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Letter from the Editor

Welcome to the new issue of *The Journal of Art Crime*, and thank you for subscribing. Your subscription supports ARCA in our non-profit research and educational endeavors, and we are grateful for it.

This issue promises to be a good one, with features on the recent Beltracchi forgery case, another that examines what happens when a “wrong call” is made in art authentication, a dip into the world of counterfeit money, and a piece on the forger’s point of view. If there is the theme, then this issue might lean toward forgery and misattribution, as the articles tend to complement one another.

We also meet the 2012 ARCA Award winners, who will receive their awards at our annual conference in the study of art crime, held this June 23-24 in Amelia, Italy, the seat of our Masters program. Ernst Schöller, Jason Felch and Ralph Frammolino, Karl von Habsburg and Joris Kila, and George Abungu are our well-deserving recipients, and each is both profiled and interviewed in this issue.

We hope that you will enjoy these articles, as we try to provide a balance between fresh academic studies by top professionals and magazine-style editorials and reviews. Best wishes and thanks again for your support.



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

Bordering on Alchemy: A Nation of Counterfeiters

Stephen Mihm

Abstract

Few of us question the slips of green paper that come and go in our purses, pockets, and wallets. Yet confidence in the money supply is a recent phenomenon: prior to the Civil War, the United States did not have a single, national currency. Instead, countless banks issued paper money in a bewildering variety of denominations and designs – more than ten thousand different kinds by 1860. Counterfeiters flourished amid this anarchy, putting vast quantities of bogus bills into circulation. This article, adapted from the 2009 book *A Nation of Counterfeiters* (Harvard University Press), discusses the origins of American counterfeiting of currency, a story that runs parallel to the story of art forgery.

Keywords: counterfeit, fake currency, illicit currency, counterfeit money, fake money.

Introduction

In the twenty-first century, we don't generally think much about the actual pieces of money that constitute the currency. Certainly, we may obsess over how much we have at any one time, but we don't subject the notes themselves to close scrutiny: most of us cannot remember (without looking) which scene goes with which denomination, or even the secular saints whose portraits adorn the front. Our ignorance is a testament to just how secure we feel about the currency and how little we need to question the underlying value of these scraps of paper. The money is in our hands, it is green, and it has a number on it: that is all we need to know.

It was not always so. In the years between the Revolution and the Civil War, money inspired not careless faith and trust, but nagging doubt and scrutiny. Most money in circulation in these years originated not with the national government, but with sometimes shaky private banks. This right to make money – literally – was a privilege that bankers acquired when they obtained a corporate charter from one of the individual states. After depositing bonds or other assets with a state government, a bank could commission an engraver to design and print so-called bank notes, colorful slips of paper that pledged to pay an equivalent amount of gold or silver coin – what was called specie – if presented for redemption at the bank, and which entered into circulation as the bank issued loans, transferred money, paid its debts, and conducted its day-to-day business. These notes were miniature works of art, filled with strange images drawn from everything from classical mythology to minor political figures.

If this was a great time to be one of the artists who engraved these bank notes, it was also a propitious time to be a counterfeiter, too. The sheer number of banks – hundreds, and eventually nearly two thousand total – made it difficult to recognize genuine notes, much less counterfeit ones. While there were many famous counterfeiters, one of the first and most famous was Stephen Burroughs, whose story is reprinted here. He was not himself an artist, but hired plenty of skilled engravers who turned out some of the first high-quality counterfeits in the United States.

Bordering on Alchemy¹

In the spring of 1806, a caravan of twenty-plus men mounted on horseback threaded their way across “the lines,” the contested borderland separating Vermont and Canada. No

1 This article is adapted from Dr. Mihm's book *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States*, published by Harvard University Press in 2009. Dr. Mihm provided the new introduction to this material exclusively for *The Journal of Art Crime*, and the article that follows is a reprint of the first chapter of *A Nation of Counterfeiters*. It is reprinted with the permission of Harvard University Press.

ordinary group of travelers, they moved by night along a rutted dirt road, concealed beneath towering stands of maple and birch trees. Possibly it was a clear night; if so, moonlight may have bathed the band each time they crossed a clearing in the forest. Their apparent leader would have cast the longest shadow: he was an enormous man who probably carried a menacing array of weaponry – a brace of pistols, or at the very least, a rifle and knife. When the road opened into a farmer's field a few miles north of the border, he and his men likely dismounted before making their way on foot toward a cluster of outbuildings and barns that circled a stone house a short distance away.

An innocent observer could be forgiven for thinking that a band of brigands was loose, bent on making mischief in a region already legendary for its lawlessness. But this company of men, led by legendary Vermont sheriff Mike Barron, had crossed the boundary lines on business of a more law-abiding nature. The farm belonged to the notorious Stephen Burroughs, a man whom Barron's biographer aptly described as “a most shrewd and accomplished villain . . . especially in the business of manufacturing and issuing counterfeit currency.” It was in this unusual line of work that Burroughs achieved lasting fame, and tales of his prowess as a counterfeiter – and his demonstrated ability to escape the most vigilant captors – circulated as widely as the bogus bank notes he issued. Barron was not taking any chances, and as he watched several of Burroughs' guards retire before morning, he motioned his men to rush the house.

Accounts of what happened contradict one another. According to Barron's biographer, the sheriff and his men stormed the house, seized the guards' weapons, and rushed upstairs. As they burst into the counterfeiter's room, Burroughs drew a pistol from beneath his pillow, only to have it struck from his hand as Barron and his men overpowered and bound him. In the “clearer light of morning,” Burroughs recognized his captor – they had crossed paths on a prior occasion – and entreated him to unbind his arms. “Colonel Mike,” he supposedly said, “you are a gentleman, and so am I; unbind my arms, and I give you my word of honor that I will be entirely subject to your orders.” Burroughs, who was by all accounts “kind, courteous, and gentlemanly in his appearance and manners,” had a way of getting what he wanted, and the sheriff succumbed to his charms – only to turn around a few moments later and find that Burroughs was aiming another pistol at him. The counterfeiter pulled the trigger, but according to one source, “no report followed. It had missed fire!” Wresting the gun from him, Barron asked Burroughs what he had meant to do. “I meant to shoot you,” Burroughs replied, honest for once.²

2 This re-imagining of Burroughs' capture is based on visits to the former Burroughs farmstead as well as the *Green Mountain Patriot*, 27 May

Did events unfold in such dramatic fashion? Possibly, though this was neither the first nor the last time Burroughs pulled the trigger of a pistol, only to have it mysteriously misfire. He may have been a criminal, but as this same account conceded, he was “skilled not in . . . deeds of violence and blood, but in diverting tricks of deception.” Tales of cold-blooded attempted murder collide with the reality that he never, in the course of his life, wounded or killed another person. Possibly the exaggerations of Burroughs’ villainy aimed to insure that his life would not appear too attractive to impressionable readers. Like the condemned prisoners of the colonial era who warned the crowd gathered below the gallows not to follow in their footsteps, Burroughs’ life needed to instruct, not inspire. As Barron’s biographer duly noted upon relating this anecdote of Burroughs’ arrest, the infamous counterfeiter repented in later years, and was “said to have been in the habit of giving good advice to young men, telling them not to do as he had done, for he had found the way of the transgressor to be hard.”³

Perhaps. Whatever happened that morning, contrition was the last thing on Burroughs’ mind as the sheriff marched him to Montreal under armed guard and handed him over to his British authorities. “These distinguished heroes returned home to their own country,” recalled Burroughs thirty years later, his pen dripping with sarcasm. His captors, he complained, “published in their periodicals, a flaming account of this brilliant and dauntless expedition!!! Indeed,” he continued, “the exultation of the Romans on the death of Hannibal was in no proportion to the triumph of the Americans at this wonderful display of courage and *sagacity* performed by their *illustrious* citizens.” But did everyone join the jubilation when they received the tidings that “Stephen Burroughs, of money-making memory” had finally fallen into the clutches of the law? For all the infamy attached to his reputation – the word “notorious” invariably appeared before his name, like some grim honorific – Burroughs enjoyed a measure of secret admiration, even awe. He was, in the words of many a newspaper, a “celebrated character,” and the “first consul of bank bill counterfeiters.” His best-selling memoirs, published in 1798, chronicled a long and successful career as an imposter, seducer, and counterfeiter, and cemented his burgeoning reputation as a trickster and folk hero who invariably outwitted the wealthy and the powerful. He proved an appealing figure, despite (or because) of his roguery, and as tales of his exploits spread in print and by word of mouth, Burroughs became the first outlaw – but by no means the last – to capture in equal measure his country’s careful

condemnation and its reluctant respect.⁴

As he languished in prison facing the prospect of ignominious deportation or death, Burroughs managed yet once more to live up to the expectations of both his detractors and admirers. One morning late in November, shortly before his trial was to begin, his jailer found the door to Burroughs’ cell ajar, and the famed counterfeiter missing. An alarm was raised, and a substantial reward offered, but Burroughs had vanished. A local sheriff brought in to investigate could only conclude that Burroughs had procured a false key, freed himself from his cell, walked down the corridor of the jail, and surmounted the final barrier – a door secured by an iron bar – with the help of his son, who ushered his father to freedom. The sheriff believed that Burroughs would flee the country, but the counterfeiter did no such thing.⁵ “Money-making” was his destiny, and he returned once more to the wilds of what is now Quebec, where he would continue to ply his trade for several more years, furnishing the United States with yet more counterfeit money – and simultaneously exasperating and entertaining the new nation with more stories of his deceptions, inventions, and imitations.

Why did Burroughs evoke such a contradictory welter of reactions? On some deep and disturbing level, Burroughs embodied the profound economic and social dislocations of the post-revolutionary era; he represented both the promise and the peril of an emergent market economy. His adult years spanned a tumultuous period, one which witnessed the final dissolution of the rigid hierarchies of colonial times and their replacement by the more fluid social order of a democratic commercial society. Self-fashioning and self-advancement slowly became a viable way of life for a growing number of white men, and Burroughs, who counterfeited not only bank notes but identities with equal ease, was symbolic of this new ethos.⁶ Indeed, in a society increasingly focused on the pursuit of easy wealth, Burroughs appeared to both his critics and admirers as an extreme incarnation of the self-

4 Stephen Burroughs, *A View of Practical Justice* (Three Rivers: G. Stobbs, 1836), 7; *Green Mountain Patriot*, 27 May 1806, 3; *Connecticut Gazette*, 28 May 1806, 3; *Northern Post*, 31 July 1806, 2. On the origins and appeal of outlaws, see Graham Seal, *The Outlaw Legend: A Cultural Tradition in Britain, America, and Australia* (Cambridge: Cambridge University Press, 1996); Richard E. Meyer, “The Outlaw: A Distinctive American Folk type,” *Journal of the Folklore Institute* 17 (1980), 94-124.

5 *Montreal Gazette*, 24 November 1806, 2; *Providence Gazette*, 3 January 1807, 2; see also the letter transcribed in *La Patrie*, 27 January 1934, 42, in “Burroughs, Stephen,” Alumni File, Rauner Special Collections, Dartmouth College Library, Hanover, New Hampshire.

6 On Burroughs and the breakdown of authority, see Jay Fliegelman, *Prodigals and Pilgrims: The American Revolution Against Patriarchal Authority, 1750-1800* (New York: Cambridge University Press, 1982), 245-246; Robert A. Gross, “The Confidence Man and the Preacher: The Cultural Politics of Shays’ Rebellion,” in Gross, ed., *In Debt to Shays: The Bicentennial of an Agrarian Rebellion* (Charlottesville, Virginia: University Press of Virginia Press, 1993), 297-320.

1806, 3; *Balance and Columbian Repository*, 17 June 1806, 5; Silas McKeen, *A History of Bradford, Vermont* (Montpelier: J. D. Clark & Son, 1875), 188-191.

3 McKeen, *A History of Bradford, Vermont*, 191. On Burroughs’ miserable aim, see *Farmers’ Cabinet*, 13 October 1807, 3.

made man, one who thrived in a society where identity was increasingly malleable and imitable and where capitalism and counterfeiting could co-exist as two sides of the same coin.

Such a conflation of categories accompanied the rise of note-issuing banks in the late eighteenth century. Like the colonial governments of Burroughs' youth, who issued paper money to provide a circulating medium for their specie-poor economies, the state-chartered banks of the new nation skirted legal barriers to pump credit into the economy. The successful circulation of these bills depended on what seemed, at the time, an almost magical belief that bank notes constituted wealth, that paper could pass as gold. Burroughs, it appeared to many, simply carried these acts of alchemy one step further, issuing imitations from his own "bank." Tales of his exploits soon spread, and Burroughs became the real and imagined source of every counterfeit note in circulation. In the process, he embodied the common spirit animating the conventional and illicit pursuit of wealth in the post-revolutionary era, a time when the right to "make money" – literally and figuratively – went from being a privilege of the few to a franchise of the many, and the distinction between bankers and men like Burroughs became difficult to discern.

In Burroughs' case, the confusing contours of the border between crime and capitalism found a corollary in the boundaries of the nation itself. Burroughs did not ply his trade within the United States, but instead commenced counterfeiting in the highly contested region separating the United States and Canada. A border region, it proved resistant to the usual mechanisms of state control, especially those of a fledgling nation like the United States. Though the framers of the Constitution had envisioned a strong national government, the United States did little at this stage to protect the currency and the country from the counterfeiters who lurked on its margins. Burroughs thus came to symbolize not only the conflation of capitalism and counterfeiting, but the larger limits of the economic and political authority of the United States. Worse, his much-publicized depredations inspired a host of imitators, all of whom helped make counterfeiting an integral part of economic life in the early republic. If some of his successors cultivated equally out-sized reputations, Burroughs remained in popular folklore the quintessential counterfeiter. He was the original against which all imitators would be weighed, measured, and valued.

The Promise of Paper

Despite his reputation, Burroughs was hardly the first to forge an identity, much less a piece of currency. Con men and counterfeiters had long thrived in England amidst the dissolution of feudal structures of authority and the rise of a more anonymous commercial society. These criminal subcultures took root in the future United States not long

after the arrival of the first settlers.⁷ Nonetheless, it would not be until the late seventeenth century that counterfeiters began plying their trade on a grand scale, churning out a steady stream of bogus coins made of pewter and debased gold and silver. Though successful, the signal achievement of this first generation of home-grown criminals was not the manufacture of false coin, but the printing of fraudulent paper money. Counterfeiters had plenty of opportunities to hone this particular branch of their craft over the course of the eighteenth century, for the colonists led not only the mother country but the rest of Europe in discovering the virtues and vices of paper currency. Indeed, by the time Burroughs was born, the impulse to substitute extrinsic confidence in paper currency for the intrinsic virtues of gold and silver was already well established in the colonies, arguably more so than any other place in the world.

That faith in paper currency, though, was less a choice than a necessity. As the colonists who first arrived on the shores of the future United States discovered, the land contained little in the way of precious metals, in contrast to the more established colonies of Latin America. While a motley assortment of Spanish pieces of eight, Portuguese *reales*, and British coins and copper tokens circulated in America, most such currency did not linger long in colonial coffers, but returned overseas to pay for much-needed finished goods. A persistent trade imbalance, and the popularity of mercantilist economic philosophy, which equated the accumulation of specie with national wealth, only increased the likelihood that gold and silver in the colonies would eventually end up in the mother country. What little coin remained in America often disappeared into hoards or into the melting pots of jewelers, silversmiths, and goldsmiths, where it could be put to more profitable use.⁸

In the absence of sufficient specie, the need for a circulating medium remained. Book credits and barter could only go so far in facilitating economic exchange. Particularly in the growing seaport cities, merchants needed something a bit more fungible than a cow, a bolt of cloth, or a peck of grain when they paid for goods or settled debts. Colonial governments consequently sanctioned a host of commodity monies beginning in the early seventeenth century. Tobacco,

7 On the larger Elizabethan underworld, see Frank Aydelotte, *Elizabethan Rogues and Vagabonds* (Oxford: Clarendon Press, 1913). On colonial con men, see Steven C. Bullock, "A Mumper Among the Gentle: Tom Bell, Colonial Confidence Man," *WMQ* 55 (1998), 231-258.

8 Custis P. Nettels, *The Money Supply of the American Colonies Before 1720* (Madison: University of Wisconsin Press, 1934); Leslie V. Brock, *The Currency of the American Colonies, 1700-1764: A Study in Colonial Finance and Imperial Relations* (New York: Arno Press, 1975), 1-16. For alternative explanations of the specie shortage, see John Kenneth Galbraith, *Money: Whence It Came, Where It Went* (Boston: Houghton Mifflin Company, 1975), 47; Roger W. Weiss, "The Issue of Paper Money in the American Colonies, 1720-1774," *JEH* 30 (1970), 770-784.

iron nails, and animal pelts all served as crude currencies, with a legislative fiat setting up equivalence between the commodity and a specified number of shillings or pennies. Though such makeshift money circulated, they proved an unreliable store or measure of value, as their price fluctuated far more than precious metals did. Wampum, strings of clam shell beads that could be traded with the Indians for pelts, proved a better substitute for specie. First adopted by the Dutch and then by the English, wampum nonetheless fell victim to overproduction, counterfeiting, and the growing scarcity of beaver. One by one, the colonies revoked its legal tender status by the end of the seventeenth century.⁹

The Massachusetts Bay Colony took the lead in formulating solutions to the currency shortage. It issued the first colonial coinage in 1652, a series of substandard coins made from low-grade Spanish silver gathered from illegal trade in the Caribbean. Imperial authorities put a stop to the mint in 1682, but this did not curtail the colony's experimentation. Eight years later, in the midst of the imperial conflicts between Britain and France, Massachusetts struggled to find a way to fund its contribution to the war effort. The solution – issuing “bills of credit” that would circulate as money – marked a radical departure in monetary practice. Though printed to pay for soldiers and supplies, the preamble to the law justified the move by citing “the present poverty and calamities of the country, and through a scarcity of money, the want of an adequate measure of commerce.” War or no war, the colonies would have a circulating medium, one that could be used to pay private debts and public taxes, and grease the wheels of commerce. This was the first public note-issuing bank in the western world, but it was hardly the last: the Massachusetts colony resorted to successive issues of paper money, as did almost every other colony in the future United States. (Fig. 1) All these issues ostensibly originated as attempts to shoulder (or defer) the burden of waging imperial wars, but did as much to pump credit into the economy. The colonies lacked the customary forms of capital, but could make do with slips of paper which passed from hand to hand, affirming a common confidence in future prosperity.¹⁰

The gradual adoption of different forms of paper money on both sides of the ocean – first by Massachusetts, then by the Bank of England a few years later, and eventually by all the colonies – marked a sea change in thinking about the nature of monetary value. An earlier tradition of economic

thought held that gold and silver was the only source of value: immutable, intrinsic, absolute, and transcendent. This “bullionist” view held that precious metals, which predated the rise of civil society, necessarily existed beyond the realm of government and human agency. John Locke was perhaps the most eloquent defender of this position, though he held that only silver, not gold, constituted “real” money. In contrast to bullionist thinking, an emergent liberal tradition saw money as a commodity, responsive to economic supply and demand, as well as to the interventions of banks and governments. The value of money, in other words, derived from extrinsic forces, and it logically followed that a surrogate for gold and silver such as paper could do the job as well as specie. While Locke's belief in the intrinsic value of money continued to attract adherents well into the nineteenth and even twentieth centuries, the future belonged to paper currency. Indeed, though the first three centuries of paper money retained a lingering attachment to the illusion that specie stood behind the promises emblazoned on its face, experience demonstrated otherwise. In reality, the value of paper money depended ultimately on the confidence that participants in the market economy accorded it.¹¹

There was in all of this a hint of the magical, or at the very least, magic by other means. In fact, some of the very first proposals for issuing paper currency originated with a coterie of Puritan intellectuals who had a double obsession with money and magic. Samuel Hartlib, a scientist active in the founding of the Royal Society, was the center of this group. He wrote on economic matters, and believed that an increase in money would lead to an increase in economic activity. “The more there is of money in any Nation, the quicker also must all those wayes [sic] be, wherein money is usually employed [sic].” Hartlib and the circle of thinkers around him – including George Starkey and John Winthrop Jr. in Massachusetts – pursued extensive studies in alchemy in the hopes of increasing the stock of money. While eventually frustrated in their ambitions, these men eventually settled on paper money as a roundabout means of achieving the alchemical effect. A 1652 pamphlet on bank currency authored by a member of the Hartlib circle, made the connection explicit, likening such money to “the Elixir or Philosopher's Stone.”¹²

11 On Locke, see Joyce Oldham Appleby, *Economic Thought and Ideology in Seventeenth-Century England* (Princeton: Princeton University Press, 1978), 199-241; Constantine George Caffentzis, *Clipped Coins, Abused Words & Civil Government: John Locke's Philosophy of Money* (New York: Autonomedia, 1989).

12 On Hartlib, alchemy, and paper money, see John L. Brooke, *The Refiner's Fire: The Making of Mormon Cosmology, 1644-1844* (Cambridge: Cambridge University Press, 1996), 105-108; Carl Wennerlind, “Credit-Money as the Philosopher's Stone: Alchemy and the Coinage Problem in Seventeenth-Century England,” *HPE* 35 (2003), 234-261; Henry Robinson, *Certain Proposals in Order to the People's Freedom and Accommodation* (London: M. Simmons, 1652), 19, quoted in Wennerlind, “Credit Money,” 252.

9 Nettels, *Money Supply*; Galbraith, *Money*, 47-50; Richard Doty, *America's Money, America's Story* (Iola, Wisconsin: Krause Publications, 1998), 21-29. On book credit, see David Terence Flynn, “Credit and the Economy of Colonial New England,” (Ph.D. diss, Indiana University, 2001).

10 Joseph B. Felt, *Historical Account of Massachusetts Currency* (Boston: Perkins and Marvin, 1839; reprint, New York: Burt Franklin, 1968); Doty, *America's Money*, 29-32; Act of December 10, 1690, quoted in Nettels, *Money Supply*, 254.

That paper money could function as a proxy for alchemy did not escape the detractors of the new money, either. In 1714, in the midst of debates over currency in Massachusetts, Paul Dudley accused the proponents of paper money of creating value out of thin air. "If this be not the Philosopher's Stone," he charged, "there is no such thing in the world." The twinning of magic and money achieved even more enduring and infamous association the following year, when the new regent of France, Philippe d'Orleans, faced with a dire financial crisis, summoned a number of alchemists to his court in the hopes they could manufacture artificial gold. According to legend, he dismissed them with the arrival of a Scottish gambler named John Law, who proposed a more modern solution to his woes: the creation of a bank that would issue paper money backed by lands owned by the state. Law superintended the creation of two note-issuing institutions whose paper promises were ultimately backed by the promised discovery of gold in America's Mississippi River Valley. Confidence in Law and his creations eventually collapsed, and the currency ceased to circulate.¹³

But if France and most of Europe remained skeptical of paper currency, seeing in its associations with alchemy and magic the potential for mischief and evil, the future United States remained enamored of its promise. For every critic like Paul Dudley, there was someone like John Wise, who wrote in support of a "land bank" the year after Law's scheme collapsed. Arguing that this bank's paper would fuel economic growth, Wise promised that "we carry as much of the *Lapis Aurificus* or *Philosopher's Stone* in our heads, and can turn other matter into Silver and Gold by the Power of thought as soon as any other people . . ." Prescient words, indeed: from that time forward, the colonies enthusiastically embraced paper money to solve shortages of specie and to stimulate trade. Though paper money would gain many adherents in the pre-revolutionary period, none came close in influence to Benjamin Franklin, whose writings on paper money ushered in some of the most successful experiments in turning paper into gold.¹⁴

Franklin made the case in a pamphlet published in 1729, where he laid out arguments that would surface again and again in the coming years. "Those who are Lovers of Trade, and delight to see Manufactures encouraged, will be for having a large Addition to our Currency," Franklin thought. "For they

very well know, that People will have little Heart to advance Money in Trade, when what they can get is scarce sufficient to purchase Necessaries . . ." Like Law before him, Franklin proposed that paper currency be backed by mortgages of property, or what he called "Coined Land," though he had no illusions about finding gold beneath the soil. In a piece published a month before his pamphlet appeared, Franklin counseled his readers with an anecdote of a gentleman farmer leaving his son a plantation with the claim that "I have found a considerable Quantity of Gold by Digging there; thee mayst do the same. But thee must carefully observe this, *Never to dig more than Plow-deep!*" The fortuitous discovery of hidden gold would not attract confidence in the currency; only the steady application of labor and industry could perform that feat. So-called "land banks" like the one envisioned by Franklin enjoyed considerable success throughout the colonial era, operating under the auspices of the individual colonies.¹⁵

Nonetheless, most of the paper money in circulation originated directly with colonial governments in the manner of Massachusetts' original issue. Such money appeared out of thin air via an alchemical transmutation, flowing off the presses with little in the way of hard assets backing these promises to pay. The colonial assemblies generally conferred legal tender status on these bills of credit, always for the payment of public taxes, less frequently for the payment of private debts. Given the sobriety with which Franklin approached the subject of money, it is appropriate that of all the colonial issues of paper currency, those of his native Pennsylvania (and to a lesser extent, several other mid-Atlantic colonies) proved most reliable. In these places, paper money *did* work: through prudent management and a good dose of economic growth, these colonial governments managed to keep one step ahead of their obligations. Confidence in these bills of credit (many of them printed by Franklin himself) rarely wavered. By contrast, the fiscal legerdemain of several of the other colonies proved disastrous. Some colonial governments turned to the printing presses to avoid imposing additional tax burdens, often redeeming one issue of bills with another, and it was not long before the excessive demands made on the colonists' fiscal faith led to the collapse of the monetary covenant. In Massachusetts, the paper currency eventually depreciated to a fifth of its face value, while Burroughs' native New Hampshire emitted vast quantities of bills relative to its population, leading at least one contemporary to characterize the colony as "always inclinable to a depreciating fraudulent currency." The worst offender, though, turned out to be Rhode Island, which ultimately redeemed its copious emissions at a tiny fraction of their original value.¹⁶

13 Andrew M. Davis, ed., *Colonial Currency Reprints, 1682-1751* (New York: A. M. Kelly, 1964), 1: 241, 249-250, quoted in Brooke, *Refiner's Fire*, 107; Hans Christoph Binswanger, *Money and Magic: A Critique of the Modern Economy in the Light of Goethe's Faust* (Chicago: University of Chicago Press, 1985); Antoin E. Murphy, *John Law: Economic Theorist and Policy-Maker* (New York: Oxford University Press, 1997); Wennerlind, "Credit-Money as the Philosopher's Stone."

14 Davis, ed., *Colonial Currency Reprints*, 2: 209, quoted in Brooke, *Refiner's Fire*, 107, emphasis in original.

15 Henry Smith, ed., *The Writings of Benjamin Franklin*, vol. 2, (New York: Haskell House Publishers, 1970), 127-155, emphasis in original; Theodore Thayer, "The Land Bank System in the American Colonies," *JEH* 13 (1953), 145-159.

16 Brock, *Currency of the American Colonies*, 17-129.

As each of the colonies issued notes in denominations, sizes, and patterns of their own choosing (and with reputations ranging from solid to suspect), and with a dizzying variety of foreign coins in circulation as well (additional attempts by the colonies to mint coins enjoyed little success) the monetary system of the future United States enjoyed a remarkable reputation for anarchy and instability by the mid eighteenth century. Though the British made feeble attempts at imposing some order throughout the colonies, attempts to regulate the money supply did not become serious until 1740, when two short-lived land banks of dubious promise commenced operation in Massachusetts. Parliament moved swiftly to curtail what it called “a Scheme for Supplying a pretended Want of Medium in Trade” by setting up a land bank. The imperial authorities put a stop to these particular schemes, but the colonies went on emitting paper currency, despite the passage of laws in 1751 and 1764 aimed at stopping the practice. The crackdown stirred discontent: as Franklin explained to Parliament in 1767, much of the colonies’ ill will was a response to “the prohibition of making paper money among themselves.”¹⁷

Even if the imperial authorities had succeeded in throttling the colonies’ impulse to “make money,” enterprising criminals would have supplied a circulating medium. Initially, counterfeiters restricted themselves to imitating the various Spanish and English coins in circulation, drawing on criminal expertise honed in England, home to sophisticated gangs of coiners. But enterprising forgers also began engraving counterfeit plates and imitating paper money not long after Massachusetts issued its first paper money. Many of these individuals, like their successors in the nineteenth century, came from the ranks of former convicts and petty criminals, while a handful could boast of a more distinguished pedigree. The aristocratic John Potter of Rhode Island was charged with the task of signing that colony’s genuine currency, but used his position and knowledge to issue – and sign – well-crafted imitations. Though apprehended, he escaped having his ears cropped (a customary punishment) by paying thousands of pounds worth of gold dust into the colonial treasury.¹⁸

17 Bray Hammond, *Banks and Politics in America: From the Revolution to the Civil War* (Princeton: Princeton University Press, 1957), 24-25; Brock, *Currency of the American Colonies*, 130-243; Jack P. Greene and Richard M. Jellison, “The Currency Act of 1764 in Imperial-Colonial Relations, 1764-1776,” *WMQ* 18 (1961), 485-518; Joseph Albert Ernet, *Money and Politics in America, 1755-1775: A Study in the Currency Act of 1764 and the Political Economy of Revolution* (Chapel Hill: University of North Carolina Press, 1973).

18 John Styles, “Our Traitorous Money Makers: The Yorkshire Coiners and the Law, 1760-83,” in John Brewer and John Styles, eds., *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick: Rutgers University Press, 1980), 172-249. The principal work on the colonies is Kenneth Scott, *Counterfeiting in Colonial America* (1957; reprint, Philadelphia: University of Pennsylvania Press, 2000), 70-92, 132-133.

Counterfeiters like John Potter and Stephen Burroughs enjoyed advantages denied their brethren on the other side of the Atlantic. In Britain, as in Europe generally, counterfeiting – particularly the forgery of coins or notes of the state or its adjuncts – constituted a treasonable act, punishable by death without benefit of clergy. From the sixteenth century onward, a steady parade of counterfeiters, coiners, and “utterers” of counterfeit coin and paper went to the gallows in England. It was, as one historian has aptly put it, the use of the “death penalty as monetary policy.” In the colonies, by contrast, even if some high-profile criminals ended up dangling at the end of a hangman’s noose, most counterfeiters evaded punishment, thanks to the relative weakness of state authority, the absence of a policing apparatus, even the lack of secure jails. But the ease with which counterfeiters plied their trade stemmed from the fact that most colonists did not view counterfeiting as a threat so much as a harmless activity, if not a beneficial one: counterfeiters, after all, did a public service by increasing the amount of money in circulation in a part of the world where the demand for money invariably outstripped the supply. Like their successors in the nineteenth century, counterfeiters stirred appreciation as much as anger.¹⁹

A host of other factors contributed to the impunity with which counterfeiters operated, and foreshadowed many of the same problems that would plague law enforcement officials by the time Burroughs and his ilk commenced operations. One, organized gangs of counterfeiters often operated beyond the geographical boundaries of the colonies. A curious loophole in imperial laws meant that it was perfectly legal to counterfeit colonial bills of credit in Ireland as well as England itself. Likewise, counterfeiters operating in one colony often enjoyed relative immunity in the event they fled to another colony, though laws passed after the mid-eighteenth century attempted to limit such evasion. Even then, the authorities in one of the future states might refuse to cooperate with another. In the unlikely event of a conviction, many counterfeiters secured pardons from governors who recognized that responsibility for the families of these men and women would fall on already burdened local communities. Despite the grim promise that adorned many bills – “To Counterfeit is Death” – counterfeiters operated with relative impunity in the future United States. It was a harbinger of things to come.²⁰

Roguary and Revolution

Burroughs’ early years are well documented, thanks to his

19 Carl Wennerlind, “The Death Penalty as Monetary Policy: The Practice and Punishment of Monetary Crime,” *HPE* 36 (2004), 131-161; Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, vol. 1 (London: Stevens and Sons, 1948), 644-648; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (New York: Penguin, 1991), 55-57.

20 Scott, *Counterfeiting in Colonial America*.

Memoirs, parts of which began appearing in the late 1790's. (Fig. 2) It is a remarkable work, akin to Benjamin Franklin's *Autobiography*, but far more literary — and far more cynical. Like Franklin's narrative, it relates the story of a self-made man who exploits the growing fluidity of eighteenth-century society to make his way in the world. Burroughs grew up in the shadow of his father, a prominent Presbyterian clergyman and theologian who raised his family in Coventry, New Hampshire, where he served as the town's minister. The son did not follow his father's calling, much less his example. Burroughs recalled that he was "the terror of the people where I lived, and all were unanimous in declaring, that 'Stephen Burroughs was the worst boy in town, and those who could get him whipped were most worthy of esteem.'" Fond of pranks, Burroughs attended Dartmouth, "where he was courted by lovers of wild college-fun on the one hand, and suspected and watched on the other." After more practical jokes, he quit school and soon shipped out on a privateer during the Revolution, obtaining a slot by impersonating a physician.²¹

That first false identity, like so many that followed, derived from Burroughs' inclination to see life in theatrical terms. He recalled, for example, how his father "let me loose on the broad theater of the world, to act my part according to my abilities." The fascination with artifice was not his alone: there was a growing obsession throughout the colonial period with deceit and imposture, concerns that coincided with challenges posed to the conventional social order by religious ferment, revolutionary politics, and the spread of market capitalism. Like the beneficiaries of these other trends, Burroughs spoke the language of social mobility. Democracy became a powerful force in the closing decades of the eighteenth century. New possibilities emerged for middling white men like Burroughs; they could now become architects of their own destiny, instead of remaining mired in inherited roles and obligations. It followed that social roles, like theatrical parts, could be assumed and abandoned at will.²²

Burroughs pursued this logic further than most of his contemporaries. After returning home to New Hampshire after his stint on the privateer, he cast around for other means of support, at which time he managed to get himself excommunicated from the Dartmouth Church of Christ (allegedly for violating commandments three and eight). Burroughs took appropriate revenge by impersonating a

minister. As he related the tale many years later, he stole a number of his father's sermons, and headed one hundred and fifty miles down the Connecticut River. After auditioning in several towns under an assumed name, he obtained a position in Pelham, Massachusetts. Several successful sermons later, Burroughs's imposture was unmasked, and he found himself cornered in a barn by an angry mob. In Burroughs's version of events, some bystanders asked his pursuers why they sought to punish him. After all, hadn't he preached well? Reluctantly, the mob answered that he had. "Well," said the bystander, "why need you make any difficulty? He preached well — you paid him well — all parties were satisfied . . . What signifies what he called his name? A name does no good nor hurt, as to the matter of his doctrine." Deflated, the angry mob dispersed and Burroughs escaped — or so he claimed. Whether true or not, the episode afforded him a subtle way to defend a new code of conduct that he returned to again and again. It sufficed that the sermons appealed and that they provided spiritual nourishment; the confidence the villagers put in him did not depend on intrinsic qualifications or theological assets. It was a lesson with considerable relevance for his experiments with money.²³

Around the time Burroughs was preaching in Pelham, he and an associate learned that an alchemist named Philips had set up shop in New Salem, offering to divulge (for a price) the secret of turning copper into silver. Burroughs recalled that his associate, a man to whom he gave the pseudonym Lysander, "appeared to entertain the highest confidence in the business." Whether Lysander was an actual individual or an incarnation of Burroughs' criminal alter ego is difficult to determine. The choice of a name is striking. Lysander was the Spartan general who brought home enormous amounts of gold and silver plundered from the Athenians during the Peloponnesian War. Flooded with precious metals, the Spartans abandoned their more modest iron coinage and developed a corrupt taste for wealth and luxury. So, too, did Burroughs after visiting Philips and seeing a demonstration of the transmutation of copper into silver. "I felt all the confidence in the business which was possible to feel on any subject," Burroughs recalled after returning home. "I saw, in my own imagination, my fortune certainly made."²⁴

He was soon disappointed: Philips deceived him along with many other men in nearby towns, borrowing money to underwrite his experiments and absconding with the funds. Among those who fell victim to Philips' fraud was

21 Stephen Burroughs, *Memoirs of Stephen Burroughs* . . . (Albany: B. D. Packard, 1811; reprint, Boston: Northeastern University Press, 1988), 3-43; *Knickerbocker* 51 (1858), 129-130.

22 On the democratization that accompanied the spread of evangelical religion, capitalism, and revolution, see Richard Bushman, *From Puritan to Yankee: Character and Social Order in Connecticut, 1690-1765* (New York: W. W. Norton & Company, 1967); Fliegelman, *Prodigals and Pilgrims*; Gordon Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 95-225.

23 Excommunication of Stephen Burroughs, 26 March 1785, in Frothingham Papers, 1683-1865, HSP; Burroughs, *Memoirs*, 71. Burroughs preached in the spring of 1785. See the discussions of his exploits in *Norwich Packet*, 8 September 1785, 3; *Essex Journal*, 14 September 1785, 3.

24 Burroughs, *Memoirs*, 60-63. On Lysander, see Arthur Hugh Clough, ed., *Plutarch: Lives of Noble Grecians and Romans*, John Dryden trans. (New York: Modern Library, 1992), 584-606.

Glazier Wheeler, a skilled counterfeiter of coin. According to Burroughs, Lysander, still entranced with the prospect of easy wealth, proposed that they embrace the next best thing to alchemy, and join forces with Wheeler. Burroughs had some misgivings, but Lysander (or Burroughs' criminal conscience) dispelled his fears with clever argumentation. "Money," Lysander said, "of itself is of no consequence, only as we, by mutual agreement, annex to it a nominal value, as the representation of property. Anything else might answer the same purpose, equally with silver and gold, should mankind only agree to consider it as such, and carry that agreement into execution in their dealings with each other. We find this verified by fact," added Lysander, "by those bills of credit which are in circulation through the world" These slips of paper, he observed, "are good for nothing; but the moment mankind agree to put a value on them, as representing property, they become of as great consequence as silver and gold, and no one is injured by receiving a small insignificant piece of paper for a hundred bushels of wheat."

Lysander based his observations on practical experience, for the colonists had embraced paper money far earlier and more enthusiastically than their counterparts in Europe. The lesson of all this paper money was obvious — at least to Lysander. As he explained to Burroughs, "the only thing necessary to make a matter valuable, is to induce the world to deem it so; and let that esteem be raised by any means whatever, yet the value is the same, and no one becomes injured by receiving it at the valuation." Counterfeiting was more of the same: it likewise required that others deem something valuable which had no intrinsic, objective value. That Lysander and Burroughs came to this conclusion after their failed investment in alchemy was appropriate. The alchemical quest for riches was disappearing at this very time, replaced by other means of creating value out of thin air. Paper money was one such surrogate for alchemy. Counterfeiting was another, and Glazier Wheeler embodied the common spirit animating both pursuits. An artisan skilled in the alchemical arts of metallurgy and chemistry, he had long directed a gang in New Hampshire that manufactured and distributed bogus coin throughout the colonies.²⁵

Whatever the risks of counterfeiting, Burroughs became convinced by Lysander's arguments. More to the point, he recalled, in what became a common refrain in his *Memoirs*, "the mania of wealth had taken strong possession of our minds, and we listened with eagerness to her calls." Taking some counterfeit coin from Wheeler, Burroughs tried to pass it at an apothecary in Springfield, Massachusetts, only to be immediately arrested and committed to trial. He represented

himself before the court in what from all accounts was an entertaining performance, but again his reputation hurt him. As he related the story in his *Memoirs*, the prosecutor cited his impersonation of a minister as evidence of his iniquity. Burroughs lamented that the jurist claimed "I had been a counterfeiter not only of the coin of the country, but had likewise counterfeited a name, a character, a calling: all of which seemed to communicate this idea to the world, that I had given a loose to the practice of every enormity; that my wickedness had at length found me out." The court found Burroughs and Wheeler guilty and sentenced both to three years hard labor on Castle Island, a fortress-like prison in Boston harbor.²⁶

Burroughs made many attempts to break jail, including one rather spectacular escape by boat that ended in his recapture a day later. He finally emerged several years later to a very different world than the one he had left behind. When he passed the counterfeit coin in the mid-1780's, the state of Massachusetts was in the midst of post-war economic slump. Farmers suffered more than most: many owed money but lacked the hard currency to make their payments. Money was scarce, and the state constitution, which forbade the use of paper currency and gave no protection to debtors, exacerbated matters, as did a new law requiring that taxes be paid in coin. Gold and silver became extraordinarily rare, much as Burroughs' friend Lysander acknowledged when he justified counterfeiting on the grounds that "an undue scarcity of cash now prevails [and] whoever contributes, really, to increase the quantity of cash, does not only himself, but likewise the community, an essential benefit." As in colonial times, demand for money outstripped supply, though counterfeiters were happy to make up the difference.²⁷

If Burroughs and Lysander failed in their attempts to increase the quantity of cash, so did Daniel Shays, the Massachusetts farmer who led an insurrection to bring some relief to the specie-starved farmers. The revolt failed, but focused attention on political reform, particularly among the economic and social elite who met to discuss changes to the Articles of Confederation in 1787. After considerable debate, they jettisoned the Articles altogether and instead drafted a blueprint for a much stronger central government: the Constitution. That document, which was debated and sent

26 *Massachusetts Spy*, 20 October 1785, 3; Castle Island Commitment Register, 1785-1788, Massachusetts State Prison Records, MSA; Burroughs, *Memoirs*, 80, 96-97; Gross, "Confidence Man," 315. On his stint in prison, see *Massachusetts Gazette*, 1 May 1785, 2; Linda Kealey, "Punishment at Hard Labor: Stephen Burroughs and the Castle Island Prison, 1785-1798," *NEQ* 57 (1984), 249-254. On Burroughs's relationship to Shays' Rebellion, see Gross, "The Confidence Man and the Preacher," 297-320.

27 Burroughs, *Memoirs*, 84. On the precarious economic situation in Massachusetts, see Leonard L. Richards, *Shay's Rebellion: The American Revolution's Final Battle* (Philadelphia: University of Pennsylvania Press, 2002).

25 Burroughs, *Memoirs*, 83; Brooke, *Refiner's Fire*, 108-28. On Wheeler, see *Boston Post Boy*, 10 October 1763, 3; *Boston Evening Post*, 7 February 1774, 3; *Salem Gazette*, 11 October 1785, 3; Scott, *Counterfeiting in Colonial America*, 157, 222-236.

to the colonies for ratification just before Burroughs emerged from prison in 1788, reflected the hard-money bias of the individuals who framed it. It granted to Congress the power to regulate interstate and foreign commerce, mint coin, and regulate the money supply. Significantly, individual states were forbidden to “emit Bills of Credit [or] make anything but Gold or Silver Coin a Tender in Payment of Debts.” This was another way of saying, however ambiguously, that paper money should not have a place in the nation’s circulating medium.²⁸

The aversion to paper stemmed from the fact that both Congress and the individual state governments had printed vast quantities of worthless paper money to underwrite their debts both during and after the Revolution. The Continental Congress became especially infamous for its irredeemable wartime issues, known as “continentals,” which over the course of the war lost almost all their value, thanks in part to counterfeits issued by the British. A popular phrase at the time, “not worth a continental,” summed up the failure of these issues and the poor reputation of paper money generally. While there was initially a clause in the Constitution that permitted the federal government to issue notes, it was quickly eliminated, one delegate recalled, to “shut and bar the door against paper money.” This fear was widely shared. As another argued, retaining the right to issue paper “would be alarming as the mark of the Beast in Revelations.” It would be better, another urged, to “reject the whole plan than retain the three words ‘and emit bills.’”²⁹

While many of the framers wished to keep paper money out of circulation, this proved impractical. There was no way that the specie-poor United States could conduct all of its business in the gold and silver coin preferred by the more developed economies of Europe. Bank notes solved the problem. The Continental Congress had already chartered the first note-issuing bank in 1782 (the Bank of North America) and after the war’s end, several state-chartered banks emerged as well, one in each of the major cities on the eastern seaboard. These early institutions enjoyed a reputation

for conservative management, and did not issue bank notes in excess of their specie reserves. They operated as practical monopolies, making loans and doing business with an elite sliver of society. The biggest and most powerful of these was the Bank of the United States, chartered by the United States Congress in 1791. The brainchild of Alexander Hamilton, it was modeled on the Bank of England and designed to assist in the collection of federal taxes and in the administration of the public finances. It also provided a market for the national debt, as subscribers had to pay for shares using federal securities. It was chartered over the strong opposition of the anti-federalists, who criticized it as monopolistic.³⁰

They need not have worried. The number of note-issuing banks grew from five to upward of three hundred in the quarter century after the chartering of the Bank of the United States. Many of these banks, moreover, differed from those favored by conservative financiers like Hamilton. They tended to represent a more aggressive, entrepreneurial, risk-taking segment of society, many of whom harbored anti-federalist sympathies. The banks they established did more than simply receive money and store it; they created it, too. “For every dollar paid in by the stockholders,” one historian of banking has written, “the banks lent two, three, four, or five. The more sanguine part of the people were happy to have it so, no matter if they did not understand how it could be.” Many of these loans took the form of bank notes. That these banks had far more notes in circulation than specie in their vaults was a lesson many would learn the hard way in the succeeding decades. But for now, few people bothered to inquire too deeply into the arcana of fractional-reserve banking, capital requirements, and specie ratios.³¹

As the years passed, it became increasingly easy to obtain a bank charter from well-placed friends in state legislatures. In time, this tactic permitted most every special interest or class to have its own bank: tradesmen, merchants, mechanics, farmers, and others. Even individual states chartered banks — the Bank of Vermont, for example — to serve their needs. Like Hamilton’s Bank of the United States, these institutions functioned as adjuncts to the state governments by absorbing state debts, or bonds, in the process of capitalization. But whatever their origin or motive, all of these new banks had one thing in common: they issued bank notes. These slips of paper, adorned with the name of the bank, denomination, and some kind of vignette, or picture, look crude by today’s standards, and could be easily counterfeited. The federal

28 Hammond, *Banks and Politics*, 89-113; *Records of the Federal Convention of 1787*, vol. 2, Max Farrand, ed. (New Haven: Yale University Press, 1937), 308-10; Janet A. Riesman, “Money, Credit, and Federalist Political Economy,” in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 128-161.

29 Charles C. Tansill and H. H. B. Meyer, eds., *Formation of the Union*. 69th Congress, 1st Session, House Document 398 (Washington, D.C.: Government Printing Office, 1927), 475, 556-57, quoted in Hammond, *Banks and Politics*, 93. On the revolutionary and post-revolutionary experience, see Scott, *Counterfeiting in Colonial America*, 253-63; William G. Anderson, *The Price of Liberty: The Public Debt of the American Revolution* (Charlottesville: University of Virginia Press, 1983); Mary M. Schweitzer, “State-Issued Currency and the Ratification of the U.S. Constitution,” *JEH* 49 (1989), 311-322.

30 Hammond, *Banks and Politics*, 103-115; David Jack Cowen, *The Origins and Economic Impact of the First Bank of the United States, 1791-1797* (New York: Garland Publishers, 2000).

