

Silent injunctions: Tactics for criminal intent or creative liability?

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This exegesis is submitted to AUT in partial fulfillment of the requirements for the degree of
Master in Art & Design [Visual Arts]

Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other learning institution of higher learning.

Layne Waerea

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To Monique Redmond and Andy Thomson...special thanks for the conversation, the guidance and most of all for making me laugh.

For my lawyer

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Abstract

Title: Silent injunctions: Tactics for criminal intent or creative liability?

This visual arts project explores the socio-legal terrain of the everyday. Through a series of interventions, in sites of public and private space, this project seeks to employ tactics that nudge at, and therefore test, the boundaries of the social norms and legal constraints that govern daily life. These tactics, if seen, will question and resist (il)legal affirmation; and at the same time provide evidence of the transgression that has occurred.

The photograph, the televisual image and the ephemera of the event, all continue to service the notion of evidence or the 'live'. And while these traces are unable to reveal the whole story, they suggest a certain futility in our continued willingness to see a single truth; and as temporary injunctions, gift alternative views of the everyday.



Berm #14, 2010

digital still (Photographer: Tuafale Tanoa'i)

Date: October 27, 2010

Time: 10:23 am

Action: To lawn mow random berms in Remuera, Orakei, and Herne Bay, Auckland.

Duration (action): 20 mins

(video): 2 mins 30

Conditions: Large garden broom. small domestic shovel and pan. all purpose black rubbish bags. red and black earmuffs. plastic safety glasses. plastic petrol container. lawnmower. grass berm.

Description: An intervention in response to the unofficial requirement that these Council-owned pieces of land, i.e. the grass berm or verge, are maintained by the nearest landowner. In October 2010, I mowed berms in the following streets of Auckland;

<i>Berms #1 - 5</i>	<i>Fenton Circus, Orakei: October 1, 2010</i>
<i>Berm #6</i>	<i>Portland Road, Remuera: October 9, 2010</i>
<i>Berm #7</i>	<i>Westbourne Road, Remuera: October 9, 2010</i>
<i>Berm #8</i>	<i>Bella Vista Road, Herne Bay: October 10, 2010</i>
<i>Berm #9</i>	<i>Argyle Street, Herne Bay: October 10, 2010</i>
<i>Berm #10</i>	<i>Darwin Lane, Orakei Basin: October 17, 2010</i>
<i>Berm #11</i>	<i>Coates Ave, Orakei: October 17, 2010</i>
<i>Berm #12</i>	<i>Paretai Drive, Orakei: October 17, 2010</i>
<i>Berms #13 – 14</i>	<i>Ridings Road, Remuera: October 27, 2010</i>

List of Interventions (2010 - 2012).

1. *Berm #14*, 2010
2. *Kitset*, 2011
3. *Grapefruit drink stand*, 2011
4. *Koha (just practising)*, 2011
5. *Yoga for beginners: Parts I & II*, 2011
6. *Powerball*, 2011
7. *I was only 10 minutes late*, 2011
8. *Free jokes*, 2011
9. *Waitangi Day spin*, 2012
10. *An unsuccessful attempt at chasing fog*, 2012
11. *Free leaves*, 2012
12. *Free queue*, 2012
13. *I look like my Mother*, 2012
14. *Friendly Maori series: coffee break*, 2012
15. *Friendly Maori series: Dawn Service*, 2012
16. *Friendly Maori series: tour*, 2012
17. *Black Noise/Noisy black*, 2012
18. *I do not freely express*, 2012
19. *Rewriting the law on disorderly behaviour for Queen's birthday*, 2012
20. *Jumping the fence 9 or 10 times*, 2012
21. *Free birthdays*, 2012
22. *Maori Lane*, 2012
23. *Free water*, 2012
24. *(In progress) Catching air*, 2012

Summary of facts

Section I The field

The site¹ of the everyday² is informed by and informs a multiple of voices, all attempting to exercise their rights under a social contract. This contract, as argued by philosopher Jean-Jacques Rousseau, refers to the agreement an individual makes with society and with themselves; where civil rights are promised in return for giving up certain personal freedoms through an obligation to respect the rights of others. A respect that continues to promote a certain freedom but also acknowledges certain rules and modes of behavior, which are designed to ensure members of a community can live together with other free and equal persons (Gourevitch, 1997).

This exegesis will draw from the disciplines of sociology, law and the visual arts to consider how social and legal rules govern our daily lives; and how the televisual image and its related ephemera may be used, not only as confirmation of performance of our social contract, but also as appropriate artistic evidence of alternative and multiple voices of the same everyday.

The research references literature and visual art works relevant to this project, and consists of three main sections that resemble the form and nature of a contractual agreement in dispute; namely the agreement, the breach and the evidence.

Section II The (Dis) Agreement

This section responds to the idea of a social contract by considering Jacques Ranciere's notion of politics; and that politics can first exist, within communities of a shared understanding or common sense (Ranciere, as cited in Wolfe, 2006). The formation of these communities is conditioned by certain aesthetic qualities and can include limits to participation. Positions or roles within any community are determined according to these limits, recognising that there are those who exist as a part of a shared world and those who are restricted or even excluded from this communal participation (Ranciere, as cited by Wolfe, 2006).

Politics for Ranciere, can occur at the boundaries of this shared world, where the interests of the sanctioned and those operating within the shared sensible collide; marking a rupture to this boundary of common sense and the capacity to alter or mark boundary shifts to previous elements of the shared sensible world (Ranciere, as cited in Wolfe, 2006).

¹ Site. Michel de Certeau in 'The Practice of Everyday Life' (1984), discusses the concepts of place and space, where 'place' is understood to exist as a location which acknowledges certain positions or relationships in respect of the geographical area. 'Space', he proposed, was defined by temporal aspects of occupation and relationships.

² Henri Lefebvre describes the 'everyday', as what remains after the superior, specialized and structured activities have been removed from our lives.

This section will consider how antagonism within the political environment, is a necessary component for any democratic sphere, having the ability to create ruptures and forge new political frontiers, where the voices of those previously excluded may be heard.

Section III The Breach

My sense of direction

For the last two and a half years I have carried out a series of interventions/actions in public and private spaces. These interventions have acknowledged a certain social or legally defined rule of preferred behaviour in these spaces; where the aim of the intervention has been to test the strength of these rules and ultimately to determine whether it is possible for other modes of behaviour to legitimately exist in this same everyday.

Prior to studying the visual arts, I used to practise law, and up until a couple of years ago, taught elements of commercial law as part of a business degree. This project and therefore exegesis, combines my interests in both the visual arts and law; where the legal and social frameworks, I am familiar with, provide form and structure to the interventions carried out.

The title of the project, 'Silent Injunctions: Tactics for criminal intent or creative liability?' includes three key elements that have informed the interventions so far; an injunction, tactics, and the notion of liability. An *injunction* is a legal term for a court order that requires you to do something, or an order prohibiting you from doing something in the future. For example, a newspaper company may be forced to print a retraction or apology about something they have published in the past - or the injunction may prohibit them from publishing a story in the future. An injunction therefore has dual qualities, and I am interested in this either/or nature; that it could mean one thing, or it could mean another.

Michel de Certeau in 'The Practice of Everyday Life', considered the relations between consumers and the mechanisms of production, and in particular the position of the everyday person in respect of the power relations that exist. A *tactic*, he explained, was a device an individual could exercise as a form of resistance to the imbalance of power between the individual and any form of authority. An action that operates within the existing system of power, and at the same time allows the individual to do things a little differently; actions that are perhaps illegal, but due to a certain ambiguity, do not attract the attention of the authorities (1984).

And finally *liability*. Using my background in law, the two key elements I have been interested in exploring have been trespass to property and disorderly behaviour in a public place. The interventions in this project, I believe, operate at the boundaries of legally acceptable behaviour, and entertain the

aesthetic of failure, particularly through the use of humour, as a legitimate form of resistance. And in respect of liability, a resistance, that if I do attract the attention of any authority, could get me into a little bit of trouble.

Section IV The Evidence

The final section examines the nature of the documentation of the interventions; and the consideration given to presentation of this documentation. Philip Auslander, in 'The performativity of performance documentation' (2006), considers the elements of the documentary and the theatrical, in relation to the performance documentation. Central to his discussion is whether the document serves to validate the existence of the performance some time earlier, or whether the document creates its own reconfigured performance some time after the event?

Paul Virilio in 'A Landscape of Events' refers to the television image as possessing the 'light of immediacy' and an ability to present images as in real time (2000). Preferring the televisual³ format, presentation of the interventions for this project reference both the alleged immediacy of the image, associations of reality or real time; and the obvious signs of post-production editing.

For each of these interventions I have used lens-based media to document the different stages of the intervention, either in the form of a digital still or video camera. The images may include the initial survey, setting up and/or the action involved - all relevant components of what I term an intervention. This section will explore whether this notion of evidence, still exists with the televisual image, and furthermore whether this evidence can exist as a secondary performance at a later stage?

*

³ The online Oxford Dictionary refers to the televisual image as relating to or suitable for television.



Kitset, 2011
digital still

Date: August 07, 2011

Time: 11:40 am

Action: To place a partially assembled kitset bookcase, with vase and flowers, on foundations for a, yet to be built, new home.

Duration (action): 38 mins

(video): 2 mins 30

Conditions: Kitset bookcase. vase. flowers picked from neighbour's garden. building site.

Description: An action in response to the 'housing development' and the strict conditions regulating private ownership and use of land as governed by the Residential Tenancies Amendment Act 2010.

