

Legislative Art as Policy and Pedagogy

Albert Stabler

University of Illinois at Urbana-Champaign

Abstract

The primary medium for artist Laurie Jo Reynolds is that of political lobbying. She refers to her practice as “legislative art,” adapting the term “legislative theater,” a technique for grassroots lawmaking developed and coined by Brazilian director and playwright Augusto Boal, who both founded the Theater of the Oppressed and served as a member of the Rio city government from 1993 to 1997. By linking the discourses of art and law, Reynolds’ practice can be understood as a form of education, highlighting the restrictions required for creativity, and the possibilities afforded by structure. In my essay I bring together European political theory, modern American politics, and contemporary conceptual art in order to magnify the possibilities of what Friedrich Schiller called “aesthetic education.” While other scholars have understood art and art education as a process of pleasurable exploration, or formal disciplinary explication, I hope to suggest a way of engaging art education as an intellectual pursuit with open-ended political possibilities.

Keywords

Art education, political theory, Laurie Jo Reynolds, law, pedagogy, conceptual art

Marilyn Zurmühlen Working Papers in Art Education 2016

<http://ir.uiowa.edu/mzwp/vol2016/iss1/>

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Acknowledgements

Thanks to my advisor, Professor Jorge Lucero, for his constant encouragement, as well as Professor Jeff Martin for his feedback on this piece, and for all of his advice on revising my dissertation.

Introduction

In her work fighting against carceral solitary confinement, sex offender registries, and other extreme forms of official punishment, Laurie Jo Reynolds has created and curated a variety of visual documents and performances, but her primary focus has been on lobbying policymakers to reform and reduce highly punitive practices. And yet Reynolds has primarily identified herself neither as an activist nor a lobbyist, but as an artist, referring to what she does as “legislative art.” This term has its specific origin in the “legislative theater” of Brazilian theater director and politician Augusto Boal (1998), and thus relates to a Latin American context of politicized artistic expression (and official repression) from the 1960s and 1970s.

But the concept could have a wider historical and cultural resonance, referring to law and politics without having to refer strictly to legislatures. While Reynolds’ art, and the history it represents, has been largely overlooked by the academic art establishment, further unpacking of the relationship between aesthetics and law might prompt conversation between those who do and those who do not recognize her gestures as artistic. My contention would be that simply recognizing the juridical and creative aspects of both legal and artistic discourse will be enough to grant work like hers a fair hearing in relationship to visual, aural, kinetic, and other expressive registers.

As a full-time high school art teacher in Chicago, I collaborated with Reynolds and her partner, Scott MacFarland, on two projects with my students on the subject of torture. But rather than making curricular suggestions and establishing straightforward connections to classroom teaching, my intention in this essay is, through juxtaposing a variety of recent and historical sources, to begin reconsidering the roles of both art and education in a general picture of politics as a form of (often brutal) creativity. Since the work of any teacher is bound up with both imparting discipline and flexibility, relaying curricular goals and facilitating inventively, the broader relevance of this discussion to classroom practice will hopefully be appreciated.

Law as Art

Writing on law has identified relatively novel areas of jurisprudence as ripe for creativity (Darcy & Powderly, 2010; Leckey, 2015). But more general analogies between law and aesthetics are plentiful. For starters, both rely on interpretation, and thus intentionality, appropriation, and precedent. A classical 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 use the Constitution to justify interference with the extensive police powers granted to states by the same founding document (Gerstle, 2015). Meanwhile, after the passage of the Civil Rights Act and other measures prohibiting discrimination in hiring, 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 techniques used to "solve" crimes, based on the dysfunctional procedures and unfounded intuitive certainty exercised by judges, prosecutors, witnesses, jurors, and police. He notes 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 legislative art 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; Duke's technique was to play the video back almost frame by frame, carefully justifying each blow and kick individually. Sun Tzu's ancient admonition in *The Art of War* (n.d.) that "all warfare is based on deception" (1.18) perhaps then applies to legal practices as well as war. For his part, Benforado advocates for constraints on this interpretive freedom, prescribing legal solutions that remove subjective interpretation, but without an eye to unintended consequences.

Nonetheless, this freedom to interpret, and the manifold futures it entails, is key to the aesthetics hidden in and the artifice permitted by law. The literati have had a role in politics throughout world history (Weber, 1919/n.d., p. 9). Since the days of the Roman Empire, rhetoric has been taught to those entering practices of law and administration (Bowersock, Brown, & Grabar, 1999, p.

