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## Refusals, Disclaimers and Denials:

### Cady Noland's Recent "Work"

As utopian as this position might sound, it is extremely salutary to imagine how material culture, and image cultures of all descriptions, may be valued differently than *as property*.— David Joselit, *After Art*.

#### **Introduction: Refusals, Disclaimers and Denials**

The artist Cady Noland has since 2001 turned away from making art, in favour of mobilising the law, particularly the Visual Artists Rights Act (VARA), in order to police the circulation of her existing works in the market. Analysis of Noland's legal manoeuvres, which have involved her refusals of authorship and of her works' status as art, suggest that her recent activities might themselves be seen as an extension of her artistic practice, such that she is performing versions of artistic and legal work that call into question assumptions about both. Noland's refusals can be seen in relation both to art-historical and performance-theoretical precedents and parallels, as well as a philosophical analysis of refusal—personified in the figure of Bartleby, the scrivener—that opens onto the potential, however slight, for the world to be other than it is.

Noland's work might typically, if approximately, be described as dealing with the underside of American commodity and celebrity culture. Born in 1956 and arriving, apparently fully formed,<sup>1</sup> in the late mid-to-late 1980s, her particular use of images and objects scavenged from mass culture situates her work at the darker end of that moment's postmodernism. Noland's installations bring together remediated images of "celebrities" like Lee Harvey Oswald or Patty Hearst who are already subjects of conspiratorial paranoia, various forms of popular, often mass-produced Americana (beer cans, American flags, shopping trolleys), fragments of vernacular architecture and elements of the infrastructure of surveillance and control: stocks (America's first public sculpture, according to Noland),<sup>2</sup> police tape, barriers. Noland's is a more disturbing investment in celebrity than Andy Warhol's, and her works are much more proleptically queasy appropriations of media images than, say, Richard Prince's (different cowboys); in Noland's work the psychic

introjection of celebrity is related to the disciplinary organisation of space, and the national flags adorning the bland and premade *Log Cabin* suggest an engagement with the spectacle of whiteness, perhaps relevant when we come to consider her more recent activities.

As Andreas Petrossiants suggests, Noland's work demonstrates an acute awareness of the violence that subtends life in American capitalism.<sup>3</sup> Her work from the late 1980s and 1990s is highly regarded by younger artists, critics and historians, but also by the market. *Oozewald* (1989) is a blown-up and altered version of a found photographic image of Oswald just as he was about to be shot by Jack Ruby: white discs suggesting a cluster of bullet holes superimposed over his eyes, by his mouth and on his torso, a fragment of the American flag covers his mouth, and Ruby's hand holds a gun, extending into the image, which is printed on a thin sheet of aluminium cut in the shape of Oswald's body. The fetched \$US6.6 million at auction in 2011, making it the most expensive work by a living woman artist at the time (Herbert 2016, 107). Subsequently, in 2015 a related work, *Bluwald* (1989), sold for \$US9.8 million (Adler 2016). Noland's work is if anything even more compelling under the current political conditions than it was when it emerged, as her essay "Toward a Metalanguage of Evil" might indicate, where she writes: "According to Ethel Spector Person, the psychopath shares the societal sanctioned characteristics of the entrepreneurial male" (Noland 1992). However, with the possible exceptions of one work dated 2008 exchanged for an older one at the Walker Art Center in Minneapolis, and new supports for older works circulating in the market, she appears not to have made any new work since 2001.<sup>4</sup> Neither has she tended to collaborate with galleries or curators in the re-presentation of her work, instead issuing a range of disclaimers distancing herself from such efforts.<sup>5</sup> Noland's last interview (which was her first in roughly a decade) was granted in 2014 to Sarah Thornton, but the publication of that interview was itself accompanied by another disclaimer: "Ms. Noland would like it to be known that she has not approved this chapter" (Thornton 2014, 325).

Most famously, Noland has on a number of occasions renounced the status as art of objects she considers to have been improperly conserved: this has generated several lawsuits in which she has variously invoked VARA or copyright protection. Sandra Antelo-Suarez, the curator of one recent exhibition in which Noland did agree to participate, *Kinetics of Violence: Alexander Calder + Cady Noland* (2017), reports that the artist was attentive "to minute details of spatiality and materiality" regarding the installation of her work, which is consistent with the reputation Noland has gathered over time (Petrossiants 2018). So, one might argue that in her refusals, disclaimers and denials, Noland is an artist who is very particular about the maintenance, circulation and display of her work and is prepared to use the available legal means to protect her position. At the same time, however, it is possible to argue that in the period since Noland has stopped making new work, she has developed an attempt—consistent with elements of her earlier practice, particularly its attention to the collapse of the distinction between people and commodities—to strategically assert but in so doing expose the limitations of the legal definition of the artwork, certainly as it concerns its status as a commodity. Here, insofar as Noland is rejecting or refusing her own work, her own labour, one might be reminded of one of the most powerful models of refusal, provided not by the practice of any artist, but by Herman

Melville's *Bartleby, the scrivener*. Bartleby's irreducibly obstinate "I would prefer not to" is pertinent because the labour that he prefers not to do is specifically legal work (he is a "law-copyist"), which resonates with the legalistic cast of Noland's recent activities.

### **Noland's Casework**

In the fall of 2011, Sotheby's was due to auction Noland's work *Cowboys Milking* (1990) on behalf of its owner, art collector Marc Jancou. Upon inspection, Noland disavowed her authorship of the work on the grounds that it had been damaged (despite a conservation report stating that it was relatively in very good condition), basing this disavowal on VARA:

VARA, 17 U.S.C. § 101 et seq., was enacted by Congress in 1990 to protect the "moral rights" of certain artists by "afford[ing] protection for the author's personal, non-economic interests in receiving attribution for her work, and in preserving the work in the form in which it was created." *Pollara v. Seymour*, 344 F.3d 265, 269 (2d Cir. 2003). The general rule under VARA is that "the author of a work of visual art . . . shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation." 17 U.S.C. § 106A(a)(2). There are enumerated statutory exceptions to that rule, however, including in some instances where "[t]he modification of a work of visual art [] is a result of the passage of time or the inherent nature of the materials." *Id.* at § 106(A)(c). (Grossman 2012)

Sotheby's withdrew the work from auction and Jancou sued both Sotheby's and Noland. Jancou's case was dismissed on the basis of the contractual relationship between him and Sotheby's (which gave Sotheby's the right to withdraw the work for a range of reasons), the court finding that the mere existence of Noland's VARA claim provided a "substantial, objective basis for Sotheby's judgment that there was...doubt as to attribution" (Grossman 2012). The court did not, however, have anything to say as to the possible validity of Noland's VARA claim, so we don't know whether the crimped corners of the aluminium sheet that the image is printed on constituted sufficient damage to be prejudicial to Noland's reputation, or indeed what the criteria would be for establishing such prejudice.