31 Hammond, *Banks and Politics*, 146; Fritz Redlich, *The Molding of American Banking* (1947; reprint, New York: Johnson Reprint Corporation, 1968), 5-23; Robert Wright, *Origins of Commercial Banking in America, 1750-1800* (Lanham, Maryland: Rowman & Littlefield, 2001).

government, which did not charter these banks, had little interest or control over their issues, and ceded the problem to the individual states.³²

When Burroughs left prison in the fall of 1788, he stood on the cusp of these developments, and over the course of the next decade he wandered about the new nation, marrying his cousin, Sally Davis, and working as a schoolteacher in Massachusetts before falling afoul of authorities, this time for allegedly seducing his female students. After yet another escape from prison (this time successful) and a stint teaching school on Long Island, Burroughs fled to Georgia, taking a job as a tutor, only to be drawn to a financial mania that gripped the region. In 1795, the state legislature had sold millions of acres in the Yazoo River watershed, precipitating what Burroughs described as a “rage for land speculation.” Though a few speculators had started the frenzy, eventually “all were seized with the mania of rushing suddenly into immense wealth, and the most nefarious schemes were put in practice to defraud a credulous world with the idea of becoming interested in the excellent soil of the Georgia lands.” Burroughs, characteristically enough, joined the stampede, for “it offered to my imagination the animating prospect of speedy affluence.” Working as a surveyor, Burroughs got himself hired by none other than Philadelphia financier Robert Morris, who eventually charged him with the task of voyaging beyond the western frontier in order to establish a fur trade with the Indians.³³

It was not to be. “Mr. Morris,” wrote Burroughs, “by a concatenation of the most astounding incidents, became embarrassed, notwithstanding his immense property and unequalled fiscal abilities,” and the scheme collapsed. Morris ended up in debtors’ prison thanks to his speculative investments in land; Burroughs, who lent the financier money, lost it all when a crooked lawyer sold his property without his consent, pocketed the money, and fled the country. Laid low by someone more conniving than himself, he returned home to his father’s house, and spent the next few years writing his memoirs and pondering his next act of self-invention.³⁴

The Banker

On several occasions in his *Memoirs*, Burroughs complained of the notoriety that had attached to his name over the course of his life. “When mankind had once formed an unfavorable opinion,” he observed of his own dubious reputation, “it was hard to eradicate such an idea, even by the most pointed evidence.” Perhaps tired of his fame, which began to assume a life of its own after the publication of his autobiography, Burroughs eventually left the United States altogether, moving to what is now Quebec and settling in the township of Stanstead, just north of the Vermont border. According to his own account, he arrived there in 1799, settling on a small river that drained into Lake Massawippi. Burroughs cleared the land and built several mills that harnessed the power of the nearby falls. There was some question as to whether the land had already been claimed by someone else, but otherwise Burroughs stayed out of trouble. Had this been the end of it, his reputation would have been confined to the misdeeds of his memoirs. But Burroughs, it seems, had acquired a thirst for making money, as an appendix to an 1804 edition of his life story made clear. “For several years he gave great encouragement to his friends, that he might still be a useful member of society,” it was reported. “But, alas! how have their hopes been blasted! Common fame says, that several of his last years have been assiduously employed in counterfeiting bills of the various banks of the United States.”³⁵

It was thanks to such exploits that Burroughs went from mild notoriety to become a larger-than-life outlaw, a threat to the nation’s fledgling economy as well as an embodiment of the growing impulse to make money at any cost. Such fears and anxieties were exaggerated, but they testified to Burroughs’s growing status in the popular imagination. Forged notes, wherever they appeared, were attributed to him, and he soon became in many minds the fountainhead of the counterfeit economy. That he never documented his doings in Canada in the detail that he related his earlier life only encouraged further speculation, and Burroughs soon found that his reputation outstripped his actual exploits. It helped that the region to which he relocated appealed to romantic sensibilities. “Stephen Burroughs was supposed to have his manufactory of counterfeit money somewhere in the recesses of those mountains,” recalled one novelist some years later. “[I]t was a wilderness then . . . It heard then the nightly scream of the panther; the growl of the bear; the bark of the wolf.” This was not too far from the truth: though the French had claimed the region just north of Vermont when they established trading posts at Quebec in 1608 and Montreal in 1642, few people

32 Hammond, *Banks and Politics*, 146-47. On the spread of banking and entrepreneurial activity, see Robert H. Wiebe, *The Opening of American Society: From the Adoption of the Constitution to the Eve of Disunion* (New York: Knopf, 1984), 150-54; Wood, *Radicalism of the American Revolution*, 316-318.

33 On Burroughs’ entanglements in Worcester, see *American Mercury*, 6 June 1791, 3; *Worcester Magazine*, 23 June 1791, 4; Burroughs, *Memoirs*, 208-218. On Burroughs and Long Island, see Aurelia Grether Scott, “The Strange Case of an Early Long Island Schoolmaster,” *Journal of Long Island History* 7 (1967), 10-23.

34 Burroughs, *Memoirs*, 343-348; Barbara Ann Chernow, *Robert Morris, Land Speculator, 1790-1801* (New York: Arno Press, 1978), 170-198.

35 Minutes and Reports of Land Committee, Vol. 14, June-December 1802, p. 5222, Lower Canada Land Papers, RG1, L3, NAC; Lists and Returns of Petitions Presented to the Lt. Gov., Vol. 2, 1797-1802, p. 535, RG 1, L3, NAC; Burroughs, *Memoirs*, 367.

settled there because it had minimal access to water and no roads. That it was the hunting ground of the Iroquois did not make it any more inviting.³⁶

When the British assumed control of New France with the Treaty of Paris in 1763, they did not institute any radical changes in the provinces of Upper and Lower Canada (later renamed Ontario and Quebec). Then, after the Revolution, they opened the area to settlement. Because all newcomers had to bear the cost of surveying subdivisions and of obtaining royal patents, wealthier Loyalists tended to be among the first permanent settlers. They set up small villages in the different tracts of land along the frontier, settling in places Stanbridge, Dunham, and Stanstead. Many people arrived after Vermont's leaders, who had contemplated joining Lower Canada, opted instead to throw their lot with the new nation to the south. Still, while Loyalists and their sympathizers numbered among the first settlers of the region that became known as the Eastern Townships, many subsequent settlers, Burroughs included, had no reason for being there aside from easy access to land. As one historian of the region wrote in the mid-nineteenth century, "others came in, who could only be regarded in the light of unavoidable evils, being of that irresponsible ill-regulated class who 'neither feared God, nor regarded man.'"³⁷

Border regions tend to attract fugitives from justice, but the stretch of frontier between Vermont and Canada offered more than the usual inducements for anyone seeking refuge from authorities in either country. Easy access to the townships was next to impossible, as there were no reliable roads connecting the region to any of the major cities of Lower Canada. Even as late as the 1830s, a survey of the roads near the border succinctly described them as "very rugged, broken, and otherwise bad." This made finding fugitives, much less bringing them to trial, next to impossible. That most criminal cases had to be tried before the Court of King's Bench in distant Montreal did not help matters, nor did the absence of any kind of police force, a scarcity of magistrates and justices of the peace, a constant clash between competing legal systems, and a number of Loyalists who had little love or respect for the laws of the United States. The federal government could do little to control criminal activity originating in the townships, for it possessed little in the way of authority over the region.

36 Solon Robinson, *The Green-Mountain Girls* (New York: Derby & Jackson, 1856), 399; Charles P. DeVolpi and P. H. Scowen, *The Eastern Townships: A Pictorial Record* (Montreal: Dev-Sco Publications, Ltd., 1962), 3-7; Jean-Pierre Kesteman, Peter Southam and Diane Saint-Pierre, *Histoire des Cantons de l'Est* (Sainte-Foy, Quebec: Les Presses de l'Université Laval, 1998).

37 DeVolpi and Scowen, *Eastern Townships*, 5-6; Audrey Martin McCaw, "United Empire Loyalists in the Eastern Townships," in *Missisquoi Loyalist Legacies* (Dunham, Quebec: Missisquoi Historical Society, Inc., 1976), 29-35; Mrs. C. M. Day, *Pioneers of the Eastern Townships* (Montreal: John Lovell, 1863), 117.

It lacked an extradition treaty with Lower Canada, and an ongoing territorial dispute between Britain and the United States made the actual location of the border a matter of personal opinion. (In a testament to this ambiguity, settlers referred to the boundary as "the lines.")³⁸

The townships became a classic borderland, an area where the conflicting loyalties of the residents, the isolation of the settlements, and the unusual mix of cultures and jurisdictions made for a breakdown in authority which worried the British administrators of the region. Indeed, the settlers of Lower Canada looked less to the imperial authorities than to their counterparts south of the border, with whom they forged strong commercial and criminal ties. Communities in northwestern Vermont, for example, exported timber and potash northward, along with a stream of cheap smuggled goods: tea, silks, cotton fabrics, china, and other portable items. Until the early 1800s, this trade was very much a one-sided affair, with little in the way of contraband goods flowing south. Things remained that way until Stephen Burroughs arrived. He had something to sell the Americans to the south, something that had not been part of the normal ebb and flow of commerce — until now.³⁹

It is unclear when, exactly, he produced his first notes. Popular lore in the townships holds that the first night Burroughs arrived in Lower Canada, he purchased a lot of gilt buttons wrapped in tissue paper, upon which he then printed counterfeits of the Bank of Haverhill, New Hampshire. This bank, however, did not go into business until after Burroughs arrived, and the incident, however suggestive, is apparently apocryphal. But within a few years, reports of counterfeit notes floating in the neighborhood of Stanstead aroused suspicions. These were confirmed in September 1805, when Sheriff Micah Barron arrested Samuel Spring and Russell Underwood in Barre, Vermont, for having in their possession a variety of counterfeit notes on banks in New Hampshire, Maine, Connecticut, and Rhode Island. In the course of the trial, it came out that Spring was an "old

38 Charles Stewart, *A Short View of the Present State of the Eastern Townships in the Province of Lower Canada* (London: J. Hatchard, 1817), 12-13; Joseph Bouchette, *The British Dominions in North America*, vol. 1 (1831; reprint, New York: AMS Press, 1968), 308, 400; André Morel, "La Réception du Droit Criminel Anglais au Québec," *Revue Juridique Thémis* 13 (1978), 449-541; Brian Young, "'The Business of Law' in Missisquoi and the District of Bedford Before 1861," *Proceedings of the Missisquoi Historical Society* 20 (1990), 10-24.

39 John Lambert, *Travels Through Canada and the United States of North America*, vol. 1 (London: Baldwin, Cradock, and Joy, 1816), 251-253; Stewart, *A Short View*, 13; Harvey Strum, "Smuggling in the War of 1812," *History Today* 29 (1979), 532-537; Chilton Williamson, *Vermont in Quandary: 1763-1825* (Montpelier: Vermont Historical Society, 1949), 242-257. On borderlands, see Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History," *AHR* 104 (1999), 814-881; MIHM, p. 59, n. 41.

offender and partner with the notorious Stephen Burroughs, in the Canada manufactory.” This was one of the first public acknowledgments that Burroughs, who was well known throughout the country thanks to his *Memoirs*, had begun another life in crime beyond the reach of the usual authorities.⁴⁰

The conviction of Spring and others associated with Burroughs did not stem the tide of counterfeits that now began to flow from Burroughs’ twin manufactories: one in Stanstead and another in the township of Shipton to the north. As news of Burroughs’ doings spread, a number of state-chartered banks – most prominently the Coos Bank of Haverhill, New Hampshire – banded together to underwrite Barron’s well-publicized raid across the Vermont border. Notably, private “citizens,” not official government representatives, initiated this movement to arrest Burroughs. Neither the states nor the federal government had the resources to mount a campaign against Burroughs or any other counterfeiter, particularly one that entailed international diplomacy. In what would remain a common practice well into the nineteenth century, private bounty hunters moved into the enforcement void. Often corrupt, such men resorted to tactics of dubious legality, often hauling fugitives across state and national lines in violation of local laws. In Burroughs case, Barron crossed into Canada with the blessing of another reward seeker, a local justice of the peace named Oliver Barker, to whom Barron transferred custody of Burroughs. The counterfeiter complained many years later that while Barker acted as a “legal agent” for the crown, he nonetheless “had a double duty to perform, one of *honor* for his original master, another of *profit* for the U. States; and as money has a great influence in human affairs, he chose, in this instance, to sacrifice honor at the shrine of Plutus”⁴¹

How, exactly, someone like Barker managed to get Burroughs committed to jail in Montreal remains unclear. While the newspapers of New England opined that Burroughs would be transported or hanged for his offenses, this was far too optimistic. As the wily counterfeiter doubtless knew, however draconian the laws might be when it came to the

counterfeiting of British currency, there were no laws against counterfeiting *foreign* bank notes. Obscure banks chartered by the now independent British colonies did not fall within the compass of the existing statutes, even if those same notes circulated north of the border. Burroughs quickly posted bail in advance of having the case dismissed, but the indefatigable Barker managed to have him recommitted once more on misdemeanor and theft charges. The counterfeiter made his well-publicized flight from the Montreal jail shortly thereafter with the blessing, Burroughs intimated many years later, of high-level authorities in the imperial government unsympathetic to American banks. “His dexterity at escaping from a halter,” observed one newspaper in the wake of these events, “appears to be no less than his adroitness at deserving one.”⁴²

Other observers tacitly applauded Burroughs the trickster, at the same time they mocked the banks he imitated. One widely reprinted article lampooned the events of that year by casting Burroughs in the role of just another banker. The piece opened with an observation that Burroughs “has carried on the banking business on a large scale,” and noted that the counterfeiter had cut into the profits of the banks of New England. In turn, “the Yankees, being so hard run upon by Mr. Burroughs, determined to try the strength of that gentleman’s *banking house*” His competitors, this article reported, “went forthwith to his bank, and after sacking it of the specie capital, proceeded to . . . an inventory of his valuables.” And what did they find? Counterfeit notes on various banks in the United States. Putting words in Burroughs’ mouth, they had the counterfeiter make a speech to his prosecutors. “Gentlemen, this is the most unpleasant day in my whole life. To be ruined by an ill-advised *extension of banking speculations* is enough to disturb the repose of a man of my Christian temper.” The counterfeit money, Burroughs insisted, was a bank deposit of his elderly mother’s, who obtained them while speculating in securities. “She always had an itch for speculation,” Burroughs was made to say. “It is owing to her that I am now a ruined man. I told her this banking was a *‘hazardous business.’*”⁴³

This burlesque, with its peculiar conflation of banking and counterfeiting, spoke to the unease that many felt about the proliferation of paper money. What was the difference between a capitalist banker and a criminal counterfeiter? There were differences, to be sure, but not to the extent

40 Epps, *Eastern Townships Adventure*, 131; B. F. Hubbard and John Lawrence, *Forests and Clearings: The History of Stanstead County, Province of Quebec* (Montreal: Lovel Printing & Publishing Company, 1874), 27; *The Green Mountain Patriot*, 17 September 17 1805, 3; *Northern Post*, 7 November 1805, 2; Kenneth Scott, “Counterfeiting in Early Vermont,” *Vermont History* 33 (1965), 297-307.

41 *American Mercury*, 19 June 1806, 3; Burroughs, *A View of Practical Justice*, 8, emphasis in original. On private law-enforcement initiatives, see David R. Johnson, *Policing the Urban Underworld: The Impact of Crime on the Development of the American Police, 1800-1887* (Philadelphia: Temple University Press, 1979), 45-46; Craig B. Little and Christopher P. Sheffield, “Frontiers and Criminal Justice: English Private Prosecution Societies and American Vigilantism in the Eighteenth and Nineteenth Centuries,” *American Sociological Review* 48 (1983), 796-808.

42 *Vermont Gazette*, June 9, 1806, 3; *Farmers’ Cabinet*, 17 June 1806, 3; *Green Mountain Patriot*, 15 July 1806, 3; *Northern Post*, 31 July 1806, 2; *Providence Gazette*, 3 January 1807, 2; Burroughs, *A View of Practical Justice*, 7; Sheldon Carrol, “Currency of Lower Canada,” *Journal of the Stanstead County Historical Society* 2 (1967), 29-40. On conflicting attitudes toward banks in the United States, see *New-Hampshire Gazette*, 28 October 1806, 2.

43 *NYEP*, 17 January 1807, 3; *Connecticut Herald*, 27 January 1807, 3, emphasis in original.

many people would have preferred. By making Burroughs into a banker, writers like these captured the ambiguities of an economy based on very little in the way of “real” money. And to have the counterfeiter decry the business of banking and speculation only made this little bit of satire all the more amusing to readers skeptical of banks and bank notes. Some may have condemned Burroughs, but others found in him a caricature of the entire business of banking and money making, someone whose criminal behavior implicitly called into question the legitimacy of the entire capitalist enterprise.

Burroughs managed to escape prosecution in this instance, as he did on a number of occasions. His dexterity at outwitting his pursuers had much to do with his many allies in the townships. As one traveler to the region later explained, “Burroughs made himself popular by several acts of publick [sic] utility in Stanstead,” including building a road of twenty miles which enabled farmers to sell their produce. That he had also cared for several residents during a smallpox epidemic a few years earlier no doubt endeared him to local residents. As Burroughs’ popularity grew, he could trade the security of isolation for the watchful eyes of his neighbors, many of whom embraced the opportunity to participate in the counterfeit economy, and protected him and harbored him when the need arose. Oliver Barker later recalled that his own attempts to arrest Burroughs met with resistance from sympathetic locals, if not members of his gang. According to Barker, Burroughs escaped from his clutches in March 1807 thanks to the “exertions & vigilance of his numerous accomplices,” one of whom attempted – as usual, without success – to shoot the bounty hunter when he visited Stanstead.⁴⁴

Political considerations may have played a role as well in Burroughs’ uncanny ability to escape prosecution. This was a region settled by Loyalists, and few of the inhabitants respected the United States, much less felt an allegiance to its banks. Even the local authorities had mixed feelings on the subject, as is evident from a petition submitted by the local magistrates in the wake of the failed attempt to arrest Burroughs in the spring of 1807, at which time Barker ransacked Burroughs’ residence in Stanstead, confiscating many of his possessions and stealing some \$53,000 in cash — or so the aging counterfeiter claimed many years later. For his part, Barker claimed the raid had broken up the remnants of “Burroughs’ old company.” Local authorities sympathetic to Burroughs were not impressed. Citing the “reprehensible”

conduct of Barker, these men complained that their colleague “in his official capacity has been hired (not to use a harsher term) and paid by sundry of the Banks of the United States” to assist in prosecuting “the Notorious Stephen Burroughs and his confederates.” Worse, they noted that Barker had called United States citizens into the province and “authorized them as constables and assistants,” and with them behaved “in an overbearing, tumultuous, and even riotous manner greatly to the Annoyance of his Majesty’s peaceable good subjects.” Most damning of all, Barker had not delivered the plates and notes seized from Burroughs to the imperial authorities, as would have been expected, but had “taken them to the Banks of the United States, and there received his payment, or reward, as stipulated between them.” Their message was clear: while Burroughs may have been “notorious,” these transgressions of the colony’s political sovereignty should not be tolerated.⁴⁵

Despite Barker’s best efforts, Burroughs remained at large, and the lack of laws against counterfeiting made prosecution a difficult affair. Meanwhile, the bogus bills continued to stream south, and individuals arrested as far away as Connecticut and Pennsylvania were accused of being in league with Burroughs, whose reputation by this time had spread far beyond northern New England. Newspaper accounts from this time give the impression that Burroughs had a monopoly on the counterfeiting trade in Lower Canada, though Barker’s own testimony suggest that several allied gangs had commenced operations as well. Unfortunately, the details are difficult to reconstruct, the relevant court records having been destroyed some years ago. Still, from what little remains, it appears that Burroughs had hired some skilled engravers to produce the bogus plates, and handled much of the printing himself. Other family members — his sons, especially — worked with him, or served as couriers to deliver the counterfeit money throughout the United States. Some accounts claimed that his wife and daughter were also involved, though these claims are more difficult to substantiate. Burroughs, one newspaper claimed, had a wife “with all the accomplishments, address and spirit to carry on his intrigues and iniquity; and a large family of children...some of whom are said to be equally expert with the father in the science of ‘dressing up vice in the garb of virtue.’”⁴⁶

45 McCaw, “United Empire Loyalists,” 29-35; United Empire Loyalists Association of Canada, *The Loyalists of the Eastern Townships of Quebec* (Stanbridge East, Quebec: Sir John Johnson Centennial Branch, U.E.L., 1984); Burroughs, *A View of Practical Justice*, 9; Petition of Oliver Barker, VSA; Petition of Patrick Conroy et al. to the Honorable Thomas Dunn, June 23, 1807, in Folder FIT1, “Burroughs, Stephen,” SHS. Burroughs’s petition for redress fell on deaf ears. See Arthur G. Doughty, ed., *Dominion of Canada: Report of the Public Archives for the Year 1831* (Ottawa: F. A. Acland, 1932), 415.

46 *Burlington Gazette*, 10 August 1807 and *Burlington Centinel*, 6 January 6 1808, cited in Scott, “Counterfeiting in Early Vermont,” 304-305; *Connecticut Courant*, 26 August 1807, 3; *Columbian Centinel*, 7 October 1807, 2; *New Bedford Mercury*, 9 October 1807, 3; *New-Hampshire Gazette*,

44 “The Juvenile Traveler . . . No. 3,” *Omnium Gatherum* (1810), 404; Hubbard and Lawrence, *Forests and Clearings*, 74; *Weekly Wanderer*, 6 April 1807, quoted in Scott, “Counterfeiting in Early Vermont,” 304; *Providence Phoenix*, 18 April 1807, 2-3; *Massachusetts Spy*, 22 April 1807, 3; Petition of Oliver Barker, 1 November 1809, Volume 74, Vermont State Papers, VSA; Edward Cleveland, *A Sketch of the Early Settlement and History of Shipton* (1858; reprint, Sherbrooke, Quebec: Page-Sangster Printing Co., 1964), 60.

Evidence of the growing sophistication of Burroughs' ring comes surfaced around this time, after yet more raids by Barker. According to a newspaper report, one of Burroughs' accomplices, a man named Remington, visited a paper mill in Montreal with an unusual request. "He told us he wanted about twenty reams, of as many different kinds as we could make," related a witness, and "he shewed bills of more than fifty different kinds, which he said he wanted paper to print them all." The paper maker agreed, but notified the authorities. "We found that Burroughs was the head of the business," reported the paper maker, who later learned that the counterfeiters anticipated needing one hundred reams of paper in the coming year. There was no limit to their ambitions: as this same witness claimed, Remington told him that "after trying New York a spell," they planned on turning their attention to the banks in "old Massachusetts." But the counterfeiters never made it to Massachusetts: Barker arrested Remington and several others in late September, catching them in the act of stamping five dollar notes on the Farmers' Bank of New York. Subsequent arrests confirmed that Burroughs was acting as the mastermind of much of the illicit "banking" conducted north of the border. Petitions for pardon filed by Burroughs' associates paint him as a charismatic figure with a silver tongue. One spoke of Burroughs' "peculiar seductive language" with which the counterfeiter painted "the most flattering, though visionary prospects of acquiring sudden wealth . . ." The fictive Lysander and real-life Burroughs had become one and the same.⁴⁷

Burroughs' reputation now began to assume a life of its own, thanks in part to the many pirated – or counterfeited – versions of Burroughs' *Memoirs* circulating in the United States. He delighted in the notoriety, using his fame to poke fun at his foes in the banking establishment. But until the spring of 1809, Burroughs had little opportunity to draw a parallel between his own activities and those of his more respectable counterparts. That changed with the implosion of the infamous Farmers Exchange Bank of Gloucester, based in Rhode Island, a state with a longstanding reputation for monetary mischief. Incorporated in 1804 by an imaginative financier named Andrew Dexter, the Farmers Exchange Bank was to the United States what John Law's Banque Royal had

been to France. By putting notes into circulation hundreds of miles away from where they could be redeemed, Dexter played a consummate shell game, dodging redemption for several months until the entire scheme collapsed in March of 1807. The auditors who picked over the carcass of Dexter's creation discovered that the institution had close to a million dollars in outstanding bank notes, and a mere \$45 in specie set to redeem them.⁴⁸

Burroughs kept abreast of the falling fortunes of Dexter's bank, and found the opportunity to weigh in on the crisis irresistible. He wrote a letter to Samuel Gilbert and Thomas Dean, two bank note brokers associated with Dexter who, in addition to their service to the fallen financier, published a guide to the counterfeit notes emanating from Burroughs' workshops. The letter began on a tone of mock seriousness. "Gentleman, Having seen your 'Only sure guide to bank Bills,' and admiring your kind labors for the public weal . . . I have enclosed and forwarded to your Exchange Office, a bill on the Shipton Bank." Noting that this bank, of which he was the principal stockholder, "has very recently commenced its operation," Burroughs requested that they "give the public the earliest notice should spurious bills of that Bank be discovered to be in circulation." Alluding to the recent troubles of the Exchange Bank (whose discredited notes had sunk below counterfeit money in the public's estimation) Burroughs slyly ridiculed the logic of intrinsic value. "Such is the depravity of man, and such the success of counterfeiting," he wrote, "that I lately observed in one of your newspapers, that *patent buck wheat pancakes* had been so exactly counterfeited . . . that none except the Officers of the *Pancake Exchange* could distinguish them from the originals!!!" Burroughs enclosed a satirical bank note that mocked the efforts of the banking community to send him to the gallows or a penal colony. It depicted "a figure of an Ourang Outang from whose mouth issued a label with these words: '*Death or Botany Bay, ha, ha, ha!*'"⁴⁹

These and other pranks only added to his burgeoning reputation as a folk hero. Accounts of his exploits began to acquire the sorts of details which, even if utterly fabricated, testified to the growing respect for his remarkable ability to defeat his more powerful foes through a mixture of ingenuity and artifice. For example, when officers of the law showed up at his manufactory in Shipton, Burroughs was supposed to have "immediately put on his snow-shoes, forward end

13 October 1807, 2; *American Mercury*, 15 October 1807, 3; *New-Hampshire Gazette*, 20 October 1807, 2; *St. Albans Adviser*, 23 June 23 1808, 3; *American Watchman*, 19 June 1811, 1; Stephen Burroughs, *Sketch of the Life of Stephen Burroughs: Containing the Most Interesting Events of His Life, as Given by Himself* (Hudson, N.Y.: H. & L. Steele, 1809), 104-5; "The Juvenile Traveler . . . No. 3," *Omnium Gatherum* (1810), 404; Gwilym R. Roberts, "Elijah Remington, the Castleton Counterfeiter," *Vermont History* 34 (1966), 66-69.

47 *Green Mountain Patriot*, 9 September 1806, 3; *Columbian Centinel*, 4 October 1806, 2; *Columbian Centinel*, 22 October 1806, 1; *Columbian Centinel*, 22 October 1806, 2; *New-Hampshire Gazette*, 28 October 1806, 2; *Massachusetts Spy*, 10 December 1806, 2; Petition of John Niles, 17 October 1810, Volume 48, Vermont State Papers, VSA.

48 Hammond, *Banks and Politics*, 172-178; Jane Kamensky, *The Exchange Artist: A Story of Paper, Bricks, and Ash in Early National America* (New York: Viking, forthcoming).

49 *Windham Herald*, 20 April 1809, 4; Burroughs, *Sketch of the Life of Stephen Burroughs*, 105-106, emphasis in original. On Gilbert and Dean, see *The Only Sure Guide to Bank Bills* (Boston: Columbian Centinel, 1806); William H. Dillistin, *Bank Note Reporters and Counterfeit Detectors, 1826-1866* (New York: American Numismatic Society, 1949), 25-27.

behind, and went away, leaving the appearance of tracks toward his house, while he was going from it.” This may have been Burroughs’ own invention, or as this account suggested, the idea may have been a variation on “Virgil’s description of Cacus, the son of Vulcan whom Hercules slew, who drew his stolen cattle into his cave backwards to deceive his pursuers.” The evocation of classical mythology was telling: Burroughs had become, like other folk heroes, a larger-than-life figure responsible for every counterfeit in circulation. A number of popular editions of his *Memoirs* published at this time only cemented his reputation. So, too, did the news that Burroughs, captured in an ambush orchestrated by Oliver Barker, managed to escape yet again.⁵⁰

Burroughs’ career mirrored the final dissolution of the colonial architecture of authority, and its replacement by a more raucous and individualistic expression of political and economic power. Growing numbers of upstart entrepreneurs claimed the right to make money in both senses of the word. They founded banks, issuing paper money as a means of underwriting their speculations outside the sort of established financial circles represented by the Boston banking establishment. In his attacks (rhetorical or otherwise) on this older order, Burroughs enjoyed a certain kinship with a new breed of agrarian entrepreneur. He was in this sense a republican, scornful of prerogative and inherited rights; no surprise, then, that he was compared to Tom Paine, among other radicals. Burroughs said as much in the opening pages of his *Memoirs*, when he wrote that “I am so far a republican, that I consider a man’s merit to rest entirely with himself, without any regard to family, blood, or connection.” As one newspaper observed at this time, “Burroughs was always an advocate of the equalizing doctrines”⁵¹

Few of Burroughs’ distant cousins, the Jeffersonian Republicans, showed much interest in prosecuting him. That had something to do with the fact that politicians of this mold had little desire to expand the policing powers of the nation state. They distrusted centralized authority, which may account for why the federal government did so little to prevent, prosecute, or punish counterfeiting of any sort in the years after 1800. Even imitations of the coins issued by the national mint went unchecked and unpunished. Congress instead ceded responsibility for counterfeiting to the individual state legislatures, few of whom showed much initiative in

combating the problem. One notable exception was the state of Vermont, which was still dominated by the Federalists just as Burroughs’ exploits began to attract considerable attention. Late in the fall of 1808, the governor dispatched an emissary to lobby the provincial legislature of Lower Canada to pass laws against the counterfeiting of the notes of banks in the United States. It was not surprising that of all the states, Vermont took the lead in addressing the problem. Not only did most of the counterfeits pass through the state on their way to various destinations throughout the country, but Vermont also had a special relationship with Canada. It relied heavily on Canadian markets for its goods, and many families had relatives on both sides of the border. Thanks in part to these ties, the legislature acceded to the request, finally passing a law that made the counterfeiting of foreign bank notes a crime, though not a capital offense.⁵²

Burroughs was not unaware of these developments. After his last escape, he had relocated to his lair in the less settled township called Shipton, further from the border with Vermont. There he learned of Craig’s initial speech to the assembly. Seeing the writing on the wall, he quickly submitted a petition to the governor. In it he reviewed the charges against him, which included counterfeiting the notes of banks in the United States; persuading someone to pass counterfeit coin; escaping from the common jail of Montreal; and last, but not least, stealing an ox, a crime which potentially carried the death penalty. Burroughs admitted that he had “made impressions representing the Bank notes or bills in circulation in the United States,” but correctly claimed that at the time he did so “was not injurious to this Province or to Great Britain, and that he was not in any manner contravening the Laws of the same.” Moreover, he claimed that upon hearing that the parliament was considering criminalizing the very thing that he had been doing, he had quit the business, burning the notes in his possession and destroying his printing press. He dismissed the other charges as “calumnious imputations,” being the product of “machinations entered into by the agents of several of the Banks of the United States with divers

52 On counterfeiting and the federal government, see *The Public Statutes at Large of the United States of America*, vol. 2 (Boston: Charles C. Little and James Brown, 1845), 494-495; James Willard Hurst, *A Legal History of Money in the United States, 1774-1970* (Lincoln: University of Nebraska Press, 1973), 5, 13, 36, 39, 71, 134-135; Dwight F. Henderson, *Congress, Courts, and Criminals: The Development of Federal Criminal Law, 1801-1829* (Westport, Conn.: Greenwood Press, 1985), 3-36. On the overture to Lower Canada, see *Records of the Governor and Council of the State of Vermont V* (Montpelier, Vermont: J. and J. M. Poland, 1877), 236; Williamson, *Vermont in Quandary*, 262-264; Lewis Cass Aldrich, ed., *History of Franklin and Grand Isle Counties, Vermont . . .* (Syracuse, N.Y.: D. Mason & Co., 1891), 140-141; *Rutland Herald*, 29 August 1810, 2. On the debate in Lower Canada, see *Journals of the House of Assembly of Lower-Canada* (Quebec: House of Assembly, 1810), 34, 60, 62, 126, 200, 208; *Journals of the House of Assembly of Lower Canada*. (Quebec: House of Assembly, 1811), 84, 628; *Montreal Gazette*, 1 April 1811, 3.

50 Cleveland, *Sketch of the Early Settlement and History of Shipton*, 60; *New Hampshire Gazette*, 20 October 1807, 2. On Burroughs’ fictional reputation, see, e.g., *Ladies’ Port Folio*, 22 January 1820, 26.

51 *New-Hampshire Sentinel*, 22 September 1804, 3; *Farmers’ Cabinet*, 7 October 1806, 2; Burroughs, *Memoirs*, 3. On democratization, see Joyce Appleby, *Capitalism and a New Social Order* (New York: New York University Press, 1984); Wood, *Radicalism of the American Revolution*, 229-369; Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge, Mass.: Harvard University Press, 2000).

persons within this Province.” Finally, he conceded that he had broken jail, but pointed out with his usual fondness for legal niceties that he had walked out without “any breaking or the use of force or violence,” making it a much less objectionable crime. On these grounds he requested clemency, arguing that he had otherwise led an honorable life, “making agricultural improvements on several very extensive Farms.”⁵³

Burroughs was eventually tried in the provincial city of Trois-Rivières, though not before turning the tables on Oliver Barker by having the bounty hunter arrested on bogus charges. Barker eventually walked free, however, and Burroughs did not. In 1811, as he awaited sentencing, American newspapers predicted that Burroughs would finally “meet the punishment he has so much laughed at, ‘death or Botany Bay.’” The court opted for the latter, but in typical fashion, Burroughs’ escaped deportation; after he offered substantial bonds for his future good conduct, Governor Craig pardoned him. Not that the former counterfeiter stayed entirely out of trouble. With the outbreak of war between Britain and the United States the following year, the border region between the two countries erupted in fighting, and Burroughs, mindful of the need to prove his loyalty to the British — and tempted by the promise of what he called “a handsome provision” — began performing “secret services” on behalf of the royal authorities. By his own account, he helped forestall a mutiny among some troops quartered near his home in Shipton, and worked as a spy, collecting military intelligence that proved critical in one of the battles fought on the frontier.⁵⁴

For this he was thrown in prison and accused, Burroughs later claimed, of working as a double agent. The charges may well have been true, but he escaped prosecution once more, though by this time events seemed to have conspired against him. His son Edward, who had been arrested several years back while traveling to Vermont as wholesaler of counterfeit money, cut off contact with his father, establishing himself at Trois Rivières as – *sacre bleu!* – a chore-boy for the chief justice of the provincial court. Shortly after this, Burroughs lost his title to his farm in lawsuits that contested his right to the land in Shipton and Stanstead. Finding himself once again without money, Burroughs moved what was left of his family to Trois-Rivières, where he worked as a schoolteacher and a tutor and, as one wag later put, he ““took up the business

of being a respectable man!’ and well and honorably did he follow that business, as his many friends — enemies he had none — who were long his neighbors, will all cheerfully testify.”⁵⁵ (Fig. 3).

It may have helped that Burroughs apparently became a devout Catholic in the 1810s, most likely inspired by his wife, a long-time convert. Catholicism, he wrote in a letter published in 1815, was a religion of “consequence, importance, and beauty” that put to shame the “horrid absurdities” of his father’s Calvinism. His daughter Sally likewise converted, despite having only a few years earlier been rumored to have been supporting herself “in stile [sic] and elegance by the simple business of signing the [counterfeit] bills, in which art she arrived to great perfection.” She embraced the new faith with fervor, entering the Ursuline Convent in Trois Rivières as a cloistered nun, eventually becoming the mother superior of that institution.⁵⁶ Burroughs himself became more pious in his later years, taking up the cause of the French Catholics who were his neighbors, and performing a variety of benevolent acts. Rumors nonetheless circulated in the United States that he had become a “high dignitary in that Church, and accumulated wealth . . . chiefly in pardoning sins and granting absolution and acts of indulgence,” but accounts of his behavior from the 1820s onward suggest that for once Burroughs had truly reformed, even if his conversion constituted a final act of rebellion against his father. One visitor in 1839 reported that Burroughs spent his days reading and writing in a room “hung round with copies, or originals” (the writer, appropriately enough, could not tell which was which) “of the master-pieces of some of the distinguished painters of Christian life and suffering, and every thing about him indicated very convincingly the genuineness of his repentance and reformation.” After spending most of his adult life adopting and discarding guises in a caricature of the Protestant self-made man, Burroughs apparently took some refuge in his new faith. Perhaps it offered solidity, stability — and after a life spent playing the counterfeit, the promise of redemption.⁵⁷

53 Petition of Stephen Burroughs, 6 April 6 1810, pp. 1045-1049, Lower Canada Petitions and Recommendations for Clemency, Volume 2, RG 4, B 20, NAC.

54 *New Bedford Mercury*, 20 April 1810, 4; *Vermont Centinel*, 27 July 1810, quoted in Scott, “Counterfeiting in Vermont,” 306; *Quebec Gazette*, 9 August 1810, 2; *PADA*, 8 May 1811, 3; *American Watchman*, 19 June 1811, 1; Petition of Oliver Barker, VSA; Burroughs, *A View of Practical Justice*, 17-19, 26-27; Philéas Gagnon, *Essai de Bibliographie Canadienne* (Quebec: By the author, 1895), 80; J. I. Little, “American Sinner/Canadian Saint? The Further (Mis)adventures of the Notorious Stephen Burroughs, 1799-1840,” unpublished paper in possession of the author.

55 Burroughs, *View of Practical Justice*, 20-21; *New-Hampshire Gazette*, 13 October 1807, 2; *Quebec Gazette*, 20 June 1811, 1; *Quebec Gazette*, 9 January 1812, 3; *Quebec Gazette*, 28 May 1812, 1; *Knickerbocker* 51 (1858), 391-392; Gagnon, *Essai de Bibliographie Canadienne*, 80-81; *British Colonist and St. Francis Gazette*, 10 July 1823, 3; *Brattleboro Messenger*, 3 August 1833, 1.

56 *Columbian Centinel*, 23 July 1817, 2; Burroughs, *Sketches of the Life of the Notorious Stephen Burroughs*, 104-105; *Les Ursulines des Trois-Rivières* (Trois-Rivières, Quebec: P. V. Ayotte, 1892), 93-95, 269-279, 482.

57 *Knickerbocker* 51 (1858), 392; *American Advocate and Kennebec Advertiser*, 6 May 1815, 4. On Burroughs’s piety in Trois-Rivières, see *Alexandria Gazette and Daily Advertiser*, 10 October 1818, 2; Letter from Edmund Bailey O’Callaghan to Louis Joseph Papineau, 4 June 1838, in Volume 2, Correspondence 1833-1838, p. 2977, in Papers of Louis Joseph Papineau and Family, MG 24, B2, NAC. On Burroughs’ death and literary afterlife, see *Montreal Courier*, 5 February 1830, 3; *NPG*, 9 September 1848, 1.

Stephen Burroughs died a year later, but his career in crime proved to be a harbinger of things to come. An archetype of the purest sort, he possessed many of the characteristics that would surface again and again in the self-made men who succeeded him. Some made their money in banking; others took up counterfeiting. Both thrived in the increasingly freewheeling culture of capitalism in the new nation, and both exploited the federal government's powerlessness to advance their own agendas. Bankers did so by arrogating the money making function, securing sanction to do so from state legislatures, while the counterfeiters who succeeded Burroughs looked to the margins of the nation state to pursue their vocation, exploiting the country's vague and confusing contours. All these capitalists, whether operating behind the façade of the law or not, shared one thing in common: a growing confidence that their notes might pass as good as gold, regardless of how little substance stood behind them. As one critic of banking wrote around this time, a growing number of "practical men" realized that so long as "confidence continued, a bank really required no more specie than it would be called upon to pay in aid of those enterprizes [sic], in which bank bills would not answer; and that a capital almost entirely fictitious, might go into operation, as securely, and more profitably, than one bottomed on actual and deposited funds." It was an observation that the swelling ranks of both bankers and counterfeiters would soon turn to profitable ends.⁵⁸

58 A Citizen, *An Appeal to the Public on the Conduct of the Banks in the City of New-York* (New York: Office of the New-York Courier, 1815), 6.

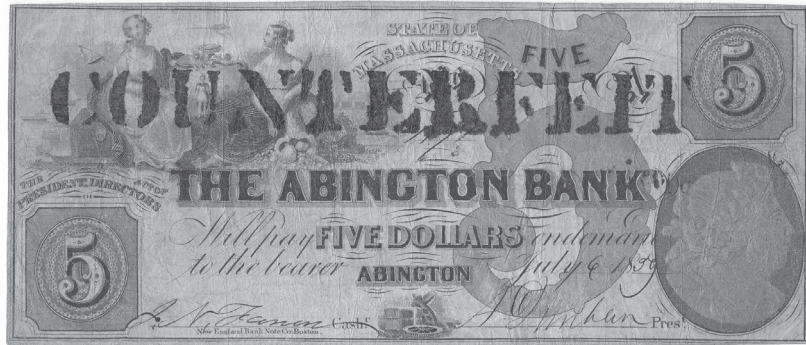


Fig. 1
Five-dollar note from Abington Bank, 1859, stamped “counterfeit”.



Fig. 2
Stephen Burroughs near the end of his life, early 1830s.



Fig. 3
Thirty-shilling note, printed in New Jersey, ca. 1764.

Daubertizing the Art Expert

John Daab

Abstract

Most industries in the United States are regulated by law. The world of art, although regulated in a general framework, is not regulated when it comes to selling that which is authentic (McCullough, 2012). Million dollar allegedly authentic works of fine and decorative art are vetted and sold by art “experts” with little or unrelated education, questionable training, non-mentored or no specific expert work experience, hyped commendations, bloated resumes and unreferenced mass media professional status. With the help of the mass media, such individuals achieve expert status without satisfying the standards of that which the law or scholarship requires (Briefel, 2006). In the recent Wolfgang Beltracchi forgery case, 47 million dollars of paintings from the “hand of various artists” were authenticated with the note made by the experts that “...using science was a waste of time” (Wright, 2012). Science entered with the result that the material make-up of the works precluded that they were created during the period of artist involvement. Out of 44 paintings, not one survived the scalpel of scientific analysis. This article addresses the conditions associated with the proliferation of wrong calls by so-called art experts and examines how scholarship, Daubert rulings, and Federal Rules of Evidence standards may assist in reducing the bad calls and consequentially art scamming, forgery and fraud.

Keywords: Daubert, expert, connoisseur, forensics, evidence, expertise, federal rules of evidence.

Introduction

Thomas Hoving (1997), former Director of the Metropolitan Museum of Art (MET), noted that out of 50,000 objects of art examined at the MET by a team of curators and scholars, 40% were found to be of questionable authenticity or attribution. The Rembrandt Project, which has conducted a similar type of scholarly analysis of allegedly authentic Rembrandt works, found that after 40-plus years and 622 works authenticated by “experts”, only 240 can be considered from the hand of the artist (Bailey, 2011). Recently in the Beltracchi case, 44 fake works of art were ascertained as real by experts only to be found as fakes, leading to the incarceration of four forgers (Wright, 2012). Two forensic fingerprint examiners from the Arizona Police Department confirmed that an alleged Pollack print found on an alleged work by Pollock was digitally applied (Hoving 2008). The so-called expert calling out that it was the real fingerprint originally was found lacking in any forensic training or education, but was labeled by various mass media as an expert. The IRS art panel over the last few years indicated that the error rate for appraisals was over 60 percent (Berus, 2010). While art scamming, forgery and fraud are significant consequences associated with the lack of standardized expertise in the art world, they will not be addressed in this examination. From the above cases regarding art expertise various inferences emerge:

1. The mass media in many cases does not perform any reference check, or lack the know-how to support their writings regarding art expertise, leaving the consumer to either generate his or her own examination and conclusion or let stand the calls from the mass media writers.
2. Art expertise is grounded in a weak system of determination with one part of a three part schema consisting of one individual issuing decisions based on ambiguous and idiosyncratic formulas and intuition resembling anecdotic ruminations.
3. The error rate in art expert determinations or conclusions is excessive and in other expert domains would not be acceptable. Doctors and engineers with even a 10% or more error rate in their actions would be severely censured.
4. There is an absence of standards in determining expertise in those areas outside the curatorial realm. Given that the curatorial realm was and had been involved in the original vetting errors, scholarship via the Hoving and Rembrandt Project curatorial team approach based on careful study, rigor, observation, peer support, and documentation serve as an example of proper art expertise in processing authentication and attribution of fine and decorative art.

The inferences above lead to a consideration that one approach is to develop a systemic standardization of art expertise following accepted scholarly approaches and found in the field of forensics governed by Daubert cases and Federal Rules of Evidence. In point, the blend of scholarship, and expertise found in the court system represents one possible paradigm to remediate the current state of anecdotic expertise contained within an almost non-existent state of legal regulation.

Definitions

Before we move into our examination. Let us first clarify some of the concepts presented in the analysis:

Art expert: Art experts are those individuals commonly called upon to provide opinions of value, authentication, style, period, medium, genre, and make-up of the material of a work of art. Appraisers provide opinions of value. Connoisseurs, art historians, curators and restorers focus on the styles and so on of a given work. Some are generalists and others maintain a specific realm such as Roman antiquities, or French works by Monet.

Art expertise: Expertise exists on many levels. Nowadays the doctorate degree is considered to be the *sina qua non* of museum art expertise. Many museum experts lack the doctorate but through lesser level education, experience and training reach a level of recognized expertise, mostly in a specific area of art. Some gravitate to science in art, others in history and others in medium such as oils, prints or sculpture. Lacking museum training they may identify themselves as having the expertise – being a connoisseur – through collecting, association, and handling but no training or education. Associated expert fields such as appraising allow the appraiser to add the expert authenticator claim to the unknowing, even though appraisal societies make it clear that appraisers should not authenticate (Booth, 2012). The simple reason is that appraisers are simply not trained in authenticating. With respect to the recent bad calls, the Rembrandt project, Hoving’s assertion of 40% of bogus art circulating, the notion of art expertise lends itself to one of an ambiguous and questionable nature (Hoving, 1997).

Daubert: Daubert refers to a group of court decisions and law providing the standards allowing an individual to be considered as an expert witness before a court of law (Legal Information Institute, 2012). These standards form the legal basis for expert testimony. Daubertization consists of energizing structures allowing a given field lacking standardization to move into having standards not only based on legal considerations but grounded in logic and empiricism. Although not steeped in science the legal/court system espouses engaging science so as to be able to generate sound decisions. The court and its judges thrive on the adversarial approach, but recognize that science must be part of its system, if not its leader

(Moenessens, 2007).

Scholarly Expertise

The gold standard of scholarly expertise is the doctorate, and those activities expected of those holding the doctorate, such as publication, lecturing, mentoring, and continued honing of expertise (Attwood, B., 2008). Those achieving the doctorate degree have been vetted by their peers holding the doctorate. Such peers consist of the chair of the department and two others serving on the committee of the student pursuing the doctorate. A typical modern course of study takes 5 years and consists of 60-90 credits of course work plus courses related to writing the dissertation. The oral dissertation is presented to the designated peers of the university issuing the degree, with the result that the student will pass the peers' vetting or have to do some repairs on the dissertation for a final completion. When oral and written dissertations are accepted, the student receives the doctorate with the written work published. The issued doctorate allows the PhD recipient to add Dr. before his or her name as an indication of specialized knowledge or expertise. One of the most important considerations in grounding the high level of expertise is the notion of accreditation.

Accreditation means that the school issuing the degree has been examined by one of the six accrediting agencies in the United States and found to have satisfied the standards of a PhD issuing institution (Ed.Gov, 2012). Additionally, the university should be established as satisfying the standards of the particular body of knowledge associated with the degree, such as the *Accreditation Council for Business Schools and Programs* (ACBSP) for a business degree (ACBSP, 2012). This second level of accreditation is a further level or dimension of expertise standardization. According to some the lack of accreditation may close doors to employment and also places a question mark after the PhD, in that a non-accredited program may be missing significant standards grounding the degree or have problems or issues.

