The People of the State of New York
Versus
The Museum of Modern Art

A Case Study with Recommendations

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For more information about the Commercial Diplomacy program and the M.A. project requirement, please visit www.commercialdiplomacy.org.

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Introduction

In the past, few questions have been asked about the provenance of works of art, except to ensure their authenticity. Today, however, as art seized by the Nazis is exhibited or goes up for sale, Holocaust victims and their descendants are coming forward to seek restitution. This, in conjunction with the recent rise in international art theft and looting, has forced those who purchase art to pay closer attention to the background of a potential acquisition (*i.e.* who owned it, where it came from, how the current owner acquired the piece, and if there is a clear succession of unquestionable ownership). Databases like the Art Loss Register have been created to enable museums, galleries, auction houses and individual buyers to find out if a piece has been recorded missing or stolen. However during WWII and its aftermath, art seized by the Nazi's was scattered across the European continent; many pieces even made their way, often innocently enough, to the United States. As a result, many good-faith collectors and museums unwittingly hold artwork of questionable provenance.

The question of how to determine the rightful owner of a piece of artwork is extremely complicated, as well as emotional. Constance Lowenthal, the director of the World Jewish Congress' Commission for Art Recovery, explains: "When people seek restitution for art 50 or 60 years later, they have to expect that their claim will be against good faith purchasers. So you have two different kinds of victims, and it becomes very difficult to find an equitable solution."[1]

With the goal of shedding light on this problem and providing a recommendation for how the international art community should handle claims of art ownership, this project examines the widely covered battle over two paintings between New York City's Museum of Modern Art (MoMA) and the State of New York. In 1997, two families made claims that they were the rightful owners of two of paintings that were on temporary loan to the MoMA (each family claimed a one painting), and at the families' behest, the District Attorney of New York effectively seized the paintings. When, nearly two years later, the New York Court of Appeals made a final decision in favor of the museum, the Federal Magistrate and the U.S. Customs Service then stepped in and again seized one of the paintings, the fate of which has yet to be decided.

For this project, I fictitiously assume the role of a consultant hired by the International Council of Museums (ICOM), an international non-governmental organization made up of representatives from museums around the world. In this capacity, I have been tasked with analyzing the problem of stolen art restitution (with special emphasis on Holocaust-era loot) and providing ICOM with recommendations for action.

[1] Walter V. Robinson, "New York DA bars return of Austrian art," The Boston Globe, Jan. 9, 1998. P. A1

The project is divided into three main sections: background, analysis, and recommendations/strategies. The analysis is further divided into four sections: stakeholder, legal, political, and commercial analysis.

The case of MoMA v. The People of New York rocked the international art world, tarnishing its public image and forcing a fundamental reevaluation of how it does business. The case also served to shine a spotlight on the myriad issues involved in sorting out stolen art claims. To ensure that museums can clean up their image, they will need to take proactive steps to ensure that the MoMA fiasco is not repeated.

Background

Within the past fifteen to twenty years, museums, foundations, and collectors have become increasingly wary of sending their art collections out on temporary exhibition for fear that all or part will not return safely. In addition to longstanding concerns that pieces could be damaged while in transit or storage, concerns about theft have risen dramatically.[2] Now, fears of seizure by another country's government have been added to the list. In January 1998, the State of New York and subsequently the U.S. government demonstrated their willingness to seize artwork based on unsubstantiated provenance claims.

Overview: MoMA v. the State of New York

In 1994, the Leopold Foundation[3] sent 150 of its Egon Schiele works to be exhibited in museums around the world. In October 1997, the pieces arrived at the Museum of Modern Art in New York City for a three-month exhibit, after which they were to travel to Spain. On December 31, 1997, five days before the exhibition was scheduled to close, the Museum received letters from two families, each of which claimed to be the rightful owner of one of the exhibit paintings.

- Henri Bondi claimed that the painting "Portrait of Wally" had belonged to his aunt, Lea Bondi, a Jewish art dealer who, fearing Nazi persecution, fled Vienna in 1938. Bondi asserted that his aunt was forced to sell her art at greatly undervalued prices and that the money she did make was then seized when she left for England.[4]

- The Reif family claimed that "Dead City III" was looted from a relative, Fritz Gruenbaum, a well known Austrian cabaret singer who had amassed an extensive art collection, and who is recorded to have died at Dachau in 1941.

Both families indicated in their letters a willingness to discuss various options for resolving their claims, but only if they could be assured, in writing, that the paintings would not be moved from the museum.

The World Jewish Congress, through their newly formed Commission for Art Recovery, offered to mediate a solution through an international panel. But according to Constance

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[2] Art theft has become the second or third leading form of international crime. It is surpassed by trade in illicit drugs but vies for position with illicit arms trade.

[3] The Leopold Foundation, or Leopold-Privatstiftung, is a government-financed collection of 250 paintings that the Austrian government purchased from Dr. Rudolf Leopold in 1994. The Foundation is located in Vienna, and it is dedicated to the life and works of Egon Schiele.

[4] Phil Hirschkorn and Reuters. "Museum wins dispute over art allegedly stolen by Nazis." CNN News Online. http://cgi.cnn.com/US/9909/21/looted.art/ September 21, 1999. P. 1 of 4.

Lowenthal, a specialist in stolen art works and the Director of the WJC Commission, the two families appeared uninterested in such mediation.[5]

The museum responded by sending two letters to each party. The first set, dated December 31, 1997, stated that, while the museum was sympathetic to the claims and was eager to see these claims resolved, it had a contractual obligation to return the entire Leopold collection to the Leopold Foundation at the close of the exhibition. The letters further stated that:

> "Art museums depend on art loans from foreign institutions to organize exhibitions that make it possible for the public to see and appreciate art from all over the world. It is important for US museums to offer foreign institutions the security of knowing that loan agreements will be honored and, indeed, *New York has a statute which specifically provides that works of art brought to New York for exhibition may not be seized or made subject to attachment* [emph. added]."[6]

In the second set of letters to the families (dated January 4, 1998), the museum reiterated its position with regard to its contractual obligations and concluded by stating that:

> "The exhibition is scheduled to be returned to the Leopold Foundation shortly after closing on Sunday, January 4. I am advising you, therefore, that the Museum intends to ship the painting to the lender on January 8 or shortly thereafter. The intervening period should afford you ample time to take such action as you deem appropriate to protect your interests."[7]

On January 7, 1998, the office New York County District Attorney Robert Morgenthau served the museum with a grand jury subpoena *duces tecum*, which obligated the museum to appear in court with the paintings and was thereby tantamount to seizure. The museum moved to quash the subpoena on January 22, 1998, on the grounds that it was invalid pursuant to section 12.03 of the New York Arts and Cultural Affairs Law, the statute to which the MoMA referred in its first letter to the families (see above). The statute reads:

> No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon any work of fine art while the same is enroute to or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition held under the auspices or supervision of any museum, college, university, or other nonprofit art

[5] Robinson.
[6] Letter from MoMA to Reif and Bondi families. December 31, 1998.
[7] The New York Court of Appeals. Final decision in the case of the Grand Jury Subpoena Duces Tecum, &C., The People &C. Respondent, v. The Museum of Modern Art, Appellant. 99 N.Y. Int. 0126. Decided Sept. 21, 1999. Sec. I., p.2.

