Pas de Deux and Prohibition: Historical Dance Bans, Dance as Justice and Dance as a Tool of Control

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This paper considers the intersections of law and dance as they relate to legislative dance prohibitions throughout history. Drawing on Michel Foucault's works on power and the control of bodies, alongside Robert W. Gordon's writings on legal discourses, this essay explores the effects of law and its discourses as a modality of power wielded by those with means to assert both physical and cultural control over marginalised and vulnerable communities. Exploring two historical dance prohibitions — New York's 1926 cabaret law and Finland's 1939 national ban on public dance — this essay reveals clear trends of political misuse, with legal restrictions imposed for the benefit of the dominant lawmaking class against those with less legal capital: predominantly women and people of racialized identities. In this way, legal prohibitions against dance have served not only to restrict and regulate the literal movements of communities, but also to restrain cultural or social movements that make their rhythms independent of the majority.

Within this essay, consideration is first given to the place of justice as a *pas de deux* between ethics and politics — where the interplay between law and its subjects is likened to a duet within which the movement of bodies is guided or restrained by the dance's leader, being the law and its makers. This is followed by examination of law's power and

control over bodies, as well as discussion of who ultimately wields this power and therefore, controls legal discourse. Before the exploration of selected historical dance bans, brief acknowledgement will be given to more traditional understandings of legal prohibitions on movement.

1 Law and Dance

Dance, as a genre of movement, is no stranger to discourse of class and legality. Indeed, dance has often been described as a universal tongue — an organic translation of the human experience, a discourse of the body. As Miriam Aziz suggests, both law and dance should be regarded as 'rule-based theories of language' (Aziz 2015). However, like both language and law, dance can be co-opted by agenda, used to police and silence: 'Both [dance] and… law provide devices to map the movement of the body through space as well as the movement of law through life' (ibid).

A Justice as Pas de Deux

To effectively unpack the implications of legal prohibitions on dance, it is first necessary to consider the intersection of dance and law, where justice exists as a *pas de deux* between dancers — an interplay between ethics and politics. With roots in classical ballet, the pas de deux — or 'step of two' — is a dance form in which two dancers perform steps together. Choreography often involves supported partner-work and close physical contact: a lead-and-follow applicable to this paper's conception of justice. Within this duet, the movement of the legal subject's body is guided, or alternatively restrained, by the dance's leader: the law and its makers. As Joshua Hall asserts, the law is popularly conceptualised as 'dominated by a professional caste to which most are effectively denied entry… yet [law] has the sole power to determine what counts as justice therein' (Hall 2023: 1). Where justice is understood as 'rendering each person their due, relative to various hierarchies of ideas, people, and things', such a vision is no less ethical than political (ibid).

Hall conceives a compelling, hybrid theory of law as poetry — the 'natural aristo-poetic counterforce' thesis — within which three

traditions central to legal philosophy — natural law, positive law, and critical legal theory — have each conceptualised law as a kind of poetry. Natural law presents the law as both metaphysically divine and 'historically dependant on its expression via poets viewed as prophets' (ibid: 4). As its name suggests, positive law 'posits' individual literary creation as the fount of human law, with its etymology derived from the Greek poesis meaning 'poetry'. Finally, the newer schools of critical legal theory — including cultural legal studies — explore this historical calcification of poeticised law into a rigid 'kind of prose prison' (ibid). As discussed above, law and dance can both be understood as rule-based theories of language. Therefore — in following Hall's theory to its natural conclusion — it may be supposed that, just as jurisprudence has historically articulated law's poetry, legal philosophy must also be capable of conceptions of justice 'compatible with… justice as (figurative or even literal) dance' (ibid: 6). Hall reimagines justice as dance through the works of Aristotle and Iris Marion Young. These works — one historical, the other contemporary — appear to articulate justice as the choreography between ethics and politics, where political structures create ethical positions of varying vulnerability and empowerment (Hall 2021: 75).

Aristotle repeatedly links ethics and politics in his conception of justice within the *Nicomachean Ethics*: 'it must not be forgotten that what is being sought is not only what is just simply but what is just in political life' (ibid: 68). Aristotle's use of the word 'justice' in this text is slightly ambiguous. One meaning is claimed to be roughly synonymous to 'equitable', while the other approximates to 'lawful' — the former seeming closer to ethics, while the latter appearing more aligned with politics (ibid). As Aristotle links equitability to art, specifically aesthetics, such a conception could be extended to physical artists, such as dancers. Similarly, in Iris Marion Young's posthumous text, *Responsibility for Justice*, the duet between ethics and politics is evoked through her concept of 'position' — where the conceptual positions of justice, which evoke the classic five 'positions' of ballet, begin with literal poses and postures of the body (Young 2011: 68).

