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# Law and Art: A Postcard from Europe

## Miriam Aziz

This is a story about professionalism; legal narrative; what we know and what we silence; and how these core issues of testimony, memory, and human rights are captured in my work as a lawyer and as an artist.<sup>1</sup>

Once upon a time, I gave up on my career in law. In fact, I gave it up twice. On the first occasion, I took a year-long sabbatical and moved to France, where I lived on a boat with a French boyfriend. On the second occasion, I was living in New York and I decided to dedicate myself exclusively to my career in the arts: I set up a performance arts laboratory called Artist (s) at Large and composed and choreographed short pieces that developed into *Lost for Words*, a performance art installation about communication beyond text that premiered at the Baryshnikov Arts Center (BAC) and the DiMenna Center in 2012.<sup>2</sup> Yet, somehow, giving up on law never really stuck.

During my first sabbatical in France, I wrote a novel about a woman in remission from cancer who spends a day in a hospital waiting room while she waits to find out whether her cancer has returned.<sup>3</sup> My doctoral thesis<sup>4</sup> on law and medical ethics mixed with my own experience dealing with a chronic illness, and many of the arguments I made about informed consent and the doctor-patient relationship found their way into the novel. In so doing, I was able to explore issues that a positivist legal framework did not allow for. In my thesis, I argued that the legal narratives that emerge in medical negligence claims were overly fault-based to the detriment of patient care and the work of doctors, rendering the regulatory context defensive and thereby eroding patient-doctor trust; whereas, in my

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1. I would like to thank Mikhail Baryshnikov and everyone at the Baryshnikov Arts Center in New York. I would also like to thank Jochen von Bernstorff, Armin von Bogdandy, Paolo Bernasconi and everyone at Gyrotonic® Milano, Angelika Betzold, Giuseppe Cottone, Matthias Goldmann, Peter Goodrich, Michaela Hailbronner, Jennifer Homans, Huong Huang, Anne Peters, Galya Benarich-Ruffer, Bernhard Schlink and Loretta Alexandrescu Stein of the *Accademia della Scala*. The usual disclaimer applies.

2. This is documented in Miriam Aziz, *Lost for Words: Embodying Law through Tanztheater*, 7 *LAW & HUMANITIES* 9 (2013); see also Miriam Aziz, *Lost for Words: Law as Tanztheater*, 2 *THIS CENTURY'S REV.* 58.

3. MIRIAM AZIZ, *LA SALLE D'ATTENTE* (2008).

4. Miriam Aziz, *The Regulation of Medical Research Involving Human Subjects: a Comparative Study* (United Kingdom, Germany and the United States) (1997) (unpublished Ph.D. dissertation, Faculty of Law, University of Edinburgh, Scotland).

novel, I was able to create a more complete narrative that was shaped by my legal research and my own experience as a patient while also acknowledging the tensions and contradictions that render medical decision-making so difficult. In short, my novel dealt with the consequences for a patient who does not trust anyone regarding her medical treatment, and how damaging that ultimately is regarding her care.

Years later, as I composed and choreographed for my arts laboratory in New York, I realized that my artistic work began to focus on witness memory and testimony in the context of the law beyond words—that is to say, how the law comes to terms with trauma and human rights violations which leave victims unable or unwilling to tell their stories.<sup>5</sup> Inspired by the modern dancer and choreographer Martha Graham, who once said, “[n]othing is more revealing than movement,”<sup>6</sup> I explored the extent to which art might be used as a vehicle for testimony. I was also interested in the narratives housed in our bodies, which both speak and suppress revelations through movement. I wanted to understand the extent to which you can see the unsaid—indeed years of the unsaid—and started to study pilates, gyrotonic,<sup>7</sup> and dance and Parkinson’s illness initiatives.<sup>8</sup> I focused on the implications for story telling and legal testimony, but this was not my original intention as I began to work on *Lost for Words*. Was this just another example of *déformation professionnelle*?

Each time I vowed to give up on a law career, something has retraced and, in effect, deepened the contours of its hold over me by exposing other ways to fuel my commitment and, ultimately, my passion. What? Seriously? Passion and law in the same sentence? Of course. The law has taught me about the many faces and facets of humanity; my love for administrative law, for instance, stems from observing the impact of law on our day-to-day lives and how it often falls short of the promises it makes in the process of implementation (but also how it sometimes keeps them). I love engaging with the rules and the principles and the cases to stumble across the creativity where sparks fly and you are able to improvise beyond customary arguments and ways of reasoning. Yet for

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5. I was greatly influenced and inspired by the work of Gayla Benarieh-Ruffer who is also the director of the Center for Forced Migration Studies (Buffet Center) at Northwestern University. See, e.g., Gayla Benarieh-Ruffer, *Testimony of Sexual Violence in the Democratic Republic of Congo and the Injustice of Rape: Moral Outrage, Epistemic Injustice and the Failures of Bearing Witness* (2013) 15 OR. REV. OF INT’L L. 226 (2013); Gayla Benarieh-Ruffer, *Research and Testimony in the ‘Rape Capital of the World’: Experts and Evidence in Congolese Asylum Claims*, in ADJUDICATING REFUGEE AND ASYLUM STATUS: THE ROLE OF WITNESS, EXPERTISE, AND TESTIMONY (Benjamin N. Lawrence & Gayla Benarieh-Ruffer, eds., 2014).

