



Griffith Journal
of Law & Human Dignity

GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

Editor-in-Chief
Felicia Lal

*Special Issue Deputy
Editor*
Molly Jackson

Executive Editors
Ada Sculthorp
Eelesa Panton
Michelle Gunawan

Editors

Alex Vanenn
Alexandria Neumann
Ashlee Robin
Genevieve White
Isa Martin
Isabelle Quinn
Issac Avery
Jake Carew

Josephine Vernon
Lachlan Robb
Michelle Gunawan
Renee Curtis
Tara Mulroy
Thomas Browning
Thomas Finn

Consulting Executive Editor
Dr Allan Ardill

Special Art Issue 2015

Published in August 2015, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*
ISSN: 2203-3114

CONTENTS

FELICIA LAL	<i>THE ART OF HUMAN DIGNITY AND THE HUMAN DIGNITY OF ART: EDITORIAL</i>	1
ANTHONY LISTER	<i>PUBLIC SPACES: PUBLIC PEOPLE</i>	5
L-FRESH THE LION	<i>WHY BLEND IN WHEN YOU WERE BORN TO STAND OUT: A STORY OF RAP, RELIGION, AND RIGHTS</i>	11
BRUCE BAER ARNOLD & WENDY BONYTHON	<i>SEEING THROUGH THE IMAGE: ART, DIGNITY, AND RESPONSIBILITY</i>	15
MATTHEW CHRISTIAN	<i>NOTES FROM UNDERGROUND: ARTISTIC RISK AND POTENTIAL IN THE NEW YORK SUBWAY</i>	31
JARROD WHEATLEY	<i>THE WRITING IS ON THE WALL: AN ASSET-BASED APPROACH TO STREET ART</i>	41
JAY SANDERSON & LEANNE WISEMAN	<i>ARE MUSICIANS FULL OF IT? THE METAPHORICAL AND FIGURATIVE POWER OF SUBCONSCIOUS COPYING IN COPYRIGHT INFRINGEMENT CASES</i>	53
CRISP	<i>ONE PERSON'S VANDALISM IS ANOTHER'S MASTERPIECE</i>	67
ADAM JARDINE	<i>WOLVES AMONG US: SOME BRIEF REFLECTIONS ON THE "BONA FIDES" OF GENDERED VIOLENCE IN COMPUTER GAME ART</i>	73
KAREN CRAWLEY	<i>BEYOND THE WAR ON GRAFFITI: THE RIGHT TO VISUAL EXPRESSION IN URBAN SPACES</i>	85

BEYOND THE WAR ON GRAFFITI: THE RIGHT TO VISUAL EXPRESSION IN URBAN SPACES

KAREN CRAWLEY *

This article draws on the work of urban scholars, activists, graffiti writers and street artists to explore alternative ways of thinking about visual expression in urban space, with a particular focus on Brisbane, Australia. The article first explores the limitations of criminalisation, arguing that a zero-tolerance approach is counterproductive. Next, the author explores the costly policy of rapid removal, arguing that despite the law's apparent commitment to upholding property rights, the authorities are ultimately more concerned with maintaining control over the visual appearance of public space. Part four argues that graffiti writers and street artists articulate a different relationship to the city based on being a citizen rather than a property owner. The article concludes by suggesting that harm minimisation is better policy than zero tolerance, and that we need to remain open to the possibilities of illegal visual expression in urban spaces.

*Dr Karen Crawley is a lecturer at the Griffith Law School.

CONTENTS

I	INTRODUCTION	86
II	THE LIMITS OF REPRESSION	88
III	REMOVAL AND AUTHORISATION	94
IV	FROM OWNERSHIP TO CITIZENSHIP	98
V	CONCLUSION	101

I INTRODUCTION

For over 20 years, urban authorities in Australia have waged a long and futile war on graffiti, with no ceasefire in sight. Declaring it a threat to property values, a scourge on our environment, a disease, an ‘ugly stain,’¹ and ‘one of the most visible and ugliest forms of crime’,² state governments and local councils have constantly sought new solutions to the “graffiti problem”— rapid removal, harsher penalties, reduced access to spray paint, crime prevention through environmental design such as surveillance, lighting, textured and graffiti-proof surfaces, and more powers for police. Brisbane currently has a full-time team of police and council workers — the *Taskforce Against Graffiti* (“TAG”), established in 2008 by then-Lord Mayor Campbell Newman as an election commitment — tracking graffiti activity. Reforms to the *Criminal Code* (Qld) in 2013 raised the maximum penalty for any kind of graffiti from five to seven years imprisonment, the toughest regime in Australia (equivalent to the maximum penalty for assault occasioning bodily harm).³ While this amendment may be more symbolic than

¹ Lord Mayor Graham Quirk, cited in Minister for Police and Community Safety The Honourable Jack Dempsey, ‘The Writing’s on the Wall for Graffiti Offenders’ (Media Statement, 28 May 2012) <<http://statements.qld.gov.au/Statement/Id/79360>>.

² Attorney-General and Minister for Justice The Honourable Jarrod Bleijie, ‘Vandals Clean Up Their Act’ (Media Statement, 3 August 2014) <<http://statements.qld.gov.au/Statement/2014/8/3/vandals-clean-up-their-act>>.

³ *Criminal Law and Other Legislation Amendment Act 2013* (Qld). The maximum penalty for the same offence in New South Wales is five years, while in Victoria and Western Australia vandalism carries a maximum jail sentence of two years. In South Australia offenders face up to six months’ jail-time, while in Tasmania perpetrators may face a fine or community service order. See *Graffiti Prevention Act 2007* (Vic); *Summary Offences Act 1966* (Vic) ss 9 and 10; *Graffiti Control Act 2008* (NSW); *Graffiti Control Amendment Act 2014* (NSW); *Graffiti Control Act 2001* (SA); *Police Offences Act 1935* (Tas); *Criminal Code* (WA) (as amended by the *Criminal Code Amendment (Graffiti) Act 2009* (WA)).

real, given that the maximum penalty has never been sought in practice — and indeed, the majority of graffiti convictions result in community service orders or fines rather than imprisonment⁴ — its message is significant: graffiti should be regarded as a serious crime.

