

AESTHETICS, AUTHORITY
AND THE OUTLAW OF THE STREET

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This is a paper about the meanings of aesthetics, authority, street art, and graffiti. It is about the potential that graffiti has to disrupt the codes that emanate from the post-industrial, capitalist city, and the ways in which law making authorities have attempted to curb that potential. The regulation of public space involves control over the visual appearance of that space. The *Graffiti Prevention Act (Vic) 2007* is one instrument employed in regulating the aesthetics of space. The legislation defines street art as illegal and imposes harsh penalties for the creators of this form of public art. As Margaret Davies writes in *Asking the Law Question*, the illegality of an act cannot be seen at face value – it is only after we see the act through the filter of the law that it is seen as criminal.² I use this as a starting point in asking why graffiti is a criminal act.

The illegality of street art is often linked to its location, or what Tim Cresswell refers to as ‘the crucial “where” of graffiti’.³ When taken off the street, and into the gallery, it is art. On the street, it is crime. Here, issues such as permanence and permission also come into play. Where street art mimics aspects of more traditional forms, such as permanency, it may become acceptable and become highly valued culturally and financially. In this paper I ask:

¹ PhD student at Victoria University, Melbourne. All photos used are the author’s own.

² Margaret Davies, *Asking the Law Question* (3rd ed, 2008) Lawbook Co, Pyrmont.

³ Tim Cresswell, ‘The Crucial “Where” of Graffiti’ in *In Place/Out of Place: Geography, Ideology, Transgression* (1996) University of Minnesota Press, Minneapolis.

How and why does the *Graffiti Prevention Act* work to support a particular aesthetic by controlling street art? I will examine how the Melbourne City Council's attempt to preserve street art was overcome by this Act, which I argue enforces the homogenised production of space and an 'aesthetic of authority.'⁴ I will also critique *DPP v Shoan*,⁵ a case that considered whether Shoan's artistic reconfiguration of space ought to be punished with a term in jail.

Legal responses to graffiti are overly punitive and must be interrogated, rather than the constant analysis of the artists and their reasons for 'offending'. What must be considered is

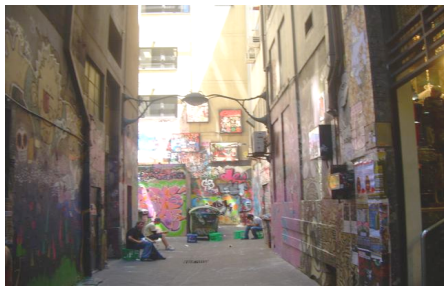


Figure 1 Centre Place, Melbourne

why street art motivates such a strong response. I contend that graffiti arouses such a response because it changes the way we experience the city. It causes an interruption to a commercialised system of signs and codes. It offers a possibility of difference and exposes cracks in the ordered routine of everyday life. Street art conveys a lifestyle that baffles those driven by a world of economy. It takes inhabitants on a treasure hunt to unknown places where countless gifts of creative, unexpected inspiration lie in wait.

As Mark Halsey and Alison Young write, '...it is no exaggeration to say that the State has a marked and ongoing interest in the flow of paint.'⁶ In the postmodern era the capitalist system works more through systems of signs and meanings and less through ownership and production. Control is maintained via influencing subjectivity through the management of messages and creation of desires. Felix Guatarri argues that we live in an age of 'Integrated

⁴Jeff Ferrell, *Crimes of Style: Urban Graffiti and the Politics of Criminality* (1996) Garland, New York, p178.

⁵ *DPP v Shoan* [2007] VSCA 220.

⁶ Mark Halsey and Alison Young (2006) 'Our Desires are Ungovernable' *Theoretical Criminology* 10(3), p295.

