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**Author**

Chappell, Duncan, Hufnagel, Saskia

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## The Beltracchi Affair: A Comment on the “Most Spectacular” German Art Forgery Case in Recent Times

*Duncan Chappell and Saskia Hufnagel*

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### Abstract

On the 27<sup>th</sup> of October 2011 the four persons accused of the ‘most spectacular’ art forgery case in German post-war history were sentenced to jail terms ranging from 21 months to 6 years. The accused were Wolfgang Beltracchi (61), the painter of the forged works; his wife Helene Beltracchi (53) and her sister Jeanette Spurzem (54) who helped him in various ways; and the ‘logistical expert’ in the case, Otto Schulte-Kellinghaus (68). Considering the financial damage the forger group had caused, the embarrassment of buyers, dealers, experts and auction houses, as well as the considerable publicity the trial incurred, this seemed a remarkably mild verdict. However, observing the way in which art forgers at large appear to be dealt with by the justice systems of various countries, it could be said that the case just confirms a reoccurring pattern of lenient sentencing. This article will examine the case and its repercussions.

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**Keywords:** Beltracchi, art forgery, art fraud, fakes, German forgers.

On the 27<sup>th</sup> of October 2011, the four persons accused of the ‘most spectacular’ art forgery case in German post-war history were sentenced to jail terms ranging from 21 months to 6 years.<sup>1</sup> The accused were Wolfgang Beltracchi (61), the painter of the forged works; his wife Helene Beltracchi (53) and her sister Jeanette Spurzem (54), who helped him in various ways; and the ‘logistical expert’<sup>2</sup> in the case, Otto Schulte-Kellinghaus (68).<sup>3</sup> Considering the financial damage the forger group had caused, the embarrassment of buyers, dealers, experts and auction houses, as well as the considerable publicity the trial incurred, this seemed a remarkably mild verdict. However, observing the way in which art forgers at large appear to be dealt with by the justice systems of various countries, it could be said that the case just confirms a reoccurring pattern of lenient sentencing.<sup>4</sup>

For at least 15 years the accused had fooled the art world with their counterfeit ‘masterpieces’ of classical modernity.<sup>5</sup> Police were mainly alerted to the case by two art experts. One of these experts had doubted the authenticity of several works she had been given to review by Otto Schulte-Kellinghaus, while the other suspected a forgery based on a faked sticker on the back of a painting purporting to be from the ‘Collection Flechtheim’. As is indicated in more detail below, this pre-war German collector was known to never issue such stickers as proof of the provenance of paintings in his collection. Suspicion was also raised when a picture that had been chemically tested was found to contain ‘titan white’ paint, a colour not available at the time the picture was claimed to have been painted.<sup>6</sup>

The accused allegedly amassed a profit of about 16

1 Michael Sontheimer ‘A cheerful prisoner: Art forger all smiles after guilty plea seals the deal’ *Spiegel Online*, 27 October 2011 <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.

2 According to the prosecution brief, Otto Schulte-Kellinghaus established the contacts to galleries in Paris, brought most of the paintings onto the market and received a commission of 20% per painting sold. He also established contact to the renowned art historian Werner Spies, self-proclaimed expert on the works of Max Ernst, who subsequently authenticated a fake Max Ernst produced by Wolfgang Beltracchi. Dorothea Hülsmeier ‘Fälscher blamieren Experten’ *Westdeutsche Zeitung*, 2 September 2011; Sven Röbel and Michael Sontheimer, ‘Forgery Scandal Embarrasses International Art World’ *Spiegel Online*, 13 June 2011.

3 Author unidentified ‘More about German art scam – High life ends for couple who conned art world’ *NZ Herald News*, 27 October 2011.

4 See for an outline of major art forgery cases throughout history: Susanna Partsch *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011). She considers a jail sentence of 4 years and 8 months, like the sentence that was received in the United Kingdom by Shaun Greenhalgh in 2007 for forging in particular a ‘Faun’ in the style of Paul Gauguin and the legendary ‘Amarna Princess’, as very high in the sphere of art forgery sentences (see at page 169).

