LEGISLATIVE ART: LAURIE JO REYNOLDS AND THE AESTHETICS OF PUNISHMENT

BY

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DISSERTATION

Submitted in partial fulfillment of the requirements
for the degree of Doctor of Philosophy in Art Education
in the Graduate College of the
University of Illinois at Urbana-Champaign, 2018

Urbana, Illinois

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Abstract

In 2013, the lobbying group Tamms Year Ten was successful in closing the Tamms Correctional Center, a prison in which men lived in near-total and near-constant isolation. The group's founder, Laurie Jo Reynolds, is an artist who describes her lobbying work as "legislative art," an homage to the governmental interventions of activist Brazilian playwright Augusto Boal. Working backward from legislative art to legislative aesthetics, I postulate the potentially fruitful concepts of judicial aesthetics and executive aesthetics, borrowing the familiar American separation of powers as laid out by James Madison. I attempt to understand Reynolds' work in a larger historical, aesthetic, and political framework by trying to describe the aestheticization of politics in America through the various mutations of racial concepts in the legal system, as well as in education, visual art, and literature. To do this I borrow ideas from the Continental political theory canon to shed light on how punishment is understood culturally in America in this moment of mass incarceration. In the end, I hope the essay yields a set of terms that allows artists and activists to have more meaningful conversations and debates, and through this dialogue to positively affect protest and policy.

Your statutes are wonderful; therefore I obey them.

The unfolding of your words gives light; it gives understanding to the simple.

I open my mouth and pant, longing for your commands.

Turn to me and have mercy on me, as you always do to those who love your name.

Direct my footsteps according to your word; let no sin rule over me.

Redeem me from human oppression, that I may obey your precepts.

Make your face shine on your servant and teach me your decrees.

Streams of tears flow from my eyes, for your law is not obeyed.

--Psalm 119:129-136 (New International Version)

…For the beautiful is nothing

but the onset of the terrifying, an onset we but barely endure;

and it amazes us so, since with equanimity it disdains

to destroy us. Every angel terrifies.

--Rainer Maria Rilke, *The Duino Elegies* (1923/1993, p. 3)

The visitor to the installation space becomes an expatriate, who has to submit himself to a foreign law, to a law that is given to him by the artist. Here the artist acts as a legislator, as a sovereign of the installation space--even, and maybe especially so, if the law that is given by the artist to a community of visitors is a democratic one.

--Boris Groys, "The Politics of Installation" (2009, para. 8)

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Chapter 1: Introduction-- Tragedy and farce

1.1 Rhetoric, art, and law

The state of Illinois had four penal facilities in 1899: two penitentiaries and two reformatories (Barton, 1899, pp. 87-88). While the overall state population has not quite tripled since that time, in March 2018 the Illinois Department of Corrections website listed 36 state prisons. But while many have opened, a few have shut down. In January 2013, the Tamms Correctional Center in southwest Illinois closed its doors. Opened in 1998 by Governor James Edgar, the facility was a "supermax" prison, in which people were kept in hermetic isolation in concrete bunker-like cells, deprived of human contact or much sensory input of any kind: 23 hours a day, 7 days a week, 365 days a year. In Tamms, "(t)here is no dining hall; there is no chapel; there is no library; there are no classrooms; there is no yard" (Casella and Ridgeway 2013). Tamms was in part a repository for "jailhouse lawyers," or incarcerated amateur legal experts, as well as alleged high-ranking gang members and the severely mentally ill. Inmates frequently languished there for years—some for the full 15 years of its operation. This pattern has been repeated at supermax prisons throughout the country (Reiter 2016).

Some of the more mild psychiatric symptoms affecting prisoners in long-term solitary confinement include "(p)roblems with concentration; sleep disturbances; hallucinations; paranoid thinking; anxiety; hostility and rage; impulsive behaviour; hypersensitivity to light and sound, not unlike the photophobia and phonophobia of a migraine; headaches; and rapid heartbeat" (as cited in Burki, 2017). Extreme stress, self-harm, and mental breakdown has been documented for

decades in many contexts of punitive isolation (Arrigo and Bullock, 2008; Arrigo and Bersot, 2015). Resisting the conditions that engender these afflictions, men at Tamms held a hunger strike in the year 2000, and in that same year a statement condemning American supermax prisons was issued by the United Nations Committee Against Torture. This was elaborated upon by the Roderick MacArthur Justice Center (2000), a Chicago-based public-interest law firm that helped to bring attention to the conditions in the facility. But the primary advocacy group responsible for the prison's eventual shutdown was an art project.

This group, Tamms Year Ten (TY10), began its work in 2008, ten years after the 500-bed "C-MAX" prison opened at Tamms. The Tamms supermax had been intended to hold violent or disruptive inmates for brief periods, but the majority of those held at Tamms had been there over a year, and in 2008, 88 men had been there since it opened (MacArthur Justice Center, 2008). At the same time, the prison was never much more than half full, and was a massive financial drain on the state of Illinois. TY10 turned a mutual support system formed by family and friends of those incarcerated at Tamms, working with artists and prison reform and abolition advocates, into a sustained and strategic lobbying campaign that resulted in a highly visible victory for the human rights of incarcerated people worldwide. At the same time, the effort was led by an artist who insisted upon characterizing the project as a piece of art. In what follows, I will describe the remarkable lobbying work that the group did, but I especially want to talk about the implications of this equally remarkable claim. So I will largely be discussing the larger context that makes this project meaningful.

TY10 has many precedents, but is a unique case. As a collective art project, its obvious precedents are other forms of "social practice" or "socially-engaged art" that have taken and are taking place largely outside of designated art spaces such as galleries and museums. While much

social practice work actually does exist in these conventional contexts, at least in part, many projects focus on public spaces, as did projects by Fluxus, Situationist, and Systems artists in the 1960s, not to mention innumerable pieces emerging from the iterations of international conceptualism, all of which elaborated upon earlier transgressive gestures by avant-gardes and the cultural products of revolutionary movements around the world.

TY10 can also can be related to forms of popular protest theater—particularly the work of Augusto Boal, a Brazilian director and playwright, founder of the Theatre of the Oppressed, who coined the term "legislative theater" when he was elected to the city council of Rio de Janeiro in 1991. Boal viewed politics as an interactive extension of theater; in his "forum theater" approach, the actors, whom he identified as "cultural animators," created short vignettes to dramatize various forms of injustice and public concern, and then the audience would become involved in proposing and acting out ways to redefine, address, or solve the issues raised by the "cultural animators." In the municipal legislature of Rio, Boal made memorable speeches and brought forward many policy proposals, some of which were enacted into law. "The legislator should not be the person who makes the law," asserts Boal (1998, p.10), "but the person through whom the law is made (by the citizens, of course!)." One noteworthy performance at the Assembly of Deputies, the body to which Boal was elected, was an event entitled "Be an MP for Three Minutes," in which anyone who showed up could speak and propose legislation; he comments that "the session lasted five hours, instead of the usual one and a half!" (p. 16). Boal's idea of the active spectator, or "spect-actor" (p. 9) is prefigured in an essay on political theater by Marxist theorist Louis Althusser (1965/1999), who states that "the play is really the production of a new spectator, an actor who starts where the performance ends, who only starts so as to complete it, but in life" (p. 151).

While there have been numerous purely theatrical electoral campaigns, there are some other examples of true aesthetically-conscious lawmaking. These include the Estridentistas, revolutionary artists and poets who held province-level positions in 1920s Mexico (Rashkin 2009), and, more recently, two-term Bogotá, Colombia mayor Antanus Mockus, who replaced the corrupt traffic police with first a phalanx of mimes (Cruz and Forman, 2016, p. 373) and then people in zebra costumes (Henderson, 2017), as well as Mexican congressman Marco Antonio Rascón, known both for his grassroots activism and outlandish performances in public sessions (Camnitzer 2007, p. 308n). In 1975 Raivo Puusemp became mayor of Rosendale, a struggling New York small town and, pursuing an aesthetic agenda, set about to see the town dissolved in a matter he considered aesthetically significant. American artist Peter Svarzbien got elected in 2016 to a position on the city council of El Paso, Texas, in order to pursue his artistic idea of a reviving a cross-border trolley service to and from Mexico (Creative Time, 2016).

While making links between the ethical and practical universals of law and the contemplative and fanciful aesthetic creations may seem far-fetched, the relationship in the West between law, drama, rhetoric, and literature can, according to Jody Enders (1992), be traced back to classical sources. Roman writers Quintilian and Cicero encouraged learning rhetorical skills from actors, while in guiding actors Lucian encouraged the study of orators (p. 25). Enders mentions that the classical rhetorical canon of *actio,* or delivery, was the basis of the term *actor,* which could denote dramatic actors, authors, and lawyers, as well as any authority figure, including members of the clergy. She goes on to posit legal elocution as fundamental to medieval theater.

> Since the juridical ritual in particular gave rise just as readily to the most devotional of mystery plays as to the most blistering of satires, it provides a partial explanation for

> many kinds of generic interplay that have been insufficiently explained by the traditional polarities of "comic" versus "tragic," "popular" versus "learned," "secular" versus "Christian." (p. 10)

In this era, identical rhetorical techniques could be used in the training of lawyers, theologians, poets, and theatrical performers, and depictions of legal procedure in the theater was mirrored by the deployment of spectacle in the courtroom. "Paramount to the success of actors and advocates alike," Enders says, "delivery lay at the crux of both rhetoric and drama and often rendered distinctions between the two discourses elusive" (p. 23).

Closer to the modern era, Henry Turner (2006) writes about how this confluence of rhetoric and theatre produces the concept of literature through the visual element of space, and how the idea of a "plot", with its connotations of spatiality, story, and conspiracy, entered simultaneously into English Renaissance drama. The artifice of the state and the artifice of the stage are explicitly compared by Thomas Hobbes in his *Leviathan* (1668/1994), with his discussion of the term "person," as derived from a dramatic "persona:"

> And from the stage (person) hath been translated to any representer of speech and action, as well as in tribunals, in theaters. So that a *person,* is the same that an *actor* is, both on the stage and in common conversation, and to *personate,* is to *act* or *represent* himself, or another, and he that acteth another is said to bear his person, or act his name (.) (p. 106)

Perhaps through these relationships of drama and law, understandings of authority as a role, and of lawful and unlawful spatial sabotage, would appear throughout the development of modern political science. In this metaphor we can read an appreciation of governing as a form (maybe the ultimate form) of free creativity, devoted to the production of a harmonious social order, depicted as an object of beauty.

Augusto Boal's political performance is cited by Tamms Year Ten founder Laurie Jo Reynolds in coining the term "legislative art" to define her practice. Based on the traditionally fluid ideas of art and acting compiled by Enders, Reynolds' invocation of the "legislative" idea may allow for some free association. My above use of the words "precedents" and "case" in discussing the history of avant-garde political art could be seen as suggesting a legal analogy, along with an artistic genealogy. It would then be fair to point out that, if I am invoking the law, "precedent" and "case" evoke the judicial rather than the legislative sphere. But this could be seen as appropriate, since, like a lawyer or a judge, I am justifying the importance and describing the meaning of an example by putting it in a historical context. In the tradition of *stare decisis* jurisprudence, I am citing earlier conclusions in order to support a claim. More a lawmaker than a judge, though, Reynolds, like Boal, was a representative who worked to create legislation intended to function in the simultaneous registers of policy and art. But before I go any further I should try to address the first and most obvious question: *why is closing a prison "art?"*

But the difficulty of answering that question, other than by nominalist tautology—it's art because an artist called it art—is what makes the discordant connotations of the analogies suggested by "legislative art" so important. The analogy could be traced to early modern Europe, in which the relative popularization of both politics and publishing led to texts that traced the development of an "art of government," largely in response to the renown of Niccolò Machiavelli's *Prince*, a succinct 16th-century overview of practical wisdom on the subject of political maneuvering, and other Machiavellian works on politics and warfare. Michel Foucault (2004) summarized this new discourse under the heading of "governmentality," describing a uniquely modern approach of soliciting the consent of the governed, versus a more traditional notion of absolute sovereignty. An iconic text theorizing this self-constraint on the part of the

powerful is Montesquieu's 1748 treatise *The Spirit of Laws,* which emerges from but only partially joins in the earlier chorus of Machiavelli critiques (Hendrickson, 2013), adding in a critique of despotism that focuses on cruel punishments. But authority, even if reframed in terms of jurisdiction or remit, is not eliminated in a liberal society. Rather, the capacity to coerce is distributed in a new way, with Montesquieu's division and constraint of administrative powers at upper levels of republican government (constrained particularly in regard to the power to punish) echoed further down the chain of authority by a profusion of vassals claiming unique zones of domination. The role of the artist has come to embody this micro-sovereignty, through its unique form of self-anointed authority.

The idea of lordly dominion is certainly an old one in mainstream Western legal and philosophical discourse, while that of universal individual autonomy is relatively new. Mediating between the two in contemporary liberal states is a structure of power largely justified through the "rule of law," reinforced at times actively by force, and at other times passively through culture. But there are points in this network of explicit and implicit enforcement where the rule of law is inflected in odd ways. These points can be specific social roles that offer a peculiarly modern authority, in which socially sanctioned power is curtailed in a formal sense, while ambiguously open in a practical sense. In describing the relation of power and beauty, G.W. F. Hegel (1835/1975) refers to the authority structures among the heroes in the *Iliad* or Arthur's Round Table as a form of distributed autonomy.

> Like Agamemnon, Charlemagne was surrounded by free heroic characters, and therefore he was equally powerless to hold them together, because he had continually to draw his vassals into council, and he is forced to be a spectator while they follow their passions all the same (.) (p. 186).

If we were to try to complicate the simple options of central absolute sovereignty versus flattened social-democratic granularity, we could think of a powerful suzerain who delegates authority to a just such a tributary vassal, who is free to exercise authority over a small population.

In the modern era this can be seen when the idea of "police powers" entered the U.S. Constitution in order to formalize an idea expressed in the *Federalist Papers* by James Madison (1787/1999), who says that the Federal government's jurisdiction "extends to certain enumerated objects only, and leaves to the several States a residual and inviolable sovereignty over all other objects" (p. 213)—the idea that would become the Constitution's Tenth Amendment. An analogous type of legal compromise, based on original sovereignty, was attempted by the formally educated indigenous Creek leader Alexander McGillivray. He negotiated treaties with the British and the Spanish governments before the American Revolution, but his 1790 Treaty of New York was only observed by American state and Federal authorities for a few years (Stock, 2008). In general, the ambiguity of sovereignty in the colonial era between various Indian peoples and competing European nations led to ambiguity of ownership, an ambiguity which many Indians and Europeans adeptly exploited (Richter, 2015). In none of these cases could various jurisdictions be considered harmoniously aligned, and the same could be said for Tamms: a state-run prison, filled with people arrested by Chicago's police and staffed by people from a depressed rural town, effectively free from Federal intervention except through torturous and risky litigation.

Such intermediate authority subsists in our society through forms of structured political specialization. While professional duties and titles have changed over time, professionalism has exuded an aura of authority for centuries. But quasi-professional positions have emerged in the

last 200 years in which qualifications are far less emphasized, or strictly defined. Michael Lipsky (1980) coined the term "street-level bureaucracy" to describe individuals who, in his telling, have "discretion" in the way that policies are implemented at the lowest, most applied level. Paradigmatic examples of such roles include the teacher and the police officer, but I would, with poetic license, include the artist.[1] In all of these, the role is to tend and somehow embody an ideal (beauty, knowledge, order) for which evaluative criteria are constantly in question.

These three positions are all distinct, but each can be seen as a mediator between the other two. Teachers perform pedagogy and inflict punishment; cops reinterpret rules and trust their instincts; artists teach viewers through both enforcing and transgressing norms. While I see the artist as having the *most* mediating role of the three, what they all have in common (even the artist, albeit in a highly figurative sense) is a nominal authority to compel. This is far less than unchecked power, but more than a compromised relative freedom to choose between limited options. The mandate of teachers, artists, and cops entails an incoherent prerogative to dominate individuals whose submission is merely formal and thus incomplete. In this these roles are not absolutely different, in structural respects, from those at the highest level of legal authority in a liberal republic. By bringing art into the legislative process, Laurie Jo Reynolds put this curious analogy into practice.

[1] The trio of teacher, artist, and police officer matches up fairly well with the modern personae of therapist, aesthete, and manager, proffered by philosopher Alisdair MacIntyre (1981, pp. 70-75).

1.2 An assortment of triads

An analogy between art and law could go in any number of directions, but I am going to focus on the "checks and balances" at work in the three branches of American government, courtesy of James Madison. This familiar liberal paradigm of specialized and mutually restricting liberal institutions proposes a government in which tyrannical urges are divided and thereby conquered. At the Constitutional Convention on June 6, 1787, Madison stated:

> The only remedy is to enlarge the sphere, and thereby divide the community into so great a number of interests and parties that, in the first place, the majority will not likely be at the same moment to have a common interest separate from that of the whole or of the minority, or in the second place, to unite in pursuit of it. (1787/1902, p. 104)

In his *Federalist Papers* (1787/1999), Madison lays out the necessary elements of an "extended republic," a democratic state that exists on the scale of a continent, and thus an empire, rather than a city-state like Plato's Athens or Machiavelli's Florence. "The extended republic," Madison claimed in the same convention speech, "is the only defense against the inconveniences of democracy consistent with the democratic form of government" (1787/1902, p. 103). His operative notion is not to discourage factional conflict, an element of society he views as inescapable, but to distribute conflict as evenly as possible by locating power in a plethora of overlapping local institutions.

While Madison (1787/1999) perceives that universal concerns cannot be represented by any one faction, and "it is uniquely on the basis of this common interest that society ought to be governed" (p. 247), Jean-Jacques Rousseau (1762/1978), upholding the ideal of formally indivisible sovereignty introduced by Renaissance jurist Jean Bodin, speaks out against thinkers

like Montesquieu and Madison, thinkers who "sometimes . . . mix all [the] parts together, sometimes they separate them. They turn the sovereign into a fantastic body formed of bits and pieces" (p. 60). Seeing the attempt to appropriate and divide up the functions of a monarch, he claims they overlook a basic truth: "for the same reason that sovereignty is inalienable, it is indivisible" (p. 59). But it is noteworthy that Rousseau describes a contradiction that would become not only acceptable but undeniable in modern art, wherein "art makes universal claims that could not previously be wagered, specifically through the development of fragmentary, incomplete forms" (Schneider, 2012, para. 4). In any event, through the mechanism of Madison's separation of powers, the power of the majority is frustrated no less than the power of any individual potentate (Balbus 2009, pp. 17-18).

Protection against what John Adams (and later Alexis de Tocqueville. John Stuart Mill, and Friedrich Nietzsche) called a "tyranny of the majority" is fundamental to Madison's scheme. Yet the minority he sought to protect was landowning white men, of which a narrow elite subsection retains an overwhelming amount of political as well as economic power in the U.S. today. In the early U.S., the basic human rights of the enslaved minority were eclipsed for 70 years after the ratification of the U.S. Constitution, as they were before, by the egregiously outsize political influence of the slaveowning planter minority (Richards 2000), even though Madison's 1787 "Virginia Plan" (1902) sought to restrict the power of the state governments that now incarcerate the majority of Americans. In contemporary Illinois, largely through legislative lobbying, the counties populated by the rural white minority have the dubious privilege of tending and repressing the largely urban and nonwhite incarcerated minority—and, as in the antebellum South, these counties gain electoral and other public benefits via their captive populations (Huling 2000, Pettit 2012).

But for Madison, ultimately, the balance of powers is an abstract matter of reason, something of a Newtonian canceling of opposed forces: "Ambition must be made to counteract ambition" (1787/1999, p. 247). Evoking modern utopian thinker and inventor of the geodesic dome R. Buckminster Fuller (1968/1969), such ideal structures of flexible tensile strength could be said to exist at both the level of the macrocosm and the microcosm—although in this case, unlike with Fuller, both the microcosm and macrocosm are social contrivances. In order to explicate the work of Tamms Year Ten, I believe that there is something to be gained from looking at how Madison's ideas dictate political relationships at the smallest level, by comparing the dynamics of authority in state structures to those of mundane conflicts at the level of daily life, which in turn become the subjects of artworks.

These dynamics operate both within law and within art. In Hermann Kantorowicz's *The Definition of Law* (1939/1958), he divides the law itself into three kinds of rules:

> first, commands which originate from the positive will of an acknowledged authority, secondly, norms whose contents conscience acknowledges as right, and thirdly, dogmas which must be acknowledged as part of a self-contained balanced system. (p. 30)

The "commands" are administrative or executive, by definition. The second, the idea of duty, represents the natural law expressed in an intuitive moral imperative, and would seem to align with the creative, collaborative lawmaker. Lastly, the "dogma that must be acknowledged" (in a modern secular context) is the province of the courts: particularly in the common-law tradition, in which a clear precedent is to be followed unquestioningly.

Within the arts, the role of the artist as an intuitive collaborator, and thus a sort of lawmaker, is borne out by innumerable examples, and the systemic pedagogical dogma that forms the content of artwork can come from critics, conceptual artists, manifesto writers, and

aesthetic theorists. The executive role is, on the other hand, is elusive and unpredictable. It is everything that cannot be reduced to content—it connotes an idea of the artist as a lonely genius endowed with an ineffable quality of authoritative authenticity, embodying the total freedom that artistic expression seems to offer, but also applies to the invisible patronage that makes such freedom possible. In many modern aesthetic theories this is referred to as "autonomy".

Kantorowicz's legal triad could be replaced by the so-called "trinity" in Carl von Clausewitz's classic stategic treatise *On War* (1832/1976), wherein the outcome of the "theatre" of war is decided by the rational direction of governments, the affective passions of warring populations, and the chance circumstances faced by armies. The arts would intuitively occupy the second role, as art that participates directly in war would be propaganda. But it should be noted that the art historians and critics who explain artwork are, like the commanders in war, reacting to specific situations--exhibitions, objects, and performances, in the case of art. The executive role belongs to the economic, ideological, and technological context in which military personnel or artists find themselves. This is the shifting background against which battle-readiness and artistic autonomy are defined.

I am going to look at the work of Laurie Jo Reynolds and Tamms Year Ten through these sets of threes. I will reflect on the roles of the teacher, the artist, and the cop alongside the three branches of liberal republican government, but I'm also adding in the cliché about a vigilante acting as "judge, jury, and executioner." At the same time, I'm trying to examine how each branch, job, or role relates to what might be considered art, in the broadest possible sense. The judicial power will of course be the judge, and I will talk in this section about teaching, as well as the concept of law. As I've mentioned, art criticism fits into this area, as does canonical Conceptual Art, which could be said to be an art form in which the artist creatively usurps the

role of the critic, as well as the teacher. The executive matches up with both the executioner and the cop, who offer the pleasurably violent fantasy of non-compromise, in light of the impossibility of perfect compliance, not to mention the appearance of autonomy that the artist borrows from her patron. The legislative power overlaps with the jury, as both seek to reconcile official imperatives with the values of the community. Here I will discuss the compromises required of artists, and strategy as not only the means of the creative process, but the result. While I plan to discuss the legislative and artistic function second in this set of three, the section in which I will tell most of the Tamms Year Ten story, I hope to portray TY10 as presenting a bridge between the abstraction of the judge or teacher and the direct authority of the administrator or cop.

The primary motif in discussing the judge, the critic, and the teacher will be "interpretation", or the translation and transmission of texts. This is a good place to start discussing Tamms Year Ten, since it began with support groups that made use of litigation and literature. For the jury, the legislator, and the artist it will be "interpellation", the vocation that aligns the needs and desires expressed by the community with conscience or internal authority. Laurie Jo Reynolds has recalled having such a come-to-Jesus moment with regard to her mission, and in this section I will describe the five-year lobbying battle. Interpellation can also be identified in the very act of declaring a lobbying campaign to be art. For the executioner, the administrator, and the cop it will be "interrogation," the retrospective and forceful shaping of intention. The Tamms prison was ultimately closed by the governor, which illuminates the importance of the bureaucratic allies in the TY10 campaign, as well as of the value of its targeted acts of gratitude.

These three sets of three could also be matched with other triads. They align with the three classical forms of elocution in the foundational Western treatise on rhetoric, the *Ad Herennium,* once attributed to Cicero: *Judiciale,* which addresses legal controversies, *Deliberativum,* for discussion of policy, and *Demonstrativum,* which praises or condemns an individual. We also have the Aristotelian trinity of approaches to knowledge in the *Nicomachean Ethics*: *episteme, phronesis,* and *techne,* which roughly equate to science, prudence, and skill, and these in turn relate to legal interpretation, legislative negotiation, and effective enforcement. But there could be any number of analogies, so my choice of these triads requires still more explication.

I want to make the case (extending the case made by others) that the legal stability and force of liberalism relies to a great extent on pleasure. In psychoanalytic jargon, the liberal is libidinal. In making this argument, I juxtapose the three branches of liberal government with psychoanalyst Jacques Lacan's three psychosocial registers: the Symbolic, the Imaginary, and the Real. In simple terms, these are aspects of our experience, and describe ways of coping with anxiety and pleasure. The Imaginary was the first of the three that Lacan developed, in describing the formation of the ego. In his telling, an infant, upon recognizing herself in a mirror, starts to develop a sense of having a singular, unified existence—a sense of wholeness that is ultimately as insubstantial as her reflection. The Symbolic deals with language, and also with law and morality, and is connected to a particular society and culture. Therefore, Lacan describes the Symbolic as being dependent upon the "Other," the individual's sense of any person or group outside of her head. His therapeutic techniques, as well as his general outlook on all aspects of human interaction, rely on his theory of the nature of language, and thus the Symbolic. Although language is the medium for rational thinking, he stresses its arbitrary and violent nature.

However, his most subtle, irrational, and ineffable realm of experience is the Real, which cannot be imagined in images or expressed in language. Associated with horror and ecstasy, its very non-reproducibility resonates with the specificity of individual condemnation and punishment, and is often expressed through repetitive nightmares or flashbacks. The Real is linked with trauma, and with the unconscious drives that, psychoanalysts claim, precede and deform our apparently rational and meaningful experience of the world. So the Real represents the mute, incomplete, and unrepresentable nature of Immanuel Kant's being "in-itself," while the Symbolic offers artificial modular schemes for distinguishing and acting upon the phenomena of perception, and the Imaginary attempts to present an integrated world that bridges or grounds these irreconcilable registers, mitigating their contradictions in the recognition of truth, beauty, and goodness. Aspects of Tamms Year Ten, as with many works of art, connect and conflict with all three psychosocial domains at various points and times.

Without explicitly referencing Lacan, the three domains are movingly illustrated in Roland Barthes' *Sade Fourier Loyola* (1971/1976), a book that successively considers the Marquis de Sade, a libertine revolutionary and lifelong prisoner best known for his brutal erotic fiction; utopian socialist Charles Fourier, who made fanciful but influential plans for perfect communities; and theologian Ignatius Loyola, who founded the scholastic Jesuit order. The Symbolic order of law and language resembles what was in Freudian psychology termed the "superego." Teaching and judgment relate to the Symbolic, as do Fourier's unsuccessful but internally consistent attempts at an ideal society, founded on the balanced optimization of pleasure; pleasure is for Lacan the core demand of the moralizing superego. Loyola's *Spiritual Exercises*, which, in attempting a fully-realized identification with the physical experiences of Jesus, apart from theological dogma, also produce an economy of pleasure in the form of a

minutely regimented visualization; this recalls Lacan's description of the ego, our sense of self, as a pacifying fantasy of order founded on the image of oneself as a undifferentiated unit. This is the regime of the Imaginary. And the domain most associated with pleasure, that of the desiring "id," is one dependent also on denying pleasure, on the detachment and deferral of gratification. The obsessive litany of afflictions that Sade visited on imaginary victims remain no less (or at least not much less) shocking in our day than in his, but, as Barthes and others have commented, they depict complete power while valuing debasement over any effort at titillation, resembling what Lacan would call the "Real:" disruption defying description, an incomprehensible conflation of sex with violence.

Each in their own way, Barthes' three figures, as the three street-level sovereigns I identified earlier, embody the form of drama most intimately associated with the law: tragedy. Fourier as teacher directs pleasure through instilling control, while relishing the cruel imposition of evaluation; Loyola the artist is the ostentatiously self-negating paragon of integrity, and Sade is the cop as antihero, the debased instrument of asymmetrical social harmony. Continuing the theme of punishment embodied by these figures, Oedipus inflicts punishment on himself for transgressing perhaps the most universally prohibited activities in human society: incest and parricide. His daughter Antigone violates a royal decree to fulfill what she perceives as her absolute duty to divine law, which is to do honor to the dead body of her brother, Polyneices. Killed in battle, Polyneices is declared a criminal for having attempted to take the city of Thebes by force. As Roberto Calasso says, "Antigone betrays the law of her city to make a gesture of mercy toward a dead man who does not belong to that city" (as cited in Krell 2005, p. 361).

At the risk of being grandiose (and unnecessarily morbid), Laurie Jo Reynolds is a figure that could stand in for Antigone. In speaking with a group (like a Greek chorus, or a jury) on

behalf of those inhabiting the living death of a carceral tomb in the Tamms supermax, her work takes on aesthetic as well as political meaning. Collective shame and desire exposed by power and experienced as pity set up the conflict in political tragedy, just as in classical drama. The success of Tamms Year Ten suggests the possibility of assigning aesthetic success and failure to many other political projects, and conversely, assigning political value to aesthetic projects.

Such an assessment must then apply to the project Reynolds took on a year after the prison closed: Illinois Governor Pat Quinn's unsuccessful 2014 re-election campaign, and his replacement by Bruce Rauner, a hardline fiscal conservative who initiated a nearly three-year budget standoff affecting not only prisons, but nearly all public services. Jonathan Wender (2008) cites Max Weber and William Muir in speaking of "the inherently tragic exercise of administrative and juridical power" (p. 5). But the impossibility of fulfilling the dictates of the law is at the heart of every tragic tale, including *Hamlet* and the Christian Gospels. It is the source of the recognition, reversal, and catharsis outlined as the virtues of good tragedy in Aristotle's *Poetics.* But this inadequacy is also the source of endless humor. Every transgression mocks the dictate it violates, which accounts for the parade of absurdities in visual art after Impressionism—of which no more iconic example exists than Duchamp's *Fountain,* a urinal hijacked for the purposes of artistic display. Politically, this farce is perpetuated in absurd attempts by authority figures to silence the laughter of their subordinates, whether in a classroom or a confrontation with police.

In tragedy or in farce, innocently and without malice, the protagonist flaunts convention and is judged—but only convicted and punished in the case of tragedy. Taking aesthetic distance from his youthful stridency, while lamenting the failure of the 1848 revolution and the

ascendancy of Louis Bonaparte to his father's autocratic throne in France, Karl Marx famously observed:

> Hegel remarks somewhere that all great world-historic facts and personages appear, so to speak, twice. He forgot to add: the first time as tragedy, the second time as farce. (1852/1978, p. 594)

The authoritarian regimes Marx's doctrines underpinned seem to have followed this pattern, largely ending with a whimper of corruption rather than a bang of collapse. In concluding, I will reflect on the role of the media in the Tamms campaign, and the aesthetic value of the futility and failure that inevitably accompanies and surrounds the so-called "rule of law," relying on the obstacle to clear sense represented both in Lacan's Real and in works of art.

1.3 Racial aesthetics, colorblind blind spots

In talking about the campaign to close the Tamms Supermax prison, I intend to look at these sets of three in the context of American incarceration, which, as has been widely acknowledged, is inseparable from the nation's history of historical racist atrocity and widespread *de facto* apartheid. Thus, although there are no significant legal restrictions on who may choose to be an artist, teacher, or cop, the power these roles embody has a relationship with the authority bestowed by the regime of white supremacy. In America the heroism all three jobs promise—provocateur of the masses, enlightener of the benighted, or defender of the defenseless, respectively—still accrues primarily in the U.S. to white practitioners of these

majority-white pursuits, all of which have their own antagonistic histories with urban communities of color. In a sense, jails and prisons could be said to hold people who have been temporarily (or permanently) relocated to make room for interventions in low-income and often racially isolated neighborhoods by white artists, teachers, and, of course, cops.

The ideals that motivate people to enter these jobs reflect cultural desires and anxieties, and thus certainly have an aesthetic element. The modern origins of race as a social institution lie not in aesthetics, but in laws around commerce that operated (and still operate) as an extension of state violence. While a Virginia judge in 1640 sentenced both of his fellow runaway servants, who were white, to an additional year of servitude, John Punch, who was Black, received a sentence of lifetime slavery. This began the mass importation of African slaves to Virginia, and begat the American system of legal apartheid, in which race has consistently denoted a line between who is a subject of wealth, and who is an object of wealth.[2] This system only began to be challenged in the 20th century through cases such as the 1964 Supreme Court case *Katzenberg v. McClurg,* in which segregation in restaurants was struck down not to uphold the principles of equity in the 13th and 14th Amendments to the Constitution, but on the basis of restricting consumer freedom, under the Constitution's commerce clause. Today, as African-Americans continue to receive longer sentences for identical convictions (United States Sentencing Commission, 2017), skin tone continues to influence African-American incarceration rates (Monk 2015). At the same time, conservative Supreme Court justices have begun to roll back protective regulations based on the commerce clause, beginning with *United States v. Lopez* (1995). In all of these decisions there is a clear element of creativity. Race is in some sense

[2] African slaves started being imported by Spain to the New World starting in 1501, after a great many indigenous people escaped or died after being enslaved.

invented by the courts; race is then not dismantled, but treated as if it never existed. Both in the 1640 decision and under the recent Rehnquist Supreme Court, this is an act of visual illusionism.

While laws create the concrete circumstances that allow race to appear real, race as an idea is an artifact of racism as an affective impulse. This impulse, not a coherent political agenda, sustains the worldview referred to as white supremacy. White supremacy could now be described as a near-ubiquitous aesthetic outlook (Taylor, 2016), bound up, like all embodied aesthetics, with mythologies of power and erotic fantasies and fears. Racism and white supremacy are neither merely individual/psychological or social/political phenomena. "The *psychical affectivity* of racism," as Derek Hook (2012) says in discussing Frantz Fanon and Homi Bhaba, "…eludes such attempts at explanation" (p. 21). "Colorism," the aspect of racial hierarchy connected strictly to the shade of one's skin, has endured for centuries in Jamaica (Brown-Glaude 2013), India (Nadeem 2014, Jha 2016), Latin America (Telles and Paschel 2014), China (Luo 2012), and within as well as outside minority communities in white-dominated societies (Mathews and Johnson 2015). As Fanon shows, the color line is a line of access barring consideration as a rational subject (1952/1986). Also in response to Fanon, Lewis Gordon (2007) notes that "the absence of a Self-Other dialectic in racist situations means the eradication of ethical relations" (pp. 11-12). Aesthetics negate ethics.

Of course, the color line has defined access to full citizenship in the American law for centuries (Haney-López, 2006; Sharfstein, 2011), before the mid-twentieth-century "racial break" (Winant, 2001) that has moved legal rhetoric toward a "colorblind" orientation in which the historical consequences of racism are disavowed (Williams, 1991; Han, 2015). The ingenuity of the contemporary disavowal of white supremacy, as well as attempts to rebrand it, can be understood as forms of political art just as easily as can attempts to resist or undermine these

efforts. A theoretical assumption I hope to justify, if not prove, is that under modern liberalism all aspects of life are made aesthetic—and thus the laws of society describe points of aesthetic tension. Meanwhile, no matter how much they recede from active consciousness, racial codes of beauty are regularly enforced.

White male artists are not the only people who have defined beauty in European societies and colonies, but they have wielded enormous power in this regard. Enormous amounts of scholarship have documented the whitewashing of history and culture by art; just one example is Elizabeth McGrath's study (1992) of how the Ethiopian princess Andromeda, a figure of classical myth, came to be depicted and thus understood as a white woman. Resisting this legacy, African-American artist Tomashi Jackson has built a body of abstract work literally illustrating the absurdity of colorism, based on drawing connections between the aesthetic color theory of Josef Albers and the language around race in 20th-century Supreme Court decisions. Another Black artist, Amanda Williams, worked with friends and family to repaint condemned buildings on Chicago's historically Black south side in colors coded by racially marketed products: "Harold's Chicken Shack" red, "Newport 100s" teal, and "Crown Royal bag" purple. In both of these projects, the clear implication is that the aesthetics of color cannot be detached from the visual politics of caste.

That beauty as well as intelligence in so many cultures is today equated with "Caucasian" features, pale skin most notably, is a way in which culture responds and contributes directly to a history of political domination. While seeking to dispel "false consciousness," of which racism is perhaps a singularly plain example, political programs that ignore race or aesthetics may make important analytical insights. The story of African-Americans can be told convincingly in terms of state-enforced material dispossession; from slavery to Reconstruction to Jim Crow

segregation, violence permitted and enforced laws that have denied Blacks property and wealth, beginning with their own bodies, and law has thus thoroughly stifled the conditions for widespread economic growth in the Black community (Baradaran, 2017; Rothstein, 2017).

But in trying to understand these laws, replacing the uncanny, irrational afterlife of a conqueror's fantasy with mere ethical universalism can result in a whole new arena of fetishization. Alexander Weheliye (2014) describes the aesthetics of "pornotroping," in which suffering black bodies are presented for the pleasure of viewers—from the memoirs of Frederick Douglass during the era of American abolitionism, to recent depictions of slavery such as those in the televised versions of Alex Haley's story *Roots*. Speaking of *Sankofa,* a 1993 fictionalized slave narrative by Ethiopian director Halle Gerima, Weheliye says, "(the film) paradoxically reinscribes the very racialized assemblages it seeks to leave behind." He continues, "It also takes for granted that black people have been fully integrated into the world of Man" (p. 108). To liberally endorse unproblematic emancipation through education requires answering for a lot of unintended consequences.

I am a cisgender straight white man, and I taught art for years to public school students in majority nonwhite communities in Chicago. I was inevitably associated with the police—not necessarily in the eyes of every single student, but that was my role as a white public servant in the neighborhoods where I worked. I don't mean to minimize the struggles that teachers, cops, and artists face, but, despite the impressive stress level of the job, I found the extent to which I was able to operate autonomously both exhilarating and bewildering. While I never had full control of any class I taught (to say the least), I could, if I chose, snitch on a student to a parole officer (which I never did) or to a parent or guardian (which I often did), who might very well be

terrified of the consequences on their child of upsetting a white man with institutionalized authority. I know that at times this resulted in violence toward these children.

While this sense of autonomy was a valued aspect of my position, the structural role of white privilege couldn't be separated from my job. This exhilarating, bewildering aspect of my teaching was a form of pleasure that binds together the experiences of the teacher, the artist, and the cop. And, as ineffable as that pleasure might be, it has everything to do with power. Reflecting rather than merely embodying this power can be a way to put it at the service of a larger group. I am going to use law, then, in both a loose and a specific sense, as a way to talk about reflecting power-- but in terms of art, once a domain of refined pleasures, but a realm that has, through the expansion of modern liberalism, come to impinge on all aspects of existence.

1.4 Methodological caveats

For Lacan, who applied psychoanalytic ideas to culture, language, and philosophy, the moral imperative that Freud referred to as the superego represents a law whose sole injunction is not (only) the repression of pleasure, but the opposite: enjoyment itself. Enacting, explicating, and enforcing laws must then be in some part an act of gratification, and promoting pleasure is thus a gesture of obedience. In a similar paradox, G.K. Chesterton asserts:

> The romance of the police force is thus the whole romance of man. It is based on the fact that morality is the most dark and daring of conspiracies. (1907/ n.d., p. 123)

Although Chesterton presumes that the reader should embrace the morality exemplified in the police, I would endorse a more neutral, literal interpretation of the statement. Art and politics propose different but compatible pleasure-seeking behaviors, and the rules through which they derive gratification are aesthetics and law, respectively. The link between them can be insight, or justice, or study- whatever is ideally imparted by the acts of pedagogy, judgment, and criticism. My effort will be to make comparisons that allow for flexibility in discussing what it means to pursue art, activism, and teaching.

But first I will make a note on my methodology, or the lack thereof. By pursuing an in-depth analogy between modern art and aesthetics on one hand and modern law and government on the other, I am proceeding on the presumption that analogy is an illuminating method of analysis. Under the heading of "expressive causality." Frederic Jameson (1981) describes the allegorical role of analogy in terms of Biblical typology, formalized in the Middle Ages, as a primary model for hermeneutics in the West. Typology involved reading the pre-Christian texts incorporated into the Biblical Old Testament, essentially those texts comprising the Jewish Tanakh, as containing prefigurations of the birth, life, death, and resurrection of Jesus. Jameson describes a typological interpretation as

> less as a technique for closing the text off and for repressing aleatory or aberrant readings and senses, than as a mechanism for preparing such a text for further ideological investment (.)

Citing Louis Althusser, Jameson then describes such interpretations as opening up space for a believer to "'insert' himself or herself" (p. 30) into the narrative. The algorithm of the allegory provided in both the prefiguration and the lived example of Christ then offered medieval theologians a moral model for individual conduct, and an anagogical model for the history of

mankind. In the case of Christian typology, there is an implied hierarchy, wherein pre-Advent laws are (to some degree) surpassed by the "Good News" of the Gospel. Similarly, in my account, the Althusserian "interpellation" (1971/2001) that occurs when Laurie Jo Reynolds is called into action is a moment in which Reynolds "inserts" herself into the legal apparatus through committing to lobbying for the closure of Tamms.

While I cannot explain away a great many distinctions between art and law, I do use the story of Laurie Jo Reynolds and Tamms Year Ten as linked exemplars to interpret political and cultural phenomena on both micro- and macro- levels, with the assistance of the tripartite liberal state as an explanatory frame. I acknowledge that critiques (such as Althusser's) of the subjectivity and lack of rigor in medieval Christological retrojection are applicable to my project as well. However, Paul W. Kahn (2011), who argues for an analogy between art and law as acts of creation, makes a case for the rhetorical force of analogy itself as the most fundamentally relevant form of political (and legal) argument. Accordingly, I am approaching this text from the outside in, as more of a sermon than a syllogism—I want the three branches of government to intuitively align with the definitions of art, law, and teaching that I hope to present.

So, while I have mapped a modern Western sensibility of art (visual art in particular) on to a modern Western ideal of liberal governance, I don't ultimately make the case for *why* this analogy should obtain. My presumption is not that art and government are related in this way in all times and places, but just that liberal humanism as a defining paradigm in the 21st century, as solidified in preceding centuries, has implications for both politics and aesthetics—precisely because of the connections between prohibition and enticement. I contend, using circumstantial evidence, that cultural content has merged with political form, and political content has merged

with cultural form, through the play of order and allure. A metaphysical article of faith I assume is that culture cannot be dismissed as an epiphenomenon of either economics or physical force.

More specific concerns remain to be stated regarding culture. Following Frank Wilderson (2010), I would claim the European-derived culture I focus on is to a degree a function of the invention of race in the West via a categorical equivalence of whiteness and humanity. The position of a subject racialized as Black is nonsensical (or unspeakable, using Wilderson's terminology) in the terms set forth by whiteness. And yet one of the philosophers I give the most space to, Immanuel Kant, was one of the earliest and most influential theorists of white supremacy. Similarly, figures like Hegel and Madison cannot and should not be excused from their explicit racist assumptions. Thus, my second problem is that of foregrounding race in a study that ventures speculations based on terms set forth by European and European-American promulgators of a white humanist liberal order, rather than finding ways to tie in the historical and theoretical insights of C.L.R. James, Derrick Bell, Saidiya Hartman, or Charles Mills, though other important authors of color are featured, such as Frantz Fanon and W.E.B. DuBois, and I cite thinkers like Sora Han, Alexander Weheliye, and Patricia Williams.

Ultimately, my story is about the fallout of white-identified acts and actors in the late stages of settler colonial capitalism, fallout which affects people of color most directly, consistently, and violently. But authors who chronicle and theorize a range of forms of racial and colonial violence, from the position of the enslaved and their descendants, tend to favor discussions of property law and the ideological content of white-supremacist jurisprudence over the political mechanics of the law, which is more my interest here. Nor do these scholars often employ examples and arguments that connect aesthetics to the legal structures of American and European white supremacy. There are exceptional moments, however, such as Robin D.G.

Kelly's brief comments regarding the impact of surrealism on Black radicals, in his foreword to Cedric Robinson's landmark work *Black Marxism* (2000, p. xxi). So I am quite possibly wrong to dismiss other such links, and intend to continue pursuing this possibility.

Related to this, I created a story that takes race-focused critique as a point of departure, but my primary protagonist is a white woman. While I do reflect occasionally on aspects of Laurie Jo Reynolds as an individual, and I dwell quite a bit on racialized historical manifestations of legislative art as a concept, I don't speculate on what role race plays in Reynolds' own motivations or political worldview. This is to some degree because my interest in psychoanalysis is not an interest in plumbing individual autobiographies for secret drives, but rather reflects my hope to understand desires more generally, as phenomena being shaped by law and art-- law and art in turn created by and referring back to a given culture. Additionally, race is something that Reynolds has talked about with me as a political fact, but not in general terms. Just to dwell on this point, all colonial and post-colonial culture is defined in large and small ways by manifestations of power that should be understood through the history of race, as a concept and a practice. But I think that the idea and the history of the avant-garde, which began in Europe, is quite relevant to parsing the work of Laurie Jo Reynolds, and needs to be brought into productive tension with the liberation projects she also takes inspiration from.

To shift over to influences- books that have informed this piece, such as Jonathan Wender's *Policing and the Poetics of Everyday Life* (2008) and Lisa Guenther's *Solitary Confinement* (2013), narrate experiences of criminal justice that make extensive use of philosophical phenomenology (thinkers like Martin Heidegger, Maurice Merleau-Ponty, Emmanuel Levinas). Recent writers about social practice art (Grant Kester, Pablo Helguera, Nato Thompson) show some sympathy for these perspectives, with perhaps more of an American

pragmatist bent. On the other hand, some political thinkers and critics that I will discuss are more Marxist, anarchist, or ambivalently leftist-populist (Luis Camnitzer, Jacques Rancière, Slavoj Žižek), even though I don't have much to say here about economics.

Essentially, I don't see my foundational theory as being nearly as important to my presentation as my superficial analogies. I present race as a central causal factor, and at points cite prominent figures like Frantz Fanon and Steve Biko, but, as already mentioned, I don't predominantly reference theorists of race. By invoking Lacan and Barthes I reveal my sympathy for psychoanalysis and semiotics, but I am not systematic in my invocation. I side with the phenomenological writers in valuing aesthetics, I side with the political writers in valuing politics, and I disagree with all of them on various points, perhaps predominantly on matters of style. I acknowledge that this leaves some conceptual issues unresolved. I also don't see myself as someone who is recording a history of social practice art around incarceration policies, so I don't intend to be exhaustive in describing projects that share that feature with Laurie Jo Reynolds or with Tamms Year Ten. Important projects like Maria Gaspar's 96 Acres, based in the area around Cook County Jail in Chicago, or Jackie Sumell's *Herman's House* project, which chronicled her conversation with long-term Louisiana solitary inmate Herman Wallace, simply don't have enough in common with the process and goals of Reynolds and TY10 to merit comparison.

This confession does beg the question about what I am hoping to achieve in my writing, but, along with entangling sanction and seduction, I think my goals relate to the dilemma of aesthetes and agitators. I want artists to listen to activists, and I want activists to listen to artists. As mutually isolated and suspicious (sometimes bohemian) bedfellows, artists and activists are often politically paralyzed, despite their considerable collective cultural, financial, and often

racial capital. In my focus on the case of Laurie Jo Reynolds and Tamms Year Ten, carried out through aesthetic ruminations on the separated powers of liberal institutions, what I hope to offer is an unsterilized way of thinking about esoteric and dull legal discourse. Beyond the high-minded frumpiness of activism, I seek to provide a view of the strange shapes and shadows that make the problems of struggling individuals and groups complex and alluring, rather than merely an unfortunate occasion for somber pity (if it happens to someone else) or anger, sorrow, and trauma (if it affects you). To do this, it will be necessary to argue that many profoundly cruel actions have a sort of humor or poignancy, and that many cultural artifacts exist in relation to politics and law in a manner only partially dictated by their formal and conceptual qualities. While Reynolds is the artist in this story, not the teacher or the cop, I feel that her long history of collaborative work can reveal elusive aspects of these other two roles.

Chapter 2: The Judge and judicial aesthetics

2.1 Judging, discerning, and interpreting

Lacan's Symbolic order is the place of "the Law," in the senses of moral, abstract, and social codes. We could thus call it the judicial domain, wherein interpretation and application of statutes occur through the moral sensibility of individuals. The Symbolic is the space of the "big Other," the paternal realm inhabited by the critic, teacher, lawyer, and judge, all of whom are anointed with both the authority to denounce error, and the inevitable stain of incompetence and hypocrisy. These are all didactic figures of principled authority, and this didacticism may inhabit all political art. Through the "art" of rhetoric, two of the most important figures of Western political philosophy, Plato and Machiavelli, address the reader as Other from the point of view of a teacher: indirectly through an interlocutor in Plato, and directly as a presumed ruler in Machiavelli (Zuckert, 2017). But pedagogical didacticism should not be understood as encompassing some essence or entirety of political art; nor should all political art be written off as a distraction from "real" politics. The consonance of law and art is a fundamental if largely unstated premise of avant-garde transgression.

But until the appearance of what Luis Camnitzer (2007) terms "conceptualist art," a global postwar embrace of poetic visual and textual production that spread far beyond New York (Camnitzer capitalizes New York's "official" Conceptual Art), a legislative campaign like Tamms Year Ten would likely have found little traction, even among enthusiasts of the avant-garde. Critic Benjamin H.D. Buchloh (1999) associated the rise of Conceptual Art with the development of a bureaucratic anti-aesthetic, emblematic of advanced capitalism.

> In the absence of any specifically visual qualities and due to the manifest lack of any (artistic) manual competence as a criterion of distinction, all the traditional criteria of aesthetic judgement - of taste and of connoirsseurship- have been programmatically voided. The result of this is that the definition of the aesthetic becomes on the one hand a matter of linguistic convention and on the other the function of both a legal contract and an institutional discourse (a discourse of power rather than taste). (p. 519)

So it should come as no surprise, as I will describe, that TY10 had its beginnings in a context of both litigation-based advocacy and communion through poetry—and while Reynolds never abandons a discourse of power, Buchloh hints at reasons that the group changed its direction. But to begin with, I hope to reflect on how the possibility of judgment sets the terms for both art and law, in order to develop my story about how an artist like Reynolds could intervene, between legislators, litigators, and prison officials, on behalf of largely unrepresented people.

In keeping with a focus on the Symbolic, an obvious point of comparison between art and law is that of creative interpretation. A much-cited example of legal creativity is the case of an English lawyer, Arundel Coke, convicted of assault in 1721 (Howell, 1816/2006, pp. 53-94). While he confessed to conspiring to maim his victim, one Edward Crispe, Coke attempted unsuccessfully to plead his innocence to the judge, after the jury's guilty plea was handed down, on the basis that the law under which he was convicted, the Coventry Act, forbade maiming rather than murder; Coke confidently proclaimed to the judge his intention not merely to disfigure but to kill Crispe. Similar invocations, often similarly futile, of the "letter of the law" have been central to the U.S. Federal government's long struggle to creatively leverage the Constitution to justify interference with the extensive police powers granted to states by the very same document (Gerstle, 2015). Meanwhile, after the passage of the 1964 Civil Rights Act and

other measures prohibiting workplace discrimination, creative interpretation of the "letter of the law" became the means by which businesses have evaded Federal restrictions (Edelman, 1992).