World Capitalism' (or IWC).⁷ Here, nothing can exist outside of capitalism or beyond its system of signs. In this sense, graffiti is a part of capitalism and is born of it. However, it also resists it. This resistance is at the level of meaning, where graffiti may confuse the messages found within public space. In this way, graffiti interrupts what Jeff Ferrell refers to as 'the aesthetic of authority' – or the neat and tidy space produced by capitalism.⁸ Halsey and Young write 'Historically, and significantly, the modern state has sought to transform smooth and nomadic territories into places where everything is ordered, numbered, monitored and controlled.'⁹ The state produces a capitalist spatiality, geared toward consumption.¹⁰ It is homogenised, and seeks to subsume all difference within its midst.¹¹ As Henri Lefebvre writes, 'What is different...is excluded....the existing centre and the forces of homogenisation must seek to absorb all differences...'¹² The city street loses its local character and becomes more like an airport.¹³ Jean Baudrillard asserts that 'The urban city is...a neutralised, homogenised space, a space where indifference, the segregation of urban ghettos, and the downgrading of districts, races and certain age groups are on the increase. ...[The city is] an immense centre for marshalling and enclosure where the system reproduces itself not only economically and spatially, but also in depth by the ramifications of signs and codes, by the symbolic destruction of human relations.'¹⁴

⁷ Felix Guattari (1989) 'The Three Ecologies' *New Formations* Number 8 Summer.

⁸ The relationship between street art and capitalism is never straight forward. Graffiti parodies commercial art and can be a form of playful political action in public space. Graffiti is also commodified by capitalism, becoming a valuable art object.

⁹ Halsey and Young at n 6, p295.

¹⁰ Henri Lefebvre, *The Production of Space* (1991) Blackwell Oxford.

¹¹ *Ibid* p373.

¹² *Ibid*.

¹³ Architect Rem Koolhaas writes that cities are becoming more characterless. See Koolhaas in Liven de Caeter, *The Capsular Civilization: On The City in the Age of Fear* (2004) NAI Publishers, New York, p11.

¹⁴ Jean Baudrillard (1993) 'Kool Killer, or The Insurrection of Signs' *Symbolic Exchange and Death* Sage, London, p77.

Authority dictates that graffiti has no place in the sanitised, commercial city. As Jeff Ferrell writes: ‘...graffiti threatens not only the economic value of private property, and the political control of property and space, but the sense of ordered style, the aesthetic of authority, that is intertwined with them. When those in authority assign epistemic and aesthetic traits to graffiti, they reveal in the process their own sense of beauty, meaning and power.’¹⁵ The political power of graffiti, Baudrillard writes, derives from its ability to ‘derail the



common system of designations.’¹⁶ As he explains, in the postmodern era the city has become a location of signs and signification rather than a place of industry and production. The city is a space dense with meanings and messages. For Baudrillard, graffiti disrupts a city which cannot make sense of it. Within the high capitalist city, graffiti is empty of meaning.¹⁷ He writes that graffiti is ‘...like a scream, an interjection, an anti-discourse, as the waste of all syntactic, poetic and political development, as the smallest radical element that cannot be caught by any organised discourse...with neither connotation nor denotation, [graffiti] escape[s] the principle of signification and, as *empty signifiers*, erupt[s] into the sphere of the *full signs* of the city, dissolving it on contact.’¹⁸

The criminalisation of Noam Jason Shoan, or ugly renderings on the blank canvas of Melbourne

I began considering these issues in August 2007 before the *Graffiti Prevention Act* came into force. I was sitting in my office at university after teaching tutorials. Someone had discarded

¹⁵ Ferrell n 4, p179.

¹⁶ Baudrillard n 14, p78.

¹⁷ Ibid p77.

¹⁸ Ibid p78-9.

a copy of the *Herald-Sun* (Melbourne's daily pictorial newspaper), leaving it on the desk for any academic wanting some light relief from the usual fare of Foucault, Derrida or the musty old judgments of the English Law Lords. Normally I would avoid this paper, but the headline 'Jail for Graffiti' boldly jumped off the front page. A 25 year old artist, Noam Jason Shoan had been sentenced to 3 months imprisonment for a 5 year 'career' of unauthorised painting in public spaces. Immediately I was struck by the very heavy penalty for what was merely an alteration of aesthetic. This led me to question: who chooses the aesthetic of public space? Are Victorians regularly jailed for altering the appearance of their local environment with a spray can?

