

The Expert versus the Object

JUDGING FAKES AND FALSE
ATTRIBUTIONS IN THE VISUAL ARTS



EDITED BY

Ronald D. Spencer

FOREWORD BY EUGENE VICTOR THAW

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Foreword

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Eugene Victor Thaw

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The problem of attributions for works of art poses a curious paradox. It can be a very complex issue involving questions of ethics, connoisseurship, and even politics. On the other hand, it is the simplest matter one can face—a work is either genuine or fake, either by the artist in question or not by him or her. This book is an attempt to answer the question “How do you know?”

The Hermitage in St. Petersburg displays two paintings by Leonardo da Vinci, only one of which is considered his own work by a consensus of scholars in the field (the *Benois Madonna*). The other is probably by Giovanni Antonio Boltraffio or some other painter in Leonardo’s circle. It is too politically sensitive to challenge the attribution officially in Russia, so hordes of tourists see the two Leonardos they have been promised.

One of the key scholarly tools for judging the authenticity of paintings and drawings by well-known artists is the catalogue raisonné. Usually written by a respected scholar who has spent a lifetime studying an artist’s work, these catalogues are often extensively reviewed and picked apart by other qualified experts, and become respected for their accuracy or notorious for their mistakes and unreliability.

In Europe, where heirs of an artist usually inherit the so-called *droit moral*, which includes a legal right to declare authentic or denounce as spurious any work purporting to have been made by their deceased relative, numerous tales of fraud are told whereby these heirs certify and promote for sale pieces which are later demoted, sometimes with the unwitting collaboration of the artist’s primary dealer. André Derain and Fernand Léger are two artists to whom this has happened, to the detriment of their posthumous reputations.

In the case of Old Master paintings and drawings, the old-fashioned mechanism of authentication was a written “certificate” from an academic authority. Before World War II, so abused was this tradition that it became a source of essential income for grossly underpaid professors. No one but the naïve believed in these “certificates,” usually written in ambiguous phrases, unless

the authority also published the work in a book or scholarly article, where his reputation was at stake. Famously, it was thought in the trade that the more certificates a painting had, the less it was likely to be authentic.

Where does the truth lie in the complex world of art objects given very high values and status by our general culture, but often not yet included in a catalogue raisonné, or included in one deemed unreliable, or caught between certificates from some authorities and denials by others. Labels on the backs of stretchers or panels showing exhibition provenance can be lost or can themselves be faked. Histories of ownership can be invented and are often impossible to check. Yet a process does exist in this highly charged, market-driven world where a Yes rather than a No can mean a difference of millions of dollars. For this reason, a consensus must develop over time about the rightness of one side or the other. Because the players in the market must risk their own large investments and because, having made costly errors, they are wiser and more experienced, the art market is the most efficient mechanism over time for sifting the real from the fraudulent or misattributed.

But before this sifting can occur, many stages need to be passed through and many reputations hung out to dry; in the process, many less experienced collectors may have their egos and their bank accounts badly hurt. Additionally, that perennial question asked in college philosophy and aesthetics courses—"If experts can't tell the difference, isn't the fake just as good as the real work of art?"—must be answered or in some way be disposed of.

All this is obviously more complicated than I have made it, and this book, with contributions from serious people whose lives are devoted to studying these questions, will, it is hoped, provide some wisdom and some useful answers.

Introduction

• • •

Ronald D. Spencer

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The authenticity of a work of visual art has always been a critical issue for anyone concerned with art, not simply for the work's monetary value, but for its intrinsic worth. *Authentication* is the process by which art experts—academic or independent art historians, museum or collection curators, art dealers, or auction house experts—attribute a work of visual art (the Object) to a particular artist or specific culture or era.

