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Letter from the Editor

With winter comes the sixth issue of *The Journal of Art Crime*, the first peer-reviewed academic journal on the interdisciplinary study of art crime.

We at ARCA and at The Journal are pleased to reflect back on a successful summer. We had our largest Conference on the Study of Art Crime to date, with over seventy in attendance and two full days' worth of excellent speakers from a variety of countries. We established our Scholar-in-Residence Program as part of our Masters Certificate Program, hosting renowned scholars Neil Brodie and Larry Rothfield for several weeks each. They gave several talks to our students and took advantage of the Cathal Blake Art Crime Library for research in the lovely setting of Amelia, Italy. Our third session of our MA Program was a great success, with a particularly proactive and enthusiastic group of international students. Applications are still open for the summer of 2012 session, for which we have already had far more interest than ever before. We are also in the process of establishing ARCA Publications, an imprint run through ARCA to publish this Journal and also books on art crime. The first publication was released this August, a book of mine, entitled *The Thefts of the Mona Lisa: On Stealing the World's Most Coveted Masterpiece*. All profits from the print version of this book go to ARCA. An excerpt from the book is included in this issue. Please consider ordering a copy of the book, which makes a great Christmas gift and supports ARCA's charitable activities.

I am pleased to introduce ARCA's new CEO, Lynda Albertson. After an extensive search and interview process, the trustees of ARCA selected Ms. Albertson to run ARCA on a daily basis. Based in Rome, Ms. Albertson can be contacted at lynda.albertson@artcrimeresearch.org. Under her guidance we have begun work on a new website, which we will discuss in the next issue. Great thanks go to Joni and Derek Fincham, who will continue to work with ARCA. Derek Fincham retains his role as Academic Director of ARCA and the Masters Certificate Program, while Joni Fincham has shifted to a role as a trustee and treasurer. I am thrilled to work with the Finchams and the rest of ARCA's staff, and look forward eagerly to the year ahead.

Thank you heartily for your support, and we hope that you enjoy this issue.

Best Wishes,



Noah Charney
Founder and President, ARCA
Editor-in-Chief, *The Journal of Art Crime*

Letter from Rome: CEO Lynda Albertson

Aliam vitam, alio mores

Translation: «Another life, other values», more commonly known as: «Other times, other manners»

Living in a city that doubles as the world's largest classical museum, I am fortunate to be surrounded by examples of many of mankind's breathtaking masterpieces. Turn any corner and you will find a 16th century fountain, a Renaissance statue or an ancient ruin dating back to the Roman Republic. From my front door, it's a six minute walk to the Colosseum and a subway ride to the largest church in the world, Saint Peter's Basilica. But despite its monumental glory and its own place in history, few remember that St. Peter's sits on the site of the most sacred building in all of Christendom, a church that survived almost 1200 years before the Renaissance came along leveled it. The Roman Forum too, for all its historical significance, was abandoned in AD 476, when the last emperor was deposed. Its temples, basilicas and monuments were left derelict and despoiled, stripped to the very lead and metal clamps that joined its once majestic buildings together. Even the marble was burned for lime to make cement.

Quite often, art crime is viewed through the collective lens of museum folk and law enforcement: professionals whose jobs it is to protect the world's most important artistic works, or in many cases, what little remains of it. When the general public thinks about art crime, most conjure up newspaper headlines reporting stolen Picassos sliced from their frames, underworld figures fencing looted Etruscan vases or auction houses dealing with the post-war reversal of Nazi plundered art, subjects and events far removed from their day to day lives.

As ARCA's new CEO I hope to raise awareness at the grass roots level of another type of art crime: public apathy and destruction to our collective cultural patrimony. I want to encourage cultural stewardship and promote public awareness at the individual level as well as the professional one, to facilitate greater community involvement and awareness that each of us has a social responsibility for the protection and care of the art, places, and material culture that define us as not only a civilization but as human beings.

Looking back to 2001, few events have caused as much distress and criticism within the international art community as the deliberate demolition of the Buddhas of Bamiyan in Afghanistan. Since that time, NGOs, international organizations, UNESCO, and even some of the most influential Islamic authorities have worked towards the development of an international instrument, capable of clarifying in which circumstances deliberate destruction of cultural heritage of great importance for humanity as a whole, constitutes a violation of international law.

But what about the destruction of historically significant objects, buildings and places that are not the direct consequence of fanatic iconoclasm or the 'collateral' effects of armed conflict such as the antiquities looted in Iraq, Egypt and Libya? How do we, as patrons and protectors of the world's vulnerable art and cultural patrimony, encourage community appreciation and care of our shared history? While it isn't feasible to save all of the world's cultural patrimony, how do we work to protect artistic expressions when our perceptions, religiously, politically or societally, change over time?

As a very wise man, John Quincy Adams, once said, "If your actions inspire others to dream more,

learn more, do more and become more, you are a leader.” In Latin we call that *facta non verba* meaning, “deeds, not words.” That is my hope and my commitment as I join you as ARCA’s new CEO and I hope that this will be your commitment to the world’s art as well. Success rests on both our shoulders. Together and through ARCA we can change the way people think, and engage our respective communities to think beyond what is important to us today but important to mankind for posterity.

Imperfect Doubles: The Forger and the Copyist

Aviva Briefel

Abstract

The nineteenth-century forger emerged as an unlikely model of middle-class selfhood, embodying the bourgeois ideals of industriousness, education, and thrift. More than this, he offered an example for living in a capitalist society without being contaminated by it. Although his artistic productions supplied a market demand, he escaped the charge of base materialism. Representations of the forger were rigorously gendered; he was always male. The forger embodied a set of prized masculine values that had to be guarded from female intrusion. Contemporary literary, artistic, and journalistic texts constructed the figure of the female copyist to guard the parameters of faking. They depicted the copyist as the forger's imperfect double; while their work methods were often the same, they were separated by a world of difference.

Keywords: art forgery; copying; nineteenth century; gender; identity.

Adapted by the author from her Cornell University Press book, *The Deceivers: Art Forgery and Identity in the Nineteenth Century*. Copyright © 2006 by Cornell University. All rights reserved.

In the beginning of Louis Édmond Duranty's story "Bric-à-Brac" (1881), the renowned collector Monsieur Gallois de Ginac finds that he has yet again been duped by a forgery. He discovers that the Rouen plate he has just purchased is a clever fraud. After shattering the deceptive object, he launches into the following diatribe:

"Forgery is a thing, I would almost say a being, which is incomprehensible, mysterious, fantastic, and completely ungraspable. What is the true goal of the forger? Where does he nest, where does he work? Most of the time, we have no idea. Does he seek to make money? That hasn't been proven. On the contrary, he almost always spends a lot of time and money in forging a beautiful object and incurs a loss when he sells it. Honest imitation, with regular and abundant production, provides much better benefits." (213; my translation)

Monsieur Gallois sees the forger as an enigmatic individual whose actions cannot be explained according to a conventional language of criminality; Gallois's attempts to decipher the figure dissolve into a series of questions and elusive characterizations. The forger's inscrutability is epitomized by his decision to pursue an art form that is not financially advantageous, an act that the materialist Gallois simply cannot comprehend. The end of the narrative offers an explanation for Gallois's preoccupation with the forger: we learn along with him that the culprit is his own son, who produces fakes to tame the frenzied collecting in which his father and his colleagues engage. Gallois's reaction to this momentous discovery is one of admiration rather than anger—he removes his hat in deference to his offspring.

The nineteenth-century forger emerged as an unlikely model of middle-class selfhood, embodying the bourgeois ideals of industriousness, education, and thrift. More than this, he offered an example for living in a capitalist society without being contaminated by it. Although his artistic productions supplied a market demand, he escaped the charge of base materialism. Representations of the forger were rigorously gendered; he was always male. It is no coincidence that the forger of Duranty's story emerges out of a patriarchal lineage of fathers and sons. The forger embodied a set of prized masculine values that had to be guarded from female intrusion. Contemporary literary, artistic, and journalistic texts constructed the figure of the female copyist to guard the parameters of faking. They depicted the copyist as the forger's imperfect double; while their work methods were often the same, they were separated by a world of difference.

Above the Law

It is tempting to view the forger as a countercultural opponent

to capitalist systems of art. This is how he has been read by recent critics who describe him as a quasi-revolutionary figure having the power to subvert traditional art forms and institutional structures. Sándor Radnóti argues that forgery is "the democratic satire and parody of the aristocracy of art" (14). Other critics focus on forgery as a radical production whose rejection of traditional categories of originality produces a subversive new art form. As Nick Groom writes, forgery is "a way of making, that is a practised craft as opposed to a capitalist production . . . a form of inspiration, and . . . the catalyst in intellectual revolutions in history, biography, and authorship" (55).¹ While forgery does have the power to challenge conventional notions of art, it does so only by reinforcing capitalist structures. The forger represents a form of controlled transgression that seems to challenge middle-class ideologies but actually makes them stronger. He embodies the productive deception that John Kucich discusses in *The Power of Lies*: "[Victorian] middle-class culture... depended precisely on internal instability, incoherence, and stratification, instantiated by a symbolic logic of transgression, to produce and maintain its claims to cultural authority" (3). The forger's simultaneous challenge to and confirmation of bourgeois values reconciles artistic crime within a broader middle-class agenda.

The nineteenth-century forger was treated as an incidental transgressor whose forgeries did not reflect a general immorality—he would never murder or steal. In *Le Truquage* (1884), Paul Eudel assures his readers that the forger may be trusted in any circumstance outside the art world: "In everyday life, he is of a painstaking honesty. One could trust him with one's wallet" (5; my translation). The law confirmed popular conceptions of the forger's contained deviance. In contrast to the coining of money or the forging of legal documents, which in England was punishable by death until 1832, the production of fake artworks could only incur a minor penalty ("Forgeries of Modern Pictures" 344). Similarly, France lacked legislation to punish art forgery until 1895 (Kiejman 125-28).² The disparity in laws on art forgery and other forms of faking suggests that artistic transgression was considered a containable offence in the nineteenth century; art forgery would not affect major political or financial institutions. The *Art Journal* complained about this double standard in an 1854 article: "Why the forgery of a name to a bill of exchange should render a man amenable to the criminal law, and yet the forgery of an artist's name, accompanied by a dishonest

1 Although Groom focuses mainly on literary forgeries such as those produced by Thomas Chatterton, he also includes art forgery in his discussion. For another account of the radical potential of forgery, see Ruthven, who asks us to "revalue literary forgery as an antinomian phenomenon produced by creative energies whose power is attested to by the resistance they engender in those who feel compelled to denounce and eradicate it" (3).

2 Eudel's *Trucs et truqueurs* has an extensive section on French art law and forgery (554-73).

imitation of his style, should only be a matter of enquiry at common law, seems to require some explanation. The injury done to society and to the Fine Arts, and indeed to our national character, by the absence of any statutable punishment for this latter class of forgeries, is far more extensive and irreparable than can be well conceived by any but artists themselves, or by public journalists like ourselves” (“Forgeries of Modern Pictures” 344).

The Art Journal’s objections to the forger overlook the fact that contemporary representations often construct him as an artist in his own right. The willingness to consider the forger a legitimate artist was not exclusive to the nineteenth century, but dates to a long tradition that treated faking as the first step toward original artistry. The history of art is full of anecdotes of famous artists, including Michelangelo, Rubens, and Andrea del Sarto, who partook in acts of forgery (Arnau 17). In his *Italian Painters* (1568), Giorgio Vasari recounts that the young Michelangelo forged Old Master drawings, smoking and staining them to give them an authentic appearance. The emerging artist later fashioned a statue of the sleeping Cupid, which Lorenzo di Medici allegedly encouraged him to pass off as an ancient artifact. Vasari argues that the believability of this forgery was a major factor in establishing Michelangelo’s reputation (423). Nineteenth-century readers were fascinated by these origin stories and linked spurious productions with genuine craftsmanship. As J. C. Robinson, director of the South Kensington Museum from 1852 to 1869, wistfully expressed, “If this particular Cupid could now be identified, it would probably be worth more than the most beautiful, genuine, antique work of its kind which Italian soil still enshrouds” (678). Another popular narrative about Michelangelo explains that after making a bust of the goddess Ceres, breaking off its arm, and burying it, the young man informed a group of archeologists that he had discovered an ancient statue, which, upon examination, they attributed to the Roman sculptor Praxiteles. As they were admiring their find, Michelangelo produced the broken arm, showed that it fit the amputated body perfectly, and declared himself its true creator. This seductive narrative suggests that forgery is a crucial first step in the construction of a genuine artistic identity (Eudel, Truquage 387; Demeure 120-21).

Nineteenth-century forgers were no less likely than their predecessors to be deemed artists. Critics created a hierarchy of talent in discussing forgers, differentiating those whose art could be dismissed as hack work from others who displayed creative talent. Robinson, for example, writes that “It is hardly necessary to say that art frauds are of every kind and degree of flagrancy, from the most vulgar barefaced shams... to the infinitely subtle and profoundly calculated efforts, I had almost said of genius” (695). It is this latter category, the forger genius, that critics extolled. One of the most notable examples of this figure was Giovanni Bastianini, whom the art critic Max

Friedländer dubbed one of the “aristocrats” of forgery (40). Under the direction of the dealer Giovanni Freppa, Bastianini produced a series of sculptures that appeared to originate from the Renaissance. In 1864, Freppa sold a Bastianini-produced terracotta bust of the poet Benivieni to a French collector, who in turn sold it to the Louvre. Angered that they had not been given a share of the considerable earnings, the dealer and the forger tried to expose the artwork as a modern copy. Freppa published a letter in a December 1867 issue of the *Chronique des Arts*, claiming that the Benivieni bust had been made by Bastianini three years earlier and that it was modeled after a tobacco factory worker. The directors of the Louvre and other central figures of the Parisian art world reacted to this news with disbelief, even when Bastianini himself confessed to having made the artwork. To prove his authorship, the sculptor accepted a challenge by Count de Nieuwekerke, director of Paris’s Imperial Museums, that he would pay the artist 15,000 francs if he could make an identical bust. Bastianini’s death at the age of thirty-eight prevented him from proving his craftsmanship. After experts had determined that the bust was, in fact, Bastianini’s work, the Louvre removed it from its public position. In the space of a few years, however, Bastianini came to be recognized as an artist in his own right: London’s South Kensington Museum purchased his bust of Savonarola in 1896.³

Bastianini’s contemporaries were unwilling to acknowledge that he might have produced his fakes with an intention to deceive. M. H. Spielmann describes the sculptor as an “arch-forger--half innocent at that, nevertheless” (408). His ambiguous reference to Bastianini’s fractional innocence reflects a generalized insistence on absolving him of criminality. Nineteenth-century accounts depict Bastianini’s alleged victimization by the dealer Freppa in a sentimental language inviting sympathetic readings:

He was now installed in Freppa’s dingy workshop . . . bound as a galley-slave to his bench. All facilities for work were indeed given him, and he could now mould his ideas in clay, or chisel them in marble, to the joy of his soul; but not for his own profit or fame were these things to be made.... And as a slave-owner so feeds his human machines as to extract from the thew and sinew the utmost amount of labour profitable to himself, always stopping short of developing a power in his victim which might lead to rebellion, so Freppa, with well-calculated

3 There are conflicting accounts of Bastianini’s story; I have drawn from a range of sources and tried to glean the most consistent narrative of the forger. These include Hoving 194-97; Jones 196-98; Kurz 148-51; Sani 102-07; and Schüller 26-35. One of the main questions raised by twentieth-century critics is the extent to which Bastianini was aware that he was producing forgeries. My account favors Jones’s and Kurz’s suggestions that Bastianini was conscious of his transgressions.

prudence, having acquired for himself this living artist brain, began to feed it in order to stimulate its creative power. (Barstow 503)

The article combines gothic and slave imagery to describe the dealer as a mad scientist who has possessed Bastianini's brain for his own dark purposes. The art critic Alexandre Foresi, who had purchased one of the forger's fakes and was one of his most adamant supporters, stresses the pathos of the Bastianini case in *Tour de Babel* (1868). Foresi's rendition of the events is peppered with apostrophes, hyperboles, and exclamations about the mistreatment of Bastianini: "Poor Bastianini! As I write these lines, it is ten o'clock, which should be the time of your lunch. You don't have any oysters, right? Or steak, chops, Bordeaux wine, Roquefort cheese, peaches from Montreuil. . . . Only a piece of bread, green beans seasoned with bad oil and vinegar, and a glass of adulterated wine, that's your lunch" (25; my translation).⁴ Bastianini seized this effective sentimental rhetoric to justify his work. In a letter to Foresi, he wrote, "I committed a crime towards art; but it isn't a crime to earn one's bread" (Foresi 113; my translation). These melodramatic renditions of the forger's oppression were met with emotional accounts of his untimely death. To emphasize the fact that the artist "died poor and his funeral was humble," an 1868 *Times* obituary recounts that only two candles were carried in his funeral cortege, and that the young boys who generally trail such processions to gather leftover wax were disappointed by its scant offerings; they "followed the mournful convoy, whistling and hooting. Whether the police at last interfered I am not informed" ("Foreign Intelligence"). The police do not appear in the forger's story to arrest him, but to ensure his commemoration.

As Bastianini's story suggests, nineteenth-century artistic discourses displaced the possibility of the forger's guilt onto the dealer, who was viewed as the true criminal of the art trade. The dealer's dishonesty assumed exaggerated proportions in the popular imagination, as he became the preferred scapegoat for artistic deception; in addition to fooling the public, he would also take advantage of young artists by forcefully turning them into forgers. Journals were full of stories of young men commissioned by dealers to make "honest" copies of old artworks, which the artists would later find hanging in museums or in private collections as the real thing. One typical narrative focuses on a dealer who refuses to purchase the original work of a young artist and commissions him to reproduce a valuable painting instead. Once the artist finishes the copy, the dealer asks him to sign it: "The artist thereupon most indignantly told his employer that he would sooner destroy his copy than lend his hand to what appeared to him no better than a forgery; but the dealer thought that, after

all, this would not signify, as he could get it done elsewhere." Years later, the artist finds his copy on the walls of a London country house. As it turns out, a relative of the owners had exchanged a real seventeenth-century portrait for the dealer's copy to pay his debts. The story progressively displaces the responsibility for the fake away from the forger, until he becomes the innocent bystander to his own victimization (Roberts 308-09).

This willingness to exonerate the forger and to blame the dealer stemmed from the figures' embodiment of conflicting models for living in a capitalist society. The dealer's dishonesty represented the very characteristic from which the middle class wanted to distance itself: debased materialism. The dealer was thought to reduce artworks to vulgar commodities, and his fraudulent transactions reeked of financially motivated deceit. While nineteenth-century critics acknowledged the importance of money to social advancement, they cautioned against treating material gain as the main objective of industry. Samuel Smiles, for example, devotes a portion of his middle-class manual *Self-Help* (1859) to warning his readers about the negative effects of seeking wealth through dishonest means: "Money, earned by screwing, cheating, and overreaching, may for a time dazzle the eyes of the unthinking; but the bubbles blown by unscrupulous rogues, when full-blown, usually glitter only to burst" (9). Given his alleged devotion to money, the dealer confirmed the worst suspicions about the fraudulence that could emerge from excessive materialism.

The forger, on the other hand, represented a form of labor removed from the acquisitive aspects of capitalism. Bernard Berenson expanded on the idea of forgers' relative disinterest in money in a 1903 letter to the *Times*: "A few hundred francs will satisfy their [Italian forgers] happy-go-lucky natures, for the adventurous, dare-devil spirit of the Renaissance is still alive in them. And for all born forgers (the born forger is scarcely less common than the born artist) forging is its own reward" (13). Berenson treats the forger as a figure whose love of art, not money, compels him to make counterfeit objects. According to such readings, noble forgers like Bastianini are inspired by an aesthetic impulse, which dealers exploit and defile by subsuming it within financial channels. Even when forgers were willing deceivers and did benefit from the fruits of their labor, contemporary representations exonerated them from pecuniary interest. They constructed forgers as models of what it meant to participate in capitalism without being contaminated by vulgar materialism.

Representations of the forger often depict him as an unlikely middle-class hero. Even when they revile the destructive aspects of his work, they describe him in terms befitting a bourgeois professional or a respectable artist. An 1867 article about the forger Flint Jack, a.k.a. the "Prince of Counterfeiters," has much in common with the exemplary

4 Duranty reproduces this passage almost exactly in describing the sufferings of the fictional forger Kresmer (298).

middle-class success stories of Smiles' *Self-Help*. The article begins, in typical Smilesian fashion, with an account of the first part of Flint Jack's life, including preliminary flashes of insight that forecast what he will become. We read of his early interest in fossils, his determination, and his frugality. The text describes his discovery of how to fake prehistoric artifacts as a "Eureka!" moment in which his diligence finally leads to desired results: "The long wished-for secret was discovered!" (260). He displays a resourcefulness in gathering materials and producing fakes that echoes Smiles' discussion of the artist James Sharples. Sharples painstakingly built the materials he needed for his paintings--"He made his own easel and palette, palette-knife, and paint-chest"--and worked assiduously toward the completion of his masterpiece (titled, ironically, *The Forge*) (Smiles 166, 169). Jack's diligence extends to his intellectual labor; he educates himself with a rigorous study of antiquities, "visiting museums, and obtaining access to private collections" (260-61). His self-instruction allows for the cultivation that is an essential part of the forger's identity. According to one critic, the forger is "the most cultured criminal in the world," as he "must combine all the graces of a polished man of the world with a bespectacled academician's knowledge of the past" (Kaempffert 74). By the end of his life, Jack has achieved another middle-class fantasy: fame. We learn that "Jack was deemed so remarkable a being that he was solicited to sit for his first portrait" (263).

Literary narratives also constructed the forger as a figure of bourgeois exemplarity. Frank Softly, the hero of Wilkie Collins's novella *A Rogue's Life* (1856), begins his adventures by introducing himself as a model to his readers: "I am an example of some of the workings of the social system of this illustrious country on the individual native, during the early part of the present century; and, if I may say so without unbecoming vanity, I should like to quote myself for the edification of my countrymen" (1). The production of Old Masters and false pounds allows him to attain the social and domestic respectability that ends up making him like everyone else; in the last lines of his fictional autobiography, he states that as a "rich and reputable man," he is "no longer interesting--I am only respectable like yourselves" (188). Softly portrays his normalization as the expected result of his creation of fakes. Indeed, it is in the studio where he is hired to forge Old Masters that he meets the woman he will marry, after saving her from her tyrannous father, a producer of false coins. On the road to the traditional conclusion of marriage, Softly will inhabit the role of the forger in multiple ways, engaging in the production, aging, and sale of fake artworks, as well as partaking in the spurious restoration of paintings. Although he is punished for his transgressions--he is sent to a penal colony in Australia--this chastisement results from his coining of money, not from his production of fake paintings. By contrasting these two forms of faking, Collins participates in the period's treatment of art forgery as a benign crime.

The novel further legitimizes faking by deploying the rhetoric commonly found in defenses of the forger. In convincing him to forge, Softly's friend Dick argues that faking can benefit society as a whole: "The sphere of the Old Master is enlarged, the collector is delighted, the picture-dealer is enriched, and the neglected modern artist claps a joyful hand on a well-filled pocket." Softly responds to this rousing speech with the proud declaration, "I burned with a noble ambition to extend the sphere of the Old Masters" (41-42). These humorous declamations magnify contemporary acknowledgments of the beneficial aspects of forgery. The exploitative Jewish dealer Ishmael Pickup is the one responsible for degrading the "noble" profession to the state of a vulgar trade.⁵

It would be misleading to suggest that accounts of the art forger were univocal in their praise. Even the most enthusiastic texts interrupt their presentations of the faker as a middle-class icon with forceful--and often forced--rejections of the figure and his work. The article on "Flint Jack," for example, punctuates its Smilesian narrative with emphatic criticisms of its subject. The end of the text reads, "What a waste of ability! But, in truth, the absence of all moral feeling, the insensibility to shame, the unconsciousness which he displayed of the existence of such a thing as personal honour, make one suspect that he is scarcely responsible for his actions" (264). Given the narrative of exemplarity that precedes it, the passage reads more as a mandatory disclaimer than as a sincere criticism of the forger. Even this abrupt shift in tone retains an element of protectiveness, as the text blames Jack's crimes on an uncontrollable degeneracy. Literary narratives joined in these forced disavowals. Collins interrupts his account of Softly's initiation into the forger's art with an extensive disquisition on the decline of the forgery trade since the time in which his book is set. While it seems aimed at faking in general, this passage settles on the art dealer as the main culprit of forgery: "I have been informed that, since the time of which I am writing, the business of gentlemen of Mr. Pickup's class has rather fallen off" (43).

Strikingly, these disavowals were a central part of the laudatory discourses that emerged around the forger. By repudiating him, literary and artistic texts ensured his role as a site of identification. They provided their readers with a cover under which they could model themselves after him without having to acknowledge this identification publicly. These disavowals were linked to another form of cover-up deployed by contemporary discussions of faking: the refutation of the forger's responsibility. They described the forger's position as one of accidental criminality and generated narratives of the forger that emphasized his incognizance in carrying out his

5 As I discuss in *The Deceivers*, the dealer was typically portrayed as Jewish during this period.

work. The faker's unconsciousness allowed him to reap the financial and social benefits of his craft while detaching him from the negative associations that such a craft might imply. This pattern of passivity and profit allowed middle-class readers to fantasize about using questionable means to reap the benefits of capitalism without being held accountable for their actions.

Henry Carl Schiller's Blackwood's story "Who Painted the Great Murillo de la Merced?" (1870) is as much about the dramatic events surrounding the creation of a forgery as it is an endorsement of the forger's innocence. The narrator is an established artist who looks back on an incident during his youth in which he was commissioned by a Jewish couple to produce a painting of John the Baptist and Salome. He finds himself implicated in what looks to be a serious crime; one of his models is a decapitated human head. Following the completion of the painting, the artist is paid generously and told never to share his experiences with anyone. Several years later, he has become a gentleman with an exemplary wife, a respectable set of clothes, and a son at Rugby. To his complete shock, he rediscovers his Salome painting, which now holds the place of honor as a genuine Murillo in the home of a reputed collector. The artist pursues the couple who had commissioned the artwork, and he finds that although he had unwittingly collaborated in the creation of a forgery, he thankfully was not an accessory to a greater crime. The decapitated head had belonged to the victim of a scything accident, not of a murder. Once he has cleared this story about his past, the narrator can end his account as an authentically innocent man.

The artist's story is replete with evidence of his blamelessness; he is a passive participant in his own forgery narrative. From the moment he receives the commission, he slips into a state of incognizance that often verges on unconsciousness. The veiled woman who hires him warns him in a heavy Dutch accent, "When you 'as done dis picture-meint!--you forgits eet--you moos know nothing of eet" (135). The artist is blindfolded to conceal the location where he will be producing his fake. The night after he begins working, he falls into a wine- and tobacco-induced sleep that blurs his senses and memory: "I am unable to recollect any succeeding circumstances, till, on the following morning, I started up from heavy sleep, wide awake, with an aching head, a feverish trickling through all my veins, and a feeling of remorse oppressing me as for some vague crime I had committed" (141). The possibility of crime appears as a dream residue rather than a waking event. Although the artist does eventually recall his curious circumstance and is later made aware of what he has done, the narrative continues to dismiss his criminality as fantasy. His discovery that no one had been harmed during the making of the painting extends to his forgery, which also loses any trace of illegality. Rather than

an incriminating piece of evidence, it becomes a sign of the artist's talent and a justification of his middle-class success. By the end of the story, the narrator frees himself from any remaining culpability by proudly declaring himself the creator of the painting: "I here assert my claim to be the painter 'OF THE GREAT MURILLO DE LA MERCED'" (165).

Pierre Grassou, the title character of Honoré de Balzac's 1840 short story, displays a similar pattern of unconscious success, or successful unconsciousness. A poor artist who has trouble selling and exhibiting original work, he is commissioned by the Jewish dealer Elias Magus to paint scenes that are in high demand. Grassou works "like a galley-slave" for the dealer, whose "diabolical expression" he is too naive to notice (256, 257). When he finds that his own paintings, prominently displayed in the dealer's window, have mysteriously aged, he imagines that he is the victim of a "strange hallucination" (258) rather than the accessory to a forgery scheme. Magus has, of course, modified Grassou's canvases to make them look like the real thing. The young artist's innocent guilt will soon be crucial to bringing him middle-class success. Grassou figures out what has happened when he sees his forgeries on the walls of a wealthy collector, whose daughter is of particular interest to the artist. When he confesses his involuntary forgeries to the young woman's father, the wealthy man is thrilled by Grassou's talent: "If you can prove that... I shall double my daughter's dowry. For, in that case, you are Rubens, Rembrandt, Terburg and Titian!" (270). Once he has claimed authorship over his forgeries, Grassou spends the rest of his life in a comfortable bourgeois enclave.

These narratives of disavowal metaphorize an essential aspect of the forger's identity: his anonymity. As Susan Stewart writes, in contrast to the plagiarist, who puts himself on a pedestal by claiming someone else's work as his own, the forger "makes a claim for the authenticity of a document rather than for the authenticity of himself or herself as a site of production" (24). The art forger must repress his own identity so that his paintings can be taken for genuine Old Masters. It is only when his work has been deemed fake that he can emerge from behind the canvas and don the laurels of his art. The convenient division of incognizance and self-awareness makes the forger particularly appealing to his middle-class readers. He represents an idealized identity in which reputations, fortunes, and social status may be earned by dubious means without being tarnished by them. The forger achieves fame by passing through a crucial period of invisibility. Schiller's narrator, Flint Jack, and Grassou all build their reputations by first going through a phase in which their identities are effaced. Their narratives collapse the attainment of fame with its antithesis: the erasure of identity. Like Michelangelo, who needs to hide himself behind the Roman sculptor Praxiteles before he can assert himself as

an original creator, these artists must immerse themselves in anonymity before they can emerge as the real thing. This trajectory guarantees a model of selfhood in which the pursuit of fame or material rewards can never be the overt motive of artistry and diligence. Celebrity can only be attained once it has been repressed. When the means have been attributed to a nebulous identity, the end rewards can be gleaned without the burden of guilt.

Enter the Copyist

The model of middle-class identity that the forger represented was exclusively male. This is not to say that there were no female forgers, but that they were denied a representational presence; nineteenth-century writers went to great lengths to preserve the image of the forger as a projection of middle-class masculinity. The bourgeois attributes that the forger embodied were themselves deeply gendered. Peter Sinnema writes that the middle-class characteristics prized by Smiles were intended for a male audience: “The very terms that enable men to court social promotion--‘energetic action’, ‘individual valour and heroism’, ‘proper performance of the duties and business of life’, to select just a few examples--are themselves exclusive, comprising a muscular parlance that baffles women’s participation in the kind of self-advocacy publicized by Smiles” (xxii-xxiii). Forgery narratives reproduced these exclusions both in their privileging of characteristics that the period refused to link to women, as well as in their gendered representations of the forger and his entourage. As evidenced by texts such as *A Rogue’s Life* and “Pierre Grassou,” woman is the reward that comes with faking, the human marker of the forger’s entrance into a middle-class existence. She displays an ignorance of faking that prevents her from claiming an active role in the profession.

The resistance of nineteenth-century discourses to representing women forgers reflects a widespread anxiety about female deception. Kucich suggests that while literary and cultural discourses figured women (as well as other disempowered groups) as inherently dishonest, they were reluctant to attribute them with the ability to deploy deception in strategic ways. Knowing how and when to lie indicated the “sophistication” and “prestige” of a privileged group (33-34). This privatization of the lie begins to explain the omission of the female forger; forgery is a refined and effective form of lying. It is a materialization of the lie, the transformation of a rhetorical act into a concrete, exchangeable, and sellable object. To allow women to participate in forgery would invite the dangerous admission that they were could partake in the masculine activities of artistic production, distribution and of disseminating their material lies to the culture at large.

There was one activity associated with women that threatened to come very close to forgery: copying. Forgery and

copying often consist of the identical process of replicating an original; as Hillel Schwartz writes, “Forgery is but the extreme of copying” (219). The language of ethics is generally used to differentiate the “honest” copy from the “guilty” forgery. According to Walter Kennick, forgery belongs to the “language of the morality of art. Forgery is something of which a person is guilty, whereas simply copying or painting in the manner of someone is not” (5). An “honest” copy looks like the original without trying to take its place. Copies have traditionally been used as pedagogical devices in art instruction as well as to disseminate artworks to those who do not have access to the real thing. Forgeries, on the other hand, are aged, signed, or manipulated in various ways so that they will appear to be long-lost originals.

Although copying was not exclusively women’s work during this period, it came to be identified as a female activity. The repetitive, uncreative labor that it often entailed concurred with the widespread belief in women’s limited creativity. In contrast to their male counterparts, whose copying was perceived as one step on the road to developing a distinctive style, female copyists were encouraged to confine themselves to exact replication.⁶ John Ruskin advocated copying as an ideal form of artistry for women in a congratulatory letter to a graduate of the Royal Female School of Art in London. Stressing the usefulness of her copies of Turner to the artistic community, he writes, “I hope you will persevere in this work. Many women are now supporting themselves by frivolous and useless art; I trust you may have the happiness of obtaining livelihood in a more honourable way by aiding in true educational efforts, and placing within the reach of the general public some means of gaining better knowledge of the noblest art” (Chalmers 63-64). The female copyist became a popular figure in both visual and literary representations. Visits to the Louvre in contemporary narratives would almost guarantee an encounter with the *demoiselles à copier*, the young women who crowded the museum’s halls with their easels.

The female copyist’s labor was not only repetitive, but also strictly legal. Her works were rigorously honest and could not slip into the category of forgery. This is a telling restriction, given the period’s heightened awareness of the ease with which copies could be taken for the real thing. There were several ways in which a copy could become a fake: through the sale of an “honest” copy by a dishonest dealer, through a misreading of the copy as an original by a collector, or through the artist’s own deception in presenting his work. As the *Art Journal* warns in an 1854 article, “It needs no ghost to show that pictures have always been copied more extensively for deceit than for artistic improvement” (“Frauds in Picture-

6 For an overview of copying in the nineteenth-century, including its association with women, see Duro; Cuzin; Dupuy; and Reff.

Dealing” 8). In a similar vein, an 1879 article on copyists in *All the Year Round* begins with a question asked by many discussions on the subject: what happens to the number of copies produced in the National Gallery and other museums? The article offers one possibility when it tells the story of a male copyist who made a perfect replica of a painting, replaced the original with his copy, and walked out of the museum with the real thing. He had managed to “disconnect the old master from the wooden stretcher to which it was nailed, and attach it to a brand-new canvas which he had brought for the purpose” (“Picture Copyists” 55, 58). Strict rules were instated in various museums to hinder forgery: reproductions had to differ in size from originals, all copies had to be registered with the museum, they needed to be stamped with an identifying mark, and could not include the original artist’s signature (Battin 153-58).⁷ One critic describes the uncomfortable experience of trying to draw or paint in the Louvre given the culture of surveillance that prevailed there. He complains that the “pictorial police,” or *gardiens*, aggressively prevented any form of artistic transgression: “A despicable habit of cloth slippers enables them [guards] to approach with a stealth and speed which it is impossible to evade, and the most furtive sketch is invariably detected and interrupted before more than a fragmentary outline has been jotted down” (Somerville 265). Despite these strict regulations, the copy was always at risk of assuming a second life as a fake.

The female copyist came close to mirroring the activities of the forger but never crossed the line into artistic deception. Contemporary representations constructed the copyist with the forger in mind. She was his imperfect double, a poor copy of his cultural significance. By representing the female copyist’s essential differences from the forger, nineteenth-century discourses imposed a strict barrier between the figures. They ascribed the copyist with an embodiment and visibility that prevented her from slipping into the forger’s powerful anonymity. By focusing on her striking physical appearance, they encouraged their readers to keep an eye on her so that she could never achieve her counterpart’s invisibility. The constant watching of the female copyist provided a parallel, ideologically motivated authority to the surveillance imposed on the copyist by museum or government administrations. Inasmuch as nineteenth-century readers were taught to differentiate genuine from fake objects, they were also asked to distinguish the forger from his inauthentic imitation, the copyist.

The female copyist is always watched. Whenever she sets foot in a museum, eyes divert from Old Master paintings to scrutinize her every move. The literature of the period is full of characters who find themselves drawn to the figure despite the many other diversions offered by the museum.

The rowdy working-class party who invades the Louvre in Émile Zola’s *L’Assommoir* (1877) is transfixed by the *demoiselles à copier*: “What interested them most were the copyists, who had set up their easels in front of everyone and were painting away without embarrassment” (77). In the first pages of Henry James’s *The American*, published the same year as Zola’s novel, a more subdued but only slightly more cultured Christopher Newman becomes engrossed by the copyists working in the Salon Carré of the Louvre: “He had looked, moreover, not only at all the pictures, but at all the copies that were going forward around them, in the hands of those innumerable young women in irreproachable toilets who devote themselves, in France, to the propagation of masterpieces” (5). Early on in our introduction to Little Billee, the artist protagonist of George Du Maurier’s novel *Trilby* (1894), we discover him to be a voracious viewer of female copyists. Despite the artistic treasures that surround him in the Louvre, “He looked at the people who looked at the pictures, instead of at the pictures themselves; especially at the people who copied them, the sometimes charming young lady painters” (11).

The extreme visibility of the female copyist bars her from the forger’s invisibility. As I discussed above, the forger’s success as both perpetrator of the fraud and as middle-class icon depends on his anonymity. By disappearing behind his productions, he guarantees that they will be taken for the real thing and absolves himself of the responsibility of his subsequent achievement. The female copyist’s conspicuousness, on the other hand, places her at the center of a relentless spotlight that prevents her from committing artistic crimes. Literary texts obsessively record her appearance as if to reassure readers that she will never slip out of their purview. Nathaniel Hawthorne’s American copyist Hilda from *The Marble Faun* (1860) becomes the center of attention of Rome’s art galleries:

All the Anglo-Saxon denizens of Rome, by this time, knew Hilda by sight. Unconsciously, the poor child became one of the spectacles of the Eternal City, and was often pointed out to strangers, sitting at her easel among the wild-bearded young men, the white-haired old ones, and the shabbily dressed, painfully plain women, who make up the throng of copyists. The old Custodes knew her well, and watched over her as their own child. Sometimes, a young artist, instead of going on with a copy of the picture before which he had placed his easel, would enrich his canvas with an original portrait of Hilda at her work. (62-63)

The passage is striking for its focus on the number of people whose gaze she attracts, including the male copyists who cease to reproduce masterpieces in order to represent her instead.

7 See also “Frauds in Picture-Dealing” 8, and Roberts

Depictions of the copyist go to extremes to deny her the facelessness of the forger. They present her as either strikingly attractive, remarkably ugly, or aggressively nondescript: in the above passage from *The Marble Faun*, Hawthorne refers to female copyists as “painfully plain.” When the young painter Anatole from Edmond and Jules de Goncourt’s novel *Manette Salomon* (1867) enters the Louvre, he is met with the pathetic spectacle of starving--yet ever-persistent--copyists. He notices “women with orange complexions, wearing sleeveless dresses, with grey bibs on their chests, and their glasses on the back of their heads, perched on ladders covered in green serge to modestly conceal their skinny legs, unhappy porcelain painters with tired eyes, grimacing in their attempts to copy Titian’s *Entombment of Christ* with a magnifying glass” (128; my translation). The absurd appearance of these decrepit women on pedestals overshadows the grandeur of the canvases they copy. The female copyist could not perpetrate the subtle transgressions of her male counterpart, who casually walks out of the museum with the original masterpiece instead of the copy.

The copyist’s artistic productions further distance her from the forger: her work is as incongruous as she is. One of the preferred means of dismissing the copyist was to deride her supposedly limited talent. This denigration assures us that her work will never be taken for the real thing while further drawing our attention to the pervasiveness of her body. In an article from *L’Art*, Louis Leroy highlights the ineptness of women who “soil canvases under the pretext of making copies” (159; my translation). The copyists in his article are dreadful artists. One woman adds an extra toe to her copy of Rubens’s *Marie de Médicis*, another forgets to include the ear of a figure from an Ingres original, while a third makes her copy even darker and more inscrutable than a faded Old Master (263, 264, 281). Male artists who have been watching them all along flock to the copyists to fix their defective drawings. The ludicrous images the women produce highlight their equally grotesque bodies. The following description from an 1890 *Art Journal* article on the Parisian copyist draws our attention to the link between the absurdity of her painting and the absurdity of her person:

This special example was a small depressed lady, above whose anxious face towered waveringly a tall funereal hat, much overweighted by a fortuitous decoration of bows. A hampering black mantle grudgingly permitted her little fat red hands and arms to emerge from among its heavy folds, and its jetted fringe swept the colours on a palette not much bigger than a postage stamp. Though copying a life-sized Murillo on a large canvas, she used a brush that matched the palette in size; but the difficulty of covering the canvas was obviated by a steady dabbing action, which--on the principle of the coral

insect--slowly but surely deposited a solid mud-like coating over the canvas. (Somerville 266)

The article figures the copyist’s work as a negative production: the more she daubs at her canvas, the less she creates. This artistic erasure contrasts with the description of the woman, which renders her as preposterous as a character from *Wonderland*. The garb of anonymity she has donned (the black mantle) only works to make her more painfully obvious. In light of the period’s investment in the forger’s invisibility, the copyist’s failed concealment conveys her distance from this lauded figure. She appears as a parodic reversal of the forger’s ability to hide himself and expose his work.

Even when the female copyist is competent and she does manage to replicate the original faithfully, she cannot occupy the esteemed place of the forger. The most admired forgers of the past two centuries are those who create “original” fakes rather than exact copies of already existing works. As the art critic Leonard B. Meyer writes, “The great forgers have not been mere copyists. They have tried . . . to become so familiar with the style of the master, his way of thinking, that they can actually paint or compose as he did. Thus, though their vision is not original, their works of art are, in a sense, creations” (88). Indeed, Bastianini’s success derived in large part from his ability to craft new Renaissance sculptures that looked as if they emerged from the past. In the words of one critic, Bastianini belongs to those “few gifted beings who seem to have actually imbibed the artistic qualities of Renaissance art to such an extent as to have attained a new and genuine personality--modern in date but old and faithful to the past in creative conception. In this case, imitation becoming creative, as we have said, it rises to the rank of real art” (Nobili 181-82). Male copyists with the aspiration of turning into original artists were also expected to avoid servile imitations. According to Paul Duro, the French Academy encouraged its male students “to develop true originality through a temporary subservience to the model, without ever falling into base imitation” (“Lure of Rome” 142). Representations of the female copyist do not allow her to partake of this creative mimicry. If she is as skilled as Hawthorne’s Hilda, she becomes a picturesque emblem of a woman’s devotion to her Old Masters.

The copyist’s physical and artistic differences from the forger prevent her from assuming his role as a middle-class icon. She displays neither his productive diligence nor his ability to climb the social ladder through his controlled transgression. When Newman commissions a series of copies from Noémie Nioche and later asks her if she has been “industrious,” she responds with words that would never cross the forger’s lips: “No, I have done nothing” (James 129-30). Her unwillingness to undertake the task forfeits her claim to the dowry Newman had promised her in exchange for the paintings. Far from being a bourgeois icon, the female

copyist is a negative example of what may happen to a woman once she deviates from the norms of bourgeois femininity. As the *Art Journal* ponders regarding aging women who work in the museum, “It would be interesting to ascertain what caused the first Bohemian stirrings to agitate their decorous bosoms, and induced them to leave homes, of whose quiet propriety their appearance is sufficient evidence, for the cold publicity of the big galleries” (Somerville 265). The article does not speculate about the social and psychological motives of the copyists’ work; it offers their visuality as proof enough of their outlandishness. It represents them as residing at the center of an impenetrable circle: copyists “unite on common ground in contemptuous dislike of the outside world” (Somerville 264).⁸ Isolated from the outside world, copyists exist in a claustrophobic and hermetic space. They are thus also closed off from the crimes of the forger, which generate both sympathy and admiration.

When the copyist does open herself to the outside world, she compromises her respectability. She is a flirt who invites attention and flaunts her pervasive visibility. James’s Noémie engages in elaborate “performances” to attract Newman’s attention: “As the little copyist proceeded with her work, she sent every now and then a responsive glance toward her admirer. The cultivation of the fine arts appeared to necessitate, to her mind, a great deal of by-play, a great standing off with folded arms and head drooping from side to side, stroking of a dimpled chin with a dimpled hand, sighing and frowning and patting of the foot, fumbling in disordered tresses for wandering hair-pins” (7). Noémie’s teasing looks reveal that she knows how to perform the role of the copyist, which entails making herself pleasing to men. Stereotypes of the copyist’s performativity led contemporary accounts to refer to her as an actress: copyists merely “pose as artists before the general public” (Somerville 264). The copyist also engages in elaborate masquerades. This idea is underscored by an article describing an aging copyist who tries to conceal her flaws by wearing the heavy make-up of a stage actress: her extravagant adornment “makes her recognizable from one end of the grand gallery to the other” (Marc-Bayeux; my translation). Such comments not only undermine the legitimacy of the copyist’s art but also confirm that she possesses a transgressive identity, based on her pervasive visibility, that further removes her from bourgeois respectability.

Representations of the copyist displace the criminality that is absent from her work onto her body. She harbors a disruptive sexuality, anchored in her physical self, that substitutes for the crime of turning copies into forgeries. When she is not aggressively unattractive or past her prime, the copyist is a loose young woman who tries to lure wealthy

men who visit the museum. Rumors of her availability pervade contemporary texts. In an 1844 article from *L’Art*, Champfleury instructs his readers how to pick up young women at the Louvre: “Copy the painting that is closest to the young lady’s; borrow cadmium or cobalt from the beloved object, who can hardly refuse; correct the odious mess of colors that the young artist calls painting (the young artist always receives such advice with pleasure); speak of Old Masters in such a way that it is necessary to continue the conversation on the street once the Louvre closes” (Dupuy 49). The artist Marie Bashkirsteff complained about the negative effect that rumors of the copyist’s promiscuity had on her art: “Curse it all, it is this that makes me gnash my teeth to think I am a woman! I’ll get myself a bourgeois dress and a wig, and make myself so ugly, that I shall be as free as a man. It is this sort of liberty that I need, and without it I can never hope to do anything of note” (Duro, “*Demoiselles à copier*” 2). Bashkirsteff failed to realize that disguising herself as an ugly woman would not free her from the stereotype of the copyist’s pervasive visibility; she would merely elicit disgusted rather than desiring gazes. The nineteenth-century copyist was trapped within her ostentatious body.

James constructs Noémie into an amalgamation of contemporary stereotypes about the *demoiselle à copier*. She is a terrible artist, is excessively embodied, and only works in the Louvre to attract men. Her decision to become a copyist was based on the visibility offered by the profession; as her father explains, “She likes to see the world, and to be seen. She says, herself, that she can’t work in the dark. With her appearance it is very natural” (49). Noémie’s physique is the subject of many discussions between the novel’s male characters. The young aristocrat Valentin emphatically describes her as being “very remarkable” (132), an expression that evokes the French “*remarquer*,” to notice. Her sexualized visibility leads her to disrupt middle-class norms of acceptable behavior.

The forger haunts the narrative as a specter of what the female copyist can never become. Following his initial interaction with Noémie, Newman encounters his old friend Tristram, who has never set foot in the Louvre before this moment. The men embark on a discussion of artistic authenticity:

“It’s a pity you were not here a few minutes ago. I have just bought a picture. You might have put the thing through for me.”

“Bought a picture?” said Mr. Tristram, looking vaguely round at the walls. “Why, do they sell them?”

“I mean a copy.”

“Oh, I see. These,” said Mr. Tristram, nodding at the Titians and Vandykes, “these, I suppose, are originals?”

⁸ Somerville alludes to both male and female copyists in this passage, but then turns to the women as true examples of deviant artistry.

“I hope so,” cried Newman. “I don’t want a copy of a copy.”

“Ah,” said Mr. Tristram, mysteriously, “you can never tell. They imitate, you know, so deucedly well. It’s like the jewellers, with their false stones. Go into the Palais Royal, there; you see ‘Imitation’ on half the windows. The law obliges them to stick it on, you know; but you can’t tell the things apart.” (16-17)

Tristram describes Paris as a place in which forgery is always on the verge of taking over the real. Without the intervention of the law, consumers would be unable to differentiate imitation stones from authentic ones or forged paintings from genuine Old Masters. Although we might suspect Tristram’s warning as a sign of his limited artistic knowledge, it does coincide with contemporary representations of the forger. Tristram echoes the type of general information about the figure to which anyone who read newspapers and magazines would have had access in the nineteenth century. His quasi-reverent observation, “They imitate, you know, so deucedly well,” reproduces the cautious praise commonly found in such accounts. Although he has avoided museums, Tristram is aware of the forger’s versatility and of his ability to penetrate the most sacred of cultural institutions. Implicit in his comment is that in order to fake successfully, the forger must remain an unobtrusive presence in the museum. His power lies in his invisibility, in the adeptness with which he can hide behind his artistic productions so that they can be taken for the real thing.

Noémie, on the other hand, cannot be separated from her bad copies. When Newman first sees her, he is “guilty of the damning fault...of confounding the merit of the artist with that of his work (for he admires the squinting Madonna of the young lady with the boyish coiffure, because he thinks the young lady herself uncommonly taking)” (7). Once he begins interacting with her, however, Newman’s aesthetic ignorance seems to rest on a foundation of good sense. His conflation of the female copyist and her painting is less of an artistic faux-pas than an accurate assessment of how she should be perceived. Although the subject of her copy is different from herself—it is a Madonna--Noémie soon confirms her proximity to the image by tarnishing the Virgin’s cheek with a “rosy blotch” (9). This gaudy addition heralds the merging of the copyist with her productions that will extend throughout the narrative. Noémie’s transformation of the Virgin into a whore crystallizes the subtext of her transaction with her customer, Newman. His first word to her, “Combien?” (“How much?”), suggests that she is as much for sale as is her copy. Their ensuing conversation bears the unmistakable form of a negotiation between a prostitute and her client. When she offers him the painting for two thousand francs, Newman protests, “For a copy, isn’t that a good deal?,” to which she replies suggestively, “But my copy has remarkable qualities;

it is worth nothing less” (8). The rest of the narrative confirms our assumptions about Noémie’s status as a prostitute. As Newman later warns his friend Valentin, who is blinded by the copyist’s charms, ““You are too good to go and get your throat cut for a prostitute”” (217). Noémie’s rapid transformation into an exchangeable object marks her increasing proximity to her copies. When Newman sees her for the last time, she has been acquired by a British lord, who keeps both her and her pathetic father dressed in the latest fashions. The narrator’s observation that “the front of her dress was a wonderful work of art” (314) suggests that Noémie has fully transformed into an objet d’art herself.

