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## What constitutes verifiable evidence: The role of conservators in art crime and cultural heritage protection

### 1. Introduction

What is value? Only by first understanding the relativism or absolutism of the thing itself can one then designate the appropriate response. When something is desired – whether real or imaginary – we institute the state of value; value is the interest attitude. George Santayana adopts the view, “Impulse makes value possible; and the value becomes actual when the impulse issues in processes that give it satisfaction and have conscious worth”.<sup>1</sup>

Throughout our shared history art has been looted, destroyed, interfered with and imitated. Experts avoid litigation, bringing about correlative concerns for the judge or jury to determine the outcome of cases in civil or criminal courts. Art has a tangible commodity, in which regulating laws and market efficiency differs from other trades. Estimating value is a black box in which authorship, aestheticism and significance all play a role.

This article will explore the material and intellectual themes surrounding the process of authentication and attribution: how can expertise and connoisseurship best inform an investigation? How verifiable are provenance claims? How effective and/or problematic can scholarly research be? What is the role of science in authentication? And how do conservators enter the mix? It shall answer these questions by discussing the various methods and techniques in examination and analysis by exploring the three core pathways that together inform an evidentiary framework: history, provenance and technical examination.

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<sup>1</sup> G. Santayana, *The Life of Reason: Introduction and Reason in Common Sense*, 1905, p. 135, <https://santayana.iupui.edu/wp-content/uploads/2019/01/Common-Sense-ebook.pdf> (accessed: 11.07.2020).

## 2. The market: Issues, needs and education

Criminals can easily adapt as opportunities present themselves. The recent theft of Van Gogh's "Spring Garden" from the Singer Laren Museum on 30 March 2020 highlights the actionability of crimes against art today. The work was on loan from the Groninger Museum, meaning that its display time would be temporary. Despite having no lapse in security measures, the Museum's sudden closure to meet COVID-19 restrictions at the beginning of the pandemic created the perfect Petri dish for the quick planning and implementation of the eventuating theft. Thieves made opportunity of an unstable and uncertain time. In a press conference following the attack, Museum Director Jan Rudolph de Lorm described the act as, "dreadful (...) Art is there for people to enjoy and be consoled by, especially in these difficult times".<sup>2</sup>

Despite high minded rhetoric about art being a "cultural exchange for the benefit of all mankind", the dichotomy of the trade is exposed when archaeological sites in Iraq, Syria and Egypt are transformed into pockmarked lunar landscapes to fill auction house podiums. Australia, for example, is a country that is "especially active" in the acquisition of cultural assets and reserves the right to interpret obligation in order to avoid providing new specific legislation to deal with the issue.<sup>3</sup> As recently as 2015, Egypt's Department for Restitution of Antiquities prevented an auction house in Australia from selling artefacts that had been looted in the crisis since the Arab Spring.<sup>4</sup>

Manacorda and Chappell believe that by refusing to register/record the origin of their collectibles Australian antique dealers impose "a very significant redimensioning of the field of application for domestic legislation containing penal sanctions".<sup>5</sup> With this in mind, is it possible to warn potential buyers of the risk of being defrauded? Due diligence is the process of gathering/disclosing relevant and reliable information about a prospective sale or contract. Due diligence is about asking the right questions; it is about obtaining and verifying information and then applying common sense.

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<sup>2</sup> "Van Gogh painting stolen from museum during coronavirus shutdown", *DutchNews.nl*, 30 March 2020, <https://www.dutchnews.nl/news/2020/03/van-gogh-painting-stolen-from-museum-during-coronavirus-shutdown/> (accessed: 15.11.2020).

<sup>3</sup> S. Manacorda, D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer Science and Business Media, New York 2011, p. 33.

<sup>4</sup> S.A. Hardy, *Illicit Trafficking, Provenance Research and Due Diligence: the State of the Art*, Research Study, 30 March 2016, Adjunct Facility, American University of Rome 2016, p. 10.

<sup>5</sup> S. Manacorda, D. Chappell, *Crime in the Art...*, p. 33.

## 2.1. Australia: A case-study

In Australia the criminal justice system would appear to be well suited to meet the challenge of art crimes, in particular fraud-related offences. There are nine jurisdictions in Australia “each of which will have its own specific statues”.<sup>6</sup> However, success in court is rarely won – and only then with clever, manipulative traversing of a legal minefield that doesn’t appear to take art seriously. In the context of Aboriginality the traditions, issues of responsibility and custodianship in Indigenous life create its own variety of challenges. Elizabeth Durack, otherwise identified by the better-known pseudonym “Eddie Burrup”, is not the only non-Indigenous person who has or will take advantage of the popularity of Aboriginal art.

