

Practice and/or process? (In)disciplining law and art

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Editors Dr Lucy Finchett-Maddock and Dr Jack Ky Tan

Introduction

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This symposia includes submissions that consider understandings of practice and process, in the interweavings between art, law and political activism, very broadly defined. The selection of essays bring together a mix of critical legal, socio-legal, practice-based and law and humanities commentaries on the coming together of art and law through its vernacular to spectacular practices and processes, of various forms.

The inspiration for this five-piece collection stems from a collaborative convergence of practitioners from the legal profession, those that are self-defined fine artists, those that see themselves as in opposition or tension with both, as activists or agitators who sit outside of any art/law dichotomy. This creation story emanated from the Art/Law Network's 'Art/Law Journal' project, the interesting intellectual and aesthetic junctures encountered giving birth to these essays. Indeed, you could regard this symposia as just *one half* of an attempt to manifest the intersections of art and law, theory, practice and process. The other half, comprising creative works, emigrated to a zine on art, law and politics, named "HYPHAE"¹. "Half" does not do justice because, just as within the four pieces of this symposia, art, law, practice and process are entangled and distributed in and amongst one another in such inseparable and co-creative ways that to speak of categorisation may be something of a fiction.

What came to light as a result of the bringing together of epistemes of different approaches to knowledge production and the bringing of objects into the world, was the manner in which institutional boundaries (perhaps laws) were being reproduced in the microcosmic example of our journal, and this resulting collection. These disciplining practices and processes, in the very sense of creating the chastenings of art (in its many forms) and law as separate, concocted over years of cultural, racial, gendered sedimentation and social conditioning, resulting in the institutions of art and law appearing as natural and given. Indeed Sylvia Wynter proposes that the rational/irrational dichotomy arises out of a 'lawlike ... systemic representaitonal shift

¹ See <http://hyphae.xyz>.

being made out of the order of discourse' in order to place the Western conception of 'Man' at the apex of a 'Chain of Being' with 'the figure of the Negro' at the nadir.² The Western romance between legality and the written text, has been rightly debated throughout and within, critical legal studies, as a point of departure between art and life, where visual, performative, and sensible excesses are redacted. But redaction only hides, and conceals, what remains and is always already, behind, and what *is*³. In the same sense, and as a result of these very socio-material practices and processes, we locate the presence of enforced dichotomies, and a redacted *other* symposia; the current practices and performances of academic knowledge-making, such as the necessary format and primacy of words, or the logistics and transactions of peer review, create another half that this symposia points to, shadows and indeed, completes.

Here, the idea of a completion of halves might seem sentimental. However, as the editors to this collection include an artist who is not an academic, Jack Ky Tan, whose academic practice (researching, reading, thinking, writing, speaking, discussing, advocating) forms part of his core artistry - his thinking and practice both emerge from and complete one another. In the way Rancière proposes 'politics has its aesthetics and aesthetics has its politics'⁴ - for Jack's work, thinking has its practice and practice has its thinking, and art has its law and law has its art. Of course this is not true of many artists whose practices stand self-sufficient from academic research. Nevertheless, in this editorial guise, there is a questioning of this call and response between a supposed split between thinking and practice, between practice that needs to be thought through, and thought that needs to be about, and be realised, *as* and *in*, practice.

Within the context of artistic practice as research, or research as artistic practice, where "research" is understood in its traditional sense of scientific knowledge or rational thinking, speaking *about*, *as*, or *in*⁵ become important epistemologies that benefit from being distinguished apart. Should the work of art or the work of creating artistic and aesthetic

² Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument.' *CR: The New Centennial Review*, 3(3), 330.

³ See the work of Anna McDonald on redaction, dance and law "walk (redaction)" at <https://vimeo.com/170149714> and "striking through walk 1" at <https://vimeo.com/167117668>, accessed 24 June 2022. Also, see relevant chapter on redaction, art practices and law in Katherine Biber, 'The Art of Bureaucracy: Redacted Ready-Mades' in Desmond Manderson (ed.), *Law and the Visual: Representations, Technologies and Critique* (University of Toronto Press, 2018), 286-309.