In *Unfair: The New Science of Criminal Injustice,* Adam Benforado (2015) marshals considerable evidence on the unreliability of interpretive techniques used to "solve" crimes, based on the dysfunctional procedures and unfounded intuitive certainty exercised by judges, prosecutors, witnesses, jurors, and police. He asserts that "procedural rules do not actually constrain officers, prosecutors, and judges very much at all; they only appear to do so" (p. 244). An historic instance of legal creativity Benforado recounts is the virtuosic performance of Sergeant Charles Duke, expert defense witness for the LAPD officers whose brutal beating of Rodney King was caught on video. Benforado doesn't mention that Duke's strategy built on the wording in the 1989 case *Graham v. Connor*, a unanimous Supreme Court opinion in favor of a plaintiff alleging wrongful treatment by police. Written by Chief Justice William Rehnquist, this opinion staked its claim at least partially on the idea of the perceptions of a "reasonable" officer on the scene. Thus Duke's technique was to play the video back almost frame by frame, carefully justifying each blow and kick individually, in order to visually shape the jury's empathic connection to the police. Sun Tzu's ancient admonition in *The Art of War* (n.d.) that "all warfare is based on deception" (1.18) applies to many such tactics, in which the law is approached (and undermined) artistically.

After introducing numerous damning statistics on the contingent factors affecting judicial rulings (such as the judge's age and whether or not he has eaten lunch), not to mention all the contingent factors affecting the availability and validity of evidence, Benforado concludes by advocating for constraints on judges' interpretive freedom. He prescribes legal solutions that remove subjective interpretation, but without an eye to the unintended consequences of

automating a procedure as complex as a criminal trial. If instead we accept that subjectivity may necessarily be part of the judicial process, might judicial creativity be productively conflated with "art?"

Critic Rosalind Krauss (1983) makes explicit a connection between art criticism and legal testimony in describing how critics scrambled to find ancient and exotic precedents for an "expanded field" of sculpture, lamenting that "anything at all could be hauled into court to bear witness to this work's connection to history and thereby to legitimize its status as sculpture" (p. 33). On the other hand, Pierre Bourdieu is something of a skeptic as to the relevance of art to authority, declaring that "one cannot read a piece of Dadaist poetry at a Cabinet meeting" (1982/1991, p. 113). While this may be true for a Cabinet meeting, or for testimony in court, he ignores the inherently whimsical nature of the legislative filibuster; this will be discussed later. At any rate, Bourdieu inadvertently points out an important way in which art and philosophy operate in parallel with legal hermeneutics, in a slighting comparison of philosopher Martin Heidegger to Dadaist artist Marcel Duchamp.

> The relations which are established between the work of a great interpreter and the interpretations or over-interpretations it solicits… resemble perfectly… those which, since Duchamp, have developed between the artist and his group of interpreters; in both cases, the production anticipates the interpretation(.) (p. 154)

Of course all art, not only Duchamp's, functions through its circulation in and legitimation by a community of privileged interpreters, as do political actions. Bourdieu seems to acknowledge this when he says, "A political intention can be constituted only in one's relation to a given state of the political game, and, more precisely, of the universe of the techniques of action it offers at any given moment" (p. 173).

In art, critics are traditionally the interpreters, acting as judges and teachers in relation to intrigued but untutored viewers. But early avant-garde artists started supplanting this critical role, taking "techniques of action" and questions of legitimacy as artistic material. Anarchistic Dada and Surrealist artists employed games and performances intended to lampoon the procedures and conventions of rule-making, while, along with their glorification of technology and war, the proto-fascist Italian Futurists may be best remembered for their propagandistic manifestos. For all his misgivings about art, Bourdieu affirms that "(l)egal discourse is a creative speech which brings into existence that which it utters" (p. 42). Granted, of course, that the law is recognized as legitimate by subjects, just as art awaits legitimation by critics, just as knowledge must be recognized as legitimate by students, as well as the teachers themselves—Lacan's "subjects supposed to know." And when mingled, these areas of education, art, and law can delegitimate each other, as with Bordieu's critique of the way in which the pedagogical pandering he identifies in officially sanctioned Social Realist art reproduces the class-based distinctions he famously denigrates in education (p. 235).

For all the promotion of populism among today's social practice artists, an arena of contemporary visual practice where Laurie Jo Reynolds is generally located, it is noteworthy that the experience of such art is often not so much that of a focus group, as Marxist skeptics sometimes think (Cronan 2013), but of a classroom. The classroom for Foucault is a place for imparting discipline, and may be one of the most straightforward examples of a "pastoral" setting, in which a teacher is responsible (to the point of legal liability and loss of employment) for the success or failure of his vulnerable charges. Through the jury, the sacred role of the judge (and the law he represents) is, for better or worse, democratized and perhaps subverted. Speaking of the juror, treated more in my next chapter, the French political historian Alexis de Tocqueville

(1835/2010) refers to the courtroom as "a free school,… where the laws are taught to him in a practical way… by the efforts of the lawyers, the advice of the judge and the very passion of the parties," concluding that the jury is "one of the most effective means that a society can use for the education of its people" (p. 448). Like a jury, the former prisoners and family members that worked alongside Laurie Jo Reynolds as Tamms Year Ten represented and advocated for their community in circumstances that at times required pedagogy and learning, but, in contradiction to de Tocqueville, for the most part they promoted shared effort over and above passive absorption of knowledge. And, as juries sometimes do, they sought to counter the power of the judge and the administrator by reversing the series of decisions that sent men to Tamms.

In her linguistic analysis of how judges assert control in the courtroom, anthropologist Susan U. Philips (1998) contends that judges who focus on transparency and on oral procedure, rather than on interpreting the written record, risk their authority and reputation in a manner analogous to the archetypal impotence of the substitute teacher (p. 89). This pedagogical attitude very much applies to how such "procedure-oriented" judges speak to juries. Philips quotes one judge on addressing jurors:

> …(J)urors, they walk into a courtroom in many instances never having been there before, not knowing what to expect. There's a lot of mumbo jumbo legal-talk going on. I think it's important and I try to make an effort, particularly when I'm impaneling a jury, to set them at ease… And I think they function better if they feel relaxed and comfortable in the situation they find themselves in, and I hope I accomplish that. (p.108)

Such judges, in Philips' account, are also more likely to try to engage verbally with defendants. The precarious status of a judge who seeks to actively involve a defendant in establishing the factual record of a case, rather than simply treating them as a mute witness to the proceedings,

results largely from the fact that defendants often refuse to cooperate in this quasi-pedagogical operation. The situation bears significant resemblance to the dynamic between a teacher and a recalcitrant student in many compulsory education settings. Philips emphasizes, however, that for a judge such a compromised situation is not mandatory, but is a question of personal style—in a word, aesthetics.

The evaluation of a student's academic performance, or the evaluation of a cultural artifact, has much in common with a common-law approach to adjudicating a court case based on principles derived from a combination of precedents. While judgments often can be overruled on appeal, and some American judges are popularly elected, thus risking countless conflicts of interest in the process of campaigning (Brandenburg, 2014), the position a judge has in regard to the law is unique. On the practical side, she does not have to compromise like a legislator. Nor is she formally subservient to the law. Rather, as an interpreter, she is informally outside of it. She is an unlike a police officer, who is allowed the power of discretion. Judges, like teachers, are given the power of discernment.

While the ideal of individual sovereignty is often opposed to the so-called "rule of law," the notion of sovereignty was initially defined for Europe by Jean Bodin, a sixteenth-century legal scholar who asserted that legal discernment was the sole determinant of power (Franklin 1963). Bodin's view is that sovereignty is to remain absolute, indivisible, and perpetual, subject to no authority other than law itself. This definition, while it appears to be describing a king, is much closer to a magistrate. In a common-law courtroom, a space defined by the rules on which the judge bases her independent decision, a judge has the final word, while authority in an assembly is multiple and relative, and even a king or a general relies either on force or an acceptance of legitimacy. Within strict formal limits, a judge's ruling is unquestionable. Of

course a judge's decisions are often subject to a variety of considerations, and can be overruled by higher courts, but at least in a given courtroom a legal or ethical or practical ambiguity is temporarily resolved, in the same way that a relatively powerless teacher still is recognized as the formal authority in a classroom. Indeed, the simultaneously totalizing and flimsy formalism of the law typifies the simultaneous subjective certainty and public incoherence of aesthetic and moral judgments, as described by Immanuel Kant.

The fact that Kant's aesthetics are described most extensively in his *Critique of Judgment* is suggestive, as in German the term for judgment, *Urteil,* is regularly used in judicial contexts. To be precise, the German title of Kant's volume uses the word "*Urteilskraft,*" referring to the *power* of judgment, but nonetheless, the logical context in which he discusses judgment encompasses both judicial and aesthetic rulings—with the former tending to fall under the category of "determinant" judgment, and the latter under "reflective" judgment.

> A determinant judgment is one in which the universal is given and the particular is to be found. In making a reflective judgment we must find a universal for a given particular. (Makkreel 1990, p. 54)

Nonetheless, both fall under the heading of judgment, which, according to Kant, "is the faculty of thinking the particular as contained within the universal" (as cited on p. 54). Kant proposes that the freedom of aesthetic imagination "consists in the fact that it schematizes without a concept" (as cited on p. 55). But, much as with his well-known ethical "categorical imperative," aesthetic pleasure arises paradoxically in "the imagination's free conformity to law" (as cited on p. 46). Beauty manifests in "the possibility of experience as a system" (as cited on p. 59); with aesthetic judgment, "the pleasing form merely gives us hope that nature as a whole can be systematized" (p. 63). For him, there cannot be beauty without rules. Events, in their irreducible

particularity, always contain the possibility of revising universal schemes—as suggested by the difficulty Kant has in even specifying what qualifies as an aesthetic form (p. 59).

Such ambiguity requires careful discernment, which presumably comes from rigorous training in interpretation. Some distance from Kant, at the other end of the German Romantic tradition, is Friedrich Nietzsche, a specialist in philology who asserted the "irreducibility of interpretation" as "a central feature of aesthetic understanding" (Cox, 1999, p. 3)--the aesthetic being, for Nietzsche, the most holistic form of understanding. Nietzsche also associates interpretation, which includes "forcing, adjusting, abbreviating, omitting, padding, inventing, (and) falsifying," with the "will to power" (p. 171), his instinctual ideal for human flourishing.

The very necessity of interpretation is occasioned by ambiguity, in law as much as in art (Thacher, 2001), and the deceptive use of ambiguity by police and prosecutors is a fundamental element of the American legal process (Shuy, 2017). The conceptualist artist Charles Gaines (2015) reflects on the creative power of the law to tell stories, without undue restriction by objective facts:

> The law deals with the issue of representation much better than art does. In law they're not really dealing with what really happened. In law they are dealing with what kind of convincing narrative can we put out there to justify a particular interpretation of an event. There's a recognition of the gap between what really happened and what we can say happened. There's even this issue of whether empirical evidence can transcend our emotional and affective relationship with an event. How meaning is formed is a much more complicated process than what establishes evidence at an intellectual level. (Black, 2015, para. 16)

Mikhail Bakhtin (1981) understood the act of narrating a novel to be one of organizing competing and contradictory points of view, thus making some interpretations more viable than others and framing meaning through the possibility of judgment. Judith Farr Tormey and Alan Tormey state that the possibility of competing interpretations create the possibility of ambiguity in visual art, just as in language (1983). Theorist Egon Bittner (1990) applies this sense of indeterminacy to any system of rules. While legal scholar Ronald Dworkin (1983) contends that literary judgment, like legal judgment, aims reflectively at authenticity, seeking one "best" possible interpretation, Bittner views courts as mere theaters of rationality, designed to erase the necessarily arbitrary aspect of the law.[3] Legal philosopher H. L. A. Hart (1961) discusses the "open texture" of the law, in which interpretation relies on context—context being a feature that Bakhtin identifies as "emergent" in the interpretive experience of the reader, and thus not to be taken for granted any more than the testimony of the characters.

Stanton Wortham (2001) talks about a CBS News story, broadcast days before the 1992 U.S. presidential election, on allegations that George H.W. Bush lied about his knowledge of the Iran-Contra arms deal. The story uses vocabulary and various framing devices to make Dan Rather and the CBS law correspondent appear as if they are conducting a legal trial, but only presenting the case for the prosecution. Wortham contends that Bakhtin would analyze not the mere statements made by the speakers, but the enactment of the narrative, the "interactioning positionality" that makes Rather the prosecutor. Authoring requires juxtaposing voices; thus, novels are more than plot. Narrators position themselves through characters in conflictual dialogue ("double voicing"). And like a trial, a narrative is dynamic, and can change directions at

[3] Conversely, the legal concept of "integrity" informs much copyright litigation in the world of theater, which can itself be understood as a realm of intense power struggles (McDonagh, 2014).

any time. Bakhtin likes indeterminacy; he makes it clear that narratives talk about objects, index voices, and establish a narrator position ("ventriloquation"). The narrative context "refracts" words like light, illuminating objects only partially.

The source of narration in a criminal trial, as in the CBS News story, is always framed by the prosecution. The enormous creative power of the prosecutor uniquely spans all three branches of government. Prosecutors act in a judicial role on behalf of the law enforcement mandate of the executive branch, and, while not writing laws, they select charges and, through the plea bargain process, they effectively negotiate the consequences of transgression on a case-by-case basis. "In the early stages (of a case), the prosecutor acts most like the magistrate;" writes Jerome H. Skolnick (1966), "in the later stages he necessarily comes to represent law enforcement." While the low standard of probable cause by which prosecutors justify charges contravenes the principles of much early American jurisprudence (Ortman 2016), it has gained currency, even with the explosion in plea bargains, and is not a difficult standard to meet in constructing a story. Plea bargains concocted by prosecutors have become the norm in American criminal convictions, constituting what Brady Heiner (2015) refers to as "procedural entrapment."

In Hegel's *Science of Logic* (1812/ n.d.), he makes space for ambiguity when he introduces the idea of "infinite judgment," (§ 1376). An example he gives is an act of theft; it does not dispute ownership, as a legal case might, but implicitly negates the very presumption of a right to personal property. It seems that, as Hegel himself suggests, that infinite judgment is in fact a description of a nonsensical proposition. Perhaps both crime and policing could be characterized as an infinite judgment, the negative supplement that creates space for law. But it seems that Hegel offers the possibility of a judgment outside of judgment, which would perhaps

be an apt description of the prosecutor—an extension of the police who shapes the majority of criminal sentencing through the plea bargain process, an event in lieu of trial which often provokes no serious interpretive challenge, as public defenders often serve at the pleasure of a prosecutor, and have a far greater workload. The absence of due process is, as has been stated, quite relevant to every prisoner in Tamms. While many Tamms prisoners were doubtless sentenced under a plea bargain, and one prisoner, Mark Clements, was exonerated when his confession was found to have been extracted by torture, every man in Tamms was sent there from another prison with no charge and no hearing.

The prosecutorial production is not a solo performance; it is often a technically advanced collaboration, much like an animated feature (Gershon 2015). And like animation, it is a story involving multiple media. Working in Sweden, Corinna Kruse (2016) structures a study of the treatment of forensic evidence around the shared prosecutorial effort to construct convincing narratives. She points out that "connections between story elements—for example, pieces of evidence—are what comprise the context within which to understand the central action" (p. 23). Prosecutors begin by "making the evidence part of legal stories—that is, through pretrial legal storytelling" (p. 34). But they have legions of support staff, as anyone who has watched televised police procedurals is aware. "Crime scene technicians transform the messy and material presumptive crime scene into an ordered and understandable contribution to the pretrial investigation's multiple legal stories" (p. 105). In her conclusion she summarizes:

> The crime scene technicians use "the story" around a case to examine the crime scene, and the abstractions they produce would not be useful to the investigation without the subsequent work of the forensic scientists, the investigators, and the prosecutors. (p. 150)

Through their prosecution, defendants become characters in official state stories.

Similarly, the "ventriloquation" Bakhtin identifies in novelists' use of dialogue seduces the reader to legalistically judge characters' intentions, so that education, like aesthetics, becomes a formal interrogation of unique, individual truth. The teacher is also an interpreter, perhaps first and foremost. Not all teachers see themselves in this way, but the standardization of textbooks, curricula, and achievement tests in countries with compulsory schooling situate the responsibility of teachers vis-à-vis a collection of texts. And on the basis of these texts he must judge his pupils. While not all schools give grades, the ones that do not may prepare "portfolios" or extensive written assessments that include more detailed evidence and thus assess with even greater scrutiny (Jones, 1995). In a compulsory situation, behavior must be evaluated along with academic progress, and so, as with judgments in courts of law, students' intentions, in manifesting learning deficits and/or willful disruption, determine what responses are deemed appropriate. As over-scrutinized as teachers are, the role of interpreter does carry its own power: the authority of judgment.

2.2 Ambiguity and silence

Lynn Mather (2011) discusses the difficulty of gathering data on American trends in legal malfeasance and malpractice. "Individual states control their own disciplinary processes and few publish aggregate data… Many insurance companies, especially those covering large law firms, will not share information with the ABA (American Bar Association) for its report," she writes, adding: "Even with better data on discipline and claims, we still would lack a clear picture of attorney misconduct without knowing something about the complaint process" (p. 130). Much of

what Mather ends up discussing are strategies for avoiding both the risk and the *appearance* of misconduct. Not only do lawyers get to largely set and monitor their own standards of conduct through their own professional associations, the ABA and other bars, the United States is a country largely run by lawyers—an observation famously made by Alexis de Tocqueville in the 1830s (1835/2010)—primarily in the judiciary, but in the legislative and executive branches as well. He even comments upon legal language spreading throughout the population, saying (with unintentional double *entendre*), "the whole people have contracted some of the ways and tastes of a magistrate" (p. 441). Certainly American teachers can hardly hope to aspire to this iconic status.

"Nowhere has the law left a larger portion of arbitrariness than in democratic republics," muses de Tocqueville, "because there does not seem to be any reason to fear arbitrariness" (p. 329). But law's potential for violence is directly related to the ambiguity of language, While intrusive and even paradoxical laws that punish sex offenders long after they complete their sentences are being challenged on the basis of "void for vagueness" (Reynolds 2016), vagueness is engaged deliberately in the work of renowned conceptual artist Lawrence Weiner, who said in 1969, "I like language very much because it's ambiguous." Weiner explains further,

> When you read the language, or when you translate the language from one language to another language to another language, which is part of the new work I've been doing, you add to the ambiguity of the piece . . . So the language, really, in my eyes, helps to get away from this thing of what something should look like and just deals with it as a general thing. (Alberro and Norvell 2001, p. 107)

Weiner thus wants to erode epistemological boundaries; he uses ambiguity to conflate Kant's categories of judging the particular from the universal (determinant judgment) with judging the

universal from the particular (reflective judgment). But this transcendent level of ambiguity is key to the authority of the law, not only because it ratifies often arbitrary exercises of power, but because law must point to itself as a source of order—what Jacques Lacan calls a "master-signifier," intended to stabilize meaning via tautology (Žižek 1991, p. 35).

Conceptual Art is founded on tautology-- perhaps exemplified in its most banal form in the works of Joseph Kosuth, in which objects are juxtaposed with their depictions and descriptions. Apprehending this tautological ambiguity requires extra effort, one might say discomfort, on the part of viewers. Weiner says that,

> this is the first art . . . where the information about the art is as important for knowing about the art as the art itself—which may be a lack and may not be because information about anything is necessary. You can't really go in front of a Barnett Newman painting, without knowing a little bit about art, and know what it's all about. So you can't be confronted by a piece of mine without knowing a little bit about the aesthetic. (Alberro and Norvell 2001, p. 105)

Access to contextual information allows some ambiguity to be reduced, but the meaning of a piece of Conceptual Art, just like a common-law precedent, exists as a game of Telephone, a floating suspicion built from compromised phrases, thus operating like what Oliver Wendell Holmes called "a brooding omnipresence," and what Lacan might identify as a "big Other" that guarantees the consistency of reality.[4]

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[4] It is then fascinating to see how Weiner's own voice as an artist was legally silenced in 1992, when his dealer disavowed responsibility for paying to store a piece by saying: "Without

Combining silence, rumor, and *schadenfreude,* Ted Purves (2005) writes about a project whose only documentation (until he wrote about it) was the testimony of the British artist who initiated it. The artist, Johnny Spencer, was invited in 1997 to take part in an public art festival in Thailand called *Chiang Mai Social Installation: Week of Cooperative Suffering.* Spencer contacted a local school for the blind, and got two blind girls to volunteer to walk around the city with him, acting as guides and discussing the different public pieces in the festival that he described for them. "To blind people," one of the young women said, "talking is art" (p. 42). When Spencer recreated this, he called the project *Site-Seeing,* and it was not documented in any of the literature surrounding the festival. Purves views Spencer's tourist project through a rose-tinted anthropological discourse of ritual exchange, saying: "Where the gift and the discharge of the debt that it brings on are brought forth simultaneously, there is no real cognizance of the intention and its attendant burden, only an experience of the community that has been formed" (p. 43). A similar dynamic occurred with Simone Leigh's 2016 show *Waiting Room* at New York's New Museum, at which many events, geared toward particular groups of Black women and girls, and not documented for the public, took place while the museum was closed. Critic Helen Molesworth (2018) identifies Leigh's "forthright insistence… that black women are the work's privileged audience" as "both deeply necessary and positively exhilarating" (p. 168). For better or worse, then, visible invisibility is perhaps the key to the aesthetic reception of practices that seem to defy aesthetic reception.[5]

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purchase there is no property right. What is stored is material without artistic value" (as cited in Camnitzer 2007, p. 260).

[5] Cf. Claire Bishop's discussion in *Artificial Hells* (2012) of unofficial, private forms of participatory art in the Soviet bloc during the Cold War.

Philip Abrams (1977/1988) notes that "an integral element of (state) power is the quite straightforward ability to withhold information, deny observation and dictate the terms of knowledge" (p. 62). "Omission becomes a form of expression," says legal scholar Patricia J. Williams (1991) in regard to the legal invisibility of Blacks and women (p. 121). Becky Pettit (2012) writes about how, via incarceration, law is erasing the ability to even statistically record racial disparity in America.

> There is no valid comparison group for many of America's inmates exactly because incarceration now inheres in whole sociodemographic groups, making it increasingly difficult to identify the effect of incarceration. (2012, Kindle Locations 1796-1797).

I want to call attention to this surprisingly "loud" insistence upon anonymity and ineffability, and suggest that the intentional ambiguity of law, combined with the hidden misery being addressed in politically performative artworks, is reminiscent of the fearful silence demanded in a courtroom or a classroom, or in John Cage's well-known silent composition, *4'33"*. The imaginary orgies of the Marquis de Sade are an intriguing space of dominance and silence; Barthes (1971/1976) calls this silence "the silence of the libidinous machine" (p. 166).

A strain of text-based art has emerged over the last decade, in which sections of blacked-out text call attention to secrets, often through the odd blocky shapes formed by lines of obscured type. This motif has existed for years in the work of artists like Jenny Holzer, who has used numerous media and approaches in presenting extensively redacted classified documents from the U.S. government's "War on Terror" after the 9/11 attacks, and Jill Magid, whose own documentary work on the Dutch secret service was redacted and then exhibited (Lee 2011), as well as in artist and journalist Laura Poitras's 2016 *Disposition Matrix* and Navine G. Khan-

Dossos's 2016 series of paintings *Remaining and Expanding,* based on redacting pages from *Dabiq,* the online media outlet for ISIS. Jamal Cyrus' images *Mentuhotep* (2008/2015) and *Cultr-ops* (2008), both graphite powder on paper, are based on files the FBI kept on Black radicals during the 1960s through its controversial COINTELPRO program. Filmmaker Steve McQueen's video installation *End Credits* (2012/2016) gives visual and audio form to the FBI's profusely redacted file on multitalented African-American performer and activist Paul Robeson. As subject matter, these partially-erased government documents have various points of visual and conceptual appeal. For one, the act of censorship is such a rare curiosity in the West that the act of exposing it carries an undeniable transgressive satisfaction. As suggested above, the transformation of words to non-signifying shapes has an enigmatic formal cachet. But perhaps the most important aspect of such work is pedagogical. Lessons in history are conveyed, as they are in the classroom, through selective and decisive erasure.

Silence and solitude entered the world of punishment with the modern concept of the penitentiary, which was developed in European monastic orders and ecclesiastical law (Peters 1998, Johnston 2000, Cassidy-Welch 2011) before being theorized by American Founding Father Benjamin Rush, who in March 1787 wrote a pamphlet entitled "An Enquiry into the Effects of Public Punishments on Criminals, and on Society." The problem with public punishment, according to Rush, was that it gave prisoners an unearned sense of their own power, while witnesses of their punishment were prone to feelings of "abortive sympathy," or even veneration for criminals. "Sympathy" and "sensibility," in his analysis, were responsible for forming citizens or, in Rush's terms, converting them into pious, disciplined, stoic, and industrious "republican machines." And yet, despite his repeated insistence on moral rehabilitation, he was at least dimly aware of the torment that came to be widely associated with

long-term solitary confinement.

> A wheelbarrow, whipping post, nay a gibbet, are all light punishments compared with letting a man's conscience loose upon him in solitude. . . . A bad man should be left for some time without anything to employ his hands in his confinement. Every thought should recoil wholly upon himself. (as cited in Lisa Guenther 2013, Kindle location 611/6792)

Rush's ideas on reducing spectacle while increasing punishment, and thus moral education, influenced the first modern prisons, including the Auburn Correctional Facility in New York state, which opened in 1818, and Eastern State Penitentiary in Philadelphia, opened in 1829. In these facilities, inmates were kept in isolation and forced to remain silent, in order to reflect on their misdeeds. In this view, the prison was to be a space of teaching—not primarily through specific texts and lessons—though there were silent prison classrooms as well, as in the Surrey House of Correction in England--but through the very architecture and regime of the institution.

The ways that "reforming" individuals has in modern times been bound up with both law and pedagogy is famously chronicled in Michel Foucault's *Discipline and Punish* (1975/1995), in which he relates an 1842 quote from the *Journal des economistes:*

> Alone in his cell, the convict is handed over to himself; in the silence of his passions and of the world that surrounds him, he descends into his conscience, he questions it and feels awakening within him the moral feeling that never entirely perishes in the heart of man. (as cited on p. 238)

Even at the dawn of penitentiary discipline in the U.S., Philadelphia's Walnut Street Prison "functioned more as a means to regulate the poor—especially poor women and African Americans—than to embody a more just and rational practice of justice" (Meranze 2016, p. 758).

Lawrence Friedman (1993) describes the remodeling of the facility in 1790, where all cells were for solitary confinement. At this facility, the intention was to add "unremitted solitude to laborious employment" (as cited on p. 78). Philadelphia's Cherry Hill prison, built in 1829, made use of Jeremy Bentham's "panopticon" layout, memorably described by Foucault, in which prisoners isolated in a circle of cells are watched from a central point. Also in Philadelphia, and also a panopticon, inmates at Eastern Penitentiary were blindfolded when in transit.

All of these facilities enforced a code of total silence. Upon visiting silent American penitentiaries, both Alexis de Tocqueville and the English novelist Charles Dickens documented their atmosphere of morbid cruelty. Dickens wrote,

> I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body: and because the ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it as a secret punishment which slumbering humanity is not roused up to stay." (as cited in Reiter 2016, p. 179)

Nonetheless, the Pennsylvania model was adopted by other states. In New York from 1821 to 1823, solitary confinement without labor was briefly attempted, but prisoners couldn't take it: one threw himself "from the fourth gallery, upon the pavement," and another "beat and mangled his head against the walls of his cells, until he destroyed one of his eyes" (as cited on p. 79). "From then on," Friedman continues, "hard labor was the absolute rule" (p. 79).

Although practices of solitary confinement were recognized as cruel at the time and generally abolished in the 1850s, they have returned to wide use, despite a great number of studies attesting to their potential for profound and permanent psychic injury, especially over

long periods (Cloud, Drucker, Browne, and Parsons, 2014; Felthouse, 1997; Smith, 2006; Haney, 1993; Haney, 1997; Haney, 2003; Rhodes, 2005; Andersen, et. al., 2000; Franke, 2014), and numerous largely unsuccessful legal challenges based on the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's guarantee of legal due process. The impact is most clearly devastating for mentally ill prisoners, who are much more likely to be placed in solitary confinement, make up a large portion of the incarcerated population (Lovell et al., 2000), and are overrepresented in supermax units (Haney, 2003; Cloyes et al., 2006; Lovell, 2008). In the past few decades, the critiques directed at solitary confinement have been to some degree deflected by redefining these practices using the ambiguous but racially charged term "segregation" (van Aken, 2016).

While a "public secret" generally describes a situation in which everyone knows about a scandalous fact that is never mentioned, the existence of "black sites" in the American policing and prison system somehow inverts that—in which people who work in a city or interact with a state government remain unaware of an institution that nonetheless exists in plain sight, documented in the public record. Just as with the secretive Homan Square police station in Chicago that the *Guardian* investigated in 2014, the very existence of the Tamms prison was both secret to the citizens of Illinois, and infamous to its prisoners. While working on the campaign against segregation practices at the Federal prison in Marion, Illinois, Laurie Jo Reynolds attended a rally at which she asked the mother of a man incarcerated at Tamms how often she spoke to her son, and was told that he could not make phone calls—this was her introduction to the idea of the Tamms prison. Even men sent to Tamms would wait weeks to find out why they had been sent there. "The thing about going to Tamms was there were no clear criteria," Reynolds has said. "It was very unclear why people were at Tamms" (Dunn, 2013,

para. 9). Long-time TY10 volunteer Carol Wilcox said that when the group started talking about Tamms to legislators, "they had no idea Illinois had that type of prison" (personal communication, July 17, 2014). The Illinois Department of Corrections, Wilcox said, even told lawmaker Eddie Washington, an early TY10 supporter, that he could not enter Tamms for a tour. The revelation of these restricted circuits of knowledge about violence can be seen in the sudden recent proliferation of videos exposing the police violence against communities of color that has gone on for centuries.

As demonstrated by a mass protest at the Plaza de Bolívar in Bogotá, Colombia in February 1948, when one hundred thousand marchers gathered in silence to mourn state brutality, public silence can serve as an expressive form of passive resistance. One of the last public Tamms Year Ten performances was silent, taking place at the 2013 Creative Time Summit, where Reynolds received the Leonore Annenberg Prize for Art and Social Change. This performance involved TY10 activists Darrell Cannon and Reginald "Akkeem" Berry, who each served several years in Tamms, and Brenda Smith, the mother of a currently incarcerated prisoner who was in Tamms for 14 years; each individual stood in silence on stage for the number of minutes that matched the relevant number of years of incarceration in Tamms. Interviewed on the art podcast *Bad at Sports* (2014), artist and activist Mary Patten reported on Reynolds's act as a transgression of the Summit's strict time restrictions, and on a criticism she heard secondhand that this gesture amounted to Reynolds effectively "objectifying the bodies" of prisoners. To an extent this might be true—despite the "dematerialization" of conceptualism, much social practice art is no more able than a teacher to work without at least an occasional visual performance. But neither this anonymous comment, nor Patten's subsequent dismissal of it, fully reflect the subtlety of Laurie Jo Reynolds' gesture—which, I think, has everything to do

with these other contexts of silence, and the set of oppositions in which she has at times found herself.

2.3 Judicial exceptions and conceptual critics

Just as Tamms Year Ten used art to enact a critique of law, judges have stepped into the role of art critics at points, rendering judgments in which they attempt to stabilize art's murky social role. While art can function discursively in a manner similar to law, without acknowledgement by legal entities, law can define the possibilities of symbolic pleasure that art will exploit through various narratives around transgression. One example among many is the 1892 U.S. copyright case of *Fuller v. Bemis,* cited by Jacques Rancière (2013), in which the court deemed the fluttering fabric dances of Loie Fuller unworthy of intellectual property protection because of its non-symbolic embodiment, saying that her dance "can hardly be called dramatic" (p. 102). But Rancière also cites the contemporaneous critic Roger Marx, who, in the vein of John Ruskin, praised the expressive utility of the decorative arts, while also claiming that Fuller's dance "proved to hold interest for aesthetics, sociology, and political economy at the same time," asserting what Rancière calls "the formative potential of a new society" (p. 145).

Further, Philippe-Alain Michaud argues in his analysis of Aby Warburg (2007) that Fuller's dances represent a revisionist view of Renaissance classicism emerging from Dionysian ecstasy and trance. This Dionysian element reappears in *Opera Sextronique,* a 1967 performance collaboration between artists Charlotte Moorman and Nam June Paik, in which Moorman played the cello in various states of undress, sometimes wearing an animal mask. The duo had debuted

their ambitious suite before uniformed police beforehand in order to avoid prosecution, but when Moorman defied a rarely-enforced law on topless public performance (just before it was superseded by a new law), she was arrested, and contested the charges in court on the grounds of its artistic content (Landres, 2017).[6] A cultural analysis (though not a legal one) could place Fuller and Moorman neither beneath nor above, but before and beyond the court rulings.

If Michaud's logic were as applied to a judicial model, it might seem somewhat like the "originalist" judicial stance expressed by late U.S. Supreme Court Justice Antonin Scalia, in which "someone interprets legal provisions as their words were originally understood" (Ponnuru, 2017, para. 1), yet without regard for the intent of lawmakers (para. 7). Rob Hunter (2014) summarizes originalism as "the doctrine that the views and preferences of long-dead politicians and judges should supersede those of the living" (para. 11), arguing that the nature of such constitutional fundamentalism is irrevocably conservative. Regardless, Fuller is not judging or citing, she is producing her own history, in the way a new law attains legitimacy through addressing a pre-existing necessity—approaching the virtual realm denoted since ancient Greece and Rome by the ideal of natural law. Žižek (2012) often refers to Hegel's view of history, in which radical change appears, as does Fuller's classical inspiration, by "retroactively positing its own presuppositions" (p. 251), a view that may not appeal to judicial purists, but at least sets an imaginary stage where art can confront law. So the cultural vanguard recognizes its purpose as one of making law and overturning precedents—even retroactively, in the case of Loie Fuller as parsed by Michaud.

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[6] In 1967 Moorman also was castigated by the artist John Cage for her interpretation of one of his indeterminate performance scores; Lauren van Haaften-Schick (2018) compares this dispute to a lawsuit for breach of contract.

But not all judicial questions on art have such a clear solution. In discussing the law around image appropriation and copyright from Pop Art and Pictures to today, Martha Buskirk (2014) states an obvious paradox succinctly:

> Content producers (many of whom are otherwise known as artists) do indeed have a vested interest in copyright protections… Yet artists are also more likely to push the envelope with respect to assertions of fair use that extend beyond prescribed terms of service(.) (p. 166).

Few artists likely felt sympathy for Island Records in their lawsuit on behalf of mega-rockstars U2 against underground audio bricoleurs Negativland, any more than the record companies that drove sampling out of hip-hop in the early 1990s, but Shepard Fairey's uncredited appropriations of other protest art could be seen as more problematic (Rodriguez, 2009). Malawi-born artist Samson Kambalu was sued by a radical artist, the Italian Situationist Gianfranco Sanguinetti, for a 2015 piece that made use of unauthorized copies of Sanguinetti's archived papers; Kambalu's anarchist gesture was eventually vindicated in court. African-American artist Sondra Perry created a digitally-rendered video about her brother Sandy, whose likeness was appropriated without his consent for a basketball game by the video game company Electronic Arts, for a show at New York's Bridget Donahue Gallery in February 2018. In another vein, Luis Camnitzer (2007) tells us that in 1988, in regard to a question of importing Cuban art under the American embargo, "the U.S. federal courts ruled that art is information and not merchandise" (p. 191), perhaps inadvertently striking a theoretical blow for Conceptual Art against Pop Art.

Just as judges act as art critics and theorists, critics and theorists of art are themselves judges and teachers, in the sense that a proper outlook on all artwork (Kant's "reflective judgment") is expressed through specific examples (Kant's "determinant judgment"). Like

judges issuing a ruling, they are generally encouraged by their audience to be as uncompromising as possible, while, like teachers, they are expected to communicate the truth of an experience. Conceptualist art opened up questions on the form of didacticism within modernist art, but religious and political popular art forms have utilized didactic approaches for centuries. In appealing to readers and listeners, these artists plead a case, just like a trial lawyer paid to act as if her moral judgment favored her client, or a teacher paid to enforce both truth and discipline. The only difference between the didacticism of a teacher and a conceptualist artist, according to Brian O'Doherty (1986), is that the artist teaches "by irony and epigram, by cunning and shock" (p. 70). For their part, the judgments of critics can be entertaining, pretentious, or irksome, but, despite their triviality, they bear comparison with the most severe judgments, in that the edification of some unenlightened addressee is necessarily invoked.

Awkward judicial efforts to discipline legal ambiguity evoke the position of a teacher who must insist on the consistency of established rules, rather than changing or eliminating them. In the 1989 case of *Patterson v. McLean Credit Union,* U.S. Supreme Court Justice Anthony Kennedy made the absurd claim that Miss Patterson, a Black woman claiming to have been harassed and fired by her employer because of her race, would not merely need to have signed a contract when she was hired that specifically barred her employer from racial harassment and dismissal, but would actually need to have been presented by her employer with a contract that actually explicitly *did* contain the right to race-based harassment and dismissal, and then to have rejected that contract (Campbell, 2004, p. 175). This is because of Kennedy's desire to remain consistent with the wording of a ruling in an earlier case, that of *Runyon v. McCrary* (1976), in which two Black girls were expelled from an all-white private school. Judicial interpretations of the Civil Rights Acts of 1866, 1964, 1965, and 1992 have provided a range of efforts to curtail

the freedoms claimed by members of protected groups in specific circumstances, and the existence of these multiple legislative acts largely represent a desire on the part of the legislature to then reformulate the rules by which such cases are judged, and thereby reassert the attendant rights. For their part, the Supreme Court justices, as in the case of Affirmative Action and school desegregation, have seen fit to repeatedly roll back what few anti-segregation legislative protections exist.

It doesn't seem that many solutions can be found in unrestrained judicial-pedagogical creativity. While in the West the secular idea of rehabilitation through imprisonment is associated with relatively recent reforms proposed by Cesare Beccaria, Jeremy Bentham, and American Founding Father Benjamin Rush, it resonates both with medieval European religious practices (Peters, 1998; Johnston, 2000; Cassidy-Welch, 2011), as well as a similar idea of reform that has held sway in China for centuries (Martin, 2014). Chinese methods of re-education were cited as highly influential in CIA reports that helped to initiate a return to practices of solitary confinement (Guenther, 2013). In general, Communist regimes in the twentieth century were known for claiming to substitute education for punishment, such that the sentences bestowed upon those deemed bourgeois and intellectually counterrevolutionary were pronounced as instruction rather than cruelty—essentially, doctrinal rehabilitation. The juridical massacres overseen by Joseph Stalin offer a memorable example of such a dynamic.

The so-called "show trials" under Stalin began as more "show" than "trial." They were dramatic public shaming sessions, growing out of confessional interrogations by local Communist Party officals, and only later developed into the high-profile events of the mid-1930s (Fitzpatrick, 1999). Robert Conquest (2008) wryly comments, in regard to the Soviet Union under Stalin, "it is extraordinary how many of the leading terrorist bands were headed by

historians" (p. 291). It is also noteworthy that the thousands of deliberate executions undertaken by the Stalin regime, in stark opposition to those of the Nazis, made extensive use of the courts as a means of punishing anti-Party heresy. The court of record in political cases under Stalin was the Military Collegium of the Supreme Court, which managed after 1934 to streamline its operations impressively; "It took mere minutes even for leading officials…Thus the Collegium got through tens of thousands of cases in the years of the Terror" (p. 283). Laws on terrorism, sabotage, and "crimes against State property" were vastly broadened and extended. The crime "suspicion of espionage" carried a sentence of eight years (p. 285). State prosecutor Andrey Vyshinsky declared that "there are no ordinary criminal offenses, that these offenses now became crimes of a political order" (as cited on p. 283). Upon making this poetic leap, Vyshinsky then aesthetically declared that "the art of identifying saboteurs" did not require a lengthy investigation, but merely required "political flair" (as cited on p. 284). A memorable actor in this bloody drama was the informer Polia Nikolaenko, who helped seal the fate of 8,000 people; Stalin called her a "heroic denunciatrix" (as cited in Brodeur, 2010, p. 239). There would be no end to the executions until Stalin called a voluntary halt, which only happened when the very structure of the state, economically and institutionally, was on the verge of collapse (p. 290). While the backdrop of the Tamms closure was a state budget battle that hardly approached the instability of Stalinist Russia, the ceaseless condemnations would not cease, despite (as with Stalin) torture in both police and correctional custody, until executive action was taken by the Illinois governor.

As Stalin knew, a decision from a position of judicial authority usually acts to endorse the power of the state. Reynolds knew it too, and chose in her organizing efforts to largely bypass the judiciary. "For the sovereignty of the state is marked precisely by this power to decide, to

judge, to rule, to interpret freely and sovereignly what is exceptional, what is the exception," says Jacques Derrida (2014). "Sovereignty is the absolute exception," Derrida asserts, tweaking Nazi jurist Carl Schmitt's axiom that "Sovereign is he who decides on the exception" (p. 129). The Roman emperor, who could issue laws, rulings, and commands, is perhaps the archetype of this principle. The emperor Justinian, known for his codification of the massive Roman legal corpus, provided an excellent example, as when in 535 CE he agreed to a petition by a widow named Gregoria to contravene a law set out in the revised code he had issued just a year earlier. But, along with also being the supreme ecclesiastical authority, Justinian was a pedagogue, as he was responsible for the *Institutes,* textbooks created for beginning law students (Humfress, 2005).

A compelling modern example of the exception as an expression of state power can be seen in *Harris v. New York* (1971)*,* and several other Supreme Court rulings on exceptions to the Constitution's exclusionary rule, the rule intended to bar illegally obtained evidence from being used in prosecutions.

> With so many exceptions, any police officer informed of the law would realize there was virtually always some potential to make use of illegally seized material, or un-Miranda-ized testimony, in some way… The existence of previous exceptions made any new exception a sure thing. (Campbell, 2004, p. 107)

This authority is, however, formally limited in the case of the judge, who is granted wide discretion primarily "in order to distinguish between the relative blameworthiness of individuals" (Hessick, p. 148n). While these moral overtones are suppressed, this holds true as well for the reputable critic and the teacher subject to standards-based evaluation. Discussing the ambiguous ambit of international courts, Mohamed Shahabuddeen (2010) observes that "judicial creativity

cannot be used to fill any conceivable gap in the law," and "(j)udicial creativity is not license for unregulated action." And yet, in these courts, judicial creativity "is intrinsic and fundamental to the judicial process. It does not have to be justified under any more specific grant of jurisdiction" (p. 187).

But this creativity must not announce itself, appearing rather as mindful obedience—a performance typical of modern authority figures, and surprisingly characteristic of the anxiety of influence among artists. Applied to the law, such obedience resembles the instinctive choices made by artists. Reflecting upon the intuitive, analogical approach to common-law judicial decisions based on using precedent to derive rules, Larry Alexander and Emily Sherwin (2009) conclude that, if only by preserving a tradition of studying applied cases, this traditional form of interpretation is superior (in their realist paradigm) to a rigorously rational philosophical approach. "Experience tells us that, in fact, we do follow rules without reflection," they say. "Assuming this is true, we must follow the rules without the assistance of philosophy, which tells us that unreflective rule following is not rational" (p. 243).

In the same volume, Stephen D. Smith (2009) describes the concept of rational jurisprudence taken up by philosophers of law as not only undesirable but delusional. Smith claims that, while lawyers and judges insist that "legal arguments and decisions are not attempting to ascertain and give effect to some preexisting hidden or transcendental model" (p. 254), this is exactly what they do in practice. One reason he suggests for this ongoing fidelity within the legal community to a phantom moral absolute is that this projection may "enhance its aura of authenticity and impartiality" (p. 255). For the judicial Constitutional originalist, this aura may apply to an unambiguous founding document. Such an aura should never be overlooked when attempting to understand the boundary-setting power of a teacher—as when George H.

Taylor (2009), from the same volume on realist jurisprudence, concludes his rumination on legal creativity with a recommendation to include imaginative applied exercises in law school curricula (p. 86).

Jacques Rancière (2010) similarly disputes the aura of pedagogical rationalism presented in Theodor Adorno's *Kulturkritik,* which Rancière describes as "part of the Romantic re-enchantment that has expanded *ad infinitum* the sensorium of art as the field of disused objects encrypting a culture" (p. 128). Adorno is known for demanding a form of political truth from art; he favors art that acknowledges itself as a self-aware fiction, through its "powerlessness and superfluity in the empirical world" (1970/1997, p. 144). For him this anti-mimetic modesty, this confessional quality, is an indication of autonomy. In contrast to Adorno, Guy Debord, renowned theorist of the "spectacle," reflected in 1961:

> The critic is someone who makes a spectacle out of his very condition as a spectator — a specialized and therefore ideal spectator, expressing his ideas and feelings *about* a work in which he does not really participate. He re-presents, restages, his own nonintervention in the spectacle. (para. 8)

But the line-drawing authority of the critic has been appropriated by artists themselves, creating the conditions for Tamms Year Ten to be considered as an artwork. Theorist Boris Groys, (2014) notes:

> Art activists do not want to merely criticize the art system or the general political and social conditions under which this system functions. Rather, they want to change these conditions by means of art—not so much inside the art system but outside it, in reality itself. (para. 1)

Critic Gregory Sholette (2016) suggests: “Conceptual artists may have opened the door to this ontological evasiveness in the 1960s when they stated that they were going to serve as their own art critics and theorists” (para. 5).

Legal theater, staged expression before the authorities and/or before the people, including dramatic impersonation, has long been an element of the rhetorical training received by barristers, lawmakers, and bureaucrats—emphasized in the writings of Quintilian (Enders, 1992, p. 56), but present at least since the time of Plato, who called lawyers “the authors of a tragedy” (as cited on p. 56). One relatively recent example of the creative dialectic engaged in political struggles can be seen in the exposure of the FBI’s COINTELPRO program, in which numerous advocacy organizations were infiltrated and hundreds of activists were targeted for investigation, framing, or assassination in the 1960s. The program was first revealed by an oppositional performance: a carefully planned burglary of an FBI office in 1971 by a group calling itself The Citizens’ Commission to Investigate the FBI—a burglary that involved costumed impersonations for both the scouting and the break-in. This burglary led eventually to the People’s Law Office in Chicago, through a long civil suit beginning in 1976, exposing thousands of documents on the FBI’s operations against the Black Panther Party in Chicago (Taylor, 2013). A later example of creative judicial resistance is the costumed figure Superbarrio Goméz in Mexico City, possibly one individual or a small group of performers who saved over 1500 people from eviction through the courts between 1987 and 1992, and who still continue(s) to make public appearances (Camnitzer, 2007, p. 257).

Describing the kind of strategic mimetic reversal seen so often in politics, Nikole Hannah-Jones (2015) writes about how the deployment of white college applicant Abigail Fisher, in a conservative legal challenge to Affirmative Action in college admissions, echoed a

precedent tactic used by the NAACP during the civil rights era, when they challenged laws using plaintiffs "who would elicit both sympathy and outrage" (para. 4). This actually echoes a strategy that groups advocating civil rights have used ever since the staged conflict that resulted in the infamous "separate but equal" decision in *Plessy v. Ferguson* (1896). In fact, the matter at issue in the equally famous reversal of *Plessy,* the school integration decision in *Brown v. Board of Education* (1955), was actually whether or not groups had the Constitutional right to pursue such a test case—a ruling that not only upheld the equity of access to education, but the dramatic nature of litigation (*More Perfect,* 2016).

In the twentieth century, artists, like lawyers, began to use the judgment of critics as material for the setting of artistic precedent. The iconic artwork associated with the Dadaists, Marcel Duchamp's immortal "readymade" sculpture *Fountain*, a urinal signed with Duchamp's pseudonym "R. Mutt," found its fame through being rejected for exhibition in 1917 by renowned painters Rockwell Kent and George Bellows, representing the Society of Independent Artists. Thierry de Duve (2014) says that "Duchamp alias Mutt had chosen the object so as to make sure it would be rejected. He had set a trap" (p. 308). Duchamp challenged assertions of aesthetic freedom after the collapse of the Beaux-Arts system through the presentation of what might be thought of as a test case. The verdict passed on him redounded instead on to those who passed judgment. In doing so, he exposed a double standard, but he did not merely overturn a law. Naming a urinal art is an action, a legal reclassification, for which the object is just a placeholder.[7] Huey Copeland (2013) makes an incisive analogy between readymades and legal

[7] On the topic of precedent, it is appropriate here to note that there is a dispute over the authorship of *Fountain*, which Julian Spalding and Glyn Thompson (2014), following the scholarship of Irene Gammel and Amelia Jones, attribute to the German artist, writer, and

subjection, saying that, long before Duchamp "turned a urinal into a work of art through a series of enunciative acts in 1917, Black bodies were subject to even more arbitrary and binding shifts in their categorical status, ready-mades *avant la lettre*" (p. 18). The double-edged nature of precedent, illuminated by Copeland's comparison, shaped the aesthetic and practical development of the Tamms campaign.

2.4 Performance advocacy

Hearings, meetings, and lobbying are actions that Reynolds regards as Tamms Year Ten performances, but she has worked on many projects that incorporate a more traditional idea of spectatorship. TY10 actions helped to create publicity around issues of solitary confinement, like a 2009 protest in which TY10 members brought ten corrections, written on tablets in the manner of the Ten Commandments, to the office of the Chicago Tribune in response to an opinion piece it had run on the new Illinois Governor Pat Quinn's efforts to reform Tamms. There was a parade for the tablets, a picketing circle, and addresses made by former inmates. TY10 representatives ended up meeting with the editorial board ahead of this protest, and members on the street below floated helium balloons with messages written on them, controlled like kites, up to the high floor on which the board was meeting.

Creating creative cards to hand legislators, inspired by sources as far afield as performance artist Adrian Piper and affirmational mantras, would remain a recurring format used

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baroness Elsa, born Else Plotz in 1874. In this account, the work is a protest against the U.S. entry into World War I, with Duchamp only claiming authorship in 1950, after Stieglitz's death.

by the group. Reynolds gave speeches in university and cultural spaces nationwide on her work with TY10, which got the project support within the art community. She continued to work with family members and other artists, activists, and community members, through rallies, vigils, mud-stenciling campaigns, press conferences, and several other formats, such as the collaborative project "Supermax Subscriptions," in which people could donate frequent-flyer miles in order to buy magazine subscriptions for Tamms prisoners.

While working with Tamms families in 2001, Reynolds visited Tamms with State Representative Lou Jones and was able to speak with inmates about their experiences in isolation.[8] Although in a meeting with corrections officials in 2009 she was told that Tamms prisoners were allowed to get together and play Monopoly, Reynolds was, by that point, able to show that those prisoners were in a room together, but isolated in separate Plexiglass cages, termed "therapy booths." Inmates would be brought to this room for this kind of "social" interaction, or for counseling, but mostly for occasional television viewing. Even this slight relief from the near-total sensory deprivation of the Tamms cells, Reynolds told me, was the result (the sole result) of a protracted lawsuit led by attorney Jean Snyder to get the prison to establish a mental health unit. The therapy booth Monopoly game provided material for a re-enactment of memorable TY10 moments that members, including released prisoners, put on as a public performance at Chicago's Links Hall in 2009.

[8] After founding Tamms Year Ten, she went to Tamms again in 2008 with Representative Eddie Washington and Malcolm Young of the John Howard Association, at the invitation of IDOC, but was stopped at the door by officials sent in a state helicopter. She returned in 2012 and was admitted.