*192 Oakland Road
Karaka 2580*

Dear Layne

Re: Property Inspection - 192 Oakland Road Karaka 2580

We have been to do an inspection of your property and we wish to thank you for maintaining it in a clean and tidy condition.

However, we would like you to clean the oven.

Yours sincerely,



Free leaves, 2012
digital still

Date: April 16, 2012

Time: 4:04 pm

Action: To rake leaves in a public park, for free.

Duration (action): 37 mins

(video): 2 mins 30

Conditions: Rake. cardboard box. high-visibility jacket. autumn leaves. public park.

Description: An intervention to consider the notion of socially acceptable behaviour in a public place.

862 leaves.

The (Dis)Agreement

Rosalyn Deutsche in 'Evictions: Art and spatial politics', believes that the public sphere 'remains democratic only insofar as its naturalized exclusions are taken into account' and where 'conflict, division and instability' while not ruining democratic participation, acknowledge the 'conditions of its existence.' (Deutsche, 1996. p. XIII). Claire Bishop, in 'Antagonism and Relational Aesthetics', adds that debate and discussion are integral to notions of democracy, and that antagonism within the political sphere can reveal weaknesses to existing structures and provide opportunities for the discovery of new political frontiers (2004).

For this project, I am interested in creating collisions or ruptures that provide space for dis-agreement within communities that have a shared sensibility. Dis-agreement that doesn't necessarily reject or repeal the common understanding, but instead offers another voice to any debate or discussion of the idea central to the intervention.

The interventions are sited in, or near the communities with which, I am most familiar. They include my past and current residential neighbourhoods, those I observe on my drive to and from work, and spaces that relate to the issues I am interested in. Interventions in public and private spaces that question land use and ownership, notions of cultural identity and perhaps provide the impetus for boundary shifts of previously held ideas. Informing the interventions, are the partitions of sense that condition my own way of thinking and include failure, humour, risk and silence; and while these acts of transgression may offer any witness or viewer another perspective, ultimately this project will test how far I am prepared to make shifts to my own way of thinking and operating in the everyday.

Looking at Michael Carter's diagrammatic breakdown of the divisions of space - public and private (1997), I am most interested in sites that offer a Public/Private intersection, spaces that recognise a private interest but with a public interface. These sites could include the publicly owned, but privately maintained, grass berm or verge, or a privately owned public carpark. I use prior knowledge of the law, to define legal/social boundaries, and the type of performances that could legitimately exist within these spaces (lawn mowing a grass verge); and at the same time test the flexibility/rigidity of any limits (random lawn mowing of any verge). The interventions for this project play with fact and suggest a form of fictional activism that relies first, on the knowledge of a code, and a willingness to test elements of that code in order to find alternative modes of operation to the everyday.

Carter's analysis (public/private) however, with advances in information technologies, has been subject to its own shift, such so that what has been formerly recognised as private, is now offered free to a willing and addicted public through convenient internet applications like Google Earth and Street View. Pamela Lee (2011), describes this as the 'open secret' and that information once regarded as classified for a secret audience, is now offered to the general public as 'free exchange of information' and overt justification for transparency of the covert relationships of power that can exist among corporations, government agencies, and private citizens.

Jill Magid is an artist who works with surveillance technologies and the notion and logic of the 'open secret'. In Figure 1, the installation *'Evidence Locker'* (2004), was the result of Magid having spent 31 days in Liverpool, under the approved eye of the city's CCTV cameras. Working in collaboration with Citywatch (Merseyside Police and Liverpool City Council), Magid used technology, not to demonstrate the power imbalance between the individual and the state, but rather as opening up 'a new field of art and activism' in which predictable forms of protest against the almighty eyes of power are turned into dandy-like appearances. For 31 days, Magid, in a bright red trench coat, performed in front of the CCTV cameras located around the city (Figure 1). At each location she would call the police, 'with details of where she was and ask them to film her in particular poses, places or even guide her through the city with her eyes closed' (Magid, 2004). Getting access to the footage required Magid completing 31 Subject Access Request Forms - 'the legal document necessary to outline to the police details of how and when an 'incident' occurred'. (Magid, 2004).

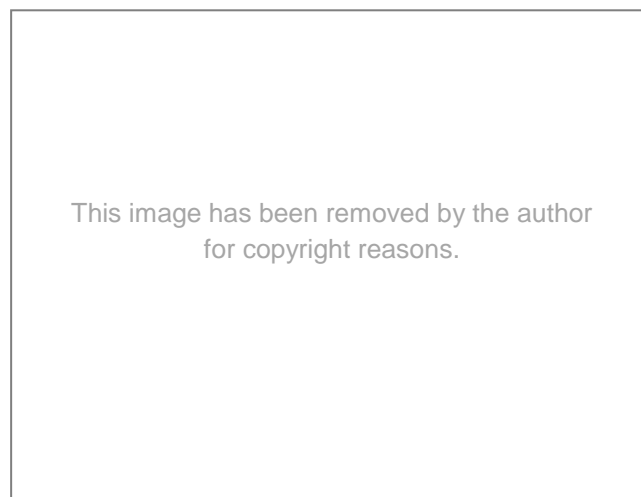


Figure 1. *Evidence Locker*, Jill Magid (2004), CCTV Footage.
Retrieved from <http://www.jillmagid.net/EvidenceLocker.php>

Magid sees technology as having a positive purpose in that she is able to define boundaries within her world; the CCTV camera allowing her to become visible (and potentially permanent) within the city, through a medium 'bigger than myself'. In this hyper-surveillance society, Magid uses technology and the acceptance of self-surveillance, as a mirror, to find or recognise her different or utopian selves (Lee, 2011).

Corinna Schnitt and Amy Balkin are two artists who have utilised lens-based media to document some form of performative intervention within their own practices, and which reference particular social and legal norms operating in our daily lives. Both artists incorporate the 'norm' as part of their process, where the aim is to draw attention to a particular rule or everyday occurrence and to offer playful and legitimate alternatives to a prescribed way of living.

Schnitt in *'Between four and six'* (Figure 2), makes specific connections to the idea of family rituals and community spirit. Her video work documents the weekly ritual she undertakes with her parents,

an excursion (outing) whereby they go out with a ladder, bucket and rags to clean neighbourhood road signs (Himmelsbach, 2008).

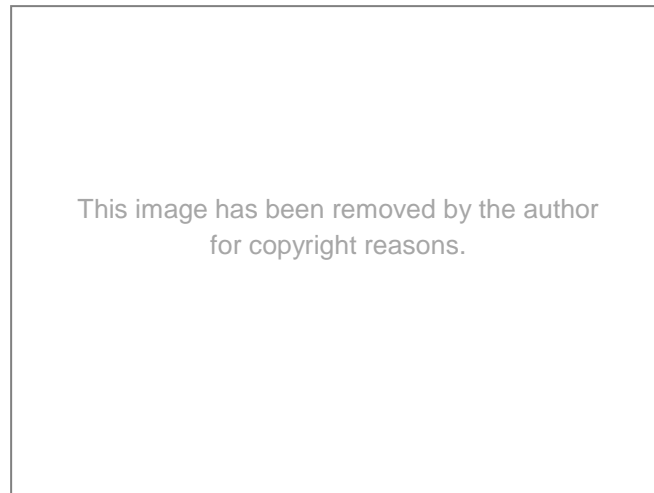


Figure 2. *Between four and six (Zwischen vier und sechs)*, Corinna Schnitt (1998), 16 mm film still
Retrieved from <http://c-level.org/CorinnaSchnitt.html>

Balkin, and her participation with '*Public Smog*' (Figure 3), used current environmental laws in the United States, as a socio-legal backdrop for her work. The description of the work identifies 'Public Smog' as 'a park in the atmosphere that fluctuates in location and scale' where the 'park is constructed through financial, legal, or political activities that open it for public use'. Balkin was involved in 'purchasing and retiring emission offsets in regulated emissions markets, making them inaccessible to polluting industries.' (*Public Smog*, 2006). This work practises the notion of the 'open secret', and through the self-titled website, makes available the information required to engage in this alternative form of participation in the emissions market.

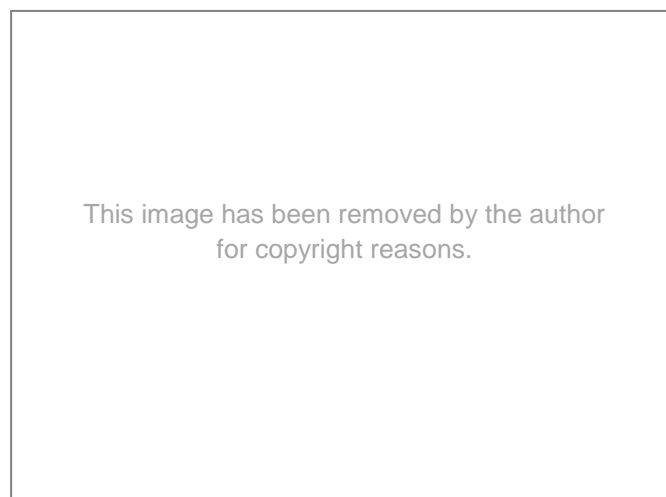


Figure 3. *Public Smog*, Amy Balkin (2006), digital still
Retrieved from <http://www.publicsmog.org/>

Magid, Schnitt and Balkin have all documented acts within the public sphere, which acknowledge and conform to, a known norm or regulation. And while appearing to sit offside accepted modes of

behaviour, these actions offer legitimate conflict and the chance for debate and discussion (Bishop, 2004).

