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The Public Good in Poetic Justice

Sonya K. Katyal

THE PUBLIC GOOD IN POETIC JUSTICE

*Sonia K. Katyal**

I have learned much about the meaning of the word "indestructible" from studying the work of artist Félix González-Torres. In 2005, I saw one of his pieces for the first time. My father had just died and my mother was now alone. To ease our sadness, we went to the Art Institute of Chicago. The work was titled *"Untitled" (Portrait of Ross in L.A.)*, and it consisted of a pile—seemingly endless—of cellophane-wrapped candies, all in glistening primary colors, each one more shiny, glorious, and sweeter than the next. Of course, the work was far from endless. Or maybe it was. As I later learned, the candies had been carefully calibrated to match the one-hundred-and-seventy-five-pound body weight of Ross Laycock, the artist's life partner, when he was healthy. The candies were meant to be replenished daily, as a kind of metaphor for endless love and the perpetuity of life. It was made in 1991, the same year Ross died of AIDS.

As González-Torres taught us, mourning is a deeply personal emotion, but *"Untitled" (Portrait of Ross in L.A.)* makes grief a simultaneously individual and collective experience; something bittersweet, intimate, and subtly political. My mother and I unwrapped our candies, placed them in our mouths, and watched as others did the same; and through these acts of consumption and replenishment, González-Torres' great love, Ross, was reborn, again and again. His message was made all the more notable because the work was made by a Cuban gay man who, at the time, did not have a legal right to privacy, let alone the right to marry, and certainly didn't have access to the same level of health care—as an HIV-positive man—that the rest of society enjoyed. Years after his death, González-Torres would represent the United States at the Venice Biennale, a fitting reminder of how universally prescient his works—and his words—had become.[1]

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* Chancellor's Professor of Law, University of California at Berkeley. Sincere thanks to the de la Cruz family, especially Rosa and Carlos de la Cruz, Amada Cruz, Pati Hertling, Jim Hodges, Joan Kee, Miwon Kwon, Ibette Yanez, Simone Ross, Sergio Sarmiento and particularly Dean Eduardo M. Peñalver. Thanks also to the wonderful research assistance of Ellen Gilmore and Amy Egerton-Wiley. This Article is dedicated to the memory of Ross Laycock, who inspired so much of the artist's work.

[1] Carol Vogel, *For Venice Biennale: Félix González-Torres*, N.Y. TIMES (April 7, 2016), http://www.nytimes.com/2006/04/07/arts/design/for-venice-biennale-Félix-Gonzáleztorres.html.

Many of us who love and follow contemporary art are well acquainted with González-Torres, an artist whose personal, affectational, and cultural identities quietly infused his minimalist works, rendering them simultaneously deeply emotive and unerringly political. There is, however, another reason why the work of Félix González-Torres is so meaningful to me and that is because his legacy, created so many years ago, essentially affected the path of my own research in response. His work, in many ways, illustrates why it is so important to study the relationships between art and property, between audience and artist, between the visual image and narrative form, between reality and the ideal. His work directs us to study the text or the picture that is created and the meaning that it is supposed to produce—and the space between how that meaning is communicated and how that meaning is received by the audience.

This Article focuses on that space—the space between the artist's intent and the audience's interpretation—because I believe that the work of Félix González-Torres carries important lessons for those of us who care, not just about social justice and conceptual art, but who also care about creating a world that enables a multiplicity of interpretations, particularly in the age of new media. That, I think, is the purpose, in many ways, of law itself—to offer us a universal vision that each of us, in our way, gets to interpret and then to express for ourselves what that meaning represents.

In this Article, I want to discuss Félix González-Torres' work in relation to a concept that we often focus on in property law, the idea of a "public good," and how it can relate to the powerful conceptual work that his artistic legacy offers us. Here, I want to suggest using the concept of a public good as a metaphor for thinking about Félix González-Torres' work in three potential ways. First, using an economic framework to demonstrate the ways in which his work underscored and challenged the notion of a singular intellectual property. Second, as I argue in Part II using a nonmarket framework, his work also illuminates the concept of a public good in a philosophical sense because his work illuminates the kind of ideal, utopian terrain that law often strives to achieve. Third, I want to highlight González-Torres' work, not in terms of how his work represents a public good, but rather how a decentralized notion of a public good, in both moral and market terms, personifies the legacy of the artist himself.

I. THE ECONOMY OF MEMORY

In the field of economics, a public good is defined as something that is both nonexcludable and "non-rivalrous" in the sense that individuals cannot be effectively excluded from use of the good, and use by one

individual does not reduce the availability of the resource to others. The idea is that a resource is essentially unlimited by nature, and thus, under certain circumstances, the law must intervene in order to protect the incentives to produce the public good.[2]

What are some examples of economic public goods? Lighthouses, street lighting, education, public art, flowers in a neighboring garden, and knowledge—things a person can view and enjoy, without depriving others from the same experience. Importantly, intellectual properties are also framed as public goods because one person's consumption of a song or a piece of art does not deprive another person of the ability to consume the same good. At the same time, however, we need legal protection of some public goods in order to maintain the incentive to produce them. In the case of copyrighted goods, if everyone could simply copy songs, art, or other works from other individuals, fewer people would choose to create because the creators would not be able to recoup their production costs. Hence, copyright law intervenes in order to enable creators to price their creations and to protect the intellectual properties of their works of art.[3]

In many ways, I would argue that some of González-Torres' seemingly endless works of public distribution, particularly *"Untitled" (Portrait of Ross in L.A.)*, discussed at the start of this Article, operated in the same way as a classic, economic public good because their actual 'thingness' is directed to never be depleted, and because of their unlimited, non-rivalrous nature. These works are nonrivalrous because the artist instructed the candies to be constantly refilled and distributed to the viewing public. At the same time, the distributive nature of the work also decentralized the audience's experience of the art, leading to a multiplicity of interpretations.

