

CHAPTER FOUR

METHODS AND EVIDENCE

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Methods and Evidence

“That which may be asserted without evidence can be refuted without evidence” (Hitchins, 2011)

In this chapter I adumbrate the theoretical concepts, which underpin the methods I have applied to my assembled empirical evidence, in order to assess the provenance of works attributed to Rover Thomas. In the first part, I outline these methods and in the second part, I detail the sources of evidence.

1: Methods

The thesis is situated within the history of art authentication and framed by two primary philosophical understandings: the criterion of verifiability articulated by British philosopher, A J Ayer in his seminal work, *Language Truth and Logic* published in 1936 and Plato’s *Allegory of the Cave*, which distinguishes between the world of appearances and reality. They are connected by the concept of necessary and sufficient conditions; the logical implicational relationship between statements, which states that one statement is a necessary and sufficient condition of another statement, such that the former statement is true, if, and only if, the latter is true. The world of appearances may furnish necessary conditions but it cannot provide sufficient conditions.

A J Ayer and Verifiability

In *Language, Truth and Logic*, Ayer ignores the world of appearances and focuses on reality and what may be said about it:

Consequently anyone who condemns the sensible world as a world of mere appearance, as opposed to reality, is saying nothing, which according to our criterion of significance, is literally non-sensical (Ayer, 1936, p.21).

Ayer's primary distinction is between statements, which are analytic and derived from logic, resulting in tautologies if true and contradictions if false, and other statements that can be verified by experience and factual evidence. What are verifiable statements? Ayer distinguished between propositions and statements. When propositions are tested for verifiability they are found to be probably the case or probably not the case. It is important to note that Ayer was not invoking mathematical probability, so no numerical degrees may be attached to statements made; nor was he saying they could ever be found to be conclusively true or conclusively false. It is therefore important to note that no categorical attributions can be made; this painting is a true Rover Thomas and this one is a false one. Ayer cautions us not "to demand certainty where probability is all that is obtainable" (Ayer, p.65). For Ayer truth only exists as a logically determined definition. In the real world of fact, verifiability is the only option. Similarly *authenticity* is too loaded, contested and problematic a term in respect of Aboriginal art. What we are concerned with here is not *authenticity* in that sense, but *authentication*, a form of verification.

Ayer's contention is that: "All significant propositions are empirical hypotheses, whose truth may be in the highest degree probable but can never be certain" (Ayer, p.146). Empirical propositions can be found false when they fail "to satisfy some material criterion" (Ayer, p.88). Contested statements are differences of opinion about things in the world and can be resolved by a "relevant empirical test" (Ayer, p.109) and "No proposition is capable even in principle, of being verified conclusively, but only at best of being rendered highly probable" (Ayer, p.147).

Ayer was not particularly interested in art authentication however he regarded the application of the verification principle to it as unproblematic:

Let us suppose that a picture is discovered and the suggestion is made that it was painted by Goya. There is a definite procedure for dealing with such a question. The experts examine the picture to see in what ways it resembles the accredited works of Goya, and to see if it bears any marks which are characteristic of a forgery; they look up contemporary records for evidence of the existence of such a picture, and so on. In the end they may still disagree,

but each one knows what empirical evidence would go to confirm or discredit his opinion (Ayer, p.22).

Another British philosopher George Warnock in a reply to Ayer, disputed the application of verification to metaphysics, and argued that there are situations where the method of verification is appropriate. Warnock proposed art authentication as an exemplar:

We might naturally say ...that there are different methods of verifying the claim that a certain picture was painted by Vermeer ... the methods in question would consist in the carrying out of certain, definite, quite elaborate procedures... the systematic scrutiny of style, paint and canvas ... (which) the expert on paintings (is) expected to have learned, to know of, and to be able to follow, certain methods appropriate to their subjects (Warnock, 1957, p.720).

Art Authentication and the development of a scientific paradigm

The choice of artists, Goya and Vermeer invoked in these examples by Ayer and Warnock is not significant for philosophy. It is telling however, for the history of art authentication. Art authentication or attribution was governed by connoisseurship until the end of the 19th century. Connoisseurship rested on intuition, which was unverifiable and as Ayer argued: “No act of intuition can be said to reveal a truth about a matter of fact unless it issues in verifiable propositions” (Ayer, 1936, p.126).

Giovanni Morelli and evidence from the work

The writings of Italian physician, anatomist and art lover, Giovanni Morelli (1816-1891) focused on the qualities and attributes of the work itself and replaced intuition with verifiable criteria:

All art historians from Vasari down to our own day have only made use of two tests to aid them in deciding the authorship of a work of art, intuition or the so-called general impression and documentary evidence (Morelli quoted by Wolheim, 1974, p.180).

From the 1880s connoisseurship was augmented and revolutionized by the acceptance of the scientific methodology invented by Morelli:

Morelli concluded that any sound art history required the satisfaction of two conditions... first it must base itself properly on controlled evidence that is on reliable and well-tested attributions and secondly, these attributions must in their turn be based on an analysis of the characteristics of the works of art themselves (Wollheim, 1974, p.180).

