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Facial Insufficiency

Political Street Performance in New York City and the Selective Enforcement of the 1845 Mask Law

L.M. Bogad

240.35 LOITERING
A person is guilty of loitering when he:
[...]
4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities. [...]

—New York Penal Code, Offenses Against Public Order

MAYDAY 2001 WRESTLING MADNESS
SUPERBARRIO MAN VS. MULTI-NEFARIOUS BOSSES

The odds may be stacked against us
The money may all be in the BossMan's Hands
But come Mayday we will collectively smack THE MAN down to the MAT
Until he cries UNCLE

—Reclaim the Streets (2001)

The Drama Review 47, 4 (T180), Winter 2003. *Copyright © 2003 L.M. Bogad*

MAY DAY, 2001: Manhattan, outside 61 Fifth Avenue, March for the Rights of Immigrant Workers — Ricardo Dominguez shouts over the city noise, a booming syndicalist circus barker.

"In this corner—SUPERBARRIO! The Hero of the Neighborhood!"

About 500 UNITE Local 169 workers, Community Labor Coalition activists, and their sympathizers cheer as Superbarrio, a Mexican working-class hero in a bright red and yellow wrestling outfit and mask, acknowledges their support. Our New York incarnation of Superbarrio is played by Jerry Dominguez, a union organizer who is also trained in martial arts. He moves gracefully as he prepares to fight, standing in one corner of our "fighting ring"—made from a length of twine held at four corners by performing activists.

Ricardo introduces a series of colorfully costumed Nefarious Bosses and Archvillains to fight Superbarrio: The Unionbusting Thug, Nike Man (aka Phil Knight the Dark Knight), the cell-phone toting Billionaire, the Demonic Dollar, ruthless credit-card wielding shoppers, and La Migra.

Two accordion players provide a dramatic score as Superbarrio battles his constantly cheating foes. The Ref is earnest and focused, relentlessly running around, tensing his entire body, and blowing his whistle. Unfortunately, he is usually on the opposite side of the ring from the action, facing outward. As The Objective Press, I hold up a corner of the "ring," bang a gong to start each round, and, in my reportage, constantly denounce Superbarrio and praise his opponents. I also hit the hero from behind with the gong when he comes close enough. Nevertheless, with the support of the cheering crowd, Superbarrio beats his opponents two or three at a time and triumphs in the end.

This performance is the work of Reclaim the Streets (RTS) activists, who are there in colorful costumes to provide political satire for demonstrators and passersby. This activist group is dedicated to reclaiming increasingly hemmed-in, homogenized, and privatized public space for free expression and carnival.[1] RTS, a movement which started in Britain, has received a surprising (and dismaying) amount of attention from certain select audiences. Nine days after this demonstration, and four months before the murderous Al Qaeda 9/11 terrorist attacks on the World Trade Center and the Pentagon, the FBI put out a report calling Reclaim the Streets part of the terrorist threat to the United States:

> [...] Anarchists and extremist socialist groups—many of which, such as the Workers' World Party, Reclaim the Streets, and Carnival Against Capitalism—have an international presence [...] also represent a potential threat in the United States [...]. (FBI 2001)

On Fifth Avenue, the police are performing their own version of street theatre. There are about as many police as demonstrators, and the police, some heavily armed, form a solid ring of blue around the protesters at all times, whether marching or performing. When marching, we look like a column of prisoners under heavy guard. This wildly disproportionate police presence serves several purposes: to intimidate the demonstrators; to criminalize us to onlookers (we must be very dangerous if Giuliani has decided that it takes this many police to contain us); and to block sight lines so that it takes special initiative for spectators to see how free expression still occurs in the increasingly hemmed-in public space of New York City.[2] This is the Street Theatre of Domination, and it is as effective as it is anti-democratic and expensive to the taxpayer.[3]

Our march starts with a demonstration in Union Square, and it will end outside the IMF building. On the way, we stop in midtown Manhattan to rally and perform outside a place of business known for unfair labor practices (in-

1. Nike Man, aka Phil Knight the Dark Knight, has Superbarrio in a headlock as part of a Reclaim the Streets demonstration on May Day 2001 in New York City. (Photo by Caroline Shepard)

cluding paying its immigrant workers as little as $2.61 an hour). The demonstrators and spectators cheer our performance and we move onward.

