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Carrie Betts

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ENFORCEMENT OF FOREIGN CULTURAL PATRIMONY LAWS IN U.S. COURTS: LESSONS FOR MUSEUMS FROM THE GETTY TRIAL AND CULTURAL PARTNERSHIP AGREEMENTS OF 2006

*Carrie Betts**

"Until now we have dreamed, we have slept. Now it is time to wake up."
- Maurizio Fiorelli, Italian Prosecutor in the Getty trial.¹

I. INTRODUCTION

Until the former curator of the J. Paul Getty Museum, Marion True, was indicted on criminal charges and hauled into the *Tribunale Penale di Roma* for trafficking in stolen antiquities and criminal associations, the modern international trade in looted antiquities barely registered on the radars of most major media outlets. In the wake of the ongoing trial of True in Rome, museums across the U.S. are slowly realizing the reality of their own vulnerability and are seeking new ways to avoid criminal and civil prosecution both in the U.S. and in the courts of foreign states. Since a number of sources that detail the enforcement and policies behind U.S. treaty obligations and foreign cultural patrimony laws are readily available, this comment will focus on the practical mechanisms American museums are developing to avoid entanglement in an international trade of looted artifacts that reaches from open-air street vendors in underdeveloped nations around the world to the halls of Sotheby's. This paper outlines the current civil and criminal mechanisms by which museums can be prosecuted for harboring stolen artifacts in their collections. It also addresses the model partnership agreements that larger museums are entering into with source-rich countries, in addition to the revision of their governance and acquisitions policies, in

* JD Candidate, University of South Carolina School of Law 2008; M.Sc. Religious Studies 2005, University of Edinburgh, Scotland; B.A. Religious Studies 2003, University of South Carolina. I thank the Faculty of the University of South Carolina School of Law Library, and in particular Stacy Etheredge, for all of their research assistance. I would also like to thank the South Carolina State Museum and its unsung heroes for the inspiration and insights acquired during my time as an assistant within its public relations department.

¹ Suzan Mazur, *Interview: Italy's Antiquities Prosecutor Fiorelli*, Scoop Independent News, 1 (Dec. 28, 2006), available at <http://www.scoop.co.nz/stories/HL0612/S00370.htm> (quoting Maurizio Fiorelli).

order to bring them into alignment with applicable federal and international laws. Since many smaller museums are unaware of the extent to which federal law can impact their operations, this comment seeks to offer suggestions for the re-visitation and revision of board of directors' ethics, governance, and acquisitions policies by looking at the recent commentary of international art law scholars and organizations.

Part II will briefly introduce the reader to the background and current status of the trial of Marion True in Rome as a window into the centuries-old international trade in looted artifacts, relevant terminology, and current issues. Examining the available federal and state causes of action that foreign states can assert against museum officials in the U.S., Part III outlines the basic provisions and drawbacks of the National Stolen Property Act and the Cultural Property Implementation Act, as well as the utilization of replevin actions in state courts. Last year, the art world witnessed the advent of formal adoption of cultural partnership agreements between U.S. museums and foreign countries concerning the restitution of unprovenanced artifacts and the institution of source-country loan programs. Thus, Part IV discusses the negotiations and implementations of some of those from within the past year. In conclusion, Part V draws from commentators and practitioners to offer suggestions to museums with budgets a fraction of the size of larger institutions.

II. THE GETTY TRIAL

In part, the outcome of trial of Marion True in Rome, Italy turns on the definitions and requirements of terms basic to the international art community, as well as whether or not True and, by association, the Getty Trust violated these basic legal concepts. Central to all controversies surrounding the acquisition of antiquities by either public institutions or private actors is the issue of provenance. Provenance is the lineage of a particular piece of art, traced back through the chain of title to the original creator, with proof emanating from "transfer of ownership and possession, location, publication, reproduction, and display."¹ The purpose of provenance research is to determine true ownership, authenticity, prior condition and status, and history of restoration.² Despite its centrality in the art world, no uniform rule or custom, or usage of the trade, exists to codify either the precise elements of

¹ JESSICA L. DARRABY, ART, ARTIFACT, AND ARCHITECTURE LAW § 2:53 (Thompson West 2006). This source has been cited extensively in this comment as a basis for understanding the legal underpinnings of the art world and, as the foremost, up-to-date authority in the field, should be consulted for further understanding of the lesser-known complexities in this field of law.

