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Between Semiotic Democracy and Disobedience: Two views of Branding, Culture and Intellectual Property

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☞ Brand names; Civil disobedience; Culture; Democracy; Intellectual property

Nearly 20 years ago, a prominent media studies professor, John Fiske, coined the term “semiotic democracy” to describe a world where audiences freely and widely engage in the use of cultural symbols in response to the forces of media.¹ A semiotic democracy enables the audience, to a varying degree, to “resist”, “subvert” and “recode” certain cultural symbols to express meanings that are different from the ones intended by their creators, thereby empowering consumers, rather than producers.² At the time, Fiske’s concept was revolutionary; it promised a complete reversal of the monopolistic hierarchy of the author and the presumed passivity of the audience in receiving meaning. The term “semiotic democracy” offered an interesting juxtaposition of ideals—political liberty, freedom of expression and creation—alongside a basic disruption of the common assumptions that inhere in authorial control.

Although Fiske originally referenced the audience’s power in viewing and interpreting television narratives, today, his vision of semiotic democracy has become perhaps the single most important ideal cited by scholars who imagine a utopian relationship between law, technology and democratic culture. Within a semiotic democracy, individuals can become both producers *and* creators, able to reinscribe and recode existing representations, thereby expanding the rich cultural fabric of our nation. Instead of relegating the audience to passive spectatorship, a semiotic democracy would empower individuals to add to the rich and expansive cultural fabric of a *true* public domain, where everyone participates equally in the ongoing process of cultural production.³

Today, the term has become as ubiquitous as it is utopian, permeating commentaries on the relationship between intellectual property and freedom of expression. Typically, scholars who embrace this ideal note that the grand and sweeping vision offered by semiotic democracy profoundly conflicts with the central precepts of exclusive ownership, which has traditionally enabled authors to direct and dictate a wide degree of control over an original image or text. Lawrence Lessig, for example, has claimed that a semiotic democracy must be nurtured, protected and secluded from the authorial control of intellectual property ownership.⁴ Terry Fisher, echoing this view, has explained semiotic democracy as a corollary of political democracy: if “political democracy” describes a system in which individual citizens are able to participate in the exercise of political power, then “semiotic democracy” describes a system in which individual citizens are able to participate in the creation of cultural meaning.⁵

* Parts of this article have been adapted from two previous articles: “Semiotic Disobedience” (2006) 84 Wash. U. L. Rev. 489 and “Stealth Marketing and Antibranding: The Love that Dare Not Speak Its Name” (2010) 58 Buff. L. Rev. 795.

¹ John Fiske, *Television Culture* (London: Routledge, 1999), p.239.

² Michael Madow, “Private Ownership of Public Image: Popular Culture and Publicity Rights” (1993) 81 Cal. L. Rev. 125, 139.

³ William W. Fisher III, *Promises to Keep: Technology, Law, and the Future of Entertainment* (2004); William W. Fisher III, “Property and Contract on the Internet” (1998) 73 Chi.-Kent L. Rev. 1203, 1217–1218.

⁴ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin Books, 2004).

⁵ “Scott Rosenberg’s Links & Comment”, available at http://open.salon.com/blog/scott_rosenberg [Accessed November 30, 2012].

Although Fiske's vision is both brilliant and indelibly important, it is also somewhat incomplete. In this article, I seek to introduce another framework to supplement Fiske's important metaphor—the phenomenon of “semiotic disobedience”—and explore how it differs from the contemporary account of semiotic democracy. Three contemporary cultural moments in the world—one corporate, one academic and one artistic—call for a new understanding of the limitations and possibilities of semiotic democracy and underline the need for a supplementary framework.

Now more than ever, the continued production of popular culture rests on the continued presence of corporate sponsorship and branding in many aspects of both public and private life. As public spaces have become converted into vehicles for corporate advertising—ads painted onto sidewalks and into buildings, schools and other public spaces⁶—product placement has soared to new heights of power and subtlety. And throughout, the law has generously offered near-sovereign protection to such symbolism through the ever-expanding vehicle of intellectual property protection. Principles of trademark and copyright ownership have allowed corporations to consecrate their symbols and images, allowing for a particularly robust form of incontestability. Equations between real property and intellectual property are ubiquitous. Underlying these themes is a powerful linkage between intellectual and tangible property: as one expands, so does the other.

In addition to the corporate moment, a second cultural moment has emerged within the legal academy, flowing quite obviously from the first: many scholars have vociferously decried the growing effect of intellectual propertisation on artistic creativity and First Amendment freedoms. The traditional argument goes something like this: because of the expansion of intellectual property, artists and activists have been forced to abandon artistic projects for fear of being sued for infringement.⁷ The specter of property rights has thus ushered in an unprecedented era of self-censorship, where artists, activists and corporate critics are routinely threatened with lawsuits over samplings of imagery or music and are unequivocally silenced as a result. There are undeniable truths to this story: The Chilling Effects Clearinghouse demonstrates the extent to which corporations exert their influence in silencing the criticism and creativity of others.⁸ Through these commentaries, semiotic democracy becomes the cause célèbre of intellectual property theorists, crystallised into an ideal vision of culture's relationship to media and meaning.

Yet at the same time, there is a third facet that is often left out of the picture, involving the increasing response of artists and activists who have chosen to expand their activities past the boundaries of cultural dissent, and into the boundaries towards occupation. The global emergence of the Occupy Wall Street Movement is the most contemporary example of this trend, but it is also deeply linked to a growing, global concern about the influence of corporate branding on civil society. Whereas previous anti-branding social movements focused mostly on parody, satire and other speech-related forms of activism, today, these same social movements have chosen to explore new forms of activism—often occupying the boundaries of tangible property in the balance.

