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Chapman Law Review

Volume 28 Spring 2025 Number 3

SYMPOSIUM: RAIDERS OF THE LOST ART

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Editor's Note

It is with great pride that *Chapman Law Review* presents the third issue of Volume 28. This issue is centered around the journal's twenty-eight annual symposium, "Raiders of the Lost Art: Legal Challenges and Recoveries," which was held on January 31, 2025. This year's event brought together legal scholars, historians, journalists, and cultural heritage advocates for a powerful and timely discussion on the legal, ethical, and historical dimensions of looted art restitution and cultural repatriation.

The first panel, The Journey Home, featured Professor Michael Bazyler, international law expert Kathryn "Lee" Boyd, and Dr. Leslye Obiora, with moderation by Professor Justin St. P. Walsh. The conversation explored the evolving frameworks surrounding cultural heritage return, voluntary repatriation, and the intersection of law with historical justice. The keynote address was delivered by Professor Erin L. Thompson, whose work on art crime, repatriation, and museum ethics offered a compelling perspective on the growing impact of voluntary returns in cultural property law and international policy.

The second panel, The Quest for Accountability, featured investigative journalist Jason Felch alongside legal practitioners Nicholas M. O'Donnell and Dylan Price, moderated by Professor Michael Bazyler. The discussion examined legal strategies for holding looters and traffickers accountable, challenges facing museum transparency efforts, and the increasing role of litigation in reshaping the norms of cultural stewardship.

On February 7, 2025, *Chapman Law Review* hosted a follow-up screening of the documentary What's Next: Armenian Genocide Restitution in the Post-Recognition Era. The film and subsequent discussion brought together members of the Chapman community for a deeply moving and urgent conversation about justice, restitution, and accountability in the aftermath of genocide recognition. We are especially grateful to Director Carla Garapedian and Professor Michael Bazyler for sharing their expertise and perspectives during this unforgettable event. We also thank every guest who joined us for taking the time to engage with this vital and ongoing issue.

In the lead-up to the symposium, *Chapman Law Review* hosted a series of creative and community-focused programming to deepen public engagement. A curated library display showcased legal and historical texts on art restitution, while a WWII-era looted art map helped contextualize the geographic breadth of

cultural losses. A scavenger hunt designed by our team encouraged students to explore real-world cases of stolen art in an interactive and educational way—bringing the topic to life before a single panelist took the stage.

This symposium would not have been possible without the thoughtful leadership and dedication of our Executive Program Editor, Greg Mikhanjian. Greg proposed this timely and important topic, helped bring together an incredible lineup of speakers, and played a central role in shaping both the event and the programming surrounding it. His commitment to justice and cultural heritage was evident in every stage of the process, and we are deeply grateful for his efforts.

We are also thankful to our incredible keynote speaker and panelists, whose insights challenged us to think critically about justice, accountability, and the enduring impact of cultural loss. Their contributions remind us that law does not exist in a vacuum—it responds to, and must be responsible for, the preservation of history and identity.

As a continuation of this critical discussion, this issue of *Chapman Law Review* features articles authored by several of our symposium participants, as well as contributions from leading scholars in the field. In addition to the scholarly work of our panelists and keynote speaker, we are proud to include a forthcoming article by Leila Amineddoleh, a renowned art and cultural heritage attorney. Together, these pieces examine the legal and ethical complexities of cultural heritage law and offer thoughtful guidance on how the legal profession can advance efforts toward restitution and reconciliation.

We are especially grateful for the support of our faculty advisor, Professor Celestine McConville, for her steady guidance, and to Dean Paul D. Paton for his encouragement and commitment to making this event a success. Special thanks are also due to Phillip Der Mugrdechian, Deane Sutic, and Jonathan Smith, whose help with marketing, logistics, and programming coordination was instrumental.

To our incredible *Chapman Law Review* team: thank you. This symposium was the product of late nights, early mornings, and an extraordinary amount of care and collaboration. Whether you were promoting the event, assembling materials, researching looted art, welcoming guests, or crafting nametags—your work was the foundation of this issue. I am especially grateful to Anna Ross, our Executive Managing Editor, and Sara Moradi, our Executive

Production Editor, for their constant support and attention to detail every step of the way.

It was an honor to watch the Chapman Law community come together for this powerful conversation—one that moved beyond abstract legal doctrine to touch the human stakes of cultural memory, loss, and return. From legal professionals to art historians, museum docents to students, this event brought together a diverse audience united by a shared sense of curiosity and purpose. Our goal for this symposium was to make the law accessible, engaging, and meaningful—something that sparked connection and community. And that's exactly what it became.

One of the most rewarding moments was watching attendees receive their photographs and "Monument Men" designations, a lighthearted but meaningful nod to their participation in a conversation about cultural preservation and justice. The scavenger hunt that led them there would not have been possible without the thoughtful and engaging design by Deane Sutic, and the library display came to life through the incredible direction of Phillip Der Mugrdechian, whose curatorial work grounded the symposium in both historical depth and visual power.

Lastly, I am truly honored and humbled to have had the privilege of working alongside the 2024–2025 *Chapman Law Review* editors. It takes more than long hours and careful edits to create something meaningful; it takes a team that believes in the work and in each other. Your dedication, creativity, and unwavering support brought this symposium to life, and I could not be prouder of what we accomplished together. I am reminded of the words of Maya Angelou: "People will forget what you said, people will forget what you did, but people will never forget how you made them feel."

This symposium made people feel seen, challenged, and inspired—and I couldn't have imagined a better team to create that experience with.

Taline Nicole Ratanjee

Editor-in-Chief

The Emerging Norm of Voluntary Repatriations of Cultural Property: Case Studies in Nepal

*Erin L. Thompson**

As the public's awareness of the histories of theft and smuggling that brought many cultural artifacts from their communities of origin to American collections has grown, attitudes toward the ethics of retaining these artifacts has also shifted. This presentation will first consider challenges posed by existing legal remedies available for source countries who seek to reclaim their heritage and then discuss the emerging practice of voluntary repatriations, which occur when the current owner of an artifact returns it to a source country or community even though legal authorities would likely not compel its surrender.

* Erin L. Thompson holds a PhD in Classical Art History and a JD, both from Columbia University. She is a professor of art crime at John Jay College (City University of New York), where she studies the damage done to cultural heritage and communities through looting, theft, and deliberate destruction of art (as well as its deliberate preservation). She is the author of *Possession: The Curious History of Private Collectors* (Yale, 2016) and *Smashing Statues: The Rise and Fall of American Monuments* (Norton, 2022). She is also a member of the Advisory Committee for the Nepal Heritage Recovery Campaign.

Today, I will contrast legal repatriations of cultural property to what are sometimes called voluntary or ethical returns. I will argue that voluntary returns are better for both the holders and the recipients of cultural property when the goal is the preservation of living cultural heritage. To explain why I think this is so important, I will begin with an absence.

Last summer, I travelled to the village of Bungamati, Nepal, to visit the Prathampur Mahabihar, one of the oldest Buddhist monasteries in the Kathmandu Valley. My guide, the architect and heritage activist Anil Tuladhar, paused in front of a locked, empty room. The room once held two carved wooden sculptures representing deities who care for ill children. The sculptures were photographed in 1968 by a visiting Danish architect and were subsequently stolen. Their present location is unknown. Tuladhar printed the 1968 photograph and hung it next to the door as part of a larger project of marking Bungamati's missing cultural property.[1]

I called these artifacts "sculptures" just now, but for many in Nepal, that's not the proper term. They are *devas*, Sanskrit for "god" or "deity."[2] *Devas* are images of deities, but not all images of deities are *devas*. If a contemporary artist makes a sculpture or painting for sale to the tourist market, that will be seen as an artwork both in Nepal and abroad. By contrast, *devas* are sacred artifacts, considered to be living manifestations of a deity. They are crafted following specific ritual practices, consecrated with ceremonies that invite the deities to inhabit the image, and are then cared for in perpetuity by their worshippers.

These ceremonies of care are called *puja* (worship).[3] In Nepal, where Hinduism and Buddhism are the main religions, many people begin their mornings by touching the forehead of a centuries-old *deva* in a shrine and then bringing their fingertips

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1 Awakened Bungamati, *Danish Group of Architects Expedition of Bungamati* (photograph), FACEBOOK, https://www.facebook.com/AwakenedBungamati/photos_by [https://perma.cc/2S2E-ATFQ] (last visited Apr. 13, 2025).

2 In using this term, I am adopting the suggestion of the Nepali scholar Alisha Sijapati. *See* Alisha Sijapati, Completing the Circle of Repatriation: Reintegration and Reinstallation of Kathmandu Valley's Devi-Devta 7 (June 2023) (M.A. thesis, Central European University) (on file with author).

3 MARY SHEPHERD SLUSSER, NEPAL MANDALA: A CULTURAL STUDY OF THE KATHMANDU VALLEY 217 (1982) [hereinafter NEPAL MANDALA] (defining *puja* as rituals during which "the images of the gods are treated as if they [are] animate beings").

to their own forehead to communicate the *deva*'s blessing.[4] *Puja* can also involve offering perfumed powders, food, flowers, and lighted lamps to the *deva*, as well as undressing, bathing, and redressing it again.[5] These actions care for the deity and invoke its divine force to care for the community in return.[6]

Some *devas* are kept in public temples or shrines, while others are installed in private chapels within multi-generational family homes.[7] If a *deva* becomes unfit for worship, for example through breakage, it is laid to rest in a ritual procedure. There is no occasion for a *deva* to enter the stream of commerce to become an artwork.

The locked door at the Prathampur Mahabihar is covered in yellow and red fingerprints left by worshippers using the colored powders employed during *puja*. People continue to offer worship to these *devas* despite the fact that their sculptures have been stolen. If someday we find where these *devas* have come to rest in some museum or living room or dealer's showcase, the community who worships them will ask for them back—not because they want these specific pieces of wood, but because they want to have the opportunity to care for their gods once more and receive their care in return.

When an American museum discovers it possesses a *deva*, what does it do? In 2024, the *Richmond Times-Dispatch* ran a report on the nearly two hundred and fifty Nepali cultural objects that came to the Virginia Museum of Fine Arts through Mary Slusser, an American scholar who purchased a number of stolen *devas* in Nepal in the 1960s and 1970s.[8] The museum has so far not returned any of these artifacts, because, as a museum spokesperson explained: "If it doesn't belong to us, we don't want it here" and "we have to have a claim" to begin the process of repatriation.[9]

But what type of claim is required? Several years ago, the organizing committee of a Nepali monastery sent the museum a

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4 *How Is Puja Performed?*, SMITHSONIAN INST., https://archive.asia.si.edu/pujaonline/puja/how.html [https://perma.cc/Q3BQ-FRGV] (last visited Mar. 26, 2025).

5 *Id.*

6 NEPAL MANDALA, *supra* note 3.

7 *See id.* at 128, 217.

8 Luca Powell, *VMFA Possesses Priceless Art and Treasures from Nepal—and Officials from Himalayan Nation Want Them Back*, RICHMOND TIMES-DISPATCH, May 5, 2024, at A1.

9 *Id.* at A14.

letter explaining that the museum held a sacred painting stolen from the monastery. Slusser herself published a description of how she knew the painting had been stolen when she purchased it, since she had seen it under worship in the monastery just days before.[10]

The Virginia Museum of Fine Arts is not an outlier in its refusal to recognize a community of origin as the proper claimant for repatriation. Instead, I am pointing out this story as an example of the current attitude of most American museums, which usually refuse to act with regard to cultural property in their possession unless a claim is made by the state authorities of the country of origin—and often only if these foreign authorities have secured the cooperation of American authorities.

But in many situations, state authorities are not the ones looked to for any other decisions about the property in question. The same situation Professor Leslye Obiora described earlier today as happening in Nigeria is also true here.[11] The legal procedures of repatriation prioritize the State and ignore existing traditional authorities (such as, in the case of the painting, the monastery committee). The people who will bear the responsibility for ensuring the safety of the artifacts should they be returned are thus excluded from the repatriation process.

This exclusion might be excusable if the current process of making a claim were efficient or easy, but this is far from true. There simply is no single system to make claims against American museums. Rather, different legal repatriation regimes are used by an overlapping—and often conflicting—ecosystem of American authorities.

In 1970, the United Nations Educational, Scientific and Cultural Organization adopted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export

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10 *See* Mary Shepherd Slusser, *Conservation Notes on Some Nepalese Paintings*, ASIANART.COM (May 19, 2003), https://www.asianart.com/articles/paubhas/index.html [https://perma.cc/2N6F-ZVBD] ("Sold or stolen soon after the display . . . the painting was soon making the rounds . . . . I was reluctant to purchase it for myself . . . but it cried out for preservation. Thus, for a diplomat who had gone on to another post still yearning for a Nepalese painting, I did purchase it . . . .").

11 *See* Leslye A. Obiora, *How Can the Protection of Cultural Property Be Strengthened in Africa? Combining International Frameworks with Customary Traditions*, ANTIQUITIES COAL. THINK TANK (Apr. 8, 2025), https://acthinktank.scholasticahq.com/article/133677-how-can-the-protection-of-cultural-property-be-strengthened-in-africa-combining-international-frameworks-with-customary-traditions [https://perma.cc/TNS7-Z6UR].

and Transfer of Ownership of Cultural Property (1970 Convention).[12] The 1970 Convention's lofty, prefatory language describes its goal as stopping the looting and smuggling of cultural heritage through increased international cooperation in investigating, remedying, and preventing such destructive acts.[13]

Crucially, though, the Convention doesn't say exactly what its signatories need to do. The one key exception is Article 7, which requires signatories to ensure the return of a quite limited class of stolen objects—those that are documented in the inventories of museums, libraries, or similar institutions.[14] If one member state finds they have one of those artifacts within its boundaries, it has to give it back to the requesting member state.[15] Few such requests have occurred. Thieves usually find easier, less secure targets like archaeological areas instead of museums. And the recent discovery that not even the British Museum has a complete inventory of its collections shows just how common it is for museum artifacts to go missing without ever having been completely documented.[16]

The 1970 Convention generally leaves it up to member states to translate its other admirable goals into actual law. Member states have accordingly enacted a broad range of domestic legislation, ranging from strict bans on importing, exporting, or even owning cultural property to only slightly restricted regimes in many market countries, including the United States.[17]

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12 *About 1970 Convention*, UNESCO, https://www.unesco.org/en/fight-illicit-trafficking/about [https://perma.cc/EYR6-GCJN] (Mar. 5, 2025).

13 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO, https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural [https://perma.cc/92B7-XVYZ] (last visited Mar. 7, 2025) (including the full text of the 1970 Convention and listing its signatories).

14 *See* United Nations Educational, Scientific and Cultural Organization, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. VII, Nov. 14, 1970, 823 U.N.T.S. 231.

15 *Id.*

16 *See* Max Kendix, *British Museum Broke the Law over Artefact Records*, THE TIMES (Aug. 11, 2024, 6:10 PM), https://www.thetimes.com/uk/arts/article/british-museum-broke-law-over-missing-artefacts-6zsxk2nrp [https://perma.cc/2FAD-XEF9]; *see also Cultural Property Crime Thrives Throughout Pandemic Says New INTERPOL Survey*, INTERPOL (Oct. 18, 2021), https://www.interpol.int/en/News-and-Events/News/2021/Cultural-property-crime-thrives-throughout-pandemic-says-new-INTERPOL-survey [https://perma.cc/U9JL-VDDP] ("[A]rchaeological and paleontological sites are by nature less protected and more exposed to illicit excavation.").

17 *See* United Nations Educational, Scientific and Cultural Organization, *supra* note 14, at 238; *see also* Redazione, *Export of Cultural Property: A Comparative Analysis of the Laws of Eight Countries*, FINESTRE SULL'ARTE (Aug. 28, 2024),

The United States implemented this Convention in 1983 through the Convention on Cultural Property Implementation Act (CPIA).[18] Under the CPIA, any 1970 Convention member state can request the imposition of restrictions on the import of their cultural property into the United States. Only a limited number of repatriations have occurred thanks to a CPIA bilateral agreement, since only a limited number of such agreements have been put into place and those that are enacted have no retroactive impact.[19]

Some of these gaps have, in theory, been filled with guidelines on acquiring and holding antiquities issued by the American Alliance of Museums (AAM) and the Association of Art Museum Directors.[20] Similar self-regulatory codes have been promulgated by dealers, scholarly associations, and other participants in the world of cultural heritage.

I will summarize the difficulties with such guidelines by looking at just one example. The AAM's guidelines, first issued in 2008, broadly warn museums that they should not acquire antiquities which the museum knows were illegally exported from their country of origin,[21] but set a much narrower scope for the due diligence museums are supposed to do to ensure that this doesn't happen. Museums are instructed only to collect documentation to show that the artifact they are considering

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https://www.finestresullarte.info/en/news-focus/export-of-cultural-property-a-comparative-analysis-of-the-laws-of-eight-countries [https://perma.cc/9KEN-M35E] (explaining that laws regulating the export of cultural property vary widely among countries, with those in the United States being far more flexible compared to the more restrictive legal regimes of Italy and Greece).

18 Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–2613; *see also* Patty Gerstenblith, *For Better and for Worse: Evolving United States Policy on Cultural Property Litigation and Restitution*, 22 INT'L J. CULTURAL PROP. 357, 367 (2015); Karin Orenstein, *Risking Criminal Liability in Cultural Property Transactions*, 45 N.C. J. INT'L L. 527, 530–31 (2020).

19 *See* Convention on Cultural Property Implementation Act § 2606(a). Under such an agreement, the United States will temporarily prohibit the import of designated cultural property unless this material is accompanied by documentation showing legal export from the partner state. *See id.* If this documentation is not provided, the material is subject to seizure and forfeiture and will be offered by American authorities to the source country for repatriation. *See* § 2609(a).

20 Erin L. Thompson, *Successes and Failures of Self-Regulatory Regimes Governing Museum Holdings of Nazi-Looted Art and Looted Antiques*, 37 COLUM. J.L. & ARTS 379, 379–80 (2014).

21 *Ethics, Standards, and Professional Practices: Archaeological Material and Ancient Art*, AM. ALL. OF MUSEUMS, https://www.aam-us.org/programs/ethics-standards-and-professional-practices/archaeological-material-and-ancient-art/ [https://perma.cc/BW84-XK7J] (last visited Mar. 31, 2025).

acquiring had already left its country of origin before 1970 or was legally exported after 1970.[22]

Many countries of origin enacted export restrictions long before 1970. Since the guidelines do not require museums to collect documentation on pre-1970 exports, this seems to allow museums to acquire antiquities which left their country of origin before 1970 without determining whether or not this export was legal, as long as the museum avoids any knowledge of illegal export. This is easily done in a secretive art market designed to conceal just such embarrassing knowledge.

Another difficulty with relying on such self-regulatory guidelines as these and other similar codes enacted by dealers, scholars, and other participants in the world of cultural heritage is their lack of accountability mechanisms. I can find little evidence of members of such associations being sanctioned or even reprimanded for violations. The reluctance of the governing bodies of these associations to point out violations is perhaps understandable, since doing so would make it clear just how little ability they have to remedy them.[23]

Another limitation shared by the CPIA and the American museum guidelines is that they deal only with "antiquities." This category is defined very differently depending on the context, but only rarely includes Nepali *devas*, which were made in the medieval period or later.[24] The same is true of many other artifacts important to other living cultures.[25]

Another important problem with existing legal repatriation regimes is that they generally require authorities and acquirers to make decisions based not on the artifacts themselves, but on their accompanying paperwork.[26] The predictable result of

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22 *Id.*

23 When surveying sixty-seven AAM member museums to determine whether they complied with the Association's supplementary guidelines intended to establish mechanisms for public accountability for antiquities acquisitions, Mackenzie Priest and I recently found that not a single one of the respondents complied with all the requirements. Erin L. Thompson & Mackenzie Priest, *The Lax Compliance of Museums with AAM Guidelines for Ancient Art*, HYPERALLERGIC (Mar. 28, 2021), https://hyperallergic.com/631776/the-lax-compliance-of-museums-with-aam-guidelines-for-ancient-art/ [https://perma.cc/R6TK-XDP3].

24 *See Definition of "In Antiquity,"* ASS'N OF ART MUSEUM DIRS., https://aamd.org/object-registry/definition-of-in-antiquity [https://perma.cc/7D4U-Q9HZ] (last visited Feb. 27, 2025).

25 *See id.*

26 *See* ASS'N OF ART MUSEUM DIRS., GUIDELINES ON THE ACQUISITION OF ARCHAEOLOGICAL MATERIAL AND ANCIENT ART 5–7 (2013),

making the sales of antiquities depend on the ability of the seller to produce the proper paperwork is the growth in forgeries of this paperwork.

For example, in 2019, the Metropolitan Museum returned a spectacular gilded coffin to Egypt only two years after its purchase when it was shown that the 1971 Egyptian export license provided by the sellers was a forgery.[27] The coffin was actually illicitly excavated during the turmoil of the Arab Spring in 2011 and smuggled out of the country.[28]

The case came to the attention of authorities because of a viral photograph of Kim Kardashian posing next to the coffin in a matching gold dress during the Met Gala. One of the men who had dug up the coffin saw the photograph and realized that the middleman who had promised to pay him after the coffin was sold had lied.[29] One of the people to whom the disappointed looter complained turned out to be an informant for the Antiquities Trafficking Unit of the Manhattan District Attorney's (D.A.) Office.[30]

The Antiquities Trafficking Unit is yet another route to repatriation. Under New York state law, the knowing possession of stolen property is a criminal offense.[31] Under the Federal National Stolen Property Act (NSPA), it is a crime to transport or receive in interstate or foreign commerce any goods to the value of $5,000 or more, knowing they were stolen.[32] The definition of stolen "has been given an expansive scope" when applying this

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https://culturalpropertynews.org/wp-content/uploads/2017/11/AAMD-Guidelines-on-the-Acquisition-of-Archaeological-Material-and-Ancient-Art-rev.2013.pdf [https://perma.cc/K7FR-7SWW]; AM. ALL. OF MUSEUMS, *supra* note 21; United Nations Educational, Scientific and Cultural Organization, *supra* note 14, at 241; U.S. IMMIGR. & CUSTOMS ENF'T, CULTURAL PROPERTY, ART, AND ANTIQUITIES INVESTIGATIONS HANDBOOK 3, 6 (2013), https://www.ice.gov/doclib/foia/policy/handbook_HSI_13-06_CPAA_Inv_11.08.2013.pdf [https://perma.cc/DQ6J-4M4H].

27 *The Metropolitan Museum of Art Returns Coffin to Egypt*, METRO. MUSEUM OF ART (Feb. 15, 2019), https://www.metmuseum.org/press-releases/metropolitan-museum-of-art-returns-coffin-to-egypt-2019-news [https://perma.cc/Z5DT-BKQC].

28 *Id.*

29 Azadeh Moaveni, "The Ostrich Defence," London Review of Books, October 5, 2023; Amani Ibrahim, *Antiquities in Transit*, ARAB REPORTERS FOR INVESTIGATIVE JOURNALISM, March 12, 2025, https://arij.net/investigations/antiquities-smuggling/en/ [https://perma.cc/7QSS-PMDH].

30 *See id.*

31 *See* N.Y. PENAL LAW §§ 165.40–.54 (McKinney 2025). A person is guilty of this offense when he or she "wrongfully takes, obtains or withholds . . . property from an owner thereof." *Id.* § 155.05(1). An owner is "any person who has a right to possession . . . superior to that of the taker, obtainer or withholder." *Id.* § 155.00(5).

32 National Stolen Property Act, 18 U.S.C. §§ 2314–2315.

Act.[33] Using these state and federal laws about stolen property, the Manhattan D.A. has seized numerous examples of cultural artifacts and returned them to their national owners, including some stolen far before 1970.[34]

The Manhattan D.A.'s Office has asserted jurisdiction over artifacts that are no longer in New York on the basis that they passed through the state.[35] This jurisdiction is broad, given New York City's status as a prominent art market, home of numerous collectors and museums, and first port of entry for many art shipments into the United States.[36] Few other American prosecutors share the Manhattan D.A.'s enthusiasm for repatriation cases, which means that an artifact with an exactly similar history might be seized in Manhattan but ignored in California.

Besides the Manhattan D.A.'s Office, I have worked on Nepali repatriation claims being handled by the Federal Bureau of Investigation's Art Crimes Team, Immigration and Customs Enforcement, and Homeland Security Investigations. Source countries must navigate a bewildering variety of authorities and processes even within a single country. (I highly appreciate the efforts made by these authorities, who often share my frustration about the tangle, especially when disputed interpretations of jurisdictional priority results in uncertainty about which team should lead the investigation.)

To explain the alternative I am envisioning to the frustrating inefficiencies of legal repatriation, I need to first give you an overview of how Nepali *devas* left their worshippers. For hundreds of years, few foreigners were permitted to enter Nepal.

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33 United States v. McClain, 545 F.2d 988, 995 (5th Cir. 1977).

34 *See, e.g.*, Graham Bowley, *The Role of New York's Lauded Looted Art Unit Is Challenged in Court*, N.Y. TIMES (Oct. 8, 2024), https://www.nytimes.com/2024/10/08/arts/the-role-of-new-yorks-lauded-looted-art-unit-is-challenged-in-court.html [https://perma.cc/J98E-8S9Z]; *D.A. Bragg Announces Return of 30 Antiquities to the People of Mexico*, MANHATTAN DIST. ATT'Y'S OFF. (Nov. 22, 2024), https://manhattanda.org/d-a-bragg-announces-return-of-30-antiquities-to-the-people-of-mexico/ [https://perma.cc/8XYR-QGBY]; Eileen Kinsella, *Manhattan DA Returns 11th Nazi-Looted Egon Schiele Artwork to Grünbaum Heirs*, ARTNET (July 26, 2024), https://news.artnet.com/art-world/11th-egon-schiele-drawing-return-grunbaum-heirs-2517095 [https://perma.cc/36HN-89UB].

35 Jennifer Anglim Kreder, *The New Battleground of Museum Ethics and Holocaust Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?*, 88 OR. L. REV. 37, 71 (2009); Bowley, *supra* note 34.

36 *See* Cenedella v. Metro. Museum of Art, 348 F. Supp. 3d 346, 361 (S.D.N.Y. 2018); *see also* ART AND THE EMPIRE CITY: NEW YORK, 1825–1861, at x (Catherine Hoover Voorsanger & John K. Howat eds., 2000) (describing New York City as a "marketplace for art and a center for public exhibitions and private collecting").

The country's borders opened only in the mid-1950s.[37] Soon, mountaineering expeditions were attempting Everest and other peaks,[38] while the Kathmandu Valley became a major stop on the "Hippie Trail" from Istanbul to India.[39] The growing fame of the Valley's heritage sites also attracted an older set of European and North American post-war travelers.[40]

The *devas*, visible in public shrines across the Kathmandu Valley and particularly numerous in the historic centers of its towns, were increasingly of interest to Westerners drawn to "Eastern spirituality," culture, and aesthetics. Thousands of *devas* were accordingly stolen from the country's shrines, monasteries, and homes beginning in the 1960s in what Slusser, herself a participant, called an "accelerating wave of brazen looting of the sacred places of Nepal."[41] In her diary from the period, Slusser noted: "I have gone quite mad sitting in the midst of this huge open-air museum that is Nepal with only the amount of money you want to part with the limit on what you can buy."[42]

Another factor in the rapid rise in demand for Nepali artifacts in America was the 1964 exhibition at New York's Asia Society titled "The Art of Nepal."[43] It was the first time an American institution had borrowed artifacts directly from Nepal. The exhibition was hailed in reviews as the first revelation of Nepal's artistic treasures to American audiences.[44] One reviewer even insisted that Stella Kramrisch, the exhibition's curator, introduced not only Americans but Nepalis themselves to their

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37 Emiline Smith & Erin L. Thompson, *A Case Study of Academic Facilitation of the Global Illicit Trade in Cultural Objects: Mary Slusser in Nepal*, 30 INT'L J. CULTURAL PROP. 22, 30 (2023); *see also* Lhakpa Norbu Sherpa, *From the Other Side*, NEPALI TIMES (May 23, 2003), https://archive.nepalitimes.com/news.php?id=3166 [https://perma.cc/P24C-B9JP].

38 *Everest 1953: First Footsteps - Sir Edmund Hillary and Tenzing Norgay*, NAT'L GEOGRAPHIC (Mar. 3, 2013) https://www.nationalgeographic.com/adventure/article/sir-edmund-hillary-tenzing-norgay-1953 [https://perma.cc/8XZC-4SRD].

39 Mark Liechty, *Building the Road to Kathmandu: Notes on the History of Tourism in Nepal*, 25 HIMALAYA 19, 19–21 (2005).

40 *Id.*

41 Mary Shepherd Slusser, The Cultural Heritage of Nepal—Its Preservation 1 (Dec. 5, 1969) (unpublished essay) (on file with the Rockefeller Archive Center).

42 Mary Shepherd Slusser, Diary 142 (1969) (unpublished diary); *see also* Mary Shepherd Slusser, *Mary Slusser: Remembrance of Things Past*, ASIANART.COM (Aug. 16, 2017), https://www.asianart.com/articles/maryslusser/index.html [https://perma.cc/HDP9-RTZ4] (Mary Shepherd Slusser diary excerpts).

43 STELLA KRAMRISCH, THE ART OF NEPAL 8 (1964).

44 *See, e.g.*, *The Pieta and an Avalokiteshvara*, N.Y. TIMES, July 26, 1964, at 8, https://www.nytimes.com/1964/07/26/archives/the-pieta-and-an-avalokiteshvara.html [https://perma.cc/JQX4-AEUN].

own heritage, since until she visited while preparing the show, "they had no idea what was great art and what was not."[45]

The exhibition introduced individuals who would become major collectors and dealers to Nepal's heritage and established a scholarly framework for interpreting, dating, and authenticating their purchases. As they began acquiring these artifacts, they paid little attention to the Nepali laws that protected them.

Nepali common law had long prohibited the theft of *devas*. In 1956, just after Nepal's borders opened to visitors, King Mahendra regularized these protections by promulgating the Ancient Monuments Protection Act (Act) as one of his first pieces of legislation.[46] This Act clarified and regularized the role of the Nepali government in the protection of ancient monuments and *devas*, including any statue or image "of historical, archaeological, or artistic" interest.[47]

The Act banned not only export but also internal movement of protected artifacts, stating that they "shall not be exported

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45 *Art: The Way to Nirvana*, TIME (May 1, 1964, 12:00 AM), https://time.com/archive/6808602/art-the-way-to-nirvana/ [https://perma.cc/37NY-62SC] ("The first scholar to study [Nepal's] art thoroughly was . . . Kramrisch . . . . The Nepalese were truly grateful, for, until she came, they had no idea what was great art and what was not.").

46 *See* Donna Yates & Simon Mackenzie, *Heritage, Crisis, and Community Crime Prevention in Nepal*, 25 INT'L J. CULTURAL PROP. 203, 207, 210 (2018). That the framers of the Act knew such protections existed and did not need to be created by the Act is reflected in the fact that the bulk of the Act is instead concerned with creating a new power for the government not contemplated by existing common law: the power to acquire historic buildings when they were at risk from negligent or incapable private owners. Ancient Monuments Preservation Act 1956, § 4 (Act No. 12/2013) (Nepal). Still, these protections are based on preexisting common law. For example, the law provides for the offering of compensation to persons displaced by the government's purchase of a building. *See id.* The 1854 *Mulukī Ain*, the previous codification of the common law, contains similar provisions for the giving of compensation for those who are removed from positions of care for *guthi* property for reasons of incapacity. RAJAN KHATIWODA ET AL., THE MULUKĪ AIN OF 1854: NEPAL'S FIRST LEGAL CODE 51–52 (2021) at 106.

47 *Country Summary for Nepal*, INT'L FOUND. FOR ART RSCH., https://www.ifar.org/country_title.php?docid=1354212558 [https://perma.cc/MZ3X-69VF] (last visited Apr. 1, 2025); *see also* Ancient Monuments Preservation Act 1956, § 2(a) (Act No. 12/2013) (Nepal). The 1956 Act made very few changes in this existing common law besides decreasing penalties (previously, the theft of a *deva* could be punished with the death penalty) and adding to the scope of governmental authority to carry out searches and shops or warehouses suspected of participating in the black-market trade. *See* Ancient Monuments Preservation Act 1956, § 13(6) (authorizing relevant officials to obtain warrants to search a "shop or museum where the ancient monument or archaeological objects and ancient handicrafts are transacted or the shop or factory where the curio is transacted [or] produced, or the go-down, house or vehicle where such objects are stored" in order to "arrest and keep in custody person who is alleged to have committed the crime"—that is, who has sold or attempted to sell protected artifacts).

[outside] the kingdom of Nepal or transferred from one place to another [inside] the kingdom . . . ."[48] This might seem overly restrictive, but it reflects the religious and cultural reality that there is no reason for *devas* to leave the community of care of the worshippers who commissioned them—not even to move to another location within the country.

The Act did not establish national ownership for *devas* or protected monuments, which can be privately owned in Nepal. The *McClain/Schultz* doctrine has long made clear to American lawyers that an antiquity constitutes stolen property under New York law and the NSPA if it was exported contrary to a national patrimony law—in effect, if it was stolen from the country that owns it—but the violation of an export ban alone is not itself enough to render an artifact stolen property.[49] The importance of the *McClain* and *Schultz* cases should not mislead us into believing that the only way that an illegally exported cultural heritage object can constitute stolen property is if it was subject to a national ownership law.[50] An artifact will be considered stolen property in New York if it was stolen from an individual or joint owners in Nepal.[51]

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48 Ancient Monuments Preservation Act § 13(1). This section specifies that export restrictions only apply to those items "prescribed by His Majesty's Government by a notification published in the Nepal Gazette." *Id.* Section 2 of the Act lists categories of protected objects and the Act as a whole was published in the *Nepal Gazette* on November 12, 1956 (volume 6, no. 28). *See id.* § 2; *see also Table of Contents*, GOV'T OF NEPAL: DEP'T OF PRINTING, http://rajpatra.dop.gov.np/welcome/list_by_type/1/2013 [https://perma.cc/XKC7-KPFW] (last visited Apr. 1, 2025) (listing the Ancient Monuments Preservation Act as one of the publications in the Number 2013 publication of the *Nepal Gazette*). The Act's export restrictions were self-promulgating. The Act's wording allowed the government to add to or clarify the listed categories, which it did for example in the *Nepal Gazette* on April 7, 1969. 18 NEPAL GAZETTE, no. 51, Apr. 7, 1969, https://media.unesco.org/sites/default/files/webform/mhm001/nepal_order_07_04_1969_eng_tof.pdf [https://perma.cc/MG6Y-4PLY].

49 United States v. McClain, 545 F.2d 988, 1001–02 (5th Cir. 1977); United States v. Schultz, 333 F.3d 393, 404 (2d Cir. 2003).

50 The *McClain* decision explicitly states its limited scope:

> The question posed, then, is not whether the federal government will enforce a foreign nation's export law, or whether property brought into this country in violation of another country's exportation law is stolen property. The question is whether this country's own statute, the NSPA, covers property of a very special kind—purportedly government owned, yet potentially capable of being privately possessed when acquired by purchase or discovery.

McClain, 545 F.2d at 996. *Schultz* is similarly limited: "The question, in other words, is whether an object is 'stolen' within the meaning of the NSPA if it is an antiquity which was found in Egypt after 1983 and retained by an individual (and, in this case, removed from Egypt) without the Egyptian government's consent." *Schultz*, 333 F.3d at 399.

51 The relevant law in 1967 was the Mulukī Ain, which states:

> If any person, with *mala fide* intention, takes any immovable property by

Things leave their original owners for all sorts of reasons, including most pertinently, voluntary sale. Reasonably, then, an owner seeking to reclaim stolen property in an American court usually has to prove it was stolen. This prevents cases in which someone fraudulently tries to claim an object that they actually sold.

But *devas* cannot be sold. They can be privately owned, but it doesn't follow that their owners can buy and sell them as if they were mere art objects, because *devas* are jointly owned by families or associations known as *guthis*.[52]

A *guthi*, as defined by Slusser, is "a common interest group with collective responsibilities and privileges."[53] We American lawyers might understand it as a trust. Membership can be determined by locality (everybody who lives in this neighborhood) or common descent (everybody who shares a particular great-great-grandfather).[54] *Guthi* members might be bound together to produce a particular annual ritual, worship a particular deity, or maintain a particular monastery, shrine, or a communal water source, as well as care for the *devas* associated with these rituals and structures.[55]

Nepali law has long held that the property belonging to *guthis* is inalienable.[56] Neither individual members nor even the entire existing membership of a *guthi* can sell or mortgage *guthi*

> converting it into a moveable property or any other moveable property in which he or she has no right, without giving any notice or taking consent of its owner to take it away or consume by himself or herself, upon depriving the owner of such property of ownership, by any means, such an act shall be deemed to be the offence of theft.

Mulukī Ain 1963, c. 4, § 1 (Act No. 67/2019) (Nepal).

52 *See, e.g.*, Salik Ram Subedi & Sudha Shrestha, *A Case of the Guthi System in Nepal: The Backbone of the Conservation and Management of the Cultural Heritage*, 4 CONSERVATION 216, 216–17 (2024).

53 NEPAL MANDALA, *supra* note 3, at 218.

54 *Id.* at 12.

55 *See id.*

> [T]he *gūṭhī* is a basic integrating factor of Newar society, whose primary function is to enable the individual Newar to fulfill his many socio-religious obligations through group action. Association is in some instances voluntary, in others compulsory, and in either case entails a balance of privilege and responsibility. Recruitment for and purposes of the *gūṭhī* are variable. In some, membership may be determined by common descent, and in others by locality. The *gūṭhī*'s purpose may be the collective responsibility for the funerals of its members, the worship of a particular deity, the upkeep of a given shrine, or one of a host of other obligations . . . .

Id.; *see also* MULUKĪ AIN OF 1854, *supra* note 62.

56 *See, e.g.*, Arturo Y. Consing, *The Economy of Nepal*, 10 IMF STAFF PAPERS 504, 507 (1963).

property, since this property is also meant to benefit future *guthi* members.[57] A *deva*, like any other *guthi* property, is inalienable because it is held in trust for these future members.

The Nepali writer and activist Kanak Mani Dixit summarizes: "Every piece of ancient religious statuary from [the] Kathmandu Valley that sits today in the West is stolen property."[58] Legal repatriations require investigation of past events to uncover evidence of theft, like police reports, witness testimony, and crime scene photographs. All of this is beside the point in Nepal, where you can tell that a *deva* was stolen if it exists anywhere other than the place for which it was made.[59] Even if one or a number of *guthi* members received money for it, they were violating the law as well as their responsibilities to the trust by doing so. The ability of other members of the *guthi* to recover their property shouldn't hinge on whether it can be proven exactly when and how it was taken.

The role of *guthis* returns us to the gap between legal repatriation and culture realities I previously mentioned. All the various legal regimes I have discussed designate the Nepali government as the proper entity to make claims and receive repatriated artifacts. But *devas* do not belong to the government.

Fortunately, this is a rather minor point in Nepal, whose government has shown itself willing to work with communities who are reclaiming their property.[60] But the designation of the central government as the only recipient of repatriations has far more worrisome implications in other countries, where the state refuses to release artifacts to minority groups, including some suffering cultural genocide committed by the state.[61]

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57 MULUKĪ AIN OF 1854, *supra* note 55, at 106 (later replaced by the Mulukī Ain of 1963). The same prohibition is stated in the 1963 Mulukī Ain. Mulukī Ain 1963, c. 7, § 3 (Act No. 67/2019) (Nepal). If the current members are not carrying out the mission of the endowment (for example, to maintain a temple), new members can take over the *guthi* in order to fulfill these obligations. MULUKĪ AIN OF 1854, *supra* note 62, at 104–05; *see also* Mulukī Ain 1963, §§ 6–7.