² *Id.*

provenance or a standard for how provenance research should be conducted by museums, traders, or other purchasers.³ Without a concrete standard, there exists a wide variety of opinions on how to deal with gaps in ownership records, how far back one must trace to declare clear title in the object, and the appropriate means by which to publicly disclose the provenance of recently acquired objects.⁴

For owners seeking the return of stolen property after the statute of limitations has expired, due diligence in the art world is determined by the “nature and value of the property,” and inquiries through online databases, law enforcement authorities, traders, and cultural institutions have been determinative in finding that an owner’s search was persistent, continuous, and through “multiple channels of communication.”⁵

Countries have created cultural patrimony laws “to vest in the sovereign state title of objects like antiquities, historic, religious and artistic objects,” even if they lack actual possession of the artifacts, which has enabled them to make assertions of rightful ownership and restitution in the courts of foreign countries.⁶ The legal effect of these blanket assertions have been contested and are subject to considerations of whether the government has made a “clear and unequivocal declaration of ownership that survives translation,” as well as whether the substantive penalties and procedures are worded to meet “basic standards of due process and notice.”⁷ Otherwise, the Act of State doctrine and Federal Rule of Civil Procedure 44.1 controls in absence of a prevailing jurisdictional statute; American courts will decide the assertion of the controlling effect of the foreign law as a matter of law and will not conduct an independent examination into the validity of the foreign cultural patrimony law itself.⁸

While some court documents apparently have been leaked to the media, it is customary practice in Italy that trial court records are not made public until the case goes up on appeal. Thus, this comment pieces together a brief narrative of the Getty trial from publicly available resources. The criminal trial of Marion True, former curator of antiquities at the J. Paul Getty Museum, and Robert Hecht, an American art dealer based in Paris, began on November 16, 2005 and has lasted over two years given the Italian standard of

³ *Id.*

⁴ *Id.*

⁵ *Id.* at § 2:60.

⁶ *Id.* at § 6:120.

⁷ *Id.* (quoting *U.S. v. McClain*, 593 F.2d 658, 670-671 (5th Cir. 1979)).

⁸ *Id.* at § 6:125-6, 128.

limiting court appearances to once or twice a month.⁹ True and Hecht have been charged by Paolo Giorgio Ferri, chief Italian prosecutor on the case in Rome, with conspiracy to commit a crime and receipt of stolen goods believed to be the result of a crime. Conviction could result in imprisonment for two to eight years and a maximum fine of ten thousand euros.¹⁰

While both defendants deny all wrongdoing and True's Italian defense lawyer, Franco Coppi, maintains that True received the objects in good faith, the only issue that Ferri must prove to convict True is that the objects in question came from Italian soil.¹¹ Under Italy's cultural patrimony laws, once an artifact's Italian heritage and lack of authorization to leave the country is proven, nothing more is needed to obtain a conviction. Under modern cultural patrimony laws, no institution or person may possess an artifact that has been illegally obtained in violation of U.S. law or treaty obligations, regardless of good faith.¹² The primary evidence against True comes from a 1995 raid by Swiss and Italian authorities on the Freeport, Geneva warehouse leased by the antiquities dealer Giacomo Medici and subsequent raid on Robert Hecht's Paris apartment in 2001.¹³ Both raids produced significant written and photographic evidence supporting allegations that True knowingly recommended illicitly-obtained artifacts to the Getty directors for purchase.¹⁴ Confidential documents leaked from the Getty since the commencement of trial conclude that the museum knowingly purchased illegal artifacts from illicit dealers, as well as laundered artifacts through private collections since at least 1985.¹⁵ The Getty allegedly was able to hide these criminal associations behind their 1995 acquisitions policy, introduced by True, whereby "proposed acquisitions must come from established, well-documented (i.e. published) collections," otherwise known as provenance-by-publication.¹⁶ While seemingly a more exacting standard than their prior policy of demanding dealers' assurances as to title, provenance-by-publication has been criticized as "an unreliable market informant" whose efficacy depends solely on "what was published, by whom, how it was published, and

⁹ PETER WATSON & CECELIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES—FROM ITALY'S TOMB RAIDERS TO THE WORLD'S GREATEST MUSEUMS* 284 (PublicAffairs 2006); Jessica L. Darraby, *To Have & To Hold: A Global Antiquities Scandal Exposes Flawed Acquisitions Policies at America's Elite Museums*, CALIFORNIA LAWYER, May 2006, at 22.

¹⁰ Darraby, *supra* note 10, at 22.

¹¹ *Id.* at 25-26.

¹² *Id.* at 27.

¹³ *Id.* at 26.

¹⁴ Andrew L. Slayman, *The Trial in Rome*, *ARCHAEOLOGY*, February 6, 2006, available at <http://www.archaeology.org/online/features/italytrial/index.html>.

¹⁵ WATSON & TODESCHINI, *supra* note 10, at 284.

¹⁶ Darraby, *supra* note 10, at 24.

to whom publication was disseminated.”¹⁷ Ultimately, the policy fails because it lacks a mandate to determine an object’s original discovery location, or its *provenience*, which is a central factor in deciding cultural patrimony claims.¹⁸

In October 2005, True resigned from her position at the Getty after it came to light that in 1995 she had accepted loans to facilitate her purchase of a villa on the Greek island of Paros from the business partner of an antiquities dealer that the Getty had dealings with and from another private collector only days after the museum had agreed to purchase that collector’s valuable collection of antiquities.¹⁹ While the Getty had known of the loans since 2002, both loans violated the Getty’s own conflict-of-interest rules and the American Association of Museum’s code of ethics, which prohibits accepting loans from any individual or entity doing business with the museum.²⁰ Additionally, the wife of the before-mentioned private collector maintained a position on the Getty board from 2001 until 2006, resigning in the wake of True’s resignation just days before her and her husband’s collection debuted at the Getty’s Villa museum re-opening.²¹