A search of a case database revealed that there are very few reported Victorian cases that contain the word 'graffiti'. *DPP v Shoan*¹⁹ stands out as the only reported criminal case on 'graffiti'. Originally heard in the Magistrates' Court, the recorded case is an appeal to the Supreme Court. The case was first heard by Magistrate Sarah Dawes who imposed a penalty of 250 hours community service and ordered that a fine of \$30,000 be paid to transport providers whose infrastructure Shoan was found guilty of damaging. Magistrate Dawes did not convict Shoan on the grounds that he was remorseful, and that a conviction would unfairly burden his future career as a graphic artist.²⁰ However, although \$30,000 was a hefty fine, the prosecution appealed the case to the County Court arguing that the punishment was too lenient, as Shoan had not had a conviction recorded.²¹ In the County Court, Shoan was convicted and sentenced to three months imprisonment. The presiding judge, Wood J, stated that graffiti was 'affronting community standards'²² and should therefore be severely

¹⁹ *DPP v Shoan* [2007] VSCA 220.

²⁰ Brendan Roberts, 'Jail for Graffiti' *Herald-Sun* August 23, 2007.

²¹ This is likely due to pressure from groups such as PALS (People Against Lenient Sentencing) and RAGE (Residents Against Graffiti Everywhere).

²² Kate Jones, 'Graffiti Vandal "now Bird Watcher"' *Herald-Sun* August 4, 2007.

punished. Shoan had originally pleaded guilty to charges of 42 counts of criminal damage which allegedly cost nearly \$52,000 to ‘rectify’.²³

On the same day as the *Herald-Sun* reported ‘JAIL FOR GRAFFITI’, debate in Victorian Parliament turned to the topic of Noam Shoan. The member for Bass commented on the judgement:

I want to congratulate Judge Tim Wood on overturning a decision of a magistrate. He jailed a graffiti artist, or vandal, Noam Shoan, for graffitiing railway property... In congratulating Judge Tim Wood I must condemn the magistrate, Sarah Dawes, for the way in which she said a conviction may interfere with the graffiti vandal, Noam Shoan, working overseas as a graphic artist. Too bad! ... These people are not artists, they are vandals, and they should be treated as such. Well done to Judge Tim Wood! There should be more judges and magistrates like him who reflect the community’s will and desire to see these people treated in the way they should be treated. Stick them in jail: they cannot do the damage there.²⁴

After Wood J’s sentence was handed down in the County Court, the case went on appeal to the Full Supreme Court. Here, Buchanan, Nettle and Curtain JJ heard that Shoan had been denied procedural fairness as the defence had not been aware that imprisonment was under contemplation by the judge. Because of this breach, the appeal was allowed. Upon reconsidering Shoan’s sentence, Buchanan J, in the major judgment, discusses Shoan’s alterations to the aesthetic of the cityscape:

The damage inflicted by the applicant on publicly owned property and property in the public view was considerable. It could be said he *defaced and rendered ugly* a great deal of the scenery that people pass by. At the very least, *he unilaterally imposed his*

²³ *DPP v Shoan* [2007] VSCA 220 [3].

²⁴ *Victoria Parliamentary Debates*, Legislative Assembly, 23 August 2007, 2936 (Ken Smith).

notions of art and decoration on the rest of the world. He did so persistently over a period of some five years.²⁵

Justice Buchanan asserts that Shoan ‘unilaterally imposed his notions of art and decoration on the rest of the world.’ (Art and decoration are an individualistic judgment of taste.)²⁶

Buchanan’s comment could be applied to any ‘man-made’ alteration to space – any deviation from its natural appearance. Streets, houses, power-lines – all inflict the passer-by with a particular aesthetic. The placement of signage, one example being billboards, could be likened to the aesthetic of a mural. A billboard is often brightly coloured and intrusive; its imagery may be an ‘affront’ to community standards of aesthetic taste (often also offensive

on other levels). Yet the eradication of

billboards is rarely contemplated²⁷ and where

Melbourne City Council has considered restricting billboards to certain locations, these

proposals have been overcome by commercial forces. It appears that money can buy an

individual the right to alter the aesthetic of public

space – as long as the messages presented are

aimed at encouraging the frenzied sale of consumer products.²⁸



Figure 2 Art at Don't Ban the Can Protest
Melbourne, 21/10/2008

²⁵ *DPP v Shoan* [2007] VSCA 220 [28] per Buchanan J (my emphasis).

