

2008

Framing Art Vandalism: A Proposal to Address Violence Against Art

M.J. Williams

Follow this and additional works at: <http://brooklynworks.brooklaw.edu/blr>

Recommended Citation

M.J. Williams, *Framing Art Vandalism: A Proposal to Address Violence Against Art*, 74 Brook. L. Rev. (2008).
Available at: <http://brooklynworks.brooklaw.edu/blr/vol74/iss2/9>

This Note is brought to you for free and open access by BrooklynWorks. It has been accepted for inclusion in Brooklyn Law Review by an authorized administrator of BrooklynWorks. For more information, please contact matilda.garrido@brooklaw.edu.

Framing Art Vandalism

A PROPOSAL TO ADDRESS VIOLENCE AGAINST ART

I. INTRODUCTION

In 1974, an artist spray-painted the Picasso masterwork *Guernica* with foot-high letters spelling “Kill Lies All.”¹ Repeatedly since 1977, a German man has splashed sulfuric acid on museum masterpieces causing damage in excess of 130 million Euros to fifty-six paintings.² In London in 1987, a man entered the National Gallery of Art with a sawed-off shotgun and fired at the museum’s prized Leonardo da Vinci drawing.³ In 1993, at a New York City museum, a guard inked love messages on a Pop Art painting he was hired to protect.⁴ In 1996, an art student gorged on blue-colored foods, entered New York’s Museum of Modern Art, and then vomited, in blue, on an important abstract painting.⁵ In 1999, a devout Catholic diverted a guard, a stanchion, and protective plexiglass to smear white paint he had smuggled into the museum over an unconventional portrait of the Virgin Mary.⁶

These acts, diverse in motive, location, and technique, represent violence against works of art. Uniting them is the aim to attack not only

¹ Michael T. Kaufman, “*Guernica*” Survives a Spray-Paint Attack by Vandal, N.Y. TIMES, Mar. 1, 1974, at 1. At that time, the painting was exhibited at New York’s Museum of Modern Art. *Id.* The vandal, Tony Shafrazi, “went on to become a rich and powerful art dealer.” Michael Kimmelman, *A Symbol of Freedom and a Target for Terrorists*, N.Y. TIMES, Oct. 13, 2007, at B7.

² Bettina Mittelacher, *Wiederholungstäter: Mit Anschlägen auf Meisterwerke hat Hans-Joachim Bohlmann Millionenschaden verursacht* (Repeat Offender: Hans Joachim Bohlmann’s Attacks on Masterpieces Have Caused Millions in Damage), HAMBURGER ABENDBLATT, June 28, 2006, at S13; *Man Splashes Acid on Three Durer Works*, ASSOCIATED PRESS, Apr. 22, 1988; *Vandalism Suspect Confesses*, WASH. POST, Oct. 9, 1977, at A31.

³ *Mental Tests Suspect in Marring of Leonardo*, N.Y. TIMES, July 21, 1987, at C17. Protective glass prevented the bullet, which was shot at close-range, from piercing the work, but glass splinters cratered a small portion of the drawing. Steve Boggan, *The Invisible Mending*, INDEP. (London), Nov. 17, 1991, at 3.

⁴ Robert W. Duffy, *For Art’s Sake; Museum Doesn’t See Suit Over Vandalism as a War*, ST. LOUIS POST-DISPATCH, Aug. 9, 1996, at 4C; Carol Vogel, *Inside Art*, N.Y. TIMES, Sept. 17, 1993, at C23. The ink from guard’s messages, “Reggie + Crystal 1/26/91” and “I love you Tushee, Love, Buns,” saturated the canvas of Roy Lichtenstein’s painting, and the work reportedly “is now worth substantially less than it was before.” *Museum Sues the Whitney Over a Disfigured Painting*, N.Y. TIMES, Aug. 8, 1996, at C16; *see also* Vogel, *supra*.

⁵ *See* Anthony DePalma, *No Stomach for Art*, N.Y. TIMES, Dec. 8, 1996, § 4, at 2. Six months prior to defacing the Piet Mondrian painting in New York, the student vomited in red on a Raoul Dufy painting at a museum in Ontario, Canada. *See id.*; Peter Small, *Student Vomited on Paintings But Won’t Be Punished*, TORONTO STAR, Dec. 12, 1996, at A12.

⁶ Roberto Santiago et al., *Virgin Mary Canvas Defaced in B’klyn*, N.Y. DAILY NEWS, Dec. 17, 1999, at 7.

physical objects, but also the public's sensibilities.⁷ Art vandalism indeed is more than a property crime:⁸ it is a violent act that targets objects the public holds dear.⁹ The German "acid-splasher" stated as much when he confessed that he "must destroy what other men cherish."¹⁰ Even more, art vandalism can be seen as an attack on the fundamental social values—civility and egalitarianism among them—that enable and encourage the public's encounters with art objects.¹¹ Harm here to the

⁷ See, e.g., Christopher Cordess & Maja Turcan, *Art Vandalism*, 33 BRIT. J. CRIMINOLOGY 95, 96-98 (1993) (finding that many representatives from public art institutions experienced "a sense of hurt and outrage as a result of acts of vandalism against 'their' works of art, as if they felt they or a family member had been personally victimized"); Boggan, *supra* note 3 (reporting that the public responded with "disbelief and great anger" to the shooting of the National Gallery's Leonardo da Vinci drawing and saw the attacker as "a vandal who had tried to deprive the world of an irreplaceable object of beauty"); Jeffrey Kastner, *Art Attack*, ARTNEWS, Oct. 1997, at 154, 156 ("There's a certain point beyond which an individual work of art becomes a possession of the entire culture . . . These are attacks against the culture, and I take it personally." (quoting a *Los Angeles Times* art critic's response to artists' vandalism of others' artworks) (internal quotation marks omitted)); Brad Kava, *Mourning the Shards of Art; Art Lovers Salute the Remains of Vandalized Exhibit*, SAN JOSE MERCURY NEWS, Apr. 2, 1995, at 1B ("As an artist, I feel like crying really hard . . . It's like being raped." (quoting a visitor to an art exhibition after it had been vandalized) (internal quotation marks omitted)).

⁸ See, e.g., M. Kirby Talley, Jr., *Dutch Disaster*, ARTNEWS, Summer 1989, at 60, 61 [hereinafter Talley, *Dutch Disaster*] (citing a museum director's comments about the limited legal penalties under Dutch law for even serious instances of art vandalism). Dutch law "does not differentiate between damaging a work of art and vandalizing a lamp post." *Id.* at 61. "Under the present situation it would seem there is no respect for works of art. . . . A more severe punishment has to come. Art must be given a separate status under the law." *Id.* (quoting museum director Jup de Groot). Other European officials also have recently called for more stringent laws to control attacks on works of art. See, e.g., Charles Bremner, *Vandals Leave a Poor Impression on Monet as Gallery Doors Fail*, TIMES (London), Oct. 9, 2007, at 39 (reporting that the French Minister of Culture "called on the [French] Justice Ministry to consider a new law with strong penalties for damaging artworks and national treasures"); *Trevi Fountain: Rutelli, Intolerable Vandalism*, AGI (Italian News Agency), Oct. 19, 2007, <http://www.agi.it/italy/news/200710191942-pol-ren0100-art.html> (reporting on the Italian Minister for Cultural Heritage and Activities' call for passage of a more stringent law against "[art] vandalism, art theft and damage to the countryside" (internal quotation marks omitted)) (last visited Oct. 27, 2007).

⁹ See JOHN E. CONKLIN, ART CRIME 244-48, 250-53 (1994); DARIO GAMBONI, THE DESTRUCTION OF ART: ICONOCLASM AND VANDALISM SINCE THE FRENCH REVOLUTION 17-20 (1997); Gary Alan Fine & Deborah Shatin, *Crimes Against Art: Social Meanings and Symbolic Attacks*, 3 EMPIRICAL STUD. ARTS 135, 136 (1985); Gary Schwartz, *The Destruction of Art: Iconoclasm and Vandalism since the French Revolution*, ART IN AM., July 1998, at 29, 29 (book review); Alan G. Artner, *For Iconoclasts, Art Vandalism is an Expression; Their Motivation Runs the Gamut*, CHI. TRIB., Oct. 14, 2007, at C15 ("to attack an art work is the ultimate infringement as the art is unresisting and on view because of tacitly agreed upon benefits not just to one individual but the many"); Bremner, *supra* note 8 ("This is a mindless . . . attack on our memory, our heritage." (quoting the French Minister of Culture's response to an attack on a Monet painting in Paris's Musée D'Orsay) (internal quotation marks omitted)); Kaufman, *supra* note 1 (reporting that the New York City mayor "was 'shocked and saddened by the brutal defacement,' which he called 'an outrageous act of violence,'" and that the lack of lasting damage to Picasso's painting, which was displayed at New York's Museum of Modern Art, is "'a great relief to all New Yorkers and visitors . . . who come . . . to view [the] priceless masterpiece'").

¹⁰ *Vandalism Suspect Confesses*, WASH. POST, Oct. 9, 1977, at A31 (internal quotation marks omitted); see also DAVID FREEDBERG, ICONOCLASTS AND THEIR MOTIVES 35-36 (1985). *But see* GAMBONI, *supra* note 9, at 198 (reporting that a German scholar surmised that this statement was not originally the attacker's own, but rather adopted by the attacker from a criminologist's comments on the attacks, which were published before the vandal's arrest).

¹¹ See Michael Kimmelman, *A Symbol of Freedom and a Target for Terrorists*, N.Y. TIMES, Oct. 13, 2007, at B7 ("Proximity is the cost, and virtue, of a civil and democratic

public interest, however, evades criminal law, which inadequately distinguishes slashing a masterpiece from breaking a window.¹² This Note argues that no adequate recognition exists for the harm caused by vandalistic attacks on objects which, unlike other tangible property, are valued both for their uniqueness and for their public significance.

The lack of legal recognition for the public value in art has not gone unnoticed. Since the 1970s, legal commentators have cited instances of damage to art by its owners as reason to establish legal recognition and protection of the public interest in art.¹³ The public benefits from the preservation of and access to artworks, and these commentators have argued that art owners' dominion over their property should accordingly be regulated to protect these public interests. To enforce preservation of and accessibility to works of art, they have proposed statutory and incentive-based schemes.¹⁴

society. . . . Part of what's beautiful about an art museum, aside from what's on view, is that it implies trust—it lets us stand next to objects that supposedly represent civilization at its best and, in so doing, flatters us for respecting our common welfare.”); *see also* Fine & Shatin, *supra* note 9, at 136 (“[T]he state or guardian is being attacked through the art work. An attack on an art object may be an attack on the community because of the perceived connection between the art object and the cultural heritage of the community.”). Museums, by definition, must make their collections accessible to the public. *See infra* note 27. This requirement applies to both collecting and non-collecting institutions. *Id.*

¹² Unauthorized damage or destruction to property is generally chargeable as criminal or malicious mischief, which protects against the financial loss vandalism causes property owners. *See infra* Part III.A. European countries criminalize art vandalism under statutes that are comparable to U.S. criminal mischief statutes. *See, e.g.,* Criminal Damage Act 1971, ch. 48 § 1 (Eng.) (“(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property . . . shall be guilty of an offence.”); Strafgesetzbuch [StGB] [Penal Code] Nov. 13, 1998, Bundesgesetzblatt [BGBl. I] 450-2, as amended, § 303, ¶ 1, *translated in* THE GERMAN PENAL CODE 175 (Stephen Thaman trans., 2002) (“(1) Whoever unlawfully damages or destroys a thing belonging to another shall be punished with imprisonment for not more than two years or a fine.”); Wetboek van Strafrecht [Sr] [Criminal Code] Mar. 10, 1984, Staatsblad van het Koninkrijk der Nederlanden [Stb.] 27, as amended, § 350, *translated in* THE DUTCH PENAL CODE 222 (Louise Rayar & Stafford Wadsworth trans., 1997) (“1. A person who intentionally and unlawfully destroys, damages, renders unusable or causes to disappear any property belonging in whole or in part to another is liable to a term of imprisonment of not more than two years or a fine of the fourth category.”). Calls for stricter enforcement of art vandalism are frequently made. *See supra* note 8; *see also* Carolyn Kleiner, *Mayhem in the Garden*, U.S. NEWS & WORLD REP., May 31, 1999, at 69 (“Ton Cremers a Dutch museum-security expert, says the attacks have more to do with the justice system than with security. ‘In our country there’s hardly any difference between smashing a shop window and damaging an important piece of art.’” (quoting Ton Cremers)).

¹³ *See generally* JOSEPH L. SAX, PLAYING DARTS WITH A REMBRANDT: PUBLIC AND PRIVATE RIGHTS IN CULTURAL TREASURES (1999); Albert Elsen, *Why Do We Care About Art?*, 27 HASTINGS L.J. 951 (1976); John Henry Merryman, *The Public Interest in Cultural Property*, 77 CALIF. L. REV. 339 (1989); Note, *Protecting the Public Interest in Art*, 91 YALE L.J. 121 (1981); Carl F. Stover, *A Public Interest in Art—Its Recognition and Stewardship*, 14 J. ARTS MGMT. & L. 5 (1984); Nicole B. Wilkes, *Public Responsibilities of Private Owners of Cultural Property: Toward a National Art Preservation Statute*, 24 COLUM.-VLA J.L. & ARTS 177 (2001).

¹⁴ *See, e.g.,* SAX, *supra* note 13, at 66-68 (proposing both voluntary tax deductions and a duty-based scheme to secure public access to significant works of art privately owned and not exhibited in public institutions); Christopher J. Robinson, *The “Recognized Stature” Standard in the Visual Artists Rights Act*, 68 FORDHAM L. REV. 1935, 1971-75 (2000) (proposing establishment of a “national registry of highly significant art”); Wilkes, *supra* note 13, at 204-09 (proposing tax incentives for art owners who preserve and provide public access to their collections and a “national register of cultural property” that designates culturally significant artworks).

Violence to art by non-owners—essentially, art vandalism—generally has been addressed by non-legal scholars.¹⁵ While these scholars have alluded to the need to protect the public interest in art,¹⁶ their main interest lies in defining art vandalism and the motives that underlie it¹⁷ and, in part, arguing for stricter criminal enforcement against art vandals.¹⁸

Existing criminal law does not distinguish art vandalism from vandalism and typically classifies the deliberate destruction of artwork as criminal mischief.¹⁹ Criminal mischief laws enforce property rights by

¹⁵ Cordess & Turcan, *supra* note 7, at 95 (“Those [perspectives] particularly relevant to art vandalism include historical, criminological, sociological, and psychological accounts.” (citations omitted)). The studies referenced in this Note are from the following disciplines: art history, *see generally*, FREEDBERG, *supra* note 10; GAMBONI, *supra* note 9, criminology, *see generally*, Cordess & Turcan, *supra* note 7; Carine de Lichtervelde, *Du Vandalisme ou de la Destruction et la Dégradation des Biens Culturels (Vandalism or the Destruction and Damage to Cultural Property)* (2007) (unpublished Master’s thesis, Université catholique de Louvain, Belgium) (on file with university), available at <http://www.museum-security.org/vandalisme%20biens%20culturels.htm>, sociology, *see generally* CONKLIN, *supra* note 9, at 244-48, 250-53; Stanley Cohen, *Campaigning Against Vandalism*, in VANDALISM 215 (Colin Ward, ed., 1973) [hereinafter Cohen, *Campaigning Against Vandalism*]; Stanley Cohen, *Property Destruction: Motives and Meanings*, in VANDALISM, *supra*, at 23 [hereinafter Cohen, *Property Destruction*]; Fine & Shatin, *supra* note 9, at 135, psychology, *see generally* ARNOLD P. GOLDSTEIN, *THE PSYCHOLOGY OF VANDALISM* (1996).

To the author’s knowledge, art vandalism, as defined in this Note, has not been previously addressed in a legal journal. The major art law treatises and case books do not discuss vandalism. *See, e.g.*, JESSICA L. DARRABY, *ART, ARTIFACT & ARCHITECTURE LAW* (2007); RALPH E. LERNER & JUDITH BRESLER, *ART LAW* (2d ed. 1992); JOHN HENRY MERRYMAN ET AL., *LAW, ETHICS AND THE VISUAL ARTS* xxvii (5th ed. 2007) (referring to the threat from “[d]eranged attacks on Michelangelo’s *Pieta* and Rembrandt’s *Night Watch*” but providing no further discussion of art vandalism).

¹⁶ FREEDBERG, *supra* note 10, at 35-36.

¹⁷ *See id.*; GAMBONI, *supra* note 9, at 9-12.

¹⁸ Cordess & Turcan, *supra* note 7, at 96-98; Fine & Shatin, *supra* note 9, at 146-47.

¹⁹ *See, e.g.*, 18 U.S.C. § 1361 (2000); N.Y. PENAL LAW §§ 145.00-.12 (McKinney 2009); MODEL PENAL CODE § 220.3 (1980).

Outside of criminal law and the scope of this Note’s discussion, the Visual Artists Rights Act (“VARA”) and the Hague Convention specifically address the deliberate destruction of works of art. VARA, which appears within the federal copyright code, allows living artists to seek damages for the intentional destruction of their work of visual art if it is of recognized stature. 17 U.S.C. § 106A (2006); *see also* 17 U.S.C. § 101 (2006) (defining the “work[s] of visual art” VARA protects). Case law and commentary attest to the limited and narrow rights VARA grants artists. *See, e.g.*, *Mass. Museum of Contemporary Art Found., Inc. v. Büchel*, 565 F. Supp. 2d 245, 258 (D. Mass. 2008) (concluding that courts should interpret VARA narrowly because “expansive application” of the rights were “not contemplated by Congress and generally [have] not been countenanced by the courts”); *infra* note 235 and accompanying text (discussing the difficulty of ascertaining the “recognized stature” standard).

The 1954 Hague Convention binds its parties during wartime “to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.” Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(3), May 14, 1954, 249 U.N.T.S. 240, available at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html; *see also* Patty Gerstenblith & Lucille Roussin, *Art and International Cultural Property*, 42 INT’L LAW. 729, 729-30 (2008). The United States joined the convention on September 25, 2008. 154 CONG. REC. S9555 (daily ed. Sept. 25, 2008); *see also* College Art Association, CAA News, <http://www.collegeart.org/news/2008/10/02/us-ratifies-treaty-to-protect-cultural-property-in-time-of-war/> (last visited Jan. 14, 2009) (providing a brief background to the recent ratification and an explanation of the understandings that accompanied Congress’s adoption of the convention). For a general discussion

prohibiting willful and unauthorized destruction of another person's property.²⁰ A financial calculation of loss determines the offense's degree and sentence.²¹ Even when an attack on an artwork results in monetary loss far higher than grading thresholds, criminal mischief sentences for art vandalism are commonly light.²²

Despite existing laws and scholars' proposals for greater legal protections, gaps exist in the law's apprehension and control of the harm caused by intentional attacks on works of art. Even with heightened security at museums since the 2001 terrorist attacks on the World Trade Center,²³ the incidence of vandalism in museums has not abated.²⁴ To address these gaps and this under-controlled crime, this Note argues for legal recognition of art vandalism. It finds art vandalism to be distinct in its motives and harms from other forms of vandalism. Moreover, the seriousness of art vandalism tends to escape and exceed available legal protections. For these reasons, this Note suggests how the law can more adequately control this crime.

Part II of this Note defines vandalism generally and art vandalism in particular. This section also assesses the differences between the two acts and establishes the distinct nature and harms of art vandalism. Part III evaluates existing laws' application to art vandalism. It first considers criminal mischief laws, which prohibit property damage

of the convention, see Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 *GEO. J. INT'L L.* 245, 259-69 (2006).

²⁰ See, e.g., 18 U.S.C. § 1361 (2000); N.Y. PENAL LAW §§ 145.00-.12 (McKinney 2009); MODEL PENAL CODE § 220.3 (1980).

²¹ 52 AM. JUR. 2d *Malicious Mischief* § 1 (2000).

²² CONKLIN, *supra* note 9, at 275. The museum guard who wrote on the Roy Lichtenstein painting was charged with criminal mischief in the second degree, which carries a maximum sentence of seven years incarceration. Vogel, *supra* note 4. The sentence was downgraded to three years probation with the guard's guilty plea to the lesser charge of criminal mischief in the fourth degree. Certificate of Disposition No. 57904, *People v. Walker*, No. 93N065146 (June 20, 1994) (documenting the arraignment charge as "145.10," which is criminal mischief in the second degree, N.Y. PENAL LAW § 145.10 (McKinney 2009), and the sentence imposed as under "145.00", which is criminal mischief in the fourth degree, N.Y. PENAL LAW § 145.00). The Catholic vandal who defaced the portrait of the Virgin Mary was fined \$250 upon conviction on three misdemeanor charges. Mike Claffey, *No Jail for Prof in Art Defacing*, DAILY NEWS, Nov. 15, 2000, at 36; see also *infra* note 73 and accompanying text.

²³ See Michael A. Gips, *Open Spaces in a Tight Spot*, SECURITY MGMT., Jan. 1, 2002, at 47, also available at http://www.accessmylibrary.com/coms2/summary_0286-24959216_ITM ("In general, museums—especially those in metropolitan areas and those with a high profile—have reacted to September 11 by increasing access controls . . . [including] 'a positive bag check of all containers brought in through the public entries.'" (quoting a museum security consultant)). More generally, an article about security at a major New York City museum concluded that "[t]he events of Sept. 11 changed everyone's thinking about the need for protection and how vulnerable any structure—particularly one in New York City—could be. Security had to be heightened and technology offered a way to do so without increasing the size of the guard force." Randy Southerland, *Ancient Artifacts, Modern Technologies*, ACCESS CONTROL & SECURITY SYSTEMS, May 2003, available at http://securitysolutions.com/mag/security_ancient_artifacts_modern/. The museum's Assistant Director for Security and Technology further commented: "Securing the museum is very different than securing just a regular office building The museum . . . is for the people, open to the public and made available to everyone. There's no way to screen out people who may be visiting for other than good reasons." *Id.* (internal quotations omitted).

²⁴ See *infra* app.

and destruction. Next, this section reviews library offenses, which prohibit damage to library property and, in some states, to artworks in museums. The evaluation of these extant laws demonstrates that they do not adequately protect against art vandalism, yet they provide guidance as to how the law should be amended. This Note's proposal in Part IV draws from the previous sections' analysis to outline how criminal mischief statutes can accommodate and control art vandalism. This proposal thus raises art vandalism's status to that of a rightful subject of the law. It treats art vandalism as a crime against property owners *and* against the public. It further allows for sentences that appropriately deter and punish the full scope of the crime.

Before proceeding, it should be clarified that the discussion here is limited to applications to the United States' legal context, even though European law and incidents are considered.²⁵ The discussion also refers predominantly to studies and materials available in English²⁶ and relies in particular on accounts of art vandalism as reported in the press. The focus is on vandalism of artworks in museums²⁷ and by extension to artworks that have acquired social and cultural value.²⁸ This narrow focus

²⁵ Most studies on art vandalism referred to here consider occurrences of the crime in Europe and North America, even when the United States is the focus of the study. While none of the studies acknowledge or question their use of European or Canadian facts to comment on the United States context, three factors may contribute to this practice: (1) the lack of well-documented examples of art vandalism and a need to cumulate all available information; (2) the uniformity of laws that regulate art vandalism in European countries, Canada, and the United States; and (3) a presumption that conditions relevant to art vandalism are comparable in European countries, Canada, and the United States.