Currently, the trial of Marion True and Robert Hecht resumed in Italy on January 18, 2007.²² True appeared in court after her release from a Greek prison on a ten thousand pound bail after the Greek government arrested her on similar charges.²³ In November 2007, Greece dropped charges against True for illegally obtaining an antique gold funeral wreath when a three-judge panel ruled that the statute of limitations had expired.²⁴ Earlier in March, the Getty had entered into a reciprocity agreement with Greece, returning the wreath in exchange for loans of antiquities of comparable value.²⁵ However, True still faces other charges in Greece in connection with two dozen Greek antiquities found during a 2006 raid on her home on the island of Paros.²⁶

¹⁷ *Id.* at 24-25.

¹⁸ *Id.* at 25

¹⁹ Slayman, *supra* note 15.

²⁰ Darraby, *supra* note 10, at 28.

²¹ *Id.*

²² Malcolm Moore, *Italy Campaigns for antiquities in Getty trial*, TELEGRAPH, Jan. 18, 2007, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/01/17/wgetty17.xml>.

²³ *Id.*

²⁴ *Greece drops charges against Getty curator over looted golden wreath*, CBC NEWS, Nov. 27, 2007, available at <http://www.cbc.ca/world/story/2007/11/27/true-greece-court.html>

²⁵ *Id.*

²⁶ *Id.*

In a recently leaked letter from True to the Getty Trust, True accused the museum of letting her take the full blame for the controversial Italian acquisitions, despite the fact that museum officials retained final approval powers in all purchases and were fully aware of the possibility that some of their acquisitions could be the result of illegal excavations.²⁷ The Getty is paying for True's defense in both Italy and Greece and, while arguing that she has been unfairly singled out in the art world, has not publicly declared her innocence.²⁸ On July 1, 2007, Dr. Karol Wight replaced Marion True as Curator of Antiquities at the Getty Museum.²⁹ Wight, who has spent her entire career at the Getty and has been acting curator since True's departure, has been involved in the Getty's negotiations with Italy while continuing to expand the Getty's collections under stringent provenance standards.³⁰

III. U.S. Enforcement of Foreign Cultural Patrimony Laws

The following is a very brief overview of the causes of action available to foreign states seeking to enforce their own cultural patrimony laws in American courts for the return of stolen artifacts that are within the U.S. In this context, not covered but noted are the ways by which these and other laws have been used to restore works of art stolen during the Nazi era and the United States' obligation to protect World Heritage Sites.³¹

The National Stolen Property Act (NSPA) makes it a federal criminal offense, subject to fines and/or maximum ten years imprisonment, to transport or aid in the transport through interstate or foreign commerce any goods worth

²⁷ Jason Flech and Ralph Frammolino, *Getty lets her take fall, ex-curator says*, LOS ANGELES TIMES, Dec. 29, 2006, available at <http://www.latimes.com/news/local/la-me-true29dec29,0,3427365.story?coll=la-home-loca>.

²⁸ *Id.*

²⁹ Press Release, The J. Paul Getty Trust, Dr. Karol Wright Named Curator of Antiquities at the J. Paul Getty Museum (Jun. 20, 2007), available at http://www.getty.edu/news/press/center/karol_wight_release_062007.html.

³⁰ Randy Kennedy, *Collecting Antiquities, Cautiously, at the Getty*, N.Y. TIMES, June 26, 2007, at E1.

³¹ Cal. Civ. Proc. Code 354.3(c); National Historic Preservation Act, 16 U.S.C. 470a-2. The purpose of the Act was "to provide a mechanism by which adverse effects of federal undertakings on historically significant properties are assessed and mitigated," and expanded to an international level when the U.S. signed the 1972 UNESCO Convention on the Protection of the World Cultural and Natural Heritage "to avoid or mitigate any harmful effects cause to a world heritage site or to a historic site that is listed on another country's equivalent of the national register," Patty Gerstenblith and Bonnie Czeglédi, *International Cultural Property*, 40 INT'L LAW 441, 451 (2006).

five thousand dollars or more and which are known to be stolen, converted, or fraudulently obtained.³²

The Act lacks a definition for “stolen,” but has been interpreted by courts broadly and in accordance with its common law definition under the *McClain* Doctrine.³³ Unphased by the lack of universal definition of “stolen” under common law, in 1977 the Fifth Circuit decided in *United States v. McClain* (*McClain I*) that the term should be construed broadly so as to meet the object and purpose of the NSPA to protect owners attempting to recover stolen property.³⁴ In 1979, the Fifth Circuit continued in *United States v. McClain* (*McClain II*) to remove any doubt that they intended the obstacles that a foreign state faced in enforcement of their cultural patrimony laws to be minimal, so long as those foreign laws were sufficiently clear on which objects were to be protected and when those objects would be considered by the foreign court as “stolen.”³⁵

