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CRIMINAL DAMAGE TO ART—A CRIMINOLOGICAL STUDY

THOMAS WURTENBERGER*

UNTIL now, the science of criminology has, more or less, neglected the fact that crime causes considerable damage within the human society. The damage of crime may relate to the injured person, *i.e.* the victim. The criminal, by his act, interferes directly with the life and possessions of other persons. Only recently, criminology has become concerned with the relationship between the criminal and the victim. There has developed a special branch of criminology which deals with this interesting approach. This new domain has been known as "victimology." Beyond this, moreover, considerable damage to societal values is traceable to crime. This aspect of crime has not received adequate attention. It is no secret that forgers, thieves and confidence men cause considerable damage to society and culture, as well as to the individual and the entire economic life of the community. Considering crime as a social and cultural phenomenon, more attention must be given to the "social and cultural damage" caused by crime.

In the following sections we shall discuss those forms of damage which are caused by criminal offenses relating to art.

I

If we consider first the offenses of "art-forgers" and "art-defrauders," we have to note that in the Middle Ages there was little if any evidence of either offense. The artist was an integral part of society. Though the work of art at that time, already had its value, it had not yet become an object of commerce. It was almost entirely connected with the all embracing influence of the Church. Special art markets were only in their infancy. The economic value of works of art was not yet an object of speculation. They were considered primarily of religious value and only, secondarily, of commercial value. The artist, as an individual, was not of importance to the collector of works of art, since, during the Middle Ages, the artist remained al-

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most anonymous. On the other hand, a work of art could then also be damaged by criminal manipulation. The artist, having been asked to create, for example, the statue of a saint, could have used, contrary to agreement, inferior materials, or he could have misused the materials, supplied by the customer, for other purposes.

Fundamental changes within culture and society arose during the period of Renaissance, which had a strong influence on the attitudes of men toward art and the artists. The new spirit of individualism brought a new hierarchy of values and with it the enhancement of the status of the individual. Upon the artist's individuality was shed a new light. In Italy, Germany, and the Netherlands, the artist emerged from the mere existence of a craftsman. The more society recognized the artist's genius, the higher was his rise in social life and the more advanced his economic gain. Mankind admired his great achievements and his talents which enabled him to create such works of art. Thus the value of a work of art became more and more dependent on the social recognition of its creator. The artistic work was considered to be a part of the artist and was celebrated as an "original," *i.e.* an original product of an important, well recognized artist.

It is of importance in the development of art-forgery and fraud, that the genuine work of art became more and more an object of value, due to the growing value-image in the capitalistic age. In the "art markets" which developed in modern times, works of art, acknowledged as originals, drew higher prices. They had become desired trade commodities. Wherever art collectors, dealers or connoisseurs acquired or disposed of works of art, there were also forgers, cheats and thieves. Since works of art have been collected by private persons and public institutions and have been treated as "commodities," there has been the temptation for countless dishonest persons to enrich themselves by forgery, theft or fraud. Unfortunately, criminology has not been able until now to obtain a reliable idea of the extent of damage caused by these criminal manipulations. For all those offenses the "dark number," *i.e.* the offenses committed, but never discovered or cleared up, was especially large. There have been no statistics containing more precise and more reliable information about the extent of criminal offenses involving art and works of art. As far as art-forgery and fraud were concerned, it has been to the disadvantage of law enforcement agencies that the victims often did not denounce such crimes because of fear of ridicule, or because of false

pride. At other times, the victims of a fraud have been prepared to co-operate with the dishonest manipulations of forgers or defrauders, in one form or the other.

The following section is intended to characterize the extent of criminality of art-forgers, defrauders and thieves in regard to the damage caused to art.

II

It is of the legal essence of crime that it threatens and abuses the possessions, values, and interests of the individual and of society. For some time, criminology has been considering aggression or abuse of a legal property as a special characteristic of crime. The injury to several, state-protected legal properties is evident when a delinquent, by his criminal act, causes manifold damage within the legal, social and cultural life. In this act of injury lies the meaning of crime as an act hostile to society and culture. It took a long time to come to the conclusion that gravest forms of art-forgery and fraud have to be considered as crimes deserving punishment, inasmuch as they cause considerable damage to the legal property of others.