Through this *pas de deux*, every member of society, simultaneously both legal subject and artist, engages with the law in a duet that is not without force or malignment. Indeed, Marxist scholars suggest that justice is merely an ideological construct of the superstructure that perpetuates bourgeois norms of exploitation (Hall 2021: 68); similarly, as Charles Mills' quotation of the African American folk saying intones: 'when white people say "Justice", they mean "Just us"' (Mills 1997: 1).

2 Law, Power and Control

A Control of Bodies

Perhaps the equivocal nature of the term 'conduct' will illustrate the specificity of power relations in the *pas de deux* of justice. To 'conduct' means to 'lead' others according to mechanisms of coercion that are, to varying degrees, strict; simultaneously, it indicates a way of behaving within an open field of possibilities (Foucault 1994: 341). The exercise of power is a 'conduct of conducts', a management of possibilities asserted over the body, the primary 'object and target of power' (Foucault 1977: 136). Walter Benjamin contends that power sits at 'the origin' of law itself (Benjamin 1977: 188). This dialectic of power, which undergirds modern societies, is often mythologised as a way of obscuring the paradox that all law — all state power, in fact — is fundamentally created and upheld by violence. Indeed, Benjamin asserts: 'Lawmaking is power-making… and to that extent an immediate manifestation of violence' (Benjamin 1996: 248). For our purposes, this violence represents the power of prohibition, the repression of the movement of bodies in dance.

Foucault argues that where one adopts a purely juridical conception of power, identifying power with a law which says 'no', 'power is taken, above all, as carrying the force of a prohibition' (Foucault 1994: 120). Power, in this way, is understood as the capacity to exert influence over the thoughts, movements and actions of others. While power can be exerted by almost anyone, Foucault states that the play of power can be, and often is, exercised oppressively, producing systematic power relations where there are 'rulers and ruled, dominators and dominated'

(James 2018: 35). Indeed, if we 'speak of the power of laws, institutions, and ideologies… it is only insofar as we suppose that certain persons exercise power over others' (Foucault 1994: 337). In this way, law is a strategy of power used by the state and by those with influence over the state's lawmaking processes to influence the thoughts, actions and wellbeing of others — dictating that certain behaviours are acceptable and other behaviours will be punished. In this conception of law, the content of positive law is determined not by natural law, moral principles or human rights; instead, it is the outcome of power contests that take place in the political and legislative spheres.

B Legal Discourse

Within Western societies since the Middle Ages, the exercise of power has always been formulated in terms of law — predominantly conceived 'to allow a privileged elite to control… the way that a community is forced to conceive of justice' (Hall 2023: 8). Indeed, not just bad law, but *all* law can be understood as the product of interest group pressures. Opponents of this view may be inclined to call it 'Marxist', but the classical Marxist theory of law is merely one highly specific subset of such a view.

It is true that the influence of social structure, class and power on accounts of law are often rejected. However, as Robert W. Gordon posits, histories of legal oppressions — including records of slavery, 'Indian' removal laws, and labour injunctions — serve as 'indispensable reminders that there's often nothing subtle about the way the powerful deploy the legal system to keep themselves organized and their victims disorganized and scared' (Gordon 1984: 74).

Despite this, Gordon postulates that law is 'inherently neither a ruling-class game plan nor a repository of noble if perverted principles' (Gordon 1988: 15). It is a plastic medium of discourse that subtly conditions how we experience social life. Such discourse appears as both technical arguments between professionals, and 'commonsense' discussions amongst laypeople. Regardless of form, legal discourses 'are discourses of power', embedded within the social and the political (ibid). They fabricate what we interpret as reality, splitting human experience

into categories: the harms we accept as fateful happenstance versus the outrageous injustices we may resist.

Admittedly, law is not uniquely the tool of the powerful, but the capability to wield legal discourse with facility and authority — or to pay others to wield it on your behalf — is a significant part of what it means to possess societal power. Therefore, legal discourses tend to reflect the interests and perspectives of the powerful people who make most use of them. Legal discourses routinely help to create and maintain the ordinary inequities of everyday social life: 'the coercions, dominations… the ordering of access to privilege, authority, wealth and power by hierarchies of class, race, gender and "merit"' (ibid: 16).

C Laws that Control Movement

A wide range of laws may be seen as interfering with freedom of movement, broadly speaking. Traditionally, laws that dictate the movement of bodies have included powers of arrest, customs, quarantine and citizenship laws (ALRC 2015: 196). If dance prohibition laws can be understood as a form of restriction-power, enforced on both social classes and individual bodies, it is not inaccurate to interpret such bans broadly — as law that interferes with freedom of movement.