Since *McClain II*, courts have commonly held that in order to be successful in its suit, a foreign state must establish the following with regards to their stolen artifact claims: that the state has national ownership over the object; that the foreign state’s cultural patrimony laws provide sufficient notice of the consequences of violation; that the object was taken after the foreign state’s laws went into effect; and that the prosecution has the burden of proving the defendant’s knowledge of the source country’s claim of rightful possession.³⁶

The *McClain* doctrine was affirmed by the Second Circuit in *United States v. Schultz*, where the Court held that the object and purpose of the NSPA dictated the application of foreign cultural patrimony laws. The *Schultz* decision also stood for the proposition that application of the NSPA was not preempted by a simultaneous prosecution for civil offenses under the Cultural Property Implementation Act (CPIA).³⁷ Further, when a party is subjected to prosecution under both of these statutes, the courts “are capable of evaluating foreign patrimony laws to determine whether their language and enforcement indicate that they are intended to assert true ownership of certain property, or

³² 18 U.S.C. § 2311 et seq., § 2314 (1934) (amended 2005).

³³ *Id.* at § 2311; Adam Goldberg, Comment, *Reaffirming McClain: The National Stolen Property Act and the Abiding Trade in Looted Cultural Objects*, 53 UCLA L. REV. 1031 (2006).

³⁴ *U.S. v. McClain*, 545 F.2d 988, 994-995 (5th Cir. 1977).

³⁵ *U.S. v. McClain*, 593 F.2d 658, 671 (5th Cir. 1979).

³⁶ Goldberg, *supra* note 34, at 1042.

³⁷ *United States v. Schultz*, 33 F.3d 393, 408-410 (2d Ct. App. 2003).

merely to restrict the export of that property,” when deciding whether the NSPA or the CPIA applies to a particular claim within a cause of action.³⁸

The CPIA is the result of Congress’s execution of U.S. treaty obligations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (hereinafter 1970 UNESCO Convention).³⁹ Through the CPIA, the U.S. cooperated with signatory nations by implementing import restrictions on certain categories of archeological and ethnological material.⁴⁰ Section 2602(a)(1) describes the conditions that must be met before the U.S., under executive authority, will impose import restrictions on cultural artifacts.⁴¹ In general, the pillaging must have placed the nation’s cultural patrimony in jeopardy; the requesting state must have previously taken measures to protect its cultural property and must show that import restrictions are necessary and would be effective; and such restrictions must be shown to be in the general interest of the international community.⁴² If these conditions are not met, then the U.S. will not prohibit importation of the item unless it was previously documented as inventory of a signatory nation’s museum or public institution.⁴³

Foreign states seeking restitution of allegedly looted artifacts also have recourse to state court civil actions for replevin. Such an action allows the foreign state or individual to bring a claim directly against a party for recovery of the stolen artifact and has the potential for monetary damages, without the drawbacks of waiting for a federal prosecutor to take the case.⁴⁴ A model case for foreign replevin claims in U.S. courts is the Seventh Circuit’s 1990 opinion in *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*.⁴⁵ *Goldberg* also highlights a common problem with foreign enforcement of claims via state replevin laws—a lack of uniformity in statutes

³⁸ *Id.* at 410.

³⁹ 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, available at <http://exchanges.state.gov/culprop/unesco01.html>.

⁴⁰ 19 U.S.C. § 2601(2) (1983); Gerstenblith and Czegledi, *supra* note 32, at 441.

⁴¹ 19 U.S.C. § 2602(a)(1) (1983).

⁴² *Goldberg*, *supra* note 34, at 1057-8.

⁴³ *Id.*

⁴⁴ Jason McElroy, *The War Against the Illegal Antiquities Trade: Rules of Engagement for Source Nations*, 27 HASTINGS COMM. & ENT. L.J. 547, 554-555 (2005); Reni Gartner, *Litigators of the Lost Art: Museums to avoid lawsuits over antiquities by proof of their provenances*, Aug. 28, 2006 MO. LAW. WKLY., 2006 WLNR 15028058.

⁴⁵ *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, 917 F.2d 278 (7th Cir. 1990).

of limitations from state to state.⁴⁶ In *Goldberg*, the Court granted restitution of looted mosaics back to a church in Cyprus based on several factors: the Church had a superior claim as compared to the art dealer; the Indiana statute of limitations applied because the state had a greater interest in the case than the place of the harm (Switzerland); and the Church had proven each element of replevin.⁴⁷ Regarding state discovery rules, the state's statute of limitations did not begin to run until the harm was discovered or discoverable by due diligence. The Court concluded this was not the date that the Cyprian government discovered the mosaic theft and began searching for it, but was the date on which the government discovered that the art dealer in Indiana had recently purchased the mosaics.⁴⁸ Of significance is the Court's discussion, and subsequent acceptance as sufficient and significant, of the Cyprian government's methods of inquiry as to the whereabouts of the looted mosaics. Once the Church discovered and reported the loss, the Cyprian government began to contact organizations, scholars, and dealers that might have known or could have come into contact with the items, including UNESCO, the International Council of Museums (ICOM), and Sotheby's and Christie's auction houses.⁴⁹ Immediately upon receiving information about the specific purchase by the art dealer Goldberg in 1988, the Cyprian government began to take "substantial and meaningful steps" towards locating the exact whereabouts of the artifacts and filing the appropriate claims.⁵⁰ Given that a foreign state has the right to regulate its own property and the Church had properly registered its property under Cyprian state law, once due diligence and certainty of artifact identification were established, the Court determined as a matter of law that the plaintiffs had met their burden of establishing the elements of replevin and were awarded the mosaics.⁵¹