5 Dorothea Hülsmeier, ‘Fälscher mit Wissenslücken’ *Westdeutsche Zeitung* (29/08/2011) 3.

6 Author interview with police investigator, LKA Berlin, 23/03/2012.

Million Euros from the fake paintings that were the subject of charges at the trial, but it seems reasonable to assume that this amount may well only be the tip of the profit iceberg.<sup>7</sup> While the accused were only charged with 14 counts of (aggravated) fraud in conjunction with forgery of documents (11 completed and 3 attempted), German police and prosecutors are still investigating 33 additional cases in a separate action.<sup>8</sup> A further 15 cases of fraud that had been uncovered had already exceeded the statute of limitations and were therefore not included among the charges which proceeded to trial or remained under investigative scrutiny. According to German criminal law, and more specifically §78 III 3. Strafgesetzbuch (StGB), offences with a maximum 10 year jail sentence expire within ten years. All crimes committed in the 1990s could, therefore, not be pursued within the German criminal jurisdiction.<sup>9</sup>

### The Scale of the Forgery

Conflicting accounts exist as to the precise numbers of fraudulent art works produced by Beltracchi which have entered the art market. One source reported that about 50 cases of fraud were uncovered during the investigation in the Beltracchi case which fell within the statute of limitations period; 21 more cases were discovered that dated back to the 1990s; and, a further 25 as yet unidentified fake pictures were believed by police to have been sold all over the world, leading to about 100 cases in total.<sup>10</sup>

The assumption that more pictures are still on the international market was supported by the recent discovery of a ‘Beltracchi’ in Japan.<sup>11</sup> One expert even suggested that nearly 200 forgeries produced by the accused could have entered the licit art market.<sup>12</sup> Other expert sources contended that at least 47 forged paintings had been placed on the market through auction houses, galleries and dealers.<sup>13</sup>

Latest reports, based on a presentation made on 27 January 2012 by the principal police investigator in the Beltracchi affair, Chief Inspector René Allonge, at the Art Crime and Art Restitution Conference in Berlin, suggest that 53 forged paintings with a value of 35 Million Euros were

7 Deutsches Presse Amt ‘Prozess um millionenschwere Fälschungen beginnt in Köln’ *Monopol Magazin*, 31/08/2011.

8 Ibid.

9 However, other national jurisdictions have different limits and the accused might still face charges there.

10 DPA, ‘Weltweite Suche nach gefälschten Meisterwerken’ *Westdeutsche Zeitung Newslines*, 27 January 2012.

11 Ibid.

12 Michael Sontheimer, ‘A cheerful prisoner: Art forger all smiles after guilty plea seals the deal’ *Spiegel Online*, 27/10/2011, <http://www.spiegel.de/international/germany/0,1518,794454,00.html>.

13 Dorothea Hülsmeier, ‘Fälscher mit Wissenslücken’ *Westdeutsche Zeitung* (29/08/2011) 3.

discovered, which were clearly attributable to Beltracchi and his colleagues; 20 more forgeries from the 1990s were identified, which could not yet be attributed to the Beltracchi gang, and in total about 100 pictures were assumed to have been forged by the group.<sup>14</sup> The latter figure is probably the most accurate estimate given to date.

### Trial and Sentence

The trial officially started on September 1, 2011.<sup>15</sup> Although the trial was estimated to run until March 2012, it was settled swiftly by a deal between the defence attorneys and the prosecution before the presiding Cologne trial judge. On the third trial day the accused were offered reduced sentences if they admitted to the charges, and the main accused, Wolfgang Beltracchi, was the first to make a full confession. Unlike the situation in the art market, ‘deals’ are (at least officially) a relatively new measure in German criminal procedure and are formally called ‘proposals for settlement’ (‘Vorschlag zur Verfahrenserledigung’).