The endless nature of González-Torres' works also represented a kind of critique of the concept of originality and questioned the value of reproduction, even while his works were premised on the very notion of reproduction for their inspiration. Here, González-Torres was deeply influenced by the work of Walter Benjamin who, in a famous essay entitled *The Work of Art in the Age of Mechanical Reproduction*, critiqued the idea that a reproduction was a true copy of an original.[4] "Even the most perfect reproduction of a work of art is lacking in one element," Benjamin wrote, "its presence in time and space, its unique existence at

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2 *See* Mark Lemley, *IP in a World Without Scarcity*, 90 N.Y.U. L. REV. 460, 466 (2015).

3 *See id.*

4 *See generally* Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*, *in* ILLUMINATIONS: ESSAYS AND REFLECTIONS (Hannah Arendt ed., Harry Zohn trans.) (1969).

the place where it happens to be."[5] Benjamin argued that something significant changes regarding the original when something is copied.[6] Not only does the context change, but also something is lost, and something is gained.

It is precisely that element—what is lost, what is gained—in the space between an original and a copy that Félix González-Torres valorizes and pulls apart so brilliantly. The artist has spoken about how Benjamin's work led him to argue that the work does not really exist; that works are destroyed because there is never an original.[7] Consider, for example, his work creating stacks of text-based art, pictures and frames on endlessly reproduced stacks of paper. In one of his works, *"Untitled" (Death by Gun)*, he lists all of the victims of gunfire during a single week period in a stack of prints.[8] Other early stacks, like those entitled *"Untitled"* (*Veteran's Day Sale)* and *"Untitled"* (*Memorial Day Weekend)*, González-Torres explains, were actually meant to entirely disappear, but could be reprinted at some later point. "To eliminate these works," it has been written about González-Torres' art, "is to complete them, and yet they are endlessly reproducible. What is original is not unique; a sculpture is an edition of prints, an installation is ingestible."[9]

The stacks actually came from the impetus to make a true public sculpture; the early stacks, for example, were motivated because, as the artist has said, "I was trying to give back information."[10] For him, the idea was that the stack of papers demonstrated that "you could never have an original—that you could show this piece in three places at the same time and that it would still be the same piece."[11] The pieces were designed to be public art in the sense that they were meant to be given away, but also to challenge the art market's own business model in the process.[12] While González-Torres was obviously moved to create art that was a critique of the notion of originality, the works also demonstrated a kind of indestructibility because his pieces were meant to be endlessly

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5 *Id.*

6 *See id.*

7 *See* HANS ULRICH OBRIST, LIVES OF THE ARTISTS, LIVES OF THE ARCHITECTS 114 (2015).

8 *See* Amada Cruz, *The Means of Pleasure*, *in* FÉLIX GONZÁLEZ-TORRES 52, 55 (Julie Ault ed., 2006).

9 *Id.*

10 Robert Storr, *Félix González-Torres: Être un Espion*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 229, 235 (quoting González-Torres).

11 OBRIST, *supra* note 7, at 147–48.

12 *See* Nancy Princenthal, *Félix González-Torres*, *Multiple Choice*, 48 ART + TEXT 40 (1994) ("[It was] about trying to be a threat to the art marketing system, and also, to be really honest, it was about being generous.").

duplicated.[13] Since there was effectively no original, except for the certificate of authenticity, the work could never actually be destroyed.

Therefore, in some ways, his works illustrated the notion of an economic public good—something that can never be depleted, something that is endlessly non-rivalrous, and something that is endlessly reproducible. "An individual piece of paper from one of the stacks does not constitute the 'piece' itself," he explained, "but in fact it is a piece."[14] The only thing that *was* original was the certificate of authenticity behind the work. "If I am trying to alter the system of distribution of an idea through an art practice it seems imperative for me to go all the way with a piece and investigate new notions of placement, production, and originality," he once explained.[15] In other words, González-Torres' works were meant to be endlessly duplicated and, because of this quality, unending.[16]

Like the artist himself, who functioned as a commodity producer as well as a quietly emotive artist, his work operated to complicate both economic and noneconomic markets simultaneously. As I have suggested, González-Torres once referred to the stacks as a foundational challenge to the art market because they could be given away.[17] At the same time, however, these works represented a kind of re-interpretation of that art market due to his creation of a (seemingly) original piece that was made up of so many copies.[18] On one hand, as Russell Ferguson points out, a sheet of paper from a stack is worth little in material terms, but it is invaluable in other, intangible ways.[19] The space between these two markets—the economic value of the piece and the parallel world of the worthless-yet-invaluable copy—were meant to operate separately in dual contexts, but they also silently functioned to challenge one another. It's more threatening, González-Torres once explained, for someone like him to be operating as part of the market, "especially when you consider that yes, this is just a stack of paper that I didn't even touch. Those contradictions have a lot of meaning," he once stated.[20]

But there was a deeply emotional purpose behind his work as well. On the stacks, and the fact that the artwork was largely given away, González-Torres said that the process was a rehearsal of loss, a rehearsal of

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13 *See* Russell Ferguson, *Authority Figure*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 81, 101.

14 *Id.* at 83.

