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Black Beauty - How Schultz and the Trial of Marion True Changed Museum Acquistions

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I. Introduction

Collecting remainders of history has long been a human pastime. Looting and the trafficking of looted items, especially art, were common as far back as ancient Egypt.[1] Yet, even in ancient times, notable figures decried the plundering of ancient artifacts and other items of value.[2] Many of these items of historical value ended up in world famous museums, including the Metropolitan Museum of Art in New York City, Louvre in Paris, and British Museum in London.[3] By the 1970s, colonial plundering was no longer a legitimate means to acquire ancient art, so museums began looking to a different source to bolster their antiquities collections.[4] As a result, the trafficking in stolen art and artifacts has become a multi-billion dollar endeavor rivaling the narcotics and arms industries.[5] However, in recent years there has been a sea change in museums' attitudes towards the collection of antiquities. *United States v. Schultz*[6] and its predecessors, as well as the recent trial of Marion True in Italy[7] have resulted in museums' changed attitude towards establishing the provenance of items they acquire and addressing patrimony claims.

This Article examines the diminishing role of black markets in the antiquities trade. In particular, this Article focuses on international conventions, American case law, and the trial of Marion True to establish that there has been a slow move away from looted art in the American museum system. More importantly, this Article examines how the Italian trial of an outspoken advocate of caution in the acquisition of antiquities,[8] Marion True, in the wake of *Schultz* has slowly shifted museums' focus towards an emphasis on determining the origins of the items in their collections.

Part I addresses the UNESCO Convention, the Cultural Property Implementation Act (CPIA), the UNIDROIT Convention, and the National Stolen Property Act (NSPA) and their relevance to the criminal prosecution of international cultural property crimes. Part II examines *Schultz* and its predecessors in establishing a domestic criminal law standard for prosecuting international cultural property theft under the NSPA, as well as alternative methods of prosecution in the United States. Finally, Part III addresses the unique and fascinating case of the J. Paul Getty Museum (the Getty)—perhaps the largest culprit of acquiring antiquities on the black market—and how the trial of Marion True has changed the way museums conduct business in the United States.

II. Paint by Letter—UNESCO, the CPIA, UNIDROIT, and the NSPA

While frowned upon, looting during peacetime was an accepted practice.[9] Following the Napoleonic Wars, however, the international community realized the destructive power of war could easily cripple a state's vast cultural heritage.[10] The 1899 and 1907 Hague Conventions spawned the Hague Regulations, of which Article 56 embodied the spirit of a changing worldview; it initiated the large-scale protection of cultural property.[11] The Great War was the next catalyst; Europe, having witnessed several cultural treasures looted and destroyed by the Kaiser, provided a manner of restitution (arguably ineffectual) for some of the nations whose property was taken through the Treaty of Versailles.[12] World War II brought about similar concerns. During the Nuremberg Trials, the Allied powers enforced the 1907 Hague Regulations in response to the extreme Nazi looting and destruction of Europe's cultural heritage that occurred.[13]

Thus far, the international law concerned itself with looting during wartime. What, then, of cultural property crime during times of peace or art theft[14] unrelated to war? Every state, naturally, had local laws concerning theft. However, the particularly large-scale of Hitler's actions drew attention to the need to protect cultural property in view of international looting of culturally significant sites. Thus, from November 1-16, 1945, the Conference for the Establishment of the United Nations Educational, Scientific and Cultural Organization (UNESCO) convened, creating the Constitution of UNESCO.[15] UNESCO,

in turn, begat the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention),[16] which is the current international standard with regards to the protection of cultural property, both in times of war and peace.[17] The Second Protocol to the 1954 Hague Convention amended it in 1999 (the Second Protocol).[18] These conventions applied only in times of war;[19] so beginning around 1970, a series of international conventions and domestic laws in the United States addressed the serious issue of stolen cultural property during times of peace.[20] This Part will address the impact of UNESCO on the international landscape, and how the U.S. has responded through the NSPA.[21]

A. UNESCO—The International Standard

UNESCO's 1954 Hague Convention was a watershed moment for cultural property protections. Unfortunately, it was largely ineffectual. Through the later part of the twentieth century, museums and private collectors continued to collect great amounts of stolen art and artifacts, often from archaeological digs.[22] UNESCO continued its efforts to combat cultural property crime, but art theft, especially from digs, provided an easy way to quietly make a lot of money.[23] Three developments created a more hostile atmosphere to art theft both domestically and internationally: (1) the Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (the UNESCO Convention),[24] (2) the CPIA, and (3) the International Institute for the Unification of Private Law's (UNIDROIT) Convention on the International Return of Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention).[25]

1. The UNESCO Convention

The UNESCO Convention was a means for member states to "enter into pacts to enforce each other's cultural property laws."[26] It covers a wide swath of items of cultural interest—not just those relegated items of archaeological significance.[27] This convention grants standing to member states to sue in foreign courts to enforce the claimant's national laws.[28] Rather than focusing on the military, as previous conventions have done, the UNESCO Convention channels its attentions on the private trade in antiquities.[29] Perhaps most promising is that one hundred and nine countries ratified it, including the United States in 1983.[30]

The UNESCO Convention proved to be a disappointment. There was "no enforcement mechanism or framework for how a claimant might be able to secure the return of cultural property," stolen or otherwise.[31] It is non-self-executing, so states do not have to adopt all the provisions contained within.[32] It was not created with private parties in mind (despite the relative proximity to World War II and claims by several private citizens for the return of their stolen property) and even the U.S. only applied it to state parties.[33] Perhaps its greatest shortcoming is the uneven distribution of rights between artifact-rich states (typically claimants) and artifact-purchasing states (typically possessors/defendants).[34] By ratifying the UNESCO Convention, artifact-purchasing states would be agreeing to allow suits to be filed in their courts using another state's criminal laws, and this is an unlikely outcome.[35] Even the U.S.'s incorporation of the UNESCO Convention conveniently left out this requirement. Instead, the U.S. forced all petitions to come through its government.[36] As discussed in the following section, the CPIA provided the next step towards honoring repatriation claims and holding thieves criminally responsible.

2. The CPIA

The CPIA is the implementing legislation in the United States for the UNESCO Convention property provision, providing that

> No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this chapter, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.[37]

Whereas in the past, it was easier to fudge provenance claims, the passage of the CPIA in 1983 allowed the U.S. to start stemming the flow of black market antiquities into museums such as the Getty, the Metropolitan Museum of Art (the Met), and the Museum of Fine Arts, Boston. If a possessor could not produce a valid export certificate for an item from a country party to the 1954 Hague Convention within ninety days, the item was subject "to seizure or forfeiture."[38] Such forfeited property would then be "offered for repatriation to the State Party from which the property was taken."[39] However, if the possessor acquired the item in good faith (such as when there is a clear chain of title to the cultural artifact), the state party would then have to pay the possessor fair compensation, unless there is a reciprocal arrangement with the U.S. waiving compensation claims.[40] Perhaps most notably, the CPIA establishes the Cultural Property Advisory Committee (CPAC), with eleven members serving three-year terms, appointed by the President:

> [T]wo members representing the interests of museums; [t]hree members who shall be experts in the fields of archaeology, anthropology, ethnology, or related areas; [t]hree members who shall be experts in the international sale of archaeological, ethnological, and other cultural property; [and t]hree members who shall represent the interest of the general public.[41]

The purpose of CPAC is to investigate the claims made by a state party and submit a report on the investigation to the President.[42] CPAC also provides advice on international agreements to implement the UNESCO Convention.[43]

The CPIA has its shortcomings. For example, the requirement that a state party would have to pay the possessor fair compensation if the article is acquired in good faith may put a strain on countries with small economies that cannot spare the funds to recover their cultural heritage.[44] Additionally, the CPIA created an exception for items of cultural property that have been in the U.S. for at least three years, in good faith, with publication, exhibition, or cataloguing of its presence.[45] The CPIA also allows requests made through the U.S. government (specifically, the President) for cultural patrimony claims, with no direct action.[46] Finally, the CPIA applies to objects (and fragments of such objects) that are of archaeological or ethnological significance. An item is of archaeological significance if it "is of cultural significance, is at least two hundred and fifty years old, and was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water."[47] This definition, however, exempts items from modern times that are equally culturally significant.[48] To redeem this defect, the CPIA also provides that an item is of ethnological significance if it is "the product of a tribal or nonindustrial society and important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people."[49] This provision was most likely added to prevent the pillaging of tribal and native societies throughout the Americas.[50]

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Thus, the CPIA provides a starting point in examining the interplay of the U.S. and UNESCO in the fight against art theft. Indeed the CPIA was perhaps the first major affirmative step in the U.S. towards establishing a standard for dealing with cultural property crimes. While the CPIA itself does not mention the prosecution of cultural property, the U.S. has prosecuted several individuals for art theft.[51] The body of international law continued to evolve; while there were several conventions[52] to protect cultural property in the intervening years (including the recognition of underwater cultural heritage and the need for its protection in the Convention on the Law of the Sea),[53] the next major development was the UNIDROIT Convention.