⁴ Jacques Rancière, 62.

⁵ Edmund de Waal, personal conversation, 2005. These modal distinctions of speaking critically about artistic practice and production were proposed to Jack in an undergraduate tutorial by ceramic artist Edmund De Waal, and has informed his research to date on the way representation and presentation functions in legal aesthetics.

knowledge through making (*praxis*, *technē* and *poesis*) be presented through a “speaking about”, i.e., through textual representation or explanation? Or can artistic knowledge claim some equivalence *as* research, as if the regimes of artistry and rationality were fully comparable and interchangeable? But perhaps the gap between practice/process and research is always that of translation, not only between two languages, but between two orders of knowledge? If so, the gap becomes insurmountable except through a speaking *in* one another, as a call and response of performativity where one speaks in one’s own ontology but in another’s epistemology: an ekphrasis if you will.

The nature of this call and response is perhaps not a dialogue between halves, but are knowledge impulses that respond to the other that is already in them. Black studies scholars Stefano Harney and Fred Moten opine that ‘in the call and response, the response is already there before the call goes out’⁶ and that ‘you are always already in the thing that you call for and that calls you’⁷. In this sense, this symposia is a call to a zine that is already somehow distributed within these pages. You might sense it through the shape of this assemblage of papers, through what these words complete, and through what is unsayable or left unsaid. It is a call from research to practice and process, which in turn, calls back.

Both art and law are placed within a disciplining of practising, each requiring “practitioners” and the production of processual and practical intuition as part of their calling. Both practice and process are movements and endings, having a practice, to practice, as both a naming category of being and a descriptor of doing. Are practices and processes the same thing? *Process*, for example, might refer to procedure in the enactment of a legal event or interpretation or judgement, or it might refer to the creation, production or situating of a work or art; similarly to arrangements of linear or non-linear elements in an act or emergence of political resistance or criticism. *Practice* could equally refer to diverse aspects of the legal or juridical experience, the making and consuming of art in its various forms, or navigation through the rough seas of political resistance, revolution or negotiation of the more stable structures of political theory, science and tradition.

⁶ Fred Moten and Stefano Harney, *The Undercommons: Fugitive Planning and Black Study* (Minor Compositions, 2013), 132.

⁷ Fred Moten and Stefano Harney, 7.

Practice is a word that gets used a lot these days. Whether you're an educator, a chef, a fine artist, or indeed, a lawyer - you have a practice, and are a practitioner. There is a very clear demarcation that becomes apparent when we refer to the "practice-based" work within the research sphere. Practice-based work involves the processes and methods involved in the creation of an artefact, which are both the process and the product of research. "Practice-led" research infers a scholarly contribution to discourse and knowledge on a particular area of practice, without the creation of an artefact. This inclusion of non-text based works as assessed for their originality and contribution to knowledge, has been included as part of research criteria in the UK since the introduction of polytechnics in 1880.⁸ In the Research Excellence Framework (REF) 2021, the system of government metrics and research auditing in the British higher education system, there has been an increased inclusion of practice-based work as fitting the metrics of "original", "significant" and "rigorous" contributions to knowledge. And yet developing a legal space for practitioners of *different kinds*, in which objects and images, performances and experiences, are included within the traditional journal publication sphere - remains complex, and just demonstrates the lexical imposition of disciplining, further.

What does it mean to be a practitioner? The word itself instils something that is unfinished, and yet there is an authority and legitimacy that at once asserts we have a "practice". Sylvia Wynter speaks of a "deciphering practice", which does not situate itself within the causal understandings of capitalism or patriarchy, but to consider how the "discursive-cum-biochemical causality" determines the '...narratively instituted "cultural Imaginaries", their modes of the subject, and "forms" or "ways" of life.'⁹ A Jamaican woman of colour having experienced British colonisation, writing ahead of her white counterparts later in the century - her thought can be identified as a precursor to considerations of matter and the non-social world in later movements of feminist new materialist and speculative thought. In a similar sense, the anthropologist Mary Douglas, who was a contemporary of Wynter's, repeats this concern for the material in her work 'Purity and Danger: An analysis of conception of pollution and taboo' (Routledge, 1966). In this text, is situated the placement of matter as social structure, through the cultural considerations of "dirt" in the arrangement of everyday life, with the famous

⁸ 'When the Council for National Academic Awards (CNAA) drew up its regulations for the higher degrees to be awarded from Polytechnics, they included a critical clause, "The written thesis may be supplemented by material in other than written form" (see Linda Candy, *Practice Based Research: A Guide*, CCS Report: 2006-V1.0 November, found at: <https://www.creativityandcognition.com/wp-content/uploads/2011/04/PBR-Guide-1.1-2006.pdf> accessed 24 June 2022.