15 Tim Rollins, *Excerpts from an Interview with Félix González-Torres*, TUMBLR: ORIENTEERING (Dec. 2011), http://orienteering.tumblr.com/post/14659295748/excerpts-from-an-interview-with-Félix.

16 *See* Ferguson, *supra* note 13, at 101.

17 *See* OBRIST, *supra* note 7, at 147–48.

18 *See id.*

19 *See* Ferguson, *supra* note 13, at 84.

20 David Deitcher, *Contradiction and Containment*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 317, 318 (citation omitted).

his worst fears in order to lessen them, referencing Freud. "The idea of pieces being endless happened," he explained, "because at that point I was losing someone very important."[21] He made the first stacks in 1989, a year after Ross' diagnosis.[22] At that time, González-Torres explains, "I wanted to lose everything in order to rehearse that fear and just confront that fear and perhaps learn something from it."[23] On this point, one critic writes the renunciation of the self and the allowance of the work's destruction are also "forms of self-preservation, of self-control, and of safeguarding the work."[24]

In other words, in order to regain self-preservation in the face of loss, González-Torres created a work that exemplifies the very nature of loss itself, forcing himself to lose, over and over again, in order to create something that survives in perpetuity. Like *"Untitled" (Portrait of Ross in L.A.)*, the artwork is continually replenished long after its subject has passed away. At the same time, there was something deeply affectionate and hopeful about González-Torres' love for Ross, and his love for sweetness and, of course, his depiction of love itself—which, as the endless supply of candies demonstrated, illustrated a love that would never die, a love that was indestructible, even in the face of death.

II. THE ECONOMY OF MULTIPLICITY

Nearly thirty years ago, a prominent media studies professor, John Fiske, coined the term "semiotic democracy" to describe a world where audiences freely and widely engage in the use of cultural symbols in response to the forces of media.[25] Although Fiske originally referenced the audience's power in viewing and interpreting television narratives, today his vision of semiotic democracy has become an important ideal cited by scholars who imagine a utopian relationship between law, the interpretation of imagery, and democratic culture.

In this section, using the notion of a semiotic democracy, I argue that Félix González-Torres' work is notable precisely because it further captures the intersection between these two meanings of a public good—the economic model and the philosophical one. As previously suggested, the economic "endlessness" of the work illuminated the concept of an economic public good; but this also feeds into a philosophical conception. Here, in the philosophical sense, the conceptual nature of the work

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21 Robert Nickas, *Félix González-Torres: All the Time in the World*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 39, 45.

22 *See id*.

23 OBRIST, *supra* note 7, at 148.

24 Rainer Fuchs, *The Authorized Viewer*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 105, 115.

25 *See* Sonia Katyal, *Semiotic Disobedience*, 84 WASH. U. L. REV. 489, 489–90 (2006) (defining Fiske's "semiotic democracy").

offers us a multiplicity of interpretations that benefit all of us in society, underscoring the notion of a semiotic democracy.

González-Torres' focus on the viewer and the audience leads to a second illustration of the public good, specifically, the way in which González-Torres enabled a diversity of interpretations of his work, both substantively and quantitatively. In philosophical terms, a public good means something entirely different than in economic terms: it appears in philosophical literature as more like the "public interest" or the "common good."[26] The basic idea, here, is that there is a shared benefit at a social level—something that all of us can enjoy and derive benefit from. Whereas the previous section drew on the idea of a public good to underscore the quantitative conceptual richness behind the unlimited, nonrivalrous nature of González-Torres' work, this section demonstrates the qualitative difference between his work and that of many other conceptual artists who were working during this period.

While there are many accounts to what comprises the "common good," and a vast literature exploring this very question, a few strands of that analysis are relevant here. The work of Félix González-Torres illuminates the shared space between a philosophical and economic account of the common good, precisely because of the artist's ability to traverse the boundaries between an individual and a collective sense of the common good.

Of course, there are many competing and overlapping definitions of the "common good." The central notion that ties many of these ideas together is what Louis Dupré has described as the "good proper to, and attainable only by, the community, yet individually shared by its members."[27] This is a philosophical ideal, as opposed to an economic one. Aristotle described it as "the common interest;"[28] Jean Jacques Rousseau described it as "the common good," referring to the general will that inheres in a political community.[29]

While philosophical conceptions of a "common good" range from ones that focus on substantive visions, and others that focus on more procedural ones, one central area of tension involves whether a "common good" must be a shared, singular vision, or whether it can be a decentralized set of interpretations. Consider an example: one central area of tension in politics emerges from the oppositional pull of two forces. The first is what Richard Ford has defined as "interest group pluralism," a political model which lacks a central normative ideal and instead oper-

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26 MARIO BUNGE, TREATISE ON BASIC PHILOSOPHY 375–76 (1989).

