



## BOOK REVIEW

**The Ends of Pardoning**

Peter Brooks\*

In *Theaters of Pardoning*, Bernadette Meyler makes a strong and richly illustrated case for the pervasiveness and importance of scenes of pardoning in both law and drama.<sup>1</sup> Pardoning often stands as a climactic moment in legal procedure and theatrical representation—and the two cross over into one another. Reading her notable book, I was reminded of a famous, moving, memorable moment of pardoning that comes in word and music, and which I think exemplifies Meyler’s argument. I refer to the climax of Mozart’s *The Marriage of Figaro*. I can make my argument best by sending the reader to its enactment, here in the version conducted by John Eliot Gardiner, with Rodney Gilfry in the role of Count Almaviva and Hillevi Martinpelto as the Countess.<sup>2</sup>

In this final scene of *Figaro*, it is the Count who finally falls to his knees to beg pardon of the much-wronged Countess—and suddenly the music of this comic opera takes on a religious solemnity, as if we were in Mozart’s *Requiem* maybe, as all the characters express their contentment with this outcome to the “crazy day” (as the title of the source play indicates) that has unfolded in the course of the opera.<sup>3</sup> Here is the text of the scene:

COUNT (*kneeling*)  
Countess, your pardon! Pardon!

CONTE (*inginocchiandosi*)  
Contessa perdono! Perdono,  
perdono!

COUNTESS  
I am more clement,  
and answer, yes.

CONTESSA  
Più docile sono,  
e dico di sì.

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1. See generally BERNADETTE MEYLER, *THEATERS OF PARDONING* (2019).

2. WOLFGANG AMADEUS MOZART, *LE NOZZE DI FIGARO* (John Eliot Gardiner conductor, Olivier Mille dir. 1994).

3. *Id.* at act 4, no. 28, <https://youtu.be/t2yrDWEoCpc>; PIERRE-AUGUSTIN CARON DE BEAUMARCHAIS, *LA FOLLE JOURNÉE, OU LE MARIAGE DE FIGARO* (Gallimard Folio 1999).

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| ALL<br>Ah! All shall be<br>made happy thereby. (Etc.) | TUTTI<br>Ah! Tutti contenti<br>saremo così. <sup>4</sup> |
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What is most striking here is that it is the Count, the one who normally grants pardon, who now must beg for it. He is after all the local sovereign, the one who traditionally has dispensed justice on his estate, who now must, and does, seek pardon for himself.

Why so? We may judge that he has lost his sovereign authority in his attempt to use an outmoded and disgraced law from a disreputable past: the so-called *droit du seigneur* or *jus primae noctis* that supposedly gave the lord of the manor the right to sex with maidens in his domain on the eve of their marriage.<sup>5</sup> It's as if the Count had reverted to a kind of discredited feudal jurisprudence and must be brought into a more enlightened modern world by way of a dramatic "theater of pardoning" in which he becomes the suitor for the Countess's act of grace. Perhaps following this scene—where the Countess's graciousness permits his rehabilitation and restoration to his social place—he will regain the privileges of sovereignty and put them to better use.<sup>6</sup> All the characters gathered on stage for the finale seem to believe a better era is at hand.<sup>7</sup>

It is not in fact clear that the seigniorial right to sex with maidens ever really existed, except in the European cultural imagination. It may have been a persistent myth—as if the phallic law suggested by the "right" had been made representative of all the forms and practices of authoritarian abuse. Such an imaginary "law of all laws" would resonate with psychoanalyst Jacques Lacan's claim that the phallus is the signifier of signifiers, fundamental to the possibility of language and of law.<sup>8</sup> It is significant that in the world of 1786 (when *Figaro* first was staged) the Count must be brought into modernity—into the world of *Aufklärung*.<sup>9</sup> He must be forced to renounce unjust tyranny and join a community of men and strong women reunited around his reformation.

Mozart's opera has always been seen as less overtly political than the play from which it derives, *Le Mariage de Figaro* by Pierre-Augustin Beaumarchais,

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4. MOZART, *supra* note 2, at act 4, no. 28.

