



EMORY  
LAW

Emory International Law Review

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Volume 32 | Issue 3

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2018

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### Recommended Citation

Caitlin O'Riordan, *Art Conservation: The Cost of Saving Great Works of Art*, 32 Emory Int'l L. Rev. 409 (2018).

Available at: <https://scholarlycommons.law.emory.edu/eilr/vol32/iss3/3>

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# ART CONSERVATION: THE COST OF SAVING GREAT WORKS OF ART

## INTRODUCTION

In 2015, a Taiwanese boy became an Internet sensation when he tripped, punching a hole through a seventeenth century painting valued at \$1.5 million.<sup>1</sup> The private owner of the Paolo Porpora carried an insurance policy on the painting, and conservationists have already begun restorations.<sup>2</sup> This story made headlines because one small misstep permanently ruined a great work of art. However, the art world faces another, quieter misstep that could be inflicting greater damage on pieces of art: restoring them. When the boy punched a hole in the painting, the global community was shocked. However, it is hardly common knowledge that the Louvre's director of restoration recently resigned after a restoration of Leonardo da Vinci's *The Virgin and Child with Saint Anne* removed a portion of da Vinci's original paint and permanently altered the features of the Virgin's face.<sup>3</sup> Even after ruining one da Vinci painting, the Louvre proceeded with plans to restore another da Vinci masterpiece—his painting of John the Baptist.<sup>4</sup> One art history expert publicly condemned the restoration as unnecessary and called the recent phenomenon of restoring da Vinci's great works as a “contagious mania.”<sup>5</sup>

Behind every great work of art there are two camps fighting to save it. Art conservationists are committed to utilizing modern technologies to maintain and restore art; another group, composed mostly of art historians, is committed to preventing the destruction of art in the name of modern restoration. While art conservation has been around as long as art itself,<sup>6</sup> the practice of

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<sup>1</sup> Charlotte Middlehurts, *Taiwanese Boy Trips and Punches Hole in £1m Paolo Porpora Painting*, TELEGRAPH (Aug. 24, 2015), <http://www.telegraph.co.uk/news/worldnews/asia/taiwan/11822401/Taiwanese-boy-trips-and-punches-hole-in-1m-Paolo-Porpora-painting.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Alice Philipson, *Da Vinci Expert Says 'John the Baptist' at Risk from Louvre Restoration*, TELEGRAPH (Feb. 10, 2016), <http://www.telegraph.co.uk/news/worldnews/europe/france/12150724/Da-Vinci-expert-says-St-John-the-Baptist-at-risk-from-Louvre-restoration.html>; see Danny Lewis, *The Louvre has Restored St. John the Baptist*, SMITHSONIAN (Nov. 9, 2016), <http://www.smithsonianmag.com/smart-news/the-louvre-has-restored-st-john-baptist-180961037/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Matthew Chalkley, *Art Restoration: The Fine Line Between Art and Science*, YALE SCI. J. (Sep. 1, 2010), <http://www.yalescientific.org/2010/12/art-restoration-the-fine-line-between-art-and-science/>.

continuous restoration has faced controversy in recent years as great works grow older and the science of restoration modernizes.

The overall meaning of “conservation” is the act of utilizing specified techniques to maintain or restore the original aesthetic of a work of art.<sup>7</sup> Art conservation, as opposed to restoration, refers to techniques that attempt to return a piece of art to its original state by addressing any damage or deterioration appearing on the surface of the art.<sup>8</sup> This process also includes cleaning and removing any surface features that detract from the work’s original image (or how the conservators believe the original image appeared).<sup>9</sup> Restoration falls under the umbrella term “art conservation.”<sup>10</sup> Art restoration means adding or replacing pieces of the artwork to restore the whole image or work as it originally appeared.<sup>11</sup> The Art Conservators Alliance refers to this practice as “compensation for losses.”<sup>12</sup> In some cases, restorations are done when unexpected damage occurs.<sup>13</sup> For example, a man once attacked a famous work in Paris’s Pompidou Centre with a hammer, forcing the museum to restore the destroyed parts of the famous work.<sup>14</sup> While there are differences in process between restoration and conservation, the two are so inextricably linked that this Comment will consider the term “art conservation” to include both.<sup>15</sup> It would be more complicated to try to differentiate where works were only “conserved” rather than “restored” and vice versa. While any work of art or architecture may be subject to conservation, this Comment will focus

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<sup>7</sup> *What is Art Conservation?*, ART CONSERVATORS ALLIANCE, [http://www.artconservatorsalliance.com/what\\_is.html](http://www.artconservatorsalliance.com/what_is.html) (last visited Jan. 19, 2018). Preservation is also included in the scope of the umbrella term art conservation. *See id.* Preservation means keeping a work of art in an environment that will prevent the work’s exposure to the elements and factors that result in destruction or deterioration of artworks. *Id.* For the purpose of this Comment, preservation is not included in the term art conservation, which is meant only to relate to conservation and restoration of the artworks at issue, not the efforts to preserve them.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Jon Henley, *€3m Urinal Survives Art Attack*, THE GUARDIAN (Jan. 6, 2006), <https://www.theguardian.com/world/2006/jan/07/arts.france>; *see also* Jason Bennetto, *Oops! Gallery Art Takes a Battering*, THE GUARDIAN (Sep. 27, 2008), <https://www.theguardian.com/artanddesign/2008/sep/28/art1> (describing other examples of museum vandalism).