58 Kanak Mani Dixit, *Gods in Exile*, HIMAL SOUTHASIAN, Oct. 1999, at 8, 8.

59 *Id.* at 11 (explaining that such statues and artwork can also be found in an alternate location if the custodians, or *guthi*, agree to its relocation, sale, or donation, even if such departure from Nepal is illegal under Nepalese law).

60 *See, e.g.*, Dr. Elke Selter, *Returning Stolen Idols to the Community: A Challenge for Heritage Law*, BRITISH INST. OF INT'L & COMPAR. L. (July 13, 2022), https://www.biicl.org/blog/42/returning-stolen-idols-to-the-community-a-challenge-for-heritage-law [https://perma.cc/2LEM-8CER].

61 *See, e.g.*, Kelvin D. Collado, *A Step Back for Turkey, Two Steps Forward in the Repatriation Efforts of Its Cultural Property*, 5 CASE W. RSRV. J.L. TECH. & INTERNET 1, 17 (2014).

Such dilemmas would be better solved by voluntary returns, which could take the form of cooperative negotiations between what I consider to be the artifact's communities of use. These could include museum scholars and visitors, the *guthi* or representatives of a family or other relevant communities or origin, and even relevant users who live outside the borders of the state currently controlling the territory in which a cultural artifact was originally made.

To illustrate the possibilities of such voluntary repatriations, I will describe some of the recent history of repatriations to Nepal. I first became involved in these claims when I heard the American artist Joy Lynn Davis talk about a *deva* showing Narayana (an avatar of Vishnu) and his consort Lakshmi sharing a single body, half male and half female.[62] The *deva* had been stolen in 1984 from a shrine in Patan, a town in the Kathmandu Valley.[63]

In 1989, the painter and art historian Lain Singh Bangdel described this theft and included a pre-theft photograph in his book *Stolen Images of Nepal*, which he wrote in an effort to protect those *devas* still in place and lay the groundwork for someday reclaiming the lost.[64]

When writing an article about these thefts, Dixit discovered that the Lakshmi-Narayana had been auctioned at Sotheby's in New York in 1990, but he couldn't discover where it had gone from there.[65] During a residency in Nepal, Davis became interested in the thefts and tried to think of new ways to locate the missing artifacts. She conducted oral history interviews to record community memories, created an online database of stolen artifacts, and began painting photorealistic scenes of symbolic returns, working from historical photographs and her observation of empty sites to envision what the *devas* would look like if they came home.[66]

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62 *See* Valentina Di Liscia, *How a Tweet Led to the FBI's Return of a Looted Nepalese Sculpture*, HYPERALLERGIC (Mar. 9, 2021), https://hyperallergic.com/627854/return-of-looted-nepal-statue-dallas-museum/ [https://perma.cc/2HSV-34LL].

63 *See* Sahina Shrestha, *US Support to Restore Stolen Nepal Gods*, NEPALI TIMES (Mar. 5, 2021), https://nepalitimes.com/news/us-support-to-restore-stolen-nepal-gods [https://perma.cc/8DFB-4FKS].

64 LAIN SINGH BANGDEL, STOLEN IMAGES OF NEPAL 246 (1989).

65 Dixit, *supra* note 58, at 9.

66 Joy Lynn Davis, *Remembering the Lost*, SOUNDCLOUD, at 11:10 (Sept. 20, 2016), https://soundcloud.com/rangjung-yeshe-institute/joy-lynn-davis-remembering-the-lost [https://perma.cc/MB5L-EPC4].

With one pectoral muscle and one breast, the Lakshmi-Narayana *deva* is unmistakable—so unmistakable that Davis immediately recognized an image that popped up during one of her periodic online searches for sculptures of Nepal. A blogger had posted snapshots from an opening at the Dallas Museum of Art. There, in the blurry background, was the Lakshmi-Narayana.[67]

The statue had been purchased by David Owsley, a prominent collector of antiquities and long-time patron of the Dallas Museum of Art.[68] It first appeared in public in late 1993, during a special exhibition put on to display Owsley's collections.[69] In 2003, Owsley pledged to leave his collection of South Asian art to the museum.[70] The majority of his intended gifts went on display in newly opened galleries, which he also paid for.[71] Since the intended gifts, including the Lakshmi-Narayana, didn't yet belong to the museum, they were not included in the museum's online catalog. The only way to realize the *deva* was in Dallas was to visit the gallery or read a 2013 museum publication.[72]

Around a month after news broke about the history of the Lakshmi-Narayana in a *Hyperallergic* article, the museum removed the piece from display, and negotiations for its return began.[73] The museum called in the Federal Bureau of Investigation's Art Crime Team, whose agents collected evidence, including the dimensions of the hole in the base, which still stood in the shrine, to verify that it matched the tenon sticking out of the bottom of the sculpture.[74] After additional delays due to the

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67 *Id.* at 39:40.

68 Erin L. Thompson, *Stolen Deities Resurface in a Dallas Museum*, HYPERALLERGIC (Jan. 24, 2020), https://hyperallergic.com/530848/stolen-deities-resurface-in-a-dallas-museum/ [https://perma.cc/H69A-EGX8] (discussing Owsley).

69 The exhibition was titled "East Meets West: Sculpture from the David T. Owsley Collection." *See* Nair, *supra* note 68.

70 *Id.*

71 *Id.*

72 *See* Davis, *supra* note 66, at 40:50. The sculpture was included in ANNE BROMBERG, THE ARTS OF INDIA, SOUTHEAST ASIA, AND THE HIMALAYAS AT THE DALLAS MUSEUM OF ART 232 (2013).

73 It was removed from view in December 2019, approximately one month after I pointed out the theft on X (formerly Twitter), and the museum replied that it would look into the matter. *See* Erin L. Thompson (@artcrimeprof), X (Nov. 19, 2019, 9:01 AM), https://x.com/artcrimeprof/status/1196835820809920513 [https://perma.cc/QX6S-XRKR]; *see also* Dallas Museum of Art (@DallasMuseumArt), X (Nov. 20, 2019, 9:57 AM), https://x.com/DallasMuseumArt/status/1197212359003197441 [https://perma.cc/LNN4-37DE].

74 *See* Nair, *supra* note 68.

COVID-19 pandemic, the museum surrendered the *deva* to the FBI agents in March 2021.[75]

Sotheby's has said it cannot recover the records that would show the provenance information provided by the seller of the statue.[76] Perhaps there was fake paperwork purporting to show a legal ownership history. Perhaps as is still common on the antiquities market, there was simply no paperwork at all.

After it was shipped back to Nepal, the Lakshmi-Narayana went into temporary storage in a museum in Patan while its fate was debated.[77] During the long process of repatriation, Dixit and other heritage activists had formed a group called the Nepal Heritage Recovery Campaign (Campaign).[78] A handful of other *devas* had been repatriated to Nepal over the years, but they had gone straight into the National Gallery.[79] The Campaign had a different goal: returning *devas* to the communities and their places of worship.[80]

The complications in this case were that the *deva* had crossed an ocean and that one of its hands had broken off (most likely during the theft, since Bangdel's photograph shows it undamaged).[81] Normally, this type of long voyage and breakage would cause worshippers to think that the deity had permanently left a statue.[82] But the Campaign persuaded the community that, as one of them put it, the god hadn't gotten an American passport during its years abroad.[83]

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75 *Id.*

76 Zachary Small, *Dallas Museum of Art to Return Sacred Statue to Nepal*, N.Y. TIMES (Mar. 4, 2021), https://www.nytimes.com/2021/03/04/arts/design/dallas-museum-nepali-structure-returned.html [https://perma.cc/RX99-8VAS].

77 Erin L. Thompson, *Returned to Nepal by the FBI, a Sculpture Becomes a God Again*, HYPERALLERGIC (Dec. 17, 2021), https://hyperallergic.com/700760/returned-to-nepal-by-the-fbi-a-sculpture-becomes-a-god-again/ [https://perma.cc/FKM7-MUT3].

78 *See Team*, NEPAL HERITAGE RECOVERY CAMPAIGN, https://nepalheritagerecoverycampaign.org/team/ [https://perma.cc/T67U-8U9M] (last visited May 21, 2025).

79 *See* Swosti Rajbhandari Kayastha, *On the Repatriation of Nepal's Lost Art*, ECS NEPAL (Mar. 2019), http://ecs.com.np/heritage/on-the-repatriation-of-nepals-lost-art [https://perma.cc/4K5G-8AXK].

80 *See Repatriation*, NEPAL HERITAGE RECOVERY CAMPAIGN, https://nepalheritagerecoverycampaign.org/object_category/repatriation/ [https://perma.cc/X9UB-4W5M] (last visited May 21, 2025).

81 *See id.*; *see also* BANGDEL, *supra* note 64; Di Liscia, *supra* note 62; Thompson, *supra* note 77.

82 Thompson, *supra* note 77.

83 *See id.*

The Campaign also coordinated the renovation of the Lakshmi-Narayana's shrine, a freestanding room topped with a stack of tiled roofs ending in snub-nosed curved beams. A CCTV system was installed to prevent another theft.[84] A replacement image of Lakshmi-Narayan that the community had commissioned to worship after the theft was moved to the side, and the sculpture's original base, which had split in two when it was stolen, was repaired.[85]

On December 4, 2021, a day chosen for its auspiciousness,[86] Lakshmi-Narayan was loaded into a palanquin carried on long bamboo poles. Led by musicians playing drums and cymbals, the procession and chanting bearers circled the shrine three times. The palanquin was set down next to a priest who had been preparing for hours, drawing diagrams in colored powders and arranging ritual utensils and offerings outside the temple door. He conducted a *puja* ceremony to ask Lakshmi-Narayan to reinhabit its statue and forgive the community for failing to protect it from theft. (I don't think the community was to blame, but I won't argue with a priest.)

Finally, the Lakshmi-Narayana was put back into the shrine it was never meant to leave.[87] Garlands of flowers went back around its neck, and vermilion powder went on its forehead. Money and grains of rice were thrown around its feet. Worshippers lit butter lamps and rang bells hanging over its head to offer the gods the pleasures of light and sound.

Earlier in the day, the family whose members formed the *guthi* charged with caring for the shrine had placed a plastic shopping basket filled with objects wrapped in newspaper before the priest. The objects were copper ornaments made in the eighteenth century to fit over the statue and adorn it on special holidays. For decades, they had remained in storage. Now, finally, the god was home and dressed once more.

The reinstallation of the Lakshmi-Narayan became part of the global conversation about the ethics of collecting cultural heritage, with far-reaching effects. After learning about the cultural and religious importance of *devas*, some holders have returned them without requiring the involvement of legal

84 *Id.*
85 *Id.*
86 *Id.*
87 *Id.*

authorities. One example is a Buddha which had been donated to the Tibet House in New York City.[88] The Tibet House's director quickly moved to return the Buddha after the anonymous researcher known as "Lost Arts of Nepal"—who matches historical photographs to museum collections databases, auction listings, and images of private collections—posted a photograph of the Buddha in place before its theft.[89] In an indication of the sheer number of recent returns, the Buddha was able to hitch a ride with other repatriations being made by the Tibet House's Manhattan neighbor, the Rubin Museum.[90]

Possibly the most striking change occurred in Nepal itself, where publicity about the Lakshmi-Narayan inspired a wave of similar requests for return and reinstallation. For example, Itum Baha, a Buddhist monastery in Kathmandu, reclaimed and reinstalled a fourteenth-century wooden carving of an apsara, a garland-bearing female spirit of the clouds and waters, which had adorned a window in the monastery until a thief ripped it out of the wall in 1999.[91] Years later, the monastery's hopes of locating the sculpture were so low that Pragya Ratna Shakya, the secretary of the monastery's Conservation Society, commissioned a replica using a historical photograph of the artifact to fill the space.[92]

But this same photograph allowed for the apsara's return after Lost Arts of Nepal spotted a match in the Rubin Museum's

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88 *See* Erin L. Thompson (@artcrimeprof), X (Dec. 21, 2021, 9:59 AM), https://x.com/artcrimeprof/status/1473352406142496771?s=42 [https://perma.cc/HLQ8-ZDDG].

89 Lost Arts of Nepal (@LostArtsofNepal), X (Dec. 6, 2021, 5:35 PM), https://x.com/lostartsofnepal/status/1468031325068087297 [https://perma.cc/2ZZV-QXFP]; Erin L. Thompson (@artcrimeprof), X (Dec. 21, 2021, 9:56 AM), https://x.com/artcrimeprof/status/1473351788443189249 [https://perma.cc/54BE-KG2E].

90 Thompson, *supra* note 89; Erin L. Thompson (@artcrimeprof), X (Mar. 1, 2022, 5:25 PM), https://x.com/artcrimeprof/status/1498831832103723009?s=42 [https://perma.cc/E4NX-DYCS]; *see also* Bibek Bhandari, *Nepal's Stolen Gods Seek New Homes*, FOREIGN POL'Y (Nov. 12, 2023, 6:00 AM), https://foreignpolicy.com/2023/11/12/nepal-stolen-artifacts-museums-religion-repatriation-heritage/ [https://perma.cc/4PQT-DXX6] ("In 2022, the Rubin Museum of Art in New York returned the artifact to Nepal as part of a wider effort in Western museums to trace and restore looted or illicitly acquired antiquities.").

91 *Itumbaha Museum Is Inaugurated in Kathmandu, Nepal*, RUBIN (July 29, 2023), https://rubinmuseum.org/itumbaha-museum-is-inaugurated-in-kathmandu-nepal/ [https://perma.cc/337W-PSFD]; Zachary Small, *Rubin Museum to Return Nepalese Relics Thought to Have Been Stolen*, N.Y. TIMES (Jan. 10, 2022), https://www.nytimes.com/2022/01/10/arts/design/rubin-museum-returning-nepalese-relics.html [https://perma.cc/7WU5-XZ2L].

92 *See* Thompson, *supra* note 77.

collections database.[93] The apsara had been purchased by the Shelley and Donald Rubin Cultural Trust, established by the Rubin Museum's founders, in a private sale only four years after its theft.[94] The Rubin returned the carving in 2022, and it was reinstalled under the window in the following year.[95]

Another return to the same monastery came from the Metropolitan Museum. Slusser began photographing Itum Baha's tenth-century wooden roof support struts in 1969.[96] They take the shape of *yakshis*, elemental fertility goddesses wearing stacks of bracelets and elaborate crowns, who raise their arms in protective gestures while balanced on smaller, contorted male figures.

Itum Baha once had a row of such protective *yakshis*, but they were stolen in 1972—a theft which caused the roof to collapse.[97] Using Slusser's pre-theft photographs, Lost Arts of Nepal located one of the *yakshis* in the Metropolitan Museum's online collection database. The museum had accepted her in 1991 as a donation, although she was never put on display.[98] After Lost Arts of Nepal made the match, Shakya spent nearly a month searching through the monastery's storerooms before he found the bottom portion of the strut—the male figure, which had broken off and been left behind during the theft.[99]

When I visited the monastery in the summer of 2022, I measured and photographed the male figure and then sent the information to the relevant curator at the Metropolitan Museum. Since the monastery's organizing committee hadn't heard anything from the museum after Lost Arts of Nepal posted the match, I assumed that either the museum had not yet heard the information or was uncertain that its figure fit the broken base.

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93 Lost Arts of Nepal discovered this match in September 2021. Cassie Packard, *Two Nepalese Antiquities in the Rubin Museum Identified as Looted*, HYPERALLERGIC (Sept. 24, 2021), https://hyperallergic.com/678768/two-nepalese-antiquities-in-the-rubin-museum-identified-as-looted/ [https://perma.cc/69NB-CNMX].

94 Small, *supra* note 91.

95 *Id.*; Ofelia Zurbia Betancourt, *Itumbaha Monastery in Kathmandu Has Inaugurated the Intumbaha Museum, the First of Its Kind in Nepal*, ARTDAILY, https://artdaily.com/news/160009/Itumbaha-monastery-in-Kathmandu-has-inaugurated-the-Itumbaha-Museum—the-first-of-its-kind-in-Nepal [https://perma.cc/7EJM-H374] (last visited Mar. 7, 2025).

96 MARY SHEPHERD SLUSSER, THE ANTIQUITY OF NEPALESE WOOD CARVING: A REASSESSMENT 61–65 (2010).

97 David Cornélius Andolfatto, *The Tunālas of Itum Bāhāh*, *in* RESTORATION OF ITUMBĀHA 142, 148 (2023).

98 *Id.*

99 Thompson, *supra* note 77.

But the curator replied that the museum was aware of the situation and intended to keep working with the Department of Archaeology rather than the monastery.

Since I failed to see why it was taking so long to complete what was essentially a two-piece puzzle, I wrote an article mentioning the strut for *Foreign Policy*.[100] In what I am certain was a mere coincidence, the museum notified Nepal that it would be repatriating its piece of the strut shortly after the publication of the article.[101] The strut is now reinstalled (although it is no longer structural and has been placed in an interior courtyard where it can be better guarded).

Another repatriation from the Metropolitan was a *deva* of Vishnu, also made after Lost Arts of Nepal discovered a matching historical photograph.[102] Today it stands in the National Museum, but this is temporary. The plan is to reinstall the piece on the small stupa in Bungamati from which it was stolen.

The Bungamati stupa is part of a complex with a public well. I know of at least three other repatriations of *devas* to *hitis* (public waterspouts). Many such medieval waterspouts are still carefully maintained by Nepali communities, who work together to keep the water channels clear and offer daily *puja* to the numerous *devas* who watch over these water sources.[103] Nearly always, these *devas* include a scene known as Uma Maheshvara—Shiva and his consort Parvati lounging in a paradisical landscape as they give the gift of water to their worshipers.

Lost Arts of Nepal identified one such Uma Maheshvara, which had been stolen from a *hiti* in Patan in the 1980s, in the Brooklyn Museum of Art.[104] The Manhattan D.A.'s Office handed

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100 Erin L. Thompson, *It Doesn't Belong in a Museum*, FOREIGN POL'Y (Dec. 5, 2021, 7:00 AM), https://foreignpolicy.com/2021/12/05/nepal-art-theft-sacred-yakshi/ [https://perma.cc/RVD7-KH9U].

101 *See* Angelica Villa, *'Priceless' Artifacts Returned to Nepal from Belgian Collector*, ARTNEWS (Mar. 5, 2024, 1:43 PM), https://www.artnews.com/art-news/news/artifacts-returned-nepal-belgian-collector-1234698930/ [https://perma.cc/T39P-XW93].

102 Namrata Sharma et al., *In Search of Stolen Gods at the Met*, NEPALI TIMES, https://nepalitimes.com/here-now/in-search-of-stolen-gods-at-the-met [https://perma.cc/VLA6-MYEN]; *see* Angela Davic, *The Metropolitan Artifacts Linked to Looting and Trafficking*, THE COLLECTOR (Aug. 6, 2024), https://www.thecollector.com/the-metropolitan-artifacts-linked-to-looting-and-trafficking/ [https://perma.cc/45P5-ZHX8].

103 *See* Alok Siddhi Tuladhar, *Kathmandu's Ancient Water Spouts Still Functioning*, NEPALI TIMES (Mar. 15, 2022), https://nepalitimes.com/here-now/kathmandu-s-ancient-water-spouts-still-functioning [https://perma.cc/P59X-W9KR].

104 Lost Arts of Nepal reported a match on April 5, 2023:

> This Dated 709 Samvat (1588 CE) Stone Image of UMA MAHESWORA, Stolen

it over to Nepali authorities in December 2023.[105] In February 2024, the *deva* was reinstalled in a niche in a *falcha*—a shaded platform for community gatherings and the use of guests and travelers—next to the *hiti*.[106]

When I went to see it a few months later, the *deva* was watching over a busy scene of neighbors filling water jugs. A member of the Nepal Heritage Recovery Campaign pointed out to me that the niche over the *hiti*'s main waterspout was still empty. It probably once contained another Uma Maheshvara image.

To the one side of the main waterspout stands an empty pedestal. Historic photographs show a Vishnu *deva* which is now in the Musée Guimet in Paris. Negotiations for its return are at a standstill, since Guimet curators made the impossible suggestion that they might consider returning this and another *deva* whose original site is also documented in historic photographs if Nepal gave them one of the star pieces of the National Museum, the oldest figural sculpture to have been found in the country.[107]

Another Uma Maheshvara was given to the Denver Museum of Art in 1980 by a married pair of collectors who bought it in India in 1968.[108] Bangdel included this piece in *Stolen Images of Nepal*, recording that it had been stolen from a *hiti* in Patan in

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> in the 1980s From Kathmandu Valley, Has Been Located in the Collection of Brooklyn Museum . . . . The Insitu Photograph Was Taken By Puspa Man Chitrakar in the 1980s. The Image Has Been Published By Art Scholar, Ulrich Von Schroeder in His Book, "Nepalese Stone Sculptures, Volume-1, Hindu, Plate No. 77B."

Lost Arts of Nepal, FACEBOOK (Apr. 5, 2023), https://www.facebook.com/photo.php?fbid=524090406582399&set=pb. [https://perma.cc/XS9R-N496].

105 *See United States Hands Over Four Stolen Nepali Artefacts*, THE KATHMANDU POST (Dec. 5, 2023), https://kathmandupost.com/national/2023/12/05/united-states-returns-four-nepali-artefacts [https://perma.cc/7L5M-V4MS].

106 The *deva* has been successfully reinstated at Hiti Falcha of Chyasal Tole in Patan. Nasreen Sheikh (@_nasreensheikh), INSTAGRAM (Feb. 16, 2024), https://www.instagram.com/_nasreensheikh/p/C3cLiWwPJ8t/?img [https://perma.cc/Y3S4-4Z8P]; *see also* Press Release, Brooklyn Museum, Stone Sculpture from the Brooklyn Museum's Collection Returning to Nepal, (Dec. 4, 2023), https://d1lfxha3ugu3d4.cloudfront.net/press/docs/CONFIDENTIAL_Brooklyn_Museum_Press Release_NepalRetur_updated.pdf [https://perma.cc/6253-QA8V] ("The object was loaned to the Brooklyn Museum in 1987 by Ben and Roslyn Shepps, and gifted to the Museum by the Sheppses in 1991.").

107 *See* Lydia Epp Schmidt, *Stolen Statues Remain at Musée Guimet over a Decade After Discovery*, ARTNET (Apr. 22, 2014), https://news.artnet.com/art-world/stolen-statues-remain-at-musee-guimet-over-a-decade-after-discovery-11363 [https://perma.cc/L3P4-V7DY].

108 *See* Angela Ufheil, *Was This Statue in the Denver Art Museum's Collection Originally Stolen from Nepal?*, 5280 (Feb. 5, 2021), https://www.5280.com/was-this-statue-in-the-denver-art-museums-collection-originally-stolen-from-nepal/ [https://perma.cc/NF4V-GGZ5].

the mid-1960s.[109] In 2019, a Nepali resident in America named Slok Gyawali noticed this match and emailed the Denver museum to ask what due diligence they had done before acquiring this piece.[110] Several months later, the museum replied, saying that they knew about the Bangdel publication but that they were "unaware of any substantiated claims of theft of [the] piece" and thus they "continue[d] to have confidence in the propriety of the provenance of the piece."[111]

Gyawali concluded that there was no hope of bringing the Uma Maheshvara back home. When news of the successful Lakshmi-Narayan claim began to circulate, he got in touch with me and shared the correspondence with the museum. A local reporter then wrote a long piece on the *deva*, and soon—again, I'm sure entirely coincidentally—the museum sent it back to Nepal.[112] It is now back in its *hiti* and receives worship, although in what is currently all too common a solution to the problem of the rapaciousness of collectors' desire, it is encased in iron bars.

Another Uma Maheshvara was stolen from yet another *hiti* in Patan and donated to the Metropolitan Museum in 1983. The museum proactively contacted Nepali authorities and arranged its 2018 return after its staff noticed that Bangdel had published it in *Stolen Images of Nepal*.[113] The *deva* spent years in Nepal's National Museum until, spurred by the example of the reinstallation of other *devas*, the *guthi* for the *hiti* requested its reinstallation.[114] In February 2022, *guthi* leaders signed legal paperwork to assume the responsibility of care for the *deva* and then took it home.[115]

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109 BANGDEL, *supra* note 64, at 77.

110 Ufheil, *supra* note 108.

111 *Id.*

112 Embassy of Nepal, Washington, D.C. (@nepalembassyusa), X (Sept. 13, 2021, 3:11 PM), https://x.com/nepalembassyusa/status/1437539486053900288 [https://perma.cc/SS8W-CFYW].

113 Sahina Shrestha, *Bringing Our Gods Home*, NEPALI TIMES (Apr. 6, 2018), https://nepalitimes.com/here-now/bringing-our-gods-home [https://perma.cc/B6BU-D7XM]; *see also Met Returns Two Stolen Artifacts to Nepal*, THE HIST. BLOG (Apr. 8, 2018), https://www.thehistoryblog.com/archives/51135 [https://perma.cc/X94D-BCGG].

114 *Id.*

115 *See* Nasana Bajracharya, *Nepal Recovers Heritage Artefacts Lost over Time. Their Restoration Beyond Museums Involves Many Challenges*, ONLINEKHABAR (Apr. 18, 2022), https://english.onlinekhabar.com/heritage-artefact-recovery-challenges.html [https://perma.cc/JU5E-RZS7] (explaining that Nepal's National Museum, which stores repatriated artwork, is "ready to help the locals retrieve the deities like in the case[] of Uma Maheshwar").

> Under [the] Ancient Monument Preservation Act (1956) and its 2015 amendment, there is a provision that if the heritage artefacts received under

Why have so many Uma Maheshvaras been returned to so many *hitis*? Not because communities wanted them more than other *devas* or because they are more important to religious and cultural practices than other *devas*, but simply because their theft happens to have produced more evidence of the type that satisfies American authorities. Since they are installed in the open, in spaces that anyone is free to visit and photograph, they were more likely to be photographed before their theft than other *devas* which might be more of a priority for repatriation to their communities.

Sometimes evidence does survive for less visible *devas*, such as the two gilded sixteenth-century masks of the deity Bhairav, a manifestation of Shiva, that were stolen from a family house in 1994.[116] For centuries, they had appeared publicly only once a year during the Indra Jātrā, one of Nepal's most important festivals. The masks, a nearly identical pair, show a snarling Bhairav with golden skulls and snakes twining through his blood-red hair.[117] A protective deity, Bhairav's fierceness is directed at the dangers facing his worshipers.[118]

One of the family members gave Lost Arts of Nepal an old snapshot of the masks, taken during preparations for a festival with the hopes that the researcher could track them down. Lost Arts of Nepal located the masks in Rubin Museum and the Dallas Museum of Art. The Manhattan D.A.'s Office later determined that the masks had been smuggled to Hong Kong and then sold at auction in New York.[119] The museums surrendered

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> the Department of Archaeology are to be returned or reinstated, they need to be handed over to the owners or guthiyars (locals) given they have substantial proof along with the recommendation letter from their respective chief district officers or local government chiefs.

Id.

116 The gilded masks, *mukhundos*, were stolen from a home in Bhimeshwar, Dolakha, Nepal. Sanjog Manandhar, *Four Stolen Nepali Artefacts Returned from the United States*, THE KATHMANDU POST (Feb. 1, 2024, 9:59 AM), https://kathmandupost.com/national/2024/01/31/four-stolen-nepali-artefacts-returned-from-united-states [https://perma.cc/JHB9-L2LR] ("The *mukhundos* . . . were stolen from Bhimeshwar Municipality-2 of Dolakha on March 6, 1994."); *D.A. Bragg Announces Return of Four Antiquities to the People of Nepal*, MANHATTAN DIST. ATT'Y'S OFF. (Dec. 4, 2023), https://manhattanda.org/d-a-bragg-announces-return-of-four-antiquities-to-the-people-of-nepal/ [https://perma.cc/5TPL-YLZ6].

117 Erin L. Thompson, *Mighty Shiva Was Never Meant to Live in Manhattan*, N.Y. TIMES (Feb. 4, 2024), https://www.nytimes.com/2024/02/04/opinion/museums-artifacts-stolen.html [https://perma.cc/7A55-GF9Q].

118 *The Power of Lord Bhairav: A Guide to Spiritual Awakening*, RUDRA INDIA (July 5, 2024), https://rudraindia.org/lord-bhairav [https://perma.cc/R3B7-VHC5].

119 *See D.A. Bragg Announces Return of Four Antiquities to the People of Nepal*, *supra* note 116.

the masks to the D.A.'s Office, which handed them over to Nepal in December 2023.[120]

At the ceremony held in Kathmandu to welcome the masks, Yagya Kumar Pradhan, an elder of their family, was photographed holding the edge of one of them as tightly as the hand of a lost child. Propped up on a conference table at the Department of Archaeology, the masks were already surrounded with signs of worship, including offerings of flower petals and silk scarves.[121] No longer were they merely artworks. They had once more become fierce community protectors.

The masks are highly important to their community, but they were repatriated not because of this importance but because a photograph happened to have been taken, kept, and given to the right researcher. But what about the other *devas* that were stolen without ever being photographed? Many of the Valley's smaller but still precious artworks were taken before cameras were in widespread use and scholars began their efforts to document Nepal's endangered heritage. Some *devas* were even deliberately hidden from view in an attempt to protect them from theft.[122]

Other *devas* were hidden for cultural reasons. For example, several examples of Buddhist protective goddesses currently in American collections were made for shrines that were open only to initiates.[123] These *devas* were sculpted of unbaked clay to harness the ritual power of the earth. The material is both heavy and fragile, which means that they were probably sculpted in place within the shrine. The figures have supports projecting from their backs because they were once attached to the wall. As Slusser writes, "Once constructed and secured to the wall . . . the sculpture was meant to stay."[124] She concludes that "thieves must have unceremoniously ripped them" from their shrines.[125]

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120 *Id.*

121 Yagya Kumar Pradhan is an elder of the Nakchhen Pradhan family. *See* Lost Arts of Nepal (@lost_artsofnepal), INSTAGRAM (Jan. 31, 2024), https://www.instagram.com/p/C2wtV3KgAiN/ [https://perma.cc/Z9AT-F76U].

122 *See* Thompson, *supra* note 77.

123 *See* Mary Shepherd Slusser, *Nepalese Unfired Clay Sculpture: A Case Study*, 32 ORIENTATIONS 71, 71–80 (2001); Mary Shepherd Slusser, *Dry-Lacquer or Clay? Preliminary Notes on a Neglected Nepalese Sculptural Medium*, 23 CONTRIBUTIONS TO NEPALESE STUD. 11, 11–33 (1996) [hereinafter *Neglected Nepalese Sculptural Medium*].

124 *Neglected Nepalese Sculptural Medium*, *supra* note 123, at 17.

125 *Id.*

The goddesses subsequently appeared in American museums and private collections in the 1980s and 1990s.[126]

We don't need pre-theft photographs to tell that these *devas* were stolen. A glance at the pieces themselves, with their distinctive iconography and broken supports, should be enough to make clear they were taken from their worshipers and smuggled out of Nepal. There is no other story we can tell ourselves—no legal, ethical explanation for their path from secret shrine to foreign collection. This crucial evidence can't be collected because it has been hidden, concealed, or erased. Does this mean that we are unable to take action? Should foreign collections use the privilege of silence to retain these *devas*?

We do not know which family or *guthi* owned these *devas* before their theft. The Southern District of New York addressed a similar concern in a 1972 case, *United States v. Plott*.[127] There, the defendant was charged with violating the NSPA for transporting alligator skins from Georgia to New York.[128] The defense argued that the charge was inappropriate because the prosecutors had not proven who owned the stolen alligators.[129] They could have been privately owned pets, federal property taken from a national wildlife preserve, or state property subject to the statute that the defendant was charged with violating. The court rejected this attempted defense, holding that "the act of stealing is as much defined by the taker's intent to keep property to which he has no right as it is by esoteric questions of legal title [of] others."[130] With *devas* as with alligators, the question of exactly whose property they were before their theft does not need to be resolved as long as they are clearly not the property of the defendant.

I will give one final example, a twelfth or thirteenth century Shiva *linga* carved with four faces, which was purchased from Sotheby's in 2000 and given to the Carlos Museum at Emory.[131] Such *lingas* are important parts of ritual practice in Nepal, where worshippers anoint them with powders, flowers, and other offerings. Small traces of such powders still adhere to the Emory *linga*.

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126 *Id.* at 11.

127 United States v. Plott, 345 F. Supp. 1229 (S.D.N.Y. 1972).

128 *Id.* at 1231.

129 *Id.*

130 *Id.* at 1232.

131 *Shiva Linga with Four Faces*, EMORY UNIV.: MICHAEL C. CARLOS MUSEUM, https://collections.carlos.emory.edu/objects/7137/shiva-linga-with-four-faces [https://perma.cc/BJ86-6TVP] (last visited Apr. 2, 2025).

So far, no documentation of the rightful home of this *linga* has been found. Without this evidence, the legal route to repatriation is unavailable, even though the powder makes it clear that the *linga* was taken from worship. In the absence of information about its original community, it might be that the most relevant community of use for the *linga* consists of the Nepali expatriates or Hindu residents of Atlanta. An agreement might be reached where they could offer worship to it to transform it from a sculpture to a *deva* while remaining in the gallery.

Many such creative possible solutions to Americans' repatriation difficulties exist – if we are brave enough to find them.

The *devas* that made their way to American collections once brought together families and communities in Nepal. They once comforted people for the sorrows of their past and inspired them to hope for the future. Americans have crammed our museums full of other people's treasures without capturing any of their real value. I argue that the current holders of sacred artifacts should stop waiting for a claim from a designated authority to unleash their legal and ethical responsibilities.

We have already taken this decision when it comes to Nazi looted art. As Edward Able, then the President of the American Alliance of Museums, said in 2003, "Our goal is to assure our many publics that American museums are committed to only having in their collections objects to which they have clear legal title, untainted by controversy or illegal, unjust appropriation."[132] This should also hold true for sacred artifacts taken from living cultures.

Victoria Reed, the head of provenance research for the Boston Museum of Fine Arts, has recently argued that, because museums are "public, educational institutions," it is reasonable to expect them "to go beyond the letter of the law" when repatriating cultural artifacts.[133] She points out that even after accumulating "a solid foundation of research" on which to base a decision of whether to repatriate, gaps in the ownership history of an artifact might remain, since "thieves rarely leave a paper trail."[134]

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132 Jacqueline Trescott, *Museums Launch Database to Find Nazi Stolen Art*, WASH. POST (Sept. 8, 2003), https://www.washingtonpost.com/archive/lifestyle/2003/09/08/museums-launch-database-to-find-nazi-stolen-art/df4bb17e-83e0-4437-b29f-ac4a828b82c9/ [https://perma.cc/9W6R-BUU7].

133 Victoria Reed, *The Art of Restitution at the Museum of Fine Arts, Boston*, AM. ALL. OF MUSEUMS (Nov. 1, 2023), https://www.aam-us.org/2023/11/01/the-art-of-restitution-at-the-museum-of-fine-arts-boston/ [https://perma.cc/K699-UMFM].

134 *Id.*

Instead of waiting to find "a 'smoking gun' showing precisely when and how a work of art was taken in order to access the [repatriation] claim," Reed calls for museums to make "small leaps of faith" if the probability of theft under the circumstances is high, even if it cannot be definitively proven.[135] Such leaps of faith are very small indeed in cases related to Nepal and many other cultures where the pain of missing cultural artifacts continues.

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135 *Id.*

Words, Words, Words: Books, Libraries, and the Law

Leila Amineddoleh

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Word, Words, Words[1]: Books, Libraries, and the Law

*Leila A. Amineddoleh**

This Article explores the cultural, historical, and legal significance of books and manuscripts, emphasizing their vulnerability to theft, destruction, and neglect throughout history. From ancient Mesopotamian cuneiform tablets to modern libraries, written materials have functioned not only as vessels of knowledge but also as cultural heritage objects subject to political, religious, and economic targeting. The Article traces the development of manuscripts, the emergence of libraries, and the long history of censorship, biblioclasm, and wartime looting. It highlights the legal challenges surrounding the restitution of stolen manuscripts and rare books, examining case studies involving institutions such as Princeton University, the Getty Museum, and the Museum of the Bible. Through detailed analysis of national patrimony laws, international conventions like the 1954 Hague Convention and the 1970 UNESCO Convention, and prominent court battles, the Article underscores the urgent need to strengthen legal protections for literary heritage. Ultimately, it calls for greater awareness and accountability to ensure that books—our "words, words, words"—are preserved as enduring records of civilization.

1 "Words, words, words," is what Hamlet's said to Lord Polonius when he asked, "What do you read, my lord?" WILLIAM SHAKESPEARE, HAMLET act 2, sc. 2, l. 192.

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I. INTRODUCTION

"*Scientia potentia est*"—translated to "knowledge is power"—is frequently attributed to Sir Francis Bacon.[2] If Bacon was right, it follows that *access* to knowledge is power. For most of human history, knowledge was passed down through oral tradition.[3] With the advent of writing, the passage of knowledge came to include the transfer of written instruments. Over the centuries, written materials became more readily available, in part due to Johannes Gutenberg's printing press.[4] However, the spread of information was still restricted by those in power, through intellectual property restrictions and ownership constraints.

Manuscripts have value apart from their intellectual property; physical manuscripts have cultural and artistic value and, in some cases, religious or sacred significance. Due to their scarcity, content, historical worth, and aesthetic qualities, the prices for historic manuscripts are high. Manuscripts are treated like art objects and have been collected for centuries. Ownership of manuscripts is heavily regulated by various property and cultural heritage laws, many of which require a government's permission to be sold or exported. Surprisingly, there was even a time when manuscripts were destroyed under royal decrees and strict national laws.[5]

Today, manuscripts are still vulnerable to theft and destruction. They are easily transported and often lost, stolen, damaged, or destroyed—either by the environment or, worse, due to conflict, theft, and looting. Historically, formerly colonized nations, including Greece, India, Egypt, and countries in the "global south," such as Mali, have experienced extensive theft of

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2 *See* BAHMAN ZOHURI ET AL., KNOWLEDGE IS POWER IN FOUR DIMENSIONS: MODELS TO FORECAST FUTURE PARADIGM 3 (2022). However, the exact phrase first appears in Thomas Hobbes' 1668 version of the work *Leviathan*. *Id.* at 4. Interestingly, Hobbes was originally Bacon's secretary. *Id.*

3 *See* Patrick D. Nunn, *The Oldest True Stories in the World*, SAPIENS (Oct. 18, 2018), https://www.sapiens.org/language/oral-tradition/ [https://perma.cc/FGU6-G4UD].

4 Hellmut E. Lehmann-Haupt, *Johannes Gutenberg*, BRITANNICA, https://www.britannica.com/biography/Johannes-Gutenberg [https://perma.cc/646Y-CYUB] (Mar. 18, 2025).

5 Kathryn Wilson, *The Destruction of Medieval Manuscripts*, MEDIEVALISTS.NET, https://www.medievalists.net/2021/12/destruction-medieval-manuscripts/ [https://perma.cc/PKT8-VRCS] (last visited Apr. 3, 2025).

their written heritage. Efforts are being made today to address the inequity of these takings.[6]

Further, manuscripts face another danger—"biblioclasm."[7] Dealers destroy books for financial gain. By dismantling books to sell a host of individual pages, rather than a single volume, dealers maximize the resale value of their acquisitions. Thus, intact books are torn apart and mutilated. Moreover, valuable folios are not as closely safeguarded as other types of cultural works. Where museums more effectively protect items within their collections, the same cannot be said of libraries.

While books and other written instruments are valuable artistic and cultural treasures, they have long fallen victim to destruction, theft, and inadequate care. Part II of this Article will provide a brief history of writing and manuscripts. Part III examines restrictions on writing through bans and destructive practices. Parts IV and V detail the looting of books and the damage caused by conflicts, and Part VI recounts the destruction of libraries due to poor management and oversight. Finally, Part VII outlines the laws and regulations protecting books and written materials.

