Ethics and the Arts

An Anthology

Edited by
David E. W. Fenner

Ethics and the Arts

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Series Preface

The aim of this series is to make available texts and collections of essays on major moral issues. Each volume will be devoted to a single issue of contemporary interest. Such in depth treatment will transcend the usual superficial presentation of such topics in general applied ethics texts. Background will be provided by classic statements in articles or detailed definitions in texts of the problems, and opposing sides on the issues will be given ample development.

The series will include authored texts on topics that have not been discussed extensively in the philosophical literature before, as well as contemporary advancements on earlier treatments. Collections of essays will bring together articles that have previously been scattered in the recent proliferation of journals that address these issues.

The present volume is the only collection I know of that focuses exclusively on diverse moral issues connected with the arts: censorship and subsidy, authenticity and ownership, and the connections between moral and aesthetic values and evaluative judgments. The collection is not only unique, but timely. It appears in a period when the National Endowment for the Arts is under fire and the government's role in the arts is a hotly debated political issue, when the connection between moral or political content in art and its aesthetic value remains at the forefront of debate in aesthetics, and when ownership and commercialization of artworks continue to exercise the sociology of art.

David Fenner has collected some of the best recent writings on these issues and provides a clear and useful overview of them in his introduction.

Alan Goldman

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Introduction

If there is but one best word to describe the world of art in the twentieth century, it is the word *challenge*. Art, artists and the artworld have provided challenge in all manner of ways. Impressionism, pointalism, abstract expressionism and cubism challenged just what representation in art means and how mimetic art need be. Dadaism, Pop Art, and "Ready-Mades" challenged the presumed unassailable line between the world of art and the ordinary world of work-a-day life, between the aesthetic world and the functional one. Now, in the latter half of the twentieth century, the line between art and the obscene or prurient has been challenged; one need only think of the uproar created by the late Robert Mapplethorpe. In general, art has become substantially less harmless. Art today not only challenges; in some ways, art literally threatens.

The obvious challenges in defining art are perhaps the most glamorous of the group, but the twentieth century artworld challenges also in ways more subtle yet certainly every bit as provocative. What now counts as originality? Can an artist add a mustache and goatee to (a copy of) the *Mona Lisa* and have a new artwork? Marcel Duchamp, in a 1919 work entitled *LHOOQ*, apparently did so. Can I simply *erase* the work of another artist and have the product of that erasure considered art? In 1959, Robert Rauschenberg, with the help of Willem de Kooning, did it.

Each time a challenge is laid down, audiences must assess how they will respond. The custom of late is that almost anything goes. But "almost anything goes" within a certain context. Apparently still one can mow one's lawn without being accused of destroying the work of art that was the unmown lawn. One can still throw away paper napkins at the end of a meal without harming the artworld. One can still highlight college textbooks without defaming art. Apparently, so long as one is in the right frame of mind, or in the right building, or with the right people, or perhaps *is* the right person or recognized as the right person . . . so long as there is an accepted context, almost anything goes.

But twentieth century art does not merely offer challenges that make connection to artists, aesthetes or aesthetic attention. Many of the aforementioned challenges purposely go outside the boundaries of the aesthetic to make their most provocative statements. Audience members are now forced—because of the moral, spiritual, patriotic challenges in art—to consider works under their attention more broadly. How one ought respond to a work of twentieth century art is not merely an aesthetic matter. If it were simply an aesthetic matter, then many of the most provocative and engaging works of recent art would be innocuous and facile.

Simply put, it is precisely decisions which call viewers (hearers, etc.) to question in themselves how they ought respond that make the challenges of art today ethically arresting and morally exigent. Ethics is a matter of deciding what to do given a certain situation. Ethics is about action. And situations calling for audience responses of ethical sorts are in abundance.

This book will address those artworld situations that call for ethical answers in five areas: censorship; the creation and re-creation—as in reproduction, copying and forgery—of artworks; ownership, copyrights and artistic property; the preservation, sponsorship, and value of artworks, or artforms; and the relationship between the aesthetic and the moral.

I

The first chapter is on censorship. This, perhaps more than the topics of the other chapters, has the virtue of being one of the most discussed themes in the first half of this decade. What is censorship? Who censors? Why do these individuals or agencies censor? Why should they censor? Under what conditions and through what means should censorship occur? How deliberate or direct must an effort be to effectively constitute censorship? If one can err by censoring too much, can one also err by censoring too little? Censorship can come in many different forms and for many different reasons.

One may censor on religious grounds; an object or event may be sacrilegious or sufficiently offensive to a religious body or perhaps even to common religious sentiment—perhaps even to spirituality itself—so as to be judged censorable. Serrano's *Piss Christ*, the

photographic work, incidentally funded by the government, of a plastic crucifix suspended in a jar of urine, was the subject of religious and spiritual calls for censorship, or at the very least for national funding to be withdrawn (a kind of censorship in itself?).

