

Reconstructing the House of Law¹

I.

Recently, I was at a seminar organized by the Harun Farocki Institute and the University of Fine Art Leipzig. Harun Farocki was a documentary film maker, who tried in his work to make social forms and the interaction of social forms plastic. Mostly, art students, photographers, and filmmakers attended, but also some lawyers. The seminar was the starting point of a new research series “Terms & Conditions: The Legal Form of Images.”

During the course of the evening, I learnt the reason the organizers had had the urge to start a research series. In recent years, they had remarked a “legal turn” in the arts of a twofold nature. On the one hand, artists have felt more and more restricted “by law” when producing art, as the organizers noted. (As I found out later, this felt sense of restriction not only came from law in the strict sense, *e.g.* from copyright law, but also from other forms of social and political regulation, *i.e.* the question of whether one can publicly make a controversial political statement at a ceremony without being ostracized or censured. Interestingly, the present artists *felt* those social restrictions as legal restrictions.) On the other hand, maybe due to this increasing sense of restriction, law *itself was becoming* more and more of *an unknown catalyzer for*

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artistic production. The organizers postulate that by making the law or the *legal restriction and framing* of art into an object of art, artists have attempted to master law again and to overcome the fear of the unknown, the overwhelming, the hypercomplex.

II.

The law is not only the frame in which art takes place but is the framework for all our social interactions, as materialistic critics since Karl Marx have so plastically pointed out. Thus, the *fear of law* and the *feeling of being restricted by law* exist not only in artists' minds.

There are many reasons to fear the law:

Laws are formulated in technical language. Legal procedures take a very long time. German bureaucracy and courts still work mostly with paper. A lot of paper. It requires long years of training, a strong will, and a great deal of hard studying to master the concepts, procedures, and methods of law. And, moreover, law, through its abstractness, creates and perpetuates injustices.

However, there is hope. Critical legal scholars rise to the aid of enlightened citizens. They try to push wide open the entry door of the house of law. But how? By empowering everyone to get access to the law, *to enter* and *to master the law* and, in the end, to use the law for individual purposes or for the broader goal of social transformation.

Nevertheless, I must wonder as I step out of the opened door that, as a woman, was closed for me for a long time, and look at the massive building from the outside: Is opening the front door to law enough? Will the law or rather the frame of law, that is, the house of law itself, change fundamentally only by inviting more people into the edifice where law takes place? Will not the same prejudices und power structures remain in place even if we adopt

an open-door policy to the law? Don't we need to change the whole house of law structurally and to rebuild it?

III.

"For the master's tools will never dismantle the master's house." Audre Lorde spoke these words in 1979.

I think about that sentence as I walk through one of the cities I have been living in during the past few years. This includes Frankfurt, Berlin, and Hamburg. Regardless of which city I wander through in my mind, I always pass construction sites. It seems like the whole city is under constant construction. We reconstruct buildings, streets, and public places. We are used to the noise and willing to invest money and labor in maintenance and reconstruction. So why not reconstruct the house of law from time to time as well?

Construction processes are difficult. They are costly. They take time. Construction efforts can also result in something very different than what was planned. The planning process may already have been rocky. Trying to develop a new (legal) system on the drawing board alone is impossible. Critical legal scholars and artistic visionaries can propose some cornerstones. Still, when it comes to *actually building* the new house of law rather than only dreaming about it, those cornerstones may not be enough. They may not entirely support the ground of the structure as we may find out. Thus, we may need to restart the building process. Every time we restart the building process, which might fail over and over again, we will have to reassess the conditions of the construction process itself. How should we structure this process? Who do we include in it? What materials should we use? Can we make sure that the new house of law that we are constructing is large enough for all present and future citizens and non-citizens? Can we shape the house of law in a way that non-human animals and

nature can enter? How much time can we allow for the building process? Are we willing to try out new, experimental forms that might reveal a leak somewhere? What about the stability or the frame? Is the roof waterproof?