Morellian connoisseurship consisted in careful observation and comparison of the way in which an artist typically depicted the incidental details of a painting; background landscapes, the folds of drapery, the hands, ears or fingernails of the figures. In the Reith Lectures, British art historian Edgar Wind contended that Morelli “developed a well defined method which transformed attributions from inspired guesses into verifiable propositions” (Wind, 1963, p.35). Morelli argued that the details he focused on, were so incidental that they would not command “the attention of any imitator, restorer or forger” (Wind, p.40). Morelli demonstrated the efficacy of his method by applying it to Italian Renaissance painting and reattributing numerous paintings. What Morelli did was create a new scientific “paradigm” as defined by Thomas Kuhn:

It is sometimes just the reception of a paradigm that transforms a group previously interested merely in the study of nature into a profession or at least a discipline (Kuhn, 1962, p.19).

The Morellian paradigm revolutionised art attributions. It was the tool that enabled the American connoisseur, art historian and dealer Bernard Berenson, to write his “Four Gospels; his four fundamental books with their accompanying lists of authentic paintings and their whereabouts” (Hughes, 1979, p.361). As American philosopher of science, Thomas Kuhn has argued:

Paradigms gain their status because they are more successful than their competitors in solving a few problems that a group of practitioners have come to recognize as acute (Kuhn, 1996, p23).

However the Morellian paradigm was severely battered by the 1929 Hahn Leonardo trial in New York, Hahn V Duveen. The presiding Judge William Harman Black, warned the jury: “Beware experts just because a man says he is an expert does not make him one”. In that case the experts, the connoisseur Berenson who gave evidence in support of the legendary art dealer, Joseph Duveen, who was correct in his attribution; neither were not able to convince the jury who expected evidence they could see for themselves. They did not trust the evidence of the “magic” eye of the connoisseur and demanded the *magical* scientific eye of the x ray (Brewer, 2009).

Van Meegeren and the triumph of science

The next turning point, or Kuhnian paradigm shift, came in 1948 with the revelations of the notorious Vermeer forgery case. Dutch artist Han Van Meegeren had created a group of paintings, which were embraced by art experts as the lost *Vermeers* from a postulated early Italian period. The forged paintings were sold to Dutch museums and Goering acquired some of them during the Nazi occupation of Holland. In May 1945, Goering’s looted art was discovered and the *Vermeer* soon traced back to Van Meegeren. To defend charges of collaboration, Van Meegeren said the work was a fake and that he had painted it himself. The ensuing court case devolved to Van Meegeren having to *prove* that he had painted the *Vermeer*. The Coremans Commission was appointed, comprising five scientists and two art historians. Scientific analysis of the paints, the supports and ageing techniques employed by Van Meegeren settled the question of the age of the paintings and proved that they could not have been painted by Vermeer. The case marked the triumph of the scientific method and the replacement of the connoisseurship paradigm. So it is not surprising that in 1951, three years after the findings of the Coremans Commission, George Warnock invokes Vermeer and mentions canvas and paint and while Warnock does not specifically refer to the scientific method, he does allude to it. In the Van Meegeren case, connoisseurship was brought into disrepute and the Morellian method had not figured. Edgar Wind nonetheless, argued that Morellian analysis was still valid and often not acknowledged by art historians after Bernard Berenson:

No laboratory test, however helpful can entirely replace the morphological tests of Morelli: in the end the “hand” must be recognized by its graphic character in whatever stratum of pigment it may appear (Wind, 1963, p.49).

The “laboratory test” referred to by Wind is an acknowledgement that art authentication had embraced science in the strict sense. It is arguable that the application of logic and the principle of verifiability were equally important in the Van Meegeren case. The forgeries were accepted with increasing laxity because the preeminent Vermeer expert, Abraham Bredius, had relied on a false precedent. All the subsequent *Vermeers* made by Van Meegeren were corroborated by their correspondence with the first one Bredius accepted as a genuine Vermeer, so they were verified against a false precedent. In the Van Meegeren trial, the Dutch dealer Hoogendijk, who had bought five of the eight *Vermeer* forgeries said: “You have to remember... that the (*Vermeer*) had been authenticated by world-renowned experts. The subsequent forgeries were links in the same chain” (Wynne, 2006, p.222). As philosopher of art, Nelson Goodman argued the effect is to corrupt an artist’s oeuvre and dull the sensibilities:

Every time a Van Meegeren was added to the corpus of pictures accepted as Vermeers, the criteria for acceptance were modified thereby; and the mistaking of further Van Meegerens for Vermeers became inevitable (Goodman, 1974, p.111).