²⁶ Exceptions are European news reports that provide information not available in English language publications and a Master's thesis in French that surveys European studies and laws related to art vandalism. *See supra* notes 2, 15 and *infra* app. note 314.

²⁷ This Note uses "museum" as shorthand for both traditional not-for-profit museums as well as not-for-profit and non-collecting exhibition spaces, both of which exhibit works of art for the public's benefit and, correspondingly, are vulnerable to art vandalism. The American Association of Art Museum Directors promulgates the following definition of art museums, which is applicable here:

An art museum is a permanent, not-for-profit institution, essentially educational and humanistic in purpose, that studies and cares for works of art, and on some regular schedule exhibits and interprets them to the public. Most, but not all, art museums have permanent collections from which exhibitions are drawn and upon which educational programs are based.

MERRYMAN ET AL., *supra* note 15, at 1155-56. To qualify for accreditation from the American Association of Museums and for funding from the federal Institute of Museum and Library Services, museums must, *inter alia*, exhibit objects to the public on a regular basis. *See id.* at 1155; Institute of Museum and Library Services, Grant Applicants Eligibility Criteria: Museums, <http://www.ims.gov/applicants/museums.shtm> (last visited Oct. 30, 2008).

²⁸ It is assumed that a museum's decision to own or display an artwork evidences and contributes to that work's social and cultural value. *See Carter v. Helmsley-Spear, Inc.*, 861 F. Supp. 303, 324-25 (S.D.N.Y. 1994), *aff'd in part, vacated in part*, 71 F.3d 77 (2d Cir. 1995), *cert. denied*, 517 U.S. 1208 (1996) (discussing the Visual Artists Rights Act "recognized stature" requirement); *Lubner v. City of L.A.*, 45 Cal. App. 4th 525, 531 (Ct. App. 1996) (inferring that an artwork would meet the recognized stature requirement of the Visual Artists Rights Act if the artist had regularly exhibited his or her work); *see also* Jane C. Ginsburg, *Copyright in the 101st Congress: Commentary on the Visual Artists Rights Act and the Architectural Works Copyright Protection Act*

on museum attacks artificially limits the discussion here to a distinct class of circumstances and objects. This Note's nearly exclusive discussion of the collective interest in museum artworks, however, is meant to add to, not detract from, discussions about the collective interest in other forms of cultural property.²⁹ Additionally, the focus here on the vandalism of museum artworks is intended to bear on the vandalism of publicly valued works of art regardless of their location when attacked.³⁰ Finally, the term "art vandalism" is used to refer broadly to this act, and while "vandalism" is saddled with derogatory meaning,³¹ this commonly used term is employed here as neutral and descriptive. More attention to the definition of both vandalism and art vandalism follows in the next section.

II. BACKGROUND: VANDALISM AND ART VANDALISM

Vandalism and art vandalism share certain threshold challenges for scholars. The study of vandalism generally and art vandalism in

of 1990, 14 COLUM.-VLA J.L. & ARTS 477, 480 n.19 (1990), cited in Carter, 861 F. Supp. at 325 (implying that public display of an artwork proves that the work is of "recognized stature").

Vandalism of artwork in public places, which is outside this Note's scope, implicates ambiguities as to a vandal's intent and knowledge, which are not present when attacks occur within museums or similar institutions dedicated to the preservation and public display of art. Works of art displayed in public spaces, for example, can be misconstrued as refuse and their damage or destruction can then accordingly be regarded as accidental. See GAMBONI, *supra* note 9, at 287-92.

²⁹ John Henry Merryman's discussion of the public interest in cultural property expansively encompasses works of art. Merryman, *supra* note 13, at 341 (defining cultural property as "objects that embody the culture" and inclusive of "archaeological, ethnographical and historical objects, works of art, and architecture"). In contrast, Patty Gerstenblith excludes works of art from her discussion of legal protection in the United States for cultural property, which she defines as objects that arise from and express the identity of a particular community or group "regardless of whether the object has achieved some universal recognition of its value beyond that group." Patty Gerstenblith, *Identity and Cultural Property: The Protection of Cultural Property in the United States*, 75 B.U. L. REV. 559, 569-70 (1995) (stating that calling an object "art" is a way to confer financial and aesthetic value whereas "[c]ultural property is that specific form of property that enhances identity, understanding, and appreciation for the culture that produced the particular property"). While the distinction between works of art and cultural property is certainly valid, for this author, discussions about these objects intersect at the concept of a collective interest in property.

The focus here on collective interest precludes discussion of the harm artists can experience when their work is vandalized. See, e.g., E-mail from Salomé W. Cihlarz to author (July 20, 2008, 03:25 am EST) (on file with author) (stating that since his painting was vandalized, the artist never again has allowed it to be shown in a public exhibition and that the attack left him feeling like a "rape victim, . . . [and] it still haunts [him] to this day"); see also *infra* text accompanying note 276. The Visual Artists Rights Act recognizes this harm by granting the exclusive right, albeit limited, to living artists to seek damages when their artwork is either mutilated or destroyed. See *supra* note 19.

³⁰ E.g., see *infra* note 240.

³¹ See *infra* notes 38 and 61 and accompanying text. Some scholars have chosen to use different terms. David Freedberg uses "iconoclasm" to root his discussion in the power of images, rather than the destruction of property. See generally FREEDBERG, *supra* note 10. Gary Alan Fine and Deborah Shatin use "crimes against art" to highlight the illegality of the conduct. Fine & Shatin, *supra* note 9, at 136. Dario Gamboni uses "destruction of art" as a more neutral term. GAMBONI, *supra* note 9, at 19-20.

particular suffers from a lack of uniform definition³² and dearth of research on the subject.³³ Property owners tend to underreport acts of vandalism.³⁴ This underreporting prevents scholars from presenting a true picture of the prevalence and the actual costs of both types of attacks.³⁵ Moreover, both vandalism and art vandalism tend to be labeled as “senseless” acts.³⁶ The differences, however, between the object, scope,

³² See GOLDSTEIN, *supra* note 15, at 3, 17, 19-22; Claude Lévy-Leboyer, *Vandalism and the Social Sciences*, in VANDALISM: BEHAVIOR AND MOTIVATIONS 1, 2 (Claude Lévy-Leboyer, ed., 1984); Gabriel Moser et al., *The Evaluation of Acts of Vandalism*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra*, at 247, 247; Willem van Vliet, *Vandalism: An Assessment and Agenda*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra*, at 13, 17-21.

³³ See Stanley Cohen, *Sociological Approaches to Vandalism*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra* note 32, at 51, 52; FREEDBERG, *supra* note 10, at 7; GAMBONI, *supra* note 9, at 10, 13; GOLDSTEIN, *supra* note 15, at 1; Lévy-Leboyer, *supra* note 32, at 1-2 (noting the lack of theoretical studies of vandalism); van Vliet, *supra* note 32, at 13, 27 (also noting that most studies on vandalism lack a theoretical basis); John Dornberg, *Art Vandals: Why Do They Do It?*, ARTNEWS, Mar. 1987, at 102, 104 (“Research into [art vandalism] is surprisingly skimpy, especially in light of the immense cultural and financial losses involved, and little information is available.”). Specific types of vandalism recognized as distinct crimes, such as graffiti, computer crimes, and hate crimes, receive more attention from legal scholars than the study of vandalism as a general phenomenon. See generally Marisa A. Gómez, *The Writing on our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism*, 26 U. MICH. J.L. REFORM 633 (1993); Lori L. Hanesworth, *Are They Graffiti Artists or Vandals? Should They Be Able or Caned?: A Look at the Latest Legislative Attempts to Eradicate Graffiti*, 6 DEPAUL-LCA J. ART & ENT. L. & POL’Y 225 (1996); Xiaomin Huang et al., *Computer Crimes*, 44 AM. CRIM. L. REV. 285 (2007); James B. Jacobs & Kimberly A. Potter, *Hate Crimes: A Critical Perspective*, 22 CRIME & JUST. 1 (1997); Andrew E. Taslitz, *Condemning the Racist Personality: Why the Critics of Hate Crimes Legislation Are Wrong*, 40 B. C. L. REV. 739 (1999).

³⁴ Administrators of schools, parks, and museums alike underreport acts of vandalism in order to deflect responsibility for the acts. See Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 231-32; GOLDSTEIN, *supra* note 15, at 3. Victims of vandalism and of art vandalism also underreport the crime to avoid copycat attacks. See Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 253 (“[T]he initial reporting of an incident often has the effect of triggering off incidents of a similar kind.”); Fine & Shatin, *supra* note 9, at 137; Kaufman, *supra* note 1 (“Originally the museum hoped to keep the vandalism secret, because . . . [m]useums are always afraid that this kind of publicity may encourage other acts of vandalism.” (quoting the Museum of Modern Art’s press officer)). Art museums may also underreport vandalism because the attacks “brutally expose[] the contradiction between the conservation and mediation that is inherent in the function of museums, [and have a] negative impact on the image of the institution, the careers of curators and their future collecting and exhibiting activities” GAMBONI, *supra* note 9, at 193. As to general vandalism, the anonymous nature of the act also contributes to its underreporting. See Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 254 (vandalism “is overwhelmingly a group offence”); GOLDSTEIN, *supra* note 15, at 3 (“many victims elect not to report vandalistic acts because they . . . have not themselves witnessed the act”); see also FREEDBERG, *supra* note 10, at 7, 10 (expressing concern rhetorically that discussing vandalism of artworks publicly, even in an academic setting, might encourage attacks and noting the fear of copycat attacks may arise from awareness, however unconscious, that the impulse to destroy artworks resides in all of us).

³⁵ FREEDBERG, *supra* note 10, at 39 n.8 (noting anecdotally the reluctance of museum curators to provide the author with access to files on works damaged by vandalism, even though these curators understood that the topic was important to study); van Vliet, *supra* note 32, at 16 (noting that the confusion over what constitutes vandalism as a general phenomenon also impedes accurate calculations of its financial impact).

³⁶ See, e.g., T. C. Wingate, Letter to Editor, *Insane Assaults*, GLOBE & MAIL, Apr. 24, 1978, at 7 (characterizing attacks on significant works of art as “senseless atrocities” and “psychopathic outbursts”). But see Michael Kimmelman, *A Symbol of Freedom and a Target for Terrorists*, N.Y. TIMES, Oct. 13, 2007, at B7 (acknowledging that art vandalism arises from a variety of motives and is not merely an act of insanity); see also FREEDBERG, *supra* note 10, at 11, 24; GAMBONI, *supra* note 9, at 10 (observing that the perception of art vandalism as senseless implies

and nature of vandalism and art vandalism suggest the need for distinct legal recognition for the particular risks and harms art vandalism presents.

A. *Vandalism*

As the definition of vandalism has broadened, scholars' understanding of the conduct's scope has varied.³⁷ Vandalism once referred specifically to the destruction of art monuments and artifacts in reference to what were considered the ignorant and barbarous acts of the Vandals, an East German tribe that invaded and pillaged cities and territories in the fourth and fifth centuries.³⁸ Today, the term vandalism refers to the destruction or damage to any form of property.³⁹ Some scholars embrace this expansive definition and address vandalism across a broad spectrum of conduct from trivial, normalized acts to acts recognized as criminal.⁴⁰ Examples of normalized acts of vandalism include throwing eggs at cars on Halloween or writing messages on a nightclub's bathroom stall.⁴¹ Acts of unacceptable and criminalized vandalism include breaking shop windows, committing arson, and slashing automobile tires.⁴² Other scholars narrow vandalism to these illegal manifestations,⁴³ which criminal codes define as intentional acts of

that “[n]othing can be learnt from it, and it must be condemned, or better still ignored”); Lévy-Leboyer, *supra* note 32, at 1, 4; Fine & Shatin, *supra* note 9, at 139, 144-46.

³⁷ See van Vliet, *supra* note 32, at 17-19 (“The literature on vandalism shows little consensus as to what constitutes vandalistic behaviour.”).

³⁸ See Cohen, *Property Destruction*, *supra* note 15, at 33-34; GAMBONI, *supra* note 9, at 15, 18; GOLDSTEIN, *supra* note 15, at 17.

³⁹ BLACK'S LAW DICTIONARY 1588 (8th ed. 2004).

⁴⁰ See Cohen, *Property Destruction*, *supra* note 15, at 23; GOLDSTEIN, *supra* note 15, at 17, 19-22; van Vliet, *supra* note 32, at 17-21. Stanley Cohen's broad typology of vandalism is arguably the most influential and is widely referenced in scholarship about both vandalism and art vandalism. See CONKLIN, *supra* note 9, at 242, 244, 249 (1994); DARIO GAMBONI, *supra* note 9, at 22; GOLDSTEIN, *supra* note 15, at 20-21, 33-34; Lévy-Leboyer, *supra* note 32, at 2-3 (citing Cohen as having drawn up the “definitive list of vandalism types”); van Vliet, *supra* note 32, at 18; Cordess & Turcan, *supra* note 7, at 95.

⁴¹ In Stanley Cohen's typology, the Halloween example would be tolerated as “ritual” vandalism and the bathroom stall example would be considered as vandalism “written-off” by the nightclub owners. See Cohen, *Property Destruction*, *supra* note 15, at 23-24, 27-30. Other categories of normalized acts include “play,” “protected” and “walled-in” vandalism, the last of which refers to trivial and routine acts of vandalism directed at institutions such as schools, workplaces, and prisons. See *id.* at 24-27, 30-33. Since Stanley Cohen identified “walled-in” or “institutional vandalism,” vandalism directed at particular institutions has been recognized as a distinct type of vandalism that may or may not be perpetrated by the institution's own population. See, e.g., 18 PA. CONS. STAT. ANN. § 3307(a)(1)-(3) (West Supp. 2008) (defining institutional vandalism as knowingly damaging a place of worship, cemetery, or school); *cf.* Cohen, *Property Destruction*, *supra* note 15, at 30-33 (finding at that time that institutional vandalism was “rarely defined as deviant by the wider society”).

⁴² See, e.g., Cohen, *Property Destruction*, *supra* note 15, at 41-49.

⁴³ See, e.g., GOLDSTEIN, *supra* note 15, at 22 (“Vandalism is an intentional act of destruction or defacement of property not one's own.”).

damage to tangible property belonging to another person.⁴⁴ Both broad and narrow definitions allow scholars to consider vandalism in a wide range of physical settings.⁴⁵

Notwithstanding the range of vandalistic behaviors scholars consider, scholars' studies converge on vandals' characteristics and motives. There is also general uniformity to theories on vandalism's underlying causes. Accordingly, these commonalities form the mainstream academic conception of vandalism.⁴⁶ Within this academic conception, vandalism can serve or accompany purposes such as theft or a political cause,⁴⁷ but vandalism as understood by scholars more commonly involves only damage to property belonging to another person or entity.

Most studies find the typical vandal is male, young (under twenty-five years old),⁴⁸ and acts spontaneously and anonymously in groups.⁴⁹ The young vandal defaces, damages, or destroys property he encounters in public spaces (parks, playgrounds, public housing, public transportation, or on the street) and in institutional facilities (schools and libraries).⁵⁰ The attacks are typically small-scale acts, not calculated to cause great damage or loss.⁵¹ Additionally, those vandals who engage in

⁴⁴ See, e.g., N.Y. PENAL LAW §§ 145.00-.12 (McKinney 2009) (stating in pertinent part: “[a] person is guilty of criminal mischief . . . when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person.”).

⁴⁵ The primary settings considered are educational institutions (see Colin Ward, *Notes on the Future of Vandalism*, in VANDALISM, *supra* note 15, at 276, 290-99); recreational areas (see H. H. Christensen, *Vandalism: An Exploratory Assessment of Perceived Impacts and Potential Solutions*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra* note 32, at 269, 269); public housing (see Ward, *supra*, at 287-88; Jack K. Wawrzynski, *Vandalism in Residential Areas in England: Oldham Case Study*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra* note 32, at 283, 283); public amenities (see Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 254-55; C. L. Markus, *British Telecom Experience in Payphone Management*, in VANDALISM: BEHAVIOR AND MOTIVATIONS, *supra* note 32, at 311); public transportation (see Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 250-53).

⁴⁶ These scholars also discuss non-conventional forms of vandalism. For a survey of “ecovandalism,” destructive, yet usually sanctioned, acts to the environment, see GOLDSTEIN, *supra* note 15, at 87-91. See also *infra* note 53 and accompanying text.

⁴⁷ See Cohen, *Property Destruction*, *supra* note 15, at 42-44 (noting also that “acquisitive” vandalism (that which involves theft) and “ideological” and “tactical” vandalism (that which serves a political cause or a desire to be sheltered in prison) are more often perpetrated by adults).

⁴⁸ See *id.* at 50; GOLDSTEIN, *supra* note 15, at 23-26; Ward, *supra* note 45, at 279. Statistics from the Federal Bureau of Investigation support this claim and show that sixty-eight percent of vandalism arrests in 2006 involved persons under twenty-five years of age. U.S. Dep’t of Just., Fed. Bureau of Investigation, *Crime in the United States, 2006*, Sept. 2007, http://www.fbi.gov/ucr/cius2006/data/table_41.html.

⁴⁹ See Cohen, *Property Destruction*, *supra* note 15, at 50; GOLDSTEIN, *supra* note 15, at 24, 27 (citations omitted).

⁵⁰ See Cohen, *Property Destruction*, *supra* note 15, at 50; GOLDSTEIN, *supra* note 15, at 24, 27-29 (pointing out that because vandals tend not to understand the consequences of their behavior, they consider property that is public as belonging to no one).

⁵¹ See Lévy-Leboyer, *supra* note 32, at 7. But small-scale attacks add up in the aggregate, and one scholar suggests that “the costs appear to be staggering.” van Vliet, *supra* note 32, at 16; see also *id.* at 15, Table 1; David A. Anderson, *The Aggregate Burden of Crime*, 42 J.L. &

attacks recognized as serious, harmful, and illegal tend to be motivated by aggression.⁵² They channel that aggression into acts of vandalism that seek out revenge, aim to get a message across, mirror play, or arise from outright hostility.⁵³ Scholars tend to identify the causes of this aggression as boredom and a lack of opportunity to express or advance oneself⁵⁴ and find that acts of vandalism function as a type of challenge for bored youth.⁵⁵ Furthermore, the sense of control vandals gain over the property they damage or destroy—objects that symbolize the society or institution to which vandals belong—counters the control the vandals perceive society or institutions hold over them.⁵⁶ Finally, the nature of a young person's perception of and interaction with his surrounding physical and social environment influences his choice to engage in aggressive acts of vandalism.⁵⁷

B. Art Vandalism

Art vandalism, as a particular form of vandalism, differs from the general form in its assailants, their motives, and scholars' theories of its causation. These differences are determined and shaped above all by what is attacked—a work of art—the nature of which differs significantly from the typical vandalized object. The particular nature of artworks, along with art vandalism's historical sources, can complicate even what one chooses to call attacks on art.⁵⁸ Typologies of art vandalism can also be complex endeavors, especially when broad definitions are adopted.⁵⁹ In contrast, this Note, because it focuses specifically on unauthorized acts intended to cause harm to artworks in museums, necessarily uses a narrowed definition that accordingly clarifies the type of assailants,

ECON. 611, 633 (1999) (citing 1974 figures for vandalism costs, including arson, at \$1.90 billion per year).

⁵² See GOLDSTEIN, *supra* note 15, at 38; Lévy-Leboyer, *supra* note 32, at 9.

⁵³ See Cohen, *Property Destruction*, *supra* note 15, at 43-50. Cohen also recognizes vandalism motivated by the aim to steal or gain attention for a need or cause. *See id.* at 42-44. As these acts employ vandalism to meet other well-defined ends—e.g., theft or shelter—they tend not to be considered in discussions about vandalism's underlying causes or proposals for its prevention. *See* Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 254 (excluding “acquisitive” and “tactical” vandalism from the assessment of whether publicity and deterrence are effective means to control vandalism).

⁵⁴ See Cohen, *Property Destruction*, *supra* note 15, at 51-53; GOLDSTEIN, *supra* note 15, at 39-41; Lévy-Leboyer, *supra* note 32, at 19-10; Laurie Taylor, *The Meaning of the Environment*, in VANDALISM, *supra* note 15, at 54, 63; van Vliet, *supra* note 32, at 27.

⁵⁵ See Cohen, *Property Destruction*, *supra* note 15, at 53; Lévy-Leboyer, *supra* note 32, at 10.

⁵⁶ See GOLDSTEIN, *supra* note 15, at 39-40; Lévy-Leboyer, *supra* note 32, at 10.

⁵⁷ See GOLDSTEIN, *supra* note 15, at 26, 48-49; Lévy-Leboyer, *supra* note 32, at 1, 5-10; Taylor, *supra* note 54, at 54-58, 62-63.

⁵⁸ See GAMBONI, *supra* note 9, at 17-20 (discussing the problematic value judgments that are associated with the original meanings and expanded connotations of the two terms “vandalism” and “iconoclasm” and the insufficiencies of a standard, more neutral term such as “destruction of art”); *see also infra* notes 71-73 and accompanying text.

⁵⁹ See CONKLIN, *supra* note 9, at 227-48; GAMBONI, *supra* note 9, at 22-24.

motives, and causes to be considered. The discussion that follows, however, will review the broader conceptions of art vandalism. It does so both to contextualize the attacks on museum artworks and to draw out the distinctions between these attacks and vandalism generally.

Both “vandalism” and “iconoclasm,” the two terms used for the intentional destruction of an artwork, carry meanings that pass judgment on the act as either abhorred or excusable.⁶⁰ Calling an act “vandalism,” a term that derives from conduct considered ignorant and barbarous, still carries moral overtones,⁶¹ even as the scope of the term’s meaning has broadened.⁶² For instance, using “vandalism” to describe the demolition of monuments and statuary of former communist regimes questions the morality of those acts of destruction.⁶³ On the other hand, calling an attack on an artwork iconoclasm, a more specialized term, which also has historical origins, invests the same act of destruction with meaning and purpose.⁶⁴ In current usage, an iconoclast refers to a maverick,⁶⁵ a person who attacks as fallacious cherished beliefs or venerated institutions.⁶⁶ Historically, the term iconoclast referred to a participant in religious and political movements that destroyed art objects offensive to their ideals.⁶⁷ Thus, the Taliban’s destruction of the Bamiyan Buddhas in Afghanistan⁶⁸

⁶⁰ See GAMBONI, *supra* note 9, at 17-20. Dario Gamboni further compares the distinction in common usage between “vandalism” and “iconoclasm” to the difference in usage between “pornography” and “eroticism.” *Id.* at 18.

⁶¹ See *id.* 18-19; Sonia K. Katyal, *Semiotic Disobedience*, 84 WASH. U. L. REV. 489, 520 (2006) (“We use the label of vandalism in traditional terms to describe expression that is, ironically, devoid of any expressive value; work that is deemed ‘vandalism’ . . . is considered to be a symptom of public blight, a sign of angry, wayward youth and criminality.”).

⁶² See *supra* note 39 and accompanying text.

⁶³ See, e.g., Christopher Knight, Opinion, *When a Government Falls, Its Statues Aren’t Spared*, L.A. TIMES, Dec. 29, 1991, at 1M (“[T]here’s something inherently barbaric about destroying any work of art. . . . When sculptures topple, as they are bound to do, they should be uprighted—not so the same, spilled beliefs can be stuffed back inside, but so we can examine their shape and contour for illuminating signs of what they once held.”); see also GAMBONI, *supra* note 9, at 51-55, 67-90 (analyzing the treatment of communist monuments by officials and individuals as a form of iconoclasm).