Considering that marking graffiti is merely the act of painting a wall, the scale of public resources devoted to eradicating it, and the vitriolic fervor with which its practitioners are denounced by politicians and pursued by the criminal law, is nothing short of remarkable. The graffiti writer is depicted as a threat to the urban fabric, a member of an incorrigible criminal underclass against which no legal action is too harsh. Policymakers and the media almost uniformly refer to writers as “vandals” who have forfeited their place in the community by refusing to obey the law and respect other people’s property or ‘community assets,’⁵ thus harming the financial wellbeing of ‘Australian families’⁶ forced to ‘clean up’⁷ their mess.

This rhetoric has engineered a crisis completely unrelated to the dimensions of the problem. After all, the worst thing you can really say of graffiti is that it ‘can impact the amenity and beauty of our environment’⁸ — but then so can smog, traffic, high-rise apartment buildings, and advertising, and none of these is typically subject to the criminal law. Contrary to the premise of most public discourse on graffiti, I will suggest that we do not have a “graffiti problem”. All things considered, there is a limit to how much havoc you can wreak through the application of paint. To borrow a turn of phrase from Desmond Manderson, we have a “graffiti problem” problem.⁹ The crisis lies in how we frame and talk about graffiti; it is a problem, therefore, of language and perception.

This article draws on the work of urban scholars, activists, graffiti writers and street artists to explore alternative ways of thinking about visual expression in urban space,

⁴ From August 2013 to April 2014, 47 individuals were sentenced to a term of imprisonment for graffiti offences. The majority of offenders sentenced — 502 in the same period — were sentenced to community service and/or monetary orders. Question on Notice to Attorney-General, No. 493, 5 June 2014, Queensland Parliament.

⁵ Katherine Feeney, ‘Brisbane Gets Graffiti Busting Boost’, *Brisbane Times* (online), 5 November 2012 <<http://www.brisbanetimes.com.au/queensland/brisbane-gets-graffiti-busting-boost-20121105-28tr2.html>>.

⁶ Attorney-General and Minister for Justice, above n 2.

⁷ Ibid.

⁸ Department of Transport and Main Roads, *Queensland Government Graffiti Management Policy 2008–2011* (2009) <[http://www.tmr.qld.gov.au/~media/aboutus/rti/Pdf_graffiti_management_policy.pdf](http://www.tmr.qld.gov.au/~/media/aboutus/rti/Pdf_graffiti_management_policy.pdf)>.

⁹ Desmond Manderson, ‘Groundhog Day: Why the Asylum Seeker Problem is Like the Drug Problem’ (2013) 41 *Griffith Review* 84.

with a particular focus on Brisbane, in Queensland, Australia. Part two explores the limitations of criminalisation, arguing that a zero-tolerance approach is counterproductive, and that we can and should pursue policies that distinguish between different kinds of graffiti and respond to community preferences. Part three explores the costly policy of rapid removal, arguing that despite the law's apparent commitment to upholding property rights, the authorities are ultimately more concerned with maintaining control over the visual appearance of public space. Part four argues that graffiti writers and street artists articulate a different relationship to the city based on being a citizen rather than a property owner, and exercise a right to visual expression that arises not through possession, but movement, proximity, and use. The article concludes by suggesting that we should aim for harm minimisation rather than zero-tolerance, but that ultimately we must also learn to live with illegal visual expression — and in fact, that it has a lot to teach us.

II THE LIMITS OF REPRESSION

When people think of graffiti, they usually think of tagging, an aesthetic practice which originated in American cities in the 1970s, in which a name is 'adopted by a writer and repeated in a variety of forms including the large murals known as pieces, the bubble style letters of a throw-up, and the tag itself, completed with a marker or aerosol'.¹⁰ This kind of graffiti has long been rhetorically associated with dirt and crime, threatening to the uninitiated because of its cryptic illegibility.¹¹ Since the late 1990s a newer genre of illicit visual expression called "street art" has emerged, employing a wider variety of techniques, including stencils, sculpture, stickers, paste-ups, textiles, and transformations of existing spaces or surfaces, such as signs or billboards.¹² Like graffiti, street art is usually unauthorised — it takes place on private property without the owner's permission. Unlike graffiti, which has largely been regarded negatively and with suspicion by those outside of its subculture, street art often appeals to a wider audience,

¹⁰ Alison Young, 'Cities in the City: Street Art, Enchantment, and the Urban Commons' (2014) 26(2) *Law and Literature* 145, 147.

¹¹ Susan Stewart, *Crimes of Writing: Problems in the Containment of Representation* (Oxford University Press, 1991) 219; Alison Young, *Judging the Image: Art, Value, Law* (Routledge, 2005) 73.

¹² See generally Nicholas Ganz, *Graffiti World: Street Art from Five Continents* (Thames & Hudson, 2004); Tristan Manco, *Stencil Graffiti* (Thames and Hudson, 2002); Tristan Manco, *Street Logos* (Thames and Hudson, 2004); Jake Smallman and Carl Nyman, *Stencil Graffiti Capital: Melbourne* (Tower Books, 2005); Christine Dew, *Uncommissioned Art: The A to Z of Australian Graffiti* (Melbourne University Publishing, 2007); Alison Young, Ghostpatrol, Miso & Timba, *Street/Studio: The Place of Street Art in Melbourne* (Thames & Hudson, 2010).

and is usually viewed more positively even when it involves the same illicit activities.¹³ The international popularity of street art makes it ripe for co-optation by postindustrial cities seeking to find a way to value their creative economies. Cities such as Melbourne have even used illegal street art to promote tourism.¹⁴

Despite these differences in medium, technique, and audience, it is important not to overstate the distinction between graffiti and street art. Many street artists begin as taggers or hone their skills doing illegal work, while others draw inspiration from other forms of visual art or wider protest movements. Tagging and “hip-hop” graffiti is not simply proto-street art, but has its own styles and levels of expertise.¹⁵ Most importantly, graffiti writers and street artists each do what they do under the threat of criminal sanction. The criminal law is not interested in the writer’s style, technique or intention, nor in community preferences about which kinds of graffiti are more desirable than others. It does not distinguish between tags that are indecipherable to the general public, etched graffiti on the window of a train, and murals and pieces that are the work of skilled artists. All that matters is whether the marking is authorised by a commission or consent of the property owner.