The Rembrandt Research Project

The way forward for art authentication appeared clear and it was in this spirit that the Rembrandt Research Project (RRP) commenced in 1968. It employed the best forensic scientific tests and art historical research on technique, materials and provenance. In 2011, after forty two years it announced its ending, if not its completion; a quarter of Rembrandt’s oeuvre had still not been investigated. In the first stage the RRP was criticised for rejecting too many attributions and later for accepting too many (Bailey, 2011). The RRP has been invaluable to Rembrandt studies but it did not deliver the timely and conclusive attributions, that were anticipated when it began.

In terms of the Kuhnian model the scientific paradigm has not completely replaced the earlier Morellian connoisseurship model, and there is inevitably a conflict between them. “The principle of falsifiability” articulated by German philosopher of science, Karl Popper (Popper, 1934) is helpful in art authentication if there is one scientific test that delivers a death blow to a hypothesis about a disputed painting, but this is rarely the case. The answer possibly lies in the relationship and ranking in importance of all the available evidence and the application of the verification principle.

Nelson Goodman and Roland Barthes

In the future these art works, which we currently regard as problematic because they are not verifiable, may later with further testing and greater knowledge become verifiable. Then, as American theorist, Nelson Goodman argues, we will see them differently and discern the difference: “And the fact that that I may later be able to make a perceptual distinction between the pictures that I cannot make now constitutes an aesthetic difference between them that is important to me now” (Goodman, 1976, p.104).

How might we understand this “perceptual distinction” and “aesthetic difference”? French semiotician, Roland Barthes in his last published work, *Camera Lucida: Reflections on photography* (1981) coined two useful terms, the *studium* and the *punctum*, which distinguish the two planes of the image. I have applied these terms to consider our experience seeing a painting and discerning an original from a forgery. The *studium* refers to our familiar understanding of the photograph, how you recognise what it is about, and the *punctum* to the something more that you perceive in certain photographs, which touch you deeply. This distinction can be applied to the phenomenological process by which you actually apprehend a forgery, after looking repeatedly at many well-provenanced examples of an artist’s oeuvre. What the forger has done, is to create the *studium* of a painting; a known subject or title, a recognized format, familiar materials, colours and apparent textures, so that on first glance you feel reassured, you know what you are looking at, and you recognize it as, for instance, A Rover Thomas Painting, but at the same time you may sense something is not right or something is missing:

the *studium* is a very wide field of unconcerned desire ...It derives from an average effect almost from a certain training ...a kind of general enthusiastic commitment of course but without special acuity. It is by *studium* that I am interested ...The second element will break or punctuate the *studium*. This time it is not I who seek it out (as I invest the field of the *studium* with my sovereign consciousness) it is this element which rises from the scene, shoots out like an arrow and pierces me...This second element which will disturb the *studium* I shall therefore call *punctum* (Barthes, 1981, p.26).

What is missing in forgeries is the *punctum*, whereas “to recognize the *studium* is inevitably to encounter the photographer’s intentions to enter into harmony with (them)” (Barthes, 1981, p.27). When we recognise the *studium* the forger has succeeded, but what we may realize in a blinding or even piercing moment of apprehension, is the absence of the *punctum*, then it as if we are seeing the painting for the first time in its true light. In recognizing forgeries, as opposed to looking at photographs, it has to be this lack, this feeling of affectlessness that strikes you and takes you back to the original, the authentic work, where instantly you can see what exactly it is you were missing out on. Some call it the soul of the work, the hand of the artist or, the “aura of the work of art” (W. Benjamin, 1934). Whatever we call it, we know it when we see it and we recognize when we have not: “The presence of the original is the prerequisite to the concept of authenticity” (Benjamin, 1934, p.222).

Models from archaeology and trafficking in antiquities

Thinking about these issues is enhanced by models drawn from archaeology and the traffic in antiquities, in particular the works of Chippindale & Gill (1991, 2000, 2007) on the auction market for antiquities and Watson & Todeschini (2006) on the relationship between looting, the market and major museum collections. In investigative journalist, Peter Watson’s study of “the illicit journey of looted antiquities from Italy’s tomb raiders to the world’s greatest museums” (Watson & Todeschini, 2006), Watson employs the terms *cordata* and “triangulation” to describe practices and activities within the Antiquities trade. Members of groups of dealers, restorers and tomb robbers referred to each other as being part of a *cordata*: “In Italian a *cordata*, coming from *corda* the word for rope, refers to a group of rock

climbers or mountaineers who are bound together on a mountainside for mutual safety” (Watson & Tedeschi, p.79). Members of the *cordata* look after each other because potentially the fall of one could bring the others down. One of the ways they assist each other is via “triangulation” which creates the potential for plausible deniability:

A “triangulation” is a term originally used in arms dealing when middlemen are trying to disguise who the ultimate “end-user” is for a particular set of weapons when general trading in them is, for one reason or another, forbidden (Watson & Tedeschi, p.77).

