

Legal Issues for Museums

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Museums

- ◇ Word “museum” from Greek word *mouseion*, a sanctuary or temple dedicated to the 9 goddesses who preside over the arts and sciences (the “Muses”).
- ◇ Middle Ages: collection and preservation of objects done in monasteries, convents, and churches.

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Museums

- ◇ 17th century: some museums opened to the public.
 - ✦ Ashmolean Museum, Oxford, opened in 1683.
 - ✦ British Museum opened in 1755.
 - ✦ Louvre opened in 1793.
- ◇ U.S.: museums slow to develop.

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Museums

- ✧ First U.S. museums were based on collections of wealthy individuals.
- ✧ Colleges established museums - e.g. Yale museum.
- ✧ 1870: big year for U.S. museums:
 - ✦ Metropolitan Museum of Art, N.Y.
 - ✦ Museum of Fine Arts, Boston

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Purpose of Museums

- ✧ Definition of contemporary museum reflects multiple purposes:
 - ✦ Acquires and conserves
 - ✦ Researches
 - ✦ Communicates
 - ✦ Exhibits

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Democratization of Museums

- ✧ Sense of purpose has shifted from elite focus to addressing a mass audience
 - ✦ Exhibitions that draw on experiences in contemporary culture:
 - ⌘ E.g. "Harlem on my Mind," Metropolitan Museum of N.Y., 1969.
 - ✦ Greater focus on education about art for the general public.

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Contribution of Museums

- ✧ “In developing justifications for the public support of museums, we have too often forgotten that their ultimate importance must lie not in their ability to acquire and care for objects — important as that may be — but in their ability to take such objects and put them to some worthwhile use.”

Stephen E. Weil

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Acquisition and Conservation

- ✧ One major function of museums is acquisition and conservation of important items of material culture.
- ✧ This role is complicated by the disruptions in the provenance of much art that changed ownership in continental Europe during World War II.

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Confiscated Art

- ✧ Ownership of art passing through Germany and Nazi-occupied territories during the 1930s and 1940s continues to be a problem.
- ✧ The Art Loss Register, an international registry of stolen art, lists looted holocaust art.
- ✧ Both MIA and Walker are participating in the Provenance Research project, attempting to trace the provenance of pieces in their collection transferred during this time.

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Provenance Research

- ✧ Works include those that were transferred between 1932 and 1946 in Europe, outside the United Kingdom.
- ✧ Search for a direct line of ownership that would exclude the possibility of Nazi seizure of the piece and transfer after that seizure.

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Provenance Research

- ✧ MIA: 117 pieces in its collection are in the research project. Some have been “cleared,” (provenance established), while others have gaps that leave questions of ownership.

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Provenance Research

- ✧ Walker: has 9 works in the provenance research project. One has “cleared:” *The Large Blue Horses*, Marc Franz.
- ✧ Research in progress on the rest.

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Holocaust Art and Ownership Claims

- ✧ Claims of “true” owners of art appropriated during the Nazi regime are complicated by several legal restrictions.
- ✧ Case of *Menzel v. List* established that true owner of seized works may still have claims to art works.
- ✧ One are state laws forbidding seizure of works of art on loan from other institutions.
- ✧ Case: Museum of Modern Art had 150 Egon Schiele paintings on loan from the Leopold Foundation in Vienna.

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Holocaust Art claims

- ✧ Two of Schiele’s works were subject to claims of having been looted by Nazis in Austria.
- ✧ Museum of Modern Art took the position that it had to return the works to the Leopold after the loan period expired, because NY law forbade them from doing otherwise.
- ✧ Court agreed.

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Holocaust Art claims

- ✧ Another problem: the Act of State doctrine might off claims of rightful owners – but held not to apply in some cases.
- ✧ When Nazis defeated, the U.S. government took possession of all Nazi assets, including the looted art still in Nazi possession.
 - ✦ Would not apply to art already in other hands.

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Holocaust Art claims

- ✧ That act by the U.S. is considered an “act of state” that cuts off claims of theft by previous owners if the art was not returned to them at that time.
- ✧ Transfers of ownership after that time may be legally valid because of the intervening “act of state.”

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Museum Stores

- ✧ Museum stores have expanded greatly in past 20 years to become a major revenue producer for large museums.
- ✧ Museums now open shops in suburban malls, competing with retailers.

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Museum Stores

- ✧ The Metropolitan Museum of Art and the Art Institute of Chicago both operate satellite museum stores in shopping centers.
- ✧ The Museum Company, a retailer that sold similar merchandise, lobbied Congress for a change in tax law to remove tax-exempt status for satellite museum stores, alleging unfair competition.

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Museum Stores

◇ IRS response:

- ✦ Museum stores serve as an income-generating part of the museum enterprise, and not as a profit-making unit in themselves.
- ✦ As long as the products sold are germane to the museum's functions, then they can be sold in a tax-exempt store. (E.g. reproductions, slides, items relating to exhibitions, books, and other items relating to visitor's convenience in visiting.)

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Museum Stores

◇ IRS:

- ✦ Items that might be a problem in a tax-exempt store are those not reasonably related to the museum's functions, e.g. golf clothing, newspapers, tobacco, and items indistinguishable from those found in other retail stores.
- ◇ Location of the store does not matter: satellite stores in shopping malls are OK.

