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**Article (Accepted version)
(Refereed)**

Original citation: Mulcahy, Linda and Flessas, Tatiana (2015) *Limiting law: art in the street and street in the art*. [Law Culture and Humanities](#) . ISSN 1743-8721 (In Press)

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Available in LSE Research Online: December 2015

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Limiting Law: Art in the Street and Street in the Art

To be published in *Law Culture and Humanities*.

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Abstract

Conventional legal responses to street art have tended to characterize it as a problem that is best dealt with through criminal law sanctions. This is not necessarily a problem for street artists who have been keen to situate understandings of their work outside of the law. But attitudes are changing. Street art is increasingly seen as having commercial value, enhancing the cityscape, creating new local art markets, attracting tourists, and contributing to the gentrification of an area with the result that conventional ways of conceiving of street art have begun to pose new challenges to concepts of crime and property. Drawing on an observational study in London, this article proposes a new theorization of the legal problems posed by street art that pays close attention to the sensual experience of encountering it in the city and to street art as performance rather than artefact.

Keywords

Street art, graffiti, criminal damage, cultural heritage, cultural property, right to the city

I. Introduction

In 2013 there was outcry amongst the residents of a north London suburb when part of a wall owned by Wood Green Investments which contained a mural by well-known street artist Banksy, was removed and sold. Created just before the Diamond Jubilee celebrations for Queen Elizabeth and mounted on the side of a budget store, this work called *Slave Labour*, depicted a young boy hunched over a sewing machine making bunting from British flags. The work was subsequently offered for sale in Miami where the auctioneers claimed that it had been “sensitively restored.” Local politicians in London, who attempted to enlist the help of the UK Arts Council in retrieving the work, argued that the removal of the mural was unethical, possibly illegal and likely to contradict the wishes of the artist who had previously condemned attempts to sell the art he chose to place on the street for free. They contended that the work had been given to the community for public enjoyment and should be returned to the place where it had been created and where it belonged. At the height of the controversy the mural was removed from sale in Miami, though the owner of the American auctioneers continued to protest that the sale was legal and that it was simply not true that the artwork had been stolen.¹ *Slave Labour* was later sold in the UK by an auction house that also claimed that the picture had been prised out of the wall legally, sold legally, and was now legally owned.² This article explores the issues raised by this episode and the implications of it for the way the law approaches the thing and the experience that is street art.

Sociologists, criminologists, urban geographers, and cultural theorists have conducted a range of empirical studies that focus on: attempts to understand the motivations of street artists and graffiti writers; the association of graffiti and street art with discourses of dirt and disorder; the norms and practices which allow street art to be defined as a sub-culture; and attitudes to the regulation of the work produced.³ These studies have done much to help us understand why, and how, street artists have attempted to situate understandings of their work in

opposition to legal regimes and outside of traditional conceptions of ownership and rights. Street art is regularly produced under cover of darkness by artists who actively avoid recognition and capture. It is placed on walls, pavements, and roofs without the permission of those who own them. The result is that street artists are commonly seen as having contempt for law. In turn, law enforcers regularly demonstrate their contempt for the artwork by removing it from walls. In this paper we argue that many more people are involved in street art than these scenarios suggest and that their network of relations is also complex. Most importantly, we claim that the relationships between the artist and other artists operating on the same patch, participants, spectators, owners and law are much more nuanced than a straightforward analysis of the applicable legal regimes governing these behaviors would suggest.

Far from being a problem for street artists, disdain for the law is seen as part of the appeal of this genre by the self-styled “outlaws” who practice it. As Walter Benjamin might have argued, it is the shock of the encounter between the passers-by and streetscape in which the “art” of street art inheres. It follows that it is the capacity to be shocked or engaged by the streets that legal definitions of street art or interventions to regulate it must address.⁴ The provenance of street art is the street, and the expectation that it is produced “illegally” is part of its essential identity. Yet, it is not enough to suggest that illegality is necessary to guarantee the authenticity of the art form, and that no further analysis is called for. Assuming an uncomplicatedly oppositional relationship between street art and law is too simple. Nor is it enough to argue that authorizing the production of street art, by removing legal sanctions from practitioners, or accessing other legal regimes, such as heritage protection, adequately addresses the problems that arise when attempting to theorize street art’s emergence into bourgeois consciousness. As soon as street art becomes recognized as having aesthetic and commercial value in the global marketplace, the jurisprudence of street art begins to raise many more questions than when it was seen as just a local activity with no commercial value. It is argued here that legal regimes that exist, or are emerging, in the UK and elsewhere fail to encapsulate the particular specificities that give street art its aesthetic and commercial value. Furthermore, it may be that new definitions of what constitutes an artwork, how we define ownership, or whose interests are deserving of protection are also at stake. In the sections that follow, we consider how contemporary legal regimes which focus on ownership, exchange and heritage in England respond to street art. The limitations of those approaches are explored by reference to a one-year observational study of street art conducted in London from 2013–2014. We conclude by proposing a new theorization of the issues that arise in the legal construction of street art. A close reading of the law in conjunction with close observation of the streets lead us to propose that neither art nor artists require, or can survive, legal protection. Moreover, whether it can be regulated or not, we suggest that street art is better understood as an artistic performance than a discrete artefact as is currently the case.

II. Legal Responses to Street Art

There are two strands of legal analysis that currently seek to explain the issues that arise in generating, selling, or preserving street art and in dealing with disputes about ownership, authorial rights, resale rights, and profit. The first involves the law of property, or more specifically “damage” to property which is said to be caused when street art is created. However, the law of property has also been evoked in attempts to protect works of art when they are removed from their original locus, as was the case in Wood Green. The second involves the laws and regulations seeking to protect and preserve cultural heritage. In this section we engage in a brief discussion of these two areas of law in order to lay the foundations for the contention that neither adequately captures the essential role of street art in creating an organic urban landscape. It is argued that, while property regimes facilitate the

fossilization and reification of the art “piece,” the notion of cultural heritage facilitates the fossilization and reification of the street. Neither addresses the essential dynamism between the two or takes account of the vital role played by other artists who alter the original work or the people who walk the streets and engage with street art as spectators and unwitting participants.