> gallery, institution or organization within any city or county of this state for any cultural, educational, charitable, or other purpose not conducted for profit to the exhibitor, nor shall such work of fine art be subject to attachment, seizure, levy or sale, for any cause whatever in the hands of the authorities of such exhibition or otherwise.[8]

It was agreed that the museum would maintain custody of the paintings until litigation over the subpoena was resolved. Over the next 21 months, the case was heard three courts: the Supreme Court, the Supreme Court's Appellate Division, and the Court of Appeals.

The Supreme Court, headed by Justice Laura Drager, decided in favor of the museum and quashed the subpoena, maintaining that section 12.03 exempted the paintings from grand jury process. The Appellate Division reversed the Supreme Court decision, stating that the statute applied only to civil processes and therefore did not limit a grand jury's subpoena powers in this case.[9] In a 6-1 decision rendered on September 21, 1999, however, the New York Court of Appeals, the state's highest judicial body, decided in favor of the museum and allow the paintings to be returned to Austria.[10]

Austria's Past Restitution Efforts

During World War II, the two largest repositories of Nazi loot held in Austria were located at the Alt Aussee salt mine and the Lauffen min in Bad Ischl. Together, they contained approximately 7,000 paintings and drawings, as well as 3,000 other items that had been taken from all areas of Nazi occupied Europe. All the items were intended to become part of Hitler's Fuehrermuseum in Linz.[11]

On May 8, 1945, US troops took control of these repositories and subsequently turned over to the Austrian government all of the loot in the Alt Aussee salt mine that was of "Austrian" origin.[12] Austria's Finanzlandesdirektionen, which was in charge of legal matters, and the Bundesdenkmalamt or Federal Office for Monuments Preservation,

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[8] Brief for the Respondent. The People of the State of New York, Respondent - against - Museum of Modern Art, Defendant-Appellant. In re-application to quash grand jury subpoena duces tecum served on the Museum of Modern Art. Argued by Mark Dwyer, Assistant District Attorney, August 6, 1997(?). p. 2.
[9] The New York Court of Appeals. Final decision in the case of the Grand Jury Subpoena Duces Tecum, &C., The People &C. Respondent, v. The Museum of Modern Art, Appellant. 99 N.Y. Int. 0126. Decided Sept. 21, 1999. Sec. I., p.2.
[10] Phil Hirschkorn and Reuters. "Museum wins dispute over art allegedly stolen by Nazis." CNN News Online. http://cgi.cnn.com/US/9909/21/looted.art/ September 21, 1999. P. 1 of 4.
[11] Oliver Rathkolb, From 'Legacy of Shame' to the Auction of 'Heirless' Art in Vienna: Coming to Terms 'Austrian Style' with Nazi Artistic War Booty, presentation based on a paper, presented at the German Studies Association Conference, Washington D.C., September 26, 1997. P. 3.
[12] The Alt Aussee stash included approximately 700 paintings that belonged to the Rothschild family, which had been forced out of Austria in 1938, and 500 paintings from other Jewish families.

which acted as the overall art custodian, were tasked with returning the looted items to their rightful owners.

The restitution process was, however, less than satisfactory for many families who wished to recover their possessions. For Jews who had fled the country, the process was particularly burdensome, if not fruitless, because of Austria's 1918 Export Control Law or Ausfuhrverbotsgesetz, which allowed the Bundesdenkmalamt to decide which works of art were allowed to leave the country and which were not. The law required that art claimants first had to prove citizenship, of which those who fled Austria had been deprived, and then had to prove ownership, which under the circumstances of exile, imprisonment, and World War II, was extraordinarily difficult. Even the Rothschilds, whose collection was well documented, had to cede part of its collection in the face of the power of the Bundesdenkmalamt. In a "restitution compromise" the lawyer of Clarice de Rothschild agreed that 14 of 16 art objects would be restituted with export licenses. The other two would be "donated," one to the Albertina Museum and one to the Ferdinandeum.[13]

Overall, of the 18,500 art objects that had been seized or had voluntarily been given up to air-raid shelters, 13,000 of those objects were returned by January 1, 1949. The restitution of the remaining objects was spread out over the subsequent 47 years.[14] Objects considered to be ownerless were held at a monastery in Mauerbach.

The Austrian government has since acknowledged that its actions in the Rothschild case were unjustifiable, even by the law of the time period, which exempted art and cultural from the Export Control Law.[15] Moreover, in 1995, under pressure from the United States and France, the Austrian government amended a 1986 law pertaining to the settlement of claims regarding art and cultural heritage in order to allow the items held at Mauerbach to be auctioned. Most recently, on January 14, 1998 (one week after the two Schiele paintings had been seized by the New York District Attorney), the Austrian Minister of Education, Elisabeth Gehrer initiated a process of provenance research for all transactions by Austrian Museums between 1938-1945. This research will undoubtedly answer more provenance questions surrounding Holocaust-era loot than can similar research carried out in far away countries such as the United States. To back up the research with action, the National Council of the Austrian Parliament has since passed a law to restitute looted art from the Nazi period.[16]

[13] Rathkolb. p. 4.
[14] Austria, Delegation Statement at the Washington Conference on Holocaust-Era Assets, Nov. 30-Dec. 3, 1998.
[15] Austrian Delegation, Austrian Restitution of Works of Art, Washington Conference on Holocaust-Era Assets, Nov. 30-Dec. 3, 1998, p.166.
[16] The law passed unanimously in November 1998.

How Nazi Loot Ended Up in Respected Museums

During WWII art changed hands at an alarming rate. The Nazi's confiscated entire collections from Jews and others in Germany, Austria, France, the Netherlands and Eastern Europe. Many of the finest pieces were snatched up by Hitler, Goering, Rosenberg, and other well-known Nazi leaders for the Linz Museum or their private collections. Other pieces, especially modern pieces that were considered "degenerate," found their way to Switzerland, England, the United States, and South America through unscrupulous art dealers in Switzerland, France, Austria and Germany. No one seemed to take the time to ask why there was a sudden surge in high quality art on the market. Although it seems incomprehensible now, many of the final purchasers, especially those in the United States, were "good faith" purchasers, generally unaware that their purchases had been stolen during the Holocaust. Many of the pieces have changed hands at least once since the war, which further complicates provenance claims.