²⁶ Carolyn Korsmeyer (ed) *Aesthetics: The Big Questions* (1999) Blackwell, Oxford.

²⁷ São Paulo, the second-largest city in Brazil, has enforced a billboard ban since January 2007. See http://www.businessweek.com/innovate/content/jun2007/id20070618_505580.htm?chan=top+news_top+news+index_innovation+%2Bamp%3B+design. Auckland has also considered a billboard ban, which was slammed as an encroachment on free speech. See <http://www.freespeech.org.nz/section14/2006/12/13/auckland-wants-to-ban-billboards/>

²⁸ As Ron English, billboard liberator, sees himself as Robin Hood – taking commercial space from corporations and giving it back to the people. English asks: ‘Who gets to own the visual space that we all share?’ *Triple J TV* Australian Broadcasting Commission, broadcast 24/4/09



Figure 4 Hosier Lane, Melbourne

Street artists such as Banksy and Shepard Fairey have gained fame and commercial success in part through the sale of books which contain photos of their illegal works. Street art-styled pieces have also been sold for high prices to celebrities such as Angelina Jolie, the ‘trendiness’ of the art amplified by artist’s ‘street’ (or illegal) presence. Street art has been repackaged as a consumer good, and used to sell products – including Melbourne itself. Melbourne’s international reputation as a street art hub was increasingly being recognised on the internet, and via books such as *Stencil Graffiti Capital: Melbourne*, published by New York publisher Mark Batty.³¹ Tourist organisations, for example, Lonely Planet, declare that Melbourne’s top cultural attraction is its laneways, complete with brightly coloured murals.³² Marcus Westbury, art curator and event manager, hosted a TV show *Not Quite Art* which featured an episode exploring



Figure 5 Crooked Rib create art at the Melbourne International Arts Festival, Sunday 26th of October, 2008

³¹ Jake Smallman and Carl Nyman, *Stencil Graffiti Capital: Melbourne* (2005) Mark Batty Publisher, West New York.

³² Lonely Planet’s *Facebook Bluelist* lists exploring Melbourne’s laneways and street art as its number one culture fix or attraction <http://www.facebook.com/topic.php?uid=11071120908&topic=4488>. See also <http://www.lonelyplanet.tv/Clip.aspx?key=F3C2E8767A975C23>



Figure 6 'Vandalism or Tourism?' - Art created at 'Don't Ban the Can' Protest against the Graffiti Control Act, 21/10/08

was brought out by Melbourne City Council's Community Cultural Development Program as part of the Melbourne International Arts Festival to create a graffiti mural with Crooked Rib in a Melbourne laneway.³⁵

Street art was Melbourne's cache of cool, it was bringing tourists and their dollars; but some residents were unconvinced, leaving the Melbourne City council in a difficult position – having to please those on two sides of an ever-widening chasm, driven wider by a wedge of moral panic. Ben Fordham, on *A Current Affair*, even described graffiti as 'organised crime'.³⁶

The Melbourne City Council sought to preserve those aspects of street art that were recognised by the greater community as creative and aesthetically pleasing, while maintaining a strong stance against what was seen as less attractive forms such as tagging.

Melbourne street art.³³ The *Melbourne Design Guide*, which 'celebrates graffiti from a design perspective' was 'proudly' sponsored' by the state government.³⁴ Local government also contributed financially to 'Stencil Fest' – a yearly ten day festival which displays stencil art by people who also regularly engage in

'illegal' stencil art – on the streets and lanes of Melbourne's inner suburbs. English artist 'Aerosol Ali'

³³ View online at <http://www.abc.net.au/tv/notquiteart/>.

³⁴ Suzy Freeman-Greene, 'Urban Scrawl: Shades of Grey' *The Age* January 12, 2008.

³⁵ Crooked Rib are a group of 14 Muslim women graffiti artists. I saw their work in progress as part of the MIAF in 2008. See Arts Hub 'MIAF Special: Aerosol Arabic & Crooked Rib' Monday, October 20, 2008 at <http://www.artshub.com.au/au/news.asp?sId=174656&ref=hubber>.

³⁶ See <http://au.youtube.com/watch?v=A-S5mOtLYPk> accessed 21 November 2008.

