputes and also for being a kind of forum by which a nation's standards or moral values can be communicated and transmitted. Courts can frame a nation's cultural context, directing by that legal principles and schemes. To put it otherwise, courts of law shape collective consciousness as well as legal rhetoric. In doing so, they can exercise a great impact on certain delicate issues and traumatic incidents that would later become in turn shared memories.

Indeed, there are some clear indications that Smith is very interested in the issue of the construction of traumatic memories as well as how one should deal with these memories. She essentially accentuates all citizens' shared responsibility for improving the conditions for all races in the United States (1994 ed., 216). This is understandable regarding the fact that daily practices or conditions will be eventually translated or reflected in political and legal decisions. That is why Smith focuses on the "moral power" attributed to public institutions, for when it comes to the application of the law, presumably all people, in theory, are equal in this process (217). This pronunciation of the contingent relationship of politics, law and moral power does certainly reveal the tremendous role of public institutions, especially the legal

ones. Indeed, this call for shared moral responsibility among individuals, as a collectivity, and the state's institutions, is very significant to sociologists.

In his discussion of the concept of cultural trauma, Jeffrey Alexander stresses the centrality of cultural trauma to "social solidarity and political action" (1). He maintains that it is through the construction of cultural trauma that national societies, social groups, and sometimes even entire civilizations can cognitively identify the existence and source of human suffering; thus, these groups will be able to take on board some significant responsibility for it. He further says that as long as the cause of trauma is identified and thereby moral responsibility is assumed, members of collectivities can define their solidary relationships in ways that, in principle, permit them to share the suffering of others (1).

By applying such insight to *Twilight*, one finds that the justice system in the Rodney King first trial failed considerably to take this "moral responsibility" which would make the acknowledgment of African Americans' suffering and victimhood legally visible. In other words, the criminal justice system can play a fundamental and powerful role in validating ethnic minorities' collective traumatic memories of racial violence, bias, and segregation. Therefore, being unable "to recognize the existence of others' trauma, and because of [such]failure," as Jeffrey Alexander would probably argue, the legal system "cannot achieve a moral stance" (1). The justice system's failure to take a moral stance suggests that reconciliation will be hard if not impossible.

As it appears from *Twilight*, the riots— besides standing as censuring the justice system's unwillingness to convict the white offenders— represent a condemnation of the deliberate role of the justice system in provoking and lingering minorities' inferior status. The notion of legal trauma alludes here to the law's reassuring of the dominant legal and cultural crisis concerning the question of racism. African Americans, in other words, believe that the

trial of Rodney King is but another instance of that kind of legal drama that tends always to ignore and dishonor or devalue their traumatic history.

Through the exclusion, whether consciously or unconsciously, of the long history of racial bias, injustice, pain, and even death, it might be further argued that the Simi Valley court which was supposed to "make an important contribution to the collective memory of [racial] violence" (Henry 4), had only contributed to black people's helplessness and despair. In *Twilight*, the focal point is not merely about the legal institutionalization of guilt and innocence in accordance with preconceived ideas related to racial biases, but the issue is also about some crucial related points, mainly the very notion of justice. The Los Angeles riots should not be simply conceived as people's rebellion against the law's refusal to acknowledge their cultural trauma (or collective memory). Indeed, at the heart of the trial and its corresponding riots there lies another question: the inherent relation between memory and justice.

3.6.3. Memory and Justice

In order to gain insight into the relationship between justice and memory, it is valuable to look at some thoughts. In his theories of justice, Ricoeur contextualizes for the inherent connection between collective memory and justice. As he outlines, "[e]xtracting the exemplary value from traumatic memories, it is justice that turns memory into a project; and it is this same project of justice that gives the form of the future and the imperative to the duty of memory" (*Memory* 88). It is through the remembrance of past or traumatic events that law can achieve justice and this mainly by turning those traumatic memories into a real project, that is, into a concrete narrative. In other words, the legal system can achieve justice in case traumatic memories are, to borrow Ricoeur's words, "raised to the level of language" (16). Certainly, justice is more prevalent when it is raised to, or taken into consideration by, the legal language. And this may help answer the question of why the Los Angeles riots emerged

after the Simi Valley verdict, not after the release of the videotape of the beating for a trial, or the word of law, has the capacity to transform a traumatic memory into real existence.

Notably, the ongoing conversations over the relationship between race and the law in *Twilight* seem to stir up bitter memories of injustices as well as the need to bear witness to all the individual and collective traumatic experiences. In placing stories of injustice in the larger historical context of racial conflict, Smith, in fact, identifies a certain connection between memory and the notion of justice. Such a connection is extremely important because of the effect it prompts. As Minow outlines, memory has a "double-edged" role for as it fuels cycles of hatred, it is also essential for "personal integrity and for bearing witness to injustice" (4). Memory is both a process of recording (or remembering) and of bearing witness. It simultaneously raises stories of both justice and injustice. And as memory is double-edged as is the law, too. The legal system can reinforce and dismiss memories. As such, legal memory is crucially important inasmuch as it paves the way for establishing justice and for the impact it has both on one's and other's self-esteem.