The statutory variants (‘serious cases’) of § 263 (Fraud) and § 267 (Forgery) of the German Criminal Code (‘Strafgesetzbuch’) applicable in this case prescribe a maximum of 10 years imprisonment for each case of fraud/forgery.<sup>16</sup> As both forgery and fraud are the result of the same criminal act, there could not be a separate sentence for the two offences. Thus, each criminal act (14 were charged) would carry a combined (fraud/forgery) sentence of up to 10 years imprisonment. However, under German Law this means that while the highest sentence has to be considered in full (10 years), all other cases would be halved (five years maximum each). The absolute theoretical maximum would therefore be 75 years. The court offered Wolfgang Beltracchi a maximum of six years imprisonment, his wife Helene Beltracchi up to five years, her sister Jeanette Spurzem up to two years and the ‘logistical expert’ Otto Schulte-Kellinghaus a maximum of five years if the accused agreed to the ‘deal’ and gave a full confession. They finally received sentences of imprisonment of six, four, one year and nine months (suspended), and five years, respectively.<sup>17</sup>

The Court therefore did not vary significantly from the upper limits they set in the original ‘deals’. In fact, only Jeanette Spurzem received a lower than the maximum agreed

sentence. Whether the lawyers did their clients a favour by concluding these ‘deals’ remains questionable. It seems that it would have been very hard to prove that the accused actually committed the offences, or at least which parts of the offences were committed by whom. A trial might also have led to the possible exclusion of some of the counts, resulting in much lower sentences. However, as is often the case in the German criminal justice system, the accused were not prepared to run the risk of failure. Further, had the accused not confessed, the trial would have become exorbitantly expensive. Up to 160 witnesses and ten expert witnesses would have been summoned to give evidence.<sup>18</sup> The defence lawyers would have to be paid, as well as the court fees. Even if some of the charges had been dismissed, the overall trial costs are only covered by the state if the accused are found ‘not guilty’, and rarely when only some charges are dismissed.<sup>19</sup> It was therefore a safer course of action to agree to the ‘deals’.

### Modus Operandi and Allied Matters

#### *The Art of Deception*

In relation to the actual *modus operandi*, the accused applied a spectacular array of ‘forgery strategies’ to turn the fake paintings of the principal accused, Wolfgang Beltracchi, formerly known as Wolfgang Fischer, into gold. Most prominently, Beltracchi painted works of art of the 20<sup>th</sup> century that had gone missing during the Second World War (WWII), including paintings by Max Pechstein, Heinrich Kampendonk, Kees van Dongen and Max Ernst.<sup>20</sup> However, he also painted ‘new’ pictures in the styles of these artists that he claimed should have been part of their Œuvre.<sup>21</sup> To convince the art world of the authenticity of Beltracchi’s work, the forger group invented an impressive and elaborate story around their origins. They claimed that Werner Jägers, who had died in 1992 and was the grandfather of the two accused sisters, had bought the pieces before WWII from the Alfred Flechtheim gallery and hidden them in the German Eifel region during the war. Jägers was said to be a friend of the master tailor Johann Wilhelm Knops, the grandfather of the accused Schulte-Kellinghaus, who himself was said to be an art collector. In fact, both men had never collected art, nor had they been particularly interested in art during their lifetimes. However, both the Jägers and the Knops collections became famous as the legend of provenance of the forged works of art, and the four accused underlined their authenticity by occasional sales of real works of art pretended to originate

14 Markus Huth, ‘35 Millionen Euro Schaden’ mz-web.de 27/01/2012.

15 Focus Online, ‘Kunstfälscherprozess in Köln – Millionen mit falschem Max Ernst’ *Focus Online* (01/09/2011).

16 The cases were considered to be ‘serious’ under § 263 III 1 and § 267 III 1 as they were committed on a commercial basis by members of a gang.

17 Christiane Meixner, ‘Freispruch für den Kunstmarkt – Zu den Urteilen im Kölner Fälscherprozess’ *Der Tagesspiegel*, 28/10/2011.

