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CARTOGRAPHY OF POWER: THE 47TH STATE'S AVERSION TO GRAFFITI ART

Priscila Poliana

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CARTOGRAPHY OF POWER:
THE 47TH STATE’S AVERTION TO GRAFFITI ART

by

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PREVIOUS DEGREES
BACHELOR OF ARTS IN ECONOMICS

THESIS
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ABSTRACT

While unauthorized graffiti has been historically associated with crime, vandalism, and property damage, the visual incursions of corporate advertisers on urban landscapes have been mostly exempt from criminal characterization—by purchasing private and public spaces for cash, upfront. The persistent transfer of capital to the private sector, and by extension commercialization of public spaces and services, invades individual privacy by intensifying exposure to relentless, unsolicited advertisement. *Guerrilla Art* thus emerges as a force challenging the favoritism of consumer culture vis-à-vis the agency of ordinary citizens to utilize the urban fabric as a medium for expression and public discourse.

Every year, governments spend millions of dollars to procure and obliterate unauthorized graffiti scribbles, just to cover them up with additional coatings of paint. However, if a building, alleyway, or ditch is left to abandonment, why spend taxpayer dollars to paint over paint?

Using Jacques Derrida’s theory of Deconstruction, this thesis examines the legal framework that unconditionally protects property against the conjectured menace of unsanctioned graffiti, of laws that privilege junked estates even when they blight the city, or present safety concerns. Furthermore, it calls into question the intransigence of New Mexico state statutes and Albuquerque city ordinances to negotiate the shared utilization of public space with graffiti artists. The unilateral indictment of all forms of graffiti is a démodé exercise in both control and futility, simultaneously suppressing and dulling the creative brilliance of everyday city life.
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PREFACE

Albuquerque is one of the fastest growing cities in the United States projected with “a five-year growth rate of 7.2 compared with the national average of 4.0 (Living Here - Albuquerque Economic Development, 2014), and while it has preserved some of its uniqueness, it is threatened by ever-looming attempts to create a commercialized, one-size-fits-all identity (like so many other contemporary urban centers in the nation and throughout the world). As a Burqueña de corazón, an Albuquerquean at heart, and a planner, one of my goals is to assimilate and honor the richness of the community's character, culture, landscape, and diversity in face of the numerous forces impelling homogenization. In that spirit, I have become particularly interested in examining how the trending privatization of public goods alters our notions of community and impinge upon the agency of ordinary citizens to utilize the urban fabric as a medium for expression and public discourse.

From the prehistoric petroglyphs to the digital billboards in Time Square, the history of humanity has been expressed through works of art performed in public spaces. In that sense, the artistic (as opposed to depredatory) and spontaneous imprinting of street walls, also known as graffiti, represents the evolution of art, not its contradiction. However, the current legal framework sanctioning unauthorized graffiti art does not account for intent when adjudicating between coercive and intimidating interventions (i.e. gang graffiti tagging) versus bottom-up inscriptions of space manifested through imageries, meanings, and styles scribbled on city walls. Ergo, in my thesis titled “Cartography of Power: The 47th State’s Aversion Towards Graffiti Art” I attempt to deconstruct the dominant intellectual edifice, codified through a legal structure and
enforced by the state’s police power, that unilaterally condemns all unsolicited graffiti interventions as equally transgressive and unwelcome. More specifically, with the purpose of interrogating the state’s aversion towards unauthorized graffiti art executed on the streets of Albuquerque, I analyze how the State of New Mexico and the City of Albuquerque articulate legal devices as a means of silencing what I believe to be a legitimate form of catalyzing a pluralistic and nuanced public discourse.
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Chapter 1 - Introduction

OVERVIEW OF THESIS CONTENT

From the ancient petroglyphs to the billboards of Time Square, humanity expresses itself through works of art executed in public spaces. Humans today interface with their built urban environments much as their forebears did traditionally in natural environments, to not only subsist, but to also express themselves, indelibly making their mark upon the surroundings artistically by adorning them with symbols, images, words, and color—graffiti, as it were. In this sense, anonymous paintings on street walls represent the culmination of art, not its decline. However, with the enhanced role of privatization in nearly every facet of modern society, the erosion of the concept of communal property previously attributed to public spaces is well under way. The ongoing transfer of capital to the private sector, and by extension commercialization of public spaces and services, not only encroaches upon public life but invades individual privacy by intensifying exposure to relentless, unsolicited advertisement. As such, this repurposing of public space through visual sanctioning degrades the agency of ordinary citizens to utilize the urban fabric as a medium for expression and discourse.

The profit-driven State's use of modern digital surveillance techniques mark an ever-increasing consolidation of power over the populace, meaning that now more than ever, insurgent street art emerges as the citizenry's response to the real and perceived lack of agency to form and transform their cities. Without a city permit or a patron, painters and sculptors incorporate art into city life by utilizing the urban fabric as a gallery. These acts of insurgency—however diverse in form, intention, and purpose—go beyond geographic boundaries to demonstrate dissent, and symbolize a claim to re-appropriate
the physical, social, and economic spaces that systematically and disproportionately exclude them. Street art thus becomes a people’s forum both for expressing themselves artistically, as well as politically. The concrete jungle thus becomes a canvas, a megaphone, and an indictment of crimes concealed in design.

This writing charts a metaphorical “Mapping” of the power relationship between individuals who manifest their creativity publicly by intervention in urban backgrounds and the bureaucratic mechanisms that taxonomize their actions as criminal. While the individual freedom to make a cardboard sign and wave it in protest while standing in front of a building is Constitutionally-protected at the very highest levels of American jurisprudence; conversely, when that same message is stenciled upon a sidewalk, the protection afforded that medium of protest speech dissolves almost immediately and universally at the lowest cognizant level of municipal code enforcement. An effort is made to examine why individual free agency to form and transform a contemporary city as an act of self-determinism is seldom recognized or protected.

On one hand, there is a dominant political body, encrypted through a common law legal framework and enforced by the corporate-state’s burgeoning police powers, which embody an overwhelming physical and structural outlay. This hegemonic structure orchestrates urban spatial relationships by way of criminalizing non-compliant behavior. On the other hand, the monolithic governmental leviathan comes vis-à-vis with an anonymous asymmetrical, bottom-up response, whose conflicting conceptualization of public spaces is expressed artistically via images, meanings, and motifs which represent a direct affront to the State’s intransigence with regards to negotiation of space. Urban interventions are characterized by their unilateral execution and fly in the face of the
State’s thinly veiled dissimulation of structural favoritism. Thus, the cartography of power aims to call into question the mechanisms that allow for these power imbalances.

To this end, the governments of the State of New Mexico and the City of Albuquerque will be examined as case studies on how statutory laws are used unilaterally to declare any unsanctioned artistic urban interventions as public nuisances demanding abatement. More specifically, with the purpose of scrutinizing the State’s aversion towards graffiti art in the streets of Albuquerque, the investigation into the role of art in public discourse, the genealogy of graffiti in New Mexico, and the legal framework constructed to criminalize graffiti. Using the landmark legal actions brought in City of Albuquerque v. Ernest Doty and Sullivan v. City of Albuquerque, this research examines the underlying paradigm that censors unauthorized public art, based on iterations grounded in the work of Jacques Derrida, and his theory of Deconstruction.

ART AS PUBLIC EXPRESSION

Around the world and throughout history, art upholds a long tradition of chronicling narratives. Art is a universal form of storytelling that sparks analytical thinking via the elaboration of context; from the informal dichos de la abuelita (your grandmother’s sayings) to the epic oral tradition of Homer, to doodles during class lectures and humming in hallways, the artistic medium tells our stories, secrets, and desires. The meta-narrative in pieces of art themselves reflects the greater human context and experience, and can translate a singular expression into a platform for thoughtful, and communal discourse. This analogous relationship between expression and context is formulated via analytical interpretation, and transmitted by the sensorial representations
expressed in works of art. Similarly, to assess the role of art is to gauge the particularities of artistic works within their individual social contexts (Knight & Krause, 2008).

Public art is broadly understood as artwork staged in civic-owned spaces such government buildings and non-privately owned infrastructure which includes, but is not limited to causeways, corridors, tunnels, and bridges. Public art can occur on privately-held property and still be considered “public” since it is plainly visible to the casual observers in publicly-accessed areas: exterior walls of both public and private buildings, for example. That precise legal intersection of the meanings public and private has and will continue to generate friction and contention because it unavoidably calls into question the jurisdiction and authority over the use of space, of which is inexorably contested by modern laws governing unauthorized graffiti. Chapter 3 deconstructs the State’s copious laws which define not only fail to recognize unauthorized graffiti as art, but label it a public nuisance, a potentially prosecutable criminal offense for its creators. Furthermore, this research attempts to understand the underlying logic behind the legal framework which ultimately has led to remedy unauthorized public art by criminalizing it.

Nevertheless, when it comes to official and sanctioned installments of public art into the city fabric, one of the challenges faced by planners, designers, and local authorities alike is implementing artwork which is relevant to the general public and representative of the city’s image of itself.

Public art can contribute to a community through a number of means of… increasing the use of public spaces; improving the aesthetics of a locality; encouraging a sense of ownership and community pride; creating
landmarks and distinctive features in the urban landscape; and supporting growth in cultural tourism (Irons, 2009)

The added importance of public art in city life rests on its ability to physically manifest a proper meeting of the minds between the artist whose vision is to be realized and the people of the community who must ostensibly share, understand, and accept the aesthetics contained therein.

However, while public art can represent an unparalleled medium of expression in city life, the application and acceptance of public artwork frequently cannot be reduced so formulaically. Though art operates as a communicative device, it cannot simply be inferred that all works of art convey, or even should convey, a specific message or purpose; neither does this paper claim that they are void of meaning or message if it is not readily interpreted by its observers. Some do, some do not, and the spectrum is potentially limitless. *A propos* to its very definition, a more viable angle of inquiry regarding public art may be to absorb it from the perspective of the audience. Knight and Krause (2008) propose that the role of art as a public expression “rests in the quality and impact of its exchanges with (the) audience,” measured by its ability to “extend reasonable and fair opportunities for the members of the public to understand and negotiate their own relationships with it” (ix). Yet, regardless of individual perceptions of the role of art in public expression, it is more than a communication channel, for it is a sophisticated language system in itself.

What exactly does graffiti have to do with art-as-public-expression then? While graffiti is often portrayed and perceived as detrimental to the landscape, “Artists in
pursuit of an engagement with the possibility of real social change have found it continuously necessary to work in ways that break with the dominant paradigms and established institutions of modern art.” (Bradley & Esche, 2007, p10). Therein lies a quandary: artists who feel they are serving a public interest by relaying a message of change, resistance, or challenge to the status quo for the good of the community, and yet they are frustrated in their artistic purposes by the law and order mechanism of the State, the struggle that ensues demands resolution, which side then is to hold sway? The public arena indubitably serves as locus for the exchange of goods and ideas but it can also be utilized as a venue for displaying, imposing, and legitimizing the political power and dominance of the state (Hue, 2010, n.d.). The section titled Public Art and the State discusses how the State can synthesize its present, concurrent approach to being both a benefactor of public arts while still being its most formidable antagonist, to a more sensible singularity of purpose. This paradox may arise as a result of the role art plays in the public sphere in constructing community, while simultaneously, amplifying the power of the state—the great pyramids in Egypt and the Americas; the Roman Coliseum; the Hanging Gardens of Babylon, all executed by and for the ruling power apparatus of its time. This argument further proves the poignancy of art as a device for self-promotion.

Later, in the next sections, titled Political Dissent, further elaboration on the power public art has to promote social change, as well as how Insurgent Art emerges to challenge the social, physical, and economic material realities of contemporary cities. In elaborating these sections, the intent is to define a definitive strategy as to how public art can be articulated, and the influence it may have in affecting public discourse.
PUBLIC ART AND THE STATE

In modern history, there has been a double standard to assess the value and the right to space regarding artworks presented in public spaces. Specifically, while the state has been a major proponent and curator of public art, it has also assumed the function of a ferocious censor of its product and persecutor of artists who created pieces deemed controversial or provocative, for instance under Nazi Germany rule. This paradoxical sentiment from the state towards works of art is intimately related to the content expressed within the context and the prospective influence this expression may exert in public discourse.

In assessing the relationship of art and the state I depart from the nineteenth century, a period marked by the ascent of modern art. This century marked a transformational moment that would forever change Europe’s social, political, economic, and cultural realities. The new economy enabled the dawn of a new class that “released” art from the monopoly of the Church, the Crown, or aristocrats (Bradley & Esche, 2009). However, at the same rate, under the patronage of capitalism, “the artist, like any other marginal small producer, is squeezed by the forces of market competition” (Cockcroft & Weber, 1977, p.23). As such, the historical development and propagation of the arts reveals an ongoing intrinsic relationship between socio-economic realities of the times, and the face of the era’s art:

“The transfer of wealth that capitalist industrial organization made possible created a new class, and expanded bourgeoisie with both disposable income and leisure time. One manifestation of the economic power of this new class was the creation of a new kind of space for the representation and enjoyment of art – the art gallery...a hybrid
private/public space… (Bradley & Esche, 2002, p.9)

Thus, a hybrid between the rich and the poor, the middle class, also marked the advent of a new age and a new perspective from which to view and experience art. Eventually, furthermore, the creation of museums and the proliferation of art galleries made art more accessible and gradually integrated the lives of a larger number of people. The “new voices” producing and “witnessing” public art promoted the development of a more diversified content and context of artistic discourse. Similarly, with the approximation of the subject to the expression, the arts bequeathed a platform for the utterance of a myriad of narratives and interests that had previously lacked space and influence in the socio-political arena of exclusively patron- and state-funded art. However, although capitalism allowed for a more expansive development of public arts, it never liberated discourse:

“At the mercy of middlemen, dealers, and gallery owners, the artist receives only the first price for his work…Although he [the artist] regards himself as part of the intellectual and professional stratum of the petite bourgeoisie, the artist is often worse off economically than a common laborer” (Cockcroft & Weber, 1977, p.23).

Consequently, under the mode of production dictated by the new economy, art is detached from the restrict monopoly of aristocrats and “emancipated” to the status of a commodity in the market. In that sense, both the creation and the creator remain tangled to a superstructure in their expression process.

In time, by way of bridging the gap between the private and public spheres, states informed by a mixed-market paradigm began to sponsor artworks through both federal
and municipal arts programs as a means of producing large-scale artistic works in urban centers. The Great Depression of 1929 was a period marked by laborers’ despair and the upsurge of a myriad of social programs aimed at reviving the economy. In order to mitigate the financial crisis, Roosevelt’s New Deal aimed at attending “people’s cerebral needs as much as the material ones,” and subsequently spawned the “nation’s largest art program ever undertaken by the government,” intending to address the economic chaos, while simultaneously asserting the government’s role as a supporter of the arts (Knight & Krause, 2014, p. 3). The Great Depression marked the advent in the United States of Big Brother as a cultured art patron. Furthermore,

The New Deal sought to change the relationship between the artist and society by democratizing art and culture. Art project officials wrote that the mass of people were “underprivileged in art”, and they endeavored to make it available to all…projects were a uniquely American blend, combining an elitist belief in the value of high culture with the democratic ideal that everyone in society could and should be beneficiary of such efforts” (Knight & Krause, 2014, p. 3).