⁹ Sylvia Wynter, 'Rethinking "Aesthetics": Notes towards a Deciphering Practice' in B. Cham Mbye (ed), *Exiles: essays on Caribbean cinema* (Africa World Press, 1992), 237-279, 260.

adaptation of dirt as merely ‘matter out of place’.¹⁰ Their shared consideration of matter as part of social and cultural practices and processes, is layered and in conjunction with, as well as in stepping outside of, extant determinations of post-Marxist thought, where practice and theory are thus *praxis*. Materiality and practice almost reunite the Cartesian split, allowing for the embodiment of indigenous, rooted, carbonised and atomic environments. This separation of theory from practice speaks of studies of management and organisational structures where practice is outside of the theoretical construct within which a body will sit, a separation between the thinking and the practical result. Influential in organisational theory, Alisdair MacIntyre made claims to working in small communities that are capable of preserving the practices and virtues previously suffocated by the force of liberal capitalism, a reality. Given his predisposition for Aristotelian teleology, practices and processes are cumulative and determine a direction toward a shared goal.¹¹

According to the Oxford English Dictionary, practice can mean: ‘the actual application or use of an idea, belief, or method, as opposed to the theory or principles of it; performance, execution, achievement; working, operation; (Philosophy) activity or action considered as being the realisation of or in contrast to theory [...]’. With a nod to the “practical”, the manipulation of hands and feet, tools and mind practice also is identified as: ‘The carrying out or exercise of a profession, esp. that of medicine or law. Also as a count noun: the business or premises of a doctor or lawyer.’¹²

To practice infers a repetition, where over time there is a solidification of ritual to finally bringing into being an end result - the process *and* the product. Much like the questioning of realism and idealism, where is the edge at which a new form comes into being? Is the form itself merely an illusion, a patterning that obliquely infers a poietic movement, where one processual moment emerges from the next. What do we mean by process? According to the same dictionary:

¹⁰ Mary Douglas, *Purity and Danger: An analysis of conception of pollution and taboo* (Routledge, 1966).

¹¹ Alasdair MacIntyre, *Selected Essays Vol. 2 – Ethics and Politics* (Cambridge University Press 2006), xi.

¹² *Oxford English Dictionary* (Oxford University Press, 2022), found at <https://www.oed.com/>, accessed 5 July 2022.

1. 'Going on, continuous action, proceeding [...] That which goes on or is carried on; a continuous action, or series of actions or events; a proceeding; (occasionally) a course or mode of action, a procedure. Now rare or merged in sense.'
2. 'The passing or lapsing of time, years, seasons, etc. [...].'
3. 'The whole of the proceedings in any legal action; an action, a suit; a case, cause, or hearing; the course, procedure, or method adopted in carrying on an action [...] The formal commencement of any legal action; the mandate, summons, or writ by which a person or thing is brought into court for litigation.'¹³

Process infers the passing of time, the techtonics of chronotopia and a movement, explicitly found within Western continental thought of Henri Bergson and Gilles Deleuze, whilst also identified within the analytical philosophy of Alfred N Whitehead's *process theory*. Whitehead speaks of this invisible juncture between what has become and the becoming, the "being and not-being", whereby '... the creative process brings together something which is actual and something which, at its entry into that process, is not actual.'¹⁴ This move between practicing to a *practice*, or a "concrecence"¹⁵ as Whitehead would term it, confers a meaning and determination found within repetition that denotes a trajectory outside of a singular instant. This is reminiscent of the performative materiality of Karen Barad, who recounts the measurement of light and the effect the receptacle through which light is quantified, has on the form that light takes¹⁶ – and thus the ontological form light takes on as a result. This plasticity is reminiscent of the filling of the receptacle, a movement between transition and concrecence, a mould filled with jelly to the point where the jelly is the mould, held and holding are indecipherable; the form is the praxis, and vice versa.

