



Tehching Hsieh, *One Year Performance 1981–1982*. Life Image
© 1981 Tehching Hsieh. Image courtesy the artist and Sean Kelly,
New York

Orders of Law in the *One Year Performances* of Tehching Hsieh

Joan Kee



A young Asian man stands outside the north entrance of the New York City Criminal Court on 100 Centre Street, just next to Chinatown (frontispiece). He is Tehching Hsieh, an illegal Taiwanese alien who has just been released from custody after having been arrested for assault and battery. The incident occurred during his undertaking of *One Year Performance 1981–1982*, a work the thirty-year-old artist began in September 1981. Known informally as *Outdoor Piece*, it was based on Hsieh's written declaration that he would live outdoors and refrain from entering any built structure for an entire calendar year. The space of the photograph opens up so that we get the sensation of occupying the same broad expanse of pavement as the artist. Indeed, we are close enough to make it seem as though we are the ones taking Hsieh's photograph at his request, even though it was he who took the picture. Hsieh is centered in the composition, one hand in a pocket and his rucksack casually laid at his feet, as if to suggest that posing for the camera marked but a brief respite in a journey. In the background, a long stretch of granite wall has been cropped in such a way that the courthouse's true height of seventeen stories has been suppressed. Nonetheless, we can read the legend that runs across the top like a frieze: "THE ONLY TRUE PRINCIPLE OF HUMANITY IS JUSTICE. JUSTICE IS DENIED NO ONE." When published in *Out of Now: The Lifeworks of Tehching Hsieh* (2009), the most comprehensive catalogue of his projects to date, the book's designer trimmed this photograph further at the right, an intriguing truncation whose unintentional effect was to reframe "JUSTICE IS" as an open question to viewers. Any answer, the photograph seems to imply, must take into consideration the relation of the individual to the law, a connection frankly highlighted by Hsieh's standing directly in front of the courthouse wall.

Completed between 1978 and 1984, the first four of Hsieh's *One Year Performances* involved extremely regulated living situations that demanded high levels of physical and psychological endurance. They included residing in a small cage like a prisoner or a zoo animal (*One Year Performance 1978–1979*; informally called *Cage Piece*), living entirely out of doors and not entering any natural or constructed dwelling (*Outdoor Piece*), feeding a card into a time clock every hour on the hour (*One Year Performance 1980–1981*; also known as *Time Clock Piece*), and, perhaps most psychologically challenging, cohabiting with, but not touching, another individual despite being tied together with a piece of preshrunk nylon rope eight feet long (*One Year*

Performance 1983–1984, or *Rope Piece*).¹ Each of these works was accompanied by a typed statement written by Hsieh indicating the scope and limits of his actions. The artist signed, dated, and distributed these documents before commencing each performance, and their language encourages them to be read as if they were contracts, an interpretation Hsieh strongly implied when he remarked that the “language of the law was appropriate to support my ideas.”² A category of legally binding agreement regulating the interaction between one party and another, contracts offer a useful conceptual framework through which to consider Hsieh’s *One Year Performances*, not only because of the formal congruence between the written statements and the appearance of contracts but also because of the lengths to which Hsieh went to fulfill the terms outlined in each statement. In fact, so vigilant was Hsieh about discharging these duties that his projects bring to mind the legal definition of “performance,” or the accomplishment of an obligation set forth in a contract.³

Existing scholarly literature attests to a rich history of conceptual artists using legalistic language as a way to bridge the gap between art and life.⁴ There also exists a related history of later twentieth-century artistic challenges to various facets of the law, acts of resistance and provocation intended to assert artistic agency and model social practice.⁵ “The use of illegality is a commitment by the artist to deal with reality, often at dangerous risk,” wrote the curator Jeannette Ingberman in the catalogue for *Illegal America*, the first major exhibition that seriously considered contemporary American art through the lens of the law. Organized in 1982 by the avant-garde performance art nonprofit Franklin Furnace in New York, the exhibition featured work by artists who intentionally violated current law as well as that of those, including Hsieh, whose works alluded to such infringements.⁶

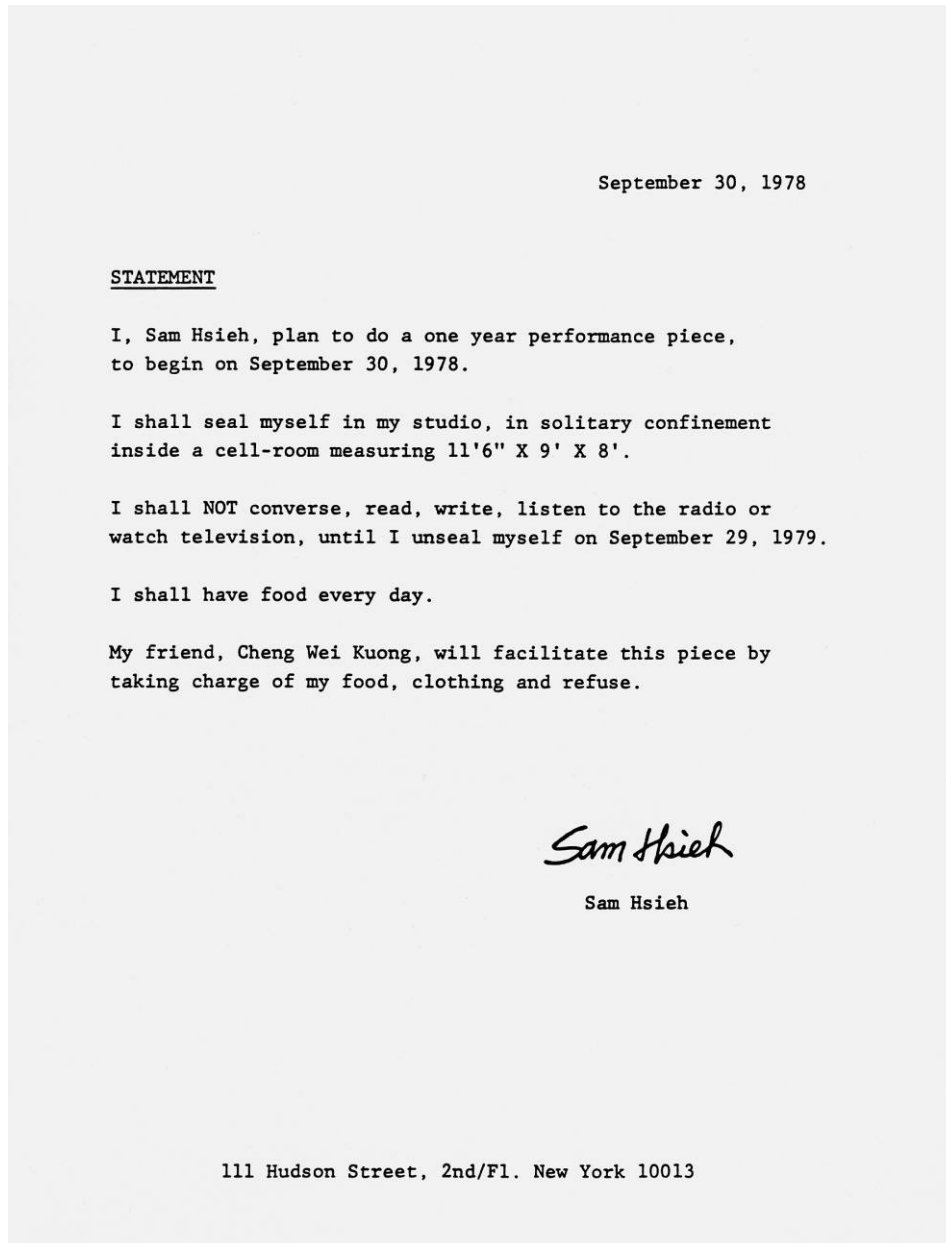
Making art that incurred criminal liability was not Tehching Hsieh’s primary concern. Indeed, the *One Year Performances* suggest that for an artwork to have genuine social import its maker had to demonstrate a strong sense of accountability. It is relatively easy to break the law; it is harder to live up to its standards. Hsieh has explicitly stated that “law is not the reason nor foundation” of his works.⁷ But by adhering to a set of self-made rules as if any violation of them could have real legal consequences, he effectively became a lawmaker who defined the terms of his engagement with the world. One might productively read the sheer volume and procedural rigor of his written statements for the *One Year Performances* as a preemptive attempt to neutralize whatever suspicions viewers may have had concerning his legal status as an undocumented alien. The strong affinity between Hsieh’s statements and contracts encourages viewers to use contract law as a gauge for measuring the artist’s integrity and credibility. The *One Year Performances* and their subsequent reception also foreground the inconclusive nature of evidence. What does evidence actually show, let alone prove? These works reveal that evidence consists of an intricate network of assumptions that accumulate but do not necessarily cohere into a single explanation. Finally, the *One Year Performances* highlight the potential of art to challenge the institutional regulation of lived experience and question legal issues related to ownership and collaboration.