314). As recounted in Giorgio Agamben's *The Kingdom and the Glory* (2011), the power of the European aristocracy in the Middle Ages was always inseparable not only from theology but also from the pageantry of high office. In *The Structural Transformation of the Public Sphere* (1962/1989), Jürgen Habermas discusses the central role of art and literature at courtly salons in creating a space for critical political discourse in modern Europe. Today, the central role of media in modern democracies dominates the popular political imaginary, while objects and performances continue to distill public political participation into memorable images. In the U.S. these include the “die-in” actions of Black Lives Matter protestors, the barricades that street activists have used for over a century (Gissen, 2015), or the “kettling” formations that police have developed to contain such protestors (Sorli, 2014). In varied ways, these appropriations stem from the production of ambiguous legal language as a necessary element of building political consensus in a democracy (Thacher, 2001).

In a series of lectures delivered in 1977-1978 and published as *Security, Territory, Population* (2004), Michel Foucault tracks the emergence in Europe throughout the Middle Ages of a model of sovereignty based on the shepherd, which he calls “pastoral power,” and traces the transformation of this power into new forms in the modern era. He quotes the influential early Christian theologian Gregory of Nazianzus, who uses the phrase “art of arts” and “science of sciences” (cited on p. 151) to describe this pastoral guidance of men. This form of government fades into the background in his account of the modern era, but, while Foucault does not make this connection explicit, the pedagogical caretaking he describes appears to inform a Romantic political vision that Friedrich Schiller famously described as “aesthetic education” (1794/2004), and that Joseph Beuys dubbed “social sculpture” (Tisdall, 1974, p. 48).

Though he traces the birth of modern political science to a backlash against the “artfulness” of Niccolò Machiavelli's *The Prince* (p. 87), Foucault nonetheless repeatedly describes the evolution of modern statecraft as “art.” He famously synthesized these inventions 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. Of course the term “art,” denoting artifice, refers exclusively to aesthetic activity neither in French nor English, but the parallels between creative and governmental “art” are not merely homonymous in Foucault's reading. The autonomy that the artist begins to develop in the Renaissance, for example, seems not at all distinct from the way in which Foucault describes the original understanding of the *coup d'état* as a kind of drama in which the state creates its own rules and acts on its own behalf (p. 342).

But in particular, the development of a governmental “art” in his genealogy has a great deal to do with the notion of police. He quotes the Renaissance historian Louis Turquet de Mayerne, who defines “police” as “everything that gives ornament, form, and splendor to the city” (cited on p. 313). If there is a police aesthetic, it is one of order and harmony, and, as in any artwork, maintaining appearances requires a great deal of effort. French republican political philosopher Jean de Dieu d’Olivier published an “Essay on the Art of Legislation” (1815/2009), in which he says 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). This cosmetic labor extends to history itself; as Edmund Burke observed, “there is a sacred veil to be drawn over the beginnings of all government” (cited in Ward & Waller, 1914, p. 23)

The creative mobilization of American intelligence, security, 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. One example is especially relevant to Reynolds’ work on behalf of people imprisoned in segregation units in Illinois. 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). In 1972, these techniques began being implemented in a Federal prison at Marion, Illinois, in which a “control unit” response to a protest and strike by political prisoners (Gómez, 2006) marked an important step toward the contemporary supermax prison.

One example of the creative dialectic engaged in political struggles can be seen in the exposure through litigation 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 a carefully planned burglary of an FBI office in 1971 by a group calling itself The Citizens’ Commission to Investigate the FBI. The People’s Law Office in Chicago, through a long civil suit beginning in 1976, helped to expose thousands of documents on the FBI’s operations against the Black Panther Party in Chicago (Taylor, 2013).

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). Describing another strategic reversal,

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 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 interplay of resistance and repression can occur within one movement. And, as proven by the Islamic State (a.k.a. IS, ISIS, ISIL.), such a movement can make aesthetically refined use of sophisticated communication strategies. Kurt Slawitschka (2015) describes the IS media operation as “a top-down industry of production with a comprehensive strategy, realized vision, and unified message: we are here, we are strong, and we are coming for you” (para. 3). Slawitschka reports that, just from observing the group’s many videos, it is clear that a professional operation is in place, and making effective use of high-end consumer-grade technology. At one point an Android app was available to instantly download IS-posted Twitter links, such as a #WorldCup hashtag that linked soccer fans to an image of a decapitated head, with the caption “This is our football. It’s made of skin” (para. 9).