An image TY10 has made use of in rallies and photo opportunities since 2012 is the protest sign "I AM A MAN," which the American Federation of State, County, and Municipal Employees (AFSCME) famously used in a 1968 Memphis sanitation workers' strike publicly supported by Martin Luther King, Jr. immediately before his assassination. In Illinois in the 21st century, AFSCME, also the union which represents Illinois prison guards, had been the strongest political force in the state opposing prison reforms advocated by TY10. When mothers of Tamms prisoners marched on the AFSCME headquarters in Chicago on the anniversary of King's death in 2012, many carried the sign "I AM A MOM," while other signs read, "MY SON IS NOT A PAYCHECK," and "TORTURE IS NOT A CAREER." Pseudonymized TY10 volunteer Carol Wilcox mentioned that Reynolds consulted with and got the blessing of the original artist behind the "I AM A MAN" signs (personal communication, July 17, 2014). These slogans added to the slogan repertoire, as "TAMMS IS TORTURE" shirts and signs had been featured in performances and actions for years. Other artists have also used this sign as a reference point. Prominent African-American painter Glenn Ligon has created two works, *Untitled (I Am a Man)* (1988) and *Condition Report* (2000), based on the iconic sanitation workers' sign, and political art provocateur Dread Scott did a simple performance negating the statement in *I Am Not A Man* (2009). Queer performance artists Sharon Hayes and Dazié Grego have separately used this sign and slogan to challenge and play with ideas of rights and gender.

Since the closing of Tamms, Reynolds' primary focus has shifted from solitary confinement to sex offender registries. In the U.S., these registries continue over time to expand, both in the numbers of people publicly punished, over 800,000 in 2017 (Feige, 2017), and in the severity of the sanctions they carry. In April 2017, Reynolds organized two events within the space of a week, events which memorably illuminated her practice and outlook. In the first event,

held at the University of Chicago's School of Social Service Administration in conjunction with the annual social practice conference Open Engagement, she and advocate for sexual assault victims Lynne Johnson held an event in which people affected by underage sexual violence and some people who perpetuated similarly aggressive acts., were able to tell their stories to the crowd. After this, state legislators, lawyers, and activists spoke about the progress being made to restrain sex-offender registry expansion and overreach through the courts, the State House, and grassroots organizing. The following week, as part of an event titled "What is an Artistic Practice of Human Rights?" Reynolds directed a group performance at the Logan Center, also at the University of Chicago, which had many of the same individuals on stage giving testimony similar (often identical) to that they had given the week previous. However, the work also included spoken word poetry, stand-up comedy, and a child actor who performed famous monologues from movies such as *The Jerk, Full Metal Jacket,* and *Taxi Driver.* And, filling the role of the chorus in Greek tragedy, there was a small audience on stage, whose reactions were caught on camera and displayed on a large screen to the off-stage audience.

Such fluid political theatre, as with Boal's Theater of the Oppressed, and his "legislative theater," may be among the most pedagogical of the arts. In visual art, the establishment of the Bauhaus art school was a landmark moment in modernism, that could also be considered a collective utopian endeavor, much like the Rudolf-Steiner-inspired chalkboard performances of Joseph Beuys. The introduction of electronic communications technology, as with the work of Experiments with Art and Technology in the early 1970s, brought visionary pedagogy directly into contact with fine art. Made popular by figures such as Buckminster Fuller, this utopian-pedagogical conceptualism has continued to influence the art world, just as education became the

battleground for civil rights. Recently many social practice projects, like the Bruce High Quality Foundation, have carried on this legacy.

A close colleague of Reynolds and an activist who opposes and repeatedly runs afoul of one of the world's few remaining revolutionary regimes, Cuban artist Tania Bruguera positions herself explicitly as a teacher in some projects, implicitly in others. Not only in her straightforwardly pedagogical pieces like *Arte de Conducta,* a discussion and "training" group in Havana that lasted from 2002-2009, but in works like *Tatlin's Whisper #5,* a 2008 performance in which mounted police used crowd-control techniques on Tate Modern visitors (reminiscent of Marta Minujin's 1965 Happening *Suceso Plastico,* involving a crowd hemmed in by police motorcycles), or the 2012 piece *Tanks,* in which, also at the Tate, visitors were subjected to a lie-detector test about their citizenship and immigrant status. As with Johnny Spencer's *Site-Seeing*, mentioned above, *Tatlin's Whisper #5* was not officially documented by the Tate. Bruguera impersonated the police, even hinting at the infamous police code of silence, but was clearly operating from the position of a radical museum educator. These pieces offered a transformative experience of improvement; she has referred often to her work as "arte de conducta," or "behavior art."

From "behavior art" it seems like only a small leap to relate this to an "art" that many teachers are familiar with as "classroom management." Jacques Rancière is known for comparing schools to police (Bingham, Biesta, and Rancière, 2010), which, in the many American urban public schools staffed by "school resource officers," would make a great deal of sense. But, particularly after the modern drop in tolerance for corporal punishment in schools, and in societies such as the U.S. without any traditional reverence for teachers, the teacher's is a form of authority founded on a demand for obedience that, while it is nearly always backed up

with various threats, is recognized as thoroughly formal. To obey a teacher is in a way similar to obeying a scarecrow. This is not a result of classroom conflict, but in a sense the cause of these conflicts. Theodor Adorno (1965/1998) compares teachers to other officials, but takes note of the low esteem in which they are held.

> Judges and administrative functionaries by contrast are delegated real power, whereas public awareness probably does not take seriously the power a teacher has, since that power is wielded over people who are not considered legal subjects having fully equal rights, that is, children. The teacher's power is resented because it only parodies the real power that is so admired. (p. 181)

As Adorno goes on to say, it's not hard to see any adult with such power as a sadistic tyrant. Adorno himself as a critic finding fault with much mainstream artistic expression cuts an analogous figure, which is why the essay reads like a work of veiled or unintentional self-deprecation. But it's not only the imbalance of power that fosters contempt for the teacher and critic, but also the fact that they, like lawyers and judges, parrot the words and ideas of others. And all of these figures claim authority through words by sanctioning a definitive interpretation. While a number of impressive artworks claim such an authority, and are carried out under the pedagogical heading of what could be called "judicial aesthetics." it's important to recognize that such work has both an affinity with and a distance from a project like Tamms Year Ten, in which members work together toward a long-term outcome, speaking rather than repeating.

2.5 Litigation versus lobbying

In January 2016, the Uptown People's Law Center in Chicago (UPLC) was successful in a class-action lawsuit that sought to improve Illinois prisoners' access to mental health services, and to reduce the use of solitary confinement (Quandt, 2016). The home page of the UPLC states that the office is dedicated to "(f)ighting for the rights of prisoners, tenants, & disabled people in Illinois" (Uptown People's Law Office, n.d.). It has been one of the few organizations in the U.S. suing on behalf of incarcerated people to protest the conditions of their confinement, ever since the Prison Litigation Reform Act made it through Congress in 1996, a bill that Marie Gottschalk (2015) says has "made it extremely difficult to hold state officials and prison administrators accountable for the unsafe and degrading conductions of their facilities" (p. 44). The office's executive director, Alan Mills (personal communication, 2016), described how their work to improve the conditions of confinement for Illinois prisoners began with a single class-action case they worked on from 1982 through the mid-1990s, that began with a man from the Uptown neighborhood where the office is based, and became a wider battle about giving people detained in segregation "meaningful access to the courts." They lost the case, but made connections with many jailhouse lawyers. They fought the building of the Tamms supermax facility in the mid-1990s, and then ended up working with men who were sent there- the first of whom was Marcus Chapman, a prisoner at the Stateville state prison that Mills' office had successfully represented in a case involving confiscated possessions. Just days after Chapman's settlement was finalized, he was sent to Tamms, and the office began investigating by making contacts within the prison. "We fairly quickly learned that it was full of litigators," Mills said; "Five of our clients ended up being sent there within the first month or two."

He then learned that men sent to Tamms had no hearings before being transferred, and the office filed a class action suit against the Illinois Department of Corrections in 2000 alleging that men were sent there as retaliation and in violation of due process. At about this time the office also began producing a newsletter for incarcerated men at Tamms and their families. The case they filed remained undecided at the time Tamms was closed in 2013. But through the newsletter, and various litigators' efforts to communicate with prisoners' friends and loved ones, the circulation outside the institution surpassed 1000. Many of these individuals started to form a mutual support network--through which, Mills attests, they were able to come to understand that their sons, brothers, and fathers were telling similar stories about the arbitrary nature of their punishment. By the time Mills became involved in 2001, these family members had formed an advocacy group which called itself the Tamms Committee. Working with lawyers Jean Snyder from the MacArthur Justice Center, which issued the 2000 report on Tamms and torture, and Jim Chapman, who in 1998 founded the Illinois Institute of Community Law and Affairs, to study criminal recidivism, the family members organized bus trips to visit their relatives, which for a time received help from the Uptown People's Law Center.

Laurie Jo Reynolds 's 2001 collaborative exhibit "Ask Me!," a series of booths featuring groups and individuals with a variety of forms of expertise (such as sexual roleplay, conscientious objector status,, Iraqi sanctions, televised soul music, mixology, Islam, the Power Rangers, and sexual abuse and body image), included a booth for members of the Tamms Committee. Every booth had a sign, and theirs said, "Ask me about Tamms." Visitors learned that men at Tamms spent 23 hours a day in solitary confinement and essentially lived in conditions of long-term sensory deprivation. The Tamms Committee representative spoke about their "hallucinations, psychosis, self-mutilation, and suicide attempts" (2014b), symptoms of a

condition the psychiatrist Stuart Grassian has studied for over 30 years, and dubbed "SHU Syndrome" (2006), after the Special Housing Units of supermax prisons.[9]

Along with other artists, musicians, poets, and activists in Chicago, Reynolds co-founded the Tamms Poetry Committee in 2006. The Poetry Committee was organized to correspond with inmates around writing poems, and offering a space for socializing and emotional support. At this point, Reynolds's work was as pedagogical as many conceptualist art pieces that have utilized the medium of written instructions. The Tamms Poetry Committee focused on helping incarcerated men and their families in a variety of ways, but it came together around the creation and exchange of poems.

Poetry is, to step back, an artistic medium with a varied political history. Strongman military leaders from Frederick the Great of Prussia to Serbian war criminal Radovan Karadžić have written poetry, and have placed great importance on the righteous force of language. Of course poetry has at least as often served a revolutionary cause, as well as no discernible cause whatsoever, but can abet violence through the action of the "obscenely permissive superego" (Žižek, 2014, para. 3). The poet, the judge, the critic, and the teacher are all participants in Lacan's Symbolic, in which language defines the limits that stoke transgressive desire. But the silence demanded by teachers and judges reminds us of the inarticulate demand made by the superego to control and direct the torrent of elusive meanings. The superego role of an art teacher's classroom usually consists of extolling students to behave freely and seek pleasure. It negates the negativity of the usual classroom regime, instilling anxiety via "the lack of the prohibition that would sustain desire" (Žižek, 2003, p. 56). The art-teaching paradigm most

[9] Recent research (Venters 2014) supports the high incidence of self-harm among prisoners in solitary confinement.

associated with guided enjoyment is often termed "self-expression," reflecting a belief in the ability of the individual to benefit from the intrinsic or therapeutic qualities of self-directed artwork. In doing so, the pupil is trained to actualize her authentic self *within limits*, appropriating the limited sovereignty of the artist.

In a way, this tension between the artist and the teacher illuminates the distance that developed between the UPLC and the Tamms Committee, and eventually Tamms Year Ten, formed by Reynolds in 2008 with members of the Tamms Poetry Committee, eventually including Tamms family members (mostly women) and formerly incarcerated men. TY10 advocated for men in Tamms, but now with a dedicated focus on lobbying for legislative policy changes. Mills was invited to speak with IDOC officials, and family members gave testimony at legislative hearings alongside volunteers, all organized by Reynolds. Mills recalls that "Laurie Jo did a great job of organizing" and reflects that "that's where the art part continued, both in terms of providing support to the men at Tamms, and just as a way of broadcasting to the world that this is what's going on down there." "I thought that was extraordinarily effective," he said, "both in terms of humanizing the guys at Tamms, and also in terms of getting people involved who wouldn't normally be prison activists." Citing the esoteric procedure of the courts, Mills said, "it's hard to get people to be involved in a lawsuit, so I really welcomed the idea that there was something easier to organize ordinary people around than a lawsuit." He sees the goals of litigation and artistic advocacy as similarly oriented toward getting the attention of powerful officials and the general public, using stories of specific individuals.

But Mills and Reynolds disagreed on pursuing a legislative strategy. Mills thought there was no chance of passing a bill to close Tamms, and Laurie Jo absolutely did. Eventually her lobbying work was pivotal to closing Tamms, but the closure was enacted through the executive

branch. Mills (2017) has written online about the difficulty of addressing IDOC policies legislatively, as lawmakers give wide discretion to departments in creating administrative regulations, a process that is overseen in Illinois by a bipartisan legislative committee known as the Joint Committee on Adminstrative Rules, or JCAR. While its website indicates that it offers a public forum for reviewing how general laws become specific policies regarding, for example, solitary confinement within IDOC facilities, Mills writes that "the entire process is pretty opaque… The system is designed so that only professional lobbyists can be expected to keep track of the process. Ordinary citizens don't have a chance" (para. 5). As a case in point, Mills says that at the last minute JCAR rescheduled a meeting on IDOC rules that he was driving from Chicago in order to attend, and, at that meeting, "unanimously approved the rules proposed by the department" (para. 1).

For her part, rather than working through the courts, Reynolds' goal was to give a public voice to men who had been incarcerated at Tamms, and to communicate directly with progressive state representatives like Julie Hamos and Art Turner, who helped to oversee the Illinois Department of Corrections (IDOC), in order to propose and lobby for reform legislation. Eight years of lawsuits had achieved little, Reynolds believed, even in some unfavorable rulings actually setting harmful precedents. "By pressing the issue," Reynolds said, referring to the work of prison reform allies working through the courts, "we did make supermax prisons Constitutional." "You can win," she said, "but if you don't win politically, you don't really win" (personal communication, April 20, 2014). Citing Keramet Reiter, Lisa Guenther (2013) notes in regard to solitary confinement that "many district and federal courts have ended up inscribing a 'just measure of deprivation' within the law, even in cases where they have explicitly affirmed prisoners' human rights" (loc. 2842, Kindle ed.). Reiter (2016) notes that scrutiny of prisoner

abuse at the Pelican Bay supermax state prison in California by the federal judiciary led to an oversight regime, but also has allowed a principle called "legal endogeneity" to emerge, in which prisoner rights declared by courts become in practice privileges that must be earned (p. 5). Ilana Gershon (2011) has commented that "laws in their originary moment in legislatures are widely understood to be the product of compromise, even shared disagreements ... as laws travel into courts, this divisive origin, with its transformative potential, often moves into the background" (p. 169).

Reynolds invited Mills to sit in on meetings with corrections officials. However, Mills' clinic, which was pursuing much of the litigation on behalf of Tamms prisoners, did not want to share information or work in any public capacity, for fear of endangering the prisoners politically (Scott McFarland, personal communication, February 23, 2014). Also, other members of the Tamms Committee, which also included family members of inmates, was not interested in doing PR and lobbying for fear of retaliatory action on the inside at Tamms. For his part, Mills recounted that correctional officials often wouldn't communicate with Reynolds or the Tamms Poetry Committee (later Tamms Year Ten) because of the pending lawsuit, and that legislators, many of whom were not only uninformed on prisons but actually didn't know about Tamms' existence (likely true for most Illinois residents), tended to defer to correctional officials. Years later in 2012, surviving a Senate override and being written back into the budget in the House, Governor Pat Quinn's line item veto ended up closing the prison. Also in that year, the Uptown People's Law Center had a favorable ruling on their due process claim, which resulted in inmates getting transferred out (despite all of them losing the hearings they were granted), which Mills felt had something to do with the closure—although it may be fair to say instead that the political movement to close the prison influenced the court decision.

In 2016 the overuse of segregation was pursued in the state legislature by Illinois State Representative La Shawn Ford, who became interested in the issue through "Sentenced: Architecture & Human Rights," a traveling show of art by prisoners in segregation, including a mock solitary cell, that the Uptown People's Law Center set up at the Chicago art space operated by *In These Times* magazine in 2015. Inspired by a mock cell fabricated by the National Religious Campaign Against Torture, Mills has done presentations on solitary confinement in which viewers can enter a stripped-down version of the mock cell, which he stores in his basement when not in use. The ongoing project "Prisoners' Inventions," an installation and 2003 booklet organized by the social practice art collective Temporary Services, also made use of a mock solitary cell. Though he makes no claim to be an artist, Mills also expresses a wider vision, saying "I don't look at the judicial system as being the ultimate solution." In a sense, Mills can be fruitfully compared to conceptual artists who make use of the law as a medium of their work, a tool for justice or for satire, but not a tool that can ultimately be transformed, or transformative. "Lawyers aren't going to change anything," Mills has stated (personal communication, February 10, 2017). On an aesthetic note, however, it should be mentioned that the UPLC fundraising emails often adopt a far less modest tone—a tone that on occasion could be said to challenge the boundaries of good taste.

Nuances of taste aside, Mills' litigation echoes a history of artistic gestures. After 1963, when conceptual sculptor Robert Morris issued a notarized "deposition" (Rosenberg, 1970/1999) denying aesthetic value to one of his own sculptures, literal examples of artistic autonomy operating through judicial authority have become numerous. There's the Canadian landowner and artist Peter von Tiesenhausen, who kept mining interests at bay by declaring his property an artwork and defending it under copyright law (Fung, 2010), and Khaled Hourani's self-

explanatory 2011 project based on loopholes in Lebanese law, *A Manifesto Declaring Palestinian Refugees in Lebanon as an Art Community Until Proven Otherwise*. The British artist Carey Young appropriates legal discourse in videos, installations, and performances that reference the language of legal documents such as wills, national constitutions, and commercial contracts. American artist Jill Magid (2016) has been working, with the blessing of the Mexican government and the family of renowned Mexican architect Luis Barragán, to convince the copyright holder of Barragán's personal papers to make them public, going so far as to write up a contract and create a ring adorned with a diamond formed from Barragán's ashes. Photographer Taryn Simon has made a number of works about the signing of international treaties. And the readymades that Cameron Rowland showed in 2016 at Artists Space in New York were commercial goods fabricated for manufacturers that contracted prison labor; Rowland also showed *Disgorgement*, a set of framed legal documents establishing a trust to pay reparations through the sale of shares of Aetna, an insurance company which once insured slaves as slaveowner property. On the other hand, in a case before the U.S. Supreme Court in 2017, Jack Phillips, a religiously conservative bakery owner, claimed the right to refuse to bake a gay couple's wedding cake on the basis of Phillips' self-description as a "cake artist". And in a lawsuit backed by right-wing tech billionaire Peter Thiel in 2016, star professional wrestler Hulk Hogan used an artistic separation of his personal identity and his identity as a performer in order to justify litigation against a news website, Gawker. The site was shuttered as a result of the lawsuit.

Conceptual art can intentionally overlap with litigation, as in the mock trials put on by the Dadaists (Witkovsky, 2004). More recently, the architect Eyal Weizman has led a collaborative group known as Forensic Architecture, a collaboration between architects, designers,

filmmakers, lawyers, scientists, and others, that seeks to enact what Weizman calls a “forensis", a practice of investigation that acts as something of a “counter-forensics”, pursuing goals of advancing human rights through a sophisticated reading of objects in relation to law. Weizman (2015) talks about buildings and other objects as both present in themselves, and representative of their histories and interactions.

> Buildings are dynamic entities. They’re continuously undergoing deformation, and deformation is information. The deterioration of a building over a long period of time is a diagram of the environment around it, a diagram of its use, of its material properties and their internal relations, the relationship of the various material bits that compose a building. And this is always a historical diagram. (35:12- 35:33)

But his approach to truth appears to be more straightforward than his poetic appreciation of physical evidence might suggest. Weizman has worked with the United Nations, and Forensic Architecture has advocated for human rights in 13 countries. The group was, for example. involved in litigating against a border wall in the Israeli-occupied Gaza Strip, artfully achieving victory with a tactical argument focusing on environmental impact. Inadvertently describing the contemplative approach of all judicial art, David Huber (2017) writes that “Forensic Architecture has found a way to direct the techniques of the aesthete back on to the world” (p. 77).

The 2017 European art festival Documenta 14 featured a project led by Forensic Architecture, in which they displayed results from their investigation of a murder committed by a neo-Nazi organization in the festival’s host city of Kassel, Germany. Maria Eichhorn did a somewhat analogous project at the same Documenta festival, creating an institute to track down and return property stolen by the (original) Nazis. While praising Forensic Architecture’s

contribution, Hill Perlson (2017) notes that this is a notable departure from the usual efforts made by conceptual artists to challenge ideas of truth; of course this could apply to Eichhorn's piece as well. In fact, Perlson's headline implies that the "evidence" gathered by Forensic Architecture is in fact "not an artwork".

Along these lines, Forensic Architecture group member Susan Schuppli talks in a 2013 lecture about the formal aesthetic expectations that legitimize evidence presented to a court.

> Matter, in effect, only becomes a material witness when the complex histories entangled within objects are unfolded, translated, and formed into legible formats that can be offered up for public consideration and debate. The conventions surrounding which public forums are able to confer legitimacy upon the speech acts of objects, and which agreed-upon standards will permit material evidence to stand up to the scrutiny of epistemological frameworks that evaluate and pass judgment upon them, need of course to be continually queried and tested. (17:15- 17:46)

Describing the trials of accused Yugoslav war criminals at the International Criminal Court, Schuppli notes that defense attorneys were able to challenge the veracity of edited and degraded video presented by prosecutors because "the court always prefers unadulterated materials to assert the relative merits of the media entered into evidence" (21:18- 21:25). The "conventions" of these "legible formats" include a simultaneous transparency and authenticity that in effect comprise a judicial aesthetic, an aesthetic that can increasingly be seen in art as well as in law. As artists working in the legal sphere, Forensic Architecture themselves offer an example of what sociologist (and occasional curator) Bruno Latour describes as an emerging "aesthetics of proof", in which "everybody, everywhere in art is doing research," such that a "multiplicity of

interpretation" now exists "in science as well as in art" (Halsall, 2012, p. 964).

The word "symbol," the fundamental interpretive unit in law as well as art, derives etymologically from "objects broken to record debt contracts" (Graeber, 2011, p. 298). Numerous artists, from Dada and Surrealism through to conceptualism, have used instructions, rules, and parameters, to curators and audiences or for themselves, as integral elements of artworks; turning the artwork into a sort of contract can be seen as a significant aspect of avant-garde art. Evoking the judicial advocacy pursued by Forensic Architecture, many artists, including Reynolds, have created work in which customized works are made at the request of a politically subjected population, essentially fulfilling a contract—a commissioned work in which the commissioner's identity enters the work's content. In Reynolds' case there is the *Photo Requests From Solitary* initiative, begun in 2009, in which artists took on the assignment of creating photographic images based on inmates' specifications. Some requests were whimsical, like J-Lo's butt in a video with Ben Affleck, two kids at the piano with a rose, or a black-and-white image of an old-fashioned clown writing a letter with a quill pen, while some are personal, like wanting an image of the inmate's mother in front of a mansion with a Hummer and a pile of cash, or an image of the inmate himself with a blue sky in the background. Some were more logistically challenging: one prisoner wanted to see all the members of the Tamms Year Ten group in one shot, and another wanted to see a prayer vigil on his behalf near the giant Bald Knob Cross in downstate Illinois. The photos have been exhibited in Santa Monica and Brooklyn, and have brought a lot of national and international attention to the project, including press in the U.K. and an *Al Jazeera* article, also helping the group to get some financial support. While TY10 made images from the *Photo Requests From Solitary* series into legislative action postcards, distributing them throughout the Illinois Statehouse, and also hung images in the

Statehouse hallway where the group did their lobbying, the origin of the work is in an informational transaction.

The work evokes the task-based, equally whimsical photos and texts of Sophie Calle, documents that, in something of a legislative spirit, Yves-Alain Bois said "admit exhibits as evidence" and display a "judicial relation to reality" (as cited in Demos, 2013, p. 117); another analogy is the task-based work of American artist Emily Jacir, whose series *Where We Come From* (2001-3) records the artist using her legal freedom of movement to perform acts on behalf of Palestinians denied such movement. Jacir played soccer with a randomly-chosen boy, visited the grave of a man's mother, watered a tree, and did many other modest deeds, documented in photos depicting the act rather than person requesting the act. The framing question that Jacir employed was, "If I could do something for you, anywhere in Palestine, what would it be?" (as cited in Demos, 2013, p. 103). Jacques Rancière (2010) dismissively refers to such work as examples of "the *pedagogical* model of the efficacy of art" (p. 136, emphasis original).

Almost as if in response to Rancière's repudiation of conceptualist artwork based on political communication, a contemporary American comedy show on the Comedy Central network, *Nathan For You,* removes all sober pretense in its use of legal contracts and loopholes, sometimes in relation to art, to create absurd and uncomfortable situations under the auspices of offering marketing consulting services to small businesses. In one program, host Nathan Fielder helps a bar to get around a non-smoking ordinance by staging the everyday activities of the bar as a theatrical performance, even hiring actors to minutely reproduce a recorded evening of typical spontaneous socialization. In another episode, which got widespread press attention, he proposed that a local coffee shop could appropriate the Starbucks brand under fair use law, declaring the store a satirical art project under the name "Dumb Starbucks;" rumors apparently

circulated that the whole affair was a prank by the anti-corporate "culture jammer" street artist Banksy. In another, he prepares a class-action lawsuit against Best Buy when the electronics retailer frustrates his attempt to help a local small competitor through a ludicrous exploitation of the corporation's "price match guarantee." And in a stunt with relevance to Reynolds' work, Fielder created a escape act in which, if he could not pick a handcuff lock, a robot would pull down his pants in front of an audience of children, an event that he made sure, with a retired judge and a police officer in attendance, would get him convicted as a sex offender. While the show studiously avoids any appearance of explicit commentary, the humor is simultaneously at the expense of political institutions, businesses (from sympathetic small entrepreneurs to impersonal corporations), and contemporary avant-garde *détournement,* all thanks to open-ended cultural and legal definitions.

But these definitions, in the context of law, seem constantly to be striving toward certitude. Describing the visionary philosophy of Charles Fourier, Roland Barthes (1971/1976) notes that Fourier attempts total specificity with his language; Barthes comments that "the context… has all the ingratitude of law: it reduces polysemy, it clips the wings of the signifier: doesn't all poetry consist in liberating the word from its context? Doesn't all philosophy consist in putting it back?" (p. 91).[10] Echoing this opposition of poetry and law, Hegel describes a fundamental aesthetic resistance to legalism through a comparison of the classical eras of Rome and Greece.

> To be just a Roman, to visualize in his own personal energies the Roman state, the fatherland and its grandeur and power, this is the seriousness and dignity of Roman

[10] This does overlook a dissent in the 2002 *Porreco v. Porreco* case by Pennsylvania Supreme Court Justice Michael Eakin, which he wrote in seven rhyming stanzas (Kleefeld 2010).

> virtue. Heroes, on the other hand, are individuals who undertake and accomplish the entirety of an action, actuated by the independence of their character and caprice… But this immediate unity of the substantial with the individuality of inclination, impulses, and will is inherent in Greek virtue, so that individuality is a law to itself, without being subjected to an independently subsisting law, judgment, and tribunal. (1835/1975, p. 185)

This "aesthetic" element of politics in Hegel is not pointing at universal liberation, however, as Hegel elsewhere describes slavery, as practiced by the ancient Greeks, as "a necessary condition for aesthetic democracy" (*Philosophy of History,* p. 254). In the north European heroic epic *Beowulf,* it has been noted that the king Hrothgar contracts with the champion Beowulf, and that the public display of the monster Grendel's severed arm as a trophy provides legitimate provocation for the vengeful incursion of Grendel's mother (Kiernan, 1984; Day, 1999); in a sense this story, like many such confrontations, can be seen as depicting litigation by other means. As Oliver Wendell Holmes (1881/1963) asserts, "the various forms of liability known to modern law spring from the common ground of revenge" (p. 33). Ironically then, the outspoken, uncompromising stances of litigators like Mills and others associated with the Uptown People's Law Center may look less institutionally constrained and more aesthetically free, while the more compromising artistic gestures of Laurie Jo Reynolds and Tamms Year Ten rely on a nuanced choreographed negotiation, the harmonizing of wills that is required for both leadership and artistic success.

Robert Brandom (2002) represents the common-law judge, who works from precedents rather than statute, as an embodiment of how for Hegel a collective spirit comes into being through the apparently free decisions of individuals. Yet even the most morally (or aesthetically) refined judge, lawyer, teacher, or critic impersonates the solitary sovereignty bestowed by an

institution, while even the most didactic, collectivist, or hidebound artist, if and when they identify as an artist, represents an inscrutable collectivity—perhaps unless they cross into "judicial art," and join the former group. The general lack of understanding that I generally run across as to what would make an advocacy campaign a work of art, even among diehard members of that campaign, wouldn't necessarily apply to a piece from a series such as *Photo Requests From Solitary,* or Jacir's *Where We Come From*. It's not only the fact that there are photos, though a specified object helps to convince skeptics at least of the existence of an art piece; it's that there's communication.

An individual photo may have its formal merits or pitfalls, but a great many viewers would likely accept the premise that the artwork being based on a task is part of its story. However, an opaque artistic gesture, like Minimalist sculptor Richard Serra's obstructive public sculpture *Tilted Arc,* can make many viewers angry—and in Serra's case, the artist lost a lawsuit and the sculpture was removed (Chave, 1990). Modern art in general confounds the laws of mimetic transaction that once took place through clear visual representation. But now art makes its laws in dialogue with a relatively small representational constituency, asserting autonomy in a negotiation of acceptable compromises, treating the law as a mutable image and not a fixed text.

Chapter 3: The jury and legislative aesthetics

3.1 The microcosm of democracy

Because of their incompleteness, images also leave room for interpretation. In discussing judicial aesthetics above, I both link and oppose the ambiguity in legal interpretation to the ambiguity faced by the silent object of adjudication, isolated in segregated detention. What begins with presumably impartial discretion winds up in a meaningless dead end. Writing in 1929 of Picasso's *Three Dancers,* George Bataille effects a roughly similar comparison when he muses,

> If the forms brought together on a canvas had no repercussion,… then painting at the very most would be good for distracting people from their rage, as do bars or American films. But why hesitate to write that when Picasso paints, the dislocation of form leads to that of thought, that is to say, that the immediate intellectual movement, that in other cases leads to the idea, aborts. (1985, p. 24)

Bataille's discussion of representation as not merely imperfect but self-destructive hints at aspects of art that I will discuss under the heading of "administrative aesthetics." Yet Bataille here shares a common thread with Gayatri Spivak's thoughts (1988) on overlapping but differing definitions of representation in the postcolonial context, in which interpretation operates in a more judicial mode. For Spivak, the aesthetic sense of "speaking about" is inevitably linked to the political sense of "speaking for" (pp. 275-276). Despite their incompatible outlooks, Spivak and Bataille both point from their opposing perspective to a problem that comes up any time a political and/or aesthetic vision is articulated, made immanent in paint or policy, which the

representation immediately fails. The actual disappoints the fantasy. In doing so, it seems to call for its own destruction.

Lacan's Imaginary domain speaks to representation, whether in the sense of a baby noticing herself in a mirror, or the artist's prerogative to reflect the world back to itself in a striking and memorable way, or someone speaking on behalf of their community in a political setting. Representation is not so much about precise verisimilitude, but rather is seeks to elicit an intuition of meaning that induces a satisfying sense of recognition, a process that is repeated through the formation of identity, and a process that is key to both political and artistic representation. The Imaginary is theatrical when the jury acts as a chorus for an accused protagonist, and the Imaginary is legislative when both statues and statutes are crafted to wishfully rectify the distance between moral compulsions and the particular conflicts that create social anxieties. At the same time, the jury (as an ideal) exists to acquit, opposing the prosecutor, just as a legislature (as an ideal) exists to obstruct, negating the authority of the executive. One of Ireland's greatest national heroes, Charles Stewart Parnell, is renowned for a masterful performance of Parliamentary procedure in which he bogged down the British House of Commons in endless irrelevant speeches. His tactics led in 1882 to an episode referred to as a "crisis of obstruction." Despite countless such examples of subterfuge, the juror and the legislator are often seen (and often portray themselves) as untutored and intuitive representatives of a social group. Their status as popular representatives hinges on a lack of distinction, and certainly eschews formal connoisseurship. In a word, they are philistines.

Tamms Year Ten approached the Tamms supermax prison not as another conceptualist art project might, as a discursive subject to be reimagined, but as an abomination to be negated. In this the group acted in thrall to fantasy no less than any other ideological project. The clarity

of their mission was at the core of their shared identity. But the project depended on the philistine claims that art could exist almost entirely outside of contemplation, and that political performance could succeed almost exclusively on political terms, with its framing as a performance coming across almost as a nominal afterthought.

While art has been pressed into service for every political, religious, and economic regime in history, including Adorno's modern "culture industry," the economically exceptional nature of art is what even makes modern philistinism possible. Or rather, it could be said, philistinism is what makes modern art possible. Philistinism willfully ignores the status of art, a status that Dave Beech (2016) describes as a "mode of production" (p. 217) whose appeal depends on its apparent transcendence of any mundane social framework.

> An economics of art is never developed within classical economics because art's prices and artistic labor do not help explain and promote the laws of supply and demand on which economic science turned. (p. 77)

Of course it is possible to take the liberty, as this essay does, of looking at exceptional political gestures as intrinsically aesthetic, and the apparently static abstractions of artistic gestures as having numerous historical functions. Just as Banu Bargu (2016) identifies a formal novelty in the political deployment by Turkish prison activists of self-destructive acts such as hunger strikes and suicide bombs, in which ascetic practices have taken on new social value, the Tamms Year Ten project can similarly be seen as claiming formal novelty through its use of traditional organizing strategies and institutionalized legal entities to oppose the sadistic creativity of a hyper-punitive institution. I want to argue that this philistinism is not only externally constitutive of the category of art, as it was widely understood beginning in the twentieth century, but also the key factor that made philistinic modernist provocation possible.

With the blurring of class distinctions in post-industrial societies and the appearance of mass philistinism, the designation of something like a lobbying campaign as artwork may rest to a degree in an attitude of being willing to compare this artwork to other formally similar objects. In this spirit, the work of TY10 (when considered as artwork) looks somewhat like the work of a jury—a small group pursuing public justice, but often through private conversations in confined spaces. In writing about TY10, Christina Aushana (2014) discusses this very aspect of the group's work, describing "borrowed conference rooms where they meet with prison officials to plea (sic) on behalf of their loved ones, temporary gallery spaces that serve as a home base for their campaign materials, and in the in-between spaces of hallways and corners of restaurants" (p. 289). In this they retained an artistic fidelity to purpose that didn't achieve its completion in a finite series of ideas and objects in distinct spaces, attached to a lesson or a principle. Instead of being available to a viewership, the project was unfrozen and difficult to view and comprehend, as every effort was bound up with the ongoing campaign to close a specific prison. A sketch of the historic role of juries, and similar community interventions in the legal apparatus, can shed light on the way that activist groups aesthetically act upon legislative policymaking.

Alexis de Tocqueville (1835/2010) was skeptical of the jury's judicial effectiveness, but praised its political role, saying, "the institution of the jury really puts the leadership of society into the hands of the people" (p. 445). He comments on the jury as fundamental to American democracy, with a role equivalent to the legislature in expressing popular values.

> The jury forms the part of the nation charged with ensuring the execution of the laws, as the legislative houses are the part of the nation charged with making the laws; and for society to be governed in a fixed and uniform manner, it is necessary that the list of jurors be expanded or restricted with the list of voters. (p. 447).

And yet juries, through the intervention of prosecutors (Pfaff, 2017), have helped to establish an anti-democratic regime of incarceration. Discussing Supreme Court Justice John Marshall's opinion in an 1833 ruling, Gary Gerstle (2015) states that the "theory of power on which the authority of the states rested… sanctioned illiberal policies in the name of the people" (pp. 67-68). Much like de Tocqueville's assessment of juries, Gerstle suggests that "state governments were thought of as embodiments of the people" (p. 67)—and of course American state governments imprison not only the majority of American inmates, but a far higher proportion of their citizens than do nation-states worldwide. In all these invocations of "the people," trust and power are placed in the hands of the non-expert, who may or may not be concerned with the preservation of justice or democracy.

Presumed to be (or idealized as) lacking in formal preparation for their roles, the roles of the juror and the legislator are in some ways like that of the so-called "outsider artist." As with the freedom given to judges to create law through interpretation, the intuitive lawmaking freedom of the American jury is inherited from the English common law, under which community members, enrolled as spectators, were expected to be able to intuitively assess the character and thus the trustworthiness of defendants and witnesses. While the legislature has its own long history, its fundamental dilemmas of representation and compromise are demonstrated in microcosm with the direct role of the jury in (purportedly) providing a reflection of local will in determining eligibility for punishment—a practice carried out in the early days of juries through painful and sometimes fatal ordeals, such as the well-known immersion in water of those accused of witchcraft. If simple adherence to absolute standards were the sole measure of legitimacy, as in Kant's determinant judgment, there would be no need for the juror who can

supposedly locate the rule reflectively, thus operating like the untrained artist or the authentically "popular" democratic representative, versus the allegedly rational judge, teacher, or critic.

Jury trials may be thought of as a draconian instrument of mob rule, as in the aforementioned witchcraft trials. But along with the ordeal, a physical torment intended to prove or disprove accusations of supernatural maleficence, the medieval English jury, introduced by Henry II in the 12th century, was an intercession between accusation and punishment intended to introduce the possibility of mercy under the harsh laws of the land. Jury trials resulted in less frequent and severe sanctions than in cases of unmediated punishment by magistrates or other authorities (Hale, 2016). Representative juries existed to acquit, thereby providing "a way to protect subjects from officialdom" (p. 29). Today, the legacy of largely unpunished police murders of unarmed Black men, women, and children has been accomplished largely through the grand jury process, with the non-indictment of Darren Wilson, the officer who shot and killed Michael Brown in Ferguson, Missouri in 2014, as a landmark example.

This could be attributed to the historic tendency of juries in trials to find predominantly in favor of defendants. But grand juries, which issue indictments rather than verdicts, almost always vote to indict, with Federal grand juries voting to indict 99.99% of the time; a major exception at the state and local level is cases involving police use of deadly force (Goldfarb 2014). As Bernard Harcourt (2016) points out, the Wilson decision was carefully staged by the prosecutor, Robert McCullough, in order to not only get the desired decision but to sow doubt in the general public as to Wilson's culpability, and even to create the impression that there had been a trial (pp. 22-26). Also, even with actual jury trials, this hasn't necessarily been the case across the board over the last thirty years, as Federal bench verdicts have become much more lenient, and

Federal jury verdicts much less so, concurrent with the imposition of Federal and state sentencing guidelines from 1989 to 2002 in conjunction with the War on Drugs (Leipold, 2005).

A reason for this shift, such as it is, may be that the role of the jury has gone from protection from officialdom, to protection from people of color. The Duke University finding (Anwar, Bayer, and Hjalmarsson, 2012) that all-white jury pools in Florida convict Black defendants at a substantially higher rate than white defendants is unsurprising. But nonetheless, given that English juries originated in an era when laws were severe, and there was no lack of violent, unruly behavior that could result, unless unchecked, in a politically unsustainable rate of execution, it could be argued that such a situation pertained also in the U.S., where jury trials perhaps reduced lynchings, but at the cost of contributing to a scale of racialized incarceration that is internationally and historically unique, as well as becoming an enormous source of strain on many communities.

In the 1986 *Batson v. Kentucky* decision, the U.S. Supreme Court tried to make juries racially representative, thereby restoring this function of mercy. But the decision was greeted with skepticism by Thurgood Marshall, the Court's first Black justice.

> Even if all parties approach the court's mandate with the best of conscious intentions, that mandate requires them to confront and overcome their own racism on all levels—a challenge I doubt all of them can meet. (as cited in Hale, 2016, p. 264).

Indeed, as it turns out, it didn't take long for prosecutors to begin training each other on how to circumvent the *Batson* ruling (Edelman, 2015, para. 8). In allowing racism to pervert the inclination of representative juries to acquit, we can see direct ways in which race has affected democracy through the artistic mechanisms of legal ambiguity.

As shown in the trial of Rodney King's police assailants, and with recent videotaped killings by police, the same images that spark a rebellion in the streets can be used in court to manufacture an unfair acquittal. But the act of acquittal can itself be a rebellion. Refusal to acknowledge evidence and abide by existing law, an act termed "nullification," has been a hallmark of prominent recent jury verdicts, with the 1995 acquittal of O.J. Simpson as perhaps the most infamous example (Hale, 2016, p. 311). As pointed up by that memorable verdict, acts of jury nullification are both praised and deplored. While the jury's "right to say no" may be considered "far removed from the partnership in judging in which the republican jury participated" (p. 307), some have claimed that the surge of jury nullifications, as popular acts of resistance against legal authority, have provided "more direct control over the making of laws than the current system allows," and "a second institution through which the people can and should exercise law-making and law-rejecting powers," expressing "a right to enact… communal or personal norms in direct contravention of formally enacted laws" (all cited on p. 310). That such a trend has arisen alongside a greater freedom for prosecutorial peremptory challenges in jury selection, as well as the sharp decline in jury trials (and trials generally), offers all the more reason to assert the trend's significance. In the privacy of a chamber, a small group of non-experts can negate unjust laws.

In a similar act of negation, the popular network of extralegal abolitionist resistance known as the Underground Railroad succeeded against legal repression that increased throughout the antebellum period, when a block comprising seven percent of the South's population formed a "plantocracy" that effectively ran the country. As W. E. B. DuBois (1935) puts it:

> It had in American history chosen eleven out of sixteen Presidents, seventeen out of twenty-eight Judges of the Supreme Court, fourteen out of nineteen Attorneys- General,

> twenty-one out of thirty-three Speakers of the House, eighty out of one hundred thirty-four Foreign Ministers. (p. 47)

Through an ongoing commitment to a "states' rights" doctrine, southern U.S. Senators and Congressmen protected the generally unpopular institution of slavery for the first 70 years of the republic, just as state governments had both before and after the Revolution: through the exploitation of legal language and procedure. Republicans William Henry Seward and Abraham Lincoln were among the many antislavery campaigners who described the antebellum Federal government as a "slave power," in which authority was both hoarded and limited in scope by a small number of highly-placed slaveowning agricultural oligarchs, and maintained by Southern officials at the Federal level, abetted by Northern "doughface" Democrats (Richards, 2000). Beginning with the "three-fifths" clause in the Constitution, which allowed slaves to be counted in determining legislative representation, and continuing with laws to allow the pursuit of fugitive slaves, to silence and imprison abolitionists, and to force new states to adopt pro-slavery policies, obfuscation and obstruction were key to the outsize legislative victories of wealthy Southern planter interests.

It could be said that the Underground Railroad provided many Americans with the merciful intercession that neither the courts nor the legislature would provide, and it did so through artful acts of evasion. In opposition to the Congressional distortion of popular opposition to plantation owners, but also to pervasive racism among whites of all regions and nationalities, free and enslaved Americans and Canadians of African descent worked, both with and without the help of sympathetic whites, to make the most of international legal and political dissonance and ambiguity. Some emancipated slaves and free Blacks mounted legal challenges to their

enslavement, but they also crossed the border in the thousands, primarily through performances of minutely orchestrated redirection and subterfuge.

One example among many is the ruse undertaken by the escaping slaves Adam and Sarah Crosswhite, who took the trouble of disposing of all of their family furniture in a bog, so that their pursuers would think they had left with all of their belongings and thus misjudge the speed of their journey (Marty, 2016, p. 202). Ellen and William Craft traveled to freedom with Ellen disguised as a white man and William posing as her servant. Ellen hid her face and disguised her voice by binding her jaw, and put her arm in a sling to avoid revealing her inability to write (Holmes, 2010). And in acts that subvert images of Africans' kidnapping, imprisonment, and commodification that are now reiterated in solitary confinement, Harriet Jacobs spent seven years hiding in a tiny attic crawl space, while Henry Brown successfully had himself shipped in a box from Richmond to Philadelphia. Such heroic acts were supported by an array of Black and white Americans, reflecting a general consensus that, despite endemic racism, largely opposed the South's consolidation of regional power. Among other measures, this was expressed in the North through "personal liberty laws" that forbade cooperation with slave catchers and allowed jury trials for fugitive slaves.

A group that I have worked with through a university program at an Illinois state prison is trying to serve a similar function. Creating a safe and confidential space for a small group of incarcerated men to discuss childhood trauma and neighborhood violence has not only provided group members with a strong support system and a model for community intervention, it has helped members to connect and contribute, through an outside member who sat on the Illinois Governor's Criminal Justice Reform Commission, to the process of re-evaluating sentencing and parole in one of the nation's most crowded and racially distorted correctional systems. Working

within IDOC, the group has created and intends to create opportunities for incarcerated and paroled people, as well as people in their home neighborhoods, to address the role of policing and state punishment in their collective existence. One of our key commitments is to egalitarian participation and consensus decision-making—the erasure of distinctions. Our relative protection from direct IDOC oversight is key to the atmosphere of trust the group has been able to preserve.

Along with the (ideally) merciful jury in its chamber and the Underground Railroad network of secret compartments, isolation has been a tool of liberation, providing potent models for understanding the work of Tamms Year Ten as a private as well as a public effort. Lobbyists among and opposed to other lobbyists, TY10 sometimes deployed the language of art as a means of communication; yet the group produced few images. Slogans proliferated, like "Stop Torture in Illinois" laid out in an outline of Illinois on a large ground covering used at public events, but not the faces and conditions of the men for whom they advocated—except for the faces of the formerly incarcerated who appeared at events in person as advocates. Nonetheless, whether absent or present, imagery remains central to the concerns of legislative art. The crusader may pursue an inner vision, but outwardly this crusader often evokes the unrefined philistine.

3.2 Iconoclasm, sacrifice, and consensus

Maps have long been used to represent political claims. The 1648 treaty reached by European states at Westphalia, which first established national boundaries on a continental basis, is a signature example. Other early modern examples include the maps that indigenous communities in the Yucatán created in order to negotiate land allocations with the Spanish

during the early days of colonial occupation (Solari, 2013). The use of images makes a statement of sovereignty concrete and immediately comprehensible, and also gives such a statement an appearance of factual, empirical authority. But this authoritative embodiment, which lends an appearance of certainty to a contingent claim, arouses strong feelings. Beyond disagreements over maps, though, disputes over images have long been a means to resolve or instigate violent conflicts.

While the work of Tamms Year Ten was not primarily visual, debating laws has always involved the contestation and even desecration of images. In its tireless work to shut down Tamms, to take it off of the correctional map, TY10 was an iconoclastic and even philistine project—skeptical of beauty but enamored of action, going beyond the bureaucratic conceptualist anti-aesthete as described by Buchloh. In 415 B.C., the escape from Athens and defection to Sparta by the famous statesman, orator, and general Alcibiades was precipitated by the disfigurement of numerous public religious statues of Hermes, an act blamed on him and his associates. Occasioning denunciations by his political enemies and stoking popular outrage, the vandalism occurred just before the planned Athenian assault on Sicily. The ancient historian Thucydides (1910/2004), who served as an Athenian general, paraphrases Alcibiades' speech to the Spartan ephors, in which, attempting to gain the Spartans' trust, Alcibiades describes the circumstances of his departure from Athens:

> Our party was that of the whole people, our creed being to do our part in preserving the form of government under which the city enjoyed the utmost greatness and freedom, and which we had found existing. As for democracy, the men of sense among us knew what it was, and I perhaps as well as any, as I have the more cause to complain of it; but there is nothing new to be said of a patent absurdity — meanwhile we did not think it safe to alter

it under the pressure of your hostility. (p. 316)

In this frank assessment of democracy, as well as in the long string of maneuvers and shifting allegiances through which Alcibiades eventually regained his status as an Athenian citizen, we can see one definition of "legislative art"—a negotiation of status in which images and theatrics are props for an assertion of power, and in which unexpected shifts of fortune are to be expected. In Plato's primary *Alcibiades* dialogue, Socrates extols virtue by comparing the practices of warmaking and of teaching to the arts of gymnastics and music, while Alcibiades asserts that war need only have the *appearance* of justice. In his essay on "transference," Lacan would describe the iconoclastic outlaw Alcibiades, destroyer of religious fetishes, as coming, through this eroticized dialogue, to fetishize Socrates himself (Fink, 2015).

Two millennia later, with the calling of the Long Parliament in November 1640 against the background of a revolutionary rollback of monarchical and church authority, English Puritans mobilized to petition the legislature to pursue the very action of which Alcibiades was accused—the deliberate destruction of religious images. One way they did this was actually through the creation of and distribution of images, simple woodcuts, but the primary medium was writing, with the creation of polemical tracts and satirical verses (Spraggon, 2003, p. 32). The splendor of the Church was one source of sinful visual opulence, but this could not be dissociated from the finery of the court (Agamben, 2011). Along these lines, the Puritan opposition to the theatre could be linked to their opposition to the Crown, exemplified by the elaborately staged European courtly masque performances of the 16th and 17th centuries, created to flatter and glorify the monarch. No matter how empty of meaning, the formal impact of official theatrics can hardly be overstated (Zupančič, 2006, p. 174). While Puritans were relentless in their deprecation of the arts, it could be said that this political anti-art writing was a

novel form of creativity—perhaps realized most spectacularly in Titus Oates' 1678 invention of an anti-Protestant "popish plot" to overthrow the king, a fabrication spread through printed media but given credence by Parliament and many other officials. Creative prose and poetry additionally found its way into Puritan and Catholic print narratives of redemptive punishment in imprisonments and executions, derived from popular "murder tracts" (Lake, 2002).

In these iconoclastic gestures may be seen the genesis of conceptual art, as a form of petitioning for the erasure of cultural tendencies believed to be somehow false. The rage of condemnation and the substitution of image with language are both inseparable from modern art, but have a long history, as in the American legacy of freed slaves creatively destroying the art treasures of their masters. One highlight of this history, recounted by Jennifer Van Horn (2017), involves an African-American woman's public destruction in 1865 of a sculpted bust of the pro-slavery Senator John C. Calhoun (p. 134). This event resonates with a 2016 incident in which Corey Menafee, an African-American dishwasher at Yale University, deliberately smashed a stained-glass window depicting an image of Black slaves, in a building named for the very same Senator Calhoun. Activist Bree Newsome brought down the Confederate flag from the South Carolina state capitol in that same year, setting the precedent for Takiyah Thompson, who in 2017 led the group that brought down a Confederate war monument in Durham, North Carolina. As it so happens, 2016 was also the year of the first legal decision naming cultural destruction as a war crime; the contrite defendant was an Islamist militant leader sentenced by the International Criminal Court for the destruction of ancient mausoleums at a United Nations World Heritage Site in Timbuktu.

