

State Britain and the Art of (Im)proper Democratic Protest - final draft after review

Title (revised)

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Keywords

Art; law; Jacques Derrida; performative; politics; boundary; border; Mark Wallinger; *State Britain*; democracy; protest; demonstration

I. Introduction

Mark Wallinger's *State Britain* was installed in the Tate Britain art gallery in London in January 2007 (figure one). The artwork was a meticulous recreation of materials that had been removed by the police under the Serious and Organised Crime Act 2005 ('SOCPA') from a longstanding demonstration in Parliament Square by Brian Haw (figure three). The work was located so that it bisected the boundary of a zone that had been created by SOCPA for the purposes of ensuring the proper operation of Parliament of the United Kingdom of Great Britain and Northern Ireland.¹ The border created by the legislation was not physically demarcated in any way. Yet, inside the zone it bounded a government minister could specify an area within which the police had increased powers to regulate demonstrations. Mark Wallinger marked out the segment of the boundary that passed through Tate Britain with a black line on the floor of the gallery (figures two and four). Wallinger's work was regarded by some as simply an eviscerated copy of Haw's demonstration. However, I propose that because of the nature of the boundary it crossed the work invited a critical engagement with the legislation without becoming subject to SOCPA and attracting the "super performative" force of the law.² My argument is that as an appropriation of Haw's protest, when approached in terms of the performative after Jacques Derrida, Wallinger's work oscillated between being art and a political protest.³ Wallinger's work focused attention on the contingencies of

where the boundaries created under the legislation were drawn and how what amounted to a demonstration for the purposes of the Act was determined. The juxtaposition of *State Britain* with SOCPA invited the work to be understood not only in terms of the past and its similarity to Haw's protest but also provoked troubling questions about whether it might in the future be regulated as a demonstration.

[Insert figure 1. *State Britain*, 2007. Mixed media installation, 5.7 x 43 x 1.9m (approx).

Detail, installation at Tate Britain, 2007. Photograph by David Morgan. Courtesy the artist and Hauser & Wirth.]

Wallinger's positioning of *State Britain* might be characterised as a deliberate provocation of SOCPA and yet another example of the mutual incomprehension, if not outright antagonism, between visual art and positive law. Yet, this would be to take an overly reductive approach to the complex relationship between the two spheres.⁴ The Act illustrated that whilst the law may be reluctant to acknowledge the interest it takes in art it has "always had a visual policy, it has always understood the importance of the governance of images for the maintenance of the social bond."⁵ For its part, art is created, distributed, marketed, sold and preserved within contexts created and regulated by legal systems.⁶ *State Britain* didn't only invite reflection on the restriction of protest by SOCPA in legal terms. The performative nature of Wallinger's work drew attention to the way in which the enforcement of the legislation was framed by the established aesthetic values of the parliamentary democracy within which SOCPA was enacted. In this way, *State Britain* not only created a context that increased awareness of the violence of black letter law but also of the way in which the organization, conventions and theories of art may be implicated in shoring up established forms of democracy. My argument is that Wallinger's work not only drew attention to the contingent nature of the

boundaries constructed by the law in the regulation of society but also to the way they were entangled in wider social values. *State Britain* did not simply provide a space to become aware of the false necessity of these norms but also, and equally importantly, the way in which established legal and aesthetic frameworks constrain the possibilities of challenging the political establishment. The work exemplified the way that art, when understood in performative terms, may be positioned to intersect with the law so as to open a critical engagement with the way society is controlled.

[Insert figure 2. *State Britain*, 2007. Mixed media installation, 5.7 x 43 x 1.9m (approx).

Detail, installation at Tate Britain, 2007. Photograph by David Morgan. Courtesy the artist and Hauser & Wirth.]

II. Parliament and Protest

Brian Haw began his permanent protest camp in Parliament Square in June 2001 in opposition to the economic sanctions against Iraq. Despite various efforts to remove or restrict his demonstration Haw remained there until shortly before his death in 2011. Parliament Square is located to the northwest of the Palace of Westminster, which is commonly referred to as the Houses of Parliament. Traffic circulates around an open grassed area at its center, which is called Parliament Square Garden. Haw positioned his protest along the pavement bordering the garden so that it was opposite one of the entrances to the Houses of Parliament (figure three). By 2006 his protest had expanded into a wide array of materials that stretched for 40 meters. It included a tarpaulin shelter, tea-making area and items that ranged from bold, large-scale work such as placards through to information boards, photocopied war zone reports and newspaper articles that needed to be seen close-up (figure

four). Initially efforts to remove the politically strident protest were ineffective but the enactment of SOCPA enabled restrictions to be imposed on the size of the demonstration. In the early hours of May 23, 2006 the majority of the handmade banners, photographs, placards, and artwork against war were dismantled and taken away by the police on the basis they were in breach of the conditions imposed on the demonstration. However, a few days before their destruction Wallinger had taken hundreds of photographs of the worn and tattered signs, objects and messages of goodwill. These were then used to recreate the weathered protest materials with painstaking attention to detail in order to form *State Britain*. The installation created a striking contrast with the elegant surrounds of the architecture and other exhibits of Tate Britain, where it was displayed during January 2007 (figures one and two).

[Insert Figure 3. Brian Haw's peace camp. April 2006. Parliament Square, London.

Photograph by Mark Wallinger]

The power to control demonstrations in the vicinity of Parliament had been given to the police by SOCPA after a report by the House of Commons Procedure Committee. The report had recommended the introduction of legislation to prohibit long-term demonstrations and to ensure that the laws regarding access to Parliament were adequate and enforceable.⁷ In April 2002 Prime Minister Tony Blair had said, "I pass protesters every day at Downing Street, and believe me, you name it, they protest against it. I may not like what they call me but I thank God they can. That's called freedom."⁸ However, in the debate on the report and the Government's response to it, it was argued this freedom had to be balanced against the need to ensure access to Parliament, which was regarded as essential to protect "its working and to our democracy."⁹ Ms Hazel Blears, Minister of State at the Home Office, with

responsibilities for policing, crime reduction and counter terrorism, had dismissed the value and significance of longstanding protests in the course of giving evidence to the Procedure Committee's inquiry. She commented, "Demonstrations have tended to come and go when things have been politically controversial, even for perhaps as long as six months there might be a presence, but if things were going to go on well beyond the time of the controversy then we have got a situation where a demonstration is not even connected to the issues that are being debated as the issue of the day, and I do not think that is about democracy."¹⁰