Each Australian jurisdiction deals with graffiti slightly differently, but all view it as a crime against property. In the *Criminal Code* (Qld) (‘the *Code*’) graffiti is a “special case” of the offence of wilful damage, which applies where a person willfully and unlawfully destroys or damages property.¹⁶ It is clear, however, that graffiti is a rather unusual case of property damage. Unlike, for instance, the act of destroying a sea wall and causing flooding (another of the “special cases” in the *Code*), graffiti does not interfere with the functionality of a surface — a wall, or tunnel, or fence, or train still functions as a wall, or tunnel, or fence, or train regardless of whether or not it is painted. Unlike arson or breakage, graffiti is only “damage” if it is *unauthorised*. It is thus inherently ambiguous to call it property damage.

The damage involved in graffiti is symbolic. Its criminalisation is premised on the claim that graffiti degrades the urban environment by introducing an intolerable level of

¹³ Tristan Manco, *Street Logos* (Thames and Hudson, 2004) 8.

¹⁴ See Alison Young, ‘Negotiated Consent or Zero Tolerance? Responding to Graffiti and Street Art in Melbourne’ (2010) 14(1–2) *City* 99, 110.

¹⁵ See further Alison Young, ‘Criminal Images: The Affective Judgment of Graffiti and Street Art’ (2012) 8(3) *Crime, Media, Culture* 297, 298.

¹⁶ *Criminal Code 1899* (Qld) s 469; *The Crimes Act 1958* (Vic) s 197(1); *Crimes Act 1900* (NSW) s 195.

aesthetic disorder that unsettles the community. Legislators and media commentators frequently draw upon the so-called “broken windows”¹⁷ theory, which states that if a window in a building is broken and left unrepaired, other windows will soon be broken; i.e. by breaking the codes of order we invite further disorder to occur. The *Queensland Graffiti Management Policy 2008—2011* reflects this reasoning, citing research to the effect that ‘residents are more fearful of crime in areas with graffiti’, that ‘graffiti may encourage offenders to commit further crimes in that area’, that ‘residents may feel less safe in their own homes and graffiti may be perceived as a sign of “social decline”’.¹⁸

Many criminologists have disputed these assertions, finding no evidence that graffiti writers are likely to commit other crimes, or that the presence of graffiti has any discernible impact upon the crime rate in a particular area.¹⁹ The problem is one of perception; representations of graffiti as a sign of disorder do not necessarily reflect reality. The CEO of Crime Stoppers drew explicitly on perceived emotions when he suggested that ‘people often feel unsafe walking through areas where graffiti is prevalent’²⁰ because ‘it could have a grungy, dark feeling around the graffiti’.²¹ As urban geographer Kurt Iveson explains, ‘a harmful feedback loop has been created. Because graffiti is constantly represented as indicative of the possibility of more serious crime, the appearance of graffiti is perceived by many observers as a signal of disorder which makes a place feel unsafe’.²²

In 2013, the Queensland state government removed the distinction in sentencing between basic graffiti and obscene or indecent graffiti, claiming that there was no justification for the distinction, since the essence of the crime is ‘the damage caused to

¹⁷ Brisbane City Council’s website explicitly references the ‘broken windows theory’: See Brisbane City Council, *Controlling Graffiti*, 4 September 2014 <<http://www.brisbane.qld.gov.au/laws-permits/complaints-fines/graffiti/controlling-graffiti>>.

¹⁸ Department of Transport and Main Roads, above n 8.

¹⁹ See Cameron McAuliffe and Kurt Iveson, ‘Art and Crime (and Other Things Besides...): Conceptualising Graffiti in the City’ (2011) 5(3) *Geography Compass* 128, 131.

²⁰ Giulio Saggin, ‘Graffiti Clean-up Costs in Brisbane’s West End Highlighted with Pop-up Event’ *ABC News* (online), 7 May 2014 <<http://www.abc.net.au/news/2014-05-06/price-tag-pop-up-event-shows-graffiti-clean-up-costs/5433140>>.

²¹ Gabrielle Lyons, ‘Fight Against Graffiti Hits the Street’ *QUT News* (online), 8 May 2014 <<http://www.qutnews.com/2014/05/08/fight-against-graffiti-hits-the-street/#.VV2nyOchxz0>>.

²² Kurt Iveson, ‘War is Over (If You Want It): Rethinking the Graffiti Problem’ (2009) 46(4) *Australian Planner* 24, 27.

property’, which is the same regardless of the representational nature of the graffiti.²³ This amendment effectively denies the representational nature of graffiti, along with the idea that certain representations are more problematic than others. This is an unfortunate erasure. Obscene graffiti is a crime in which the damage is not to individual property rights, but to collective cultural values of decency and respect (rather like the crime of damaging or destroying cemeteries, gravestones, war memorials and places of religious worship, another “special case” under the *Code*). To treat an obscene — or hateful — act of graffiti the same as a well-intentioned artistic endeavor elevates the inviolability of property boundaries above all other cultural values and obscures meaningful distinctions between the different kinds of harm the state is meant to protect us from.

As the war on graffiti has intensified over the past decade, each Australian state has enacted a range of specific offences prohibiting the activities associated with graffiti and street art, such as carrying graffiti implements, selling aerosol paint to young people, and recording and disseminating images of graffiti.²⁴ The ways in which these laws are impacting young people is not yet fully understood, but youth justice advocates have raised concerns about increased police harassment, the too-wide definition of a graffiti implement (which has seen young people stopped for having highlighter pens), and the supervision of youths carrying out mandatory cleaning orders.²⁵ These hard-nosed graffiti laws form part of a package of legislative initiatives, including the controversial “move on” provisions that allow police greater control over the behaviour and movements of young people in public spaces.

The Queensland government justified these initiatives on the basis that ‘community concern about youth offending has been escalating’, even as studies show that youth

²³ Katherine Feeney, ‘New Laws to Jail Graffiti Vandals for Seven Years’, *Brisbane Times* (online), 10 April 2013 <<http://www.brisbanetimes.com.au/queensland/new-laws-to-jail-graffiti-vandals-for-seven-years-20130409-2hje7.html>>.