The visually consistent IS message of cruelty and purity, fusing police discipline and military exuberance, recalls Anna Chave’s association of 1960s Minimalist art with the aesthetics of both multinational capitalism and Nazi propaganda (1990), but also the millenarian paranoia that has typified U.S. state-sponsored public-safety messaging from the Cold War to the current War on Terror (Masco, 2014). Along those lines, the wearing of orange jumpsuits by hostages in IS execution videos is widely taken to reference similar outfits worn by military detainees at the U.S. Guantanamo Bay prison in Cuba (Bennett, 2015), thus contributing to the group’s published agenda to antagonize the West into open confrontation (Atran & Hamid, 2015)-- a provocation that dramatically magnifies the militarist spectacles undertaken in the early 20th century by the Italian Futurists.

It also calls to mind a video illicitly recorded in 1988 by imprisoned Illinois serial killer Richard Speck, in which he sports breasts grown with smuggled hormones, and does cocaine with and performs fellatio on his prison husband; the 1996 public release of this video was instrumental in building political will to approve construction of the Tamms supermax prison (Eisenman 2009, p. 40). Tamms is the all-solitary prison that Laurie Jo Reynolds and her group Tamms Year Ten worked for five years to shut down. The vehement reaction to this provocative video is reminiscent of the public outrage at many avant-garde artworks-- in particular, the 1989 controversy over the National Endowment for the Arts, in which Congressional conservatives such as Jesse Helms denounced

works by artists such as Robert Mapplethorpe, Andres Serrano, and Karen Finley.

Art as Law

Gallery artists offer various strategies for how legislative art can be introduced in an institutional setting. Following in the institutional critique tradition of Fred Wilson, Cameron Rowland appropriates objects, in the manner of Marcel Duchamp's "readymades." While Duchamp's found objects created the possibility for what Lucy Lippard (1973/1997) would eventually call the "dematerialized art object," Huey Copeland (2013) relates readymades to earlier forms of legal 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). Similarly, Rowland brings together objects that recount the history of slavery with products made by contemporary prison labor. Through the unremarkable nature of the artifacts on view, he uses Duchamp's "anti-aesthetic" (Foster, 1983) to convey a sublime sense of what Hannah Arendt famously called, "the banality of evil."

Much as with Duchamp, Wilson, and Rowland, the artist Carey Young makes use of the aura of the gallery to comment on often invisible aspects of capitalist culture. She appropriates legal discourse in videos, installations, and performances that reference the language of legal documents such as wills, national constitutions, and commercial contracts. The way in which Young takes on explicit forms of law is lighthearted and accessible, but it points to the creative latitude involved in legal interpretation.

Defying modernist denunciations of seductive aesthetics (Adorno & Horkheimer, 1944/2002), Trevor Paglen derives elements of sublime beauty from sites of state secrecy. Along with co-authoring *Torture Taxi* (Paglen & Green, 2006), an investigative report on extraordinary rendition, he has visually documented classified American spaces and objects, including distant military installations, defense intelligence satellites, underwater communications cables, and official patches awarded to elite spies, with an aesthetic that evokes the misty spiritualized paintings of Caspar David Friedrich. The tension created by Paglen's adorned (and thus non-Adorno) approach to exposing government secrets has, along with some official surveillance (Weiner 2012, para. 7), earned him some critical suspicion (Kastner, 2015). More Swiftian than Romantic, the 2008 video *Episode III: Enjoy Poverty* has viewers follow the Dutch artist Renzo Martens as he tours war-ravaged areas of the Congo in order to offer a devas-

tating critique of Western journalists and NGOs. He does this partially through performing his inability to escape his own narcissism, and his equal inability to offer the natives a means of economically exploiting their own poverty. More recently, he has established an arts colony in Congo with the explicit aim of “gentrifying the jungle.”

Each in their way, all of these artists simultaneously convey and confound a message. This is similar to what laws do, opening up new options while foreclosing others, and it also recalls the practice of teaching. Like a conceptual artist, a teacher presents not only content, but a situation intended to make it meaningful. Both the resistance of the audience and the aspiration to induce a transformation, as opposed to simply providing enjoyment, are built into the project of conceptual art, just as they are with education.