27 Louis Dupré, *The Common Good and the Open Society*, 55 REV. OF POL. 687, 687 (1993).

28 ARISTOTLE, POLITICS 70 (Benjamin Jowett trans., 1999).

29 JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 54 (Jonathan Bennett ed., 2010).

ates much like the conventional marketplace.[30] Here, the government remains politically neutral and responds to citizen demands, much like a marketplace. Ford quotes from Iris Marion Young: "Various interests compete with one another for people's loyalties, and those that amass the most members and money have the market advantage. . . . [Pluralism] makes no distinction between . . . selfish interests and normative claims to justice."[31]

In contrast, Ford describes a model premised on republicanism as a notion of universal citizenship based on an idea of interconnectedness; one that also defines the common good as a more singular sense of shared purpose, one that does not support "organized disadvantaged groups as separate political entities."[32] A somewhat similar view, one might argue, is Thomas Aquinas' view of the common good, which has been described as the view that goods that are "common in a strong sense: as perfecting the whole community, they belong to no one in particular, but the community itself."[33]

In many ways, I would argue that the sweeping vision offered by González-Torres marks a pathway between these two poles—one that aspires to a sense of universal citizenship, but one that also recognizes the need for a plurality of individual interpretations. As Gregory Alexander, one of the participants in this symposium, has written, "citizenship is a matter of interacting with others for the sake of the common good."[34] Much of this vision of the common good is attributable to the way in which the artist was deeply committed to exploring—and facilitating—multiple interpretations of an ideal world in his work. Here, the individual and common good are both goals to be sought after in tandem with one another, rather than at odds.[35] As one philosopher noted, "The public welfare is therefore that which fosters a secure life both universally and in each particular person," requiring a harmonization of the individual with the collective version of goodness.[36]

Even though his visions were so universal, so emotive, and so sweeping at the same time—there is also a tremendous, individuating semiotic democracy to what was left unsaid. Consider, for example, the directions for installation of his works. In many of his works González-

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30 Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1888 (1994).

31 *Id.* (quoting Young).

32 *Id.* at 1889.

33 Mark Murphy, NATURAL LAW IN JURISPRUDENCE AND POLITICS 73 (2006) (describing Aquinas).

34 Gregory Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 771 (2009).

35 *See* Brian M. McCall, *The Corporation as Imperfect Society*, 36 DEL. J. CORP. L. 510, 540 (2011).

36 *Id.* (citing John of Salisbury).

Torres noted that whoever owned the piece gets to decide how the work will be installed, enabling the gallery, installer, museum, or historian to decide how the work will be presented for the time that it is present. In one interview, he recalls,

> [W]hen I send this stuff to museums, art handlers and historians have a hard time deciding what to do with them. They keep faxing us back saying, "What do we do with this thing?" and we keep faxing them back saying "Whatever you want!" and they just don't believe it. They say, "This cannot be true!"[37]

Elsewhere, he said, "I see myself almost like a theatre director directing a very spontaneous performance," noting that when someone takes a paper, or eats a candy, that creates the conditions for a quiet kind of collaboration between the viewer, the artist, and the subject of the art.[38] It is actually the viewers—who both construct and and are constructed by their surroundings and categories of identity—that, either actively or passively, help us to interface between the private and public sphere, and show us, in other words, the true nature of a philosophical public good.[39]

For the artist, this kind of external participation was absolutely essential for the work to exist. "I need a viewer," he stated. "Without a viewer, without a public, this work has no meaning; it's just another . . . boring sculpture sitting on the floor, and that is not what this work is all about," he said.[40] At another point, he stated,

> I don't want to make art just for the people who can read Fredric Jameson sitting upright on a Mackintosh chair. I want to make art for people who watch *The Golden Girls* and sit in a big, brown La-Z-Boy chair. They're part of my public, too, I hope. In the same way that that woman and the guard are part of my public.[41]

It is this liminal state between audience and artist, I would argue, that characterizes—and actually recodes—the notion of a nonmarket public good. At one point, in an interview, he says, "I always thought that there was nothing new under the sun. Except that it is not about

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37 OBRIST, *supra* note 7, at 149.

38 OBRIST, *supra* note 7, at 153.

39 *See* Fuchs, *supra* note 24, at 106.

40 Ferguson, *supra* note 13, at 84.

41 Robert Storr, *When This You See, Remember Me*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 1, 15 (citation omitted).

being new, but about who makes it better. I like that more," he said, in an oblique reference to competition and a critique of originality.[42]

Instead of a typically liberal focus on property, originality, and individualism, González-Torres emphasized what Russell Ferguson has called "synthesis and recombination" alongside the model of "mutual exchange." This is where the viewer, through various acts of acceptance and receipt, becomes part of the art itself.[43] At one point, the artist was reportedly disturbed to see pieces from his stacks discarded after an opening. To him, such actions called into question whether or not the viewer was actually participating in the work, and this participation, for the artist, was absolutely essential for the work to exist. A commentator wrote: "Multiplicity flies in the face of uniqueness and also of authority: as those numerous sheets flutter out into the street the artist is losing control of the piece—its physical substance and its meaning."[44]

These points are deeply relevant to anyone concerned about the politics behind the creation of intellectual property. It would be easy to argue that just as González-Torres critiqued the idea of an original, he was also critiquing the idea of who creates authorship. Or one might argue that the artist was also, implicitly, raising the question of who is the actual artist—himself, the public, or the installer of the work? But these claims run the risk of being too reductive to the notion of authorship itself. One author, Rainier Fuchs, has argued that it would be too limiting to view González-Torres' work as a sort of negation of the notion of authorship.[45] Instead, he argues that it is better to view the artist as offering us a new, revised version of authorship—an authorship that is premised on participation but does not dispense with the idea of the author entirely.[46]

I would echo this view and argue that although the artist did not challenge the notion of authorship directly, he certainly used his work to play with the notion of originality. Much of his work reworked the notion of advertising and consumption to use the concept of originality to focus on the way that identities circulated in modern contemporary culture. By reworking classic imagery, González-Torres also, ironically, forcibly reclaimed the perspectives of those who are often missing from mainstream representations. At the same time, somewhat paradoxically, he was preoccupied with freedom; one author writes about transgressing "the notion of control in favour of conditions which promote the partici-

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42 *Id.* at 13.

