

## “When the Signature Does Not Make a Difference”

Dialogue between Sharon Hecker, art historian, and Giuseppe Calabi, lawyer

*An interesting case of “original” copy of a work of art made by the author himself: two almost identical portraits of a Napoleonic general, same family provenance, but one apparently signed “Andrea Appiani” (the suspicion is that the signature is apocryphal) and the other not. One is at the Galleria d’Arte Moderna in Milan, the other (the one apparently signed) had obtained a certificate of free circulation to be sold. Then, however, the Ministry blocked everything, with subjective reasons that highlight the value of the copies, also driven by the Nft phenomenon.*

### Prologue

A young and ambitious Napoleonic general, of aristocratic lineage and belonging to a well-known Modenese family, commissioned the Milanese painter Andrea Appiani (1775-1838) to paint a portrait of him in full dress uniform. It is Achille Fontanelli, who was very close to Napoleon, to the point of deserving the appointment of Minister of War and Navy (1811). The exact date of this portrait is not known, but it probably dates to a period between August 1811 (the date of Fontanelli’s appointment as Minister) and April 28, 1813 (the date in which Appiani stopped painting because of a stroke). The portrait comes directly from the family of the Modenese general and was donated in 1941 to the City of Milan. It is currently on display at the Galleria d’Arte Moderna (GAM) in Milan. It is not known why General Fontanelli commissioned from the artist a copy of the same self-portrait in 1813. This copy is identical to the painting exhibited at GAM, with one difference: on the left side of the painting there is a signature and the date “1813”. It is possible that the copy also remained within the family and was exhibited at a show in Turin in 1961, on the occasion of the centenary of the Unification of Italy. When the replica was presented by the owner to the Florence Export Office in 2019, an investigation was conducted, which also involved an expert from the Pinacoteca di Brera. The examination of the work showed that it was not mentioned either in the modern literature on Appiani, or in the historical sources (the so-called “Carte Reina” of the lawyer Francesco Reina, a great friend and connoisseur of Appiani’s works) and that the signature was probably apocryphal, i.e. not traceable to the artist’s hand. Following the preliminary investigation, the work, considered an autograph replica of the prototype in public hands and exhibited at GAM, obtained a certificate of free circulation, and was exported to be sold by an international auction house in January 2020.

A few hours before the auction, the auction house received, through the forwarding agent in charge of the transport, a decree from the Ministry annulling the certificate of free circulation in self-defense, with the following reasons: (a) contrary to the opinion of the Florence Export Office, the painting was signed by the artist, (b) it too has a provenance traceable to the general’s family, and (c) it was probably intended for a public celebratory place, since in it the general is shown in his resplendent nobility, unlike the original, which presents Fontanelli in a more “domestic” mode.

The certificate of free circulation was deemed to be vitiated by an excess of power characterized by a lack of preliminary investigation. The painting was therefore withdrawn from the auction and repatriated. A dispute ensued between the owner and the Ministry, and this summer the Lazio Regional Administrative Court ruled in favour of the Ministry, confirming the legitimacy of the annulment of the certificate of free circulation.

GC

Is it so important that a work of art be signed and dated? Especially when there is no doubt about its authenticity and we are reasonably sure of the period of its creation? In our case, the painting was certainly made by Appiani between 1811, the year in which Fontanelli was appointed Minister, and 1813, the year in which Appiani ceased his artistic activity. And when two works are almost identical, one being a replica of the other, is it possible to indicate that the differences are due to a more celebratory and official dimension of one of the portraits (the one presented at the Export Office) compared to a more “domestic” image of the general represented by the one at GAM, opening the way to aesthetic and subjective judgments? Let’s be clear: the works are truly almost identical: the one considered by the Ministry to be more “domestic” does not depict the general in a robe and slippers, but still in full dress uniform!

As for the signature, it was noted by the art historians who examined the work before the certificate was issued, but it was probably considered apocryphal: so much so that the request for exportation indicated: “declared: Signed Appiani - ascertained: without signature”, where the expression “without signature”, precisely because it must be read together with the previous one (“declared: Signed Appiani”) must evidently be understood as “without ascertained autograph signature”.

