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The Value of Vandalism: Re-evaluating the Collection, Privatization and Preservation of Illegal Artworks

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Abstract

The modern graffiti movement is considered to have started in America in the 1970s, and influenced similar movements across Europe and the globe throughout the following decades. Over the past forty years, graffiti has evolved from a subversive subculture associated with degeneracy into an esteemed and lucrative art form, birthing the Post-Graffiti movement and producing gallery-worthy artworks valued in the millions. By situating graffiti and street art as historically valuable and culturally rich materials, this paper analyzes issues surrounding the privatization and preservation of such works. The illegal nature of graffiti complicates matters of ownership and collection, with significant works often being installed, and subsequently removed, illegally. This paper evaluates the litigation and legal actions taken to protect the rights of the artist as well as efforts in maintaining unrestricted public access to street art and graffiti. In addition to legal complications, graffiti's public nature also provides challenges for art conservationists. By removing the work from its original context, a collector alters the impact of a work of graffiti and impossibly subverts its purpose as being an accessible and free message to the masses. Yet arguably, this may be the only way to safely preserve the physical integrity of outdoor installations from the natural elements. Contemporary scholarly opinions, a close examination of works by world-renowned graffiti artist Banksy, and a series of legal cases regarding the treatment of works of graffiti and street art ownership and removal inform the author's perspective and analysis of this multifaceted issue.

1. Introduction

In recent decades, historians have begun to recognize the cultural and historic potential of graffiti in helping contemporary scholars further understand past civilizations. Examples of graffiti from historically significant sites are revered by scholars, and very few individuals would consider the removal of ancient graffiti to be appropriate. Yet surprisingly, little consideration has been given to the retention of contemporary graffiti that may also be culturally significant.[1] Certain works of graffiti, which are in some cases cherished by their surrounding communities, are frequently erased per city ordinance or removed to be sold at auction to private collectors, and are thus lost to public sphere.

The modern graffiti movement is considered to have started in America in the 1970s, and influenced similar movements around the globe throughout the decades to follow. Early examples of graffiti existed in Philadelphia in the 1960s before being introduced to New York City, where it gained popularity with teenagers and young adults illegally "tagging" names on subway cars. At that time, the emphasis was on the frequency or visibility of a writer's tag throughout the city rather than on creativity or artistic value.[2] Graffiti developed a more extravagant aesthetic as a result of its popularity in the New York subway system, eventually growing from tags into full-blown "pieces."[3] During the early 1970s, artists and art critics began to view graffiti as an independent expression of aesthetic in urban culture. By the early 1980s, the combination of a booming art market and a renewed interest in painting resulted in the rise of a few graffiti artists to art-stardom.[4] Jean-Michel Basquiat, a former street artist known by his "Samo" tag,

and Keith Haring, a professionally trained artist who adopted a graffiti style, were two of the most widely recognized graffiti artists. New techniques in the 1980s and early 1990s led to a new form of graffiti, labeled Post-Graffiti or also known as Street Art.[5] The participants used stencils, posters, stickers and installations to spread their art illegally in the streets.

Over the past forty years, graffiti has evolved from a subversive subculture associated with degeneracy into an esteemed and lucrative art form, producing gallery-worthy artworks worth millions. With pieces by artists including Shepard Fairey, Jean-Michel Basquiat, and Banksy already being collected and coveted, it can be assumed that this type of work will hold even more value for future generations. Sites such as the Berlin Wall and the ancient city of Pompeii are clear examples of instances in which architectural remains containing acts of graffiti have helped historians cultivate a deeper understanding of past cultures (Fig. 1). Why, then, is little action being taken to properly care for their contemporary equivalents? The answer lies in the very nature of graffiti itself.

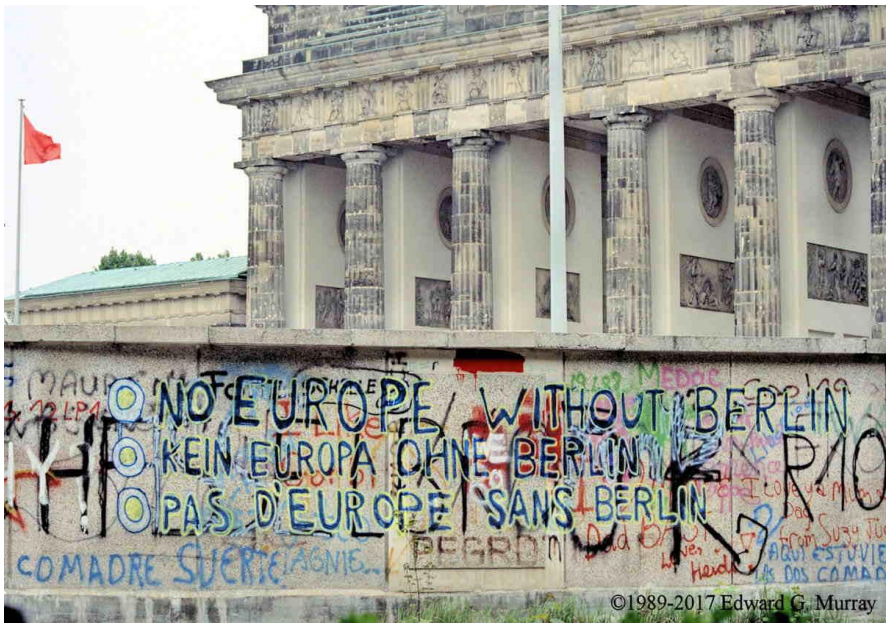


Figure 1. Section of Berlin Wall containing acts of graffiti, c. 1965, photo by Edward G. Murray, taken 1989-2017. https://www.widewalls.ch/berlin-wall-art-edward-murray-interview/

Before proceeding, it is necessary to define the terms “graffiti” and “street art” within the context of this discussion. “Graffiti”, which comes from the Italian *graffiare*, or “to scratch,” has been defined as "unauthorized writing or drawings on a surface in a public place."[6] While this definition recognizes the importance of graffiti being unauthorized, it does, however, limit graffiti to public locations and this is not always the case. Additionally, graffiti is no longer limited to writing or drawing. Take, for example, the French contemporary urban artist known as “Invader,” who creates pixelated tile mosaics (inspired by the 8-bit video game Space Invader, from whence he derives his pseudonym) and then affixes them to walls or other public surfaces using concrete or other adhesives. He has “invaded” over seventy-seven cities around the world, making him one of the most famous and influential anonymous urban artists alive today. His mosaics are pre-made before being applied to a more permanent surface, and are therefore impossible to remove without destroying them. Various forms of graffiti and unauthorized street art may incorporate similar or different methods other than painting, writing, or etching onto a surface.