The interventions for this project are informed by specific social norms and legal rules that have been co-opted by the communities I live within. And while they may register as some kind of failure to act or perform accordingly, it is my respectful submission that these interventions operate as a form of resistance, in order to test the strength or weakness of any existing structure and as Ranciere argues, offering 'a temporary interruption' to a shared understanding of the everyday (Ranciere, as cited by Wolfe, 2006).

*



Rewriting the law on disorderly behaviour for Queen's Birthday, 2011
video still (Video: Ziggy Lever)

Date: June 04, 2012

Time: 05:45 pm

Action: To write out the Supreme Court decision on disorderly behaviour while sitting in a public pond, under a fountain.

Duration (action): 12 mins

(video): 4 mins 38

Conditions: Rain jacket. curriculum reader for first year AUT Law students. legal pad. black pen. green plastic chair. public pond with fountain.

Description: An action that considers the Court of Appeal decision of *Kinney v Police* [1971] NZLR 294, and what constitutes disorderly behaviour in a public place. See Section I The Breach, p. 22.



Yoga for beginners: Part II, 2011
video still

Date: October 30, 2011

Time: 11:55 am

Action: To float a yoga mat in the middle of a public lake.

Duration (action): 45 mins

(video): 2 mins 30

Conditions: Pink yoga mat. fishing line. scissors. architecturally designed lake.

Description: An action in response to the 'housing development' and the strict conditions regulating private ownership and use of land.



Waitangi Day spin, 2012
digital still

Date: February 06, 2012

Time: 12 noon

Action: To hang my washing on my neighbour's washing line.

Duration (action): 9 mins

(video): 2 mins 54

Conditions: Washing (jeans and tee-shirt), 4x pegs, step ladder, neighbour's washing line, gentle breeze.

Description: This action considers the nature of land ownership in New Zealand and the rhetoric of disagreement that arises every year around Waitangi Day (February 6th), and the Treaty of Waitangi.



Koha (just practising), 2011
digital still

Date: June 27, 2011

Time: 01:41 pm

Action: To place a koha ice-cream container on the foreshore of a West Coast beach.

Duration (action): 35 mins

(video): 2 mins 30

Conditions: Blue plastic ice-cream container. log. West Coast beach. Winter's day.

Description: A response to the controversial Foreshore and Seabed Act 2004, and the related issues of land-use and ownership in New Zealand.

The Breach

Kinney v Police

"The incident which involved the appellant occurred at 5.30 pm. The function was ending and the last of the bands was silent. But as the appellant made his way to the road, he found himself passing the pond which I have mentioned. Normally it is occupied only by goldfish and a few wild ducks, but on this occasion they were joined for a few brief moments by the appellant. The ducks seemed unperturbed — they remained on the surface of the water with scarcely an increase in their rate of stroke. The attitude of the goldfish is unknown. As for bystanders, there were few people about at the time, although there is evidence that some persons were looking across towards the Gardens from their homes on the far side of the road."

Kinney v Police [1971] NZLR 924 per Woodhouse J.

*

Michel de Certeau, in the chapter 'Making Do: Uses and tactics', focuses on those ways of operating that the individual may engage with, which at best, register as a form of resistance, or failing that, acknowledge a certain resignation to the imbalance of power between the individual and any form of authority. This resistance, he contends, exists in the form of tactics: an action that 'insinuates itself in the other's place, fragmentarily, without taking it over, in its entirety, without being able to keep it at a distance' (1984, XIX). While showing no allegiance to any strategic base, these tactics rely more on seizing the moment, in order to subvert time over space. Tactics that don't automatically breach any known or defined laws, and as a result of the interventions emerge as overlaps, where social and legal ambiguities provide opportunities for creative exploitation.

The interventions that I engage in as an artist, acknowledge, question and resist certain social/societal norms, rules and regulations that determine what is acceptable behaviour in public spaces. I use particular legislation and case-law as starting points for the interventions, which may involve referencing a particular action (trespass to land) or the purpose supporting the legislative measure (Public Places bylaw 2008). The resulting action and installation may not reference the specific rule, but sits more in support. And with every intervention, there are several stages involved. From the initial idea and survey of a proposed site, through to the action and documentation for installation. Each stage is important, helps comprise the intervention and in some way references a legal rule. My interest in the law therefore provides key elements to the form, structure and conceptual development of these interventions.

The case of *Kinney v Police*, is a key legal authority in New Zealand, which helps define what constitutes disorderly behaviour in a public place. It is taught to first year law students at AUT and is part of their curriculum reader. The case involved a hapless concert-goer, who on his way home, decided to wash his feet in a public fountain. Whether he was seen by a member of the public, or from a private residence, and the degree to which his actions could offend were the elements the Judge had to consider in deciding whether his actions were disorderly.



Figure 4. *Rewriting the law on disorderly behaviour for Queen's Birthday*, 2011 video still
(Video: Ziggy Lever)

The intervention entitled '*Rewriting the law on disorderly behaviour for Queen's Birthday*' (Figure 4), is a response to this case. The 4 min 38 sec video features me wading into a public duck pond at dusk, sitting in a plastic garden chair under a fountain; and in blustery conditions, attempting to copy the entire contents of a Supreme Court authority on what amounts to disorderly behaviour in a public place. The title, wading into a public pond at that time of day/night and the low-res quality of the video, were all deliberate decisions designed to lead any viewer into thinking that the act of (re)writing under a fountain was potentially disorderly. And it was my hope that the repeated video clip, of a seemingly harmless activity, would throw into question what it is we value as orderly/disorderly and why is it that we come to that conclusion? While not imagining a right to rewrite the law, or that I have a definitive grasp on the legally correct meaning of disorderly, my attempts to write were more to reflect my own relationship as a former practitioner and teacher of the law, and to entertain a sense of ambiguity as to the purpose and nature of the law surrounding this intervention, as illustrated through the futility and impossibility of the chosen action. Questions that surfaced in critique, acknowledged a certain obscurity to the work, and a frustration that even the title did not appease, so whether any message or content was accurately conveyed is somewhat doubtful. So while I am happy to court the ambiguous as a deliberate ploy to raise questions, this element requires constant consideration, if I am to achieve the aims of this project.

The Breach | The Site

The actions for the interventions are of the everyday and are located in my everyday. And it is both the public space of the street and their adjacent private spaces, that operate as the primary site⁴ for intervention. Deciding where, when and why to intervene, has largely been determined on a day-to-day basis. Sometimes happenstance, others seasonal, the intervention may involve a site of personal

⁴ site. See footnote p. 8 for explanation. The site of the intervention, in the context of Certeau's space and place, is where the action occurs.

interest (Housing developments), reference a special anniversary (Waitangi Day), or relate to political or legal news (the now repealed Foreshore and Seabed Act 2004).



Figure 5. *Yoga for beginners: Part II*, 2011 video still

The intervention '*Yoga for beginners: Part II*' (Figure 5), was carried out in a newly developed housing area, close to where I currently live. The uniformity of the houses, materials used for construction and the designer landscaping are common features of any housing project, and it is through the use of a yoga mat, floating in the middle of a public lake, that I attempt to reference the site and the restrictions that exist with this style of living and landownership.



Figure 6. *Waitangi Day spin*, 2012 digital still

'*Waitangi Day spin*', (Figure 6), involved jumping the fence and hanging my washing on my neighbour's washing line, where the act of trespass and use of someone else's property, on Waitangi Day, was in direct response to the continued debate that surrounds the Treaty of Waitangi. A debate that is fuelled by media, Maori and non-Maori alike, and where dis-agreement is repetitive and ongoing.



Figure 7. *Koha (just practising)*, 2011 digital still

This intervention on a West Coast beach (Figure 7), referenced legislation the Labour Government in 2004, enacted under urgency, as an attempt to prevent this area of land (the foreshore and seabed) from being privately owned by local Maori. The use of the blue ice cream container, as an honesty box, was my response and dis-agreement to the way the government exercised its constitutional right to create laws, which it argued were made to protect the right of all New Zealanders to free access and use of this treasured part of the country. An exercise, which I believe was made in haste, in view of the fact this law (Foreshore and Seabed Act, 2004) was subsequently repealed/replaced by the Marine and Coastal Area (Takutai Moana) Act 2011, due to the strength of some public opposition; and the realisation that the government may have been more intent on retaining any commercial benefits generated from this 'property', than ensuring private individuals or a group of individuals did not hold exclusive rights, over and above the general public, to this area of land.

The Breach | The Action

After selecting a site, I begin with a set of instructions which outline the action and accessories to be required. The action (e.g. trespass to property) and the accessories used (ice cream container as koha or honesty box), are deliberate choices to acknowledge the relationship between the intervention and the site. The action and related objects, due to their familiarity, allow the viewer to engage with the resulting artwork as well as providing an alternative viewing of the space and associated action in question. The ice-cream container, easily recognised as a household storage item, performs its function as an honesty collection box in both '*Grapefruit drink stand*', (Figure 6) and '*Koha (just practising)*', (Figure 7). While provisional in nature, the objects are deployed as according to function, for the duration of the intervention.

When carrying out a survey of any site or idea for intervention, I am conscious of the legal constraints that may exist, and the range of consequences that are possible, should I attract the attention of the police or a member of the public. Crucial to any successful prosecution will be whether I have been *seen* doing something disorderly in or within view of a public place. These guidelines have ensured interventions of short duration with little visible trace remaining.

The Breach | The Viewer.