The sturdy connection between justice and collective traumatic memories can be grasped in Smith's play through people's perception of the criminal justice system and the way in which issues of the recurrent racial inequities are discussed. For instance, the story of a black girl named Latasha Harlins a fifteen- year- old African American who was killed year before the Rodney King trial in a store owned by the Korean Soon Ja Du for being accused of stealing a bottle of juice may serve as a good illustration. The interviewee, here, affirms that if one black person is denied the full meaning of justice, the whole community that is indeed deprived of justice. Smith reports:

> Because justice denied Latasha Harlins
> Is justice denied every American citizen.
> And the sentencing of Soon Ja Du,
> Was a five-hundred-dollar fine,
> "restitution of the funeral expenses."
> You-can't-bury-a-dog-in-Los Angeles-for-five-hundred-dollars. (2003 ed., 48)

The story of this black girl expresses African Americans' general attitude toward the criminal justice system. And although the process of denying justice to black people is frequently observed, the legal system in the Rodney King case comes to reaffirm the renunciation of many traumatic memories. A traumatic memory can only be given true credence in case the legal system places issues of racial trauma at the center of its proceedings. In doing so, not only does the legal system secure one or many memories from slipping into legal oblivion, but the notion of justice itself which is also secured from becoming an empty rhetoric.

Therefore, through invoking stories of victimization, Smith's aim is not so much to reveal the prospective of racial bias and injustice as it is also a symbolic remembrance of victims of traumatic injustice whether of loss or suffering. Behind exposing the dramatic story of Latasha Harlins, Smith wants to invoke the necessity of doing justice to the dead. In this respect, James Booth who also discusses what he describes as the "centrality of memory to justice," points to the significance of remembering past injustices, for such a process would give dignity to those who have not been granted in their lifetime (778). To remember some wrongs is to honor the forgotten, or the victims of trauma, as well as highlight what racial prejudice may mean to a collectivity. To remember is, in other words, to reflect on an unresolved trauma, particularly when considering that justice is crucially "directed toward others", as Ricoeur also outlines (*Reflections* 225).

One can understand why Smith tries to capture the black community's feelings toward the law institution. Focusing always on the fact of the continual cycles of judicial bias, Smith associates to the same results when the issue of race confronts the criminal justice system.

Apparently, legal decisions are, more often than not, made according to stereotypical beliefs. One of the characters says:

> Because no matter what people say,
> the injustice of what happened to Rodney King,
> it just coincides,
> as there's a parallel
> between Rodney and Latasha. (Smith 2003 ed., 48)

This explicit reference to the death of this young girl and the incident of Rodney King has a special meaning for the black community. Both events invoke the persistence of injustices inflicted upon black bodies. The implication is that if one case is not treated fairly, similar processes of inequities will be forcibly repeated on a whole community. The dramatic insinuation of the story of Latasha Harlins, borrowing Horsman's words, is intended "to give a voice to the dead so that they might address the living with a demand for justice", which "ultimately remains silent" and "unspoken within the idiom of the courtroom" (11). Accordingly, it might be further argued that Smith creates her own "theater of justice" (11) in which stories of injustices are remembered and honored.

Remarkably, the incident of this young black girl is not the only indicator of the sense of victimization among the different ethnic groups. Korean Americans also perceive themselves as victims of African Americans, particularly during the Los Angeles riots. One noteworthy testimony delivered in the play is that of a Korean Woman, Mrs. Young- Soon Han, a former liquor store owner and a victim of the uprisings. In a section entitled "Swallowing the Bitterness," this Korean woman shifts the attention to the "other" victims: the Korean immigrants. In fact, this woman also questions the true meaning of justice and wonders where and how the Korean community can find justice. She says:

> Okay, Black people probably believe they won by the trial? Even some complains only half right? Justice was there. But I watched the television that Sunday morning, early morning as they started. I started watch it all day. They were having party and then they celebrated, all of South-Central, all the churches. They finally found that justice exists in this society. Then where is the victim's rights?. (Smith 1994 ed., 246-247)

Ironically, demand for justice is also raised by people who in the black people's eyes are seen as their perpetrators. Smith, thus, enlarges the pattern of black/white binary. As such, racial tensions in multiracial urban communities, like Los Angeles, may also help to reflect on the role of the law in constructing ethnic identities or racial categories (as articulated by Ian Lopez). The readers/audiences of *Twilight* are exposed then to different conceptions of justice. What can be claimed is that trauma destabilizes coherent meanings, leading to different perceptions of what justice may truly stand for. Ultimately, such antagonism touches the very conception of justice and the notions of victims and perpetrators as well.