IV. CULTURAL PARTNERSHIP AGREEMENTS AND DUE DILIGENCE

As source-rich countries increase their use of the November 1970 UNESCO Convention to have their restitution claims answered in the courts of foreign states, more museums are seeking to protect themselves from criminal and civil litigation by entering into cultural partnership agreements with source countries. Museums are beginning to set higher standards of due diligence to establish the provenance of their collections.⁵²

⁴⁶ McElroy, *supra* note 45, at 559.

⁴⁷ *Goldberg*, 917 F.2d at 278.

⁴⁸ *Id.* at 287-288.

⁴⁹ *Id.* at 281.

⁵⁰ *Id.* at 290.

⁵¹ *Id.* at 285.

⁵² Reni Gartner, *Litigators of the Lost Art: Museums to avoid lawsuits over antiquities by proof of their provenances*,

The Museum of Fine Arts, Boston (MFA) initiated talks with the Italian government after learning in October 2005, via a Bloomberg news report, that twenty-two antiquities in their collection had been listed as looted or as coming from smugglers working out of Italy during the evidentiary phase of Marion True's trial in Rome.⁵³ In September 2006, the MFA became the first museum to sign an agreement with the Italian Ministry of Culture for the return of thirteen antiquities that Italy had claimed were purchased from illegal dealers.⁵⁴ Consequently, the MFA was also the first to realize the fruits of such agreements, in the form of their first loan from the Italian government, the over nine-foot high marble statue of the Goddess of Peace *Eirene*, which will be on display at the MFA until the fall of 2009.⁵⁵

The 2006 Agreement creates a partnership between the Italian government and the MFA whereby "significant works" will be loaned to the MFA for limited displays and exhibitions.⁵⁶ In addition to the artifact exchange and exhibition program, the two parties have plans for future collaborations in archeological excavations, conservation, and academic research.⁵⁷ Francesco Rutelli, the Italian Minister of Culture, applauded the MFA for its cooperation in ending the international trade in stolen antiquities and for establishing a model partnership of "reciprocal cooperation and enhancement of the cultural patrimony of humanity."⁵⁸ Looking on the bright side of their new restrictions, the MFA also hopes that the agreement will begin to slow the illicit trade and thus ensure that valuable antiquities are preserved for future generations.⁵⁹

The MFA concurrently revised its policies pertaining to provenance determination of acquisitions to ensure that the object did not enter the country in violation of U.S. law in effect at the time of its importation and that the

Aug. 28, 2006 MO. LAW. WKLY., 2006 WLNR 15028058.

⁵³ Vernon Silver, *Boston Art Museum Returns 13 Disputed Antiquities to Italy*, BLOOMBERG.COM, Sept. 28, 2006, available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aDmHaY.X8Xys>.

⁵⁴ Press Release, Museum of Fine Arts, Boston, Deputy Prime Minister of Italy Unveils Ancient Masterpiece on Loan to the Museum of Fine Arts, Boston (Nov. 28, 2006), available at http://www.mfa.org/dynamic/sub/ctr_link_url_3797.pdf.

⁵⁵ *Id.* at 1.

⁵⁶ Press Release, Joint Statement from the Museum of Fine Arts, Boston, and the Italian Ministry of Culture, Museum of Fine Arts, Boston and Italian Ministry of Culture Sign Agreement Marking New Era of Cultural Exchange (Sept. 30, 2006), available at http://www.mfa.org/dynamic/sub/ctr_link_url_3444.pdf.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1.

⁵⁹ *Id.* at 2.

object had not been illegally exported or appropriated.⁶⁰ In accordance with the 1970 UNESCO Convention, the MFA will not knowingly purchase or receive as a gift any object that has been “stolen from a museum, or a religious, or secular public monument or similar institution,” including those that were part of official archeological excavations and were later removed from the country of origin in violation of that country’s cultural patrimony laws.⁶¹ Additionally, the Museum has obligated itself to consult with scholars, government agencies, the Art Loss Register, and the International Foundation for Art Research before acquisition.⁶² If these guidelines are met, and there is no evidence of illegal export/import or an unlawful appropriation that has yet to be cured, then the Museum Board of Directors may approve the purchase.⁶³ However, if the provenance of the object remains questionable after using due diligence, then the Board has discretion to proceed with the acquisition, based on a policy of the greater public interest in the object being conserved and exhibited for the masses rather than risking deterioration in a private collection.⁶⁴ Finally, all acquisitions must be placed on the museum’s website and any claims against the object are to be immediately directed to the deputy director of the MFA.⁶⁵

It should be noted that the Metropolitan Museum of Art (the Met), after its own long history of questionable acquisitions of rare artifacts, condemned by some in the art world as pirate-like, also entered into a cultural partnership agreement with Italy in February 2006.⁶⁶ In exchange for the transfer of title of six antiquities in its collection, including a set of Hellenistic silver, the Italian Ministry has allowed the Met to keep a hotly-contested and prized Euphronios krater until January 2008 and a silver collection until 2010

⁶⁰ Museum of Fine Arts, Boston, Acquisitions and Provenance Policy, <http://www.mfa.org/master/sub.asp?key=41&subkey=3090>.