In *R v John Douglas O’Loughlin* (2002) NSWDC the defendant O’Loughlin claimed that Clifford Possum had made him an honorary “cousin”, giving O’Loughlin the right to embellish and complete Possum’s paintings.<sup>7</sup> This case raises the issue of authorship based on thematic content, “a consideration quite absent from traditions of European art”.<sup>8</sup> How does one even begin to navigate authorship of *Dreamings* in art through law, as exemplified in this case?

The issue of authorial ethics is complicated. Ingenuine works can be signed legitimately or produced collectively, as with Turkey Tolson or Ginger Riley. The complexity of these situations may inspire new questions such as: is the object an authentic Aboriginal work and is the artist in fact Aboriginal? Are they entitled to use the thematic material he/she is projecting? Since the 1970s Aboriginal art in Australia has been driven by market demand, setting forth an evolution of styles, and whilst legal proceedings require consideration of authenticity “issues are likely to shift to the question of deliberate deception, and the nature of intentional dishonest conduct involved”.<sup>9</sup> This creates a complexity not associated with historical or curatorial art attribution enquiries.

The system therefore needs investigators who can collaborate and work across several disciplines, professions, and jurisdictions. Conservators hold intrinsic positions in this network, being highly esteemed for their interdisciplinary training which inspires the development of a range of skillsets across materials, analysis and documentation. Treatments are strongly informed by a thorough understanding of the cultural context of a work, its materials and techniques, with further technical research presenting a major scientific element that has the potential to provide verifiable, forensic proof in art crime

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<sup>6</sup> C. Alder, D. Chappell, K. Polk, “Frauds and Fakes in the Australian Aboriginal Art Market”, *Crime, Law and Social Change* 2011, vol. 56, no. 2, p. 193.

<sup>7</sup> *R v John Douglas O’Loughlin* (2002) Unreported, NSWDC, 23 February 2002.

<sup>8</sup> C. Alder, D. Chappell, K. Polk, “Frauds and Fakes...”, p. 199.

<sup>9</sup> *Ibid.*, p. 203.

investigations.<sup>10</sup> It is evident that due to the endemic cycle of secrecy in the art market autoregulation and self-regulation sometimes do not work. It is therefore up to the individual or institution to practice due-diligence and keep a work's history up to date and record clean.

### 3. Verifiability: The definition

The burden of proof, or *onus probandi*, consists of two things: the evidential burden and the legal burden.<sup>11</sup> The legal burden implies an obligation to persuade the court “to the appropriate degree” in both civil and criminal cases, whilst the evidential burden requires that a party establish “sufficient evidence relating to a fact in issue”.<sup>12</sup> In this, particulars *relevant to the issue* and with *the capacity for proof* can be presented in court. Legal epistemology is therefore realist and positivist, demanding “definite and verifiable evidence” as proof.<sup>13</sup> However, what constitutes the term *verifiable* and what does it mean to have *verifiable evidence*? First, let's explore the etymology of the word *verifiable*.

*Verifiable* is a collaboration of the verb *verify* and adjective *able*. *Able* not only denotes having the specific power, resources, freedom or opportunity to *do* something but also signifies having the quality or nature to make something possible.<sup>14</sup> To *verify* is a transitive verb that endorses the following legal definition: “to confirm or substantiate by oath, affidavit, or deposition – verify a motion”. The principle of the word is therefore positioned in tautological truth. The type of evidence selected depends entirely on suitability, the quality of execution, relevance and verifiability of what is being asserted.

The word *evidence* originates from the Latin term *evidentia*, which means: “to show clearly, to make clear to the sight, do discover clearly certain, to ascertain or prove”.<sup>15</sup> Without evidence there can be no proof. Therefore, if evidence seeks to either support

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<sup>10</sup> I. Cook, J. Lyall, R. Sloggett, “Conservation in Australian museums” [in:] *Understanding Museums: Australian Museums and Museology*, eds. D. Griffin, L. Paroissien, National Museum of Australia 2011, [https://nma.gov.au/research/understanding-museums/\\_lib/pdf/Understanding\\_Museums\\_whole\\_2011.pdf](https://nma.gov.au/research/understanding-museums/_lib/pdf/Understanding_Museums_whole_2011.pdf) (accessed: 10.10.2020).