Today, over a year after Occupy Wall Street was launched, commentators are often tempted to dismiss the movement as a momentary outburst, an episode of global convergence between art, occupation and activism that has since passed. However, to do so would vastly oversimplify what the Occupy movement might be able to teach us about the relationship between social movements, branding and the culture of property rights. Since Occupy was largely borne out of the anti-branding movements in the late 1990s, it is also, I would argue, demonstrative of a significant shift in tactics in the worlds surrounding anti-consumerism and globalisation. While there is much to write—and explore—regarding the nature and purpose of the Occupy movement, I want to focus specifically, in this article, on what the Occupy

⁶ Naomi Klein, *No Logo: Taking Aim at the Brand Bullies* (New York: Picador USA, 2000), p.280.

⁷ Marjorie Heins and Tricia Beckles, *Will Fair Use Survive? Free Expression in the Age of Copyright Control* (New York: Brennan Center for Justice, 2005).

⁸ Chilling Effects Clearinghouse, available at <http://www.chillingeffects.org> [Accessed October 28, 2012].

movement can teach us about tactical shifts in global anti-branding activism and the role of intellectual property and culture.

Part of the birth of Occupy Wall Street, I would argue, comes from the growing resistance to the “intellectual propertization” of culture. As much as Occupy Wall Street was about a lack of political representation for the disenfranchised, it was also motivated, in part, by a structural critique of the role of corporate influence on global society. It had its own “brand”, one might argue, but one that was linked to a stalwart kind of visual resistance to the intellectual propertisation of culture. (The movement, for example, refused to trademark the term “Occupy”). Rather than engaging in purely expressive acts, like parody or satirical treatments of branding, Occupy Wall Street seemed to call for a broader kind of political imagination instead, demonstrating a new relationship between intellectual property and culture. For every movement toward enclosure that the law readily facilitated, Occupy seemed to demonstrate the existence of an opposite, underappreciated movement toward liberation from proprietary values—a moment that exposed the need for alternative political economies of activism and information.

Today, we might argue that the appeal of the Occupy movement represents a framework one step beyond semiotic democracy: a framework of semiotic *disobedience*, a world which importantly differs from, and yet remains in, the shadow of semiotic democracy. And yet the difference between these classifications of expression—one legally protected, one less so—both captures and transcends the foundational differences between democracy and disobedience itself.

Of course, disobedience—even of the semiotic variety—is not always universally defensible, morally or legally.⁹ However, to the extent that we are living in a world populated by consumerism and brand dominance, it makes even more sense to study the ways in which members of the public, especially through the lens of the Occupy movement, have responded with their own set of critiques. These critiques are sometimes satirical, deeply expressive and, at times, illegal—but they all offer some powerful insights into the contemporary relationship between property, intellectual property and culture.

These movements also demonstrate an important shift in the language and focus of civil rights—which today focuses even more on the right to information access and the right to expression in the face of digitisation and intellectual property protections. Just as previous discussions of civil disobedience focused on the need to challenge existing laws by using certain types of public and private property for expressive freedoms, today’s generation of activists seek to alter existing intellectual property by interrupting, appropriating and then replacing the passage of information from creator to consumer. In short, the object of attention is the appropriation and occupation of intellectual, tangible or even bodily property.

I call these recent artistic practices examples of “semiotic disobedience” because they often involve the conscious and deliberate re-creation and occupation of property through appropriative and expressive acts that consciously risk violating the law that governs intellectual or tangible property.¹⁰ While Occupy Wall Street might be an example of this trend, it is by no means the only example. However, because of the way in which semiotic disobedience diverges from semiotic democracy, their differences are worth examining for what they suggest about the changing relationship between intellectual property and culture.

The Legacy of Semiotic Democracy

In a piece in the *New York University Law Review*, Jack Balkin quite eloquently explores the relationship between digital culture and democracy, and extols the virtues of a semiotic democracy in the process. “A democratic culture”, Balkin writes, “is the culture of a democratized society; a democratic culture is a

⁹ For more on this point, see generally Eduardo M. Penalver and Sonia Katyal, *Property Outlaws: How Squatters, Pirates and Protesters Improve the Law of Ownership* (Yale: Yale University Press 2010).

¹⁰ Paul Baines, “A Pie in the Face: Culture Jammers Re-Code, Hijack, Subvert, Un-Cool, De-Myth and Reclaim the Cultural Sphere” (2001) *Alternatives J.* 14, 15.

participatory culture”.¹¹ For Balkin, a wide range of forces engage in the process of democratization—“institutions, practices, customs, mannerisms, speech, and dress”—all of which involve forms of social life that empower “ordinary people [to] gain a greater say over the institutions and practices” that govern and shape them. A semiotic democracy is an integral part of this process because it empowers the art of conversation: it enables individuals to fashion productive and protected responses to the forces of culture which shape and constrain them.

By empowering access to these multiple forces, a semiotic democracy inherently reduces the monopolistic power of an author, allowing the audience to respond by utilising the same channels and symbols as an original owner. Digital technology has revealed the interactive and appropriative features of freedom of expression—in this way, it implicates both individual liberty and collective self-governance. Consider Balkin on this point:

“Freedom of speech is appropriative because it draws on existing cultural resources; it builds on cultural materials that lay to hand. Dissenters draw on what they dislike in order to criticize it; artists borrow from previous examples and build on artistic conventions; even casual conversation draws on common topics and expressions . . . In a democratic culture people are free to appropriate elements of culture that lay to hand, criticize them, build upon them, and create something new that is added to the mix of culture and its resources.”¹²

Note, however, that most of Balkin’s observations suggest a culture that appropriates through the copying of information, rather than the subversion of its circulation. As digital technology reduces the costs of copying and distribution, Balkin details, it allows others to modify certain cultural products and illustrates how copying enables annotation, innovation and collage. But Balkin’s examples are limited entirely to the principles of “nonexclusive appropriation”—the idea that any cultural product is open to comment, alteration and innovation so long as it is premised on copying the document first. The end result that is sought is clear: the expansion of First Amendment and fair use principles to support the existence of a semiotic democracy.¹³ Through non-exclusive appropriation, the marketplace of speech expands and grows in both character and diversity.