Hsieh’s first four *One Year Performances* provocatively imply that a close reading of certain artworks and the methods of analysis applied to such interpretations reveals the fluid and often contradictory nature of the law. In other words, art has a great deal to say about the law, especially about how the meaning of the law depends as much on perception and appearance as it does on documented fact. At the same time, interrogating Hsieh’s *One Year Performances* through the lens of the law offers new insights into the artist’s creative practice.

From Documentation to Contract

The typewritten text accompanying each of Hsieh's *One Year Performances* follows roughly the same format. The date is flush right at the top of a sheet of white, U.S.-letter-size paper (fig. 1). Below the date appear several sentences under the general header "STATEMENT." Each sentence is single-spaced but separated by double spacing. The first sentence begins with the identification of the author (for example, in the case of *Cage Piece*, "I, Sam Hsieh"), followed by a description of his general intentions ("plan to do a one year performance piece") and the conditions under which the performance will be undertaken ("I shall seal myself in my studio, in solitary confinement inside a cell-room").⁸ The artist signed each statement, and his studio address appears centered at the bottom of the page.

- 1 Tehching Hsieh, *One Year Performance 1978–1979*. Statement © 1978 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York



Although Hsieh claims that his statements were written without reference to any existing models, the form and language of each follow what was, by the late 1970s, a well-established tradition of instruction-based conceptual artworks, the origins of which dated back to Marcel Duchamp and Tristan Tzara's "To Make a Dadaist Poem" (1920).⁹ In the 1960s experiments in musical notation by John Cage and the artists associated with Fluxus such as George Brecht, Mieko Shiomi, and Alison Knowles catalyzed the production of instruction-based works, ranging from Yoko Ono's proposal pieces (fig. 2), brief instructions that set forth mental or physical tasks to be carried out by the reader; to the wall drawings of Sol LeWitt, based solely on written directions and diagrams (fig. 3); to the "Activities" of Allan Kaprow, which consisted of pre-determined actions derived from everyday activities such as speaking to friends over the telephone or looking at one's reflection in a mirror. In each case, the artist charged an unidentified audience with performing a given act. These works are not legal notices per se, but the obligation imposed on the audience is so great that it approximates the force of a contract.

COUGH PIECE

Keep coughing a year.

1961 winter

Sol LE WITT
Born 1928, Hartford, Connecticut
Lives in New York

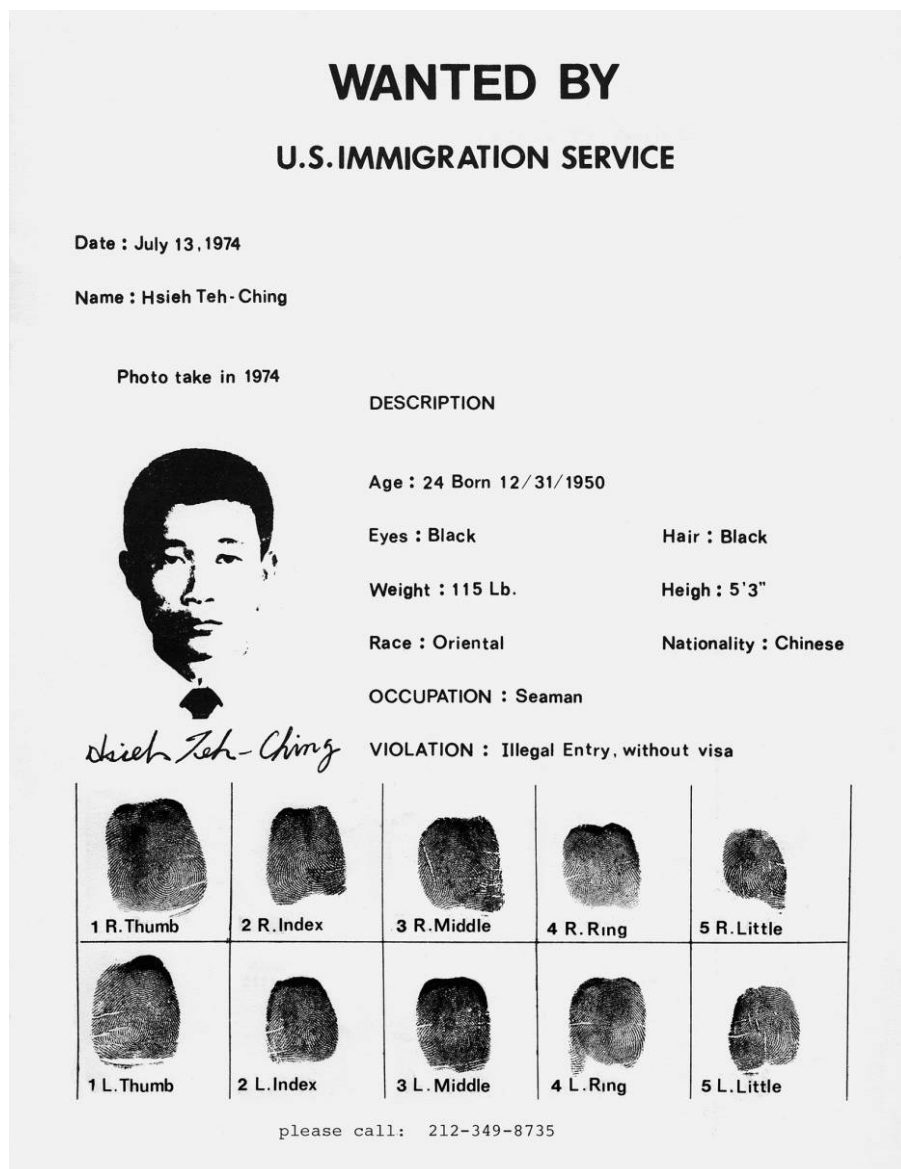
PROPOSAL FOR WALL DRAWING, INFORMATION SHOW

Within four adjacent squares,
each 4' by 4',
four draftsmen will be employed
at \$4.00/hour
for four hours a day
and for four days to draw straight lines
4 inches long
using four different colored pencils;
9H black, red, yellow and blue.
Each draftsmen will use the same color throughout
the four day period,
working on a different square each day.

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Ono, LeWitt, and Kaprow typically obligated others to perform the carefully prescribed actions outlined in their work. By contrast, Hsieh's self-imposed rules implicate the artist as a promisor, or, in legal terms, someone who voluntarily pledges to fulfill a promise made to another party as part of a contract. Individual sentences in the artist's statements turn on Hsieh's granting or denying himself access or permission. In *Cage Piece*, the second sentence explains what Hsieh will do ("I shall seal myself in my studio"), while the third sets forth limits to his activities ("I shall NOT converse, read, write, listen to the radio or watch television"). Hsieh mitigates the force of that denial in the fourth sentence with a brief permission ("I shall have food every day"), then concludes by delegating responsibility for "facilitat[ing]" the work to a named party ("My friend, Cheng Wei Kuong"). The repetition of the word "I" at the beginning of the first four sentences, particularly in the initial statement, in which "I" is immediately followed by the artist's name, mimics the language used for all legal documents that require the affirmation of personal identity.