Noémie’s transgressive identity sets her apart from the forger’s controlled deceptions. She takes on an epidemic criminality that proliferates outside the boundaries of her canvas. Her delinquency exceeds her role as a prostitute; the narrative is intent on inflating her deviance to ever greater proportions. After Valentin describes Noémie as a woman who is ““intelligent, determined, ambitious, unscrupulous, capable of looking at a man strangled without changing colour,”” Newman responds, ““It’s a fine list of attractions . . . they would serve as a police-detective’s description of a favourite criminal”” (182). The American had already found out that Noémie was past reform when she did not produce the copies commissioned from her in exchange for her dowry. As the narrative progresses, she continues to earn the title of criminal. The novel holds her responsible for Valentin’s death as he engages in a fatal duel over her. If the forger’s criminality is confined to his canvas, Noémie’s exists everywhere except on the artwork itself.

The narrative moves toward purging itself of the female copyist and neutralizing any danger she may pose. Frustrated with her work, Noémie defaces one of her copies with a red cross and refers to her vandalism as the ““sign of the truth”” (131). This appraisal endows the object with a confining legitimacy that sets it apart from the forger’s spurious productions. The painting is permanently marked by the sign of its inability to fool anyone. The ruined artwork has its narrative double in the erasure of Noémie from the plot at the end of the novel. The last time he sees Noémie, Newman thinks of her as an “odious blot upon the face of nature; he wanted to put her out of his sight” (310). He gets his wish when her father’s prediction that Newman will soon read about her marriage with the British lord in the newspapers proves false. James ends the chapter by reassuring us that the copyist will not be commemorated: “To this day, though the newspapers form his principal reading, his eyes have not been arrested by any paragraph forming a sequel to this announcement” (315). The text imposes its own cross on Noémie. Unlike the forger, who attains fame after the fact, both the copyist and her artworks vanish into nothingness.

Newman surpasses Noémie in learning how to negotiate the copy at the end of the narrative. Although his copy is a written note instead of a visual image, the novel suggests a link between the two forms of reproduction by using them to frame the narrative. Noémie's terrible copies from the beginning of the text give way to Newman's useful copy of the note that the late Monsieur de Bellegarde had composed to warn of his wife's intentions to murder him. The American deploys this missive to revenge himself for this woman and her son's successful attempts to bar him from marrying her daughter, Madame de Cintré. While at the start of the narrative James seems to ridicule Newman's nouveau riche vulgarity by revealing that the American "often admired the copy much more than the original" (5), at the end he confirms that copies can be worthy substitutes for the real thing. When he first sees the note, Madame de Bellegarde's son accuses Newman of having produced a forgery; the next time they meet, however, he tells him, "You will be surprised to learn that we think your little document is--a'--and he held back his word a moment--'is genuine'" (299). This change gives Newman's copy the weight and scope that Noémie's images lack in the narrative: it is a copy that earns the title both of forgery and of original. This dual association makes it a much more potent production than anything Noémie could ever create. While Newman eventually gives up on his plans of revenge and decides to break his ties with Europe altogether, his brief foray into transgressive copying leads him to embody the invisible forger of the narrative. He gives life to the shady figure who haunts the Louvre.

James's novel adheres to a tradition intent on contrasting the forger and the copyist as imperfect doubles. The opposition of these figures safeguards forgery as a privileged male role that is immune from female intrusion. In so doing, it displaces categories of authenticity that are usually reserved for inanimate artworks onto their human producers.⁹ This opposition creates an indirect relationship between the authenticity of the producer and his or her productions. The female copyist in *The American* and in other contemporary texts is an inauthentic version of the forger, even though (and, in fact, because) she can only produce legitimate works. The forger, in turn, bears an authentic identity that contrasts with the spuriousness of his art. This indirect relationship reveals the period's evaluation of forgery as having the potential to construct legitimate identities. The forging of objects extends to the forging of selves that take on the import of originals. The copyist's work, on the other hand, can only palely emulate the forger's, and will inevitably be cast aside as--to use Newman's expression--the "copy of a copy."

9 Both Seltzer and Porter discuss the novel's conflation of the object and the human worlds. While Seltzer examines the ways in which the realist genre of the novel puts into play questions about the interpenetration of human and object categories in a commercial society, Porter discusses the text's transposition of artistic categories onto its female characters.

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Enhancing the Art of Seeing – A Leonardo Case Study

Hasan Niyazi

Abstract

An exploration of the scientific and stylistic processes employed to determine the date and authorship of an ink on vellum drawing of a young girl. Sold by Christie's as a pastiche by a German 19th century artist, the results of the investigation nominated Leonardo da Vinci as the probable author of the drawing. An examination of critical response and possible implications of the phenomenon known as 'CSI effect' is also considered.

Keywords: Leonardo da Vinci, La Bella Principessa, authenticity, attribution, Carbon-14 dating, Multispectral scanning.

Introduction

Any area of study is enhanced by an increased capacity to make use of relevant findings provided by new forms of analysis. The process of determining authorship of an artwork, particularly from the Renaissance is at present, a largely undocumented, hidden endeavour. A task primarily concerning the art market, academic and museum sector, its dealings occasionally permeate the public sphere when a new discovery emerges associated with a well-known artist.

A standardised process lies at the heart of the scientific method. This requires that anyone trained in the underlying principles of this method can reproduce the exact conditions of an investigation and its result. This is underpinned by statistical enumerators, which aim to quantify degrees of error in measurement, biases and variation due to external and internal factors. Reading any reputable scientific document, much of this information is often laid out bare in order to demonstrate the efficacy of the process, and allow critical analysis.

How does this relate to art attributions? Analysis of artworks for authenticity has for a long time been a very subjective process. Closely guarded by its proponents, a critical analysis of a piece and the mode it is reported in has done very little to enlighten others of the efficacy of their expertise. This may have been acceptable at one time, but the increasing use of public funds and appeals for donations by museums to purchase works compels such processes to be made transparent and openly reported. From a legal perspective, the art market itself is under strict obligation to provide that attributions have been made with due diligence.

There is a degree of controversy around the topic of connoisseurship used in verifying authenticity of artworks. On closer examination, the key to this discussion seems to be around the type of analysis that relies heavily on intuited response of a particular expert. Increasing use of quantifiable methods in analysing artworks has required that the role of the connoisseur be revised. It now becomes a collaborative effort, comprising experts in different fields.

Defining authorship is the first step in clarifying these processes. Present definitions employed are simply insufficient in matching the level of detail provided by new modes of analysis. Built into this is an added degree of responsibility by these investigators to report their findings in a manner that is transparent and allows reproduction of testing methods and critical analysis to be properly conducted. There is presently no definitive text on the attribution process; nor standardised training or modes of reporting. Specialists from different centres come to their tasks with disparate levels of expertise and equipment. There is also variability in the

respective abilities of these individuals to report these findings, particularly when interpreting scientific tests. To put it simply, the language of scientific reporting is highly standardised, the language of the art historian is not.

There are rare instances of art historians, some of whom with varying degrees of scientific training, making a concerted effort to present their data in new ways. The greatest advances in this area have made it into certain volumes on controversial attributions, with some of the more notable efforts being by the late Professor James Beck¹ and Professor Martin Kemp². The level of detail provided by such authors is innovative in the field of art history. These are worthy of detailed review, in a manner that goes beyond the type most commonly seen in articles by journalists and art commentators. The following case study will explore this in more detail.

Portrait of a young woman in profile, on vellum, executed in chalks and ink

La Bella Princepessa was a descriptive moniker ascribed to the drawing of a young woman at the centre of great debate in the art world. Comprising big names and a potentially large market value, the investigation was at once remarkable and dismaying. With the great sums of money that accompany a potential Leonardo, it can validly be argued that rational analysis is not possible. Immediately, the impartiality of the involved parties comes into question. To analysts without the critical tools to pick through evidence, the natures of their reflections on the findings are often largely subjective or presented without a significant level of detail. Other reports invariably took the focus off the evidence being presented, discussing wider issues pertinent to the art market and attribution process. This type of discussion of is course valid, but incomplete.

The investigation into the authenticity of *La Bella* was conducted by a team of specialists - most notably Professor Martin Kemp of Oxford University, Pascal Cotte of Lumière Technology and Peter Paul Biro, an art restorer with an interest in examining artworks for finger and palm prints. The latter has been in the news recently, having launched a lawsuit against *The New Yorker's* David Grann³. In a fascinating piece of emotive journalism, Grann highlighted some of the concerns with Biro's processes, going as far as to suggest the restorer fabricated fingerprints in other investigations⁴. Biro's work on *La Bella* will be discussed later, in a manner exploring the validity of such data.

1 (Beck, 2007)

2 (Kemp & Cotte, *La Bella Principessa*, 2010)

3 (Halperin, 2011)

4 (Grann, 2010)

Below is a summary of the findings presented for *La Bella Principessa*, assembled from results reported by external sources and the 2010 publication co-authored by Kemp and Cotte:

Portrait of a young woman in profile in Renaissance dress - "La Bella Principessa"

- Wedding portrait of Bianca Sforza [d.1496], legitimised daughter of Ludovico Sforza
- Identified as a page cut from the Sforziad, a volume of wedding Poetry, currently in the National Library of Poland, Warsaw (September 2011)⁵
- Dated c.1495-6
- Black, red and white chalk (*trois crayons*), heightened with pen and ink on vellum, laid on oak panel
- 33 x 23.9 cm (reported by Cotte)
- Private Collection (Purchased 2007 by Peter Silverman on behalf of an unidentified Swiss collector)

Attribution Status:

- Sold by Christies New York in 1998 as a German 19th century drawing⁶
- Sold on in 2007 as a portrait "based on a number of paintings by Leonardo da Vinci and may have been made by a German artist studying in Italy"
- Published as a Leonardo autograph work in 2010 by Kemp and Cotte (announced 2009)
- Attribution notably supported by Pedretti, Gregori, Vezzosi, Geddo, Turner, Strinati (and others)
- Summarily contested by Bambach, Fahy, Penny, Mariani, Schröder, Kline (and others) - though the degree to which each of these individuals have examined the original and provided a detailed counterpoint analysis is noted to be comparatively minimal against the data supplied by Kemp and Cotte.
- Source volume identification revealed September 2011, findings published online at Lumière Technology.⁷

Stylistic analysis

Theme

Examination of this leaf of vellum reveals precise cut marks and indications of stitching suggesting it was cut from a book, the source of which has now been identified. In his initial analysis, Kemp put forward the argument that it was removed from a volume of poetry produced for the Sforza during Leonardo's first tenure at the Milanese Court. Other

examples of Renaissance poetry volumes were cited, although no references to Leonardo illustrating such a volume have yet come to light. The depiction of the sitter in profile was shown to be in concordance with other depictions of Sforza women from the same period, including the paintings depicting Bianca Maria Sforza and Beatrice d'Este, at Washington and Oxford respectively, attributed to Leonardo follower Ambrogio de Predis (tentatively in the latter instance). It should be noted, Bianca Maria in the de Predis portrait should not be confused with the tentatively identified Bianca in the drawing. Bianca Maria was the eldest legitimate daughter of Galeazzo Maria Sforza, making her Ludovico Sforza's niece.

Kemp presents the sitter in the drawing as Bianca Sforza, a legitimised daughter of Ludovico Sforza and his mistress Bernardina de Corradis. After her marriage in 1496, she died a few months later, possibly as a result of an ectopic pregnancy. It has been suggested that the volume of poetry and the drawing were a memorial tribute to the departed Bianca, who would have been 14 years of age at her death. The key evidence to support this is correspondence from Ludovico Sforza's wife, Beatrice d'Este - indicating the family's distress at the death of "Madonna Bianca".



Bianca Maria Sforza. c.1493. Ambrogio de Predis. NGA Washington

In differentiating Leonardo as the author from his Milanese counterparts, Kemp points out subtle factors such as the tension apparent in the chording around the hair, which is not as developed in profile portraits attributed to artists such

5 (Kemp & Cotte, *La Bella Principessa* and the Warsaw Sforziad, 2011)

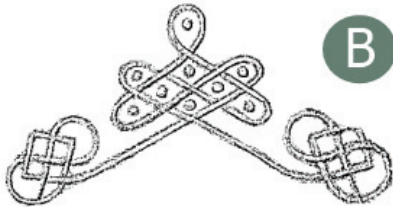
6 (Christie's, 1998)

7 (Lumière Technology, 2011)

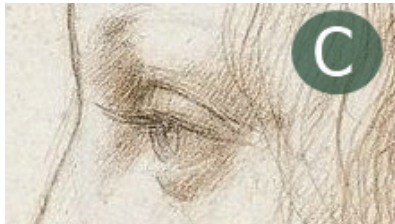
as de Predis. Kemp’s familiarity with the nuances of design seen in Leonardo’s notebooks makes such a comparison natural, but it is commonly ignored by critics. Similar are details seen in the knot design on the sleeve, which mirrors designs for the Vincian academy (surviving copies made after Leonardo). That such designs fascinated Leonardo has been passed on to us by Leonardo’s notebooks, as well as a famous description by Vasari. A similar consideration of this type of intricate patterning being a Leonardo peculiarity was made more recently in the attribution of *Salvator Mundi*.⁸



A: Eye detail from *La Bella*



B: Digitally extracted pattern from *La Bella* sleeve



C: Eye detail from reversed Windsor drawing



D: Pattern detail from Vincian Academy design

An extant Leonardo drawing at Windsor also provides a compelling point of comparison. Although commentators such as Dorment have accused Kemp’s selection of drawings as “dealing from a stacked deck”⁹ this is a somewhat unfair

appraisal. Works of Leonardo’s Milanese contemporaries were presented as counterpoints highlighting the nuances of quality of *La Bella*, in an attempt to differentiate this work from a Leonardo pupil or follower. The Windsor drawing is highly relevant, as it establishes a geometric similarity in Leonardo, whose notebooks document a fervent study of the proportions of the human form, including the face.

That the two drawings are geometrically congruent can not on its own be conclusive of authorship, but in consideration along with other factors such as the depiction of the eye, cording in hair and knotting design on clothing points towards characteristics that are particular to Leonardo and not seen in his followers. Any critic of this piece must hence be able to produce a work demonstrating these same characteristics by an artist other than Leonardo. The extant depiction of Sforza women from de Predis and others, whilst very fine in their own right do not display these characteristics.



Overlay composite with reversed image of Windsor drawing.

Medium and pigment characteristics

The multispectral scan reported by Cotte allowed a differentiation of the media used, as well as a clearer delineation of the respective restorations that were applied. The primary medium was described as black, red and white chalk, known as *trois crayons*. This was heightened with ink. Much of the drawing’s present vividness from a colour perspective was identified as being from later restorations. That being said, via careful use of colorimetry, Leonardo was able to achieve some colour by blending his original media. Critics who have levelled complaints about this piece being too colourful for Leonardo do not mention this point, or perhaps have not given adequate study to Cotte’s analysis:

If the basic *trois crayons* technique uses only three colours (black, red and white), how does one explain how the artists rendered the sitter’s amber eyes, her green, red and yellow costume, or the brown of her hair? It is a colorimetric fact that green

8 (Niyazi, 2011)
9 (Dorment, 2010)

can be obtained by a diffusion of black pigment on a background of yellow. This optical peculiarity was exploited by Leonardo to marvellous effect. He conveyed tones of green by applying progressive strokes of black chalk (no doubt sometimes blended with his finger or the edge of his hand) to the yellowish surface of the black vellum.

With regards to later additions to retouch the portrait:

Unfortunately, the three coloured zones of the costume - green, “yellow”(as it now appears) and red - as well as the brown of the hair no longer represent the original colours of the portrait in a wholly accurate manner. The pigments have also been overlaid by olive green, yellow and brown wash brushstrokes, which are later additions.

Mode of reporting

From an early point in the book, Professor Kemp outlines the rationale for the nature of reporting in the book. Discussion that would typically be left as adjunct text in an appendix has been given its own chapter alongside the usual mode of art historical report. Looking at antecedent works by Leonardo and his pupils, and discussing the historical use of illustrations in volumes of Renaissance poetry is where many other writers would start and end their piece. It was a bold, but important step for an art history publication to make the inclusion of these extra data elements as part of the main body of text. The language of this has been modified to enable comprehension by a wider variety of readers. That being said, those who come to these sections who have little experience with scientific language may need to acclimatise to the language used, rather than dismiss it as “barely intelligible”¹⁰.

Of the reviews made of the 2010 publication, Richard Dorment’s piece at *The Telegraph* attempted to provide a summary of the findings. Unfortunately, Dorment quickly abandons the discussion of the evidence, and instead focuses his attention to the war of words between scholars, asserting opinions against the attribution, but often with little clarifying detail. Dorment’s key issue seems to have been the assuredness with which Kemp makes his statement:

I don’t doubt that Prof Kemp’s belief in Leonardo’s authorship is sincere. But he is wrong to think he can prove this by steamrolling the public into accepting his attribution.

This must have been a difficult decision for Kemp and Cotte, who must have felt some impetus to report their

findings in a manner that goes beyond the type seen in scientific documents. There is a fascinating summation at the end of the volume by Kemp:

No single piece of evidence *proves* conclusively that the portrait of the woman in profile in coloured chalks...was executed by Leonardo da Vinci in the mid 1490s or that the sitter is Bianca Sforza. Similarly, no single piece of evidence *proves* that the *Mona Lisa* in the Louvre is a portrait of Lisa Gherardini...commenced in 1503 and finished a good deal later.... The now secure position of the portrait of *Mona Lisa del Giocondo* in Leonardo’s body of autograph paintings depends on an accumulation of interlocking reasons, and, not least, on the way that the painting participates in how we actively see Leonardo as a whole.

Kemp’s ability to shift gears between the disciplines of art history and science have as much to do with his own past training, than his omnipresent role as an established authority on Leonardo attributions. Many of his previous publications discuss Renaissance painting as an occupation akin to a scientific pursuit by artisans adopting a research based approach, accounting for the astounding advances made in optical realism in the 15th and 16th centuries.

Negotiating modes of reporting inherent to the arts and sciences is a challenge not faced by many art historians outside of those working on attributions and in conservation departments. A scientific document will focus strongly on the evidence presented and its ability to clarify the issue being investigated. If Kemp were to have adhered to a more rigid technical mode of reporting, many of the critics of *La Bella Principessa* would have had much less to lament. Had the book expressed the realities of the process outlined in the epilogue at the start, and relied less on individual pronouncements of opinion, its strength as a scientific document would invariable have been strengthened. In an art historical sense however, the presentation of these findings without the final verdict of such a renowned expert would ultimately have been unsatisfying to many readers.

A more lucid presentation of the facts and the process of analysis was written by Jo Ann Caplin¹¹, an art historian with a background in Chemistry. This rational and detailed piece was written for the Spring 2011 edition of the magazine of the Chemical Heritage Foundation. It provides the fullest account of the details and rationale employed by Kemp and his associates, and highlights that a search for further supportive evidence is continuing.

10 (Dorment, 2010)

11 (Caplin, 2011)

Among the wealth of data presented in the 2010 publication, there is some small consideration given to clarifying why the piece is not a 19th century or later copy, and some comments on the efficacy of the scanning technology used by the Lumière system and the analysis performed by Biro.

In statistical terms, this is called validity. The Cambridge dictionary of statistics succinctly defines this as “the extent to which a measuring instrument is measuring what was intended”¹². This type of discussion is vital when presenting information of a technical nature. In the analysis presented by Kemp and Cotte, there is some reporting of this nature, primarily around the Carbon-14 testing results, and elements of the multispectral scanning system.

However, a more complete assay of the evidence would also mention other factors that could contribute to the results seen. It is the diminished account of these omitted details that often form the basis of critical rejection of the findings of an investigation. Some of these are of course subjective in nature, and difficult to prove in any direction, but spelling them out is important. The following headings will clarify the key points:

Carbon-14, old vellum, layering and hatching

Carbon-14 testing performed by the Institute of Particle Physics in Zurich dated the vellum between a date range 1440-1650, establishing it as contiguous to Leonardo’s era. It should be noted here that the stated probability of this date range is 95.4%, whereas the interval between 1470-1530 is 27.2%. These probabilities are related to the properties of substances subjected to the radiocarbon testing method, compared against estimates of atmospheric carbon levels during the periods in questions. Without delving too deep into the nuances of carbon dating, this finding is presented as statistically significant to allow a confident statement that the piece of vellum was in existence in the c.1495-6 date proposed by Kemp.

The drawing being on vellum accounts for another anomaly in extant Leonardo works. This has been numerously cited by critics of the piece. To account for this, Kemp quotes a hitherto neglected passage in Leonardo’s notes:

There are no other known works by Leonardo on vellum, but there is previously neglected evidence of his interest in making coloured images on prepared animal skin...the most intriguing passage occurs in Leonardo’s so called “Ligny Memorandum” in the *Codice Atlantico*...Later in the note he writes: “Get from Jean de Paris the method of dry colouring and

the method of white salt, and how to make coated sheets; single and many doubles; and his box of colours; learn the tempera of flesh tones, learn to dissolve gum lake...”

This is believed to be a reference to Jean Perréal, a French artist travelling through Italy after the invading French emperors. He is cited as being in Milan with Charles VIII in 1494 and with Louis XII in 1499. The references to “dry colouring” and “box of colours” are interpreted as using a non-paint medium to apply colour, such as with chalks. The reference to “coated sheets” and “single and many doubles” is interpreted as a query on how to maximise as many single and double rectangular pages from an irregularly shaped stretched animal skin.

The “gum lake” and “coated sheets” is also a reference to a substance commonly used by artists known as gum arabic. Extracted from acacia, it was often used as a binder for pigments, and a fixative for sheets of vellum. Technical examination of *La Bella* verified the presence of gum fixative over the original layer, as well as a subsequently applied sealant, believed to be the work of a restorer.

Although the use of coloured chalks as a medium is traditionally ascribed to French artists, it is clarified that there are no extant examples of Jean Perréal’s work in this medium. Kemp also provides examples of work in coloured chalks by his Milanese counterparts, attempting to demonstrate in each instance they lack the combination of Leonardo peculiarities seen in *La Bella*. That this comparative evidence is more thoroughly explored has hardly rated a mention by any of the critics of Kemp’s presentation, making the “stacked deck” allegation by Dorment seem somewhat unwarranted in particular.

Kemp and Cotte also provide a detailed account of the layered presentation of the original drawing and subsequent restorations and application of pigment. Some comment on the ability of this to be mimicked may have been useful. Subsequent critics (such as Kline¹³) who attribute the work to German artists working in the 19th century would better serve their case by submitting evidence of these artists using 15-16th century vellum and a detailed analysis showing earlier or later marks on the surface being indistinguishable. At present, the extent of Kline’s evidence seems to be a “identical young woman”¹⁴, also drawn on vellum. An account of the age of vellum sheets used by artists such as Julius Schnorr von Carolsfeld and a presentation of detailed analysis of *La Bella* that betray a 19th century author would be welcome, but presently has not been made.

13 (Kline Art Research Associates, 2010)

14 (Kline Art Research Associates, 2010)

12 (Everitt & Skrondal, 2010)

Another significant point is that the drawing presented by Kline shows a type of hatching that is quite different from the type seen in many Leonardo drawings, a downward diagonal suggesting a left hand. This is seen in many examples beyond *La Bella*, and allows even the most casual observer to look at Kline's submission with a healthy dose of scepticism. Another critic affirmed that left handed shading has been faked by other Leonardo followers, such as Francesco Melzi¹⁵, but a detailed assay of this has not been presented. A thorough comparison of the mode of sketching in a faked left hatch and authentic Leonardo drawing would be a better way to refute this. Indeed, in the course of the analysis Kemp and Cotte also demonstrate that restorers aiming to recreate faded sections of this hatching had their work betrayed when examined under the high fidelity of the Lumière scans.

Multispectral scanning

The multispectral imaging system provided by Lumière Technology provides a level of detail unprecedented in art analysis¹⁶. It produces images of a very high fidelity, revealing elements of the piece being examined via filters that have a varying ability to penetrate certain materials. The most well known example of this principle is of course X-Ray analysis, where X-Rays have an ability to penetrate soft tissue, but not bone, allowing visualisation of the skeletal system. A multispectral scanner works in a comparable manner, but rather than the subject being tissue, it is an artwork with different pigment substances arranged in layers.

It should also be clarified that multispectral scanning is not peculiar to art analysis, but commonly used in a variety of disciplines, from engineering to geology, to provide fullest possible set of data on the properties of substances or objects being examined. That this technology has been applied to art analysis was a scientific inevitability as it is a non-destructive means of providing detailed readings and images that also have the advantage of being shared as digital files. Museum and conservation organisations would readily welcome access to the quality of images produced by such a system were it presently not as cost prohibitive.

Fingerprint examination: data, media focus and the CSI effect?

Much has been murmured about the inclusion of finger print discussion by Biro. Particularly in light of recent allegations of fraud made by *The New Yorker* columnist David Grann, and the subsequent lawsuit against him¹⁷. In the emotive art world, there seems to be prevailing guilt by association

that weaknesses in this method in some way detract from Kemp and Cotte's results. This is an incorrect assumption. What may be more useful is looking at the actual data supplied by Cotte and Biro, and examining it on its merits.

That artists, including Leonardo used elements of their hands and fingers in remodelling applied media is obvious. Whether a discernible methodology can be applied to examine these marks is the focus of the work of people like Biro, who in his work as an art restorer would have often noted such marks in pigments under a magnification source. The key impediment to this analysis is that we do not have an extant set of prints from Leonardo to make the comparisons a less equivocal process.

What is more valuable is the attempt to gather a larger pool of data to describe technique, including use of hands and fingers by artists working in a given era. Biro's work to establish a database of marks on artworks is a useful idea with broad practical scope. That it has been linked more prominently to attributions specifically is unfortunate, an element promoted more by journalists than by professionals dealing with attributions. Outside of a 'forensic' context, such observations are commonly stated in technical reports issued by museums and conservation organisations.

As far as the key print mark on *La Bella Principessa*, scanning reveals the ink to be contiguous to that used in the rest of the drawing, which can be readily distinguished from the restorations. Whether markers are consistent with 'prints' on other Leonardo works was never a consideration on which the attribution rested in this instance. Hence, although the 'fingerprint evidence' has been heavily promoted by journalists, it was *never* a conclusive factor of the investigation. For the sake of completeness, the following is Kemp's summation of this evidence as stated in the book. I have bolded elements of the report's language to highlight the caution with which this is presented.

At a historical distance of more than 500 years, **no forensic evidence is likely to be wholly conclusive**. We cannot, after all, take prints from Leonardo's own hands. However, the **likely correspondence** of the fingerprint found on *La Bella* with prints on Leonardo's unfinished *St. Jerome* is an **important piece in the jigsaw** of technical and stylistic evidence.

Whether such a statement accounts for the heavy focus on the fingerprint evidence by press and critics is beyond the scope of this piece. The truth to the biases seen in reporting may simply lie with the fact that fingerprint evidence is more palatable than the other technical evidence presented. In the legal industry, this unbalanced weighting of specific types of

15 (Dorment, 2010)

16 (Lumiere Technology, 2011)

17 (Halperin, 2011)

evidence, such as DNA and fingerprint results is known as *CSI Effect*¹⁸, due to the public's greater familiarity with the nature of evidence presented on TV crime shows such as *CSI*¹⁹.

Source volume identified – the Warsaw *Sforziad*

On Tuesday, 27th September 2011 *The Guardian* announced Kemp's discovery of the source volume - a 15th century book created for the House of Sforza, known as the *Sforziad*, located at the national library in Warsaw, Poland²⁰. Technical evidence is only briefly mentioned, particularly in regards to the vellum in the book - which "closely matches" the vellum of the *La Bella* drawing. In addition, we are told that stitch holes and incision marks correspond precisely from the cut page to the source volume.

Critics of the piece must now re-orient their approach - an argument that it is by a Leonardo contemporary may still arise from some. Although any allegation that it is a later piece is less likely to stand up against the body of evidence amassing for this work. The technical findings and provenance of the *Sforziad* can now be examined at Lumière Technology's website²¹, and summarised in a release authored by Kemp and Cotte²².

Conclusion: Attribution methodology, critical future

Once thought to be the work of a 19th century German school, the drawing of the young woman in profile now has a tentative attribution to Leonardo. Its critics are numerous, yet in each instance a detailed account of confounding factors has not provided. Evidence of later artists using 15th/16th century vellum needs to be produced, as well as analysis showing later marking of these sheets can not be separated from those made in earlier periods.

From reports made in various media, many of the objecting commentators have not seen the work in person. One of the scholars who did, Pietro C. Marani²³, an Italian Leonardo scholar was worried by the nature of pigments, the "firmness of stroke and the absence of craquelure." It was not clarified whether we should be expecting to see craquelure on a leaf of vellum which has been dated to the 15th-16th century, one which has had hatching elements touched up by restorers and pigments added at a later date - all mentioned in Kemp and Cotte's analysis as discernible from a lower and faded layer of original work.

18 (Shelton, 2008)

19 (Goodman-Delahunty & Verbrugge, 2010)

20 (Alberge, 2011)

21 (Lumière Technology, 2011)

22 (Kemp & Cotte, *La Bella Principessa and the Warsaw Sforziad*, 2011)

23 (Dorment, 2010)

Connoisseurs that target the mode of drawing, the nature of the detail and media will need to account for a unified presentation of facts, as summarised by Kemp and Cotte. For example, putting forward that other artists faked left handed hatching to simulate Leonardo drawings on its own is not enough to account for the many elements to this piece. That there is a fingerprint on the work potentially corresponding to another Leonardo work is a data point given only a diminished weight in the original analysis. Anyone seeking to undermine the nature of the findings presented by Kemp and Cotte would better spend their time finding a piece of similar quality, media and age characteristics from a 19th century or later artist. The examples offered thus far have been poor at best, with no comparable level of analysis.

Klaus Schröder of the Albertina Museum in Vienna is also a reported critic²⁴. Of particular interest would be the findings of the Vienna Academy of Fine Arts, who examined the piece. The results of these findings have been difficult to discern, and the reasons for Schröder's rejection of the piece not entirely clear.

In a fascinating report at *ARTNews*²⁵, we are given some insight into the social dynamics of scholars commenting on attributions:

Why do many scholars decline to be identified in attribution disputes? "Scholars usually don't talk about other scholars," said William E. Wallace, Barbara Bryant Murphy Distinguished Professor of Art History at Washington University in St. Louis and an authority on Michelangelo. "It's a small world. I'm being approached all the time. I just don't want to get into the fray. Maybe we have fragile egos and we want people to be our friends. It's not fun to gather enemies."

In presenting these findings, I would like to categorically state I have *no* opinion on the author of the picture –the true allure of this topic is the process and mode of reporting of attributions. Kemp and Cotte have presented a sizeable amount of data as to why they believe it is a Leonardo. It is frustrating to see critics and reviewers dismiss the work without a detailed account as to why. Anyone interested in the pursuit of knowledge welcomes more data and its application in a critical manner. The overall counter of the critics has furnished little actual detail beyond subjective opinions, often ignoring key points of the results presented.

What is sometimes missed when there is such conflagration over authenticity is the undeniable beauty of

24 (Dorment, 2010)

25 (Esterow, 2010)

the drawing, regardless of its author or period. It is quite charming, and we should be glad it has resurfaced, despite the scholarly jousting and vast sums entangled in it.

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Flouting the Law through Fine and Decorative Art Appraising

John Daab

Abstract

In appraising fine and decorative art, there are standards available in carrying out the process. The Uniform Standards for Professional Appraisal Practice were developed to protect the appraiser, client, and the public against bad appraisals. Over the last 5 years appraisals filed with the Internal Revenue Service have a hit rate of about 30-40%. That is, the 23 IRS Art Panel reviewers made up of experts in the field of art have found over the last 5 years the 500 or so appraisals filed for donations, estates, or capital gains/losses failed to satisfy USPAP or legal standards required for an IRS qualified appraisal in at least 6 to 7 out of every 10 cases. The significant point is that those bad appraisals, not reviewed, are costing the public millions of dollars in tax dollars. Further, appraisal violations not only cost the appraiser in terms of penalties, but the client has to pay unnecessary interest costs and penalties as well. This article looks at the history of the appraisal process its structures, the expectations of an appraisal, a composite case study of an appraisal in violation of the standards, the liabilities associated with an appraisal in violation of the standards and laws, and those factors lending themselves in the promotion of fraudulent appraising. From the analysis the article offers suggestions to hold back the spate of poorly developed appraisals.

Keywords: USPAP, fine art appraising, decorative art appraising, qualified appraisers, qualified appraisal organizations, Appraisal Foundation, IRS Art Review Panel.

Introduction

Each year, the Internal Revenue Service Art Advisory Panel reviews between 500 and 1000 fine art appraisals for various tax uses such as capital gains, donations, and estate values. Over the last 5 years, questionable or misrepresented appraisals were as high as 70 % (Fraudbaron, 2011). In point, only 30%-40% of the opinions of value provided by certified and qualified appraisers were accurate. Appraisals were misrepresented as being too high or too low resulting in millions of dollars of lost monies to the treasury. In almost all cases, the over or underestimated appraisals were prepared by appraisers from appraisal organizations certified by the IRS as qualified appraisal associations (ASA, 2011).

In March of 2011, the FBI reported that various museums engaged in fine art appraisal fraud to such an extent that the real worry is that many more unidentified museums may be engaged in similar criminal processes (Feich, 2008). In a recent review of the International Foundation of Art Research (IFAR 2011) case law relating to IRS value/appraisal cases, it was noted that driving force behind the cases fell into the categories of, fraud, customs law violations, tax law violations, negligence, estate probate and fair market value (IFAR 2011). One would think that if appraisals sent to the IRS have a success rate of 30-40%, what is the success rate of non IRS appraisals? Berelson (2009) and Cruise Bruise (2011) warn that appraisals violating the law on land are one thing; art purchased at sea with appraisals usually result in overestimated values reaching 90% with no hope of returning the art, or having the buyer's money returned. On land, purchasers of the art sadly find out that the art was only worth a small fraction of the appraisal when offered for sale to the secondary gallery market. One would think that the government should develop standards for appraisals/appraisers to prevent scam appraisers from casting off fraudulent opinions of value. In fact, the Appraisal Foundation in Washington D.C. created and monitored by Congress in 1986 developed appraisal regulations and standards in their Uniform Standards of Professional Appraisal Practice (USPAP, 2011). Why is it the case that if standards are required, fraudulent appraisals move uncontrollably through the system? To answer this question let us examine the history, system of appraising, its structures, and the problems resulting from the present appraisal process.

History of the Current Appraisal Standards

In 1986, the Appraisal Foundation, a newly created government-backed entity, developed a group of standards and regulations applicable to appraising property. Propelled by the Savings and Loan debacle in the late 1980s, partially brought about by faulty and fraudulent appraising, the Uniform Standards of Professional Appraisal Practice (USPAP) was created by the Appraisal Foundation (USPAP,

2011). USPAP standards relate to the valuation of real estate, real property, businesses, and machinery. As time went on, the hokey antique store down the block's appraisals were replaced by professional appraisals and appraisal organizations espousing USPAP as their gold standard. Today, USPAP remains as the gold standard for any legitimate appraisal, to the point that "... in many states to appraise real property one must study for, and take the USPAP examination and be provided documentation that the exam was passed" (USPAP, 2011). The IRS requires that to submit a donation or for estate purposes the appraiser must provide a "qualified appraisal" via USPAP and be a qualified member in an accepted appraisal organization (IRS, 2007). Thus, if your aunt Tillie wanted to donate her 1 million dollar Ming dynasty Buddha statue to the local homeless shelter for a tax write-off it would be necessary to obtain the services of an IRS qualified individual to provide an appraisal. Appraisers who fail to follow the guidelines "may" be fined or be disbarred from providing appraisals to the IRS in the future (IRS 2011).

The Structures of the Appraisal Process

USPAP-the Regulations:

USPAP consists of definitions, a preamble, rules, standards and standards' rules, and statements on appraisal standards, all compressed into a 350+ page book. The four concepts grounding USPAP and its report format are ethics, competency, scope of work, and jurisdictional exceptions. The meat of the standards is found in the ethics and competency requirements. Scope of work requires the appraiser to identify the problem under terms of how the appraisal will be used, the names of the individuals using the appraisal, date of the appraisal, definition of value, the conditions of the process and subject matter, and the definition of value. The jurisdiction standard weighs in what state, federal, and city regulations take precedence over USPAP (USPAP, 2011). In terms of Ethics- The overall rule is: To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics (USPAP, 2011).

Conduct:

"An appraiser must perform assignments ethically and competently, in accordance with USPAP. An appraiser must not engage in criminal conduct, must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests, must not advocate the cause or interest of any party or issue, must not accept an assignment that includes the reporting of predetermined opinions and conclusions, must not communicate assignment results in a misleading or fraudulent manner, must not use or communicate a misleading or fraudulent report

or knowingly permit an employee or other person to communicate a misleading or fraudulent report, and must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance, income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.” (USPAP, 2011).

Management:

“The payment of undisclosed fees, commissions, or things of value in connection with the procurement of an assignment is unethical. It is also unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:

1. The reporting of a predetermined result (e.g., opinion of value).
2. A direction in assignment results that favors the cause of the client.
3. The amount of a value opinion.
4. The attainment of a stipulated result, or, the occurrence of a subsequent event directly related to the appraiser’s opinions and specific to the assignment’s purpose. Advertising for or soliciting assignments in a manner that is false, misleading, or exaggerated is unethical.” (USPAP, 2011)

Confidentiality:

“An appraiser must protect the confidential nature of the appraiser-client relationship, and must act in good faith with regard to the legitimate interests of the client in the use of confidential information. An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment. An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.” (USPAP, 2011).

Record Keeping:

“An appraiser must prepare a work file for each appraisal, appraisal review, or appraisal consulting assignment. The work file must include:

1. The name of the client and the identity, by name or type, of any other intended users;
2. True copies of any written reports, documented on any type of media;

3. Summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser’s signed and dated certification;
4. All other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.
5. An appraiser must retain the work file for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.
6. An appraiser must have custody of his or her work file, or make appropriate work file retention, access, and retrieval arrangements with the party having custody of the work file. “(USPAP, 2011).

The overarching focus of the appraisal standards is to provide the ground rules of processing an appraisal. The ground rules function as expected practices to be carried out by the appraiser to the point that a failure to follow such practices may constitute malpractice and as such be subject to litigation and possible criminal prosecution and or fines.

IRS panel

The IRS Art Advisory Panel was established in 1969, as the IRS’s watchdog for appraisals submitted for donation and estate tax purposes (Dobrzynski 2008). The panel has 25 members consisting of scholars, art dealers, and museum officials. It examines opinions of value provided by qualified appraisers following USPAP practices and IRS rulings. It scrutinizes the 500-1000 values provided by appraisers for a given year. This is a stressful process for appraisers who have submitted values since the panel rejects at least half and as many as 60 % or more of submitted appraisals (Grant, 2011). Rejecting the values provided results in additional taxes, interest costs, and penalties for the taxpayer, and possible penalties for the appraiser. Many appraisers are so fearful of the IRS Panel that they refuse to engage in such appraisals. The panel for the year 2007 regained close to \$54,000,000, in lost taxes (IRS, 2008).

Education

Most fine and decorative art appraisers have degrees in the many branches of art-history, studio art, connoisseurship, chemistry and art authentication. A few colleges such as New York University offer courses in personal property appraising leading to a professional credential- not a degree- in appraising. According to Mark Grove, Virginia-based appraiser and an NYU faculty member, “There is no licensing requirement in

the United States for personal property appraisers (Personal Property is anything tangible that can be moved, e.g. art, antiques, etc.” (Kendzulak, n.d.).

The Appraisal Associations

The three leading appraisal associations- American Society of Appraisers (ASA), Appraisers Association of America (AAA), and the International Society of Appraisers (ISA) provide ethical guidelines for their members as they carry out their appraisal activities. They also set up the requirement to enter the association as an appraiser. Most require at least 3-5 years of working as an appraiser. Most importantly a peer group will also look for relevant education, and experience in generating USPAP reports. The associations also conduct testing in specific areas to certify appraisers (Antiques Prime, 1998).

Expertise

Appraisers frequently note that they are court experts in personal property valuation. While it may be true that appraisers may be called upon to provide expert testimony in providing opinions of value, it is not the case that such expert status in a particular case provides expertise in all cases. Kumho Tire noted that expert determination is made by the judge as the “gatekeeper” in a court of law. In point, an appraiser functions as an expert when the judge decides that the appraiser may be considered as an expert (USLegal, 2011). Expertise develops from taking courses, working as an appraiser and passing the USPAP exam. There are few if any college accredited majors in appraising.

Fraud laws

Fraud laws differ in terms of time and location. For the most part there are 5 general conditions which must be present to reasonably assert that fraud took place (LegalDictionary, 2011).

- (1) A false statement of a material fact
- (2) Knowledge on the part of the defendant that the statement is untrue
- (3) Intent on the part of the defendant to deceive the alleged victim
- (4) Justifiable reliance by the alleged victim on the statement, and
- (5) Injury to the alleged victim as a result

In addition, there must be a body of law providing the conditions of fraud. This point is raised in relation to “fraud” taking place outside the territorial waters on board cruise lines (Fine Art Registry, 2011). What seems to be the case at sea is that fraudulent transactions relating to art sales and appraisals take place with impunity due to the fact that regulatory laws

and bodies are not applicable outside the territorial limits. In point, cruise lines and the vendors auctioning their wares are able to carry out activities which would fall under criminal acts, but since there is an absence of any law covering such activities companies operating at sea can and do carry out not only fraud but other grey area crimes as prosecutions rarely take place (Cruise Bruise, 2011).

Appraiser A says that X is only worth 10 dollars. B relies on A’s assertion as a certified appraiser (he lists himself as being certified) and sells X for 10 dollars. A knew that X was worth \$10000 and intentionally bought it from B for \$10 in order to sell it for \$10000. A could be charged with committing fraud because he satisfied the conditions of fraud.

The Appraisal Process

A calls B the appraiser to provide an opinion of value for a Dali signed Lithograph. B arrives at the location of the work. B brings his gloves, black light, camera, computer, electric cord, and blanket to position the 18x18 inch work for examination. B measures the work, frame and construction, looks for a signature, date, identifies subject matter/title, looks at the back for any anomalies, asks the owner for any documents of ownership, sales slip, artist, taxes paid, previous ownership, and any relevant information regarding the work. B also checks for condition in terms of damages, and aging. B returns the work to its original location, and tells A that he will research and provide an opinion of value. B returns to his office, and researches the piece following accepted practices (New York University, 2011). In addition to above, Corey and Sigety(2009)suggestthefollowingintheappraisalexamination:

Artist recognition- Is this artist hot or cold to the market? Artists selling high and quickly are valued higher.

Market Location- The value of an artist’s work is a function of where the work is selling. Warhols will sell well in the New York and California markets but not so well in Montana.

Signature- Signed works are more valuable than unsigned. Moreover the signature should match the accepted signatures.

Subject matter- the subject matter of an artist’s oeuvre is varied and some subject matter sells better than others. Which category does the present work fall?

Sizing of work- The larger the work the more value it has. This rule is not universal, but in comparing apples to apples the larger apple commands a higher value.

Number of original pieces- The lower the number of pieces created the more valuable the work.

Condition- If the work under examination has significant defects the value will be reduced. Aging effects such as discoloration will reduce value but not as much as a major rip in the area of subject matter.

Rarity- Extremely rare works are problematic to provide an opinion of value simply because comparable values are not available. Rare works should also be examined with a cloud of suspicion since many of the finds are fakes.

Bibliography, Exhibitions- Artists having a documented history lend higher value to a work.

Is the Artist New to Market- New artists tend to be valued less than established.

Celebrity Status- Was the work originally owned by a celebrity? Celebrity branding ups the value in a work in most cases.

Editions- First editions are more valuable than later editions.

Provenance- Documentation of ownership provides higher value and less risk to a work. Few or no documents supporting a work's history or ownership reduces value.

Museum exhibitions of an artist's work increases the value of the artist and other works.

Percentage sold at auction- The higher the percentage sold the greater the value.

Difficulty of Transporting- If a work is problematic to transport a slight value decrease will result.

Authenticity- Unless there is an apparent factor indicating that the work under examination is a fake, the appraiser will always assume that it is authentic. Appraisers are not authenticators.

Market interaction- In times of market volatility determining a value is extremely difficult. Trying to establish a valid value when the market is bouncing around like a Spalding presents a significant problem to an appraiser.

Connoisseurial stamp- Has the piece been vetted by a connoisseur or entity functioning as a connoisseur such as a museum, curator, art historian? Positive responses will add value to a piece.

After evaluating the piece via the factors, B secures 3 to 4 recent auction house prices applicable to the work and provides an opinion of value. This opinion is called the Fair Market Value (FMV) based on what he has examined and what values are provided by auction houses in the area. In

theory, the report is couched in the USPAP format developed in accord with the topics presented above. Note here that the format is not universal but must reflect the standards of USPAP. If the piece is being valued for insurance purposes FMV will not be used. In cases of insurance losses, Retail Replacement Value (RRV) will be used which is the values supplied by retail outlets in the area (USPAP,2011). It is extremely important to understand the differences between the two. An entity supplying a RRV for a piece auctioned or sold should not prepare an RRV since the value supplied would be a value only applicable to an insurance loss which would be higher than if the item was offered for sale on the open market. An entity offering to buy the item, for example, an art gallery would more than likely pay about one half of the RRV value.

An Appraisal Gone Wrong: A Composite Case Study of the Greedy Appraiser

Ernie, who received his New York University Fine and Decorative Arts Appraisal Studies Certificate, has been appraising over the last ten years. Ernie is also a member of the AAA. Ernie lives in Princeton, and has an office in the area. Ernie frequently makes trips to NYC to appraise art works. When Ernie becomes very busy he hires college students to help out with appraising. Ernie's resume, found on his website, lists 15 or more specialties. If Ernie watches a Teaching Company lecture on the High Renaissance, he lists expert status for the High Renaissance Period. If he appraises a silver cup, he lists silver as a specialty (Dillion, 2010). Ernie also notes in his resume that he is a certified and licensed appraiser. (Dillion 2010)

Ernie was recently contacted by AAA, an art-consulting firm, requiring an appraisal of a multitude of items located in various locations throughout the world. The firm advised Ernie that the appraisal was needed to secure a loan. The firm also noted that it must be completed within one week. The firm stated that the works were from China, various mixed media from an unknown artist and some from Africa. Some others were noted to be one of a kind. Photos could be supplied as needed.

The CEO of AAA stated to Ernie that the owner would not be named, but the appraisal would serve as the value of the art. The art would serve as collateral for the loan of \$3,000,000. If the appraisal could not reach the value of the loan, the loan would not be provided, and the owner would have to file bankruptcy. The owner and his three young children would end up in the street. The report needed to be sent within five days. The CEO noted that if the appraisal was successful the appraiser would be paid 5% of the loan value, and it would be the beginning of a very fruitful relationship as the management company took care of all its clients' insurance, donation, estate and collateral needs. Ernie said

yes to the project.

Ernie received photos of about 100 objects and they were fuzzy revealing no details about the objects. The firm supplied a breakdown of the objects and where they were bought. There were 50 sculptures from Africa, 25 paintings from China, and 25 other works of various media and one of a kind contemporary works by an unknown artist who had no history of sales or exhibitions. Some of the works were purchased from European collectors. Ernie spoke to the CEO of the firm about the difficulties he was having trying to provide values. Some of the college students he hired to help with the appraisals are complaining that the photos cannot be read, and it is impossible to research for values. The CEO told Ernie to “just provide” some numbers to move the loan forward. Ernie provided the numbers equal to the 3 million (Murphy 1991), the loan was secured, and he walked away with \$25,000, with a promise that he would be paid the rest at a later time (Myerowitz 2010). He is still waiting, and four years have passed. Where did Ernie go wrong?

Analysis

Ernie should have analyzed the costs/benefits of the assignment. It would appear that the facts of the assignment are: there is not enough time to prepare for a solid appraisal, photos alone are not acceptable devices for an appraisal, he is not an expert/specialist in the areas specified, African art and Chinese art are known to be highly questionable in terms of authenticity, no comparable values are available for the artist and mixed media is difficult to compare, no guarantee that fruitful relationship would develop since no contract provided, and little or no provenance is available.

The data or facts supplied indicate that even if more time is provided there is an issue with the management company requesting an appraisal in such a short time period. If they are in the business of managing their client’s wealth, asking for an appraisal to secure a loan for 3 million in a week to ward off bankruptcy, they are certainly not on top of their game, especially if their present client is heading into bankruptcy. The first problem is that the client seems to be incompetent, and seems to be scamming the bank. What the management company is doing is attempting to secure a document by any means necessary to secure a large loan via questionable art properties. The details of the properties all seem to have issues relating to low values: known countries producing high quantities of inauthentic art, unknown artist works, and mixed media works. This company is on the edge, looking for some way to move beyond bankruptcy for their client. Given that the client seems to be incompetent, will payment for services be rendered? By providing a spurious appraisal to a past client it is reasonable to assume that future business will

be impacted and lost.

If we assume for a minute that Ernie “may” receive \$150,000 for his appraisal, the specter of ethical violations, loss of professional stature, jail time, civil suits, and loss of business would outweigh the monetary benefits of the assignment. In point, the uncertainty of benefit compared to the risks of criminal prosecution, court costs, jail time, loss of business income arising from damaged professional stature make the assignment unworthy of engagement and should be refused (USPAP, 2011).

Liabilities of a Spurious Appraisal

USPAP Violations

The following USPAP conduct and management violations took place: (See above)

1. Accepting compensation contingent on a predetermined result- \$3 million loan X 5%
2. The reporting of a predetermined value- \$3 million
3. Failure to be objective and impartial- reporting favors cause of client
4. Reporting the \$3 million- attainment of a stipulated result
5. Providing the collateral value amount of \$3 million- occurrence of an event specific to assignment purpose
6. The failure to properly carry out research properly- incompetence in carrying out assignment
7. Providing an amount not supported by proper documentation- provided results in a fraudulent manner
8. Using non-appraisal trained individuals- did not note that they were used

Potential Criminal Violations

African and Chinese art are traditionally identified with art which is questionably authentic, no comparable values were used to ground values, and Ernie and the firm secured benefits from the appraisal at the same time the bank suffered a loss by providing a loan based on a misrepresented value. Ernie intentionally misrepresented the value to secure a payment and putting intention, benefit, loss to the bank, making a false statement, and bank reliance on the statement satisfies the conditions of fraud prosecution. Further, since he was involved with another to defraud, he may also be prosecuted for conspiracy. Ernie may also be charged with falsifying his certifications and licenses. Some states hold that unless an individual possesses a certification or license the assertion that one is certified or licensed is a crime (Justia Law, 2011).