The “objects” with which this book is concerned are works of visual art—paintings, drawings, and sculpture, although many of the general concepts, and certainly the emphasis on the importance of connoisseurship and the need for systematic authentication procedures, will be applicable as well to other objects, such as archaeological objects, decorative arts, and antiques.¹

Since the process of authentication of visual art depends chiefly on the scholarship of art experts, it is especially important that the experts feel free to express scholarly opinions about the attribution of works of art. The art-minded public, unfamiliar with the attribution process, may regard it with a measure of suspicion or may put too much trust in it, believing that attributions are made and fakes disclosed as a result of scientific evidence. In fact, few are based on scientific tests; the majority are based on the connoisseurship of an expert. And here, the natural wariness about the subjectivity of an individual opinion may be compounded by numerous examples of shifts in the status of a single work—a work removed from the canonic oeuvre of an artist by a group of experts (e.g., the Rembrandt Research Project) and then, a few years later, reattributed to the same artist by the same experts.

If the art-minded public does not have a clear idea of the attribution process, it is largely because the experts have rarely articulated it in a systematic way. And why this paucity of expert explanation? Chiefly because of the experts' fear of legal liability. If you doubt this, think, for example, about the thousands of artworks that public museums acquire each year, and think, too, why one never (or rarely) sees an expert publicly challenge the authenticity

of a work on which an institution is spending millions of dollars. Why, for instance, are there no false attribution sections in almost all catalogues raisonnés? Why are owners of an artwork usually told only whether it “will” or “will not” be “included in the catalogue” raisonné of the artist in question. And why do most American museums have policies which prohibit their curators from expressing opinions on works of art not already owned by the museum?

The question of whether a work of art is “real” or “original” implies other questions: What am I buying? What do I own? What am I looking at? And, increasingly, perhaps due in some small part to higher prices, but in larger part to the growing sophistication of the art-minded public as a result of exhibitions such as the Metropolitan Museum’s 1995 “Rembrandt/Not Rembrandt,” people are beginning to ask how a given attribution was arrived at. The question may be answered at several moments—when art is bought and sold in a private transaction or at public auction, when art is appraised for its value for an income or estate tax deduction, when museums and art galleries mount public exhibitions, when a scholar produces a book on the work of an artist, or simply when an owner wishes to determine the authorship or authenticity of a work.

Even as public awareness of and demand for opinions on the authenticity of art is increasing, fewer experts are willing to render these opinions for fear of being sued by a seller, buyer, or owner. This circumstance is aggravated because an art scholar authenticating a work may not ethically charge a fee related to the value of the art. For a \$500 fee, why should the expert risk a million-dollar lawsuit for product disparagement or negligence? It should also be understood that, in much the same way that court decisions awarding damages for medical malpractice influence how doctors practice medicine, court decisions holding experts liable for negligent opinions with respect to attribution affect how (and indeed if) experts will provide their expertise and opinions for the benefit of the art market and the general public.

These conditions have led groups of art scholars to form boards or committees in part to defend and ensure against these potential legal claims. This attempt is bound to be only partly successful, largely because the law demands objective evidence, which conflicts with the intrinsic “subjectivity” of even group connoisseurship.

It is not just experts, art dealers, and lawyers who are interested in authentication. The public has always been fascinated to see a shrewd art forger one-up rich collectors and pompous experts, especially in the case of twentieth-century art. Here many museum goers still feel that they are being taken for a ride. Standing before an abstract or minimalist painting, they think, “My kid could do that, or better.” Even this dubious visitor would, however, accept objective scientific evidence about the authenticity of a work. But, alas, when

we examine the process of attribution, we find very few decisions supported by science. Instead, as we will find in this book, we are, in the vast majority of cases, drawn back to those “pompous” experts and connoisseurs.

The public’s lack of understanding of the attribution process and the experts’ concern about legal liability for expressing their opinions have combined to produce fertile ground in which fakes and false attributions flourish. And the concern over legal liability has been intensified by several unfortunate court decisions in which the courts did not fully comprehend the attribution process or the expert’s role.