Hsieh's statements might be included in what the art historian Benjamin Buchloh has famously termed "the aesthetic of administration," a phrase coined to illustrate how conceptual artists of the 1960s and 1970s actively incorporated into their work methods, forms, and materials associated with bureaucracy. One iteration of this aesthetic, according to Buchloh, was artists' use of "legalistic language," terminology derived from actual legal documents, in the name of institutional critique.¹⁰ A number of artists appealed to the format of the contract in order to claim rights not otherwise recognized or guaranteed by statutory law. LeWitt, James Turrell, and Robert Barry generated certificates of ownership and authenticity as a means of asserting control over the presentation and circulation of their works in a legal climate in which copyright protected only the physical expression of an idea and not the idea itself.¹¹ Other artists, such as Daniel Buren and Edward Kienholz, turned to the contract to emphasize the seriousness of their artistic intention, which was inextricably related to a broader awareness of having to claim and protect their creative rights.¹² This use of the contract was pushed to its limits with "The Artist's Reserved Rights Transfer and Sale Agreement" (1971), the model document designed by the dealer and curator Seth Siegelaub and the lawyer Robert Projansky in an effort to ensure resale royalty rights for artists.¹³ Taking a cue from the agreement, from 1974 to 1975 the artist Michael Asher co-authored, with the attorney Arthur Alef, a contract meant to serve as a model for any future display or transfer of his works.¹⁴ Not only did this document specify Asher's intentions for



the pieces, it made violations of those intentions actionable by law.

Hsieh flatly denied that the *One Year Performances* related to his rights as an artist and an illegal immigrant, or that they were in any way reflections of personal identity. Indeed, as the art historian Frazer Ward has observed, the *One Year Performances* stand out because of Hsieh's "near-systematic negation of subjectivity, staking out a position along the intersecting limits of economic, juridical, and political orders."¹⁵ Although based on Hsieh's lived experiences, the *Performances* are not about his personal feelings and beliefs; instead, they probe the extent to which individuals are defined by the legal and political systems to which they are subject. The photograph Hsieh took of himself standing in front of the New York City Criminal Court highlights the artist's liminal position in the United States. The phrase "JUSTICE IS" on the courthouse frieze calls to mind the running joke among Asian Americans, Hispanics, and African Americans accused of crimes who ask whether "Justice" is more accurately rephrased as "Just Us," a telling pun that lays bare the realities of a justice system often prejudiced against non-white suspects.¹⁶

Hsieh appeared to make light of how various legal and political systems define individuality in

Wanted by U.S. Immigration Service, a mock wanted poster that identifies him as an illegal alien (fig. 4).¹⁷ Made in 1978, four years after he left his native Taiwan for New York, and featured in the exhibition *Illegal America*, the work directly resonated with the courts' practice of referring to illegal aliens as "undocumented," or individuals defined by their lack of requisite documentation and permission paperwork.¹⁸ "Illegal alien" status was also defined by the state's attempts to find and expel those to whom the term was applied.¹⁹ Upending the traditional function of the wanted-fugitive poster, Hsieh freely provided audiences with photographic documentation of his physical likeness as well as his vital statistics, occupation, fingerprints, and signature. The artist put immense trust in the public to which the work was ostensibly addressed, even using his real name, "Teh-Ching," rather than the pseudonym ("Sam") that he had adopted in the United States out of a fear of arrest and deportation.²⁰

The statements that accompanied Hsieh's *One Year Performances* likewise functioned as quasi-legal documents through which the disenfranchised artist might assert his

- 2 Yoko Ono, *Cough Piece*, 1961. First published in Yoko Ono, *Grapefruit* (Wunternbaum Press, 1964) © 1961 Yoko Ono
- 3 Sol LeWitt, proposal for wall drawing, 1970 © 2016 The LeWitt Estate/Artists Rights Society (ARS), New York
- 4 Tehching Hsieh, *Wanted by U.S. Immigration Service*, 1978 © 1978 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York

own agency and authority. Legally speaking, Hsieh's statements were not contracts. There was no "meeting of the minds," a phrase used in contract law to indicate that the parties to an agreement are aware of the commitments they are making to one another. Neither was there "consideration," or something of value that each party to a contract gives in exchange for fulfilling the terms of an agreement. Yet the language of the statements conveyed an express sense of obligation to an outside party, even if Hsieh never identifies who that party actually is save for what can be inferred from targeted mailings to "people in the art world" or posters and flyers distributed near his downtown New York studio on Hudson Street.²¹ Notably, despite a general tendency of American code law to deny various entitlements to illegal aliens, under both the Fourteenth Amendment and section 1981 (1970) of the code of laws of the United States (more commonly known as the U.S. Code), these individuals are permitted to enter into valid contracts that can be upheld in a court of law.²²

On Meaning What He Says

Hsieh tried to communicate his ideas in the *One Year Performances* as clearly as possible, since the statements were directed to a generic reader.²³ The need for clear communication was particularly urgent because the texts were often the only explanation of what the artist was doing. Hsieh's syntax and vocabulary are simple enough to be widely accessible. In the statement for *Outdoor Piece*, for example, the artist declares that he will "stay OUTDOORS," then describes that condition as the refusal to "go inside" (fig. 5). The next sentence explicitly defines being "inside" as the occupation of any structure, whether synthetic or natural, temporary or permanent (caves and tents are included, as well as buildings and various modes of mechanized transport). Anticipating the harsh New York winters, Hsieh proceeds to qualify his promise: "I shall have a sleeping bag." Overall, he clearly delineates a set of expectations for both the artist and his audience. In return for undertaking this work, Hsieh seems to say, "I expect you to refrain from imposing your own views regarding how I should go about it." The clearly and succinctly composed texts accord with the standard of "plain meaning," a term that refers to the judicial practice of interpreting a given text from the perspective of a lay reader. The plain-meaning rule thus encourages language that could not have more than one likely interpretation. In the late 1970s "plain meaning" became a key issue as pro-consumer-rights groups helped bring about state and federal regulations to promote its use in consumer contracts.²⁴ Although there was no set test to gauge how easy contracts were to read, the length of sentences, complexity of grammar and syntax, and difficulty of vocabulary were considered important criteria.²⁵ Hsieh's English-language statements notably reveal almost nothing about the non-native speaker's foreign origins.²⁶ (The exception is a minor grammatical lapse in the second sentence of the text for *Outdoor Piece*: "I shall stay OUTDOORS for one year, [and] never go inside.") The studied neutrality of Hsieh's words and syntax reads as strategic, perhaps as an attempt by the artist to claim a place in a civil society otherwise defined by policies emphasizing exclusion over inclusion.

Likewise, the clarity and concision of Hsieh's brief texts recall the emphasis of American courts on reader comprehension as a significant factor in adjudicating a contract's validity. As the Court of Appeals for the Second Circuit held in an important 1977 decision, a contract had to articulate its provisions clearly ("it exhausts credulity to think that they or any other layman reading these legalistic words would have known or even suspected that they amounted to [such] an agreement"). Moreover, the contract's

September 26, 1981

STATEMENT

I, Tehching Hsieh, plan to do a one year performance piece.

I shall stay OUTDOORS for one year, never go inside.

I shall not go in to a building, subway, train, car, airplane, ship, cave, tent.

I shall have a sleeping bag.

The performance shall begin on September 26, 1981 at 2 P.M. and continue until September 26, 1982 at 2 P.M.