43 Ferguson, *supra* note 13, at 94.

44 Susan Tallman, *The Ethos of the Edition: The Stacks of Félix González-Torres*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 123, 127.

45 *See* Fuchs, *supra* note 24, at 105.

46 *See id*.

pant's freedom in the symbolic construction of the work."[47] For example, in his work illustrating the book *Out There: Marginalization and Contemporary Culture*, González-Torres reproduced a series of advertisements and found images—vintage postcards, Eartha Kitt, and images from the Manual Alphabet of American Sign Language.[48] The cover of the book, however, was a series of American flags blowing in the wind, painted by the late artist Brian Buczak who died of AIDS on the Fourth of July, 1987. As Ferguson points out, the artist's "choice of this image shows again how ready he was to lay claim to a symbol of authority and to transform it."[49]

As I've suggested, the artist's critique of authorship through appropriation is deeply relevant for property and intellectual property scholars. Yet his work is also illuminating for social movement scholars as well. Others have written about how González-Torres' most poignant acts of performance were reminiscent of Guy Debord's *Society of the Spectacle*, which advocated for interventionary tactics to break our romance with image and illusion.[50] It was, interestingly, González-Torres who asked the question of how truly "public" our public spaces might be in the face of corporate sponsorship.[51] On one occasion, at a public lecture about his work in Detroit, the artist decided not to show a single slide about his work. Instead, he recited a list of sobering facts about the worsening social conditions during the Reagan and Bush years. During the presentation, the artist displayed a publicity shot from the series *Dynasty* that kept projecting, and then jamming, again and again as the talk continued.[52] Robert Storr recounts:

> Doubtless aware that he was surrounded in that city by the dismal ruins of the machine age and working-class dreams that were his casualty, he chose instead to project a single image over and over again at the rhythm typical of such presentations, an image paradigmatic of the next stage of capitalism, namely the information age. . . . His weapon of choice, however, was the not verbal protest or theoretical exegesis, but an at first wry then abysmal representation of a single promotional photograph made for one of the media's most successful campaigns for selling

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47 Monica Amor, *Félix González-Torres: Towards a Postmodern Sublimity*, 30 THIRD TEXT 67, 69 (1995).

48 Ferguson, *supra* note 13, at 97.

49 *Id.*

50 *See also* Katyal, *Semiotic Disobedience*, *supra* note 26, at 517; *cf.* Storr, *supra* note 41, at 16 (discussing González-Torres' efforts to destabilize the standard art world).

51 *See* OBRIST, *supra* note 7, at 113.

52 *See* Cruz, *supra* note 8, at 52.

> the illusion of having it all. Those in attendance laughed then squirmed, then got it.[53]

Here, González-Torres was especially alert to the fact that the "primary product" of advanced capitalistic desires isn't really about the actual things that its industries produce—and here, the author referred to consumer goods, entertainment, sex, or culture—but rather about the "craving for things that exceed any definable need or wish."[54] Elsewhere, the artist noted, "[s]ymbolism sells. History doesn't."[55]

As he presciently observed, the danger of using consumptive imagery to satisfy these deeper cravings, however, risked that the public would become less and less informed as a result.[56] For example, although González-Torres only lived to see just the beginning of the Internet era, in 1990, he presciently wrote of the dangers of the "new technologies of information," noting that "they fail to guarantee an informed or active public, that instead of arguments, we have sound bites."[57]

As a result, against the backdrop of a less politicized public, or maybe *because* of that perception, the artist produced works that were deliberatively minimalist, both because of their ability to maximize the multiplicity of audience interpretation, but also because they provided a dramatic and utterly abstract counternarrative to the dire statistics the artist recounted in his writings and interviews on social welfare. In one such exhibition narrative, for example, González-Torres writes:

> It is a fact people are discriminated against for being HIV positive. It is a fact the majority of the Nazi industrialists retained their wealth after the war. It is a fact the night belongs to Michelob and Coke is real. It is a fact the color of your skin matters. It is a fact Crazy Eddie's prices are insane. It is a fact that four colors—red, black, green and white—placed next to each other in any form are strictly forbidden by the Israeli army in the occupied Palestinian territories. This color combination can cause an arrest, a beating, a curfew, a shooting, or a news photograph. Yet it is a fact that these forbidden colors,

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53 Storr, *supra* note 41, at 16.

54 *Id.* at 14.

55 Félix González-Torres, *1990: L.A., The Gold Field*, *in* FÉLIX GONZÁLEZ- TORRES, *supra* note 8, at 147, 148.

56 As Cruz points out, González-Torres was deeply influenced by Berthold Brecht, whose goal aimed to "develop the means of pleasure into an object of instruction, and to convert certain institutions from places of entertainment into organs of mass communication." Cruz, *supra* note 8, at 59 (citing Bertolt Brecht, *The Modern Theatre is the Epic Theatre*, *in* BRECHT ON THEATRE: THE DEVELOPMENT OF AN AESTHETIC 37, 42 (1964)).