⁶⁴ GAMBONI, *supra* note 9, at 19 (“In contrast [to “vandalism”], ‘iconoclasm’ and ‘iconoclast’ have the advantage of implying that the actions or attitudes thus designated have a meaning.”).

⁶⁵ For example, the cable television program “Iconoclasts” defines the individuals it portrays as “creative visionaries whose passion for what they do has transformed our culture.” Sundance Channel, <http://www.sundancechannel.com/iconoclasts#/about> (last visited Nov. 2, 2008).

⁶⁶ See GAMBONI, *supra* note 9, at 18, 338 (citing OXFORD ENGLISH DICTIONARY 609 (7th ed.)).

⁶⁷ Unlike the Vandals, iconoclasts acted not as a single conquering people but as part of movements, organized by the Byzantine Church (8th-9th centuries) and Puritan Reformation movement (16th-17th centuries), and during the French Revolution (18th century), that destroyed pictorial objects or cultural artifacts and monuments to serve political and religious ideals. See FREEDBERG, *supra* note 10, at 9-10 (discussing in particular the Dutch 16th-century movement); GAMBONI, *supra* note 9, at 28-36; Julius S. Held, *Alteration and Mutilation of Works of Art*, S. ATL. Q., Winter 1963, at 1, 5-6; see also MERRYMAN ET AL., *supra* note 15, at 618-21. Iconoclasm is used more frequently to figuratively describe attacks on ideas, yet in common usage it can still refer to physical attacks on objects. See, e.g., Artner, *supra* note 9.

⁶⁸ See, e.g., Larry B. Stammer, *West, Islamic Leaders Decry Taliban’s Statue Demolition*, L.A. TIMES, Mar. 3, 2001, at A4 (“The demolition of the towering statues in Bamian

was iconoclasm (even if derided as vandalism),⁶⁹ as was the 2003 toppling of the statue of Saddam Hussein in Baghdad.⁷⁰

The contradictory concepts embedded in the terms “vandalism”—acts that are senseless and condemned—and “iconoclasm”—acts that have purpose and may thus be excusable—can shape how we judge intentional damage done to works of art. Museum officials and the press, for example, frequently label attacks on artworks as “senseless” and psychotic, and thus impenetrable and uncontrollable.⁷¹ These labels can serve practical ends for those who use them but confuse the common and legal understandings of intentional acts to damage or destroy works of art.⁷² In the absence of legal definition, these labels and

province, as well as the ruination of every other non-Islamic religious piece of art in the country, was ordered Monday by Mullah Mohammed Omar, the Taliban’s supreme leader. “These idols have been gods of the infidels,” he declared.” (quoting the Taliban’s leader); see also Ed Timms, *Tearing Down the Temples; Clashes Between Cultures Often Leave Places of Worship in Ruins*, DALLAS MORNING NEWS, Apr. 29, 2001, at 1J (“[T]he recent destruction of the Bamiyan Buddhas in Afghanistan may be more of a political act than a religious statement. . . . [T]he Taliban may have threatened to destroy the Buddhist statues because its leaders were angry at the United Nations’ economic sanctions and the refusal by the international community to recognize their government.”); Lior Jacob Strahilevitz, *The Right to Destroy*, 114 YALE L.J. 781, 826-27 (2005) (discussing the attack’s expressive value).

⁶⁹ See, e.g., Barbara Crossette, *Taliban: War for War’s Sake*, N.Y. TIMES, Mar. 18, 2001, at 4 (“Rough-cut and wild-eyed, vandals called the Taliban blasted away last week at works of priceless ancient art, the giant standing Buddhas of Bamiyan. The world, including the world of Islamic scholarship, was outraged and could barely find the words for what had happened.”); Jeff Jacoby, Editorial, *Taliban Achieve What They Seek: Uproar*, BOSTON GLOBE, Mar. 8, 2001, at A17 (“UNESCO’s Arab contingent calls it ‘savage.’ . . . The president of the Islamic Center of New Delhi . . . labels the Taliban’s actions ‘barbarian politics.’”).

⁷⁰ See Andrew Herrmann, *Regime Topples*, CHI. SUN-TIMES, Apr. 9, 2003, at 1; Richard W. Stevenson, *Bush Praises Troops Role in Helping to Free Iraq*, N.Y. TIMES, Apr. 13, 2005, at A1 (“Mr. Bush said the toppling of Mr. Hussein’s statue in Baghdad two years ago would rank with the fall of the Berlin Wall ‘as one of the great moments in the history of liberty.’”). But see Strahilevitz, *supra* note 68, at 825 (suggesting that the statute’s destruction may have violated international law); Louis Freedberg, Editorial, *Of Statues and Symbols*, S.F. CHRONICLE, Apr. 14, 2003, at B6 (“By relentlessly bombing government buildings and tearing down images of Saddam Hussein wherever it encountered them, the U.S. must take some responsibility for encouraging the vandalism now destroying Iraq.”).

⁷¹ For example, the director of the Whitney Museum of American Art reacted to the vandalism of a major artwork at another museum by stating that “[t]here’s little you can do to prevent the actions of a mad person.” Carol Vogel, *Dutch Vandal Slashes Museums’ Confidence*, N.Y. TIMES, Nov. 27, 1997, at E1 (internal quotation marks omitted). In response to a different attack in Amsterdam, the Rijksmuseum’s Director of Public Relations stated: “The assailant and his motives are wholly uninteresting to us; for one cannot apply normal criteria to the motivations of someone who is mentally disturbed.” GAMBONI, *supra* note 9, at 195 (internal quotation marks omitted); see also *id.* at 170 (“[T]he dominant societal stereotype of vandalism was (and is) that vandalism is the archetypal instance of ‘motiveless’ action: senseless, wanton, random, meaningless.” (quoting Cohen, *supra* note 33, at 51) (quotation marks omitted)). This is not to say that individuals with psychiatric disorders do not vandalize artworks. See, e.g., *Ill Man Damages Museum Painting*, CAPITOL TIMES (Madison, WI), Apr. 5, 2007, at A10.

⁷² For instance, museums, which depend on loans and donations of works of art, may wish to appear neither responsible for nor vulnerable to attacks. Interview with senior underwriter of a leading fine arts insurance company (Jan. 15, 2008); interview with Director of Security at a major New York City art museum (Oct. 30, 2007); see also *supra* note 34. Dario Gamboni further considers that museums “[may] wish to deny the existence of reactions that, if considered meaningful, must imply some kind of criticism of the museum and of the art or culture it stands for.” GAMBONI, *supra* note 9, at 193. Labeling an attack “senseless” or “insane” serves these ends. See *id.* at 195 (finding that these types of statements are “typical of the way in which judgements [sic] of

conflicting moral concepts can transcend the designation of an act as criminal and influence how that act is judged by society and by the law.⁷³

Moral judgment also tends to be passed on acts of art vandalism because the objects attacked—works of art—are not neutral objects but instead aim to elicit judgment and response in their viewers.⁷⁴ Among other features, emotive power and irreplaceability distinguish works of art,⁷⁵ and these qualities can stir diametrically opposed responses.⁷⁶ The

psychic abnormality are frequently used to deny relevance and meaning to aggression directed at works of art perpetrated within cultural institutions”); Fine & Shatin, *supra* note 9, at 138 (“The designation of insanity shifts blame from the keepers of the art treasures . . . to individual actors By neutralizing or negating these actions, the symbols [i.e., the work of art and the museum] remain inviolate. Labeling a deviant social actor as mentally ill reaffirms the cultural and political status quo.”); see also Cohen, *Campaigning Against Vandalism*, *supra* note 15, at 231-32; GOLDSTEIN, *supra* note 15, at 3.

⁷³ Dario Gamboni recounts, for example, the sympathy held by both the public and the judge for the acts of a German art vandal who in 1985 “sprayed shellac on three paintings [that depict] homosexual practices,” even while the judge ultimately condemned the man for the crime. GAMBONI, *supra* note 9, at 196. The lenient sentencing of a Catholic man who defaced a controversial painting of the Virgin Mary, see *supra* note 6 and accompanying text, suggests that the judge felt the crime was mitigated by its intended iconoclastic purposes. The judge characterized the attack on the painting as “an intolerant act, *however well-intentioned it might have been*, that is not in keeping with the core value of our society.” Claffey, *supra* note 22. (emphasis added). He further reasoned that the attack “was a crime committed not out of hate but out of love for the Virgin Mary.” Christopher Francescani, *Judge Has Mercy on “Virgin” Defiler*, N.Y. POST, Nov. 15, 2000, at 32. The judge sentenced the man to a \$250 fine on conviction for three misdemeanor counts, rejecting the prosecutor’s recommendations for probation, community service, and sensitivity training as well as the prosecutor’s request for a protective order to bar the man from the museum where the attack took place. Claffey, *supra* note 22. The battle over labeling an act as vandalism or iconoclasm is also apparent in the report on the trial of a man who beheaded a statute of the former British Prime Minister Margaret Thatcher. See Christian Gysin, *This Act of Sabotage*, DAILY MAIL (London), July 5, 2002, at 20, 21; see also *infra* notes 102 and 106 and accompanying text. The defendant reportedly told the court that his act was in protest of global capitalism and that his “intention was to have a day in court and ‘highlight his concerns about the future of the world and the future of his two-year-old son.’” Gysin, *supra*. The defendant also said in his defense, “I haven’t really hurt anybody, it’s just a statue an idol we seem to be worshipping” *Id.* Baroness Thatcher’s quoted reaction, however, distanced the act from its alleged political meaning: “I thought it was appalling It’s what vandals do. Politics is about persuading people to reason not by acts of sabotage like this.” *Id.*

⁷⁴ See Dornberg, *supra* note 33, at 105 (“Artworks are never attacked at random Each piece of [vandalized] art was a specific target because it provoked—emotionally, socially or politically” (quoting art historian Dario Gamboni) (internal quotation marks omitted)); Roberta Smith, *Why Attack Art? Its Role Is to Help With Problems, Not Become a Problem*, N.Y. TIMES, May 13, 2004, at E1 (“Art’s job is to provoke thought in ways that are difficult to resolve and uncomfortable; it’s a relatively neutral place to experience the unresolvable issues that dominate real life, to practice a kind of abstract flexibility that might move us toward resolution in real life.”).

⁷⁵ For discussion of the emotive power of artworks see, e.g., L. TOLSTOY, *WHAT IS ART?* 51 (A. Maude, trans., 1960) (1897) cited in Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 40 U. MIAMI L. REV. 659, 660 (1986); John Henry Merryman, *The Public Interest in Cultural Property*, 77 CAL. L. REV. 339, 348 (1989). For the recognition of artworks’ irreplaceability, see, e.g., Patricia Failing, *Picking Up the Pieces: The Case of the Dismembered Masterpieces*, ARTNEWS, Sept. 1980, at 68, 74 (associating the “the growth of respect and appreciation for the integrity of works of art” with, inter alia, the extinction of the passenger pigeon in 1914, finding “[t]he realization dawned that the last pigeon’s demise had opened a permanent hole in the seam of evolution comparable to the unbridgeable voids in history left by destruction and mutilation of unique artistic achievements”); see also GAMBONI, *supra* note 9, at 121-26 (discussing the traditional expectation that artworks be rare objects stands in contrast to the advent of modern technologies and avant-garde art).

most successful and treasured examples of artworks evoke the response, and the convention, to value and preserve them.⁷⁷ To destroy an object others cherish perverts this response and social norm.⁷⁸ There is great symbolic power, then, in an attack on a work of art that society has chosen to preserve and venerate. An attack on an artwork assaults the

It is important to note, however, that artworks are not uniformly unique, irreplaceable objects, and thus it would be inaccurate to use irreplaceability as a defining feature of an artwork. For example, the artist Felix Gonzalez-Torres' "public sculptures" are installations comprised of "endless" stacks of printed paper, pages of which the public is encouraged to take and the exhibiting institution is asked to replenish. See Robert Storr, *Interview with Felix Gonzalez-Torres*, ARTPRESS, Jan. 1995, at 24-32, available at <http://www.queerculturalcenter.org/Pages/FelixGT/FelixInterv.html> ("It wasn't just about trying to problematize the aura of the work or it's [sic] originality, because it could be reproduced three times in three different places and in the end, the only original thing about the work is the certificate of authenticity. I always said that these were public sculptures . . .") (quoting Felix Gonzalez-Torres explaining his "stack" sculptures). Other examples of Gonzalez-Torres' work, such as his candy sculptures, use mass-produced objects expressively to evoke irreplaceability and permanent loss. As floor installations of mass-produced wrapped hard candies, the candy sculptures disappear over the course of their exhibition as the viewing public takes and consumes pieces of the candy. Hamza Walker, *The Renaissance Society, Felix Gonzalez-Torres: Traveling*, <http://renaissancesociety.org/site/Exhibitions/Essay.Felix-Gonzalez-Torres-Traveling.83.html> (last visited Jan. 20, 2009). Gonzalez explained that "[t]here was no other consideration involved [in making the candy sculptures] except that I wanted to make art work that could disappear, that never existed, and it was a metaphor for when Ross was dying. . . . I didn't want it to last, because then it couldn't hurt me." *Id.* For images of the candy sculptures, see *The Renaissance Society*, <http://renaissancesociety.org/site/Exhibitions/Images.Felix-Gonzalez-Torres-Traveling.83.html> (last visited Nov. 2, 2008). While most artworks are irreplaceable, this is a quality that some artworks subvert, and thus irreplaceability or uniqueness does not uniformly distinguish works of art from other objects. Moreover, there is no evidence that art vandals seek to attack artworks because they are irreplaceable. In fact, a vandal has attacked Marcel Duchamp's *Fountain* (1917, 1964), an art object made from a mass-produced urinal, revered as "the cornerstone of Conceptual Art" and for making an "assault on rarity." GAMBONI, *supra* note 9, at 125-26, 279-80 (recounting and analyzing the vandal's first attack on Duchamp's *Fountain*); Alan Riding, *Conceptual Artist as Vandal: Walk Tall and Carry a Little Hammer (or Ax)*, N.Y. TIMES, Jan. 7, 2006, at B7 (discussing the vandal's first and second attacks on *Fountain* and mentioning that the artist made eight replicas of the work after the original 1917 version was lost).

⁷⁶ See Cordess & Turcan, *supra* note 7, at 98 ("[A]ll art is vulnerable and all art should provoke some response." (quoting a respondent to the authors' study of the susceptibility of artworks to vandalism) (internal quotation marks omitted)); Held, *supra* note 67, at 6-8.

⁷⁷ See FREEDBERG, *supra* note 10, at 35 ("When we are moved by an image . . . our natural response is one of protectiveness. The image . . . enhances our emotions, sparks our intelligence, arouses meaningful evocation; and so we must shelter it, protect it, conserve it. These things and the fact that a work may be acknowledged as a masterpiece, as the greatest product of a nation, as extraordinarily valuable (even in the monetary sense alone); even the fact that it is housed in a grand or public institution reinforces the inclination to make of the work an object which we preserve against ravage."); Joseph L. Sax, *Heritage Preservation as Public Duty: The Abbé Grégoire and the Origins of an Idea*, 88 MICH. L. REV. 1142, 1168-69 (1990) (finding the notion and practice to preserve cultural objects originated at the time of the French Revolution); Held, *supra* note 67, at 26 (quoting Johann Wolfgang von Goethe from the *Propylaen*: "'Works of art are the property of mankind and ownership carries with it the obligation to preserve them.'").

⁷⁸ FREEDBERG, *supra* note 10, at 35 (one who attacks an artwork "overturns these impulses [to "cling, dote, cherish, preserve"] into their very opposite"); Held, *supra* note 67, at 26 (quoting Johann Wolfgang von Goethe from the *Propylaen*: "'He who neglects this duty [to preserve artworks] and directly or indirectly contributes to their damage or ruin invites the reproach of barbarism and will be punished with the contempt of all educated people, now and in future ages.'"). *But see* Gary Schwartz, *Ars Moriendi: The Mortality of Art*, ART IN AMERICA, Nov. 1996, at 72 (arguing that far more art objects perish than survive in spite of efforts to preserve them, that art objects protected from natural decay by the cultural practice to preserve are not necessarily the past's finest cultural achievements, and that the very cultural practice to preserve causes physical and intellectual damage to art objects).

social order by targeting objects that embody shared cultural meaning. Art objects' physical fragility and irreplaceability serve to heighten the harm caused.⁷⁹ Furthermore, when an attack targets a museum's artwork, the attack also assaults that institution, the values it symbolizes, and its mission to care for and display works of art for the public's benefit.⁸⁰

Because works of art can embody public meaning, many scholars and commentators define art vandalism broadly to include harm done by, or with the consent of, artworks' owners.⁸¹ Property ownership entitlements, they argue, do not give an art owner, whether a private collector or public institution, license to willfully damage or destroy significant works of art.⁸² Notwithstanding economic incentives to care for valuable works,⁸³ art owners do damage and destroy their own property. Examples include altering or destroying works that offend

⁷⁹ Art conservators and restorers are typically recruited to address the damage caused by vandalism. See, e.g., Suzanne Muchnic, *Uffizi Gallery Bombing: Binding Up the Wounds*, L.A. TIMES, June 7, 1993, at 6F (reporting on the planned repair to the over thirty works of art damaged in the bombing of Italy's Uffizi Gallery). For a brief overview of the profession including the differences between art conservation and art restoration, see Sarah E. Botha, *Art Conservation: Problems Encountered in an Unregulated Industry*, 26 COLUM. J.L. & ARTS 251, 259-62 (2003). No documentation exists on the number of vandalized works that have been successfully restored. Studies and the press have made anecdotal mention of irreparable damage or of damage that remains visible even after restoration. See, e.g., Held, *supra* note 67, at 5 ("The damage [several slashes to a painting on canvas] since has been mended, but once one knows the history of the picture [*The Rokeby Venus*], one easily can detect the traces of these wounds when examining the original painting."); M. Kirby Talley, Jr. *Rembrandt's Danaë: After 12 Years of Painstaking Restoration following a Vandal's Brutal Attack, the Painting Still Sings, Albeit Somewhat More Softly Than Before*, ARTNEWS, Summer 1998, at 88, 90 [hereinafter Talley, *Rembrandt*] ("Up close, and viewed in raking light, traces of the gutters and pitting caused by the acid splashing over and running down the painting can still be seen. It would have been impossible to hide such scars completely without carrying out a total restoration that would have ultimately ended in falsification."); *Kiss Is Just a Kiss, Not a Cy*, CHIC. TRIB., Oct. 10, 2007, at C10 ("Restorers have tried to remove the lipstick smudge from the bone-white canvas using nearly 30 products—to no avail.").

⁸⁰ See *supra* notes 11 and 27.

⁸¹ See GAMBONI, *supra* note 9, at 147-49; SAX, *supra* note 13, at 7-8; Avis Berman, *Art Destroyed: Sixteen Shocking Case Histories*, CONNOISSEUR, July 1989, at 74, 74. Destruction of a work by its artist, however, is not considered vandalism if the artist is the sole owner of the work. See CONKLIN, *supra* note 9, at 227; see also Strahilevitz, *supra* note 68, at 830-35 (discussing the rationales for artists' right to destroy their own creative work as long as it has not been published or publicly displayed). Artists may also destroy their own work under moral rights statutes. See Edward J. Damich, *State "Moral Rights" Statutes: An Analysis and Critique*, 13 COLUM.-VLA J.L. & ARTS 291, 300 & n.46 (1989) (explaining that all state moral rights statutes permit artists to violate the integrity of their own work).

⁸² See SAX, *supra* note 13, at 4 ("Despite the powers that owners have to do as they wish with the objects that they own, public attitudes reflect an understanding that is in advance of legal theory. A sense that the fate of some objects is momentous for the community at large has certainly insinuated itself into the public consciousness."); Berman, *supra* note 81, at 74, ("Perhaps . . . standard property rights do not apply to unique works of art with aesthetic, historical, or documentary interest, because these come to have an intrinsic quality that no one can buy."); Held, *supra* note 67, at 26. *But see* Strahilevitz, *supra* note 68, at 785 (defending owners' right to destroy their property in circumstances that promote "expressive interests, spur creative activity, and enhance social welfare").

⁸³ See Eric A. Posner, *The International Protection of Cultural Property: Some Skeptical Observations*, 8 CHI. J. INT'L L. 213, 224-25 (2007) (arguing generally that the market for cultural property should remain unregulated as is the market for works of art, in part because financial value, not regulation, incentivizes owners of art objects to care for them).

taste;⁸⁴ cutting works when the fragments can be sold for greater profit;⁸⁵ and failing to protect works from obvious and known risks of harm.⁸⁶

In contrast, the conventional definition of art vandalism, the focus of discussion here, refers to intentional acts to damage or destroy works of art done *without* the right or the owner's consent.⁸⁷ This definition corresponds to notions of traditional property entitlements and existing criminal law.⁸⁸ Scholars, the press, and owners of vandalized artworks distinguish serious attacks, which gain their attention and concern, from minor acts, which follow patterns of vandalism as a general phenomenon⁸⁹ and tend to be "written-off,"⁹⁰ despite being illegal and having the potential to cause costly damage.⁹¹ It is the serious attacks, those calculated to alter or destroy the artwork they target, which are likewise the subject of discussion here. Serious acts of art vandalism broadly fall under two categories; however, many acts share characteristics of both. One category, "tactical,"⁹² comprises attacks that seek to bring attention to a political cause. Designed to cause public outrage and fear, tactical vandalism targets works of art held in high public regard. The other category, "expressive,"⁹³ comprises attacks

⁸⁴ CONKLIN, *supra* note 9, at 234-35; GAMBONI, *supra* note 9, at 149-64 (discussing instances when offense to public tastes has led to the destruction, alteration, and dismantling of art in public places); SAX, *supra* note 13, at 13-20, 35-42; Berman, *supra* note 81, at 74-81; Held, *supra* note 67, at 8-15.

⁸⁵ CONKLIN, *supra* note 9, at 235-36; Failing, *supra* note 75, at 68; Held, *supra* note 67, at 16-22.

⁸⁶ CONKLIN, *supra* note 9, at 231-33; Berman, *supra* note 84, at 75, 80. For discussion of harm to works of art resulting from negligent restoration or conservation, see Botha, *supra* note 79 at 251; Heidi Stroh, *Comment: Preserving Fine Art from the Ravages of Art Restoration*, 16 ALB. L.J. SCI. & TECH. 239 (2006).

⁸⁷ No study has approached the question, presumably due to lack of data, whether artworks are more frequently or more severely harmed by non-owners than by owners.

⁸⁸ See *supra* note 44; *supra* Part III.A.

⁸⁹ See *supra* notes 48-55 and accompanying text.

⁹⁰ As these minor acts tend not to be reported or prosecuted, they fall under Stanley Cohen's category of "written-off" vandalism. See *supra* note 41.

⁹¹ See Cordess & Turcan, *supra* note 7, at 97. "Minor" or trivial acts of art vandalism—"scratching and scribbling with pencils"—tend, like vandalism as a general phenomenon, to be anonymous acts perpetrated as the result of "'daring' by adolescents or school children." *Id.* at 97-98; see also CONKLIN, *supra* note 9, at 249 ("Much of the vandalism that occurs in museums is by groups of young people who are seeking relief from boredom through pranks, making fun of what others regard as serious, competing with friends for attention, or hoping to earn the respect of their peers for their courage or creativity. Often their play vandalism is not malicious . . ."); cf. GAMBONI, *supra* note 9, at 192 ("With modern art . . . very minor interventions such as touching or spitting . . . can result in a destruction of the work, without the author of the gesture . . . being necessarily conscious of it.").