Following Bergson and Deleuze, the centrality of time and spatiality and the sedimentation of practices and processes in the construction of reality, has been a key epistemological turning point in recent years, emanating from a linguistic turn that continues to question the very notion of epistemology over ontology, language over matter, text over image, dichotomy over heretonomy:

¹³ *Oxford English Dictionary*.

¹⁴ Alfred North, Whitehead, *Religion in the Making* (Fordham University Press, 1996), iii.

¹⁵ Alfred North, Whitehead, *Process and Reality: An Essay in Cosmology* (Macmillan Publishing, 1978).

¹⁶ Karen Barad, 'Quantum Entanglements and Hauntological Relations of Inheritance: Dis/Continuities, SpaceTime Enfoldings and Justice-to-Come' *Derrida Today* 3.2 (2010): 240–268.

‘[A proposition is] that we recognise space as always under construction. Precisely because space on the reading is a product of relations-between, relations which are necessarily embedded in material practices which have to be carried out, it is always in the process of being made. It is never finished; never closed. Perhaps we could imagine space as a simultaneity of stories-so-far.’¹⁷

And yet the congenital nonlinearity of practice and process within indigenous knowledges, has arguably been present and acknowledged by those communities, for a lot longer. These could be traditional oral histories of passing on stories of a specific environment, from one generation to the next, through a combination of the social and biophysical. In Julia Cruikshank’s ‘Do Glaciers Listen?’, she repeats how Athapaskan and Tlingit cultures’ oral traditions see glaciers as social landscape’s natural processes, both generative of, and generating, stories: ‘glaciers take action and respond to their surroundings. They are sensitive to smells and they listen. They make moral judgements and they punish infractions.’¹⁸ Which may also make us think of the *processes* and *practices* of story-making and story-telling - the re-telling of histories through black quantum futurism and the reclamation of colonised bodies. Donna Haraway has been pivotal in framing the way such narrative can symbiotically generate material futures: ‘World is a verb [...] stories are of the world, not in the world. Worlds are not containers, they’re patternings, risky co-makings, speculative fabulations.’¹⁹

Reflecting the varied epistemological approaches found within these papers, the connections between methodology, practice and process perhaps come to the fore - a methodology as a logical framework that has become practice, both idiosyncratically, and that widely shared, through the production of research. An ascription to critical legal or socio-legal methods of knowledge production, or that of practice-based or practice-led anomalies in between, will perhaps be just as much a searching for truth, or truths, a connection between thinking and matter, that each method deems access to. Is practice and process context, and truth itself?

¹⁷ Doreen Massey, *For Space* (Sage, 2005), 9.

¹⁸ Julia Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters & Social Imagination* (University of British Columbia, 2005), 3.

¹⁹ Donna Haraway *Science Fiction, Speculative Fabulation, Spring Figures, So Far*, found at <https://adaneuromedia.org/2013/11/issue3-haraway/>, accessed 16 December 2021.

Of course, legal infrastructure is based upon accessing a chimaera of truth, through processes and practices themselves - or at least “justice being seen to be done”²⁰. Is practice context? Is the essence of practice and process, evidence? Is procedure itself an aesthetic practice? Consider the drying, cracking of ceramic as a modality, as an artefact - the proof of a metabolism thus far. Within this is the very emergence of due process, the rule of law, whereby architectures of justice are constructed and formulated as and in, the accumulation of procedure that then gives way to substantive legitimacy.

How do such themes emerge in the works of this symposia? Within the first piece, ‘Methodologies of Law as Performance’, Sean Mulcahy considers how traditional qualitative methodologies, such as ethnographic observations, case studies and comparative analysis, are used in law as performance studies. The paper then goes on to consider different methodologies, such as narrative, story-telling and also performance- or practice-led research, which position the legal researcher as practitioner and are under-utilised within legal research. Here, the questioning of methodology as practice is key and delicately presented within the piece as well as Mulcahy’s own experience across theatre as a performer, and how he melds this into his legal academia.