II. BRIEF HISTORY OF MANUSCRIPTS[8]

The history of written materials is long enough to fill countless libraries. According to scholars, "[w]riting was invented independently in at least four different times and places: Mesopotamia, Egypt, China, and Mesoamerica."[9] Of these writing systems, Egyptian and Sumerian are the oldest.[10] Some

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6 *See, e.g.*, *Growing Awareness of Looted Antiquities Fuels Calls for Their Return*, GLOB. TIMES (Sept. 29, 2024, 4:01 PM), https://www.globaltimes.cn/page/202409/1320562.shtml [https://perma.cc/JR9Z-5JB2].

7 *See* Sayan Sarkar et al., *Biblioclasm: A Sociocultural Study of Knowledge Destruction and Prevention Through Legal Mechanisms*, 8 INT'L J. KNOWLEDGE DESTRUCTION & PREVENTION THROUGH LEGAL MECHANISMS 1, 1–12 (2024).

8 The author acknowledges that this Article heavily focuses on European and Western laws and history. The scope of this Article is narrow because the general topic is too broad to properly cover in a law journal article. She also recognizes that the history of print is rich globally, especially in Asia—one of the places where print made major advancements. *See* Ryan Wolfson-Ford, *The History of Printing in Asia According to Library of Congress Asian Collections – Part 1*, LIB. OF CONG. BLOGS (June 22, 2021), https://blogs.loc.gov/international-collections/2021/06/the-history-of-printing-in-asia-according-to-library-of-congress-asian-collections-part-1/, [https://perma.cc/7FBN-9B3P].

9 Ilona Regulski, *The Origins and Early Development of Writing in Egypt*, OXFORD ACAD. (May 2, 2016), https://academic.oup.com/edited-volume/43506/chapter/364131674 [https://perma.cc/HNK9-TK4N].

10 *Id.*

scholars regard cuneiform script as the oldest form of writing. The Kish Tablet, a clay tablet from Iraq featuring a pictographic, proto-cuneiform script, dates to 3500 BC and is widely regarded as the earliest known example of writing.[11] But those writings were not literary—instead, they recorded trades of malt, barely, and beer, making them more like an Excel spreadsheet than *A Midsummer Night's Dream*.[12]

The world's first known author was a female. Her name was Enheduanna—a Mesopotamian poet, princess, and priestess born over 4,300 years ago.[13] She used cuneiform to "compose[] 42 temple hymns and three stand-alone poems" that are an important part of Mesopotamia's literary culture.[14] She was a powerful figure whose writing and music helped to shape the beliefs and rituals associated with Akkadian worship.[15]

Meanwhile, in Egypt, a hieroglyphic writing system may have emerged from preliterate artistic traditions.[16] "The earliest evidence of phonetic writing in Egypt dates to about 3250 BC," and according to archaeologists, "the earliest known complete sentence in the Egyptian language has been dated to about 2690 BC."[17] The Egyptians created the first papyrus scrolls used by ancient Greek city-states and throughout the Roman Empire.[18] While most of them have been lost to the ravages of time, surviving papyri and evolving technology that permits deciphering what was previously undecipherable provides a glimpse into the past.[19]

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11 Eva Baron, *The Oldest Written Text in the World Is 5,500 Years Old*, MY MOD. MET (Nov. 30, 2024), https://mymodernmet.com/the-kish-tablet/ [https://perma.cc/MAU6-SV9H].

12 *See id.*

13 *Enheduanna: The World's First Named Author*, BBC (Oct. 26, 2022), https://www.bbc.com/culture/article/20221025-enheduanna-the-worlds-first-named-author [https://perma.cc/JH7Q-WKES].

14 *Id.*

15 *Id.*

16 JOHN BAINES, VISUAL AND WRITTEN CULTURE IN ANCIENT EGYPT 117–18, 120, 122 (2007).

17 Regulski, *supra* note 9.

18 *Papyrus*, BRITANNICA, https://www.britannica.com/topic/papyrus-writing-material [https://perma.cc/RMG6-JSKS] (Apr. 1, 2025) ("Paper made from papyrus was the chief writing material in ancient Egypt, was adopted by the Greeks, and was used extensively in the Roman Empire.").

19 Marzia D'Angelo & Federica Nicolardi, *Addressing Material Issues Through Digital Solutions:* Maque-IT *and the Virtual Reconstruction of the Herculaneum Papyri*, *in* DIGITAL PAPYROLOGY III 303, 304–09 (Nicola Reggiani ed., 2024). Interestingly, some papyri have survived through the practice of reusing materials, such as the Egyptian use of papyri in cartonnage. Erja Salmenkivi, *Reuse and Recycling of Papyrus*, *in* RECYCLING AND REUSE IN THE ROMAN ECONOMY 89, 89 (Chloë N. Duckworth & Andrew Wilson eds., 2020).

The first libraries were repositories for knowledge, initially storing scrolls.[20] One of the Ancient Wonders of the World, the Library of Alexandria was established under the Ptolemaic Dynasty of Egypt that ruled from 323 BC to 30 BC, becoming the most well-known library of the ancient world, and helping shape Alexandria into an important intellectual center.[21] Although the precise layout of the library is not certain, it likely included lecture halls, laboratories, meeting halls, gardens, dining commons, and even a zoo.[22] The library had an unusual way of acquiring its collection with the use of a type of book pirate. Agents of the library were tasked not only with buying scrolls for the collection, but also with confiscating scrolls from ships docked at port, copying them, and then returning those copies to the ships before adding the originals to the library.[23] It is said that the library housed over 500,000 works (the precise number is unknown).[24] According to scholars, the library "contained the totality of knowledge of the ancient [Western] world, ranging from literary works, to philosophical tractates, to scientific explanations."[25] Ultimately, the Library of Alexandria was destroyed, but the cause and method of its demise remain unclear. Popular myth suggests that Julius Caesar burned it to the ground, but the more likely explanation is that the library experienced a protracted and painful decline.[26]

Although the storied library slowly died and its vast collection of scrolls disappeared over the centuries, its demise gave birth to the use of parchments and books. While the Library of Alexandria was voraciously acquiring scrolls, another institution, the Library of Pergamon, was amassing an impressive collection of its own.[27] Concerned with competition for scholarly works, Egypt prohibited the export of papyrus in

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20 Andy Green, *The Long Strange Story of Search: From Ancient Scrolls to Digital Scrolls*, MAGELLANTV (June 14, 2020), https://www.magellantv.com/articles/the-long-strange-story-of-search-from-ancient-scrolls-to-digital-books [https://perma.cc/NY5D-LGPL].

21 Joshua J. Mark, *Library of Alexandria*, WORLD HIST. ENCYC. (July 25, 2023), https://www.worldhistory.org/Library_of_Alexandria/ [https://perma.cc/7F92-XVPP].

22 Tom Garlinghouse, *The Rise and Fall of the Great Library of Alexandria*, LIVE SCI. (Mar. 14, 2022), https://www.livescience.com/rise-and-fall-of-the-great-alexandria-library [https://perma.cc/YR42-9L6V].

23 Mark, *supra* note 21.

24 *Id.*

25 Garlinghouse, *supra* note 22 (alteration in original) (quoting Willeke Wendrich, professor of Egyptian archaeology and the Joan Silsbee chair of African cultural archaeology at the University of California, Los Angeles).

26 *Id.*

27 Mark, *supra* note 21.

an effort to stop Pergamon from making copies of books.[28] This did not stop the leaders of Pergamon's library. Roman writer Marcus Terrentius Varro described this ongoing dispute as follows: "[T]he rivalry about libraries between king Ptolemy and king Eumenes [of Pergamon], Ptolemy stopped the export of papyrus . . . and so the Pergamenes invented parchment."[29] In effect, the rivalry between the two kings led to the parchment industry. The English word "parchment" comes from the Latin *pergamena*—named after the ancient city of Pergamon.[30]

Eventually, parchment replaced papyrus as the most common writing material during the early Middle Ages in Europe.[31] Rather than being fabricated from papyrus leaves, parchment was prepared from animal skins.[32] This material was more durable than papyrus.[33] In addition, parchment could be stitched together to create "durable and flexible volumes."[34] This quality was incredibly important for the development of books because writing was no longer confined to a scroll that had to be rolled out, but rather paginated in a form similar to modern books. Those books were easy to open to a specific page and were easier to store and transport than their papyrus counterparts.[35]

Ultimately, the founding of universities in Europe led to an increased demand for books.[36] Some of these manuscripts were of such high quality and originality that they were practically

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28 *Id.*

29 Lauren Young, *The Fierce, Forgotten Library Wars of the Ancient World*, ATLAS OBSCURA (Aug. 26, 2016), https://www.atlasobscura.com/articles/the-fierce-forgotten-library-wars-of-the-ancient-world [https://perma.cc/GF2M-CFHF] (second alteration in original).

30 *Pergamena Parchment*, PERGAMENA, https://www.pergamena.net/parchment [https://perma.cc/G4Y5-9MP9] (last visited Mar. 18, 2025).

31 *Parchment*, LIBR. PRES. & CONSERVATION, http://preservationtutorial.library.cornell.edu/librarypreservation/mee/preservation/parchment.html [https://perma.cc/8F8E-FQJS] (last visited Mar. 18, 2025).

32 *Papyrus to Paper: Unfolding Pages of History*, BARONFIG, https://baronfig.com/blogs/blog/papyrus-to-paper-unfolding-pages-of-history [https://perma.cc/ZJ6Y-22KM] (last visited Mar. 18, 2025).

33 *Id.*

34 *Parchment*, *supra* note 31. Notably, paper eventually replaced parchment in the late Middle Ages. *See* Rich Rennicks, *The History of Vellum and Parchment*, NEW ANTIQUARIAN (Dec. 29, 2022), https://www.abaa.org/blog/post/the-history-of-vellum-and-parchment [https://perma.cc/82ZZ-SMLH].

35 *Codex*, BRITANNICA, https://www.britannica.com/topic/codex-manuscript [https://perma.cc/AR6X-W2LR] (Mar. 3, 2025).

36 Dep't Medieval Art & Cloisters, *The Art of the Book in the Middle Ages*, THE MET (Oct. 1, 2001), https://www.metmuseum.org/essays/the-art-of-the-book-in-the-middle-ages [https://perma.cc/UV45-Z2QK].

works of art themselves.[37] As it took thousands of hours to create some of these books, their values were astronomical, and so they were literally kept under lock and key.[38] Over time, this led to the development of modern libraries and private collections.[39]

III. BANNED WRITINGS AND THE INTENTIONAL DESTRUCTION OF BOOKS[40]

Words can be powerful, even dangerous. Laws and political regimes that have sought to destroy books have widely fallen into two categories: acts of state or religious orders.

A. Banning and Burning Books for Political Motivations

> *"'You'll have to burn me now, I know those books by heart', quips Severus when Labienus' books are burned."*
>
> — Joseph Howley[41]

Some of the first laws concerning the written word were passed by the Augustan Senate in Ancient Rome.[42] The government banned books that contained political criticisms or topics deemed immoral or subversive.[43] However, the origins and enactments of these rules are unclear, and there was likely no formal legal procedure pertaining to these bans.[44] One of the first examples of book burning demonstrates the vague nature of the laws. In 181 BC, books attributed to Numa Pumpilius, Rome's second king, were discovered in a tomb.[45] The Senate ordered the books to be burned because they were, in "some unspecified way,

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37 *Id.*

38 *Chained Library*, HEREFORD CATHEDRAL, https://www.herefordcathedral.org/chained-library [https://perma.cc/4MRK-MDXG] (last visited Mar. 18, 2025).

39 *See, e.g.*, *The Middle Ages and the Renaissance*, BRITANNICA, https://www.britannica.com/topic/library/The-Middle-Ages-and-the-Renaissance [https://perma.cc/A5Z9-QKGG] (Mar. 28, 2025).

40 The author acknowledges that this section addresses only a very small fraction of historic acts of destruction, and it mostly focuses on European and Near Eastern examples. Providing a comprehensive history of these acts would require hundreds of pages.

41 Joseph A. Howley, *Book-Burning and the Uses of Writing in Ancient Rome: Destructive Practice Between Literature and Document*, 107 J. ROM. STUD. 213, 223 (2017).

42 *Id.* at 217.

43 Shriya Tiwari, *A History of the Banned Books*, IMPERIUM (Apr. 11, 2023), https://www.imperiumpublication.com/post/a-history-of-the-banned-books [https://perma.cc/B8C7-ZFF6].

44 Howley, *supra* note 44, at 217.

45 James Richardson, *Numa and Pythagoras: Did Livy Misrepresent Valerius Antias?*, 18 HISTOS 38, 39 (2024).

hazardous to the Republic."[46] According to Livy's characters, a burning of this sort was the duty of a magistrate.[47]

While the government purportedly banned books to "protect" its citizens,[48] bans were typically imposed on works that were critical of the state. And punishments were severe for the authors of the suspect books. Not only could they face exile, but authors could be found guilty of treason (the highest crime) and executed—not for acting against the state, but for writing books.[49] One of these censored writers, Aulus Cremutius Cordus, praised the assassins of Julius Caesar in his writing.[50] As a result, he faced criminal charges merely for writing about history.[51] There was a book burning ordered by the Senate, and he was sentenced to death.[52] To escape execution by the state, Cordus starved himself to death.[53]

While banned books may have been outlawed and destroyed, it is impossible to erase an idea or a memory. In fact, some of the banned books were still available to those seeking them.[54] In the case of Cordus, his daughter ensured the survival of his writings by defying the prohibitions, retaining copies of her father's texts, and later republishing them.[55] Stoic philosopher Seneca linked book-burning with tyranny and rejected its practice. He asserted that "great books cannot truly be destroyed because of the important role that *readership* plays in their lives—whether in the memories of readers, or in reputation and copying, literature spreads quickly beyond the confines of one material copy."[56] Examples from ancient Rome illustrate that banning books is not an effective way to destroy them or obliterate their memories.[57] Banned books kept finding a way to survive. In fact, prohibiting

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46 Howley, *supra* note 44, at 219.

47 *Id.*

48 *See* Duke Alumni Lifelong Learning, *Banned Books: Before the Printing Press*, YOUTUBE, at 6:17 (Sept. 29, 2022), https://www.youtube.com/watch?v=2eCQAOD54PI [https://perma.cc/R27N-YMHB].

49 *Id.* at 5:30.

50 *Id.* at 6:58.

51 *Id.* at 7:36.

52 *Id.* at 8:10.

53 *Aulus Cremutius Cordus (c. ? – 25 AD)*, THE LATIN LIBR. [hereinafter *Cordus Biography*], https://www.thelatinlibrary.com/historians/notes/cremutius.html [https://perma.cc/F6ZB-FPEF] (last visited Mar. 18, 2025).

54 *See* Howley, *supra* note 44.

55 *See Cordus Biography*, *supra* note 53.

56 Howley, *supra* note 44.

57 Susan Rahyab, Censorship and Book-Burning in Imperial Rome and Egypt (May 15, 2020) (M.A. thesis, City University of New York (CUNY)) (on file with CUNY Academic Works).

writings sometimes helped to keep them in circulation;[58] banning or censoring books usually makes them more popular (a reality that still holds true today).[59]

B. Banning and Burning Books for Religious Reasons

During the Middle Ages, the primary justification for book burning was no longer treason against the state, but heresy against orthodox religion, which was made possible by the Church's control over the distribution of publications and the spread of information.[60] During the Christian era, book burnings continued to be ordered by religious leaders rather than state agents. For example, the first century book burning at Ephesus was recorded in the Acts of the Apostles, where Paul the Apostle encouraged Christian converts to burn their books of magic.[61] In a much more violent episode, the Diocletian, or the Great Persecution, began in 303 AD and ended eight years later. Emperor Diocletian initially ordered that the leading Manichaeans be burnt alive with their religious scriptures, dictates that eventually extended to other Christians.[62] The destruction of their literature was a key part of the hostility. Similar episodes of religiously motivated censorship would play out over the course of the following centuries.

One of the first official state-backed book burning laws that was passed post-Antiquity was the *de heretic comburendo* ("On the Burning of Heretics"), by the English Parliament under King Henry IV in 1401.[63] The law was intended to eliminate heresy, in particular "perverse people of a certain new sect . . . make and write books, [and] do wickedly instruct and inform people."[64] The

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58 *See* Duke Alumni Lifelong Learning, *supra* note 49, at 8:19.

59 Emma Smith, *The Big Idea: What if Censoring Books Only Makes Them More Popular?*, THE GUARDIAN (May 1, 2023, 7:30 PM), https://www.theguardian.com/books/2023/may/01/the-big-idea-what-if-censoring-books-only-makes-them-more-popular [https://perma.cc/N35D-FGLR].

60 *See* Duke Alumni Lifelong Learning, *supra* note 49, at 26:53.

61 *Acts* 19:19–20 ("A number who had practiced sorcery brought their scrolls together and burned them publicly. When they calculated the value of the scrolls, the total came to fifty thousand drachmas. In this way the word of the Lord spread widely and grew in power.").

62 William, *The Diocletian Persecution 303 – 313 AD*, HIGH SPEED HIST. (Feb. 23, 2024), https://highspeedhistory.com/2024/02/23/the-diocletian-persecution/?srsltid=AfmBOooD6G38h_AUlLo8tHt7F4yHG-kNXRXkg4O6bMlBUbJcFZrSy1_g [https://perma.cc/GPH2-KT8Q].

63 *The Medieval Church*, UK PARLIAMENT, https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/religion/overview/medievalchurch/ [https://perma.cc/BM4T-EV88] (last visited Apr. 1, 2025).

64 DANBY PICKERING, THE STATUTES AT LARGE 414 (Forgotten Books 2018) (1761).

law's purpose was to "utterly destroy" all "preachings, doctrines, and opinions of this wicked sect."[65] Those who refused to hand over the offending materials could face corporal punishment or burning at the stake.[66] The first person sentenced to burning was killed in 1401.[67] Eventually, the Suppression of Heresy Act of 1414 amended the law to clarify the process by which charges could be brought.[68]

In 1497, Florence, the cultural jewel and center of Humanism, became known as the site of the Bonfire of the Vanities.[69] Religious zealots following the fiery Italian friar Girolamo Savonarola gathered and publicly burned pagan and "immoral" books, including copies of the Decameron (targeted for its anti-clericalism and eroticism, and once known as "Dirty Stories").[70] Considered scandalous since its first publication in the mid-fourteenth century, it was burned during public displays of piety.[71] The bonfire was intended to purge the city of objects tempting sinful behavior, which included manuscripts of secular songs and artworks, including paintings and sculptures.[72]

The following century witnessed widescale destruction of books. The Protestant Reformation and Counter-Reformation led to vast devastation of art and cultural heritage, including books. Paintings and sculptures in Christian churches were likewise destroyed during the Reformation based on the idea that they

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65 *Id.*

66 *Id.*

67 James Rye, *Lynn Priest Makes National History*, CIRCATO, https://circato.co.uk/lynn-priest-makes-national-history [https://perma.cc/78UQ-AGH3] (last visited Apr. 2, 2025).

68 Eliot Wilson, *Bloody Bonner: History Is Not a Morality Tale*, THE IDEAS LAB (Feb. 18, 2024), https://theideaslab.substack.com/p/bloody-bonner-history-is-not-a-morality [https://perma.cc/987S-ACCR].

69 Kat Eschner, *A Fanatical Monk Inspired 15th-Century Italians to Burn Their Clothes, Makeup and Art*, SMITHSONIAN MAG. (Feb. 7, 2017), https://www.smithsonianmag.com/smart-news/when-fanatical-monk-took-over-florence-and-burned-bunch-vanities-180962005/ [https://perma.cc/3EEG-BQ3C].

70 *Id.*; Charlotte Cook, *Giovanni Boccaccio (1313-1375)*, FLORENCE AS IT WAS (Feb. 2021), https://florenceasitwas.wlu.edu/people/giovanni-boccaccio [https://perma.cc/G9AW-YHJD].

71 *Savonarola and His Bonfire of the Vanities*, ITALIAN OLD MASTERS, https://italianoldmasters.wordpress.com/2019/01/26/%EF%BB%BFsavonarola-and-his-bonfire-of-the-vanities/ [https://perma.cc/7MED-HFEV] (last visited Apr. 2, 2025). In 1559, Pope Paul IV even included the masterpiece in the Index of Prohibited Books. *See* Dennis Duncan, *The Decameron: The 'Eye-Popping' Medieval Tales that Pushed Sexual Boundaries*, BBC (July 25, 2024), https://www.bbc.com/culture/article/20240724-the-decameron-the-eye-popping-medieval-tales-that-pushed-sexual-boundaries [https://perma.cc/7JNR-RWHZ].

72 Eschner, *supra* note 69.

were contrary to the word of the Bible.[73] At the time of the Reformation and during the English Civil War, church paintings were destroyed in their thousands. Few survived across the United Kingdom, and of those that remain, many have been defaced. It is believed that up to ninety-seven percent of English religious art was destroyed during and after the Reformation.[74]

German priest and Reformer Martin Luther instructed his followers to destroy Catholic books, leading to a public burning in Wittenberg in 1520.[75] Fighting fire with fire, the following year Emperor Charles V, the Holy Roman Emperor and Archduke of Austria, banned books and writings of Luther and his followers, and ordered all written materials burned.[76] A number of other bans spread throughout northern Europe.[77]

Besides destruction by warring Christian sects, Jewish and Muslim materials were also banned and destroyed. Jewish texts had long been targeted since the Roman era. The extensive burning of books commanded by Pope Gregory IX and Louis IX of France during the "Trial of the Talmud" in the thirteenth century was particularly violent, leading to the burning of 12,000 handwritten Talmudic manuscripts in Paris.[78] Church leaders reasoned that the Talmud contained blasphemous writings towards Jesus Christ and his mother Mary, attacks against the Church, and other offensive pronouncements against non-Jews.[79]

When the Crusaders defeated the Muslims and captured Tripoli in 1109, the Christian warriors destroyed the Banu

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73 *Iconoclasm and Reformation*, DEUTSCHES HISTORISCHES MUSEUM (Aug. 8, 2017), https://www.dhm.de/blog/2017/08/08/iconoclasm-and-reformation/ [https://perma.cc/E2GW-MDU7].

74 *Reformation 'Recycling' May Have Saved Rare Painting from Destruction*, UNIV. OF CAMBRIDGE (Nov. 27, 2015), https://www.cam.ac.uk/research/news/reformation-recycling-may-have-saved-rare-painting-from-destruction [https://perma.cc/554J-RF64].

75 David B. Morris, *Martin Luther as Priest, Heretic, and Outlaw: The Reformation at 500*, LIBR. OF CONG. BLOGS (Oct. 11, 2017), https://blogs.loc.gov/international-collections/2017/10/martin-luther-as-priest-heretic-and-outlaw-the-reformation-at-500/ [https://perma.cc/WW5J-BE55].

76 *Id.*

77 The Emperor Charles V Issues "The Law of Printing" in Response to the Excommunication of Luther, HISTORYOFINFORMATION.COM, https://www.historyofinformation.com/detail.php?id=2418 [https://perma.cc/SCU9-UTGL] (Mar. 22, 2025).

78 *See* Robert Chazan, *Trial, Condemnation, and Censorship: The Talmud in Medieval Europe*, *in* THE TRIAL OF THE TALMUD: PARIS 1240, at 1 (John Friedman & Jean Connell Hoff trans., 2012).

79 Lou Hackett Silberman & Haim Zalman Dimitrovsky, *Talmud and Midrash*, BRITANNICA, https://www.britannica.com/topic/Talmud [https://perma.cc/CJ6V-3WD6] (Feb. 6, 2025).

Ammar Library—the finest Muslim library in the world at the time.[80] It is believed that around 100,000 books were turned to ash.[81] In 1204, during the Sack of Constantinople, the Crusaders destroyed the last surviving copies of classical works in Europe.[82]

The Inquisition, another blight on multiculturalism, led to the widespread destruction of art and manuscripts. In 1560, the Catholic Church compiled a list of banned books known as the *Index Librorum Prohibitorum* (Index of Prohibited Books).[83] The index contained a plethora of works, including those promoting Protestantism, Judaism, and even certain versions of the Bible.[84] Works by Nicolaus Copernicus and Galileo Galilei appeared on the list, and, until 1758, works that advocated heliocentrism were also banned.[85] The punishment for reading books on the list was excommunication and spiritual damnation.[86] Surprisingly, the index was in use until Pope Paul VI abolished it in 1966.[87]

Not content to leave book burnings behind, Spanish colonizers brought the destructive practice to the "New World." Spanish rulers destroyed Mayan writings and artifacts to eliminate the culture.[88] It is recorded that in Mexico in 1561, Spanish Franciscan Bishop Diego de Landa took it upon himself to wipe every trace of Mayan culture from the new Christian

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80 Lindsey Weaver, *10 Libraries Deliberately Destroyed*, HUBPAGES, https://discover.hubpages.com/education/Libraries-Lost-to-Time [https://perma.cc/N46M-PLEL] (Jun. 12, 2018).

81 Radwan Mawlawi, *Tripoli's Dar-ul-ilm*, AL-RABITA, http://alrabita.freeservers.com/library.html [https://perma.cc/T7VZ-LQWS] (last visited Mar. 17, 2025).

82 Rupert Matthews, *Sack of Constantinople*, BRITANNICA, https://www.britannica.com/event/Sack-of-Constantinople-1204 [https://perma.cc/TM8V-KNA9] (last visited Apr. 2, 2025).

83 *Index Librorum Prohibitorum*, BRITANNICA, https://www.britannica.com/topic/Index-Librorum-Prohibitorum [https://perma.cc/L63L-U48M] (Feb. 18, 2025).

84 *Id.*

85 Anna Culbertson, *Banned Books Week 2020*, SAN DIEGO STATE UNIV. (Sept. 23, 2020), https://library.sdsu.edu/scua/news/banned-books-week-2020 [https://perma.cc/M9PB-H9EZ].

86 Robert Sarwark, *The Catholic Index of Forbidden Books: A Brief History*, INTELL. FREEDOM BLOG (Feb. 21, 2018), https://www.oif.ala.org/catholic-index-forbidden-books-brief-history/ [https://perma.cc/DC6J-2VM5].

87 Tiwari, *supra* note 43.

88 Georges Fery, *Burning the Maya Books: The 1562 Tragedy at Mani*, POPULAR ARCHAEOLOGY (Oct. 23, 2020), https://popular-archaeology.com/article/burning-the-maya-books-the-1562-tragedy-at-mani/ [https://perma.cc/6S8Y-NCXB].

state.[89] He proudly recounted, "We found many books with these letters, and because they contained nothing that was free from superstition and the devil's trickery, we burnt them, which the Indians greatly lamented."[90] This description is heart-wrenching, as the indigenous people of Mexico suffered in seeing their culture obliterated.

IV. BOOKS AND MODERN WARFARE

A. Destruction

Art, culture, and written materials have always been targeted during war. One of the greatest cultural losses suffered during World War I (WWI) was the German army's intentional burning of Leuven, a city known for its rich art holdings and university library. Included in the fire was the destruction of the library at the University of Leuven.[91] As a result, 300,000 books, 800 incunabula (books and pamphlets printed in Europe before the year 1500), and 1,000 manuscripts were lost.[92] Eventually, the library was rebuilt, but it was destroyed again during the Second World War (WWII), just a few days after the Nazi invasion of Belgium, with only 15,000 volumes surviving.[93]

It is no surprise that WWII led to the extensive destruction of books. Not only did cultural sites and libraries across Europe fall victim to looting and bombing,[94] but books were also deliberately targeted. The Third Reich infamously gathered books and dramatically incinerated them in large bonfires—the same was done for artwork that the Nazis labeled as "degenerate."[95] In 1933, the Nazi government began purging

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89 *Bishop Diego de Landa Orders Destruction of the Maya Codices*, HISTORYOFINFORMATION.COM, https://www.historyofinformation.com/detail.php?id=1574 [https://perma.cc/7T2B-ZC3N] (Mar. 22, 2025).

90 Nicoletta Maestri, *Diego de Landa (1524-1579), Bishop and Inquisitor of Early Colonial Yucatan*, THOUGHTCO., https://www.thoughtco.com/diego-de-landa-inquisitor-colonial-yucatan-171622 [https://perma.cc/ZW38-NWFZ] (Jan. 3, 2020).

91 *Germans Burn Belgian Town of Louvain*, HIST. (Nov. 16, 2009), https://www.history.com/this-day-in-history/august-25/germans-burn-belgian-town-of-louvain [https://perma.cc/6853-42SD].

92 Mose Apelblat, *The Story of How Leuven's Jewel Was Twice Destroyed and Rebuilt*, BRUSSELS TIMES (Aug. 31, 2024), https://www.brusselstimes.com/52524/the-story-of-how-leuven-s-jewel-was-twice-destroyed-and-rebuilt [https://perma.cc/3Z86-4UFV].

93 *Id.*

94 *See* Patricia Kennedy Grimsted, *Spoils of War Returned*, NAT'L ARCHIVES, https://www.archives.gov/publications/prologue/2002/spring/spoils-of-war-1 [https://perma.cc/E8QB-P9H2] (July 25, 2022).

95 *"Degenerate" Art*, U.S. HOLOCAUST MEM'L MUSEUM: HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/degenerate-art-1 [https://perma.cc/X8RJ-

cultural organizations of Jewish people and others alleged to be politically suspect, or who performed or created artwork that the Nazis labeled "degenerate."[96] On May 10, 1933, as part of the Nazi agenda, the Nazi German Association gathered in thirty-four towns to burn over 25,000 "un-German" books, ushering in an era of censorship.[97] That evening, in many university towns in Germany, right-wing students marched in torchlight parades "against the un-German spirit."[98]

Although the Third Reich advanced an agenda to destroy art and culture as part of its propaganda,[99] Germany itself suffered great losses. One striking example was the damage to the Bayerische Staatsbibliothek (the Bavarian state library) in Munich, hit four times by the Allies in their blanket raids.[100] Half a million volumes were destroyed in these four fires, including numerous irreplaceable items from the Bavarian collection.[101] Today, it is an important European library and research center.[102] Together with the Staatsbibliothek in Berlin and the Deutsche Nationalbibliothek at Frankfurt and Leipzig, "it constitutes the virtual Nationalbibliothek (National Library) of the German Federal Republic."[103]

WFXK] (June 8, 2020). Degenerate art was seized, displayed as lacking merit, or destroyed by fire. *See id.*

96 *German Students, Nazis Stage Nationwide Book Burnings*, HIST. UNFOLDED, https://newspapers.ushmm.org/events/german-students-nazis-stage-nationwide-book-burnings [https://perma.cc/QUN4-9Y3B] (last visited Mar. 14, 2025). One of the many problems with the Nazi effort to label art this way was that there was no fixed definition of the term; members of the Nazi Party were granted broad discretion to label, seize, and destroy property without due process. Leila Amineddoleh, *Nazi Laws Used to Plunder Art and the Current Legal Tools Used to Unwind Looting*, *in* NAZI LAW: FROM NUREMBERG TO NUREMBERG 171–72 (John J. Michalczyk ed., 2018).

97 *German Students, Nazis Stage Worldwide Book Burnings*, *supra* note 96.

98 *Book Burning*, U.S. HOLOCAUST MEM'L MUSEUM: HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/book-burning [https://perma.cc/2S5R-KQWV] (Apr. 3, 2025).

99 *See* David B. Dennis, *Culture War*, HUMANITIES (Jan.–Feb. 2014), https://www.neh.gov/humanities/2014/januaryfebruary/feature/culture-war [https://perma.cc/C2LG-98A5]; Leila Amineddoleh, *supra* note 96, at 169–70.

100 *See The Bayerische Staatsbibliothek*, BAVARIKON, https://www.bavarikon.de/object/bav:BSB-CMS-0000000000000597?lang=en [https://perma.cc/9HTK-DZCU] (last visited Mar. 15, 2025).

101 *See id.*

102 *See id.*

103 *Id.* Together, those libraries have a collection of over 10,900,000 volumes, in addition to 55,000 current journals as well as a further 140,000 manuscripts. *Id.* Included in the collection are precious manuscripts and rare prints that comprise cultural heritage (including around 21,000 incunabula dating to before December 31, 1500). *See id.*

Since the end of WWII, censorship and destruction of books has continued during times of conflict. Two well-known incidents in the Middle East and Africa were committed at the hands of religious extremists. Mosul's public library, which contained some eight thousand rare antique books and manuscripts, was destroyed by the Islamic State of Iraq and the Levant (ISIL) in 2015, as was Mosul's university.[104] ISIL reportedly sold some of these valuable books on the international market.[105]

One of the most lamented patterns of destruction during the twenty-first century took place in Timbuktu, Mali. Between 2012 and 2013, Islamist rebels burned and stole thousands of fourteenth-century manuscripts dating from Mali's golden age, when that country was a trading hub and center of Sufi Islam. After Hardline Islamist fighters seized control of Timbuktu and much of northern Mali in 2012, they imposed their rigid interpretation of Islamic doctrine, which called for the destruction of any piece of cultural heritage that contradicted it. Central to this destruction were Timbuktu's famed libraries and books. "[M]ilitants implemented Sharia law, and banned anything considered sinful," including manuscripts viewed as pagan writings.[106] In the end, at least 4,203 were burned or stolen.[107] Luckily, many manuscripts were saved and are being preserved due to the bravery of numerous book-owning families and officials of the state-run Ahmed Baba Institute, who smuggled about 285,000 books to safety.[108] Funding from the Prince Claus Foundation in the Netherlands and the German Foreign Office was also instrumental to that effort.[109]

Finally, in the summer of 2016, the International Criminal Court in The Hague charged Ahmad Al Faqi Al-Mahdi, a member

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104 *See* Henri Neuendorf, *8,000 Books Burned by ISIS in Massive Iraqi Libricide*, ARTNET (Feb. 25, 2015), https://news.artnet.com/art-world/8000-books-burned-by-isis-in-massive-iraqi-libricide-267932 [https://perma.cc/379S-YF9Z].

105 *See* Nicole Winchester, *Targeting Culture: The Destruction of Cultural Heritage in Conflict*, UK PARLIAMENT (Dec. 14, 2022), https://lordslibrary.parliament.uk/targeting-culture-the-destruction-of-cultural-heritage-in-conflict/ [https://perma.cc/S9CF-M7UW].

106 Monica Villamizar, *Preserving the Priceless Manuscripts of Timbuktu*, PBS (June 27, 2018, 6:20 PM), https://www.pbs.org/newshour/show/preserving-the-priceless-manuscripts-of-timbuktu [https://perma.cc/9PW6-4T5H].

107 *See Safeguarding Mali's Ancient Manuscript Collections, an International Conference in Bamako*, UNESCO (Jan. 21, 2015), https://whc.unesco.org/en/news/1219 [https://perma.cc/9QKX-TXHV].

108 *See* Naveena Kottoor, *How Timbuktu's Manuscripts Were Smuggled to Safety*, BBC (June 4, 2013), https://www.bbc.com/news/magazine-22704960 [https://perma.cc/W6UN-XSM9].

109 *See id.*

of Ansar Dine, an Al-Qaeda allied group.[110] He was charged for his role in the destruction of cultural heritage (including books) in Mali.[111] Al-Mahdi faced a war crimes charge under Article 25 of the Rome Statute.[112] It was the first time the International Criminal Court prosecuted a criminal for the "destruction of buildings historical and religious monuments," including ancient manuscripts, as a war crime.[113] The Malian national admitted guilt. Specifically, he admitted that he "'exercised joint control over the attacks' by planning, leading and participating in them, supplying pick-axes and in one case a bulldozer."[114] Mahdi, facing thirty years in prison, received a nine-year sentence. In handing down the judgment, the Judges stated that they took into account al-Mahdi's "genuine remorse . . . 'deep regret and great pain'" and his calls on other Muslims not to make the same mistake.[115] On November 25, 2021, his sentence was commuted to seven years,[116] and he was released in 2022.

B. Looting of Collections During Conflict

During war, looting runs rampant.[117] In addition to the intentional destruction of books for political or religious reasons, collections have also been looted, primarily for financial gain.

1. Looting of the Kosinitza Monastery

When the Bulgarian Army invaded Greece during WWI, guerilla soldiers looted the Kosinitza Monastery, a church built

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110 *See* Owen Bowcott, *ICC's First Cultural Destruction Trial to Open in The Hague*, THE GUARDIAN (Feb. 28, 2016, 7:14 PM), https://www.theguardian.com/law/2016/feb/28/iccs-first-cultural-destruction-trial-to-open-in-the-hague [https://perma.cc/6AAX-45R4].

111 *See id.*

112 *See ICC Pre-Trial Chamber I Confirms the Charge Against Ahmad Al Faqi Al Mahdi and Commits Him to Trial*, INT'L CRIM. CT. (Mar. 24, 2016), https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-confirms-charge-against-ahmad-al-faqi-al-mahdi-and-commits-him-trial [https://perma.cc/3AXL-7WLM].

113 *Id.*

114 Stephanie Van Den Berg, *Islamist Rebel Gets Nine Years Imprisonment for Timbuktu Destruction*, REUTERS (Sept. 27, 2016, 4:27 PM), http://www.reuters.com/article/us-warcrimes-mali-idUSKCN11X0IS [https://perma.cc/JT4F-YL7T].

115 Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/12-01/15-171, Judgment and Sentence, ¶ 62 (Sep. 27, 2016), https://www.icc-cpi.int/sites/default/files/itemsDocuments/160926Al-MahdiSummary.pdf [https://perma.cc/QXV6-X5XY].

116 *Al Mahdi Case*, INT'L CRIM. CT., https://www.icc-cpi.int/mali/al-mahdi [https://perma.cc/NG7P-FXP3] (last visited Mar. 21, 2025).

117 *See* Gabrielle Sierra, *Treasures Looted in War* (Aug. 25, 2020), https://www.cfr.org/podcasts/treasures-looted-war [https://perma.cc/8C79-KVDH].

in the mid-twelfth century near Drama in northern Greece.[118] The soldiers had first surveyed the monasteries in northern Greece to see what treasures could be pilfered.[119] Then, on the night of March 27, 1917, a "band of sixty criminals" stormed the Theotokos Eikosiphoinissa Monastery (also known as Kosinitza Monastery).[120] The soldiers assaulted two elderly monks, forcing them to reveal where valuables were stored.[121] The guerrilla fighters then ransacked the monastery, removing 431 manuscripts and printed books, precious objects, and 3,000 drachmas in cash.[122] They loaded the treasures onto twenty-four mules and escaped with their loot.[123] The manuscripts were sold on the art market, and some eventually made their way to the United States.[124]

A number of the looted books from the Kosinitza Monastery have been identified in private collections, including museum and university collections. In 2016, the Lutheran School of Theology at Chicago (LSTC) restituted a rare ninth-century codex from the monastery.[125] It had been removed in the 1917 plunder of the monastery, and it was ultimately purchased in 1920 by Levi Franklin Gruber, who later became the president of one of LSTC's predecessor schools.[126] Gruber bequeathed the codex to his widow, who donated it to LSTC. Eventually, the Greek Orthodox Church contacted LSTC about the codex.[127] Taking an ethical stance, LSTC cooperated and voluntarily returned the looted item.[128] James Niemann, President of LSTC explained, "For nearly a century, we have been blessed to be the stewards of this

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118 *LSTC Returns 1100-Year-Old Manuscript to Greek Orthodox Church*, LUTHERAN SCH. OF THEOLOGY AT CHI. (Nov. 1, 2016), https://lstc.edu/news/lstc-returns-1100-year-old-manuscript-to-greek-orthodox-church/ [https://perma.cc/MGH9-RKEX].

119 *Eikosiphoinissa Manuscript 220: The Restoration of a Greek Gospel Manuscript Looted During World War I*, MUSEUM OF THE BIBLE, https://www.museumofthebible.org/eikosiphoinissa-manuscript-220 [https://perma.cc/JJ4W-NC5H] (last visited Mar. 21, 2025).