When selecting a public or private site within which to perform, it is not my initial intention to engage with, or even to be seen by any viewer. This apparent ambivalence to any viewer during the intervention, is directed firstly by the legal criteria for disorderly behaviour (i.e. to be seen), and secondly that the interventions exist foremost as a stage in the art-making process (and concurrently as a test to the flexibility of my own personal boundaries) — and not as a personal invitation for collaboration or comment. However given the public nature of some of the sites, I am aware that there is a strong possibility I may be seen; leaving open the question of what it is the viewer sees? While these interventions exist as part of a visual arts project, the relative normalcy and short duration of the action may mean any viewer to the intervention does not recognise that what they are witnessing *is* a

stage of an art-making process. This ambiguity has meant that with '*Berm #14*', I was mistaken for an independent lawn mowing contractor, '*Koha (just practising)*', a council dog control officer patrolling public beaches; and with '*Grapefruit drink stand*', someone commissioned to take photographs for a real estate agency.



Figure 8. *Grapefruit drink stand*, 2011 digital still

So while the importance to me is the carrying out of the action in the selected site, the possibility of being seen has to be dealt with at the time and remains an unknown element of all interventions.

While there is the possibility of a social encounter, my reluctance to be seen or even to engage with the public, would appear to sit in contrast to Nicolas Bourriaud's notion of relational art; where the meaning of the artwork is the result of a collective and social effort, rather than a solitary or individual experience. Bourriaud believed that relational artworks insisted upon use over contemplation, and were intended to produce human relations and to encourage action. That the artworks appeared open-ended with no formal duration, Bourriaud argued, allowed a versatility for interpretation and a momentum to keep the work in motion. The traditional art space such as the gallery, was converted into a social space, where viewer participation and dialogue was paramount to any conversation about the form or nature of any human relation that resulted (Bourriaud, 1998).

Claire Bishop in '*Antagonism and Relational Aesthetics*' (2004), believed that Bourriaud's analysis of relational art didn't go far enough, and that he failed to consider the types of human relations being formed and that not all these relations might be positive. While Bourriaud was happy to celebrate a renewed democracy of art representation, Bishop went further and asked 'what does this democracy really mean'? As well as the social encounter, relations as antagonism or agitation, Bishop offered, can help define the democratic conditions operating within the public sphere, and should be embraced as a fundamental element of relational art (2004).

With the interventions of this project, while there is the possibility of a social encounter, there are never any formal rules of participation offered. As a form of relational antagonism, this may reinforce a distance between any viewer and the action, and at the end of the day, may negate any notions of relational art. While it is not my intention that these interventions operate to produce human relations at the time of action, I am interested in the words of Thomas Hirschhorn when I carry out an intervention. Hirschhorn believed the political commitment to his art, was not just about activating the viewer in a space: "I do not want to do an interactive work. I want to do an active work. To me, the most important activity that an art work can provoke is the activity of thinking. Andy Warhol's Big

Electric Chair (1967) makes me think, but it is a painting on a museum wall. An active work requires that I first give of myself.” (Hirschhorn as cited in Bishop, 2004, p. 76).

*

Accessories.

large garden broom. small domestic shovel and pan. all purpose black rubbish bags. red and black ear-muffs. plastic safety glasses. plastic petrol container. lawnmower. grass berm.

kitset bookcase. vase. flowers from neighbour's garden. building site.

small wooden butler's table. glass pitcher. plastic disposable cups. orange and grapefruit juice. blue plastic ice-cream container. grass berm.

blue plastic ice-cream container. log. West Coast beach. Winter's day.

pink yoga mat. 45mm fishing line with weight. scissors. architecturally designed public lake.

1x bag of 100 multi-coloured plastic balls. tennis racket. for sale sign.

cardboard stencil dollar bill sign. chalk. privately owned public carpark.

free jokes (sign). Rugby World Cup NZ 2011.

I'm against it tee-shirt. jeans. 4x plastic pegs. step ladder (medium). neighbour's washing line. Waitangi Day.

tee-shirt. jeans. jacket. running shoes. neighbouring farm. Autumn fog.

rake. cardboard box with the word free written on one side. public park. Autumn leaves.

free queue (sign).

I look like my mother (sign).

\$4.30 (x2). Starbucks.

48% friendly tee-shirt. friendly here (sign). Memorial dedicated to the brave men belonging to the Imperial and Colonial forces and the Friendly Maoris who gave their lives for the country during the New Zealand wars 1845 -1872.

photocopier machine. A4 (white) paper. 2x 14" CRT televisions.

legal pad. black pen. curriculum reader for AUT first year law students.

tee-shirt. jeans. jacket. sneakers. plastic garden chair. public pond with fountain.

step ladder (medium). neighbouring fence.

free birthdays (sign). blue plastic ice-cream container.

cardboard stencil MAORI LANE. white chalk. bus lane.

Accessories, 2010 – 2012



An unsuccessful attempt at chasing fog, 2012
video still

Date: February 18, 2012

Time: 6:43 am

Action: To chase fog from a neighbouring farm.

Duration (action): 20 mins

(video): 4 mins 38

Conditions: Jeans. tee-shirt. jacket. running shoes. neighbouring farm. late summer. early morning fog.

Description: This intervention involved engaging in the act of trespass onto a neighbour's farm, and running around chasing fog for 20 minutes.

Failure

"Failure is rarely a measure in itself but rather a vague and unstable category that is used to determine all that is errant, deficient, or beyond the logic and limitations of a particular ideology or system." (Cocker, 2010).

*

Emma Cocker in her article, 'Over and over, again and again' (2010), makes reference to specific art practices and their relationships to notions of failure, repetition and the absurd. Using the Greek myth of Sisyphus⁵ as a (philosophical) backdrop, she argues that the deliberate use of 'failure' (and repetition), while referencing the tragically absurd, can also facilitate a different reading of playful resistance. On p 54 she states, 'the myth of Sisyphus is invoked in different ways where its meaning can be seen to shift, moving from (and also between) a sense of futility and an individual's resignation to the rules or restrictions of a given system or structure, through resistance towards a playful refusal of the system's authority.' (2010).

I am interested in exploring how far the deliberate flouting of the 'rules of a game' can exist as a form of resistance, or whether the intended collision with the system's authority, appear only as unresolved, illegitimate and a return to the absurd? Or perhaps that it is this 'critical inconsistency' that is integral to the ideas central to this project, where the 'shifting of position between investment and indifference, seriousness and non-seriousness, gravity and levity, serves to rupture or destabilise the authority of the rule while still keeping it in place.' (Cocker, 2010, p. 156).

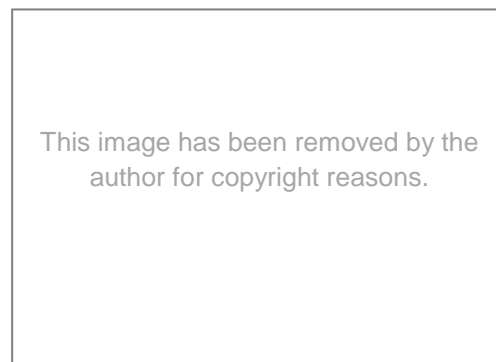


Figure 9. *La Pluie (Projet pour un texte)*, Marcel Broodthaers (1969), film still
Retrieved from http://not-yet-there.blogspot.co.nz/2008_03_01_archive.html

Understanding, or at least acknowledging a system of authority is central to the interventions of this project. The authority could manifest as a social or legal norm or the laws of nature. Marcel Broodthaers in '*La Pluie (Projet pour un texte)*', (Figure 9), is filmed trying to write with a fountain pen, in the rain. Cocker describes the act of Broodthaer writing, 'Over and over, the artist attempts to

⁵ According to popular translation of Classic mythology, Sisyphus was punished for his lack of respect for the gods, and given the task of rolling a rock to the top of a mountain only for it to then roll back down again (Cocker, 2010).

inscribe his thoughts onto the page, however each time he is thwarted by the relentless downpour, which washes his words away.’ (Cocker, 2010, p. 157).



Figure 10. *An unsuccessful attempt at chasing fog*, 2012 video still

The intervention '*An unsuccessful attempt at chasing fog*', (Figure 10), explores the physical (im)possibilities of the action and the system of social and legal norms that it references. As an opportunity to extend Summer, this intervention proposed to chase fog from a neighbouring farm, and involved jumping the fence at 6:43am and running into and chasing away pockets of fog. With the ascending sun and the logistical difficulties of achieving this aim, failure, in a physical sense, was always anticipated. But failure to adhere to social and legal rules that discourage trespassing onto privately owned land and running (aimlessly) for 20 minutes, at this hour of the morning, was offered as analogous resistance to the expected modes of behaviour in today's society. While not advocating a complete disregard for private property rights, the early morning jog encouraged few witnesses, leaving unanswered the question as to what messages, other than the futility of the exercise, were or could have been conveyed at the time of intervention?

