

Next to last words

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It is often, too often, written about me as an artist that I am a criminal lawyer. This gives my art a certain legitimacy even as it raises a certain suspicion about my advocacy. What is rarely noted is that as a criminal lawyer, I am an artist. What is never said, except by me, is that there is no difference between them. At least to me.

As both a criminal lawyer and arguably a criminal artist, I see my work as the movement of language through space. This is a fundamentally sculptural movement, meaning either a movement that casts something into being that was not previously, or, put more surgically, excises something from where it once was, the sculpture then being the increase in negative space and the decrease in positive space at the site of the excision. This can easily be seen in the case of a digging oneself into a hole.

Parenthetically, it could be noted here that the official American definition of terrorism, as codified at 18 U.S.C. § 2331 prohibits activities that (1) involve violent and illegal acts/acts dangerous to human life; (2) intend to intimidate/coerce a civilian population or governmental policy or conduct; and (3) occur either outside (“international terrorism”) or within (“domestic terrorism”) official American jurisdiction. Therefore, there is nowhere that cannot be governed by the American, being either inside or outside official American jurisdiction. This is not a question of approval or disapproval for such a position, just the acknowledgement that this is the positivist position of United States law. The world is our platform.

The idea of illegality is typically considered close to the idea of “outlaw”; but, as noted, there is no “out” of the law’s reach, at least not for the American. Just as there is no outside of language itself, regardless of one’s position as to its legitimacy—even such an objection must be rendered linguistically. We come into being / through language, we identify we in language, and we die when someone pronounces us dead. I may consider myself dead well before such time but cannot state as a matter of fact that “I am dead.” I can, however, state it as a matter of language. To be dead may mean, in law, that I no longer enjoy the rights and privileges afforded the living. I am dead, and I am correct in saying so as a matter of fact. Fact, in law, is that which is recognized as having the force of law: a “fact” was originally a legal misdeed, as determined by the sovereign. Or, in the last words of one subsequently executed Texas inmate: *Now I lay here dead.*

To the analogous point: law, like literature, is made of language. Law prescribes and proscribes what may be done in terms of being legal or illegal. // is a Latin variant of *in*, meaning “not” or “in opposition to”. A circular move: what is illegal is that which is in opposition to what is legal. A positivist approach would be to understand all that is not lawfully sanctioned is therefore against the law; a realist approach would argue that the law has not yet considered all. Put another way, tell me what is forbidden, and I’ll know what has been seen to have been done. But here we also see how law depends on the recognition and understanding of its language for its enforcement—and that enforcement is the only proof of existence of the law.

To extend our legal-linguistic analogy: artistic terrorism is thus an act or acts of violence to and within language that is coercive/intimidating to the practice or reception of art that occurs either within or outside what is deemed art. Hidden in this are the facts that (1) language is what makes something illegal and is that which (2) demarks jurisdiction. So we prescribe and proscribe all at once, which is

also what art is and what art does, locally and globally: a demarking of what is properly within the realm of art, and the denomination of what may not be said at any given moment to be art, which is a version of what may not be said at any given moment. To say that which may not be said to be art, and claim it and that like it, or those who like it, as art, thus does a fundamental violence to the concept of art. We are now speaking of malfeasance versus misfeasance: malfeasance being the injurious act done willfully and intentionally, misfeasance being the willful and intentionally inappropriate or incorrect act. There is of course nonfeasance, the failure to act when required to do so, but that comes later.

While I leave to my critics, who are always right, the job of determining whether my acts are injurious or inappropriate, although, as we all know, there is always some injury in the inappropriate, or some notion of the incorrect in the injurious. However, in terms of an act's reception, there is an correlative difference between being included (which also includes being excluded), and being excised, that is to say, between being uninvited versus being un-invited. One means you are either popular or not, the other means you are popular for the wrong, *i.e.*, unlawful, reasons. Parenthetically, I have a history of un-invitations: museums, conferences, panels, and publications. These un-invitations or excisions could be considered as a series of art works in themselves, just as they could be seen as the result of my digging my own grave, artistically speaking.

To come to art via law, as I have done, is to come to art from another jurisdiction. However, just as a good criminal defence lawyer relies upon a rule's exception, necessity being the mother of exception, to challenge a conviction, I do not rely upon the traditions or platforms of art to identify its proper parameters. Just as a good criminal ignores the law. Or, to quote Sade, who knew something about law and language: *only that is really criminal which rejects the law*. Sade naturally wanted to violate the law for the sake of its violation, which is piquant but beside

the point. The point here is provided by Spinoza, who says, with more words: *The true schismatics are those who condemn other men's writings and seditiously stir up the quarrelsome masses against their authors... the real disturbers of the peace are those who, in a free state, seek to curtail the liberty of judgment which they are unable to tyrannize over.* Between these two very good points is the point of indifference. Indifference to all law, to what constitutes our regulation and its jurisdiction, disregard for what is considered either good manners or good morality. To what is, in a word, authority. And, which may be also relevant, to what is, in a word, freedom.