1 Property Law: Street as “Canvas”

Far from being in need of the type of protection demanded by Wood Green residents, street art is often conceived of by law enforcement agencies as a social ill or nuisance. It is managed by reference to two key pillars in the field: the criminalization of the artist and the protection of the rights of the property owner. Altering someone else’s property without their permission has long been conceptualized as a legal wrong and in the UK street artists can be prosecuted under section 1 of the Criminal Damage Act 1971 for destroying or damaging property in this way.⁵ This legislation was originally used to manage “graffiti” rather than “street art” but the lumping together of these two terms as though they are a single genre is now contested amongst artists and commentators. Artists have been keen to emphasize that street art is increasingly being used to cover a broad range of processes, styles, and ideologies that constitute part of the “post-graffiti” or “neo-graffiti” “movements.”⁶ The credibility of distinctions between these two forms remains debatable but it is the case that a number of street artists are uncomfortable being associated with graffiti writers and keen to separate out what they do from tagging, territorial graffiti, and vandalism as well as corporate advertising.⁷

Despite these debates, the Department for Environment, Food and Rural Affairs (DEFRA) has defined the term “damage” broadly enough to cover “[a]ny informal or illegal marks, drawings or paintings that have been deliberately made by a person or persons on any physical element comprising the outdoor environment, with a view to communicating some message or symbol etc. to others.”⁸ In 2006, they went on to attempt to regulate street art and graffiti by suggesting in the Code of Practice on Litter and Refuse 2006⁹ that local authorities work with landowners to remove it from the street.¹⁰ It was argued in the Code that the work of street artists could lead to “further degradation of the area and an increase in the fear of crime.”¹¹ It also expects that “Local authorities should always remove graffiti ... from public property. They should also work with private property owners to seek the removal of graffiti ...”¹²

Public bodies have become increasingly accepting of the distinctions between graffiti and street art but concern about the effect on the urban environment has continued. By way of example, the Hackney Council Graffiti Policy, which regulates the streets on which the observational study reported below was conducted, reflects both recognition of the problem and ambivalence about how to deal with street art:

... the Council accepts that properly authorised and appropriate street art may be recognised and supported subject to ... that art not being a detriment to local environmental quality. Despite this the Council remains committed to reducing and removing undesirable graffiti, and considers that any graffiti that appears on buildings and other structures without the owner’s consent is an interference with the property owner’s rights and as such that person has committed a criminal offence under the Criminal Damage Act 1971.¹³

It remains the case that street artists may be liable for civil prosecution for trespass,¹⁴ whether or not the claimant suffers any damage. If they obstruct or disturb any rightful activity on the land, they may be prosecuted in criminal court for “qualified” or “aggravated” trespass.¹⁵ In addition, the Anti-Social Behaviour Act 2003 specifically provides for penalty notices for graffiti and fly-posting in section 43 though the penalty usually takes the form of a relatively

small fine. If the graffiti or art is likely to cause distress, then the court may impose an ‘antisocial behaviour order’ under section 1C of the Crime and Disorder Act 1998.¹⁶

The rights of property owners extend beyond their ability to claim financial compensation for damage to their possessions. Somewhat ironically, English law also allows them to benefit from the “damage”. On the one hand, the owner may be responsible for removing the “graffiti” or “street art” when it is considered a nuisance, but they can equally claim to be the beneficiary of any positive value that accrues from it. This is because the owners of buildings, fixtures, and other goods that come under the definition of “land” in England also own anything that becomes part of the land.¹⁷ In the case of street art, this means that once paint or other materials are applied to the surface of a building, the owner of it becomes the owner of the art piece. The consequence of this is that Wood Green Investments which owned the wall on which *Slave Labour* was mounted were not only well within their legal rights to remove and sell Banksy’s work, they could also, as the auction houses subsequently claimed, pass on good title to it. These understandings of both the activity of the artist as illegal and the property rights of the owner being total appear to transform street art into something that is manageable through existing art and property regimes. Viewed from this perspective, street art is distinguishable from the place in which it is has been created, is considered to be moveable, and is treated as a contained artefact.

The law of copyright is no more generous to street artists or communities when it comes to regulation of street art still *in situ*. Street art and graffiti are capable of being protected as artistic work under the Copyright, Designs and Patents Act 1988.¹⁸ But, although copyright can exist in the artist’s work,¹⁹ it may not be infringed when others make a painting, drawing, engraving or photograph of the work; or when the work is included in a film or television broadcast.²⁰ This “freedom of panorama” exception validates both the creativity merit of street art and permits its commodification by others as street art is increasingly used as a backdrop to advertisements, music videos, and other revenue-generating projects. This UK position is particularly negative in its approach to artists’ rights. In the USA, although the art may be destroyed, changed or otherwise worked upon by others, copyright protection may prevent the art from being republished in other formulations.²¹

Significantly, the same “street” artists are protected by law when they produce work for private sale. Work produced in studios or on a wall owned by the artist is treated as being akin to any other type of discrete movable art and is protected by the Copyright Designs and Patent Act 1988. Transformed into “legitimate art,” the intrinsic value of the art turns on the legality of place. The moral and resale rights that protect all artists adhere when lawfully created pieces are sold, with the result that artists’ recognized moral rights carve out exceptions to property ownership. This means that purchasers of street art produced for sale may not erase or ignore continuing rights that the artist retains in the piece. These rights consist of the right of paternity (to be identified as the author), the right of integrity (to object to derogatory treatment of the piece), and the right to object to false attribution.²² Artist’s resale rights also respect the ongoing authorship of the artist by ensuring that a small sum is transferred to the artist upon each further sale after the original acquisition.²³ In sum, if Banksy had produced *Slave Labour* on a wall he owned, his personal and financial interests would have been protected. If he had mounted his art on a surface owned by the council, the community’s ongoing access to the work may have been assured. The problem is that producing work in a context recognized by the existing legal regime would have betrayed the conventions of street art as to what renders a piece authentic.

Notwithstanding the benefits of existing legal regimes that focus on the protection of property, the disputes between the owners of walls who approve of the additions that street artists have made to their property without permission and local authorities that want to remove them lead us to question what is being achieved by a largely negative legal regime.²⁴

Current systems of protection also deny the claims of local residents to determine the appearance of their streetscape. There is also a growing feeling amongst commentators that the legal regulation of street art reflects a poor understanding of the object at the center of the controversy.

2. *Street as Artefact: Cultural Heritage Law*

Displays of street art on the streets of Melbourne, Berlin, New York, Miami, Buenos Aires, Bristol, and London demonstrate that this art-form is now a worldwide phenomenon. This development is reflected in the fact that major galleries around the world have hosted street art exhibitions and by the emergence of ferociously lucrative markets in street art. This was evidenced by the fact that *Slave Labour* was expected to sell for \$70,000 at auction in Miami and to go on show alongside pieces by Damien Hirst, Andy Warhol, Mario Testino, and Russell Young.²⁵ These various developments mean that, rather than being seen as a problem, it is increasingly accepted that street art attracts people to places and enhances the urban landscape. Ironically, this also makes the new cityscapes embellished by street art increasingly vulnerable. As Peter Aspden of the *Financial Times* has argued: “There is something of the Wild West about ownership of street art. The only certainty is that it is not likely to remain in the street for very long. It has simply become too valuable.”²⁶ As an increasing amount of street art and images of it are sold, acquired for corporate marketing campaigns,²⁷ private collections, and exhibitions, it has become an imperative to protect rights private law regimes in the ways anticipated above.

The relationship between street art and markets for art, property, and tourism has become an extremely complex one. In an ironic turn not lost on street artists, the characterization of street art as a rebellious reaction to established orders is now perceived to be part of both its intellectual and commercial appeal.²⁸ Street art provides an example of the hunger of commercial systems for subcultural energy and artistry.²⁹ For some writers, the growing popularity of street art has prompted the increasing domestication and commodification of this genre in ways that challenge its authenticity by taking the art out of the street and street out of the art.³⁰ Indeed, it may be that street art is increasingly in danger of being subsumed by the very acquisitional practices of advanced capitalism that many street artists set out to critique.