3. The UNIDROIT Convention

The UNIDROIT Convention applies to international claims for "the restitution of stolen cultural objects and the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage."[54] Its primary goals included "restitution of stolen cultural objects"[55] and the "return of illegally exported cultural objects."[56] UNIDROIT itself works to "reconcile the rights of good faith purchasers in art-purchasing nations and the need for protection of archaeological resources in artifact-rich nations."[57] It seeks to accomplish this goal by "encouraging artifact-rich nations to maintain catalogues of national collections, developing ties of friendship and cooperation among museums in different countries, working toward greater international recognition of national cultural property laws, and issuing a kind of identity card for documented cultural objects."[58]

The UNIDROIT Convention sets out guidelines for enforcement, specifying that the claim must be international in character.[59] It clearly states, "The possessor of a cultural object which has been stolen shall return it."[60] Cultural objects are defined as, "those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention."[61] This, obviously, is a much broader category than the "archaeological or ethnological" specification in the CPIA.[62] Under the UNIDROIT Convention, "[c]laims must be made within three years from the time the claimant discovers the location of the object and the identity of the possessor; however, all claims must be filed within fifty years of the time of the theft."[63] Like the CPIA, the UNIDROIT Convention also contains a good faith provision, wherein the claimant must provide reasonable compensation for the item if it was acquired in good faith.[64] Additionally, the UNIDROIT Convention provides for the return of illegally exported cultural property,

though it must do so through a court or similarly competent authority in the state where the property is held.[65] In particular, the possessor automatically defaults and must forfeit the item if there is no export permit (a sure sign that the item was purchased through the black market).[66]

The UNIDROIT Convention is also not a perfect solution for the U.S. Perhaps the biggest problem domestically is that it carries no force in the United States.[67] While the CPIA does offer several similar provisions, UNIDROIT provides more leeway for the claimant[68] and does not specify that the object must be older than two hundred and fifty years old,[69] and therefore can be considered more in line with the goals of the UNESCO Convention. Additionally, while the CPIA limits the cultural objects to those of "archaeological or ethnological" significance,[70] the UNIDROIT Convention has a much broader spectrum of protected items.[71] The CPIA, then, creates even more of a limit on culturally significant items, exempting such items as antiquities between a century and two hundred and fifty years old and certain property relating to history. However, the UNIDROIT Convention does not apply when "the export of a cultural object is no longer illegal at the time at which the return is requested or the object was exported during the lifetime of the person who created it or within a period of fifty years following the death of that person."[72] Ideally, in such a circumstance, domestic criminal law standards will apply; though the UNIDROIT Convention does not provide any clarity. As the UNIDROIT Convention is not in full force in the U.S., it merely serves as a guidepost and a possible affecter of domestic law.

B. The NSPA—Criminalizing an International Offense

The NSPA[73] is the major basis for criminal prosecution of cultural property theft in the United States. It was passed in 1934 as an extension of the National Motor Vehicle Act of 1919.[74] Section 2314 provides for prosecution of "[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud."[75] Section 2315 provides for prosecution of:

> Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken.[76]

Taken with the CPIA, the NSPA could be the standard by which patrimony claims are resolved and the international black market in antiquities shut down in the United States. To date, the NSPA has been the basis for almost all international art theft prosecutions in the United States.[77]

Yet the U.S. has repeatedly encountered problems in attempting to prosecute art thieves through the NSPA.[78] In particular, since the NSPA is a criminal statute, prosecutors must prove the "scienter" element to the crime, that is, the element of intent or knowledge of wrongdoing.[79]

Proving scienter is especially difficult due to the very nature of black markets themselves. From finder to possessor, the stolen item can pass through numerous hands, including very discreet dealers and auction houses.[80] The lack of procedural safeguards, or in many cases, the intentional disregard of those safeguards, leads to an inability to show "a legitimate chain of title," and the final purchaser is not always aware of the illegal nature of the item he or she has acquired.[81] Despite this setback, the NSPA has provided the basis for numerous claims and the evolution of domestic criminal law towards prosecuting individuals for the international crime of art theft.[82]

III. Game Change—How *Schultz* Created a New Legal Landscape

The NSPA and CPIA together spawned a line of cases that applied domestic criminal law to international offenses.[83] Due to the difficulty of establishing that an object is stolen, prosecutors have become adept at finding clever methods of bringing forth a successful case against a defendant, a la Al Capone.[84] This Part examines what led up to seminal case of *United States v. Schultz*,[85] the impact of *Schultz*, and briefly examines alternative methods employed by the U.S. government to prosecute art theft.

A. The Beginnings of Change

With the UNESCO Convention came a change in U.S. attitude towards stolen cultural property. No longer were provenance claims swept under the rug and patrimony claims ignored. In 1970, the U.S. realized that these crimes were of vast significance, in no small part due to an effort by archaeologists to preserve their dig sites which were long subject to looting.[86] As a result, a pair of cases[87] emerged in the 1970s that would set the standard for applying the NSPA to cases of stolen cultural property going forward.

The first such case is *United States v. Hollinshead*.[88] Hollinshead, an antiquities dealer specializing in pre-Columbian artifacts, financed a co-conspirator, Aramilla, to procure such artifacts.[89] The case particularly concerned one item, the Machaquila Stele 2, worth several thousand dollars.[90] The stele was "found in a Mayan ruin in . . . Guatemala, cut into pieces,"

brought to a man named Fell's fish packing plant in Belize, then marked as the "personal effects" to Hollinshead in Santa Fe Springs, California.[91] The stele traveled around the United States, settling in California with Hollinshead before he was arrested.[92] Overwhelming evidence showed that the defendants knew it was illegal to remove the stele from Guatemala under Guatemalan law, and further knew the stele was stolen.[93] The Ninth Circuit dismissed eight of the claims raised on appeal regarding evidentiary matters as lacking merit.[94] However, the court chose to examine the claim "that the court erroneously instructed the jury that there is a presumption that every person knows what the law forbids."[95] The district court judge defined the word "stolen" as used in Section 2314 of the NSPA[96] in his jury instructions as "acquired, or possessed, as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership."[97] While there was no objection at that time to the definition, there was an objection to the later jury instruction at question in this case.[98] Noting that the law in question was U.S. law, the government only needed to prove that the defendants knew the stele was stolen,[99] not from where it was stolen.[100] The court then drew the conclusion that the government did not need to prove "the law of the place of theft," reasoning Guatemalan law would only bear on this case insofar as the defendants' knowledge the stele was stolen.[101] The court stated that the jury instruction may have been in error, but not to a prejudicial extent.[102] By proving the defendants "brib[ed] officials and us[ed] false marks on the stele's packaging to smuggle it into the United States," the government established beyond a reasonable doubt that they knew the stele was stolen and they were smuggling it into the U.S. in violation of the NSPA.[103]

The second case involving the NSPA was *United States v. McClain*.[104] More so than *Hollinshead*, *McClain* was poised to send a real message to the art dealing community, holding profound implications for art dealers, who were never before criminally liable for their actions.[105] The defendants were "convicted by a jury of conspiring to transport, receive, and sell stolen pre-Columbian artifacts" in violation of the NSPA.[106] Joseph M. Rodriguez, one of the defendants, approached Adalina Zambrano of the Mexican Cultural Institute in San Antonio, Texas with a proposal to sell her various pre-Columbian artifacts.[107] Unfortunately for Rodriguez, the Institute was an official part of the Mexican government, thus presumably sealing the case against him for illegal importation.[108] The other four defendants were implicated in similar cases of attempting to sell stolen pre-Columbian artifacts.[109] The defendants did not deny they knew the objects were illegally imported, but claimed that because Mexico did not truly lay claim to all objects of cultural significance within its borders, found or unfound, until 1972, they could rightfully claim ownership of the items.[110] The contested jury instruction, which formed the basis for the Fifth Circuit's reversal, read that:

> [S]ince 1897 Mexican law has declared pre-Columbian artifacts recovered from the Republic of Mexico within its borders to be the property of the Republic of Mexico, except in instances where the Government of the Republic of Mexico has, by way of license or permit, granted permission to private persons or parties or others to receive and export in their possession such artifacts to other places or other countries.[111]

The court first recognized that Mexico has a similar right to make a claim under the NSPA as any state in the U.S.[112] The court then examined, as it did in *Hollinshead*, the trial judge's use of the word stolen in his jury instructions.[113] The court spent some time on this discussion before finally rejecting the defendants' argument that property owned by a foreign government, yet also capable of being privately owned through purchase or discovery, is not stolen for the purposes of the NSPA.[114] The court evaluated the 1897 Mexican Law on Archaeological Monuments, and found nothing to constitute a declaration of ownership by the state.[115] Similarly, it stated that the Mexican 1930 Law on the Protection and Conservation of Monuments and Natural Beauty "implicitly recognized the right to private ownership of monuments and expressly allowed monuments to be freely alienated, subject to the government's right of first refusal."[116] The court found that both the 1934 and 1970 laws allowed for private ownership of movables, even if they were of cultural value.[117] The 1972 law was the first instance the court found where the Mexican government asserted its rights to the cultural property in its borders.[118] Thus, the court held that "a declaration of national ownership is necessary before illegal exportation of an article can be considered theft, and the exported article 'stolen,' within the meaning of the [NSPA]."[119] The court went on to hold that "the state's power to regulate is not ownership."[120] Applying the court's logic, the following conditions show the item was stolen: (i) if the export was after 1972, the artifact may have been stolen (if it was "not legitimately in the seller's hands as a result of prior law"); (ii) if the export was before 1972 but after 1934, then one would need to show it "was found on or in an immovable archaeological monument;" and (iii) if the export was before 1934, then the object was not the property of the Mexican government, and so illegal exportation would subject the receiver to prosecution under the NSPA.[121] Since the jury was not informed, it had to determine when the objects were exported, then apply the relevant Mexican law, the convictions were reversed, and the case remanded.[122] Ultimately, *McClain* is about the distinction between "stolen" and "illegally exported" goods, which is the difference between a criminal and civil penalty.[123]

Hollinshead and *McClain* were not without their critics. Some argued that the U.S. had improperly enforced the penal laws and export regulations of other states.[124] Just as significantly, many detractors feared the decisions would bolster the black markets in art-purchasing nations.[125] Additionally, some were troubled by the application of the NSPA to cultural property theft in foreign countries,[126] though as the *McClain* court stated, "[I]t is not 'unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.'"[127] If *Hollinshead* and *McClain* were controversial decisions, *Schultz* would blow them out of the water.

If* Hollinshead *and* McClain *were controversial decisions,* Schultz *would blow them out of the water.