There is perhaps nowhere better to see the world of semiotic democracy in action than by studying the ongoing conversation between corporations and advertisers who own brands, and the activists and artists who have attempted to subvert them through parody, satire and critique. “In the twenty-first century”, one commentator notes, “brands have acquired a place in the world unimaginable in any previous period of history”.¹⁴ Consumers, too, have fallen in love with the brand. Brands permeate the fabric of our lives—they help construct our identities, our expressions, our desires and our language. Yet inasmuch as they serve as powerful expressions of consumer identity and desire, they are also an important vessel of corporate identity and property.

By inhabiting these two worlds—the world of the consumer and the world of the corporation—brands have come to play an increasingly vexing role in public consciousness. At the same time that brands are expressive, they are also powerful devices of economic power and market dominance, a factor which leads to potent struggles over their meaning and definition. For, aside from the idealised convergence between personal and corporate identity that a brand represents, a brand can also be simultaneously deeply political and deeply commercial. And as part of our cultural consciousness, a brand can often serve as a powerful organizing principle for political action.

¹¹ Jack M. Balkin, “Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society” (2004) 79 N.Y.U. L. Rev. 1, 35.

¹² Balkin, “Digital Speech and Democratic Culture” (2004) 79 N.Y.U. L. Rev. 1, 4–5.

¹³ Balkin, “Digital Speech and Democratic Culture” (2004) 79 N.Y.U. L. Rev. 1, 55.

¹⁴ Majken Shultz, Mary Jo Hatch and Mogens Holten (eds), *The Expressive Organization: Linking Identity, Reputation, and the Corporate Brand* (Oxford: Oxford University Press 2000), p.52.

In just the last few decades, a new movement of activists has sprung up internationally and domestically, engaging in artistic and political activity to challenge the expansion of the brand into public discourse. Some types of “anti-branding” seek to retake public space for their own expression, using graffiti and street art to dissent from the commercialisation of the public sphere; some seek to simply rebrand or recode existing brands for the purposes of humor or social commentary. Sometimes anti-brands might target a certain brand for opposition; at other times, they might utilize a brand for the purposes of satirical or humorous commentary on another subject. And yet, the ways in which these artists have done so have raised complicated questions of identity, language and control—setting up a fascinating clash between freedom of expression and intellectual property.

Today, the modern anti-branding movement is widely associated with the 1990s anti-globalisation movement, even though similar projects regarding an “aesthetics of democracy” have been a significant part of the counter-culture art movements of the 1950s, 1960s and 1970s. These counter-culture movements, from the 1950s to the early 1990s, led to the formation of a new movement in North America and Europe that called itself “culture jamming”, which referred to taking existing media generated text and altering it to say something different, as in classic parody or satire.¹⁵ *Adbusters* says: “We believe [this movement] can be to our era what civil rights was to the 60s, what feminism was to the 70s, what environmental activism was to the 80s.”¹⁶

Anti-branding activism serves to expose, dissect and then recode various messages in advertising. The message of the anti-brand is simple: if images can create a brand, they can also destroy one.¹⁷ As the journalist Naomi Klein recounts in her book, *No Logo*, the anti-branding movement operates at the cross-section between art, labor and anti-globalisation.¹⁸ By targeting companies that have invested millions in building strong global brands, anti-branders seek to expose potential hypocrisy between corporate philosophy and corporate activity to the average consumer. Anti-sweatshop movements were galvanised in 1992 when the United States National Labor Committee performed an exposé of corporate and US Government subsidies of *maquilas*. Afterward, major labels like the GAP, Nike, Disney and Guess were forced to respond to consumer concerns about their labour practices with partners in developing nations, even though they had claimed only years earlier to be “innocent global shoppers”.¹⁹

In addition to a growing concern about corporate social responsibility, a second factor has added to the growth in anti-branding: the increasing force of “consumer sovereignty”, which has led many consumers to respond and publicise their complaints against particular corporations.²⁰ These dynamics have reframed the relationship between advertising and consumers into a much more dialogic relationship, as opposed to a one-way relationship of corporate inculcation. In many cases, anti-branding activists have decidedly turned to the advertising executives’ own arsenal of tools to address consumer concerns, using appropriative strategies to address the increasing dominance of branding strategies in both private and public space.

Finally, another key factor has also contributed to this contestatory dynamic: technology. Digital technology and the internet has created a world that makes copying, pasting and rebranding relatively simple tasks: something that takes hours to create with paper and paintbrush now takes minutes through the ease of graphic technology. And messages are just as easy to disseminate, in seconds, to thousands of individuals. In this way, the internet has effectively transformed the world of brands, trademarks and symbols into something that is largely up for grabs; a “semiotic democracy” that enables individuals to respond to and reframe brand dominance.

¹⁵ For discussion on these projects see Kalle Lasn, *Culture Jam: The Uncooling of America* (New York: Eagle Brook, 1999); Klein, *No Logo* (2000); and Rosemary Coombe, *The Cultural Life of Intellectual Properties* (Durham: Duke University Press 1998).

