

The radical imaginary: the social contract

Curator:

Marie J. Jean

Agency, Carlos Amorales,
John Boyle-Singfield, Jill Magid,
Milo Rau et Carey Young

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Milo Rau, *The Congo Tribunal*, 2017, cinema documentary, still, 100 min. A Fruitmarket and Langfilm production, in coproduction with IIPM – International Institute of Political Murder, SRF Schweizer Radio und Fernsehen – SRG SSR / ZDF, in collaboration with ARTE. Distributed by Real Fiction and Vinca Film.

Believing that the International Criminal Court had shirked its duty in the matter of the Congo's twenty-year-long civil war, Milo Rau decided to mount a tribunal in Bukavu, at which lawyers argue and victims, witnesses, executioners would testify, along with members of the government, the army, rebel groups, and NGOs—all of them real-life protagonists in this ongoing human tragedy. For, despite the fact that the conflict has claimed more than six million lives, the Congolese today remain trapped in a state of impunity, because none of the war crimes committed has been subject to legal challenge. What prompts an artist to stage this type of work, appropriating the conceptual and political apparatus of the judicial system? Rau is categorical: his theatre does not aim at “sterile criticism of policies or institutions”; it seeks nothing less than to “change” them.¹ Yet although the trial was heard using actual testimonies—the protagonists played their own roles before 1,000 spectators who had come to hear them—it had no legal force. Its repercussions were considerable, however, because *The Congo Tribunal* (2017) has demonstrated that this barbaric conflict resulted from exploitation of natural mineral resources—gold and coltan—by multinationals that desire the status quo in this region of Africa so as to better profit from growth in a technology industry (mobile telephony) in a globalized economy.

The Congo Tribunal points up the lack of international judicial institutions and effective economic regulatory structures to safeguard justice and rights for the Congolese. If Rau employs the form of the tribunal, subscribing to its operational logic, it is to generate a “radical imaginary,” as posited by Cornelius Castoriadis: that is, a process of continuous creation that produces novel significations of the imaginary with the potential to transform institutional positions.² The radical imaginary thus impels the emergence of open knowledge, continually in the process of generating itself, out of two movements that are generally in a relationship of mutual tension: on the one hand, the requirement for “critical lucidity,” and on the other, the “creative function of the imaginary.” It is a process whereby the individual, creating and constantly drawing forth new critical stances and new realities, is him or herself transformed by what s/he modifies and, consequently, the boundaries of the institution in which s/he has agency are modified. All of the artists featured in this exhibition submit Justice to a comparable radical imaginary, casting a lucid gaze upon its ethical and political implications.

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Jill Magid also casts a critical eye on the judicial institution, but in her case by attempting to test the rules governing intellectual property law. Her project *The Barragán Archives* submits the legal apparatus to a process of subjectivation, but in this case setting up a sort of love triangle among the parties involved. In 2013, intending to conduct a search in the professional archive of Mexican architect Luis Barragán (1902–1988), the artist ran up against an obstacle: she was systematically refused access. The archive is the property of Rolf Fehlbaum, chairman emeritus of Vitra, who acquired it as a gift to his fiancée, architecture historian Federica Zanco.³ Since that time Zanco has been director of the Barragán Foundation and claims exclusive rights to its use, including reproduction of any and all images of the architect's creations.⁴ How is it that a private company can hold the exclusive rights to an renowned architect's archive as well as the copyright on his works, even though they are in the public interest?

True, property rights confer the right to use, profit from and dispose of a thing, to be the absolute, exclusive holder of that thing. But is such privatization of intellectual property ethically acceptable? Magid began a series of projects aimed at highlighting these legal constraints in order to question them:⁵ unable to reproduce images of Barragán's works or buy a licence to distribute them, she acquired works published by Federica Zanco and then framed the photographic reproductions; unable to access the architect's Butaca chair (which had previously been adapted by Clara Porset), she made a tracing of the one designed by Josef Albers—who had produced it from his own tracing of Barragán's version—and reproduced it to scale.⁶ The artist even suggested Zanco agree to a trade: return to the architect's professional archive to Mexico in exchange for a diamond ring that the artist had made from Barragán's ashes (the body for the body of work), after unearthing his cremation urn in the presence, and with the permission, of members of the Mexican government and the architect's family. While Magid awaits a response, the ring has been put on display, for the purpose of prompting debate about the ethical and legal issues around privatizing an archive and a life's work, now rendered inaccessible to the public and the research community.

John Boyle-Singfield has engaged in a similarly radical enterprise, reconstituting the 1992 documentary film *Baraka*, directed by Ron Fricke. The film depicts, without narration, scenes of natural landscapes, religious rites and assembly-line work, creating a poetic, spiritual portrait of our planet. While its director originally shot material for fourteen months on five continents, Boyle-Singfield spent a few months in front of his computer, searching out photo and video reproductions in stock image banks to meet the daunting challenge of recreating the sequences of the original documentary, one by one. While the visual flow of his film, *Reconstitution* (2015), is similar to that of Fricke's original work, his intent differs: the images are low-resolution jpegs including the watermarks of the rightsholding corporations that demand licence fees for their use: getty images, corbisimages, shutterstock, videoblocks. Boyle-Singfield's successful enterprise of *détournement* leads to the sad realization that these companies have become the masters of the imagesphere, the sole holders of the usage rights to a global visual heritage.