SOCPA was a large piece of legislation and its primary purpose was the creation of the Serious Organized Crime Agency. The provisions that regulated demonstrations in the vicinity of Parliament formed a relatively small part of the Act. The zone defined by the legislation was circular and at no point more than 1 kilometer in a straight line from Parliament Square ('circular zone'). It was this area that included within it part of the Duveen Galleries of Tate Britain. As mentioned earlier, *State Britain* was positioned deliberately so that it bisected the boundary of the circular zone, which was marked out by Wallinger on the floor of the gallery (figures two and four). Under SOCPA subordinate legislation could be used by the Secretary of State to specify a designated area, which had to fall entirely within the circular zone ('designated area').¹¹ Inside the designated area all demonstrations had to be notified to the police and a failure to do so was an offence, which could lead to a conviction.¹² The police were required to give demonstrations of which they were notified authorisation under section 134 of the Act; but the Police Commissioner could then impose conditions that in his "reasonable opinion" were necessary to prevent any of seven types of event that in broad terms related to public safety.¹³ The definition of these section 134 public safety purposes ranged from being relatively specific, such as causing a "hindrance to any

person wishing to enter or leave the Palace of Westminster,” to the vaguer and more wide ranging “disruption to the life of the community or “serious public disorder.”¹⁴

[Insert Figure 4. *State Britain*, 2007. Mixed media installation, 5.7 x 43 x 1.9m (approx). Detail, installation at Tate Britain, 2007. Photograph by David Morgan. Courtesy the artist and Hauser & Wirth.]

Although it was generally accepted that the ability to police protests was necessary, SOCPA was criticised during the course of its enactment for introducing disproportionate restrictions on freedom of expression. The point was made that the Act appeared to be specifically directed at Haw.¹⁵ More generally, it was argued that the extent of the area of the circular zone was “clearly excessive.”¹⁶ It was complained there had been an uncritical over-reliance on advice from the police in determining the parameters of both it and the designated area. The observation was made that the underlying reasoning behind the circular zone and the designated area remained unknown.¹⁷ Concern was expressed about the power given to the Secretary of State to use subordinate legislation to create the designated area by means of an order. Whilst any such order could be debated it could not be amended but only either accepted or rejected.¹⁸ In addition the scope of the police discretion to define activities as demonstrations was also criticized.¹⁹ Against these objections it was argued the powers were not intended to prevent freedom of expression and were needed because of the status of Parliament and any protests that hindered its proper operation would not be in the interests of democracy.²⁰

The conditions that the police were able to impose on protests under SOCPA were restrictive of forms of expression regarded as unacceptable and as such amounted to censorship when

understood in a narrow and conventional sense of the word.²¹ I have already mentioned that it was an offence to organise a demonstration in the designated area without notifying the police. It was also an offence to knowingly fail to comply with any conditions imposed under the Act. In such situations the organiser of a demonstration was liable to be convicted of a criminal offence and sentenced to a term of imprisonment.²² However, SOCPA was also framed in such a way that it would encourage protests to conform with unstated norms as to what was considered proper behaviour in the vicinity of Parliament. This was because of the lack of specificity in the definition of what constituted a demonstration. The Act provided simply that a demonstration had to be in a “public place” but that was defined broadly to include, amongst other things, “any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.”²³ In the course of Parliamentary debate it was stated the implementation of SOCPA relied on, “a combination of the experience of the police, common sense, and the application of the judgments of the courts. That is the means by which we define demonstrations.”²⁴ This meant the legislation placed the initial onus on individuals to decide, without any clear legislative guidance, what constituted a demonstration that had to be notified to the police. As a consequence the Act was censorship in a broader and formative sense in that it involved the “regulation of the social domain of speakable discourse” within which democratic protest could be expressed.²⁵

SOCPA was just one piece of legislation in a network of various rules, laws and regulations that protect the area around Parliament due to its architectural, historical and symbolic significance.²⁶ The Houses of Parliament, Westminster Abbey and the nearby St Margaret’s Church are, for example, included on the UNESCO list of World Heritage Sites.²⁷ Parliament Square Garden is registered as an English Heritage Grade II Registered Garden of Special

Historic Interest under the Historic Buildings and Ancient Monuments Act 1953. The Greater London Authority, which has described the location as both “at the heart of Contemporary British Politics” and as “an area of significant historic and symbolic value to the British People and many others worldwide” is able to make and enforce byelaws to secure the proper management of Parliament Square.²⁸ The law privileges and seeks to perpetuate the buildings, art and events in and around Parliament that have an established association with the United Kingdom’s parliamentary democracy. One instance of this is the “dominance of 19th and 20th Century white men” represented in the statues situated in the area and nearby streets.²⁹ All of which makes the vicinity a potent site not only for protest about political issues but also for contestation over the way in which demonstrations are regulated and policed.³⁰ In short, SOCPA contributed to both the restriction and the production of activity and behaviour that is considered appropriate to the United Kingdom’s parliamentary democracy.

The way in which SOCPA gave added force to the production of “certain norms governing what is speakable and what is not” was identified and objected to even before the debate on the subordinate legislation that created the designated area around Parliament Square.³¹ A group called ‘People in Common’ had started to have a weekly “tea parties” in Parliament Square Gardens in front of the House of Commons. A press release by the group described the meetings as, “aimed towards a DIY, non-hierarchical participatory form of democracy.”³² Mark Thomas, an artist and activist, later mocked the police in a newspaper article for having threatened with arrest a woman who had brought a cake with the word ‘peace’ iced on it to one of the picnics.³³ As already mentioned, such activities exposed the organisers to the danger of being convicted simply for failing to provide notification of what the police subsequently regarded as a demonstration. These and other actions brought into question the

notion that what constituted a demonstration was a matter of common sense and drew attention to the way SOCPA sought to produce behaviour that conformed to what was considered to be suitable for the vicinity of Parliament.³⁴ Under the United Kingdom's existing system of parliamentary democracy there is a ban that prevents voting by prisoners who are serving a custodial sentence.³⁵ Approached in such terms there were those who objected to SOCPA who took "the risk of being cast out into the unspeakable."³⁶ Although the provisions of the legislation that enabled the police to control demonstrations in the area around Parliament Square were eventually repealed they were replaced by the Police Reform and Social Responsibility Act 2011.³⁷