Today, most museums and private collectors that hold looted artwork are simply unaware of the questionable past of these pieces. When a Museum sends a collection abroad for a temporary exhibition, it does not do so with the knowledge that pieces in its collection might be stolen art. Indeed, although the art world's general "don't ask, don't tell" policy may have helped perpetuate the problem, art institutions do not keep their collections secret for fear that some of their pieces might have been stolen. On the contrary, new acquisitions, including temporary exhibitions, are displayed prominently, written about in illustrated catalogues, and flaunted in the press.

Where Are the Paintings Now?

On September 23, 1999, the United States Attorney, at the urging of the Bondi family and the US Customs Service, issued a seizure warrant for "Portrait of Wally" and began a civil forfeiture proceeding. Because federal law supersedes state law, the MoMA had no avenue of recourse.

Now, several months after this seizure, evidence has been uncovered that seems to indicate that neither the Reifs nor the Bondis had legitimate claims. In the instance of "Dead City III," the painting was claimed by the widow of a son of the pre-war owner's cousin. However the cousin was not an heir to the painting. In the case of "Portrait of Wally," the situation is even more convoluted. Henry Bondi, the claimant for his deceased aunt, Lea Bondi Jaray, wrote about his vivid recollections of having seen the painting in his aunt's house in Vienna before the war. But, according to the pre-war owner's grandson, the claimant never saw the painting, never set foot in the house in Vienna, and the claimant recently conceded in a British newspaper interview that he is not even an

heir. The US Justice Department is nonetheless still involved in a civil forfeiture proceeding for this claimant.[17]

[17] Prepared Statement by Glenn D. Lowry, Director of the Museum of Modern Art, New York, Before the House Committee on Banking and Financial Services, February 10, 2000, p. 3 of 5.

Stakeholder Analysis

The core issue raised by this case is the question of whether or not the District Attorney has and should have the authority, based on little or no evidence of illegitimate ownership, to seize works of art that are on temporary loan to New York's arts establishments. Allowing the DA such authority would set a precedent that could be very damaging to the future of temporary exhibitions and to museums everywhere. At the same time, however, the issue of the restitution of assets seized during the Holocaust is not only legitimate but also very emotional. Holocaust restitution is an issue that New York's museums cannot ignore because a substantial portion of their donor base is either Jewish or sympathetic to Holocaust issues.

The Museum of Modern Art

MoMA's interests in this case can be summarized as follows:

- It wanted to make sure that the museum maintains its position as a major destination point for temporary exhibitions;
- It wanted to fulfill its contractual obligation to the Leopold Foundation; and
- It wanted to avoid appearing unfeeling or unresponsive to the families' claims because such an appearance could damage its private donor base.

Museums everywhere depend upon temporary exhibitions in order to stage fundraising events, bring in new donors, and maintain their donor bases. If they lose these opportunities, they also lose a major source of revenue. Such a loss is particularly damaging to American museums because they receive relatively little support from the government; the government cannot be relied upon to make up for private support.

In this light, MoMA's response to the Bondi and Reif claims is not so surprising. The museum was not willing to risk the ramifications of holding back paintings that it was contractually obliged to return, particularly based only on unsubstantiated claims and particularly because it believed that section 12.03 of the New York Arts and Cultural Affairs Law precluded seizure by law enforcement officials.

Nonetheless, the MoMA ran a risk by not accommodating the families' request to hold the paintings in the United States. The museum's actions could be interpreted as unfeeling and even anti-semitic, and such a perception could be very damaging to the museum's ability to raise funds and acquire new donors. Jewish families have historically been avid supporters of the arts, one of the many reasons why collections from Jewish families were targeted during the Holocaust. It is safe to assume that Jewish families are well represented on the MoMA's donor list, as well as on the donor lists of most other arts institutions in New York. If this population were to begin to believe that New York's museums are not sympathetic to Holocaust issues, it is possible that a large number of

individuals might pull their funding. It is also possible that other, non-Jewish, supporters might react in a similar manner.

The museum also has an interest in making sure that Holocaust restitution claims are handled more smoothly in the future. In order to avoid negative press and the expense of a legal battle, the museum has an interest in 1) clarifying when and how Section 12.03 of the NY Arts and Cultural Affairs Law will protect it, and 2) developing Museum policies that dictate how such claims should be handled, including mediation procedures.

The Bondi and Reif Families

The claimant families' immediate interest was that of keeping the paintings in the United States. This is an understandable concern considering the general neglect with which the Austrian Government has addressed restitution issues. However, in waiting to announce their claims until five days before the exhibition was scheduled to close and the paintings were to be sent on to Spain, the families apparently hoped to force the museum to act in their favor. It almost seems that the families wanted a legal battle. They must have realized that the Museum would not readily forsake its contractual obligation, and although the Commission for Art Recovery offered to create an international panel to mediate between the families and the Austrian Government, the families declined such assistance.

The families' chosen course of action had the benefit of side-stepping any significant dealings with the Austrian government. Indeed, Bondi asserted that his aunt had made attempts to retrieve the painting, "Portrait of Wally" several years earlier and had been rebuffed by the Austrian government. However the families' actions were not without risk. They delayed any steps toward resolving the crucial question of whether the paintings were in fact rightfully theirs, and they angered the Austrian government, probably making any future negotiations that much more difficult. In fact Leopold Foundation Director Klaus A. Schroeder responded to the grand jury action calling it "insulting" and "illegal." He also accused the Jewish claimants of having a "warlike mentality" and resorting to "coercive and underhanded methods."[18]

New York Museums and Galleries

New York's museums and galleries were quick to realize that the MoMA case could have serious consequences for all of them. Accordingly, several museums and galleries together submitted an *amici curia* brief during the Supreme Court proceeding. The brief expressed concern over the likely ramifications of a decision in favor of the District Attorney and the People of New York. A decision that allowed the DA to seize works

[18] Robinson.

based solely on the unsubstantiated claim of an individual would set a precedent whereby works of art on temporary loan from a foreign institution would never be considered wholly secure.