Civil Charges

Ernie, by providing a misrepresented appraisal to the firm and

its unknown client may be sued for malpractice by failing to follow USPAP practices, due diligence by not carrying out his research thoroughly, providing a fraudulent report, and failing to inform the client those areas he was not competent, (Findlaw, 2011).

Factors Promoting Fraudulent Appraising

The case of the “greedy appraiser” may be looked upon as an example of poor reasoning or a failure to activate a cost/benefit analysis. The fact is that there are few costs in developing a misrepresented appraisal. The fraudulent appraisal is an earmark of a poorly controlled industry wherein greed is easily carried out because penalties are weak and those organizations involved in the regulation of appraisal process rarely act to control members and violations. Let us see why.

USPAP, a Scam?

Although Congress implemented USPAP as a standard for appraising, they provided no rules to penalize violations of the standard. There are no USPAP police or any kind of remedy for those who fail to follow the standards. Basically USPAP is a toothless tiger. It is almost as if USPAP added a blanket of protection for those who want to flagrantly take advantage of clients and the IRS by using the passing of the USPAP test as a credential of expertise (one receives a credential from the appraisal organization sponsoring the test) and at the same time a shield to prevent scrutiny by outside eyes. Without any rules or administration of penalty for violations USPAP credentializes the holder of the passing of the test by adding a level of government professionalism and expertise. At the same time it suggests to the public that there is no need to examine the appraisal process because it is generated by government standards, and watched over by the Appraisal Foundation.

IRS Panel

Over the last few years, it has become commonplace for the IRS to reject 60-70 of appraisals for fine and decorative arts. The response of the IRS Panel to those appraisers in the rejected group is to provide a fine of \$1000 and or debarment from serving as an IRS “qualified appraiser”. One would argue that in any other field getting it right only 33% the time would be egregiously unacceptable. We would not accept a surgeon being successful with only 1/3 of his operations nor would we accept a professional engineer to be okay with only a small amount his or her buildings standing and 60-70 percent falling to the ground. This is not to say that the IRS panel’s conclusions are beyond question or politics. The goal of the government taxing authorities is to collect as much money as they can, and this surely serves as a motivation to stretch their conclusions of what is acceptable as a sound

appraisal. It is also not clear that the make-up of the board adds to the expertise of assessing those works placed before the panel. It is one thing to have a curator or art historian serve as an examiner; it is another to have a gallery person passing judgment on works simply because he or she sells art. Granted that since we do not have any standard process for establishing art expertise, a gallery owner is probably is a better choice than a shoe salesperson. However, questionable the panel is, it still does not absolve the appraising profession from developing questionable or fraudulent reports for their clients or the IRS.

Authenticity

Appraisers are advised by their associations to never provide authentication for the works they appraise (Dillion 2010). This advice is appropriate since authentication is extremely expensive and comes with a host of problems. The most significant problem is that authentication for or against a work often finds the authenticator being sued for his or her conclusion. Almost no entities authenticate at this time for fear of being challenged with a SLAPP suit or being a bull’s eye for an unhappy collector (CALP, 2011). Most appraisers handle this minefield by noting in their reports that they assume authentication but do not lend their appraisal expertise to it simply because they have not been trained in said discipline. What follows the appraiser around like a week old t-shirt, however, is that the factors leading up to the appraisal (above) often contradict the assumption of authenticity. That is, the *Factors of Value* approach not only establishes a credible scholarly examination for value, but also slowly uncovers the level of a work’s authenticity. In the case study, Ernie’s research would have established generically that the works from Africa and China have serious issues of authenticity, and the authenticity assumption generated would be in contradiction to the immediate facts. Further, the less hit factors on the hit parade of value establishment, the less prone a given work is in terms of authenticity. No provenance, no exhibition, no signature and so on place the assumption of authenticity into a relief of a serious authenticity problem. In point, it reduces the work to issue status and therefore, its value becomes questionable and reduced (Murphy, 1991).

Scholarship

Opinions of value in terms of scholarship move on a continuum of worst to best. The worst is providing only an opinion with no research; better, but still bad, is when the appraiser provides a little information on condition, failing to mention that a given work is basically a broken suitcase; the best is when the appraiser really digs in and produces an in depth report with many references and citations. Courts fail to lower the boom in the first case by only castigating the appraiser as being a slacker

(Greenberg, 1993). In fact, by failing to research correctly and appropriately, and then providing an opinion of value is misrepresenting the work for gain. The courts look with blinded eye at such cases because they are apt to leave the issue with the associations the appraiser belongs to for punishment. In the second case, of misrepresenting a work by failing to include all the conditions influencing the value, the court reduced the value provided to only 90%, leaving the appraiser to fend off his client who was now subject to increased taxes, interest, and penalties. Again the failed scholarship by the appraiser was relegated back to another party and kept out the purview of the court (Murphy, 1991).

Associations

It is seldom the case that appraiser associations call their members on the carpet for violating association by laws or ethics. This is not so unusual for professional organizations. Doctors and attorneys, for example, are rarely if ever prosecuted by their own accrediting body for doing wrong. (FAR, 2010).

Mens Rea¹

The International Foundation of Art Research (IFAR) reported cases of appraisal fraud and found only one case of fraud out of 19 (IFAR, 2011). Most cases were tried under the customs and tax fraud statutes, which are much easier to prosecute than fraud involving the establishment of intent to commit fraud. This problem is magnified when applied to corporations. Corporations cannot be said to have intention since only humans have intentionality. This is not to say that those in control of companies cannot be prosecuted. The hobgoblin of intentionality in corporate malfeasance is that it is difficult to identify the actual person who intentionally promoted the crime since there are so many layers of responsibility in an organization. The top executives will argue that the computers made the mistake; the lower level will argue that the upper echelon did it. The time it takes to nail the complicit party is not worth the effort since it will ultimately become a prosecutor's nightmare of knowing who the bad guy was but missing mens rea to establish his case.

In the cases of appraisal malfeasance the leveling problem is non-existent. The appraiser does the investigation, develops, writes and files the report or opinion of value. While some reports are poorly written, others pale in terms of the appraiser representation, the expert in valuations, providing

only minimal information so as to increase the value. If an item has one condition problem it is worth more than an item containing many condition problems. Ten cracks in a Rodin sculpture decreases its value compared to only one crack. The claim of the appraiser that he did not see the other cracks is tantamount to a professional engineer examining a column for stress and missing nine out of ten stress cracks. Such an assertion flies in the face of common sense and is professionally nonsensical. In point, there is no excuse for such behavior and is constitutive of intentionally attempting to hide from the IRS the real value of the work.

Conclusion

What we have provided is an examination of the structures of the appraisal process, the appraisal process itself, how appraisals go wrong, and the factors promoting the misrepresented appraisal. The appraisal process of fine and decorative art is, in many cases, misrepresented and fraudulent to the tune of 60-70%. The billionaire hedge fund impresarios are not satisfied with making a billion here or there, but are intent on not paying taxes on the art they own. They hire the appraiser to evaluate the low value of the work or high cost of the donation to reduce taxes on their goodies. The qualified appraisers present their case to the IRS Panel, a surrogate peer group, who sees through the gimmicks and comes back with additional taxes, penalties, and interest. While there are governmental standards to process the appraisal, there are no teeth to punish those who fail to follow the standards. Appraisal associations hardly ever punish those who violate the standards or even the association rules and ethics. The government apparently would rather have the associations or client punish the wrong doers. What is significant in the Panel's examinations is that peer group analysis indicates that there are serious problems with appraisals going to the IRS. What happens when they are not examined by a peer group but an unwary client?

The assumptive significance of authenticity without examination exists as a joke in any scholarly endeavor but passes muster for the IRS and the Appraisal Associations. Possible disbarment and coffee money fines lead one to conclude that although the IRS sends up red flags most of the time, perhaps the people on board the panel would really like to maintain the status quo rather than prosecute the members of their community. Why would an art dealer punish an appraiser when the appraiser might provide business to the dealer?

The present structures of controlling bad appraisals are weak, without teeth, and do not represent the cost of breaking the law. If an appraiser knew that he might serve time for committing fraud like other criminals, he or she might think twice before handing in an unethical, unscholarly and bogus

¹ A fundamental principle of Criminal Law is that a crime consists of both a mental and a physical element. Mens rea, a person's awareness of the fact that his or her conduct is criminal, is the mental element, and *actus reus*, the act itself, is the physical element.

appraisal. It would also help if the associations chimed in and began doing a better job of monitoring those who are apparently satisfied with being right only 40%-50% of the time.

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The Pillaging of the Abandoned Spanish Countryside

Leila Amineddoleh

Abstract

Spain is rich in art treasures: artwork ranging from religious works, modern paintings, ancient architecture, Roman ruins, and Visigoth remnants are densely scattered across Spain's cities and countryside. Whereas some of the art is world-renowned and protected, much of the art is still hidden in churches and in depopulated towns and is left vulnerable to damage and theft. Spain's cache of hidden works has great cultural value to the Spanish cultural identity; however, these works are often misappropriated because their existence is virtually unknown or unprotected. In light of the international upset over the theft of the Codex Calixtinus, this paper sets forth recommendations for Spain to follow to protect its patrimony, most importantly the necessity of creating an extensive catalogue, encompassing both State and Church property.

Keywords: abandoned towns, art theft, Church, Codex Calixtus, cultural heritage property, depopulation, national property database, patrimony laws, pilgrimage route, religious artwork.

Introduction

The Spanish countryside is a treasure trove of cultural heritage property; however, the Spanish State has not taken suitable measures to effectively safeguard these items. As the problem of depopulation empties the countryside of inhabitants, property (both decorative items and architecture structures) is abandoned. Property in these abandoned towns are not catalogued by the Spanish State, thus its existence remains unknown to Spanish cultural ministries. Opportunists have taken the liberty of pilfering these items and depriving the nation of its cultural heritage property. Spain's cultural heritage property is being further harmed by the nation's lack of involvement in international treaties, leading to the international community's lack of interest in these items. In addition, the State lacks control over much of its cultural heritage property since the State wields very little authority over the Church (although the State provides the Church with tax subsidies), and the vast majority of privately-held art belongs to the Church.

Discussion

Spain's developing economy has led to depopulation

During the first half of the twentieth century, Spain was classified as a nation with an agriculturally-based economy. As Spain's economy developed during the mid-twentieth century, the nation became more industrialized. The evolving economy deemed farming less profitable, and younger generations stopped entering the agricultural trade. Another factor accelerating the rate of depopulation is the Spanish government's promotion of tourism. Spain is one of the world's most popular travel destinations, and much of the Iberian nation's economy relies on the tourism industry. According to the United Nation's World Tourism Organization, Spain has been listed as one of the top-three countries for most international tourists for many years.¹ Dependence on tourism has contributed to the irrelevance of the agricultural sector in the Spanish way of life.

With a changing economic landscape, the nation's population has redistributed. As younger generations gravitated away from agriculture, the population relocated with an exodus of inhabitants from smaller towns. The increasing level of education also has contributed to changing population densities in Spain. As younger generations achieve higher levels of education, they move from rural areas to urban centers. Younger generations left small village *en masse* in the 1960s. Ever since, small rural towns have been slowly dying. With thousands of villages across the Spain landscape now

populated by just a handful of older people, many will become ghost settlements within ten years, only visited by returning emigrants during the summer months.² Those who abandon these small villages leave behind homes, art, and in some cases, cultural heritage property. Inhabitants of agricultural communities understand the need for younger people to leave rural areas. A shepherd from one of Spain's farming towns said of his children who live in different parts of the country, "They all went to college...There was nothing for them here."³ Nonetheless, the last century's en-masse migration to cities has created hardship in the deeply aged rural structures.⁴

A change in population has a huge effect on the landscapes and ecologies of surrounding areas.⁵ A phenomenon has hit Spain in which entire towns have been deserted during the wave of rural depopulation. Surprisingly, these ghost towns were not all very small communities. Deserted towns include small cities that once had populations numbering in the thousands. Remnants of these towns now contain abandoned homes, municipal buildings, historic sites, artwork, cultural heritage property, and churches. The towns are called "pueblos abandonados" ("abandoned towns") or "despoblados" ("depopulated towns"). A recent article estimates that 2800 towns in Spain have been abandoned, with the majority of them located in the northwestern regions of Asturias and Galicia. Two of every three abandoned towns are located in these northwest regions.⁶ In fact, abandonment is a problem that is predominantly plaguing northern Spain. However, the problem with depopulation is not unique to Spain; it is occurring throughout Europe.⁷

Political structures in Spain contribute to the depopulation of rural communities

To understand the abandonment of northern Spain, it is essential to understand the political structures of the towns. The territories of Spain were established by the Spanish Constitution of 1978.⁸ The Constitution established three levels of organization: municipalities, provinces, and autonomous

2 *Rural Depopulation in Spain*, IBERIANATURE, Jan. 1, 2008, available at <http://www.iberianature.com/spainblog/category/human-geography-of-spain/>

3 Merijn de Waal, *Spanish Ghost Town Buys New Residents*, NRC HANDELSBAD, April 22, 2010, available at http://www.nrc.nl/international/article2530278.ece/Spanish_ghost_town_buys_new_residents

4 *Brevísima historia de la despoblación*, PUEBLOS ABANDONADOS, NOV. 11, 2009, available at <http://www.pueblosabandonados.es/search?updated-max=2009-11-16T10%3A35%3A00%2B01%3A00&max-results=8>

5 *Id.*

6 *Historias de miedo para pasear por pueblos abandonados*, 20 MINUTOS. ES, NOV. 28, 2010, available at <http://www.20minutos.es/noticia/886204/0/miedo/pueblos/abandonados/>

7 Merijn de Waal, *Spanish Ghost Town Buys New Residents*, NRC HANDELSBAD, April 22, 2010, available at http://www.nrc.nl/international/article2530278.ece/Spanish_ghost_town_buys_new_residents

8 La Constitución española de 1978 (the Spanish Constitution of 1978).

1 World Top 50 Tourism destinations, available at http://www.srikumar.com/tourism/world_top_50_tourist_destination.htm

regions, with municipalities being the subdivisions of provinces, and provinces being subdivisions of autonomies. The Spanish State (which is a regionalized, not a federal, government) guarantees solidarity amongst the constituent parts of the country.⁹ The municipalities, the lowest level of organization, are administered by councils of elected mayors and councilors. Citizens participate in public affairs through their municipalities. The Spanish Constitution grants financial autonomy and financial self-sufficiency to all municipalities.¹⁰ Financial autonomy denotes that municipalities formulate their own decisions regarding resource management, while self-sufficiency is aimed at guaranteeing that all municipalities have resources necessary to exercise their competences.¹¹ One of the primary methods for raising resources in municipalities is through tax revenue.¹²

Currently there are 8,109 municipalities in Spain.¹³ The vast majority (84%) of municipalities have fewer than 5,000 inhabitants; however, only 13% of Spain's population lives in these municipalities.¹⁴ Northern Spain has a low population density and the greatest concentration of municipalities.¹⁵ Some towns have populations of less than one-hundred people. Much of the revenue of municipalities comes from tax dollars; therefore, without an ample population, there are not sufficient resources to sustain a community. Due to the lack of work and inability of municipalities to maintain their communities, people continue to flee smaller municipalities and head to urban areas.

José Maria Area is a representative at the Ministry of Culture for the province of Burgos in Northern Spain. According to Area, Spain faces a problem with its municipalities; there are "too many municipalities in northern Spain."¹⁶ For example, the province of Burgos which has an area of 14,300 km² contains 371 municipalities¹⁷, many

of which have fewer than 100 inhabitants¹⁸. In fact, many of the municipalities have only a few dozen people.¹⁹ With an excess number of municipalities, resources are spread too thin. Municipalities are too small to function effectively because these communities do not produce enough money from tax revenues due to their undersized populations. And since municipalities are small and there are an overwhelming number of them, they do not function efficiently because resources are duplicated, creating great amounts of waste. To make matters worse, small municipalities do not receive financial assistance from the State because they are underpopulated.

According to Area, there has been a movement to reform municipalities and to consolidate them.²⁰ Pedro Arahuetes, Segovia's mayor and president of the finance commission for the association that represents Spain's municipalities and provinces, opines that Spain's federal government should consider a controversial reform to mandate the mergers of small communities so they can consolidate to save on costs, especially smaller towns numbering 400 people or fewer that have their own municipal governments.²¹ However, those efforts are being met with major resistance because citizens fear losing control of their towns and they do not want to surrender their municipalities and their "identities."²² Locals do not want to merge with neighboring towns;²³ however, it would serve citizens well to consolidate the nation's municipalities. As stated by Arahuetes, "The territorial distribution of towns in Spain is totally unsustainable and someone has to address this problem in a serious way."²⁴ Furthermore, one of the biggest problems of the rural world is the absence of county-wide policies, which are capable of organizing and planning macro areas.²⁵ Each village functions as its own microcosm, as its own mini-republic. "This type of structure is killing the rural world."²⁶

The problem of abandoned towns in Spain is so great that entire websites and books are devoted to the subject.²⁷

9 Artículo 138 de la Constitución española de 1978 (Article 138 of the Spanish Constitution of 1978), available at http://es.wikisource.org/wiki/Constituci%C3%B3n_espa%C3%B1ola_de_1978:_10#Art_137

10 Gobierno de España, Ministerio de Administraciones Públicas, *Local Government in Spain*, available at http://www.mpt.es/publicaciones/centro_de_publicaciones_de_la_sgt/Otras_Publicaciones/parrafo01111111115/text_es_files/file/Regimen_Local_ING-INTERNET.pdf

11 *Id.*

12 *Id.*

13 Council of European Municipalities and Regions, available at http://www.ccre.org/espagne_en.htm

14 Gobierno de España, Ministerio de Administraciones Públicas, *Local Government in Spain*, available at http://www.mpt.es/publicaciones/centro_de_publicaciones_de_la_sgt/Otras_Publicaciones/parrafo01111111115/text_es_files/file/Regimen_Local_ING-INTERNET.pdf

15 A representation of the population density can be found at http://upload.wikimedia.org/wikipedia/commons/thumb/3/36/Municipalities_of_Spain.svg/2000px-Municipalities_of_Spain.svg.png.

16 Telephone interview with José Maria Area, representative of the Burgos Ministry of Culture, November 2010.

17 http://en.wikipedia.org/wiki/List_of_municipalities_in_Burgos

18 For a list of municipalities and their populations, see http://populations.guide-spain.com/Castille_and_Leon/Burgos

19 *Id.*

20 Telephone interview with José Maria Area, representative from the Burgos Ministry of Culture, November 2010.

21 *Spanish Towns Face Funding Crisis, Rack Up Debts*, HUFFINGTON POST, August 13, 2011, available at http://www.huffingtonpost.com/2011/08/14/spain-debt-crisis_n_926446.html.

22 Telephone interview with José Maria Area, representative from the Burgos Ministry of Culture, November 2010.

23 *Spanish Towns Face Funding Crisis, Rack Up Debts*, HUFFINGTON POST, August 13, 2011, available at http://www.huffingtonpost.com/2011/08/14/spain-debt-crisis_n_926446.html.

24 *Id.*

25 *Rural Depopulation in Spain*, IBERIANATURE, Jan. 21, 2008, available at <http://www.iberianature.com/spainblog/2008/01/rural-depopulation-in-spain/>

26 *Id.*

27 <http://despoblados.blogspot.com/>; <http://www.pueblosabandonados.com/>

Abandonment has caused such alarm that some municipalities have taken extreme measures to combat rural depopulation. One striking example: The town of Retortillo de Soria, located in Soria, the least populated province in Spain, made international news in the spring of 2010 by attempting to repopulate itself.²⁸ The population of Soria decreased by about forty percent during the last century, and today's population density is comparable to the desert nation of Oman.²⁹ Retortillo's mayor won the 2007 election with her promise to increase the population of the town. The mayor invited Spaniards to relocate to the village, promising parents with young children cheap housing with assistance from the municipality.

People assess abandoned towns at such low values that it is possible to purchase entire villages in Spain for a couple hundred euros.³⁰ However, these prices do not accurately reflect the villages' values, since they contain many valuable and historically significant objects. Whereas it may be cost-prohibitive for individuals to purchase homes in abandoned towns and to recreate communities, it is profitable for companies to exploit parts of towns in new creations. It is profitable to remove raw materials and "genuine antiques" (a piece of furniture or decorative object or the like produced in a former period and valued for its beauty or rarity) from these villages either to sell them or use them in new pieces or in new structures. Ultimately, it is cheaper to completely deconstruct abandoned structures than to renovate, conserve, or reconstruct the buildings. People and companies now visit abandoned towns to reap the benefits of a free or nominally-priced supply of raw materials.

There is a link between abandoned and depopulated towns and the misappropriation of cultural property

According to the Burgos Ministry of Culture, the people of Spain do not recognize a link between the misappropriation of valuable art and cultural property and the problem of depopulation.³¹ In light of the fact that some municipalities do not have sufficient funds to repair streets and infrastructures, the people from those regions are unconcerned with secondary concerns, such as art. As stated by Area in the Burgos Ministry of Culture, "There is little money in the municipalities, and there is even less for artwork."³² For people in struggling

communities, protection of art and cultural heritage property is not a priority, especially since most individuals do not realize that abandoned towns are targeted for art takings.

The construction sector benefits from the abandonment of towns

One group benefiting from the public's lack of regard for cultural property is the construction sector, as companies take pieces of buildings from these towns. Construction companies head to deserted towns to procure building materials. Long-forgotten houses and churches are dismantled for their parts, which often include centuries-old art, carvings, doors, portals, and tiles. However the takings include not only pieces of private homes, they also include pieces from public buildings and churches. It is a growing trend in Spain (and in the rest of Europe and in the United States) to decorate lavish homes and businesses with antiques and traditional decorative arts. There are countless businesses around the world that specialize in the sale of genuine antique pieces destined for use in new construction.³³ Popular building pieces include structural elements of buildings, such as antique doors and windows, and decorative items such as Spanish tiles and carvings. In fact, a search on the internet yields items such as coats-of-arms³⁴ and stone fountain pieces.³⁵ Some companies list the items as "reclaimed European building materials," implying that the pieces were saved from destruction and salvaged for sustainable use, not that they were taken for economic gain. Genuine antiques are in a fixed and limited supply, and the demand is huge. People want to refurbish their homes or businesses with these pieces, and they are willing to pay a premium. Due to the popularity and high demand and limited supply of these objects, the items yield a high price. Escalating prices motivate construction companies to visit abandoned towns to collect quality pieces.

One such company, Antiquedades Chelo, is located in the northwestern region of Galicia.³⁶ (Galicia is one of the regions with the highest rate of depopulation.) Antiquedades Chelo does not take any "mobile" art, like paintings and statues, but instead removes structural elements of buildings, often taking pieces from churches. A representative of the company stated that in order to take pieces from the churches, Antiquedades Chelo receives permission from specific diocese.³⁷ When

es/2010/04/guia-de-pueblos-abandonados-del-pirineo.htm

28 Merijn de Waal, *Spanish Ghost Town Buys New Residents*, NRC HANDELSBAD, April 22, 2010, available at http://www.nrc.nl/international/article2530278.ece/Spanish_ghost_town_buys_new_residents

29 *Id.*

30 <http://www.vuelaviajes.com/pueblos-abandonados-en-venta/>; http://www.periodpropertiesinspain.com/asp/property_detail.asp?cod=94

31 Telephone interview with José María Area, representative from the Burgos Ministry of Culture, November 2010.

32 *Id.*

33 A simple internet search resulted in some of these "hits": www.antiguedadeschelo.com/; <http://www.solarantiquetiles.com/>; <http://www.pasodobleimports.com/>; <http://www.lantiquario.com/index.htm>; <http://www.architecturalauktion.com/html/aboutus.htm>

34 http://www.pasodobleimports.com/index.php/products/details/antique_stone_coat_of_arms/

35 http://www.pasodobleimports.com/index.php/products/details/stone_fountain_piece/

36 Antiquedades Chelo, available at www.antiguedadeschelo.com/

37 Interview with representative from Antiquedad Escelo, October 2010.

working with the Church, the company has not faced any opposition in acquiring pieces from the diocese.³⁸ For the most part, the company takes pieces from non-active churches that were scheduled to be demolished. Rather than expending funds to preserve the structures, the Church often decides to demolish the buildings, thus the diocese grant permission for construction companies to remove the pieces for alternative uses.

Pillagers remove art, particularly religious works, from abandoned towns

However, not all companies or individuals receive permission to remove artwork or elements from building structures. Rather, there has been a well-documented pillage of northern Spain. Government representatives in Spain acknowledge the looting of cultural heritage pieces, particularly religious works from the north. According to the Senior Prosecutor of Galicia (a region on the northwest), there have been dozens of historical heritage lootings since the 1970s used to fund “networks of illegal traffic of religious objects.”³⁹ Miguel Angel González, a “delegado diocesano de Patrimonio” (diocesan delegate of patrimony) stated that thieves specifically target objects with heritage value.⁴⁰ It is clear to the Guardia Civil and to prosecutors that stolen objects are intended for the black market, and that they eventually appear at auction.⁴¹ Representatives of the bishopric attend auctions in Spain and Portugal to find missing pieces. However, it is often difficult to identify and locate the pieces because there is not a clear record of property, especially since the pieces may be altered, repainted, or disfigured.⁴² In the case of altarpieces and larger works, they may be dismantled and then sold in parts. Sometimes columns, niches, and chunks of altarpieces appear at auction, years after a theft or illegitimate sale. Yet, it is impossible to identify the pieces and to determine whether they were stolen, since they have been decontextualized.⁴³ In the case of construction companies and raw materials, the pieces will be near impossible to identify once they are used in a different context or structure.

Spain does not have a uniform cataloguing system for cultural heritage property

One of the difficulties in protecting Spanish art is identifying Spanish art. Spain has a huge cache of art and cultural heritage property scattered throughout the country, in both large cities

and in small towns. However, it is difficult for municipalities and autonomous regions to protect their art and cultural heritage property since records do not exist for many of the pieces. Spain does not have a uniform cataloguing system. The national law protecting historical patrimony in Spain establishes that all municipalities are responsible for the objects within their borders. Municipalities have a duty to protect cultural heritage objects, which include art objects, churches, castles, and historic sites. However, the municipalities are not given the proper tools and funds for this task.

The State asserts that it is not responsible for cataloguing the cultural property, yet it requires municipalities to catalogue and disclose cultural heritage property within their territories.⁴⁴ The State seeks to increase the coordination between municipalities and the State in order to protect art.⁴⁵ A representative from the Spanish Ministry of Culture in Madrid provided information about this issue and Spain’s efforts to protect its patrimony. The nation aims to merge municipal inventories with the general inventory of the State and to use the inventory as a way to track art being removed from its borders. In addition, the merged catalogues are to be used at auction. The State requires that all auctioneers review a catalogue of objects classified as national cultural heritage property before placing items up for auction.⁴⁶

Cataloguing art is an expensive process; however a national cataloguing system is feasible, as demonstrated by the Italian government, which has a national catalogue for cultural holdings.⁴⁷ The catalogue is created by the Central Institute for Cataloguing and Documentation (Istituto Centrale per il Catalogo e la Documentazione, “ICCD”), a body within the Ministry for Cultural Heritage and Activities. To successfully catalogue, the CICD hires specialists and provides high-level training and research in the cataloguing sector. The institute defines cataloguing as the act of registering, describing and classifying all types of cultural heritage; it requires accurate descriptions of the works, including written descriptions, measurements, and photographs. Cataloguing standards consist of regulations, specific standards and support tools and a set of rules and guidelines.⁴⁸ After cataloguing, the Institute assigns numbers to assets which make up the national archaeological, architectural, art history and demnoanthropological heritage.⁴⁹

Italy’s national catalogue also encompasses holdings

38 *Id.*

39 J.T. Ourense, *Los robos en iglesias surten el trafico ilegal de obras de arte*, LA REGION, Sept. 13, 2010, available at <http://www.laregion.es/noticia.php?id=131799?visita=1>

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 Interview with a representative at the Ministry of Culture in Madrid, November 2010.

45 *Id.*

46 *Id.*

47 <http://www.iccd.beniculturali.it/>

48 <http://www.iccd.beniculturali.it/index.php?en/115/cataloguing-standards>

49 <http://www.iccd.beniculturali.it/index.php?en/95/institute>

from the Church. The Church has a separate national database and software to catalogue its own holdings.⁵⁰ The Catholic database converges into a larger overarching government database.⁵¹ Although the Church is independent from the State and owns its own property, the State has the authority to ensure that the nation's cultural heritage interest is guaranteed. For example, when an entity wishes to organize an exhibition and requests a loan for a piece owned by the Church or physically located inside of a church, the borrower must make two requests: one to the Church and the second to the government through the Ministry of Culture (Ministero per i beni Culturali).⁵² The government has the authority to oversee the preservation of cultural heritage property.

Whereas the Italian government has devoted resources to protect its national property, the Spanish government does not provide economic resources to that cause. Employees of the Spanish Ministry of Culture opine that the government does not have the financial resources to devote to cataloguing. However, there are methods that would make it economically feasible for the State to sponsor a national database of catalogued objects. Italy's ICCD receives resources from "both ordinary and extraordinary budgets; with proceeds derived from the development of its activities and the collaboration with other entities, both public and private; with the contributions from public administrations and bodies and private Italians, communities, as well as international organizations aimed at supporting the Institute's duties."⁵³

The Spanish State has the same ability as the Italian State to raise funds and create a database. Just as cataloguing Italian art provides the government with control over national artwork and cultural heritage property which brings in tourism and revenue for the country, protecting Spanish art could be used as a way to increase tourism in abandoned areas. In addition, preserving and protecting art will ensure its survival for future generations, and will benefit the nation economically and enrich the country's cultural identity. And just as the ICCD accepts funding from private organizations, Spain may find additional funding from private donors, educational groups (like universities, archaeological institutes, cultural studies organizations), or wealth donors with an interest in preserving Spanish cultural property.

Spain's historic patrimony law does not effectively protect its property, partly because it does not accurately catalogue its property and because it does not contain holdings in abandoned towns

50 Interview with Matteo Andreani, Cataloguer of Masterpieces for the Senigallia Diocese and the Head Cataloguer for the Camerino Diocese, April 2011.

51 *Id.*

52 *Id.*

53 <http://www.iccd.beniculturali.it/index.php?en/95/institute>

Although cataloguing pieces helps to prevent the taking and theft of cultural heritage property and national art troves, there is conflict between the State and the municipal governments because municipalities do not have sufficient funds for this undertaking. In an attempt to protect its cultural patrimony, the Spanish State requires cataloguing, but does not provide money for the protection of art.⁵⁴ The State provides very minimal funding for cataloguing; municipalities receive 1% of the money raised from State taxes for the protection (which includes cataloguing) and restoration of art within a municipality. The Law of Historic Patrimony which provides funding is referred to as "1% Cultural."

The law states:

La Ley de Patrimonio Histórico establece la obligación de destinar en los contratos de obras públicas una partida de al menos el 1% a trabajos de conservación o enriquecimiento del Patrimonio Histórico Español o al fomento de la creatividad artística, con preferencia en la propia obra o en su inmediato entorno.

The Heritage Act establishes the obligation to spend on public works at least 1% to work in conservation and enrichment of Spanish Historical Heritage or the promotion of artistic creativity, preferably in the work itself or their immediate environment.⁵⁵

It is not feasible for fiscally weak municipalities to devote resources to cataloguing property. As stated by José Maria Area (a representative from Burgos Ministry of Culture), "Municipalities are struggling overall. Forget about the art."⁵⁶ Moreover, even after pieces are catalogued, they may not be protected. The only art that is protected are items that have been warranted protection as proclaimed by the regional government.⁵⁷

Another major flaw in Spain's system is that cataloguing does not capture abandoned towns; it is impossible to catalogue items and structures in depopulated communities. Abandoned towns do not produce any revenue; they do not have tax revenues or industry revenues and they do not generate tourism. With zero revenue, there is zero funding for cataloguing. For that reason, abandoned towns are overlooked in the cataloguing process, and objects in those areas are never added to cultural property inventories. People have no idea what treasures are held in depopulated towns. The void of

54 *Id.*

55 Gobierno de Espana, Ministerio de Cultura, *1% Cultural, Patrimonio Historico*, available at <http://www.mcu.es/patrimonio/CE/UnoCult/Definicion.html>

56 Telephone interview with José Maria Area, representative from the Burgos Ministry of Culture, November 2010.

57 *Id.*

information and lack of records about objects within these areas makes abandoned towns vulnerable as perfect targets for removal of property.⁵⁸

In addition to the fact that art in abandoned towns are not known or catalogued, the work in those areas may be seen as a low priority. According to the Patrimonio Histórico (the Historic Patrimony Law), the Joint Commission considers various criteria in financing a patrimony project.⁵⁹ Considerations include that performance of the project is funded by various public administrations, that the actions belonging to public works environment, and that the action will contribute to the regional balance. These considerations weigh against the protection of property within abandoned areas. First, the protection of materials in depopulated towns cannot be funded by public administrations because those regions have *de minimis* or non-existent revenues. Furthermore, it is highly unlikely that the commission would consider an abandoned town as contributing to the regional balance—either because the town does not attract visitors, does not sustain a thriving community, or because property within the area is unknown to decision-makers. The Ministry provides that only certain parties can apply for the 1% cultural funding. Permitted parties are autonomous communities, municipalities, provincial councils and island councils, public universities, and the State.⁶⁰ Without knowledge of the art within abandoned towns, there will not be any grant applications for the protection of the art against construction companies, pillagers, treasure-hunters, tourists, opportunists, and looters.

Spanish people in general do not view depopulation as a problem related to art and cultural heritage property. Ignorance concerning this issue is the reason that there is little initiative to protect property within abandoned areas.⁶¹ In fact, cultural ministry representatives claim that there is no problem related to spoilage of art and property within these towns. Burgos Cultural Ministry representative José Maria Area stated that there is no spoilage of art in abandoned towns. He stated that this was a problem in the 1970s, but that those types of robberies no longer occur.⁶² Representatives from various cultural institutions state that taking of art from abandoned towns is not problematic and not common today. But the question must be asked: how can the State know whether art

is being taken when the State and municipalities have no idea of property within these towns?

Another way for the Spanish government to protect its property by joining international conventions

Another way for Spain to protect itself against missing art is for the State to take a more active role in prosecuting art thieves once they are found selling the items on the international black market. To assist in doing this, Spain should ratify international conventions and work with the international community to stop art theft. By joining international conventions and enacting stronger laws, the Spanish government will help stop the entry of Spanish goods onto the international black market. Joining conventions will encourage other party states to cooperate in the effort to protect Spanish cultural property. By making it impossible for thieves to sell their wares, Spain will remove much of the incentive for art theft. Entering into international agreements will make it more difficult for thieves to reap the countryside of items simply because they are easy to take. In 2002, Spain ratified and entered into force the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), however the nation has not signed or ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).

To more effectively protect the nation's cultural heritage property, Spain should follow the lead of nations like Italy and Egypt who have worked with the international community and who have enacted strong patrimony laws. Italy has patrimony laws dating back to the nineteenth century.⁶³ The law, "General Regulations for the Protection of Things of Historical and Artistic Interest," claims national ownership of antiquities and regulates their excavation and exportation.⁶⁴ Egypt's patrimony law vests national ownership in all objects found in Egyptian soil.⁶⁵ Spain should protect its cultural heritage property by enacting patrimony laws as well. Those who try to sell "found" items (those that are found by chance in the soil or in abandoned areas) would not be able to export the items because the property would be vested in Spain. However, in order for international cooperation to take effect, it is essential that the Spanish State make it a priority for the international community to recognize its property by cataloguing the country's cultural patrimony. Since depopulated areas are a clear target for the taking of items, Spain must devote resources to cataloguing items in these areas.

58 *Roban una imagen del Cristo crucificado*, ABARAN, October 26, 2010, available at <http://www.murcia.com/abaran/noticias/2010/10/26-roban-imagen-cristo-crucificado-obra.asp>

59 Gobierno de España, Ministerio de Cultura, *1% Cultural, Patrimonio Histórico*, available at <http://www.mcu.es/patrimonio/CE/UnoCult/Definicion.html>

60 *Id.*

61 Telephone interview with José Maria Area, representative from the Burgos Ministry of Culture, November 2010.

62 *Id.*

63 See Andrew L. Slayman, *The Trial in Rome*, *ARCHAEOLOGY*, Feb. 6, 2006, available at <http://www.archaeology.org/online/features/italytrial/>

64 *Id.*

65 Egypt's public *Law 117/1983* vests ownership of all antiquities discovered after 1983 to the Egyptian nation.

Spain can protect its cultural heritage property by exercising control over the Church

In addition to joining the international community in strengthening patrimony laws, the Iberian nation is in a unique position to protect its art because much of it can be secured by monitoring the Church. The Catholic Church plays a major role in the preservation of Spanish cultural patrimony because the Catholic Church owns the vast majority of privately-held cultural heritage property.⁶⁶ The church owns 70% of the historic centers of four of Spain's most artistically and culturally significant cities: Toledo, Avila, Burgos, and Santiago de Compostela.⁶⁷ And the church controls 80% of the national historic and artistic heritage of Spain, consisting of cathedrals, monasteries, and museums.⁶⁸ Records show that most crimes against cultural heritage property in Spain (at least in the north) take place on church property.⁶⁹

Currently, the Church controls the property in its possession. Yet since the church owns so much of Spain's cultural and artistic heritage, the State should ensure that the Church properly protects the pieces, for they have value for the national culture and identity of Spain. It is necessary for churches to be protected by the State's patrimony laws and for the churches to adhere to the laws, especially since the Church receives funding through tax subsidies from the State. The Spanish government formally separated from the Church under the 1978 Constitution, but the State has continued to finance the Church since 1979. An agreement with the Vatican allows taxpayers to contribute 0.52 percent of their income taxes to the institution.⁷⁰ Since 1989, however, these contributions have not matched Church spending, and the government has made up the difference with an annual lump sum payment.⁷¹ In 2006, the government announced that the State would no longer be forced to pay an annual allowance to the Church.⁷² To compensate, the voluntary donation of taxable earnings rose from 0.52 percent to 0.7 percent, meaning that taxpayers may give 0.7 percent of their income tax to the Church rather than to the Tax Office.⁷³ Due to the tax benefits and State

funding, the State should require the Church to catalogue its holdings, either through an internal board or preferably through a State-funded and State-appointed committee. In addition, the State must ensure that the Church does not sell objects of patrimonial significance.

One of Spain's historic and religious centers is Toledo, the former capital of Spain, and a region famous for the richness of its religious art. Although abandonment of churches is not common in Toledo, a representative of the Archdiocese in Toledo answered some questions related to church holdings. According to the Art Director of the Archdiocese of Toledo, Father Pablo, individual churches sell art from their art troves. However, this should not be happening. According to him, the historic patrimony laws of Spain establish that the Church is not permitted to sell artistic pieces. Churches receive funds from the State, thus churches fall under the State-imposed patrimony laws. The State laws prohibit the Church from selling cultural and historic pieces to raise funds. All pieces held within churches or that are part of the physical architecture of churches are subject to the State laws. Father Pablo opined that abandonment is not common in Toledo, but it is more of a problem for churches under the Archdiocese of Burgos, a region along one of the most significant pilgrimage routes that crosses international borders between Spain, Portugal, and France and ends in Santiago de Compostela.

The pilgrimage route meanders through regions in the Northwest of Spain, the areas that have been hardest hit by depopulation and which have been plagued by thefts. The route is hailed as a journey through centuries of art; unfortunately though, the Way of St. James also brings destruction to Spain's cultural heritage. Thefts occurring along the route, including channels through Burgos, are very troubling as the area holds a treasure trove of significant artworks, including some of the world's best known Romanesque art. Danger to this area is accentuated by the fact that this area has been plagued by depopulation.

Thefts of religious property along pilgrimage routes in northwestern Spain are well-documented

Thefts in the northwest of Spain are well-documented. The Guardia Civil of A Coruña in Galicia has spoken about the existence of the illicit commercial traffic of religious objects from Galicia.⁷⁴ Thefts in Burgos are well-documented. Over the past fifty years, there has been documentation of over 100 pieces of stolen objects from the Burgos region, which does not include undocumented thefts.⁷⁵ Among the pamphlets in

66 Gobierno de España, Ministerio de Cultura, *Niveles de protección del Patrimonio*, available at <http://www.mcu.es/patrimonio/CE/BienCulturales/NivProtec/RegimenesEspeciales.html>

67 *¿Cuánto dinero tiene realmente la iglesia católica?*, LA NORIA, Nov. 2007, available at http://www.lanoria.telecinco.es/dn_299.htm

68 *Id.*

69 *Se Multiplican los Robos en Las Iglesias del Rural*, EL CORREO GALLEGO, Oct. 31, 2010, available at <http://www.elcorreogallego.es/galicia/ecg/multiplican-robos-iglesias-rural/idEdicion-2010-10-31/idNoticia-605719/>

70 *Spain Cuts Funding for Catholic Church*, NATIONAL SECULAR SOCIETY, Sept. 29, 2006, available at <http://www.secularism.org.uk/spaincutsfunding-forcatholicchurc.html>

71 *Id.*

72 *Id.*

73 *News from Spain: Changes in State Funding of Church*, NEWS FROM SPAIN, Sept. 26, 2006, available at <http://news-spain.euroresidentes.com/2006/09/changes-in-state-funding-of-church.html>

74 *Se Multiplican los Robos en Las Iglesias del Rural*, EL CORREO GALLEGO, Oct. 31, 2010, available at <http://www.elcorreogallego.es/galicia/ecg/multiplican-robos-iglesias-rural/idEdicion-2010-10-31/idNoticia-605719/>

75 *Mas de 100 obras desaparecidas*, DIARIO DE BURGOS DIGITAL, Sept., 19, 2010, available at <http://www.diariodeburgos.es/noticia.cfm/>

the Office of Diocesan Delegate Equity is a bulging folder of papers and photographs containing information about all kinds of works of art: sculptures, paintings, chalices, and altars. These works are all missing pieces that have been stolen from religious sites during the past 50 years, the value of some of these, incalculable. Included in the thefts are the cases of two especially painful disappearances: the blocks of Quintanilla de las Viñas (the valuable Visigothic segments were stolen from a chapel in Burgos in 2004), and the Virgen del Torreón (a Romanesque sculpture of the late twelfth-century plundered from the Church of Padilla de Abajo in 1992). It has been noted that art thefts in Spain coincide with religious holidays, events, and significant religious sites. In October, a 17th-century painting of the Virgin was apparently stolen during a sightseeing tour in the Collegiate Church of San Pedro de Lerma in Burgos.⁷⁶ (This piece is still missing.) And although policing helped to recover nearly all items taken, 2005 was a year marked by the most virulent and damaging waves of religious art theft.⁷⁷ Judging from the high number of robberies of religious art, it is evident that there is a market for religious cultural property.

In other regions, theft has been even more dramatically noted. In fact, the recent theft of the Codex Calixtinus has brought international attention to church owned treasures, and thefts, in Spain. The book is a twelfth-century illuminated manuscript formerly attributed to Pope Calixtus II. The work is an anthology of background detail and advice for pilgrims traveling along the Way of St. James, a pilgrimage route meandering through northern Spain and ended at the shrine of St. James the Great in Santiago de Compostela, in Galicia. The book includes sermons, reports of miracles, liturgical texts, polyphonic music pieces, and descriptions of artwork found along the route, and information about local customs.⁷⁸ “It is one of the most important texts of the Middle Ages and of incalculable value,” says Jesús Tanco from the University of Navarra.⁷⁹

On July 5, 2011, the priceless tome was stolen. The Codex was reportedly removed from the cathedral archives on July 5, and reported missing the following day. On July 7, 2011, church authorities in Santiago de Compostela confirmed that the manuscript was stolen from a safe in the cathedral vault.⁸⁰ (According to some sources, the keys to the safe were

still hanging in the lock.) As in the rest of Spain, security at the cathedral was not extensive.⁸¹ According to reports, none of the security cameras in the archive were focused on the vault housing the manuscript. Access to the document was strictly controlled, but access to the chamber’s keys was not.⁸² “The church likes to operate under a principle of good faith,” says Tanco, the president of the Navarra chapter of the Friends of St. James Pilgrimage. “We’ve been recommending for years that they improve their security measures.”⁸³ Sadly, the church also did not insure the work. The Cathedral Deacon José Maria Díaz confirmed that the piece was not specifically insured, and said he did not know if the cathedral’s general insurance would cover the book’s theft.⁸⁴

The theft has brought the public’s attention to Spain’s religious art, and the awareness that there are thousands of pieces that are vulnerable to theft and difficult to protect.⁸⁵ News sources have recognized that there are no sufficient records of art inventory, including a photographic record of items.⁸⁶ For this reason, police cannot identify missing pieces. For twelve years, Pope John Paul II urged churches to inventory and catalogue their cultural heritage holdings.⁸⁷ The region of Galicia never did so, although art theft was on the rise.⁸⁸ Especially telling is that some investigators believe that the Codex theft was carried out in order to embarrass church officials by drawing attention to the poor security guarding priceless artifacts.⁸⁹

In some regions, art police patrol areas during times of great influx (such as Easter and Passover). As Burgos and the northwest (such as Santiago de Compostela) attract people all-year with its pilgrimage route, the northwest regions are in particular need of protection, both by physical security measures and by monitoring and cataloguing. In addition, people in these regions are under the false assumption that visitors to religious sites are “personas buenas” (good people).⁹⁰ Based solely on the fact that tourists are attracted by

81 *Id.*

82 *Id.*

83 *Id.*

84 McMahon, Felim. *Pain in Spain as Priceless ‘Codex Calixtino’ Book Stolen*, STORYFUL, July 2011, available at <http://storyful.com/stories/1000005214>.

85 Pontevedra, Silvia R. *Fiscalía, Iglesia y Cultura harán inventario del patrimonio eclesial*, EL PAIS, July 28, 2011, available at http://www.elpais.com/articulo/Galicia/Fiscalia/Iglesia/Cultura/haran/inventario/patrimonio/eclesial/elpepiauatal/20110728elplgal_15/Tes.

86 *Id.*

87 *Id.*

88 *Id.*

89 *El robo del Codice Calixtino se podría resolver el 25 de Julio, día de Santiago Apostol*, LA VANGUARDIA, July 22, 2010, available at <http://www.lavanguardia.com/20110722/54190291258/el-robo-del-codice-calixtino-se-podria-resolver-el-25-de-julio-dia-de-santiago-apostol.html>

90 *Roban una imagen del Cristo crucificado*, ABARAN, October 26, 2010, available at <http://www.murcia.com/abaran/noticias/2010/10/26-roban-ima>

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76 *Roban cuadro de la Virgen durante una visita turística en Colegiata de Burgos*, ABC.ES, Oct. 5, 2010, available at <http://www.abc.es/agencias/noticia.asp?noticia=542250>.

77 *Id.*

78 http://en.wikipedia.org/wiki/Codex_Calixtinus

79 Abend, Lisa, *Codex Caper: Medieval Guidebook Stolen from a Spanish Church*, TIME, July 11, 2011, available at <http://www.time.com/time/world/article/0,8599,2082071,00.html>.

80 *Id.*

religious sites, inhabitants believe that the visitors have good intentions. However, dozens of thefts a year are committed at religious sites and there is a thriving black market for these pieces.⁹¹

The Church owns a great deal of Spain's cultural patrimony, thus Spain should exercise some level of control over the property. Although there are not any laws restricting the Church from selling its holdings, the nation's cultural and political past is so closely intertwined with the Church, that the State should be able to stop the Church from selling its items. Furthermore, since the State's tax structure helps to fund the Church, the State should yield some type of control over the cultural patrimony in the Church's possession. Restricting the church's actions will allow Spain to better protect its cultural patrimony. However, the State is not actively trying to halt the Church from selling or abandoning its property. Although the Church is prohibited from selling its cultural property, the State does virtually nothing monitor the property, halt sales or prevent abandonment. The only way for the State to monitor the Church's property is for the State to gain knowledge of Church holdings which can only be done with a comprehensive cataloguing system. To accurately catalogue national holdings, the inventory should be made by an impartial board.

In order to salvage cultural heritage property in abandoned towns, the State's control of the Church will protect property and prevent the sale of items to companies looking to dismantle culturally significant pieces. For objects not under the Church's control, the State should sponsor protection of objects in abandoned areas. In order for the State to properly protect its holdings, a catalogue should include objects in abandoned areas. The first step is to understand the nation's treasures, by visiting abandoned areas and churches and by creating an extensive inventory of the nation's overlooked cultural heritage property.

Conclusion

Spain can protect its cultural heritage in three ways:

1. cataloguing and protecting items in abandoned areas;
2. cataloguing items in the Church's possession and restricting sale of those items; and
3. joining international conventions in halting the sale of catalogued items on the international black market.

gen-cristo-crucificado-obra.asp

91 *Se Multiplican los Robos en Las Iglesias del Rural*, EL CORREO GAL-LEGO, Oct. 31, 2010, available at <http://www.elcorreogallego.es/galicia/ecg/multiplican-robos-iglesias-rural/idEdicion-2010-10-31/idNoticia-605719/>

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Derek Fincham

The Empty Frame “Cerveteri: a Vulnerable Ancient Masterpiece”

Just north of Rome, a few kilometers in from the coast, sits one of the world's great treasures. This was a powerful commercial center at the time. The Etruscan civilization ruled over central Italy before the Romans. For over six centuries the people here created a massive city to house the deceased. Massive tombs and cities are laid out, cut from the soft native tufa rock. Visitors to the necropolis see the town and architectural planning of an ancient civilization in a way which feels comforting and familiar as any city, with streets, small neighborhoods and architectural elements. The round tombs were perhaps borrowed from the Etruscans by the Romans for Hadrian's mausoleum, though in typical Roman fashion, they made it grander and bigger, almost pompous. Only part of the site has been protected and fenced off—the Necropoli della Banditaccia. The Banditaccia has been excavated, and is cared for as a UNESCO World Heritage site. This band has been fenced off and protected from looters. But why cannot the whole complex be protected? The answer of course is limited resources and a massive area in need of protection. Thousands of tombs have been excavated outside Cerveteri, which date from the 9th century BCE until the late Etruscan age.