Some have found it necessary to skip the standardization of expertise via graduate degree accreditation and reduce the costs and work involved by "lip sticking the pig". Some individuals engage a degree through a *degree mill*, whereby one pays a certain amount and receives the degree with no involvement in the education process. Such mills work nationally and internationally and are listed by various reporting agencies (Bear, 2005). The listing of such degrees as genuine by the holder may be a crime in certain states and under certain circumstances (Consumer Fraud Reporting, 2012).

All but dissertation (ABD) status usually means that the person has completed his or her required courses but has

not delivered the dissertation associated with the doctorate. The ABD appears as a genuine degree but is really only a notification that the doctorate is being worked on and at a certain level. This is not to say that some schools will provide a lower degree at the ABD stage, usually a Masters, but that the ABD is not normally considered a degree and further expertise should not be inferred unless demonstrated (Carnegie Mellon University, 2011). A last note has to do with *honorary doctorates*. Honorary doctorates are provided by colleges to honor certain accomplishments by individuals. Such degrees are not grounded in any specific scholarly expertise or education but merely indicate that a school honored the individual. The protocol for using this degree is to always note after listing the Dr., the word Honorary appears after the degree. This integrity listing of honorary is meant to speak to the reader that it is not a genuine doctorate entailing that the person has a given expertise in a particular area (Carroll, 2012).

Daubert

Daubert rulings and Federal Rules of Evidence entail that to be considered as an expert in a court of law one must first be considered by the Judge in a particular case (Bernstein, 2004). That is, expert evidence is not just provided; a Judge -- the gatekeeper -- reviews the expert's background and from the examination decides whether the expert fits the requirements of the case. Thus, in a case of document examination whereby a forged check was written and cashed by a certain individual, the Judge would entertain individuals holding Certified Document Examiner (CDE) credentials to serve as evidence experts providing a statement that the alleged forged signature on the check matched or did not match the signature of the forger. In cases of fingerprint match the Judge would likewise examine the credentials of the individuals ascertaining or denying the match. The important point here is that the Judge looks at a given expert's qualifications before being considered as having expert status (Berger, 2005). Judges are not afraid of throwing experts out of the courtroom if they fail to understand the nature of courtroom procedures or are blatantly not qualified (*People v. James Hyatt*, 2001). What does the Judge look for in the qualifications of an expert?

Judicial Expectations of Expertise

Although the Judge is the gatekeeper in the vetting of experts, he or she is governed in the decision by laws and regulations. Some of these standards of examining expertise are:

Education: The higher the level of education related to the specific field the higher the level of expertise.

Licenses and Certifications: In addition to levels of education, individuals study and test out for specific areas of expertise

such as medicine, accounting, fingerprinting, document examination, etc.

Training: It is expected that a person considered to be an expert will have undergone training in his or her specific field. Expertise in one field does not carry over to another field.

Mentoring: Learning a specific activity or operation should take place under the guidance of someone who is passing expertise to the learner. This requires active participation, interaction and guidance by the senior expert.

Experience: In addition to the learning component, one should be practicing for a period of approximately 10,000 hours. This is the expectation but is a function of a given project or case.

Publishing: As in the academic world, experts should be publishing works related to their field.

Teaching: Experts should be engaged in teaching.

Continued learning: Experts should be involved in learning by taking courses equivalent to 15 continuing education credits or CPE.

Membership in organizations: Experts should belong to organizations representing the field in which the expert is engaged (Sapir, 2007).

The Processing of Expertise

In the process of carrying out expertise, whether inside or outside the court, the paradigm utilized to reach conclusions is scientific analysis. What this means is that the expert is both knowledgeable about proper empirical and logical necessities of examination and assessment, error rates, peer acceptance of the particular approach in developing conclusions, and the use of standardized equipment to evaluate any information being processed by the equipment as well. Therefore, the grounding of evidence will always proceed from data which is appropriated from objective rather than subjective sources and the methodology used to gather and process the data is driven by accepted and clearly established principles with a minimal error rate. The use of methodologies and equipment must be vetted and accepted as sound by the peer group currently using them. Error-prone, new, untried theories and equipment which has not withstood the test of time will be dismissed by adversarial processes as unsound. Further, failing to engage the proper sources and equipment or failing to provide some scholarship will appear as disrespectful to the court, resulting in being dismissed as an expert (*People v. James Hyatt*, 2000).

***In Limine* Challenge**

The *In Limine* challenge is a court proceeding whereby the attorney asks the Judge to disallow a prospective expert from providing evidence due to the expert's qualifications (Legal Information Institute, 2011). That is, the attorney filing the motion states that the qualifications of the expert are weak or outside the demands of the case before the court. This action is done before the Judge begins hearing the case. The challenger might argue that the expert does not have *bona fide* credentials, the credentials do not qualify the expert, or that the expert is ill-fitted to serve in the particular case. This systemic challenging of expertise via an adversarial approach fine tunes the qualifications supportive of expertise practiced before the court and serves as a model in other fields such as art.

The IRS Art Panel

The Internal Revenue Service (IRS) Art Panel is a group of 20-plus individuals chosen by the IRS to serve as a peer review of tax returns with fine and decorative art narrations. Those serving on the panel are art curators, gallery owners, art historians, authenticators, and others with a background in art (Daab, 2012). The person filing the return may be looking for a reduction of taxes because of a charitable gift of a certain amount, or an estate may be filing estate taxes because of a death in the family or other art related reasons. Such filings must be made by with an opinion of value developed by an appraiser. The interesting aspect of the IRS panel is that like Daubertization the panel vets good appraisals from bad. It also falls into the Daubert model in that it expects appraisals to follow the *Uniform Standards of Professional Appraisal Practice* developed by the Appraisal Foundation and various IRS laws. Those that fail to follow get dinged on their appraisals (60-70% fail) with resulting interest and penalties for the taxpayer and possible fines and disbarment to practice for the appraiser (Berus, 2010). The point in mentioning the Panel is that like Daubert, standards are available, whether in principle or practice, to ground art expertise and as such there is no reason to continue to allow ambiguity and subjectivity to ground expertise in art assessment.

Voir Dire

Voir dire is the process by which attorneys challenge jurors and experts in a court case to speak the "objective truth" (Christopher, 2009). Through *voir dire* attorneys challenge the background and qualifications to serve as an expert. The Judge is the gatekeeper in allowing experts into a trial, but during the trial attorneys will subject the expert to questions addressing whether he or she has the qualifications provided. Such questions relate to a specific expertise which serves the requirements of the case. General expertise is easily

questionable. Questioning which turns up information weakening the integrity of the expert falls into the “weight and credibility” criterion. Thus, an expert may provide the relevant experience and qualifications and be allowed through the gate, but attorney questioning may reveal that the qualifications involved pushing the proverbial envelope, making the qualifications not really true, or that the expert was involved with issues surrounding his expertise such as being sued for malpractice or a failure to provide due diligence. Such issues detract from the weight of the expertise and also the credibility of what the expert has to offer (Sapir, 2002).

Case Histories of Questionable Art Expertise¹

Mr. White is a certified appraiser who allegedly authenticated 11,000 works by Dali and other artists. Recognized experts have declared his authentications to be false. Mr. White declares that he is the only expert in Dali works because he is very familiar with the artist. Although he has been involved in a doctoral program he has not completed it. Other than being an appraiser he has not produced any other credentials which would demonstrate his authenticating education, training, mentoring, publishing, or specific work experience in the field. Given that appraisal organizations make a point of advising appraisers not to engage in authentication but only assume it when providing an opinion of value since there are no courses providing or leading to an expertise in authenticating. There are programs specifically offered to provide a background in authentication but Mr. White has not participated in any (University of Delaware, 2012). Lacking any credible satisfaction of the above Daubert standards, he, besides being challenged by accepted experts that have identified his calls as erroneous, would clearly be challenged by the opposing attorneys as being qualified as an authentication expert.

Mr. Red has been identified by various mass media reports as a forensic expert. He has been a defendant in various court cases relating to his work in art, and over the last few years has been involved in two notorious Pollack authentications involving fingerprint identifications. Other than working in his father’s business involving restoration of various works of art, Mr. Red has not demonstrated any background or credential supporting his expertise. Merely because one works in the art world does not entail that one has secured art expertise especially when the mentor has been the defendant in various court cases. As a so-called fingerprint expert, Mr. Red was so far off the mark when assuming that an exemplar found in the studio of Pollack was that of Pollack rather than that of the many visitors to the studio at the time, constituting an egregious error on the part of a

fingerprint expert -- a match exists when a proven exemplar fingerprint matches one under examination. The fact that the fingerprint under assessment was digitally applied and he did not recognize it but Daubertized experts did, challenges the level of his expertise, if any.

Mr. Brown, a law enforcement investigator of art thefts, was called upon to provide expert testimony regarding the authenticity of certain works. He has a Bachelor’s degree in Political Science and worked in his father’s antique store when he was young. There is no evidence that he was involved in a mentoring or education by his father nor are any expert credentials available demonstrating the level or extent of his art expertise. Mr. Brown is currently enjoying mass media hype about his expertise in art but suffice to say that the jury in the above case ruled against Brown and even added a \$500,000 penalty against the plaintiff.

Miss Green was an art impresario representing a well known gallery and later opened her own. Over the years she handled many famous artists such as Pollock, Stella and others. Miss Green has an art degree but little else in the way of expertise. She has been involved with selling forgeries and recently returned the money to a buyer for a forged work. She is being sued for other forgeries as well, but alleges that she did not know that the works she handled were fakes even though she has been in the art world for over 30 years and operates her own gallery (Cohen, 2012).

Conditions Supportive of Weak or Non-Existent Art Expertise

From the above cases it is evident that the standardization promoted by Daubert was almost non-existent. Any assumed expertise was overridden by the consequences following. In the first case, Mr. White, since he is a certified appraiser, utilized his appraiser certification as a badge to move in an associated field-art authentication, despite the fact that he was not trained to authenticate and advised by his certification agency not to authenticate. Mr. White may have entered a malpractice scenario since he additionally did the appraisals *en masse* and beyond his certified status. The fact that his authentications were challenged by experts in the field of authentication places him in a position of having little weight and credibility to his statements. He authenticated without training, was not a recognized authenticator, failed to follow the practices of his organization, and made errors in past art activities. In the case of Mr. Red, except for a large camera hung from his neck, he apparently had no education, training, or qualifications to serve as an expert except that he was the son of an art restorer. The father was involved in some litigation with his restoration activities. Mr. Red’s background really does not qualify him for any expertise. The fact that in various forensic undertakings he does not apparently know

¹ The following case histories are based on fact. The names have been changed to preempt a SLAPP suit. http://www.fineartregistry.com/articles/daab_john/

that fingerprint matching takes place when one compares a sample with a confirmed exemplar, nor is able to recognize an artificial print from a real one even with his electron microscopic camera, allows one to reasonably suggest that the weight of his expertise leaves much to be desired.

In the third case involving Mr. Brown it was noted that he was a federal investigator with an impressive stolen art property return record but not one associated with authentication or defamation/disparagement. He had no qualifications to serve as an expert except in property crimes. Even after a lengthy art authentication trial with a partner involved in the prosecution of federal crimes, the jury slammed both who served the defendant and also fined the plaintiff \$500,000. This was another case of no weight, relevance, and credibility having emerged to bury the plaintiff's experts.

In the case of Miss Green, the gallery owner and expert, no information except that she had a degree in art surfaced indicating that she was qualified as an expert. Mere gallery association, even if for many years, does not create expertise. She was a sales person interested in making money. Similar to the above cases, the fact that she did not recognize nor apparently activate some research about the works sold or bought indicates poor art authentication processing. The buyer stating that she does not want to reveal the name of the owner or offer documentation of ownership, is a dramatic failure in due diligence. The fact that she already had to return funds due to having sold a work of questionable legitimacy should have placed her on alert.

The thrust of our analysis is that the current state of the non-museum art world seems to consist of a loose amalgamation of gallery owners, appraisers, collectors, connoisseurs, and celebrity experts clinging to a world whereby, for want of nothing else available, their word is the law. While the legal system accepts that it is necessary to have qualified experts the current pool providing expertise in art adds a greater level of chaos, and unknowing to a system grounded in the belief that there exist art experts capable of providing objective testimony. There is no reason not to implement a system of standardization of art expertise following Daubert and rules of expertise, especially when the art world seems to be moving into higher level of values, and the immigration of works from parts of the world not always inclined to provide the genuine article. The most significant aspect of propelling Daubert forward in the art world is that in the recent cases of *Jaeger* and *Knoedler* the individuals involved were associated with the selling of art for many years and seemed not to have gleaned the expertise to at least adopt a skeptical approach to individuals "finding" a treasure trove of lost art (Cohen, 2012).

Concluding Notes

The extent, level and dimensions of an absence of standards in the world of art expertise and its effects have been noted. The open road taken by so-called art experts has and continues to create havoc in the art marketplace and in the court. Other fields of lesser value have regulations and requirements expected of those who practice in the fields. Uneducated preschool teachers are expected to engage in some form of coursework making them more prepared for what they do when performing their job. Almost none exist for the non-curatorial personnel often involved in the sale or legitimizing of a valuable work of art. Challenges abound, easily leading to the sequestering of a given work in the basement due to issue problems. The unqualified and hyped experts are quickly and numerous available. Daubertization will provide a standardization of expertise, rather than by an assumption or association with art. Specific education, and experience, training, mentoring, testing, teaching, publishing, peer review, organization membership, and always seeking to become better in what one does is a necessary and critical dimension of expertise in a technologically advanced society. Why give it up to those whose expertise is more sleight of hand than grounded in a respect for truth and accomplishment?

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Looting History: An Analysis of the Illicit Antiquities Trade in Israel

Aleksandra Sheftel

Abstract

The state of Israel has numerous historically and culturally significant archaeological sites. Some of these date back to as early as 8000-7000 B.C, and are important to three of the world's great religious traditions (Judaism, Christianity, and Islam). Unfortunately, many of these sites are targeted by looters who illegally excavate the sites and, in doing so, erase history. This paper is an overview of the antiquities looting problem in Israel. It discusses Israel's existing laws regarding the antiquities trade, describes the effects that Israel's wars have had on the illicit antiquities trade, and the different motivations and attitudes of the looters in Israel. The paper also discusses the market players in this trade, analysing the roles the middlemen, the dealers, and the collectors play. It discusses who the looters are, why they engage in their illicit activities, and how they go about their business. The paper discusses ways in which the Israeli government has tried to stop the trade in illicit antiquities, and the debates that surround these and other proposed solutions. The paper concludes by analysing three alternative solutions that Israel could consider implementing in order to curb the looting.

Keywords: Israel, Palestine, Archeology, Antiquities, Antiquities trade, Looting, Intifada, Teddy Kollek, Moshe Dayan.

Introduction

The state of Israel is arguably one of the most historically and culturally significant places in the world. It is considered to be a holy land by three of the world's great religious traditions. Followers of Judaism, Christianity, and Islam have been making pilgrimages there for millennia. It is a land that has been at history's crossroads for thousands of years, a place where civilizations have left behind historical clues in the ruins at hundreds of impressive archaeological sites, some of which date back to as early as 8000-7000 B.C. Ancient sites, such as Beer Sheva's prehistoric Chalcolithic settlements which date back to the 4th millennium B.C., Jerusalem's 3,000 year-old Mount of Olives Jewish cemetery, and the ancient Roman city of Caesarea, are all examples of the thousands of great archaeological sites found in Israel. When properly excavated, the artifacts found at these sites are transferred by archaeologists to Israeli museums. Tourists flock to Israel to see these sites and museums, to touch history, to gain a better understanding of the ancient stories that they grew up with, and to marvel at the achievements of the ancients.

Unfortunately, not all the archaeological sites in Israel are excavated legally and with the same love, care, and attention. The Israel Antiquities Authority (IAA, the principal organization in Israel with responsibility for antiquities) has an electronic list of over 14,000 sites in Israeli territory, and it is estimated that over 11,000 of these sites (within the pre-1967 borders) have been robbed since 1967.¹ In addition to the known sites, hundreds of more archaeological sites are still untouched by archaeologists due to lack of funding, and these unexcavated sites are also a common target for looters. Karen Lange, in "The Stolen Past," wrote:

With ruthless efficiency the looters dug beneath each foundation and into every well and cistern, searching for anything they could sell: Byzantine coins, clay lamps, glass bracelets. In the process they toppled columns and riddled the site with holes, erasing the outlines of walls and doorways, and the only surviving record of thousands of ancient lives.²

Looters who take objects out of the ground are, in effect, erasing history: these artifacts are archeologically worthless when taken out from the sites with no record of where and how they were found. History becomes ruined after lying untouched for thousands of years.

1 Orly Blum, "The illicit antiquities trade: an analysis of current antiquities looting in Israel," Illicit Antiquities Research Centre against the theft & traffic of archaeology, 2002. <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue11/blum.htm> (Accessed July 23rd 2011).

2 Karen Lange, "The stolen past," *National Geographic*, December 2008. <http://ngm.nationalgeographic.com/2008/12/palestine-antiquities/lange-text> (Accessed July 23rd 2011).

This paper will provide an overview of the antiquities looting issue in Israel. It will start by discussing Israel's existing laws regarding the antiquities trade, and how these laws inadvertently promote looting and theft from archaeological sites. It will describe the effects that Israel's numerous past armed conflicts, in particular that of the second intifada, had on Israel's archaeology and illicit antiquities trade. The paper will analyse the different motivations behind the looting that takes place in Israel, and the attitudes of these looters towards cultural ownership. It will discuss the market players in this trade, and analyse the roles the middlemen, the dealers, and the collectors play, discuss who they are, why they engage in their illicit activities, and how they go about their business. The paper continues by discussing ways in which the Israeli government has tried to stop the trade in illicit antiquities, and the debates that surround these and other proposed solutions, and concludes by analysing three alternative solutions that Israel could consider implementing in order to curb their looting problem.

Israel's Laws Regarding the Antiquities Trade

In 1978, Israel implemented an Antiquities Law in 1978 ("the 1978 Law"), the full text of which can be found on the Israeli Antiquities Authorities website. This law nationalized newly-discovered antiquities in order to protect them. Article 2(a) states, "Where an antiquity is discovered or found in Israel after the coming into force of this law, it shall within borders fixed by the Director [of Antiquities] become the property of the State."³ However, this nationalization law creates an unfortunate paradox: on the one hand, selling and collecting Israeli antiquities is permitted almost without any limitations, while on the other all antiquities that have been dug up in Israel after 1978 are officially the property of the State.⁴ Therefore, legal excavations are not and cannot be a contemporary source of supply for antiquities dealers. Consequentially, they are inadvertently encouraged to acquire antiquities from illicit excavations.⁵ This has led to the IAA blaming the dealers for encouraging antiquities looting and theft, and declaring that the trade should therefore be outlawed completely.⁶

This paradox has created a debate within Israel between the IAA and the dealers. The IAA wants to outlaw completely the trade in Israeli antiquities, because it believes that dealers would then no longer be able to do business in Israel and theft from archaeological sites will stop. The dealers' argument, on the other hand, maintains that if the antiquities trade were to be outlawed, then it would simply continue to

3 Israel Antiquities Authority: Antiquities Law, 2011 http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=448&module_id=6#as (Accessed August 1st 2011).

4 Blum, "The illicit antiquities trade," 2002.

5 Ibid.

6 Ibid.

operate underground (as has happened in other Mediterranean countries where the trade is forbidden, such as Greece, Italy, and Cyprus).⁷ This debate will be discussed in further detail in the fifth section of this paper.

While antiquities' dealing in Israel is a legal industry, it does have certain prohibitions on the export of antiquities. According to the 1978 Law:

- All antiquities exported from Israel require the written approval of the Director of Antiquities. If the antiquity is of national importance, written approval of the Minister of Education and Culture is required.
- All antiquities shipped abroad must be registered and shipped through a licensed dealer. The IAA reserves the right to confiscate any item not registered.
- Export of ancient inscribed objects, written materials, architectural fragments or other objects of stone such as columns, ossuaries or sarcophagi is prohibited.
- The sale or transfer of antiquities from a private collection or museum requires approval by the Director of Antiquities

However, these laws are not as strict as the export laws of other Mediterranean countries, and antiquities can easily be exported due to the Israeli regime's greater tolerance.⁸

Unfortunately, the long unresolved questions of borders and cultural heritage ownership between Israel and Palestine make it questionable as to whether the 1978 Law applies to the West Bank. Israel argues that heritage sites with connection to Jewish History are under Israeli sovereignty, and that therefore the 1978 Law applies to any Jewish cultural heritage site/artifact found in the West Bank.⁹ Palestine, on the other hand, holds that location, rather than religious identification, determines a site's sovereignty, and that therefore Israel has no right to any of the cultural heritage in the West Bank.¹⁰ According to Palestinian authorities, the Jordanian Law of Antiquities of 1966 (which prohibits destroying, disfiguring or causing any harm to antiquities) applies to all sites in the West Bank.¹¹ Israel, however, did not adopt this law to the West Bank, and therefore the Israeli government and its archaeologists continue applying Israeli antiquities laws in the West Bank.¹² It is clear that each side will stubbornly continue

to hold by their own rules, and the question of cultural heritage ownership in the West Bank will continue to be a grey area, until a time when Israel and Palestine can get around to negotiating and resolving this issue.

The Effect of Armed Conflict

Following the establishment of the Israeli nation-state in 1949, Israel became very interested in archaeology. Israel used archaeology as a tool to connect ancient cultural objects and sites with national identity, and to promote feelings of personal and cultural attachment to the ancient land.¹³ "Israeli archaeologists, professional and amateur, are not merely digging for knowledge and objects, but for the reassurance of roots, which they find in the ancient Israelite remains scattered throughout the country."¹⁴ The importance of archeology and historic sites to Israel can especially be seen during times of armed conflict, when victories and defeats are often measured by the gain or loss of ancient archeological and/or religious sites, such as Rachel's Tomb in Bethlehem, the Cave of Patriarchs in Hebron, and most famously, the Western Wall and the Temple Mount in Jerusalem.

History shows us that a nation's cultural heritage objects and sites often suffer during times of armed conflict. Valuable artworks and cultural heritage objects can be taken to finance military actions, to fulfill the desires of the conquering parties, to punish the defeated parties, or to glorify the victor. Historic examples of this can be seen as far back as the Classical World and as recently as the War in Iraq, and certainly during the past wars in Israel. In addition, art and cultural heritage crime during times of war is often carried out not only by armies and governments, but by private individuals acting purely for personal financial profit, as well. According to Emile Durkheim's Anomie theory, rapid changes in society (such as those brought about during times of political change, economic instability, and armed conflict) cause a breakdown of social rules and norms, which leads to increased criminal activity.¹⁵ This may explain why art and cultural heritage objects are often looted / stolen by individuals during unstable times.

Archaeological looting in Israel can be seen as an inadvertent effect of the 1993 Oslo Accords, which attempted to resolve the ongoing Palestinian-Israeli conflict during the first intifada (1987–1993).¹⁶ Under the 1993 Oslo Accords

7 Ibid.

8 Ibid.

9 Lauren Gelfond Feldinger, "Israel and Palestine: who owns what?" *The Art Newspaper*, 2011. <http://www.theartnewspaper.com/articles/Israel-and-Palestine-who-owns-what/23589> (Accessed March 25, 2012).

10 Ibid.

11 Ibid.

12 Ibid.

13 Sayej, Ghattas J. "Palestinian Archaeology: Knowledge, Awareness and Cultural Heritage." *Present Pasts*. <http://www.presentpasts.info/article/view/pp.22/32> (Accessed October 30th, 2011).

14 Amos Elon, *The Israelis: Founders and Sons*. New York: Hold, Rinehart and Winston, 1971, page 280.

15 Mathieu Deflem, "Anomie," *The Blackwell Encyclopedia of Sociology*, Oxford: Blackwell Publishing, 2007.

16 Lange, "The stolen past," *National Geographic*, December 2008.

and subsequent agreements, Palestinian officers officially have jurisdiction in cities, towns, and some large villages controlled by the Palestinian Authority. They can also enter areas jointly controlled by the Palestinian Authority and Israel, but only after notifying the Israeli military. Entering territory governed solely by Israel (which encompasses about 60 percent of the West Bank) is, essentially, forbidden. Given such limitations, it is clear the Palestinian officers can do very little to track down and arrest looters in most areas of the West Bank. Israeli soldiers, on the other hand, can patrol everywhere. However, since most Palestinians have very little tolerance for any show of Israeli force in the West Bank, and often see it as a provocation, Israel is very reluctant to send soldiers into the West Bank to drive off looters.¹⁷ Therefore, the law enforcement after the first Intifada in areas controlled by the Palestinian Authority, as well as areas controlled jointly by the Palestinian Authority and Israel has, unfortunately, been ineffective in controlling looting. In an interview for National Geographic, an archaeological staff officer for the West Bank, Yitzhak Magen, said “We can’t protect sites next to Palestinian villages. We can’t go there.”¹⁸ The combined absence of Israeli soldiers and the restrictions on Palestinian police in Palestinian territories are basically leaving archaeological sites there unprotected, and looters are essentially free to do as they wish. According to Hamdan Taha, the Palestinian Authority’s antiquities chief, “The system has collapsed.”¹⁹

Researchers have found that the archaeological looting problem in Israel became even more serious in the years during and after the second intifada (2000 – 2005).²⁰ In 2000, as the conflict between Israelis and Palestinians intensified, the West Bank became all but ungovernable. Soon the Israelis set up a series of security checkpoints, sealed off the West Bank region, and barred most Palestinians from working inside Israel. As a result, many Palestinian individuals suddenly found themselves jobless, and looked for cash wherever they could find it in order to feed their families. Not surprisingly, looting became a very profitable choice. “Since the start of the second intifada, looters have overrun countless archaeological sites that crowd the West Bank.”²¹ According to Morag Kersel, an expert on the illegal antiquities trade in Israel, Jordan and the Palestinian Territories: “few jobs, inadequate law enforcement by both Palestinian and Israeli authorities, and demand for artifacts just across the border in Israel have created the perfect setting for looting.”²² Both the Israeli and Palestinian Authorities have noticed the spike in

looting over the last couple decades and are alarmed by it.²³ Yet political circumstances and deep mutual distrust continue to hinder police and lawmakers on both sides of the border.

Market Players: a Pyramidal Structure

The Looters

In 1985, the IAA created the Theft Prevention Unit, a body responsible for preventing thefts from archaeological sites and for supervising antiquities commerce. The Theft Prevention Unit has the power to conduct searches, to make arrests, and to investigate suspicious business operations in the antiquities trade. Throughout their many years of operation, the unit has observed that looters in Israel can generally be divided into three groups, based on their motives and reasons for engaging in their illicit behaviours.²⁴

The first group consists of both individual and organized criminals, who loot and sell these objects for the financial gain. This group then uses the money to feed their families by selling the objects either to middlemen/dealers, who then pass the objects on to unsuspecting tourists and collectors. These looters generally come from poor villages in the West Bank area and other occupied territories, and the IAA believes that most of these thieves are shepherds and other local inhabitants from villages close to ancient sites.²⁵ Due to the economic deprivation of the villagers, as well as poor law enforcement in these areas, looting and stealing cultural heritage from archeological sites becomes a very tempting option for individuals.²⁶ These individuals are not politically motivated, and they do not particularly care about the cultural “ownership” of these objects: all they want, at the end of the day, is money. In fact, most of these looters see their work as a job—one that is sometimes risky but potentially very profitable.²⁷ Even before the current unrest in the region, which created difficulties for many Palestinians trying to find employment in Israel, looting was often seen as preferable to many other forms of employment (i.e., working in factories).²⁸ As Morag Kersel states in a 2007 article for the *Journal of the World Archaeological Congress*: “the looters are outside in the fresh air; they make their own hours; if they make a spectacular find and reap the financial rewards, they may not have to work for weeks, living off of the proceeds from the sale; and most importantly, looted material is hard currency

17 Ibid.

18 Ibid.

19 Ibid.

20 Adel Yahya, “Looting and ‘Salvaging’ the Heritage of Palestine,” *Journal of the Institute of Archeology Heritage Section*, 2010. <http://www.presentpasts.info/article/view/pp.26/48> (Accessed August 1st 2011).

21 Lange, “The stolen past,” *National Geographic*, December 2008.

22 Ibid.

23 Ibid.

24 Morag Kersel, “Transcending Borders: Objects on the Move,” *Archaeologies: Journal of the World Archaeological Congress*, 2007. <http://www.yorku.ca/kdenning/+++3130%202007-8/Kersel%20on%20Looting%20in%20the%20PA.pdf> (Accessed September 6, 2011).

25 Blum, “The illicit antiquities trade,” 2002.

26 Ibid.

27 Kersel, “Transcending Borders: Objects on the Move.”

28 Ibid.

that is tax free”.²⁹

The second group of looters has a very different – and perhaps surprising – motive for their crimes. Dr. Kersel says that one of the motives for looting in Israel is recreational. “People are very interested in getting out on the weekend in the land, and it’s just something that they do. They take their families out, have a picnic and dig around on their hill.”³⁰ This group consists of both Israelis and Arab Israelis, who disregard Israel’s Antiquities Law: these people argue that their ancestors have lived on their piece of land for hundreds of years, and therefore any law which declares state ownership of objects found under their land is seen as absurd. This group sees these artifacts as their personal property, inherited by their ancestors who have lived there for many generations.

The third and final group’s motive is a bit more sinister. Kersel’s extensive research revealed a practice termed “resistance looting,” which is people digging in the ground and looting in an attempt to find and remove all evidence of foreign occupation.³¹ The idea of land ownership and cultural heritage ownership is often intertwined and very closely related in the state of Israel. Antiquities can give us a window into the history of the land, the people who lived there in the past, and what their lives were like. Resistance looters are motivated by the desire to erase this evidence, in order to further their claim onto their ownership of the land.³² So far, Kersel has found evidence for this in the West Bank, but not in Israel or Jordan. According to a lecture she recently gave in Toronto: “People loot to find and destroy any evidence of occupation on their land. Anything with a Jewish motif or anything with a Christian motif, and it just so happens that those things are (worth hundreds) of dollars on the market.”³³

She also noted that she has not found any evidence that “resistance looting” is being carried out in an organized way in the West Bank.³⁴ The artifacts found by resistance looters are sometimes given to dealers to sell, but they are unfortunately also sometimes simply destroyed.

How do the financially-motivated looters go about their business? Usually, these kinds of looters work in groups of six to ten people (mostly from the West Bank, where there are a lot of villagers who specialize in digging antiquities).³⁵ They are generally experienced looters, and they know what

items to look for, and approximately how much money they can earn by selling them. For example, a single cave from the Second Temple period can hold hundreds of items. When the looters find an underground cave or tomb, which can be as little as two meters underground, they can discover ossuaries and bones, as well as jewelry, oil lamps, glass bottles, and many other valuable items. In one cave you can find as many as 200 oil lamps, each of which you can sell for about 200 shekels (about \$50). While this may not seem like a large sum, these small thefts add up to a lot of money. In addition, if an oil lamp happens to have a special decoration on it, the price may go up to \$10,000.³⁶

Before the Israelis built the Green Line’s defense wall (which separates Israel from the West Bank), it was much easier to catch the looters as they were crossing the border. Now, however, it is much more difficult to apprehend the looters at the border, because the looters have an arrangement with Israeli Arabs or Israelis, who drive into the West Bank, pick them up, and then drive them into Israel, where the majority of the antiquities looting takes place.³⁷

Once they have made their way into Israel, the looters use metal detectors to help them find the treasures in the dead of night. According to Ganor, these people are experts in identifying promising areas of land: “They are very good experts in archaeology because they know how to find things under the ground. They look for how the rock is cut. They watch the indentation. They know how to do it.”³⁸ The looters search for clues such as fig trees that are known to flourish near underground caves, broken ceramics on the surface, and signs of hewn stones.³⁹

Aside from looters who work under the ground, there are also many looters who work under the water. The Mediterranean coast of Israel is between Egypt and Lebanon. In the third millennium B.C., the Middle East began using shipping to trade goods, and the Israeli coast was the road between Egypt and Lebanon. Thousands of ships sank along the coast of Israel and are on the bottom of the sea, and many looters dive to collect items – such as bronze vessels – from the bottom.⁴⁰

Once the looters have acquired their stolen goods, they contact their village’s middleman, who works as a liaison between the looters and the dealers, and the looted artifacts

29 Ibid.

30 Owen Jarus, “Looted artifacts sold to tourists in Israel antiquities scam,” *Heritage Key*, 2010. <http://heritage-key.com/blogs/owenjarus/looted-artefacts-sold-tourists-israel-antiquities-scam> (Accessed July 23rd 2011).

31 Ibid.

32 Kersel, “Transcending Borders: Objects on the Move.”

33 Jarus, “Looted artifacts sold to tourists,” *Heritage Key*, 2010.

34 Ibid.

35 Ibid.

36 Eti Bonn-Muller, “An interview with Amir Ganor, director of the Robbery Prevention Division,” *Archeology, a publication for the Archeological Institute of America*, 2010. http://www.archaeology.org/israel_antiquities_authority/ganor.html (Accessed August 1st 2011).

37 Ibid.

38 Ibid.

39 Yahya, “Looting and ‘Salvaging,’” 2008.

40 Bonn-Muller, “An interview with Amir Ganor,” 2010.

begin their way up the illicit antiquities trade's pyramid.

The Middlemen

The middlemen are usually men who used to be looters in the past, but have earned enough money from their looting to move up in the ranks. These middlemen have groups of looters who work for them: they pay the looters their salaries and supply them their tools, equipment, and metal detectors. After the groups finish "working" at night and come back to the West Bank village with all the looted items, they give the items to the middleman, who calls the dealer(s) whom he is associated with and lists the items that were found. After this, the middleman needs to find a way to ship the items from the West Bank back into Israel. For this, he calls up the Israelis or Israeli Arabs whom he works with, and these people transfer the goods back into Israel across the Green Line, because they can easily move directly from the West Bank to Israel without being "checked." They come into the village and offer the middleman a price, and then pay for the items in cash.⁴¹ Then they take the items to the next level of the pyramid, the dealers. Thus, the looted goods are brought up to the third level of the pyramid.

The Dealers

The West part of Jerusalem (the Old City) has 45 antiquities dealer shops, most of which are run by Israeli Arabs, but Christians and Israelis own shops as well. The 1978 Law (article 15) states that dealers can only sell artifacts if they are in possession of a license from the Israeli Antiquities Authority.⁴² The 1978 Law also states that every licensed dealer has to keep a record of their in-stock items and register the list annually when renewing his license.

However, those inventories are often purposefully kept vague: for example, a listing that says that a dealer owns a pot dated to the Bronze Age doesn't mean very much, since many pots of that era will be in their shop.⁴³ Dealers are required to give buyers a certificate of authenticity for each item, but they often "forget" to mention that the buyer also needs to acquire an export permit. "Lots of people who purchase artifacts don't know that they're supposed to ask for an export permit – the law doesn't require the sellers to offer you an export permit," said Dr. Kersel at a presentation at the University of Toronto.⁴⁴ The IAA suspects that dealers replace every sold object with a similar – and often looted – antiquity, which receives the same stock number. Since the inventory descriptions are kept vague, it is not hard to find an artifact that looks similar to the one

that was just sold (Kersel, 2006). And since the original object was sold without an export permit, the sale is not officially registered with the IAA. Therefore, according to Dr. Kersel, material "that was looted as recently as last week was illegally entering the legal market through an exchange of registry numbers."⁴⁵ In addition to circumventing IAA regulations, this tactic also helps dealers evade income tax requirements.⁴⁶

Once the dealer has acquired a new item, given it an ID number and recorded it in the inventory list, they are free to sell this item to anyone, such as tourists or museums. Whenever the dealer notices a new trend, such as more tourists asking for oil lamps from the time of Jesus, he or she will tell the middleman that they want these kinds of oil lamps. The middleman will then, in turn, tell the looters to keep a special eye out for these lamps.⁴⁷

Most dealers claim that the antiquities in their shop were acquired from private collections and were purchased legally (that is, from collections which were built up before 1978, when it was still legal to excavate on private property and collect cultural artifacts). It is difficult to prove that these dealers are lying, because investigating the source of antiquities is expensive and makes large demands on the available resources. However, it is difficult to believe that all 100,000 antiquities exported from Israel each year all come from pre-1978 inventories.⁴⁸ The dealers mask these looted objects under a cloak of legitimacy, and sell them to (generally) unsuspecting, good-faith purchasers.

The Collectors

The fourth and final level of the pyramid is the collectors. There are two different types of collectors who purchase Israeli antiquities. The first group comprises of tourists, who (according to the IAA) constitute 90 percent of antiquities buyers. In particular, tourists often demand pottery objects and coins from the period of the Bar-Kochva revolt (the Second Jewish revolt against Rome), dating to 132–135 AD. Christian pilgrims often seek objects from the Byzantine era, and the demand is also very great for items that are marked with a cross. For the most part, tourists do not care about the provenance of the antiquities they are purchasing: sadly, their main interest and concern is that the object is "old." An IAA survey revealed that 80 percent of people entering antiquities shops are tourists, and that 67 percent of those tourists buy at least one antiquity.⁴⁹

The second group consists of Israeli citizens, many of

41 Ibid.

42 Israel Antiquities Authority, 2011.

43 Jarus, "Looted artifacts sold to tourists," *Heritage Key*, 2010.

44 Ibid.

45 Ibid.

46 Blum, "The illicit antiquities trade," 2002.

47 Bonn-Muller, "An interview with Amir Ganor," 2010.

48 Blum, "The illicit antiquities trade," 2002.

49 Ibid.

whom are influential public figures. Not only do these people purchase looted antiquities, they also exert pressure on the government not to change the current Antiquities Law, which permits the trade in antiquities. One such person was Teddy Kollek, the mayor of Jerusalem from 1965 – 1993, the founder and head of the Jerusalem Foundation, and the president of the Israel Museum from 1965-1996. He was a notable collector of Israeli antiquities. In 1987 he wrote a letter to the Minister of Education and Culture stating that the prohibition of the antiquities trade would be ridiculous, because the existence of legitimate dealer shops enables the IAA to supervise antiquities dealers. Furthermore, Kollek also argued that outlawing the trade would only drive it underground, and that as a result most antiquities would then be smuggled across the border.⁵⁰

Another powerful political figure who engaged in collecting looted antiquities was Moshe Dayan, Israel's legendary general and former minister. To most Israelis, Dayan is seen as a great hero. However, he had a great hunger for valuable archaeological artifacts, and he developed his extensive private collection with the help of unauthorized and unscientific digs by Israeli soldiers. While acting as Minister of Defense, he fought against important anti-looting legislation. When the IAA discovered what he had been doing, they merely seized most of his private collection instead of arresting him. His collection was then given to and displayed in the Israel Museum of Jerusalem.⁵¹

Both Kollek and Dayan were important political figures who did a lot of good for their new country; however, when it came protecting their country's cultural heritage and archeological artifacts, they got sidetracked by their desire to develop their personal collections. As a result, they did a lot to prevent the establishment of laws aimed at safeguarding their national heritage, in an attempt to protect and increase their own collections. Episodes of this nature raise valid questions about the pressure that powerful figures may bring on their government, as well as highlight the conflicts that can occur between public and private interests in the field of archaeological heritage.

Possible Solutions

The Israeli government acknowledges that the illicit trade in antiquities is a big issue in their country. The Robbery Prevention Unit's primary job is to control the antiquities looting by catching looters, regulating dealers and antiquities exportation, and identifying fake antiquities.

Every year, the Robbery Prevention Unit catches

between 100-150 looters, and most of them go to jail. The law in Israel says that the maximum sentence for damage to antiquities sites is five years in jail, but the judges are often lenient and only sentence criminals to a few months to one year.⁵² The punishment for middlemen and dealers is usually even smaller, and frequently results merely in high fines. Sometimes, if a dealer is found guilty of dealing in looted antiquities, the state can take possession of the items in the dealer's shop. Israeli collectors often go unpunished, because most of them are very rich and influential public figures. According to Ganor, the director of the Robbery Prevention Unit, these collectors merely have to claim that they did not know their object's source, in order get away with it.⁵³

The main topic of debate in Israel regarding the illicit antiquities trade is whether Israel would be able to control the plunder of archaeological sites more effectively by maintaining/ increasing a legitimate and supervised trade, or by banning the trade altogether.

An IAA survey revealed that the majority of archaeological objects plundered from ancient sites are small antiquities such as coins, oil lamps and so on, and that the primary purchasers of these objects are tourists.⁵⁴ Therefore, outlawing the trade completely would make it impossible for dealers legally to sell their merchandise to tourists, the most important market for antiquities. As a result, looting will become less profitable, subsequently reducing the amount of plundering. However, this idea is often countered with the argument that the illegality of the antiquities trade may only succeed in escalating prices, and therefore lead to even higher profits for the dealers and middlemen. Another objection to outlawing the trade is that Israel may then follow in the footsteps of Italy, Greece, and other Mediterranean countries which have banned their antiquities trade, causing the trade to go underground and the objects to be smuggled abroad.⁵⁵

Rather than prohibit the trade completely, the pro-trade lobby recommends that the IAA should sell the archeological artifacts that have already been studied and documented, and which are now kept in storage. However, there is a very strong opposition to this suggestion: according to the IAA, over 100,000 artifacts are sold in Israel per year. The Department of Antiquities has approximately 120,000 registered items in storage (excluding coins). If the sale of artifacts continues at the same rate, the Department of Antiquities' storage rooms would be completely emptied out in a little over a year's time. This suggestion would only create more problems than it would solve, and within a year everyone would be back to

52 Bonn-Muller, "An interview with Amir Ganor," 2010.

53 Ibid.

54 Blum, "The illicit antiquities trade," 2002.

55 Ibid.

50 Ibid.

51 Ibid.

Clearly, there is no simple solution to fixing Israel's looting problem. The various motivations and reasons for the looting, as well as the many parties interested in profiting from the looting, make finding and implementing a successful solution quite tricky. There are certain steps, such as increased policing and punishments, which would undoubtedly help deter looters. As has been mentioned, the chances of looters getting caught and receiving a severe sentencing are much smaller than the chances of profiting from their lucrative activities, and therefore looters see their activities as slightly risky, but potentially very profitable. If the chances of getting caught and receiving a severe sentencing were raised, then many looters would likely be deterred. However, while these two possible solutions are quite simple in theory, they are much more difficult to put into actual practice, due to financial issues and staff shortages at the Robbery Prevention Unit, public skepticism as to the severity of cultural looting as a crime, and most importantly, the political circumstances and deep mutual distrust between the Israeli and Palestinian Authorities. Therefore, it is clear that some alternative steps should be considered by the IAA and the Israeli government.

One such alternative solution could be for Israel to relax the law which "nationalizes" each newly-discovered antiquity.⁵⁷ This action would likely be particularly effective in tackling the first group of looters (the ones who do it for a financial gain). Relaxing the nationalization law would create a much greater supply of legitimate objects that can be sold to tourists and Israeli collectors. If the state of Israel claims ownership of only certain objects of significant cultural heritage, and allows the rest to be sold, it will greatly increase the supply side of the market. If the demand side of the market can be satisfied with these legitimate objects, then dealers will not need to purchase illegitimate objects from looters anymore. This will then cause the looters to abandon their illegal digging, due to the lack of profitability.

Another alternative solution to solving Israel's looting problem is through public education and awareness programs. According to Adel H. Yahya, the author of a 2008 article entitled *Looting and Salvaging*:

If there is going to be a solution or even an ease to the problem of looting, changing the public's attitude towards cultural heritage must come first. This means changing the attitude of illegal excavators' and collectors themselves, but more importantly changing the general public's tolerance

Therefore, Israel should not only continue to educate the public about the importance of preserving cultural heritage, but to also significantly increase the number of their current educational centers. The IAA currently operates four educational centers throughout the country with the goal of educating school students, as well as the general public, to care and preserve the country's antiquities and antiquity sites. Each of the four educational centers is located in a different area of the country, and conducts educational programs specifically designed for each target audience (depending on the area's archaeological resources). These kinds of programs are invaluable, because if people are taught from an early age to care and preserve their cultural heritage, they will likely grow up to have a consciousness and sensitivity to this issue. In order for this method to be as effective as possible, either the number of educational centers should be increased dramatically (possibly one in each city), or a "culture and archeology appreciation" course should be added to the curriculum of each public school in the state. Hopefully, these educational programs will help with the second group of looters: if people can see the significance of their actions, they may realize that their recreational looting is actually causing a great deal of damage, and may begin to abandon the practice of "digging for fun."

Unfortunately, it is much harder to find a solution for the third group, the so-called "resistance" looters. In a country where land ownership is such a hotly debated issue, antiquities come to play a great role in "proving" land ownership. Until the time when Israelis and Palestinians resolve their land-owning issues, resistance looting will continue to be a problem. Therefore, as of today, the best way to curb this kind of looting is simply through increased policing and greater punishments for damaging archeological sites.

In addition, the IAA may consider introducing the use of new technology in the trade. As of today, buyers can never be sure whether the artifacts they are purchasing are from legitimate sources, regardless of whether or not their dealer has a license and whether they receive a certificate of authenticity: these pieces of paper really don't mean anything, at the end of the day. Yet the state of Israel is, after all, a leader in technological advances and innovations: so why not create a new system, based on technological advances, which would make the trade more transparent? The IAA should consider investing money into developing a new, revolutionary technological method for dealers to register the cultural objects in their collections, making it harder for them to cheat the system. The proper technology would, ideally, make it easy for buyers to differentiate between legitimate

56 Ibid.

57 Ibid.

58 Yahya, "Looting and 'Salvaging,'" 2008.

and illegitimate objects, and make it impractical, unprofitable, and/or extremely risky for dealers to acquire looted objects, therefore deterring looters from their illicit activities due to the lack of demand for these objects.

important initial steps to successfully solving Israel's looting issue.

Conclusion

In conclusion, it is clear that Israel's antiquities laws create a serious imbalance between the small supply of legitimate antiquities and a growing demand in the market, which inadvertently promotes looting and theft from archaeological sites. In addition, the political, social, and – most importantly – economic instability in the region make looting a tempting option to those who are otherwise unable to find suitable employment. The lack of cooperation between the Israeli and Palestinian authorities causes many areas of Israel and Palestine to be unpatrolled, and therefore easy to loot without the fear of getting caught. Consequentially, looters weigh the small chances of getting caught, combined with the relatively small punishments, with the potential to make a lot of easy money to feed their families, and looting becomes a very appealing option indeed.

However, looters in Israel are not only limited to those who rob archeological sites for financial gain. Recreational looters see archeological artifacts (especially those found on their land) as their personal property, inherited by their ancestors who have lived there for many generations, and therefore do not see anything wrong with their actions. Resistance looters, on the other hand, are concerned in erasing evidence that other civilizations may have lived on their land before them, and therefore often destroy objects in order to further their claim onto their ownership of the land.

Regardless of their motive, all looters are erasing history: artifacts are archeologically worthless when taken out from the sites with no record of where and how they were found, and history becomes ruined after lying untouched for thousands of years. Israel's looting problem causes a great loss to the country's cultural heritage, and it is not a problem that is easy to solve.

Possible anti-trade solutions may be thwarted by pro-trade lobbying parties, and other possible solutions (such as increased policing) may be hard to get passed by the government due to financial and political issues. However, one possible solution that Israel should seriously consider is relaxing their Nationalization laws, as this will create a greater amount of tradable objects and will reduce the financial incentives operating to promote their involvement in the trade. In addition, increasing awareness about the importance of preserving and protecting cultural heritage through continued educational programs, as well as increasing the use of technology on the dealer's end of the trade, may be

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The Beltracchi Affair: A Comment on the “Most Spectacular” German Art Forgery Case in Recent Times

Duncan Chappell and Saskia Hufnagel

Abstract

On the 27th of October 2011 the four persons accused of the ‘most spectacular’ art forgery case in German post-war history were sentenced to jail terms ranging from 21 months to 6 years. The accused were Wolfgang Beltracchi (61), the painter of the forged works; his wife Helene Beltracchi (53) and her sister Jeanette Spurzem (54) who helped him in various ways; and the ‘logistical expert’ in the case, Otto Schulte-Kellinghaus (68). Considering the financial damage the forger group had caused, the embarrassment of buyers, dealers, experts and auction houses, as well as the considerable publicity the trial incurred, this seemed a remarkably mild verdict. However, observing the way in which art forgers at large appear to be dealt with by the justice systems of various countries, it could be said that the case just confirms a reoccurring pattern of lenient sentencing. This article will examine the case and its repercussions.

