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Sergio Muñoz Sarmiento

In this interview, art lawyer and art law scholar Sergio Muñoz Sarmiento interviews artist Sergio Muñoz Sarmiento. The interview covers subject matter such as the artist's practice, his interest in law, and law's relationship to art. This interview took place in New York City, New Haven, and Washington, D.C. between December 15, 2014 and March 14, 2015, via in-person and e-mail exchanges. Sarmiento and Sarmiento sincerely thank Kevin Tobia for his generous and scholarly feedback and comments, and for his undying patience with these split personalities.

Sergio Muñoz Sarmiento, Esq. (SMS, Esq.): For the record, please state your name, occupation, and place of birth.

Sergio Muñoz Sarmiento: Sergio Muñoz Sarmiento. I am an artist, born 1968 in El Paso, in the great state of Texas.

SMS, Esq.: Before we get into the intricacies of art and law, I would like to get some background information first. What interested you in art, and why did you become an artist?

Sergio Muñoz Sarmiento: I became interested in art via music. When I was a teenager, I thought that art was being able to draw something with a high degree of precision—in other words, realistically. My best friend in high school and I would spend class time drawing heavy metal album covers. To me, that was art. I was good at it, so I decided to study art the second time I opted to attend college (at the University of Texas at El Paso). By the way, my first whack at college was a real bad experience. My father wanted me to study business and become a businessman. That lasted about one semester. Hell, I even took one drawing class and failed that class. I just didn't care about school at the time. I cared about girls, cars, and music.

SMS, Esq.: Hahaha.

Sergio Muñoz Sarmiento: Anyhow, ideologically, I remember that during elementary school—fourth grade I believe—I went with friends to a theme park. I didn't like the rides or such at the time so I played games in order to win prizes. I played a dart game and won a poster of this guy wearing make-up and a star painted over his right eye, and he was holding an electric guitar between his legs. He was also wearing high-heeled boots

and what appeared to be very tight leather pants. I didn't know at the time who this was, but of course eventually I found out it was Paul Stanley of KISS. I took the poster home and hung it on my bedroom wall. Within two weeks I bought my first rock album, KISS's *Alive*, a double album, for a bit over eight dollars.

SMS, Esq.: So you wanted to be like Paul Stanley?

Sergio Muñoz Sarmiento: No. Not in the sense that you mean. I didn't want to look like him. Rather, there was something captivating about his look, his pose, his attitude . . . very counter-culture. I'd never seen anyone like this. Plus, it was his "fuck you" attitude that attracted me. This rebelliousness, so to speak, was confirmed when my father demanded that I tear the poster down from my wall because he thought Stanley looked like a woman. So I kept it up. The poster, that is.

SMS, Esq.: Why didn't you become a musician?

Sergio Muñoz Sarmiento: Who says I'm not?

SMS, Esq.: Ok, why didn't you pursue music instead of the visual medium?

Sergio Muñoz Sarmiento: That's interesting. Come to think of it, I did have a drum set in high school, but my mother hated it because of the noise and because I had a band with guys she didn't really care for. She wanted me to stop wasting my time and become successful. Which is interesting, right, because she was completely ecstatic when I told her I was returning to college to get my art degree. SMS, Esq.: I guess to her music was more rebellious and unacceptable than art. Is this idea of rebelliousness or counter-culture is important to you?

Sergio Muñoz Sarmiento: Of course. That's why I chose art. When one of my art teachers at UTEP, Linda Lynch, finally disabused me of the notion that art was being able to draw realistically and introduced me to modern and contemporary art, my whole life changed. Joan Miró's *Birth of the World*, projected on a screen during one of my art history courses, was my first real experience with art as we know it. There was also a custodian at UTEP's art department at the time, Ed, and I can't recall his last name, but he turned me on to Schopenhauer's *The World as Will and Representation*, which just blew my mind. So by the time I was exposed to *Conceptual Art*—all via art magazines, art journals, and art history books, mind you—I was hooked. To be an artist meant that you were giving the middle finger to everyone else. That you could do anything you wanted. To do something—make something—that you felt or thought was missing from culture. And more so, you could be an intellectual and an artist.

SMS, Esq.: So you still consider yourself an artist with subversive tendencies?