The case has also forced New York's museums to make the issue of Holocaust-era art loot a priority. Before the case hit the front pages, museums and art dealers could afford to ignore the issue. Now, however, New York museums have pledged to research the provenance of their permanent collections to ensure that they do not contain pieces that may rightfully belong to Jewish families. Additionally, Philippe De Montebello, the Director of the Metropolitan Museum of Art and the US Association of Art Museum Directors Task Force, has called on art museums to respond promptly to any and all claims by owners or heirs of allegedly confiscated art. Such matters, he asserted in a special report, should be resolved "in an equitable, appropriate, and mutually agreeable manner." He has also noted that mediation should be employed to facilitate this process of sorting out stolen art claims.[19] The report's recommendations are likely to be heeded because museums and galleries have an interest in ensuring that Holocaust-ear art claims are dealt with swiftly, before they appear in newspaper headlines.

In short, the museums and galleries of New York have an interest in taking a proactive stance toward the claims of Holocaust victims and their descendants, particularly now that the issue has received significant international attention. If museums fail to act, they risk damaging their combined image, and therefore potential donor prospects. Toward this end, the Metropolitan Museum of Art has begun the arduous process of reviewing the provenance of all works of art the Museum acquired after the war. The research entails "the systematic examination of indices, acquisition records, and entry cards, some of them written generations ago in now-fading ink," of over two million works of art.[20]

New York's museums and galleries also have an interest in taking the next step of seeking out those descendants of Holocaust victims who may not realize that they are heirs to Holocaust loot.

Robert S. Morgenthau - District Attorney

Robert S. Morgenthau's interest in this case was primarily a political one. By winning the case, he would have set a precedent that would empower him and future New York District Attorneys to seize works of art with the goal of returning them to Holocaust victims or their descendants. Morgenthau's willingness to take on this battle certainly gained him favor within Jewish populations in New York and beyond.

[19] Philippe de Montebello, Statement given during Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art. Washington Conference on Holocaust-Era Assets, Nov. 30-Dec. 3, 1998.
[20] De Montebello, p.556.

Nonetheless, it is not clear that such power would actually work to the ultimate advantage of Holocaust survivors and descendants. If the Leopold Foundation had not sent its collection of Schiele's works out on temporary exhibition, it is unlikely that the Reif family would have seen "Dead City III," recognized it, and put forward a claim. If museums decrease the number of temporary collections that they send to New York out of fear of seizure, not only will the museums lose out, but potential claimants would lose an opportunity to learn the whereabouts of a work of art that may have hung on their parlor wall at one time.

Austrian Government/ Leopold Foundation

The Austrian government's clear interest in this case was to see the two paintings, "Portrait of Wally" and "Dead City III," returned to Austria. It is can be debated whether or not the government also has an interest in addressing Holocaust restitution. While the Austrian government has made some effort to return works of art to their rightful Jewish owners, the effort has been seen by many as being purposely over-bureaucratic and difficult. In fact, the grueling restitution process has been seen by many as a way of punishing the Jews, as well as a way of keeping them from returning to Austria.[21]

In recent years, however, the Austrian government has become more forthright in addressing restitution issues. As previously noted, on January 14, 1998 (one week after the two Schiele paintings had been seized by the New York District Attorney), the Austrian Minister of Education, Elisabeth Gehrer initiated a process of provenance research for all transactions by Austrian Museums between 1938-1945.

Moreover, Austrian Judge Reimer Gradischnik has suggested that anyone who thinks the process slow or unjust should learn a bit about "how things work in Austria."[22] Although this response is wholly unsatisfying to those who would like to pursue restitution claims, particularly because Gradischnik was at the time of his remark the only judge for about 525 restitution cases, it is true that the Viennese are well known for their aversion to change. It is also true that the high-profile nature of the MoMA case has made it more difficult for the Austrian government to give restitution issues anything but the highest priority. As Metropolitan Museum Director De Montebello has stated, "The genie is, at last, out of the bottle, and no resistance, apathy, or silence can ever fit it back inside again."[23]

[21] Rathkolb. p. 6.
[22] Andrew Decker, "How Things Work in Austria," ARTnews 92 (Summer 1993): 198.
[23] De Montebello, p. 556.

Jewish Organizations

Although many Jewish organizations had a stake in the outcome of this case, two were directly connected to it: the World Jewish Congress and the United States Holocaust Museum. Interestingly, the two took somewhat different views of the DA's actions.

The World Jewish Congress' Commission for Art Recovery took the opinion that while the families may have legitimate claims, the Museum of Modern Art had an obligation to return the works of art to Austria. Ronald S. Lauder, former Ambassador to Austria and chairman of both the MoMA and the Commission for Art Recovery undoubtedly had a great deal to do with the development of this position. Not surprisingly, then, the Commission also decried the DA's decision to seize the paintings—a position that was made all the more strong by the fact that the seizure effectively sidetracked the possibility of working out a mediated solution between the families and the MoMA. As previously mentioned, the Commission had offered to oversee a mediation process, which would have helped build the reputation of the newly formed Commission as the appropriate forum for addressing and mediating Holocaust-era asset claims.

By contrast Marc Masurovsky, the director of the U.S. Holocaust Museum's Holocaust Art Restitution Project, applauded the DA's decision to seize the paintings saying that MoMA should have said it would hold onto the works and been more receptive to the families' claims. But Ori Z. Soltes, the director of the United States Holocaust Museum, took a less clear-cut stance. As a museum director he was troubled by the DA's action and acknowledged that the seizure "could have serious consequences if it deters art institutions that trust one another from lending their collections for exhibitions elsewhere."[24] He nonetheless expressed concern that the MoMA should have done more to honor the claims and that the DA effectively "took MoMA off the hook" when he seized the paintings.[25] In short, the Reif and Bondi claims put the US Holocaust Museum in a difficult position because it has interests both as a museum and as an organization that takes a particular interest in Holocaust issues.

International Council of Museums/ American Association of Museums

ICOM and AAM are both interested in assisting their member museums develop useful and enforceable policies. ICOM defines itself in Article 1 paragraph 1 of its statutes as "the international non-governmental organisation of museums and professional museum workers established to advance the interests of museology and other disciplines concerned with museum management and operations."[26]

[24] Robinson.
[25] Ibid
[26] ICOM Code of Professional Ethics, Section 1.1. http://www.icom.org/ethics.html. p. 1 of 16.

The objectives of ICOM, as defined in Article 3 paragraph 1 of its statutes, are to:

a) Encourage and support the establishment, development and professional management of museums of all kinds;
b) Advance knowledge and understanding of the nature, functions and role of museums in the service of society and of its development;
c) Organize co-operation and mutual assistance between museums and between professional museum workers in different countries;
d) Represent, support and advance the interests of professional museum workers of all kinds; and
e) Advance and disseminate knowledge in museology and other disciplines concerned with museum management and operations.[27]

Of particular interest is letter b), which acknowledges that museums have a special role to play in the "service of society and its development."