57 González-Torres, *supra* note 55, at 148.

> presented as a solitary act of consciousness here in Soho, will not precipitate a similar reaction.[58]

His writing, however, was only rarely this didactic. His most powerful works, like *"Untitled" (Portrait of Ross in L.A.)*, were deeply abstract and minimalist in nature and design. Some of his most powerful works were reproduced on billboards—seagulls, an unmade bed, a list of key dates in gay and lesbian history—preserving a kind of intersection between public and private. The work had a public character due to its placement in a mainstream advertising medium—but it was also deeply private because it did not direct a particular, singular interpretation but left many elements unsaid. As one author explained, this process was deliberate—at first, González-Torres processed events in a deeply personal way, but then later removed his own subjective narrative, enabling the piece to become an abstract work that was far removed from himself, and instead represented the possibility of many decentralized interpretations.[59]

As I have suggested, the artist used a variety of tactics to encourage multiple interpretations: the seemingly endless redistribution of artist-generated texts, photographs, and candies; unexpected interventions and the absence of direction for display; and billboards that were deliberately permeated with minimalist imagery or blank spaces to encourage audience participation. For the billboard made to commemorate the 20th anniversary of the Stonewall Rebellion, for example, the artist listed a series of dates placed just below the expanse of a blank, black rectangle at the site of the original uprising. There were two lines of white text at the bottom: "*People with AIDS Coalition 1985 Police Harassment 1969 Oscar Wilde 1895 Supreme Court 1986 Harvey Milk 1977 March on Washington 1987 Stonewall Rebellion 1969*."[60] As Joshua Takano Chambers-Letson has written,

> Like a judge interpreting the law with regard to the specifics of a case[,] . . . the spectator viewing the billboard is called upon to consider the various events within an associative history of queer legal, public, and political life and give these disparate references meaning within the context of their own personal experiences.[61]

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58 Roland Barthes, *The Death of the Author*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 116, 121 (quoting from a 1988 Exhibition Statement by Félix González-Torres).

59 *See* Feliz González-Torres & Hanae Ko, *One on One: Koki Tanaka on Félix González-Torres,* 93 ARTASIAPACIFIC 27, 27 (2015).

60 Joshua Takano Chambers-Letson, *Contracting Justice: The Viral Strategy of Félix González-Torres*, 51 CRITICISM 559, 567 (2009).

61 *Id.*

On this seminal public work, Simon Watney has written, "The 'private' defiantly invades 'public' space."[62] Commenting on Watney's observation, the brilliant Miwon Kwon points out that what enabled this invasion is actually not said or on display; instead, she writes, "it is the unarticulated, silent relations between the events and dates on the billboard; it is the vacant expanse above the text, which the artist called a 'space for imaginary projection.'"[63] The work—the real brilliance of Félix González-Torres—lies precisely in that blank expanse, the space that surrounds his formal, minimalist, and yet universalist vision. González-Torres noted, "We should fight hate and the dissemination of ignorance and fear with the effective use of history and fact. Ideology cannot stand it," he concluded, "when we make connections."[64]

Yet when the artist relied on a billboard, or listed key dates in the history of the gay rights movement along with significant moments from his own life, he reifies, for us, the link between these seemingly disconnected moments of the personal, the political, the private, and the public.[65] González-Torres also avoids the sort of binary characterized by a clear delineation between the viewer and speaker, between audience and artist; instead, he makes the line between the two one of the targets of his critique.[66] It was far more valuable to the artist to imagine a way in which participation engendered a multiplicity of alternative interpretations. Susan Tallman has referred to his billboards as a form of "commercial subversion"[67] and, in an interview, González-Torres himself discussed plans for future works that would circulate as non-English advertisements for local museums in ethnic newspapers, and an example is what he described as "installations for strings of lights along public streets."[68] The latter came to pass, the former never did.

III. THE ECONOMY OF GOOD(NESS)

As Russell Ferguson has observed, the question of authority— institutional or personal—is a central theme in González-Torres' work.[69] Thus, unmaking the role of authority was also a major, though implicit, goal of his work. The artist sought out authors—Barthes, Foucault, and Benjamin—who offered him a view not only of the way that the self is

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62 Simon Watney, *In Purgatory: The Work of Félix González-Torres*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 333, 342.

63 Miwon Kwon, *The Becoming of a Work of Art: FGT and a Possibility of Renewal, a Chance to Share, a Fragile Truth*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 281, 289–90.

64 González-Torres, *supra* note 55, at 148.

65 *See* Fuchs, *supra* note 24, at 111.

66 *See id*.

67 Cruz, *supra* note 8, at 52 (quoting Tallman, *supra* note 44).

68 *Id.*

69 *See generally* Ferguson, *supra* note 13, at 101.

formed in culture, but also of the "cracks in the master narrative, those cracks where power can be exercised."[70]

Traversing the boundaries of identity and finding those cracks is never simple, never easy. But González-Torres also, I think, asked the audience to interrogate their own boundaries, noting that the very act of looking is invested with identity-based classifications: gender, race, nationality, class, sexual orientation, and such.[71] Through these lenses, the artist encouraged us to develop and interrogate our own notions of public goodness as a result. As one author has written, the artist's "refusal to accept himself as a marginalized or stereotypical figure also enabled him" to remake and resignify society "as merely an unstable bundle of labels."[72] For example, González-Torres compared his work, as an artist, to a person in drag, noting "sometimes I make the stacks, sometimes I do the curtains, sometimes I do text pieces, sometimes I do canvases sometimes the light strings, sometimes billboards or photos."[73] These works resembled, in a very direct way, his own experience as a gay man: "a way of being," he wrote, "in which I am forced by culture and by language to always live a life of 'in-between.'"[74] González-Torres, and others, relate this work directly to the paradigmatic closet—"appearing to be normal," one author writes, "but actually being the 'other.'"[75]

It is this link, I think, between the singularity of an identity, as a gay man, as an outsider—that he so brilliantly draws from, and it leads him to generate, paradoxically, not just a single piece, but rather, a multiplicity of pieces, and papers, and copies, and stacks, and billboards, each of which draw upon the participation of the audience. For González-Torres, his identity as a gay, HIV-positive man was very much like a "copy," very much like a framing of something—an identity—that looked a certain way, but was actually something else, something much more complex and challenging.