In the Jancou case, then, Noland's VARA claim went untested, and *Cowboys Milking* was sent back to the collector in limbo: it is now "formerly attributed to Cady Noland" (Adler 2016), or "authorless" (Buskirk 2013). As Martha Buskirk observes:

Jancou still has the object in question (for which he paid \$106,500 in 2011), and there is nothing to prevent him from hanging it up and enjoying it in the privacy of his own home. It seems very unlikely, however, that he owns a work of art by Cady Noland that he can display or sell as such (Buskirk 2013.)

If that remains the case, then Noland has engineered a legally-based challenge to the status of the artwork as a commodity subject to be freely traded on the market, although that challenge is not yet fully worked through. It is also a fairly obvious challenge, insofar as it is perfectly clear without legal verification that the market value of an artwork depends upon its attachment to a proper name. Other artists have successfully separated themselves from artworks using VARA, but prior to that, attempts to disown works were more likely to end up looking like new artworks themselves. Robert Morris, for instance, made *Document* in 1963, a notarised text negating “the aesthetic content and quality” of an earlier work, *Litanies* (1963), which had been sold to the architect Philip Johnson and for which he had not been paid; Johnson ended up paying for both and eventually donating them to MoMA.<sup>6</sup> Joshua Decker uses this example to declare that “art cannot be un-arted” (Decker 2015), but Noland’s activities have rendered that uncertain.

At least one other work by Noland (or, formerly attributed to her) may have befallen the same fate as *Cowboys Milking*. In 2014, the collector Scott Mueller attempted to buy a work of Noland’s, *Log Cabin Blank with Screw Eyes and Café Door* (1990), from Galerie Michael Janssen. *Log Cabin* had been installed outdoors for a decade in Germany, and by 2010 “had deteriorated to the extent that conservators replaced the logs and rebuilt the façade according to its original specifications and using the original fabricator” (Marber 2017, 7). Initially without any direct contact from Noland or her lawyers, Noland’s earlier disclaimers and legal activity evidently had an effect on the nature of the purchase contract:

When Mueller and the Gallery agreed to Mueller’s purchase of *Log Cabin*, they entered a written contract that fully disclosed and acknowledged the work’s restoration. In fact, the parties apparently contemplated that the artist might object to that restoration in a way that could cause problems; the complaint states that, “given the history of the artist,” the sale contract expressly provided that the Janssen Gallery would buy the work back from Mueller in the event that the artist “refuses to acknowledge or approve the legitimacy of the work; seeks to disassociate her name from the work; or claims that her moral rights . . . have been violated.” (Lucas 2015)

Noland reacted just as the contract rider anticipated:

after Mueller paid the purchase price of \$1.4 million to the Gallery, his agent wrote to Noland “to inform her of the sale and the replacement of the logs that had rotted in the ten years it sat outside at a museum in Germany.” Noland, according to the complaint, “angrily denounced the restoration of the artwork without her knowledge and approval” and told Mueller’s agent that any future display or sale of the work “must include notice that the piece was remade without the artist’s consent, that it now consists of unoriginal materials, and that she does not approve of the work.” She also wrote to Mueller, stating, “This is not an artwork” and objecting to the fact that the work had been repaired without consulting her. (Lucas 2015)

This triggered the buy-back clause, and because of a dispute as to the amount to be paid, Mueller sued the gallery and an art advisor (but not Noland). Mueller's suit was dismissed, again without any determination as to whether Noland's actions constituted a disclaimer under VARA, or if so whether that disclaimer would be valid (Marber 2017, 7; Lucas 2015). So, another work of Noland's is thrown into limbo in terms of its attribution and hence its monetary value, or its marketability altogether, on the basis, essentially, of a possible but untested legal claim. If we accept that a primary function of the law is to regulate property rights, and especially ownership, which like authorship is generally attached to proper names, then we see an impasse here. The idea that the artist might use legal means to remove her name from a restored or conserved object (though there was not, immediately, even a specific threat of legal action), which would ruin its market value, puts the object's owners into a defensive posture, such that they remove it from the market in order to preserve its authorship, presumably hoping to stave off or wait out the threatened disavowal. In this scenario, everyone but Noland wants the work to remain a "Noland" in order to protect their financial investment, while Noland wants to remove her name from the object in order to protect the authenticity of the object, *prior* to its restoration or conservation, and, I would argue, to protect the specificity of her own labour. The status of the object, meanwhile, remains uncertain: art or not art, *Log Cabin* or copy, a "Noland" or something else.

In 2017, however, Noland launched her own suit against the dealers, collectors and art advisors whom she contends were involved in the decision to refabricate *Log Cabin* without her consent and whom she argues stood to profit from the sale of what she regards as an unauthorised copy of her work. As such, she is basing her suit not only on VARA (and its earlier state analogue, the New York Artists' Authorship Rights Act of 1983), but also on copyright law.<sup>7</sup> The dealers have filed for dismissal of the suit, and helping their cause, the US Copyright Office has so far rejected Noland's application to copyright *Log Cabin*, because it lacks "the minimal degree of creativity to qualify for registration," a bureaucratic assessment that lends itself to Kafkaesque hilarity.<sup>8</sup> The dealers' argument for dismissal echoes precepts of conceptual art to the extent that they argue that the work is not able to be copyrighted because what gives its generic materials their importance is the idea behind the work, not its material form (Halperin 2018). Art-historically, this is a poor argument because, to the contrary, it is the unexpected spatial and physical deployment of generic elements that makes Noland's work compelling. The materiality of her work is not reducible to a proposition or statement and neither does it represent the working-through of a conceptual plan. That may or may not matter to the Copyright Office.