The federal government commissioned numerous artists to decorate buildings, plazas, and public spaces under the jurisdiction of the Treasury Release Art Project (TRAP), which, in turn, administered “aesthetic and technical standards in keeping with “good” art” (Knight & Krause, 2014, p. 3). Hue (2010) marks this intersection of supposed state benevolence / altruism with hegemony by noting that “public space has…been both an expression of power and a subject of political control” since the dawn of art and the state (p.3). Subsequent to the growth of the state apparatus, public art develops a collective expression of dissent, a means of challenging the ruling class and its
dominant ideologies through the altering of the built environment; the gallery that materializes, and confronts elitists’ coercive abstractions.

When public art expresses a counterpoint that challenges the dominion of the State, or the belief systems it sustains, tension is inevitable. Accordingly, both the value and the menace posed by public art rest on its capability to catalyze discourse that is either pro or against the state’s agenda. In that sense, public art can do much more than beautification or ornamentation of spaces, but be employed to advance or debunk concepts, instill sentiment and, ultimately, affect change. The state also legitimizes the role of art as a force capable of unifying or splintering public perception and discourse, if art were irrelevant or merely for the expression of beauty, why outlaw or restrict it at all?

These are some of the compelling reasons for the unabated restriction and censorship of art throughout modern history; similarly, these expressions have been both promoted, as well as censored by the State. Witness the concurrent use of visual art as propaganda, along with the sanctioning of the art of dissidence by Nazi Germany. One of Hitler’s first initiatives as Chancellor was to commission a museum in Munich to promulgate a new notion for the Aryan aesthetic ideal. Under Hitler’s rule, the “selective demonization” of art was utilized as a core component to “foment[ing] an atmosphere of permissible hatred and a link between aesthetics and human disaster.” The gestalt for the “purification” of Germany intended “to promote the Apollonian “classical” ideal and eradicate the wanton Dionysian “primitive,” a broad category that included, along with

\[1\] Conversely, when one looks at the art produced during the Works Progress Administration period, white artists exclusively authored most of the work executed during the period. The work delegated to people of color was typically in road constructions and other physical labor oriented jobs and environments and in the trades: carpentry, furniture making, auto-mechanics, etc. Patrocinio Barela, a wood sculptor from Taos, is a rare example of an artist-of-color whose work momentarily flourished during this period.
the mentally and physically deformed, avant-garde modernism, Bolshevism, and Jewish culture” (Cotter, 2014) manifesting an intent to inculcate the Aryan ideal on the collective psyche, the Nazi state abolished any artistic expression deemed to challenge the programmed ideology—all in the name of upholding a “genuine” German essence. And yet the criterion to sanction artwork was unclear even to the most prominent members of the party. Censorship presumably centered on banning works of art that “did not fit with the extremist beliefs of the regime,” those in which there was “little left but an academic style that celebrated youth, optimism, power and eternal triumph” (Art in Nazi Germany, n.d.) In the face of severe repression, and unable to practice their métier without fear of reprisal from the Nazi-controlled State, Germany lost the voice of hundreds of artists and scientists who fled in exile. In shutting off dissent through means of censorship and intimidation, Nazi Germany successfully instilled a chilling, deceitful sense of pride and legitimacy seldom challenged with German borders during that time. The silencing of and manipulation of public opinion through the orchestration sanctioning of the arts set the background for one of the most horrifying massacres in modern history. Consequently, through the State’s lens, artistic manifestations become both an object of suspicion and a valuable device for self-promotion.

ART AS POLITICAL DISSENT

Cayses (2014) contends that the horrors of the Second World War, compounded by Stalin’s atrocities, made it increasingly difficult for artists to express dissent. Modern capitalism also established itself out of the ashes of World War Two, and enabled the U.S. to “afford to power the whole global non-communist economy by running trade
deficits (Harvey, 2003) undertaking a massive industrialization process, that would eventually shift predominantly rural populations to major urban centers.

Concurrently, dictators seized power in several South American countries, and would terrorize the populace for decades to come, through censorship, arbitrary arrests, kidnapping, torture, and outright murder (Nockerts, 2002) prompting producers of art to adapt to the changing political climate as a means of not only creative survival, but of basic survival. The dictatorial power structure sweeping the postwar world also demanded audience transmogrify from the role of passive observers to active contributors charged with “completing the message and even creating it” (Cayes, 2014, p. 116.) This new trajectory of the arts emerged as “a counter discourse strategy that questioned the political hegemony of the State and the fetishist condition of legitimate art” (MariaElena, 2011.) For example, Arthur Barrios created a series of urban interventions in the late 1960's and early 1970's on the streets of Rio de Janeiro and Belo Horizonte, Brazil, to denounce the horrors of the military dictatorship at a time of severe censorship.

In his work named “Trouxas Ensanguentadas” (Bloody Bags) Barrios constructed bags “that alluded to [human] physical remains that were wounded or devastated.” (see figure 1)
The 500 bags left in conspicuous spots on the streets of Rio de Janeiro contained “Blood, Bits of nails, saliva, hair, urine, Shit, bones, toilet paper (used and unused), tampons, humid paper, food waste, paint, camera film rolls, etc.” (Osorio, 1999, n.d.). Barrios utilized the city fabric as a museum to display his creations, express dissent, and raise awareness through objects that “operated as provocation devices that altered the perception of the unaware walker-by who came across these packages…along the city sidewalk” (MariaElena, 2011, n.d.) Barrio’s Bloody Bags elucidate the power of one voice in breaking the silence of repression, as well as the symbiosis between art and politics. Household items are thus converted by ordinary citizens into a headlong challenge to state violence, and the power of art to grant voice to the powerless emerges yet again as an historical motif.

In addition to Trouxas Ensanguentadas’s in-your-face art, artistic content’s intensity can be commensurate to the level of intensity of dissent as ferocious or as nuanced and
subtle as the times themselves. Examples of public art as protest speech in present-day digital age demonstrate that public art is not only still effective, but widespread in its usage, even locally. Economic hardships for college students facing rising fees and swelling student debt have led students across the country to protest the commoditization of higher education. As president of the University of New Mexico (UNM) Graduate & Professional Student Association (GPSA) I too witnessed art being censored at the behest of Dr. Robert Frank, the school’s president in May of 2014. The art in question was located in a public building on campus whose construction was paid by taxpayers and maintenance entirely supported by funds paid out-of-pocket by students in non-tuition “student fees,” monies collected from all UNM students. At that time, there was a lot of controversy over Dr. Robert G. Frank, the University’s president, abrupt decision to remove from the purview of a student-led board eighteen percent of the yearly amount students paid in fees without offering any alternative mechanisms for community input in the fee allocation process. Frank’s decision was not well received by the student body that united to appeal to the UNM’s Regents Board. Enter art as protest; graduate / professional students created a flyer-invitation that explained the issue and asked for student and community members’ attendance at the following regents’ public meeting (see Figures 2 and 3). Figure 2 is the front of the invitation with Dr. Frank’s face and the total amount of fees students pay per year ($1,300). Figure 3 is the back of the invitation, breaking down the fee allocation.
Several students reported that university staff members were collecting the bills at the same rate that they were being distributed throughout campus. As president of the GPSA, the author was approached by a UNM staff member, who explicitly asked the author, in her capacity of leadership as GPSA president, to communicate to students that the leaflets pictured above were not permitted within the Student Union Building (SUB), yet another campus building erected with taxpayer dollars and maintained by monies levied through student fees. The staff member attributed the sanctioning of the leaflet
material to the fact that it had not been manufactured by any of the university's divisions and, as such, could not be officially promoted inside the building in the absence of a formal tabling event. The banning of these bills in common areas of a public edifice demonstrates how the conceptualization of public spaces comes accompanied by authority-sanctioning. While the ethos of academia glorifies virtues of freedom of speech and unfettered access to information, it yet sanctions the expressions of these values when used against the interests of the university’s own power structure in protest of policy, case in point proving the power of art to inform, influence, and mobilize and that sanctioning of public space, based on false premises, is a commonplace strategy to countervail its efficacy under dubious claims of law and order. It is about content and nothing else.

INSURGENT PUBLIC ART

Physical spaces reserved for public use are a central component of city life. Theoretically, they would allow people the opportunity to engage with one another in a zone where exclusionary factors such as race and income may not necessarily determine access or advantages. However, with the propagation of the capitalist agenda in nearly all segments of Western society, the concept of communal proprietorship in regard to public space appears to be eroding. According to Mark (1989), “Public space is the common ground where civility and our collective sense of what may be called ‘publicness’ are developed and expressed” (p. 149.) In this sense, if public space functions as a locus where ideas and goods can be exchanged and expressed, then population's ability to form and transform these places implies a direct relation to its agency to exercise democratic
principles, such as freedom of expression and the right of assembly. However, as opposed to notions of agency and liberty. Agacinski argues “the actual making and practice of public space often reflect a different political reality and social bias” (Hue, 2010, p.3.)

The trending privatization of public spaces, resources, and services illustrates a growing influence of the profit-driven agenda on public discourse. Regardless of whether you are walking down the street or enjoying the comfort of your own home, there is always something for sale at your fingertips. Billboards, commercials, pop-up ads continuously assault our privacy, and making people vulnerable to corporate messaging; consent has been pre-empted and purchased in advance. This barrage of marketing is tantamount to a one-way conversation, promoted by large corporations that can afford their way, regardless of consent, into everyday life.

In the 2010 landmark case Citizens United v. Federal Election Commission, the United States Supreme Court went even further, lifting previous restrictions on corporate political spending, allowing corporate entities the same rights of free speech as “persons” meaning they now had carte blanche to heavily fund candidates and issue advocacy as protected free speech not subject to the limits of the soft money previous set in the landmark Buckley v. Valeo. The interests of these “people” are innocuously explain by the seemingly benevolent move to spur economic development, and thereby funnel unprecedented amounts of “public funds … to subsidize development of private venues, while developers are generously rewarded for providing spaces with limited public use” (Hue, 2010, p.6). The ever-increasing influence of money into politics places the interests of one group, bottom-line corporations over others, and subsequently creates socio-political realities that systematically benefit private interests over the greater social good.
Some of these realities can be observed through current legislation regarding the sanctioning of art in public land, discussed in detail in Chapter 3, enabling the State to gradually expand its influence on how, when, and which spaces can be utilized. For example, the current cases of spikes constructed under awnings to discourage the homeless from sleeping in visible landmarks demonstrates the way in which the very notions and purposes concerning public spaces have been reassessed under the premise that more governmental control translates to better quality of spaces for all (Mark, 1989.) Lefebvre analyzes “The Sociology of Marx” noting the importance of addressing contemporary acquiescence towards a government that conceptualizes a need to create “form which organizes formless content” in society (1968.) These forms represent a circular process that emerges as a response to the tensions and clashes in social relations between the government and the governed. As government continues to grant itself an increasing scope of control and the State’s police and judicial power are continually enhanced, an increasingly vast legal framework must be decoded in order to determine the aesthetics of the city and its experience. Low and Smith (2005) contend that a contemporary example of the further expansion of State authority was conceded by the citizenry, post-9/11 heralding in “new forms of control in public space … curtailed freedom of movement and expression and greatly limited the activities and meanings of contemporary public space” (Hue, 2010, p.3.)

This State power grab proceeded virtually without resistance and interruption from the populace, prompted by fervent interest in national security and prevention of future terrorist attacks within American borders. Not all citizens went along quietly, some exert their own imprint on the socio-political conscience through insurgent art
voicing their disapproval of the disproportional legislative favoritism for private interests. Through guerrilla graffiti art, community and individuals struggle “to find their place and expressions in the contemporary city and, in doing so, redefine the boundaries, meanings, and instrumentality of public sphere” (Hue, 2010, p.14.) As posed by Wash (1996), graffiti becomes an instrument of defiance when writers use the urban fabric as a canvas to voice their dissent.

Through guerrilla graffiti art, community and individuals struggle “to find their place and expressions in the contemporary city and, in doing so, redefine the boundaries, meanings, and instrumentality of public sphere” (Hue, 2010, p.14). As posed by Wash (1996), graffiti becomes an instrument of contestation when writers use the urban fabric as a means of demonstrating rejection of their working-class environment. Most [writers] worked in menial, low-class jobs felt that they had no individuality in the workplace; that they were just part of the city's life-blood and could not be distinguished from the next worker. Turning to art, graffiti writers posted their names in as many places as possible, in essence to let the world know that they were still conscious and were still human beings (p.35)

Street artists, often self-taught, utilize the urban fabric as a public gallery to “challenge the conventional understanding and making of public space” through open, visible defiance of the systems that have defined them (Hue, 2010 p.2.) Their art is independent, in spirit, often done in solidarity with a voice muted by the hypnosis of society and mass media. It aims to provoke thought and increase awareness and prompt others to take action as well. In that sense, graffiti street art may serve as an instrument to
protest and “to challenge the legitimacy of the present political economic order or specific government policies” (White, 2001, p.254) These acts of insurgency – though very diverse in form, intention, and purpose – go beyond geographic boundaries to demonstrate dissent; they symbolize an insubordinate claim for the re-appropriation of the physical, social, and economic spaces that systematically and disproportionately discriminate against the less privileged.

Chapter 2 - Methodology

METHODS

The methodological framework for the investigation pertaining the state’s contemporary aversion to graffiti art is grounded in the collection of numerous legal devices, which are later interrogated through the lenses of Derrida’s theory of Deconstruction. However, prior to analyzing this legal framework, the research process began by debriefing the role of art as a mechanism of expression and public discourse. Art is produced within context and thus interrelated with the socio-political happenings of the state. As previously discussed, not all art contains a message, but there is a longstanding trend of common people using imageries and motifs to talk back to the power structures of their governments and societies. Preliminary conclusions point to the significant influence the State can exert in the production of the arts, either by promoting, impeding, or a selective formula of the two. Similarly, graffiti’s defiant continuation in the face of countless efforts to outlaw it, once again asserts itself as a rebellion against multiple legal, political, economic, social, and religious dominant paradigms.
For as long as humans have sought or even built shelter to protect themselves from the elements, they have also seen it fit to narrate stories, upon those shelters. The genealogy of graffiti briefly covers these vivid colors and imageries from the Upper-Paleolithic era and the Native Pueblos, to inscriptions by Spanish conquistadores and the artsy Chicano Muralism movement, which analogously to graffiti, utilized wall-painting as an instrument to broadcast chronicles and resistance.

DATA COLLECTION & ANALYSIS

Data collection originates from a variety of public records such as court archives, police records, city ordinances, state statutes, constitutions, news coverage, photography, archival research, legal research, and comprehensive reviews. To synergize all this pieces, this thesis focus on diagraming an analogical and figurative cartography of power that amalgamates the abstract and tendentious devices which regulate, monitor, criminalize, and censor all types of unauthorized graffiti art indiscriminately. Similarly, the cartography lent principles from Derrida’s Theory of Deconstruction to disassemble the very foundations of knowledge that construe graffiti as hostile, filth, and pernicious. In this regard, I queried the meanings behind the legal framework constituting unauthorized graffiti as criminal as well as unfolded the orthodox architectural cannons propping the 47th State’s aversion to graffiti art.