¹⁶ Laura Barton, “A Job for Consumers: Try to Buy Nothing”, *Guardian Education*, November 20, 2001, p.55.

¹⁷ Mark Dery, “Culture Jamming: Hacking, Slashing, and Sniping in the Empire of Signs”, available at http://project.cyberpunk.ru/idb/culture_jamming.html [Accessed October 28, 2012].

¹⁸ Klein, *No Logo* (2000).

¹⁹ Martin Morris, “Contradictions of Post-modern Consumerism and Resistance” (2001) 64 *Stud. in Pol. Econ.* 25, 26.

²⁰ Robert Lande, “Consumer Choice as the Ultimate Goal of Antitrust” (2001) 62 *Univ. Pitt. L. Rev.* 503.

Admittedly, anti-brands highlight a critical disjunction between the economic rationale of the marketplace and freedom of speech, and the regulatory, mediating role played by law. But the practice of anti-branding also demonstrates how much power the audience actually possesses. One example might be a situation where an individual might appropriate, modify or rebrand an advertising message to critique the product, the corporation or something else. A great example might be the publication *Adbusters*, which targets both particular companies and advertising campaigns, but also targets the more general trend of consumption in both the United States and Canada. In some examples from their magazine and website, particularly their “spoof ads”, an individual might initially take up a proffered message from mainstream advertising, but then later, appropriate and modify an advertising campaign to send a message that diverges from the one intended.

In one example, titled, *Absolut Nonsense*, an image of an Absolut vodka bottle is depicted with the slogan: “Any suggestion that our advertising campaign has contributed to alcoholism, drunk driving, or wife and child beating is absolute nonsense. No one pays any attention to advertising.”²¹ The message of the ad is unmistakably ironic: do not believe that such undesirable activities are tied to the scourge of alcohol consumption and associated advertising.

Parodies like *Absolut Nonsense* raise important textual questions: Is the parody targeting Absolut (the vodka), Absolut’s marketing campaign or the general practice of alcohol consumption? Or is it targeting all three? And if so, should trademark law interfere? The “*Absolut Nonsense*” ad is an example of one particular technique to illustrate the practice of anti-branding: “subvertising”, which is basically ad parody.²² Subvertising involves the conscious recoding of various brand images in order to expose and thereby transgress the proffered construction of social meaning offered by the corporation. Consider these examples:

- A person has created a near-perfect replication of an Old Navy logo on a clothing tag that is usually attached to the inside of a person’s apparel. The subvert, which is designed to replicate the percentage of fibers on a tag, instead says “77% child labor 22% adult labor and ‘Made in Sweatshops’” underneath. The implication of the ad is unmistakable, reminding the consumer that he or she is making a purchase that is not only composed of particular types of fibers, but also a substantial degree of child labour.
- The character of “Joe Chemo” is designed to replicate almost perfectly the infamous figure of “Joe Camel”, who was used to sell Camel cigarettes.²³
- On December 3, 2002, the 18th anniversary of the toxic gas leak at a chemical plant in Bhopal, India, the Yes Men, an anticorporate organisation, emailed thousands of journalists a press release purporting to be from Dow Chemical, which explained Dow’s failure to resolve the health and environmental consequences of the accident. “We understand the anger and the hurt,” claimed an (alleged) Dow spokesman. ‘But Dow does not and cannot acknowledge responsibility.’²⁴ The Yes Men also included a link to their own Dow-Chemical.com, a website resembling the corporation’s real site at www.dow.com [Accessed November 13, 2012].²⁵
- Just this past year, in response to the British Petroleum oil spill in the Gulf, Greenpeace, an environmental awareness group, announced a contest to “Redesign BP’s logo”, explaining:

²¹ Dery, “Culture Jamming”, available at http://project.cyberpunk.ru/idb/culture_jamming.html [Accessed December 3, 2012].

²² Alexander Barley, “Battle of the Image”, *New Statesman*, May 21, 2001, p.45.

²³ See Joe Chemo, <http://www.joechemo.org/> [Accessed October 28, 2012]; Adbusters, “Spoof Ads: Tobacco”, available at <https://www.adbusters.org/gallery/spoofads/tobacco> [Accessed October 28, 2012].

²⁴ Caleb Carr, “Dow v. Thing: A Free-Speech Infringement That’s Worse Than Censorship”, *Village Voice*, January 21, 2003, available at <http://www.villagevoice.com/2003-01-21/news/dow-v-thing/> [Accessed October 28, 2012].

²⁵ In response to Dow’s threats of copyright and trademark infringement, the entire host server was shut down, making it impossible for a variety of organisations to access their network.

“A few years ago, BP rebranded themselves as ‘beyond petroleum’. And yet BP is pursuing ... deepwater drilling, despite the massive environmental damage that’s being caused by their business.

That’s why we want you to rebrand them.”

The campaign concludes:

“BP’s slick green logo doesn’t suit a company that engages in dangerous offshore drilling. We’re inviting you to design them a new logo that’s more suitable for their dirty business.”²⁶

Typically, subvertising can cover a whole variety of different types of ad parody—everything from projects that appropriate particular brands to those that communicate a certain political statement that may or may not be indirectly tied to a corporation. At times, subvertisements can also include “gripe sites” that may resemble an official corporate website. One newspaper reports that “conservatively, more than half of the Fortune 1000 companies have encountered some type of website critical of their business.”²⁷ These sites take on a myriad of different characters—some simply offer various narratives from consumers who have been disappointed by a particular product or company, pairing a trademark with the word “sucks” in a web address—to the most sophisticated and seductive of ad parodies. Many subvertisements, like the Absolut example, reveal a subconscious message in an advertisement, uncovering a perceived deeper meaning or truth hiding behind the euphemism.²⁸

Given the investment that corporations make in branding their identities and products, one could argue that the simple act of anti-branding in the marketplace can be both devastating for trademark monopolies and deeply empowering for critical consumers. Yet intellectual property law is often caught between the need to protect the intellectual property of a certain brand and the imperative to allow for freedom of expression to flourish. The economic arguments against anti-branding are readily understood. According to the traditional view, in order for a trademark to have value, it must exist as separate and unique from all other symbols; it must carry its own qualities that distinguish it from other signs; but this conception of value-from-differentiation is somewhat different than the utilitarian conception that has been historically associated with brands. As applied to modern-day branding philosophy, this conception of value turns on the notion of brand equity and brand image, both of which draw from intangible essences like corporate image, identity and brand personality.

