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INTRODUCTION

Managing, protecting and safeguarding the cultural and patrimonial legacy of an artist, especially if established or potentially attractive to the market, involves economic interests of great importance. It may require substantial investments in order to organize the artist's cultural memory, the archive and to manage the bequest.

The responsibility and protection of artists and their estates in pursuing these tasks is only partially regulated by the law. Nonetheless, legal reforms addressing specific needs are currently being discussed, such as the protection of authenticating artists and experts in the State of New York.

Museums, public libraries and universities are involved in this discussion, as they appear to be today the chosen places to receive and preserve artists' cultural legacy, especially when there are no heirs or when the heirs do not pursue their mission due to lack of funds or interest.

Artists' Archives and Estates is a fundamental issue not only from a pragmatic/practical perspective, but also from a legal perspective, which has given rise to a very interesting international academic debate. The topic needs to be further analysed and researched based on the valuable input from practitioners.

The aim of the conference "Artists' archives and estates: cultural memory between law and market" was to highlight, by means of a comparison between different regulations, the divide concerning inheritance and the safeguarding of artist's rights in the many disciplines involved.

Speakers at the conference included representatives of some of the most important artists and artists' foundations, art lawyers from different countries - France, UK, Germany, USA, Switzerland -, distinguished museums directors and conservators and presidents/directors of important cultural institutions.

The presentations reflected on the complex issues arising when authenticating a work of art, or determining its provenance, with an em-

phasis on the right to authenticate and the new market rules in this field – considering the very important role of certificates of authenticity issued by artist's archives; the system of indirect authentication through the publication of an artwork in the artist's "catalogue raisonné"; and the role of museums in the management of archives, including issuing expertise.

Moreover, the conference's purpose was to identify guidelines and good practices to navigate the complex set of rules already set and appropriated by the market.

The research results are gathered in this book that we are sure will be an important reference in founding the discipline of the Artist Archives.

The members of the conference's Scientific Committee are: Prof. Alessandra Donati (Univ. Milano-Bicocca), Prof. Rachele Ferrario (Accademia di Belle Arti di Brera), Dr. Anne Laure Bandle (Art Law Foundation, Borel & Barbey), Me Anne-Sophie Nardon (Borghese Associés, Member Institut Art et Droit), Dott. Silvia Simoncelli (NABA, Nuova Accademia di Belle Arti Milano), and Dott. Filippo Tibertelli De Pisis (AitArt).

The conference is held under the patronage and support of Università Milano-Bicocca, Accademia di Belle Arti di Brera, NABA Nuova Accademia di Belle Arti di Milano and AitArt (Associazione italiana degli Archivi d'Artista); and under the patronage of Ministero dei Beni e delle Attività Culturali e del Turismo, ICOM Italy – International Council of Museums Italy, The Art Law Foundation, Geneva, and The Museo del Novecento, Milano.

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The conference was accredited by the order of attorneys of Milan

ARCHIVI D'ARTISTA E LASCITI: MEMORIE CULTURALI TRA DIRITTO E MERCATO

INTRODUZIONE

L'Università Milano-Bicocca, l'Accademia di Belle Arti di Brera, NABA Nuova Accademia di Belle Arti di Milano, in collaborazione con l'Associazione italiana degli Archivi d'Artista hanno dedicato al tema della autenticità, della conservazione e della gestione del patrimonio creativo e documentale di un artista, nonché della circolazione delle sue opere, un convegno internazionale e pluridisciplinare.

Gestione, tutela e valorizzazione dell'eredità culturale e patrimoniale di un artista sono temi al centro del dibattito storico, artistico e giuridico del mondo dell'arte e possono coinvolgere anche interessi economici di grande rilievo.

È un tema cruciale per artisti e loro eredi, storici dell'arte, istituzioni – Musei, Biblioteche e Università – collezionisti, galleristi, case d'asta e giuristi, che merita di essere approfondito, coinvolgendo i vari operatori del settore nell'interessante dibattito in materia anche a livello internazionale.

Tutto ciò è in parte regolamentato dal diritto positivo ed in parte da prassi del mercato; in materia si rilevano peraltro originali proposte di riforma, come quella relativa alla responsabilità dell'*authenticator*, in fase di approvazione nello stato di New York.

Il convegno ha costituito un appuntamento importante per affrontare le problematiche della certificazione dell'autenticità delle opere d'arte, per individuare linee guida e principi di buone pratiche per la tutela e la valorizzazione dell'artista e della sua opera, con interventi di rappresentanti di istituzioni museali, giuristi esperti del diritto dell'arte e del mercato internazionale dell'arte, artisti, fondazioni e archivi d'artista, italiani e stranieri.