Research into the topic by council led to new graffiti management strategies³⁷ that recognised a difference between ‘street art’ and ‘graffiti.’ Graffiti was usually linked with ‘tagging’ and street art with murals or alternatives such as stencils, stickers and paste-ups. Although often the same people engaged in more than one type of street art, an artificial distinction was constructed. While ‘tagging’ was ‘ugly’, ‘street art’ was creative - and increasing Melbourne’s profile on the tourist map.

Melbourne city council’s website states that:

The City of Melbourne recognises the *importance of street art* in contributing to a *vibrant urban culture*. Melbourne’s street art has become *internationally renowned* and has become an attraction for local and overseas visitors experiencing Melbourne’s creative ambience.

Council takes a strong stance against illegal graffiti and has a number of measures in place to ensure that the city stays clean.³⁸

The strategies employed by the council are an effort ‘to ensure that the city stays clean.’³⁹ That graffiti is equated with dirt or uncleanness is a common response to graffiti, which is often connected with disease, plague, disruption to order and danger.⁴⁰ However, ‘legal street art’ – although often indistinguishable to the passer by – contributes to the vibrancy of the urban centre.

In conjunction with the distinction between ‘tagging’ and other forms of street art, Melbourne city council sought new ways to control the location and content of street art. Although artists

³⁷ Alison Young, Mark Halsey and Helen Forster, *Draft Graffiti Management Strategy* (2005) City of Melbourne.

³⁸ City of Melbourne Website at <http://www.melbourne.vic.gov.au/info.cfm?top=145&pg=3274> accessed 26 April 2009.

³⁹ Ibid.

⁴⁰ Alison Young, ‘Written on the Skin of the City’ in *Judging the Image* (2004) Routledge, London.

within the street art scene, such as Ghost Patrol, insist that one of the essential qualities of street art is its ever changing, ephemeral nature, Melbourne City Council sought ways to align street art with more traditional forms of art, by accentuating its permanence. As Jeff Ferrell writes, ‘...spontaneity ... contributes to the threat which graffiti writing poses to those in authority.’⁴¹ One way that council sought to preserve street art while controlling its spontaneity was by amending the Activities Local Law to create a permit system.⁴² This system, the only one of its kind in the world, also overcame the issue of permission. The applicant for the street art permit was the owner of the property – not the artist.⁴³ The applicant had to provide not only the street address, but also a ‘sketch map’ and colour photos (where the exact position of the art has been marked out in chalk or masking tape) showing the location of the proposed art. The application was more likely to succeed where the applicant also attached a description and sketch of the proposed artwork. These measures hopefully ensure the public that only the ‘right’ kind of imagery ends up on Melbourne’s walls.

Although the permit system could be seen as stifling creativity, it was mostly looked upon favourably by street artists, who welcomed the recognition of the value of their work. The permit system was only on foot for a number of months before the introduction of the *Graffiti Prevention Act*, which saw the removal of all information on permits from the Melbourne City Council’s website – besides the list of permits previously granted.

Apart from the permit system, the transformation of street art from ephemerality to permanence is exemplified by the Union Lane street art project. This project involved a legal mural being created by around 50 artists in November and December 2007.⁴⁴ The project is

⁴¹ Jeff Ferrell n 4, p173.

⁴² *Activities Local Law Amendment (Street Art) Local Law* 2006.

⁴³ Melbourne City Council *Street Art Permit Fact Sheet* (no longer online).

⁴⁴ <http://www.melbourne.vic.gov.au/info.cfm?top=75&pa=3128&pa2=3552&pg=3859> .

part of the city of Melbourne's graffiti management plan.⁴⁵ Once the mural was completed, it was covered by an anti-graffiti coating at a cost of \$50,000 to ensure that the art in the laneway maintained its permanence – although it was indistinguishable to much illegal street art found in the city.

Another strategy to preserve the permanency of street art was the placing of a Perspex panel over Banksy's 'little diver' in Swanston Street. The stencil is rumoured to have been worth 'more than an average house.'⁴⁶ However, even with the coating, 'vandals' managed to destroy Banksy's art by pouring silver paint under the Perspex and scrawling 'Banksy woz ere' over the top.⁴⁷ This 'vandalism' of Little Diver may have been a backlash against attempts to change the meaning of Banksy's work from a rebellious and ephemeral addition to public space, into a static tourist attraction/commodity – a predictable and staged product within the city's aesthetic.