Anti-branding, by its own admission, is designed to both dissect and perhaps weaken the proffered message of the advertisement. It introduces “noise” to the signal of the corporate speaker, and instead suggests a wide array of less desirable (but informative and often humorous) connotations to the buyer. It adds potential costs to the goodwill that is associated with a tightly constructed sign, altering its meaning, and exposing—and potentially making light of—certain hidden messages. In some cases, an anti-brand may actively dilute the meaning of a mark by associating the mark, either with undesirable connotations or with an entirely different issue or product, raising issues of tarnishment as well as potential blurring. In short, an anti-brand performs all of the same functions that a traditional trademark performs—it offers information and signals certain qualities, and it is also expressive of a particular philosophy. In other words, it functions just like any other brand, except that it derives its value, not from differentiation, but from similarity to another brand, and by communicating—and recoding—a particular message that an original brand represents.

²⁶ Greenpeace, “Redesign BP’s Logo”, available at <http://www.greenpeace.org/usa/news/gulf-oil-spill/bp-logo> [Accessed October 28, 2012].

²⁷ Robert Trigaux, “Gripe.Com”, available at <http://www.sptimes.com/News/13199/Business/gripecom.html> [Accessed October 28, 2012].

²⁸ Klein, *No Logo* (2000), p.279.

But while traditional advertising directs itself towards building further economic value, an anti-brand aims towards the opposite result. Anti-branding uses the same arsenal of weapons as advertising—language and image—to flip the social meaning of a brand. By employing speech and visual expression and exploiting the instability of the brander’s reliance on an unstable medium, anti-branding offers the consumer a different way to construct the dialogue, even while still using the brand philosophy and image. The message may be separate and distinct from the original corporate brand message, but it still converges with the mark because it uses the trademark or the sign in order to communicate a particular message. In doing so, a trademark transgresses its own identity as a vessel for corporate identity and property, and instead arguably becomes remade into something else, an anti-brand—constituting expressive speech, a satire or, at other times, a parody.

Because it is most often connected to a particular message, rather than a certain product, an anti-brand demonstrates how a trademark can become transformed from a commodifiable property—part of the marketplace of goods—into a symbolic expression within the marketplace of speech. Rather than existing within a marketplace of goods that derives value from a brand’s association with a product or corporation, the anti-brand participates in the marketplace of ideas that derives its value from its expressive commentary on the brand instead. This transition, from brand to anti-brand, and thus from trademark into speech, in turn highlights another key difference: even though trademark law (by protecting the mark’s stability of essence and identity) suggests that a mark is immutable, the First Amendment’s protection of consumer commentary suggests that trademarks are indeed unstable, immutable entities, open to constant reinterpretation and resignification.

Semiotic disobedience: Between appropriation and occupation

More recently, the world of semiotic disobedience took on a new flourish with the Occupy Wall Street movement, which actually originated from the leaders of the global culture jamming movement—Kalle Lasn and Micah White of the magazine *Adbusters*. In June 2011, Lasn registered the website *occupywallstreet.org* and sent a note to their subscribers, saying: “Are you ready for a Tahrir moment? On September 17, flood into lower Manhattan, set up tents, kitchens, peaceful barricades and occupy Wall Street,” the message said. “It just kind of snowballed from there”, explained *Adbusters* senior editor Micah White shortly after the protests began.²⁹ They selected September 17 as the launch date—America’s Constitution Day. The announcement poster was a classic example of semiotic democracy in action—it displayed a photograph of a female ballerina, perched in a pirouette atop the famed Charging Bull statue on Wall Street, underneath a single question, lettered in red, “What Is Our One Demand?” (The bottom of the poster suggested simply, “Bring Tent”.)

As much as Occupy was focused on actual, tangible occupation, it was also focused on giving rise to a seminal kind of visual resistance to consumerism. One of the most ubiquitous symbols to emerge from the Occupy movement was a satirical American flag, emblazoned with corporate logos, that was made by *Adbusters*, and carried by protesters and photographed widely throughout the occupation of Zuccotti Park. The appearance of the anti-branded flag made a powerful visual statement about what America appeared to have become to the occupiers—a land of brands, logos and unbounded corporate influence.