Truth in Art and in Law

Presaging the analogy Foucault makes between “raison d’etat” and artistic autonomy, Walter Benjamin identifies “art pour l’art” with fascism in his critique of the Italian Futurists (1935/1968, p. 242). Pierre Bourdieu, however, is more of a skeptic as to the relevance of art to authority, opining that “one cannot read a piece of Dadaist poetry at a Cabinet meeting” (1982/1991, p. 113). Yet, in a slighting comparison of Martin Heidegger to Marcel Duchamp, he inadvertently points out an important way in which art and philosophy operate in parallel with legal hermeneutics.

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)

But all art, not only Duchamp’s, functions through its circulation in and legitimation by a community of privileged interpreters, as do political actions. Bourdieu acknowledges this a bit later: “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). Indeed, the early avant-garde took such “techniques of action” as artistic material. Dada artists employed mock trials as a form of performance, as just one of many gestures intended to engage with the procedures and conventions of rule-making, while the Futurists are perhaps best remembered for their propagandistic manifestos and their glorification of war.

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 its subjects. On the other hand, the pandering he identifies in Social Realist art (p. 235) echoes the reproduction of distinctions he repeatedly denigrates in education. Indeed, legitimacy is rarely conferred by objects of education (the students), but only bestowed third-hand upon those whom Jacques Lacan refers to as the “subjects-supposed-to-know” (1964/1977, p. 232). For all the promotion of populism among today’s social practice artists, an arena of contemporary art where it would be proper to locate Laurie Jo Reynolds, 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 that 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 (often to the point of loss of employment) for the success or failure of his vulnerable charges.

Art and politics are incoherent but undeniable, embodying more than depicting truth beneath the surface: truth that is, however momentarily, taken up as knowledge. In *The Truth in Painting* (1978/1987), Jacques Derrida talks about Paul Cézanne’s commitment to truth as a performative 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 the same kind of speech act referenced by Bourdieu. 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.

Through the contingent event of their temporary existence, 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 the failure of Louis Bonaparte’s democratic bourgeois “revolution.” In contrast, he asserts:

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)

A perhaps lurid example of this foundational inconsistency was 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 IS-linked attacks the previous month in Paris permitted a swift response (Rayne, 2015). Such absurd vignettes truly are the stuff of both contemporary art and political intrigue—to misquote Marx, they simultaneously embody both tragedy and farce.

Conclusions

Ruth Ronen (2014) writes: “Art... exhibits the fact that the law... cannot regulate what it claims to regulate” (p. 90). Perversion, absurdity, fear, and repulsion comprise the truth of legal violence, and so art is needed to supplement the incompleteness of law. Carey Young treats the legal apparatus of capital as a game, while Cameron Rowland mines it for artifacts. Trevor Paglen ominously re-enchants and Renzo Martens tragically but satirically confronts the political sausage-processing that Laurie Jo Reynolds effectively conceals behind a surface of task-based documentation of her advocacy efforts. But all these cases underscore how art can be relevant to the political truth of everyday life: not through forced attempts in art classes to emulate (aesthetic) representations, but by demanding legitimacy, insisting on recognition, and demonstrating the failure of (legal) representations.

The ideas of conceptual artists influence my approach to teaching art, by affecting how I think about the institutional and discursive relationship of art and education. As I mentioned earlier, that doesn’t mean that there’s any particular curricular outcome of the comparisons I’ve laid out, in terms of concrete art projects. Instead, the way in which artworks and laws work to sabotage both each other and themselves might encourage a sense of humility about the authority of the art teacher, while relieving the burden of providing students with an ineffable experience magically detached from evaluation and the politics of the educational apparatus.

Twentieth century art education scholarship has had much to say about expression, discipline, and visual culture; the artwork invoked by these scholars thus tends to be, respectively, varied expressionisms, traditional art-historical objects, and art referencing contemporary popular culture. But conceptualist art

has not gotten its art-educational due, and it is a tradition at least as relevant to contemporary fine art as the three aforementioned. In addition, a point I have sought to make by discussing art's relationship to law is that this is a context that exists in the wider world, and such an approach denies the insular self-referentiality that prompts people of all ages to remain skeptical of fine art. Instead of dumbing art down, trying to make art classrooms (merely) a day spa, a guild apprenticeship, or an image-surfing party game, it could be worthwhile to start discussing ways to open up the intellectual and social aspects of both art and schooling.

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