Not all legislative-aesthetic gestures are iconoclastic in this way, although they may involve another violent visual erasure: the sacrificial punishment of scapegoats. Scapegoats of

concern to Reynolds have long included the staff-assaulting prisoner, or the sex offender. French republican political philosopher Jean de Dieu d'Olivier published an "Essay on the Art of Legislation" (1815/2009). He described the design of a law much as modernist designers and architects would discuss functional structures. "Haven't we established that the great art of legislation comes down to reducing its rules to their most simple form?," d'Olivier asks. "We could say that in our art, less is more" (p. 31). He addresses the budding lawmaker In a calm reasonable tone of pedagogical advice, reminiscent of Socrates advising Alcibiades. But as Socratic dialogues often portend the poisonous hemlock Socrates would eventually be forced to drink, we can sense with d'Olivier the shadow of the guillotine, a device described at the time of its invention by the Jesuit-trained Dr. Guillotin as a "philanthropic machine" (Derrida, 2014, p. 270)—and a machine that created its own (allegedly painless) visual spectacle (Graybill, 2006). Or we could look forward to the time when French colonial authorities in Algeria, projecting a façade of humanity, observed five rules for the proper conduct of torture, including that it never be done in front of children, or by "sadists" (as cited in Peters 1996, p. 178).

Indeed, with the advent of the post-revolutionary Reign of Terror, France entered into an era of increasingly violent popular spectacle (Graybill, 2006). But reassuringly, d'Olivier tells us: "Have not the French, who are descendants of Gallic people, shown that, under peaceful princes and friends of the fine arts, they could set the tone of Europe in the kindest civility?" (p. 102). But he says also that "the art of legislation becomes very difficult, since it consists in the organization of a censorship that obstructs neither too much nor too little a fair liberty" (p. 136)—bringing to mind the cosmetic labor invoked by British parliamentarian Edmund Burke, a fierce critic of revolutionary France, who observed, "there is a sacred veil to be drawn over the beginnings of all government" (cited in Ward & Waller, 1914, p. 23). We can see the aesthetic

function of the allegedly humane practice of segregated detention even before the French Revolution. In his aforementioned pamphlet condemning public spectacles of punishment, the American Benjamin Rush proposed isolation as a space of imposed self-reflection (1783/2005). This overdetermined privacy, invisibility as a form of protective spiritual retreat, was much like the "solitary reverie" invoked in the same year as Rush's pamphlet by French revolutionary Jean-Jacques Rousseau (1783/2009).

By contrast, the judicial theater of the Reign of Terror, overseen by a Revolutionary Tribunal that included a twelve-man jury, provides an exemplar for Joseph Stalin's show trials, the public condemnations of the Chinese Cultural Revolution, and the hearings of the House Un-American Activities Committee (HUAC), the main stage for the American "Red Scare" of the 1950s. Many creative individuals went before the Committee, and used it as a stage, as in 1953, when Lionel Stander announced his refusal to perform without a paycheck, and when Jerry Rubin wore a Revolutionary soldier costume to testify in 1966 (Camnitzer, 2007, p. 276n). Tony Perucci (2012) examines the HUAC interrogation of legendary performer Paul Robeson as a form of both repressive and emancipatory performance. But an exceptional example is Harvey Matusow, a writer and performer by trade who, as a former Communist, worked as an aide to Senator Joseph McCarthy and gave a significant amount of testimony dedicated to informing on fellow radicals, before recanting all of his accusations in a book entitled *False Witness*, and serving a prison sentence for perjury. During his time as a paid informant he was working on raising money to publish a book of poems, doing a stand-up act at a Washington nightclub that included an impression of Senator McCarthy, and promoting another book denouncing the anti-Communist magazine *Counterattack,* for which he had at one point served as editor (Lichtman &

Cohen, 2004, p. 96). Later in life he went on to produce an experimental music festival and to broadcast regularly on cable public access as a TV clown.

These contradictions perhaps make it easier to accept the appropriation of works by Abstract Expressionist painters Jackson Pollock, Willem de Kooning, and Mark Rothko as a tool of anti-Communist propaganda by the CIA,[11] at the same time artists were subpoenaed to appear before the HUAC. And the artifice undertaken by McCarthy himself should not be overlooked. While he had intervened on behalf of former Nazi officers after the war (Heartfield, 2012, p. 388), McCarthy borrowed the name of his House Un-American Activities Committee from the Special Committee on Un-American Activities, established in 1934 to investigate Nazi groups operating in the U.S. Referencing this original anti-Nazi Special Committee, but avoiding reference to McCarthy, conservative American politician Newt Gingrich more recently used the occasion of the bombing of a Miami nightclub by a professed Islamist to argue for a concerted campaign to root out "Islamic supremacists" (Bobic, 2016). These are just some of many moments of scapegoating legislative sacrifice in the U.S. that calls to mind René Girard's paradoxical idea of the divine victim (1999/2001).

In the case of the Tamms Correctional Center, this sacrificial aesthetic moment came in 1996 when Chicago news anchor Bill Kurtis released a 1988 video shot in prison of serial killer Richard Speck. In the video Speck, sporting breasts induced by taking smuggled hormones, wears only women's panties, snorts cocaine, and performs fellatio on another prisoner. The video was shown to Illinois state legislators in a packed session, and is considered to be a significant factor in the approval of Governor Jim Edgar's prison proposal (Eisenman, 2009, p. 40;

[11] "Parapolitics: Cultural Freedom and the Cold War" was a 2017 exhibition in Berlin that specifically addressed the use of art in pro-Western CIA propaganda.

Reynolds, personal communication April 20, 2014). The abject repugnance experienced by lawmakers viewing this tape translated more or less directly into the denial of sensation experienced by men in Tamms.

The brutal response to the provocation of Speck's shape-shifting body also calls to mind an earlier Chicago scapegoat: Linda Taylor, infamously demonized by Ronald Reagan as the "welfare queen," a name bestowed by the *Chicago Tribune* in the 1970s. While wildly unrepresentative of welfare recipients generally, she was reminiscent of both a performance artist and an escaping slave (cf. the case of Ellen Craft, mentioned above). She was a chameleonic figure who relentlessly gamed a system that offered minimal sustenance to marginalized populations. And, at least in Chicago, Taylor also ended up doing her part to boost newspaper sales.

> She allegedly had at least 31 addresses, 25 phone numbers, 3 cars (including one Cadillac) and several husbands (most dead and one 25 years her junior). Her physical form was as elusive as her legal identity. Investigators alleged she had 30 different wigs and had claimed benefits as a white, an African American, and a Filipina. (Kohler-Hausmann, 2007, p. 334).

Before being invoked in national politics, Taylor's media image was used to enact restrictive surveillance on people receiving Illinois state welfare payments, beginning as early as 1974—a trend that continued in President Bill Clinton's welfare reform, up through recent draconian Federal rules regarding food stamps.

The vehement reactions to Speck's provocative video and Taylor's renegade performances are reminiscent of the public outrage at many avant-garde artworks-- in particular, the "culture wars" over the National Endowment for the Arts, highlighted in 1989 when

Congressional conservative Jesse Helms denounced works by artists such as Robert Mapplethorpe, Andres Serrano, and Karen Finley on the floor of the U.S. Senate. A year earlier in Chicago, African-American artist Dread Scott Tyler had aroused the ire of President George H. W. Bush for displaying a piece entitled *What is the Proper Way to Display a U.S. Flag?,* an installation which invited viewers to walk on an American flag in order to view a photo of flag-draped coffins and write in a comment book. Condemned on the Senate floor, this piece helped to inspire anti-flag-desecration legislation that ended up being struck down by the Supreme Court. Tyler's piece also inspired a response piece by an art teacher, which encouraged viewers to walk on a tape outline of Tyler's presumably dead body in order to pay veneration to a flag on the wall (Thompson, 2016).

The outsize, pedagogically punitive reactions to the abject aesthetic impact of Speck and Taylor can be seen as both a reflection and extension of the NEA artists' attempts at representing sadism and deviant sexuality. Scapegoating has become institutionalized in many states through the adoption over the last two decades of criminal justice registries, which have been and remain a main focus of Reynolds' organizing efforts. The most well-known are sex offender registries, but in Illinois there are also registries for murder, arson, methamphetamine crimes, and violent crimes against youth. The popularity of such registries with legislators is simply a reflection of their popularity with the public; everyone wants to be on record supporting such measures, just as nobody wants to be on record opposing them. The proliferation of pedophilia imagery in legislative campaign advertising, familiar in Illinois but making national headlines in a 2016 North Carolina Senate race (Phillips, 2016), may help Reynolds to be understood as someone who may sometimes use images, but who opposes certain images with a will. The appeal of scapegoats underscore what makes the juror, the legislator, and the artist different from the

judge, administrator, or police officer (though not the teacher)—the presence of an audience. Often, the spectatorship is a two-way street.

In 1965, Yale political science professor James David Barber published a study of newcomers to the Connecticut state legislature. His narrative invoked a set of images, these being the four types he identified as representing fundamental characteristics of "freshman" legislators. One of these types is the Spectator, who does very little work to create, introduce, or work on legislation, but nonetheless claims to be interested in pursuing a legislative career. "Unlike other quiet legislators," writes Barber, "they place a high value on the legislature as entertainment." He cites a respondent who confesses, "there's pageantry, there's entertainment. And you can watch the people—I mean, I like to watch the people. And I'm sitting where I have a pretty good view" (p. 24). One legislator rapturously describes a beautiful table display at a legislative dinner party she attended:

> And on one side was a great big basket of flowers- real flowers. A great big floral display. On the other side was an ice-basket. One of those molded ice-baskets? And that had real flowers in it, too. And they had a spotlight on it. Different colors? And it was just a beautiful sight. And then the food was arranged—the turkey and the ham were cut real pretty and laid on trays with pansies and parsley and all kinds of decorations on it. (as cited on p. 49)

Despite the Spectator's lack of creative productivity, this type tends to help build consensus through ready acquiescence (pp. 65-66). Speaking of Spectators, Barber says:

> The legislator does not have to decide whether his constituents are wholly right or his party is wholly right. He does not have to resolve all their philosophical differences. He does not have to calculate how their preferences on all legislative issues, taken

> collectively, can be arranged in a transitive schedule maximizing rewards for both sides… The multiplicity of demands reaching the Spectator from different groups may simply multiply his opportunities for submission. He can "go along" with several of them at the same time. (p. 61)

While this sounds very unlike the unwavering focus that characterized the legislative work of TY10, the role of the Spectator as a mirror of the popular will does seem like a viable definition of an ideal lawmaker, juror, or artist: chosen for mainstream predictability rather than idiosyncratic individuality, never fixated on principle to the exclusion of compromise. There is an element of philistinism, an indifference to perfection, with the congenial Spectator as much as with the militant Puritan iconoclast. The role of submission in legislation is a theme I will return to.

Alongside the pleasure of submission, the pleasure of transgression, not only against the law but also through it and within it, often toying with written and unwritten laws of white supremacy, has fueled the enjoyment of modern art since its inception. As Charles Shepherdson summarizes Lacan, "we do not enjoy in spite of the law, but precisely because of it" (1995, n.p.). According to Karin Wieland, Filippo Tomasso Marinetti and the proto-Fascist Italian Futurists, active in the first decades of the twentieth century, "incorporated the methods of a political electoral campaign into art: newspapers, manifestos, public appearances, and scandals." (as cited in Groys, 2012, p. 207) Mock trials and other political spectacles were incorporated into public performances by the anarchic and anarchistic Dadaists, active in Zurich and Berlin after the First World War (Witkovsky, 2004). Before this, both reactionaries and revolutionaries made use of lawmaking imagery from Exodus in the turbulent decades following the French Revolution (Ribner, 1986), and the Paris Commune helped to establish the utopian but also legalistic

tradition of artists' manifestos (Federation of Artists, 1871/2016). Transgression is perhaps the most obvious link between art and law.

While her link to philistinism remains important, Laurie Jo Reynolds' location of art in law and action does not remove it from the realm of aesthetics, but ties it to the history of modern art. Aesthetics "is by no means free from laws," says Friedrich Schiller (1794/2004), even if "the mind in its aesthetic condition … acts freely and is in the highest degree free from all constraints." While Todd Cronan dismisses the idea that "the production and articulation of new formats is the occasion of new social realities," (2013, n.p.), his paraphrase of David Joselit's central claim in the book *After Art*, Joselit (2013) is just updating the Romantic view that a thing's "aesthetic character" can "relate to the totality of our various powers, without being a specific object for any one of them" (Schiller, p. 99). Hito Steyerl (2016) has observed that cell phone cameras use data-mining algorithims to construct a fictionally enhanced version of an otherwise low-resolution photograph, but this is obviously what portrait painters have done for centuries—creating an imaginary image that, like anyone campaigning or lobbying in the legislative process (such as Laurie Jo Reynolds and Tamms Year Ten), solicits the fantasmic engagement and consent of the subject.

3.3 Hearing the call

A moment of tragic awakening comes in Charlotte Bronté's *Jane Eyre,* when Jane encounters a hidden prisoner in her home. In the book's climactic crisis, Jane discovers that her fiancé Edward Rochester has a "dark" secret—Bertha Mason, a Creole "Negress" he met and

married in the West Indies, who was declared mad and has been locked up in the attic for a decade. A victim of torture, Bertha is portrayed as a wild beast, devoid of humanity— less a person than an allegory of maimed imperialist conscience brought to agonized life. Jane flees, only to wind up in the arms of St. John, a missionary who seeks to marry her and take her off to India. Eventually, with the independence granted to her by an inheritance, Jane returns to Rochester, now blind and incapacitated by Bertha's desperate final attempt at liberation, to act as his nursemaid, much like Antigone with her blind father Oedipus in exile. While it is far from clear that Bronté sympathizes with Bertha, the stench of guilt, drifting in from the hinterland of Empire, seeps through the whole novel.

While there are reasons to critique the thoroughly dehumanized figure of Bertha, Jane may perhaps be understood to hear in Rochester's appeals for her mercy the frustrated fury of the sadistic colonizer. In the other side of the colonizer-colonized dialectic, the Black Martiniquan psychoanalyst, critic, and revolutionary Frantz Fanon writes at length in his *Black Skin, White Masks* (1952/1986) of a traumatic experience of interpellation he experienced upon being called out in the street by a young white boy, who points Fanon out to his mother and says, "Look, a Negro!" (p. 84). In his last book *The Wretched of the Earth* (1961/1963) it could be said that the racialized self-estrangement Fanon describes in such excruciating detail in the earlier work finds its resolution and purpose when he rather reluctantly ends up working in Algeria, and then becoming a doctor supporting the militant Algerian resistance to the French. Throughout *The Wretched of the Earth*, Fanon refers to "we Algerians", indicating the sense of solidarity in international anti-colonial struggle that he movingly articulates throughout that volume.

The sacrificial scapegoat that Bertha represents, and the individual case studies that Fanon relates at the end of *The Wretched of the Earth,* are relevant for the sense of vocation that

would dawn upon Laurie Jo Reynolds when reading letters from men incarcerated at Tamms. As expressed in *Jane Eyre,* the sublime, à la Kant and Burke, is an experience of virtual death, the euphoria of disappearing like a speck in the vastness of nature. Like a zealot making demands in the name of a higher law, contravening Thomas Hobbes' assertion of law as strictly earthly and absolute, Reynolds apprehended her political and artistic mission in a flash of insight brought about by an apprehension of suffering. Jan Verwoert (2008) cites an anecdote Giorgio Agamben tells about the eminent Russian poet Anna Akhnatova:

> Standing outside a Leningrad prison in 1930 where her son was a political prisoner, a woman whose son was also imprisoned, addressed Akhmatova with the question: "Can you speak of this?" She realised that she had to respond yes— indeed she could—and in this moment found herself both indebted and empowered. (p. 101)

A comparable moment of decision would occur for Reynolds in 2008, when a realization would make her reframe her work as an artist, and refuse to continue working as she had previously. This revelation emerged from a newfound depth of empathy, directed toward action rather than, as with Wender's (2008) contemplative appreciation of police encounters, moments of ineffable aesthetic poignancy.

Regardless of how one chooses to respond, the experience of long-term solitary confinement is movingly expressed in stories of unrelenting interiority. Interviewed about his day-to-day life, a former long-term segregation inmate at Pelican Bay in California describes it as a thoroughly uncanny environment.

> …And it's quiet. Very quiet. And when you walk inside the unit, it's so quiet, you can't imagine that there's anybody there. And when you walk in the unit, you don't see bars. All you can see is doors, like that. And you can't even imagine there's people back there.

> … And what's even more creepy, when you go into the little SHU yard they have for us… Someone described it to me once… "Imagine yourself walking into a ten-feet empty pool, in the bottom… and you stand up, and that's all you see in the all around, the walls." (as cited in Reiter, 2016, p. 176)

Falsely charged Black Panther Albert Woodfox, who spent forty years in solitary in Louisiana, once told a psychologist: "It takes so much out of you just to try to make these walls, you know, go back to the normal place they belong," "Someday," he went on, "I'm not going to be able to deal with it. I'm not going to be able to pull those walls apart" (Aviv 2017, para. 65). Kalief Browder, arrested at age 16 on charges of theft he steadfastly denied, refusing to accept a plea deal, ended up spending two of his three years at New York's Rikers Island jail in solitary confinement. The charges were dismissed (likely because of national press coverage), but Browder committed suicide at age 22.

The capacity of long-term solitary confinement to cause permanent mental damage can be seen as a deepening and magnification of this immediately unnerving quality. Lisa Guenther (2013) reflects at length on the capacity that such an experience has to dissolve boundaries between self and world, and any grounding in space and time. Such spaces fail to rehabilitate prisoners or deter recidivism (Gordon, 2014; Frost and Monteiro, 2016), results that render it meaningless in the terms of social engineering, and so addressing these spaces at the level of aesthetics seems necessary, if insufficient.

Prolonged segregation is a brutally simple policy--minimalist, if you will-- that operates at the aesthetic level of a gesture, a wordless message that traps and immobilizes its subject like an image in a photograph. The utilitarian clarity of purpose that appeared in early prison designs based on Bentham's panopticon seemed to be a presentiment of modernist architecture, and this

functional austerity has continued, up through the cutting-edge, largely automated supermax facilities of today. The solitary cell is an embodiment of this austerity as a test of psychological endurance that clearly surpasses mere functionalism. The stern, bleak rectilinearity of Minimalist art and Brutalist architecture resonate aesthetically with the prison—Robert Morris' "steel cage-like constructions of 1967" (Chave, 1990, p. 55) provide a straightforward example. The Minimalism-influenced installation artist James Turrell has capitalized on the "fugue state" typical of isolated sensory deprivation (Rodney, 2016, para. 4), evoked in the immersive experiences offered in his 1990s "Soft Cell" series, as well as his "Perceptual Cell" series in the 2010s. These works, for all of their sublime power, simply represent the bliss of submission. An aesthetic gesture of resistance, like that of the (lowercase) brutalism it opposes, must perhaps manifest in the medium of law to be realized.

Borrowed from observations of Chinese political detention, as well as inherited from early American penitentiaries, solitary confinement as a technique of interrogation and re-education was studied and implemented experimentally in the early 1960s by the CIA as a tactic to be used against politically radical prisoners. One of these experimental programs was based in Illinois at the Federal facility in Marion, which hosted the first modern isolation unit in 1972, before effectively becoming the nation's first supermax with the 23-year lockdown that began in 1983 (Guenther, 2013). In 1997 Reynolds began working with the Committee to End the Marion Lockdown, opposing the solitary confinement of Puerto Rican political prisoners at this prison[12],

[12] The solitary confinement of political prisoners at Marion continues today, as with the case of Earth Liberation Front member Daniel McGowan, who in 2008 was placed in the segregated Communications Management Units (CMU) there without due process, apparently in response to his online writing (Slade, 2014).

which has come to be associated with the inauguration of widespread segregated detention practices to punish and intimidate prisoners in the U.S. (Jeffreys, 2014). Although solitary confinement in the U.S. dates back to 1790 with Philadelphia's Eastern State Penitentiary, this modern iteration of long-term isolation became institutionalized in Illinois in 1998 with the Tamms supermax, initially intended to house only inmates with severe disciplinary violations for no longer than one year. Neither restriction was observed.

Men who transferred into Tamms were locked in a solitary windowless cell for at least 23 hours per day, and denied nearly all human contact, an experience shown to cause severe mental anguish. The use of terror by correctional officers should not be overlooked either, as TY10 members told me. Johnnie Walton, who spent five years in Tamms and over forty behind bars, told me that guards in Tamms would physically torment inmates without provocation. Brenda Smith, whose son spent 14 years in Tamms, told me of a nearly fatal beating one prisoner received just before the closure of the facility. Walton spoke in particular about the SWAT team training that correctional officers started receiving in the late 1990s, in which swarming armored guards would not merely restrain but brutalize and intimidate unruly inmates. Walton reports:

> Eighty percent or ninety percent of these guards don't want no trouble. They just want to do their eight hours and get out of here. But you got ten percent that's gonna try to hurt you, they're gonna try to drive you, they're gonna try to break you. (personal communication, July 16, 2014)

But the usual fate of men in Tamms was a slow, wasting mental and physical collapse that Walton characterized as "death by deterioration."

The political origin of Tamms was in the response to an era in which gang authority structures were used to control prison populations, which promoted peace at the expense of state

authority, leading to a harsh crackdown. One factor was certainly the 1996 Richard Speck tape, which spurred public punitive outrage.[13] But changes brought about by the media-fueled backlash against gang authority in prison hardly resulted in success. Both within and outside prison walls, the dismantling of gang hierarchy led to more of a dispersal than a reduction of violence. At the whim of wardens, Illinois prisoners were transferred to Tamms without due process, although this transfer was widely claimed to only apply to persistent violators of prison safety rules. The brother of pseudonymized TY10 volunteer Carol Wilcox (personal communication, July 17, 2014) was taken out of his cell at the state's Menard prison in the middle of the night with no warning or recourse and transferred to Tamms, despite his clean disciplinary record. Brenda Smith (personal communication, July 15, 2014) believes that filing grievances was what put her son in Tamms, and kept him there.

The three main groups of Tamms prisoners ended up being highly litigious inmates like Smith's son, powerful gang members (most without serious prison disciplinary reports), and the severely mentally ill. Johnnie Walton brought up in his interview the use of Tamms to house the mentally ill, and also said that the existence of Tamms served officials in other Illinois prisons as a potent threat for prisoners who assaulted staff; Reynolds said that only six prisoners ever sent to Tamms had committed serious acts of violence while incarcerated. One of these was Joseph Dole (2016), who recounts a brutal and prolonged beating he received from staff at the state prison at Menard after punching a warden, resulting in his subsequently being transferred to

[13] A contemporaneous crackdown was the increased harshness of juvenile sentencing after the high-profile 1989 "Central Park Five" case, in which five teenage boys of color, convicted based on coerced confessions and plea bargains amid a media frenzy of lurid paranoid provocation, were exonerated after spending over a decade behind bars.

Tamms, and being denied due process or adequate legal recourse. More to the point, Wilcox related a quote from her brother that served as her call to action: “They’re sending me there to die.”

In 2006, the Tamms Poetry Committee began to hold public events in order to share prisoners’ letters, events that began building interest in the issues raised by the project. In early 2007, the group participated in the aforementioned exhibit “Captive Audience” at the University of Illinois at Chicago’s Gallery 400 space, a prison-themed show curated by artist Marc Fischer, affiliated with the collective Temporary Services. They displayed poems and responses from inmates, there was artwork by men at Tamms, and Reynolds installed her video “Space Ghost,” which juxtaposed audio of prisoners’ phone calls describing the effects of solitary confinement over footage of astronauts in space. They had a public event to write letters, and lawyers for and family members of Tamms inmates attended and shared information. This helped to build the group’s mailing list, and raised the level of public interest around issues at Tamms. At the end of that year the video was screened at the Hyde Park Art Center, and there was another informational event, which drew in a crowd less exclusively comprised of art enthusiasts. A former Tamms inmate was there, as well as a lawyer, and many more people who had signed up to receive updates from the Poetry Committee. They read from postcards and composed responses. Here Reynolds would hear her call.

In analyzing the rhetorical structure of Ignatius Loyola’s *Spiritual Exercises*, Roland Barthes (1971/1976) describes “mantic art,” a “language of interpellation” in which a “question addressed by man to the Divinity” receives "a “response sent by the Divinity to man” (p. 46). “The function,” he says, “… is to determine a choice, a decision” (p. 47). It was in this manner Reynolds had her breakthrough—appropriately expressed in parable form:

> Okay, the story is now a parable. There's an artist, and there's a man in the bottom of the well. The artist has the urge to tell people about him and to make art about him, and she does. At what point does the artist, who knows all about this man, try to get him out?... We sent letters and poetry to every prisoner in Tamms, to try to provide them with some social contact… But at a certain point, this 'man in the well' question came up from the prisoners themselves. One prisoner wrote, "Hey, this poetry is great, but can you please tell the governor what they're doing to us down here?" This prisoner was saying, "Take some political responsibility." (Reynolds, 2011)

Johnnie Walton, who was a committed member of Tamms Year Ten until his death in 2015, wrote the postcard to which Reynolds attributes her decision to change the direction of her activism. For her, as for Latin American artists in the early 1970s, according to Luis Camnitzer (2007), "making art, at least in its formalist version, stopped being the real issue. The aim became to organize a receptive community, which is a political issue" (p. 20). So it was at the origin of the "legislative art" project Tamms Year Ten: the creation of artworks turned into an effort to organize resistance to the prison.

3.4 The fight to close Tamms

In 2008, the tenth anniversary of the opening of Tamms, Reynolds helped to found Tamms Year Ten as a group dedicated to undertaking direct legislative action in opposition to violations of human rights at the facility. Reynolds sympathizes with advocates of prison abolition, but opposed a group name that called for closing the facility, as she recognized the political realities of this effort. Speaking of corrections and other public officials TY10 deals with, she said, "I maintain a radical critique of the current system, and they know it, but I see their structural obstacles, and I also see their good-faith efforts to turn the system around" (2014a). Instead, she chose a name, Tamms Year Ten, that would hold legislators accountable for the prison's first decade. "The men were originally supposed to be there for one year," says Reynolds, "but at that point one third of them had been there for the entire decade." She would continue to advocate for the closure of Tamms through developing warm, respectful relationships with as many representatives and administrators as could be helpful or feasible.

TY10 built relationships with sympathetic legislators through volunteering. The group's first action was to volunteer for State Representative Eddie Washington, one of the group's most committed early allies, who demonstrated the importance of meeting frequently with corrections officials. Their first legislative action was to appear at a hearing of the State House Prison Reform Committee. Committee member Julie Hamos, who became Illinois' chief health care administrator, offered TY10 numerous effective strategies for pursuing their legislative goals, as well as actively promoting the closure of Tamms. Shortly after that hearing, in April 2008, they introduced legislation to reform conditions at Tamms, and did so again less than a year later, in January 2009.

Reynolds made a point of lobbying members of the Black and Latino representative caucuses, and this continued throughout the campaign. TY10 started showing up at the capital in Springfield for lobbying days, at which members gave cards to state representatives in order to be invited to meetings in order to share concerns, and to advocate for the legislation the group had drafted. And, as Washington had encouraged, they met with administrators in the Illinois Department of Corrections.

> (W)e read, researched, filed Freedom of Information Act requests, extracted data from the public record and gathered statements from prisoners and their family members… Through forums, lobby days, press conferences, rallies, prayer vigils and parsley-eating contests, we gained the support of 70 organizations and 27 legislators for a reform bill sponsored by Hamos. She also initiated roundtable discussions between Tamms Year Ten, the IDOC and legislators. The highlight of these meetings was seeing the real experts—the men recently released from Tamms—confront their former captors. (Reynolds and Eisenman, 2013, para. 8)

Reynolds' partner Scott MacFarlane stated that at that moment, there was no widespread prison reform movement whatsoever (personal communication, May 9, 2014). The John Howard Association (JHA), a judicial watchdog organization, was focused solely on due process at that time, according to Reynolds. Still, Reynolds had a good relationship with director Malcolm Young, whom Reynolds invited to tour Tamms with her and Representative Washington in 2008. However, JHA was not addressing solitary confinement until the appointment of John Maki as the executive director in 2010.

Early on, TY10 got in touch with human rights monitors in order to pressure for legal changes, and started working closely with reporters. The group got former Tamms inmates

involved in speaking directly to legislative committees, supporting "second chance" legislation and fighting tough-on-crime bills backed by the AFSCME, the union representing all the state's prison guards. As mentioned earlier, in 2012 TY10 would hold the rally at AFSCME's Chicago headquarters at which mothers of Tamms prisoners held up signs with phrases such as, "I AM A MOM."

Illinois Governor Rod Blagojevich was indicted on corruption charges and impeached in January 2009, and the newly promoted Governor Pat Quinn appointed Michael Randle to head IDOC, a reformer concerned about mentally ill inmates who had closed a supermax prison in Ohio. Early on, Randle drafted a ten-point plan for reform at Tamms (2009), informed by legislation TY10 had proposed over the past two years. This plan advocated for a transparent review process for men transferred into the facility, mental and physical health evaluations, behavior-based privileges, access to education, religious services, and printed materials, opening up the facility to the media, transitional facilities for men transferring out, and reviews of the cases of long-term inmates at Tamms. In four months on the job, Randle oversaw the release of 1500 inmates. One point in the plan that was realized was the creation of a step-down unit for people being released from segregation (another term for solitary confinement). Another point that was implemented involved a review of the conditions and effects of segregated detention on prisoners subjected to it, with one finding being that segregation did nothing to prevent recidivism once inmates were returned to the general population or released. TY10 sponsored a "Party on the Right Side of History," in order to thank all who had supported the ten-point plan. And Reynolds began a positive working relationship with Governor Quinn, who would end up supporting the closing of Tamms starting in 2010 through using his veto power. Randle's plan was derailed in 2010, however, by a sensationalized scandal over an early release program for

offenders with short sentences, which led to him losing his position. This was when TY10 held the "Ten Commandments"-themed rally, protesting an editorial attacking Randle, outside of the offices of the *Chicago Tribune*.

After Randle's departure, Reynolds continued meeting with IDOC officials and Democratic leaders in order to press for reforms, and came up with the plan of lobbying to de-fund Tamms through working with State Representative Luis Arroyo. Arroyo pushed Reynolds to pursue this closure strategy by having TY10 attend and testify at IDOC hearings before the House Budget House Appropriations Committee. The committee was then chaired by Representative Karen Yarborough, a friend of TY10. At an appropriations meeting in April 2009, Arroyo showed up and shared letters he had received from human rights organizations decrying the conditions at Tamms. Other legislators joined in, with one asking corrections officials to describe a typical inmate's day in Tamms—a day which, it was revealed, would be profoundly uneventful. With Arroyo's help, TY10 effectively hijacked the proceedings, answering questions and sharing information about conditions at the prison, and made a big impact on conversations around state prison reform.

Arroyo decided that he would pursue the chairship of the Appropriations Committee, and successfully achieved it, remaining a reliable and powerful ally for TY10. Frustrated by another 2010 meeting about Tamms that included IDOC acting director Gladyse Taylor, along with Reynolds and other TY10 members, Arroyo decided to advocate for a Latino director; this was also successful, when Salvador Godinez, who had long been warden of the prison at Stateville, became director in 2011. Through her relationship with Arroyo, Reynolds was able to meet with Godinez early on in his tenure, and would continue to do so, often bringing along formerly incarcerated men, and doing so without needing to invite in legislators to legitimize the

discussion. Through Godinez, Reynolds would be able to have direct visits with men who had been incarcerated at Tamms when they were transferred out to the maximum-security prisons at Pontiac and Menard as part of their "step down" transition.

Despite relentless opposition from the prison guards' union, Director Godinez would prove to be a stalwart ally in the effort to close Tamms. Yet by implicating herself within the highest echelons of the prison system, Laurie Jo Reynolds was attempting peace negotiations with what many would consider a violent state apparatus. The embrace of impurity and ambiguity is a key element of the project's subtlety, as well as of its success. And its success also came about partially through Reynolds' claim that TY10 was an artwork.

3.5 Art supports activism

The women's health project Women on Waves, founded in 1999 by Dutch physician Rebecca Gompers, has spent years operating an abortion clinic at sea, docking at ports in areas in which legal abortions are difficult or impossible to obtain. The Women on Waves vessel will take any women who appear at the dock twenty miles out to sea, into international waters, in order to legally provide medical services the women are denied on the mainland, including the abortion pill. This is an effort that has a clear ethical imperative, and can be held up as a small but important activist gesture: not only for providing abortions, but for being symbolic ambassadors for women's health as a human rights issue. Beyond this, however, the group is

recognized as a significant social practice art project, boasting a number of high-profile exhibitions, and an appearance in Nato Thompson's important social practice catalog, *Living as Form* (2011).

Carrie Lambert-Beatty (2008) begins an essay on Women on Waves with aesthetic praise, describing this clinic housed in a floating shipping container as having "the stripped-down gleam of contemporary high design" (p. 309), and goes on, in a slightly labored fashion, to lay out the group's impressive artistic credentials (p, 313). But from the perspective of Gompers and other participants, the primary benefit Women on Waves has derived from appearing in high-profile exhibitions like the Venice Biennale is the elevation of the project's international profile, and consequently an increased awareness of abortion laws worldwide. Although Lambert-Beatty seeks a more poetic motivation for the engaging of contemporary art discourse, the funding to purchase and equip the portable clinic came from the Mondrian Foundation, a granting agency founded by the estate of landmark modernist painter Piet Mondrian (p. 316). And, in at least once instance, the boat's official status as art, rather than a medical clinic, stopped the group from being forcibly returned to the Netherlands (p. 322). These economic and legal incentives seem intimately linked to the mission of Women on Waves "to do media politics… by means of—medical service" (p. 320).

Similarly, identifying the project as art was a way that Reynolds hoped Tamms Year Ten might receive funding and recognition, as well as flexibility. The diligent and resourceful Reynolds has the latter item covered. Speaking of Reynolds, Melinda Gullen (2014) asserts: "As an artist, she is independent of the institutional hang-ups experienced by many advocacy groups and can remain responsive with her tactics" (p. 291). But support and resources are another matter. For years before she was appointed to a faculty position at the University of Illinois at

Chicago in 2014, Reynolds had hoped that getting a teaching job through an art department would enable her to use a college or university as a funding mechanism, as TY10 functioned for years without significant backing.

Throughout the history of the group, Reynolds worked with little to no funding, applying for grants but mostly running up debt, since the group's political activity prevented it from becoming a not-for-profit organization. But in the days of the Tamms Committee, Reynolds received valuable volunteer assistance from local activists: Nadya Pittendrigh on administration and database development, and Josh Jones, who worked in the office of the Attorney General. Family members of Tamms prisoners have assisted in updating the listserv, arranging visits, and setting up meetings with legislators, as well as participating in rallies and lobbying efforts. For years the group also maintained a staff of four to six interns during the school year, who provided Reynolds with her opportunity to teach legislative art through long meetings and hands-on projects. There were other small grants, but to a great extent TY10 was supported by Reynolds's part-time teaching, her partner Scott MacFarlane's Ph.D program income, and, of course, credit card debt. Being unable to claim nonprofit status led to tax problems, and so in 2014 Reynolds hired a business consultant as the first paid staff position in the group's history. In June of that year she overcame stiff competition to win her university teaching position, an achievement due in no small part to the significant amount of recognition Reynolds has been able to garner for the project.

The awards she has received, like the 2012 John Peter Altgeld Freedom of Speech Award from Chicago's Newberry Library, and a 2013 Leonore Annenberg Prize for Art and Social Change from Creative Time in New York, an award which has gone to highly visible artists like the Yes Men, helped to raise the profile of the organization, as well as Reynolds herself. In 2012

Reynolds received the prestigious Soros Justice Fellowship for research and public work on the reform of punitive laws against released sex offenders, a project that began as a class she taught at Loyola University and DePaul University in Chicago. Her opposition to practices of publicly shaming, excluding, harshly punishing, and stigmatizing sex offenders for life continued to informed the 2011 project "Sex Offender Coming Home," in which released prisoners finishing sentences for sex crimes are imagined receiving a warm welcome and constructive re-entry support, to affirmation cards for legislators to aid them in analyzing new bills to punish sex offenders, and informative sex offender calling cards for neighborhood distribution.

In 2013, Tamms closed. Also in that year, Reynolds was also the recipient of a highly competitive Creative Capital grant and a fellowship from the Blade of Grass Foundation to develop her satirical and informational viral video series on prison justice, "The Honey Bun Comedy Hour," taking her back to her early-1990s roots in writing, directing, and producing televised comedy in Atlanta. The show aimed to "depict the horrors, boredom, and small mercies of prison life," using the metaphor of the packaged Honey Bun, a treat that is used for currency in many prisons. She described it as "a film art comedy that's usually not very funny," drawing in part on stories gathered through her work with TY10. For example: "Faygue, who has schizophrenia, tries to hang himself in Tamms, and gets a bill for $5.30 for the sheet he damaged." Other than re-enactments, this "variety show" features segments such as "Best Bureaucrat Award," "Prisoner Soliloquies," and, "Bad Bill of the Month." She shows the videos to "individual decision-makers," such as "a legislator at church, a warden in his office," or "anywhere they're needed to impact policy" (2014). The next comedy performance project, "The Starbucks Sleep Apnea Sex Offender Comedy Hour," premiered in April 2017 at the Open

Engagement social practice conference, along with the "We Shouldn't Have Policies We Are Afraid to Talk About" panel.

At the beginning of 2014 Reynolds (and her cat Leon) spent time in the Netherlands at the van Abbemuseum in Eindhoven for a residency connected to the exhibit, "The Museum of Arte Util" ("Useful Art"), organized by Tania Bruguera. At this residency she intended to research Dutch prison closures, visit a treatment facility for sex offenders, and continue to work on Illinois prison issues. She was asked to create a timeline of efforts to reform conditions at Tamms, a project that she bristled at, saying that when she sees a timeline, she "just can't make a narrative out of it" (2014b). So Reynolds subverted this request by refusing to summarize and encapsulate the group's history. Instead she took on the Sysyphean task, as something of an ongoing installation/performance, to chronologically post and label every document the group had ever created, stringing them on wires—evoking something like Robert Morris' 1962 *Card File,* the 1972 project *index 01* by Art & Language, or any number of Conceptual and Fluxus archives. She had only brought along a fifth of the group's massive boxed archive, which made the effort only slightly more manageable.

Just for a sense of the scope of the van Abbemuseum archiving project, Reynolds estimates that the group has sent and received 75,000 emails over its history, and at one point issued no less than 30 legislator fact sheets over one legislative session of the Illinois House; also, she has 2,000 TY10 documents on her computer. Some years were titled, and so were some of the documents. Some sample document titles: "Reynolds Teaches Herself Advanced Excel From An Online Course So She Can Keep Track of Tamms Year Ten Campaign," "Ambitious Meeting Agenda," "Note From One Prisoner In Georgia To Another, Offering A Deal For The Debt He Hasn't Paid So They Can Start Playing Checkers Again," and, "Paper On Which We

Determined Which Of The Three Branches Of Government To Pursue To Address Crisis At Tamms Supermax Prison." The timeline project continued in fall 2014 when Tamms Year Ten exhibited work in California at the Santa Monica Museum of Art in conjunction with the group Solitary Watch, in a group show entitled "Citizen Culture: Artists and Architects Shape Policy."

In *Towards a Lexicon of Usership,* Steven Wright speaks of such work as being reminiscent of "On Exactitude in Science," a Jorge Luis Borges story (inspired by Lewis Carroll) in which a map is made at a one-to-one scale to the landscape it represents (interestingly, "one-to-one" was also the guard-to-prisoner ratio at Tamms). "I just started to think that the medium is work," Reynolds said, "the medium is time, and labor… I guess what I experienced is just boxes and boxes of labor" (2014). This should not be overlooked as empty metaphor, as the comparison helps both to justify the work aesthetically based on craftsmanship, and to justify the central public role Reynolds has taken in the collective campaign of closing Tamms. Critics of social practice often disparage both the anti-aesthetic visuality and the egocentrism present in much socially-engaged art, and while these are fruitful critical approaches, there are good reasons to appreciate both Reynolds' aesthetic humility and driving personality as aspects of an individual style. "Such evidentiary material still has political currency," said Julia Bryan-Wilson (2014, p. 147), speaking of the Tate Britain's exhibit of Margaret Harrison, Kay Hunt, and Mary Kelly's multimedia investigative artwork *Women and Work: A Document on the Division of Labor in Industry 1973-1975*. Bryan-Wilson's statement on this classic data-gathering conceptual piece will, I believe, hold true for Reynolds as well.

During her residency Reynolds also got involved with a group called We Are Here, attempting to assist Somali and other African refugees whose requests for asylum had not been recognized by the Dutch government. They made extensive use of public squats for housing

these refugees, but with the approval of Amsterdam's mayor, the group began housing many of these asylum seekers in decommissioned prisons. Along with getting a human rights photographer she knows to do a story on the group for *Vice UK*, Reynolds worked on creating flag-themed signage and calling cards in collaboration with this group, some of which made use of the poetry of Italian-Argentine poet Antonio Porchia, in order to make an impression on lawmakers and on the public at large. She used the free printing service offered by the van Abbemuseum to print the cards, and the printing continued after she returned.

While she was doing all of these things, and giving regular presentations, she continued to advocate for basic needs and privileges on behalf of former Tamms prisoners back in Illinois, now transferred to long-term segregation units primarily in prisons at Pontiac and Menard. "Long-term segregation, which is basically solitary confinement, is quicksand," Reynolds says, "and you take everything away from someone, and they quickly lose any sense of self from which to generate 'good behavior,' or anything else" (2014b). Pontiac is in fact entirely comprised of segregation units, divided into "protective custody" and the harsher "administrative detention," the latter of which houses all the Tamms men who were transferred to Pontiac. In lieu of Reynolds finishing the TY10 timeline, the van Abbemuseum agreed to contribute funding to the work of TY10 in fall 2014, in exchange for the right to represent and display that work.

"Right now there is strong potential for transforming Illinois prison spaces and experiences," Reynolds stated (2014b), "through collaborations between artists, urban planners, social workers, architects, and farmers." Some projects she sees a lot of hope in include: a collaboration (based on a model program in Philadelphia) between artists and men serving life sentences to produce murals installed by inmates on work-release for the communities where the prisoners come from; a prisoner choir at the Stateville prison, which would hold walking

performances in its infamous roundhouse panopticon (the last panopticon in use in the U.S., closed in 2016); archiving photo albums of former corrections officials in order to document a time when, she says, "their system was way better" (2014b); and, a collaboration with the artists' collective Fallen Fruit to create a fruit orchard inside the maximum-security state prison at Pontiac, in the town of Pontiac, and on Chicago's west side, where many inmates come from.

As mentioned, in fall 2014 Reynolds successfully landed a tenure-track faculty job in the Department of Art at the University of Illinois, which, as she had hoped, gave her more leverage and resources for advocacy. Beginning in 2015, she began turning her advocacy back to the issue of sex offender registries—and, along with them, the registries that also are kept for murderers, arsonists, and those perpetrating non-sexual violence on minors. Just as the term "decarceration" has finally begun to enter more mainstream political conversations, Reynolds hopes to promote a term coined by her partner, Scott MacFarlane: "deregistration." Organizing sex offenders is extremely difficult, she explained, because of the risk involved in revealing their identities. They are unlike the men who were locked up in Tamms, many of whom were recognized in their communities for what Reynolds called their "high status." She hoped to utilize expertise in First Nations restorative justice models to develop proposals for confronting the current registry paradigm.

Reynolds has indeed flexed her academic muscle to organize major events around sex offender registries. She brought together a range of activists and attorneys from throughout the state and around the country for a conference at Northwestern University that she organized in fall 2016, entitled "The Registry 20 Years Later: Addressing Unintended Consequences." In April 2017, as mentioned above, Reynolds orchestrated parallel back-to-back public testimonial events at the University of Chicago, to share and discuss and act upon the experiences of

formerly incarcerated people living under the oppressive legal sanctions of the sex offender registry. Both were titled “We Shouldn’t Have Policies We Are Afraid to Talk About” and featured some overlapping participants, but the first was presented as a panel at the School of Social Service Administration, under the auspices of a social practice art festival, and the second as a theatrical performance at the University’s Logan Center for the Arts.

Since she started her teaching work at the University of Illinois at Chicago, Reynolds has been finding her footing. In her work with students she has made some meaningful connections, but has found herself not knowing how to talk productively with some young people supporting anti-racist grassroots efforts to oppose police brutality and state racism, often affiliated with the Movement for Black Lives. She has concerns that, as in the differences she has had with uncompromising litigators and their supporters, the focus on ideological purity at the expense of practical organizing, lobbying, and coalition-building will not serve the goals of the effort. Interestingly, similar concerns have been voiced by Alicia Garza, the Oakland-based co-founder of the Movement for Black Lives.

> When I sit with elders, one thing they say is that they really underestimated the power of the state, and we didn’t actually understand the state as well as we thought we did. I think that is something that is still true for us, and it is something that will make or break this movement… It doesn’t mean that you sit in your kitchen and dream up a new policy and try to go at it on your own. It means that you have to do the hard work that many of these organizations are trying to do, which is organizing and bringing people together at scale, more than your five friends, to craft solutions to the problems that we face, and then to build strategies for how to get to those solutions. (Adetiba & Davies, 2016, para. 12, 28)

"We need to not write off politicians," Reynolds said in much the same spirit, regarding contemporary protest movements; "We're working from a position of no power" (2016).

In the case of arts administrators reifying social practice, perhaps the idea of not writing off politicians could be extended to artists. Reynolds' misgivings with a limited idea of politics also extends to the administration of her department, which has been working toward reorienting the studio art curriculum and programming to focus more and more on social practice, and the foundation-based nonprofit funding model that has allowed social practice to quickly become institutionalized. "Every problem has a different solution," Reynolds told me; "If you're doing (social practice) just for the sake of doing it, you're erasing politics."

These confrontations are forcing Reynolds to develop her own understanding of the overlap between art and politics in everyday interactions that don't directly involve sites of stigmatized suffering, and so her practice continues to change. Nonetheless, considering her career thus far, I feel that Reynolds' projects have aesthetically done something at least somewhat bigger and better, considered separately or collectively, than Women on Waves, or any number of other social practice projects. Her edge, I think, comes from pursuing political progress from a number of angles, as well as generating somewhat undefinable performances, events, and ephemeral objects. This brings us to a more general discussion of how a political project acquires aesthetic value, and how an art project exists politically.

3.6 Chaos, ambiguity, refusal

In his "Critique of Violence" (1955/1978), Walter Benjamin sees violence at the heart of legislative petitions.

> (W)hat parliament achieves in vital affairs can only be those legal decrees that in their origin and outcome are attended by violence. (p. 289)

He subsequently asks, "Is any nonviolent resolution of conflict possible?" This raises the question of whether a law or an artwork could of itself be violent or nonviolent; the obvious problem in calling pieces of art or legislation violent is that no matter how many people are physically or emotionally injured by actions resulting from the enforcement of law and the administration of justice, or the indirect effects of aesthetic activity, laws and artworks themselves exist primarily as abstract concepts. Even the text of a ratified bill is not in itself a law, without the authorities that legitimate it and the subjects that recognize it. Empirically it would seem that abstract concepts do not injure people in the same way as bullets, clubs, chokeholds, or tasers deployed by conscious beings whose actions are indirectly motivated by those concepts. The diffusion of responsibility between the invention and deployment of potentially dangerous tools allows space for the specialized roles of legislators and artists.

As did Rousseau in his *First Discourse* (1750/1779), Friedrich Schiller (1794/2004) phrased the seeming incommensurability of justice and aesthetics as a historical paradox: "Wherever we turn our gaze in the ancient world we find taste and freedom mutually avoiding each other" (p. 59). He compared the artisan, the artist, and the politician in terms of violence:

> When the mechanical artist sets his hand to the formless block… he does not hesitate to

> do it violence… When the fine artist sets his hand to this same block, as little does he hesitate to do it violence, only he forbears to shew it… The situation is quite different with the pedagogical and political artist, who has Man at the same time as his material and as his theme… he must pay careful heed to its idiosyncracy and its personality. (pp. 32-33)

"If the inner man is at one with himself, " he concludes hopefully but cryptically, "…the State will simply be… the clearer expression of his inner legislation" (p. 33). But it's hard to see any clear expression in much recent legislation. The USA PATRIOT Act, a landmark expansion of Federal policing powers passed in October 2001 in response to the 9/11 attacks the previous month, is a just one standout model of creative legislative obscurity, formed entirely as a unreadable litany of amendments to earlier laws.

From Plato and continuing through and beyond Schiller, "art" as a discourse has been connected by philosophers to education- but rarely if ever as a means of authorizing straightforward interpretations of artworks. Alain Badiou (2005) sees art and philosophy as necessarily linked by education *through* provocation, a link that modern education has for the most part severed. He claims that, "'education' (save in its oppressive or perverted expressions) has never meant anything but this: to arrange the forms of knowledge in such a way that some truth may come to pierce a hole in them" (p. 9). Meanwhile, language, as Talleyrand says, hides our thoughts (as cited in Jameson 1981, p. 61); just as education transmits politically neutralized conventions, and law works to conceal power. But art can, in keeping with Badiou's vision, construct an argument that is *intended* to fail, to trip over itself, and thereby become visible, while legislation, by that logic, can at least marginally upset an existing legal order. Any artist, not only Reynolds, is thus more like a legislator than a mathematician, a geographer, or a

watchmaker, pursuing representation for the sake of recognition, and seeking justification through consensus rather than utility.

But this consensus must be aligned with the direction of power and influence. Attempting to moderate Nazi jurist Carl Schmitt, who compellingly reasserted the political significance of force, Jürgen Habermas claims that our slow civilized transition from force to rules presents "an ambivalence in the concept of law" for modern governments. Habermas says:

> On the one hand, …the concept of law as an expression of will included as an element the claim, successfully asserted through recourse to violence, to the exercise of domination. On the other hand, however, the concept of law as an expression of reason preserved other, older elements of its origin in public opinion(.) (1962/1989, p. 81)

Rather than a dialectic, though, Habermas is misidentifying an evasive yet necessary nonspecificity at the heart of law. Vagueness as to purpose and principle is key to the compromises that broker legislative deals. This vagueness, political as well as semantic, reliably creates the conditions of both a law's misapplication (external contingency) and its sabotage (internal loopholes). Karl Marx pessimistically summarizes:

> Indeed, the movement of this world within its framework of laws is bound to be a continual suspension of law. (1844/2009, n.p.)

Benjamin notes the "demonically ambiguous" nature of law (p. 295), claiming that in the case of lawmaking violence, such as war, the legislative moment happens in the "peace ceremony" when new borders are decided upon, a border that is only "fair" in the sense that everyone must observe it. He quotes Anatole France's quip that "(p)oor and rich are equally forbidden to spend the night beneath the bridges" (p. 296). If fairness is achieved, it is by an accretion of reforms

rather than the elimination of unjust laws, thus forever multiplying ambiguities. Freedom to interpret, as I've discussed, is key to the art that hides in law.

Without apparent irony, given his belief in enlightened dialogue, Habermas notes that in most democracies the presumption of free choice has come to replace the language of prohibition. Herbert Marcuse would characterize this tendency as "repressive tolerance." This can be seen clearly in the coercive leverage exercised by prosecutors through the apparently free and fair plea bargain process (Kaste, 2014; Pfaff, 2017), the process that produces most American prison sentences. The prosecutor essentially controls the functioning of justice, including the choices of which laws are enforced, in what way, in which situation, and with which subjects. The other partners in this "bargain" lack any equivalent power, and choice without power is an illusion. The enforcement of laws after the official elimination of explicitly racial codes emphasizes the ideological value of this apparent choice in prosecuting racially marginal legal subjects. As Jill Leovy (2015) puts it, "Black people experienced law… as a systematic extension of the campaign of terrorist violence that had brought an end to Reconstruction and stripped them of their rights under the Constitution" (p. 156). Blacks in the Jim Crow South, according to anthropologist Hortense Powdermaker, saw law as "a vague and sinister force, transcending any body of definite rules" (cited in Leovy, p. 82). And Ghassan Hage sees in the modern age "a recurring and even systematic history of social interactions where Westerners require from those they racialise an exact obedience of the letter of the law such that they do not require it in interactions among themselves" (2014, para. 12).