Il testo che ne è nato è ricchissimo e segna un decisivo momento di riflessione in ordine all'importanza di fondare una nuova disciplina, anche giuridica, degli Archivi di Artista.

Il comitato scientifico: Prof. Alessandra Donati (Dipartimento dei Sistemi Giuridici, Università degli Studi di Milano-Bicocca), Dr. Anne

Laure Bandle (Art Law Foundation Università Ginevra, Froriep), Prof. Rachele Ferrario (Dipartimento di Comunicazione Didattica dell'Arte, Accademia di Belle Arti di Brera), Me Anne-Sophie Nardon (Borghese Associés Parigi, Institut Art & Droit Lione), Dott. Silvia Simoncelli (Dipartimento di Arti visive, NABA, Nuova Accademia di Belle Arti), Dott. Filippo Tibertelli De Pisis (Presidente Associazione italiana degli Archivi d'Artista).

Desideriamo ringraziare l'Università Milano-Bicocca, l'Accademia di Belle Arti di Brera, NABA (Nuova Accademia di Belle Arti di Milano) e AitArt (Associazione italiana degli Archivi d'Artista) per aver reso possibile questo convegno insieme agli enti patrocinanti Mibact, Icom Italia, FDA (Art Law Foundation) Museo del Novecento di Milano e ai generosi sostenitori Open Care servizi per l'arte e lo studio legale Netm. Un ringraziamento anche a Pirelli HangarBicocca e all'avv. Giuseppe Calabi.

Ringraziamo tutti gli straordinari ed eccellenti relatori che hanno generosamente contribuito allo studio del complesso tema e condiviso ricerche, esperienze e punti di vista.

In particolare la nostra gratitudine va alla collaborazione preziosa della dott.ssa Anna Pirri Valentini per il suo paziente lavoro di editing ed anche di responsabile della segreteria organizzativa. Un ringraziamento anche a Miriam Canzi ed a Edoardo Mombelli.

Il convegno ha ricevuto l'accredito dell'Ordine degli avvocati di Milano.

TOWARDS A DEFINITION OF AUTHENTICITY FOR A WORK OF ART*

Silvia Fabro: SF
Sharon Hecker: SH

SF: I was kindly invited here to represent the category of artist's heirs, in order to add my contribution to this conference to the discussion among those who are connected to the work of artists. To stimulate the reflection that I want to share with you today, I decided to invite Sharon Hecker, a scholar and art historian and specialist in the works of the modern sculptor Medardo Rosso.

Sharon does not work in my archive but I have known her since 1990 when she came from the United States to Milan to work at the gallery where my father, Luciano Fabro, was opening an exhibition. Sharon, I would be happy if you could begin by speaking about the first contact you had with my father's work.

SH: Luciano Fabro is one of the most important postwar Italian artists, a rare example of a theoretician...who had an important role in teaching art and a rare sense of responsibility towards history and the artists who came both before and after him. After my studies at Yale University I came to Italy, and when I arrived in Milan I met Fabro in the best of all possible ways: by "meeting" his work.

In this conference we are discussing the theme of safeguarding works of art, and Fabro's exhibition at the Christian Stein Gallery, where I came to work in 1990, focused on an emblematic work of art: a sculpture that Fabro dedicated to Nadezda, the wife of the poet Osip Mandelstam. Osip's poems were officially ordered to be destroyed by the Stalinist regime, but thanks to Nadezda's memory and devotion, she was able to save her husband's poetry from being forgotten after he was arrested and sent to Stalin's work camps, where he died. Clearly

* A conversation between Silvia Fabro, Archivio Luciano e Carla Fabro, Milan and Sharon Hecker, Independent Art Historian and Curator.

Fabro appreciated the need to safeguard and preserve works of art for the future.

Many years later I wrote an essay on this sculpture and on what happened during the inauguration of Fabro's exhibition at the Christian Stein Gallery: Fabro distributed candies wrapped in Nadezda's words for the public to savor – and also to remember.

SF: You just opened a very important exhibition in the United States on an Italian artist from the nineteenth century who you have been studying for many years: how did you begin to work on Medardo Rosso?

