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In Vacuums of Law We Find: Outsider Poiesis in Street Art and Graffiti
Art Crime Handbook, Palgrave MacMillan

"If graffiti changed anything, it would be illegal".
Banksy

Lucy Finchett-Maddock is a Lecturer in Law at the University of Sussex. Her work predominantly focuses on the intersection of property within law and resistance, interrogating the spatio-temporality and aesthetics of formal and informal laws, property (squatting and housing), commons and protest. She is author of monograph 'Protest, Property and the Commons: Performances of Law and Resistance' (Routledge, 2016). Her work also looks to broader questions around the intersection of art and law, resistance, legal and illegal understandings of art, property, aesthetics and politics. She is currently developing an 'Art/Law Network' (in collaboration with Sussex's Art and Law Research Cluster), where artists, activists, lawyers, practitioners and other such agitators can share their work and ideas, create art projects on law; law projects on art; collaborate on methodological and pedagogical approaches to law, through art; art, through law - and anything else in between.

Abstract

This piece seeks to demonstrate the striating role of property within street art and graffiti, creating a threshold where criminal and intellectual property meet to both outlaw and protect street art at the same time. Street art reveals a legal vacuum for poiesis, protest and property on the threshold of aesthetic and juridical legitimacy and illegitimacy, illustrating where law means all and nothing at once. Legal sanction is argued as affecting the aesthetics of street art, where criminalisation protects the rights of property owners over the creative rights of artists, reasserting the exclusionary nature of law, intertwined with reasserting the 'outsider' nature of their art. This is argued as not coincidental, but that notions of aesthetics are not only prioritised by the art 'establishment', but also supported by law, to the detriment of other forms of aesthetics such as street art and graffiti. As such, street art and graffiti reveals the elixir of property in both the art and legal establishments, coming to pass as a result of violent histories of expropriation through art property and real property. Ultimately, street art and graffiti is argued as a protest against the legal-aesthetic hegemony, the analysis of criminal, real and intellectual property meeting points telling us more about the congenital role of art in law and vice versa than solely explaining the legalities of random acts of illicit expression.

Introduction

In 2014, six law students and I took part in a 'StreetLaw' project where we worked with local alternative art gallery 'Art Schism' (Brighton) and their lead street artist 'Sinna One' to answer some questions the gallery had on the legality and illegality of street art and graffiti (StreetLaw, 2014). The students investigated the law surrounding the art form, learnt to spray paint, and ran a street art workshop for excluded children from the local Pupil Referral Unit. Some of the questions raised by Sinna One have now been the subject of case law,

with *Creative Foundation v Dreamland Leisure Ltd* [2015] deciding the ownership of street art between landlords and tenants¹.

Taking inspiration from *StreetLaw Brighton*, I analyse the application of criminal law and real and intellectual property law in regulating street art and graffiti, to see not only what the art form and its creators can tell us about the dissident subculture, but also what the movement may tell us about the link between authorities of art and law more generally. I argue that acceptability by authority in art and in law are historically the same, highlighting the role of property in both art and law as deciding gradients of aesthetic tolerability and intolerability. This authority reproduced and manifested is discussed as a Western construction spread through property, and the expropriation of art for commodifying purposes. Looking at street art and graffiti demonstrates the role of property not only in law but also in conceptions of what is acceptable (or otherwise) forms of art. Street art and graffiti is thus an obvious protest against the destructive histories connected to the establishment of the art world, the law, and property in sum.

In the past few years street art and graffiti has become an increasingly familiar and commonplace adornment to our cemented towns and cityscapes. Similarly, thousands of websites, Twitter and Instagram accounts portray a now colourful and vivid cement-riddled street art and graffiti-strewn planet. This 'mainstreaming' of street art and graffiti appears to be prevalent not just within more accepting communities, but across the world, and for different reasons.

The commercialisation of street art and graffiti has been commented on by academic voice on deviant urban art and writing, criminologist and legal thinker Alison Young in her work 'Street Art World' (2016a). In this text designed to be accessible beyond academia she speaks of a world full of street art and graffiti. She comments on the sardonicism of showing privately owned Banksy works in a commercial gallery space that charges admission, as opposed to the free commons of the street, asking "Is this 'exit through the gift shop' an ironic and knowing wink at Banksy's critique of the commercialisation of street art in his 2010 movie? Is it possible to own an ironic Banksy mug?" (Young, 2016b). This commercialism reminds us of the colonial extractivism synonymous with forms of state-market governance, allowed and enacted through law. Urban spaces appear legally complete, the majority of land is owned privately with the resultant recourse to private law mechanisms to govern any protest, at least in the UK context (Mead, 2010; Finchett-Maddock, 2016). This recourse to private law means of removing resistance from the streets, speaks of council outsourcing to corporate contracts for cleaning city walls and ridding them of both legal and illegal art placed on the street.

The unique ambiguities of street art and graffiti posit not just in terms of artistic expression, or ways of recognising one community by another through territorial demarcation; not just new ways of the global art market to spread their feelers for profitable forms of propertied exchange and commercialism, but the very abstract-legal and material divisions street art and graffiti is made on, create legal vacuums for poiesis, protest and property on the threshold of aesthetic and juridical legitimacy and illegitimacy. Street art and graffiti's ambiguity is confounded through the mixture of legal forms, categories and demarcating

¹ With many thanks to the editor Saskia Hufnagel for the inclusion of my work in the handbook and her reading of my work. Donald McGillivray and Andres Guadamuz for their kind assistance in reading and commenting on this piece. Thank you to Colin King for putting me in contact with the editors of this handbook in order to give me space to develop these ideas around street art, graffiti, aesthetics, law and property. With many thanks to Alison Young and Marta Ijadica for their work on street art and graffiti that I refer to, and our contact in recent times on the intersection of art and law.

lines that the creations and its creators manage to traverse. Street art and graffiti's existence indicates a melting pot of both law and its absence, law's omnipotence and its impotence, as at once this supposedly abnormal art surpasses legal category and yet is a stark reminder of the boundaries of legal and illegal.

The laws governing street art and graffiti and the actions of its creators range from trespass to intellectual property of copyright and trademarks, art market law, real property, heritage and planning laws, criminal law, environmental health and council bye-laws. It is a legal elixir, and yet demonstrably transcends law entirely as whether it is legitimate or otherwise, its performance endures. Its most instructing alchemy points to junctures between intellectual and real property, between artistic expression and ownership, between crime and creativity, between law and its outside. Iljadica's work 'Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture' (2016) on informal and informal graffiti and copyright norms, speaks of the intersection of physical and intellectual territories that binds graffiti, codes of appropriation and re-appropriation in terms of both the material and immaterial (Iljadica, 2016: 49). Despite at once being unscaffolded by law, indicating the life force of expression that cannot be touched by legal category, street art and graffiti is synchronically defined entirely by the legal, and the illegal, what is deemed right, what is deemed wrong, legitimate and illegitimate. This is much like the proper or improper created by the artifice of property as Margaret Davies would opine (2008). Whether it be the judicious questioning of the art establishment on the content and form of street art and graffiti as 'reputable' beyond the gallery space, to the definition of a creative work of art that may decipher copyright protection between a tag and a mural, we are talking boundaries, thresholds, lines, and resultant 'vacuums' of law; and the intersecting role of property. Iljadica speaks of these vacuums as the 'bounded commons', "... a regime that is bounded by property rights but creates a type of limited public domain (or commons) within its boundaries" (Macmillan, 2007: 106 in Iljadica, 2016: 50). These are vacuums much in the way that Lambert (2013) talks of what exists within the thickness of the line of the architect's drawing, what resides within the very boundary of law and its outside. Art is the threshold between law and life as Agamben would concur, and the use of street art and graffiti is very much an expression of experience, territory, code, as much as it may be an ulterior form of copyright as Iljadica argues (2016) or bottom up commons of Mulcahy and Flessas in 'Limiting Law: Art in the Street and Street in the Art' (2016) that speak of legal pluralisms.