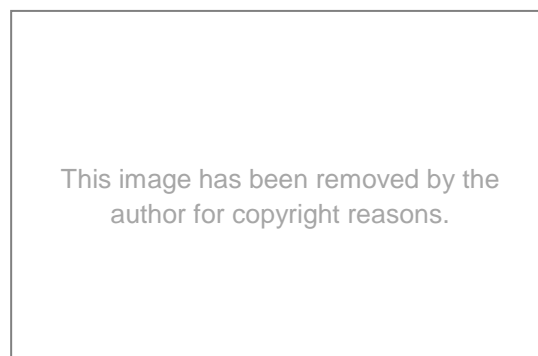


Figure 11. *Paradox of Praxis 1 (Sometimes making something leads to nothing)*, Francis Alys (1997), digital still. Retrieved from <http://www.nytimes.com/2011/05/01/arts/design/francis-alyis-a-story-of-deception-to-open-at-moma.html>

The work of Francis Alys often entertains the idea of failure. His work entitled '*Paradox of Praxis 1 (Sometimes making something leads to nothing)*' (1997, Figure 11), shows Alys pushing a large block of ice through the streets of Mexico City, until it has melted away. '*Rehearsal 1*' (1999 - 2004), also involves the artist engaging in 'protracted action that invariably fails to produce any sense of measurable outcome.' (2010, p. 159). A red Volkswagen is featured making repeated attempts to

climb a hill in Tijuana. This action is set against the soundtrack of a brass band in rehearsal, where when 'the musicians play, the car begins its ascent. As the band stalls so does the car; instruments are retuned as the Volkswagen gradually rolls back down the hill.' The action and title, suggest Alys is more interested in repetition where the act of completion 'is always potentially delayed.' A refusal to meet expectations and a device instead, to question the existing dominant framework, while still operating within it (Cocker, 2010). Mark Godfrey in 'Politics/Poetics: The work of Francis Alys', believes the 'most significant question he poses - to himself as well as to his viewers - is whether such poetic acts, while underlining the 'senselessness' of particular real situations, can also create a space for new ways of thinking' and ultimately possibilities of/for change (Godfrey, Biesenbach & Greenberg, 2010).

Within this project, I am interested in engaging in situations that appear open-ended, ambiguous or even incomplete. '*An unsuccessful attempt at chasing fog*' also suggests, that on another day I might have better luck. '*Rewriting the law on disorderly behaviour for Queen's Birthday*', entertains in the present continuous, the right as to who is qualified to determine the legal bar for defining non-acceptable behaviour in the everyday. Actions that I would argue, acknowledge a certain futility and therefore a sense of absurdity with each Sisyphean attempt. Rosalind Krauss, on Sol LeWitt's *Variations of Incomplete Open Cubes* (1974), argued against the interpretation that this work demonstrated the 'pursuit of intelligibility by mathematical terms' and instead suggested it was essentially subversive in nature, 'addressing itself to the purposelessness of purpose' (Krauss, as cited in Cocker, 2010, p. 270). The interventions in this project are my attempts to question the purpose of the rules of any particular situation; in order to test the flexibility of any system of control and to see whether the rules of engagement can be changed or redefined.

*



Free jokes, 2011

digital still (Photographer: Tuafale Tanoa'i)

Date: October 11, 2011

Time: 04:58 pm

Action: To stage a protest of kind, during the Rugby World Cup NZ 2011.

Duration (action): 12 mins 30

Conditions: Free jokes sign.

Description: An attempt of social protest at the legislation banning unauthorised commercial profit from the staging of the Rugby World Cup NZ 2011.

Date: Tue, 19 Jun 2012 22:17:27 +1200

To: laynew@hotmail.com

Hey miss Layne!

Liv and I were sitting at britomart this evening and a faux sort of homeless man (maybe he was just a bit hobo chic I'm not sure) came up to us and asked to sell us a joke, but then said he'd give it to us for free!

and I'm passing on the savings with the very same free joke...

Q. How many psychiatrists does it take to change a light bulb?

A. One but the lightbulb has to want to change first.

love

Soph

Humour

“There is no better start for thinking than laughter. And, in particular, convulsion of the diaphragm usually provides better opportunities for thought than convulsions of the soul.”
(Walter Benjamin, 1978).

*

Simon Critchley, in his book ‘On Humour’, describes laughter as an ‘interruption of breath’, and further that ‘laughter invites comparison with similar convulsive phenomena like orgasm and weeping.’ (2002, p. 8). Critchley believes it is this loss of self-control that signals a distancing of mind from body; a disjunction where we can reflect and notice the disparity in the way things are, against our original expectations. We can observe in convulsions, spasms, or tears (2002).

Humour plays an important part in my everyday, and accordingly is central to the interventions. I look for occasions where I might enjoy or activate a humorous moment. A moment that relies on the structure of a joke, and provides opportunities to thwart expectations.

The structure of a joke implies expectation and deception; the setting up of a familiar and habitual situation, abruptly defeated by the unexpected (Critchley, 2002). Stephen Crocker, on Bergson’s analysis of laughter, refers to the moment of breakdown as allowing a ‘more intensive engagement with the situation at hand’. (2010, p. 82). When the expected does not arrive, we achieve some kind of distance in order to reflect on the reality of the moment (Crocker, 2010). And it is this reality of moment that I like to engage with; taking the structure of a joke and twisting it around as a listener or a joke-teller. An intensive engagement to experience a change of situation or to deceive. (Critchley, 2002).

Allan Ryan in ‘The Trickster Shift’ (1999), cites the work of anthropologist, Paul Radin, and in particular a profile of the Trickster⁶ as found in American Indian mythology; where the element of trickery is seen as important to any tactic of deception. Ryan refers also to Gerald Vizenor’s work on contemporary Trickster narratives, where his emphasis is on the Trickster as a ‘doing’ rather than an essence. And while the Trickster, as familiar to stories of the Native mythological universe, may manifest as a being, these creations serve more to illustrate the doing as ‘being curious, ingenious, playful, irreverent and resilient’ (Ryan, 1999). Central to the idea of the ‘doing’ are the comic qualities associated with the trickster, where the ultimate goal of the comic element ‘is a radical shift in viewer perspective and even political positioning by imagining and imaging alternative viewpoints’ (Ryan, 1999).

⁶ The Trickster, in North American mythology, is admired for being a risk taker, rule breaker, boundary tester and creator transformer (Ryan, 1999).

Thomas Olesen in 'Humour and social protest' (as cited in Klein, 2007), sees humour as having the potential to act as a symbolic bridge between distant ideas. Within a political context, humour can be used to engage the recipient with broader ideas not immediately evident in the humorous point being made.

I am interested in the playful and (I suspect) most likely the irreverent, as starting points for any interventions. Sheri Klein in 'Art and Laughter', describes the relationship between art and humour as a postmodern condition, which focuses on the sociological understanding of the use of humour to perpetuate or challenge norms or stereotypes and to induce pleasurable experiences. Klein discusses the variations of humour and notes that satire (in caricature form) has had a long presence in the history of the visual arts. Other types of humour to emerge more recently include the use of parody, irony and the pun - all of which are characterised by distinctive and subtle shifts and which add their own inflections to the discussion on humour in art (2007).

Returning to 'The Trickster Shift', Lawrence Sullivan believes the use of irony is central to the Trickster figure. "The Trickster's character and exploits embody the process of ironic imagination. His dynamism of composition mocks, shatters and re-forms the overtly clear structures of the world and the overtly smooth images of the mind. In him the 'double-sidedness of reality reveals itself." (Ryan, 1999, p. 8).

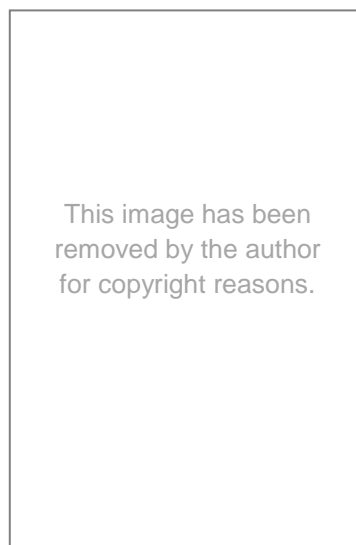


Figure 12. *Bliz-aard Ball Sale*, David Hammons (1983) photograph

Retrieved http://www.frieze.com/issue/print_article/a_fraction_of_the_whole/

David Hammons is an artist who uses humour to explore ideas of ethnic identity and to critique both the art and political worlds. For the duration of his career as an artist, Hammons has remained unrepresented by any agent of the art industry, and has earned the reputation of being a trickster, elusive to media and the market trends alike. Decisions that might ordinarily interfere with any commercial success, but for Hammons, a personal strategy that has ensured cult-like attention from the industry for the last 40 years. In his work, '*Bliz-aard Ball Sale*' (1983, Figure 12), the documentary

photograph of his street performance, shows Hammons as an 'anonymous and disreputable pedlar', trying to sell snowballs in winter. As the Trickster tag suggests, Hammons sees the notion of the artist as one in 'constant flirtation with the illicit and the fraudulent', where it just might be possible that 'the whole business is a scam.' (Stern, 2009).

Hammons' use of humour to expose the 'double-sidedness' of the art and political worlds, suggests there are boundaries that can be crossed; that the humour of the situation can provoke a rupture to expectations of the individual and community. But what if this 'flirtation' goes too far, the meaning potentially obscured and the opportunity to reflect, lost? An awareness of the local and shared understanding of any community, is therefore important to gauge any relative success in the use of humour to convey the silent messages present in a joke.

Michael Parekowhai, is another artist who often uses humour to translate ideas related to originality, authenticity and ownership. Sally Blundell, in an interview with him for the New Zealander Listener describes this translation as one 'that interweaves the canon of "high art" with cultural tradition, the handmade object with mass-produced tourist tat, the imported with the proudly colloquial.' (2011, May 14th). His work 'appropriates the already appropriated', using recognisable souvenirs to re-represent; giant inflatable bunnies, a 1962 VW Kombi van, and guitars decorated with 'paua inlays and classic kowhaiwhai patterns.' (Blundell, 2011, May 14). His use of humour, Blundell adds, can at times render a sense of discomfort with the realisation of what is being translated. His use of a life-size, tuxedoed mannequin with the name tag "Hello, My Name is Hori", may have encouraged initial laughter, but Blundell believes it could also have left the viewer with a 'lingering unease.' (2011, May 14th).