This “capture” of the practice of street art by the market has led to an increasing number of legal scholars, geographers, museologists, and cultural theorists calling for the need for legal regimes to rethink the capabilities of law and the meaning of “heritage” in this area.³¹

Contrary to regimes that focus on personal property rights, it is being argued that street art belongs, in some ineluctable manner, to its environment, and should be “protected” *in situ* as a result.³² Irina Tarsis has argued that some of the same value and values inhere in modern street art as do in ancient artefacts, as both rely on determinations of context and provenance for a great part of their meaning.³³

Authenticity in this context is defined largely by reference to provenance and context. The concept of “authenticity” is central to any discussion in heritage circles and one that sits alongside “preservation” as a core component justifying this special form of protection., Thus, it would not be unreasonable for cultural theorists and heritage experts to call for the same type of protection for street art as for objects found in archaeological sites. This would mean that street art might be protected under UNESCO heritage Conventions³⁴ (being listed on the World Heritage List), under domestic national laws and local authority regulations (being listed on national registers), and covered by other protections that seek to keep “heritage” from destruction. The fact that street art fits into the definitions of both tangible and intangible cultural heritage, on the basis that it is both a product that enriches or comes to define a community and a practice that may be protected under the international Convention

for the Safeguarding of Intangible Heritage, means that it should be a very simple matter to adopt heritage practices, discourses, and instruments in order to argue for the preservation of street art.³⁵ As Merrill comments,

The removal of street art—Banksy’s or otherwise—from the street can have negative consequences for its integrity, erode the cultural significance attached to its particular setting and, in certain instances, trigger debates that are reminiscent of the illegal trade of antiquities.³⁶

As regards “preservation,” heritage schemes operate to identify, list (or otherwise publish), and then preserve sites, monuments, objects, collections, and cultural practices. For example, folklore, dances, and music, and any other important relics or indicia of a particular or world culture may be protected as cultural heritage. Although it is arguable that identification, publication, and preservation are all equally important, most heritage schemes emphasize preservation as the ultimate goal of the legal instruments at their disposal. The layers of regulation and responsibility that make up the listing process in the UK require, as a minimum, a stable and definable place, building, object, image, or other artefact to list and conserve.³⁷ These values are underpinned by directives and considerations that may themselves be dissonant³⁸ and require local councils to take into consideration the frequently splintered interests of people, such as residential property owners, businesses, young people, and national projects.³⁹

One of the most persistent questions that might arise in this context is not whether a particular artefact constitutes heritage, vandalism, or both, but whose heritage is it? Property law fundamentally protects owners, while also defining the class of objects that may be owned. In the context of street art, property law must be able to separate a piece from a wall, the artist from owner, and viewer from the government agent who decides whether to retain or erase a particular piece. The “strategically important degree of control” that heritage law expects is much the same as that which property law, and specifically property in land, requires.⁴⁰ Specific heritage instruments, such as listing, may pay lip service to more expansive notions of fluidity and shifting signifiers of authenticity in a particular community, but they also aim to satisfy a pragmatic need for clear definitions about the thing to be protected and exactly what the heritage investments are to be.

Finally, the traditional heritage management values of authenticity and preservation are now being explicitly interpreted by policy makers in light of the growing emphasis on using “heritage” to generate economic development.⁴¹ At the level of the street and street art, this takes the form of a struggle between established conceptions of vandalism and emerging notions of what makes a particular area commercially viable through its ability to attract tourism, art dealers, and new residents.⁴² In the UK, the National Planning Policy Framework (2012),⁴³ has recently affirmed the overarching aim of heritage planning as “sustainable development” to be attained by a new, local set of guides and considerations which are meant to involve the entire community in deciding how and what enriches the quality of their lives and opportunities.⁴⁴ Alison Young has suggested that such projects have a tendency to flounder on the rocks of traditional property rights and lead to “zero tolerance” for alternative projects rather than produce the community-directed discourse anticipated.⁴⁵ It is too soon to tell what will happen in the UK.

Heritagization⁴⁶ of street art has also been shown to be possible elsewhere. In Germany, certain works have protection through listing on a federal register⁴⁷ because of their “age and survival value,” and there have been similar initiatives in the UK. But such schemes are not without their problems. Not only have street artists resisted these forms of protection⁴⁸ but a Banksy mural has been listed in Cheltenham, in the UK, to the satisfaction of nobody.⁴⁹ The inherent conflict in listing street art is very plain. On the one hand, listing is a means of respecting the artist’s and community’s desire that the works stay *in situ*. On the other hand,

protection also involves reification of works meant to be understood as fluid and dynamic because listing will “protect” a mere “snapshot” of urban culture at only one moment. Perhaps as significantly, it also involves the co-option of the language of a subculture that has expressly sought to remain outside of a gallery culture. In this context it has been argued that “[i]t is necessary to consider whether the application of heritage frameworks might be more destructive than protective of the authenticity of ... graffiti.”⁵⁰ In other words, authenticity and preservation, the two values that anchor heritage instruments, are viewed as being conceptually and practicably opposed to each other in street art. The observational study discussed below demonstrates without any doubt that the value(s) of street art are not compatible with those of preservation, nor development, nor schemes meant to engage future generations.⁵¹ We argue that some of the most lucid and telling accounts of what the meaning and worth of street art may be relate instead to its evanescence and that some heritage management that already occurs within the community generating street art recognizes this delicate balance between stasis and change.⁵² The problem with heritage as a tool is that it facilitates a process of fixing the past in a fictional stable narrative. In order for heritage to be relevant to the debate about street art, it would have to be converted to a discipline that tolerates, indeed celebrates, alteration and erasure. This new perspective is slowly emerging in the academic literature, but it is not yet clear how it will be of use to those activists or policy makers who seek the preservation of street art.⁵³ At best, it may be used to protect the space for the production of street art but not the art itself.

III. Alternative Understandings of Street Art

In an attempt to better understand the extent to which existing legal regimes are capable of responding to street art, a year-long observational study involving weekly visits to selected sites was undertaken by one of the authors in the area around Curtain Street in Shoreditch, East London. This is a district well known for its street art and has been characterized as a mecca, or spiritual home for the genre. It is particularly well known for attracting the work of overseas artists such as Pablo Delgado, Christiaan Nagel, and Roa.⁵⁴ Initial visits focused on a one-mile square radius around Curtain Street but the frequent changes to walls that occurred in the area meant that it soon became difficult to chart and reflect on all the alterations introduced or blank walls transformed. As a result, it was decided to restrict the focus of the project to three particular stretches of wall. All of these were in private ownership and, in the course of the study, a large section of one wall which contained a large mural that had gone largely unaltered for some months was demolished by private developers. Another of these locations underwent regular alterations during the study period. A mural believed to have been created by “Amigo” was soon embellished by small stenciled fish skeletons, flying pink pigs, and eventually was almost completely obliterated by a mural by another artist which one of the authors observed being created. Over 2,000 photographs were taken during fieldwork in order to create a record of the different forms of street art in the area and the changes to walls and other surfaces that were regularly observed. Numerous blogs and websites that charted and discussed changes to the area were also monitored on a regular basis. The explicit purpose of the study was to attempt to understand street art from the perspective of street artists and the communities in which it was placed, rather than from the perspective of law enforcers or those owners of walls and surfaces who claimed ownership of the actual work or the right to destroy it. In particular it sought to interrogate the extent to which street art can variously be characterized as being damage to property or in need of protection.