B. The Curious Case of *United States v. Schultz*

United States v. Schultz is the game changing moment in domestic case law, providing for the criminal prosecution of an art dealer, Frederick Schultz, who was "indicted on one count for conspiracy to receive stolen Egyptian antiquities that had been transported in violation of 18 U.S.C. § 371" conspiracy to commit offense or defraud the United States.[128] Schultz argued that the items he allegedly conspired to receive could not be stolen, as they were not owned by anybody.[129] The prosecution countered that the Egyptian government's patrimony law, Law 117, "declared all antiquities found in Egypt after 1983 to be the property of the Egyptian government.[130]

Jonathan Tokeley Parry, a British national, showed Schultz a photo of "an ancient sculpture of the head of Pharaoh Amenhotep III," and claimed he obtained the sculpture in Egypt from a building contractor via a middleman, Ali Farag.[131] To smuggle the sculpture out of Egypt, Parry coated it with plastic to make it appear like a cheap souvenir, then removed the plastic in England.[132] Schultz offered Parry a large amount of money to be the agent in the sale of the sculpture, which Parry agreed to, and the two subsequently established a false provenance for the item to better sell it.[133] When the men were unable to find a buyer, Schultz purchased the sculpture for $800,000, and later sold it to a private collector for $1.2 million.[134] By mid-1995, Robin Symes had acquired the sculpture and requested that Schultz provide him with further details as to the sculpture's origin, as the Egyptian government was pursuing it.[135]

Using the same method as with the Amenhotep sculpture, Parry and Schultz smuggled more items out of Egypt; they did this at least five more times from 1991-92, "under the false provenance of the Thomas Alcock Collection."[136] In June 1994, both Parry and Farag were arrested in Great Britain and Egypt, respectively, for dealing in stolen antiquities.[137] Though Parry was in custody, he and Schultz continued to talk, discussing the purchase and resale of ten limestone stele (inscribed slabs), though neither obtained them.[138] The court found Parry and Schultz's communications to be evidence that they were aware of the legal risk of their actions; the couple employed "'veiled terms,' code, or languages other than English" in their letters.[139] Schultz was found guilty on the sole count and was sentenced to thirty-three months imprisonment on June 11, 2002.[140] Interestingly, one can see the split in ideology between dealers/collectors and archaeologists/preservationists in the series of *amicus curiae* briefs submitted to the court.[141]

The first major issue the court tackled was the application of the NSPA to cases implicating patrimony laws.[142] Law 117, Egypt's patrimony law, enacted in 1983, required the registration and recording of all privately owned antiquities in Egypt, prohibited their removal from Egypt, and made the private ownership or possession of antiquities after 1983 illegal.[143] Parry and Schultz's scheme involved buying "newly unearthed antiquities at black market prices from tomb-raiders, building contractors, and corrupt Egyptian officials."[144] Law 117 attached criminal penalties to smuggling, theft, removal, counterfeiting, unlawful dispossession, and defacement of antiquities.[145] The Second Circuit flatly rejected Schultz's argument that Law 117 did not create an ownership right.[146] The court stated that Law 117 is directed towards both "activities within Egypt as well as the export of antiquities out of Egypt."[147] Though the Second Circuit believed Schultz violated Egyptian law, it still needed to determine whether Schultz violated the NSPA.[148] The court noted that the nationality of the owner of the stolen property has no impact under the NSPA.[149] Furthermore, the court cited its own argument in *United States v. Benson*,[150] which applied the NSPA to cases where the person from whom the property was stolen may not have been the true owner as the victim's title in the property may be irrelevant.[151] Schultz persisted on rejecting the Egyptian government's ownership claim by rejecting the holding in *McClain* and conflicting with U.S. policy, with the CPIA, and the common law definition of "stolen."[152] The court, in turn, agreed that the Fifth Circuit "found the proper balancing tests between" "stolen" and "illegally exported."[153] The court found that U.S. policy was irrelevant here as Law 117 is a true ownership law,[154] and cited the Senate Report on the CPIA for support of its finding that the law functions as a corollary to existing federal and state remedies, including theft

and smuggling laws.[155] Additionally, the court found Schultz's arguments concerning the common law definition of "stolen" to be unpersuasive.[156] Schultz raised an additional argument concerning mistake of U.S. law, as he was unaware that violations of Law 117 were subject to criminal penalties domestically under the NSPA, the court rejected his reasoning, noting that the NSPA does not include the term "willfully," and only requires knowledge that the goods were "stolen, unlawfully converted, or taken."[157] Schultz raised two additional claims: 1) regarding the "conscious avoidance" jury instruction,[158] and 2) the admittance of evidence by the state concerning other individuals' in the antiquities trade's personal knowledge of the Law 117 (including his former assistant).[159] The former was rejected as the instruction was accurate enough, and the latter was rejected on the grounds that the testimony was relevant.[160]

The primary holding from *Schultz* was that "the NSPA 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."[161] Furthermore, *Schultz* established what had long been suspected in the American legal system: the CPIA and the NSPA are not mutually exclusive.[162] In the aftermath of *Schultz*, museums began to change their attitudes towards looted antiquities.[163] The rule denying deliberate avoidance, a tactic long used by art dealers to trade items on the black market, also changed the game; now provenance would have to be established for a museum or collector to feel comfortable in its acquisition. Provenance was more clearly established and many museums voluntarily repatriated artifacts they found to be looted. The NSPA is not the only vehicle for criminal prosecution, however, and individuals who have attempted to get around it have found themselves subject to prosecution by more creative means.

C. Cleverness—Alternative Routes to Prosecution

While the NSPA provided the prosecutorial grounds for the majority of stolen art cases in the United States, including *Schultz*, this was not the only means to prosecution. This Part briefly discusses some of the alternate methods used to obtain a conviction in an international art theft case.

Since the NSPA applies to archaeological artifacts stolen from "nations with statutes vesting ownership of the objects in the state," it would not apply to a bona fide purchaser of the objects, who bought them in good faith, trusting their provenance.[164] Sometimes the prosecutor can bring a case under the NSPA when the scienter is less clear, such as in the case of Joe T. Meador, a soldier during World War II who stole the Quedlinburg treasures after the war and brought them home to Texas.[165] After he died, the German government discovered the family was trying to sell the treasures, and rather than pursue the prosecution, requested the U.S. government drop the case and instead reached a settlement for $2.75 million.[166] Another case, *Peru v. Johnson*,[167] showed the difficulty of establishing that artifacts were illegally excavated.[168] The case placed on the claimant a difficult standard of proof—that of the object's geographical origin—and may be the reason claimants found it so difficult to bring an NSPA case after *McClain* until *Schultz*.[169] However, in light of this limitation, the U.S. uses other means to prosecute art thieves; mail and wire fraud statutes, for example, were used in *Center Art Galleries-Hawaii Inc. v. United States*.[170] In *Snider v. Lone Star Art Trading Co.*,[171] a combination of individuals and corporation were held to be in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO) by misrepresenting the value of art plates in order to sell them.[172] Finally, in *United States v. Clack*,[173] the court convicted and fined the defendant $1,008,000 under both the NSPA and the Hobbs Act for "a series of burglaries and robberies of antique art, paintings, Oriental rugs, and jewelry."[174]

These cases show that while the NSPA was difficult to enforce in cases of art theft, it was still possible to use domestic statutes to obtain a conviction of forgers, defrauders, and thieves. *Schultz* reaffirmed the right of foreign states to their own cultural property. While this began the move towards fixing the inherent problems in the art trade, it would take one more case for the message to sink in.

IV. American Outlaws—The Getty's Game with the Black Market

The period from 1970 to 2003 saw a gradual shift in attitude towards recognizing patrimony claims and the need to establish provenance. The threat of criminal prosecution for international art theft hung heavily over the heads of dealers, museum directors, and private collectors. On the other side, archaeologists, researchers, and states cheered as they saw a victory in *Schultz*, a step towards ridding them of the plague of theft and destruction of their archaeological digs.

This was clearly not the end of the black market, however. Old guard American museums such as the Met and the Getty were loath to part with artifacts in their collections, whether or not the patrimony claims were legitimate.[175] This Section briefly examines the importation of stolen art to the Getty, as well as the subsequent trial of Marion True and its impact on the nature of museum acquisitions today. This Section relies entirely on the account of the case by Jason Felch and Ralph Frammolino in their book, *Chasing Aphrodite*,[176] as it is arguably the best and only authoritative source in English on this particular case.

A. Crime

The J. Paul Getty Museum in Malibu, California was initially conceived as a tax shelter for J. Paul Getty; a place

to store his art collection and receive a sizeable tax deduction in return.[177] The acquisition of art as a tax incentive later came back to haunt the Getty, but at that time, the collection was barely open to the public.[178] After Getty's death, he left the museum nearly $700 million in Getty Oil stock, which rapidly transformed the collection from the tax break of an oilman to "the richest art institution in the world."[179] The endowment in turn led to the Getty's first questionable acquisition, a bronze statue of an athlete later named "the Getty Bronze."[180]

The Getty, now the richest art museum, was also arguably the most entrenched museum in the illegal art trade.[181] Former antiquities curator, Jiri Frel, used the museum as a tax shelter for the Hollywood elite, establishing a scheme whereby he would have the rich and famous buy antiquities of all manner, including shards and smaller items, for a relatively low cost from a dealer.[182] He would then inflate the value of the item through his appraisal (initially by actual treatment and restoration of the item, later by the simple stroke of a pen) and had the owner donate the item to the museum for a massive tax write-off.[183] These acquisitions, however, were not the source of the Getty's ultimate troubles; those were the result of Marion True's actions during her stint as antiquities curator.[184]

In 1986, True began a business relationship with Robin Symes, a dealer, who introduced her to the source of True's downfall, a cult statue from a Greek temple, likely Aphrodite, at the cost of $24 million.[185] Meanwhile, True and John Walsh, the director of the Getty, drafted a memo stating, "We believe we should go beyond what is demanded by the law . . . and abide by the highest possible ethical standards in our collection policy."[186] The Aphrodite had a highly suspect provenance[187] and though the Getty requested information about the statue, the purchase was authorized a week before the Italian Ministry of Culture reported it had no information about the statue.[188] However, upon debuting the statue and receiving criticism from the Italian government, the Getty stated that it would return the statue if the Italians could mount a credible claim.[189] Further acquisitions were made of similar questionable provenance, yet by 1998, Marion True had emerged as a beacon of museum reform, calling for an end to the justifications for acquiring looted antiquities.[190] Meanwhile, the Italian police launched an investigation through the art squad of the Carabinieri, leading to the arrest of the dealer Giacomo Medici and in October 1999, a request for strict import quotas brought via the CPIA.[191] In her testimony in the CPIA hearing, True said that the "suggestions of some that it was better to have illicit antiquities on well-tended American shelves than to let the careless Italians keep them in dusty exhibits" was improper. American museums were equally careless.[192] However, the contents of Medici's warehouse were shipped to the Italian art police, which led to a rather devastating deposition of True.[193] This would prove to be the beginning of the end.