5. See *Droit du Seigneur*, ENCYCLOPAEDIA BRITANNICA (July 2, 2007), <https://perma.cc/L8Y3-NMC8>.

6. See MOZART, *supra* note 2, at act 4, no. 28.

7. See *id.*

8. See JACQUES LACAN, *The Signification of the Phallus*, in ECRITS 575-84 (Bruce Fink trans., 2002). Lacan does not intend his semiotic theory to privilege male over female, but it is dubious that he achieves gender neutrality.

9. I use the German for "Enlightenment," as defined by Immanuel Kant in *Beantwortung der Frage: Was ist Aufklärung?* IMMANUEL KANT, *Beantwortung der Frage: Was ist Aufklärung?*, in BERLINISCHE MONATSSCHRIFT H. 12, S. 481-494 (1784).

which had been banned in Vienna where the opera was to premiere.<sup>10</sup> The libretto that Lorenzo da Ponte created from Beaumarchais notably omits the fifth act soliloquy in which the valet Figaro denounces the Count and his class for their parasitic existence—a soliloquy that underscores the role of the play as one of the literary precursors of the French Revolution.<sup>11</sup> Nonetheless, I think Mozart’s opera obliquely but tellingly makes the point about the need to move out from an oppressive legal regime to a more enlightened one. It is in particular the reversal of the pardoning scenario that appears proto-revolutionary. In Beaumarchais’s play, the Countess kneels to the Count before he raises her up and begs her forgiveness.<sup>12</sup> In the opera, the Count’s fall to his knees is an astonishing, solemn, and moving moment.<sup>13</sup> And of course the music very much makes this point in its sudden shift from frivolity to solemnity.<sup>14</sup> The sovereign’s request for pardon in and of itself bears a message and makes an impression.

There is doubtless a pattern of climactic plea and pardoning throughout Mozart’s operas, as Mladen Dolar and Slavoj Žižek argue in their book *Opera’s Second Death*.<sup>15</sup> The dispensation of mercy runs from *The Abduction from the Seraglio* (*Die Entführung aus dem Serail*, 1782) through *Figaro* and *Così fan tutte* to *La Clemenza di Tito* (*The Clemency of Tito*, 1791) and then *The Magic Flute* (*Der Zauberflöte*, 1791), which, Žižek notes, could be titled “The Clemency of Zarastro.”<sup>16</sup> Though none of the others is quite so moving as the Countess’s in *Figaro*. Bernadette Meyler mentioned to me, after my oral comments on her book, that composers of Baroque opera—Handel, for instance—often used stories of pardoning. It is interesting to speculate as to why pardon, mercy, and clemency become in this period—from the sixteenth through the eighteenth century—a dominant theatrical trope. Why clemency over retribution, for instance, or conquest? As Meyler suggests, theaters of pardoning represent a certain civilizing influence exercised on the long tradition of the revenge tragedy.<sup>17</sup>

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10. See BEAUMARCHAIS, *supra* note 3; see *id.* at 248-49, for a discussion of the censorship of the play.

11. See BEAUMARCHAIS, *supra* note 3, at act 5, scene 3 for the soliloquy, which does not appear in *Le Nozze di Figaro*, MOZART, *supra* note 2.

12. BEAUMARCHAIS, *supra* note 3, at act 5, scene 19.

13. See MOZART, *supra* note 2, at act 4, no. 28.

14. See *id.*

15. MLADEN DOLAR & SLAVOJ ŽIŽEK, *OPERA’S SECOND DEATH* (2002).

16. See generally *id.*; see also Zachary Woolfe, *Enduring Appeal of Mozart’s Oddball Opera*, N.Y. TIMES (Nov. 8, 2012), <https://perma.cc/DA4B-RFMG> (quoting Žižek as saying, “The entire canon of Mozart’s great operas . . . can be read as the deployment of the motif of pardon, of dispensing mercy, in all its variations.”).

17. Cf. MEYLER, *supra* note 1, at 12, 69-70.

As Meyler writes, pardoning, even in the legal arena, “already entails a certain theatricality.”<sup>18</sup> The subject is inherently dramatic, a moment of recognition and reversal in the best Aristotelean tradition. Characteristic of Meyler’s excellent book is the fact that the traffic flows both ways, demonstrating the theatricality of legal pardons and the legal drama of pardoning so often seen on stage.<sup>19</sup> As she demonstrates, it’s not just that law exercises its power as dramatic theme and matter on the stage but also that the literary genre of tragi-comedy itself appears to influence the performances of legal and political actors.<sup>20</sup> That’s an original and crucial insight. Her book hence succeeds in creating a true intersection of law and literature, one of real importance, something that I find is relatively rare in law and literature scholarship. *Theaters of Pardoning* will I think be recognized as an exemplary work in the somewhat undefined field to which it contributes.