Tehching Hsieh

Tehching Hsieh

New York City

terms had to be easy to identify and not “buried in a multitude of words.”²⁷ This ruling represented a decisive shift in the law from the 1960s, when the same court discounted the relevance of a contract’s visual appearance in assessing its efficacy.²⁸ Each of Hsieh’s statements is typed rather than handwritten, a decision calculated to invest the text with the kind of authority associated with legal documents. (By the late 1970s fewer than half of all American states honored handwritten wills.) Hsieh further increased the readability of his texts by using generous spacing after each sentence. His selective use of capitalization (“I shall NOT converse, read, write, listen to the radio or watch television,” in *Cage Piece*, for example, and “I shall stay OUTDOORS for one year, never go inside,” in *Outdoor Piece*) notably, if unintentionally, conformed to the standard of conspicuity set forth in the first edition of the Uniform Commercial Code published in 1952 governing the sale of goods, which requires that any disclaimer in an agreement be “so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals is conspicuous. Language in the body of a form is ‘conspicuous’ if it is in larger or other contrasting type or color.”²⁹

5 Tehching Hsieh, *One Year Performance 1981–1982*. Statement © 1981 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York

The strong resemblance between the language and format of Hsieh’s written statements for the *One Year Performances* and those of legal documents likewise may have assuaged the incredulity some viewers expressed regarding his undertaking, which was conducted largely out of the public eye. The critic John Perreault has noted the considerable difference, for example, between Hsieh’s work and Joseph Beuys’s 1974 performance *I Like America: America Likes Me*, in which the German artist lived with a coyote in a confined part of an art gallery for three days.³⁰ The full-year length of Hsieh’s performances, by contrast, made it hard for some viewers to believe that he actually completed the work according to the stipulations he had set forth. Before visiting Hsieh in his studio during the course of *Cage Piece*, the critic Kay Larson confessed to assuming that the performance took place only on the days when the artist’s space was open to the public.³¹ Were audiences to accept on faith that Hsieh would obey the



letter of his own law? The abundance of photographic documentation of his *One Year Performances* suggests that Hsieh might have regarded written documentation as insufficient proof of his dutiful undertaking of the “contractual” obligations. As the art historian Kathy O’Dell has argued, if a performance is best seen as a contractual structure joining artist with viewer, it was photography that provided “pseudolegal” proof that such an agreement was in fact executed.³²

For *Cage Piece*, the artist even went so far as to hire a lawyer (Robert Projansky, the attorney who drafted “The Artist’s Reserved Rights Transfer and Sale Agreement”) and a notary to ensure that he adhered to the terms he had set for himself.³³ Hsieh’s upstairs neighbor, the artist Claire Fergusson, who was an eyewitness to the beginning and end of the work, remembers a lawyer signing slips of paper printed with the artist’s name and a number identifying each bar of the cell, which were then attached to every joint of the cage.³⁴ On the final day of the performance, Hsieh walked out of the cage and shook hands with Projansky in front of an audience of seventy people.³⁵ Neither the labor involved nor the lawyer could guarantee that Hsieh would adhere to his own conditions, but the ceremonial quality of the artist’s entrance and exit from the cage suggested the seriousness with which he took his charge.

The last day of *Cage Piece* also saw the artist Cheng Wei Kuong, with whom

- 6 Tehching Hsieh, *One Year Performance 1978–1979*. 366 daily scratches © 1979 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York
- 7 Tehching Hsieh, *One Year Performance 1978–1979*. Life Image © 1979 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York. Photograph, Cheng Wei Kuong

Hsieh had shared a painting studio in Taiwan, take a black-and-white photograph showing part of a sheetrock wall in Hsieh’s cell covered with uneven rows of tally marks incised by the artist with a nail clipper (fig. 6). The photograph was framed to show only that portion of wall, excluding all other information save for a legend, at the bottom, that reads, “Sam Hsieh 93078–92979,” indicating the duration of the performance (from September 30, 1978, to September 29, 1979). This photograph was one of many Cheng took during *Cage Piece*, most of which focused on the cage-like cell of pine dowels in which Hsieh resided over the course of the performance (fig. 7). The flattened curves of the “9” and “2” in the artist’s signature line are telling traces of the significant time and effort Hsieh must have invested in carving each daily mark and stress the materiality of his physical presence in the cell. Yet this close cropping of the photograph indicates that there is something more to the scene than what the picture shows, namely, durational, lived experiences that all still photographs are ill-equipped to relate. What do Hsieh’s

8 Tehching Hsieh, *One Year Performance 1980–1981*. Punching the Time Clock © 1981 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York. Photograph, Michael Shen

typewritten statements of intention and photographic documentation of the *One Year Performances* actually convey about what it was like to relinquish nearly all forms of contact with the outside world, or to be sleep-deprived for an entire year as Hsieh would be in *Time Clock Piece*? The artist's work calls attention to the facts the evidence suggests, but it is never definitive; it tends to raise more questions than it answers. Even with oral, written, and visual testimony, can we take Hsieh at his word? Or, put more broadly, what is specifically needed to assure us of his credibility? As Hsieh told the conceptual artist and critic Barry Kahn just before starting *Outdoor Piece*, "It is not possible for someone to witness, follow me all the time. If I did this [Outdoor] piece before I did the cage piece, people might not believe me, but now they believe me."³⁶ Each performance was preemptive evidence of Hsieh's ability to successfully complete future works, even when there were no witnesses. The cumulative effect of Hsieh's *One Year Performances* demonstrated the importance of precedent in establishing credibility.



Performing in Good Faith

It was with *Time Clock Piece* that Hsieh seemed most intent on proving his trustworthiness or, more specifically, suppressing signs of untrustworthiness. For this performance, the artist set out to "punch a Time Clock in my studio every hour on the hour for one year" (fig. 8). As the art historian Julia Bryan-Wilson has argued, *Time Clock Piece* is a work that "betrays an anxiety about questions of evidence." Bryan-Wilson explains how the extensive paper trail Hsieh produced "exaggerates bureaucratic demands for strict information management and record keeping." In other words, it imparts to Hsieh an intention to out-bureaucratize the bureaucracy by underscoring the means by which it conducts its business.³⁷ Yet parody was not the artist's aim. Seen in another light, Hsieh's diligence in keeping time reads as an extreme demonstration of his trustworthiness for audiences deeply skeptical of language. By the time he began *Time Clock Piece* in 1980, the history of conceptual art was rife with works that underscored the malleability of language. For many viewers it was difficult, if not impossible, to take any written statement by an artist at face value without also wondering whether it was meant to be ironic, a response, perhaps, to the law's insistence on regulation. How literally, then, should viewers take the similarity between Hsieh's statements and the idea, if not the function, of the contract?

- 9 Tehching Hsieh and Linda Montano, *One Year Performance 1983–1984*. 365 Daily Image © Tehching Hsieh, Linda Montano. Image courtesy the artists and Sean Kelly, New York



A productive lens through which to read Hsieh's work is the concept of good faith, or the duty of parties in a contract to deal with each other fairly and honestly.³⁸ Another important concept in contract law, the doctrine of good faith resonates with the material ends to which Hsieh went to ensure that he met his stated obligations. In the case of *Cage Piece*, for example, Hsieh had paper seals pasted on the wooden dowels that formed the bars of his cage. The fragility of the paper ensured that any attempt on the artist's part to escape would have been duly recorded. In performing *Time Clock Piece*, Hsieh used twelve alarm clocks as well as a wristwatch to minimize the possibility of missing punching the clock. To decrease the risk of falling asleep at night, the artist placed his wristwatch in front of a microphone attached to a loudspeaker that amplified the sound of its alarm. While measures such as these were no guarantee that Hsieh would make his hourly commitments, they indicated a level of care and concern that might be considered sufficient in terms of what good faith demands.³⁹

Moreover, Hsieh honored what the legal scholar Roger Summers called "the spirit of the deal" by generating an "Explanation of Procedure" for *Time Clock Piece* that set out three steps he would undertake "to avoid any suspicion of cheating." Hsieh had a witness sign each of the daily time cards and oversee any "repair or adjustment" of the clock; documented each punch with a 16mm movie camera set up in his studio for the duration of the project; and commenced the performance with a shaved head, allowing his hair to grow back naturally "to help illustrate the time process."