For the purpose of this paper, I will borrow Alan Forster’s more comprehensive and contemporary definition of “graffiti” as "inscribed or surface applied media, forming writing or illustration, produced without expressed or implied permission."[7] The prevalent theme throughout these various definitions is that these works tend to be publicly and illegally placed, and therefore temporal, which presents several dilemmas when faced with the challenge of preserving such works in instances where they may bear cultural significance, and should therefore, arguably, be preserved for future generations. “Street art” finds its origins in the graffiti artists (and artists heavily inspired by graffiti) who started showing in galleries and art institutions during the 1970s and 80s, including Haring and Basquiat. Due to its origins in illegal activity and its archetypal interest in subversion and political or social commentary, street art has always had a complex relationship with the art world in general. The fact that these artists’ works existed both

illegally on city walls and simultaneously for sale in galleries and museums has significantly influenced subsequent generations, including artists like Banksy. Some graffiti writers have negative or mixed feelings about work referred to as "street art," since the term can imply that a former underground artist has "sold out," or sacrificed their artistic authenticity and integrity for the sake of profit or popularity. Yet in some instances today, even illegally placed artworks are forcefully removed from the street to be auctioned to private collectors, without any involvement or profit being made on behalf of the artist.

By situating graffiti and street art as historically valuable and culturally rich materials, this paper analyzes issues surrounding the privatization and preservation of such works. The illegal nature of graffiti complicates matters of ownership and collection, with significant works often being installed, and subsequently removed, without expressed permission. This paper evaluates the litigation and legal actions taken to protect the rights of the artist as well as the efforts to maintain unrestricted public access to street art and graffiti. In addition to legal complications, the public nature of graffiti provides challenges for art conservationists. By removing the piece from its original context, a collector alters the impact of a work of graffiti and impossibly subverts its purpose as an accessible and free message to the masses. Yet arguably, this may be the only way to safely preserve the physical integrity of outdoor installations from the natural elements. Contemporary scholarly opinions, a close examination of works by world-renowned graffiti artist Banksy, and a series of legal cases regarding the treatment of works of graffiti and street art ownership and removal inform the author's perspective and analysis of this complex issue.

2. Ancient Graffiti

Although this paper focuses on the treatment of contemporary graffiti, the easiest way to understand the cultural significance of graffiti is by examining works of the past. The graffiti that survives from the ancient world, predominantly surrounding the Mediterranean, offers us profound insight into the everyday lives of its former occupants. The men and women of ancient cultures, both free and enslaved, used graffiti to comment on their own lives, to protest against issues of their times, and to address diverse topics such as religion, politics, commerce, and sexuality.[8] When viewing graffiti in this context, the parallels to modern graffiti become immediately evident. Additionally, it should be noted that the practice of graffiti is neither a new nor localized phenomenon. As Peter Bell observes, "From the prehistoric cave paintings of Burgundy in France, through gladiatorial fan worship in Roman Lyons to the messages left on the walls of Germany's Reichstag in 1945 by triumphant Soviet troops, people are determined to leave a record of their existence and experience."[9] The urge to convey a message to a widespread audience seems to be a universal and timeless human characteristic.

Figure 2. Election slogans on a wall in Pompeii, Italy, prior to eruption of Vesuvius in 79 A.D. Image by Kathrine Sikes, https://www.ancient.eu/article/467/pompeii-graffiti-signs--electoral-notices/

Consider the ancient city of Pompeii (Fig. 2). Over 11,000 wall inscriptions have been excavated from the city, close to the estimated number of residents living there prior to the fatal eruption of Mount Vesuvius in 79 C.E..[10] If placed in a contemporary context, most of these inscriptions would be considered little more than barroom vandalism, rich with lewd and bawdy content and describing acts of prostitution, copulation, and other unsavory acts. Yet, for historians, the themes, locations, and methods associated with these ancient inscriptions provide enormous insight into the less visible social practices of the occupants of Pompeii, in ways that fine art is simply incapable of doing.[11] They inform historians about where people spent their time, which classical literature residents were familiar with, and much more. Traditional artworks that have historically been collected and preserved are those that have been commissioned by the church, the government, or the upper class. Thus, such works are inextricably biased, and offer only a limited scope into the reality of life for everyday citizens. Graffiti, however, is an unfiltered glimpse into the minds of everyday people of the past. Scholar and professor Peter Keegan claims that, in relation to the study of ancient graffiti, what is important to note "is how historical, cultural and sociological contexts can combine to inform an audience—at once historically contemporary with *and* distant from the writer and the writing—about the individual, society and a plethora of perspectives on the wider world."[12] It is logical to assume, then, that contemporary graffiti will eventually provide a similar insight for future generations about the political, cultural and sociological perspectives of graffiti writers. In this way, graffiti has an inherent and unparalleled potential to hold historic value.

3. Establishing Cultural Significance

What constitutes something as culturally significant? Globally, there are a few varying but nonetheless similar models used to identify the elements that make an artifact "valuable." For example, the Burra Charter of Australia defines "cultural significance" as "aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. Places may have a range of values for different individuals or groups."[13] In essence, "cultural significance" is a way of determining the value of places, buildings and associated artifacts, which further our understanding of the past, and thus enrich the present and ultimately future generations.[14]

Most commonly, when addressing historic graffiti, the value attached to its specific location is an integral part of the source of its significance. The Historic Buildings and Monuments Commission for England attempts to protect "heritage values" that can be attributed to places, which includes evidential, historical, aesthetic and communal value. For this commission, e*vidential value* is characterized by "the potential of a place to yield evidence about human activity;" *historical value* is characterized and derived by "the way in which past people, events and aspects of life can be connected through a place to the present. It tends to be illustrative or associative;" *illustrative value* "has the power to aid interpretation of the past through making connections with, and providing insights into, past communities and their activities through shared experiences of a place;" *associative value* is related to people, events or particular movements that "give historical value a particular resonance." *Aesthetic value* is derived from "the ways in which people draw sensory and intellectual stimulation from a place," and can be an act of "conscious design or seemingly fortuitous." *Communal value* derives from the "meaning of a place for the people who relate to it, or from whom it figures in their collective experience or memory." [15]