Thus, freedom of scholarly opinion requires an understanding of the attribution process on the part of the courts and of lawyers, and would benefit from increased public awareness of the process.

Part I, “Authentication and Connoisseurship,” illuminates the process through essays and interviews based on the practical experience of art world experts. Each author addresses attribution issues involving his or her particular professional concerns, an approach that presents a wide variety of professional and institutional interests.

The essays begin with an examination of the nature and history of connoisseurship. By *connoisseurship* we mean that sensitivity of visual perception, historical training, technical awareness, and empirical experience needed by the expert to attribute the object. Francis O’Connor and Peter Sutton agree on the primacy of connoisseurship in the attribution process, with the former focusing on the nature of connoisseurship and the latter on its historical development as a bona fide analytic tool. They also agree on its essentially “objective” nature.

The 1942 essay about fakes by Max Friedländer is, in part, here to remind the reader that a fake—a work created with *intent to deceive*—is but one facet of authenticity issues.² The larger, more important, and much more frequent problem is the examination of a work of unknown or wrongly attributed authorship.

The application of connoisseurship to an artist’s entire body of work will often result in the catalogue raisonné—the principal published research document on the artist’s work. In their essays on the catalogue raisonné, John Tancock, Michael Findlay, and Peter Kraus agree on the primacy of the catalogue raisonné as a research tool, and agree as well on many of the considerations which make certain catalogues unreliable. Tancock and Findlay allow the reader to see how the two major public auction houses, Sotheby’s and Christie’s, utilize (or do not utilize) a catalogue raisonné in the auction sale cataloguing process.

While the catalogues referred to in these essays represent the opinions of a single expert (or, at most, two or three coauthors), Eugene Victor Thaw discusses the operation of the art world and art market, as a whole, in self-

correcting misattributions. Thaw reveals how art historians, curators, art dealers, conservators, auction house experts, and collectors come, over time, to a consensus (which may change as a result of new research and analysis) about the attribution of a work of art. How this process operates in the field of Old Master drawings is the subject of the essay by Noël Annesley, an Old Master drawings expert. Through describing the analytical method by which he attributes an Old Master drawing, Annesley explains his part in the market's "self-correction."

To the layman, a signature on a painting might appear to be important evidence of authorship. In fact, it tends to be nowhere near as important to the expert as our everyday contact with bank checks, receipts, wills, deeds, and contracts would suggest. However, signatures remain important to judges in courts, and so Patricia Siegel, a handwriting expert, shows how she decides on the authenticity of an artist's signature (Jackson Pollock, in this example).

It is also important to understand how organizations and groups of experts (foundations, boards or committees of experts, as opposed to individual experts) operate in the determination of authenticity. Sharon Flescher describes the workings of the International Foundation for Art Research, although IFAR is somewhat atypical of these groups because it undertakes research on more than one artist. But, with respect to each artist, IFAR's process is rather typical in that it employs a group of experts who arrive at an opinion on attribution by consensus.

Another organization concerned with issues of authenticity and attribution is obviously the art museum. Samuel Sachs II, former director of the Frick Collection, agrees with O'Connor and other essayists in this book on the primacy of provenance and connoisseurship in determining authenticity, and on the relatively small value of signatures in this process. But there are other criteria at work in a museum. Obviously it is important not to hold out a fake as authentic; but more important than the matter of attribution (that is, who created the work) is whether the work of art is of "consummate quality."

If connoisseurship is primarily concerned with articulating visual perceptions, conservators bring to the attribution process a fairly single-minded concern with the physical structure of a work. Rustin Levinson, a conservator, describes how an examination of the physical structure of a painting can help attribute the authorship of traditional works of art. With respect to contemporary art, conservators face new challenges from artists who, in recent decades, use a variety of eccentric and often impermanent materials. The conservation of such non-traditional materials, as Levinson demonstrates in her second essay, becomes increasingly complex, both in terms of physical procedures and philosophical issues, all of which have important ramifications for attributing works of art.