Hsieh instituted similar methods of enforcement for the faithful execution of *Rope Piece*, in which he and fellow artist Linda Montano agreed to live tied together for one year without touching (fig. 9). Hsieh and Montano bound themselves to one another using sailor's knots that were then sealed with lead pieces signed by two witnesses. Eight feet long and made of nylon, the rope was both long and flexible enough to allow the artists a certain measure of respective freedom: getting up at different times, for example. But it was not so long that they could live independently. The fact that the rope was tied to both individuals at the waist left their hands free, but at the same time reinforced how their connection involved the entire body. As time passed, it would have been difficult

for the pair not to think about cutting the rope. Montano recalls that less than a month before the end of *Rope Piece*, she showed a friend an article in *Life* magazine about a girl who had learned Harry Houdini's trick of freeing himself from ropes while underwater.⁴⁰ Yet the act of tying the rope, especially in front of a sizable audience of more than sixty viewers, amounted to a public ritual as binding as any legal agreement. "It's like a wedding . . . they're officially tied together," commented one witness.⁴¹ For some viewers, then, the nature and duration of the action suggested that the artists were performing according to a preexisting set of rules. In describing the undertaking as "official," witnesses to the start of *Rope Piece* indicated that they perceived Hsieh and Montano to have entered into their venture with the gravity demanded by ceremonies undertaken at the behest of the law. The knots binding Hsieh and Montano remained intact until the rope was cut on the final day of the performance.

We may ask whether Hsieh treated the conditions of his statements as if they were enforceable, or, at the very least, if non-fulfillment would trigger any form of consequences. The art historian Max Liljefors has asserted that Hsieh's performances reproduced and, therefore, exposed the contradictory nature of the law both as a source of legitimation and as profoundly malleable. Liljefors claims that tenets of the law are frequently subject to what the philosopher Giorgio Agamben describes as "mere writing," without any power to enforce itself.⁴² There was no pressing reason why Hsieh should obey the self-imposed draconian limitations on his movements, but this was hardly the point. What mattered was whether the artist took these restrictions seriously. Hsieh expressed his resoluteness in many ways, expressing regret, for example, when he overslept during *Time Clock Piece* ("I felt bad about the times I missed") and attempting to make amends by scrupulously recording the times when he forgot to punch his card (of the 8,760 total required punches, he missed only 133).⁴³

Still more compelling was his distress when confronted with the prospect of involuntarily violating one of his own rules. In February 1982, while sitting on the corner of a

private doorstep in Tribeca in lower Manhattan "drinking tea" during the course of *Outdoor Piece*, Hsieh was attacked by the building's owner, who allegedly threw an iron rod at the artist and the backpack that contained the camera he used for documenting his work.⁴⁴ Hsieh defended himself with the set of nunchucks he carried with him for protection, an act that resulted in being charged with possession of a criminal weapon and second-degree assault.⁴⁵ Video footage taken by Fergusson that May shows an increasingly agitated Hsieh as New York City police surround, grab, and force the artist into a precinct station (fig. 10), where he was detained for fifteen hours.⁴⁶ This video documentation of Hsieh's efforts to avoid violating the terms of his performance doubles as

10 Tehching Hsieh, *One Year Performance 1981–1982*. Arrested © 1981 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York



evidence of the degree to which the law itself is a performance. Drawing on the distinction the legal philosopher Roscoe Pound saw between “law on the books” and “law in action,” the legal theorists J. M. Balkin and Sanford Levinson contend that the law only works when it becomes “enacted behavior” in front of an audience.⁴⁷ The apparently unstaged video footage shows how the authority of law is conveyed through the bodily gestures and attire of the police, as well as by the futility with which Hsieh attempts to resist detention. The artist ultimately took his arrest and possible punishment in stride. Speaking to a journalist reporting on the incident, Hsieh stated, “If they [the police or the judge] ask me to go inside the court building, I will. I understand reality. . . . It’s the law.”⁴⁸ This comment was not so much an expression of defeat or resignation as it was a voluntary recognition of the context or, rather, the system within which Hsieh was operating. Exploring how to function within such a system was a critical aspect of his work.⁴⁹ Incidentally, the passion with which the artist resisted being pulled inside the police station may have prompted the legal authorities to recognize the seriousness of his intentions. During the initial hearing for Hsieh’s case, Judge Martin Erdmann allowed him to remain outside the courtroom, an act that acknowledged art as constituting its own semi-autonomous domain.⁵⁰

On Legal Status or the Art/Life Distinction Revisited

Let us return to the photograph documenting the daily scratches Hsieh made over the course of *Cage Piece*. As noted above, these engraved marks and the set of numbers below them highlight the duration of the performance and the artist’s diligence in visualizing duration. The centrality of time in this work might be productively tied to a particular mode of time-consciousness experienced by aliens surrounded by citizens of a country. During his first few years in the United States, Hsieh worked as a dishwasher and cleaner in a New York City Chinese restaurant that immigration officials periodically targeted in their hunt for individuals living in the country illegally.⁵¹ Lacking both a work permit and a social network, the artist recalls that he was simply “killing time,” perhaps until he either gained permanent residency or citizenship or until he was apprehended, imprisoned, and deported by authorities.⁵² By 1976 the Immigration and Naturalization Service had detained or arrested more than one million illegal immigrants, prompting the introduction of the Simpson-Mazzoli Immigration Reform and Control Bill in 1982 to “close the back door to immigration” by making it a criminal offense to hire an illegal alien.⁵³ Many courts became so anti-immigration that they endorsed racist practices openly; for example, even lawful permanent residents, particularly elderly Asian Americans on public assistance, were returned to their countries of ethnic origin.⁵⁴

Though forced to constrict the scope of his activities by American immigration law, Hsieh was able to create a world of his own making through the rules he set for himself. “I was the one who built rules, executed them and broke them as well.”⁵⁵ Inherent in these words is a demonstration of Hsieh’s personal autonomy; the statements underscore the voluntary nature of the extreme acts he chose to perform. What kind of person “choose[s]” to “live in the street,” as one interviewer asked in a discussion of *Outdoor Piece*?⁵⁶

Hsieh repeatedly asserted, “I don’t blur art and life.”⁵⁷ Nevertheless, the artist’s performances seem to call into question some of the assumptions that typically inform the regulation of lived experience. The *One Year Performances* might even be regarded as an argument on behalf of the idea of self-enforcement—that contracts can be upheld

without the interference of law. The legal scholar Robert Scott claims, “any effort to judicialize preferences for fairness and reciprocity will destroy the very informality that makes them [contracts] so effective in the first place.”⁵⁸ He suggests that laws are more effectively upheld when they are not imposed on individuals by an outside authority, but when individuals voluntarily administer the law according to their own terms. When compared with the events marking the beginning and end of *Cage Piece*, those of *Rope Piece* reflected a shift toward thinking about how obligations and their enforcement could be managed through extralegal means. The official duties Projansky assumed in *Cage Piece*, for example, were conducted by Hsieh and Montano themselves, while the events marking the start and finish of the performance were less elaborate than those held for the earlier work and seemed less the result of predetermined custom. The closing event, as a witness named C. Carr described it, was “suitably undramatic.”⁵⁹

The potential of art to challenge the institutional regulation of lived experience is even more forcefully evident in *Outdoor Piece*, in which Hsieh temporarily joined the ranks of New York’s homeless population. He was, of course, living on the streets by choice, not out of necessity; indeed, one of the most powerful aspects of the artist’s legal defense following his 1982 arrest was to deny any suppositions of permanent vagrancy.⁶⁰ Nonetheless, many photographs document him living outside, on the streets, frequently near buildings and sometimes in construction sites. In these images, the built environment figures as a set of impediments that the individual body must negotiate. They suggest that living in the city obligates its inhabitants to undertake a kind of uncompensated labor. Such photographs complement those taken of Hsieh during *Cage Piece*, which depict the artist languishing in his self-made cell, isolated from the outside world. *Cage Piece* highlights how much of daily existence is about being subject to physical and psychological enclosure: of windows blocked by “wrought iron bars, razor wire around construction sites, and doors requiring that one be ‘buzzed in.’”⁶¹ The management of physical borders via the legal definition of property makes it impossible for bodies to move freely, at will. Hsieh leveraged his own property to finance both *Cage Piece* and *Outdoor Piece*. In the former instance, he parceled his loft into multiple spaces for rent; in the latter, he sublet his entire loft, an ironic move given how frequently others mistook him as homeless.⁶²