The case *Highsmith v. Getty Images (US), Inc., et al.* provides an illustration of gross misuse of licence fees. The stock photo agency freely appropriates archival photographs, even if their authors, wishing to make them accessible to everyone, have donated them to public institutions and declared them royalty-free.⁷ Getty Images added its logo to the images and sold a licence for their use, without informing potential customers that they were originally available free of charge. Getty took its mercantile logic even further: it demanded that users of these images pay royalties, despite the fact that they had been declared royalty-free. Although demanding payment of royalties for public-domain images is not necessary illegal—after all, image banks are providing a service by making such images available—one cannot but acknowledge the immoral nature of such over-commercialization. Seen in that light, Boyle-Singfield's intent is not so much related to the content of the images used, but to the legal and ethical framework around them, or that they contribute to problematizing.

Agency is the name of a Brussels-based collective founded by Kobe Matthys in 1992 for the purpose of amassing a vast archive of "things", derived from public controversies or cases involving intellectual

property, copyright, trademarks, and patents. Agency is constituting its archive from instances of plagiarism, copying, misuse, appropriation and fraud, and has thus far compiled more than 2,000 different cases. Its “list of things” encompasses objects from the artworld but also objects outside it (e.g., food recipes, technical drawings, advertisements, software), and for which intellectual property claims have been made. Agency thus reminds us that the French Code of Intellectual Property protects authors’ rights to “all works of the mind, whatever their kind, form of expression, merit or purpose.”⁸ This ambitious intellectual enterprise thus affords us the opportunity to expand our knowledge of jurisprudence in matters of authors’ rights.

The assemblage that Agency has designed especially for this exhibition (“Thing 002296”) deals with the case *Hawley v. Canada*, heard in 1990. The plaintiff, John Hawley, claimed ownership of a painting that he made in 1987 when imprisoned in Frontenac Institution, a minimum-security correctional facility in Kingston, Ontario. While serving a ten-year term for a string of armed robberies, Hawley completed the painting, entitled *Mount Whympier*, working from a photograph of the peak, which is in Kootenay National Park, British Columbia. When he was paroled in 1987, he demanded that the Crown give him the painting. The Crown refused. The Federal Court decision reads, in part: “It is true, says the Crown, that the work of the plaintiff was done while incarcerated in Frontenac Institution but it was a work commissioned by the prison authorities, that it was created during his working periods and that the Crown is entitled to keep possession of it.”⁹ Although the Court acknowledged that a work of art is the property of its creator, because of the specific context in which this work was commissioned and produced, it found in favour of the Government of Canada.

Invited to create a site-specific exhibition at the Museo Amparo in Puebla, Mexico, 2010, Carlos Amorales engaged in both a critical and a political investigation of the museum’s collection of pre-Columbian artefacts. He designed a work compiling texts by several intellectuals that explored the construction of Mexican national identity in the context of anthropology museums, and the appropriation of that narrative by a private institution. In the face of this institutional critique, the museum imposed a publication ban. Wishing to avoid lengthy legal proceedings, the artist sought other means of countering this censorship. What would happen if the censored text were transposed into coded language, for example, in drawing form? Though this work never saw the light of day, the artist’s thinking sparked the project *Supprimer, modifier, préserver* (2012).

Upon close examination, one cannot help realize that the drafting of legal texts is also a literary genre subjected to process of codification. A civil code, for instance, provides access to the principles governing the rules of private law and rights (of persons, family, property, and civil liability). It is thus an organized set of rules having the force of law, expressed in a codified language that must reflect not only existing legislation but also an enlightened awareness of the values at issue. That said, although a codified law is constructed according to a logical framework, the text may be imperfect, contain faulty rules, or be founded on obsolete values; lawmakers seek to identify such deficiencies so as to suggest amendments or new interpretations. Invited to a research residency at the Musée d’art contemporain du Val-de-Marne, Amorales turned his attention to France’s Civil Code, a work in which privacy is regulated by political and legal operations: he decided to reproduce it using a printer equipped with a pencil to draw the electronically stored text. Using this new graphite-printed version of the *Code Civil*, he made a “juridical fiction” film in which lawyers were invited to “erase” an article of the code and then explain the reasons for and consequences of their action. The video *Supprimer, modifier, préserver* reminds us, with humour and irony, of the need to rewrite laws devised by legal and political institutions so as to account for the struggles and values that continually transform our society.