While part I of this book illuminates the nature of authentication and con-

noisseurship, part II, "Authentication and Law," attempts to help the reader understand how the law resolves disputes over issues of attribution. The essays in part II should help to establish the objective and systematic standards necessary to defend, at law, art scholarship and subjective judgments about art. To this end, Theodore Stebbins, Jr., addresses the liability of art experts in law courts from the late nineteenth century to the present day. Stebbins also examines the practical methods and procedures used by art experts today, and the effect of these procedures on their potential liability for rendering an opinion on authenticity. The essays in part II deal as well with the kinds of legal claims made as a result of an attribution, and the question of whether the expert's determination, self-described as only an "opinion," gives the expert protection from legal claims (Ronald D. Spencer, "The Risk of Legal Liability for Attributions of Visual Art").

Factors which judges consider important and proposed procedures for experts to follow that would limit their liability are covered in my essay, "Authentication in Court: Factors Considered and Standards Proposed." Newly available legal protections for experts rendering opinions (such as "hold-harmless" provisions in agreements between owners of art and the experts) is the subject of my essay, "A Legal Decision in New York Gives Experts Protection. . . ." Last, French law and its complicating factor of artists' (and their heirs') moral right to attribute the artist's work is discussed by Van Kirk Reeves in "Establishing Authenticity in French Law."

One goal of this book is to help lawyers advise their clients and judges to arrive at more informed decisions (informed, that is, by a better understanding of the nature of the attribution process and its practical consequences for art scholarship and the art market). When judges and private legal advisers know something more about the "industry," a knowledge which seems quite lacking in some of the judicial decisions discussed in this book, decisions are more likely to be fair to litigants and legal advice more useful to art world participants. The essays in part I describing the process of attribution and examining the history, nature, and practical application of authentication and connoisseurship are intended to provide the legal community with just such industry knowledge.

At this point the reader may well be asking why, and to whom, authenticity in the visual arts is important. As will be seen, there has been, and continues to be, an intrinsic conflict between the subjectivity of the expert's connoisseurship and the objectivity of the law, which demands clear and compelling evidence. It is said of James McNeill Whistler that when someone showed him an alleged Velázquez, he dismissed it after a glance, and when its owner protested his curtness, he declared, "I always swoon when I see a Velázquez." One of the contributors to this book of essays can deeply sympathize with Whistler. Not that Francis O'Connor faints at the sight of a Jack-

son Pollock painting, but he knows that recognizing a copy, a mistaken attribution, or a fake comes from a lifetime of empirical experience with an artist's oeuvre. With such experience, you can perceive the wrongness of a work as quickly as you could a forgery of your own signature. But proving such immediate, visual perceptions in court is, alas, not easy.

The essential points here are two. First, as it is argued, expressly in some essays (O'Connor and Sutton) and implicitly in others, that the connoisseur's perception of an artist's form, or distinct manner, is not dissimilar from other types of "objective" evidence accepted by a court, such as handwriting analysis and forensic pathology—both of which are based on the formal characteristics of phenomena. Second, the expert must take a more systematic, organized, and careful approach to the authentication process, so subjective judgment can be supported by rational and physical analysis of the art object. Inherent, of course, in such a coherent system is that the authentication process is based on experts with no self-interest in the object in question, and not, as was common in late nineteenth- and early twentieth-century Europe, on an opinion stated in a certificate for which a substantial fee, linked directly to a positive opinion, was received or promised.

In establishing these two points, it is hoped that this book will be of use to a wide range of individuals for whom a coherent system of authenticating works of art is important, if not crucial, in their professional lives. Artists and their estates have a very real interest in defending themselves against forgeries and misattributions; dealers, collectors, scholars, curators, and auctioneers all need to know with some modicum of certainty that what they sell or resell, acquire, study, or exhibit is authentic.

It may be useful to detail the value of the essays to each of these interested parties.

