

## Law in the Work of Felix Gonzales-Torres

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### Recommended Citation

Peñalver, Eduardo M. and Sarmiento, Sergio Muñoz (2017) "Law in the Work of Felix Gonzales-Torres," *Cornell Journal of Law and Public Policy*: Vol. 26 : Iss. 3 , Article 1.

Available at: <https://scholarship.law.cornell.edu/cjlpp/vol26/iss3/1>

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## INTRODUCTIONS

### LAW IN THE WORK OF FÉLIX GONZÁLEZ-TORRES

*Eduardo M. Peñalver\**  
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Within contemporary art, it is well known that Félix González-Torres created elegant, sparse and poetic art works. Through his use of diverse media—photography, drawing, and sculpture (created by using unusual materials such as candy, stacks of paper, or battery operated clocks) González-Torres’ merged the personal and the political; the conceptual and the aesthetic. These aspects of his work have been thoroughly explored by artists, scholars, and collectors alike.

What observers have not examined nearly as fully are the many ways that Félix González-Torres’s art referenced, utilized and challenged legal tools and doctrines in part by complicating the notion and definition of the art object itself. By merging minimal-conceptual art strategies with legal devices, González-Torres’ art works upset and expand our understanding of what constitutes the art object, the ownership, exhibition and dissemination of art, and the public’s relationship to art and art institutions.

Certain art historians are skeptical of conceptual artists’ use of law and legal instruments. For example, in his book, *Conceptual Art and the Politics of Publicity*, Alexander Alberro laments that Seth Siegelaub and Robert Projansky’s artists’ contract of 1971, better known as *The Artist’s Reserved Rights Transfer and Sale Agreement*, did nothing more than facilitate the commodification of ideas. It is quite possible that this skepticism and criticism is based on a superficial understanding of legal doctrines and philosophical jurisprudence. No stranger to the hermetic and the obtuse, the law does not lend itself to facile consumption and understanding of its historical-philosophical origins, let alone its practical applications, by other disciplines.

Félix González-Torres counters this type of cursory approach. An avid reader of literature, art history and semiotic theory, González-Torres

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was well aware of the complexities, power and politics of language. With his art world success, González-Torres became increasingly aware of how legal language could be used to further not only an artist's political beliefs, but also his artistic intentions. Given González-Torres' role as a critically engaged artist and educator, one could argue that González-Torres was aware of other artists who were already employing the written contract to further artists' rights. By his time, artists such as Hans Haacke, Michael Asher, Tehching Hsieh and Adrian Piper were either familiar with or using Seth Siegelaub and Robert Projansky's artist's contract mentioned above. It is very likely that González-Torres studied Siegelaub and Projansky's contract and found in it a platform, a boilerplate, for guaranteeing that his artistic wishes and intentions would be reliably secured. For González-Torres, the legal tool that could most closely enforce his wishes took the form of what is known as a certificate of authenticity.

The fact that little critical attention has been given to the role law and legal instruments played in conceptual art and post-conceptual art practices is precisely why this symposium volume exists: to counter the reticence—one can even say fear—of many art historians and critics (not to mention legal scholars interested in art) to acknowledge the critical and unsettling role that law and legal jurisprudence has had in art of the twentieth and twenty first centuries.

The papers published here attempt to counter this reticence and fear. They also memorialize the spoken word. The six papers and photographic artwork are the fruit of a gathering, *Poetic Justice: On the Intersection of Art and Law in the Work of Félix González-Torres*, which took place on February 11, 2016 at the de la Cruz Collection in Miami, Florida. That event brought together scholars with backgrounds in law, art history and cultural history, as well as collectors and contemporary artists to analyze the work of Félix González-Torres and its impact on the worlds of art and law. The symposium was organized by Cornell Law School; the Art & Law Program; and the de la Cruz Collection.

The artist as infiltrator was, for Félix González-Torres, a key performative role. Having grown up in Fidel Castro's Cuba, and—later—having participated in collaborative political groups such as Group Material, González-Torres expressed skepticism of revolution and direct political action. As he once put it: "I don't want a revolution anymore, it's too much energy for too little."

In his essay for this volume, *Félix González-Torres' Epistemic Art*, Robert Hobbs explores this tension between innovation and pragmatism within González-Torres's work. Hobbs provides a thoughtful overview of González-Torres's art after his departure from Group Material. Focusing more on the artist's intimate relationship to the viewing audience and

the collector, Hobbs explains how González-Torres appropriated American history and its language in order to unveil the subtle-yet-political constructions of sex and gender. Similar to how a lawyer employs performative tactics to bend and manipulate legal systems and adversarial interactions, González-Torres appropriated the language of the art market and legal system in order to guarantee that the relevance of his art works and ideas were well secured.