Figure 7 AC/DC Lane, Melbourne

Graffiti and the simulated city

Even when 'tamed', however, graffiti-styled imagery is at times considered a threat to authority, or at least as having the potential to 'tarnish' Melbourne's image. During the Florida Epcot Food and Wine festival in September 2008, Tourism Victoria and Walt Disney recreated the Victoria Market and a series of inner city laneways – complete with graffiti. The hyper-real simulation even had 'extras'. However, although the street art in Florida was only a copy of Melbourne graffiti, it advertised the city in a way that Victorian Premier John

⁴⁵ Ibid.

⁴⁶ Jo Roberts, 'Could Laneway Graffiti be Worth More than your Average House?' *The Age* January 16, 2008 <http://www.theage.com.au/articles/2008/01/15/1200159449775.html>.

⁴⁷ Janae Houghton, 'The Painter Painted: Melbourne Loses its Treasured Banksy' *The Age* December 14, 2008 at <http://www.theage.com.au/national/the-painter-painted-melbourne-loses-its-treasured-banksy-20081213-6xzy.html>.

Brumby found offensive. It was thus treated as if it were ‘real’ (criminal) graffiti. Premier Brumby commented: ‘I don’t think graffiti is what we want to be displaying overseas. We’ve put through very tough laws to discourage graffiti – it’s a blight on the city.’⁴⁸ As Baudrillard theorised, in *Simulacrum and Simulation*, the postmodern era dissolves the distinctions between the ‘real’ and the ‘simulated’ so that the real no longer exists.⁴⁹ In this example, the simulation of Melbourne in Florida contained the symbols of crime which were treated as ‘real’ graffiti and cleaned from the display.



Figure 8 Hosier Lane

In a similar vein, Marc Ecko’s ‘Getting Up: Contents Under Pressure’, a computer game about graffiti writing in which the player is rewarded for tagging, was banned in Australia.⁵⁰ This virtual tagging creates no actual damage in the ‘real’ world,

but like the graffiti within the simulated ‘Melbourne’ in Florida, its imagery is seen as threatening – the reproduction of graffiti within cyberspace becoming indistinguishable from the real and hence eradicated from public (gamer) view. The film *70K*⁵¹ was also refused classification by the Office of Film and Literature Classification, for similar reasons. This non-narrative film depicted graffiti artists scrawling their tags throughout Melbourne to a rock soundtrack. Again, the existence of graffiti within the hyperreality of the cinema is responded to by authority as being menacing, and removed from public view via the refusal of classification.

⁴⁸ Jewel Topsfield ‘Brumby Slams Tourism Victoria over Graffiti Promotion’ *The Age* October 1, 2008.

⁴⁹ Jean Baudrillard (1996) *Simulacra and Simulation* University of Michigan Press, Michigan

⁵⁰ Australian Government *Office of Film and Literature Classification* see online at <http://www.oflc.gov.au/>.

⁵¹ 70k stands for the crew 1970s kids – the crew of graffiti writers that artist Noam Shoan is a member of.

Commercialisation of the Image

The relationship between graffiti and capitalism is complex and involves an exchange of ideas and imagery, resulting in an interplay of colours and styles. Lachlan McDowell argues that ‘Much graffiti, particularly the tradition of tagging originating from New York ...provides a model for an individualised, highly mobile, geographically engaged subject that is not dissimilar from an ideal, late-capitalist consumer.’⁵² Iain Sinclair writes: ‘the [graffiti] tag is everything, as jealously defended as the Coke or Disney decals. Tags are the marginalia of corporate tribalism. Their offence is to parody the most visible aspect of high capitalist black magic.’⁵³ In this way, graffiti mimics commercial art, but contains different messages. Baudrillard writes: ‘...[G]raffiti runs contrary to all media and advertising signs, although they might create the illusion, on our city walls, that they are the same incantation.’⁵⁴ Graffiti’s parody of commercial art runs both ways. Street artists are influenced by designs and colours from commercial art and billboards, and also by the very act of ‘pushing’ their own tag or identity into the spotlight. Commercial advertisers also frequently use graffiti imagery in their campaigns. Elements of graffiti art are appropriated as they lend an element of ‘street cred’ to an advertising campaign. One example of the appropriation of graffiti into advertising was its use in the Hummer ‘Now Get Lost’ promotion. Part of the commercial was photographed in Hosier Lane, Melbourne. Art curator Andy Mac asked Hummer on behalf of the artists to pay for the use of the imagery once it was taken off the wall and super-imposed onto the car (see Figure 7). Hummer chose not to pay the artists, but use ‘generic graffiti’.⁵⁵