Sergio Muñoz Sarmiento: Yes and no. That's a complicated question. You see, I love art, I really do. Lately I've been reviewing art history and

it gives me so much joy and pleasure to see and read about projects that were so revolutionary then, and to a large extent still are today. That being said, art is a subset of culture. It's no longer the space I thought it was. Instead of art being the space from which to give the middle finger, it's become another space that gets the middle finger; the space that gets infantilized and commercialized. Someone else is throwing the middle finger, and I want to know and hang with those people. So in effect, I'm interested in culture at large and not necessarily art. At least not what is currently being produced and packaged as art. That doesn't interest me one bit. I'm interested in cultural pockets and experiences. And I'm interested in creative individuals, who increasingly—and sadly—are not to be found in art.

SMS, Esq.: Where do you see or find these “creative individuals” and “cultural pockets and experiences” that you enjoy or find gratifying?

Sergio Muñoz Sarmiento: I can't tell you. I mean, I could, but I don't want to. I prefer to keep them to myself, and for my friends that are not in art or art law.

SMS, Esq.: So you won't share?

Sergio Muñoz Sarmiento: No.

SMS, Esq.: Seriously? Not even one example?

Sergio Muñoz Sarmiento: No.

SMS, Esq.: Fine, but I'm curious why you say you won't even share with your art or art law friends.

Sergio Muñoz Sarmiento: I guess I don't want those pockets and experiences dissected, commodified, and made part of the so-called “art world.” I've realized that art (meaning culture and creativity) does not necessarily mean “art world,” and I like it that way. What I like about law is that it rejects critical theory (Foucault, Derrida, Butler, etc.), although, and unfortunately, I'm increasingly seeing art law folk contaminating art and law with this kind of theory.

SMS, Esq.: But you have to agree that there is some value to Benjamin's notion of the “aura,” or Foucault's ideas about the Panopticon. . .

Sergio Muñoz Sarmiento: Of course, but they have their limits; they're not applicable across the board. That would be like putting ketchup on everything you eat.

SMS, Esq.: You presented at The Legal Medium conference at Yale Law School this past February. What were your thoughts?

Sergio Muñoz Sarmiento: I'm actually interested in yours. . .

SMS, Esq.: Ok. Well, it was great to see such a large turnout; to see that there is a lot of interest in this crazy and new thing called art and law. Content-wise I was surprised that aside from you and Tehching Hsieh no one else mentioned the contract or contractual language vis-à-vis art. I'm also intellectually exhausted of hearing about the *Cariou v. Prince* case

and the appropriation “debate.” I’m beginning to think that the name of this field should be changed from art and law to appropriation and the God-given right to fair use. There are so many other interesting areas concerning art and law that could and should be discussed: the aesthetics of law; resale royalty rights on both a national and international scale; the use of contracts and contractual language in art; cultural property . . . think the recently proposed German law concerning national cultural property and the Detroit Institute of Art’s collection and the city’s debt; intellectual property and conceptual art; the question of artistic intent in the reproduction and re-fabrication of dead artists’ works; money laundering and art collecting; the question of the “aura” and finance; labor and employment rights in art institutions (think globalization of museums); and the question of collaborative practices and property ownership (e.g.- law and social relations). Those are just some current and important topics, but I suppose they aren’t as sexy.

I thought that Doris Sommer’s comments on aesthetics were right on point and very timely given how aesthetics is frequently simplified and thought of as only the visual and as something we’ve all accepted as bad or pernicious. Keller Easterling was also quite dynamic and I loved how she weaved law into architecture and space without it being obvious or pedantic.

Sergio Muñoz Sarmiento: What would you have spoken about?

SMS, Esq.: I would have spoken about the corporation as artist. I’m currently researching this subject matter given that, at least in the U.S., corporations have free speech rights, and now after the Hobby Lobby case small privately-held corporations also have free exercise of religion rights. Why can’t corporations also be artists, especially when U.S. courts are increasingly finding that fine art is a commercial activity? If, as some pro-appropriation people think, artists should get to grab images when and as they see fit, all under the rubric of “art,” then why shouldn’t mega for-profit corporations be allowed to appropriate from artists, say Koons, Marclay, Kara Walker—without consent and without compensation—to sell their products? In effect, what’s the difference between Takashi Murakami and Abercrombie & Fitch?

Sergio Muñoz Sarmiento: That’s very interesting, but aren’t you afraid of being called “cynical”?

SMS, Esq.: No. I think we tend to be a bit too fast in labeling someone cynical when we don’t like what someone says or when what they say questions and disturbs our politics? Sergio Muñoz Sarmiento: Interesting. So I guess the question now is, “am I relevant?”, or perhaps better yet, “is what I do relevant?”