[27] Ibid, Section 1.2. p. 2 of 16.

Legal Analysis

The People of New York v. Museum of Modern Art

Judge Drager of the New York Supreme Court was the first to hear the People of New York v. Museum of Modern Art, the MoMA's legal challenge to the DA's seizure. While, he found in favor of the museum and quashed the subpoena, the Appellate Court subsequently overturned his decision. The final 6-1 decision by the New York Court of Appeals ruled in favor of the museum, which allowed the paintings to be returned to Austria (although, as previously noted, the US government then seized one of the two).

The case hinged on the interpretation of Section 12.03 of the New York Arts and Cultural Affairs Law:

> No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon any work of fine art while the same is enroute to or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition held under the auspices or supervision of any museum, college, university, or other nonprofit art gallery, institution or organization within any city or county of this state for any cultural, educational, charitable, or other purpose not conducted for profit to the exhibitor, nor shall such work of fine art be subject to attachment, seizure, levy or sale, for any cause whatever in the hands of the authorities of such exhibition or otherwise.[28]

The New York District Attorney's office chose to view the case as a criminal case and asserted that the museum was in possession of stolen property. The DA argued that Section 12.03 was only intended to apply to civil cases and should in no way inhibit the grand jury's powers in a criminal case. In fact, the forms of process referred to in the statute are all terms that relate exclusively to civil litigation (*i.e.,* "attachment," "execution," "sequestration," "replevin," "distress," "levied upon," "levy," "sale"). [29] Moreover, the statute makes no reference to subpoenas, or warrants, or to other forms of criminal procedure; the only word that could arguably be related to criminal procedure is "seizure," but in the context of the surrounding language, the DA argued, the meaning of this word was intended to relate to civil procedure. As explained in the DA's appellant brief, "No rule of construction . . . permits the segregation of a few words from their context and from all the rest of the section . . . for the purposes of construction."[30] The

[28] Brief for the Respondent. The People of the State of New York, Respondent - against - Museum of Modern Art, Defendant-Appellant. In re-application to quash grand jury subpoena duces tecum served on the Museum of Modern Art. Argued by Mark Dwyer, Assistant District Attorney, August 6, 1997(?). p. 2.
[29] Brief for the Respondent. The People of the State of New York, Respondent - against - Museum of Modern Art, Defendant-Appellant. In re-application to quash grand jury subpoena duces tecum served on the Museum of Modern Art. Argued by Mark Dwyer, Assistant District Attorney, August 6, 1997(?). p. 10.
[30] Ibid, p. 15. Matter of Albano v. Kirby, 36 N.Y.2d 526, 530 (1975)

DA further asserted that it seems unlikely that the drafter of Section 12.03 would make multiple references to the various types of civil procedure and then bring all forms of criminal procedure under the term "or any kind of seizure."

The MoMA argued that, according to the principles of statutory construction, there was no reason to believe that the original drafters of section 12.03 intended to specifically exclude criminal cases.

> A general law may, and frequently does, originate in some particular case or class of cases which is in the mind of the Legislature at the time, but, so long as it is expressed in general language, the courts cannot, in the absence of express restriction, limit its application to those cases, but must apply it to all cases that come within its terms and its general purpose and policy.[31]

Both parties agreed that the original incentive for Section 12.03 was the perceived abuse of a civil provisional remedy by a creditor to exploit a non-resident's loan of artwork to a museum in Buffalo.[32] Nonetheless, this does not necessarily also mean that the legislature intended to exclude criminal acts from falling under the jurisdiction of the law. In fact, the legislature drafted the law broadly rather than restricting it to situations similar to that which occasioned the original drafting. Hence the choice of the phrasing "any kind of seizure" and for "any cause whatever." The burden of proof was on the District Attorney to show that the original drafters actually meant to exclude criminal acts by virtue of their failing to include them.

The DA also argued that a subpoena does not constitute a seizure, even under criminal law. On this point, the DA cited Matter of Grand Jury Subpoenas, 72 N.Y.2d 307, 315, cert. denied, 488 U.S. 966 (1988).

> "A search and seizure is conducted abruptly, without advance notice, often with force or the threat of force. A subpoena, in contrast, remains at all times under the control and supervision of a judicial officer and may be challenged before compliance through a motion to quash. Moreover, the unannounced search and seizure of documents often results in serious social stigma . . . [T]ypically no stigma whatsoever attaches if [a subpoena] is enforced."[33]

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[31] Appellant's Reply Brief. The People of the State of New York, Respondent - against - Museum of Modern Art, Defendant-Appellant. In re-application to quash grand jury subpoena duces tecum served on the Museum of Modern Art. Argued by Evan B. Davis. August 16, 1999. P. 5. N.Y. Statutes ~ 114, commentary at 239 (McKinney 1971).
[32] Ibid, p. 7.
[33] Ibid, p. 13. Matter of Grand Jury Subpoenas, 72 N.Y.2d, 307, 315, cert. denied, 488 U.S. 966 (1988)

The DA maintained that even if "seizure" could somehow be deemed to include criminal process, it would only include warrants, not subpoenas. Counsel for the MoMA countered that the court's subpoena *duces tecum* effectuated seizure because it required the museum to appear in court with paintings that it was contractually obligated to return to Austria.

The DA also argued that Section 12.03 did not apply because the MoMA had not proved that the Leopold Foundation did not benefit from the exhibition—that the exhibit was conducted "not for profit." The DA sought a financial accounting of the exhibition and from this asserted that foundation had made a profit. The contract between the museum and the foundation obliged the museum to pay most of the expenses of the exhibition, which is standard practice in the art world. In addition, the museum agreed to pay the foundation $60,000 and a percentage of the catalog sales. The foundation's expenses amounted to between $70,000 and $75,000 USD.[34] The MoMA contended that this information was entirely unnecessary because the question of whether or not the exhibition was "conducted for profit" is one of intention, not accountancy.[35] In the MoMA's view, the loan of a collection from the Leopold Foundation, a non-profit cultural institution, to the Museum of Modern Art, a non-profit New York museum, was quite obviously "not conducted for profit" without regard to the specific expenses or reimbursements.[36]

The museums and galleries of New York, and perhaps of the world, breathed a collective sigh of relief when the Court of Appeals' decision was announced. A final decision in favor of the District Attorney would have set a precedent that could have proved to be very damaging to the arts institutions of New York. Moreover, had the court ultimately allowed the DA's seizure of the Schiele paintings, the ramifications of this case would have been huge because the DA's power to issue subpoenas is not restricted to investigations of stolen property. If the court had found in favor of the DA, then any district attorney or assistant, anywhere in the state, would be empowered to seize by subpoena works of art that he or she suspects to be evidence of a violation of some penal law provision. This would include, for example, provisions that restrict the display of obscene or indecent material.[37] No foreign museum or collector has any reason to want to risk harassment over potentially controversial works of art.