Chapter 3 - Theoretical Framework

JACQUES DERRIDA’S ‘DECONSTRUCTION’

Deconstructing knowledge is significant beyond any conventional, or even
philosophical assessment aimed at gauging how we know what we know. For the purposes of this paper, Derrida’s Deconstruction exposes the hollow foundation of the capricious constructs that condemn graffiti as a repository of deviance, crime, poverty, ‘filth’, and marginalization. Hence, I intend to challenge these pre-established notions of centrality by carefully disassembling seemingly neutral assessments, in order to reveal their inherent connotations. I seek to find a truer ground zero for discourse around public art as a voice for the marginalized. I must first clarify a critical point, however:

In spite of appearances, deconstruction is neither an analysis nor a critique…it is not an analysis in particular because the dismantling of a structure is not a regression toward a simple element, toward an indissoluble origin…deconstruction is not a method and cannot be transformed into one. These values, like that of analysis, are themselves philosophies subject to deconstruction (Derrida, 2012).

Therefore, Derrida is first to acknowledge that even his own theory of Deconstruction is also subject to deconstruction, that neither is it the seed of universal truth. Derrida elucidates this notion through negative definition; a snake oil peddler he is not. As such, deconstruction cannot be merely subsumed to a method, rule, or principle, for it is merely an “activity of reading” the world:

The “deconstructor” looks for the ways in which one term in the opposition has been "privileged" over the other in a particular text, argument, historical tradition or social practice. One term may be privileged because it is considered the general, normal, central case, while the other is considered special, exceptional, peripheral or derivative. Something may also be privileged because it is considered more true, more valuable, more important, or more universal than its opposite. Moreover,
because things can have more than one opposite, many different types of “privilegings” can occur simultaneously (Balkin, 1995, n.d.).

To deconstruct is thus to interrogate structures as an ombudsman, looking for looseness, flaws, assumptions, contradictions, bias, and so on. It is to look for what transcends the object of appraisal and yet enables it existence (Wigley, 1993, p.44). Though there is no fixed place to start the process of deconstruction, I may begin this cellular break down through a more in- depth analysis of the language, literature, context, and philosophy of current regulations on public art. For the purposes of this paper, the production of space and its adornments themselves are an appropriate starting point, for they are the concrete manifestations of a multitude of abstract sources of knowledge, and reflect the politics of materialism and the architecture of institutions that produce and reproduce them.

SYNOPSIS

Since its inception in the mid 1960's, Derrida’s Deconstruction has been applied to myriad disciplines in the interest of scrutinizing epistemological connotations that had not been sufficiently probed. Deconstruction may appear to be a self-explanatory term, but to engage in deconstruction is to disassemble the foundations of knowledge to a cellular level in pursuit of its most primitive origins and meanings. In Derrida’s words, Deconstruction is “not a destruction but precisely a deconstructing that dismantles the structural layers in the system” (Wigley, 1993, p.42.) As a critic of philosophical thought, Derrida brings to surface the problematic nature of the center, or locus of power, the
organizational focus by which complex concrete or abstract structures—such as a building, or the U.S. Constitution are based upon. The locus then is the linchpin that is used through the elaboration and determination of a “presence” aimed at stabilizing a given system (Morse, 1997) and yet the locus is a divergent point between two or more inherently diverse factors. By “presence,” we understand the original state of matters, or the allegedly notion of “true” meaning. We then observe, interpret, and echo presence through our limited systems of expressions as a means of composing the “text”. The text, in turn, represents what we see, the interpretations of presence that combine to form a whole open to further interpretations. Derrida argues, “what we get when we read a text is not an objective account of logos”, the Ancient Greek term for speech, thought, law, or reason—the present interpretation or understanding of the text itself. “This understanding becomes so to speak, our own [text] of the text.” (Ozmone & Crave, 1986, p.368.) Similarly, any disruption, alteration, or deviance from the structure are described as “play” (Morse, 1997). Derrida’s notion of meta-construction and interpretation of knowledge, as well as his idea that knowledge is determined by power, returns us to the very origin of balance of power between individual artistic expression and its perception by the state, and the struggle that endures.

The notion of center, which stabilizes presence in the center, is expressed through the differences, in what Derrida refers to as “Différence”, the presumed primordial state of both presence and absence. For example, in Western tradition, binaries, such as, god/Satan, male/female, good/evil, and so on, are fundamentally conceived of as figures possessing intrinsic value. In that sense, presence gains its meaning through its juxtaposition with opposing meanings, or through its relationships. Ergo, good is known
when contrasted to evil, women are identified through their differences with men, and a state of nature is understood as the barbaric opposite of “civilized” social development. Derrida refers to these binaries as “signs”. “As with all other human symbols, a sign is always a representation of another sign, with no fixed anchoring point, except the something [that is] missing (Phillips, n.d.). In other words, Derrida purports the non-existence of absolute metaphysical truth; there are only arbitrary cultural constructions (Irvine, 2004). These attributed meanings reveal the foundation, or structure of the system to be neither grounded in objective, nor efficient deliberations, as historically asserted; rather, they stem from wholly subjective and arguably partisan assessments of presence, or “truths”.

Therein lies a conundrum for in Derrida’s vision, “translations are both impossible and necessary” (Chattopadhyay, 2012) inasmuch as they may be untraceable, or even incomprehensible. Still, the exercise of cross-examining these translations characterizes our quest for knowledge (Derrida, & Venuti, 2001, p.120). Our human system of linguistic expression is a limiting factor, for language runs the gamut from concrete to hopelessly abstract, from effable to ineffable. Yet, translation “practices the difference between the signified and the signifier,” and based on the grounds that “meaning lies before and beyond language, philosophy rests in translatability”. If translations fail, so does philosophy, so we must move boldly forward (Chattopadhyay, 2012). The activity of reading the text through its translations relates to a practice Derrida describes as ‘iterability’. Iterability is the capacity of signs (and texts) to be repeated in new situations and grafted onto new contexts. Derrida’s aphorism "iterability alters" (Derrida 1977) means that the insertion of texts into new contexts continually produces new meanings
that are both partly different from, and partly similar to previous understandings. There is thus an ongoing a nested opposition between them, and "play" between to two competing meanings results (Balkin, 1995, n.d.).

The state has been incredibly prolific in condemning and outlawing unauthorized graffiti. Countless statutes and case law examples illustrate the state’s aversion towards graffiti as a criminal urban intervention. The institutions comprising the state (executive, legislative, judicial) are the text, while the resulting social norms, enforced by law, comprise the layers of iterability. I employ Derrida’s deconstruction to decode the relationship between the state’s will to ban graffiti through legal devices and simple force, thereby elucidating the relationship between signified and signifier through mechanisms of iterability. In doing so, I accept the premise that “More than the metaphor of foundation, [architecture] is the foundational metaphor” (Wigley, 1993, p.19). Public works are the contested terrain, the contested body, and our vehicle for undertaking this journey.

ARCHITECTURE AS A TRANSLATION OF SPATIAL RELATIONS

Over the centuries prominent transnational philosophers from all over the world have drawn analogies between the physical construction of public spaces, and the abstract basis of reality. Derrida interrogates the reasons for which scholars have intentionally chosen the image of a building as a symbolic representation for reality. However, long before the notion of deconstruction emerged, Martin Heidegger, a contemporary German philosopher who himself conjectured in architectural terms, called this longstanding tradition among philosophers into question:
He points, for example, to the way Immanuel Kant’s Critique of Pure Reason describes metaphysics as an “edifice” erected on secure “foundations” laid on the most stable “ground”. Kant criticizes previous philosophers for their tendency to “complete its speculative structures as speedily as may be, and only afterwards the enquire whether these foundations are reliable. The edifice of metaphysics has fallen apart and is “in ruins” because it has been erected on groundless assertions unquestioningly inherited from philosophical traditions. To restore a secure foundation, the Critique starts the “thorough preparation of the ground” with the clearing, as it were, and leveling of what has hitherto been waste grounded”. The edifice of metaphysics is understood as a ground structure (Wigley, 1993, p.9).

In this sense, the edifice is where knowledge resides, while the ground upon which it is built connotes a fundamental prerequisite for its very existence. Derrida contends that metaphors are never innocent (Wigley, 1993, p.17). Comparing reasoning schema to architectural structures in order to describe fundamental “truths” is neither ingenious, nor accidental. It is circular reasoning, and a logical fallacy: it uses structures created by the state to legitimize the state itself – a kind of sleight of hand. It divulges a strategy that allows for the legitimization of discourse regardless of careful examination, while also systematically obstructing view from and to alternative approaches. Nonetheless, the same metaphor that is employed to represent fundamental “truths” is later discarded by philosophy as a mere and unsophisticated illustration of metaphysics. The invitation to abandon the metaphor bespeaks a system of blind spots, and therein lies the link between deconstruction and architecture.

Philosophy upholds the canons of architecture to the extent that architecture
weathers those of philosophy. Architecture’s orthodox creed insists on portraying the discipline as beautiful, classifiable, and logical. In an essay named “In Defense of the Validity of the Canon in Architecture”, Breitschmid assigns conservative architecture the exclusive ability to materialize “dreams and ambitions…precisely,” and simultaneously denies the same potential to the “non-canonical approach,” which he condemns as lacking consensus, and being an illegitimate “means of judging beauty”. Thus one entitled man presumed to silence any and all nontraditional architecture in the analysis of history as a form that “cannot be fully and definitely conceptualized” (Breitschmid, 2012).

Furthermore, he argued that

> the canonization of buildings is a useful strategy to disseminate and popularize excellent and difficult ideas about architecture among a larger, less elite group of architects and the lay population... The fact that "canonical buildings" possess central qualities lacking in other buildings is what makes it possible to delineate these limits in the first place (Breitschmid, 2012).

Breitschmid’s manifesto reminds us that hierarchy and control are two core principals sustaining the architectural dogma of might and command, and that this line of hegemonic thought has sought to hijack a monopoly on the functionality and beauty of spaces. Similarly, some studies argue that this vertical, top-down approach proposed by Breitschmid, remains predominant as a social organizational method because it

> "(a) creates a psychologically rewarding environment; (b) motivates performance through hierarchy-related incentives; (c) capitalizes on the complementary psychological effects of having versus lacking power; (d) supports division of labor, and, as a result, coordination; and (e) reduces
conflict and enhances voluntary cooperation” (Halevy, Chou, & Galinsky, 2012).

A closer look at the alleged advantages for hierarchical schemes reveals that, from (a) to (e), all benefits purported are directly related to capitalist principles that esteem structure and revenue. Similarly, to illustrate sources of knowledge in architectural terms is to rely on a logic of support that is hierarchical, self-serving, both controlled, and domesticated. Hence, the architecture of space, in the name of maintaining its cannons of order, structure, efficiency and so on, works to camouflage and perpetuate an everyday culture of separation, deprivation, and unapprised consent. As such, “architectural discourse appeals to philosophy to constitute itself, only to subordinate it as a provisional and ephemeral argument that must give way to the fundamental materiality of a building” (Wigley, 1993, p.19). However, the materialization of the belief system, successfully orchestrated through the building, does not render the “contract “between the architecture and philosophical dogma completed. Instead, they must continue this partnership in the interest of suppressing narratives of space (such that of graffiti) that may challenge this predominant model. Continued adherence to the principles and obedience to the traditional cannon are imperative elements to the economy within and outside this system.

The translation of spatial relationships through the lenses of architecture, and its assembly to philosophy, tampers the idea that architecture is an impartial and autonomous discipline. Instead, it corroborates to the notion that the building of spaces serve as a means of dissimulating structural favoritism. In that sense, architecture can
never symbolize construction but only the reproduction of additional layers made on behalf of an underlying system of beliefs that precedes it.

The idea of support is dependent on a particular view of architecture that defines a range of relationships as fundamental (foundational) to supplementary (ornamental). With each additional layer, the bond is weaker. The structure is supposedly bonded to the ground more securely than the ornament is bonded to the structure. But as the distance to the ground becomes greater, the thread to the overall structure diminishes. This vertical hierarchy needs to be understood as a mechanism of control that makes available the thought of the ground as support that is metaphysics ... Philosophy attempts to tame ornament in the name of the ground, to control representation in the name of presence (Wigley, 1993, p.11)

The State utilizes its exclusive authority to create, enact, and enforce laws by way of carefully architecting space. Firstly, it asserts its power by setting a structural bond to the ground as a means of rendering its presence justifiable and its actions legitimate. It markets this bond as neutral and indispensable through the articulation of philosophical iterations (such as that of the social contract, a figurative consented agreement between government and governed defining the obligations and rights of each) and ideologies that instill a raison-d'être, and, ultimately, instigate both pride and fear. This “structural bond to the ground [is what] can control representation” (Wigley, 1993,p.14.) but it is also founded upon contradictions. Consequently, whoever can influence the state at its most basic layer, where concrete meets the ground, can also have agency in the shaping of additional layers. Secondly, it construes and sustains the base of the edifice with building blocks molded by a set of sophisticated institutional practices designed to serve a pre-
established sociopolitical agenda grounded to the structure – that of its designer. These building blocks represent the fundamental relationships that connect the government to the governed. They comprise institutions, legislations, processes, procedures, and all other elitist abstractions that manifest themselves in space. However, “with each additional layer, the bond [becomes] weaker” and the connection with the grounding principles falls pray to play. This is because, as more layers are built, the edifice’s gravitational center (which is meant to focus and organize the entire system by mitigating and moderating presence), fluctuates allowing signifiers to slide around and refer to each other horizontally, consequently, challenging the very notions of presence. In this fashion, architecture reveals the political nature of space by revealing relationships of power.

The state’s rigorous attempts through legislation to sanction graffiti art in public space is riddled with incongruities, and reveals the intention to stabilize the center by moderating signifiers producing meanings that differ from those that are grounded to the structure. In other words, the Law, which itself is a signifier domesticated by iterability, seeks to render docile the subversive qualities of spatial relationships through systematic repression codified in “an unnatural structure that benefits an elite through the operations of a crypt that only they share” (Wigley, 1993, p.154). The metaphor of the common people’s dreams, vision and bodies being dumped into mass, unmarked graves is all to apt a continuation for the state’s silencing of their ideas and art in life.
Chapter 4- Graffiti Art

THE GENEALOGY OF GRAFFITI

Although the proliferation of graffiti in urban centers may be perceived as a postmodern phenomenon, the inscription of walls has been part of humanity’s history for thousands of years. It is still uncertain when humans first started this practice, but, “the oldest cave painting known until now is a 40,800-year-old red disk from El Castillo, in northern Spain”. Indeed, these paintings not only shed some light on the living conditions during the Upper-Paleolithic era, but also inform the development of theories regarding major prehistoric migrations. They also form the pulse of the heartbeat of intertwined human and art history; after all, “There is nothing like a blank stone surface to inspire a widely shared urge to make art” (Wilford, 2014). We have a virtually uninterrupted history of expressing ourselves in our surroundings.