Elegant burial sites attract attention. Created as monuments to the deceased, these works of architecture and art are designed to produce emotion in the visitor. This is why even centuries later they attract tourists and the curious looking for more understanding of the ancient past. In this, Cerveteri compares favorably with other remarkable cemeteries where thefts often occur. Père Lachaise, which was established in 1804 includes artists and writers like Edith Piaf and Oscar Wilde or St. Louis Number 2 in New Orleans which house the remains of the first jazz and blues musicians are both plagued by theft and damage. Thieves and looters come to rob the dead of their grave goods, or the monumental architecture which can be cut or chipped or knocked off and stolen. As someone who writes and thinks about cultural heritage law, I don't often get an opportunity to see a crime scene firsthand. But the problem of illicit looting emerges in stark terms when one visits Cerveteri. Outside the Banditaccia are other tombs, some unexcavated by archaeologists, hidden by trees and the hills where looters pits are a not unusual, and the ordered excavation and care is absent. Pottery shards and fresh pits are a common sight.

The Cerveteri necropolis comprises a remarkable glimpse of the Etruscan civilization. Massive round tombs stretch across the slope towards the distant sea. In the tombs, the simple depiction of everyday life instill a comforting feeling that these Etruscans were not much different than us. In the frescoed tombs and Etruscan houses visitors can see and experience an ancient culture. The accomplishments of the deceased buried in Cerveteri have been lost to the centuries. It is the art, architecture and sculpture which have endured there.

Art in the form of ancient Greek pottery is perpetually at risk from theft. The ancient krater painted by Euphronios, was stolen from a tomb in 1971 by five *tombaroli* (the term for tomb robber in Italian). They tunneled into the earth broke through stone doors, past a small stone carving meant to ward off evil spirits,

and found a network of ancient burial chambers. The ancient Etruscans collected the painted pottery of the ancient Greeks, and placed the pottery in the tombs. The Metropolitan Museum of Art purchased this piece, and gave it back after a 40 year repatriation campaign. Today it is housed in the Villa Giulia Museum in Rome. This is the story most know about when Cerveteri is mentioned. And that is a shame. The site itself amazes, and should be known as more than a crime scene. It reminds me again of the importance of calling attention to the looting and theft of art and knowledge.



Photograph by Derek Fincham

Context Matters “Compliance and the Antiquities Market”

Over the last 25 years there has been a major change in the way countries have sought to reclaim archaeological material that had been looted. Claims have been made against the background of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This was accepted by the USA in 1984 and by the United Kingdom in 2002.

Attempts to reclaim material were extended and tended to take time to go through the legal channels. Such disputes included the Kanakaria Mosaics to Cyprus, the Dekadrachm Hoard and the Lydian Treasure to Turkey, and the Aidonia Treasure to Greece. The case of the Sevso Treasure is unresolved as although it was certainly removed from its archaeological context by unscientific means, it has not been possible to confirm where this hoard was found.

The seizure of the Medici Dossier in the Geneva Freeport (and related photographic archives in Basel and in Greece) has allowed the Italian authorities to adopt a different strategy. Images of objects in a fragmented state or still covered in mud have been an emotive force in the rhetoric surrounding the returns. Museums that were reluctant to negotiate were persuaded that bad publicity could be avoided if discussions about returns were initiated. In one case a major North American museum was shown images in 2005 and less than a year later had arranged to return 13 antiquities to Italy. It was, and is, hard to argue that something was in “an old collection” when the object had been recorded in a distressed state subsequent to the 1970 UNESCO Convention.

Yet compliance has been reluctant in some quarters. Boston’s Museum of Fine Arts was aware nearly twenty years ago that the torso of a Weary Herakles fit the abdomen and legs of a statue that had been excavated at Perge in southern Turkey. The presentation of a collection history that suggested that the torso had surfaced in Germany in the 1950s was a distraction. The situation was made more complicated as the donors had retained part ownership of the torso. Full title was eventually transferred to the MFA.

The Minneapolis Institute of Arts is reported to have initiated an enquiry into the acquisition of an Attic red-figured krater in June 2006, but it took until September 2011 for the museum to decide to return the pot. The Greek authorities have identified three items in a North American university collection that can be quite clearly seen in images seized in Switzerland but there seems to have been little movement in the case.

Some auction houses seem to be willing to change. A series of revelations about Sotheby’s (London) was made in Peter Watson’s *Sotheby’s: Inside Story* (1997). This led to the cessation of the sale of antiquities through London. Indeed Sotheby’s appears to have taken considerable care over what it has been selling and is clearly taking compliance very seriously. It is a rarity for something from one of the photographic archives

seized in Switzerland and in Greece to appear in their catalogues and Sotheby's itself seems to have benefited by offering items that have recorded and authenticated histories that can as a result realize higher prices.

At the same it has become clear that objects easily identified from these same photographic archives continue to pass through the market. In 2009 three antiquities were seized from another New York City auction house, one prior to the sale and two subsequent to it. The raid had been based on identifications made through the seized photographic archives in Switzerland. The auction house declared its cooperation with the law-enforcement agencies over the return of what its own press officer described as "stolen artifacts". Yet, in May the following year, the same auction house continued with the sale of three antiquities that were identified from the same Swiss photographic archive. An object from the same dossier was also on offer at the London branch of the same auction house in October 2011.

An article in the Italian press in early 2011 identified 16 objects from three different archives that were on offer at the same time by a single New York gallery. The value of the pieces were well in excess of half a million US dollars (two pieces had been sold for an undisclosed sum, and three others were "prices on request"). Another London auction-house has had a series of incidents over several years relating to material that appears in the image dossiers.

The fact that such events continue to happen in spite of the UNESCO Convention and other codes of conduct suggest that there is little legal deterrent over the sale of recently surfaced antiquities. There appears to be little genuine concern about the ethical issues relating to the trade in antiquities and the permanent destruction of archaeological contexts to supply material for the trade.

Is this the place for the media and Web 2.0 technologies to encourage compliance through the discussion of the issues? After all, if auction houses choose to ignore the issues, should potential buyers be made aware of the situation? Perhaps the solution to addressing continued looting lies not only in the courts but also the channels of the new media.

News

This covers the period March 2011 – August 2011

Egypt

In August 2011 it was announced that four fragments from the mortuary temple of Amenhotep III were spotted when they were consigned to a London auction house by a North American private collector. An eye from a statue in the same complex was returned to Egypt in 2008.

A fragmentary relief removed from Behbeit el-Hagar has been recovered from Bonhams in London. The block appears to have been removed from the site in 1990 and the identity of the person who consigned the lot has not been revealed.

The US authorities have started to take legal action over the Egyptian mummy mask acquired by the St Louis Art Museum. The mask may have been stolen from archaeological storage at Saqqara, though the Swiss-based dealer has indicated that it had been sold through a dealer in Brussels in 1952.

Egypt: Political Change

During the upheavals in Egypt at the beginning of the year it became clear that a number of items had been stolen from or damaged in the Cairo Museum. Several recoveries have now been made. One disturbing development is that commentators on cultural property in North America and Europe have used the upheavals as an excuse to ease back on returning disputed cultural material. Vernon Silver of Bloomberg interviewed a number of individuals including attorney William Pearlstein and Ursula Kampmann (of the International Association of Dealers in Ancient Art).

Dr. Zahi Hawass has been tireless in his efforts to reduce the amount of looting on archaeological sites in Egypt. He has also been instrumental in calling for the return of objects that have been acquired by other museums. However after a brief period as Minister of Antiquities, Hawass has been removed from his official role as a result of the political changes following the uprisings in Egypt earlier in 2011. After a period of uncertainty Hawass issued a formal statement of resignation in which he talked about the damage to a number of sites and archaeological stores.

Hawass also called for a Memorandum of Understanding (MOU) with the US to restrict the movement of Egyptian antiquities.

Libya

The civil war in Libya (continuing as I write) may have compromised a number of archaeological sites and museums. The Director-General of UNESCO has asked dealers and galleries to be alert for any antiquities that may have been derived from sites in Libya.

Italy

In April 2011 The Carabinieri seized a number of antiquities that were being driven across the border with Switzerland. The objects appear to have been found in the region of Avellino and Salerno.

The acrolithic statue returned to Italy from the J. Paul Getty Museum has been put on display in the Aidone Museum in Sicily. The statue is the inspiration for *Chasing Aphrodite* (2011) by Jason Felch and Ralph Frammolino. Aphrodite is one of the possible identifications for the figure.

The issue of objects identified from photographic archives seized from dealers continues to unsettle the market. An Apulian fishplate was sold at Christie's in London in April 2011. Although the fishplate had been provided with a collecting history that traced the object back to a Basle collection in 1976, other seized documents from a dealer unnamed in the "provenance" show that it was restored in 1998. This raises the possibility that the stated collecting history was fabricated. It is a reminder that the due diligence search needs to depend on authenticated documentation. A Corinthian olpe in the same sale was said to have been "acquired on the Swiss market in 1996". Its appearance in a second photographic dossier has confirmed how it passed onto the market.

Italian investigative journalist Fabio Isman has discussed the implications of the archive held by Gianfranco Becchina. The evidence suggests links to a number of museums in Britain, France and North America. Further investigations are likely to initiate a new series of claims for the return of objects.

The Attic red-figured krater in Minneapolis (discussed in *JAC* 5) will be returning to Italy.

The Mougins Museum of Classical Art

The Mougins Museum of Classical Art opened in France in May. Among the items on display were two pieces that had once formed part of the Graham Geddes collection: an Apulian krater and a Gnathian krater. Both had surfaced in a London sale at Sotheby's in December 1985. (The London sale of the Geddes collection in October 2008 was seriously disrupted after the Italian authorities intervened.)

Greece

In July 2011 Secretary of State Hillary Rodham Clinton and (then) Hellenic Minister of Foreign Affairs Stavros Lambrinidis signed a Memorandum of Understanding (MOU) relating to import restrictions on archaeological and Byzantine ecclesiastical material derived from Greece.

North American coin collector Jonathan Kagan returned a hoard of coins containing material from Abdera to Greece. The hoard was acquired in 2000, and it will be kept in the Numismatic Museum in Athens.

An Attic black-figured amphora acquired by the Goulandris Collection and now in the Museum of Cycladic Art in Athens has been identified from photographs in the Medici Dossier and the Schinoussa Archive. The amphora surfaced via Sotheby's and the London market.

Bulgaria

Canada has announced that some 21,000 "smuggled archaeological objects and ancient coins" would be returned to Bulgaria. The items include Greek, Roman, Byzantine and Ottoman material. The objects had been seized in Montreal in 2010.

Turkey

There has been a long-running dispute between Turkey and Boston's Museum of Fine Arts over the ownership of the upper part of a statue of a "Weary Herakles". The lower part was found during the excavation of Perge. The Boston piece had been acquired by Shelby White and Leon Levy who had retained part ownership. A cast of the bottom part of the statue had been shown to fit the torso back in 1992. Boston had acquired the torso in 1981 via a dealer in Frankfurt/Main who claimed that it had been acquired in Germany around 1950.

The return has encouraged the Turkish Culture Minister to talk about further claims on cultural property. These may include the terracotta panels from the Düver frieze as well as the magnificent series of Roman bronze imperial statues looted from Bubon.

Reports from Turkey suggest that in 2010 some 68,000 looted antiquities were seized. It was claimed that some 5000 individuals were involved.

England

Metal-detectorists have made two newsworthy finds in recent years. The Frome Hoard of some 52,000 Roman coins will be acquired by the Museum of Somerset thanks to support from, amongst others, the National Heritage Memorial Fund and the Art Fund. The timely reporting of the Frome Hoard seems to be in contrast to the Anglo-Saxon Staffordshire Hoard. A dispute there between the detectorist and the farmer on whose land the hoard was found is gathering momentum over the sharing of the "reward".

The J. Paul Getty Museum

The acquisition of recently surfaced antiquities by the J. Paul Getty Museum has been discussed by Jason Felch and Ralph Frammolino in their *Chasing Aphrodite* (2011). James Cuno, who is well known for his strong views on the acquisition of antiquities, has moved from the Art Institute of Chicago to become President of the Getty Trust. Cuno has confirmed that he will abide by the Getty's current acquisition policy and he stressed the important ways that the Getty supported conservation projects.

Alleged smuggling ring

News broke during the summer of 2011 that US authorities had managed to reveal an alleged antiquities smuggling ring. In July the US Immigration and Customs Enforcement (ICE) announced that they had brought charges against two US dealers and a third based in the United Arab Emirates (UAE). These dealers were named as Salem Alshdaifat of Holyland Numismatics, Mousa Khouli who operated Windsor Antiquities in New York, and Ayman Ramadan a Jordanian antiquities dealer who operated Nafertiti [sic.] Eastern Sculptures Trading, in Dubai, UAE. Ramadan is reported to be on the run. Among the items seized was "a unique three-part coffin set belonging to Shesepamuntayesher from the Saite period or 26th Dynasty, approximately 664-552 B.C.E" The ring is also reported to have included the collector Joseph Lewis. It is

reported that Lewis was purchasing antiquities from Khouli, who in turn was buying from Alshdaifat and Ramadan. Khouli apparently created false collecting histories (so-called “provenance”) for the objects.

One thing that has emerged from the story is that Lewis was loaning parts of his Egyptian collection to other museums. The Virginia Museum of Fine Arts (VMFA) has acknowledged that it has 8 pieces on loan. The collecting histories have been released and they include two pieces from an anonymous Swiss private collection (acquired before 1970); the Swiss private collection of Simon Ohan Simonian; the James B. McMullen collection; the Australian private collection of William Bowmore; and an anonymous French private collection (purchased through Rupert Wace Ancient Art of London). It is important that the documentation for these histories is authenticated given the allegations in this case. VMFA has indicated that it will co-operate fully with the US Attorney’s Office in New York. Boston’s Museum of Fine Arts has also accepted the loan of a mummy mask from the Lewis Collection (and previously on loan from the Harer Family Trust). Lewis also appears to have donated 19 objects to the Michael C. Carlos Museum at Emory University although the museum has been unwilling to release details. Lewis seems to have been the person acquiring the Egyptian coffin that was seized in Miami and subsequently returned to Egypt.

The Baltimore Test Case

There has been a test case brought by the Ancient Coin Collectors Guild (ACCG) relating to the import of Cypriot and Chinese coins. Although the case was dismissed, the ACCG has decided to appeal against the decision.

Cultural Heritage in Wartime

Recent conflicts in Iraq and Afghanistan, as well as the political upheavals in North Africa and the Middle East have made the issue of protecting cultural heritage in battlefield situations a pressing topic. Dr Nigel Pollard arranged a workshop on ‘Archaeology and Cultural Heritage in Wartime’ at Swansea University. Speakers included Professor Carlotta Coccoli, Dr Laurie Rush, Dr Charles Kirke, and Dr Richard Osgood, Dr Amara Thornton, Dr David Gill, and Dr Nigel Pollard.

Market Results

The worldwide value of the market in antiquities continues to be a matter of dispute. Research with Kate Spiller has indicated that Christie’s in London offered some 5962 lots that sold for just under £40 million in the period from 1998 to 2010. The average value per lot was around £6700. My own research has suggested that Christie’s New York auctioned \$9.6 million worth of antiquities in 2006, and £4.1 million in London. By 2010 this had grown to \$42.7 million in New York, and £7.8 million in London. However, the 2010 figures are inflated by two items: a single Cycladic figure in New York that sold for \$16.8 million, and the Crosby Garrett Roman helmet in London for £2.2 million. In contrast Sotheby’s auctioned \$91 million worth of antiquities in 2010 and \$10.2 million in 2006. A report in the *Wall Street Journal* (March 14, 2011) reminded those considering antiquities as an investment to be cautious about objects that could be identified by the photographic archives seized from dealers in Switzerland and Greece.

The Flap Over Scrap: Theft and Vandalism in Exterior Sculptures

Every morning on their way to the Notting Hill tube many individuals run into (sometimes literally) Nadim Karam's *Carnival Elephant* sculpture, idly evoking the movement of people around it with its gently revolving fan, spinning in unison with the whirlwind of activity at the Newcombe Piazza. Last week, however, the fan was not moving: some rascal had indiscriminately broken off one of the blades. The stasis causes many to wonder how and when the watchful elephant will be repaired, following the unholy act of animal cruelty enacted upon it.

Deliberate damage upon public sculptures and monuments is by no means a modern development. Indeed even medieval morons pried bronze clamps and support bars from inside the walls of Rome's Colosseum for use elsewhere in the city, owing in part to their own inability to manufacture the building materials they required.

At the Art Loss Register ("ALR"), contemporary sculpture damage and theft reports have been rising for years, often in correlation with the increased value of their raw materials. In recent times copper alone has seen an exponential rise in value, trading at over £5,500/tonne in August of this year, with gold, brass and lead also seeing rises of almost 20% in 2011 alone. It seems that during each economic downturn, thieves target increasingly more ignoble sources of quick cash, with public sculpture, cemeteries and even church roofs bearing the brunt of their greed. Much of the work undertaken by the ALR is in conjunction with, or on behalf of, insurance companies, many of whom have direct interests in the protection of works on their books.

Within instances of vandalism and theft of public works there are many issues that determine the reintegration of works in vulnerable locations. The *Little Mermaid* statue in Copenhagen has been vandalised no fewer than 11 times since the first instance in the 1950s, each and every time being patched up, polished and returned to active service following intensive restoration. Such committed and repeated restoration is far from economical, though deemed a necessary expense when the work's popularity is considered. Not all public works are so fortunate in their friends and their exposure to the possibility of damage or theft prompts

¹ Chris Marinello is the Executive Director of the Art Loss Register. Jerome Hasler is a student of the Courtauld Institute of Art, London.

The Art Loss Register is the world's largest private database of stolen art and provides art recovery and mediation services to the art trade. www.artloss.com +44 (0) 207 841 5780

The Winston Art Group provides damage appraisals to the art world and can be contacted at 001 (212) 542-5755 or www.winstonartgroup.com.

DeWitt Stern is a privately held insurance brokerage and risk management firm, specializing in business, personal, fine art, entertainment & media and can be contacted at 001 212-297-1421 or www.dewittstern.com.

The Institute of Scrap Recycling Industries is a Washington DC based trade association representing the recycling industry. ISRI can be reached at 001 (202) 662 8500 or www.isri.org.

further discussion of the continued viability of public works in light of this developing malevolent trend.

With whom, then, does the responsibility for the safeguarding of these public treasures lie? Measures have been taken in Holland to secure public works of sculpture with modern technological resources such as alarm systems and GPS tracking devices, though this is not perhaps a luxury in which minor galleries and civil authorities can afford to indulge. Arguably this necessitates the ‘first call’ for sculpture thieves to be more vigilant as the first line of defence – the scrap metal dealerships. We spoke to Melissa Merz, of the Institute of Scrap and Recycling Industries in Washington DC, about the due diligence obligations of the metal recycling and scrap trades.

What controls are in place to insure that stolen sculptures are not being fenced through scrap yards for the value of their metal content?

We strongly encourage that all thefts be reported through our *ScrapTheftAlert* system so scrap recyclers can be on the lookout for the statue and/or any parts of it. Also, developing a working relationship with local law enforcement, industry, and municipalities constructs a mutual understanding of, and interest in overcoming, the challenges involved with preventing the inadvertent purchase of stolen material.

Recalling the two-tonne Henry Moore sculpture stolen in 2005 from the Henry Moore Foundation reported to have been sold as scrap - do you think such activities are now commonplace?

With commodity prices as high as they are, criminals have been seen to be stealing increasingly heavier objects in increasingly more brazen operations. Galleries and authorities maintaining works of public sculpture must be more aware of the vulnerability of works in their custody.

Insurance groups continue to bear the brunt of the costs to recover and replace works vandalised and stolen. Ownership often passes by subrogation to the underwriter, but this is little comfort when one considers how many works are melted down. Often cases are not as severe, with damage and vandalism of a kind being easier to repair. The role of damage appraisal firms, and the conclusions they draw, are becoming increasingly prominent in influencing the risks insurance companies are prepared to take.

Elizabeth von Habsburg of the Winston Art Group, a damage appraisal firm in New York City, discussed with the ALR some of the issues faced in the appraisal and assessment of art works in the public realm.

What is a “damage appraisal” and what is it used for?

A “damage appraisal” is a report prepared by a qualified appraiser in which he or she examines the condition of an item (or group of items) that has suffered damage or loss, and using his or her expertise, determines the value before damage, the current value in damaged condition, and where appropriate, the value after restoration. In some cases, these reports are issued for works that are total losses due to destruction or theft, and in other cases the reports are prepared for items that are partially damaged.

What is the methodology involved in creating a damage appraisal?

Typically, the appraiser will examine the damaged object, and note its condition at the time of inspection. Most often, the appraiser is instructed to use either *Retail Replacement Value* (the estimated cost to replace the item with a comparable piece in the primary market), or *Fair Market Value* (comparable to the estimated cost to replace the work in the secondary market).

The appraiser will then research the value of the work in prior-to-damage condition, and in current damaged condition, reviewing the appropriate marketplace for the artist or maker. The appraiser will also consider the previous auction and retail sales records for similar works, determining whether previous works by this artist or maker were sold in damaged condition and if so, the effect of that damage on the sale price. Further considerations detail checking the current desirability of the artist or maker, comparing the sale prices

of works in the relevant medium, and taking into account the severity of the damage before providing his or her opinion on the value before damage, the current value in damaged condition and the value of the piece post –restoration.

Who, primarily, would commission such a report?

Typically either the owner of the damaged piece, or the broker, adjuster or underwriter will request an assessment and valuation of the work. Normally, these reports are requested in order to determine the loss of value payment due to the owner. On occasion, however, the owner or the insurer requests this report solely in order to determine the saleability of the work in damaged condition.

The findings of damage appraisal firms reveal in detail the financial cost of the theft and vandalism of public works of art. Steven Pincus, Managing Director at DeWitt Stern, a fine art insurance brokerage and risk management firm, spoke to the ALR about their practices within these concerns and their attitude towards the continued viability of insuring works in public spaces.

What is the attitude of underwriters to the risks associated with the insuring of high-value works in the public realm?

Underwriters are always concerned about this exposure and want to see that works are secure in order to minimize theft. Precautions such as being well lit at night, as well as having the cooperation of local police to monitor the work do help from a vandalism perspective.

How do insurers first approach a claim to a vandalized work of art?

If a work does suffer a loss, there are many factors that have a bearing on the final outcome. For instance, is the artist alive or dead? Is there a Foundation that has a say in the conservation process? Can the artist remake the piece? These are factors that underwriters may have deal with in the loss settlement process.

Should vandalised works be replaced in their original public location following restoration, or removed to less-vulnerable locations?

If an underwriter will not continue to insure a work that has sustained damage due to its location, then moving the work may be the only way to obtain the required insurance. This would be the tail wagging the dog and fortunately we do not see this that often.

The demand for high-value raw materials will only increase with greater consumption in the Eastern markets, driving up the prices of metals such as gold and copper, the prices of which continue to rise at a staggering rate. As such, the onus upon those organisations and authorities responsible for public works of sculpture and statuary to increase their security measures against the threat of theft and vandalism is greater than ever. The highlighting of the issues within public sculptures details the very real need for more conversation to happen between the industries concerned within the trading and display of works of art in order to counter the opportunism within vandalism and theft. Nevertheless, the ever-ubiquitous ‘keep calm and carry on’ mentality seems alive within the commissioning of public works.

Wilfred Cass, of the Cass Sculpture Foundation, the largest commissioning body of works of sculpture in the United Kingdom, has seen no decline in enthusiasm in spite of increased vulnerability of high-value works in public spaces. ‘We will continue to commission and place works all over the world, we see the threat of children climbing on works as equal to that of somebody stealing them – and we’re not particularly threatened by either’, Mr Cass said in a short conversation with The Art Loss Register. Not all organisations share this opinion, and regrettably the threat of theft and vandalism persists in growth. Nonetheless, the Art Loss Register continues to offer the services of registration and recovery of stolen works, assisting law enforcement and private enterprise alike in the safeguarding of public and private property and to combat those who seek to deface it.

Art Law and Policy

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When is a citizen not a citizen for purposes of foreign sovereign immunity?

The case that the New York Times has called “the world’s largest unresolved Holocaust art claim” may provide an answer to that question. In *de Csepel v. Republic Of Hungary* (10-cv-1261), heirs of the Hungarian banker Baron Mor Lipot Herzog sued in United States District Court in Washington seeking the return of a collection worth more than \$100 million. Since the suit is against the Republic of Hungary (and several of its state-run museums, where much of the collection still hangs), the question of foreign sovereign immunity naturally presents itself. The plaintiffs say the doctrine doesn’t apply because the works were taken in violation of international law -- even though it is well-established that a state’s taking of the property of its own citizens cannot violate international law. In a recent decision (issued September 1, 2011), the District Court agreed.

To back up: under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.*, a foreign state is immune from suit in United States courts unless one of the specific statutory exceptions in 28 U.S.C. § 1605 is met. In this case, the plaintiffs rely primarily on the so-called “expropriation exception”:

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case ... in which rights in **property taken in violation of international law are in issue** and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.

28 U.S.C. § 1605(a)(3) (emphasis added).

The obvious difficulty under this exception is that, as the District Court noted, “it is well-settled that a state’s taking of the property of its own citizens, *no matter how egregious*, does not constitute an international law violation” and (at least as a formal matter) the Herzog family members remained Hungarian citizens at the time of the (egregious) taking. The defendants pointed to a submission by one of the plaintiffs’ attorneys to the Hungarian courts in 1999 admitting that her mother “did not surrender her Hungarian citizenship; she was not deprived of it; she was not dismissed from the ties of Hungarian citizenship.”

The District Court looked past that. It held that, while technically the family may have remained Hungarian citizens, *as a practical matter* they were anything but: “as of 1944, Hungarian Jews could not

acquire citizenship by means of naturalization, marriage, or legalization; vote or be elected to public office; be employed as civil servants, state employees, or schoolteachers; enter into enforceable contracts; participate in various industries and professions; participate in paramilitary youth training or serve in the armed forces; own property; or acquire title to land or other immovable property. Moreover, all Hungarian Jews over the age of six were required to wear distinctive signs identifying themselves as Jewish, and were ultimately subject to complete forfeiture of all assets, forced labor inside and outside Hungary, and ultimately genocide.” In short, “it is clear that under these extraordinary facts, the government of Hungary ... had *de facto* stripped her, Ms. Weiss de Csepel, and all Hungarian Jews of their citizenship rights. Consequently, the alleged Hungarian ‘citizenship’ of plaintiffs’ predecessors does not preclude the application of the expropriation exception in this case.”

It’s an interesting decision -- on the one hand, a taking of a citizen’s property, *no matter how egregious*, can never be a violation of international law; but, on the other hand, a state’s egregious treatment of its citizens *in other ways*, not necessarily related to the taking, can convert the taking into such a violation. Perhaps sensing the novelty of the argument, the District Court included an alternate route to the same result: “even if defendants are correct that the seizure of the Herzog Collection by Hungary alone would not constitute a violation of international law, the Complaint also states a substantial and non-frivolous taking in violation of international law based on the active involvement of German Nazi officials in the taking of at least a portion of the Herzog Collection.” The Complaint alleges that the German Nazis “assisted the Hungarian government in the discovery of the bulk of the Herzog Collection” and that the work was then “taken directly to Adolf Eichmann’s headquarters following its seizure.” On this theory, the claim would be understood as a claim *against Hungary* for an international law violation *by Germany* -- another way of getting around the principle that a state’s taking of its own citizens’ property (“no matter how egregious”) is not a violation of international law.

There are a number of other significant rulings in the opinion -- including that the U.S. was an appropriate forum, and that the case was not barred by the statute of limitations -- but I suspect that, in the inevitable appeal, it is the “when is a citizen not a citizen?” question that will get the most attention.

What the Lady Has Wrought: The Ramifications of the Portrait of Wally Case

On July 20, 2010, on the eve of trial, the case of *United States v. Portrait of Wally*, which our firm litigated for more than ten years, was finally resolved by stipulation and order. The U.S. Attorney in Manhattan commenced the case in the fall of 1999 by seizing the painting, “Portrait of Wally” by Egon Schiele (*Wally*), while it was on loan for exhibition at the Museum of Modern Art in New York. The case has been credited with awakening governments around the world, as well as museums, collectors, and others in the global art community, to the problem of Nazi-looted art almost seventy years after the beginning of the Nazi era in Europe. Although this case will surely be commented on and analyzed for many years to come – including in a documentary film due to be released in the spring – as the attorneys for the claimant in the case, we thought it would be helpful to provide some thoughts from our unique vantage point.

Basics of the Case

Herrick, Feinstein represented the Estate of Lea Bondi Jaray throughout the litigation. Ms. Bondi Jaray was a Jewish art dealer in Vienna who fled for London in 1939 after her gallery was “Aryanized” by a Nazi agent. She was also forced by him to give up a prized personal possession that she kept in her home: Egon Schiele’s haunting portrait of his lover and favorite model, Wally Neuzil. After the war, *Wally* was mistakenly mixed in with the artworks of Heinrich Rieger, a collector who had perished in a concentration camp. Along with Rieger’s artworks, *Wally* was transferred by Allied troops to the Austrian government. *Wally* ended up at the Austrian National Gallery (the Belvedere) despite the fact that it clearly had never been part of the Rieger collection. Ms. Bondi Jaray later asked Rudolf Leopold of Vienna, a Schiele collector, to help her get her painting back, but instead he arranged to acquire it himself and refused her demands to return it to her. Ms. Bondi Jaray died in 1969.

Eventually, Leopold established the Leopold Museum in Vienna and *Wally* became part of its collection. In the

1990s, Leopold made the fateful decision to loan several of the Museum’s Schiele works, including *Wally*, to the Museum of Modern Art (MoMA) in New York. In early 1998, near the end of the exhibition, Ms. Bondi Jaray’s heirs notified MoMA of their claim and then contacted the District Attorney of New York County, who subpoenaed the painting in connection with a criminal investigation that he commenced to determine if *Wally* constituted stolen property present in New York in violation of New York law. MoMA moved to quash the subpoena on the ground that New York law prohibits seizure of an artwork on loan from out of state. The case worked its way up to the state’s highest court, which ruled in MoMA’s favor.

Immediately thereafter, the U.S. Attorney for the Southern District of New York commenced an action to have the Leopold Museum forfeit *Wally* on the ground that it was stolen property unlawfully imported into the United States. The U.S. Customs Service seized the painting, marking the start of more than ten years of litigation during which Herrick worked closely with the U.S. Government in its attempts to recover the painting and return it to the Estate of Lea Bondi Jaray.

The case was finally settled a week before trial was scheduled to begin. Most of the issues in the case had been resolved by motion last fall and the sole remaining issue for trial was whether Leopold knew that *Wally* was stolen when he, through the Leopold Museum, imported it into the United States for the MoMA exhibition.²

Ramifications of the Wally Case and Its Settlement

Rather than attempting to analyze the many legal issues presented by the case, we highlight here several key points that concern the importance of *Wally* to Nazi-looted art claims worldwide.

Helping to Bring the Problem Posed by Nazi-Looted Art to the Forefront

The commencement of the New York State and federal litigation in the *Wally* case “changed everything,” as a recent

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This article, authored by Howard N. Spiegler, a partner and co-chair of the Art Law Group of Herrick, Feinstein LLP, a New York based law firm, first appeared in the Group’s newsletter, *Art and Advocacy*, Fall 2010, Volume 7, and is reprinted with permission.

2 See *United States v. Portrait of Wally*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

headline in the Art Newspaper declared.³ The fact that a loaned artwork at MoMA could be seized by U.S. Government authorities sent shockwaves throughout the world and was a major factor in causing governments, museums, collectors, and families of Holocaust victims to focus their attention on Nazi-looted art. It helped open a global reexamination of the massive looting of art fomented by the Nazi regime, as well as the post-war policies of the U.S. and European governments that were purportedly designed to deal with looted art recovered from the Nazis but, in many cases, resulted in the failure to return it to its true owners.

A specific outgrowth of this renewed interest, and an important stimulus to its further development, was the adoption in 1998 by 44 nations of the Washington Principles concerning Nazi-looted art.⁴ One principle states that pre-war owners and their heirs should be encouraged to come forward to make known their claims to art that was confiscated by the Nazis and not subsequently restituted; another states that once they do so, steps should be taken expeditiously to achieve a just and fair solution. This led several European governments to create restitution commissions to examine or reexamine claims by victims and their families. And museums all over the world, as well as governments with art collections of their own, started placing on the Internet images and information about artworks in their collections for which there was a gap in ownership history, or provenance, between the years 1933 and 1945, asking those with further information about these works to contact them and perhaps make a claim for recovery. Claims to recover Nazi-looted art have been brought all over the world over the past decade. And each year, new litigations are commenced, especially in the United States, and many settlements are announced.

The Role of the U.S. Government in Nazi-Looted Art Matters

What most distinguishes the Wally case from the many subsequent cases brought to recover Nazi-looted art is the fact that it was commenced by the U.S. Government. Indeed, critics of the case repeatedly questioned why the Government was committing substantial resources to what some considered to be nothing more than a title dispute between the Leopold Museum and the Bondi Jaray family – a dispute that should have been resolved in a civil lawsuit between them. Indeed, they asked why the Government was involved at all.

This question is critically important because it raises the issue of whether the U.S. and other governments should play a significant role in trying to resolve Nazi-looted art

claims. Despite the misgivings expressed by many, it is clear that this civil forfeiture action was consistent with, and fully promoted, the express public policy interests of the United States regarding Nazi-looted art. The Government's complaint alleged that *Wally* was stolen by a Nazi agent from Lea Bondi in 1939, wrongfully acquired by Leopold, and then knowingly imported by the Leopold Museum into the United States in violation of the National Stolen Property Act. In other words, what was alleged against the Leopold Museum was that it knowingly trafficked stolen property in the United States. After an exhibition at one of this country's foremost museums, the Leopold was going to take this stolen property out of the country, while the heirs of the true owner, among them several U.S. citizens, stood by helplessly. The heirs could not ask a court to attach the property pending a resolution of the matter because New York State law immunizes from judicial seizure art loaned from outside New York. So the U.S. Government acted to assure that the stolen property did not leave the country.

As former Chief Judge (and later Attorney General) Michael B. Mukasey determined in one of the early decisions in the case: "On its face, [the National Stolen Property Act] proscribes the transportation in foreign commerce of all property over \$5,000 known to be stolen or converted. Although the museum parties and *amici* would have it otherwise, art on loan to a museum – even a 'world-renowned museum' – is not exempt." Explaining further, the court added that "if Wally is stolen or converted, application of [the National Stolen Property Act] will 'discourage both the receiving of stolen goods and the initial taking,' which was Congress's apparent purpose." The court concluded that "there is a strong federal interest in enforcing these laws."⁵ But the U.S. Government's interest in discouraging the trafficking of stolen goods is only part of the story. The United States also led the way in urging governments around the world to develop methods to effectuate the policy of identifying Nazi-looted art and returning it to its rightful owners. It was the U.S. Government that convened the 1998 conference of government officials, art experts, museum officials, and other interested parties from around the world to consider and debate the many issues raised by the continuing discovery of Nazi-looted assets including artworks, resulting in the promulgation of the Washington Principles. The U.S. Government continued its participation in this area by playing a critical role in the 2009 Holocaust Era Assets Conference that took place in the Czech Republic and joining in the Terezin Declaration, which reaffirmed and expanded the Washington Principles.⁶

5 *United States v. Portrait of Wally*, 2002 U.S. Dist. LEXIS 6445, at *86 (S.D.N.Y. Apr. 11, 2002).

6 Terezin Declaration of June 30, 2009, available at http://www.holocausteraassets.eu/files/200000215-35d8ef1a36/TEREZIN_DECLARATION_FINAL.pdf. See L. Kaye & A. Sax-Bolder, *June 2009 in Prague: The Washington Holocaust Era Conference Revisited* (Herrick/Art & Advocacy),

3 See Martha Lufkin, "Portrait of Wally Battle Resolved, The Case That Changed Everything", *The Art Newspaper* (Sept. 2010).

4 Washington Conference Principles on Nazi-Confiscated Art, available at <https://ecf.nysd.uscourts.gov/cgi-bin/login.pl>.

One of those principles encouraged the resolution of these disputes by “alternative dispute resolution,” where possible, to avoid long, drawn-out litigation. Throughout the Wally litigation, there was criticism that this lengthy litigation in state and federal courts was the wrong way to go about resolving Nazi-looted art claims. But alternative dispute resolution is not always possible, particularly where one of the parties is unwilling to participate in good faith. In the Wally case, the U.S. Government brought the forfeiture action to prevent the Leopold from sending the painting to Austria, thus placing it beyond the reach of any plausible attempt at resolution. Furthermore, the Austrian Government, while adopting a law in 1998 that purportedly was designed to ensure the careful review of claims for Nazi-looted artworks in the Austrian Government’s possession, had determined that, as a “private foundation” under Austrian law, the Leopold Museum was not covered by that statute (despite the fact that the Austrian Government provided a substantial amount of its funding and appointed half of its board of directors).

In any litigation it is usually in all of the parties’ interests to reach a mutually acceptable resolution as early as possible. But as is often the case, it is only after the court issues a decision resolving many of the issues in the litigation, as happened in the Wally case last fall, that the parties become better focused on the likely outcome of the case. But regardless of when this case was finally settled, commencing this forfeiture action and securing the artwork in the United States certainly promoted the U.S. Government’s interest in fairly resolving these cases and preventing the trafficking of property looted in the Holocaust.

One final note about the U.S. Government’s role in these cases. Although the Government sometimes takes a position adverse to the claimants in these kinds of cases, especially where a foreign government is the party in possession of the disputed artwork and issues relating to sovereign immunity are involved, an important lesson of the Wally case for potential claimants is not to ignore the very helpful and often critical role that the U.S. Government can play with respect to individual claims.

The Settlement Terms

Since this case involved the resolution of a government forfeiture action, there was little question that the settlement would be filed with the court and its terms open to public scrutiny and review. This is rarely the case in private civil litigations, however, where the confidentiality of the terms of settlement is almost always agreed to by both parties. As a

result, the public has been made aware not only of the precise amount of monetary compensation paid to the Bondi Jaray Estate by the Leopold Museum (reflecting the painting’s market value), but also of the non-monetary settlement terms, including the opening ceremony and temporary exhibition of *Wally* at the Museum of Jewish Heritage in New York before it was transported to Austria, and the specific signage that must accompany *Wally* at any exhibition sponsored by the Leopold Museum, either at the Museum or anywhere else in the world.

It is important to recognize that Nazi-looted art claims involve very deep emotions occasioned by the horrific experiences of the claimant families during the Holocaust. As a result, even where a claim can be resolved by payment of the full value of the claimed artwork, other interests of the claimant must often be satisfied before the case can be settled. These interests include “correction of the record” concerning the true provenance of the artwork, and providing public and permanent recognition of the true historical facts. The importance of exhibiting the artwork at a museum dedicated to the remembrance of the Holocaust, even temporarily, cannot be overstated. Thus, potential settlements of Nazi-looted art claims should always give heed to the importance of recognizing the emotional needs of the claimants to try to correct the historical, but still deeply felt, injustices of the Nazi era.

The True Impact of the Wally Case

The real importance of the Wally case, however, is what it means for both claimants and possessors of Nazi-looted artwork. First, it sends a clear message throughout the world that the U.S. Government will not tolerate trafficking of stolen property within its borders and will commit the resources required to see that the victims of looted art are treated appropriately. Second, it tells the families of Holocaust victims everywhere that they can stand up for their rights and persevere even in the face of intransigence and procrastination by the current possessors of their property. When their efforts seem hopeless, let them remember *Wally*.

Spring 2009, page 5; H. Spiegler, *The June 2009 Prague Conference and Terezin Declaration: A New Beginning?* (Herrick/Art & Advocacy), Summer 2009, page 4.

Are Penal Procedures Only a Last Resort?

It is a shared experience that in the art market some publicized and well-targeted penal procedures versus art dealers, auction houses, museum curators and/or others involved in this trade have strong deterrent effects. This happens mostly because of the people interested in and of their high status. And the intensification of investigations in the national and international field, which will very likely lead to the limiting of illegal purchases, especially with reference to those known as the “major purchasers” will be carefully assessed by the professionals who will reduce their demands in proportion to the investigative capacity of the public institutions.

In this respect, one should recall the Italy’s recent initiatives through the criminal law -considered sometimes as primary tool in the protection of the Italian cultural heritage- which have had an impact on the markets, especially abroad (for instance, these initiatives triggered an ample process of return by U.S. museums, and nowadays Italian cultural items of uncertain provenance are less attractive objects of exchange).

However, it now behooves me to underline that the adequacy of a given judicial space appears to be of vital importance not only for the cultural heritage of a single nation, but also for all the other countries, -at least- of the same cultural area. It is a known fact that the criminals acting in this sector take advantage of the weak links in the various systems, exporting and even using for the various systems of triangular trading the legal systems most permeable to illegal trafficking. And then from them, sending the cultural objects also to those countries where protection is effective and congruous. In fact, this process of laundering antiquities is highly facilitated by jurisdictions without any or insufficient regulation of the antiquities market, or by failure to enforce the existing legislation.

Another aspect should be now stressed. The penal option’s being developed could mean greater adherence to the rules of the countries of origin of cultural goods. And differences among the countries which adopt common law principles versus civil law principles, will be, if not eliminated, at least reduced, because relationships will be significantly influenced by the penal legislation of the country of provenance of the object. Recourse in principle to the public policy of the country from which restitution is being requested, which in the past and also somewhat in the present has been invoked in order to justify the non-restitution of cultural goods, should be

coming to an end. And even if, in the context of international cooperation, the standard of proof is much higher for a criminal offence than for a civil or administrative wrong, this consideration does not entail that the return and/or the forfeiture of the cultural item concerned is much more likely to happen if a civil suit, rather than a criminal suit, is undertaken. In fact, a penal procedure will often be cultivated before the origin country Courts, which are not only “domestic courts” or sympathetic towards the victim, but also able to enhance the evidence collected. Whereas, a civil claim is far more expensive and it must be lodged with foreign judiciary, where the opponent is generally much favoured, very often knowing better the legal system where he is accustomed to operate.

By contrast, until now, in UNESCO Conventions penal sanctioning by Member States remains only one of the possible, remote options, and the criminal law has a function of the whole residual (the so called penal minimalism). Instead, the time is ripe to change this attitude and to propose uniform patterns of crimes so as to oblige domestic systems to view the illicit trafficking in a homogenous way, to punish such criminal conducts seriously, and -consequently- to provide consistent standards for search, seizures and forfeiture procedures. All these targets should be available thanks to the United Nations Convention against Transnational Organized Crime of 2000, and they are embodied in the United Nations Economic and Social Council recommendations -given on 14th December 2009- for the prevention of crimes that infringe on the cultural heritage of peoples. The said Council, *inter alia*, stressed that States should have legislation that is appropriate for criminalizing trafficking in cultural property and that takes into account the specificities of such property; that States should be using a wide definition that can be applied to all stolen and illicitly exported or imported cultural property; that the trafficking in cultural property (including stealing and looting at archaeological sites) should be a serious crime, especially when organized criminal groups are involved, allowing cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or that they cannot have a reasonable belief in the licit provenance of the objects, confiscating the proceeds of crime. Moreover, States should consider including, in their cooperation agreements on protection against trafficking in cultural property, specific provisions for information exchange; a coordinated follow up of the flow of cultural objects, whenever feasible; and the return or, as appropriate, the restitution of stolen cultural property to its rightful owner.

Then, all these recommendations have been the content of the report presented by the Secretary General to the 19th Session Commission on Crime prevention and Criminal Justice, held in Vienna 17-21 May 2010.

In this regard, I have to stress by now that the organized crime is a frequent phenomenon in the art market, highly specialized and in need of different abilities and/or expertise, from the tombaroli or thieves, to the mediators, shippers and drivers, customs officials, dealers, experts, restores and action's house employees, etc. All people often working together with divided tasks, in a transnational dimension and operating through traditional hierarchical structures (in the national market) or flexible networks (abroad). However, either in a pyramidal or in a net approach, trans-national organized crime is an increasingly articulated phenomenon, from the illegal acquisitions of cultural goods, their illicit exportations from the country of origin, their expertises in order to raise the price, their laundering activities in order to give to the items themselves a licit provenance. And through all these intermediaries the cultural goods fetch back an inflated evaluation that -in turn- fuels other looting activities or thefts.

We have also to stress that investigations in the cultural sector are very peculiar. In fact, their target is often finalized to gather evidence in order to defeat criminal organizations with a strong sense of belonging and usually deep rooted into a given community. Not only. In these criminal phenomena the "omertà" is very involving, and confidential tips to the authorities are immediately rewarded -at least- through the expulsion from the group and from its lucrative traffic. Moreover, the criminal organizations are often acting through many companies, well articulated in foreign territories and composed of multi-off-shore firms. At the same time, investigations in the cultural field have a wider spectrum, because the ordinary police activities must take into account other aspects, somehow antagonist each others. Thus, the good recovery could sometime hinder the efforts to defeat and punish the criminals, when, for instance, they make reprisals on cultural items to obtain impunity.

Anyway, it is evidently impossible to counteract the criminality in this sector only with the police and with penal trials. For instance, no authority can superintend every archaeological site in its country in an attempt to stop clandestine excavations, nor can it patrol every national border to perform export checks. In fact, one has to consider that it is not possible to control territories that often are very large and not always well known as archaeological areas. And the international cooperation is highly required to tackle all these phenomena, specially through the preventative cooperation until today rarely initiated.

On the contrary, this preventative cooperation would lead to continual vigilance by the Authorities of those countries which have ratified one of the many conventions in this sector, since, albeit not expressly, these conventions ultimately impose the obligation of coming forward with spontaneous information without necessarily waiting for information and in-put from the investigative authorities of another country. The exportation country would obviously have more information at its disposal and what's more, the market of artistic goods would come under the required scrutiny in foreign territories. Thus, not only clandestine trafficking would be discouraged, but honest dealers would be rewarded and would no longer be exposed to unfair competition nor to actions of vindication by previous private owners, perhaps after several years.

If preventative cooperation were to begin, many situations, seriously prejudicial to the cultural patrimony, would disappear. At the same time those areas of privilege would be limited (free-ports, auction houses, etc.), which in the past, and still today, represent places in which trading in artefacts of illicit provenance was and still is flourishing.

In this respect, in each UNESCO Member State working groups (composed of jurists and experts) should be organized, having their competence on controlling the internal market of artistic goods and coming forward with spontaneous information, and at the same time giving legal advise to the country of origin.

In fact, it is time to shift from the Treaties and the Conventions which seem to be having good but not conclusive effects in solving the problem of preserving archaeological sites, to trying to get these working groups organized as task forces, inter-governmental agencies, or even private funding, on protecting the archaeological site and heritage. In brief, these groups should provide a comprehensive survey of the items illegally exported, working in close contact with foreign Authorities, reporting on suspicious cultural goods, helping in their restitution and simplifying or -at least- clarifying the procedures often slow, complicated and expensive.

Moreover, in a civil context, when opportune and feasible, time is also ripe for seeking ethical and moral solutions to claims of items of outstanding cultural importance, not just legalistic results based on costly and protracted proceedings. In this respect, there should be also concern about the evidential standard to be adopted and the level of proof required, behoving to say that the benefit of the doubt should go to the claimant.

In conclusion, if all the above mentioned recommendations and amendments could be implemented, really the penal procedure shall be a last resort. In this regard, States concerned should behave in good faith, which is not the

case when either of them insists upon its own position, without contemplating any modification of it, or relies exclusively on the provisions of its own legislation, without considering rules and principles of international law.

On the contrary, States should take this path in the concrete, thus avoiding a probable phenomenon of pan-criminalization. Indeed, notwithstanding the expression “ars grata legi” and considering all the penal prosecutions I have been called to do: I think that the ethical approach is more fruitful than the -straight- legal one, either in relation to a prompt repatriation of cultural goods or, obviously, for a better dialogue between professionals and archeologists of different countries. In fact the unethical provenance of a cultural item can be easily ascertained, but its vindication on a penal legal basis means that the dialogue between the interested parties is ended.

Archaeology and the Problem of Unauthorized Excavation in Italy

The public follows, with growing and increasingly alarmed attention, news on the destruction of historic sites because of speculation, pollution and even war. In contrast, little consideration is given to the rather serious state of danger in which the world's archaeological heritage remains as a result of being the target of increasingly frequent episodes of looting at illegal excavations.

In recent decades these depredations, due to the smuggling of archaeological material on the international arts market, have taken on such a scale that not even the specialists in this sector can assess the value of the losses with confidence.

What is certain, however, is that the archaeological heritage of many regions of the world is constantly the subject of illegal activities involving not only the physical destruction of looted artifacts, but also the resulting loss of the rich heritage of historical information contained in those archaeological sites, destroyed by the violent action of the excavations themselves.

The regions most severely affected by this phenomenon are in Central and South America, Italy, the Middle East, China and Turkey, while countries such as Germany, Switzerland and Austria increasingly report on looting at archaeological sites.

Some rumors downplay this situation, justifying the presence of numerous archaeological finds on the illicit market by claiming that these artifacts are from random findings which occurred during normal farm work activities or urban development.

Law enforcement activities of police forces however have shown that there is not only a phenomenon of systematic aggression against the treasures hidden underground or in marine areas, but that the delinquency of this type of crime (illicit excavations, receiving, marketing illegally, etc.) is often committed by professionals and research experts, with clear planning skills, advanced sales channels (online sales) and a tested networks of specialists in excavation: the "grave robbers".

The archaeological research

The end purpose of archaeological research is finds identification, the individuation of the material traces (material culture) of ancient civilizations. Excavations are carried out surveying the territory by use of scientific methods and are

the basis which leads scholars on the road to interpreting a hidden historical reality, which represents the most precious document of the existence of a past civilization.

Excavations have been and are, therefore, in the archaeological field, the tool to locate and recover the traces of history. Although they were initially intended exclusively for the recovery of precious relics or artifacts, over the passage of time more and more attention has been placed on the context of the finds. Greater importance is now placed on the "stratigraphic" method that allows for thorough analysis of the traces found, the identification of relationships between the traces themselves, and the interrelation of the two.

Such methods are therefore indispensable not only for the dating of buildings and objects, but also to reconstruct a historical context with a reliable timeline. A carefully analyzed profile of the layers could furnish diverse information such as the sequence of work steps during the construction of a house, how it had been used over time, and the possible time of its decay and destruction.

