

**Fordham Law Review Symposium  
Remedies for Looted Art and Cultural Property—Civil, Criminal or Consensual?**

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**Opening Remarks**

Thank you, Dean Landau, for your kind words of welcome and thank you to former Dean Matthew Diller for assisting in the initiation of this event today. Also, much appreciation to my fellow Fordham adjunct-professors who helped in the planning of this symposium - Professors Ray Dowd, Leila Amindoleh, and Alex Pearl. I particularly wanted to acknowledge the person who has really brought all this together, Fordham Law Review Symposium Editor, Kayla Siletti-Brown. She has worked on this night and day, thank you Kayla. Also, thank you to Associate Symposia editor, Amy Walker, Law Review Editor in Chief Charis Franklin and all the Law Review team who have worked on this event. Thank you also to this outstanding group of speakers and moderators from New York, from up and down the East Coast, as well as Oklahoma, London, Nigeria, Cambodia. The breadth and depth of your experience is a testament to the significance of this issue.

So, why now?

I believe that this is a unique moment in time as we reexamine the question of how we, as a society, address looted art and cultural property.

It affects property that is now in both public and private hands. It is in some ways the meeting point of history, morality, justice, as well as legislation, civil litigation, law enforcement, alternative dispute resolution as well as broader policy issues.

The areas we will discuss today are very different, yet all are part of an examination of the intersection of art, culture, law and society.

As we will hear, there are several developments that are all coming together now that make this a particularly relevant subject for the legal and general community. A new set of Best Practices on the subject of Holocaust-era art and cultural property led by the United States is gaining increased support from countries, there are a growing number of claims, archives are being opened up, the subject of looted antiquities and art is dramatically affecting the museum world, new regulations governing Native American cultural property have led to significant changes in the way institutions treat these items, there has been significant return of cultural objects and human remains to tribes, and there has been an increasing engagement of law enforcement. Internationally, countries have been developing legal as well as consensus-based processes. Yet, as we will also hear, in many areas there is limited progress and many challenges ahead.

The speakers, moderators as well as hundreds of participants here in person and remotely today - judges, practitioners, academics, students, experts, representatives of museums and auction houses, journalists, members of the law enforcement community, and people interested in the field - is a testament to the significance of this issue at this time.

As the Best Practices points out looted art and cultural property includes not just paintings and other visual and decorative art, but also sacred scrolls, religious and ceremonial objects, libraries, manuscripts, archives, musical instruments and much more - the scope is broad.

Why does art and cultural property matter?

It speaks to who we are, to who we want to be. It reflects our perceptions of ourselves and how we want to be seen.

It can be an object of beauty. Yet it also can be functional - sometimes part of a religious or cultural ceremony....

It can bring us closer to lives that are no longer with us and to memories that were lost. It can represent the heart of a family, the heritage of a community, the soul of a people. It can tell us where we came from and who we are.

It tells a story.

A beautiful leather-bound book of burial records dating from the 19th century that had belonged to the Jewish community in the town of Oradea in today's Romania came up for auction at a New York auction house in 2021. It was being sold by a private individual. A page of that book in elegant handwriting lists the names of those who passed away. One of them is described simply as Tova Esther, the daughter of Leah, who passed away on the 5th day of the Hebrew month of Kislev. Who was Tova Esther? Is that page perhaps the last fragment available to us that tells us where she lived and where she died? Maybe this page is the only document still existing that tells her story? And how did this precious book that once lived in a synagogue in a small town in Transylvania reach New York in 2021?

What other paintings, books and ritual objects that tell the story of a family or represent the history of a people remain today behind closed doors?

We live today in a world where distortion of history is widespread, a world where common understandings of the past stand on a less and less firm foundation - in what some call a 'post-truth world' with shifting perceptions of history. Perhaps it is more important than ever that these items can teach us their story and their history, and can serve as a constant in an increasingly fluid world.

Our gathering today may raise more questions than answers.

As we grapple with the subject of this symposium : "Remedies for Looted Art and Cultural Property—Civil, Criminal or Consensual?", the questions range from "what" to "why" to "how"?

While there is no one single answer to these multi-faceted questions, there are a few themes that I believe we need to consider.

Firstly, the historical context matters. We need to look at dark chapters of human history with deep sensitivity and understanding. We need to develop rules and processes, and find mechanisms that understand and take into account that history.

Secondly, this is not just about well-known items of great financial value. Our attention tends to be drawn to high profile cases of artwork by luminaries hanging in storied museums across the world – art that is certainly of tremendous symbolism. But it is also about items that are sometimes of small financial value but of immeasurable historical meaning to families and to communities. For every renowned masterpiece that was taken, there are also hundreds of lesser-known works and religious items. They came from great cities, from small towns, and from tiny villages. Some were created by people whose famous names roll off our tongues, and others by anonymous craft workers toiling in obscurity.

Thirdly, this is not simply a legal issue... We sit today in a law school, but this is about far more than law. It is about history, it is about family and community, it is about tradition, it is about religion, culture and society. The majesty of the law can do many things but it is not always so well equipped to find justice in this field. Technical defenses may be appropriate in routine litigation, but we are not dealing with normal commercial matters.

Fourthly, this is not a national issue - it is a global one. It affects countries, nations, peoples, communities, individuals across the world both in terms of where looted art and cultural property came from, and where it is today.

Fifthly, at the core of addressing looted art and cultural property is transparency. Provenance research is slow and expensive. But it is not just good practice, it is the foundation of the proper management of art and cultural property in our world today. And in an art world that sometimes operates out of the public eye, we need transparency regarding archives and transaction records to ensure that the history is known.

Sixthly, this is not just about the physical items themselves, it is also about what they can tell us about the people who created them and the people to whom they belonged. Physical objects can be the prism through which we can explore the past. They can be tools to teach us about people and communities.

Finally, this is a moment in time that calls for us to be bold - to reexamine our preconceptions and assumptions, and not to be afraid of change. In an area where information is not always clear and all the facts may be shrouded in history and not known, we may need to take new approaches including assumptions as to the origins of an object, as to who is its rightful owner or regarding the appropriate place where it belongs.

That beautiful leather-bound book is not just a collector's item – it also reflects the memory of Tova Esther, the daughter of Leah, who passed away on the 5th day of the month of Kislev. What happens to that book, ultimately, must honor her memory.

Today is not just about the restitution of property; it is also about the restitution of history.