B. Punishment

The ruling in *Schultz* changed the face of museum acquisitions and made very real the threat of domestic criminal prosecution. Yet the Italian police wanted to fully impress upon American museums the consequences of illegal acquisitions, and end the practice once and for all.[194] Through the 2002 arrest of art dealer, Frieda Tchakos, the investigators learned about the donation of several looted items to the Getty, effectively a laundering scheme on par with Frel's.[195] The Italians established a case against Medici, True, and another art dealer they both worked with, Robert Hecht.[196]

Medici's trial began in December 2003; it was severed from the trials of his alleged co-conspirators.[197] Medici was found guilty in December 2004 for antiquities trafficking of objects looted from Italy.[198] Though True's preliminary hearing took a year and a half, she was ultimately indicted for trafficking looted antiquities on April 1, 2005 and ordered to stand trial in Rome.[199] The Getty announced her "retirement" on October 1, 2005.[200] By 2007, the Getty returned forty-six artifacts including the Aphrodite (though not the Getty Bronze), purchased over thirty years, worth nearly $40 million dollars.[201] Meanwhile, True had been protesting her innocence, but it was too late.[202] The criminal case in Italy continued; however, the prosecutor stated he had no intention of putting her in jail, and offered a speedy conclusion provided True admit her wrongdoing.[203] She was simultaneously facing a criminal trial in Greece time for similar charges, though the Greek government dropped the case after the statute of limitations expired in November 2007.[204] True's criminal trial in Italy was finally dismissed without verdict in October 2010, when the statute of limitations expired on those criminal charges.[205]

The trial of Marion True in a foreign court was the final straw that broke down the old guard and led to a new wave of museum acquisitions. The Italian prosecutor stated that "[h]is goal had been to change the behavior of American museums, and that battle had been won . . . . Marion True had been collateral damage, a means to an end."[206] This rather drastic outcome did, however, lead to the steady repatriation of cultural artifacts from museums in the U.S. to Italy and Greece, which culminated, in the Getty's case, with the shipment of the Aphrodite—which may not have been Aphrodite at all[207]—back to Italy in December 2010 where it remains in a museum outside the ruins of Morgantina, where it was first stolen.[208]

V. Conclusion

The world of antiquities acquisitions has changed. Art theft has by no means diminished;[209] however, now it has a diminished role in the United States.[210] While some have protested

this cultural shift,[211] it has largely been accepted by American museums.[212] The combination of the NSPA, the CPIA, *Schultz*, and the trial of Marion True have sent the sternest possible message to museums, dealers, and private collectors of antiquities in the U.S.: art theft is not tolerated in this country. The black market in looted treasures will persist, as it always has, but for now, the major museums in the U.S. are backing away and choosing instead to display valuable artifacts from other countries via long-term loans.

Of course, the U.S. is not the only major art-purchasing nation. The U.K., France, Belgium, the Netherlands, Japan, Canada, and China all have purchased objects of questionable provenance, or otherwise acquired them through looting in imperial times.[213] The change in the U.S. is important; it shows that Americans are capable of respecting the international community and its history. However, this does not change the controversy over the Elgin marbles, still in the British Museum, or the hundreds of sculptures in the Louvre still subject to patrimony claims. While domestic criminal law has worked in the United States by punishing offenders and recognizing the problem of stolen art, selling stolen artifacts on the black market remains as good a source of income today as it was for the crew of the *Ferrucio Ferri* when they discovered the Getty Bronze. Hope can be found in the words of J. Paul Getty,

> To me my works of art are all vividly alive. They're the embodiment of whoever created them—a mirror of their creator's hopes, dreams and frustrations….They have led eventful lives—pampered by the aristocracy and pillaged by revolution, courted with ardour and cold-bloodedly abandoned. They have been honored by drawing rooms and humbled by attics. So many worlds in their lifespan, yet all were transitory. What stories they could tell, what sights they must have seen! Their worlds have long since disintegrated, yet they live on.[214]

By preserving provenance, we preserve our shared history, keeping the story true and giving these precious and historic works of art new life, a more priceless undertaking than profit. The black market in looted antiquities will continue until such a time as both art-purchasing and especially art-rich countries recognize their shared responsibility in protecting the world's cultural heritage from the dangers of looting, and preserve them for posterity so that future generations can understand their history.

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[1] An Egyptian papyrus from 1100 B.C., now ironically in the British Museum, provided the details of the trials of robbers attempting to steal from the pharaohs' tombs. *The Abbott Papyrus*, The British Museum, http://www.britishmuseum.org/explore/highlights/highlight_objects/aes/t/the_abbott_papyrus.aspx (last visited Feb. 8, 2011) (noting tomb robberies as early as 1126 BC). Before the colonially justified looting of ancient sites, one could readily find examples of conquerors taking the spoils of war in the form of art and other aesthetically pleasing items. *See* Jason Felch & Ralph Frammolino, Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum 1-3 (2011) (noting acts of pillaging by the Roman, Spanish, French, and British empires). However, colonialism led to perhaps one of the most famous cases of looting: the taking of the friezes from the Parthenon in Greece (now called the Elgin marbles) and their subsequent removal to Britain, where they are on display in the British Museum today, by Thomas Bruce, Seventh Earl of Elgin, also known as Lord Elgin. *See id*. at 2-3 (describing the British Parliament's condemnation of Elgin's acts). The debate over ownership is ongoing, and in part has become an argument of preservation versus repatriation. *See*, *e.g.* Lisa J. Borodkin, Note, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 Colum. L. Rev. 377, 409 (1995) (addressing the apologists' view that the Elgin marbles are better preserved in the British Museum than their companion fragments at the Acropolis due to the air pollution of Athens); Christine L. Green, Comment, *Antiquities Trafficking in Modern Times: How Italian Skullduggery Will Affect United States Museums*, 14 Vill. Sports & Ent. L.J. 35, 35 (2007) (noting that Greece has requested the return of the Elgin marbles).

[2] The Roman lawyer Cicero argued against the kleptomaniacal tendencies of the Sicilian governor, Gaius Verres, in 70 B.C., saying his ransacking of both public and private properties was "what Verres called his passion; what his friends call his disease, his madness; what the Sicilians call his rapine." Felch & Frammolino, *supra* note 1, at 2. Similarly, when Lord Byron found out about Lord Elgin's removal of the Elgin marbles, he referred to him as a "spoiler" worse than "Turk and Goth" in his poem, "The Curse of Minerva." *Id.* at 3.

[3] *See id.* at 3 (noting the rise of "encyclopedic museums" in Britain, the United States, and France).

[4] *See* Clemency Coggins, *Archeology and the Art Market*, 175 Sci. 263, 263 (1972) (discussing the destructive tendencies of the international antiquities market, in particular noting the shift in attention in the 1970's to "Southeast Asia, India, and the pre-Columbian cultures of Mexico, Guatemala, and Peru.").

[5] *See* Borodkin, *supra* note 1, at 377 (stating that the illegal art trade, valued between three and six billion dollars in the mid-1990s, is larger than any other area of international crime except narcotics and arms trafficking); *see also*, Felch & Frammolino, *supra* note 1, at 2 (discussing the multi-billion dollar market in antiquities trafficking in the context of the J. Paul Getty Museum).

[6] United States v. Schultz, 333 F.3d 393, X416 (2d Cir. 2003) (concluding that the National Stolen Property Act applied to property that is stolen from a foreign government if that government asserts ownership to that property pursuant to a patrimony law).

[7] *See generally*, Felch & Frammolino, *supra* note 1 at 74 (writing about the circumstances preceding and surrounding the trial of Marion True, antiquities curator at the Getty).

[8] *Id.* at 53 (noting that a disregard of formalities places the museum in potential harm).

[9] *See* Felch & Frammolino, *supra* note 1, at 2-3 (recounting the condemnation of looting from ancient Rome to the UNESCO convention in 1970).

[10] *See* M. Cherif Bassiouni, *Reflections on Criminal Jurisdiction in International Protection of Cultural Property*, 10 Syracuse J. Int'l & Com. 281, 289 (1983) (arguing that the protection of cultural property is inherent in different international agreement provisions).

[11] Article 56 of the 1899 Hague Regulations states, in relevant part,

> The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property . . . . All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments,

works of art or science, is prohibited, and should be made the subject of proceedings.

Laws and Customs of Wars on Land, art. 56, The Hague, July 29, 1899, 1 Bevans 247, 261. Article 56 of the 1907 Hague Regulations states, in relevant part,

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful [sic] damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

Laws and Customs of Wars on Land, art. 56, The Hague, Oct. 18, 1907, 1 Bevans 631, 653. There are two notable differences. The first is the shift from "communes" in the 1899 Regulations to "municipalities" in the 1907 Regulations, which was likely related to the change in the political character states from monarchies to republics, the former feudal system allowing unorganized villages, while the latter republican system called for representation, thus organization in the communities. The second is the change from "proceedings" to "legal proceedings," showing that mere formalities were not enough, and that the full force of law would be brought against destroyers of cultural property.

[12] Germany was required to return to France the "trophies, archives, historical souvenirs or works of art carried away from France during the war of 1870-1871," commonly known as the Franco-Prussian War. Treaty of Peace with Germany, art. 245, June 28, 1919, 2 Bevans 43, 157-158. Additionally, Germany returned the "original Koran of the Caliph Othman" to the King of the Hedjaz, the "skull of the Sultan Mkwawa" to the British, and several documents to the University of Louvain in Belgium to compensate for burning the Library of Louvain, among other items. *Id.* at 158. The skull was removed from German East Africa, so may have been a treaty-validated cultural acquisition by the British. *Id.* Germany was also required to return two triptychs— one of the Mystic Lamb by the Van Eyck brothers and the other of the Last Supper by Dierick Bouts, both of which were in Belgian churches in Ghent and Louvain respectively. *Id.* Interestingly, this was not the last time the Mystic Lamb was stolen, and while it was finally returned to Belgium after World War II, it is arguably one of the most stolen pieces of art in history. *See generally* Noah Charney , Stealing the Mystic Lamb: The True Story of the World's Most Coveted Masterpiece (2010) (stating that the Mystic Lamb has been stolen six times, and has been the subject of thirteen crimes overall over six centuries).