Peter Watson applied the term to Antiquities trading when this method was used to cover up the real source of an unprovenanced antiquity. As Kopytoff (1986) has argued any thing has a history and a “cultural biography” and the same may be said of provenance:

Provenance as defined in the dictionary as “the fact of coming from some particular source or quarter” is actually becoming a diversity of information, rather than a simple fact ...the main discriminant is the different moment in time at which the fact of having a certain source is noticed and thereafter seems pertinent. So we need to consider the entire life story of an object...the successive stages of events it has experienced, and the changing concerns, which directed interest in it at successive stages (Chippindale, 1999, p.7).

Chippindale and Gill argue that in terms of archaeological knowledge, context is critical and that knowing where exactly something came from offers “diverse benefits”. Context makes it a better artefact because it offers more information and is accordingly valued more highly in the market and “it gives some security against risks in identification” and allows “verification” (Chippindale & Gill, 2000, p.467). Chippindale and Gill have made quantitative studies of the Antiquities market and they distinguish between the interests of the connoisseur and the archaeologist, which used to be in harmony, but have now diverged to the point of being in opposition. For the present day connoisseur, “context is a bonus when known but neither central not essential” (Chippindale, 1999, p.6) whereas for the archaeologist an object’s worth

arises from its ability to convey “evidence of and from the past” (Chippindale, p.3). In many interesting ways their findings resonate with the activities of the Aboriginal Art market. Just as the interests of archaeologist and the connoisseur have diverged sharply to bifurcate completely; the type of person who was interested in Aboriginal culture and collected Aboriginal Art has split into those who collect Aboriginal Art and those who invest in Aboriginal Art. Their interests and concerns are not always the same and can often be highly divergent and even in opposition.

The context is the Aboriginal Art Market

This is salient because the context, for any painting purported to be by Rover Thomas is the Aboriginal Art world and the art market, and it is often the case that there are parallel entities operating. So the task is not just to verify paintings but also to verify the different contexts in which these paintings were produced and to verify these paintings within those contexts. We are frequently dealing with two worlds comparable to Plato’s world of appearances and the real world. Sometimes provenance accounts cross the borders of these worlds. The border is often contested, ambiguous and contradictory because it draws on both worlds As the preeminent Leonardo Da Vinci expert, Martin Kemp has commented knowledge about attribution arises within a context: “what we accept as knowledge, right and wrong is hugely coloured by how that knowledge emerges and who propagates it, particularly when large sums of money are at stake” (Kemp quoted by Keeling, 2012, p.26). The art market for Aboriginal art as it has grown in volume and value through the processes of the secondary or auction market has fomented the shadow world, where appearances are manufactured to feed its insatiable appetite. As legal scholar Alfred Bauer has argued:

While increased attention to a cultural product may help create a market for it, demand plays a pivotal role in driving the search for supply to satisfy it. This is particularly the case with “unique” or “precious” kinds of products, such as art or objects, for which individuals will pay large sums of money (2007, p.698).

Plato's allegory of the cave

In Book VII of *The Republic*, Plato postulates two worlds inhabited by humans. A world of appearances which is an illusion, and gives rise to false belief, and a world of reality, in which knowledge is possible and truth discoverable or revealed. The people chained in the cave are prevented from knowing the truth. Knowledge is hidden from them. It is a self-referential world. Everyone else in the darkness sees the same shadows and will form similar mistaken beliefs about the nature of things. Deception is easily practiced. There could not be shadow worlds without a real world. Just as there cannot be an inauthentic thing unless there exists an authentic thing to base it on and ultimately to compare it with. Inside the cave there can be experts but they are experts in appearances. The knowledge they have is false and incomplete knowledge so it cannot be true knowledge. There is something more but it can only be discovered and known by leaving the world of shadows behind. Inside the cave there are only appearances, shadows of the real. Outside there is the real world subject to questions and answers constituting checks and balances. Only from a position outside the cave is it possible to know about the cave, the darkness the chained people and the procession of things casting shadows.

We cannot be convinced by appearances. Conviction arises from testing belief against reality. A more believable illusion is still an illusion. The allegory gets its force from our understanding of how the appearance of reality has been created. It is constructed from the material of the real, which supplies its shape and outline but without the depth, consistency and heft of the real. The shadow world seeks legitimacy from the real world. It invokes the real world to bolster and augment its credibility. The real world does not invoke or rely on the world of appearances to legitimize itself. Often it distances itself from the world of appearances and sometimes acts as if the world of appearances does not exist at all. Some actors perform exclusively in the world of appearances, while others operate only in the real world. Others move between them. The world of appearances and the real world seem to blur at times and require close attention to the presentation of a thing to discern appearances from reality.

In Chapter 7, I examine the creation of an alternative Aboriginal art world (AN AAAW) based on Plato's distinction between the world of appearances and reality. AN AAAW has developed to mirror the existing Aboriginal art world through the creation of a series of parallel entities in the organisation of the primary and secondary or auction market. As Chippindale & Gill conclude this can result in "a maze of doubt" when "the very slim record of provenance is itself a mixture of record and supposition melding together in a way that prevents the two components from being teased out" (2000, p.504).