The criminal has no working authority, only the ability to be indifferent to the presence of the police. This is true regardless of whether the police are there to serve and protect or to surveil and execute, because there is never one without its other. The United States has a robust history of police restriction on speech, but it is important to remember that much of this history is civilian—someone complained that someone else was abusing the platform. The public square, the pulpit, the pamphlet, the theatre turned obscene. Today, of course, the platform is often what we casually call “social,” which is an important distinction both legally and socially, for there are no American civil liberties on private property and if our largest platforms are all private, all social, for if many are held as American corporations, all are international in their jurisdictions, then there is no place to speak that is protected when that speech is purposefully anti-social, criminal.

Spinoza notes that the supplication to authority is always directed towards the law and towards the “applauding multitude,” which, in a democracy, functions as the *de jure* authority. In the contemporary, the applause, like the *de facto* multitude, is virtual and viral, its execution before its trial, because the platform is the chopping block. Take away my platform and you take away my speech. This is a good analogy because the tradition of the last words of the condemned began as a

public plea, made before the axe-man or the guillotine, and if the call was moving enough as a protestation of innocence or genuine repentance, the crowd could be duly moved, and the life spared. Now, the soon to be executed are mic'ed after they are strapped down to a gurney and hooked up to a lethal IV, invited to say a few words, and then definitively shut up. Platformed and de-platformed, one being meaningless without its other. Freedom, in other words, is "nothing left to lose." Including one's life when one already lies dead.

When I began my project, *Last words*, a sound art work in which I have recorded my reading of all of the last words of condemned Texas inmates since 1982, updated about twice a year to keep pace with the pace of the executions, I was initially confused by the platform of the Texas Death Penalty website. The website, as you may know, contains the name, age, and ethnicity of the condemned, a brief account of their capital crime, the county in which they were sentenced, the date of their execution, and a transcription of their last words. Inclusion of the demographic data is easily understood, as we would want to know that the executions are reasonably administered across the state, reasonably spread across the races, reasonably extended across time and space, just as inclusion of the facts of the individual offense is appropriate, so that we know that the ultimate punishment is reserved, reasonably, for the ultimate crime. What was not legible to me at first was the inclusion of the last words. Then it occurred to me that I was reading the data backwards: if I began with the last words, the rest could never be called into question. For the last words were what rendered the condemned human. If we can understand the speech of the monster, the monster is just a man, and, as men, we are permitted to kill men, whereas monsters can never be put down, at least not permanently. There will always be another Frankenstein, Draculas are difficult to extinguish, and tend to spread, and zombies, well, zombies are a problem.

Foucault saw the moment of the last words as the moment, however unstable, in which the crime was properly inscribed into the criminal, who, by his body and his speech, authenticates his crime, and the sovereign power which then renders him criminal. We could say that with the last words, the criminal signs his crime with the same flourish and at the same time as he signs off on his demise. The idea of the “death warrant” meaning in this sense, an assurance of sovereign authenticity, just as the signature of the artist attests to the authority of art.

There is something more here about our demand that unreason is itself reasonable that springs from the Cartesian fantasy that there is this private self that may be duly segregate from the public body, both in its individual and collective form. This is demonstrated neatly in the 1924 German film, *Orlacs Hände*, and its 1960 American remake, *The Hands of Orlac*, when the hands of an executed murderer are grafted onto the body of an innocent man, who then begins to strangle various other victims. The fantasy works both ways: the public demand for the murderer to be reasonably repentant or unjustly condemned, the private demand, evidenced in many of the last words of the condemned themselves, that they be admitted into the Kingdom of Heaven as a matter of ontological right born of love. Love of family, love for the victim, love of Christ, love for forgiveness. As if love is reasonable, as if love is not itself criminal, experienced as a matter of violence and violation. But this is an aside, having either too little or too much to do with law and art.

In his death penalty seminars, Derrida does not say much about the last words of the condemned, though oddly nominates Christ’s offerings at the last supper as among them, arguing that this language metaphysically links the Christian body and blood to public consumption and sacrifice. Derrida doesn’t speak of His excretion, which would be interesting, *i.e.*, whether Christ shits on the cross, whereas at least one Texas inmate proudly notes that he is not wearing a diaper, which is more, as my philosophic friend noted, than Christ could say. But what

Derrida could have done was look at the seven statements made during the crucifixion, His last last words, which were, in order of divine enunciation: *Forgive them, they know not what they do... Verily I say unto thee, Today shalt thou be with me in paradise... Woman, behold thy son! Behold thy mother!... My God, my God, why hast thou forsaken me?... I thirst... It is finished.... Father, into thy hands I commend my spirit.* Which is, now that I think about it, very Foucauldian, Christ confessing both his mortality and his immortality, that is to say, the great crime against humanity of the Incarnation. For Christ could only suffer unto death, but not die. And He was incapable of loving unreasonably, *i.e.*, with the requisite amount of ontological violence.