III. Art and the Performative

On the day of the press opening of *State Britain* at Tate Britain a politician from the Labour government called in to a radio programme to say, "This is *exactly* where his [Haw's] protest belongs."³⁸ The curator and artist Dean Kenning commented that such a view "relies on the old modernist suspicion that museums are the mausolea of radicality."³⁹ This illustrated that the visual identity between Haw's protest and *State Britain* meant there was a risk the artwork would simply be regarded as the calcified remains of the demonstration. The tendency to do this may have been encouraged by a common lack of precision in accounts of *State Britain's* bisection of the circular zone. The Tate, for example, describes the work as having been partially situated inside the "exclusion zone."⁴⁰ However, no part of it fell within the boundaries of the designated area, which had to be entirely within the circular zone's boundary. As I described earlier, it was only inside the smaller space of the designated area that the police could impose restrictions on demonstrations. My argument is that although no part of Wallinger's work fell inside the designated area this did not mean its bisection of the

circular zone was simply a rhetorical gesture. In this regard, my starting point is to situate *State Britain* in the context of the art historical heritage it shared with readymades such as the work *Fountain* by the artist Marcel Duchamp. As the art historian Benjamin Buchloh has identified Duchamp's readymades drew attention to the performative nature of art given that, by declaring everyday objects to be works of art, he had inaugurated "a new aesthetic of the speech act ('this is a work of art if I say so')"⁴¹ There are a range of approaches to performatives but my argument depends on understanding their nature through the work of Jacques Derrida.⁴²

Derrida argues performatives function because they can be repeated or more accurately because they are iterable.⁴³ The iterability of a performative means it has a force that makes possible self-identity.⁴⁴ As Derrida explains, "[i]terability requires the origin to repeat itself originally, to alter itself so as to have the value of origin, that is, to conserve itself."⁴⁵ This means the way in which work declares itself as visual art must be acknowledged and enforced by theory, conventions and institutions.⁴⁶ Art that appropriates, such as Duchamp's readymades, draws attention to the interpretive and organisational frameworks that iterate the non-originary origins which are the conditions of possibility of art. Expressed more generally, in performative terms visual art may only be understood as such in terms of the tradition it inherits even if it does not simply repeat that heritage when it is affirmed as art.⁴⁷ This is illustrated by *State Britain*, which was recognised as being by an acknowledged artist, immediately accepted into Tate Britain and then won critical acclaim and was awarded the Turner Prize in December 2007.⁴⁸ Of course, as Derrida points out, there is in turn always another and yet more powerful system of "laws and social conventions that legitimates all these things."⁴⁹ Tate Britain, for example, is situated in a network of relationships regulated

by the Museums and Galleries Act 1992 under which all the Tate's property, rights and liabilities are entrusted in its Board of Trustees.

Whilst iterability enables self-identity it also brings with it the possibility of a break with every established state of affairs. It is this possibility for a performative rupture that Judith Butler focuses on when she says that for Derrida, "The force of the performative is thus not inherited from prior usage, but issues forth precisely from its break with any and all prior usage."⁵⁰ Iterability means there may be invention, understood in terms of that which "did not appear to be possible; otherwise it only makes explicit a program of possibilities within the economy of the same."⁵¹ It is because of iterability that it is possible to have work, such as Duchamp's readymades, that breaks with established theories and conventions so as to bring about a change in what is accepted as art. Yet, if Wallinger's work drew attention to this it also invited those who encountered *State Britain* to realise that the law is, as Julie Stone Peters has put it, the "ultimate performative institution."⁵² As such, iterability provides a means to account for the way in which SOCPA could have determined that *State Britain* was a demonstration. This was implicitly acknowledged by the artist and curator Richard Grayson when he pointed out that Wallinger's freedom of expression was "profoundly different" inside the boundary of the circular zone by comparison with the area more than 1 kilometer beyond Parliament Square.⁵³ As the boundary of the designated area was defined by delegated legislation, it could be changed by the Secretary of State simply by means of an order. Grayson appreciated that, as a simulacrum, had *State Britain* at any time fallen inside an expanded designated area it could have become subject to conditions imposed by the police under SOCPA.⁵⁴

My argument is that, when understood in terms of Derrida's work, as a simulacrum *State Britain* had the effect of inviting a response that not only looked backwards in time but also forwards to the future.⁵⁵ The bisection of the boundary of the circular zone by Wallinger's work drew attention to the way that meaning is a product of the "systematic play of differences, of the traces of differences, of the *spacing* by means of which elements are related to each other."⁵⁶ To give an account of the work in these terms is to interpret it through *différance*, which is Derrida's neologism for the way meaning emerges out of a diachronic process of deferral in time as much as difference in space. Wallinger's work contested the logic of model and copy. *State Britain* trembled between being perceived as a work in terms of the past form of Haw's demonstration and a future in which it might itself be regarded as a protest and subjected to restrictions under SOCPA. The demarcation on the floor of Tate Britain of a segment of the circular zone boundary focussed attention on the importance in *State Britain* of both place and time. The oscillation of the work across that border generated a tension that drew attention to the way the boundary between the speakable and the unspeakable might be redrawn in the future and the risks this could potentially bring with it, which might even have retrospective effect under the law.⁵⁷

IV. Boundary Issues

State Britain, by crossing the boundary of the circular zone, invited people to focus on the designated area, which might be changed without the need for an Act of Parliament. An expansion in the designated area potentially had implications for the work's exhibition in Tate Britain as an institutionally acknowledged work of art. In the event that all or part of the gallery fell inside the designated area would Wallinger's work of art, or a section of it, be regarded as a demonstration? If *State Britain*, either in part or in its entirety, fell inside the

designated area would the police impose s.134 public safety conditions on it? Assuming that such restrictions were imposed, was there a risk that the part of *State Britain* installed inside the circular zone would be dismantled and removed by the police; and if not, why not?

Would it make any sense that *State Britain* could pose a public safety concern on one side of the boundary inside the art gallery but not on the other? As the work was situated beyond the designated area, these questions might have seemed only remotely relevant to the protection of Parliament. But, in that case why was the circular zone the size it was and what would have happened if Wallinger had installed his institutionally recognised artwork in Parliament Square? By directing attention to such issues *State Britain* invited people to become aware that common sense could not be relied upon to provide clear and unequivocal guidance as to what constituted a demonstration for the purposes of SOCPA. Of course, as I have already mentioned, this was also illustrated by other actions that took place inside the designated area. However, Wallinger's work differed from those demonstrations in that the questions posed by its oscillation could be deferred and did not need to be answered by the police in the course of enforcing the Act. I will come onto why that deferral was significant through a discussion of the way in which *State Britain's* fluctuations across the boundary of the circular zone invited reflection on the violence of the law.