3 Historical Dance Bans

Living beings naturally seek cultural fulfilment and social empowerment rather than the mere continuance of living; in this way, even 'apolitical' movements of artistic expression involve tensions that can be repurposed for liberation (Hall 2021: 64). This being understood, it is no surprise that throughout history many jurisdictions have sought to legislate on dance and its acceptable participants. The two historical dance prohibitions considered in this essay are New York's 1926 cabaret law and Finland's 1939 national ban on public dance.

These instances of prohibition were selected for their historical significance in the examination of dance as a site of law's control over bodies, particularly marginalised bodies. Historically, the bodies of women and those of racialized persons have been viewed as possessions or objects lacking in legal personhood (Naffine 2024: 22; Finkelman

2012; 109), whose movements and activities ought to be controlled and constrained. Through these case studies, we see the vestigial overlay of old, problematic legal doctrine like coverture and slavery.

A New York City Cabaret Law - 1926

On 7 December 1926, the Municipal Assembly of the City of New York's aldermanic branch convened in City Hall to enact a local law that would 'regulate dance halls and cabarets' and facilitate their licensing (NYC Municipal Assembly 1926). The law, introduced under Mayor Jimmy Walker, and repealed only as of 2017, had the alleged purpose of making it easier for police to control speakeasies and clubs illegally serving alcohol under Prohibition. The law's adoption was urged by the Police and Licence Commissioners and clergymen of various religious denominations — emphasising the conservative social concerns that prompted the introduction of such a law.

With the mobilisation of troops for World War I and immigration cut off from Europe, the industrial capitals of America's northeast experienced intense labour shortages (Hirschman and Mogford 2009: 3). Consequently, manufacturers sought employees from the exodus of workers emigrating north — a significant proportion of whom were African Americans seeking reprieve from the legal violence and oppression of the 'Jim Crow South' (Kennedy 2004: 279). These workers filled both new and existing positions in burgeoning industries. During the strikes of 1917, some were even hired as 'strike-breakers', taking the place of workers petitioning for improved labour practices (ibid: 281-282). This, unfortunately, only served to perpetuate further racial resentment amongst many working class, immigrant and first-generation Americans. Bigotry was given a life by citizens at every level of New York society: wealthy suburban homeowners, police commissioners, mayors, court judges and lawmakers.

In New York City, such tensions reached a boiling point during the Silent Protest Parade of 1917. In Illinois, on 1 July 1917, two white policemen were killed in altercations caused by marauders attacking the homes of African American families. The incident sparked a race riot the next day, ending with forty-eight deaths, hundreds of injured,

and thousands of homes burned (Library of Congress nd). The carnage, which disproportionately targeted African Americans, lead to the National Association for the Advancement of Colored People's Silent March — where 10,000 black men, women and children marched New York's Fifth Avenue (ibid).

The 1926 cabaret ban called for the prohibition of dancing in all New York City public spaces — either defined as 'public dance halls' or 'cabarets' — unless the venue had obtained a license. Under this law, a public dance hall referred to 'any room, place or space in the city of New York in which dancing is carried on and to which the public may gain admission' (NYC Admin. Code section 20-359(1)). In contrast, a 'cabaret' was defined broadly as 'any room, place or space in the city in which musical entertainment, singing, dancing or other similar amusement is permitted in connection with the restaurant business' (NYC Admin. Code section 20-359(3)). Despite the wording of the ordinance, by the time New York City began attempting to regulate 'cabarets', they had largely been destroyed by Prohibition (Chevigny 1991: 32). Indeed, what the city was really attempting to licence was the 'speakeasy' — the era's preeminent venue of dance and music. Attorney Paul Chevigny asserts that the ordinance 'threw together dancing and music', primarily because live music was necessary for social dance to take place (ibid). However, the law exempted places of entertainment in large hotels; this significant exception to the law was criticised as 'class legislation' (ibid: 33). While such an exception was likely the result of successful lobbying, it served to emphasise New York City's intention to control what was viewed as 'respectable'. Such an attempt, says Chevigny, must have been 'largely directed at the black music and dance that was performed in the Harlem clubs, as well as the social mixing of races' (ibid).

As the ordinance mutated over time, it was eventually utilised to explicitly limit the instruments — and therefore genres — that were permitted to play within dance halls. Permitted instruments included strings, keyboards and electronic sound-systems; conspicuously absent are the jazz staples of wind, percussion and brass (NYC Admin. Code

section 20-359). Simultaneously, the law prohibited more than three musicians playing at the same time. Naturally — as outlined in *Warren Chiasson v New York City* (1986) — such a restriction impacted jazz bands and the social dancing aligned with Black jazz culture the most.