For a very prosaic example of the ordinary operation of parallel worlds in the market place, See: **Appendix D: ALDI and the Aura.**

Christopher Hitchens' dictum, "**That which may be asserted without evidence can be refuted without evidence**" (Hitchens, 2011), as elegant and appealing as it is, will not suffice. There is an immense gap between the ease with which unfounded assertions are made, and then repeated and repeated, compared to the painstaking work of proving them to be based on nothing whatever. To invert Hitchens' dictum, I propose; That which is asserted without verifiable evidence can only be refuted with verifiable evidence. When reality is shadowed, it is imperative to distinguish between worlds, so that the unverified are not verifying the unverifiable.

How can the two worlds be distinguished and evidence verified?

Distinctions can be made between evidence by the application of a criteria test. In the following chapters, I apply verifiable criteria and examine:

- an organization or entity for its integrity (See Chapter 5 on Art Centres)
- a publication for its authority (See Chapter 6 on Aboriginal art auction catalogues)
- an individual for their expertise (Chapter 6 on Rover Thomas experts)
- and artworks for their authenticity (See Chapter 9 on early East Kimberley boards and Chapter 10 on the 1995 Dandenongs paintings).

The important elements to consider are:

Source

Closeness to the ground, nearness to origin, first hand engagement

Length of continuous engagement, duration and quality

Arrangements are public and candid subject to community scrutiny and revision

Standing

Association with other reputable specialists and specialist institutions

Documented relationships with other individuals and organisations of good standing

Consistency of relations established and maintained

Credibility grows it does not diminish over time and practice

Reliability

Commitment to the production of accurate verifiable knowledge and information

Quality of supporting documentation

Corroborates other information independently elicited

Expertise

Persons concerned are of good character

They are known for best practice in the field, and recognised as such by their peers

Expertise is independently proven and reliably imputed not claimed

Pre existing expertise is brought to bear, in the form of qualifications and or training in a relevant field

Originality and creativity

Contribution to the corpus of knowledge

Original published research

Governance and Financial

Government funded organizations provide additional elements of oversight

Keeping and securing good records

Transparent records publicly scrutinized

Independent auditing financial and periodic peer review

Relations between organizations and entities are not secretive, contradictory or obfuscatory

Definition of a Well-Provenanced work and a Problematic work

Two key definitions must be made: what is meant by a well-provenanced artwork and hence determining whether artworks that may or may not be reliably ascribed to the oeuvre of the artist, and what is meant by a problematic artwork, where it is not yet possible to verify the artwork as either belonging to, or not belonging to the artist's oeuvre. American legal academic and archaeologist, Stephen Urice describes the key constituents of provenance: "(It) refers to the history of an object and includes such information as when and by whom the object was made, who owned it, and its record of publication, public exhibition and restoration or conservation" (2010, p.125). What I mean by a well-provenanced work is that a particular work has an extensive paper trail and amongst that collection of documents the information corroborates itself and is not inconsistent. The documentary evidence that has been assembled tells you when the work was made, where it was made, what it looked like when it was first made, what it was titled or called, who it was made for or commissioned by, who it was sold to, when it was sold, how much it was sold for, how much the artist was paid, where it has been exhibited, who exhibited it, what it was named as in the exhibition, whether it was illustrated or written about in the catalogue, whether the exhibition was advertised and reviewed, and if the exhibition travelled to other venues, who bought works from the exhibition, and were these buyers from public galleries and institutions or private collectors. Each of these events or moments in the life of an artwork generates at least one record, and usually more than one. While it is impossible to assemble all the documents one work may have generated in its lifetime, there will be at least be a number of documents from different independent sources that corroborate each other.

Provenance assessment

Sometimes the word "strong" is used to qualify provenance, as in, this or that work has strong provenance, meaning that it will hold up under the pressure of scrutiny. Its antithesis is "weak" provenance, meaning that under investigation it will be brittle and shatter or come apart if examined too rigorously.

Following Ayer, on the idea of “strong” and “weak” verification (Ayer, 1936, p.18), I propose six stages of provenance assessment to express the steps between the verifiable and the unverified: where ratings E and F are extensions of D, the problematic.

A- the work is **well -provenanced**.

B - the work is *strongly* substantiated.

C - the work *weakly* substantiated.

D - the work is **problematic**.

E - the work is under *examination* because of concerns about its bonafides.

F - the work has been proven to be *fraudulent*.

The criterion of verifiability is employed throughout the process and applied to all the statements made about the artwork, not just to those statements about its ultimate status as a well-provenanced or problematic artwork. The artwork needs to be tracked within the context it is put forward, and the individuals, organizations, entities and institutions it is purported to be related to, need themselves to be verified. As art authentication expert, Robyn Sloggett has argued: “The issue is not *what* we know but rather *how* we know and whether our assertions are verifiable. Authentication involves finding connections between theories and facts and verifying these connections.” But there must be enough factual information, “so that the contextual reference points are as complete as possible” (Sloggett, 1999, p.4).