In *Twilight*, The characters' narratives demonstrate how blurred and sometimes meaningless the victim/victimizer pattern is. The idea that none person is responsible is observed. Again, Congressman Maxine Waters expresses such dichotomy when she says: "Everybody in the street was not a thug/or a hood" (Smith 1994 ed., 161). Through this testimony, Maxine Waters admits the difficulty of setting clear-cut boundaries between victim and perpetrator in such highly exposed violence. For in such traumatic situations, as Caruth notes, traumatic experiences extend "beyond the psychological dimensions of suffering it involves" as to denote "a certain paradox: that the most direct seeing of a violent event may occur as an absolute inability to know it" (*Unclaimed Experience* 91-92). The inability to discern between victim and offender seems to project on the justice system's inability to see and admit racial injustice.

Nevertheless, one can notice how much Smith wishes to challenge this notion of trauma's ambiguities as well as to transcend the dichotomy of victim/perpetrator and its subsequent philosophy of blame, or as Fergusson would describe it as "culture of complaint" (66). Smith uses her play as a platform to stress on the importance of reaching practical solutions, essentially those basing on mutual understanding. This is indeed obvious again in

the testimony of Maxine Waters. In her speech given at the First African Methodist Episcopal Church, and by addressing the president of the United States and the governor, she utters:

> For politicians who think/everybody in the street/who committed a petty crime,/stealing some Pampers/for the baby,/a new pair of shows. . ./We know you're not supposed to steal,/but the times are such,/the government is such,/that good people reacted in strange ways/They are not all/crooks and/ criminals./ If they are,/ Mr. President,/what about your violations? Oh yes./ We're angry,/and yes,/this Rodney King incident./The verdict./Oh, it was more than a slap in the face./ It kind of reached in and grabbed you right here in he/heart/and pulled at you/and it hurts so bad. (Smith 1994 ed., 161)

By explicitly attributing responsibility to political leaders, the character calls on all the authorities and institutions to give serious consideration to ethnic minorities' needs and rights in order to achieve the full meaning of justice, regarding their ability to contribute efficiently to battle discrimination. But, one important question one should address here is: Besides the point of the necessity of remembering past injustices, under what terms is justice possible? In point of fact, behind stories of victimization, there lies another crucial element that of the justice system's refusal to punish the alleged offenders, the core nexus of the Los Angeles riots. If the justice system can give credence to memory, justice is meaningless unless it is attached to the measure of legal punishment.

3.6.4. Justice and Punishment

In the previous chapters, some elements related to the concept of punishment have been discussed. In Miller's play, it appears that punishment can be inflicted blindly and violently on nonconformist subjects or potential political enemies. In Berrigan's play, the proposed idea is that punishment can be commendably reinterpreted when its subjects are civil disobedient and conscientious objectors aiming at protecting people's lives and whose caused harm is only symbolic. And at this stage of the study one would like to ponder again on the concept of punishment but with regard to wrongdoers whose inflicted harm is undoubtedly concrete and prejudiced.

As already noted, what looked to be a communal act of civil disorder in Los Angeles, 1992, turned out to be a theater against the exoneration of the four white police officers. Undoubtedly, the legal system is principally projected to be responsible for reparation. If law can cause legal traumas, as Felman contends, law can also greatly help in the process of "recognizing and breaking cycles of hatred" (Minow 13). The Los Angeles insurrections are, and should be seen as, African Americans' call for reparation: a legal recognition and rectification of past, present, as well as any future injustice. However, this cannot be achieved without the measure of criminal punishment.

African Americans, to borrow Booth's words, did not "simply want crime to stand exposed... [they] want[ed] it to be punished as well. Truth and retribution are what is wanted" (782). Punishment is a primary tool for executing justice because punishment, or the sentence of the law, "is to the moral sentiment of the public in relation to an offence what a seal is to hot wax" (qtd. in Osiel 25). This presupposes that there is a strong connection between punishment and collective memory. The heart of the matter in the Rodney King case, indeed, centers on the dearth of this socio-legal measure and the collective impact it might have exercised. As Davis explains, the Rodney King case represents "a compelling example" because people "expected the police officers involved in the beating of Rodney King to be swiftly charged, convicted, and punished" (276). It is all about public sentiment and common expectation toward unpunished acts of violence.

This might explain why the public had never before made so totally a criminal case its own for in the first place citizens wanted those policemen to be punished "not so much for King's sake as for the sake of all the future Kings, including just possibly themselves," as Alfred Knight articulates (244). The not-guilty verdict for the four police officers meant the nonperformance of justice for any African American. In Felman's terms, African Americans did not only seek justice for "re-establishing the law's monopoly on violence" or conceiving

justice simply as punishment; they also sought justice "as a marked symbolic exit from the injuries of a traumatic history: as liberation from violence itself" (1). The decision of exonerating the white offenders, in the black community's view, meant that the principle of justice can hardly have any merit. It is through the process of fair legal redress that some racial practices would be far from normalization, or 'de facto decriminalization.' Legal proceedings can work as an efficient mechanism to end racial trauma by denouncing racial prejudices, which can be achieved primarily through the process of punishment.