Illegal excavations in Italy: the "tomb robbers"

Since the beginning of the last century the presence of numerous archaeological areas in Italy has been of constant interest throughout Europe, resulting in the launch of numerous excavations, generally without scientific control. As a result of this, the attention of archaeologists and collectors turned increasingly to the Greek mainland with the consequence being a drop in demand for artifacts from sites in Italy, up until the 1950s, when systematic illegal excavations began, especially in central and southern areas, such as Lazio, Puglia, Campania, Calabria and Sicily.

During the 1970s, the phenomenon took on the proportions of a veritable industry, with systematic looting focusing almost exclusively on ancient cemeteries and funerary objects from various and numerous tombs, resulting in a huge increase in the prices of antiquities on the international market.

But who are the tomb robbers and how do they act? The term *tombarolo* means "seeker of tombs."

From the experiences gathered by the police and especially by the Carabinieri Division for the Protection of Cultural Heritage, a special department in charge of crimes against

Italy's cultural patrimony, the archaeological site looters come from the neighboring countryside located near to archaeological sites.

While in the past, excavations were carried out after the harvesting of agricultural crops, in order not to "damage" the farmers' livelihood, with the passage of time, grave robbers have developed an almost round-the-clock method of searching out diverse field locations in order to beat the patrols of the police force, which have become much more attentive.

The tomb robbers almost always cover the terrain in groups of five or six people with vehicles (French automobiles are preferred for their suspensions systems, which allow for cars to have greater agility in the necessity of a quick get-away). Within the group there is an exact division of tasks: some dig up the area of interest in order to locate the tomb, others are the "pole" (look-out), others are involved in the selection and collection of the artifacts deemed most valuable commercially. To work on more complex burial complexes, tomb robbers use diverse teams.

During the first hours of the morning they generally inspect the fields and plots of land considered more "interesting" by surveying the soil using a long iron rod or poker (in Italian a *spillone*). Where this detects some resistance in the subsoil, they proceed to a closer examination. Surveying for borders, this provides them with reliable information on the presence of a tomb, and its shape is marked with small piles of stones. Sometimes, in order to facilitate the use of the probe, the ground is wet with water at the point of the entry hole, which explains the presence in many fields of discarded plastic tanks and probes, a testimony of this simple but effective working technique.

In the evening tomb robbers come back to marked areas and begin unearthing the tomb, first digging a hole several meters deep and then, as soon as they reach the tomb's covering, they break it open quickly and inspect the funeral finds. After a brief but expert assessment of the findings, they select those considered most commercially popular and discard objects which are incomplete or inconspicuous (often intentionally destroying the objects).

Until a few decades ago, tomb robbers, perhaps as a sign of "respect" dictated by superstition, collected only objects that were not in direct contact with the remains of the deceased. Lately however, instead of finding heaps of earth around looted tombs, we now find not only fragments of pottery but also bones. The looting pits are dug and then left abandoned until the fields are plowed: this is a way to avoid digging in the same site more than once. Since archaeological tomb sites have been intensively exploited for years, important discoveries (of

major finds) are rare. Most tomb robbers aim for the fastest approach before moving on: pokers, water canisters, hoes and spades are being replaced with motorized backhoes! The use of machinery gives the robbers another advantage: it allows them to hide the true purpose of the excavation under the pretext of doing farm work.

To avoid the risk of being arrested and subsequently investigated by the police, tomb robbers avoid keeping the archaeological finds in their own homes. The most suitable storage places are old abandoned cottages or country houses. In this way, if they are identified, law enforcement agencies have no culprit to prosecute.

But where do these finds end up being sold?

The channels through which the archaeological material reaches dealers or collectors are diverse. At the national and local market level only the more common artifacts are sold, with relatively low earnings. The international market concentrates on the most important pieces, such as ornate red figure vases (i.e. vases where the red areas have been left unpainted), gold jewelry, pottery, etc. The fences that act as intermediaries in this area are extremely professional and in constant contact with international buyers. They arrange transportation across borders and are fully aware of the prices and market value of their merchandise.

According to police data, the most tried and tested means of transport is either the use of refrigerator trucks, rarely subjected to careful monitoring because of the perishability of the merchandise normally transported, or the use of simple suitcases. Inside the luggage, the vessels are often inadvertently smashed into pieces, before being transported by train in sleeper cars or wagons, where baggage is rarely checked at night. This applies obviously to smaller pieces.

Conclusion

To limit illegal excavations and to search for a means by which to effectively eliminate all economic incentives for looting, it would be necessary for countries which focus on, and trade in, ancient antiquities to impose severe restrictions on imports of archaeological heritage. Imports should be allowed only for those objects whose provenance was legally established with certainty, such as by certified document.

To prevent illegal importation it would be better if all privately held/owned objects of archaeological value currently were subject to mandatory registration. Objects not registered by a certain date should be confiscated and possibly returned to their countries of origin. Unfortunately, not all countries with at-risk archaeological patrimony have a regenerative capacity suitable to counter the damage caused by grave robbers, and

thus the formation of a unique international front remains one of the few hopes in this tragedy: the battle in defense of culture must be fought by all, because we either lose together or win together.

*

General B(a) CC Giovanni Pastore

L'Archeologia e il Problema degli Scavi Abusivi in Italia

L'opinione pubblica segue con crescente e sempre più allarmata attenzione le notizie della distruzione di siti storici a causa delle speculazioni edilizie, dell'inquinamento e perfino degli eventi bellici. Al contrario, una scarsa considerazione viene invece riservata al grave stato di pericolo in cui si trovano i beni culturali archeologici a causa dei sempre più frequenti episodi di saccheggi mirati, mediante attività di scavi clandestini.

Negli ultimi decenni questi saccheggi, a causa dell'introduzione clandestina del materiale archeologico sul mercato internazionale di opere d'arte, hanno assunto dimensioni tali che neanche più gli specialisti del settore riescono a valutare con una certa attendibilità.

E' ormai provato comunque che il patrimonio archeologico di molte regioni del mondo è costantemente oggetto di attività illegali che comportano non solo la distruzione materiale dei reperti saccheggiati, ma soprattutto causano la perdita di quel ricchissimo patrimonio di notizie storiche contenute in quei siti archeologici distrutti dall'azione violenta degli scavi stessi.

I Paesi più gravemente colpiti da questo fenomeno sono l'America centrale e meridionale, l'Italia, il Medio Oriente, la Cina e la Turchia, mentre da Paesi come la Germania, la Svizzera e l'Austria arrivano sempre più frequentemente notizie di saccheggi di siti archeologici.

Le voci che vorrebbero minimizzare questa situazione tendono a giustificare la numerosa presenza di reperti archeologici nel mercato illecito sostenendo che si tratta di manufatti provenienti da ritrovamenti casuali, avvenuti durante normali attività di lavori campestri o durante opere di edificazione urbana.

L'attività di contrasto delle forze di Polizia hanno invece

dimostrato che non solo esiste un fenomeno di aggressione sistematica ai tesori nascosti nel sottosuolo o nelle aree marine, ma hanno dimostrato che la delinquenza dedita a questo tipo di reati (scavi illeciti, ricettazione, commercializzazione illecita, etc.) è commessa da professionisti e spesso esperti ricercatori, con evidente capacità di pianificazione, canali commerciali all'avanguardia (vendite on line) e collaudate reti di specialisti di scavi: i "tombaroli".

La ricerca archeologica

La finalità della ricerca archeologica è -come noto- l'individuazione materiale delle tracce di antiche civiltà. La ricognizione del territorio mediante scavi effettuati con metodi scientifici è quindi la base che permette agli studiosi dei dati via via acquisiti di interpretare una realtà storica nascosta, che rappresenta il più prezioso documento dell'esistenza di una civiltà passata.

Gli scavi hanno rappresentato e rappresentano quindi nel campo archeologico lo strumento per individuare e recuperare le tracce della storia. Sebbene inizialmente essi erano finalizzati esclusivamente al recupero di reperti o di preziosi manufatti, con il passar del tempo si pose sempre più attenzione al contesto dei ritrovamenti. Fu quindi riposta importanza massima al metodo stratigrafico che permetteva attraverso l'analisi delle tracce ritrovate, l'individuazione dei rapporti tra le tracce stesse e le azioni che le avevano generate.

Tale metodo di ricerca risultò pertanto indispensabile non solo per la datazione di edifici ed oggetti, ma anche per ricostruire un contesto storico con una successione temporale attendibile. Un profilo degli strati accuratamente analizzato poteva infatti fornire diverse informazioni come per esempio la sequenza delle fasi di lavoro durante la costruzione di una casa, l'uso a cui essa era stata adibita

nel tempo, i vari momenti del suo decadimento e della sua distruzione.

Gli scavi abusivi in Italia: i “tombaroli”

La presenza delle numerose aree di interesse archeologico in Italia suscitò fin dagli inizi del secolo scorso un costante interesse in tutta Europa con l'avvio di numerose campagne di scavi generalmente senza un controllo scientifico.

In seguito, l'attenzione di archeologi e collezionisti fu rivolta sempre più alla madrepatria greca con la conseguente flessione della domanda di reperti provenienti dai siti dell'Italia fino agli anni cinquanta, quando iniziò una sistematica attività soprattutto di scavi abusivi nelle aree centro-meridionali come il Lazio, la Puglia, la Campania, la Calabria e la Sicilia.

Durante gli anni settanta, il fenomeno assunse le proporzioni di una vera e propria industria con sistematici saccheggi estesi soprattutto alle necropoli e ai corredi funerari delle varie e numerose tombe, determinando un enorme aumento di prezzo dei reperti sul mercato internazionale.

Ma chi sono e come agiscono i tombaroli? Il termine “tombarolo” sta chiaramente a significare “ricercatore di tombe”.

Dalle esperienze raccolte dalle forze di Polizia e in particolar modo dal Comando Carabinieri Tutela Patrimonio Culturale, uno speciale reparto preposto al contrasto dei reati contro il patrimonio artistico nazionale, gli autori dei furti di reperti archeologici provengono quasi sempre dai paesi vicini ai siti archeologici.

Mentre in passato gli scavi venivano effettuati in periodi successivi ai raccolti agricoli, per non “danneggiare” i contadini, con il passar del tempo i tombaroli hanno sviluppato una attività di ricerca quasi continua e diversificata sul terreno per battere il controllo delle forze di Polizia, divenuto molto più attento.

I tombaroli si spostano sul terreno quasi sempre a gruppi di cinque, sei persone dotate di automezzi (sono prediletti i veicoli francesi per le loro caratteristiche di sospensioni idonee a consentire una più agile fuga, in caso di necessità). All'interno del gruppo esiste una esatta divisione di compiti: alcuni scavano l'area interessata fino a scoprire la tomba; altri fanno da “palo” (sentinelle); altri ancora sono addetti alla scelta ed al prelievo dei reperti ritenuti più preziosi per il loro presunto valore commerciale. Per operare su complessi tombali più articolati, si associano diverse squadre di tombaroli.

Durante le prime ore del mattino vengono generalmente

ispezionati i campi ritenuti più “interessanti” mediante il sondaggio del terreno con una lunga asta di ferro (spillone) e dove questa trova una certa resistenza nel sottosuolo, si procede ad un esame più attento. I sondaggi ravvicinati, se positivi, forniscono indicazioni attendibili sulla presenza di una tomba e la sua forma viene contrassegnata con dei piccoli cumuli di pietre. Talvolta, per rendere più agevole l'uso della sonda, il terreno viene bagnato con molta acqua nel punto del foro il che spiega la presenza nei campi di numerose taniche di plastica e sonde non più utilizzabili, a testimonianza di questa semplice ma efficace tecnica di lavoro.

Verso sera, i tombaroli ritornano nelle aree contrassegnate ed iniziano a dissotterrare la tomba scavando prima una fossa in genere profonda qualche metro e quindi una volta raggiunta la copertura, la sfondano rapidamente per procedere altrettanto rapidamente ad ispezionarne il corredo funebre presente all'interno. Dopo una sommaria ma esperta valutazione dei reperti, vengono prelevati quelli ritenuti commercialmente più richiesti e scartati quelli incompleti o poco appariscenti (spesso distrutti intenzionalmente).

Fino a qualche decennio fa i tombaroli, forse per una forma di “rispetto” dettata dalla superstizione, prelevavano solo quei reperti che non erano a diretto contatto con i resti dei defunti; da qualche tempo invece, sui cumuli di terra attorno alle tombe saccheggiate, vengono rinvenuti non solo frammenti di vasellame ma anche ossa. Le fosse scavate vengono lasciate abbandonate fino a quando i campi vengono arati: è questo un modo per evitare di scavare più volte nello stesso sito. Poiché nei siti archeologici ormai sfruttati intensivamente da anni non si verificano più scoperte importanti, gran parte dei tombaroli sta passando a metodi più rapidi: sonda, tanica, zappa e vanga vengono sostituite dall'escavatore! L'impiego di mezzi meccanici rappresenta inoltre un altro vantaggio: permette di nascondere il vero scopo dello scavo con il pretesto di effettuare dei lavori agricoli.

Per evitare il rischio di essere arrestati a seguito di una perquisizione da parte delle forze di Polizia, i tombaroli evitano di conservare i reperti nelle proprie abitazioni. I luoghi ritenuti più idonei sono vecchi casolari o case di campagna abbandonate in modo che se vengono individuati, gli organi di Polizia non possono fare altro che procedere nei confronti di “responsabili ignoti”.

Ma dove finiscono i reperti per essere venduti?

I canali attraverso i quali il materiale archeologico raggiunge i commercianti o i collezionisti sono diversi. In ambito nazionale e locale, vengono smerciati soprattutto i reperti più “comuni”, con guadagni piuttosto bassi. Il mercato internazionale si concentra invece prevalentemente sui pezzi più importanti come vasi a figure rosse riccamente decorati, monili d'oro,

terracotte, etc. I ricettatori che agiscono in questo settore sono persone estremamente professionali ed in costante contatto con referenti internazionali. Essi organizzano il trasporto oltre i confini e sono perfettamente a conoscenza dei prezzi e del valore di mercato della loro merce.

Secondo i dati in possesso delle forze di Polizia, i metodi di trasporto più collaudati sono: o l'utilizzo dei camion frigorifero, raramente sottoposti a controlli accurati a causa della deperibilità della merce normalmente trasportata; o l'impiego di semplici valige, all'interno delle quali i vasi vengono messi sotto forma di cocci e trasportati a mezzo treni nelle cui carrozze con cuccette o vagoni notte raramente i bagagli vengono controllati. Quanto detto vale ovviamente per reperti di dimensioni ridotte.

Conclusioni

Per limitare e cercare di eliminare efficacemente ogni incentivo economico agli scavi clandestini sarebbe necessario che i Paesi nei quali si concentra il commercio di opere d'arte antica, imponessero restrizioni severe all'importazione di beni culturali archeologici. Tale importazione dovrebbe essere ammessa solo per quei reperti la cui provenienza legale fosse dimostrata in maniera certa, come per esempio una documentazione certificata.

Per ostacolare l'importazione clandestina sarebbe quindi opportuno che tutti gli oggetti di valore archeologico di proprietà privata venissero sottoposti a obbligo di denuncia. Gli oggetti non registrati entro una determinata data dovrebbero essere confiscati e possibilmente restituiti ai loro Paesi di provenienza. Purtroppo però non tutti i Paesi con il proprio patrimonio archeologico a rischio hanno una capacità rigenerativa idonea a contrastare il danno arrecato dai tombaroli e quindi la formazione di un fronte internazionale unico rimane una delle poche speranze per sconfiggere questo dramma: la battaglia a difesa della cultura va combattuta da tutti perché o si perde tutti insieme o si vince tutti insieme.

Lessons from the History of Art Crime

In lieu of our regular short column, “Lessons from the History of Art Crime,” this month we include a chapter from my recent book, *The Thefts of the Mona Lisa: On Stealing the World’s Most Famous Painting*. This is the first book published by ARCA Publications, a new endeavor of ARCA’s. All profits from the print edition of this book, which is available on Amazon, go to ARCA and support ARCA’s non-profit activities.

For our sample chapter, I have chosen to include the story of Picasso and Apollinaire’s involvement in theft from the Louvre. While they were accused of having stolen the *Mona Lisa*, of which they were innocent, they were guilty of the theft of other artworks from the Louvre, as we will see.

Chapter excerpted from Noah Charney’s *The Thefts of the Mona Lisa: On Stealing the World’s Most Famous Painting* (ARCA Publications 2011)

When Picasso Stole the *Mona Lisa*¹

In September 1904 the young Cubist painter Pablo Picasso attended the opening of a new room at the Louvre that featured Iberian art from the museum’s permanent collection. As a proud Spaniard, Picasso was thrilled by the ancient art he saw on display, sculptures that had an air of the simplified abstraction of Cycladic figurines, and yet were millennia old, and which were the original, most authentic art of Picasso’s homeland. The statues were perhaps not artistic masterpieces, but they were important pre-classical archaeological specimens. Not, perhaps the most obvious choice for something to steal, and yet they would be stolen. It was noted at the time of their disappearance that they were of no real financial value, roughly-carved and of basic materials (primarily limestone), nor were they particularly rare. Their interest was archaeological and related to the history of the pre-Roman inhabitants of what is now Spain and Portugal, the Iberians—a tribe that was only recently coming to scholarly

attention at the time.²

These statuettes would, however, prove of central importance to the evolution of Modern art due to Picasso’s interpretation of them. A glance at the works in question confirms what Picasso would glean from his admiration of them—they might as well be Picasso sculptures, for their amorphous form suggestive of a human head, and yet grotesquely and beautifully broken into general shapes that implied eyes, braided hair, and lips, but which were more geometric than naturalistic.

One statue head in particular struck Picasso so strongly that he would recall it vividly in an interview more than fifty years after its theft.³ The statue had a long, arched nose, prominent lips (with a slight overbite), a hair style which we would now call a “Caesar,” brushed from the back to the front and, most striking of all, enormous, over-sized ears, perhaps with dangling earrings, or else dramatically elongated lobes. These Iberian statue heads were not small trifles—those discussed in this chapter weighed approximately seven kilos each.

1 I am indebted in this chapter to the art historian Silvia Loreti, who was the first to break the full details of the story of Picasso and Apollinaire’s “affaire des statuettes.” While scholars such as John Richardson mention the affair, and Picasso’s former lover Fernande Olivier recalls portions of the case in her memoirs, Loreti was the first to focus on the issue and dig deeply into the Louvre archives, noting numerous irregularities for the first time. The examination of the Louvre archives is her work and, rather than citing her efforts in the majority of these notes, suffice it to say that the credit for digging up information on this case goes to her and to John Richardson, in his definitive Picasso biography series. Loreti’s article was first published in Charney, Noah (ed.) *Art & Crime: Exploring the Dark Side of the Art World* (Praeger, 2009). This chapter could not have been written without her extensive research, and the credit for discovery of most of the facts is entirely hers.

2 These statements were made by Edmond Pottier, a Louvre curator, who made comments after he recognized photographs of a pair of statue heads published in *Paris-Journal*. Pottier, Edmond, August 29, 1911, Archives des musées nationaux, Musée du Louvre, folder A15, first discovered by Silvia Loreti.

3 Picasso discussed the *affaire des statuettes* and its influence on his painting in a 1960 interview: Dor de la Souchère, *Romuald Picasso à Antibes* (Hazan : Paris, 1960), p.15

Picasso's visit to that exhibit, just a year after he had moved from Spain to Paris, proved important for 20th century art history, as Picasso would use these Iberian statuettes as models for the faces of the prostitutes he painted in his 1907 masterpiece, *Les Femmes d'Alger*, considered by many to be the first great abstract painting and the very foundation of Modernist painting.⁴

But that visit to the Louvre was also intimately linked to the 1911 theft of the *Mona Lisa*. For in 1911 Pablo Picasso and his close friend, the Polish-born poet, Guillaume Apollinaire, were brought in for questioning by the Paris police on suspicion of having stolen the *Mona Lisa*. In fact they were innocent of the *Mona Lisa* theft, but they were terrified nonetheless—so much so that Picasso, under oath, denied having ever before seen Apollinaire. Picasso and Apollinaire were petrified of the police not because they had stolen the *Mona Lisa*, but because they had stolen something else from the Louvre: a pair of ancient Iberian statue heads that they had first seen at the Louvre exhibition.

What would become known as the “affaire des statuettes” began with the introduction of a Belgian con man, secretary, soldier and later a cowboy, by the name of Joseph-Honoré Géry Pieret. Géry Pieret was working as a personal secretary for Apollinaire, at the time, a renowned journalist, modern art critic and poet.⁵ Géry Pieret was also a compulsive art thief, although the fact that art was his target may have been circumstantial, rather than a primary motivator. He took to stealing from the Louvre museum regularly.

In the first decade of the 20th century, to remove objects from the Louvre museum was not particularly difficult to do. Although alarms had been invented, they were not widely used until after the First World War, and the objects on display at the museum were not protected by alarms. Nor, in many cases, were they even fixed in place. Most statues were simply laid out on tables, without locks or glass vitrines to discourage curious hands. As previously mentioned, although the enormous museum, once the French royal residence in Paris until Napoleon and his art advisor, Dominique-Vivant Denon, converted it into a public art museum had over four-hundred rooms displaying art, it only employed around two-hundred guards.⁶ Objects disappeared from the Louvre with enough regularity that Parisian newspapers frequently commented on

the poor security and, on more than one occasion, lamented in print that one day all of this lax security would lead to the disappearance of the *Mona Lisa*. These comments would prove tragically prescient.

By his own admission, Géry Pieret began stealing from the Louvre in March 1907, though evidence suggests that he began some time earlier. Another Iberian statue head was stolen in November 1906, and the theft was featured in the newspaper *Le Matin*.⁷ That article mentions the low financial value of Iberian statue heads in general, stating that the thief might be “a possessive and discreet collector who has no interest in money, but keeps [the statues] in the most secret part of his apartment getting drunk on their beauty in solitude.” That a criminal collector must be behind art thefts is a suggestion that the media regularly touted, though there are very few known historical instances of it being the case. This would prove to be one of those very few exceptions.

The thief who stole this statue head may well have been Géry Pieret—indeed it seems odd that two separate thieves should target the same out-of-the-way objects which were both unwieldy and of relatively little resale value. But Géry Pieret later wrote to the prominent Parisian newspaper *Paris-Journal* that it was in March 1907 that “I first penetrated the Louvre.”⁸ He made regular visits to the museum, often taking a souvenir with him on his way out, and clearly enjoying himself. In fact he stole with such confidence and frequency that he once told his girlfriend, Marie Laurencin, “Marie, I’m off to the Louvre this afternoon. Can I bring you anything you need?” She thought he meant something from the shopping arcade adjacent to the Louvre museum.⁹

In his letter, sent after the *Mona Lisa* had been stolen and had captured the headlines, Géry Pieret boasted of having smuggled the statue heads out of the museum under his coat, stopping en route to ask a museum guard for directions to the nearest exit. He was clearly interested in touting his accomplishments, perhaps with unrealistic grace notes embellishing the true story. This is what he wrote to the editor of *Paris-Journal*:

Monsieur, on 7 May 1911 I stole a Phoenician statuette from one of the galleries at the Louvre. I am holding this at your disposition, in return for the sum of 50,000 francs [which the newspaper offered for the return of the *Mona Lisa*]. Trusting that you will respect my confidence, I would be happy to meet you...

4 This is attested to in a letter written by Guillaume Apollinaire in 1915: Apollinaire, Guillaume, Letter to Madeleine Pages July 30, 1915, in Apollinaire, *Lettres à Madeleine. Tendre comme le souvenir* (Gallimard : Paris, 2005), pp.96-8.

5 Precious little is known about Géry Pieret (a shame because his biography would be fascinating). Most of the surviving material was first published in John Richardson *A Life of Picasso: 1907-1917 – The Painter of Modern Life* (Pimlico: London, 1997), vol.2, pp.20-1.

6 For more on the origins of the Louvre, please see Charney (2010).

7 *Le Matin*, Nov. 10, 1906

8 “Une voleur nous rapporte un œuvre dérobée au Louvre”, *Paris-Journal*, Aug. 29, 1911, p.1. The quotes from this article that follow are the translation of the author.

9 Esterow (1966), p.122

On 29 August 1911 *Paris-Journal* published a large photograph across their front page. It showed an Iberian bust of a female.¹⁰ The article headline read: “A Thief Brings Us a Work Stolen from the Louvre.” But this was not the *Mona Lisa*, the masterpiece on everyone’s mind. This newspaper article first published the letter above, which continued as follows:

Now although *Paris-Journal* did offer a reward of 50,000 francs to anyone who brought in *Mona Lisa*, we have never offered to ransom *all* stolen works from the Louvre.

Still, because this was a chance to check a detail that would be interesting if it were genuine, one of our reporters went to the appointed place [specified by the letter writer, Géry Pieret]. There he met a young man, aged twenty to twenty-five, extremely well-mannered, with a certain American chic, whose face and style and manners suggested both a good heart and a lack of scruples. This was “The Thief,” as we must call him.

The thief confirmed to our reporter that what he had written in his letter was genuine. He showed him the work that he claimed to have stolen from the Louvre. It is a rather crude bust, an example of the somewhat primitive art of the Phoenicians, 28 centimeters tall, 22 centimeters wide, and weighing no less than 6.75 kilos!

In agreement with *Paris-Journal*, the thief Géry Pieret committed to writing his story, which they published in the same 29 August edition of their newspaper. He wrote:

It was in March of 1907 that I first penetrated the Louvre, as I was a young man with time to kill and no money to spend. At the time I had no preconceived notions that I might “work” in the museum. I was born in Belgium, where every painting in a museum is locked to the wall and every statue is affixed to its pedestal, and my travels abroad in the United States, Canada, and almost every country in Europe, except it seems France, had done nothing to change my idea that a museum was an impregnable fortress of art.

It was around 13:00. I found myself in the gallery of Asian antiquities. A single guard sat there, motionless. I was about to climb the stairs leading to the floor above when I took note of a door on my left which seemed to have been accidentally left ajar. I only had to push it, and I found myself in a room filled with hieroglyphics and Egyptian statuary, I think—in any event, the room impressed me deeply because of the resonant silence and

the fact that I was completely alone. I walked through several adjoining rooms, stopping every once in awhile in a shadowy corner to run my hand over a well-made neck or cheek which caught my eye.

It was then that it came to me just how easy it would be to pick up any object of a modest size and take it away with me.

I was wearing a boxy overcoat, and my slender body meant that I could add a bit to my dimensions without attracting the attention of the guards, who have no strong grasp of proper anatomy, anyway. At that moment I was in a small room, a closet really just two meters by two, in the Gallery of Phoenician Antiquities.

As I found myself absolutely alone, and I heard no sounds of any sort, I took my time, examining about fifty sculpted heads that were displayed there. I chose one of a woman with, if I recall correctly, twisted, conical forms on each side. I put the statue under my arm, pulled up the collar of my overcoat with my left hand, and calmly walked towards the exit, asking a guard, who still sat motionless, for directions en route.

I sold the statue to a Parisian painter friend of mine. He gave me a little money—fifty francs, I think, which I lost that same night playing billiards.

“What do I care?” I said to myself after losing the money. “All of Phoenicia is there for the taking.”

The very next day I took a bust of a man with enormous ears—a detail that I found fascinating. And three days later I took a plaster fragment covered in hieroglyphics. A friend gave me twenty francs for that one, which I stole from the large room adjacent to the Phoenician gallery.

Then I emigrated. I made a little money in Mexico, and decided that it was time to return to France and start my own art collection for a minimal expenditure. On May 7th, I went into my Phoenician gallery, and was surprised to find it dramatically changed. The statue heads had been rearranged, and although there had been more than forty when I last saw the room, now there were only twenty or twenty-five. It did occur to me that perhaps other statues had been removed by others imitating my theft method, which made me indignant. I took the head of a woman, stuffing it into my trousers. The suit I wore that day was of a heavy material, too large for my form, but the statue proved too large for me to conceal it properly. Even though I was wearing a raincoat, and despite the fact that I am obviously a man, it looked as though I were

10 This bust, stolen in 1911, carried the inventory number AM 880, Ibid

pregnant.

It took me at least twenty minutes to leave the museum. The statue kept shifting in my trousers, and I was nervous that it would drop down a trouser leg and shatter on the floor. This did not happen, but the task took its toll on my clothes, and I decided that it would be prudent to delay any further thefts for a few weeks, until I could get hold of a pair of leather cowboy trousers and some special suspenders. Unfortunately, being erratic in my behavior, my attention wandered to other activities, and it was several months before I returned to my antiquarian projects.

And now, one of my colleagues has spoiled all my plans for a collection by making this hullabaloo in the paintings department [by stealing *Mona Lisa*!] I truly regret this, for there is a strange, almost voluptuous charm about stealing works of art, and I will probably have to wait years before resuming my activities.¹¹

Why would Géry Pieret boast of his illegal exploits to a major newspaper? Perhaps he misunderstood the offer of a cash reward, thinking it would be good for any work stolen from the Louvre. But the Belgian was nothing if not self-promoting and, one might conclude, more than a little crazy. For Géry Pieret chose to approach *Paris-Journal* only a week after the *Mona Lisa* disappeared, an event that had prompted international headlines and outrage. In the days following the theft, three important newspapers, *Paris-Journal*, *Le Matin*, and *L'Intransigeant* attacked the Louvre for its dreadful security, in a series of vituperative articles. “Unimaginable” screamed the headlines. How could the museum permit such a masterpiece, such a symbol, to be stolen? The papers were open about their mistrust of the authorities, who they thought might well have been in on the theft. At best the police were too passive—the papers decided to investigate independently of the bungling police department, whose botched efforts we will examine in a later chapter. *Paris-Journal's* offer of a cash reward of 50,000 francs, no questions asked, to anyone who could bring them the *Mona Lisa* is what most likely prompted Géry Pieret to write, but pride and a touch of madness, which today reads as charming, certainly helped to egg him on.

In short, the *Mona Lisa* theft had grabbed the headlines and Géry Pieret, by now back in Brussels, having left the services of Apollinaire, did not like to have his own bold thefts overshadowed by this upstart *Mona Lisa* thief. *Paris-Journal's* offer of a generous reward brought some crazies out of the woodwork and, as we will see, unearthed the truth about an entirely different theft from the Louvre.

Was the Louvre indeed so poorly protected as to have been the victim of multiple thefts over the course of years? The answer was yes. A number of French newspapers published articles on various “disappearances” from the Louvre in 1906, including an Egyptian statuette and an Iberian bronze statue of a female that had only been acquired by the museum a few months prior, which may or may not have been the work of Géry Pieret.¹² But while Géry Pieret, writing under the rather melodramatic pseudonym of Ignace D'Ormesan, was seeking notoriety for his own activities, he inadvertently implicated two celebrity artists in the theft of the *Mona Lisa*: Picasso and Apollinaire.¹³

After his first correspondence with the newspaper, Géry Pieret pocketed a reward (of an undisclosed sum) and handed over the Iberian statue head to a *Paris-Journal* reporter, along with a letter stating that he was the man responsible for the theft of the statue head, which he incorrectly described as “Phoenician.” He claimed that he had stolen it from the Department of Oriental Antiquities on 7 May 1911.¹⁴ He also stated that this statue head was neither the first, nor the only object he had lifted from the Louvre. The newly-returned statue head went on display in a vitrine beside the offices of *Paris-Journal* before its planned return to the museum.

But Géry Pieret was not done with *Paris-Journal*. His next letter to them expressed some indignation at the way he had been portrayed. Here is the 30 August 1911 article from *Paris-Journal*:

No sooner did *Paris-Journal* announce, yesterday, the other theft at the Louvre, than crowds began to visit our display window to see the bust that was formerly a part of the museum collections, and to which we would soon return it. There were expressions of disbelief but the facts could not be argued with, and the realization that the organized looting of our museums certainly does exist, as revealed with such perverse ingenuity by our thief, caused general bafflement.

The visitors to our windows exchanged many interesting comments, from which we will spare the officials of the French government, for they were vigorous and not particularly favorable. So many

12 “On vol au Louvre”, *Le Matin*, Nov. 10, 1906; “On a volé au Louvre, et on y volera demain, si des solutions sérieuses ne sont prises”, *L'Intransigeant*, Nov. 11, 1906, p.2. These objects were found in a hairdresser's shop in 1908, and a Louvre guard was imprisoned for his role in their theft.

13 This letter was written on 9 September 1911 and was published 12 September 1911 in *Paris-Journal*, p.1

14 “Un voleur nous rapporte une oeuvre derobée au Louvre,” *Paris-Journal*, 29 August 1911, p.1. Translations from French are by the author, unless they are cited as “Quoted in,” in which case they match the original source in which they were quoted.

11 *Paris-Journal* 29 August 1911. Unless cited as “quoted in,” the translations are by the author.

cameras, both still and motion-picture, were aimed at the bust that the mysterious *Mona Lisa* might have turned green with envy.

We also had a visit, strictly business this time, from The Thief. After pocketing the agreed ransom, he handed us a sheet of paper on which he had written a rather amusing protest:

“To the Editor-in-Chief. In an age when the right of reply is universally recognized by the press, you will allow me a few words of protest against certain unflattering terms made about me in your issue yesterday, in relation to the theft of the Phoenician statuette. A professional thief, lacking in any morality, would remain untroubled by them. But I am not without sensitivity, and the few thefts in which I have engaged have been prompted by temporary ‘difficulties.’ Bourgeois society, which makes life very difficult for those without abundant funds, whatever one’s intellectual capacity, is responsible for these meanderings off the straight and narrow path...”

Géry Pieret was a thief with morals and sensitivity. It was society’s fault, and he was determined to be seen in a positive light, particularly since he had had the courtesy to turn in a statuette that he had taken the time and trouble to steal.

It is important to distinguish of which busts we speak. This female sculpted head was stolen in 1911, and it bore the museum identification number AM880. This was, at the very least, the third Iberian bust stolen by Géry Pieret, who at this point remained anonymous in his correspondence with *Paris-Journal* and was safely abroad in Belgium. His letter explained that he had stolen two others, one male and one female bust, on two separate visits to the Louvre on back-to-back days, not to mention a work of Egyptian plaster and who knows what else. He said that he then sold them to unnamed friends in Paris, one of whom was a painter.

It would turn out that the “unnamed friend” was Pablo Picasso. The two other busts in question were still in his possession. To be precise, they were hidden in his sock drawer.

The flush of press brought on first by the *Mona Lisa* theft and now by the uproar caused by the publication of Géry Pieret’s letters frightened Picasso and Apollinaire. As we shall see, both men at the very least knew that they were in possession of stolen art, and most likely, the two had both commissioned the theft, and were involved in it.

The pressure was so great that Apollinaire made the dangerous and perhaps foolish decision to personally return

the two statue heads that had been stolen in 1907. He left them at the *Paris-Journal* office on 5 September 1911. The next day the newspaper published an article about their return, featuring photographs of the statuettes along with the excuse provided by the unnamed owner: “One would not think that such unrefined objects could have been part of the Louvre collection...seduced by the relatively low price, he purchased them.”¹⁵

Seeing their photographs in the paper, Louvre curator Edmond Pottier recognized the two statue heads as entries AM1140 and AM1141 in the Inventory of Mediterranean Antiquities kept by the museum.¹⁶ Pottier immediately contacted the newspaper, and was told that the statues had been brought in by “...an honourable individual, who had purchased the two heads for a small amount of money, and who had grown concerned after the rumours in the press about the thefts of the Iberian statuettes, and thinking that he might, without realizing it, have purchased stolen objects, he brought them in to the newspaper.”¹⁷

The efforts of the paper to protect the identity of the seemingly honorable owner did not stand up to the police demand for information, desperate as they were in their fruitless search for the far more important *Mona Lisa*. Unfortunately for the owner, he was too much of a celebrity to go unrecognized.

It is unclear why it fell to celebrated art critic and poet Apollinaire to return the statues in person, for it was certainly Picasso who had possession of the stolen sculptures. Of the two, Picasso was the more domineering, the alpha dog in the relationship, and so the frightened Picasso might well have bullied Apollinaire into delivering the statues alone. Apollinaire did know the editors of *Paris-Journal* through his work as a journalist, and so might have thought that he could rely on their discretion and assistance. But why would Apollinaire not have simply sent the statues to the offices of *Paris-Journal*, by post or by messenger, rather than bringing them in person? In addition to imprisonment, as a foreigner, Apollinaire (like Picasso) faced the possibility of deportation from France, which would certainly have been of serious consequence to Apollinaire. One might argue that Apollinaire’s involvement in this affair indirectly brought about his premature death during the First World War, as we will discuss.

On September 7, Apollinaire was arrested under several

15 “Le Louvre récupère ses richesses,” *Paris-Journal*, 6 September 1911, p.1

16 Pottier, Edmond, August 29, 1911, Archives des musées nationaux, Musée du Louvre, folder A15. Pottier to Homolle, 31 August 1911

17 Pottier, Edmond, Sept. 6, 1911, Archives des musées nationaux, Musée du Louvre, folder A15.

accusations, half of them true. He was accused of harboring the thief of the Iberian statue heads, of which he was guilty. But the Paris police, grasping for a positive headline to offset the lack of progress on the *Mona Lisa* case, threw in another charge that was based on no apparent evidence: that Apollinaire was also involved in the theft of the *Mona Lisa*.

The police needed a scapegoat, and Apollinaire was an ideal choice, in that he appealed to the xenophobia of the French at the time. He was born in 1880 in Rome as Wilhelm Albert Włodzimierz Apolinary Kostrowicki, his mother a member of the minor nobility of Poland. His father was most likely Francesco Flugi d'Aspermont, a Swiss Italian aristocrat, who left soon after Apollinaire's birth. Apollinaire grew up speaking French, was educated in Monaco, and lived most of his life in Paris, in love with France and the French language and later considered to be one of the greatest francophone poets. But he was a foreigner and, in a country where the madness of the Dreyfus affair was a fresh memory, he was an ideal scapegoat. Right-wing publications attacked him—his biggest crime from their perspective was not having been born French.¹⁸

In police custody, Apollinaire vehemently denied involvement in the thefts of either the statue heads or the *Mona Lisa*. He did however admit that he knew the man who had stolen the statue heads. He had housed Joseph-Honoré Géry Pieret during the thefts, employing him as a personal secretary but dismissing him from service soon after the thefts took place. This was how the police first became aware of the name Géry Pieret, who was quickly recognized as the author of the pseudonymous letters to *Paris-Journal*.

The police had not a shred of evidence linking Apollinaire to the *Mona Lisa* theft and, with the thief still at large, were not overly interested in who stole a couple of Iberian statues. The press and the public would rail against them until the *Mona Lisa* was recovered, and it soon became clear that Apollinaire had nothing to do with that affair.

The day after the papers reported Apollinaire's arrest, *Paris-Journal* received another letter from Géry Pieret (who was safely abroad in Brussels), who declared that Apollinaire was innocent, claiming that he alone had been responsible for the theft of the statue heads. It was clear that, while Géry Pieret sought notoriety and was shameless about his own involvement in the affair, he held no grudge against Apollinaire, and tried actively to distance his former employer

from the thefts.

One of the statue heads, which had been stolen in 1911 and returned along with the first letter by Géry Pieret, had been stashed in Apollinaire's apartment. But the other two statues, those returned by Apollinaire, had been in Picasso's possession since their theft in 1907. We know that Picasso kept them hidden among his clothes because his lover at the time, Fernande Olivier, had noted in her memoir how she always found it odd that, of all of the artworks in Picasso's collection, most of which were displayed prominently around his apartment and studio, only these two statue heads remained resident at the bottom of his wardrobe. She wrote, that Picasso "took great care of his [1907] gifts, and kept them buried in a wardrobe."¹⁹

Fernande Olivier wrote of the affair in her memoir:

Géry Pieret gave Picasso two little statuettes without revealing where he had acquired them. He said only that they should not be displayed in too conspicuous a manner. Picasso was enchanted and he treasured these gifts and buried them at the back of a cupboard... I remember very well that [after the *Paris-Journal* articles] Apollinaire and Picasso had a horrible time. I can see them both now: remorseful children, paralyzed by fear and making plans to flee the country. It was thanks to me that their despair stopped short of truly drastic measures. They decided to remain in Paris and dispose of the compromising objects. But how?

Finally, after a hurried dinner and a long evening of waiting, for they had decided to go that night and hurl a suitcase containing the statuettes into the Seine, they set out on foot around midnight, carrying the suitcase. They returned at 2am, completely exhausted. They still had the suitcase with them, with the statuettes inside. They had wandered the streets, unable to find the right moment to dump the suitcase, or more likely not daring to do so. They thought they were being followed the whole time. Their imaginations dreamt up a thousand potential disasters, each more fantastic than the previous. Though I shared their alarm, I had observed them closely earlier that evening. I am sure that, without realizing it, they imagined themselves as characters in a drama, to the point that though neither of them knew the first thing about the cards they held during those painful hours of waiting for the moment when they were to leave for the Seine, they pretended to play cards, which I'm sure was an attempt to imitate bandits they had read about who coolly played cards before riding off. In the end, Apollinaire spent the

18 One may wonder why the actual thief was not demonized—in this period, as we will discuss later, the idea of a gentlemanly thief was romanticized, based largely on the novels, in France, of Maurice LeBlanc. As a Belgian, Géry Pieret was foreign but francophone, and therefore not nearly so foreign as Picasso and Apollinaire who may have spoken good French but who would have drawn the xenophobia of many of the French at this time

19 Olivier, Fernande *Picasso et ses amis* (1933), Pygmalion: Paris, 2002, p.184

night at Picasso's and the next morning went to the office of *Paris-Journal* where he offered them the statuettes on condition that their source be kept secret.²⁰

Due to his long-standing connections with *Paris-Journal*, Apollinaire may have felt confident that his identity would remain secret. He had written for the newspaper in the past and, ironically enough, he wrote one of the first articles published by the rival paper, *L'Intransigeant*, on the *Mona Lisa* theft.²¹ But he was perhaps unwise to rely on discretion from *Paris-Journal*, for the newspaper's own staff art critic was on bad terms with him, and would likely have leapt at the opportunity to inconvenience the more famous Apollinaire.²²

The next day, 6 September, *Paris-Journal* published the following:

While Waiting for the Mona Lisa, the Louvre Recovers its Treasures

A pair of new recoveries are made to *Paris-Journal*—the possessor of the two other stolen statuettes mentioned by “our thief” has turned them over to us. The stone man and the stone woman have been identified by the Louvre administration.

Paris-Journal recently returned to the Louvre an antique bust, an example of Iberian art but now known under the incorrect designation of “Phoenician” because the thief used this term, in his unusual account of the affair which we printed verbatim.

Our readers will not have forgotten that in his account he mentioned that other statues had been stolen several years ago and sold to an art lover. It was not specified whether those statues had been bought in good faith or if the art lover in fact knew from where they came.

The Typewritten Letter.

Yesterday we found in our mail a letter written on a typewriter. This document came from the mysterious art lover whose identity neither we nor the police could discover.

He asked us, of course, to promise to be discreet, and offered to come in person if we would be willing to take the responsibility of returning the stolen statues to

the Louvre without involving him.

Of course we accepted, our first consideration being the completion of our national collection.

A Visit.

At the appointed time, the mysterious visitor was announced. Our editor-in-chief met him.

The statement by the possessor of the statues may be summarized as follows:

An amateur artist, reasonably well-off, his greatest pleasure is in collecting art. The sculptures in question were offered to him a few years ago. Seeing that these samples were of a rather crude style, he had no idea that they might have come from the Louvre. Since he was attracted by the relatively low price, he bought them. But recently his attention was drawn to the thief's story as published in *Paris-Journal*, a story that has had wide repercussions.

The reproduction on our pages of a “Phoenician” statuette made him realize that he was in possession of works that were very similar, and the fact that the thief had mentioned other statues convinced him that he had them in his collection.

His dismay may easily be imagined. At first he did not know how to proceed, but then it occurred to him that he might turn to *Paris-Journal*.

The Stone Man and the Stone Woman.

Our visitor brought the sculptures in question with him to the meeting in our office. They match the description provided by the thief. One is of a male head with an enormous ear, and the other is the head of the woman whose hair is rolled into a sort of a twist. The dimensions are approximately those of the statue that we recently restored to the Louvre.

Yes, these are Both Objects Stolen from the Louvre!

The curator in charge of these statues at the Louvre, M. Pottier, said: “Yes, these are the two objects. They are two fine works from the period corresponding to the end of the Roman Republic [in Iberia].”²³

20 Olivier, quoted in Esterow (1966), p.128, and checked against the original

21 “Le rapt de la Joconde,” *L'Intransigeant*, 24 August 1911, p.1

22 Wilkins, Karen “Picasso: From Les Demoiselles to Parade,” *New Criterion*, February 1997.

23 *Paris-Journal* 6 September 1911, quoted in Esterow pp.128-130 and checked against original source for alternative translation and accuracy, as with all quotes, unless noted as “quoted in...”

Apparently the handling of this affair, and the way in which it was published in *Paris-Journal* pleased G ry Pieret. A letter from him was published the following day, in the 7 September 1911 edition of *Paris-Journal*:

I do not want to leave France without once more thanking you for the chivalrous manner in which you handled the little matter in which I was involved. I hope with all my heart that the *Mona Lisa* will be returned to you. I am not counting very heavily on such an event. However, let us hope that if its present possessor allows himself to be seduced by the thought of some gain, he will confide in your newspaper, whose staff has displayed toward me an admirable degree of discretion and honor. I can only urge the person who now possesses Vinci's masterpiece [sic] to place himself in your hands. He has a colleague's word for it that your good faith is above suspicion.

Goodbye. I am about to leave France to finish my novel.²⁴

But while G ry Pieret was pleased with *Paris-Journal*, Apollinaire ended up with a less than satisfactory relationship with them, as it seems that someone at the newspaper informed the police either that Apollinaire was the man who brought in the statuettes or that Apollinaire had a relationship with both the statuettes and *Paris-Journal's* informant-thief, G ry Pieret. Apollinaire was arrested at his apartment at 37 Rue Gros in the suburb of Auteuil on 7 September.

On 9 September 1911, *Paris-Journal* added their next installment of the saga:

It was not without emotion and surprise that Paris has learned of the arrest made by the S ret  in connection with the recent return of Phoenician statuettes stolen from the Louvre in 1907.

The name of the person arrested is enough to account for this strong reaction. He is M. Guillaume Kostrowsky, known in literary and artistic circles as Guillaume Apollinaire.

M. Guillaume Apollinaire, of Russian-Polish origin, is thirty years old and lives in Auteuil at 37 Rue Gros.

He is secretary of a literary review, *Les Marges*, and the author of a book called *L'H r siarque et Cie*, a candidate for the last Prix Goncourt. He writes for many other magazines and reviews; indeed, the readers of *Le Matin* have seen his short stories in our department "Tales of a Thousand and One Mornings."

Such is the man who was arrested the night before last by order of M. Drioux, on the charge of "harboring a criminal." What exactly are the charges against him? Both the Public Prosecutor and the police are making a mystery of the affair.

"Without endangering progress already made," *Le Matin* was told, "we can say nothing except that we are on the trail of a gang of international thieves who came to France in order to pillage our museums. M. Guillaume Apollinaire committed the error of sheltering one of these criminals. Was he aware of what he was doing? That is what we will determine. In any case, we are certain that we will shortly be in possession of all of the secrets of this international gang, the name of one member of which has already been uncovered by us."

In artistic and literary circles, however, where M. Guillaume Apollinaire is very well-known and well-regarded, it is believed that the authorities have been overhasty, and that before long the former Prix Goncourt candidate will be exonerated.

The following is what we have been able to ascertain concerning the arrest.

The Arrest.

On the afternoon of the day before yesterday, two people presented themselves at 37 Rue Gros in Auteuil. They asked for the apartment of M. Guillaume Apollinaire, where they sat with the occupant for about one hour, after which they departed. A few minutes later, M. Apollinaire joined the mysterious visitors in the street after leaving his keys with the concierge. The three men entered a taxi which drove quickly away towards the Department of Justice.

The gentlemen who had spoken with M. Apollinaire were none other than two inspectors working under M. Hamard, charged with taking the writer to the S ret  for questioning.

M. Apollinaire was first met by M. Jouin, assistant chief of the S ret , and was soon after brought to speak with M. Drioux, the investigating magistrate.

Before the Judge.

The interview of M. Apollinaire lasted well into the night. After the writer had provided his personal details, M. Drioux informed him that anonymous denunciations had been received by the Public Prosecutor's Office, to the effect that he had been in touch with the thief of the

24 *Paris-Journal* 7 September 1911, as above, in Esterow pp.130-131

Phoenician statuettes, and also that he was a receiver of stolen goods, having recently returned, through *Paris-Journal*, two other busts belonging to the same collection.

On hearing these charges, M. Apollinaire protested vehemently, but soon after admitted that he was acquainted with the thief.

“But,” he added, “there is nothing in the law that forces me to reveal his name to the authorities.”

“In that case,” replied M. Drioux, “I charge you with complicity in harbouring a criminal.”

Dismayed by the threat, Apollinaire exclaimed: “All I can tell you is that I knew the thief of the statuettes. He is a young Belgian. I employed him as a secretary for a few weeks. But when I learned that he was a thief, I fired him and took it upon myself to return, via *Paris-Journal*, the objects that he had stolen. What have I done wrong?”

Then he finally revealed the name of his thief/secretary.

Nevertheless, M. Drioux confirmed that he had signed a warrant for Apollinaire’s arrest, and he was then placed in a cell.²⁵

When Apollinaire was questioned in custody, he was compelled to reveal the link to Picasso in the Louvre theft, which led to Picasso being questioned. The two were interrogated separately, and neither represented himself with honor. Picasso was so frightened, particularly of being deported back to Spain, that he denied having ever seen Apollinaire, at that time his closest friend.²⁶

Picasso’s lover, Fernande Olivier, wrote the following about Picasso’s interrogation:

At around 7am one morning there was a ring at Picasso’s door. The maid had not yet come downstairs, so I opened the door to see a plainclothes policeman flashing his badge. He introduced himself and asked that Picasso follow him in order to appear before the examining magistrate at 9am. Shaking with fear, Picasso dressed, but I had to help him, as he was almost mad with terror. The good-natured policeman was friendly, smiling, wily, insinuating, and he did his best to find out what he could. But Picasso was so suspicious that he would say nothing. He arrived at the prefecture of police with the policeman, still uncertain as to why he was being brought in.