Keywords: Beltracchi, art forgery, art fraud, fakes, German forgers.

On the 27th of October 2011, the four persons accused of the ‘most spectacular’ art forgery case in German post-war history were sentenced to jail terms ranging from 21 months to 6 years.¹ The accused were Wolfgang Beltracchi (61), the painter of the forged works; his wife Helene Beltracchi (53) and her sister Jeanette Spurzem (54), who helped him in various ways; and the ‘logistical expert’² in the case, Otto Schulte-Kellinghaus (68).³ Considering the financial damage the forger group had caused, the embarrassment of buyers, dealers, experts and auction houses, as well as the considerable publicity the trial incurred, this seemed a remarkably mild verdict. However, observing the way in which art forgers at large appear to be dealt with by the justice systems of various countries, it could be said that the case just confirms a reoccurring pattern of lenient sentencing.⁴

For at least 15 years the accused had fooled the art world with their counterfeit ‘masterpieces’ of classical modernity.⁵ Police were mainly alerted to the case by two art experts. One of these experts had doubted the authenticity of several works she had been given to review by Otto Schulte-Kellinghaus, while the other suspected a forgery based on a faked sticker on the back of a painting purporting to be from the ‘Collection Flechtheim’. As is indicated in more detail below, this pre-war German collector was known to never issue such stickers as proof of the provenance of paintings in his collection. Suspicion was also raised when a picture that had been chemically tested was found to contain ‘titan white’ paint, a colour not available at the time the picture was claimed to have been painted.⁶

The accused allegedly amassed a profit of about 16

1 Michael Sontheimer ‘A cheerful prisoner: Art forger all smiles after guilty plea seals the deal’ *Spiegel Online*, 27 October 2011 <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.

2 According to the prosecution brief, Otto Schulte-Kellinghaus established the contacts to galleries in Paris, brought most of the paintings onto the market and received a commission of 20% per painting sold. He also established contact to the renowned art historian Werner Spies, self-proclaimed expert on the works of Max Ernst, who subsequently authenticated a fake Max Ernst produced by Wolfgang Beltracchi. Dorothea Hülsmeier ‘Fälscher blamieren Experten’ *Westdeutsche Zeitung*, 2 September 2011; Sven Röbel and Michael Sontheimer, Forgery Scandal Embarrasses International Art World’ *Spiegel Online*, 13 June 2011.

3 Author unidentified ‘More about German art scam – High life ends for couple who conned art world’ *NZ Herald News*, 27 October 2011.

4 See for an outline of major art forgery cases throughout history: Susanna Partsch *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011). She considers a jail sentence of 4 years and 8 months, like the sentence that was received in the United Kingdom by Shaun Greenhalgh in 2007 for forging in particular a ‘Faun’ in the style of Paul Gauguin and the legendary ‘Amarna Princess’, as very high in the sphere of art forgery sentences (see at page 169).

5 Dorothea Hülsmeier, ‘Fälscher mit Wissenslücken’ *Westdeutsche Zeitung* (29/08/2011) 3.

6 Author interview with police investigator, LKA Berlin, 23/03/2012.

Million Euros from the fake paintings that were the subject of charges at the trial, but it seems reasonable to assume that this amount may well only be the tip of the profit iceberg.⁷ While the accused were only charged with 14 counts of (aggravated) fraud in conjunction with forgery of documents (11 completed and 3 attempted), German police and prosecutors are still investigating 33 additional cases in a separate action.⁸ A further 15 cases of fraud that had been uncovered had already exceeded the statute of limitations and were therefore not included among the charges which proceeded to trial or remained under investigative scrutiny. According to German criminal law, and more specifically §78 III 3. Strafgesetzbuch (StGB), offences with a maximum 10 year jail sentence expire within ten years. All crimes committed in the 1990s could, therefore, not be pursued within the German criminal jurisdiction.⁹

The Scale of the Forgery

Conflicting accounts exist as to the precise numbers of fraudulent art works produced by Beltracchi which have entered the art market. One source reported that about 50 cases of fraud were uncovered during the investigation in the Beltracchi case which fell within the statute of limitations period; 21 more cases were discovered that dated back to the 1990s; and, a further 25 as yet unidentified fake pictures were believed by police to have been sold all over the world, leading to about 100 cases in total.¹⁰

The assumption that more pictures are still on the international market was supported by the recent discovery of a ‘Beltracchi’ in Japan.¹¹ One expert even suggested that nearly 200 forgeries produced by the accused could have entered the licit art market.¹² Other expert sources contended that at least 47 forged paintings had been placed on the market through auction houses, galleries and dealers.¹³

Latest reports, based on a presentation made on 27 January 2012 by the principal police investigator in the Beltracchi affair, Chief Inspector René Allonge, at the Art Crime and Art Restitution Conference in Berlin, suggest that 53 forged paintings with a value of 35 Million Euros were

7 Deutsches Presse Amt ‘Prozess um millionenschwere Fälschungen beginnt in Köln’ *Monopol Magazin*, 31/08/2011.

8 Ibid.

9 However, other national jurisdictions have different limits and the accused might still face charges there.

10 DPA, ‘Weltweite Suche nach gefälschten Meisterwerken’ *Westdeutsche Zeitung Newslines*, 27 January 2012.

11 Ibid.

12 Michael Sontheimer, ‘A cheerful prisoner: Art forger all smiles after guilty plea seals the deal’ *Spiegel Online*, 27/10/2011, <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.

13 Dorothea Hülsmeier, ‘Fälscher mit Wissenslücken’ *Westdeutsche Zeitung* (29/08/2011) 3.

discovered, which were clearly attributable to Beltracchi and his colleagues; 20 more forgeries from the 1990s were identified, which could not yet be attributed to the Beltracchi gang, and in total about 100 pictures were assumed to have been forged by the group.¹⁴ The latter figure is probably the most accurate estimate given to date.

Trial and Sentence

The trial officially started on September 1, 2011.¹⁵ Although the trial was estimated to run until March 2012, it was settled swiftly by a deal between the defence attorneys and the prosecution before the presiding Cologne trial judge. On the third trial day the accused were offered reduced sentences if they admitted to the charges, and the main accused, Wolfgang Beltracchi, was the first to make a full confession. Unlike the situation in the art market, ‘deals’ are (at least officially) a relatively new measure in German criminal procedure and are formally called ‘proposals for settlement’ (‘Vorschlag zur Verfahrenserledigung’).

The statutory variants (‘serious cases’) of § 263 (Fraud) and § 267 (Forgery) of the German Criminal Code (‘Strafgesetzbuch’) applicable in this case prescribe a maximum of 10 years imprisonment for each case of fraud/forgery.¹⁶ As both forgery and fraud are the result of the same criminal act, there could not be a separate sentence for the two offences. Thus, each criminal act (14 were charged) would carry a combined (fraud/forgery) sentence of up to 10 years imprisonment. However, under German Law this means that while the highest sentence has to be considered in full (10 years), all other cases would be halved (five years maximum each). The absolute theoretical maximum would therefore be 75 years. The court offered Wolfgang Beltracchi a maximum of six years imprisonment, his wife Helene Beltracchi up to five years, her sister Jeanette Spurzem up to two years and the ‘logistical expert’ Otto Schulte-Kellinghaus a maximum of five years if the accused agreed to the ‘deal’ and gave a full confession. They finally received sentences of imprisonment of six, four, one year and nine months (suspended), and five years, respectively.¹⁷

The Court therefore did not vary significantly from the upper limits they set in the original ‘deals’. In fact, only Jeanette Spurzem received a lower than the maximum agreed

sentence. Whether the lawyers did their clients a favour by concluding these ‘deals’ remains questionable. It seems that it would have been very hard to prove that the accused actually committed the offences, or at least which parts of the offences were committed by whom. A trial might also have led to the possible exclusion of some of the counts, resulting in much lower sentences. However, as is often the case in the German criminal justice system, the accused were not prepared to run the risk of failure. Further, had the accused not confessed, the trial would have become exorbitantly expensive. Up to 160 witnesses and ten expert witnesses would have been summoned to give evidence.¹⁸ The defence lawyers would have to be paid, as well as the court fees. Even if some of the charges had been dismissed, the overall trial costs are only covered by the state if the accused are found ‘not guilty’, and rarely when only some charges are dismissed.¹⁹ It was therefore a safer course of action to agree to the ‘deals’.

Modus Operandi and Allied Matters

The Art of Deception

In relation to the actual *modus operandi*, the accused applied a spectacular array of ‘forgery strategies’ to turn the fake paintings of the principal accused, Wolfgang Beltracchi, formerly known as Wolfgang Fischer, into gold. Most prominently, Beltracchi painted works of art of the 20th century that had gone missing during the Second World War (WWII), including paintings by Max Pechstein, Heinrich Kampendonk, Kees van Dongen and Max Ernst.²⁰ However, he also painted ‘new’ pictures in the styles of these artists that he claimed should have been part of their (Euvre.²¹ To convince the art world of the authenticity of Beltracchi’s work, the forger group invented an impressive and elaborate story around their origins. They claimed that Werner Jägers, who had died in 1992 and was the grandfather of the two accused sisters, had bought the pieces before WWII from the Alfred Flechtheim gallery and hidden them in the German Eifel region during the war. Jägers was said to be a friend of the master tailor Johann Wilhelm Knops, the grandfather of the accused Schulte-Kellinghaus, who himself was said to be an art collector. In fact, both men had never collected art, nor had they been particularly interested in art during their lifetimes. However, both the Jägers and the Knops collections became famous as the legend of provenance of the forged works of art, and the four accused underlined their authenticity by occasional sales of real works of art pretended to originate

14 Markus Huth, ‘35 Millionen Euro Schaden’ *mz-web.de* 27/01/2012.

15 Focus Online, ‘Kunstfälscherprozess in Köln – Millionen mit falschem Max Ernst’ *Focus Online* (01/09/2011).

16 The cases were considered to be ‘serious’ under § 263 III 1 and § 267 III 1 as they were committed on a commercial basis by members of a gang.

17 Christiane Meixner, ‘Freispruch für den Kunstmarkt – Zu den Urteilen im Kölner Fälscherprozess’ *Der Tagesspiegel*, 28/10/2011.

18 *Ibid.*

19 See §§ 153, 153 a, 154, 154 a, 170 II of the German Code of Criminal Procedure (Strafprozeßordnung).

20 Nicolette Feiler-Thull, ‘Gewiefte Fälscherbande – Prozess um Kunst-Skandal in Köln’ *3Sat Kulturzeit*, 12/09/2011.

21 Gisela Friedrichsen, ‘Eulenspiegel oder Künstler’ *Der Spiegel* (2011) Vol. 43, 148, 149.

from these collections, and some purchases of real art by the ‘inheritors’ of the fictional collections.²²

The accused also had a sophisticated way of distributing tasks among the group. While Wolfgang Beltracchi copied the missing paintings (or painted new works in the style of the famous artists), Otto Schulte-Kellinghaus established contacts with renowned art experts, some of whom, like Werner Spies, gave him appraisals for the pieces examined.²³

The wife of Beltracchi posed as the owner of most of the art works and actively traded on the art market with the help of her sister. Additionally, the Beltracchi couple faked photographs to highlight the authenticity of the paintings. Wolfgang had photographed his wife Helene, disguised as her own grandmother, in their house in France sitting in front of several forged paintings from the ‘Jägers Collection’ which were later sold as originals. The black-and-white photo had been printed on pre-war developing paper and was slightly out of focus. They even cut a zigzag pattern around the edge of the picture to make it look authentic, but only distributed scans rather than the original so as not to raise suspicion.²⁴

While the inconsistencies that were discovered during the criminal investigation into this matter were substantial and might ultimately have led to the conviction of the accused without confessions, they were not uncovered by experts and auction houses during the approximately 15 years the forger group was conducting its operations. After the above mentioned experts had pointed out inconsistencies with regard to several works and thereby sparked investigation, the main evidence that the pictures subject to the charges were forged came eventually from the frames. Beltracchi had bought the frames close to his house in France at antique markets.²⁵ Some of the frames were made of the same wood, or at least wood from the same region, which raised suspicion considering that the painters worked in different countries.²⁶ The frames were also all fabricated after the French model, which was considered to be rather unlikely for the pictures claimed to be by other than French artists.²⁷ Another major piece of evidence for police was the fake sticker of the ‘Collection

Flechtheim’. The accused had put these stickers on several paintings as proof of provenance. Alfred Flechtheim had been a renowned German art dealer in the 1920s. However, he had never produced these, if any, stickers to mark paintings in his collection.

Further points that raised suspicion were that the paint did not have small fractures, characteristic for old paintings, and that the ‘titan white’ used for the pictures actually did not exist at the time the pictures were dated.²⁸ Stickers from galleries had been tainted to look old, but had been glued to the pictures with a type of glue that did not yet exist at the time the paintings were claimed to be created.²⁹ Many more clues were found, as Chief Inspector Allonge put it, ‘after the fact’. In an interview in late 2011, he stated that it was much easier to find evidence once it was clear that a piece was a forgery. Finding out whether a work of art is in fact a fake is rather more difficult.³⁰

Major problems and vulnerabilities in the determination of provenance of works of art exist due to the lack of complete and comprehensive catalogues. This does not only relate to catalogues relating to the works of one artist, but also to the catalogues of galleries and museums.³¹ The accused exploited this vulnerability to their advantage. They forged the stickers that indicated the gallery the picture had been obtained from and relied upon the fact that there existed few catalogues relating to the forged works or the gallery, and if they did exist they did not contain photographs or reproductions of the faked pictures.³²

Déjà vu

The modus operandi, but also the life story of Beltracchi, show striking similarities with those of many other ‘famous’ forgers, and in particular Han van Meegeren who was specialised in works of Jan Vermeer.³³ Like van Meegeren, Beltracchi played on the secret longings of art collectors to find previously unknown or lost works of famous artists. While van Meegeren ‘completed’ Vermeer’s work by adding

22 Claudia Herstatt and Angelika Kindermann, ‘Etikettenschindel’ *Art – Das Kunstmagazin* (12/09/2011).

23 Michael Kohler, ‘Sammlung Jägers’ *Art – Das Kunstmagazin* (28/09/2011).

24 Tony Paterson, ‘High life ends for couple who conned art world’ *New Zealand Herald* (27/10/2011).

25 Zeitung Heute, ‘Tadellos das Gemälde ist’ *Der Tagesspiegel*, 31 December 2011.

26 DAPD, ‘Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter’ *nachrichten.yahoo.com* 28 January 2012; Gabriela Walde, ‘Wie man Kunstfälschern auf die Schliche kommt’ *Berliner Morgenpost*, 2 February 2012.

27 Zeitung Heute, ‘Tadellos das Gemälde ist’ *Der Tagesspiegel*, 31 December 2011.

28 DAPD, ‘Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter’ *nachrichten.yahoo.com*, 28 January 2012; Gabriela Walde, ‘Wie man Kunstfälschern auf die Schliche kommt’ *Berliner Morgenpost*, 2 February 2012; Eckhard Hoog, ‘Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?’ *Aachener Zeitung*, 31.12.2011.

29 DAPD, ‘Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter’ *nachrichten.yahoo.com*, 28 January 2012.

30 Zeitung Heute, ‘Tadellos das Gemälde ist’ *Der Tagesspiegel*, 31 December 2011.

31 Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011).

32 Joachim Hauschild and Ute Thon ‘Henrik Hanstein – Interview: “Die Experten sind mitverantwortlich”’ *Art – Das Kunstmagazin*, 19/05/2011.

33 See in general Jonathan Lopez, *The Man who Made Vermeers* (First Mariner Books, 2009).

religious paintings, a type of work so far unknown by Vermeer but always suspected to exist, Beltracchi gave the art world paintings that ‘should have been painted by the artist’ and were highly desired by collectors. One painting by André Derain in particular, displaying Matisse painting at Collioure, was highly desired as it supposedly proved that Derain and Matisse had been working at the same time at the artist village of Collioure. Specialising in ‘rare’ paintings and styles by artists, van Meegeren and Beltracchi relied on the fact that the more desired a work of art is, the less its authenticity is going to be doubted by experts, dealers and auction houses.

It is also interesting to observe that both van Meegeren and Beltracchi were rather successful as artists in their own right, and both would probably have been able to make a living from painting without resorting to forgery. Similarities also become apparent with regard to their alleged and actual motives: Both claimed to have forged to fool critics and the art world, but they also loved living a ‘high life’ and needed more and more money to support their extravagant habits. Their works similarly ended up in major galleries, museum and private collections.

With regard to their *modus operandi*, both forgers were extremely attentive to detail and studied very thoroughly the generality of works of the artists they forged. This fastidious behaviour was probably a recipe for their considerable and long-standing success. Both were also very careful not to get in direct contact with buyers and relied on accomplices to introduce the paintings to experts and the art market. However, unlike Beltracchi, van Meegeren was not known to involve his family, and his wife in particular, in his criminal activities.

Unlike most forgers, van Meegeren and Beltracchi made millions from their work and it can be assumed that many of their paintings are still being admired as originals in major museums, galleries and private collections. Even so, while Beltracchi now faces serving a quite substantial custodial sentence, van Meegeren was only sentenced in 1947 to one year in custody and died before the sentence could be put into effect. This is a major difference between the otherwise very similar cases and could lead to the conclusion that art crime is now taken more seriously than it seems to have been during much of the 20th century.³⁴

The Victimised Market Players

The Art Newspaper has published a full list of the 53 ‘fakes’ attributed to date to Beltracchi, and according to James

34 This section is predominantly based on Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011) 116-127, and an author interview with the principal investigator in the Beltracchi case, LKA Berlin, 23/03/2012.

Roundell, the director of London- and New York-based dealers Dickinson Gallery, Beltracchi’s fakes have been passed through the hands of major auction houses such as Sotheby’s and Christie’s; art dealers; experts in their field, like Werner Spies; and distinguished and knowledgeable private collectors like the Hilti Art Foundation.³⁵ Many civil law disputes have therefore emerged in recent months. For example, Trasteco Limited, a Maltese firm, is suing the Cologne Auction House Lempertz for damages as they bought a fake Heinrich Campendonk ‘Red Painting with Horses’ from the Gallery for nearly 2,9 Million Euros. Only after a chemical analysis of the painting was it confirmed that the picture had indeed been a fake.³⁶ According to the Director of the Cologne Auction House Lempertz, Henrik Hanstein, the Auction House has since invested in a 70.000 Euro Thermo Scientific Niton x-ray fluorescence analytic machine.³⁷ However, had the forger used the right pigments, even these machines would not have been able to uncover the crime.

Further civil law suits have been directed against the art historian Werner Spies, currently being sued for damages in a Court in Nanterre, France.³⁸ Christie’s and Sotheby’s have agreed outside of the courtroom to compensate several buyers and the Hilti Art Foundation has asked the Dickinson Gallery to compensate them for the forged Derain they bought for 4.5 Million Euros.³⁹ Contrary to the criminal charges in the German jurisdiction, the civil claims can in some countries and under certain circumstances not fall within a 10 year statute of limitations and it therefore seems likely that the battle for compensation will be lengthy.⁴⁰

Extent of Damage

Determining the true extent of art crime can be a very difficult if not impossible business because so many offences of this type are believed to either go undetected or unreported. In the Beltracchi affair the nature and extent of the police operation that brought all of the accused to justice (at least for part of their offences) is still not clear. It is possible that some of the works of Wolfgang Beltracchi might have been discovered to be fakes well before the case became a matter of notoriety and law enforcement investigation, but this information was concealed by those affected as ‘victims’ because of the potential financial loss and embarrassment involved in

35 Julia Michalska, Charlotte Burns and Ermanno Rivetti, *The Art Newspaper*, Issue 230, 05/12/2011.

36 Eckhard Hoog, ‘Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?’ *Aachener Zeitung*, 31/12/2011.

37 Charlotte Burns, ‘Knoedler Forgery Scandal Grows’ *The Art Newspaper* Issue 231, 09/01/2012.

38 Julia Michalska, Charlotte Burns and Ermanno Rivetti, *The Art Newspaper*, Issue 230, 05/12/2011.

39 Ibid.

40 See for example § 199 III 2. Bürgerliches Gesetzbuch (German Civil Code).

revealing their misfortune. This veil of silence on the part of victims represents one of the biggest problems in the field of investigating and preventing art crime and no doubt explains in part why this criminal group was able to function with such brazen success and profitability for so many years. Even when reported, such offences rarely attract the attention of police and prosecutors who have any expertise in the area of art crime -- a situation which may have prevailed initially in the Beltracchi investigation, although those involved seem to have overcome any such deficiencies and secured the conviction of some of the most sophisticated art forgers to surface in recent European history.

Greed and Gullibility

The attribution of blame in these types of art crime cases is obviously a tricky and often messy issue. According to the main villain involved, Wolfgang Beltracchi, the art market and the 'greed and dishonesty of the trade' are largely responsible for this sorry state of affairs.⁴¹ He might not be entirely wrong in expressing such a viewpoint although the considerable financial advantage and the high flying life-style he supported from his misdeeds suggest he is far from meeting his own self-description of being a cynical 'Robin Hood'.⁴² We intend exploring further his motivations and modus operandi as part of on-going research into the Beltracchi affair.

41 Michael Kohler, 'Sammlung Jägers' *Art – Das Kunstmagazin* (28/09/2011).

42 Ibid.

The Forger's Point of View¹

Thierry Lenain

Abstract

Adopting an interpretative perspective aiming to shed light on the forger's point of view – the ideas he has of the art, of its history and of his own practice – implies an initial paradox. By definition, the forger would not attribute his productions to any other but himself without concealing his own artistic subjectivity. This is why only failure on the forger's part or a discovery of the fake can lead to an understanding of his point of view. Under this condition, two pathways open up to the hermeneutic inquiry. It can first be based on the examination of the works themselves. The stylistic distortions and, more importantly, the way of combining the iconographic borrowings betray the imaginary of the forger, working with the intention of deceiving. Their study most often shows a figurative spirit torn between literal imitation and the paradoxical desire to invent what the imitated artists *could have* created. But beyond that, the words and writings of the forgers also call for interpretation. Whether it means, for them, to revive the destabilizing power of their practice or, in contrast, to legitimize it, their discourse assumes a “theory” of the history of art that inscribes itself as well in the realm of tension and paradox. We see them, indeed, dismiss the historicist reason while at the same time relying on it. On the one hand, they rely upon an aesthetic of the expressive trace according to which all original work translates the spirit of its author as a historically placed subject. On the other, they like to imagine that the spirit of the imitated masters comes to visit them across time (spiritualism), unless they refer to eternal laws of art (idealism), whose notion leaves no room to the difference between the fake and the authentic.

Keywords: forger, art forgery, fakes, authenticity, psychology of forgers.

¹ First published in French in: Philippe Kaenel et Danielle Chaperon (eds), *Points de vue. Pour Philippe Junod*, L'Harmattan, Paris, 2004, pp. 165-189. The author is a professor of art theory at the Free University of Brussels (ULB). This article was translated from French by Dr. Liisa van Vliet.

In the perspective generally adopted by the art historian, the critic, or the expert, to suggest that the forger – the sworn enemy – might be credited with an authentic point of view, a perspective of his own which would deserve consideration, is truly a paradoxical idea, if not a suspicious one.

One might as well solicit moral and social recommendations from a gangster or consult with a dictator on the nature and virtues of democracy. It seems normal to think that a forger must only have *means* and *ends*. His way of knowing the artistic thing does not exceed the register of an instrumentalizing thought. How can one credit this cynical and coldly operational way as a point of view? How can one approach the behaviour, production and sayings of the forger if not in an objective fashion that is just as cold as his, and whose only goal is to better thwart the traps that he has laid for honest people? If one must enter the forger's mind, it will then be in the way of a criminologist who, resolved not to let himself be sucked into the vortex of the hermeneutic circle, aims to understand the criminal only to better fight the crime.² But, if this denial of interpretability has long dominated literature on the fake in art, current research has relegated it to the ranks of pre-scientific attitudes. We tend to recognise, today, that it is no longer possible to treat the phenomenon of the fake in art in the manner of a naturalist studying a harmful species. Solid reasons justify this change of perspective.

The first results from a massive fact, which has certainly been known forever, but for which specialists of the *Kunstwissenschaft* have for a long time worked at ignoring the implications. It is that the fake in art is not born at the edges but at the heart of the artistic culture. The first “forgers” were major artists whose mystifications are presented to us, by the most well informed observers of the period, as genuine exploits.³ This is why historians could and should not refuse to admit that the practice of modern forgers, even if they no longer exhibit the brilliant profile of their ancestors, must have conserved something of this original anchoring, despite historical mutations. Such refusal would, indeed, be tantamount to the denying of any sort of continuity between art as we know it today and what art was at the time of the Italian Renaissance, cradle of the problem of forgeries. What would then remain of the very idea of art history?

A second reason comes to mind, also of a genealogical

nature. The history of historical critique and of artistic literature demonstrates that in their own origins, and then throughout their development, the activity of the forgers and that of critics have always been closely dependent on one another.⁴ Even under the tardy hegemony of a “religion of the authentic”⁵ that fully requires the excommunication of the fake, their respective practices never ceased to mingle close enough to touch, fit together and mesh in a strange way.

Without even mentioning the dubious connivance between corrupt experts and well-connected make-up artists, or even fraudulent acts perpetrated by savants in search of money or recognition⁶, one could not hide how much the thought process of the best forgers mimics that of the erudite scholars, to the extent of becoming a sort of double in negative form – or even sometimes beating them on their own turf. It is with an uncommon intellectual honesty that the art historian Charles Sterling confessed having experienced this troubling proximity of spirit. Even before he had thought of bringing together the *Pieta* of Villeneuve-les-Avignon with the certain work of Engerrand Quarton (the *Coronation of the Virgin* of the hospice of Villeneuve), the author of a fake *Annunciation* in the Avignon style had established the link. “I could only resign myself to salute in him the artist that intuitively discerned the narrow affinity between the *Pieta* and the *Coronation* of Quarton”⁷ (Fig. 1).

Perhaps we shouldn't be surprised that an art historian can find himself thus preceded on the turf of historical truth by an anonymous champion of lies: among the dupes, whose expectations the forger must know how to satisfy, the expert occupies the front row since it is, after all, by his intermediary that important works are authorised to circulate around the art market.⁸ Any good forger must therefore be

4 On this matter, see mainly Anthony Grafton, *Forgers and Critics: Creativity and Duplicity in Western Scholarship*, Princeton University Press, 1991.

5 Mark Jones, «La religion de l'authentique», in *Faux et usage de faux. 18 essais sur le faux dans les arts plastiques, au cinéma et à la télévision*, Paris, Musée du Louvre, 1990, pp. 62-65.

6 Cases of fraud perpetrated by scientists appear less often in the history of art than in other disciplines, but they can be found. A good example of this are the fake Egyptian scarabs made by a penniless young egyptologue, bought by Jean Capart for the Musée d'Art et d'Histoire of Brussels (cf. Van De Walle, «L'histoire véridique des faux scarabées de Nécho», in B. Van de Walle, L. Limme, et H. De Meulenaere, *La Collection égyptienne. Les étapes de son développement*, Brussels, Musées Royaux d'Art et d'Histoire, 1980, pp. 81-92).

7 Charles Sterling, «Les émules des Primitifs», *Revue de l'Art*, 21, 1973, p. 87. On this *Annunciation*, see Mauro Natale et Claude Ritschard (dir.), *L'Art d'imiter*, cat. exp., Geneva, Musée d'Art et d'Histoire, 1997, pp. 196-200.

8 In commercial terms, the certificate of authenticity constitutes an indispensable attribute, whose importance can outweigh the object itself. Obtaining certificates (real or fake) formed an essential part of the swindling lead by Fernand Legros (cf. Jean-Louis Clément, «L'affaire Legros», *Revue Internationale de Police Criminelle*, 412, mai-juin 1988, pp. 21-27 ; Jean

2 Max Friedländer invites the *connoisseur* to turn into a “criminologist” as soon as the suspicion of a fake is born in him. (*On Art and Connoisseurship*, Oxford, Bruno Cassirer, 1942, ch. 36).

3 When contemporary art historians and critics mention the anecdotes of Summonte, Condivi and Vasari, they avoid ruling on their orientation, absolutely contradictory to the modern attitude. These stories are meanwhile not all lost for everyone. The forger Eric Hebborn was quick to rely on them to legitimize his own activities (*The Art Forger's Handbook*, Londres, Cassell, 1997, introduction).

able to appropriate intimately the thought process of an art historian or *connoisseur*. But it is only fair to add that, in return, these specialists learn a lot from the study of fakes, even if only because their detection implies a constant progress of technical and historical knowledge; the forgers themselves never ceasing to progress on their side (notably thanks to careful reading of specialised literature). Ruthless adversaries, the forger and the critic nevertheless remain conjoined one to another like Siamese twins who only live through a permanent exchange of their vital substance.

A third reason must keep us from ignoring the point of view of forgers. We have seen a few of them expressly claim ideas pertaining to their own practice and the role it is supposedly playing within the art world. Faced with such a voicing and such an attitude, we have no other choice but to start listening. Should we conclude that these speeches are devoid of substance? That they betray or conceal a fundamentally depraved perspective that would teach us nothing if not about depravity itself? It is still necessary to begin judging the claim admissible in its form, and thus join in the dance of interpretation. The opposite road has no outcome: to refuse to adopt the hermeneutic attitude is to block from the outset any possibility of an effective critique.

But from this principle to its implementation arises an immediate paradox. Unlike any normal artist, who openly expresses his personal view or that of his historical-cultural environment, the forger, acting as such, cannot reveal his view without destroying his own efforts. He must, in fact, play a *double* dissimulation: to conceal as much as possible his personal aesthetic vision and to keep silent about his actions. Only very particular circumstances, always associated to a failure of a fake as such, can cause the rupture of this wall of silence. The point of view of the forger only reveals itself *in spite of* his very project. A hermeneutic of the fake thus takes the shape of a broken circle: it implies by principle a discontinuity and mismatch between the intentional purpose of the one interpreting and that of the interpreted. The latter must have gone awry in one way or the other to come to light. This rather paradoxical highlighting can occur according to four main scenarios.

The view of the forger can first reveal itself through his own works. The simplest case presents itself when the aesthetic form bears the stamp of the personal vision, or *Zeitgeist*, of the maker. The art historian in this case is on familiar ground.

The fakes made by Han van Meegeren or those by the anonymous artist baptized “pathetic forger” by Charles

Sterling,⁹ to name just a few, reveal a very characteristic style that cannot be confused with the originals they strive to imitate. This characteristic formal profile reflects, in large part, the aesthetic expectations of the time (which explains that these fakes may have abused, in their time, even the best observers). It also exhibits singular traits which, when detected, allow the reconstitution of a corpus. The work of the forger then emerges, gradually, from the ocean of objects awaiting attribution, just like that of an ancient anonymous master. This stylistic personality of works can suggest something about the preconceptions, the ideas and the feelings of the maker: the expressionist excess crossbred with the “pathetic forger’s” miserabilism, the bitter and depressed gravity of Van Meegeren, etc. ... (fig. 2). Of course, this stylistic hermeneutic encounters the same limits and stumbles over the same epistemological problems as in the case of normal works of art; but the main point is that these problems and limits are precisely the same.¹⁰

Things get complicated however when the production of fakes is not betrayed by a recognizable stylistic profile. The case is then more difficult, but not necessarily lost: light can still spring out of an approach that is more philological than aesthetic: source criticism. Most of the forgers adopt a *modus operandi* that is curiously similar to the old septentrional masters, which are known to have elaborated their compositions by combining motifs taken from authoritative images. Unlike those artists, forgers, however, endeavor to conceal their “borrowings” when, and insofar as, these could compromise them. They actually choose them based on this necessity, always looking *sideways* through the windows of their imaginary museum, not in search of haloed figurative solutions endowed with a prestige supposed to rebound onto the new work, but rather of spare parts susceptible to fit together in the most efficient and discreet way possible. But this dissimulation of sources, inevitably, has limitations. Careful examination of the borrowings, of their provenance and of the manner in which the forger combines them sometimes allows one to detect the falsification and to assemble a *corpus*.¹¹ However, the investigation does not

9 Sterling, cf. note 6, p. 91.

10 For the classical idea of the work as expression of its author (and its insufficiencies), see Philippe Junod, *Transparence et Opacité. Essai sur les fondements de l'art moderne*, Lausanne, L'Age d'Homme, 1976, pp. 115-117. The point concerning the interpretation of fakes as artworks was revisited (and modified) in my book *Art Forgery. The History of a Modern Obsession*, Reaktion Books, London, 2011.

11 The question of the forger’s sources (artistic and photographic) has focused the attention of the team of researchers who, under the direction of Mauro Natale and Claude Ritschard, examined the fakes of the Holzer bequest, with excellent results (see above, note 6). This is also how the “Forger of the Ocampo panels” was identified. A significant corpus of his works could be reconstituted, in three stages, by Maryan Ainsworth and Didier Martens: (1) rapprochement of several paintings attributable to the same forger (cf. Maryan Ainsworth, “*Caveat emptor. An Early Twentieth-Century*

Ferré, *Lettre ouverte à un amateur d'art pour lui vendre la mèche*, Paris, Albin Michel, 1975, pp. 38-43).

stop with mere attribution. The choice of the sources, the combinatorial methods and especially the introduction of variations or significant iconographic distortions sometimes give access to the thoughts of the forger as well as, if not better than, the expressive intonations of a personal style. Here again, individual traits due to the forger and traits from the period in time are interlaced.

The forger identified by Maryan Ainsworth and Didier Martens, active in the first years of the 20th century, proceeded by assembling motifs taken from the Flemish masters of the 15th century. The variations introduced in the treatment of certain motifs inform us about his way of seeing and thinking. One of them pertains to the motif of angels holding a brocade behind the Virgin (fig.3), taken straight from the *Madonna at the Fountain* of Jan van Eyck (Antwerp) (fig.4). In the work of the latter, the two angels are inscribed in the top angles of the painting, in such a way that the edges of their wings appear to touch the frame to the point of partially melting into its moldings. This results in an effect of *trompe-l'oeil*, aiming to push the principal figure towards the spectator's space: when our attention is concentrated on the top third of the painting, the Virgin seems to stand *in front of* the image plane. Such methods of indirect presentification are very often found in Flemish Primitives. But the artistic mentality of the 19th century no longer appreciates or understands this rhetoric of the frame, through which the content of the representation gives the illusion of crossing the aesthetic border. The conception of the painted image inherited from the Neoclassicism and Romanticism periods, which requires a clear separation between the representation and the real world, rejects the Gothic appeal of the *trompe-l'oeil*.¹² This is why the forger of the Ocampo panels broke the parallelism between the edge of the wings and the frame. Of this painting, whose current location could not be determined, only the photo of poor quality, reproduced here, seems to subsist; the variant

appears in it, however, without a doubt, even if we restore in our imagination the edges of the painting visibly cropped in this picture. With other adaptations, carefully detected by Didier Martens, this modification, as subtle as it is revealing, would have permitted the forger to slip the image of the 15th century into the horizon of expectations of his contemporaries.

It is with the same goal that we see him systematically conceal the sex of the infant Jesus under a cloth (fig. 5), whereas the Flemish Primitives never failed to show this organ which attests to the entirety of the divine incarnation. The prudish mentality of the 19th century demanded the obliteration of this motif, even if this meant erasing at the same time the essential theological messages it was charged to convey, far from any evil thought. As a matter of fact – subject to closer examination – it seems that these cloths are part of the principal pictorial layers. They don't present themselves as giving the illusion of having been added *over* the representation of the infant's sex, as if to simulate the modesty overpaint, which was in widespread use between the 16th and 19th centuries. It is therefore quite probable that they in fact had not been placed on an underlying motif. Why, indeed, would one bother to paint a motif only to cover it up, if not to imitate an overpaint? Had this been his intention, the forger would have had to sow one or more clues that could lead the attention of the spectator towards this direction (e.g., an effect of transparency hinting at the existence of the underlying motif). The act of including the modesty cloth in the first degree image rather than imitate a secondary intervention indicates that the forger hadn't been conscious of an anachronism. He approached the simulation of the 15th century image within a mental framework of which the contingent historical character was not apparent to him. Imitating a modesty overpaint should have nonetheless granted the pastiche a supplementary sign of authenticity. But everything seems to indicate that its maker hadn't even realized the very special status of this motif, which he simply saw as a necessity without alternative. This case appears even more significant as the simulation of a secondary intervention (modification of the format, late additions, deteriorations, restorations) constitutes a classic method of forgers.¹³

Workshop for Flemish Primitives", *Apollo*, June 2001, pp. 20-29) ; (2) at the same moment, discovery of a fake Bermejo conserved in the Musée du Petit Palais à Paris (cf. Didier Martens, "Deux panneaux attribués à Bartolomé Bermejo et à son entourage. Critique d'authenticité et essai de datation", *Gazette des Beaux-Arts*, October 2001, pp. 121-136) ; (3) connection between these different works, discovery of new copies and baptism of the anonymous (see Didier Martens, "Les frères Van Eyck, Memling, Metsys et alii, ou le répertoire d'un faussaire éclectique", *Wallraf-Richartz-Jahrbuch*, n° 64, 2003).

12 This dislike of *trompe-l'oeil* appears for instance in the theory of imitation of Quatremère de Quincy, who professes that the "success of illusion" is due to the fact that "its effect is not unmissable, and cannot be complete" (*De l'imitation*, Archives d'Architecture Moderne, Brussels, 1980, p. 121). This theory also forbids one art to borrow the means of another; thus the painter could not use relief, which belongs to sculpture (p. 18). The painted frames prolonged by *trompe-l'oeil*, so dear to the Flemish Primitives, would fall under the same condemnation that "these painted statues" of which "no-one can justify the lying illusion [...]. Everyone knows that the effect of the imitative accumulation is null, as long as it is unseen, and perhaps even more null when it is discovered" (p. 106).

13 Van Meegeren damaged, then crudely restored, the *Supper at Emmaüs* (see Lord Kilbracken (John Raymond Godley), *Van Meegeren ou la vie d'un faussaire*, trad. G. Henry, Paris, Mercure de France, 1969, p. 76; English edition : *Van Meegeren. A Case History*, London, Nelson, 1967). The same procedure was commonly used to increase the apparent age of fake furniture of styles made in the studio of André Mailfert, as he describes in his memoirs written in 1929 (*Au pays des antiquaires. Confidences d'un «maquilleur» professionnel*, Paris, Flammarion, 1968, *passim*). There is evidence to think that the forger of the Ocampo panels had himself simulated a mutilation: "The examination of the left panel (of a fake dismembered triptych) taken away from its frame suggests that the landscape (still present in the central panel) had been scratched. The preparation of chalk and glue, as well as certain elements of color, are still visible. Perhaps the forger intended to produce a fake mutilated Flemish triptych. The absence of landscape on the panels would have conferred on the object an additional historical credibility, suggesting a

Source criticism also sheds light upon a figurative thought torn between the fascination for models taken in their literality and the desire to fill the virgin cases of an imaginary museum, or, as Martens said, to exhibit the “hidden face of the past.”¹⁴ This tension is a deep and generic characteristic of the approach taken by the majority of forgers. On the one hand, they willingly allow themselves to be obsessed by a particular motif. This is the case for the drape of the Virgin in the central panel of the triptych of Vienna, by Hans Memling, so recurrent in the production of the forger of the Ocampo panels that he seems to have been “truly obsessed.”¹⁵ On the other hand, we see the forger often act as if he wanted to pick up the paintbrushes of the masters they imitate where they let them lay, and paint the works they might have been able to paint, updating (sometimes with a distance of several centuries) the possibilities of figurative invention that lay fallow. Art history presents itself in the eyes of the forger as a sort of Leibnizian universe, where the current reality is enveloped in an almost palpable cloud of possible worlds. In this way, the forger of the Ocampo panels reveals to us the lower part of several figures of the Virgin, which 15th century artists merely represented by a bust.¹⁶ Van Meegeren was, meanwhile, attempting to fill the hiatus that separates the Caravegian paintings of Youth and the works more typically Vermeerian of Maturity. It is true that it was mainly a case of “confirming” the prediction of Abraham Bredius, who had reunited the two parts of the *corpus* under Vermeer’s name and had announced the appearance of works from the intermediate phase.¹⁷ But it was also a way of provoking the delayed appearance of a possible world *already formed* in a virtual sphere, by substituting himself, so to speak, to the Delft master in person. In a similar vein, and in a manner that addresses the question of the *point of view* in the first sense of the term, the Englishman Tom Keating, author of numerous pastiches in the most diverse styles, had conceived the idea of remaking the *Bar of the Folies Bergères* by recomposing the same scene from another angle than that chosen by Manet.¹⁸

In the third scenario the perspective of the forger reveals itself through his words and his behavior, when a more or less

passage through time that would have left consequences.” (Martens, *loc. cit.*)

14 Ibid.

15 Ibid. Martens identifies another motif recurrent in the forger of the Ocampo panels: the draping of the robe of Elisabeth Borluut, wife of the donors of the polyptych of the *Mystical Lamb* of the van Eyck brothers.

16 Ibid.

17 Kilbracken, pp. 57 sq. On Van Meegeren, also see Jonathan Lopez, *The Man Who Made Vermeers. Unvarnishing the Legend of Master Forger Han van Meegeren* (Orlando etc., 2008).

18 Tom Keating tried to recompose the scene by making models pose according to the original image (see *The Fake’s Progress (Being the Cautionary History of the Master Painter and Simulator Mr. Tom Keating as Recounted With Utmost Candor Without Fear or Favor to Mr Frank Norman, Together With a Dissertation Upon the Traffic in Works of Art by Mrs Geraldine Norman)*, London, Hutchinson, 1977, p. 184).

dramatic unveiling brings him to react. Such a disaster may perhaps be the opportunity to repaint himself with new colors and to become finally recognized thanks to a *coup de théâtre*. Just after the war, Van Meegeren was accused of having sold major works of the national heritage to the Nazi enemy. But the court case that ensued, and where he risked the death penalty, was above all an unexpected opportunity for him to set his stage. He could, finally, let his resentment explode in the face of the world, by exposing in the finest detail his motives and methods – the very precision of the confessions acting already as a powerful disturbing force. A few of his quick-witted replies have gone into posterity, as well as the theatrical poses that he delighted in taking in front of his public of thrilled journalists, incredulous judges, sometimes sheepish witnesses and experts tormented by the irony of an accused giving himself airs of leading the dance. The bitter imitator, the failed artist who wanted to be the equal of the great masters, could finally escape the dead-end he had led himself into: wanting to prove his talent without being able to manifest it as his.¹⁹ One of the lines of defense was actually to affirm that in the beginning at least, his enterprise didn’t have any venal aims. He would have had the intention to give back the money from the sale of the *Supper at Emmaüs*, and to unveil the deception with a crash. Loving too much the great life style he was leading, he did nothing of the sort, and therefore only a sensational trial would allow him to adopt *in extremis* the role of a hoaxer and thus to finally become the *author* of his fakes.²⁰

Finally, it does happen that the forger openly takes the floor *in the space of the discourse on art itself*. It could be a means for him to justify himself while at the same time settling a few scores. Réal Lessard, one of the appointed painters of crooked art dealer Fernand Legros, signed such a plea *pro domo* (of which, one must admit, neither the substance nor the credibility bear much weight).²¹ Interest is increased when the forger goes beyond the register of personal valorization and attempts to elaborate a “theory” that permits him to re-inscribe his activities into the cultural fabric. This re-inscription can occur in two ways. Either the forger acknowledges his denunciation and seeks to re-launch his fakes as art works in and of themselves – after all, they are also *paintings*. This is the meaning of the confessions of Tom Keating, the pleasant and prolific *cockney* forger.²² Or,

19 Kilbracken, pp. 202-206 and 226 sq.

20 If the author is the one who, in one way or another, attributes his own creation to himself by claiming responsibility for them, then the successful forger cannot be regarded as an author in the proper sense.

21 Réal Lessard, *L’Amour du faux. La vérité sur l’affaire Legros*, Hachette, Paris, 1988. The author attempts to argue that, manipulated by his crooked lover, he really hadn’t realized the use reserved for imitations that he is attributing to himself (not without contesting, with a suspicious cruelty, the paternity of the works claimed by his collaborator and rival Helmyr de Hory, who was already dead for several years when the book came out).

22 Note that Tom Keating did not take the initiative to publish his

the discourse aims, instead, to increase the destabilizing power of the fake, by exploiting the circumstances of the reveal to fire off an implacable movement of riposte. This time, the forger advances, like an irritated predator, on the ridge that separates culture as a field of legitimacy and the abyss of unspeakable practices. He uses speech to aggravate the obsessive fear of secrets, and plays the truth game to better sharpen the thread of lies. The refutation of the specialists, the quiet explanation of certain technical tricks and the claim of fakes not yet detected, whose existence are merely evoked but not revealed, are among the most efficient processes of such a rhetoric, handled with insolent mastery by Eric Hebborn. It is worth noting that if such public speeches usually take place following a failure, it is not always the case. André Mailfert, a cabinet-maker-forger from Orléans active between the two world wars, only published his memoirs to spice up the opulence of his old age by reliving the best moments of a long, picturesque and fruitful career.²³

We have seen it: the the forgers' production reflects the quasi-Leibnizian structure of their imagination. Their turn of mind also appears sometimes in their informal words or in their behavior. Such as have been so well recounted by Augustin Thierry,²⁴ the actions of Thomas Chatterton, the young autodidact who, from the bottom of black poverty, gave birth to lifelike medieval poems, indicate a prodigious force of fantasmatic absorption in the literary past, to the point that it is experienced as a world of living possibilities just as real, if not more so, than the present. In the case of Van Meegeren, this fantasy of a full updating of the past, fed by an extremely traditionalist training, was accompanied by a visceral rejection of modern art: for him, art history had ended with a 19th century lived as a continuation and a path back to the golden age of Dutch painting. But it may also happen that forgers provide us with explanations giving a much clearer idea of this sort of historicist Leibnizianism which the forger takes to the furthest extremes.²⁵ To make

memoirs; he took the opportunity at the invitation of two journalists (who wrote the text from the long interviews he had given them). The desire to re-define himself as a talented *pasticheur* also appears in the confessions of Réal Lessard.

23 "It isn't a misplaced need to proclaim the truth that compels me to act in this way, nor the desire to pass for an original, nor the hope of conquering the academic palms; it is neither to accomplish a duty, nor in obedience to a vow... it is simply because it amuses me." (Mailfert, cf. note 12, p. 10) In this case, one cannot speak of the failure of the fake. Still, the speech of Mailfert is given at the end of his life as a forger, after ceasing his activities. And some of his fakes obviously risked paying the costs of the revelations made in the book. For the rest, the author plays with the procedure of malicious revelation: I have revealed some, but others will remain, that this book won't stop (*ibid.*, p. 185).