At the center of Félix González-Torres's infiltration of law is the aforementioned "Certificate of Authenticity." As Joan Kee discusses in her contribution to this volume, these certificates operate simultaneously as proof of authenticity of the work of art, as evidence of ownership of the work, and as a set of instructions that describe the work and provide more or less detailed "instructions for installation." Later versions of the certificates identified themselves as "agreements," and were signed by the artist, the gallery, and the owner of the work. Two examples of certificates of authenticity are included in the appendix to this issue.

Consistent with the notion of González-Torres as an "infiltrator," the significance of his work is not limited to the contributions he made to the tradition of Conceptual art. For both the lawyer interested in art and for the artist interested in law, Félix González-Torres's work, and his invocation of legal tropes (like contracts), generate intriguing puzzles that offer to challenge and illuminate issues at the boundaries of both art and law. In the essays that make up this special issue, a number of interesting questions arise on more than one occasion.

The first is the identity and nature of the work. Consider the work, "*Untitled*" (*Portrait of Dad*) (1991), whose certificate of authenticity is included in the appendix. According to the certificate, the piece consists of "white candies, individually wrapped in clear cellophane. The ideal weight is 175 lbs. In the original and ideal manifestation of the work the candies were poured directly on the floor where two walls meet to create a pile in the corner." Is this work of art the particular candies that sit in the gallery at any given moment? This is certainly possible, although unstable and perhaps superficial. After all, that physical manifestation of the artist's vision is constantly changing as observers of the work take pieces away from it and as the curator replenishes it. Is the work the certificate of authenticity? Possibly, but the certificate itself seems implicitly to deny this when it points towards the expression of the artist's vision in the world through its description and instructions for display. Is the work the vision—the idea—itself, as Joan Kee suggests in her essay? Are the physical objects—the individual candies or the pile of candy—merely visible (and ephemeral) materializations of the underlying work? This is certainly another possibility. Each of these attempts to define the "work" raises new questions of its own.

One important set of questions revolves about what it means to own such a work. For the collector, the identity of the work has a great deal of significance for a number of reasons. Perhaps most obviously, it is likely to have some bearing on the marketability and long-term value of the work. Imagine, for example, that the work described above were simply a particular pile of candies that, once consumed by observers, was gone? Who would pay a significant sum of money for such an ephemeral asset? González-Torres's candy piles have sold for millions of dollars, which suggests that collectors understand the work to be something other than the particular candies on display at any given time.<sup>1</sup> At the other extreme of abstraction, if the work is identified as the idea described in the certificate of authenticity, the legal enforceability of that claim within the law governing intellectual property might make it impossible for the "owner" of the work to exclude others from appropriating it. If the certificate is the work, it may trigger a host of legal questions around the status of that certificate—as property, contract or both. If the work is the certificate, understanding that certificate as property (or contract) might make the work more (or less) alienable and therefore more (or less) attractive as an object of ownership. On the other hand, as Kee observes, González-Torres viewed the certificate as reflecting an ongoing relationship between the artist and the owner of the work. This aspiration finds some confirmation in the contribution by Carlos and Rosa de la Cruz, who plainly enjoyed a relationship of deep intimacy with González-Torres. That intimacy—which could not be alienated—both informs and gives meaning to their ownership of his work, and continues to inform their curation of the González-Torres's pieces in their collection.

Finally, the work of González-Torres raises legal questions whose significance extends beyond the circle of those immediately involved in the transactions over his work. Are there lessons that legal theorists can draw from his work about the concept of "property" and the notion of the "contract"? In their contributions to this issue, Gregory Alexander and Joan Kee suggest that possibility. More concretely, identification of the work with the certificate of authenticity, for example, might problematize the status of the collector as an "owner" because of the restrictions placed on the collector's rights with regard to the work by the artist through the certificate. This is particularly the case if the law views the certificate through a contractual lens. As with software and music, perhaps under certain circumstances, it is more appropriate to think of the

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<sup>1</sup> In 2010, "*Untitled*" (*Portrait of Marcel Brient*) (1997), sold at auction for \$4.5 million. The piece consists of roughly 200 pounds of blue candy piled in a corner. See Kyle Chayka, *Candy Sells for \$4.5 Million at Philips de Pury Auction*, Hyperallergic.com (Nov. 9, 2010), <http://hyperallergic.com/12202/candy-sells-philips-de-pury/>.

collector of González-Torres works as a mere licensee. But perhaps our notion of ownership needs to be broad enough to encompass such limitations. Some scholars have argued for treating ownership of significant artwork as a kind of trusteeship imbued with significant duties to the public.<sup>2</sup> If this is the case, can the constrained prerogatives of González-Torres' collectors shed light on the duties of collectors of other works of art not subject to certificates of authenticity? Do owners of art works—both private and public entities—have any moral or legal obligations to the general public when it comes to exhibiting, owning and deaccessioning art works? And do these constraints on owners shed light on the notion of ownership more broadly or are they only operative within the discrete world of art?