<sup>11</sup> D. Walker, *Rules of Evidence*, lecture in: “Graduate Certificate in Art Authentication”, Centre for Cultural Material Conservation, Melbourne, 1 June 2012, p. 7.

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> R.A. Wilson, *Writing History in International Criminal Trials*, Cambridge University Press, New York 2011, p. 7.

<sup>14</sup> “Able” [in:] *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/able> (accessed: 11.07.2020).

<sup>15</sup> K. Debesu, A. Eshetu, “Meaning, Nature and Purpose of Evidence law”, *Abyssinia Law*, 4 September 2012, <https://www.abysiniaweb.com/about-us/item/932-meaning-and-nature-of-evidence-law> (accessed: 20.10.2020).

or not support a proposition then to *verify* is to systematically authenticate or prove that the evidence is incontestable or contestable. In this the admissibility, credibility and weight of evidence *need* to be thoroughly considered before being presented in court.

Forgery and fraud, theft and extortion, money laundering, and document and identity fraud are very hard to prove. “The art industry actively suppresses reliable information about its products – a behaviour that the governing legal regime reinforces”.<sup>16</sup> For example, there are no specialist art and cultural property investigation units in Australia to aid with art crime investigations.<sup>17</sup> Investigations are therefore run through one of nine different authorities, such as the Federal and State Police Services, the Interpol National Bureau or Austac.<sup>18</sup> These authorities are responsible for the investigation of crime and thus operate with a combination of statute and common law.

Whilst most developed legal systems encourage efficiency by “either requiring those with reliable information to disseminate it or forbidding them from concealing it”,<sup>19</sup> traditional modes for investigating a crime against art, such as interviewing the witnesses or obtaining statements in a fraud-related offence, become “ineffective” because the investigatory trail “tends to lack documentary evidence, which conventional fraud inquiries rely upon”.<sup>20</sup> This therefore requires an evidential chain that is multidisciplinary; “one that not only accepts particular evidence that may support the assertion of authenticity, but which can also contest evidence that is not correct”.<sup>21</sup>

## 4. Authentication: Means and methods

### 4.1. Connoisseurship

How is authenticity translated, transmitted and preserved? What is coherent truth? The value of art is all about perception = (perceived) rarity + (perceived) authenticity + (perceived) demand. Serotonin reacts on a subconscious level; it is more enticing to look for answers

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<sup>16</sup> G. Day, “Explaining the Art Market’s Thefts, Frauds, and Forgeries (And Why the Art Market Does Not Seem to Care)”, *Vanderbilt Journal of Entertainment & Technology Law*, Spring 2014, vol. 16, no. 3, p. 439.

<sup>17</sup> M. James, “Art Crime” [in:] *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, Canberra 2000, p. 1.

<sup>18</sup> *Ibid.*, p. 1.

<sup>19</sup> G. Day, “Explaining the Art Market’s Thefts...”, p. 464.

<sup>20</sup> M. James, “Art Crime”..., p. 4.

<sup>21</sup> R. Sloggett, “Considering Evidence in Art Fraud” [in:] *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime*, eds. D. Chappell, S. Hufnagel, Ashgate Publishing Company, Surrey, England 2014, p. 121.

that feed our assumptions. As such, questions around verifiability in connoisseurship have haunted art experts throughout the centuries. Without compelling evidence of who created a painting, experts must examine a number of characteristics such as colour, content and technique in order to determine whether a specific master produced a particular work.<sup>22</sup>

Much of art-historical scholarship as a means for interrogating the claims of generative style is based on the Morellian method, whereby identification of morphological traits is deemed positivist, objective and scientific.<sup>23</sup> The stakes are raised when connoisseurship treats style as evidence for contingent cause. To claim that one can determine the “authorship” of a painting “requires an entirely different level of empirical support than simply showing that one has an experienced-based way of seeing”.<sup>24</sup> The approach taken in the exemplary debate between two prestigious representatives at Museum Boijmans van Beuningen stems from Morelli’s science of pictology.