In the event the designated area had been expanded to include *State Britain* within it the questions that Wallinger's work had at the outset posed hypothetically would have become live issues. The decisions made in response would have been important given that the legislation had been enacted to protect Parliament and a law is meaningless unless enforced.⁵⁸ Even so, the way in which *State Britain* trembled between being a work of art and a demonstration need not have given rise to any anxiety when viewed from the perspective of positive law. Any decisions made about Wallinger's work would have been valid if grounded

in the legitimacy of existing law. The way in which Wallinger's work might be dealt with would be a matter for determination by the police in accordance with SOCPA. The courts were there to ensure that the police acted correctly as required under the Act. The Court of Appeal's decision that the wording of SOCPA applied to Haw had already illustrated that, if necessary, the legislation would be interpreted in accordance with applicable legal principles. It might be the case that the oscillation of the work drew attention both to the contingent nature of the boundaries constructed by SOCPA and how it might be problematic at times to use common sense to determine what amounted to a demonstration. However, approached in terms of positive law, *State Britain* could be dismissed as generating esoteric, "hard cases at the edges of law, rather than raising issues central to the very nature and structure of law."⁵⁹ Nevertheless, I propose that it was precisely by opening such apparently marginal questions that *State Britain* invited a "dissensus, that makes visible what the dominant consensus tends to obscure and obliterate."⁶⁰

Clearly, given that *State Britain* did not fall inside the designated area, the police never had the scope to impose any conditions on the work, irrespective of whether they might have viewed it as a protest or not. But, as already proposed, the bisection of the boundary of the circular zone by Wallinger's work invited those who encountered it to reflect on what might happen if the designated area were expanded to include within it part of Tate Britain. In such a case Wallinger, or perhaps the Trustees of the Tate, would have needed to decide if they had to notify the police of the work's installation. Assuming the police had been notified then they might, or perhaps might not, have then imposed conditions on *State Britain* as had been done with Haw's protest. This scenario opened the prospect that Wallinger's work may not have been regarded as a demonstration by reason of its position inside Tate Britain given the laws and conventions that regulate behaviour in art galleries and museums.⁶¹ However, if the

status of the gallery had led to such a decision then surely this would have resulted in it being asked whether any other locations within the designated area might have had a similar effect?

State Britain focused attention on an unavoidable problem that confronts any given legal system. It provided a context to realise that “the generality of the law is heterogeneous to the specificity of the case.”⁶² The context of Wallinger’s installation invited the realisation that the claim the law makes for the generality of its application is fundamentally incompatible with regulating any particular case exclusively in terms of the merits of its own specific circumstances.⁶³ *State Britain* illustrated that, as is the case for any law, SOCPA could not “be general enough not to be violent, not to engender exceptions or instances of counter-violence.”⁶⁴

State Britain did not only invite awareness that SOCPA could not address the singularity of the individual whilst at the same time seeking to realise the generality that the law claims for itself.⁶⁵ The work was also exemplary because the undecidable relationship between the general and the singular, which it focused attention on by oscillating across the boundary of the circular zone, translates the iterability of the law.⁶⁶ The way in which the work drew attention to this translation may be approached through the observation by Chantal Mouffe that, “[w]hat is at a given moment considered as the ‘natural’ order – jointly with the ‘common sense’ which accompanies it – is the result of sedimented hegemonic practices; it is never the manifestation of a deeper objectivity exterior to the practices that bring it into being.”⁶⁷ As already discussed, Wallinger’s work problematized the extent to which the enforcement of SOCPA relied on common sense to determine what constituted a demonstration. In turn this invited reflection on why the legislation, framed in the way it was, should be needed to prevent demonstrations that it was concerned would prevent the proper operation of Parliament. Approached in this way, *State Britain*’s juxtaposition with SOCPA

could not be disentangled from the way in which the Act brought the force of the law to bear in order to ensure the continued functioning of the United Kingdom's highest source of law. The fluctuations of Wallinger's work invited an engagement with the way that the violent inauguration of a legal framework is iterated by legislation that is enacted, interpreted and enforced under that same system.⁶⁸

State Britain drew attention to SOCPA's contribution to the continued operation of Parliament, which was of course the origin of the Act itself. The inquiry into the need for the legislation that Wallinger's work invited might then have led onto reflection about Parliament, the way it works, and why it has the authority to pass legislation such as SOCPA. The origin and force of the law may be traced back to a rupture with a previous legal system. As Margaret Davies puts it, "The legitimate history of a legal system has a stopping point where the legality or illegality of a particular act is undecidable. For instance, a successful *coup d'état* is defined by the fact that an act which is illegal under the pre-existing legal order becomes the source of all legality."⁶⁹ In other words, at some point it will not be possible to find a legal justification for an existing system of law. The bisection of the circular zone by *State Britain* provided a context for the acknowledgement of the non-originary origins of the law. However, the violence of a legal system's foundation does not provide a basis for the outright rejection of the law given that it cannot avoid being violent. As William Sokoloff points out, Derrida "does not reject law but puts pressure on it to be something more than maintenance of dominant power relations of the community."⁷⁰ An established legal order can do so by acknowledging, rather than disavowing, its violence. SOCPA failed to do this given that, for example, the police had the discretion to determine what constituted a demonstration on the basis of common sense and their advice as to where to locate the Act's

boundaries had been accepted uncritically. By contrast, *State Britain* focused attention on the troubling way that SOCPA shored up what was considered appropriate democratic conduct.