Throughout subsequent centuries, graffiti continued to accompany the ascent of civilizations. For example, in Ancient Greece graffiti was known for its erotic motif, while in Pompeii it varied “from number games to drawings to clever poetry compositions…graffiti … yielded more than 11,000 inscriptions – close to the number of residents estimated to live there” (Benefiel, 2010 p.59). Time and again, the inscriptions of walls have served as an operational means of communicating and recording history, reminding us of the power of storytelling through imagery. Graffiti is the very genesis of art, not its contradiction.

PREHISTORIC PEOPLES OF NEW MEXICO

Few places on earth meld the encounter and mixing of peoples and cultures with
the magnetism of New Mexico. This ‘enchanted’ land boasts over twelve thousand years of continuous inhabitation, with the arrival of prehistoric populaces believed to have crossed the Bering Straight from Siberia, trailing the migration of animals such as the mammoth, bison, as well as ancestors of the camel and horse. At the early stages of the Christian era, three main agricultural cultures inhabited New Mexico: Mogollon, Anasazi, and Hohokam (Torres, n.d.). The Mogollon settled in the southwest part of the state, along what is now the frontier on New Mexico and Arizona. The Anasazi settled in Northern New Mexico, an area encompassing modern day Albuquerque. The word Anasazi is derived from the Navajo language and means “the ancient ones,” or “the enemies of our ancestors”. Historians and archeologists refer to the Anasazi as the Great Pueblo because of their wide range of cultural innovations, such as adobe houses, pottery, and built pit chambers, known as kivas, for religious purposes (Roberts & Roberts, 1988, p.9). Furthermore, we will shortly find that, coincidently, one of the buildings graffitied by Ernest Doty is named after the Anasazi. Doty’s inscription at the abandoned and lofty downtown building was the chief reason leading to his arrest in 2009 (see chapter 6 under the case studies section).

PETROGLYPHS. These ancient peoples may not have left any written records chronicling their passage in New Mexican lands, but, in addition to a complex network of ruins, they left behind carvings on cave walls that greatly inform historical accounts of the region. From the Greek petra “rock” and glyph “carving”, petroglyphs literally means the carving or drawing of a rock. These inscriptions were not highly technical, or elaborate, and their meanings have not been definitively deciphered. And yet, they allow us to go back in time and to gain valuable sight into the history of humanity: “Petroglyphs
demonstrate that humans may have been using icons for many years to communicate and retell events of the local history and traditions” (Boivin, 2004). Furthermore, the carving of cave walls could have conceivably been the earliest form of communication among humans before the development of more sophisticated written and spoken language systems. The petroglyphs attest that, for thousands of years, ancient indigenous peoples of New Mexico have altered their built environment, not only as a means of subsistence, but also to narrate their stories through the use of imagery.

**OÑATE’S INSCRIPTION AT EL MORRO MONUMENT.** Though prehistoric indigenous peoples had been inscribing their stories on New Mexico’s cave walls thousands of years prior to the birth of Jesus or Columbus, El Morro Monument’s most distinguishable feature is the inscription left by Don Juan de Oñate. Long prior to the arrival of Spaniards, the Anasazi Pueblo was drawn to the area known as *El Morro* (headland), due to its abundant sources of fresh and potable water, as well as its convenient location at the bottom of the bluff. Then, in late sixteenth century, Spanish *Conquistadores* and missionaries began visits to the Monument that would continue for the two centuries. In one of these visits, Spanish colonial governor Don Juan Oñate decided to join the ancient tradition and leave a mark at the Monument himself. The translation of Oñate inscription reads: “Passed by here Governor Don Juan Oñate, from the discover of the Sea of the South, on April 16th of April, 1605” (Knight, 2014, p.261) – see Figure 4. Onate’s inscription, one of the earliest made by *conquistadores*, partially covers another inscription attributed to prehistoric natives of New Mexico (Clark, 2009).
In the year 1605, one might expect to have found plenty of vacant space on those walls and yet, it is not unlikely that Oñate might have deliberately selected to carve his message over a previous engraving, given the colonial governor’s well documented disdain towards New Mexico’s Natives. In a letter sent to King Philip of Spain, Oñate states many reasons, other than the opportune geographical location and wealth flowing to the kingdom, to justify his ill treatment of the Indians. Oñate referred to the Natives as beasts to be corrected and tightly controlled, (McGeagh, 1990, p.30) and inferring that, as colonial governor, it was his duty to administer flagellations and other violent aggressions, and administer punishment he did. Under his rule, natives were mutilated, slaughtered, enslaved, and deprived of shelter. One of Oñate’s most notorious crimes was
the massacre at the Acoma Pueblo in 1599; in response to a rebellion, Oñate ordered that

In 1598, ... 507 Acoma [Natives be put on trial]. Women between 12 and 25 were enslaved for 20 years at the Pueblo of Ohkay Owingeh. Men over the age of 25 had one foot cut off, and younger men were enslaved for 20 years (Native Voices, 1998).

The accounts of Oñate’s cruelty abound throughout written and oral history colonial sources, and yet, his memory continues to be honored by several New Mexican institutions. As Trujillo (2008) explains, to commemorate the four centuries of Onate’s expedition in New Mexican lands, “Longtime Senator and New Mexico power broker Emilio Naranjo” proposed a bill, duly approved by the State Legislature, to create of a center and monument in honor of Onate in Española, Northern New Mexico. The county donated the land, but “the statue cost $108,000 and the center’s total cost was $1.5 million,” fully funded by taxpayer dollars (93). However, in January of 1998, seven years after the statue had been erected, there occurred “an act of monumental dismembering” to literally cut off the colonialist nostalgia of some Nuevo Mexicanos (see Figure 5). The local newspaper, the Albuquerque Journal, received an email message saying the following:

We invite you to visit the Oñate Distortion Museum and Visitor Center located eight miles north of Española. We took the liberty of removing Oñate’s right foot on behalf of our brothers and sisters of Acoma Pueblo. This was done in commemoration of his 400th year anniversary acknowledging his unasked for exploration of our land. We will be melting his foot down and casting small medallions to be sold to those
who are historically ignorant” (94).

The incident gained national attention, and provoked controversy. Lee Francis, the interim director in 1998 of the Native American Studies Department at the University of New Mexico, stated in an interview to the Science Christian Monitor: "It’s like asking the Jewish people to celebrate Hitler" (Baldauf, 1998). Estevan Arrellano, director for Onate’s Monument and Visitor Center, disagreed: “Give me a break – it was 400 years ago. It's OK to hold a grudge, but for 400 years?” (Brookes, 1998). Though the
monument was repaired by the end of that month, the statue embodies the contested
terrain of art, history, and public memory; it is a place of pain, of remembrance, and of
continued re-negotiation of the past with the present.

**CHICANO MURALS.** While the known history of murals dates back to the
beginning of the twentieth century, Chicano muralism exploded on the scene in the
United States during the 1960’s. As previously stated, relief programs were created in
response to the Great Depression of 1929, and the rise of arts programs implemented
during Roosevelt’s New Deal marked a bold new tradition of contemporary governmental
support for public arts. The era of economic hardship became one of prosperity after
World War II, when the United States of America consolidated its position as the
beacon of capitalism. This new economic power player went on to develop an insatiable
appetite for consumerism that gave rise to innovative forms of advertisement, produced
and distributed by mass media. The complex visual schemes conveyed through “ads show
that people will accept any style, so long as they understand why it is being used and what
its meaning is” (Cockcroft & Weber, 1977, p.26). The ad explosion was accompanied by
a surge in the construction of museums and other officially sanctioned places for viewing
and experiencing art, the combination of which contributed to the construction of a
rather elitist paradigm dictating that “true” art could only be entertained in institutions,
such as museums and art galleries. This sanitizing movement was again confronted by the
emergence of innovative forms of art during the tumultuous political environment of the
1960’s, and birthed a new public expression and mouthpiece: muralism (Cockcroft &

Chicano muralism is a tradition of the American Southwest transcribing a
community-based practice that goes beyond aesthetics and has its roots in Mexican muralism (Baker, 2014). Mexican muralism, in turn, had emerged interrelated with the ideals of the Mexican Revolution that took place from 1910 to 1920; this popular uprising, and subsequent bloody war, was a response to Porfirio Diaz’s dictatorship, and sought “agrarian reform to overcome the power of the landowners”. The Mexican Muralist movement had three main protagonists: José Clemente Orozco, Diego Rivera, and David Alfaro Siqueiros, all of whom believed that muralism was an expression meant to spur social change (The art of Ramon Contreras and The Mexican Muralist Movement, 2009).

The Chicano Movement developed during the civil rights era as “a cultural as well as a political movement, helping to construct new, transnational cultural identities and fueling a renaissance in politically charged visual, literary, and performance art” (Castañeda, 2006, n.d.). Those born in the United States of Mexican descent created this new language for proclaiming pride in their mestizo heritage through the Chicano identity. This novel terminology and worldview also fomented political militancy around the cause of broadening access to essential resources – such as justice, education, and healthcare – while denouncing perpetual colonial and racist practices that undermined Chicanos’ quality of life in the United States. Likewise, during the 1960’s, Chicano Muralism arose as a means of instilling pride and solidarity within a community that has been historically underserved and associated with poverty, marginalization, ignorance, and deviance (Baker, 2014). Apropos, Chicano muralism illustrates an effort to promote the creation of politically and socially powerful art, asserting Chicano presence and cultural pride by re-appropriating spaces through street art. One of the examples of these
powerful visual representations is still visible beneath the bridge that links San Diego to Coronado Island (one of the wealthiest areas in the country) in California (see Figure 6). The mural located at Chicano Park was painted in the 1970’s, and later restored in 2012 due to weather damage (Chicano Park, 2012). The mural demonstrates open defiance of western historical indoctrination by preserving indigenous imageries as a means of creating a sense of identity, pride, and resistance.

Figure 6. Chicano Park in San Diego, California (Chicano Park, 2012)

“Although the mass mobilization of the Chicano movement may no longer exist” as obstinately as before (Baker, 2014), Chicano murals continue coloring the consciousness of passersby.
GRAFFITI ART

As with the Chicano Mural Movement, modern graffiti art arose during the 1960’s as an insurgent form of expression. Gude (1989) contends that “the graffiti movement [also] explored the communal ownership of public spaces that had been increasingly privatized,” but their work differed [from muralism] on [seems like it should be ‘in’ but if the author wrote on, oh well] the criminal component rigorously attributed to graffiti expression (Knight, 2008, p.117). This invites a more inclusive and bottom-up approach towards viewing graffiti as public art; this affords the opportunity to investigate the impetus behind it before summarily dismissing it as vulgar or criminal In this vein, in the next section I seek to briefly discuss the beginnings of graffiti art in the United States, as well as enumerate several current styles of graffiti. This deconstruction of the State’s aversion towards graffiti, coupled with an investigation of its origins and significance of this practice as an urban intervention is of critical importance to this paper. As related much earlier in this treatise, in the face of expanding state restrictions of the practice of unsanctioned street art, it is essential to inquire as to the objectives behind this art. And who better to ask, than the artists themselves? This helps to elucidate their motivation, rather than exclusively privilege the perceptions and conceptualization of its beholders.

THE EMERGENCE OF A SUBCULTURE

In the United States, graffiti activity was first detected in Philadelphia, and gained additional notoriety in New York’s subway stations during the in the early 1970’s (Whitehead, 2004). One of the first official accounts documenting graffiti art in the form of tagging was an article in the New York Times featuring someone who inscribed a
nickname and a street number, “Taki 183”, in New York’s subway stations and buildings. See Figure 7.

![Image of graffiti]

*Figure 7. Taki’s graffiti at New York’s Subway Station (Kasdan, 2011)*

After Taki, many others mimicked his style by producing signature logos, also called “tags”, such as “Barbara 62”, “Yank 135”, “Joe 136”, and so on and so forth (Powers, 2004). In time, these inscriptions became known as “tags” and, by extension the practice of inscribing tags on the city fabric as “tagging”. As it began to propagate in New York and all over the world, tagging transformed from a mere inscription of a pseudonym on the city’s fabric into a way for individuals to demonstrate and “materialize” their presence and identities. Sociologist Gregory Snyder contends:

> Whatever their class, race, ethnicity, religion, or age, [graffiti] writers define themselves not by what they look like, or what language they speak,
or what clothes they wear, but by what they do. Their identities are as writers first, and as members of ethnic, religious, and other subgroups second (Chan, 2009).

As such, graffiti develops as subculture where “writers do much more than write graffiti… [they also] assume a social identity that is conducive to the norms, standards, and values of [this] subculture” (Dar, 2013, p.3). Various scholars and city officials have associated this collective social identity with other parallel subcultures, such as hip-hop and tattoo aficionados. Graffiti has also been perceived as an expression of youthful rebellion, but this premise “rhetorically denies the continuing significance of subcultural participation to those of us who have accidentally grown up and grown older over the years” (Dar, 2013, p.9). Therefore, the significance of graffiti art should not be defined strictly in relational terms with any parallel, or symbiotic subcultures. For the purposes of this paper, I focus on the graffiti subculture itself, without delving into parallel identities that may also inform group membership; relational subcultures are not essential to creating graffiti art. As for the graffiti subculture itself, studies show that graffiti writers define graffiti “as a community, noting the significance of feeling a part of something in which they could relate to others who are similarly passionate about graffiti (Dar, 2013, p.11). Simply put, they feel they are constructing both meaning and community through their unlicensed art.

One distinct characteristic peculiar to the graffiti community is that membership is mostly anonymous. Though often writers develop a relationship with one another when working with a partner or a crew, that is not to say they can recognize vast numbers
of other writers within their own communities by physical appearance or their true names. Instead, their acquaintance of other writers may be limited due to inherit secrecy that entails membership in a community that subsists in the outskirts of legality. Further, graffiti writers particularly those who express their “subcultural personas” through tagging, are often accused of egocentric behavior for publicizing their names on city walls in what some would deem as “shameless acts of self-promotion”. (Dar, 2013, p.146)

However, while tagging can be perceived as representative of presence – “here I am”, “look what I can do” – when writers execute unauthorized graffiti, only those who know them (either in person or merely by name / tag) can attribute recognition to their work. That is, anonymity is just as intrinsic to the art-form as the message itself.

**GRAFFITI STYLES**

Though “graffiti varies greatly in the message being conveyed and the style of the presentation” it is unarguably a form of self-expression (White, 2001). Subsequently, the question rests on whether “unsolicited” graffiti constitutes a legitimate form of public expression or not. On the conclusion of the following chapter “Legal Framework” I address the issue of collective legitimacy (as opposed to legal legitimacy) more closely, however, in order to assess whether unauthorized graffiti should be criminalized or not we must first attempt to differentiate between the numerous types of graffiti art that exist.