As the Simi Valley courtroom refused to enforce what individuals viewed as compulsory legal reparation, the Los Angeles riots exemplified the natural kind of hostile attitudes that would arise toward the legal system. The process of denying and dismissing what people would identify as the law's divergence from what is to be considered as proper rights is certainly a huge issue. Within this line, it is accepted that the "failure to remember, collectively, injustice and cruelty is an ethical breach. It implies no responsibility and no commitment to prevent [racial violence] in the future. Even worse, failures of collective memory stoke fires of resentment and revenge" (Minow 28). In other words, the failure of the legal system to punish wrongdoers, to borrow an expression from Osiel, will certainly lead to "discredit the law" (113). As mentioned earlier, the Los Angeles riots were heavily laden with the sense of helplessness and outrage, clamoring for both political and legal consideration of minorities' racial trauma.

In *Twilight*, Smith exhibits this sense through the picture of people's dissatisfaction with, if not disdain for, the law as rebellion and chaos would become the only language they could understand, that is, the only order they could uphold. Speaking about the Los Angeles riots, Smith reports:

You know, we got rid of all these Korean stores over here.
All these little stores.
You know, we got rid of all that.
We did more in three days than all these
politicians been doin' for years.
We didn't have a plan.
We just acted and we acted in a way that was just.
Now we got some weapons, we got our pride.
We holdin' our heads up and our chest out. (1994 ed., 175-176)

In African Americans' view, collective wrongdoings against them which are not addressed by the law will ultimately cause acts of revenge. It is a question of pride, and that is why the riots are considered as an expression against, as well as a counter-narrative to, the legal silence as already stated. The silence of the law undoubtedly has ramifications. After all, as Ricoeur conceptualizes, institutional justice usually stands as "the spirit of vengeance" (*Reflections* 223). The fundamental aim of institutional justice, in the form of inflicting punishment on wrongdoers, is to control over individual or collective acts of revenge. That is to say, the process of punishment would effectively stave off backlash.

Perhaps the clearest illustration of the spirit of vengeance in Smith's play is seen in the testimony of Paul Parker who, with great satisfaction, expresses that his motto is "No Justice No Peace" (1994 ed., 177) — a phrase that was used by many protesters during the Los Angeles riots. He further explains that such an expression is not shallow but a deep one. It means that since there is no justice for the violation of the black community's rights, neither peace of mind nor physical peace will ultimately prevail (178). Such words reveal the sense of victimization whose underlying assumption seeks the affirmation to see justice done. In other words, justice would remain incomplete without the process of punishment. In fact, seeing justice put into practice, which is highly achievable through the visited punishment, would certainly enhance minorities' sense of unity to the American nation. Punishment can ensure social harmony for:

> [T]he rituals of criminal justice—the court-room trial, the passing of sentence, the execution of punishment— are, in effect, the formalized embodiment of the *conscience collective*. In doing, justice and in prosecuting criminals, these procedures are also giving formal expression to the feelings of the community— and by being expressed in this way those feelings are both strengthened and gratified. (qtd. in Osiel 24)

Indeed, behind the expression of "No Justice No Peace" lies another question related to punishment: forgiveness. Speaking about past memories principally in the context of transitional justice processes and amnesties, Ricoeur relates forgiveness to punishment. "The question of forgiving arises", as he says, "where there has been an indictment, a finding of guilt" (*Memory* 453). Relating this conceptualization to *Twilight* one can say that forgiveness is meaningful only insofar punishment is meted out on wrongdoers. Moreover, while perceiving forgiveness as an individual act separated from legal proceedings, Ricoeur nevertheless insists on the importance of establishing justice (458). He also says that "one can forgive only where one can punish; and one must punish where there has been an infraction of the common rules" (470). For the black community, punishment extends to entail the necessity of recognizing racial injustice, a necessary step toward achieving both security and peace.

The role attributed to the law institution concerning its power of ensuing legal decisions as a direct exercise of justice on behalf of the community, as outlined by Ricoeur, has a huge impact on societies' stability. He claims that the act of judging "is finally something more than security—it is social peace" (*The Just* 131). Accordingly, the expression of "No Justice No Peace" stands as a metaphor for the importance of admitting legally a collective traumatic memory, accompanied by the notion that punishment must be vested on any offender. Only in this way would it make sense to speak of justice and peace. This is greatly understandable given the fact that courts of law have the capacity to "perfor [m] a kind of commemorative act, tacitly invoking a regrettable past the nation is aspiring to transcend" (Siegel 173). Just as there is no legal denunciation of past and present wrong deeds, there is

no escape from trauma repetition. In other words, transcending a regrettable past and healing a traumatic present are inexorably bound to the role of the justice system in dealing effectively with such issues. In failing to do so, it is the haunting past that will continue to pose its heavy shadows on the present as well the future.