For artists and their heirs, an active production of fakes may well prove a negative form of flattery, but it is hardly a distinction to be sought or tolerated: it devalues the real works from the artist's hand, distorting their aesthetic and economic appreciation. This has happened with a vengeance in the realm of Salvador Dalí's prints. On another level, unauthorized reproductions of an artist's work leave the artist the loser when it comes to royalties and reputation. Here, Robert Indiana's widely reproduced *LOVE* image is a notorious example. Artists and their heirs, therefore, have to fight inauthenticity on two fronts: the first, that of mistaken attributions or outright forgeries, and the second, that of intellectual property rights violations.

Dealers are often required both morally and legally to certify the authenticity of the objects they sell, so the need to establish the rightness of their wares is paramount. Both their reputations and their economic well-being require a system of authentication that is authentic in itself, being free of all questionable self-interest and recognizable as authoritative. At present, it is of-

ten the case that a dealer cannot find a recognized authority willing, even if able, to give an opinion as to the authenticity of an object because a negative opinion is too vulnerable to a lawsuit. This problem is complicated by the fact that some dishonest dealers are all too willing to pay for wildly inaccurate positive authentications, which are relatively invulnerable to challenge by knowledgeable experts for the same reason—they dare not speak out for fear of risking litigation. This book spells out the rights, duties, and vulnerabilities of art dealers faced with authentication problems, and the legal and commercial remedies available to protect them, their artists, and their clients from the consequences of fakery and misattribution in the art market.

Collectors, obviously, have a right to expect that what they buy is authentic, just as any consumer ought to be able to trust the label on a watch or a scarf. But truth in labeling does not always pertain to what changes hands in the present-day art world, leaving inexperienced collectors especially vulnerable to fakes and misattributions. Here, the collector has some obligation to perform “due diligence” before any major purchase, making sure to see such things as a complete provenance and an authoritative publication history for the object (although, as a practical matter, this information is probably not available for a large percentage of lesser works). It is hoped that the wealth of information in this book will help the fledgling as well as the experienced collector avoid the acquisition of inauthentic objects.

Scholars are perhaps the most vulnerable to the present lack of clear-cut standards and procedures for authenticating works of art. They are on the front line of defense against fakes and misattributions, especially those scholars who undertake a monographic study of an artist, or who author a catalogue raisonné of the artist's work. It is scholars who most often become the recognized authorities to whom everyone else turns for informed opinions, and until early in the twentieth century, they were able to give such opinions without inhibition.³ However, because of concern for legal liability, they are no longer able to do so as freely as in the past. Further, since scholars are seldom economically independent, they are most vulnerable to the threat of litigation. Many oeuvre catalogues are stalled because of the consequences of listing known fakes, or omitting them, which is pretty much saying the same thing. One practical result of this book might be a change in the views of judges in future court decisions about expert opinion, so that those best qualified can make judgments on authenticity without undue concern for being ruined in the process.

Museum curators are very much in the same vulnerable situation as scholars, although somewhat more protected by their institutions. Whether to include a work deemed inauthentic in an exhibition can, however, have ramifications quite different from those faced by the scholar. If you want a certain collector to leave your museum his Picasso, do you overlook the dubious

Utrillo being pressed upon you for a current exhibition? When a certain Old Master painting suddenly appears at auction from the collection of a very famous connoisseur, how do you judge, under the pressure of the connoisseur's reputation, the conflicting opinions of experts that the painting may be (a) authentic but heavily restored; (b) the artist's copy; (c) an assistant's copy; (d) a seventeenth-century copy; (e) something more recent?

Similarly, what does the auctioneer do when required to warrant the authenticity of the same painting when it is sold, and be ready to give back the money if the buyer later balks when the conflicting opinions of experts are reported in the newspapers? Since auctioneers tend to see a greater variety of works, as well as greater numbers of dubious works, than other art world professionals, they are more dependent on reliable in-house and outside expert opinion, and more vulnerable to litigation of all sorts. Here again, it is hoped that the experts in auction houses can learn from this book.