If Noland's case continues (and is not ruled out by virtue of the relevant statutes of limitations), then presumably the outstanding question of whether her disavowal of the refabricated *Log Cabin* represents a valid claim under VARA will be resolved, which would seem to require that the damage to the work be seen as the result of the original work not having been properly maintained by its owners (under the New York state Artists' Authorship Rights Act, this would require "gross negligence") (Marber 2017, 8), rather than as a function of "the passage of time and the inherent nature of the materials." And if that

were so, presumably the court would also determine the relevant criteria for assessing prejudice to Noland's reputation.

It might seem like an appealing scenario that Noland, even prior to launching her own suit, had performed legal activity in such a way as to inject financial risk into the market for her own work. Artists don't by and large do what they do in order to contribute to the growth of an investment category, and neither do they typically benefit directly from sales of their work at auction.<sup>9</sup> At the same time, however, Noland's work, with its found materials and recycled images, participates in the very attack on the category of art as separate from other categories of objects upon which Amy Adler bases her famous critique of moral rights:

It once seemed obvious that there was a distinction between art and other objects. But that is no longer the case. Indeed, I would argue that the incoherence of the category of "art" has become *the subject* of contemporary art. The lack of distinction between art and other objects is now a central preoccupation of contemporary art.

Moral rights law thus protects art under a justification that is the very target of the art it purports to protect. (Adler 2009, 295)

In this context, the rather convoluted argument presents itself that Noland is prepared to perform the legal refusal of her own authorship, but in the "solo genius artist" fantasy model that Adler correctly identifies is attached to very different assumptions about what an art object is and what the labour of an artist is, than inform her own work (Adler 2009, 271). If, in so doing, Noland is rejecting the authorship performed into being by the law (a fantasy of authorship historically often denied to women and people of colour), then one might see a double refusal at work, in which Noland is at once relying on VARA to deny a form of authorship and artistic subjectivity that is not her own, while revealing its operation within the statute. Here, "Cady Noland," the author attached to *Log Cabin* under VARA, might appear as the legal fiction of artist Cady Noland, or perhaps as her "avatar," in the sense described by Uri McMillan and discussed below.

### **Context: Dropout Artists**

Both Petrossiants and Herbert situate Noland's recent activities, seen as a form of practice, in relation to a loose tradition of artists who have for various reasons and in various ways abandoned the art world: "drop out art," as Alexander Koch called it, who lists Noland among his secondary examples (Koch 2011). Koch articulated this definition in connection with the exhibition he curated, *Gestures of Disappearance*, first shown in 2002 at the Gallery of the Art Academy in Leipzig, then re-presented at the Bergen Kunsthall in 2015. The exhibition brought together works and/or documents relating to the practices of Lee Lozano (who more or less systematically withdrew from the art world starting in 1969), Chris Burden (who disappeared for three days in 1971), Bas Jan Ader (who was lost at sea in 1975 while executing a work), and the early 20th-century poet, amateur boxer and avant-gardist provocateur, Arthur Cravan (who is presumed to have been lost at sea in

1918).<sup>10</sup> In his preface to the 2015 installation, Koch describes the four as “passionate utopians” who fell hard:

What the gestures of disappearance bury is nothing less than an emancipatory model of the role and behavior of an artist: the belief that the individual’s artistic practice can be sustainable and effective under the given social conditions. The exhibition’s four protagonists drew different conclusions from the loss of a horizon they would fain have set sail for. What united them is that they chose for a brief moment to perform gestures in which the fading of their emphatic belief in the artist’s role found clear articulation. (Koch “Gestures of Disappearance” 2015)

Koch’s position was as nostalgic and romanticised in 2015 as it had been in 2002, and as much grounded in psychological speculation. Nonetheless, the exhibition and Koch’s essay, “General Strike: Opting Out of Art, a Theoretical Foundation,” crystallised a phenomenon worth inspecting. Koch’s essay provides an initial, tripartite typology, framed in terms derived from sociologist Pierre Bourdieu. “Ostentatious inaction” takes in “artistic gestures of silence and acts of refusal” such as John Cage’s *4’33”* (1952), that were “ostentatious disruptions of norms and standards of the production, presentation, or distribution of art,” but could ultimately be absorbed by the canon. A somewhat less distinct category, “communicative inaction,” defined as “the failure to perform an artistic act,” of which “Duchamp’s silence” is the example, “directs attention primarily to how the role of the artist is imagined and addresses the social conditions that frame an existence in the field of art.” Only “radical inaction,” for Koch, “amounts to a withdrawal from art,” which he sees as grounded in a reassessment of the possibilities available to an actor within the field of art:

Such a reassessment may reflect on the conditions that frame an artistic practice, on the general cultural and political situation in a society, or more specifically on individual institutional, economic, or social routines that are typical of the field of art; the actor in the field then addresses these routines precisely by no longer accepting them and consequently ceasing to contribute to the field’s social reproduction. (Koch 2011)

“Radical inaction” comes in regressive and progressive versions, the first exemplified for Koch by Lozano’s gradual withdrawal from the art world, which according to Koch took her out of that world but provided no particular analysis of it. The progressive version is exemplified by Charlotte Posenenske, the poster child for dropping out of art, who decided that art, and her own modular, interactive sculpture of the 1960s, could not contribute sufficiently to emancipatory politics, and abandoned them in favour of sociological research on the division of labour.<sup>11</sup>

Koch has constructed a canon of avant-gardists dropouts, mostly western European and American. In relation to this, critics and historians will have their own lists of disappearances, whether or not they are concerned with the social reproduction of the field

of art, artists' post-utopian melancholy, or something else. There will be permanent dropouts and temporary, artists who have tried to keep the art world at arm's length or who have attempted to manage the market for their work; Marcel Duchamp will inevitably figure, and artists like Cravan, Ader and Christopher D'Arcangelo who died young and whose politics allow this to be made to seem like their deaths were continuous with their work (generally a troubling contention, in my view).<sup>12</sup> All of which is to say that there is a field in which to situate Noland's recent activities as a practice, with precursors and comparisons and at least one typology, even though those who address this field must, like Koch, also point to its amorphousness, its overlap with failure, and its reliance on the "actor" having established themselves within the field as an artist in order to be able to abandon that position.