Establishing the cultural significance of ancient graffiti is one matter to consider. As stated by French artist and critic Jean Cocteau in 1960, "art produces ugly things which frequently become more beautiful over time."[16] The centuries-old texts that we value so much today, may have not held as much worth in their own time. Accordingly, neither academia nor the state currently accept contemporary graffiti as a valid form of narrative or expression. Take, for example, the 2014 Hong Kong "invasion," in which local authorities systematically removed the artist Invader's unauthorized installations (Fig. 3). As previously noted, Invader creates mosaics from ceramic tile, typically no more than a few feet across, before applying them to a hard surface (such as a wall) with strong bonding agents. His mosaics predominantly depict characters from the 1987 video game Space Invader, and comprise the on-going and international graffiti project he refers to as "invasion waves." The square tiles he uses in his iconography resemble pixels, and are an homage to "a time where digital technologies are the heartbeat of our world."[17] The local community lamented the loss of public artworks which the artist had installed for free. In response, Invader created a replica of one of the destroyed works and sold it for over $250,000—effectively proving that the city had robbed its residents of millions of dollars in cultural value.[18]

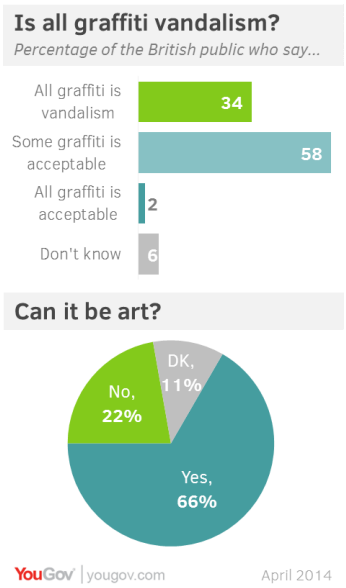
Figure 3. HK_118, Invader, Wave 07 in Hong Kong, China, 2017. Tile mosaic affixed to building. https://www.space-invaders.com/media//invaders/hong-kong/HK_118-diapo-35ILTOI6.jpg

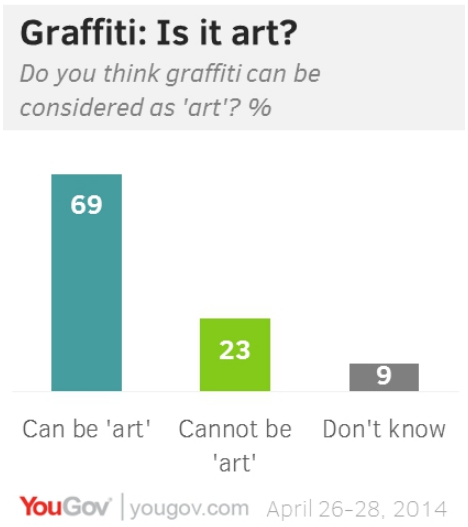
In future situations, it is imperative that we reconsider how this cultural value is determined regarding works of illegal graffiti art and writing. While some graffiti can be determined as having true artistic merit, the examples from Pompeii illustrate that conventional aesthetic value is not always a reliable indicator of which artworks deserve to be preserved. Traditionally, the evaluation of "good" art or graffiti has been conducted by experts and art critics. Historic conservationists Forster, Vettese-Forster, and Borland suggest that today, the assessment of graffiti should be evaluated and value-attached by broader society, community groups, and experts alike.[19] However, there is much debate between these groups regarding the retention of contemporary graffiti, whose potential for informing historians has yet to become clear. Conflicting desires between the government, private property owners, art collectors and communities have complicated such situations in courtrooms across the world.

4. The Rising Popularity of Graffiti

Public perception of street art and graffiti appears to be changing. A 2004 YouGov poll concluded that by a resounding three-to-one margin (66% to 22%), people think graffiti can be considered as "art," (Fig. 4-5). In a separate question, only about a third (34%) say "all graffiti is vandalism" while over 50% accept that "some graffiti is acceptable."[20] The belief that graffiti can be art, and therefore is not always vandalism, is held by people from all age groups, though younger adults tend to be more accepting. A parallel survey conducted by YouGov America found similar results: 50% of Americans believe that some or all graffiti is acceptable and 69% think it can be considered an art form.[21]

Still, not everyone feels favorably about graffiti. When asked generally if they liked or disliked "graffiti," only 15% of the public say they like it, while 39% dislike it and 42% are neutral.[22] However, there are significant geographic differences. People in London, a city that hosts a thriving street art scene and is home to many original Banksy works, are almost split on graffiti (23% like it and 28% dislike it), while people elsewhere in Britain are much more likely to have a negative opinion of it. There is also a particularly wide age gap here – those over the age of 60 are twice as likely as 18-24 year olds to dislike graffiti. British street artist Neil Morris surmises, "These people are middle-aged, middle-manager types that think the art is offensive to others without actually asking anyone. And it's money that has changed perception. Money changes everything."[23]





Figures 4 and 5. YouGov polls regarding public opinion on graffiti, British and American polls, sample size: 1629 adults, fieldwork conducted 27th - 28th April 2014.

Indeed, money seems to be at the heart of the controversy surrounding street art. In the eyes of some people, the presence of graffiti decreases the value of surrounding properties. To the urban art lover, it may in fact increase property value. In Asheville's River Arts District, street artists are being frequently commissioned to add their signature urban flair to a formerly "run down" area of town, transforming it into an up-and-coming tourist attraction and site for many new housing and renovation projects. In fact, many major cities across the United States and Europe are embracing the graffiti movement, designating areas or districts to the urban art scene (e.g., Wynwood Walls in Miami, or 5Pointz in Long Island) and funding "public art projects."