The conception and performance of *Outdoor Piece* overlapped with contemporary debates over the criminalization of homelessness. In the early 1980s some courts attempted to resurrect the antivagrancy laws that had been struck down as unconstitutional by the New York Court of Appeals in *Fenster v. Leary* (1967), and more broadly by the U.S. Supreme Court in *Papachristou v. Jacksonville* (1972).⁶³ Since the late 1970s a number of legal measures had been taken to address rising numbers of homeless men and women in New York City, including statutes that allowed for the involuntary detention of “endangered” persons such as the Protective Services for Adults Law, enacted by the New York Legislature in 1981.⁶⁴ Increasingly, the definition of homelessness turned less on the absence of a place of residence per se than on the particular choice of habitation. As claimed by Ellen Baxter and Kim Hopper in the first major study of homelessness in New York City in the 1980s, the status of being homeless was defined by the public nature of the spaces these individuals inhabited: doorways, train stations, bus terminals, public plazas, and subways.⁶⁵ The many photographs Hsieh took of himself conducting activities conventionally done in private, such as sleeping or bathing, in the out-of-doors further suggested the extent to which the homeless body is subject to public scrutiny. *Outdoor Piece* implicitly asks whether we scrutinize the homeless more closely because we perceive them as using our taxpayer-financed property without our consent.

- 11 Tehching Hsieh, *One Year Performance 1981–1982*. Life Image © 1982 Tehching Hsieh. Image courtesy the artist and Sean Kelly, New York



Yet the photographs Hsieh took during the course of *Outdoor Piece* appear to bestow on the homeless a measure of agency not ordinarily ascribed to them by virtue of their ambiguous legal status.⁶⁶ The images stress the artist's efforts to domesticate the outside environs, transforming what is ordinarily understood as public space into a quasi-private realm. One image shows Hsieh sitting placidly, even insouciantly, in an upholstered leather chair with ornately carved wooden arms on a concrete sidewalk in front of a large urban structure (fig. 11). Another chair lies overturned to the artist's left. Cradling a coffee cup in his hands, Hsieh puts the chair in which he sits to the kind of use for which it was likely intended—as a seat in a conference room or boardroom. In a world that typically acknowledged Hsieh only as a preamble to his exclusion, the artist occupies a space in which viewers are summarily denied participation. *Outdoor Piece* was intermittently witnessed by many, but usually from a distance and not in any prolonged way.⁶⁷ Similarly, visitors recall that Hsieh refrained from interacting, even acknowledging, those who came to see him in *Cage Piece*: "Talking was not allowed."⁶⁸ In *Rope Piece*, the duration of Hsieh and Montano's engagements with the public were limited to that of a social call; viewers could enter the artists' world, but only on their specific terms, which were always subject to change.⁶⁹

The strong implication of proprietorship in the documentation accompanying *Outdoor Piece*, as well as in the execution of *Rope Piece*, brings to the fore yet another type of legal status, this time concerning matters of ownership and collaboration. Although the interaction between Montano and Hsieh was often compared to that taking place in a marriage, Hsieh regarded it more like a business partnership.⁷⁰ Hsieh has asserted that he and Montano did not discuss the question of who authored the project. "I didn't think of ownership when conceiving my work," Hsieh stated, adding later that both artists unequivocally own the copyright of the performance, although he, not Montano, kept all of the documentation produced during the course of the work.⁷¹ Similarly, Montano seems to have regarded *Rope Piece* under the rubric of practice and not property. Yet the premise and logistics of *Rope Piece* thrust into view the uncertain

relationship between artistic creation and ownership as seen through the lens of collaboration. Montano stated that she and Hsieh shared the responsibility of documenting *Rope Piece*, taking turns each month photographing and tape-recording the work.

Some viewers were unconvinced that Hsieh and Montano were equal partners, however. According to the critic Jill Johnston, Montano allegedly felt “engulfed by Hsieh’s dominance as author of the piece.”⁷² Other commentators have suggested that Hsieh’s reliance on friends like Cheng Wei Kuong to document aspects of his performances was in fact a challenge to the notion that artworks are necessarily the product of a single, autonomous creator: the curator and critic Adrian Heathfield has argued that “the whole duration” of *Cage Piece* was “built on the shadow duration of Cheng’s careful attendance.”⁷³ Except for *Rope Piece*, Hsieh resists describing his works as collaborations, noting, for instance, that the assistance he received from close friends during the enactments of *Cage Piece* and *Outdoor Piece* was entirely voluntary. The level of effort invested by these friends, particularly Cheng in *Cage Piece*, however, opens questions about when and how personal relationships affect authorship, a condition heavily implicated in economic regimes that regard artworks primarily as tangible property.

Johnston read Hsieh’s conception of *Rope Piece* as “two people, equal before the law of the work.”⁷⁴ According to her, Hsieh saw the performance as constituting its own kind of law, one distinct from that regulating life. For Montano, the division between art and life was less pronounced. She likened her participation in *Rope Piece* to voluntary conscription into a kind of military or a religious order, as implied by her description of Hsieh as a “master.”⁷⁵ Yet the term “master” also hinted at a different approach to the work, which Montano later elaborated by framing her participation as a form of redistributed authority: not only did she find herself “rubbing up against the power” of the patriarchy, she shared that power.⁷⁶ Although Montano never explicitly invoked the law in relation to *Rope Piece*, it was nonetheless present as a question of capacity, in terms both of the ability of the law to regulate action and of those empowered to use this authority. Considered in relation to Hsieh’s three earlier *One Year Performances*, the “law” to which Johnston referred seemed based on upholding the separation of art from life while remaining mindful of both. That Hsieh was among those most committed to enforcing this separation is borne out by how he destabilized that boundary even for those who had never seen documentation of the performances. In her preface to *Choices: Making an Art of Everyday Life*, Marcia Tucker recounted how a friend, on hearing of *Outdoor Piece* and *Time Clock Piece*, deemed Hsieh “unethical” for “making a mockery of” those imprisoned by their transgressions or by the deadening confines of a routine job.⁷⁷ Tucker’s friend thought that Hsieh unjustly capitalized on the experiences of those for whom incarceration or homelessness was not a lifestyle choice. By calling the artist’s actions “unethical,” the friend suggested that he or she regarded Hsieh as crossing a line; his performances were far too close to real life to be just art.

By way of closing, let us consider again the photograph of Hsieh standing outside the New York City Criminal Court. The camera is at too far a remove to record the artist’s features in detail; instead, the viewer’s gaze is directed to the words carved in stone (an inadvertent echo of Hsieh’s own laborious inscriptions in *Cage Piece*) above Hsieh’s head like a caption or title. The physical distance between the text above and Hsieh standing his ground below points to a profound disjunction between the rhetoric of American democracy and the experience of being subject to its regulations. The photograph, particularly in its cropped incarnation, foregrounds how the perceived status of the law and its consequent authority depends as much on the appearance of

material forms as it does on the content and tone of written language. The law may be the most pervasive means of translating the will of the polity into action, but its power depends on the ability to communicate intention through visual and physical forms. Artists, in many respects, are thus especially well placed to explore how the law actually works, whether by taking apart the syntax of a legal truism or by encouraging viewers to ask what is actually taking place in a photograph.

Hsieh's *One Year Performances* and their accompanying documentation proposed the need for a new kind of artistic agency. It was not enough for artists to appropriate the language of the law or to disclose their perpetual subjection to the authority of the legal system. Hsieh's projects interrogated the law's fundamental meanings, functions, and assumptions. In so doing, he offered the possibility that the words about justice hovering over his head might be something more than mere platitude.