In my own activist work in central Illinois, I had the opportunity to work in fall 2016 on a campaign to oppose a jail expansion referendum put on the ballot by the Champaign County Board. A well-contrived maneuver, the referendum was justified by an administrative plan in

which spending to expand a local jail in the wake of three recent deaths of African-American detainees from medical neglect was justified not only by adding a medical wing to the plan (without accompanying services), but also including in this plan, down the priority list, the cost of a behavioral health/detox center (also being planned under the leadership of the county sheriff)-- a center that the county administrator admitted couldn't find a service provider. In addition, the plan served as an omnibus bill, tying funding for a public nursing home to the far more expensive jail project. As many have noted, repressive tolerance now often takes the form of so-called "carceral humanism." But the *coup de grace* was that County Board members were able to disavow responsibility for the spending plan, since the referendum was only to create a blank check (a slush fund), rather than to fund the priorities detailed in the plan.

And yet, Board members insisted on the advisability of the plan, and the urgency of its funding. This nebulous tangle of intentions was even highlighted in a conservative local media outlet (Kacich, 2016), The frequent claims of unavoidable necessity by County Board members recalled an interview with accomplished painter Marlene Dumas (Bloom, 2009), who spoke on the value of ambiguity as reflective distance.

> Sometimes people ask me, "Why does it all have to be so ambiguous?" But it's not that I deliberately want to confuse anyone—that is how I experience things. There are artists who want to possess their images…These are ways of talking about images that I find quite scary—they sound so authoritative… On the contrary, you have to take distance from the work. (p. 27)

This distance is not without political charge, however, as Dumas is a white South African whose apparently traumatized subjects include, in a 2013 series, images from the funeral of assassinated Congolese independence leader Patrice Lumumba. In this case it is possible to feel unease

around the presentation of historical documentation as evocative ambiguity—much as with painter Dana Schutz's controversial abstraction of Emmett Till's coffin in the 2017 Whitney Biennial.

For some politicians, similar to artists like Dumas and Schutz, obscurity of purpose can be presented as a necessary part of the democratic process. The aesthetic of a presentation engineered for disavowal is frustrating both for voters and art viewers, such that bluntness, as in the 2016 election campaign of Donald Trump, is perceived simultaneously as transgressive authenticity and xenophobic philistinism. The jail expansion proposal lost decisively at the ballot box in 2016, while Trump did not, buoyed by an ingenious fusion of willful obscurity and baseless hyperbolic ultimatums. Following the election, the Board has been able to benefit similarly, by moving to sell the nursing home to private interests, while locating alternate revenues for jail expenditures. Such maneuvers display a perverse elegance.

The intricate choreography involved in first being elected to office and then negotiating the web of interests and stated and unstated agendas in any legislative body, in order to increase one's prominence and successfully promote legislative goals, is what makes it the most performative branch of government, as well as the most often perceived as slow-moving, ineffectual, and duplicitous. Legislators are rarely experts in anything other than the law; as if channeling philosopher Michel Foucault (1979/2008), litigator Alan Mills (2016) paraphrased a legislator who said, "Our expertise is in balancing competing interests." In his 1994 memoir *The Art of Legislative Politics,* Tom Loftus, the Democratic speaker of the Wisconsin State Assembly from 1983-1991, relates his reflections and experiences deep in the weeds of election and lawmaking campaigns. "Chaos has gotten a bad rap," Loftus ruminates, reflecting on his obstructionist gambit to save the position of Ed Jackamonis, his predecessor and patron.

> Out of chaos comes order. Thus, I would learn, if you seek a new order, foment chaos. The trick is to get the desired outcome. When a leader is experienced he or she can leave, in order to let things fall apart, and then put them together in a more preferable way. (pp. 55-56)

From a story of defeating one bill through a motion pulling an unrelated bill in order to trigger a caucus meeting, to a lobbyist altering memos on checks to dodge an investigation, to attempting to override a veto through humiliating a representative who was a potential swing vote, Loftus's anecdotes illustrate how publicly-touted ideals are pursued incrementally through bizarre and banal artifice. An intriguing artifact Loftus mentions is a thick document he received for review and subsequently instructed his staffer to throw out of the window; it was recovered later and displayed in the office with a distinct tire track on the envelope (pp. 140-141).

Known for his attempts at the reconciliation of matter and spirit, Hegel describes two opposed ways that modern literary and dramatic characters can define themselves in relation to their larger social environment.

> (A)s happens in genuine states, the whole details of their mental attitude, their subjective opinions and feelings, have to be ruled by this legislative order and brought into harmony with it. This attachment to the objective rationality of the state which has no dependence on subjective caprice may either be pure subjection, because rights, laws and institutions, by being mighty and valid, have the power of compulsion, or it can arise from the free recognition and appreciation of the rationality of what exists, so that the subject finds himself over again in the objective world.

The "legislative order" he mentions defines the context for modern dramatic conflicts, in which an individual's inevitable submission to the collective accompanies either enlightenment or

despair. Luis Camnitzer (2007) describes Duchamp's breakthrough as one of substituting context for content, in a manner different than that of later Conceptual Art. "His intention," Camnitzer says, "was not to lay down aesthetic rules over reality;" this would echo the judgment of a court. Rather, " he was interested in re-signifying meaning without altering the object" (p. 159). In this action, Duchamp's readymades demonstrated a transcendent, or legislative, function of art. A law is always a prohibition, and thus provides the opportunity for a productive negation.

Attempting to negate this negation, Tania Bruguera declared: "I have always said that we have to put Duchamp's urinal back in the restroom" (2011, para. 6),[14] sounding much like the disciplining philosopher, exemplified in Charles Fourier, whose task, as Barthes (1971/1976) puts it, is to put the unruly poetic word back into conventional usage (p. 91). But toilets are not found only in restrooms. As featured in the mock solitary cell used in the aforementioned Temporary Services project "Prisoners' Inventions," the toilet is also one of the only elements of most solitary-confinement cells; denied human contact, prisoners in segregated detention frequently bypass the toilet and resort to an elemental and desperate form of self-expression: the spilling of blood and the smearing of feces.

The toilet is a provocative if somewhat base metaphor for discussing legislative art, as when Žižek (2004) contrasted European philosophical attitudes (or national ideologies) by their expressions in toilet design. The spirit of revolution summed up in Rousseau's cry to "shatter the old world to bits and then/ Remould it nearer to the heart's desire" (as cited in Gauss, 1914, p. 16), is reflected in French toilets that immediately hide excrement, versus Kant and Schiller's

[14] Bruguera installed a replica of Duchamp's *Fountain,* which she titled *Urine Luck,* at the Queens Museum of Art in 2011. "A day later," writes Sam Thorke (2014), "…Duchamp's 'R. Mutt' signature had vanished, cleaned away by maintenance staff" (para. 1).

speculative tradition, which evokes the waste in German toilets left in plain view for thorough speculative or hermeneutic examination, calling to mind Hegel's declaration, "Out of the foaming ferment of finitude, Spirit rises up fragrantly." (1807/1995, p. 233). But when the object of perverse fascination (feces, art, the will or spirit of the people) is flushed away, the container (the toilet, the gallery exhibit, democratic structures) is made conspicuous in its emptiness and open to new content. Eliminating refuse completes refusal. The crisis (or the vacuum), formally speaking, is one of representation-- visual, narrative, electoral, and legal.

Reynolds embraces all of this messiness. "Legislative work doesn't deny you any of the indeterminacy, collaboration, authorship, or brushes with the uncanny that art provides," she says. "On the contrary, it can be a way to find it." And, "I'm enthusiastic about legislative art because it is engaging, unpredictable and rewarding. But mainly because it is necessary" (2014b). "Necessity" as a statement of moral urgency helps to dispel the long-standing associations of "contingency" with fine art, not just by the supposedly ignorant masses but the mainstream of modern art. But the first quote, on indeterminacy and the uncanny, suggests that the legislative artist "finds" art, as Reynolds suggests, by turning her back on established forms of aesthetic beauty. This is what the Argentinian artist Pablo Suarez did in 1968 when he cited his letter refusing participation in an exhibition as his contribution to that exhibition (Camnitzer, 2007, p. 34), or when feminist musician Kathleen Hanna, emulating an answering-machine recording, created a statement of her refusal to participate on Mike Watt's 1995 album *Ball-Hog Or Tugboat?*as a track on the album. These acts, like Duchamp's readymades, like the independent and collective disruptions performed by solitary inmates, offer a productive negation, a creative refusal.

An ethical choice allows the superego to induce pleasure by denying pleasure, which can include the denial of aesthetic pleasure. Marcel Duchamp, who identified modernist art with both contingency and with tactical formalism, famously turned his back on art in order to play chess. Of course he is remembered primarily as an artist, but he also made noteworthy contributions to chess, such as his examinations of insoluble endgame scenarios, referred to as deadlocks (Beliavsky and Mikhalchishin, 1995). In these articulations of algorithimic dead ends, Duchamp could be seen as setting a negative precedent followed by the sculptor Robert Morris, who in 1963 signed a notarized statement that removed aesthetic content from his sculpture *Litanies* in response to a delay in timely payment. This was followed in 1969 by painter Lee Lozano with her declaration to leave the art world, and in 1971 to cut off all relationships with other women; critic Helen Molesworth (2006) described Lozano's gestures respectively as rejections of capitalism and patriarchy. Lent momentum by Mierle Laderman Ukeles' 1969 *Manifesto for Maintenance Art*, the "wage for housework" movement at the time, in which individuals agitated for recognition of female-identified care work not in order to be integrated into capitalism, but in order to refuse this labor. All these refusals seek to redefine the formal terms of art through a forceful negation of beauty, much as the iconoclasts of Alcibiades' Athens and the London of the Puritans defaced images for religious and political ends.

Legions of conceptual artists have followed this example by denying access to a specific object. In a recent example, Maria Eichhorn's 2016 exhibition at London's Chisenhale Gallery consisted of shutting down the gallery for the month-long run of her show, as well as all of its communications, in order to grant the staff a paid vacation. And, while exhibitions of both recent and historic invisible art have been plentiful over the last few years, it is worth remembering that refusals can be both aesthetic in their form and political in their effects, as when hundreds of

thousands of Puerto Rican voters acted *en masse* during national referendum elections regarding joining the U.S. as a state, turning in ballots stating "none of the above" in 1998 and blank ballots in 2012, before simply boycotting the polls (atypical for this high-turnout island) in June 2017.

Refusal can also appear as overabundance, rather than erasure. An aesthetic relationship between negation and repetition is proposed in Italian artist Mario Merz's impersonal actuarial meditations on the politics of mass solidarity and cooperation. One of the many spaces Merz decorated with a series of ever-lengthening numerals based on the Fibonacci sequence was a prison in Pescara, Italy. In speaking of Walter Benjamin as a champion of "mechanical reproduction," Boris Groys (2012) could also have been commenting on contrasts Merz drew between industrial proliferation and organic procreation.

> Capitalism is a silent work of reproduction and repetition. What corresponds to capitalism, accordingly, is a theology beyond theology—a thinking of reproduction that only considers the form of reproduction, but no longer asks what is actually being reproduced (p. 98).

What is denied in Merz's iterative meditations is the sense of a frame or a limit, which in a way is common to all of the aforementioned works. Refusal to reproduce, repeat, resolve, or represent appears in Duchamp, Lozano, Merz, and Eichhorn (not to mention the voters of Puerto Rico) as the only possible resolution. Alain Badiou (2005) describes the failure of modern art as an inability to simultaneously meet two criteria required to unite truth and form: "Immanence: art is rigorously coextensive with the truth that it generates. Singularity: these truths are given nowhere else than in art." (p. 9). In doing so, he apparently makes a paradox of the familiar courtroom oath, "the whole truth and nothing but the truth." Acting to make avant-garde refusal not virtual,

not a minimalist gesture of invisibility, but immanently legal, as TY10 has, is the kind of conceptual progression that, for Hegel, defines a productive negation.

3.7 The eager and willing confessor

"Transgression presupposes the existing order," says Pierre Klossowski (1947/1991), "the apparent maintenance of norms under which energy accumulates thereby making transgression necessary." (p. 19) Žižek compares Lacan's belief in desire to the pursuit of unbearable excess and cruelty rhapsodized by Georges Bataille. In his book *The Tears of Eros* (1961/2001) Bataille imputes ecstasy to a victim in an image of a man being cut to pieces, "the death of a thousand cuts," while throughout his contemporary work *Erotism* (1962/1986) he describes his opposition to the modern relaxation of sexual prohibitions, precisely in order to preserve the possibility of violation. "Thus Bataille brought to its climax," according to Žižek , "the dialectical interdependence between Law and its transgression" (2006, p. 95). As I will detail in the following chapter, this emphasis on transgression is an important component of an administrative aesthetic. But it is opposed by the aesthetics of refusal. TY10 is only one of countless examples of ethically-motivated artistic responses to anguish abound. "The iconography of suffering has a long pedigree," acknowledges Susan Sontag (2003), right after asking, "What does it mean to protest suffering, as distinct from acknowledging it?" (p. 38).

For Sontag, this moment of protest began with Goya's *The Disasters of War,* pitiable

printed scenes from the Napoleonic Wars that prefigure the storytelling undertaken by Tamms Year Ten. Recent examples of proactive (versus merely exploitive) political provocation exist throughout conceptual art, from the revolutionary Constructivists in Russia and Estridentistas in Mexico in the 1920s, to the 1960s utopianism of the Diggers in the U.S., to the artists who created the 1968 installation *Tucumán Arde* in Argentina, and other works that flaunted U.S.-backed authoritarianism in Latin America throughout the 1970s, to the 1980s censorship-baiting of David Wojnarowicz and General Idea, to the 1990s provocations of Critical Art Ensemble and the Yes Men, to the 2000s work of Dutch video artist Renzo Martens.

Making work that critiques of the kind of disaster tourism Arthur and Joan Kleinman (1997) describe as a solipsistic and sadistic "cultural appropriation of suffering" (p. 2), Renzo Martens' 2007 film, *Episode 3: Please Enjoy Poverty,* offers a striking example of the pathos of judicial impotence. In the film, he attempts to rally the impoverished residents of a small village in the war-torn Congo to document their own misery, selling photos to Western media outlets as a means of developing a sustainable occupation. In the end, after arranging a meeting with a media executive, he fails to find a buyer for the photos taken by the men he tutors--- thus we see the impossibility of self-representation that applies to art as well as neo-colonialist press coverage. But, both within the diegetic timeframe of the film, and the time since its release, Martens has continued to pursue the possibility of representation through an iconoclastic critique of documentary journalism.

In his videos Martens goes into war zones and behaves both ludicrously and strategically: whether interviewing Chechniyan refugees about himself, interrupting a U.N. press conference with irrelevant and irreverent statements, or teaching Congolese villagers to shun journalists and document and sell their own war documentation. In *Episode 3,* perhaps the most striking visual

moment occurs when he comes to a village of plantation workers and erects a large neon sign saying "Please Enjoy Poverty," around which the villagers celebrate and dance for hours. Martens poses as a sadist, and yet the pleasure his artwork provides is clearly the pleasure of tragic anguish juxtaposed with absurd humiliation. Interestingly, Martens has now moved from a satirical performance of failure to one of overcoming, as he has founded an artists' community in Congo with the stated intention to "gentrify the jungle"—going so far as to stage a public Skype address in a jungle clearing to a group of Congolese artisans by American celebrity author Richard Florida, an economic-development culture booster known for his work on "creative cities." Though Martens does not present it as a stand-alone art piece, this event, through its documentation, can be aesthetically appreciated for its tragic absurdity. The group of artists he has assembled, the Cercle d'Art des Travailleurs de Plantation Congolese, premiered their work in New York in spring 2017 at SculptureCenter, as well as at the Armory Art Show.

Much as with *Nathan For You,* the cable reality show that uses inept marketing consultations to prompt farcical legal scenarios, the pathos in *Episode 3* hinges on the failure of pedagogy to resolve traumatic social deadlocks. In a different way, the exhibitions by the Cercle d'Art des Travailleurs de Plantation Congolese conveys a similar message, exemplified in its lackluster critical reception (Okeke-Agulu, 2017; Bishop, 2017). There lurks in these aesthetic projects an alienation of ethics from itself, in which efforts of enlightenment merely reassert existing relations of power, with authentic self-representation as seemingly the only way out. An awareness of *schadenfreude*, the punitive pleasure of observing suffering, is made available to the viewer, but so is the humiliation of the protagonist. The atmosphere of doom is directly linked to existing political institutions, such as the U.N., the World Bank, and global media conglomerates. When Pierre Klossowski attributes to Sade the view "that of themselves

institutions ensure the triumph of perversions" (Klossowski, 1947/1991, p. 26), this is a view that might also be ascribed to another French philosopher: Jean-Jacques Rousseau.

Bringing together the themes of pedagogy, judgment, and policing, Jeffrey Martin (2014) reflects on international cultural differences in the training and evaluation of judges and police officers. He draws a contrast between the pragmatic common-law tradition of American society on the one hand, in which judges and police officers are expected to draw on lived experience and employ intuitive discretion, and on the other the French civil law tradition, inherited from imperial Rome, who instill codification and constraint in the training of both their judiciary and their police. But pedagogy becomes a means of judgment even between levels of executive authority within one state; one clear example is a highly critical U.S. Department of Justice report on the use of force by Chicago police, which includes sections dedicated to identifying and correcting "training deficiencies" (U.S. Department of Justice, 2017a, p. 8). In particular, Martin describes the French paradigm as subservient to the rule of law and the separation of powers, and distilled in the writing of Rousseau, for whom civil society preceded and superseded the state, and who famously propounded a non-institutional pedagogy built on free exploration.

Rousseau has a relationship to violence that seems to invert the sadistic glee of the police in the manipulation of rules and the power to punish. Rather than the arbitrary whim of a master or judge, Rousseau is associated with adherence to formally contracted rules—a form of pleasure and politics that Gilles Deleuze (1971/1989) associates with masochism, and links to an alternative logic of non-patriarchal power. Indeed, based on his *Confessions* (1782/1987), Rousseau seems literally to have been something of a sexual masochist; he was labeled as such in 1890 by Dr. Richard von Krafft-Ebing (Musser, 2008), who distinguished masochism as enjoyment of submission from a simple attraction to physical pain. The punishments Rousseau

received as a child from his nursemaid, developed in him a vivid fantasy structure; as Nancy Durbin (1993) says, "(T)he young man's sexuality is in some way stirred up by a seemingly non-sexual infraction" (p. 26). Being spanked by Mademoiselle Lambercier, declares Rousseau, "decided my tastes, my desires, my passions, my being, for the rest of my life." He elaborates:

> To fall at the feet of an imperious mistress, obey her mandates, or implore pardon, were for me the most exquisite enjoyments, and the more my blood was inflamed by the efforts of a lively imagination the more I acquired the appearance of a whining lover. (I, p. 41)

He uses this disclosure not as an excuse for sensual imaginative abandonment, nor as a pretext for lachrymose self-deprecation, but, along with anecdotes of unjust punishments in his life (one on which he was punished unjustly, and one, the theft of a ribbon, in which he caused an innocent girl to be punished), and his other lapses (including his literal physical self-exposure to women at a well in Turin), as ways to advance his ideas about the deterioration of social relationships, from traditional horizontal connections of mutual aid and confidence, to modern interactions determined by hierarchies of power (Schreiber-Byers 2010). With this change, Rousseau says, "we were less ashamed of being wrong, and more frightened of being accused; we began to conceal our doings, to rebel, to lie" (I, p. 21).

Based on his experience as an apprentice, Rousseau condemns the moment when, through subjection to tyranny, the child goes from "filial dependence to servile slavery" (I, p. 31). As he gains experiences with social rank and institutional authority, Rousseau's outrage grows. An experience with an ambassador in Venice, he says,

> left in my soul a seed of indignation against our stupid civil institutions, where the true common good and real justice are always sacrificed to some apparent order, which is in

> fact destructive of all order and simply adds the sanction of public authority to the oppression of the weak and the iniquity of the strong (I, p. 327)

Unlike liberal thinkers before and after him, Rousseau resolutely refuses to concede that there is any possibility of true justice through manmade laws, saying:

> In order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed… It would take gods to give men laws. (1762/1978, p. 25)

Rousseau is an iconoclast, in that he refuses to acknowledge any perfectibility in civilized institutions, and thus the ability to use government to create representations of justice. In his ironic and perverse absolutism, he is more an artist and a legislator than a litigator or teacher. Not citing what has gone before, nor embracing order and pleasure with the detached fervor of an aesthete, Rousseau confronts, opposes, and seeks to replace the institution--simply because what comes next cannot be any worse than what currently exists.

This sense of accusation suffuses the *Confessions,* most generally directed at the powerful on behalf of those whom they accuse and persecute, but also at the reader (Durbin, 1993). Pankraj Mishra (2017) goes so far as to lay the 21st-century global resurgence of angry populism at the feet of Rousseau's persecution complex, citing the philosopher's "severe maladjustment" (p. 25). But for her part, Laurie Jo Reynolds speaks about the accused individual in order to oppose a larger narrative about evil predators, a narrative that projects fantasy outcomes or political scapegoats, echoing Rousseau's view of the good individual damaged by society. Here she discusses designations such as "sex offender" or "staff assaulter" that denote the most despised criminals:

> Because these classifications produce false narratives about why crimes are committed, and to whom, they also fail to address or prevent the tremendous harm that comes from violence. They also prevent us from seeing how structural conditions, such as poverty, inequality, disenfranchisement, and racism, lead to crime, or how some groups are systematically criminalized. These labels force us to imagine an individual person making bad choices, as if they had an entire world, and endless opportunities to choose from (2014b).

Like Rousseau's, Reynolds' work can be seen as revolutionary, in the sense described by Foucault (1978/2008, p. 40), making use of law to redefine and reassert the sovereign power of the people, rather than to abolish the state (and thus, we see under neoliberalism, to inevitably repackage and reassert it in the private sector). In TY10, traditional cultural representations are challenged, so that presentations of powerless individuals may be amplified. Individuals are not condemned, but rather the institutions they represent.

As set forth in his *First Discourse* (1750/1779), Rousseau's attitude toward culture and research was less reverent even than his attitude toward the state. "(T)he arts and sciences," he said, "have together, in all ages, and in all countries, produced a general contempt of good morals, and total disregard of public virtues: evils which have never yet failed to terminate in the annihilation of empire" (p. xii). This revolutionary venom was perhaps only nearly matched by his distaste for his own medium, that of literature. William Wordsworth, whom Christian Gauss (1914) identified as Rousseau's "English disciple" (p. 12), announced:

> Books! 'tis a dull and endless strife, …
>
> Let Nature be your teacher (as cited in Gauss, p. 13).

Or, as Rousseau stated unceremoniously in his educational treatise *Emile,* "I hate books" (1762/1978, p. 184).

Not propounding the necessity of art in the somewhat pedagogical sense offered by Tania Bruguera, Reynolds' view of artistic necessity seems to follow Rousseau, who stated ambivalently that "the arts are necessary to us now as crutches are necessary for the old and decrepit" (Quoted in Gauss 1914, p. 8). "The essence of politics, according to Rousseau," says Alain Badiou, "affirms presentation over and against representation" (2006, p. 95). This can be seen in a 2012 exhibit at Chicago's Sullivan Galleries, in which Reynolds turned the gallery space into a functioning lobbying office. This happened at the same time as *Opening the Black Box: The Charge is Torture,* an exhibition organized by the Chicago Torture Justice Memorial Project; my students participated in this show, which put on display Chicagoans' responses and proposals to memorialize the legacy of notorious police torturer Jon Burge. In the TY10 installation space, Reynolds had a dedicated work and archive space, about which she said: "This approach is what theorist Stephen Wright calls the 'one-to-one scale,' where the representation of the work, and the work, are the same thing." "They took no time away from the project in order to represent it," she said, "in fact, they wanted to support it" (2014b). This gets at a key element of the TY10 project as an art piece: it prefers presentation to representation, politically as well as aesthetically.

Giving meaning to students' existence as self-actualized subjects rather than treating education as mere information is an important part of most if not all progressive education inspired by Rousseau's fictional student Emile. Despite the utopian educational projects that have been undertaken in his name, however, Rousseau rejected the sentimental glorification of childhood, prefiguring Emile Durkheim's warning (1893/2002, p. 230) about the formalizing of

self-expression as applied to education. It is wrong-headed to presume Rousseau was an advocate for "innocent" artistic self-indulgence, partially because he placed no particular value on aesthetics and culture, and partially because it makes it hard to understand how he understands an "innocent" child (like himself in his *Confessions*) committing a crime.

Laurie Jo Reynolds refuses, as Rousseau also would, to assign corruption to any individual's nature, thus complicating the simplistic ideas of childhood innocence that drives the social contempt directed at sex offenders, She reminds people of the high number of sex offenders who are juveniles, citing the average age of youth perpetrators as 14.

> (F)eminism made the leap that we have to look at the broader systems that lead to and support rape culture, and silence victims. But this radical critique by feminists has been hijacked and distorted by legislators, and the news media, who have persuaded us instead that all the moral depravity is embodied in certain individuals that are just not us, and not in our families, they're these strangers. (2014b)

And, of course, a great number of sex offenders are sexual abuse survivors. Himself a notorious denier of sexual abuse, Sigmund Freud wrote, speaking of those who re-enact trauma: "He reproduces it not as a memory but as an action; he repeats it, without, of course, knowing that he is repeating" (as cited in Bloom 2005 & 2010).

For Rousseau as for Reynolds the socializing mission depicts the child not as a blank slate, a notion proposed by John Locke, but relies on a redemptive, experiential and experimental idea of transformative autobiography opposing the quantitative accountability now holding the day in education policy. Nonetheless, Jeffery Martin (2014) observes that Rousseau's social contract, realized in the French insistence upon the rights enshrined in the rule of law, has resulted in the creation of an "administrative police," with the right to gather unlimited

information on citizens (p. 471). The citizen registries Martin describes the police maintaining in France, as well as in Taiwan, can be seen as analogous to the sex offender registries that Reynolds opposes, which should suggest that the analogy between her and Rousseau requires many caveats.

For Rousseau, confession relates to both pleasure and politics. His feverishly emotional writing set the stage for modern revolutionary theories, as well as the moral and aesthetic arguments of idealists and Romantics in the 19th century. His ideas on egalitarian revolution and childhood autonomy still influence how we view and respond to the violence perpetrated on, by, and in the name of children and marginalized people. Catherine Malabou (2011) speaks of confession in Rousseau as a political act inaugurating citizens through mutual recognition. "The yes of forgiveness shatters the negativity of their isolation," Malabou says (p, 25), which is an apt summary of the epistolary exchanges initiated by the Tamms Poetry Comittee that led Laurie Jo Reynolds to the founding of TY10. But in this founding, she declaratively opted for reform over mere recognition, or radical reconfiguration.

The writing of a memoir in the form of a confession has no more recognized precedent in the West than the *Confessions* of Saint Augustine, in which he counsels, "Return within yourself. In the inward man dwells the truth" (as cited in Koch, 2015, p. 159). In his *City of God,* however, Augustine is torn about the seemingly contradictory Christian duties to solitude and to service.

> Holy leisure is longed for by love of truth, but it is the necessity of love to undertake requisite business. If no one imposes that burden upon us, we are free to sift and contemplate truth; but if it be laid upon us, we are necessitated for love's sake to undertake it. (as cited in Koch, p. 207)

But the parallels between Augustine, Rousseau, and Reynolds perhaps diverge with the intrusion of this "burden" of interpellation, the moment of calling that redirects the pilgrim's path. The "holy leisure" Augustine speaks of was something that Reynolds has no interest in, but it seems to have influenced Rousseau's notion of an ideal life, as well as some literary notions of the prison space.

Jacques Rancière (2013) depicts Rousseau's "solitary reverie" as a "disinterested sensible state," (p. 47) focusing in particular on Stendhal's Julien, a carpenter's son who finds his final respite in a prison cell (p. 45). But the philosophical definition of solitude, going back to the imprisoned Roman patrician writer Boethius, requires than solitude be voluntary (Koch, p. 16). An aesthetic approach that disenchants this notion of monastic confinement is suggested by Kevin Thompson (2016), who sees an aesthetically important literary gesture in a publication of the Prison Information Group, an early 1970s Parisian activist effort that included philosophical luminaries Michel Foucault and Gilles Deleuze, and which published documents about prisons and by prisoners. Thompson notes a pamphlet the group published in 1972, *Suicides de prison,* which, among other documents, features a group of letters from a gay prisoner who committed suicide while in solitary confinement. Thompson contends that the volume "frames these letters… such that they are transformed from being mere discourse… to fundamentally new kinds of statements," statements which can prompt insight into "the processes that compel so many into incarceration" (p. 200). While literary insight still remains a form of recognition rather than action, this Prison Information Group would eventually cease their efforts, in order to make way for an advocacy group composed of former prisoners and prisoners' family members--something like TY10.

Seemingly unlike either the immobilized subjects for whom she advocates, or the solitary artist described by Rancière, Byron, Wordsworth, and Rilke, or the paralyzed "beautiful soul" exemplified in Melville's Bartleby and Kafka's hunger artist (not to mention Hamlet), Laurie Jo is an artist oriented toward collaboration and uncomfortable with the cessation of struggle required for reflection. Suffering from undiagnosed sleep apnea, for years she powered through sleepless nights and bleary days fueled by caffeine, maintaining the campaign through ceaseless communication and repeated expressions of gratitude. She shuns the aura of works and personality typical of the artist and, unlike Stendhal's picaresque heroes in *The Red and the Black* and *The Charterhouse of Parma,* who accept imprisonment with a sort of beatific delight[15], Laurie Jo pursues arduous activity, directed toward defined goals. Both resistance to and transformation of the prison experience can be seen with the example of Albert Woodfox, the former Black Panther framed for murder who spent over forty years in solitary confinement. A militant teacher and organizer, Woodfox severely restricted his intake of sleep, as well as other forms of physical satisfaction. "We wanted the security people to think that they were dealing with superhumans," he reflected (Aviv 2017).

The gestures of refusal in which TY10 engages, refusals to be visually or dramatically titillating, can through Rousseau be seen as both resistance and avant-garde provocation directed at systems of state-sanctioned punishment. Itself a grotesque parody of provocations by artists

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[15] In *The Charterhouse of Parma*, Fabrice del Dongo surprises himself by "laughing in a jail." "'Never have I been so happy,' he confesses to himself" (as cited in Pearson 2014, p. 164). "The prison-wish seems stronger than the prison-fear," says Roger Pearson of Stendhal (p. 164), perhaps suggesting that, amidst his anxieties, Stendhal might have harbored his own masochistic tendencies.

like Chris Burden and researchers like Philip Zimbardo, widespread long-term solitary confinement can also be seen as a result of modern utilitarian calculation yoked to medieval confessional redemption.

Despite his appreciation of solitude, the coercive fact of allegedly dispassionate yet compassionate internment would likely for Rousseau reflect an institutionalized morality that he called *amour-propre,* or "self-love." Rousseau's political ideals rely on a Platonic self-revelation rather than the pedagogical pragmatism of Quaker reformers like Benjamin Rush. Rather than a detailed definition of government, whose artifices he despised (as in his critiques of Montesqieu), he elaborated a political narrative of the autonomous social individual and the "general will" while remaining critical of the practice of philosophy itself, and even, in his 1761 novel *Julie*, of the violent utopianism advocated by Enlightenment visionaries inspired by his own writings (Žižek 2011). While Rousseau seeks to promote an ideal of solidarity that inevitably relies on ideology, he also seeks to eradicate the comfort that comes from believing in the myth of an eternal and unchanging social order.

Žižek (2012) praises the rejection of fantasy in Jacques-Louis David's *The Death of Marat,* which inspired Rousseau's brutal insurrectionary offspring, the Jacobins. This painting places above the martyred leader a large empty dark space, opposed by Žižek to the sort of detail-packed ideological fantasy scene typical of Stalinist Social Realism (p. 711). But I think again of the words of Edmund Burke, the prominent British critic of the French Revolution, who spoke of the "sacred veil to be drawn over the beginnings of all government." Perhaps the necessary "censorship" that the post-Revolutionary statesman Jean de Dieu d'Olivier identified as essential to legislative art is most beautiful when it is most explicit, as with the numerous artworks that make use of redacted text, and the austere modern architecture that developed from

the functional blankness of the prison structure. But Rousseau himself would likely have dismissed any form of artistic idolatry outright, and for Reynolds visual gestures, while significant, are largely incidental. And for both, while literary works may be objects of suspicion, personal narratives are vital tools of emancipation.

Confession and experimentation can be seen as intimately connected to morality, pleasure, and violence. Ideally not reinforcing but sabotaging "subjectivity" is the "subjunctivity" that Jerome Bruner (1986) links to narrative desire. "To be in the subjunctive mode," he says, is "to be trafficking in human possibilities rather than in settled certainties" (p. 21). This should be understood apart from the "ventriloquation" Bakhtin identifies in novelists' use of dialogue (Wortham, 2001), seducing the reader to legalistically judge characters' intentions. As in a trial, ideologies in what Bakhtin calls the "polyphonic novel" strive not for consensus but for conquest (Groys, 2012, p. 184). In the right circumstances, then, confession can undermine rather than sustain interrogation.

In a polyphonic narrative, aesthetics becomes a competitive interrogation of unique, individual truths, to be compared and consumed as otherness, the standardized strangeness of suffering objects. But this contemplation of affect is perhaps the perverse inverse of what, decades before realism made art out of everyday life, Schiller (1794/2004) called "the still more difficult art of living" (p. 80), an art which, each on their own terms, both Rousseau and Reynolds might endorse. In such an art, one might imagine an artist who turns away from the patron or the audience, and away from the classroom, and toward the larger world of the public.

3.8 An alignment of wills

Considering the pedagogical guidance to be given to those drafting laws, Helen Xanthaki (2010) describes the practice as a pragmatic balancing act, placing it in the Aristotelian category of *phronesis*, or practical wisdom. She writes that legislative drafting considered as "a pure form of art" is a "traditional" approach that "ignores its nature as a discipline of law" (p. 121). But her negotiation of common and civil law, administrative and legislative roles, historical institutions and exigent circumstances, represents in some respect the aesthetic decision-making required in any design process. While Aristotle opposes *phronesis,* often translated as prudence, to *episteme* and *techne*, which respectively denote knowledge and skill, these two, despite Xanthaki's contention otherwise, map only imperfectly on to our contemporary notions of science and art. I would contend that this prudent balance applies to successful art no less than legitimate law.

While it may be artistic, this prudence is surely political. The tactical juggling act Xanthaki describes, put forward in the context of standardizing rules across the European Union, can be related to the ongoing calculus Foucault (1979/2008, p. 52) describes as necessary to maintain balance and avoid imperial supremacy across the continent of Europe, beginning in the 1648 Peace of Westphalia. In contrast, however, Agamben (2000) suggests dispensing with such artful *realpolitik* altogether: "…(W)e could conceive of Europe not as an impossible 'Europe of the nations,'…but rather as an aterritorial or extraterritorial space in which all the (citizen and noncitizen) residents of the European states would be in a position of exodus or refugee, the status of European would then mean the being-in-exodus of the citizen…" (p. 24).

But no such utopia has come to pass, and so the arena of legislative drafting should not be understood as a somehow unproblematic space of populist consensus. Constantly beholden to

donors and a party apparatus, the creative potential of the legislator is easily redirected, like that of the artist courting collectors, into the monotonous task of crafting an image of appeasement and predictability, to reassure powerful interests. In the American legislative context, at multiple levels of government, the American Legislative Exchange Council (ALEC) has become a highly influential source of readymade legislation. For example, a trove of leaked documents revealed an effort to promote private prisons through the expansion and heightened enforcement of criminal laws (Cooper, Heldman, Ackerman, and Farrar-Myers, 2016). The tireless efforts and expressions of gratitude that are hallmarks of Reynolds' artistic practice are perversely mirrored in the favors ceaselessly demanded and rewarded by an entity like ALEC, whose wide influence seems to render irrelevant the very distinction between the market and the state. And, while corruption need not be accepted as unlimited and inevitable, it can be seen as inseparable from the practical considerations of law.

As it happens, *phronesis* describes Reynolds' approach to politics quite succinctly. Making common cause with as many officials, activists, and reporters as possible, whether in administrative or legislative capacities, is a theme that runs throughout Reynolds' recollections. Despite the collective imaginative creation of political reality pursued by Tamms Year Ten, it, unlike the Tamms Poetry Committee, may be outside the realm of *poiesis,* the ideal aesthetic realm which Plato saw as primary to material *physis* and concrete *praxis,* and which Heidegger associated with world-making rupture (Di Pippo 2000). But the pragmatic performances of TY10 shouldn't be confused with mere rationality. While Jacques Rancière observes that the arts came in time to be "extricated… from the legislative reign of truth over discourses and images" (2004, p. 12), art could be at times a source of creative legislation that generates images and discourses

through paradox. Even if, to be both effective and aesthetic, tactical deployments of traumatic affect must project an image of orderly rigor.

As the psychoanalyst Hanna Segal proposed in 1952, the roots of aesthetics can be seen more in a cry of mourning and aggression than in an ordered expression of rationality (Trieman 2016). Paul W. Kahn (2011), following Carl Schmitt, offers a vision of politics based in collective will, before and above reflective reason. In describing his understanding of politics Kahn argues for an approach based on analogy and rhetoric rather than logical proof; this mode of argument, central to common-law deliberation, was touched upon earlier in discussing legal realism, in which history rather than rational argument is the a guiding principle. One analogy Kahn makes is between the interpretation of law and of art, in which he situates art as an intermediary.

> The (art) work itself is engaged in a kind of conversation with us and with other works… An act (of interpretation) commensurate with human freedom must fill this middle range that represents an interchange between the universal and the particular. This domain is neither that of reason nor of desire but of the imagination. (p. 129)

Although Schmitt, ever the realist, decries the aesthetic influence of Romanticism on politics (1928/1986), [16] Kahn makes the analogy between an artist creating art and a collective democratic "popular sovereign" creating the state, presenting the claim, "We do not speak of the popular sovereign knowing or wanting but only willing" (p. 131).

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[16] However, Schmitt, who would eventually become a legal advisor to the Nazis, dallied with Expressionist literature, and had a friendly and respectful relationship with the important Zurich Dada artist Hugo Ball, a fellow anti-rationalist and anti-Semite (Stark, 2013).

Outlined in his book *The Ignorant Schoolmaster,* Rancière (1991) describes the learning situation similarly, as an alignment not of rational understandings but of wills—an alignment poorly understood by the majority of those involved in education, but certainly appreciated by those in politics (Bingham, Biesta, and Rancière, 2010). The faculty of imagination, while it may seem more passive and fanciful, is the faculty of will, and also of religious faith. The capacity to pursue a political vision, as Schiller expressed, is the capacity to bring something believed to exist into existence.

Roland Barthes (1971/1976) describes Ignatius Loyola as a figure consumed obsessively by the act of writing and classifying, while simultaneously focused on the image. This image is not an indistinct mystical vision, but rather a "view"—his writings are "compositions of place" whose "detail is painstaking" (p. 55); "the image is the abiding material of the *Exercises*" (p. 66). Although intended as a guide, the reason that Ignatius' *Spiritual Exercises* should be understood as art rather than pedagogy is that, like laws written by legislators for the use of courts, or textbooks written for the use of teachers, he wrote not for individual practitioners but for the director of the religious retreat center, whose responsibility it was to lead the meditations of individual exercitants (pp. 41-44). But, as with the work of the legislator, this guide is comprised of minutiae, and, like the evidence from her archived lobbying files that Reynolds presents as artwork, the project is set out "in a discursive system of annotations, notes, points, preambles, precautions, repetitions, reversals, and consolidations which form the strongest of defenses" (p. 70). "Ignatius opens to the Divinity a list, at once metaphoric and metonymic, of its attributes; it is possible *to speak* God" (p. 68).

The rigidity of the system requires constant rearticulation and emendation. It is an incessant activity to be sustained by will. But this totalizing rigidity is evidence of neither

rationalism nor narcissism. Reynolds worked through the Tamms campaign in a sleepless haze of adrenaline, partially as the result of sleep apnea that went undiagnosed until 2016. Without attributing any religious motivation to her personally, Reynolds' work manifests the Christian ideal of solidarity with a society's most despised individuals, and should be understood as neither simply utilitarian nor ecstatic. Just as the juror and the legislator assert the voice of a constituency, Reynolds acted as a conduit for both the men incarcerated at Tamms and the family members that formed Tamms Year Ten. Her single-minded struggle follows the Jesuit mandate, "to will nothing oneself" (p. 73).

Chapter 4: The Executioner and administrative aesthetics

4.1 Getting their hands dirty

For Hegel (1835/1975), the modern protagonist can be noble, or poignant, but cannot be, "as he was in the Heroic Age proper, the embodiment of the right, the moral, and the legal as such" (p. 194). Because these principles aren't abstracted into a social code, this bygone hero in himself represents and confronts an unknowable and infinite truth we associate with Lacan's Real. Comparing Lacan's Real with Frantz Fanon's idea of necessary violence, Frank Wilderson (2010) says that "what Loïc Wacquant calls the 'carceral continuum'… remains constant, paradigmatically, despite changes in its 'performance' over time—slave ship, Middle Passage, Slave estate, Jim Crow, the ghetto, and the prison-industrial complex" (p. 75). Thus Hegel's hero might be said to exist today only in its negation, in which disorder, immorality, and illegality are projected on to a racialized Other.

This Real is first and foremost a negative space—it's what cannot be named or imagined. But an element of the Real can also be found in the administrator making instinctive decisions simultaneously in her own name and in the name of an authorizing corporate entity, and it is the feared regime of punishment whose presence reassures a fearful public. It is also the undefined realm of ungoverned activity, which police participate in while putatively acting to contain, where anxiety about a descent into barbarism is less assuaged than redirected by turning social chaos against itself.

The Real is also the uncanny presence that haunts many in long-term solitary confinement—a featureless space that persists monotonously, denying the distinctions between inner and outer reality that sustain a stable sense of a coherent world (Guenther, 2013). In Illlinois the open-ended, state-backed authority of the correctional officer is organized and manifested in AFSCME, the union that was Tamms Year Ten's primary opponent in pursuing prison reform. And yet the Illinois governor, taking advantage of the line-item veto, a check the state executive enjoys vis-à-vis the legislature, was able to close the Tamms supermax, decisively overcoming the inertia of the State Assembly.

The abstractions of aesthetics and law enter into a visceral, tangible situation of power directed by desire. "Before the Law" is a story within Franz Kafka's novel *The Trial,* published posthumously against his wishes in 1925. This parable is related in a cathedral by a prison chaplain to the protagonist, a target of mysterious legal persecution. In the story, a man lives his life before a guarded door; in the man's last moments of life, the guard reveals this door exists only for him, and it is then closed forever. An inconclusive interpretive debate follows this tale. In the larger world of the novel however, the protagonist Joseph K. experiences all the futility of the mythic legal subject in "Before the Law," yet his banal existence of tedium, anxiety, discomfort, and inconvenience is punctuated by scenes of sexual brutality, and visits to a strange courtroom bedecked with pornography. I propose that experiences of lust, delusion, disgust, and fear, as well as confusion, humiliation, and frustration, connect art to the law just as much as ideological issues of interpretation. In regard to race, Shannon Sullivan (2014) expresses it well: ""white ignorance primarily operates physiologically, not cognitively" (p. 591). This pre-cognitive realm of experience echoes the largely intuitive, irrational world of the police: partially

because of the delusional concept of race that historically has informed policing, but also because it relates to violence more broadly.

Guy Debord (1961/ n.d.) was associated with the Situationist International, which participated actively in the ill-fated May 1968 street protests in Paris, events which attempted to enact what Debord termed a "revolutionary judgment of art" (para. 2). It may be just as outrageous an act as calling a lobbying campaign art, to say that revolutionary engagement can in and of itself be artwork, as Luis Camnitzer says in discussing novel forms of resistance undertaken by the militant revolutionary Tupamaros of Uruguay (2007), but Camnitzer's ideas are important to thinking about the executive aspect of art, the art of the inspector, torturer, or executioner. Their spaces of wide discretion are defined by the aesthetics of judgment, teaching, and interpretation, discussed earlier, which tend rather ironically to bracket off choices for judges, critics, and teachers. The legislative artist, of whom Reynolds is my exemplar, can potentially bridge the virtual world of criticism and the material realm of action—the general and the specific, the abstract and the concrete, the public and the private. But the executive, fighter, lawbreaker, and police officer all occupy the latter category of the specific, concrete, active, and private: all characteristics many would associate with Hegel's classical hero, or a modernist definition of the artist as *auteur* and *provocateur*. A reflection on the direct use of immediate power can round out the idea of legislative art.

Prefigured in Duchamp's "curated" readymades, the administrative role of the curator (*commissaire* in French, which also means "chief of police") has come in much of the contemporary art world to absorb and sometimes eclipse the status of the material or conceptual visionary. As administrative roles in universities and large nonprofit organizations have been steadily and formlessly multiplying, as have state policing agencies (Brodeur, 2010), and as have

the foundation grants for temporary small-scale community enhancement art projects sometimes identified as "social practice." Austrian economist Friedrich Hayek connected capital directly to the formation of desire and taste (Robin, 2017), and the funding of the fine arts has indeed now become a highly abstract market of quantified speculative investment (Kazakina, 2017), distinct from the premodern institutional patronage of aristocrats and high clergy. Nebulous economic contexts of artistic production are eroding the idealized autonomous creativity attributed to the artist since at least Kant, but also perhaps overshadowing the art being produced.

Nonetheless, the association of art and politics has a lengthy history in the West, if we consider administrative actions as "art," in the senses both of "artifice," and of being "artful." Statecraft has been discussed in this way since at least the time of Machiavelli's *Prince,* particularly through the backlash against Machiavelli (Foucault, 2004), and I would argue that art continues to provide a model for the creative enforcement of laws today, since far more sentences are reached in deals made by prosecutors, freely assembling charges and sentences, than in rulings made by judges, let alone juries.

In the *Leviathan,* his monumental treatise on government, Thomas Hobbes drew an analogy between the formation of the human body by God to oversee nature, and the formation of human government by man, through what he calls "art":

> *Art* goes yet further, imitating that rational and most excellent work of nature, man. For by art is created that great Leviathan, called a Commonwealth or State, which is but an artificial man, though of greater stature and strength than the natural, for whose protection and defense it was intended" (1668/1994, p. 9).

The Swiss historian Jacob Burckhardt sees the creation of the modern individual, in turn, as a creation of this (for him, exceedingly rational) governmental artwork. Speaking of the changing shape of government during the Renaissance, he says:

> ...a new fact appears in history—the State as the outcome of reflection and calculation, the State as a work of art. This new life displays itself in a hundred forms, both in the republican and in the despotic States, and determines their inward constitution, no less than their foreign policy. (1860/2008, n.p.)

While there are reasons to continue to heed Walter Benjamin's warning about aestheticizing politics, much may be gained by retroactively projecting on to these authors the modern use of the word "art," and then taking the comparisons between politics and art more literally than figuratively.

Contra Hobbes and Burckhardt, though, we should perhaps consider a more informal contemporary definition of art: art as a performance of power that parallels government as a project of vanity and self-glorification rather than a rational machine, as can be seen in the history across civilizations of sacralized authoritarian pageantry (Agamben, 2011). The Romantic ideal of total expressive freedom can be considered in this light, as can its leveraging as a transcendent principle--first in the Cold War and now in the War on Terror, in which artfully legitimated torture emerged from the shadows. Law functions in this current context of endless war not as a limit, but as a tool to enable executive autonomy and capital expansion.

The sadism associated with the torturer should be understood as intimately related to the goal of civil harmony through the medium of tragic theater. A mutation of the teacher who demands answers and apologies, we have the figure of an obscene interrogator, former Chicago police commander Jon Burge. Burge and his officers tortured false confessions out of at least 100

young African-American men in the 1980s and 1990s, including Mark Clements, who was sent to Tamms, but released when his tortured confession was thrown out. It was a project around Burge's perjury trial that led to a classroom collaboration with Laurie Jo Reynolds while I was an art teacher on the city's south side, at the school from which Burge graduated back when the area was relatively white and prosperous. Refracting Foucault's police state without limits, Burge ruled through terror even more than surveillance. Hobbes (1668/1994) justifies this limitlessness in his *Leviathan*: "To resist the sword of the commonwealth in defence of another man, guilty or innocent, no man hath liberty, because such liberty takes away from the sovereign the means of protecting us" (p. 143).

Burge's reign of terror was undoubtedly propelled by the link between interrogation and pleasure. The same link is evident in a recent report finding that the Missouri parole board had spent years deliberately playing word games in parole hearings, attempting to insert and elicit odd words and references while questioning inmates (Bogan, 2017). Indeed, forced confessions, linking legal/religious transgression and pornographic spectacle, are a motif used by the Marquis de Sade (Barthes, 1971/1976, p. 145). The modern hedonistic appropriation of Hobbesian limitlessness embraces and diffuses the arbitrary chance that once expressed the whim of a monarch, in which no audience can grant or withhold approval. This is the sense in which the philosopher Georges Bataille speaks of sovereignty: acting freely "without receiving anything, even recognition that one's act has occurred" (Rutherford, 2012, p. 15).

This relates to how police organizations, particularly secretive forces in their nascent stages, often put a far greater value on individual autonomy than on collective organization. A noteworthy example can be seen in the early days of the Office of Strategic Services (OSS), the predecessor to the American CIA that was formed during World War II to coordinate clandestine

operations behind enemy lines. The OSS was notoriously disorganized, and its leadership put a great deal of emphasis on individual initiative and ingenuity. Referring to the founding director of the OSS, General William Donovan, R. Harris Smith (1972) writes: "Every eccentric schemer with a harebrained plan for secret operations (from phosphorescent foxes to incendiary bats) would find a sympathetic ear in Donovan' office" (p. 3). At a greater scale, a parallel example contemporary with the OSS was its stated enemy, the National Socialist regime in Germany. Contrary to received impressions of the Nazis as embodying a brutally efficient and organized state apparatus, historian Gerhard Weinberg (1994) characterized the result of the party's attempt to work on top of and alongside pre-existing bureaucratic structures as "administrative chaos" (p. 686). Ernst Rudolf Huber (1939/2000), a professor of jurisprudence during the Nazi period, characterized the charismatic leadership of the Fuhrer as not even comprising a proper state under the rule of law (p. 282), with power devolved to "little Hitlers" operating at the local level.

Today even the most reform-minded judges and legislators defer to the judgment of police, prison administrators, and, most importantly, prosecutors (Pfaff, 2017). As a consequence, the non-transparency and lack of due process faced by men sent to Tamms is echoed outside of corrections administration by the supposedly accountable public judiciary. Ryan H. C. Balisacan (2014), at that time an official corruption investigator in the Philippines, asserts that prosecutors are among the least constrained officials in any branch of government.

> In investigating cases, deciding what charges to file against whom, and handling the various incidents of trial including, among others, entering into plea bargains with the accused, prosecutors rely almost exclusively on their own appreciation of what "justice" demands in a particular situation. (p. 380)

The situation is not very different in the U.S., as Balisacan makes clear. The ability of Jon Burge to sustain his authoritarian fiefdom for multiple decades required the tacit permission of State's Attorney Richard M. Daley, son of the infamous Mayor Richard J. Daley, who would himself become Chicago's mayor in 1989 and remain in that position for 22 years. Along with illustrating the political ambition that drives many prosecutors (much like ambitious artists pursuing fame), this provides a stellar example of the principle of the prosecutorial exception as outlined by Sarat and Clarke (2009).