One may censor on social grounds. In direct cases, a work may threaten national security (imagine a work that incorporates state secrets that were acquired surreptitiously by the artist) or a work may threaten by inciting a group of people to riot or harm others, either manifestly or covertly. In some cases, a work may even have the effect of promoting one to harm oneself (as certain rock music has been alleged to do; Mary Devereaux discusses this). In indirect cases, censorship may be deemed appropriate where the work in question attacks the moral fibre of the society or the community. If an artwork makes us less good than we would be, or were, before experiencing that work, then such a work might rightly be censored. Allegedly, pornography (which, let us stipulate here, is not art) has effects other than simply the satisfaction of prurient interests on the parts of those who experience it. Could art which has themes that could be seen to appeal to sexual interests have the same ill side effects? Should such photographic works such as those of Robert Mapplethorpe be censored—kept from children? kept from the public? kept from everybody at all times?

Besides the sorts of venues in which censorship is practiced, there are many forms of censorship. When a government dictates that a work not exist or never be opened to an audience, this is the most overt form of censorship. Currently our government "censors" acts that could incite riots, the public display of sexual themes, yelling fire in a crowded theatre, and all acts which in their creation would seriously harm the participants. If any of these items were incorporated into bona fide artworks, then they would be candidates for direct censorship. More subtle forms of censorship exist as well. If the N.E.A. elects never to fund a given art movement or artform, this may be viewed as a form of censorship. Some would argue, however, that for such an action to be censorship, that action on the part of the N.E.A. would have to be deliberate and intentional with the purpose of not allowing this movement or artform a chance for exposure; just because the N.E.A. does not fund every artist is no reason to suggest that the N.E.A. is censoring all those unfunded. Nevertheless, the government does take a moral responsibility, and so is morally accountable, when it delivers to some artists and artforms funds that others do not receive.

Decisions are being made as to what is to happen with the public's money, and these decisions almost of necessity will involve more than simply what an accountant would do. These decisions will involve what the government, or agents acting on behalf of the government, decide is worthy of funding, is culturally or socially important, is valuable as art.

Censorship can happen in still other forms. If a gallery owner elects not to show a particular artist or artform, if a community elects not to allow such a showing, if the local school board withdraws from school library shelves certain books—books traditionally found on school library shelves—if the local television station refuses to carry certain network shows, if an exhibit is picketed . . . there are many ways that censorship of artworks can occur. And in some communities it is clear that such means of censorship are overused and taken advantage of.

Beyond deciding exactly what censorship is, there are, it seems, three central questions making up the core of the issue of censorship: First, who ought censor? Second, what should they censor? Third, how should censorship be carried out?

The first question can be answered in several different ways:

(1) The Local Community.
(2) The Religious Community.
(3) The Moral Community.
(4) The Society. The state has the responsibility to protect us both domestically and from foreign invasion; does it also have the responsibility to protect us from things properly censored? On other hand, does the state have the responsibility, given a mandate to educate its populace, to provide us with access to art? What about the possibility that some of that art may be thought properly censorable by some of that populace?

The second question can be answered more simply. *What harms* should be censored. But, of course, the interest is in the details:

(1) What harms physically
    (a) What harms the artist's subjects, persons, property or the environment.
    (b) What harms another artist's work.
(2) What harms morally
(3) What harms spiritually or religiously

(4) What harms socially or divisively
(5) What harms societally or nationally
(6) What harms psychologically
    (a) Explicitness in violence
    (b) Explicitness in sexual themes

The last question is, How should one censor? First, it is important to understand that all censorship is on a continuum with all other censorship. While authoritarian societies may censor more, and more frequently, than liberal states, each society is on the same continuum because every society, no matter how liberal, enlightened or psychologically stable, censors something. The trick is to understand where on that continuum is the proper place to draw a line—or, more modestly, where on that continuum is the proper line drawn for *this* society at *this* time.

The old adage about obscenity—"I can't define it, but I know it when I see it"—is almost entirely useless as a means of deciding where the line is to be drawn. Clearly in many cases—all?—the artist's intuitions about the propriety of a work disagree with the intuitions of those who seek to censor that artist or her/his work. It is probably the case that those who are in the most central position to enact governmental censorship, legislators and politicians, are in less of a position to act as the best judges of such things than are others. Shall the lawyers rule the artists? And yet, if the politicians are simply acting on the interests of their constituents, then we might ask why the artists ought think themselves immune from the commonality of the views of the populace of which they are but a part?

Liberal positions—though today there exists more interest among self-described liberals for censoring items that bespeak at all of ethnic or gender disenfranchisement—have traditionally held that adults, given that they are adults, ought serve as their own judges of what is and is not appropriate for themselves and their families. Some have held that the only appropriate group to be subject to the effects of censorship are children. In the privacy of one's home, or in the privacy of a closed location, adults have the right to experience almost anything they seek to experience. So long as there exists no overt physical harm of the subjects or the audience, adults can make up their own minds.

Furthermore, some hold that censorship, in concert with the liberal position described above, ought only to be practiced with regard

to the *creation* of artworks. Only those works that in their creation involve harm to their subjects, as would so-called "snuff films" and child pornography, should be properly censored. All else ought be available for the decisions to view or not to view of free and thoughtful adults.

Finally, we have not discussed, except in passing, the problem of the mutability of the appropriateness of censorship for a given society or community. It may well be that what is properly censorable today will not be so tomorrow. While it was right and proper for Victorians to hide the legs of tables from potentially inflamed and subsequently scandalized onlookers, we today can brave bare-legged furniture without succumbing to its temptations.