Finally, these essays will demonstrate, despite our intuitive suspicion that art and the law do not comfortably coexist, that there is as much human empathy inherent in the formulation of a body of law as there is in the creation of a work of art. Both attempt to express, through either images or actions, a respect for what is true and real, and a rejection of what is not. It is our hope that this compilation of ideas will further that respect.

Notes

1. For a study of these other objects, see Mark Jones, *Why Fakes Matter: Essays on Problems of Authenticity* (London: British Museum Press, 1992).
2. For a study exclusively on the subject of fakes in the visual arts, see the work of Friedländer's younger contemporary, Otto Kurz, *Fakes*, 2nd rev. and enl. ed. (New York: Dover, 1967).
3. See Sir Joseph Duveen's difficulties in the 1929 case of *Hahn v. Duveen*, addressed in part II of this book.

Part I

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Authentication and Connoisseurship

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Authenticating the Attribution of Art

Connoisseurship and the Law in the Judging of Forgeries, Copies, and False Attributions

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Francis V. O'Connor

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Francis V. O'Connor discusses the three major tools utilized by experts in determining the authenticity of a work of art—historical documentation or provenance, scientific analysis, and visual inspection by a knowing eye or connoisseur. Of these three, connoisseurship, as the author articulates the process, remains primary.—RDS

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FRANCIS V. O'CONNOR is an independent historian of American art who has published extensively on Jackson Pollock and Abstract Expressionism, New Deal art patronage programs, the American mural, and the psychology of creativity. Between 1973 and 1978, he edited, with Eugene V. Thaw, *Jackson Pollock: A Catalogue Raisonné of Paintings, Drawings, and Other Works*, and in 1995 edited *Supplement Number One* to that catalogue.

...

It is unlikely that the many millions of commuters who pass beneath Grand Central Station's famous "Sky Ceiling" every year are aware that the depiction of the ceiling's constellations is an inauthentic work of art.¹ Designed by the French muralist Paul Helleu (1859–1927) and painted in 1913, it was "restored" in 1945 by pasting grossly conspicuous asbestos panels over the original, then crudely copying the outline of the various zodiacal figures upon them. Fifty years later, New York's Metropolitan Transit Authority, in an otherwise commendable restoration of the entire station, spent millions of dollars to clean the fake ceiling rather than a few more to reveal the aesthetically superior original underneath. Their argument? New Yorkers were used to

the copy, so why restore the admittedly better original at greater expense? This is a typically American response to the matter of authenticity. While we would condemn a politician caught in a verbal lie, however artful, visual lies in art are somehow forgivable as a matter of public policy.

America's earliest and most prophetic critic, Alexis de Tocqueville, noticed this trait of character upon his arrival in America in 1831, when he saw along the shores of Long Island Sound a number of impressive dwellings, not a few aping the style of Greek temples. Upon closer inspection, he discovered they were constructed of whitewashed brick and wood.² Indeed, when teaching art history at the University of Maryland in College Park 160 years later, I could always get the students interested in the arcana of the Greek orders by first making them notice the pillars of the university's buildings: what the Greeks carved in marble, the state of Maryland had franchised out to a maker of wooden barrels. After that, fluting, capitals, and especially entasis—that subtle curvature of the drum of a classical column—were indelibly imprinted on young minds by noting the various ways the pillars' slats warped!

A people still rooted in colonial habits of mind, Americans create practical illusions of grandeur when the authentic reality is beyond our grasp—or interest. If we can't afford to live in a palace with a rusticated granite exterior, carved marble walls, coffered ceilings, and terrazzo floors, then rock-face, embossed wallpaper, tin ceilings, and linoleum will do. So long as they look trim and exclude the weather, the authenticity of materials is secondary. Given such an ingrained pragmatism—consider all those “homemade” pasta sauces that come ready-made in jars (or, for that matter, the refabrication of Marcel Duchamp's Ready-mades, which have had such an influence on our art and culture³)—it is difficult to get Americans to worry overmuch about truth in art.