120 *Id.*

121 *Id.*

122 *Id.*

123 *Id.*

124 Zoe Sottile, *Stolen in 1917, This 1,000-Year-Old Manuscript Was Just Returned to Its Rightful Owners*, CNN WORLD, https://www.cnn.com/2022/10/01/world/christian-gospel-manuscript-return-greece-trnd [https://perma.cc/GNP3-VNQP] (Oct. 1, 2022, 12:00 PM).

125 *Id.*

126 *LSTC Returns 1100-Year-Old Manuscript to Greek Orthodox Church*, *supra* note 118..

127 *Id.*

128 *Id.*

remarkable document, and today we are blessed again by the opportunity to return it to our Greek Orthodox friends and strengthen the bond we have together in Christ Jesus."[129]

Religious leaders have urged other institutions to do the same. The Order of Saint Andrew called on Duke University, Princeton University, and the Morgan Library to return stolen manuscripts to the Greek Orthodox Church.[130] The church has argued that the law is clearly in its favor, positing that even a good faith purchaser cannot acquire valid title to stolen goods and has an obligation to return them.[131]

Originating in Roman law, the Latin maxim *nemo dat quod non habet* is a legal principle that states: "No one can give what they do not have."[132] Under this rule, which is followed in the United States, the purchase of property from someone who does not own it does not confer title to the purchaser—even if the purchaser had acted in good faith.[133] Under this principle, good title never passed to whomever the marauding soldiers sold the manuscripts. Thus, title did not pass to any of the institutions that acquired the stolen works from the Kosinitza Monastery.[134]

Further supporting this argument for the Greek Orthodox Church is that the "spoils of war" doctrine has never been recognized in the United States.[135] The "spoils of war" doctrine holds that the victorious party in a conflict may seize and retain enemy property, including land, chattels, and valuables, captured during the war.[136] Thus, title to stolen objects during WWI never

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129 *Id.*

130 *The Order of Saint Andrew Calls on Duke University, Princeton University and the Morgan Library to Return Holy Manuscripts Stolen from the Ecumenical Patriarchate*, ARCHONS OF THE ECUMENICAL PATRIARCHATE, https://archons.org/the-order-of-saint-andrew-calls-on-duke-university-princeton-university-and-the-morgan-library-to-return-holy-manuscripts-stolen-from-the-ecumenical-patriarchate/ [https://perma.cc/FCL2-FMHM] (last visited Mar. 21, 2025).

131 *Id.*

132 *See, e.g.*, Mitchell v. Hawley, 83 U.S. 544, 550 (1872).

133 *Id.*; *see also* Cassirer v. Thyssen-Bornemisza Collection Found., 69 F.4th 554, 569 (9th Cir. 2023) (discussing California law).

134 *See* Bakalar v. Vavra, 619 F.3d 136, 140 (2d Cir. 2010) ("[I]n New York, a thief cannot pass good title."); Michelle I. Turner, *The Innocent Buyer of Art Looted During World War II*, 32 VAND. J. TRANSNAT'L L. 1511, 1534 (1999) ("[A]bsent other considerations an artwork stolen during World War II still belongs to the original owner, even if there have been several subsequent buyers and even if each of those buyers was completely unaware that she was buying stolen goods.").

135 *In re* Flamenbaum, 1 N.E.3d 782, 785 (N.Y. 2013).

136 *See id.*

passed to the Bulgarian soldiers or the party to whom they sold the manuscripts.

Unfortunately, though, even with the Greek Orthodox Church's strong ownership claims and precedent that favors the original owner over a good faith purchaser during times of conflict,[137] there are challenges when demanding the return of stolen property. Those challenges include standing inquiries,[138] jurisdictional issues,[139] choice-of-law disputes,[140] and statute of limitations.[141] Resolving these procedural conflicts can take years or even decades to resolve, resulting in massive litigation fees, frustration, and sometimes no clear answer about the substantive aspects of a dispute.[142]

The Morgan Library & Museum heeded the call for restitution. A leading museum for books and manuscripts with an impressive collection of rare books, early printed books, and illustrated books, the museum is a gem in Manhattan's cultural space. However, a manuscript looted from the Kosinitza Monastery was discovered in its collection. The twelfth-century work, containing the New Testament's Epistle to the Hebrews and Book of Revelation, is part of a larger New Testament manuscript.[143] It had been donated to the Morgan Library in 1926. In 2021, after a long settlement negotiation, the Morgan Library provided an extended loan to the Church. The manuscript is now located in the Kosinitza Monastery where it is accessible "to researchers, scholars, clerics, monastics, and

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137 Menzel v. List, 267 N.Y.S.2d 804, 811–12 (Sup. Ct. 1966).

138 *See* Yien-Koo King v. Wang, No. 14-cv-7694, 2017 WL 2656451, at *4, *11 (S.D.N.Y. June 20, 2017).

139 Federal Republic of Germany v. Philipp, 592 U.S. 169, 186–87 (2021) (denying jurisdiction under the Foreign Sovereign Immunities Act, holding that the descendants of Jewish art dealers attempting to reclaim an art collection purportedly sold under duress to the Nazis could not sue Germany in a U.S. court).

140 Cassirer v. Thyssen-Bornemisza Collection Found., 596 U.S. 107, 113 (2022) (holding that in a suit raising non-federal claims against a foreign state or instrumentality under the Foreign Sovereign Immunities Act, a court should apply the substantive law by using the same choice-of-law rule applicable against a private party).

141 Autocephalous Greek-Orthodox Church v. Goldberg and Feldman Fine Arts, Inc., 717 F. Supp. 1374, 1385–93 (S.D. Ind. 1989).

142 *Ex parte* McCardle, 74 U.S. 506, 514 (1868). When cases are dismissed during procedural wranglings, courts do not have the opportunity to rule on substantive questions. *See, e.g.*, *id.*

143 *Joint Statement of the Morgan Library and Museum and the Ecumenical Patriarchate*, THE MORGAN LIBR. & MUSEUM (Oct. 29, 2021), https://www.themorgan.org/press/2021/joint-statement-morgan-and-ecumenical-patriarchate [https://perma.cc/L8XK-TQP5].

theologians for use in furtherance of educational, cultural, or religious purposes."[144]

Unexpectedly, three other manuscripts looted from the Kosinitza Monastery ended up spending years on a bookshelf in New York City at Swann Auction Galleries.[145] The books, dating back to the sixteenth and seventeenth centuries were originally sold by the auction house to a dealer who later returned them because he had questions about the books' provenances (ownership histories).[146] The manuscripts were placed on a gallery's shelf and languished there for a decade until they were rediscovered during an office renovation.[147] Upon their resurfacing, a senior specialist in early printed books at the auction house, Devon Eastland, researched the books.[148] She realized that they had been looted, and so she contacted a representative for the Greek Orthodox Church to begin the restitution process.[149] In April 2023, the three books were returned at a celebratory ceremony in Lower Manhattan.[150]

During that same ceremony, the Museum of the Bible was acknowledged for returning a manuscript to the Greek Orthodox Church in September 2022.[151] While that museum faced intense scrutiny and criticism for its collecting practices, it acted ethically by voluntarily returning a book in its possession to the Kosinitza Monastery. The museum acquired the one-thousand-year-old manuscript, which the Museum of the Bible states is one

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144 *Id.* Duke also returned its manuscript to the Greek Orthodox Church, but the eleventh century Byzantine book was returned to a different monastery, the Holy Monastery of Dionysiou on Mount Athos in Greece. *See* Eric Ferreri, *Duke Libraries Returns Byzantine Manuscript to Original Home in Greece*, DUKE TODAY (Jan. 5, 2015), https://today.duke.edu/2015/01/greekmanuscript [https://perma.cc/P8UM-GGD3].

145 *Rare Manuscripts Returned in Historic Ceremony at St. Nicholas Ground Zero*, GREEK ORTHODOX ARCHDIOCESE OF AM. (May 4, 2023), https://www.goarch.org/-/rare-manuscripts-returned-in-historic-ceremony-st-nicholas-ground-zero-2023 [https://perma.cc/C9QM-28B50].

146 *Id.*

147 *Id.*

148 Colin Moynihan, *Looted Monastery Manuscripts Rediscovered During Office Renovation*, N.Y. TIMES (Apr. 28, 2023, 2:40 PM), https://www.nytimes.com/2023/04/28/arts/greek-monastery-kosinitza-mansucripts-looted.html [https://perma.cc/XW8B-NVNW].

149 *Id.*

150 *Rare Manuscripts Returned in Historic Ceremony at St. Nicholas Ground Zero*, *supra* note 145.

151 The author also had the privilege of attending the ceremony. *See Repatriation Ceremony of Eikosifoinissa Monastery Manuscripts*, SERBIAN ORTHODOX CHURCH DIOCESE OF EASTERN AMERICA, https://www.easterndiocese.org/news_230504_1 [https://perma.cc/W5Z7-H9SJ].

the oldest handwritten gospels in the world. The book, known as the Eikosiphoinissa Manuscript 220, was sold by Christie's, the world's leading auction house, in 2011 to the Green Collection, which then donated it to the Museum of the Bible. In 2015, the Greek Orthodox Church requested restitution of manuscripts from several American institutions, including the Museum of the Bible. The museum researched its holdings and learned that the manuscript was stolen.[152] Ultimately, the Museum of the Bible decided to voluntarily return the manuscript in 2022. The Greek Orthodox Church praised the return, stating, "We cannot express enough [of] our gratitude to the Green Family and the Museum for their Christian and professional service . . . . You have set an example for others to follow, and we pray that they do."[153]

Not all possessors of books looted from the Kosinitza Monastery returned their books to the church. In 2015, the Greek Orthodox Church wrote to Princeton University demanding the return of four manuscripts believed to have been stolen during the same raid by Bulgarian soldiers.[154] Princeton did not return the items. As a result, the Greek Orthodox Church sued Princeton University in 2018 to recover the valuable religious texts.[155] The Church's complaint against Princeton alleges that the manuscripts appeared at the auction house of Joseph Baer & Co. in Frankfurt, Germany.[156] The monastery asserts that Princeton bought one of the manuscripts, while the other three were bequeathed by its trustee, Robert Garrett, who bought them at the auction house in 1924.[157] The Church argued that since the manuscripts were stolen, title could not have passed to the subsequent purchasers, and thus Princeton never acquired title to the items.[158]

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152 *See Museum of the Bible Restores Greek Gospel Manuscript to Kosinitza Monastery*, MUSEUM OF THE BIBLE (Aug. 26, 2022), https://www.museumofthebible.org/newsroom/greek-gospel-manuscript [https://perma.cc/ZTS8-6S8F].

153 *Joint Statement of the Greek Orthodox Archdiocese of America and the Museum of the Bible*, ORTHODOX OBSERVER NEWS (Sept. 29, 2022), https://www.goarch.org/-/9-29-2022-joint-statement-of-the-greek-orthodox-archdiocese-and-museum-of-the-bible [https://perma.cc/N6NL-JFP3].

154 Nick Rummell, *Princeton Sued by Greek Monastery over Rare Texts*, COURTHOUSE NEWS SERV. (Dec. 14, 2018), https://www.courthousenews.com/princeton-sued-by-greek-monastery-over-rare-texts/ [https://perma.cc/BHH3-P92B].

155 *Id.*

156 Complaint at 2, His All Holiness v. Princeton Univ., No. 18-17195 (D.N.J. Dec. 13, 2018).

157 *Id.*

158 *Id.* at 3.

Princeton countered that the manuscripts were obtained legally, claiming that two of the manuscripts in question were gifted to St. Andrew of the Russians in 1877, which predates the alleged removal in 1917.[159] However, the university urged the court to dismiss the case, relying on procedural defenses and asserting that the statute of limitations had expired. In January 2025, the Church voluntarily dismissed its claim with prejudice. At the time of publication, the manuscripts are still housed at Princeton University.

2. Armenian Manuscript

A similar case was filed in 2010 by the Western Prelacy of the Armenian Apostolic Church of America against the J. Paul Getty Museum (Getty).[160] Between 1914 and 1923, the Ottoman Empire systematically murdered and displaced anywhere between 600,000 and 1.5 million Armenian citizens.[161] As during any conflict, fleeing victims left behind valuable cultural heritage vulnerable to destruction and looting. Amongst those objects were the famous Zeytun Gospels, an illuminated manuscript sacred to the Armenian Christian faith. Created by prodigious illuminator T'oros Roslin in 1256, the Zeytun Gospel Book was created at the Cilician scriptorium Hromklay during the Medieval period.[162] Like the manuscripts looted from the Kosinitza Monastery, the Zeytun Gospels were not static objects; they were worshipped, used in liturgical ceremonies, and included colophons, or notes, that documented historical happenings and commentaries by the artist.[163] The gospel book remained safe in the remote town of Zeytun until the Ottoman genocide placed the work in peril.[164] The Gospels were removed for safekeeping by Asadur Agha Surenian-Basilosian; he believed they would protect him and his family.[165] However, during the

159 Aaron Solomon, *Princeton Suit Puts Artifact Ownership in Spotlight*, BOS. HERALD (July 27, 2023, 12:48 AM), https://www.bostonherald.com/2023/07/27/solomon-princeton-suit-puts-artifact-ownership-in-spotlight [https://perma.cc/E6AY-CS3W].

160 *See* Complaint at 1, W. Prelacy of the Armenian Apostolic Church v. J. Paul Getty Museum, No. BC438824 (Cal. Super. Ct. June 1, 2010) (suing over a manuscript allegedly stolen in 1915).

161 Don Melvin, *8 Things to Know About the Mass Killings of Armenians 100 Years Ago*, CNN (Apr. 22, 2021, 5:21 AM), https://www.cnn.com/2015/04/23/world/armenian-mass-killings/index.html [https://perma.cc/VHM5-8QYF].

162 HEGHNAR ZEITLIAN WATENPAUGH, THE MISSING PAGES: THE MODERN LIFE OF A MEDIEVAL MANUSCRIPT, FROM GENOCIDE TO JUSTICE 57–58 (2019).

163 *Id.* at 58–60.

164 *Id.* at 114.

165 *Id.* at 114–15.

turbulence of war, the gospels changed hands. The book made its way to the Mesrob Mashtots Institute for Ancient Manuscripts in Armenia where it was studied.[166] Yet it was missing eight pages, believed to have been ripped out and smuggled into the United States in 1923 by Melkon Atamian.[167] According to the provenance provided by the Getty, the Los Angeles-based museum acquired the missing pages in 1994 after purchasing them from the Atamian family.[168] In 1994, the pages were loaned from a private collection to the Morgan Library in New York City for an exhibition. Following the exhibition, the Getty purchased the pages.[169]

It is unclear when and how the pages were removed from the Zeytun Gospel Book. The Armenian Church asserts that the manuscript was sent to Turkey to save it from destruction during the Armenian Genocide, and then it went to Aleppo in Syria to be authenticated.[170] During authentication, the pages were removed.[171] On the other hand, the Getty contends that the entire manuscript was legally acquired by an Armenian man who then moved to the United States with only eight pages.[172]

The Western Prelacy of the Armenian Apostolic Church sued the Getty. The parties met during a court-ordered mediation, but they failed to find a resolution,[173] so the litigation moved forward. The Getty used a technical defense, urging the court to find that the case was untimely.[174] The museum argued that under the Discovery Rule (the statute of limitations rule applied in California), the statute of limitations had expired because the plaintiff should have reasonably discovered the location of the Gospels years before 2006.[175] On the other hand, the Armenian Apostolic Church asserted that the museum never obtained title

166 *Id.* at 236–38.

167 *See id.* at 190–91.

168 *Canon Tables from the Zeytun Gospels,* GETTY, https://www.getty.edu/art/collection/object/103SBS#full-artwork-details [https://perma.cc/S8UQ-6CUS] (last visited Apr. 13, 2025).

169 *Id.*

170 *See* WATENPAUGH, *supra* note 162, at 184.

171 *See id.* at 186.

172 *Id.* at 2.

173 Parties' Joint Stipulation Re: Completion of Mediation, W. Prelacy of the Armenian Apostolic Church v. J. Paul Getty Museum, No. BC438824 (Cal. Super. Ct. May 31, 2012).

174 *See Case Summary*, INT'L FOUND. FOR ART RSCH., https://www.ifar.org/case_summary.php?docid=1355366345 [https://perma.cc/7HP5-AKAA] (last visited May 20, 2025).

175 *See id.*

to the Gospels because they were stolen.[176] Luckily for the Church, California applies the Stolen Art Recovery Statue, which extended the "time period in which stolen art claims could be filed, adopting a statute of limitations that begins from the time a plaintiff actually discovered the whereabouts of the stolen work."[177] The Getty's defense failed.[178] Finally, in 2015, the parties entered into a settlement.[179] Under the agreement, the Gospels remained at the Getty to guarantee their preservation and exhibition, with the condition that "the church gets recognition that all along it has been the rightful owner of the pages."[180] In addition to updating the provenance of the pages, the Getty also agreed to cover the plaintiff's costs incurred from the lengthy legal battle.[181] This was viewed as a positive outcome, as it enabled the pages to benefit from the Getty's extensive resources to ensure their long-term conservation under the museum's stewardship, while also educating the public about the tragic circumstances surrounding their removal.[182]

V. LEGAL BATTLES FOR STOLEN MATERIALS: EXTENSIVE LOOTING IN IRAQ

One of the best-known recent international cultural heritage repatriations involved written materials. While not books, the objects were early written documents—cuneiform tablets and bullae (small clay seals) originating from ancient Sumeria. The objects are dated between 2100 to 1600 BC and "are mostly legal and administrative documents, but also include an important collection of Early Dynastic incantations and a bilingual religious text from the Neo-Babylonian period."[183] The problem is that they were looted during the decades-long conflict in the Middle East.

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176 *See id.*

177 *See id.*

178 *See id.*

179 *See id.*

180 Mike Boehm, *Legal Settlement with Armenian Church Lets Getty Museum Keep Prized Medieval Bible Pages*, L.A. TIMES (Sept. 21, 2015, 12:00 PM), https://www.latimes.com/entertainment/arts/culture/la-et-cm-armenian-church-settles-with-getty-museum-20150918-story.html [https://perma.cc/EY7F-HMUC].

181 *Id.*

182 *Getty Announces Agreement in Armenian Art Restitution Case*, GETTY (Sep. 21, 2015), http://news.getty.edu/canon-table-2015.htm [https://perma.cc/75P3-ED9U].

183 *ICE Returns Thousands of Ancient Artifacts Seized from Hobby Lobby to Iraq*, U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/news/releases/ice-returns-thousands-ancient-artifacts-seized-hobby-lobby-iraq [https://perma.cc/67KB-43BN] (Jan. 24, 2025).

The matter made headlines around the globe because the United States Attorney's Office for the Eastern District of New York seized thousands of artifacts from Hobby Lobby. Over five thousand looted artifacts were purchased by Hobby Lobby (a major craft conglomerate) and smuggled into the United States.[184] Steve Green, the company's president, began an insatiable collecting spree that began in 2009.[185] Ultimately, Hobby Lobby acquired tens of thousands of archaeological items and Biblical-era objects.[186] These acquisitions were intended to support an evangelical interpretation of the Bible and stock the Museum of the Bible (a museum which Hobby Lobby owners planned to open).[187] By purchasing and later donating these looted artifacts, the company stood to receive favorable tax treatment and even profit from the transactions.[188]

Following the government's seizure of artifacts, Steve Green attempted to deflect criticism by citing ignorance and inexperience, admitting that the company "should have exercised more oversight and carefully questioned how the acquisitions were handled."[189] However, the Justice Department noted that the acquisitions were "fraught with red flags."[190] Despite having consulted with an antiquities expert, the company proceeded with its purchases by ignoring the expert's advice and using highly questionable business practices.[191]

Since 1990, the United States has had strict regulations in place against the importation of Iraqi cultural materials.[192] It is

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184 The author of this Article had the immense honor of serving as a cultural heritage law expert and consultant on the case.

185 Joshua Barajas, *3,800 Artifacts Once Bought by Hobby Lobby Were Just Returned to Iraq*, PBS, https://www.pbs.org/newshour/nation/3800-artifacts-once-bought-by-hobby-lobby-were-just-returned-to-iraq [https://perma.cc/E5VY-8GUU] (May 3, 2018, 1:15 PM).

186 Emma Green, *Hobby Lobby Purchased Thousands of Ancient Artifacts Smuggled Out of Iraq*, THE ATLANTIC (July 5, 2017), https://www.theatlantic.com/politics/archive/2017/07/hobby-lobby-smuggled-thousands-of-ancient-artifacts-out-of-iraq/532743/ [https://perma.cc/8HYM-DQYW]; *see also* Barajas, *supra* note 185.

187 *Id.*

188 *See generally* Donna Yates, *Museums, Collectors, and Value Manipulation: Tax Fraud Through Donation of Antiquities*, 23 J. FIN. CRIME 173 (2016).

189 Candida Moss & Joel Baden, *Hobby Lobby's Black-Market Buys Did Real Damage*, N.Y. TIMES (July 6, 2017), https://www.nytimes.com/2017/07/06/opinion/hobby-lobby-iraq-artifacts.html [https://perma.cc/UPZ6-2KTT].

190 Barajas, *supra* note 185.

191 *Id.*

192 *Prohibited and Restricted Items, Cultural Artifacts and Cultural Property*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/travel/us-citizens/know-before-you-go/prohibited-and-restricted-items [https://perma.cc/8LSU-KK7P] (Mar. 14, 2025)

well documented that Iraq has suffered plunder for decades, with looting occurring during and after the Gulf War,[193] during the rule of Saddam Hussein, after the U.S. military invasion in 2003,[194] and, finally, during the theft and looting under the ISIL.[195] In fact, in 2004, the U.S. government restricted the import of archaeological or ethnological material from Iraq under the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (Iraqi Antiquities Act),[196] which allowed the President to impose import restrictions on any archaeological or ethnological materials originating from Iraq.[197] The President's powers under the Iraqi Antiquities Act expired on September 30, 2009.[198]

However, even in the absence of emergency provisions in place, Iraq enacted cultural heritage laws as early as 1936.[199] The country ratified patrimony laws decades ago to vest ownership of cultural heritage in the State. Under the terms of Iraq's Antiquities Law Number 55 and subsequent legislation, all antiquities and all heritage material within the territory of Iraq, unless registered as private property with the Department of Antiquities, shall be considered the property of the State.[200] This patrimony law has been consistently updated throughout the years to provide ownership to the State.

("Merchandise determined to be Iraqi cultural property or other items of archeological, historical, cultural, rare scientific and religious importance illegally removed from the Iraq National Museum, the National Library and other locations in Iraq, since August 6, 1990, are also prohibited from importation.").

193 *See* McGuire Gibson, *The Looking of the Iraq Museum in Context*, *in* CATASTROPHE!: THE LOOTING AND DESTRUCTION OF IRAQ'S PAST 13, 13 (Geoff Emberling & Katharyn Hanson eds., 2008).

194 *Oriental Institute of the University of Chicago to Examine the Looting of the Iraq National Museum and Mesopotamian Archaeological Sites*, UNIV. OF CHI. INST. STUDY ANCIENT CULTURES, https://isac.uchicago.edu/museum-exhibits/special-exhibits/oriental-institute-university-chicago-examine-looting-iraq-nation-0 [https://perma.cc/PC28-XKBP] (last visited Mar. 29, 2025).

195 *United States Files Complaint Seeking Forfeiture of Antiquities Associated with the Islamic State of Iraq and the Levant (ISIL)*, U.S. ATT'YS OFF., D.C. (Dec. 15, 2016), https://www.justice.gov/usao-dc/pr/united-states-files-complaint-seeking-forfeiture-antiquities-associated-islamic-state [https://perma.cc/T3SF-Q6ZZ].

196 *See* Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, §§ 3001–3003, 118 Stat. 2434, 2599–2600; Convention on Cultural Property Implementation Act, 19 U.S.C. § 2603.

197 *See* Lukas Padegimas, *How New York Investors Financed the Looting of Syria, Ukraine, and Iraq*, 6 GLOB. BUS. L. REV. 105, 115 n.404 (2016).

198 Emergency Protection for Iraqi Cultural Antiquities Act of 2004 § 3003.

199 *See Antiquities Law N.59 of 1936 and the Two Amendments N.120 of 1974 and N.164 of 1975*, UNESCO, https://www.unesco.org/en/cultnatlaws/antiquities-law-n59-1936-and-two-amendments-n120-1974-and-n164-1975 [https://perma.cc/85U6-NHCP] (last visited Mar. 18, 2025).

200 *Id.*

More recently, emergency protections have been put in place to protect heritage objects from Iraq. On April 30, 2008, the United States imposed an emergency import restriction on any archaeological and ethnological materials from Iraq.[201] The restriction amended the Customs and Border Protection (CBP) regulations to reflect the Iraqi Antiquities Act. The United States also instituted this restriction to abide by paragraph 7 of the United Nations Security Council Resolution 1483, which obligates all members to assist in the protection of Iraq's cultural heritage.[202] The Iraqi Antiquities Act authorizes the President to exercise his authority "under section 304 of the Convention on Cultural Property Implementation Act with respect to any archaeological or ethnological material of Iraq without regard to whether Iraq is a State Party under the Convention on Cultural Property Implementation Act, and without the need for a formal request from the government of Iraq."[203]

The looting of Iraqi antiquities was extensively reported in mainstream media,[204] as well as within the museum and art community. For example, the International Council of Museums (ICOM) creates "Red Lists" that classify categories of objects vulnerable to looting, in order to educate the public and prevent the objects from being sold or illegally exported.[205] These publications provided notice to collectors and dealers, informing them as to the problems associated with looting, and making it more difficult for them to claim ignorance as to the looted nature of their purchases. ICOM's publication on Iraq explicitly mentions cuneiform tablets and bullae, the exact category of materials that Hobby Lobby was purchasing.[206] Even art institutions, such as museums, circulated information about the risk of acquiring illicit artifacts. Professional groups such as the Association of Art Museum Directors provided guidance to

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201 Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq**,** 19 C.F.R. § 12 (2008).

202 *Id.*

203 *Id.* (citation omitted).

204 *See, e.g.*, Kristin Romey, *Despite ISIS Threat, Looted Antiquities Returning to Iraq*, NAT'L GEOGRAPHIC (Mar. 24, 2015), https://www.nationalgeographic.com/history/article/150324-iraq-artifacts-return-isis-baghdad-museum-islamic-state-archaeology [https://perma.cc/4B8F-WURC].

205 *Red Lists*, ICOM, https://icom.museum/en/red-lists/ [https://perma.cc/T3VQ-6E2D] (last visited Mar. 31, 2025).

206 *Emergency Red List of Iraqi Cultural Objects at Risk*, ICOM, https://icom.museum/wp-content/uploads/2019/03/Emergency-Red-List-Iraq-English.pdf [https://perma.cc/B57T-HLKR] (last visited Mar. 18, 2025).

museums concerning acquisitions. Similarly, the Federal Bureau of Investigation issued a warning regarding looted antiquities in 2015.[207] Specifically, the warning noted that individuals who deal in looted antiquities may be subject to sanctions under the Iraq Stabilization and Insurgency Sanctions Regulations[208] and prosecution under 18 U.S.C. § 2339A.

It is hard to fathom that the Hobby Lobby owners and employees were unfamiliar of the legal restrictions, given the company's apparent efforts to evade detection when importing Iraqi materials into the United States. Evidence revealed that "Hobby Lobby employees did not meet the owner and dealer of the artifacts, and [they] wired payments to seven bank accounts held in other people's names."[209] The dealer, based in the United Arab Emirates, shipped the artifacts in numerous packages with false and misleading shipping labels, describing the contents as "ceramic tiles" or "clay tiles"—items plausibly associated with a craft store—and listing Turkey as the country of origin, rather than Iraq.[210] Other pieces were shipped from Israel and falsely labeled as Israeli objects.[211]

Besides the red flags, one of the most damning pieces of evidence was the fact that Hobby Lobby hired a cultural heritage law expert to advise on its acquisitions. Renowned expert and professor Patty Gerstenblith warned the Hobby Lobby owners that antiquities coming from conflict zones and from heavily looted areas were risky to purchase:

> I read them the riot act . . . I explained to them how the system worked in the interest of trying to discourage them from doing anything illegal. I knew they were building a collection, so I was concerned they might be doing something they shouldn't, even out of ignorance of the law.[212]

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207 *ISIL and Antiquities Trafficking: FBI Warns Dealers, Collectors About Terrorist Loot*, FBI (Aug. 26, 2015), https://www.fbi.gov/news/stories/isil-and-antiquities-trafficking [https://perma.cc/WQ9Y-P35Z].

208 *See, e.g.*, 31 C.F.R. § 576.201 (2025).

209 Sasha Ingber, *Hobby Lobby's Smuggled Artifacts Will Be Returned to Iraq*, NPR (May 1, 2018, 7:27 PM), https://www.npr.org/sections/thetwo-way/2018/05/01/607582135/hobby-lobbys-smuggled-artifacts-will-be-returned-to-iraq [https://perma.cc/4GPZ-TS22].

210 *Id.*

211 *Id.*

212 Ed Pilkington, *Hobby Lobby Investigated for Trying to Import Ancient Artifacts from Iraq*, THE GUARDIAN (Oct. 28, 2015, 8:45 PM), https://www.theguardian.com/us-news/2015/oct/28/hobby-lobby-investigated-ancient-artifacts-iraq [https://perma.cc/MU6A-M4KU].

But Hobby Lobby did not heed her advice; rather, the company's employees ignored it and proceeded with their buying spree.

Finally, in 2011, Customs and Border Patrol detained five packages destined for Hobby Lobby.[213] The company filed for the return of the packages.[214] In September 2015, it requested a referral to the U.S. Attorney's Office. After investigating the matter, the United States filed a civil action to forfeit the artifacts imported by Hobby Lobby in July 2017 because they were smuggled.[215] The government filed an *in rem* action against the artifacts.[216] While the company claimed its misstatements were errors made by the exporter, the facts pointed to fraud and willful ignorance—both of which are methods often used by antiquities smugglers. However, "willful ignorance" is not a defense.[217] The government's complaint also claimed theft under the National Stolen Property Act[218] because the objects imported into the United States were "protected under the cultural patrimony law of its country of origin."[219] U.S. courts recognize and enforce the patrimony laws (ownership laws) of other nations.[220] As the imported artifacts fell under Iraq's patrimony law, they are deemed stolen goods in the United States.

The United States ultimately entered into a stipulation of settlement with Hobby Lobby. Under the agreement, the company forfeited the antiquities (without any compensation), paid $3 million in fines, and adopted serious reforms—enacting internal policies governing its importation and purchase of cultural property, training personnel, hiring qualified outside customs counsel and customs brokers, and submitting quarterly

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213 *Id.*

214 Complaint at 18, United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets, 1:17-cv-03980-LDH (E.D.N.Y. July 5, 2017).

215 *Id.*

216 *Id.*

217 Lambert v. California, 355 U.S. 225, 228 (1957) (citation omitted) ("The rule that 'ignorance of the law will not excuse' is deep in our law, as is the principle that of all the powers of local government, the police power is 'one of the least limitable.'"); *see also* Leila Amineddoleh, *Why the Feds Were Smart Not to Throw the Book at Hobby Lobby for Buying Iraqi Loot*, ARTNET (July 12, 2017), https://news.artnet.com/art-world/why-hobby-lobby-verdict-1021247 [https://perma.cc/DCA3-CVSG].

218 National Stolen Property Act, 18 U.S.C. §§ 2311–2323.

219 Complaint at 15, United States v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets, 1:17-cv-03980-LDH (E.D.N.Y. July 5, 2017).

220 *See, e.g.*, United States v. Schultz, 333 F.3d 393, 416 (2d Cir. 2003) ("[T]he [National Stolen Property Act] applies to property that is stolen from a foreign government, where that government asserts actual ownership of the property pursuant to a valid patrimony law.").

reports to the government on all cultural property acquisitions for eighteen months.[221] The public settlement exposed it to great scrutiny from the public, journalists, and those monitoring the trade of cultural items. In fact, this scrutiny led to the discovery of other problematic issues with objects acquired by Hobby Lobby, including its purchase of forged Dead Sea Scrolls[222] and the acquisition of the "Gilgamesh Dream Tablet," which had been looted in 1991.[223] In May 2018, nearly four thousand artifacts were returned to Iraq and went on display at the Iraqi National Museum.[224] After the return of the cuneiform tablets and clay bullae, Hobby Lobby was connected to another looting incident, but this time involving a library collection and a professor.[225]

VI. LOOTING OF LIBRARIES

The guardians of fine art are sometimes complicit in thefts. Sadly, the same is true for custodians of books and manuscripts.[226] University scholars and librarians sometimes abuse their access to valuable works to pilfer them and profit from their sale. This is due to the fact that libraries typically are not safeguarded as securely as museums. Libraries, even ones with rare books in their care, tend not to employ security guards to monitor patrons, and they do not adequately secure entrances and exits.

Besides lack of security, books and manuscripts are simply physically easier to misappropriate from libraries than artworks are to take from museums. They are often smaller, lighter in weight, and easier to hide in a backpack or briefcase. Seeing a person walking out of a museum with a painting is cause for alarm. But it is not unusual to see someone exit a library with a

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221 *See* Amineddoleh, *supra* note 217; *see also Hobby Lobby Settles $3 Million Civil Suit for Falsely Labeling Cuneiform Tablets*, U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/news/releases/hobby-lobby-settles-3-million-civil-suit-falsely-labeling-cuneiform-tablets [https://perma.cc/9NKS-PNXS] (Jan. 24, 2025).

222 Brigit Katz, *All of the Museum of the Bible's Dead Sea Scrolls Are Fake, Report Finds*, SMITHSONIAN MAG. (Mar. 16, 2020), https://www.smithsonianmag.com/smart-news/all-museum-bibles-dead-sea-scrolls-are-fake-report-finds-180974425/ [https://perma.cc/6TM6-GL5J].

223 *Looted Gilgamesh Tablet, One of World's Oldest Surviving Works of Literature, Returns to Iraq*, PBS (Dec. 8, 2021, 11:24 AM), https://www.pbs.org/newshour/arts/ancient-gilgamesh-tablet-returns-to-iraq-30-years-after-being-looted [https://perma.cc/A3DV-ZX59].

224 Ingber, *supra* note 209.

225 *See infra* Section VI.A.

226 *See, e.g.*, Todd Samuelson, Laura Sare & Catherine Coker, *Unusual Suspects: The Case of Insider Theft in Research Libraries and Special Collections*, 73 COLL. & RSCH. LIBR. 556, 558 (2012).

book in his or her bag (perhaps the book was borrowed from the library, or the person was conducting long-term research with some of their own materials). And what is more, books or pages of books (like illuminated drawings, lithographs, or maps) are easier to dismantle and sell.[227] Parts removed from books are difficult to identify once they appear on the market, and there may not even be a record or archive of the individual pages in books, so missing pages may not be noticed from a larger book or because owners of the books may not be familiar with each individual page.[228]

A. The MacArthur Scholar at the Oxford Library

The Egyptian Exploration Society (EES) was founded in 1882, as the Egypt Exploration Fund.[229] It was established to explore, survey, and excavate ancient sites in Egypt and Sudan, and to publish the results of this work. Today it is one of the leading archaeological organizations,[230] and it houses its collection at Oxford.[231] In 2016, the EES became suspicious that a seemingly reputable scholar at Oxford was stealing items from the collection and selling them on the art market.[232]

Dirk Obbink's credentials were stellar. He had an assistant professorship at Columbia University; he was appointed as Lecturer in Papyrology and Greek Literature at Oxford; he was named the head of the Oxyrhynchus Papyri Project, which maintains an important collection of papyri found in Egypt; he served as a faculty member at the University of Michigan as a Professor of Classical Studies, and he was the Ludwig Koenen

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227 Nancy Kuhl, *New Scholarship: The Map Thief*, BEINECKE RARE BOOK & MANUSCRIPT LIBR. (June 24, 2014), https://beinecke.library.yale.edu/article/new-scholarship-map-thief [https://perma.cc/DXG3-8ABQ].

228 *See* Dwyer Murphy, *A Visit to the Shadowy World of Rare Book Theft*, LITERARY HUB (Dec. 1, 2016), https://lithub.com/a-visit-to-the-shadowy-world-of-rare-book-theft/ [https://perma.cc/6NYJ-RZ3L].

229 *See Our History*, EGYPT EXPL. SOC'Y, https://www.ees.ac.uk/our-cause/about-us/our-history.html [https://perma.cc/YZ86-YN9T] (last visited Mar. 15, 2025); *Egypt Exploration Fund*, THE BRITISH MUSEUM, https://www.britishmuseum.org/collection/term/BIOG53455 [https://perma.cc/LML6-UWSG].

230 *See Research*, EGYPT EXPL. SOC'Y, https://www.ees.ac.uk/our-cause/research.html [https://perma.cc/S3YM-AL2J] (last visited Mar. 20, 2025).

231 *See The Oxyrhynchus Papyri*, EGYPT EXPL. SOC'Y, https://www.ees.ac.uk/collections/papyri.html [https://perma.cc/9T7X-L5EC] (last visited Mar. 21, 2025).

232 *See* Charlotte Higgins, *A Scandal in Oxford: The Curious Case of the Stolen Gospel*, THE GUARDIAN (Jan. 9, 2020) https://www.theguardian.com/news/2020/jan/09/a-scandal-in-oxford-the-curious-case-of-the-stolen-gospel [https://perma.cc/H9XG-3UYH].

Collegiate Professor of Papyrology; he worked as Director of the *Imaging Papyri Project* at Oxford; he published scholarly works; he appeared on television programs; and he was a MacArthur Fellow for his work with papyri.[233] Obbink was described by some of his colleagues as "brilliant."[234] The MacArthur Foundation praised Obbink as a hero, saying he was an "expert in the art and craft of rescuing damaged ancient manuscripts from the ravages of nature and time . . . ."[235] Yet despite his laurels, Obbink was charged with looting the collection that he was tasked with studying and "rescuing."[236]

As alleged in a 2021 legal complaint, Obbink purportedly sold seven stolen fragments of ancient Egyptian papyrus, destined for display at the Museum of the Bible, to Hobby Lobby for a total of $7.1 million between 2010 and 2013.[237] The Oxford Professor's response to the allegation was that he "mistakenly" sold the pieces that belonged to the EES.[238] However, that was only the tip of the iceberg. Representatives from the Museum of the Bible and the EES ultimately discovered that the theft was bigger, alleging that they identified thirty-two papyrus fragments that Obbink stole from EES to sell to Hobby Lobby.[239]

So, how did this go undiscovered? Similar to museum thefts, most library and collection thefts are inside jobs.[240] In both instances, books and artworks are not always thoroughly and accurately catalogued, providing opportunities for malfeasors to

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233 *See* Colin Moynihan, *He Taught Ancient Texts at Oxford. Now He Is Accused of Stealing Some.*, N.Y. TIMES, https://www.nytimes.com/2021/09/24/arts/design/hobby-lobby-lawsuit-dirk-obbink.html [https://perma.cc/S9LV-DYAC] (Sept. 27, 2021).

234 *Id.*

235 *Id.* (quoting the McArthur Foundation).

236 *Id.*

237 *See* Complaint at 1, Hobby Lobby Stores, Inc. v. Obbink, No. 1:21-cv-3113 (E.D.N.Y. June 2, 2021).

238 Benjamin Sutton, *Hobby Lobby's Lawsuit Against Papyrus Scholar Changes Venues*, ART NEWSPAPER (Sept. 28, 2023), https://www.theartnewspaper.com/2023/09/28/hobby-lobby-museum-bible-lawsuit-papyrus-dealer-dirk-obink-venue-change [https://perma.cc/W4A5-L8EW].