Moreover, what is properly censorable here may not be so in other societies or communities. Amsterdam's tolerances may not be the sort that could be practiced, without negative social repercussions, in cities in America or Britain. And American tolerances may not be the sort that could be countenanced in Singapore or Iran. If there are such differences among place and time, then the task of censorship is an ever present one.

The articles collected here on the topic of censorship are three: (1) Richard Serra's "Art and Censorship," taken from a speech he gave in Des Moines, Iowa, on 25 October, 1989, seven months after the government dismantled his architectural sculpture, *Tilted Arc*, from its place beside the Federal Plaza in New York City; (2) Mary Devereaux's "Protected Space: Politics, Censorship, and the Arts"; and (3) Richard Shusterman's "Aesthetic Censorship: Censoring Art for Art's Sake."

Much of Serra's speech has to do with an earlier speech given by then-*New York Times* art critic, Hilton Kramer. In an article that has become famous in its own right, "Is Art Above the Laws of Decency?"[1] Kramer argues that galleries that elect to cancel exhibitions of highly controversial works, as the Corcoran Gallery in Washington did in the case of a Mapplethorpe showing, are acting rightly. "Should public standards of decency and civility be observed in determining which works of art or art events are to be selected for the government's support?" Kramer asks. " . . . [I]s everything and anything to be permitted in the name of art?"

Kramer then goes on to specifically discuss Serra's *Tilted Arc*:

> What proved to be bitterly offensive to the community that *Tilted Arc* was commissioned to serve was its total lack of amenity—indeed, its stated goal of provoking the most negative and disruptive response to the site the sculpture dominated with an arrogant disregard for the mental well-being and physical convenience of the people who were obliged to come into contact with the work in the course of their daily employment.

Kramer's position is clear: public, social standards of morality and taste rightfully play a role in the determination of which artworks the government funds and perhaps which artworks the public is made to look at. The tax dollars spent to fund projects like Serra's sculpture are *public* tax dollars. Why oughtn't the public, then, have their interests met in deciding how those public funds should be spent?

Although Kramer's position may stand alone in this anthology on the use of censorship and restriction of public funds to insure that social standards are not transgressed, there are articles included in chapter four which also question the parameters of governmental funding of the arts.

Serra's speech is in large measure an answer to the claims of Kramer. What Kramer fails to understand, charges Serra, is that for all the claims of uncivility of *Tilted Arc*, the reaction which was to destroy the sculpture was even more uncivil. *Tilted Arc*'s removal and destruction was a violation, says Serra, of his First Amendment rights to freedom of speech. The removal of the work on the part of the government served the government's interest in laying a precedent for future censorship.

In short, Serra claims that the General Services Administration which ordered the removal of *Tilted Arc*, a sculpture it had commissioned ten years earlier, violated his freedom of speech and acted on arbitrary standards in the destruction of a work of art.

While the GSA bought from Serra the sculpture, the GSA still did not have the right to destroy it. How far do the rights of buyers of artworks go? This is a question we address in chapter three. Serra claims that artists always have the right not to have their works destroyed, regardless of the property ownership of that work. The right

the artist retains is not an economic right, insofar as the work has been bought and paid for by another, but a moral right of authorship.

Mary Devereaux's article, "Protected Space: Politics, Censorship, and the Arts," was a piece written for the fiftieth anniversary edition of the *Journal of Aesthetics and Art Criticism*. In it, she notes that art today is frequently politically contextualized. This occurs not only by the political right but also by liberals. While the right wing is concerned that standards of decency and morality are upheld, the left is concerned that intolerance as portrayed in artworks be eliminated. While formalist strategies of attending to works in the absence of considering their political ramifications, to thinking of artworks as "aesthetically autonomous," have been popular in the past, the answer lies not in reducing works to political vehicles nor to merely formal objects or line and color. The answer lies in striking a balance between the various facets of artwork consideration.

Devereaux writes

> Current Anglo-American aesthetics is embroiled in two debates: one centered on the National Endowment of the Arts and taking place in the "real world" of politics and art; the other centered on specifically philosophical issues and taking place within the progression of aesthetics. Both debates manifest an underlying struggle between the political and non-political conceptions of art. Both debates give rise to the same dilemma: forcing us to choose between *either* a formalist conception of art which protects art from the exigencies of changing political fashion but isolates art from life, or various political conceptions of art which integrate art with life but sacrifice its autonomy. This dilemma turns on a misunderstanding of autonomy, a misunderstanding that can, I argue, be resolved by a reconceptualization of autonomy as "protected space."[2]

Richard Shusterman's article, "Aesthetic Censorship: Censoring Art for Art's Sake," is the last of the three articles in this section. Shusterman's piece considers censorship of artworks on grounds other than political or social. He considers *aesthetic* censorship of artworks.

He argues that no case has been made against censorship which would preclude the propriety of censoring for reasons that are aesthetic in nature. Shusterman argues that, (i) aesthetic censorship would have the effect of highlighting the best work, (ii) it would not dull our aesthetic sensibilities with less-good work, (iii) if economic constraints will necessarily act as a censor, better we censor on aesthetic grounds so that the best work is assured support.