6. *The American Dance*, in MODERN DANCE 101 (Virginia Stewart, ed., 1935).

7. Gyrotonic is a form of exercise which uses specialized equipment and combines principles drawn from swimming, dance, yoga, tai chi and gymnastics.

8. Such as the dance for Parkinson’s program offered by the Mark Morris Dance Center in Brooklyn.

all the statutes and the cases and the treatises and the guidelines, I have often felt that so many components of our stories are withheld or fall by the wayside, as if deemed irrelevant as part of legal argument. This is particularly the case in an adversarial system where stories are edited and compressed into legal narratives that, at times, risk stripping us of the very humanity which we seek to uphold and protect. Research has shown that, in the event of a medical mishap, sometimes patients just want a doctor to say sorry or to know what happened, which doctors rarely do for fear of litigation and impact on their insurance premiums.<sup>9</sup>

For a while, I thought that I could get to those stories through law and humanities. As a visiting scholar at Cardozo Law School, I immersed myself in its renowned law and art program. I soon realized that I didn't want to write about law and art—I wanted to actually create it. My curiosity flourished as a frequent visitor to the BAC during my three years in New York; I attended many shows there and I also rented rehearsal space<sup>10</sup> surrounded by a variety of international artists from a plethora of disciplines. I found support and confidence that I would never have had in Europe to experiment; to “mix it up”: to fuse music, dance, film-making, text, painting, notwithstanding the inner censors—that Greek chorus issuing diktats that unless I had completed years of training in one arts discipline only, preferably in a *conservatoire*, I really had no place to even be in the room. The BAC aggregates the worlds within and beyond New York and promotes inter-disciplinary experimentation of the highest caliber. It attracts artists who are not afraid to experiment in other forms of art with its founder, Mikhail Baryshnikov—dancer, actor, photographer, etc.—leading by example.

After over three years in New York, I decided to come back to Europe for personal reasons. The Greek chorus was waiting for me in the arrivals lounge of Nice's airport and has stalked me ever since. I arrived back in Europe with a network mostly based in the law; I left my arts network back in New York. I sensed that I could never have created *Lost for Words* in Europe because, in Europe, all I was good for was my legal training. I was not allowed to do anything nor be anyone else.

However, six months after I got back from New York, I started working at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany as a senior researcher and managing editor of a book series on European Administrative Law.<sup>11</sup> To my surprise, both directors, Professors Armin von Bogdandy and Anne Peters,

9. See Benjamin Ho and Elaine Liu, *Does Sorry Work? The Impact of Apology Laws on Medical Malpractice*, JOHNSON SCH. RES. PAPER SERIES, Dec. 2010.

10. Assisted by subsidized rehearsal space by the New York State Council on the Arts with the support of Governor Andrew Cuomo and the New York State Legislature.

11. MAX PLANCK HANDBOOKS ON PUBLIC LAW: IUS PUBLICUM EUROPAEUM (forthcoming 2017).

demonstrated genuine interest and support for my law and art work. I was even invited to film the Institute's Masterclass with the international law scholar Martti Koskenniemi and made a short film about it,<sup>12</sup> through which I was able to share how I saw the class, namely, as a dance and theatre performance. I realized that I had found a place where things were happening and where innovation was able to flourish and thrive. Around this time, an article appeared in the German national newspaper, the *Frankfurter Allgemeine Zeitung*, which complimented my dance and theatre work,<sup>13</sup> and I started to receive invitations to create lecture-based performances to mediate science.<sup>14</sup> I had already been using my arts lab for law teaching for some time,<sup>15</sup> but I suddenly realized that a career path in law and arts—one that is creative and not mere commentary—just might be possible.