To return to Bartleby in a slightly roundabout way, there is an argument that Noland's position would be stronger, both practically and philosophically (if not financially, as she is seeking damages), if the legal questions remained unresolved. Simultaneously relying on and hollowing out VARA ceases to be interesting once her claim, which seems likely to fail, is tested. This is where Bartleby is relevant. For Giorgio Agamben, Bartleby provides a key to our understanding of potentiality, as derived from Aristotle, for whom, Agamben argues, "all potential to be or to do anything is always also potential not to be or not to do" (Agamben 1999, 245). Without this negative valence, Agamben continues, "potentiality would always already have passed into actuality and would be indistinguishable from it." For Agamben, and in Jessica Whyte's powerful reading, it is important that the work Bartleby is supposed to be doing is legal: "Bartleby challenges not only our faith in the law's capacity to embody and administer justice, but also the form of rational decision making presupposed by a liberal legal system" (Whyte 2013, 98). But Bartleby's is not a refusal in the name of anything (it is not exactly a refusal at all); preferring not to participate in the working of the law, he does not propose any alternative. Bartleby will prefer not to unto death, yet this non-preference opens onto potentiality as such. Agamben sees Bartleby dwelling in "the indifference of Being and Nothing," but this does not represent an equivalence between the two terms: "rather, it is the mode of Being of potentiality that is purified of all reason" (Whyte 2013, 259). As Whyte glosses it: "In the formula 'I would prefer not to,' [Agamben] sees a liminal zone suspended between affirmation and negation, being and nonbeing, predicated on the renunciation of any will or reason to choose either option" (Whyte 2013, 112). The importance of this is that potentiality opposes itself to actuality and, ultimately, to sovereign power as it is tied to history, to an understanding of things being as they are:

Two key things are at stake in this attempt to assure the actuality of potentiality: first, if we are always able to be other than we are, this destabilizes the attempt to found state power on the representation of a fixed substantive identity. Second, the repotentialization of the past, by granting possibility to what *is* or *has been*, disrupts the tradition, and its codification in law that is premised on the erasure and forgetting of manifold unactualized possibilities, and on the too-hasty burial of the hopes of those who fought for a different world (Whyte 2013, 112).

That may seem a lot to ask of poor Bartleby. In general terms, Agamben sets his critique of sovereignty in a contemporary world largely defined by Guy Debord's spectacle, where "politics and all of social life" are transformed "into a spectacular phantasmagoria," and where the old social classes are "dissolved" into a "planetary petty bourgeoisie" (Agamben 1993, 79, 63). On Agamben's planet, presumably all the other categories of social difference have been dissolved, as well. Following Whyte, Agamben's focus on commodification and a putatively classless (raceless, genderless...) society displaces any attention to labour: what is masked by the "fetish quality" of the commodity "is the human labour it embodies, a content it cannot do without, and one that Agamben's account does not consider" (Whyte 2013, 128). Agamben, that is, is not necessarily attentive to the forms of exploitation and immiseration that are filtered through labour—and class, race and gender—in contemporary capitalism, given the continuing effects of globalisation, automation, and forced migrations of various kinds.<sup>13</sup> Noland's legal activities, however, seem designed to protect both her "work"—in the sense of the (inevitably commodified) objects she has produced—and the labour embedded in them. If she seems to exercise privilege in using the law as a tool, the work of other artists provides contexts that help to unpack this.

### **Refusal and the Performance of Difference**

In this context, we should note that Koch's canon is remarkably white. Ironically enough, it perpetuates the very same order of historical and institutional exclusions that render his sociological framework so pallid. One need do little more than flag the Guerrilla Girls to suggest the institutional brakes applied to the careers of women artists, so these are not abstract or unknowable forces. And as the art historian Faye Gleisser has suggested in relation to the work of Adrian Piper, refusal, withdrawal and disappearance are privileged strategies (Gleisser 2016). Noland perhaps implicitly acknowledged this when she said that her father (Kenneth Noland) "had his own problems with the auctions" (Thornton 2014, 326). A familiar art-historical move in this context would simply be to add other figures to the canon, Piper, for example, and Tehching Hsieh, among others.<sup>14</sup> This might not be entirely without merit, but it wouldn't necessarily get to the valences of refusals marked by categories of social difference. Inheritance counts, Noland seems to say—but so does, for instance, the hypervisibility of bodies of colour, or legal definitions of immigrants.

Noland's recent activities have relied in part on her ability to take legal action or invoke possible legal protections as though these were neutral technologies. Other examples trouble any such assumption. Among Hsieh's five *One Year Performances*, three might be seen as forms of refusal: *One Year Performance 1978–1979 (Cage Piece)* saw Hsieh confined to a cell within his apartment; in *One Year Performance 1981–1982 (Outdoor Piece)*, Hsieh lived out of doors on the streets of New York, and in *One Year Performance 1985–1986 (No Art Piece)*, Hsieh withdrew from the art world. Subsequently, in *Thirteen Year Plan 1986–1999*, Hsieh made work in secret. Elsewhere I have argued that in these works, initially conducted while he occupied the precarious position of "illegal alien," Hsieh undertook a "near-systematic negation of subjectivity, staking out a position along the intersecting limits of economic, juridical, and political orders" (Ward 2012, 135). Joan

Kee, in tracking both the legal forms invoked by the conceptual/contractual documents that Hsieh used to guarantee his performances and the laws that he ran up against in the course of the performances (for instance, when he was briefly arrested during *Outdoor Piece*), describes Hsieh as probing “the extent to which individuals are defined by the legal and political systems to which they are subject” (Kee 2016, 77).