Whether intentionally or not, the aldermen were legislating in the shadow of the view — already widespread throughout the nation — that jazz music and Black dance culture were a source of moral degradation (Chevigny 1991: 33). In 1922, the Illinois Vigilance Association attributed jazz music with the 'downfall' of one thousand Chicago women (Leonard 1962: 35-38). As quoted by actress Laurette Taylor: 'Jazz, the impulse for wildness that has undoubtedly come over many things besides the music of this country, is traceable to the negro influence' (Chevigny 1991: 33). Indeed, the cabaret laws were principally of symbolic value to those who enforced them — expressing the racist views of the city's lawmakers that vernacular music and dance were not worthy of respect or equitable enjoyment.

In alignment with this essay's prior discussion on legal discourses, Chevigny asserts that 'such an enforcement of status is characteristic of lawmaking about the arts [including dance]; those who legislate… by their acts make the discrimination come true' (ibid: 2). Indeed, according to Joseph Gusfield, this sort of control expresses the public worth of one culture's norms relative to others; thus, 'demonstrating which cultures have legitimacy and public domination… it enhances the social status of groups carrying the affirmed culture and degrades groups carrying that which is condemned as deviant' (Gusfield 1968: 58).

B Finnish Dance Ban - 1939-1948

In December 1939, shortly following the outbreak of the Winter War, Finland instituted a national ban on dancing, which lasted until the signing of the Moscow Armistice in 1944 (Nevala and Tikka 2022). The former statute, Act No. 447/1939, legislated that the only public entertainments allowed were musical concerts, theatre, film and patriotic celebrations (Pesola 2002: 311). During an interim peace between 1940 and 1941, dance was once again permitted; however,

the clergy opposed the repeal of the ban, claiming that, among other things, dance would disturb the martyrs and arouse disapproval at the warfront (ibid: 312). As the conflict of the Continuation War proceeded in 1941, the Finnish Ministry of the Interior saw the ban reinstated (ibid: 311). After the War, this prohibition persisted, although in diminished capacity at restaurants, until 1948 (Act No. 652/1948).

The loss of social dance was felt keenly by the public, especially by the youth. Partner dance, which became popular in Finland at the end of the 19th century, originally took place only at events like weddings or harvest festivals. However, when community-oriented groups, such as worker and youth associations, began organising fundraising and social evenings, dance became more accessible and widespread (Nevala and Tikka 2022). It was common for young people to organise spontaneous dance events, often located in nontraditional or unusual locations: on a bridge, in a meadow, or simply wherever flat terrain was located. During winter, dances were held in houses or barns, thus coming to be referred to as 'corner dances' (Pesola 2002: 311). Even prior to legal prohibition, such corner dances were viewed as morally objectionable, with allegations that young people were exposing themselves to alcohol abuse, crime and — the most concerning of all — premarital relations. As a result, corner dances were publicly condemned by both the evangelical Lutheran church and Finland's overwhelmingly Lutheran population (Nevala and Tikka 2022).

While several countries briefly instated restrictions on public dance during World War II, Finland's prohibitions were unique, spanning for almost a decade (The Guardian 1945). To prevent the organisation of modern, illicit corner dances, authorities sought pre-emptive action: in 1943, a legislative attempt was made to further disrupt the organisation of secret dances (Act No. 683/1943). On a local level, young people began to feel this disruption; sports fields, often used as impromptu dance floors, were divided into large squares with barbed wire to prevent dancing (Paavolainen 1946: 653).

In the years from 1942 to 1944, several thousand people were prosecuted for illegal dancing — whether for organising or taking

part in the secretly-held festivities (Nevala and Tikka 2022). Citizens were fined and even imprisoned; two women were sentenced for several months for 'continuously breaking the dancing ban' (ibid). In Helsinki, as part of attempts to thwart the restrictions, dance evenings were coordinated under the guise of schooling, as educational arts courses had not been prohibited (Backlund 1989: 638-39). Dances were often interrupted by shows of executive force — as in Vöyri at the end of September 1944 where a violent police presence prompted dancers' to flee and, in the ensuing chaos, a man was shot in the stomach and later died of his injuries (Pesola 2002: 312). At least two people died during such raids (Nevala and Tikka 2022).