The irony is that at the point at which street art and graffiti resists state law, it opens it up as commons; the streets and their art align with copyleft, Situationist philosophies. And yet between the artists themselves there are histories, expectations and etiquettes, similar to those in any other normative situation. Offered is a glimpse into the sensorial performance of aesthetics and law, where the two are not indistinct, where value, judgement, form and method rule in both legal and artistic terms. Street art and graffiti stands in contradiction to and in protest of, the established customs of Western aesthetic and legal sensibility that are built upon the buying and selling of private property. The apparently separate institutions of art and law, rely on the authority of one another, in order to support the flow of capital in art, law or realty, and it is the work of artists such as those painting and writing in the street that seek to reveal the underlying capital of art, and law. And yet at the same time their art seems to defy the law, where both property and expression become plateaus and mezzanines striating law, and the same vice versa, creating vacuums of criminal poesis, within law and art itself. The following pages seek to discuss street art and graffiti in relation to the law of England and Wales as well as other jurisdictions, specifically criminal damage as well intellectual and real property intersections, where there can be found an account of

not only street art and graffiti's legal regimes, but also what this 'outsider' form of art may teach us of the virtual and material of law and aesthetics beyond.

Subvertising, Legitimation, Cooptation, Critique

Banksy's own attribution site, the 'Pest Control Office' (see <http://www.pestcontroloffice.com/whatispco.html>), is a great starting point to enter the ambiguity and satire of the street art and graffiti world, where art created without permission has become such a cultural and economic paragon that the artist has to manage the influx of attribution claims virtually without compromising his identity. Banksy, amongst other illicit art legends that preceded him such as Jean-Michel Basquiat, Keith Haring, as well as peers Blek Le Rat, Shephard Fairey and graffiti crews such as MSK, is a street artist associated with the worldwide scene of underground artists and graffiti writers and their artistic forms. Rafael Schacter (2014) uses the terminology 'Independent Public Art' of theorist Javier Abarca to describe street art and graffiti, an umbrella label describing all forms of 'autonomously produced aesthetic production in the public sphere'. Schacter (2014) describes the global nature of the artists' networks, where crews resemble the cooperative artisanry of medieval guilds (Sennett, 2008: 60).

The history and origins of street art and graffiti have been well documented, with in-depth and accomplished works on the art form that may differ from one to the next, but most genealogies locate the start of the art form as we know it today as emanating from the late sixties onwards, directly expressing the styles and aesthetics of seventies hip hop New York. Its philosophy is intertwined with anti-advertising philosophy of 'culture jamming' (Lasn, 2000), 'subvertising', and anti-branding groups such as Vermibus (Berlin), Brandalism, Protest Stencil (UK), Public Ad Campaign (New York), Billboard Utilizing Graffitiists Against Unhealthy Promotions (US), BUGA-UP (Australia), Citizens Organized Using Graffiti Hits on Unhealthy Products (COUGH UP) (UK) which seeks to retake public space for their own expression, using graffiti, stickering, 'slaps' and street art to dissent from the commercialisation of the public sphere. The anti-commodification stance of the art form is a direct descendent of the Situationists and Dadaists, where cultural memes of capital are resisted, subverted and recoded, akin to the 'semiotic democracy' expressed by Fiske (1999). The impetus for street art is expressed suitably by Banksy: "Modern street art is the product of a generation tired of growing up with a relentless barrage of logos and images being thrown at their head every day, and much of it is an attempt to pick up these visual rocks and throw them back" (McIntyre, 2013: 309).

Street art and graffiti as an art practice is as old as law itself, cave paintings, public wall art and muralism dating back through Medieval times to ancient Pompeii and beyond. As Germaine Greer notes, "Whether at Lascaux 17,000 years ago or in Western Arnhem Land 50,000 years ago, art began on a wall. If the sandblasters had been around in either place, we would have lost a precious inheritance" (Greer in Edwards 2009). Graffiti is the plural word and form deriving from the Greek '*grafein*' (to write), and Italian plural '*graffito*' meaning pictures 'scratched' ('*graffiato*') or etched on a surface, a technique dating back to ancient graffitiists as they sketched their work onto walls as murals and frescoes (Rychliki, 2008). Today, however, graffiti refers to the large colourful lettering, fonts, signatures, and stylised pseudonyms, expressed in less intricate forms of 'tagging', and 'throw ups' of large bubble style lettering, whereas street art is more akin to muraling.

Academic commentary on street art and graffiti has exploded from early conservative criminologists dramatizing the art, to Baudrillard's essay 'Kool Killer' (1993 [1976]) Barthes' text entitled 'Cy Twombly' (1991 [1979]), through to the thinkers writing literature directly

on the street art and graffiti as seen through the lens of criminal and intellectual property. Today street art and graffiti are the subject of specialised art books, biographies as well as artists themselves using social media to record the creating of their work and the locations, especially notable on Instagram. All this is a nod to its increased acceptance and legitimisation by society, and certainly a shift away from the early anti-branding days, with the simultaneous pitfalls of it becoming co-opted and mainstreamed, sold back to us as a commodity on the high street canvas.

The Law, The Outsider and Deviant Creativity

The law that gathers and seeks to construct street art and graffiti is not a simple amalgamation. Under the criminal law the 'graffer' or artist will be assessed on their culpability, and to some extent likely culpability, as a vandal. In 1995, New York Mayor Rudolph Giuliani introduced an 'Anti-Graffiti Task Force' (New York Mayoral Executive Order No. 24, July 11, 1995). to combat the wave of graffiti that had occurred since the sixties and seventies in the city, laws where the sale of spray paint to anyone under the age of 18 became a criminal offence (Section 110-117.2 New York Administrative Code: Defacement of property, possession, sale and display of aerosol spray paint cans, [and] broad tipped markers and etching acid prohibited in certain instances). A similar campaign was brought in through English and Welsh law with the 'Keep Britain Tidy' campaign resulting in legislation granting the use of graffiti removal notices (Anti-Social Behaviour Act 2003 2003, s.48-52. s.31 and Part 4 of the Clean Neighbourhoods and Environment Act 2005 amended the Graffiti Removal Notices to 'Defacement Removal Notices' to incorporate fly-postering and stickering), amongst other measures to tackle graffiti and street art 'vandalism'² to be discussed shortly. Yet copyright law has the capacity to protect the street artist or writer's moral integrity through the protection of authorship rights. This abstruse approach by the law equates a crime/art division that Young (2006, 2012, 2013) evinces in her work. She explains how aspects of everyday life become criminal acts, and how street art and graffiti's deviant art scene's ambiguous images straddle the art/crime dichotomy, not least the real or imagined line between artist and criminal.

This treatment by the law speaks of liminal crossings in which the law clearly governs a separation between purely creative 'affective encounters' (Young, 2012) and those that are crimes. 'Liminality' comes from the Latin word *limen* and refers to our happenstances of thresholds, such as street artists and graffiti writers teetering on and existing within these edges, not just of legality and illegality but also of aesthetic recognition. Their art is thought of as a form of outsider art (Cardinal, 1972)³, in the sense that the participants are thought to not have art school training (although this cannot be generalised) and yet arguably by categorising the art as *outsider* more divisions are created that speak of the combined influence of the prescribed art world establishment as well as the institution of law. This reminds us of Howard Becker's seminal criminological text 'The Outsiders' ([1973] 2008), where deviancy is determined not as an inherent but cultural assumption, that we behave as we are so labelled. Following from Halsey and Young (2006: 277) whereby graffiti writing is described as "an *affective* process that *does things* to writers' bodies (and the bodies of onlookers) ...", one can see how the combined intersecting planes of criminal, intellectual and real property (law) and the expectations of the art establishment (aesthetics), will affect, effect, construct and label the street artist and graffiti writer as synchronically outsider in law, and outsider in art. It is the *affective encounter of law* that labels to produce a self-fulfilling prophecy of deviance.

What motivates the street artist or graffiti writer varies and has been referred to extensively (Young, 2013; 2006; 2012), but the role of the law in deciding the illicit nature of the art

² Gomez's (1993) states a dichotomous categorisation of graffiti into 'graffiti art' and 'graffiti vandalism'.