Under the Trump regime, the executive has asserted its prerogative over that of judicial authorities primarily through immigration, as the immigration system is under the executive rather than the judiciary. The adjudication of immigration has been understood, ever since the issuing of late-19th-century Supreme Court decisions upholding the deportation of Chinese immigrants, to be a matter of administration rather than criminal law, and thus not subject to the Constitution (Hernández, 2017); immigration court judges are essentially "government lawyers" (Campoy, 2017). Legal scholars have stressed the role of the exception offered by prosecutorial discretion in limiting the extradition of law-abiding immigrants (Cade, 2013; Wadhia, 2013 and 2015; Zatz and Rodriguez, 2014; Corcoran, 2014; Margulies 2014), which recall petitions for clemency made to monarchs such as the Roman emperor Justinian, mentioned above (Humfress, 2005). Despite instances of mercy, this dynamic of sadistic autonomy plays out throughout the justice system, with America's national prosecutors' organization expressing both its resistance to Federal forensic guidelines, and its support for Attorney General Jeff Sessions' mandate to seek maximum punitive sanctions (National District Attorneys Association, 2017a, 2017b).

In regard to domestic racism, the recent spate of recorded and publicized police killings of unarmed African-Americans illustrates various gaps in the rule of law. A pointed example is

the apparent impossibility of gaining convictions in such cases, even in the rare case of a motivated prosecution. Michael Schatzow, one of the lead prosecutors involved in trying officers involved in the 2015 killing of Freddie Gray while in the custody of the Baltimore police, expressed pessimism regarding the ability of the judiciary to reform either the police, or the judiciary itself.

> A trial is not about answering broad questions. A trial is focused on whether the state can prove beyond a reasonable doubt the guilt of the defendant who is charged. A trial may not be the best vehicle to determine broad questions of public policy; broad questions of what the law should be; broad questions, in this case, of how the police should police; or how citizens should interact with the police. A criminal trial may not be the best place to do that. (As cited in Neyfakh 2016, para. 6)

However, like police in other cases (Holley, 2016), the officers in Freddie Gray's killing filed suits in response to their "defamation" and prosecution, and courts have proved willing to consider these lawsuits. The exceptional immunity granted to prosecutors has, in the case of Baltimore's chief prosecutor Marilyn Mosby, has thus itself proven to be subject to exception in the case of prosecuting police (Hager, 2017). A longer historical view of the creation and evolution of the police, in and beyond the U.S., may help to illustrate both the rules of pleasure and the pleasure of rules.

Through recapitulating in various ways the *patria potestas,* the power that an ancient Roman landowner held over his family and slaves, sovereignty stripped from indigenous groups was dispersed at the beginning of the American republic to hundreds of localities and thousands of newly propertied white men, thus defining a vast array of distinct and overlapping areas of state non-intervention within the state.

> Early nineteenth-century American laxity in regard to criminal activities, great latitude of American administrative and judicial discretion, the extraordinary latitude of the American jury compared even to the English jury, the admission of illegally obtained proofs by U.S. courts, and the vagaries and inconsistency of sentencing and punishment kept the American police generally free to operate as they wished(.) (Peters, 1996, p. 111)

The link between early American policing and slave patrols has long been overlooked (Turner, Giacopassi, and Vandiver, 2006), as has the explicit connection between suppressing slave revolts and the Second Amendment to the U.S. Constitution, which provides for "the right to bear arms" in the service of "a well-regulated militia." There had already been hundreds of slave rebellions at the time of the Constitutional Convention, and Constitutional framer Patrick Henry advocated for this right as a direct response to the rights given to the U.S. Congress under the First Amendment.

> If there should happen an insurrection of slaves, the country cannot be said to be invaded. They cannot, therefore, suppress it without the interposition of Congress(.) (The Founders' Constitution 1788/1987, para. 12)

Service in such militias was considered obligatory throughout the antebellum South (Haden, 2003), and was pivotal in establishing white supremacy as not merely an ideology but a duty and a regime. But it should be understood first and foremost as a prerogative to assert dominion through permission to break taboos on behalf of the order those taboos defined.

This diffusion of arbitrary authority is still with us today. Jon Burge inhabits a role that the French Royalist Joseph de Maistre (1821/2009) characterized as an unfairly reviled figure. This is the executioner, who acts not as an ordinary individual, but in a role in which murder is

required in order to sustain the law. Rhapsodizing the executioner in terms not unlike Georges Bataille's lament over the modern invisibility of the slaughterhouse[17], de Maistre says:

> He is not a criminal and yet no tongue would content to say, for example, *that he is virtuous, that he is an honest man, that he is admirable* etc. No moral praise seems appropriate for him, since this supposes relationships with human beings and he has none. And yet all greatness, all power, all subordination rests on the executioner; he is both the horror and the bond of human association. (p. 36, emphasis in original)

Egon Bittner (1990) describes the role of the police in similar tainted terms, stating that "policemen are viewed as the fire that it takes to fight fire" (p. 96). This gives the police officer, like the executioner, a morally ambiguous role; as Jean-Paul Brodeur (2010) succinctly states: "There is no significant divide between the good guys enforcing the law and the bad guys who are violating it" (p. 246). This is a variety of power without what might be termed prestige, but with great freedom. It recalls William Westley's description of the "policeman's world," which he presents as "spawned of degradation, corruption, and insecurity. He sees man as ill-willed, exploitative, mean, and dirty; himself as a victim of injustice, misunderstood and defiled" (1970, n.p.).

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[17] "Meanwhile, today, the slaughterhouse is cursed and quarantined like a boat carrying cholera. In fact, the victims of this curse are not butchers or animals, but the good people themselves who, through this, are only able to bear their own ugliness, an ugliness that is effectively an answer to an unhealthy need for cleanliness, for a bilious small-mindedness, and for boredom." George Bataille, as cited in Leach, N. (Ed.). (1997). *Rethinking Architecture: A Reader in Cultural Theory,* p. 22. New York: Routledge.

Yet these stains are what make the enforcer such a mesmerizing figure. The contradictions enacted by the executioner and the police officer literally defy meaning, as Picasso's painting did for Bataille, in that they cannot be adequately included in the symbolic system they preserve. Barthes (1971/1976) describes the "solitary" space of Sade's fantasies as "completely confounded with the blank of the narrative: the meaning stops" (p. 16). As much as this evokes imprisonment, it also depicts the world of the cop. When Slavoj Žižek (2000) states that "(t)he Lacanian Real is strictly internal to the Symbolic; it is nothing but its inherent limitation, the impossibility of the Symbolic fully to 'become itself'" (p. 120), he could easily be talking about the impossibility of indicting a police officer. Bleak and Hobbesian perhaps, but rich with poetic tragedy.

In late medieval and early modern Western art, punishment appears as a glorified and divine necessity. While premodern Biblical and classical images of torment are abundant, Ambrogio Lorenzetti's 1339 series of frescoes allegorizing good government makes its political points fairly literally, depicting an anthropomorphized goddess of security, labeled Securitas, holding a hangman's gibbet. John T. Hamilton (2013) describes Lorenzetti's painting as visualizing a collectivized, integrated deployment of fear and violence, opposing a common enemy (p. 145). This morally and divinely sanctioned violence was common throughout the art of many societies, and of course still exists in superhero movies and police procedurals.

Ethically ambiguous images of inevitable corruption evoke a sort of tragic fatalism, exploited in narratives formed in the mold of Clint Eastwood's Dirty Harry films. In the most general sense, Boris Groys (2012) similarly associates the modernist artist's attempt to reveal the "truth" of her medium with the belief that war reveals the "truth" of a person, in which "a deep connection is proclaimed between aesthetics, the search or the revelation of the concealed, and

the violence that plays a key role in artistic modernism" (p. 229). The glorification of war was explicit for the Futurists, but Groys says that the ethos of cruelty was visible throughout avant-garde art.

> Cubism… compelled (the image) to admit its… character by applying rigorous methods that were fully reminiscent of traditional methods of torture—reduction, fragmentation, cutting up, and collage. (p. 233).

In the Cubist refusal to straightforwardly depict forms in such work, divisive modernist critic Clement Greenberg (1949/1961) sees a "radical denial of all experience not immediately revealed to the eye," "The world was stripped of its… skin," he continues, "and the skin was spread flat on the flatness of the picture plane" (p. 172). This torment is, Greenberg suggests, also a revelation. Revealing the intention (or desire) of the work, interrogation, is crucial to its pleasure, even as modernist art increasingly made a point of avoiding representation of any kind. But the pleasure can also be that of polymorphous perversity; Barthes (1971/1976) points this out in describing the impossible orgies of de Sade, noting that "to accomplish them, if they are taken literally, one would need a multiple and disarticulated body" (p. 130).

The Cubists' abstraction of torture resonates with Lon Fuller's 1934 reflections on judicial interpretation, when he suggests that modern judges torture legal texts through imaginative analogies much as confessions were tortured out of prisoners in the Middle Ages, optimistically surmising: "The millennium, when it arrives, will bring not only a humanitarian treatment of our treatment of legal doctrine, but also, I feel sure, a greater certainty in the prediction of judicial decision" (p. 435). But torture may not be an artificial imposition on the language of law, but an element intrinsic to language itself (Žižek 2014) As with the positivist utopia advanced by Buckminster Fuller, as well as the algorithmic amelioration of justice

proposed by author Adam Benforado (2015), or Burckhardt's hyper-rationalized state, Lon Fuller's belief in total visibility, a discoverable transparent truth, may be more of a temptation to detached absolutism than expanded compassion.

Supplementing this visibility, as an example of selective (perhaps Oedipal) blindness, Austin Sarat and Connor Clarke (2009) recognize in the decisions made by prosecutors to refrain from indictment something of the privileged sovereign "exception" designated by Agamben, after Schmitt (and Derrida)-- an insight relevant to the aforementioned failure of American courts to hold police accountable for Black civilians' deaths. The brutal interrogator who faces his own inquisitors with wordless defiance (referred to in American police departments as "the code of silence"), as Jon Burge has done multiple times under oath since 2004, mirrors the unique moral outlook of modern art and law. The freedom to make such exceptions extends from the prosecutor, the legal voice of the police, to anyone else acting on behalf of the police (Bittner, 1990, p. 35). This vacuum provokes not only force but crime. "The theoretical discourse that was favourable to modern art….," observes Groys, "has generally interpreted (the) avoidance of critical judgment… as the effect of an irresistible inner compulsion which forces the artist- even against his own conscious will—to create the Other, the new, the criminal and the dangerous" (p. 52). So perhaps the artist builds his own gallows, anticipating an ever-deferred verdict, a judgment on the absence of judgment. This modernist anti-ethics can be perceived as perverse or as impossibly absolute, an ideal judgment, but it also may be viewed also as an executioner's aesthetic, devoid of pity.

But beginning around the turn of the 19th century, when de Maistre was writing, images of suffering start to become both a spur for empathy and a titillating spectacle. With the upheaval of the French Revolution and the Napoleonic Wars, violence can be understood as a call to

action, as in Goya's *Disasters of War,* which Susan Sontag (2003) links to the ongoing history of documentary photography, in which depictions of suffering are intended to elicit sympathy. But violence can also become an occasion for sinister glee. At the time of the early French republic, this can be seen in the grisly waxworks of Madame Tussaud (Graybill, 2006). Punishment would slowly begin to change, as official public executions receded and made room for the dissemination of gruesome imagery through the market, whether for gleeful or empathic enjoyment. The inevitable distortion of Goya's solicitation of empathy is expressed in Rancière's sarcastic comment (2010) about how "a series of photographs about the way colonizers represent the colonized will work to undermine the fallacies of mainstream representations of identities" (p. 136),

Such delectation of slaughter can be understood to appeal both to the oppressed as well as the powerful. "There were two 'Reigns of Terror' if we would remember it and consider it, the one wrought in hot passion, the other in heartless cold blood…" said Mark Twain in *A Connecticut Yankee in King Arthur's Court*, putting the Jacobins' mass executions in a larger moral context; "(W)hat is the horror of swift death by the axe compared with lifelong death from hunger, cold, insult, cruelty, and heartbreak?" (as cited in Žižek, 2011, p. 387). The revolutionary narrative that raised up Lenin and Mao, and exiled both de Maistre and Hobbes, allows pleasure to be taken in directing general retribution at a designated victim. This evokes the model of sacrifice laid out by René Girard (1999/2001), and discussed earlier in regard to scapegoats such as Linda Taylor and Richard Speck. Both revered and reviled, a victim ambiguously represents both her social group and an anonymous vessel of guilt and rage; we can see here how a victim, a criminal, a cop, and an executioner can begin to merge in an indistinct traumatic twilight.

4.2 "The justice of administration"

In the early 19th century, the documented litany of breakdowns and suicides in American prisons that made use of solitary confinement was so horrific that the practice was eventually even decried by the U.S. Supreme Court, in the 1890 *Medley* case. And yet, in the 20th century, it returned. When the most excessively inhumane forms of prison labor were finally eliminated, when the use of indeterminate sentencing was banned, and even when the courts interceded in acts of egregious human rights abuses, the prerogative of prison officials was not curtailed but enhanced. In the face of legislative sentencing reform, electoral referenda, and judicial monitoring, prison officials built and expanded the most populous and expensive carceral facilities ever seen. Ultimately, the prison is a space of the executive.

As seen in exercises of state discretion such as the placement of men in Tamms at the apparent whim of officials, as well as in Governor Pat Quinn's free commitment to act against both the prison guards' union and the majority of state legislators in closing Tamms, creativity has long played a central role in imprisonment and policing. Cincinnati, Ohio, which established its police force in 1852, one of the first American cities to do so, was also in 1870 the birthplace of the National Prison Association. Dedicated to "penal reform," this group was instrumental in calling for prison sentences of indeterminate length. At this first Cincinnati meeting, Reverend E.C. Wines put forward "the principle that imprisonment ought to be continued till reformation has been effected, and, if that happy consummation is never attained, then during the prisoner's natural life" (cited in Friedman 1993, p. 140).

Indeterminate sentencing, a blank check for administrative creativity, was to be widely

adopted for serious felonies over the next few decades. It applied not only to violent crimes but, even after the end of forced sterilization and lifetime commitment after World War II, nonviolent sex offenders faced long indeterminate sentences, sometimes extended for many years by juries in the face of expert advocacy (Letourneau and Caldwell, 2013). Andreas Kalyvas (2008) explains evocatively that, for Max Weber, "real juridical creation leans on a web of extralegal substantive axiological meanings and imaginary significations established by the victorious charismatic movement after a protracted symbolic struggle" (p. 63). Without the innovations in incarceration over the course of the nineteenth century, based on the liberal outlook of Quaker reformer Benjamin Rush, and the individualist values of a young decentralized capitalist state, such freedom of juridical fiat may not have emerged.

Over a century later, in 1971, an influential report was released by another progressive Quaker voice, the American Friends Service Committee. This report, entitled *Struggle for Justice,* protested against the use of indeterminate sentencing, and questioned the goals of rehabilitative justice to which it was connected. One important failure of the rehabilitation model linked with indeterminate sentencing is that this paradigm projected pathology on to entire sectors of the population, without addressing the dramatic physical and psychological effects of poverty. David Fogel, who in 1975 became director of the Illinois Law Enforcement Commission, was moved by these arguments. Like Wines, Fogel was a prison reformer; unlike Wines, Fogel was also a prison abolitionist. Fogel's vision was a future devoid of prisons. He sought as a first step to get rid of the indeterminate sentences handed down to prisoners, who were at the mercy of authorities and constantly worried about their next parole hearing, instead pushing for a system of "flat time," mandated sentences of a specified duration, but allowing

substantial judicial leniency. He wrote, "My concern is less with the administration of justice and more with *the justice of administration"* (1975, p. xv, emphasis original).

Fogel's attempt at technocratic transparency is consonant with Michel Foucault's vision of modern punishment as simply a weighing of interests. Foucault says:

> Something is interposed between the crime, on the one hand, and the sovereign authority to punish, possibly with death, on the other… Punishment will be rooted only in the play of the interests of others, of the family circle, of society, and so on. (1979/2008, p. 46)

And yet this logic of "interests" could be said to have led to the replacement of rehabilitation with retribution, highlighted in the U.S. with the massive criminal justice paradigm shift of the so-called War on Drugs, during which determinate sentences started being legislated as well as adjudicated.

As it turns out, determinate sentencing meant longer sentencing and minimal rehabilitative services in prisons, and effectively no services whatsoever when inmates were in solitary confinement. Around the same time that sentencing was being reformed, a similar spirit of rational transparency, compassion, and respect for dignity led to "deinstitutionalization," the nationwide defunding of state-run mental hospitals, with no commensurate increase in funding for community-based mental health services. One result is that the vast majority of Americans institutionalized for mental illness now reside in jails and prisons. As mentioned earlier, relative to the general population, people with mental illness are highly overrepresented in segregated detention.

Determinate sentencing, as well as other elements of Fogel's Illinois "Justice Plan," also ended up sparking the movement toward minimizing the use of probation, spurring prison overcrowding and new prison construction, and inaugurating the system of mass incarceration

that the U.S. supports today (Maghan, 1997). Judith Butler (2014) observes that the early penal reformers, the historical opponents of the death penalty, "seem to prefer a long, drawn-out form of cruel imprisonment" (p. 32). Of course, cruel imprisonment was expressly what Fogel sought to overcome, like Rush and Beccaria before him, but, in polls and elections, popular sentiment in the U.S. has generally favored harsh punishments (Garland, 2001; Reiter, 2016). The imposition of legislative and judicial oversight over prison administration has proved to be, particularly with the expansion of incarceration starting with the drug war in the 1970s and the advent of supermax prisons in the 1980s, an authorization without stipulation—a blank check for officials and wardens to inflict seemingly endless penalties (Reiter 2016). "Punitive license," it might be called. As demonstrated in these perversions of reform, law, like language, has a way of betraying reformers' intentions. But the intentions of the accused are cited as the basis for punishment, and the accumulation of intentional proof in circumstantial detail, through surveillance and interrogation, is used to justify the magnification of this punishment.

Such intensive administrative scrutiny has become the rule in punishment, as well as in schooling. One reason is that the legal protection of children is a particularly charged area, involving permanent and comprehensive restriction. All U.S. states have registries for sex offenders, some of which track individuals for life. While most states limit the amount of time sex offenders' names remain public, many sex offenders have to continue to check in with authorities for life, and large areas near schools, parks, and day care centers remain prohibited zones for registered sex offenders to traverse, let alone reside. Both the prosecution of sex offenders, which Laurie Jo Reynolds now expends a great deal of effort in opposing, and anxieties around drugs and violence, have continued to propagate an image of school as a "safe

space." The school is thereby exposed to what Walter Benjamin might term the "law-maintaining violence" of central oversight.

> (T)his legal system… strives to limit by legal ends even those areas in which natural ends are admitted in principle within wide boundaries… as in the laws relating to the limits of educational authority to punish (Benjamin 1955/1978, p. 280).

This panic translates also into the oversight of teachers and school administrators, who for decades have been targets of suspicion in education policy. Thus, the less "successful" a school, teacher, or student is, the more visible it/s/he must become, and as the students are suspended repeatedly and eventually expelled (and often imprisoned), so the schools are put on probation and eventually closed or reconstituted, often as quasi-public charter schools. This happened with multiple schools I worked at in Chicago.

And yet, while Chicago public schools continue to experience massive defunding, Jon Burge continues to receive a pension. He was briefly incarcerated for perjuring himself about torture (after the statute of limitations expired on his crimes), but, as Peter Manning (1978b) puts it, "(l)ying serves to relieve situations not easily solved by recourse to the law" (p. 247). Most importantly, highly visible videotaped police killings of unarmed Black people, even when they see the light of day, continue to result in few if any legal sanctions. As similar as they seem in some aspects of their jobs, the work of a police officer and a teacher are widely divergent in regard to the kind of autonomy they are granted and the oversight they endure. One reason for this is that, in keeping with the violent and undefined Real in which she operates, a police officer has far more of a negative than a positive job description, which allows her to claim legal sanction for extralegal actions.

> We know that (definitive activities of the police) do not include arrests; we also know that they do not stand under judicial control, and that they are not, in any important sense, determined by specific executive or legislative mandates. (Bittner, 1990, p. 32)

As helpful as this subtractive listing is, it falls short of defining the police. What, then is the police?

4.3 Crowd control as mythic tragedy

Before the word "police" came to denote a group of individuals paid to enforce laws, it was understood around 1600 to mean roughly what "civilization" now means in opposition to "barbarity," but generally as a quality possessed by individuals (Febvre, 1930/1998). But it soon began to take on an all-encompassing idea of municipal order, incorporating health, charity, and general domestic well-being—domestic both in the sense of the homeland and the family. Cited by Michel Foucault, the historian Turquet de Mayerne described police in 1611 as "everything that gives form, ornament, and splendor to the city" (p. 313). Referring to Nicolas de La Mare's 1722 *Traité de la Polıce*, Brodeur (2010) says that the term "police," in early modern usage, "both means order and the power to establish it" (p. 47). Just as the Italian classicist, political economist, and diplomat Galiani believed "police" to apply equally to both the distribution of bread and the politeness of Enlightenment salon society (Swenson, 2000, p. 41), Sir William Blackstone says in the fourth volume of his *Commentaries on the Laws of England,* from 1769,:

> The public police and economy…mean the due regulation and domestic order of the Kingdom, whereby the individuals of the state, like members of a well-governed family,

> are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious and inoffensive in their respective stations. (as cited in Bittner, 1990, p. 235)

As late as the 1820s, the British police reformer Patrick Colquohoun was attempting to realize what David Garland (2001) describes as "an emphatically *preventative* model of regulation," in which "crime control was a diffuse, widely shared responsibility, involving strict regulation of social and economic activities, informal surveillance, and the avoidance of criminal opportunities" (p. 31).

Extending Colquohoun's relationship between law enforcement and prediction into the 20th century, a study conducted by sociologist Ernest Burgess in 1928 on Illinois prisoners, assessing each prisoner's risk of returning to prison on a range of 21 factors, was an important moment in the development of actuarial science, affecting the development of insurance practices in particular and wider ideas of "risk management" in finance and security (Harcourt 2006). Whether public or covert, similar efforts to gather information and neutralize threats remain central to the work of political police agencies in both democratic and undemocratic regimes, and certainly in liminal spaces like prisons. This latter area is a realm of police work Brodeur refers to as "high policing."

On the other hand, the range of duties that "low" police undertake, even within one role (be it officer, detective, *et cetera*) is wide and generally quite undefined (Brodeur, 2010, p. 132), making membership in the police a performance of intuitive sensitivity and broad discretion with clear artistic parallels. While police enjoy many legal and extralegal privileges, much of what police do are activities not off limits to members of the public, and even more of their activities involve no direct physical violence whatsoever. Begging a comparison to the avant-garde, Egon

Bittner (1990) proposes that "anything unpredictable that cannot be dismissed or assimilated to the usual is a proper object of police attention" (p. 252). He emphasizes that patrolmen frequently handle any immediately pressing task, without any direct input, assistance, or oversight. He goes so far as to claim that "no human problem exists, or is imaginable, about which it could be said with finality that this certainly could not become the proper business of the police" (p. 250). The creation of a quasi-professional group authorized to deploy force at the discretion of individuals, without any real threat of censure, radically transformed the ideal civic harmony contained in the original concept of "police" into its anarchic opposite: a source of endless repressive pleasure. In the U.S., police as heroic restorers of order assuaged white insecurities around economic and political disparities, allowing them to mirror and perpetuate each other.

This is the context in which the massive police response to the Black Panthers should be understood. The Panthers started out in Oakland performing surveillance on the police, and moved into providing food, clothing, and health care to members of their community—"to serve and protect," to quote the familiar motto. Although militarism appropriately describes their eventual adoption of uniforms and guns, as well as revolutionary ideology, thereby violating Weber's state monopoly on violence (a prohibition which never applied to propertied whites in the U.S.), the Panthers essentially acted as a grassroots mirror of the police, focused far more on local security than on instigating acts of war. But the police enjoy socially unique authority, backed by legislative statute, judicial precedent, and administrative policy, to pursue whatever goal they deem prudent, using the means at their disposal. And yet, as the Panthers certainly recognized, force rather than law is central to the role of the police, just as expediency rather

than law is central to the plea bargains that are negotiated by criminal prosecutors and that resolve the vast majority of criminal cases.

Citing Bittner, Brodeur (2010) notes that, unlike any other group that enjoys a limited legal access to violence, such as prison guards, "the police can use their capacity to overpower resistance in *any* situation where the use of force can be justified" (p. 113, emphasis original). But Brodeur later points out that private security forces similarly exist in an ambiguous relationship to the law (p. 329). Thus "to police," in any capacity, effectively means to enjoy extralegal privileges. After all, the "police powers" granted to states and municipalities by the Tenth Amendment to the U.S. Constitution has effectively blocked most Federal efforts at enforcing citizens' rights supposedly guaranteed by that document—but guaranteed only at the Federal level (Gerstle 2015).

In this way, "police powers" could be said to echo the seemingly lawless provocations of the modern avant-garde. The relationship of police to the laws they supposedly enforce may truly be thought of as aesthetic rather than teleological. Bittner (1978) rejects the very idea that police are employed primarily to enforce laws or fight crime, suggesting instead that "the police are nothing else than a mechanism for the distribution of situationally justified force in society" (p. 34). "I am not aware of any descriptions of police work on the streets," he says, "that support the view that patrolmen walk around, respond to service demands, or intervene in situations, with the provisions of the penal code in mind." "In the typical case," he continues, "the formal charge *justifies* the arrest a patrolman makes but is not the *reason* for it" (p. 245).

The work of the police is always extralegal, in some sense. Walter Benjamin (1955/1978) observes,

> (T)he "law" of the police really marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain. (p. 288)

Much as with art, and culture generally, the police have undergone an experience of mutual disenchantment with and by the public, in which their inability to meaningfully affect crime rates has resulted in a long-term strategy of veiling, cajoling, and, most importantly, containment. This exercise in political optics can be understood as a performance of tranquil security for a designated sector of the population (Manning, 1978a, p. 9). But in the U.S. this performance is two-sided, in that low-income (but not only low-income) communities of color have come to expect public humiliation, beatings, and occasionally executions, while tolerating enormous civilian bloodshed, in a manner that recalls displays of power in autocratic societies and colonial occupations past and present. These communities may be compared to blank surfaces on to which power is projected, as when Hito Steyerl (2012) compares bodily gestures of a university police officer at University of California Davis pepper-spraying a seated crowd to Jackson Pollock dripping paint on a canvas. Describing the "political aesthetics" of "kettling," the police technique of obstructing, surrounding, and channeling demonstrators, Scott Sorli (2014) describes how the police shape the crowd with their shields and barriers, with tear gas and the built environment, into an amorphous outline of besieged containment, creating a "mass ornament" (p. 145). Going back to Bentham, prisons themselves can be seen as sites of display, as with a student I had in a 2016 prison-based reading group, who compared the cellhouse to a giant art gallery, exhibiting criminalized bodies for a variety of audiences.

This choreography repeats itself on a grand scale with political gerrymandering and school segregation (Chang, 2018), gentrification and incarceration, creating a segregated image of peace, sustained by "dark sites" of racialized poverty, the American equivalent of famed Soviet dissident author Aleksandr Solzhenitsyn's "gulag archipelago." Working with just such a notion of politicized space, Jacques Rancière (2010) opposes the concept of police, as a force delineating and separating areas, physical and metaphorical, to politics, which thrives on empty, uncertain, and extraneous space and activity. The "partition of the sensible" that the police secures

> should be understood in the double sense of the word: on one hand, as that which separates and excludes; on the other, as that which allows participation. (p. 36)

Politics confront police, Rancière asserts, through "an intervention in the visible and the sayable" (p. 37). The "sensible" thus links art and politics intimately, but not straightforwardly or comfortably. Art cannot merely be subtracted from or absorbed into life, and vice-versa; Rancière cites the example of militant French workers in the 1840s celebrating Gustave Flaubert, who was denounced by bourgeois critics into the 1860s (p. 116), but who expressed little sympathy for the poor, asserting, "Devil take me if I don't feel just as kindly toward the lice biting a beggar as I do toward the beggar" (as cited in Rancière 2004, p. 157).[18]

Political potential inherent in this very confusion of art and life, for both artist and viewer, permits a sense of autonomy separate from reason. In 1991, Neue Slowensiche Kunst, an art project associated with the German experimental band Laibach, created an imaginary state

[18] Flaubert's quote has a nice symmetry with the comment Trinculo makes upon encountering Caliban in Shakespeare's *The Tempest:* "When they will not give a doit to relieve a lame beggar, they will lay out ten to see a dead Indian" (as cited in Sontag 2003, p. 57).

with boundaries in time rather than in space; they went on to issue passports, produce musical compilations, and convene international congresses. Rancière says,

> Art lives so long as it expresses a thought unclear to itself in a matter that resists it. It lives inasmuch as it is something else than art, namely a belief and a way of life. (p. 123)

At the same time, he is justifiably skeptical about artistic practitioners of "ethical immediacy" who "continue to try to overturn the logic of the theatre by making the spectator active…, by sending artists into the streets of derelict suburbs to invent new modes of social relations" (p. 137). More than this, however, he declares: "Practices of art… do not take leave of themselves to become forms of collective political action;" here he could be read as dismissing any aesthetic value for an effort like TY10. Instead, by expanding their sphere of reference, artistic practices "contribute to the constitution of a common sense that is 'polemical'" (p. 149).

Political art for Rancière is a form of "dissensus," opposing the police regime that "pins bodies to 'their' places and allocates the private and public to distinct 'parts'"(p. 139). In its imagery of bodies and private parts, this quote resonates ironically with Barthes' (1971/1976) description of Sadean libertines, who "have an overwhelming urge to hide the Female's sexual organs scrupulously" (p. 123). But, along with making artwork out of everyday life, the police also then present this artistically transformed refraction of society back to the public.

According to "build the party," cited by Benjamin Noys (2013), all aesthetics is merely "imperial neutralization, whenever *direct* recourse to the police is not possible" (p. 13). The idea of revolutionary art is rendered impossible. Similarly, in *The Wretched of the Earth* (1961/1963), Frantz Fanon talks about the work that aesthetics does in a colonizer society, as opposed to that of a colonized society.

> In capitalist societies, the educational system, whether lay or clerical, the structure of moral reflexes handed down from father to son, the exemplary honesty of workers who are given a medal after fifty years of good and loyal service, and the affection which springs from harmonious relations—all these *aesthetic* expressions of respect for the established order serve to create around the exploited person an atmosphere of submission and of inhibition which lightens the task of policing considerably. (p. 38, emphasis added)

As Rancière would doubtless agree, this aesthetic policing is carried out spatially. The colonizer lives in an area of material and visual bounty.

> The settlers' town is a strongly built town, all made of stone and steel. It is a brightly lit town; the streets are covered with asphalt, and the garbage cans swallow all the leavings, unseen, unknown and hardly thought about… (T)he streets of (the settlers') town are clean and even, with no holes or stones. The settler's town is a well-fed town, an easygoing town, its belly is always full of good things. (p.39)

This town he contrasts to "the native town, the Negro village, the medina, the reservation, a place of ill fame, peopled by men of evil repute."

> They are born there, it matters little where or how; they die there, it matters not where, nor how. It is a world without spaciousness; men live there on top of each other, and their huts are built one on top of the other. The native town is a hungry town, starved of bread, of meat, of shoes, of coal, of light. (p. 39)

But then he links the life of the native to the Imaginary, to the fantastic projection of desire. "The look that the native turns on the settler's town is a look of lust, a look of envy; it expresses his dreams of possession… to sit at the settler's table, to sleep in the settler's bed, with his wife if

possible" (p. 39). While this is not the aristocratic aesthetic ideal of the well-ordered cosmos, it expresses an aesthetic ideal nonetheless—a revolutionary one.

In neighborhoods like the area of Chicago's southeast side. where Jon Burge held something like sovereign power, there's not much to distinguish it from Fanon's "colonial" or "native" countries, where, unlike the aestheticized condition he attributes to capitalist countries overall, "the policeman and the soldier, by their immediate presence and their frequent and direct action maintain contact with the native and advise him by means of the rifle butts and napalm not to budge" (p. 38). I would modify Fanon's searing analysis on three points. First, I maintain that in cities in America and throughout the world, the two towns, "settler" and "native," exist side by side in racially and economically segregated urban areas. Secondly, I would not characterize the work of the policeman in the poor majority-Black neighborhood as any less aestheticized than the work of the teacher in the wealthy majority-white suburb. The teacher convinces the young white person that resistance is immoral, and the police officer convinces the young Black person that resistance is hopeless. This is a clear illustration of a judicial versus an executive rhetorical performance. And lastly, the police, as I've suggested, perform a vital aesthetic function in wealthy areas, just as in poor ones—conveying to "good people" the assurance that they are safe.

The two audiences of the American police both experience outbreaks of unspeakable, irrational violence, and, at the same time, moments of stable and secure innocence. Each group identifies with one of these conditions as an everyday reality. The upheaval takes on aspects of dramatic fantasy, and the condition of peaceful stasis becomes an idyllic pastoral fantasy, each of which enters reality through active social reinforcement. For comfortable white areas, the repressed trauma returns as a recurrent element of nightmare, made manifest in media narratives of global upheaval and social decay. The proliferation of white militias testifies to the urgency of

the need for a conflict that can generate a catharsis to expunge collective guilt. This has manifested in various attempts to seize the extralegal white-supremacist authority currently embedded in policing, but dating back to posses, lynch mobs, and slave patrols.

In a new twist on white nationalism, a few contemporary white radicals have gained marginal visibility in courtroom videos and news stories through announcing themselves as "sovereign citizens." Often affiliated with separatist militia groups, these individuals have attempted to argue their way out of prosecution on the basis of their allegedly Constitutionally-protected right to withhold consent to abide by state and Federal laws. This refusal is a form of micro-secession, a refusal to acknowledge the post-slavery laws of Reconstruction (Crowell 2015, p. 2). This refusal, however, recalls nothing so much as the legally-informed tactics of police confrontation weaponized by the Black Panthers after the decline of 1960s civil rights activism. This recent right-autonomist white resurgence plays out in a reassertion of racial order in poor rural white prison towns like Tamms, experienced firsthand as bodily fear, felt by all the Tamms Year Ten members who attended a 2012 mass pro-Tamms rally in Ulin, Illinois. Family member Carol Wilcox (2014) compared her sense of the simmering fury on display that day, among the rural white crowd, to that faced by Freedom Rider anti-racist activists in the South during the American civil rights struggle.

For poor Black and brown communities, repression itself is continually restaged in street violence, while some ecclesiastic and secular institutions insist upon the possibility of a world disciplined into normalcy. But many residents, especially young people, are under no illusions as to their standing with the police.

> This is a common understanding among the Black teenagers we work with on the South Side—regardless of any effort they may make to pacify officers, once detained, the

> situation is largely out of their control. Students report that they assert themselves at their own peril. (Futterman, Hunt, & Kalven, 2016, p. 17).

The work of the police in a ghetto is largely a task of containment and separation (Bittner 1990, pp. 38-39). Fanon (1961/1963) says that, in the colonized world, "the dividing line, the frontiers, are shown by barracks and police stations" (p. 38). The "thin blue line" of the police may be understood as an opaque curtain of capricious violence that makes everyday life into life-and-death drama. And this opacity, like that of the Freudian unconscious, offers the police a destructive freedom. This has only begun to be glimpsed in the videos of police violence that have surfaced to date. Friedrich Schiller (1794/2004) declares that "aesthetic freedom is to be distinguished from the logical necessity of thinking and the moral necessity of willing only by the fact that the laws which guide the operation of the mind are not realized, and because they meet with no resistance do not appear as compulsion" (p. 99). But no matter how free their expression, no artist who has an audience, who functions as a member of a community, can enjoy the level of autonomy enjoyed by the police.

4.4 Mastery, mimicry and martyrdom

The farcical aspects of law and art depend on the absurd joy of transgression. The pathos of tragedy can paint absurdity with sober *gravitas,* but, as Hegel shows in the *Aesthetics* (1835/1975), transgression can also come from the destructive glee of comedy. In *Laughing at Leviathan* (2012), Danilyn Rutherford describes a form of solidarity familiar among marginal groups by describing the people of West Papua, who insist upon smirking at the stern Indonesian

state that demands their allegiance. Not that the epics lacked violence, nor did Chaucer refrain from salacious detail, but the Marquis de Sade, a licentious political revolutionary, may be understood as the first comically violent literary provocateur—a revolutionary writer who endured years of solitary confinement for depicting tormented suffering as eroticism rather than piety--or perhaps as a different strain of piety. Sade writes comedy through his grim commentary on confinement and torture.

It is important to understand that Sade's writings are indeed escapist fantasies, even if linked to the Marquis' professed revolutionary politics. Jacques Lacan (1990) comments specificially on the Marquis de Sade in relation to the philosophy of Immanuel Kant, and finds Sade a pitiable character by comparison. Locked in his cell, Sade tries to carry out a moral duty to express amoral pleasure, a "will-to-enjoy" that Lacan associates with Freud's "superego," the realm of morals and laws. Thereby Sade mimics a kind of mastery in the Symbolic world of writing that, in Lacan's telling, is the property of educated professionals, what Lacan calls the "university discourse" (1964/1977). But as pathetic and ridiculous as he may seem, the visionary Sade provides a compelling antihero precedent for more politically effective prison writers of the twentieth century like Antonio Gramsci, Aurobindo Ghose, George Jackson, and, particularly in terms of his erotic ruminations, Black Panther leader Eldridge Cleaver. And, at the same time, Sade's delusions of hedonistic grandeur make him a caricature of the police.

As thoroughly irreligious as Sade's writing is, David Farrell Krell (2005) points out that "Sade's heroes respond to beauty by desiring that it suffer beyond death, …into the infinity that is so successfully represented by the Christian hell" (p. 359). This is not unlike seventeenth-century Christian mystics who embraced the inevitability of damnation, subscribing to a doctrine of "pure love" that entailed "an unqualified self-divestiture required by obedience to the

unknowable will of a transcendent, arbitrary God" (Bersani and Phillips 2008, p. 75)—even though they assured themselves that after death they awaited a prompt immersion in hellfire. "Priests and bishops are always among the Marquis' heroes" notes Krell (p. 359), wryly downplaying the debased role of the clergy in Sade's structured orgies. As anachronistic as the idea of eternal punishment already seemed to cultured Enlightenment Europeans, the contingency of fate in Sade is ultimately justified only in suffering, a viewpoint passionately expressed in the twentieth century by Georges Bataille, who evokes in his writing an ideal of individual sovereignty strongly influenced by Sade.

Many visual depictions of divinely ordained violence decisively changed their tone (but not their ubiquity) after Sade, after Goya's *Horrors of War,* and with the advent of documentary photography (Sontag 2003). Ennobling and titillating violence has continued to fuel high art as well as popular entertainment, particularly in the genre of film, with Alfred Hitchcock standing as the cinematic archetype for both audiences. The effect of these examples, if not their intention, is that violence has come to be associated with transgression, anxiety, and persecution rather than righteous judgment. While action movies and superhero comics continue to resolve conflicts through the smiting of wrongdoers, even in these the formless trauma of brutality is shaped through the *gravitas* of tragedy, in which the heroes, like de Maistre's executioner, are the ones willing to get their hands dirty. Arbitrary power takes center stage, frequently refusing to rest in any single individual. This violent formlessness, an expression of Lacan's Real, is also expressed in the amorphous plot of the Sadean "rhapsodic" novel, a narrative which according to Barthes (1971/1976) has "no *meaning* or direction, nothing compels it to develop, progress, end" (p. 140).

As portrayed in the novels of Franz Kafka and the films of Stanley Kubrick, the persecuting machinations of modern institutions often seem absurd, and sometimes darkly comical. Marshall “Eddie” Conway, the former Minister of Defense of the Baltimore Black Panther Party, tells this story of reading in the newspaper while stationed with the U.S. Army in Germany about the militarized response of police to African-Americans protesting in New Jersey:

> I was on my way to Vietnam, and at that point I decided to like leave the Army, come home, and with the concept that well okay, we needed to make some changes in America, America needed some kind of reform. Military vehicles shouldn't be sitting in the middle of the intersection and fifty-caliber machine guns shouldn't be pointed at Black women in the Black community, and so something was wrong with that picture, and I could probably come home and help join some effort to help reform that... As I went on I realized that some more serious kind of organizing need to happen, to improve the condition in the Black community, and I looked at all the different organizations, and the Black Panther Party represented at least a serious attempt to start feeding the children, to start educating the population, to start organizing health care, and stuff like that, so I joined, I started working with them, and I didn't discover until later on that the chapter was organized by a national security agent and police informants and so on. (Conway and Boyle, 2014)

Conway’s sentencing was just one in a string of convictions, that, along with targeted assassinations, eliminated the Black Panthers as a political threat. Conway was released after almost 44 years, according to his attorney Bob Boyle, based on a 2013 finding that Maryland courts had, up until the 1980s, given jurors latitude to consider all instructions from the judge as

"advisory." This was found unconstitutional, Boyle said, because jurors were allowed to overlook the admonition to find a defendant guilty only if convinced of guilt beyond a reasonable doubt.

The prosecution of Conway by the government could be seen as having begun even before framing him, back when the Federal counter-insurgency program COINTELPRO decided to create a booby-trapped Panthers chapter in Baltimore. This maneuver outflanked Conway's protest against a racial double standard (regarding public assembly) with another racial double standard (regarding political activism generally). The long-delayed release of other Black Panthers, some decades after signing tortured confessions, some after decades in solitary confinement in institutions like the state prison at Angola, a still-operational Louisiana plantation, provide parallel Kafkaesque (or Duchampesque) examples of legal contradictions resulting in deadlock. Even in 2013, the jury for Marissa Alexander, an African-American woman whose claim of self-defense based on "Stand Your Ground" was defeated (despite having injured nobody), was instructed based on the presumption of her guilt rather than her innocence (Cacho, personal communication, 2014). Alexander was released in early 2017, but her imprisonment continued a long tradition of Black women receiving long and brutal sentences for convictions related to self-defense in situations of gender violence (Haley, 2016). This was demonstrated again in the 2016 conviction, commuted in 2018, of Black teenager Bresha Meadows for the murder of her horrifically abusive father.

Both those fighting against the state and those acting on its behalf often borrow legal and extralegal tactics from each other. Recent attempts both to cover up and to expose extralegal violence by the Chicago Police Department against poor people of color have continued to inspire ingenuity on both sides, most recently in the collaboration of journalists, lawyers, and

activists to expose a one-year cover-up of the police murder of Laquan McDonald that allowed Mayor Rahm Emanuel to retain his seat in a tight re-election campaign (Black, 2015). Whistleblowers within the CPD, effectively acting as informers to the public about corrupt officers engaged in long-standing practices that exploit citizens in low-income communities of color, have faced alienation and not-so-veiled threats. But through a long process of interviewing, even without access to tangible proof, journalist Jamie Kalven (2016), who helped to expose the McDonald video, has, like a talented prosecutor, managed to construct a detailed incriminating narrative.

As shown in the above anecdotes, creativity in law is, in courts, classrooms, and public media outlets, used more often to justify rather than to end repression. But amoral creativity is of course exercised by private interests as well as by public authorities. Concerning the creative evasion of compliance in the arena of equal-opportunity employment legislation, Lauren B. Edelman (1992) emphasizes the importance of "the process by which organizations respond to law" over "viewing law and the legal process as given authorities that organizations either obey or resist" (p. 1534). So the operations of the legal apparatus can provide tools for resistance. Law-and-order jurisprudence has even been used in the service of anti-racism, as when in 1976 arch-conservative Antonin Scalia, long before his appointment to the Supreme Court, successfully negated the statute of limitations and thus extended the power of the FBI to investigate John F. Kennedy's long-unsolved 1964 assassination; this provided the strategy for a productive 2004 investigation into the 1955 murder of Emmett Till (Benson, 2016).

Mimicking the emancipatory movements they sought to dismantle, the creative mobilization of American intelligence, security, legal, and police forces against political dissent in the 1960s provides a striking example of a dynamic in which state forces emulate their

antagonists, whether real or imagined (as with the Black Panthers efforts to "serve and protect" their communities). "Turning one's enemy into a covert asset," notes Jean-Paul Brodeur (2010), "is perhaps the oldest trick of the intelligence business" (p. 229). One example is especially relevant to Reynolds' work on behalf of Illinois prisoners imprisoned in segregation, also known as solitary confinement. After the Korean War the CIA, along with academic and private interests, began studying Chinese imprisonment and interrogation techniques, particularly the use of solitary confinement, in order to disrupt the activities of U.S. political activists; one result was the 1963 publication of the KUBARK Counterintelligence Training Manual (Guenther, 2013, Kindle location 1628).[19] In 1972, these techniques began being implemented in a Federal prison at Marion, Illinois, in which a "control unit" was established in the prison in response to a protest and strike by political prisoners (Gómez, 2006). This marked an important step toward the contemporary supermax prison, to be followed in 1983 by the aforementioned 23-year full-prison lockdown in response to the murders of two correctional officers. Before joining the Tamms Committee, Reynolds was a part of the effort to end this lockdown.

As with the element of "myth" Benjamin speaks of in founding laws, narrative is now as always connected intimately to law and violence in explicit ways—primarily but not solely in regard to interrogation. In his tongue-in-cheek comparison of community organizing with the military pacification of occupied populations, Nato Thompson (2013) quotes David Petraeus' *Counterinsurgenxy Field Manual 3-24*: "The central mechanism through which ideologies are

[19] Also, during the post-9/11 "War on Terror", psychologists James Mitchell and Bruce Jessen reverse-engineered torture techniques for use on U.S. prisoners at Guantanamo Bay in Cuba through examining 1950s military manuals on withstanding torture at the hands of the Chinese during the American war in Korea (Fink and Risen, 2017).

expressed and absorbed is the narrative" (para. 8). Such advice could have been shared in a COINTELPRO briefing, I can imagine, in the operations leading up to the founding of the decoy Panthers chapter in Baltimore and the imprisonment of Marshall "Eddie" Conway, reminiscent of the idea of "pre-crime" introduced in Philip K. Dick's novel (and later Steven Spielberg's movie) *Minority Report*. This predictive security perspective resonates with the "narrative networks" program now being undertaken in the U.S. government by the Defense Advanced Research Projects Agency (DARPA), which "aims to address the factors that contribute to radicalization, violent social mobilization, insurgency, and terrorism among foreign populations" (www.darpa.mil, para. 6).

An artistic comment on such authorial administration was a 1971 conceptualist art project entitled *Orders & Co.,* during the period of Operation Condor, a decade-long series of brutal U.S.-backed regimes in South America that toppled democratic leaders and murdered hundreds of dissidents. In *Orders & Co.*, Uruguayan expatriates in the U.S. issued commands to be followed by Jorge Pacheco Areco, the Uruguayan president. "On October 5, Pacheco was ordered to make sure his fly was closed before leaving his home. On November 5, while walking, he was to pay particular attention to every third step" (Camnitzer 2007, p. 244). Albeit amusingly ineffectual, this piece reflects on narrative as a matter of control. More recently, the DARPA-style approach to propagandistic conflict has been opposed by artist Trevor Paglen, who has attempted with some success to "plot" the opaque machinations of extrajudicial administration, both in the sense of mapping and storytelling, the latter largely through romantically indistinct images of classified operations, but also through a narrative of his collaborative investigation into the practice of "extraordinary rendition" following the 9/11 attacks (2006). On the other hand, keeping with this theme of top-down extralegal discretion,

eminent American legal scholar Richard L. Posner wrote after 9/11 that the Constitution should not be viewed as a restriction on the surveillance and pursuit of terror subjects (Cole, 2006)—this might be called freedom of repression. The pleasure of this freedom to repress is evoked in the video game *Papers, Please,* created by independent game developer Lucas Pope in 2013, in which players are put into the role of a border official checking documentation and deciding whether or not to let individuals cross into a fictional authoritarian Eastern Bloc country.

Of course tragic drama is often deliberately evoked by those who oppose the police, with the names of martyrs fueling revolutionary action. Given the overwhelming odds they faced, leaders have made the most of their tragic circumstances. Martyrs like Martin Luther King and Harvey Milk spoke of and planned for their demise, controlling their own narratives beyond the grave. Foreseeing his eventual assassination, anti-apartheid leader and Black Consciousness theorist Steve Biko attempted to teach rather than to govern, while asserting that "death itself can be a politicizing thing" (as cited in Hook 2012, p. 32). Hook cites an assessment that: "Activity, not activism as such, marked (Black Consciousness) strategy… Its most astute exponents understood that if they formed a rigidly structured organization the police would immediately destroy it" (p. 34). In his attempt to move from an affirmative self-recognition in the aesthetic appreciation of Blackness, into communal liberation, Biko took on aspects of Hegel's artist who achieves "supreme liberation" in rejecting material (or bodily) form for the objective abstracted Idea, "the vision in which consciousness has to depend upon the senses passes into a self-mediating knowledge, into an existence which is itself knowledge—*into revelation*" (1817/2008, p. 174). This spiritual "dematerialization," to appropriate the term coined by art critic Lucy Lippard, echoed the poetically sublime aestheticizing of information in conceptual art.

Marshall "Eddie" Conway's position as a soldier in Europe witnessing dramatic confrontation at home in the newspaper exemplifies the kind of predicament that for many people, as with Laurie Jo Reynolds' experience of interpellation upon reading Johnnie Walton's call to replace poetry with advocacy, provokes a dangerous decision to take action by challenging the law. In Conway's case, he eventually won a liberating victory in the face of legal self-contradiction. But Conway's case also serves as a reminder that liberalized parameters of judgment in democracies (civil rights, for example) have often resulted in selective deregulations accompanying a consolidated apparatus of control. Benjamin observes with regard to the police that "in democracies… their existence… bears witness to the greatest conceivable degeneration of violence" (p. 287). This dynamic of disintegration is visible in the structural inertia that David Fogel's dilemma illustrates, and in the paradox of the free subject paralyzed by obedience in Kafka's parable "Before the Law," in which the protagonist is, without force, restrained throughout the course of his life from accessing a room in which the Law is kept. The parable form, a deliberate choice for Kafka, recalls the "mythic" dimension that, for Benjamin, is the foundation of law, and is also tied up with resistance to the law. For better or worse, the call to overturn law, to which Reynolds responded, seems inseparable from the call to found a new law. "Dematerialization" turns out to be useful when physical objects are overwhelmingly in the control of the police.

4.5 The blunt and elusive object

Celebrated American jurist Oliver Wendell Holmes (1881/1963) reconstructs the history of liability in civil law as one in which inanimate objects, like ships and weapons; inhuman beings, like animals and trees; or incompletely human forms of property, such as slaves and children, went from being held accountable for various delicts (or claims of damage), to the eventual concentration of responsibility in the property owner. While this evolution displays an increasing appreciation of the freedom exercised by holders of property, it also involves an apparent shift in the legal status of inanimate objects—although Holmes cites a federal case in which a judge comments that "the thing is… primarily considered as the offender, or rather the offence is primarily attached to the thing" (as cited on p. 27).