SH: This involves a bit of historical reconstruction, too. It was actually thanks to Fabro that I came to know about Medardo Rosso (fig. 1). I had initially thought I would write about Fabro's art and career. But when I proposed it to him, he said that first I needed to study the works of Rosso. This was because, according to Fabro, and now also according to me, Rosso is the artist who opens art to modern concepts. Now, after many years of researching and studying Rosso, my monograph on him has been published by the University of California Press, and my exhibition on him has opened at the Pulitzer Arts Foundation in St. Louis.

When I met Fabro at the Stein Gallery, I also met Silvia. Let me introduce you to those in the audience who do not know your history. After studying art history, Silvia worked as a restorer and was researching a hypothesis for a method and theory on the restoration of contemporary art by interviewing artists, museum directors, and restorers.

Silvia always worked with her father on the preparation and installation of his exhibitions, on his catalogues and the publications of his theoretical writings. Today she directs the Archivio Luciano e Carla Fabro. Since his death she has curated exhibitions, directed publications and takes care of the works.

Our dialogue today, therefore, has deep roots in the past and has developed over time. We have been comparing notes for many years about the problems we encounter in our respective work, and this is why it seemed to us that it could be interesting to share with you our practices and our methodologies – for my part, applied to the modern sculpture of Rosso, and for Silvia, applied to the contemporary sculpture of Fabro – in an attempt to understand if there were any affinities between what we do.

SF: We need to clarify that our talk today will concentrate on the problems posed by sculpture. We would like to reflect on the ways we can work to protect a work of art's authenticity over time.

Sharon, even though we work on two artists who lived in different

historical periods, can we say that this is a common problem that we share?

SF: Of course, Silvia. Even though I don't issue authenticity certificates, as a scholar and an expert, I, too, have to address the problem of authenticity. When I write a book or an essay or curate an exhibition, I must be certain about the authenticity of the works I publish or exhibit because this is my responsibility.

SF: But what kinds of instruments does an art historian use in order to do that?

SH: When one must establish the authenticity of a work of art, a scholar considers an ideal situation to be the existence of an artist's archive, a catalogue of the artist's work (even though the methodologies used for writing catalogue raisonnés have evolved over time), historical documents (images from the artist's lifetime, correspondences, diaries, publications from the artist's lifetime, supporting material such as certificates, notarized documents, wills, receipts, commercial agreements...).

The role of the art historian is not, however, that of a compiler of documents, but rather my job is to compare and check the veracity and reliability of these historical sources.

For my exhibition and my book on Rosso, I

- studied documents preserved in the artist's archive (even though Rosso was an artist who kept things very selectively)
- recovered old images
- studied newspaper and journal articles from the artist's lifetime
- conducted research in public offices (chamber of commerce, notaries, land and birth and death registries, etc.)
- conducted research in archives around the world to recreate the network of people who were connected to him
- organized and directed technical studies, which involved consulting with experts in other fields such as conservators, conservation scientists, specialists in bronze and wax casting procedures, etc.

Only through this kind of research work was I able to confirm, refute, or correct the information I found.

This was painstaking, exacting work and I spoke frequently with Silvia about it and discovered that it was not only my personal experience.

SF: I am sensitive to this problem because we who work on contemporary artists must also work with historical documents of artworks.

We can therefore affirm that a point in common between the art historian and the person who runs an archive is the need to have informa-

tion, but documented information that can withstand the test of time, because it is precisely time that is the element that is most important in our work.

It is precisely a consciousness of this need that led me, together with my father and my mother, to create an archive in the 1980s. We started from the fact that Fabro had always preserved everything, without being selective, including things that could seem to be of secondary importance. This was quite an exceptional choice, linked to his will to protect and care for his work and his concept of responsibility with respect to the history of art. Luciano also preserved material that had to do with his travel companions and the years in which he worked. To proceed from this attitude to the birth of the Archivio Fabro was a natural process. For me, to have had the chance to work with him, to gather his thoughts and indications about his work, was a precious gift.

And on how working with an artist is stimulating and important, I refer you to yesterday's wonderful talk by Maddalena Disch from the Archivio Paolini.

But let's return to the theme of our talk today: authenticity.

It is clear that even when one works on contemporary art, one faces the problem of authenticity.

As long as the artist is alive, the responsibility is his, but what happens when he is no longer alive, how are we supposed to behave? Must we keep as our point of reference the same parameters that art historians use? Of course!

Yesterday many people spoke about focusing on the artwork, I absolutely agree. We archives have the obligation to create the most complete file on the work because I maintain that a declaration "Work made by..." is not sufficient to protect and care for the authenticity of a work of art, and that one must accompany the work with the most complete documentation possible, we must provide a great deal more information than just that sentence.