**TAGGING.** Tagging represents the first and most basic expression in graffiti art. In a “tag” the author “inscribes a name in a unique style. The tagging “may be done with a number of different materials ranging from spray paint cans to drill bits used for etching and encompasses everything in between such as stencil outlines, marker pens and
stickers” (Rieb, 2011). The goal of tagging is to “get up” (or inscribe) your tag as often as possible to develop a “rep” (or reputation) within the subculture. Subsequently, the activity of tagging can be perceive as a competition that is weighted by both the amount of tags executed as well as the difficulty of reaching the location tagged. Ceteris paribus, the greater the number of tags and the danger associated to tagging the location (buildings’ height, police presence, area of difficult access, etc.), the more the prestige attributed to the tagger within this subculture (Powers, 2004). While not all forms of tagging are gang-related, tagging is the faction within graffiti that is generally associated with gang activity and crime. Gang tagging is often characterized by signs and symbols painted in a single color that are readable to the viewer. See Figure 8.

Figure 8. Chicano gang graffiti in Los Angeles (Picture by Robert Gribble)

The inscription says “Chicano Power west side R” to the left. The “R” is argued to stand
for “rifa” which translates to rules and is inferred to express the gang’s ruling power or its superiority. Interestingly, the inscription is accompanied by two swastikas. Similarly, under the window it reads “Los Vatos Locos de Varrio Venice” which translates to "the crazy guys from the neighborhood of Venice". Venice is a beach located on the west side of Los Angeles (Acker & Gribble, 2007). Similarly, on Figure 7, another example of graffiti related gang tagging in São Paulo, Brazil. The São Vito was a 367 ft. tall building with 27 stories built as part of the city’s endeavor towards affordable housing during the 1950’s – a period of intense industrialization and migration to the city center. A couple decades later the building became known for averaging 10 police reports, mostly theft, per week. The slow and unreliable elevator service led to several fights among neighbors, some of whom opted for throwing trash out of the window in lack of a proper elevator service. The building was evacuated in 2004 due to poor structural conditions and demolished in 2011.
Until this date São Vito is believed to have been the building with more taggings in the world. The abandonment of the building facilitated gang activity while its height represented a great opportunity for gang members who wanted to “get up” their names as well as that of their gangs (Meio século de Edifício São Vito, o. 2010).

Whether gang-related or not, the popular antipathy towards tagging seems to be based on an aesthetic repulsiveness added to the association of these tags to loathsome crimes. Yet, graffiti many writers seem to hold different views on the subject. Spanish graffiti artist Zozen contends that, for the most part, graffiti artists have not had any formal training therefore it is impossible to start by painting what some would identify as
artistic murals. In that sense, Zozen continues, “one has to start by the primary and minimalist expression of graffiti, which is represented in tagging” (Bomb It, 2008). As Gustavo Pandolfo (a prominent Brazilian graffiti artist who works with his bother in a graffiti project called “Os Gêmeos” which translates to “The Twins”) poses, “there are a lot of homeless people in Sao Paulo [Brazil] and [regardless of your standing in life] everyone has a name, [therefore] the importance of expressing and defending it”. Furthermore, some graffiti writers argue that the act of tagging is the only manner they have to express their name and identity in a metropolis that disregards their mere existence (Bomb It, 2008).

**THROW-UPS OR “THROWIES”.** With the rapid popularization of graffiti, the competition for public recognition became increasingly harder. Consequently, tagging became more elaborated, giving rise to added dimensions of graffiti which were more creative and “arty” than simply tagging. “A throw-up is something that can be done quickly and repeatedly, while still identifying the writer. They are usually done in bubble letters, often in one color with a differently colored outline”. See Figure 10.
Figure 10. Graffiti Throw-Up (Graffiti Alphabet Throw up, n.d.).

When graffiti arts go out “bombing” at night, the fastest and most common way to inscribe city walls are either by writing either tags or a throw-ups (Delana, n.d.). Further, it is argued that throw-ups are the natural progression of tags therefore most writers have their names in both forms. “Throw-ups are often utilized by writers who wish to achieve a large number of tags while competing with rival artists”. However, while tags generally take approximately 5 seconds, “throwies” might take up to 30 seconds to complete, subsequently, increasing risks for the writer to get caught (Rieb, 2011).

ADDITIONAL STYLES. Comparable to Throw-Up are: “Fat Caps” on Figure 11 that are similar to Throw-Ups except that the alphabet is not entirely round. There is also the “Wild Style” (Figure 12), which is a more elaborated representation of the alphabet. These inscriptions are harder to read and have more of an extravagant and enigmatic style. Wild style pieces can be tri-dimensional and “considered to be one of the most complicated forms of graffiti”. “Blockbusters” or “Roller” (see Figure 13) composed
of large and squared letters usually occupying entire, or large part, of walls. Like Wild Style they can be performed with a spray can but are usually created with paint rollers using one or two different colors. Furthermore, there is the “Heaven” style, which represents graffiti done at tall buildings (see Figure 14). “Heaven” is arguably one of the riskiest form of graffiti writing not only for the increased possibilities of the writer to get caught but also due to the danger the writer is exposed to when escalating tall buildings carrying paint material. Subsequently, writers who accomplish the deed gain added recognition in the community, sometimes even being named kings or queens (Delana, n.d.). Following, there are graffiti made with Stencils, which are done by cutting a paper or a cut board in the shape of an image and spraying it onto a wall (Figure 15). “Sticker Style,” a form of street collages with homemade figures or stickers (Figure 16).

*Figure 11. Fat Cap in Paris, France. (Kizer, 2013)*
Figure 12. Wild Style in Naples, Italy by Koso (Koso, 2014)

Figure 13. Blockbuster style. Photo by OtherThings (Delana, n.d.)
Figure 14. Heaven style in Brazil. Photo by unknown author (Russos russando na China, 2014)

Figure 15. The critic of the surveillance state in England by Banksy. Photo by Matt Cardy (Simth-Park & Isaac 2014)
Graffiti has been a recurring form of expression to portray the memories and reveal the presence of those who had access to no other gallery but the city dwellings to express themselves. Upon outlining some of the few distinct graffiti styles that exist within a transnational subculture that allows for limitless forms, lexes, and voices to coexist, the unique and diverse contributions made by graffiti art become self-evident. In graffiti lies an opportunity for citizens from all walks of life to express themselves, resonate their voices, and catalyze public discourse through utilizing the city fabric as an open gallery. Ergo, if art is a communicative channel and graffiti is a manner through which individuals can express themselves, then the censoring of graffiti becomes a matter of freedom of speech.
Chapter 3- Legal Framework

LEGAL DEVICES

Laws represent the codification of the most influential paradigms in society. These legal codes, pre-established by a particular sector of society, are intended to set parameters by distinguishing actions deemed permissible versus those that are not. In that sense, laws represent the imposition of a system of belief aimed at conditioning individual behavior and a method of punishment for those who fail to comply with codes of conduct. Subsequently, legal devices play an influential role designating moral standards, rights, and obligations that are meant prevent disorder and balance individual rights with public welfare. While theoretically punishment should be apportioned accordingly to the significance attributed to the transgression committed, in practice these conceptualizations become subjectively interpreted.

The State is co-opted by moneyed elites who hold overwhelming sway over government policy, influence the drafting, administration, and enforcement of laws. In democratic societies, the State distributes these three functions to different branches and departments that work individually and collaboratively. As such, while elected officials forming the legislative body are charged with the making of the law, the judiciary branch (composed of both elected and appointed officials) is responsible for its interpretation. Apropos, laws are introduced, discussed, and approved exclusively by the legislative branch which then passes the baton to the judiciary branch which evaluate and applies the law on a case-by-case basis (U.S. Federal Government, 2014). A priori, the judiciary system imposes the burden of proof on the party making the complaint. In turn, the alleged offenders will be given an opportunity to defend themselves from accusations in a
court of law, which is presided by a magistrate — who is either elected in publicly open elections or appointed by members of the legislative branch. In constructing and executing legal devices this elite exerts a significant amount of influence on all members of society. However, the numerous lobbying groups providing donations and clout to these elites exert a great deal of influence on how legislation is drafted and applied thus influencing legislation guiding moral behavior.

The legal framework deeming all types of unauthorized graffiti as equally criminal is construed within the boundaries of a cartography of power (the branches/ how they control and delegate power but are still one) that is therefore circular and tautological. One goal of this writing is to examine these legal devices to interrogate how the sanctioning of artistic expressions in public spaces set a modus operandi that reconciles both individual rights and freedom of speech. To do so, I list some of the main legal devices construing all forms of unauthorized graffiti as a transgression as well as deconstruct them. These laws were compiled from both the New Mexico State Statutes and the Albuquerque Code of City Ordinances.

NEW MEXICO STATE STATUTE

New Mexico State Statutes set clear parameters as to how the cities and counties within the State should address unauthorized graffiti. These laws define unauthorized graffiti on Personal or Real Property and set penalties for those who fail to comply.

A. Graffiti consists of intentionally and maliciously defacing any real or personal property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or
the use of any object without the consent or reasonable ground to believe there is consent of the owner of the property. As to the punishment, it is informed by the financial damage the unauthorized inscription has caused to the property owner:

B. Whoever commits graffiti to real or personal property when the damage to the property is one thousand dollars ($1,000) or less is guilty of a petty misdemeanor and shall be required to perform a mandatory one hundred hours of community service within a continuous six-month period immediately following his conviction and shall be required to make restitution to the property owner for the cost of damages and restoration.

Ceteris paribus, if the damage exceeds one thousand dollars, the offender “is guilty of a fourth degree felony” and will “be required to perform a mandatory one hundred sixty hours of community service” during a “continuous eight-month period” as well as restituting the property owner for financial damages “as a condition of probation or following any term of incarceration as a condition of parole”. Furthermore, if the crime is “committed by more than one individual, the court may apportion the amount of restitution owed by each offender in accordance with each offender’s degree of culpability” (Unauthorized Graffiti on Real or Personal Property of 1993).

In sum, the language utilized to define Unauthorized Graffiti deems the action as the “intentional and malicious” defacement “of any object without the consent…of the property owner”. In deconstructing these legal devices, it is crucial to take a closer look at the word choice presented in the state statute. For example, the word “maliciously” is an adverb derived from malice. Malice is a noun denoted by the Oxford dictionary as “the desire to harm someone; ill will” and, in legal terms, as “wrongful intention; specially as
increasing the guilt of certain offenses”. Similarly, the word “intentionally” denotes an action that was done on “purpose”, or “deliberately”. Further, to deface is to “spoil the surface or appearance”. Subsequently, describing all types of unauthorized graffiti by assembling words such as the “intentional” and “malicious” “defacement” connotes a prior conjecture/postulate of graffiti as detrimental and unfavorable to the city. Further, both the words “intention” and “malice” connote deliberate purpose and are thus tautological. Consequently, by this word choice, State Statute reveals a preexisting hypothesis deeming unauthorized graffiti as inimical. Though all laws are construed departing from the logic of addressing deviant behavior that is injurious, the automatic deduction that unauthorized graffiti damages the city is both inaccurate and biased. As discussed on previous chapters, graffiti, authorized or not, is a legitimate form of expression that has instrumental functions on city life and public discourse; thus censuring and penalizing individuals who commit graffiti as a means of beautifying the city and/or catalyzing discourse with the same rigor as the system condemns gang related graffiti, fails to properly account intent. Yet in this case, the question lies on reconciling freedom of speech vis-á-vis private property rights. The State Statute has resolved this question by classifying graffiti into two different categories (criminal and non-criminal) that assign graffiti a right to exist solely based on the consent of the property owner.

Analogously, when it comes to punishing individuals who committed graffiti without the consent of the property owner, there are no considerations in the law that differentiate between autonomous and artistic versus gang-related and coercive representations of graffiti. Instead, State Statute, once more, utilizes the opinion on property, or the alleged damage to the property, as the sole measure apportioning
punishment. The one thousand dollar damage threshold is what separates a petty misdemeanor from a fourth degree felony.

Unauthorized Graffiti is also classified as a Delinquent Act as well as litter under the State’s Statutes. If the delinquent is a minor, the punishment is mandatory community service but if the minor fails to comply, “the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation” (Delinquent Act of 1978). As to categorizing unauthorized graffiti as litter, it is placed side-by-side with the clean up of “weeds and all waste material” as an endeavor of the “keep New Mexico beautiful incorporated” program, a “statewide organization that is the official clearinghouse for beautification projects in the state (Litter Control and Beautification Act of 1978). Furthermore, Unauthorized Graffiti is also a Public Nuisance punishable as Criminal Damage to Property which is either “A. injurious to public health, safety, morals, or welfare; or B. interferes with the exercise and enjoyment of public rights, including the right to use property (Public Nuisance of 1963).

The assignment of unauthorized graffiti alongside weeds and waste materials and as part of a program to “keep New Mexico beautiful” corroborates to the hypothesis that the legislative elite, in establishing the laws, departs from a logic that construes all types of unauthorized graffiti as inimical and filthy litter. Additionally, once more, notions of private property inform the sanctioning of graffiti when Public Nuisance classifies it as an interference of “the right to use property”. Consequently, if a minor commits this crime and fails to abide by the punishment, State Statutes inflict public humiliation on parents as a mechanism of deterrence.
ALBUQUERQUE CITY ORDINANCES

The City of Albuquerque, City Charter is consistent with the laws established by State Statutes yet contain more detail. Under municipal code, Unauthorized Graffiti is placed under the Morals and Conduct’s chapter and classified as “a form of vandalism which injures and stains Albuquerque”; thus, the City’s intent is “to eradicate or minimize this visual blight”. Ordinance requires that the mayor creates an Anti-Graffiti Coordination Office charged with “education, advice and assistance on the removal and avoidance of graffiti as well as the place for the city to collect information on graffiti’s occurrence on both public and private property”. Currently, this office works under the Solid Waste and Management Department, where the Graffiti Removal Division is one of the City Clean programs (Graffiti Vandalism of 1993).

Describing all types of unauthorized graffiti as a “visual blight” that “injures and stains Albuquerque” further corroborates the hypothesis that the State’s aversion to graffiti art is based on the premise that these inscriptions all represent urban deterioration and decay that should therefore be obliterated. The Solid Waste and Management Department is a division primarily charged with trash collection, disposal, and recycling (Solid Waste & Management, 2013). Thus, the assignment of the Anti-Graffiti Coordination Office under the Solid Waste Department, and as a part of the City Clean program, correlates graffiti with garbage and construes art as filth in need of cleansing. Subsequently, the City of Albuquerque has established strict processes to respond to the proliferation of unauthorized graffiti in Albuquerque. As per city ordinance, when graffiti is found

within the city and visible from the public right-of-way or city-owned
land, the office of Anti-Graffiti Coordination shall give or cause to be given notice that the graffiti should be removed or effectively obscured within 16 days of notice being conveyed by the city, removal being either by the person in charge of the property or by the city or the city's agent (Graffiti Vandalism of 1993).