Unfortunately, the DA's actions, despite the MoMA's court victory, have already done at least some damage. In fact, just one month after the seizure of the Schiele paintings, two lenders backed out of an agreement to loan paintings to the museum for a Pierre Bonnard retrospective. One of the lenders wrote to the exhibition curator saying in part: "The news

[34] Brief for the Respondent, p. 39-40.
[35] Appellant's Reply Brief, p. 13.
[36] Ibid, p. 13.
[37] Appellant's Reply Brief. The People of the State of New York, Respondent - against - Museum of Modern Art, Defendant-Appellant. In re-application to quash grand jury subpoena duces tecum served on the Museum of Modern Art. Argued by Evan B. Davis. August 16, 1999. p. 11.

of the arrest of the two Schiele paintings in your museum made me very anxious and unsure, and you certainly will understand that I'm not in a position to lend you my painting under such circumstances."[38]

It is impossible to determine how many other lenders have foregone lending paintings or collections for the same reason, without specifically saying so. Many collectors simply do not know the complete history of ownership of all their pieces and therefore do not know if some may have been stolen at one time—during the Holocaust or otherwise.

Moreover, if the DA of New York were allowed to seize a painting every time someone recognized, or thought that they recognized, a piece, the New York art institutions would have a major public relations and legal issue on their hands. Indeed, a claim can be made by anyone—even someone who has only heard descriptions of a painting from an aging relative or someone who has only an old, yellowing photograph of a work to substantiate a claim—and the number of claims are in fact rising.

The "Immunity from Seizure Act"

The whole MoMA fiasco might have been avoided if the museum had initially sought federal protection for the paintings under the "Immunity from Seizure Act," which can be applied to art works "imported into the United States from any foreign country . . . for temporary exhibition or display" if the U.S. Information Agency determines that the artwork, or collection, is of "cultural significance" before it is imported.[39] However MoMA has rarely attempted to navigate the bureaucracy involved in acquiring this protection because it is time consuming and because it believed broader protection was automatically available under New York state law—except for the fact that it does not protect paintings from federal seizure.

Since the beginning of this case, the MoMA has chosen to apply for immunity from seizure protection for all of its temporary exhibitions from outside the United States. This is both because of its own desire to avoid a repeat of the Schiele seizure, and because lenders are requiring it before they agree to send a temporary exhibition. However this protection may not be enough to allay lenders' fear of the whims of US law enforcement and would-be claimants.

[38] Judith H. Dobrzynski, "Lenders Pull Two Bonnards from a Show at the Modern," The New York Times, April 29, 1998, Section E; Page 1; Column 1.
[39] Entertainment Law Reporter, Recent Cases, Vol. 21, No. 10, March, 2000.

International Legal Issues

There are large differences between individual countries' laws relating to stolen art; they differ in their treatment of property rights, good faith purchases, statutes of limitations, adjudication means, and cost accounting methods, among other things.

In the United Kingdom, for example, some museums have no powers at all to dispose of works in their collection, making it difficult for a museum to take steps to restitute a painting.[40] In the UK, all national museums and galleries are founded by acts of Parliament, and Parliament dictates what these institutions can and cannot do. Because UK museums are also charities, the charity law further restricts them. Restitution matters in the UK are also complicated by a legal presumption that good title to a work of art passes to the possessor if the possessor acquired the work in good faith and the appropriate limitation period has elapsed, which is currently six years. The presumption is particularly bothersome to those concerned with restitution because the UK was never occupied during the war, and accordingly, it is more than likely that UK museums were a destination for Holocaust loot.

Political change within a country can also complicate restitution claims. When, for example, Martha Nierenberg made a claim that involved paintings in Budapest's Museum of Fine Arts and National Museum, the new democratic government of Hungary convened a committee of experts that, after lengthy deliberations, decided the paintings did in fact belong to Nierenberger. By this time, however, a new government had come to power in Hungary. When she approached it with the committee's findings and a proposal to settle the claim, it was unwilling to accept the previous government's findings and instead required her to start the process over again. She was forced to seek legal counsel and file suit in Hungary, but still the Hungarian government continues to delay her request even though Hungarian law supports her right to possession of the paintings.[41]

These two situations are not unique. Every country has its own unique laws and political issues that make restitution claims more or less easy. In general, however, the situation is particularly difficult in Eastern Europe where the many political regimes are particularly unstable. There is a much stronger assumption in favor of original owners in countries that have signed the Unidroit convention.[42]

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[40] Statement of Sharon Page, Tate Gallery, Before the House Committee on Banking and Financial Services Hearing on Nazi-Looted Assets, February 10, 2000, www.house.gov/banking/21000pag.htm. p. 4 of 6.
[41] Statement of Martha Nierenberger, Before the House Committee on Banking and Financial Services Hearing on Nazi-Looted Assets, February 10, 2000, www.house.gov/banking/21000nie.htm.
[42] Ibid, p. 3 of 6.

The Unidroit Convention on Stolen or Illegally Exported Cultural Objects

Unidroit, the International Institute for the Unification of Private Law, is an independent intergovernmental organization that was formed to "examine ways of harmonizing and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law."[43] It became involved with the issue of stolen art when UNESCO asked for its assistance and input on the possibility of amending Article 7 (b) (ii) of the 1970 UNESCO Convention. The problem with this Article, and with the entire 1970 Convention more broadly, is that it only applies to objects stolen from a museum or from a religious or secular public monument or similar institution; it completely disregards the rights of individual, private claimants.