⁵² Lachlan McDowell (2005) ‘Graffitimedia: How graffiti functions as a model for new media futures’ paper presented at *Vital Signs: School of Creative Media National Conference* September 7-9.

⁵³ Iain Sinclair cited *ibid*.

⁵⁴ Baudrillard n 14, p79.

⁵⁵ Andy MacDonald speaking at a graffiti forum at the *Famous when Dead* Gallery, North Melbourne, 6 April 2008.



Figure 9 Hummer 'Now Get Lost' Advertising Campaign Online

Graffiti Prevention Act (Vic) 2007

The *Graffiti Prevention Bill* was passed in late 2007. Outrage following what was seen by some as lenient sentencing⁵⁶ and pressure from vocal minorities such as RAGE and Graffiti Hurts Australia⁵⁷ – as well as

conservative forces within the government - heralded the push toward making graffiti its own category of criminal damage. Now, not only can the artist be charged with damage to property under the *Summary Offences* or *Crimes Act*,⁵⁸ but be also charged with ‘marking graffiti’ under the new Act.⁵⁹

One aspect of the Act which is of particular concern is the reversal of the burden of proof. The burden of proof in criminal cases usually lies with the prosecution – which is a central pillar of our legal system and a right set out in the *Victorian Charter of Human Rights and Responsibilities*.⁶⁰ The *Graffiti Prevention Act* allows for search without a warrant upon ‘reasonable grounds’.⁶¹ Those found carrying implements such as textas or aerosol paint cans must prove that they need the implements for a purpose other than graffiti – put another way, they are guilty until proven innocent.⁶² There are many lawful uses for these so-called

⁵⁶ For example PALS, People Against Lenient Sentencing, see: <http://palsforjustice.com/news.php>, or Victoria *Parliamentary Debates* n 24.

⁵⁷ See <http://www.graffitihurts.com.au/>.

⁵⁸ *Summary Offences Act* (Vic) 1966 s 10; *Crimes Act* (Vic) 1958 (Vic) s 197.

⁵⁹ *Graffiti Prevention Act* (Vic) 2007 s 5

⁶⁰ *Victorian Charter of Human Rights and Responsibilities Act* (Vic) 2006.

⁶¹ s 12 and s 13. Underage persons may be searched under the Act, although with some restrictions.

⁶² This is an aspect of the legislation which has come under fire, even from local councils who have a ‘zero tolerance’ response to graffiti (eg Moreland city council – see minutes of council meeting 14 February 2007 accessed at <http://www.moreland.vic.gov.au/council/minutes/minutes2004-2008/cm140207.htm> on 19 February 2008.

‘graffiti implements’ and this is strong punishment for their possession. Being found in possession of a ‘graffiti implement’ has a penalty of 25 penalty units, or \$2,835.50. If a person is ‘present in or near - a) a location with a high incidence of graffiti or b) a location that appears to have been recently marked with graffiti’⁶³ this may be sufficient reason for search without a warrant. This is particularly disturbing where persons as young as 14 can be searched. Train stations or surrounds, and many Melbourne streets would fit the description of a ‘location with a high incidence of graffiti’.