Rules of Evidence

In court, the golden rule is that evidence must be relevant. Evidence is the means for proving or disproving a fact or matter in issue. It is relevant if it tends to prove or disprove the disputed fact at issue. Evidence that is not relevant is not admissible. There are two different types of evidence: actual and circumstantial, or direct and indirect. Evidence is constituted from facts, oral testimony, documents and physical exhibits. In criminal law, evidence is collected from inspection of the scene or event, examination of exhibits, interviewing witnesses, inspection of records, interrogation and surveillance of suspects. Exhibits are material objects produced for inspection that tend to prove or disprove a fact. They might be documents, objects or

photographs and they constitute the real evidence which everyone can see. Evidence may be *direct* evidence from documents or the testimony of a witness who saw, heard or felt the event or *indirect*, circumstantial evidence, which tends to establish the fact did exist. Circumstantial evidence supports the drawing of inferences about the facts at issue. Generally *hearsay* evidence is not admissible; evidence of a previous statement made by a person is not admissible to prove the existence of a fact that the person intended to assert by the statement. The common law position is that a statement of a person made to a witness is admissible for the purpose of proving that the words were said, but not in order to prove that the statement was true (Stratton, 2007, p.1). Police prosecutor David Walker, reminds us that not all witnesses are the same. Some people want to be helpful and will invent situations and facts. Some people, despite having obviously been present, saw or heard nothing (Walker, 2008).

History and Memory

In discussing the relationship between evidence and reality, Italian historian, Carlo Ginzberg defines the aim of biographical historical research to be: “the reconstruction of the relationship (about which we know so little) between individual lives and the contexts in which they unfold. Attempts to connect these two poles are often conjectural. But not all conjectures are equally acceptable” (1991, p.90). We rely on the physical evidence left behind in the form of things and documents that pertain to things, and to the memory of those who made the things or saw them being made or saw them soon after they were made and perhaps contributed to the documents about these things and the events surrounding them. We recover and assess this evidence of the past in the present. As Walter Benjamin said: “History is the subject of a structure whose site is not homogenous empty time, but time filled by the presence of the now” (Benjamin, 1940, p.263). Benjamin contrasted an “experienced event” which is “finite” and “a remembered event which is infinite because it is only a key to everything that happened before it and after it” (Benjamin, 1920, p.204). Memory proliferates and produces meanings every time it is retold. Australian historian and writer, Inga Clendinnen has described the “discomforting paradox” that we live with: “Our memories are essential, our memories are unreliable” (Clendinnen, 2006, p.39).

So in interviewing the actors in this drama, I must remember that their memories, which are essential for me to write this history, are unreliable. Not because they are lying or trying to deceive me but because they have created the sequence, the chain of events, the ersatz causality, to make sense of and tell themselves the story of what happened, from a swirling maze of sensations, feelings, events and moments in which they had a part and within which they have a fixed the swirl and set it into a memory of their own. As British academic psychologist and writer, Charles Fernyhough says: “Memory wants to be true to the way things are, but it also wants to tell a story that suits the teller” (2012, p.186). I must elicit and listen to these stories and become at the same time “the devoted critic of those stories” (Clendinnen, 2006, p.43). Historians must “unscramble what actually happened” (p.48). The position of “the now” allows for some criticism and some unscrambling, but probably not as much as what might be achieved in the future. Memory is fragile, fugitive, reconstructive and strives for narrative coherence. “To emphasise the narrative structure of memory is not to deny its potential veracity” (Fernyhough, 2012, p.273). It must make sense for *the rememberer*, who is also often trying to fit it into a larger picture that they are now aware of, the events that preceded it and the unfolding of things afterwards.

Novelist, Salman Rushdie calls it: “memory’s truth, because memory has its own special kind. It selects, eliminates, alters, exaggerates, minimizes, glorifies and vilifies but also in the end it creates its own reality... and no same human being ever trusts someone else’s version more than their own” (Rushdie, 1980, Book 2, p.253). Fernyhough stresses that all the studies show people are notoriously bad *rememberers* of dates and exact words but they do usually get the gist right, the feelings behind the deep meaning of memories they recall and retell (Fernyhough, 2012, Chapter 4).

The famous utterances of Rover Thomas, “I want to paint” recalled by Mary Macha and “That bugger paints like me” recalled by Wally Caruana, are likely to be accurate because they are semantically simple and clearly stood out from other utterances Rover Thomas made that Gardiya found inchoate and unfathomable.