Ernst van de Wetering, of the Rembrandt Research Project, and Museum curator Jeroen Giltaij expressed contradictory opinions when asked whether or not the painting “Tobit and Anna” should be attributed to Rembrandt.<sup>25</sup> Both experts deploy their arguments in ways that can be seen to establish the very essence of what makes connoisseurship controversial – when acuity or perception drifts from authenticity to claims of authorship. Whilst there is no danger in using general terms to class an object as “merely or trivially, taxonomic” to ascribe Rembrandt van Rijn’s very own personal style as proof of attribution can tip the scales towards treating speculation as inferred fact.<sup>26</sup>

The Federal Court of Australia’s guide on “Expert Evidence & Expert Witnesses” states that an expert witness can be expected to “give opinion evidence” and/or “express an opinion that may be relied upon in alternative dispute resolution”. Therefore, the problem lies not in opinion alone but rather in whether that opinion has sufficient foundation. Self-confidence and understanding strengthens the ability to make autonomous decisions in the face of adversity but requires a level of ability that takes time and training to mature.<sup>27</sup>

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<sup>22</sup> G. Day, “Explaining the Art Market’s Thefts...”, p. 478.

<sup>23</sup> D. Ebitz, “Connoisseurship as Practice”, *Artibus et Historiae* 1988, vol. 9, no. 18, p. 208.

<sup>24</sup> S.A. Cole, “Connoisseurship all the way down: art authentication, forgery, fingerprint identification, expert knowledge” [in:] *Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves*, ed. C. Noah, Palgrave Macmillan, London 2016, p. 31.

<sup>25</sup> Museum Boijmans van Beuningen (MBVB), *Rembrandt? No, I don’t recognise him!*, 20 March 2012, <https://www.youtube.com/watch?v=dfE73puKbSU> (accessed: 20.08.2019); Museum Boijmans van Beuningen (MBVB), *Rembrandt? Yes, it has to be him!*, 27 March 2012, <https://www.youtube.com/watch?v=CJ6oX8XWDPk> (accessed: 20.08.2019).

<sup>26</sup> R. Neer, “Connoisseurship and the Stakes of Style”, *Critical Inquiry*, Autumn 2005, vol. 32, no. 1, pp. 11–12.

<sup>27</sup> J. Ashley-Smith, “Losing the Edge: the Risk of a Decline in Practical Conservation Skills”, *Journal of the Institute of Conservation* 2016, vol. 39, no. 2, p. 121.

## 4.2. Provenance

Authentic works held within private collections often have no documentation to support claims of authenticity. In contrast, other collectors hold significant provenance trails with no means to explicate the accompanying names, dates and places. Such was the case with “A Nude” by Moise Kisling.<sup>28</sup> The provenance research trail can take an investigator to established archives, filing systems, libraries, catalogues, indexes, and representative inventories – anything that informs a work’s genesis and biography; it is a record of more than just the “social life” of an object. With existing art market codes of practice contesting the diminutive act of removing context from cultural heritage, provenance has strengthened to become not only a method of attribution or evidence of authenticity but proof of ownership and treatment of good-faith. “Indeed, stolen art often resembles those with clean titles, frustrating attempts by good-faith buyers to guarantee an unchallenged purchase...it is easy to bring a lawsuit alleging to be the try owner of a painting, the effect of creating a cloud over the work’s title. A work loses almost all marketability, and thus value, when other potentially assert a claim over it as few buyers wish to litigate a replevin claim or even possibly risk losing the work. Because few artworks possess such value worth litigating, these disputes often settle.”<sup>29</sup>

Theft has ravaged the art industry, yet the response has been to increase secrecy. Day states that a work with strong provenance comes at a premium, and “as a provenance becomes cloudier, its value diminishes”.<sup>30</sup> Unfortunately acting on good-faith requires that “one take into account indications of illegality with gross negligence”, without the obligation of conducting research.<sup>31</sup> Provenance provides a reconstruction of past events, and for a work to enter the art market at its maximum value it is expected that secure documentation accompanies it. The sad irony is that the cause and effect of transactional secrecy in the market only encourages art theft by reducing the sum of information upon which a consumer may rely.

Thievery isn’t the only undesirable behaviour affecting the art market. “(...) the lack of warranties or guarantees accompanying many art transactions mandates that any hopeful purchaser guarantee a work’s most essential quality, i.e. its authenticity”.<sup>32</sup>

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<sup>28</sup> M. Masurovsky, “A Nude by Moise Kisling”, *Plundered Art: a perspective from the Holocaust Restitution Project*, 3 April 2019, <https://plundered-art.blogspot.com/2019/04/a-nude-by-moise-kisling.html> (accessed: 24.07.2019).

<sup>29</sup> G. Day, “Explaining the Art Market’s Thefts...”, p. 476.

<sup>30</sup> *Ibid.*, p. 477.

<sup>31</sup> G. Wessel, “Dealers and Collectors, Provenances and Rights: Searching for Traces” [in:] *Countering Illicit Traffic in Cultural Goods: the global challenge of protecting the world’s heritage*, ed. F. Desmarais, International Council of Museums, Paris 2015, p. 9.