Carey Young employs a similar performance-based logic in creating her installations, but invites the public to engage with the often opaque, authoritarian rhetoric of the law. *Declared Void II* (2013) asks spectators to enter a cubic space and, while there, agree to declare themselves a citizen of the United States. This “legal void” today raises a not inconsiderable issue: it forces us to consider “where legal territories apply and where laws and human rights are enforceable.”¹⁰ It resonates even more

dramatically in the wake of the accusations that the U.S. administration has, with impunity, detained more than a thousand illegal immigrants, literally in cages, and separated them from their children. In Young's video *Uncertain Contract* (2018), a man recites various terms likely drawn from the legal rhetoric of contractual documents—"offer", "tender", "condition", "service", "damages", "notice", "termination", "severance", "jurisdiction", "witness"—before stepping toward the camera and shutting it off. His gestures and repeated vocal inflections call to mind a theatrical space, but the whiteness of his surroundings instead evoke the neutral "white cube" space of a gallery. In this piece as well as in her work overall, Young maps out legal fictions to remind viewers that every exhibitional context, including their own presence and participation, is also conventionally subjected to a contractual pact.

Marie J. Jean

The Radical Imaginary: The Social Contract is the first project in a series of exhibitions about the Institution and its history, seeking to understand how artists have either associated themselves with or been opposed to it, gradually inflecting its positions. The objective is to observe an alternative form of institutional critique that conceives of the components of the Institution (the judicial system, the university, the economy, etc.) as processual forms, in constant transformation, starting from two movements that are normally in a relationship of mutual tension: the sine qua non of "critical lucidity" and the "creative function of the imaginary."

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1. Milo Rau, quoted in Alexandre Demidoff, "Milo Rau : 'Le théâtre doit changer le réel'." *Le temps*, May 2018. [Freely translated.] Online version: <https://www.letemps.ch/culture/milo-rau-theatre-changer-reel>
2. Cornelius Castoriadis (1922–1997) was a philosopher, economist, psychoanalyst and revolutionary activist who reconsidered the traditional models according to which western philosophy has defined society and history based upon the "creative activity" of individuals and collectives. Though little known, his ideas are the subject of renewed interest in this study and conceptualization of new institutional models. See *The Imaginary Institution of Society*, trans. Kathleen Blamey, Cambridge, MA: MIT Press, 1987 [1975].
3. Vitra is a Swiss company that manufactures and markets the works of contemporary furniture designers including Charles and Ray Eames, Jean Prouvé, and Verner Panton.
4. Acquired in 1995 and moved to Switzerland, the professional

archive includes thousands of Barragán's original drawings, photographs and models. The owners saw fit to remove the accent from the spelling of the architect's surname when they named their institution. The Foundation owns and controls the image rights, even if it is not the owner of the Barragán buildings.
5. As Daniel McClean reminds us, "while copyrights law seek to balance the rights of users and the public domain with the rights of creators/owners (including through limitations such as the copyright fair use/dealing exemptions, the scope of protection, and the duration of protection), the relationship between the public domain and copyright owners has largely become skewed in favor of copyright owners in the global economy and digital environment." "Jill Magid and Luis Barragán's Legacy," in *Jill Magid: The Proposal*, Berlin: Sternberg Press, 2016. p. 67.
6. This chair model is in wide use in Mexico (and is itself an adaptation of a Spanish colonial design); in 1940, designer

Clara Porset introduced a modernist reinterpretation. She also designed a specific model for Luis Barragán in 1945, though that version was patented under the architect's name. Josef Albers, a friend of both Barragán and Porset, had also created a version of the chair in 1940, working from Porset's original (he had traced its dimensions during a visit to her Mexico City studio), which he then had reproduced (by Mary M. Gregory) for the dorm rooms of Black Mountain College, near Asheville, North Carolina. Magid's version, *Butaca Chair, After Josef Albers, After Luis Barragán, After Clara Porset* (2014), evinces the grey areas around attribution of the chair's design when copyright (author's right) can no longer be distinguished from property rights.
7. Getty Images demanded a royalty fee from photographer Carol M. Highsmith in 2016 after she posted her own photographs on her own website, despite the fact that she had given her archives to the Library of Congress free of charge,

and declared her approximately 100,000 images to be royalty-free.
8. Per article L 112-1 of France's *Code de la propriété intellectuelle* (CPI). Today, the CPI protects the rights of authors, and a list of works accorded protection has been established, though it is intentionally not an exhaustive register, leaving room for new forms of art. Canada, the United States and the other Common Law countries enforce copyright, which, per the Berne Convention, recognizes a moral dimension in author's rights, in turn ensuring better protection of intellectual property.
9. Cited in *Hawley v. Canada*. Online: <https://www.canlii.org/en/ca/ft/doc/1990/1990canlii8024/1990canlii8024.html?resultIndex=3>.
10. Daniel McClean, "The Artist's Contract / from the Contract of Aesthetics to the Aesthetics of the Contract," *Mousse Magazine*, No. 25. Online: <http://moussemagazine.it/daniel-mcclean-the-artists-contract-2010/>.