Figure One: Mural by Amigo, March 2014.



It soon became clear from observations that street art in Shoreditch varies considerably in terms of the techniques and materials used. The dominant form tends to be spray-can murals but there was also much evidence of mosaics, installations, paste-ups, graffiti lettering, stickers, stencils, and tags. Some of the pieces viewed were the work of individual artists but many

others came about as collaborative efforts by “crews”. Much of the artwork in the area has been placed on walls without the explicit permission of the owners, though there are some privately owned spaces devoted to street art such as those provided by the self-styled creative community called “Village Underground.”⁵⁵ In other instances works, have been commissioned by local businesses. Very few, if any, roads in the district have escaped the attention of artists.

Fieldwork indicated three particular ways in which understandings of street art within street art “communities” sit uncomfortably with current legal regimes and pose dilemmas about whether and how the interests of artists and local communities could be recognized and protected. Each of these are considered in detail in the sub-sections that follow. The first of these is that street art can rarely be seen as the creative output of just one artist. This is more than a reference to the creation of work by crews. It relates instead to the common practice of the random evolution of a piece by a series of strangers over time. The second is that there are difficulties in treating street art as an object that can be bought, sold, and transported as though it were a discrete and contained thing that is separate from the street. The third is that, for some, the ideologies underpinning the practice of street art sit in opposition to the concepts of both private ownership and heritage as it is commonly understood.

1. Creative Evolution? The Ephemeral Nature of Street Art

It is clear from the discussion above that in the art world debates about how creative rights in a piece of art are produced and distributed usually start with the individual artist or creative genius. Indeed, in the present context, valuable studies of individual street artists or pieces have been undertaken to good effect. There are many blogs, websites, and books devoted to these topics that commonly display images of particular works by popular artists. These photographic records and the original pieces removed to galleries and collections facilitate the compilation of a valuable visual archive of the body of work of the highly talented artist. However, this is not always an accurate prism through which to understand what street art is, and what needs protecting. This focus on the individual suggests that art is created by one person, is capable of completion, and that the same work of art could be created in any one of a number of locations. A single visit to the fieldwork site might well have served to confirm the validity of this approach. Multiple visits to the same sites over the course of a year presented a very different understanding of street art as transformative and ephemeral. Rather than being understood as discrete pieces produced by individual artists, site visits encouraged an understanding of street art as a multi-authored process of constant creative evolution

Replacing, transforming or contributing to existing exhibits is a commonly accepted convention in the field of street art. By way of example, figures 1 and 2 show how a mural by Amigo spotted in March 2014 in Christina Street was painted over by another crew in May 2014. This demonstrates that even pieces produced by the most revered artists will be altered as a matter of course. Far from being disapproved of, artist Blek Le Rat⁵⁶ has argued that alteration by another is part of the ideology underpinning a “reactive” genre. Rather than viewing pieces as discrete artworks, new work is often seen as the first utterance in a performance in which other artists offer contributions over time. If a visitor to an art gallery “amended” an exhibit, it would be viewed as an act of vandalism but, for many street artists, alteration is seen as part of a “design dialogue”⁵⁷ in which erasures, rewritings, and the memories of what lies underneath the most recent set of images are what makes the piece.⁵⁸ The layers of artistic and memorial investments in the “look” of a wall at any one moment gesture to understanding street art as a palimpsest, producing sensory and memorial reactions through its multi-layered, complex, and sometimes hidden history.⁵⁹



Figure Two: The same wall shown in figure one in May 2014 minutes after the mural by Amigo was sprayed over

This suggests that street art cannot be adequately understood as “finished” work produced by one person. Instead, it requires constant exposure to change if it is to remain authentic. Viewed in this way, it may be that the removers of *Slave Labour* from the side of the budget store have acquired no more than a nascent work of art awaiting responses. It also explains the essential tension at the heart of the street art and cultural heritage models. If heritage instruments are to be relevant to this form of art they would have to shift from a methodology that facilitates a fixing of a stable narrative pertaining to the past to a discipline that tolerates, indeed celebrates, alteration and erasure. This new perspective is slowly emerging in the academic literature but it is not yet clear how it will be of any use to those activists or policy makers who seek the preservation of street art.⁶⁰ One comment offered here is that the focus may well need to be on the protection of a suitable street space for the production of street art rather than the protection of the art. But, if the street is to continue to be more than a new type

Figure Three: Taking Place in Shoreditch I



of studio, this entails a much more nuanced discussion of the role of the street in street art than is commonly undertaken.

2. *Embedded Art*

The conceptualization of the street as a mere canvas for street art in current legal regimes also runs the risk of seeing the street as no more than a convenient surface. Our observational study suggests that the street is also highly significant because of its capacity to become an inspiration for, and integral to, the art produced. The essential argument here is that, rather than just being a backdrop for street art, the street is viewed as a critical part of what is being exhibited. In this context, Young⁶¹ has described street art as being “written on the skin of the city,” and a website dedicated to street art in Shoreditch has likened it to images being “tattooed into the brick and mortar of this

post-industrial environ.”⁶² Street artists Blek Le Rat and Remi Rough have argued that, when pieces are taken away from the street to the more sterile environment of the gallery, street art does not only lose a context but also an essential component of what the artist was attempting to convey.⁶³ When *Slave Labour* was removed for sale it was effectively severed from the very place that provided it with meaning. It was surely the location of this piece on the employment conditions of the deprived—on the side of a budget store in an area in which there had recently been riots—which gave this work resonance?

The symbiotic relationship between the street and art is particularly obvious when artists anchor their work in the locality by incorporating features of walls, floors, and fittings into the images produced. Instead of treating the wall as a blank canvas, artists often treat it as imbuing the work with a particular character.⁶⁴ Figures 3 and 4 provide examples of how the street can dictate the form of the work displayed in Shoreditch. This makes clear how the art responds to the street rather than just using it as a surface and the capacity of this genre to quite literally “take place.”

These illustrations raise important questions about the authorship of the work in this context. Is it the artist or the symbiote of artist and street that creates the art?

3. *Exposed Art*

A distinctive feature of street art that should further expand our consideration of what is being protected is the way in which it is experienced differently from art in conventional fora. Like environmental art and land art before it, street art acquires some of its dynamism from the fact that the conditions in which it is viewed are constantly changeable. When we

Figure Four: Taking Place in Shoreditch II



visit a gallery we generally expect that curators protect the work on display by managing temperature, backdrop, and lighting. The context is largely treated as distinct from the art and is generally not expected to detract from it. By way of contrast, street art is deliberately exposed to the ever-changing conditions of the street and no attempt is made to protect it from the rain, snow, direct sunlight, or intense cold. This distinction was understood by the curators of the Tate's 2008 exhibition of street art in which the commissioned exhibits were placed on the outside of the gallery.