He writes

> Censorship has always been regarded as essentially and necessarily inimical and harmful to art, and antithetical to aesthetic autonomy and interests. My paper challenges this still popular dogma which stems from an oversimplified notion of censorship and its possible forms and motives. The concept of censorship not only allows the possibility of censoring works of art (or parts thereof) on *aesthetic* grounds, i.e. because they are aesthetically objectionable, but such aesthetic censorship would most likely promote superior art and appreciation.[3]

II

The second chapter is entitled "Creations and Re-Creations." Here we will discuss the problems of Fakes and Forgeries, Copies and Reproductions. While the latter two are obviously necessary in the creation and re-creation of many artworks and in some artforms, the former two labels are distinctly pejorative. Why? What is the difference between a copy and a forgery?

There are many works of art which exist, at least in a form that can be sensed, only through copies. Literature, poetry, symphonies, operas, dances, plays, lithographs, monoprints, etchings, and so forth and so on, can only be experienced by an audience through a performance, reproduction or copy. These works are different in kind, then, from artworks like paintings, sculptures and architecture, of which there can only exist a single instantiation. There are many copies of Joyce's *Dubliners*, all of them sharing in common a text, though only some sharing in common such things as print and binding. There

can be many copies of an etching, though all, given that each is signed and numbered, are different in some respect. There can be a great number of performances and productions, and there are, of the ballet, *The Nutcracker*. But unlike *Dubliners*, each may be markedly different from the others. Even within a single score, a single choreography, a single company, and a single production run, there will be differences in each and every performance.

These differences are expected and, by aficionados today, embraced as a means of understanding and appreciating the artwork more deeply through being able to experience variations and being in the position of comparing copies one with another. Copies are essential to the work's existing in a sensory form. And they are important in their differences to presenting the artwork in detail and variation enough to add to the experiences of audiences who see or hear more than a single copy.

Forgeries and fakes, however, do not share in the nobility of diversity which informs copies and reproductions. Forgeries and fakes, in the very naming, have an ethical dimension. These items are made with the intention that at some time they will deceive. Whether they deceive a curator, art patron, viewer, or all three, they present themselves as something they are not. Indeed, there need not be specific physical work that is copied for such a deception to take place. For many years, works of Van Meegeren were taken to be authentic works of Vermeer. Van Meegeren's works were not copies of actual Vermeer works; Van Meegeren's works were simply very closely in the Vermeer style. How such deception is accomplished, and whether fakes and forgeries suffer in respect of their aesthetic appreciation, is not at issue here. What we mean to explore is the ethical aspect of the deception that seems a necessary part of any forgery or fake.

But what of an artist "borrowing" from another artist? "Variations on a theme," "Musical Sampling," and creating artworks "after so-and-so" or "in the style of so-and-so" are all of this kind. It has become commonplace to see the works of some artists taken over by other artists, either in collaboration of efforts, sometimes in homage to the first artist for offering inspiration or a great work, sometimes in mimicry of the former artist, and sometimes in outright appropriation of the first artist's work in the creation of that of the second artist. As is evident, the moral implications of the use of another's work in one's own can run the gamut from being highly flattering to stealing.

Ethically speaking, how far may one go? How much of the work of another artist can one appropriate and still refer to her own work as original and separate from that of the latter?

This, of course, raises the following question: What do terms like 'original', 'novel', and 'creative' mean? Without defining such terms at the outset, the point at which the demarcating line between flattery and stealing is to be drawn remains in question. Should a work, to be considered original, incorporate at least fifty percent new work? Line-drawing in percentages is problematic. Should a novel work simply include some new thought, some new expression not in the original from which it was inspired? How modest or how dramatic need be this new expression?

In this chapter, we will explore these and other questions. Included here are: (1) W.E. Kennick's "Art and Inauthenticity"; (2) L.B. Cebik's "Forging Issues from Forged Art"; and (3) Kenton Harris' "No Dance Is a Fake."

W.E. Kennick's "Art and Inauthenticity" obviously takes the inspiration for its title from the 1976 Nelson Goodman work, "Art and Authenticity."[4] Kennick's paper is first and foremost a sorting out of the correct classifications that ought be applied to forgeries, fakes, copies, etc. He avoids a discussion of the aesthetic value of forgeries in deference to defining the terms that we use to class what I call here "re-creations." The work that Kennick does is absolutely basic to sorting out questions of, say, the aesthetic merit of a forgery or, say, the moral status of a fake.

He writes

> Before the question whether there is an aesthetic difference between a fake and authentic artwork can be given an univocal answer, it must be given a univocal sense. To do this one must spell out not merely what an aesthetic difference is but also the differences between the authentic and the fake. Confining itself largely to painting, this paper deals with the last question only, particularly with the difference between forgeries and copies.[5]

L.B. Cebik's paper, "Forging Issues from Forged Art," is the second of the three in this chapter. Instead, Cebik suggests, of asking about the *aesthetic* value of a forgery, ask first about what forgeries say

about art theory. Perhaps forgery is less primarily an aesthetic problem and more a problem of what Cebik calls the art realm.