While such districts are incredible to visit, the painted walls often conceal an uglier truth. As graffiti and street art gain popularity, the process of "art washing" urban areas has displaced many street artists, minorities and low-income families across America by systematically gentrifying property using the trending street art aesthetic. Lecturer on urban creativity, activism, and politics, Dr. Oli Mould defines "art washing" as:

> A process that uses artistic practices unwittingly (or not) in the service of private capital. It is the deliberate use of art as a tool to make a place more 'amenable' for private capital and the aesthetics that it currently desires… Art washing is the deliberate use of arts and culture to secure future profitable gain rather than social inclusion or commentary. It is the mobilisation of artistic creativity completely devoid of its subjective, complicated and politically-charged context.[24]

Art washing is a simple yet tragic method of gentrification, affecting urban areas around the world and present even in Asheville's own River Arts District. Investors buy up "undesirable" property, commission artists to paint the exterior in a polished version of the unauthorized and organic alternative, often times referencing the name or function of the establishment and intended to grab the attention of potential patrons. Areas formerly considered "the wrong side of the tracks" are quickly being transformed into art walk strolls for wealthy tourists as they shop amidst high-end boutiques and restaurants, while the former residents are displaced from their studios and homes.

The irony lies in the fact that authentic and unauthorized graffiti is often regarded as being critical of precisely this type of consumer culture and artistic elitism. In his book *Crimes of Style*, Jeff Ferrell iterates that "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. For the writers, graffiti disrupts the lived experience of mass culture, the passivity of mediated consumption."[25] Therefore, the cultural impact of graffiti writing and imagery is largely embedded in the fact that they defy the laws of capitalist production. Each piece is unique to the space and time in which it was created, and requires no mediation between text and reader. It has the ability to reach a wide range of audiences, as it requires no purchase

to receive its message. In a capitalist society that mandates consumption, the goal of many street writers is to elicit free thought from the readers or viewers and to encourage recognition of the capitalist forces that control society.[26] The large-scale reproduction or commission of works in the "graffiti style" abolishes their authenticity and grossly distorts and exploits the value of true, unrestricted graffiti.

Since the 1990s, most U.S. cities have established graffiti abatement ordinances that require private property owners to remove graffiti from their buildings, often at their own expense.[27] These ordinances define graffiti broadly to include essentially any surface marking applied without advance authorization from the property owner.[28] Meanwhile, as graffiti has steadily risen in prominence as a legitimate art form since the 1960s, some property owners may find themselves fortuitous recipients of remarkable "graffiti" they deem art (such as installations by artists such as Invader, Banksy, or other big names in the street art scene), and thus wish to preserve. Intellectual property attorney Margaret Mettler suggests that private property owners who wish to keep un-commissioned art on their property can successfully claim that graffiti abatement ordinances and sign regulations, as applied, violate their First Amendment speech rights.[29]

5. Litigation Regarding the Removal and Ownership of Graffiti

In most Western jurisdictions, graffiti writers and street artists are considered by the law and broader society to be vandals, criminals, and frankly, degenerates.[30] However, the unauthorized and public nature of graffiti has repeatedly complicated matters of legal ownership and the subsequent treatment, removal, and sale of iconic installations of beloved works of art. Even in situations where graffiti is of a historic nature, the decision to remove or retain can lead to much confusion and debate. With contemporary graffiti, the proper treatment of an illegal installation becomes even more complex. It becomes a legal and ethical tug-of-war between the extent of the law, the will of the public, the property owner, and in some cases, the artist. As public opinions on graffiti evolve, matters of ownership and removal of graffiti are being addressed on a case-by-case basis, sometimes in favor of the property owner, and other times granting rights to the artist.

American lawyer Marisa Gómez proposes a model for distinguishing "graffiti art" from "graffiti vandalism," in order to appropriately preserve or persecute them.[31] Gómez's suggestion "is not to try to prevent graffiti, but rather to strive to prevent vandalism. In equating all graffiti with vandalism, statutes and policies ignore the fact that graffiti and vandalism are not mutually inclusive."[32] Her proposed method to address this dilemma is to legitimize graffiti that is done with permission, and to condemn graffiti when done without permission. This model attempts to protect private property while still allowing some "acceptable" graffiti. Condemning all graffiti endangers graffiti as a legitimate art form and ignores its meritorious cultural and social content. She suggests that designating legalized spaces for graffiti and murals would help distinguish "genuine artists" from those who simply wish to deface property.[33] At a glance, this may seem like a perfect solution. However, as we will examine later with the case of 5Pointz in New York, issues may still arise with the erasure of graffiti even in "sanctioned" graffiti spaces. Even a publically sanctioned "free-wall," as they are often referred to, may experience periodic erasure in order to make room for new work, giving the aerosol artists no physical rights to their work.

Gómez properly acknowledges that condemning *all* graffiti will not prevent vandalism, because it fails to account for the motivations underlying graffiti. This much is evident in our current legal treatment of contemporary graffiti. She goes on to suggest that the urge to deface property is often not a graffiti artist's primary motivation.[34] While it may hold some truth, this is a complex statement to make, chiefly because little data exists regarding what makes certain surfaces more or less popular targets for graffiti, aside from their level of visibility. While it is probable that the sheer thrill of committing vandalism is not the only motivator behind all works of graffiti, it has been observed that the less accessible a surface is, the more desirable it may become to many graffiti artists. This is evidenced in the ubiquitous frequency of graffiti on the sides of subway cars, tall buildings, bridges, and other areas which are often out of reach but widely visible to the average pedestrian. For example, artist Invader attributes different point values to his works, favoring those which had a higher risk involved in their assemblage or which are more widely visible to the public.[35] Many reputable graffiti works consist of other artistic or social qualities that separate them from the works which Gómez would deem "graffiti vandalism" to be persecuted under her proposed treatment. It is unclear whether providing a sanctioned graffiti territory would do much to prevent youth from continuing to vandalize private property, especially considering how frequently graffiti tends to comment on a society that prioritizes property over personal expression.

5.1 The Banksy Controversy

It is unreasonable to assume that all artists feel the same way about the treatment of their graffiti, but it is fair to say that certain artists' opinions are held in higher public regard than other, lesser-known artists. Recently, there has been much public controversy surrounding the world-renowned, anonymous British graffiti artist known only as Banksy. He has maintained anonymity while painting around the world, publishing a book, and even creating a documentary, *Exit Through the Gift-Shop*. Banksy's artwork makes for a prime example of the dilemmas which exist today regarding the protection, collection, and removal of unauthorized artworks which are intended by the artist to belong to the people rather than in a private collection. This particular type of ownership dilemma has continued to appear in both American and European courtrooms over the past decade. Juris Doctor Peter Salib explores the events surrounding several Banksy pieces, which perfectly exemplify the extent of the controversy regarding legal treatment of graffiti.