²⁴ The *Summary Offences Act 2005* (Qld) contains an offence of possessing a graffiti instrument that is reasonably suspected of having been used for graffiti, or is being used. See also *Graffiti Prevention Act 2007* (Vic); *Summary Offences Act 1966* (Vic) ss 9 and 10; *Graffiti Control Act 2008* (NSW); *Graffiti Control Amendment Act 2014* (NSW); *Graffiti Control Act 2001* (SA); *Police Offences Act 1935* (Tas); *Criminal Code* (WA) (as amended by the *Criminal Code Amendment (Graffiti) Act 2009* (WA)).

²⁵ See eg, Alex Dickinson, ‘Graffiti Artists Take Aim at the Lord Mayor Campbell Newman’ *Courier Mail* (online), 5 March 2010 <<http://www.couriermail.com.au/news/graffiti-artists-take-aim-at-the-lord-mayor-campbell-newman/story-e6freon6-1225837511082>>; Interview with Peter Breen, Director of Jugglers Space Inc. (Brisbane, 27 March 2015); Interview with Janet Wight, Director of Youth Advocacy Centre Inc. (Brisbane, 9 April 2015).

offending has actually been *decreasing*.²⁶ Our cultural demonisation of youths as signifiers of disorder goes hand-in-hand with the shrinkage of public space available to them. Most legitimate activities cost money, and it is a lack of money that accounts for many young people's entanglements with criminal law.²⁷

Based on the notion that graffiti writers are anti-social, law and policy makers have largely been absolved of responsibility to engage with them. Instead, they have taken the easy route of vilification and condemnation, arguing that graffiti writers are simply vandals who cannot be reasoned with. Yet researchers who have engaged with members of the graffiti community have revealed a diverse range of motivations for what they do. Some seek recognition from other writers, some are bored or wish to be rebellious, and others wish to contribute to the cityscape by creating an interesting experience for the spectator.²⁸

Mark Halsey and Alison Young's interviews with graffiti writers in Melbourne and Adelaide found that writers rarely cited the thrill of breaking the law as their primary motivation, and did not conceive their activities as destructive, rebellious or spiteful. The pleasure they took in writing graffiti revolved around 'themes of respect, expression, design, and quality of the image'.²⁹ Writers frequently made considered aesthetic choices about placement and design that reflect the norms of graffiti culture, preferring the walls of commercial premises or public assets to residential homes, churches, cemeteries, or trees, and leaving the work of more experienced artists, elaborate pieces and commissioned works untouched.³⁰

²⁶ Jodie O'Leary, 'Out of Step and Out of Touch: Queensland's 2014 Youth Justice Amendments' (2014) 26(2) *Current Issues in Criminal Justice* 159; Terry Hutchinson and Kelly Richards, 'Scared Straight: Boot Camps for Queensland' (2013) 38(4) *Alternative Law Journal* 229.

²⁷ Graffiti offences represent a relatively small proportion of young people's entanglements with the criminal justice system, lagging significantly behind shoplifting, stealing, fare evasion, and drug possession. Queensland Youth Advocacy Centre, *Annual Report (2013-2014)* <<http://www.yac.net.au/wp-content/uploads/2014/10/YAC-2014-Annual-Report-single-page-spread.pdf>>.

²⁸ Young, above n 15, 309.

²⁹ Mark Halsey and Alison Young, "'Our Desires are Ungovernable": Writing Graffiti in Urban Space' (2006) 10 *Theoretical Criminology* 275, 292.

³⁰ Mark Halsey and Alison Young, 'The Meanings of Graffiti and Municipal Administration' (2002) 35(2) *Australian and New Zealand Journal of Criminology* 165; Halsey and Young, above n 28, 297; Kurt Iveson, 'Policing the City' in Mark Davidson and Deborah Martin (eds), *Urban Politics: Critical Approaches* (Sage Publishing, 2015) 94.

The current policy of criminalisation drives norms underground, meaning that young people do not become sufficiently exposed to graffiti culture and are not educated by more experienced writers.³¹ Making it riskier to write graffiti only encourages the growth of forms that can be rapidly executed (etching, tags, stickers), rather than more considered pieces, which take longer, and are commonly regarded as more desirable by members of the wider community.³²

Like most councils, Brisbane City Council engages in some “welfarist”³³ approaches to the “graffiti problem” that seek to recognise and redirect the energies of writers and street artists away from illegal activity towards legitimate artistic ventures such as public murals. These approaches could be taken much further, but will not eliminate illegal graffiti. The underlying assumption of harsh enforcement measures, like with any zero-tolerance approach, is that if the penalty is severe enough, people will change their behaviours and the problem will be stamped out. But graffiti writers will always desire sociality, recognition and pleasure, and although the form of their work may change in response to the accessibility of surfaces and the availability of materials, it has shown it will persist. The law is achieving nothing by being blind to the features of the culture it is trying to influence.

Official responses to graffiti should not be based on blanket condemnation, but take into account the intentions of its practitioners, the specificities of local context and the nuances of people’s attitudes towards graffiti in their area. An example of such an approach was the proposal developed by two consultants for Melbourne City Council to designate certain inner-city laneways famous for their graffiti as “high tolerance” zones. Meanwhile, other high-traffic commercial areas and areas where residents were more concerned about graffiti were to become “low tolerance” zones, subject to the policy of rapid removal.³⁴ Despite extensive community consultation and support among both graffiti artists and the wider public, the proposal was scuppered at the last minute, as the Victorian state government and police preferred a hardline approach. Such

³¹ Halsey and Young, above n 30, 173.

³² Iveson, above n 22, 25.

³³ Halsey and Young, above n 30, 175–177.

³⁴ See Young, above n 14.

alternative approaches bring with them their own challenges of propriety and negotiation, but these are preferable to a counterproductive policy of criminalisation.

III REMOVAL AND AUTHORISATION

Politicians frequently quote the financial costs of graffiti to the tax-paying public. Brisbane City Council's 2014 Cost of Crime campaign attached large visible price tags to picnic tables, bus stops and outdoor seats, with the aim of 'building awareness about the cost of vandalism'³⁵ and thereby exhorting members of the public to do in graffiti writers. From 2012–2015, members of the public were encouraged to message the location of graffiti (along with photos) to a special hotline run by CrimeStoppers.³⁶ Council would send a graffiti removal team to buff the spot and restore the supposedly pristine surface of the city, usually within 48 hours.