³ Jean Dubuffet coined the term *art brut*, translated by Roger Cardinal in the 1970s as 'outsider art' (1972).

certainly speaks of labels, those which are supported and upheld through a combination of juridical expectation and that of the commodified world of the 'insider' art establishment. Bird (2009: 1) refers to Davies (2008), for whom the illegality of an act cannot be seen at face value; only after we see the act through the filter of the law is it seen as criminal. This demonstrates the power that law has to categorise, and yet arguably there are material conditions of law, aesthetics and property preceding an act that bind, effect and give affect to the creative outcome of the artists and writers. This creates not only the "entrenched *ressentiment* of the illicit artist" (Girard, 1977 in Young, 2012: 4; 2013), but simultaneously holds up the establishments of law and art, fused in the elixir of property and colonisation.

The impact of law on street art and graffiti will be discussed specifically in the UK (English and Welsh law) context, in order to draw wider conclusions around the role of property and law in aesthetics. First we will turn to the *criminal* plane of law in which we find street art and graffiti caught, followed by the *copyright* framework and the extent to which the genre is set free, finishing with the striating whim of real *property* on which both the law and the art sit. Whether the criminal and copyright planes of law affect one another is to be seen; the threshold at which the two meet is that of real property, the land as material commodity. This real property translates into moveable property on the art market, the alternate trafficking of global capital, the quiet colonising of aesthetics back round to law.

Crime, Damage, Outsider Behaviour

Street art and graffiti is an illegal urban artefact (or practice and performance, according to Schacter, 2014; Mulcahy and Flessas, 2016) in most places around the globe, if it is created without the property owner's permission. Under English and Welsh law, street artists and graffiti writers, if caught in the act of making their artwork without permission of the owner of the property, can be prosecuted under s.1 Criminal Damage Act 1971, where the definition of criminal damage is: "A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence". Under this legislation, if found guilty there is a maximum penalty for those over 18 of ten years if the criminal damage exceeds £5,000 (s.4 (2) Criminal Damage Act 1971).

Additionally, under the Anti-Social Behaviour Act 2003 (ss.48-54A as amended by Part 4 Clean Neighbourhoods and Environment Act 2005), someone caught in the act of creating street art and graffiti without permission can be issued with a fixed penalty notice by the local authority (s.48 as amended by s.28 Clean Neighbourhoods and Environment Act 2005). Using the same act, local authorities can issue 'Graffiti Removal Notices' (amended by Part 4 of the Clean Neighbourhoods and Environment Act 2005 to 'Defacement Removal Notices' to incorporate fly-postering and stickering), to owners of street furniture to remove illicit art pieces or writing. If the owner fails to do so within 28 days the local authority may do it themselves (s.48 (1-3)) and charge the owner for the costs (s.48 (4)). A piece of work can stay on someone's property if they so wish as long as the graffiti or street art is regarded as legal regardless of the canvas owner's opinions or permissions, such as if the words or images do not incite racial hatred (an offence under the Public Order Act of 1986 Part 3 s.18-19). The 2003 legislation also makes it illegal for retailers to sell spray paint to people under the age of 16 (Anti-Social Behaviour Act 2003 s.54-54A as amended by s.32 Clean Neighbourhoods and Environment Act 2005) and gave power to the Police or local authority to issue Anti-Social Behaviour Orders (ASBOs) to control those repeatedly caught (Anti-Social Behaviour Act 2003 s.85). ASBOs have now been superseded by injunctions and Criminal Behaviour Orders under the Anti-Social Behaviour, Crime and Policing Act 2014, bringing in

'Public Space Protection Orders' (PSPOs) that specifically criminalise anti-social behaviour linked with a specific place (such as illegally camping in a park, or writing on a wall in the instance of street art and graffiti) where the 'unreasonable' activity is being committed.

Across the world there are alternate criminal law approaches to street art and graffiti, and how to manage those creating the works. As yet there is not one specific law condoning graffiti in the UK⁴, however there exist more draconian measures elsewhere, such as the specific Victorian Graffiti Prevention Act 2007 covering the geographical area of Melbourne, a city famed for its graffiti and street art as well as written extensively on by Young (2012, 2013), as well as in New York as mentioned previously. This more extreme response is linked to the conservative policies of the cities' authorities, where criminalisation is used to 'crack down' on the illicit acts that are seen as deviant vandalism as opposed creative adornments to the urban environments.

There remain examples of graffiti writers and street artists being treated with the full force of the law. The case of GSD Crew where the artists were given an 11 year sentence (Young, 2016: 35) and *DPP v Shoan* [2007] where Noam Shoan had his fine overturned for a prison sentence, taking the case up to the Australian Supreme Court, are examples of an extreme response from the law, seeking to make examples of Shoan and GSD to deter future graffiti writers and street artists with heavy punishments. A UK case *R. v Dolan (Thomas James)* [2007] [2008] discusses the harsh sentencing of prisoners creating graffiti. Singapore goes to an extreme with its draconian cleansing laws with repeatedly enforcing 8 cane strokes, 3 years in jail and \$1, 471 fines (Hopes and Fears, 2015). The British Home Office, reflecting Keep Britain Tidy and the classification of graffiti and street art as anti-social behaviour, introduced a 'Name That Tag' initiative, offering rewards for information on prolific graffiti writers. According to the Crime Prevention Website, the British Transport Police run an information sharing database of tags accessible by Local Authorities, a means of tracking the illicit artists and writers, as well as the extent of the damage caused by graffiti which can be collated and taken into account by courts in sentencing (2016).

In Berlin, a city known for its bohemian lifestyle and as a place for art and creativity, street art and graffiti is curbed by more lenient laws such as 15 Euro fines; and Bogota, Colombia has seen a moratorium on all laws around street art and graffiti after the police shot and killed Felipe Becerra as he was painting: "No permits are required for painting a building's facade, police rarely intervene, and when they do they can only ask the writer to erase their work and leave" (Hopes and Fears, 2015). Buenos Aires, Argentina, is recognised as a mecca for graffiti and street art, as well as Mumbai, India, and Cape Town, although these cities' criminal laws are still strict around art placed in the street (Hopes and Fears, 2015).

Edwards' (2009) discussion on the interpretation of criminal damage in the case of the street art of Banksy is an interesting and comprehensive one, giving an insight into how the law views alternate aesthetics, and the ever prioritising of property over those who create the art. He explains "there is no separate exculpatory or justificatory defence of 'aesthetic value', and so graffiti artists must argue that they either have not 'damaged' property, they lacked *mens rea* or they had lawful excuse" (2009: 345). He argues that the importance of work such as Banksy's as social and political commentary forces a rethinking of the definition and ambit of criminal damage (2009: 345), raising two issues in relation to whether street art and graffiti constitute 'damage' according to the tests, whether the defendant can claim they did not intend to cause damage but intended to create an artistic work (relieving

⁴ Scots Law similarly prescribes the control of graffiti and street art under the Anti-Social Behaviour Act (Scotland) 2004 ss.58-61.

them of the *mens rea*, the mental intention necessary for a criminal damage charge), and whether there is a defence for street artists under s.5 of the Criminal Damage Act 1971 that an urban artist does not believe their work to be damaging.