If Kee’s formulation is necessarily also true of Noland, it nevertheless applies differently. If some of Noland’s legal moves are tendentious (or, tactical), she nonetheless has untrammelled access to making them. Similarly, if in declaring that works that have not been dealt with in ways that meet her approval are not works of art, Noland is negating her own authorship, her subjectivity as artist, it should be observed that this is a different register of choice for her than for an artist of colour like Piper. To begin with, when as Simone Browne argues we should see “surveillance in and of black life as a fact of blackness” (Browne 2015, 6), then any refusal or withdrawal from visibility by a black artist is freighted in ways that immediately challenge Koch’s abstract sociology, but more importantly almost automatically and unavoidably implicate art world politics in larger concerns (so the burden of representation meets its double in the burden of non-representation). Hence the importance of Uri McMillan’s argument that black women performers strategically “become objects, often in the form of simulated beings” that he calls “avatars” (McMillan 2015, 7). For Piper, who early in her career was assumed in her absence to be a white man and in her presence evidently sometimes a white woman (McMillan 2015, 106),<sup>15</sup> her avatars—among them the best-known being the *Mythic Being* (1973–75), Piper in drag as a somewhat androgynous, somewhat racially indeterminate young man with moustache and Afro—were objects to be performed in order to put identity aside in pursuit of freedom. Piper’s avatars represented “a rigorous attempt to render her black female body flexible and polymorphous, and to temporarily escape from it by radical acts of self-estrangement” (McMillan 2015, 102).

For McMillan, this self-estrangement has been central to Piper’s career and it can be seen in relation to Noland’s legal manoeuvres as another form of refusal or negation of subjectivity, not least because Piper deployed it, in/as performance, as a means of resisting the “esoteric shrine” of the gallery and the commodification of her practice (McMillan 2015, 147). Piper also staged a more direct form of refusal that bears some comparison with Noland’s resistance to the exhibition and sale at auction of her work. A short clip of the *Mythic Being*, from Peter Kennedy’s film *Other than Art’s Sake* (1973), appeared in the exhibition, *Radical Presence: Black Performance in Contemporary Art*, curated by Valerie Cassel Oliver, in its original instantiation at the Contemporary Arts Museum Houston in 2012. When the exhibition moved to the Grey Art Gallery at New York University in 2013, Piper withdrew the work, attaching a note to the screen that had previously shown the clip, arguing that her contribution and those of other black artists working in performance would better be seen in multi-ethnic exhibitions that allowed audiences to “measure directly the groundbreaking achievements of African American artists against those of their peers in ‘the art world at large’” (McMillan 2015, 150). The public dispute that ensued between Piper and Oliver brought up significant questions. “Principally,” McMillan observes, whether “an exhibit limited to black performance art is necessarily a ghettoizing affair?”

McMillan allows that Piper's withdrawal might have been both a publicity stunt *and* "a brilliant black performance art piece," but more pointedly wonders whether Piper might have been concerned with the risk that the exhibition reduced her work "to a contested subcategory *within* black art," and placed "more attention on the artist's identity (as a black performance artist) than on the art artifact" she had created (McMillan 2015, 150–51).

Piper's self-estrangement is driven by raced and gendered necessity, more than Noland's refusal of authorship. Yet Piper's withdrawal from *Radical Presence* (she is, after all, an artist of radical absence, as well) provides another version of the manipulation of artworld norms (of exhibition, sale, promotion) seen to be consistent with an existing practice. Piper's disidentification with *Radical Presence*, to borrow José Esteban Muñoz's term, working within and on that framework so as to provide herself with space in which to move, might also provide a model.<sup>16</sup> And where Noland's attack on the market came on the heels of skyrocketing prices for her work at auction, Piper's attack on the exhibition came in advance of her solo exhibition at MoMA, the largest devoted to the work of a living artist at the mothership of institutional legitimation.<sup>17</sup> Both artists seem prepared to give up some aspects of authorship, in order to protect others.

Noland has apparently always been both canny and cautious about the art world, and well aware of the institutional integration of capitalism and sexism.<sup>18</sup> A genealogy for Noland's withdrawal from the art world might then include Lozano, whose withdrawal from the art world and from speaking with women can be seen, contra Koch, to have identified "the interconnected and mutually beneficial systems of patriarchy and capitalism" and then to have rejected "their self-imposed terms of engagement" (Molesworth 2002, 71).<sup>19</sup> But Noland has not travelled as far from the art world as either Lozano or Posenenske. Unlike Posenenske, she has not rejected it in favour of an entirely different field. Rather, if her "unapproved" interview with Thornton is to be relied upon, Noland might in fact "'like to get a studio and start making work' ... but tracking the old work is a 'full-time thing'" (Thornton 2014, 328). Rather than abandoning the field, Noland has been attempting to police some of its operations. In this connection, Gustav Metzger's call for a three-year art strike suggests itself as a partial model—especially as the text was Metzger's contribution to an exhibition he apparently resisted being included in (Oliveira 2016)—as do Piper's prickly relation to and manipulation of art institutions, and Hsieh's efforts at stretching the membrane of art to encapsulate the *No Art Piece*, or especially the *Thirteen Year Plan*. "To bring down the art system," Metzger wrote,

it is necessary to call for years without art, a period of three years—1977 to 1980—when artists will not produce work, sell work, permit work to go on exhibition, and refuse collaboration with any part of the publicity machine of the art world. This total withdrawal of labour is the most extreme collective challenge that artists can make to the state (Metzger 1974, 79).

Although Metzger himself stepped away from making art at times, his call to (lay down) arms might be seen as idealistic and impractical, and found few followers.<sup>20</sup> But since 2001,

coincidentally, Noland has largely conformed to its terms, although perhaps not as part of a collective challenge to the state.

What the art strike, Posenenske's giving up of art in favour of sociological research, and Noland's turn to tracking and attempting to control the circulation of her existing work suggests is that art is not an ontological category, but a form of labour. Piper, in manipulating (if not hijacking) the curatorial platform of *Radical Presence*, focused attention on the institutional racial dynamics that delimit that field of labour. And the former illegal alien then immigrant Hsieh's work, while not autobiographical, nonetheless dramatises a minoritised relation to labour under global capitalism. As against stereotypes that assume that one *is* an artist, despite the practical necessities of training, etc., and more importantly the ways that the field is structured by the same logics of race and gender as the larger society, the various dropouts present art as something that one might be able to choose to do—or prefer not to.