As opposed to other types of vandalism that physically damage or render public or private property unusable, graffiti writing itself does incur a cost either to the owner or public. The costs lie in the *removal* of graffiti. The policy of rapid removal is designed to discourage graffiti by making it more ephemeral, in the hope that this will deny graffiti writers the rewards of publicity and exposure that is said to fuel their desires, and 'increase the perception of community safety'.³⁷ Apart from the fact that this policy sets up perverse incentives for graffiti writers (why put in effort when all work will be treated the same?), it assumes that graffiti is something that *must be removed*, and ignores any potential for aesthetic value. It also consumes a vast amount of public resources. Between Council's TAG initiative, and the state government's supplementary funding, more than \$13.5 million was allocated to fight graffiti in Brisbane from 2012–2016.³⁸ The policy effectively commits public funds to a bottomless merry-go-round of cleaning and re-cleaning, blind to the possibility that community interests are not best served by committing such vast resources to rapid removal.³⁹

³⁵ Brisbane City Council, *Cost of Crime Campaign Puts a Price on Vandalism*, <<http://www.grahamquirk.com.au/cost-of-crime-campaign-puts-a-price-on-vandalism/>>.

³⁶ Queensland Government Department of Infrastructure, Local Government and Planning, *Previous Funding Programs* <<http://www.dilgp.qld.gov.au/local-government/grants/previous-funding-programs.html>>. This service was terminated by the Labor Government on 30 June 2015.

³⁷ Queensland Police, *Graffiti Removal Powers: Summary Offences Act 2005: A Guide to Legislation and Procedures 3* <<https://www.police.qld.gov.au/programs/youth/Documents/GraffitiRemovalPowersGuide.pdf>>.

³⁸ Feeney, above n 5.

³⁹ Iveson, above n 22, 31.

Such a stance on eradication may appear to be an extension of the legal rights enjoyed by public and private property owners. Yet the way in which the objective of graffiti removal is pursued is not always consistent with the law's commitment to protecting private property. In many Australian jurisdictions, public authorities grant themselves permission to remove graffiti from private property if the owners do not take action themselves. For example, the *Summary Offences (Graffiti Removal Powers) Amendment Act 2008* (Qld) gives state and local governments the power to designate graffiti removal officers who can remove graffiti which is in, or can readily be seen from, a public place. They can do so without the prior consent of property owners if the officer does not need to enter the property to access the graffiti (for instance, if it is on a wall or fence, or can be accessed by leaning or reaching over a wall or fence). In these situations, the property owners must advise council that the work has been commissioned or is authorised — otherwise, it is liable to be quickly removed.

In a high-profile incident in 2010, Brisbane council workers buffed a piece by contemporary aerosol artist Anthony Lister on the side of a private building accessible from a vacant lot in Fortitude Valley, less than 48 hours after he had completed it.⁴⁰ Then-City Councilman David Hinchliffe, a longtime supporter of the arts who had consulted with Lister on the project, accused the removal team of heavy-handed tactics. In response, then-Lord Mayor Campbell Newman stated: 'The Graffiti Reduction Unit is very supportive of artwork but received no notification from the building owner, the local councillor or artist that work was being carried out for a mural.' He made it clear that the onus was on the building owner to notify Council, '[i]f Commissioner Hinchliffe had come to council with the property owner and said ... I am commissioning a piece of urban art ... and I give my full permission for it to happen ... I would have no problem with that.'⁴¹ Newman said: 'There is a definite line between graffiti and art but when it is on private property and it hasn't been approved it is graffiti'.⁴² Brisbane's Lord Mayor echoed this

⁴⁰ Alex Dickinson, 'Graffiti Artwork by Anthony Lister Commissioned by Property Owner Rubbed out by Brisbane City Council', *Courier Mail* (online), 14 September 2010 <<http://www.couriermail.com.au/news/queensland/graffiti-artwork-by-anthony-lister-rubbed-out-by-brisbane-city-council/story-e6freoof-1225921335596>>.

⁴¹ Sarah Horsley, Interview with Campbell Newman, Lord Mayor of Brisbane (Television Interview, 14 September 2010) <<https://www.youtube.com/watch?v=EtB8YNjGr7o>>.

⁴² 'Graffiti Plus Paperwork Equals Art in Brisbane' *ABC News* (online), 15 September 2010 <<http://www.abc.net.au/news/stories/2010/09/15/3012035.htm?site=brisbane>>.

terminology when recently unveiling new art on the pillars under Coronation Drive: ‘This is authorised art, this is the sort of stuff we love brightening up our infrastructure’.⁴³

Although Newman indicates a difference between (good) street art and (bad) graffiti, the distinction he makes is based on authorisation rather than artistic merit or value. Moreover, since the property owner in this case *had* given permission for the work, the approval Newman sees as lacking could only have been granted by the council itself. His comment reveals that what is at stake for the council is not the protection of its citizen’s private property rights — including the citizen’s right to visual expression on the surface of property — but the maintenance of control over public space and the norms of image production in the cityscape.

Prior authorisation is meant to be determinative, but it can be altered by an arbitrary exercise of public power. In 2013, Lister and fellow artist Sofles collaborated with council on the Milton Road mural (figure 1). Lister buffed part of the mural, and added the figure of a member of a “buff” crew, clad in high visibility gear, as though the mural was being painted over (figure 2). Within 48 hours, Council workers had buffed over this part of his work (figure 3).



Figure 1: Mural by Sofles and Lister on Milton Road, Brisbane Australia (Photo taken by Karen Crawley, 2015).

⁴³ Eveline Fielding, ‘Brisbane Cirque du Soleil-Inspired Street Art Project Unveiled by Lord Mayor Graham’ *ABC News* (online), 6 May 2015 <<http://www.abc.net.au/news/2015-05-06/brisbane-cirque-du-soleil-inspired-street-art-project-unveiled/6449274>>.



Figure 2: Mural by Lister on Milton Road, Brisbane Australia (Photo taken by Anthony Lister, 2013).



Figure 3: Buffed by council workers (Photo taken by Lister, 2013).

Lister had permission to make art on this particular wall, and so the graffiti removal officers had no jurisdiction there. When those officers buffed over their own likeness, they showed that their objection to Lister's art was not about its placement, but rather its content. Lister's art had drawn attention to their exercise of public power and control of public space, so they erased his commentary on the constrained and coercive conditions in which his act of visual expression took place.