24 See Augustin Thierry, *Les Grandes Mystifications littéraires*, Paris, Plon, 1911, chapter II.

25 It is time to say that the metaphor has its limitations: according to the Leibnizian system, the actual world has a higher ontological status than the possible; while the forger substitutes, so to speak, the possible for the real

this fantasy into a story sitting on a "theory", the forger naturally uses what the culture of his time provides at his disposal. We thus see him dig sometimes into the toolbox of historical sciences, and sometimes in the colorful album of fantastical explanations (all the better accepted as they convey the seductions of archaism). Alceo Dossena, an artisan creator of magnificent pastiches of sculpted works from the Antiquity, the Middle Ages and the Renaissance, sold as authentic pieces by unscrupulous middlemen, has thus delivered interesting explanations on his way of conceiving and living his relationship with art from the past. Restituted by Frank Arnau, these explanations, that an H.G. Wells would not have disdained, carry us completely into the register of the paranormal: "I was born in the modern times, but with the spirit of another time."²⁶ To explain, in the language of a historian, the incredible mimetic power of Dossena's pastiches, Arnau let himself accept a manifestly absurd solution that he knew ruined the two pillars of historicist reason: the idea of irreversibility of time and that of the exclusive link that connects a *Zeitgeist* to the period in which it was developed.

How did a man of our era manage to represent forms of the past as well as the artist who lived in that past? To this question there is but one answer: exceptions exist – a creator-artist so intimately connected to the past that he no longer lives in his time, but in others. This goes against the thesis generally accepted, that it is impossible to create a veritable masterpiece outside of one's time.²⁷

We have observed Dossena for several days. All of his works came effortlessly out of his fingers, without mystery, without trickery. He was singing an operatic aria or was smiling sweetly to us. This extraordinary work seemed natural to him. Only then did we realize having contemplated the incarnation of a Renaissance master and of a Greek sculptor. For an art historian, at least, and for me, in consequence, this thought is frightening and intoxicating at the same time. The fundamental theory of art criticism, according to which a masterpiece is only born *once*, at one point in time, when, at the intersection of certain facts or events tied to his era, it becomes its expression, this theory is thus reduced to nothing.²⁸

Tom Keating has given his own version of this historicist

(by specializing in the updating of possibilities that had not been called to materialize in History as it really had taken place).

26 Frank Arnau, *L'Art des faussaires et les faussaires de l'art*, trans. E. Vincent, Paris, Robert Laffont, p. 216 (English edition : *Three Thousand Years of Deception in Art and Antiques*, trans. J. Maxwell Brownjohn, London, Jonathan Cape, 1961)

27 *Ibid.*, p. 215.

28 *Ibid.*, pp. 217-218.

spiritualism where the experience of an intense impregnation into the past history of styles is expressed. Impossible within the strict framework of historicism, but unthinkable without it, this metaphysics is a sort of *credo quia absurdum* to which Keating does not hesitate to confer a mystical dimension. For him, the stylistic imitation practically becomes a form of *spiritism*.

It takes very little to fire me to paint a picture, a little illustration in a magazine, a dusty old reproduction, anything at all. I seem to be able to walk right into pictures, turn around in them and even make contact with the masters who made them.²⁹

Keating evokes these moments of escape from the natural course of things, where the spirit of such great masters of the past has, as he says, “come to him,” abolishing for many hours any lucid conscience, and leaving as its only trace a painting, having appeared as if by magic:

If ever a master came down to me, Goya did that night. It'd started, like so many of the others, as a joke. Never before or since have I felt so strongly the presence of a master. The old boy was standing there right next to me and he was guiding my hand so firmly that I felt I had no control over what was taking shape on the canvas at all.³⁰

In the middle of the sixties, when I began to emulate Goya and other great masters, I often felt their spirits actually guiding my hands. Most people either don't believe me or think I'm round the bend when I tell them this. But it is terrifyingly true and to me not particularly surprising. After all, most people can feel the sense of power that radiates from a Rembrandt, Tintoretto or El Greco and what other way is there to define that feeling than to say that the spirit of the master is living on in the very fiber of the canvas? [...] One of the first times that I experienced this feeling was in 1962. [...] I was doodling in pastel on a sheet of Ingres paper, when suddenly I began to feel very tired. I lay down on my bed and as it got dark I got the strange feeling that I was floating. Then a feeling of oppression, of being pulled down. I felt so awful that I vomited and cried. I slept fitfully and seem to recall getting up several times during the night. When I woke up the next morning there was on my easel a self-portrait of Degas. I know that I must have done it, but I had

no memory of it. The only Van Gogh that I ever painted happened in a similar way. I couldn't paint a Goya, Rembrandt or even a Samuel Palmer for a million pounds or to save my life. But when the spirit of a long-dead artist comes into my hands, the images flow out on the canvas without the slightest effort on my part. I am not a spiritualist and I have never dabbled in the occult; I cannot account for the strange thing that happens to me and I will not try.³¹

I sound ridiculous, I know, but Degas really did draw that picture through me, and many others besides. I woke up one morning and found it on the easel, in place of the scratchy, silly daub that I'd been working on the day before: a pastel self-portrait, completely unmistakable in form and technique [...]. But the queerest thing of all was when I measured it, it was in centimeters instead of inches! It was on ordinary Ingres paper from the local art shop in Richmond, and I did not measure it before I pinned it to the drawing board on my easel.³²

One of these sessions took place in an old Tudor manor where the painter found himself alone for a few days, and where there was a strange atmosphere:

It was a Friday evening and there was a long weekend in front of me. I'm not a bloke who sits watching telly much. I do love telly sometimes, but I was feeling edgy, being in that spooky house by myself at night. The feeling came upon me and I got my folio of old and new paper and did sixteen Palmers in a week-end. [...] They just poured out chonk, chonk, boom, boom, one after the other, as though I was writing letters [...] In the daytime I worked at my own painting, and in the evening after supper I'd climb the stairs and sit in my sketching room and wait for “it” to happen [...] I'd just sit there whistling softly to myself to help me think and look at the moon. Dink, donk, dink, tick, tick, tick, - it would start to happen [...] With Sam's permission [Samuel Palmer] I sometimes signed them with his own name, but they were his work and not mine. It was his hand that guided the pen. It turned out dozens and dozens and dozens of them. And then would come Gainsborough, Wilson, Turner, Girtin, Constable, all of the boys.³³

Added to these different manifestations and modified

²⁹ Keating, p. 80. “Turning around in the painting.” This was almost exactly what he wanted to do with the *Bal des Folies Bergères* (see above, note 17).

³⁰ Ibid., p. 165.

³¹ Ibid., pp. 84-85.

³² Ibid., pp. 153-154.

³³ Ibid., pp. 182-183.

states of consciousness was yet the sensation of an electric shock at the physical touch of the canvases of the great masters.³⁴ As for the paintings realized under the directorial presence of Goya (a self-portrait, like the Degas), Keating offered it to a young Spanish friend, who hung it in his bedroom; the latter, he assures us, strongly believed that this painting, which he contemplated every day upon awakening and before falling asleep, cured him of a serious disease.³⁵

Those confessions resonate with a sound common sense and a taste for jokes that Keating associates, moreover, with the production of fakes. He, himself, insists on specifying that his auto-portrait of Goya was born, in the beginning, from a joking mood. Indeed, he takes care to present himself as a stranger to occultist preoccupations. It is of course possible that a bit of irony, or even comedy, comes into these explanations (that were enough to vividly interest his interviewers). But it seems very difficult to measure it on the basis of the text. And if one wants to see here the expression more or less sincere of a way of *living* the act of stylistic simulation, on an existential level charged with reveries of the historical imagination, it is obviously out of the question to contest pertinence of Keating's explanations in the name of pure reason. We can underline, however, that the historicist spiritism of the forger fits perfectly with the ultimate orientation of an *aesthetic of the trace* whose cultural ties are deep and that, from Giovanni Morelli to David Rosand, never fully faded away.³⁶ Certainly, the confessions of Dossena and Keating inscribe themselves into this orientation in an essentially naïve manner, stripped of any metaphoricity and as if oblivious of the principle of reality. Still, they reflect in their own way a mental framework which is also that of the historians and art critics – the metaphoric part modulating itself according to the level of epistemological consciousness. After all, it isn't a forger, but Giovanni Morelli himself who wrote these lines, upon which ends his journey across the Borghese Gallery:

One day, I was in ecstasy in front of this mysterious painting [anonymous portrait of a woman, difficult to attribute], trying to interrogate it: my spirit met that of the artist who was looking out through these feminine traits and, in this reciprocal contact, there suddenly came a spark and I rejoiced in exclaiming: "is it really you, my friend Giorgione!" and the

painting's answer: "Yes, it is I."³⁷

In these forgers, seized to the point of hallucination by the vertigo of the mimetic contemplation of the originals, which they looked and absorbed themselves into almost like ancient devotees in front of their *Andachtsbilder*, the trace appears so close to its origin, the difference resorbs itself so much into the fantasy of the pure presence, that the work of art from the past gives itself to them like an open passage, through the obviousness of style, to the realm of spirits. However, this swedenborgian *penchant* of certain forgers is all the more peculiar as their perspective implies, also, a flagrant and profound rupture with regards to the idealism that generally reigns in the field of art discourse. *Mediation* is everything here. The forger tries to assimilate *a priori* the action of all the mediators who enable the circulation of art works. The role of intermediaries and of the presentation strategies are subject to sustained scrutiny, as well as market expectations; following the example of certain contemporary artists, the forger considers, for example, the price of works as an artistic sign in itself.³⁸ In general, the perspective of the forger assumes a recusal of the object-oriented scheme that structures the aesthetic eye of amateurs, critics and, still too often, art historians – a scheme through which the art object should be separated of its mediating organs, of which the art sociologists and contemporary artists have incessantly claimed the integration.³⁹

Moreover, the full perspective of the forger, seizing the works without tuning out the environment of practices and symbolic meanings these works belong to, implies *ways of looking* that break with the codification of the perceptive conducts determined by the idealist scheme. In this way, the forger gives as much importance to the media and materials as to the image itself. The artistic object immediately asserts itself, in his eyes, through its material historicity, as evidenced by the traces of aging such as cracks, patina, restorations, etc. The minute attention he brings to the material profile of the work, in order to anticipate the eye of the expert and his magnifying glass, breaks with the classic imperative of

37 Giovanni Morelli, "De la peinture italienne. Les fondements de la théorie de l'attribution en peinture, à propos de la collection des galeries Borghèse et Doria-Pamphili," éd. Jaynie Anderson, trans. N. Blamoutier, Editions de la Lagune, Paris, 1994, pp. 320-321. Critics have since established that the painter was in fact not Giorgione.

38 Van Meegeren had well realized the role of price as a sign of authenticity (see Kilbracken, p. 236).

39 Nathalie Heinich sees the contemporary artist as a sort of sociologist: "Are there in our century better sociologists – acting sociologists, practitioner-sociologists – than the artists?" (*Le Triple Jeu de l'art contemporain. Sociologie des arts plastiques*, Paris, Minuit, 1998, p. 70). In the same way, Christian Bessy and Francis Chateauraynaud underline the sociological skills of the forgers: "We (have) repeatedly suggested that a good forger would be eligible for a sociology degree." (*Experts et faussaires. Pour une sociologie de la perception*, Paris, Métailié, 1995, p. 234)

34 Ibid., p. 173.

35 Ibid., pp. 167-168.

36 For the paradigm of the trace, see Carlo Ginzburg, «Traces. Racines d'un paradigme indiciaire», in *Mythes, emblèmes, traces*, several translators, Flammarion, Paris, 1989, pp. 139-180 (English edition: *Clues, Myths and the Historical Method*, Baltimore, Johns Hopkins University Press, 1989). As example of the pregnancy still actual in this paradigm, see David Rosand, *The Meaning of the Mark: Leonardo and Titian*, Spencer Museum of Art, University of Kansas, 1988).

the “right distance.” For the forger, a painting shouldn’t be looked at from a unique and ideally situated point of view; it must produce its effects from close up as well as from afar, and must give just as much through its infinitesimal details as through its big formal articulations. With their hard and translucent surface, finely cracked, the fake Vermeers of Van Meegeren seem more convincing today when we look at them up close, i.e., when the image itself becomes erased to benefit the matter from which it is made. The experience arising from this recalls – in reverse – that of Diderot facing *The Skate of Chardin*:⁴⁰ with our noses glued to the painting, we (almost) see a Vermeer, then “everything gets mixed up” if we take a few steps back to envisage it from a reasonable distance. Better yet, like an experimental painter engaged in the exploration of supports as well as of surfaces, the forger contests even the privilege of the obverse over the reverse, giving all his attention to the *back* of the canvases and panels, no less than that given to their painted face.

How can one not marvel at this tension that tears the thoughts of the forger between a realism and an idealism equally extreme, between projection and absorption, between matter and spirit(s), between past and present, between virtual and actual? All do not carry out these dichotomies in the same fashion. With all the irony he was capable of, Eric Hebborn insisted on keeping his distance from those who, forgers like himself, imagined they could turn tables by making paintings. If he explains that the making of a successful fake supposes a complete absorption and a temporary raising of the bar between the conscious and unconscious – a psychological process certainly peculiar and nervously trying—⁴¹ he doesn’t care about Tom Keating’s explanations:

This is all very well, but there is a snag. When these “gaffers” come down they generally leave their genius upstairs, and death has so rusted their dexterity that it would really be better for everybody if they stayed where they are. In any case we can get on perfectly well without them.⁴²

Instead of this spiritualist imagery, it’s an altogether secularized version of the “paradigm of the trace” that he proposes:

While it is conceivable that an imitator may be skilful enough to follow the hand of a former artist, for that hand has left a visible, tangible trace, how can he possibly make the necessary step back in time to enter the mind of that artist? Such a feat is

not quite as miraculous as it may at first seem. The truth is that every mark a draughtsman makes is a reflection of his mental state. Their hand works in obedience to their mind. If one truly understands the marks of a drawing and more particularly the meaningful relationship between those marks, one is in mental contact with their author, no matter how far remote in time and space. This requires great knowledge and sensibility, not clairvoyance. It is no more than can be reasonably expected from a connoisseur.⁴³

Just as much as the swedenborgian forgers, Hebborn’s skepticism incidentally recuses the critics and historians, victims of their superstitious attachment to the dogma of the *exclusive* link supposedly uniting the style of a work and its auctorial or historical origin. No, he proclaims to the experts too sure of their good eyes, the imitator doesn’t *necessarily* leave his personal mark. No, the fakes are not *all* destined, sooner or later, to be detected.⁴⁴ Certain of having the facts on his side (and indeed, they are), he doesn’t let himself be fooled by the proponents of a *radial* metaphysic of the expressive trace (which had precisely led Frank Arnau to imagine an inversion of the time-line). It is perched on the rubble of this radicalism, which art historians and *connoisseurs* have for too long taken for granted, that we see him defy these specialists of the game of stylistic mimesis.

However, if this skepticism is apparently sovereign, as if camped in an impregnable manner on the ground of facts and common sense, it actually leans on another form of idealism. Instead of the free circulation of spirits across history, it is the invocation of a-temporal laws that acts this time as ideological anchoring. The art would obey principals that remain the same under the surface of stylistic variations. It is thus that the art of drawing presents itself to the forger “as an ancient and alas almost dead language, the grammar of which had remained largely unchanged since the man’s appearance on the earth.”⁴⁵ That these eternal principles found themselves swept aside in the 20th century does not change anything. Although a stranger to the spirit of rancor that animated a Van Meegeren, Hebborn also detests modern art, where he only sees an aberration more or less despicable.⁴⁶ Resorting to the idea of eternal principles leads the forger to conceive drawing and painting

43 Hebborn, *Confessions*, p. 296.

44 Ibid., p. 283 et 307.

45 Ibid., p. 259.

46 Hebborn considers abstract art as a “failure” (ibid., p. 108). He considers old art as “very definitely better” than present art, and “not just different” (p. 176; Hebborn highlights this). Moreover, contemporary art, to him, seems to be “an admirably clear indication” of the mental and spiritual disorders of our time, “but, as art, it leaves much to be desired.” (p.177) Further on, he dares write that the Max Ernst that Peggy Guggenheim had (according to him) placed in her toilets was in its well deserved place (p. 181).

40 On the idealist principle of the “right distance”, see Junod, p. 227.

41 Cf. Eric Hebborn, *Confessions of a Master Forger*, London, Cassell, 1997, pp. 216-217.

42 Hebborn, *The Art Forger’s Handbook*, p. 38.

as performing arts. It consists, in his own eyes, in interpreting old scores in accordance with the rules of the ageless plastic grammar, with the quality of interpretation dependant upon regular practice of the instrument.⁴⁷ Hence the typical paradox of the forger, very recurrent in the writings of Eric Hebborn: he never produces fakes, not even imitations, but always original works.⁴⁸ Thus, he explains, to make a “Corot” from an original drawing is not in the least about slavishly copying it. It is rather about studying, pencil in hand, the visual language of the master. “Having thus familiarized myself with Corot’s vision and method of communicating it, I was now prepared to make an original work with some of the virtues I admired in the (...) drawing [of Corot].”⁴⁹ And it’s still too little to say that by so doing Hebborn doesn’t falsify anything and doesn’t even imitate; a fake, this *could not* exist, since there are only works made in a manner of this or that artist:

It is the labelling, and only the labelling, of a picture which can be false, and contrary to popular belief there is not and can never be a false painting or drawing, or for that matter any other work of art. A drawing is as surely a drawing as a rose is a rose is a rose, and the only thing that may possibly be false about it is its label – its attribution. What a relief this truth should be for the art world! No longer need the expert, the collector, or anybody else worry about fakes. The term can be expunged from the art lover’s vocabulary.⁵⁰

Once again, it is *tension* that characterizes the discourse and the perspective of the forger. Eric Hebborn seems, indeed, to want to make academic values and transgressive malice coexist. The fake, he says, does not exist. But he nevertheless continues to talk about fakes from one end of his books to the other, or to present himself under the grimacing traits of a forger – not without profiting from all the luciferian intonations that this theme and this role harbor. With what delectation does he not make us penetrate into the “Devil’s kitchen”?⁵¹ What communicative jubilation when he tells us how, applying in reverse the methods of reasoning of the best experts, he managed to make them accept his creations as so many old works, thus opening for them a royal route to the most prestigious collections! On the one hand, Hebborn claims to follow the a-temporal laws of art, throws the questions of attribution to the background and evacuates, in the same gesture, the problem of authenticity. But on the other hand, here he is devoting all his efforts to simulate the style and

technique of the masters of the past, and to imagine strategies of presentation each more devious than the other in order to have his creations attributed to someone other than himself.⁵² Now, if the essential part of art resides in this ideal grammar that knows no age or name, why deploy such treasures of skill and intelligence to capture a label of authenticity that supposedly counts for nothing? We imagine, of course, what moments of intense excitement can be felt by the one who manages to lead a specialist of the caliber of Anthony Blunt to authenticate one of his own paintings as an autographical work of Giovanni Benedetto Castiglione.⁵³ But what common measure exists between this game of hide-and-seek, as erudite as it might be, and the art such as he invites us to conceive it, sat upon the Mount Olympus of his eternal principles? Finally, how might Hebborn have known the pleasures of deception and painted himself as “Master-forger” if, as he pretends to call for, the notion of the art fake had been crossed out of spirits?

It is, after all, a quite difficult role that befalls the forgers: that of reuniting, in a living paradox, the most antithetical positions that can be held at the heart of the cultural field. It seems that this field locally twists itself at the place of their contradictions, under the tension of their paradoxes. The forger’s way of seeing convenes a strange geometry, as bewildering to the exceedingly Euclidian expectations of the art historian as to the tastes of the very round circles of the hermeneutes. This is the work they accomplish, this is the meaning of their point of view.

47 Ibid., pp. 216 sq. et p. 295. Hebborn even mentions the forger’s *stage-fright* when facing the empty sheet of ancient paper (p. 296).

48 Ibid., p. 357.

49 Ibid., p. 228.

50 Ibid., p. 357. To defend his idea, Hebborn resorts to a long quote of Gombrich.

51 Hebborn, *The Art Forger’s Handbook* (“*The Devil’s Kitchen*”).

52 One of the strategies consists in signing a drawing with a clearly apocryphal signature; having detected the fake signature, and re-established the correct attribution, the expert will persuade himself even more of the authenticity of the work. “This is diabolical. Are there no limits to your skulduggery?” (ibid., p. 63).

53 Hebborn, *Confessions*, p. 262.



Fig. 1



Fig. 2



Fig. 3



Fig. 4



Fig. 5

Art Law and Policy “When Photography Might be Illegal”

In an earlier Art Law and Policy column (Spring 2011), I looked at the question of whether a state can declare an entire subject matter off-limits to photographers. In that case, the subject matter was farms: the state of Florida was considering a bill that would have made it illegal to take photographs of a farm without consent. I argued that such a statute would be clearly unconstitutional. “[As] a general matter,” the Supreme Court has said, “the First Amendment means that government has no power to restrict expression because of its message, its ideas, *its subject matter*, or its content.” *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002) (internal quotation marks omitted; emphasis added).

Texas Penal Code § 21.15(b)(1) presents a related question. What if it’s not the subject matter that’s off-limits, but the subject matter *combined with the photographer’s intent* in taking the photograph? The statute makes it a crime to photograph someone “without the person’s consent” and “with intent to arouse or gratify the sexual desire of any person.” Late last year, a Texas appellate court upheld the statute. *Ex parte Nyabwa* (Tex. Ct. App. Dec. 13, 2011). The Court acknowledged that “[photography] is a form of speech normally protected by the First Amendment,” but accepted the State’s argument that “the statute is not a regulation of speech at all, but instead is a regulation of the photographer’s or videographer’s intent.” Just as a statute criminalizing harassment by telephone (which will typically involve speech) does not violate the First Amendment because it focuses on the actor’s intent (in that case, “to inflict emotional distress”), this statute regulates “a person’s intent in creating a visual record,” as distinct from “the contents of the record itself.” On this basis, the Court concluded that the statute “is not a regulation of speech” and therefore does not violate the First Amendment.

In March of this year, the Texas Court of Criminal Appeals declined to review the case. Two judges voted to hear the case, one of whom wrote a strong dissent, arguing that the statute is “virtually unbounded in its potential application.” “The photographing of anyone, anywhere, and under any circumstances can be an offense ... so long as the [photographer] ... harbored the requisite sexual mental state.” And focusing on the maker’s intent can’t be enough to save the statute because the First Amendment *includes*, “as a component of freedom of expression,” freedom of thought, including the “freedom to think sexual thoughts.” A photograph could be a crime under this statute even if “the person photographed [were] a fully-clothed adult walking down a public street.” “The breadth of this statute is breathtaking,” the dissent concludes, and “the type of intent that it regulates” is protected by the First Amendment.

The dissent’s analysis seems to me persuasive. Where is the crime here? It’s not a crime to photograph someone without his or her consent – it can’t be, under the First Amendment. And it’s not a crime to think sexual thoughts about a stranger. So how does putting the two together – the photograph and the sexual thoughts – somehow add up to a crime? One can imagine a statute making it illegal to photograph or videotape people at ATM machines “with the intent” to steal their PIN numbers. There, the intent would be crucial to

distinguish crime-facilitating behavior (stealing PIN numbers) from mere speech (taking photographs of people at ATM machines). But this case is different: there is no crime being facilitated. In the final analysis, it's no different than making it a crime to *look at someone* "with intent to arouse or gratify sexual desire."

It's also hard to know how the authorities will be able to accurately determine the photographer's true intent. What if she has a "mixed" intent – to take a beautiful photograph, to document a journey and, perhaps also, to arouse sexual desire? Is that a violation of the statute? How strong must the culpable intent be in comparison to the blameless intent(s)? If the main purpose of the photograph was non-sexual but, somewhere deep down the photographer felt just the tiniest intention to arouse sexual desire, is that a violation of the statute? What if, at the time the photograph was taken, the photographer had no sexual intent, but then later, in looking at the photograph, it has *the effect* of arousing sexual desire? Or what if, through psychoanalysis, he comes to understand that, though he did not realize it at the time, the photograph was taken with an intent to arouse desire? Has he retroactively committed a crime? The difficulties in proof here seem insurmountable.

In *Stanley v. Georgia*, 394 U.S. 557 (1969), the Supreme Court invalidated a State law criminalizing the possession of obscene materials. The Court rejected the State's attempt "to control the moral content of a person's thoughts." "To some," the Court said, "this may be a noble purpose, but it is wholly inconsistent with the philosophy of the First Amendment."

“Rise in Thefts from Museums: Due to Economic Crisis?”

The Museum Security Network (www.museum-security.org) has been on line since December 1996. In the past fifteen years over 40,000 reports have been disseminated about incidents with cultural property, such as thefts, fake and forgeries, vandalism, and embezzlement. The number of thefts of sculptures from gardens and towns has grown tremendously, so much so that we have stopped trying to record all of them.

This year alone (and this is just a brief summary, far from complete) Stone Age axes were stolen from the Yorkshire Museum, a number of Lord Nelson artifacts were stolen from the Norwich Museum, as well as Buddhas from Ulster Folk and Transport Museum, artifacts worth £1.8m from Durham University’s Oriental Museum, watches from Silverton Country Historical Society museum, a lifeboat from RNLi’s museum; Museum Gouda (in The Netherlands) was robbed of a 17th century religious object, after the museum door was forced open using explosives; the National Gallery in Athens suffered a theft of Picasso and Mondrian paintings; and the Olympia Museum in Greece lost over 70 objects, after a early morning robbery. Thieves have wrenched the horns off stuffed rhinoceroses in European museums: Bamberg, Germany, Florence, Italy, Haslemere Educational Museum, Ritterhaus Museum Offenburg, Germany, Swords Auctioneers, Stansted Mountfitchet, and more. Officials at Europol, the European Union’s criminal intelligence agency, claim the number of thefts of rhinoceros horns has increased sharply in Europe during the past year. Since 2011, the agency has recorded 56 successful, and 10 attempted, thefts.

According to a U.K. report 75,000 heritage crimes were committed in one year (experts warn that the “alarming” figures show that Britain’s history is being destroyed in an “insidious and often irreversible way” for future generations): the study found nearly a fifth of the country’s 31,000 Grade I or II* buildings were subject to criminal acts, while more than 63,000 Grade II buildings were targeted. The report, compiled by the Council for British Archaeology and Newcastle and Loughborough universities, found that crimes such as metal theft were more likely to occur in the north, while at least 750 sites were hit by “devastating” arson attacks.

All together an alarming development, or is this just business as usual?

Several newspapers reports and Internet blogs claim a rise in museum thefts due to the economic crisis, and security budget cuts. Official police statistics do not substantiate these claims (stats are always a bit late, and per annum 2011 figures are not yet available).

It is quite possible that there is rather a rise in information, than a rise in incidents. The link between the present economic crisis and thefts from museums is even more difficult to prove. Only a very small percentage – at best 5% to 10% - of art crimes are solved, so our knowledge is rather based on anecdotal evidence than

facts. Some of the more infamous thefts from museums took place before the economic crisis hit the western world. Benvenuto Cellini's Saliera was stolen 2003 from the Vienna Kunsthistorischesmuseum. That burglary and theft took only 58 seconds. Value of the Saliera: €35 million. The facts only justify the conclusion that security was far below standard. The largest art heist outside war-time took place – the Isabella Stewart Gardner Museum heist – in March 1990. There appeared to be due to poor organization of security.

The Van Gogh Museum, Amsterdam, was robbed of two painting during an early morning burglary in 2002. An unexpected lack of structural security made that theft possible.

In 2010, the Musée d'Art Moderne de la Ville de Paris was robbed of several paintings. After this theft it was revealed that part of the security system had been out of order for about a year. All these thefts could take place not because of budget cuts due to any economic crisis, but rather due to neglect at a managerial level. Security and safety is part of museums' core business, but too often do not get the attention they deserve.

Museums, by nature, find themselves in a difficult split between their task to show their most valuable objects to millions of visitors, and their wish to safeguard these objects for present and future generations. A difficult, but not an impossible task.

In case the economic crisis really becomes a threat to (security) budgets, why not sell those rhino horns at \$30,000 per kilo, and replace the originals by resin copies?

Ton invites you to follow the Google group about thefts from museums: <http://groups.google.com/group/museumthefts>

Context Matters
“Princeton and Recently Surfaced Antiquities”

In 1983 the USA ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970). Article 7 includes the statement,

To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned.

In 2002 the Princeton University Art Museum agreed to return the fragmentary pediment of a Roman funerary relief that it had acquired in 1985 from New York dealer Peter Sharrer with funds provided by Mr and Mrs Leon Levy (inv. 85-34: Princeton University Art Museum 1986, 38, 39 [ill.]; Padgett 2001b, 47-51, no. 11). It turned out that the fragment had been discovered in 1981-82 at Colle Tasso near Tivoli and had been published by Zaccaria Mari. Michael Padgett, the then curator at Princeton and who was preparing a catalogue of the Roman sculptures, notified the museum's acting director who in turn contacted the Italian authorities (Anon. 2002). Susan M. Taylor, the museum's newly appointed director, was quoted in the press release about the return: “We are proud to be an active partner in the ongoing international effort to resolve ownership claims for stolen objects and in discouraging the illegal trade of art and cultural artifacts.”

This was not to be the end of the museum's return of antiquities. In 2007 the Princeton University Art Museum agreed to hand over, or transfer title, of a number of antiquities (Gill 2009; Gill 2010b; see also Godart and De Caro 2007). The eight pieces that were returned to Italy or transferred included four pieces that were purchased in 1989 (a Carian oinochoe, inv. y1989-53; an Attic red-figured psykter, inv. y1989-69; an Apulian loutrophoros and an Apulian krater, inv. y1989-20, -40), two purchases in the 1990s (an Etruscan oinochoe, inv. 1995.149; an Etruscan head of a winged lion, y1994-58), and two gifts made in the 1990s (an Etruscan black-figure skyphos fragment, inv. 1995-64, gift of Brian T. Aitken; Etruscan terracotta plaque with relief centaur (inv. 1995.129, gift of Ali and Hicham Aboutaam). The collecting histories prior to acquisition were left undisclosed although the psykter was reported to have been handled by Robert Hecht (Watson and Todeschini 2006, 177-79), and the Etruscan head seems to match a piece in the Medici Dossier (Isman 2010). The Roman funerary relief and four of the later pieces returned to Italy were acquired during the Assistant Curatorship of Robert Guy (1983-92). The other four pieces were acquired by Padgett.

In June 2010 an article in *The New York Times* revealed that Princeton's troubles were far from over (Eakin and Povoledo 2010; see also Isman 2010). The report revealed that there was a further Italian investigation into acquisitions by the museum either from or through Edoardo Almagià. Almagià had been

the source of a pair of Etruscan silver bracelets that had been returned to Italy from the Cleveland Museum of Art (inv. 1996.16-17). The Italian legal document also suggested that Padgett was implicated. He quickly gave a statement for the *Princeton Alumni Weekly* (Maynard 2010a):

After working so closely and cooperatively with the Italians in the past, I was very disappointed and surprised that this investigation is now taking place. I am reluctant to comment at length at this early stage, but I do want to clearly state that I am innocent of what the Italian prosecutor is apparently alleging.

Almagià was quoted in the same report, and was dismissive of Italian claims: “You give them your hand, they’ll take your forearm. ... What they took from Princeton [in 2007], it’s ridiculous. The museum has a right to collect; the dealers have a right to deal.” He also gave a longer interview (Maynard 2010b). Almagià continued to reject the Italian claims:

I have urged the Italian government to give back the objects it took. What they took from Princeton, it’s ridiculous. It’s ridiculous Princeton didn’t do anything to fight that. Museums should really be tough. Every American museum should fight for its right to acquire objects in the market. The museum has a right to collect; the dealers have a right to deal.

Such a view was reminiscent of the position that had been taken by James Cuno (Cuno 2008). More controversially, Almagià asserted the right of American museums to collect antiquities in an unrestricted way. “The Americans need to say: We believe in freedom, free markets, free enterprise. It’s a very serious ideological battle.”

What Almagià appears to be asserting is that North American museums and collectors have the freedom to collect antiquities irrespective of the ethical considerations relating to how they were removed from their archaeological contexts and how they left their countries of origin. Such an argument ignores the issues surrounding the recent returns of material from North American collections (Gill and Chippindale 2006, 2007a, 2007b). The president of Princeton, Professor Shirley M. Tilghman, was also quoted in the report (Maynard 2010a). “What is challenging is that the standards of provenance have been changing over the last 30 years — and rightfully so — and have become much more stringent.” This was suggesting that the ethical position of a major university collection like Princeton had been unaffected by the 1970 UNESCO Convention (agreed 40 years previously) or by the 1973 Declaration by the Archaeological Institute of America. Yet in fact, as events would show, the disputed acquisitions had been made within the previous twenty years when issues about recently surfaced antiquities were well known (e.g. Gill and Chippindale 1993).

The debate then went quiet, but on 20 January 2012 a simple list, without accession numbers, was released by the Italian Ministry of Culture indicating that Princeton would be returning further groups of material (Anon. 2012b):

centosettanta tra reperti archeologici interi e frammentati restituiti dal Princeton University Art Museum, tra cui un askos a forma di astragalo, due statuette di donna, di cui una che suona un tamburello e l'altra la lira, un pithos a figure rosse e bianche, raffigurante animali, e 166 frammenti (quattro di un cratere a figure rosse, cinque di rilievi architettonici, un gruppo di 157 elementi architettonici con figure di tori).

There was no immediate release by the museum, but on 25 January 2012 Princeton University issued a press statement (Anon. 2012a). The Princeton statement grouped together the large number of fragments:

Under the agreement, six works were returned to the Republic of Italy in December 2011. The transfer of title for the six returned items is an important aspect of the agreement because it recognizes that legal title rested with Princeton before the transfer and that the works were acquired by Princeton in good faith. The items that were transferred are a black-glazed askos; a pair of female statuettes; four fragments of a red-figure calyx krater; fragments of an architectural relief; a

pithos in white-on-red style; and a group of fragmentary architectural revetments.

It has subsequently been revealed that Princeton signed the agreement to transfer the objects in June 2011, and that the handover took place in December 2011 (Maynard 2012). It should be noted that while the Italian press release gave the number of pieces returned, the Princeton one grouped material together.

Using the press images issued by the Italian authorities alongside the descriptions in the various press statements and reports, it is possible to identify the pieces. They consisted of:

- a. “a pair of female statuettes” / “due statuette di donna, di cui una che suona un tamburello e l'altra la lira”. Apparently y1993-28, and y1993-28. Canosan “statuette of a woman playing a tambourine” and “playing a lyre”. Both Museum purchases and source unstated (Princeton University Art Museum 1994, 83).
- b. “fragments of an architectural relief” / “cinque [frammenti] di rilievi architettonici”. Edoardo C. Almagià gave four Etruscan architectural reliefs in 1995: inv. 1995-125, 126, 127, 128. A fifth architectural fragment, joining inv. 1995-127, was given by Almagià in 1999 (inv. 1999-4) (Princeton University Art Museum 1997a, 61; Princeton University Art Museum 2000, 91).
- c. “a group of fragmentary architectural revetments” / “un gruppo di 157 elementi architettonici con figure di tori” / “a group of Etruscan architectural terra-cottas”. These would appear to be the group of Etruscan “fragmentary revetments with painted and relief decoration” (inv. 1996-343.1-57) and the group of Etruscan “fragmentary revetments with painted bulls” (inv. 1996-48.1-100). Both groups (in total 157 fragments) were gifts of Almagià (Princeton University Art Museum 1997b, 103, 104).
- d. “a pithos in white-on-red style” / “un pithos a figure rosse e bianche, raffigurante animali”. Inv. 1999-8. Gift of Edoardo C. Almagià ... in honor of Allen Rosenbaum (Princeton University Art Museum 2000, 91, 93 [ill.]).
- e. “a black-glazed askos” / “un askos a forma di astragalo”. Apparently inv. 2002-156. “Gift in memory of Emily Townsend Vermeule, Honorary Degree Holder of the Class of 1989” (Princeton University Art Museum 2003, 154).
- f. “four fragments of a red-figure calyx krater” / “quattro [frammenti] di un cratere a figure rosse” / “a calyx krater attributed to the Attic vase painter Euphronios”. The krater fragments, attributed to Euphronios by Padgett and showing Ajax carrying the dead Achilles, were acquired in 1997 (inv. 1997-488 a-d). Museum purchase, Fowler McCormick, Class of 1921, Fund (Princeton University Art Museum 1998, 194, 197 [ill.]; Padgett 2001a).

It is perhaps significant that the museum suppressed the association with Almagià in its press release in spite of the fact that the *Record of the Princeton University Art Museum* had stated the links with Almagià in some of the cases.

The Princeton return had implications for other museums. The initial report had suggested that Almagià had been linked to other major collections (and was already associated with the return from Cleveland) (Eakin and Povoledo 2010). Maxwell D. Anderson, the newly-appointed director of the Dallas Museum of Art, identified two items purchased from Almagià that had been made in the 1990s (inv. 1998.74; 1995.115.1-2.M) and had them posted on the Association of Art Museum Directors (AAMD) object registry. Such a move turned the online registry from being a way of looking at recent acquisitions to a place where much earlier acquisitions could be scrutinised retrospectively. Anderson took a clear position in the 1980s over recently-surfaced antiquities (Anderson and Nista 1988; Wescoat and Anderson 1989; Anderson and Nista 1989; see also Butcher and Gill 1990) and was keen to ensure that his present museum was seen to be transparent in its acquisition policy. The Tampa Museum of Art has identified an Apulian loutrophoros that has been purchased from Almagià by a private collector (inv. 1987.037). The J. Paul Getty Museum acquired an Athenian red-figured cup (“reconstructed from fragments”) from Almagià in 1986 (inv. 86.AE.479; Walsh 1987, 163, no. 13). The formally stated source had been the “New York art market”. Boston’s Museum of Fine Art also seems to have acquired items from Almagià. These include a Roman imperial marble portrait statue (inv. 1991.534), and a series of Italian impasto pots, reportedly purchased in Basel, Switzerland, and subsequently

acquired via Almagià (inv. 1995.820, 821, 822, 823, 824, 825, 826, 827a-b, 828). It is clear that the museums mentioned here were not alone in acquiring ancient objects from this specific source.

The response of James Steward, the director of the Princeton Museum, to the return is worth noting. In the original January 2012 press release he was quoted (Anon. 2012a): “The spirit of these negotiations has sought to maintain scholarly access to important works of art while honoring international agreements relative to the disposition of cultural property.” He was uncomfortable with the criticism that Princeton had been less than transparent with the details about the return of antiquities. In a press interview Steward asserted (Maynard 2012):

Very few museums, if any, have in fact a policy of ‘complete transparency’ relative to acquisitions. Indeed, past agreements with donors, gallerists, and others may preclude such transparency. We continue to value these relationships, just as we do the public trust that is placed in our museum, and we seek to acquit ourselves of that trust while honoring the privacy of the individuals with whom we work.

Steward is a member of the Association of Art Museum Directors (AAMD). This body issued a “New Report on Acquisition of Archaeological Material and Ancient Art” on June 4, 2008. In the Statement of Principles:

D. AAMD is committed to the exercise of due diligence in the acquisition process, in particular in the research of proposed acquisitions, transparency in the policy applicable to acquisitions generally, and full and prompt disclosure following acquisition.

It is full disclosure that is seen on the website of a museum such as Boston’s Museum of Fine Art where the complete collecting history of an object is presented. It is full disclosure when an institution such as the J. Paul Getty Museum reveals the full background of the objects that it returned to Italy (Gill and Chippindale 2007a). Steward, who is not an archaeologist, may not, perhaps, understand the importance of “collecting histories” when it relates to ancient material culture (see Gill 2010a). And why should the museum fail to provide details of objects (with inventory numbers) that it has decided to return because it is considered to be the appropriate ethical action to take? The AAMD guidelines on the acquisition of antiquities also include:

E. Member museums normally should not acquire a work unless provenance research substantiates that the work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970. The museum should promptly publish acquisitions of archaeological materials and ancient art, in print or electronic form, including in these publications an image of the work (or representative images in the case of groups of objects) and its provenance, thus making this information readily available to all interested parties.

The concept of making “information readily available” is part of a transparent organization. Yet repeated requests to the appropriate member of the curatorial staff at Princeton have been left unanswered and presumably ignored. Steward concluded his remarks by confirming that the museum “is profoundly committed to honoring the integrity of cultural property and to stamping out illicit trade of all kinds in works of art, and now has among the most rigorous acquisitions and loan policies in the museum industry.”

Steward’s statement will perhaps be tested if further contested material is identified in the collection at Princeton. It is clear that other objects derived from Almagià can be identified in the collection through their publication in the *Record*. These include seven gifts that can be recognised in the period between 1987 and 1996, but it is not clear which other items in the museum were purchased from him. There was also a suggestion that Almagià was linked to a number of loans although their identities have, as yet, not been made public (Eakin and Povoledo 2010). It appears that the loans, several clearly Etruscan in origin, were made to the museum in 1995, 1996, 1997, and 1999. There was also an indication that a Tyrrhenian amphora was also under investigation (inv. 2001-218; Princeton University Art Museum 2002, 136, 137 [ill.]). A further piece was a bronze Villanovan cinerary urn in the form of a hut (‘una capanna villanoviana’) (Isman 2010). This appears to be an item purchased from an undisclosed source in 1999 (inv. 1999-70; Princeton University Art

Museum 2000, 91, 92 [ill.]). The hut itself is clearly identified in one of the Polaroids that forms part of the Medici Dossier (see Gill and Tsirogiannis 2011).

University museums should set an example for the highest ethical standards. Unethical acquisition policies should have no place in such places of learning. A sequence of Princeton's curators responsible for "ancient art" do not appear to have understood the intellectual consequences of acquiring recently surfaced antiquities. There are serious concerns that the museum was tardy in making a public statement about the most recent return, and that when it did so it failed to make key information available. This apparent lack of transparency only serves to damage the very trust that Princeton's museum director claims is important to his institution.

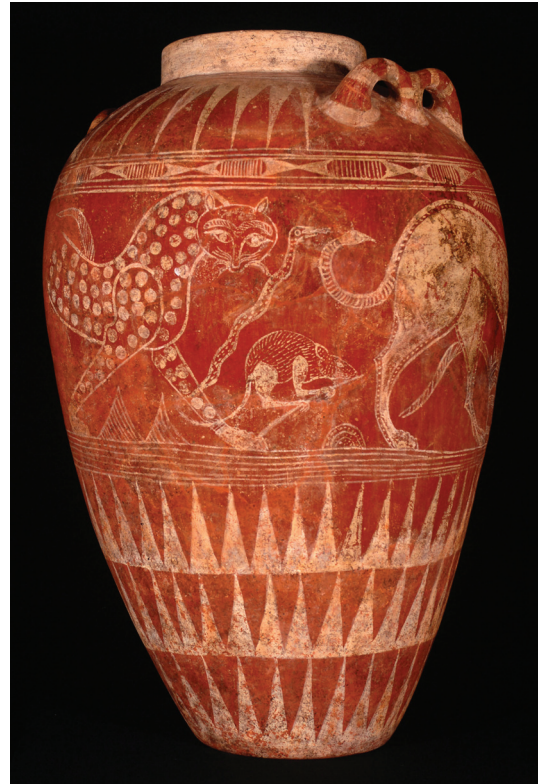
How can Princeton proceed and seek to restore its patinated reputation? One approach would be to learn from Maxwell Anderson's enlightened position. The museum could place the full collecting histories of antiquities acquired since 1983 on the AAMD object registry. Are there other countries that could have a claim on part of the collection?



Antiquities returned to Italy in January 2012. Source: MiBAC.



Pair of Italian terracotta statuettes returned by Princeton University Art Museum. Source: MiBAC.



Etruscan white on red pithos returned by Princeton University Art Museum. Source: MiBAC.

News

This covers the period September 2011 – February 2012

Egypt

The Egyptian Official Press Agency (MENA) has announced the appointment of Mustafa Amin as the new head of the antiquities service.

Cyprus

The Menil Foundation in Houston announced that it would be returning Byzantine frescoes from a church at Lysi in northern Cyprus to the island. The frescoes had been purchased in 1984. They will now be displayed in Nicosia.

Greece

The J. Paul Getty Museum has returned an Attica religious calendar to Greece. The inscription was acquired in 1979, but appears to have been seen in the vicinity of Thorikos in Attica in the period 1959 to 1961. The return may appear to be setting a precedent for objects that left their country of origin prior to the UNESCO Convention of 1970.

The Getty has also returned two parts of a fragmentary funerary relief that it acquired from Nikolas Koutoulakis in 1973. They are known to fit a third fragment at present in the Kanellopoulos Museum in Athens.

It has been reported that the Greek authorities have asked the Badisches Landesmuseum in Karlsruhe to return two pieces to Greece. They consist of a Cycladic figure and an Early Cycladic stone bowl. Harald Siebenmorgen, the director of the museum, rejected the request.

Greek authorities have made some arrests in northern Greece relating to the apparent looting of material comparable to what has been found in the early cemeteries at Sindos.

Some 77 items were stolen at gun-point from one of the archaeological collections at Olympia. They include a number of Geometric bronzes.

Italy

The Minneapolis Institute of Arts has returned an Athenian red-figured volute-krater to Italy. For the full discussion prior to this announcement, see: David W.J. Gill, "Context matters: the unresolved case of the Minneapolis krater." *Journal of Art Crime* 5 (2011), 57-61.

The North American healthcare company Humana has returned two Roman statues (one of Fortuna) that had been on display in its premises. It appears that at least one was purchased from a New York antiquities dealer.

Princeton University Art Museum announced that it had returned a significant number of antiquities, including Etruscan architectural terracottas, to Italy.

The Metropolitan Museum of Art announced that it had returned pottery fragments to Italy. These had formed part of the private collection of the MMA's curator Dietrich von Bothmer. It is unclear how the fragments passed into the Bothmer's collection.

The trial of Robert Hecht in Rome expired due to the statute of limitation law. Hecht died in February 2012 in Paris. Hecht was directly linked to a number of antiquities including the Sarpedon krater, and other items in Boston, Cleveland, Copenhagen, and Princeton.

Turkey

The upper part of the “Weary Herakles” has been signed over to Turkey by Boston’s Museum of Fine Art. The torso can thus be reunited with the lower part of the statue that was excavated at Perge. The torso had featured in the exhibition *Glories of the Past*. The show contains objects that have now been returned to Greece and Italy.

London market

Two terracotta protomai from southern Italy were offered at a London sale at Christie’s in October 2011. The pair appeared to feature in the Schinoussa archive and were thus linked to Robin Symes. The pieces were left unsold after concerns were raised (although it should be noted that Christie’s decided that they should not be withdrawn).

A Roman marble portrait head that was stolen from Sabratha in Libya was offered for sale by an auction house in London. The head was stolen in 1990, but the auction house presented what appears to have been a falsified collecting history dating back to the mid-1970s.

Munich market

An Athenian black-figured amphora offered on the Munich market was identified by Christos Tsirogiannis from one of the Swiss photographic dossiers. The amphora had previously formed part of the Waltz collection in Munich.

Cycladic fragments from the Keros haul (derived from Greece) were on sale by a Munich auction-house.

New York market

A Peucetian clay stamnos that could be recognised from one of the photographic dossiers seized in Switzerland was offered in an auction in New York in December 2011. The seized photograph clearly shows deposits on the surface of the pot.

An Apulian loutrophoros, attributed to the Varrese painter, was offered at auction in New York. This was known to be linked to Robin Symes. An Apulian dinos in the same sale was identified from the Schinoussa archive.

A New York antiquities gallery offered a pair of Apulian volute-kraters that could be identified from two separate photographic archives.

A North American coin-dealer, with interests in a Swiss-based company, was arrested at the New York International Numismatic convention. Two coins with an apparent value of \$2.8 million were seized.