If you doubt that, think of the sale in 1995, by the U.S. Postal Service, of some 12,000 fake prints by Salvador Dalí and 1,400 other dubious works, recovered during the breakup of a Honolulu forgery ring. While most of the prints are marked as fakes, the marking was apparently so discreet that they were still marketable. A judge had ordered the sale of the fakes so that the forgers could pay the fines they were otherwise unable to afford. Further, only one member of the Art Dealers Association of America was willing to testify for the prosecution.⁴ This incident not only underlines the point that the circulation of fake visual art does not seem very important, but also reveals the reluctance of art professionals to get involved in what has become the very awkward and dangerous task of authentication.

It used to be that an “original” work of art was understood to have been created by the artist, its originality proved with documents, signatures, and the informed opinion of experts. Copies and fakes of the original were distinguished by the signature—whether the contrivers signed their own names

or forged that of the artist. More recently, there has been a disturbing tendency to denigrate the authority of both artist and expert, to confuse truth with dogma, and to treat all created objects as “texts” which can be used as pretexts for new texts based on the free associations of their relativistic authors. Scholars balk at “privileging” the elitist hand of the artist over the exploitable “text” created thereby, and would probably consider rockface and linoleum more “democratic” than pricier stuffs—and fuss over their relative authenticity. Taken to extremes, such a point of view denies the objectivity of historical truth, and would deem a fake to be as culturally significant as an authentic object. Thus our present academic colonialism begs the question: What’s the difference?

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Aside from the moral and ethical dimensions of authenticity, rooted as they are in the integrity of an artist’s oeuvre and in how we understand the past through its artifacts, there is the simple public expectation and legal requirement that what is for sale be what it is claimed to be. We hardly want our Perrier bottles filled with carbonated tap water, our jeans distinguished by forged designer labels, or our Rolexes stamped out in Brooklyn. We want truth in advertising. Thus, in New York State, an art gallery or auction house must certify what it sells as authentic, and that statement is most often based on the consensus of scholars expert in the object’s creator or era. Similarly, curators in museums have a moral obligation to the public, and to history, to show art whose authenticity is based on the same criteria, and to label doubtful works as such. Scholars cataloguing the work of an artist have a similar obligation to exclude or to identify forgeries, copies, and false attributions. Yet these acts of simple integrity grow more and more difficult to perform.

An art dealer faced today with a fake Impressionist painting offered for sale with a certificate from the artist’s great-granddaughter, who has inherited in France the *droit moral*, the absolute right to authenticate her ancestor’s work, is confronted with a double dilemma: having to contradict an opinion that is legally valid in another country, and to deal with American libel laws under which he can be accused both of defaming the work’s owner and disparaging the work’s value. Similarly, if an auction house, curator, or scholar refuses to include such an object in a sale, exhibition, or catalogue, or dares to declare or publish it as unauthentic, the same risks are incurred—sometimes with serious consequences for the individual or institution involved.

Consider the case of Gary Tinterow, the Metropolitan Museum of Art’s curator of European paintings. He was one of four people or institutions sued for, among other reasons, excluding a painting attributed to Georges Seurat (by the great Impressionist scholar, the late John Rewald) from a 1993 exhibition of the artist’s works on the grounds that it was not authentic. Since the

owners could no longer sell the work privately or at auction, they sought damages.⁵

Situations such as this have led to a state of affairs in the art world in which it is virtually impossible to openly evaluate the authenticity of works of art, and in which the informed opinion of an expert is no longer either respected or protected. The reasons for this state of affairs are complex, but they center on a growing lack of confidence in seemingly subjective expert opinion concerning art, and the parallel lack of consistent procedures for applying such expertise.