In April of 2014, Bristol native Dennis Stinchcombe stumbled upon a Banksy painting depicting a couple embracing while looking at their cell phones over each other's shoulders. In direct violation of vandalism laws, the artist had painted onto a piece of plywood covering a door beside a public sidewalk (Fig. 6). It is a life-size work with a powerful visual message. The surface is a dark flat black, which creates the illusion that the two figures are standing in a dark doorway. Both the man and woman in the composition are in business attire and each person is holding an iPhone, both indicators of their upper to middle-class social status. The gray-scale stencil work seems to be illuminating the participants' faces, as if the light source were being produced by their cell phones. Their faces are mere centimeters apart, generating the suspense of a kiss waiting to happen, but both parties appear too distracted by their cell phones to give their attention to the person directly in front of them. The piece is a clear commentary on how cellular devices and social media have come to obstruct and even replace personal human interactions; a message that has potential to inform future generations about the current technological revolution and its uglier social impacts.

Stinchcombe ran the Broad Plain Boys' Club, a 120-year-old community institution that provides after-school programming to Bristol's youth. The Boys' Club was, at the time, facing financial difficulties.[36] Recognizing the artist of this poignant stencil-work, Stinchcombe removed the piece, now known as *Mobile Lovers*, from the wall with intention to auction it. The Bristol City Council intervened almost immediately, confiscating the painting under the claim that because it was painted onto public property, it belonged to the city. The artist Banksy then wrote a letter to Stinchcombe, purporting to give ownership rights to the Boys' Club. The city of Bristol agreed that the letter settled the ownership dispute, and Stinchcombe auctioned the piece for over half a million dollars which was given to the Boys' Club.[37]

Figure 6. Banksy, Mobile Lovers, 2014, Bristol, London, spray paint on plywood. Photo by Paul Green, https://news.artnet.com/app/news-upload/2014/05/2014.04-Banksy-0015-Edit.jpg

Alternatively, consider the saga of *Slave Labour*, another unauthorized Banksy work (Fig. 7). The piece depicts a young, downtrodden boy sitting behind a sewing machine and manufacturing a string of miniature Union Jacks.[38] Banksy painted the piece on the side of an "everything-costs-a-pound" store in Haringey, London.[39] The piece, which is a commentary on discount stores' unethical labor practices, eventually became a landmark attraction in Haringey, drawing so many visitors to the neighborhood that the local subway station posted a sign reading "This way to our Banksy."[40] In February 2013, the piece disappeared, removed from the wall on which it was painted approximately a year after it had first appeared.[41] Then, *Slave Labour* resurfaced at an auction house in Miami; the owner of the discount store's building intended to sell it.[42] Though the citizens of Haringey were initially able to block the auction in Miami, the painting was later sold at a different auction.[43] Yet Scotland Yard and the FBI "issued statements that there is no evidence of criminality involved in the removal of this illegally painted" mural.[44] Banksy has stated that he believes his art should remain on its original location on the street.[45]

Street art has recently become incredibly valuable with Banksy pieces frequently selling for more than $1 million.[46] After its return to Mr. Stinchcombe, *Mobile Lovers* sold for over $670,000. *Slave Labour* ultimately sold at a London auction for approximately $1.1 million.[47] Other artists' works have sold for even more, with one Jean-Michel Basquiat piece going for over $16 million in a 2012 auction.[48] Though neither of the aforementioned Banksy cases escalated into full-blown lawsuits, Salib comments, "the stakes are becoming too high for interested parties to ignore the question of street-art ownership. Thus, American law will eventually have to determine who owns a given artwork."[49] Indeed, as street art and graffiti increases in popularity, the courts of law will inevitably be forced to come up with a standardized model for determining proper ownership.

Figure 7. Banksy, Slave Labour, 2012, Wood Green, London, 122 cm x 152 cm, spray paint on wall.

Graffiti can be contemplated via a variety of legal statutes, and yet none of them succeeds in solving the issue of ownership across the board. Salib explores possible doctrinal solutions to the matter, including the British Law of Finders (more specifically, the clauses regarding abandoned property), The Law of Gift, and the Law of Accession in regards to Banksy's much-disputed artworks.[50] The nuanced concepts of "abandoned property" and "gifting" seem almost too subjective to be of great legal persuasion. In many instances, the artist has not explicitly expressed their intentions for their installations, so it is nearly impossible to interpret whether their work was intended as a "gift" or if it constitutes "abandoned property" which would render it free to the finder.

5.2 The Visual Artists Rights Act

The Visual Artists Rights Act was created as an extension of the 1976 Copyright Act in 1990 in order to grant statutory moral rights to artists over their work.[51] This can include the right of attribution, the right to have a work published anonymously or under a pseudonym, and the right to bar the work from alteration, distortion, or mutilation. Additionally, even after a work leaves the artist's possession or ownership, anything else that may detract from the artist's relationship with the work can bring these moral rights into play. Even after an artist sells a work to a collector, they can assert their rights over the work if the collector proposes changing the work in a substantial way.

Affording artists a moral right in copyright issues related to artistic works first originated in Europe in 1928, where it is not possible to assign or waive your rights in a work. At that time, laws on moral rights were not a major priority in America, since copyright law in the United States emphasizes protection of financial reward over preservation of creative attribution. But when the U.S. joined the Berne Convention for the Protection of Literary and Artistic Works in March of 1989, its signatories suggested that something should be done to get those moral rights in check – and the Visual Artists Rights Act was the solution.[52]

Typically, works of graffiti have fallen outside of the parameters of the VARA, but a recent ruling in a Brooklyn court may be changing the way graffiti is protected under American law. On February 12, 2018, a judge ruled that New York property developer Gerald Wolkoff must pay $6.7 million to a group of graffiti artists for painting over their work without warning in 2013. The 5Pointz Aerosol Art Center, Inc., often referred to as simply 5 Pointz or 5Pointz, was an outdoor graffiti space where aerosol artists were given free reign and freedom from arrest (Fig. 8). Opening in 2001, 5pointz attracted artists, rappers and dancers from around the world who transformed the once barren sides of a warehouse into a bright spectacle of public art. The space contained over 200,000 square feet of surface to paint and was curated by artist Jonathan Cohen, who scheduled times for artists to work and required a sample from aerosol painters wishing to add their work to the warehouse.[53] Named for the five boroughs of New York, the warehouse became an artistic mecca of the graffiti world. Developer Wolkoff had established that he would only allow artists to paint on the landmark property for a limited amount of time before its eventual development into condominiums, but he infringed upon the rights protected by VARA when he supervised the "whitewashing" of over 350 works of art without providing any notice to the artists.[54] The aggrieved artists took the case to court, and to everyone's surprise, both the jury and judged ruled overwhelmingly in their favor.