Conclusion

In this chapter, one has considered how *Twilight* projects African Americans' experiences of racial trauma. Through using real people's testimonies about the aftermath of the 1992 Los Angeles riots, Smith re-narrates and re-questions some fundamental traumatic issues. As it has been shown, when the question of race confronts the criminal justice system, there is always something to be said about the complex and unresolved conflict or the dilemma of white/black binary. While the playwright does not draw from the court documents to comment on legal matters and procedures (as is the case with the two previous discussed plays), the included testimonies are nevertheless sufficient to give a comprehensive image of African Americans' relation with the legal system. If racial conflict is often a subject of close scrutiny among different scholarly fields, in her play, Smith opens up a space for people from different walks of life to give their own testimonies and perceptions of individual as well as collective dramatic and traumatic events.

The story of Rodney King is but one example of judicial bigotry in which the law or the legal system at all its levels functions in a way that legitimizes and authorizes racial bias, hence, engendering traumatic encounters and incidents. This does not simply involve the legal system's shortcoming to consciously acknowledge racial bias, violence and suffering, but often an explicit miscarriage of justice, a willful ignorance of racial prejudice. The legal institution seems to reflect the general cultural landscape in which minorities, and particularly African Americans, are oppressed and marginalized. The violence that was perpetrated on the black motorist could not be legally grasped. And the videotape of the beating which was

supposed to be a controvertible evidence of police brutality against the black community ended up as unusable evidence when confronting existing prejudiced ideologies of white supremacy or innocence and the presumed guilt of African Americans.

As the justice system constructs meanings of race, it also participates in producing traumatic incidents. Significantly, in *Twilight* Smith seems to reveal the intersection of legal trauma with cultural trauma and/or collective memory. It is disclosed that African American's cultural trauma was only in need of a legal decision to show a whole group's suffering and crisis. The role that courts may play in considering collective memories as a process of establishing justice and as a means of healing— and perhaps ultimately of solving the racial dilemma— is not achieved in the first Rodney King case. Without recognition from the law institution, African Americans' trauma cannot find any resolution. Therefore, revenge and violence are doomed to continue happening. For African Americans, justice is meaningless if not attached with and interpreted alongside the long racial history, that is, when recognizing that the tendencies of the past still exist. Therefore, a not-guilty verdict for the four police officers comes to symbolize an unfinished trauma, originating from the distant past, affecting the present and still stretching toward, and continuing to haunt, the future.

General Conclusion

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In this study, one has been concerned with the law institution's handling of three traumas (the anti-Communist witch-hunt, the Vietnam War and racial violence) in three American dramatic works written in the twentieth century. One crucial point has been advocated: in its encounter with trauma, the legal system appeared to be powerless or ineffective for, in many instances, the questioned trauma remained resilient to legal remedy. In other words, while courts of law are conventionally hailed as a venue for the pursuit of justice, yet they can tremendously fall within the murk of injustice or more precisely legal trauma. This is first and foremost an effect of trauma. Trauma can simply distort and dismay legal proceedings and reasoning, endangering thereby a society's common sense and leading to controversial debates. Within this context, one has come to the conclusion that while the legal system's understanding of trauma seems complex and nuanced, a dramatic work can better speak and expose cases of the justice system's traumatic failure.

By drawing on an interdisciplinary approach, on has tried to apply Felman's concept of legal trauma to *The Crucible*, *The* Trial, and *Twilight*. In each play, one has dealt with a preoccupying trauma that has deeply affected the American nation. As it has been suggested, all the three playwrights cast serious doubts on the nature and the function of law and the value of justice in twentieth-century American history. At the same time, these playwrights point to the importance of dramatic reconstructions and the prerequisite for representing cases of unresolved and unfairly treated traumas. Indeed, this point remained at the core of the entire analysis in which one has tried to highlight that Miller, Berrigan and Smith have been able to demonstrate how the legal language sometimes fails to encode the notion of trauma. However, a dramatic representation can do that through a re-evaluation of the causes, the consequences and the impact of a traumatic event.

Through the three chapters, one can see that the central question that never seems to be confronted directly by the legal system is trauma itself. Accordingly, it is argued that Miller, Berrigan, and Smith pose the right inquiries. That is to say, in times of exaggerated fear some accused or suspects are to lose their lives, careers are to be destroyed and legal proceedings are to be broken and violently enforced. In times of wars or civil disturbance, laws may not reflect a society's values or common sense and respond to people's demands, enlarging by that the sense of political and legal alienation. In the condition of racial trauma, the criminal justice system would constantly refuse to see and to acknowledge minorities' collective traumatic memories. Simply said, these playwrights explore the problem of why the justice system cannot handle adequately and fairly some urgent traumas and this by acting positively, not succumbing to their impact.