I had, in fact, stumbled across this idea in 2007 when I interviewed the then-executive manager of the BAC, Huong Huang, during my time as a visiting associate professor at Cornell Law School. We ended up talking about choreography and copyright, and I remember thinking: "I don't want to write law articles about choreography, I actually want to *make* choreographic pieces." And so I did, in New York in the studios of the BAC. My first piece was a *pas de deux* about the aftermath of German Unification, trust, and the way law was perceived by former East German citizens, using the voice of the law professor and best-selling novelist Bernhard Schlink. He not only agreed to be interviewed, but also gave me invaluable feedback on my work with Artist (s) at Large.<sup>16</sup> I do not think that I would have been able to gain such access to Bernhard Schlink for an arts project in Europe. European law faculties, particularly on the continent, are formal—if not forbidding—places; they can be unforgiving to academics who stray beyond the fold across disciplines<sup>17</sup> and legal cultures.<sup>18</sup>

I have used the criticism, reticence, indifference, or outright hostility as a source of motivation. Obstacles can be paths, of sorts. Sometimes,

12. Mirafleur, Max Planck Institute Masterclass on International Law with Martti Koskenniemi, YOUTUBE (Jul. 8, 2014), <https://www.youtube.com/watch?v=y15LBfwqFwY>.

13. Maximilian Steinbeis, FRANKFURTER ALLGEMEINE ZEITUNG (Ger.), Apr. 30, 2004.

14. Through, for example, the European Commission's Proof of Concept funding initiative.

15. Miriam Aziz, *Were you with Me? Creativity, Dialogue and Self Expression in Legal Process Narratives*, in BEYOND TEXT IN LEGAL EDUCATION 268 (Zenon Bankowski, Maksymilian Del Mar, Paul Maharg, eds., 2012).

16. K. Die Sprechstunde . . . (Were you with me? By Miriam Aziz for Artist (s) at Large), <http://vimeo.com/37617368> (last visited Apr. 14, 2015).

17. Academics who specialize in private law are typically not permitted to address questions of public law without risking an entertaining but stifling turf war.

18. Law faculties in Europe remain largely homogenous, if not nationalistic; tenure for non-nationals is an exception despite the openness of the United Kingdom and the Netherlands and the free movement provisions accorded by European Union law (disallowing discrimination on grounds of nationality unless it may be objectively justified).

however, the obstacles are just that; the criticism and nastiness can be corrosive and damaging. Obstacles can, however, have their funny moments: in a seminar I gave on art and law, I was told that I was not a real lawyer. What amused me was not the criticism *per se*, but the passionate vehemence with which my colleague was trying to exclude me from the legal profession. I have learned a lot from observing how rules that govern boundaries of exclusion are devised and policed across different cultures; I have also drawn from my observations to nourish the art of survival as a lawyer who has travelled and practiced widely across the European legal area. What I have learned is this: the more personal the attack is, the greater the likelihood that you are dealing with a lowest common denominator of mediocrity, which may stifle innovation, so desperately needed during times of economic and social crisis.

Legal training is like any form of vocational training: it involves sacrifice. We clear the hurdles—those rites of passage of law exams, bar exams, case loads, publications—by committing to daily study and practice. I commit to my career as an artist with the same appreciation of technique and discipline. I sometimes struggle to retain a sense of my own voice, my own identity and experience. Tensions between perceived polarities of objectivity and subjectivity, reason and emotion, and the fact that it has all been done before can paralyze. However, there is something about the law which stresses neutrality to the point of dehumanizing. Law journals, for instance, shy away from first person testimony of scholars, some of whom have been at the coal face of the subjects of their scholarship. My own attempts to share my first account testimony about dance—how I learned to take care of my body, express communication and story-telling through movement, and find a way to protect a sense of self while I developed a career in law—were seen as too personal by those unwilling to take risks, or at least question rules and push boundaries of legal scholarship.

Be that as it may, I find the question interesting. Why do I dance? I also ask myself, why the law? Life-long learning in both dance and the law necessitate checking in with my own motivation and intention because without them, my discipline and effort risk becoming sterile. As a ballet master once explained: movement without intention quickly withers, like going to a train station without knowing where you are going. Sometimes I know exactly what my intention and motivation is, like when I am working on a law article or a piece of art and suddenly a clear vision that guides everything I do within a framework underwritten by a rule of relevance. The effort suddenly makes sense. When I am in between projects, suddenly the opposite is true, and doubt permeates my very bone marrow with paralysis. That is, until something interrupts the doldrums. It may be an encounter, a photograph, a newspaper article, a piece of music, or a friend forwarding you an email about an upcoming law and art

conference at Yale, and suddenly you sit upright, inhale a little more fully, and feel revived and rejuvenated because you're inspired. And so you write to the organizers of the conference, and then they write back, and what's more, they invite you to contribute to a special edition of a journal. Life can be that good!