239 *See id.*

240 *See* Bea Mitchell, *Staff Stealing from Museums Is an "Unspoken Problem," According to Experts*, BLOOLOOP (Aug. 21, 2023), https://blooloop.com/museum/news/staff-stealing-museums-problem-experts-say/ [https://perma.cc/82HL-NN8B]; *see also* Susan Mandel, *Insider Theft, Fires, and Vandals Top List of Museum Concerns*, SEC. MGMT. (June 1, 2008), https://www.asisonline.org/security-management-magazine/articles/2008/06/insider-theft-fires-and-vandals-top-list-of-museum-concerns/ [https://perma.cc/XV4M-7SN9].

get away with theft.[241] In fact, the British Museum recently faced international criticism for its failure to discover thefts from its collection. That institution—one of the largest and most famous museums in the world—did not have a complete and accurate record of its holdings, so one employee misappropriated and sold over two thousand objects from the collection over the course of several decades.[242]

Additionally, large museums keep many of their objects in storage, meaning the watchful eyes of the public and scholars cannot detect the thefts. As a result, artworks may be overlooked for years or decades, enabling thieves to pilfer objects.[243] The same is true of books. For this reason, insiders are often the people raiding collections.

It can be easy to escape detection and misappropriate objects from collections, particularly for those individuals who are tasked with guarding the collection or studying the works. These people have access to the works that the public does not, in part because they maintain trusted positions. As a leading scholar studying papyri, it was natural that Obbink would gain access to valuable fragments. He borrowed unpublished fragments from the library[244] and brought them to his office to study them.[245] While this is normal behavior for a professor or scholar working to study primary sources, professors typically *return* borrowed materials to the collections. But Obbink never returned the fragments. Instead, he sold them. It was also discovered that Obbink removed cataloguing information about the papyri so that there was no record of the missing works.[246] According to the EES, the texts that ultimately landed in the Hobby Lobby collection were taken without authorization from the library,

241 *See* Harriet Sherwood, *Thefts by Staff a Common Problem in UK Museums, Say Experts*, THE GUARDIAN (Aug. 18, 2023, 12:10 PM), https://www.theguardian.com/culture/2023/aug/18/thefts-by-staff-a-common-problem-in-uk-museums-say-experts [https://perma.cc/T235-DCR2].

242 *See* Jeannette Plummer Sires, *How Museum Items Go Missing*, SAPIENS (Dec. 6, 2023), https://www.sapiens.org/archaeology/british-museum-thefts/ [https://perma.cc/K63M-7SFW].

243 *See id.*

244 An "unpublished fragment" is one that has not been formally released or distributed to the public, meaning it is not accessible through traditional publication channels like journals or websites; essentially, these fragments are not accessible or even known to the public.

245 *See* Moynihan, *supra* note 234.

246 *Professor Obbink and Missing EES Papyri*, EGYPT EXPL. SOC'Y (Oct. 14, 2019), https://www.ees.ac.uk/resource/professor-obbink-and-missing-ees-papyri.html [https://perma.cc/B45X-RSV5].

and, in most instances, the catalogue card and photograph were also missing. Fortunately for the EES (but unfortunately for Obbink), the EES maintained back-up records which led to the discovery of the missing unpublished texts.[247]

It was a shock that the professor with impeccable credentials would have violated the EES collection. But Obbink's behavior during the legal proceedings against him were perhaps even more bizarre. Obbink never defended himself. In fact, the quiet professor never appeared in court and never named an attorney representative. Obbink simply ignored the lawsuit. As a result, the court entered a default judgment against him for $7,085,100.00.[248] Oxford University suspended Obbink's position,[249] and Obbink was not rehired by the EES.[250]

Sadly, Obbink was not the first scholar to succumb to the temptation of theft. Many examples have been recorded during the past few decades. Between 1992 and 2017, Gregory Priore, the former archivist of the Carnegie Library's rare book room, stole rare books and sold them through dealer John Schulman.[251] The men dealt in over $8 million worth of books.[252] Another notorious example involved a student assistant working at the Special Collections department at the Honnold Library in California. The pilferer, Peter French, had access to the card catalogue.[253] He realized that certain manuscripts had not been

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247 *See id.* In a 2019 announcement, the EES gratefully acknowledged the fact that the Museum of the Bible "accepted the EES claim to ownership of the thirteen pieces identified to date, and is arranging to return them to the EES." *Id.* Ultimately, there were thirty-two items identified. *See* Moynihan, *supra* note 233.

248 *See* Hobby Lobby Stores, Inc. v. Obbink, No. 5:23-cv-879, slip op. at 1 (W.D. Okla. Mar. 11, 2025) ("Judgment is hereby entered in favor of Plaintiff Hobby Lobby Stores, Inc. and against Defendant Dirk D. Obbink, in the amount of $7,085,100.00, together with prejudgment interest from February 5, 2013, at the rate of 6% per annum, as specified in 15 Okla. Stat. § 266, postjudgment interest at the rate provided in 28 U.S.C § 1961 until the judgment is satisfied, and attorney's fees and costs.").

249 *See* Alex Greenberger, *Hobby Lobby Sues Former Oxford Professor Accused of Stealing Papyrus Fragments*, ARTNEWS (June 3, 2021, 2:03 PM), https://www.artnews.com/art-news/news/hobby-lobby-dirk-obbink-lawsuit-stolen-papyrus-fragments-1234594693/ [https://perma.cc/C7LC-LBZ8].

250 *See Professor Obbink and Missing EES Papyri*, *supra* note 246.

251 *See* Michael Levenson, *2 Sentenced to House Arrest in Long-Running Scheme to Steal Rare Books*, N.Y. TIMES (June 20, 2020), https://www.nytimes.com/2020/06/20/us/Carnegie-library-theft-schulman-priore.html [https://perma.cc/3JHA-2EXQ].

252 *See id.*

253 *See* Bart Jaski, *The Weesp Missal*, UTRECHT UNIV. (June 2013), https://www.uu.nl/en/special-collections/collections/manuscripts/other-medieval/the-weesp-missal [https://perma.cc/9CEJ-KVLR].

registered and finalized in the cataloguing system, so he removed their data from the records and offered the items to auction houses between 1968 and 1972.[254] One book was purchased by the Beinecke Library at Yale University.[255] Luckily, an expert recognized the twelfth-century Cistercian manuscript, and the Beinecke Library voluntarily returned it to the Honnold Library.[256] French was arrested in 1973 and sentenced to two years' imprisonment.[257] In a more recent example, in 2015, the Bibliothèque Nationale de France announced that several sixteenth- and seventeenth-century engravings and atlases had been stolen. The theft was an inside job, orchestrated by a low-level employee responsible for stocking items.[258]

B. The Crooked Librarian

One of the most brazen thefts involved the Girolamini Library in Naples, Italy. Nestled in the Centro Storico (historic center) of the Italian city, across from the city's cathedral, lies the Church and Convent of the Girolamini. Founded in the sixteenth century, the religious site included a library, the Biblioteca Girolamini.[259] The library was full of valuable manuscripts and books: a 1518 edition of Thomas More's *Utopia*; Galileo's 1610 treatise *Sidereus Nuncius*, containing more than seventy drawings of the moon and the stars; centuries-old editions of Aristotle, Descartes, Galileo and Machiavelli; and Johannes Kepler's study of the motions of Mars, *Astronomia Nova*, considered one of greatest books in the history of astronomy.[260] Thousands of books and rare items were stolen from the collection.[261] The theft was a result of a years-long scandal involving book dealers and even a priest, with Marino

254 *Id.*

255 *Id.*

256 *Id.*

257 *Id.*

258 *See* Doreen Carvajal, *Employee Held in Paris National Library Theft*, ARTSBEAT, https://artsbeat.blogs.nytimes.com/2015/07/22/employee-held-in-paris-national-library-theft/ [https://perma.cc/3W4B-TLQR] (July 27, 2015).

259 *See* Alan Johnston, *Naples' Girolamini: The Looting of a 16th Century Library*, BBC NEWS (Dec. 19, 2013), https://www.bbc.com/news/magazine-25403595 [https://perma.cc/TGH7-2ZQV]; Rachel Donadio, *Rare Books Vanish, with a Librarian in the Plot*, N.Y. TIMES (Nov. 29, 2013), https://www.nytimes.com/2013/11/30/books/unraveling-huge-thefts-from-girolamini-library-in-naples.html [https://perma.cc/X7VN-7FT2].

260 Johnston, *supra* note 259.

261 *See* Donadio, *supra* note 260.

Massimo de Caro (the library's director at the time of the thefts) at the center of the larceny.[262]

While the library is usually closed to the public, some exceptions are made to allow access to scholars. Professor Tomaso Montanari, an art historian and academic in Naples, visited the library in April 2012. He was stunned by the state of the library—it was a mess, with books scattered all over the floor, garbage everywhere, and even "a dog roaming around the library with a bone in its mouth!"[263] A library staff member pulled the professor aside and informed him that "the director [de Caro] has been looting the library!"[264]

Later in April 2012, the library was formally impounded by the judicial authorities as a Neapolitan prosecutor began an investigation into the thefts. The investigators tapped de Caro's phone and learned that he was hiding books in his home, in a storage unit in Verona, and in the basement of a co-conspirator's family's home, and that he was still actively attempting to sell the volumes.[265] In addition, a brother-and-sister duo of librarians helped state prosecutors by providing video surveillance footage showing de Caro in the act of removing books from the library.[266]

To hide the evidence of the theft and to disguise their origins, the criminals removed identifying marks, like seals, on the manuscripts.[267] In some instances, seals and pages were simply ripped out of books, and bindings were even removed. The books were moved out of the library late at night, after security cameras were turned off. Similar to Obbink's tampering with the records of EES, the gang destroyed the library's catalog in an attempt to hide evidence of the pillage.[268] Once the identifying features of the works were removed and the books were eliminated from the records, they appeared on the international market. Over four hundred and fifty volumes went to a German auction house, while others traveled even farther.[269] Investigators have been contacted by traders and collectors from across Europe, the United States, and Latin America.

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262 *See id.*

263 Johnston, *supra* note 260.

264 *Id.*

265 Nicholas Schmidle, *A Very Rare Book*, NEW YORKER (Dec. 8, 2013), https://www.newyorker.com/magazine/2013/12/16/a-very-rare-book [https://perma.cc/A8T8-D8TH].

266 Donadio, *supra* note 260.

267 Johnston, *supra* note 260.

268 *Id.*

269 Schmidle, *supra* note 265.

In 2013, de Caro was sentenced to seven years in prison.[270] Ultimately, his sentence was commuted to house arrest because he cooperated with investigators.[271] The Italian Ministry of Culture recognizes that surveillance was not adequate, but it optimistically believes that about eighty percent of the stolen books have been recovered.[272] Yet, the head of Italy's Antiquarian Booksellers' Association, Fabrizio Govi, casts doubt on this perspective.[273] He points out that libraries are usually "at the bottom of the list of priorities" for the national cultural heritage sector.[274] "They are in an amazing state of abandonment and decay," he insists.[275] Sadly, this is true in many places, not only in Italy.

VII. LAWS PROTECTING BOOKS

While libraries and book collections have been the targets of theft, this is due to the lack of security and the ease with which thieves pilfer books and written materials. However, national laws are in place to protect libraries, educational institutions, and books. For example, the Biblioteca Girolamini was ransacked, but Italy actually has legislation in place to protect valuable volumes. Italy's cultural heritage laws, dating back to as early as 1909,[276] protect books, specifically designating as cultural property "the book collections of libraries of the State, Regions, other territorial government bodies, as well as any other government body and institute.[277] Revisions and updates to Italy's laws have consistently protected books. Indeed, Royal Decree No. 363 of 1913[278] and the Law No. 1089 of 1939[279] specifically mention books. Italy is not the only nation to

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270 *The Girolamini Thefts - Marino Massimo de Caro Sentenced to 7 Years Imprisonment*, LIGUE INTERNATIONALE DE LA LIBRAIRIE ANCIENNE (Mar. 17, 2013), https://ilab.org/fr/article/the-girolamini-thefts-marino-massimo-de-caro-sentenced-to-7-years-imprisonment [https://perma.cc/AB2E-YFTE].

271 Donadio, *supra* note 260.

272 Schmidle, *supra* note 265; Johnston, *supra* note 260.

273 Johnston, *supra* note 259.

274 *Id.*

275 *Id.*

276 Legge 20 giugno 1909, n. 364, G.U. 28 giugno 1909, n. 150 (It.).

277 Legge 22 gennaio 2004, n. 42, G.U. 24 febbraio 2004, n. 45 (It.).

278 Regio decreto 30 gennaio 1913, n. 363, art. 128(b), G.U. 5 giugno 1913, n. 130 (It.) (providing that cultural heritage laws apply to "prints," further defined as "incunabula, editions by famous printers, rare books and rare engravings").

279 Legge 1 giugno 1939, n. 1089, art. 1(c), G.U. 8 agosto 1939, n. 184 (It.) (protecting "manuscripts, autographs, correspondence, notable documents, incunabula, as well as books, prints and engravings of a rare and valuable nature").

recognize the cultural value of books; nations like Oman[280] and Ecuador[281] specifically list manuscripts as falling under their laws. However, even if not specifically named in legislation, historic manuscripts and books generally fall under the broad category of "moveable property" with historic and cultural significance, thus they are typically protected by restrictions on the movement and sale of cultural heritage via patrimony laws.

Besides national legislations, countries came together to protect heritage through the drafting of numerous treaties and conventions. The Hague Conventions of 1899 and 1907 provided for cultural heritage by prohibiting pillage and outlawing the confiscation of private property.[282] Under these conventions, "private" property includes that belonging to state-owned institutions for religion, charity, education, and the arts.[283] Further, the conventions outlawed the destruction and intentional damage to artworks. The 1899 and 1907 Hague Conventions embody rules of customary international law. Thus, they are also binding on states which are not formally parties to them.[284]

In the years after WWII, nations met to draft a treaty to avoid the vast cultural destruction that had occurred in the prior decade. This resulted in the Hague Convention of 1954. The Hague Convention specifically lists "works of art, manuscripts, books and other objects of artistic, historical or archaeological interest."[285] Signatory nations are obliged not to target historic sites, but rather to take measures to protect them during conflict.

The most often-cited convention addressing the protection of cultural heritage outside the context of war is the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). It is arguably the most

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280 *See* Law on the Protection of Manuscripts of 2009 (Act No. 70/77) (Oman).

281 *See* Law of Cultural Patrimony of 1979 (Act No. 3501) (Ecuador).

282 Convention (II) with Respect to the Laws and Customs of War on Land art. 46–47, July 29, 1899, T.S. No. 403 [hereinafter Hague Convention of 1899]; Convention (IV) Respecting the Laws and Customs of War on Land art. 46–47, Oct. 18, 1907, T.S. No. 539 [hereinafter Hague Convention of 1907].

283 Hague Convention of 1899, *supra* note 282, art. 56; Hague Convention of 1907, *supra* note 282, art. 56.

284 *Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 29 July 1899*, INT'L HUMANITARIAN L. DATABASE, https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899 [https://perma.cc/MJ69-TABK] (last visited Mar. 10, 2025).

285 Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 1, May 14, 1954, 249 U.N.T.S. 240.

important convention aimed at protecting cultural heritage because it established a global legal framework to combat the illicit trafficking of cultural artifacts.[286] The convention sets forth that cultural heritage is a basic element of civilization and national culture, and that its value can only be fully appreciated when its history and origin are known. The convention also charges state parties with the responsibility of protecting cultural heritage within their territories. The 1970 UNESCO Convention specifically mentions written materials numerous times. Article 1's definition of "cultural property" specifically includes "inscriptions," "engraved seals," "engravings, prints and lithographs," and "rare manuscripts and incunabula, old books, documents and publications of special interest, postage, revenue and similar stamps, singly or in collections, archives."[287]

Moreover, the International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects seeks to prevent the trafficking of cultural heritage by requiring buyers to ensure the legitimacy of their acquisitions. While noble in its intent, the 1995 UNIDROIT Convention has not been as widely accepted as the 1970 UNESCO Convention. However, like the 1970 UNESCO Convention, UNIDROIT protects "rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections."[288] The enumeration of books and manuscripts in international conventions and in national heritage laws reflects the importance and significance of our written heritage.

VIII. CONCLUSION

While the importance of written heritage has been recognized internationally, books, manuscripts, and writings continue being stolen and destroyed. Sometimes the works are destroyed for the viewpoints they express, their destruction a form of suppression either by religious sects or political leaders. Other times, works are looted for economic gain, treated like

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286 *See About 1970 Convention*, UNESCO, https://www.unesco.org/en/fight-illicit-trafficking/about [https://perma.cc/3L3G-MGZH] (last visited Mar. 10, 2025).

287 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 1(e), (g)(iii), (h), Nov. 14, 1970, 823 U.N.T.S. 231.

288 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, annex, June 24, 1995, 2421 U.N.T.S. 457; *see also* 1970 UNESCO Convention, supra note 287, art. 1(h).

other valuable collectibles, important for both their intellectual property, historic importance, and aesthetic qualities. And sadly, some written works are simply lost to the ravages of time, damaged by bookworms, both figurative (voracious readers and overly eager bibliophiles creating marginalia) and literal (the larvae of a wood-boring beetle that feeds on the paper and glue in books). Unfortunately, the same efforts made to protect art and heritage are often not applied to books and other written materials. Clever criminals take advantage of this shortcoming and use the opportunity to pilfer valuable works from collections. This, however, is a modern tragedy because "words, words, words" are an important part of our shared history and record of civilization.

Armenian Genocide Looted Art and the Story of the Armenian Genocide Restitution Movement: A Tribute

Armen Manuk-Khaloyan, Michael Bazyler, Kathryn "Lee" Boyd

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Armenian Genocide Looted Art and the Story of the Armenian Genocide Restitution Movement: A Tribute

Armen Manuk-Khaloyan, Michael Bazyler,* Kathryn Lee Boyd**

This Article explores the emergence and development of the Armenian Genocide Restitution Movement and its founder, Vartkes Yeghiayan, with particular focus on legal efforts to recover looted cultural and private property. Drawing on case law, historical research, and interdisciplinary analysis, the authors examine how U.S. courts have been used to pursue redress for mass atrocity crimes, including lawsuits against insurance companies, corporations, and sovereign entities. Central to the discussion is the Zeytun Gospels case, the first major attempt to reclaim art looted during the Armenian Genocide, which highlights the complex interplay of law, history, and cultural identity in restitution efforts. The Article also introduces the Armenian Genocide Looted Art (AGLA) project, a collaborative initiative aimed at documenting and recovering cultural heritage displaced by genocide. Through this lens, this Article addresses the legal, ethical, and historical challenges of pursuing justice long after mass atrocity.

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I. INTRODUCTION

After being asked to speak and participate in the January 2025 symposium held by *Chapman Law Review*, intriguingly titled *Raiders of the Lost Art: Legal Challenges and Recoveries*, two of us[1] recalled the person who brought us to the juncture where the law meets the horrors of the Armenian Genocide, one of the finest lawyers and individuals we knew: Armenian-American attorney Vartkes Yeghiayan (1936–2017). Without Vartkes, our professional paths as legal restitution experts for looted art, and especially Armenian Genocide Looted Art (AGLA), would have been quite different. We take the opportunity in this Article to pay homage to Vartkes and to tell the story of how he became the father of the ongoing Armenian Genocide Restitution Movement.[2] Put simply, without Vartkes, there would have been no Armenian Genocide Restitution Movement, and the movement would not have included AGLA restitution without his championship. What drove him to become the first Raphael Lemkin[3] of the movement and then the Armenian Indiana Jones who traverses the globe to find and return AGLA?[4]

To make the story complete, we asked Armen Manuk-Khaloyan—a Ph.D. candidate in the Department of History at Georgetown University, as well as a colleague and brother-in-arms with Vartkes—to share his recollections. Armen has known Vartkes the longest of the three of us, going back more than a decade when, fresh out of undergrad at the University of California, Los Angeles, he became the chief researcher in the Glendale, California, law office that Vartkes was operating. Frankly, any commercial work was overshadowed by the firm's pro bono efforts to bring a measure of

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1 Both Ms. Kathryn "Lee" Boyd and Professor Michael Bazyler participated as panelists in the symposium. *2025 Chapman Law Review Symposium: Raiders of The Lost Art*, CHAP. L. REV. (Feb. 13, 2025), https://www.chapmanlawreview.com/2025/02/2025-chapman-law-review-symposium-raiders-of-the-lost-art-2/ [https://perma.cc/KC5X-56CR].

2 For an overview of the Armenian Genocide Restitution Movement, see Michael J. Bazyler & Rajika L. Shah, *The Unfinished Business of the Armenian Genocide: Armenian Property Restitution in American Courts*, 23 SW. J. INT'L L. 223 (2017).

3 Raphael Lemkin was a Polish-Jewish attorney who is best known for his efforts to establish the Genocide Convention after World War II, being dually motivated by his studies of the Armenian Genocide and his own personal experiences during the Holocaust. *See Coining a Word and Championing a Cause: The Story of Raphael Lemkin*, HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/coining-a-word-and-championing-a-cause-the-story-of-raphael-lemkin [https://perma.cc/E8MR-LP4Z] (May 2, 2023).

4 *See* Mike Boehm, *The Getty Museum Is in a Legal Fight over Armenian Bible Pages*, L.A. TIMES (Nov. 4, 2011, 12:00 AM), https://www.latimes.com/entertainment/la-xpm-2011-nov-04-la-et-armenian-bible-20111104-story.html [https://perma.cc/PZ8Q-BQZ3].

long-overdue justice to the heirs of the Armenian genocide victims. And so, here we are.

Sadly, Vartkes cannot be with us to wage the legal battles he began in American courtrooms, or to appear at symposia like this one, to discuss how the law can bring justice to historical wrongs and keep alive the memory of those who perished, or whose culture was obliterated in one swoop in a region where they long resided in their ancestral homelands. This legal journey was put into action by Vartkes' long-time dream to bring greater recognition to the mass murder that Armenians experienced living as subjects of Ottoman Turkey in the second decade of the twentieth century—and to the losses they suffered.[5]

II. HOW IT ALL BEGAN

While out bicycling with friends one day in 1947, a young Vartkes caught sight of a fenced encampment built next to the British military base in Dhekelia, Cyprus. At first, he was unable to grasp the significance of the camp, but on his third or fourth trip, he and his friends were approached by a middle-aged man who came up to the edge of the fence and asked who they were. Vartkes informed him that he and the others were students attending the American Academy, a boarding school in Larnaca.[6] The man identified himself as a Jewish survivor of the recent world war and his fellow inmates as refugees trying to make their way to British Mandatory Palestine. He told the young Vartkes that he once had a son who would have been the same age as Vartkes. When they were still together, the son had enjoyed holding onto the index finger of his father. Now, the man asked if Vartkes could do the same. Not without some hesitation, Vartkes tepidly extended his hand through the chain link fence and gripped the man's finger. Tears slowly streamed down the man's face. When he and his friends bicycled to Dhekelia the following week, they found that the transit camp had been dismantled, the inmates nowhere to be seen. Even after the passing of seventy years, this encounter remained seared in Vartkes' memory.[7]

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5 *See* MICHAEL BOBELIAN, CHILDREN OF ARMENIA: A FORGOTTEN GENOCIDE AND THE CENTURY-LONG STRUGGLE FOR JUSTICE 4–5, 137 (2009); *see also The Armenian Genocide (1915-16): Overview*, HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/the-armenian-genocide-1915-16-overview [https://perma.cc/Y3YT-8QUV] (Nov. 7, 2024).

6 BOBELIAN, *supra* note 5, at 134.

7 This story was relayed to co-author Armen Manuk-Khaloyan.

Vartkes Yeghiayan had many such striking anecdotes to share with friends and acquaintances. That was partly because he had lived during such extraordinary times. The son of Armenian Genocide survivors, he was born in Addis Ababa, the capital of Abyssinia (modern Ethiopia), in 1936.[8] His childhood had been marked by Italy's occupation of that country and the Second World War on the African continent. After the war, his father's modest business in Addis and the family's close connections with Ethiopia's royal dynasty had afforded him the opportunity to study abroad, first at the American Academy in Cyprus, then at the University of California, Berkeley, and Lincoln Law School in the United States.[9] In the 1960s, he worked as an attorney alongside César Chávez in securing rights for Latino laborers in California. In 1974, he was tapped by President Nixon to become the Special Assistant for International Operations to the director of ACTION, a federal government umbrella organization responsible for global aid operations.[10] During his tenure, he met with world leaders in the Middle East and South Pacific and had many stories to tell about those interactions and travels as well. Vartkes was a firm believer in the U.S. Agency for International Development's (USAID) mission to the Third World,[11] but he also encouraged self-sufficiency. To that end, in 1976, he organized a much-celebrated conference on the future of volunteerism in Vienna that gathered together over 230 participants from 108 countries.[12]

Vartkes' personal background, activism, and work as a civil servant drew him toward championing a number of such causes. Even after he left government to start his own practice in Los Angeles, he was able to apply his skills in new areas.[13] When Armenia gained its independence from the Soviet Union, he visited the country to arrange for USAID assistance and even offered his

8 *Brief Biography of Vartkes Yeghiayan*, ARMENIAN EDUC. FUND [hereinafter Vartkes Biography], http://www.aefweb.org/Files/Vartkes_Biography.pdf [https://perma.cc/4UCR-RD7U] (last visited July 12, 2024).

9 BOBELIAN, *supra* note 5, at 134–37.

10 *See* Yeghiayan v. United States, 649 F.2d 847, 848 (Ct. Cl. 1981).

11 *See* BOBELIAN, *supra* note 5, at 207; Vartkes Yeghiayan & Armen Manuk-Khaloyan, *Vartkes Yeghiayan on Henry Morgenthau III*, USC SHOAH FOUND. (Apr. 9, 2015), https://sfi.usc.edu/video/vartkes-yeghiayan-henry-morgenthau-iii [https://perma.cc/MU3H-7VSA].

12 *See generally* COLIN BALL, JEFFREY M. HAMMER & VARTKES YEGHIAYAN, VOLUNTARISM: THE REAL AND EMERGING POWER (1976), https://ellisarchive.org/sites/default/files/2021-09/Voluntarism.pdf [https://perma.cc/7EU5-YA4P].

13 Michael J. Bobelian, *Vartkes's List*, LEGAL AFFS., Mar.–Apr. 2006, at 38.

expertise in drafting its first constitution.[14] His support for the new republic could only have been expected from someone who had grown up hearing—in hushed voices and whispers—the stories about his parents' ordeal during the genocide. He was an avid reader of history and could hold forth on a number of subjects, including but certainly not limited to the Ottoman Empire, the modern Middle East, World War I, and Winston Churchill.

In 1987, Vartkes came across a passage in a book that led him to leap from his feet. It was the memoir of Henry Morgenthau, Sr., the U.S. Ambassador to the Ottoman Empire during World War I and the Armenian Genocide.[15] Morgenthau recounted a conversation he had had in 1915 with Ottoman Interior Minister Talaat Pasha, the top leader of the ruling Committee of Union and Progress government and one of the main architects of the Armenian Genocide.[16] Talaat had demanded that the ambassador provide him with a list of Armenians who held life insurance policies with American companies, confidently assuring Morgenthau that, with the beneficiaries all deceased, the state could now stand to claim those benefits.[17] Indignant, the ambassador refused the request.[18]

And so marked the beginning of Vartkes' arduous journey to seek legal restitution for the victims of the genocide, long denied by the Republic of Turkey, the Ottoman Empire's principal successor.[19] Not just insurance benefits, but confiscated bank accounts, landed properties, and artwork and other cultural objects would fall under the attorney's purview.[20] Vartkes' work formed one part of a much wider global and post-colonial discourse

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14 *See* Vartkes Biography, *supra* note 8; *see also Secret List of Insurance Policyholders Found*, ARMENIAN WEEKLY (Mass.), Apr. 13, 2002, at 5. For additional biographical information on Vartkes, see Bobelian, *supra* note 13; BOBELIAN, *supra* note 5, at 134–38, 208–19; Beverley Beyette, *He Stands Up in the Name of Armenians*, L.A. TIMES (Apr. 27, 2001, 12:00 AM), https://www.latimes.com/archives/la-xpm-2001-apr-27-cl-56190-story.html [https://perma.cc/TEG8-GVLH]; *Impact in Profile: Vartkes Yeghiayan*, USC SHOAH FOUND., https://sfi.usc.edu/profiles/vartkes-yeghiayan [https://perma.cc/CD93-NBZT].

15 BOBELIAN, *supra* note 5, at 207–08.

16 *Id.* at 208.

17 *Id.*

18 *Id.*; *see also* HENRY MORGENTHAU, AMBASSADOR MORGENTHAU'S STORY 339 (1918).

19 *See* Samuel E. Plutchok, *Denial Is Not an Option, or Is It? How the Turkish Denial of the Armenian Genocide Blocked Recovery in the United States*, 13 U. MASS. L. REV. 234, 237 (2018).

20 *See* Davoyan v. Republic of Turkey, 116 F. Supp. 3d 1084, 1102 (C.D. Cal. 2013) ("[T]he Ottoman Empire and later the Republic of Turkey stripped ethnic Armenians of their property and . . . these expropriations were integrally related to the government-sanctioned genocidal policies."); *see also* Bakalian v. Cent. Bank of Republic of Turkey, 932 F.3d 1229, 1235–36 (9th Cir. 2019).

in the late twentieth century on human rights and restitution in the era of genocide and mass violence.[21] Most recently, this conversation has been reenergized by efforts to recover controversial art objects like the Elgin Marbles[22] and the Benin Bronzes.[23] In the Armenian case, the study of the provenance and movement of Armenian art objects already has a name: the Armenian Genocide Looted Art Research Project.[24] The following section examines the long road it has taken to arrive at this point, much of it paved by Vartkes himself, a worthy spiritual descendant of Raphael Lemkin, who first coined the word genocide.[25] It examines the course of Armenian Genocide restitution over the past twenty-five years, the work done with regard to AGLA, and prospects for the recovery of artwork.

III. FROM LAMENTATION TO LITIGATION: HOLOCAUST RESTITUTION IN AMERICAN COURTS

For Vartkes to have initiated any legal action back in 1989 for the unpaid insurance benefits would have posed a significant challenge at the time. Historian Michael R. Marrus has noted that, up until World War II, reparations "were understood to be a

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21 VARTKES YEGHIAYAN, THE ARMENIAN GENOCIDE AND THE TRIALS OF THE YOUNG TURKS, at ix (1990); *see* Richard Goldstone, *The United Nations' War Crimes Tribunals: An Assessment*, 12 CONN. J. INT'L L. 227, 228 (1997) ("In particular, the Holocaust led to the realization that the traditional approach of humanitarian law which focused upon the rights of nations but failed to set out rights of individuals was hopelessly inadequate in protecting innocent civilians during times of war."); Diane F. Orentlicher, *International Criminal Law and the Cambodian Killing Fields*, 3 ISLA J. INT'L & COMPAR. L. 705, 706 (1997); *see also* Payam Akhavan, *The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment*, 90 AM. J. INT'L L. 501, 502 (1996).

22 *See* Nadia Banteka, *The Parthenon Marbles Revisited: A New Strategy for Greece*, U. PA. J. INT'L L. 1231, 1238 (2016) ("The British Government has since retained a consistent position on the debate having declined all subsequent requests for full return of the Parthenon Marbles [to Greece]."); *see also* Dea Sula, *Where Will the Parthenon Marbles Go?*, CTR. FOR ART L. (Nov. 28, 2023), https://itsartlaw.org/2023/11/28/where-will-the-parthenon-marbles-go/ [https://perma.cc/QHX4-Z9VW].

23 *See* Elaine Kim, Note, *Returning the Benin Bronzes: An Analysis Under International and U.S. Law*, 14 NOTRE DAME J. INT'L & COMPAR. L., May 26, 2024, at 4–6 (noting that cultural internationalists support Britain's claim to the Benin Bronzes, while cultural nationalists support Nigeria's claim); *see also* Alex Marshall, *Who Owns the Benin Bronzes? The Answer Just Got More Complicated.*, N.Y. TIMES, https://www.nytimes.com/2023/06/04/arts/design/benin-bronzes-nigeria-ownership.html [https://perma.cc/Q85T-NLYX] (June 5, 2023).

24 *See Armenian Genocide Looted Art Research Project (AGLARP)*, THE PROMISE ARMENIAN INST. UCLA (June 14, 2023), https://www.international.ucla.edu/armenia/article/267152 [https://perma.cc/Q7AG-GJ8E].

25 *See* RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (1944) ("This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word genos (race, tribe) and the Latin side (killing) . . . .").

matter of *interstate* negotiations and payments . . . less a matter of justice to individuals than they were part of the restoration of global equilibrium . . . ."[26] Against the backdrop of the enormous tragedy of the Holocaust, legal experts in 1945 confronted the inadequate protections for victims of state-sponsored violence and persecution more fully than they had in the past.[27] In relation to restitution, the United States had taken an early lead. Shortly after the conclusion of the war with Germany, the U.S. Office of Military Government for Germany issued Military Government Law No. 52 as a first step in addressing the issue of expropriated property.[28] A number of similar postwar-era laws followed.[29] In 1952, the Federal Republic of Germany and the newly established state of Israel signed the Luxembourg Accords, which outlined a plan that would compensate Holocaust victims in several paid installments.[30]

It was only in recent years, however, that scholars and genocide survivors increasingly regarded restitution to personal victims as a crucial element of justice for human rights violations. In the 1990s, Jewish survivors began to file lawsuits to reclaim looted artwork and restitution for seized bank assets and unpaid insurance policies in U.S. civil courts.[31] Holocaust survivors and their attorneys considered the American federal and state court system an ideal forum to bring forth suits for restitution. The U.S. justice system allows foreign citizens to initiate claims for human rights abuses that took place outside the United States, recognizes class action lawsuits, and promotes a legal climate enabling

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26 MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990S, at 63 (2009).

27 *See, e.g.*, LEMKIN *supra* note 25, at 7–8.

28 Also known as the Blocking Control Law, Law No. 52 placed all property in Germany under the jurisdiction of military occupation authorities and stripped the Nazi Party and its affiliated organizations of all property owned or in their control. *See* Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246, 250 (2d Cir. 1947) ("Law No. 52 makes it clear that it was contemplated that property transferred under duress by 'Nazi officials' is to be sequestrated by the local authorities."); *see also* Ergänzung Nr. 1 zur Allgemeinen Anordnung No. 1 Gemäß Gesetz No. 52 der Militärregierung [Supplement No. 1 to General Order No. 1 Pursuant to Military Government Law No. 52], Dec. 1, 1946, SAMMLUNG DER GESETZE, VERORDNUNGEN, ANWEISUNGEN UND ANORDNUNGEN DER MILITÄRREGIERUNG DEUTSCHLAND at 9 (Ger.).

29 For instance, Law No. 59 was also enacted. *See* Estate of Reihs, 102 Cal. App. 2d 260, 265 (1951) ("The object of Law 59 was to return to the victims of Nazi persecution the properties of which they had been deprived by duress and other unlawful means.").

30 *See* MICHAEL BAZYLER, HOLOCAUST, GENOCIDE, AND THE LAW: A QUEST FOR JUSTICE IN A POST-HOLOCAUST WORLD 158 (2016).

31 *See* United States v. Portrait of Wally, 663 F. Supp. 2d 232, 246 (S.D.N.Y. 2009); *see also* Barry Meier, *Jewish Groups Fight for Spoils of Swiss Case*, N.Y. TIMES (Nov. 29, 1998), https://www.nytimes.com/1998/11/29/world/jewish-groups-fight-for-spoils-of-swiss-case.html [https://perma.cc/B7YM-6N7C].

lawyers to assume the risks and costs involved in pursuing cases that involve countless hours in discovery, depositions, and the courtroom.[32] In some instances, pre-existing law lent itself to the claims of prospective plaintiffs. For instance, the exception clauses of the Foreign Sovereign Immunities Act of 1976 (FSIA), which exempt foreign states from protection in American courts, were instrumental for attorney Randy Schoenberg and his client Maria Altmann in their long and ultimately successful quest to retrieve five paintings from the Austrian government that Nazis had confiscated in the 1930s.[33] In other cases, new legislation was drafted to clear legal hurdles, such as statute of limitations laws.[34]

The success of the early Holocaust restitution cases was nevertheless mixed: none of them went to trial, and a number of them were defeated in court. In most cases, the plaintiffs settled with the defendants, and the sums attained were not always very significant. Co-author Michael Bazyler has opined, "[W]e call these payments 'symbolic justice'" because "[m]uch more important than the sums received was the recognition by the perpetrators of the wrongs committed against the victims and an issuance of an apology to those victims."[35] Many in the Jewish community likewise considered the settlements "some measure of justice" obtained for the Holocaust's victims.[36] A number of these cases continue to await adjudication in U.S. courts.

A. Suing Life Insurances for Profiting from the Armenian Genocide

Holocaust reparations and restitution efforts would serve as a precedent for Vartkes. Like other Armenian advocates, Vartkes

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32 *See* MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS, at xii–xiii (2003); *see also* Leora Bilsky et al., *From* Kiobel *Back to Structural Reform: The Hidden Legacy of Holocaust Restitution Litigation*, 2 STAN. J. COMPLEX LITIG. 139, 156 (2014).

33 *See* Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3) (abrogating foreign states' sovereign immunity in cases involving property taken in violation of international law); Republic of Austria v. Altmann, 541 U.S. 677, 688 (2004). Altmann's remarkable life story and the legal challenges of her case were portrayed in the 2015 biographical film *Woman in Gold*, starring Ryan Reynolds and Helen Mirren. *See* WOMAN IN GOLD (BBC Films 2015).

34 For example, section 354.3 of the California Code of Civil Procedure was passed to extend the statute of limitations for Holocaust art recovery. *See* CAL. CIV. PROC. CODE § 354.3 (West 2003), *invalidated by* Von Saher v. Norton Simon Museum of Art at Pasadena, 862 F. Supp. 2d 1044 (C.D. Cal. 2012).

35 Michael J. Bazyler, *From "Lamentation and Liturgy to Litigation": The Holocaust-Era Restitution Movement as a Model for Bringing Armenian Genocide-Era Restitution Suits in American Courts*, 95 MARQUETTE L. REV. 245, 254 (2011).

36 MARRUS, *supra* note 26, at 5.

had watched the Holocaust restitution cases of the 1990s closely and saw them as a model.[37] An Armenian-American, Martin Marootian, whose uncle had once held a life insurance policy with New York Life Insurance Company, became the lead plaintiff in the class action lawsuit that Vartkes and his firm filed against the company in 1999.[38] With the help of California State Senator Charles Poochigian (who is also Armenian-American), Vartkes was able to push for legislation—specifically, section 354.4 of the California Code of Civil Procedure, which explicitly provides redress for "Armenian Genocide victim[s]" and extends the statute of limitations for an event that had taken place nearly eighty-five years earlier.[39] In 2004, after years of legal wrangling and negotiations, the two sides agreed to settle for $20 million, the first such settlement in the Armenian Genocide Restitution Movement.[40] Another class action suit, filed in 2001 against French insurance giant AXA, settled four years later for $17 million.[41]

B. Suing Other Willing Business Partners to the Armenian Genocide

Over the next decade, Vartkes' firm would file class action lawsuits against a host of businesses, corporations, and entities accused of complicity in the genocide.[42] Despite some successes,

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37 *See* BOBELIAN, *supra* note 5, at 213.

38 *See* Elaine Woo, *Martin Marootian Dies at 95; Lead Plaintiff in Suit over Armenian Genocide Victims' Insurance Policies*, L.A. TIMES (Mar. 12, 2011, 12:00 AM), https://www.latimes.com/local/obituaries/la-me-martin-marootian-20110312-story.html [https://perma.cc/2PZP-XFGG].