If we want to test out new forms of thought and production, we must be willing to take risks and to accept failure. This is difficult in a world governed by economic pressure, competition, business interests, perfectionism, and stress. However, if we do not think about changing the forms of thought and production, we risk reproducing the same hierarchies and power asymmetries from which we wish to escape.

IV.

How can we open new spaces for thought in the rebuilding process? In what ways can we perform a critique of law during the “new twenties” of the twenty-first century? Can we escape the vicious circle of recycling thought reproduction?

We might find an answer in experimenting with media like film, performance, or theater. These forms enable spectators to see law as a social phenomenon, as a frame, that is, as Bertolt Brecht put it, open “for access” and reconstruction. By making law the object of the performing arts, or rather, a performing object of art, society and its laws are presented as only one possible option of reality. Acting out a scene inevitably contains the possibility of the same scene being acted out in different ways. The actor does not have to decide on any one performance but can play with differences of meaning. It is therefore no coincidence that many revolutionary plans were probably forged in the backrooms of literary salons and theater basements.

Moreover, the production process of a play or a film, if actors are involved, differs from the production of a classic academic

text. Of necessity, the production can only succeed if *all of the* participants work together, share a vision, participate in rehearsals or shoots, and *relate to one another*. Working on a project collectively helps participants to question and sharpen their own ideas and concepts while being forced to make compromises and being inspired by these restrictions.

V.

This is a positive – even a romanticized – interpretation of the performing arts as new forms of legal criticism. However, we should be wary, as Greta Olson reminds us in her groundbreaking essay “De-Americanizing Law and Literature Narratives: Opening up the Story,” of naively placing too much hope in forms outside of the law, especially in “the arts.” We could classify this “blanket reference” to the arts as a *déformation professionnelle* of (critical) legal scholars who seldom take a closer look at the production processes of the (performing) arts themselves to consider what being an artist – from a material point of view – really means.

It means to be ready to live a life of financial insecurity, of instability, and of fighting against meaninglessness, sexism, and ageing on a daily basis. As institutions, public theaters are under economic pressure to produce a certain number of successful plays each year. They are structured in a highly hierarchical way, offer precarious work conditions and contracts that can be terminated at liberty. And the film market is even more dependent on capital than the legal practice is.

V.

Therefore, as critical lawyers, we are privileged. Our legal surroundings offer a stable framework with less precarious condi-

tions in which to take the risk of producing art than in the art market. We should be willing to take this risk because there is a difference *in form* when we consider the law through the artistic lens as an object of *art*, if we try not only to criticize, but to actively *create* something. In artistic and academic production processes, content and form are equally important, and are completely intertwined. I cannot think solely about form or solely about content because neither content nor form is a priori, or a given. Rather, the form can only be decided on accordingly to the content, and finding the right form is a central part of artistic research. Content conditions form, and form determines content.

VI.

A few weeks after my visit to Leipzig, I was invited to the “Good Practice Salo(o)n” at the Bauhaus University in Weimar. Hosted by the Chair for Artistic Research at the faculty for Art and Design, the “Good Practice Salo(o)n” is part of the faculty’s PhD program. Here, again, I was overwhelmed by the genuine interest in law as a framework and as an artistic object. I got the impression that the framework that is given by law, especially through the self-imposed stipulation of a PhD program, was not seen as a restriction at all but rather as a protective shield – a shield that may become even more important given the rise of right extremist politics.

The stipulation is itself a work of art, an attempt to give a frame to the un-frameable process that is artistic research. At the same time, this stipulation leaves room for testing boundaries and questioning the framework as well. Without a frame of some kind, legal or not, the breach of the norm becomes hard to enact in a field in which everything seems possible – art. We need a frame in order to be able to deconstruct it.

VII.

Reflecting back on the visits to Leipzig and Weimar, I believe that there is a way to conquer the fear of law. This is to accept law for what it is – a tool that is necessary to create a framework for an artistic critique of law. This frame will vary according to the content that it contains and will, ideally, have an inner connection to this content. The frame is there to be destroyed and reconstructed in a constant process of rebuilding. The frame itself performs art.