At that moment the police arrest one of our performers—Garrett Ramirez, aka El Dolar del Diablo, or the Demonic Dollar. They also charge through the crowd to rough up an Associated Press photographer who took pictures of Ramirez's arrest. We are afraid Superbarrio will also be arrested, so some of us squeeze around him in the crowd and piece together an outfit for him from our spare clothes. He strips off his costume and puts on our clothes in the street...and performs at another sweatshop site later on without his mask.[4] In all, five demonstrators were arrested that day, part of a larger pattern of unprovoked arrests at permitted demonstrations around the city about which several lawsuits are pending.[5]

The arresting officer, Michael Galgano, shield 02671 of the Patrol Boro Manhattan South Task Force, invoked the Mask Law of 1845, a little-known law cited in the opening quote above. Like many of the police officers under the Giuliani administration, he was aware of the precise phrasing of this law and used that phrasing in his police report to justify his arrest:

> [...] (ii) amidst said gathering, the deponent observed approximately five individuals wearing masks that covered their faces; (iii) the deponent observed that said individuals with masks were congregating together in that they were in proximity to each other *and were engaged in some form of performance together*; (iv) said congregation of individuals wearing masks was not a masquerade party or like entertainment where permission was first obtained from the police; (v) the deponent observed that one of said individuals wearing a mask was a man wearing a business suit, a tie with pictures of United States currency on it, and a red mask [...]. (People of the State of New York v. Garet [*sic*] Ramirez 2001; emphasis added)

In short, Ramirez was pinched for wearing a mask on the streets of New York City as part of his costume in a political performance for a legally permitted labor demonstration.[6]

Of the few people who have heard of the Mask Law, many believe that it was passed to prevent the Klan from marching in New York wearing their hoods. While the law was applied against the Klan in 1999,[7] it was originally passed in 1845 to help crush a radical farmers' revolt that had swept through out upstate New York. Armed farmers, protesting the *de facto* feudal rent system of the time, which indentured them for life to a few plutocratic landowners in Albany, donned frightening masks and costumes, called themselves "Indians," and massed by the hundreds to disrupt rent collection and the auctioning off of bankrupt farmers' goods (Christman 1978; Kubik 1997). The frightened State Legislature passed a law forbidding the rebellious farmers from protecting their identities with masks—while thoughtfully providing an exception that allowed the landowning classes to enjoy their masquerade balls. Giuliani—and now Bloomberg—have selectively enforced this law against protesters in the global justice movement at events like the May Day parades and the World Economic Forum protests.

The Anti-Rent War of 1845 was in effect a peasant rebellion by destitute sharecroppers. Their use of masks and costumes preserved their anonymity, one of the tools that James C. Scott calls a "weapon of the weak" (1985:36). Their costumes looked nothing like any Native American nation's clothing, and it is a bitter irony that they took the name of the indigenous peoples they had helped to displace. However, by thus invoking the "Indians" of the Boston Tea Party, they portrayed themselves as good patriots and also recalled the post-Revolutionary working-class revolts that had been crushed as the new American ruling class consolidated power—Shay's Rebellion and the Whiskey Rebellion. As "Indians," they identified with a population on the far margins of the capitalist economy, a frightening "Other" with little to lose in their struggle against the system.

It is appropriate that the Mask Law, after several reforms of the New York Legal Code, has come to rest in the Loitering section of the law. Loitering laws regulate behavior in public space, and forbid activities seen as nonproductive and disruptive (gambling, begging, peddling, sex work, even sleeping). In the context of the corporatization of public space (often described as the replacement of "Main Street" by the mall), loitering laws regularly collide with free speech rights. The original Anti-Rent rebels opposed the monopolization of arable land by the few. Modern day protesters caught by the Mask Law oppose the mallification of public space in New York City. They partake in carnivalesque protest to attempt to reclaim the street for public dialogue—an activity that admittedly and unashamedly has no market value and which may disrupt business-as-usual.

Ramirez spent 30 hours in jail after his arrest, and had to engage in five months of tedious legal battle to defend his First Amendment right to free expression. In an ironic twist of legal jargon, his lawyer, Edward Land, filed a successful "Motion to Dismiss for Facial Insufficiency." It was a supposed insufficiency of facial exposure that had led to Ramirez's arrest on May Day.

A key point in Land's argument was that the officer, in his own arrest report, had contradicted himself when he called our Superbarrio skit "some form of performance" while also claiming it was "not a masquerade party or like entertainment where permission was first obtained from the police" (People of the State of New York v. Garet [*sic*] Ramirez 2001). While failing to modify or overturn the Mask Law, Land was able to show that Ramirez's mask was a part of an "entertainment" and "symbolic political expression."[8] The law's exception for masquerade balls, meant to protect the upscale diversions of antebellum landowners, was interpreted to protect free speech.