UNESCO ultimately decided that instead of amending the 1970 Convention, it would commission Unidroit to create a new convention that would address two of the most significant private law aspects of the protection of cultural property: the acquisition in good faith of cultural objects *a non domino* and the principles of civil law affecting the transfer of ownership of cultural property.[44]

The resulting "Unidroit Convention on Stolen or Illegally Exported Cultural Objects" attempts to unify national laws regarding stolen cultural objects. Opened to signature in 1995, the Convention does not specifically address the issue of art loans or Holocaust restitution, but its provisions, nonetheless, would be useful in settling such claims. The Convention calls for:

- giving priority to the dispossessed owner as opposed to the purchaser, even if that purchaser acquired the piece in "good faith,"
- specifying a limitation period for the bringing of actions under the Convention for the return of a stolen object, and
- providing compensation to the possessor of a stolen object."[45]

The basic philosophy of the Convention is laid out in Article 3 (1): "the possessor of a cultural object which has been stolen shall return it."[46] This simple statement is an important innovation for those countries that have traditionally provided protection to a good faith purchaser. This includes countries in Europe, for example the UK, as noted

[43] Marina Schneider, The Unidroit Convention on Stolen or Illegally Exported Cultural Objects,
[44] Marina Schneider, Analysis of the Unidroit Convention on Stolen or Illegally Exported Cultural Property, Unidroit, Rome, November 28, 1995, p. 2 of 14.
[45] Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Rome, June 24, 1995, Chapter II, Article 4 (1).
[46] Ibid, Chapter 2, Article 3 (1). The Convention defines "cultural object" as objects that, "on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention." Ibid, Chapter 1, Article 2.

above, and Italy, which only acknowledges purchasers' rights.[47] This provision has made it difficult for countries that have laws that favor purchasers to sign the Convention.

The Convention's specification of a limitation period is another area of concern for many countries. Some have argued against all limitation periods on the grounds that they would legitimize situations that resulted from illegal acts. Others insist that a time limit, especially if it were relatively brief, would encourage potential claimants to act quickly and avoid the disturbance of a long established possession.[48] In any event, the Unidroit Convention includes two limitation periods. The first is a short period of three years that begins as soon as the claimant comes to know the location and possessor of the cultural object in question; all claims must be made during these three years. The second limitation period is an absolute period of fifty years from the time of theft, however the Convention also grants exception to this rule for any "Contracting State" that wishes to declare a longer time limit.[49] Because of this absolute time limit, Holocaust loot is not covered by the Convention.

The inclusion of a provision concerning compensation for a purchaser of stolen art is also considered to be very innovative, and hence highly controversial. The Convention states that "the possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knows nor ought to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object."[50] Because it is not fair to make the claimant, especially if it is an individual, pay the many thousands, or millions, of dollars that a painting may be worth, the Convention also provides that "reasonable effort shall be made to have the person who transferred the object . . . pay the compensation."[51]

The Unidroit Convention provides the basis on which countries can unify their laws regarding stolen art purchases in favor of those who have been deprived of their works. Unfortunately, because of the wide differences in opinion between "exporting" and "importing" countries as to the breadth of the Convention, many countries have not yet signed and ratified it.

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[47] If a painting is stolen in Germany, transported to Italy for purchase, a claimant has no right to restitution under Italian law, even if the painting is then transferred to another purchaser in France. If one of the Schiele paintings had been transferred to Italy and purchased and then sold to Dr. Leopold, who then sold his collection to the Austrian Government, it would be very difficult for the claimants to retrieve that painting because Italian law would have made the Italian purchaser of that painting its lawful owner.
[48] Marina Schneider, Analysis of the Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Unidroit, Rome, 1995, p. 6 of 14.
[49] Unidroit Convention, Ch. 2, Art. 3 (5).
[50] Ibid, Ch. 2, Art. 4 (1).
[51] Ibid, Ch. 2, Art. 4 (2).

Commercial Analysis

The MoMA case raised at least three substantial financial issues for museums and galleries:

Loss of Temporary Exhibitions/Loans

As previously noted, just one month after the DA seized the Schiele paintings, two individuals backed out of agreements to loan paintings to the MoMA, and one of the lenders specified the seizure as the reason for the decision. New York's museums and galleries would be dealt a severe blow if numerous lenders were to take similar positions and stop allowing their pieces to travel to New York. The loss of temporary exhibitions would mean lost revenues and probably decreased fundraising possibilities. Museums count on temporary exhibitions in order to hold special fundraisers that bring in new donors and show established donors that they are making a good investment. The funds raised by temporary exhibits are crucial not only for future temporary exhibits, but also the acquisition and maintenance of permanent collection pieces.

Loss of Jewish and Other Donors

The simple truth is that the issue of Holocaust-era stolen art, because of its connection to the horrifyingly systematic extermination of the Jews, elicits a response that other forms of art theft do not. The Federal Magistrate and the US Customs Service did not seize anything from a Boston Museum of Fine Art exhibit of Guatemalan artifacts--artifacts that had looted from Guatemala. The government didn't even respond when the museum refused to even consider the possibility of returning the pieces to Guatemala.

Jews and others, however, remain deeply concerned about restitution of Holocaust art. If a significant number of donors were to pull their financial support from the MoMA in protest over the handling of the Schiele claims (or other potential claims), the impact on the museum's finances would be significant.

The Cost of Provenance Research

By prompting museums and galleries internationally to embark on an intensive and ambitious process of provenance research, the MoMA case has created a new financial burden for the art world. Indeed, provenance research is extremely costly; it involves highly labor intensive, painstaking, and time-consuming work on the part of multi-lingual curators and their assistants. Researchers must first determine if there is a questionable period in a piece's ownership history between 1933 and 1945. Then, where such gaps are found, researchers set about trying to fill them. Of course, such research is extremely difficult, if not impossible, for a temporary exhibit's destination museum. Instead, lenders

must be called upon to provide information, whether that be one museum or several individual collectors. The burden is especially large for small and mid-size museums. As one curator of a mid-sized museum putting together an international exhibition explains:

> "We have been putting a great deal of energy into the issue of provenance. But we are a small museum and have no resources to hire additional qualified hands to do the intensive research that may be warranted. For our recent exhibition we devoted extraordinary time, 16 months, and effort to determining that neither domestic nor international loans were likely to be subject to claims. Our immunity from judicial seizure application was successful but required the peculiar Catch-22 that we guarantee there was no possibility of competing claims of ownership. If we could provide such assurance, we wouldn't need the immunity. There were works for which we simply could not get information regarding crucial years."[52]

According to MoMA Director Glenn Lowry, the museum has two full-time staff, plus some part-time staff, working on provenance research virtually non-stop. Some of the work is parsed out to some of the other 42 curators, depending upon their expertise. But the museum (like others) does not have a specific line-item budget for this work. It comes out of the budget allocated for curatorial work, which has not been increased to reflect this added workload.

There are still a large number of works for which little to no information is available. Over the past 60 years, a great deal of information has been lost, and that which has not been might be buried in archives and government documents that are possibly not yet declassified. Therefore, even if museums do as much provenance research as possible, claims will likely still be made, and museums will need to be prepared to take on the research and legal costs involved in sorting them out.