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The Empty Frame “Giorgio Vasari, Art Thief”

A work titled *The Battle of Anghiari* has been much in the news lately, which is surprising considering it was begun in 1505 and lost to history sometime soon after. The work had a decidedly inauspicious beginning. Pope Leo X remarked that the artist “will never do anything for he begins by thinking about the end before the beginning of his work.” Its creator was given a commission to decorate one wall in the Hall of Five Hundred in the Palazzo Vecchio in Florence. The work was to be displayed opposite a planned work by Michelangelo (another violent depiction, this one of the Battle of Cascina, also lost to history).

The *Battle of Anghiari* depicted a rush of men, swords and horses — or at least that appears to be the gist of the work based on Peter Paul Rubens’s copy. The artist of course was Leonardo da Vinci, and the painting would have been one of his final major works. He used a novel technique at the time, applying oil color to the wall along with a thick undercoat of wax and other materials. In a rush to finish the work, he ordered large charcoal braziers be brought close to the work in progress and hung from the ceiling to dry the upper part of the work. This resulted in a mess of smoke and melted wax and prevented the work from being finished. Michelangelo’s cartoon across the hall was eventually cut into pieces.

In recent years Maurizio Seracini has argued that Vasari painted over the *Battle of Anghiari*. He has used non-invasive measures like drilling small holes in the mural to reveal what may be behind the wall. His research has been controversial, but initial reports indicate that the chemicals and pigments found behind the Vasari mural may share chemical characteristics with other works by Leonardo. The skeptic must wonder what could be so terrific about the hidden Leonardo that would justify the removal of Vasari’s mural.

Vasari’s mannerist work in the Palazzo Vecchio has lessened in esteem as the centuries have gone by. But great admirers of cultural heritage will note that in the Villa Giulia, the large court which a visitor sees on entering, was designed by Vasari. The court is a beautiful and tranquil setting, preparing the viewer for the classical works and grave goods which circle it. Perhaps it is fitting that the archaeological material on display there has been recovered from places like the Met and the Getty, and are now on display around a court which was one of the crowning achievements of Vasari — the first art historian, and the artist who ‘stole’ the last major work of Leonardo from history. One wonders if Vasari thought, no matter what I do, I can never surpass you Leonardo. It seems odd that Vasari spent so much of his career building up the importance of Florentine artists, only to cover up one of his last major works. As Vasari wrote in his book, *The Lives*:

It would be impossible to express the inventiveness of Leonardo’s design for the soldiers’ uniforms, which he sketched in all their variety, or the crests of the helmets and other ornaments, not to mention the incredible skill he demonstrated in the shape and features of the horses, which Leonardo, better than any other master, created with their boldness, muscles and graceful beauty.

Why cover it then? Why spend so much time building up the importance of this artist, only to cover his last flawed melted wax mess of a depicted battle? Perhaps the work did not live up to Leonardo's other creations, therefore a lesser work. And yet the quote above would seem to dismiss this explanation. It is not really lost, the work was not misplaced, rather a conscious decision was made to cover the work, to steal the space and the notoriety of the original artist. Would we be thinking and wondering about the importance of Vasari's work in the Palazzo Vecchio today if it perhaps did not cover the work of the master Leonardo?

At the very least Vasari had only a selective desire to preserve works of art. He once said "[t]here is more glory in making an old building healthy and perfect than in tearing down to rebuild anew." A beautiful call for cultural heritage preservation, but we sometimes have trouble living up to our aphorisms. Vasari seems to have painted over a work by the artist he admired most.



“Peter Paul Rubens’s copy of *The Battle of Anghiari*”

Lessons from the History of Art Crime “Mark Landis: the Forger Who Has Yet to Commit a Crime”

To trick the art world has been the primary motivation of nearly all of history’s known forgers. The financial gains aside, forgers often seek to fool the art community as revenge for having dismissed their own original creations. Traditionally, this takes two forms: first, forgers demonstrate their ability to equal renowned artists, by passing their work off as that of a famous master; and second, they show the so-called experts to be foolish, by thinking that the forgers’ work is authentic. Money has been only a secondary concern for many of history’s known forgers — an added bonus after the initial thrill of success at having fooled the art community.

But one very unusual forger, the subject of an exhibition called “Faux Real” at the University of Cincinnati that opened on April Fools’ Day of this year, is an exception to just about every rule.

The exhibit (for which I and another ARCA staff member, Derek Fincham, provided some didactic material) features works by Mark Landis on loan from a number of the forty-plus museums in the United States to which he donated paintings that he claimed were originals by important artists, but which in fact he had painted himself. He is unusual in that he is the most famous forger who apparently has never broken a law. He has committed no act of fraud nor other criminal offense, because he has never accepted money for his forgeries – not even tax breaks. If no one has been defrauded, then there is no victim who might bring criminal charges.

Landis appears to have been motivated neither by revenge nor by money. He may be the first forger in history to practice his art without the goal of the acquisition of cash or artistic satisfaction. Instead, Landis seems to have been motivated by two desires. First, he enjoyed being made to feel important, wined and dined by the grateful museums to which he donated his relatively simplistic forgeries, which were never meant to fool anyone for very long. Small museums in particular rely on donated objects and are understandably appreciative of a donor, which is what Landis presented himself as, using a variety of aliases. Not wishing to “look a gift horse in the mouth,” it was only after Landis had left, having been catered to and showered with thanks, that staff would examine their new gift and discover that it is a rather mediocre copy. Landis’ second motivation was to gift objects in the name of his family, as a way to honor them — he did not have an abundance of authentic objects of value to offer, so he made some himself.

We might consider that Landis is a selfless forger and one who is relatively harmless. He has none of the passive-aggression and rash bravado of renowned art forgers like Eric Hebborn, Han van Meegeren, or Elmyr de Hory. It is not clear if he has ever actually broken a law and, aside from a show of gratitude and some food and wine, the museums who were gifted his forgeries have not apparently been defrauded. And yet he has donated his forgeries to over 40 museums, making him one of the more prolific, if not skillful, forgers

in history. He is less in the mould of the majority of famous forgers than he is a quirky identity impostor, perhaps like the man known as Clark Rockefeller, who spent years under an assumed identity, eager to be treated with reverence, passing as a member of the American old-money aristocracy.

Landis did not try hard to fool museums. He sometimes made forgeries simply by painting directly over a photocopy of the original paintings. The forgeries were only good enough to fool someone at first glance, but that was enough for Landis. He would be praised and thanked effusively by the small museums to which he donated these artworks. When he left the museum, the curators would examine their new “trophy,” and very quickly see that it was not what Landis claimed. He is by no means a “master forger,” nor was he trying to be. He is an eccentric con man who may continue to carry out his odd prank in the future. But for now, the fruits of his labors are on display at an exhibition well worth attending.

The lesson for museums? Perhaps one should look a gift horse in the mouth.

“Headache Art”

The following essay is an excerpt from Joshua Knelman’s book Hot Art (Tin House, 2012), and is published with permission from the author. Knelman’s book is reviewed in this issue.

Giles Waterfield, director of the Dulwich Picture Gallery in London, was supposed to be relaxing. He woke up in Scotland on his first holiday that year, excited about attending the Edinburgh International Festival—music, poetry, literature. He hadn’t even left a telephone number where he could be contacted by staff.

Waterfield was out of bed by 9 AM and strolled from the art dealer’s apartment where he was staying to nearby Waverley train station, where he bought a copy of *The Times*. He scanned the front page of the most venerated newspaper in England. The date was August 15, 1981. “It was right there in bold letters: ‘Rembrandt Stolen for Third Time,’” remembered Waterfield.

Waterfield and I met because my younger sister was studying art history at the Courtauld Institute of Art in London. Waterfield was her professor and thesis adviser, and she mentioned to him that I was in the middle of writing a book about international art theft. “I didn’t realize that Giles was the director of Dulwich when it had a Rembrandt stolen,” she told me. “And apparently it was the third or fourth time that painting was stolen. If you want to talk to him, he said he’d be willing to tell you about his experience. I think it was a ransom case,” she said.

“It is a director’s worst nightmare to have a famous painting stolen from their gallery,” Waterfield told me when we sat down at a pub around the corner from his apartment on a damp London afternoon. Waterfield is in his mid-fifties, trim, with a tuft of grey hair and very calm, considered blue eyes.

Reading the article on the front page was slightly humiliating, he recounted: a high-profile theft, and of a painting that had previously been stolen—twice. Dulwich Gallery came off as irresponsible, and now one of the stars of its collection was gone for the third time. Waterfield clicked through the two earlier thefts, although both had taken place before he was the director.

“The first took place on New Year’s Eve 1966, I believe. Ten paintings, including the Rembrandt, were stolen.” A major bank robbery had also taken place in London around the same

time. The stolen works were later recovered at Streatham Common, in a bag under a bush. “Much speculation was given to the idea that the bank robbers had stolen the paintings as an insurance policy and traded them with the police for a favour.” That was the rumour, but it was never proven. “Everyone was just happy the art came back.”

The second time the Rembrandt was stolen was less sinister but more bizarre. “It was an eccentric theft,” noted Waterfield. The portrait disappeared in the middle of the day, during business hours. When staff members saw the blank space on the wall, they got into a car and drove around the neighbourhood, searching for a suspect. A few streets away they saw a man with a large beard riding a bicycle up a hill. There was a package in the bicycle’s basket, about the size of the stolen painting. A staff member pulled up the car beside the bicycle and asked, “Excuse me. What do you have in your bicycle basket?”

The man admitted it was, in fact, Rembrandt’s portrait of Jacob de Gheyn III. He didn’t try to outrun them on his bike. Instead he complained that the gallery was always closed at the most inconvenient times. He planned to copy it and then return it to the gallery. He didn’t understand what all the fuss was about. The police didn’t press charges.

Now the painting was gone again, and Waterfield’s vacation was over. He was on the next train back to London.

Dulwich Picture Gallery sits back from the road on a lawn dotted with trees. Opened in 1817, it is widely considered to have been the first public art gallery in Britain. In 1981 Dulwich had recently reopened after a renovation, and it was Waterfield’s mission to garner the gallery more attention. That wasn’t a problem anymore. “The media were all over us. And so were the police.” He remembered looking at the empty spot on the wall. “There was a sense of real violation,” he told me.

Dulwich held a major old-master collection of seventeenth- and eighteenth-century paintings, and one of the main draws was the Rembrandt room, which held several paintings by the revered Dutch artist, including the now missing portrait. Staff knew it as Gallery Eleven. Waterfield had last seen the painting three days earlier. He knew it

well: he'd spent hours looking at Jacob's face. Rembrandt Harmenszoon van Rijn had painted the portrait of Jacob de Gheyn on wood early in his career. Born on July 15, 1606, the artist was the son of a miller and a baker, one of nine children. He had success as a portraitist at a young age, but died poor, outliving his wife and son. After his death, he became one of the most treasured painters in history, and one of the most popular among art criminals—close to two hundred Rembrandts are listed as stolen.

The portrait at Dulwich was a well-known easy target. The frame hung on just two hooks, for a reason: "The hanging system was designed for easy removal so that even an idiot could move it if there was a fire," explained Waterfield. When I strolled into Gallery Eleven, the portrait was the first in sight, facing me. It hung at chest level and was small compared to most of the works in the room. So small, in fact, that it was easy to understand the inclination to grab it off the wall and run. Jacob stares out darkly from the glistening canvas, almost daring you, "Take me."

"There was one piece of good news," Waterfield told me. "Two of the thieves had been caught on camera." But as the days passed Waterfield lost hope. The media decamped. So did the police. Dulwich went from circus to graveyard. For eleven days nothing happened. Every once in a while Waterfield would get a phone call from a friend wanting to commiserate. He got used to these calls. On the morning of Tuesday, August 25, Waterfield was sitting at his desk in the gallery when the phone rang. He assumed it was another pity call.

"Is this the managing director of the gallery?" The voice was male, with a foreign accent.

"Yes, I'm the director," Waterfield answered.

The voice said, "I am a German businessman and I act as a broker. I deal in pictures, sometimes for private clients in America interested in very high-quality works." He told Waterfield that a person was offering to sell him a Rembrandt painting for one million pounds.

"It is a portrait of Jacob de Gheyn," said the voice. "I have looked it up in a catalogue of Rembrandt paintings, and I see it belongs to you."

Waterfield stayed calm, his voice steady. "It has been stolen from us," he said.

"Oh. I have not seen any newspaper report of the theft," said the voice. "I would like to help you but I need to discuss it with you further." Then he asked, "Can you fly to Amsterdam tomorrow to talk about it?"

The question floated in Waterfield's mind for a moment.

"Yes, I think so," he answered. Of course he could. It was his Rembrandt. He'd do whatever the man on the phone commanded.

"Is the picture insured?" the voice asked.

"No, because the premiums are too expensive for the gallery, but there is a reward."

"How much?"

"Five thousand pounds."

"Not much for a Rembrandt," the voice laughed.

"Ours is a poor gallery," said Waterfield.

The voice laughed again.

"May I tell the police?" Waterfield asked.

"I would prefer not at this moment," the voice answered. "There is a need for haste, as there is an interested American buyer coming to Europe on the weekend."

Waterfield agreed to fly the next day. The voice said he would call back in one hour with further instructions. Waterfield hung up the phone and ran all the way to the bursar's office at Dulwich College, which at that time was responsible for the gallery. The two men decided to ignore the warning and call the police, who agreed to send an officer to the gallery.

Meanwhile, the voice called back at 11:15 as promised.

Waterfield had already arranged his flight to Holland. He would arrive at the airport at noon, and the voice instructed him to take the airport bus to the Schiphol Hilton hotel. The bus was free, he added, consolingly.

"Could you tell me your name?" Waterfield politely inquired.

"Müller," said the voice. It was a common German name.

Müller provided further instructions. Waterfield should go to the reception desk at the Hilton and ask for Mr. Müller. Agreed. Waterfield hung up.

The police arrived at the gallery too late for that conversation, but now they attached a tape recorder to

his phone. This was 1981, and the tape recorder was big, Waterfield remembered. “It was a low-tech offering. Not much of a secret weapon, but it would do.”

Then the police left him alone. An hour passed, and Waterfield suddenly remembered that his passport had expired the week before. “There was a passport strike in progress!” He made a few phone calls. There was something called a Visitor’s Passport that he could pick up at the post office. He rushed around London to get some passport photos, then to the post office. Success. When he returned to the gallery, he found a message from a Detective Chief Inspector Evans, who was requesting a meeting. He went to see the detective.

DCI Evans had white hair and a relaxed smile. He coached Waterfield on what to say to Müller. “This whole thing could be a hoax,” the detective warned, and in his opinion it probably was. In case it wasn’t, though, the DCI and another police officer would make the trip to Amsterdam as well. Waterfield was relieved. “This James Bond stuff wasn’t my thing,” he said.

In Holland, the Dutch police would be the active officers; the Brits weren’t going to be allowed even to observe the meeting. The night before the trip, DCI Evans gave Waterfield this advice: “Get a good night’s sleep.” That was not possible.

The next morning Waterfield flew to Amsterdam. In the arrivals lounge he caught sight of another British detective he had met, a Detective Inspector Sibley, but he pretended not to recognize him in case Müller was watching. Waterfield skipped the free bus ride and hailed a taxi. The taxi driver scolded him for not taking the free bus.

The Hilton lobby was anonymous, comfortable, and not large. At reception Waterfield asked for Mr. Müller. The receptionist paged the German, but there was no sign of anyone. Maybe it was all a hoax? Waterfield started to relax. He walked a few paces away. Then a stranger appeared beside him. “Mr. Waterfield?”

He recognized the voice.

Müller was about six feet tall, receding hairline, overweight, rings of sleeplessness under his brown eyes. His style was garish, his jacket and tie brightly coloured. “Orange is what I remember most,” said Waterfield. The stranger steered the gallery director toward the hotel lounge. It was crowded, but oddly, nobody sat near them.

Müller told Waterfield that he had a wife and children and that his wife was worried. It was a nice touch, a personal detail that put Waterfield at ease. Maybe this man was just trying to be honest and helpful. Maybe he was just trying to

get Waterfield’s painting back. Müller said exactly that: he was an honest businessman who wanted to help the gallery director, and he was prepared to cooperate with the police, but not at this point.

Müller said he felt he deserved 10 per cent of the painting’s value as a finder’s fee. “I’m not used to dealing with stolen property,” Müller told Waterfield. Müller said that he had been contacted by an intermediary but that even the intermediary did not have the picture. Someone else did—someone he didn’t know.

“I’ve now seen reports in German and Dutch newspapers suggesting that the value of the painting is one million pounds. One hundred thousand pounds seems like a suitable sum,” Müller said.

“Is that your price?” Waterfield snapped a little too quickly. The director was repelled.

“Yes,” Müller answered. “We must hurry as the American buyer coming this weekend is prepared to pay one million dollars. This should be sorted out by the weekend. I would prefer you to have the painting because of my concern for the gallery.”

Waterfield probed, just as DCI Evans had instructed him: “I need proof that the picture is available before I can persuade my chairman and bursar to pay out. I am willing to believe you, but it is not in my hands. I cannot make out large cheques. I need to know what is on the back of the picture, and I also need a photograph.”

Müller was irritated. “I do not see the necessity, but I will make a telephone call.” Müller mentioned that he was thirsty. Waterfield felt obliged to buy him a drink. Müller ordered a tonic, Waterfield an orange juice—non-alcoholic choices. Both men wanted to stay sharp.

Waterfield watched the German businessman leave the lounge to make his phone call. He came back ten minutes later and said, “I can tell you what is on the back of the picture this evening. I don’t think it’s essential for you to have photographs.”

Waterfield replied, “I think I will need them to persuade my chairman and bursar.”

Müller said, “I will telephone you this evening with a description of what is on the back of the picture.”

The two strangers sipped their little drinks across from each other. Waterfield probed again, this time for personal details. Müller said he had graduated from Harvard Business

School, had gone on to Cambridge to study English literature, and spoke five languages. He had been an investment analyst. One of his partners had been involved in criminal activities of a vague nature, and Müller had lost a lot of money. It was because he'd lost so much money that Müller wanted the 10 per cent.

It became obvious to Waterfield that Müller wanted him to leave the Hilton first. Müller suggested that he catch the next plane to London, but Waterfield had other plans: he was scheduled to meet with police. He told Müller he wanted to see the treasures of the Rijksmuseum. So when he left Müller that's exactly where he went.

At the museum Waterfield didn't quite know how to act. He suspected he was being followed, so he started to walk quickly up and down flights of stairs, looking over his shoulder. He'd turn corners sharply, retrace his steps. He'd walk into a washroom and then leave immediately. Nothing. At the cafeteria he tried to choke down a sandwich, but his appetite had vanished. Finally he used the phone number he'd been given for Detective Constable Bosworth Davies, another British detective who had followed him to Holland.

The DC was boiling with impatience. "What happened!"

Waterfield refused to get into details on the phone. DC Bosworth Davies gave him the number for the Dutch police contacts. Waterfield called them from the same phone and arranged to meet them at another hotel, the Prinsengracht. Evans and Sibley would be there as well.

It was a sunny afternoon, which felt odd to Waterfield. He couldn't enjoy the weather. He strolled along a gorgeous canal to the hotel, where a stranger lounging outside shot Waterfield an almost imperceptible smile, then disappeared. Evans and Sibley were waiting upstairs in a room. Waterfield told them what he'd discussed with Müller. The detectives said he should go back to London and wait it out. He took a flight back. At eleven o'clock that night the phone rang and he turned on the tape recorder. It was Müller.

"Yes, good evening Mr. Waterfield."

"Oh hello, is that Mr. Müller?"

"Yes."

"Yes, hello."

"How are you?"

"Fine, thank you."

Müller said, "Well, I have here a few things which were on the back. There were some things they couldn't read because it was very, very small. They needed a special glass for it but they didn't have it with them but they could read, um, it's as follows: XTR..."

"Yes."

"TMUM..."

"Yes."

"and M... U... N... US..."

"Right."

"then M... O... I..."

"Yes."

"I... S. And then a separate R. And then the museum, Amsterdam 1952. And that's on the backside."

"Fine," Waterfield said.

"Is that correct or...?"

It was correct.

The director insisted on photographic proof of the painting. Müller wasn't happy but agreed to try. He'd have to phone back. Click.

Waterfield tried to get some sleep. Life had become absurd. The next morning he carried the tape recorder to work under his arm. He tried to conceal it but it was big. He couldn't concentrate. He sat around feeling nervous. His phone would ring. He'd turn on the recorder and answer. A friend: "Giles, how are you?" Turn it off. He'd lie. "Great, great. Never better." Hang up. Wait. Phone would ring. Tape recorder again. An artist. Turn off the recorder. At noon Müller called. Tape recorder running.

Müller said the photographs should be ready by evening. Waterfield should go home after work and wait at his flat for a phone call with further instructions on where to pick up the photos. Müller warned Waterfield not to talk to the police and added that when Waterfield went to get the photographs he should park his car at a distance from the pickup location. He warned, "Be careful."

He called back a few minutes later, wanting to make sure Waterfield wasn't on the phone with the police. The police, in fact, were at Dulwich Gallery. Waterfield walked back to his

flat. The sky darkened, and so did his mood. DCI Evans kept phoning to find out if a meeting place had been arranged. No news. Waterfield waited. His mood sank deeper. Then at 8 PM the phone rang. Tape recorder on. It was the dreaded voice.

Müller had decided to tell Waterfield a few details about the theft. He said it was an inside job. One of Waterfield's staff was an accomplice. For Waterfield, who trusted his staff, this was horrible news.

Then the voice told him to go to the Playboy Club. "Take somebody with you," instructed the voice, "for your own health." The London Playboy Club had opened in 1965, after gambling had been legalized. Girls in bunny suits fawned over men as they stared at legs and lost their money. In 1981, the Playboy Club branch Waterfield was told to visit was the most profitable casino in the world.

When he arrived at the club, these were the instructions: He should ask for the doorman. The doorman would possess an envelope from a man called Leo. Waterfield should collect the envelope and leave immediately. The proof Waterfield was looking for, the photographs of the stolen Rembrandt, would be inside. It was a simple plan. Waterfield hung up. Was somebody from the gallery involved? And he'd been warned about his safety.

Waterfield went directly to meet with DCI Evans. Evans was in a bright mood and greeted Waterfield warmly. "Well, Mr. Waterfield? I can't call you that all the time. What's your first name?"

"Giles."

"Well, Giles, enjoying it, are you?"

"No, I am not."

They went to the Playboy Club. DC Bosworth Davies rode along. Bosworth Davies had been a rugby player at Cambridge, and his pure physical strength reassured the gallery director. Waterfield parked illegally near the club. "For the first time in my life I wasn't worried about getting a parking ticket," he told me.

As Bosworth Davies and Waterfield left the car, a stranger walked past and nodded. "Hi Boz," said the undercover officer.

Waterfield entered the Playboy Club. He felt as if he were on stage but didn't know where the audience was or who they were. He asked for the doorman by the name he'd been given.

"Oh, he's away on holiday," a staff member at the club finally told him. Then the Playboy Club employee pointed to

the door. "But try out there." Waterfield left the club. A small group was gathered near the door.

"Envelope from Leo?" Waterfield asked them.

A man looked at him for a moment, then handed Waterfield an envelope. Waterfield took it and walked briskly back to the car. The detective wouldn't let him open the envelope until they arrived safely at Waterfield's apartment, which was now feeling a little crowded: nine policemen were camped in his living room. Eight of them were drinking beer. The inspector liked whiskey. Waterfield was nursing club soda.

Bosworth Davies delicately eased the mouth of the envelope flap apart, reached inside, and pulled out nine Polaroid pictures. Waterfield couldn't believe it. Each Polaroid featured the Rembrandt in a different and unglamorous pose. In one, the canvas was propped up behind a rusted sink. In another it leaned on a graffiti-stained wall at the top of a squalid set of stairs. The pictures were somehow pornographic. It was kind of a fuck-you gesture: instead of photographing the painting on a lovely velvet carpet, they'd put it in a dirty washroom.

There was no doubt, though: Müller's men possessed the masterpiece.

“Appendix on Forensics of Forgery Investigation”

The following text was provided by the author for didactic material, and was used as wall copy in the exhibition “Faux Real,” on the career of art forger Mark Landis, held at the museum of the University of Cincinnati, which opened April 1, 2012, and is curated by Aaron Cowan. This text is a preview of Charney’s forthcoming book, The Book of Forgery, to be published by Phaidon in 2013.

The world of forensics is both fascinating and potentially confusing to non-scientists. Since Martin de Wiild first used forensic examination to authenticate van Gogh paintings in the first decades of the 20th century, science has been one of the key means of distinguishing fakes from originals in the art world. The complexity of the science employed by conservators and specialists means that non-scientists are confronted with processes and terms about which they know very little. While a true understanding of these techniques and terms requires intensive study, the following glossary offers a quick-reference for those who would like to know more about the forensic techniques used in the study of art.

Dendrochronology

The study of the age of wood is one that does not require hi-tech tests. The growth rings of a tree can be measured, sometimes with the naked eye, and then compared to computerized databases of spacing between growth rings in various woods. When a match is found, the number and spacing of growth rings can determine the age of the tree from which the panel was cut. This works best with trees like oaks, often used for panels in northern Europe. The preferred poplar wood of Italian panel paintings (a favorite because it resisted insects) does not form regular rings, and therefore is not easy to date using this method.

Ultraviolet Light

Using UV light on a painting causes some materials to fluoresce. This is particularly useful to see where paintings might have been retouched by past restorers. The natural resin used as a varnish in most Old Master paintings tends to fluoresce in a pale green. If a portion of the painting does not fluoresce in this color, it suggests that it was painted over the original varnish, and is therefore younger than the painting.

X-radiography

While we associate x-rays with medical examination of bones, they were used on paintings almost as soon as they were invented, back in 1896. X-ray sensitive film sheets

are placed on the surface of an object, and x-rays are then beamed through the object from behind or beneath. The resulting x-ray imprints onto the film after having passed through the object. Most materials used in painting are fairly transparent to x-rays, which means that the more absorptive materials, like lead white, will show up darker on the x-ray and therefore more prominent. This technique is particularly helpful for finding under-drawings and under-painting, *pentimenti*, that demonstrate the creative process of the artist as he experimented with the positioning of figures and objects in his final painting.

Infrared Radiation

Using a section of the electromagnetic spectrum that is beyond what we can see without scientific assistance, IR can show layers hidden beneath the surface of a painting. Under-drawings and *pentimenti* may be revealed because pigments which are opaque in visible light become transparent in the infrared region of the spectrum. This is best for locating carbon black, used frequently for under-drawings, since it absorbs infrared radiation and therefore looks dark in IR images. This method may be used with infrared-sensitive photographic film or with infrared reflectography (IRR), which uses a special digital camera to photograph this extended portion of the spectrum.

Ultraviolet Fluorescence & Polarized Light Microscopy

Conservators may want to look at cross-sections, tiny slices from a painting that show each layer of pigment, much as a geologist might look at layers of earth, seen from the side, so that each layer was evident. These cross-sections should show the ground (gesso), pigments, and varnish on top of a painting, and can be subjected to further scientific tests. UV light applied to the cross-section helps to identify the materials in the cross-section. Polarized light microscopy uses a special microscope with a polarizing light filter to look at the crystalline structure of pigment samples, which tells scientists which pigments are present, much like looking at a blood sample can identify the pathogens in the bloodstream.

Scanning Electron Microscope

To really get up close in an examination, conservators can turn to an SEM. This microscope shoots high-energy electrons into a sample and records how they interact with the particles just below the surface, showing the topography of the surface (think of the texture of a van Gogh painting), and even the chemical composition of pigments. SEM can magnify up to 100,000x—quite a difference when compared to a normal binocular microscope, which magnifies 50x.

Energy Dispersive X-ray

EDX follows up on the results of an SEM examination. It allows scientists to analyze the SEM data to determine the elemental composition of a layer within a cross-section. While it cannot tell us exactly what each layer is, it can identify what elements a layer contains (lead, copper, iron, etc). It is then up to the scientist to determine whether those elements make sense and what the sum total of those elements would equal in terms of pigments and varnishes.

X-ray Diffraction

XRD uses a type of x-ray that scatters in a “fingerprint” pattern when it encounters the crystalline structure of pigments. By analyzing the scatter pattern (like a criminal investigator might examine blood spatter from a gunshot wound), materials and pigments may be identified.

Raman Microscopy

Low-intensity laser beams are used to identify the molecular structure of both organic and inorganic pigments. By comparing with a database the way that the laser wavelengths (called the Raman spectrum) are scattered by the pigments they encounter, the pigments can be identified.

Fourier Transform Infrared Spectroscopy

FTIR shoots beams of infrared radiation into paint samples. Because materials absorb this radiation at different wavelengths, a record of the resulting wavelengths can be used to identify materials. Paints are almost always composed of multiple pigments and binders, making them less-than-straightforward to analyze. Further, every artist until the 19th century mixed their own paints and had their own “recipes” for their preferred colors, specific combinations of pigments in varying proportions. Guercino used an instantly-recognizable slate-infused dark blue, for example, and Yves Klein famously designed his own cobalt blue, which he patented and can be purchased today at any paint shop. FTIR microscopy is helpful in identifying binders, like egg or linseed oil, and also can spot unexpected materials that are grounds for suspicion, such as

shellac, that should not be in an authentic painting.

Chromatography & Mass Spectrometer

To determine exactly what organic components make up a paint requires breaking the components apart. This may be done using chromatography, in which a paint sample is dissolved and the gas it releases is trapped and analyzed. The gas is further broken down in a heated column that causes the molecular components to separate. A mass spectrometer attached to the chromatograph then records the composition of each molecular component, resulting in a GC-MS analysis (GS for “gas chromatography” and MS for “mass spectrometer”).

High Performance Liquid Chromatography

HPLC uses liquid to draw a sample through a porous material that draws out and separates the components of the sample. This is used primarily to identify organic dyes.

Radiocarbon Dating

Also called Carbon-14 Dating, this is probably the best-known of the tools that we are discussing. It is a technique in which a tiny sample of an organic (carbon-based) substance is destroyed and the resulting gases captured. It works only for organisms that took in carbon from the air (such as plants and animals). The amount of radiation in radioisotope carbon-14 (an element that appears in all organic matter) that was in the sample is then recorded by a computer, and can be used to calculate the age of the organic substance when it died, or ceased to continue to grow. As soon as the organic material stops growing or dies, the amount of radiation in the carbon-14 begins to lessen, in a process called radioactive decay. Since scientists know how much radiation should be present in carbon-14, and they know the rate at which it decays (the radiocarbon half-life, or how long it would take for half of the radiation to disappear), if they can determine the amount of radiation left in the carbon-14 of a sample, they can calculate when the decay started. This technique was invented in 1949, but ironically the nuclear testing of the 1950s altered the radiation levels throughout the planet, meaning that organic matter from the 1950s onward does not adhere to the natural “rules” of the pre-nuclear era. This technique may be used for organic materials up to around 50,000 years old (as materials older than that do not have enough carbon-14 remaining to analyze), for which it usually has a plus-minus 200 year level of accuracy. It is therefore far better at determining whether an archaeological object, a mummy for instance, is from 500 BC or 200 BC, than trying to determine whether a wooden sculpture is truly by Donatello and was carved in 1415. It could only tell us that the wood of the sculpture had been felled sometime within a century, plus or minus, of the date in question. Organic material from 1950 or later adheres to

a different set of rules thanks to the radiation after nuclear testing, and can often be aged accurately to within one year. This caused trouble, as we saw in the section on wine fraud, because while wine can be tested to see if it was made between 1950 and the present, if it was made in 1940 it will test only with a plus-minus two-hundred year accuracy, meaning that it could be from 1940 or it could be from 1840. Yet even these tests can be fooled – it was noted that Chinese forgers were injecting a radioactive isotope into forged vases, so that the vases would carbon-date to the correct age, even though they were made in the modern era.

X-ray Fluorescence Analysis

Some of these techniques require the invasion or destruction of a small portion of the material in question in order to analyze it. It is of course preferable to use non-invasive, non-destructive analytical techniques whenever possible. X-ray fluorescence analysis examines the elements present in the surface and layers just beneath without damaging the material. Other techniques are borrowed from medical science, like optical coherence tomography (OCT), which examines art the way doctors examine patients using a CT scan.

Fingerprint & DNA Analysis

Considering artworks as physical objects that will have been handled over the years, it makes sense that fingerprints or DNA sample analysis might be employed to determine who handled the work in question. This is a rather recent addition to the investigator's arsenal, at least in applying these techniques to art. But as with a crime scene, artworks can be tampered with. Investigators describe suspected instances of fingerprints or DNA material being placed by forgers for scientists to discover—an elaborate incarnation of a “forensic trap.”

“Art Crime in North America”

A shorter version of this lecture was delivered via Skype to the conference entitled “Contemporary Perspectives on the Detection, Investigation, and Prosecution of Art Crime,” organized by the ARC Centre of Excellence in Policing and Security (CEPS) at Griffith University in Brisbane, Australia on May 1-2, 2012. An extended version, including citations and new edits, will be published in two upcoming academic publications, both organized by CEPS.

Thank you very much for inviting me to speak at this conference. It’s an honor to be included with such an esteemed group of speakers, and I’m pleased that I could be with you, digitally if not physically.

Today I’m pleased to speak about art crime in North America. It is refreshing for me not to have to introduce art crime in general—if anyone knows about it, it will be my fellow speakers. So many of us are obliged to begin talks with an introduction to art crime, because the extent of it, and the facts obscured by fiction, film, and media misinterpretation, create a screen that can be difficult to see beyond. Even the facts, presented by reputable sources like the US Department of Justice, are not always clear and coherent. They rank art crime as the third highest-grossing criminal trade worldwide, behind only the drug and arms trades. This is based on a study that my friend and colleague, Vernon Rapley, could tell you more about—it was a combined Interpol and Scotland Yard study that was also integrated into the UK Threat Assessment in 2006/2007. Another number that we hear is that art crime is worth \$6 billion per year. Of course no one has any real idea, and that number is little more than an arbitrary guess. It could only reflect the estimated black market value of art registered as stolen (meaning 7-10% of its estimated auction value, which is itself an unscientific measurement). If that number is correct, then art crime cannot be the third highest-grossing criminal trade. The number is far too low, and human trafficking, even illegal traffic of plants and animals, might be considered higher. We simply don’t know, which can be frustrating—it is also one of the reasons why art crime has gone relatively understudied until recent years. Criminologists shy away from a field such as this, which lacks extensive and accurate empirical data, and relies on macro-analysis from anecdotal material and the experience of those in the field, often related orally or even through the unreliable filter of the media.

What everyone can agree on is that art crime is indeed very serious, that much of it is perpetrated by, on behalf of, or involving organized crime groups of all sizes, from local gangs to international syndicates, and therefore it is not just the art that is at stake. This is what is important, and nit-picking over

percentages and whatnot is an exercise in frustration.

There are hundreds of thousands of art crimes reported per year, but despite this fact the general public only hears about the handful of big-name museum heists that make international headlines. In Italy alone there are around 20,000 art objects reported stolen annually, and many more go unreported. By far the biggest problem in terms of quantity, difficulty in preventing, and difficulty in policing, is the illicit excavation of antiquities directly from the earth, or in some cases the sea, about which my colleague Neil Brodie will surely speak more.

Much of the mechanics of art crime – precisely how and for what exact purpose it is committed – remains mysterious to the general public and police alike. The reasons for this are complex and fascinating. They require an understanding not only of Organized Crime, but of the exclusive and often underhanded machinations of the international art community. The art trade has always been shady and unscrupulous, full of closed doors and lips, gentlemanly vows of silence and blind eyes. What other multi-million dollar market so rarely leaves a paper trail of transactions, regularly hides commodities to avoid luxury tax, and relies so heavily on the unscientific assurance of connoisseurs to determine authenticity and value, with fortunes in the balance? Few police understand the art world, and few members of the art community work as police officers.

Most countries have no dedicated art police, an important point to note, as it is evidence that the governmental administration of these countries do not consider art crime of sufficient severity to warrant a department of their own, despite numerous publications to the contrary. The reason for this is the relative paucity of sufficiently extensive empirical data and statistics on art crime—the result of a cyclical self-destructive pattern. The empirical data is sparse because governments do not dedicate resources to gathering and analyzing data on art crime. They do not dedicate resources because the existing data has not proven its extent and severity to them.

For this reason, it is useful to consider some of the

more successful art squads as a point of reference for other countries and for future action. Some law enforcement bodies have recently established art squads, such as Canada and The Netherlands, the former of which is considered here. The FBI only formed their art squad in 2004. We will discuss the extent of art investigation in the US and Canada shortly.

It should be noted that the recovery rate for stolen art is particularly low, in some cases as low as 2-6%: my colleague Mark Durney did a study last year in which he estimated that only 1.5% of stolen art is recovered. It is even rarer to both recover stolen art and successfully prosecute. Because the greatest amount of data and subsequent analysis comes from solved cases, ideally involving both recovery of stolen goods and successful prosecution of the criminals, it is understandable that limited data is available on art crime.

In order to speak from a point of mutual departure, it is useful to define terms for this essay. When art police say that most art crime, since the 1960s, has involved organized crime at some point in the life of the crime (theft, smuggling, laundering, fencing, etc), the general instinct is to assume that they mean large criminal syndicates, or “mafias.” Of course such syndicates have been involved in numerous high-profile art crimes, several of which we will discuss below, from the Corsican Mafia’s rash of thefts along the French Riviera in the 1960s and 70s to the Russian mafia’s involvement in several thefts of Edvard Munch paintings, to Balkan mafia’s role in art thefts in Zurich to Cosa Nostra’s famous 1969 theft of Caravaggio’s *Nativity* from the church of San Lorenzo in Palermo. But those are the cases that make international headlines, and they represent only a fraction of what is actually reported each year. That is not to say that these high-profile cases are the only ones in which major criminal syndicates are involved—far from it. But the definition of organized crime used in discussions with police about art crime is significantly more expansive. Organized crime may be defined as any group of three or more individuals who work together in criminal enterprises aimed at collective, long-term goals. This definition, which paraphrases the generally-accepted criminological definition, includes everything from a small local gang of jewelry and art thieves to the Japanese Yakuza. It is easier, in fact, to list what it does not include than what it does. This definition excludes street criminals, crimes of opportunity, independent thieves stealing for ideological reasons, most forgery and deception crimes (which tend to be perpetrated by individuals or pairs, without connection to larger criminal groups or other criminal activities), or those whose goal is maximizing immediate cash profit. The definition is otherwise inclusive, and it is therefore easy to understand how world art police agree on the role of organized crime in art crime.

In this paper, I will examine several case studies in some

depth that will serve as exemplary of the situation in North America. Because there are so many case studies to choose from, and only thirty minutes allotted to me, I have selected three main cases, one in Canada, two in New Haven, CT in the United States. The reason for choosing two in New Haven out of all possible US cases, is that they happened to coincide with my teaching a seminar in art crime at Yale University, in the spring of 2009. Life provided ideal case studies for my students, right in their hometown, and these cases are as exemplary as any. We will discuss the 2008 theft of Bill Reid gold sculptures from Vancouver, in Canada. And in the US we will discuss two New Haven cases: the union of art theft, drug use, and local organized crime leaders in the Dennis Maluk case from 2009; and a pre-emptive legal action brought by Yale University to firmly establish their ownership of Van Gogh’s “Night Café.”

Small-Scale Organized Crime Groups: Bill Reid Gold Thefts (2008)

On 23 May 2008 thieves wearing gas masks stole twelve gold objects created by the Haida goldsmith Bill Reid as well as several antique Mexican gold objects from the Museum of Anthropology at University of British Columbia, in Vancouver. Thieves had watched the museum for some time, noting when the security guards changed shifts. In the process they took note of the smoking habits of the only guard on duty at night—he regularly slipped outside for a cigarette, leaving the museum unguarded for the duration of his smoke.

The thieves waited until the guard stepped outside for his cigarette, and rushed into the museum. But they were prepared for the guard’s return, should he finish his cigarette break early. They sprayed bear spray across the entrance to the museum, a high-powered form of mace used in emergencies to repel a bear attack, thereby blocking the entrance—had the guard returned he would have been, effectively, maced by the cloud of smoke that remained. Wearing gas masks to protect themselves and hide their identities, the thieves made off with a haul of gold artworks. The thieves also had significant knowledge of electronic security systems: they disabled the recording mechanisms of the surveillance cameras while the cameras were still on.

The museum was particularly fearful that the gold objects would be melted down for their raw materials. Most stolen art has a high value through non-intrinsic reasons: that is to say that the value is not the sum of its constituent parts (which in paintings, for example, are often just wood and pigment), but rather how those humble parts are unified by the artist. For works of jewelry or in gold, there is a danger that the thieves will try to cash in only on the value of the raw materials, which are of reasonably high value in this case. While the art itself was valued at \$2 million, we have discussed the difficulty and

danger for the criminals to attempt to sell stolen, uniquely identifiable art. It is far safer to melt such gold artworks into unidentifiable lumps of raw material and sell those, thereby pocketing \$15,000 (the value of the raw gold) without risk of being caught.

In hope of preventing this, the museum offered a reward for information leading to the recovery of the stolen art of \$50,000 Canadian, a sum far higher than the value of the raw materials alone. The danger of offering a reward is that it teaches not only these criminals but others that crime does pay—that they can be rewarded by their victim in the form of cash for the return of the stolen art. For this reason in some countries, it is been illegal to pay a ransom, whether to recover a kidnap victim or a work of art. In 1975, thieves stole twenty-eight paintings from the Museum of Modern Art in Milan. A reward was offered, and the paintings were returned by a colleague of the criminals, who thereby pocketed the reward. Shortly thereafter the same gang of criminals stole thirty-five paintings, including many of the same works, from the same museum. This time they kept the art, and it has never been recovered. That is the danger of paying a ransom.

In this case, however, the strategy paid off. The offer of a reward tempted the thieves, who were members of a small local criminal gang involved primarily in jewelry theft. Their intention had been to melt the stolen objects, but the reward had stayed their hand long enough for the police to arrest them after an anonymous tip led to their capture in a suburb of Vancouver. All but two of the stolen works were recovered, along with other stolen jewelry pieces.

Dennis Maluk and Heroin for Paintings (2009)

The spring of 2009 saw a rash of art thefts in New Haven, Connecticut. A total of thirty-nine recorded artworks (paintings, drawings, and photographs) were stolen from the greater New Haven area within a period of months. This included three paintings taken from the Slifka Center at Yale, a Jewish community center, three photographs taken from the New Haven Public Library, three photographs taken from the New Haven Legal Assistance Association, and six works taken from the Yale New Haven Hospital. None of the works were of significant value, but those from the Slifka Center were worth in the high thousands of dollars each.

Examination of CCTV footage from the Slifka Center led local police to the thief: Dennis Maluk, a heroin addict. Maluk was arrested and told police that he had been stealing art in order to trade it for heroin. His dealer, Bruno Nestir, was a local member of a larger regional gang involved in small-scale sales of drugs and illicit firearms. When police raided Nestir's apartment, they found all thirty-nine paintings, two shotguns, two rifles, two revolvers (all unlicensed), \$947 in

cash, and both heroin and marijuana packaged for sale on the street.

Only one of the stolen artworks was hanging on Nestir's wall. The others were stacked neatly on the floor of his apartment. He had taken to selling the frames for cash, and it is not clear what his intention was with the artworks themselves. Maluk said that Nestir would trade him \$30-40 worth of heroin for each artwork. Maluk was essentially stealing art to exchange for a day or two's worth of his heroin fix.

Dennis Maluk is a typical example of a street criminal (sometimes called "common thief") who happens to steal art, but who might have been just as content stealing DVD players, laptops, or cars—anything that will get him quick cash or, in this case, his next heroin fix. He stole paintings for no more thought-out reason than that they were relatively under-protected, relatively portable, and that he could get heroin for them. But the case is not quite so clear-cut, as Maluk was swapping the thirty-nine paintings he happened to steal for heroin provided by a member of a local organized crime group, Bruno Nestir. Thus, the street criminal was being used by an organized crime group.

While this case is, in itself, not particularly remarkable and does not involve art of particular importance, it does provide an ideal microcosmic view into what happens with stolen art. In cases such as this, and on a larger scale like the Martin Cahill case we will discuss in a moment, we see the interchange between drugs, arms, and stolen art, which sometimes takes the form of exchange on a closed black market between criminals or criminal groups. Stolen art may be used for barter or act as collateral in deals for other illicit goods for which there is criminal risk involved in cashing in on the good in question, whether it is drugs, arms or art. This case also illustrates a common theme: most thieves who steal art have no prior experience in art crime, and no knowledge of, or appreciation for, art. Art represents an easily-portable, often under-protected, high-value commodity, and nothing more.

Pre-Emptive Lawsuits against Reclamation Claims: Yale Art Gallery and Van Gogh's *Night Café* (2009)

The Internet era has seen a sudden increase in repatriation and reparations legal cases regarding stolen art. This is due to the simple fact of the world of information having become more accessible. Thanks to digitization we now know the location of artworks, particularly in public collections, from Seattle to Sri Lanka. In the past one would have to travel to a collection to know what is inside it, or to rely on catalogues and books, which might not always show complete collections. A precedent has been set that art stolen during the Second World War in particular should be returned to the ancestors of those

from whom it was stolen, as in the Maria Altmann case, in which five Gustav Klimt paintings that had been taken from her family during the Nazi era were restored to Altmann after a legal battle. A small but growing legal specialization has arisen, a subsection of art law which focuses on art reparations. A settlement was recently struck on behalf of the descendants of Kazimir Malevich, in which five Malevich paintings, appropriated by the Soviet Union when Malevich traveled abroad in 1927, were returned to the Malevich family, while a further seventy-five under consideration, would remain in the collection of the Stedelijkmuseum in the Netherlands, which had acquired these eighty works in 1958. This trend has also seen pre-emptive, defensive lawsuits. In 2009 the Yale Art Gallery brought a pre-emptive suit, seeking for a judge to reiterate that the jewel of their collection, *Night Café* by Vincent van Gogh, was the property of the museum. A rumor had preceded this action that a descendant of the original owner was making noise about reclaiming the painting for his family, which prompted Yale to this defensive action.

This action came shortly after the nation of Peru began to threaten legal action to recover the artifacts excavated from Machu Picchu by Yale archaeologist Hiram Bingham, circa 1911. This case is distinctive because there is no allegation of looting—Bingham led a well-documented, respectful archaeological expedition. At the time, Peru did not have the infrastructure to present the artifacts in a safe museum environment of their own, and it has been argued that Yale preserved treasures that would otherwise have fallen to looters or deteriorated. I have seen these artifacts, which are kept at the Yale Peabody Museum of Natural History. They are primarily pottery shards and textile fragments—there is hardly a first-rate, museum-worthy piece among them, and their interest is largely scientific, rather than as a museum draw. Had Peru's approach been less threatening and more cooperative, Yale might not have felt obliged to draw themselves up into a defensive formation, making it appear that they would lose face and admit a degree of guilt were they to acquiesce to Peru's demands and return the artifacts. There is a huge difference, psychologically, between a nation demanding that objects be returned (as Peru has done with Machu Picchu and Greece with the Parthenon Marbles), and requesting the return or sharing of objects, as Italy has done in many cases, far more successfully. When looting cannot be proven, the question becomes a moral rather than a legal one. For moral questions, better results would come about through polite cooperation, rather than public demand.

We will likely see more such lawsuits in the future, as more of the world's collections are digitized. Not only does this allow people to learn what art is where, but it also facilitates family history research, allowing victims of past art theft to discover the historical circumstance and therefore build a reasonable legal case for reparations or the return of

looted art.