In case the owner or agent of the property communicates to the Office of Graffiti Removal that the inscription was authorized within a ten day period upon being officially notified, then the marking “is not [considered] graffiti as herein defined; the city will then not authorize removal”. Other things equal, if the property owner or person in charge fails to inform the authorities that they will either perform the clean up on their own or that the marking has been authorized, “it will be deemed to be consent to the city's entering on the property and removing or completely obliterating the graffiti; any color used shall be similar to that of the structure affected” (Graffiti Vandalism of 1993).

On the excerpt above, the City grants itself the authority and legitimacy to invade and deface private property without necessarily meeting a higher burden of justification to substantiate this power, as it duly requires a warrant. Furthermore, property owners who might have had their properties graffitied are not asked to make a formal complaint for erasure as the city has taken upon itself the obligation to patrol and inform owners that their property has been marked upon. Conversely, if the city notifies property owners or occupants that graffiti has been committed on their property, it becomes their exclusive obligation to contact the Office of Graffiti Removal in order to express consent in no less than ten days. Paradoxically, while city ordinance allows parties sixteen days to remove or obscure the graffiti upon notification date, it grants the City the right to intrude and
deface private property without owners explicit consent after the tenth day of notification. Hence, the City Ordinance on Graffiti Vandalism places the burden of proof on the property owner while authoritatively and contradictorily granting itself the jurisdiction to trump due process and property rights. Consequently, the actions allowed by city ordinance raise important questions concerning the individual rights protected by both the First and Fifth Amendments of the U.S. Constitution. Furthermore, on top of the notion of consent, City Ordinance adds the layer of timely response as an additional justification for the censoring of graffiti.

City ordinance’s further substantiates rules regarding the sanctioning of unauthorized graffiti in six, out of a total of fourteen, chapters comprising the document. For example, in chapter 6, Waters, Sewers, and Streets, it sets specific anti-graffiti regulation for work sites in town compelling contractors to remove graffiti markings immediately upon notification, and imposing rather austere penalties for failure to do so.

All work sites shall be maintained graffiti-free. Upon notification of graffiti found on work site, including any and all barricading and signage associated with the project, applicant shall have 60 minutes to begin removal of all graffiti. Graffiti removal shall continue expeditiously until completed. Failure to promptly remove graffiti may result in permit revocation, citation to Metropolitan Court, or both” (Clean Up of 2005).

Following, chapter 9, Health, Safety, and Sanitation, stipulates that commercial containers should be graffiti-free, compelling contractors to address graffiti but, in this case, without establishing a specific penalty for non-compliance.

They shall be kept in a clean, neat, and sanitary condition at all times, by the property owner. This shall include a requirement that the bins
be kept painted and maintained as necessary by the property owner to maintain a clean and neat condition. Containers must be free of all graffiti (Precollection Practices of 2013).

Further, in chapter 14, Business and Occupations, natural gas companies operating in Albuquerque are also subject to compliance with graffiti-free laws as a “Minimum Condition on Use of Property”.

Grantee shall be responsible for the maintenance of its own equipment [and] facilities...including the removal of all graffiti there from. If after notice from the City that any such graffiti has not been removed, it will be removed by the City at Grantee's sole cost" (Exercise of Rights Under a Franchise; Minimum Conditions on Use of Property of 2003).

Also chapter 16, Zoning Code, states that building facades of vacant shopping centers should be a graffiti free zone (Shopping Center Regulations of 2007). Lastly, on chapter 12, Criminal Code, the Sale and Display of Aerosol Paint is regulated. The ordinance establishes aerosol spray paint should be supervised at all times, that is, the product must be displayed or stored in places where customers are not granted direct access to the merchandise without employee supervision. Additionally, an official proof of identification should be provided for purchase and sales to minors are strictly prohibited. Stores selling aerosol paint must also post the following warnings in a conspicuous place at or near the product and in capital letters:

(1) GRAFFITI IS A CRIME. THE DEFACING OF PUBLIC OR PRIVATE PROPERTY IS PUNISHABLE BY A FINE OR IMPRISONMENT".
(2) "NO SPRAY PAINT OR GLASS ETCHING CREAM SOLD TO
MINORS. SELLING SPRAY PAINT OR GLASS ETCHING CREAM TO OR PURCHASE OF SPRAY PAINT OR GLASS ETCHING CREAM BY PERSONS UNDER 18 YEARS OF AGE IS AGAINST THE LAW. VIOLATORS CAN BE FINED UP TO $500 OR IMPRISONED FOR UP TO 90 DAYS”.

In addition to these warnings, close to the store’s cash register the following notice should be posted also in capital letters:

NO SPRAY PAINT OR GLASS ETCHING CREAM SOLD TO MINORS. THE LAW FORBIDS SELLING SPRAY PAINT OR GLASS ETCHING CREAM TO PERSONS UNDER 18 YEARS OF AGE. WHEN IN DOUBT, ASK FOR PROOF OF AGE. ACCEPT ONLY IDENTIFICATION ISSUED BY THE FEDERAL, STATE OR LOCAL GOVERNMENT (Sale and Display of Aerosol Spray of 2004).

LOCAL PARTICIPANT OBSERVATION

Having identified the City and State’s legislation on Unauthorized Graffiti, I proceeded with contacting City of Albuquerque officials to request additional information (such as public records and procedural matters) regarding their response to graffiti complaints. My intention meeting and conversing with city employees was to confirm that the legal documents compiled were both relevant and consistent with the city’s operational procedures combating proscribed graffiti. Additionally, in the capacity of a participant observant, opportunity was presented to ride along with the city’s Graffiti Clean Up Crew to better understand their daily operations as well as develop a more comprehensive review of the work executed by the Solid Waste & Management Department eliminating graffiti within the boundaries of the Albuquerque metro area.
It was discovered that any citizen, regardless of having ownership of a property, could report suspected unauthorized graffiti activity either by phone or through the City of Albuquerque 311 mobile application. Consistently with city ordinance and state statute the Solid Waste Department administers an Anti-Graffiti Hotline that receives calls Monday through Saturday from 6am to 9pm and from 9am to 6pm on Sundays. After operation hours, concerned citizens can call the Crime Stoppers Hotline or the local policy department. Additionally, the City of Albuquerque’s 311 mobile application is available at both the Apple and Android stores and is modern, free, and user-friendly interface. When users press the REPORT button on the app, a screen will open listing a number of options, including a “GRAFFITI” button, however, users may also opt for typing in the activity they wish to report. The REPORT button also has a GPS (Global Positioning System) function that shows the user’s location in real time. Assuming the activity happened at the location that the person who is reporting is at, this function greatly facilitates the reporting process since typing in an address is unnecessary. The REPORT screen has also a camera button, which allows user to take a picture of the graffiti they wish to report. Once the report is fully submitted through the mobile application, dispatchers who work at the Solid Waste & Management Division automatically receive a case number, the address for the suspected activity, a photo (if one is attached) as well as a call back number (that of the phone through which the report is created). With this information in hand, dispatchers contact the removal team that works nearby the area where suspected activity was reported, and assign them the job. The Solid Waste & Management department does not yet issue public reports on how many users accesses and occurrences the mobile application receives in any given period of time. As
to the conventional Anti-Graffiti Hotline, which is only one of the ways through which graffiti can be reported, it receives an average of three hundred calls per day every day and it is believed to be yet the most popular way of reporting suspicions of unauthorized graffiti activity.

Once a Graffiti Removal Team receives an assignment, city employees who work in this division go to the area in pairs of two. If the unauthorized inscription was committed in public owned property, the team proceeds to paint it over, however, if the graffiti was executed in privately owned property, the team seeks to locate the property owner, tenant, or an employee of the establishment that was vandalized for approval to remove. The approval is made through a document letter headed with the City of Albuquerque’s official seal and it is titled “OWNERS CONSENT FORM” that states as follows:

I (name) BLANK verify that I am the owner of the property located at (address/zip code) BLANK, and that I grant permission to the City of Albuquerque Graffiti Removal Services Division of the Solid Waste Management Department to enter my property to eradicate graffiti vandalism. I have indicated below my signature, the specifics about my property, and the method I prefer to be used for this removal. Should removal be ineffective, I will/will not (circle one) approve of the surface to be painted over with the understanding it will be matched as closely as possible to the existing color of the site.

I understand that the City of Albuquerque will not be liable for any damage that occurs to my property.

Signature and Date
Moreover, it is claimed that in the case no one with authority to approve the work can be found on site to sign the document, the typical understanding is that the team should not proceed with the removal. Furthermore, the team will also not paint over unauthorized graffiti inscriptions executed on traffic signs, traffic light poles, or curbs, energy poles, schools and universities, and city parks. Complaints of graffiti on these locations should be addressed respectively to the New Mexico’s Motor & Vehicle Department, the public energy provider (PNM), Albuquerque Public Schools and universities, or to the Park Management Division.

ALBUQUERQUE PUBLIC ARTS PROGRAM

Under President Roosevelt’s administration, the aforementioned New Deal initiatives ignited a tradition of governmental support of the arts in the United States. In Albuquerque, as per city ordinance, the creation of public art is encouraged at both the public and private realms as a means of integrating “art into the architecture of municipal structures”. The Art in Municipal Places Ordinances, created in 1978, establishes definitions, purpose, funding, requirements for art selection, as well as administrative organization and responsibilities relating to the City’s Public Art Program. In turn, the eleven acting members forming the Albuquerque’s Arts Board direct the city Art’s Program provided that the mayor approves of their recommendations for artwork projects. The structure of this board is as follows:

There shall be one member of the Albuquerque Arts Board from each City Council District [8] and two members who serve at large. When a vacancy on the Albuquerque Arts Board occurs, the Councilor
representing the District in which the vacating member of the Albuquerque Art Board resides, shall nominate two members to the Albuquerque Arts Board who reside in his or her respective Council District and the Mayor shall appoint one of these recommended members. The mayor shall appoint the two at large members to the Albuquerque Arts Board with the advice and consent of the Council (Art in Municipal Places of 1992).

As state above, the selection process to serve in the Albuquerque Arts Board is subjected to either Council (for reappointment) or Mayoral endorsement (for first-time appointments) at all times. Furthermore, it is important to emphasize that this Board's ability to develop artistic projects in Albuquerque, as per City Ordinance, is conditional to mayoral sanction. Hence, the Albuquerque Arts Board operates as an “advisory board for such city arts or cultural projects and programs as directed by the mayor.” (Art in Municipal Places of 1992). *Ceteris paribus*, if the Arts Board informs the City's Art Program and the mayor oversees the Arts Board, the initiatives of the City’s Art Program likely oscillate according to the imports of the mayor in charge.

**OBJECTIVES.** The latest version of the Public Art Program Guidelines (revised in 2013) corroborates the scope of influence of the Arts Board and further elaborates on matters such as sources of funding, selection and acquisition standards, and decommissions criteria. Moreover, it institutes shared objectives to inform the City, the Arts Board, and the Mayor in their endeavor towards a local Public Arts Program. The program’s goals are listed as follows:

“A. The Program will develop public art projects which enhance the urban

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2 Except in the case of reappointment where only Council approval is necessary.
environment of public spaces as well as the visual design form and content of the city; which enhance a particular community; and, which may enhance the tourist and economic potential of Albuquerque and particular sites within the community.

D. The Public Art Collection will reflect the diverse spectrums of beliefs, cultural heritage and traditions, and artistic expressions of Albuquerque and New Mexico.

E. The Public Art Collections will include Works of Art representing a broad variety of media and styles and support community interests in having an aesthetically enhanced environment.

F. The Program will adhere to all federal, state and local laws related to inclusion and non-discriminations.

G. The Program will identify and pursue additional sources of funds and donations of Works of Art to the City of Albuquerque.

H. The Program will inform the public regarding public art including opportunities for public participation in all phases of the public art project.

I. The Program will promote the visual arts of Albuquerque and New Mexico and, inform and work to increase understanding within the community about the purposes and meanings of the Works of Art in the collection through art outreach, education, media, and social events.

J. The Program will document, maintain and conserve Works of Art in the Collection, regardless of the source of acquisition, and make the Collection available to the public through a variety of media.

K. The Program will develop opportunities for local artists through participation in Albuquerque Public Art Program workshops and educational events.

L. The Program will work with other organizations to promote the arts.

(Public Art Program Guidelines of 2013).
FUNDING. As to the funding component, the primary monetary capital formally available for the propagation of the Public Art Program originates from the “1% for Arts” fund. Under the “1% for Arts” formula, 1% of every voter-approved General Obligations (G.O.) Bonds for capital projects, or similarly 1% of Revenue Bonds Funds, will be used towards the purchase and/or installation of artworks throughout the City (11). Additionally, other public and private sector funding sources can be solicited and/or accepted when “donations are subject to the same administrative processes and criteria” (11). Further, the Arts Board can weight in the discussion on whether extraneous parties’ dollars should fund public works or art or not by recommending “approval or denial of projects to the Mayor [based] on the appropriateness of any financial contribution towards an art project” (11). Nevertheless, the mayor holds the ultimate authority to accept or deny any donations towards a public art project.

SELECTION AND ACQUISITION PROCEDURES. The conceptualization of new art projects (AKA “Initiation of New Arts Projects”) or acquisition of existing works of art by a particular artist (AKA “Unsolicited Proposals”) could be petitioned by any member of the public. When proposals are made to initiate new arts projects, they will be evaluated by the full Board for consideration and “preliminary meetings may be held to determine possibilities regarding the theme, the site, appropriate artists or a particular artist, the makeup of a Committee and other related matters.” Conversely, “Unsolicited Proposals” will be first evaluated by a “standing Unsolicited Proposal

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3Committee members have to perform very specific roles as denoted on page 15 of the Public Art Program Guidelines.
Committee for recommendation”. The full Board will discuss unsolicited proposals recommended by the Unsolicited Proposal Committee at least once a year (12). However, all proposals shall be subjected to a review process where their appropriateness for public display will be assessed.

Proposals for, or existing, Works of Art that include subject matter such as the apparent representation of violence, inappropriate nudity, denigration of individuals or cultures, or desecrations of significant cultural symbols, will be reviewed for their appropriateness for public display. Proposals for, or existing, Works of Art that include religious subject matter or symbols may be placed in a public space as long as it is not in a location where it can be revered and is solely for the purpose of exhibiting cultural and historical traditions (Public Art Program Guidelines of 2013, p.18).

Artists may be selected through open competition, invitation to present a project, and/or direct selection (16) based on how the Board assesses their ability to meet the guidelines specified on the work’s “Prospectus”.

“Prospectus’ is the term used to describe ‘what is wanted in a particular Work of Art”. In relation to the City’s purchasing processes, it is equivalent to ‘a request for proposals’ or a ‘request for qualifications’. The Prospectus is often also referred as the ‘Call for Artists’. A Prospectus usually includes elements such as the site, the desired medium for the artwork, a theme or desired qualities which may help artist in responding to the range of needs affecting a public art project, the funding source, the budget amount, and artist eligibility requirements. A Prospectus shall be developed for every project, including donations, acquisitions of existing Works of Art, or direct selection of artists (6).”
Furthermore, the Program may also commission works of art as part of a broader development plan. These plans may have “particular parameters, themes or objectives” to be met and are allowed under the “Public Arts Plan” section. Following, under the “Public Arts Policies” the City’s reserves itself to the right to “develop comprehensive policies and procedures to establish specific parameters or objectives in relation to particular genres of public art such as murals, digital and temporary installations and other forms of cultural assets or expressions” (Public Art Program Guidelines of 2013, p.13). All of which should be properly announced in a public Prospectus, pondering the input of the Arts Board, and drafted by the Public Arts Program staff. Once the City acquires works of art, a Notice of Acceptance is issued and ownership of artworks belongs to the City.