Following on, Robyn Gill-Leslie’s ‘How bodies challenge disciplinary binaries: re-examining law and the arts inside the Marikana Commission of Inquiry’ brings us to the forefront of discussions around evidentiary art, the apparent divisions between art and law, and the practices and processes that determine the constructs of legitimacy and disciplinary boundaries as a result. As a critical juncture to the “law *and*” movement, Gill-Leslie argues that art is complicit within the violence of the law, where only the corporeality of movement can allow for understanding the fluidity and lack of rigidity between disciplines. He takes the tragic scenes of the Marikana Massacre in South Africa where forty-four striking miners were killed by the South African Police Service (SAPs), where bodies are left as wreckage of the brutal apartheid, where the men who remained were accused of their killings. Gill-Leslie demonstrates the lack of critical power of art as murdered union leader Mgcineni Noki’s demise became the subject of legend and the culture industry’s fascination in his hero semiotic as a result. Here Gill-Leslie shows us the Noki’s body becomes cannibalised by the art world and no longer serving as the evidence of horror and the possibility for a truth within the bounds of the law. He

²⁰ *R v Sussex Justices, ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER.

proposes a way of traversing this practice and process, through the work of stencil street art, using the body as a bridge to co-generative space between the law and the arts.

In Philippa Crockett Thomas' 'The Researcher as unreliable narrator - writing sociological crime fiction as a research method' we find a visceral, lived storytelling and as a result, the revealed practices and processes of law, through both the author's own experience of crime writing, as well as her use of narrative and life-writing with her research. Composite of poststructural and speculative formulations of understanding truth and subjectivity, Thomas asks us to "make strange" experience through the process of narrative and storytelling, in order to understand the embedded normative presence of law within. Her acts of translation, exemplified by the included passage of one of her pieces of writing 'Lodger', remind us of the power of externalised narrative and the questioning of who is telling, for the usefulness in locating possibilities for change and transformation, the very motor of process itself, through its use as a research method within a social justice context. Within this is a live example of the power of fabulation, a materiality of law through a processual stream of storytelling that infers a questioning of methodological procedure within the presence of law, and law-telling.

'Imagination through Repetition' by Aleksandra Wawrzyszcz and Thom Hume, is a meditation on the shared practices of legitimacy held between the artist and the judge, as practitioners. They consider rebellion and imagination as tools for continuity and critique, and the extent to which either is attached to an egoic impulsion and thus furthering a juridical framework, as a result. The authors state: 'unlike artistic practice, judicial legitimacy is not based on individual actions but rather a commitment to the Integrity of the system as a condition of its legitimacy.' The emplacement of "cumulative" and "formal" repetition as the key means through which legitimacy is concurred, is found within the continuous and expansionist forms of law and art, that they differentiate as found within the works of the artists On Kawara and Peter Dreher that they discuss. This concern for accumulation is reminiscent of Whitehead's concrescence and transition, the movement of measured and measurement through repetition and iteration, creating innovations of category and form.

Oscar Guardiola-Rivera's 'Slow-mo: The Violent Art of Oscar Murillo' brings us in direct conversation with the materiality of Murillo's canvas, painted architectures and the force of history and art conferred. We are sent on a journey of swirls, lines, dirt, but most lucidly, the lines of colonialism that Guardiola-Rivera describes as passed on and emanating within

Murillo's works: 'In this trajectory, circles, arrows, lines and signifiers aren't constrained by the colonial capitalist system they contingently encounter, invert, and often subsume in revolt and in dialogue with the cosmo-plasticity of the visual-spatial reasoning of Afro-Amerindian peoples.' A powerful account of Murillo's practice and process, both of, and through, a "world cut in two", the materiality of violence made ever more real. The piece is a timely summoning of practices that sit outside Western epistemes, and yet very much within the processes of the art world, another indication of the culpability of law as an aesthetico-material formation, that at onces creates, and so too, destroys, movements, peoples, and their heritages.

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