SMS, Esq.: Exactly. Speaking of relevance, can you tell me more about these “creative individuals” you spoke about earlier? Why do they fascinate you? What’s attractive about them, and are they relevant?

Sergio Muñoz Sarmiento: There are individuals who find something not quite right in their life or their existence, or in our case, with creativity. I always think of someone like Bruce Lee, who most people—because they have been brainwashed by the mass media—think is just some Hollywood clown. But in fact Lee is a perfect example of the Nietzschean *Übermensch*. Lee found many things wrong with the martial arts, specifically the Chinese martial art known as Wing Chun (詠春), the art he first studied, so he combined twenty-six different fighting arts to create Jeet Kune Do. Lee studied how animals and human beings actually fight, not how we think they fight. This is very similar to learning how to draw realistically, right, when your teacher instructs you to draw what you see, not what you know. Anyhow, Lee was extremely open-minded. He read and studied everything. He even studied those arts that he didn't like because he knew that he would never be able to foresee how the enemy would attack or defend; what the enemy knows or does not know. He wanted to be prepared. That's a creative individual.

SMS, Esq.: So Lee going outside of an established field and discourse is similar to you as an artist looking at law?

Sergio Muñoz Sarmiento: It's about categorization, which of course has to do with borders. Remember that I was born in El Paso, Texas, right next to Juarez, Mexico. Although they are two cities divided by concrete barriers and chain-link fences, they're also divided by law. However, as a kid growing up neither side really acknowledged or even accepted this fictitious and arbitrary border—we just were. People came and went from one side to the other. Some spoke English, some spoke Spanish, others spoke English and Spanish, and others spoke a Southwest street slang mixture of English and Spanish, otherwise known as Caló. And then we also added African-American and Anglo-American idioms, so it was a real mixed bag.

I remember going to Juarez as a little kid and as my father drove through one of the main avenues, seeing small Aztec pyramids next to Spanish cathedrals next to night clubs based on European architecture. This was all “normal.” It just was. It wasn't until I went to UTEP and CalArts that I was informed that this was called post-modernism, and that it arrived in the visual arts in the 1980s. My friends and I, all from El Paso (UTEP is predominantly a commuting university), just looked at each other in disbelief; we'd been living it and now some so-called intellectual from France was telling us that this was post-modern.

My point being that I grew up not needing the stability and comfort provided by borders, categories, and establishments. In other words, acceptance. But I suppose that right there is the Mexican-American condition. You're neither Mexican nor American. You're something else, like this art & law thing. I like being something else.

SMS, Esq.: But what about law?

Sergio Muñoz Sarmiento: That's just it. Law is an extension—an expansion—of what I do. I went to Cornell Law School as an art project .

...

SMS, Esq.: Wait. You attended law school as an art project? This is a bit disturbing; you're talking about my profession, which I take very seriously. Was this a joke, a prank, a hoax?

Sergio Muñoz Sarmiento: Not at all. That period of my life, from 2002 to 2006, was a continuation of my interest in language and structures, and my introduction to law, government, power, and violence. This project has expanded to what now consists of art projects, teaching, writing, lecturing, blogging, social media, and my private law practice.

SMS, Esq.: So you're not an art lawyer?

Sergio Muñoz Sarmiento: It's more complicated than that. Art law is what lawyers do: trust and estates, consignments, authentication, intellectual property, artist-gallery disputes, etc. Art law is really no different than divorce law or securities law. It's law as it applies to the business of art. I engage in what I call art & law. The ampersand is crucial because to me law and art are two radically separate discourses and practices. Art & law looks at the practical, the theoretical and the speculative aspects of these two structures. It's where artists, art historians and critics engage law and legal scholars study art to further not only their own space but create another new space. And that is possible. In fact, it's vital and necessary.

SMS, Esq.: Are there any artists out there who engage law in an interesting manner?

Sergio Muñoz Sarmiento: Yes, of course, and this relates to what I was just detailing; the tripartite structure of art & law: practice, theory, and the speculative. The artists that appropriate law successfully use it as medium and fully engage law's force. In other words, they don't use law in a symbolic fashion. I'm writing on this now. Artists such as Colectivo de Acciones de Arte (CADA), Michael Asher, Elaine Sturtevant, Mike Kelley, Felix Gonzalez-Torres, Hans Haacke, Adrian Piper, Christoph Büchel, and Santiago Sierra all engage law in a manner that I call the speculative. For example, when the Massachusetts Museum of Contemporary Art sued Büchel for the right to exhibit his project, Training Ground for Democracy, without his consent, the litigation that ensued became part of Büchel's project. In other words, the negotiations, legal process, documents, court appearances and such became Büchel's medium. Similarly, Asher used contractual agreements to guarantee that the mandates of his projects would be adhered to and, as with his project at the Museum of Contemporary Art Chicago in 1979, to hold the museum to its duties, however "absurd" the museum thought they ultimately were.