⁶¹ *Id.*

⁶² *Id.* For examples of databases used by American museums in discovery of provenance, see International Foundation for Art Research, <http://www.ifar.org>; Interpol Stolen Works of Art, <http://www.interpol.com/Public/WorkofArt/Default.asp>; The Art Loss Register, <http://artloss.com/Default.asp>; U.S. State Dept., Bureau of Educational and Cultural Affairs, <http://exchanges.state.gov/culprop/index.html>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ PETER WATSON AND CECILIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES—FROM ITALY’S TOMB RAIDERS TO THE WORLD’S GREATEST MUSEUMS* 103 (PublicAffairs 2006); Press Release, The Metropolitan Museum of Art, Statement by the Metropolitan Museum of Art on its Agreement with Italian Ministry of Culture (Feb. 21, 2006), available at <http://www.metmuseum.org/>, then “press room.”

in a “newly designed treasury.”⁶⁷ The Agreement explicitly stipulates that all of the pieces that the Met is returning to the Italians were acquired in good faith and disclaims any knowledge that the objects were illicitly excavated or smuggled out of the country at the time of the Met’s purchase.⁶⁸ Similar to the MFA, the Met will also be able to enter into future four year loan agreements with Italy for “works of art of equivalent beauty and importance to the objects being returned.”⁶⁹ The objects will be chosen from a list submitted by the Met and “others,” subject to joint approval.⁷⁰ Unlike other museums that have begun an active campaign for boardroom transparency to enhance public reputation, the Met has not made any significant public relations efforts concerning how, or if, their acquisitions policy has changed since their agreement with Italy beyond those efforts already implemented through their Provenance Research Project concerning Nazi-era art works.⁷¹

In reaction to the criminal proceedings against their now-former curator Marion True, the Getty Museum has begun the process of digging itself out of the pits of public scorn and is striving to become an exemplar of boardroom transparency, due diligence in provenance research, and as community educators.⁷² Beginning in late 2005, the Getty began returning objects to Italy after the country filed a formal forfeiture complaint against the museum with the U.S. Attorney for the Central District of California for objects which had been allegedly illegally excavated and exported out of the country. Even though they believed that they had a valid defense to the charges, the Getty, to preserve their relationship with Italy, submitted to a consent judgment with the court making no finding of liability, and returned the contested items plus others which were still under investigation by the Italian authorities.⁷³ The Getty continued its dialogue with the Italian authorities as both parties began to examine the provenance of the museum’s

⁶⁷ Press Release, The Metropolitan Museum of Art, Statement by the Metropolitan Museum of Art on its Agreement with Italian Ministry of Culture (Feb. 21, 2006), <http://www.metmuseum.org> (follow “press room” hyperlink).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ The Metropolitan Museum of Art, Introduction to Provenance Research Project, available at http://www.metmuseum.org/Works_Of_Art/provenance/pv_introduction.asp.

⁷² See The J. Paul Getty Museum website, http://www.getty.edu/conservation/research_resources/charters.html, <http://www.getty.edu/about/governance/>, for an impressive display of the extent to which the museum has made important information regarding their own museum operations, and research of the antiquities in general, available to the public.

⁷³ Press Release, The J. Paul Getty Trust, Statement Regarding Returned Objects From the Getty (Nov. 7, 2005), available at <http://www.getty.edu/news/press/>.

pieces of Italian heritage and began to negotiate the return of the allegedly stolen antiquities in exchange for a loan program.⁷⁴

Unfortunately, after signing an agreement with the Getty in October 2005, the Italian Ministry of Culture withdrew from that agreement shortly thereafter, citing renewed claims against the bronze Statue of a Victorious Youth, otherwise known as the Getty Bronze, and rejecting a scheme of joint ownership of the Cult Statue of a Goddess, Aphrodite, that would have allowed for collaborative investigation into the provenance of the statue and a neutral binding arbitration to decide final ownership of the object at the end of the four-year period.⁷⁵ The Getty insisted that it is was serious about continuing negotiations for a new agreement with the Italian Ministry of Culture and was doing its part to end the international trade in looted antiquities, as its new Acquisitions and Governance policies reflected, and that they would return twenty-six antiquities pursuant to the October agreement without guarantee of reciprocal loans.⁷⁶ However, the Getty refused to bend to Italian politics on the return of the Getty bronze because it believed that its defense, that the bronze was found in international waters in 1964 and acquired by the museum only after the Italian courts had concluded that the evidence did not support Italian ownership, could survive any reasonable challenge.⁷⁷ The protracted negotiations between the two parties finally ended in late July, the same day Italy's threatened cultural embargo against the Getty was to go into effect, with the Getty agreeing to return forty antiquities to Italy, including the disputed Aphrodite statue.⁷⁸ The parties agreed to set aside discussions about the fate of the Getty Bronze for the time being in order to come to a long-term loan agreement.⁷⁹ The agreement is unlikely to affect True's trial in Rome for, as noted by her attorney Francesco Isolabella, even if