The memories retailed in the interviews I conducted, are subject to scrutiny and cross checking with other memories from other interviewees and with the evidence in the objects and the documents to build up a new picture for now, that is as full as possible

and as coherent as possible and draws attention to the places where there are gaps, inconsistencies and contradictions. As Rimas Riauba, whom I interviewed, later remarked:

All this is to the best of my knowledge, I remember a lot like it was yesterday as it was one of my favourite and most stimulating periods of my life. Alas memory fails to certain degrees as well and in time, future references from other independent sources may confirm or correct my version (Riauba, email, 2012).

Methods Summary

I have set out my methods to assess provenance by drawing from Ayer's verifiability principle and the distinction between necessary and sufficient conditions, in the context of art authentication, as understood by Morelli, Kuhn, Goodman and Barthes and located within the art market as analysed by Chippindale, Gill, Watson and Sloggett. I have applied Plato's Allegory of the Cave to describe the phenomena of parallel worlds operating within the art market. I have defined the criteria for a well-provenanced work and considered the rules of evidence and the role of memory in writing history, as illuminated by Ginzberg, Benjamin, Clendinnen and Fernyhough.

I now turn to the primary records, which provide the sources of evidence.

2: Sources cited:

(1). Art Centre Archives:

Waringarri Aboriginal Arts

Electronic database of works by Rover Thomas. (150, works 116 paintings 34 prints)

Certificates of Authenticity (or photos alone) for Rover Thomas (160 works).

Sales books line entries for all purchases of paintings from the artist (190 paintings).

Waringarri financial records relating to sales of Rover Thomas work.

Waringarri letters in/out files relating to Rover Thomas works.

Rover's Life: Recording and Transcript by Frances Kofod. c1991.

Roba Subjects: Artist Reference n.d. Artist: Rover Thomas (Roba) Inventory of subjects – Country, Dreamings, Historical and other events, unpaginated typescript, 16pp: no author is cited, however it was prepared for Kevin Kelly by Eric Kjellgren a PhD student assisting at Waringarri in 1995-6 and based on Frances Kofod's records of Rover Thomas's stories for his paintings.

Warmun Art Centre:

Records relating to the *Estate of Rover Thomas*.

(2). Legal documents

Legal Agreement between Mary Macha and Rover Thomas 1992.

Will of Rover Thomas and legal documents relating to disputes after the artists death.

Transcript of trial of Pamela and Ivan Liberto, County Court, Victoria, Nov. 2007.

(3). Mary Macha records:

Some letters, photographs, diary notes and typescripts of articles.

While Mary Macha was working for Aboriginal Arts Australia, her records were deposited with WA museum and after 1983 when she became an independent dealer, Kim Akerman and John Stanton assisted her with the documentation. Kim Akerman has digitised Mary Macha's archive and records and they will be deposited with AIATSIS in the future.

(4). Library research:

AIATSIS Library, Canberra; Baillieu Library, University of Melbourne; Lenton Parr Library, Victorian College of the Arts; State Library of Victoria, Art Library; Battye Library of WA History, State Library of Western Australia; Berndt Museum, WA; Mitchell Library, State Library of NSW; National Library of Australia; Art Library, Museum and Art Galleries of the NT, Darwin; Broome Historical Society, Archives of St John of God, Broome; Kununurra Regional Library; The Belkin Archive, University of British Columbia, Vancouver; The Tate Library, London.

Rover Thomas Artists Files: AGWA, NGA and NGV.

(5). Collections in museums and galleries:

Art Gallery of WA; Holmes a Court Collection, Heytesbury; Notre Dame University Collection, Broome; National Gallery of Australia; Art Gallery of NSW; National Gallery of Victoria; Mitchell Depository, National Museum of Australia; National Portrait Gallery, Canberra.

(6). Auction catalogues and auction databases:

Sotheby's, Deutscher-Menzies, Lawson-Menzies, Christies, Shapiro, Phillips, Bonhams, Bonham & Goodman, Deutscher & Hackett, Gregson & Flanagan.

Websites of auction houses including ebay and other internet auction sites.

The Australian Art Sales Digest, (AASD).

(7). Art centres, galleries, dealers and peak bodies:

Exhibition catalogues

Newspaper and magazine profiles, articles and reviews.

Industry Websites; ANKAAA, DESART, ACGA, Art.Trade.

(8). Photographs:

Photographic collections: at the AIATSIS *Mura Collection* deposited by:

Sr Veronica Ryan, Helen Ross, Colin Tatz and Bruce Shaw.

(9). Archives:

Mike Dillon's Papers, AIATSIS; Dillon was the first Community Advisor at Warmun.

Kenneth Coutts-Smith Fonds, Belkin Archive of Contemporary Art, University of British Columbia, Vancouver.

(10). Recordings:

Mary Durack, *Lament for a Drowned Country*.

Frances Kofod interview with Rover Thomas, c1991.

Gurirr Gurirr Performance, NATSIAA, Darwin, MAGNT, 1998.

Discussion between Rusty Peters and Rover Thomas, Feb. 1995.

(11). Oral Histories: Interviews and discussions

A. Discussions; recalled and recorded:

Mary Macha, Art dealer who worked with Rover Thomas, 1983-1991.