⁹² This term is borrowed from Stanley Cohen yet combines its features with what he calls ideological vandalism. See Cohen, *Property Destruction*, *supra* note 15, at 43-44.

⁹³ This term is comparable to, but is not to be confused with, its use in two recent articles on related topics. Peñalver & Katyal, *supra* note 140, at 1102 (calling expressive those acts of lawbreaking that "seek[] to send a strong message about the perceived injustice of existing property arrangements"); Strahilevitz, *supra* note 68, at 786 (calling expressive those destructive acts that "gain attention for a cause or message").

motivated by what an artwork depicts or expresses, or by the high social value and cultural status it holds.⁹⁴

A look at examples of tactical art vandalism—attacks on prominent artworks to gain attention for a political cause—sheds light on the crime, its assailants, and their motivations. Likely the most widely discussed tactical art vandal, Mary Richardson, repeatedly hacked at a 17th-century painting, *The Rokeby Venus*, at London's National Gallery in 1914 with a meat chopper.⁹⁵ Richardson planned the attack to draw attention to a fellow suffragist's hunger strike in prison.⁹⁶ The attack, like many others by the suffrage movement,⁹⁷ was premeditated and deliberate in targeting the painting that Richardson slashed.⁹⁸ The art historian Dario Gamboni suggests that by assaulting unique and treasured depictions of human figures, the suffragettes were able to stir intense public outcry, like that which might accompany murder, without actually harming a human being.⁹⁹ Strategically, Mary Richardson turned

⁹⁴ See GAMBONI, *supra* note 9, at 201 (summarizing that “works are simultaneously abused because they exemplify fame, value and domination”).

⁹⁵ See, e.g., GAMBONI, *supra* note 9, at 94. To view an image and short history of the painting, which is also known as *Toilet of Venus*, see The National Gallery, <http://www.nationalgallery.org.uk/cgi-bin/WebObjects.dll/CollectionPublisher.woa/wa/work?workNumber=NG2057> (last visited Aug. 26, 2008). To view an image of the damaged painting before its restoration, see GAMBONI, *supra* note 9, at 94.

⁹⁶ See FREEDBERG, *supra* note 10, at 15-16; GAMBONI, *supra* note 9, at 93-95; Fine & Shatin, *supra* note 9, 141-42; Dornberg, *supra* note 33, at 102. Restorers repaired the painting after the attack, but “one easily can detect the traces of [the] wounds when examining the original painting.” Held, *supra* note 67, at 5.

⁹⁷ For example, the Women's Social and Political Union, to which Ms. Richardson sent her statement, “organized between 1912 and 1914 . . . incidents of civil disobedience, guerrilla tactics, and open warfare” after the suffrage movement failed to win reforms from the British Parliament. GAMBONI, *supra* note 9, at 95; see also CONKLIN, *supra* note 9, at 246 (“The suffragettes . . . attacked eleven works of art in a five-month period in 1914 . . .”).

⁹⁸ See GAMBONI, *supra* note 9, at 94-96. Richardson prepared a statement prior to the attack which reads, in part:

I have tried to destroy the picture of the most beautiful woman in mythological history [i.e., Venus] as a protest against the Government for destroying Mrs. Pankhurst . . . [T]he stones cast against me for the destruction of this picture are each an evidence against [the public] of artistic as well as moral and political humbug and hypocrisy.

Id. at 94-95 (citing *Miss Richardson's Statement*, TIMES (London), May 11, 1914).

⁹⁹ *Id.* at 96; see also FREEDBERG, *supra* note 10, at 20, 33 (noting that “[w]e feel especial horror at the mutilation of [a] face and eyes . . . , and we are thus provided with deep psychological testimony to the labile inclination to respond as if the body [depicted and attacked] were actually present,” and, that attacks on portraits can function as a “violent act . . . [that is] relegated to a second order of harm; but one which could gain a much lower level of publicity if the act had not involved an image”); Cordess & Turcan, *supra* note 7, at 95 (“Art vandalism may be seen as an intermediate form between an attack on a thing and an attack on a person . . . [Art vandalism] may be a particular case of acts of malicious damage providing one substitute for aggression against people.”); Chris Cordess, *Home Front: The Makings of an Art Vandal*, GUARDIAN, Sept. 3, 1994, at TT8 (“In some cases, violence to an image is a substitute for an attack on a person. The frequency of suicide or attempted suicide by assailants of major artworks emphasises [sic] their desperation: it mirrors the high rate of self-destructive acts committed by those who are violent to other people and not merely to material objects.”).

the public outcry her attack provoked against the public by calling it “hypocrisy” for the public to pass moral judgment on the abuse of a depiction of a woman, while a real woman suffered in prison for a political cause.¹⁰⁰

Other examples of tactical art vandalism include: the 1993 bombing of Italy’s Uffizi Gallery,¹⁰¹ which sought to destabilize the Italian government; the 2002 beheading of a Margaret Thatcher statue, which meant to protest global capitalism;¹⁰² and the 2007 neo-Nazi attack in Sweden on an exhibition of sexually explicit photographs, which aimed to battle “the decay of society.”¹⁰³ Many individuals who attack prominent artworks ascribe political reasons to their acts even if, like the man who decapitated the Thatcher statue, they are not part of an organized political movement,¹⁰⁴ or their political cause is personal.¹⁰⁵ All such attacks, like the suffragette’s, are premeditated, deliberate in their

¹⁰⁰ See *supra* note 98.

¹⁰¹ The bomb blast, from within a car parked outside the museum, killed five people and destroyed a library, museum archive, and several paintings. See GAMBONI, *supra* note 9, at 104-05; Robert Hughes, *Striking At the Past Itself; Terrorists Bomb the Uffizi, Destroying Lives and Precious Artifacts of Civilization*, TIME MAGAZINE, June 7, 1993, at 34.

¹⁰² Gysin, *supra* note 73. The attacker entered the public gallery with a cricket bat intending to strike the marble statue which was on view to the public before its planned placement in the House of Commons. *Id.* An image of the statue by Neil Simmons after its attack is available at Art Crime, <http://www.artcrimes.net/pages/simmons.html> (last visited Aug. 26, 2008). It has since been repaired and is reportedly on view at the same gallery where it was vandalized. OFFICIAL BOOKLET TO MARK THE UNVEILING ON 21ST FEBRUARY 2007 OF THE BRONZE STATUE OF BARONESS THATCHER SCULPTED BY ANTHONY DUFORT FOR THE HOUSE OF COMMONS 10 (Malcolm Hay, ed., 2007), available at http://www.parliament.uk/documents/upload/Baroness_Thatcher_booklet.pdf (last visited Jan. 6, 2009). Parliament commissioned another sculptor, Anthony Dufort, to create a replacement statue in bronze, which was unveiled in February 2007. *Id.* For images of and information about the new statue, see *id.*

¹⁰³ See Liveleak, http://www.liveleak.com/view?i=f59_1191946711 (last visited Jan. 11, 2009) (hosting video documenting the attack); Swedish National Socialists, Nationalists Act Out Against Degenerate Art in Sweden, http://www.den-svenske.com/nationalists_act_out_against_degenerate_art_in_sweden.html (last visited Nov. 2, 2008). Four members of the neo-Nazi group entered the gallery during regular business hours and swung at the photographs with crowbars and axes in the presence of gallery visitors and staff. *Id.* The attack destroyed seven of the fourteen exhibited photographs by Andres Serrano from his series *The History of Sex*. Carol Vogel, *Gallery Vandals Destroy Photos*, N.Y. TIMES, Oct. 9, 2007, at E1. Each photograph was originally produced in three editions, and the destroyed photographs were expected to be replaced and placed back on display in the exhibition. See Russell Smith, *You Can Call It Vandalism, Intervention, or Just Plain Art*, GLOBE & MAIL, Oct. 18, 2007 at R1; Vogel, *supra*. For information about the artist and his work, see Artnet, Andres Serrano, <http://www.artnet.com/awc/andres-serrano.html> (last visited Nov. 2, 2008).

¹⁰⁴ For example, the man who shot the Leonardo da Vinci drawing in 1987 claimed he acted in “‘protest’ against the political, social, and economic conditions in Britain.” Boggan, *supra* note 3; see also *supra* note 3 and accompanying text. After serving a sentence at a maximum security mental hospital, however, the man revised his reasons for the attack, claiming that it was a “cry for help” and a means to “be taken away and given treatment.” Boggan, *supra* note 3.

¹⁰⁵ For example, an unemployed man slashed ten Dutch Old Master paintings in 1989 in protest of Holland’s employment of foreigners. Talley, *Dutch Disaster*, *supra* note 8, at 60-61; *Slasher Rips Old Paintings*, ST. LOUIS POST-DISPATCH, Mar. 30, 1989, at A2. Another unemployed man brutally attacked a museum’s most important painting, Rembrandt’s *Danaë*, with sulfuric acid and a knife to avenge the government for denying him public assistance. Talley, *Rembrandt*, *supra* note 79, at 86 (explaining that the man sought “to destroy something of extraordinary value” and asked an attendant to point out the most important painting, which was the *Danaë*).

choice of targets, and calculated to capitalize on the public's outrage to bring attention to a political cause.¹⁰⁶

Reviewing examples of expressive art vandalism adds other dimensions to the crime, its perpetrators, and their motives. Whereas tactical art vandalism sacrifices an artwork to a political cause, expressive art vandalism takes issue with the artwork itself. Provoked by an artwork and its social importance, the expressive art vandal typically seeks to obliterate artworks for their religious, moral, or political imagery,¹⁰⁷ social, cultural, or financial status,¹⁰⁸ or incomprehensibility.¹⁰⁹ Most expressive attacks, like tactical attacks, are premeditated, directed at prominent artworks, and attention-seeking.¹¹⁰ These attacks, in

¹⁰⁶ Some scholars compare "tactical" attacks with acts of terrorism as they "are designed to indicate that the state and public are vulnerable." Fine & Shatin, *supra* note 9, at 138 ("I have tried to destroy a valuable picture because I wish to show the public that they have no security for their property nor for their art treasures until women are given their political freedom." (quoting another suffragette who also destroyed a painting in 1914) (internal quotation marks omitted)). For more examples of tactical art vandalism, see CONKLIN, *supra* note 9, at 244-48. The Italian attack was among several in Italy attributed to the Mafia, which targeted culturally significant monuments and works of art as a strategy of political destabilization. See GAMBONI, *supra* note 9, at 104-05; Hughes, *supra* note 101, at 34. ("[A]s an image of unrepentant terrorist power striking back against the Italian state, the bombing of the Uffizi could hardly have been improved upon. . . . [I]f you want to make your power felt, a good way to do it is by destroying something that, unlike human life, is not even notionally a renewable resource. That 'something' is the sense of a readily accessible past, without which there is no memory and no civilization."). While the man who beheaded the statue of Margaret Thatcher underestimated the amount of outrage his act prompted, he intended to have a day in court to "highlight his concerns about the future of the world and the future of his two-year-old son." Gysin, *supra* note 73. The neo-Nazi group videotaped and promoted the attack by uploading the video on the YouTube website in October 2007. The Local: Sweden's News in English, *Google Blocks "Pornographic" Video of Art Attack*, Oct. 10, 2007, <http://www.thelocal.se/8746/20071010/> (last visited Oct. 30, 2008). The video threatens subsequent attacks and encourages others to "[j]oin the fight against the decay of society!" Liveleak, http://www.liveleak.com/view?i=f59_1191946711 (last visited Jan. 11, 2009). The video has since been removed from the YouTube website. The Local: Sweden's News in English, *supra*.

¹⁰⁷ For example, the man who defaced a portrait of the Virgin Mary by spreading white paint over its surface reportedly sought to "clean the painting," which he found "abusive." Santiago et al., *supra* note 6; see also, Chris Cordess, *Home Front: The Makings of an Art Vandal*, *GUARDIAN*, Sept. 3, 1994, at TT8 ("Of course the history of iconoclasm is that of the destruction of religious images, but this is rarely the prime motive nowadays, except for images of the Virgin Mary or the Mother And [sic] Child."). An example of vandalism arising from moral offense is typified by a woman who threw a bronze statue at a 19th-century painting on display in a museum because she found the painting "filthy." GAMBONI, *supra* note 9, at 192-93. A politically-motivated attack occurred in 2004, when the Israeli ambassador to Sweden physically assaulted an art installation that he felt glorified a suicide bomber. Jonathan Jones, *Arts: "It's Inciting Murder,"* *GUARDIAN*, Jan. 22, 2004, at 14; see also CONKLIN, *supra* note 9, at 248-49 (reviewing destruction of artworks by their owners who were motivated by offense to their moral standards).

¹⁰⁸ Artists most often commit this type of attack and often claim that their acts of vandalism constitute independent works of art. See Kastner, *supra* note 7, at 154.

¹⁰⁹ See Dornberg, *supra* note 33, at 105 ("Most modern works . . . are assaulted primarily because the viewers simply do not understand them, and what you do not understand frustrates you and can lead to outbursts of violence and barbarism." (quoting the art historian Dario Gamboni) (internal quotation marks omitted)).

¹¹⁰ GAMBONI, *supra* note 9, at 197, 201 ("Aggressors acting in museums . . . tend to desire and enjoy publicity" and they attack prominent artworks "because they exemplify fame, value and domination."); see also FREEDBERG, *supra* note 10, at 25.

particular, demonstrate a perversion of the normalized response to protect and preserve powerful and prominent works of art.¹¹¹

The devout Catholic, who in 1999 smeared white paint on an unconventional depiction of the Virgin Mary, typifies an expressive vandal motivated by offense to an artwork's imagery.¹¹² Through this transgressive act, the man sought to obliterate or "white-out" the painting's "blasphemous" depiction of the Madonna,¹¹³ as well as attack the authority the painting gained as part of a widely visited, high profile exhibition aptly titled "Sensation."¹¹⁴ Another form of expressive art vandalism attacks artworks' status and is committed most often by artists. Artists who vandalize artworks seek to impugn the cultural meaning of prominent artworks, as well as seek recognition for their destructive acts as performative works of art themselves.¹¹⁵ The third

¹¹¹ See *supra* note 78 and accompanying text. Several scholars offer psychological explanations when discussing these violent, destructive responses to works of art, offering theories that revolve around an individual's confusion between image and reality, which is triggered by their encounter with particularly powerful and evocative works of art. See FREEDBERG, *supra* note 10, at 11; GAMBONI, *supra* note 9, at 200 (finding that an individual's identity crisis can precipitate or accompany his attack on a work of art); Held, *supra* note 67, at 6 (discussing the "belief in the magic powers embodied in a work of art" that causes a "confusion between image and reality"); John J. Teunissen & Evelyn J. Hinz, *The Attack on the Pietà: An Archetypal Analysis*, 33 J. AESTHETICS & ART CRITICISM, Autumn 1974, at 43-44 (applying psychological theories to the 1972 attack in Florence, Italy on Michelangelo's sculpture of Christ in the lap of the Virgin Mary).

¹¹² See *supra* note 6 and accompanying text. The neo-Nazi group's attack on the sexually explicit photographs shares some of the motivations of this form of expressive art vandalism. See *supra* notes 103 and 106 and accompanying text.

¹¹³ Robert D. McFadden, *Disputed Madonna Painting in Brooklyn Show Is Defaced*, N.Y. TIMES, Dec. 17, 1999, at A1.

¹¹⁴ See, e.g., Online NewsHour, *The Art of Controversy* (Oct. 8, 1999), http://www.pbs.org/newshour/bb/entertainment/july-dec99/art_10-8.html.

¹¹⁵ For example, the art student who vomited on a painting in New York's Museum of Modern Art targeted the painting because it was "oppressively trite and painfully banal art" and considered his act a performance piece. Kastner, *supra* note 7, at 154-55 (internal quotation marks omitted); see also *supra* note 5 and accompanying text. Another artist spray-painted a large green dollar sign on a painting in Amsterdam's Stedelijk Museum to protest "the power of money over art." Stephanie Cash, *Newman's Cathedral Slashed at Stedelijk*, ART IN AMERICA, Jan. 1998, at 27, 27; Anatoly Korolyov, *The Love of Money Is Still Seen As Root of Evil*, MOSCOW TIMES, Apr. 30, 1997; Art Crime, <http://www.artcrimes.net/suprematisme-1920-1927> (last visited Jan. 11, 2009) (reporting that the artist attacked the work as performance art in protest of "corruption and commercialism in the art world").

Artists and other art vandals may defend their acts as protected and thus legally permissible forms of expression. See, e.g., Claffey, *supra* note, 22; Kastner, *supra* note 7, at 156 (discussing the defense of artists' attacks as legitimate forms of expression). First Amendment rights, however, do not extend to illegal acts, such as unauthorized damage to property. See *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993); Sonia K. Katyal, *Semiotic Disobedience*, 84 WASH. UNIV. L. REV. 489, 557 (2006) ("Any type of intentional, lasting damage to property ["owned by another private party"] . . . is not considered to be within the ambit of First Amendment protection, even if it has the potential to communicate expressive activity."); Strahilevitz, *supra* note 68, at 828 ("[T]he law might well view the symbolic destruction of irreplaceable property as low-value speech that can be restricted in order to facilitate the success of a deliberative process."). Lior Jacob Strahilevitz further argues that: "Destroying a unique, irreplaceable piece of property is . . . closer to heckling a speaker than to responding to what he has to say. . . . [B]y privileging creation over destruction [the government] is establishing a procedural rule that the artist who intends to make a lasting aesthetic contribution cannot have her speech cut off without her consent." *Id.* at 827-28 (footnote omitted).

form of expressive vandalism arises from a lack of understanding and sense of exclusion “outsiders” to the art community experience when confronted with highly praised and valued works of art.¹¹⁶

In sum, most serious acts of art vandalism, tactical and expressive, are perpetrated by individuals, with the exception of some political attacks. Those individuals (and, less frequently, the groups) plan their attacks to achieve certain results.¹¹⁷ They typically enter museums legally, and often have planned how to circumvent museum security.¹¹⁸ Whether by choice or circumstance, art vandals generally attack in the presence of museum visitors and staff.¹¹⁹ In addition, art vandals

Legal, by way of ownership, but still provocative artworks have been made from permanently destroying or altering preexisting works by other artists. Robert Rauschenberg famously erased a Willem de Kooning drawing he received for that purpose from the senior and more prominent artist. See GAMBONI, *supra* note 9, at 268; YouTube.com, Robert Rauschenberg - Erased De Kooning, <http://youtube.com/watch?v=tpCWh3IFtDQ> (videotaped interview of Robert Rauschenberg) (last visited Nov. 4, 2008). The work, *Erased DeKooning* (1953), is now in the San Francisco Museum of Modern Art’s collection. San Francisco Museum of Modern Art, <http://www.sfmoma.org/artwork/25846> (last visited Jan. 11, 2009). A more recent example is *Insult to Injury* (2003), a series of works by the British artists Jake and Dinos Chapman of clown and puppy heads drawn on eighty rare prints purchased by the artists of Francisco de Goya’s celebrated *Disasters of War* (1863). See Jonathan Jones, *Look What We Did: Weaned on a Diet of Pickled Animals and Unmade Beds, the British Public Has Become Remarkably Difficult to Shock*, GUARDIAN, Mar. 31, 2003, at 2; William Underhill, *Going Over Goya*, ARTNEWS, Jun. 2003, at 50. Notably, the Chapmans’ work was vandalized by another artist. See “Comedy Terrorist” Barschak Jailed for Paint Attack, HERALD (Glasgow), Nov. 25, 2003, at 8; Matt Shinn, *Arts: Blam! Pow! Splat!*, GUARDIAN, Nov. 6, 2003, at 10.

¹¹⁶ See Dornberg, *supra* note 33, at 106 (“[M]ost viewers simply do not have the intellectual capacity or background to comprehend the intention or issues at stake in a work of art. And when they do not understand it, they feel excluded or even mocked, and react violently and aggressively.” (quoting art historian Dario Gamboni)); see also GAMBONI, *supra* note 9, at 207-10 (discussing the 1982 physical assault on an abstract painting at Berlin’s Nationalgalerie and the public reaction to it). The museum guard’s defacement of the Roy Lichtenstein painting may also be understood as expressive art vandalism. See *supra* note 4 and accompanying text.

¹¹⁷ See GAMBONI, *supra* note 9, at 190 (“[E]ntering a museum implies . . . a knowledge that [its] objects, generally a public property, are valuable and consequently watched over.”). The planning often includes bringing the instrument or material used to destroy the work of art into the museum. See, e.g., Boggan, *supra* note 3 (reporting that the attacker carried a sawed-off shotgun into the museum, which he used to shoot the Leonardo da Vinci drawing); Gysin, *supra* note 73, at 20 (reporting that the attacker brought a cricket bat into the gallery, which he used to assault the statue); Kaufman, *supra* note 1 (reporting that the attacker used spray-paint to deface the painting); Santiago et al., *supra* note 6 (reporting that the attacker smuggled white paint into the museum by hiding it in a hand lotion bottle and used the paint to deface the painting); see also CONKLIN, *supra* note 9, at 241 (“The deliberateness of vandals’ actions is often clear from the tools they use to inflict damage on art: hammers, hatchets, knives, paint, acid, fire, even bombs.”).

¹¹⁸ See, e.g., Boggan, *supra* note 3 (reporting that the attacker “had been [to the museum] before, to study [its] locking-up procedure” and on the day he shot the drawing, the attacker waited until closing time when “a security guard asked him to leave and then went away to clear the rest of the gallery”); Santiago et al., *supra* note 6 (reporting that the attacker feigned illness to cause the guard positioned near the painting to leave the area to seek medical assistance). Scholars have noted that museums, as high status institutions, and their museum security measures socialize most people not to violate an artwork’s integrity. See CONKLIN, *supra* note 9, at 240-41 (“Most people who enter public places to look at art have not been explicitly taught how to behave in the presence of art, but most of them treat the art with respect and do not even consider damaging it. . . . Visitors who do touch works of art will probably be told not to by a guard, letting them know that they are not as unsupervised as they had thought.”).

¹¹⁹ See, e.g., Kaufman, *supra* note 1 (recounting a sixteen-year-old’s account of the spray-paint attack on Picasso’s painting at New York’s Museum of Modern Art); Swedish National

deliberately choose the artworks they attack.¹²⁰ They select works that when attacked will symbolize or substitute for violence against a person¹²¹ or represent an attack on society or the state.¹²² Indeed, all serious acts of art vandalism, tactical and expressive, target socially valued works of art.¹²³ Art vandals thus not only damage or destroy an art object, but assault the public value assigned to it. They target artworks at museums because of the public value museum display confers.¹²⁴ By intentionally attacking publicly valued artworks in prestigious institutions, art vandals gain publicity generated by the public's outrage.¹²⁵ Many seek the public attention and most claim or do not avoid responsibility for their attacks.¹²⁶ Finally, directly affected parties, as well as the legal system, typically misapprehend art vandalism and consider it a "senseless" act or, contradictorily, a morally justifiable act.¹²⁷

C. *Distinguishing Art Vandalism from Vandalism*

The differences between vandalism as a general phenomenon and art vandalism in particular call for recognition of art vandalism as a distinct form of criminal conduct. Vandalism of an artwork carries greater social consequences than vandalism of other types of property. Works of art are fragile often irreplaceable objects of collective interest.¹²⁸ Harm to artworks thus threatens to eliminate physical

Socialists, *supra* note 103 (showing that exhibition visitors and staff were present for the neo-Nazi attack).