Before criminology came to that conclusion, several sociological conditions had to be fulfilled. At first these acts had to be considered as aggressions against the sphere of legal property of the individual or of society. Then slowly the protecting function of penal law became evident in the combat against crime and art-forgery. When society condemned such crime, it stressed the great harm inflicted upon the culture of the community. But where are these dangers and damages to be found which are caused by the crimes of art-forgers? Forgery and fraud, in regard to art, also injure the values, image of art, culture and science and damage the material property of the individual and society as well.

III

The criminal aggression involved in forgery is, in the first place, directed against the acknowledged values of art, as they are expressed in a specific work of art. The degree of quality of a work of art, after all, is present in the special charm of its aesthetic effect that was expressed through the efforts and abilities of a specific artist. This aesthetic effect of an "original" might be expressed in the harmony of forms or in the combination of colors. That purely aesthetic character

of an art object, at first, does not seem to be injured by the forger's actions. Thus, the aesthetic value of a work has been barely touched when the forger has only falsified the artist's signature of an original. On the other hand, it cannot be contradicted that a skilled imitator might obtain a remarkable aesthetic effect with his forged work. It has, however, to be taken into consideration, that a work of art is not only fully characterized by its outer aesthetic appearance, but it is also a symbol of multiple functions which are of importance to human life. Not only is the work of art the expression of its creator's individuality, but it also exemplifies the requirements of art of his time. A forged work only simulates another artistic expression or a former style and loses thereby—as far as today's conception is concerned—an essential part of its aesthetic value. Thus aesthetic standards and aesthetic considerations are combined. The special attraction of a genuine work of art is reflected in the harmony of its expressions, in its conformity of reality and appearance. This will, however, be valid only when the bonds between the art object and its creator are not severed by the interference of a forger. Those who pretend by a recently produced reproduction, that Raphael had painted this picture, do not only offend contemporary awareness of artistic standards and appreciation, but also those of the 16th Century. The forgers are misleading their own generation by pretending to show the work of art of a great artist of the past, since they want to ascribe it to past periods of art, while it actually does not belong to the creations of that time. So the forgers disturb, at the same time, the conception that connoisseurs and art lovers had formed on their own about the nature of art of bygone times. The aggression of a forger is thereby directed against the basic foundations of our conception of art, which in its essence is to be found in the perception of originality. This too is the case if the forger has truly mastered the imitation of other forms of style. But the discovery of many cases of forgery in the past thirty years would tend to demonstrate that imitators, however much skilled and endowed, are seldom able to achieve expression of a genuine and original work.

Not only art itself, but also the personality of the artist whose creation has been subjected to acts of forgery or fraud, suffers. Whenever forged versions of an artist's creations appear, however well executed, the copies invariably becloud the integrity of the originals and pose a threat to the entire productivity of the true artist. This is

true only if originality in the sense of authenticity is considered to be of highest value when judging an artist's creation. Many a great artist of the past, *e.g.*, Rubens, was supported in the painting of his works by assistants and pupils. So it is difficult to establish beyond any doubt the individual contents of originality in those works.

It is known that some artists did not attach much significance to the question of whether work attributed to them was really done by them or not. Those artists, however, who claim full recognition of their own creations will consider forgery of art to be an offense to their "good name" and their honor. Moreover, the imitation and the reproduction of a work of art is frequently also an interference with the intellectual property right of its creator, because plagiarism and copying involves a dishonest appropriation of the authorship of another artist. Any creator whose own work was attributed to another artist, *e.g.*, by falsification of the artist's signature, will be injured professionally. This reminds one of the painter Professor Hans Blum. At an exposition in Munich he saw a portrait he had painted a long time ago. But now this portrait showed the signature of the famous painter W. Leibl. Here the forgers of the signature had misused for their criminal purposes the similarity of Blum's style of painting and that of the far better known painter Leibl. Blum insisted on his authorship of this picture and demanded the removal of the forged artist's signature.

Furthermore, the increasing development of art-forgery may cause an often unnoticed damage of ideal as well as of material kind to aesthetics, which are concerned with the interpretation of the different methods of artistic creation and with the revelation of the characteristics of past styles of art. The efforts of students of aesthetics are often misled when they are confronted with a forged work of art without the slightest hint of misrepresentation. An expert in art will draw erroneous inferences about the development of style of a great artist when forged elements are being added to his works. To give an example, forged works of Van Gogh may be mentioned which were included in the general catalogue of the works of this famous painter, published by the Dutch art connoisseur de la Faille. These forged works caused serious controversies among experts as to the question of originality.