At the same time, paradoxically, despite his identity as a gay, HIV-positive man, González-Torres also viewed himself as part and parcel of society, rather than an outsider. "At this point I do not want to be outside the structure of power, I do not want to be the opposition, the alternative. . . . No, I want to have power," he once stated.[76] And yet, he argued,

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70 Rainer Fuchs, *The Authorized Observer*, *in* FÉLIX GONZÁLEZ-TORRES: TEXT 89, 92 n.8 (Dietmar Elgar ed., 1997) (citation omitted).

71 *See* Tim Rollins, *Félix González-Torres: Interview*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 68, 74.

72 Ferguson, *supra* note 13, at 96.

73 Rollins, *supra* note 71, at 70.

74 OBRIST, *supra* note 7, at 147.

75 Cruz, *supra* note 8, at 55.

76 Maurizio Cattelan, *Maurizio Cattelan Interviews Félix González-Torres*, MOUSSE MAGAZINE (2007), http://moussemagazine.it/articolo.mm?id=59 (advocating a form of social

the Left was more than willing to collude in a division between insider and outsider, because it happily played the role it was assigned:

> We have to restructure our strategies and realize that the red banner with the red raised fist didn't work in the sixties and its not going to work now. I don't want to be the enemy anymore. The enemy is too easy to dismiss and attack. The thing that I want to do sometimes with one of these pieces about homosexual desire is to be more inclusive. Every time they see a clock or a stack of paper or a curtain, I want people to think twice.[77]

Elsewhere, the artist wrote,

> It it going to be very difficult for members of Congress to tell their constituents that money is being expended for the promotion of homosexual art when all they have to show are two plugs side by side, or two mirrors side by side, or two light bulbs side by side.[78]

The quiet universality of his vision, then, was the most revolutionary part of his statement and legacy. As José Esteban Muñoz explained, by not identifying—disidentifying—with the public/private binary, he was able to practice an activism that was deeply political but also deeply counterintertuitive to the way that traditional activism unfolded.[79] For example, one of his projects, which, again, blurred the line between private and public, was a project for MOMA which consisted of over twenty billboards throughout New York City, each showing the same photograph of an unmade bed with two pillows, side to side, each with an indentation of where a person once slept.[80] At the museum, González-Torres installed an unmade bed, explaining, "I needed distance from my bed, and that bed became a site that was not only the place I sleep in, it was also the place of pain at night."[81]

He went on further to explain that part of the reason for why the bed was installed in the museum was to underscore the fact that, for gay people in America, there was no line between private and public in the wake of the 1986 ruling of *Bowers v. Hardwick*,[82] which upheld sodomy

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justice that envisions advocacy and art effecting change within the pre-existing cultural pillars of "money and capitalism").

77 Storr, *supra* note 10, at 238.

78 Nancy Spector, *Travel as Metaphor*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 249, 260.

79 *See* JOSÉ ESTEBAN MUÑOZ, DISIDENTIFICATIONS: QUEERS OF COLOR AND THE PERFORMANCE OF POLITICS 172 (1999).

80 *See e.g.*, OBRIST, *supra* note 7, at 113.

81 *Id.*

82 478 U.S. 186 (1986).

laws and refused to extend the right of privacy to gay people.[83] "I think at this point in history," González-Torres stated, "what we are really talking about is private property (and perhaps not even that) and not about private space, because our most intimate desires, fantasies and stories are intersected by areas legislated and controlled by the law."[84] As he stated about the billboards,

> [I]t's not just about two empty beds. It's about the way some people read it in the streets. It was about emptiness, it was about homelessness, . . . it was about an announcement for a movie that was about to come . . . It could be about anything. And that is exactly the way I want it to function, because some other readings could always be right. But the reading that I wanted to give to the work is very subtle, it is not about confrontation, it is about being accepted. And then, once you accept these things in your life then I say to you: 'But I just want you to know that this is about this', and then it is already too late, it is already inside the room.[85]

As González-Torres argued, it was far better to be on the inside, to attach oneself to institutions, because institutions are always self-replicating, so if one attaches to one, like a virus, you can be replicated alongside them.[86] Here, González-Torres recognized, brilliantly, long before many other LGBT activists, that the religious right's tactics relied on a strategy of deflecting the meaning of their actions by using charged, symbolic images of gay affection. "Why bother with the destruction of the environment or lack of adequate health care when we have a black and white photo of two men kissing?" he asked, concluding, "Now that's real meaning."[87] "Why worry about $500 billion losses in the savings and loan industry when $10,000 was given to Mapplethorpe?"[88]

The boundaries between private and public dissolve, only then, with the help of the viewer, and through the work we see something new, what has been referred to as a "new subjectivity, reflexive and resistant to the attacks of power . . . less an individual project than a collective, community activity."[89] The goal instead, for him, was openness, because the audience is seduced, in a way, by the universal emotions behind the

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83 *See* OBRIST, *supra* note 7, at 112.

84 *Id.* at 113.

85 *Id.* at 119.

86 *See id.* at 118; *see also* Chambers-Letson, *supra* note 60, at 567.