At this point I return to the significance of the way that *State Britain* created a context in which it might be realised the application of SOCPA could be problematic whilst not actually triggering the need to apply the Act. As institutionally recognised art the work's oscillation across the border of the circular zone not only drew attention to the legislation but also "wider processes, tendencies and dynamics" by which the United Kingdom's parliamentary democracy is guarded.⁷¹ *State Britain* invited, for example, a comparison between it and the art that was considered suitable for the vicinity of Parliament. The conditions imposed on Haw's demonstration by the police suggested that Wallinger's work would not be considered suitable for inclusion in Parliament Square alongside the statues of Winston Churchill or Nelson Mandela. *State Britain* drew attention to the way that established aesthetic values are part of "the realm of sedimented practices, that is practices that conceal the original acts of their contingent political institution and which are taken for granted, as if they were self-grounded."⁷² Such social norms are not only enforced by laws such as SOCPA they also operate to inform and constrain what legislation is created and how it is understood.⁷³ These values intertwine with the law so as to secure the existing form of parliamentary democracy in the United Kingdom.⁷⁴ SOCPA was enacted in such a way as to enable a disavowal of the contingency of the artistic values that contextualised its enforcement. By comparison, Wallinger's work provided an opening to perceive art in terms of the political understood as the, "ever present possibility of antagonism", which necessitates an acknowledgement of the "lack of a final ground and the undecidability which pervades every order."⁷⁵ In short, *State Britain* invited the recognition that, as Mouffe puts it, "[t]here is an aesthetic dimension in the political and there is a political dimension in art."⁷⁶

The juxtaposition of Wallinger's work with SOCPA opened a space to engage with the way in which the stability of the social sphere remains "relative, even if it is sometimes so great as to seem immutable and permanent."⁷⁷ This may be understood in terms of Derrida's argument that, "Undecidability is always a determinate oscillation between possibilities (for example, of meaning, but also of acts). These possibilities are themselves highly determined in strictly defined situations (for example, discursive – syntactical or rhetorical – but also political, ethical etc). They are pragmatically determined."⁷⁸ *State Britain's* bisection of the boundary of the circular zone drew attention to the way that the possibilities between which the work vibrated were not determined solely by SOCPA. There were objects and activities within the borders created under the legislation that were protected by other means, such as well-established aesthetic values, from the possibility of even being considered as (part of) a political demonstration. A recent example of that kind might include, for example, participation in the 'Parliament in the Making' programme held in 2015 to celebrate the Magna Carta.⁷⁹ However, iterability brings with it the promise that "[t]he frontier between the social and the political is essentially unstable and requires constant displacements and renegotiations between social agents."⁸⁰ Expressed in terms of Derrida's work, this is because "iterability blurs a priori the dividing line."⁸¹ The intersection of Wallinger's work with SOCPA drew attention, in both legal and aesthetic terms, to the possibility of reactivating the calcification of the established social order. Crucially, *State Britain* did so whilst at the same time inviting awareness of the "process of selection [that] appears to presuppose a decision."⁸² The oscillation of the work opened a space to acknowledge the "unarticulated assumptions, implications and effects" that structure and constrain decisions about, amongst other things, what activities are considered to be acceptable demonstrations against the established political order.⁸³

My argument is that *State Britain* was an invitation to engage with what, in an established democracy such as the United Kingdom, may at times be relatively subtle constraints and complexities involved in acting “within the code contrary to the code.”⁸⁴ Wallinger’s work created a context that encouraged those who encountered it to become aware that what is regarded as an (un)acceptable democratic protest is not something that is “simply a matter of chance and will” but nor is it determined by an individual piece of legislation.⁸⁵ The way in which SOCPA regulated demonstrations may have given undue latitude to the discretion of the police but, as eventually happened, it could be repealed. However, understood in terms of iterability, the legal system was affirmed by the enactment, interpretation, enforcement and even the eventual repeal of the legislation. Moreover, the political establishment is entangled in aesthetic values, which are themselves constantly subject to affirmation through a network of entrenched art practices, conventions and institutions. The fluctuation of *State Britain* between being recognised as a work of art and a protest invited a critical attitude towards efforts to protect democracy not only through the application of common sense enforced by the application of the law but also by means of what was considered aesthetically acceptable. The work opened a space to see the need for “dissident and inventive rupture with respect to tradition, authority, orthodoxy, rule, or doctrine” and it did so whilst inviting the acknowledgement this cannot be effective unless the complex systems of constraints that frame such criticality are not disavowed.⁸⁶

V. Conclusion

In a democracy a determination always has to be made as to where the lines are to be drawn between the freedom to act and being held responsible by the law. *State Britain*, as did other

protests directed at SOCPA, focussed attention on the way in which the legislation sought to ensure that protest activity in the vicinity of Parliament was acceptable to the existing political establishment. Wallinger's work invited those who encountered it to reflect on the potential the law had to determine it was a demonstration. *State Britain* opened a context in which to imagine situations in which, as had been the case with Haw's demonstration, the police might dismantle it. In the process, Wallinger's work encouraged people to think about why it was problematic to protect democracy through the contingencies enforced by SOCPA. However, as a protest the effectiveness of *State Britain* was not limited to inviting those who encountered it to reflect on the vagaries of where the circular zone and the designated area were respectively positioned or the uncertainties of what would be regarded as a demonstration. The oscillation of *State Britain* across the boundary of the circular zone focussed attention on the highest source of law in the United Kingdom. Not only did the location of Parliament frame the possibilities of efforts to control demonstrations but SOCPA was itself the outcome of the proper Parliamentary processes the legislation had been enacted to protect. SOCPA disavowed the violence of the legal system by which it had been enacted and was enforced by treating the issue of what constituted a demonstration as a matter of common sense. Although it is unavoidable for any legal system not to be violent there is scope for this to be lessened by acknowledgement of the law's non-originary origins.⁸⁷ I have sought to argue that Wallinger's work did this but not simply by encouraging a perception of SOCPA as an outcome that was simply arbitrary or accidental. The creation of the legislation and the boundaries constructed under it were predicated on the existence, location and operation of Parliament.