While the exhibition space tends to discipline us to be docile spectators and to focus on the act of observation,⁶⁵ art on the street aims to excite a broader range of senses. This is suggested by the artist Rafael's claim that, when galleries ask him to paint on one of their walls, he hates it because it is "devoid of the dust, the dirt, the people" of the street.⁶⁶ Viewed in this way, street art is a genre in which the senses are assaulted in ways that are profoundly different to those of the gallery. Our experiences of street art were mediated by: the taste of pollution; the smell of dog excrement or takeaway food; the noise of cars and conversation; and the feel of jostling bodies on the pavement. Moreover, when they appropriate the streets, street artists also appropriate the people who walk on them. Some commentators have characterized passers-by as unwilling or chance spectators.⁶⁷ But one could equally easily view the observer as being transformed into a participant in an episode of performance art who is shocked or delighted into a response. Like all forms of performance, the audience is central. As one blog noted, when commenting on the way in which street art is represented by enthusiasts:

In the real world of street art those who happen to see the art, and enjoy it, encounter it as a moment of serendipity. Bloggers and web site owners rip the art from [its] geographical location and juxtapose the images next to each other. Here, viewers of street art get a concentrated experience, delivered to them through the click of a mouse, rather than the motion of their legs.⁶⁸

Architectural theorists such as Rendell⁶⁹ have long argued that the art world is not attentive enough to the cultural and spatial practices with which some art is invested and street art provides an excellent example of this. For many street artists, local residents are part of the urban environment they work with.⁷⁰ Young⁷¹ captures this when she comments: "It is not possible for the citizen to look at the city without also being in the city: there is no separation of viewer and object as there might be with a painting in a gallery." Street art does not just need an audience to be shocked, amused, or angered; it also explicitly invites and needs audience participation. These different understandings of the relationship between art, place, and people raise challenging questions about the practices and space we are trying to preserve. It also suggests a much more fundamental critique of the notions of rights and property than was possible in the sections above discussing contemporary legal frameworks. Street art creates a space that cannot be "administered" and one that escapes the disciplinary project(s) of modern urbanism(s).⁷²

The conceptualization of street art as a dynamic, ever-changing group project in which anyone can be involved has led some commentators to describe the street as a form of aesthetic commons.⁷³ This claim hints at a more fundamental challenge to the ways in which notions of art, the place of art, and its opposite vandalism are constructed by artistic and legal communities in mature capitalist societies. In the words of Ossian Ward⁷⁴

I want you to imagine a scenario if you will, and it's a world without museums where our public institutions lie in ruins and our swish commercial galleries and boutiques are all boarded up. Art has been released from its prisons and lines the streets and walls of our cities in place of advertising hoardings. London grey is replaced by resplendent multi-colour. Every surface of the city is colonised by an all over tattooing of self-expression and artists are free to decorate the city with art that

belongs to all of us. So, it sounds like utopia to me but I am not condoning some pseudo Marxist restitution of art for the masses or some sort of anti-bourgeois rally cry of art for all, but the futurists did have a point when they talked about museums as cemeteries.

This way of thinking about the form and place of art begins to make clear the potential of this genre to challenge the validity of art markets and law in defining “art” as discrete, transportable, complete pieces of work with investment potential and easily identifiable creators. As Banksy (2006) has argued, street art has the power to question the ways in which particular sorts of visual displays and cultures are legitimated and valued in the modern city.⁷⁵

Just as pop art attempted to do before it, street art frequently draws attention to the ways in which the sanctioned images of corporate advertising structures our experience of urban space and renders it bland. For some commentators, street art is said to deliberately position itself in contrast to, or as a critique of, the “bleak uniformity” of late capitalist aesthetics interested in creating global templates that manipulate consumers and deny the specificity of place.⁷⁶ Rejecting the suggestion that their clandestine creations are accurately dismissed as vandalism, some street artists have reacted by coining the term “brandalism” to suggest the ways in which street art provides a desirable alternative to the existing visual codes and cultures of corporate advertising.⁷⁷ In their comprehensive review of the role that street art has played in reclaiming the public in public places, Visconti and colleagues⁷⁸ have argued that contemporary street art offers the possibility of new approaches to the production of urban space.

It might also be suggested that street art outlaws are prompting context-specific debate about the concept of right to the city,⁷⁹ or what Purcell has more specifically articulated as the opening-up of a new politics of the inhabitant.⁸⁰ Martin Irvine identifies the essentially political relationships between artists, the street(s), street art, and other inhabitants of the city.⁸¹ Central to all these themes are ideas of community, spectatorship, participation, and audience that have been much neglected in existing legal accounts of practice. These alternative discourses encourage us to focus on appropriation rather than ownership by conceiving of a different relationship between residents, artists, and the urban wall.⁸² It encourages us to think about how we live in the city and what we desire to experience there.⁸³ Like the skateboards in Borden’s study of space in the modern metropolis, street art also serves to prioritize use over exchange and prompts us to think of surfaces as having multiple uses.⁸⁴

Banksy remains scathing about attempts to intellectualize street art in the ways being attempted by this article⁸⁵ and Ossian Ward’s quotation above also appears to reject the association of street art with a particular political ideology. Whether or not they are considered overtly political, specific attempts by street artists to use art to encourage us to actively engage with our environment were regularly observed during fieldwork. Ben Wilson’s pavement-based decorated bubble-gum patches and Pablo Delgado’s miniature paste-ups in Shoreditch encourage us to look down at the pavements of our city just as Xylo’s mosaics placed high on the walls of Shoreditch encourage us to look up. These examples created without the permissions of “owners” are compelling visions of how others “right to the city” might begin to be operationalized.⁸⁶ Lefebvre’s call for collective action to displace and reshape the experiences of the urban environment is highly relevant here. One way to understand street art is as a celebration of the dirt and noise of the city and a reaction against the processes through which collective activity is increasingly restricted to shopping centers, gated communities, entertainment complexes, and private sports clubs.

IV. Concluding Thoughts: Street World, Street “Art”

The observational study undertaken for this article and our analyses of existing legal frameworks demonstrate the fundamental inability of contemporary law to comprehend, much less regulate or protect, the various phenomena that make up street art. Unable to grasp the complex constellation of ever-shifting factors of which street art is comprised, the law is only able to delineate a type of void, between removal and fossilization, in which street art flourishes. Passers-by, artists, building owners, police, council workers, lawyers, and art dealers are left to make sense of what law is not able to encapsulate. On reflection our research suggests that street art is best understood as ongoing performance and experience rather than artefact. It is a collaborative undertaking between artists and artist, or artist(s) and audience, many of whom are often strangers. As such, it stands in direct contrast to the concept of art as a product of the individual genius; as embedded in the street rather than positioned on top of it. Like other forms of performance art, street art lacks a formal structure. Interventions can be unscripted, random, and occur with or without audience involvement. The two forms share a tendency towards the ephemeral as both types of performance evade complete capture and ownership. Cultural theorists understand the intense interconnectedness between the built environment and the artistic, ephemeral actions that make up street art. Our question is whether legal forms can also do so.