<sup>32</sup> G. Day, “Explaining the Art Market’s Thefts...”, p. 478.

Indeed, how reliable are provenance claims? Ideally an unbroken list/series of owners could provide crucial information, but what if the work itself is forged? What if the documentation that follows a work into market is forged? And what if forged works are accompanied by forged documentation? Art is a poorly regulated trade; patrons should not underestimate the number of forgeries, or indeed the probability of purchasing a problematic work. Elmyr de Hory alone painted and sold approximately one-thousand forgeries in the styles of Matisse, Van Gogh, and other celebrated masters.<sup>33</sup>

Art dealer John Drewe's expert understanding of the power of provenance gave him "unlimited access" to the world's most renowned cultural heritage institutions.<sup>34</sup> Over several years Drewe ingratiated himself with major bodies such as the Tate, Victoria and Albert Museum and the Institute of Contemporary Art. He infiltrated their official records to include both digital and hardcopy provenance documentation, proving to prospective buyers that associate fraudster John Myatt's fake Giacometti's, Braque's and Klee's etc. were "genuine".<sup>35</sup> The "secure" home for countless works' proof of derivation was ransacked and all it took was "the skill of a painter, the hubris of a con man and the organised, planned co-operation of a team of lesser accomplices" to successfully thwart the system.<sup>36</sup>

Understanding the amenability of forged documentation can better prepare an investigator with the skills necessary to avoid the provenance trap. Pre-emptive strategising to digitally eradicate fake or forged provenance is underway. At the 2019 Association for Research into Crimes against Art (ARCA) Art Crime Conference, Massimo Sterpi presented on current platforms being used to fight concerns around provenance.<sup>37</sup> He discussed Verisart, a Blockchain-based artificial intelligence that seeks to combine transparency, anonymity and security to protect records of creation and ownership of artworks and collectibles. According to Sterpi, Verisart "will fight art forgery" by providing an "airtight" authentication methodology that allows for real time verification of artworks using a distributed ledger and hi-resolution image-recognition technology.<sup>38</sup>

Other examples that involve extracting metadata through automatic web scraping include: Plantoid, a database created by artist Primavera de Filippi that theorises an

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<sup>33</sup> Ibid., p. 479.

<sup>34</sup> S. Nall, "An Australian Art Dealer's Perspective on Art Crime" [in:] *Contemporary Perspectives...*, p. 102.

<sup>35</sup> M. James, "Art Crime"..., pp. 2, 3; D. Chappell, K. Polk, "Fakers and Forgers, Deception and Dishonesty: An Exploration of the Murky World of Art Fraud", *Current Issues in Criminal Justice*, March 2009, vol. 10, no. 2, p. 400.

<sup>36</sup> S. Nall, "An Australian Art Dealer's Perspective..." p. 102.

<sup>37</sup> M. Sterpi, "Collision or Collaboration: the Economic Impact of Cultural Heritage in Stakeholder Territories", *ARCA Art Crime Conference*, Amelia, Umbria, 22 June 2019.

<sup>38</sup> Ibid.



on-going and automatic chain of contract; Chronicle embeds artworks with micro-chips, which can be scanned to attain information and indubitably be tracked risk-free; Magnus, compiled through crowdsourcing, contains more than ten million works and their prices; Sothebys' Thread Genius identifies objects and then recommends similar images to the viewer; Maecenas incorporates tokenisation into its cryptography, thus making it impossible to falsify transaction sales. These are just a few examples of artificial intelligence programmes set to aggregate statistics for future provenance claims.

#### 4.3. Forensic science

Scholarly research, connoisseurship and provenance are necessary for any investigatory framework with which one interrogates the substantiality of materials and techniques but forensic science “provides contestable and verifiable evidence of the kind required in legal cases”.<sup>39</sup> Conducting technical research to investigate an artwork or antiquity is a necessary step towards establishing verification of authenticity. William Charron, who founded the Court of Attribution for Art, a new body dedicated exclusively to resolving art disputes launched in The Hague on 7 June 2018, summarised in an interview that “in addition, where authenticity cases frequently turn on expert evidence, including in particular forensic science (evaluating a work of art at a molecular level to detect dating anachronisms) and provenance research, I thought that a less-adversarial expert model might work, meaning those kinds of experts would be appointed by the tribunal itself, similar to French and German courts”.<sup>40</sup>

To rely solely on connoisseurship and provenance presents a misnomer or burden of diligence that risks loss. Lord Duveen was sued for slander of title in the 1920s after publicly claiming that Mrs Andrée Hahn's Leonardo da Vinci was not what it was purported to be.<sup>41</sup> He put forward a worthy panel of art critics, art historians, several museum directors and a chemistry professor but despite his varied collection of experts Hahn's forensic and scientific analysts trumped Duveen's defence. Hahn's evidence, which included X-radiography, was enough to convince nine of the twelve jurymen that forensic science was the more authoritative source in this case.