[13] *See generally* Lynn H. Nicholas, The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War 18, 25 (1994) (discussing the looting and destruction of Europe's cultural treasures during the height of Hitler and Göring's campaign to acquire the great works of art in the continent, as well as the subsequent work by the American Monuments officers to retrieve them).

[14] The term "art theft" is used generally throughout this paper to refer to the theft of cultural property.

[15] *See* Constitution of the United Nations Educational, Scientific and Cultural Organization, UNESCO, Nov. 16, 1945, 3 Bevans 1311, 1311 (listing the dates of completion, acceptance, and implementation of the UNESCO constitution).

[16] *See* Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, May 14, 1954, 249 U.N.T.S. 215, 215 [hereinafter 1954 Hague Convention].

[17] *See id.* at 242, 256 (applying cultural property protections in a non-international armed conflict).

[18] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, Mar. 26, 1999, 38 I.L.M. 769 [hereinafter Second Protocol].

[19] *See generally* 1954 Hague ConventionNEEDthe World Problem of Illicition] on Stolen or Illegally Exported Cultural Objects: An Answer to the World Problem of Illicit, *supra* note 16 (setting forth the protocol for the protection of cultural property in the event of an armed conflict); Second Protocol, *supra* note 18 (noting the need to *improve* the protection of cultural property in the event of an armed conflict).

[20] *See generally* UNESCO Convention, *infra* note 24, at 236 (requiring the parties to the Convention to oppose the illicit import of stolen property by passing appropriate legislation and to make any necessary reparations).

[21] *See* 18 U.S.C. § 2314 (2006) (prescribing punishments for individuals who are involved in the transportation of stolen goods).

[22] From the late 1970s through 1988, looters were known to steal objects from the Princeton archaeological dig at Morgantina, Sicily. *See* Felch & Frammolino, *supra* note 1, at 97-98; *see also* Leah E. Eisen, Commentary, *The Missing Piece: A Discussion of Theft, Statutes of Limitations, and Title Disputes in the Art World*, 81 J. Crim. L. & Criminology 1067, 1069-70 (1991) ("The rapid growth of the illicit trafficking of art, combined with the ineffectiveness of both unilateral and multilateral attempts to protect cultural property, leaves art owners in a precarious position. Once art objects are stolen, owners often have no other alternative but to wait for their property to resurface on the art market.").

[23] *See* Borodkin, *supra* note 1, at note 8 (1995) (citing *Collectors or Looters?* Economist at 117, 118 (1987) which argues that "Americans routinely receive mandatory prison sentences for possession and sale of narcotics. By contrast, a typical punishment for smuggling archaeological artifacts is a fine, a suspended sentence, and community service."); *see also id*., at note 9 (citing Deborah Pugh et al., *The Greed That Is Tearing History Out By Its Roots*, Guardian at 13 (1992) (noting that antiquities trafficking in Peru is almost as profitable as the cocaine trade but with fewer risks).

[24] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO, Nov. 14, 1970, 823 U.N.T.S. 231, 231 [hereinafter UNESCO Convention].

[25] Convention on the International Return of Stolen or Illegally Exported Cultural Objects, UNIDROIT, June 24, 1995, 34 I.L.M. 1326, 1331 [hereinafter UNIDROIT Convention] (providing for "the restitution of stolen cultural objects" and for "the return of cultural objects removed from the territory . . . contrary to its laws concerning regulating the export of cultural objects").

[26] Borodkin, *supra* note 1, at 388.

[27] Protected items include: (a) [r]are collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments. UNESCO Convention, *supra* note 24, at 234-36.

[28] Borodkin, *supra* note 1, at 388-89 (explaining that aggrieved member nations have standing to bring lawsuits in the jurisdictions of other member nations). This provision clearly flies in the face of sovereignty, and seems to serve more as a proactive measure to encourage states to root out illegal importers and the black market in their borders.

[29] *See id.* at 389 (noting further that the UNESCO Convention is a means to provide remedies).

[30] *See id.* (noting that Canada was another major art-importer that ratified the agreement). *But see id.* (stating that "the major art-purchasing nations of England, Switzerland, Germany, Japan, the Netherlands, and France have not ratified the agreement."). *Contra* Eisen, *supra* note 22, at 1069 n.15, n.16 (further noting that Canada is the only art-purchasing state left party to the UNESCO Convention, as the U.S. left in 1984, claiming UNESCO was mismanaged, moving to the left, targeting the U.S. as a result, and becoming a forum for non-aligned and Eastern Bloc nations).

[31] Gillian Flynn, *The Recovery of Stolen Property in the State of Maryland*, 38 U. Balt. L.F. 103, 106 (2008).

[32] *See id.* (explaining that each country only had to adopt "those provisions consistent with that nation's laws.").

[33] *Id.*; *see also* discussion *infra* Part I.A.2 (discussing the CPIA).

[34] *See* Borodkin, *supra* note 1, at 389 (discussing how transaction costs create relative disadvantage for artifact-purchasing states).

[35] *See id.* (discussing the tendency of art-purchasing countries to decline to ratify the agreement).

[36] *See* discussion *infra* Part I.A.2 (discussing the American system of filing a CPIA claim).

[37] 19 U.S.C. § 2607 (2006).

[38] Flynn, *supra* note 31, at 110.

[39] *See id.* (citing § 2609).

[40] § 2609(c).

[41] § 2605(a)-(b).

[42] *See* § 2605(f) (detailing the duties of the Committee charged with investigating claims made by a State Party under § 2602(a)).

[43] *Id.* (outlining the Committee's duties when an agreement is proposed by the president or when there is an emergency condition under § 2603).

[44] *See* Flynn, *supra* note 31, at 111 (arguing that the good faith provision may discourage countries with limited funds from bringing claims against good-faith possessors).

[45] § 2611(2) (listing requirements for exemption from § 2611).

[46] § 2602(3) (outlining when the President may enter into agreements to implement article 9 of the Convention).

[47] § 2601(2)(C)(i).

[48] Currently, in 2012, two hundred and fifty years ago was the year 1762. The CPIA, as a result, does not currently apply to any items from the American Revolution, steamboats (invented in 1776), original copies of Thomas Paine's *Rights of Man* (written in 1791), the original score to Mozart's *The Magic Flute*, as well as items from the Industrial Revolution, the Napoleonic Wars, the Edo and Meiji periods in Japan and the Qing Dynasty in China. Obviously, the CPIA is not meant to encourage art theft, but certainly there are items from these periods, which if they were in the U.S., their home countries would wish returned. Thomas Paine, Rights of Man (1791), *reprinted in* Thomas Paine: Rights of Man, Common Sense, and Other Political Writings 86 (Mark Philp ed., 1995); *The Magic Flute* (composed in 1788), Wolfgang Amadeus Mozart, Die Zauberflöte (The Magic Flute) (EMI Classics 1950) (1788).

[49] § 2601(2)(C)(ii).

[50] *See generally* Coggins, *Archeology, supra* note 4, at 264 (addressing the pillaging of native artifacts from pre-Columbian cultures).

[51] *See* discussion *infra* Part I.B (discussing the NSPA, which allows for criminal prosecution in stolen property cases).

[52] *See e.g.*, European Convention on Offences Relating to Cultural Property, June 23, 1985, 25 I.L.M. 44, 45 (1986) (addressing the need to protect cultural property and provide a means of restitution for stolen cultural property).

[53] *See* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, 450, 517 (requiring the preservation of all archaeological and historical artifacts found in the sea).

[54] UNIDROIT Convention, *supra* note 26, at 1331. UNIDROIT drafted this convention in response to a request by UNESCO to harmonize member states' cultural property laws. *See* Flynn, *supra* note 32, at 106-07 (describing the events leading up to the Convention on Stolen or Illegally Exported Cultural Objects in 1995).

[55] UNIDROIT Convention, *supra* note 25, at 1331-32 (detailing the process of restitution and setting forth the responsibilities of the illegal possessor as well as the rights of the aggrieved party).

[56] *Id.* at 1332-34 (detailing how a State may request the return of stolen cultural property).

[57] Borodkin, *supra* note 1, at 390.

[58] *Id.*

[59] *See* discussion *supra* Part I.A.3 (noting that the UNIDROIT Convention applies to international claim).

[60] UNIDROIT Convention, *supra* note 25, at 1331 (reinforcing the emphasis the Convention placed on ensuring the restitution of stolen cultural objects).

[61] *Id.* (defining the scope of application).

[62] *See* discussion *supra* Part I.A.2 (discussing the use of the terms "archaeological and ethnological" in the CPIA).

[63] Flynn, *supra* note 31, at 107 (explaining that "the Convention applies the discovery rule to the tolling of the statute of limitations."). There is an exception when the item has been removed from an identified monument or archaeological site, or belongs to a public collection. *Id.*

[64] *See* UNIDROIT Convention, *supra* note 25, at 1333 (explaining that for compensation to be paid the "possessor neither knew nor ought reasonably to have known . . . that the object had been illegally exported.").

[65] Flynn, *supra* note 31, at 108 (explaining that a State may request the return of cultural property even if it was not actually stolen).

[66] *See id.* (noting that the lack of a permit erodes the defendant's claim of lack of notice as to the legality of the item's exportation).

[67] *See* Claudia Fox, Note, *The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects: An Answer to the World Problem of Illicit Trade in Cultural Property*, 9 Am. U. J. Int'l L. & Pol'y 225, 250 (1993) (discussing how parent legislation to the UNIDROIT Convention in the United States restricted imports and emergency application of the Convention).