Mary Douglas refers to a joke as 'a play upon form.' (1975, p. 96), a structure that I too use to comment on some aspect of the social culture of the everyday. Critchley further agrees by stating 'what is played with are accepted practices of a given society. The incongruities of humour both speak of a massive congruence between joke structure and social structure, and speak against those structures by showing they have no necessity.' (Critchley, 2002, p. 10). For the joke, there is the recognised form...'Knock knock'...or 'An Englishman, a Scotsman and an Irishman walk into a bar.'; and where once initiated and the listener agrees, they both then enter a social agreement to engage in the joke-telling process. For the listener to walk away at this point would be a breach of social norm. But for the listener to stay, engage in the process and still not laugh? Maybe also a breach, but not as serious. Anyway besides, whose breach is it? For when a joke is started, the listener has an expectation that something funny and unidentified at this stage, is due. But what if the listener understands the intention but doesn't find the joke funny?

Inherent to the nature of humour is the element of risk; that what I find funny, may not register even a smile from any other listener or viewer. Critchley believes that 'humour is usually highly context-specific' and that translation is not always guaranteed (2002, p. 67). Even if the joke-teller is

convinced of the hilarity of the moment, the lack of cultural, political or even legal insider-knowledge of the listener or viewer can render the joke flat in seconds (2002).

The *'Free jokes'* series was an intervention that involved the Rugby World Cup NZ 2011, and in particular a response to constitutionally challenging laws that protected the corporate interests sponsoring the event. These laws gave 'super-ordinary' powers of delegation to the local council to ensure no one else profited from the staging of this international tournament. Council employees were dressed in bright orange, all-weather protective clothing, and armed with clipboards as they patrolled the specific 'Clean Zones' to check for illegal frontyard sausage sizzle hustlers and irregular advertising that offended the purpose of the legislation. Hardly likely to compete, these D.I.Y. business efforts were not encouraged, despite this being an important part of our national identity. This to me was an example of laws being used to temporarily suspend part of our social structure, and my protest sign was a play upon the idea that we should not have to fight for something that is, or should be 'free'.

For the duration of the Rugby World Cup, weather permitting, I would attend the grounds close to Eden Park stadium, and stage a 'protest' close to kick-off. This timing ensured a constant flow of people, some who smiled, made a remark in passing, or barely gave me a second thought. And, of course there were the anticipated requests for a 'free joke'. I had prepared a few standard funnies, but overall my attempts at promoting physical pleasure failed, and I was thankful for the unchanging gait of passer-bys. But even if the passing observer didn't laugh, did they get any message? It was my guess that most were unaware of the potential threat to our constitutional makeup, but was the viewer/passerby offered any idea or viewpoint to reflect upon? Other than the possibility of standing on a street corner, on the eve of a culturally significant social and sporting event, holding a simple sign for what looks like a protest, but doesn't quite fit the mould - probably not.

So while I envy the expert joke-teller, with a recognised form and follow-through, the style of humour I am (now) more interested in engaging is the 'spontaneous joke' which uses the structure of the standardised joke as an entree, but then offers no obvious finish or dessert, operating more as an add-on. I enjoy playing with words, text or a conversation. Sometimes trivial, often unheard, these moments record a certain slippage or temporary detour to any expectation. With respect to this project, this double-sidedness may appear in the title, the objects used or the site chosen. I am interested in entertaining the notion of ambiguity, as a way to provoke alternative interpretations of the situation under observation. An ambiguity that promotes intrigue rather than doubt and is non-threatening in its attempt to disrupt the structure of the standard joke, and in some way embraces the thoughts of Parekowhai, "Humour's a really important part of everyday life, especially with art. You gotta make them smile before you make them think." (Tahana, 2010, February 24).

*



Friendly Maori series: coffee break, 2012
digital still (Photographer: Ziggy Lever)

Date: April 14, 2012

Time: 10:17 am

Action: To change identities while drinking coffee.

Duration (action): 45 mins

Conditions: \$4.30 (x2), Starbucks.

Description: An intervention to contemplate the notion of changing public identities while ordering coffee at Starbucks. Using Starbucks's service structure of writing a customer's name on the cup at the point of sale, and then calling this name out when the coffee was ready, I wanted to try out a new public identity while having coffee with a friend. My first attempt at Miss New Zealand was reduced to a simple 'Miss ENZ' and my second attempt, 'Friend?'

Risk

risk: the possibility that something unpleasant or unwelcome will happen; a person or thing regarded as a threat or likely source of danger. (Oxford Dictionaries, 2012).

*

Risk as a notion, acts as a future proposition with no specific definition of time; supported by an incident in the past and a warning sign of possible outcomes and consequences. A notion that feeds off a state of ambiguity or something incomplete, that can only guide or at best, manage the possibilities of a favourable outcome.

Mary Douglas in her work on risk perception, believes perceived risk is closely related to an individual's social and cultural makeup and community (Douglas, 1992). From the outset, the interventions involve some element of risk, both to me as an artist and as a New Zealand woman of Maori/Irish descent, with former work experience as a lawyer. While practising law, my work involved assisting people to manage their daily risks in respect of the law, and if that (had) failed, then in court to argue the outcome. Assessment of multiple options was necessary within any given situation.

If I perform/intervene in view of the public in a public space, or enter onto private land there is a chance I may invite a public prosecution (disorderly behaviour) or private action (trespass). So for each intervention, this awareness of risk is necessary, as both a personal motivator and to assess the potential for any legal action. My intention is that these interventions sit at the boundaries of socially acceptable behaviour and are somewhat vague in substance. The drink stand at the side of the road (*Grapefruit drink stand*), or the message in chalk at a privately owned carpark (*I was only 10 minutes late*) are actions chosen as least likely to offend a viewer, but still in danger of legal sanction. With this project I am interested in questioning why it is that these seemingly harmless actions could be a reason to penalise, and while I try not to be overly confident in my pre-intervention legal assessment, this information helps me identify entry and exit points and what I might say if questioned.



Figure 13. *I was only 10 minutes late*, 2011 video still

The intervention, entitled '*I was only 10 minutes late*', (Figure 13), was in response to receiving an infringement notice of \$65.00 for returning late to my car at an inner city carpark. While I recognise something was owed, to my mind, this fee did not accurately reflect their loss for the errant 10

minutes. As the carpark was privately owned, I knew that if they were to pursue this penalty, the costs involved in taking legal action would far outweigh the sum claimed. Therefore I knew that the letters I continued to receive of pending action, and added costs, were intended to intimidate me into paying the fee, rather than provide formal notice. I chose not to respond to any of the letters, as is my right, and was amused by the fact that this was costing them money to write to me. And while I have no proof, the chalk message I left in the car park space outlining my sentiments, appeared to have been water-blasted from the site within 24 hours, so surely another cost to them.



Figure 14. *Friendly Maori memorial*, 2012 digital still (Photographer: Ziggy Lever)

The '*Friendly Maori*' series grew out of an interest in a local memorial⁷ (Figure 14), dedicated to the 'memory of the brave men belonging to the Imperial and Colonial forces and the Friendly Maoris who gave their lives for the country during the New Zealand wars 1845 -1872.' The term 'Friendly Maori' or kupapa, was used to describe Maori who fought with the Crown, against other Maori. And as a descendent of one of the tribes referred to as 'friendly', I was keen to explore opportunities for an intervention in relation to this site. The interventions '*Friendly Maori series: coffee break*' and '*Friendly Maori series: tour*' (Figure 15), referenced the deliberate use of text in public environments. The tour to the memorial was a chance to open up a discussion around the presence of the memorial, the use of these words at that time, and how as artists we might respond to this in today's conversation. The third intervention in this series was carried out at dawn on ANZAC Day this year. '*Friendly Maori series: Dawn Service*' was for those who had died for their country but also questioned why we continue to memorialise and even glorify the notion of war?

⁷ This memorial is located at the top of Wakefield Street, Auckland.