Science presents a framework for processing and understanding certain types of information. To understand a given phenomenon the following cyclic pursuit plays out:

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<sup>39</sup> R. Sloggett, “Art crime: fraud and forensics”, *Australian Journal of Forensic Sciences* 2015, vol. 47, issue 3, p. 1.

<sup>40</sup> M. Fox, “Q&A: Law Alum Spearheads New Art Attribution Court”, *UVA Today*, 26 July 2018, <https://news.virginia.edu/content/qa-law-alumnus-spearheads-new-art-arbitration-court> (accessed: 11.07.2020).

<sup>41</sup> R. Sloggett, “Art crime...”, p. 2.

making an observation, formulating a hypothesis and performing experiments. Forensic science is frequently called upon in authentication cases to present a 'different kind of evidence' that works as a less-adversarial model.<sup>42</sup>

The use of raking light and microscopic examination is particularly useful for visual examination because close inspection of the materials is required. Ultraviolet (UV) light and infrared (IR) can be used to determine whether any lasting remnants of existing varnish or preparatory layers exist. The increasing need for non-destructive techniques in the investigation of paintings has encouraged the use of nuclear instruments, for example the portable x-ray fluorescence spectrometer (XRF) can be used to take an elemental map of regions of different colours from the surface of a work. XRF can help discern the painter's palette and answer whether or not it is consistent with the attributed artist.

XRF readings present a compact analysis of all layers, surface to preparatory, and their elements. In other words, the "characteristic X-rays from elements in pigments in under layers, down to (and perhaps even including) the ground layer will be present in the spectrum".<sup>43</sup> Therefore, it may be difficult to determine any definitive outcomes from the data provided as ambiguous results are inconclusive. Although there is no substitute for examining the materials and techniques of an artist, a credible database from which to reference one's findings is needed before any definitive statement can be reached.

The long list of analytical tools available for the forensic investigation of materials and techniques include Polarising Light Microscopy, Raman Spectroscopy and Fourier Transform Infrared Reflectography. If visual examination and non-destructive techniques are proving insufficient, sampling with the client's permission can also take place. A section taken from a painting, usually accommodating several paint layers and less than a millimetre in diameter, can be subjected to instrumental analysis. Gas Chromatography and Mass Spectrometry with more recent additions of Synchrotron beam line techniques are used to inform art crime investigations.<sup>44</sup> Another tool used in art authentication for the purposes of providing closer inspection of the pigments in a paint sample would be a scanning electron microscope (SEM).

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<sup>42</sup> M. Fox, "Q&A: Law Alumnus Spearheads..."

<sup>43</sup> L.D. Glinsman, "The practical application of air-path X-ray fluorescence spectrometry in the analysis of museum objects", *Reviews in Conservation* 2005, no. 6, p. 8.

<sup>44</sup> V. Kowalski, R. Sloggett, *Building Evidence for Use in Criminal Cases – Standard Practice and Methodologies – A Case Study in Australia*, The University of Melbourne, [n.d.] Victoria, p. 4, <http://authenticationinart.org/pdf/papers/Building-evidence-for-use-in-criminal-cases-%E2%80%93-standard-practice-and-methodologies-%E2%80%93-A-case-study-in-Australia-Robyn-Sloggett-and-Vanessa-Kowalski.pdf> (accessed: 20.10.2020).

Yet, new technologies to assist technical research are always being developed. Rutgers University in New Jersey and Atelier for Restoration and Research of Paintings in the Netherlands are currently undertaking studies using Deep Recurrent Neural Network (DRNN). DRNN conducts machine-based algorithms that have been programmed to look for specific features in line drawings by Picasso, Matisse, and Modigliani amongst others. DRNN aims to analyse the mark making of questionable works by orienting the “push” and has so far successfully identified the artist in 80% of examinations undertaken.<sup>45</sup>