Notes

This article would not have been possible without the generous input and assistance of Joshua Chambers-Letson, Jon Hendricks, Bibi Obler, Amy Tang, Mathieu Templon, the anonymous reviewers at *American Art*, and, above all, Tehching Hsieh, who endured my innumerable questions with extraordinary patience and understanding.

- 1 Hsieh made six durational performance works between 1978 and 2000. Often called *No Art Piece*, the fifth performance (*One Year Performance 1985–1986*) saw Hsieh refrain from discussing, making, seeing, or reading about any form of art. For the sixth performance (*Tehching Hsieh 1986–1999*), Hsieh made but did not show art for thirteen years.
- 2 Tehching Hsieh, interview by Adrian Heathfield, "I Just Go in Life: An Exchange with Tehching Hsieh," in Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh* (Cambridge, Mass.: MIT Press, 2009), 326.
- 3 Robert Braucher and E. Allan Farnsworth, *Restatement of the Law, Second—Contracts 2d* (St. Paul, Minn.: American Law Institute, 1981), §1.
- 4 See, for example, Alexander Alberro, *Conceptual Art and the Politics of Publicity* (Cambridge, Mass.: MIT Press, 2003); Martha Buskirk, *The Contingent Object of Contemporary Art* (Cambridge, Mass.: MIT Press, 2003); and Liz Kotz, *Words to Be Looked At: Language in 1960s Art* (Cambridge, Mass.: MIT Press, 2007).
- 5 See, for example, Richard Meyer, *Outlaw Representation: Censorship and Homosexuality in Twentieth-Century American Art* (New York: Oxford Univ. Press, 2002); *Legal/Illegal: Art beyond Law* (Berlin: NGBK, 2004); Julia Bryan-Wilson, *Art Workers: Radical Practice in the Vietnam War Era* (Berkeley: Univ. of California Press, 2009); Carlo McCormick, *Trespass: A History of Uncommissioned Urban Art* (Cologne: Taschen, 2010); and Leif Dahlberg, ed., *Visualizing Law and Authority: Essays on Legal Aesthetics* (Berlin: Walter de Gruyter, 2012).
- 6 Jeannette Ingberman, *Illegal America* (New York: Exit Art Press, 1982), not paginated.
- 7 Tehching Hsieh, email message to author, October 11, 2014.
- 8 Reproductions of Hsieh's statements of intent can be seen at <http://one-year-performance.com> (accessed May 16, 2013).
- 9 Tehching Hsieh, email message to author, October 11, 2014.
- 10 Benjamin H. D. Buchloh, "Conceptual Art, 1962–1969: From the Aesthetic of Administration to the Critique of Institutions," *October* 55 (Winter 1990): 118.
- 11 The art historian Alexander Alberro notes (*Conceptual Art and the Politics of Publicity*, 169) that the agreement regulates "the experience of ownership," suggesting more broadly how artists used contracts to preserve what they saw as their authorial rights. On the strategic use of certificates of authenticity by artists, see *In Deed: Certificates of Authenticity in Art* (Amsterdam: Roma Publications, 2011).
- 12 In 1967 Edward Kienholz began to have contracts accompany each sale of his *Concept Tableaux*, which consisted of a plaque and a framed written description of a proposed work (the *Tableau*). Kienholz insisted that buyers choosing to purchase the "finished *Tableau*" compensate him for "all expenses that may be required for actual production" including "reasonable living expenses." The text of Kienholz's contract is reproduced in full in *Work from the 1960s by Edward Kienholz* (Washington, D.C.: Washington Gallery of Modern Art, 1967), 35–37. Daniel Buren issues contracts called "Avertissements" that allow him to disclaim authorship of the work should buyers fail to comply with its terms. For a

- discussion of these contracts, see Maria Eichhorn, "On the *Avertissement*: Interview with Daniel Buren (1998)," in *Institutional Critique and After*, ed. John Welchman (Zurich: JRP/Ringier, 2006), 85–123.
- 13 Despite being widely publicized, the agreement was rarely used, whether because of "habit and simple inertia," as Siegelau claimed, or because of a reluctance among dealers to impose on prospective buyers what they might regard as an added sales tax. The agreement was ultimately more convincing as a work of conceptual art than as a practical legal instrument. "The Artist's Contract: An Interview with Seth Siegelau and Bob Projansky," *New York Element* 2, no. 5 (June–July 1971): 8. A full copy of the agreement was published in *Studio International* 181, no. 932 (April 1971): 142–44.
 - 14 For a description of the agreement's creation, see Kirsi Peltomäki, *Situation Aesthetics: The Work of Michael Asher* (Cambridge, Mass.: MIT Press, 2010), 69. The original document is located in the Getty Research Institute, Giuseppe Panza Papers, Series IV, box 174, folder 27.
 - 15 Frazer Ward, *No Innocent Bystanders: Performance Art and Audience* (Hanover, N.H.: Dartmouth College Press, 2012), 135.
 - 16 Robert Jackall, *Wild Cowboys: Urban Marauders and the Forces of Order* (Cambridge, Mass.: Harvard Univ. Press, 1997), 225.
 - 17 Delia Bajo and Brainard Carey, "In Conversation: Tehching Hsieh," *Brooklyn Rail* (August–September 2003), <http://www.brooklynrail.org/2003/08/art/tehching-hsieh> (accessed April 12, 2013).
 - 18 For a survey of cases in which the "undocumented alien" is cited in court cases during the 1970s, see "Developments in the Law—Immigration: Policy and the Rights of Aliens," *Harvard Law Review* 96 (April 1983): 1286–1465.
 - 19 On the origins of the term "illegal alien" in an American context, see Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton Univ. Press, 2010), 177.
 - 20 Ray Langenbach, "Statutory Obligations: The Performances of Tehching Hsieh," *Art AsiaPacific* 33 (January–March 2002): 53. Hsieh remarked that he used "Tehching" during the course of *Outdoor Piece*. Only in 1981, when he "no [longer] felt afraid," did he permanently revert to his original name. Tehching Hsieh, email message to author, April 18, 2013.
 - 21 Tehching Hsieh, email message to author, June 13, 2013.
 - 22 Peter S. Muñoz, "The Right of an Illegal Alien to Maintain a Civil Action," *California Law Review* 63, no. 3 (May 1975): 776–81. Section 1981 guarantees that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts." See 42 USC 1981 (1970).
 - 23 Tehching Hsieh, email message to author, October 11, 2014.
 - 24 Calvin J. Karlin, "Readability Statutes—a Survey and a Proposed Model," *University of Kansas Law Review* 28 (1980): 531, 532–35.
 - 25 In the late 1970s the readability levels were based on the average number of syllables per word in texts, and average sentence length was measured in terms of the number of words per sentence. *Ibid.*, 535. See, for example, Lawrence Solan, Terri Rosenblatt, and Daniel Osherson, "False Consensus Bias in Contract Interpretation," *Columbia Law Review* 108 (June 2008): 1268–1300; and Steven Shavell, "On the Writing and the Interpretation of Contracts," *Journal of Law, Economics, and Organization* 22, no. 2 (2006): 289–90.
 - 26 For the statement accompanying *Cage Piece*, the artist Ming Fay helped edit Hsieh's grammar. Tehching Hsieh, email message to author, April 18, 2013.
 - 27 *National Equipment Rental v. Hendrix*, 565 F.2d 255 (2d Cir. 1977).
 - 28 *National Equipment Rental Ltd. v. Szhukhent et al.*, 375 U.S. 311 (2d Cir. 1964).
 - 29 U.C.C. 1-201(10), 1952.
 - 30 John Perreault, "Tehching Hsieh: Caged Fury," *Artopia: John Perreault's Art Diary* (blog), *ArtsJournal*, February 1, 2009, http://www.artsjournal.com/artopia/2009/02/tehching_hsieh_caged_fury.html (accessed May 15, 2015). Perreault witnessed Beuys's performance.
 - 31 Kay Larson, "A Year in the Life," *Village Voice*, October 1, 1979, 83.
 - 32 Kathy O'Dell, *Contract with the Skin: Masochism, Performance Art, and the 1970s* (Minneapolis: Univ. of Minnesota Press, 1998), 14.
 - 33 Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh*, 68.
 - 34 Claire Fergusson, "Doing Time: A One-Year Performance by Sam Hsieh," *High Performance* 2, no. 4 (Winter 1979–80): 10.
 - 35 Tehching Hsieh, email message to author, April 18, 2013.

