

Colophon

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Collective Struggle of Refugees.
Lost. In Between. Together

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Artists at Work: Patrick Bernier and Olive Martin

Audrey Chan

Artists Patrick Bernier and Olive Martin's ongoing performance project, *X. c/ Préfet de... Plaidoirie pour une jurisprudence (X and Y v. France: The Case for a Legal Precedent, 2007–present)*, juxtaposes the legal status of an author versus that of an undocumented immigrant (sans-papiers) facing deportation in France. As artists concerned with issues of migration, they recognized an irony in the rapid expansion of copyright and intellectual property laws in the digital era, on the one hand, and the diminishing rights of immigrants and freedom of movement under French and European Union law, on the other. "X" is a character invented by the artists, a stand-in for individuals facing deportation orders in French and European courts. In the performance staged by Bernier and Martin, he or she is not only an illegal immigrant but also the author of a site-specific immaterial work—a shift in status that would accord X different rights and possibly allow him or her to stay in the country. The legal plea to allow X to stay in France is argued by practicing lawyers (Sylvia Preuss-Laussinotte and Sébastien Canevet) to an imaginary judge, in whose place the audience sits. This transposition implicates the audience in the routine process of entry and expulsion that takes place everyday at the borders of today's increasingly migrant societies. The project was originally developed under the title *Projet pour une jurisprudence* during the artists' residence at Les Laboratoires d'Aubervilliers in 2007. Since that time, iterations of the project have been presented in different art venues in France, Belgium, and Austria.

Bernier and Martin have worked collaboratively for over a decade, but their separate projects also develop the themes explored in *X. c/Préfet de... : Bernier's work deals with issues of hospitality and hosting, both virtual and real, and his projects have taken the forms of chat rooms, collaborations with storytellers, curatorial interventions, and writing. Martin's projects in photography, film, and*

installation have dealt with the porosity of identity in the context of Giorgio Agamben's notion of "whatever singularity."¹ In July 2009, writer Audrey Chan interviewed Bernier and Martin about their practice at their home in Nantes.

Audrey Chan: What takes place in a performance of *Plaidoirie pour une jurisprudence*?

Olive Martin: It's very simple: two lawyers appear before an audience on a bare stage. As people take their seats, the lawyers put on their black robes. They are in the administrative court responsible for cases involving foreigners and deportation. Sylvia Preuss-Laussinotte, a lawyer defending immigrants' rights, begins her plea on behalf of her client, X, addressing the audience as she would a judge in a tribunal. After presenting her case, she introduces Sébastien Canvet, a specialist in authors' rights, and explains to the judge that they consider their client not as a foreigner, but as an author. Sébastien and Sylvia proceed to give legal arguments to the audience as to why their client should be allowed to stay in France. So the client X is a model, and in fact, X could be anyone.

AC: When you say a person is an author, the implication is that they have produced a work. So when the lawyers defend the immigrant as an author, does the question arise, "What is X an author of?"

OM: We made a case where X is the author of an immaterial, site-specific work that cannot exist if this person is sent back to his or her country. We are also making the argument that authors' rights should protect the author and not just the work. So the two lawyers, Sylvia and Sébastien, bring in cases where immaterial works were protected and discussed. They invite the judge—the audience—to make a new legal precedent.

Patrick Bernier: When we present the performance outside of France, we address the plea to an imaginary judge of the European court, rather than the French court. So the title of the performance is no longer *X v. the Préfet*, but *X and Y—two co-authors—v. France*.² And the arguments are based on the 10th article in the European Convention on Human Rights (1950) on the freedom of expression and artistic liberty.

AC: Do the lawyers present their arguments spontaneously or from a script?

OM: Sylvia usually writes her plea, but adapts it to new political situations as they arise. Sébastien never prepares a written text, only the structure of his argument and some notes. Before the performance, we distribute to each audience member a 30-page document containing all of the documents a lawyer typically gives to a judge to follow the case he is defending. You can follow along during the performance as the lawyers will say, "On page 1..."

PB: We give the plea and the sources of the plea to the audience. It's connected to open-source theory.