At the same time, the use of the *Adbusters* flag, in conjunction with the protesters’ actual, physical occupation of quasi-public space, was also quite revealing. Clearly, the object of the Occupy protest movement, unlike most of *Adbusters*’ previous work, was much broader than just the world of advertising—it was a protest against the financial structures that *produced* corporate branding—in addition to the world of Wall Street, income inequality and the increased power of corporate influence over

²⁹ Andrew Fleming, “Adbusters Sparks Wall Street Protest”, *Vancouver Courier*, September 27, 2011, available at <http://www.vancourier.com/Adbusters+sparks+Wall+Street+protest/5466332/story.html#ixzz278skdVKS> [Accessed October 28, 2012].

government. This shift was also foundational in nature in terms of tactics—it symbolised a movement away from communicating through images, parody and satire, and instead towards actual, physical occupation of the tangible structures within the financial world. In fact, one might argue that it reimagined political organisations entirely, as the movement was entirely composed of a horizontal, participatory structure—a leaderless base of activists, modeled after the “Arab Spring”. As one activist, Marina Sitrin, explained:

“The ways in which we organize in these spaces of assemblies and working groups is inextricably linked to the vision of what we are creating. We seek open, horizontal, participatory space where each person can truly speak and be heard. We organize structures, such as facilitation teams, agendas, and variations on the forms of the assembly, from general assemblies to spokes councils, always being open to changing them so as to create the most democratic and participatory space possible ... The creation of alternative institutions and solutions has already begun in the United States. With or without encampments, the constructive phase of the Occupy movement is here, and all indications are that it will not slow down ...”³⁰

The Occupy movement, although it faced significant challenges, certainly touched a global nerve—at its height, at least 1,000 other cities and localities had formed similar Occupy movements, and became a huge presence across social media networks. Throughout, many encampments were often illegal, but they continued to persist. People kept coming to Zuccotti Park, from other states and countries—and the list of social services kept growing, from a makeshift kitchen, open to all, to a legal services station, a set of tents donated by the rapper Lupe Fiasco, and finally, to the People’s Library, which held several thousand volumes.

But the shift toward actual occupation also demonstrated a new, emergent form of dissent: what I call semiotic disobedience. Although many projects, including Occupy Wall Street, stemmed from an *Adbusters*-like sympathy for anti-branding activism, the tactics that Occupy Wall Street demonstrated took things one step further. Here, the emphasis was on interruption and occupation, as opposed to appropriation. Appropriation usually involves some form of copying; interruption, however, involves something different. Consider the following observation by Johann Hari, building off the work of Umberto Eco, who coined the term “semiotic guerrilla warfare”:

“[Eco proposes] an action [which would] urge the audience to control the message and its multiple possibilities of interpretation. When corporate interests go so far as to employ viral marketing—where, for example, two good-looking, trendy people are employed to walk around public places talking loudly about how great Stella Artois is—subverting these acts seems to some activists the only meaningful way to protest.”³¹

Like yesterday’s civil rights activism, and as our body of First Amendment jurisprudence has plainly recognised, these forms of semiotic disobedience demonstrated that there are spaces for political expression carved outside the boundaries of protected speech like parody.

Occupy Wall Street is just one example of this trend, but the various facets of its movement help us to understand the various ways to engage property rights and culture. Its most obvious tactic demonstrates the actual occupation of tangible, quasi-public space, which facilitated the interruption of the financial world’s everyday operations. By interrupting and occupying the urban spaces devoted to Wall Street and corporate culture, the movement was able to dramatically shift the tenor of the conversation surrounding Wall Street, leading to a much more pointed (and poignant) level of critique.

³⁰ Marina Sitrin, “Occupy Wall Street, Beyond Encampments”, quoted in Timothy Malone, “Occupy Together: the Transnational Foundation of Occupy Wall Street”, available at <http://www.yesmagazine.org/people-power/occupy-wall-street-beyond-encampments> [Accessed October 28, 2012].

³¹ Johann Hari, “How to Beat the Adman at his Own Game”, *New Statesman*, June 17, 2002, p.22.

Prior to the advent of Occupy Wall Street, other forms of “semiotic disobedience” included a number of aggressive approaches to visual and verbal representation—including recoding, subverting and reclaiming certain kinds of government, corporate and private property. These forms of activism have been around for generations, occupying various properties, intellectual and real, with a unique blend of humor, creativity and activism. In San Francisco, a group known as the Billboard Liberation Front (BLF) routinely “liberates” and “improves” billboard advertising by vandalizing and altering messages and logos. The group has been around since 1977.³² Its tactics are anonymously and meticulously arranged and deployed, paying tremendous attention to mimicking actual ads by matching paint colors, letter fonts and other graphics to the original.³³

Internationally, other groups, like “Billboard Utilizing Graffitiists Against Unhealthy Promotions”, or BUGA-UP (in Australia) or Citizens Organized Using Graffiti Hits on Unhealthy Products (COUGH UP) in Britain, targeted tobacco advertising. In the 1990s, in Harlem, Chicago, Detroit and Dallas, parishioners led “billboard-busting blitzes” in which they would paint over the tobacco advertising surrounding their church.³⁴ Countless other artists repaint sign imagery, alter advertising slogans, replicate legal notices,³⁵ scrawl responses on ads³⁶ and “jam” broadcast messages in the media. Others organise massive interruptions in public space,³⁷ fund projects that are directed toward corporate sabotage,³⁸ alter products in the marketplace before they are sold³⁹ and vandalise preexisting works of art.⁴⁰ Still others actively hijack domain names, appropriate online identities and hack into private corporate spaces in cyberspace.⁴¹

Although public-spirited lawbreaking in the United States can be traced back to incidents such as the Boston Tea Party, the emergence of these types of semiotic disobedience created new and particularly vexing problems for lawyers and law enforcement officials, both of whom are often bemused by artists’ increasingly creative and confrontational approaches. In each example, an individual actively transgresses the private, sovereign boundary of corporate property—a billboard, a domain name, an identity or a tangible product—and transforms it into a sort of “public” property open for dialogue and discussion, an entity that is non-sovereign, borderless and thus incapable of excluding alternative meanings.