After they arrived at the police station and had waited for some time, Picasso was led into the office of the magistrate. There he saw Apollinaire, pale and disheveled and unshaven, with his collar torn, wearing no tie, his shirt undone, looking gaunt, a pitiful scarecrow who made you feel pathos just to look upon him. He had been in prison for two days and after he had been questioned like a common criminal for hours he had confessed to everything they had asked him to. The truth played only a walk-on role in his confession. He would have admitted to anything only to be left in peace. Powerfully moved by this sight, the trembling Picasso became desperate: his heart failed him even more than it had that morning when he had been unable to dress himself, as he was shivering so violently.

The scene, which he described for me later, is impossible to articulate. He could only say what the magistrate asked him to say. In addition, Apollinaire had admitted to so many things, true and false, that he had inadvertently compromised Picasso, so intense was his distress and confusion. Apparently they both wept before the judge who was quite fatherly and who had a hard time maintaining his judicial severity in the face of their childish panic. It has been said that Picasso denied his friend and pretended not to know him. This is quite untrue. Far from betraying him, this moment brought out the true strength of their friendship...

...The whole affair was shelved and forgotten after a time, but for many weeks after, Picasso and Apollinaire still thought that they were being followed. Picasso would only go out by night in a taxi, and even then he was in the habit of switching cabs in order to put his “pursuers” off the trail.²⁷

Olivier’s account sounds credible since, although she was Picasso’s lover, she was not afraid to report how frightened he was, and therefore it seems that she was comfortable painting him in a less-than-heroic light. And yet she claims that he never denied knowing Apollinaire. The truth is not known. But since Olivier does not report further details of the confession, her account does not reveal exactly what Apollinaire confessed to and how it implicated Picasso.

Apollinaire’s version of the interrogation is rather different, and suggests that Picasso showed less solidarity than might have been hoped.

They questioned me and threatened to search the homes of all of my closest friends. Eventually the situation

25 *Paris-Journal* 9 September 1911, quoted in Esterow pp.132-33
26 For more on this, see Richardson (1997)

27 Olivier, Fernande *Picasso and his Friends* (Appleton-Century 1965), p.149-150

became completely draining and terrible. Finally in order to avoid causing greater problems still for my girlfriend and my mother and my brother, I was compelled to tell them about X: I did not describe his true role in the affair, I merely said that he had been taken advantage of, and that he had never known that the antiquities he bought came from the Louvre.

The following day there was a confrontation with X, who denied knowing anything at all about the affair. I thought that I was lost, but the investigating magistrate saw that I had done nothing, but that I was being victimized by the police because I had refused to betray the fugitive and turn him over to them, and he permitted me to question the witness myself. Using the rhetoric dear to Socrates, I quickly forced X to admit that everything I had said was true.

...Such is the story, bizarre, incredible, tragic, and amusing all at the same time. The upshot was that I was the only person arrested in France for the theft of the *Mona Lisa*. The police did all they could to justify their action. They questioned my concierge and my neighbors, asking if I had brought home little girls or little boys and similar nonsense. If my life had been in the slightest way objectionable, I'm sure that they would not have let me go—the honor of the establishment was at stake. It made me understand the man who said that if he were accused of stealing the bells of Notre Dame, he would flee the country immediately. I will add that no apology was ever offered to me.²⁸

Le Matin reported that Apollinaire had also confessed to helping Géry Pieret escape. He had taken him to the train station, bought him a ticket, and given him 160 francs.²⁹ Perhaps that was the extent of what the police had on Apollinaire, because the same newspaper, in an article entitled “The Mistake,” went on to say:

The police, most likely to avenge themselves for certain justified sarcastic remarks aimed at them in the past have, with their usual ineptitude, thrown their hooks into someone who knew the thief and who, an even greater coup for officers of the law, happens to be a man of letters *and* a foreigner.

Le Matin had noticed that, fresh from the Dreyfus Affair, the police had chosen to divert attention from their own failure to locate the *Mona Lisa* (which, it must be recalled, was the real prize that had been stolen) by focusing on a foreigner who had

merely known the thief of far less important objects.³⁰

Though Géry Pieret was in Belgium, he was still actively involved in this dialogue of newspapers, and he clearly had no hard feelings for Apollinaire. He wrote his next letter to *Paris-Journal* to convey his dismay at the treatment of his former employer. He continued to write using a pseudonym: the name of a character in Apollinaire's *L'Hérésiarque et Cie* who was based on Géry Pieret, Baron Ignace d'Ormesan. “It is deeply regrettable, and indeed sad, that a kind, honest and scrupulous man like M. Guillaume Apollinaire should suffer for a single moment because of the personal affairs of someone who was, for him, merely a literary subject—Baron Ignace d'Ormesan.”

Apollinaire spent a total of six days in custody, while his influential friends, including the lawyer and friend from his school days, Toussaint Luca, helped to secure his freedom. *Paris-Journal* wrote on 13 September that Apollinaire's “bad dream is ended,” and he was released. The newspaper deplored the way Apollinaire was treated, handcuffed, and it scolded the police for not providing him with a taxi, seeing as he was a “penniless” man who had “stolen nothing and lives by his pen alone.”³¹

Paris-Journal quoted a transcript from Apollinaire's hearing before his release:

Judge Drioux: “You admit that even though you knew [the statuette] was stolen, you kept that third statue, stolen in 1911, in your house from June 14th to August 21st?”

Apollinaire: “Certainly. It was in Pieret's suitcase. I kept everything—the man, the suitcase, and the statue in the suitcase. I promise you that I was not happy about it, but I did not think that I was committing a serious crime.”

Judge Drioux: “Such a degree of indulgence surprises me.”

Apollinaire: “Here is part of my reason. Pieret is to some extent my creation. He is a very strange fellow and after studying him I made him the hero of one of the last short stories in my *L'Hérésiarque et Cie*. So it would have been a kind of literary ingratitude to let him starve.”

Judge Drioux: “You bought, quite recently, it has been alleged, a castle in the region of the Drôme?”

Apollinaire: “You must be referring to a castle in

28 Quoted in Esterow (1966), p.140

29 *Le Matin* 10 September 1911

30 Ibid.

31 *Paris-Journal* 13 September 1911

Spain. I have seen many of those evaporate.”

Judge Drioux: “I have a letter here from someone who writes that you borrowed two books from him and that one them, *La Cite Gauloise*, you never returned.”

Apollinaire: “I would guess that his reason for lending them to me was so that I could read them. I have not read them yet. I will return them to him as soon as I can.”

It is the stuff of farce that Judge Drioux, at a hearing with the accused, could come up with nothing more damning to throw at him than the fact that he had borrowed and failed to return a book from a friend. This account, in which the judge seems severe and unsympathetic is another that is at odds with what Olivier wrote in her memoir. Such discrepancies make it difficult to know what to believe, although the courtroom account is, in theory, objective whereas Olivier’s memoir is not.

Soon after his release from police custody, Apollinaire gave an interview to *Le Matin*, in hopes of setting the record straight and parrying some of the right-wing accusations against him. Without naming Picasso, he stated that “one of my painter friends” had unwittingly purchased the two stolen sculptures back in 1907. He claimed that he had known that the statues were stolen, but that his friend had not, and that Apollinaire neglected to inform him. This seemingly odd admission was forced upon him, as the police had taken possession of Apollinaire’s extensive recorded correspondences, among which were letters from Géry Pieret discussing the statue thefts.³²

When asked after his release about whether Géry Pieret could have stolen the *Mona Lisa*, Apollinaire told a reporter:

On 21 August I had definitely decided to ask Géry Pieret to leave my house. This fateful date had a great deal to do with my arrest. The police saw a connection between the theft of the *Mona Lisa* and the time Pieret left my apartment. Those two events coincided with the 21st, a disturbing coincidence, of which I am only the victim of circumstance. However I can state that on the 21st Pieret was not absent from [my home on] Rue Gros. At the moment that I fired him, I decided to give him a departing gift of a few engravings. “You can sell them,” I told him. “That way you’ll have a little cash.” He spent the morning selecting the engravings and at 2pm Géry went out and bought some eggs and fruit which we ate together for lunch. He was gone for only fifteen minutes

or so, hardly long enough to steal the *Mona Lisa*.³³

After making this statement, Apollinaire went home and prepared to attend a party held by his friends in honor of his release from custody. He was late for the party, because his first item of business upon returning home was to write an article about his time in the Santé prison, to be published in *Paris-Journal*.

As the heavy door of the Santé shut behind me, I felt as if I had died. However it was a bright night and I could see that the walls of the courtyard in which I found myself were covered with climbing vines. I then went through another door and when that closed I knew that the area that sustained vegetation was behind me, and I felt that I was now somewhere beyond the boundaries of the earth, where I would be completely lost.

I was questioned on several occasions and a guard told me to take my new gear: a rough shirt, a towel, a pair of sheets, and a woolen blanket. Then I was taken down endless corridors to my cell, number 15, section 11. I had to strip right there in the corridor and I was searched. I was then locked in my cell. I slept very little because of the electric light that is kept on throughout the night.

Everyone knows what prison life is like: a limbo of boredom, where you are alone and yet constantly under surveillance.

The food given by the state to its prisoners is small in portion but reasonably good. Every morning there is bread and, after a daily walk, there is broth with a few vegetables swimming in it. At three in the afternoon there is a dish of either beans or potatoes, and on Sunday there might be some meat to vary the menu—a rather lean one, but of excellent quality...

...The special delivery letters and telegrams from my attorneys, Maitres José Théry and Arthur Fraysse, lifted my spirits. I learned that the media was defending me, that writers who are the honor of France had spoken out in my favor, and I felt less alone. But all of my misery returned on Tuesday, when I was “extracted” to be taken to see the investigating magistrate...

...Eventually the long wait ended and a guard led me, handcuffed, to the magistrate’s office.

What a surprise to find myself stared at like a strange beast! Suddenly fifty cameras were aimed in my direction, the magnesium flashes casting a dramatic

32 Jacquet-Pfau, Christine and Décaudin, Michel “L’Affaire des statues. Suite sans fin...,” *Que vlo-ve?*, 23 (July-Sept. 1987), pp. 21-3

33 Quoted in Esterow, p.136

light over the scene in which I played the starring role. I soon recognized a few friends and acquaintances and there were my attorneys by my side. I think I must have laughed and cried at the same time...

...There remains one obligation to fulfill: allow me to express my thanks to all the newspapers, all the writers, all the artists who have given me such touching support and solidarity. I hope that I may be forgiven for not yet having thanked each person individually. But that will be done, by letter or by personal call. However the observation of the basic laws of etiquette will not make me feel that I have paid my debt of gratitude.³⁴

Apollinaire tried to paint himself in a better light, stating in his interview that he tried unsuccessfully to convince Géry Pieret to return the sculptures as soon as he realized that they were stolen. But Géry Pieret was determined to sell them. As Apollinaire told it, Géry Pieret did not know Picasso, but one day heard Apollinaire mention his “painter friend” (unnamed in the *Le Matin* interview), and took it upon himself to offer the freshly stolen sculptures to him. Géry Pieret brought the statues to the “painter friend [who]...without imagining that the objects had been stolen, [Picasso] bought one of the two sculptures for the price of 50 francs. Since [Picasso] refused to buy the second sculpture, Géry Pieret kindly gave it to him.”³⁵ Picasso had a two-for-one stolen art deal on his hands.

As we will see, there are numerous holes in this version of the story which might be filled with more damning facts.

Under interrogation in police custody, Apollinaire told the police of Picasso’s involvement—something he never once did in public or for the press. His version of the story, or rather one of his versions of it, was only committed to paper in July 1915, in a private letter to a friend, Madeleine Pages. Apollinaire narrated the affair as follows:

In 1911, I housed a young man, smart but crazy and unscrupulous – someone rather more stupid than evil. In 1907 he had stolen two Iberian statues from the Louvre that he then sold to Picasso—a great artist, but also unscrupulous, and one whose name was never once associated with the affair, thanks to my intervention. I tried, in 1911 and in 1907 or 1908, to convince Picasso to return the statues to the Louvre, but his aesthetic studies urged him to keep them, and from that Cubism was born. He told me that he had cracked open [the statues] in search of the mysterious principles of the ancient and

barbaric art form of which they were a part. Meanwhile I had found a way of freeing him from [his problem of possessing stolen goods] without damaging his honor. My friend Louis Lumet, an official to the Ministry of Fine Arts to whom I had told the story, thought to turn [the theft] to good purpose by exposing the Louvre in a journalistic coup. We would have proposed to *Le Matin* to show the public just how poorly the Louvre’s treasures were secured by first stealing one statue – a big deal – and then another – another big deal.³⁶

Thus, according to Apollinaire, the renowned critic of modern art, the entire invention of Cubism was thanks to this theft and Picasso’s inspiring possession of the stolen statues—a small sacrifice for the Louvre, in exchange for the wonders of that critical Modernist movement. And as we have mentioned, one of Picasso’s greatest masterpieces, *Les Femmes d’Alger*, was directly influenced by the statues he acquired through Pieret and was begun the same year they were stolen.

The letter went on to explain how Picasso’s fascination with the statue heads soured very suddenly after the *Mona Lisa* theft. He realized that the publicity from the *Mona Lisa* investigation would mean that a close eye would be cast on the Louvre, and other works stolen from it might be compromised. When Géry Pieret’s letter was published, Picasso really did get scared—though the letter was not signed, Picasso had no doubt as to its author. Géry Pieret was a loose cannon, unpredictable and dangerous in that he was both seeking media attention and was able to point the finger of blame at Apollinaire and Picasso for their co-involvement in the “*affaire des statuettes*.”

In his letter, Apollinaire continued: “I went to see Picasso and told him how foolishly he had acted, and how risky was his behavior. I found a terror-stricken man who told me that he had lied [about cracking the statues open], as the statues were intact. I told him to return them to *Paris-Journal*, which he did.” It was always a strange statement to say that Picasso claimed to have broken open the statue heads in order to learn something of how they were created. Anyone familiar with sculpting would know that stone is sculpted from the outside, not the inside, and that cracking open a stone sculpture will reveal nothing about the process by which it was carved. In his letter, Apollinaire also implies that Picasso, not he, returned the statues. These incongruities may have been the result of several years having passed between the theft (1907), the return of the sculptures (1911) and the letter (1915), or may have been a case of Apollinaire toying with the truth to impress his lady friend. Likewise, in the letter Apollinaire

³⁴ *Paris-Journal*, quoted in Esterow, pp.137-8

³⁵ “M. Guillaume Apollinaire raconte l’histoire de son secrétaire Géry Pieret, Baron Ignace d’Ormesan, voleur au Louvre et en quelques autres lieux”; “M. Apollinaire prouve que Géry Pieret n’a pas pu voler la *Joconde*”, *Le Matin*, Sept. 13, 1911, p. 1.

³⁶ Apollinaire, Guillaume, Letter to Madeleine Pages July 30, 1915, in Apollinaire, *Lettres à Madeleine. Tendre comme le souvenir*, Gallimard : Paris, 2005, pp.96-8

altered his initial story, stating that he “was obliged not to say what Picasso’s role [in the affair] had been, but that he had been abused and that he did not know that the antiquities that he had bought came from the Louvre.”³⁷

It will come as no surprise that further evidence makes clear that Picasso certainly knew that the statue heads he purchased from Géry Pieret had come from the Louvre. The Italian painter Ardengo Soffici, who met with Picasso in Paris in 1905, noted that Picasso frequented the Louvre, where he loved to “pace around like a hound in search of game, between the rooms of the Egyptian and Phoenician antiquities.”³⁸ We also now know that Picasso knew Géry Pieret reasonably well in 1907, having surely met him through their mutual friend, Apollinaire. In letters between Géry Pieret and Apollinaire, Picasso is frequently mentioned by name and, as if that were not enough, in April 1907 Picasso received a postcard from Géry Pieret.³⁹ A note in Géry Pieret’s correspondence mentions that in April 1907 he actually owed Picasso some money for a painting he had commissioned from him—of this, Géry Pieret wrote to Apollinaire from Brussels that he “would have paid [Picasso] generously when he returned [to Paris].”⁴⁰

So, there is no question that Géry Pieret knew Picasso reasonably well, and that Picasso would surely have known the origin of the two statue heads offered to him for purchase in 1907. But could Picasso have really been surprised by Géry Pieret’s offer? Or might Picasso have actually commissioned the theft? How deep was his involvement?

Picasso as Criminal Collector

A common popular misconception about art crime is that most art thefts are commissioned by criminal collectors, like Doctor No in the James Bond film. In reality, only a negligible percentage of known art thefts throughout history have been commissioned by a collector—that is to say, someone who desired an artwork for his private personal collection and hired a thief to steal it for him. There are perhaps two dozen such cases confirmed, which is an insignificant number when one considers that every year there are anywhere from 50,000-100,000 art objects reported stolen worldwide.⁴¹

37 Ibid., p.98

38 Soffici, Ardengo *Ricordi di vita artistica e letteraria* (Florence, 1931), p.47

39 Postcard addressed to Picasso from Bruxelles and signed Guillaume Apollinaire and Géry Pieret, April 13, 1907: Caizergues, Pierre and Seckel, Hélène (eds.) *Picasso Apollinaire. Correspondances* (Gallimard: Paris, 1992), p.59

40 Letter and postcard sent by Pieret to Apollinaire from Brussels respectively on date April 4, 1907 and April 7, 1907: Stallano, Jacqueline “Une relation encombrante: Géry Pieret”, in Michel Décaudin (ed.), *Amis européens d’Apollinaire*, Sorbonne nouvelle: Paris, 1995, p.17

41 Art objects may be roughly defined as man-made creations deemed part of the cultural heritage of a nation or people, the primary value of which

Criminologists and art police rightly tend to downplay the popular misconceptions perpetuated through film and fiction, largely in an effort to shift the perception of art crime away from *The Thomas Crown Affair* and to emphasize its severity, its extent, and the involvement of organized crime and terrorist groups.⁴² But this case is one of the few exceptions to the rule, an instance when truth does follow popular misconception. In the *affaire des statuettes* we seem to have one of the famous exceptions to the rule that collectors do not commission art thefts. The criminal collector, our Doctor No, in this case appears to have been Pablo Picasso.

Since 1904 Picasso had been living in a houseboat called *Bateau Lavoir* in the Montmartre quarter of Paris. It was in September 1904 that the Louvre opened a small room on its ground floor to display the museum’s collection of ancient art from the Iberian Peninsula.⁴³ Among the works on display were statue heads from Cerro de los Santos, an important archaeological site in Picasso’s native region of Andalusia. The two statue heads that ended up in Picasso’s wardrobe were displayed at that time in this room, where they remained until Géry Pieret “liberated” them.⁴⁴

is non-intrinsic (as opposed to jewelry, for example, the value of which is mainly the sum of its components—unless the jewelry was made or owned by a renowned artist or individual, in which case its value would be raised considerably for non-intrinsic reasons). For precise numbers of reported thefts and artworks stolen, please refer to Interpol’s Stolen Works of Art CD-ROM, published annually, or any of the Carabinieri Yearbooks, which list annual thefts from within Italy alone as ranging from 20,000-30,000 objects reported stolen. Reported thefts certainly represent only a fraction of the actual number of thefts taking place each year. For various reasons, many other thefts go undetected, unreported, or are improperly filed and reported

42 The link to organized crime is documented in numerous case studies, but the connection to terrorism has been discussed and is believed by prominent government bureaus, but has not been sufficiently substantiated by documents in the public record, beyond a handful of important cases. This assertion, as well as the ranking of art crime as the third highest-grossing criminal trade worldwide comes from a UK National Threat Assessment, conducted by SOCA (Serious Organized Crime Agency). The statistics for the study were provided by Scotland Yard in 2006/2007, but are classified. The report remained in the Threat Assessment for several years. The terrorist links to the Middle East were brought to European attention by the Interpol Tracking Task Force in Iraq and were reported at the annual Interpol Stolen Works of Art meeting in Lyon in 2008 and 2009, after prior meetings had been held in Lyon, Amman, and Washington. The Head of Interpol IP Baghdad claimed to have proof of the link between Islamic Fundamentalist terrorist groups and art crime (primarily antiquities looting). Major bureaus, from Interpol to Scotland Yard to the Carabinieri to the US Dept of Justice, believed these reports and still broadcast the claims of it, so there is no reason to doubt it—but the details have yet to be made available to the general public or scholars

43 *Chroniques des arts*, Nov. 24, 1904, quoted in Aulanier, Charles *Histoire du palais et du Musée du Louvre*, vol. 9, Musées nationaux : Paris, 1964, p. 137; Catoni, Maria-Luisa “Parigi, 1904 : Picasso ‘iberico’ e le *Demoiselles d’Avignon*”, *Bollettino dell’arte*, nos. 62-3 (July-October 1990). This fact in connection with this case was first noted by Silvia Loreti

44 Loreti, Silvia “The Affair of the Statuettes Reexamined: Picasso and Apollinaire’s Role in the Famed Louvre Theft” in Noah Charney (ed.) *Art & Crime: Exploring the Dark Side of the Art World* (Praeger 2009), pp.52-63

The curator of the room, the aforementioned Edmond Pottier, noted that at the end of 1907 most of the statue heads were placed in museum storage.⁴⁵ That means that G ry Pieret may have had to descend into the labyrinth of the Louvre’s art storage in order to steal the third head, which he took in 1911. It should be noted that the Louvre’s collection is so enormous that only an estimated one-third of its collection is on display in the enormous museum, with two-thirds packed in storage.⁴⁶

In 1897 the museum had acquired a renowned female Iberian statue head referred to as the *Lady of Elche*. A French archaeologist went so far as to suggest that the theft of the *Mona Lisa* might have been in retaliation for the purchase by the Louvre of the *Lady of Elche*, which Spaniards might feel rightly belonged in Spain.⁴⁷ Perhaps the thefts of the other Iberian statue heads were motivated by this sentiment?

From 1897 through the opening of the Iberian Room, ancient Spanish art had a pride of place in the Louvre. Picasso scholar Anne Baldassari uncovered another piece of evidence: a photograph in the Picasso Archives taken by Picasso of a man standing in his studio on the Bateau Lavoir, posing beside a plaster copy of the famous *Lady of Elche*.⁴⁸ This is further evidence of Picasso’s interest in the Louvre’s collection of Iberian statuary.

Picasso was a regular visitor to the Louvre and a passionate admirer of Iberian art, which he felt was the root of all Spanish art. It is inconceivable that he would not recognize the statue heads presented him by G ry Pieret. It is also beyond plausibility that G ry Pieret would randomly choose to steal a pair of statues that were so ideally suited to Picasso’s tastes, and then happen to offer them to the Spaniard. In a court of law, a prosecuting attorney would argue that these coincidences placed it “beyond reasonable doubt” that Picasso put in a request for these particular statues, thereby effectively commissioning the theft.

Apollinaire’s 1915 letter to Madeleine P ges was revealing in other ways, for it states that Picasso had purchased both statues offered by G ry Pieret, directly contradicting his previous statement to *Le Matin* that Picasso had purchased only one of the two, declining the second, the statue with over-sized ears, which G ry Pieret subsequently gave him at no charge.

Compelling evidence comes from Picasso himself, in

an interview he gave decades later, in 1960, when the whole *affaire des statuettes* must have felt lifetimes behind him. He stated, “Do you remember that episode in which I was involved? When Apollinaire stole some statuettes from the Louvre? They were Iberian statuettes...well, if you look at the ears of *Les Demoiselles d’Avignon*, you’ll recognize the ears of those sculptures.”⁴⁹ Should we believe this statement that “Apollinaire stole some statuettes?” Does this mean that Apollinaire actually did the stealing, or merely facilitated the theft? Or was Picasso, now in his old age, trying to deflect the blame from himself, instead pinning the crime on his old friend, now long-deceased?

One more clue further confirms that G ry Pieret’s selection of the Iberian statue heads was not random, as he would have liked us to believe. Recall that he mistakenly referred to the statuettes as “Phoenician,” in his letter to *Paris-Journal*. This suggests that G ry Pieret had no particular knowledge of, or interest in, the sculptures that were stolen. The Louvre’s Iberian room was tucked out of the way, relatively difficult to find and not the sort of place that one would accidentally wander into. According to Edmond Pottier, the room was also frequently closed to the public, making it that much less likely a target for a random theft.⁵⁰ It had none of the cachet of the Greek rooms or the painting galleries. While it is a stretch to think that G ry Pieret would randomly happen to choose that room to burgle, it is beyond plausibility that he should happen to steal the very statues that Picasso had so admired. G ry Pieret’s confusion about Phoenician versus Iberian was most likely because someone else had told him specifically where to go and what to remove, which included objects that were out of the way and, frankly, not particularly convenient to carry. Recall that he also stated that he stole the two statue heads in 1907 on consecutive days, one each day. Unless he was specifically targeting Iberian sculpted heads there was no reason to burgle the same out-of-the-way room twice in a row, thereby compounding the chances that someone would notice a pair of busts missing.

Finally, there is the question as to whether the two stolen busts were still on open display at the time of the theft. Recall that the curator Edmond Pottier said that most of the statues that had been initially displayed in the Iberian room when it first opened in September 1904 were moved into storage in 1907. Did G ry Pieret swipe the statue heads just before the room was re-arranged, with much of its contents going into storage? Or might the bold G ry Pieret actually have had to enter the museum’s storage facilities in order to access the targeted objects? There is no proof of the latter hypothesis, but

45 Pottier, Edmond, Sept. 6, 1911, Archives des mus es nationaux, Mus e du Louvre, folder A15

46 Mentioned by a tour guide on a recent visit to the Louvre

47 Letter of the director of the *Revue des  tudes anciennes* to Homolle, Sept. 6, 1911

48 Baldassari, Anne *Picasso Photographe, 1901-1916*, R union des mus es nationaux: Paris, 1994, pp.106-07

49 Dor de la Souch re (1960), p.15. The connections in this paragraph were first noted by Silvia Loreti in her chapter in Charney (ed.) *Art & Crime* (2009)

50 Pottier, Edmond, August 29, 1911, Archives des mus es nationaux, Mus e du Louvre, folder A15

we may well have discovered the reason for the theft having taken place in 1907, something scholars have yet to note.

The theft took place in March 1907, according to Géry Pieret's own statement. We do not know precisely when the Louvre curators altered the Iberian room and moved some objects into storage, beyond its having been sometime in 1907. But the very fact of the exhibit being altered provided an ideal opportunity for the heist. We have noted the poor security at the Louvre, which certainly helped the chances for a successful theft. But here was a golden opportunity to grab some sculptures before they disappeared into storage. If the theft took place near or during the actual reconfiguration of the Iberian room, then the thieves could rely on internal bureaucratic confusion as a screen for a missing object. A security guard noting an empty space on a table in the Iberian room might well reason that the curators had removed the object in question, as they were in the process of altering the exhibit there. The alterations of the Iberian room provided the perfect opportunity to steal works that Picasso might have admired from as early as September 1904, when the Iberian room first opened.

A *Le Matin* article told of a November 1906 theft of a different Iberian statue head, this one bronze, and ostensibly stolen before Géry Pieret "first penetrated the Louvre," according to his own statement, in March 1907.⁵¹ On 10 November 1906 the journalist wrote that the theft was likely prompted by "a possessive and discreet collector who has no interest in money, but keeps [the statues] in the most secret part of his apartment getting drunk on their beauty in solitude."⁵² As mentioned before, this is the very cliché that scholars of art crime try to debunk. Almost never is an art theft commissioned by a collector who wishes to keep the stolen art for his private delectation. But in this case, it seems to have been just that. After all, we know from Fernande Olivier that Picasso kept the stolen statues in his wardrobe, which constitutes a "most secret part of his apartment."⁵³

Picasso was known to be a passionate art collector, and his collecting began in earnest around this time. He had an extensive collection of African and Oceanic art. His enthusiasm, which has been described as "pathological," was fueled by his fellow countryman and a marvelous painter,

51 When Géry Pieret's letter was published in *Paris-Journal* the lawyer of the Louvre guard who was imprisoned for the theft of the bronze Iberian female statue wrote to *Le Matin* arguing that Géry Pieret's statement constituted new evidence that could exonerate his client—for if Géry Pieret admitted to stealing Iberian statuary in 1907, he might very well have also stolen the bronze Iberian statue in 1906 for which his client was imprisoned. This was first noted by Silvia Loreti. "Les vols du Louvre. Un défendeur s'interpose en faveur de son client", *Le Matin*, Sept. 22, 1911

52 *Le Matin*, Nov. 10, 1906

53 Olivier, Fernande (1933, *Pygmalion*: Paris, 2002), p.184

also an expatriate in Paris, Ignacio Zuloaga, whose collection included numerous examples of Spanish art, from the ancient to El Greco.⁵⁴ Picasso has proven himself an avid art collector of both legitimate and illegitimate acquisitions.

That Picasso bought statues he knew had been stolen from the Louvre is beyond doubt. We have also proven beyond reasonable doubt that he selected the works to be stolen, thereby commissioning the theft. But could Picasso or Apollinaire have been involved with the actual act of theft?

Picasso the Art Thief?

Picasso said that Apollinaire had stolen the statues. There is no evidence of that, and since the statement was made casually more than fifty years after the fact, it is difficult to determine how much weight to place on its accuracy. But it is certain that to steal the statue heads would have been difficult to manage if one worked alone. Each head weighs approximately seven kilos. Imagine having to sneak out of a museum while concealing a seven-kilo limestone statue.

Géry Pieret lived in Apollinaire's apartment at the time, which circa 1911 was in the outskirts of Paris, in Auteuil. But in March 1907 Apollinaire lived even further away from the center of Paris, in the village of Le Vesinet. Géry Pieret would have had to not only extract the statue from the guarded museum, presumably hiding it inside an oversized coat, but also transport it across the city of Paris to Apollinaire's residence. An accomplice must surely have been involved, at the very least waiting outside the Louvre with a vehicle in order to facilitate escape. That same accomplice might have "cased" the museum with Géry Pieret, pointing out the objects to be stolen—for a vague description alone would be insufficient for an unpracticed eye to distinguish which of the many, relatively similar Iberian statue heads to take. For lack of other suspects, that accomplice must have been either Apollinaire or Picasso. If it was Apollinaire waiting in the "getaway" carriage, then that would explain Picasso's recollection that Apollinaire had stolen the statues. Someone must have helped Géry Pieret commit the crime and escape: either Apollinaire or Picasso or both.⁵⁵

And what became of the unusual Géry Pieret? According to Apollinaire, he was arrested in Cairo in late 1913, but the courts there acquitted him. "I was glad of this," Apollinaire

54 This collecting connection was noted by Silvia Loreti, who termed it "pathological" in her chapter in Charney (ed.) *Art & Crime*. More on Picasso and art collecting may be found in John Richardson (1997)

55 There could, of course, have been another person, an as yet unidentified accomplice. But since Apollinaire and Picasso's involvement is well documented from various angles, and since neither they nor Géry Pieret ever mentioned another individual, despite being quite open about their involvement, a fourth accomplice does not seem likely

wrote. “The poor fellow was crazy rather than criminal; the courts must have thought so, too.”⁵⁶ Géry Pieret made his way to the United States, where he was last heard of working as a cowboy near San Diego.

After Apollinaire was cleared of involvement in the *Mona Lisa* theft, the air cleared and both he and Picasso were left with a still greater celebrity, albeit for the dubious achievement of having been wrongfully accused of the most famous heist in history, while at the same time being guilty of an only slightly less-objectionable series of thefts from the same museum.

There is a sad coda to Apollinaire’s involvement in the *affaire des statuettes*, first noted by Peter Read in his book on the friendship of the Polish poet and Picasso. The affair may have actually led, albeit indirectly, to Apollinaire’s tragic, premature death. Apollinaire loved France and was devastated by the xenophobic accusations and attacks against him in 1911. Three years later, fate would present him with an opportunity to prove his loyalty to his adopted country.

At the start of the First World War, Apollinaire volunteered for the French army. He died from influenza while hospitalized for a head wound received in action.⁵⁷ He was a part of the 1/3 of Europe who lost their lives before the war wound to a close.

The Iberian statuettes are now back at the Louvre, although not always on display. They played a key role in the history of art, thanks to their cameo in the birth of Modernism in Picasso’s 1907 *Les Femmes d’Alger*. And they will forever be remembered for the supporting role they played in the story of the theft of the *Mona Lisa*.

56 Esterow (1966), p.141

57 Read, Peter *Picasso et Apollinaire. Les métamorphoses de la mémoire 1905-1973* (Jean-Michel Place : Paris, 1995), p.71

Nathaniel Herzberg
Le Musée Invisible: Les Chefs-d'oeuvre volés
(Nouvelle Edition)
Editions du Toucan, 2010

This handsome edition by “Le Monde” journalist, Nathaniel Herzberg, begins provocatively:

“It’s the largest and richest museum in the world—works by Picasso, Renoir, Rembrandt, Monet, Matisse, Warhol, the great Italian Primitives, a whole range of Flemish masters with Vermeer at the top of the list. Also works of sculpture, furniture, rare books, musical instruments, precious timepieces. No period or important artist is unrepresented in this unique establishment, Le Musée Invisible—the greatest museum in the world, but no one can see it. Its collections, stolen over the course of centuries, pillaged from historic sites, taken from museums, churches, chateaux and private collectors, and never recovered.”

In homage to these missing works, Herzberg has created this imaginary museum. As a backdrop to the works he has chosen for the collection, he paints the strangely diverse world of criminals responsible for the thefts, but especially a world where to steal a work of art is easier than to resell it.

The above Introduction is actually preceded by an explanation of why a new edition was necessary so soon after the first appeared. As Herzberg explains, “...the May 2010 thefts of five masterpieces from the Paris Musée d’Art Moderne, the most important theft of a French museum in the past quarter century had occurred, and the book made no mention of it.”

To no one’s surprise, there were other major thefts during the interval between the first and second editions: a Breughel stolen from an art fair in Brussels, an anonymous portrait from a Polish church, a Degas pastel from the Musée Cantini in Marseilles, an anonymous sculpture from a Venezuela museum, a lavishly decorated marble plaque from a Teheran mosque, and an antique statue stolen from a private collection in Copenhagen. In 2009 alone, 1751 works of art were reported stolen in France.

Although France is his focus, Herzberg devotes an entire chapter to the Gardner Museum theft of 1990. He adds that between the first and second edition of his book, two previously included works were recovered. A 2009 plea bargain with the

Dutch thief, Petrus Schoofs, incarcerated in Belgium for drug trafficking, resulted in the return to Fontainebleau of a pair of ornate swords stolen in 1995. The recovery of a Monet stolen from a Polish museum was based on an interesting twist and some good luck. An amateur painter had substituted his own work for the real Monet, but was caught when he was fingerprinted for not having paid a bill. The thief explained that he was motivated by passionate love for the painting, which he kept in the back of an armoire, where he was able to contemplate it in secret. Because he never sought to profit from the painting by selling it, Robert Z. got only a light sentence, and his story is being turned into a film.

The author mentions, in passing, that the art market of the past thirty years has evolved and become more globalized. Art lovers line up in ever longer lines, making it harder to protect the dizzying number of works. Man’s greed and the legal loopholes that allow criminals to escape with the equivalent of a slap on the wrist make art crime a growth industry.

Of course, explains Herzberg, such crimes have a long history that dates back thousands of years: Egypt, Rome, the sacking of Constantinople during the Crusades and wars of conquest (notably those led by Napoleon). Right behind the generals marched the art experts, ready to appropriate whatever struck their fancy. The Louvre owes much of its collection to war booty. Africa, Asia, and the rest of Europe bear witness to the policy, “to the victor go the spoils.” During World War II, the Nazis, to whom Herzberg devotes a chapter, made off with hundreds of thousands of works of art from public and private collections of occupied countries.

In his romp through the history of art crime, the author devotes two sentences to the 1911 theft of the Mona Lisa, covered most recently in Noah Charney’s edition (written as a benefit to ARCA) of *The Thefts of the Mona Lisa*. Herzberg summarizes in two paragraphs the centuries of crimes against Van Eyck’s Ghent Altarpiece, which is pictured in a beautiful two-page spread, and detailed comprehensively in Charney’s *Stealing the Mystic Lamb*. Destined for Hitler’s personal museum in his home town of Linz, the 1432 work was partially recovered amidst hundreds of other masterpieces, in the Alt Aussee Salt Mine.

As the author explains, he has chosen to include only the

most celebrated works in his Musée Invisible. These pieces that a traditional museum can only dream of showing are his attempt to offer a diverse collection of universal appeal and that transcends time and place. Further, a selected piece must be currently missing. One that has been repeatedly stolen and then found does not make the cut. Herzberg closes his introduction by wishing us a pleasant visit to the Musée Invisible.

In short, this is a beautiful “coffee table” book that gives some details about each piece and how it was stolen. Among the not-so-new points he makes:

1. Sometimes copies are so good that they go unnoticed for years.
2. Speed counts! Video surveillance alarms are not usually fast enough to be effective.
3. Many thefts occur during building repairs, and during transport of art works for special exhibits.
4. Defective alarms and cameras can be a thief’s best friend.

At the end of the book, Herzberg includes a sort of “rogues gallery” that features photos and background information about four of the most notorious art thieves of our time. This chapter is subtitled, “Professional gangster, the thief who commits crimes of opportunity, and the passionate kleptomaniac.”

Herzberg concludes with some encouraging statistics about the relative decline in the number of art thefts since 2002, and offers theories to explain the change. To explain his goal in writing this book, Herzberg adds, in closing, “what makes a work of art precious goes well beyond its material worth. Perhaps to create an Invisible Museum of stolen art at least offers a concrete vision of these lost works. Even if a book like this is based on a pipe dream, what’s the use of creating an imaginary museum if you don’t allow yourself to dream?”

Dreams of invisible museums aside, this book has some deficiencies worth noting. It is badly in need of an index and careful copy editor. The odd punctuation (“Dr No”?), capitalization errors (“musée d’Art moderne”?), and misspellings (“Hermann Georing”?) are distracting. Furthermore, it is ironic that for a book dedicated to art, the strange paragraphing format is visually disturbing. Paragraphs are sometimes indented, sometimes not; sometimes lines are skipped between what seem to be paragraphs, sometimes not. It is hard to figure out if there is a rationale to the arrangement. Even the name of the publisher is not spelled consistently. “Edition du Toucan”? “Editions du Toucan”?

Perhaps the new edition was put together faster than an adept thief could make off with a new acquisition for the

Invisible Museum of Stolen Art? The purchaser will have to decide if this pretty picture book is worth the hefty 40 euro sticker price.

Terence M. Russell
The Discovery of Egypt: Vivant Denon's Travels with Napoleon's Army
(Sutton Publishing Limited, 2005)

Vivant Denon
No Tomorrow
Translated from the French *Point de Lendemain* by Lydia Davis with an introduction by Peter Brooks
(New York Review Books, 2009)

Does the name “Denon” ring a bell? Perhaps it would if you are the sort of Louvre visitor who has gazed up at the inscription “Pavillon Denon” on the Louvre’s façade, or who notices, en route to the “Mona Lisa,” to “The Winged Victory of Samothrace,” and to Michelangelo’s Slave sculptures, that you are walking in the museum’s “Denon Wing”. Or maybe you are a *connaisseur* of erotic literature who knows about the new dual-language edition of “No Tomorrow,” a work attributed to Denon that has recently garnered attention in literary circles. Just who could this chameleon-like Denon fellow be?

Known as “Napoleon’s Eye,” as well as a lover of the Empress Josephine and eventual director of the Louvre, Denon was a man of many talents. Writer, artist, collector, adventurer, archeologist, tastemaker, and charming courtier, he could metamorphose into whatever role was required of him.

Readers of Terence Russell’s scholarly, authoritative text will get to know the colorful Denon as an intrepid artist able to sketch rapidly under fire who was selected to accompany the French troops on their Egyptian campaign. In addition to his drawing skills, however, Denon paints with his words keen observations about the land and culture he encounters. Denon’s illustrated record of what he saw in Egypt is here made available to the non-speaker of French, through Russell’s well-chosen quotes and drawings. Russell’s paraphrasing and commentary, although sometimes more dry than Denon’s own words, add a necessary framework to the story.

It is thanks to Denon that so many Egyptian artifacts made it safely to Paris, where as a result of his efforts, the wonders of Ancient Egypt began to be known and appreciated. Without Denon, today’s Louvre would not be the treasure house that it is. To those interested in art crime, however, there is another facet to Denon’s far-reaching influence and collecting style.

As an immensely likeable master courtier, Denon was able to put a positive spin on what amounted to Napoleon’s

looting of the art of countries where he waged war. Under Bonaparte, the appropriation of art became standard policy. In praising Napoleon for his heroic efforts to “conserve” great art in the face of “the torment of war,” Denon lauds a policy that would later be copied by Hitler, whose wholesale confiscation of art was touted as an effort to “protect” it.

Now how does the reader put together the Denon who drew for sixteen hours straight through eyelids bleeding from the windblown sand, with the author of the 30-page erotic classic, “No Tomorrow,” which according to one reader, should be next to “titillating” in the dictionary? Although Denon was known to have talent for pornographic art, it may be quite a leap from that to authoring what Good Reads calls “one of the masterpieces of eighteenth-century literature, a book to set beside Laclos’ ‘Les Liaisons Dangereuses.’”

The outlines of the plot are simple. A naïve male narrator is seduced by an unnamed older woman who, during the course of their one night together, offers him much more than he bargained for-- especially some very shocking lessons about the nature of feminine wiles and the ethics of pleasure. As one reviewer put it, “this tale of seduction is itself a seduction, with a plot that could be said to slowly unveil itself before arriving at an unexpected consummation.” The story is presented as a delicious memory in flashback by a now older and wiser narrator.

Almost the same length as the novella itself, Peter Brook’s rich introduction is just as provocative. He sets the work in the great French tradition of “elegant eroticism” of the sort we associate with a Fragonard painting. He opens his introduction as follows:

“No Tomorrow’ may be the most stylish erotic tale ever written. Erotic, while not at all pornographic. The whole art here is to stage a scene—itsself highly theatrical—of sexual bliss without naming names, or parts, or detailing the acts taking place... ‘No Tomorrow,’ you could say, is about...pleasure

considered, planned, staged, given and received in a momentary exchange where the gift is all the more precious for its transience.”

It does not seem a huge leap to relate the ethics of pleasure conveyed in this little book to the pleasure that thieves motivated by passion describe feeling in the presence of art they have stolen. Even the delighted museum visitor who finally comes face-to-face with a favorite work of art that he can never fully possess may share in this type of “stolen” pleasure.

Brooks offers intriguing details that reaffirm Denon as a Protean survivor who knew how to make the most of friends in high places to reinvent himself and sidestep the Reign of Terror. At a time when an aristocratic name offered a quick trip to the guillotine, the former “De Non” morphed his own name into the more Republican-friendly “Denon,” and thanks to the painter, David, got himself a job designing costumes for the Jacobins.

In taking notes from Terence Russell’s book on Denon in Egypt, I found myself listing many of Denon’s attributes along with quotes to substantiate them. These included his modesty about his own gifts, his sense of gratitude for the experience (however painful it was), the sensitivity he shows in his admiration for the loyalty of a slave to his dying master, his courage as he kept drawing in the midst of chaos and death, his evenhandedness and refined sense of justice in showing when the army was wrong. Without making excuses, he shows how hard it can be to do the right thing, despite good intentions.

Although Napoleon’s Egyptian campaign was a military failure in which one soldier in three perished, it was an important milestone in archeology and Egyptology. Its far-reaching legacy included l’Arc de Triomphe, the design of many Paris squares and of Sevres porcelain and Gobelins tapestries, and of course, the discovery of the Rosetta Stone.

It should be mentioned that noble intentions and character traits aside, Denon managed to amass a vast personal art collection. Just as in “No Tomorrow,” rules are rules in the game of seduction, and in the hands of a master manipulator, they can be played for all they’re worth. A propos of bending rules, what about the art of Egypt that was confiscated and relocated, allowing it to be preserved and to offer pleasure to future generations? Does that justify its having been stolen? This is not an easy question to answer. Similarly, “No Tomorrow” ends with the author saying, the equivalent of, “there is no moral to this story.”

In another odd link with Denon’s desire during the Egyptian campaign to be the first to enter catacomb-rich

caves, “No Tomorrow” emphasizes the theme of initiation—the need to make the old seem new and fresh again: “My heart was pounding as though I were a young proselyte being put to the test before the celebration of the great mysteries....”

Among my many favorite quotes from Russell’s book is the way Denon ends the account of his extraordinary travels:

“Here terminates my ‘Journal.’ For my own part I shall esteem myself happy if, by my zeal and enthusiasm, I have succeeded in giving my readers an idea of a country so important in itself...if I have been able to portray, with accuracy, its characteristic forms, colors, and general appearance and if, as an eyewitness, I have described with interest the details of an extended and singular campaign...of this celebrated expedition.”

At least from the point of view of this reader, Denon amply fulfilled these ambitions. In terms of the two books under discussion in this review, for the illustrations alone, the Russell book is worth a close look. And as for Denon’s “No Tomorrow,” once you pick it up, I defy you to put it down.

Sandy Nairne
Art Theft and the Case of the Stolen Turners
Reaktion 2011

Sandy Nairne is a busy man. He is director of London's National Portrait Gallery, lectures widely on art history and his latest area of interest, art theft, and has a new book out, *Art Theft and the Case of the Stolen Turners* (Reaktion, 2011). And the subject of his book will show you just how busy he was—for he is largely responsible for the recovery of two J.M.W. Turner paintings from the Tate collection that were stolen while on loan at an exhibition in Frankfurt.

Sometime before 10pm on 28 July 1994, thieves broke into the Schirn Kunsthalle in Frankfurt and grabbed two Turner paintings (*Shade and Darkness* and *Light and Color*) as well as a Caspar David Friedrich painting (*Nebelschwaden*) as they hung on display. The thieves waited for the security staff to leave the gallery, closing it for the night. They bound and gagged the night watchman, but he managed to struggle free and alert the police around 10:45pm.

It is not clear if the primary motivation was ransom or whether that was secondary after a failed attempt to find a buyer, but in October 1999, five years after the theft, a lawyer was contacted to act as a go-between in an attempt to negotiate the return of the pictures. Links to the Balkan Mafia were strongly suggested. Two members of the Metropolitan police force were involved in the ultimate recovery of the paintings, nicknamed "Operation Cobalt." Four individuals were arrested one year after the theft, but it took many years to recover the paintings.

When the paintings were stolen, Sandy Nairne worked at the Tate. It was in this capacity that he was first dispatched to the scene of the crime. He subsequently threw himself into the ensuing investigation whole-heartedly and passionately, flying to the Continent often and, as he admits himself, allowing his personal and professional life to suffer for the hours put into the case. It is rare and fortunate to know someone who played such an insider role in the recovery of stolen art, and Nairne's book succeeds in providing a concise, interesting, and fast-paced inside view of the investigation and recovery. Well, almost all of it. We'll get to that in a moment.

The two Turner paintings in question were two of 3000 owned by the Tate, so some have begged the question of why such a fuss was made. They were, however, insured for 24 million pounds. Nairne's book begins with a basic introduction

to art theft, and moves quickly to his own story, which is part memoir, part investigation. The most pertinent questions have been raised regarding what exactly went on in the process of recovering the paintings. As readers and otherwise praising critics have noted, the book does not convey what is probably the most interesting part of the story—the precise nature of the transaction that led to the recovery.

The issue is that the Turners were insured. The insurance company paid the Tate the entire 24 million pound value of the paintings, assuming that they might never be recovered. This meant that, if they were recovered, then the insurance company would own them, not the Tate. But, the Tate was given the chance to give the insurance company back 8 of the 24 million, and in doing so buy back the right to the two Turners should they ever be recovered. Tate took the gamble, bought back the title, and then the Turners were recovered. So it looked, suspiciously to some, like the Tate had gotten their paintings back and also made a 16 million profit off the insurance company.

There is also the question of what, precisely, led to the recovery of the works. Money changed hands, but no ransom was paid. It is normal for a reward payment to be paid for information leading to the recovery of stolen art—that's how much stolen art is recovered. But because the exact natures of the transactions were not made public, ethical questions were raised.

Nairne spends much of the book discussing these ethical questions, and does so thoughtfully and well. He essentially pre-empts the queries of the readers, but that did not stop readers and critics from asking more. To be fair, in writing about crimes such as this it is inevitable that personal, moral, or even legal restrictions may require that not all information be conveyed. It is par for the course for sensitive material that is still so fresh. Nairne handles the topic professionally and intelligently, telling a good story, refreshingly open about his own trials and tribulations.

He is so scrupulous that he does not get into what, to some, would be a juicy side-story about the suspected involvement of the Balkan Mafia and certain individuals who have cropped up in numerous journalistic accounts, such as Stevo O and Joseph Stohl. Without anything definite to convince Nairne of

their involvement, he errs on the side of understatement and caution. I found myself thinking that this is a prime difference between British non-fiction and American non-fiction. The British tend to provide more thoughtful, sober accounts, the Americans (myself included) tend to sensationalize and insert invisible exclamation points whenever possible. Two different styles, both acceptable. American readers may find Nairne's book somewhat soft-spoken in terms of the grit of the true crime plot, just as some British readers likely find my own books about art crime somewhat over-egg the pudding, as the saying goes. But Nairne's book is undoubtedly and intriguing and valuable story about the recovery of stolen art, and the trials that one man went through in order to bring about that recovery.

This review first appeared in a different form in the online magazine ArtInfo in October 2011.

Sandy Nairne is the director of the National Portrait Gallery in London and author of *Art Theft and the Case of the Stolen Turners* (Reaktion, 2011).

1. You clearly threw yourself into this quest to recover the Turners even, as you describe, to the detriment of social and professional obligations. What did the Turners symbolize for you, beyond the simple recovery of property?

The two stolen Turner paintings were both part of the Turner Bequest – the paintings that J.M.W Turner himself had himself selected to leave as a legacy to the nation – and it was of paramount importance to try and recover them. The Tate knew that this was part of the responsibility of their guardianship of these works. The loss of the paintings also stood, in a way, for theft of other high value works that have been taken from public galleries, something that must be prevented and countered from every angle.

2. You meticulously discuss how you and colleagues discussed the moral questions of ransom versus payment for information. Little art would ever be recovered if no one paid for information—that’s how police investigate, but it seems to be a moral quagmire for some of your readers. Now that your book is out, has your view solidified or changed about how the Turners were recovered? Without needing to repeat what is written in the book, do you have any new thoughts on the topic now that it has been publically discussed to a greater extent?

I knew over the period of the recovery that the work we did was legal (because we went to enormous lengths to ensure that every authority had been consulted and ended with a high court judgement that it was so) and I still believe it to be ethical as well. The paintings might have come back after 20 years or more, but the payment of a fee for information leading to recovery did allow them to go back on display- after 8 and a half years away and supervised by the police. There is a huge public gain in that. In essence, it was the Frankfurt authorities who took the overview and decided that it was appropriate to find a route back for the paintings.