18 Ibid.

19 See §§ 153, 153 a, 154, 154 a, 170 II of the German Code of Criminal Procedure (Strafprozeßordnung).

20 Nicolette Feiler-Thull, ‘Gewieft Fälscherbande – Prozess um Kunst-Skandal in Köln’ *3Sat Kulturzeit*, 12/09/2011.

21 Gisela Friedrichsen, ‘Eulenspiegen oder Künstler’ *Der Spiegel* (2011) Vol. 43, 148, 149.

from these collections, and some purchases of real art by the 'inheritors' of the fictional collections.<sup>22</sup>

The accused also had a sophisticated way of distributing tasks among the group. While Wolfgang Beltracchi copied the missing paintings (or painted new works in the style of the famous artists), Otto Schulte-Kellinghaus established contacts with renowned art experts, some of whom, like Werner Spies, gave him appraisals for the pieces examined.<sup>23</sup>

The wife of Beltracchi posed as the owner of most of the art works and actively traded on the art market with the help of her sister. Additionally, the Beltracchi couple faked photographs to highlight the authenticity of the paintings. Wolfgang had photographed his wife Helene, disguised as her own grandmother, in their house in France sitting in front of several forged paintings from the 'Jägers Collection' which were later sold as originals. The black-and-white photo had been printed on pre-war developing paper and was slightly out of focus. They even cut a zigzag pattern around the edge of the picture to make it look authentic, but only distributed scans rather than the original so as not to raise suspicion.<sup>24</sup>

While the inconsistencies that were discovered during the criminal investigation into this matter were substantial and might ultimately have led to the conviction of the accused without confessions, they were not uncovered by experts and auction houses during the approximately 15 years the forger group was conducting its operations. After the above mentioned experts had pointed out inconsistencies with regard to several works and thereby sparked investigation, the main evidence that the pictures subject to the charges were forged came eventually from the frames. Beltracchi had bought the frames close to his house in France at antique markets.<sup>25</sup> Some of the frames were made of the same wood, or at least wood from the same region, which raised suspicion considering that the painters worked in different countries.<sup>26</sup> The frames were also all fabricated after the French model, which was considered to be rather unlikely for the pictures claimed to be by other than French artists.<sup>27</sup> Another major piece of evidence for police was the fake sticker of the 'Collection

Flechtheim'. The accused had put these stickers on several paintings as proof of provenance. Alfred Flechtheim had been a renowned German art dealer in the 1920s. However, he had never produced these, if any, stickers to mark paintings in his collection.

Further points that raised suspicion were that the paint did not have small fractures, characteristic for old paintings, and that the 'titan white' used for the pictures actually did not exist at the time the pictures were dated.<sup>28</sup> Stickers from galleries had been tainted to look old, but had been glued to the pictures with a type of glue that did not yet exist at the time the paintings were claimed to be created.<sup>29</sup> Many more clues were found, as Chief Inspector Allonge put it, 'after the fact'. In an interview in late 2011, he stated that it was much easier to find evidence once it was clear that a piece was a forgery. Finding out whether a work of art is in fact a fake is rather more difficult.<sup>30</sup>

Major problems and vulnerabilities in the determination of provenance of works of art exist due to the lack of complete and comprehensive catalogues. This does not only relate to catalogues relating to the works of one artist, but also to the catalogues of galleries and museums.<sup>31</sup> The accused exploited this vulnerability to their advantage. They forged the stickers that indicated the gallery the picture had been obtained from and relied upon the fact that there existed few catalogues relating to the forged works or the gallery, and if they did exist they did not contain photographs or reproductions of the faked pictures.<sup>32</sup>

#### *Déjà vu*

The modus operandi, but also the life story of Beltracchi, show striking similarities with those of many other 'famous' forgers, and in particular Han van Meegeren who was specialised in works of Jan Vermeer.<sup>33</sup> Like van Meegeren, Beltracchi played on the secret longings of art collectors to find previously unknown or lost works of famous artists. While van Meegeren 'completed' Vermeer's work by adding

22 Claudia Herstatt and Angelika Kindermann, 'Etikettenschindel' *Art – Das Kunstmagazin* (12/09/2011).

23 Michael Kohler, 'Sammlung Jägers' *Art – Das Kunstmagazin* (28/09/2011).

24 Tony Paterson, 'High life ends for couple who conned art world' *New Zealand Herald* (27/10/2011).

25 *Zeitung Heute*, 'Tadellos das Gemälde ist' *Der Tagesspiegel*, 31 December 2011.