Cebik writes

> The question, "Do art forgeries have any aesthetic value?" has produced numerous insights into the concept of forgery. Exploring the nature of the concept of forgery yields the conclusion that it says little or nothing about the possibility of aesthetic values in forged works. The presence or absence of such value depends upon the art theory the analyst brings to the study of the forgery.[6]

The last paper in this chapter is Kenton Harris' "No Dance Is a Fake." After laying out a definition of dance to be used as a touchstone for discussion of dance identity—that is, what makes two dances the same—Harris explains that two dances are the same only when both follow the rules of reproduction that govern the use of the name of the dance that both claim to be. Two productions of *Swan Lake* are really two productions of the same dance when each follows certain rules, rules that are pliable and evolving, that govern calling each of those two productions *Swan Lake*. Since each dance production will be different from every other dance production with regard to what rules a given production chooses to follow and which to discard or adapt, no dance can be a "fake" of another. But while this is the case with regard to dance productions or performances, this is not the case with dance *styles*. Styles may be able to be forged.

III

Chapter three is on ownership, copyrights and artistic property. While this chapter heading may suffer from sounding too legalistic, it encompasses some of the most interesting moral dilemmas facing the art world today.

Few of us, no doubt, have not had the opportunity to see a film that was originally shot in black and white *colorized*. While it is undeniable that film colorizers are becoming better at their craft—the first colorized films were caricatures of themselves—this does not address the point about whether they are doing a disservice to an

original black-and-white film in the first place. Woody Allen, for one, has taken a strong stance against the colorizing of films. And it is easy to see from where his sentiment is born. The nuance of shading, of the play with light and dark that is apparent in so many films of the thirties and forties would be severely limited in affect if colorized. Orson Welles' *Citizen Kane* is a prime example of a work that uses light and shadow in an integral way to the aesthetic nature and story of that film. Would the film be destroyed, or at least very much harmed, by colorization? What about more contemporary films like Allen's *Manhattan* or Spielberg's *Schindler's List*?

Or is it the case that artworks, like any other real properties, are possessions of their owners? If I own a table, and it is too high for my purposes, I have a right to cut the legs a bit in order to make it more functional. It is my table, and I can do with it as I like (within limits, of course; I cannot, for instance, use it to fashion stakes with which to kill the vampires I take to be sleeping in the house next to mine—actually, I suppose I can make the stakes; I simply cannot use them in the manner for which they were intended). Suppose I purchase an inexpensive copy of a painting, the sort always sold in museum bookshops and euphemistically called a print. I have the right, once I get the copy home and discover that it does not fit the frame I own, to cut bits off each side to make it fit. This may be aesthetically suspect, but it is still my right.

What if I own a film? What if, in the manner of Ted Turner, I purchase a film and its rights, and wish to colorize that film? If the film is my property, why ought I not have the right to do with it as I see fit? I can, for instance, decide only to show my film ("my" film) once a decade. Few will challenge my right to do that. I can have the film formatted to fit a television screen and to fit within a two-hour time period, and I can cut the film up with dozens of commercials. Few will challenge my right to do that. And if I want to colorize it?

The *Mona Lisa* is not for sale. It has reached that point as one of the most central members of the canon of western art that it will most probably never again be in the position where it could be sold and owned by a single patron or set of patrons. It, to employ the cliche, belongs to the world. But suppose that one could purchase it. If one did, would she be able to treat the *Mona Lisa* in any way she wished? On one side of the intuitional line about what is appropriate would be that patron's right to privately house the work; it is her right that she

not allow the work to be shown. She may decide to house the work in a non-climate-controlled room. This would be very foolish in terms of her investment, and would no doubt offend museum owners and aesthetes, but it may be her right to do so. She may wish to illuminate it brightly; she may wish to lock it in a safe. In each case, the right seems hers. May she destroy it? That is, is it her right to dispose of it in such a way as to destroy it? Is it her right to paint on top of it, or draw on it, or remove the canvas from the stretchers? Can she chip away at the paint, or pinprick the canvas? These latter questions test the intuition that what one possesses, what one owns, can be treated in any way that the owner believes fit. Even if the Louvre decided to illuminate the work too brightly, many would be up in arms over such effrontery. Artworks seem to have a protection and a right to such protection that few other possessions enjoy. One may do whatever one wishes to one's table, but one cannot torture one's livestock or pets, one presumably cannot dump down the sink the cure for cancer, and one cannot draw on the *Mona Lisa*. These are not legal encumbrances; they are moral.

Yet another topic for this chapter is that of how material may be published and released. This book, for instance, enjoys a certain protection, and no publisher other than Garland Publishing has a right to produce copies of it. Each of the previously published articles collected herein also enjoys a certain protection, and alongside each such essay is mentioned the party from whom permission was sought and obtained to reprint those articles here. This protection, these copyrights, are in place to ensure that the work of authors and their agents, in this case philosophers and publishing houses, are not exploited for gains that the authors, etc., will not see. One's labor is one's own, and so benefits accruing from that labor should rightfully go to the deserving.

But what if a professor finds that there is no suitable anthology of articles available on the topic of her upcoming course? May she, for the sake of that single group of students, fashion one together for their use? May she copy just enough sets of those articles for those students and no others? What if a major in her department asks for an additional copy? Copyright law, as any teacher who uses copyrighted material can attest, is wide-ranging and not uncomplicated. The protections we enjoy as authors are in kind the nuisances we find as teachers.

In this chapter the following articles relating to these issues are included: (1) Francis Sparshott's "Why Artworks Have No Right to Have Rights"; (2) James O. Young's "In Defense of Colorization"; and (3) Peter Karlen's "Worldmaking: Property Rights in Aesthetic Creations."