Sometimes, experts waste time, money and energy by studying a forged work. In this regard, too, the dangerous and criminal character

of art forgery becomes evident. In the history of art-forgery there are even cases where a forger has produced such a work with the sole purpose of playing a practical joke on the experts and connoisseurs and to mislead them in their judgment. The biographers Condivi and Varari already attributed such a motive to the young Michelangelo when he created a sculpture of an Amor in antique style. Such assaults upon the honor of art connoisseurs or experts are not likely to be discernible by penal law.

Apart from aesthetic consideration, the profession of the art dealers, too, will register a considerable loss of prestige if some of its members are occupied with the dissemination of forged works. It should be recognized that since the 19th Century, art trading has become a very important branch of the general trade. Many honorable persons, often of international repute, have become art dealers. The excessive increase of art-forgery on the art-market diverts the normal course in art trading. The more art dealers become identified with the activities of art-forgery, the more it will contribute to the public discredit of the profession of art dealers. It has happened again and again that art dealers have co-operated with an artist who has forged works of art and thus has committed criminal offenses of fraud and forgery. Due to such detestable manipulations the honest art-traders have been injured most of all, and the honest art dealers have a right to protection against the unfair competition of their criminal colleagues.

IV

Finally, any person is injured in his interest and possessions when buying, as a private art collector or art dealer, forged works instead of originals. The fraud of forged works of art must be considered to be an interference with the individual freedom of the victim. The forger frustrates the collector's quest for truth in beauty. Moreover, the innocent party disposes of his money in favor of the criminal who is unjustly enriched thereby. The defrauder derives a perverted satisfaction from viewing his fellowmen as an "object" which lends itself to his criminal manipulation. The human dignity is degraded by the act of fraud. In recent times the concept has been developing that the criminal who deceives his fellow man thereby abuses his confidence. Moreover, he violates the right of humanity to pursuit of truth. To this concept of the damaging effects of criminal manipulations in art trading it has been contended that the collector does not need extensive

protection of his subjective values and personal properties against the machinations of forgers and cheats. The naïve, the credulous and the ignorant must accept the risk of being deceived by forgers and dishonest art dealers. "The world wants to be cheated, who is to reproach?" Sebastian Brant said in his *Narrenschiff* five hundred years ago. Such a view, however, fails to recognize the threat of such criminal acts to social life. Such a concept is out of time with the social-ethical tenets of present society. Certainly, it is right to say that the behavior and the attitude of the victim of fraud with forged works often induces the forger to perpetrate the criminal act. Credulity and ignorance of people constitute a temptation for art-traders to profit from stupidity. This was already mentioned in 1901 by H. Gross in his book on *Fraud with Curiosities*. But the fact that stupidity and credulity of the victim facilitates crime cannot outweigh the aesthetic and economic rights of the victim which are specially protected by legislation of all countries. Nothing should prevent the judge from appreciating fully that the art-forgery does, in fact, take unfair, illegal and immoral advantage of his victim. However, the material damages of a forgery are more easily established than those intangible damages to the collector's freedom and confidence.

According to German law, a fraud can be punished only when there is damage caused to another person's property. There is still no statistical data available on the losses in economic values which dealers, collectors and acquirers of forged works have suffered. They appear, however, to be extremely high. When occasionally successful forgers, e.g., Alceo Dossena or Hans van Meegeren, have been discovered, the deceived collectors and dealers have lost millions. The extent of damage, caused by art-forgery or fraud, is in proportion to the prices of genuine works of art, which can be obtained on today's international art-markets. The international art-market, located principally in New York, Paris, London and Rome, offers with its manifold activities the very "milieu" in which all human passions find an outlet. Today, the strong desire for representation, the striving to accumulate capital and to translate it into objects of high value are the main motives for the acquisition of works of art. The enormously intensified demand for works of art of fully recognized artists of the past and present makes the prices, which are being paid for genuine works of art, rise to unexpected heights. Thus in case of forgery, damages may amount to millions of dollars.