Figure 8. 5Pointz Aerosol Art Center, est. 1993, Long Island City, New York. Photo courtesy of Flickr user Patxi Moraleda, March 2013. https://www.flickr.com/photos/patx11/8938483524

This is the first instance in which graffiti was afforded protection under VARA, which is definitely a significant step forward. Although the murals were still lost, what happened to 5Pointz could be a critical moment for graffiti's acceptance as a validated art form. Many are hopeful that this case can pave the way for future aerosol artists to seek justice if their works are destroyed or removed without notice. An expert witness in the case, adviser and appraiser Renee Vara expressed how important such a conclusion to the case is:

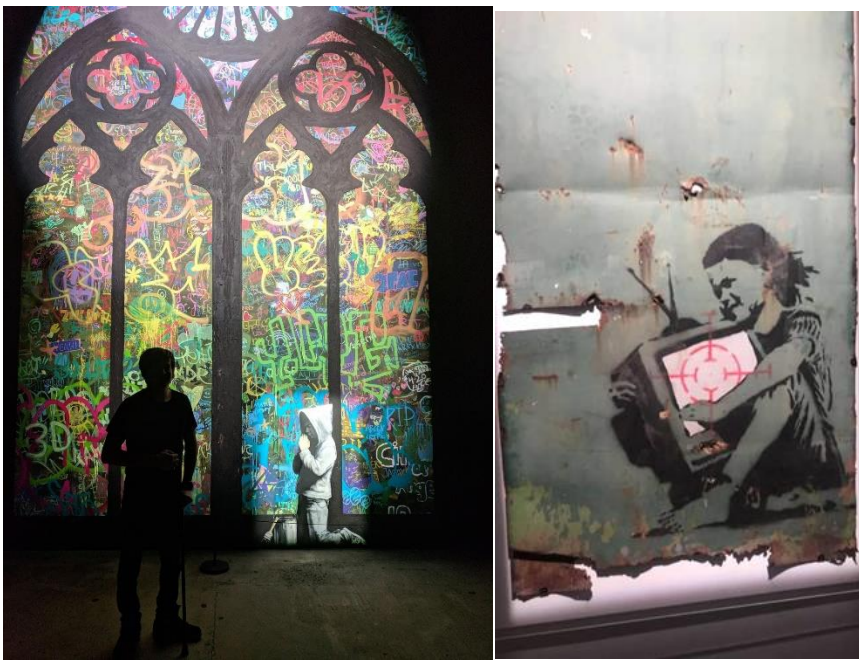
> This is a win for artists' rights all across the country. This is a win for the visual artists and their protection under VARA. This is a clear message by the people that the whitewash was a cruel willful act and Jerry Wolkoff was held accountable. It sends a clear message, which is that public art and free art is not disposable.[55]

The 5Pointz outcome is sure to be a precedent-setting case that irrevocably alters the landscape for many artists working with public art projects. However, the exact effects of this ruling are yet to be observed by the urban art community.

6. Graffiti in Galleries

In December of 2018, I attended a private Banksy exhibit in Miami, one of the most popular cities for graffiti and street artists in the world. Just a few months before this exhibit, the artist had secretly installed a shredder within the frame of his famous painting *Girl With Balloon*. The shredder was activated via remote by the artist at the precise moment of auction, shocking the crowd at Sotheby's Auction House and, subsequently, art lovers around the world. This act of destruction was generally seen as an opposition by Banksy to his street art, which he intended to be available to the public, being turned into fine art and exploited by galleries and collectors. Bearing this in mind, there was a lot to contemplate while moving through the dark maze of this unauthorized and unendorsed exhibit.[56] As an avid Banksy fan, it was exciting to see his work up-close. Yet there was a persistent, nagging feeling that something wasn't right. For many, Banksy is seen as a sort of underground, artistic Robin-Hood, giving art to the poor and a middle-finger to the elite. His work is dense with satirical commentary on topics including politics, religion and society, challenging consumerism, authority, and public opinions. If any graffiti artist shall be deemed as "historically or culturally significant," Banksy is among the top contenders.

Considering the show from a preservationist perspective, these works were safe in a private collection, receiving proper care and remaining safe from the unpredictable environments of their original locations. Yet from a broader cultural standpoint, paying sixty dollars to view artwork which was intended to be free to the people conflicted with my moral compass. The man responsible for the show, Steve Lazarides, was a former friend and agent of Banksy for eleven years. However, the two men parted ways in 2008, and Lazarides speculated that Banksy "would probably hate the show."[57] Lazarides is now a successful gallery owner who planned to auction several more works by Banksy in July of 2019.



Figures 9 and 10. Banksy and Students from public schools in LA, *Forgive Us Our Trespassing*, 2011 and *TV Girl on Garage Door*, photos by author, from Art of Banksy Exhibit in Miami, Florida December 12, 2018.

Many of the items on display were either photographs or "rare painting multiples" stenciled on canvas, rather than literal graffiti. However, there were a few rare pieces, which had been removed from their original urban locations. Yet despite the dark, underground atmosphere that had been fabricated in the large Miami warehouse, the dozens of cameras and stand-by security guards in each room removed any possibility of replicating the artist's intended context. One of the distinguishing characteristics which sets graffiti apart from regular paintings on canvas is that it was never intended for gallery walls. While Banksy intended for these pieces to be seen by the masses—subliminally on a daily walk to work, or bemusedly while roaming the street late at night—his desire was disregarded as they were placed

behind glass. I yearned to touch the rusted metal garage door on which Banksy stenciled a child clutching a television, and pondered the irony of this object's journey from the sidewalk to the showroom (Fig. 9-10).