17 March; 22 October, 2010, residence, Subiaco, WA.

Kim Akerman, archaeologist, curator and writer who recorded the Guriir Gurirr in 1979 at Warmun. Adjunct Professor, UWA. 20 October, 2010, University of WA.

Michael O'Ferrall and **Kyle Gannon**. The curator and installer of artwork for the 1990 Venice Biennale. 24 October 2010 AGWA.

Joel Smoker, artist, photographer, musician, teacher coordinator of Waringarri Arts. Easter 2011 St Kilda, Vic.

B. Recorded interviews:

Professor Will Christensen, anthropologist and linguist, researcher for the EKIAP, recorded stories at Warmun for the Krill Krill boards in 1983.

25 October 2010, Curtin University, WA.

Dr John Stanton, anthropologist, director of the Berndt Museum, UWA.

12 March 2010, University of WA.

Michael O’Ferrall, Curator of Aboriginal Art, AGWA, Curator of the 1990 Venice Biennale with Rover Thomas and Trevor Nickolls.

May 15 2009, Hawthorn, Victoria and 19 March 2010, Fremantle, WA.

Joel Smoker, the first Art Coordinator at Warinagarri Aboriginal Arts 1985-1990.

24 October 2010, residence, Mundaring, WA.

Frances Kofod, Linguist, worked in the East Kimberley from 1987. Interviewed Rover Thomas for Rover’s Life c1991.

24 December 2009, Selby, Victoria and September 14, 2010 University of Melbourne.

Kevin Kelly, Director, Waringarri Aboriginal Arts 1992-97, who organised the trip back to Well 33 in 1995, Executor of the Estate of Rover Thomas.

8 September 2008, Red Rock Arts, Kununurra, WA.

Leon Stainer, Master Printmaker, Northern Editions, CDU who made prints with Rover Thomas and was a member of the party on the trip back to Well 33 in 1995

18 August 2008, Charles Darwin University, Darwin, NT.

Tom Spender, exhibitions manager for Kimberley Art, Melbourne.

14 April 2011, residence Fitzroy, Vic.

Cath Elderton, community development worker, established Balangarri Association.

3 October 2010, residence Bondi, NSW.

Rimas Riauba, artist and assistant bookkeeper, Balangarri Association, Warmun.

10 October 2010, residence Bruny Island, Tasmania.

Seva Frangos, gallerist, exhibition director, AGWA during the Venice Biennale.

17 March 2010, Seva Frangos Gallery, Subiaco, WA.

Freddie Timms, artist, former Chairman of Jirrawun Art, painted with Rover Thomas in Melbourne 1995 at the Dandenongs Painting workshop.

14 September 2009, Kununurra park, WA. (In the presence of Quentin Sprague and Michelle Newton of Jirrawun Arts).

Rusty Peters, artist, friend, Warmun resident, painting assistant at Waringarri Arts and **Jane Yalunga**, artist, Warmun resident, daughter of Rover Thomas (In the presence of linguist Anna Crane). 18 September 2009, Painting Shed, Warmun, WA.

Gabriel Nodea, artist Warmun resident, Chairman of Warmun Arts, dancer in revival of the Gurirr Gurirr and painter of Warmun Dreamtime series.

18 September, 2009 Warmun Art Centre, Warmun, WA

C. Informal discussions with:

Dallas Gold, director of Raft Artspace, Darwin and lately Alice Springs.

Dr Colin Laverty, collector of Indigenous art.

Maurice O’Riordan, writer on Indigenous art and editor of *Art Monthly*.

Helen Read, collector and dealer, Digeri Art Tours and Palya Art, based in Darwin.

Anne Brody, art historian, curator: NGV; Holmes a Court Collection and Kerry Stokes Collection, Perth, WA.

Dr Darren Jorgenson, art historian, UWA.

Belinda Carrigan, Manager Holmes a Court Collection, Gecko Gallery, Broome.

Dr Eric Kjellgren, Curator of Oceania, Metropolitan Museum, New York.

Professor Fred Myers, anthropologist, New York University, New York.

William Mora, gallerist with a long-standing engagement with Kimberley art.

Dr Georges Petitjean, Curator and Director Aboriginal Art Museum, Utrecht.

Margie West, Emeritus curator MAGNT, founder of the NATSIIA.

Dr Julie Gough, Palawa artist and board member, Indigenous Art Code.

Judge Ron Merkel, Chair Indigenous Art Code

John Oster, CEO, Indigenous Art Code

Wally Caruana, artist, art historian, Curator of Indigenous Art at the NGA; Sotheby’s and Bonhams Aboriginal art consultant; partner in Reid & Caruana.

Tim Klingender, Aboriginal art specialist: Sotheby’s and Bonhams.

Crispin Gutteridge, Aboriginal art specialist: Sotheby’s, Joels and Deutscher-Hackett.

Appendix D: ALDI and the Aura.

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