SMS, Esq.: Strong art and law projects engage law incidentally and not

self-consciously . . . they don't try too hard, like Carey Young and Jill Magid who mostly use law in a symbolic fashion and thus, to me, are not very interesting projects. What I mean by this is that they point to "law" in a generic way rather than engage law as language and force; in other words, on its own terms. When Young has gallery visitors sign a piece of paper waiving their constitutional rights when they step into a square box drawn on the floor, this, to me, is make-believe and a bit naive. Especially when we have Guantánamo as a real example. So how do you as an artist use or further art & law?

Sergio Muñoz Sarmiento: That's a good question and I'll give you two answers. The first is that back in 2010 I started a critical seminar program, The Art & Law Program, which introduces artists, curators, writers, and art historians to law. Now I want to be clear that this program is not about the practical aspects of law—how to read a contract or what is a copyright. This program looks at law as I encountered it during my tenure at Cornell Law School. In the program we read very little critical theory, if at all, and we don't really allow for the usual socialist-Marxist discussions that other residencies love. We look at law as a law student would study it. The last couple of years we have focused on tangible and intangible property and its relationship to government. One thing the program prides itself on is proposing a more pragmatic approach to problem-solving. A key component of the program is to challenge the individuals in the program to think out of the utopian box: the same box that has been in place since the '60s.

The second answer I'll give you is that we, as creative individuals who desire a new space of culture, must use systems and structures that exist elsewhere. We must study even those structures we don't agree with and learn how they work and why they work. This is not just being pragmatic; it's being creative. If we must study business tactics to do so, then so be it. I was just speaking to someone who is studying geospatial intelligence and surveillance—which, keep in mind, may be associated with right-wing ideals—and they informed me that they were reading Foucault, Deleuze and Said. This isn't new, but once again, the "right" doesn't have a problem studying the "left," but the "left" still rejects, to its peril, languages and structures of the "right."

It's like this: there was a moment when I was going through law school when I had the fish-water epiphany. You know, the saying that the last thing a fish will discover is water. It's that moment when you become aware of how the "system" works—the constructs of institutions and government and whether you are in or out. You realize that no matter how much you vote, protest, make art, or complain in seminars, there are those that truly understand the nature, structure, and function of government, which in effect is the leveraging and implementation of force and power.

Artists must study economics, government, law, and the metastructures

of “business.” The artist must evolve. We can’t expect to see any changes sitting in our overpriced studios making banal stuff for an art market and reading texts by some dead French guy who never set foot in Birmingham, Alabama or East Los Angeles.

SMS, Esq.: Are there any other areas or spaces you would say artists should study other than law, business, government, and economics?

Sergio Muñoz Sarmiento: Yes. Artists have to study the role, practice and function of the outlaw. I think about this a lot, and think that there are at least three areas of “outlaw” culture that we can learn from: drug cartels, biker gangs, and criminal enterprises (mafias). For example, let’s take biker gangs. These are groups that form, and although they generally do recruit, they also attract a certain individual. These groups have realized that government as we know it is not for them or by them; rather, it’s meant to exploit them. So what these pockets of creativity do is create their own form of government that works for them—outside of the law as we know it—and endeavor in activities that a government that is not their government labeled as being illegal or criminal. But it works. It works for them, their lifestyle, and what they believe the nature of the individual to be. These groups have members that are lawyers, doctors, architects, and law enforcement. Like well-trained units they have learned to be organic and malleable; to understand the enemy; to move in and out; to fracture and destabilize from within by using established systems and structures. In fact, there are even individuals within these groups that roam in and out of different biker groups. They’re called nomads.

SMS, Esq.: Wait. Those are outlaws, criminals, law-breakers. They’re not bankers, lawyers, doctors, or police. You know, law-abiding citizens.

Sergio Muñoz Sarmiento: To me they’re the same. In fact, I also want to learn from economists, finance people, MBAs. I want to know how they problem-solve, how they think, how they create . . . how do they define creativity? And I love law in general; it’s like I’ve been given the skills and language to read the playbook—the master’s playbook.

SMS, Esq.: The fish discovered water . . .