Wallinger's work did not only provide an opportunity to acknowledge the violence of the law in determining what was regarded as a demonstration; it also invited awareness of the way in

which established aesthetic values work to secure the political establishment. *State Britain* opened a context in which to engage with the conventions and laws that determined the work could be encountered in Tate Britain as art. The juxtaposition of *State Britain* with the boundary of the circular zone invited those who encountered it to reflect on the performative conditions of possibility of art. Wallinger's work focussed attention on the way that protest materials identical to those removed by the police from Haw's demonstration in Parliament Square were accepted into and framed by Tate Britain as art at the same time that it invited reflection on the way that the enactment of SOCPA was predicated on the existence of Parliament. Crucially, in doing so Wallinger's work did not only reactivate the boundary between the sedimentation of the social and the agonism of the political in legal terms. The oscillation of the work simultaneously drew attention both to the borders constructed by SOCPA and the way in which the nation's parliamentary democracy is enveloped within established aesthetic values, which determine the sort of work that is considered acceptable for the vicinity of Parliament. My argument is that keeping open the possibility of inventive engagements with democracy must involve challenging the assumptions, processes and institutions that underpin such artistic and cultural values. This is not simply a matter of acknowledging the contingencies of how democracy is realised and commemorated but also requires identification of the ways in which the prospects of bringing about change are constrained by systems of prevailing power. Democracy does not only require the sustained and permanent critique of entrenched legal institutions and frameworks. It is also necessary to engage with the aesthetic values and other norms that shackle challenges to the political establishment. Of course this involves risks, as it cannot be known in advance were a refusal to unquestioningly comply with dominant relationships of power will lead. However, critical engagements with the complex entanglements that secure the political establishment are necessary in order to leave open the promise of a more democratic society.⁸⁸

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List of Legal Cases

Haw v Westminster City Council [2002] EWHC 2073 (QB).

R (Haw) v Secretary of State for the Home Department and another [2005] EWHC 2061 (Admin).

R (Haw) v Secretary of State for the Home Department and another [2006] EWCA Civ 532.

WORD COUNT (including abstract, keywords and article including footnotes and list of legal cases): 9,304

Footnotes

¹ In the interests of brevity I shall subsequently refer to ‘Parliament’ and the legal system of the ‘United Kingdom’ although to be precise the United Kingdom does not have a single legal system.

² Julie Stone Peters, “Legal Performance Good and Bad,” *Law, Culture and the Humanities* 4 (2008), pp. 179-200, p. 185.

³ By comparison, Costas Douzinas engages with the relationship between law and aesthetics through the visual sphere, within which he engages with issues of representation or mimesis. Costas Douzinas, “Sublime Law: On Legal and Aesthetic Judgements,” *Parallax* 14 (4) (2008), pp. 18-29, p.19.

⁴ Costas Douzinas, “Whistler v. Ruskin: Law’s Fear of Images” *Art History*, 19 (3) (1996), pp. 353-369; Costas Douzinas and Lynda Nead, “Introduction” in Douzinas and Nead, eds. *Law and the Image* (Chicago, Chicago University Press, 1999); Daniel McClean, ed., *The Trials of Art* (London, Ridinghouse, 2007).

⁵ Douzinas, “Whistler v. Ruskin,” p. 362.

⁶ Douzinas and Nead, “Introduction,” p.9.

⁷ House of Commons Procedure Committee (‘HCPC’), *Sessional Orders and Resolutions* (2003), HC 855, Third Report of Session 2002-03, London, The Stationery Office, pp.10, para. 22.

⁸ Tony Blair, Speech at the George Bush Senior Presidential Library April 8, 2002, which was referred to in debate at the Report Stage and Third Reading by Lembit Öpik, Liberal Democrat M.P. for Montgomeryshire, reported in House of Commons (‘HC’) *Hansard*, February 7, 2005, Col. 1288.

⁹ Peter Hain, Leader of the House of Commons and Labour M.P. for Neath, HC *Hansard*, November 3, 2004, vol. 426, col. 376.

¹⁰ HCPC, Third Report, Question 114, Evidence 27. See also Q. 104, Evidence 25.

¹¹ SOCPA s.138. Subordinate legislation refers to when an Act of Parliament delegates power to a government minister, such as the Secretary of State, to make orders, regulations or rules.

¹² SOCPA, ss. 132 and 136.

¹³ For example, conditions limiting the number of demonstrators, and the size of banners or placards. SOCPA ss. 134 and 135. Additional requirements could later be imposed on those organising or taking part in any demonstration.

¹⁴ SOCPA, s. 134 (3). I shall refer to these seven types of event as the “s. 134 public safety purposes”.

¹⁵ See the debate at the Report Stage and Third Reading, HC *Hansard*, February 7, 2005, vol. 430 and in particular cols. 1289-1290.

¹⁶ David Heath, Liberal Democrat M.P. for Somerton and Frome, Standing Committee D, *Hansard*, January 20, 2005, col. 435.

¹⁷ Edward Garnier, Conservative M.P. for Harborough, “I fully accept that the police have told the Government that that is what they want. In order to judge whether this is a proper delineation, we need to know the reasoning behind it, not simply the Minister’s assertion that that is what he has been told by the Metropolitan police. They may have told him any number of things, but that does not necessarily justify what is being presented.” Second Standing Committee on Delegated Legislation (‘SSCDL’), *Hansard*, October 12, 2005, col. 19.

¹⁸ Garnier commented, “One has only to look at the content of the order to see the designated area, which we cannot amend. We either have to accept it in full or strike it down in full.” SSCDL, *Hansard*, October 12, 2005, col. 9.

¹⁹ See, for example, Heath, “We are now entering a Kafkaesque area of definitions,” SSCDL, *Hansard*, October 12, 2005, col. 6 and also see col. 26. David Jones, Conservative M.P. for Clywd West, “The difficulty is that, if the expression “demonstration” is not defined, it can arguably be anything—any activity—that the officer in question deems it to be.” SSCDL, *Hansard*, October 12 2005, col. 17.

²⁰ Hain, spoke of “the unique position of Parliament and its surroundings,” HC *Hansard*, November 3, 2004, vol. 426, col. 373. See also Caroline Flint, The Parliamentary Under-Secretary of State for the Home Department, HC *Hansard*, February 7, 2005, vol. 430, col., 1287 and col. 1292. The concerns expressed in the Procedure Committee and subsequent debates included: disruption due to noise; security concerns; visual appearances; and the permanency of Haw’s protest. See for example: Standing Committee D, *Hansard*, January 20, 2005, cols. 438-441 and HC *Hansard*, February 7, 2005, vol. 430, cols. 1287-1301.

²¹ Judith Butler, *Excitable Speech: A Politics of the Performative* (New York and London, Routledge, 1997), p. 128.

²² SOCPA, ss. 132, 134 (7) and s. 136. The first conviction under the Act was in December 2005, when Maya Evans was convicted for reading the names of British soldiers killed in the Iraq War near the Cenotaph without police authorisation. *BBC News*, December 7, 2005, <http://news.bbc.co.uk/1/hi/england/london/4507446.stm> (accessed September 27, 2014).