Researchers suggest that motivations behind the bans were largely 'moral' in nature, as the prohibition was enforced against a public body predominantly made up of young women (ibid). Indeed, in the late summer of 1941, over half of the male workers in general industry and approximately 70 percent of those in agriculture were absent on military service (Olsson 2022: 129). During this time, women were expected to behave as the moral backbone of an uncertain society where — despite the powerful propaganda encouraging active participation in war work — the nurturing of traditional family values was women's prime duty on the home front (ibid). As orated by Pia Olsson's anonymised Finnish narrators: 'Motherliness is the best feature in every woman, even in an old maid' (ibid: 135).

While the division of labour shifted during the war years, women's active role in working life was merely a short-term change, based on economic necessity (ibid: 129). Moral guardians of the home front believed that the 'female surplus', in conjunction with immoral public entertainment, would prove to be a dangerous combination (Pesola 2002: 312). As a result, it was necessary for women's behaviour and sexualities to be monitored and strictly controlled. Social dance — with its associations of impropriety and depravity — was viewed as a serious threat to the moral status quo and the wellbeing of the country at large. Even at wartime weddings, newlyweds were permitted to dance only a single waltz while guests watched on (Niiniluoto 1994: 40). By breaking

the dance ban, women were viewed as undermining the whole nation's ability to defend the country.

From a modern perspective, such concerns might prove surprising, considering Finland's position as something of a pioneer in women's suffrage — being the first country in Europe to expand voting rights to women (Juntti 1998: 400). However, one must account for both the ideologically conservative nature of Finland's predominate religion, Lutheranism, and Finnish nationalism's roots in Hegelian philosophy and the ways it constructs subjectivity (Juntti nd).

While sects of the Lutheran church were more lenient on public dance — 'some dancing not sinful says Lutherans' reads the headline of one 1943 article — there was to be a distinction made: not between modern and old-style dancing, but 'between those dances in which the sexes come into close contact, and those in which they did not' (The Mail 1943: 2). Similarly, within Finnish political ontology there is a supposition of shared political identity, 'a common structure of norms [legal and otherwise]' (Pulkkinen 2000: 134). This finds its roots in Hegel's idea that the state has an ethical goal, understood to be the 'common good' (Sihvola 2008: 92). To participate in the activities of the state as a citizen, one must set aside subjective and personal projects — recognising the state's ethical goal and committing oneself to its realisation (ibid). The implication of such a construction is that separate interest groups experience difficulties in self-formation. As a result, any nationalism movement based on the Hegelian political ontology, such as Finland's, makes it difficult for women to step out from the shadow of the nation and form an interest group based on their gender (Juntti nd). The political and legal discourse prevalent in Finland since the 1840s has so completely subsumed the nation's women, that — in the realm of politics — it has, and continues to be, difficult for them to set agendas that emphasize individual rights that contradict the nationalist agenda (Juntti 1998: 412-15; Pylkkänen 2001: 124-25). As a result, the historical expectation became that 1940s women participate within society as 'Civic Madonnas': with their social activity accepted only within certain moral parameters (Jiménez-Muñoz 1993: 421). Such a

conception demonstrates the difficulty that marginalised social groups face in attempts to move freely within the legal *pas de deux*. Lawmakers, influenced by the prevailing discourse of the powerful, whether wealthy, religiously prominent or otherwise, legislate to control the movement of bodies; the less privileged must simply obey.

4 Conclusion

There is retrospective necessity in calling for scrutiny of historical lawmaking that seeks to control which kinds of communities are entitled to movement. The dance prohibitions examined within this paper were eventually repealed, likely as the laws were no longer necessary — having served their purpose as tools of power within the legal discourse of the time. Upon the return of Finland's wartime patriarchs, it became less necessary to exert control over the movements and sexualities of 'unsupervised' women. Similarly, as of 2017, it was largely less politically favourable — due to the cultural rise of intersectionality (Collins et al 2021: 699) — to support the continuation of historical, racially-charged lawmaking in New York. As discussed, laws shift with legal discourse and the overarching political needs of those with predominant access to the lawmaking class. Indeed, the power politics and discourses of law often prevent formal legal rules from being practically enforced or enacted.

The law may assume a position as leader of the *pas de deux* of justice, but this comes with it a responsibility to wield legal power in a fashion that will not prejudice the movements of marginalised communities, alongside a necessary recognition that a *pas de deux* is not led by one dancer but is a duet in which both dancers contribute equally. If we should 'consider every day lost on which we have not danced at least once' (Nietzsche 1964: number 23), then the law — both now and in the future — has an imperative to facilitate, not restrict, the cultural expression of people who have already lost so much. If the law's justice is to develop in ways that facilitate, rather than restrict, movement, it must do so through the vigilance and continued efforts of those who remain aware of the historical misuse of law that precedes them.

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