The idea of an act of pardoning in which sovereignty defines itself, displaying what you might call the place of sovereignty,<sup>21</sup> calls to mind a French play nearly contemporaneous to the English examples, such as *The Laws of Candy* and *The Bondman*, that Meyler discusses: Pierre Corneille’s *Cinna, ou la clémence*.<sup>22</sup> Corneille’s play premiered in 1641, on the eve of the English Civil War.<sup>23</sup> The play turns on the Roman Emperor Augustus’s pardon of Cinna and Emilie and their confederates, who have plotted his death. Once the plot has been discovered, Augustus—in a long soliloquy in Act IV—considers and more or less decides upon a bloody and exemplary punishment for Cinna and company.<sup>24</sup> But now, suddenly in Act V, the spectacle of more bloodshed repels him, and he comes to a seemingly instantaneous decision for pardon instead.<sup>25</sup>

This moment of pardoning, in the last act, irrupts into the play as a kind of gratuitous gesture of the sovereign. Augustus suddenly declares that the conspirator who sought to kill him shall instead become his friend (in a line all French schoolchildren used to know by heart): “*Soyons amis, Cinna, c’est moi qui t’en convie*.”: “Let us be friends, Cinna, it is I who so invite you.”<sup>26</sup>

This decision is crucially figured as a moment of *self*-conquest:

Je suis maître de moi comme de l’univers;

Je le suis, je veux l’être.

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18. *Id.* at 16.

19. *See, e.g., id.* at 108.

20. *Id.*

21. *See id.* at 249 (discussing Jean Bodin and Immanuel Kant).

22. *See id.* at 112-21, 143-45; PIERRE CORNEILLE, *Cinna, ou la clémence*, in 1 THÉÂTRE COMPLET (Maurice Rat ed., 1960).

23. *Cinna*, ENCYCLOPEDIA BRITANNICA, (Mar. 23, 2011), <https://perma.cc/9RAZ-9DKK>.

24. CORNEILLE, *supra* note 22, at 948-49.

25. *Id.* at 966.

26. *Id.*

[I am master of myself as I am of the universe;  
I am master, I want to be master.]<sup>27</sup>

We read this to mean: master of myself, I can be master of the universe. But syntactically it is put somewhat differently: I am master, I want to be master. It's an act of the will. It's as if the act of mastery were declared before the decision to master. This may indicate a kind of psychological and physical simultaneity of the being and the act of willing to be. It appears as an instant in which self overcomes itself, in a kind of *Aufhebung* which in and of itself both declares and exercises Augustus's sovereignty. He wills himself into being Augustus. And as he at once understands, the exemplarity of his act will live on:

O siècles, ô mémoire!  
Conservez à jamais ma dernière victoire!

(O centuries, o memory!  
Preserve forever my last victory!)<sup>28</sup>

This is what it means to be Augustus, and to be remembered as Augustus.

In pardoning, Meyler suggests kings are "turned" by God.<sup>29</sup> And in Corneille's play, the conspirators themselves are turned, in a trope of conversion: They experience a change of heart and offer not only submission but also genuine allegiance to the emperor.<sup>30</sup> And then the Empress Livie has a vision in which she prophesizes a long reign for Augustus, free of further sedition.<sup>31</sup> Not only the current conspirators, but also the State itself has been transformed by the act of clemency. It's like the effect of the "Act of Oblivion" called for by Charles II and finally instituted in 1660, discussed by Meyler in her sixth chapter: The act of erasure that preserves the well-being of the state.<sup>32</sup> I note that Corneille explicitly declared the derivation of his play from Seneca's *De Clementia*—important to Massinger and others discussed by Meyler—and Montaigne's gloss on it.<sup>33</sup> And also, the Emperor Augustus seems to have been James I's ideal of a ruler, which nicely links *Cinna* to Shakespeare's *Measure for Measure*, which Meyler discusses so acutely.<sup>34</sup>

The theatricality of pardoning, and theaters of pardoning, have a long life: Dramatic pardoning still had force well into the nineteenth century, for instance in Victor Hugo's *Hernani*, which famously brought Romantic drama to that bastion of conservatism, the Comédie-Française, in 1830, and in the opera,

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27. *Id.*

28. *Id.*

29. MEYLER, *supra* note 1, at 99-100.

30. CORNEILLE, *supra* note 22, at 966.

31. *Id.* at 967-68.