CONSIDERATIONS

Upon careful review of all city ordinances sanctioning graffiti and also those encouraging the arts in Albuquerque, the question on how all these regulations advance public safety while satisfactorily reconciling individual rights with freedom of speech remains afloat. The state has been incredibly prolific in condemning and outlawing unauthorized graffiti; the numerous aforementioned statues and ordinances make this case. These legal devices represent the abstract constructions of a ruling paradigm that is in constant need for reassurance, seeking to legitimize procedures aimed at transforming the collective urban environment through a circular and top-down logic. The elite that supports the arts so obstinately is the same that describe graffiti as a visual blight plastering the city with grime, deviance, and disorderliness. The governmental support of
the arts through the city’s Art Program or the numerous non-profits it sponsors, though incredibly valuable and beneficial to city life, imposes numerous standards for artistic expression. The bureaucracy and criteria artists are required to meet in order to present their works often institute a barrier to de organic and spontaneous proliferation of the arts in the city. Yet, the artistic freedom of speech lies on the ability of ordinary citizens to independently intervene in the urban fabric.

Chapter 6 – Case Studies

ERNEST DOTY VS. CITY OF ALBUQUERQUE

On August 6th, 2010 Ernest Doty was arrested charged with three counts of Unauthorized Graffiti on Personal or Real Property. The Criminal Complaint court documents explain that Doty’s arrest followed Detective J. Cumbie’s report to the District Attorney’s office asserting that an “unknown individual had painted a rainbow on two buildings” in Albuquerque, one located in 202 Central SE (aka the old Hudson Hotel) (see Figure X) and the other at 522 Central SW (aka Anasazi building) (see Figure Y), between July 7th and July 8th of 2010 (State of New Mexico v. Ernest Doty, 2010). As the investigation continued, a report of another building, located on 2300 Central SE (aka Which Which, also painted with a rainbow of similar characteristics (e.g. color, style) was found. On this report, filed on March 2nd, 2010 by Lisa Gutierrez, the website www.flickr.com/photos/33913462@N05 (Nese, 2009) is declared to contain pictures of the alleged rainbow. This space on Flickr, claimed by someone called Nese/there can only be one! shows pictures of these three buildings with the rainbows as well as comments with compliments and thank you replies made by an unknown author.
However, these pictures disappeared from the webpage right after a report made by KOAT (Vandal Strikes Downtown With Colorful Paint, 2010), was aired on July 10th 2010, about buildings “vandalized” with rainbows in downtown Albuquerque. The pictures posted on the webpage combined with conclusions from other investigations, identified Ernest Doty as the author of the rainbows on these three buildings; subsequently, an arrest order was issued on his name on August 5th 2010 (State of New Mexico v. Ernest Doty, 2010).

*Figure 17. Old Hudson Hotel on 202 Central SE, Albuquerque. Photo by Eric Williams (Sauthoff, 2010).*
Doty was arrested in August 6\textsuperscript{th}, 2010 on a $40,000 bond but was let go a few days later. The three counts on Unauthorized Graffiti on Personal or Real Property against him were classified as a Fourth Degree Felony with a “penalty of eighteen months of imprisonment and not more than a $5,000 fine”. While the defendant initially pleaded ‘Not Guilty’ on all charges, on the Final Disposition Agreement, signed two years later, on September 7\textsuperscript{th} 2012, his plea was ‘No Contest’ on all counts. The case was settled as follows:

The State agrees to a Conditional Discharge at initial sentencing only on condition of three (3) years supervised probation and on the condition the defendant make restitution in full to victims listed in this case (State of New Mexico v. Ernest Doty, 2010).

In addition to all standard conditions entailing probation, the court asked proof of
defendant’s full-time employment (at least 30 hours/week) or full-time education, or a combination of employment and education for the entire probation period. Further, Doty payed the total amount of $3,000 on restitution to listed victims. However, just a few days after the sentence, upon Doty’s payment of restitution in full, the Court placed the defendant on unsupervised probation on September of 2012 (State of New Mexico v. Ernest Doty, 2010).

THE ART

Doty’s rainbow in the Anasazi building attracted substantial media attention at the time of its creation. His chosen canvas was located at the top of an eleven-store structure that was, according to Darren White, the Public Safety Officer Chief, deemed “unsafe for human occupancy” (Sautoff, 2010). The Albuquerque Journal corroborated to White’s statement in describing 2010’s Anasazi as “basically a giant abandoned building in the middle of the city center, creating concern about its future among city officials” (Metcalf, 2013). Perhaps some of these concerns were intensified because the building, once a promising innovation for mixed-used (commercial and residential) development in downtown Albuquerque, remained unfinished and associated to a million-dollar embezzlement scandal. An article published by KOAT 7 Albuquerque news (City Takes Over Downtown Anasazi Building, 2006) on July 6th 2010 (one or two days before the date Doty allegedly sprayed the building, according to the previously cited report produced by Detective J. Cumbie), the local news channel announced that court records had been recently made available charging Anasazi’s developer, Vicente Garcia and two other individuals “with nineteen felony counts of bank fraud and money laundering for
taking $2.4 million in loans intended for the project". Given the circumstances, the city had stepped in to renegotiate with the Federal Deposit Insurance Company, owner of the loan, the securement of all eleven floors of the building until a new developer could be found (Metcalf, 2013). Further, according to the Safe City Strike Force, a task force charged with inspecting buildings’ conditions, two major concerns were pointed out about Anasazi’s situation,

One of them, being how easy is it to get into the building, and secondly, how easy it is to simply take a misstep and fall 11 stories …When we did the inspection, we were able to just lift up a gate that obviously was supposed to be a parking garage for the condos, and we were just able to walk right in.

All things considered, due to administrative malfeasance, the Anasazi building was put under the care of the City of Albuquerque, which, in turn, failed to maintain it in appropriate conditions assuring public safety and preventing trespassing (City Takes Over Downtown Anasazi Building, 2006).

However, the rainbows painted on 2300 Central SE and 202 Central SE, respectively a Which Which sandwich business (located at a district AKA “student guetto”) and an office building with commercial spaces available for rental, were both privately owned locations. Though the sandwich joint’s unsolicited rainbow had been reported to the police months prior to the investigation leading to Doty’s arrest, in the case of the Old Hudson and the Anasazi, there has never been a police report filed by a concerned citizen but the continued investigation of Detective Cumbie. The rainbows hit the local newspapers and T.V. channels and the media frenzy provoked diverse reactions
on Burquenos. During an interview aired by KOAT 7 News titled “Vandal Strikes Downtown With Colorful Paint” the news anchor introduces the segment as follows: “Several Downtown Albuquerque buildings in Albuquerque are covered in paint…costing taxpayers thousands of dollar” and though city officials have made of it a “top priority to clean off graffiti…they admit it might be though” given the height of the Anasazi building. Further, when interviewed on the issue, Chief White, reacted with anger saying that the graffiti clean up exposed city employees to danger” [for] “trying to clean up the mess of some knucklehead…The only person who thinks it’s great [the rainbows] is the person who did it. We don’t…we want the knucklehead to know we’re going after you!

A passer-by, also interviewed, gives her take on the issue: “I just wonder, how does he get up there?” However, with the persistence of the interviewer, she ends up saying: “it’s kind of disrespectful, yeah” (Vandal Strikes Downtown With Colorful Paint, 2010).

THE ARTIST

Doty, who anonymously became the city’s number one enemy, decided to make his side of the story known. On August 4th 2010, two days prior to his arrest, he contacted the Weekly Alibi, a local newspaper that is free and of wide circulation, for an interview, under the condition of anonymity. When asked about his motivations to paint the rainbows, Doty said,

I was feeling really depressed and I had this notion that if I went out and painted a rainbow, maybe someone would see it and feel what I was feeling or feel anything as intensely as I was…I stopped doing them because it
didn’t have the response I wanted. Then about a year ago I met somebody who asked me if I was the one that had done the rainbow a couple years back. They said when they first saw it, it made them cry. At that moment I knew it did have the effect that I wanted, that people were feeling something (Sauthoff, 2010).

He was also asked about his opinion on why the rainbow at the Anasazi building received so much attention.

It’s [the Anasazi] just this ugly, eyesore, half-completed building that’s been that way for years. I think because it was already in people’s minds, they saw this ugly building with these ugly connections...I chose that one because I’ve been looking at it since they stopped construction...I chose it because it already had some attention, and some negative attention, and I wanted to direct that negative attention and show that sometimes something ugly can be beautiful, too...

If the building is in limbo, why would you spend taxpayer dollars to remove something that people find beautiful? Shouldn’t the majority of the people get to decide if it stays? Why are we spending millions and millions of dollars painting the ditches? Graffiti removal is part of Waste Management, and they’ll go into a ditch and walk over a couch, past a homeless man and over some broken bottles to buff over some graffiti. Why not pick up the couch, sweep up the bottles and feed the hungry? That’s what we should be focusing on, not painting an arroyo where dirty water is washing into our rivers and polluting our water supply.

Why do you choose to do street art?
I want to inspire other people. That’s part of all my art; it’s always positive. I think I chose street art to inspire somebody else in a way that’s outside of the box. Like somebody who wouldn’t normally be exposed to street art,
somebody who would just walk past it. Street art really saves a lot of people who are down in their lives and on their luck. This is their one and only outlet. Plus, you get an immediate response from people. A lot of times it’s just, Look at that graffiti on that freeway wall. But maybe the graffiti on the freeway isn’t the ugly thing, maybe that’s not what they’re angry about. Maybe they’re angry about how for the last 10 years you’ve been driving through this prison freeway with these big ugly gray walls and it just took the graffiti to point out the ugly that was already there (Sauthoff, 2010).

Finally, Doty explains his choice of rainbows as a theme for his art as a symbol of future, promises, dreams, and imagination, which he associated with rainbows as a child. He denies this choice to be motivated as an expression of gay pride but expresses satisfaction to think that it could promote pride or any other positive feelings to viewers.

**SULLIVAN VS. CITY OF ALBUQUERQUE**

On August 10\(^{th}\), 2009 the City of Albuquerque received a complaint about a mural painted on the back wall surrounding Carlos Chavez’s residence at 8115 Fruit Ave. NE. Chavez, who owns the property and the concrete wall that surrounds it, had commissioned Joseph Sullivan, Manuel Montano, and Diego Trujillo to paint the mural on his property’s back wall, on the portion facing the alleyway. On the morning of August 27\(^{th}\), 2009, John Doe, an employee of the Solid Waste Management Division, parked a truck on the alleyway behind Carlos’ residence. Doe’s intention was to cover the mural art on Chavez’ wall with a high-pressure paint sprayer which was attached to the City of Albuquerque’s truck he was driving. Upon seeing the City’s truck, Chavez
approached Doe to inform him that he owned the residence, had commissioned the mural art at his back wall, and did not want it removed. However, against Chavez warnings, John Doe proceeded to erase the mural (Joseph Sullivan v. City of Albuquerque, 2011).

In Sullivan et al. vs. City of Albuquerque et. al plaintiffs complaint for damages resulting from Doe’s actions as an individual and also as a City employee. The complaint was filed two years after the incidence, on August 26th, 2011 with the Bernalillo Second Judicial District Court accusing the Defendants on seven causes of action:

(1) prima facie tort; (2) trespassing; (3) intentional infliction of emotional distress; (4) criminal damage to property; (5) violation of Plaintiffs’ First Amendment rights - to wit, freedom of speech/expression; (6) violation of Plaintiffs’ right of enjoying life, and of acquiring, possessing, and defending property; and (7) punitive damages. Lastly, plaintiffs demanded “an award of their respective damages proven at trial, an award of punitive damages, and an award representing costs and allowable attorney’s fees incurred in this action, together with such further of other relief as may be appropriate in the circumstances”(6) (Joseph Sullivan v. City of Albuquerque, 2011).

The Defendants’ Answer to Plaintiffs’ Complaint for Damages, filed on November 7, 2011 by Assistant City Attorney Trisha A. Walker, stated that Defendants deny allegations in Plaintiffs’ causes of action and assert that they were without knowledge or information sufficient to form a belief as to the truth of these allegations. Defendants claim the City to be “immune from any alleged operable acts of negligence” further

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*The case’s complete name is: Joseph Sullivan, and Carlos Chavez, and Manuel Montano, and Diego Trujillo vs. City of Albuquerque, and City of Albuquerque Solid Waste Management DIV., and John Doe, Employee of Albuquerque Solid Waste Management.*
accusing plaintiffs of failing “to exercise ordinary care which caused the injuries and damages claimed” and artists lacking standing to sue. Hence, “Defendants respectfully request that this court dismiss Plaintiffs’ Complaint with prejudice, award Defendants the attorney fees and costs of this action” (Joseph Sullivan v. City of Albuquerque, 2011).

Conversely, on the Response to Defendant’s Motion to Dismiss, filed on May 2012, plaintiffs rebutted the arguments used in the defendant’s proposed motion while corroborating the claims made on the Causes of Action. The Attorney for Plaintiffs argues on the grounds of the Due Process Clause, defined on the Fourteenth Amendment of the United States Constitution, “for protection against the actions of the City of Albuquerque”. It claims that the erasure of a commissioned work of art, executed by a city employee who blatantly ignored the property owner’s disapproval for such action, constitutes a violation of the plaintiff’s due process rights. Chavez “stood by and watched the vandalism of his property”. The lack of concern for his powers as a property owner, without due process of law, resulted in a “grossly negligent, and intentional, and criminal violations of the Plaintiffs rights.”

As to the matter of plaintiffs who are not property owners having Standing to litigate, their claim is sustained from the moment the defendants opt to destruct the artwork without soliciting authorization from the artists, consequently, obstructing plaintiffs rights to their intellectual property predicted by both state and federal laws. Moreover, the unauthorized destruction of plaintiffs work prevents authors from receiving

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Footnote: Fourteenth Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
acknowledgement for the mural, which reasonably sustains the claim for damages under New Mexico Statutes. As such, plaintiffs urge that the defendants’ motion to dismiss the case be negated, also based on a violation of the Tort Claims Act which addresses cases that include abuse of authority in official duties. Supposing that John Doe, Solid Waste & Management employee, “violated state and federal law in conducting the audit…if he was performing an act that he was requested, required, or authorized to perform, he was acting within the scope of his duty”. As such, suing and naming the Solid Waste & Management Department in the Torts Claim is suitable. Finally, the Court referred the case to arbitration and appointed Theresa Duncan as the arbitrator on December 2012. Arbitration between the two parties continued and reached a settlement agreement of $6,000, the District Court Judge, Alan Malott, dismissed the case with prejudice on January 2013 (Joseph Sullivan v. City of Albuquerque, 2011).