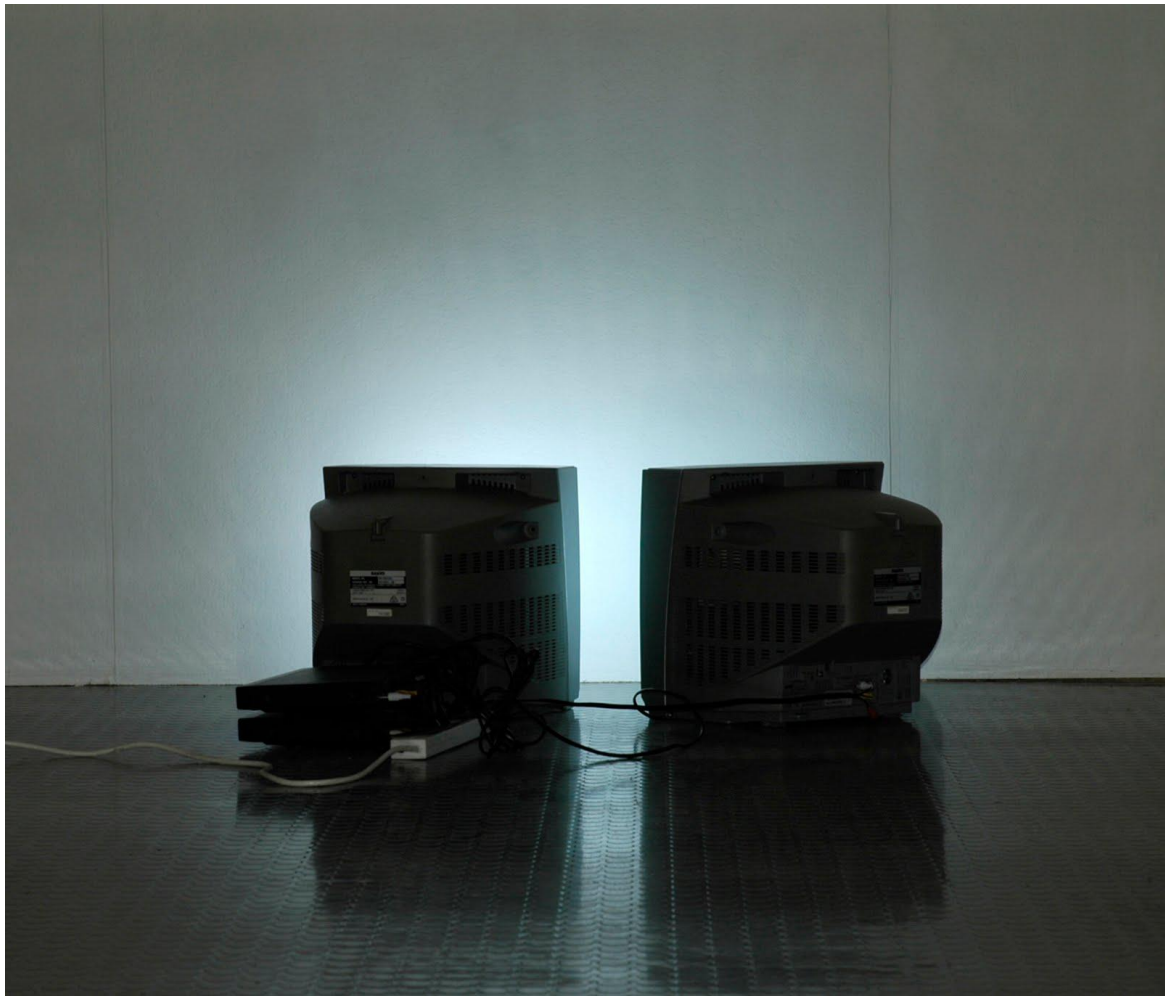
Figure 15. *Friendly Maori series: Tour*, 2012 digital still (Photographer: Ziggy Lever)

The '*Friendly Maori*' series recognises the element of cultural risk, and how I negotiate that on a public and personal level. My upbringing has been largely a Pakeha one. My Father has shared stories of growing up Maori, but it has been my Mother's cultural guidance that I am most aware of in my day to day life. So while my public/physical appearance is clearly part-Maori, my personal life experience to date has not fully embraced all elements of Maori culture. This has allowed a double-existence or even something situated somewhere in-between; a combination of social and cultural rules defining both. This is an ambiguity I am keen to develop as an exploration into the cultural risks that I am prepared to take with my practice and within my everyday.



Figure 16. *Friendly Maori series: tee-shirt*, 2012 digital still (Photographer: Ziggy Lever)

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Black Noise/Noisy Black, 2012
digital still

Date: February 24, 2012

Time: 02:45 pm

Action: To capture silence

Duration (video): 2 mins 04

Conditions: Photocopy machine. A4 paper (white). 2x 14-inch CRT televisions.

Description: The aim of this intervention was to try and capture 'silence' by videoing a photocopier in action. Unofficially, Black Noise or Noisy black, is also called silent noise. In the field of telecommunications, and in particular facsimile (photocopy machines, digital scanners) and display systems (television), the term noisy black can refer to a non-uniformity in the black area of the image, which is caused by the presence of noise in the received signal.

Silence

Historian Jay Winter, in 'Shadows of war: A social history of silence in the twentieth century', describes 'silence not as a thing, or inert space, but rather a set of cultural practices' that shape and define the relationships an individual performs in public and private. Winter questions the proposition made by French anthropologist, Marc Augé, that silence is 'the space of forgetting and speech the realm of remembrance'; and instead argues that silence can embody both acts, at the same time; and is a 'socially constructed space in which and about which subjects and words normally used in everyday life are not spoken' (2010).

Referring to silence as the unspoken or hidden, Winter reminds us of composer John Cage's *4'33"* (1952) and his interpretation of the performative nature of silence; where the silence acknowledges 'the presence of ambient and unintentional noise rather than a complete absence of sound' (2010).

Of interest to my practice, are these silent pockets which Winter argues define and are defined by socially acceptable conventions. Winter outlines three impulses that drive these cultural practices and it is the second one which interests me most with respect to my work; that 'the social construction of silence addresses problems of social conflict more directly'. Silence is preferred in order to temper opportunities for conflict or dissent; time aiding or legitimizing the deliberate choice to remain silent. Arenas where these practices thrive and are reinforced, include the courts, relationships of confidentiality (doctor, lawyer, priest or spouse), and as an inverse affirmation in our House of Parliament, i.e. parliamentary privilege affording politicians the opportunity to say things normally unspoken, for fear of legal ramifications: a privilege only they can enjoy, and only within the walls of Parliament. The nature of political or strategic silences suggests both coercion and consent; a willingness to perform and perpetuate these social conventions (2010). Foucault writes of this form of self-regulation, where Bentham's panopticon, provides illustration of the continual presence of the systems of power (1995).

Corinna Schnitt's *'Between Four and Six'* provides a literal yet probing examination of this form of self-regulation, albeit in celebratory form, leaving the spectator time to observe the silence in her work (1998). As mentioned earlier, *'Between Four and Six'*, is a 6 min colour video, showing the artist and her parents, setting out on their weekly Sunday ritual to clean neighbourhood traffic signs. The film event takes us through 'streets of a typical suburban residential estate', where the artist employs a single, uniform and continuous, tracking shot, that dutifully accompanies her narration of the family ritual/outing (Himmelsbach, 2008).

I am interested in Schnitt's observations of everyday occurrences, and how a shared understanding of social interaction can influence human behaviour, on an intimate level within the family home; and within a more public arena in the wider community. Although staged in a public exterior, the banal but communal nature of the activity and the aesthetics of the single tracking shot, remind us of the

regularity and perhaps familiarity of such outings or activities; thereby allowing the viewer/spectator to transpose their own experiences or inner worlds, within this public framework. Schnitt's observations and narrative voiceover, suggest a documentary style; and the absurd ritual undertaken, completely natural. While purporting to simulate the ideal social image, i.e. 'the Schnitt family doing their bit for the community', the uniform and contingent nature of the video, serves to illustrate a family beset by time-based and socially conforming obligations of personal communication and social interaction.

Winter believes humour, as related to silence, is another domain which challenges what should be said in polite society, and points most directly at our acquiescence. Operating outside the normal code of social conduct, humour confronts the presence of silence in the spoken and the unspoken. With my project, my intention has been to create a 'situation' that despite the initial visual confrontation, offers a safe zone to reflect on the power that silence plays in our everyday lives. While lacking the reliability of any formal code of conduct, these performative acts on the construct of silence, employ humour as a form of protagonist and social cushion, where my personal involvement confirms that I too have been coerced or have consented.

The work '*Black Noise/Noisy Black*' refers to the unofficial term for silence. While it is generally accepted that there is no such state of absolute silence, I am interested in drawing attention to the possibilities of other noises and how it is that we shape cultural practices with the said and the unsaid. These injunctions/interventions therefore, while not completely silent, speak more to the variety of noises that can exist in the everyday.

*



Maori Lane, 2012
video still

Date: September 18, 2012

Time: 10:35 pm

Action: To make a special lane for Maori.

Duration (action): 2 hours 13 mins

(video): 23 mins 30

Conditions: Cardboard stencil MAORI LANE. white chalk. bus lane.

Description: An intervention to encourage discussion on the notion of water rights in New Zealand.

The Evidence

Within this project, as I am using both digital stills and video and am interested in the televisual and the notion of legal evidence, the challenge has been to locate the work for presentation in a form that best accommodates these aspects. Deciding how much and what to reveal, in order to allow access to the ideas in the work, has presented the biggest challenge for me with this project. For early presentation of the interventions I have been interested in exploring Auslander's ideas on the nature of the performance document, and in particular, whether the documentation of the intervention operates as confirmation that the act/breach did occur, or in the case of installation, whether the use of the televisual and other related objects operate as an independent work? Critical feedback has suggested that access to the ideas has been more successful where I have used just the televisual document and the objects used in the intervention. A simplicity that speaks to the nature of evidence, but presented in a new or reconfigured form. On occasions when I have introduced objects for installation that were not used in the intervention, the 'theatricality' of the documentation has dominated, and created a new work unintended and unsupported by the aims of this project. My ongoing challenge therefore is to find which form of reconfigured evidence best supports and allows access to the ideas in the work.

Roland Barthes in 'Image, Music, Text' (1977), argues that the documentary photograph exists as 'a message without a code' and provides a means of accessing the reality of the performance: a position our legal system still retains as a cornerstone of the law of Evidence. In contrast, Auslander cites Amelia Jones' proposal, that documentation sits as supplementary to but dependent on the performance - thus questioning photography's ontological make-up (2006). While Walter Benjamin (1936), would argue the reproductive nature of the photographic image has reduced its aura and therefore claim to authenticity of any original or 'live' performance, I believe this element, despite academic arguments otherwise, does remain in some form. Jones sees it as supplementary, perhaps even of equal status (Jones, as cited by Auslander, 2006), but in any event this project has been interested in testing whether the use of digital stills and video does affect the encounter the spectator has with the work; whether the documentation continues to champion a certain authenticity of the performance/intervention, or whether the resulting installation of edited footage placed alongside objects used in the action, offers instead a small shift in interpretation of the work? A shift which favours a certain 'theatricality' once reassembled in a gallery or space away from the site of action, and at the same time evidence not just of the action but also of my own failure to perform the social covenants implied in a social contract.