For Edwards, after combing through appellate court decisions on definitions of criminal damage (*R v Fiak* [2005], *Roe v Kingerlee* [1986], *Whiteley* (1991)), the test of criminal damage is so broad that it warrants street art and graffiti being considered under an alternate legal framework. Higher courts rely on the Magistrates' Courts and their jurisdiction to assess whether damage has been inflicted under s.1 of the Criminal Damage Act 1971, following the rulings in *Fiak* and *Roe v Kingerlee* (Edwards 2009: 348). Edwards discusses how each of the cases specifically relate to the extent to which 'harm or injury' is inflicted on the 'value or usefulness' of the property (*Fiak* and *Morphitis v Salmon* [1990]), a narrower continuation of *Whiteley* where any physical alteration at all may be deemed damage (Edwards, 2009: 349). In *Hardman v Chief Constable of Avon and Somerset* [1986], campaigners for nuclear disarmament had used soluble paint and claimed that no criminal damage had occurred as the rain had washed the paint away. But it was held that damage had been incurred through the 'expense and inconvenience' on the part of the local authority having to remove the paint with high pressure jets. There is a lack of consistency over how the courts should deal with street artists and graffiti writers and this troubles Edwards, where there are clearly no means by which to judge a defendant and their work other than through a very broadly defined ambit of damage, placing property rights above the artistic expression of the artist defendants (Edwards, 2009: 350). As such, Edwards calls for an alternate prism in which street art and graffiti should be viewed by the courts: "Damage' can only be assessed by reference to the spatial context in which the act occurs. Both 'beauty' and 'damage' are context-dependent; both involve an interaction between subject and observer, the labels being the means of conveying to others the observer's affective response to the subject."

Not only does the criminal law apply to graffiti and street art in terms of defining the damage to the property, but also the behaviour of the artists concerned. An interesting development in Common Law countries' jurisdictions has been the crackdown on 'anti-social behaviour', arguably a development of criminologists Wilson and Kelling's 'broken windows' theory (1982). This 'zero tolerance' approach claimed that one piece of graffiti 'vandalism' can lead to the degeneration of an area, contrary to the belief that street art could actually benefit an area and be deemed an asset to a community to look after for future generations. Millie argues, in a similar stance to criminal damage and the fluctuating nature of artistic acceptability, what is or may not be 'anti-social' is context specific (Millie, 2008). This seemingly is reflected in the handling of graffiti as anti-social behaviour by the Courts. In *R. v Moore* (Samuel George) [2011], the stance was lenient with anti-social behaviour deemed too extreme for street art and graffiti, and yet with *R. v Brzezinski* (Tomasz Adam) [2012] graffiti was viewed as anti-social behaviour whether deliberately offensive or otherwise, followed by *R v Ruth* (Tobias Daniel) [2014] EWCA Crim 546 where graffiti was automatically assumed as criminal damage. For street artists and graffiti writers, the label vandal repeats through its link association with their works, and how they feel the law sees them, an inevitable loop leading to intentional criminal damage giving effect to that which the law has so labelled.

Intersecting the Intellectual and the Real

Many cities and towns now have 'free walls' where street art and graffiti can be done legally without any reprimand, where local authorities designate the area as a licenced space.

Arguably the acceptance of graffiti and street art relies on the local community's shared views as to whether they wish it be there or not, whether overtly through the extent to which local authorities enforce the law or unconsciously through the snowballed approval of the art as it gathers in a space without any obstruction. In a place such as Brighton, there is little reservation to the practice of street art and graffiti, a culture of urban creativity that even the local police have been known to condone. A number of stories of the local enforcement authorities' turning a blind eye as they stumbled upon artists mid-paint or spray were as shared from experience to myself and my awe inspired students by Sinna One.

The mainstreaming nature of commercialism has meant that street art and graffiti has become more commonplace. Co-optation and commodification has increased the amount of licenced pieces, as well as the work of the artists being used for advertising and marketing, often at times without their permission. Here, the anti-capitalist heritage of street art and graffiti comes full circle with a countering of its original purposes and intentions as the movement rescinds to create advertising as opposed to subvertising. Enter intellectual property as a legal plateau that contrasts with the criminal law, offering the artists' work the possibility of protection, afforded in authorship rights. Copyright is increasingly playing an integral role in the protection of illicit artists' and writers' works, as images, designs and fonts, are being used and profited by corporations, either with or without the consent of the artists.

The filing of a copyright breach against McDonalds for the unlicensed use of graffiti and tagging art by the family of the late artist Dash Snow in 2016 (*Jade Berreau v McDonald's Corporation* Case No. CV 16-7394), demonstrates the irony of corporate use and mainstreaming of street art and graffiti taken to an extreme. Dash Snow, who lived the nihilistic edge of his art through street daubing in crews and on his own from a young age, dying from a drugs overdose at the age of 27, expressed his opposition to capitalism through his tagging as a reclamation of space from corporate culture. Dash Snow was notorious for his extreme work as an artist, at times using his own semen in his work, and had been noted as stopping homeless persons to write on their backs, an interesting take on what constitutes street furniture (Buffenstein, 2016). Snow's signature and internationally recognised tag 'SACE' had been reproduced by McDonalds across its international suite of restaurants, and was recognised by the former partner of Snow when she had visited a London McDonalds. When the multinational refused to remove the art when requested by the family, a copyright infringement was filed as a violation of the artist's economic and moral rights as well as falsified copyright management through the inauthentic use of Snow's signature⁵. The case was later settled out of court, and closed in January 2017.

What undeniably stands out is how the use of Snow's work to decorate the insides of McDonald's restaurants, cuts to the core of where lines and thresholds have been crossed, not just in a theoretical analogy but in a literal hypocrisy that not only misunderstands but simply does not care why street artists and graffiti writers risk and expend their lives, for the cause of painting the street. Nothing can mean more to a graffiti writer than their 'street cred' which incorporates their resistant stance towards authority and capitalist cooptation, and their place within their own creative and territorial peer groups. So for an artist who spent his sadly short life defying the system to have his work misused and misrepresented by the very echelons he was fighting is the ultimate disrespect and undermining of his work.

⁵ The 1709 Copyright Blog cites McDonalds' intentional falsified copyright management information as a violation of 17 U.S.C. § 1202 "which forbids anyone to knowingly and intentionally, in order to induce, enable, facilitate, or conceal infringement, to provide false copyright management information" and that this argument has also been made by graffiti artists Revok and Steel of graffiti crew MSK in their copyright infringement suit against Roberto Cavalli (*Williams, Chapa, and Rubin v. Cavalli* (Central Dist. Of CA, 2014), (Weiss, 2017).

As the family's argument on behalf of Snow expressed this: "Mr. Snow's reputation and legacy have been irreparably tarnished, diminishing the value of his work" (Weiss, 2017). It is here where copyright protection can be used as an anti-advertising tool, allowing "...artists to object to and (try to) prevent what still several street artists, especially those who stick to the original values of the subculture, do not accept, namely a commercial exploitation of their art which is antithetical to that message" (Bonadio, 2017: 39).

This story of the underground fighting back against the corporate use and mainstreaming of their work, and the flagrant trammelling of the street art and graffiti scene's roots and anti-advertising philosophy, is being repeated at an expansive rate as the artwork becomes more widespread, and marketing teams easily access images of street artist and graffiti writers' work online, to use as magnets for their business portfolios. Most of these cases are being settled out of court⁶, leaving the question of whether their works can be protected under copyright as yet unsettled in law and open for interpretation by the intellectual property community. At least such deals out of the courtroom offer those artists concerned the recompense in financial terms, if not the silence of the global corporations admitting their misappropriation of these artists' work.

The copyright plateau the plaintiffs have engaged in these cases, is split in economic and moral terms of authorship rights, based on the presumption that street artists and graffiti writers are protected by intellectual property law. Under UK law, the works of street artists would be defined under the Copyright Designs and Patents Act (CDPA) 1988 as an 'artistic work' "irrespective of its artistic quality" (section (1)(a))⁷, repeated under Article 2 of the international treaty the Berne Convention for the Protection of Literary and Artistic Works⁸. The intellectual property of the street artist and graffiti writer subsists in moral and economic authorship rights that are attached to their works, as has been discussed much more comprehensively by copyright thinkers Bonadio (2017; 2014) and Iljadica (2016; 2014). Street artists and graffiti writers may find means of protecting their moral rights (right to be designated as author, object to derogatory treatment of their work, right to object to false attribution, CHIV Defined by Copyright Designs and Patents Act (CPDA) (1988), and economic rights (right to reproduction, renting, lending the work, performance communication and adaptation (s.16 CPDA), rights to resale (*droit de suit*), licencing).