Another, equally dramatic shift in tactics included Occupy’s complete resistance to the very concept of intellectual property and ownership over the meaning of the term “Occupy”. In October 2011, someone involved with Occupy Wall Street allegedly filed an application to trademark “Occupy Wall Street”. The application was reportedly met with great reluctance from the movement. As some in Occupy Wall Street must have felt, just as the movement never meant to stand for a list of central demands or message, it also never meant to become a brand on its own. For many reasons, Occupy Wall Street had every reason to fear privatising—owning—what it means to be part of the 99 per cent, or even to occupy Wall Street. In grappling with the question of whether to trademark its brand, Occupy Wall Street has had to confront

³² Billboard Liberation Front Creative Group, “The Art and Science of Billboard Improvement: A Comprehensive Guide to the Alteration of Outdoor Advertising”, available at <http://www.billboardliberation.com/guidebook.html> [Accessed October 28, 2012]; Matthew Kauffman, “Bushwhacked Billboards”, *Hartford Courant*, September 25, 2002, p.E1.

³³ Kauffman, “Bushwhacked Billboards”, *Hartford Courant*, September 25, 2002, p.E1.

³⁴ Klein, *No Logo* (2000), p.290.

³⁵ See “But Wait, There’s More”, *Autoweek*, May 27, 2002, p.48; Stay Free Magazine, “Park Slope Public Works”, available at <http://www.stayfreemagazine.org/suv> [Accessed October 28, 2012].

³⁶ Klein, *No Logo* (2000), pp.289–290.

³⁷ For examples of organized interruptions in public space, see *Critical Mass*, available at <http://www.critical-mass.net> [Accessed December 3, 2012]; Leander Kahney, “E-Mail Mobs Materialize All Over”, *Wired News*, July 5, 2003, available at <http://www.wired.com/news/culture/0,1284,59518,00.html> [Accessed October 28, 2012].

³⁸ The artist-activist group @TMark (pronounced “artmark”) imitates the operation of a corporation and has created a host of anti-corporate projects and parody websites at www.gatt.org [Accessed October 28, 2012], www.gwbush.com, www.microsoftedu.com. The group has received cease-and-desist letters from its corporate targets. See @TMark, available at <http://www.rtmart.com> [Accessed October 28, 2012].

³⁹ *Barbie Liberation*, available at <http://www.sniggle.net/barbie.php> [Accessed November 14, 2012].

⁴⁰ Dario Gamboni, *The Destruction of Art: Iconoclasm and Vandalism since the French Revolution* (New Haven: Yale University Press, 1997).

⁴¹ For excellent discussions of these tactics, see Caroline Auty, “Political Hacktivism: Tool of the Underdog or Scourge of Cyberspace?” (2004) 56 *Aslib Proceedings* 212.

the uncomfortable reality that to trademark “Occupy” would create a contradiction in terms—a property right with the ability to cease others from defining, for themselves, what Occupy means for them.

It is precisely this type of resistance that characterises the difference between Occupy and yesterday’s anti-branding movements. Although the movement is joined by a stalwart commitment to the disenfranchised 99 per cent, it is also united by an opposition to entrenched ideas—forcing a reimagination of politics, organisation, culture and property. Like semiotic democracy, the phenomenon of semiotic disobedience aims to create a dialogue where one is absent and tries to reclaim the inducement of passivity among modern consumers.⁴² Further, both semiotic democracy and semiotic disobedience seek to reverse the privileged position of the speaker or author and make the audience an active participant instead of a generally passive spectator.⁴³

However, although semiotic disobedience arguably shares many of the same goals of semiotic democracy, there are important differences between the two concepts. Unlike semiotic democracy’s willingness to place consumers and corporations on an equal playing field, some forms of semiotic disobedience are largely substitutive: it attempts to occupy and “recode” corporate space for the purpose of restoring a sort of critical balance between consumer and corporation. There is a deep and growing skepticism to traditional concepts of ownership, demonstrated, in part, by the resistance to the reach of intellectual property over aspects of culture. Unlike semiotic democracy, which seeks access to symbols, semiotic disobedience seems to take issue with the very idea of ownership of symbols entirely. In this way, the tactics utilized by semiotic disobedience activists offer an interesting convergence of property and speech by targeting—and challenging—the “sovereignty” of advertising. As these activists are well aware, trespass, vandalism, defacement, cyber-squatting and property occupation or alteration enjoy little protection under the law; the end sought is not protection, but protest.

And that is the story of disobedience: the making of meaning in the shadows of democracy, sometimes outside the protections of the law. Since the social norms of semiotic disobedience often favor the occupation of another’s property, rather than its independent reproduction, the types of semiotic disobedience mentioned here tend at times (though not always) to fall outside of legal protection.

While semiotic democracy focused on expanding the marketplace of ideas, semiotic disobedience focused on actually “correcting” the marketplace by occupying some ideas in favor of others. Moreover, unlike the goal of semiotic democracy, which focuses on legalising a self-created parody alongside an original work through fair use, the theory behind semiotic disobedience focuses on the occupation of owned property itself. In doing so, Occupy’s semiotic disobedience forcibly reclaims privately owned intellectual property for a sort of alternative domain that aims to place a pro-consumer, anti-corporate view at the center of its discursive space.

Although Occupy’s semiotic disobedience fails to capture all of the elements of classical forms of civil disobedience,⁴⁴ it does replicate its performative, dissenting character. As some authors have observed, civil disobedience, at its most general level, is defined as “doing legally reprehensible things in public, at times in an exhibitionist manner, for the purposes of political or social protest”.⁴⁵ As defined by Carl Cohen:

“Civil disobedience is an act of protest, deliberately unlawful, conscientiously and publicly performed. It may have as its object the laws or policies of some governmental body, or those of some private

⁴² Alexander Barley, “Battle of the Image: Subvertising”, *New Statesman*, May 21, 2001, p.45.