¹²⁰ See *supra* note 74.

¹²¹ See *supra* note 99 and accompanying text; see also, e.g., Boggan, *supra* note 3 ("I sat looking at [the Leonardo da Vinci drawing] one day and went away and thought about it during the week. I didn't want to damage myself or anyone else. If I damaged an inanimate object, then that would get the feelings out of my system" (quoting the vandal) (internal quotation marks omitted)); Santiago et al., *supra* note 6 ("The man who painted [the portrait] showed very poor taste and very little respect for the representation of the Virgin Mary. If [the artist] saw a picture of his mother depicted in that way, he'd take a knife to the person who made it. He would kill him." (quoting the vandal's wife, who encouraged her husband to take action against the painting) (internal quotation marks omitted)).

¹²² See Fine & Shatin, *supra* note 9, at 135-36 ("[T]he state or guardian is being attacked through the art work. An attack on an art object may be an attack on the community because of the perceived connection between the art object and the cultural heritage of the community.").

¹²³ *Id.* (arguing that "it is not art *per se* that is being attacked," but the public value the artwork embodies and represents).

¹²⁴ Museums, by choosing which artworks to collect, exhibit, study, and preserve for the public's benefit, endow the objects they select with recognized public meaning and value. See *supra* note 28.

¹²⁵ See GAMBONI, *supra* note 9, at 191.

¹²⁶ See *id.* at 190-91 (observing that vandals at museums display "a greater willingness to be recognized as the author[s] of [their own] action and to suffer sequels that follow from it"); Cordess & Turcan, *supra* note 7, at 99-100 (finding that attacks tended to be public events aimed at achieving notoriety and that "the contemporary vandal of major artworks rarely seeks to avoid detection").

¹²⁷ See *supra* notes 71 and 73 and accompanying text.

¹²⁸ See *supra* notes 78-80 and accompanying text; see also SAX, *supra* note 13, at 24 ("[W]orks of fine art are more than economic commodities and they oftentimes provide our communities with a sense of cohesion and history. The public[] [has an] interest in preserving

embodiments of culture.¹²⁹ Minor attacks on works of art are comparable to vandalism as a general phenomenon and are intended to cause only trivial harm.¹³⁰ In contrast, serious acts of art vandalism intend to assault intangible, publicly held values in addition to impermissibly invading the exclusive property rights of the artworks' owners. Accordingly, the unauthorized intentional destruction of a work of art violates the social norm to preserve works of art of public value *and* violates the social norm to protect property rights.¹³¹ From a legal standpoint, socially valued works of art are "property plus public interest,"¹³² and art vandalism thus threatens both interests. While museums, as the artworks' owners, are frequently its victim, the crime does not target the institution, nor even art, but the public value the museum and artwork represent, embody, and create.¹³³ The artworks' intangible value is furthermore reflected in their high market value, and thus art vandalism can also exact great financial loss.¹³⁴ Art vandalism additionally places public safety at risk. The attacks, especially on figurative artworks, can be seen as intermediate or substitute forms of violence against persons.¹³⁵ Furthermore, because the attacks generally take place in public, they risk endangering bystanders and engendering disorder.¹³⁶ In some instances, art vandalism can also be seen as a form of terrorism.¹³⁷ For these reasons, art vandalism requires laws that address the property it harms and the full scope of risks it presents. Consequently, this Note proposes that laws designed to deter and redress art vandalism must protect the property interests of art owners and the collective interest in objects of cultural significance, as well as the public interest in social order and public safety.

important artistic creations . . ." (quoting Letter from Sen. Alan Sieroty to Hon. Edmund G. Brown, Jr., Governor of Cal. (Sept. 3, 1982), in support of California's art preservation legislation)).

¹²⁹ See *supra* notes 122-123 and accompanying text.

¹³⁰ See *supra* note 91.

¹³¹ See *supra* notes 77-78 and 87-88 and accompanying text.

¹³² John Henry Merryman presaged and promoted special legal treatment for works of art in the United States, stating that in Europe "a work of art is different for some legal purposes from other objects of property, so that the law of property must be appropriately modified in order to deal properly with the special considerations that are raised by works of art." John Henry Merryman, *The Refrigerator of Bernard Buffet*, 27 HASTINGS L.J. 1023, 1037 (1976); see also *id.* at 1037 n.47.

¹³³ Unlike instances of institutional vandalism, art vandalism does not target the museum facility, by for instance breaking windows or other institutional property. See *supra* note 41.

¹³⁴ See *infra* text accompanying note 166; see also MERRYMAN ET AL., *supra* note 15, at 963 (discussing the "close relation between art world consensus about artistic value and market value").

¹³⁵ See *supra* note 99.

¹³⁶ Two accounts in particular shed light on the pandemonium that can accompany attacks on artworks in public institutions. Kaufman, *supra* note 1 (recounting a sixteen-year-old's account of the spray-paint attack on Picasso's painting at New York's Museum of Modern Art); Swedish National Socialists, *supra* note 103 (documenting a neo-Nazi group's masked attack with crowbars and axes on an exhibition in a public gallery).

¹³⁷ See *supra* note 106.

III. LAWS PROHIBITING UNAUTHORIZED INJURY TO WORKS OF ART

Currently, acts of art vandalism are charged as one of two crimes that prohibit physical harm to another's property: criminal mischief and library offenses. This section introduces and evaluates these two property crimes and seeks to determine to what extent they apply to and have the capacity to control art vandalism as the previous section has defined the crime. While neither law currently provides adequate protection against art vandalism, to varying degrees they both provide a basis for effective control of the crime. Fundamentally, both criminal mischief and library offenses establish that willful damage to a work of art warrants criminal sanctions. In addition, in some states these laws specifically recognize and protect the public interest and cultural value that is embodied in property such as art. Therefore, notwithstanding their shortcomings, criminal mischief and library offenses have the potential to address art vandalism. Assessing the laws' strengths and weaknesses points to how they may be amended to more effectively apprehend and control art vandalism.

A. *Criminal Mischief*

Intentional property damage, or vandalism, is an illegal act. In the United States, the federal government and every state has criminalized vandalism in statutes that prohibit physical injury to another person's tangible property when done without a legal right.¹³⁸ These statutes defend ownership interests in real and personal property.¹³⁹ By deterring and punishing injury to the physical integrity and financial value of another's property, these statutes, like property law generally, seek to protect and stabilize the property regime.¹⁴⁰ State codes most often call the offense criminal mischief,¹⁴¹ and the following elements are common to all criminal mischief statutes: (1) injury to tangible property

¹³⁸ See Victoria L. Lutz & Cara M. Bonomolo, *My Husband Just Trashed Our Home: What Do You Mean That's Not a Crime?*, 48 S.C.L. REV. 641, 641 n.2 (1997) (listing all state statutes); see also DAVID T. SKELTON, CONTEMPORARY CRIMINAL LAW 111 (1998) (noting that vandalism is the commonly used term for the crime).

¹³⁹ 54 C.J.S. *Malicious or Criminal Mischief or Damage to Property* § 1 (2005); John M. Leventhal, *Spousal Rights or Spousal Crimes*, 2006 UTAH L. REV. 351, 361 (2006); see also ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW 40 (1991).

¹⁴⁰ See Eduardo Moisés Peñalver & Sonia K. Katyal, *Property Outlaws*, 155 U. PA. L. REV. 1095, 1098 (2007) (observing that the "criminal enforcement of existing property entitlements" supports stability, which is a "key purpose of property law") (citing Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 CORNELL L. REV. 531, 552 (2005)).

¹⁴¹ This Note uses criminal mischief as the generic term for the crime. The federal statute and several state codes employ different names for the crime. See Lutz & Bonomolo, *supra* note 138, at 641 n.2 (citations omitted).

(2) belonging to another person (3) committed with a culpable mental state.¹⁴²

Criminal mischief statutes derive from malicious mischief, a common law offense, in which ill-will towards property owners combined with the intent to harm their property.¹⁴³ Today, the federal government and nearly all states have abandoned “evil motive” culpability for the crime and require only a purposeful or reckless mental state.¹⁴⁴ Whereas the original common law crime called for capital punishment,¹⁴⁵ all states and the federal government classify criminal mischief as a misdemeanor.¹⁴⁶ This comports with the contemporary perception of vandalism as a minor “nuisance crime” that causes minimal harm and warrants few arrests.¹⁴⁷ Aggravating factors, however, can heighten the crime’s severity and increase its classification from a misdemeanor to a felony.¹⁴⁸

Art vandalism, as unauthorized and intentional physical injury to works of art, is prosecuted as criminal mischief.¹⁴⁹ Criminal mischief statutes, however, as currently formulated, do not fully recognize the harm art vandalism causes. This Note thus argues that unless amended these statutes cannot adequately control nor punish attacks on publicly valued works of art. To reach this assessment, two statutory features of criminal mischief are particularly important to consider: what valuation enhances the crime’s severity and what types of property receive special forms of protection.

¹⁴² 54 C.J.S. *Malicious or Criminal Mischief or Damage to Property* § 4 (2007); Lutz & Bonomolo, *supra* note 138, at 641, 644. *See, e.g.*, N.Y. PENAL LAW § 145.10 (McKinney 2009) (stating, in pertinent part, “[a] person is guilty of criminal mischief . . . when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person”).

¹⁴³ 54 C.J.S. *Malicious or Criminal Mischief or Damage to Property* § 1 (2005); Martin R. Gardner, *The Mens Rea Enigma: Observations on the Role of Motive in the Criminal Law Past and Present*, 1993 UTAH L. REV. 635, 713-14 (1993).

¹⁴⁴ *See, e.g.*, State v. Cannady, 196 S.E.2d 617, 619 (N.C. Ct. App. 1973), *aff’d* 205 S.E. 2d 358 (N.C. Ct. App. 1974) (interpreting the state’s statutory prohibition of “willful and wanton injury to personal property,” N.C. GEN. STAT. § 14-160 (2006), as enacted “to avoid the element of malicious ill will required by the commonlaw [sic] crime of malicious mischief”); *see also* Gardner, *supra* note 143, at 716.

¹⁴⁵ Gardner, *supra* note 143, at 713.

¹⁴⁶ North Carolina courts have stated that removing the mental state of malice justifies reducing the crime from a felony to a misdemeanor. *Cannady*, 196 S.E.2d at 619. *See* N.C. GEN. STAT. §§ 14-127, 14-160(a) (2006).

¹⁴⁷ JOHN H. LINDQUIST, MISDEMEANOR CRIME: TRIVIAL CRIMINAL PURSUIT 103 (1988).

¹⁴⁸ *See, e.g.*, ARIZ. REV. STAT. § 13-1604 (2001) (classifying as a felony the “aggravated criminal damage” to a place of worship, school, or cemetery). Generally, felonies carry sentences over one year in prison, whereas misdemeanors carry sentences of one year or less. SKELTON, *supra* note 138, at 18.

¹⁴⁹ *See, e.g.*, Kaufman, *supra* note 1 (reporting that the vandal who spray painted the words “Kill Lies All” on Picasso’s painting was charged with criminal mischief); Vogel, *supra* note 4, at 1C (reporting that the museum guard who vandalized the Pop Art painting was charged with criminal mischief by the Manhattan District Attorney’s office); *Metro News Briefs: New York*, N.Y. TIMES, Dec. 26, 1999, at 41 (reporting that the vandal who attacked the Virgin Mary painting was charged with criminal mischief). In some states, art vandalism can be charged as a different criminal offense. *See infra* Part II.B.

States most commonly assess the severity of criminal mischief in financial terms.¹⁵⁰ The majority of statutes, including the federal law, grade criminal mischief according to the monetary loss that results from the intentional damage to the property.¹⁵¹ Generally, states assign the highest sentences for damage amounts between \$1000 and \$5000.¹⁵² The associated maximum prison sentences range between five and ten years.¹⁵³ As the outlier, Texas grades criminal mischief as a first-degree

¹⁵⁰ 52 AM. JUR. 2d *Malicious Mischief* § 1 (2000). Other aggravating factors can also enhance the crime's severity. Many states impose higher sentences when damage to property endangers human life or the property is damaged by dangerous means. *See, e.g.*, GA. CODE ANN. § 16-7-22 (2007); N.Y. PENAL LAW § 145.12 (McKinney 2009); *see also* Carthern v. State, 529 S.E.2d 617, 620 (Ga. 2000) (interpreting criminal damage in the first degree to refer to "reckless endangerment" and recognizing the "heightened punishment for criminal damage to property when human safety is threatened"). States also frequently enhance the punishment when the vandalism causes substantial impairment to a public utility. *See, e.g.*, UTAH CODE ANN. § 76-6-106 (2003); WIS. STAT. ANN. § 943.01 (West 2005). The culpable mental state can also reclassify the crime as a felony. For example, New York grades as misdemeanors a reckless act that causes damage above \$250, or an intentional act that causes less than \$250 damage to another's property. N.Y. PENAL LAW § 145.00 (McKinney 2009). Intentional acts of criminal mischief, however, that cause damage above \$250 are graded as felonies. N.Y. PENAL LAWS §§ 145.05, 145.10 (McKinney 2009); *see also* MASS. GEN. LAWS ch. 266, § 127 (2000); N.D. CENT. CODE § 12.1-21-05 (1997) (grading pecuniary loss above \$2000 as a misdemeanor if caused recklessly and as a felony if caused intentionally). *But see, e.g.*, ME. REV. STAT. ANN. tit. 17-A, §§ 805, 806 (2006) (making no distinction between damage caused "intentionally, knowingly, or recklessly").

¹⁵¹ For instance, willful damage exceeding \$1000 to United States government property is a felony and punishable up to ten years, whereas damage under \$1000 is charged as a misdemeanor. 18 U.S.C. § 1361 (2000). New York's criminal mischief statute also distinguishes between misdemeanor and felony charges and escalates the charge in degrees according to the amount of damage caused. *See* N.Y. PENAL LAW §§ 145.00-.12 (McKinney 2009). North Carolina and Rhode Island are the only states that do not consider financial loss and that classify the crime as a misdemeanor under all circumstances. N.C. GEN. STAT. § 14-127 (2006); N.C. GEN. STAT. § 14-160(a) (2006); R.I. GEN. LAWS § 11-44-1 (2002). *But see, e.g.*, N.C. GEN. STAT. § 14-148(c) (2006) (grading desecration or defacement of a grave site as a felony if the amount of damage is \$1000 or greater and as a misdemeanor if less damage is caused). Some states grade the crime according to the property's value rather than the loss incurred. *See, e.g.*, D.C. CODE § 22-303 (2001); MASS. GEN. LAWS ch. 266, § 127 (2000); *see also* NEV. REV. STAT. ANN. § 206.310 (LexisNexis 2006) (recognizing either "value of the property affected or the loss resulting from such offense" in assigning the appropriate sentence); *Romero v. State*, 996 P.2d 894, 897 (Nev. 2000) (clarifying that when property is destroyed, its fair market value is the appropriate measure, whereas when property is partially damaged, the cost of repair properly measures the amount of damage). The Model Penal Code, the American Legal Institute's codification of criminal law, cautions that classifying the crime according to the property's value risks over-grading the crime. MODEL PENAL CODE & COMMENTARIES § 220.3 cmt. 8 (1980) ("One who dents a fender by throwing rocks at a parked vehicle, for example, hardly presents a serious risk that the entire value of the car will be lost."). For a brief history of the Model Penal Code and its impact, see Sanford H. Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 CAL. L. REV. 943, 947-53 (1999). To be clear, financial loss is not an element of the crime; it is relevant for sentencing purposes only. *See supra* note 142 and accompanying text. A vandal, furthermore, need not intend to cause a specific amount of financial damage to be convicted of higher grade of criminal mischief. *See State v. Paris*, 627 A.2d 582, 586 (N.H. 1993); *Valdes v. State*, 510 So.2d 631, 632 (Fla. Dist. Ct. App. 1987) (noting that "the value of the property damage is relevant only to the severity of the crime").

¹⁵² *See, e.g.*, N.J. STAT. ANN. § 2C:17-3(b)(1) (2008) (providing the highest grade for loss greater than \$2000); 18 PA. CONS. STAT. ANN. § 3304(b) (2000) (providing the highest grade for loss greater than \$5000); VA. CODE ANN. § 18.2-137(B) (2004) (providing the highest grade for property valued or damaged at \$1000 or more).

¹⁵³ *See, e.g.*, IDAHO CODE ANN. § 18-7001 (2008) (authorizing sentences of one to five years for damage over \$1000); ME. STAT. REV. ANN. tit. 17-A, §§ 805, 1252(2)(C) (2007) (authorizing a maximum sentence of five years for damage over \$2000); N.H. REV. STAT. ANN. §§

felony if pecuniary loss is greater than \$200,000,¹⁵⁴ which can lead to imprisonment for life or for a term of five to ninety-nine years.¹⁵⁵ Four states recognize damage over \$100,000,¹⁵⁶ which authorizes prison sentences ranging from one to fifteen years.¹⁵⁷ At the opposite extreme, two states assign the highest sentences of up to three or five years¹⁵⁸ for damage at or above \$500.¹⁵⁹

In addition to punishing vandalism according to diverse damage thresholds, states also measure property damage differently.¹⁶⁰ Some jurisdictions measure damage strictly by the cost of repair.¹⁶¹ Other states allow the diminution of the property's value or the cost of repair to determine the crime's severity.¹⁶² When there is a choice of calculation, or the means of measurement are not defined, reasonableness determines which calculation of economic loss is most appropriate under the given circumstances.¹⁶³

As currently formulated, criminal mischief statutes risk underestimating and undercriminalizing art vandalism. If value is not

634:2, 651:2 (2007) (authorizing a maximum sentence of seven years for damage over \$1000); S.C. CODE ANN. § 16-11-510 (2003) (authorizing a maximum sentence of ten years for damage at or above \$5000); W. VA. CODE ANN. § 61-3-30 (LexisNexis 2005) (authorizing a maximum sentence of ten years for damage at or above \$2500); WYO. STAT. ANN. § 6-3-201 (2007) (authorizing a maximum sentence of ten years for damage at or above \$1000); *see also* 54 C.J.S. *Malicious or Criminal Mischief or Damage to Property* § 17 (2005) (stating that “[g]eneral rules governing sentencing and punishment in criminal prosecutions” apply to convictions of criminal mischief including the consideration of aggravating and mitigating factors).

¹⁵⁴ TEX. PENAL CODE ANN. § 28.03(b)(7) (Vernon 2008).

¹⁵⁵ TEX. PENAL CODE ANN. § 12.32 (Vernon 2003).

¹⁵⁶ ALASKA STAT. § 11.46.475(a)(3) (2007); 720 ILL. COMP. STAT. 5/21-1 (LexisNexis 2008); OHIO REV. CODE ANN. § 2909.05(E) (LexisNexis 2006); S.D. CODIFIED LAWS § 22-34-1 (2006).

¹⁵⁷ ALASKA STAT. § 12.55.125(c)(1) (2007) (providing a sentence of five to eight years for a class A felony that is a first felony offense committed without aggravating factors); 730 ILL. COMP. STAT. 5/5-8-1(4) (LexisNexis 2007) (providing a sentence of four to fifteen years for a class one felony); OHIO REV. CODE ANN. § 2929.14(A)(3) (LexisNexis 2008) (providing a sentence of one to five years for a felony of the third degree); S.D. CODIFIED LAWS § 22-6-1(6) (2006) (providing a maximum sentence of fifteen years for a class three felony).

¹⁵⁸ Maryland permits imprisonment for up to three years, while Mississippi authorizes maximum jail terms of five years. MD. CODE ANN., CRIM. LAW § 6-301(b) (LexisNexis 2002); MISS. CODE ANN. §97-17-67(3) (2007).

¹⁵⁹ MD. CODE ANN., CRIM. LAW § 6-301(b) (LexisNexis 2002); MISS. CODE ANN. §97-17-67(3) (2007).

¹⁶⁰ 54 C.J.S. *Malicious or Criminal Mischief or Damage to Property* § 10 (2007) (citing *State v. Hughes*, 946 P.2d 1338, 1342-43 (Idaho Ct. App. 1997)).

¹⁶¹ *Id.*; *see also* TEX. PENAL CODE ANN. § 28.06 (Vernon 2003) (“The amount of pecuniary loss . . . if the property is damaged, is the cost of repairing or restoring the damaged property”); *People v. Dunoyair*, 660 P.2d 890, 895 (Colo. 1983) (“In cases of partial damage, the appropriate measure of economic loss will generally be the reasonable cost of repair or restoration.”). *Dunoyair* affirmed a jury conviction for intentional damage to a painting hung in a university campus restaurant. *Id.* at 891-92. The court considered the painting's market value in order to determine whether the restoration costs were less than the painting's actual value and thus permissible. *Id.* at 894-95.

¹⁶² *See, e.g., Hughes*, 946 P.2d at 1343.

¹⁶³ *See, e.g., State v. Brockell*, 928 P.2d 650, 651-53 (Ariz. Ct. App. 1996) (finding that a criminal mischief statute that grades the crime according to economic loss is not constitutionally void for vagueness because it does not specify how to measure the amount of damage caused).

appropriately accounted for or measured, the crime goes underpenalized.¹⁶⁴ First, the grading thresholds do not account for the economic value of the museum-owned artworks targeted for attack.¹⁶⁵ The market value of works of art in museum collections can range from the hundreds of thousands to hundreds of millions of dollars.¹⁶⁶ If criminal mischief penalties are meant to be proportional to the amount of damage caused,¹⁶⁷ then proportional penalties do not currently exist for works of art in museum collections. Second, in cases of damage to a work of art, neither the cost of repair nor diminution in value alone may properly measure loss. Unlike an automobile or a building, artworks tend not to be composed of separable manufactured parts.¹⁶⁸ If one part of a painting is damaged, the integrity and value of the entire work can be diminished.¹⁶⁹ Even when restored, an artwork often cannot be returned to its prior condition.¹⁷⁰ Accordingly, in many cases restoration costs and lost market value together more accurately determine the financial loss caused by vandalism to a work of art.¹⁷¹ Third, measuring the crime's severity according to the art owner's financial loss neglects to recognize or punish detriment to the collective cultural value embodied in works of art. As a result, criminal mischief statutes currently fail to account for the

¹⁶⁴ *Romero v. State*, 996 P.2d 894, 897 (Nev. 2000) (“The overall intent of [criminal mischief] statutes is to make criminal penalties proportionate to the value of the property affected.”).

¹⁶⁵ Art vandals often target the most valuable works of art. *See, e.g.*, FREEDBERG, *supra* note 10, at 15 (“But why did you choose the *Nightwatch*?” “Because it seemed to me to be the most expensive possession of the State”) (quoting an interview with the attacker of a Rembrandt masterpiece) (citation omitted); Talley, *Rembrandt*, *supra* note 79, at 86 (explaining that the vandal entered the museum seeking “to destroy something of extraordinary value” and asked an attendant to point out the museum’s most important painting).

¹⁶⁶ Interview with senior underwriter of a leading fine arts insurance company (Jan. 15, 2008).

¹⁶⁷ *See supra* note 164.

¹⁶⁸ The authors of the Model Penal Code considered a car rather than a painting when they called it extravagant to assume vandalism risks “harm to the entire unit of property.” MODEL PENAL CODE § 220.3 cmt. 8 at 53 (1980).

