

Art, Law, and Finance Project

Restitution Claims of Cultural Artifacts and Property Rights: A Transatlantic Comparison
Berkeley Law, October 28, 2024

Takeaways

Our October 28th transatlantic session, hosted by Berkeley's Art, Law, and Finance Project, San Francisco Superior Court Judge Simon J. Frankel mediated a discussion comparing the approaches of cultural property protection between Italy and the United States. The recent European Court of Human Rights (ECHR) decision upholding the confiscation order on the *Victorious Youth*, commonly referred to as the *Getty Bronze*, was used to illustrate the significant distinctions between the two.

Presenting Italy's view were Andrea Averardi and Anna Pirri Valentini, both professors at IMT School for Advanced Studies Lucca. Andrea and Anna shared Italy's long history of strong legal protection for cultural property. Italy is considered among the most stringent countries when it comes to the protection of cultural heritage. For example, both publicly and privately owned goods can be classified as 'cultural property' if considered of cultural interest. This legal definition implies, among other things, that the property cannot be permanently exported from the state. Additionally, according to the Italian Code for Cultural Heritage and Landscape, if any cultural item is newly discovered underground, it automatically belongs to the Italian state. As applied to the case of the *Victorious Youth*, since the bronze was discovered by a ship flying the Italian flag, by law, it was automatically deemed property of the state. The failure to report the discovery and proceeding sale and export of the bronze was thus considered a violation of Italian law.

Thaddeus Stauber, Head of Nixon Peabody's Art and Cultural Institution Practice, presented the U.S. perspective, beginning with the key distinction that while Italy has a designated Ministry of Culture, the U.S. does not. This means we don't have a centralized authority defining for us what is or is not "American" cultural property. The U.S. places a higher priority on private property rights versus the legal construct where the state owns cultural property or regulates what individuals can do with art and artifacts with the exception of NAGPRA. This is also in part due to the dynamic diversity of the U.S. as a younger multicultural country. Additionally, the U.S. museums are not primarily state-owned, and very little in them is considered public property. Thaddeus pointed out that moral constraints and public relations concerns keep museums from buying anything with questionable provenance. This effectively halts the market for such items, so ethical considerations *have made* a difference. So, given the ECHR decision, what's next for the Getty? While the Italian Civil Code makes citizens responsible for reporting the discovery of items of cultural significance, the civil laws of one country

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cannot easily be enforced in another. This matter is likely to remain unresolved for some time.