Brisbane City authorities are not yet done with Lister. In November 2014, a week before the G20, he was arrested on twelve charges of wilful damage related to pieces dating back to 2009, and is currently awaiting a hearing (as of July 2015). With these criminal charges hanging over his head, Lister executed *Hometown Ballerina* (figure 4) as a "gift"⁴⁴ to the City on a wall donated by a private supporter — whom the police then questioned.

⁴⁴ Natalie Bochenski, 'Council Destroys Lister Works Worth Thousands' *Brisbane Times* (online), 20 May 2014 <<http://www.brisbanetimes.com.au/queensland/council-destroys-lister-works-worth-thousands-20140520-zrhpp>>.



Figure 4: Hometown Ballerina by Lister (Photo taken by Crawley, 2015).

IV FROM OWNERSHIP TO CITIZENSHIP

The fact that authorised street art is often the subject of official praise,⁴⁵ and unauthorised street art is a criminal offence, shows the extent to which our interaction with the streets, walls, surfaces and common places of our cities is dominated by the paradigm of property ownership. Those who try to repress graffiti entirely, and those who seek to accommodate it within authorised or designated spaces, both accept and work within this logic of ownership that grants to the individual owner or public authority the right to enjoy one's space, to develop it, and to prevent others from using it. As Iveson writes, efforts to repress graffiti by criminalisation and eradication, or to redirect it towards authorised places, are 'attempts to naturalise property relations in the city, insisting that surfaces are inviolable because they are publicly or privately owned, and denying or restricting graffiti writers access to those surfaces'.⁴⁶

What might it mean to think of urban public space in a different way? Cities are more than conglomerations of owned land — they are lived, embodied and representational spaces of movements and flows, rhythms, and the circulation of bodies and things, constructed within a multiplicity of discourses and networks. This insight necessitates looking beyond the physical dimensions of the city and asking how its users are brought

⁴⁵ Fielding, above n 43.

⁴⁶ Iveson, above n 30, 96.

together and sustained by and through shared representations. Space as psychologically lived in, or what Henri Lefebvre called representational space, is implicated in the very production of space itself.⁴⁷ How we imagine a place, space, street, or city in large part creates the conditions of possibility for how we act, which itself creates the contours of that very space.

In recent years, a number of scholars and activists have been inspired by graffiti and street art to explore other ways of understanding how we inhabit, move through, interact with, and lay claim to our cities. Graffiti writers and street artists view the city as an assemblage or network of spaces and surfaces, each of which offers different aesthetic potential according to its texture, visibility and accessibility.⁴⁸ When the artist who executed the stencil (figure 5) saw the metal railing, originally intended as a boundary-marker, she or he imagined, and created, a young man jumping over it with fluid athleticism, thus generating a moment of unexpected encounter for the passing spectator.



Figure 5: Stencil art, Artist unknown, in West End Brisbane, Australia (Photo taken by Crawley, 2015).

⁴⁷ Henri Lefebvre, *Production of Space* (D Nicholson Smith trans Blackwell, 1991) 39 [trans of: *La production de l'espace* (first published 1974)].

⁴⁸ Halsey and Young, above n 29, 296.

Criminologist Alison Young argues that street artists' entitlement to do what they do 'arises through proximity to a surface and through aesthetic reaction to what is already there'.⁴⁹ She and others refer to the notion of "the commons", pieces of land that existed for shared use, such as animal-grazing or water-access, and which find their contemporary equivalent in parks, squares, and other places where individuals come together to communally enjoy urban resources.⁵⁰ The commons is not simply what is left after individual property holders have gobbled up tracts of urban space, but rather constitutes a different logic based on adapting and experiencing spaces, rather than using and possessing them.

The struggle over graffiti is thus part of a broader struggle over authority, expression, and belonging in capitalist cities — a struggle over who claims the right to determine the identity and possibility of urban places. Our modern cities are 'urban media landscapes'.⁵¹ Their many surfaces are put to work as spaces of communication and expression by a variety of actors posting advertisements, signs, notifications, political slogans, and artistic works. The authorities exercise control through imposing a particular urban visual order in which some forms of expression — advertising, signage, authorised political posters — are fine, and others are not. Graffiti writers and street artists are often keenly aware of their exclusion from this order. As Canadian street artist Roadsworth pointed out, '[w]e aggressively pursue graffiti writers for scrawling their names on a wall across from a massive backlit billboard advertising Big Macs'.⁵²

Graffiti writers and street artists insist on using the city as a medium of visual expression, without the kind of legitimacy obtained through property ownership or bureaucratic planning approval. They rewrite the urban environment by marking places not intended to act as a communication medium — walls, trains, fences, roads, signal boxes, park benches, infrastructure, and interstitial places. They pursue what Lefebvre

⁴⁹ Young, above n 10, 156; Alison Young, *Street Art, Public City: Law, Crime and the Urban Imagination* (Routledge, 2013) 54.

⁵⁰ Mark Halsey and Ben Pederick, 'The Game of Fame: Mural, Graffiti, Erasure' (2010) 14(1–2) *City* 82, 97; Young, above n 10; Christian Borch and Martin Kornberger (eds), *Urban Commons: Rethinking the City* (Routledge, 2015); Lucy Finchett-Maddock, *Protest, Property and the Commons: Performances of Law and Resistance* (Routledge, 2016).

⁵¹ Iveson, above n 30, 88.

⁵² Roadsworth, cited in Laura Boudreau, 'A Divided Highway' (2005) *Spacing* <<http://spacing.ca/art-roadsworth.htm>>.

famously called a 'right to the city: the right to claim presence in the city, to wrest the use of the city from privileged new masters and democratise its spaces'.⁵³

For spectators, the affective experience of viewing graffiti or street art is inseparable from the knowledge that they are viewing something that was placed there illicitly or without permission. The same image or work placed in an art gallery would constitute a radically different affective experience for the viewer: one less immersive, more marked by contemplative distance. The political clout of graffiti or street art — its ability to comment on or act as a critique on existing structures of power — is largely a measure of its illegality. It is the trace of a furtive, outlawed event. It is immediate, unexpected, unplanned, and ungovernable, changing the way we experience the routine of everyday life. Every act of graffiti or street art gestures towards a right to visual expression that arises just through *being* in the city — a right that can be curtailed but not erased.