39 *See* CAL. CIV. PROC. CODE § 354.4 (West 2011), *invalidated by* Movsesian v. Victoria Versicherung AG, 670 F.3d 1067 (9th Cir. 2012). Section 354.45 provided a legal avenue for Armenian Genocide claimants to pursue the recovery of stolen assets. *See id.* § 354.45, *invalidated by* Deirmenjian v. Deutsche Bank, A.G., 526 F. Supp. 2d 1068 (C.D. Cal. 2007).

40 Henry Weinstein, *Insurer Settles Armenian Genocide Suit*, L.A. TIMES (Jan. 29, 2004, 12:00 AM), https://www.latimes.com/archives/la-xpm-2004-jan-29-me-genocide29-story.html [https://perma.cc/4N9W-RPYR].

41 Associated Press, *French Firm Settles Armenian Genocide Suit*, L.A. DAILY NEWS, https://www.dailynews.com/2005/10/14/french-firm-settles-armenian-genocide-suit/ [https://perma.cc/FAW8-DUQB] (Aug. 29, 2017, 3:23 AM). The Armenian Genocide restitution cases were not free from controversy. In 2016, the State Bar of California initiated disciplinary proceedings against Vartkes Yeghiayan, alleging mismanagement of funds designated for Armenian Genocide survivors in the AXA settlement. *Vartkes Boghos Yeghiayan*, Docket No. 11-O-11758 (Cal. State Bar Nov. 20, 2017). The State Bar terminated the proceedings without a decision on the merits due to Vartkes Yeghiayan's death in 2017. *Id.*

42 For further discussion on these cases, see Second Amended Class Action Complaint, Movsesian v. Victoria Versicherung AG, No. 2:03-cv-9407, 2007 WL 9728507 (C.D. Cal. June 22, 2006); First Amended Class Action Complaint, Deirmenjian v. Deutsche Bank

these cases, like the Holocaust restitution suits before them, encountered resistance in the courts. Even with the passage of California legislation, many of the defendants challenged the legal merits of the cases and in various instances, such as *Movsesian v. Victoria Versicherung AG* and *Deirmenjian v. Deutsche Bank AG*,[43] defendants succeeded in having the case dismissed. At the heart of the matter was the legislation's constitutionality and whether American courts were the appropriate forum to consider such weighty issues involving events from nearly a century ago.[44] The defendants argued that two principles in particular deprived the plaintiffs of any legal standing.[45] On the one hand, there was the doctrine of field preemption, which upholds the supremacy of federal over state law in the second clause of Article VI of the Constitution, reserves the prerogative to conduct foreign affairs to the U.S. government.[46] On the other hand, the early nineteenth-century political question doctrine maintains that certain matters are fundamentally political and remain outside the competence of the judicial branch.[47] The courts were inclined to agree with the latter.

Thus, in *Movsesian*—a case in which descendants of Armenian Genocide survivors sued two German banks over unpaid insurance benefits—the defendants argued that, given the fact that the U.S. government had at the time yet to categorize the 1915 killings as genocide, federal law preempted section 354.4 of the California Code of Civil Procedure.[48] The plaintiffs pushed back, contending that regulation of insurance matters was well within California's remit. The case went back and forth in the courts until early 2012, when all nine judges of the Ninth Circuit Court of Appeals agreed that the case was outside the

A.G., No. 2:06-cv-774, 2006 WL 4749756 (C.D. Cal. Oct. 16, 2006); Complaint, W. Prelacy of the Armenian Apostolic Church v. J. Paul Getty Museum, No. BC438824, 2010 WL 2257369 (Cal. Super. Ct. June 1, 2010) [hereinafter Getty Complaint]; Complaint, Bakalian v. Republic of Turkey, No. 2:10-cv-9596, 2011 WL 13128870 (C.D. Cal. Dec. 15, 2010). For a concise overview on, and legal analysis of, these cases in general, see Bazyler & Shah, *supra* note 2, at 244–76.

43 Movsesian v. Victoria Versicherung AG, 670 F.3d 1067, 1077 (9th. Cir. 2012); Deirmenjian v. Deutsche Bank AG, 548 F. App'x 461, 466 (9th Cir. 2013).

44 *See Movsesian*, 670 F.3d at 1069; *see also Deirmenjian*, 548 F. App'x at 463–64.

45 *See Movsesian*, 670 F.3d at 1071, 1077 (finding that the foreign affairs doctrine and field preemption rendered section 354.4 unconstitutional); *see also Deirmenjian*, 548 F. App'x at 463–66.

46 *See Movsesian*, 670 F.3d at 1071–72.

47 *See* Baker v. Carr, 369 U.S. 186, 210, 217 (1962).

48 Movsesian v. Victoria Versicherung AG, 578 F.3d 1052, 1055–56 (9th Cir. 2009).

court's competence.[49] When the Supreme Court declined a writ of certiorari, the case was dismissed.[50]

C. Suing Turkey

Other cases face similar legal hurdles. In *Bakalian v. Central Bank of the Republic of Turkey*, the plaintiffs sought compensation for Armenian land in Incirlik, Turkey, which the Ottoman government had expropriated[51] and that the Turkish government in the 1950s began renting out to the North Atlantic Treaty Organization (NATO) to build and operate a massive air base.[52] Although the plaintiffs asserted jurisdiction under the FSIA takings exception, the case languished in the courts for almost a decade.[53] The defendants raised a number of objections, including the matter's infringement upon the political question doctrine and the appropriateness of the court system as a forum to adjudicate such issues.[54] Oral arguments for *Bakalian* were heard before the Ninth Circuit Court of Appeals in August 2016 and again in December 2018.[55] Less than a year later, the Ninth Circuit affirmed the decision on the ground that the case was time barred.[56]

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49 *Movsesian*, 670 F.3d at 1077 ("[S]ection 354.4 expresses a distinct point of view on a specific matter of foreign policy. Its effect on foreign affairs is not incidental; rather, section 354.4 is, at its heart, intended to send a political message on an issue of foreign affairs by providing relief and a friendly forum to a perceived class of foreign victims. Nor is the statute merely expressive. Instead, the law imposes a concrete policy of redress for 'Armenian Genocide victim[s],' subjecting foreign insurance companies to suit in California by overriding forum-selection provisions and greatly extending the statute of limitations for a narrowly defined class of claims.") (alteration in original) (footnote omitted)).

50 *See* Bazyler & Shah, *supra* note 2, at 251–52 .

51 Bakalian v. Cent. Bank of Republic of Turkey, 932 F.3d 1229, 1231–32 (9th Cir. 2019).

52 *See Incirlik Air Base History*, INCIRLIK AIR BASE, https://www.incirlik.af.mil/About-Us/Fact-Sheets/Display/Article/300814/incirlik-air-base-history [https://perma.cc/8WMG-SEG6] (Nov. 2018).

53 *See Bakalian*, 932 F.3d at 1232–33.

54 Bazyler & Shah, *supra* note 2, at 260–61.

55 2016 Oral Argument, Bakalian v. Cent. Bank of Republic of Turkey, 932 F.3d 1229 (9th Cir. 2019) (No. 13-55664), https://www.ca9.uscourts.gov/media/audio/?20160804/13-55664/ [https://perma.cc/6WWC-9RFY]; 2018 Oral Argument, Bakalian v. Central Bank of Republic of Turkey, 932 F.3d 1229 (9th Cir. 2019) (No. 13-55664), https://www.ca9.uscourts.gov/media/audio/?20181217/13-55664/ [https://perma.cc/4P9G-CBTE].

56 Martin Macias Jr., *Ninth Circuit Says Too Late on Claims of Armenian Genocide Land Grab*, COURTHOUSE NEWS SERV. (Aug. 8, 2019), https://www.courthousenews.com/ninth-circuit-says-too-late-on-claims-of-armenian-genocide-land-grabe/ [https://perma.cc/78HT-G9M9].

IV. THE ZEYTUN GOSPELS LITIGATION

AGLA has been a forgotten part of the Armenian genocide. As University of California, Davis art history professor Heghnar Watenpaugh explains in a passage worth quoting here at length:

> For Armenians who experienced the genocide, the near-total loss of their centuries-old religious and cultural heritage was painfully apparent. However, to this today, a full reckoning of the cultural losses of the Armenian Genocide has not taken place, because the genocide itself has not been fully reckoned with. The Republic of Turkey, the successor state to the Ottoman Empire, adopted an official policy of denial. Denial, continued persecution, hatred, expropriation of wealth, destruction of cultural monuments, appropriation of cultural achievements: there has not been acknowledgment, let alone apology, atonement, or reparation to any degree and any kind, even the most minimal, by Turkish state institutions. In the last years, a new wave of scholarship has begun to break the silence. Nevertheless, official state denial of the violence and the proscription of the use of the word 'genocide' continue.
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> The genocide and its painful afterlives haunt the history of Armenian cultural heritage and the historiography of Armenian art itself. This is due to the fact that the entry of some Armenian artworks into the art world and art writing coincided with the genocide, the violence of looting and dispersal, and entry into the more shadowy corners of the art market. I do not suggest that every single Armenian manuscript in European or U.S. collections today was looted during the Armenian Genocide. Indeed, works of Armenian art have been circulating in a global art market since the medieval period. However, I do argue that a large corpus of Armenian works of art made their entry in the art world and in art collections in a single wave as a result of the disruptions of the Armenian Genocide. This sudden transfer of Armenian art in a time of war and dispossession is comparable to the mass movement of Nazi-looted artworks during World War II, which continues to haunt the art world today.[57]

Even as he was filing lawsuits for unpaid insurance claims and confiscated property, in 2010, Vartkes initiated perhaps one of his most daring legal broadsides to Armenian Genocide restitution.[58] Much like how section 354.4 of the California Civil Code had paved the way for the Armenian Genocide insurance cases, section 338(c)(3) provided the legal foundation to bring suit against museums, institutions, and entities alleged to have

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57 Heghnar Zeitlian Watenpaugh, *Provenance: Genocide. The Transfer of Armenian Sacred Objects to Art Collections*, *in* VARIANT SCHOLARSHIP: ANCIENT TEXTS IN MODERN CONTEXTS 219, 234 (Neil Brodie et al. eds., 2023) (citations omitted) .

58 *See* Getty Complaint, *supra* note 42.

illegally acquired stolen Armenian artwork.[59] In June 2010, Vartkes filed a lawsuit against the J. Paul Getty Museum in Los Angeles to return several missing pages from a medieval Armenian illuminated manuscript called the Zeytun Gospels.[60] Commissioned for production in the thirteenth century, the manuscript had survived down the ages in the safekeeping of the Armenian Church in the Ottoman Empire.[61] During the genocide, it had passed from hand to hand and ended up finally in a museum in Yerevan, the capital of then-Soviet Armenia—with eight of its most precious pages mysteriously absent.[62] In the lead-up to the case filing, Vartkes and his research team determined that the pages had been torn out during the genocide by an Armenian individual, who later immigrated to the United States and kept them in his possession before ultimately selling them to the Getty in 1994.[63]

In 2019, Watenpaugh, who wrote an authoritative biography of the Zeytun Gospels in her book *The Missing Pages*, listed its most salient facts:

> The Zeytun Gospels was created in 1256 by Toros Roslin, the greatest medieval Armenian illuminator. He worked in the scriptorium of the castle of Hromkla, then the seat of the catholicos of the Armenian Apostolic Church and located in present-day southwestern Turkey, on the westernmost bend of the Euphrates River. The manuscript is called the Zeytun Gospels after the remote mountain town where it was once kept. When the Armenians of Zeytun were exiled from their homes and exterminated during the Armenian Genocide a century ago, the manuscript too was removed from its church. It was passed from hand to hand, and caught in the confusion and brutality of war. Today the Zeytun Gospels survives almost intact, divided into two parts. The main manuscript is preserved in the Mashtots Institute of Ancient Manuscripts, known as the Matenadaran, in Yerevan, Republic of Armenia (Ms. 10450). The Gospel Book's Canon Tables, in eight illuminated pages, were separated and are kept in the J. Paul Getty Museum in Los Angeles (Ms. 59). The manuscript was sundered as a result of the Armenian Genocide. The circumstances of the separation of the manuscript and the fragment were central to a

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59 *See* Second Amended Complaint and Demand for Jury Trial at 9–10, Western Prelacy of the Armenian Apostolic Church v. J. Paul Getty Museum, No. BC438824 (Cal. Super. Ct. filed Aug. 1, 2011) [hereinafter Second Amended Getty Complaint]. For a discussion on Armenian art and cultural property recovery, see Rajika L. Shah, *The Making of California's Art Recovery Statute: The Long Road to Section 338(c)(3)*, 20 CHAP. L. REV. 77 (2017).

60 *See* Getty Complaint, *supra* note 42.

61 *See* Second Amended Getty Complaint, *supra* note 59, at 5–6.

62 *See id.* at 8. For a study on the history of the Zeytun Gospels itself, see HEGHNAR ZEITLIAN WATENPAUGH, THE MISSING PAGES: THE MODERN LIFE OF A MEDIEVAL MANUSCRIPT, FROM GENOCIDE TO JUSTICE (2019).

63 *See* Watenpaugh, *supra* note 57, at 222, 224.

> lawsuit between the Armenian Church and the Getty, begun in 2010. In the lawsuit, the Western Prelacy of the Armenian Apostolic Church of America sought the return of the Canon Tables, asserting that the illuminated pages were sacred and had been stolen: they had been removed from the main manuscript, the Zeytun Gospels, during the Armenian Genocide. The museum's legal counsel maintained that the Getty owned the pages as works of art, having acquired them legally.[64]

Yeghiayan represented the Armenian Church in the effort to return the eight missing pages to the mother manuscript in Yerevan—in his words, like an orphaned child being miraculously reunited with his parents.[65] In any event, the two parties came to a settlement in 2015, where the pages would remain in the Getty Museum's collection.[66]

The future of Armenian Genocide art restitution became a subject of intense discussion among legal specialists in the years following the *Getty* case. Watenpaugh explains her own journey and what happened next: "While litigation was ongoing, I became intrigued by the work of art/sacred object dichotomy outlined in legal documents. I set out to learn more about the history of the Zeytun Gospels. The provenance the Getty had for this manuscript at that time was brief, as provenance lists are."[67]

When it acquired the Canon Tables, the Getty presented them to museum-goers in the following way:

> *Catholicos Constantine I (1221-67); bound into a Gospel book in Kahramanmaras, Turkey; Nazareth Atamian; private collection, U.S.* (Getty Museum 1995: 89).[68]

Watenpaugh notes that, "[e]ven to an untrained eye, this provenance had some gaps, and raised some questions."[69] She elaborates: "Here was a layer of loss: due to the violent events of the twentieth century, the history of the manuscript had been lost in the fog of time, people connected to its history were dead, some of them murdered, and documentation was elusive."[70]

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64 Watenpaugh, *supra* note 57, at 221–22.
65 *See* WATENPAUGH, *supra* note 62, at 3.
66 *See id.* at 18.
67 Watenpaugh, *supra* note 57, at 222.
68 *Id.*
69 *Id.*
70 *Id.*

In 2016, after the case was settled, the Getty adjusted the provenance:

> *1256, Catholicos Konstandin I, died 1267; by 1923–1994, in the possession of the Atamian Family; 1994, acquired by The J. Paul Getty Museum; 2016, gift of the Catholicosate of the Great House of Cilicia, by agreement.*[71]

The *Getty* case represented a major milestone in the recovery of Armenian looted art. Yeghiayan's boutique law firm went up against the world's wealthiest art museum in the first art case emanating from the Armenian Genocide.[72] The case catapulted the Zeytun Gospels into the global conversation on art heritage and restoration, and demonstrated the reaches and limits of the American legal system on such matters. It highlighted those challenges while at the same time demonstrating new paths forward.

V. THE FUTURE OF ARMENIAN GENOCIDE LOOTED ART

In the wake of the Biden administration's recognition of the Armenian Genocide in 2021, a number of legal and history experts gathered in the summer of 2023 to launch the multidisciplinary project, AGLA.[73] AGLA set out to conduct research on suspected looted Armenian art, cultural heritage, and other cultural objects and foster a conversation on different aspects of restitution and art.[74] In 2023 and 2024, the AGLA Movement hosted participants at two conferences intended to answer the important questions relating to restitution: "[W]hat are the possibilities of creating an Armenian Genocide reparation movement post-recognition? What opportunities does the American legal system offer for reparation? Can the Holocaust restitution movement serve as a model for the Armenian Genocide?"[75] Stuart Eizenstat, Special Representative of the President and Secretary of State on Holocaust-era Issues, lent his weight to the project in 2023, discussing his experience in helping to facilitate Holocaust restitution in the 1990s on behalf of the Clinton administration.[76] The project has ambitious aims, hoping to expand the ambit of its activities from collaborating with universities, the U.S. government, and the Armenian

71 *Id.*
72 *See* Bazyler & Shah, *supra* note 2, at 267, 274.
73 *See Armenian Genocide Looted Art Research Project (AGLARP*), *supra* note 24.
74 *Id.*
75 *Id.*
76 *Id.*

diaspora to developing curricula, working with organizations to establish controls over the traffic of looted artwork, organizing conferences and exhibitions, and broadening knowledge on Armenian art and history more generally.[77]

VI. CONCLUSION

Vartkes' encounters and experiences of his early youth shaped much of his understanding of the world. He carried these memories with him when he decided to enter law and then applied them when he began the Armenian Genocide Restitution Movement in the 1990s. In a span of twenty years, Vartkes moved the ball forward on cases involving the payment of insurance policies, the restoration of landed properties, and the safe return of art objects determined to have been removed from Ottoman Armenian churches and homes during the genocide. Each of these cases, as we have seen, encountered its own respective challenges and enjoyed varying degrees of what we may call success. Yet at each step, legal experts have come away with a slightly firmer knowledge of how to proceed—AGLA being one of the most vibrant examples. It is this forward momentum that will allow us to make the best use of our courts to attain justice and honor the ideals of pioneers like Vartkes Yeghiayan as we look toward the future.

77 *Id.*

Turnabout Is Foul Play: Sovereign Immunity and Cultural Property Claims

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Turnabout Is Foul Play: Sovereign Immunity and Cultural Property Claims

*Nicholas M. O'Donnell**

In 1976, Congress enacted the Foreign Sovereign Immunities Act, 28 U.S.C. § 1601, et seq., to establish the circumstances under which foreign states and their instrumentalities are subject to suit in United States courts. Under the Act, a foreign state is immune from suit unless an enumerated exception applies. Of these exceptions, the "expropriation exception" of section 1605(a)(3) was invoked for various claims to looted or dispossessed cultural property. Most frequent of all were claims arising out of Nazi-era transfers and thefts, a dispossession of art in particular that Congress (unanimously) in 2016 labeled the "greatest displacement of art in human history." Claims were evaluated without regard to the nationality of the Nazis' victims, consistent with a 2016 amendment to the FSIA that confirmed its applicability to "Nazi-era claims" defined as those dating from January 30, 1933 to May 8, 1945, as well as with the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

In 2021 the Supreme Court abruptly changed course. The expropriation exception, the Court held, incorporates the so-called "domestic takings rule," under which international law is indifferent to crimes by a government against its own nationals. By inserting this additional element into the expropriation exception at odds with the Genocide Convention and § 1605(h), the Court sent a clear message of hostility to cultural property claims that sovereign litigants and the lower courts have followed. What has ensued is a demeaning race to the bottom in which heirs of the Nazis' victims are forced to explain why international law should protect those whom Germany cast out of the protection of its laws.

Ironically, the Court's increasing reliance on an unrelated law that addressed the Act of State Doctrine provides the solution. After the Supreme Court declared Cuba's expropriations non-justiciable under the Act of State Doctrine, Congress asserted its co-equal power to restore access to U.S. Courts with the Second Hickenlooper Amendment. Without irony, the Supreme Court has increasingly cited the Second Hickenlooper Amendment to interpret the Foreign Sovereign Immunities Act more narrowly. Congress must take the cue, and act to remind the Court that Congress meant what it said, not the policy that the Court has inserted into the law.

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I. INTRODUCTION

When and whether foreign state museums and collections can be subject to the jurisdiction of U.S. courts over cultural property ownership-related claims has followed a curious arc in the last quarter century. After Maria Altmann successfully obtained jurisdiction over the Republic of Austria for that nation's wrongful possession of her family's artworks taken from them in the Nazi Era, courts initially accepted an increasingly expanded amount of expropriation claims, such that by 2016 the courts, and Congress, had reached what appeared to be a consensus.

Since 2020, however, the Supreme Court has rejected its own recent guidance and built a jurisprudence of immunity with startling speed. Notwithstanding the clear directives of the Foreign Sovereign Immunities Act (FSIA) and its legislative history—that policy and politics have no place in determining sovereign immunity—courts have effectively reversed the presumption of jurisdiction where a statute confers it. Increasingly, they have held that the very *purpose* of the FSIA is to deny immunity, rather than set forth exceptions to it. Arguably, the courts have disproportionately used cultural property cases to push a separate agenda: the abolition of human rights claims from U.S. courts. Whether that agenda should or should not succeed has nothing to do with the enumerated exceptions to sovereign immunity about property that Congress has set for the courts to apply. The Court's approach is at odds with the history and text of the FSIA.

As it has done before, Congress must exert its power as a co-equal branch to rebuke this era of impunity, which has encouraged the very worst behavior by sovereign defendants.

II. SOVEREIGN IMMUNITY BEFORE 1976

For much of U.S. history, foreign sovereigns were seldom amenable to suit in the courts of the United States.[1] Although immunity was not required by the Constitution, Justice Marshall's opinion in *The Schooner Exchange* was broadly interpreted to confer virtually absolute immunity on foreign sovereigns.[2]

Sovereign immunity was "a matter of grace and comity" by the United States to other nations, in that courts would defer to the

1 The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 137 (1812).

2 *See, e.g.*, Berizzi Bros. Co. v. The Pesaro, 271 U.S. 562, 571, 574 (1926) (holding that an Italian merchant ship was immune from a damages claim in federal court).

decisions of the political branches of the government—the Executive in particular—in determining whether a foreign state was immune from suit.[3] In practice, until 1952, the Executive Branch granted immunity in every case in which it was sought, rendering foreign states effectively immune from any suit.[4]

That changed when the State Department announced the so-called "restrictive" theory of immunity in a letter from Acting Legal Adviser Jack Tate.[5] The restrictive theory holds that a sovereign retains absolute immunity for its public acts—*jure imperii*—but not its commercial or private ones—*jure gestionis*.[6] If sued, the foreign state would ask the State Department for a "suggestion[] of immunity," leading to political considerations not necessarily bound by the restrictive theory.[7] To make matters worse, foreign states did not always approach the State Department, leaving the court without clear instruction and often forcing it to rely on prior decisions of the State Department which were themselves inconsistent.[8]

As the Supreme Court noted, this case-by-case analysis was "neither clear nor uniformly applied."[9] Indeed, the approach "thr[ew] immunity determinations into some disarray" because "political considerations sometimes led the Department to file 'suggestions of immunity in cases where immunity would not have been available under the restrictive theory.'"[10] These nearly three decades have been described as an "executive-driven, factor-intensive, loosely common-law-based immunity regime."[11]

III. CONGRESS CONFERS IMMUNITY DETERMINATIONS EXCLUSIVELY TO THE JUDICIARY

By the 1970s, this arrangement had satisfied no one. The State Department, in particular, had to take on duties it had not

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3 Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 480, 486 (1983); *see also Ex parte* Republic of Peru, 318 U.S. 578, 588 (1943).

4 *Verlinden*, 461 U.S. at 486.

5 *See* Letter from Jack B. Tate, Acting Legal Adviser, Dep't of State, to Philip B. Perlman, Acting Att'y Gen., Dep't of Justice (May 19, 1952), *in* 26 DEP'T ST. BULL. 984, 984 (1952) [hereinafter Tate Letter].

6 *Id.*; *Verlinden*, 461 U.S. at 487.

7 *Verlinden*, 461 U.S. at 487.

8 *See* Andreas F. Lowenfeld, *Claims Against Foreign States—A Proposal for Reform of United States Law*, 44 N.Y.U. L. REV. 901, 909–12 (1969).

9 *Verlinden*, 461 U.S. at 488; *see also* Frederic Alan Weber, *The Foreign Sovereign Immunities Act of 1976: Its Origin, Meaning and Effect*, 3 YALE STUD. WORLD PUB. ORD. 1, 11–13, 15–17 (1976).

10 Republic of Austria v. Altmann, 541 U.S. 677, 690 (2004) (quoting *Verlinden*, 461 U.S. at 487–88).

11 Republic of Argentina v. NML Cap., Ltd., 573 U.S. 134, 141 (2014).

requested. This resulted in it making decisions that inevitably left either the plaintiff or their foreign diplomatic counterparts displeased with the outcome. As later Deputy and Acting Legal Adviser Mark B. Feldman has noted:

> This practice became a serious problem for the State Department. There were tensions with foreign governments and mounting criticism from the private sector. In many cases, the Department was not competent to make immunity determinations on legal grounds, and foreign governments often would pressure the Department to grant immunity in cases where immunity was not legally justified.[12]

Congress drafted a bill much like what the FSIA later became, but which did not pass in its first form—H.R. 3493—in 1973.[13] In transmitting the first bill that Congress considered in 1973, Secretary of State William P. Rogers and Attorney General Richard G. Kleindienst spoke forcefully:

> The central principle of the draft bill is to make the question of a foreign state's entitlement to immunity an issue justiciable by the courts, *without participation by the Department of State.*
>
> . . . [T]ransfer of this function to the courts will also free the Department from pressures by foreign states to suggest immunity and from any adverse consequences resulting from the unwillingness of the Department to suggest immunity.[14]

That bill was referred to the House Committee on the Judiciary, but no further action was taken before the end of the 93rd Congress.[15] Among the reasons the bill did not advance was that Congress expressed concerns about a lack of broad consensus given the scope and complexity of the bill.[16]

Congress was determined to address the subject, however, and took up the matter two years later.[17] The legislative history of

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12 Brief of Former State Dep't Att'y Mark B. Feldman as Amicus Curiae in Support of Respondents at 6, Republic of Hungary v. Simon, 592 U.S. 207 (2021) (No. 18-1447). Mr. Feldman was principally engaged in the State Department's approval of the later bill that eventually became law in 1976. *Id.* at 1.

13 *See* Dep't Justice and Dep't State Letter of Transmittal (Jan. 22, 1973) *in* 15 I.L.M. 88, 88 (1973).

14 *Immunities of Foreign States: Hearing on H.R. 3493 Before the Subcomm. on Claims & Governmental Rels. of the H. Comm. on the Judiciary*, 93d Cong. 34 (1973) (emphasis added).

15 *H.R.3493 - A Bill to Define the Circumstances in Which Foreign States Are Immune from the Jurisdiction of U.S. Courts and in Which Execution May Not Be Levied on Their Assets, and for Other Purposes*, CONGRESS.GOV (Jan. 31, 1973), https://www.congress.gov/bill/93rd-congress/house-bill/3493 [https://perma.cc/QBT3-S2LM].

16 Brief of Amicus Curiae Mark B. Feldman, Former U.S. Dep't of State Acting Legal Adviser in Support of Petitioners at 4–5, Cassirer v. Thyssen-Bornemisza Collection Found., 596 U.S. 107 (2022) (No. 20-1566), 2021 WL 9219017, at *4–5.

17 *See* Foreign Sovereign Immunities Act of 1976, H.R. 11315, 94th Cong. (1976).

this bill, which eventually became the FSIA, is extensively and frequently cited in interpreting the statute.[18] The House Report discusses the history of immunity and states repeatedly that the purpose of the bill is to codify the restrictive theory of sovereign immunity: a "foreign state is entitled to immunity only with respect to its public acts, not with respect to commercial or private acts."[19] The House Report explains why the Tate Letter and suggestions of immunity had been unsatisfactory to all involved:

> The Tate letter, however, has not been a satisfactory answer. From a legal standpoint, it poses a devil's choice. If the [State] Department follows the Tate letter in a given case, it is in the incongruous position of a political institution trying to apply a legal standard to a litigation already before the courts.
>
> On the other hand, if forced to disregard the Tate letter in a given case, the Department is in the self-defeating position of abandoning the very international law it elsewhere espouses.[20]

Addressing the House Judiciary Committee, State Department Legal Adviser Monroe Leigh was unequivocal that this approach was an "outdated practice of having a political institution, namely, the State Department, decide many of these questions of law."[21] Mr. Leigh drew a line under the era defined by *Schooner McFaddon*, rejecting the State Department-centered, absolute immunity framework because:

> The purpose of sovereign immunity in modern international law is not to protect the sensitivities of 19th-century monarchs or the prerogatives of the 20th-century state. Rather, it is to promote the functioning of all governments by protecting a state from the burden of defending law suits abroad which are based on public acts.[22]

This expression was not academic. While the bill was under discussion, the Supreme Court decided *Alfred Dunhill*, in which the Court was narrowly divided on the restrictive theory's vitality pre-FSIA.[23] Nevertheless, the House Report is clear:

> [T]he bill is designed to depoliticize the area of sovereign immunity by placing the responsibility for determining questions of immunity in the courts. Our litigation experience abroad teaches that questions of sovereign immunity are almost universally passed upon by foreign

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18 *See Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcomm. on Admin. L. & Governmental Rels. of the H. Comm. on the Judiciary*, 94th Cong. (1976) [hereinafter House Report].

19 *Id.* at 25.

20 *Id.* at 26.

21 *Id.* at 25.

22 *Id.* at 27.

23 Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 711 (1976).

> courts as a matter of law, and not by the political branches of foreign governments as a foreign policy matter.[24]

The House Report confirms that the FSIA was *not* intended to affect the Act of State Doctrine, which generally precludes review of a government's official act.[25]

Notably, European law was already coalescing around the restrictive theory.[26] The House Report cites at length to the then-recent European Convention on State Immunity, which contains similar articles to those in the original FSIA for torts, real property, counterclaims, and commercial activity.[27] Interestingly, discussion about recent interpretations of the FSIA was driven by concerns that other countries might try to assert expansive jurisdiction.[28] Yet the practice of the Justice Department was actually the inverse at the time, *declining* "to plead sovereign immunity abroad in instances where, under the policies announced by the Department of State, that Department would not recognize a foreign state's immunity in the converse situation in this country."[29]

The expropriation exception of section 1605(a)(3) is the outlier to this harmony between the European Convention and the FSIA. Section 1605(a)(3) states:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
>
> . . .
>
> (3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned

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24 House Report, *supra* note 18, at 31.

25 *Id.* at 34; *see also* Bernstein v. N.V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, 210 F.2d 375, 376 (2d Cir. 1954) ("In view of this supervening expression of Executive Policy, we amend our mandate in this case by striking out all restraints based on the inability of the court to pass on acts of officials in Germany during the period in question."). That "supervening expression"—Press Release No. 296—was issued by Acting Legal Advisor Jack B. Tate, the very man who authored the Tate Letter of 1952, under which the State Department later made (or did not make) an individualized "suggestion of immunity" prior to the FSIA. *Id.*; *see also Alfred Dunhill*, 425 U.S. at 699–715.

26 *Alfred Dunhill*, 425 U.S. at 712–13.

27 House Report, *supra* note 18, at 37–40.

28 Federal Republic of Germany v. Philipp, 592 U.S. 169, 187 (2021) ("As a Nation, we would be surprised—and might even initiate reciprocal action—if a court in Germany adjudicated claims by Americans that they were entitled to hundreds of millions of dollars because of human rights violations committed by the United States Government years ago.").

29 *Id.* at 32.

> or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States[.][30]

Despite being an outlier in addressing government takings at all, the Supreme Court suggested that this is fact "emphasizes conformity with international law" because of the commercial nexus component of the provision.[31] Having made that pronouncement, the Court has since cited itself repeatedly for the conclusion that "[n]othing in the FSIA's history suggests that Congress intended a radical departure from these principles in codifying the mid-twentieth-century doctrine of 'restrictive' sovereign immunity."[32]

For the first three decades, the FSIA was regularly interpreted at face value. Justice Scalia later referred to this interpretation as having "abated the bedlam" of the Tate Letter era by "replacing the old executive-driven, factor-intensive, loosely common-law-based immunity regime" with the law's "'comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state.' The key word there—which goes a long way toward deciding this case—is *comprehensive*."[33] Under Justice Scalia's interpretive methodology, the focus is entirely on what the law says: "[A]ny sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall."[34] Of equal importance, he left no room for extraneous consideration of the wisdom of foreign policy:

> Nonetheless, Argentina and the United States urge us to consider the worrisome international-relations consequences of siding with the lower court. Discovery orders as sweeping as this one, the Government warns, will cause "a substantial invasion of [foreign states'] sovereignty," and will "[u]ndermin[e] international comity." Worse, such orders might provoke "reciprocal adverse treatment of the United States in foreign courts," and will "threaten harm to the United States' foreign relations more generally." These apprehensions are better directed to that branch of government with authority to amend the Act—which, as it happens, is the same branch that forced our

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30 Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3).

31 Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 581 U.S. 170, 181 (2017).

32 *Id.* at 171; *see also Philipp*, 592 U.S. at 183.

33 Republic of Argentina v. NML Cap., Ltd., 573 U.S. 134, 141 (2014) (citation omitted).

34 *Id.* at 141–42; Jonathan R. Siegel, *Legal Scholarship Highlight: Justice Scalia's Textualist Legacy*, SCOTUSBLOG (Nov. 14, 2017, 10:48 AM), https://www.scotusblog.com/2017/11/legal-scholarship-highlight-justice-scalias-textualist-legacy/ [https://perma.cc/TU2Y-SWMZ].

> retirement from the immunity-by-factor-balancing business nearly 40 years ago.[35]

IV. SOVEREIGN IMMUNITY AND CULTURAL PROPERTY

The Court decided *NML Capital* in the midst of a two-decade period in which the FSIA was put to use in service of cultural property claims with considerable success. Maria Altmann filed suit in 2000 against the Republic of Austria, seeking the restitution of several paintings that had belonged to her uncle Ferdinand Bloch-Bauer.[36] Bloch-Bauer was a scion of a sugar-producing family in the Austro-Hungarian empire, who lived in Austria until he "fled the country ahead of the Nazis, ultimately settling in Zurich. In his absence . . . the Nazis 'Aryanized' the sugar company he had directed, took over his Vienna home, and divided up his artworks, which included the Klimts at issue."[37] Ferdinand was married to Adele Bloch, the sitter of multiple portraits by Gustav Klimt.[38] Adele died in 1925, leaving her Klimts to Ferdinand, with the expressed desire "that Ferdinand bequeath the paintings that she left to him to the Austrian national collections."[39]

After the *Anschluss*,[40] Bloch-Bauer was accused on April 28, 1938, "charged with a variety of trumped-up offenses and fined RM 700,000 (Reichsmark). On May 14, 1938, a judicial seizure order deprived Bloch-Bauer of the legal authority to dispose of his own property. Local attorney Erich Führer was appointed administrator of the Bloch-Bauer estate."[41] Ferdinand fled to Switzerland, leaving his niece Maria Altmann (née Bloch) in custody of his collection.[42] However,

> Führer began to liquidate Bloch-Bauer's assets in January 1939, and strong-armed Altmann out of her property as well. *Adele Bloch-Bauer I*

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35 *NML Cap.*, 573 U.S. at 146 (citations omitted).

36 Altmann v. Republic of Austria, 142 F. Supp. 2d 1187, 1192 (C.D. Cal. 2001).

37 Republic of Austria v. Altmann, 541 U.S. 677, 682 (2004). Aryanization was a policy of the Nazi regime whereby Jewish-owned property would be transferred to non-Jews, or "Aryans." *See "Aryanization,"* HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/aryanization [https://perma.cc/UL4D-FJ8Q] (last visited May 19, 2025).

38 NICHOLAS M. O'DONNELL, A TRAGIC FATE: LAW AND ETHICS IN THE BATTLE OVER NAZI-LOOTED ART 85 (2017).

39 *Id.* at 87.

40 The *Anschluss*, which is a German word for "connection" or "joining," refers to Nazi Germany's annexation of Austria in March 1938. *See Nazi Territorial Aggression: The Anschluss*, HOLOCAUST ENCYC., https://encyclopedia.ushmm.org/content/en/article/nazi-territorial-aggression-the-anschluss [https://perma.cc/5H47-U62M] (last visited May 19, 2025).

41 O'DONNELL, *supra* note 38, at 87.

42 *Id.* at 87–88; Republic of Austria v. Altmann, 541 U.S. 677, 704–05 (2004).

> and *Apple Tree I* were traded in 1941 to the Austrian Gallery for *Schloss Kammer am Attersee III*. *Adele Bloch-Bauer II* was sold in March 1943 to the Austrian Gallery. *Houses in Unterach am Attersee* was kept by Dr. Führer for his personal collection.[43]

After the war, Altmann pursued the return of the paintings, which had been returned to the National Gallery by the Monuments, Fine Arts and Archives Division (MFAA, better known as the Monuments Men).[44] The National Gallery rebuffed her by claiming (falsely) that Adele's will dictated a bequest to the gallery.[45] Altmann settled in Los Angeles.[46]

Altmann sued Austria, invoking the expropriation exception of the FSIA.[47] The district court held that the exception applied to the forced sale by Altmann to Führer: "The taking was not for public purpose; instead, some of the art was distributed to the collections of Hitler, Göring, and Dr. Fürher."[48] Moreover, "the Nazis' aryanization of art collections was part of a larger scheme of the genocide of Europe's Jewish population."[49] The court also rejected Austria's exhaustion argument.[50]

Because Altmann sued Austria—rather than the Belvedere Gallery, where the painting hung—the court also had to analyze the commercial nexus requirement of section 1605(a)(3).[51] There too, Altmann prevailed. The court looked at the statute as a whole and held that the gallery's (an instrumentality's) commercial activity in the United States rendered the state defendant, Austria, amenable to jurisdiction.[52]

The Ninth Circuit affirmed, holding squarely that the expropriation exception applies where the taking of property is (1) discriminatory, (2) not for a public purpose, and (3) lacks adequate compensation (a taking).[53] Furthermore, the

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43 O'DONNELL, *supra* note 38, at 87–88.

44 *Art Restitution Cases*, MONUMENTS MEN & WOMEN FOUND., https://www.monumentsmenandwomenfnd.org/resources/art-restitution-cases [https://perma.cc/X9BS-PZCG] (last visited Mar. 27, 2025).

45 O'DONNELL, *supra* note 38, at 88.

46 *Id.* at 90.

47 *Id.* at 91.

48 Altmann v. Republic of Austria, 142 F. Supp. 2d 1187, 1203 (2001).

49 *Id.*

50 *Id.* ("[T]his exhaustion requirement is excused when the domestic remedies are a sham, are inadequate, or would be unreasonably prolonged.") (citing RESTATEMENT (THIRD) OF FOREIGN RELS. L. § 713 cmt. f (1986)).

51 Nina Totenberg, *After Nazi Plunder, A Quest to Bring Home the 'Woman in Gold,'* NPR (Apr. 2, 2015, 4:03 AM), https://www.npr.org/2015/04/02/396688350/after-nazi-plunder-a-quest-to-bring-the-woman-in-gold-home [https://perma.cc/76VE-PKUK].

52 *See Altmann*, 142 F. Supp. 2d at 1204–06.

53 *See* Altmann v. Republic of Austria, 317 F.3d 954, 968 (9th Cir. 2002).

instrumentality's activity must satisfy the commercial nexus test.[54] The Ninth Circuit also addressed whether the FSIA applies retroactively to events that occurred before either the statute's passage or the doctrine of restrictive immunity announced in the Tate Letter. It held that "the Austrians could not have had any expectation, much less a settled expectation, that the State Department would have recommended immunity as a matter of 'grace and comity' for the wrongful appropriation of Jewish property."[55]

The Supreme Court granted certiorari only on the retroactivity question and affirmed.[56] In hindsight, it is surprising that the Court granted review at all, given the simplicity of the retroactivity question—and even more perplexing how it managed to make that question so difficult. The FSIA is a status-based query: whether the present-day defendant is immune from suit as a foreign sovereign. It is the exclusive avenue through which people can sue (present tense) a foreign state or instrumentality. Congress's emphatic expression of that question leaves no doubt that its provisions applied because the question is only whether Austria was a foreign state *at the time it was sued*. Otherwise, how would a court in 2004 possibly have determined immunity? The FSIA had ended the suggestions of immunity.