This continuum between passive and intentional subjects leads the philosopher John Dewey (1916) to open *Democracy and Education* not with a human being, but a stone. "The most notable distinction between living and inanimate beings is that the former maintain themselves by renewal," he says (p. 1). He moves into his views on modern schooling only after progressing from stones to a discussion of "primitive" peoples, who don't sufficiently differentiate themselves from their environment, as "only a small number of natural resources are utilized (by these 'primitive' societies), and they are not worked for what they are worth" (p. 44). The restriction of judicial and legislative activity to the actions of productive and reproductive subjects has created room for the expansion of policing via the invention of forensic science, in which objects come to mark the traces of actions by culpable individuals (Kruse 2016). To some extent the debilitation of a person through solitary confinement resembles a cancellation of volition, reversing the incomplete evolution of intentionality laid out by Holmes and Dewey in a

manner consistent with Frank Wilderson's (2010) idea of the fundamental fungibility of the nonwhite body.

In a 1952 manifesto by the French Internationale Lettriste, headed by Guy Debord, the group disdained leaving behind evidence: "Anything that keeps something upright contributes to the work of the police" (as cited in Camnitzer 2007, 276n). And indeed much of the enjoyment created and experienced by police is far from immaterial. The birth of American police in patrols intended to contain immigrants and catch escaped slaves has been documented, but it is worth thinking about the significant pleasures of transgression and possession. An example might be the Fugitive Slave Law of 1850, which gave slave hunters the right to kidnap free African-Americans with impunity in supposedly "free" states. This principle was reinforced by the U.S. Supreme Court's 1857 Dred Scott decision, in which the citizenship of Blacks was decisively denied. During the American Civil War the participation of Black soldiers in General Sherman's March to the Sea, walking off plantations, burning property, and freeing their fellow former chattel, defines the revolutionary rejection of the pleasure experienced by slave-hunters and slaveowners (DuBois, 1935, pp. 66-67), following the model laid down by Black Haitian revolutionaries who burned fields of sugarcane. The removal of Federal troops from the American South in 1877, signifying the abandonment of Reconstruction reforms, would allow regressive jurisdictions to deny African-Americans access to employment, housing, and the vote—but would also cause these same African-Americans to face the full force of legal and often extralegal punishment.

The regime of mass incarceration can be traced back to concentration camps, the modern version of the slave labor camps that existed throughout ancient Rome. Just as concentration camps were used by colonizers in Cuba and throughout Africa in order to contain potentially

insurgent masses, disease-filled "contraband camps" were used during and after the U.S. Civil War to intern freed slaves (Downs, 2012), much as camps were used to permanently resettle Indians throughout the 1800s, before reaching an epic apotheosis in the Nazi death camps. Andrea Pitzer (2017) relates this history to the U.S. Guantanamo Bay prison in Cuba, as well as to other "black sites", refugee camps, and immigrant detention facilities. In all of these historical cases, torture has been common, and starvation and disease often rampant. While the development of these camps depended on the invention of material technologies like barbed wire and automatic weapons, as well as legal emergency powers in democracies that allowed extrajudicial mass detention, the ever-intensified dehumanization of the contained population is a key aspect of this administrative innovation.

But actual inanimate objects still remain central to procedures of law enforcement. In general, the province of executive authority should be understood as the realm of the inanimate, only nominally restrained in the U.S. by the "exclusionary rule" banning the use in court of illegally obtained evidence. Back in 1962, Francis Allen identified four important limitations on this rule (pp. 78-79). As upheld in federal courts, these exceptions include the use of evidence illegally obtained by private citizens, evidence obtained by police illegally from a third party, testimony about illegally obtained evidence, and evidence obtained illegally by state authorities but submitted by federal authorities. Since this time, the War on Drugs, initiated under President Richard Nixon and expanded under Ronald Reagan, has further diminished restraints on police "search and seizure" authority.[20]

[20] In a scathing and eloquent dissent in *Utah v. Strieff* (2016), a Fourth Amendment case involving police powers, Supreme Court Justice Sonia Sotomayor described a typical invasive

This history of intruding upon and seizing property continues to this day. In his history of American police militarization, *Rise of the Warrior Cop* (2014), Radley Balko talks about the evolution of the no-knock police raid after the Supreme Court ruled in favor of state authorities in the 1963 case *Ker v. California.*

> The courts have since held that police may enter at the scene of a search without announcing even with a regular warrant if they hear or see activity within the residence that merely suggests someone is destroying evidence. (p. 46)

The Supreme Court's 1968 decision in *Terry v. Ohio* expanded search powers further, allowing "police officers to stop and frisk someone based on no more than 'reasonable suspicion' that the person is engaged in criminal activity or about to commit a crime" (p. 55). The media theater of the War on Drugs made drug raids a reliable revenue source for local police departments, especially once the 1984 omnibus crime bill allowed for massive forfeitures of property in these raids (p. 152). Despite the seeming relevance of the Sixth Amendment, juries have been largely shut out of finding damages in forfeiture cases (Fineran and Luther 2013). To this day, police departments in cities like Chicago use forfeiture laws to create a massive "secret budget" (Handley, Helsby, & Martinez 2016), while in the last decade the Federal Drug Enforcement Agency has pulled in billions of dollars in cash and property, seized without due process or even administrative oversight, often from individuals who are released or never even charged with a crime, many "without a court-issued warrant and without the presence of narcotics" (U. S. Department of Justice, 2017b, p. iii). In July 2017 Attorney General Jeff Sessions told the

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police stop by citing every Supreme Court decision that legitimated an officer's apparently unwarranted intrusion into someone's person, privacy, and property.

National District Attorneys Association that his intention was to expand the practice of civil asset forfeiture (U.S. Department of Justice, 2017c).

The militaristic shock tactics used by the police in drug raids historically coincides in the U.S. of with the sort of surveillance of trivial minutiae that might be associated with checkpoints in an occupied area. Taking its name and inspiration from a 1982 *Atlantic* essay on police reform by George L. Kelling and James Q. Wilson, a style of swiftly and harshly punishing publicly visible but minor property offenses, known as "broken windows" policing, was adopted for decades in cities throughout the U.S. It came to evolve into the "stop and frisk" patrol tactics now being praised by law-and-order politicians. In 1995, Eric Holder, the Black State's Attorney of the District of Columbia, who would later become the U.S. Attorney General under Obama, introduced a program called "Operation Cease-Fire" which encouraged police to stop vehicles that appear suspicious on any pretext, in order to conduct searches for drugs and weapons; he even did so in the name of civil rights for African-American communities, claiming that "the people of Washington, D.C. in 1995 are in some respects no freer than the people of Selma, Alabama in 1965" (as cited in Forman, 2017, p. 194). The overlapping of intention and appearance appears in a high school student's narrative from the south side of Chicago.

> Malik, a large wrestler, told us he wears "hipster" styles to avoid police scrutiny. "My jeans will be fitted. If I have a hoodie on, it wouldn't be dark. It'll be a bright red or purple or something like that with designs on it." He notes that styles he perceives as more masculine, like "really baggy pants, big hoodies, things like baggy clothes in general are suspicious to the police." (Futterman et al. 2016, p. 27)

The delectation of minor visual information by the police is another element that evokes Sade's fantasy accounts. Brodeur (2010) states that "profiling people on the basis of their physical

appearance is a built-in feature of the job of policing the streets" (p. 355).

Brodeur also discusses "policing appearances," which he says "refers to both the policing of appearances and the appearances of policing" (p. 174). There is the first sense, in which any visual cue which hints at wrongdoing can attract attention, but forms of wrongdoing without public visual evidence, such as most white collar crime, is not deemed relevant to the work of patrol officers, or what Brodeur refers to as "low policing." The latter sense refers to another artful aspect of policing, in which the presence of police reassures citizens and reinforces civic order. Relative to the military, however, police have a limited capacity to confront direct organized resistance, which reinforces the importance for police of projecting an image of strength. For the police this can include tolerating some level of illegal activity, but requiring it to occur in private. As in modernist painting, the pure optical surface overrides any consideration of depth. According to Clement Greenberg (1949/1961), "now the unity and integrity of the visual continuum, as a continuum, supplants tactile nature as the model of the unity and integrity of pictorial space" (p. 173). Translated into politics, the image of force can be understood as a surface of order. The belief that this force is pervasive and fundamental supposedly operates to forestall social disintegration.

On the subject of law and abstraction, Hito Steyerl (2012) relates the use of pixellation in contemporary military camouflage to the distortion that occurs in the most immediate recordings of events. She makes the point that mediated abstraction has become synonymous with authentic realism, when the mediation makes visible the significant lack of data in even the most detailed image. This again evokes Greenberg (1949/1961), who pronounced: "The paradox of French painting from Courbet to Cézanne is how it was brought to the verge of abstraction by its very effort to transcribe visual reality with ever greater fidelity" (p. 171). As Greenberg's comment

suggests, this precision is inseparable from incompleteness, and provides an apt metaphor for the intensification of surveillance via advanced forensic technologies.

Steyerl used a forensic 3-D modeling apparatus as part of her "White Shadows" project, in order to examine what is missed and abstracted by the supposedly superhuman documentary capabilities of technology. Describing this slowly rotating ultra-high-resolution digital-modeling still camera in a 2014 lecture, she notes its failure to capture any motion whatsoever. "You can document anything *but* a crime with this device," she says. As with a panopticon, all objects are only seen by this camera from one central perspective, meaning that any hidden, oblique areas of the objects in the scene are simply blank, not rendered. While the forensic capabilities of the digital camera are formidable, in appearance it seems comparable, in terms of authoritarian optics, to Robert Whitman's *Solid Red Line,* a 1967 installation in which a centrally placed laser device slowly traces and erases a red line on the gallery walls, as well as any viewers in the space. Whitman's piece would be of no practical use to the police, but the appearance of oversight, as in the largely ineffectual implementation of police body cameras, is often all that matters. To evoke Lacan's discussion of the disembodied "gaze", the ability to project an inscrutable entity that anticipates and confronts the viewer, rather than to craft a specific rhetorical appeal to the viewer, is what separates judicial aesthetics from administrative aesthetics.

Total surveillance has always been the ideal of policing, which over time has involved the collection and analysis of ever more minute scraps of information. Galiani, an Enlightenment economist and diplomat mentioned earlier, stated in 1773 that police "is an affair of detail" (as cited in Kaplan 2015, p. 596). Much like this fastidious policing, nineteenth-century realist authors are known for their detached cataloguing of mundane ephemera, as summarized by

Gustave Flaubert, whose preference for lice over beggars I cited above. Also fascinated by the ignominious was Flaubert's contemporary Charles Baudelaire, who states: "Dullness is frequently an ornament of beauty" (as cited in Wender 2008, p. 72). Both authors are associated with the era of the flâneur, or dandy, a modern aesthete who wandered "through city streets that offer the fortunate individual the delights of the cityscape and the perhaps even greater pleasures of suspended social obligation" (Ferguson 1997, p. 80).

Jean-Paul Sartre (1948) describes Flaubert's objectivity as a force of sterile destruction, saying: "His sentence… falls into the void, eternally, and drags its prey down into that infinite fall. Any reality, once described, is struck off the inventory" (p. 131). Art, in the wake of the realism of Flaubert, Baudelaire, and Courbet, is the assertion of the increasingly minimal difference between experience and empty fact offered by the context of art. To characterize the ironies engendered by criminal justice reform as comically absurd and tragically inevitable, as Flaubert and Baudelaire might have, is cruel in a sense (an important sense), but perhaps also suggests how drama impels action: for armed citizens, government agents, jury members, and activists, the relationship between aesthetics and ethics elicits an intuitive response and a sense of purpose.

Nonetheless, the flâneur resembles nothing so much as the police officer patrolling on foot, and their appearance in Paris was fairly synchronous. While this patrol officer would frequently rely on a squad car in the twentieth century, the detail-oriented beat cop was famously rehabilitated in Kelling and Wilson's article "Broken Windows," which, among its many claims, cites an odd, avant-garde-esque experiment based on the targeted perpetration and monitoring of automobile vandalism by Philip Zimbardo of Stanford Prison Experiment fame, whom I will discuss shortly in regard to creative sadism. The anti-vandalism policy to which Kelling and

Wilson's article lent its name was made famous in New York in the 1980s, coincidentally the center of the international art world, at that point just beginning to become known for the beauty of its graffiti art. Both aesthetic and sadistic, the policy matches up well with the emphasis in modern and contemporary art on mundane objects and trivial gestures.

In modern visual art the appreciation of the mundane arguably began with painters like Courbet, to be extended in Duchamp's readymades, and later in the industrial imitations of Pop Art. Just as the 2003 Temporary Services book and exhibition "Prisoners Inventions" focused on creative tools made by prisoners using mundane objects, so too did the crowd of southern Illinois residents clamoring to keep the Tamms prison open, at the hearings held by the state Commission on Government Forecasting and Accountability (COGFA) in the town of Ulin, Illinois in summer 2012. Tamms family member Carol Wilcox was in attendance, as mentioned above, and she recalled the fear she felt at the roar of the throng when a guard held up a prisoner's confiscated shank. The guard triumphantly shouted that, confined in Tamms, its maker would never have the chance to use it again. Nervously laughing, she recalled, "I was like, get me out of here! Let's get to the bus!" (personal communication, 2014). COGFA ended up ruling against the closure of Tamms.

A similar appropriation of the prisoner's meager possessions occurred shortly after the closure of Tamms, when former Tamms prisoners organized a hunger strike in which the mandated provision of sterilized toenail clippers was a stated demand. Reynolds (2016), while never opposing the hunger strike, is unequivocal in her deprecation of the strategy, in which an item like the sterilized toenail clippers inevitably appeared in media venues mocking and denouncing the prisoners' demands. In 1979, French former prison doctor Antoine Lazarus observed in regard to similar prisoner demands: "What is surprising . . . is that they ask for basic

comfort: nourishment, bedclothes. . . . Detainees display, sometimes at the risk of their own lives, an enormous need to change things, to be heard, and simultaneously they demand all the little things" (as cited in Guenther, 2016, p. 49). Lisa Guenther goes on to say:

> Far from undermining radical decarceration projects, the creaturely politics of prisoner-led resistance movements affirms the meaning of political subjectivity, not as an abstract status that is granted on the decimated ground of animality but rather as an elaboration and amplification of (inter)corporeal life. (p. 50)

Along these lines, Alan Mills, who gives significantly more credit to hunger strikes than Reynolds (both, personal communications 2016), was involved in a contraband case at Tamms in 2001 in which a prisoner who had been smuggling in hacksaw blades via his sister, managed to bargain with prison officials to shield her from prosecution and pay off his large debt to the state (Rushton 2001). Reynolds has, however, expressed a sense that litigators tend to overemphasize the positive effects of overt actions such as these. Subtlety has its advantages in all art forms.

For her part, law professor Keramet Reiter (2016) gives ample credit to thousands of California prisoners who participated in hunger strikes opposing segregated detention in July 2011, October 2011, and July 2013. These strikes did result in concessions from prison officials in regard to more obviously significant issues regarding long-term assignment to solitary confinement, but also in regard to more seemingly trivial issues around food and clothing. One important concession involving mundane objects was that the settlement imposed a formal process on so-called "gang validation," the punitive administrative attribution of gang affiliation based on tattoos or personal possessions, which could add time in prison and/or in segregation (p. 197). While more far-reaching than the Illinois hunger strikes, Reiter does acknowledge the

ways in which prison officials used the California strikes as opportunities to depict the men as desperate and dangerous. These officials employed creative tactics to avoid being forced to meet prisoner demands, including shifting prisoners between facilities and, in at least one case, releasing a high-profile prisoner directly into general population who was summarily stabbed to death, possibly in order to create a media event (p. 201).

This inscrutability of the object and the bureaucrat manifests in the artist herself. Discussing an alignment of the State with "inner legislation," Žižek (2011) identifies a radical potential in displays of apathy he terms "Bartleby politics," referencing a story by Herman Melville in which an assistant hired by a lawyer obstinately refuses to work, to leave the office, and eventually even to eat, voluntarily dying of hunger in jail. Such a display Žižek calls a "gesture of 'preferring not to'" that "suspends the subject's libidinal investment…(here the most radical act is to do nothing)." Many commentators have linked Melville's narrative to Franz Kafka's story "A Hunger Artist." Both Melville's and Kafka's anonymous (and eventually caged) protagonists become an uncanny presence by the end of the story; they begin as social beings but end up as autonomous obstacles, persisting obstinately until quietly transitioning to death, all the while seeming less and less like conscious intentional beings and more like inanimate objects. These can be read as chilling allegories of how an experience of collective alienation leads to mental disintegration for people in long-term solitary confinement, but they also demonstrate the aesthetic character of the hunger strike, and, in their paralyzed moral perfection, provide examples of what Hegel referred to as "the beautiful soul."

As the group Our Literal Speed has said, 'If the twentieth century was defined by the Readymade, then perhaps the twenty-first century belongs to the Nevermade." (Quoted in Cahill and Von Zweck, 2014) While Lippard's dematerialization recasts the Marxist critique of the

commodity fetish and the auratic art object in Walter Benjamin's landmark essay "Art in the Age of Mechanical Reproduction" (1948/1978), as well as the spiritualization of freedom struggles, I would argue that another example of the "Nevermade" are the laws defining and protecting commerce and property--meaning everything we might consider modern or contemporary "art." The art market emphasis from 2012 to 2014 or so on "post-Internet" gallery art underscores not just the homogeneity of capitalist material culture, but the possibility of sinister drama dwells in even (or in particularly) the most banal artifacts, as when fourteen-year-old Texas high school student Ahmed Mohamed made headlines in 2015 for bringing a homemade clock to school. Owing to his dark skin and Muslim identity, it was interpreted by school authorities as a bomb, with Ahmed being briefly put under arrest, and subsequently gaining widespread notoriety. Inverting this drama in April 2017, artist Huong Ngo created an installation of artwork at the DePaul University Museum of Art that focused on invisible ink, hidden pockets in drag garments, multipurpose kitchen utensils, and other strategic implements utilized by Nguyen Thi Minh Khai, a renowned but elusive female Vietnamese revolutionary spy during the era of French colonial rule.

Out-of-place people with out-of-place objects connote hidden networks, recalling the physical subterfuge of the Underground Railroad while hinting perhaps at the covert methods of terror and torture increasingly prominent in post-9/11 policing and the quotidian items used in so-called "improvised explosive devices." Not only artists, but through its networks of storage and shipping the art market itself can reveal strange aspects of the executive persistence of unexhibited art objects, material facts and speculative tokens in which viewers are irrelevant (Heidenreich 2016). With the enormous volume of investment, and thus theft, forgery, and black-market transactions in fine art objects (not to mention what might be termed cultural

money laundering), a noteworthy place where art and administration overlap is in the storage, shipping, and security apparatus of the art museum. Seeking to expose and interrogate this hidden realm, artist Don Celender created a body of conceptualist documentary work in the 1970s and 1980s based on the administration and infrastructure of galleries and museums, including one booklet, *Museum Piece* (1975), which consisted entirely of images of the loading docks at various international museums. In 1978 Celender created the booklet *Observations, Protestations, and Lamentations of Museum Guards Throughout the World*, which documents responses to 1,200 surveys, in 12 languages, sent to museum security administrators and filled out by security personnel (Public Collectors Study Center 2009). Operating in the realm of realist bemusement, however, it's hard to tell from Celender's booklet if the questions guards answered on art and labor add up to an insight into the relationship of aesthetics and security.

Žižek states: "The 'divine' dimension appears at (the) overlapping of violence and non-violence." (pp. 400-401) And so, decontextualization (or "defamiliarization") still seems key to the seemingly divine intervention involved when a common object is placed in a gallery, be it Duchamp's appropriated urinal in 1917, or a pallet of packaged bottled water in 2014, as part of an assemblage in Carson Fisk-Vittori's exhibition at Carrie Secrist Gallery in Chicago (evoking *Fountain*? Water pollution? Waterboarding? Excess packaging? Air travel restrictions on liquids?). Ideally such an act remains one of evasion and refusal, not straightforward combat or surrender, through using an object to deny the interrogating eyes of the audience any insight into intentionality. The fundamental inscrutability of objects is one of Kant's enduring insights. Enclosed in itself, the object is neither free nor unfree. It has no opposite, just as, in Lacanian psychoanalysis, the unconscious has no negation—only a libidinal drive that spins around a never-healed wound.

4.6 Aesthetic pleasures of interrogation

For citizens in a democracy, choices of representatives are made with a nod at public dialogue, though they ultimately reflect individual desires—which in turn derive from impersonal drives formed by group identification. However, for those who are objects rather than subjects of government, they regularly face external interrogation, without adequate representation, and these interrogations are about intentions rather than desires. "In contrast to everyday talk," Derek Edwards (2008) observes, "police interrogations display a pervasive concern with the *intentionality* of reported actions" (p. 182, emphasis mine). Edwards describes interrogations not in strict opposition to "everyday talk," but as something of an institutionally specialized subgenre of these conversations, in which intentions are brought up reflectively or speculatively in order to explain anomalous events. Keenan and Weizman (2011) argue for a "forensic aesthetics," claiming "there is an arduous labor of truth-construction embodied in the notion of forensics, one that is conducted with all sorts of scientific, rhetorical, theatrical, and visual mechanisms" (n.p.). Yet there is plenty of evidence that the techniques involved in this "arduous" (and artful) labor are quite likely to result in false confessions, coercive plea bargains, and unjust convictions.

> According to the nine steps of the Reid technique, the investigator is meant to hammer on the suspect's unquestionable guilt and emphasize the futility of denials in light of the damning evidence, while at the same time offering sympathy and potential justifications that encourage the person to see confessing as more acceptable. (Benforado, 2015, p. 32)

It is perhaps unsurprising that this specialized idiom of interrogation and intentionality, an exercise rooted in using fiction to elicit information with little truth-value, forms the dramatic

basis for justifying the use of force in mysteries, police procedurals, and courtroom dramas from the Victorian era to today. But interrogation should not be thought of as necessarily aggressive, even if violent. In de Sade's *120 Days of Sodom,* for example, the erotic inquisitions are consistently detached, formal, and polite*,* much like formal legal testimony (Barthes 1971/1976, p. 132). Even when crude, it is merely explicit rather than invasive (p. 133).

More broadly speaking, the search for intention is the stuff of realistic drama, of qualitative research, of law, and even of modern art, as parsed by Boris Groys (2012), again linking criticality and criminality:

> Modern art transcends or evades even the traditional distinction between art and non-art. It thereby escapes the aesthetic laws that previously made it possible to judge an individual work. The wish to escape the judgment of others, however, generally leads people to suspect a criminal intent. (p. 51).

These issues of judgment and intent are summed up as choice, in Albrecht Meylahn's description of Lacan's ethical Act as "an Act where the subject chooses him/herself as s/he becomes a subject and is no longer just the object of the big Other's desire" (2013, p. 4). Certainly this "Act" conforms to the psychoanalytic goal of overcoming trauma through consciously putting the unspeakable into words. It also directly opposes a central goal of the use of isolation and sensory deprivation, which is to force a prisoner into reliance upon and trust in his interrogator (Guenther 2013).

But do we choose ourselves—or *only* ourselves? The "big Other" in Lacan is a figure that can refer to God or the State, among other defining entities, but, perhaps especially now when such grand narratives have lost much of their force, a proliferation of legal subjects can

instigate a mania to constantly interrogate the desires of small-o "others." Nietzsche says:

> From time immemorial we have ascribed the value of an action, a character, an existence, to the intention, the purpose for the sake of which one has acted or lived; this age-old idiosyncracy finally takes a dangerous turn—provided, that is, that the absence of intention and purpose in events comes more and more to the forefront of consciousness.

He asserts that "an action *is never caused by a purpose*…" (as cited in Klossowski, 1969/1975, p. 51, emphasis original). Albeit hyperbolic, such an ultimatum can throw into relief the invasive interpretation involved in an artistic critique, a criminal conviction, or a grade based on student effort. Plato, reviled by Nietzsche as a false idol, proposes in his *Laws* a similar idea. His prime interlocutor, a figure called the Stranger, states: "The unjust man is presumably bad, but the bad man is involuntarily so… For I agree that everyone does injustice involuntarily" (1967-1968, 860d-e).

Yet Plato maintains a place for harsh retributive punishment, based on weighing both the illicit pleasure brought about by a crime, and the criminal's resistance to reform (i.e. amenability to pedagogical intervention). Punishment generally is justified as a political necessity, based on an assessment of a culprit's moral character and attitude that Plato's statement on willful wrongdoing would seemingly annul. Thus in the *Laws* Plato designates solitary confinement, a fate worse than execution, for the most impious and unreformed criminal. Of this criminal Plato decrees:

> …(L)et him who is guilty of any of these things be condemned by the court to be bound according to law in the prison which is in the centre of the land, and let no freeman ever approach him, but let him receive the rations of food appointed by the guardians of the law from the hands of the public slaves. (909d)

The contradiction between these two ideas reflect the conundrum of Plato's teacher Socrates, famously executed for corrupting the youth of Athens; Arthur Shuster (2016) suggests that this tension between reason and retribution "may explain both Socrates' popularity in Athens and his eventual condemnation under its laws" (p. 45).

Two well-known (arguably Socratic) social psychology experiments that could be described as meta-sadistic, sadistically causing others to act sadistically for the sake of knowledge, are worthy of consideration as avant-garde provocations. The first is Stanley Milgram's infamous obedience experiment, begun at Yale in 1961, designed to see how much pain a person would deliberately inflict when following orders. Volunteers who believed they were research assistants were told to administer progressively more intense electric shocks to the supposed research subjects; in fact, the volunteers were the subjects, there were no electric shocks, and the supposed subjects were actors who portrayed anguish through expressions of agony. This is perhaps the historical experiment most often cited when explaining the existence of academic review boards that oversee experimental ethics. Milgram went on to do several more variations on this experiment over the next decade.

The other notorious anecdote concerns the 1971 Stanford Prison Experiment, in which volunteers were randomly assigned to play the roles of prisoners and prison guards. The experiment was ended prematurely in response to the cruelty of the students assigned to play prison guards. Projecting both empathy and a flair for marketing, Professor Philip G. Zimbardo reflectively summarizes the Stanford experiment thusly, on a website promoting a book and two films about the experiment:

How we went about testing these questions and what we found may astound you. Our

> planned two-week investigation into the psychology of prison life had to be ended after only six days because of what the situation was doing to the college students who participated. In only a few days, our guards became sadistic and our prisoners became depressed and showed signs of extreme stress. (The Stanford Prison Experiment, 2016)

This experiment ended just a few weeks before a prison uprising involving the revolutionary George Jackson at San Quentin, and another at Attica in New York that was brutally crushed by the National Guard. As a result Zimbardo ended up giving testimony to the U.S. Senate Judiciary Committee on his findings. The fascination both of these highly theatrical experiments have continued to elicit is partially indicative of the insights they apparently provide, but also of the pleasure they evoked by such seemingly allegorical vignettes. The public afterlife of these experiments resides in the glimpse they offer of cruelty at an analytical distance.

The creative performances of Milgram and Zimbardo, whose most visible legacy may be in the arena of "reality-based" television, are for me most noteworthy for how their enactments of intellectual authority overlap and conflict with the content about state authority that they were intended to produce and convey. While less widely publicized, the experiences of people in long-term solitary confinement, particularly but not exclusively of those with a pre-existing mental illness, offer far more vivid anecdotes than these social psychology experiments. In 1993, just before Judge Thelton Henderson began to hear arguments in the case of *Madrid v. Gomez,* regarding abuse of prisoners in the segregation unit at Pelican Bay State Prison in California, the television news show *60 Minutes* aired a story on this subject, including the story of a mentally ill man who regularly smeared himself and his cell with feces, until he was given a scalding bath, scrubbed violently, and subjected to racist denigration by guards. Keramet Reiter (2016) notes the extremely high rates of mental illness (pp. 132-4) and suicide (pp. 163-165) in isolation units

at Pelican Bay.

In 2012 the ACLU prison project was representing mentally ill prisoners in the Federal supermax prison in Florence, Colorado. A lawsuit brought on behalf of prisoners in solitary at the supermax alleged that one inmate "amputated some of his fingers, a testicle, scrotum and earlobes." The allegations continued:

> Acts by other prisoner-plaintiffs include: swallowing a razor blade to persuade medical staff to amputate his right leg, where he suffered a gunshot wound long ago (he succeeded); amputating a finger, adding it to a bowl of ramen noodle soup and eating it; and swallowing broken glass (p. 768).

David C. Fathi, executive director of the ACLU National Prison Project, said in 2004 that "every Federal court to consider the question has held that 'supermax' confinement of the seriously mentally ill is unconstitutional" (Katel 2012, p. 768). There are still occasional reports, including the 2014 PBS *Frontline* program "Solitary Nation," that document the prevalence of self-cutting and feces-smearing among prisoners in solitary.

The similarities between such harrowing acts of self-harm and the intentionally lurid acts of self-tormenting artists do make for striking comparisons. One example is offered in Daniel Joseph Martinez's 2002 animatronic self-portrait sculpture, entitled *To Make a Blind Man Murder for the Things He's Seen (or Happiness is Over-rated),* in which the artist's facsimile kneels on the ground in what appears to be a prison jumpsuit, repeatedly slicing at both his wrists with razor blades. But there are many more examples. Even overlooking Kafka's fasting performer, Van Gogh's ill-fated ear, and the Romantic torment of figures such as Beethoven and Goya, the artist as recipient of physical torture at least dates to the early days of performance in

the 1960s and 1970s, immortalized in early works by Chris Burden and Marina Abramovich and extended into spectacle by figures like Bob Flanagan, Ron Athey, Jean-Louis Costes, and G.G. Allin. Iraqi artist Wafaa Bilal's 2007 web-based endurance piece, *Domestic Tension* (formerly titled *Shoot An Iraqi*), created in response to the killing of his brother at a U.S. checkpoint in Iraq, adds an explicit political dimension to this self-torment; for the duration of the month-long performance, an online interface allowed anyone to shoot paintballs at Bilal at any time of day.[21] In something of the same extrajudicial spirit as *Shoot An Iraqi*, Chicago artist Robin Hustle enacts on herself the same force-feeding procedure used on prisoners on hunger strike in the Guantanamo Bay prison in the 2012 video *How It Feels to Force-Feed.*

Mikhail Bakhtin, in his study of Rabelais, hearkens nostalgically all the way back to the medieval carnival, which, he claimed, included "'mirthful' tortures, murders, insults, defamation, pelting with excrement, and so on," prison-like vignettes which Groys (2014) interprets as a reference to the show trials of the genocidal Stalin era (p. 186). Bakhtin's exultation of the "carnivalesque" as a model for the "polyphonic" novel is thus also an exaltation, if perhaps a bitterly mocking one, of the regime that persecuted him. The pleasure generated by cruel acts, recognizing them as violence related to law, is emphatically not meant to implicate TY10 to the practices of torture the group was dedicated to exposing and eliminating, nor to place it within a genealogy of spectacularly brutal art, but it is relevant to placing the enterprise within a larger art-historical context.

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[21] In a moment of retributive administrative art, Bilal (2013) recalls a 2008 experience in which his gallery premiere of a suicide-bomber-themed video game, entitled *Virtual Jihadi*, was shut down by the city of Troy, New York, predicated on the width of the gallery's door frame not being up to code.

Leaving aside the more recent and emancipatory subcategory of masochistic excruciation, the history of brutality in Western art (and entertainment) is of course as long as those histories themselves. "I am convinced we have a degree of delight, and that no small one, in the real misfortunes and pains of others," Edmund Burke wrote in 1757; "There is no spectacle we so eagerly pursue, as that of some uncommon and grievous calamity" (as cited in Sontag, 2003, p. 87). Many decades later, Thomas DeQuincey (1839/ n.d.) took a more tongue-in-cheek tone in his essay, "Murder Considered as One of the Fine Arts," in which he makes the modest proposal, "Murders have their little differences and shades of merit, as well as statues, pictures, oratorios, cameos, intaglios, or what not" (p. 1). At one point he refers to a "revolution in the art" brought about by a pair of serial killers in 1828 who murdered strangers to sell the cadavers for dissection (p. 5). Francesca's flagellation of Christ, Grunewald's agonized Passion, Titian's flaying of Marsyas, Gentileschi's beheading of Holofernes, Holbein's entombed corpse, and Rembrandt's slaughtered ox, begat Piranesi's dystopian prison images in the *Carceri*, Eakins' medical demonstration, and Bacon's hanging carcasses; the carnage of the *Iliad,* Shakespeare's gruesome *Titus Andronicus,* Verstegan's *Theatre des Cruautes,* and the brutal spectacles of Madame Tussaud's waxworks and the Grand Guignol have spawned the sinister voyeurism of *Law and Order: SVU* and the bloody implication of torture and terror in *24*. In its own way, the ideal of aesthetic enforcement continues to this day, with ongoing fetishization of police violence--both in popular culture and in the imagery of militarization deployed in actual police operations and broadcast through media.

With roots in Futurism, the role of the artist as tormentor is also central to the history of participatory art. 1960s Argentine performance artists exemplify this (Longoni and Mestman, 2004, Bishop 2012): in what he called "an act of social sadism made explicit" (as cited in

Longoni and Mestman, p. 162), Oscar Masotta lined up poorly-dressed individuals to be viewed on stage to the accompaniment of a piercing electronic tone (*To Induce the Spirit of Image*), while Rodolfo Elizalde and Emilio Ghilioni started a fight in the street, and Graciela Carnevale locked viewers in a gallery (both from the *Ciclo de Arte Experimental*). If slightly less spectacular, an undercurrent of violent aggression powered the masculine swagger of both American Minimalist sculptors[22] and Viennese Actionists. Recently, the artists Jordan Wolfson and Jon Rafman have followed in the sadistic wake of Jake and Dinos Chapman by making gallery artwork that celebrates unadulterated brutality. But cinema may be the medium most famously associated with sadism in our era: from Bunuel, Oshima, Romero, Leone, and Peckinpaw to Tarantino, Lynch, von Trier, and Haneke.

The relationship between "edgy" culture and torture is well-established, providing spectacles that transmit an emphatic but often opaque or ambiguous political potential. The artist Trevor Paglen (2006) describes a CIA facility in Afghanistan known as the "Dark Prison," in which "Eminem's *Slim Shady* album and other abrasive music and sounds were blasted twenty-four hours a day; interrogations were held under strobe lights; and prisoners were strapped to the ceiling" (p. 127). But the forms imposed by cruelty can allow new forms to emerge. Suggesting an emancipatory dimension to prison, Jan-Louise Lewin (2017) contends that South African male sex workers make the prison into a site of performance. Mentioned earlier, the scandalous Richard Speck tape, in which a serial murderer with breast implants snorted cocaine and

[22] The Brooklyn Museum's April 2014 exhibit of work by social practitioner Ai Wei Wei features the artist in "solitary confinement" inside a steel box, reminiscent of Minimalist artist Tony Smith's 1962 six-foot cube *Die*. Anna Chave (1990) describes how connotations of domination and torture haunt work by classic Minimalists like Robert Morris and Richard Serra.

performed fellatio in prison, a video that ignited public outrage about leniency toward prisoners,[23] could fit seamlessly into the scatological tradition that connects Carolee Schneeman, Paul McCarthy, Ryan Trecartin, and Santiago Sierra.

Sierra is a Spanish artist known for paying participants, often members of socially marginalized groups, to provocatively debase themselves; he received a prominent mention in Claire Bishop's 2004 salvo in the magazine *October* in regard to "relational aesthetics," a term for process-oriented public collaborations which has since been replaced by "social practice" and "socially-engaged art." He appears again as a champion of avant-gardism in Pablo Helguera's *Education and Socially-Engaged Art* (2011), in which Sierra's ethical provocations trump the "'feel-good' positive social values" of, say, "a children's mural project" (p. 10). For Bishop (2012), Sierra's conceptual rigor is demonstrated in his transparency.

> Unlike many artists, Sierra is at pains to make the details of each payment part of the work's description, turning the economic context into one of his primary materials (p. 113).

Grant Kester (2011), however, compares Sierra to voyeuristic documentary photographers, and though he finds Sierra's moral confrontations compelling, for Kester they ultimately lack meaningful agency.

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[23] The response to the Speck tape has an interesting, somewhat opposed parallel with the response to images of U.S. military police torturing detainees at Abu Ghraib, which, as T.J. Demos (2013) notes, "circulated between very different interpretive contexts, performing equally as sadistic pornography and as documents of human rights abuses" (p. 130).

Whether pro or con, these writers don't fully account for Sierra's most provocative pieces, such as "245 cubic meters" (2006), his simulated gas chamber in an abandoned synagogue, or "Los penetrados" (2012), a film and photo series depicting a variety of interracial couples engaged in anal sex. While all of his works draw inspiration from early conceptual performances like Argentine artist Oscar Bony's 1968 piece *Working-Class Family,* a family that posed in an art gallery for several hours a day (until the police shut the exhibition down), Sierra's most outrageous works go beyond any sanctimonious accusation and become straightforward affirmations of perverse cruelty. For me, the provocateur's presumed critique of the artist as exploiter (not to mention the utilitarian fig leaf of "transparency") is less important than the illustrations he provides of ways in which power creates pleasure, a discussion that bears on Reynolds' dedication to representing stigmatized and scapegoated individuals politically, rather than aesthetically.

Reynolds' work on opposing punitive moral panics, particularly the lifetime stigma of the sex offender registry, shares subject matter with many aesthetic libertines, including but not limited to the Marquis de Sade. In their gleefully provocative parodic responses to the so-called "Satanic ritual abuse panic" around pedophilia in the 1980s, American artists Mike Kelley and Paul McCarthy each established their own recognizably perverse aura. Kelley has spoken and written about the stuffed-animal works he created in the 1980s garnering psychoanalytical critiques, which he parlayed into uncanny portrait photos of individual plush toys (Singerman, 2008). He also created a series of installations, sculptures, and flat pieces that build on the fantasies of Satanic rituals projected into children's testimony in the McMartin Preschool case in California, a popular spectacle that lasted form 1987 to 1990. McCarthy referenced this era of "day care hysteria" in performances that made use of creepy clowns, such as those

sensationalized in the case of the Fells Acre Day Care trial, which occurred in Massachusetts in the same era, but also referencing Illinois "killer clown" serial murderer John Wayne Gacy. Many differences in tone and content exist between this work and Reynolds', but a noteworthy one is the apparent absence of the scene of law, of courtrooms or prisons, in the responses Kelley and McCarthy made to these media-circus trials.

Nonetheless, the perversity on which these artists trade is ultimately located with the keepers of public order. The hypocrite that manipulates a child to accuse an adult of grotesque abuse is undoubtedly in the grip of a fantasy. These fantasies shape the ways in which police are expected to behave, in order to assuage the fears of the social group from which the accusations come. The laughable idea that the force unleashed by such a fantasy could have a rational component is critiqued by Egon Bittner in these terms:

> In sum, the frequently heard talk about the lawful use of force is practically meaningless… Our expectation that policemen will use force, coupled by our refusal to state clearly what we mean by it (aside from sanctimonious homilies) smacks of more than a bit of perversity. (1970, p. 122)

The modern philosophical reference point for both perfection and perversity is the writing of Immanuel Kant around moral and aesthetic ideals. By proposing that we examine our intuitions at a rational distance, Kant introduces the possibility of clinically detached yet subjective notions of beauty and justice, thus allowing the subterfuge of these ideals in the fantasies of de Sade (Lacan, 1990), as well as the experiments of Zimbardo and Milgram.

Much legal violence takes place in the nebulous zone between the letter of the law and the imperatives of administration and enforcement. Voter I.D. laws, "stop and frisk" policing,

and judgments concerning Florida's "Stand Your Ground" law are recent examples of race-based legislation, enforcement, and adjudication in our so-called "post-racial" society. Expanding on the legal fiction of the "reasonable officer" introduced by the unanimous opinion in the 1989 Supreme Court case *Graham v. Connor*, under which many acts of police violence have been justified, including the 1992 beating of Rodney King in Los Angeles, Jody Armour (1994) coined the notion of the "reasonable racist." This concept was deployed in a lecture by legal scholar Lisa Cacho in describing how the defense team successfully justified Neighborhood Watch volunteer George Zimmerman's fatal shooting of unarmed teenager Trayvon Martin in 2012 under "Stand Your Ground." "(W)hether or not Zimmerman's assumptions were right," she said, "his actions would be considered justifiable if he could prove that he believed his assumptions" (personal communication, April 21, 2014). The 1989 finding of the U.S. Supreme Court in *Graham v. Connor* on the question of "reasonable" police violence sets forth just such an ill-defined standard of "subjective objectivity" (Alpert and Smith 1994, p. 486), and similar logic guided the FBI's finding that Cleveland police officer Timothy Loehmann was justified in his fatal shooting of 12-year-old Tamir Rice, armed with a toy gun (Peralta, 2015). Through a strong emphasis on environmental influences, Laurie Jo Reynolds and the Tamms Year Ten project oppose this absolute Kantian fidelity to intent.

Kant's philosophy links force, order, and aesthetics through the striving toward perfection, the ideal moral symmetry of punishment, and the ambiguity of the sublime. The sublime is the aesthetic impulse most intimately associated with tragedy, fear, and awe. He describes the experience of the sublime as

> a pleasure that arises only indirectly; viz., it is produced by a momentary restriction of the vital powers, followed by an even stronger outflow of them; it seems to be an emotional

> state of being stirred, which the imagination takes seriously, rather than as play. (1790/1974, p. 245)

This initial constriction is a response of horror, which is then resolved with reference to the universal (Makkreel 1990, p. 96). Jean-Paul Brodeur (2010) similarly describes Bittner's analysis of policing as the constriction of minimal necessary force, opposed by the public demand for an immediate and absolute annihilation of criminality (p. 116). The aforementioned attribution of "police" as a source of "form, ornament, and splendor" in a public space relates perhaps to the sublime aesthetic transformation in which a chaotic multiplicity is unified into a "manifold" (Makkreel 1990, p. 77). This contradictory condition is echoed in the figure of the guilty criminal, whom Kant acknowledges will seek to avoid punishment, but who simultaneously on a deeper level desires punishment, since he shares a universal moral sensibility and desires to be considered a human worthy of respect (1797/1964, p. 108).

Excessive compassion and rational mercy are both dismissed as immoral by Kant. Following this idea, Charles Baudelaire denounced compassion as cowardice in his criticism of Victor Hugo's opposition to the death penalty. For Baudelaire, insistence on the sanctity of life "clings to animal existence and abandons the human" (Butler, 2014, p. 32), seemingly foreshadowing Agamben's notion of "bare life." Prefiguring Baudelaire's defense of the death penalty, Kant looked upon the denial of punishment as a denial of humanity, and the denial of base pleasure as a more ultimately pleasurable experience of overcoming. A rigorous self-denial was practiced as a form of psychological training by Black Panther Albert Woodfox, who spent over 40 years in solitary confinement—more than any other prisoner in U.S. history (Aviv, 2017), but who was of course given no choice in regard to his punishment.

Kant postulates what amounts to an absolutism of the individual's freedom, innate understanding, and detached perception, as regards both aesthetic beauty and moral perfection. His rational claims to designate that which he claims to be self-evident offer no end of solipsistic tautological confusion. Along with the reference to the "unconditional demand," Žižek (1998) says, in regard to Kant:

> (T)he concrete formulation of a determinate ethical obligation has the structure of aesthetic judgement, i.e. of a judgment by which, instead of simply applying a universal category to a particular object or of subsuming this object under an already given universal determination, I as it were *invent* its universal-necessary-obligatory dimension… (para. 19, emphasis mine).

Pierre Klossowski (1947/1991), prefiguring Jacques Lacan's comparison of Kant's "moral imperative" to the cruelty of the Marquis de Sade, says of Sade:

> Conceiving the perverse act as obedience to a moral imperative, an idea, he constructs a new conception of perverse sensibility on the basis of this idea (p. 18).

However, apropos of Lacan's "Kant with Sade" article (1990), Žižek characterizes Sade as the "symptom" rather than the "truth" of Kant: sadism for Žižek is not an affirmation of Kant's extremism, but a deformation of the pure autonomy inherent in Kantian ideas about personal responsibility. "Sade is the symptom of how Kant betrayed the truth of his own discovery," says Žižek (2006, p. 94). Similarly, Klossowski (1969/1997) cites Nietzsche comparing Kant to "*the fox who returns to his cage after having broken out of it*" (p. 7, emphasis original).

Friedrich Nietzsche claims that Kant's moral categorical imperative "reeks of cruelty" (as cited in Butler 2014, p. 31), but Žižek (1998) insists that "this (sadism) is what Kantian ethics prohibits." (para. 25). Žižek challenges such characterizations of Kant as "the proverbial teacher who tortures pupils with impossible tasks and secretly savors their failings(,)" but who makes the excuse, "' I myself find it hard to exert such pressure on the poor kids, but what can I do-it's my duty!'" (para. 18). Elsewhere, however, Žižek contends that sadistic detachment fulfills Kant's description of a purely ethical act (1994, p. 27). Regardless, the executioner's aura of selfless sadism haunts the teacher much as it does the police officer and the jingoistic or budget-cutting legislator, not to mention the figure of the internal judge that appears throughout Kant's writings in the form of the reproachful conscience (Shuster, 2016, p. 109). Indeed, the internal disciplinarian motif is woven into the administrative fabric of modern schooling much as it is in modern jurisprudence, in the former case perhaps most visibly in the public shaming doled out to public schools and their teachers, along with the rise of police presence and hyper-punishment in schools serving low-income minority populations.

This is where the example of police as the model bureaucrat, the exemplar of all other members of an administrative apparatus, becomes clear. Max Weber's ideal of an administrative bureaucracy based on rules and roles, offering a dispersed and anonymous authority (1922/2012), matches up well with the clear behavioral regimentation of Sade's libertine retreat (Barthes 1971/1976, p. 27), and both of these dovetail into Kant's idea of duty, explicated by Lacan as a form of profound enjoyment, or *jouissance*. Prioritizing loyalty to an organization over personal extra-institutional responsibility is not unique to the police, and could be seen as extending to the pure autonomous self-referentiality of fine art, described in rather sublime terms in 1953 by painter Ad Reinhardt.

> Fine art can only be defined as exclusive, negative, absolute, and timeless. It is not practical. useful, related, applicable, or subservient to anything else. Fine art has its own thought, its own history and tradition, its own reason, its own discipline. It has its own "integrity" and not someone else's "integration" with something else.

In this essay Reinhardt famously dismisses art that in any way refers to a reality outside itself, saying: "Art is art; life is life." The pleasures of aesthetics are made absolute in this executive vision of the artist as a role and not an individual caught up in relationships, or even in a body, as when he says, "The eye is a menace to clear sight." The rules do not merely protect pleasure from irrelevant dilution, but, through obedience to their arbitrary dictates and divisions, produce pleasure through denying desire.

The issue comes down to the nature of the detachment Kant requires of ethical and aesthetic considerations; indeed, *all* desire to Kant is "pathological" (Žižek 2012, p. 706). Returning to the artist, Žižek says:

> The exemplary case of the "pathological," contingent element elevated to the status of an unconditional demand is, of course, an artist absolutely identified with his artistic mission, pursuing it freely without any guilt, as an inner constraint, unable to survive without it (1998, para. 10).

In the modern era, then, both beauty and virtue are symptoms, if not necessarily of the same affliction. Nonetheless, the recognition and affirmation of desire are, for psychoanalysts, the cure for both. The "fidelity to the truth of one's desire" that Lacan advocates (Žižek, 2006, p. 94), just as with the aesthetic and the moral "truth" that are for Kant superior to desire, underscores a point I would make about the temptations of autonomy: namely that, in the modern

era, desire is understood as truth.[24] For literary critic Northrop Frye (1957), desire was not merely an individual but a communal destiny:

> Civilization is not merely an imitation of nature, and it is impelled by the force that we have just called desire… (Desire) is neither limited to nor satisfied by objects, but is the energy that leads human society to develop its own form (p. 73).

A provocation offers a value, seemingly at the expense of moral evaluation or even traditional aesthetics (cf. Duchamp's quite ordinary urinal), that confers upon the action an aura of ineffable truth implicit in every fascinated, repulsed, or infuriated response to Ad Reinhardt's black canvasses or Damien Hirst's carcass vitrines. Kant, Žižek says, wants the consequences of immorality to dissuade desire; however, Žižek also reminds us that Lacan acknowledges the intuitive truism, known to Sade as to any teacher, parent, or babysitter, that the perceived immorality of an act, the sense of violating the Law and one's duty, spurs the act's desirability, and thus its pleasure. In the visual arts of the 20th century as never before, pleasure came to be associated with austerity and abjection, repression and repulsion. While this doesn't describe the

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[24] Groys (2012) attributes the 20th-century lionization of desire in French philosophy less to Freud and more to the Russian-born Parisian philosopher Alexandre Kojeve, whose lectures to the Surrealist circle were attended by Jacques Lacan, Georges Bataille, and other luminaries (p. 157). Groys calls Kojeve "the Duchamp of philosophy" for presenting himself not as an interpreter and critic, but merely a reproducer of Hegel's philosophy for the Paris of his day (p. 100). Kojeve went on to a distinguished career as a chief planner of the European Common Market, presenting us with a biographical overlap of desire both as economic and psychological truth, expressed through law and philosophy respectively.

work of Laurie Jo Reynolds in any particular sense, it does help to delineate the context against which her work is defined.

4.7 The positive veto

The victory of Tamms Year Ten depended upon Illinois governor Pat Quinn, and the top administrators who oversaw the prisons. In general, these were officials whom Reynolds believed could overcome the organized resistance of the guards' union, and the many voters and representatives they could mobilize. When Quinn came into office in January 2008, after the sensational arrest of Governor Rod Blagojevich for attempting to sell Barack Obama's vacant Senate seat appointment, the new governor brought his chief of staff Jerry Stirmer, who was open to listening to the stories of institutionalized people and their families. In May, as mentioned above, Quinn appointed Michael Randle as his Director of Public Safety. Randle's proposed prison reforms, based in part on legislation TY10 proposed, provided a blueprint for what advocates such as TY10 and the Uptown People's Law Center would pursue over the next few years. The end of the primary TY10 struggle came with Quinn's veto, which cut off funding for four Illinois prisons, including Tamms. This veto should be understood as a positive assertion of prerogative, as opposed to reductive legislative consensus or negative judicial censure.

TY10 issued a "report card" on prison reform to the State House budget appropriation committee in 2011. State Representative Luis Arroyo continued to vocally combat Tamms funding in 2012, now as chair of the Appropriations Committee. Undoubtedly influenced by Arroyo, but in a move that both Reynolds and MacFarlane characterize as heroic and selfless,

and as promised in his budget speech, Quinn erased Tamms and three other Illinois prisons from the budget that February with a line-item veto. TY10 made a point of repeatedly thanking him for this, sometimes with lavish bouquets of flowers. “Sometimes when you’re doing something really tough, like Governor Quinn was,” Reynolds said, “and everyone hates you and everyone’s yelling at you, (hearing from) the few people that are like ‘you’re doing it for me, thank you,’ that can give you the strength to keep doing it” (personal communication, April 20, 2014a). Tamms Year Ten eventually got over a thousand people to send thank-you notes to the governor.

Opposition was fierce. While Quinn’s office lobbied hard to sustain the veto, AFSCME steadily campaigned for a veto override that would keep the prisons open. Their efforts included a proposal to reclassify Tamms as a maximum-security prison, a transition that would require significant new construction, and thus cost the cash-strapped department millions of dollars. Through the efforts of State Representative Barbara Flynn Currie, this became a bill to reduce Tamms to medium-security, but with a clause in the bill to make the action discretionary (and thus toothless). Despite the fact that one of the prisons slated for closure was empty, with its guards being shipped to another site every day during their shift, funding for all four prisons was re-entered into the budget. This was accomplished via the influence of no less a power broker than Michael Madigan, veteran Speaker of the Illinois House, without unified opposition from the Illinois House Black Caucus or other traditional allies of prison reform. This frustrated Luis Arroyo, who had made a public promise to around forty Tamms mothers and supporters that the prison would not reopen.