Sergio Muñoz Sarmiento: Exactly. In particular, I’m interested in property, both tangible and intangible forms. I’ve been thinking and writing about aesthetic property rights as the fourth phase of property, after the agricultural, industrial and knowledge-based phases.

Let me give you an example. I participated in an art law conference in Los Angeles recently and had a major revelation while there . . . that the majority of the attendees didn’t give a damn about artists. Many lawyers certainly don’t, and neither do collectors, auction houses or art dealers. The art world and art market as we know them don’t need artists. Think about it. If Alexander Alberro and Benjamin Buchloh are correct when they argue that Duchamp and Conceptual Art introduced legal and administrative practices that shifted artistic practices from the art object to

the certificate of art, then it's what is certified as art that makes the art work. That "certification" is pure abstraction . . . it's intellectual property.

SMS, Esq.: Right, no one wants to come out and say it, but it's the art collector that certifies any "thing" (the res, as we say in law) as art, like the certificate. The recent situation with Wade Guyton proves our point, where the collector basically said, "you [Guyton] don't get to say what is art or when it's art; it's when I buy your thing for an arbitrary amount of money that dictates when it's art"—at least art as collectors, dealers, museums, art fairs, and galleries are concerned. Gerhard Richter just said as much in an interview with *The Guardian*, where he basically said that the art business is getting more anonymous, and that in the end "it just comes down to the price."

Sergio Muñoz Sarmiento: Wow. You're sounding a bit cynical.

SMS, Esq.: That's Richter. Well, if it makes you feel better, I do know some artists that don't toe that party line, and I believe you mentioned some above, and hell, let's be honest, some were your teachers.

Sergio Muñoz Sarmiento: Very true. Art and law as a field of engagement is very exciting right now and we're just at its nascent stage. Art historian and curator Lauren van Haafden-Schick is doing revolutionary work and research around artists' rights and contracts (notably, Siegelaub's Artist's Reserved Rights Transfer and Sale Agreement). I'm so excited to see this and can't wait to read and see what is yet to come.

Yet there is so much still to be done and written about, especially as it pertains to non-object based practices and artists residing elsewhere than the U.S. Artists in Argentina, Mexico, and China are producing interesting work that touches on law, as are artists in Italy, Germany and Spain. I'm thinking in particular of Ai Weiwei's use of social media as a form of communicative-social act as art; how that rekindles the free speech-art debate in a matter that makes contemporary art practices relevant and timely. There's also a lot of interest in art and law in Australia, Europe and Latin America in general. I love it. It's not that I'm anti-critical theory; it's that I'm for the creation of new ways of thinking and being—of being human, creative, ethical, aesthetic, political, and sovereign. History will absolve us, and I think we both know who I'm referencing here when I say that.

SMS, Esq.: What are you reading now, listening to now?

Sergio Muñoz Sarmiento: Here's what I'll reveal. Musically I listen to everything, from the moment I wake until I sleep. I go from metal and rock to country, blues, electronica, jazz and latin rock. That's one thing about Internet radio . . . I can listen to radio stations all over the world.. I've been listening to a couple of Texas boys lately, Stevie Ray Vaughan and Johnny Winter, as well as Enanitos Verdes, old school latin rock.

Law-wise I like to read Richard Posner and Eugene Volokh, and in

terms of art I'm reading artist writings (Judd, Sekula, Irwin) and some October historians on '60s art. I think Hal Foster still has a lot to say; I just wish he would be a bit more direct and blunt. I was also just given a beautiful catalogue on the work of Imi Knoebel, one of my favorite artists, so I'll be cracking that. But my main source of comfort is always Nietzsche.

SMS, Esq.: Who are three people you would love to meet?

Sergio Muñoz Sarmiento: Dead or alive?

SMS, Esq.: Either. Or both.

Sergio Muñoz Sarmiento: Nietzsche, Emiliano Zapata, and Borges. All at once would be very nice. A close fourth would be Roberto Bolaño.

SMS, Esq.: That's an interesting group.

Sergio Muñoz Sarmiento: They were creative.



Figure 2. Sergio Muñoz Sarmiento, *Americana*, spray paint on drawing paper, 60" x 54" (2012).



Figure 3. Sergio Muñoz Sarmiento, *Good Will*, mixed-media, dimensions vary (2012).



Figure 4. Sergio Muñoz Sarmiento, *Law Firm*, spray paint on drawing paper, 60” x 54” (2012).



Figure 5. Sergio Muñoz Sarmiento, *Paul Stanley*, graphite drawing based on artist’s memory, 9” x 12” (2015).