Interestingly, there were several quotes by Banksy blown up, printed on canvas and displayed on the wall, challenging the very type of elitist privatization and profiteering of art to which his work is now subjected. Many of the pieces were accompanied by short essays or videos in which Lazarides fondly recalls his days working with Banksy. Even so, Banksy seems to have a less nostalgic attitude towards his former partner. In the introduction to his book "Wall and Piece," Banksy states "Despite what they say graffiti is not the lowest form of art. Although you might have to creep about at night and lie to your mum it's actually one of the more honest art forms available. There is no elitism or hype, it exhibits on the best walls a town has to offer and nobody is put off by the price of admission."[58]

Upon reading this, one is reminded of the pricey admission ticket. While many punchy quotes by the artist were canvased throughout the exhibit, this one was not. It is not hard to imagine why Lazarides may have chosen to omit Banksy's open distaste for the gentrification of his artwork. Banksy has thoroughly expressed his rejection of the exclusivity of galleries and museums, stating in his book that "When you go to an Art gallery you are simply a tourist looking at the trophy cabinet of a few millionaires."[59] In the early 2000s, he protested this by sardonically inserting his own pieces into museums such as the Louvre, the Tate Gallery in London, and the New York Metropolitan Museum of Art (without authorization, as is the Banksy way) to see how long it would take anyone to notice.[60] Often, these pieces would be accompanied by a mock-label drafted by the artist.

Attending the Banksy exhibit was an unforgettable and priceless experience, but after venturing deeper into the complex realm of underground art, it becomes apparent that the private production of the show was exploitative of not just an artist, but the underground art movement as a whole. Considering the forceful removal of such works through the lens of VARA, putting money into the pockets of private graffiti collectors seems to implicate oneself in a sort of cultural robbery. Yet some experts argue that this is precisely the best way to keep such treasured works intact.

7. Removal of Graffiti in the Name of Preservation

The largest collection of removed Banksy artworks belongs to the Sincura Group, which has been criticized by many citizens for the removal (or as the Sincura Group phrases it on heir website, the "salvaging") of beloved works of art by Banksy. The previously mentioned Banksy mural *Slave Labour* that mysteriously disappeared from a north London wall was featured as the centerpiece of one of the Sincura Group's private art exhibition and auctions. The Sincura Group is a network of London-based, luxury concierge specialists who pride themselves on "obtaining the unattainable."[61] Tony Baxter, the director of Sincura, said in a statement that the group does not "steal art, nor do we condone any acts of wanted vandalism or theft."[62] Mr. Baxter said that the group had been approached by building owners to remove the artworks painted without permission on their sites, and it has made no financial gain from the sale of street art to date. The Sincura Group has given estimates of value for the seven works ranging from 150,000 pounds (about $250,000) to 1 million pounds (about $1.7 million).[63] After continuing to receive criticism from the public and even the artist himself, the group asserted that their event had been a test to assess the viability of establishing a museum in central London dedicated to these "salvaged" street artworks.[64]

While it remains to be seen if such a museum is in fact underway, the idea itself feeds into a persuasive argument for the possible long-term benefits connected to the preservation of street art. Peter Bengtsen argues that such continued effort to take down, restore, and preserve artworks at great cost suggests that some preservationists expect either that more graffiti artists will eventually come to acknowledge the removed artworks as part of their oeuvre, or that the emphasis previously put on the artists' statements will diminish in favor of other types of provenance.[65]

Although the argument for the removal and preservation of street artworks may prove to be beneficial, it is still not widely accepted among street artists and graffiti enthusiasts. There does appear to be a growing awareness of the potential long-term benefits of preservation. Bengtsen remarks that this is perhaps fueled by widespread resignation to the fact that street artworks are being removed regardless of anyone's feelings about the matter.[66] These benefits include having access to a more complete overview of certain artists' body of work and allowing future museum-goers and researchers to study samples of actual street artworks from the early twenty-first century rather than only photographs and other forms of documentation. Additionally, works of public interest would be safe from the multitude of threats they face on the street, including demolition, erosion, or intentional erasure by the government or other artists. However, since the preservation argument hinges on the need for at least some removed street artworks to become accessible to the public, it is significantly challenged by the fact that these pieces have mostly ended up in the hands of private collectors or in the stocks of galleries.[67]

8. Conclusion

The preservation argument focuses on the long-term importance of preserving a certain number of street artworks and making sure that they become available to the public. However, even if artworks become accessible to the public, their removal, restoration, and preservation in an art institution comes with a significant trade-off in terms of the loss of their original context, which adds notable meaning to the artworks. Since street artworks are essentially site specific, the shift to placement in the context of the museum often significantly alters how the artworks are perceived, and in some cases deprive them of meaning.[68] Ideally, significant works of graffiti ought to be left in their original context when feasible. The Street Museum of Art, headquartered in Williamsburg, Brooklyn, is a museum with such a concept.

While attempts have been made by museums to bring street art into the gallery or museum, this street art museum attempts to bring the gallery or museum to the streets. The Street Museum of Art accomplishes this by creating labels such as those seen next to works of art in a gallery and places them next to the street art.[69] On its website, it announces the exhibition and includes a map, pinning each work of art in the exhibit to its exact location. In putting together an exhibition, the Street Museum of Art states that one of its greatest challenges is the changing nature of street art. That is, the museum may plan to include work in its next exhibit only to discover that it is gone before the exhibition has even begun. Thus, museum workers find themselves making changes to the program up until the night before an exhibition.[70] These artworks are short-lived because cities actively seek to remove graffiti.[71] Consequently, while the museum allows the pieces to be viewed in their original context, this method fails to preserve works for future generations.

If removed with the intention of restoration or preservation, works of graffiti art should eventually be displayed in museums that are freely accessible to the public in a space that honors their original context as much as the gallery may allow. Perhaps this calls for a new type of viewing space altogether, and it certainly asks society and the law to reframe the way we think about exploiting, condemning, displaying or privatizing graffiti which is agreed to contain cultural or historic value.

