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ARTICLES

OBJECTS OF ART; OBJECTS OF PROPERTY

*Gregory S. Alexander**

Seemingly worlds apart, art and the law of property in fact share much in common. Some of this shared space is obvious, the result of their intersection through property law's protection and regulation of art. But another aspect of their commonality is considerably less obvious. Both rely, implicitly and in ways not always acknowledged, on assumptions about objects in the world—thing-ness. That is, both have relied, or traditionally have done so, on certain assumptions about the nature of objects—the objects of art and the objects of property—and the upshot of those assumptions is that those objects are characterized by thing-ness, i.e., physicality, tangibility, stability, durability. Further, these assumptions are not only parallel to each realm but intersect with each other in functional ways. Notably, property law's interaction with art depends upon art's assumption of its own thing-ness, for property law itself traditionally has depended upon certain assumptions regarding the nature of property—what can be property. It has assumed that art is a tangible, stable, and durable object.

Genres of art, whose genesis date back to the 1960s, have problematized these assumptions about the nature of art, i.e., its thing-ness. This was precisely the point of that genre known as conceptual art, which Sol LeWitt defined in the following terms:

In conceptual art the idea or concept is the most important aspect of the work. . . . In other forms of art the concept may be changed in the process of execution. . . . When an artist uses a conceptual form of art, it means that all of the planning and decisions are made beforehand and the execution is a perfunctory affair. The idea becomes the machine that makes the art.¹

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¹ Sol LeWitt, *Paragraphs on Conceptual Art*, 5 *ARTFORUM* 10, 79–84 (1967), reprinted in *CONCEPTUAL ART: A CRITICAL ANTHOLOGY* 12, 16 (Alexander Alberto & Blake Stimson eds., 1999).

The whole point of this new type of art was to denigrate the art object so that the focus would be on the prior abstract idea. Artists like Joseph Kosuth and Lawrence Weiner threw into question the then-prevailing assumption that the artist's task was to create object objects—certain kinds of objects, to be sure—but objects nevertheless.

Although the heyday of conceptualism ended by the 80s, its influence on subsequent young artists was enduring and profound. This is evident in the unique work of Félix González-Torres, who carried forward the problematizing impulse of conceptualism and combined it with elements of political activism and expressions of deeply personal experiences. González-Torres' work was also powerfully democratic and participatory, inviting audiences and the public to create meaning with him. His work's dissolving urge extended not only to its objects but also to location, blurring the line between public and private spaces.

Many of these themes—putting into question the public/private distinction, the democratizing of the personal, and the importance of community—are also familiar to property law and legal scholarship. Each of these themes is worthy of discussion, but as a scholar of property law and property theory, the denigration of the object seems especially so to me. The reason is that González-Torres' work sheds light on an issue that currently divides property theorists regarding the ontology of property.

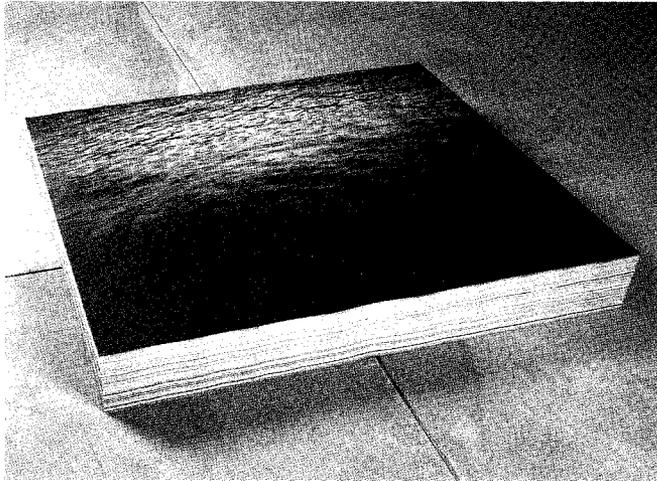
In the early part of the 20th century, a group of avant-garde legal theorists called “Legal Realists” attacked the then-prevailing conception of property as thing. They set out to show that property is nothing more than a bundle of rights and other legal relations existing between persons with respect to interests. This bundle of rights conception of property quickly caught on and is now the prevailing view in the United States (although not elsewhere in the world). Lately, a group of legal scholars has launched a revanchist critique of this conception, arguing that property is the stuff of things. So, Harvard law professor Henry Smith states, “[P]roperty is, after all, a law of things.”² But the bundle of rights view remains strong and has no shortage of defenders.³