¹⁶⁹ *See supra* note 79. John Henry Merryman also identifies the intangible collective interest in preserving an artwork’s integrity as arising from the importance of seeing “the work as the artist intended it, undistorted and ‘unimproved’ by the unilateral actions of others.” Merryman, *supra* note 132, at 1041.

¹⁷⁰ *See supra* note 79. The nature of the damage and the nature of the art object influence the restoration’s success. For instance, the conservator Caroline Keck has noted that when “ink has marred porous layers, compensation for . . . damage [by conservation] is seldom completely effective.” CAROLINE KECK, ON CONSERVATION 10 (1971). As another example, restoration to large monochromatic paintings, such as Barnett Newman’s work, “do[es] not easily conceal scars.” Vogel, *supra* note 71, at E1. A conservator further explained that the repair “‘can interfere with the overall painting, because there are no figural elements to mask it.’” *Id.* In some cases, full restoration is possible, such as when a varnished painting is defaced. *See, e.g.*, Kaufman, *supra* note 1 (reporting no damage was caused to Picasso’s masterpiece because a thick coating of varnish “‘acted as an invisible shield’” between the painting and the vandal’s spray paint and that a solvent removed nearly all traces of the red paint, the remainder of which was scraped off).

¹⁷¹ For example, the St. Louis Art Museum, which owns the painting that was damaged when the museum guard wrote on it in ink (*see supra* note 4), spent \$6500 to restore the painting. *Museum Sues the Whitney Over a Disfigured Painting*, N.Y. TIMES, Aug. 8, 1996, at C16. The museum further sought \$1.5 million in compensatory damages in a civil suit for loss to the painting’s value despite the effort to restore the ink stained canvas. *Id.*; *see also supra* note 170.

public loss incurred when works of art that the public values are intentionally attacked.¹⁷² In sum, when statutes do not properly account for the tangible and intangible value lost when an artwork is damaged or destroyed, they fall short of discouraging and properly punishing art vandalism.

Some criminal mischief statutes, however, do consider intangible value and provide higher grades for vandalism of specific types of property. These examples are important to consider as to art vandalism because they show that state legislatures have chosen to account for certain properties' public, symbolic, or historical value.¹⁷³ In addition to general prohibitions of property damage, some states also specifically prohibit, for instance, harm to service animals,¹⁷⁴ damage to schools,¹⁷⁵ or desecration of cemeteries.¹⁷⁶ Consequently, in some jurisdictions vandalism to a school or cemetery leads to a more severe sentence.¹⁷⁷

Most notably, New Hampshire amended its criminal mischief statute in 1996 with a provision that specifically protects unique objects of cultural value.¹⁷⁸ Under the law, criminal mischief rises from a

¹⁷² See *supra* notes 7-11 and 169 and accompanying text.

¹⁷³ See, e.g., 14 AM. JUR. 2d *Cemeteries* § 31 (2000) (“The sentiment of all civilized peoples regards the resting place of the dead as hallowed ground and requires that in some respects it be not treated as subject to the laws of ordinary property.”); see also *People v. Rivera*, 968 P.2d 1061, 1068 (Colo. App. 1997) (noting that the “aggravating factor[] of the loss of the community’s school building, which had symbolic and historic value” properly contributed to sentencing of the crime).

¹⁷⁴ See, e.g., CAL. PENAL CODE § 600.5 (West Supp. 2008) (prohibiting injury or death to “any guide, signal, or service dog”); IND. CODE § 35-43-1-2(a)(B)(vi) (2004) (prohibiting damage to a “law enforcement animal”). California provides approximately forty other prohibited forms of conduct towards animals under malicious mischief. CAL. PENAL CODE §§ 596-600.2 (West 1999).

¹⁷⁵ See, e.g., ARIZ. REV. STAT. ANN. § 13-1604(2) (2001) (designating defacement or damage to a school or educational facility as aggravated criminal damage); 720 ILL. COMP. STAT. 5/21-1.2(a)(3) (2008) (designating damage to a “school, educational facility or community center” as institutional vandalism); NEV. REV. STAT. ANN. § 206.125(1)(c) (Supp. 2007) (prohibiting damage to a “school, educational facility, . . . or community center”).

¹⁷⁶ See, e.g., ALA. CODE § 13A-7-23.1 (LexisNexis 2005) (prohibiting injury or destruction of “any tomb, monument, gravestone or other memorial of the dead”); ALASKA STAT. § 11.46.482(3) (2007) (classifying the damage or desecration of a cemetery as third degree criminal mischief); IDAHO CODE ANN. § 18-7027 (2004) (prohibiting desecration of a “grave, cemetery, headstone, grave marker, mausoleum, crypt, or other place of burial”); MASS. GEN. LAWS ch. 266, § 127A (West 2000) (prohibiting injury or destruction of a “building, structure or place used for the purpose of burial or memorializing the dead”); N.Y. PENAL LAW §§ 145.22-.23 (McKinney 2009) (classifying two degrees of desecration of “real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains”).

¹⁷⁷ See, e.g., ALASKA STAT. § 11.46.482(3) (2007) (classifying desecration of a cemetery as criminal mischief in the third degree and grading the crime as a class C felony); ARIZ. REV. STAT. ANN. § 13-1604(2) (2001) (classifying defacing or damaging a cemetery as aggravated criminal damage).

¹⁷⁸ Criminal Mischief Definition Revised, ch. 225:2, 1996 N.H. Laws 349-50. The provision went into effect on January 1, 1997. *Id.* Three other states also provide specific protection for works of art in separate criminal mischief statutes. FLA. STAT. ANN. §806.14 (2007) (prohibiting willful damage to a work of art displayed in a state building); OKLA. STAT. §1785 (West 2002) (prohibiting malicious damage to works of literature or art in public institutions, such as libraries or museums); R.I. GEN. LAWS § 11-44-15 (2002) (prohibiting willful, malicious, or wanton damage to property belonging to or in the custody of libraries, museums, or archives). Like library offenses

misdeemeanor to a felony when, *inter alia*, a person purposely or recklessly damages property he knows has “historical, cultural, or sentimental value that cannot be restored by repair or replacement.”¹⁷⁹ No published case law is available to clarify the provision’s scope. A review of the provision’s language and legislative history, however, demonstrates that the law neither addresses nor adequately applies to art vandalism.

As drafted, the provision requires a person know that the property he damages has cultural value that cannot be restored or replaced.¹⁸⁰ The provision thus overlays a strict knowledge requirement not present in the statute’s other forms of felony criminal mischief.¹⁸¹ Indeed, in many circumstances, proving that a person knew that the object he attacked “cannot be restored by repair or replacement” would be difficult to establish and easy to refute beyond a reasonable doubt. The legislative history clarifies that the provision aims to protect owners of personal property, such as photo albums and other sentimental mementos, from instances when such knowledge constitutes a malicious attack.¹⁸²

Thus intended and formulated, New Hampshire’s statutory provision for objects of cultural value does not effectively address art vandalism. First, given the frequent and well publicized restoration of vandalized artworks, a prosecutor would find it exceedingly difficult to meet this provision’s additional burden of proof.¹⁸³ Second, the provision as formulated does not address the nature of art vandalism. While art vandals target objects of cultural value,¹⁸⁴ there is no evidence

discussed *infra* Part II.B., these laws do not provide adequate or exemplary protection against art vandalism.

¹⁷⁹ N.H. REV. STAT. ANN. § 634:2 (2007). As a class B felony, conviction can lead to imprisonment for up to seven years. *Id.* § 651:2 (2007).

¹⁸⁰ *Id.* § 634:2(II)(a) (2007). See *State v. Paris*, 627 A.2d 582, 586 (N.H. 1993) (clarifying that a defendant need not act purposely with respect to the amount of pecuniary loss caused).

¹⁸¹ See N.H. REV. STAT. ANN. § 634:2(I) (2007). The other aggravating factors that enhance the crime to a felony are as follows: “(a) pecuniary loss in excess of \$1,000; (b) A substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service; or (c) Discharge of a firearm at an occupied structure . . .” *Id.* at II.

¹⁸² See *(New Title) Relative to Vandalism and Criminal Mischief: Hearing on H.B. 1291 Before the S. Comm. on Judiciary*, 1996 Leg., 1996 Sess. 5 (N.H. 1996) (statement of Representative Donna P. Sytek). Representative Sytek was the only official to address the portion of the bill amending the criminal mischief statute. *Id.* In support of the amendment, she stated: “A serious criminal mischief isn’t only when you destroy something valuable; it’s when you destroy something that might be irreplaceable. I’m thinking of wedding albums, Christmas ornaments that my daughter made maybe when she was five years old, if somebody knows that by destroying that . . . it should be a felony.” *Id.*

¹⁸³ David Freedberg observes that media reports on art vandalism take “interest in restoration, in the awesome difficulties of repairing the work, of the almost magical success of making it appear as if the attack had never happened.” FREEDBERG, *supra* note 10, at 25 (citation omitted). Two examples are the detailed accounts of the restoration of the (London) National Gallery’s Leonardo da Vinci drawing that was damaged when shot at and Rembrandt’s *Danaë* that was damaged with knife slashes and acid. Boggan, *supra* note 3; Talley, *Rembrandt*, *supra* note 79, at 86.

¹⁸⁴ See *supra* note 110 and accompanying text.

that they seek out artworks that cannot be restored or replaced. Finally, the provision may protect only irreparable property from damage.¹⁸⁵ It thus can deny protection to repairable works of art, as well as many other forms of salvageable property with historical, cultural, or sentimental value.

In sum, while art vandalism squarely constitutes criminal mischief, criminal mischief statutes do not currently recognize the unique risks and harms of art vandalism. Extant laws neither account for nor set appropriate penalties for artworks' significant financial and cultural value. Some states do protect property with public, cultural, and symbolic value. Nonetheless, no criminal mischief law, as currently formulated, effectively protects works of art from vandalistic attack arising from the shared cultural value the artworks embody and represent.

B. *Library Offenses*

There are certain criminal laws and other offenses that specifically seek to protect artworks belonging to museums and other public institutions. Six states prohibit intentional damage to property in the collections of libraries, galleries, museums, and other related educational institutions.¹⁸⁶ These offenses are nearly identical to criminal mischief in that they prohibit damage to tangible property belonging to a library or other enumerated institution committed with a culpable mental state.¹⁸⁷ Unlike criminal mischief, library offenses¹⁸⁸ may also prohibit the

¹⁸⁵ Not all publicly valued artworks are irreparable or irreplaceable. *See supra* note 75.

¹⁸⁶ CAL. EDUC. CODE § 19910 (West 2002); 720 ILL. COMP. STAT. ANN. 5/16B-2.1 (2008); N.H. REV. STAT. ANN. § 202-A:24 (1999); N.C. GEN. STAT. § 14-398 (2006); S.C. CODE ANN. § 16-13-330 (2003); UTAH CODE ANN. § 76-6-803 (2003). Three other states have similar offenses yet limit protection exclusively to libraries. MASS. GEN. LAWS ANN. ch. 266, §§ 99, 100 (2000); MICH. COMP. LAWS ANN. §750.391 (2004); MINN. STAT. ANN. § 609.541 (2003). Ohio criminalizes as desecration purposely damaging "object[s] of reverence or sacred devotion" such as the United States or Ohio flag, a "work of art or museum piece," and a "place of worship" and its property. OHIO REV. CODE ANN. § 2927.11 (LexisNexis 2006). Ohio classifies desecration of a "work of art or museum piece" as a misdemeanor. *Id.* § 2927.11(A)(5), (B).

¹⁸⁷ *See* CAL. EDUC. CODE § 19910 (West 2002); 720 ILL. COMP. STAT. ANN. 5/16B-2.1 (2008); N.H. REV. STAT. ANN. § 202-A:24 (1999); N.C. GEN. STAT. § 14-398 (2006); S.C. CODE ANN. § 16-13-330 (2003); UTAH CODE ANN. § 76-6-803 (2003). New Hampshire does not define the protected property. N.H. REV. STAT. ANN. § 202-A:24 (1999). All other states provide illustrative lists, such as: "any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials in any format, electronic data processing records, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics." UTAH CODE ANN. § 76-6-804 (2003). Most define a library as or list the institutions as "any gallery or museum or any state, public, school, college, or other institutional library." *E.g.*, N.H. REV. STAT. ANN. § 202-A:24 (2007).

¹⁸⁸ This Note uses library offense as the generic term. States generally use descriptive titles such as "[m]alicious cutting, tearing, defacing, breaking, or injuring," CAL. EDUC. CODE § 19910 (West 2002), or "[t]heft or destruction of property of public libraries, museums, etc.," N.C. GEN. STAT. § 14-398 (2006).

property's theft,¹⁸⁹ and they additionally apply to persons who act under consent or another form of legal right.¹⁹⁰ In these six jurisdictions, acts of art vandalism are properly prosecuted under these offenses.¹⁹¹ In North Carolina, for instance, a museum guard who purportedly damaged a museum toilet, the overflowing of which consequently damaged a museum art piece, was convicted under criminal mischief (for damage to the museum's toilet) and under the library offense (for damage to the museum's tapestry).¹⁹²

Generally, however, library offenses do not address the serious form of art vandalism discussed in this Note. Most states classify the offense as a misdemeanor regardless of the amount of damage caused.¹⁹³ With no or minimal grading structures, the offenses furthermore treat all library and museum property uniformly regardless of the economic value, rarity, or fragility of the object attacked.¹⁹⁴ When compared with criminal mischief, the library offenses suggest that slashing a museum's painting is a *lesser* crime than slashing a car's tires.¹⁹⁵ While these laws have the advantage of specifically recognizing the vulnerability of artworks in public institutions, the offenses provide weaker protection for artworks than the states' criminal mischief laws.¹⁹⁶ These offenses may function well as deterrents for minor forms of vandalism¹⁹⁷ by making intentional damage to library or museum property a punishable offense.¹⁹⁸ But if applied to serious acts of tactical and expressive art

¹⁸⁹ N.C. GEN. STAT. § 14-398 (2006); S.C. CODE ANN. § 16-13-330 (2003). Utah equates the offense with theft for sentencing purposes. UTAH CODE ANN. §§ 76-6-412, 76-6-803 (2003).

¹⁹⁰ Presumably, consent or justification operate as affirmative defenses. The one published case regarding this type of statute did not clarify this point of law. *State v. Davis*, 356 S.E.2d 607 (N.C. Ct. App. 1987).

¹⁹¹ *Id.* This is the only published case that addresses a library offense.

¹⁹² *Id.* at 609. The appellate court ultimately vacated the library offense conviction on the basis of insufficient evidence. *Id.* at 610.

¹⁹³ CAL. EDUC. CODE § 19910 (West 2002); N.H. REV. STAT. ANN. § 202-A:24 (1999); S.C. CODE ANN. § 16-13-330 (2003). *But see* 720 ILL. COMP. STAT. ANN. 5/16B-2.1 (2008); N.C. GEN. STAT. § 14-398 (2006) (grading the crime a Class H felony if damage exceeds \$50 and otherwise as a misdemeanor). As a first offense, a Class H felony in North Carolina can carry a prison sentence of four to eight months. N.C. GEN. STAT. § 15A-1340.17(c) (2006). Utah grades and sentences the offense as theft, which in that state mirrors the criminal mischief penalty structure. UTAH CODE ANN. §§ 76-6-106, 76-6-412, 76-6-805 (2003).

¹⁹⁴ *Id.*

¹⁹⁵ This is accurate with the exception of North Carolina, where the damage to the painting could be charged as a felony, and Utah, where there would be no distinction in the severity of these acts. N.C. GEN. STAT. §§ 14-160, 14-398 (2006); UTAH CODE ANN. §§ 76-6-106, 76-6-412 (2003).

¹⁹⁶ *Compare, e.g.,* N.H. REV. STAT. ANN. § 634:2 (2007) (classifying as felony criminal mischief purposely causing or attempting to cause damage when pecuniary loss is over \$1000 or when the "actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement") and N.H. REV. STAT. ANN. § 202-A:24 (1999) (classifying as a misdemeanor willful or malicious damage to any property in any library or museum).

¹⁹⁷ *See supra* notes 50, 91, and 130 and accompanying text.

¹⁹⁸ In 1959, New Hampshire State Senator Martin testified that while "[the library offense] law has rarely been used in a court case, . . . it has served as a useful deterrent." *An Act Relative to Damaging and Detaining Library and Gallery Property: Hearing on H.B. 127 Before the S. Comm. on Exec. Department, Municipal and County Government*, 1959 Leg., 1959 Sess. 311

vandalism,¹⁹⁹ in most instances these statutes would gravely underestimate and underpenalize the crime.²⁰⁰

Because these offenses overlap with criminal mischief, they can furthermore lead to confusion and unpredictability in the prosecution of art vandalism.²⁰¹ For example, if a person within New Hampshire's jurisdiction intentionally and seriously damages an artwork in a museum, he could be charged with a felony under one of two different provisions in the general criminal mischief statute or with a misdemeanor under the library offense.²⁰² Failure to prosecute under the library offense could lead to a dismissal, whereas failure to prosecute under criminal mischief could lead to a disproportionately light sentence.²⁰³ Consequently, the library offenses, which aim to control minor forms of vandalism, can impair the prosecution and confuse the legal apprehension of serious art vandalism.²⁰⁴

As examples of duplicative and inconsistent laws, library offenses, in fact, have been singled out for criticism by commentators calling for reform to state criminal codes.²⁰⁵ These commentators argue

(N.H. 1959). To encourage this deterrent effect, Massachusetts, where the statute applies only to libraries, requires libraries to prominently display posters summarizing and explaining the law. MASS. GEN. LAWS ch. 266, § 100 (2000). For an account of a library vandal undeterred by California's law, see Richard Meyer, *Slasher Story*, ART JOURNAL, Spring 2005, at 32 (recounting that in nearly one year 607 books, most relating to homosexual history and culture, were seriously damaged by a single vandal and describing the exhibition the library organized in response to the attacks).

¹⁹⁹ See *supra* Part I.C.

²⁰⁰ In the two states where the library offense is graded higher than or equal to criminal mischief, the offense still does not proportionally address the severity of art vandalism. In North Carolina, while violating the library offense is a Class H felony, the maximum sentence is eight months imprisonment. N.C. GEN. STAT. §§ 14-398, 15A-1340.17(c) (2006). This sentence is significantly lighter than penalties for criminal mischief in other states. See *supra* text accompanying notes 153-159. Utah grades the library offense and criminal mischief equally, and thus does not properly account for the greater magnitude of harm when a work of art is attacked. UTAH CODE ANN. §§ 76-6-106(3), 76-6-412, 76-6-805 (2003); see *supra* notes 164-172 and accompanying text.

²⁰¹ The authors of the Model Penal Code warned that "an unwary prosecutor who filed a charge under the general provision [of criminal mischief] based on conduct that was specifically prohibited elsewhere ran the risk of dismissal for charging the wrong offense." MODEL PENAL CODE § 220.3 cmt. 1 at 41-42 (1980). Thus, the authors recommended consolidating all forms of criminal mischief into a single statute. *Id.* at 42. Accordingly, their concern applies when a state has a general criminal mischief statute and separate statutes that prohibit harm to particular types of property, such as library offenses.

²⁰² See N.H. REV. STAT. ANN. §§ 202-A:24, 634:2(II)(a), 634:2(II)(d) (2007) (assuming the vandalism causes over \$1000 worth of damage).

²⁰³ See *supra* note 201.

²⁰⁴ See Paul H. Robinson & Michael T. Cahill, *The Accelerating Degradation of American Criminal Codes*, 56 HASTINGS L.J. 633, 637-45 (2005) (hereinafter *Accelerating Degradation*) (identifying the multiple problems that can arise from redundant offenses in a state's compiled laws); Paul H. Robinson & Michael T. Cahill, *Can a Model Penal Code Second Save the States from Themselves?*, OHIO ST. J. CRIM. L. 169, 170-72 (2003) (hereinafter *Model Penal Code Second*) (arguing that library offenses, and other such "designer offenses," "cause positive damage to the effective operation of the code").

²⁰⁵ Robinson & Cahill, *Accelerating Degradation*, *supra* note 204, at 638; Robinson & Cahill, *Model Penal Code Second*, *supra* note 204, at 170; Melissa J. Mitchell, *Cleaning Out the Closet: Using Sunset Provisions to Clean Up Cluttered Criminal Codes*, 54 EMORY L.J. 1671, 1678 (2005).

that duplicative laws, such as the library offenses, make it more difficult for citizens, law enforcement, and the courts to understand what conduct a state code prohibits.²⁰⁶ This confusion can lead to errors and disparate treatment.²⁰⁷ When offenses overlap, as library offenses do with criminal mischief statutes, punishment levels can become inconsistent and disproportionate.²⁰⁸ These laws thus create the risk that justice will be misapplied and that the law's moral authority and deterrent effect will be undermined.²⁰⁹ Accordingly, library offenses, which seek to prohibit harm to artworks separately from the generic criminal mischief statutes, present neither a recommended nor workable statutory model for devising more effective control of art vandalism.

While art vandalism is prosecuted under criminal mischief and as a library offense, neither law, as formulated in any jurisdiction, effectively and appropriately addresses the crime. Library offenses protect works of art in museums and other public benefit institutions.²¹⁰ They thus identify precisely the property at risk from art vandalism.²¹¹ However, these offenses underpenalize the crime and misapprehend the value, financial and intangible, of museum artworks.²¹² As devised separately from criminal mischief, sometimes outside the criminal code,²¹³ they create confusion and risk misapplication of the law.²¹⁴ Criminal mischief, as criminal codes' primary vandalism law, more properly addresses the crime. While the statutes concern property generally, they can also accommodate provisions that reach specific types of property crimes.²¹⁵ Amending criminal mischief statutes with provisions like the library offenses, which delimit the property art vandalism harms and account for the nature of the crime and scope of its harms, will allow states to more effectively protect artworks at risk from intentional attack.

²⁰⁶ Robinson & Cahill, *Accelerating Degradation*, *supra* note 204, at 638.

²⁰⁷ *Id.* at 638-39.

²⁰⁸ *Id.* at 642-44.

²⁰⁹ *Id.* at 644.

²¹⁰ See *supra* note 186 and accompanying text.

²¹¹ See *supra* note 124 and accompanying text.

²¹² See *supra* notes 193-200 and accompanying text.

²¹³ See CAL. EDUC. CODE § 19910 (West 2002); N.H. REV. STAT. ANN. § 202-A:24 (1999) (located, respectively, in the states' consolidated statutes under Education and under Libraries).

²¹⁴ See *supra* notes 207-209 and accompanying text.

²¹⁵ See *supra* note 173 and accompanying text.

IV. PROPOSAL: AMEND CRIMINAL MISCHIEF STATUTES TO ADDRESS ART VANDALISM

Multiple concerns justify amending criminal mischief statutes, even absent an accurate account of art vandalism's prevalence.²¹⁶ Available scholarship and documentation sufficiently attest to the risks art vandalism presents.²¹⁷ First, adverse consequences arise from inadequately controlling the crime: property owners incur financial loss;²¹⁸ objects of recognized cultural value suffer damage or destruction;²¹⁹ lasting damage or total loss of these artworks deprive property owners and the public of access to cultural heritage;²²⁰ the public risks exposure to disorder and physical danger;²²¹ and museums bear indirect financial and reputational costs.²²² Second, without specific recognition of and accounting for art vandalism in criminal mischief statutes, the crime risks being misapprehended by prosecutors and judges,²²³ disproportionately sentenced,²²⁴ and ineffectively discouraged.²²⁵ Finally, notwithstanding security measures, museums do not have the capacity to prevent the crime.²²⁶

²¹⁶ See *supra* note 33 and accompanying text regarding the lack of study and scholarship on art vandalism.