In addition to legal cases, the Internet era has made it far more difficult for thieves to sell stolen art. Most valuable fine art is unique and instantly recognizable if it comes from an extant collection (antiquities looted directly from the earth or the sea are, of course, a different story, as we have discussed). Within hours of the discovery of a theft, photographs and descriptions of the stolen goods can be circulated around the world. This makes it very difficult for a potential buyer of stolen art to claim that he did not know that the work in question was stolen, and it makes it far more difficult for thieves to shop stolen art. This has driven criminals to use stolen art as barter or collateral, as we have discussed, in order to avoid the danger of looking for a buyer—for a large percentage of the stolen artworks that are recovered are found thanks to an undercover operation in which a policeman pretends to be a buyer of stolen art, luring the thieves into offering him the works.

To conclude, we will discuss the extent of art crime in the US and in Canada, and take a quick look at the art squads in each country.

FBI Art Squad

Founded in 2004, the FBI runs a team of 13 dedicated agents, supported by special trial attorneys for prosecutions. It also maintains the National Stolen Art File (NSAF), a computerized index of reported stolen art for the use of law enforcement agencies around the world. The FBI Art Squad has recovered over 2600 items valued approximately \$142 million. Such statistics must be understood in context, however. The values for art cited are based on the estimated open market value, should a work of art with legitimate pedigree be offered at auction. Estimates of the black-market value of stolen art, based on the amount which undercover agents were asked to pay during sting operations, is 7-10% of its perceived open market value, which we have already mentioned is an unreliable sum total—it really only serves to indicate that art crime is indeed a serious problem, far more serious than either the general public or government administrators realize. The FBI has been remarkably successful, despite the fact that a relatively small number of thefts occur in the United States. The US is rather a preferred venue to sell stolen art, and for this reason the FBI has helped other countries recover their stolen art, and has participated in numerous undercover operations in collaboration with foreign police forces.

There are some independent art police outside of the FBI, but they have largely turned to investigating art through the accumulation of experience in the field, rather than having been given special training or assignments. Don Hyrcyx in Los Angeles is the leading investigator outside of the FBI, and

Don Volpe was the only such investigator in New York until his death. Others include Thomas McShane and insurance agents, like Dorit Straus of Chubb. But we can count on one hand the number of art-specific investigators in the US, which is telling. The FBI stolen art database contains only a few thousand stolen objects, while the world's largest database, run by the Carabinieri and nicknamed Leonardo, contains over three million.

Quebec Art Squad

In 2008 the Sureté du Quebec, in collaboration with the Royal Canadian Mounted Police, established the first national art crime investigation team in Canada's history. The four-man team is now led by Jean-Francois Talbot, who has worked since 2003 with Alain Lacoursiere, an art historian and retired member of the Montreal police. Lacoursiere, who has been nominated for an ARCA Award, helped in the development of an art crime team in Canada and a system called Art Alert, which is an email bulletin sent out to 25,000 subscribers in 75 countries, largely members of the art community and police departments. Between 2004 and 2008, a combined force of agents from the Surete du Quebec and the Montreal police department, investigated around 450 art crimes, made 20 arrests, and seized over 150 stolen or forged artworks, with a total estimated value of around \$2 million. The newly-established art crime team handles an average of 90 art crime cases per year.

Conclusion

To conclude, it is safe to say that art crime in North America is a far more significant problem than most realize, including police, government officials, and the general public. However while North America is leading market country for stolen and looted art and antiquities, with a significant portion of such goods smuggled to the United States or Canada for sale, neither country is a major source for stolen or looted objects. This is in part due to the shorter history of cultures that produce lasting plastic art of a high market value. Woodwork and textiles, made by Natives of North America, does not last centuries buried underground, and indeed burial rituals are very different among these cultures than, for example, Etruscans, who buried their dead in elaborate tombs, surrounded by valuable artifacts, intended to be preserved. As a source country for looted antiquities, taken in illicit archaeological excavations, North America might be consider along the lines of African nations, whose valuable plastic objects, certain bronzes and ceramics aside, tend to be made of wood and therefore neither sustain burial nor survive in non-ideal conditions for centuries. Likewise there is not the same tradition of art decorating religious institutions in North America that there is in Europe, meaning that churches and temples, while occasionally targeted by art thieves, do

not pose the same sort of potential for victimization that they do in European countries. With around 90 cases investigated each year in Canada, and a few hundred per year in the United States, North America is more often the ultimate destination for illicit art that is intended for resale, rather than the origin of the theft or looted site. This is in stark contrast to the several thousand cases per year investigated in Germany, or the number in Italy, which investigates around 20,000 stolen artworks per year.

For this reason, a focus should be placed on ensuring that the art market is monitored, and Customs places an added emphasis on keeping questionable works out of the United States and Canada. The art market is so heavily weighted toward New York (with forays into Los Angeles, Montreal, and Vancouver), that efforts could be concentrated there. At-risk sites are more practically limited to museums, galleries, and private collections, with the largest problem worldwide, illicit looting of archaeological sites, hardly an issue in North America. Likewise the frequent victimization of churches in Europe is hardly a problem. This information can allow US and Canadian efforts to focus for maximum effect.

But the issue remains, as my colleague Professor Petrus van Duyne likes to say, "There is not enough fear about art crime." Because the general public still thinks of art crime in terms of Thomas Crown and *Ocean's Twelve*, rather than the truth relating to organized crime and terrorism, and because the majority of the public does not feel a personal connection to art (and therefore fear its disappearance), there is no pressure on governments and police departments to focus effort and funding on art protection and recovery. For this reason it is useful to emphasize the more sinister side of art crime, in order to impel those with the power to reinforce the efforts of the few passionate investigators and scholars to do so.

Thank you for listening and for hosting me at this conference.

Anthony M. Amore and Tom Mashberg
Stealing Rembrandts: The Untold Stories of Notorious Art Heists
Palgrave Macmillan (2011)

Although over the last two decades or so other artists have overwhelmed his once vaunted prices, Rembrandt remains an iconic figure. Certainly, he is well known to thieves who were unable to resist gunning for works stored in galleries with negligible defense against robbery. Rembrandt's 1632 portrait of Jacob de Gheyn III has the dubious honor of being the "most oft-stolen painting in the world". As an *International Herald Tribune* headline once declared (with uncharacteristic wit), "Rembrandt Needed a Night Watchman."

Authors Amore and Mashberg — the former the head of security at the Isabella Stewart Gardner Museum and the latter an award-winning investigative reporter — explain how media hype of record prices can attract the attention of thieves. They cite the Goldschmidt sale at Sotheby's in 1958 as the "triggering event" for high art prices that led to criminal interest in art. Three years later Rembrandt's *Aristotle Contemplating the Bust of Homer* became, at \$2.3 million, the then most expensive painting ever sold. Doubtless, potential raiders noticed this.

The litany of Rembrandt thefts from the 1960s is blamed on "a widespread failure of imagination among owners and caretakers." Paintings might sometimes be bulky but they rest in galleries "secured by little more than ceiling wires or a few screws." Even today, "the only physical deterrence come in the form of velvet ropes and guards whose long days of boredom can be read in their slumping body language."

The Internet has helped art thieves immeasurably. Museums and galleries often publish floor plans and architectural renderings online. On Google Earth anybody can view the roofs, exteriors, and grounds of a public building. A museum packed with so-called "laser" technology is far from impregnable. Lasers need electricity, which is easily cut off.

Galleries continue to wrestle with the contradictory requirements of accessibility and security. Several layers of protection might shield *The Mona Lisa* but this is impractical for most other artworks. Thus valuable paintings become sitting ducks. As Denis Ahern, director of safety and security at London's Tate Galleries, says: "If you want to give public access to original artworks, there will be risk, and there is no real defense against a thief who is willing to kill in order

to steal." Amore and Mashberg's grim conclusion is that "Effectively, art theft can never be stopped."

Art theft is, say Amore and Mashberg, "a costly and sordid global racket." Art crime sometimes has disturbing implications. For example, several heists have been linked to drug trafficking. But some onlookers view art theft as class warfare, with little sympathy available for extremely valuable and "unattainable, inaccessible, even incomprehensible" works that are stolen, especially from a private collection. Amore and Mashberg point out that, paradoxically, works stolen from public galleries, which represent the apotheosis of public sharing, are not at all "liberated." A valuable work of art stolen from a public space cannot be seen by anybody, rich or poor.

Valuable works of art tend to be so well known that it is impossible to sell them on the open market. The Hollywood notion of the wealthy art collector stealing paintings à la Thomas Crown simply doesn't exist in reality. During one of several interviews conducted for this book, the infamous New England art thief Myles J. Connor Jr. says, "It's far too risky when the item is internationally notorious ... These people are rich enough to buy art legitimately, anyway." More often paintings are used as "hostages" to barter for something, whether it is money or a larger political or personal purpose. Rembrandt's works "are not so much stolen as kidnapped — or 'art-napped' — with some sort of extortion, reward or ransom in mind."

The broader themes of art theft are well covered, as are the specific details of several heists, but a few errors have crept in that betray a lack of knowledge of British geography and history. For example, they refer to "Birmingham New Street Station in London". A quick glance at a map would have prevented this embarrassing error, in which the principal station of Britain's second city (population 3.5 million) is sited in London. *Rembrandt's Mother Reading* is dated as 1630 and, the authors state, "was acquired by Britain's Earl of Pembroke under the reign of King Henry VIII" — but Charles I was King of England, Scotland and Ireland from 1625 to 1649. Worcester (Massachusetts) is, according to a note, "pronounced WOOS-ter," which is (to this Worcestershire-born reader) a novel pronunciation. In England or America it

is pronounced WUSS-ter. An Americanism such as, “although those crimes come with an asterisk” might confuse a non-American reader (at any rate, they confused this English reader).

Stealing Rembrandts has a high moral tone, repeatedly emphasizing that crime doesn't pay. The haughty message of this book is that “art thieves have been far better at accruing prison time than wealth ... Better in the long run to steal the money from the museum's donations box than its famous works of art.” The authors also note the damage done to artworks by criminals, calling them “knives with knives.” The clumsy thieves of various paintings in Moscow in 1927 cut various paintings from their frames but, declare Amore and Mashberg, “were not complete vulgarians” — the paintings were recovered four years later, having been sealed and covered in a special composition to protect them from damage.

Perhaps art thieves should consider the fate of the criminals Adriaan Adriaanszoon and Joris Fonteijn, their dissections depicted by Rembrandt in (respectively) *The Anatomy Lesson of Dr Tulp* and *The Anatomy Lesson of Dr Joan Deyman*.

James Cuno
Museums Matter: In Praise of the Encyclopedic Museum
(The University of Chicago Press 2011)

Cuno is passionate about the contribution of the encyclopedic museum to the cultural landscape of our cosmopolitan world. The implicit statement of his title is a change from the earlier questions that he has raised: *Whose Muse?* (2004), *Who Owns Antiquity?* (2008), and *Whose Culture?* (2009) [see reviews by Gill in *JAC* 1, 1, Spring 2009, 65-66; 2, 1, Fall 2009, 99-100]. The four core chapters on the Enlightenment, the Discursive, the Cosmopolitan, and the Imperial Museums had their origins in the 2009 Campbell Lectures at Rice University.

Cuno avoids turning his attention to the issue of antiquities. Yet they lurk on the periphery of his text. As I walked around the Greek and Roman galleries of New York's Metropolitan Museum of Art (a good example of an Encyclopedic Museum) in the first weeks of 2012 I had Cuno's words in my mind as his imaginary viewer engaged with objects on display: "why it looks the way it does, how it might have been made, by whom and where, and what purpose and meaning it may have had for the first people who saw it and all who subsequently came into contact with it before and after it entered the museum's collection" (pp. 3-4). Signatures of statue bases as well as on Athenian figure-decorated pots may point us to artists of both high and low status. The iconography may provide insights into Athenian social values and indeed myth. Residual paint on funerary stelai reminds us that not all marble was brilliant white. But what about the viewers? How can we understand the reception of such ancient objects when their contexts have been permanently lost? And so often the pieces have no declared collecting histories that will trace their passage from the ground (or even their archaeological context) to museum gallery.

And it is the failure of professional museum curators, especially in North America, to engage with the importance of archaeological context that has caused the controversial acquisition of "recently surfaced" antiquities. Only days before, in Philadelphia, I had listened to the curator of a classical collection in a major art (encyclopedic) museum present a major classical bronze statue that was acquired from a Swiss gallery in 2004. The delightful bronze was reported to have been derived from a collection in the eastern part of Germany. Where was such a bronze found? Where was it displayed? When was it made (assuming that it was not an original by Praxiteles but rather a later copy)? Yet there

have been questions raised about the veracity of the statue's "collecting history", not least by Greece in 2006. There is more to the statue than the appreciation of the skill of a named classical artist, and that is why Cuno's approach can appear to lack sophistication (at least when it comes to the study of antiquities).

There are troubling ideas below Cuno's words. He reminds us of the ethnic origins of Chicago's population. Does the collection of the Art Institute of Chicago introduce residents to "the historic cultures of their Chicago neighbors" (p. 6)? Would the fact that Chicago has the third largest Greek population in the world justify the acquisition of decontextualised Greek antiquities? Or would the presence of Americans descended from West Africa justify the display of Benin bronzes that had been pillaged from their homelands?

One of the issues to emerge from the antiquities scandals of the first decade of the 21st century is that museums failed to establish properly documented collecting histories. And these encyclopedic museums, among them Boston's Museum of Fine Art, the Cleveland Museum of Art, and New York's Metropolitan Museum of Art, as well as Princeton University Art Museum (a museum now embroiled in a further dispute with Italy), failed to approach their acquisitions as Cuno suggests: "[Encyclopedic museums] explore these data [sc. collections] as physical things: how they were made, how their physical properties have changed over time, who made them and how one knows that, who's owned them and seen them and how one knows that" (pp. 29-30). Another question that is raised in my mind as I walk round the gallery of decontextualised antiquities in an encyclopedic museum is this: how can you display that piece? The uncultured lack of concern for the damage sustained to the archaeological record of countries such as Greece, Italy and Turkey, is a contradiction of the enlightenment principles that such museums (and museums professionals such as Cuno) claim to hold.

Cuno reflects on the "core mission" of museums: "to collect, preserve, and present things in the public interest" (p.34). While I would agree that objects in a collection can "tell a story", part of the narrative is lost if the original setting for the work of art has been lost perhaps through deliberate looting. Cuno, as a self described "modern and liberal" (p.

54), is perhaps unaware of the intellectual consequences of collecting recently surfaced antiquities.

I was fascinated by the way that Cuno considered the possible pressures applied to a visitor to the galleries of an encyclopedic museum (p. 51). Critics of such museums imagine the visitor “as unwittingly subject to the ideological strategies of the museum, and through the museum to those of the state and the political and social elite. She has no independence of mind and cannot see through the discursive structures employed in the display of its collection or presentation of its exhibitions” (p.51). Yet how many visitors to an encyclopedic museum would seek to ask questions beyond the carefully constructed information labels?

I was struck by Cuno’s vision of Web 2.0 technologies and their application to museum settings (p. 50). While his view is dated, the possibility of walking around a gallery, iPad 2 in hand, taking notes, accessing the internet, using image recognition software to obtain further information is here. Visitor generated comments and questions can enhance the museum experience and contribute to the understanding of the encyclopedic museum. But how will museums seek to stop visitors asking the awkward questions? Who is the owner behind this anonymous loan? Why does this sculpture appear in the photographic archive of a Swiss dealer when you say it was derived from a significant nineteenth century collection?

Cuno has long relied on the now outdated, and indeed flawed, thinking by Kwame Anthony Appiah’s view of Cosmopolitanism (p. 62) [see Gill, *American Journal of Archaeology* Online Book Review 113, 1, January 2009]. Cuno reflects on the Benin bronzes, an example of historic looting (pp. 63-65). Some of the issues relating to Gandharan sculpture were left unasked (pp. 67-68, 69 fig. 7). Did collectors of such sculptures, removed from countries such as Afghanistan in the years prior to the tragic events of 9/11, unwittingly (or should that be unthinkingly?) contribute financially to those who sought to attack North America? The blend of Hellenistic and South Asian art forms may be interesting to an art historian, but their origin and their collecting histories are equally significant.

There is a brief passing allusion to the “relocation of works of art” (p. 65). This raises a number of issues when we consider ancient classical objects. Athenian figure-decorated pots may have been made for export. But does the fact that some Etruscans chose to be buried with such material justify the looting of ancient cemeteries in Tuscany to provide the art market, and ultimately (cosmopolitan) museums, with items? But what may be presented as a “work of art” in today’s cosmopolitan museum may have had a more humble role in the ancient world. Ancient commercial graffiti have provided significant evidence for the low value of such painted pottery

in contradiction to art historical scholarship that privileges such material. Cuno’s statement, “government efforts to retain works of art within a given jurisdiction as evidence of a pure, essentialized, state-based identity are contrary to the truth and history of culture” (pp. 76-77), supported by a reference to his *Who Owns Antiquity?*, is misplaced. The acquisition of recently surfaced antiquities by major North American museums (such as Boston’s Museum of Fine Art, the Cleveland Museum of Art, the J. Paul Getty Museum, New York’s Metropolitan Museum of Art, and Princeton University Art Museum) could be considered as an action “contrary to the truth and history of culture.”

Cuno returns to the theme of the destruction of the Bamiyan Buddhas in Afghanistan (pp. 104-07; *Who Owns Antiquity?* p. 148; Derek Gillman in *Whose Culture?* pp. 165-67). Cuno has moved from defending museums to comment on the deliberate destruction of (significant) cultural property still in its original context.

Do museums matter? As somebody closely involved with the curatorial side of two university museums (The Fitzwilliam Museum, Cambridge; The Wellcome Museum of Egypt Antiquities / The Egypt Centre, Swansea University) and who has relied on museum collections for academic research, my answer is yes. But what we want to see are museums, and by that we, of course, mean museum curators, directors and trustees, adopting the highest ethical standards over acquisitions so that they do not contribute (knowingly or out of ignorance) to the destruction of the world’s cultural heritage.

Joshua Knelman

Hot Art: Chasing Thieves and Detectives Through the Secret World of Stolen Art
(Tin House Books, 2012)

Interpol and UNESCO listed art theft as the fourth-largest black market in the world (after drugs, money-laundering, and weapons). But what did that mean? After I'd been following Czegledi's career for several years, one point was clear: don't look at the Hollywood versions of art theft – the Myth. This is a bigger game, with more players, and the legitimate business of art is directly implicated. A lot of the crimes are hidden in the open. Stealing art is just the beginning. Then the art is laundered up into the legitimate market, into private collections, into the world's most renowned museums.

– Joshua Knelman, author of *Hot Art*

Toronto journalist Joshua Knelman, author of *Hot Art: Chasing Thieves and Detectives Through the Secret World of Stolen Art* (Tin House Books 2012), introduces to the general reader the international problem of art crime and the limited resources of legal authorities in fighting this problem in the first decade of the 21st century.

In 2003, Knelman was just a 26-year-old researcher for the Canadian magazine *Walrus*, when he stumbled down the rabbit hole of art theft and recovery. A gallery owner hesitant to speak about the theft of \$250,000 worth of photographs stolen two years earlier opens up when police arrest a thief who has some of the pieces. Knelman asks to speak to the suspect's lawyer, leading to a midnight phone call from the thief who has been investigating Knelman. The two meet in a café in Toronto. The aspiring reporter is physically threatened, given stolen art, and then lectured by the thief about how the secretive business practices in the legitimate art market actually support art crime. Thus begins Knelman's adventures through the world of thieves and investigators of looted art.

The journalist befriends Bonnie Czegledi, a Toronto attorney specializing in art crime, who educates Knelman about the types of stolen art and cultural property: missing Holocaust-looted artworks; pillaging of antiquities from source countries such as Egypt, Afghanistan, and Turkey; multi-million dollar thefts from museums worldwide; and unreported thefts from galleries and residences. Knelman writes:

The world's cultural heritage had become one big

department store, and thieves of all kinds, at all levels, were shoplifting with impunity, as if the one security guard on duty was out on a smoke break.

Auction houses and art dealers launder stolen art; police aren't trained to investigate art theft; and lawyers aren't trained to prosecute them. "Meanwhile, the criminal network is international, sophisticated and organized," Knelman writes. Ten years ago, when he started out, tools to recover stolen art included Interpol's stolen art database; the International Council of Museum's guidelines for the buying practices of museums; the International Foundation for Art Research; and the Art Loss Register.

For example, Knelman confirms that a curator at the Royal Ontario Museum was offered antiquities after the looting of the National Museum of Iraq in 2003 (the institution declined) – more than three decades after the 1970 Convention barring importing of stolen artwork across international borders.

Knelman points out that only a handful of detectives worldwide have the expertise and training to investigate art thefts – from the pairs of police officers located in Montreal and Los Angeles to the larger European squads in England and Italy.

In 2005, Knelman's published an article in *The Walrus*, "Artful Crimes," which highlights art crime in Canada against an increasingly global and transnational problem. But he wasn't done with the story. Two years later, Knelman paid his own way to join cultural attorney Czegledi at the International Council of Museum's conference in Cairo. American prosecutor Rick St. Hilaire guides him through Egyptian history of ancient art crimes and summarizes the problem of smuggling of antiquities today which Knelman smartly summarizes in his book. Knelman also meets Alain Lacoursière, the police officer that initiated the study of art crime in Quebec, while dodging an Egyptian conference organizer who demands the journalist pay a higher rate on his hotel room – Knelman sleeps on the floor in another room to avoid paying the organizer his cut.

By 2008, Knelman wants to write an investigative book on the mysterious and increasingly violent black market for

stolen art, goes online to find an art thief interviewed by the magazine *Foreign Policy*, and finds Paul Hendry, a small-town hoodlum who graduated to handling millions of dollars in stolen paintings and antiques. “We struck up what turned out to be a three-year conversation,” Knelman writes. “We started to talk once, twice, sometimes three times a week.

It was easy to make a living from stealing art, according to Paul, if a thief made intelligent choices, if he stayed below a certain mark – about \$100,000. Less was better. Don’t steal a van Gogh. To someone who knew how to work the system, the legitimate business of fine art became a giant laundry machine for stolen art. You could steal a piece and sell it back into the system without anyone being the wiser.

“It’s called ‘pass the hot potato,’” Paul told me. “A dealer sells it on to the next dealer, and the next, until nobody knows where it came from. It’s a fantastic system! And that system is the same wherever you are. It doesn’t matter if you’re talking about London, New York or New Delhi,” he explained. “Art is something you have to think about as a commodity that goes round in circles. The only time it appears in the open is when someone tries to filter it into the legitimate art market – auctions, art fairs, gallery sales, dealers. Otherwise it’s hidden away inside someone’s home.”

Hendry grew up in Brighton and learned his outlaw trade as a “knocker,” who talked and sometimes bullied elderly residents out of their art and antiques. Since 1965, Sussex Police had been responding to a high number of residential burglaries and created England’s first Art and Antiques Squad that operated until 1989.

In the 1960s Brighton closed down a large open-air market and built a huge shopping mall, Churchill Square. Produce vendors started going door to door, which created opportunities to buying “good junk.” They became known as “knockers.”

Knockers sold “junk” to antique dealers at a price higher than they had paid for it. Knocking turned into a devious game that allowed thieves to peek at the inventory inside the houses of the upper middle class.

Hendry tells Knelman of his poor and chaotic childhood, his training on the streets of crime, and how he hires local men from the neighborhood bar, high on heroin or cocaine, to break into homes for Hendry to steal other family’s treasures.

In the same year, as economic chaos grips the bond markets

and art prices continue to increase, Knelman interviews Don Hrycyk of the Los Angeles Police Department’s Art Theft Squad; Richard Ellis, former head of Scotland Yard’s Art and Antiquities Squad; Julian Radcliffe of the Art Loss Register; FBI Art Investigator Robert Wittman; Matthew Bogdanos who led the recovery effort for antiquities looted from the National Museum of Iraq in 2003; Giles Waterfield, the former director of the Dulwich Picture Gallery who helped to recover “the Takeaway Rembrandt;” and Bob Combs, head of The Getty’s security.

Knelman spends a lot of time with Detective Don Hrycyk of the Los Angeles Police Department’s Art Theft Squad, the nation’s only full-time municipal unit dedicated to investigating art-related crimes. Knelman recounts Hrycyk’s background, from patrolling the streets of South Central Los Angeles to the detective’s patient and precise work investigating art thefts. In 2008, Hrycyk was training his partner, Stephanie Lazarus, just as his former boss and mentor, Bill Martin, had trained Hrycyk 1986 to 1989.

In Los Angeles in the mid-1980s, art theft was a hidden crime, blending many different worlds. It cut across socio-economic lines and could move in a heartbeat from blue-collar to white-collar criminals. A thug who knew nothing about art except that it was valuable could steal a painting; that same afternoon, the painting could wind up in the possession of an auction house; within the week or the month, it could be sold to one of the Los Angeles art elite.

In addition to visiting art galleries, auction houses, and museums, Hrycyk read Laurie Adam’s 1974 book, *Art Cop*, about the work of a former undercover New York City narcotics officer, Robert Volpe, who was probably the first detective in North America to investigate art theft full-time. Knelman writes:

Volpe’s investigations included burglaries, robberies, and consignment frauds – when an artist or patron would lend a piece of work to a gallery and the gallery would vanish or refuse to return the art. He believed that art theft in New York in the 1970s had reached the same stage as narcotics a decade earlier.

Hrycyk tells Knelman that the unregulated art world (just like the drug dealers Hrycyk arrested for years) relied upon a code of ethics where not asking for information seems to be part of that world’s business practices. Buyers and sellers of art use middlemen just as drug dealers do. “It is considered rude to ask questions about the provenance of an artwork – who owned it, where it came from. Embarrassment is often one of the leading factors for secrecy,” Hrycyk tells Knelman.

Martin retired in 1992 but it wasn't until two years later that Hrycyk returned to the Art Theft Squad to work with a rotating string of partners until he chose Lazarus to train in 2006. *Hot Art* opens with a chapter on a ride-a-long with Hrycyk and Lazarus to the crime scene at an antiques store on La Cienega, and recounts the detectives' investigation.

Knelman's sister, a student at the Courtauld Institute of Art in London, introduces her brother to her thesis advisor Giles Waterford, who had been the curator at the Dulwich Picture Gallery in 1981 when "the Takeaway Rembrandt" was stolen for the third time. Rembrandt's very small painting, entitled *Jacob de Gheyn III*, is an example of "Headache art" which attracts significant media attention. Waterford recounts his negotiations with a German businessman for a "finder's fee" that leads to the recovery of the painting.

Art thief Paul Hendry tells Knelman that "there was one detective in London, in particular, who made his reputation dealing with headache art cases." Richard Ellis, the man who re-started Scotland Yard's Art and Antiques Squad.

As a detective, Ellis had been involved in a number of high-profile cases, including reclaiming a Vermeer from a criminal organizer in a chase that lasted seven years and spanned half a dozen countries. That case was chronicled thoroughly in *The Irish Game: A True Story of Crime and Art*, by Mathew Hart.

Ellis' interest in art theft began with the burglary of his parents' home in 1972 and the subsequent recovery of his family's property at the Bermondsey Market: London's Friday-only open market of junk and antiques. Ironically, Ellis was never allowed to work on the Philatelic Squad that evolved from investigating crimes in the stamp market to the unregulated antiques industry that operated as Scotland Yard's first Art and Antiques Squad. Knelman recounts Ellis' strategy of reopening the department in 1989 after it had been closed for five years. Ellis' cases included the recovery of paintings stolen from Russborough House in 1986; the 1994 recovery of Edvard Munch's *The Scream* stolen from Norway's National Gallery; and Jonathan Tokeley-Parry's smuggling of antiquities out of Egypt in the 1990s. Knelman writes:

For Ellis, the Russborough case provided the link between stolen art and organized crime, diamond dealers, and a network that stretched across Europe. The Schultz case, which involved 14 countries on four continents, proved that the stolen art network was sophisticated and involved criminals at all levels of the trade, from the men who dig in the dirt to the men in the shops and galleries on Madison Avenue.

Ellis retired from Scotland Yard in 1999. He told me that his success as a stolen-art detective was primarily due to his ability to gather information. He relied on a network of informants to keep him abreast of what was happening in the criminal underworld. His squad of detectives paid cash for useful information. "Every Friday the calls would come in. Payday," Ellis explained.

In London, Julian Radcliffe, founder of the Art Loss Register, a private company originally funded by auction houses and insurers to create a database of stolen art, tells Knelman of his effort to establish a stolen art database for art dealers and auction houses. The company also reported over \$200 million in art theft recoveries by 2008, including recoveries of paintings by Cézanne, Edouard Manet, and Pablo Picasso.

"Famous paintings are just a small percentage of what is stolen," Radcliffe told Knelman, [adding that] most of the art on the ALR list are minor paintings and antiques, and fewer than 1 per cent of those are ever recovered.

Radcliffe explains that art dealers often didn't question why they could purchase a painting cheaply. Sometimes if art dealers found out the art was reported stolen on ALR, they would not buy the work but refer it to someone else. Even art thieves like to search the database to see if a painting has been reported stolen.

In the over 1,000 recoveries Radcliffe has enjoyed, in only three cases was the thief not after the paycheck for the stolen art, and most of the art that wasn't immediately passed on to a dealer or auction house was stored in a vault, a closet, an attic, or a basement.

"Transactions in the art world are often carried out anonymously ... and this cult of secrecy can be taken advantage by criminals," said Radcliffe. "The art trade is the least regulated and least transparent activity in the commercial world, and the portability of the times and their international market make them very attractive for moving value, unobserved."

Radcliffe said that the average value of stolen art is under \$10,000 and that thieves will pass these items off to fences, who will then move them into the outlands of the art market: to small auction houses or galleries, or across oceans.... About half of all stolen art recovered by the ALR was found in a different country from where it was originally stolen.

In the United States, Knelman meets Special Agent Robert K. Wittman, then a Senior Art Investigator for the Rapid Deployment Art Crime Team for the Federal Bureau of Investigation. Wittman was six months away from retirement. The 1996 law, The Theft of Major Artwork, had made it a federal crime to steal from a museum or to steal a work of art worth more than \$5,000 or older than 100 years. Knelman tells how Wittman recovered a Norman Rockwell painting in Brazil just three months after recovering human remains for ten days, after the bombing that collapsed the World Trade Center.

Knelman meets Matthew Bogdanos, who had lived one block from the WTC on 9/11. A prosecutor and Marine reservist, he led the art theft investigation of the National Museum of Iraq after looting in 2003, and established an amnesty program to recover the stolen antiquities.

In the fall of 2009, Knelman meets Bonnie Magness-Gardiner, head of the Federal Bureau of Investigations' Art Crime Team, which had reorganized in response to the looting of the Iraqi museum. Magness-Gardiner echoes what Knelman heard in his first meeting with an art thief in Toronto six years earlier about an unregulated and undocumented art market based on secretive transactions involving millions of dollars.

I asked Magness-Gardiner if it was fair to say that no one had a handle on how large the black market in stolen art had become. "Yes, that's fair to say," she answered. "When we say 'black market,' really what we mean are those stolen items that are in the legitimate market and shouldn't be there. The black market isn't separate. So we're talking about items that have no history. The collectors, the museums, and the dealers all partake on some level."

Magness-Gardiner explains:

Art is one of the biggest unregulated markets in the United States. The business of art tends to be very closed and secretive. It is still business done on a handshake. Financial transactions are quite difficult to track, because you don't have a paper trail. How art is bought, sold, and moved is a challenge in itself to understand. When a piece of art is bought or sold, there is the movement of the physical object from one location to another. There is also the transfer of money from one bank account to another. There is nothing to link those two events.

Magness-Gardiner addressed the lack of information about the collecting history or previous ownership of an object of art or cultural property:

"Another problem built into a business-on-a-handshake model is the issue of provenance. The first thing we tell a new agent to do is to find out whether or not the work of art that has been stolen is, in fact, real. Where does it come from? Where are its records? We don't know until we do a background investigation on the piece of art." She continued, "Looking at the authenticity of a piece is always detective work. Unlike most other material items manufactured today, art does not have serial numbers. Lack of serial number is one element that really distinguishes art from other types of property theft. The only parallel is jewelry and gems – difficult to trace because they don't have a serial number either, and so they are particularly valuable to thieves," she said.

"The middlemen and the dealers don't want other people to know their sources. This can stem from a legitimate business concern, because if other dealers find out who their sources are, they could use those same sources."

Knelman dedicates a chapter to the art crime investigator, Alain Lacoursière, who had worked on art thefts as part of his police job since 1992. The Quebec Art Squad didn't know of the work of the LAPD Art Theft Detail until Knelman told the French-speaking detectives of Hrycyk's work.

In *Hot Art*, Knelman successfully brings a personal narrative navigating the disparate international world of art theft and recovery that almost unknowingly tell of the same story of theft and laundering stolen art through the legitimate market and the limited resources to combat the problem. From England's first art investigative team, the Sussex Police's art and antiques squad, in 1965 to information flourishing on the internet through blogs such as *Art Hostage* (written by the former art thief and Brighton Knocker Paul Hendry), and information dispersed by Interpol, the LAPD's Art Theft Detail, Quebec's Art Crime Squad, and the Museum Security Network, who in the English-speaking world will be the next law enforcement officers to continue the work of its pioneers?

Aviva Briefel

The Deceivers: Art Forgery and Identity in the Nineteenth Century
Cornell University Press (2006)

Forgery fascinates. Whether a forged painting or Shakespeare play, our interest in fakes and forgeries is akin to our interest in magic. A fake is an illusion, created by a magician/forgery who awes us with his (and almost all known forgers have been male) sleight of hand. There is also a Robin Hood element to many forgers. Because unlike art thieves, they tend to work alone or with one colleague, and are not linked to more sinister organized crime, we can admire them from a moral comfort zone. Their crimes are more like pranks in our mind, and they traditionally do not cause more damage than to the owners and the experts who might accidentally authenticate them. And so we can smile at these illusionists called forgers and, with relatively few exceptions, do so without guilt.

This concept of forger-as-magician-as-working-class-hero, showing up the elitist art world, has origins that date back to the 19th century. They likely began before, and the history of forgery (a book on which I am just finishing) dates back far longer. But the 19th century is when individual instances shifted to sociological phenomenon. That story is elegantly described in Aviva Briefel's *The Deceivers: Art Forgery and Identity in the Nineteenth Century*.¹

Briefel, a young professor of literature at Bowdoin College, has written more on literature than art, but she is steady and thoughtful in her book on what art forgery meant to the 19th century imagination. The number of known forgers, and recognized forgeries, increased sharply during this period, though it was still a time when forensic investigation was in its infancy, and so connoisseurship was the surest method of authentication. We now know that connoisseurship is the most easily fooled of authentication methods, because it is the most subjective and falls victim to the subconscious hopes and prejudices of the expert. But during the 19th century, and really until the Wacker Van Gogh trials in 1932, experts had the final say on what was an original work, and what was a fake. The 19th century rise of new art collections, purchases from the crumbling remains of no-longer-wealthy aristocratic estates, and the foundation of new museums, all contributed to a fruitful hive of illicit activity in the thriving art market. Adding to this was the fact that wealthy collectors were rarely

experts themselves, and had to rely on agents to recognize an artist's work, and to negotiate a purchase. This meant that those agents could manipulate their clients by recommending questionable works for acquisition, so we have intentional misattribution thrown into the mix, along with fakes (original works altered fraudulently to increase their value) and forgeries (wholesale fake works, made from scratch to appear more valuable than they actually are).

Briefel deals with art forgery, but by way of many literary texts, particularly Nathaniel Hawthorne's *The Marble Faun*. I found the approach to art and art crime through literature refreshing—art history, like art crime, in inherently interdisciplinary, and new approaches provide fresh vantage points. Briefel discusses how “copying” as a concept was gendered (that was for ladies), while “forgery,” with its criminal underpinnings, was man's work.

In the end, we are presented with a literary criticism of art forgery—that might sound as if it would not work, but it does. Briefel allows us to see the 19th century art forgery as a social phenomenon, approaching it from angles that would never occur to an art historian or criminologist. A recommended read for academic students of the 19th century creative, and criminal, arts.

1 A chapter from *The Deceivers*, adapted by Aviva Briefel, was published in the Fall/Winter 2011 issue of this journal.

Peter Silverman with Catherine Whitney
Leonardo's Lost Princess
(John Wiley & Sons, Inc., Hoboken, New Jersey, 2012) pp. 256

This book is a fascinating, fast-moving and educational account of the authentication of a previously unknown work by Leonardo da Vinci. Detail about the drawing is first reported in the *Antiques Trade Gazette*, 12 October 2009, which includes a detailed description of the process of technology applied to authentication. The book covers in depth the suspicions of the owner regarding the drawing to which he was attracted after several years of having not purchased the work when first admired and for sale. A second lucky but unexpected opportunity is presented to purchase the work some years later.

While art historians and experts variously agreed and disagreed on the authenticity of the work, the book is most interesting in outlining the exacting use of science in the documentation of the “authorship” to Leonardo. Most fascinating, however, is the explanation of the use of digitalized images using multispectral photography at 1,570 pixels per millimeter by Lumiere Technology and the use of “fingerprints” detected on the work, as well as on others known to have been accomplished by Leonardo.

Also of interest is the almost vituperative disagreement between “experts” on whether the work is by Leonardo. The exchanges, some noted in quoted detail, provide interesting insight into the world of art connoisseurship.

On the jacket Peter Silverman is reported as a noted art collector with his “...significant discoveries (of) three mis-catalogued works by Van Dyck and a wooden cross attributed to Michelangelo.” Catherine Whitney is noted as having written or co-written more than fifty books in various fields.

The style is easy to read and may be put down for the night at the end of a chapter, but beckons to be picked up the next day to read (and learn) more. This is a must read for anyone interested in the application of science to art authentication and most certainly for law enforcement personnel involved in investigating art crime.

George Abungu is the winner of the 2012 ARCA Award for Lifetime Achievement in Defense of Art. Dr. Abungu, a native of Kenya, has served as Chairman of the International Standing Committee on the Traffic of Illicit Antiquities since 1999, and as Director-General of the National Museums of Kenya from 1999-2002. Among his many projects, he was involved in the return to Kenya of looted vigango (traditional grave markers). For more information on him, see the article on ARCA Award winners in this issue.

1. *How did you bring the vigango back to Africa from the United States?*

Many greetings from Nairobi. I will now try to answer some of the questions you raised. First let me recognize the good work ARCA is doing, and to thank the membership for the award that I feel is a great privilege to me and to Africa as a whole. As an archaeologist and a heritage professional, I have spent a lot of my working life in museum and museum-related fields. I have dealt with the protection of works of art as a field archaeologist working on the Kenyan coast, as head of Coastal Museums Programmes, as Deputy Director of the National Museums of Kenya and, subsequently, from 1999-2002, as Director General of the National Museums of Kenya. The museum, apart from hosting the Gallery of East African Contemporary Art, was also in charge of all other heritage in the country, including the Mijikenda Kayas, where many of the vigango were stolen from in the past.

I got involved with the vigango issue when I was still at the Coast of Kenya, working as the Coastal Archaeologist as well as Head of the Museums there. During that time we had to deal with thefts not only of the vigango but also the illegal sale and purchase of Swahili cultural materials such as chairs, doors and jewelry — all that qualify as works of art. With the cooperation of law enforcement agencies, we managed to apprehend a number of dealers who, unfortunately, due to the leniency of the law, often managed to get away with only small fines by way of penalty. However it was a lesson to others.

As for the return of the vigango to Kenya, this happened after I left the museum. However I started the process of the return by working with two scholars from the USA who had worked on the Kenyan coast and knew the vigango and the families from whom they had been stolen. We basically blew the whistle, as well as contacted these institutions during my time at the

museum, to inform them that we knew they had these items and, as a country, we wanted them back. As my successors at the museum continued to follow up through official channels with the institutions, I continued to write articles using these as examples of illicit and immoral acquisitions. In the end, both the Kenyan government, as well as the concerned institution, took the action to return two vigango. Since then, many have been returned.

2. *What is the International Standing Committee on the Traffic of Illicit Antiquities? How was it established, how did you become involved, and what are some of its ongoing activities?*

The International Standing Committee on the Traffic of Illicit Antiquities was founded in Cambridge at the McDonald Institute of Archaeology, during Professor Colin Renfrew's time. It came out of a meeting where people were concerned about the loss, particularly of the archaeological material through the illicit digging and transfer of said materials. It brought people from all over the world to discuss and highlight this problem. Subsequently a follow-up meeting took place in Los Angeles, organized by the Getty Museum and UCLA. Through this committee arose publications, as well as networks of concerned professionals, whose actions have contributed to addressing this major international problem. I see that two of the past recipients of the ARCA Award, Professor Renfrew and Neil Brodie, were founders of this Standing Committee.

3. *Are museums in Kenya and elsewhere in Africa relatively well-protected? We hear a lot about European art theft, but little from African nations.*

The National Museums of Kenya are pretty much well-protected, but occasionally there is theft. As for many museums in Africa, security is a major problem. Many artworks disappear each year, especially from museums in the western part of the continent. There are also illegal collections of African artwork, especially the

so-called “ethnographic materials” from many parts of the continent. We are actually not sure of the numbers, but it is large. In addition to this, there are illegal digs in archaeological sites for material, including the famous Nok material from Nigeria and Mali. The problems of theft are mostly prevalent in areas of conflicts and chaos, or in areas where there is acute poverty.

4. *How many African nations have dedicated art police?*

As far as I know, there is no country with dedicated art police in Africa, not even Egypt. There are tourist police, but these only take care of the well-being of tourists where they are. Thus the art issue falls under the general duty of the national police, who hardly understand heritage law. This in itself is a major hindrance to fighting the problem. The same applies to most customs officers at the points of exit in airports who also do not only understand the laws or appreciate the value of such heritage.

5. *How did you first get interested in the protection of cultural heritage?*

I have always been interested in the protection of our heritage since childhood, having grown up surrounded by elders who appreciated and practiced our heritage. Over the years I have seen the destruction and erosion of this very heritage. However, my very active participation in the protection of the heritage started in 1985, when I was employed by the National Museums of Kenya as an archaeologist, and posted to the Coast of the country. Here I started to appreciate our heritage even more, but also to worry about the loss that was occasioned both by humans and by nature. In the name of development, I saw that we were losing a lot. In addition to this, I saw many outsiders who knew the value of this heritage, roaming around as collectors, paying little money to custodians of family inheritance, only to cart it away outside the country. This made me very conscious not only of the value of the heritage but of its fragility, its role in our society and the need to protect it for human good, preferably *in situ*.

I have dedicated a lot of my time, therefore, not only advocating the respect of a people’s heritage, its protection and the fight against illicit traffic through my work as an archaeologist and heritage professional, but I also have written extensively on this. I have presented in different forums, but I did not expect this award. It has been a sweet surprise.

Ernst Schöller is the winner of the 2012 ARCA Award for Art Policing and Investigation. A long-standing member of the Stuttgart Fine Art and Antiquities Squad and the German Art Unit of the police, Schöller is also a scholar, teaching about the investigation of art forgery. For more information on him, see the article on ARCA Award winners in this issue.

1. *Where did you grow up?*

I was born in Stuttgart (21.02.1954) and I live with my family (two children, aged 23 and 28) in a little town called Fellbach, directly beside Stuttgart.

2. *Where and what did you study?*

After “gymnasium” (college/secondary school) I joined the police, in 1974. During the first five years, I studied “inside the Police,” which means half a year working and half a year studying in a central university of the police (like a police academy). Since 1980, I have worked in the Fine Art & Antiques Squad in the State Criminal Investigations Department of Baden-Württemberg (one of the 16 states of Germany).

3. *How did you decide to join the police force?*

Uups... that was a long, long time ago... 1- A father of a school friend was a “police agent”; 2- It was, for a young man (a boy really), an interesting profession; 3- If you stay 3 years in the police, you do not need to join the army (which was otherwise mandatory in 1974). Perhaps one of the three reasons, perhaps only two.... As I said, it was a long, long time ago.

4. *How did you come to the art unit of the police force?*

I’ve been interested since the gymnasium in Art and Antiques...

5. *You are both an investigator and a scholar. How do you balance these two sides of your career?*

It is difficult. First of all, I’m an investigator, but nevertheless I noticed that sometimes it’s necessary to have a background in historical and technical matters... So I think it’s a good combination of theoretical and practical work.

6. *Do you both teach and write scholarly work?*



No, as I wrote, I’m foremost an investigator. One or two times a year, for 4-5 days, I teach at the University of Berne in Switzerland, together with a Swiss professor. It’s a workshop about the possibilities of recognizing fakes within art prints (etchings, wood cuts, lithographs). Sometimes I will write for a magazine, or a section of a book, for example for an exhibition called “Wa(h)re Lügen” (True Lies), where we showed 300 fakes and originals in four different museums. We had a total of more than 50,000 paying visitors.

7. *You have investigated some of history’s most famous forgers, including Geert Jan Jansen and Konrad Kujau. Is one of your cases most memorable?*

It’s difficult to choose. Jansen made fakes of a very high quality -- and we found the best ones in his house, made using original techniques (but no prints), so-called “fait a la main.” Our Kujau investigations are only connected with fake paintings and drawings that he made (from 1988-2000 he was my “special guest” on six different occasions), not with his “Hitler Diaries.” This happened before my time, and it was no work of art! (Politically-motivated investigations are assigned to another department.)

8. *How would you describe the difference in your investigation of a literary forgery (The Hitler Diaries) and an art forgery (Jansen)?*

In principle, there are no differences. You have to search for a “red filament,” starting from a suspicion, based on spotting one fake, and leading back to the seller, then perhaps a second or more fakes, some proof, until you find the forger, his workshop, the printing machines...

9. *How does the Beltracchi case compare to other forgery cases you've worked on?*

This case was investigated by my colleagues in Berlin. Our part was to fetch the painting, *La Horde*, ostensibly by Max Ernst (sold for €4.3 million), and a second one, supposedly by Campendonk (€850,000) from the Würth Museum in Künzelsau. The great difference was certainly the involvement of the famous expert on Max Ernst, Mrs. Werner Spies, former director of the Centre Pompidou in Paris.

10. *There are only a few investigators worldwide who have made something of a science of the study of forgery in the course of their investigations. You and Vernon Rapley (former head of Scotland Yard's Arts and Antiques Unit) seem to be the two most prominent and successful. Does your success investigating forgery come from an innate interest in the subject, or was it simply a question of which cases found their way onto your desk?*

No, it's an interest connected to the knowledge of how to recognize fakes. It is absolutely necessary that you have inside the team, inside the police, someone who is able to recognize a fake. If you have no one, there can be no investigation, and causes problems for the police. For example, if you go outside to check an art fair, or a gallery, it is necessary that you are able to see with more than your eyes, to have a feeling that there is something wrong with a questionable object.

11. *Are there personal or psychological characteristics that you have found to be consistent in the forgers you have investigated?*

There is one main characteristic: to get money. Later, when the media interest begins (newspapers, TV, etc.), this changes. They want to show that they are quite good, or even better, than the original artist, and they take vengeance at the art market. Because this angle is more interesting for the media, the forgers tend to play it up.

12. *How large is the German art unit, and roughly how many art crimes (thefts, forgeries) are reported in Germany in*

each of the past few years?

There are four units, one in Munich/Bavaria, and others in Berlin, in Stuttgart, and in Wiesbaden (this is the Central Federal Bureau). A total of about 15 colleagues. In 2009 we had 2055 thefts of artworks, in 2010 about 2411 cases. There are no police statistics or numbers for “art forgeries,” but I can say that up to 75% of our daily work is connected to forgeries.

13. *Now that Germany has the shortest statute of limitations on prosecution for possession of stolen goods in Europe (it was formerly Switzerland, if I am correct), have you seen a rise in the number of stolen artworks taken from other countries, and ending up in Germany?*

No. For normal thefts we have (a statute of limitations of) 5 years, and for serious cases (thefts from houses, museums, churches), we have 10 years.