González-Torres' work throws the thing view of property in doubt. Thing-ness is a matter of constancy, stability and, usually, tangibility. Land is a thing; my watch and my car are things. I can touch them. Their physical aspects are more or less constant. Their existence is not ephemeral. True, there are counter-examples. A soap bubble lasts only a short while and is highly unstable. We might question whether a soap bubble

² Henry E. Smith, *Property as the Law of Things*, 125 HARV. L. REV. 1691, 1691 (2012).

³ See, e.g., Robert C. Ellickson, *Two Cheers for the Bundle-of-Sticks Metaphor, Three Cheers for Merrill and Smith*, 8 ECON. JOURNAL WATCH 215 (2011); Stephen R. Munzer, *A Bundle Theorist Holds On to His Collection of Sticks*, 8 ECON. JOURNAL WATCH 265 (2011).

is even a thing, an object, but even if it is, people sometime use the image of soap bubbles to capture precisely the opposite of the ordinary properties of things. Is art, then, a thing? Until the appearance of work of conceptual artists most of us would have supposed so. A painting is a thing; so is a sculpture. But what of González-Torres' work?



Félix González-Torres

"Untitled", 1991

Print on paper, endless copies

7 in. at ideal height x 45 1/4 x 38 1/2 in. (original paper size)

Installation view: *Félix González-Torres*.

Luhning Augustine Hetzler Gallery, Los Angeles. 19 Oct. – 16 Nov. 1991.

Photographer: James Franklin

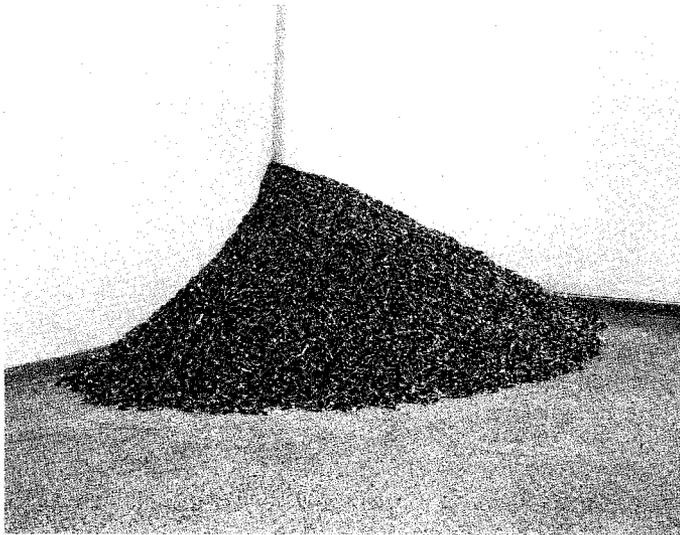
© The Félix González-Torres Foundation

Courtesy of Andrea Rosen Gallery, New York

Consider his work titled *"Untitled"* of 1991, consisting of individual stacks of paper compiled neatly in cubic form on the gallery floor. In most of these installations the paper consisted of printed broadsheets that bore photographic images or oblique texts. In these pieces people other than González-Torres acted as major contributors to the work. They removed the sheets and replenished them. The piece dematerializes but endures. Referring to the 1991 installation at the Walker Art Center, González-Torres stated: "This piece requires the participation of the public in order to exist. It's a non-static sculpture, it's always changing, it can disappear, yet at the same time, it's indestructible because it can always be reprinted. It's an attempt at creating a more democratic artwork. A public piece."⁴

⁴ Art exhibition label text for Félix González-Torres, *Untitled*, WALKER ART CENTER (1993), <http://www.walkerart.org/collections/artworks/untitled-2219> (last visited February 6, 2017).