1. In *The Coming Community*, Giorgio Agamben defines "whatever singularity" as that which has an "inessential commonality, a solidarity that in no way concerns an essence." His notion of "whatever" is based upon the original Latin definition of "being such that it always matters." See Giorgio

Agamben, *The Coming Community*, trans. Michael Hardt (Minneapolis: University of Minnesota Press, 2003).

2. For more information about the project, please visit the website: <http://www.plaidoiriepourunejurisprudence.net/spip.php?article12>.

AC: How did you come to collaborate with Sylvia and Sébastien?

OM: We wanted to work with two specialists to give a professional legal base to our work. In fact, they were both already activists within their own field. But we didn't know they would be as involved as they finally were, as performers. In our first discussion, Sylvia told us that the judge should be a creator. Lawyers bring in the tools for the judge to be creative.

AC: That's interesting because in the United States, the term "activist" is often used to discredit a judge, suggesting that the judge is interpreting the law to serve a personal or political bias. In the process of developing a new legal precedent, a rule or principle is established through a court ruling that can later be applied to subsequent cases with similar facts.³ In common law systems, such as in the United Kingdom and the US, the law is made by judges and evolves over time on a case-by-case basis through legal precedent. In contrast, France's civil law system is comprised of codes (e.g., code de la propriété intellectuelle) originating in legislation. In both cases, previous court decisions are the building material for a lawyer's argument. In the French context, a judge can decide whether or not the argument is based on a sound interpretation and application of civil code. If not, a judge on a later case can dismiss the previous ruling. You need to refer to the past in order to move forward.

OM: It's a passionate and complicated question of interpretation. A case can be interpreted and applied

in many ways, so you have to be clever and thoughtful enough to match one case with another to make the argument that you want. As in art, when you put two things together, they say something different.

AC: When the lawyers plea to the audience directly, it calls attention to the theatricality of the courtroom and the fact that lawyers have to perform, like actors. It's a kind of performance of persuasion.

OM: We liked the language and the theatricality of the courts, and we knew that this was the form that we wanted to play with. For example, lawyers can speak for their client in the first person—they say, "I did not kill." There's a kind of confusion of identities between the lawyer and his or her client. Sylvia and Sébastien were very surprised when we told them, "Well, we just want you to plea as you do in the court." They responded, "But is this really art?"

PB: They wanted something more theatrical....

OM: With lighting, with a set, something very organized... whereas we wanted something more documentary and direct.

AC: Do you plan to stage the performance in courthouses too?

OM: Not in courthouses, not yet at least, or maybe never. Courthouses could be the real site of the work, but that's not our goal. The first goal was to set a legal precedent. While it may not be a realistic goal, we hope that it will happen.

3. The form of "precedent" most applicable to Bernier and Martin's project is the "landmark decision," which establishes an

important legal principle or change in the law on a particular issue (e.g., the rights of illegal immigrants).

AC: Perhaps establishing the new precedent isn't the immediate goal, but your work projects towards what currently seems impossible. In that way, you're infecting legality with an artist's perspective.

OM: We know that the project can change the way people see laws regarding foreigners, artists, and art, as well as authors' rights. It reminds us that you can, as a civilian, influence the law and speak and act on behalf of foreigners, who are not simply people who crossed the French border just to eat your bread. They are your neighbors and their kids are playing in the street with yours.

PB: All court decisions against foreigners are made in the name of the French people. Our wish is that the people will go to their courthouses to see what happens in their name, that they ask questions and say that they don't agree with the decisions being made.

OM: In the beginning, we had a more activist position. Now, however, we don't grant efficiency the same importance.

PB: Now we know it takes a long time to affect the mentality of a judge. To change this mentality, we have to make ideas circulate. Our project can serve as a template for action.

AC: What led you to work on this project?

PB: When Olive and I arrived in Nantes in 2001, my work concerned hospitality, freedom of movement, and borders. I began working with a local association

called GASPROM (Groupement Accueil Service Promotion du Travailleur Immigré), that agitate on behalf of immigrants. For about three years, I worked there as a volunteer and activist, sorting mail and writing official letters for immigrants requesting asylum from the French government. The letter writing was my informal training in foreigners' rights. People told me their reasons for having left their countries for France. Little by little, I began to understand how I could combine these two activities—my art practice and my activist practice.