87 Félix González-Torres, *supra* note 55, at 148.

88 Storr, *supra* note 10, at 237.

89 Carlos Basualdo, *Common Properties*, *in* FÉLIX GONZÁLEZ-TORRES, *supra* note 8, at 185, 189–90.

work—and then only later realizes it is the work of a gay man, an outsider, who at that point was largely left disenfranchised by the boundaries of legal protection.[90]

IV. EPILOGUE

In the spring of 2016, just before Orlando, some members of my family—my partner, my daughter, and I—went to see Félix González-Torres' portraits at Andrea Rosen in New York. Each "portrait" was nothing like what you would imagine. Instead of a picture of a person, each room instead contained a list of titled life events, noted beside the year it took place, and placed just under the ceiling in a single line of text. We normally read words or quotes that encircle a courtroom or place of education from seemingly timeless heroes, usually white, male, and straight. But here, in the gallery, we were presented instead with a listing of life events for people who mostly resembled none of those things—female, queer, people of color. Consider the artist's own self-portrait:

> *Ross 1984.*
> *Supreme Court 1986.*
> *Interferon 1989.*
> *March on Washington 1987.*
> *A view to remember 1995.*

Had he been alive today, Félix González-Torres would have unquestionably known how to mark what happened in Orlando,[91] or what is happening in North Carolina,[92] the recent resurgence of threats to cut funding for the arts in Georgia over an exhibit on AIDS,[93] or the myriad of antigay initiatives crossing the country in a post-Obama era.[94] His work especially continues to ring true when we consider that after Orlando, the intimate spaces where LGBT citizens populate—the nightclubs, our safest spaces for celebration and protection—are now—like the unmade bed in the museum— rendered as something else, something

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90 *See* Fuchs, *supra* note 24, at 111.

91 *See* Ralph Ellis et al., *Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance*, CNN (June 13, 2016, 11:05 AM), http://www.cnn.com/2016/06/12/us/orlando-nightclub-shooting.

92 *See* Michael Gordon et. al, *Understanding HB2: North Carolina's Newest Law Solidifies State's Role in Defining Discrimination*, CHARLOTTE OBSERVER (March 26, 2016, 11:00 A.M.), http://www.charlotteobserver.com/news/politics-government/article68401147.html.

93 *See* John Gillooly, *Cobb Lawmakers Blast Kennesaw State's AIDS Museum Exhibit*, MARIETTA DAILY J. (May 19, 2016), http://www.mdjonline.com/news/cobb-lawmakers-blast-kennesaw-state-s-aids-museum-exhibit/article_56746c9e-1e2e-11e6-8f4c-63338f8f74fe.html.

94 *See* "'*Death by a thousand cuts': LGBT rights fading under Trump, advocates say*," THE GUARDIAN, (Mar. 30, 2017), https://www.theguardian.com/us-news/2017/mar/30/lgbt-rights-under-trump

not quite public but certainly no longer private. But within that permeable space, something deeply indestructible continues to endure.

Indeed, just as I was leaving the gallery, the same notion caught my eye. In one of the portraits, the one for Julie Ault, the events did not end at the at the year of the artist's death. They continued, in fact, even up to the present. Why? It turned out that Félix González-Torres had actually noted in the certificate of authenticity that the owner could add or subtract dates as the owner preferred, knowing the likelihood that he would not be alive to determine the work's future form, and further illustrating the artist's belief that "change was the only way to make the work remain permanent and relevant."[95]

In many ways, the decision to continue marking life events demonstrated the point that the real art, and the real creator, lies in the person, the caretaker who continues chronicling the events. In an exhibition catalog of his portraits, the artist's foundation echoed this view, noting that the majority of his works—the candies, the portraits, the stacks—all possessed the quality of anticipating further change and alteration long after the artist had passed. "It was the owner, the caretaker he entrusted with this work's evolution," the Foundation wrote. "In direct relationship to his own portrait, the rules and guidelines and intentions of these portrait works create a forum for perpetual vitality/life. The perpetuation of his life without stagnation."[96]

The notion of perpetual vitality is what defines our community after *Bowers*, after AIDS, after Orlando, after the current administration. I can think of no other quote, standing here in the de la Cruz collection, that illuminates this concept other than the artist's own words, written to Andrea Rosen, so many years ago. He wrote,

> This is the place, the only place, the place of pleasure, of images, of sound and voices, of views to remember, the place for memories and red typewriters, the place to travel and imagine other places. And how do we leave this place? How will this place remember us, by our objects, by our legacy of sublime daily actions, by close relatives and friends, by the house and the language we built . . . And when we are forced to cross that threshold of unspeakable darkness, the place of no images, the place of no voice, the place of no touch, then we should remember how, once, we were in the present of this

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95 Adair Rounthwaite, *Split Witness: Metaphorical Extensions of Life in the Art of Félix González-Torres*, REPRESENTATIONS, Winter 2010, at 35, 38.

96 *Id.* (quoting from agreement regarding the sale of González-Torres's 1989 self-portrait *Untitled* by the Félix González-Torres Foundation to the San Francisco Museum of Modern Art and the Art Institute of Chicago jointly).

> wonderful place. To a more intensively lived present, to an overwhelming place.[97]

Thank you, de la Cruz family, Ibette Yanez, Eduardo Peñalver, and Sergio Sarmiento, and everyone else here for bringing us to this version of a public good—an overwhelming place, a more intensively lived present—that is Félix's work and legacy.

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97 *Selected Correspondence*, *in* FÉLIX GONZÁLEZ-TORRES 169 (Julie Ault ed., 2006).