Perhaps most importantly for the purposes of this special collection of essays, the phenomenon that is street art requires the development of a jurisprudence of the senses rather than reliance on a conventional jurisprudence of rights. The experience of street art collapses the distinctions between internal and external stances to the world, and between nature and the built environment.⁸⁷ Confronted by street art, passers-by become *flâneurs*; they begin “botanizing on the asphalt.”⁸⁸ Seen through the lens of work by Walter Benjamin and Michel de Certeau, street art can be understood as returning the modern metropolis to the spectator, if only for occasional and fractured instances as one passes by, admires or is distracted, even disgusted, by a piece of street art. Forced to pay attention to the street as an admirer or critic, to interact with the smell and noise which it might be said to encompass, street art could be said to change the reality that “[i]n the crowded streets of the urban metropolis, the individual is not merely absorbed into the masses: all traces of individual existence are in fact effaced.”⁸⁹ What matters is that both artists and passers-by are grounded in place the instant that they become sensitive to the street, the moment and the aesthetic that they inhabit.⁹⁰ These metropolitan specters embellish our cities for a host of motives from personal gratification to boredom. What unites them all is their desire to adorn the surface of the city in order to force a reaction or encounter.

In ways that resonate with many street artists’ contempt for institutionalized gallery space, Benjamin demonstrates that neither the artist nor the spectator need be a genius or “connoisseur.” For him, the essence of modern, living art is that it is intended to exist without an “aura,” that it is intended to remain outside an artistic tradition established by the bourgeoisie.⁹¹ Street art adorns the city, and as with the *flâneur*, “a shiny enamelled shop sign is at least as good a wall ornament as an oil painting is to a bourgeois in his living room.”⁹² Street artists may rely on similar concepts of creation and authentication as artists in more conventional art forms, but they are frequently reluctant to partake in the same traditions of display, commodification and collecting that are the center of the capitalistic art project and the legal regimes that facilitate the legitimation of its ways of thinking. It is important to note in this context that while many street artists may now produce work in studios to sell on the private market, the majority of them continue to return to the street and embellish its surfaces for free. Seen in this way, the inevitable tension between legal regime and street art is more than a misunderstanding, oversight, or nuisance, it is fundamental to the politics of the modern city.

What then is the role of law in this area? If we consider street art as performance, in which each piece is an act of co-creation between the artist and the passers-by, then we can imagine that the Copyright, Designs and Patents Act 1988 might protect it as performance rather than as artefact. Alternatively, we could imagine allowing the lacuna at the center of all legal regimes discussed in this piece to continue to exist. 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 demonstrated. We propose that street art is understood as this kind of performance and, thus, needs no more legal intervention than Yves Klein did when he offered to sell his own “pictorial sensitivity” for gold leaf in 1962.⁹³

It could be argued that the existence of street art and the currents and eddies of notice around it that we have discussed here demonstrate an aesthetic, civic, and ethical unease with a politics of representation largely determined by corporate interests and the elite. This sense of discomfort is further heightened by the unthinking commodification of work like *Slave Labour*, which has been given to a local community by an artist who claims no recompense, and the framing of that gift as theft, private property, or object to be fossilized by law. These concerns speak to a desire within communities to re-appropriate places, non-commercial experiences and things on the street. It also speaks to the delight of the random passer-by in being shocked into an engagement with the city and granted agency in increasingly managed cityscapes. The fact that street art is now a global phenomenon that attracts people to particular localities is testimony to emerging calls for the reclamation of the public sphere from private property developers and corporate entities in order that we may revel in the phantasmagoria of cities decorated, redecorated, and contested by the people who live in them.

Acknowledgements

The authors would like to thank the many people on the streets of Shoreditch who gave up their time to talk to us about street art and the LSE students who accompanied us on walking tours and offered up their insightful comments. We would like to thank Hannah Lloyd and Anne Laure Bandle for their research assistance in the early stages of this project and Emma Rowden for providing helpful comments on an earlier draft.

¹ “‘Banksy’ Boy Worker Image on Poundland Shop Wall” May 16, 2012, BBC, <http://www.bbc.co.uk/news/uk-england-london-18075620> (accessed November 4, 2015); “Banksy Mural Torn off London Poundland Store for Miami Auction” *The Guardian*, February 18, 2013, <http://www.theguardian.com/artanddesign/2013/feb/18/banksy-london-miami-auction> (accessed November 4, 2015); “Banksy ‘Slave Labour’ Wood Green Graffiti Put up for Auction in Covent Garden” Huffington Post UK, May 11, 2013, http://www.huffingtonpost.co.uk/2013/05/11/banksy-slave-labour-graffiti-wood-green-auction- n_3259040.html; “Banksy Slave Labour Graffiti Removed from Auction Sale in Miami” Huffington Post UK, February 23, 2013, http://www.huffingtonpost.co.uk/2013/02/23/banksy-slave-labour-graff n_2750358.html (accessed November 4, 2015); “Haringey Council Asks Art Council for Help Saving Sewing Machine Boy Banksy” Huffington Post UK, February 20, 2013 http://www.huffingtonpost.co.uk/2013/02/20/art-council-banksy-recovery n_2722537.html (accessed November 4, 2015). See also the discussion of this case study in Alison Young, *Street Art, Public City: Law, Crime and the Urban Imagination* (London: Routledge, 2014).

² Stephen Bates, “The ‘Slave Labour’ Banksy Sale Should be Enough to Provoke Another Banksy” *The Guardian Online*, May 13, 2013 <http://www.theguardian.com/politics/2013/may/13/stephen-bates-diary-banksy> (accessed November 4, 2015)

³ See, for instance, T. Cresswell, “The Crucial Where of Graffiti: A Geographical Analysis of Reactions to Graffiti in New York,” *Environment and Planning D, Society and Space*, 10, 1992, 329–44; J. Austin, “More to See than a Canvas in a White Cube,” *City*, 14(1–2), 2010, 33–46; S. Banet-Weisner,

“Convergence on the Street: Rethinking the Authentic–Commercial Binary,” *Cultural Studies*, 25(4–5), 2011, 642–58; J. Ferrell and R. Weide, “Spot Theory,” *City*, 14(1–2), 2010, 48–62; M. Halsey and A. Young, “‘Our desires are Ungovernable’: Writing Graffiti in Urban Space,” *Theoretical Criminology*, 10, 2006, 275; E. Chmielewska, “Framing [Con]text: Graffiti and Place,” *Space and Culture*, 10, 2007, 145–68; L. Nandrea, “‘Graffiti Taught Me Everything I Know about Space: Urban Fronts and Borders,” *Antipode*, 31(1), 1999, 110–16; M. Irvine, “The Work on the Street: Street Art and Visual Culture,” in Barry Sandywell and Ian Heywood, eds, *The Handbook of Visual Culture* (London and New York: Berg, 2012) pp. 235–78.

4 W. Benjamin, *The Writer of Modern Life: Essays on Charles Baudelaire*, Michael W. Jennings, ed. (Cambridge MA: Harvard University Press, 2006).

5 See further Criminal Damage Act 1971 <http://www.legislation.gov.uk/ukpga/1971/48/section/1> (accessed November 2, 2015).

6 L. Droney, “The Business of ‘Getting Up’: Street Art and Marketing in LA” *Visual Anthropology*, 23(2), 2010, 98–114. For an extensive discussion of this point, see Young, *Street Art, Public City*.
7 Alison Young, *Judging the Image: Art, Value, Law* (Abingdon: Routledge, 2005); L. Visconti, J. Sherry, S. Borghini and L. Anderson, L., “Street Art. Sweet Art? Reclaiming the ‘public’ in public places,” *Journal of Consumer Research*, 37(3), October 2010, 511–29.