⁴³ Baines, “A Pie in the Face” (2001) *Alternatives J.* 14.

⁴⁴ For example, whereas civil disobedience traditionally requires the actor to accept punishment for her actions, many participants in semiotic disobedience try to actively avoid detection and punishment. E.g. Hakim Bey, “The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism”, available at <http://hermetic.com/bey/taz1.html> [Accessed October 28, 2012].

⁴⁵ Jerome B. King, “Book Reviews” (1972) 86 *Harv. L. Rev.* 468, 469.

corporate body whose decisions have serious public consequences; but in either case the disobedient protest is almost invariably nonviolent in character.”⁴⁶

Here, Occupy Wall Street’s semiotic disobedience represents both an outgrowth of and a departure from traditional forms of civil disobedience. As Nathan Schneider wrote in *The Nation*, referring specifically to Occupy Wall Street:

“When the first arrest videos went viral, it was rarely noticed that protesters were arrested while committing conscious acts of civil disobedience: holding down an illicit tarp that was protecting equipment from the rain, continuing a speech about having courage after being ordered to stop, writing the word ‘love’ on the sidewalk in chalk ... Nor has it been much remembered what kind of backdrop these early moments stood against: the police commanders wandering through the plaza and waking people at dawn, the ever present worry of a forced dispersal, the sense of isolation when the TV trucks were gone.”⁴⁷

University of Chicago Law Professor Bernard Harcourt has called the Occupy movement an example of “political disobedience”, as distinguished from “civil disobedience”. He argued that whereas civil disobedience accepted the legitimacy of political institutions, but resisted the authority of certain laws, Occupy’s political disobedience “resists the very way in which we are governed: it resists the structure of partisan politics, the demand for policy reforms, the call for party identification, and the very ideologies that dominated the post-[Cold] War period”.⁴⁸ The point of the resistance is not to articulate clear policy demands or “embrace old ideologies”, Harcourt wrote. The central focus of Occupy was not to rehash questions of whether big government or no government was better—the point was to resist politics as much as to resist the preexisting political structures that forced such choices upon people. In this way, Harcourt wrote that the resistance bore similarities to Foucaultian “critique”, demonstrating a resistance to being governed “in this manner”, or “voluntary insubordination”.

There is another important difference between civil disobedience and semiotic disobedience as well. With the latter, the object of protest is not just the state or federal laws that surround the expanding sovereignty of intellectual property, but also the private and corporate forces that rely on their existence. For a semiotic democracy, the ideal involves a culture rich in reproductive images, creating more speech (and thus more property) in the marketplace of ideas. In contrast, Occupy’s semiotic disobedience challenged these categories by creating expressions that were tangible, rivalrous and substitutive; its occupation of actual space made it more costly for corporations to advertise and protect the identity behind their products and images, because of the skillful way the movement engendered a deep and widespread critique of the corporate world.

And, in doing so, semiotic disobedience creates a new, converging marketplace of speech that is largely designed to interrupt and interfere with the “codes” of the previous one. The result is a world in which the powerful purchase properties—billboards, domain names and the like—only to have their messages exposed, occupied and thus interrupted by their disenfranchised counterparts. The idea behind semiotic disobedience is not to permit a marketplace of speech where the answer to objectionable speech is more speech, but rather where the goal is to interrupt, disrupt and replace the speech of the corporate entity with that of the disenfranchised consumer.

As a result, the spirit of Occupy reflects some of the same classic goals and interests of traditional civil disobedience. What matters is not whether Occupy “succeeded” (in whatever sense of the word)—what matters is the way Occupy offered us a new way to think about the relationship between law, culture and

⁴⁶ Carl Cohen, *Civil Disobedience: Conscience, Tactics, and the Law* (New York: Columbia University Press, 1971), pp.39–40.

⁴⁷ Nathan Schneider, “From Occupy Wall Street to Occupy Everywhere”, *The Nation*, October 11, 2011.

⁴⁸ Bernard Harcourt, “Occupy Wall Street’s ‘Political Disobedience’”, *New York Times*, October 13, 2011.

intellectual property. The individuals I am speaking of do not expressly seek to reclaim the protection of the law; rather, their very objective is to demonstrate the expressive value of transgressing its limits.

Conclusion

As the US First Amendment jurisprudence has aptly demonstrated, speech does not always have to be protected in order to be powerful: indeed, some of the most meaningful language of our time has been that which falls outside of law's protective boundaries. Similarly, I argue that it is too reductionist and simplistic to dismiss these actions as adult pranks, devoid of legal and political meaning. Indeed, the stark number and prominence of contemporary projects—like Occupy Wall Street—that offer sophisticated critiques of the relationship between culture and corporate commodification makes it impossible to do so.

Viewed through this prism, property law is no different. It creates boundaries that enfranchise certain types of speech at the expense of others. And, in doing so, it enables certain types of legal and illegal dissent, conferring legitimacy on some types of speech, but often excluding other types of expression from protection. Rather than expanding the marketplace of protected speech, as the First Amendment attempts to do, intellectual property law has tended to narrow its boundaries, thereby expanding the boundaries of the prohibited marketplace of speech instead.

As I argue, semiotic disobedience suggests there is another story that needs to be told, one that emanates from the shadow of the limits of law's governance. Thus, just as civil disobedience challenges basic conceptions of political democracy by drawing attention to disenfranchised minorities, semiotic disobedience challenges notions of semiotic democracy by drawing attention to disenfranchised types of expression. These alternative political economies of expression operate largely outside of law's protective enclosures, even though they represent powerful examples of the expressive diversity that the First Amendment is supposed to protect.