The example of a case of fraud may show how skilled defrauders are in the art-market and the extent of the caused damage. A few years ago in several European countries and in the Federal Republic of Germany forged works of art were the object of a fraud, organized on a gigantic scale, in which also a large number of well-known German industrialists were involved. To these industrialists forged paintings of little value were offered at high prices by the skillful accomplices of an international group of art dealers from Paris, Monte Carlo, Rio de Janeiro, Amsterdam, and other places. At the same time, they were told that there were already foreign buyers interested in these paintings who would pay even higher prices in case the prospective owners would want to resell them, but who only wished to buy from private persons. In many cases the swindlers won the confidence of the German industrialists only after acting as the representative of a foreign government, or by placing alleged foreign orders, at times up to \$250,000. Thus tricked, the industrialists bought the forged paintings from the accomplices, who were acting as sellers, expecting a high profit from the resale. But neither the swindlers nor the alleged foreign buyers were ever seen again, and the victims were left with the valueless paintings for which they had paid fortunes. The total damage caused by these frauds was estimated by the police to exceed eight million marks. With good reason, R. Grassberger attributes such fraudulent manipulations to the modern criminality "due to prosperity."

Especially since the beginning of the 19th Century, the number of public and state owned art collections of all kinds rose to unexpected heights. The increased popularity of art appreciation was traceable to the influence of museum administrators in the art-market. Substantial sums of money were required from public revenues and taxes to supply popular demand for public-owned works of art. Even the expert officials of museums were not safe from the deceit of forgery and fraudulent manipulations, in acquiring art for the public.

It may be remembered that some decades ago, the Boymanns Museum at Rotterdam paid high prices for pictures which later turned out to be imitations of the Dutch painter van Meegeren. And when Baden-Wurtemberg had purchased a self-portrait of Rembrandt, the price of which exceeded three million marks, a strong controversy arose as to the originality of this painting. When the state and the communities spent considerable sums for the purchase of forged

works of art, trusting in their authenticity, it meant a considerable economic loss when the truth became evident. The confidence of the public is adversely affected when forged works are placed in public museums, and the cultural goals of the community become more difficult to attain.

V

The damage caused to art by crime not only greatly increased due to fraud and forgery, but further damage was caused by increased frequency of theft of art-objects. The desire for larger, more impressive private collections among aristocrats led to a greater demand for works of art of all kinds. Today, this demand can hardly be satisfied by honest art trading alone. Consequently, the number of thefts of art-objects has increased enormously. The thieves of such genuine works of art of high value try to dispose of them by selling them to art-traders or private collectors. The extent to which the theft of art-objects has grown may be seen from the fact that art collectors have become more and more fearful of losing their art treasures to thieves. It has been said that in 1962 the British author William Somerset Maugham had preferred to auction his collection of modern art in London being fearful of the growing number of thefts on the Riviera. This fear had become a burden for him.

For a time, pictures of saints and paraments were stolen from churches and, less frequently, art-objects from public museums. R. Grassberger reports on the increasing number of such thefts: "While in Austria during the years from 1957 to 1959 the damage caused by some 40 thefts a year amounted to 10,000 shillings per month, the thefts caused in 1961 reached 400,000 shillings and will be exceeding this year the upper limit of one million. The fact that nothing is sacred to thieves is less serious than the thoughtlessness with which many of the buyers neglect to inquire after possibly suspicious origins of the art-objects, which have been offered to them and which are intended to give their homes the very status, which it is still lacking."

In Southern Germany the theft of art-objects from churches has increased heavily. Thieves frequently complicate the investigations of the police by selling the stolen objects to foreign art dealers and antique merchants, who often buy such suspicious works of art carelessly.

Without taking into consideration the material damage caused to

the state, to communities and churches as well as to individual proprietors of art-objects, it must be stressed that in the theft of works of art from churches the religious domain suffers severe injury. Such despicable theft clearly demonstrates the objectionableness of such crimes, because churches are thereby deprived of many century-old objects of Christian culture. This damage cannot be repaired, even by replacing the genuine object with a really good imitation, as has occurred in recent times in Bavaria. It matters not that the faithful congregation might be inspired as much by the imitation as it would be moved by the original work. The spiritual harm consists in depriving the beholders of the satisfaction to be derived from the genuine work, by deceiving them into accepting the copy for the original.

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