We contemporary archives have the duty to be the ones who safeguard and avoid the dispersion of as much information as possible with respect to what was done in the past... That way we can save the historians of tomorrow some hard work... and also some wild deductions.

But – and this is an important point – every artist is different, every archive is different, therefore I can only speak of my own experience.

Luciano Fabro was an artist who was very attentive to the safeguarding of his work.

I have the good fortune of knowing his works very well, and since I worked with him I have direct knowledge, but that is my situation now, today, and I have the duty to think about what is going to happen tomorrow. I am lucky to have a very large archive: photographic images, correspondences, files of the works annotated and discussed with my father, account books, publications, theoretical texts by the artist, videos, etc. etc.

The problem is to be able to maintain the complexity of all this data and not to schematize it. The information must be “gathered together, ordered, and linked” in a way that that it can be used in the future too, even by someone who does not have, like me, a direct memory of the facts.

If our archives live beyond us, something that we all hope will happen, then the day will come in which they will be run by people who cannot rely on their recollections. The biggest part of the job is therefore to work in a way that the archival materials, and the memory of contemporaries, can be used in the future and can converge in the files for each work, and the information in the files must match the documents.

This is a complex job and is constantly “in progress.”

Conditioning and studying the archival material, and the material that we constantly receive thanks to new research being conducted, leads to new information that emerges every day, and all this needs to be recorded.

Our research is continuous but it requires the collaboration of everyone who works on art. I want to open a reflection on this subject regarding a very current question: Sharon, I’d like you to tell everyone what documents you were required to produce in order to exhibit works in your latest exhibition of Medardo Rosso.

SH: When one curates an exhibition in the United States, one must prepare a document called “Immunity from Seizure” for the Department of State, in which the curator declares the truthfulness of all the provenances (transfers of ownership) of a work of art going all the way back to the artist. It is not enough to write a simple declaration with a list of names. The curator and expert must also provide external historical documentation that corroborates these transfers of ownership. Declarations such as “Work of art by...” are not sufficient, nor are stylistic comparisons to similar looking works. In the cases we did not find sufficient provenance documentation for a work of art, we were not able to exhibit the work.

SF: This is a problem that we also face. One might think that for a contemporary work of art reconstructing the complete provenance is not a problem, but there is a heated discussion going on about this point nowadays. We archives have a great difficulty reconstructing the provenance of works, we run up against the absence of “best practices” of communicating transfers of ownership and the related documentation to archives.

I am not interested, in the context of this conference, in discussing why this happens.

I am interested in highlighting the fact that all of this is leading us to lose information that will no longer be recoverable in the future.

With the passing of time there will always be fewer and fewer people capable of evaluating if information – which lacks supporting documentation – is reliable or not.

I believe that it is realistic to think that whoever acquires a work of art today without asking for this kind of documentation, without conducting the necessary verifications on its history, risks finding him/herself with a problematic work in the future.

These lacunae of information also risk – and this is not a problem of secondary importance – erasing the possibility of a reconstruction of a historical context made up of relationships, friendships, etc.

I hope that conferences such as the one we are speaking in today can serve to sensitize people about these subjects.

We who work on contemporary sculpture also have other problems that have to do with the theme of authenticity.

As other speakers said yesterday, sculptures are frequently taken apart – and there is the problem of how the parts get reassembled.

We have the problem of their installation with respect to the space they are placed in.

The question I would like to ask the art historian is: are these problems new, are they only problems for contemporary sculptors?

SH: Actually no, even for Medardo Rosso there is the problem of the relationship between his works and light and space, and I must be very sensitive to that whenever I am working on him or installing a show about him.

Rosso is extremely important because he is the first modern sculptor to open up the problems that will be central to contemporary sculpture. Medardo was very attentive and worried about how his works would be exhibited with respect to light, orientation, this extended even to

the question of which bases they would be mounted on (frequently he designed the bases himself or he used "found" objects).

When we installed the show at the Pulitzer, in order to protect his works and ideas we tried to respect his indications as much as possible by studying his writings and the photos that he himself made of his own works in order to document how they should be illuminated and exhibited. Even if the problem in his case presents itself in a much less evident way with respect to contemporary sculptors, with his intuitions Rosso opened up the problems that will be fundamental for displaying the sculpture of the second half of the twentieth century.