The motivation of the sentence in this regard is not convincing and seems to rest on the Administration’s thesis according to which the signature was not noticed or was even concealed by the owner.

But even if the work had been signed by Appiani himself, would this fact make it worthy of protection, when an identical exemplar (prototype), even if not signed, is already present in the cultural property of the Municipality of Milan?

The expert appointed by the Court ascertained the autograph signature, but the point is another: if the prototype and its replica are both authentic and come from the same family of the general, isn’t it sufficient for the protection of the Italian cultural heritage to have one of them? What “marginal utility” can be given by the fact that another authentic painting, recognized as a “replica” of the first one and with the same family origin, is forcibly kept in the Italian territory? It seems to me that extending the borders of protection in relation to an asset that has legitimately left the Italian territory means attributing an extraterritorial scope to the Italian law of protection, which - as it is well known - can only be exercised on things present in the Italian territory. If an asset has been illegitimately removed, there are international instruments (for example, the 1995 Unidroit Convention) aimed at its repatriation. The annulment in self protection should concern cases in which it is clear that a certificate of free circulation has been issued on the basis of fraudulent behavior of the party concerned, which for example has indicated a false attribution or has failed to indicate an attribution that was ascertained and is reasonably sustainable. In these cases, it is sacrosanct to annul a certificate even when the work has left the territory and the person who exported it is also exposed to the risk of a severe criminal sanction.

SH

The Ministry’s belated decision to retain the copy of the original may seem unreasonable given the initial approval of the export of the copy. But this delayed knee-jerk reaction to the initial position seems perfectly in line with today’s reassessment of copies. What is the value of a copy?

Is it a mere derivation or replica of an original? Or is it an object in its own right, with its own particularities and history?

The Ministry's unusual treatment of Appiani's copy reflects a broader cultural shift from the way we are accustomed to valuing the copy. In his famous 1935 essay on art in the age of mechanical reproduction, philosopher Walter Benjamin considered only the original to be of value, believing that all copies were stripped of the magical "aura" of the original. From the late nineteenth century onward, words like "replica," "specimen," "copy," and "reproduction" suggested the inferiority of the copy with respect to the original. But today the value of copying seems to be gaining importance again, as seen in the explosion of digital copies and NFTs. The Ministry's decision to reappropriate Appiani's copy indicates that it does not consider it inferior or redundant to an original, especially since in this case the same artist created both the copy and the original.

In its original (!) sense, the word "copy" has no negative connotation. On the contrary, its Latin root, *copia*, denotes abundance and profusion, coming from the root *ops*, which means "power, wealth, resources" and "to work and produce in abundance." From copy come images of abundance such as *copious* and *cornucopia*. While originals imply scarcity, rarity, uniqueness and singularity, copies carry with them a sense of multiplicity, richness and universality. If there is no malicious or dishonest intention in its making (i.e., a forgery), then a copy in art can be defined simply as a repetition of an existing work. Many artists have made copies of their works, including Antonio Canova, who created two versions of his Three Graces, one now in the Hermitage and another in the Victoria & Albert Museum.

Art historians are trained to think comparatively, to look for minimal distinctions between originals and copies, and to create hierarchies between these distinctions. This traditional approach was used superficially in the ministerial decision on the Appiani copy. Beyond the signature issue, it would seem a stretch to assert that the copy in this case is an official version of a more "domestic" portrait, without having any convincing visual or historical evidence to support it. However, if we were to consider the copy as an object in its own right, then it might prove useful in learning more about Appiani's copying intentions, practices, and processes. We might also learn something about the collecting and exhibition customs of the time. The question persists: why would the family want to have two copies? It could be argued that at the time, as well as today, owning both the original and the copy could be useful if either work went on loan or was damaged or accidentally destroyed.

Will collectors agree to buy copies? Will museums agree to exhibit the copies? If the answer to both is yes, then should the Ministry not only appreciate the copy for its aesthetic, cultural, social, and historical value, but also compensate the owners with a fair market value?

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