There are several themes here on which it is worth dwelling because they also resonate with the Legal Realists' project to destabilize the then-prevailing property worldview. The first thing to notice in "Untitled" paper stacks is the project's thing-ness, or rather its lack thereof. If we understand things, as we usually do, to be characterized by stability and identity, then González-Torres' stacks throw into doubt the thing-ness of these works. Their very thing-ness is ambiguous, neither easily affirmed nor denied. In one sense they are stable, for, assuming the public or whoever 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. Moreover, even resupplied, their constituent parts are fundamentally dynamic, constantly changing as pages are removed and added. Eventually, each stack consists of completely new sheets of paper. At that point can we say that the stack is the same "thing?"



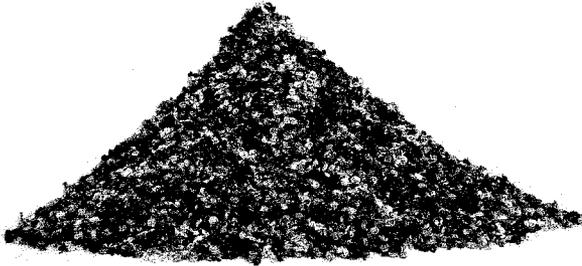
Félix González-Torres
 "Untitled" (*Public Opinion*), 1991

Black rod licorice candies individually wrapped in cellophane, endless supply
 Overall dimensions vary with installation
 Ideal weight: 700 lbs

Installation view: Félix González-Torres. The Solomon R. Guggenheim Museum, New York. 3 Mar. – 10 May 1995. Cur. Nancy Spector. Catalogue.

Photographer: David Heald

© The Félix González-Torres Foundation
 Courtesy of Andrea Rosen Gallery, New York



Félix González-Torres

“Untitled” (Portrait of Ross in L.A.), 1991

Candies individually wrapped in multicolored cellophane, endless supply

Overall dimensions vary with installation

Ideal weight: 175 lbs

Installation view: *Félix González-Torres*.

Luhring Augustine Hetzler Gallery, Los Angeles. 19 Oct. – 16 Nov. 1991.

Photographer: James Franklin

© The Félix González-Torres Foundation

Courtesy of Andrea Rosen Gallery, New York

Another theme to notice in this series of projects is the blurring of the line between the public and the private. As the statement from González-Torres that I quoted earlier indicates, this blurring was intentional. González-Torres had consciously pursued the same theme in other projects. His well-known candy spill projects express the same idea. In these projects large piles of small pieces of individually wrapped candies are eccentrically spilled on the gallery floor, sometimes in the open (as in *“Untitled” (Public Opinion)* of 1991), sometimes in a gallery corner (as in the poignant and compelling project *“Untitled” (Portrait of Ross in L.A.)* of 1991). Once again, audience participation is invited, even required, for the projects’ success. Audience members were expected to remove pieces of the candy, unwrap them, and place the candy in their mouths, in Eucharist-like ceremonies. In traditional art, of course, an invisible but clearly understood wall exists between viewer and the object. In González-Torres’ projects that wall is torn down, or at least made ambiguous because as each constitutive element of the project, whether a piece of candy or a sheet of paper, is removed, it is replaced.

In this process of removal and replenishing González-Torres added a dimension that we seldom associate with art—responsibility. The responsibility involved in his paper stacks and candy projects is twofold: the audience has the responsibility of participating with the artist’s plan

to remove constitutive elements and, second, the museum has the responsibility to replenish the supply of those elements according to the artist's specifications.

This dimension of responsibility provides another characteristic that art as González-Torres conceived it shares with property. Property is not solely a matter of rights; it is also a matter of responsibilities or obligations that the owner owes to other members of the various communities to which he or she belongs. Just as the responsibility dimension of art is usually sublimated, so also is the obligation dimension of property ownership.⁵ The view that is commonly projected of both is distorted, ownership without obligations, and much political damage results from that distorted view. Landowners scream, or worse yet, sue, when government land-use agencies impose regulations on the use of their land in the interest of preserving the environment, public health, or safety. Business owners complain about abuse of rights when regulators impose restrictions on automobile emissions. The sense that property exists to create propriety, or the common good, is simply lacking. González-Torres' projects remind us of its existence.