14. *What are your thoughts on the Der Spiegel article of several years ago that described Mohammed Atta trying to sell looted Afghani antiquities to a professor at a German university, in order to buy an airplane to use in the 9/11 attacks?*

No special thoughts. It was one possible way to get money: selling drugs, weapons, stolen or faked art. In the first moment, you didn't know why he wants to get money, his reason, but afterwards it's naturally different.

15. *How have you seen art theft, antiquities looting and art forgery change over the course of your career? Can you note any definite trends?*

Naturally it's changing. The whole legal and illegal art market depends on the consumer's taste. In the 70s and early 80s, we had a lot of sacred art, hand-woven carpets, and such go missing. In recent years we are seeing a strong interest in paintings, graphic work and other goods of the 20th century, “classic modern art,” German Expressionist works. You can see this change if you have a look in catalogues of auction houses from different decades.

Kila and Habsburg are co-winners of the 2012 ARCA Award for Art Protection and Security. For more information about them, please see the article on ARCA Award winners in this issue. Joris Kila answered questions on behalf of both parties.

1. *Tell me about the Austrian Society for the Protection of Cultural Heritage and Blue Shield Austria. How did these initiatives begin and what are some of their current projects?*

The current Austrian situation concerning the implementation of the 1954 Hague Convention (1954 HC) for the Protection of Cultural Property in the Event of Armed Conflict, especially within the Austrian Armed Forces (AAF), is not the product of well-organized activity; it is rather the result of a number of individuals' efforts while working in a variety of positions at the right time. A long time passed between Austria's 1964 ratification of the 1954 Hague Convention, and its implementation and dissemination within the AAF. The first Austrian "military mission" in which cultural property protection (CPP) played a role, occurred in 1968 in the context of the "Prague Spring." The Austrian government and military leaders expected Soviet troops to cross Austrian territory on their way to Prague, violating the country's sovereignty and neutrality. Knowing that the Soviet troops could not be stopped by military force, Austria prepared for an invasion. By initiative of the Federal Bureau for Monuments and Sites (FBMS) and under the supervision of its provincial departments, hundreds of Blue Shields, the emblem of the 1954 HC, were distributed in districts of eastern and northern Austria and, through the active participation of gendarmerie and army officers, these were attached to historical or cultural monuments along the anticipated Soviet route through Austria. It was greatly feared that Soviet troops would



Karl von Habsburg



Joris Kila

not respect Austria's rich cultural heritage, which had already suffered badly during World War II.

The idea was that this time the enemy would at least be made aware of the fact that with every destructive step they took, they were likely to be violating international law. This form of resistance without force at the climax of the Cold War initiated the birth of some sort of "Blue Shield Movement" in Austria, which finally resulted in the foundation of the Austrian Society for the Protection of Cultural Property in 1980. This civil organization is still characterized by having many regular and militia army officers among its members who are entrusted with most of the positions on its steering board. The Society also played an initial and decisive role in setting up the Austrian National Committee of the Blue Shield in 2008. Therefore, both organizations – forming an interface between civil and military expertise as well as providing an unrivaled pool of experts within Austria –

consequently have an interest and high competence in (today's) military CPP.

2. *What is Intangible Cultural Heritage Protection?*

Culture is a word the meaning of which constantly changes while adapting to its surrounding. The definition of culture can be very broad in an anthropological sense as "everything surrounding us" or as narrow as "art." The legal approach to culture and its protection is usually (referring to the 1954 Hague Convention and its protocols) about cultural property. Since April 21, 2006,

the legal framework for cultural heritage is broadened substantially by the entering into force of the UNESCO 2003 Convention on Intangible Cultural Heritage that comprises cultural aspects as oral traditions, performing arts, social practices and traditional craftsmanship but can also be a national anthem or certain language or dialect.

3. *What would you like to see the military do during future conflicts to better protect cultural heritage?*

Follow the directives laid down in the HC 1954, meaning to train and prepare military on CPP in peace-time. To be more specific, I mean Article 25, the Dissemination of the Convention. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their military programmes and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property. Article 3: Safeguarding of cultural property; Article 4: Respect for cultural property; Article 5.2: Occupation; Article 7: Military measures; Art. 7.1: The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples; Art. 7.2: The High Contracting Parties undertake to plan or establish in peacetime, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it. The 1999 Second Protocol: Article 5: Safeguarding of cultural property; Article 9: Protection of cultural property in occupied territory. Last but not least, it is time to create an international military cultural emergency response team.

4. *How did you two begin to work together? What was the first project and how do you collaborate now?*

We met some five years ago, at a seminar of the Austrian Defense Academy in Vienna about Cultural Property Protection and the military. Currently we work together on cultural emergency assessment projects in Libya, and in the editorial board of an academic series of publication with Brill publishers, entitled “Heritage and Identity.” There are plans to start an academic research center in Austria about cultural property protection in times of conflict involving the military.

Ralph Frammolino, along with Jason Felch, is the co-winner of the 2012 Eleanor and Anthony Vallombroso Award for Art Crime Scholarship. The award was granted both for Frammolino and Felch's outstanding journalistic work, and the book that resulted from it, *Chasing Aphrodite*, about the Getty antiquities scandal and Marion True. To learn more about the award winners, please see the awards section in this issue. Ralph responded to some questions on his own behalf, and on behalf of Jason Felch.

1. *What is the origin of your interest in the protection of antiquities?*

Prior to *Chasing Aphrodite*, I was among the blissfully ignorant art-loving masses who regarded museums with a sort of hushed awe while delighting in their inspiring displays of ancient pieces. I accepted without question the good intention of curators, academics and museum officials, never giving a thought to the back story of how they obtained their trove of Greek and Roman pieces (my favorites). Then, as an investigative reporter for the *Los Angeles Times*, I had the rare opportunity to examine this world through a different prism. Jason and others at the paper had just finished an investigation into the finances of the Getty Trust, the richest art institution in the world. The editors at the *LA Times* teamed me up with Jason to look at problems with the antiquities collection, a move that happened about the time a Roman court indicted Getty antiquities curator Marion True for trafficking in looted artifacts. What we found was shocking, the equivalent of steroids in baseball and pedophile priests in the Catholic Church. The museum world had its own dirty little secret – that it was feasting on the fruits of an illegal trade – and justifying it through sham acquisition policies, temporized denials and archly worded statements about serving posterity. To me, the protection of antiquities became a proxy for cultural colonialism. While I would like to think that the Getty scandal marked a change, I'm no longer sure. In my mind, the Getty's selection of James Cuno as CEO and Timothy Potts as Museum Director



Ralph Frammolino (left), Jason Felch (right)

– two openly avowed collecting hawks – marks a giant step backward from the enlightened, culturally sensitive stance the Getty adopted after it was caught with looted masterpieces. Now Cuno and Potts say they want to start to aggressively acquire Middle Eastern antiquities – coincidentally as war, terrorism and regime change have triggered wholesale looting of such artifacts, which will no doubt start bobbing up through the market in the coming years.

2. *Do you recall the first moment that you came across a piece of unpublished information that pricked up your journalistic ears, so to speak, and led you to delve further into the *Chasing Aphrodite* story?*

Yes, vividly. It was the first time I saw copies of former Getty Museum Director John Walsh's hand-written notes of his September 1987 conversations with Getty CEO Harold Williams about the antiquities market. At the time, the Getty was contemplating the purchase of the Aphrodite, a statue of such great artistic and institutional significance. The problem was, however, that the statue had appeared from out of nowhere, unknown to the experts. These, and the recent breaks on the statue's torso, all but screamed that the piece was looted. Walsh and Williams discussed how antiquities dealers were liars who spun fantasy provenance for the goods they sold. Then, in apparent reference to the Aphrodite, Walsh quoted Williams as saying: "We know it's stolen. Symes [the statue's dealer, Robin Symes of London] a fence...." Those words nearly jumped off the paper. But for me

the biggest jolt came from another passage, where in longhand Walsh quoted Williams as saying: “Are we willing to buy stolen property for some higher aim?”

When I read that, I literally got down on the ground and bowed to that piece of paper. Rarely does an investigative reporter get inside an institution like this, and rarely does a journalist get such telling evidence of the ugly truth behind the fetching scenery. At that moment I knew this would be a story that wouldn’t stop, and one that could have profound implications for the Getty and other museums. Here we had the most private thoughts and comments of Williams – a former UCLA Business School chairman and former head of the Securities and Exchange Commission -- and John Walsh, the man in charge of the world’s richest museum, wrestling with what everyone understood but few, if any, acknowledged openly: they were buying stuff from a market awash in illicit objects. Unfortunately for the Getty, this conversation led Walsh and Williams to weaken, not strengthen, the Getty’s antiquities acquisition policy, allowing the museum to buy the Aphrodite as a “test case” and continue acquiring suspect objects that, in the end, came back to haunt it.

The only other document that evoked such a strong reaction from me was the so-called “smoking gun memo,” in which former antiquities curator Arthur Houghton wrote in 1986 that he had talked to two prominent dealers to find out where they had gotten three of the Getty’s other antiquities masterpieces. He discovered that the pieces came from “excavations” of ruins near Taranto in the late 1970s, after the ratification of the UNESCO Convention. This was proof positive Getty insiders knew they were dealing in hot antiquities from the illegal trade. But no light bulb went on for Houghton or Debbie Gribbon, the Getty Museum assistant director who received the memo.

It’s interesting to note that the Getty withheld both these documents from Italian authorities after promising to turn over everything in its files.

3. *How did you two divide the research and writing in your collaborative newspaper articles and your book?*

One of the more gratifying things about *Chasing Aphrodite* is how almost everyone says it speaks with one “voice.” We worked hard to achieve that unity of vision, style and literary register. Jason and I are very different people but we always put the story first, both at the newspaper and for the book.

Collaborating for the newspaper stories was easy;

reporters are under pressure, they pitch in where they can, and an editor is there to referee any disputes or help solve any reportorial puzzles. But with the book, we were on our own.

First, we wrote a collaboration agreement that laid out how we intended to work with each other and what would happen if one of us died or quit the project. We also went through our files and constructed a meticulous 88-page timeline. After blocking out the story, each of us took different sections to research and/or re-report. For instance, one of us took up the subject of J. Paul Getty and his antiquities “addiction”; the other looked into the background of Marion True, the main character of the tale. We also wrote letters to many of the former and current Getty officials who either declined to be interviewed or broke off communication during the newspaper series. We wanted to impress on them that the book would be a different take, one that would go into greater depth and take a narrative approach. Our goal was to help readers understand the nuances, developments and legal issues of collecting in “real-time,” just as our characters faced them. We weren’t motivated by the judgment of retrospect, as is the case with newspaper reporting. We wanted their side, their stories and whatever contemporaneous documents, memos or personal writings they could share. That netted us a fantastic find: the notes of Arthur Houghton, author of the “smoking gun” memo. This process opened a new view into the personalities and objects that ran through our book.

Each of us wrote the first draft of the section we researched. Then we swapped them for an initial edit. The edited version was sent back to the original writer, who made the changes and then added or deleted more. We also convened lengthy Skype calls – I was in South Asia during most of this while Jason remained in California – to go over the changes. When we initially handed the first draft to Houghton Mifflin Harcourt, it was 190,000 words – nearly twice the limit. We were told to cut it down and our editor at Houghton Mifflin Harcourt gave some general structural suggestions, but we never had a thorough, tough line edit. After the second round, the publisher wanted to go to print. But we pulled the book back and continued to polish it for nearly a year. This back and forth, this swapping of chapters, allowed us to meld our visions and styles into what you can now read in the book. Just as the book finally went to press, Marion True’s trial in Rome ended because of a time limit -- and we were able to slam something into the epilogue about it.

One of my biggest reportorial regrets is that, except

for a few benign questions, Marion True steadfastly refused to talk to us during the six years of reporting for the newspaper and the book. She never forgave us for getting her fired from the Getty over two personal loans she took from individuals from whom the Getty bought tens of millions of dollars worth of antiquities on her recommendations. She concealed the loans from her bosses, who fired her after we confronted them with questions about the obvious conflict of interest.

4. *What is WikiLoot and how did it come about?*

WikiLoot is a crowd-sourcing platform that will make public hundreds, potentially thousands, of photos seized by cultural authorities from dealers' warehouses and antiquities traffickers showing artifacts as they looked fresh from the ground or undergoing restoration for sale into the market. This will allow interested museum-goers and art lovers to act as amateur sleuths by comparing the WikiLoot photos to the objects they see in their own museums, local collections, art dealer showrooms and auctions. If they find a match, they can alert the authorities. In *Chasing Aphrodite*, we describe how it took the Italians years to match the photos they recovered from Giacomo Medici's warehouse to the polished artifacts at the Getty and other major American museums. WikiLoot would accelerate this massive game of Concentration through the power of crowds. Of course, the WikiLoot process needs refining but it is already creating quite a stir in the art world.

The idea originated with Jason, who was looking for some way to use the hundreds of photos of looted antiquities we gathered during our reporting at the *Los Angeles Times* and for *Chasing Aphrodite*. The majority of these have yet to be traced to restored artifacts. Meanwhile, the U.S. Immigration and Customs Enforcement and foreign art squads have extremely limited manpower and funds, so they could use all the help they can get. Jason has since applied for a Knight News Challenge Grant to fund WikiLoot as a non-profit concern.

5. *You have written on a wide variety of subjects for the LA Times and elsewhere. Will you continue to write on illicit trade in antiquities, or are your next projects in other domains?*

The Getty story – and *Chasing Aphrodite* – represents nearly six years of constant reporting, writing and research into the trade. I felt a closure when Jason and I went to see the Aphrodite, now known as the “goddess of Morgantina,” in its new home in Aidone, in Sicily. I wrote about that in a November 2010 cover story for

Smithsonian Magazine. The Getty story was my swan song – and perhaps the most important of my 30-year journalism career. Except for writing occasional freelance pieces, I am no longer a working journalist.

In 2008, just as the Getty and other American museums returned more than 100 antiquities to Italy and Greece, I took a buyout from the *Los Angeles Times* and hit the road as a journalism teacher and media development consultant. I now work for various aid agencies, such as USAID and the World Bank Institute, training foreign journalists in South Asia on investigative reporting techniques and how to use their new right-to-information laws, which are similar to the U.S. Freedom of Information Act. I've taught or trained in India, Nepal, Sri Lanka and Bangladesh, but concentrated more in Bangladesh, where I've worked with major publications and NGOs here to help foster a culture of investigative reporting much like the kind Jason and I did on the Getty story and for *Chasing Aphrodite*. I don't anticipate doing any more investigative reporting on the illicit trade in antiquities.

But Jason has and does write about the antiquities trade – spectacularly, I might add. Besides keeping the *Chasing Aphrodite* website fresh and provocative, he continues to break stories on the trade while exploring other investigative projects for the *LA Times*. He recently broke the story about how Turkey, like Italy in the Getty case, is now demanding dozens of looted antiquities from the Getty, Met and other museums. He's also writing about the Norton Simon Museum's questionable possession of a temple guardian statue from Cambodia. And, of course, there's WikiLoot.

Thierry Lenain is a Belgian professor of art theory at Université Libre de Bruxelles. He is the author of *Monkey Painting (Reaktion, 1997)* which, as the title suggests, is about what happens when monkeys are given painting materials, and the recent *Art Forgery: the History of a Modern Obsession (Reaktion, 2011)*. We chatted with Lenain, who also has an academic article published in this issue.

1. *What led you to write Art Forgery, when your previous research has been on other topics?*

There is indeed a link with my previous topics. If we leave out a book based on a PhD dissertation, pertaining to the question of play in Nietzsche's philosophy, those topics all dealt with things whose inclusion in, or exclusion from, the category of artworks is problematic and an object of controversy. Such was, typically, the case of monkey painting. To most, the results of the graphic or painting plays of non-human primates have strictly nothing to do with art: only a misleading resemblance with action-painting could prompt someone to think otherwise, they say. But to others, those plays should indeed be regarded as reflecting the very pre-human roots of art and, in that measure, should certainly not be excluded from the category of art (this category rather must be extended so as to accommodate "animal art").

In fact, the issue appears to be considerably more complicated (and for that matter, fascinating) than that. On the one hand, non-human primates do not use painting as a means to convey symbolic content of any kind – so what they do when playing with the human-given painting apparatus can hardly of itself be treated as "art" in the proper sense. But on the other hand the resemblance with action-painting cannot be held as strictly fortuitous or irrelevant, because apes do not just do anything when given paint and a sheet of paper. Moreover, contemporary art has made it possible, since Marcel Duchamp, to consider the presentation of any given non-artistic object as an artistic proposition. Why, then, should we not accept that the display of an ape-made painting within an artistic environment could be



an artistic event (though its "author" obviously is not the ape but rather the person who decided to consider it as art)?

My two other books dealt with contemporary artists who certainly have stretched the limits of the concept of art, and this is especially the case of Bernar Venet, the French-born Minimalist and conceptual artist. In contemporary art, there is a founding principle according to which the artwork can consist of objects (or pieces of information) which, in and of themselves, are not artistic at all, and do not even remotely look like art objects – much less so, in fact, than a painting made by an ape. ... Now the question of art forgery can be approached in that perspective too. It also is an example of something whose affiliation to (or exclusion from) art is problematic through and through. Either you count it "in" – but then you'll have serious problems with the fact that a fake has precious little to do with "normal art" in sociological terms (if only because a fake is *radically* authorless) – or you expel it, which leaves you with the problem of accounting for its eerie resemblance with full-fledged artworks, especially when no aesthetic difference can be found between a fake and its model. As a result, the status of forgeries (art or non-art) has long been a bone of contention among critics, art historians and other observers of the art-world.

More than that, what makes art forgery an especially captivating subject matter is both the intensity of the controversies it triggers and the depth of the conceptual questions it raises as a cultural phenomenon – not to mention its broad historical scope, which itself is a consequence of its long-reaching roots in the remotest layers of Christian culture. Art forgery in that respect

is a much more considerable topic than, say, monkey painting (whose narrow historical confinement does not, however, diminish its potential for conceptual disruption). Among other borderline topics susceptible to shaking the conceptual framework of art theory, this one clearly ranks quite high. This theoretical vertigo is precisely what attracted me in the first place.

2. *Which case studies did you focus on in your Art Forgery book?*

In fact, this book is not so much about art forgery *per se* as about its *perception* throughout Western history – meaning that its subject matter is essentially historiographical. What I tried to do is reconstruct the genesis of the issue and its evolution from an attitude of admiration (in the Early Modern culture) to expressions of execration and denial (abundant in the late-modern horizon). So my case studies are of the literary kind. Much attention is devoted to Vasari's *Lives* (published in the second half of the sixteenth century), because this work is the birthplace of the literary motif which will later be at the core of "fake-lore" at large. At the other end of the spectrum, Paul Eudel's book *against* art forgery also deserved careful examination, as did Max J. Friedländer's *On Art and Connoisseurship*. But then the Van Meegeren affair – treated not as a point of art history, but rather as a critical moment in the history of the cultural *representations* of art forgery – also was an important case. And let us not forget to mention the writings of the British forger Eric Hebborn.

3. *Which other books on forgery did you find particularly useful as reference points for your research?*

There certainly are many excellent books about art forgery, given the enormous amount of literature on the issue; by the way, I could not even dream of reading all available literature (and there surely must be some more or less embarrassing omissions in my bibliography). Among the books issued in recent years, I'd perhaps single out Jonathan Lopez's thorough study of the Van Meegeren affair (Edward Dolnick's book on the same subject is also very good); Christopher Wood's *Forgery, Replica, Fiction* is a fascinating study pertaining to the early history of forgeries and archaeological expertise – as is Anthony Grafton's about literary forgeries, or Jean-François Jeandillou's about literary mystifications. These are only a few outstanding examples, among others. Then again, once you adopt a historiographical perspective, almost all books, recent or otherwise, appear to be worth reading: if not as secondary literature providing analytical tools, at least as primary "objects" to be analyzed. For example, an interesting sub-genre in

the literature on art forgery is the writings of forgers – and in my opinion those of Eric Hebborn deserve to be regarded as classics of their kind.

4. *How do you think that art forgery has altered or evolved from its "golden age" in the 19th century to the present day?*

The evolution follows the same basic pattern as the one stressed by Grafton in the domain of literature: generally speaking, art forgery evolves hand in hand with the critical discourse and methods, the former benefiting from the conquests of the latter in their struggle to overcome it – and vice-versa. Now regarding the cultural perception of art forgery, I'd say that the period between the 1880s and the 1960s was that of the most virulent concern and, as a result, of the most extreme reactions of detestation and denial of the effective power of fakes. Starting from the 1980s, you see the appearance of a number of studies straying from that old neurotic-like attitude. The 1990 exhibition at the British Museum, curated by Mark Jones, is the perfect example of a more open and serene way of dealing with the topic, approaching it as a phenomenon to be understood under the light of history, sociology or cultural anthropology.

The explanation of this change is certainly not that there would be fewer fakes than before, or that the better lab methods would have made it completely impossible for forgers to operate successfully – this is obviously not the case. The change in perception has rather something to do with the fact that contemporary artistic culture does not emphasize the element of truthful expression, inherited from Romanticism, as much as nineteenth- and mid-twentieth century culture did. Not that this element has been erased, of course; but contemporary artists have done a lot to criticize the Romantic conception of authorship and of the artwork as an authorial relic (or to re-establish it in much more mediated ways). One might even say that contemporary artists have "stolen" some of the most disquieting means through which "golden age forgers" have been circumventing the requirement of authenticity and the criteria applied by connoisseurs to judge of it. As a result, art forgery to some extent has found itself sort of trivialized in terms of its deep-down cultural relevance.

5. *Have you found a general psychological profile to which the majority of known art forgers adhere? Are there certain characteristics that the majority of them share?*

This is a difficult question because we do not have that much information about the personality of forgers, a few notable exceptions notwithstanding. From the

information we have, I'd not say that there is a constant psychological profile. You find very different types. I stressed this point apropos of André Mailfert vs. Han van Meegeren vs. Eric Hebborn – three completely different personalities. What is true, however, is that the figure of the forger is commonly portrayed using the derogatory pattern of the failed artist bitterly trying to rise himself above its lack of talent by attacking the credibility of experts. What struck me, in this respect, is that the general portrait of the forger drawn by Paul Eudel in the 1880s seems to be a fitting description of Van Meegeren who, by the way, became something as the epitome of the art forger at large. But this is only a literary pattern and an example fitting it well.

Now there certainly are typical features of the forger considered from a *cultural-sociological* point of view. Most forgers are nostalgic and reject the art of their time, for instance. And whatever their character, bitter or otherwise, they behave like “cultural perverts,” meaning that they do not play the artistic game openly. They treat the critics, the experts, and the public not as partners in the game but as mere prey, to be captured in a web of lies, which is to say that they do not address them as subjects, but manipulate them as objects.

6. *There have been an unusually high number of skillful Belgian and Dutch art forgers in history, more it seems than from any other country (van der Veken, van Meegeren, Wacker, Geert Jan Jansen, to name a few). Is there a cultural rationale for this trend?*

Now that you mention it... But wait, do we really have reliable statistics about that? Supposing the observation is right, perhaps a part of the explanation is that Belgium and the Netherlands were places where the survival of traditional artistic values and know-how was especially strong (even though Modern art was flourishing there too). By the way you can see the same phenomenon in Italy, in Siena in particular. The context of the art market and collectionism certainly is another important factor.

7. *Which other criminological or sociological fields seem to run parallel to the psychology of art forgery?*

Artworks are, as French sociologist Nathalie Heinich puts it, “person-objects”: unsubstitutable singular realities endowed with a special kind of value. Following that definition, every activity consisting in deceiving someone as to the singular identity of any entity (objects or subjects alike), especially as to its origin, bears some family resemblance with art forgery. In a general way, crookery most often relies on the substitution of something or someone for the real thing or person.

And at the end of the day, every type of object whose value depends on its origin can be faked for a profit: vintage cars, celebrity autographs, wines, even musical performances, etc. You name it. Forgery is nothing but the reverse side of the special value of authenticity conceived as the link between an entity and its origin.

8. *If you were to summarize the thesis of your book in one paragraph, what would it be?*

Art forgery cannot be understood as a cultural phenomenon, short of an inquiry into its genealogy. It emerged in the context of the Italian Renaissance, with roots in the Christian cult of relics (these are, in the history of mankind, the first example of singular objects whose value depends on its origin, which for that reason must be certified). But it did not evolve into the connoisseur's nightmare before the last decades of nineteenth century. At that moment the Romantic conception of the artwork as its author's relic was radicalized to such a degree that the very idea of a work displaying another identity as its own became unconceivable. This is why, until the advent of the critique of the mythological substructure of authorship in contemporary art, forgery became an object of intense detestation and denial among critics and art historians. Under the lens of “deep historiography,” those neurotic-like reactions betray the presence of something which, though the very product of the late-modern art culture, could not find a place in the system of that culture which, to some extent, is still our own while already appearing as a thing of the past.

In 2008 the Sureté du Québec, in collaboration with the Royal Canadian Mounted Police, established the first national art crime investigation team in Canada's history. The four-man team is now led by Jean-Francois Talbot, who has worked since 2003 with Alain Lacoursiere, an art historian and retired member of the Montreal police. Lacoursiere, who has been nominated for an ARCA Award, helped in the development of an art crime team in Canada and a system called Art Alert, which is an email bulletin sent out to 25,000 subscribers in 75 countries, largely members of the art community and police departments. Between 2004 and 2008, a combined force of agents from the Sureté du Québec and the Montreal police department investigated around 450 art crimes, made 20 arrests, and seized over 150 stolen or forged artworks, with a total estimated value of around \$2 million. The newly-established art crime team handles an average of 90 art crime cases per year. ARCA interviewed the art crime team, including Alain Dumouchel, to learn a bit more about art crime and investigation in Canada.

1. *How many art thefts are reported annually in Canada (if you have the number for the past few years that would be welcome)?*

I can give you the statistics for the past two years. Stolen objects include: paintings, sculptures, vases and liturgical objects. In 2010, a total of 102 of these objects have been declared missing to our team of investigators. In 2011 that number came down to 80.

2. *How many investigators focus on art in all of Canada?*

The investigator's team of Sûreté du Québec (SQ) and of Gendarmerie Royale du Canada – Royal Canadian Mounted Police (GRC-RCMP) – is actually formed with one member from each of these organizations. We give assistance to all SQ units as well as other Municipal Police Services across the Province of Québec. We may also bring our support to different police units of the GRC-RCMP, but our primary mandate is within the province of Québec.

3. *How did your unit come to be established?*

The works of art investigation team was created in 2003. It was formed of one member from the Service de Police de la Ville de Montréal (SPVM) and from the SQ. Then, in 2008, the SPVM decided to withdraw from the team. So the GRC-RCMP then assigned a member and teamed up with the SQ.

4. *What would you consider the five most important art crimes in recent Canadian history?*

- Robbery of two artifacts at the Museum of Fine Arts of Montréal in October 2011.
- Robbery at Jean-Paul Riopelle's studio in 2005 and

in 2011. (The investigation resulted in finding the artifact stolen in 2011.)

- Robbery of artifacts of the "Groupe des Sept" (Group of the Seven) in a Toronto art gallery in July 2011.
- Fraudulent purchases by credit cards in art galleries in the province of Québec of 35 work of art valued at around 245,000\$. (The investigation allowed us to find the work of art and permitted us to put under arrest two of the suspects.)
- Seizure in a Calgary art gallery in 2009, two of the works of art of Jean-Paul Riopelle. One work of art stolen in 2009 and another stolen in 1993 in Montréal.

5. *What is the recovery that you are most proud of?*

The investigation concerning fraudulent purchases of 35 works of art valued at around 245,000\$ from different artists, with credit cards in many art galleries across the Province of Quebec in 2011, involved many police organizations. That teamwork permitted us to recover works of art hidden in a warehouse in Quebec City which resulted in giving them back to the swindled gallery owners.

6. *What venue is most often victimized in Canadian art theft cases (private, museum, gallery, religious institution?)*

Most of our investigations consist of robberies in residential houses.

7. *How many thefts seem to have been perpetrated by organized criminals (any group of 3 or more individuals working in criminal enterprises toward collective, long-term goals, like the Bill Reid thefts), as opposed to individual thieves or crimes of opportunity?*

It is impossible for us to answer that question right now.

The information is unlisted.

8. *Is forgery a prevalent crime in Canada, or do you focus on theft?*

Counterfeiting is an important offence, but it's mostly robbery and fraudulent purchases of works of art that occupy our investigation team.



MASTER'S CERTIFICATE PROGRAM IN ART CRIME AND CULTURAL HERITAGE PROTECTION

2012 Dates: June 1 through August 12
Location: Amelia, Italy

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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. Tjihuis
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
Monitoring Expert Group

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
IESA/Wallace Collection

Archaeology and Antiquities

Valerie Higgins
Faculty and Chair
Department of Archaeology and Classics
American University of Rome

Investigation, Insurance, and the Art Trade

Dorit Straus
Worldwide Fine Art Manager
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Art Policing and Investigation

Richard Ellis
Director, The Art Management Group
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Academic Admissions and general questions on the 2012 Program should be sent to:

education (at) artcrimeresearch.org

ARCA Award Winners

2012 ARCA Awards

ARCA (the Association for Research into Crimes against Art) is pleased to announce the winners of its annual awards for the year 2012.

ARCA presents four annual awards. Nominations are made by ARCA staff, trustees, and members of the editorial board of this journal. The winners are decided by a vote of the trustees, and are presented at ARCA's annual conference, held in Amelia, Italy on June 23 and 24 of this year.

The 2012 ARCA awards go to the following outstanding contributors to the field of art crime studies and the protection and recovery of cultural heritage.

ARCA Award for Art Policing and Recovery

Past winners: Vernon Rapley (2009), Charlie Hill (2010), Paolo Giorgio Ferri (2011)

Shortlisted nominees: Don Hrycyk, Alain Lacoursiere, Sharon Cohen Levin, Maurizio Seracini, Christos Tsirogiannis

2012 winner: **Ernst Schöller**

Schöller is a long-standing member of the Stuttgart police and the German Art Unit of the police. He is also a scholar, teaching university courses on the investigation of forgery cases. He has been involved in the successful investigation and prosecution of numerous prominent art crime cases, with his particular expertise and experience in the investigation of art forgers. His successes include the arrest of Konrad Kujau (the forger of the "Hitler Diaries") for art forgery, and the cases against Geert Jan Jansen, Alexej Jawlensky, and Leon Amiel.

Schöller is awarded for his long-term success as an investigator in Germany, and as a scholar and specialist in art forgery.

ARCA Award for Art Protection and Security

Past winners: Francesco Rutelli (2009), Dick Drent (2010), Lord Colin Renfrew (2011)

Shortlisted nominees: Matthew Bogdanos, Laurie Rush

2012 joint winners: **Karl von Habsburg and Joris Kila**

Karl von Habsburg is president of the Association of National Committees of the Blue Shield and, jointly with Dr. Joris Kila, he runs the International Military Cultural Resources Work Group.

Habsburg is a former member of the European Parliament for Austria, and has specialized in International Humanitarian Law and Intangible Cultural Heritage Protection. A former air force pilot, he still serves in the reserve of the Austrian armed forces as a key Cultural Property Protection Officer. He is vice president of the Austrian Society for the Protection of Cultural Heritage and a founder of Blue Shield Austria. In addition to being a frequent lecturer, he is an author of several

publications on the subjects of Intangible Cultural Heritage Protection and Military Cultural Property Protection and has carried out multiple documentation missions in conflict zones.

Kila is chairman of the International Military Cultural Resources Work Group. He is a researcher at the Institute of Culture and History of the University of Amsterdam, and a board member for civil-military relations with the World Association for the Protection of Tangible and Intangible Cultural Heritage in Times of Armed Conflict (WATCH), based in Rome. Additionally, he serves as a community fellow of the Cultural Policy Center at the University of Chicago, is a member of the US Central Command Historical/Cultural Action Group and is Chair of the International Cultural Resources Working Group. Until recently he served as network manager and acting chairman of the cultural affairs department at the Civil-Military Co-operation (CIMIC) Group North in the Netherlands. In that capacity he undertook several cultural rescue missions in Iraq and FYROM (Macedonia).

Habsburg and Kila are jointly awarded for their long-term service to the protection of cultural heritage in conflict zones.

Eleanor and Anthony Vallombroso Award for Art Crime Scholarship

Past winners: Norman Palmer (2009), Larry Rothfield (2010), Neil Brodie (2011)
Shortlisted nominees: Fabio Isman, Sandy Nairne

2012 joint winners: **Jason Felch and Ralph Frammolino**

Mr. Felch and Mr. Frammolino are award-winning investigative journalists with the *Los Angeles Times* newspaper, and co-authors of a book based on their columns, entitled *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum* (2011).

Jason Felch is an award winning investigative reporter with the *Los Angeles Times*. In 2006 he was a finalist for the Pulitzer Prize in Investigative Reporting for exposing the role of the J. Paul Getty Museum and other American museums in the black market for looted antiquities. His work has also been honored by the National Journalism Awards, Investigative Reporters and Editors, the National Association of Science Writers, and others. Prior to joining the *LA Times* in 2004, Jason was a fellow at the Center for Investigative Reporting and a freelance writer on topics such as money laundering, arms trafficking and drilling for natural gas in the Peruvian rainforest.

Ralph Frammolino is a veteran journalist who worked at American newspapers for 30 years. He spent 25 of those at the *Los Angeles Times*, where he covered a variety of beats but mostly concentrated in investigative projects for the Metro staff. His work has been honored by the Associated Press of Texas, Dartmouth University Business School and the Los Angeles Press Club. He was part of the staff effort that won a Pulitzer Prize in 1994 for the coverage of the Northridge Earthquake, and was a co-finalist for a Pulitzer in 2006 for his coverage of the J. Paul Getty Museum antiquities scandal. Since leaving the *LA Times* in 2008, Mr. Frammolino has been working in South Asia as a teacher, journalism trainer and media development consultant with USAID, the World Bank and other foreign aid donors. He continues to freelance and his stories have appeared in *The New York Times*, *New York Post*, *LA Times*, *Columbia Journalism Review* and, most recently, *Smithsonian Magazine*.

Felch and Frammolino are jointly awarded for their outstanding research and scholarship that informed both their investigative articles for the *Los Angeles Times* and their book, *Chasing Aphrodite*.

ARCA Award for Lifetime Achievement in Defense of Art

Past winners: Carabinieri TPC (2009), Howard Spiegler (2010), John Merryman (2011)
Shortlisted nominees: Matthew Bogdanos, Mark Dalrymple, Maurizio Seracini, Sandy Nairne

2012 winner: **George H. O. Abungu**

Dr. Abungu, a native of Kenya, has served as Chairman of the International Standing Committee on the Traffic of Illicit Antiquities since 1999, and as Director-General of the National Museums of Kenya from 1999-2002. Among his many projects, he was involved in the return to Kenya of looted Vigango (grave markers).

Dr. Abungu has over 60 publications in the disciplines of archaeology, heritage management, and museology, culture and development and has championed the role of the arts and its respect and protection in many of his publications, public forums and in his works as a museum professional, scholar and administrator

He has been an advisor to the Aluka project of the Mellon Foundation, the Global Heritage Fund, and is Vice President of the International Council of Museums (ICOM), a Member of the International Jury of the UNESCO Melina Mecouri International Prize for Safeguard and Management of Cultural Landscapes, and Board member for TARA, the Trust for African Rock Art, among others. He has sat on the World Monuments Watch panel and was Kenya's Representative to the UNESCO World Heritage Committee, and Vice-President of its Bureau (2004-2009).

He is awarded for his long-term efforts to secure the cultural heritage of Kenya and other African nations.

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Art and **CRIME**

Exploring the Dark Side
of the Art World

Edited by Noah Charney

Afterword by John Stubbs

Contributor Biographies

George H. O. Abungu, a native of Kenya, has served as Chairman of the International Standing Committee on the Traffic of Illicit Antiquities since 1999, and as Director-General of the National Museums of Kenya from 1999-2002. Among his many projects, he was involved in the return to Kenya of looted Vigango (grave markers).

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Duncan Chappell is a lawyer, criminologist and former Director of the Australian Institute of Criminology. He is also the Chair of the Australian Research Council's Center of Excellence in Policing and Security. Currently an Adjunct Professor in the Faculty of Law at the University of Sydney he has researched and published on art crime as well as acting as an expert in art crime cases. His recent publications include Manacorda, S. and Chappell, D. *Crime in the Art and Antiquities World. Illegal Trafficking in Cultural Property* (New York: Springer, 2011).

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 currently is a professor at the American University of Rome and Brown University. He is the editor of ARCA's first book, *Art & Crime: Exploring the Dark Side of the Art World* (Praeger 2009) and *The Thefts of the Mona Lisa: On Stealing the World's Most Famous Painting* (ARCA Press 2011).

Urška Charney is the head of design for ARCA.

Ton Cremers is a security consultant and the founder of The

Museum Security Network (MSN). He was awarded the 2003 Robert B. Burke Award for excellence in cultural property protection.

John Daab was formerly a NYCTP Police Officer and NYU Professor. John is currently a Certified Fraud Examiner (CFE) with the Association of Certified Fraud Examiners and a Certified Forensics Consultant (CFC), Accredited Forensic Counselor (AFC) and a Certified Criminal Investigator, specializing in art forensics research with the American College of Forensic Examiners International (ABFEI). John holds Diplomate (DABFE) status and is a board member of the American Board of Forensic Examiners (ABFE), Criminal Investigator division. John is a Certified Homeland Security 1, (CHS1) and a Certified Intelligence Analyst (IAC) member of the American Board of Certification in Homeland Security (ABCHS). John has won awards for teaching management and service to NYU. John has published over 70 articles and recently authored, "The Art Fraud Protection Handbook." John is currently completing studies in Art Appraisal at NYU, beginning a docent program at Princeton, and has completed a second book, *Forensic Applications in Detecting Fine, Decorative, and Collectible Art Fakes*.

Jason Felch is an award winning investigative reporter with the *Los Angeles Times*. In 2006 he was a finalist for the Pulitzer Prize in Investigative Reporting for exposing the role of the J. Paul Getty Museum and other American museums in the black market for looted antiquities. His work has also been honored by the National Journalism Awards, Investigative Reporters and Editors, the National Association of Science Writers and others. Prior to joining the *LA Times* in 2004, Jason was a fellow at the Center for Investigative Reporting and a freelance writer on topics such as money laundering, arms trafficking and drilling for natural gas in the Peruvian rainforest. Jason received a bachelor's in philosophy from Boston College and a Masters in journalism from UC Berkeley. Before entering journalism, he was a teacher and founded an afterschool program in San Francisco. He currently lives in Pasadena, California with his wife and son. *Chasing Aphrodite* is his first book.

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Ralph Frammolino reported for nearly 25 years at the *Los Angeles Times*. His work has also appeared in the *New York Times* and the *Columbia Journalism Review*. He is now a media consultant for various aid projects in Bangladesh, Nepal, and Sri Lanka, where he trains working journalists on investigative reporting techniques and right to information laws. In 2006 he and Jason Felch were finalists for the Pulitzer Prize in Investigative Reporting for exposing the role of the J. Paul Getty Museum and other American museums in the black market for looted antiquities.

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Karl von Habsburg is president of the Association of National Committees of the Blue Shield and, jointly with Dr. Joris Kila, he runs the International Military Cultural Resources Work Group.

Habsburg is a former member of the European Parliament for Austria, and has specialized in International Humanitarian Law and Intangible Cultural Heritage Protection. A former air force pilot, he still serves in the reserve of the Austrian armed forces as a key Cultural Property Protection Officer. He is vice president of the Austrian Society for the Protection of Cultural Heritage and a founder of Blue Shield Austria. In addition to being a frequent lecturer, he is an author of several publications on the subject of Intangible Cultural Heritage Protection and Military Cultural Property Protection and has carried out multiple documentation missions in conflict zones.

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'Cross-border police co-operation: Traversing domestic and international frontiers' (2011) Crim LJ 333 and she co-edited 'Cross-border Law Enforcement - Regional Law Enforcement Cooperation - European, Australian and Asia-Pacific Perspectives' (2011) Routledge. Saskia is a qualified German legal professional and accredited specialist in criminal law.

Joris Kila is chairman of the International Military Cultural Resources Work Group. He is a researcher at the Institute of Culture and History of the University of Amsterdam, and a board member for civil-military relations with the World Association for the Protection of Tangible and Intangible Cultural Heritage in Times of Armed Conflict (WATCH), based in Rome. Additionally, he serves as a community fellow of the Cultural Policy Center at the University of Chicago, is a member of the US Commands Cultural Historical Action Group and is Chair of the International Cultural Resources Working Group. Until recently he served as network manager and acting chairman of the cultural affairs dept. at the Civil-Military Co-operation (CIMIC) Group North in the Netherlands. In that capacity he undertook several cultural rescue missions in Iraq and FYROM (Macedonia).

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Donn Zaretsky is an art law specialist at the firm John Silberman Associates. Zaretsky published the Art Law Blog at <http://theartlawblog.blogspot.com/>.

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the thefts of
the **Mona Lisa**

ON STEALING THE WORLD'S MOST FAMOUS PAINTING

NOAH CHARNEY
foreword by Derek Fincham

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. We wish to thank new ARCA CEO Lynda Albertson for her efforts and leadership in all of ARCA's projects since last September. Thanks also to ARCA's staff, particularly Derek and Joni Fincham, Madi Gandolfo, Monica Di Stefano, Rene du Terroil, and our interns who assisted with fact-checking and copy-editing the journal.

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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*

Heritage and Identity

Issues in Cultural Heritage Protection

Edited by Joris D. Kila and James A. Zeidler

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Cultural heritage is continually under threat from human conflict, natural disaster or theft. The books published in this new series will contribute to the global dialogue about (a) the social value of cultural heritage as collective memory and identity, (b) how we can effectively protect cultural property in contexts of human conflict, natural disaster, or theft and looting, (c) ethical and legal consequences for institutions such as museums and universities as well as collectors and dealers when confronted with rare antiquities of unknown or with—in hindsight—politically incorrect provenance, (d) how the past is or was represented in history and the present, depending on geographical and political location and how cultural heritage is or should be protected and conserved for the future. The series will have a multidisciplinary perspective which will include aspects of international law, cultural diplomacy,

the role of military forces, other stakeholders such as NGOs and IOs, exploitation of cultural resources, connections with environmental aspects, discussions on “repatriation” of artefacts, national laws on ownership, illicit traffic of cultural property and the different aspects of intangible cultural property. The series will be very timely not only because of on-going armed conflict in Iraq and Afghanistan, but also due to the recent episodes of civil unrest in the Middle East (e.g. Egypt, Yemen, Libya, etc.) as well as natural disasters (e.g. Haiti, Japan). All of these varied contingencies have put cultural properties at risk and all of them merit careful analysis and scrutiny.

For information on manuscript proposals, please contact acquisitions editor Irene van Rossum at rossum@brill.nl.



BRILL

Heritage Under Siege

Military Implementation of Cultural Property Protection following the 1954 Hague Convention

Joris D. Kila



- February 2012
- ISBN 978 90 04 21568 9
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- List price EUR 99.- / US\$ 140.-
- Heritage and Identity

Heritage under Siege is the result of international multidisciplinary research on the subject of military implementation of cultural property protection (CPP) in the event of conflict. The book considers the practical feasibility as well as ideal perspectives within the juridical boundaries of the 1954 Hague Convention. The situation of today's cultural property protection is discussed. New case studies further introduce and analyze the subject. The results of field research which made it possible to follow and test processes in conflict areas including training, education, international, interagency, and interdisciplinary cooperation are presented here. This book gives a useful overview of the playing field of CPP and its players, as well as contemporary CPP in the context of military tasks during peace keeping and asymmetric operations. It includes suggestions for future directions including possibilities to balance interests and research outcomes as well as military deliverables. A separate section deals with legal aspects.

Joris D. Kila, PhD (Amsterdam, 2011), is researcher at the University of Amsterdam's Institute for Culture and History, reserve Lt. Colonel in the Netherlands army and holds degrees from Leiden University and the University of Amsterdam. He undertook cultural rescue missions in Iraq, Macedonia, Egypt and Libya, and is affiliated with several heritage organizations. He is Chair of the International Military Cultural Resources Working Group IMCURWG and has written numerous publications on heritage protection.

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BRILL

RFID AND ART SECURITY

Bill Anderson, Partner

Vootner 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.

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>

Finally, Cremers argues that these RFID systems are unreliable—the frequencies they typically broadcast on can be jammed⁷ 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,

7 See <http://www.jammer-store.com/high-power-blockers-jammers.html>

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.

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.

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.



International Military Cultural Resources Working Group (IMCURWG)

IMCURWG comprises cultural heritage professionals working in the military context in order to:

- Enhance military capacity to implement cultural property protection (CPP) across the full range of operations
- Provide a forum for international co-operation and networking for those working within the military context
- Identify areas of common interest
- Share best practice and lessons learnt
- Raise awareness and publicise military commitment to the protection of cultural property and cultural heritage, both tangible and intangible
- Initiate and stimulate research on CPP and military involvement
- Assist in the creation of an international military cultural emergency team and carry out emergency missions (so far Egypt 1x Libya 2x)

Membership is by invitation and will be restricted normally to cultural heritage experts working within the military context. However, recognising that the effectiveness of this group will be its ability to work in a liaison capacity the group may invite advisors, for example from NGOs and universities, and observers to participate as appropriate. Members and sub-committee participants are expected to contribute in a pro-active and inventive manner.

IMCURWG is not intended to replace any existing organisations working in this field. Rather, it would be in a position to be pro-active in developing partnerships and networks between the military and existing non-military organisations and groups. Because of its international and independent position, IMCURWG can under certain conditions be of help when experts of certain countries cannot travel to areas due to political restrictions.

IMCURWG will always work within the context of the Hague Convention addressing archaeological sites, historic buildings, museums, libraries, galleries, cultural landscapes and archives and other relevant legal obligations.

Short-term goals are to:

1. Develop a strategic plan for IMCURWG including an organizational structure and legal identity of the organization.
NB: Chair already appointed, co-chairs heading sub-committees
2. Develop sub-committees on:
 - GIS
 - Training, research and education
 - Cultural Diplomacy
 - Operational planning
 - NATO and other international military organizations
 - Funding and PR
 - Environmental aspects including Cultural Landscapes
3. Develop a web-site that will explain the role of IMCURWG and provide a vehicle for hosting training materials and other information as it is developed (restricted access)
4. Develop and test on-site training modules and programmes for senior leadership worldwide
5. Develop a GIS data-bases of immovable cultural heritage (restricted access)
6. Produce publications: the first a 'bench-marking' of existing provision of training

Medium-term goals (within five years) are to:

1. Develop and test appropriate training modules, programmes, and curricula for different levels of the military regarding cultural property protection
2. Establish a network of ‘reach-back’ expertise to support deployed forces
3. Develop capacity to provide expert assessment of sites to be developed by deployed forces in-theatre
4. Collect and share data for the GIS data-bases of immovable cultural heritage for the purpose of supporting military environmental planning
5. Support efforts to establish an international military and a civilian rapid reaction team for the protection of cultural property during and immediately following armed conflict. Research and discuss if and to what extent such teams can be deployed for natural disasters
6. Produce targeted publications for military and other audiences initiate seminars and conferences
7. Initiate a military medal for outstanding military contributions concerning CPP
8. Create a permanent office for the IMCURWG (The Hague, Washington, Vienna)

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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.
- Do not include any hyperlinks.
- Pages should be numbered consecutively in the upper right-hand corner beginning with the title page.
- The title page should be followed by the body of the text, acknowledgments, figures, tables and bibliography, in that order.
- Use italics (instead of underlining) for titles of larger works (books, magazines) and quotation marks for titles of shorter works (poems, articles).
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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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