²³ SOCPA, s. 132.

²⁴ Paul Goggins, Conservative M.P. for Wythenshawe and Sale East, SSCDL, *Hansard*, October 12, 2005, col. 20.

²⁵ Butler, *Excitable Speech*, p.133.

²⁶ Butler, *Excitable Speech*, p.132 describes “the codification of memory, as in state control over monument preservation and building, or in the insistence that certain kinds of historical events only be narrated in one way” as an example of censorship as productive in the sense of being “formative and constitutive.”

²⁷ <https://www.westminster.gov.uk/world-heritage-site>, World Heritage Site (accessed October 30, 2014).

²⁸ <https://www.london.gov.uk/city-hall/parliament-square-garden>, Parliament Square Garden (accessed September 27, 2014).

²⁹ Robert Booth, *The Sunday Times*, December 31, 2006, p.8.

³⁰ Robert Hardman, *Mail Online*, April 17, 2009, <http://www.dailymail.co.uk/debate/article-1170404/ROBERT-HARDMAN-Why-Left-silent-riot-squads-inflicted-terrible-injuries-peaceful-country-folk-2004.html> (accessed September 1, 2014).

³¹ Butler, *Excitable Speech*, p.133. For the timing of the protest activity see Heath, SSCDL, *Hansard*, October 12, 2005, col. 6.

³² https://p10.secure.hostingprod.com/@spyblog.org.uk/ssl/parliamentprotest/2005/08/12_noon_every_sunday_parliament_square_london_picnic_tea_party_protest.html, 12 Noon Every Sunday, Parliament Square London Picnic/Tea Party Protest (accessed September 1, 2014). Matthew Tempest, *The Guardian*, August 30, 2005, [http://www.theguardian.com/politics/2005/aug/30/houseofcom\\$mons.uk](http://www.theguardian.com/politics/2005/aug/30/houseofcom$mons.uk) (accessed September 1, 2014).

³³ Mark Thomas, *The Guardian*, October 12, 2006, <http://www.theguardian.com/politics/2006/oct/12/houseofcommons.comment> (accessed September 1, 2014).

³⁴ <https://www.indymedia.org.uk/en/2006/12/358676.html>, The Serious Organised Crime and Police Act 2005 (accessed September 1, 2014) gives details of protest activity related to SOCPA from August 1, 2005.

³⁵ Carmen Fishwick, *The Guardian*, February 12, 2015, <http://www.theguardian.com/politics/2015/feb/12/uk-prisoners-banned-voting-echr> (accessed June 8, 2015) and see also *BBC News*, October 6, 2015, <http://www.bbc.co.uk/news/uk-34450879> (accessed October 6, 2015).

³⁶ Butler, *Excitable Speech*, p.139.

³⁷ For more wide-ranging and general discussions of the protest activity and legislative framework see Kiron Reid, "Letting Down the Drawbridge: Restoration of the Right to Protest at Parliament," *Law, Crime and History* 1 (2013) pp. 16-51 and Joanna Gilmore, *'This is Not a Riot!' Regulation of Public Protest and the Impact of the Human Rights Act 1998* (Oxford, Oxford University Press, 2016).

³⁸ Dean Kenning, "You Cannot be Serious: Art Politics Idiocy," *Art Monthly* (June, 2007), pp. 7-10, at 8.

³⁹ Kenning. "You Cannot be Serious", p. 8.

⁴⁰ <http://www.tate.org.uk/whats-on/tate-britain/exhibition/mark-wallinger-state-britain>, Mark Wallinger: State Britain (accessed September 1, 2014).

⁴¹ Benjamin Buchloh, "Conceptual Art 1962-1969: From the Aesthetic of Administration to the Critique of Institutions," *October* 55 (Winter, 1990), pp. 105-143, p. 116.

⁴² For a genealogy of performatives see J. Hillis Miller in "Performativity as Performance / Performativity as Speech Act: Derrida's Special Theory of Performativity," *South Atlantic Quarterly* 106 (2) (Spring, 2007), pp. 219-235.

⁴³ Jacques Derrida, *Limited Inc.* (Evanston, Illinois, Northwestern University Press, 1988), p. 129.

⁴⁴ Derrida, *Limited Inc.*, p. 10.

⁴⁵ Jacques Derrida, "Force of Law: 'The Mystical Foundation of Authority'," *Cardozo L. Rev.* Vol. 11 (1989-1990), pp. 920-1045, pp. 1007-1009.

⁴⁶ Peter Brunette & David Wills, "The Spatial Arts: An Interview with Jacques Derrida" in Peter Brunette and David Wills eds., *Deconstruction and the Visual Arts* (Cambridge, Cambridge University Press, 1994), pp. 9-32, p. 18. For the argument in relation to literature, Jacques Derrida, "Before the Law" in Derek Attridge, ed., *Acts of Literature* (New York and London, Routledge, 1992), p. 214.

⁴⁷ Geoffrey Bennington and Jacques Derrida, *Jacques Derrida* (Chicago and London, University of Chicago Press, 1993), pp. 179-187 discuss this in terms of literature.

⁴⁸ Of course, art that complies with established theory and conventions may still be excluded from institutions that it might be expected would accept it as art. The controversial refusal by the Guggenheim to exhibit Hans Haacke's *Shapolsky et al. Manhattan Real Estate Holdings - a Real Time Social System, as of May 1, 1971* is one such example.

⁴⁹ Derrida, "Before the Law," p. 214.

⁵⁰ Butler, *Excitable Speech*, p. 148.

⁵¹ Jacques Derrida, *Psyche: Inventions of the Other, Volume I.* (Stanford, Stanford University Press, 2007), p. 44.

⁵² Peters, "Legal Performance Good and Bad," p. 185.

⁵³ Richard Grayson, "Mark Wallinger" *Art Monthly* 304 (March, 2007), pp. 26-27, p.27.

⁵⁴ Grayson, "Mark Wallinger, *State Britain*", p.26.