26 DAPD, 'Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter' *nachrichten.yahoo.com* 28 January 2012; Gabriela Walde, 'Wie man Kunstfälschern auf die Schliche kommt' *Berliner Morgenpost*, 2 February 2012.

27 *Zeitung Heute*, 'Tadellos das Gemälde ist' *Der Tagesspiegel*, 31 December 2011.

28 DAPD, 'Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter' *nachrichten.yahoo.com*, 28 January 2012; Gabriela Walde, 'Wie man Kunstfälschern auf die Schliche kommt' *Berliner Morgenpost*, 2 February 2012; Eckhard Hoog, 'Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?' *Aachener Zeitung*, 31.12.2011.

29 DAPD, 'Kunstfälscher-Skandal: Beltracchis Frau spielte eigene Großmutter' *nachrichten.yahoo.com*, 28 January 2012.

30 *Zeitung Heute*, 'Tadellos das Gemälde ist' *Der Tagesspiegel*, 31 December 2011.

31 Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011).

32 Joachim Hauschild and Ute Thon 'Henrik Hanstein – Interview: "Die Experten sind mitverantwortlich"' *Art – Das Kunstmagazin*, 19/05/2011.

33 See in general Jonathan Lopez, *The Man who Made Vermeers* (First Mariner Books, 2009).

religious paintings, a type of work so far unknown by Vermeer but always suspected to exist, Beltracchi gave the art world paintings that 'should have been painted by the artist' and were highly desired by collectors. One painting by André Derain in particular, displaying Matisse painting at Collioure, was highly desired as it supposedly proved that Derain and Matisse had been working at the same time at the artist village of Collioure. Specialising in 'rare' paintings and styles by artists, van Meegeren and Beltracchi relied on the fact that the more desired a work of art is, the less its authenticity is going to be doubted by experts, dealers and auction houses.

It is also interesting to observe that both van Meegeren and Beltracchi were rather successful as artists in their own right, and both would probably have been able to make a living from painting without resorting to forgery. Similarities also become apparent with regard to their alleged and actual motives: Both claimed to have forged to fool critics and the art world, but they also loved living a 'high life' and needed more and more money to support their extravagant habits. Their works similarly ended up in major galleries, museum and private collections.

With regard to their modus operandi, both forgers were extremely attentive to detail and studied very thoroughly the generality of works of the artists they forged. This fastidious behaviour was probably a recipe for their considerable and long-standing success. Both were also very careful not to get in direct contact with buyers and relied on accomplices to introduce the paintings to experts and the art market. However, unlike Beltracchi, van Meegeren was not known to involve his family, and his wife in particular, in his criminal activities.

Unlike most forgers, van Meegeren and Beltracchi made millions from their work and it can be assumed that many of their paintings are still being admired as originals in major museums, galleries and private collections. Even so, while Beltracchi now faces serving a quite substantial custodial sentence, van Meegeren was only sentenced in 1947 to one year in custody and died before the sentence could be put into effect. This is a major difference between the otherwise very similar cases and could lead to the conclusion that art crime is now taken more seriously than it seems to have been during much of the 20<sup>th</sup> century.<sup>34</sup>

### *The Victimised Market Players*

*The Art Newspaper* has published a full list of the 53 'fakes' attributed to date to Beltracchi, and according to James

34 This section is predominantly based on Susanna Partsch, *Tatort Kunst: Über Fälschungen, Betrüger und Betrogene* (C.H. Beck, 2011) 116-127, and an author interview with the principal investigator in the Beltracchi case, LKA Berlin, 23/03/2012.