- 36 Quoted in Barry Kahn, "One Year at a Time: Sam Hsieh's Annual Acts," *Live*, nos. 6–7 (1982): 41.
- 37 Julia Bryan-Wilson, "Tehching Hsieh," in *Work Ethic*, ed. Helen Molesworth (University Park: Pennsylvania State Univ. Press and the Baltimore Museum of Art, 2003), 143.
- 38 See the *Restatement (Second) of Contracts* 205 (1981).
- 39 Kathleen A. Hughes reported that after Hsieh bought a second loudspeaker and alarm in January 1981, the total number of missed punch-ins in a month decreased from twenty-one to three. "Artist Explores Essence of the Daily Grind by Punching in Once an Hour for a Year," *Wall Street Journal*, April 24, 1981.
- 40 Jill Johnston, "Hardship Art," *Art in America* 72, no. 8 (September 1984): 179.
- 41 Kathleen A. Hughes, "Long and Very Close Relationship Looms for Two Artists in New York," *Wall Street Journal*, July 6, 1983.
- 42 Max Liljefors, "Body and Authority in Contemporary Art: Tehching Hsieh's One Year Performances," in Dahlberg, *Visualizing Law and Authority*, 228–29, quoting Agamben.
- 43 Hughes, "Artist Explores Essence of the Daily Grind"; and Bryan-Wilson, "Tehching Hsieh," 143.
- 44 Tehching Hsieh, email message to author, June 11, 2013.
- 45 Kathleen A. Hughes, "Mr. Hsieh's Latest Performance: Keeping Warm Was the Easy Part," *Wall Street Journal*, June 11, 1982.
- 46 Hsieh, "I Just Go in Life," in Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh*, 328.
- 47 J. M. Balkin and Sanford Levinson, "Interpreting Law and Music: Performance Notes on the 'The Banjo Serenader' and 'The Lying Crowd of Jews,'" *Cardozo Law Review* 20 (1999): 1518–19.
- 48 Quoted in Hughes, "Mr. Hsieh's Latest Performance."
- 49 The case was eventually dismissed after the serious charge of second-degree assault was reduced to "disorderly conduct." Jonathan Siskin, "Still Doing Time," *High Performance* 5, no. 3 (Fall 1982): 76.
- 50 Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh*, 44.
- 51 Langenbach, "Statutory Obligations," 47.
- 52 Hsieh cited in Andreas Gedin, "Tehching Hsieh: Passing Time," *Nu: Nordic Art Review* (January–February 2002): 67.
- 53 For a summary of the act and its history, see Lawrence H. Fuchs, "Directions for U.S. Immigration Policy: Immigration Policy and the Rule of Law," *University of Pittsburgh Law Review* 44 (Winter 1983): 493.
- 54 Bill Ong Hing, "Racial Disparity: The Unaddressed Issues of the Simpson-Mazzoli Bill," *Berkeley La Raza Law Journal* 1, no. 1 (1983): 26–27.
- 55 Hsieh, "I Just Go in Life," in Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh*, 326.
- 56 Jeanette Ingberman and Papo Colo, "I Choose to Do This," *Art Com* 5, no. 2 (1982): 18.
- 57 Hsieh quoted in Karlyn De Jongh, "Art/Life: A Conversation with Tehching Hsieh," *C Magazine* 105 (Spring 2010): 4. Fellow performance artist Ray Langenbach has similarly claimed that Hsieh insisted on separating what he was doing in *Time Clock Piece* from the life of the imprisoned. Langenbach, "Statutory Obligations," 49.
- 58 Robert E. Scott, "The Death of Contract Law," *University of Toronto Law Journal* 54, no. 4 (Fall 2004): 389.
- 59 C. Carr, *On Edge: Performance at the End of the Twentieth Century*, rev. ed. (Middletown, Conn.: Wesleyan Univ. Press, 2008), 3.
- 60 Hsieh's nonvagrant status was emphasized in Mike Pearl and Larry Nathanson, "Gotta Have Art, Says Judge with a Heart," *New York Post*, June 22, 1982.
- 61 Thad Ziolkowski, "The Implosive Quest of Tehching Hsieh," *New Observations* 108 (September–October 1995): 11.
- 62 Fergusson, "Doing Time," 10. Also see Ingberman and Colo, "I Choose to Do This," 17.
- 63 Fenster v. Leary turned on the rule for common-law vagrancy that initially defined a vagrant as a person "(1) being without visible means of support, (2) being without employment, and (3) being able to work but refusing to do so." The court overturned the law, alleging that the antivagrancy statute interfered with a person's right to conduct himself in the manner of his choice so long as his actions do not interfere with those of others. Fenster v. Leary, 20 N.Y. 2d 309 (1967). In Papachristou v. City of Jacksonville, the Supreme Court held that antivagrancy laws criminalized "activities . . . historically part of the amenities of life as we have known them." The court went on to hold that the scope of

- the law was too great, allowing police “unfettered discretion” to arrest anyone on suspicion of past or future criminality. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) at 164, 168.
- 64 1981 N.Y. Laws ch. 991.
- 65 Ellen Baxter and Kim Hopper, *Private Lives/Public Spaces: Homeless Adults on the Streets of New York City* (New York: Community Service Society, 1981), 6–7.
- 66 Although the photographs for *Outdoor Piece* look as if they were taken by a companion or third party, all were made by the artist himself using a tripod, save for a few that were captured by people who took pictures on Hsieh’s behalf “by chance.” Tehching Hsieh, email messages to author, April 18 and June 11, 2013. The artist remarks, “I stayed alone through the piece, no one followed me for documenting the work.”
- 67 As Joe Hannan, then the publicist for The Kitchen, an important venue for experimental art in downtown New York, recalled, “If I recognized Tehching Hsieh on the street, I don’t remember it.” Quoted in Ward, *No Innocent Bystanders*, 144.
- 68 Quoted in Bajo and Carey, “Tehching Hsieh.”
- 69 Only in an unrealized 1985 performance did audiences play an active role in Hsieh’s projects. Subtitled “Performed by Other People Organized by Tehching Hsieh,” the work reversed the artist-audience dynamic by having the presumed audience, the public, hold a torch that weighed roughly three pounds, an act which Hsieh planned to document as a witness. Tehching Hsieh, “Statement for One Year Performance 1985–1986,” 1985, Franklin Furnace Artist Files, Museum of Modern Art. “Everyone,” including “children, non-artists, artists, etc.” was invited to participate.
- 70 Carr, *On Edge*, 7.
- 71 Tehching Hsieh, email messages to author, April 17, 2013, and December 1, 2014.
- 72 Johnston, “Hardship Art,” 179. Alex Grey and Allyson Grey, “Linda Montano and Tehching Hsieh’s One Year Art/Life Performance,” *High Performance* 7, no. 3 (1984): 27.
- 73 Heathfield, *Out of Now: The Lifeworks of Tehching Hsieh*, 29.
- 74 Johnston, “Hardship Art,” 178.
- 75 Susan Silas and Chrysanne Stathacos, “A Conversation with Linda Montano,” *MOMMY* (blog), July 19, 2012, <http://www.mommybysilasandstathacos.com/2012/07/19/a-conversation-with-linda-montano/> (accessed May 17, 2015).
- 76 Patricia Maloney, “The New Endurance of Linda Mary Montano, Part 1,” *Art Practical*, January 19, 2015, <http://www.artpractical.com/column/women-in-performance-the-new-endurance-of-linda-mary-montano-part-1/> (accessed May 18, 2015).
- 77 Marcia Tucker, *Choices: Making an Art of Everyday Life* (New York: New Museum of Contemporary Art, 1986), 11.