With the *Altmann* theory of jurisdiction undisturbed (if not squarely affirmed by the Supreme Court), other claimants followed suit, with similar success—and with substantial encouragement from Congress and even the Supreme Court itself. Indeed, for several years, *every* case to consider the question since the FSIA's enactment has held that the organized plunder of art—including forced "sales"—by Nazis, their puppets, and their allies meets the threshold takings requirement.[57] This was

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54 *See id.* at 968–69.

55 *Id.* at 965.

56 *See* Republic of Austria v. Altmann, 541 U.S. 677, 681, 702 (2004).

57 *See, e.g.*, Cassirer v. Kingdom of Spain, 616 F.3d 1019, 1023, 1027 (9th Cir. 2010) (holding that a painting sold for paltry sum by Lilly Cassirer to finance flight of German Jew constituted a taking in violation of international law); de Csepel v. Republic of Hungary, 808 F. Supp. 2d 113, 129–30 (D.D.C. 2011) (discussing an illegitimate acquisition of the Herzog collection by Hungary); de Csepel v. Republic of Hungary, 169 F. Supp. 3d 143, 164 (D.D.C. 2016); Malewicz v. City of Amsterdam, 362 F. Supp. 2d 298, 301, 308 (D.D.C. 2005) (holding that the paintings left for safekeeping by Kazimir Malevich with custodian later persecuted by Nazis warranted later jurisdiction against current sovereign possessor of artworks); Berg v. Kingdom of the Netherlands, No. 18-cv-3123, 2020 U.S. Dist. LEXIS 84489, at *32 (D.S.C. Mar. 6, 2020) ("These allegations, considered in the grim context of the Nazis' persecution of Jews during World War II, suffice to show at this juncture that the coerced sale of the Artworks was consistent with the Nazis' pursuit of the Final Solution.").

sufficiently self-evident that one of Germany's own federal states (Bavaria) acknowledged:

> "[G]enocidal takings *committed by a state* against its nationals" constitute takings in violation of international law under § 1605(a)(3), and the usual "domestic takings rule" whereby "a foreign sovereign's expropriation of its own national's property does not violate international law" does not apply where the foreign state is engaged in genocide.[58]

In 2005, the heirs of Kazimir Malevich invoked the expropriation exception to sue the City of Amsterdam to recover a group of paintings that had been loaned to the Menil Collection in Houston from the Stedelijk Collection.[59] The claim concerned certain works that Malevich had entrusted to friends in Germany in the 1920s.[60] The U.S. District Court for the District of Columbia held that the temporary loan qualified as commercial use in the United States sufficient to satisfy the commercial nexus element, and that the taking elements of the expropriation exception otherwise applied.[61] The court reached this conclusion even though the loan was immune from seizure pursuant to the Immunity from Seizure Act (IFSA). The IFSA prohibits "any judicial process, or [the entry of] any judgment . . . for the purpose . . . of depriving such institution . . . of custody or control of such object," if it has been granted immunity from seizure pursuant to IFSA prior to the exhibition loan (as this loan had).[62] The court also rejected the views expressed by the State Department in a statement of interest, concluding that the loan was equivalent to a transaction that could have been undertaken by a private lender.[63] After the parties engaged in discovery, the court ratified its conclusions.[64] Not long after, the parties settled the dispute.[65]

This commercial nexus analysis displeased Congress enough to overrule the decision with respect to objects that have immunity from seizure pursuant to IFSA, but to *bolster* Nazi-era claims as

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58 Defendant's Memorandum of L. in Support of Their Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction Under the FSIA at 22, Hulton v. Bayerische Staatsgemälde-Sammlungen, 346 F. Supp. 546 (S.D.N.Y. 2018) (No. 16-cv-9360) (citation omitted).

59 *Malewicz*, 362 F. Supp. 2d at 303, 306.

60 *Id.* at 301.

61 *See id.* at 306, 308–09, 314.

62 *See id.* at 303, 305.

63 *Id.* at 312–13.

64 Malewicz v. City of Amsterdam, 517 F. Supp. 2d 322, 325–26 (D.D.C. 2007).

65 *See* Malewicz v. City of Amsterdam, No. 07-5247, 2008 WL 2223219, at *1 (D.C. Cir. May 14, 2008).

covered takings in violation of international law. On December 10, 2016, Congress passed the Foreign Cultural Exchange Jurisdictional Clarification Act (Clarification Act), and President Obama signed it into law on December 16, 2016.[66] With the Clarification Act, Congress amended the FSIA to provide that a loan of art (or another "object of cultural significance") into the United States, without more, would generally not satisfy the commercial nexus test.[67] However, this limitation would *not* apply to cases involving the Nazis' takings of art and other cultural property:

> The bill denies immunity, however, in cases concerning rights in property taken in violation of international law in which the action is based upon a claim that the work was taken: (1) between January 30, 1933, and May 8, 1945, by the government of Germany or any government in Europe occupied, assisted, or allied by the German government . . . .[68]

Congress articulated precise definitions in the codified law. A "covered government" includes "the Government of Germany during the covered period," which is defined as "the period beginning on January 30, 1933, and ending on May 8, 1945."[69] Congress's definition of "covered period" beginning on January 30, 1933, has significance here; at least until it annexed the Sudetenland in 1938, the victims of the Nazis' racially-motivated art looting were German Jews.[70] Indeed, as Hitler tried to rebuild Germany's power to wage war in the 1930s, Jews in Germany were the *only* Jews that the Nazis had the power to oppress, as described in section 1605(h)—and Congress made explicit that such claims lie pursuant to the FSIA.[71] Neither the Takings Clause nor the Clarification Act (which is codified as part of the FSIA) places any limitation on claims where the nationality of the victim is the same as the perpetrator. Congress knew how to, and did, create such limitations elsewhere in the FSIA. The FSIA's terrorism exception, for example, applies only to claimants and victims who, at the time of the relevant act, were United States

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66 *See* Foreign Cultural Exchange Jurisdictional Clarification Act, Pub. L. No. 114-319, 130 Stat. 1618 (2016) (codified at 28 U.S.C. § 1605).

67 28 U.S.C. § 1605(h)(2)(A).

68 Foreign Cultural Exchange Jurisdictional Immunity Clarification Act, S. 3155, 114th Cong. (2016).

69 28 U.S.C. § 1605(h)(3)(B)–(C).

70 *Early Nazi Rule*, BRANDMAN HOLOCAUST MUSEUM, https://www.brandmanmuseum.com/early-nazi-rule [https://perma.cc/9NB2-69VH] (last visited Feb. 11, 2025).

71 28 U.S.C. § 1605(h)(3)(B)–(C).

nationals, members of the armed services, or had certain connections to the U.S. government.[72]

Indeed, by the end of the decade, this was developing into what could even be called a consensus about the expropriation exception.[73] In *Cassirer v. Kingdom of Spain*, the Ninth Circuit endorsed without reservation the conclusion that Lilly Cassirer's 1939 sale of *Rue St. Honoré, Afternoon, Rain Effect* by Camille Pissarro while preparing to flee Germany was also such a taking.[74] Jakob Scheidwimmer had been appointed to "appraise" Cassirer's collection and entered into similar "negotiations."[75] Cassirer could not take the painting or any money out of Germany without permission, which Scheidwimmer secured after she agreed to sell him the painting for a pittance.[76] Even that token sum was illusory because it was put in a blocked account.[77] The Ninth Circuit recognized this for what it was, a taking in violation of international law.[78]

Similarly, a District Court for the Central District of California concluded that where a complaint alleged "that the Ottoman Empire and later the Republic of Turkey stripped ethnic Armenians of their property and that these expropriations were integrally related to the government-sanctioned genocidal policies," the expropriation exception applied.[79] Claims against Russia proceeded successfully under the expropriation exception with respect to the library of the then-Lubavitcher Rebbe of the Chabad Lubavitch movement.[80]

Notably absent from *any* of these cases or the Clarification Act is any concern with, or inquiry into, the citizenship or nationality of the victims of expropriation—or any challenge by the governments of Spain, the Netherlands, or Austria to its

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72 28 U.S.C. § 1605A(a)(2)(A)(ii).

73 This stood in contrast to other provisions of the FSIA. *See, e.g.*, Rubin v. Islamic Republic of Iran, 583 U.S. 202, 205–06 (2018) (seeking to attach cultural property to satisfy judgment under the terrorism exception of section 1610 of the FSIA).

74 Cassirer v. Kingdom of Spain, 616 F.3d 1019, 1037 (9th Cir. 2010).

75 *Id.* at 1023.

76 *Id.*

77 *Id.*

78 *See id.* at 1037. This conclusion was so obvious, despite the fact that Lilly Cassirer was from Germany, that Spain and its instrumentality never challenged it. The United States sided with the Cassirers on the Thyssen-Bornemisza Collection Foundation's petition for certiorari, urging the Supreme Court to uphold jurisdiction under the expropriation exception of section 1605(a)(3). *See* Brief for the United States as Amicus Curiae at 7–8, Kingdom of Spain v. Estate of Cassirer, 564 U.S. 1037 (2011) (No. 10-786).

79 Davoyan v. Republic of Turkey, 116 F. Supp. 3d 1084, 1102 (C.D. Cal. 2013).

80 *See* Agudas Chasidei Chabad of United States v. Russian Federation, 528 F.3d 934, 942–43 (D.C. Cir. 2008).

relevance. In *Simon v. Republic of Hungary*, the D.C. Circuit emphatically held that citizenship or nationality did not matter.[81] *Simon* involves claims by the victims of takings in Hungary in connection with the horrific roundup and deportation of Jews starting in 1944.[82] The *Simon* court engaged in a detailed analysis about why the targeting of Jews' property under Nazi repression is a taking in violation of international law, as it was carried out as part of a genocidal campaign:

> The Convention on the Prevention of the Crime of Genocide, adopted by the United Nations in the immediate aftermath of World War II and ratified or acceded to by nearly 150 nations (including the United States), defines genocide as follows:
>
> > [A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> >
> > (a) Killing members of the group;
> >
> > (b) Causing serious bodily or mental harm to members of the group; [or]
> >
> > (c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part* . . . .[83]

Depriving property leads inexorably to conditions that make existence impossible.[84] The *de Csepel* case, also against Hungarian state defendants, was in accord. That case concerns the legacy of the art collection of Baron Mór Lipot Herzog, a Jewish art collector in Budapest.[85] Baron Herzog died in 1934, and the collection stayed with his wife, who passed it to their children.[86] The D.C. Circuit held squarely that the expropriation exception applied:

> Of course, we have no quarrel with the historical underpinnings of the district court's analysis. During World War II, the Hungarian government did indeed enact a series of anti-Semitic laws "designed to exclude Jews from meaningful roles in Hungarian society." This exclusion was both symbolic, through the requirement that Jews "wear distinctive signs identifying themselves as Jewish," and

81 Simon v. Republic of Hungary, 812 F.3d 127, 144 (D.C. Cir. 2016).

82 *Id.* at 132.

83 *Id.* at 143 (citing Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277).

84 *Id.*

85 de Csepel v. Republic of Hungary, 714 F.3d 591, 594 (D.C. Cir. 2013).

86 *Id.* at 598.

> physical, through expulsion "to territories under German control where they were mistreated and massacred."[87]

There was little reason to doubt this trend would continue without regard for the nationality of the victims of cultural property theft in the Holocaust or other genocidal episodes. In *Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling Co.*, the Supreme Court affirmed "there are fair arguments to be made that a sovereign's taking of its own nationals' property sometimes amounts to an expropriation that violates international law, and the expropriation exception provides that the general principle of immunity for these otherwise public acts should give way."[88] If there was any systemic domestic expropriation that violates international law, and that already led to the United States "to involve itself in the domestic politics of another sovereign," it is the Holocaust.[89] This applies more broadly to genocide as well, courts found.[90] *Helmerich* even made passing reference to *Simon* without criticism, leaving no indication that it would reverse course completely less than four years later.

Finally, in *Berg v. Kingdom of the Netherlands*, a South Carolina district court succinctly distilled the common understanding as of 2020, in which consideration of the victim's nationality played no role whatsoever.[91] The *Berg* plaintiff's predecessors were forced in 1940 to sell the company's inventory to Nazi agents.[92] The *Berg* plaintiffs sued the Netherlands and various agencies and museums in 2018, invoking the expropriation exception.[93] In 2020, the district court quickly disposed of defendant's argument that the expropriation exception

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87 *Id.* at 598 (citations omitted); *see also* de Csepel v. Republic of Hungary, 859 F.3d 1094, 1102 (D.C. Cir. 2017) ("[T]he fundamental fact remains: Hungary's possession of the Herzog collection stems directly from its expropriation of the collection during the Holocaust.").

88 Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 581 U.S. 170, 182 (2017).

89 Abelesz v. Magyar Nemzeti Bank, 692 F.3d 661, 675 (7th Cir. 2012) ("All U.S. courts to consider the issue recognize genocide as a violation of customary international law.").

90 *Id.* at 676 ("The international norm against genocide is specific, universal, and obligatory. Where international law universally condemns the ends, we do not believe the domestic takings rule can be used to require courts to turn a blind eye to the means used to carry out those ends."); *see also* Mezerhane v. República Bolivariana de Venezuela, 785 F.3d 545, 551 (11th Cir. 2015).

91 The district court found that the FSIA deprived the sovereign defendants of immunity but dismissed the claims for lack of personal jurisdiction over those defendants. Berg v. Kingdom of the Netherlands, 2:18-cv-3123-BHH, 2020 U.S. Dist. LEXIS 84489, at *30 (D.S.C. Mar. 6, 2020).

92 *Id.* at *4.

93 *Id.* at *6.

was simply inapplicable, summarizing: "These allegations, considered in the grim context of the Nazis' persecution of Jews during World War II, suffice to show at this juncture that the coerced sale of the Artworks was consistent with the Nazis' pursuit of the Final Solution."[94] The opinion makes no mention of the nationality or citizenship of the victims at all because it was irrelevant to the analysis under well-expressed standards since *Altmann* at least.

Lest it be forgotten, this was the policy of the United States since it was enunciated by the very generation who personally defeated the Nazis. On April 27, 1949, the State Department issued Press Release No. 296 on April 27, 1949, titled "Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers."[95] It stated, inter alia, that "it's this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property," and "the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials."[96]

V. SLAMMING THE COURTHOUSE DOORS CLOSED

During this period following *Altmann*, a group of claimants filed a case consistent with the theory of jurisdiction that had solidified.[97] It would prove to be the vehicle by which the Supreme Court would reverse itself and inject policy into the FSIA that Congress had rejected forty years earlier.

The collection at issue—known as the "Welfenschatz" in German, and the "Guelph Treasure" in English—consists of several dozen medieval reliquary and devotional objects.[98] Originally comprised of eighty-two objects, "the Welfenschatz occupies a unique position in German history and culture, harkening back to the early days of the Holy Roman Empire."[99] It resides today in the Kunst und Gewerbemuseum, managed by the

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94 *Id.* at *31–33.

95 Jack B. Tate, *Jurisdiction of U.S. Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers*, 20 DEP'T ST. BULL. 573, 592–93 (1949).

96 *Id.*

97 Philipp v. Fed. Republic of Germany, 253 F. Supp. 3d 84, 86 (D.D.C. 2017).

98 *See* First Amended Complaint at 1, Philipp v. Federal Republic of Germany, 248 F. Supp. 3d 59 (D.D.C. 2017) (No. 15-cv-00266).

99 *Id.* at 17.

state-run Stiftung Preussischer Kulturbesitz (Prussian Cultural Heritage Foundation) in Berlin.[100]

In or around 1929, the consortium of art dealers that owned the Welfenschatz formed, consisting of three art dealer firms in Frankfurt: J.&S. Goldschmidt, I. Rosenbaum, and Z.M. Hackenbroch, owned by Jewish dealers Zacharias Max Hackenbroch, Isaak Rosenbaum, Saemy Rosenberg, Julius Falk, and Arthur Goldschmidt.[101] Even at the time, this acquisition was controversial among the significant nativist forces that would later make Hitler's assumption of the Chancellorship possible.[102] The consortium's members lived in Frankfurt, which had a new mayor after Hitler's ascension to power: former District and Local Leader of the *Kamfbund für deutsche Kultur*—the League of Struggle for German Culture—Friedrich Krebs.[103] Krebs quickly wrote *to Hitler himself*, noting explicitly the opportunity with the Nazis' ascension to acquire the Welfenschatz for only a third of its real value.[104]

The consortium members were soon caught along with millions of others with the rise to power of the Nazi Party.[105] Over the next two years, various high-level Nazis like Wilhelm Stuckart (author of the Nuremberg Race laws, and a participant at the Wannsee Conference) and Paul Körner (served as State Secretary of both Prussian State Ministry and Four Year Plan)—all reporting to Hermann Goering—echoed this focus on getting the collection for a fraction of its market value.[106] Two of the owners (Rosenberg and Rosenbaum) had left and established roots in Amsterdam.[107] After the Nazi cabal quashed the one possible market buyer for the Welfenschatz (in Herrenhausen), the consortium bowed to reality and surrendered the collection for a pittance of its worth, partially paid into blocked accounts or in swaps of art actually worth far less.[108] Goering then presented the collection to Hitler as a gift.[109]

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100 *Restitution Request "Welfenschatz,"* STIFTUNG PREUSSISCHER KULTURBESITZ, https://www.preussischer-kulturbesitz.de/en/news-detail/article/2014/01/13/restitution-request-welfenschatz.html [https://perma.cc/YRH2-N2ZP] (last visited Mar. 27, 2025).

101 First Amended Complaint at 2, *Philipp*, 248 F. Supp. 3d 59 (No. 15-cv-00266).

102 *See id.* at 18–19.

103 *Id.* at 2, 25.

104 *Id.* at 25–26.

105 *Id.* at 44.

106 *Id.* at 33–35.

107 *Id.* at 50.

108 *Id.* at 44.

109 *Id.* at 5.

The consortium's heirs sued Germany and the Prussian Cultural Heritage Foundation in 2015, invoking section 1605(a)(3).[110] The plaintiffs alleged that the "sale" was a taking in violation of international law and that the Prussian Foundation was engaged in commercial activity in the United States.[111] They alleged that as a result of Nazi persecution, "they were officially no longer considered German" (an allegation that appeared verbatim in every pleading thereafter).[112] They alleged that the forced sale was not for a public purpose, did not provide reasonable, prompt, and freely available consideration, and was discriminatory.[113]

Germany and the Prussian Cultural Heritage Foundation moved to dismiss.[114] What was novel was the tack they took against the FSIA. Unlike Austria, the Netherlands, Hungary, or Spain before them, the direct perpetrator of the Holocaust itself sought shelter under the "domestic takings" rule.[115] Germany also argued that (1) the claims did not satisfy section 1605(a)(3)'s commercial nexus requirement over Germany, (2) prudential exhaustion (framed as international comity) compelled dismissal because the Heirs had not first sued in Germany, (3) the non-binding Advisory Commission recommendation was actually a ruling on the merits such that adjudicatory comity compelled dismissal, (4) the policy of the United States forbids individual claims litigation like the Heirs, and (5) the doctrine of *forum non conveniens* compelled dismissal.[116]

The District Court rejected each of these arguments.[117] In particular, the District Court rejected the Defendants' domestic takings argument as irrelevant:

> [I]n *Simon*, the D.C. Circuit expressly rejected the application of the domestic takings rule in the context of intrastate genocidal takings. Rather, the D.C. Circuit, tracing the development of international human rights law, noted that in those circumstances the relevant international law violation for jurisdictional purposes under the expropriation exception is genocide, including genocide perpetuated by a foreign state against its own nationals.[118]

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110 *Id.* at 1.
111 *Id.* at 8.
112 *Id.* at 23.
113 *Id.* at 8–9; *see also* RESTATEMENT (SECOND) OF FOREIGN RELS. L. §§ 185, 187 (1965).
114 Philipp v. Federal Republic of Germany, 248 F. Supp. 3d 59, 63 (D.D.C. 2017).
115 First Amended Complaint at 72, *Philipp*, 248 F. Supp. 3d 59 (No. 15-cv-00266).
116 *Id.* at 63.
117 *Id.* at 87.
118 *Id.* at 72 (emphasis added) (citations omitted).

The D.C. Circuit Court of Appeals affirmed on July 10, 2018, except as to the commercial nexus text over Germany, which had not been met.[119] The D.C. Circuit reiterated its holding in *Simon* that genocidal takings may "subject a foreign sovereign and its instrumentalities to jurisdiction in the United States where the taking 'amounted to the commission of genocide.'. . . This, we explained, is because '[g]enocide perpetrated by a state,' even 'against its own nationals[,] . . . is a violation of international law.'"[120] The Defendants petitioned the D.C. Circuit Court of Appeals for rehearing, which the court denied.[121]

Germany petitioned the Supreme Court for certiorari, which the Court granted on July 2, 2020.[122] The Court denied the plaintiffs' conditional cross-petition to review the commercial nexus ruling.[123] Notably, the United States submitted its views on the petition at the invitation of the court, urging a grant of review and reversal.[124] Endorsed and signed by the State Department, the United States took the position that there could be no circumstance in which a Nazi-forced sale victimizing a German Jew in the 1930s could constitute a violation of international law, such that the FSIA would confer jurisdiction over either Germany or the Stiftung Preußischer Kulturbesitz (SPK), the Prussian Cultural Heritage Foundation in Germany.[125] The United States also agreed with the second question presented by Germany (and which had been granted in *Simon*), namely, that notwithstanding the text of the FSIA, there might be circumstances where the courts should abstain.[126]

The case was argued on December 7, 2020—Pearl Harbor Day, no less. The oral argument was practically a filibuster for policy disagreements with the FSIA itself. Justice Thomas repeated the Court's previous mantra that the expropriation was not intended to be a "radical departure" from international law,[127] even though there is no expropriation exception in the European

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119 Philipp v. Federal Republic of Germany, 894 F.3d 406, 414 (D.C. Cir. 2018) (citing de Csepel v. Republic of Hungary, 859 F.3d 1094, 1102 (D.C. Cir. 2017)).

120 *Id.* at 410–11 (alterations in original) (quoting Simon v. Republic of Hungary, 812 F.3d 127, 142, 145 (D.C. Cir. 2016)).

121 Philipp v. Federal Republic of Germany, 925 F.3d 1349, 1349 (D.C. Cir. 2019).

122 Federal Republic of Germany. v. Philipp 141 S.Ct. 185, 185 (2020).

123 *Id.* at 188.

124 Brief for the United States as Amicus Curiae at 1, 34, Federal Republic of Germany v. Philipp, 141 S. Ct. 185 (2020) (Nos. 19-351 and 19-520).

125 *See id.* at 6.

126 *Id.* at 15–16.

127 Transcript of Oral Argument at 56, Federal Republic of Germany v. Philipp, 141 S. Ct. 185 (2020) (No. 19-351).

Convention or elsewhere. Justice Breyer came armed with one of his famous hypotheticals, which managed to single out two separate ethnic groups *and* an apparent terror at the thought of holding China accountable for genocide or the United States for its own transgressions:

> I mean, what about Japanese internment, which involved 30,000 people in World War II who were not American citizens but were of Japanese origin? And the first time we'd sue China for the Rohingyas or whatever, you know, what do you think they're going to say about the . . . railroad workers who came in in [sic] the 19th century?[128]

The Rohingya, of course, are an oppressed religious and ethnic minority in Myanmar, not China.[129] Justice Breyer apparently meant to be aghast at vindicating the rights of Uyghurs in a manner Congress has forcefully endorsed.[130] Justice Barrett suggested that plaintiffs were "struggling to identify limits" with respect to the Clarification Act, ignoring that the limiting principle *is* the text of the Act (i.e., the FSIA itself) about Nazi era takings.[131]

The decision followed soon after, vacating the D.C. Circuit, holding that the FSIA incorporates the domestic takings rule,[132] and remanding to determine the consortium's nationality and whether the plaintiffs had preserved the question.[133] The opinion contained basic elementary errors, like misquoting the Complaint regarding when Rosenberg and Rosenbaum left Germany.[134] It evoked the Chief Justice's chipper syllogisms—like, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race"[135]—with tautologies like, "We do not look to the law of genocide . . . . We look to the law of property."[136] The

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128 *Id.* at 59–60.

129 *See Burma*, U.S. HOLOCAUST MEM'L MUSEUM, https://www.ushmm.org/genocide-prevention/countries/burma [https://perma.cc/BN96-MP54] (last visited Feb. 17, 2025).

130 An Act to Ensure that Goods Made with Forced Labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China Do Not Enter the United States Market, and for Other Purposes, Pub. L. No. 117–78, 135 Stat. 1525 (2021) (codified at 19 U.S.C. §§ 1307, 4681); 22 U.S.C. §§ 2656, 6901, 7101, 7107.

131 Transcript of Oral Argument, *supra* note 127, at 83.

132 Without explanation, the Court declined to reach the abstention question presented in both *Philipp* and *Simon*. *See, e.g.*, Federal Republic of Germany v. Philipp, 592 U.S. 169, 187 (2021).

133 *Id.*

134 For example, the opinion states that "[t]wo of the consortium members fled the country following the sale," when in fact the Complaint stated that they had left by 1935, the year in which the subsequent transaction took place. *Id.* at 174; *see* First Amended Complaint at 50, Philipp v. Federal Republic of Germany, 248 F. Supp. 3d 59 (D.D.C. 2017) (No. 15-cv-00266).

135 Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007).

136 *Philipp*, 592 U.S. at 180.

international law of property has *included* the law of genocide since 1948 in response to the historical episode at issue.[137] This law had been in place for three decades by the time the FSIA was passed in 1976—the point at which the Court argues international law remains frozen in time forever.[138] The opinion ignores this.

The real agenda was explicitly stated, expressing horror that the decision below would "force courts themselves to violate international law, not only ignoring the domestic takings rule but also derogating international law's preservation of sovereign immunity for violations of human rights law."[139] *Philipp* is a property case, not a human rights case; there was no real risk. The Chief Justice employed a straw man argument, accusing the plaintiffs of trying to "insert modern human rights law into FSIA exceptions," when they had done no such thing.[140] "The heirs concede that at the time of the FSIA's enactment the international law of expropriation retained the domestic takings rule,"[141] wrote the Court, which was odd given that the thrust of the entire brief and argument was the literal opposite. That is, the FSIA incorporated the Genocide Convention to which the domestic takings rule must yield.[142] The D.C. Circuit opinion and the plaintiffs' case were grounded in the taking of specific unique property for discriminatory reasons, yet the opinion states that their position "is not limited to violations of the law of genocide but extends to any human rights abuse."[143] No examples of this were offered because it has never happened in the nearly fifty years the FSIA's expropriation exception has been law.[144]

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137 Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277.

138 *See Philipp*, 592 U.S. at 180–81.

139 *Id.* at 182.

140 *Id.* at 184.

141 *Id.* at 181.

142 The Court's fixation that international law is static as of 1976 (for instance, that the Second Restatement is for all time the expression of the contours of international law) is further at odds with its own jurisprudence. *See, e.g.*, Jam v. Int'l Fin. Corp., 586 U.S. 199, 210 (2019) (noting the "link [from] the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other"). Moreover, the current Restatement refutes the *Philipp* opinion: "International law recognizes a state's jurisdiction to prescribe law with respect to certain offenses of universal concern, such as genocide . . . even if no specific connection exists between the state and the persons or conduct being regulated." RESTATEMENT (FOURTH) OF FOREIGN RELS. L. § 413 (2018).

143 *Philipp*, 592 U.S. at 182.

144 Sovereign litigants have had no compunction about arguing later formulations of international law when it suits them. Hungary, for example, repeatedly cites the Third and Fourth Restatements of Foreign Relations before the Supreme Court. *See, e.g.*, Petitioners' Opening Brief at 25–26, 36, Republic of Hungary v. Simon, 592 U.S. 207 (2024) (No. 23-867).

Finally, the Court wrote the Clarification Act out of existence. According to the Court, section 1605(h) means that "[c]laims concerning Nazi-era art takings could be brought under the expropriation exception where the claims involve the taking of a *foreign* national's property."[145] For this atextual conclusion (again, ignoring the definition of Nazi Era Claims—inserting "foreign national" where Congress had not—and the undisputed history of *who* the Nazis' victims were in 1933—German Jews), the Court cited *Altmann*.[146] This is extraordinary. No one in that case—including Austria—suggested that the suit against Austria depended on whether Ferdinand or Maria were Austrian. Altmann (as Bloch-Bauer's heir) "claim[ed] that Austria's 1948 actions (falsely asserting ownership of the paintings and extorting export permits in return for acknowledge[ment] of its ownership) violated either customary international law or a 1907 Hague Convention," not a specific law of takings.[147] The Central District of California held that "the Nazi 'aryanization' of Ferdinand's art collection by the Nazis is *undeniably* a taking in violation of international law."[148] On appeal, Austria did not seek review of that holding. The Ninth Circuit noted that the paintings' "taking appears discriminatory . . . [and] Altmann is a Jewish refugee," without discussing citizenship or nationality.[149] Altmann's most recent nationality in 1948 was *Austrian*, the country of her birth, and the same nationality as Erich Führer, who expropriated the paintings.[150] If the domestic takings rule were part of a long and unbroken rule, then *Altmann* would have been a domestic taking. Evidently, it was not—until the Supreme Court's decision in *Philipp*.

Notably, the Court's opinion in *Philipp* essentially pretends that the FSIA never happened. It relies extensively on pre-statute jurisprudence, citing authority that predates both the FSIA and the Genocide Convention.[151] The Court also relied on the statutory

145 *Philipp*, 592 U.S. at 185.

146 *Id.*

147 Republic of Austria v. Altmann, 541 U.S. 677, 707 (2004) (Breyer, J., concurring).

148 Altmann v. Republic of Austria, 142 F. Supp. 2d 1187, 1203 (C.D. Cal. 2001) (emphasis added).

149 Altmann v. Republic of Austria, 317 F.3d 954, 968 (9th Cir. 2002).

150 O'DONNELL, *supra* note 38, at 83, 87.

151 *Philipp*, 592 U.S. at 177 ("What another country has done in the way of taking over property of its nationals . . . is not a matter for judicial consideration here.") (citing United States v. Belmont, 301 U.S. 324, 332 (1937)). Nations' indifference to the unchecked Jewish persecution led to the Genocide Convention in the 1930s. *See* Brief of Amici Curiae Holocaust and Nuremberg Historians in Support of Neither Party as Amici Curiae Supporting Neither Party at 25–26, Federal Republic Of Germany v. Philipp, 592 U.S. 169 (2021) (No. 19-351).

rebuke by Congress after *Banco Nacional De Cuba v. Sabbatino* for the upside-down conclusion that Congress' expansion of jurisdiction in the 1960s meant a restriction a decade later.[152] Moreover, the court claimed that the Second Hickenlooper Amendment and the expropriation exception use "nearly identical language" to describe statutory provisions that are utterly different on their face, other than the plain language of "international law."[153] Germany argued that the Court's opinion in *Sabbatino* and the subsequent Second Hickenlooper Amendment establish the phrase "property taken in violation of international law" as *limited* to the expropriation from aliens.[154] In *Sabbatino*, the Court found that "the act of state doctrine proscribes a challenge to the validity of the Cuban expropriation decree" involving American-owned property.[155] The Court had no need to express a view as to which victims of property takings could claim a violation of international law—and did not do so.

In response, Congress passed the Second Hickenlooper Amendment, which specifically addressed other countries that have "nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens."[156] Congress barred the Act of State Doctrine from applying to certain claims of "a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and the other standards set out in this subsection."[157] That is, Congress recognized that impermissible takings encompass those from U.S. citizens but was silent on what other takings may be illegal.

Nonetheless, Chief Justice Roberts wrote that "nothing in the Amendment purported to alter any rule of international law, including the domestic takings rule,"[158] which merely assumes it applies, and that the Genocide Convention was irrelevant. This interpretation reads an extraordinary amount of meaning into the Second Hickenlooper Amendment and the FSIA that is simply absent from the text itself.

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152 *Philipp*, 592 U.S. at 179.
153 *Id.*
154 *Id.*
155 Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 439 (1964).
156 22 U.S.C. § 2370(e)(1)(A).
157 *Id.* § 2370(e)(2).
158 *Philipp*, 592 U.S. at 179.

It cannot be overstated how dramatic a reversal this was in a short amount of time. *Helmerich* was decided fewer than four years earlier, after the district court followed *Simon* in denying Germany's initial motion to dismiss. In *Helmerich*, the Court wrote: "[T]here are fair arguments to be made that a sovereign's taking of its own nationals' property sometimes amounts to an expropriation that violates international law, and the expropriation exception provides that the general principle of immunity for these otherwise public acts should give way."[159] A short while later, the Court could conceive of no instance where that "general principle of immunity for these otherwise public acts should give way," and only then because the perpetrator of the worst art theft and genocide in history—Germany—asked.[160] In four years, "sometimes" became "never."

VI. THE REVENGE OF THE SOVEREIGNS

The Chief Justice's disdain for jurisdiction carried the day on remand, despite the most basic tenets of Nazi philosophy and why that put their victims outside the nationality the Nazis defined themselves as—which the D.C. District Court pretended not to see.[161] As a result, neither court in *Philipp* reached the conclusion of how to provide redress to victims deprived of the rule of law. It should have.

Nationality is the "genuine link"[162] between the individual person and the benefits of international law. The classic definition of nationality (and thus the one Congress would have understood in 1976) is "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."[163] The Restatement (Second) of the Foreign Relations Law of the United States explains that "[t]he nature of the genuine link requirement has not been determined by decisions since the Nottebohm Case, although it is clear from that case that a variety of factors such as consent, birth, marriage, other family ties,

159 Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 581 U.S. 170, 182 (2017); *see also* Abelesz v. Magyar Nemzeti Bank, 692 F.3d 661, 675 (7th Cir. 2012) ("All U.S. courts to consider the issue recognize genocide as a violation of customary international law."); *id.* at 676 ("The international norm against genocide is specific, universal, and obligatory. Where international law universally condemns the ends, we do not believe the domestic takings rule can be used to require courts to turn a blind eye to the means used to carry out those ends.").

160 *Helmerich*, 581 U.S. at 182.

161 Philipp v. Stiftung Preussischer Kulturbesitz, 628 F. Supp. 3d 10, 30 (D.D.C. 2022).

162 MALCOM N. SHAW, INTERNATIONAL LAW 813 (6th ed. 2008).

163 Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. 4, 22–23 (Apr. 6, 1955).

voting, allegiance, and economic interests would be relevant."[164] In other words:

> Nationality is . . . *determined* by one's social ties to the country of one's nationality, and when established, gives rise to rights and duties on the part of the state, as well as on the part of the citizen/national. In turn 'citizenship' is a way to maintain common norms and values of the state as a social and political community.[165]

The Supreme Court has recognized that, for certain purposes, "a national character may be impressed upon a person, different from that which" he has under the formalities of domestic law.[166] The Court has also held a British citizen to be a national of the Confederate States of America where he was a longtime New Orleans resident, "identified with the people of Louisiana," and otherwise worked to serve the Confederate cause.[167]

Consortium members Rosenberg and Rosenbaum "had emigrated by 1935 from Germany. In Amsterdam, the two founded the company Rosenbaum NV."[168] To "emigrate" is a term of art, defined as: "to leave your own country to go and live permanently in another country."[169] Emigration is, by its essence, a circumstance where "the individual has renounced" the former nationality.[170] Under *Philipp*, the legal significance of this should have been to conclude that the Welfenschatz was owned, in part, by Rosenberg and Rosenbaum—Dutch nationals—at the time it was taken by Prussia, one of the constituents of Germany. These Jewish refugees with no "social ties" left the country where they had raised their families because their government denied their very humanity based on their religion.[171] The German government would have answered the question in 1935, and Nazi

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164 RESTATEMENT (SECOND) OF FOREIGN RELS. L. § 26 cmt. d (1965).

165 CAMBRIDGE UNIV. PRESS, NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW 12 (Alice Edwards & Laura Van Waas eds., 2014); *see also* RESTATEMENT (SECOND) OF FOREIGN RELS. L. § 26 (1965) ("An individual has the nationality of a state that confers it upon him *provided there exists a genuine link between the state and the individual*.") (emphasis added).

166 The Venus, 12 U.S. (8 Cranch) 253, 277–78 (1814). In *The Venus*, the Supreme Court treated naturalized American citizens who had returned to Britain as British subjects for purposes of the law of prize. *See id.* at 277.

167 The Venice, 69 U.S. (2 Wall.) 258, 274–75 (1864); *see also* Thirty Hogsheads of Sugar v. Boyle, 13 U.S. (9 Cranch) 191, 197 (1815) (holding that "identification of [a person's] national character" may depend on the "particular transaction" at issue).

168 Complaint at 46, Philipp v. Federal Republic of Germany, No. 1:15-cv-00266 (D.D.C. Feb. 23, 2015).

169 *Emigrate*, OXFORD LEARNER'S DICTIONARIES https://www.oxfordlearnersdictionaries.com/us/definition/american_english/emigrate?q=emigrate [https://perma.cc/5CK5-AXYX] (last visited Feb. 10, 2025).

170 *See* RESTATEMENT (SECOND) OF FOREIGN RELS. L. § 26 (1965).

171 *Id.* § 26 cmt. d.

policy about nationality could scarcely have been clearer: Jews were not Germans.

Although the pleadings consistently alleged over eight years that the consortium members were not regarded as German, the district court[172] and the D.C. Circuit[173] claimed to be baffled at how Germany could have known that nationality was in play, concluding the plaintiffs forfeited their argument. The claims were dismissed, and the case ended.[174]

Hungary was ready to step into the fray. It argued that Nazi victims who had become de facto stateless were without remedy because international law only protects the nation insulted by the taking, not the subjects who suffer the taking—similar to how Germany was protected in the 1930s while the Jews remained vulnerable until the world united to enact the Genocide Convention.[175] The D.C. Circuit agreed.[176] Soon after, the vast majority of the *de Csepel* claims were dismissed on the same basis.[177]

In *Ambar v. Federal Republic of Germany*, another case against Germany by the heir to an Austrian man about a property in Berlin, Germany claimed the plaintiff failed the *Philipp* domestic takings test because Nazi Germany declared Austrian Jews to be German after the *Anschluss*.[178] In other words, with the wind of *Philipp* in its sails, the Federal Republic of Germany argued that no international law violation occurred when Nazi Germany annexed Austria, declared Austria's Jews to be subject to its anti-Semitic laws and persecution, and stole their property.[179] This sleight of hand was too much even for the judge who so caustically dismissed *Philipp* on remand.[180]

Against this shifting tide of skepticism toward cultural property jurisdiction, the second prong of the expropriation exception (the "commercial nexus element") came into renewed

172 *See* Philipp v. Stiftung Preussischer Kulturbesitz, 628 F. Supp. 3d 10, 30–31 (D.D.C. 2022).

173 *See* Philipp v. Stiftung Preussischer Kulturbesitz, 77 F.4th 707, 709–10 (D.C. Cir. 2023).

174 *See id.*

175 *See* Simon v. Republic of Hungary, 77 F.4th 1077, 1105 (D.C. Cir. 2023).

176 *Id.* at 1097–98.

177 *See* de Csepel v. Republic of Hungary, 695 F. Supp. 3d 1, 32–34 (D.D.C. 2023).

178 Ambar v. Federal Republic of Germany, 596 F. Supp. 3d 76, 79–80, 82–83 (D.D.C. 2022).

179 *Id.* at 85 ("Germany is asking the Court to apply *some* retroactive laws in a way that allows them to benefit from *some* Nazi-era laws while disclaiming others.").