8 DEFRA, *The Code of Practice on Litter and Refuse* (London: DEFRA, 2006); graffiti is dealt with under “litter and refuse”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218806/cop-litter.pdf (accessed November 2, 2015).

9 DEFRA, *The Code of Practice on Litter and Refuse*, sections 12.0 and 12.3.

10 DEFRA, *The Code of Practice on Litter and Refuse*.

11 DEFRA, *The Code of Practice on Litter and Refuse*, section 12, p. 37.

12 DEFRA, *The Code of Practice on Litter and Refuse*, section 12.3, p. 37.

13 Hackney Council Graffiti Policy (2013) <http://www.hackney.gov.uk/Assets/Documents/Hackney-graffiti-policy.pdf> (accessed November 4, 2015).

14 *Winfield and Jolowicz on Tort* 17th edn (London: Sweet & Maxwell, 2006), p. 621.

15 Criminal Justice and Public Order Act 1994, s. 68.

16 See also *R v Brzezinski (Tomasz Adam)* [2012] EWCA Crim 198; [2012] 2 Cr App R (S) 62.

17 Law of Property Act 1925, s. 205(1)(ix).

18 Copyright, Designs and Patents Act 1988 <http://www.legislation.gov.uk/ukpga/1988/48/data.pdf> (accessed November 4, 2015).

19 Copyright, Designs and Patents Act 1988, s.4.

20 Copyright, Designs and Patents Act 1988, s.31(1). This is a very complicated area of law and is beyond the scope of this paper to discuss fully. Please see L Bently and B Sherman, *Intellectual Property Law*, 4th edn (Oxford: Oxford University Press, 2014), p. 306 et seq., “9 Incidental Uses”.

21 <http://ipkitten.blogspot.co.uk/2014/08/not-so-happy-trails-as-nyc-mural-artist.html>;

http://www.huffingtonpost.com/2014/07/29/aholsniffsglue-american-eagle-artist-lawsuit-copyright_n_5627862.html (accessed November 4, 2015); Megan Ralstin, “6 Things You Must Know about Copyrights in Street Art” <http://artlawjournal.com/6-copyrights-street-art/> (accessed November 4, 2015).

22 Copyright, Designs and Patents Act 1988. The fourth right, the right of privacy, applies to private films and photographs. In the UK, owners are not precluded from destroying the piece entirely, as this would not harm the integrity of the piece by subjecting it to a derogatory “treatment”—it merely ends the artwork.

23 Artist’s Resale Right Regulations 2006 <http://www.legislation.gov.uk/uksi/2006/346/contents/made> (accessed November 4, 2015).

24 See, for instance, Adam Gabbatt, “ROA’s Graffiti Rabbit Faces Removal by Hackney Council,” *Guardian Online*, October 25, 2010 <http://www.theguardian.com/artanddesign/2010/oct/25/roa-graffiti-rabbit-hackney-council> (accessed November 4, 2015).

25 Huffington Post UK, Haringey Council Asks Art Council for Help Saving Sewing Machine Boy Banksy. Several well-known auction houses such as Bonhams and Julien’s in London and Doyle New York have had auctions devoted completely to street or “urban” art.

26 <http://itsartlaw.com/2013/03/25/part-i-who-owns-street-art/> (accessed November 4, 2015).

27 Cameron McAuliffe and Kurt Iveson, “Art and Crime (and Other Things Besides ...): Conceptualising Graffiti in the City,” *Geography Compass*, 5(3), 2011, 128–43.

28 L. Dickens, “Pictures on Walls?” *City*, 14(1–2), 2010, 63–79; Banet-Weisner, “Convergence on the Street”; Droney “The business of ‘getting up’.”

29 Banet-Weisner, "Convergence on the Street".
30 Cresswell, "The Crucial Where of Graffiti".
31 For a representative sample of heritage and emerging pro-preservation arguments, please see
McAuliffe and Iveson, "Art and Crime"; Alison Young, "Negotiated Consent or Zero Tolerance?
Responding to Graffiti and Street Art in Melbourne," *City*, 14(1–2), 2010, 99–114; Lachlan
MacDowall, "In Praise of 70K: Cultural Heritage and Graffiti Style," *Continuum: Journal of Media
and Cultural Studies*, 20(4), 2006, 471–84; Samuel Merrill, "Keeping It Real? Subcultural Graffiti,
Street Art, Heritage and Authenticity," *International Journal of Heritage Studies*, 21(4), 2015, 369–89;
Alberto Frigerio and Elvira Khakimova, "Shaping the Street Art Legal Framework: The Clash between
Private and Public Interests in the Banksy 'Slave Labour' Case," *Aedon* 2, 2013
<http://www.aedon.mulino.it/archivio/2013/2/frigerio.htm> (accessed November 4, 2015); Rodney
Harrison, "Forgetting to Remember, Remembering to Forget: Late Modern Heritage Practices,
Sustainability and the 'Crisis' of Accumulation of the Past," *International Journal of Heritage Studies*,
19(6), 2013, 575–95.

32 It is noticeable that the term street art is increasingly being used to cover a broader range of processes,
styles, and ideologies which have been distinguished from their earlier iterations as part of the post
graffiti or neo-graffiti movements. Though far from being a homogeneous category, the term street art
is increasingly being used to distinguish contemporary unsanctioned public art from territorial graffiti
and vandalism as well as from corporate advertising. See further : Droney "The Business of 'getting
up'"; Young, *Judging the Image*; Visconti et al., "Street Art. Sweet Art".
33 Tarsis, n.26 supra; see also Merrill, "Keeping It Real".
34 Most importantly, street art might be protected under the Convention for the Safeguarding of the
Intangible Cultural Heritage 2003 <http://www.unesco.org/culture/ich/en/convention> (accessed
November 4, 2015) and the Convention Concerning the Protection of the World Cultural and Natural
Heritage 1972 <http://whc.unesco.org/en/conventiontext> (accessed November 4, 2015).
35 See, for example, [http://itsartlaw.com/2013/04/29/part-ii-unesco-forced-to-consider-street-art-as-
cultural-heritage/](http://itsartlaw.com/2013/04/29/part-ii-unesco-forced-to-consider-street-art-as-cultural-heritage/) (accessed November 4, 2015).
36 Merrill, "Keeping It Real", p. 376.
37 The protection of heritage is complicated for local authorities like Hackney that have to take into
account multiple layers of regulation. At the national level, the built environment is managed by the
Department for Culture, Media and Sport (DCMS) and its sub-agencies, most notably Historic
England, which produces and oversees the National Heritage List for England, under the aegis of the
DCMS. The list includes World Heritage Sites, but it does not inscribe them. Within the designated
areas for heritage, there is no easy fit for street art and the underlying value of preservation for future
generations can prove difficult to operationalize.