[68] *See* UNIDROIT Convention, *supra* note 25, at 1332 (stating that "[t]he possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.").

[69] *See supra* note 48 (discussing the practical effect of the age cutoff in the CPIA).

[70] *See* discussion *supra* Part I.A.2 (discussing the use of the terms "archaeological and ethnological" in the CPIA).

[71] The UNIDROIT Convention covers the same items as the UNESCO Convention. *See generally* sources cited *supra* notes 24-25 (discussing the prohibition of illegally importing or stolen cultural objects and providing for the return of such objects to their home state).

[72] UNIDROIT Convention, *supra* note 25, at 1334 (setting forth the general exceptions of the chapter). *But see id.* (declining to apply the provision exempting "export during the lifetime of the [creator] or within a period of fifty years following" that person's death when the "cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community" and ensuring the object's return in that circumstance).

[73] 18 U.S.C. §§ 2314-15 (2006).

[74] *See* Jennifer Anglim Kreder, *The Choice Between Civil and Criminal Remedies in Stolen Art Litigation*, 38 Vand. J. Transnat'l L. 1199, 1206 (2005) (discussing the history of the NSPA).

[75] *See* § 2314 (providing a fine and/or imprisonment for no more than ten years for someone found guilty of violating the section).

[76] *See* § 2315 (providing a fine and/or imprisonment for no more than ten years for someone found guilty of violating the section).

[77] *See* Kreder, *supra* note 74, at 1206 (discussing the bases of prosecution for international art theft in the United States).

[78] *See* Eisen, *supra* note 22, at 1068 n.14 (explaining that the lack of success is due in part because the property must fall within the United States' narrow definition of the word stolen).

[79] Kreder, *supra* note 74, at 1206 (noting that the government must show that the violation was intentional).

[80] *See id.* at 1207 (noting that "dealers and auction houses take very few measures to verify the provenance of the artwork.") (quoting Claudia Fox, Note, *The UNDROIT Convention on Stolen or Illegally Exported Cultural Objects: An Answer to the World Problem of Illicit Trade in Cultural Property*, 9 Am. U. J. Int'l L. & Pol'y 225, 233 (1993)).

[81] *Id*. *See generally* Felch & Frammolino, *supra* note 1, at 17-25 (discussing the acquisition of numerous pieces by the Getty through often questionable provenance claims, ultimately leading to the prosecution of Marion True in Italy).

[82] *See e.g.*, United States v. Hollinshead, 495 F.2d 1154, 1155 (9th Cir. 1974) (applying the NSPA to the transportation of stolen goods from Central America to the United States); United States v. Schultz, 333 F.3d 393, 409 (2d Cir. 2003) (clarifying the roles of the NSPA and CPIA in domestic enforcement of cultural property patrimony claims in a criminal theft claim).

[83] *Schultz*, 333 F.3d at 409.

[84] *See* Borodkin, *supra* note 1, at 396 (noting that "[f]ederal mail fraud, wire fraud, credit card fraud, and tax fraud provisions, as well as unifying criminal conspiracy laws have occasionally been employed in the art context.").

[85] *Schultz*, 333 F.3d at 410 (concluding that NSPA "applies to property that is stolen in violation of a foreign patrimony law" and that "CPIA is not the exclusive means of dealing with stolen artifacts and antiquities.").

[86] *See* Clemency Coggins, *Illicit Traffic of Pre-Columbian Antiquities*, 29 Art Journal 94, 94 (1969) (noting the destruction of digs and cultural sites in Guatemala and Mexico as part of the quest for fuel to feed the art market).

[87] United States v. Hollinshead, 495 F.2d 1154, 1154 (9th Cir. 1974); United States v. McClain, 545 F.2d 988, 992 (5th Cir. 1977) (reversing defendants' conviction for conspiracy to violate the NSPA).

[88] *Hollinshead*, 495 F.2d at 1154.

[89] *Id.* at 1155.

[90] *Id.* (noting that the stele was a very rare item).

[91] *See id.* (describing the use of bribes to Guatemalan officers to ensure the package was exported without any hassle).

[92] *See id.* (noting that Fell and Dwyer, another conspirator, stele traveled from "Decatur, Georgia, to New York City, to Wisconsin and to Raleigh, North Carolina" before winding up with Hollinshead, who attempted to sell it).

[93] *See* United States v. Hollinshead, 495 F.2d 1154, 1155-56 (9th Cir. 1974) (noting that "[i]t would have been astonishing if the jury had found that they did not know the stele was stolen.").

[94] *Id.* at 1155 (dismissing claims relating to the sufficiency of the evidence).

[95] *Id.*

[96] *See* 18 U.S.C. § 2314 (2006) (concerning transportation of stolen items).

[97] *Hollinshead*, 495 F.2d at 1156 (quoting the judge's jury instruction).

[98] *Id.* (objecting to the instruction that the jury "must find beyond a reasonable doubt that appellants knew the stele was stolen).

[99] *See id.* (citing McAbee v. United States, 434 F.2d 361, 362 (9th Cir. 1970)).

[100] *See id.* (citing Pugliano v. United States, 348 F.2d 902, 903 (1st Cir. 1965)).

[101] *Id.*

[102] United States v. Hollinshead, 495 F.2d 1154, 1156 (9th Cir. 1974) (noting that the court felt it was unlikely the jury questioned the instruction insofar as it referenced Guatemalan law).

[103] Kreder, *supra* note 74, at 1208. Interestingly, this case began as a civil suit brought by the Guatemalan government, which was dropped when the U.S. attorney began criminal proceedings. *Id.*

[104] United States v. McClain, 545 F.2d 988, 988 (5th Cir. 1977).

[105] The *amicus curiae* brief from the American Association of Dealers in Ancient, Oriental, and Primitive Art stated that "merely by dealing in art work that have originated albeit many years earlier in countries whose laws include broad declarations of national ownership in art, [dealers] will be open to charges of receiving and transporting stolen property in violation of federal criminal law." *McClain*, 545 F.2d at 991. While the brief also argued for the public's right to view art in the United States, clearly the bigger fear was criminal prosecution of dealers, museum directors, and private collectors for failing to establish the provenance of works in their collections. *Id.*

[106] *McClain,* 545 F.2d at 992.

[107] *Id*. at 992-93.

[108] *See id*. at 993 (stating that Zambrano was able to identify through photographs several of the items Rodriguez had shown her).

[109] *See id.* (stating defendants Simpson and Bradshaw attempted to sell artifacts they knew were stolen to McGauley and an informer).

[110] *See* United States v. McClain, 545 F.2d 988, 993 (5th Cir. 1977) (discussing Dr. Gertz's testimony that Mexico's laws have protected its cultural heritage since 1897, including registration and export permit requirements established in 1934, through which only fifty to seventy permits have been issued. The defendants did not register their artifacts or obtain export permits).

[111] *Id.* at 994.

[112] *See id.* (noting that 18 U.S.C.§§ 2314, 2315 (2006) refer to both interstate commerce and foreign commerce).

[113] *See id.* at 993-94 ("[S]tolen means acquired or possessed as a result of some wrongful or dishonest act of taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the benefits of ownership and use.").

[114] *See id.* at 997 ("[W]e cannot say that the intent of any statute, treaty, or general policy of encouraging the importation of art more than 100 years old was to narrow the National Stolen Property Act so as to make it inapplicable to art objects or artifacts declared to be the property of another country and illegally imported into this country.").

[115] *See id.* at 997-98 (noting that the l897 law did intend to declare archaeological monuments were property of the state but distinguished antiquities and other movable objects).

[116] *See* United States v. McClain, 545 F.2d 988, 998 (5th Cir. 1977) (describing that nothing in the 1930 law contained a declaration of ownership by the government).

[117] *See id.* at 998-99 (explaining that governmental ownership was limited to "artifacts found in or on immovable monuments").

[118] *See id.* at 1000 (noting that only after the effective date of the 1972 law would the Mexican government have had ownership of the artifacts in question).

[119] *Id.* at 1000-01. Notably, the court argues,

If . . . an object were considered 'stolen' merely because it was illegally exported, the meaning of the term 'stolen' would be stretched beyond its conventional meaning. Although 'stealing' is not a term of art, it is also not a word bereft of meaning. It should not be expanded at the government's will beyond the connotation—depriving an *owner* of its rights in property—conventionally called to mind.

Id. at 1002. This is a fine point to make, though not one without meaning, as it effectively separates the customs violation of illegal export with outright theft, as someone could theoretically violate a country's export laws while

maintaining full title to the property that was exported. Essentially, the court is trying to distinguish between ownership and possession to ensure that criminal penalties are not imposed when they are not required. United States v. McClain, 545 F.2d 988, 1002 (5th Cir. 1977).

[120] *Id.* at 1002.

[121] *Id.* at 1003 (providing a summary of the court's conclusions).

[122] *See id.* (noting that the jury was the only body who could properly determine when the object was exported; holding otherwise would violate the defendants' right to a trial by jury).

[123] *Contra* Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 350-51 (1982) (arguing that *McClain* erodes the distinction between "stolen" and "illegally exported." Bator states, "A blanket legislative declaration of state ownership of all antiquities, discovered and undiscovered, without more, is an abstraction—it makes little difference in the real world. Yet *McClain* gives this abstraction dramatic weight: Illegal export, after the adoption of the declaration, suddenly becomes 'theft.' The exporting country, without affecting any real changes at home, can thus invoke the criminal legislation of the United States to help enforce its export rules by simply waving a magic wand and promulgating this meta-physical declaration of ownership.").

[124] *See* Kreder, *supra* note 74, at 1211 (noting some of the criticism of the *Hollinshead* and *McClain* decisions).

[125] *See id.* at 1212 (stating that enforcement of "foreign law criminalizing the export of any and all artifacts, rather than . . . a narrower class of objects, would generate a black market in 'art hungry' nations."); *see also* United States v. An Antique Platter of Gold, 184 F.3d 131, 134 (2d Cir. 1999) (stating that *McClain* adopted a broad definition of property under the NSPA, but declining to address the issue).

[126] *See* Kreder, *supra* note 74, at 1212 (noting that many believed the NSPA to apply to domestic organized crime among the several states, rather than international crime).