In the hope of illuminating how legal trauma is manifested through the discussed dramatic works, at the start of this study, the need to speak of one important issue which is the law's violence has been identified. The idea is that in the face of some urgent crises, the law institution often cannot get over its traditional function: violence. Because the law is highly ritualized, there are some recurring patterns to which legal representatives cannot be resistant to their impact. The justice system, which is thought to be able to deal with national crises, may dramatically succumb to the complex nature of trauma. The law institution is more likely to engender legal trauma instead of legal resolution. And as discussed, this can be the case when courts of law appear to be unable to cast aside some detrimental factors or some imposing threats and questions. These are mainly about great fear or paranoia and security concerns, political agendas and consistent, conscious racial prejudice. Indeed, a common feature between *The Crucible*, *The Trial*, and *Twilight* is the point of the justice system's blindness to traumatic conditions.

As proposed, legal trauma can be manifested in the very legal proceedings through which violence, silence, and blindness would overwhelm the legal arena. Trials within a hysterical atmosphere can constantly be featured by unreliable, opposing, and dubious testimonies. By revealing the law's refusal and inability to see some people's deception (and by extension to the exaggerated Red Scare rhetoric), Miller highlights a trauma trial, that is, the rising of previous traumatic conditions at any time and under any disguise. Similarly, when trials of dissenters or war protesters are controlled by political realities or motives and the law's rigidities, Berrigan offers an instance of the legal weakness. At the same time, he also demonstrates the moral strength of those who oppose a meaningless, violent war. Likewise, in dealing with racial trauma, the legal system often appears neither able to admit the possibility of black victimhood nor white offense. That is why Smith insinuates that racial trauma can be effectively addressed, and probably stopped. This happens only in case African Americans' collective memories are to be legally acknowledged. In this way, finding a way to get rid of the disturbing white/ black binary would be then possible.

It should be noted that an essential claim has been made vis- à vis the possibility of fairly resolving critical legal cases or future similar ones within the discussion of the problematic relationship between trauma and trial. To discuss this relation, one has ventured to probe into the complex nature of trauma, which significantly manifests into the legal system's constant limitations to deal with some legal cases. It would be fair to say that the capacity of the justice system to resolve conflicts or urgent traumas can be dangerously impaired. This is less attributed to the fact that some traumatic conditions are elusive inasmuch as they may reflect a variety of manifestations, reverberating in different ways. Instead, it is also because the juridical consciousness is not always immune to violence, political influence, and historical oblivion. Undoubtedly, the impact of legal decisions is

crucial insofar as they can have a profound influence on individuals' status, as well as communities' perception and attitudes.

The justice system through the trial process— with its exalted form, mass audience, and questioning claims for justice— cannot always narrate a nation's crises and cries; yet, a work of dramatic art can do that. As a trial scene may be loaded with some complex social, political, cultural and legal abysses, a dramatic work can effectively bring them to light. In other words, through dramatic arts, some traumatic histories can be better exposed. The dramatic reconstruction of trials can draw one's attention to the unseen and unresolved aspects of conflicts. It can uncover the inexplicable and incomprehensible legal decisions and their unjust and traumatic outcomes. That is to say, playwrights can tell and retell something about a given historical moment. Moreover, the dramatic representation of some legal cases and their aftermaths not only helps illuminate a country's history and culture, but considerably helps reveal some hidden issues related to institutions of law and their legal proceedings. In this sense, a dramatic work can effectively display the law's weakness, blindness and violence.

By inferring a direct correlation between past and present traumatic circumstances, Miller in his historical drama urges his readers/ audiences to examine cases of injustice in the midst of their critical frenzy conditions in whatever forms they might take or motives they might hinge on. *The Crucible* is designed to make the reader understand both the Salem tragedy and its parallel Communist hysteria and rethink of their shared traumatic legal dimensions. Indeed, in taking up such a historical parallel, it has been able to apply Felman's repetitive legal trauma theory. The main idea is that threats of the past may haunt the present in the guise of wicked enemies, clamoring for a national stir to contain them. And in its attempt to do that the legal system would dramatically repeat past structures of injustice. The reader or viewer of Miller's work would definitely conclude that the Salem trials proved to be

lingering long after their time because they have never fully come to a rational and fair ending.

Indeed, *The Crucible* enables Miller, besides the fact of reopening the case to his American audience, to comment on the universal theme of justice. In doing so, he ascends the sense of solidarity and common experiences among various societies. Miller rightly notes that wherever his play is staged in any of the five continents, there is always a certain amazement that the same dread that happened to them or that menaced them, had actually happened before to many others. And it is all very strange that the devil is known to lure people into forgetting precisely what it is vital for them to remember; that is to say, "how else could his endless reappearance always comes with such marvelous surprise?", as Miller concludes (*Where You Ever*).