V CONCLUSION

The war on graffiti is a policy failure. At the very least, a different regulatory approach is needed, a harm minimisation approach that views "the graffiti problem" as an issue of planning rather than policing. The current policy of eradication and criminalisation is counterproductive and costly, based on flawed assumptions about the links between graffiti and crime, and willful blindness to the cultural dynamics and motivations of its practitioners. There is much scope for building on existing community partnerships in order to take graffiti writers seriously as stakeholders in the city, working with members of the community to identify high tolerance areas and legal walls, to provide hoardings, and to support those members of the graffiti community who can mentor others. The excessive money and effort currently devoted to graffiti's rapid removal could be limited to removal only on certain proscribed surfaces — those linked to values of decency and respect shared by many graffiti writers — and reallocated towards alleviating the pressures of homelessness, unemployment, and other factors that alienate people, and particularly young people, from their urban environments.

⁵³ Henri Lefebvre, 'The Right to the City' in Eleonore Kofman and Elizabeth Lebas (trans and eds), *Writings on Cities* (London: Blackwell, 1996) 151 [trans of: *Le Droit à la ville* (first published 1968)].

Beyond these diversionary regulatory measures, we need to accept that some illegal graffiti will happen, and learn to live with it. Taking a democratic approach to our cities means entertaining the idea that the contents of our urban media landscape should not be determined exclusively by the individuals, corporations or state authorities that own publicly accessible land. This means relinquishing the fantasy of absolute control where everything remains in its assigned place, and accepting a certain level of disorder and aesthetic diversity. This does not necessitate a free-for-all for graffiti writers and street artists. As Iveson points out, to celebrate all graffiti or street art uncritically is the flipside of denouncing it all equally — both approaches ‘ignore questions of style, quality and credibility that its practitioners have debated for years’, and ‘belittle the talents and dedication of those who have spent years developing their craft, not to mention the risks many of them have taken and the price many of them have paid’.⁵⁴

It does mean, however, recognising and acknowledging the contribution that graffiti writers and street artists make to our cityscapes, and thinking of certain parts of the city as being available for creative intervention or “remixing”.⁵⁵ To insist on remaining open to the possibility of unauthorised graffiti is to insist that graffiti writers and street artists are a part of the city, even if they’re denied authority (or corporate sponsorship). To move beyond the war on graffiti requires an open and inclusive dialogue among citizens, not just property owners, about what kind of places we want our cities to be. With their ability to challenge perceptions, engage community and stimulate dialogue, graffiti and street art can be forms of expression that force us to reconsider how we inhabit our shared spaces, and point the way towards an alternative vision of the city in which all citizens play an active role in the construction, revision and imagination of public space.

⁵⁴ Kurt Iveson, ‘Graffiti, Street Art and the City’ (2010) 14(1-2) *City* 26, 28.

⁵⁵ Scott Burnham, ‘The Call and Response of Street Art and the City’ (2010) 14(1-2) *City* 137, 139.

REFERENCE LIST

A Articles/Books/Reports

- Burnham, Scott, 'The Call and Response of Street Art and the City' (2010) 14(1-2) *City* 137
- Borch, Christian and Martin Kornberger (eds), *Urban Commons: Rethinking the City* (Routledge, 2015)
- Dew, Christine, *Uncommissioned Art: The A to Z of Australian Graffiti* (Melbourne University Publishing, 2007)
- Finchett-Maddock, Lucy, *Protest, Property and the Commons: Performances of Law and Resistance* (Routledge, 2016)
- Ganz, Nicholas, *Graffiti World: Street Art from Five Continents* (Thames & Hudson, 2004)
- Halsey, Mark and Ben Pederick, 'The Game of Fame: Mural, Graffiti, Erasure' (2010) 14(1-2) *City* 82
- Halsey, Mark and Alison Young, "'Our Desires are Ungovernable": Writing Graffiti in Urban Space' (2006) 10 *Theoretical Criminology* 275
- Halsey, Mark and Alison Young, 'The Meanings of Graffiti and Municipal Administration' (2002) 35(2) *Australian and New Zealand Journal of Criminology* 165
- Hutchinson, Terry and Kelly Richards, 'Scared Straight: Boot Camps for Queensland' (2013) 38(4) *Alternative Law Journal* 229
- Iveson, Kurt, 'Graffiti, Street Art and the City' (2010) 14(1-2) *City* 26
- Iveson, Kurt, 'Policing the City' in Mark Davidson and Deborah Martin (eds), *Urban Politics: Critical Approaches* (Sage Publishing, 2015)
- Iveson, Kurt, 'War is Over (If You Want It): Rethinking the Graffiti Problem' (2009) 46(4) *Australian Planner* 24
- Lefebvre, Henri, *Production of Space* (D Nicholson Smith trans, Blackwell, 1991) 39 [trans of: *La production de l'espace* (first published 1974)]

Lefebvre, Henri, 'The Right to the City' in Eleonore Kofman and Elizabeth Lebas (trans and eds), *Writings on Cities* (London: Blackwell, 1996) [trans of: *Le Droit à la ville* (first published 1968)]

Legal Affairs and Community Safety Committee, Parliament of Queensland, *Criminal Law Amendment Bill (No. 2) 2012* (2013)

Manco, Tristan, *Stencil Graffiti* (Thames and Hudson, 2002)

Manco, Tristan, *Street Logos* (Thames and Hudson, 2004)

Manderson, Desmond, 'Groundhog Day: While the Asylum Seeker Problem is like the Drug Problem' (2013) 41 *Griffith Review* 84

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

O'Leary, Jodie, 'Out of Step and Out of Touch: Queensland's 2014 Youth Justice Amendments' (2014) 26(2) *Current Issues in Criminal Justice* 159

Queensland Youth Advocacy Centre, *Annual Report* (2013–2014)

<<http://www.yac.net.au/wp-content/uploads/2014/10/YAC-2014-Annual-Report-single-page-spread.pdf>>.