Punishment for graffiti is severe – up to 2 years jail and a \$27,220.80 fine. Graffiti is defined as anything which involves marking a surface which cannot be easily wiped off with a dry cloth.⁶⁴ Where graffiti is on private property, ‘A council may...take any action necessary to remove or obliterate graffiti on private property if graffiti is visible from a public place.’⁶⁵

Legal developments since the passing of the *Graffiti Prevention Act (Vic) 2007*

Since the *Graffiti Prevention Act* was passed in Victoria, there have been a number of legal developments. The permit

system, which attempted to tame the spontaneity of street art, has now been modified by the *Activities (Street Art) Local Law 2009*. One purpose of the amendment to the *Activities Local Law* is to: ‘ensure consistency with the *Graffiti Prevention Act 2008*’. The amendment does



Figure 10 Don't Ban the Can - Art from the Protest

⁶³ *Graffiti Prevention Act (Vic) 2007* s 13.

⁶⁴ s 2.

⁶⁵ s 18.

allow street art which is executed ‘in accordance with a permit.’ However, only ‘murals’ can be street art. Tagging and ‘stand alone stencils’ cannot.⁶⁶

New South Wales has also followed Victoria, passing its own legislation specifically criminalising graffiti. The *Graffiti Control Act* (NSW) 2008 is similar in content to the Victorian legislation. Cheyene Black, an 18 year old writer, was sentenced to three months imprisonment under the Act for scrawling her nick name on a cafe wall with a marker.⁶⁷ The conviction and prison term were, however, overturned on appeal.⁶⁸ The Act itself stipulates at s 4(2) that ‘A court ... must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 5... on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.’⁶⁹ Obviously, this provision did not influence the magistrate in sentencing Black – this was her first offence – but still resulted in conviction and imprisonment. Black was guilty of more than just markings on a wall – she was an ‘aesthetic saboteur.’

⁶⁶ However, Banksy’s ‘Little Diver’ is a stand-alone mural, prompting the question of whether it would be considered street art or graffiti under the new law, had it not been painted over.

⁶⁷ Harriet Alexander (2009) ‘Graffiti Girl Wins Appeal Against Jail Term’ *Sydney Morning Herald* March 4, 2009. Accessed online at <http://www.smh.com.au/national/graffiti-girl-wins-appeal-against-jail-20090304-8nxd.html> on April 26 2009.

⁶⁸ Ibid.

⁶⁹ *Graffiti Control Act* (NSW) 2009 s 4(2).



Figure 11 School children and tourists observe graffiti in Centre Place, Melbourne

Conclusion

Graffiti writing breaks the hegemonic hold of corporate/governmental style over the urban environment and the situations of daily life. As a form of aesthetic sabotage, it interrupts the pleasant, efficient uniformity of 'planned' urban space and predictable urban living.⁷⁰

In this paper I have discussed legal responses to graffiti in the context of its affects/effects on the aesthetics of the city. Graffiti is dangerous because it symbolises lack of order, and blurs boundaries rigidly enacted by property law. As Halsey and Young write '...graffiti's authors write in ways which rupture orthodox senses of urbanity – of order, cleanliness, purity, integrity and so forth.'⁷¹ Graffiti, or its less menacing meme, street art, confronts ingrained ideas about public space, and who has rights to determine its use and meaning. As Jeff Ferrell asks, why is a wall with graffiti considered 'uglier' than one without it? And who has a right to make this choice? Public art must not interrupt the 'aesthetics of authority' or it is rendered illegal vandalism by the state.

⁷⁰ Jeff Ferrell n 4, p176

⁷¹ Halsey and Young n 6, p296.

In the postmodern era, capitalism is marked less by the ownership of the means of production but rather centres on the control of subjectivity through signs, media and advertising, for example.⁷² Within post-industrial capitalism, or the age of *integrated world capitalism*,⁷³ all aspects of daily life are subsumed. However, power is always incomplete. There are always nodes of resistance. For Baudrillard, graffiti can provide at least a disruption to the codes of the capitalist city, and the potential to dissolve its structures at the level of meanings. In the words of Baudrillard:

We must attack...by means of difference, dismantling the network of codes, attacking coded differences by means of an uncodeable absolute difference, over which the system will stumble and disintegrate. There is no need for organised masses, nor for a political consciousness to do this – a thousand youths armed with marker pens and cans of spray-paint are enough to scramble the signals of urbania and dismantle the order of signs.⁷⁴



⁷² Guattari n 7, p137.

⁷³ Ibid.

⁷⁴ Baudrillard n 14, p80-81.



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