Francis Sparshott claims that artworks do not have rights nor can they. While we may initially believe that artworks have certain rights—the right not to be vandalized, for instance—it is not actually the artwork that is the bearer of a right; it is rather we who have an obligation to treat the work in a certain way. We have this obligation not because of the artist so much as because of the future viewing audience that will come to appreciate the work in question. The rights are not borne by the artwork; they are rights that the future viewers hold.

Sparshott writes

> The rights and interests centered on artworks are radically heterogeneous. The temptation to consolidate them by thinking in terms of rights of artworks as such should be resisted. The value of human rights depends on human freedom and especially on human morality, which is not the same as the fragility of an artwork. The museum mentality that increasingly demonstrates the way American philosophers think about art bespeaks a fetishism that deserves sympathy but not respect.[7]

James Young tackles a problem that is very timely, the colorization of originally black and white films. This topic has gotten lots of press lately, with one of the most noteworthy opponents to the colorization of films being the director Woody Allen. Allen has claimed that the aesthetic merits of a film originally filmed in black and white can suffer if the film is colorized. And even with the advent of better and better means by which films are colorized, examples where black and white photographic effects are aesthetically very important, as in the case of Welles' *Citizen Kane* or a contemporary film like Spielberg's *Schindler's List*, still persuade that the colorization of originally black and white films, especially ones where it seems clear that such films would be aesthetically harmed by colorization, ought not be subject to colorization. On the other hand, of course, if Ted Turner

buys a film and its rights, isn't it his to do with as he likes? This harkens back to the Serra case.

Young recognizes the strong pretheoretical intuition that one ought not tamper with the work of another artist; he also recognizes that there may be aesthetic reasons against the colorizing of a film, at least in the case of some originally black and white films. But he argues that since the only candidate for colorization is not the original film footage, but simply a *copy* of the film, which by definition is not the single instantiation of that artist's work, we do not destroy the artist's original by colorizing that copy.

Young writes

> I consider the claim that the colorization of films is an unjustifiable tampering with the artist's work and argue that it is not. I distinguish between artworks which are instantiated in only one object and works that are instantiated in many. I argue that modification of the second sort of artworks is unobjectionable. In fact, modification of works instantiated in many objects is the source of good art in many cases.[8]

The last paper of this chapter is Peter Karlen's "Worldmaking: Property Rights in Aesthetic Creations." Karlen is a practicing attorney. His work in aesthetics, then, is informed to some degree or other by legal concerns as well as aesthetic ones. In "Worldmaking," Karlen questions what the artistic copyright holder really owns. It is naive to suggest that the copyright owner owns something connected to the artwork, as a physical or sensible instantiation, in question. Rather, the copyright owner owns something that covers "a set of relationships" into which that artwork may enter. After outlining what a right to intellectual property means, Karlen suggests that the copyright ownership really extends in a limited way to the whole world, which is to say that no one may shape anything that will mimic, copy or create in viewers the same imaginative experience as the copyrighted artwork.

IV

The fourth chapter is on the issues of the preservation of art, state-sponsorship, and the social and/or cultural value of art. In this chapter, instead of focusing on the individual, be that the artist, patron or viewer, we focus on the society, or, more precisely, on the state or nation. What does the state owe art, artists and the art world? Do the obligations that the state bears towards its citizenry compel it to diligently oversee the cultural and artistic life of that society?

Many answer yes to this question. If a society is wont to call itself civilized or advanced, then it must look after the education of its inhabitants. Part of the educational aims of such a society may be cultural in content, and so part of the state's obligation may be to provide not only for the exposure of its populace to that society's cultural and artistic history, but to provide for the continuance of the traditions and institutions that have made up the content of that history. The state must collect monies from its citizenry for education; and since artistic education is a facet of that necessary education, the state must fund art exhibitions, art institutions, artists and art movements. In short, the state must fund art.

But how is it to accomplish this? While it is easy enough to create taxes for the benefit of art and to create agencies for the distribution of these funds, it is very difficult in the face of the number of artists working—and deserving—to decide who gets funding and who does not. Some argue that the state agencies, then, to accomplish their missions, must be in the position of being able to judge artistic and cultural value. These agencies must be able to, in a sense, look into the future to see what will be of lasting value, aesthetically as well as socially, to the society and its populace. This is a tough trick, but one that must be done *if* a society deems the funding of art to be among its responsibilities (as ours does).

The other side of the coin, of course, is that art is not properly part of the education content of a society. If art, might say those holding this position, is to flourish, it must be a thing embraced by the populace, and to be embraced is to be supported. If the citizens want art, let them fund it themselves, in the way perhaps that the great patrons of renaissance Florence, the Medicis, and the Vatican, did. Americans pay a great deal for entertainment. If art is essentially for the purposes of pleasure, as some contend, then it is a pleasure that

must rely on its own attraction for its own life. The film industry is flourishing, as is the rock music industry. If the opera or ballet is valued by the citizens, or enough of them, then the opera and ballet will flourish likewise. If they are not, then they will go the way of other artforms that are no longer practiced today. To governmentally support artforms that are not popularly supported may result in the isolation of those artforms from the very public they are intended to benefit. Such artforms may become insulated from public criticism and in doing so the governmental support may succeed in stifling and inhibiting the artistic growth of those artforms.