### **Conclusion: Refusal and the Transformation of Labour**

What can be drawn from Agamben's version of Bartleby's (non-) labour (in the less consequential field of art), is the intimate connection between uncertain forms of refusal of the conventions of artistic labour, and potentiality. This is to suggest that while every refusal might not open onto the "indifference of Being and Nothing," the relation between refusal and potentiality is scalable: less extreme refusals than Bartleby's do open onto things being other than they are. This maps onto the logic of both McMillan's avatars and Muñoz's disidentifications, which reframe Agamben's argument for a more immediate politics.

Aside from the artistic actions/non-actions we have seen so far, there are other historical examples. An accomplished painter, Duchamp preferred not to, refusing the "retinal." That brought us the readymade, which delivered an epistemological shock that undermined categories understood to be central to art (authorship, originality, etc.). Subsequently, minimalists refused composition, postmodern dancers refused seduction, conceptual artists preferred not to provide an object at all. And both within and at tangents to these histories, Piper manipulated her own objecthood, and Hsieh alternately hyperbolised the administration of his being and abandoned it.<sup>21</sup> If in each of these instances refusal of one form of labour was made in the name of another, they nonetheless served as attempts to wrest art from the logic of the commodity—which preoccupies Agamben, among so many others; however quickly and inevitably recaptured, they may be seen as attempts to imagine art and by implication "things" as other than they are. As expressions of potentiality in a minor key, these moments were neither necessary nor predetermined.

The transformation of Noland's labour is compelling in this context. Conceived of as "this is not a work of art if I say so," it might look like an inversion of Robert Rauschenberg's famous telegram asserting "This is a portrait of Iris Clert if I say so" (Petrossiants 2018). But that formulation effectively restates a familiar version of authorship (the "I say so"). If Noland's legal activities are geared toward protecting the specificity of her own prior labour (stopping the labour embedded in *Log Cabin*, so to speak, before its refabrication)—which

might be seen as an attempt to refuse history—then the formulation becomes more temporally complicated: there was a *Log Cabin* that Noland made and views as its authentic form, the memory or history of which her recent actions would preserve, so the statement needs to hold together *at once* “I said so then/I say not now.” Noland, that is, is using legal means to renounce authorship in the present in order to preserve it in the past and, as we have seen, a form of authorship that may not even be her own, but its avatar.

The refabricated *Log Cabin* will remain in purgatory (I am tempted to say, somewhere like Bartleby’s walled courtyard), but only as long as Noland’s case goes unresolved. If her suit proceeds and she wins or loses, then the refabricated *Log Cabin* either is not or is an artwork of which she is not or is the author (whatever protestations she makes to the contrary). This is why Noland’s position seems stronger if her case remains untested: as the contract rider between Mueller and Galerie Janssen indicates, even a perceived pattern of behaviour that falls short of a precise threat of legal action under VARA to disclaim her work has already effectively served to remove the refabricated *Log Cabin* from the market, and to bring into question its status and value as a commodity. The contingent status of the bastardised *Log Cabin* enshrines Noland’s original labour, whereas a court finding on her VARA claim risks invalidating it, and, more broadly—whichever way it is decided—delimiting authorship and the value of the work within the realm of property (which might also have the consequence of definitively alienating Noland’s labour). We can, of course, take Noland at her word that she simply does not want anyone to “change, modify, or destroy” her art (Halperin 2018). And we can see her attempt to use “the form of rational decision making presupposed by a liberal legal system” itself as a means by which to refuse the circulation of her works as commodities, or as art at all, and implicitly to renounce a version of her own status as artist. But Noland’s work itself so consistently trips the wires of human subjection to the commodity form that it seems plausible that she might seek to manipulate that “form of rational decision making” as though it were part of a readymade architectural kit. Even its temporary suspension paradoxically opens up the potentiality in which the value of art is liberated from legal constraint as property. The all-too familiar indistinction between people and things in American capitalism has been the subject of much of Noland’s work, and the work of other women, artists of colour and “aliens” makes clear that this complex must be tied to histories of slavery, forced and economic migrations: what must the implications of this be, for thinking through the value of the artist and her labour?

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## Notes

1. Martin Herbert suggests that Noland’s “fusion of ‘60s Pop, ‘70s scatter art, well-founded ‘80s anxiety, and intermittent invoking of Abraham Lincoln, is the endpoint of a country that couldn’t live up to its ideals,” and observes that “[s]he seems to have arrived fully formed but with expansions in waiting” (2016, 103–11, 104, 105).

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2. “The artist considers the stocks to be the first public sculptures in colonial America. For Noland, the stock directly references the ceremonial rituals of public humiliation and shame that occupied both the moral and geographic center of public life,” (James Rondeau cited in Petrossiants 2018).

3. “Sublimated violence threads itself through American society—structurally fostered by classist, racist, misogynistic, anti-queer, nationalist, capitalist, and imperialist impulses (interwoven of course)—and imbues civic and state-to-citizen relations with such imperatives. Cady Noland skillfully engages this condition in her 1989 text, “Towards a Metalanguage of Evil,” in which she documents the specific forms this violence takes in popular culture and in interpersonal relationships, and critiques what she terms ‘the game.’ Comparing prevalent social tendencies guided by self-interestedness to ‘psychopathic’ impulses, Noland brings our attention to the quotidian, but no less cruel, violence of the everyday maintained by ingrained patriarchal and militaristic tendencies,” (Petrossiants 2018).

4. “In 2008, without fanfare, Noland seems to have exchanged a damaged work in the Walker Art Center Collection in Minneapolis for a new one, albeit a piece – an untitled shopping basket containing crash helmets and weaponry – that could have come from the late 1980s (see, for example, *Basket of Action*, 1988) but is dated 2008. Even in producing fresh artworks, Noland is not going to make anything really *new*. Or, to flip that position, there’s no need to, since her critical position has not aged. America has not changed, only become more what she recognized it to be decades before” (Herbert 2016, 108).