⁵⁵ This approach may be compared with, for example, that of Jean Baudrillard, *Simulacra and Simulation* (Ann Arbor, University of Michigan Press, 1994). Ross Abbinnett, "The Spectre and the Simulacrum: History after Baudrillard" *Theory, Culture and Society*, 25 (6) (2008), pp. 69-87 argues that there is a proximity between Baudrillard's simulacrum and Derrida's concept of the spectre from which emerges, "a sense of the contingency which opens, and ultimately limits, the practical and discursive figuration of autonomous solidarities," p. 70. Leonard Lawlor, "The Beginnings of Thought: The Fundamental Experience in Derrida and Deleuze" in Paul Patton and John Protevi, eds., *Between Deleuze and Derrida* (London, Continuum, 2003) points out, "Derrida abandons the idea of the simulacrum in favour of the spectre," p. 81.

⁵⁶ Jacques Derrida, *Positions* (London and New York, Continuum, 2002), p. 27, emphasis in the original.

⁵⁷ Haw had argued that SOCPA did not apply to him because of the wording of the legislation, which came into force after his protest had commenced. Initially he was successful when it was decided that under the legal rules of statutory interpretation a true construction of the Act meant it did not apply to Haw, *R (Haw) v Secretary of State for the Home Department and another* [2005] EWHC 2061 (Admin). However, the Court of Appeal subsequently decided that the word “start” when read in context meant “to continue” and so Haw was required to comply with SOCPA, *R (Haw) v Secretary of State for the Home Department and another* [2006] EWCA Civ 532. The conclusion of the Court of Appeal is discussed in Thomas A. Cross, “When ‘To Start’ is ‘To Continue’: Statutory Interpretation in the Brian Haw case” *Judicial Review* 12 (2007), pp. 122-133.

⁵⁸ As regards the need for SOCPA see Hain, HC Hansard, November 3, 2004, vol. 426, col. 373. For the importance of the enforcement of the law see Costas Douzinas and Adam Gearey, *Critical Jurisprudence: The Political Philosophy of Justice* (Oxford and Portland, Oregon, Hart Publishing, 2005), p.70 and also William W. Sokoloff, “Between Justice and Legality: Derrida on Decision,” *Political Research Quarterly* 58 (2) (June, 2005), pp. 341-352, p.344.

⁵⁹ Margaret Davies, “Derrida and Law: Legitimate Fictions” in Tom Cohen, ed., *Jacques Derrida and the Humanities: A Critical Reader* (Cambridge, Cambridge University Press, 2001), p. 222.

⁶⁰ Chantal Mouffe, “Artistic Activism and Agonistic Spaces,” *Art and Research* 1 (2) (Summer, 2007), pp. 1-5, p. 4. Available at <http://www.artandresearch.org.uk/v1n2/mouffe.html> (accessed, September 1, 2014).

⁶¹ Kathryn Brown, “Re-placing Art: Museums and the Street” *The International Journal of the Inclusive Museum* 1 (2) (2008), pp. 89-96, p. 95 argues that, as a quotation of the original protest, the work did not retain a “functional political purpose.” Also consider Kenning, “You Cannot be Serious,” p. 8 referred to earlier for the comment made by the Labour politician on the radio about Tate Britain being the place where Haw’s protest belonged.

⁶² Sokoloff, “Between Justice and Legality,” p. 344.

⁶³ Sokoloff, “Between Justice and Legality,” p. 344.

⁶⁴ Richard Beardsworth, *Derrida and the Political* (London and New York, Routledge, 1996), p. 25

⁶⁵ Beardsworth, *Derrida and the Political*, pp. 25 and 42.

⁶⁶ Beardsworth, *Derrida and the Political*, p. 25 discusses this in terms of “literature and the law (in the phenomenal sense).”

⁶⁷ Mouffe, “Artistic Activism and Agonistic Spaces,” pp. 2-3.

⁶⁸ Davies, “Derrida and Law,” p. 227.

⁶⁹ Davies, "Derrida and Law," p. 225.

⁷⁰ Sokoloff, "Between Justice and Legality," p. 347.

⁷¹ Susan Marks, "False Contingency" *Current Legal Problems* 62 (1) (2009), pp. 1-21, p. 17.

⁷² Mouffe, "Artistic Activism and Agonistic Spaces," p. 2.

⁷³ The importance of the surrounding area and its visual appearance was explicit in the text of the Serious Organised Crime and Police Bill, as it was introduced in the House of Commons on November 24, 2004 (session 2004-05). S.123 provided that police officers would be able to issue directions to someone whose conduct had or could have, amongst other things, the result of "spoiling the visual aspect, or otherwise spoiling the enjoyment by members of the public, of any part of the designated area." The Bill is available at <http://www.publications.parliament.uk/pa/cm200405/cmbills/005/2005005.htm> (accessed 17 July 2014). Also see Heath, Standing Committee D, *Hansard*, January 20, 2005, col., 435.

⁷⁴ Derrida, "Force of Law," p. 1009, "the police are present or represented everywhere that there is force of law."

⁷⁵ Mouffe, "Artistic Activism and Agonistic Spaces," p. 2.

⁷⁶ Mouffe, "Artistic Activism and Agonistic Spaces," p. 4.

⁷⁷ Derrida, *Limited Inc.*, p. 145.

⁷⁸ Derrida, *Limited Inc.*, p. 148.

⁷⁹ <http://www.parliament.uk/about/living-heritage/evolutionofparliament/2015-parliament-in-the-making/>, 2015: Parliament in the Making (accessed September 25, 2015).

⁸⁰ Mouffe, "Artistic Activism and Agonistic Spaces," p. 2.

⁸¹ Derrida, *Limited Inc.*, p. 70.

⁸² Butler, *Excitable Speech*, pp. 128-9.

⁸³ Marks, "False Contingency," p. 17.

⁸⁴ Jacques Derrida, "Admiration of Nelson Mandela, or The Laws of Reflection," *Law and Literature* 26 (1) (2014), pp. 9-30, p. 24.

⁸⁵ Marks, "False Contingency," p. 10.

⁸⁶ Jacques Derrida, *The Gift of Death* (Chicago and London, Chicago University Press, 1995), p. 27.

⁸⁷ Sokoloff, "Between Justice and Legality," pp. 346-7.

⁸⁸ Jacques Derrida, "Nietzsche and the Machine" in Elizabeth Rottenberg ed., *Negotiations: Interventions and Interviews, 1971-2001* (Stanford, California, Stanford University Press, 2002), pp. 215-256, p. 252 and also

Jacques Derrida, "Autoimmunity: Real and Symbolic Suicides" in Giovanna Borradori ed., *Philosophy in a Time of Terror* (Chicago and London, Chicago University Press, 2003), pp.85-136, p.120.