Finally the Senate voted to override Quinn’s veto. Shortly before the House took their second override vote, TY10 took a page from Representative Arroyo’s playbook by sharing a story about overstaffing at Tamms with George Pawlaczyk, a friendly downstate reporter in

Belleville. Investigating a lead provided by a prisoner, it turned out that a prison with around 100 inmates had not only 16 food supervisors, but also over two guards per inmate and two GED instructors, with employee salaries averaging over $70,000. The story made it into the Capitol Fax, which threatened Republican support for the veto override. Madigan never called the vote, and so the veto went unchallenged.

In the end, the governor has the power to open and close prisons, while the legislature merely appropriates funding, and so Quinn went ahead with prisoner transfers through the end of 2012, until the prison was empty. While budget concerns were cited as the major factor, the closure of Tamms in January 2013 was indeed Quinn's decision, in the face of significant opposition from downstate legislators and AFSCME. Reynolds has repeatedly emphasized that she would have been neither angry nor surprised if Quinn had caved in on Tamms, in order to get union support on another of his political goals, such as pension reform. He was "trashed in the press," Reynolds recalled, to the point of being "booed at the state fair." "The union fights anything that can be perceived as pro-inmate," Reynolds told me. She said that AFSCME leaked confidential information to the press about prisoner swaps across state lines involving Tamms inmates, including prisoner names, in the effort to provoke fears of threats to prisoner security and insist on the necessity of Tamms as a "safety valve." Only three of the swaps actually went through, and the state police was sent in to investigate the leak, with no result. In any event, unions were a major source of Quinn's support, which underscores for both Reynolds and MacFarlane the bravery of the decision to shutter Tamms.

They also praise the courage of IDOC Director Salvador A. Godinez, who proposed closing Tamms in 2011 in the face of fierce opposition from within his department. "He had to defend this to his whole workforce," Reynolds said, "to the people who run his prisons, to the

guards who love Tamms" (personal communication, 2014). "Really, the Department (of Corrections) is in a very unenviable position right now because anything they do to make prisoners' lives better, the union runs crying to the press… but if they don't do it, then the… advocates out there, like the people supporting the hunger strikes and everything, they attack the governor, they attack Director Godinez." Here she stakes out a position that could be seen as both between and apart from the most vocal partisans in the debate over solitary.

Reynolds spoke of Godinez's stalwart loyalty, describing a meeting with him to which she invited no legislators, only bringing in two released former gang chiefs, one of whom Godinez knew from his days as an administrator at the Stateville prison. The guards' union was very active in persecuting Godinez through the media, passing on anti-reform stories to many outlets in downstate Illinois. "Downstate legislators, all of them… they're constantly calling for Godinez to be fired. There's actually a state resolution right now calling for him to be fired. And he wasn't confirmed for two years in a row because they knew it was too political," she said, "so they ended up confirming him this year… they had a confirmation hearing up near Chicago where the Senators couldn't go to it" (2014a). As seen in the moms' march on AFSCME headquarters in 2012, family members had come to play an even larger role in the organization than the released prisoners, in terms both of sharing information and volunteering, as well as helping one another. Along with pursuing grievances from these family members on behalf of individual Tamms prisoners, Reynolds, with other TY10 members, kept working on educating Democrats on issues of prison conditions, praising Quinn for his decision to close Tamms, and pushing legislators to keep Tamms out of the budget.

Through executive action, legislative art became legal reality. In January 2013, Tamms closed, and has stayed closed. Quinn's steadfastness in following through on his pledge,

especially given the heat he took from unions from cuts he was making to state pensions, still amazes Reynolds, especially given that Rod Blagojevich, his predecessor, at one point went back on a promise to close the Pontiac prison in order to gain other political concessions. Reynolds' creative autonomy ultimately required the backing of a figure who had the option of avoiding compromise. And so she went on in 2014 to take a position in his unsuccessful re-election campaign. She says she regrets nothing (personal communication, 2016), and sees it as a necessary extension of the Tamms Year Ten campaign, in which the celebration of dedicated allies is of equal importance to the overcoming of enemy resistance.

But Reynolds does admit that there was a degree to which, during the Tamms campaign, she always had to give Quinn the impression that the campaign was bigger than it actually was. In forming alliances just as in confronting enemies, a degree of bluffing is crucial. Along these lines, Joseba Zulaika (2016) notes that "military strategy is notorious for the use of bluff and stratagem." He continues:

> An army ready to strike means real combat, while an underground terrorist group's threat of violence, you never know with certainty if it is for real until it happens. Still, threats are terrorist incidents, since intentionality is in itself a criterion for terrorism(.) (p. 45)

This is obviously not to characterize the social justice achievements of TY10 either as bluff or terrorism, but to comment upon a tactical element of the project that is both artistic and political, while Zulaika's quote underscores the crucial legal force of intentionality. Reynolds' untold hours of re-election campaigning on Quinn's behalf represents an extension of TY10's public acts of gratitude, but her unwavering strategic focus is key to understanding her aesthetic intentions. Although ideas of citizenship often seem to have been eclipsed by privatization, especially in the reliably formal and jaded art mainstream, it may yet be possible to look past the

visual object market and recognize Tamms Year Ten's undeniable political victory—at least insofar as it qualifies as a media event.

Chapter 5: Conclusion- the fourth estate

5.1 Campaign as brand

An idea to gather information from men at Tamms was put forward at a 2007 meeting by Jean Snyder and Locke Bowman, attorneys with the MacArthur Justice Center who were representing men at Tamms, and also working with Tamms family members through the Tamms Committee. Reynolds offered to take on this task, and was put in charge of the surveys. Attorney Alan Mills, who was also working on a class-action suit representing men at Tamms, was not at this meting, and Reynolds recalls that when he responded angrily to the surveys being distributed without his oversight, she was blamed. Mills' contention is that the surveys implied that responses would be protected by attorney-client privilege. Reynolds has noted that the information gathered in these surveys turned out to be crucial to the lobbying campaign, in that it allowed the activists who became Tamms Year Ten to not have to rely on lawyers or on litigation.

Despite the concerns Mills raised about the surveys at the time, and in talking to me, Reynolds said no men she worked with over years of organizing reported any such concerns--despite the fact that, as she put it affectionately, "they complain about everything" (personal communication, 2016). Mills acknowledged that the content of the surveys provided an extremely useful foundation for the Poetry Committee to begin their lobbying work, and he doesn't claim that there were any negative repercussions. But while Reynolds would later invite Mills to meetings with IDOC, and she still works with Snyder and Bowman, there had been a

decisive split between Mills and some leaders in the Tamms Committee early on, and the efforts, priorities, and viewpoints of TY10 and the Uptown People's Law Center, which Mills directs, gradually diverged.

This incident points up the imperfect compatibility between litigation and lobbying, and thus judicial and legislative aesthetic registers. Of course many groups both lobby and litigate, with the ACLU as a salient example, but the contradictions apply within as well as between organizations. The UPLC is a nonprofit, which thus has a focus on fundraising. Its messaging by necessity appeals to principles, as can be seen in their robust social media presence and (occasionally hyperbolic) mass emails. But it can be seen also in public actions, as when Brian Nelson, a former Tamms prisoner who works with UPLC protested outside the 2016 annual luncheon of the prison watchdog John Howard Association, claiming that the Society's disinclination to endorse the anti-solitary bill authored by the UPLC and introduced by State Representative La Shawn Ford, had effectively killed the bill.

However, Reynolds and others, including the John Howard Association, perceived the bill as highly unlikely to make any progress, owing to the way in which it was written. Poorly written legislation, and bad press generated by prison reform activism are often upsetting and alienating for legislative allies of reform, Reynolds explains. She suggests, however, that such setbacks tend to be de-emphasized by those who are wedded to the confrontational, pedagogical tactics of public interest litigation. Such an outspoken approach may align with the rhetoric of an election or a fundraising campaign, but are less congruent with the long-term coalition-building and horse-trading involved in creating law, a patient process that in some ways looks like the enigmatic process of developing multifaceted and compelling artwork.

While Reynolds has had disputes with litigator allies, and TY10 received extensive assistance from high executive officials, the bulk of their opposition has been the legislative and media opposition TY10 faced from AFSCME. Indeed, the prison guards' union was the organization's most bitter foe, opposing any measures that sought to curtail restriction and punishment of prisoners. While they found a common enemy at one point in protesting against a private health care contractor that racked up numerous medical neglect claims from Illinois prisoners, TY10 has had no success with its overtures toward collaboration with AFSCME over the years, though Reynolds once mentioned that she had some hope that the national union leadership's "End Mass Incarceration" campaign might offer inroads against the recalcitrant state union (personal communication, 2014).

During the 2012 legislative session, after longtime Illinois House Majority Leader Mike Madigan inserted Tamms back into the budget, following Quinn's veto, Reynolds was approached by representatives of AFSCME, who sought a compromise in which Tamms would be reclassified as a lower-security facility, with more lenient treatment of inmates. Reynolds refused, citing the absence of common spaces at the prison—no cafeteria, chapel, school, gym, visiting area, day room, or vocational area—and she refused to support any further construction that would add such facilities. And, at bottom, she doesn't trust the union. Reynolds maintains that AFSCME actively spied on its opposition, including TY10, and deployed a press strategy which focused on violence and scapegoating. In an incident that instructively illustrates correctional politics, California prison guards were convicted in 2003 of instigating a brief riot in the yard at Pelican Bay in 1993 in order to influence the Federal judge who was visiting the prison weeks before the beginning of *Madrid v. Gomez,* a landmark lawsuit addressing practices of solitary confinement (Reiter, 2016, p. 133).

As mentioned earlier, TY10 had a PR coup during the 2012 legislative session, when downstate reporters broke news about overstaffing at Tamms, but failures were also numerous, particularly in southern Illinois media markets in which prisons form a significant element of the economy. Back in 2000, not long after the formation of the Tamms Committee, a prison hunger strike that resulted in negative coverage was credited by Mills (2013) as having an important positive impact on the movement to close Tamms, while Reynolds sees the press backlash as evidence of its ineffectiveness. And, as mentioned earlier, opponents of solitary confinement received a blow five weeks after the closure of Tamms, when media outlets mocked a hunger strike in which prisoner demands included access to cable television and sterilized toenail clippers. In another media victory for AFSCME after the Tamms closure, several outlets reported that prison violence had increased, contradicting the findings put out by IDOC. As with the prisoner's shank brandished by the pro-Tamms speaker, mentioned in Carol Wilcox's anecdote from the rally at the 2012 COGFA hearings, material objects and physical danger, diametrically opposed to the lofty ideals put forward by the Uptown People's Law Center, provided substance to the retributive vitriol put into the press by AFSCME.

The gallery work produced in the Tamms campaign, as well as in Reynolds' work around sex offenders, should not be understood as an end result, but as one part of an overall media strategy to change the law. Media literacy is a central element of Reynolds' work, with the goal of this focus being to encourage wariness of the kind of sensationalist scapegoating that drives negative press and punitive legislation, but about which litigators and other activists may have little expertise or sensitivity. In September 2010, hopes for reform that began to be kindled by Quinn's appointment of Michael Randle just over a year earlier to the post of Director of Public Safety were dashed, much as the 1988 U.S. presidential campaign of Michael Dukakis had been,

by reports of a crime committed by a man who had been released early from prison. John Maki, who took over the John Howard Association early in Quinn's first term, fought to counteract the press attacks on Randle. Reynolds has continued to work closely with Maki, whom she believes helped to make the Department of Corrections more publicly accountable than it may have ever been.

Reynolds began working with media consultants early on in the Tamms campaign, when she got a MacArthur Foundation grant to hire a PR firm that later would offer the group free workshops on dealing with the press. Two memorable lessons were to lay low, and avoid gloating. As highlighted in Reynolds's parable of the well, and in Benjamin's "mythic violence," dramatic stories are crucial in creating new legal possibilities.[25] The *Chicago Reader* ran an in-depth cover story on Tamms in 2007, which was the first public outlet to break the story of inhumane conditions at the prison. In 2009 the *New Yorker* ran a piece on the consideration of solitary confinement as torture. Human Rights Watch supported the torture designation, as did Amnesty International in the U.K., but the U.S. branch did not immediately join them, and the ACLU was very late in opposing solitary confinement as an abridgement of human rights. In his coverage, starting in 2010, Robert Wildeboer at Chicago's public radio station WBEZ examined the enormous expense as well as the conditions at the prison.

A week before the 2012 downstate COGFA hearings regarding the fate of Tamms, Governor Quinn's press staff helped prepare Reynolds for a televised press conference, giving

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[25] An intriguing study of competing stories with regard to the fates of prisoners is Sara Cobb's 2010 study in *Narrative Inquiry* on the different ways defense and prosecuting attorneys construct narratives in capital sentencing hearings, "Stabilizing violence: structural complexity and moral transparency in penalty phase narratives."

her a list of tough questions and rehearsing with her. Reynolds also maintained a good relationship with IDOC press specialist Tom Scher throughout the TY10 effort. Messaging was again a major theme in a conference she organized in November 2016 around sex offender registries, with a panel presentation and a morning workshop given over to the Opportunity Agenda, a group that works with social justice projects to develop a "values-first" media profile. It was at this conference that I learned that John Maki would be heading a state legislative advisory commission investigating risk assessment practices and the outcomes of criminal registries. Along with this task force, an anti-registry campaign was being formed that included the ongoing work of a public interest law project, Illinois Voices, and the building of a broad-based lobbying movement that would include victims representatives, law enforcement, probation officers, prosecutors, and academics.

As part of this campaign, Reynolds plans to focus on the press, creating a story bank and pitching articles to various outlets. She has mentioned many times that, particularly in campaigns against punitive persecution of sex offenders, the prime enemy is mailers sent out to voters, in which support of such retaliatory measures is presented as virtuous, and opposition a capitulation to utter depravity—a phenomenon she credits for the success of legislative measures that stigmatize sex offenders. Her mission could be seen as, through a variety of approaches in a range of contexts, disrupting the assumptions that drive the policing of public space.

5.2 Order and entropy

Describing an early optical illusion created by Renaissance architect Filippo Brunelleschi that makes use of a mirror and a painting with one-point perspective, Thomas Brockelman (2011) writes: "Cutting the viewing hole in the painting precisely *at* the vanishing point collapses two representational functions, but in each of these, the effect of the pinhole and the mirror is to underscore the 'subjective' nature of pictorial representation" (p. 96). This seems to be an example of what Lacan means when he says: "That in which the consciousness may turn back upon itself… *as seeing oneself seeing oneself*—represents mere sleight of hand" (1977, p. 74, emphasis original). And this fabricated subjectivity, both excluded from and projected into the image, is hardly a solitary hallucination. Order in an image, a classroom, a city, or an institution is never simply a matter of clarifying a blurry, inchoate situation. Rather, it relies on controlling the frame, the boundaries of order and disorder—the point of view from which harmony dominates (and dominance harmonizes)—relative to an individual who is included in the image of order she perceives.

This order can begin to be understood as an illusion, like the viewing apparatus Brockelman describes, or, in Lacanian terms, imposing the Imaginary on the Real. Hegel states in his *Phenomenology of Spirit* (1807/1967) that attaining truth entails a chaotic condition of disorder, a "bacchanalian revel" of inebriation (p. 105). Georges Bataille, who also extolled the liberatory ethics of drunkenness, pronounced that "the universe resembles nothing and is only formless, like a spider or spit" (1929/1985, p. 31). While scientific laws of nature may be immutable, their ultimate derivation, even if they date to the Big Bang, may be arbitrary and contingent, a confluence of arbitrary factors. Order is a situated perception of a temporary state,

which is why the ultimate question an aesthetic theory needs to answer is one of critical judgment or pedagogy: "what is pleasurable to perceive?" But the political role of "the media"-- in the sense of journalism and popular culture, as well as in the sense of the inert materials to which the artist, in Schiller's words, "does violence"-- is something that should not be overlooked in trying to understand the success or failure of an artist, just as it should be essential to tracing the success of a legislative campaign. In comparing art and law in a capitalist republic, stark differences exist in audiences and consequences, but marketing and distribution are vital to success. The link between art and politics is perhaps summed up in the idea of packaging, of design. And, in the case of prisons, absence and invisibility turn out to be useful as well.

As in Foucault's analysis of Jeremy Bentham's panopticon, a centralized prison design that allows efficient surveillance, form and function can both be seen as responsible for projecting order into the consciousness of everyone in the space. But through isolation of individuals and the internalization of surveillance, centralization has evolved into dispersion. Foucault himself remarks that, in nineteenth-century housing estates for French workers, control was enacted through isolation, 'by localizing families (one to a house) and individuals (one to a room).' He continues:

> The layout, the fact that individuals were made visible, and the normalization of behavior meant that a sort of spontaneous policing or control was carried out by the spatial layout of the town itself.

And this sense of being visible, on which this "spontaneous policing" relied, came to rely in other settings upon a pure and unadorned background. This blankness also simultaneously conveyed utilitarian simplicity, industrial efficiency, ethical clarity, and scientific objectivity.

Built in Vienna in 1890 under the direction of the eminent psychologist Richard von

Krafft-Ebing (an influential theorist on masochism), the design of the Purkersdorf Sanitorium expressed spatial separation, medical specialization, and clean, gridded rationality. Leslie Topp (2004) emphasizes that the design thus implies a visual depiction of truth, which then acquires a moral aspect; this would become institutionalized in the bare white walls of the modern art gallery, which Alex Kitnick (2016), describing an installation by artist Matthew Barney, characterizes as a padded cell (p. 254). The Austrian and Czech modernist Adolf Loos is remembered for, among other accomplishments, the essay "Ornament and Crime," in which, as the title suggests, Loos identifies adornment as a sign of immorality, barbarism, and decadence. Topp notes that an important influence on early Austrian modernism was the British art critic John Ruskin, who felt that excessive embellishment "is as truly deserving of reprobation as any other moral delinquency" (p. 18).

Ruskin's sentiments on moral and aesthetic purity were contemporary with the development of Victorian prison designs, which contrasted sharply with the era's fondness for filigree. As the internal space became more subdivided, the prison exterior began to convey a look of functional austerity, decades before the style would become fashionable in modernist architecture. Yvonne Jewkes and Helen Johnston cite Britan's Pentonville Prison, which opened in 1842, as 'one of the most advanced buildings of the time' and 'a blueprint for the building and renovation of prisons.' Pentonville featured a blank façade, a panopticon plan, and 520 solitary cells. The authors describe the increasing remoteness of penal locations in the United Kingdom, and also report that recent facilities are starting to look more dispersed and residential, like the housing estates Foucault describes.

The initiation of a long-term full-scale lockdown began at the Federal prison in Marion, Illinois in 1983, but the nation's first architecturally-planned supermax opened in 1986 in

Arizona: the Special Management Unit 1, or SMU 1. Based on the SMU 1, the Pelican Bay State Prison opened in remote Del Norte County, California in 1989 as America's first state supermax prison, and boasted a modern, compact, highly utilitarian design. The architectural firm that designed it, Arrington Watkins, also designed the SMU 1; the firm's website still boasts of its "design innovations," including "windowless cells with skylighted dayrooms" (Reiter, 2016, p. 106). As with the "global cities" that set the stage for modernity, architecture defines the possibilities of a contained human world (Therborn, 2017). Not only was Pelican Bay located in a remote area and planned to allow small, stand-alone pods, with infrastructure that allowed for maximum visibility of inmates and minimum contact between inmates and staff, the process of its political origin echoed this harsh elegance.

While populist tough-on-crime grandstanding by the governor, two successful pro-incarceration voter referenda, and legislative determinate sentencing mandates created the conditions for its existence, and complaints over a series of brutal and deadly incidents of prisoner abuse led to judicial oversight early on, the design and financing of Pelican Bay were delegated to corrections officials, and, as long as the consent decree was formally observed, prison administration was delegated as well (Reiter, 2016). Much as with Tamms, legislators and even top corrections officials, let alone the media or the public, remained largely unaware of the experiences of men in Pelican Bay. The appearance of transparency, as with Brunelleschi's device, is an illusion.

Ever an opponent of illusion, Walter Benjamin identifies "art pour l'art" with fascism in his critique of the Italian Futurists (1935/1968, p. 242). Yet Theodor Adorno, with whom Benjamin was associated in the Frankfurt School, promoted throughout his career the unblemished immanent authenticity of "autonomy" as the only possible artistic ideal—linked

conceptually to Ruskin's equation of aesthetics with truth. Art and politics are incongruent but inseparable, each embodying surface contradictions rather than depicting truth deep within: this truth of superficial incongruity, however clumsily or fleetingly, may be taken up as teachable knowledge. In *The Truth in Painting* (1978/1987), Jacques Derrida talks about the painter Paul Cézanne's commitment to truth as a performative but impossible promise.

> Its performance does not promise, literally, to *say*, in the constative sense, but again to "do." It promises another "performance"… with no descriptive or "constative" reference, the promise makes an event (it "does something" in uttering). (p. 3, sic)

This is not exactly the same kind of self-fulfilling speech action referenced by Bourdieu (1982/1991, p. 42). What a piece of art offers to do is often merely to undo itself; to the extent it makes a statement, it challenges its universal applicability. Whether in schools, asylums, or prisons, architectural designations of absolute truth eventually unravel at the hands of institutional populations (both the watchers and the watched), despite the best efforts of administrative and instructional hierarchies. Through what medium can an artistic gesture confront an institution?

Through the contingent, temporary events in which they manifest, artistic performances and revolutionary gestures can either underwrite or undermine statements of necessary and eternal law. "Let the dead bury their dead," writes Karl Marx (1852/1978, p. 597), eulogizing in Biblical language the failure of the French Revolution as evidenced by Louis Bonaparte's successful 1851 coup d'etat-- a newspaper-aided, anti-legislative counter-revolution of sorts. Borrowing Foucault's (2004) description of the coup d'etat as a theatrical expression of artistic freedom (p. 265), Bonaparte's ascension could be seen as a well-scripted play rather than a funeral. In contrast to this orderly scheme, Marx presents liberation as a reintroduction of chaos.

> Proletarian revolutions…. criticize themselves constantly, interrupt themselves continually in their own course, come back to the apparently accomplished in order to begin it afresh, deride with unmerciful thoroughness the inadequacies, weaknesses, and paltrinesses of their first attempts, seem to throw down their adversary only in order that he might draw new strength from the earth and rise again, more gigantic before them, recoil ever and anon from the indefinite prodigiousness of their own aims, until the situation is created which makes all turning back impossible (.) (pp. 597-598)

While Marx's lament regarding Louis Bonaparte reads like a prophecy of the Trump election, a far more minor but equally lurid contemporary example of the blurry line between spectacle and crime is a stabbing that occurred in December 2015 at the Art Basel art fair in Miami, an act that many took to be an artistic performance—although, ironically, heightened security prompted by spectacular ISIS-linked attacks the previous month in Paris permitted a swift response (Rayne, 2015). This absurd vignette is the stuff of both contemporary art and political intrigue—to misquote Marx, it simultaneously embodies both tragedy and farce.

Before this, in October 2014, a politically-motivated incident of vandalism and assault took place at a Chelsea gallery showing photos documenting civil wars in Syria and Ukraine, which writer Ben Davis (2015) linked to a spurious Russian media attack on the same journalist the following year. And in December 2016, the Russian ambassador to Turkey was shot and killed at a photography exhibit in Ankara at which he had been scheduled to speak, by an off-duty Turkish police officer who clearly intended to make a spectacle of the event (Arango and Gladstone, 2016). The symbolic value of material actions is the stuff of media-fueled political movements, from the American civil rights movement to ISIS. Rather than merely shrugging off

such events as reality-show slapstick, it is important to recognize that Marx's solution lies not in quiet pedagogical dogma but in messy and energetic dispute.

At the level of the individual, the endless self-questioning Marx talks about was formulated abstractly in the one-sided dialectic of psychoanalysis. Derrida's description of the performance that "makes an event" seems right in line with Jacques Lacan's notion that, while the unconscious is structured like a language, it does not say anything; rather, it acts, and creates effects in the world. Interpretation is undertaken by the analyst, who uses dreams and fantasies to attempt to diagnose forms of maladjustment, and interrogation applies to the experience of the analysand, who must endlessly enact self-disclosure before a "subject supposed to know," perhaps even forming an attachment to the analyst reminiscent of the so-called "Stockholm syndrome." The analyst can offer a modicum of reflective insight, but, as with Reynolds, the breakthrough only comes (if it comes) with interpellation, with the analysand somehow recognizing themselves and ultimately rejecting the analyst, along with any external, superior source of knowledge.

Not in spite of but actually owing to his powerlessness, the analyst, like the teacher, embodies the reinforcement of order, ruling through moral rather than physical force. The critic, when opposed to the gallerist, the curator, and the collector, seems similarly weak and parasitic, and yet participates in the only discourse that offers the guarantee of an artwork's enduring transcendent relevance. A public-interest litigator involved in criminal justice reform similarly must appeal to a higher principle of justice than that of simple incapacitation or retribution.

Opposing this formal regime is a physical regime. The "law and order" projected on to the police represent original chaos, communal drives, inchoate historical tendencies that split rather than unify a community. The officer is a fetish object intended to cover an absence, a hope

that, for members of dominant groups, allows anxieties around entropy to be temporarily assuaged. For dominated groups, while there may be frequent crises that call for police services, no such mirage exists. Tragedy, as Nietzsche has it in *The Birth of Tragedy* (1872/1956), relies on reconciling Dionysian chaos and Appollonian order through checks and balances. Negotiating between a universal ideal and a material hierarchy are the artist and the legislator. They offer, like Brunelleschi's viewfinder (but absolutely unlike a solitary cell), a vehicle for projecting oneself into the center of a stable symbolic and physical space. The recognition of historic and contemporary structures of power requires the de-centering of the frame.

5.3 Excessive commitment

Art historian Claire Bishop (2012) describes collaborations with science and industry undertaken by artists in the 1960s and 1970s. One British initiative, the Artists' Placement Group (APG), put artists into positions in government agencies. Speaking of artist Ian Breakwell's 1976 residency with the Architects' Division of the Mental Health Group of the Department of Health and Social Security, Bishop quotes the members of the Architects' Division who, in opposition to their superiors, appreciated Breakwell's consultations of mental health patients in regard to their conditions. "Ian has succeeded, from his point of view," the Division said, " in giving us a real and lasting image of the insanity surrounding insanity." The documentation Breakwell collected led to "media coverage, public outcry, and a government enquiry" (p. 172). But Bishop notes slightly disparagingly that Stuart Brisley, another APG artist, lists an archiving collaboration in his exhibition record "as a 'project,' rather than a work of art." Despite her

skepticism, Bishop grants APG credit for aiding in "rethinking the function of the exhibition from show-room to locus of debate" (p. 176). Precedents such as these[26] support the legitimacy of Reynolds' artwork, but still don't tell us how to discuss them critically.

In response to a question after a talk, Laurie Jo Reynolds described Tamms Year Ten as an artwork in these terms:

> The way that I think about the aesthetics of this project, and about legislative art, is that, although there are clearly art forms imbedded in it, like the photo project and the posters, and, you know, the conceptual stuff, like the Supermax Subscriptions… that I sort of like think of the whole thing as an autonomous system… that is what is art… it's that entire commitment, that entire, kind of, obsession, that drive… everyone facing in the same direction… the form of attention that we pay to everything… The way this came about, and the way we were connected to each other,… like, all of the things that shaped us… all those things are the aesthetic. And also, the way that we existed in the State House, and the way that we existed with legislators, is totally different from how advocates do that… We had practically taken thanking people to an art form… To me it's sort of the system, you know, it's the commitment… For me it would not have happened without… my interest in art and my exposure to art and without me being an artist it wouldn't have happened otherwise… And interjecting this poetry into these cards, into these people's lives, is an example… it was a very strategic campaign, and things are strategic, there's cause and effect, but there's also this sort of excess, also, that we brought to it… We were

[26] In a "litigious art" move, in 1977 APG's co-founder, John Latham, "sent invoices for 'services rendered' to the British government,… and proceeded to stop paying taxes from that year on" (p. 174).

> always working from a position of weakness, against this state power… but what we did, as the weak participant in the deal, really changed over the years. (2014b)

This holistic description of the project seems to line up with Grant Kester's (2011, 2013) views on artwork as a complex collaborative process unfolding over time, rather than a singular object or event with one distinct creator, sealed off from any supporting context. Based on projects such as Project Row Houses in Houston, a long-term effort led by Houston-based artist Rick Lowe to provide affordable housing and sustainable art venues in a traditionally African-American neighborhood in danger of gentrification, Kester's view is that art should not be read as isolated, timeless "textual objects," but understood through ethnography, the kind of in-depth description commonly practiced in cultural anthropology.

It's fitting then that Kester sent out graduate students in 2013 to do ethnographic documentation of TY10, and the Blade of Grass Foundation also was planning at that time to do ethnographic reporting on the group's work. Kester is substantially correct, in that a longitudinal, conscientious, multidimensional, inclusive, and unsparing examination of an artwork's context is enormously valuable, and can often be found lacking in art criticism and art history. It should also be acknowledged that the kind of patient investigative technique pioneered by ethnographers has changed the nature of journalism, and, while writings documenting brutality and injustice predate modern anthropology, ethnography has provided a model for uncovering, substantiating, and disseminating vital information, proving to be a tool that benefits marginal populations.

Yet, skepticism should be held in reserve for the presumed authenticity and sensitivity of such an approach to art (Feiss, 2014; Sharpe, 2014). An ethnography is often thought of as an unproblematically "rich" first-person account of history, but it has roots in pre-colonial conceptualizations of unfamiliar peoples as monstrous (Miyashiro, 2006), which were of course

deployed in campaigns of persecution and colonial occupations. Practicing techniques that parallel the detailed espionage carried out in a police state (Borneman & Masco, 2015), ethnography has now become a handmaiden of business management and market research (McCuistion, 2008). Most significantly, the kind of ethnographic approach Kester champions is targeted *avant la lettre* by Jeremy Gilbert-Rolfe (2000) as an erasure of art: " 'Art after art' turns out to be a kind of social documentation, anthropological in content and form... What is new is that the ethical is now no longer a volition for art, but what one has instead of art" (p. 109). The very approach taken by critics such as Kester is leveraged by those who associate all political art with the kind of "ethical regime" Rancière (2004) traces back to Plato; these critics seek to dismiss all art that apparently jettisons aesthetic questions in favor of the kind of instrumental concerns that seem tailored to the interests of a philanthropic foundation, rather than any public seeking a pleasurable, exciting, or contemplative experience. This has been a thus-far unstated concern in my writing here: can politicized "art after art" be saved from a complete absorption by social science methodologies?

If it can be, it cannot wash its hands of aesthetics and art history, but, in the spirit of legislative compromise, it will need to encounter and engage with dissimilar artifacts, against the background of a shared history that may have yet to be written. "(H)istory is inaccessible to us except in textual form," says Frederic Jameson (1981), "(…) it can be approached only by way of prior (re)textualization" (p. 82). While she started out her career focusing on public policy, Laurie Jo ended up pursuing her interest in art because, as she stated, "it's the cultural narratives about people that were actually determining the policies" (2014b). In qualitative narratives, like this one, interpretations should not be accepted as empirical observations. As Ruth Ronen (2014) says, speaking of Kafka's "Before the Law" allegory in *The Trial*, "The law is what cannot be

narrated or represented in utterances that portray truthful or fictional states of affairs" (p. 10). The law is always in a state of limbo between competing interpretations.

There is certainly a contested history of the fight against solitary in Illinois, but what I've learned provides an insight into what makes the Tamms Year Ten effort worthy of regard as an art project: its ability to shift between appearances by absorbing content without contradictions. Art and politics are both incompatible and inextricable; viewers project a core of truth retroactively from a perceptible surface of depiction: truth that is momentarily taken up as knowledge, while simultaneously witnessed as a fleeting hologram. For this one reason among others, one thing that Tamms Year Ten couldn't be, despite its fierce ethical commitments, and the better judgment of trial lawyers, is thoroughly transparent.

Art points outward, but also back at itself. Critic and curator Diedrich Diederichsen (2017) asserts that "art's ability to remain inaccessible within a public arena is one of its fundamental prerogatives" (p. 210). Peter Goodrich (2009) analogously describes the core of legal philosopher K. N. Llewelyn's search for a conceptual kernel of jurisprudential realism as a search for the "inarticulate" and the "unthought" (as cited on p. 215). Along these lines, the artistic object may be an advocacy campaign, as a creative medium, but it then must be simultaneously a reflection upon itself as a specific, embodied advocacy campaign, with a particular imaginative approach. As with Burke's "sacred veil," art like law retains, as Édouard Glissant rather legalistically puts it, "a right to opacity" (as cited in Diedrichsen 2017, p. 210).

Another way of stating this is that art and law intersect at this point of rumor and misdirection. In *Human, All-Too-Human* (1878/1986) (in which he also cites John Adams' liberal chestnut on the "tyranny of the majority"). Nietzsche dismisses the idea of artistic genius,

saying that artistic accomplishment is the result of labor and not divine inspiration; we can recall Reynolds speaking of her archives as "boxes and boxes of labor." "The work produces its full effect when it excites a belief," Nietzsche contends, "… that the complete and perfect has suddenly emerged instantaneously." His goal as a philosopher, he writes, "is to counter this illusion and to display the bad habits and false conclusions of the intellect by virtue of which it allows the artist to ensnare it" (p. 80). In this case, the interpreter opposes the artist, just as the litigator opposes the lobbyist. Understanding a law requires understanding not only who it affects and what needs it addresses, not only the words that were used in the text and how they were interpreted in different contexts, but what deals and favors were required, and what larger goals were served in bringing it about. In this respect, Kester is perfectly correct. When seeing a piece in a museum, or in a prominent collection, magazine, blog, or gallery, similar considerations need to be borne in mind.

What Kester might not attempt is to insert a political campaign into a mainstream art-historical narrative. An intriguing contrast might be drawn between Laurie Jo Reynolds' work and that of any number of more palatable and commercially successful aesthetic approaches—but a worthwhile counterpoint should share some key features. During their long career, the Swiss duo of Peter Fischli and David Weiss did, tongues firmly in cheek, what Nietzsche imputes to the artist:[27] creating images of reality as substitutes for reality. At their 2016 Guggenheim retrospective, "How to Work Better," the artists created a slide table of their postcard-esque photographs of banal nature scenes and notoriously overdocumented tourist sites (*Visible World,* 2003). They fabricated a series of sculptures over many years, meticulously

[27] Nietzsche is in this instance fairly close to Marx (1864/n.d.), who describes art as "unproductive labor."

replicating shabby studio ephemera from painted polyurethane foam (*Polyurethane Objects,* from 1982 onward). They made an enormous series of gestural unfired-clay tableaux fictionalizing historic moments (*Suddenly this Overview,* 1981/2006). Most memorably, they created a film documenting an absurdly long Rube Goldberg-esque series of chain reactions (*The Way Things Go,* 1987). This latter marvel of inanimate choreography has gained traction outside the art world; one YouTube clip from the film boasts almost 400,000 views.

This work has been frequently associated with Conceptual Art, although clearly not tied to Lucy Lippard's "dematerialization." Instead, the pair made playfully self-aware objects that, like much conceptualist art, did not mind making fun of itself, while baiting the audience in the process; perhaps it could be thought of as prop comedy as well as informational humor. Looking at this work through the notion of the balance of powers, however, it could be suggested that it plays the rule-based poetics of Conceptual Art pedagogy, the judge, against the material violence of the avant-garde executioner's shocking gesture. This cancellation is provocative in the way it befuddles the highbrow connoisseur and the art skeptic in much the same way, by begging the question as to how the gestures of Fischli and Weiss, in their grandly mundane way, came to be recognized as art in the first place. Their craftsmanship and laborious repetition, as well as their winking irony, offer ready answers. But it should not be overlooked that, as conceptual artists, they merely upheld a conventional interpretation of the Duchampian precedent, under which all modern fine art is merely a sideshow to industrial production. The postwar Belgian poet and artist Marcel Broodthaers offered another take on Duchamp, saying that with *Fountain* Duchamp "aimed at destabilizing the power of juries and schools" (as cited in de Duve 2016, p. 35). Broodthaers likely meant schools of art and exhibition juries, but there's no reason to not impute

a larger legal and educational scope for the monumental urinal, comparable to the scope of the Tamms lobbying campaign.

Along with Duchamp, Broodthaers also provides an illuminating shared reference point for Fischli and Weiss and for Reynolds. Broodthaers is often credited with introducing the idea of "institutional critique": curated objects and spaces that take the space, history, and archival and social contents of the museum as subject matter. While he was hardly the first artist to address exhibition space as itself an element of an exhibition, Broodthaers, with his "museum fictions," was fairly unique in the 1960s. Rather than using mass-culture appropriation to prosaically deflate the grandiose elitist aspirations of modernism, as Pop artists did in the U.S. and the U.K., or rejecting all forms of visual display outright, as the Situationists would do in Paris, he was known both for clinging to unfashionable imagery and for engaging head-on with the concept of an institution. In their multi-media approach to the understated and disposable, Fischli and Weiss clearly reference Broodthaers' anachronistic, deskilled, and consciously insincere works of studied tediousness. Broodthaers' paintings and sculptures combine letters and numbers with egg and mussel shells, and his slideshow-esque films feature static images and cryptic text. Reynolds, however, echoes Broodthaers more subtly and elliptically. By being a "counter-utopian," as Trevor Stark calls Broodthaers (Borja-Villel 2016, p. 140), Reynolds skeptically but sincerely takes the institution on, with neither a bemused wink nor a pious scoff.

Contradicting but also complicating Bruguera's instrumentalism, Broodthaers says: "I choose to consider Art as a useless labor, apolitical and of little moral significance. Urged on by some base inspiration, I confess I would experience a kind of pleasure at being proved wrong" (1975/1987, p. 35). On the eve of a Broodthaers retrospective in New York, curator Manuel Borja-Villel comments: "For Broodthaers, the artist's political commitment is nearly

always manifested in the space of the adversary" (Borja-Villel et al. 2016, p. 119). Borja-Villel also notes that Broodthaers' renowned meta-curatorial gesture, the 1968-1972 *Musée d'Art Moderne, Département des Aigles*, appeared after the May 1968 uprising in Paris, in which Broodthaers had attempted to act as a political mediator for a group of artists "and had ended up rather disappointed by the reduction of the whole discussion to the artists' demand to have their work shown in the galleries of the Palais (des Beaux-Arts)" (p. 120). Broodthaers said of the *Département des Aigles*: "It plays the role of, on the one hand, a political parody of art shows, and on the other hand an artistic parody of political events" (1972/2012, p. 354). This could describe, respectively, the campaign office that Reynolds deployed as an installation in the Sullivan Galleries, and the "I AM A MOM" march at AFSCME headquarters, which pointedly evoked the 1968 Memphis sanitation workers' strike. Just as Broodthaers framed the framing device of the museum, Reynolds bitterly mocks the possibility of politically progressive dark humor, with her comedy shows about supermax prisons and sex offender registries.

Also in the wake of 1968, Broodthaers both published and exhibited several "open letters" on behalf of his fictional institution, essentially poetic press releases for political sit-ins, and in 1969 he copied poetry by Mallarmé in chalk on three black shirts from the Dallas Police Department (*Un coup de dés, ombre, voile*). A fairly similar effort, the project my high school students did in collaboration with Tamms Year Ten, to alter prison jumpsuits with text and images in response to the perjury trial of Jon Burge, was proposed by Reynolds. Like Reynolds, as well as many avant-garde artists in Cold War police states in his time, Broodthaers recognized an important overlap between the aesthetics and politics of collective self-imaging, both on the part of artists and of the state. In his final interview in 1974, he stated:

To change concepts one will first have to acknowledge that the Plastic Arts in an

> outdated linguistic framework serve only as a practice field for manoeuvres of a more military than scientific type. (as cited in Buchloh, 2016, p. 46)

Broodthaers' "manoeuvres" were perhaps military in the sense of being socially strategic—which is to say political, in the intimate and practical sense crucial to the Tamms campaign.

Rachel Haidu (2016) describes the parties Broodthaers would hold for his unconventional museum, at which collectors mingled with prominent critics and artists: "they stayed really late, and they drank a lot and they sat on crates and they smoked and talked and so on" (p. 149)—the kind of event that would become common in informal gallery settings over the ensuing decades. Reynolds could be said to have made this sort of self-promotional networking into an aesthetic project of lobbying legislators. Like Reynolds, Broodthaers came to art after having rejected the possibilities of poetry, presenting fifty volumes of his final book of poems encased in plaster (*Pense-Bête,* 1964). In *Pense-Bête* he writes something of a working definition of legislative art, albeit in an appropriately tongue-in-cheek tone:

> Works of jurisprudence have often excited my imagination. Each word in them has its place, a very precise place. The ambiguities of law certainly derive from differing interpretations of the text, from the spirit and not from the letter. (1964/1987, p. 15)

Both artists brought forth a creative gesture as a result of an impasse, a feeling of impotence. Broodthaers reconciled unconventional objects and unconventional gestures through the use of conventions, the sort of reconciliation that makes Reynolds' work "legislative" outside of its literal content as lobbying.

Benjamin Buchloh (1987) acknowledges Broodthaers' sympathy for and affiliation with leftist groups and events throughout his career, while admitting that "Broodthaers seems to have distanced himself generally from all the progressive aspects of the modernist credo," including

"those defining themselves through explicitly political definitions and events" (p. 69). Nonetheless, Duchamp's and Broodthaers' readymades stand for an uncanny and hardly apolitical overlap between institutional spaces and bodily detritus, as opposed to Fischli and Weiss's charmed philosophical relics of curatorial ritual. Laurie Jo Reynolds' gesture, while more politically proactive, is also more artistically reluctant than those of Fischli and Weiss, and her assumption of an art context is almost perfunctory—neither she nor other Tamms volunteers have been terribly interested in discussions of art. In its momentary instantiations, her work is sometimes uncomfortably funny, but can, like Broodthaers', also be simply solemn, without any obvious nod at either comedy or tragedy. As with U.S. Senator Jesse Helms' vitriolic screeds against Federally-funded art considered "obscene or indecent" (cited in Honan 1989, para. 1), Reynolds and Broodthaers keep one foot, like good legislators, in the iconoclastic realm of the philistine.

Still, as she tells us, Reynolds views the entire project of Tamms Year Ten as the piece, not its individual artifacts. The piece is a legislative campaign that had a singular goal. As an art piece, it is a campaign to create an event, which came with the closure of Tamms. But every work of art is similarly a struggle—in the case of stars like Fischli and Weiss, we might say that they have also achieved the victory of visibility and art-world success. Both art and non-art audiences may remain confused or dubious about how Tamms Year Ten is then to be understood or validated as art, but, what it is, as art, is a largely unseen portrait of what organized groups can do in the face of trauma.

5.4 Checks and balances

In appreciating the implications of a supermax prison like Tamms as a supreme rationalization of punishment, and strategic resistance to that prison as a work of art, I am interested not only in the intersections between different branches of the government, in how they supposedly restrict and reinforce each other, but also in the plenitude of incompatibility and contradiction embedded in between functions. "(T)he conception of the separation of powers," claims Theodor Adorno (1969/1998), "…has its lifeblood in critique" (p. 283). The Tamms Year Ten campaign made use of legislative lobbying, but litigation and administrative and executive influence were also part of the effort to close Tamms. And it wasn't a simple cooperative effort, where advocates collaborated unproblematically with lawyers, representatives, and officials. As I've described, there were also tensions and competing agendas.

In terms of the tension between branches of government, the 2012 legislative session was probably the most vivid example. The governor closed the prison with a line-item veto, rejecting an item in the legislature's proposed budget. The legislature stalled on closing Tamms and nearly overturned Quinn's veto, and, in the meantime, the prison guards' union went through the courts to attempt to keep the prison open. In fact, the very creation of the American supermax can be read through inter-branch conflicts (Reiter, 2016), as well as the more general return of retribution in place of rehabilitation (Garland, 2001). The movement away from indeterminate sentencing, which was in large part a result of litigation (along with administrators like David Fogel), represented a temporary assertion of legislative and judicial oversight over the decisions of prison officials, once fully determinate sentencing guidelines started being introduced, eventually including mandatory minimums such as "three strikes" laws. And yet the creation of

elaborate segregation units, prisons within prisons, both resulted from and expanded the restoration of executive discretion—both for prison administrators and for prosecutors, two of the primary architects of mass incarceration.

Throughout this text, I've also tried to suggest that teaching, artmaking, and policing infiltrate one another. This principle manifests in figures such as the critic, the spy, and, indeed, the prosecutor—not to mention legislative lobbyists for prison guards. The experience of the art teacher provides one example of how all three forms of power (however constrained) intersect in one occupation. While the desire to have students express themselves can be at odds with classroom safety, the tension between teaching and making is no less pronounced. Even without invoking threats of punishment, the pressure on students to self-differentiate while conforming to institutional parameters and models for expression, while publicly struggling with media that they may be encountering for the first time, can create a challenging environment for both teachers and students. Beyond such discomfort, however, pedagogical, expressive, and security concerns can all be in open conflict.

As discussed earlier, the professions of teaching and law are generally despised—and of course plenty of people hate critics. The regimes of oversight that teachers endure in the U.S., due to their relative lack of autonomy, is one example of how administrators and lawmakers have leveraged this distaste into power. Tort reform, rules against frivolous lawsuits, are an example in which lawmakers and administrators have benefitted at the expense of lawyers. But teachers, lawyers, and critics can and do push back, albeit with far less leverage. But lawmakers and administrators can be relied upon to attack each other. While the ability of administrators or police officers to act unilaterally and to use violence discretionarily has been discussed, it should also be recognized that distaste for tyranny, bureaucracy, and legislative corruption and gridlock

are routinely used as talking points in displays of executive and legislative rhetorical art. Such dynamics can also be seen outside of governmental contexts, in conflicts and contradictions between religion, culture, and commerce.

During the ratification debates over the U.S. Constitution in the 1780s, the Federalists' judicial push for a universal legal apparatus struggled against the Anti-Federalists' desire for spheres of local executive autonomy. The push for legislative mediation was less an explicit position than a means for sublimating the conflict between federal centralization and states' rights, such that the latter was able to maintain its practical supremacy under the dubious formal aegis of federal regulation (Whittington, 2003; Gerstle, 2015). Just as this dialectic requires a third term, in the legislature, so does the "trialectic" I'm insisting upon require a fourth. The news media has often been cited as filling this unelected, non-accountable role, and, as commented upon by Max Weber (1919/1946) among others, this phantom Ministry of Information certainly can be regarded as accountable for highlighting any and every issue that is ever seen as relevant to the work of governing at a given time. It is clear that, for Tamms Year Ten, a proper appreciation of the role of media, in terms of garnering volunteers, political allies, and funding, drove the production of performances and visual works, and thus is fundamental to considering the project, in its widest definition, as an artwork.

Once we at least hypothetically consider a government with four branches, a fifth column is perhaps inevitably bound to emerge. If I were to speculate on what this would be in the U.S., it's a factor that I have attempted to underscore throughout, which is the drama of hierarchical racial conflict. This is not to discount class or gender identity, nor any other categories designating axes of struggle, but Brunelleschi's viewing apparatus should be remembered here. Every vanishing point lies on a horizon. The very possibility of apparently free and endless

fertile land and agricultural prosperity that defines America's endless utopian promise should be seen as a horizon that hides colonized people, like the painting that partially hides the true church interior when viewed in Brunelleschi's mirror. As I suggested in the introduction, the aesthetics of race are in one sense pathetically simple—a totalizing visual system that simultaneously assigns power and beauty. But simplicity doesn't imply either weakness or inevitabilty. The actions of the other four branches can, at least in theory, validate or override this aesthetic agenda. While the fundamental role of this division makes it extremely difficult to even begin to substantively discuss, I would suggest that addressing it should actually be the long-term goal of any legislative artwork, both in and beyond the U.S. And yet Hegel reminds us that "the actual world of justice and ethical life (is) understood through thoughts; through thoughts they are invested with a rational form… This form is law(.)" (1821/1974, p. 259). Thus, along with endemic issues of residential segregation and unequal public services, it shouldn't be forgotten that, as one example, Illinois still faces the possibility of a new Federal supermax prison at Thomson (Stahl 2015). Illinois U.S. Senator Richard Durbin, who held Congressional hearings in 2012 to address solitary confinement practices, helped to sell the prospective supermax site to the federal government (Ridgeway and Casella, 2013).

And yet, why should anyone be interested in opposing this prison, if they or their friends or family members are in no danger of being sent there? The prison would be opposed, as prisons in the past have been, by activists who have chosen to pursue the decarceration issue, perhaps for personal reasons but perhaps for moral or religious reasons, and there will certainly be family and friends ready to fight. The terror, confusion, and euphoria of battle are made subservient to these noble, indissoluble, and ideological urges toward martyrdom and militancy. Essentially this fantasy puts the force of the Real, of the executioner or police officer, at the service of the

teacher or judge, which works better in theory than in practice. What does suffering have to do with justice, after all? The history of art, visual and otherwise, offers a wide catalogue of alternative options, and so it makes sense to find solutions through legislative mediation—and for there to be a political movement, aesthetics are necessary.

In 1999 Rosalind Krauss lamented a "post-medium condition," in which conceptual art had lapsed into consumer-friendly installation art that evinced nostalgia for politicized postwar avant-gardes such as Situationism, institutional critique, and Fluxus; blame for this state of affairs was placed squarely at the feet of Marcel Broodthaers. Laurie Jo Reynolds and Fischli and Weiss stand as opposed representatives of the Broodthaers tradition, suggesting both the limits and possibilities of legislative art. Krauss's complaint seems like an extension into art itself of her earlier statement on the "expanded field," in which she compares critics anxiously trying to expand the definition of sculpture through citations of precedent to lawyers before a court (1983, p. 33). But art criticism truly can stand as a sort of legal argument, just as a legal argument can be a type of criticism. And what this text has sought to argue, however elliptically, is that, just as art can be a form of lobbying *for itself*, albeit often in the non-democratic context of an exclusive cultural cabal, it follows that lobbying *qua* lobbying can be art. As Broodthaers said, "Since Duchamp, the artist is the author of a definition" (as cited in de Duve 2016, p. 34)

Yet, in seeking to provide an explanatory background for Tamms Year Ten and Reynolds' other work, despite a blizzard of citations, I have said nothing that necessarily validates my meandering account as art criticism, political theory, or anything else with a pedigree. In *Museum Without Walls,* his critique of the course art history since photography, André Malraux's bitter tongue-in-cheek skepticism toward grandiose syncretic scholarship like mine is unmistakable.

> Nothing conveys more vividly and compellingly the notion of a destiny shaping human ends than do the great styles, whose evolutions and transformations seem like long scars that Fate has left, in passing, on the face of the earth. (1967, p. 46)

I haven't tried to claim, however, that any of my juxtapositions here are more than suggestive. The job descriptions of artists, teachers, and police officers remain in most practical ways distinct from one another, as well as from those of judges, legislators, and administrative officials. Still, I make no claim to be practical, but to be meaningful. If art truly has no political education function, and prisons truly have no aesthetic or pedagogical dimensions, and classrooms truly have no political or artistic potential, my analogies are unhelpful. However, if under our liberal regime of social organization the line between these arenas is in some cases not merely blurry but nonexistent, there are good reasons to find new ways to discuss all three. I hope my reflections may provide some terms and tactics.

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