## 5. Reflections: From reactive to pre-emptive

“Conservation: all actions aimed at the safeguarding of cultural material for the future. Its purpose is to study, record, retain and restore the culturally significant qualities of an object with the latest possible intervention.”<sup>46</sup> Reflecting upon Cook, Lyall and Sloggett’s definition of contemporary conservation one can determine that it is partly the responsibility of conservators to protect cultural heritage. Their principles and practices inform critical, technical examinations and treatments, and can also aid the recovery of lost, stolen, damaged, imitated or illicitly traded heritage. It begins with advocating for the significance of art, antiques and cultural heritage. In *Charles Blackman and ORS v. Peter Gant and Anor* (2010) VSC 22, for example, the police were reluctant to cooperate largely due to reasons of indifference.<sup>47</sup>

The adverse effects of being desensitised to art crimes, often considered “more prankster than gangster” is why the current estimate is that 10 per cent of the art market is “fake or problematic” and only “a fraction of these works are ever identified”.<sup>48</sup> The hidden and less conservative estimate or dark figure of crime will continue to persist with no consistent reporting mechanism in place. It is paramount that we acknowledge the scale and capacity of art crime and take the matter seriously. The “L’Arte Di Salvare

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<sup>45</sup> M. Sterpi, “Collision or Collaboration...”

<sup>46</sup> I. Cook, J. Lyall, R. Sloggett, “Conservation in Australian museums...”

<sup>47</sup> *Charles Blackman and ORS v. Peter Gant and Anor* (2010) VSC 229; C. Alder, D. Chappell, P. Polk, “Frauds and Fakes...”, p. 205.

<sup>48</sup> N. Charney, “Provenance Trap: Understanding the Modus Operandi of Art Forgers”, The Association for Research into Crimes Against Art, lecture, Amelia, 25 June 2019; S. Nall, “An Australian Art Dealer’s Perspective...”, p. 108; K. Polk, L. Aarons, C. Alder, *An Exploration of the Illegal Art Market o Australia*, A Report Submitted to the Criminology Research Council, Department of Criminology, University of Melbourne 2000, p. i, <http://citeseerx.ist.psu.edu/viewdoc/summary;jsessionid=F01F50233421C507EE9A10B5E9F6F83D?doi=10.1.1.421.4652> (accessed: 14.10.2020).

L'Arte" exhibition provides the perfect springboard for discussing the benefits of working together, of universal cohesion.

## 6. Global networks: Objects and the people that care about them, exploring international repatriation as a means for righting past wrongs. "L'Arte Di Salvare L'Arte" and the University of Manchester

The 2019 "L'Arte Di Salvare L'Arte" exhibition at the Quirinal Palace in Rome displayed art salvaged by the Carabinieri of the Department for the Protection of Cultural Heritage (TPC). Some of the most significant works recovered by the Carabinieri were revealed together for the first time, including the Euphronios krater (stolen in the '70s from one of Cerveteri's necropolises); the only complete Capitoline Triad (stolen from the Tenuta dell'Inviolata in 1992); the "Il giardiniere" by Vincent Van Gogh (stolen in 1998 from the Galleria Nazionale d'Arte Moderna in Rome); and a pair of 4<sup>th</sup> century marble griffins (stolen from the tomb of Ascoli Satriano in 1976).

The last 50 years has seen the Carabinieri Task Force recover about 3 million finds; a significant number. However, this was only achieved with the help of a growing global network. The "L'Arte Di Salvare L'Arte" exhibition highlights the power of international cooperation and indicates that success can really only be achieved with universal acknowledgement, support and response.

In a similar vein, Irit Narkiss and Mark Furness from the Museum of Manchester and John Iris Library reflected upon their experience of art crime at the "Gilding & Decorative Surfaces Group Symposium: Devotional Objects", the Little Ship Club, London, 6 March 2020. The talk focused on how cultural heritage institutions respond to claims of repatriation/restitution, and the consequences of their actions.

A delegation of Traditional Owners from the Australian Institute of Aboriginal and Torres Straits Studies (AIATSIS) have been working with the Manchester Museum, part of The University of Manchester, on a project that has the scope to facilitate the return of cultural heritage back to Country. Funded by the Australian Government to mark the 250<sup>th</sup> anniversary of Cook's first voyage to the East Coast of Australia, the project not only involved initial secondary source research of institutional holdings but was also followed up with the targeted investigation of online collections and direct contact with community stakeholders.

By developing conversations around the future of their collections and, critically, taking action, the Museum of Manchester leads by personal, professional and sectoral

example. “Repatriation is not about what is lost but about what is gained”.<sup>49</sup> Narkiss and Furness refined their “First Pass” collections report during custodian meetings on Country, promoting cross-cultural collaboration and revitalisation. This dialogue has since led to specific reacquisitions being made.