Smallman, Jake and Carl Nyman, *Stencil Graffiti Capital: Melbourne* (Tower Books, 2005)

Stewart, Susan, *Crimes of Writing: Problems in the Containment of Representation* (Oxford University Press, 1991)

Young, Alison, 'Cities in the City: Street Art, Enchantment, and the Urban Commons' (2014) 26(2) *Law and Literature* 145

Young, Alison, 'Criminal Images: The Affective Judgment of Graffiti and Street Art' (2012) 8(3) *Crime, Media, Culture* 297

Young, Alison, *Judging the Image: Art, Value, Law* (Routledge, 2005)

Young, Alison, 'Negotiated Consent or Zero Tolerance? Responding to Graffiti and Street Art in Melbourne' (2010) 14(1–2) *City* 99

Young, Alison, *Street Art, Public City: Law, Crime and the Urban Imagination* (Routledge, 2013)

Young, Alison. Ghostpatrol, Miso & Timba, *Street/Studio: The Place of Street Art in Melbourne* (Thames & Hudson, 2010)

B Legislation

Crimes Act 1900 (NSW)

Crimes Act 1958 (Vic)

Criminal Code (WA) (as amended by the *Criminal Code Amendment (Graffiti) Act 2009*)

Criminal Law and Other Legislation Amendment Act 2013 (Qld)

Graffiti Control Act 2001 (SA)

Graffiti Control Act 2008 (NSW)

Graffiti Control Amendment Act 2014 (NSW)

Graffiti Prevention Act 2007 (Vic)

Police Offences Act 1935 (Tas)

Queensland Criminal Code 1899 (Qld)

Summary Offences Act 1966 (Vic)

Summary Offences Act 2005 (Qld)

C Other

Attorney-General and Minister for Justice The Honourable Jarrod Bleijie, 'Vandals Clean Up their Act' (Media Statement, 3 August 2014)

<<http://statements.qld.gov.au/Statement/2014/8/3/vandals-clean-up-their-act>>

Bochenski, Natalie, 'Council Destroys Lister Works Worth Thousands' *Brisbane Times* (online), 20 May 20, 2014 <<http://www.brisbanetimes.com.au/queensland/council-destroys-lister-works-worth-thousands-20140520-zrhpp>>

Boudreau, Laura, 'A Divided Highway' (2005) *Spacing* <<http://spacing.ca/art-roadsworth.htm>>

Brisbane City Council, 'Controlling Graffiti', 4 September 2014 <<http://www.brisbane.qld.gov.au/laws-permits/complaints-fines/graffiti/controlling-graffiti>>

Brisbane City Council, 'Cost of Crime Campaign Puts a Price on Vandalism', <<http://www.grahamquirk.com.au/cost-of-crime-campaign-puts-a-price-on-vandalism/>>

Department of Transport and Main Roads, *Queensland Government Graffiti Management Policy 2008–2011* (2009) <http://www.tmr.qld.gov.au/~media/aboutus/rti/Pdf_graffiti_management_policy.pdf>

Dickinson, Alex, 'Graffiti Artists Take Aim at the Lord Mayor Campbell Newman' *Courier Mail* (online), 5 March 2010 <<http://www.couriermail.com.au/news/graffiti-artists-take-aim-at-the-lord-mayor-campbell-newman/story-e6freon6-1225837511082>>

Dickinson, Alex, 'Graffiti artwork by Anthony Lister Commissioned by Property Owner Rubbed Out by Brisbane City Council', *Courier Mail* (online), 14 September 2010 <<http://www.couriermail.com.au/news/queensland/graffiti-artwork-by-anthony-lister-rubbed-out-by-brisbane-city-council/story-e6freoof-1225921335596>>

Feeney, Katherine, 'Brisbane Gets Graffiti Busting Boost', *Brisbane Times* (online), 5 November 2012) <<http://www.brisbanetimes.com.au/queensland/brisbane-gets-graffiti-busting-boost-20121105-28tr2.html>>

Feeney, Katherine, 'New Laws to Jail Graffiti Vandals for Seven Years', *Brisbane Times* (online), 10 April 2013 <<http://www.brisbanetimes.com.au/queensland/new-laws-to-jail-graffiti-vandals-for-seven-years-20130409-2hje7.html>>

Fielding, Eveline, 'Brisbane Cirque du Soleil-Inspired Street Art Project Unveiled by Lord Mayor Graham' *ABC News* (online), 6 May 2015 <<http://www.abc.net.au/news/2015-05-06/brisbane-cirque-du-soleil-inspired-street-art-project-unveiled/6449274>>

'Graffiti Plus Paperwork Equals Art in Brisbane' *ABC News* (online), 15 September 2010
<<http://www.abc.net.au/news/stories/2010/09/15/3012035.htm?site=brisbane>>

Horsley, Sarah, Interview with Campbell Newman, Lord Mayor of Brisbane (Television Interview, 14 September 2010) <<https://www.youtube.com/watch?v=EtB8YNjGr7o>>

Lyons, Gabrielle, 'Fight Against Graffiti Hits the Street' *QUT News* (online), 8 May 2014
<<http://www.qutnews.com/2014/05/08/fight-against-graffiti-hits-the-street/#.VV2nyOchxz0>>

Interview with Janet Wight, Director of Youth Advocacy Centre Inc. (Brisbane, 9 April 2015)

Interview with Peter Breen, Director of Jugglers Space Inc. (Brisbane, 27 March 2015)

Minister for Police and Community Safety The Honourable Jack Dempsey, 'The Writing's on the Wall for Graffiti Offenders' (Media Statement, 28 May 2012)
<<http://statements.qld.gov.au/Statement/Id/79360>>

Queensland Government Department of Infrastructure, Local Government and Planning, *Previous funding programs* <<http://www.dilgp.qld.gov.au/local-government/grants/previous-funding-programs.html>>

Question on Notice to Attorney-General, No. 493 Asked on 5 June 2014, Queensland Parliament

Queensland Police, *Graffiti Removal Powers: Summary Offences Act 2005: A Guide to Legislation and Procedures*
<<https://www.police.qld.gov.au/programs/youth/Documents/GraffitiRemovalPowersGuide.pdf>>

Saggin, Giulio, 'Graffiti Clean-up Costs in Brisbane's West End Highlighted with Pop-up Event' *ABC News* (online), 7 May 2014 <<http://www.abc.net.au/news/2014-05-06/price-tag-pop-up-event-shows-graffiti-clean-up-costs/5433140>>