3. In your research have you come across another art theft that is similar to the theft and recovery of these Turners? One which a student of the history of art theft might use in a comparative essay?

It is difficult to be sure. I have not found a close, single comparison. Some aspects fit with the attempted return

of the Leonardo da Vinci Madonna of the Yarnwinder, although the terms of that offer were very much contested in the Scottish courts. Other aspects may end up being similar to the Paris, Musée d’Art Moderne theft of May 2010.

4. One comes away from the book with a number of unanswered questions that, for understandable reasons, could not be included. Can you share any thoughts about Stevo V or Josef Stohl?

Various names from the Frankfurt or German underworld have been raised as potentially having been linked to the loss of the two Turners paintings and the Friedrich from the Schirn Kunsthalle in 1994. I never had any direct or certain information that clearly connected either of these two names to the theft or to the offer of return. That remains the case today.

5. You understandably and rightly down-play the glamorous, romantic popular notions about art crime, which bear resemblance to only a handful of confirmed historical cases. Why do you feel that art theft has retained its outdated and largely fictitious patina of glamour in both the public and criminal mind?

*I think the power of certain “mythic” narratives is immense. This is where Barthes is such a sharp theorist of myth, as he describes the social need that a myth fulfils. So right back to the 19th century the idea of the ‘gentleman thief’ as described in the character of Raffles had already been set out in popular literature, while being given a little bit of truth in the adventures of the criminal Adam Worth. The glamour is there by association – between the works of art and the presumptions about the type of criminal involved, as brilliantly portrayed much later in the second version of *The Thomas Crown Affair* – but this also fits within the larger narrative of criminals who are smart enough to outwit the authorities, whether the police or the management of a museum. Arguably it goes even wider to the Robin Hood type of story in which the “bad person” is really good underneath – or can be allowed at least some redeeming features. A criminal who is simply avaricious and calculates only to private greed does not offer interest to popular audiences.*



Art and **CRIME**

Exploring the Dark Side
of the Art World

Edited by Noah Charney

Afterword by John Stubbs

Stuart George is a UK-based writer, art historian, and expert on fine wines—one of his recent articles was an analysis of what wines appear in Vermeer paintings. The Journal of Art Crime interviewed him about the art of wine, and the crimes committed in the wine world.

1. What is the origin of your interest in wine?
Like many students, I spent far too much time and money on alcohol. When I graduated, the wine trade seemed like it would be a nice way to earn a living. I started by driving a van for a wine retailer, then worked as a warehouse rat, and eventually became a shop manager.
2. What is a reasonably-priced wine that is still a show-stopper to pull out at dinner parties?
Champagne always seems to be well-received. My favourite value for money Champagne is Pierre Vaudon, made by the Union Champagne cooperative in Avize. It's £7-8 a bottle less than the supposedly grander names and at least as good.
3. You consult on wine as well as write on it. Could you share any unusual or funny stories about your adventures in consulting?
Wine consultancy is a highly dangerous job. I broke my foot at a Port tasting in 2004 when a hefty table of hugely expensive wines tipped over and landed on me. My colleagues were more concerned about the tsunami of wine staining the nice carpets at the Portuguese Embassy than my broken bones. I'm sure my foot was trodden on as they rushed to save the precious liquids.
Recently I was in Georgia and visited the lovely estate at Tsinandali, built by the poet and soldier Prince Alexander Chavchavadze. As well as importing the first grand piano in Georgia, he built what was then Georgia's largest and best-equipped winery, which is currently being reconstructed. The cellars contain 16,000 bottles from the 19th and 20th centuries, the oldest of which is "Polish Honey" wine of the 1814 vintage. Most of these are of historical value only but I was astonished to find some old Bordeaux wines – Château d'Yquem 1861 and Château Lafite 1905 – and an 1846 Vin de Constance from South Africa. The combined value of these seven bottles I reckon is \$100,000. I asked, "Are you sure you wouldn't like me to help sell these bottles for you...?" But they insisted that the wines are part of the collection and won't be sold. Who knows what might be lying in the cellars of Russian dachas? The Tsars bought a lot of d'Yquem, most significantly Grand Duke Constantine's purchase of a 900-litre barrel of 1847 d'Yquem at the then extraordinary price of 20,000 francs.
4. *The Billionaire's Vinegar* tells the story of a suspected fraud involving the world's most expensive bottle of wine. What are your thoughts on the case of the Jefferson bottles?
In June 2010, while in Hong Kong on business, I was invited to visit a private cellar in the mountainous and densely populated New Territories region. The cellar was astonishing, filled with every great vintage of every desirable wine. The owner claimed to have the world's largest collection of Pétrus, for example. An entire wall of wine racks was filled with Pétrus vintages back to the early 20th century. In the entrance to the apartment block, pride of place was given to a glass case containing the oldest, and probably most notorious, bottle in this fabulous collection – a 1787 Lafite, engraved with the initials "Th.J".
Having been authenticated by Michael Broadbent MW, about the most experienced and honest man in the wine trade (and a hugely enjoyable companion at lunch or dinner to boot), an engraved 1787 Lafite was sold at a London auction on 5 December 1985 for £105,000, a then record price for a single bottle of wine. Other bottles of Jefferson Lafite were subsequently sold, including the one that I saw in Hong Kong.
When researching the provenance of the bottles, Broadbent contacted Cinder Goodwin, who had spent 15 years editing Jefferson's Memorandum Books. She could not find any record of wines of the 1787 vintage in Jefferson's meticulous records. Goodwin also noted that Jefferson initialed his correspondence as "Th:J", with a colon, whereas the bottles were engraved as "Th.J". Nonetheless, the sale went ahead. Other details subsequently emerged. Rodenstock was apparently known among Bordeaux antiques dealers for buying old, empty bottles. It would have taken an eighteenth century engraver about three hours to write "Lafite 1787 Th.J" on a glass bottle – and Jefferson owned hundreds of bottles.
Some of Rodenstock's bottles have been subjected to radioisotope analysis, which measures radiation levels. These tests showed that the wine is definitely older than the atomic bomb explosions of the 1940s. But that certainly does not prove that it was made in 1787.
*Broadbent successfully sued Random House, the UK publisher of *The Billionaire's Vinegar*, in October*

2009. As Broadbent's solicitor put it, "The book made allegations which suggested that Mr Broadbent had behaved in an unprofessional manner in the way in which he had auctioned some of these bottles and that his relationship and dealings with Hardy Rodenstock, who discovered the original collection, was suspected of being improper." The book is no longer available in the UK. It is 25 years since Rodenstock bestrode the fine wine world like a colossus but the litigation goes on. Probably we will never know the truth about that bottle of Lafite 1787.

5. How frequently do you suspect that fraud takes place in the world of high-priced wines?

Leaving aside the 1787 Lafite mentioned above, I have never knowingly seen a "genuine fake" bottle of fine wine. Nonetheless, merchants' and auctioneers' outrage at fake wine is like Claude Rains' shock at learning that there was gambling at Rick's place in Casablanca. Anything that is valuable is in danger of being faked.

More attention is being paid to preventing fraudulent wine than ever before, which suggests that as the Hong Kong/China market has gone supernova, the amount of fakes and forgeries being sold has increased significantly.

According to some sources, fake wines flow in and out of Hong Kong like the cheap and illegal Irish reprints of books that allegedly flooded the British market in the eighteenth century. I was told that China's government officially deplores the country's inexorable production of fakes but in practice turns a blind eye.

6. In art history, the fact of connoisseurship being integral to authentication means that there is perhaps an over-reliance on individual expert opinion. Is the wine world similar, and what measures are in place to act as safety-nets should the experts be either uncertain or be fooled? *The authentication methods are very similar. As you rightly point out, there is an overreliance on individual expert opinion. If somebody says that a 1787 Jefferson Lafite is genuine, then it is genuine.*

The traditional, and still most reliable, way of judging if a wine is "fake" or not is to taste it. But very few people have the experience and ability to declare that a bottle of, say, Pétrus 1921 is the real thing. Even then, bottles vary tremendously according to storage conditions. And by opening a bottle the evidence is destroyed.

Art authentication can use science to establish facts. Samples can be taken from a painting without causing significant damage to it. But a wine can only be sampled by opening the bottle. Even then, there is no way to date old wine scientifically. An old bottle cannot be x-rayed like an old painting.

More recent vintages of fine wines have measures in place to prevent fraud. Château Margaux uses a

"Prooftag" seal on all bottles. The negociant (merchant) Bordeaux Winebank has introduced an iPhone app that scans a "dot matrix code" on the seals attached to the wooden cases it distributes.

But for older wines – especially pre-1945, because so many records were lost or destroyed in the war – effectively there is no "safety net" to catch the experts if they fall!

7. Wine has been the target of some ravenous art thieves, notably Hermann Goring during the Second World War, when he made straight for the finest restaurants in Paris to loot their cellars. Can you share any World War II wine adventure stories?

In February 2007, a bottle of 1943 Schwarzer Tafelwein "Führerwein" was sold by Plymouth Auction Rooms in Devon, England. Reportedly found by the Devon-based vendor in a garage in France several years ago, the bottle had a front label that featured a photograph of Hitler in suit and tie, with the neck label displaying the Nazi eagle-on-top-of-a-Swastika emblem.

The bottle was from a collection understood to have been given to Hitler's officers to celebrate the Führer's 54th birthday on 20 April 1943, so the "1943" on the label is erroneous – the wine must have been made in 1942 or earlier. Back to fake wine again...

Tafelwein is a low-class table wine and was, even in 1943, not a particularly dignified present, even allowing for Hitler's scant knowledge of wines – he was a teetotaler. On his 54th birthday in 1943 Hitler was trying to come to terms with the catastrophic loss of the 6th Army at Stalingrad, the bombing war on Germany and the rout of the Afrika Korps. Handing out carpeting was more the order of the day than handing out wine.

There was nothing on the label to indicate where the wine was made. The red wine itself would be undrinkable now and, like the label's imagery, probably leave a nasty taste in the mouth.

8. I spend much of the year in Umbria. Can you recommend a wine or two that I might not have tried, but which would be worth a journey?

Perhaps the most interesting wine in Umbria is Arnaldo Caprai's Sagrantino di Montefalco 25 Anni, his top bottling. It's a rich, very tannic, dry red wine that tastes of chocolate and coffee. A good wine to drink at Christmas!

9. What is your next project?

Currently I am working on a fine wine project in Hong Kong and China. In the meantime I continue to write about wine and to broker (genuine!) fine wines into auctions. My website is www.stuartgeorge.net.

MASTER'S CERTIFICATE PROGRAM IN ART CRIME AND CULTURAL HERITAGE PROTECTION

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Art Crime and Its History
Noah Charney
Founding Director of ARCA
Adjunct Professor of Art History
American University of Rome

Art and Cultural Heritage Law
Derek Fincham
Academic Director of ARCA
Assistant Professor of Law
South Texas College of Law

Criminology, Art, and Transnational Organized Crime
A. J. G. Tijhuis
Faculty of Law and Partner and Attorney
Vrije Universiteit Amsterdam
Pontius Advocaten Law Firm, the Netherlands

Museums, Security, and Art Protection
Dick Drent
Director of Security
van Gogh Museum, the Netherlands

Organization of Art Crime: Villains in Art and Artful Villains
Petrus van Duyne
Professor of Criminology
University of Tilburg, the Netherlands

Art in War
Judge Arthur Tompkins
New Zealand District Court Judge
Honorary Member of Interpol's DNA
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Art History and the Art World
Tom Flynn
Writer, Journalist and Art Historian
Lecturer at Kingston University
Lecturer, History of the Art Market, Art & Business
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Archaeology and Antiquities
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Investigation, Insurance, and the Art Trade
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Worldwide Fine Art Manager
The Chubb Group

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Richard Ellis
Director, The Art Management Group
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Scotland Yard Arts and Antiques Squad

Academic Admissions and general questions on the 2012 Program should be sent to:

education (at) artcrimeresearch.org

The Art We Must Protect: Top Ten Must-See Artworks in Florence

Michelangelo

David

(1501-1504)

Galleria dell'Accademia

Certain works of art have become invisible. People can still see them, but they choose not to. It has become more important for tourists to say that they have seen Michelangelo's *David* or Leonardo's *Mona Lisa*, than to actual gaze upon the works, examine them, interact with them, think about them, imbibe them. They are items to check off, not destinations to savor. Michelangelo's *David* is one of the few such monumental artworks, beyond famous and endlessly hyped, to live up to every inch of the hype, and surpass it. Carved by Michelangelo from a block of faulty marble which had already been begun and botched by a past sculptor, this masterpiece was considered the greatest sculpture in history from the moment it was completed. And it certainly is to this day. How much more difficult a task is faced by the sculpture, to withstand the scrutiny of millions per year, all of whom have been told that seeing it will change their lives. And yet it does. It inspires awe in every individual who views it, from the jaded to the pilgrims. I have intentionally left out of this list many of the most famous and important artworks in Florence. There are far too many to name. There are none from the Uffizi museum, as that institution alone could fill a top one-hundred. But this sculpture must be mentioned, and it simply must be seen.

Verrocchio

David

(1475)

Museo del Bargello

Michelangelo's *David* is not *the* David, but is simply his version of one of the most popular themes of Renaissance Florence. Many different artists were commissioned to create statues of the Old Testament hero, who was seen as the mascot of Florence. Young David, like the city of Florence, was small and perceived as weaker than his opponent, Goliath, yet triumphed anyway. Florence, a city of as few as 20,000 inhabitants in the mid-16th century wished to be seen by others as small but mighty. The David statues were meant as a warning to potential Goliaths. Verrocchio is now best known as the teacher of Leonardo, an honorable but insufficient legacy for this genius of sculpture. Although understated, this sculpture is perhaps his masterpiece. Its direct inspiration would have been a bronze David by Donatello (1440), also

on display at the Bargello. To see first Donatello's (he made two, one in bronze and one in marble, both very different and both on display at the Bargello), then Verrocchio's, then Michelangelo's, one has a sense of the artistic tradition passed down through generations. Each artist tries his hand at the subject of his predecessor, simultaneously paying homage and trying to outdo the past master.

While Donatello's David is cocky and pleased with himself for having slain Goliath, and Michelangelo's David is nervous but determined, shown before the fight begins, Verrocchio's David carries the most complex emotion in his bronze face. Verrocchio's David is, physically, a slight and effeminate 14 year old (it may be that the young Leonardo modeled for this sculpture), in contrast with Donatello's slightly lumpy 12 year old and Michelangelo's idealized athletic 18 year old. Verrocchio's David has slain and beheaded Goliath, and has been standing triumphant over the head, much as Donatello's David does. But the expression of Verrocchio's is infinitely more subtle and complex. Study it carefully. You will see in his face that he has been smiling broadly...but a thought has just occurred to him, to break him of his childish pride. The weight of his triumph is just dawning on him: the forecast of his future as King of Israel, and the burden of leadership that will fall upon his fragile, young shoulders. That moment of revelation of import after a care-free smile is captured in bronze by the brilliance of Verrocchio. Look upon this sculpture, and you will feel that Verrocchio should not merely be known as Leonardo's teacher but, that Leonardo should be referred to as Verrocchio's pupil.

Donatello

Mary Magdalene

(1455)

Museo dell' Opere del Duomo

Until Marcel Duchamp's *Fountain* sculpture of 1917, a urinal purchased, signed, and declared an artistic masterpiece, beauty was one of the requisites of art. Aristotle wrote of three necessary questions that one may ask to determine whether a work of art is of merit: 1) Is it good? This question is perhaps better phrased to ask, does the artwork successfully achieve what the artist set out to do? If the artist meant to draw a stick figure, then he should not be judged as if he sought to draw a photo-realistic representation. But implicit in this question is an evaluation of the artist's skill. The other two questions are more straightforward. 2) Is it beautiful? A subjective

question. And, 3) is it interesting? This too is subjective, and often requires a recognition of the traditional, past ways of depicting certain artistic or historical subjects, to determine the creative ways in which the artist might have differed. These questions should empower the viewer. There is no right or wrong answer to these three questions. An artwork must be good, beautiful, and interesting for *you*, the individual viewer, or else it does not succeed for you. With Duchamp's *Fountain*, all of a sudden anything could be art. At least, that was the point that Duchamp was trying to make. He stripped away two of the three requisites. Art did not need to be "good," exhibiting artistic skill, nor did it have to be beautiful. It only had to be interesting.

Why bring this up now? What could a urinal declared art in 1917 have to do with one of Donatello's last sculptures, carved of wood in 1455? It is because Donatello took the brave step of creating a sculpture that, while it fulfills to the brim the characteristics of skill and interest, it is certainly not beautiful. In fact, this is the most frightening artwork I have ever seen, and indeed one of the most frightening things I have ever seen.

Donatello's Mary Magdalene, sculpted out of wood and painted with varnish and some gold leaf, is a shriveled, deteriorated, bone-dry old hag. None of the voluptuous Mary Magdalenes of most paintings. Here we see the Magdalene after her flight from the Holy Land, her arrival in Marseille, and her sojourn as a hermit in the wilderness. Near her natural death, she is starving, toothless, gnarled and bony—a skeleton with bronzed-wood skin sucked close to the bone and tumbleweed hair cascading down and clotting to her body. Look at her out of the corner of your eye, and the realism leaps to the fore. It looks as if she might move at any moment. Look away, and she will step off of her plinth, crawl towards you, and place a sinuous hand on your leg. This is what happens to beauty, the ravages of age and of self-mortification in the name of spirituality. If there is beauty in it, it is sublime—a combination of horror and beauty from which we cannot tear our eyes. Come to see Donatello's Magdalene. If you dare.

Pontormo
Capponi Altarpiece
(1525)
Santa Felicita

This is perhaps the single greatest work of Mannerism: the Michelangelo-inspired movement in which the idealization and naturalism of bodies is hyper-extended and contorted for dramatic effect, embracing the creative power of painting to do more than duplicate nature or show the perfection of Heaven. Many art history books list this, Pontormo's masterpiece, as the illustration of the Entombment—the moment in which the dead Christ is placed into his tomb. Others label it as a

Deposition: the moment Christ's corpse is removed from the cross. Still others call it a Pieta: in which Mary has a moment to mourn her dead son, whose body is draped across her lap. The genius of Pontormo's monumental fresco is that it is at once all, and none. If it is a Deposition, where is the cross? If an Entombment, where is the tomb? If it is a Pieta, why are all of these figures, many more than the Bible tells us were present at any of the aforementioned events, floating about. Why is Christ removed from his mother? At this period in art history, it was highly unusual to break from traditional depictions of traditional, dogmatic moments. Pontormo imbues his painted bodies with mass, but without weight. Christ's corpse floats, held up by the tip-toe squatting John the Evangelist, whose gaze, breaking the fourth wall and locked in on you, the viewer, is one of the most heart-wrenching, emotionally powerful expressions in art history. We struggle to distinguish one body from another, the bodies themselves are elongated and twisted. And yet, the entirety of the composition is so effortlessly lovely, it brings to the viewer a sense of emotional weightlessness and peace akin to the physical weightlessness of the painted bodies.

Bronzino
Chapel of Eleonora di Toledo
(ca. 1543)
Palazzo Vecchio

Tired of the lines at the Uffizi and Accademia? The Palazzo Vecchio often has a line trailing out its main entrance as well. But enter from the west side of the building, where there is never a line and stride straight through the state rooms until you reach the tiny private chapel of the wife of Cosimo de' Medici, the great Spanish beauty Eleonora di Toledo. Step inside to one of Florence's greatest jewels, hidden away from the sweat and elbows of the tour groups in the piazza outside.

Bronzino is my favorite artist, and a strong candidate for the most meretricious yet unknown Florentine painter. His perfect portraiture, immaculate smooth surfaces, crisp lines and bright colors give his paintings the luster of glass. If best known for his *Allegory of Love and Lust* in the London National Gallery, one of the art world's greatest mysteries, this private chapel is his labor of love. Lean inside from the threshold to see all four frescoed walls. The central panel above the chapel altar was so admired that a copy of it was commissioned to send as a diplomatic gift. The figures run the gamut from sharply conceived to unfinished, but one element is laced throughout—the incredible beauty and otherworldly elegance of the bent and contorted Mannerist bodies. Here perfection of form has been hyper-extended into a contortionist's ballet, through escalated colors and weightless bodies. And yet the sum total is achingly lovely, a quiet oasis just beside the most crowded piazza in the touristic universe.

Giambologna

The Appenine

(1580)

Villa Demidoff (Pratolino)

Hundreds of years before “found art” was a concept, before the collages or pastiches of the twentieth century, there was Giambologna, the nickname for Jean de Boulogne, the French sculptor working for the Medici in Florence whose work proved to be the pivot point between Mannerism and the Baroque. Though his more famous *Rape of the Sabine* in Piazza della Signora is far easier to access, the pleasures are still greater when one seeks out his hidden wonder, a short bus ride out of the city center.

The Appenine, named after a mountain range, is an ancient extinct nature god, one trapped forever, like a renegade from Ovid’s *Metamorphosis*, bent before a fountain in a pleasure garden. He is carved out of stone, but also comprised of found objects, rocks and shells, pasted-on appendages, that lend the appearance of a barnacle-clad aquatic beats rising to the surface, dripping in seaweed and seawater—and somehow frozen there, dried in the wind above the fountain water, captured and mighty.

Michelangelo

Laurentian Library Steps

(1525)

San Lorenzo

It is easy to forget that architecture appears on Michelangelo’s resume. He thought of himself as a sculptor first, then a poet, then an architect second, and somewhere far down at the bottom of the list, his least favorite occupation: painter. His most monumental work of architecture is of course Saint Peter’s Cathedral. But his most fascinating is certainly the Laurentian Library. The steps in the atrium are a miracle of engineering and illusionism.

Michelangelo has placed an oversized monumental staircase, steps like water flowing downstream, in a tight and insufficiently grand space to accommodate the staircase. The result is at once awkward and elegant, a difficult combination to achieve. It rides the razor’s edge, with failure on one side and discomfort on the other. This combination of warped and bent harmonies, the contortion of which produces new and otherworldly beauty, defines Mannerism, the artistic period that was instigated by Michelangelo’s admirers. Michelangelo toys not only with our sense of space, but our expectations. There are window cornices without glass, looking onto only the stone wall. There are columns, which until this creation supported the weight above them and stood outside the wall—yet here they bear no structural weight and are recessed within the wall, not standing without. And the lines of the balustrade

are parallel, yet no matter how certain we are of this fact, they always look to our easily-tricked eyes as though they are aimed in towards each other, as if to meet on some imaginary vanishing point on a distant horizon. The ability to defy expectation, to make beautiful what should be discomfiting, to convince the eye of what the mind knows to be untrue—Michelangelo is a Mannerist magician.

Masaccio

Holy Trinity

(1427)

Santa Maria Novella

One of the most influential paintings in history, and perhaps the third most influential fresco, behind Giotto’s Arena Chapel and Michelangelo’s Sistine Chapel, Masaccio’s work embodies an artistic era. During this period of art history Florence was the center of the universe. Donatello was the god of marble sculptors, Brunelleschi the god of architects, Ghiberti the god of bronze casters, and Masaccio the god of frescoes. This masterpiece by Masaccio, the hefty and unkempt young man known to his friends by the nickname which means “big sloppy Tom,” perfectly articulates the quest for accurate perspective, realizing it in paint eight years before Leon Battista Alberti would commit its secrets to paper in his *Treatise on Painting*.

The goal of much painting is to convince the viewer that they are looking at a three-dimensional vision, when in fact the viewer knows logically that what they see is two-dimensional: pigment on a flat support, such as this church wall. How does perspective work? Imagine you are in the desert, standing on railway tracks that disappear into the distance. How can this effect be replicated in a painting? The process, while difficult to do well, is deceptively simple. Draw a dot on a piece of paper. This is your “vanishing point.” Draw a horizontal line through the dot. Call this the “horizon line.” From that dot use a ruler to draw diagonal lines emanating from the vanishing point, but only below the horizon line. These diagonals are called orthogonal lines, and they lead our eye back to the vanishing point. Then draw in more horizontal lines below the horizon line. Those lines nearest to the horizon should be closer together, and the distance between them should become greater the further away you are from the horizon. The result is an accurately-realized plane that gives the illusion of three dimensions.

Can you find Masaccio’s vanishing point? Follow the orthogonal lines indicated by the Brunelleschian architecture of the space around the Trinity (Christ, God the Father, and the Holy Spirit as a dove). The architectural lines mirror the invisible orthogonal lines that subtly lead the eye to the vanishing point. Masaccio’s fresco is the embodiment of the single greatest painterly advancement of all time—the

discovery and harnessing of perspective.

Cellini

Perseus

(1545-54)

Piazza della Signoria

Cellini is one of art history's great characters. Known to us in extensive, but certainly distorted detail through his autobiography, he was a soldier, goldsmith, sculptor, engineer, minter of coins and medals, gem specialist, and adventurer who dabbled in necromancy and got into sword fights everywhere he went. He is chiefly remembered for his autobiography, full of swash-buckling lies peppered with fact, and his saliera, constructed for Francis I. Of the few extant sculptures, one may be considered truly great. And that sculpture stands in Piazza della Signoria, surrounded by the monuments of competitors. Of the neighbor to its right, Baccio Bandinelli's *Hercules and Cacus*, Cellini wrote that it resembles "a sack full of melons." Of Ammanati's *Neptune* fountain, Cellini mourned the agony of the beautiful block of marble that Ammanati's chisel sculpted into ruin. But Michelangelo's *David*, which stood beside *Perseus* until the 19th century, received his limitless praise. As with all Mannerists, Cellini idolized Michelangelo. His *Perseus* is his version of Michelangelo's *David*, trying his hand at the monumental shrine to the potential beauty of the male body. Like David and Goliath, the choice of a commission of *Perseus* by the Medici is meant to warn potential invaders that Florence, like the heroes David and *Perseus*, may seem weak and small compared to their enemies (Goliath and Medusa), but they will triumph anyway. Cellini chose the medium of bronze, and tells in his autobiography of the touch-and-go process of pouring the bronze into the single mould that created his masterpiece. It is easy to see Cellini's thought process—that while Michelangelo is surely the master of marble, he is the master of bronze. Cellini even hides his own portrait in the back of *Perseus*'s helmeted head. His *Perseus* presents the severed head of Medusa, whose gaze turns viewers to stone. We, the viewers of Cellini's statue, are petrified with awe at its power and beauty. Michelangelo may rule the art of marble, but Cellini's bronze *Perseus* is without equal.

Perugino

Pazzi Chapel Altarpiece

(1493)

Santa Maria Maddalena dei Pazzi

Part of the pleasure in seeking out art that remains in situ is the pilgrimage. I would much prefer to journey to see one work of art where it was always meant to be, than go to a museum and be flooded with too much of a good thing, stripped of its natural habitat and hygienized by artificial lights, white walls, and tourists blocking one's view. It is important to recall that

no art before the Modern period was meant to be seen in a museum, nor was it meant to be seen with artificial lights. Art was created for churches or homes, to be seen by natural or candle light. Though it can help us to see details more clearly, artificial lights of any sort, such as those used in a museum or spotlights that some churches employ, are anachronistic. No painter painted thinking that anyone would see their work thus. So it is refreshing and enlightening to travel to see a work in situ, in the way that the painter intended.

How much more pleasurable when the path to see an artwork involves a treasure hunt of sorts? Few tourists make their way to the church of Santa Maria Maddalena dei Pazzi, although it is in the center of Florence. This makes it a precious commodity. For those that make their way to this church, finding our elusive quarry, the hidden Pazzi Chapel, is another adventure. Walk halfway down the nave and turn right into the sacristy. Ask the sweet old lady for directions to the Pazzi Chapel and leave a small donation to the church. You'll be sent down a corridor, around spiral stairs, across an underground crypt, weaving your way outside of the footprint of the church to the private chapel of the Pazzi family.

There in the white-washed quiet waits a fresco by Perugino, idyllic, harmonious and balanced. Though it is a crucifixion scene, there is no pain, no sadness, no suffering. Only peace and stillness and beauty. Far from the crowds clustered in Piazza della Signoria, you have found your hidden treasure.

Synopsis of ARCA's Third International Art Crime Conference Amelia, Umbria, Italy held July 9 and 10, 2011

Compiled and Edited by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief

INTRODUCTION

Written by Kirsten Hower, ARCA Intern

ARCA (*Association for Research into Crimes against Art*) is a non-profit 501(c)(3) organization which researches contemporary issues in art crime and cultural heritage protection. ARCA's mission is to serve as an accessible resource of knowledge and expertise necessary to increase the security and integrity of all art and cultural works. As an interdisciplinary research group/think-tank, ARCA aims to bridge the gap between the practical and theoretical elements of this global issue. ARCA utilizes its network of partners and colleagues, including foreign and domestic law enforcement officials, security consultants, academics, lawyers, archaeologists, insurance specialists, criminologists, art historians, conservators, and others within the arts and antiquities communities to raise awareness of art crime and cultural heritage protection.

ARCA's annual conference is held at the seat of our Master's Certificate Program, in Amelia, Italy, each summer. This interdisciplinary conference is an annual medium to further the academic and professional study of art crime, and to allow both professionals and the public to network together, sharing opinions and examining strategies for best practices, be they in museums or within investigating law enforcement agencies. Through this forum ARCA seeks to encourage scholars and students worldwide to turn their attention to the understudied field of art crime and cultural heritage protection.

ARCA's Master's Certificate in Art Crime and Cultural Heritage Protection is being held for its third year this summer. Courses include the discussion of Art and Antiquities Law and Policy, the History of Art Crime, Art History and the Art World, Art Crime and Organized Crime, Illicit Antiquities, Investigation and Art Insurance, and Museum and Art Security. This year there are nearly thirty students who form a cosmopolitan group. Their background includes the arts, journalism, law, archaeology, teaching, and military service. They come to Amelia from Germany, Spain, Canada, Bermuda, and the United States.

ARCA is also supporting two writers-in-residence this summer. The first is Neil Brodie, an archaeologist and leading voice in the urge for action to prevent the loss of archaeological context. The second is Lawrence Rothfield, an Associate Professor at the University of Chicago Department of English and co-founder of its Cultural Policy Center.

Noah Charney is the Founder and President of ARCA and the Editor-in-Chief of *The Journal of Art Crime*. Recently a Visiting Lecturer at Yale University, he is currently an Adjunct Professor of Art History at the American University of Rome. He is also the editor of ARCA's first book, *Art & Crime: Exploring the Dark Side of the Art World* (Praeger 2009). His most recent book is *Stealing the Mystic Lamb: the True Story of the World's Most Coveted Masterpiece* (Public Affairs 2010).

Dr. Derek Fincham is ARCA's Academic Director. He is Assistant Professor of Law at South Texas College of Law. His research focuses on the intersection of law with art and antiquities. He holds a Ph.D. in cultural heritage law from the University of Aberdeen, and a J.D. from Wake Forest University and additionally serves on ARCA's Board of Trustees. A knowledgeable expert in the field of illicit cultural property protection, he maintains a weblog at <http://illicit-cultural-property.blogspot.com>.

List of ARCA's Trustees:

Dennis Ahern, Director of Security, the Tate Galleries, UK

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Introductory Remarks Given by Dott. Riccardo Maraga, Mayor of Amelia, Italy

Mayor Riccardo Maraga welcomed participants of ARCA's third annual International Art Crime Conference to the Palazzo Boccarini in Amelia on Saturday, July 9.

When citizens of the 3,000-year-old Umbrian town elected Maraga from the Democratic Party in May 2011, they voted in one of the youngest mayors in Italy. A native of Amelia, Maraga graduated in Law from the University of Perugia with a thesis on "Labor and the Constitution". Last October, he earned his doctorate in Economic Law. In 2011, he was selected as one of "40 Young European Leaders" for a meeting in December to be held later in the year in Paris, France.

Panel 1: Harmonizing Police Cooperation and Returns

Arthur Tompkins, "Paying a Ransom: The Theft of 96 Rare Medals and the Reward Payments" Synopsis by Molly Cotter, ARCA Intern

Judge Arthur Tompkins opened the International Art Crime Conference with an engaging discussion on the positive and negative aspects of paying ransoms or rewards in order to recover stolen art. He utilized the 2007 theft of 96 rare medals from New Zealand's National Army Museum, valued at NZ\$5-\$6 million, as a case study to examine the arguments in support of and against ransom payments. He first noted that readily paying a thief's ransom might seem to be the ideal solution. The art is returned quickly; it limits the potential for the work to be damaged; bad publicity for the institution is avoided; and the necessity of having to make, or pay out on, an insurance claim is prevented. In the New Zealand museum's case, a substantial private reward was posted for information pertaining to the theft, and the medals were returned within a few months.

Though this seems like a storybook ending, the arguments against ransom payments suggest that this behavior not only encourages, but also endorses, future crimes. If a ransom is paid or a reward given, the chance of a repeat offence is much greater. Also, it perpetuates the gentleman art thief myth, and reduces the level of moral turpitude attributable to the crime. Simply put by Judge Tompkins: "The thief is happy, the owner is happy, the police are happy, and some wealthy insurance company has paid, but will get its money back from its customers, so everyone wins." The payer also becomes complicit in the crime, and the transparency of the transaction can be lessened.

Judge Tompkins also discussed the legal responses around the world to such crimes. In the most extreme examples, such as in Italy and Colombia, ransom payments are illegal. Other countries make it unlawful to offer a "no questions asked" reward; however, penalties for violating this often involve only a minimal fine.

A contemporary case study of how ransom payments endorse crime can be examined by studying the activities of pirates off the coast of Somalia. As of mid December 2010, Somalia pirates were holding at least 35 ships, more than 650 hostages, and had earned nearly US\$240 million through ransoms. Their system has become so sophisticated that there is even a piracy stock exchange, Judge Tompkins told the audience.

A systemized ransom/reward structure does encourage and sustain illegal activity, and the direct costs of recovering stolen art have a detrimental effect on collections and access to art, according to Judge Tompkins. However, he noted, "Legal prohibitions of activities, where there is a potential for profit involved, simply do not work." He proffered that in an ideal world, a victimized individual or institution would pay the money, get the artwork returned, find and prosecute the thieves, and then recover the ransom payment.

Ludo Block, "European Police Cooperation on Art Crime" Synopsis by Mark Durney, Founder of Art Theft Central

Ludo Block, a former Dutch police officer and current investigator at Grant Thornton, recently submitted his doctoral dissertation

on the topic of police cooperation in the European Union. While his dissertation focuses on EU policy-making in relation to police-cooperation, Block focused his panel lecture at ARCA's conference to the subject of transnational police cooperation in crimes against art.

Unfortunately, art crime is often overlooked by law enforcement due to the lack political priority. Whereas most members of the European Union do not maintain law enforcement units to investigate art crimes, a few countries such as France, Spain, Greece and most especially Italy each maintain specialized units to address and respond to the important problem. Italy has organized its data management capabilities, its art crime experts, and investigative capacity under the *Comando Carabinieri per la Tutela del Patrimonio Culturale*, a specialized division with more than 300 staff. Furthermore, it has trained officers at the local level in order to enable them to effectively investigate crimes against art. The Carabinieri play a major role in the annual art crime courses offered to senior law enforcement by CEPOL, the European Police College. Some other EU Member States maintain centralized units but these are usually staffed with only a handful of experts. In most Member States, data management on art crimes is insufficiently organized and as a result reliable statistics on the scope are difficult to access.

Throughout his research, which featured interviews as well as a literature and document study, Block found that the countries that placed art crime high on their policing agendas largely drove the European Union's cultural heritage protection policy. In spite of various attempts since 1993, only recently, in 2008, did the European Union pass a new policy aimed at increasing police cooperation in combating art crime. However the new guidelines have done little to enhance the cooperation between the member countries.

Block stated that in practice law enforcement efforts in a majority of the member countries rely on the personal dedication of a handful of specialized art crime investigators. In cases that involve transnational crimes, most investigators take advantage of their informal relationships with other investigators in order to pursue crimes that extend beyond their country's borders.

The European Union is in the process of developing an art crime database. In 2008, Europol, the European Union's criminal intelligence agency, declined to participate in the project but Interpol, which has a long history of supporting the fight against art crime, quickly agreed to convert their database to the EU member states' needs. According to Block, combating art crimes must start with proper data management on the local level where art crimes usually are registered first. Only then can sufficient information become available to successfully support investigations and transnational police cooperation.

Saskia Hufnagel, "Harmonizing Police Cooperation in the Field of Art Crime in Australia and the European Union" Synopsis by Kirsten Hower, ARCA Intern

Dr. Saskia Hufnagel, a Research Fellow at the Australian Research Council Centre of Excellence in Policing and Security (CEPS) at Griffith University in Queensland, presented "Harmonizing Police Cooperation in the Field of Art Crime in Australia and the European Union."

Her research project was originally meant to focus on the collaborative effort of Australia and the European Union, but became a project centered more on the need for cooperation in both systems. As Dr. Hufnagel said, she was doing "the dance of presenting a research project that doesn't exist." Her project, therefore, became more focused on the comparison between Australia and the European Union concerning perception, priority, policing, and reactions towards art crime.

Dr. Hufnagel demonstrated in her presentation that Australia, in general, does not put a policing priority on art crime, because of the perception that art crime is a financial matter compensated by insurance companies. "Generally there is a lack of recognition which leads to a lack of resources," Dr. Hufnagel said. Australia's nine territories therefore do not allocate resources towards investigation and prevention of these crimes, Dr. Hufnagel said. Accordingly, they also do not feel the need to enhance cooperation amongst the states and territories to combat the problem. It is difficult to generate support for the problem because in Dr. Hufnagel's words, "we don't know how much art crime is going on in Australia" due to the fact that most crimes are not reported.

Dr. Hufnagel stated that there is not a strong focus on art crime research in Australia and that the last funded research related to art crime from a practical policing perspective was conducted in 1999 by a single individual, who was not granted sufficient resources to finalize his research, which undermined the effectiveness of his conclusions. Art crime is a very sensitive issue and cooperation is not only necessary between different law enforcement agencies, Dr. Hufnagel said, but also between

the museums and galleries and police, which is probably even more difficult. Police cooperation between Australia and neighboring countries concerning drug smuggling is relatively high, but unfortunately, when it reaches the bounds of art crime, the differences in culture seem to impede effective cooperation. Dr. Hufnagel compared this to the European Union, which has divisions of laws applicable to each of the countries that, as a result, do not aid fellow countries in their fight against crime, in a similar way to the problems face in Australia in relation to art crime.

Speaking passionately about the subject, the need for further examination of art crime and more cross-border communication, Dr. Hufnagel said, “Art is really important to our lives because our lives are so limited...art allows you to experience a vast range of emotions, cultures, and situations, you could never perceive otherwise.” She intends to continue her research into art crime and to raise the field’s status in the realm of police enforcement with the hope that something will be done to further improve cooperation and collaboration in Australia and the European Union.

Panel 2: Perspectives on Forgery and the Local Impact of Heritage Crime

Laurie Rush, “Art Crime: Effects of a Global Issue at the Community Level”

Synopsis by Mark Durney, Founder of Art Theft Central

Dr. Rush’s lecture featured discussions of the role of military archaeologists in preventing inadvertent damage and destruction of cultural heritage as well as limiting the illicit traffic in antiquities during the most recent conflicts in Iraq, Afghanistan, Libya, and Egypt. TO highlight an example of this, academic archaeologists in cooperation with military and NATO personnel were able to develop a ‘no strike list’ in Libya within 36 hours after US participation was announced.

During the most recent conflicts in Iraq, Afghanistan, and Egypt, Dr. Rush worked with the Legacy Resource Management Program to create decks of playing cards inspired by the US military’s tradition of using playing cards as educational tools. However, rather than depict images of the most-wanted Iraqis like a previous deck, the Heritage Resource Preservation playing cards depict the challenges of preserving heritage during military operations as well as provide useful archaeological site preservation advice.

According to Dr. Rush, the constant rotation of military officers and the flux in standard practices that it creates can make it difficult to effectively maintain efforts to protect cultural heritage sites and institutions during conflicts. During the US-led military invasion of Iraq in 2003, the garrison commander at Tallil Air Base developed a strategy to protect the ziggurat of Ur, located in the region thought to be the biblical birthplace of Abraham, by incorporating the ziggurat within the installation fences. While this rezoning was a risk mitigation strategy, it also helped the US armed forces which prevented the destructive looting that took place at other ancient Iraqi sites In 2009, U.S. military authorities turned the site of Ur over to the Iraq State Board of Antiquities and Heritage. Its future however remains precarious, as sectarian violence continues.

Rush believes that the Comando Carabinieri Tutela Patrimonio Culturale (Carabinieri Art Squad for the Protection of Cultural Heritage) , which has been sent into numerous conflict zones in order to train local leaders and military personnel in the protection of cultural sites and institutions, should serve as a model for other countries that seek to develop similar cultural heritage preservation efforts.

Currently, while based in Rome, Dr. Rush is working closely with the Carabinieri and examining their best practices. In addition to working with the military to protect sites during conflict, Dr. Rush stressed the need to focus attention and resources on developing strategies to maintain cultural heritage sites in the immediate aftermath of conflicts. Managing sites as community assets and rebuilding tourist attractions are critical to attracting local and international investment and attention. Dr. Rush believes that such efforts can be spearheaded by partnerships between academic institutions and government organizations.

Dr. Laurie Rush, the Booth Family Rome Prize Winner in Historic Preservation at the American Academy in Rome, presented on “Art Crime: Effects of a Global Issue at the Community Level.”

Duncan Chappell, “Forgery of Australian Aboriginal Art”

Synopsis by Molly Cotter, ARCA Intern

Aboriginal Australians make up only two percent of the nation's population. Their art is of an extremely spiritual nature and works consist mostly of desert sand, rocks, and homemade pigments -- natural elements from the earth. The value of Aboriginal art has soared in recent years with one work selling for a record \$2.4 million at auction. The market itself grosses nearly \$100-\$500 million annually, which makes it a major source of income for many Aboriginal communities and individuals. Because of the swelling demand for Aboriginal art on the market, more and more pieces are being forged and slipped into auction sales. Aboriginal forgeries are mores upsetting than traditional forged works because they undermine the integrity of Aboriginal art; it's meaning, and even the original painter's spirituality.

In one case, a married couple was tried and convicted of selling nearly \$300,000 worth of fake Rover Thomas paintings through Australian auction houses. When initially arrested, police seized not only numerous Thomas catalogues, but also two unfinished forged canvases. In other cases, criminals forged prints to substantiate provenance to entire exhibitions and unfortunately, often suffered only minimal consequences. Despite this, authorities have run into issues in trying to protect the cultural heritage of Aboriginal art. Sometimes artists sign blank canvases before beginning work on them, or family members aid in the production of the work, making issues of provenance and authorship more complicated.

The aforementioned examples as well as a number of civil suits underscore the need for due diligence of galleries and auction houses not only to defend their reputation but the integrity of the Aboriginal artists and their legacies.

Professor Duncan Chappell is the Chair of the CEPS (Centre of Excellence in Policing and Security) International Advisory Board in Australia. A lawyer and criminologist, he also serves as an Adjunct Professor at the Sydney Law School at the University of Sydney. His presentation focused mainly on the Australian Aboriginal art market and the moral and of course monetary corruption of contemporary forgeries.

Panel 3: Historical Perspectives on Looting and Recovery

Maria Elena Versari, "Iconoclasm by (Legal) Proxy: Restoration, Legislation and the Ideological Decay of Fascist Ruins"

Synopsis by Kirsten Hower, ARCA Intern

Maria Elena Versari, presentation examined the conflicting modern views of Fascist architecture and, particularly, what to do with what remains of it. The debate that Versari highlighted centers on those historians who wish to preserve the architecture of the past for its part in history, and those who wish to wipe away the memories of Fascism and its place in Italian history. Regardless of one's viewpoint, she pointed out that "the buildings that survived represent one of the most continuous forms of Italian architecture."

Versari's main focus concerned iconoclastic acts towards remaining Fascist architecture: both destructive and in terms of conservation. In specific reference to the Mancino Law of 1993—which punishes acts that incite violence—she referred to people who had been prosecuted for endorsing Fascist art, after the decline, and attempting to incite racism and violence. In addition, Versari referenced the application of Hans Belting's division of symbols and how that can apply to the iconoclastic actions against Fascist art and architecture—an attempt to destroy the collective mental symbol by destroying the physical symbol. Belting, a German art historian and theorist of medieval and Renaissance art, as well as contemporary art and image theory narrates the historical encounter between world history and art, however, as Versari pointed out, Mussolini took on past symbols and images, using them for his own purposes and changing their meaning—his own form of iconoclasm that has later been attacked in anti-Fascist acts of iconoclasm. This is another reason that the anti-Fascist iconoclasm is so questionable, given that it "might also be an act of historical imagination."

Versari focused on the other form of iconoclasm found in the action or inaction of conservation on the part of governmental bodies. She specifically pinpointed the legal complexities that led to the inaction on the part of several offices to allocate the funds to properly preserve architecture built during the Fascist period, allowing these buildings to decay and crumble rather than preserving them for their historical purposes. Versari concluded by comparing recent practices of local administrations in dealing with Fascist art and architecture. While some will give money to alter or 'cover up' the symbols of Fascism in certain architecture—whitewashing plaques and the like, others, as in the case of Forlì, are pursuing a more subtle critical practice, suggesting the visual historicization of Fascist remains and of their subsequent iconoclastic history.

Maria Elena Versari is the Assistant Professor of Art and Design at the University of North Florida. After graduating with her PhD from Scuola Normale Superiore in Pisa, Versari has taught in both Italy and the United States and published many scholarly works, including *Constantin Brancusi* (Florence: Scala Group/Rome: L'Espresso, 2005) and *Wassily Kandinsky e l'astrattismo* (Florence: Scala Group, 2007). In addition to teaching, she is currently a member of the Advisory Board for the online journal *Art in Translation*.

Annika Kuhn, “The Looting of Cultural Property: A View from Classical Antiquity”

Synopsis by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief

Annika B. Kuhn, a recipient of The Mercator Fellowship on International Affairs is collaborating with ICCROM and their Collections Unit on the preparation of the upcoming course on First Aid to Cultural Heritage in Times of Conflict.

A Rhodes Scholar at the University of Oxford, where she received her doctorate in ancient history, Dr. Kuhn will be focusing her Mercator Fellowship on the question of restitution and mobility of cultural assets and the possibilities of international cooperation. She discussed how the destruction and pillage of cultural property in times of war and peace reach far back in history to the Greek and Roman periods. She selected historical examples of cases and the different forms of ancient responses to the loss of significant religious and cultural artifacts, which ranged from the diplomatic negotiation of returns, the repatriation of looted property as symbolic political acts, the restoration of the religious and cultural order by the use of replicas as well as early antecedents of the ‘codification’ of norms to respect the inviolability of religious and cultural sites and prohibit the illicit appropriation of art.

Using the Tyrannicides an example, according to Pliny the Elder, the Tyrannicides, Harmodius and Aristogeiton, were commissioned with public funds and erected in the Kerameikos in 509 BCE. Taken as war booty in 480 BCE during the Greco-Persian war, it remained in Persia for 150 years until Alexander the Great returned it to Athens. During the interim a new statue was commissioned, when the Greeks vanquished the Persians at Salamis and it was this sculpture which in turn served as a template for the group we possess today, which was found in the ruins of Hadrian’s villa and is now on display in Naples. The Arch of Titus in contrast, displays the Roman war booty in a triumphal procession parading spoils from the sack of Jerusalem in 70 CE.

Dr. Kuhn quoted Cicero in his speech against Roman Magistrate and governor Verres, one of the earliest art recognized thieves in which he acknowledged the Romans ambivalent attitude toward Greek art as “trifling and contemptible”. The Sicilian governor conducted “forced sales” in the province and used slaves to rob residences and temples in a systematic theft of art. Verres looted statues, furniture, vases, jewelry, carpets and paintings from sites throughout Sicily.

The Roman statesman and general Marcus Vipsanius Agrippa installed Lysippo’s statue of a Greek athlete, The Scraper, in the Baths of Agrippa, but when the emperor Tiberius removed it to his bedroom, the Romans objected to the private collecting of war booty and shamed him into returning it for public display. The emperor Augustus wrote to the Ephesians that presenting a looted statue of a golden Eros to Artemis was unacceptable: “You will do well and worthily of yourselves if you restore the offering. In any case, Eros is not a suitable offering when given to Artemis!” Caligula (37-41 CE) and Nero (54-68 CE), Germanicus’ son and grandson, respectively, stole art as Roman emperors displaying Greek art in Roman villas.

Elena Franchi, “Under the Protection of the Holy See: The Florentine Works of Art and Their Moving to Alto Adige in 1944”

Synopsis by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief

Franchi is the author of two books on the protection Italian cultural heritage during the Second World War: *I viaggi dell’Assunta: La protezione del patrimonio artistico veneziano durante i conflitti mondiali*, and *Arte in assetto di guerra: Protezione e distruzione del patrimonio artistico a Pisa durante la seconda guerra mondiale*. She has also been involved in a project on the study of the “Kunstschutz” unit. In 2009 she was nominated for an Emmy Award – “Research” for the American documentary *The Rape of Europa*, 2006, on the spoils of works of art in Europe during the Second World War.

“In Italy, at the beginning of the war in 1940, the movable works of art were subdivided into three classes of importance and sent to castles and villas in the countryside to protect them from the only danger to be expected: the air raids,” Franchi told the audience. “The most important Florentine works of art were gathered in three deposits: Villa Medicea di Poggio a Caiano

(also known as Ambra) sheltered masterpieces from the Uffizi Gallery and Palazzo Pitti; Villa Medicea della Petraia housed precious sculptures; and Palazzo Pretorio in Scarperia protected the main works of art coming from churches and private collections.”

At the end of the first year of the war, Franchi said, Villa Medicea di Poggio a Caiano was full and other deposit sites needed to be set up to shelter other important works. By 1943, Florence’s mobile patrimony resided protectively in more than 20 storage sites.

On July 10, 1943, the Allied Forces landed in Sicily in “Operation Husky”, and launched the Italian Campaign. “A frenetic moving of works of art from one deposit to another suddenly started, under heavy bombardment, even though fuel and means of transportation were hard to find,” Franchi said.