Video as a process has allowed multiple combinations of image and audio to be manipulated and replicated. When viewed through its related technology - the TV monitor - the post-production image can be subject to further modification. While the artist may control the electronic editing process, once the video is presented for viewing, the final images can be further modified and recomposed. This recording and editing process therefore presents a paradox, that notwithstanding video being recognised as a specific creative expression, it still remains at the mercy of a medium designed for

reproducibility. 'The technical properties of the cathode tube are one thing and the aesthetic properties of the images we see on the screen are another' (Ranciere, 2007).

While Paik's earlier video work focused on using the medium to critique itself and the institutions of art, his later work explored ideas related to technology and its effect on society. Paik's work as sculpture or installation created different spectator experiences from 'frontal presentation of surfaces (screens) to more complex configurations' where the spatial arrangements of objects and images are the central components to understanding the work. I am interested in the use of video for its associations with images of the everyday and for its technical capabilities to record, manipulate and reproduce. As a screen, the images broadcast, still carry a resemblance to the live, the multiple and the reproduced. Similarly, Paik's deliberate use of the loop, is to suggest the continuous and unending stream of the televisual data. This constant state of reproduction, Ranciere argues, ensures an equal and reciprocal disappearance, thus feeding a demand for more.

Virilio in 'Art and Fear', believes the aesthetics of disappearance leads to a new aesthetics of absence, 'an absence where the silence of the visible is abolished by the sound of audiovisual multimedia.' (2003, p. 15). The televisual image in advertising and the cinematic image have saturated 'human consciousness', Virilio argues, where the immediacy of contemporary visual art is dominated by the sonority of the audiovisual (2003, p. 16). With respect to this project, the televisual documentation is often presented using television monitors, where the audio recording of the intervention accompanies the visual images. This audio is used for its relationship to the everyday and while operating more in the background to the visual image, usually includes the ambient sounds of birds, cars passing and the occasional dog bark or lawn mower. The question this raises for the project is whether my use of the televisual to document the interventions, while convenient to the notion of the everyday, could operate as Virilio alleges, as complicit termination of the right to be silent. Or perhaps in my deliberate decision to render the audio subordinate to the visual, the documentation of these interventions can activate a moment of silence or reflection and in some way respond to Virilio's challenge that it is the responsibility of artists 'to recover rather than discard the material that is absent and to bring to light those secret codes that hide from view' (2003, p. 9).

The intervention '*Maori Lane*' (2012), is an attempt to deal with this issue of reconfigured evidence as it relates to the installation of the work. With instructions 'to create a special lane for Maori', this intervention involved stenciling in white chalk the words *MAORI LANE* in the bus lane outside ST Paul St Gallery III, on Symonds St. This intervention was carried out the night before the exhibition opening, at the same gallery, of this work. Using the gallery foyer as a provisional studio, I spent 2.5 hours darting out into the traffic, marking the letters in chalk and on occasion talking to members of the public brave enough to enquire as to what I was doing. The following evening at the exhibition opening, the edited video of the action was installed in the foyer of the gallery with the traces of the stencil still visible on the street directly outside the gallery. While the video never clearly reveals myself as the subject chalk-marker, it does support the notion of evidence of the action itself, and

when presented within the institutional gallery, speaks also to the reconfigured element, when placing deliberately manipulated footage alongside objects used in the intervention, in a space clearly distinct from the site of action. A duality of outcomes I am hoping will promote an openness to any reading of the work.

For the end of year exhibition, I will continue to explore this notion of reconfigured evidence, with the installation of different versions (documentation) of the televisual and related objects used in the interventions. Presentation of the interventions may reference the archive, in relation to earlier work, together with documentation of actions carried out in the time leading up to the exhibition. This reflects the ongoing events-based nature of the project where the ideas for the interventions have related to national holidays, special anniversaries, the seasons and daily politics. The end of year exhibition, as significant criteria for successful university qualification, provides another anniversary with respect to this project.

As personal trophies, these interventions record my failure to perform according to certain rules of preferred social and legal behaviour. A failure I would submit, acts as a form of personal resistance to the ideas of social control central to each intervention. This project aims to perform, document and present interventions which promote a questioning of the rules which define acceptable social and legal behaviour in public spaces. An enquiry that I hope identifies a certain disagreement, not just with these rules, but as a required element of the democratic process of daily life. And a disagreement that is vital in order to encourage and hear other voices that exist in the everyday.

*



Free water, 2012
video still

Date: October 30, 2012

Time: 12 noon

Action: To give away water for free.

Duration (action): 48 mins

(video): 2 mins 30

Conditions: Free sign. Outdoor table (small). 29 plastic drinking glasses. water.

Description: An intervention to encourage discussion on the ownership of water rights in New Zealand.



Intervention in progress/ *Catching air*, 2012
video still

Date: November 09, 2012

Time: various times

Action: To catch air to give away for free.

Duration (action): 24 mins

(video): 1 min 42

Conditions: Plastic bag (large). Top of Oracle Tower. Air.

Description: An intervention to encourage discussion on the ownership of water rights in New Zealand.

Plea in mitigation (Thesis examination documentation and work in progress)

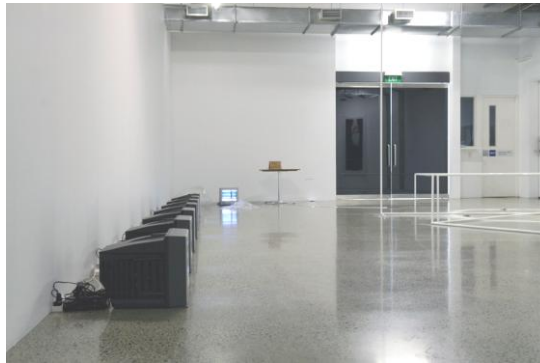


Figure 17. Thesis examination documentation, 2012 digital still (Photographer: Ziggy Lever)

As outlined in the preceding section, installation of the documentation for examination would include the reconfigured televisual image and objects used in any intervention. Installed in Gallery I of St Paul St Gallery, the space I had available was a long rectangular corridor, (or back-to-front L), with one long wall running almost the length of the gallery, perpendicular to another smaller wall just inside the entrance to the right (Figure 17).



Figure 18. Thesis examination documentation: *Archive*, 2012 digital still (Photographer: Ziggy Lever)

Using the long wall, I placed 7 identical television monitors and dvd players at equidistance on the ground, where the intention was to provide an archive of previous interventions. The wall at the end and closest to the entrance, sectioned off a working space to trial more recent ideas, or to stage interventions that might occur during the exhibition period. This set up allowed for continuation of the everyday ongoing nature of the project (Figure 19), and the opportunity to continue working on ideas and develop works that may emerge during the exhibition timeframe.



Figure 19. Thesis examination documentation: *Working space*, 2012 video still



Figure 20. *Free water*, 2012 video still

The intervention '*Free water*' (2012, Figure 20), was a continuation of my interest in the notion of property rights and another opportunity to trial this idea in a public space. Placing a small outdoor table in the middle of a busy pedestrian intersection, I offered for free, 29 plastic drinking glasses filled with water. My idea was to see what kind of reaction passersby might offer, to something (i.e. water) that they ordinarily regard as being free. The 2min30 video shows some interaction from the public, but generally most were happy to pass by with no more than a curious glance in the direction of the water feature.

For examination I presented 7 previous works, selected as an archive of personal favourites or trophies, together with the more recent *Free water* video along with the table and *Free* sign used in the intervention. Also available with the exhibition work was an A5 colour bulletin of all of the interventions included in the archive and working space, which provided relevant details of each intervention.



Figure 21. Thesis examination documentation: *AD12 Opening night Part I*, 2012 video still

For the opening of AUT's Art and Design Festival, AD12, I replaced the *Free water* video with another construction of the water feature (Figure 21), again wanting to see what kind of public reaction might occur within a gallery setting, where water was already freely available. Within a couple of hours, I was surprised to see most of the glasses were taken, leaving me unsure as to whether this was due to the copycat behavior of viewers on opening night, their ensuing dehydration or whether viewers had read the bulletin and considered the ideas around ownership of water rights, which was my intent for the work.



Figure 22. Intervention in progress/ *Catching air*, 2012 video still

As the free water had run out, I decided to trial a related idea of giving away air for free. Locating a good source of air on top of the Oracle Tower on Wakefield St, I proceeded to catch air in large plastic bags, to give away during the remainder of the exhibition (Figure 22).



Figure 23. Thesis examination documentation: Intervention in progress/ *Catching air*, 2012 video still

Leaving the objects used in the '*Free water*' intervention in the working space to encourage a connection between the act and the gesture, I replaced the '*Free water*' video with the 1min42 sec '*Catching air*' loop, together with 3 large plastic bags filled with air (Figure 23). While the plastic bags remained in different states of inflation for the next 2 days, no one was tempted to help themselves, leaving unanswered at this stage, the question as to whether the ideas of the intervention had been clearly conveyed to the viewer. A state of ambiguity perhaps, but in any event as the intervention is ongoing, this exhibition offered an excellent opportunity to trial ideas in the public domain, with the view of using any critical feedback to fine-tune, reconfigure and if possible add to the archive of my everyday.

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