However, the law itself was not struck down, and further Mask Law arrests

2. Superbarrio in action against the Billionaire and other villains. (Photo by Diane Greene Lent)

of demonstrators followed at other protests, such as at the World Economic Forum protests in late January to early February 2002. While the courts have not responded favorably to the attempts of progressive lawyers to overturn or modify the law, it was ruled unconstitutional in a recent decision concerning a group of Klansmen. However, the city has appealed the ruling, claiming that the Mask Law is important for maintaining public order, and the legal battle continues (Baer 2002:35–36).[9]

The willfully selective enforcement of a 150-year-old law, first passed to help crush an upstate peasants' rebellion, has raised the social cost of performative protest in the rapidly shrinking, Disneyfied public space of New York City. As RTS organizer Benjamin Shepard wrote:

> It was clear to everyone that the police arrests were designed to turn people away, chilling interest in future protests. Nonetheless activists around the world, aware they are making an impact, continue to link guerrilla theatre with bread-and-butter economic issues and the fight for a revitalized public sphere. (2003)[10]

More recently, restriction on public protest in New York City has extended beyond the Mask Law. On 15 February 2003, an estimated 400,000 protesters from all over the United States converged on New York City to protest the Bush Administration's plans for war in Iraq. However, they were legally denied the right to march in the city, a ruling that was upheld upon appeal.

Despite the dubious justification that the police could not control or afford a march of that size (notwithstanding the precedent of the Yankees' victory parade in 1996 which was estimated at 1 million marching sports fans), it was the ban on marching itself that actually created a great deal of chaos in the city.[11] The protesters were allowed to demonstrate on First Avenue, but no legal path had been set aside for them to get there. Unless they could teleport, they were expected to arrive at the rally site by twos and threes, walking along the sidewalks of the city. The mass of demonstrators was so large that over 70 feeder marches from all over the city converged on First Avenue. However,

3. Disperse at once: A policeman informs frustrated protestors on 15 February 2003 that they must move on. (Photo by Fred Askew)

First Avenue was quickly filled up for miles, with protestors hemmed into cramped, restrictive "pens" or "protest cages" as has become common practice in New York.

There were too many protestors for the sidewalks to contain, and the police were blocking entry to First Avenue. Huge stretches of the city streets, including Second and Third Avenues for dozens of blocks, were soon unavoidably and illegally filled with frustrated demonstrators who had come a long way only to be denied access to the protest assembly. They could not hear the speakers and could not move.

In some places, this led to conflict with the police, who used pepper spray, batons, and horses to try to push the people back onto the sidewalk or to block them as they tried to find a way to First Avenue. In other places it led to a carnival atmosphere, as protesters created their own demonstrations on the spot, swarming the neighborhoods, climbing onto parked vehicles, singing, and dancing. The NYPD was temporarily overstretched by the chaos, a clear result of the refusal to permit an orderly march. Some RTSers, who had had no intention of entering a "cage" in the first place, wheeled their baby-carriage-cum-mobile-sound-system back across town, blasting funk music, picking up dancers and protestors along the way, and wandering the streets at will. An untenable restriction of public space had led to tactical occasions for creative protest. Nevertheless, this regrettable and undemocratic refusal to issue a march permit, made possible in an atmosphere of terror alerts and permanent war, set a worrisome precedent for the regulation of public dissent in New York City.

4. Breaking the Law: Tens of thousands of anti-war demonstrators had no choice but to break the law by filling New York City streets on 15 February 2003, when a march permit was denied. (Photo by Fred Askew)

As elsewhere, protesters and performers in New York are often ringed by walls of police, crammed into "protest cages," and otherwise restricted in their access to audiences, both live and mediated. The use of colorful masks and puppets is a tactic to overcome these restrictions in a creative, nonviolent manner,

5. The author violates the Mask Law at A New York City anti-war protest on 26 October 2002. (Photo by Fred Askew)

and to communicate more effectively through entertainment. It also makes protest more joyous for participants facing intimidation. The state's inventive application of the law, and the prospect of jail time and legal troubles, may serve to deter some carnivalesque protesters, but others will find innovative artful responses.[12] This improvisation will continue as social movements and the state contend the uses and regulation of public space.

Notes

1. For more on Reclaim the Streets, see Stephen Duncombe's "Stepping Off the Sidewalk: Reclaim the Streets/NYC" (2002).
2. A friend of mine from Chicago, who came late, said that, for a split second, he wondered

if the police union was marching for May Day. Then he saw some protesters through the solid wall of blue uniforms.