When I was asked to contribute to the Special Issue of the *Yale Journal of Law & the Humanities* dedicated to the Legal Medium Conference, I was sitting on a train on my way to running a two-day workshop at Tübingen University Law Faculty in Germany to assist the Jessup Moot Court team with their preparations for the upcoming National Rounds of the competition. The workshop was based on *The Art of Advocacy: Movement, Flow, Expression*, which I regard as outreach for my arts work, as well as part of my law teaching. I believe that we all need to move, to find our own flow, which facilitates expression. I use exercises adapted from yoga, dance, and my performance arts laboratory to exercise the vocal chords and diaphragm, and to stimulate and release improvisation and creativity so that students can experiment with styles of advocacy and reasoning. There are 'movement codes' that govern advocacy. Indeed, a trial is based on a choreography; every legal culture has its own 'language' and 'etiquette' and the globalization of law requires lawyers to be versed in more than one national legal language and culture.

There are, of course, universal 'rules of the game' for legal advocacy. My focus is to enable students to discern their own styles and techniques, both directly—by rehearsing pleadings—and indirectly—by designing a team ritual to communicate more clearly as a group, even without words. A trial is a performance, with rules of engagement that govern interaction. It is a choreography: turn the sound down and you will see a dance/theatre piece *extraordinaire* with a lot of improvisation! As an advocate, you represent others; you carry the voices of others. In short, you are their *porte parole*. A lot of role play is involved. For instance, while judges preside, transmitting neutrality and impassivity through their expressions and their body is paramount.<sup>19</sup> Imagine watching a thriller or a documentary, and then imagine that you may not react to what you see and, in fact, must ensure that you are not seen reacting. Or imagine that a friend tells you about a particularly traumatic experience and you do not—indeed must not—react. Instead, you must respond in a neutral tone, ask some questions, and suggest courses of action. What happens to us

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19. I remember spending a week with a High Court judge in Manchester, England as part of work experience during my undergraduate degree. Spending days in court, sitting next to the judge was exhausting as I realized that I had to ensure that neither my body nor my expression gave away what I thought or felt. When confronted with facts of cases that are particularly gruesome or disturbing, this can be incredibly difficult and I came away wondering whether this would affect ways of dealing with my feelings about cases.

when we act as judges or advocates? Where do we go? A distinction between the role that one ‘plays’ and oneself must be drawn and upheld in a career in the law. Yet when faced with cases that expose the very worst of which humanity is capable, and repeatedly so, that line is not so easy to distinguish. Indeed, it feels as though being human necessitates abandoning all pomp and ceremony to take one’s face in one’s hands and weep, and in so doing, find a refuge for empathy.

I remember weeping once during my brief exposure to criminal law. Looking back, I should probably have wept more, as there are still scenes that haunt me years later. This experience inspired a short story installation I created called “*Ich sehe nicht die Stunde*” or “I do not see the Hour.”<sup>20</sup> (See Figure 1.) The title comes from an Italian expression, *non vedo l’ora*, which is used to signify impatience for something to happen. It is mostly used as a positive expression, but can also be used ambiguously. Indeed, the ambiguity made me think of narratives in which time could be described as having stood still: as in moments of intense creativity or connection to something or someone; or moments of trauma, when something terrible happens and everything stops. The woman at the center of the piece is the bearer of a number of—and variety of—narratives involving the challenge of disappearing in plain sight, rather like the first time I put on a barrister’s gown and appeared before a judge in the Royal Courts of Justice while I was still a student; or walking into a legal negotiation in a suit with files under both arms; or delivering my first law lecture; or sitting on a panel of examiners for oral exams in administrative law at the University of Siena; or performing as a musician on stage; or simply sitting around a dinner table, finding myself playing a part, and avoiding saying anything too heartfelt lest it upset the evening’s intricately choreographed and sometimes overly rehearsed decorum. I look at the world’s stage and the players that abound and wonder where do I come in?

So here I am, in Europe, managing a career as a law scholar and teaching law through a type of movement-based, creativity-enhanced case method, while also creating performance installations about the law by writing the text, composing the soundtrack, filming, directing and performing the dance and theatre components with other artists. The bureaucracy can be stifling, but I take two expressions I learned in New York with me wherever I go. First, you need to *make it happen*. Second, as the late actress Lauren Bacall was reputed to have said: *the world*

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20. The story is about a former judge whose memories of cases she has worked on begin to resurface on her way to visit an old friend. She leaves a letter and a collection of sketches behind. The letter evolves into a short story and the sketches develop into portraits. The question remains: what became of the woman? See Figure 1.



*doesn't owe you a damn thing.*<sup>21</sup> Needless to say, I never leave home without both expressions at the ready.

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21. Enid Nemy, *Lauren Bacall dies at 89: in a Bygone Hollywood, She Purred Every Word*. N.Y. TIMES, Aug. 12, 2014.



**Figure 1.** Giuseppe Cottone, Filming "Ich sehe nicht die Stunde" (Pantelleria, Italy 2014). Courtesy of Giuseppe Cottone.