The law of intellectual property is also implicated by an understanding of González-Torres's works, distilled to their essence, as pure ideas. While González-Torres (following other conceptual artists) seemed to view this claim as modest and democratic in its material parsimony, to the intellectual property lawyer, the claim to own an idea (as opposed to the expression or physical manifestation of an idea) is maximalist in the extreme. One who claims to “own” an idea as a work of art claims a right to fence off a domain of human thought, ostensibly free from the limitations (e.g., on duration and scope) built into the law of intellectual property. These fascinating and important legal questions form the preoccupation of several of the pieces that follow.

In his essay, *Objects of Art; Objects of Property*, Gregory S. Alexander deploys González-Torres's art to pose a challenge to an influential theoretical approach to the question of “property.” Under this approach, the institution of property exists in order to facilitate the organization of human activity with respect to scarce resources by clearly allocating rights with respect to those resources in ways that are more easily legible to participants in a legal system than would be the case with a highly customized allocation of individual rights. By attaching property rights to lumpy “things,” the law of property reduces the information processing costs that go along with allocating private rights over scarce resources. All non-owners need to know in order to navigate through a world of private rights is whether they own a particular “thing” they encounter. If they do not, the law's message to them (on this view) is very simple: “keep off or don't touch.”<sup>3</sup>

In elaborating this approach, Harvard Law School professor Henry E. Smith has dubbed property law as the “Law of Things.” As Smith puts it:

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<sup>2</sup> See, e.g., Joseph L. Sax, *Playing Darts with a Rembrandt* (2001).

<sup>3</sup> Henry E. Smith, *Property as the Law of Things*, 125 Harv. L. Rev. 1691, 1693 (2012).

Property is a shortcut over the “complete” property system that would, in limitlessly tailored fashion, specify all the rights, duties, privileges, and so forth, holding between persons with respect to the most fine-grained uses of the most articulated attributes of resources. Property starts by taking advantage of the fact that some connections among people, uses, and attributes of things are more important than others. Property organizes this world into lumpy packages of legal relations—legal things—by setting boundaries around useful attributes that tend to be strong complements.<sup>4</sup>

Alexander argues that the questionable “thingness” in González-Torres’ paper stacks contains valuable lessons for property theorists. González-Torres’s intentional and playful obfuscation of the “thing” that constitutes an individual work of art suggests the need for a theory of things in order to get Smith’s theory off the ground. Alexander contends that, pace Smith, “thing-ness is ambiguous, neither easily affirmed nor denied. In one sense they are stable, for, assuming the public or whomever is responsible does its part by replenishing the supply of paper, the stacks remain. Yet in another sense these works are quite unstable. Their very existence depends upon the cooperation of someone other than the artist.” With the stack’s shifting height, disappearance and replenishment, at what point can we say that the stack of paper is *the* stack of paper? Keeping in mind that the stack diminishes as every viewer takes, free of charge, a piece of paper or two, at what point can we say that the artwork is a “thing,” if it is even a thing at all?

For Alexander, the question of what is the “thing” in many of González-Torres’ artworks is complicated by González-Torres’ invocation of the public and private divide. The museum’s care—in fact, its duty—to replenish candy and paper is juxtaposed with González-Torres’ invitation of the public to interact with the art works; to negotiate a space of give-and-take. For Alexander, both the museum’s and the public’s role vis-à-vis González-Torres’ work highlights another key factor within theories of property: that of responsibility. While some might view this invocation of duty as antithetical to ownership—and therefore suggestive of another kind of relationship between artist and collector—for Alexander, property as an institution is always a blend of rights and duties; prerogatives and responsibilities.

Joan Kee’s *Félix González-Torres on Contracts* takes a more poetic and philosophical approach to the written agreement, arguing that for González-Torres the certificate of authenticity, i.e., the contract, was not

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<sup>4</sup> *Id.*

just an instrument of private law, but also a work on paper that documented his ongoing and perpetual relationship to the individual, (the collector), and to the general public (the art museum). For Kee, González-Torres' use of the contract was guided, to many a contract scholar's chagrin, by ambiguity and trust. Through his use of suggestive language, González-Torres aimed at leaving narrow-yet-ample room for interpretation on behalf of the collecting entity. The collector or curator could make certain choices as to the display, care and conservation of the work, but so long as those choices remained within the purview of González-Torres' contract.

