

Introduction: The Legal Medium

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I.

Tehching Hsieh imprisoned himself for a year in his studio. Park McArthur battled an artist residency for better wheelchair access. Mary Ellen Carroll exploited Houston's lack of zoning laws to rotate a house 180-degrees. The work of these artists was not necessarily *about* law. Rather, these artists *used* law as a material, target, and readymade. They engaged the legal medium.

Artists have been working with the legal medium for decades, perhaps centuries, but this engagement is taking on a distinct importance today. The role of the institution in the Art World is changing. The handful of powerful, centralized institutions are giving way to many new institutions, some of which are not “art institutions” at all. Artists are increasingly working between these institutions — city councils, galleries, museums, fairs, donors, grant-givers, sponsors, schools, and more — to make their work.

The process of making a work of art is becoming more entrepreneurial. Artists often bemoan this shift and wonder how best to hold and nurture an artistic vision while interfacing with so many actors, each with its own intentions and priorities. Indeed, this state of affairs poses new challenges. But it also exposes with greater clarity a range of possibilities. For between institutions, in the contracts, processes, codes, and norms that bind and define them, lies vast creative opportunity. It is where we increasingly find law as medium.

To better understand this creative moment, a diverse group of students, artists, and academics launched The Legal Medium — a multidisciplinary, multi-year exploration of the ways in which contemporary artists from diverse backgrounds and disciplines encounter, take advantage of, and seek to mold law. In February 2015, The Legal Medium held its inaugural symposium at Yale Law School. Leading artists and thinkers of our time engaged in panels, presentations, and performances; we also mounted an exhibition of contemporary artworks. The essays in this special edition of the *Yale Journal of Law & the Humanities* were written by the panelists and artists from this inaugural event. They represent the first step in an ongoing effort to grasp The Legal Medium.

II.

For many years, artists and academics have discussed the creative practices that use law as a medium under different, overlapping categorizations: Relational Aesthetics, Participatory Art, Social Practice, Institutional Critique, Public Art, Activist Art, and so on. Debates about these practices have turned on agency, exploitation, liberation, and whether aesthetic quality is lost or won in a social turn.

By shifting our focus and analyzing these practices under the rubric of the legal medium, we can create new modes of understanding. In particular, we can examine the practices that deploy law as artistic medium in at least five ways.

First, we can look at law as a conceptual artist might – as it structures terrains of appearances and experiences, such as laws of the body, the built environment, the digital world, and the political body.

Second, we can adopt the lens of the law professor who sees law as a multilayered material in and of itself. When we peel back the letter of the law, we can examine how artists interact with the norms, rules, processes, institutions, and enforcement mechanisms that give words on a page their force in the world. For example, we can study the artist who engages positive law and, in response to a local ordinance that says *Thou shall not pass*, the artist passes. We can also examine the artist engaging social norms when positive law is silent on a particular matter, like Mary Ellen Carroll seizing legal silence to rotate a house. Or we can look at artists engaging the institutions that deliberate upon, create, and enforce law, from Congress to cops.

Third, we can look at the legal medium as a practicing lawyer might, focused on doctrines such as torts, contracts, property, tax, constitutional law, and human rights law.

Fourth, we can see through the eyes of a sculptor, asking how the artist stretches, exposes, breaks, polishes, refines, and reconfigures law.

And fifth, we can adopt the lens of a comparative law scholar to see how artists operate in various legal regimes defined by belief, ideology, or geography: from Religious Law to Natural Law; law in France versus law in China; Detroit versus Delhi. Each of these lenses allows us to categorize and analyze artistic practices in distinct and potentially fruitful ways.

III.

My own interest in *The Legal Medium* was born out of my pivot from the worlds of law to the worlds of art. Last year, I launched a global public art initiative called *Portals*. *Portals* are gold shipping containers with immersive audio-visual technology inside. When you enter one, you come face-to-face with someone in another container, full-body, as if in the same room.

These *Portals* are then placed across various forms of distance – geographic, political, socioeconomic, gender-based, ideological, and so forth – and citizens are invited to converse across distance. The first *Portals* pair connected Tehran and New York City in December 2014. Strangers in each location engaged in private, one-on-one, twenty-minute conversations about “What would make today a good day for you?”

Portals seeks to create space for de-instrumentalized encounters between individuals. Often in life, when strangers meet and converse, it is with a purpose — to land a job, get a visa, make a friend, or get a date. To enable intentions that could include any, all, or none of those, requires a very specific context. And I think the best, and perhaps only, context that permits a wide range of possible encounters is that provided by the institutions and associations of art. That is why I knew *Portals* must be art. And I initially assumed law would simply serve this broader vision.

But from the very beginning, I was struck by the number of fateful decisions that lay before me in the realms of law I engaged. From questions around intellectual property and public permitting to contract law and corporate structure, each area of law raised novel ethical, practical, and aesthetic questions.

The goal of *Portals* is to be fundamentally inclusive, both in terms of the shared space, placements, and encounters. People must be able to join regardless of ability to pay. And *Portals* must be free and open to the public. But how can this idea of inclusion best be teased out across domains of law? Intellectual property protection is by definition exclusionary, but such protection also may be necessary to permit the selective application that is required to raise the funds that ensure that all *Portals* can be free. And though *Portals* is not about making money, if it does, how can that profit be shared evenly across the network? That simple goal becomes extremely difficult, especially when considering the range of international issues that arise, from sanctions regimes to differing tax codes.

I spent months deciding what color to paint the shipping container. I wondered whether I should be approaching the legal questions with the same obsessiveness. In need of guidance, I reached out to artists and academics, and quickly found many others facing similar issues.

Perhaps by grouping creative practices in a different way, we thought, and by putting legal minds at the service of unpacking artists’ practices, we could better understand the creative possibilities before us. Perhaps we could facilitate new collaborations and open up new areas of inquiry. And perhaps all of this would help us make art.



Figure 1. Elizabeth Bick, *Portal in the Woods* (Washington DC, Shared_Studios 2014). Courtesy of Shared_Studios.



Figure 2. Andrew Koh, *Portal at the Yale University Art Gallery* (New Haven, Shared_Studios 2015). Courtesy of Shared_Studios.