Whether the devil (or enemy) has many-sided shapes or one shape, it often misguides people and even legal institutions, leading to miscarriage of justice, ambiguities and chaos. The failure to know and to remember traumatic instances would likely decrease the chances of giving fair resolutions while simultaneously increasing the likelihood of trauma repetition. Not only has Miller, therefore, uncovered the often outbreak of the specter of the Salem legal trauma to his contemporary viewers, but his drama has also achieved another role that of bringing that trauma (with all its underlying features) closer to them. Through *The Crucible*, Miller revives some shared painful, maybe forgotten or buried wounds. As outlined, *The Crucible* seems to better reveal cases of legal injustice, that is, legal trauma, through making it more tangible, or much closer. And in bringing about legal trauma closer, the boundaries between law and justice are considerably revealed.

To better uncover how different conception between law and justice might constitute an example of legal trauma, the attention is turned to another traumatic event, the Vietnam War. This war was of one of the most traumatic conditions that the American nation found

itself obliged to grapple with. The 1960s and 1970s stood as among the most violent decades in the American history, deeply affecting both the society and the law institution. The focus has been on one particular subject, the response of the justice system to anti-Vietnam War protesters. Through Berrigan's documentary drama, *The Trial*, one major claim has been about the conception that in its attempt to settle the conflict between the protesters and the government, the legal system appears to work in a fashion that would proliferate trauma, not resolving it. This constitutes indeed the condition of legal alienation to which the playwright stands sorely to criticize. In fact, one could also claim that the play's nine defendants embody the explicit meaning of one's duty to stand and challenge the trauma of the Vietnam War.

The play's nine protesters overtly acknowledge that they broke the law "TO BEAR WITNESS" (qtd. in Isaac 126) to the age destructive weaponry and the country's imperialistic tendency or hegemonic policy. Yet, as proposed, the core of the event, the essence of civil disobedience, or the necessity to break unjust laws and stop their violent or traumatic results, for which the Catonsville Nine stand to defend in their trial finishes by being ungrasped, misunderstood and irrelevant. Through Berrigan's work, one has noted the extent to which the medium of theater can be used as a forum to demonstrate forms of conflicting pleas. A principal focus has been on featuring the inability of the legal system to engage actively with the opposing discourses between the anti-war protesters and the government. Berrigan's play is then a challenging one in the sense that it calls for resisting both the hegemonic dictates of the political machine and the stringencies of laws.

Interestingly, through the recreation of a courtroom in theater and the restaging of momentous units of the judicial proceedings documentary theater, henceforth, "not only records the virtues and flaws of the way that legal history is remembered, [but] it reconfigures that history" (O'Connor 5). That being said, one has ventured to probe that *The Trial* can be read as a medium to both spotlight on some blemishes in the American legal system and to

expose arguments about how such flaws can be avoided in the future. In his drama, Berrigan aims to reorient the law as regard to traumatic conditions. He essentially raises the point of how the justice system should see and recognize the violence caused by the Vietnam War. Berrigan, in fact, challenges the strict application of rigid laws by calling for a lawful recognition of protesters' fair redress and the condemnation of the government's actions. In doing so, not only current atrocities that will be addressed, but future injustice will be swiftly handled or more precisely avoided.

To expand on the issue of unresolved traumas and to examine another central issue in modern American history: the perpetuating racial trauma, Smith's verbatim drama, *Twilight* has been picked up. In this work, the playwright chose to use people's real words instead of using trial transcripts. In involving people's real testimonies, Smith has been able to "occup[y] the position of survivor and listener, emphasizing the process by which memory transforms from a purely private to a more externalized, public form" (Griffiths 97). Having recourse to real witnesses Smith stands not only as a commentator of racial trauma but also as an analyst and a critic. The idea is that people's testimonies would suffice to evoke some of the most significant issues about racial trauma in general and law and justice in particular. From this point of view, it might be said that Smith's objective is to give an extra- legal quality to those testimonies. A quality that has been used in the analysis of *Twilight* in this study.

Through this verbatim play, one could see how Smith opens up that closed legal space, in a way that her theater becomes a setting for not only presenting grief and grievance but also an alternative to real courtroom's narratives. As discussed, many testimonies do, in one way or another, grief the justice system's handling of racial prejudice. Some other testimonies are fuelled with distress and mutual hatred or incomprehension. More importantly, many testimonies that stand against the justice system's verdict in the Rodney King case do

essentially wonder until when the realities of racial violence and bias will endure. By drawing on the play's testimonies and the legal case of Rodney King, one has propped the idea that though the law can create and validate racial traumas, through its process of affirming the dominant prejudiced ideology, it appears that law can also and ought to break the cycle of legal bias and injustice.

In *Twilight*, it has been argued that legal trauma is exemplified in the form of institutional violence which has become doomed to be lingering for so long. The legal system's role in constructing and enduring racial bias and injustice is deeply invoked. A primary point has been made about the legal drama of the Rodney King. This case is but another conundrum of the unending racial trauma due to the law's willful and repetitive desertion. Indeed, one legal decision may end up in another wound, leading to a kind of revolutionary response, understood by the wounded group as analogous to justice re-establishment. The crime of the beating that was to be purportedly at the heart of the trial turned out to be secondary, even irrelevant to the legal system. Given this, a trial is not always a means for a balanced justice inasmuch as the law itself creates or constructs racial meanings. Through *Twilight* one can come close to the idea that law is fallible or fragile in the face of some national traumas, that is, prone to distortion or more precisely to willful judicial blindness.