Recently, while re-reading Camus' *L'homme révolté*, I was struck by his account of the history of nihilism, in which *tout est permis*, including murder, because no god exists. But surely if no god exists, if Christ shits, then there is no need to kill, because death takes care of itself. Excrementally.

This is seen as the case in my current work, *an American opera*, which combines nationalistic jokes, mostly anti-German and anti-American; an appellate account of the testimony of a teenage prostitute, mostly denials; an American football player's motivational speech; a litany of self-hate, mostly in the second person; quotations from those involved in mass shootings, mostly school shootings; and selected last words of those dead inmates. There are also lawyer jokes because there is always a lawyer. The language is excreted, or excised, from the death of many gods, not the least of which are those of law and art. They are also, not coincidentally, founded on the same terror of being and not, and the terror of being at the hands of some lawful and ongoing god.

Parenthetically, I grew up in the American military. This is only interesting because, on the one hand, we were the very symbol of America, and thus, the American.

On the other, we lived in a totalitarian military régime. I also spent most of my childhood living in Germany, which understands something about totalitarian military regimes, and living there in a time of domestic terrorism against the German bourgeoisie, many of whom were former National Socialists, and the American military, then at war in Vietnam. In other words, there was a lot of bombing about. I mention this by way of exculpating myself from any fantasy of justice in the name of law. Or safety against the terrors of any shitless god.

Here is an illegal poem, illegal because it was improperly lifted from a communication to me, poetry as you will see:

The inmate came up behind me
I did not know he was there.
I had one arm handcuffed
To a stool.

The inmate started hitting me
In the face. I could not protect
Myself and the deputies
Who were less than 10 feet
From me in the office

Did not even react to help me
For a few minutes.

I had my orbital bone
Broke in 2 places,
My nose was fractured,
My pupil was separated,

My internal lens was displaced,

I had bleeding in my eye for months
And it caused more vision loss.

The doctor told me the bones
In my face will hurt for the rest
Of my life. I still have nightmares
Over what happened to me
And I have flashbacks.

P.S. I hope you have
a happy Halloween

Again, as my art excises language from its lawful provenance, and my law excises art from its lawful practice, I have been excised myself from various platforms by way of being blocked, being boycotted, being petitioned against, being un-invited from conferences, performances, public and private conversations, and by being threatened with various forms of bodily and otherwise professional harm because of my indifference to the sovereign law of the platform.

My indifference lies both in my speech and in my refusal to speak, that is, to signal how my speech should sound in the ear so that its message is rightly sounded. For the other aspect of the freedom of speech not often mentioned is the freedom *not* to speak, to refuse to say, even upon demand. Here is where nonfeasance comes in and the American First Amendment meets its Fifth, the famous right to remain silent, even when the cops ask you to sing, or when the inmate understands that the only power that he has on the gurney bed is not to say anything, to refuse the morality thrust upon and into him by way of the IV.

Sade says, *It would be no less absurd than dangerous to require that those who are to insure the perpetual **immoral** subversion of the established order themselves be **moral** beings.* Criminals are not moral beings. However, they may be, and often are, ethical. Ethics can be ugly. Like art. Ethics can be violent. Like art. For both ethics and art demand a suspension of belief, belief in the morality of the long arm of the law, which means the law of the moment, belief in the immediacy or legibility of an act occurring across time and space, when what we know is that art occurs over time, like ethics, and it is only through the resounding of time through space that we see what might be properly ethical and innately aesthetic, because ethics and aesthetics is not the clapping-back of the multitude, but the sound of something that should not be, or cannot be, then sounded by the crowd. Ethics, like art, holds itself at least temporarily in suspension, improperly commanding applause not for what it is saying, but for what it will have said. Parenthetically, I note that in the one filmed execution by guillotine that I have been able to find, the body of the decapitated bounced from the force of the blow. Bounced, to be exact, off the platform.

For finally, I would take this bouncing materially, as producing not merely the slapstick spectacle of a headless body springing back into life, or life-like, by way of animation, however cartoonish, but also as producing a sound. The sudden, eruptive sound of a body flung up and down, echoing against the platform of all the laws and all the gods that are necessary to produce and reproduce such sounds. Sounded against the applause they command. Which is what makes it art.

NB:

Fuss, Diana. "Last Words." *ELH*, vol. 76, no. 4, 2009, pp. 877–910. *JSTOR*, JSTOR, www.jstor.org/stable/27742966.