3. This method of policing has continued. At the Halloween Parade in the West Village on 31 October 2002, many RTSers were in the "Absurd Response to an Absurd War/ Perms for Permawar" contingent. That contingent was the only group lucky enough to be surrounded by a special police motorcycle escort throughout the parade, making it difficult for the activists to give flyers to the crowds.
4. In Superbarrio's wrestling performances in Mexico, it is only the loser of the fight who is unmasked. This is the source of a great deal of drama—will the villains take Superbarrio's mask this time? In New York, we had to compromise this dramatic element in order to continue with the day's performances and avoid jail time for our hero.
5. As Jerry Dominguez said, "This year they brought out hundreds of cops to arrest a few guys in tights. Apparently they're terrified of a peaceful demonstration that brings immigrant workers and their native-born supporters together to demand the right to organize" (in Wilson 2001).
6. As Ramirez wrote:

> It is the tradition of Mexican wrestling, especially Superbarrio, for contestants to wear masks. It is also its tradition to pit underdog working-class heroes against authoritarian villains. I portrayed one of the latter, the Demonic Dollar (el Dolar del Diablo), an archetype of an arrogant member of the wealthy elite, and embodiment of the pernicious influence of money and materialism in social life. [...] I'll admit that I don't have a great understanding of the law, or a record of my case yet, but I was informed by both my public defender and my judge that I committed a mere violation and should not even have been arrested, let alone booked and held for thirty hours. I feel that this was reprehensible action on the NYPD's part. I participated in a peaceful and creative protest only to be made the target of gross repression tactics. An obscure law was enforced without warning, possibly used as an excuse to harass critics of the mayor's friends and intimidate the immigrant community. [...] The anti-mask law itself is asinine and an unacceptable impediment to free expression. (2002)

7. While the Klan have used their masks to commit murder and other atrocities with impunity, they now also claim they need their masks to protect themselves from popular reprisal as a despised, weak group (CNN.com 1999).
8. It also helped that Land was able to show the Assistant District Attorney a videotape of the police beating the photographer that day without provocation. She dismissed the case rather than have that video shown in court (Land 2002).

   Anarchists on May Day 2000 who had been arrested at a demonstration under the Mask Law failed in *their* motion to dismiss because they did not show that their wearing of bandannas over their faces had been part of "a performance or like entertainment." They had "merely" been wearing bandannas to preserve their anonymity for fear of repression as anarchists, a concern made more immediate given the long-standing police practice of videotaping and photographing protestors, and the advent of facial-recognition technology that can digitally record and pick out individual faces in crowds (The People of the State of New York v. Jacques Aboaf et al. 2001). Performance Studies scholars take note: Fitting the law's definition of *some form of performance* may keep you out of jail.
9. The Anti-Defamation League has called upon the New York State Legislature to enact a new law that would make it a misdemeanor to wear a mask in public only when the sole intent is to "threaten or intimidate" (Anti-Defamation League 2002).
10. The NYPD followed the Bush Administration's policy of preemption at a 7 April 2003 protest against the Carlysle Group, arresting over 100 protestors and onlookers, including some RTS members, before any action or civil disobedience had begun. Another lawsuit is pending. For more on this pattern of preemptive arrests of activists in New York, see Lee (2003).
11. As Alex Vitale, criminologist and professor of sociology at Brooklyn College said in his "Open Letter to Mayor Bloomberg":

> The decision not to grant a march permit seems difficult to defend on the grounds of deployment of police resources and concerns about public safety. Major cities all over the world were able to accommodate large marches without

> any major incidents. [...] One of the implications of the denial of the permit is that only marches that are large enough to potentially effect national policy can't be adequately policed. This flies in the face of the core principles of the First Amendment. [...] The decision to deny a march permit ended up costing the city just as much or more in overtime and other expenses as a unified march would have. [...] The policing of a unified march and rally might have involved a major inconvenience to drivers, but it represents much less of a safety and security concern than having lots of angry young people marching in small groups all over Midtown in response to the denial of a march permit. [...] It is my opinion that [the protest] pens serve primarily to isolate and inconvenience participants and serve very little safety function. People should be able to move about the rally, come and go freely, and assemble ahead of time with their friends and co-workers. Each of these was not allowed by police on the 15th. (Vitale 2003)

12. For more information on the preemptive arrest of 64 political puppeteers, and the confiscation and destruction of their puppets by the Philadelphia Police Department to prevent them from artfully protesting at the Republican National Convention of 2000, please see <R2Kphilly.org>.

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Creating High Culture in the Globalized "Cultural Desert" of Singapore

C.J.W.-L. Wee

This essay is dedicated to the memory of Kuo Pao Kun (1939–2002)

Singapore, with a population of 3.2 million (4 million, including foreigners) is distinct from other postcolonial societies in its desire to emulate the advancements of the West while forsaking not only many of the political dimensions of democratic life but also its cultural dimensions. The result is an industrial and commercial understanding of culture; manufacturing and productive institutions have become the collective basis of social life. And yet, de-

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