Both Bonadio (2017) and Iljadica (2014; 2016) separately argue that copyright protection should extend to the work of artists who choose to paint and write in the street, in spite of the illicit nature of the acts they are committing⁹: "The process by which an artwork is created should be neutral in copyright terms. Other works that are created illegally are indeed protected by copyright in many jurisdictions - paparazzi pictures that violate privacy

⁶ Recent US examples other than *Jade Berreau v McDonald's* are *Anasagasti v. American Eagle Outfitters, Inc.*, No. 1:14-cv-05618 (S.D.N.Y. Jul 23, 2014); *Hayuk v. Sony Music Entertainment et al*, No. 1:14-cv-06659 (S.D.N.Y. Aug 19, 2014); *Miller v. Toll Brothers, Inc.*, No. 1:15-cv-00322 (E.D.N.Y. Jan 21, 2015).

⁷ UK - Defined by Copyright Designs and Patents Act (CPDA) 1988, (1)In this Part "artistic work" means—

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

(b) a work of architecture being a building or a model for a building, or

(c) a work of artistic craftsmanship.

⁸ Article 2 of the Berne Convention states: [T]he expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as . . . cinematographic works . . . works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works . . . works of applied art . . ."

⁹ Bonadio (2014) refers to cases in the US such as in *English v BFC&R E. 11th St LLC* where the question raised by defendants was since it was illegal to place a mural graffiti work, it should be excluded from the copyright protection; as well as *Mitchell Bros. Film Group v Cinema Adult Theater*, the obscenity of a work has been taken into consideration when claiming validity of protection and copyright infringement.

laws, for instance” (Bonadio, 2014). The fact that street artists and graffiti writers very often conceal their work with a pseudonym does not detract from copyright protection, the author’s work retaining rights despite their oft ‘orphan’ status (Rychlicki, 2008).

Vacuums of Poiesis - Protest and the Striation of Property

In spite of intellectual property law clearly giving scope to the protection of street artist and graffiti writers work (whether as fixed object or more preferred as performance, as per Mulcahy and Flessas, 2016), the point at which any protection feels vulnerable is where the plane of real property re-enters. The ownership question generates a juncture where the rights of the owner of the material object on which the street art is daubed meet those of the creator. From what we have seen, authorship rights are settled enough to construe the owner of the moral and economic rights of a work as the author themselves (CDPA s 9(1) and s.11(1), as well as the case of *Naruto v Slater* 2016)¹⁰. And yet, in the instance of graffiti and street art, ownership is not just a concern for the author of the work of art, but also for the owner of the real property on which the art sits. Recent case law in England and Wales has directly clarified the position of who might own a work of street art and graffiti in the context of a landlord and tenant situation. In *Creative Foundation v Dreamland Leisure Ltd Chancery Division* [2015] EWHC 2556 (Ch), the landlord was deemed the owner of any street art and graffiti added to their property, as per the tenancy agreement between Creative Foundation and Dreamland Leisure. In 2014, Creative Foundation organised an art fair in Folkestone Triennial where there appeared a Banksy mural ‘Art Buff’ on the back of an amusement arcade leased from Creative Foundation by Dreamland Leisure, who removed the Banksy piece from the property, to sell at a New York art gallery (Maxwell, Shaw and Bruce, 2015). The Court held that the lessee did not have the right to remove the mural, affirming the freeholder owned the street art where the tenancy did not assert the right to remove chattels as part of upkeep, and that the mural should be delivered up to the claimant. Interestingly, Iljadica argues that under copyright law, the freeholder could be argued to have infringed the distribution right of the author by placing the chattel embodying the work on the market without the author’s consent under s. 18(1) CPDA and Article 4(2) Infosoc Directive (2017, 261).

Bonadio asks “There is a strong tension between artists and owners of the surfaces where artworks are placed. Who should the law protect more strongly?” (2017: 20). Given the case of first instance in *Creative Foundation* where the freeholder has been deemed to own the art, then what happens to the street artist’s rights as per *Nurato*? The moral personality rights always remain with the author of the work, and yet it is the economic right which can be transferred, street artists and graffiti writers using their *droit de suit* to claim their royalties if their work is sold.

This brings us back to the concern of ‘value’, capital and commodity (Edwards, 2009; Young, 2000), where the striating force of real property, will take precedence over any original expression in terms of intellectual rights of the creative (Griffin, 2010): “The distinction between the work and the embodiment becomes here blurry as the alteration of a physical support inevitably modifies the work understood as immaterial concept” (Bonadio, 2017: 21). It is here that we experience the division, the liminal, where outsider art touches

¹⁰ A famous demonstration of this is the case of the ‘Monkey Selfie’ *Naruto v Slater* (2016), where the plaintiff PETA acted on behalf of Naruto (the monkey who had taken a photo of himself using photographer David Slater’s camera) claiming that the monkey selfie pictures came “from a series of purposeful and voluntary actions by Naruto, unaided by Slater, resulting in original works of authorship not by Slater, but by Naruto” (Guadamuz, 2016). PETA were deemed not to have standing to represent Nurato, and as Guadamuz explains, the copyright subsists with the photographer Slater given the ‘sweat of the brow’ argument.

insider law, where the outsider law of street artists and graffiti writers traverses aesthetic authority, where private property cuts into expression, protest and poesis, creating categories of acceptable art, and acceptability in sum. In Markel (2000), it is suggested that US federal legislation should be passed so as to invalidate any copyright claim for works produced as a result of criminal law infringement (Bonadio, 2017: 34). Whether arguing that the criminality of the act does or does not affect incorporeal protection for works of street art and graffiti, what is forgotten is the deciding role of real property and how it characterises what is acceptable or otherwise. Individual property has the final say on the legitimacy of the aesthetic value of street art and graffiti, through its division of our urban environment in terms of ownership, where you can and cannot create, and the proffered version of aesthetics that ownership and law supports as a result.

Salib (2016) discusses the alternate ways that street art and graffiti can be understood in terms of property in the US context, and Iljadica (2015) considers how real property may offer a way through where the artist can argue their 'moral right of integrity' as to the treatment of their work by the freeholders. This is through having a say in cases where their work is deemed to be destroyed along with the building, with a tentative argument found in *Harrison v Harrison* [2010] as well as *Snow v The Eaton Centre* [1985] that may support street artists being able to decide as to the 'treatment' of their work. This is more in line with the Visual Artists Rights Act (VARA) (1990) in the US, legislation that protects the moral rights of artists in their work where VARA recognises and protects works of visual art that have been "incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work" (s.13). In *Cohen v. G&M Realty LP* (2013), referring to the licenced graffiti and art work of the legendary illicit art mecca '5Pointz' that had been encouraged by the owner since the 1990s, seventeen graffiti artists filed a VARA lawsuit to stop developers from raising the factory that was covered in their works, upon news that the property owner wanted to destroy the buildings to redevelop the area. The lower court held that "VARA protects even temporary art from destruction", however the art had to be of a 'recognised stature' to be protected from destruction, thus produced legally.

Mulcahy and Flessas (2016) discuss street art as an artefact through the listing of buildings in the UK context as a way around the unconsented destruction of street artists' work. Under s.1(5) of the Planning (Listed Building and Conservation Areas) Act 1990, part of a building can be listed, as long as it is in the interests of the architectural nature, aesthetic merits, historical interest, national interest, heritage asset, and localism of the area. The legislation counters instances where even if the owner of a wall wishes graffiti to stay, the Local Authority can serve a s.215 notice under the Town and Country Planning Act 1990, if in the authorities' opinion the piece is detrimental to the area. This use of heritage and planning law to protect illicit art was found in two Banksy pieces, one in Park Street, Bristol, where the local community opposed the removal of the work and managed to keep it after petitioning the council, arguing it was an asset to the community; and the second where there was local community opposition to the removal and sale of Banksy's *Slave Labour* from the Turnpike Lane area of London, Wood Green¹¹.