The key, then, is to determine, first, what role government support of the arts should take, and, secondly, exactly what value the arts, or particular artforms or movements, hold for a society. To ask the latter, one first must inquire into what context this question ought be asked. Should the value of art be merely to strengthen the society as a political body? Should the value of art be for educational purposes only? Should art always uplift and moralize? Should art simply mirror the society, its strengths and weaknesses? Should art always challenge?

If any positive answer is forthcoming to the question about whether the state ought support the arts, then we must ask about the nature of such an obligation. Certainly the concerns mentioned above must be addressed, but beyond these concerns lie those regarding what the state is supposed to do with the product of its investment. If the state funds art, then what is created is either the property of the state or not. In the American case, the property is that of the artist, and is his to dispose of as he sees fit. But if the value of the funding of art is social, then there is reason for suggesting that the property, the created art, ought be looked after by the state: used in exhibitions, used for educational purposes, and stored away for continued use as the history of that society progresses.

National museums may see it as part of their mission to do just this, to house the most valuable of the works created by artists of that society (or one related in some way to that society). But what about the plethora of works that are funded and created but are not deemed valuable enough to house in national galleries?

The Netherlands are having this difficulty today. As a nation, the Dutch have funded a great deal of art, with the consequence that the state is now responsible for that work. In 1992, a report came out in *The New York Times*[9] that the Dutch state was trying to "give away

215,000 works of art," which the state had funded and was currently housing. This body of work had been collected from the 1950s to the 1980s in programs where the Dutch government purchased the hitherto unsold works of Dutch artists. The government will not sell the works, for this would flood the market, ruining it for artwork currently being produced in the Netherlands. Neither will the government destroy the work, at least not until such time as all other options have been attempted, because this would suggest that the work had no value. For the same reason, then, the government will not simply give the work away. Instead, the Dutch state is trying to find homes for their vast collection in schools, hospitals, clinics, police stations, government buildings and the like.

The Dutch are carefully attempting to assess the aesthetic and cultural merits of the works, insuring that they are not "donating the Rembrandts and Van Goghs of our time." While governments are perhaps qualified to judge the economic and social worth of objects, theirs is an inescapably controversial task in the assessment of the aesthetic and cultural merits of artworks. But perhaps it is not so unique. The United States' NEA is charged with judging, at least partly on aesthetic or cultural grounds, the relative worth of projects brought to their attention for possible governmental funding. The Dutch simply have a much larger task in their hands, different in degree but perhaps not in kind from what the NEA does.

Four articles relating to these questions, those of the responsibilities of the state to fund art, and what its further, though implicit, obligations are, are included in this chapter: (1) Noël Carroll's "Can Government Funding of the Arts Be Justified Theoretically?"; (2) Joel Feinberg's "Not with My Tax Money: The Problem of Justifying Government Subsidies"; (3) Ernest van den Haag's "Should the Government Subsidize the Arts?"; and (4) Gordon Graham's "The Politics of Culture: Art in a Free Society."

Noël Carroll's "Can Government Funding of the Arts be Justified Theoretically?" clearly lays out many of the issues involved in creating a case for governmental funding of the arts. The first case that Carroll considers as possible justification for governmental funding of the arts is the case wherein the government's concern for the welfare of its citizenry mandates public arts funding. This case can be made out in terms of the basic goods that address the needs of the populace, including the artists themselves; this case can also be made out in terms of the "aesthetic welfare" of the society. Although the state may not be

justified in treating the funding of arts with the same degree of importance as securing (other) basic goods to its populace, the state may still have a secondary duty to provide for arts funding. This may be in part due to understanding the populace as in part having *aesthetic* needs. But then of course only those art projects, or perhaps we ought say those aesthetic projects, which meet the aesthetic needs of human beings would be the sort justified for governmental support. Beyond this, Carroll considers economic reasons for funding art. He ends the article with a consideration of the possibility that the development of aesthetic sensitivities in the society may foster moral awareness as well.

Joel Feinberg's paper, "Not with My Tax Money: The Problem of Justifying Government Subsidies," is the most recent of the papers on state funding of the arts. He argues that there is a *prima facie* case not to have citizens pay for what they may not be able to share in. One possible answer is the *Benefit Principle*, which suggests that art will benefit some of the populace directly—as education, even if one is not in school, has a direct benefit—or that it will benefit indirectly. But the case for the universality of benefit is very difficult to make. A second possible answer is what Feinberg calls *Rotational Justice*, where some people, even though they constitute a minority, get what they really want, because others, even when they find themselves in minorities, will get the things they really want. We all win for the important things, so we are willing to lose for things that are important to others. Feinberg complements this with a discussion of the intrinsic value (some) works of art possess; cashing out the intrinsic value of artworks in terms of their ability to offer viewers valuable experiences (regardless of whether they actually do this, since that would make the value purely instrumental).

The fourth paper in this chapter is Gordon Graham's "The Politics of Culture: Art in a Free Society." What is the place of government intervention, including government support, of the arts in a free society? First, it depends on the theory of the value of art. (i) The *Pleasure Theory* holds that art is good as it offers pleasure to viewers—but then so does sports, and we might find that sports offers greater pleasure. (ii) The *Understanding Theory* holds that art is good as it furthers our understanding of the world and ourselves—but science does this as well. Any government intervention will violate a strict conception of orthodox liberalism: coercion of people to pay for something that they might not wish to be coerced to pay for. What

must be recognized for this coercion to be at all justified is that in funding the arts, the state increases the overall wealth of that state.