5. The artist and keen Noland observer Greg Allen maintains a list on his blog, see “An Anthology of Cady Noland Disclaimers,” updated March 29, 2018, [greg.org: https://greg.org/archive/2015/06/13/an-anthology-of-cady-noland-disclaimers.html](https://greg.org/archive/2015/06/13/an-anthology-of-cady-noland-disclaimers.html). It should be noted that as this essay goes to press, a retrospective exhibition, *Cady Noland*, has opened at the Museum für Moderne Kunst in Frankfurt, which may contain new or refabricated works (Buskirk 2018).

6. See <https://www.moma.org/collection/works/79897>

7. For a summary of the ambit of the case and questions as to whether Noland’s case will fall outside of the relevant statutes of limitations, see Marber (2017, 7–8).

8. Julia Halperin (2018) explains: “The US Copyright Office has repeatedly rejected Noland’s application to register *Log Cabin* as a work of art ‘because the work lacked the minimal degree of creativity to qualify for registration,’ Noland’s lawyer explained in a brief filed earlier this week. Specifically, the Copyright Office had conveyed to Noland’s team that the work’s construction ‘is exactly what one would expect to see in a “classic” log cabin design’—and that its outward appearance would be ‘inevitable’ in any such design. (Noland has filed another appeal with the office, which is currently pending.) The artist, obviously, feels differently. ‘Clearly, the Copyright Office does not understand contemporary art,’ her lawyer wrote earlier this week. *Log Cabin*, he said, was the result of a series of intentional creative decisions. ‘Noland was not designing backyard garden sheds and trying to seek copyright protection for her design. Instead, she made a sculpture that was neither a house, garden shed, or a shelter, and strategically draped her signature American flags over one of the ‘window’ openings.’”

9. Damien Hirst provides an exception here, having sold his own work directly at auction at Sotheby’s, which Noland apparently admired: “She wishes that more artists had such power over the circulation of their work” (Thornton 2014, 325).

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10. For documentation of the Bergen Kunsthall installation and reissued, revised and new texts, see Koch 2015.

11. “Charlotte Posenenske explained her withdrawal from art with her belief that art was incapable of contributing to solving social problems. Instead of leaving it at that, the artist switched to sociology. She apparently thought that social research, by meticulously reconstructing and critiquing widely used methods of the determination of value in economic processes based on the division of labour, would be better suited to establish a more democratic and fair organization of labour than making sculptures. The latter were built in such a way that the viewers, working together, could alter and rearrange them, effectively becoming active users.

They, too, thus represent processes based on a division of labour, in conjunction with a direct invitation to participate. But that seems to have been not enough to Posenenske’s mind. Whether her scholarly work ultimately brought her closer to realizing her aims is a different matter” (Koch 2015).

12. There is sometimes a tendency, that is, to romanticise suicide as continuous with an artistic practice. In the case of Bas Jan Ader, while as an experienced sailor he must certainly have understood the risk of sailing the Atlantic in a small boat. Alexander Dumbadze’s meticulous research in *Bas Jan Ader: Death is Elsewhere* should have put this tendency to rest.

13. As Whyte notes of Agamben, “capitalism remains undertheorized in his *oeuvre*, yet he refers often to *commodification*” (2–13, 127).

14. Herbert adds David Hammons; aside from Piper and Hsieh, one might also consider aspects of the practices of Yoko Ono, Ana Mendieta, and Lorna Simpson, among others.

15. See Piper’s *My Calling Card #1* (1986-90), a card explaining that she was black, which she would give out when people made racist remarks, failing to recognise her as such.

16. “Instead of buckling under the pressures of dominant ideology (identification, assimilation) or attempting to break free of its inescapable sphere (counteridentification, utopianism), this ‘working on and against’ is a strategy that tries to transform a cultural logic from within, always labouring to enact permanent structural change while at the same time valuing the importance of local or everyday struggles of resistance” (Muñoz 1999, 11–12).

17. *Adrian Piper: A Synthesis of Intuitions, 1965–2016*, Museum of Modern Art, New York, March–July 2018, <https://www.moma.org/calendar/exhibitions/3924>

18. Herbert cites Noland’s answers to a questionnaire by Bruce Hainley and John Waters in 2003: “Yes,” Noland wrote. “Artists get ‘screwed’ by their dealers [...] art work and artists also begin with ‘virginity’ but may have ‘deflowerments’ by art world professionals.” They asked her why New York museums are so sexist. Noland pointed out that the Whitney and MoMA each had a Lauder (“as in Estée Lauder, cats and kitties”) on their boards, thus being associated with men’s domineering images of women; the MoMA, among others, ‘has its own DISMAL history “with” women’; and that ‘the last Whitney Biennial had 80 men and 30 women. HOW SICK IS THAT?...I ASSURE YOU IT’S ALL VERY MUCH ABOUT SEX’” (Herbert 2016, 103).

19. Clearly, Molesworth sees analysis of the field at work in Lozano's self-exile, though she converges somewhat with Koch's account in seeing Lozano's refusal to play by the rules as feeling "simultaneously utterly pathological and consummately idealistic" (2002, 71).

20. The artist and variform provocateur known as Stewart Home proposed a more anarchic art strike for the years 1990–93. See Home, <https://www.stewarthomesociety.org/artstrik.htm>

21. It should be noted that Hsieh stopped making new work after the *Thirteen Year Plan*, and has since then managed the reception of his work, if in less contentious ways than either Noland or Piper, including the exhibition of *Cage Piece* at MoMA in 2009, which initiated the museum's performance art series.

## Works Cited

Online sources cited in this article were checked shortly before this article was published in December 2018 and all links were current at that time.