The concepts of thingness and responsibility are extended by Sonia K. Katyal in her analysis of the public good in González-Torres' art works. In her essay, *The Public Good in Poetic Justice*, Katyal urges us to understand property not only as a thing, but rather as a collective experience: a collective experience that is inherently a political act. Katyal proposes that we interpret "public good" through González-Torres' work in three ways: first, by noting how González-Torres' work questioned notions of a singular intellectual property; second, by engaging his art in a philosophical and utopian sense; and third, by recognizing how the public good "personifies" González-Torres' legacy. In effect, Katyal adds to the beauty and complexity in González-Torres' work by not only broadening the interpretations of his work, but also, and quite poetically, humanizing our understanding and application of law.

But, lest we get too comfortable with the beauties of public participation, Martha Buskirk reminds us that just as there is a good in the public, there is the potential for public wrongs. In her essay, *Public Experience/Private Authority*, Buskirk notes that most post-studio art works<sup>5</sup> must be read through the rise in the use of private documents, in particular, certificates. Given that most post-studio art allowed for purchasers and collectors to assemble and display such art works in multiple formats, post-studio artists were faced with challenges as to the proper display of their art works and, more problematically, whether it was the artist or the collector who should ultimately decide the art work's fate. For Buskirk, the use of certificates profoundly changed art making in the latter half of the twentieth century, for not only did certificates address an artist's demands concerning the exhibition and dissemination of their art works, they also helped launch, propel and strengthen artists' rights.

González-Torres' interest in play, proliferation and randomness is echoed by artist Jim Hodges's photographic contribution to this collection. Inserted between pages of each journal, in random fashion, is a

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<sup>5</sup> Post-studio art works are idea and research based art projects, not necessarily always objects, that are generally created on-site and/or through industrial means of production. The use of found and ready-made objects is also quite common.



photograph with a back label that reads, “*framing the possibles . . . the table top studio of FGT, (date and photographer unknown) JH 2016.*” For this volume, Hodges produced a limited number of these photographs, three hundred copies to be exact, mirroring the general print-run of the *Cornell Journal of Law and Public Policy*.

The limited number of photographs mirrors the limitations in and of González-Torres’ work. With González-Torres’, the price of his art works limit who can actually “own” them, i.e.- the certificate of authenticity to a particular art work. However, Hodges’s limited edition photograph for this journal is physically limited—only the lucky ones that obtain one of the three hundred copies of this journal will “own” a Jim Hodges art work.<sup>6</sup> But perhaps not all of González-Torres’ works, at least those governed by a certificate of authenticity, were to be “owned” only by those interested in González-Torres’ art work as a commodity. As noted above, the answer to what constitutes “the work” is obscured by the multiple linguistic, legal and artistic parameters engaged by González-Torres. For those interested in the poetic aspects of “the work,” the candies and posters *are* the work. For those interested in financial speculation and asset accumulation, the certificate of authenticity *is* the work. And, still, for those focused on the complex concepts of and to González-Torres’ work, the idea *is* the work. Here, Conceptual art comes full-circle—from art as idea to idea as commodity, back to the idea as art.

And what of the image captured by an unknown photographer, with date also unknown? A photograph that frames an image of four unknown individuals, the residue of, presumably, a dinner or late night drinks (a game of poker, perhaps), and plastic figurines of Sylvester the Cat and Santa Claus. But why exclude the faces of the individuals? Why focus on the back-side of a pop-culture plastic figurine that points to our right with his index finger? Why are the faces of all figures within the frame obscured? How many individuals are in the room, and what are they discussing and doing? By posing these questions, Hodges poetically compares the framing in photography to the act of framing within the law. Do we read only within the frame, or do we expand our reading outside of the four corners? And what governs our methodology, our sources, and to what extent?

As every first-year law student quickly realizes, the pleasure to be gleaned from the law resides not in *the* answer (for there is none), but rather in the rabbit hole maze created by the temporary postulation, “it depends.” Like many first-year law classes, Félix González-Torres’ art works are, fundamentally, Socratic. Does González-Torres’ art work further conceptual art or perpetuate the commodification of culture? Do his

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<sup>6</sup> It is unclear whether Jim Hodges considers his limited edition photograph for this journal an artwork. Does it matter?

collectors and agents guarantee his relevance within the canon of contemporary art or do they, instead, facilitate and perpetuate financial speculation in art? Is his artwork memorialized at the expense of its ephemerality and transience? And perhaps more importantly, are the discourses of art and law to be merged and overlapped? It depends.