SF: So we can say that these are – and probably always have been – the problems that sculpture has always been concerned with. What Sharon says introduces a fundamental theme. As an archive I have the obligation not to lose information that allows us to protect and care for these works in the best ways possible, but in order to do this we need to create a complete file that includes:

- the artist's notes on the work
- historical images
- detailed entries about how the work is put together
- detailed entries on installation
- critical notes on the work
- notes on materials
- documented transfers of ownership (provenance)
- complete documentation on any restorations that the works have undergone – including detailed descriptions of any substitutions of parts and copies of declarations by the artist or by the archive for this kind of intervention.

Those of us who work on contemporary art still have the chance today to not lose all this information and therefore the chance to safeguard the *authenticity* of the work of art...and here we return to the theme of our talk today.

You will have noticed that neither Sharon nor I have ever used the term *authentication*. This is because we both agree on the fact that the work of safeguarding an artwork does not exhaust itself or concentrate on the definition "Work made by...".

This is because, as we have tried to explain to you, we believe that the concept of authenticity, for sculpture, is a complex set of factors made of materials, rules of assembly – or the relationship among the various parts of the work, of rules about installation, of rules about

exhibition – or the relationship of the work with its surrounding space and light.

Unfortunately these are subjects that are frequently underestimated.

As I said before, every artist is different, every work of art is different, and for this reason there is the need today for specific attention and rules.

Frequently sculptures, due to lack of information, are unfortunately poorly assembled, poorly exhibited, or parts are substituted in arbitrary ways.

I work and "fight" on a daily basis for my father's works to be installed and exhibited correctly.

Unfortunately, frequently I must intervene after the fact, whereas it would be much simpler if collaboration with archives were an automatic "best practice."

Here I would like to launch an appeal to museums, collectors, restorers, and curators. I would like, in response to my objections after seeing an embarrassing installation or restoration, not to hear people say: "we worked from photographs." You should know that the photographs that you normally use were not taken for that purpose and therefore are frequently misleading. In sum, those of you who work on contemporary art still have the artists or their archives at your disposal: exchange ideas with them, discuss things with them, they are the people who have the greatest knowledge of the artist's work.

Because if you don't, the real risk is that the person who has the burden of safeguarding these works could reject the authenticity of badly assembled and badly restored works. In a challenging way, I'd like to say that I have seen more works made false by terrible installations and restorations than actual forged works.

I would like to use an example to make a point that I consider fundamental.

These *Piedi* (Feet, fig. 2) are some of the best known works by Fabro, I would like to use them as an example to clarify what we've said up to now.

They are formed by a part that is on the ground (which is sometimes made of glass, sometimes marble, sometimes bronze, etc.) that rises up with a column in silk that reaches up to touch the ceiling (I want to emphasize this last point).

I noticed that the silk column, certainly the most perishable of the bottom part, is frequently substituted without the archive or the artist

being informed. The silk column is part of the work...it seems strange that I have to say this over and over...and was always designed by Fabro and made with extreme care for the quality of the fabric, the color, and the sartorial craftsmanship.

Does installing the sculpture in an incorrect way without respecting the indications of the artist, or substituting this element in an arbitrary way harm the authenticity of the work? I say yes – and I behave accordingly.

To conclude, I'd like to present a good example of collaboration between institutions and archives:

Recently I finished the reconstruction of the silk stocking of a "Glass Foot" from collection of the Centre Pompidou in Paris.

The museum concluded that the stocking was too damaged to be exhibited.

- It contacted me
- I conducted research in the archive
- I found a letter that my father wrote to the museum, where he says that the stocking should be reconstructed and how...
- I gave the museum new silk that, under Luciano's supervision, we had dyed in the original color and kept in storage for such cases
- I personally supervised the work of the seamstress who sewed the stocking
- I provided my declaration of the authorized reconstruction
- I created for the museum a file with indications about how to install the work.

SF: We have told you about the ways in which we both conduct our work, because we want to repeat the concept that both of us – the person who safeguards the "moral rights" of the artist, as well as the person who, as a scholar, would like to protect and care for the work of art--have the duty to safeguard the work's *authenticity* in the complex manner in which we have explained it here today.

SF: Because when one works with art, which is our culture, our identity, one needs to maintain an approach that always looks towards the future, because it is our responsibility to leave its value intact for those who come after us.

As Luciano Fabro said: "The greatest battle is that of distinguishing between those who would like to reduce art to the surface and those who endeavor to obtain the preservation of what we can define as *interiority*."