Repatriation/restitution is by no means an easy process and the work currently being implemented at the Museum of Manchester not only addresses unrequited colonialism, which promotes healing and reconciliation, but draws attention to the lasting impact/post-colonial trauma of art crime. The University of Manchester has since identified and plan to return 43 sacred and/or ceremonial objects to the Aranda, Gangalidda Garawa, Nyamal, and Yawuru peoples.<sup>50</sup>

In conservation the principles and ethics resulting from a science-based agenda, inspired by universal values inherited from the Enlightenment, incites detachment from object biographies. At Manchester Museum, it was the act of bringing secret sacred objects back to Country that was most important and necessary for cultural revitalisation. The act unlocked the objects’ lore, history, tradition and story and in turn highlights the art of value. Objects don’t have needs; they only have the needs of the people that care about them.

## 7. Conclusion: Reflecting on cohesion

It is impossible to remain isolated and introspective within such a fast-paced environment. Art, antiques and antiquities are exchanged, trafficked and smuggled daily with or without the stakeholder’s knowledge. There’s no time like the present to integrate frameworks that proactively endorse the protection of our shared cultural heritage.

Whilst science is politically attractive the Arts are not. Contingent valuation questionnaires regarding the economics of cultural heritage have surfaced to provide proof that growing awareness around cultural policy exists but there is a need for comprehensive groups to unite and, ideally, challenge the existing model.<sup>51</sup> The discussion point: fragmentary dialogue concerning art crime requires better interdisciplinary cohesion, came up again and again during the 2019 Art Crime Conference. Training modules like

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<sup>49</sup> I. Narkiss, M. Furness, “The return of cultural heritage project: what does it take to unconditionally repatriate?”, Gilding & Decorative Surfaces Group Symposium: Devotional Objects Symposium”, Little Ship Club, 6 March 2020.

<sup>50</sup> Ibid.

<sup>51</sup> S. Mourato, M. Mazzanti, “Economic Valuation of Cultural Heritage: Evidence and Prospects” [in:] *Assessing the Values of Cultural Heritage Research Report*, The Getty Conservation Institute, Los Angeles 2002, p. 52.

ARCA's postgraduate certificate programme and allocating funding towards specific research endeavours, such as *Trafficking Culture*,<sup>52</sup> has and will continue to generate vital interest.

Investigating the authenticity or attribution of a work of art is difficult and costly. It's a process that had been made even more difficult by legal liabilities, such as the threat of being sued. Those who can offer an expert opinion avoid being assertive in fear of potential litigation, defamation of title or producing disparagement.<sup>53</sup> However, as evidenced time and again, the conservation lab/studio is *not* be a neutral space. Conservators have the means, tools and training required to produce evidence that is verifiable in art crime investigations. Flooding the market with bad information needs to stop, and it begins with law aligning on common ground with those that have immediate access to the world's art.

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<sup>52</sup> <https://traffickingculture.org/> (accessed: 20.11.2020).

<sup>53</sup> G. Day, "Explaining the Art Market's Thefts...", p. 483.

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## Summary

### **What constitutes verifiable evidence: The role of conservators in art crime and cultural heritage protection**

This article will explore the material and intellectual themes surrounding the process of authentication and attribution of works of art: how can expertise and connoisseurship best inform an investigation? How verifiable are provenance claims? How effective and/or problematic can scholarly research be? What is the role of science in authentication? And how do conservators enter the mix? It shall answer these questions by discussing the various methods and techniques in examination and analysis by exploring the three core pathways that together inform an evidentiary framework: history, provenance and technical examination.

The drive to create a robust framework that ensures best practice exists, highlighted time and again by claims of restitution, questionable authorship, falsified documentation and scholarship. Lawsuits involving authenticity and attribution require evidence and proof. Various levels of understanding coexist between all disciplines involved, and allowing these levels of understanding to intersect will implement necessary change.

**Keywords:** verifiability, evidence, authentication, attribution, provenance, forensic science, fakes, fraud, authorship, conservation

## Streszczenie

### **Co składa się na wiarygodność dowodu: o roli konserwatorów w walce z przestępczością przeciwko dziełom sztuki**

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**Słowa kluczowe:** wiarygodność dowodu, sprawdzalność dowodu, oryginalność dzieła sztuki, atrybucja, proveniencja, kryminalistyka, falsyfikat, oszustwo, autorstwo dzieła sztuki, konserwacja