Roundell, the director of London- and New York-based dealers Dickinson Gallery, Beltracchi's fakes have been passed through the hands of major auction houses such as Sotheby's and Christie's; art dealers; experts in their field, like Werner Spies; and distinguished and knowledgeable private collectors like the Hilti Art Foundation.<sup>35</sup> Many civil law disputes have therefore emerged in recent months. For example, Trasteco Limited, a Maltese firm, is suing the Cologne Auction House Lempertz for damages as they bought a fake Heinrich Campendonk 'Red Painting with Horses' from the Gallery for nearly 2,9 Million Euros. Only after a chemical analysis of the painting was it confirmed that the picture had indeed been a fake.<sup>36</sup> According to the Director of the Cologne Auction House Lempertz, Henrik Hanstein, the Auction House has since invested in a 70.000 Euro Thermo Scientific Niton x-ray fluorescence analytic machine.<sup>37</sup> However, had the forger used the right pigments, even these machines would not have been able to uncover the crime.

Further civil law suits have been directed against the art historian Werner Spies, currently being sued for damages in a Court in Nanterre, France.<sup>38</sup> Christie's and Sotheby's have agreed outside of the courtroom to compensate several buyers and the Hilti Art Foundation has asked the Dickinson Gallery to compensate them for the forged Derain they bought for 4.5 Million Euros.<sup>39</sup> Contrary to the criminal charges in the German jurisdiction, the civil claims can in some countries and under certain circumstances not fall within a 10 year statute of limitations and it therefore seems likely that the battle for compensation will be lengthy.<sup>40</sup>

### **Extent of Damage**

Determining the true extent of art crime can be a very difficult if not impossible business because so many offences of this type are believed to either go undetected or unreported. In the Beltracchi affair the nature and extent of the police operation that brought all of the accused to justice (at least for part of their offences) is still not clear. It is possible that some of the works of Wolfgang Beltracchi might have been discovered to be fakes well before the case became a matter of notoriety and law enforcement investigation, but this information was concealed by those affected as 'victims' because of the potential financial loss and embarrassment involved in

35 Julia Michalska, Charlotte Burns and Ermanno Rivetti, *The Art Newspaper*, Issue 230, 05/12/2011.

36 Eckhard Hoog, 'Beltracchi: Wie viele Bilder des Fälschers sind im Umlauf?' *Aachener Zeitung*, 31/12/2011.

37 Charlotte Burns, 'Knoedler Forgery Scandal Grows' *The Art Newspaper* Issue 231, 09/01/2012.

38 Julia Michalska, Charlotte Burns and Ermanno Rivetti, *The Art Newspaper*, Issue 230, 05/12/2011.

39 Ibid.

40 See for example § 199 III 2. Bürgerliches Gesetzbuch (German Civil Code).

revealing their misfortune. This veil of silence on the part of victims represents one of the biggest problems in the field of investigating and preventing art crime and no doubt explains in part why this criminal group was able to function with such brazen success and profitability for so many years. Even when reported, such offences rarely attract the attention of police and prosecutors who have any expertise in the area of art crime -- a situation which may have prevailed initially in the Beltracchi investigation, although those involved seem to have overcome any such deficiencies and secured the conviction of some of the most sophisticated art forgers to surface in recent European history.

### **Greed and Gullibility**

The attribution of blame in these types of art crime cases is obviously a tricky and often messy issue. According to the main villain involved, Wolfgang Beltracchi, the art market and the 'greed and dishonesty of the trade' are largely responsible for this sorry state of affairs.<sup>41</sup> He might not be entirely wrong in expressing such a viewpoint although the considerable financial advantage and the high flying life-style he supported from his misdeeds suggest he is far from meeting his own self-description of being a cynical 'Robin Hood'.<sup>42</sup> We intend exploring further his motivations and modus operandi as part of on-going research into the Beltracchi affair.

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41 Michael Kohler, 'Sammlung Jägers' *Art – Das Kunstmagazin* (28/09/2011).

42 Ibid.