¹¹ Perhaps the most potent form of protest, following a long tradition of Temporary Autonomous Art that thrives on its impermanence, is exemplified in artist Blu's destruction of his own work in protest against the local authorities in Bologna's hypocritical stance towards street art and graffiti as they opened their doors to a bank sponsored exhibition 'Street Art Banksy & Co' in 2016 whilst exerting draconian criminalisation of street artists and graffiti writers: "We are faced with arrogant landlords who act as colonial governors and think they're free to take murals off our walls. The only thing left to do is making these paintings disappear, to snatch them from those claws, to make hoarding impossible" (Vogt, 2016). Forget the removal of works by the owners in realty, but the invisibilisation of art by the artists themselves.

Who's Aesthetics? Street Beauty and the Law

The originality of a work within Common Law jurisdictions such as the US and UK, rests on considering the 'sweat of the brow'¹², or the workmanship and effort put into a given piece. This legal framing of creativity offers a mechanism of attributing the artists as well as defining what may persist as art, in law. On first sight, it appears that creative merit is irrelevant to the procedure of copyrighting necessary to demarcate the edges of private property, not just of the intellectual nature, but specific to the street art and graffiti denomination, ultimately as it rests on reality.

According to Edwards, the question of 'Where is the boundary between art and criminal damage?' is superfluous, "as if these concepts are mutually exclusive, and as if a threshold exists beyond which something adjudged 'art' loses that status and becomes criminal" (2009: 347). Young agrees as she states the law does not distinguish between aesthetic styles, artistic media, and the subcultural groupings of practitioners. Instead, all that matters is whether or not the image's presence is authorised through a commission or the consent of the property owner (Young, 2012: 4). Similarly, Mulcahy and Flessas discuss the impotence of law in the face of street art and graffiti's energy and form, "There is no reason to use law to legitimate art. It either legitimates itself, or it is forgotten; sometimes the purpose of its very existence is only to celebrate its destruction, as the Dadaists, surrealists, and others have posited in the past" (Mulcahy and Flessas, 2016: 22).

Yet if we look to the manner in which property relations effect and affect not only the legal nature of street art and graffiti, but also what are acceptable and unacceptable forms of art overall, we can question whether finding a division between criminality and art is so redundant after all. Under the VARA act in the US, moral rights are only protected for those works of a 'recognised stature', which specifically relates to the *Cohen* case, deeming uncommissioned works as outside both the law and the artistic preference of the educated art world. VARA protects visual artists' 'moral rights' by prohibiting the destruction of visual art, "including paintings, drawings, sculptures or photographs, of 'recognised stature', is further defined in case law as "art experts, the art community, or society in general views as possessing stature" (*Carter v. Helmsley-Spear*, 861 F. Supp. 303, 324-25 (S.D.N.Y. 1994)). Although not on UK shores, this expresses an interesting inter-connection between the functioning of the art and legal establishment beyond the state.

As has been suitably referred to elsewhere, it is the crucial 'where' of graffiti (Cresswell, 1996) and street art that shapes its treatment by the law, the art world, property owners, passers by, admirers, opponents, as "when taken off the street, and into the gallery, it is art. On the street, it is crime" (Bird, 2009: 2). Ferrell (1996: 141-143) and Young (2005: 56-62; 2014) further illustrate that for many years the association with graffiti has been a derogatory judgement of 'disgust' where street artists and graffiti writers resemble 'dogs' marking their territory. Why it should prompt such outrage goes back to the line drawn by what is acceptable and otherwise, in law and in art. Clearly unless the surface is the public boundary of the property, the artist will have to trespass, thus creating a civil wrong before they have even started creating the art, crossing the line of law. Nevertheless, to say that the law does not impact in any sense on the works of graffiti and street artists, and how they are more widely perceived themselves, is right to an extent given the precarious nature of

¹² Defined in leading UK case *Walter v. Lane*, EU ruling *Football Dataco Ltd and Others v Yahoo! UK Ltd and Others* - C-604/10 - *Football Dataco and Others*; and in the US - *Feist Publications v Rural Telephone Service Co* 499 US 340 (1991) 113 L Ed 358 (1991) (Sup Ct) at 369 (found at Stokes, 2014).

the works they produce - there will be an inevitable who gives a shit risk-taking attitude of 'what more can they do to us'? However, this view of the artist and their art as unaffected by legality and illegality, detracts from the preceding layers of law laid down historically that effect and affect what we perceive as aesthetics and what is aesthetically-pleasing. These previous layers of law perpetuate a sedimented exchange of inclusion and exclusion through inter-sovereign systems of private property in art (as moveable capital) and land (as immovable capital); the construction of spatial and temporal historical materialisms, slavery, violence, and colonising divisions that construct the system of law, capital, and aesthetics, that we have come to know.

These designs, walls, architectures, are all human fictions that rely on the greatest fiction of all, private property and the law that supports this, resulting in capital found in land but also in great cultural and artistic commodities. The ordered nature of the new urban world is in direct contrast to the underlying chaos wrought to create it, the 'civilised' appearance of the city hiding its 'disordered' underbelly. Michael Buor's depiction of the structure of New York in the 1950s portrays this order/disorder dichotomy: "marvellous walls of glass with their delicate screens of horizontals and verticals, in which the sky reflects itself; but inside those buildings all the scraps of Europe are piled up in confusion ... The magnificent grid is artificially imposed upon a continent that has not produced it; it is a law one endures" (Buor in Arnheim, 2917: 2-3).

The subjective nature of art appreciation connects the creator, the viewer, the audience, the purchaser, the private property owner, the law, where we assert a choice as to whether we value something or not as an artistic work. Yet this assumption that aesthetic appreciation, and the work produced, comes from an absence of law, from an autonomy of art (Rancière, 2005: 20), is circuitous, closing the gap on other narratives that may be influencing what is acceptable or otherwise. The expression, 'Beauty is in the eye of the beholder' escapes the situatedness of the beholder, and the aesthetic regime within which their gaze may be locked. Dialectics of *beauty v ugly*, *order v disorder*, assert a mathematical discrimination for art works that are not a totality, not a symmetry, not a category that private property can easily attach itself to. According to Lorand, beauty does not have one single opposite (1994: 399), it cannot be shoehorned into an impossible equilibrium, the very same impossible equilibrium of private property and its assertion of edges, finite divisions of what is correct and otherwise.

Dominant understandings of aesthetics, *aesthesis*, *aesthetikos*, *aisthanomai* to sense, to feel, perceive, emanate from the very same space of law; Eurocentric origins that create an aesthetic hegemony over other connotations of what is beautiful or otherwise. Rancière's 'distribution of the sensible' highlights the limiting role of time and capital (2005: 13) as it alienates us from our ability to experience art is an historical materialist account that despite its critique of property in art, sits on a privileged platform of male dominated post-Kantian continental philosophy, where his voice will be heard louder than those voices of the anywhere else. Responding to an increasing responsibility to learn from voices other than those dictating and familiar, this article undoubtedly sits from a similar privilege and would hope to not abuse its position but to add to a debate epitomised by the work of Vazquez and Mignolo (2013). Rolando Vazquez and Walter Mignolo's 'Decolonial AestheSis' (2013) speaks of a movement in thought, word and art, a 'Decolonial Manifesto' to counter the colonisation of aesthetics by the West, where dominant perceptions of aesthetic quality laden with the prevailing ideology of the aesthetic and political establishment. Decolonial aesthetics does not distinguish between the rules of aesthetics and the rules of law, the two coterminous and codependent for the protection of an elitist status quo. The 'outsider'

nature of street art and graffiti demonstrates this congenital link between property, capital, law and aesthetics, as the art establishment seems unaccepting of the artists' work, reasserting the aesthetic hegemony of the art world held up by capital and law.

Nevertheless, the fact that street art and graffiti is ardently debated in contemporary art criticism demonstrates these views are not the entire voice of the art world, revealing schisms between modern contemporary art forms and those more traditional. An example that epitomises this ongoing incongruity came from Jones (2004 in Watson, 2004) who wrote street art and graffiti evinces 'the dead hand of convention', and has lost its outsider status: "Call it art if you want. But it's very bad art". The question may be which side of the aesthetic hegemony Jones is situated, to be able to articulate his educated views, on a world distinct from his.