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Museum Trustees

- ◇ Museum trustees charged with setting policy for museums.
- ◇ Trustees are uniform group: wealthy, older (60% are at least 60 years old), graduated from elite schools (60% from Ivy League), and have legal/financial connections (more than 50% in law, banking, finance).

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Trustees

- ✧ Boards of Trustees are self-replacing - they select their own members, so not very likely to diversify their membership.
- ✧ Museums with partly public ownership have public representatives (e.g. Metropolitan Museum of New York). Private museums do not.

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Trustees

- ✧ One way to get selected to be a trustee: have an outstanding art collection that might be donated to the museum upon your death!
- ✧ Trustees have an obligation to exercise reasonable care and due diligence in their decisions and actions, for the benefit of the museum and the public interest.

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Trustees

- ✧ Conflicts of interest often come up with trustees, since their own financial interests may be at stake in museum policies.
 - ✦ E.g. decision to acquire art may increase or decrease the value of a trustee's own collection.

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Trustees

- ✧ Trustees generally defer to the director (who reports to them) and the curators in operating expertise. They are obligated to ensure competent operations, however.

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Trustees

- ✧ In some cases, irreconcilable conflicts of interest should prevent people from serving as museum trustees.
 - ✦ E.g. art dealer: impossible to see how this could not be a conflict of interest for a trustee, if the art dealer works in any field in which the museum has or wants to have holdings.

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Trustees

- ✧ Collectors are often made members of museum boards, but they could have conflicts of interest, too.
- ✧ However, collectors are chosen for the board precisely because they have expertise in the type of art the museum acquires and exhibits.
- ✧ This conflict is managed by non-compete agreements.

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Directors and Curators

- ✧ Issues can also arise with museum directors and curators.
E.g. they should not bid at an auction in which the museum is bidding for pieces.

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Ethics and exhibitions

- ✧ “The Passionate Eye: Impressionist and other Master Paintings from the E.G. Buhrlé Collection” was held at the National Gallery in Washington in 1990.
- ✧ The exhibition of paintings, itself, was impressive. Few collections equal Buhrlé’s French paintings collected from 1926 through 1956.

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Passionate Eye

- ✧ The catalogue for the exhibition gives a flowery tribute to Buhrlé as a “selfless patron of the arts” who created a “harmonious environment” for his workers.
- ✧ What wasn’t discussed was the nature of his business in Switzerland: making bombs and anti-tank weapons for both Germany and the Allies during WWII.

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Passionate Eye

- ✧ Buhrlé's son, very active in the art acquisition enterprise, was convicted in 1970 for illegal arms sales.
- ✧ Some of the paintings came from the collection of Hermann Goering; others had questionable provenance.

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Passionate Eye

- ✧ What did the National Gallery have to gain from the exhibition?
 - ✦ Buhrlé family did not contribute a single painting to the permanent collection.
 - ✦ This was the final tour, with no future loans of these pieces possible.
 - ✦ The Buhrlé family markets pieces from time to time, with prices enhanced by this exhibition.

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Passionate Eye

- ✧ What is the ethical stance on an exhibition of this sort?
- ✧ Is it worthwhile to see the art, regardless of the surrounding circumstances?

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Museum Obligation of Public Access

- ✧ Museums are non-profit, tax exempt institutions, so that status carries an assumption that they will operate in a way that benefits the public.
- ✧ The Barnes Foundation in Merion, PA (near Philadelphia) was (is) a strange example of a limited access museum.

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Barnes Foundation

- ✧ Established by Albert Barnes in 1922 as a combination arboretum and art gallery with a fantastic collection of Impressionist and Post-Impressionist paintings:
 - ✦ 181 Renoirs
 - ✦ 69 Cezannes
 - ✦ 46 Picassos
 - ✦ 59 Matisses, among others
- ✧ Idea was to offer courses in art and botanical sciences using the collections available on site.

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Barnes Foundation

- ✧ Admission essentially limited to those taking courses at the school, although Barnes instructed that the museum be open to the public not more than 2 days a week for limited hours with cards of admission issued by the Trustees.

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Barnes Foundation

- ✧ Several lawsuits were filed challenging the restrictive nature of the museum, and questioning the propriety of its tax-exempt status.
- ✧ The Trustees at first tended to restrict access even further after Barnes's death; the court ordered them to offer public access at least equal to that contained in the original trust documents.

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Barnes Foundation

- ✧ The museum, arboretum, and school still function today, but are changing dramatically.
- ✧ Admission days are still limited to 3 days a week, and reservations must be made at least 45 days in advance for permission to visit.
- ✧ The school still functions, offering college credit for art and botany courses based on the collections.
- ✧ Facility offered unique way of viewing art and connecting art and the natural world.

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Barnes Foundation

- ✧ Barnes also specified that no "society functions" were ever to be held at the museum facilities, including "tea parties, dinners, banquets, dances, or musicales."
- ✧ The Trustees themselves went to court asking for permission to interpret this clause to permit fundraising activities for the benefit of the museum, and the court agreed.

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Barnes Foundation

- ❖ Museum eventually succumbed to financial problems and arranged to build a new facility and move collection to Philadelphia.
- ❖ Film, *The Art of the Steal*, describes the move as an abuse of authority and a violation of Barnes's original intent for the institution to link art and nature.
- ❖ New museum will carry on tradition of association of nature and art, but in ways that will serve more viewers.
- ❖ Original site in Merion, PA will remain open as an arboretum, and archives will be available to scholars.

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