As this study progresses, investigating the notion of legal trauma using an interdisciplinary approach seemed very compelling and compulsory. Throughout the process, one could only provide some aspects of legal trauma as the task of investigating legal proceedings or legal themes in drama is so immense as well as highly challenging. This challenge can be further intensified when discussing trials as being legal traumas and dramas in themselves. It may also be necessary to point out that to interpret each of these legal traumas and dramas in a single work cannot be all- encompassing because basically each

trauma has its own feature whether in form, cause, or effect. Thus, to reflect on trials and traumas of a traumatic century in dramatic literature is undoubtedly very dicey and at the same time very promising.

Through the chapters developed in this study, one major goal is to contribute to and enrich the debate about Felman's concept of *legal trauma* and try to give and expand a critical discussion on the subject. Also, in appealing to the legal failure in this study, the hope is to add to the role of drama in exposing, in general, the theme of law and justice and, in particular, the theme of legal transgressions. Because law is generally perceived as a set of abstract regulations worth following, one can detect the need for a more critical view and interpretation of human conditions and experiences under the law. This would also help to avoid many problems, including the case of legal trauma. The notion of the dramatic exposition of the legal transgression can be in fact the subject of another more detailed study that may apply other approaches not refer to herein. Indeed, there is much one can learn from the representation of legal issues in dramatic works in which other debates can be raised and more interdisciplinary approaches can be applied.

Therefore, one would like to recommend the following points which might be of interest to future researchers who would like to shed light on, or rethink of, the representation of trials (law and justice) in different dramatic productions:

- Psychoanalysis, law and dramatic representations.
- The impact of some legal cases on dramatic representations and/or vice versa.
- Dramatic literature as a specific mode of testimony.
- Drama, crime and punishment and socio- legal scholarship.

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Resumé

Cette étude traite la relation conflictuelle entre procès judiciaire et trauma dans le théâtre américain du 20ème siècle. En ayant recours à une approche interdisciplinaire faisant appel notamment à des études juridiques, études politiques, études traumatologiques, à la sociologie, histoire et à la critique littéraire, et ainsi en adaptant ce que Shoshana Felman nomme traumatisme légal, il est soutenu que *Les sorcières de Salem* de Miller, *Le procès* de Berrigan et *Twilight* de Smith servent de narration lucide et une évaluation critique dépeignant l'échec traumatique du système judiciaire. Cette étude explore les cas dans lesquels le système de justice aurait recours souvent à la violence, à l'obscurité et au silence imposé pour résoudre, respectivement, trois crises juridiques. Elle commence par une discussion sur les racines du traumatisme juridique causé par les procès de sorcières de Salem et sa réapparition lors de la chasse ou la campagne anticommunisme. Elle soutient ensuite que la réticence de l'institution judiciaire à situer le trauma de la guerre du Viêt Nam dans un langage juridique efficace et compréhensible emporte son propre échec juridique. Cette étude termine en discutant comment le système de justice marque son échec juridique frappant et inexplicable lorsque il contribue au racisme institutionnel et à la négligence de la mémoire collective de toute une communauté.

المستخلص

تتطرق هذه الدراسة إلى العلاقة الخلافية بين التروما و الإجراءات القضائية او المحاكمة في الدراما الأمريكية للقرن العشرين. من خلال الاعتماد على منهج متعدد التخصصات الذي يشمل الدراسات القضائيه، الدراسات السياسية ، دراسات التروما ،علم الاجتماع ،التاريخ والدراسات الأدبية بالإضافة الى تكييف مفهوم فلمان للتروما القضائيه ، ازعم ان البوتقه لميلر، المحاكمه لبيرقن، و الشفق لسميث تعد بمثابة عرض واضح و تقييم نقدي لفشل العدالة الصادم أو بعبارات أخرى السقوط في حالة التروما القضائيه . تستكشف هذه الدراسة الحالات التي يلجأ فيها نظام العدالة إلى العنف والتعتيم والصمت في عملية حل ثلاثة أزمات قانونية على التوالي. تبدأ الدراسة بمناقشة جذور إرث التروما القانونية التي واجهتها محاكم سالم التي عادت إلى الظهور مرة أخرى في عمليات البحث عن ما يعرف بالحرب ضد الشيوعية. ايضا ، فإن إحجام مؤسسات القانون عن وضع تروما حرب فيتنام في إطار لغة قانونية فعالة ومفهومة يبرز فشلها القانوني. تختتم هذه الدراسة بمناقشة فكرة انه من خلال إضفاء الطابع المؤسسي على العنصرية والرفض القضائي للذاكرة الجماعية للمجتمع، يفرز نظام العدالة فشله الواضح و الغير المبرر.