That said, other thinkers have also discussed the commonplace sexism and racism in street art and graffiti (Wilson, 2014), and counter movements such as the 'Doomsbury Collective' (2016) have sought to paint over offensive street art and graffiti using simple clean line brushstrokes of Abstract Expressionism to distinguish from the art 'establishment' underneath. The likes of the Doomsbury Collective inflect the ambiguity of what authority and establishment mean and street art and graffiti's role in this, and yet equally demonstrates the colonisation of aesthetics at play on the canvas of the street.

Conclusion

Given this discussion on street art and graffiti and its not inconsequential nor coincidental expression of the role of law in art and art in law, where can we go next to recognise its importance as an art movement to those who partake, to urban dwellers, whether from an oppositional stance, or one that seeks to preserve works for the community? Some arguments may contend to the protection of street art under constitutional freedom of expression guarantees (Mettler, 2012), recognising the dissident cacophony of street art as it bemuses itself and its audience, with the ordinary and spectacular of everyday life¹³ whilst the likes of Edwards and Bonadio would seek a recourse to criminal and copyright jurisprudence in turn.

One way of recognising graffiti and street art's dissident ability to pose a threat to the aesthetic of authority and private property (Ferrell, 1996: 175), is to recognise its capacity to question the historically bound *authority of aesthetics*. The harsh sentencing of street artist Noam Shoan in Melbourne further demonstrates the command of one form of aesthetics authority over another, where Justice Buchanan castigates Shoan for "unilaterally impos[ing] his notions of art and decoration on the rest of the world" (*DPP v Shoan* [2007] VSCA 220 in Bird, 2009: 5). Illicit urban aesthetics such as street art and graffiti manifest the 'frontier' (Nandrea, 1991), a border aesthetic that inhabits a place 'at authority's edge' (Spyer, 2008: 546), designs that 'fix and unsettle borders' (1998:3). And yet this edgework can be seen as an opening, a recasting of law and aesthetics where artistic expression plays out in a public display of pluralism in aesthetics. It displays a vacuum of law where art and law are all and

¹³ Right to protest claims under the Human Rights Act 1998 (articles 10 and 11, freedom of expression and freedom of assembly) in the UK context have thus far proven fruitless coming up against the rights of the landowners on whose land protests have been occurring as per *City of London Corp v Samede* [2012], demonstrating the striating role of property in expression not confined to the placement of art in the street. However, where right to private and family life under article 8 arguments have been used there may be seen the development of precedent around the use of the article a defence in protests on private land can be engaged where the rights of the protestors may have the potential to trump the Article 1 Protocol 1 right of peaceful possession of property by the landowner in 'exceptional circumstances' (*Manchester Ship Canal Developments Ltd v Persons Unknown* [2014]; *Malik v Fassenfelt* [2013]).

nothing at once, expressing systems of domination preceding and hopeful displays of expression to come.

Young (2000: 265) argues that the desire to judge artworks is a desire for the reinstatement of the law (of community, of religion, of representation). This same desire holds true to the art of the street, where at every criminal act of uncommissioned painting on private property, at every out of court settlement for artists seeking to protect their work from marketisation, the art/law authority is restored.

By discussing the meeting point of criminal law with intellectual property, on the street artist's canvas of private property, it is hoped the congenial link of aesthetics and law has been demonstrated. This piece seeks to further contribute to the subversion of this aesthetic-legal hegemony through demonstrating the colonisation of art through law, and law through art, to the detriment of other forms of aesthetics, such as the alternative creativity of street artists and graffiti writers discussed in this piece; those whose voices have only recourse to the street.

References

- Arnheim, R. 1971. *Entropy and art: An essay on order and disorder*. Berkeley: University of California Press.
- Barthes, R. 1991 [1979]. *Cy Twombly: Paintings and Drawings 1954-1977*. New York: Whitney Museum of American Art.
- Baudrillard, J. 2005 [1976]. *Kool Killer*. Paris: Editions.
- Becker, H. 2008. *The Outsiders: Studies in the Sociology of Deviance*. London: Simon and Schuster.
- Bird, S. 2009. *Aesthetics, Authority and the Outlaw of the Street*. *Public Space: The Journal of Law and Social Justice*. 3(3), 1-24.
- Bonadio, E. 2014. *Who owns Street Art?* [Online]. Accessed 9 February 2017. Available from: <http://www.city.ac.uk/news/2014/sep/who-owns-street-art>,.
- Bonadio, E. 2017. *Copyright Protection of Street Art and Graffiti under UK Law*. *Intellectual Property Quarterly*. [Online]. Accessed 9 February 2017. Available from: <http://openaccess.city.ac.uk/16217/>.
- Buffenstein, A. 2016. *Dash Snow's Family Sues for Copyright Infringement*. *Artnet*. 16 October 2016. [Online]. Accessed 9 February 2017. Available from: <https://news.artnet.com/art-world/dash-snows-family-sues-mcdonalds-copyright-infringement-685901>.
- Cardinal, R. 1972. *Outsider Art*. London: Studio Vista.
- Cresswell, T. 1996. *In Place/Out of Place: Geography, Ideology, Transgression*. Minnesota: University of Minnesota Press.

- The Crime Prevention Website, Graffiti. [Online]. Accessed 5 February 2017. Available at: <https://thecrimepreventionwebsite.com/garden-boundaries-fences-and-defensive-plants/681/graffiti/>,
- Davies, M. 2008. *Asking the Law Question*. 3rd Edition. Sydney: Lawbook Co.
- Davies, M. 2007. *Property: Meanings, Histories, Theories*. London: Routledge Cavendish.
- Doomsbury Set. 2016. *Open Arts Surgery*. [Online]. Accessed 9 February 2017. Available at: <http://openartsurgery02.blogspot.co.uk/>.
- Edwards, I. 2009. *Banksy's graffiti: a not-so-simple case of criminal damage?* *Journal of Criminal Law*, 73(4), 345-361.
- Ferrell, J. 1996. *Crimes of Style: Urban Graffiti and the Politics of Criminality*. Boston: Northeastern University Press.
- Finchett-Maddock, L. 2016. *Protest, Property and the Commons: Performances of Law and Resistance*. London: Routledge.
- Fiske, J. 1999. *Television Culture*. London: Routledge.
- Girard, R. 1977. *Violence and the Sacred*. Baltimore: John Hopkins University Press.
- Gomez, M. 1993. *The Writing on Our Walls: Finding Solutions through Distinguishing Graffiti Art from Graffiti Vandalism*. *University of Michigan Journal of Law*, 26(3), 633-707.
- Griffin, J. 2010. *Illegal Graffiti: a Copyright Perspective*. *Intellectual Property Law Bulletin*, 22, 123-155.
- Guadamuz, A. 2017. *The Monkey Selfie: Copyright Lessons for Originality in Photographs and Internet Jurisdiction*. *Internet Policy Review*, 5(1) 1-12.
- Hopes and Fears. 2017. *What are the Penalties for Graffiti around the world?* [Online] Accessed February 9 2017. Available at: http://www.hopesandfears.com/hopes/city/city_index/168925-penalties-for-graffiti.
- Iljadica, M. 2015. *Graffiti and the Moral Right of Integrity*. *Intellectual Property Quarterly*. 1-23.
- Iljadica, M. 2016. *Copyright Beyond the Law: Regulating Creativity in the Graffiti Subculture*. London: Bloomsbury Publishing.
- Jones, J. 2004. *Dim, cloned conservatives: Modern graffiti is not subversive - it is a formulaic, bankrupt cliché*. *The Guardian*. [Online]. Accessed February 9 2017. Available at: <https://www.theguardian.com/politics/2004/aug/07/arts.ourcritics>.
- Lambert, L. 2013. *Weaponised Architecture: The Impossibility of Innocence*. Barcelona: DPR.
- Lasn, K. 2000. *Culture Jam: How to Reverse America's Suicidal Consumer Binge – and Why We Must*. New York: Quill.