Fifteen days later, Benito Mussolini was dismissed and Marshal Pietro Badoglio was appointed as Prime Minister to head the government in his place. After the Armistice declared on September 8th between Italy and the Allied armed forces, the situation of the deposits became increasingly risky, Franchi said. In those days two military units began to operate in Italy for the protection of cultural property: the Monuments, Fine Arts and Archives program under the Civil Affairs and Military Government Sections of the United States Armed Forces (MFAA) established and the German Kunstschutz. Frederick Hartt, responsible for the MFAA in Tuscany, declared at the end of the war: “Italian authorities had done almost everything possible to protect their country’s treasure against bombardment.”

According to Franchi, and contrary to what many believe, the Nazis did not always steal the artwork around them. Franchi argued that in the case of Florence, the Kunstschutz unit, the German military unit created to protect cultural property, worked with Italians Carlo Anti, the Director general of the Belle Arti at the Italian Ministry of National Education of the Republic of Saló and Carlo Alberti Biggini, the Minister of Education, to move as much as possible to the north of Italy (controlled by the Italian Social Republic with Mussolini and the German occupation).

In June 1944, Biggini ordered a move of the main works of art of Florence and Siena to the north of Italy, far from the battle line. But the difficulties of his own journey made it clear that it was impossible to carry such precious shipment to the north.

Despite this, at the beginning of July, the German Army evacuated the precious works of art belonging to Florentine Galleries from the deposit of Montagnana, since the battle line was approaching. The German Army also evacuated the deposit of Oliveto, unbeknownst to the Kunstschutz, the Italian Ministry and the Superintendency.

The Kunstschutz got on the trail of the missing works of art and removed the works of art from the deposit of Poggio a Caiano that was under the protection of the Holy See. At the end, the Florentine works of art removed by German Army and Kunstschutz were all moved to two deposits to Alto Adige that were entrusted to the local Superintendent and to German Kunstschutz until the arrival of the Allies in 1945.

Charlotte Woodhead, “Assessing the Moral Strength of Holocaust Art Restitution Claims” Synopsis by Molly Cotter, ARCA Intern

Charlotte Woodhead, Assistant Professor at the University of Warwick, Warwick School of Law shared her analysis of the numerous moral considerations of the United Kingdom’s Spoliation Advisory Panel, which hears claims relating to World War II thefts of cultural objects.

Founded only in the year 2000 and keeping in mind the time bars involved in civil suits, the panel mediates disputes from people, or their heirs, who lost property during the Nazi era which are now held in UK national collections. Members of the panel, including lawyers, judges, professors, an art dealer and a baroness are appointed by the Secretary of State and consider both legal and non-legal obligations, such as the moral strength of the claimant’s case, and whether any moral obligation rests on the holding institution. In cases where the claimants received post-war compensation, the panel also considers any potential unjust enrichment were the object to be returned or a monetary reward offered. The public interest of a piece is also a factor in deciding whether to simply return the item or offer a reward.

The Panel's proceedings are an alternative to litigation and its recommendations are not legally binding on any parties. However, if a claimant accepts the recommendation of the Panel, and the recommendation is implemented, the claimant is expected to accept this as full and final settlement of the claim.

Woodhead also discussed the difference between UK claim resolution and those of the Restitutions Committee of the Netherlands. The British panel seeks restitution for art lost or stolen during the Nazi era (1933-1945) whereas the Dutch committee focuses on art lost in direct relation to the Nazi regime. Regardless of their differences, Woodhead stressed the importance of the existence of these panels saying "Nazi stolen art is different from stolen art [in general] as there is a wider cultural goal to right the wrongs of the past."

ARCA ANNUAL AWARDS IN THE FIELD OF ART CRIME PREVENTION AND INVESTIGATION AND CULTURAL HERITAGE PROTECTION:

ARCA Award for Art Policing & Recovery – Recipient – Paolo Ferri Synopsis of award recipients by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief

Paolo Giorgio Ferri, retired Italian State Prosecutor received ARCA's Award for Art Policing and Recovery for his role in the return of many looted antiquities from North American public and private collections. He was the lead attorney in Italy's cases against The Getty Museum's Marion True, their former antiquities curator in Los Angeles and other American museums for the return of looted antiquities. He now serves as an international expert in jurisdictional disputes of cultural goods for the Italian Ministry of Cultural.

Dr. Ferri told the audience, in Italian and through the use of an English translator, that he was delighted to receive the ARCA award, his first major award recognizing his professional accomplishments. Years ago, Ferri said, exporting of looted antiquities was a fiscal misdemeanor and assisted by the ease with which the items could be cleared through Switzerland. He credited the work of Peter Watson, the author of *The Medici Conspiracy*, for his investigation into Giacomo Medici which helped to enable the return of many objects. In addition, the subsequent media coverage increased awareness of the problem of selling cultural heritage.

Regarding resolution of these matters of allegations of stolen antiquities, Dr. Ferri would prefer an international court that would provide more uniform judgments. "This court could possibly be under the offices of UNESCO which recently started offices for mediation and restitution," Dr. Ferri told the audience. He proposes that arbitration would expedite these matters and that inexpensive working groups in each country could provide spontaneous information that could ease the return of looted cultural objects. "The Washington Agreement should help people who hold titles in 'good faith' and return objects to the original country of origin," Dr. Ferri said. "The necessity of proof should come from the buyer of good faith." The object should be returned to the country of origin who claims it if there is any doubt, Dr. Ferri said. "Cooperation in macro-regions is of extreme importance," he said.

Eleanor and Anthony Vallombroso Award for Art Crime Scholarship – Recipient - Neil Brodie

Dr. Brodie is an archaeologist who has written extensively on the looting of antiquities and their eventual sale. He has conducted archaeological fieldwork and is the former director of the Illicit Antiquities Research Centre at the University of Cambridge as well as the former director of Cultural Heritage Resources at the Stanford Archaeology Center. His comprehensive lectures and prolific writing on the illicit trade of antiquities stands as a thoughtful and impassioned cry for the preservation of a vanishing and finite resource.

ARCA was also pleased to present the following awards the following individuals who were unable to attend the conference this year.

ARCA Award for Art Security & Protection – Recipient Lord Colin Renfrew (in absentia)

Lord Renfrew has been a tireless voice in the struggle for the prevention of looting of archaeological sites and one of the most influential archaeologists in recent decades. At Cambridge he was formerly Disney Professor of Archaeology and Director of

the McDonald Institute for Archaeological Research. He is now Senior Fellow of the McDonald Institute for Archaeological Research.

ARCA Award for Lifetime Achievement in Defense of Art/John Henry Merryman (in absentia)

A renowned expert on art and cultural property law, Professor Merryman has written extensively about art and heritage for forty years. He currently serves as an Emeritus Professor at Stanford Law School. He adds this award to his impressive list of awards, including the Order of Merit of the Italian Republic and honorary doctorates from Aix-en Provence, Rome (Tor Vergata), and Trieste. In 2004 he also received the American Society of Comparative Law's Lifetime Achievement Award "for his extraordinary scholarly contribution over a lifetime to comparative law in the United States". His textbook *Law, Ethics, and the Visual Arts*, first published in 1979 with Albert Elsen, stands as the leading art law text. His writings have shaped the way we think about art and cultural disputes, and have added clarity and rigor to a field he helped pioneer.

Panel 4: Writers on Art Crime

Vernon Silver, "The Lost Chalice"

Synopsis by Jessica Graham Nielsen, ARCA Intern

Vernon Silver, senior writer at *Bloomberg News* in Rome and author of *The Lost Chalice* (Harper Paperbacks, 2010), presented his paper, "Crimes Scenes as Archaeological Sites" at ARCA's third annual International Art Crime Conference in Amelia in July 2011. Silver is an archeologist and Oxford-educated antiquities scholar,

In the nonfiction thriller "The Lost Chalice" Silver focuses his story on the journey of the oldest known work by renowned ancient Greek vase painter and potter Euphronios which formerly resided at The Metropolitan Museum of Art's ancient collection. The book traces the journey of the kylix from an Etruscan tomb in Italy through the hands of Bruce McNall and the Hunt Brothers through several countries, Sotheby's auction house in 1990 and finally, after more than 30 years its return to its home nation.

Here Silver describes his work:

Italy's criminal investigations of the illicit antiquities trade have largely ignored the archaeological sites from which artifacts have been removed. Greater attention to these crime scenes -- which double as archaeological sites -- can help restore some of the archaeological context lost in the process of looting objects.

This paper uses the example of the 1971 illicit dig at the funerary complex of Greppe Sant'Angelo near Cerveteri, Italy, in which tomb robbers uncovered a previously unknown complex of Etruscan tombs, removing sellable artifacts that included a red-figure Attic vase that became known as the Euphronios krater. The recent trials in Rome that led the Metropolitan Museum of Art to return the vase to Italy did not address the archaeological origins of the object. Although Italy's requests for its return drew on the moral argument that the nation's archaeological heritage had been harmed, the lack of crime-scene analysis was a lost opportunity to rebuild a record of the vase's history, including the other objects with which it was buried, and details of the necropolis where it was found.

Drawing on research for the author's doctoral thesis ("The Antiquities Trade: Object Biographies of Euphronios vases looted from Etruria") and his related book, "The Lost Chalice" (2009, 2010) this paper presents examples of the rich selection of untapped data about the site: photos from the early 1970s in the archive of the Villa Giulia museum; interviews with a surviving tomb robber; contemporary visits to the site itself and objects in the Cerveteri archaeology museum that were also found at the site but never labeled as such. Each help rebuild the lost context.

From a policing view, an eye for archaeology would enhance the collection of such records. (Fans of one crime-scene television show might think of this approach as "CSI: Ancient Victims Unit.") For the sake of archaeology, there is more to investigate than just the buyers and sellers.

In the future, greater police and prosecutor attention to developing and publishing of crime-scene data on illicit excavations,

and involving archaeologists in the process, would be a step towards mitigating damage to the archaeological record. Outside Italy and other source countries such as Greece and Egypt, scholarly attention to police evidence should also help meet those ends.

**Fabio Isman, “Grande Razzia and *Il predatori dell’arte perduta: il saccheggio dell’archeologia in Italia*”
Synopsis by Jessica Graham Nielsen, ARCA Intern**

Fabio Isman, is a celebrated investigative journalist in Rome, who contributes to *The Art Newspaper* and writes regular columns for *Il Messaggero* and *Arte e Dossier* who has published 24 books, 18 of which are dedicated to art and culture in Italy. Through an interpreter, Isman talked passionately about the immense scope of illegal excavations, the illicit trade in Italian antiquities, and the yet unpunished main characters in a drama of tomb robbers, dealers, antiquities collectors, auction houses and the world’s major museums.

In his presentation, which he called: “The Biggest Looting: an awful story, that will never end,” he shared pictures and information he found while researching his book, *Il predatori dell’arte perduta: il saccheggio dell’archeologia in Italia (Raiders of the Lost Art: the Looting of Archaeology in Italy)*, which is the first written account on the subject in Italian. He described his book as following Peter Watson’s fundamental work in *The Medici Conspiracy*, thanked him, and added that the depth of the issue has not been discovered until recently.

“I will talk of a phenomenon: one million antiquities shipped from Italian soil from 1970 on, the most important [of which] was sold to the world’s greatest museums and big collectors...I wrote it because Italy is a great source of antiquities and I realized that few [here] are aware...”

He went on to describe a story of ten thousand people, involved in the systematic looting and sale of one million illicit objects sold to thirty-six museums and twelve private collectors through specialist dealers from 1970 to 2004 in a business that is still ongoing – items having just come up at auction a few months before ARCA’s 2011 conference was held.

Isman traced the beginning of the Grande Razzia to the Metropolitan Museum’s purchase of the illegally excavated Euphronios Krater which sold for \$1,000,000 in 1972 and made art market history, establishing a record price for an ancient object. As the collector’s market hungered for more objects, it was fed by looter/dealers Giacomo Medici with his secret depositories discovered in Geneva in 1995; four rooms filled with vases and recently excavated objects including four thousand Polaroid pictures of artifacts, some of which were already in major museum’s collections, and Gianfranco Becchina who’s four warehouses discovered in Basel in 2001 containing more than \$6 billion worth of antiquities.

Isman referred to these men and other nefarious characters as “murderers of antiquities” who had scattered important objects around the world, leaving them out of context and thus “destroyed.” He underscored his words with images of a villa excavated in an unknown location at Pompeii, its frescoes buried yet still intact, and those same frescoes cut into pieces so that they could be taken to Medici’s storehouses.

Isman thanked the State, and particularly Prosecutor Ferri and the Carabinieri (which increased from 16 - 300 during these years) for helping to curb the flood of antiquities leaving Italy and helping many artifacts to find their way back home. But he also lamented that “no police dog is at the airport sniffing for ancient vases and [that] one third of the people in prison have something to do with drugs and not one [of them is there] for illegal art.”

**Peter Watson, “Some Unpublished and Unpalatable Details about Recent Art Crimes”
Synopsis by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief**

Peter Watson, author of numerous books including *The Medici Conspiracy* and *Sotheby’s the Inside Story*, leaned back in his chair in front of the audience and like a practiced storyteller, said that he would talk about “some unpublished and unpalatable” details about recent art crimes. He asked the audience to question about how much they knew about the truth of art theft. “Museums lie about provenance and experts are not experts,” he said.

Watson spoke about the stories in his books, of how a priest with the Vatican’s mission trafficking in stolen paintings, pleaded for mercy on the court, and after the judge suspended his sentence, went on to traffic drugs.

He also talked about John Drewe, the forger, once suspected of burning down a house that killed a Hungarian lodger and two months ago was sentenced for defrauding a widow.

To underscore the dark side of the industry, Watson spoke of Robin Symes. When Symes' late partner Kristo Michaelides died and his family filed estate related proceedings against him the judge sentenced him to two years in prison for a separate criminal offense. Serving just 7 months of this sentence, a month after Symes was released a BMW was deliberately set on fire and a luxury yacht in dry dock also went up in flames. "Nothing was ever proved, but this is underlining the idea that we are not dealing with nice people," Watson said.

In regards to the Sevso silver, a strange murder in the late 1970s in a wine cellar showed three sets of footprints going into the wine cellar, and two going away. People accused of these crimes are "too dangerous", Watson said. His friend Charley Hill, who recovered one of the Munch paintings while working for Scotland Yard, said that his children were threatened in a case.

"This is a very unpleasant world so watch where you're going," Watson told the audience.

Panel 5: Fresh Perspectives on Art and Heritage Crime

Leila Amineddoleh, "The Pillaging of the Abandoned Spanish Countryside"

Synopsis by Molly Cotter, ARCA Intern

Many towns in the Spanish countryside have been abandoned. Since the towns operate on tax dollars and people have fled to bigger, more industrial cities, rural houses and churches become vulnerable to pillaging. Amineddoleh's presentation even included an astonishing ad in a Spanish newspaper that advertised an entire "Town for Sale" for 189,000 Euro.

One very unfortunate issue with these depopulated cities is the fate of the art and cultural objects left behind. Though some construction companies have permission to remove Roman ruins and Visigoth remnants from the abandoned homes and churches, much of the forgotten art is eventually ripped from its context and sold.

Unbeknownst to many Spanish citizens, the hidden works have incredible cultural and historical value for the nation's identity. Municipalities receive 1% of tax revenue for art restoration but in many cases without a sufficient number of people in the town paying taxes, there is little money for protection.

Amineddoleh strongly believes that for Spain to protect its patrimony it must create an extensive catalogue that encompasses both State and Church property. She believes working with a database modeled after the Italian ICCD catalogue, which receives donations and revenue, would be ideal for keeping track of and protecting Spain's cultural treasures.

Courtney McWhorter, "Perception of Forgery According to the Role of Art"

Synopsis by Jessica Graham Nielsen, ARCA Intern

McWhorter described the different and changing ways we have valued art over time: from placing a high value on the aesthetic experience; to subsequently valuing its specific place in history; to the current trend of appreciating art more in economic terms. She proposed that as the perceptions of the value of art have changed, so has our acceptance and tolerance for copies and forgeries. "I will show how art is valued today according to its historicity, rather than its aesthetic capabilities," McWhorter said. "Such claims explains why forgeries could have once been acceptable, but now are not because they falsify history."

McWhorter explained that in the Renaissance art was valued for the aesthetic experience it could impart. Scholars looked to the ancients for inspiration on how to think about art and embraced Plato and Aristotle's theories. The Greek philosophers considered art to be a mere copy of the ideal and that its primary objective should be to evoke a feeling. Thus, when the Duke of Mantua was told that the "Raphael" he had coveted and that had been (reluctantly) given to him by Ottavio de Medici was in reality a copy by Andrea del Sarto, he reportedly said that he "valued it no less than if it were by the hand of Raphael." In his mind the genius was in Sarto's perfect copy – an improvement on the original. The copy had artistic merit in its own right.

McWhorter then discussed the twentieth century and used Van Meegeren's "Vermeers" as an example of how the value

of art has shifted to one of historicity. Originally esteemed as some of Vermeer's greatest masterpieces when they were "discovered," they were disparaged by critics as worthless fakes once Van Meegeren was forced to admit (and prove) that he had actually painted them. The career of the connoisseur who had enthusiastically welcomed them as the long hoped for missing link between Vermeer's earliest religious work and the small domestic scenes he became associated with later, was ruined. It was the great value placed on art's historical relevance that Van Meegeren had exploited for the conception and acceptance of his Vermeer pastiches.

Lastly McWhorter turned to the current obsession of valuing art as an economic asset. She showed several images of editorial headlines proclaiming the monetary losses various collectors, including the actor Steve Martin, had suffered by being duped by fakes and forgers such as the "German Ring." She blamed the auction houses for the current commodification of art and although she did not expand on it, she alluded to a developing phenomenon of fakes becoming just as economically valuable as some of the works they imitate.

Courtney McWhorter is currently completing her final year as an Honors student at Brigham Young University, working towards a Bachelor in Art History.

Michelle D'Ippolito, "Discrepancies in Data: The Role of Museums in Recovering Stolen Works of Art" **Synopsis by Mark Durney, Founder of Art Theft Central**

Michelle D'Ippolito discussed the role museums play in reporting and recovering stolen art. Many museums are reluctant to report art thefts due to their "concern for their public image and a persistent lack of funding." According to D'Ippolito, the public's opinion of a museum greatly affects its ability to attract visitors and donations, which in turn impacts its likelihood of receiving government grants. Unfortunately, in the event of a theft, the media frequently focuses its headlines on museums' security shortcomings rather than on the possible factors that may contribute to losses. For example, after it was reported that 1,800 historic artifacts were missing from Pennsylvania's state collections, the media published headlines, such as "PA. Auditor Says State Has Lost Treasure Trove of Artifacts" and "Audit: Pennsylvania museums' artifacts 'likely lost forever.'"

Alternatively, the media could have examined how the Pennsylvania State Historical and Museum Commission's recent budget cuts and staff reductions may have contributed to its inability to accurately account for its collections. Funding is critical to a museum's basic operations and its effort to preserve and protect cultural heritage. For example, it enables a museum to purchase current collections management software, which streamlines the inventory process and also provides financing for the specialized training of museum personnel.

D'Ippolito continued her panel lecture with a discussion of the variety of national, international, and private stolen art databases available to art theft victims. While such databases are helpful to ensuring a quicker recovery of stolen art, their true potential has not yet been realized. Many countries do not consistently report museum theft due to their inability to register accurate statistics. According to D'Ippolito, this element coupled with the fact that many museums are reluctant to report theft has given rise to a situation that has little effect on deterrence.

In conclusion, D'Ippolito offered a few strategies to increase the reporting and recovery of stolen art. She identified eliminating discrepancies in the information required to report a theft; interfacing current databases; creating a database related to the objects recovered with details of the investigation; and increasing museums' participation in reporting theft as key areas for further improvements.

Michelle D'Ippolito, is currently is completing her undergraduate degree at the University of Maryland.

Sarah Zimmer, "The Investigation of Object TH 1988.18: Rembrandt's 100 Guilder Print" **Synopsis by Kirsten Hower, ARCA Intern**

Sarah experience ranges from fine art exhibitions to art history to museum work, on which her presentation, "The Investigation of Object TH 1988.18: Rembrandt's 100 Guilder Print," is based. While working in the archive of a museum, Zimmer discovered that an etching by Rembrandt was missing and then proceeded to investigate its disappearance. Her investigation, which included emailing former directors of the museum and anyone that may have an idea of where the print disappeared to, led to an interesting turn of events when she was asked to halt all investigation into this mystery.

Rather than completely forgetting the project, Zimmer was driven to investigate the value of this particular print and the value of works to museums. A contemporary artist with no prior knowledge of this Rembrandt's "worth," she was intrigued by the question of: "What is the value of this museum protecting this secret when the value of the work may be minimal?" Using her artistic training, Zimmer delved into the realms of forgery to recreate the Rembrandt print along with provenance documents for an exhibition examining the value of a work and where the value lies. "I'm attempting to understand the value of the work, whether it's monetary value or assigned value. Whether it's the name that counts or the functional value of depicting a story." Zimmer's exhibition was shown at the Museum of Contemporary Art in Detroit in 2010 and also in Chicago.

Not inclined to completely let go of the project, Zimmer is still interested in examining the value that museums place on works and what value society places on works of art, such as "How we've made Rembrandt, the name, a commodity." Though she no longer works for the museum from which this print went missing, Zimmer stated that, "the true crime was the institution depriving us of information and not allowing us to continue our investigation." Of the multiple missing works that Zimmer investigated while working at this museum, the Rembrandt is the only one that raised the attention of the institution to cease research into its whereabouts. Zimmer is still pursuing research into the value that is placed on works by museums and the art community.

Sarah Zimmer is a part-time faculty member at the Art Institute of Michigan's Photography department and teaches both art history and studio art.

Panel 6: Cultural Heritage and Armed Conflict

Mark Durney, "Collection Inventories"

Synopsis by Catherine Schofield Sezgin, ARCA Blog Editor-in-Chief

Collection Inventories account for works in the event of disaster, transition or conservation treatment and are a proactive effort to protect and secure art collections, Mark Durney, ARCA's Business and Admissions Director, told the audience at ARCA's third annual International Art Crime Conference.

Accurate and well-audited inventories may increase the likelihood of recovering missing items. In 2008, an inventory of Russian museums discovered 242,000 pieces missing of which only 24,500 were officially registered as stolen.

In 1980, the Dutch Institute for Social Policy Research's Condition Survey reported a backlog of 70,000 "men years" to inventory 16 national museums.

Many collections in Egypt don't have inventories, Durney told the audience. And when 56 objects were reported missing from Egypt as published by the Supreme Council, the description of such items as a 'wooden model vase' were incomplete as to claim or recognize the object.

In France, 2002 legislation required all museums to create inventories of their collections and calls for them to be reviewed every ten years. The *Joconde: catalogue des Collections des Musées de France* is an online inventory from 328 museums.

"More information, better results," Mark Durney said. "Collection inventories hold institutions accountable for objects in the public trust; motivates more accurate theft reporting; and increases likelihood of recovery."

"Law enforcement claims a recovery rate of 5-10 percent," Mark Durney said. "But looking at the numbers over a ten year period, only 1.9% of objects registered stolen were recovered. The confidence interval is 95% and you can quote me on that."

Larry Rothfield, "What Museums and Archaeological Sites can do Protect Themselves during Times of Upheaval: Lessons Learned from Cairo"

Synopsis by Jessica Graham Nielsen, ARCA Intern

Larry Rothfield, was a writer-in-residence during the 2011 ARCA Summer program and presented his thoughts on the recent looting during the revolution in Cairo.

“The recent revolution in Egypt provided a natural experiment or stress test of the security system that normally protects antiquities, whether in museums, or on sites or in remote storerooms. What can we learn from the looting of the Cairo Museum (and from storerooms and archaeological sites around the country) is how other heritage professionals could and should be planning ahead to cope with similar situations of political instability that might strike their country?”

Rothfield described the failings of security during the recent revolution in Cairo that “allow us to see important things about the structure of heritage protection.” The lack of an established contingency plan in the wake of the Tunisian revolution essentially left the Cairo museum unguarded and allowed a mob to break in to the gift shop of the museum, a very few of whom were able to then penetrate the galleries and steal a small number of artifacts. Thanks to civilians though, who formed a human chain surrounding the museum, looting and damages were limited.

Rothfield questioned why the “Pharaoh of Antiquities,” Zahi Hawass, was not better prepared for the eventuality of the looting, the timeline involving his resignation and subsequent re-instatement after Mubarak’s toppling, the inaccurate reporting on the series of events surrounding the looting, and due to some strange coincidences, whether the thefts could have possibly been an inside job. He went on to list six lessons learned:

1. Contingency plans are needed to assure the safety of museums and cultural heritage sites during times of normal security breakdown.
2. Antiquities ministries are interested in scholarship and excavations and aren’t particularly interested in site security.
3. Well-conserved sites that are not armed are not protected.
4. Mobilized public and dedicated civil servants can protect sites and museums.
5. There is no substitution for police, or militarized police, in general lawlessness.
6. Tourism revenue alone will not provide locals with enough incentive to protect heritage if doing so becomes too dangerous.

In response to questions regarding the arming of guards he said that he did not believe in simply handing out guns and that a contingency plan, training and an “all hands on deck” approach might have prevented the looting that did occur. He also stressed that the situation in Cairo was very different than the issues that Donny George at the Baghdad Museum faced during wartime.

An article in the Guardian published during the conference discussed Mr. Rothfield’s views in more detail.

Larry Rothfield is an Associate Professor of English and Comparative Literature at the University of Chicago, where he co-founded and directed the Cultural Policy Center from 1999-2008. He has published on a wide array of subjects in cultural policy. His last book, *The Rape of Mesopotamia* (University of Chicago Press, 2009) offers a behind-the-scenes look at the causes for the failure of US forces to secure the Iraq National Museum and the country’s archaeological sites from looters in the wake of the 2003 invasion.

Katharyn Hanson, “Looting at Archaeological Sites During Conflict: Iraq’s Cultural Heritage as a Case Study” Synopsis by Kirsten Hower, ARCA Intern

Katharyn Hanson’s archaeological experience has helped her to examine the dangers that archaeological sites face and what can be done to prevent the looting and destruction of these sites. In her presentation, “Looting at Archaeological Sites During Conflict: Iraq’s Cultural Heritage as a Case Study,” Hanson examined the looting of archaeological sites in Iraq and stressed the tools with which these sites can be protected in the future.

Opening her talk with the topic of the devastation of the Iraqi National Museum, Hanson highlighted the difficulties entailed in even knowing how much has been stolen from a museum—let alone from an archaeological site. In addition, the lack of recoveries made is even more depressing than not knowing how much was lost in the first place. Moving on from the losses incurred at the Iraqi National Museum, Hanson used the same premise to talk about two archaeological sites in Iraq that have been devastated by looters: Umma and Umm al-Aqarib. As she stated in her presentation, “By far, the majority of artifacts stolen from Iraq come from archaeological sites.” Using aerial and satellite photos, she was able to demonstrate the extreme number of additional of looter’s holes to archaeological sites from 2003 to 2008. The result was disheartening and mind numbing, with an increase of nearly 5,000 or more looter’s holes at each site over the course of five years.

Hanson also stressed that certain artifacts had been recovered after being found in the presence of weapons, such as AK-47s—marking a tie between the arms market and the black antiquities market. In a really somber moment, she stated that we do not really know where these works go after they have been dug up: “We don’t have a great answer. I don’t know.”

Hanson then stated what measures are out there, legally, for protecting sites, such as CIPA, Customs Enforcement, and the Hague Convention which calls for sites to be protected during wartime. However, it was pointed out that sadly, these are more measures for protecting what is looted from sites in the hopes of recovering them. Hanson brought a very somber topic to the conference, but it was certainly one worth hearing and will, hopefully, advocate more work towards protecting archaeological sites in Iraq and around the world.

Katharyn Hanson is a Ph.D. candidate at the University of Chicago, concentrating her studies in Mesopotamian Archaeology.

Panel 7: 40-year Anniversary of the 1970 UNESCO Convention

Catherine Schofield Sezgin, “Report on the 40th Anniversary Celebration of the 1970 UNESCO Convention” Synopsis by Jessica Graham Nielsen, ARCA Intern

November 14, 2010 marked the 40th anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. ARCA blog editor-in-chief, Catherine Sezgin, reported on her participation in a celebration of the 40th anniversary held in Paris in March 2011 from her notes on the event. She mentioned that she had seen Annika Kuhn and Prosecutor Ferri at the event and invited them and many of her other fellow presenters at the ARCA conference (who she deferred to as having greater knowledge of the history and successes of the treaty), to engage in a lively discussion following her presentation.

“The Fight against the Illicit Traffic of Cultural Property: The 1970 Convention: Past and Future” The conference was an opportunity for UNESCO to look at the history of the Convention, evaluate its accomplishments, strengths and weaknesses and examine its main challenges. Sezgin noted that there was a speaker who brought up the similarities in the implementation of the 1970 Convention of UNESCO on illicit traffic to the experiences of the Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (CITES). She also sat in on a public debate covering various issues among representatives from “source and destination” countries, the art market, museums and international organizations. Sezgin was most impressed by the Mexican representative, Dr. Jorge A. Sánchez-Cordero, Director of the Mexican Center of Uniform Law; who spoke about Mexico’s active participation in the forming of the treaty and that it was the eighth country to ratify it. Mr. Cordero said:

“We are in a situation that we cannot tolerate. Many countries are being plundered through clandestine excavations. Despite all our efforts, criminals operate on sites and in the trafficking of cultural and archeological objects.”

Dr. Sánchez-Cordero also talked about the ‘international community experiencing a rise of a new consciousness regarding the need of protecting cultural heritage, which is not linked to cultural nationalism, but rather to the need of safeguarding universal knowledge.’ Sezgin reported that he urged UNESCO to ‘play a prominent role in the new cultural order’ and said that the convention ‘only protects objects placed on an inventory list,’ this was a perfect introduction to the next speaker at the ARCA conference, Chris Marinello, from the Art Loss Register, who described his company’s database.

Catherine Schofield Sezgin received her Master’s certificate in ARCA’s International Art Crimes Studies Program in 2009. She has written about the efforts of law enforcement to stop the trafficking of stolen antiquities on ARCA’s blog and in *The Journal of Art Crime*. She has worked as the editor-in-chief of ARCA’s blog since 2010.

Chris Marinello, “Art Loss Register and Stolen Art Databases” Synopsis by Mark Durney, Founder of Art Theft Central

Chris Marinello, Executive Director & General Counsel of the Art Loss Register, delivered a lecture on the role of private and public stolen art databases in the recovery of lost art. In March 2011, Marinello along with ARCA’s Catherine Sezgin attended the 40th Anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property held at UNESCO’s headquarters in Paris France. As of 2011, the ALR’s database contained more than 350,000 images of stolen works of art. The ALR offers its registration services on a pro bono basis to countries that

are currently engaged in armed conflict or that have endured through natural disasters. For example, upon hearing news of the looting and theft of objects from sites and institutions across Egypt, the ALR reached out to Zahi Hawass to assist in recovery of its missing objects.

Marinello continued with a discussion of a number of the more intriguing recoveries the ALR had made in recent years. For example, in cooperation with Immigration and Customs Enforcement, the ALR returned a portrait of a young girl by famous Belgian artist Antoine (Anto) Carte to its owner 69 years after it was stolen by the Nazis. During World War II, the work's original owners fled their Brussels home and the Nazis eventually confiscated their art. In November 2008, the ALR notified ICE and the U.S. Attorney's Office that a Long Island art gallery had possession of the work. Fortunately, in this case the present owner forfeited the painting upon hearing that it had been stolen during the war. However, as Marinello alluded to, few cases are resolved as quickly. As illustrated in the Carte case, the ALR frequently works closely with domestic and international law enforcement agencies including the FBI, Scotland Yard, the Carabinieri, and Interpol.

Upon conclusion of Marinello's lecture, former Italian state prosecutor Paolo Ferri provided a few insights into the Carabinieri's lost art database, which he says now contains over four million registered objects.

ARCA Award Winners

2011 ARCA Award Winners

We are pleased to announce the winners of the 2011 ARCA Awards. Awards are voted by the trustees and the editorial board of this journal. Anyone not serving on one of these committees is eligible for the awards, which are nominated every January. Winners are provided an all-expenses trip to Italy, where they receive the awards formally at the annual ARCA Conference and give a speech to the congregants. A brief profile of each award winner follows below.

ARCA Award for Art Policing & Recovery

Paolo Ferri

Dr. Ferri has served as Italian State Prosecutor and has been a prominent figure in the return of some 130 antiquities from North American public and private collections. He now serves as an expert in international relations and recovery of works of art for the Italian Culture Ministry.

2011 Finalists: Sharon Cohen Levin, Don Hrycyk, Jurek Rokoszynski

2010 Winner: Charles Hill

Eleanor and Anthony Vallombroso Award for Art Crime Scholarship

Neil Brodie

Dr. Brodie is an archaeologist who has written extensively on the looting of antiquities and their eventual sale. He has conducted archaeological fieldwork and was the former director of the Illicit Antiquities Research Centre at the University of Cambridge. His terrific writing on the illicit trade in antiquities stands as a thoughtful and passionate cry for the preservation of a vanishing and finite resource.

2011 Finalists: Fabio Isman, Peter Watson, Kurt Siehr

2010 Winner: Larry Rothfield

ARCA Award for Art Security & Protection

Lord Colin Renfrew

Lord Renfrew has been a tireless voice in the struggle for the prevention of looting of archaeological sites, and one of the most influential archaeologists in recent decades. At Cambridge he was formerly Disney Professor of Archaeology and Director of the McDonald Institute for Archaeological Research and a Senior Fellow of the McDonald Institute for Archaeological Research.

2011 Finalists: Marion True, Steve Keller, Bob Combs

2010 Winner: Dick Drent

ARCA Award for Lifetime Achievement in Defense of Art

John Henry Merryman

A renowned expert on art and cultural property law, Professor Merryman has written beautifully about art and heritage for many years. He currently serves as an Emeritus Professor at Stanford Law School. He adds this award to his impressive list of awards, including the Order of Merit of the Italian Republic and honorary doctorates from Aix-en Provence, Rome (Tor Vergata), and Trieste. His textbook *Law, Ethics, and the Visual Arts*, first published in 1979 with Albert Elsen, stands as the leading art law text. His writings have shaped the way we think about art and cultural disputes, and have added clarity and rigor to a field he helped pioneer.

2011 Finalists: Maurizio Fiorilli, Oscar Muscarella, Ton Cremers

2010 Winner: Howard Spiegler

Contributor Biographies

Lynda Albertson is the CEO of ARCA. Her 25 year business career spans positions in cultural heritage and academics, as well as public and corporate administration in North America and Italy. She has a particular interest in museums, cultural heritage conservation, art in public spaces and the development of preservation collaborations and partnerships with individuals and agencies internationally. Outside the world of galleries and museums, she has worked diligently to heighten cross-cultural awareness within an increasingly global society.

Leila Amineddoleh is an art law and intellectual property attorney in New York City. Upon graduation from law school, she worked as a litigator at Fitzpatrick Cella for three years. She then worked as a legal consultant, and recently joined Lysaght, Lysaght & Ertel. She is Of Counsel at the firm and the Chair of the Art Law Group. Recently she joined Fordham University School of Law where she teaches Art Law as an adjunct professor. Prior to the pursuit of her legal degree, Ms. Amineddoleh received her B.A. from NYU, and she completed ARCA's Masters Program in 2010.

Bill Anderson is the co-founder of the firm ArtGuard, which develops art security technology used by the National Gallery of Art and other museums nationwide.

Aviva Briefel is Associate Professor of English at Bowdoin College. She is the author of *The Deceivers: Art Forgery and Identity in the Nineteenth Century* (Cornell University Press, 2006) and co-editor of *Horror after 9/11: World of Fear, Cinema of Terror* (University of Texas Press, 2011). She is currently at work on a book titled *Amputations: The Colonial Hand at the Fin de Siècle*.

Diane Joy Charney teaches French Literature at Yale University, where she is also Tutor-in-Writing and the Mellon Forum Fellow of Timothy Dwight College.

Noah Charney is the Founder and President of ARCA and the Editor-in-Chief of *The Journal of Art Crime*. Recently a Visiting Lecturer at Yale University, he is currently Adjunct Professor of Art History at the American University of Rome. He is the editor of ARCA's first book, *Art & Crime: Exploring the Dark Side of the Art World* (Praeger 2009). His latest book is *The Thefts of the Mona Lisa: On Stealing the World's Most Coveted Masterpiece* (ARCA Publications 2011).

Urška Charney is the head of design for ARCA.

John Daab is a Certified Fraud Examiner specializing in art and forgery research through the Association of Certified Fraud Examiners. A Certified Forensics Consultant and Accredited Forensic Counselor, he is also a Registered Investigator with the American College of Forensic Examiners International. His academic credentials include a BA/MA Philosophy, MBA Business, MPS/Industrial Counseling, MA Labor Studies and a PhD in Business Administration. John has also completed New York University's Fine and Decorative Art Appraisal Program and is completing a docent program at Princeton University. He is a member of the National Sculpture Society, the Association of Certified Fraud Examiners, the American College of Forensic Examiners Institute, Association for Research in Crimes Against Art, and The Fine Art Registry. In addition to his awards for teaching management and service to NYU, John has published more than 70 articles and authored, *The Art Fraud Protection Handbook*. Having recently completed a second book, *Forensic Applications in Detecting Fine, Decorative, and Collectible Art Fakes* and is now working on his third book on the Business of Art.

Paolo Giorgio Ferri is a retired Prosecutor for the Republic of Italy who played an integral role in the return of looted antiquities illicitly exported from Italy and sold to North American public and private collections. He served as the lead attorney for the Museum and the J. Paul Getty Museum and its former curator of antiquities, Marion True. Presently he serves as an international expert in cultural goods juridical problems for the Italian Ministry of Cultural Heritage

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Christopher A. Marinello had been a litigator in the criminal and civil courts in New York for over 20 years before joining the Art Loss Register as Executive Director and General Counsel. Chris has represented galleries, dealers, artists and collectors and is currently managing US and worldwide art recovery cases for the London based organization. The Art Loss Register is the world's largest international database of stolen, missing and looted artwork. It is used by law enforcement agencies, the insurance industry, the art market, museums and private collectors, who can commission pre-sale due diligence checks as well as fine art recovery services. Chris serves as the ALR's chief negotiator and has mediated and settled numerous art related disputes as well as several high-profile Holocaust Restitution claims. He is often asked by law enforcement to take part in clandestine art recovery operations and has participated in numerous international conferences on stolen artistic property. Chris has taught Law & Ethics in the Art Market at New York University SCPS, Seton Hall University and Sotheby's Institute of Art, Masters Degree Program. He is also a member of Advisory Council of the Appraisers Association of America and Inland Marine Underwriters Association.

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Lilian Noack works at the Daumier Register.

General B(a) CC Giovanni Pastore served as Vice-Commandant of the Carabinieri Division for the Protection of Cultural Heritage from 1995 until his retirement in 2011. During that time he was widely considered the world's finest art policeman, Colonel Pastore commanded the twelve Carabinieri art police divisions within Italy. Pastore was trained at the elite military academy in Modena. He studied art history, law, and security, and excelled in horsemanship. Over his long career, he has been decorated with numerous medals both in Italy, including the equivalent of a knighthood, and by grateful nations abroad, in appreciation for his professional service. He is one of the founding trustees of ARCA.

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by journalists for his commentary on art-related legal matters.



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The Journal of Art Crime

Acknowledgements

Thanks, as always, to the Board Members of ARCA, both its trustees and the Editorial Board of The Journal of Art Crime. This fall we wish to thank Lynda Albertson, ARCA's new CEO, for leading the way on all of ARCA's projects since she took over in September. Thanks also to ARCA's staff, particularly Derek and Joni Fincham, Mark Durney, Madi Gandolfo, Monica Di Stefano, Rene du Terroil, and our interns, Jessica Nielsen, Molly Cotter, and Kristin Hower.

As a non-profit, ARCA could not survive without the generosity of its members and subscribers.

Thanks to all of you who have supported ARCA in its work against art crime.



Noah Charney
Founder and President, ARCA
Editor-in-Chief, *The Journal of Art Crime*

Dear Daumier Friends,

Daumier collectors fascinated by his oil paintings may be interested to hear that the Daumier Register has been informed about the whereabouts of two Daumier paintings, which we had previously registered under “present location unknown”.

DR7196 (“Femme avec deux enfants” / “Mother with her children”) is a beautiful oil painting that was believed having been stolen, but reappeared some time ago at the National Gallery of Serbia in Belgrade. It had previously belonged to the famous art dealer Vollard and became then part of the notorious Shlomovic collection. We invite you to read in the “Background Details” of DR7196 (<http://www.daumier-register.org/werkview.php?key=7196>) the fascinating path this painting had taken during and after the Second World War until it eventually found its way to Belgrade.

The second painting, DR9119 (“Un wagon de troisième classe” / “Third Class” / “Wagen dritter Klasse”) <http://www.daumier-register.org/werkview.php?key=9119>) had disappeared after it had been sold in 1982 at Drouot auction in Paris. It was part of two Daumier paintings (the second being DR7005), which belonged to the estate of Roger Leybold in Paris and shows an interesting Third Class Carriage scene. We were informed by the owners that it is presently for sale at an Art Gallery in Paris (Galerie AB) where it had been stored since 1982.

We hope you will enjoy this additional information about two interesting paintings, which have finally reappeared. On this occasion, we would once again like to draw your attention to www.daumier.org, our website on Daumier’s life and work. You will find among the many other interesting sections a chapter on “Lost Art” (<http://www.daumier.org/index.php?id=236>) with two lists: “Lost and Missing Paintings” and “Stolen or Looted Paintings”. We will follow up any new information on the whereabouts of lost paintings and adjust the list accordingly if paintings can be found through this platform.

Best regards
Lilian & Dieter Noack
Daumier Register

RFID AND ART SECURITY

Bill Anderson, Partner

Votner Gouche, Art Guard

Every year art thefts occur in private and public sites that otherwise have good after-hours security. Increasingly, many such thefts happen during business hours when after-hours security systems have been turned off.¹

RFID (radio frequency identification) tags² are touted as the cutting-edge solution to this kind of art theft—and more. At its core, “RFID” just means “any method of identifying unique items using radio waves.”³ When attached to artworks, these tags are intended to alert security to any attempt to tamper with or steal an artwork—mostly paintings.

RFID tags purport to add a layer of security to the protection of valuable assets, especially when public access requires turning off other layers of security.⁴ And even when other security systems are on, an independent wireless sensor network would still be another strong barrier to theft.

Even more interesting, RFID art security systems often advertise the ability to “track and trace valuable assets”—not merely in the sense of bookkeeping and inventory control, but also in the sense of tracking an asset’s physical location. Many have the impression that, like GPS, RFID systems routinely track a fairly precise spatial position of a tagged asset, tracking it in real time as it moves from room to room, or even city to city.

In an earlier ARCA article⁵, founder of the Museum Security Network Ton Cremers dashes a number of misconceptions about RFID security. He argues that the RFID systems installed in many museums are, in fact, expensive overkill, since these institutions don’t use or need the elaborate trace and tracking capabilities that typically led them to buy the complex hardware and software package in the first place. He points out:

The installed RFID systems can’t geolocate stolen artwork outside a building. And setting up an elaborate interior sensor network that would continually locate the precise position of an artwork would be unnecessary and so expensive that no museum has done this.

Basic RFID systems are expensive in terms of hardware and installation.⁶ Moreover, they require the operation of a complicated software package on a host computer. This means costly maintenance and training to run the software. And what happens if the software gets corrupted or a virus crashes the system?

In the end, museums only use their RFID sensors for motion and vibration detection, not asset tracking. After all, in order to surreptitiously move a painting across a room, one would first have to set off the tag’s motion/vibration detector. But one doesn’t need “RFID” for that. Simply purchase wireless motion sensor tags that report to a simple control panel. This kind of system is cheaper and less complicated.

Finally, Cremers argues that these RFID systems are unreliable—the frequencies they typically broadcast on can be jammed⁷

1 Clive Stevens of Euronova in Bristol, England, a firm that specializes in asset-protection devices, says, “I’ve seen confidential police studies showing that daytime crimes accounted for two-thirds of all thefts in 2000 and the situation is getting worse. We call this ‘crime migration’—when one security problem gets solved, criminals attack the next weakest link.” MARC SPIEGLER Debunks Six Persisting Myths Of Art Crime” <http://www.museum-security.org/?p=13>

2 Modern RFID systems typically consist of (a) a “reader” which either receives or transmits a radio signal, and (b) a “tag”, a small wireless sensor attached to an artwork, communicating with the reader. In the case of art security, these tags typically have motion and vibration detectors that alert security to any tampering or movement of the artwork. “Active” tags have their own power supply, whereas “passive” tags don’t. Virtually all art security tags are battery powered, so I won’t be discussing passive RFID tags.

3 <http://www.rfidjournal.com/glossary/radio%20frequency%20identification>

4 For example, even today, gallery owners sometimes protect valuable paintings by depending upon a bunch of marbles, carefully placed behind hanging art, to make a racket as they hit the floor when a thief disturbs the artwork.

5 Ton Cremers, “Tracking and Tracing of Stolen Art Objects” *The Journal of Art Crime* (vol. 4, Fall 2010)

6 But such cutting-edge security is too expensive for the vast majority of museums. “It would take £300,000 [\$550,000] to install an RFID system that protects all the works displayed in a large museum,” says Robert Green, managing director of ISIS. “But most museums don’t have large security budgets.” MARC SPIEGLER Debunks Six Persisting Myths Of Art Crime” <http://www.museum-security.org/?p=13>

7 See <http://www.jammer-store.com/high-power-blockers-jammers.html>

or subject to interference (some by garage door openers and children's toys).

A response to Cremers

I agree with points (1) and (2) above, but (3) and (4) need clarification.

It is true that, all other things equal, a hardware-based motion sensor network, run from a control panel, provides the same degree of theft protection, but without the higher degree of vulnerability, cost and complexity of a software, pc-based RFID system. Even better, a hardware-based sensor network can have an intuitive pc interface, with many of the add-on capabilities of the current RFID packages. Even if the computer goes down, the hardware-based network will still send out security alerts through a regular landline or cell phone network. And buttons or screens on the control panel can still manage the network.

However, as Cremers suggests, in the public's mind the term "RFID" is strongly associated with tracing and tracking merchandise. For this reason, vendors of simple wireless motion detector sensors for artwork often don't claim or think of their sensors as "RFID," yet technically they are.⁸ The jamming and interference problem is the same for these motion sensors as for any other RFID sensor.

Cremers neglects to mention an important standard feature of most wireless security sensors that deals with this interference problem: a sensor tag typically signals its status back to a host computer or central control panel at regular periodic intervals—be it every 2 seconds, minutes, or hours. Each of these status notifications essentially tells the central control (be it a control panel or host PC), "I'm here and operating normally."⁹

If false alerts didn't exist, and if a tag is programmed to check in with central control (say) every minute, then a missing check-in would alert security to investigate, and a thief has no time to pull off the theft.¹⁰ So RFID sensor tags do more than detect motion or vibration.

In practice, however, central control will often not notify security of any particular signal failure, since there would be too many false alerts. As Cremers says, for many RFID systems, signal interference is not unusual—in some cases so routine that security personnel won't take missing status checks seriously until 20 minutes have passed. In practice, it will be difficult for a thief to accurately time such lapses. But what if the thief somehow knew the precise timing of the last successful status check, and also knew he could successfully steal a painting in, say, under 3 minutes? If false alerts are an issue, Cremers' concerns about tag interference or jamming remain.

Nevertheless, top security vendors are addressing even such unlikely scenarios. In particular, more sophisticated sensor systems can effectively and quickly overcome jamming or interference, making any check-in failure a significant security event.¹¹ If false alerts are not an issue, then an effective security network will never give a thief the time to pull off an unnoticed theft.

It is true, as Cremer says, that certain buildings, wall material, and space configurations pose challenges to effective RFID or sensor placement. But it is also important to note that the vast majority of these challenges can be met by placing extra boosters (aka "repeaters") and readers between a given sensor and central control.

Of course, museums may want to combine security with inventory tracking and include the bells and whistles. That's fine, but, as Cremers points out, security comes first, and it's important not to confuse the use of sensors and RFID for inventory tracking and control versus theft protection.

8 Looking at the history of RFID, it's clear that the term also applies to tags that do no tracking or tracing of merchandise or inventory. For example E-Z Pass tags for toll booths, and tags that identify aircraft as friend or foe, are both widely cited, classic cases of RFID.

9 However, other information such as a low battery will also be reported.

10 Of course, there is always the remote possibility that a thief could get lucky and pull off a heist in under a minute. I am only suggesting that the chances of a successful unnoticed theft would be vanishingly small, and such a setup would in practice prevent such thefts.

11 Most sensor tags in today's market have one-way transmitters, from tag to reader. But there are tags that offer two-way communication with the reader, and will automatically channel hop to another frequency if the reader indicates a missed signal. This channel hopping will rapidly continue until a connection is established. If after (say) one minute, a connection can't be established, central control notifies security that something significant happened. This technique has proven effective against jamming and interference.

Conclusion:

Clearly a good motion detector sensor network will deter or prevent thieves sneaking away with a piece. This represents a very large segment of art thefts. Moreover, having an independent layer of protection on valuable artwork serves to discourage nighttime theft.

The case of brazen armed robbery is less clear. It probably wouldn't make any difference in well-planned robberies where crooks are confident they can be in and out in a few minutes, long before police arrive. Yet surely in most cases, knowing a theft would immediately and automatically alert the police would make a substantial difference. It would raise the risk to the perpetrators in general. The risks of encountering time-delaying accidents, unanticipated traffic, or an extra security guard who shouldn't be there, etc., could all be fatal to a successful robbery, and thus deter it.

Hence wireless anti-theft sensor technology is here to stay.



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- All articles should be double spaced in **10 point Times New Roman** font.
- The spacing under the paragraph settings should be set to **0 point**.
- Skip one line between paragraphs. The first line of new paragraphs should also be indented, whereas the first line of a new section should not be indented.
- Leave only **one space** after periods or other punctuation marks.
- The title page should include the title and the author's name.
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- Pages should be numbered consecutively in the upper right-hand corner beginning with the title page.
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- Footnotes should be indicated in-text by superscript Arabic numbers after the punctuation of the phrase or clause to which the note refers.
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JOURNAL OF ART CRIME

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The Journal of Art Crime, published by ARCA Publications, is the first peer-reviewed interdisciplinary academic journal in the study of art crime. This twice-yearly publication provides vital information for members of the art trade, museums, security professionals, police, art lawyers, cultural ministries, private collectors, gallery owners and dealers, conservators, insurers, cultural heritage NGOs, as well as academics in the fields of criminology, law, art history, history, sociology, policing, security, and archaeology.

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