[52] Statement by Lyndel King, Director of the Frederick R. Weisman Art Museum, Before the House Committee on Banking and Financial Services Hearing on Nazi-Looted Assets, February 10, 2000, www.house.gov/banking/21000kin.htm. p. 2 of 3.

Recommendations

This case had the unintended consequence of forcing the issue of Holocaust art restitution into newspaper headlines around the world. In order to ensure that lenders will continue to allow their art collections to travel overseas, the art world will need to take proactive steps to ensure that future claims are addressed in a manner that accounts for the interests of all stakeholders: claimants, destination museums and galleries, and lenders.

Toward this end, the international art community should take the following actions:

- Museum policies should be amended to include policies for responding to stolen art claims;
- The U.S. and key European countries should ratify the Unidroit Convention on Stolen or Illegally Exported Cultural Objects; and
- The international community should develop a mutually agreed dispute settlement mechanism for acting on stolen art claims.
- A task force should be formed to put together a travelling exhibition that would contain works of art of questionable provenance and works that have been restituted to Jewish families.

This is an ambitious plan of action, but now is the best time to act in order to aid Holocaust victims and their descendants in claiming their possessions, as well as to help museums deal effectively with these issues when they arise.

Mediation Clause

Mediation provides an opportunity to resolve an issue to the benefit of all parties. Mediation is usually significantly more effective than litigation; it is less time consuming and costly; and it encourages parties to work together to reach a solution rather than pitting them against one another. Unlike litigation, or even arbitration, mediation offers the prospect of something more than an all or nothing result, which is particularly important in cases like this one in which emotions run high. Mediation also offers confidentiality, which is important to museums because they do not want to be seen in the press as anything less than fully sympathetic towards victims of art theft generally, let alone Holocaust survivors or descendents.

By including mediation clauses in their contractual loan agreements, art institutions can help encourage potential claimants to become part of a mediation process. Because potential claimants would not be party to the loan agreement, they would not be bound to any mediated agreement. Nonetheless, their participation in a mediation process ensures that their interests will be at least acknowledged, if not fully addressed.

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In the Schiele case, for example, if the claimants, MoMA, and the Leopold Foundation had agreed to seek mediation early on rather than immediately seeking legal counsel, the dispute would likely have been solved relatively quickly. It is likely that the fact that the people making the claims did not even qualify as heirs would have been determined quickly rather than only after almost two years of litigation.

Unidroit Convention on Stolen or Illegally Exported Cultural Objects

Of the 22 countries that have ratified the Convention, only Lithuania, Hungary, and Italy could be considered major art "importing" countries that have a stake in Holocaust-era restitution issues. France has yet to ratify the Convention, and the United States, Germany and the UK have yet to sign, let alone ratify, it. Only when all major art importing countries adopt the Convention will there be an effective foundation for the resolution of disputes involving stolen art, including Holocaust-era looted art.

Resistance to the Unidroit Convention

There are a number of key reasons why the Unidroit Convention has met with international resistance. These include 1) issues between what are considered "export" or "art-rich" nations and "import" or "destination" nations, 2) issues between the developed countries over sovereignty and the differences between common law or civil law systems, and 3) issues within the developed countries between art dealers, museums, and auction houses and those trying to create a transparent system of transactions for the art market. Unidroit Convention drafters attempted to find a balance between these interests, yet most interested parties are still not willing to support the Convention.

"Import" vs. "Export" Nations

The majority of countries that have signed and ratified the UNESCO and Unidroit Conventions are considered art "exporting" countries. Most of these are also considered developing countries, which tend to have much richer archaeological resources than most of the developed countries. Unfortunately they do not have the funding to adequately protect their archaeological sites or enforce the cultural property laws that they have passed.

Strategy

In the United States:

Legislative Strategy

The Schiele case brought a great deal of attention to the issue of Holocaust-era loot. In order to capitalize on this attention, as well as the momentum created by the Washington Conference on Holocaust-Era Assets, U.S. museums should take the following steps to persuade Congress to support adoption of the Unidroit Convention:

1) Write letters to sympathetic members of Congress, including:

- Senator Daniel P. Moynihan (D-NY)
- Senator Charles Schumer (D-NY)
- Representative Carolyn B. Maloney (D-NY)
- Representative James A. Leach (R-Iowa)
- Representative John J. LaFalce (D-NY)
- Representative Ken Bentsen (D-TX)
- Representative Nita M. Lowey (D-NY)
- Representative Michael P. Forbes (R-NY)

These members have expressed interest in Holocaust loot restitution, some because they are from New York, but others because of their membership on the House Committee on Banking and Financial Services, which heard testimony on February 9 and 10, 2000, regarding the restitution of Holocaust assets. (Testimony was given by Earl Powell, Director, National Gallery of Art in Washington D.C., Glenn Lowry, Director, Museum of Modern Art in New York, Lyndel King, Director, Weisman Art Museum in Minneapolis, Ron Tauber, President, Art Loss Register, Amb. Ronald Lauder, Chairman, Commission for Art Recovery, and Amb. Stuart Eizenstat, Deputy Secretary, Department of the Treasury.)

Other government representatives who should be lobbied include:

- Ambassador Stuart E. Eizenstat
- Ambassador Ronald S. Lauder

All of the above mentioned members of Congress, as well as Amb. Eizenstat and former Amb. Lauder, should be visited by museum directors and should receive lobby packets that include a white paper that explains the importance of ratifying the Unidroit Convention.

Media Strategy

In order to repair some of the damage that was done by the negative media coverage of the Schiele case, US museums need to mount a public relations campaign designed to convince the public that they are willing to do what needs to be done in order solve Holocaust restitution cases. As the NEA again comes under fire, this would be a positive image builder for the US arts community. To this end, museums should endeavor to get newspaper and magazine articles written about their provenance research and efforts to contact potential heirs. Additionally, they should seek coverage of the Unidroit Convention and its importance to both museums and claimants.

Press representatives that should be contacted include:

1) Arts and Entertainment Journalists for major newspapers:
- Judith H. Dobrzynski at The New York Times
- Walter V. Robinson at The Boston Globe

2) Journalists at Major Art Magazines
- Andrew Decker at ARTnews magazine
- Arts & Antiquities

Creation of Dispute Settlement Mechanism

One of the concerns that has repeatedly been expressed is the lack of an internationally, or even nationally, recognized dispute settlement mechanism to mediate claims.

The newly formed Commission for Art Recovery of the World Jewish Congress has successfully mediated many cases within the past two years for claimants of Holocaust-era works of art. Despite this positive development, however, the Commission, ICOM, and UNESCO should work together to create an international recognized dispute settlement mechanism for art claims—a mechanism that would provide mediation to any victim of stolen art.