180 *See id.* at 88.

focus and ended a decade-long case against Russia, which had proceeded under section 1605(a)(3), concerning the library of the then-Lubavitcher Rebbe of the Chabad Lubavitch movement (Library).[181] By the early twentieth century, the Library included thousands of religious books, manuscripts, and other documents. One portion of the Library was seized in 1917 by the emerging Bolshevik government from a warehouse.[182] The Fifth Rebbe had placed it there for safekeeping in the face of the advancing German army during the First World War as the Tsarist regime collapsed.[183] The Russian State Library (where those objects ended up after the dust settled) rejected the Fifth and then the Sixth Rebbe's pleas for their return.[184]

The *Chabad* plaintiffs had successfully invoked the expropriation exception a decade and a half earlier against the Russian state defendants in possession of the Library. The D.C. Circuit held that the Library was taken in violation of international law.[185] Rather than defend the case back in the trial court, however, the Russian defendants filed a "Notice With Respect to Further Participation."[186] In January 2013, the court (over the objections of the United States)[187] fined the Russian Federation, the Russian Ministry of Culture and Mass Communications, the Russian State Library, and the Russian State Military Archive $50,000 per day for their failure to comply with the original judgment.[188] That was reduced to an accumulating judgment, which accrued to more than $175 million.[189] The plaintiffs sought to attach property to satisfy the judgment—property they contended was owned by entities controlled by the Russian Federation.

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181 *See* Agudas Chasidei Chabad of United States v. Russian Federation, 110 F.4th 242, 250–52 (D.C. Cir. 2024).

182 Agudas Chasidei Chabad of United States v. Russian Federation, 528 F.3d 934, 938 (D.C. Cir. 2008).

183 *Id.*

184 *See id.* at 938–39.

185 Particularly, the Court held that international law was violated by executive action that overruled an initial victory in Russian court in 1991. *See id.* at 946.

186 Notice with Respect to Further Participation, Agudas Chasidei Chabad of United States v. Russian Federation, 729 F. Supp. 2d 141 (D.C. Cir. 2011) (No. 05-cv-01548-RCL).

187 Statement of Interest of the United States at 1, Agudas Chasidei Chabad of United States v. Russian Federation, 729 F. Supp. 2d 141 (D.C. Cir. 2011) (No. 05-cv-01548-RCL).

188 *See* Memorandum Opinion on Contempt Sanctions, Agudas Chasidei Chabad of United States v. Russian Federation, 729 F. Supp. 2d 141 (D.C. Cir. 2011) (No. 05-cv-01548-RCL).

189 Interim Judgment, Agudas Chasidei Chabad of United States v. Russian Federation, 729 F. Supp. 2d 141 (D.C. Cir. 2011) (No. 05-cv-01548-RCL).

That litigation focused on the commercial nexus requirement of section 1605(a)(3), which states that "a foreign state shall not be immune from the jurisdiction of courts" when the takings element is satisfied and either of the following two conditions is met:

> [T]hat property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.[190]

This is a class disjunctive formulation. The foreign *state* is not immune when one of two conditions are met: (1) the foreign state uses the subject property in the United States in connection with a commercial activity, or (2) a state's agency or instrumentality owns or operates the property and is engaged in a commercial activity in the United States (not necessarily involving the subject property). The text's most plausible reading is that if the property is not physically present, but an agency or instrumentality is engaged in commercial activity, the state itself is not immune.

This question arose in the lower courts leading up to the Supreme Court's *Altmann* decision. In *Altmann*, the Ninth Circuit held that the lawsuit against Austria could proceed because the museum holding the painting met the lower commercial activity requirement, sort of like tagging a parent company with jurisdiction by virtue of its subsidiary activity.[191] The Ninth Circuit has consistently upheld this view which, as noted above, is the correct reading of the statutory text.[192]

The appellate court in *Chabad* reached the same conclusion in 2008. The D.C. Circuit analyzed principally the second scenario of the commercial nexus test as applied to instrumentalities of the Russian Federation, rejected Russia's argument for a more demanding test for instrumentalities, and reversed the district court's finding of Russia's immunity where the property had never

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190 28 U.S.C. § 1605(a)(3); *see Chabad*, 528 F.3d at 940.

191 *See* Altmann v. Republic of Austria, 317 F.3d 954, 969 (9th Cir. 2002).

192 *See* Cassirer v. Kingdom of Spain, 616 F.3d 1028 (9th Cir. 2010) ("Congress meant for jurisdiction to exist over claims against a foreign state whenever property that its instrumentality ends up claiming to own had been taken in violation of international law, so long as the instrumentality engages in a commercial activity in the United States."). Also, in a case against Romania and RADEF România Film, the commercial activities of the latter brought the "claims within the second commercial-activity nexus clause," and costs were taxed against both defendants. Sukyas v. Romania, 765 F. App'x 179, 180 (9th Cir. 2019).

crossed the borders of the foreign state but the instrumentalities in possession of it are engaged in commercial activity.[193]

In 2017, however, the D.C. Circuit had reversed course.[194] Circuit Judge Randolph dissented, sensibly:

> Although § 1605(a)(3) provides that a foreign state shall *not* be immune from suit, the majority crosses out the "not" and holds that the foreign state shall be immune from suit when its agencies or instrumentalities owning or operating the expropriated property engage in commercial activity in the United States.[195]

In 2024, the D.C. Circuit in *Chabad* hewed to *de Csepel* and *Philipp*—not the statute, not its earlier ruling in *Chabad*, and not the Ninth Circuit's analysis—concluding that "there is no jurisdiction over a claim against a foreign state under the FSIA's expropriation exception unless the expropriated property is located in the United States."[196]

While not terribly surprising, it was disappointing. The worst was yet to come, however:

> Finally, there is no indication of gamesmanship . . . . It would be a different case if, for instance, the Russian Federation had appeared and contested jurisdiction, determined that its arguments were unlikely to succeed, withdrawn and defaulted, and then strategically reappeared in an attempt to challenge jurisdiction a second time. Or one could imagine a scenario in which a foreign state relied on its agencies or instrumentalities for the specific purpose of raising or re-raising jurisdictional arguments that otherwise would be precluded.[197]

This extraordinary statement is explained partly by the post-*Philipp* surrender by the courts. That "gamesmanship" is *exactly* what happened in this very case. Not only that, Russia's wider response was conclusive evidence of gamesmanship: the cultural property embargo that continues to this day.[198] The *Chabad* plaintiffs petitioned for a rehearing en banc, which was denied,[199]

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193 *Chabad*, 528 F.3d at 947–48, 955.

194 *See* de Csepel v. Republic of Hungary, 859 F.3d 1094, 1105 (D.C. Cir. 2017); *see also* Schubarth v. Federal Republic of Germany, 891 F.3d 392, 399–401 (D.C. Cir. 2018).

195 *de Csepel*, 859 F.3d at 1111.

196 Agudas Chasidei Chabad of United States v. Russian Federation, 110 F.4th 242, 252 (D.C. Cir. 2024).

197 *Id.* at 255 (emphasis added).

198 *See* Nicholas O'Donnell, *Russia Sanctioned $50,000 per Day for Defiance of* Chabad *Library Judgment that Led to Art and Cultural Loan Embargo*, ART LAW REP. (Jan. 16, 2013) https://blog.sullivanlaw.com/artlawreport/2013/01/16/russia-sanctioned-50000-per-day-for-defiance-of-chabad-library-judgment-that-led-to-russian-art-loan-embargo/ [https://perma.cc/HFF2-RPER].

199 Agudas Chasidei Chabad of United States v. Russian Federation, No. 23-7036, 2024 WL 4291931, at *1 (D.C. Cir. Sept. 23, 2024).

and then successfully petitioned the Supreme Court for an extension of time until early 2025 to file for a writ for certiorari.[200] The plaintiffs submitted their petition on February 20, 2025,[201] and as of this writing, the Court has not decided whether to hear the case.

Similarly, the *Berg* case also faltered post-*Philipp* on appeal as a result of the commercial nexus analysis. The *Berg* claimants were heirs to the Dutch art gallery, Firma D. Katz.[202] The paintings at issue in *Berg* followed a complicated trajectory after the war and were returned to the Dutch government by the MFAA, consistent with the policy of external restitution to the country of origin, but not necessarily to the owner.[203] By the time of the lawsuit, the paintings were in the hands of several private and public museums in the Netherlands.[204] Although the district court—tracking the pre-Supreme Court *Philipp* consensus of *Altmann*, *de Csepel*, *Malevich*, *Chabad*, and *Cassirer*—held that the claims against the Dutch state defendants satisfied the takings element of the expropriation exception of section 1605(a)(3) of the FSIA, it ultimately concluded that the defendants' contacts were insufficient to confer personal jurisdiction.[205]

To assess the expropriation exception, the Fourth Circuit considered the commercial nexus element on appeal. The district court had made findings as to which of the various sovereign defendants were instrumentalities and which were political subdivisions of the foreign state.[206] The Fourth Circuit applied the *de Csepel* and *Philipp* view of a disjunctive test requiring the foreign state to have used the property at issue commercially in the United States, which is problematic for the reasons discussed earlier.[207] There was no dispute that the paintings had not entered the United States, so whether the defendants were a foreign state

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200 Application for Extension of Time to File Petition for Writ of Certiorari, Agudas Chasidei Chabad of United States v. Russian Federation, No. 24A551 (U.S. Dec. 3, 2024); *see also No. 24A551*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24a551.html [https://perma.cc/TW8D-F5L5] (last visited Feb. 15, 2025).

201 Petition for a Writ of Certiorari, Agudas Chasidei Chabad of United States v. Russian Federation, No. 24A551 (U.S. Feb. 20, 2025).

202 Berg v. Kingdom of the Netherlands, 24 F.4th 987, 990 (4th Cir. 2022).

203 *Id.*

204 *Id.*

205 Berg v. Kingdom of the Netherlands, No. 2:18-cv-3123-BHH, 2020 WL 2829757, at *13–15 (D.S.C. Mar. 6, 2020).

206 *Id.* at *5–7.

207 *Id.* at *11–12.

or subdivision, or an instrumentality (requiring only commercial activity of any sort) was outcome dispositive.

The Kingdom of the Netherlands was clearly a foreign state, so the court concluded that the state itself remained immune from suit.[208] The Ministry of Education, Culture & Science of the Netherlands (Ministry) and the Cultural Heritage Agency of the Netherlands (RCE) were the subject of the heart of the analysis. As the *Berg* court explained, "the FSIA applies to the component parts of a foreign state, distinguishing those that are legally separate from the foreign state from those that are not," such that "legally separate agencies and instrumentalities may lose their sovereign immunity under the second clause of the expropriation exception, while legally inseparable political subdivisions cannot."[209]

To determine the status of the defendants, the *Berg* court relied on the core functions test, as other circuits have done. The core functions test asks, "if the core functions are governmental, courts treat the entity as a mere political subdivision—not legally separate from the foreign state."[210]

Considering the Dutch defendants, the Fourth Circuit found them all to be political subdivisions and thus immune from suit. The Ministry is one of twelve agencies that report to the Prime Minister.[211] The RCE "implements legislation on heritage management and serves as a centre of expertise on the conservation of the Netherlands' historic buildings, archaeological heritage and cultivated landscapes" and is responsible for cultural policy.[212] The Fourth Circuit distinguished the agencies held to be instrumentalities in *de Csepel* because the Hungarian Ministry's "functions are those that a private entity could engage in as well. Moreover, [its] placement outside of the Hungarian government, as a joint-stock company, further emphasizes its commercial, rather than governmental, nature."[213] Even though the RCE's duties include management of the art collection—the very subject

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208 *Id.* at *4–5, 11.

209 *Berg*, 24 F.4th at 992 (quoting Wye Oak Tech., Inc. v. Republic of Iraq, 666 F.3d 205, 214 (4th Cir. 2011)).

210 *Id.* at 993 (quoting *Wye Oak Tech., Inc.*, 666 F.3d at 215 (citing Transaero, Inc. v. La Fuerza Aerea Boliviana, 30 F.3d 148, 151, 153 (D.C. Cir. 1994))); *see also* Garb v. Republic of Poland, 440 F.3d 579, 590–91 (2d Cir. 2006).

211 *Berg*, 24 F.4th at 995.

212 *Id.* at 993 (citation omitted).

213 *Id.* at 995 (quoting de Csepel v. Republic of Hungary, 613 F. Supp. 3d 255, 274 (D.D.C. 2020)).

of the suit—the Fourth Circuit waived this away as "but one part of RCE's functional portfolio."[214]

This turns the public or private analysis at the core of the FSIA on its head. *Every* sovereign defendant has different, sometimes extremely broad, functions. The touchstone is the nature of the action at issue in the lawsuit. RCE manages the country's art museums, where the paintings stolen from Firma D. Katz are located.[215] Excusing those acts because of other official acts frames the question to suit the desired answer.

Even *Cassirer*, the singular case in which the United States has been supportive of a claimant, has been on a knife's edge post-*Philipp*. The Supreme Court ruled for the Cassirers on the question of how to select applicable law under the FSIA after the question of immunity has been resolved.[216] The Ninth Circuit applied a federal common law choice-of-law test.[217] The Supreme Court rejected this interpretation of section 1606 of the FSIA, which expressly provides that a foreign state not entitled to immunity "shall be liable in the same manner and to the same extent as a private individual under like circumstances."[218]

On remand, the Ninth Circuit again ruled for the Thyssen-Bornemisza Collection, holding that even under California's choice-of-law test, Spanish law applied, and the museum had acquired prescriptive title.[219] Here, again, the interpretation of greater interests and effects in favor of Spain betrays a *Philipp*-era distaste for claims.[220]

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214 *Id.*

215 *See* Berg v. Kingdom of the Netherlands, No. 2:18-cv-3123-BHH, 2020 WL 2829757, at *1, *6 (D.S.C. Mar. 6, 2020).

216 Cassirer v. Thyssen-Bornemisza Collection Found., 596 U.S. 107, 117 (2022).

217 *Id.* at 112.

218 *Id.* at 108.

219 Cassirer v. Thyssen-Bornemisza Collection Found., 89 F.4th 1226, 1235–37 (9th Cir. 2024); *see also* Nicholas M. O'Donnell, *Pissarro Painting Sold Under Nazi Duress Awarded to Thyssen-Bornemisza Collection Foundation*, INST. OF ART & L. (Jan. 17, 2024), https://ial.uk.com/pissarro-nazi-duress [https://perma.cc/L3WV-ZZ3B].

220 This predilection for immunity has infected the commercial activity exception analysis as well. *See* Barnet v. Ministry of Culture & Sports, 961 F.3d 193, 195–96 (2d Cir. 2020). In *Barnet*, a collector consigned a bronze figure of a horse at auction with Sotheby's. *Id.* at 195. Greece demanded the sculpture's repatriation, and Barnet sued to quiet title. *Id.* Yet despite claiming ownership—a quintessentially private and commercial act—the Second Circuit held the interference with the New York art market to be a sovereign act. *Id.* This was inspired in part by the Chief Justice's opinion a few years earlier in *OBB Personenverkehr AG v. Sachs*, which involved a strained reading of the "based on" element of the commercial activity exception of 28 U.S.C. § 1605(a)(2). OBB Personenverkehr AG v. Sachs, 577 U.S. 27, 29, 32 (2015). The transmission of the letter by Greece could not have been more fundamentally commercial—it sought to, and did, put a stop to a public auction

In their petition for certiorari, the Cassirers note their entitlement to relief was based on a change in California law.[221] In response, and even though the applicability of the expropriation exception was established in the case and the violation of international law was conceded by Spain more than fifteen years ago, the Thyssen-Bornemisza Collection served notice of its intention to argue that *Philipp* renders the case a domestic taking.[222] The Cassirers addressed this new argument in their motion for relief from judgment in reliance on Assembly Bill 2867, which enacted a new provision of the California Code of Civil Procedure, section 338(c)(6), to alter California's choice-of-law test.[223] The Supreme Court vacated the Ninth Circuit ruling, remanding for determination of the applicability of the new California law.[224]

Finally, *Simon*'s second trip to the Supreme Court in 2024 served notice of the Court's intent to inject its policy views in order to narrow the FSIA, this time through the commercial nexus test. After both sides endured and argued an ultimately pointless trip to the Supreme Court in 2020 about possible abstention, the case returned on the question of that part of the commercial nexus that asks if "that property or any property exchanged for such property [taken in violation of international law] is present in the United States in connection with a commercial activity carried on in the United States by the foreign state."[225] The *Simon* plaintiffs are the heirs to victims of the expropriation of property in the course of their deportation by Nazi-allied Hungary.[226] But the case does not claim that Hungary is in possession of specific unique property that was taken from their ancestors, as *Altmann*, *Cassirer*, *de*

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of cultural property. *See Barnet*, 961 F.3d at 198. The fact that Greek law is the basis of ownership would be the same for a private collector.

221 Petition for Writ of Certiorari at 7, Cassirer v. Thyssen-Bornemisza Collection Found., No. 24-652 (U.S. Mar. 10, 2025) (citing A.B. 2867, 2023–2024 Leg., Reg. Sess. (Cal. 2024)).

222 Joint Statement Pursuant to Standing Order Paragraph 5(B) Regarding Local Rule 7-3 Pre-Filing Conference at 5–6, Cassirer v. Thyssen-Bornemisza Collection Found., No. 2:05-cv-03459-JFW-E (C.D. Cal. Jan. 17, 2025).

223 Plaintiffs' Notice of Motion and Motion for Relief from Judgment Pursuant to Fed. Rule of Civ. Proc. 60(b)(6) at ii, *Cassirer*, No. 2:05-cv-03459-JFW-E (C.D. Cal. Jan. 28, 2025).

224 Cassirer v. Thyssen-Bornemisza Collection, No. 24-652, 2025 WL 746324, at *1 (U.S. Mar. 10, 2025) ("Judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of Assem. Bill 2867, 2023–2024 Reg. Sess. (Cal. 2024).").

225 28 U.S.C. § 1605(a)(3).

226 Simon v. Republic of Hungary, 812 F.3d 127, 132–33 (D.C. Cir. 2016).

Csepel, and *Philipp* did.[227] It asserts that Hungary has property exchanged for that expropriated property.

The *Simon* case poses an interesting question about how direct an exchange there must be from the stolen property to the general assets of a nation itself. Yet in probing this question, the Court's now-conclusive bias in favor of immunity was on full display. At oral argument on December 3, 2024, the Court repeatedly referred to the policy concerns about a particular result that the 94th Congress rejected definitively in passing the FSIA. For example, Justice Kavanaugh posed the following softball question to the Assistant to the Solicitor General (who argued the case in favor of Hungary): "One of the important things, I think, with making sure we don't read it too expansively is friction with other countries and, if other countries adopted a similar expropriation and commingling theory, the effects it would have on the United States."[228]

That is what the Roberts Court has deemed important, but it is the antithesis of what the House Report made plain when it condemned the "outdated practice of having a political institution, namely, the State Department, decide many of these questions of law,"[229] and the antithesis of Attorney General Kleindienst's explanation that "[t]he central principle of the [FSIA] . . . is to make the question of a foreign state's entitlement to immunity an issue justiciable by the courts, *without participation by the Department of State*."[230] It perpetuates "the sensitivities of nineteenth-century monarchs or the prerogatives of the twentieth-century state" that the FSIA emphatically rejected.[231]

The government lawyer took it even a step further, arguing that the *Sabbatino* case—overruled by Congress—is actually the "touchstone" of what takings qualify under section 1605(a)(3).[232] "[T]he expropriation exception in particular, intended to be and recognized by this Court as a small departure from the restrictive theory of sovereign immunity, would not cover a lot of cases that

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227 *Id.* at 147.

228 Transcript of Oral Argument at 30, Republic of Hungary v. Simon, 145 S. Ct. 480 (2025) (No. 23-867).

229 House Report, *supra* note 18, at 25.

230 *Immunities of Foreign States: Hearing on H.R. 3493 Before the Subcomm. on Claims & Governmental Rels. of the H. Comm. on the Judiciary*, 93d Cong. 34 (1973) (emphasis added).

231 House Report, *supra* note 18, at 27.

232 Transcript of Oral Argument at 30, *Simon*, 145 S. Ct. 480 (2025) (No. 23-867).

are beyond where *Sabbatino* as a touchstone would . . . indicate that it applies."[233]

Hungary's counsel suggested that the Second Hickenlooper Amendment was intended to apply to "a tiny fraction of expropriation claims around the world"—a remarkable statement about Cuba in the 1960s.[234] No member of the Court pushed back on either statement. Worse, the government lawyer suggested, "[T]his Court, I think, has said . . . in *Philipp*, for example, that the expropriation exception really was intended to capture *Sabbatino* and *Sabbatino*-like cases."[235] The Chief Justice seemed to agree, stating, "[W]e know that from *Sabbatino* and the second Hickenlooper amendment that Congress had in mind a much narrower exception than that."[236]

The Court's February 21, 2025 opinion bears this out.[237] Elevating the imagined link between the Second Hickenlooper Amendment and the expropriation exception, the Court cites *Philipp* to interpret the FSIA's immunity based on the rejection of the Act of State Doctrine.[238] The net result is that the Supreme Court has made a statute that is *not* about immunity—the Second Hickenlooper Amendment—paramount to understanding the FSIA, over actual amendments to the FSIA like the Clarification Act.

VII. RESTORING THE STATUS INTENDED BY CONGRESS

What stands out from *Philipp* and the cases since is a solicitude not just for sovereign immunity, but for sovereign impunity. Consider even just the array of parties in that case. Germany had been dismissed, and the Supreme Court

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233 *Id.* (alteration added).

234 *Id.* at 8.

235 *Id.* at 31. (alterations added).

236 *Id.* at 62. (alteration added).

237 *See* Simon v. Republic of Hungary, 145 S.Ct. 480 (2025).

238 *Id.* at 488. *Cf.* 28 U.S.C. § 1605(a)(3) (A state is not immune "in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States."); 22 U.S.C. § 2370(e)(2) ("[N]o court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law.").

declined the consortium heirs' petition to hear the commercial nexus question. As a result, Germany, the country at once responsible for the Holocaust and, since the D.C. Circuit ruling in 2018, was certain to face no consequence for the taking at issue in *Philipp* regardless of the outcome. And still, the Supreme Court granted certiorari for a case about the Holocaust to make these points (and continued to do so repeatedly thereafter).

The irony of the caution stated about using the FSIA to modify sovereigns' behavior is that it has *incentivized* the very worst behavior. Germany's initial motion to dismiss in *Philipp* made such reprehensible arguments as suggesting that the 1935 transaction "predated the Holocaust by several years."[239] The district court opinion in 2017 did not directly rebuke this, but other organizations did,[240] and the initial outcomes served as a corrective. Since 2021, however, in cases like *Ambar*, Philipp has invited the very worst sort of self-justification.[241]

The implication of these incentives in other scenarios is straightforward. Ethnic Armenian victims in Nagorno-Karabakh would doubtless face the argument that Azerbaijan claims sovereignty, and thus the takings are domestic. Vladimir Putin denies that Ukraine even exists, so Russia's bad faith in *Chabad* would extend to a claim of immunity for the pillage of Ukrainian museums. And to give an example similar to the one Justice Breyer offered dismissively, what about Tibet, a sovereign country when invaded militarily by China?[242]

Notwithstanding the elevation of *Sabbatino* in the *Simon* argument to a place it was never meant to be, that 1960s case does provide a constructive counterexample of Congress refusing the disrespect served to it by the Supreme Court, when "Congress did not applaud the Court's [ruling]."[243]

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239 Defendants' Motion to Dismiss and Incorporated Memorandum of L. at 24, Philipp v. Federal Republic of Germany, 248 F. Supp. 3d 59 (D.C. Cir. 2017) (No. 1:15-cv-00266-CKK).

240 *See* Nicholas O'Donnell, *Widespread Criticism Continues from Historians over Germany's and SPK's Revisionism Concerning Holocaust and Forced Sales of Art*, SULLIVAN: ART L. REP. (Nov. 19, 2015, 12:48 PM) https://blog.sullivanlaw.com/artlawreport/2015/11/19/widespread-criticism-continues-from-historians-over-germanys-and-spks-revisionism-concerning-holocaust-and-forced-sales-of-art/ [https://perma.cc/XG9W-HANN].

241 Ambar v. Federal Republic of Germany, 596 F. Supp. 3d 76, 79–80, 82–83 (D.D.C. 2022).

242 Transcript of Oral Argument at 56, Federal Republic of Germany v. Philipp, 141 S. Ct. 59–60 (2020) (No. 19-351).

243 Federal Republic of Germany v. Philipp, 592 U.S. 169, 179 (2021).

So Congress must again restore the balance it has previously set in 1976 and again in 2016 in the Clarification Act. There is little about which Congress has been as unequivocal and bipartisan than art theft and the Holocaust. From the Holocaust Victims Redress Act of 1998 (HVRA)[244] to the Holocaust Expropriated Art Recovery Act (HEAR Act)[245] and Clarification Act,[246] to the Justice for Uncompensated Survivors Today Act of 2017 (JUST Act),[247] it is hard to imagine how Congress could state more clearly that Nazi art theft, beginning on January 30, 1933, offended international law. The HEAR Act makes specific findings about Nazi property crimes related to art, such as those at issue in this case:

> It is estimated that the Nazis confiscated or otherwise misappropriated hundreds of thousands of works of art and other property throughout Europe as part of their genocidal campaign against the Jewish people and other persecuted groups. This has been described as the "greatest displacement of art in human history."[248]

Like the Clarification Act, the HEAR Act defines its "covered period" as "the period beginning on January 1, 1933, and ending on December 31, 1945"—that is, even broader than the strict duration of Hitler's regime.[249] The HEAR Act also references the findings expressed in the HVRA. The HVRA states:

> The Nazis' policy of looting art was a critical element and incentive in their campaign of genocide against individuals of Jewish and other religious and cultural heritage and, in this context, the Holocaust, while standing as a civil war against defined individuals and civilized values, must be considered a fundamental aspect of the world war unleashed on the continent.[250]

For its part, the JUST Act defines "wrongful transfers" to include "forced sales or transfers, and sales or transfers under duress during the Holocaust era."[251]

The Supreme Court treated these laws dismissively, to say nothing of eighty years of American leadership on restitution

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244 *See* Holocaust Victims Redress Act, Pub L. No. 105-158, 112 Stat. 15 (1998) [hereinafter HVRA].

245 Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (2016) [hereinafter HEAR Act].

246 Foreign Cultural Exchange Jurisdictional Clarification Act, Pub. L. No. 114-319, 130 Stat. 1618 (2016).

247 *See* Justice for Uncompensated Survivors Today Act, Pub. L. No. 115-171, 132 Stat. 1288 (2017) [hereinafter JUST Act].

248 HEAR Act, *supra* note 247, § 2(1).

249 *Id.* § 4(3).

250 HVRA, *supra* note 244, § 201(4).

251 JUST Act, *supra* note 247, § 2(3).

stretching from the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control in 1943, to the Genocide Convention, to the Washington Conference. The Court concluded that the HEAR Act, which expands the limitations period on Holocaust-era art claims—and therefore makes litigation possible where it was barred before—actually "encourage[s] redressing those injuries outside of public court systems."[252] This is palpable nonsense, a complete betrayal of any pretense of textual interpretation.

As in *Sabbatino*, the co-equal branches of government must act. So far, Congress' response has been tepid. A handful of Representatives did file an amicus brief in *Philipp*, noting, inter alia, that:

> Congress has explicitly sanctioned claims arising from over a century of wrongs carried out by sovereigns against "targeted and vulnerable" groups, repeatedly sought to facilitate redress for Nazi-era takings, and made clear its intent at the genesis of the FSIA to "encourage" claims against sovereigns in federal courts. The D.C. Circuit's decisions below jibes with and furthers that congressional intent.[253]

The Supreme Court opinion simply ignores the brief. Another group filed a brief in *Simon* in 2024.[254] The effect of that remains to be seen, but given the disrespect to Congress in *Philipp*, there is no reason to believe it will be any different. *Cassirer* is the only case in which the State Department has not spoken in full-throated support of sovereigns like Nazi Germany, Austria, Hungary, or Putin's Russia.

As a result, legislation is clearly necessary. As a start, Congress[255] should cement what it said in 2016 by (1) affirming the common-language interpretation of the commercial nexus test that the Ninth Circuit used in *Altmann* (a disjunctive test, under

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252 Federal Republic of Germany v. Philipp, 592 U.S. 169, 186 (2021).

253 Brief for Members of the U.S. House of Representatives as Amici Curiae in Support of Respondents at 14, Federal Republic of Germany v. Philipp, 592 U.S. 169 (2021) No. 19-351 and No. 18-1447).

254 Brief for Members of the U.S. House of Representatives & Senate as Amici Curiae in Support of Respondents at 1, Republic of Hungary v. Simon, 145 S. Ct. 480 (2025) (No. 23-867).

255 When one speaks of "Congress," of course, the Executive must also be involved to pass a statute absent a veto override. This gives cause for concern. Despite the proscriptions of the House Report, the State Department has resolutely supported the very worst sovereign defendants. With respect to the relevance of genocide, the State Department appears to be overhauling its own condemnation. The webpage titled "Remembering the Rohingya Genocide," for example, is currently inoperable. *See* Antony J. Blinken, *Remembering the Rohingya Genocide*, U.S. DEP'T OF STATE (Aug. 24, 2024), https://www.state.gov/remembering-the-rohingya-genocide/ [https://perma.cc/TF8M-GASL].

either prong of which the foreign state is amenable to suit), and (2) passing the following revision of section 1605(a)(3):

> (i) Exception—Nazi-era claims. Notwithstanding the domestic takings rule (see *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703 (2021)), paragraph (a)(3) shall nonetheless apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection where the action is based upon a claim concerning a work of art or other object of cultural significance taken between and including January 30, 1933, and May 8, 1945, by (a) the Government of Germany; (b) any government in any area in Europe that was occupied by Germany or the military forces of the Government of Germany; (c) any government in Europe that was established with the assistance or cooperation of the Government of Germany; or (d) any government in Europe that was an ally or collaborator of the Government of Germany, or any of their allies or agents, members of the Nazi Party, or their agents or associates, regardless of the nationality or citizenship of the alleged victim.

This would not yet provide relief to victims of the Armenian Genocide, or Putin's war against Ukraine (which Russia would, in its own twisted logic, describe as a domestic taking since it does not acknowledge Ukrainian cultural existence), or the Rohingya (in Myanmar). But it would be a start. And perhaps it would bring the Court in line with where it should have been since *N.M.L. Capital*, to say nothing of the House Report: policy is for Congress; application of the FSIA's text is for the courts—no more, and no less.

Further, the odd phrasing of the commercial nexus text could and should be clarified. Is it one test for any sovereign defendant, or two tests depending on the "core functions" of the defendant? Congress could put this to rest.

The Supreme Court took a hatchet to what Congress enshrined in 1976. The question now is whether Congress will tolerate the rebuke.

Chapman Law Review Looted Art Display

"Raiders of the Lost Art"

Phillip Der Mugrdechian

The 2025 *Chapman Law Review* symposium, "Raiders of the Lost Art: Legal Challenges and Recoveries," brought together experts from around the country to discuss art law, looted art, and the prosecution of bad actors as a domestic and international concern.

The Hugh and Hazel Darling Law Library and *Chapman Law Review* put together a display to supplement the symposium. The display exhibited contributions from symposium panelists, focusing on works that showcased their areas of expertise. Topic areas included looted art restitution, the destruction of cultural heritage in Ukraine, museums as bad actors, and laws and cases that concern restitution and repatriation of stolen art. The aim of the display was to further highlight the topic of looted art, the global impact of art theft, and the consequences that the destruction of cultural heritage has had throughout history and around the globe.

The display featured a variety of resources including law review articles, books, and photographs. Faculty of the Fowler School of Law contributed several pieces, including "From 'Lamentation and Liturgy to Litigation': The Holocaust-Era Restitution Movement as a Model for Bringing Armenian Genocide-Era Restitution Suits to American Courts" by Professor Michael J. Bazyler.[1] His article, which was published in the *Marquette Law Review* in 2011, discusses how Holocaust restitution cases can serve as a model to litigate future Armenian

1 Michael J. Bazyler, *From "Lamentation and Liturgy to Litigation": The Holocaust-Era Restitution Movement as a Model for Bringing Armenian Genocide-Era Restitution Suits to American Courts*, 95 MARQ. L. REV. 245 (2011); *see also* Armen Manuk-Khaloyan, Michael Bazyler, & Kathryn Lee Boyd, *Armenian Genocide Looted Art and the Story of the Armenian Genocide Restitution Movement: A Tribute*, 28 CHAP. L. REV. 535 (2025).

Genocide restitution cases.[2] Dr. John Hall contributed photos from his recent travels to Ukraine, revealing the cultural destruction caused by war with Russia.[3] Also included in the display was Dr. Hall's article in *Chapman University Magazine* about his observations abroad.[4] Two books—*Chasing Aphrodite* by Jason Felch and Ralph Frammolino,[5] and *Treasures in Heaven: Armenian Art, Religion, and Society* by Thomas F. Mathews and Roger S. Wieck[6]—were featured, as they represented the work of panelists Kathryn "Lee" Boyd and Jason Felch.

Chapman's Leatherby Libraries and the Hugh and Hazel Darling Law Library contributed a selection of books for additional reading on a variety of topics related to art law, looted art, and stolen art. The titles included works by symposium panelists as well as the symposium's keynote speaker, Professor Erin L. Thompson. Some of the more prominent works on art law and restitution included the following: *The Missing Pages: The Modern Life of a Medieval Manuscript, from Genocide to Justice* by Heghnar Zeitlian Watenpaugh,[7] *The Brutish Museums: The Benin Bronzes, Colonial Violence, and Cultural Restitution* by Dan Hicks,[8] and *Possession: The Curious History of Private Collectors from Antiquity to the Present* by Erin L. Thompson.[9]

The staff of the Hugh and Hazel Darling Law Library and the students of the *Chapman Law Review* collaborated to create this display. This teamwork played a vital role in the project's

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2 *See id.*

3 *See* Харківська правозахисна група [Kharkiv Human Rights Group], *California Law Professor Investigating Cultural Genocide in Ukraine*, YOUTUBE (July 23, 2024), https://www.youtube.com/watch?v=8jnfyyUdrlc [https://perma.cc/NZD4-UYUT]; *see also* Joy Juedes, *Law Professor Spends Summer Investigating War Crimes in Ukraine*, CHAP. UNIV.: CHAP. NEWS (June 24, 2023), https://news.chapman.edu/2023/06/14/law-professor-spends-summer-investigating-war-crimes-in-ukraine/ [https://perma.cc/F6KY-VU7Q].

4 John Hall, *Law Professor Witnesses Attack on Ukrainian Culture*, CHAP. UNIV. MAG., Winter 2024, at 9.

5 JASON FELCH & RALPH FRAMMOLINO, CHASING APHRODITE: THE HUNT FOR LOOTED ANTIQUITIES AT THE WORLD'S RICHEST MUSEUM (2011).

6 THOMAS F. MATHEWS & ROGER S. WIECK, TREASURES IN HEAVEN: ARMENIAN ART, RELIGION, AND SOCIETY (1998).

7 HEGHNAR ZEITLIAN WATENPAUGH, THE MISSING PAGES: THE MODERN LIFE OF A MEDIEVAL MANUSCRIPT FROM GENOCIDE TO JUSTICE (2019).

8 DAN HICKS, THE BRUTISH MUSEUMS: THE BENIN BRONZES, COLONIAL VIOLENCE AND CULTURAL RESTITUTION (2020).

9 ERIN L. THOMPSON, POSSESSION: THE CURIOUS HISTORY OF PRIVATE COLLECTORS FROM ANTIQUITY TO THE PRESENT (2016).

success. We deeply appreciate the hard work and diligence of all involved. We extend special thanks to Taline Ratanjee, Editor-in-Chief of the *Chapman Law Review*; Gregory Mikhanjian, Executive Program Editor of the *Chapman Law Review*; and Assistant Research Librarian Phillip Der Mugrdechian of the Hugh and Hazel Darling Law Library for all their dedication, hard work, and the long hours they devoted to the completion of this display.[10]

10 There were numerous other materials that were featured in the symposium display. *See* Republic of Austria v. Altmann, 541 U.S. 677 (2004); W. Prelacy of the Armenian Apostolic Church v. J. Paul Getty Museum, No. BC438824 (Cal. Super. Ct. filed June 1, 2010); DARSIE ALEXANDER & SAM SACKEROFF, AFTERLIVES: RECOVERING THE LOST STORIES OF LOOTED ART (2021); MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (2003); MICHAEL J. BAZYLER ET AL., SEARCHING FOR JUSTICE AFTER THE HOLOCAUST: FULFILLING THE TEREZIN DECLARATION AND IMMOVABLE PROPERTY RESTITUTION (2019); WHO OWNS THE PAST? CULTURAL POLICY, CULTURAL PROPERTY, AND THE LAW (Kate Fitz Gibbon ed., 2005); CRAIG FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE (2010); DARIO GAMBONI, THE DESTRUCTION OF ART: ICONOCLASM AND VANDALISM SINCE THE FRENCH REVOLUTION (1997); JEANETTE GREENFIELD, THE RETURN OF CULTURAL TREASURES (3d ed. 2007); BRUCE L. HAY, NAZI-LOOTED ART AND THE LAW: THE AMERICAN CASES (2017); ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE (Barbara T. Hoffman ed., 2006); MUSEUM COOPERATION BETWEEN AFRICA AND EUROPE: A NEW FIELD FOR MUSEUM STUDIES (Thomas Laely et al. eds., 2018); NEGOTIATING CULTURE: HERITAGE, OWNERSHIP, AND INTELLECTUAL PROPERTY (Laetitia La Follette ed., 2013); IVAN LINDSAY, HISTORY OF LOOT AND STOLEN ART FROM ANTIQUITY UNTIL THE PRESENT DAY (2014); S.R.M. MACKENZIE, GOING, GOING, GONE: REGULATING THE MARKET IN ILLICIT ANTIQUITIES (2005); IMPERIALISM, ART AND RESTITUTION (John Henry Merryman ed., 2006); MARGARET M. MILES, ART AS PLUNDER: THE ANCIENT ORIGINS OF DEBATE ABOUT CULTURAL PROPERTY (2008); MELISSA MÜLLER & MONIKA TATZKOW, LOST LIVES, LOST ART: JEWISH COLLECTORS, NAZI ART THEFT, AND THE QUEST FOR JUSTICE (2010); NICOLAS M. O'DONNELL, A TRAGIC FATE: LAW AND ETHICS IN THE BATTLE OVER NAZI-LOOTED ART (2017); NORMAN PALMER, ART, ADVENTURE AND ADVOCACY: CONTRACTS, CLAIMS AND CONTROVERSIES IN THE WORLD OF CULTURAL PROPERTY (2105); WAYNE SANDHOLTZ, PROHIBITING PLUNDER: HOW NORMS CHANGE (2007); Julia Halperin, *Getty Becomes First Museum to Restitute Armenian Art Removed During Genocide*, THE ART NEWSPAPER (Sept. 22, 2015), https://www.theartnewspaper.com/2015/09/22/getty-becomes-first-museum-to-restitute-armenian-art-removed-during-genocide [https://perma.cc/AS58-UBCD]; Dylan Price & Gregory Dauber, Panelists at the *Chapman Law Review* Symposium: Raiders of the Lost Art (2025); Erin Thompson, *Mighty Shiva Was Never Meant to Live in Manhattan*, N.Y. TIMES (Feb. 4, 2024), https://www.nytimes.com/2024/02/04/opinion/museums-artifacts-stolen.html [https://perma.cc/BYH4-Z8R7]; Justin St. P. Walsh, *A Silver Service and a Gold Coin*, 24 INT'L J. CULTURAL PROP. 253 (2017).

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