[127] *See* United States v. McClain, 545 F.2d, 988, 1002 n.30 (citing Boyce Motor Lines v. United States, 342 U.S. 337, 340 (1952)).

[128] *See* United States v. Schultz, 333 F.3d 393, 395 (2d Cir. 2003) (noting the underlying offense was a violation of the NSPA under 18 U.S.C. § 2315).

[129] *Id.* at 396 (arguing that the items were not stolen within the meaning of the NSPA).

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *See id.* (noting the culprits claimed one of Parry's relatives brought the sculpture from Egypt in the 1920s and kept it in a private collection, the "Thomas Alcock Collection," since that time).

[134] United States v. Schultz, 333 F.3d 393, 396 (2d Cir. 2003)

[135] *See id.* (noting that Schultz requested information on the Egyptian claim, but did not provide additional information on the sculpture's provenance).

[136] *Id.* at 396. Some of the items brought out of Egypt may have been fakes, including a sculpture of Meryet Anum, a daughter of Pharaoh Ramses II, and a sculpture Parry called "The Offeror." *Id.* at 396-97. The Offeror was confiscated from Parry by British authorities, and although Schultz faked an invoice to show it was his, he was unable to reclaim it. *Id.* at 397. Parry and Farag were eventually able to bribe corrupt Egyptian antiquities police officers, paying off some of their debts in exchange for antiquities in police possession, including one item that still had a partial Egyptian government registry number, despite Parry's attempts to remove it. United States v. Schultz, 333 F.3d 393, 397 (2d Cir. 2003). The final item noted is "a limestone sculpture of a striding figure," named "George," obtained from Egyptian villagers. *Id.* at 397. The men used the same Thomas Alcock Collection scheme to try to sell it, but when Schultz could not sell it in New York, it was sent to Switzerland, where Parry was not able to retrieve it for reasons that remain unclear. *Id.* at 397.

[137] *Id.* at 397-98 (noting that both men were charged with dealing in stolen antiquities).

[138] *Id.* at 398 (detailing Parry and Schultz's plans to make additional acquisitions even after Parry's arrest).

[139] United States v. Schultz, 333 F.3d 393, 398 (2d Cir. 2003).

[140] *Id.* (noting that Schultz received a thirty-three-month imprisonment for his conviction).

[141] *Id.* Pro-Schultz briefs were from parties such as The National Association of Dealers in Ancient, Oriental & Primitive Art, Inc., The Art Dealers Association of America, and The American Society of Appraisers. Briefs that opposed Schultz included parties such as The American Anthropological Association, The Society for American Archaeology, and the Archaeological Institute of America. *Id.*

[142] *Id.*

[143] United States v. Schultz, 333 F.3d 393, 395 (2d Cir. 2003). Indeed, Article 7 of Law 117 outlaws the trade in Egyptian antiquities outright. *Id.* at 399.

[144] *See* Kreder, *supra* note 74, at 1213 (explaining that Parry and Schultz "needed the objects to be from an unpublished tomb, so that the Egyptian Government could not identify them as having been removed from Egypt in the recent past.").

[145] *See* Schultz, 333 F.3d at 400 (noting the maximum criminal penalty is for smuggling, requiring a fine between 5,000 and 50,000 pounds and a prison sentence with hard labor; the minimum criminal penalty is for defacement, imposing a prison term of three to twelve months and/or a fine of 100 to 500 pounds).

[146] *Id.* at 398-403. The court relied on the opinions of Dr. Gaballa Ali Gaballa, Secretary General of Egypt's Supreme Council of Antiquities, who clearly stated that the Egyptian government owns all newly discovered antiquities, and several people had been prosecuted within Egypt from violating Law 117 (where the violations were entirely within Egypt). *Id.* at 400-01. The court also heard from General Ali El Sobky, the Director of Criminal Investigations for the Egyptian Antiquities Police, who stated that most cases concern antiquities trafficking within Egypt, and even in the case of acquittal, the item is retained by the Egyptian government. *Id.* at 401. *Contra id.* at 401 (citing UCLA Law Professor Khaled Abou El Fadl's testimony that Law 117 never established Egypt's clear ownership rights, though he admittedly never practiced in Egypt).

[147] United States v. Schultz, 333 F.3d 393, 402 (2d Cir. 2003) (concluding that Law 117 was "clear and unambiguous").

[148] *See id.* at 399 (stating that the object still must fall within the NSPA's definition of "stolen").

[149] *See id.* at 402 (citing United States v. Frazier, 584 F.2d 790, 794 (6th Cir. 1978)).

[150] United States v. Benson, 548 F.2d 42, 46 (2d Cir. 1977).

[151] *See Schultz*, 333 F.3d at 402 (citing *Benson*, *supra* note 150, at 46).

[152] *Id.* at 403 (summarizing Shultz's argument that the holding in McClain should be rejected "based on current Second Circuit precedent . . ."). Note that the court had earlier stated that the goods were "stolen" if "the antiquities [Schultz] conspired to receive in the United States belonged to someone who did not give consent for Schultz (or his agent) to take them." *Id.* at 399.

[153] *Id.* at 404. The court supported this ruling with the holding in *Hollinshead*. *See id.* at 404 ("[A]n object is 'stolen' within the meaning of the NSPA if it is taken in violation of a patrimony law."). *But see id.* at 405 ("The Second Circuit has rarely addressed *McClain,* and has never decided whether the holding of *McClain* is the law in this Circuit."). The court went on to reject Schultz's interpretation of the holdings in United States v. Long Cove Seafood, Inc., 582 F.2d 159, 163, 165 (2d Cir. 1978), which cited *McClain*, 545 F.2d at 163, in a positive light, and United States v. An Antique Platter of Gold, 184 F.3d 131, 134 (2d Cir. 1999), which is irrelevant. United States v. Schultz, 333 F.3d 393, 405-07 (2d Cir. 2003).

[154] *See id.* at 408 (noting that Law 117 is not limited only to export restrictions).

[155] *See id.* (citing S. Rep. No. 97-564, at 22 (1982)). Indeed, the court reasons that the fact that both a civil remedy under the CPIA and a criminal remedy under the NSPA may exist does not "limit the reach of the NSPA." *Id.* at 409 (stating that "the CPIA is an import law not a criminal law.").

[156] *Id.* at 409-10 (noting the Supreme Court has held the NSPA to apply to a broader class of crimes than those contemplated by the common law).

[157] *See id.* at 411 (citing 18 U.S.C. § 2315 (2006)). Concerning Schultz's mistake of Egyptian law, the court noted that "if a jury finds that a defendant knew all of the relevant facts, the defendant cannot then escape liability by contending that he did not know the law." *See id.* (noting that Schultz was knowingly participating in a conspiracy to smuggle antiquities out of Egypt, and smuggling is not a legal activity).

[158] United States v. Schultz, 333 F.3d 393, 412-13 (2d Cir. 2003). The jury instructions stated, A defendant may not purposefully remain ignorant of either facts or the law in order to escape the consequences of the law . . . deliberate avoidance of positive knowledge [is treatable as] the equivalent of such knowledge, unless you find the defendant actually believed that the antiquities were not the property of the Egyptian government.
Id. at 413.

[159] *See id.* at 416 (noting that determination of relevancy was for the discretion of the trial court; that determination will stand an absent abuse of discretion).

[160] *Id*.

[161] *Id.*

[162] *See id.* at 410 (remarking that extending the NSPA to stolen artifacts does not conflict with United States policy).

[163] *See* Felch & Frammolino, *supra* note 1, at 228 (describing that "four German antiquities museums agreed to adopt strict guidelines forbidding the acquisition of undocumented ancient art."). *But see id.* at 232 (quoting Giuseppe Proietti, a senior Culture Ministry official in Italy, who described the Getty and Met as "rogue museums" due to their known involvement with art traffickers).

[164] Kreder, *supra* note 74, at 1218-19.

[165] *See id.* at 1219 (The Quedlinburg treasures were a 'trove of gold, silver and bejeweled medieval manuscripts [hidden in a cave during the war] near the Quedlenburg Cathedral, their home for the previous 1,000 years.' One such treasure covered with precious stones is believed to have belonged to Henry I. The treasures have been described as 'one of the most important collections of religious art of the Middle Ages.').

[166] *Id*. at 1219-20. *But see id.* at 1220 (noting that Meador was court-martialed in 1945 for stealing valuable French china from a chateau).

[167] *See* Gov't of Peru v. Johnson, 720 F. Supp. 810, 812 (C.D. Cal. 1989) *aff'd sub nom.* Gov't of Peru v. Wendt, 933 F.2d 1013 (9th Cir. 1991) (holding that Peru couldn't establish that the artifacts were illegally excavated because it was unclear when they were unearthed or from what country they were from).

[168] Borodkin, *supra* note 1, at 395 (noting the difficulties in establishing the elements in a NSPA prosecution).

[169] *Id.* at 395-96 (describing the rule in *Johnson*, 720 F. Supp. at 810, places claimant nations in an evidentiary Catch-22; if the claimant had the ability to police all the archaeological sites in its borders, it would not have to seek an NSPA suit as the object would never leave the country).

[170] *See* Center Art Galleries—Hawaii, Inc. v. United States, 875 F.2d 747, 747 (9th Cir. 1989) (involving the sale of a forged Salvador Dali painting); Borodkin, *supra* note 1, at 396 (noting that defendants were convicted under mail and wire fraud statutes to three years and thirty months, respectively, for selling forged prints).

[171] Snider v. Lone Star Art Tracing Co., 672 F. Supp. 977, 979 (E.D. Mich. 1987) (denying all but one of the defendants' motions for reconsideration and allowing the plaintiff to file an amended complaint).

[172] *See* Borodkin, *supra* note 1, at 396 (noting that the defendants attempted to argue that their actions did not constitute the separate acts required for a "pattern" of behavior required for a RICO violation); *see also* Faircloth v. Finesod, 938 F.2d 513, 514 (4th Cir. 1991) (holding defendants liable for triple damages under RICO for giving out fraudulent estimates of a Picasso "art master" (template for making reproductions) and obtaining a fraudulent opinion letter stating the art masters could be used as tax shelters).