38 J. E. Tunbridge and G. J. Ashworth, *Dissonant Heritage: The Management of the Past as a Resource in
Conflict* 1st edn (Ann Arbor: University of Michigan, 1996).
39 Alison Young, "Negotiated Consent or Zero Tolerance? Responding to Graffiti and Street Art in
Melbourne," *City: Analysis of Urban Trends, Culture, Theory, Policy, Action*, 14(1–2), 2010, 99–114.
40 K Gray and S F Gray, "The Idea of Property in Land", in Susan Bright and John K Dewar, eds, *Land
Law: Themes and Perspectives* (Oxford: Oxford University Press, 1998), pp. 15–51.
41 See, for example, Historic England, "The Power of Place," [http://www.historicengland.org.uk/images-
books/publications/power-of-place](http://www.historicengland.org.uk/images-books/publications/power-of-place) (accessed November 4, 2015).
42 See further Hackney Council Graffiti Policy, 2013.
43 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf (accessed
November 4, 2015).
44 See, for example, in the "Ministerial Foreword": "Planning must be a creative exercise in finding ways
to enhance and improve the places in which we live our lives ... This should be a collective enterprise.
Yet, in recent years, planning has tended to exclude, rather than to include, people and communities.
In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them.
Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses
this."
45 Young, "Negotiated Consent or Zero Tolerance?"
46 The term heritagization is widely used to mean the appropriation by heritage discourses of sites of
national and international interest.
47 See also [http://www.smashingmagazine.com/2011/07/13/the-heritage-of-berlin-street-art-and-graffiti-
scene/](http://www.smashingmagazine.com/2011/07/13/the-heritage-of-berlin-street-art-and-graffiti-scene/) (accessed November 4, 2015)
48 Merrill, "Keeping It Real," pp. 375–76.

49 See *The Independent* <http://www.bbc.co.uk/news/uk-england-gloucestershire-31539767> February 19, 2015 (accessed November 4, 2015); <http://www.independent.co.uk/arts-entertainment/art/news/banksy-mural-spy-booth-has-been-a-curse-not-a-blessing-for-one-cheltenham-homeowner-10103122.html> 12 March 2015); <http://rt.com/uk/239789-banksy-spy-mural-owner/> March 11, 2015 (accessed November 4, 2015).

50 Merrill, “Keeping It Real,” p. 380.

51 MacDowall, “In Praise of 70K”.

52 Nandrea, “‘Graffiti Taught Me Everything I Know about Space’,” pp. 110–16; Merrill, “Keeping It Real”.

53 Harrison, “Forgetting to remember, remembering to forget”.

54 London Street Art (2013) <http://www.ravishlondon.com/londonstreetart/> (accessed November 4, 2015); London Street Art2 (2013) <http://www.flickr.com/photos/londonstreetart2/8419813602/> (accessed November 4, 2015).

55 See further <http://www.villageunderground.co.uk/> (accessed November 4, 2015).

56 Tate, “‘Graffiti: Utopia or a Bit Boring?’ Street Art Talks at the Tate,” October 31, 2008 www.tate.org.uk (accessed November 4, 2015)

57 S Burnham, “Scenes and Sounds—The Call and Response of Street Art and the City”, *City*, 14(1–2), 2010, 137–53, p. 139.

58 Merrill, “Keeping It Real,”; MacDowall, “In Praise of 70K”.

59 Michel deCerteau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984), p. 108.

60 Harrison, “Forgetting to remember, remembering to forget”.

61 Young, “Judging the image”.

62 London Street Art.

63 Tate, “Street Art Talks—The History of Street Art with Blek Le Rat and Remi Rough,” 2008, www.tate.org.uk/context-comment/audio/street-art-talks-history-street-art (accessed November 4, 2015). For the damage this entails, see two interesting works of fiction: Roald Dahl, “Skin,” in *Skin and Other Stories* (London: Puffin, 2002), pp 1–21; and H. H. Munro, “The Background,” in *The Complete Short Stories of Saki* (Ware: Wordsworth Editions, 1993), pp. 103–05.

64 Burnham, “Scenes and Sounds”.

65 T. Bennett, *The Birth of the Museum: History, Theory, Politics (Culture: Policy and Politics)* (London: Routledge, 1995).

66 Tate, “Graffiti: Utopia or a Bit Boring?”

67 Kim Dovey, S Wollan and I Woodcock, “Placing Graffiti: Creating and Contesting Character in Inner City Melbourne,” *Journal of Urban Design*, 17(1), 2012, 21–41.

68 London Street Art2.

69 Jane Rendell, *Site Writing: The Architecture of Art Criticism* (London: Tauris, 2010) and Jane Rendell, *Art and Architecture: A Place in Between* (London: Tauris, 2006).

70 Burnham, “Scenes and Sounds”.

71 Young, “Judging the Image,” p. 72.

72 Certeau, *The Practice of Everyday Life*.

73 Visconti, “Street Art. Sweet Art?”

74 Tate, “Graffiti: Utopia or a Bit Boring?”

75 Banksy, *Wall and Piece* (London: Century, 2006).

76 Gary Shove, *Untitled I: Street Art in the Counter Culture* (London: CarpetBombingCulture, 2008).

77 Banksy, *Wall and Piece*.

78 Visconti, “Street Art. Sweet Art?”

79 H Lefebvre, *Le droit à la ville* (Paris: Anthopos, 1968); H Lefebvre, *Espace et politique* (Paris: Anthopos, 1973); H Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991); H Lefebvre, *Writings on Cities* (Cambridge MA: Blackwell, 1996).

80 Mark Purcell, “Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant,” *GeoJournal*, 58, 2002, 99–108.

81 “The social meaning of street art is a function of material locations with all their already structured symbolic values ... A specific site, street, wall, or building in London, New York, Paris, or Washington, DC is already encoded as a symbolic place, the dialogic context for the placement of the piece by the artist. The practice is grounded in urban ‘operational space,’ the ‘practiced place’ as described by de Certeau—not the abstract space of geometry, urban planning, or the virtual space of the screen, but the space created by lived experience, defined by people mapping their own movements and daily relationships to perceived centers of power through the streets, neighborhoods, and transit

networks of the city. Street art provides an intuitive break from the accelerated ‘aesthetics of disappearance,’ in Paul Virilio’s terms, a signal-hack in a mass-mediated environment where what we see in the regime of screen visibility is always the *absence* of material objects. The placement of works is often a call to *place*, marking locations with awareness, over against the proliferating urban “non-places” of anonymous transit and commerce—the mall, the airport, Starbucks, big box stores—as described by Marc Augé. Street art is driven by the aesthetics of material *reappearance ...*: Martin Irvine, ‘The Work on the Street’ in Barry Sandywell and Ian Heywood, eds, *The Handbook of Visual Culture* (London and New York: Berg, 2012), pp. 235–78 (citations omitted).

82 Ian Borden, *Skateboarding, Space and the City: Architecture and the Body* (London: Bloomsbury, 2001).

83 Young, *Street Art, Public City*.

84 Borden, *Skateboarding*.

85 Banksy, *Wall and Piece*

86 Henri Lefebvre, *Writings on Cities* 1st edn (London: Wiley-Blackwell, 1968).

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90 Jennings, 2006, pp.12–16. Supra n. 88. In this essay, Baudelaire may be seen as the first “graffiti writer.”

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93 *Immaterial Pictorial Sensitivity*, 1962.