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The art historian has traditionally had three major tools for determining the authenticity of a work of art, which can be listed in the order of their seeming capacity for “truth”: scientific analysis, historical documentation, and visual inspection by a knowing eye—or connoisseur. Since the ability of the connoisseur to perceive the rightness of a work usually precedes the need for the lab or the archive, the idea of connoisseurship is crucial to the whole matter of authenticity—and is the most difficult for the layperson to understand.

Once, viewing a photograph of a Jackson Pollock drawing on heavily textured rag paper, I questioned its authenticity: the signature and overall appearance seemed oddly askew despite the work’s impeccable history back to the artist and the distinction and probity of the collector who owned it. Later, when the original was seen from across a room, it was obviously right—but it fell apart when closely inspected. Documentation revealed the problem: the work had been inexpertly mounted; the irregular surface of the rag paper had been crushed, causing the original facture, including the signature, to be pressed aside a fraction of an inch. From afar, Pollock’s singularity of form sang out; up close it was a micro ruin, like stomped moss.

That first practical application of connoisseurship taught me that the ability to recognize the *form* of an artist, those complex characteristics identifying a particular artist’s unique way of making an image, is crucial to the authentication process; documentation and technical information are of secondary importance—or so one thought.

Historically, this sense of an artist’s form was established in the later nineteenth century by the Italian doctor of natural science, Giovanni Morelli. He noticed that artists working within rigid stylistic and iconographic traditions could nevertheless be distinguished from each other by the way they painted an ear or a fingernail—details in which imposed convention gave way to the singularity of the artist’s personal observation. Practically, it is what anyone can see immediately when viewing his or her signature forged on a check or document—and yet it is difficult to articulate. This is not a Giotto, you confidently state. That is not my signature, you insist. But why isn’t it? Prove

it to a judge and jury! The latter situation—alas, all too prevalent today—is harder than one might imagine, given the elusiveness of an artist's form and the means by which it is made manifest.

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Authenticating a work of fine art is a method of judgment based on an informed perception and interpretation of the form and the facture specific to the artist who created it. It is analogous to methods used by other professionals—methods that are often accepted as systematic and scientific.

Handwriting analysts, for instance, when judging the authenticity of a signature, look to its formal characteristics—the shape of its letters, their angle in respect to a baseline, their loopings above and below that line, and others—in comparison with an authentic signature. They can see, on the basis of matured experience in perceiving such matters, that the forged signature is lacking in the salient characteristics of the authentic signature. Such expert judgments have long been accepted in courts of law, and such techniques of form perception are even taught, as a dimension of commercial security procedures, to young bank clerks or store salespersons who review checks or credit card slips for fraud.

Authenticating a work of fine art is thus not much different in essence from authenticating a signature—which also is often part of the art authentication process. It is a matter of an informed and experienced perception of form. Such empirical perception is also utilized regularly in professions of a more recognized scientific bent. Forensic pathologists and anthropologists can deduce from a wound or scrap of bone the weapon employed, the age and sex of the victim, or a human or animal provenance—often by visual inspection alone, and without elaborate laboratory testing. Similarly, medical doctors spend years learning the skills of the diagnostician under the supervision of experienced senior nosologists, who demonstrate how the look of a fingernail, or a tongue's pallor, or the droop of an eyelid, or a tiny shadow on an X ray or CAT scan can indicate a symptom's cause or hidden pathology.

Such perception of anomalies in physical form is perhaps best developed among medical psychiatrists and psychotherapists (the latter including psychoanalysts and clinical psychologists), who observe a patient's body English, emotional aura, and linguistic anomalies (which are formal on another level), the better to diagnose mental pathology or neurotic or affective dysfunction. Therapists who have seen hundreds of such patients exhibiting specific behavioral characteristics, can spot a problem instantly in terms of the various formal phenomena it manifests. (Think, for instance, of the personality of someone you know whose shoulders are always up around his or her ears.)

All these experienced perceptions of form would be considered scientific