[173] United States v. Clack, 957 F.2d 659, 660 (9th Cir. 1992) (noting that the jury rejected the defendant's insanity defense).

[174] *See* Borodkin, *supra* note 1, at 397 ("If a claimant could show that smuggler used force in the course of trafficking, the Hobbs Act could possibly apply to international cases as well.").

[175] Felch & Frammolino, *supra* note 1, at 181-83 (regarding the Met's repatriation battle with the Italian government over a collection of ancient silver vessels and other artifacts).

[176] *See id.* at 111.

[177] *See id.* at 20-21 (noting that the idea for the museum came from Getty's long-time accountant).

[178] *See id.* at 21 (noting that museum hours were from Wednesday to Friday, 3 to 5 PM, with required reservations for the parking lot).

[179] *See id.* at 25 (describing the exuberance of the museum employees after learning of Getty's bequest to the museum).

[180] *See id.* (noting that the museum board unanimously agreed to the $3.95 million dollar purchase price, even though Getty himself had recently refused to pay such a price). The Getty Bronze was discovered somewhere in the Adriatic by the crew of the fishing trawler *Ferrucio Ferri* in 1964. Felch & Frammolino, *supra* note 1, at 9-10. It was brought back to the town of Fano, Italy and moved to the captain's cousin's house, who invited local dealers to inspect it. *Id.* at 10-11. They rejected offers of up to one million lire, demanding more, and buried the statue in a cabbage field to prevent its discovery. *Id.* at 11. It was shown to Giacomo Barbetti, a wealthy antiquarian, a month later, and he proclaimed that it was the work of Lysippus, a famous ancient Greek sculptor (the personal sculptor of Alexander the Great). *Id.* at 12. The authors surmise that the Getty Bronze was likely taken in raids by Romans of the Greek mainland and islands around the beginning of the first millennium AD. *Id.* at 11-12. Barbetti purchased the statue for 3.5 million lire, approximately $4,000, split among the crew (the captain received $1,600, double his monthly wage). Felch & Frammolino, *supra* note 1, at 12. Barbetti moved the statue to a church in Gubbio where it was hidden by the church priest under a red velvet curtain in the sacristy, until the stench became unbearable and the priest moved it to his home, submerging it in salt water. *Id.* at 12. From there, the story gets murky. By the time the Carabinieri, the Italian national police, showed up, it was gone to Milan, France, or even a monastery in Brazil. *Id.* at 12-13. Though the Italian government filed criminal charges against Barbetti and the priest for violating Italian cultural property law (all objects found after 1939 are objects of the state, and possessors of such objects are guilty of theft) in 1966, the case was eventually dismissed for lack of evidence. *Id.* at 13. The statue emerged in London three years later, apparently hidden in the Brazilian monastery before being sold for $700,000 to Artemis, a Luxembourg-based art consortium. *Id.* German antiquities dealer Heinz Herzer, a member of Artemis, shipped the statue to his studio in Munich, carefully removing the detritus that was encrusting it and taking painstaking steps to ensure its preservation. Felch & Frammolino, *supra* note 1, at 13. Herzer also concluded the statue to be the work of Lysippus, and obtained the expert opinion of Bernard Ashmole, curator of Greek and Roman art at the British Museum, to back up this claim. *Id.* at 14. Ashmole discussed selling the statue to J. Paul Getty, but he refused to buy it unless there were assurances regarding its legal status and provenance as well as a five-year money-back guarantee in the event of a patrimony claim. *Id.* at 20. Around the same time, German and Italian police raided Herzer's studio in Munich, questioning him about the statue's journey, and he only

escaped arrest when German authorities refused to extradite him to Italy to be prosecuted for trafficking looted art. *Id*. With Getty's death, the museum was no longer "required" to establish provenance, and readily bought the statue for $3.95 million, without permission from Italian authorities. FELCH & FRAMMOLINO, *supra* note 1, at 25. The Getty Bronze was shipped from London to Boston, quietly exhibited in the Denver Art Museum to avoid California taxes, before it went to the Getty in mid-November 1977. *Id.* This remarkable story illustrates only part of the depth of the smuggling scheme employed by dealers and purchasers of art to acquire valuable and exquisite items.

[181] *See id.* at 195-202 (noting the Italian government's investigation concerning looted artifacts, many of which were considered to be among The Getty's best pieces).

[182] *See id.* at 32 (mentioning that the scheme "might even be legal").

[183] *See id.* at 32-37, 49-50 (noting that this tax fraud scheme resulted in over a hundred donors giving six thousand antiquities valued at $14.7 million over four years. The authors further note that Frel would enter the museum with items stuffed in his pockets and that "a number of donations came through Frel's new wife."). Frel was put on leave in 1984, resigned in 1986, and the story about the tax fraud broke in 1987. FELCH & FRAMMOLINO, *supra* note 1, at 81-82.

[184] *See id.* at 111-158 (detailing "The Temptation of Marion True").

[185] *See id.* at 84-87 (explaining this was twice the cost of another questionable acquisition by the Getty, a kouros or Greek statue of a young boy with one foot forward as if in an Egyptian painting, and more than had ever been paid for a work of ancient art till then).

[186] *See id.* at 91 (remarking that this policy ultimately led to the Getty justifying its purchase of looted antiquities).

[187] *See id.* at 88 (discussing Iris Love's appraisal of the statue. He stated, "Anybody who knows about southern Italian sculpture is going to know it came from Italy . . . . Italy doesn't have a statue of this size and of this style, and there aren't any statues in any European or American museum like it . . . . I beg you, don't buy it. You will only have troubles and problems.").

[188] There is evidence to suggest that the Getty knew the statue was stolen. Harold Williams, the CEO of the Getty stated on September 2, 1987, "We know it's stolen . . . We know Symes is a fence." FELCH & FRAMMOLINO, *supra* note 1, at 89.

[189] *See id*. at 107 (noting that the Getty would be "obligated to return the piece regardless of the statute of limitations.").

[190] *See id.* at 164 (noting that True, at a 1998 conference at Rutgers University, claimed that "[t]he Getty had abandoned its acquisitive past.").

[191] *See id.* at 169-76, 183 (noting that Medici had kept thirty albums of Polaroids documenting all of items he had trafficked during his career). After stolen items were identified, the Getty returned several antiquities to Italy as a sign of good faith. *Id.* at 176-79 (noting the return of a vase, a sculpture, and a bust).

[192] FELCH & FRAMMOLINO, *supra* note 1, at 185; *see also id.* at 190-91 ("Experience has taught me that in reality, if serious efforts to establish a clear pedigree for the object's recent past prove futile, it is most likely—if not certain—that it is the product of the illicit trade and we must accept responsibility for this fact . . . . It has been our unwillingness to do so that is most directly responsible for the conflicts between museums, archaeologists, and source countries.").

[193] *See id.* at 206-14 (detailing True's "easy betrayal of museum colleagues").

[194] *See id.* at 227 (commenting that the Italians wanted "to make an object lesson out of the Italian's three biggest targets: Hecht, Medici, and True.").

[195] *See id.* at 225-27 (noting that the deposition of Tchakos gave the prosecutors enough evidence to indict True on conspiracy charges).

[196] *See id.* at 252 (stating that Medici "invoked his right to a 'fast track' trial").

[197] *See* FELCH & FRAMMOLINO, *supra* note 1, at 252-53 (noting the trial took approximately one year due to the slow Italian system).

[198] The case established the chain of export through Medici, dealing through Hecht and others, and purchasing through True. *Id.* at 253.

[199] *See id.* at 258-259 (stating that Marion True is the first American curator to face criminal charges from a foreign government).

[200] This preceded publication of a piece about her obtaining loans from dealers and donors to enable her to buy a house in Greece. *See id.* at 266 (commenting that True chose to "voluntarily retire" for violating the Getty's policy).

[201] *See id.* at 304 (noting that even though the Getty would receive no compensation for the objects returned, the Italian Cultural Ministry offered to loan the Getty comparable objects).

[202] *See* FELCH & FRAMMOLINO, *supra* note 1, at 296 (explaining that True portrayed herself as "champion of returning objects to Italy").

[203] *See id.* at 305-06 (noting that the Cultural Ministry dropped all but three of its civil claims).

[204] *Id.* at 306.

[205] *See id.* at 312 (remarking that despite a finding of her guilt or innocence, the destruction of her career had been her punishment).

[206] *Id.* at 306 (noting that True continued to deny any wrongdoing).

[207] The statue is arguably of Persephone, goddess of fertility, rather than Aphrodite, goddess of love. FELCH & FRAMMOLINO, *supra* note 1, at 307 (noting that the Getty had since added a plaque that read: "On loan from Italy.").

[208] *Id.* at 307-08.

[209] *See id.* at 311 ("Looting continues around the globe, and wealthy collectors in Asia, Russia, and the Middle East have quickly filled the void left by American museums in the antiquities market.").

[210] *Contra id.* at 311 (noting that after the Getty scandal, other southern California museums were implicated in a tax fraud scheme accepting donations of looted Southeast Asian artifacts similar to the Frel's scheme).

[211] *See generally* Clement W. Meighan, *Another View on Repatriation: Lost to the Public, Lost to History*, 14 THE PUBLIC HISTORIAN 39, 45 (1992) (defending the role of museums in acquiring looted artifacts for their protection).

[212] *See* FELCH & FRAMMOLINO, *supra* note 1, at 311 ("American museums have all but stopped purchasing recently looted Greek and Roman antiquities."); *contra id.* ("Even in America, some museums appear not to have gotten the message. Even as the Getty scandal made international headlines, several other southern California museums were caught in a tax fraud scheme to accept donations of looted Southeast Asian artifacts.").

[213] *See generally* FELCH & FRAMMOLINO, *supra* note 1, at 176 (noting that by far most objects ended up in American museums; there were objects in New York City, Boston, Cleveland, Tampa, Minneapolis, Princeton, San Antonio, Fort Worth, and, of course, Los Angeles).

[214] *Id.* at 17.

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