⁷⁴ Press Release, The J. Paul Getty Trust, J. Paul Getty Trust and Italian Ministry of Culture Issue Joint Statement (Jan. 31, 2006), <http://www.getty.edu/news/press/>; Press Release, The J. Paul Getty Trust, J. Paul Getty Trust And The Italian Ministry of Culture Issue Joint Statement (June 21, 2006), <http://www.getty.edu/news/press/>.

⁷⁵ Press Release, The J. Paul Getty Trust, J. Paul Getty Museum to Return 26 Objects to Italy (Nov. 21, 2006), <http://www.getty.edu/news/press/>.

⁷⁶ *Id.*

⁷⁷ Press Release, The J. Paul Getty Trust, J. Paul Getty Trust Statement In Response To Remarks Made By Francesco Rutelli, Italy's Minister of Culture, Wednesday, December 20 In Rome (Dec. 20, 2006), *available at* <http://www.getty.edu/news/press/>.

⁷⁸ Elisabetta Povoledo, *Getty Agrees to Return 40 Antiquities to Italy*, N.Y. TIMES, Aug. 1, 2007, at E1.

⁷⁹ Jason Felch and Ralph Frammolino, *The Return of Antiquities a Blow to Getty*, L.A. TIMES, Aug. 2, 2007, at A1.

it could be proven that the returned artifacts were illegally exported it does not mean that True knew of this at the time of purchase.⁸⁰

Lest it appear that only private institutions are being targeted in the global effort to end trafficking in looted antiquities, it was announced in June 2007 that Italy had agreed to return ninety-six antiquities to Pakistan.⁸¹ Italy is voluntarily returning the artifacts after it was discovered that the artifacts had been disguised as modern Thai art and smuggled into the country from southwestern Pakistan and southeastern Iran.⁸² Finally, a May 2007 agreement for the return of stolen artifacts between Greece and Switzerland, a world-renowned thoroughfare in the international art trade, saw its first payoff this year. Interpol alerted Greece in March 2007 that it had located a first century A.D. statue of Apóllo, discovered in the late nineteenth century and reported stolen in 1991, in the possession of a Swiss art dealer.⁸³ After a brief contest, the art dealer turned over the artifact to Swiss authorities, who then returned it to Greece in June 2007.

V. CONCLUSION: THE FUTURE OF MUSEUM ACQUISITIONS POLICIES AND INTERNATIONAL ENFORCEMENT OF CULTURAL PATRIMONY LAWS.

The good news for smaller museums that lack the large budget of the institutions discussed in this comment is that reasonable steps towards guarding against possible allegations of involvement in the illegal artifact trade are not unduly burdensome or cost-prohibitive. Indeed, most small museums, if they even have a collection of antiquities from other countries, need only concern themselves with the provenance of those items which have been gifted or bequeathed to them. Otherwise, transparency in boardroom ethics and transactions, due diligence in provenance research, revision of acquisitions policies to reflect cooperation in ending the illicit trade in antiquities, and publication of recent acquisitions are all effective means of establishing a museum's compliance with treaty and statutory obligations.

Research of internet databases not only aids source countries in establishing proof of meaningful attempts to locate stolen objects after the statute of limitations has run but are also a valuable tool for museums in creating a valid presumption that an object is lawfully within the U.S. Some of more widely-known databases include: the Cultural Property Advisory Committee of the United States Information Agency's Image Database, The

⁸⁰ *Id.*

⁸¹ AP, *Italy to Return Smuggled Art to Pakistan*, SAN FRANCISCO CHRONICLE, Jun. 25, 2007, available at <http://sfgate.com>.

⁸² *Id.*

⁸³ Karolos Grohmann, *Greece Hails Return of Stolen Ancient Statue*, REUTERS, Jun. 14, 2007, available at <http://www.reuters.com>.

Central Registry of Information on Looted Cultural Property, 1933-1945, The Art Loss Register, Interpol's Art Theft Division, and the FBI Art Theft Program.⁸⁴

The International Council of Museums (ICOM), a non-governmental organization with consultative status to the United Nations' Economic and Social Council, is comprised of museum professionals and international museum organizations for the purpose of fostering professional cooperation, cultural preservation, and advancement of professional standards.⁸⁵ As a supplement to existing treaty obligations and statutes, the ICOM offers its own Ethics of Acquisition recommendations, to which museums may formally subscribe and submit their notice of cooperation to ICOM through its Secretariat at the UNESCO House in Paris.⁸⁶ The effectiveness of the enforcement powers of UNESCO for violations of these ethical obligations is debatable. In reality, such a subscription by an American museum could be used by foreign claimants as additional evidence of a museum's deviation from international norms when combined with other causes of action in American courts.