²¹⁷ See *supra* note 15; see also *infra* app. (listing instances of art vandalism in public institutions reported in the press from 1977-2007).

²¹⁸ Museums typically carry all-risk insurance policies for their collections that cover loss due to damage or destruction. Interview with senior underwriter of a leading fine arts insurance company (Jan. 15, 2008). Insurance companies, however, spread these costs to other insured parties and onto the market. See Peter Z. Grossman et al., *Uncertainty, Insurance and the Learned Hand Formula*, 5 L. PROBABILITY & RISK 1, 11 (2006), available at <http://lpr.oxfordjournals.org/content/vol5/issue1/index.dtl#ARTICLES>. (“[I]nsurance markets are intended to spread the risks to insurance firms across a pool of insured—both potential victims and injurers—so that the average value of harm represents a real number that when translated into premia allows for both claim satisfaction and company profits.”).

²¹⁹ See *supra* notes 122-123 and accompanying text.

²²⁰ See *supra* note 169.

²²¹ See *supra* notes 135-136 and accompanying text.

²²² See *supra* notes 34, 72.

²²³ See *supra* note 73 and accompanying text.

²²⁴ See *supra* note 22 and accompanying text.

²²⁵ See *infra* note 255 and accompanying text.

²²⁶ See *supra* note 23 and accompanying text. In fulfilling their public benefit missions, museums inescapably place works of art at risk. See Jason Sickles & Olin Chism, *Police Lack Leads in DMA Vandalism*, DALLAS MORNING NEWS, Mar. 19, 1998, at 31A (“You make a commitment to share the experience of the art. Inherent in that is that you may run some risks.” (quoting a prominent Dallas art collector’s reaction to the vandalism of three paintings at the Dallas Museum of Art) (internal quotation marks omitted)). The institutions must balance the risks of exposing artworks to harm with the benefits of making them accessible to the public. *Id.* (“From a curatorial point of view, our ultimate responsibility is to protect the art, yet we want to make the art-viewing experience as meaningful as possible to our audience.” (quoting the museum’s curator) (internal quotation marks omitted)). Museums are typically hesitant to adopt security measures that significantly interfere with their visitors’ experience and with the works of art on display. *Id.* (“We don’t put bulletproof glass in front of the paintings, and we don’t enclose every sculpture. We want people to experience texture and surface and volume and color in a manner that’s not impaired by an intervening element.” (quoting the museum’s curator) (internal quotation marks omitted)); Kleiner, *supra* note 12 (“[W]e can build this place into a fortress, but that’s not what we want . . . We think of the museum as an

If amended, criminal mischief statutes can address these risks. As previously discussed, the statutes currently fail to recognize the crime or properly measure its harm.²²⁷ Curing these deficiencies will enable the statutes to more effectively control art vandalism. Indeed, given the nature of the crime and the risks it presents, this Note's proposal aims, above all, to discourage the crime.²²⁸ Accurately measuring art vandalism's severity and clearly identifying the property it protects can further reinforce this deterrence goal, as well as promote normative values.²²⁹

This Note thus suggests two mandates for a provision that would amend criminal mischief statutes.²³⁰ Criminal mischief laws have the advantage of being codified in every United States jurisdiction, criminalizing vandalistic conduct, employing grading structures, and enhancing penalties for both monetary and intangible losses.²³¹ Furthermore, in most jurisdictions, the statutes recognize and identify specific types of property that require special protection not provided in

open public space, not Fort Knox." (quoting a museum spokesman responding to a vandalistic attack at his institution) (internal quotation marks omitted)); Muchnic, *supra* note 79, at 6F (expressing that "the greatest tragedy is that bullet-proof glass will be put on more of the paintings" because it distorts the paintings (quoting an art conservator) (internal quotation marks omitted)).

Notwithstanding museums' misgivings about the effects of broader security measures, initiatives to increase public funding can improve security and protect against vandalism by, for example, increasing security staff. As evidence of this, reductions in security personnel following budget cuts led to greater instances of vandalism at the Smithsonian museums. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1127, SMITHSONIAN INSTITUTION: FUNDING CHALLENGES AFFECT FACILITIES' CONDITION AND SECURITY, ENDANGERING COLLECTIONS 6 (2007), available at <http://www.gao.gov/new.items/d071127.pdf> ("Some of the Smithsonian's museum and facility directors said that in the absence of more security officers, some cases of vandalism and theft have occurred."); Jason Edward Kaufman, *Smithsonian Adopts Sweeping Reforms*, THE ART NEWSPAPER, Feb. 2, 2008, available at <http://www.arteconomy24.ilssole24ore.com/news/news.php?id=203> ("And museum directors report increased vandalism due to reductions in security staff—at the [Smithsonian] American Art Museum, works have been written on, spat on and kissed.").

²²⁷ See *supra* Part III.A.

²²⁸ A discussion of deterrence and criminal law theory is beyond the scope of this Note. In simple terms, deterrence is a utilitarian theory that assumes that people make rational choices and that criminal sentences therefore can be designed to disincentivize others from committing a similar offense. Andrew Ashworth, *Sentencing Aims, Principles, and Policies*, in FOUNDATIONS OF CRIMINAL LAW 333, 336 (Leo Katz et al. eds., 1999). One of the many criticisms of deterrence theory is the blunt and potentially unjust punishment of individuals with sentences meant to deter others. *Id.* at 337-38. The principle of desert when combined with deterrence objectives may "preserve elements of deterrence theory while avoiding the principled objections." *Id.* at 338. This Note's argument is informed by this hybrid. Paul H. Robinson and Michael T. Cahill succinctly articulate it as follows: "[A] system based purely on desert will also tend to achieve [deterrence's] crime-control objective, because the prospect of ex post deserved punishment for those who commit crimes provides a good ex ante incentive not to commit them. In short, desert deters." PAUL H. ROBINSON & MICHAEL T. CAHILL, LAW WITHOUT JUSTICE 118 (2006).

²²⁹ See *supra* note 228 and *infra* note 252.

²³⁰ This Note's proposal assumes a criminal mischief statute structured as a single general offense to which a provision may be amended. The proposal can also be adopted by states that organize their criminal mischief statutes into an integrated series of offenses or retain the "old approach" of prohibiting numerous specific harms supplemented by a "catch-all offense." MODEL PENAL CODE § 220.3 cmt. 1 at 41-42 (1980). States without a single statute should exercise care to maintain uniformity in grading, culpability, and other definitions to avoid the problems raised by Paul H. Robinson and Michael T. Cahill. See *supra* notes 206-209 and accompanying text.

²³¹ See *supra* Part II.A.

the general offense.²³² Thus, the statutes can accommodate this Note's suggestions and through them, it is argued, affect needed improvements to control art vandalism.

A. *Identify the Property*

To address art vandalism, the provision must identify the property entitled to its enhanced protection: works of art that embody public value. Determining "what is art?" may ultimately be unanswerable²³³ and courts have long avoided the question.²³⁴ Courts have additionally struggled to ascertain which works of art hold public value.²³⁵ Thus, the provision requires clear statutory definition of which artworks fall within its protection. Clearly delimiting the protected property will aid judges, enable enforcement, and provide effective notice.²³⁶ This proposal looks to the library offenses discussed above for a practical and appropriate solution.²³⁷

The library offenses expressly delimit protection for objects at risk in public institutions, such as libraries, museums, archives, and governmental agencies, by defining the institution as a stand-in for a definition of the protected objects.²³⁸ This approach can be adapted to a

²³² See, e.g., *supra* notes 174-177 and accompanying text.

²³³ See Christine Haight Farley, *Judging Art*, 79 TUL. L. REV. 805, 808 (2005) ("The 'What is Art?' debate has raged for centuries without resolution.")

²³⁴ *Id.* at 811-15. "[O]ne of the most stable and explicitly stated doctrines across art law is termed here 'the doctrine of avoidance' of artistic determinations." *Id.* at 815.

²³⁵ See, e.g., *Martin v. City of Indianapolis*, 192 F.3d 608, 610 (7th Cir. 1999) (ruling on what evidence and test may be used to determine whether a work of art is of "recognized stature" under the federal Visual Artists Rights Act). The "recognized stature" standard, not defined by the Visual Artists Rights Act, limits protection against destruction "to those works of art that art experts, the art community, or society in general views as possessing stature." *Carter v. Helmsley-Spear, Inc.*, 861 F. Supp. 303, 325 (S.D.N.Y. 1994), *aff'd in part, vacated in part*, 71 F.3d 77 (2d Cir. 1995), *cert. denied*, 517 U.S. 1208 (1996). The standard has been widely criticized by commentators as impractical and imprecise. See, e.g., Jane C. Ginsburg, *Copyright in the 101st Congress: Commentary on the Visual Artists Rights Act and the Architectural Works Protection Act of 1990*, 14 COLUM.-VLA J.L. & ARTS 477, 480 n.19 (1990) (calling the standard "incoherent"); Rebecca J. Morton, *Carter v. Helmsley-Spear, Inc.: A Fair Test of the Visual Artists Rights Act?*, 28 CONN. L. REV. 877, 914 (1996) (concluding that the standard is "unworkable," too subjective, and leaves "the court embroiled in critical disputes between art experts"); Robinson, *supra* note 14, at 1969 (noting evidentiary problems and the problems with the "battle of the experts" the standard initiates at trial).

²³⁶ As to the benefits of clarity and notice, see ROBINSON & CAHILL, *supra* note 228, at 89-90 (stating that clarity promotes "fair notice of the criminal law's commands," which provides basis for deterring the prohibited conduct and reinforces legislative authority over judicial discretion in lawmaking).

²³⁷ See *supra* note 186 and accompanying text.

²³⁸ *Id.* The offenses offer three different formulations to associate the property with the institutions: "belonging to, on loan to, or otherwise in the custody of" or "deposited in" or "belonging to or in the care of." Legislatures might also consider the language in the federal statute criminalizing theft of "major artwork[s]," which, by definition, are displayed in museums. 18 U.S.C. § 668(a)(1) (2000) (defining a museum as an institution organized for an educational or aesthetic purpose with a professional staff that uses and cares for "tangible objects" which are regularly exhibited). Unlike this Note's proposal, the federal statute defines which conditions, in addition to ownership or display in a museum, must be met for objects to be considered "major artworks" and thus entitled to protection. § 668(a)(2). Most library offenses also list the types of objects intended

provision specific to art vandalism by limiting the enumerated institutions to those targeted by art vandals.²³⁹ A broadly conceived adaptation may be: “Any work of art belonging to, displayed by, or otherwise in the custody of an institution organized on a permanent basis in whole or in part for educational purposes that exhibits works of art to the public on a regular basis.”²⁴⁰ This definition offers clarity, precision, and flexibility.²⁴¹ First, it eliminates the need to define the objects deserving protection and instead defines the institutions that by exhibiting works of art confer public value on them.²⁴² Furthermore, as a definition of publicly valued artwork, this formulation relies on and ratifies the expertise of the institutions’ professional staffs and thus avoids the need for courts to make aesthetic judgments.

This proposal suggests amending criminal mischief statutes to designate specific protection for artworks displayed by museums. By clearly identifying the protected property, the statutes will more effectively address art vandalism. Furthermore, they will promote the statute’s enforcement by providing prosecutors and courts with a clear definition and mandate. By such notice of legislative intent and normative commitment, the provision will reduce misapprehension of the crime.²⁴³ Moreover, by recognizing art vandalism, providing specific protection for museums and their exhibits, and promising greater enforcement, the provision can encourage museums to more accurately report serious instances of the crime.

B. *Proportionally Grade and Penalize*

The provision will further promote deterrence by properly grading and penalizing the crime. Criminal mischief statutes generally

for protection, *see supra* note 187, but have the advantage, in the author’s opinion, of avoiding the distinction between “major” and protectable artworks and “lesser” and unprotectable artworks.

²³⁹ *See supra* note 27 and accompanying text.

²⁴⁰ *See supra* note 27. States may choose to narrow the definition explicitly to museums. As formulated, the definition also applies to public works of art installed under the auspices of a not-for-profit art institution. To further clarify this purpose, the words “commissioned by” may also be added.

Although this Note discusses only art vandalism in museums, the vandalism of public art is a closely related issue. *See supra* note 28. Artworks are indeed vandalized outside the museum context, such as in public spaces and in private homes. *See GAMBONI, supra* note 9, at 287-92. Adoption of the “recognized stature” standard—withstanding its limitations, *see supra* note 235—can extend protection against vandalism to publicly valued artworks not owned or exhibited in museums. Legislatures could also consider adopting language, as does the federal art theft statute, that defines “objects of cultural heritage” according to their financial value or their value in combination with their age. 18 U.S.C. § 668(a)(2) (2006) (limiting protection to objects worth at least \$100,000 or, if over 100 years old, worth at least \$5,000). Once a legislature determines that destruction of an artwork of public value warrants legal recognition for the harm to both property and collective interests, extending this protection beyond institutional walls would only be logical.

²⁴¹ As to the proposed definition’s flexibility, *see supra* note 240.

²⁴² *See supra* notes 118-119, 124 and accompanying text.

²⁴³ *See supra* note 236. For examples of judicial misapprehension of art vandalism, *see supra* note 73 and accompanying text.

grade the crime's severity and assign sentences according to financial loss,²⁴⁴ which is measured by either the cost of damage or diminution in the property's value.²⁴⁵ Three changes to the grading process will lead to more proportional punishment of art vandalism. First, to accurately account for the damage caused to a work of art, the valuation must combine restoration costs with the loss of market value.²⁴⁶ Accordingly, a provision that amends a criminal mischief statute to address art vandalism must specify that applying both forms of valuation is appropriate when measuring damage to a work of art.²⁴⁷ Second, the provision must also account for the non-monetary losses exacted by art vandalism.²⁴⁸ To do so, the provision can enhance the crime's severity by one degree regardless of the amount of pecuniary loss.²⁴⁹ The final and most drastic recommendation is for states to either revise their grading structures or create a new category of "grand criminal mischief." Currently, most states' criminal mischief statutes do not recognize loss above \$5000.²⁵⁰ Given the high market value of museum artworks, damage caused by art vandalism will far surpass most states' highest grading level, especially in light of the two previous recommendations.²⁵¹

To address art vandalism and discourage the crime, criminal mischief statutes should be amended with a provision that reflects these recommendations. Without these changes, the severity of art vandalism, as existing statutes measure it, goes unaccounted for, which impairs the law's deterrent effect.²⁵² For example, spray painting a Picasso masterpiece affords a vandal far more notoriety and risks a loss of far greater magnitude than if the vandal instead spray painted a wall.²⁵³ An

²⁴⁴ See *supra* notes 150-151 and accompanying text.

²⁴⁵ See *supra* notes 161-163 and accompanying text.

²⁴⁶ See *supra* notes 168-171 and accompanying text.

²⁴⁷ It is assumed that the valuation will be governed by reasonableness and that this valuation will be applied when appropriate. See *supra* note 163 and accompanying text.

²⁴⁸ See *supra* notes 7-11, 169 & 172 and accompanying text.

²⁴⁹ Some criminal mischief statutes employ a similar mechanism for the protection of different types of property. See, e.g., *supra* note 177.

²⁵⁰ See *supra* text accompanying note 152.

²⁵¹ See *supra* text accompanying note 166 and *supra* note 171. For instance, the museum guard's permanent defacement of the Pop Art painting (*see supra* note 4 and accompanying text) reportedly depreciated the painting's value by \$1.5 million. See *supra* note 171. Yet the crime could be graded only as if the damage had merely exceeded \$1500. See N.Y. PENAL LAW § 145.10 (McKinney 2009). Whereas the sentence of up to seven years imprisonment for this charge might be considered harsh, this is the same punishment contemplated for vandalism to property without public value. See N.Y. PENAL LAW §§ 70.00(2)(d), 145.10 (McKinney 2009). Ultimately, the guard pled guilty to a lesser charge and was sentenced to three years probation. See *supra* note 22. For a discussion of plea bargaining in respect to desert, see ROBINSON & CAHILL, *supra* note 228, at 80-82.

²⁵² John E. Conklin goes further to say that "lenient treatment that fails to recognize the sociocultural significance of art will not deter vandals and may actually encourage acts of destruction by communicating to the general population that art vandalism is a trivial offense." CONKLIN, *supra* note 9, at 276.

²⁵³ See *supra* note 1 and accompanying text. Professor Ann Althouse mentioned this example in conversation with the author to highlight the difference in symbolic meaning between writing on a wall and writing on a painting.

attack on an artwork should accordingly carry greater penal consequences.²⁵⁴ This is especially true because some art vandals consider the crime's relatively light penalty when planning their attacks.²⁵⁵ As discussed, tactical and expressive art vandals make a series of choices in planning and committing their crimes.²⁵⁶ They seek publicity and a forum for their message.²⁵⁷ Art vandals make deliberate choices and the risk of appropriate and proportional sentences can make attacking an artwork a less palatable strategy. In sum, the suggested amendments to criminal mischief statutes, while modest for a property crime of such magnitude, can establish legal recognition of art vandalism that will guide enforcement, discourage the crime by applying just penalties, and encourage more reporting of its occurrence.

V. CONCLUSION

The modesty of this proposal is dictated by the lack of information currently available about art vandalism. The proposal represents the minimum states should do to protect publicly valued works of art. As more becomes known about art vandalism, states might determine that greater control is warranted and develop measures to encourage prevention and, when necessary, greater enforcement of the crime.²⁵⁸ The result of more study of art vandalism might also justify a

²⁵⁴ In this instance, the painting was easily restored and suffered no permanent damage, therefore the crime could have been charged at the same degree as defacing a wall. *See Kaufman, supra* note 1.

²⁵⁵ *See GAMBONI, supra* note 9, at 198-99 (recounting that a man who nearly destroyed a Rubens painting with acid "had envisaged . . . attracting attention to his ideas, such as committing suicide or colouring the Bodensee [River], before he had arrived at the idea of destroying 'some famous picture' and verified that it could not cost him more than three years of jail"); *see also* Andrew Ashworth, *Sentencing Aims, Principles, and Policies*, in FOUNDATIONS OF CRIMINAL LAW 333, 336 (Leo Katz et al. eds., 1999) (noting that deterrent theory assumes "rational beings, who will adjust their conduct according to the disincentives provided by sentencing law" and that research has suggested that "general deterrence is more likely to be effective for planned . . . than for impulsive crimes"). On a historical note, the judge who sentenced the suffragette Mary Richardson (*see supra* text accompanying note 95) commented that her "sentence [was] thoroughly inadequate for such a crime" and due to a "'queer anomaly of English law'" had she smashed a window instead of a major work of art the penalty could have been three times as severe. GAMBONI, *supra* note 9, at 96; Fine & Shatin, *supra* note 9, at 146 (citations omitted).

²⁵⁶ *See supra* notes 117-126 and accompanying text.

²⁵⁷ *See supra* notes 106-109 and accompanying text. Encouraging productive speech and discouraging acts that destroy speech also comports with the First Amendment's utilitarian principles. *See Strahilevitz, supra* note 68, at 827-28 ("Tearing down or obliterating a statue sends a powerful message that the destroyer disagrees with the symbolic expression manifested in the work. But the destructive act is unlikely to contribute to a healthy public discourse . . . If the First Amendment is about the nation's commitment to producing a public debate that is 'uninhibited, robust, and wide-open,' then the law might well view the symbolic destruction of irreplaceable property as low-value speech that can be restricted in order to facilitate the success of a deliberative process.") (citations omitted).

²⁵⁸ For instance, the art historian Dario Gamboni believes that education is needed to address art vandalism: "What is needed . . . is more information, education and enlightenment about art. That is the only way to overcome incomprehension and diminish the 'aggressive potential' of art

uniform federal solution to protect the national interest in works of art that embody public value regardless of the jurisdiction.²⁵⁹

Notwithstanding its proposal, this Note has the additional purpose of prompting more awareness and study of art vandalism. The legal field, including art law, has been curiously silent on the subject.²⁶⁰ Other fields have shown the rich philosophical, historical, sociological, and psychological meanings at play in intentional attacks on works of art.²⁶¹ Study of the behavior illuminates the nature of art's status in society and of people's encounters with art.²⁶² These insights aside, art vandalism is not merely theoretical. It is a property crime that threatens and often ruins objects society chooses to cherish. Law, as the arbiter of relational rights and duties, has much to say and do about such violence against art.

Without more study, much will remain unknown about art vandalism. Without changes to laws, the crime will remain undeterred. Financially motivated art crimes, such as theft and fraud, are more pervasive than vandalism and accordingly demand greater attention and concern.²⁶³ When art vandalism occurs, however, its consequences can be far more devastating than misappropriation or misrepresentation because the effects of physical attacks are often irreversible. In the absence of effective laws, museums alone bear responsibility for both preventing and controlling vandalistic attacks on artworks they exhibit. It is no wonder, then, that museums underreport vandalism's occurrence, deflect responsibility for it, and downplay vulnerability to the serious attacks.²⁶⁴ While museum security can be bolstered by public funding,²⁶⁵ museums and other caretakers of cultural property cannot prevent art vandalism.

that many people feel and to which they react with 'counter-aggression' by attacking or destroying the art." Dornberg, *supra* note 33, at 108-09 (internal quotation marks omitted).

²⁵⁹ Some commentators have proposed establishing a national registry of significant works of art as a means for their protection. *See, e.g.*, Robinson, *supra* note 14, at 1971-75; Wilkes, *supra* note 13, at 177, 205-09.

²⁶⁰ None of the major art law reference books discuss art vandalism. *See supra* note 15.

²⁶¹ *See supra* note 15.

²⁶² The art historian Dario Gamboni observes that "research into the causes and motivations of art vandalism . . . raise[] profound questions about art itself, about what art is, what it purports to be, and the complex relationships linking artists, their work and the public." Dornberg, *supra* note 33, at 106 (internal quotation marks omitted).

²⁶³ Interview with senior underwriter of leading fine arts insurance company (Jan. 15, 2008). Theft and fraud, unlike vandalism, are thoroughly addressed by the major art law reference books. *See generally* DARRABY, *supra* note 15; LERNER & BRESLER, *supra* note 15; MERRYMAN ET AL., *supra* note 15.

²⁶⁴ Traditionally, cultural institutions have also downplayed the theft of objects from their collections. Steve Twomey, *To Catch a Thief*, SMITHSONIAN, Apr. 2008, at 88, 90 ("Traditionally, the custodians of heritage have been leery of making too much fuss over thefts. After all, the filching of a historical treasure from a restricted and guarded room is embarrassing, and an admission of breached security could hurt funding or discourage potential donors from bequeathing their prized collections."). "But a string of recent high-value crimes has led" some institutions "to greater frankness about the threat" and keeping quiet about the crime, has been characterized as "sleeping with the enemy." *Id.*

²⁶⁵ *See supra* note 226.

Their institutional missions require that they benefit the public with access to art, and this benefit undeniably puts artworks at risk. In the calculus of this risk to culturally significant works of art, law can and should lessen the odds.