32. See MEYLER, *supra* note 1, at 200-01.

33. See CORNEILLE, *supra* note 22, at 894.

34. See generally MEYLER, *supra* note 1, at 33-109.

*Ernani*, that Giuseppe Verdi derived from it, which premiered in Venice in 1844.<sup>35</sup> The pardon extended by Don Carlos, who has become the Emperor Charles V, to his would-be assassins again creates a conversion effect, assuring a largely triumphant reign. Like many another dramas and operas of the time—and like so many of Shakespeare’s plays—Hugo’s and Verdi’s are in essence political in their concerns. And it may be that political theater needs acts of pardoning in order to promote a vision that goes beyond the partisan, that seeks to unite an audience and by extension a nation in a consensual state. Certainly all of Hugo’s work, very much including *Les Misérables*, sounds a central message of pardoning and forgiveness as crucial to social solidarity.<sup>36</sup> In societies of deep inequality and patent social injustice, pardoning and forgiveness seem to be needed for reconciliation to begin—and Hugo was ever more concerned to bring the opposing factions of his compatriots, the partisans of revolution and the defenders of reaction, into a lasting truce. One could perhaps include within this tradition such quasi-theatrical political events as the Truth and Reconciliation Commission in South Africa (which also points to the limits of pardon in promoting social justice).

The other choices for a theater attuned to political conflicts might be Antonin Artaud’s theater of cruelty or Berthold Brecht’s revolutionary epic theater, which seeks not reconciliation but political engagement.<sup>37</sup> These may give us a better sense of the task of theaters of pardoning: Pardon rises above the conflict and revenge on which theater so much thrives, putting an end to the story by a supremely dramatic act that lifts us above the ordinary terms of dramatic enactment. As Meyler so pertinently argues, such a terminal uplifting of the terms of conflict gives us the genre of tragi-comedy, which in turn can serve as a model for legal pardoning.<sup>38</sup> What may most unite plays as diverse as *Measure for Measure*, *Cinna*, *The Marriage of Figaro*, and *Hernani* is the desire to avoid bloodshed and terminal punishment (though it leaves room for self-punishment, as in *Hernani*). No bloodbaths, though we come very close to them.

Meyler’s book could lead to much further speculation along these lines, and others as well. In this brief comment, I cannot engage with all her rich arguments and examples. I have simply tried to show the ways they encourage us to think about the issues at hand, in the directions they inspire, into further examples and critical analyses. That is because *Theaters of Pardoning* is itself an exemplary act of law and literature scholarship, in which each of these fields illuminates the other. That’s a rarity in law and literature scholarship, where usually the traffic flows only in one direction, as in a one-way street, often one

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35. See VICTOR HUGO, *HERNANI, OU L'HONNEUR CASTELLAN* (1830); GIUSEPPE VERDI, *ERNANI* (1844).

36. See VICTOR HUGO, *LES MISÉRABLES* (1862).

37. See ANTONIN ARTAUD, *THE THEATER AND ITS DOUBLE* 84-88 (Mary C. Richards trans., 1958); BERTOLT BRECHT, *A Short Organum for the Theatre*, in *BRECHT ON THEATRE: THE DEVELOPMENT OF AN AESTHETIC* 180-82 (John Willett ed. & trans., 1964).

38. See MEYLER, *supra* note 1, at 108-09.

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ending in a dead-end. Meyler's book transcends the impasse of such scholarship in that it privileges neither of its fields but instead creates a dialogue between them. That takes tact and balance, as well as deep understanding of the two fields set in juxtaposition. *Theaters of Pardoning* is a book informed by political theory as well as the history and aesthetics of drama. It is really extraordinarily erudite and learned in both law and literature. But it is also animating, and great fun to read.