For their part, the ICOM recommendations include: publication of all objects in museum collections to foster exchange and dialogue; to shy away from acquisitions based purely on commercial value and to act instead with an eye towards conservation and scholarship; to contact source countries or cultural institutions within those countries when doubt is raised as to the provenance of an object already in their collection; to notify source countries when offered directly or indirectly an object that has questionable provenance; and, notably, "to remind their authorities and collectors that they have a moral duty to assist in the future development of museums in these [source] countries."⁸⁷ According to the ICOM examples, the University of Pennsylvania Museum and the Harvard University Museum based their own acquisitions policies on the ICOM ethical guidelines shortly after they were

⁸⁴ The United States Information Agency, Cultural Property Advisory Committee, *International Cultural Property Protection: Image Database*, <http://dosfan.lib.uic.edu/usia/E-USIA/education/culprop/database.html>; The Central Registry of Information on Looted Cultural Property, 1933-1945, <http://www.lootedart.com>; The Art Loss Register, <http://www.artloss.com>; Interpol, *Stolen Works of Art*, <http://www.interpol.com/Public/WorkofArt/Default.asp>; Federal Bureau of Investigation, Art Theft Program, <http://www.fbi.gov/hq/cid/arttheft/arttheft.htm>.

⁸⁵ International Council of Museums, *ICOM Mission* (2007), <http://icom.museum/mission.html>.

⁸⁶ International Council of Museums, *Ethics of Acquisition* (2005), <http://icom.museum/acquisition.html>.

⁸⁷ *Id.*

originally released in 1970.⁸⁸ The ICOM affirmed its 1970 Code of Ethics for Museums in the wake of the Getty trial and openly supports governments pursuing credible and documented restitution claims for cultural property through international courts.⁸⁹ However, to avoid endless litigation and “solutions-of-last resort,” the organization is encouraging more mediations, informal negotiations of claims, and “new kinds of constructive relationships,” which presumably includes the cultural partnership agreements created by the MFA and the Met.⁹⁰

Unfortunately, as a result of the Getty trial, it appears that no amount of due diligence in provenance research and transparency in museum acquisitions policies will absolutely prevent a source country from claiming ownership and seeking return of looted artifacts. Even if a museum acquires an object in only the best interests of preservation and to prevent the object from falling into obscurity in private collection, the road to Italian prisons is seemingly paved with good intentions, as is evidenced by a statement Marion True submitted to the court during her trial in November 2006. Defending her recommendations to purchase objects that risked being found to be illegally excavated, True justified her actions based on the tightened restrictions of the 1995 acquisitions policy of provenance-by-publication and that the contested purchases were also justified by the prospect of the artifacts being lost to private collections, further feeding the demand for black market antiquities.⁹¹

It remains to be seen what the impact of a verdict in the Getty trial will ultimately have on museum culture, but some smaller museums have already begun returning artifacts to source countries and revising their acquisitions policies. The University of Virginia Art Museum has returned to Sicily two sixth-century B.C. marble sculptures received from a New York businessman and a terra cotta antefix bought at an auction two years ago.⁹² And, in a recent statement by the director of the Nasher Museum of Art at Duke University during the unveiling of a recently gifted collection of forty-five ancient Mediterranean pieces, Kimerly Rorschach admitted that the museum is still in the process of writing a new policy for accepting antiquities

⁸⁸ *Id.*

⁸⁹ International Council of Museums, *Statement by the President of ICOM on current legal actions against museums for the return of illegally exported cultural property (especially Italy vs. the J. Paul Getty Museum)* (Dec. 2006), http://www.icom.museum/statement_illegalexport_eng.html.

⁹⁰ *Id.*

⁹¹ Vernon Silver, *Getty Ex-Curator Says Antiquities Trade 'Corrupt,' Art Smuggled*, BLOOMBERG.COM, Nov. 10, 2006, <http://www.bloomberg.com> and on file with author.

⁹² Elisabetta Povoledo, *Two Marble Sculptures to Return to Sicily*, N.Y. TIMES, Sept. 1, 2007, at B7.

but is currently not accepting gifts that have incomplete documentation prior to 1970 or lack a bill of sale.⁹³ The move is part of Nasher's commitment to abstain from involvement in the black market antiquities trade, noting that this will continue to be a relevant policy as artifacts looted during the Iraq war begin to make their way onto the market.⁹⁴

Indeed, in the ruins of the career of Marion True, it seems that more museums, no matter their size, are heeding the words of the Italian prosecutor Fiorelli and realize that now is truly the time to "wake up."

⁹³ Ellen Sung, *Nasher Museum Acquires Ancient Treasures*, THE NEWS & OBSERVER, Feb. 5, 2007, available at <http://www.newsobserver.com/105/v-print/story/539873.html>.

⁹⁴ *Id.*