THE ART

The collection of additional information, aside from court records, on Sullivan’s v. City of Albuquerque controversy, is limited because the case did not experience media exposure. No records could be found on the work defaced by the city but, as part of my participant observation methodology, I visited the mural’s former site at the Northeast part of town and took photos of my findings. Chavez’ home is located at Albuquerque’s densest car dealership corridor on Lomas – some of the dealerships situated there are Mazda, Chrysler, Chevrolet, Ford, Hyundai, etc. Yet, based on my impressions of the

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6 “A dismissal with prejudice is dismissal of a case on merits after adjudication. The plaintiff is barred from bringing an action on the same claim” (Dismissed With Prejudice Law & Legal Definition. (n.d.).
residential corridor in the neighborhood, I assume that the vicinity is not an affluent one. Below, on Figure.19, there is a picture of the Chavez’s residence façade; noticeably a modest home and in need of a coat of painting and landscape work. On the following picture (Figure 20), there is the back of Chavez’s house, which faces, an alleyway, as properly described in Sullivan v. City of Albuquerque, as well as some visible graffiti inside the patio. On the next picture (see Figure WW) the graffiti can be observed more closely. However, the most interesting finding of this site visit was a discovery off the scripts: Chavez’s back wall is about sixteen feet away from the main administrative office of the Subaru dealership, which it faces directly.

*Figure 19. Chavez’s Residence, Front, Fruit 8115. Photo by Priscila Poliana.*
Figure 20. Chavez’s Residence, Alleyway. Photo by Priscila Poliana.

Figure 21. Chavez’s Residence, Patio, Fruit 8115. Photo by Priscila Poliana.
THE ARTIST

I proceeded with the participant observation component of this research to get to know the principal actor moving this litigation, Joseph Sullivan, and his many hats. I met with Sullivan at a local trendy salon in the heart of downtown Albuquerque, a business that harmonizes sophistication and simplicity with character and style. This comes as no surprise as the owner of the Inspire Salon is a native Burqueña by the name of Rosalee, who above all else, is a world-traveller and lover of street arts. The salon’s mission statement is to “make each experience an escape from the busy streets” and provide a “space that will inspire and encourage appreciation and understanding of art and its role in society through direct engagement with original works” (Inspire Salon, 2014). Sullivan had accepted Rosalee’s invitation to make his contribution to the salon’s art installation.
called “Hit and Run”, and was there working on his piece. At this first interaction with Joseph I learned that, aside from being a prolific and well-known graffiti artist in the State, his recognition in the local community is also due to his many years of work as D.J. Kayote at a KUNM – a local radio station. Furthermore, Joseph can also be found at the state’s courts as he is also an acting attorney who graduated from UNM’s School of Law.

Over his long journey as an artist, Joseph has performed many works in the inside of galleries and authorized walls, however, he believes that this type of work is just art done by people who also do graffiti. Respect comes with putting your work in public spaces. It goes back to the performance aspect of it, being in touch with your city, being in touch with nature, with organisms and knowing where you're going … The point, Sullivan says, of gallery shows and legal walls is to help people find a way to respect the art. Graffiti’s kind of an intimidating topic to someone who hasn't been exposed to it. It's hard to appreciate when someone writes on your trash can or your building, garage or whatever. This is a way for the public to come in and be able to relate a little easier to graffiti (DeMarco, 2007).

**COMPREHENSIVE REVIEW OF CASE STUDIES**

Less than two years after Doty's arrest, the artist, who was born and raised in Albuquerque, was commissioned to spray one of New Mexico’s most notorious art institutions in town, the Albuquerque Museum (Roberts, 2014). Yet, Doty’s path into the Albuquerque art establishment took years and, most likely, occurred as a product of the controversy surrounding his arrest in 2010 coupled with the recognition he received for his work out of state during these 4 years. Doty became the anti-citizen, the city
vandal, the night that he painted two rainbows, one at a historic building that has commercial purposes, and the other at the Anasazi; a building that carries the name of one of New Mexico’s greatest Pueblos and yet had been disfigured by corruption, neglect, depravity, and vulnerability: the embodiment of looming conditions, public nuisance itself. Yet, though no concerned citizen filed a complaint against Doty’s rainbows downtown, city officials reacted with anger and media vehicles narrated the novelty with partisan outrage: “Several Albuquerque buildings…covered in paint costing taxpayers thousand of dollars”. Chief White contends city employees were being put under peril to perform the clean up yet he his exclusionary assertion fails to recognize to the other hundreds staff members whose professions present risk, such as those who daily work at high heights cleaning the windows of buildings or else. Yet, successive to all the fuzz over Doty’s rainbows, he was let go of his sentencing of probation upon paying restitution in full.

As to Sullivan’s scenario, as in contrast to that of Doty’s, the city is the vandal by its own parameters. It becomes the trespasser who against the unambiguous disapproval of Chavez, intrudes and defaces private property at its own capricious will. Furthermore, the location of the vandalized property is also an object worth of further analysis. Car dealerships are a multi-billion dollar industry and in an automobile-instructed city, such as Albuquerque, generate substantial revenues to the city’s vaults. The positioning of the mural, directly faced towards the Subaru’s dealership office headquarters, inserts into the (con)text connotations of iterability by producing meanings that are contradictory to those stipulated by state statute and city ordinance. The hypothesis on whether this scenario indicates that the state deems enhanced value to commercial property uses (as
juxtaposed to residential use) is an object of exploration for further research.

Chapter 7 – Conclusion

CARTOGRAPHY OF POWER INFORMED BY DECONSTRUCTION

As previously discussed, the production, access, and distribution of public spaces in the human polity ultimately conceal the interests of the institutions that produce and reproduce them. This thesis deviates from the premise that graffiti art, as an insurgent urban intervention tactic, is automatically detrimental to either a city or its inhabitants. On the contrary, it acknowledges graffiti as a form of public expression which works in ways that break with the dominant paradigms and established institutions of modern art. Hence, the purpose of this paper is to deconstruct the arbitrary indictment of graffiti by investigating the elements transcending the object of appraisal itself, and yet enabling its existence. My analysis demonstrates that the rhetoric arbitrarily construing graffiti as a repository of deviance, crime, poverty, and ‘filth’, is hollow. The indictment of graffiti art thus becomes a metaphor to maintaining canons of order and structures that perpetuate an everyday culture of separation, deprivation, and unacquainted consent.

While the ongoing development of the arts has allowed for a wider and more diverse production and consumption process, the proliferation of conventional museums and galleries has not necessarily been at the forefront of the popularization of the arts in the Western Hemisphere. From the advent of government sponsorship programs such as the Treasury Release Art Project, to the present date, this has been the case. Drawings, sculptures, photography, theater, musicals, and dance are still largely inaccessible to populaces that do not frequent galleries, either by choice, lifestyle, economics, or
accessibility. The lower and middle class locals from Santa Fe and Taos, for example, very rarely visit the local museums/galleries or attend art shows and openings. This has also become an issue in the villages of northern New Mexico where “studio tours” have become an annual occurrence. The studio tours are primarily a showcase of art by non-Hispanic and non-Indians residing within these art colonies and communities. As such, artists around the globe have found it increasingly relevant to showcase their work in ways that challenge conventional wisdom and expand access to the arts. This collective exposé has thus become what we now understand as street art: an open-air gallery that is visible, accessible, and readily available to passersby; a locus where the artist, the message, the city, and the public intersect. In some places this model is deemed to advance place-based notions of identity, city life, and expression while in others it has been notorious for concerns, ranging from questionable aesthetics and safety to decreased home values. This alleged dichotomy thus calls into question the negotiation between the public and the private domains, an arena historically populated by intense ideological debate. On one hand, agency over public spaces advances a community’s quality of life, civic pride, and self-representation. The place-centered approach which goal is to create vibrant public spaces that interconnect peoples and neighborhoods, and facilitate a range of social interactions among otherwise disparate constituencies (Budruk, 2011,p.41). On the other hand, the protection of private property coupled with the maintenance and control of “shared” spaces are enforced through design and land-use regulation. This dominant structure orchestrates urban spatial relationships by programming design and criminalizing non-compliant behavior. However, a counter-argument thwarts this rather practical breakdown in a fundamental way. The aforementioned contrasts
notwithstanding, the relationship between neoliberalism and the erosion of agency over communal property is more convoluted than the ideological binaries would suggest. Hence, the distinction between public and private should not be merely reduced to a mutually exclusive relationship especially in these times of rapidly shifting contexts.

“For instance, freedom which Habernas (1991) locates in the private realm and Arendt (1958) finds in the public, emerges in the context of public space as at once private (free market and individualism) and in public (as freedom of speech and dissent as a measure of democracy) reflecting the contingent and strategic nature of categorical meanings. In examining privatized public space it is important not to reify labels of ‘public’ and ‘private,’ but to explore the attenuated meanings of each in changing historical and institutional moments” (Peterson, 2006, p.357).

A more sophisticated analysis on how the private and public interplay is material for further research. For the purposes of this thesis, the arbitrary criminalization of graffiti and its relation to erosion of agency over communal property remains central. However, the encroachment of the public spaces seems to correlate with the expansion of private interests. Consistent with the recent privatization and restructuring of public services in the Americas, from parks, waste management, prisons, and schools to the most critical resources, such as electricity and potable water, there is an economic trend toward profit driven companies being in charge of apportioning goods and services. Now more than ever, in addition to the economic might to control private markets, corporations and contractors have increased influence over public goods and services, thus elucidating the encroachment, surveillance, and erosion of the commons.
When ivory tower planners erect cities, they tend to reproduce designs from the pages of historical traumas, whether it is a conquistador's twelve-foot bronze equestrian statue, or perhaps the simple whitewashed gentrification in the neighborhood that used to be yours. These top-down constructions, literally and figuratively, are often antithetical to the values and historical struggles of the local people. Conversely, graffiti art is a worldwide grassroots movement that embodies humanity's desires to memorialize their stories, their joy, and even their anger or dissent, through artistic expression manifested in vivid color and imagery; note the recently ubiquitous meme, “Ferguson & Mi Barrio & Tu Barrio,” and its proliferation as cover photo, or virtual ‘tag’ on social media. However, as with all art, there is implicit metaphor and, as Derrida reminds “metaphors are never innocent” (Wigley, 1993, p.17.) These supposed “unauthorized” images are an overt challenge to the co-opting of mental and physical spaces that have themselves been hijacked without popular consent. They dwell on both private and public property, regurgitating metaphors over intended design and, consequently, defying an entire belief system that monitors the distributions of space, form, and order – art as a scheme of deviance itself. Graffiti then becomes a device to challenge the social, political, and economic leviathan that suffocates representation, and overshadows the free agency of ordinary citizens in their daily lives. Even ostensibly simple geometrical themes out of Euclid's elements reveal at times an insidious underbelly; graffiti talks back to the appropriation of beauty in the name of order, and infuses its will on the belly of the beast, the city streets themselves.

Critically, fresh ideas have been born of the most unorthodox muses and planners, and re-infused life into urban centers. Jane Jacobs, a homemaker without formal
education, “popularized the idea of eyes on the street” — the simple, revolutionary notion that “streets are safer and more vibrant when there are pedestrians on them” (Ferro, 2014.) Her insertion of the community’s agency and “smart growth” transformed the planning profession by re-writing and debunking powerful paradigms, from that of the automobile-instructed city, and the immaculately ordered suburbs to one more concerned with inclusiveness and organic planning. The life and work of this innovator left planners a legacy of place-centered and community-based interventions that favor diversity, density, and the spontaneity of spaces over the sterile, artificial, and exclusionary orchestration of city life. Graffiti acts, in this organism of the polis, this ecosystem of beings and elements, are the embodiment of a catalyst that forms and transforms the city from within. Witness yet again the potential of meaningful interactions between individuals with each other and their environments, and their ability to transmogrify an entire society’s way of thinking.

**RECOMMENDATIONS**

Though this paper denounces the summary criminalization all forms of graffiti, which both denies its multiple facets, as well as underplays its connection to freedom of expression and speech, that is not to say it unconditionally condones graffiti on private or public spaces. Instead, the deconstruction of the legal framework is an attempt to shed light on the arbitrary criminalization of the arts performed in forsaken areas as well as the disproportional punishment of those acting upon what I contend should be a protected liberty. The quandary then becomes where to draw the line between freedom of speech and private property rights.
While the issue of legitimacy continues to incite contentious debate among scholars, this paper sought to deconstruct legal legitimacy from social legitimacy as ascribed in legal positivism. To wit, the criminalization of unauthorized graffiti on the grounds of public acquiescence to the current legal framework should not infer legitimacy when divorced from a more comprehensive social context. For “Legal validity engenders a legal, but not necessarily a moral, obligation to obey,” (Thomas, 2013) since the laws may not necessarily satisfy core principles of justice and democracy. Conversely, Legal Positivism suggests that laws are “a matter of what has been posited (ordered, decided, practiced, tolerated, etc.)” and, subsequently reveal a construction of the dominant paradigm (Green, 2013.) As such, because laws represent the abstractions of a moral system constructed to favor certain values over others, at times arbitrarily, I proposed to assess whether unauthorized inscriptions of space are reasonable or not, based on (1) whether the creator’s intent was criminal and (2) whether artwork executed advances the public good. One definition of criminal intent denotes a deliberate intention to injure, intimidate, or deprive another party from their due rights to speech, freedom, and/or property. I suggest, however, a new perspective on this phrase as applied to graffiti, and propose its novel recast as a form of speech. As such, it becomes critical to scrutinize the legal framework that vehemently protects spaces unconditionally, even when they blight the city and present safety concerns, such as abandoned buildings and dark alleyways. Also, in adjudicating criminal intent, courts need to distinguish between political dissent, which classifies as protected speech, and threats aimed at provoking fear of bodily harm. As in the preamble by Virginia v. Black, the plaintiff must bear the burden of proof to any claims on the defendant’s alleged ill intent. I, thus, propose graffiti be treated on the
grounds of freedom speech, alongside its liberties and restrictions. On the other hand, while the definition of public good is equally contentious, for the purposes of this analysis, I assume that unauthorized graffiti works can be public goods when they meet the following criteria: (a) reflect the community’s narratives “through nuanced social commentary and its artistry” (Olivero, 2014), (b) do not represent a safety threat (for example, by blocking view to either pedestrians or drivers), (c) do not incite violence or content deemed harmful to children, and are performed in areas that (d) have been abandoned (as opposed to depredatory graffiti in properly-maintained property), and/or (e) are not deemed historical.

Ultimately, I propose the current legislation be reviewed and revised for unauthorized graffiti is predominantly not ill-intended, but rather a robust and colorful expression of the democratic panorama of voices, which can and should be considered a public good. Legislation that seeks to ban graffiti outright has further been shown to be an exercise both in futility and hegemony. Statutes only breed more statutes, the creative brilliance of everyday city inhabitants is quashed, and the fabric of the mundane is dulled.
REFERENCES


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