González-Torres was quite conscious about his desire to problematize public and private categories in art. He was quite critical of public art, as conventionally understood and presented. In an interview, he stated,

When I started doing this work in 1988-89 the buzzword was public art. One thing that amazed me at that the difference between being public and being outdoors was not spoke about. It's a big difference. Public art is something which is really public, but outdoor public art is something that is usually made of good, long lasting material and is placed in the middle of somewhere, because it's too big to be inside. I was trying to deal with a solution that would satisfy what I thought was a true public sculpture, and that is when I came up with the idea of a stack.⁶

In González-Torres' view, what makes a work public is not its location but its relationship with the audience. This is a more profound sense of *public* art, for it injects a dimension that is not commonly associated with art, even public art, as commonly defined—democracy, in a participatory sense. The artist is removed from the pedestal as the sole creative genius

⁵ See Gregory S. Alexander, *The Social Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009).

⁶ Interview by Robert Storr with Félix González-Torres, (Jan. 1995), <http://www.queer.culturalcenter.org/Pages/FélixGT/FélixInterv.html>.

behind the work. Instead, the audience participates in the work's ongoing process of creative destruction and reproduction.

The property theorist will notice something about this process that throws into question an important aspect of the thing conception of property. According to that conception, the owner of the thing has the sole and virtually unfettered right to exclude the right of the world from any access to or use of the thing. In this respect, the owner stands in the position of the conventional image of the artist—the sole creative genius. González-Torres stacks and candy projects throw that imagery into question. If we imagine the artist as owner, then these projects give us reason to be skeptical of the claims of the thing conception of property, specifically the nature of the right to exclude. Matters are rather murkier than these theorists would have us believe. In fact, owners do not solely control access to or use of their property; they do not enjoy absolute or unlimited control over it. There are many exceptions to an owner's right to exclude, imposed by federal or state laws for various reasons. As a result of all of these exceptions, the owner comes into view less as a sole creative genius than as, in the words of one property theorist,⁷ an "agenda setter." There are obvious differences between the situations of owner and artist, of course. The degree to which González-Torres blurred the line between the artist and his audience was the result of his own volitional decision. While property owners are certainly free to open their property to the public, the legal exceptions to the owner's right to exclude are not the result of choices the owner makes. Still, the basic point regarding the blurring of lines between public and private and what public means remains one that both have in common.

A final theme in the paper stacks and candy projects on which I wish to dwell connects up with the object-ness of the works. Let us return to "*Untitled*" (*Portrait of Ross in L.A.*). As a number of commentators have pointed out, the installation appears to be an allegorical portrait of González-Torres' partner, Ross Laycock, who died of AIDS-related complications in 1991. The diminishing amount of candy symbolically referred to the wasting away of Laycock's body from the diseases that ravaged him. Hence, the project is intended to convey the sense of instability, inconstancy, and fragility, not the object-ness of art as conventionally framed. But those characteristics capture the object's symbolic object—the human body—perfectly. The human body is inherently unstable. It is fragile and constantly degrading, even when not wracked with disease. It is always moving towards its inevitable end and physical dissolution, its undoing as an object.

⁷ See Larissa M. Katz, *Exclusion and Exclusivity in Property*, 58 U. TORONTO L. REV. 275, 278 (2008).

Human bodies are property, and they are things. But it is easy to overlook the fact that they are a shadowy sort-of-thing. González-Torres' work underscores their instability and fragility, characteristics that we who inhabit bodies would just as soon ignore. Yet they *are* objects. We can see them, feel them, and identify them, all characteristics that the thing-theorists of property consider to be hallmarks of property. These characteristics are also present in González-Torres' installations. Like bodies, they appear more stable and more durable than they are. In terms of the characteristics that we ordinarily associate with objects, both bodies and González-Torres' projects stand somewhere between diamonds and soap bubbles, and I think that is just what he wants us to see. Objects—things—are not all of a piece, as it were; they are spread along a very wide spectrum of types ranging from diamonds to soap bubbles. They are variously solid and stable to ephemeral and shadowy. The lines between these categories are blurred as often as not. So also are the lines between public and private.

All of these insights connect González-Torres' art with property law and legal theory. Henry Smith is right that property is a law of things, but, as González-Torres' work shows, just what things are is far more nuanced than Smith and other thing-theorists recognize. Thing-ness is not self-defining, and its meaning is not constant. Nor is its meaning strictly private. Lines are blurred, both in art and law. Who would have thought?