OM: GASPROM was set up in the 1960s to help the first wave of migrant workers in France, who did not have many rights and were not protected under the law. The association helped them to find a place to live and gave them access to health care. In the 1970s, during the first economic crisis, France shut its borders and wanted the foreign workers to go back home. But they were already living in France and they wanted their families to join them. Since that time, the face of migration has changed.

AC: How did you arrive at a relationship between authorship and migration?

OM: Through Patrick's work with GASPROM, we learned that there are more and more laws that regulate displacement, travel, and borders. And as artists, we found that there are also an increasing number of laws that regulate cultural and artistic production.

AC: So you're proposing that just as citizenship can be achieved through the legal process, everyone has the potential to be an author protected before the law. Authors'

rights [les droits d'auteur] in French law are typically framed as protecting the creator, but they also limit access to artwork by limiting its redistribution. What application of authors' rights are you referring to within your project?

PB: In the *Plaidoirie*. . . we are trying to return to an idea dating from the French Revolution, developed by Abbé Sieyès and Pierre Beaumarchais: that an author's rights are meant to protect the author from a producer—for instance, a theatrical producer or record label. Beaumarchais essentially said, "Well, we need money to live, we need money to make our work. We need you to recognize intellectual ownership." Abbé Sieyès was also concerned with making a work quickly available to the public. He proposed that an artwork should be protected for five years, after which time it would become *domaine public* [public domain]. Currently the length of protection is 70 years after the death of an author.

OM: There's a difference between the Anglo-Saxon method of copyright and authors' rights in French law.

AC: In contrast to British and American copyright laws, which privileges the publisher or editor of a work, French law recognizes *les droits d'auteur* [rights of the author]. In fact, in France, a work can only be protected if it is an *œuvre de l'esprit* [a work of the mind] that has emanated from an author's intellect.

PB: Both the French and Anglo-American systems limit the circulation of artwork, but the current evolution of these rights in the French context increasingly

protects the interests of producers and companies in order to help them make a profit.

OM: This year in France, President Sarkozy tried to pass the HADOPI law.⁴ Besides protecting profits, there is the basic question of "What is protection, really?" The idea of an artwork is that you share it—it only has an effect if it's heard, seen, and shared. A similar question concerns the French borders. We want to protect, but what exactly are we protecting? At that point, protection just closes you off to other possibilities.

Patrick Bernier (born 1971) and Olive Martin (born 1972) are artists based in Nantes, whose research into how art can be political often leads them into exploratory encounters and collaborations with fields as diverse as law, storytelling, fairy chess, and weaving. Audrey Chan (born 1982) is a Los Angeles-based artist, writer, organizer, and educator who researches feminist art, identity politics, and rhetoric. This text originally appeared as Audrey Chan, "Artists as Work: Patrick Bernier and Olive Martin," *Afterall Online*, 3 November 2009, online at <http://afterall.org/online/bernier-martin.essay>. It is published in this reader, in lightly edited form, with permission of the authors and *Afterall Online*.

4. HADOPI Law or Creation and Internet Law are alternative names for *la loi favorisant la diffusion et la protection de la création sur Internet* [law favoring the diffusion and protection of creation on the Internet]. HADOPI is an acronym for the French government agency, *Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet* [High Authority of Diffusion of the Art Works and Protection of the (Copy)Rights on Internet] established by the bill. The agency is vested with police power to punish violations of copyright law by Internet users under

a "three strikes" punitive arrangement. After protracted debate and public protest, the bill was first rejected (9 April 2009) and then accepted (12 May 2009) by the French National Assembly and finally the French Senate (13 May 2009). Most recently, the *Conseil Constitutionnel* [Constitutional Council], France's highest constitutional authority, ruled on 10 June 2009 that the HADOPI law is unconstitutional on the grounds that "the Internet is a component of the freedom of expression and only a judge can impose sanctions under the law."