- Lorand, R. 1994. *Beauty and its opposites*. The Journal of Aesthetics and Art Criticism 52(4) 399–406.
- Macmillan, F. 2007. *Altering the Contours of the Public Domain*. In Waelde, C. and MacQueen, H. (Eds) *Intellectual Property: The Many Faces of the Public Domain*. Cheltenham. Edward Elgar.
- Maxwell, T., Shaw, B. and Bruce, A. 2015. *Who owns street art?* Law Gazette. [Online]. Accessed February 9 2017. Available at: <https://www.lawgazette.co.uk/practice-points/who-owns-street-art/5051041.article>
- Markel, D. 2000. *Can Intellectual Property Law Regulate Behaviour? A 'Modest Proposal' for Weakening Unclean Hands*. Harvard Law Review 113, 1503-1520.
- McIntyre, I. 2013. *How to Make Trouble and Influence People: Pranks, Protests, Graffiti, and Political Mischief-Making*. London: PM Press.
- Mead, D. 2010. *The New Law of Peaceful Protest; Rights and Regulation in the Human Rights Act Era*. London: Hart Publishing.
- Mettler, M. 2012. *Graffiti Museum: A First Amendment Argument for Protecting Uncommissioned Art on Private Property*. Michigan Law Review, 111 (2) 249-281.
- Millie, A. 2008. Anti-social Behaviour, Behavioural Expectations and an Urban Aesthetic. British Journal of Criminology, 48(3) 379-394.
- Vazquez, R. and Mignolo, W. 2013. 'Decolonial AestheSis': Colonial Wounds/Decolonial Healings. Social Text. [Online]. Accessed February 9 2017. Available at: http://socialtextjournal.org/periscope_article/decolonial-aestheSis-colonial-woundsdecolonial-healings/, accessed 9 February 2017
- Mulcahy, L. and Flessas, T. 2016. *Limiting Law: Art in the Street and Street in the Art*. Law, Culture and the Humanities, 10.1177/1743872115625951, 1-23.
- Nandrea, L. 1991. *Graffiti Taught Me Everything I Know about Space, Urban Fronts and Borders*. Antipode, 31(1), 119-116.
- Rancière, J. 2005. *From Politics to Aesthetics*. Paragraph, 28 (1). [Online]. Accessed February 9 2017. Available at: <http://www.eupublishing.com/doi/pdfplus/10.3366/para.2005.28.1.13>
- Rychliki, T. 2008. *Legal Questions about Illegal Art*. Journal of Intellectual Property Law and Practice, 3(6), 393-400.
- Salib, P. N., 2016. *The Law of Banksy: Who Owns Street Art?* University of Chicago Law Review, 83(4) [Online]. Accessed February 9 2017. Available at: <https://ssrn.com/abstract=2711789>.
- Sennett, R. 2008. *The Craftsman*. New Haven: Yale University Press.
- Schacter, R. 2014. *Ornament and Order: Graffiti, Street Art and the Parergon*. London: Routledge.

- Stokes, S. 2014. *Digital copyright: law and practice*. London: Bloomsbury Publishing.
- Spyer, P. 1998. *Border Fetishisms: Material Objects in Unstable Spaces*. London: Routledge.
- Spyer, P. 2008. *Christ at Large: Iconography and Territoriality in Postwar Ambon*. in Hent de., V. (ed.) *Religion: Beyond a Concept*. New York: Fordham University Press.
- StreetLaw. 2014. [Online]. Accessed February 9 2017. Available at: <https://streetlawbrighton.wordpress.com>.
- Vogt, A. 2016. *Graffiti artist destroys his own work after his art was removed from original locations*. The Telegraph. [Online]. Accessed February 9 2017. Available at: <http://www.telegraph.co.uk/news/worldnews/europe/italy/12192754/Graffiti-artist-destroys-own-work-after-his-art-was-removed-from-original-locations.html>.
- Watson, M. 2004. *Graffiti: Popular Art, Anti-social Behaviour or Criminal Damage?* *Criminal Law and Justice Weekly*, 35(168) 668-670.
- Wilson, J. and Kelling, G. 1982. *Broken Windows*. *Atlantic Monthly*. 249(3):29–38.
- Wilson, J. Z., 2014. *Ambient Hate: Racist Graffiti and Social Apathy in a Rural Community*. *The Howard Journal*. 53(4) DOI: 10.1111/hojo.12076 ISSN 0265-5527, 377–394.
- Weiss, M-A. 2016. *A Big Tag with Fries and a Can of Spray*. The 1709 Blogspot. [Online]. Accessed February 9 2017. Available at: <http://the1709blog.blogspot.co.uk/2016/10/a-big-tag-with-fries-and-can-of-spray.html>.
- Young, A. 2000. *Aesthetic Vertigo and a Jurisprudence of Disgust*. *Law and Critique*, 2000, 11 241–265.
- Young, A. 2005. *Judging the Image*. London: Routledge.
- Halsey, M. and Young, A. 2006. *Our Desires are Ungovernable*. *Theoretical Criminology*. 10(3), 276-277.
- Young, A. 2012. *Criminal images: The affective judgment of graffiti and street art*. *Crime Media Culture*, 1-25.
- Young, A. 2013. *Street Art, Public City: Law, Crime and the Urban Imagination*. London: Routledge.
- Young, A. 2016. *Commodifying Banksy*. The Conversation. [Online]. Accessed February 9 2017. Available at: <https://theconversation.com/commodifying-banksy-66679>
- Young, A. 2016. *Street Art World*. London: Reaktion Books.

Cases

- Creative Foundation v Dreamland Leisure Ltd* Chancery Division [2016] EWHC 859 (Ch)
Creative Foundation v Dreamland Leisure Ltd Chancery Division [2015] EWHC 2556 (Ch)

Manchester Ship Canal Developments Ltd v Persons Unknown [2014] EWHC 645 (Ch)
R v Ruth (Tobias Daniel) [2014] EWCA Crim 546
Malik v Fassenfelt [2013] EWCA Civ 798, [2013] 3 E.G.L.R. 99
City of London Corp v Samede [2012] EWHC 34 (QB)
R. v Brzezinski (Tomaosz Adam) [2012] EWCA Crim 198
R. v Moore (Samuel George)[2011] EWCA Crim 1100
Harrison v Harrison [2010] FSR 25
R. v Dolan (Thomas James) [2007] EWCA Crim 2791; [2008] 2 Cr. App. R. (S.) 11 (CA (Crim Div))
DPP v Shoan [2007] VSCA 220
R v Fiak [2005] EWCA Crim 2381
Whiteley (1991) 93 Cr App R 25
Morphitis v Salmon [1990] Crim LR 48
Hardman v Chief Constable of Avon and Somerset [1986] Crim. L.R. 330 (Crown Ct (Bristol))
Roe v Kingerlee [1986] Crim LR 735-6
Snow v The Eaton Centre [1985] 70 CPR (2d) 105

Non-UK

Jade Berreau v McDonald's Corporation, 2:16-cv-07394 (Central District of California)
Naruto, et al. v. Slater, et al., no. 15-CV-04324 (N.D. Cal. January 28, 2016)
Miller v. Toll Brothers, Inc., No. 1:15-cv-00322 (E.D.N.Y. Jan 21, 2015)
Williams, Chapa, and Rubin v. Cavalli (Central Dist. Of CA, 2014)
Anasagasti v. American Eagle Outfitters, Inc., No. 1:14-cv-05618 (S.D.N.Y. Jul 23, 2014)
Hayuk v. Sony Music Entertainment et al, No. 1:14-cv-06659 (S.D.N.Y. Aug 19, 2014)
Cohen v. G&M Realty LP, 988 F. Supp. 2d 212, 214, 109 U.S.P.Q.2d 1869 (E.D.N.Y. 2013)
English v BFC&R E. 11th St LLC
Mitchell Bros. Film Group v Cinema Adult Theater
Carter v. Helmsley-Spear, 861 F. Supp. 303, 324-25 (S.D.N.Y. 1994).