9. References

1Alan Forster, Samantha Vettese-Forster, and John Borland, "Evaluating the Cultural Significance of Graffiti," *Structural Survey* 30, no. 1 (2012): 2.
2 Lynn A. Powers, *"*Whatever Happened to the Graffiti Art Movement?" *Journal of Popular Culture* 29, no. 4 (Spring, 1996): 139.
3 Jessie L. Whitehead, "Graffiti: The Use of the Familiar," *Art Education* 57, no. 6 (Nov, 2004): 27.
4 Ibid.
5 Ibid.
6 R. E. Allen, H. W. Fowler, and F. G. Fowler, *The Concise Oxford Dictionary of Current English* (Oxford: Clarendon Press, 1990), 617.
7 Forster, Vettese Forster and Borland, "Evaluating the Cultural Significance of Graffiti," 3.
8 Peter Keegan, *Graffiti in Antiquity* (London: Routledge, 2014), 1.
9 Bethan Bell, "Street Art: Crime, Grime, or Sublime?" BBC News.
https://www.bbc.com/news/uk-england-38316852 (Accessed March 2019).
10 Rebecca R. Benefiel, "Dialogues of Ancient Graffiti in the House of Maius Castricius in Pompeii," *American Journal of Archaeology* 114, no. 1 (2012): 59. http://www.jstor.org/stable/20627644.
11 Ibid.
12 Keegan, *Graffiti in Antiquity*, 16.
13 *The Burra Charter*, 1999, as referenced by Forster, 3. The Burra Chapter defines the basic principles and procedures to be followed in the conservation of Australian heritage places.
14 Forster, Vettese-Forster and Borland, "Evaluating the Cultural Significance of Graffiti," 3.
15 Historic England, *Conservation Principles, Policies and Guidance*, 27-31.
16 As quoted by Forster, Vettese-Forster and Borland, "Evaluating the Cultural Significance of Graffiti," 7.
17 The anonymous artist known as Invader, as quoted on his personal website at https://www.space-invaders.com/about/
18 Lindsey Mancini, in a personal interview with the artist, "Invader Responds to 'Uproar' Caused by Bhutanese Invasion", The Arrow, Last modified Feb 8 2018. http://arrow.theartaround.us/invader-responds-to-uproar-caused-by-bhutanese-invasion/

19 Forster, Vettese-Forster and Borland, "Evaluating the Cultural Significance of Graffiti*,"* 4.
20 William Jordan, "Graffiti Is an Art Form, Say Public", YouGov.co.uk. Sample Size: 1629 Adults in Great Britain, fieldwork conducted the 27th - 28th April, 2014. https://yougov.co.uk/topics/politics/articles-reports/2014/05/01/graffiti-is-an-artform-say-public
21 Ibid.
22 Ibid.
23 Bell, "Street Art: Crime, Grime, or Sublime?"
24 Oli Mould, *Urban Subversion and the Creative City* (London: Routledge, 2015).
25 Jeff Ferrell, *Crimes of Style: Urban Graffiti and the Politics of Criminality* (Boston: Northeastern University Press, 1993).
26 Veronica Saydack, "Street Art as a Narrative" (M.A. diss, San Diego State University, 2011), 4.
27 Margaret L. Mettler, "Graffiti Museum: A First Amendment Argument for Protecting Un-commissioned Art on Private Property," *Michigan Law Review* 111, no. 2 (Nov. 2012): 249.
28 Mettler, "Graffiti Museum," 249.
29 Mettler, "Graffiti Museum," 251.
30 Saydack, "Street Art," 3.
31 Marisa A. Gómez, "The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism," *University of Michigan Journal of Law Reform* 26, no. 3 (1993): 696.
32 Gómez, "The Writing on Our Walls," 697.
33 Ibid.
34 Ibid.
35 Invader, https://www.space-invaders.com/about/
36Ibid, 2293.
37 Ibid, 2295.
38 National flag of the United Kingdom.
39 Sarah Lyall, "Borough Searches for Missing Boy, Last Seen on Wall", *NY Times*, Feb 28 2013, archived at http://perma.cc/CLV5-4YEQ
40 Ibid.
41 Ibid.
42 Salib, 2294.
43 Jamie Wetherbe, "Missing Banksy Mural Fetches $1.1 Million at Auction," *LA Times*, June 4, 2013, archived at http://perma.cc/85FF-HUGS
44 Ibid.
45 Ibid.
46 Lowpro, "Top 25 Most Expensive Banksy Works Ever," *Arrested Motion,* Sept 21, 2011, archived at http://perma.cc/38EU-E3ZW
47 Wetherbe, "Missing Banksy."
48 Mila Pantovich, "The Most Expensive Street Art: From Basquiat to Banksy," *JustLuxe,* Jan 9, 2013, archived at http://perma.cc/8UFL-SYM7.
49 Salib, "The Law of Banksy," 2297.
50 Ibid, 2298.
51 Nicole Martinez, "Can Street Artists Protect Their Work?" *Art Law Journal from Artrepreneur,* 2018. https://alj.artrepreneur.com/visual-artists-rights-act/
52 Ibid.
53 Mekhala Chaubal and Tatum Taylor," Lessons from 5Pointz: Toward Legal Protection of Collaborative, Evolving Heritage," *Future Anterior: Journal of Historic Preservation, History, Theory, and Criticism* 12, no. 1 (Summer, 2015): 77.
54 Ibid.
55 Ibid.
56 Each advertisement for the show had footnoted that the show was not in any way endorsed or promoted by the artist himself.
57 From statement by Lazarides posted at the entrance of the Banksy exhibit in Miami, FL, which the author personally attended December 12, 2018.
58 Banksy, *Wall and Piece* (London: Century, 2015), 8.
59 Ibid, 170.
60 Ibid, 170.

61 Peter Walker, "Art: Second Banksy Work Taken from Shop Wall," *The Guardian,* Jul 27, 2013. http://0-search.proquest.com.wncln.wncln.org/docview/1412843682?accountid=8388.
62 New York Times, "Seven Works Attributed To Banksy To Be Auctioned," *New York Times Company,* April 24, 2014. https://search.proquest.com/docview/2213549835/abstract/592A2C8FC2BA42CAPQ/1?accountid=8388
63 Ibid.
64 Peter Bengtsen, "Stealing From the Public: The Value of Street Art Taken From the Street," In *Routledge Handbook of Graffiti and Street Art,* ed. Jeffrey Ross (Routledge, 2016): 424.
65 Ibid.
66 Ibid.
67 Ibid.
68 Ibid, 427.
69 Carmen Cowick, "Preserving Street Art: Uncovering the Challenges and Obstacles," *Art Documentation: Journal of the Art Libraries Society of North America* 34, no 1 (Spring 2015): 42.
70 Ibid.
71 Ibid.