- Adler, Amy. 2009. "Against Moral Rights." *California Law Review* 97 (1): 263–300. <https://doi.org/10.15779/Z380X3H>
- . 2016. "Cowboys Milking: Formerly Attributed to Cady Noland." *The Brooklyn Rail*. March 4, 2016. <https://brooklynrail.org/2016/03/criticspage/cowboys-milking-formerly-attributed-to-cady-noland>
- Agamben, Giorgio. 1993. *The Coming Community*, translated by Michael Hardt. Minneapolis: University of Minnesota Press.
- . 1999. "Bartleby, or On Contingency." In *Potentialities: Collected Essays in Philosophy*, edited and translated by Daniel Heller-Roazen, 243–71. Stanford: Stanford University Press.
- Allen, Greg. 2018. "An Anthology of Cady Noland Disclaimers." <https://greg.org/archive/2015/06/13/an-anthology-of-cady-noland-disclaimers.html>
- Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham: Duke University Press.
- Buskirk, Martha. 2013. "Marc Jancou, Cady Noland, and the Case of the Authorless Artwork." *Hyperallergic*. December 9, 2013. <https://hyperallergic.com/97416/marc-jancou-cady-noland-and-the-case-of-an-authorless-artwork/>
- . 2018. "Cady Noland's Pathological America." *Hyperallergic*. December 11, 2018. <https://hyperallergic.com/474241/cady-noland-survey-museum-for-moderne-kunst/>
- Decter, Joshua. 2015. "No (art) exit." In Alexander Koch, *Gestures of Disappearance*. [http://kunsthall.no/dokmnt/2015/NO5\\_4\\_GoD\\_DIG2.pdf](http://kunsthall.no/dokmnt/2015/NO5_4_GoD_DIG2.pdf)
- Dumbadze, Alexander. 2013. *Bas Jan Ader: Death is Elsewhere*. Chicago: University of Chicago Press.
- Gleisser, Faye. 2016. "Disappearance as Decoy. Adrian Piper's The Mythic Being and the Guerrilla Imaginary" Paper presented to College Art Association panel, "The Power of Disappearance." Washington, D.C. February 2016.
- Grossman, Judd B. 2012. "Suit Against Sotheby's Dismissed Based on Artist's Disclaimer of Authorship." *Art Law Blog*. May 29, 2012. <https://www.grossmanllp.com/suit-against-sothebys-dismissed-based-on-artists-disclaimer-of-authorship>
- Halperin, Julia. 2018. "Art Dealers Strike Back at Cady Noland in an Increasingly Philosophical Legal Dispute About a Restored Sculpture." *Artnet news*. February 5, 2018. <https://news.artnet.com/art-world/noland-log-cabin-lawsuit-1259900>
- Herbert, Martin. 2016. *Tell Them I Said No*. Berlin: Sternberg Press.
- Home, Stewart. 1989. *The Art Strike Handbook*. London: Sabotage Editions.
- Joselit, David. 2013. *After Art*. Princeton: Princeton University Press.

- Kee, Joan. 2016. "Orders of Law in the *One Year Performances* of Tehching Hsieh." *American Art* 30 (1): 72–91. <https://doi.org/10.1086/686549>
- Koch, Alexander. 2011. "Out of Practice, Out of the Picture. An Introduction to Leaving the Art World Behind." KOW 8 (General Strike). <https://kow-berlin.com/events/kow-issue-8>
- . 2015. "General Strike: Opting out of art, a theoretical foundation." In *Gestures of Disappearance*. [http://kunsthall.no/dokmntr/2015/NO5\\_4\\_GoD\\_DIG2.pdf](http://kunsthall.no/dokmntr/2015/NO5_4_GoD_DIG2.pdf)
- . 2015. "Gestures of Disappearance, Once More." In *Gestures of Disappearance*. [http://kunsthall.no/dokmntr/2015/NO5\\_4\\_GoD\\_DIG2.pdf](http://kunsthall.no/dokmntr/2015/NO5_4_GoD_DIG2.pdf)
- Lucas, Kate. 2015. "Disclaimer by Artist Cady Noland Sparks Another Lawsuit." *Art Law Blog*, June 30, 2015. <https://www.grossmanllp.com/disclaimer-by-artist-cady-noland-sparks-another-lawsuit>
- Marber, Sinclair Devereaux. 2017. "Conserved or Copied? Artist Cady Noland At It Again Over *Log Cabin*." *IFAR Journal* 18 (2/3): 6–8.
- Metzger, Gustav. 1974. "Years Without Art." In *Art into Society – Society into Art: Seven German Artists*, edited by Christos Joachimedes and Norman Rosenthal, 79. London: ICA.
- McMillan, Uri. 2015. *Embodied Avatars: Genealogies of Black Feminist Art and Performance*. New York: New York University Press.
- Molesworth, Helen. 2002. "Tune In, Turn On, Drop Out: The Rejection of Lee Lozano." *Art Journal* 61 (4): 64–71. <http://dx.doi.org/10.1080/00043249.2002.10792137>
- Muñoz, José Esteban. 1999. *Disidentifications: Queers of Color and the Performance of Politics*. Minneapolis: University of Minneapolis Press.
- Noland, Cady. 1992. *Towards a Metalanguage of Evil*. Östfildern: Hatje Cantz.
- Oliveira, Manuel. 2016. "Present Art Challenges and Demands: Revolution or Reaction? Turn or Restoration?" In *Act or Perish! Gustav Metzger: A Retrospective*, edited by Dobrila Denegri and Pontus Kynander, 181–84. Torun: Center of Contemporary Art Znaki Czasu/NERO.
- Petrosiants, Andreas. 2018. "Inside and Outside: Cady Noland and the Violence of the Everyday." *The Brooklyn Rail*, February 7, 2018. <https://brooklynrail.org/2018/02/artseen/Inside-and-Outside-Cady-Noland-and-the-Violence-of-the-Everyday>
- Rondeau, James. 1996. "Cady Noland/*Matrix 130*, June 16 – August 18, 1996." Wadsworth Athenaeum Museum of Art, Hartford. <https://thewadsworth.org/exhibitions/matrix/1990s/>
- Thornton, Sarah. 2014. *33 Artists in 3 Acts*. New York: W.W. Norton.
- Ward, Frazer. 2012. *No Innocent Bystanders: Performance Art and Audience*. Hanover: Dartmouth College Press.
- Whyte, Jessica. 2013. *Catastrophe and Redemption: The Political Thought of Giorgio Agamben*. Albany: SUNY Press.

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