M.J. Williams[†]

[†] J.D. Candidate, Brooklyn Law School, 2009; A.B., University of Michigan, 1986. The author wishes to thank Professors Ann Althouse, Michael T. Cahill, Beryl R. Jones-Woodin, Minor Myers, and Robert M. Pitler for their helpful advice, comments, and encouragement. She also is thankful for the dedication and camaraderie of the *Brooklyn Law Review*'s editors and staff, in particular Shawn Thomas. Finally, the author is ever grateful for her family's patience, love, and support.

APPENDIX: PRESS REPORTS OF VANDALIZED ARTWORKS IN PUBLIC ART INSTITUTIONS, 1977-2007²⁶⁶

- 1977 Twenty-three paintings (including three paintings by Rembrandt Van Rijn, and paintings by Peter Paul Rubens, Cranach, Paul Klee, and Thomas Herbst); art institutions in seven German cities; damaged with sulfuric acid.²⁶⁷
- Untitled* (1966-74), Jo Baer; Oxford Museum of Modern Art, Oxford, England; damaged with lipstick.²⁶⁸
- 1978 *The Adoration of the Golden Calf* (1635), Nicolas Poussin; National Gallery, London, England; damaged from knife slashes and torn by hand.²⁶⁹
- Self-Portrait with a Grey Hat* (1887), Vincent van Gogh; Van Gogh Museum, Amsterdam, Holland; damaged from knife slashes.²⁷⁰
- 1979 *The Potato Eaters* (1885), Vincent van Gogh; Van Gogh Museum, Amsterdam, Holland; damaged from eight-inch scratch from a key.²⁷¹
- 1981 *Diana, Princess of Wales* (1981), Bryan Organ; National Portrait Gallery, London, England; damaged from knife slashes.²⁷²

²⁶⁶ This list is by no means complete. It includes only those incidents reported in newspapers and magazines, as noted. *See also* Cordess & Turcan, *supra* note 7, at 101 (supplying an appendix without citations of “Well-Known Art Works Attacked, with Location and Year of Attack,” which includes five incidents between 1977 and 1991 that are not included in this Appendix).

²⁶⁷ Dornberg, *supra* note 33, at 103 (stating incorrect date of attack); *3 Durer Masterpieces Vandalized with Acid*, N.Y. TIMES, Apr. 22, 1988, at C28.

²⁶⁸ GAMBONI, *supra* note 9, at 192 (discussing vandalism to painting); E-mail from Jo Baer to author (Aug. 30, 2008, 08:48 GMT) (on file with author) (providing painting’s title and year).

²⁶⁹ *Poussin Painting Slashed in Gallery*, GLOBE & MAIL, Apr. 4, 1978, at 12.

²⁷⁰ *Dutch Artist Slashes Van Gogh Painting* (World News Briefs), N.Y. TIMES, Apr. 26, 1978, at A7. The painting is in the collection of the Van Gogh Museum, which identifies it as *Self-Portrait with a Felt Hat*. Van Gogh Museum, <http://www3.vangoghmuseum.nl/vgm/index.jsp?page=1957&collection=1285&lang=en> (last visited July 19, 2008).

²⁷¹ *Van Gogh Wrecker Sentenced to Jail*, GLOBE & MAIL, Nov. 28, 1979, at 15 (reporting on vandalism to the painting); Van Gogh Museum, <http://www3.vangoghmuseum.nl/vgm/index.jsp?page=1303&lang=en> (last visited July 19, 2008) (providing the year for the painting).

²⁷² *Student Slashes Portrait of Princess of Wales*, N.Y. TIMES, Aug. 30, 1981, at 5.

- 1982 *Who's Afraid of Red, Yellow and Blue? IV* (1969-70), Barnett Newman; New National Gallery, Berlin, Germany; damaged by physical assault and with strikes from a plastic bar.²⁷³
- 1983 17th-century painting; Ducal Palace, Venice, Italy; damaged from knife slashes and torn by hand.²⁷⁴
Number 17 C (1947), *Multiform* (1949), *Number 8*, (1949), and two untitled paintings (1949), Mark Rothko; San Francisco Museum of Modern Art, San Francisco, California, United States; damaged by scratches.²⁷⁵
- 1984 *Rosa Zeiten* (1978), Salomé and *Wirtschaftswerte* (1980), Josef Beuys; Düsseldorf, Germany; damaged with spray paint.²⁷⁶
Saint Peter (late 14th-early 15th c.) and *The Virgin Enthroned Among the Saints* (late 14th-early 15th c.), Taddeo di Bartolo, six additional unidentified 15th-17th-century paintings; National Gallery, Umbria, Italy; damaged by scratches and with pierced holes.²⁷⁷
Le Jardin (1936), Pierre Bonnard; Dallas Museum of Art, Dallas, Texas, United States; damaged by twelve-inch gash.²⁷⁸
Judson Smith (1926), Andrew Dasburg; Dallas Museum of Art, Dallas, Texas, United States; damaged with pierced holes.²⁷⁹

²⁷³ GAMBONI, *supra* note 9, at 207; Dornberg, *supra* note 33, at 103.

²⁷⁴ *Tourist Rips Painting*, N.Y. TIMES, Feb. 11, 1983, at C25; Artner, *supra* note 9; *Iconoclasts, Art Vandalism is an Expression*, CHI. TRIB., Oct. 14, 2007, at C15.

²⁷⁵ *Rothko Paintings Vandalized*, N.Y. TIMES, May 14, 1983, at 14.

²⁷⁶ MARK ROSENTHAL, JOSEPH BEUYS: ACTIONS, VITRINES, ENVIRONMENTS 82 (2004) (providing year of Beuys' installation); Dornberg, *supra* note 33, at 102; E-mail from Salomé W. Cihlarz, the artist, to author (July 20, 2008, 03:25 am EST) (on file with author) (providing original title and year for *Rosa Zeiten* and reporting on vandalism to Josef Beuys' installation).

²⁷⁷ SIBILLA SYMEONIDES, TADDEO DI BARTOLO 31, 85, 129 (1965) (providing period of artist's activity); *Italian Paintings Damaged in Gallery*, GLOBE & MAIL, Sept. 4, 1984, at M7 (reporting on vandalism to paintings).

²⁷⁸ *Bonnard Is Damaged At Dallas Art Museum*, N.Y. TIMES, Oct. 5, 1984, at C24; *Painting Damaged in Dallas Museum*, GLOBE & MAIL, Oct. 26, 1984, at E11.

²⁷⁹ *Id.* (reporting on vandalism to painting); VAN DEREN COKE, ANDREW DASBURG 46 (1979) (providing year of painting).

- 1985 *Danaë* (1636), Rembrandt van Rijn; State Hermitage Museum, St. Petersburg, Russia; damaged from knife slashes and with sulfuric acid.²⁸⁰
- King Philip IV of Spain* (1628), Peter Paul Rubens; Kunsthaus Museum, Zurich, Switzerland; destroyed by arson.²⁸¹
- 1986 *Who's Afraid of Red, Yellow and Blue III* (1967-8), Barnett Newman; Stedelijk Museum, Amsterdam, Holland; damaged from knife slashes.²⁸²
- 1987 *The Virgin and Child with St. Anne and the Infant St. John* (1500), Leonardo da Vinci; National Gallery, London, England; damaged from splintered glass following gun shot.²⁸³
- 1988 Eleven 19th-century American paintings (*A Portrait of George Clinton*, Ezra Ames; *The Bear Dance*, William Holbrook Beard; *Pilgrims Going to Church*, George Henry Boughton; *Pocahontas Saving the Life of Captain John Smith*, John Gadsby Chapman; *Interior of George Haywood's Porter House, New York City*, Edmund D. Hawthorne; *Bowling Green, New York City*, David Johnson; *Santa Claus*, Robert Walter Weir; *Sailing on Great South Bay*, Junius Brutus Stearns; *The Parting Guests*, Woodworth Thompson; *John S. Kennedy*, Seymour J. Guy; *Alfred van Santvoord*, Eastman Johnson); New York Historical Society, New York, New York, United States; damaged from slashes with sharp instrument.²⁸⁴
- Mary as Grieving Mother* (1496), *Paumgartner Altar* (16th century), *Mourning of Christ* (1504), Albrecht Dürer; Alte Pinakothek Museum, Munich, Germany; damaged with sulfuric acid.²⁸⁵

²⁸⁰ Talley, *Rembrandt*, *supra* note 79, at 86.

²⁸¹ *Rubens Work is Burned*, N.Y. TIMES, June 14, 1985, at C27.

²⁸² GAMBONI, *supra* note 9, at 211; Vogel, *supra* note 71, at E1.

²⁸³ *Mental Tests Suspect in Marring of Leonardo*, N.Y. TIMES, July 21, 1987, at C17; Brandon Taylor, *Picking Up the Pieces*, ARTNEWS, Feb. 1989, at 43.

²⁸⁴ *Eleven Paintings Are Slashed at New-York Society*, N.Y. TIMES, May 3, 1988, at C16.

²⁸⁵ *Three Durer Masterpieces Vandalized with Acid*, N.Y. TIMES, Apr. 22, 1988, at C28.

- 1989 Ten 17th-century Dutch paintings (*The Eavesdropper* (1657), *Portrait of Jacob de Wit* (1657), *Children in a Landscape* (1674), *Self-Portrait* (c. 1685), Nicolaes Maes; *Couple in a Landscape* (c. 1648), *Venus, Paris, and Amor* (1656), Ferdinand Bols; *St. Anna Praying* (1643), Jan Victor; *Portrait of Adriaen Braets* (1664) and *Portrait of Maria van de Braeff* (1664), Jacobus Leveck; *Conversion of St. Paul* (c. 1650), Albert Cuyp); Dordrechts Museum, Dordrechts, Holland; damaged from knife slashes.²⁸⁶
- Network of Stoppages* (1914), Marcel Duchamp; Museum of Modern Art, New York, New York, United States; damaged from a six-inch gash with a sharp instrument.²⁸⁷
- 1990 *La Madonna Del Gatto*, Federico Baroccio (before 1577); National Gallery, London, England; damaged from nine knife slashes.²⁸⁸
- The Night Watch* (1642), Rembrandt van Rijn; Rijksmuseum, Amsterdam, Holland; damaged with chemical solution.²⁸⁹
- Six paintings (including *Still Life with Brioche* (1880), Edouard Manet; *Road at Wargmonte* (1879), Pierre-Auguste Renoir; *Self Portrait* (1865-66), Frederic Bazille); Nelson-Atkins Museum, Kansas City, Missouri, United States; damaged with sharp object.²⁹⁰

²⁸⁶ Talley, *Dutch Disaster*, *supra* note 8, at 60-61.

²⁸⁷ *Painting Slashed at Modern*, N.Y. TIMES, Jan. 16, 1990, at C13.

²⁸⁸ *Man Slashes 16th-Century Art*, TORONTO STAR, Jan. 11, 1990, at A13; *Art Vandalism Trial*, TIMES, Feb. 9, 1990.

²⁸⁹ *Museum Visitor Damages a Rembrandt*, N.Y. TIMES, Apr. 7, 1990, at 13 (reporting on the vandalism of the painting); Rijksmuseum, http://www.rijksmuseum.nl/aria/aria_assets/SK-C-5?lang=en (last visited July 19, 2008) (providing year for the painting).

²⁹⁰ MARC S. GERSTEIN, IMPRESSIONISM: SELECTIONS FROM FIVE AMERICAN MUSEUMS, 166-67 (1989) (providing correct artist and year for *Road at Wargmonte*); *Six Paintings in Exhibit Are Damaged*, CHI. TRIB., June 17, 1990, at C4 (reporting on vandalism); Art Institute of Chicago, <http://www.artic.edu/aic/collections/artwork/110661> (last visited Oct. 30, 2008) (providing the year for *Self Portrait*); Carnegie Museum of Art, <http://www.cmoa.org/searchcollections/details.aspx?item=1025372> (last visited Oct. 30, 2008) (providing the year for *Still Life with Brioche*).

- 1991 *David* (1501-04), Michelangelo Buonarrati; Galleria dell'Accademia Museum, Florence, Italy; damaged with hammer.²⁹¹
- 1993 Thirty-three paintings (including the destroyed *Birth of Christ*, Gerrit van Honthorst; *Buonadventura* and *Ciclo Viti*, Barolommeo Manfredi) and three sculptures; Uffizi Gallery, Florence, Italy; three paintings destroyed and thirty paintings and three sculptures damaged from bomb explosion.²⁹²
- Curtains* (1962), Roy Lichtenstein; Whitney Museum of American Art, New York, New York, United States; damaged with ink.²⁹³
- 1994 *Away from the Flock* (1994), Damien Hirst; Serpentine Gallery, London, England; damaged with ink.²⁹⁴
- 1996 *The Harbor at Le Havre* (1905-06), Raoul Dufy; Art Gallery of Ontario, Ontario, Canada; defaced with vomit.²⁹⁵
- Composition in White, Black and Red* (1936), Piet Mondrian; Museum of Modern Art, New York, New York, United States; defaced with vomit.²⁹⁶
- 1997 *White Cross on Gray (Suprematisme)* (1920-27), Kazimir Malevich; Stedelijk Museum, Amsterdam, Holland; damaged with spray paint.²⁹⁷
- Cathedra* (1951), Barnett Newman; Stedelijk Museum, Amsterdam, Holland; damaged from seven knife slashes.²⁹⁸
- 1998 Two busts of Christopher Columbus and Amerigo Vespucci (c. 1815), Giuseppe Ceracchi; White

²⁹¹ Alan Cowell, *Michelangelo's David is Damaged*, N.Y. TIMES, Sept. 15, 1991, at 3.

²⁹² Hughes, *supra* note 101, at 34; Muchnic, *supra* note 79, at 6F.

²⁹³ Vogel, *supra* note 4, at C23.

²⁹⁴ Kastner, *supra* note 7, at 154.

²⁹⁵ *Id.* at 155; DePalma, *supra* note 5.

²⁹⁶ *Id.*

²⁹⁷ John O'Mahony, *Restoration and Devastation: John O'Mahony on the 1998 Cultural Scene in Eastern Europe*, FIN. TIMES (London), Jan. 6, 1998, at 13; Art Crime, <http://www.artcrimes.net/pages/malevich.html> (last visited Aug. 26, 2008).

²⁹⁸ Vogel, *supra* note 71, at E1.

House, Washington, District of Columbia, United States; defaced with spray paint.²⁹⁹

The Icebergs (1861), Frederic Church; *Lighthouse Hill* (1927), Edward Hopper; Dallas Art Museum, Dallas, Texas, United States; damaged from lengthy scratches with sharp instrument.³⁰⁰

Zora Standing (1912), *Pianist and Checkers Players* (1924), *The Oriental (L'Asiatique)* (1939), Henri Matisse; Capitoline Art Museum, Rome, Italy; damaged with ink.³⁰¹

Self Portrait at the Age of 63 (1669), Rembrandt van Rijn, National Gallery, London, England; defaced with paint.³⁰²

1999 *Sentieri Ondulanti* (Watery Paths) (1947), Jackson Pollack; National Gallery of Modern Art, Rome, Italy; defaced with ink.³⁰³

Nude in Front of the Garden (1956), Pablo Picasso; Stedelijk Museum, Amsterdam, Holland; damaged from large hole with blunt knife.³⁰⁴

The Holy Virgin Mary (1996), Chris Ofili; Brooklyn Museum of Art, Brooklyn, New York, United States; defaced with paint.³⁰⁵

²⁹⁹ Maria Elena Fernandez, *Tourist at White House Defaces Two Sculptures with Spray Paint*, WASH. POST, Jan. 14, 1998, at B1.

³⁰⁰ *Three Paintings Vandalized at Dallas Museum of Art*, CHI. TRIB., Mar. 18, 1998, at C2 (reporting on vandalism); Dallas Museum of Art, http://dallasmuseumofart.org/Dallas_Museum_of_Art/View/Collections/American/index.htm (last visited Oct. 31, 2008) (providing the years for the two paintings).

³⁰¹ Nick Allen, *Hermitage Art Vandalized in Rome*, MOSCOW TIMES, Feb. 6, 1998; National Gallery of Art, <http://www.nga.gov/cgi-bin/pinfo?Object=65246+0+none> (last visited Nov. 14, 2008) (providing the year and more commonly-used title for *Pianist and Checkers Players*); *id.*, http://www.nga.gov/cgi-bin/tinfo_f?object=72329 (last visited Nov. 14, 2008) (providing the year and more commonly-used title for *The Oriental (L'Asiatique)*); see also Alessandra Stanley, *Art Thieves in Rome Take 2 Van Goghs and a Cezanne*, N.Y. TIMES, May 21, 1998, at A3.

³⁰² Jason Bennetto, *Man Squirts Yellow Paint on National Gallery Rembrandt*, INDEP. (London), Aug. 6, 1998, at 5 (reporting on the defacement of the painting); Nat'l Gallery, <http://www.nationalgallery.org.uk/cgi-bin/WebObjects.dll/CollectionPublisher.woa/wa/work?workNumber=NG221> (last visited Oct. 31, 2008) (providing the year for the painting).

³⁰³ *Italian Art Vandal Strikes Again, This Time It's a Pollock Painting*, GLOBE & MAIL (CANADA), Jan. 27, 1999, at C5.

³⁰⁴ Marlise Simons, *A Picasso is Severely Slashed By a Dutch Mental Patient*, N.Y. TIMES, May 18, 1999, at E1.

³⁰⁵ Robert D. McFadden, *Disputed Madonna Painting in Brooklyn Show Is Defaced*, N.Y. TIMES, Dec. 17, 1999, at A1. Art Crimes, <http://www.artcrimes.net/holy-virgin-mary> (last visited Jan. 12, 2009) (providing image of and year for the painting).

- 2001 Two paintings (including *Rocky Landscape* (c. 1783), Thomas Gainsborough); Brooks Museum of Art, Memphis, Tennessee, United States; damaged from three-centimeter scrape.³⁰⁶
- 2002 *Marble Lady* (2002), Neil Simmons; Guildhall Art Gallery, London, England; damaged from strikes with a cricket bat and metal pole.³⁰⁷
- 2003 *Washington Crossing the Delaware* (1851), Emanuel Gottlieb Leutze; Metropolitan Museum of Art, New York, New York, United States; defaced with photograph adhered with glue.³⁰⁸
- Insult to Injury* (2003), Jake and Dinos Chapman; Modern Art Oxford, Oxford, England; damaged with paint.³⁰⁹
- 2005-2007 Thirty-five attacks (not itemized); Smithsonian museums, Washington, District of Columbia, United States.³¹⁰
- 2005 *Nude in Mirror* (1994), Roy Lichtenstein; Kunsthaus Bregenz, Vienna, Austria; damaged from four twelve-inch knife slashes.³¹¹
- 2006 *Fountain* (1917), Marcel Duchamp; Centre Pompidou, Paris, France; damaged with hammer.³¹²
- Durga* (1964) and *Draupadi* (c. 1960-70s), Maqbool Fida Husain; Asia House, London, England; damaged with spray paint.³¹³

³⁰⁶ SCOTTISH TREASURES: MASTERPIECES FROM THE NATIONAL GALLERY OF SCOTLAND 100 (2001) (providing year for the Gainsborough painting); Frank O'Donnell, *On-Loan Masterpiece Hit by Vandals*, SCOTSMAN, Apr. 9, 2001, at 5.

³⁰⁷ Gysin, *supra* note 73, at 20.

³⁰⁸ Kerry Burke & Alice McQuillan, *Bizarre 9/11 Twist to Vandal's Deed*, N.Y. DAILY NEWS, Jan. 24, 2003, at 5.

³⁰⁹ "Comedy Terrorist" Barschak Jailed for Paint Attack, HERALD (Glasgow), Nov. 25, 2003, at 8; William Underhill, *Going Over Goya*, ARTNEWS, June 2003, at 50 (providing year of artists' work).

³¹⁰ James V. Grimaldi, *GAO Faults Smithsonian Upkeep and Security; Leaks and Vandalism Threaten Collections*, WASH. POST, Sept. 29, 2007, at A-1; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1127, SMITHSONIAN INSTITUTION: FUNDING CHALLENGES AFFECT FACILITIES' CONDITION AND SECURITY, ENDANGERING COLLECTIONS 33 (2007), available at <http://www.gao.gov/new.items/d071127.pdf>.

³¹¹ MARY LEE CORLETT, THE PRINTS OF ROY LICHTENSTEIN: A CATALOGUE RAISONNÉ 1948-1997 263 (2002) (providing year of *Nude* series); *Museum Visitor Cuts Lichtenstein Painting*, CHI. TRIB., Sept. 5, 2005, at 14.

³¹² Riding, *supra* note 75.

- Celebration of Peace at Münster* (1648), Bartholomeus vand der Helst; Reischmuseum, Amsterdam, Holland; damaged with sulfuric acid.³¹⁴
- 2007 *The Triumph of David* (1640), Ottavio Vannini; Milwaukee Museum of Art, Milwaukee, Wisconsin, United States; damaged from large hole from physical assault.³¹⁵
- Phaedrus* (1977), Cy Twombly; Collection Lambert, Museum of Contemporary Art, Avignon, France; damaged from lipstick stain.³¹⁶
- Samuel Johnson* (c. 1772-78), Sir Joshua Reynolds; National Gallery of Art, London, England; damaged from shredding from hammer strikes to protective glass.³¹⁷
- Seven photographs from *A History of Sex* (1997), Andres Serrano; Kulturen Gallery, Lund, Sweden; destroyed with crowbars and axes.³¹⁸
- Le Pont D'Argenteuil* (1874), Claude Monet; Musée D'Orsay, Paris, France; damaged from four-inch hole from physical assault.³¹⁹

³¹³ Amit Roy, *Vandals Close Exhibition*, DAILY TELEGRAPH (London), May 29, 2006, at 8; Ajay Prakash, *London Gallery Closes M.F. Husain Exhibition After Paintings Are Vandalised*, World Socialist Web Site, <http://www.wsws.org/articles/2006/jul2006/husa-j03.shtml> (last visited July 19, 2008) (identifying the titles of the vandalized paintings); see also Press Release, Asia House, First Solo Exhibition in London: M.F. Husain: Early Masterpieces 1950s-70s (May 2006), <http://www.asiahouse.org/net/documents/ah10027.pdf> (last visited July 19, 2008) (providing the year for *Durga*).

³¹⁴ Mittelacher, *supra* note 2, at S13.

³¹⁵ *Ill Man Damages Museum Painting*, CAP. TIMES (Madison, Wis.), Apr. 5, 2007, at A10.

³¹⁶ *Kiss Is Just a Kiss, Not a Cy*, CHIC. TRIB., Oct. 10, 2007, at C10 (reporting on the vandalism to the painting); Susan Bell, *One is Art, One is Vandalism—But Which is Which?*, SCOTSMAN, Oct. 10, 2007, <http://news.scotsman.com/international.cfm?id=1617642007> (last visited Nov. 2, 2007) (providing image of the lipstick-stained painting); see also Press Release, Collection Lambert, I Don't Kiss, http://www.collectionlambert.net/jembrassepas/presse/Press_release.pdf (last visited July 19, 2008) (providing the year of the painting and discussing the exhibition *J'embrasse Pas*, which was organized in response to the vandalism of Twombly's work).

³¹⁷ Lee Glendinning, *Vandal Admits Hammer Attack on Portrait Worth £1.7m*, GUARDIAN, Aug. 11, 2007, at 10.

³¹⁸ Vogel, *supra* note 103, at E1.

³¹⁹ James Kanter, *Vandal Punches Hole in a Monet in Paris*, N.Y. TIMES, Oct. 8, 2007, at A8.