Graham writes

> This essay considers the place of state support for the arts in a free society conceived along traditional liberal lines. It argues that this question cannot be addressed adequately without considering the value of the arts. Once this is recognized, a defense of state involvement can be made in terms of art as wealth creation.[10]

The third paper in this chapter is Ernest van den Haag's "Should the Government Subsidize the Arts?" Van den Haag argues that the case for government support of the arts is not made on the basis of the public benefit of pleasure. Even though historical precedent shows government support of the art throughout the ages, this does not justify subsidies today. Why should the few who go to the opera expect the many who do not to subsidize the opera? Art does not have enough social benefit to be socially supported. Further, how should the government judge the deserving of such support? Finally, subsidies might promote mediocrity in art by rewarding half-hearted artists who only work because there is government support, *or* government support might reward imitation: "copy what gets support." Prices might go up without governmental funding of the arts, he argues, but art will survive through private support.

V

The final chapter is entitled "Aesthetic Values and Moral Values." This chapter deals with the relationship between these two sorts of value. How is excellence of one kind, say aesthetic, related to excellence of the other? Can an increase in one sort of value complement a paucity of the other? For example, can a strong moral message make up for a lack of aesthetic merit in assessing the overall value of a work of art? On the other hand, does an increase in the focus on one sort necessitate a decrease in the other? For instance, does a greater focus on the aesthetic merits of an artwork lead to the unawareness of the moral standards of a work? Does a formalist consideration of a work, for

example, allow in that work a greater moral latitude? Or, on the other hand, does a greater emphasis on the moral facet of a work curtail the aesthetic freedom present in a work?

Yet another question in this vein is whether art can morally illuminate or instruct. Some philosophers of art working today believe the answer to this question is yes. We grow as moral persons through exposure to art. If this is the case, then is this instruction at the hand of the artist, or is it a function of the art object itself? Do artists have a responsibility regarding the moral enrichment of their audiences? Can a work displaying immoral themes, or incorporating immoral aspects, nonetheless be uplifting? Is all art properly criticized from a moral perspective?

The articles included in addressing this somewhat broad topic are: (1) Marcia Muelder Eaton's "Serious Problems, Serious Values: Are There Aesthetic Dilemmas?"; (2) Marcia Cavell's "Taste and the Moral Sense"; and finally, (3) Ron Bontekoe's and Jamie Crooks' "The Interrelationship of Moral and Aesthetic Excellence."

Marcia Muelder Eaton explores, in "Serious Problems, Serious Values: Are There Aesthetic Dilemmas?" whether there are aesthetic dilemmas in the way that there are moral dilemmas, that is, if indeed there are moral dilemmas. What would constitute an aesthetic dilemma? What would be the similarities between aesthetic dilemmas and moral ones? Would there be, and what would be, the connections between aesthetic dilemmas and moral dilemmas?

She writes

> One way of approaching the question of whether or not there is a significant connection between aesthetic and ethical value is by investigating apparent analogies and disanalogies between moral and aesthetic activities. In this paper I ask whether any aesthetic tests for the presence of a moral dilemma—a logical test and an emotional test—are applicable to aesthetic problems discussed. Several categories fail to meet the tests that moral dilemmas meet; some qualify as genuine dilemmas. Finally I argue that since moral dilemmas arise due to the existence of moral obligations, aesthetic dilemmas imply the existence of aesthetic obligations. A way of interpreting "aesthetic dilemma" is suggested.[11]

The second paper in this chapter is Marcia Cavell's "Taste and the Moral Sense." Though there is much argument for the separation of moral and aesthetic considerations when it comes to art, there is common ground between moral and aesthetic activity. As aesthetic consideration is not rule-guided, moral sensibility cannot be truly rule-guided either. Furthermore, as moral considerations are contextualized, so are aesthetic considerations.

Cavell writes

> It is argued that while there are important differences between moral and aesthetic judgments, there are also important similarities. In particular, certain kinds of moral judgments are as little concerned with rules and principles as are critical judgments about particular works of art; and questions of purpose and context are equally important—contra Stuart Hampshire in *Logic and Appraisal*—to an understanding of action and art. The critic attempts to describe and judge the work of art on its own terms; but what these terms are, in any given case, or what is *internal* to the work and what is *external*, is a complicated question.[12]

The last (but, of course, not least) paper in this collection is Ron Bontekoe's and Jamie Crooks' "The Inter-relationship of Moral and Aesthetic Excellence." They argue that a mishandling of moral matters in an artwork is an aesthetic defect. A bad moral vision in a work hurts that work. An artist must be sensitive to moral matters, though this does not mean that the artist's moral vision must be worn on the sleeve of his/her artwork (so to speak). Preaching is not of aesthetic merit. Being concerned, however, with the overall moral character of the work, is of importance to the worth of the resulting artwork.

Bontekoe and Crooks write that

> The process of artistic creation is a matter of progressively narrowing in on some worthwhile experience the possibility of which the artist has caught a glimpse. This process involves the artist in an attempt to capture the inner necessity governing her subject. Because a bad moral vision is one which gets something significantly wrong about the