<sup>15</sup> *See What is Art Conservation?*, *supra* note 7. Conservation involves restoration processes, such as cleaning, that are intended to reveal the original artwork beneath any dirt or damage. Restoration involves restoration processes, such as adding paint, that are intended to recreate portions of artwork that have been lost due to damage or age. *Id.*; *see also Conservation vs. Restoration*, SOUTH FLA. ART CONSERVATION (Jun. 3, 2012), <http://sflac.net/uncategorized/conservation-vs-restoration/> (defining “conservation” and “restoration” and the relationship between the two terms considering the definitions).

specifically on paintings because they are most commonly the subjects of controversy.

Critics of conservation feel that techniques cannot preserve the integrity of a painting if the techniques did not exist at the time that the author created the artwork. Specifically, art conservation is controversial today because restorations tend to reflect the contemporary aesthetic ideals and can have the unintended consequences of updating in the name of preservation. The restorations also focus on “readability,” meaning making the work of art accessible or attractive to a modern audience.<sup>16</sup> Restorations tend to reflect the aesthetic ideals of the times.<sup>17</sup> As one journalist put it, “every generation of restorers, in other words, believes it understands the original intent of the artist.”<sup>18</sup> As the generations change, so do the ideals of restoration. However, this phenomenon grows increasingly problematic as centuries of restoration and conservation efforts build off of each other rather than the original work.<sup>19</sup> Another particular complaint is that restorations cannot be true to the character of the art because using new technology means using techniques that did not exist when the work was first created.<sup>20</sup> While conservationists claim that they intend to merely restore and maintain works as they originally were, critics fear the loss of important works of art through “conservation” that is slowly rendering original artworks unrecognizable.

Alongside the increased wave of art conservation, voices of backlash have grown louder against the practice of art conservation and the frequency with which it is employed.<sup>21</sup> At the helm of the controversy, art historians James Beck and Michael Daley attempted to expose art conservationists for destroying works of art and serving as a key component of a money-fueled scandal in the industry.<sup>22</sup> According to Beck, the key problem was that the intellectual community stood by while the industry of art conservation spiraled out of control.<sup>23</sup> However, in recent years, the art world has awoken to this

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<sup>16</sup> James Beck, *Restoration and the Myth of Readability*, 21 NOTES IN THE HIST. OF ART 1, 1 (2001).

<sup>17</sup> Michael Kimmelman, *After a Much-Debated Cleaning, A Richly Hued Sistine Emerges*, N.Y. TIMES, (May 14, 1990), <http://www.nytimes.com/1990/05/14/arts/review-art-after-a-much-debated-cleaning-a-richly-hued-sistine-emerges.html?pagewanted=all>.

<sup>18</sup> *Id.*

<sup>19</sup> Kimmelman, *supra* note 17.

<sup>20</sup> Chalkley, *supra* note 6.

<sup>21</sup> JAMES BECK & MICHAEL DALEY, *ART RESTORATION: THE CULTURE, THE BUSINESS, AND THE SCANDAL* 26 (John Murray Publishers, 1993).

<sup>22</sup> *Id.* at 154–68.

<sup>23</sup> James Beck, *Reversibility, Fact or Fiction? The Dangers of Art Restoration*, 18 U. CHI. PRESS 1, 1 (1999).

problem and spoken out against art conservation as it stands—highly unregulated.<sup>24</sup>

This Comment does not argue that all conservation has resulted in harm to great works of art. Rather, it proposes simply that art conservation requires greater regulation and scrutiny. One solution to the art conservation problem would be a body of unattached art historians who would evaluate the conservation project. It would do so in light of a cost-benefit analysis that weighs the cost of conservation against the benefits and the likelihood that the art could actually be damaged in the process. In doing so, it would mirror the process of conserving privately held art where insurance companies and owners usually do employ a basic cost-benefit analysis to determine if a conservation effort would be worth the cost.<sup>25</sup> In the private market, conservations are only undergone after careful scrutiny and consideration.<sup>26</sup> Importantly, attempts to restore damaged art are almost universally believed to reduce the value of the work.<sup>27</sup>

To support the proposition that art conservation should be based on an independent cost-benefit analysis, this Comment will proceed in three parts; Part I will evaluate the current regulations, or lack thereof, as they stand under the relevant organizations and the United Nations Educational, Scientific, and Cultural Organization (UNESCO).<sup>28</sup> Part II will flesh out the controversy as it has evolved and currently stands in the world of restoration and art historians while discussing why little concrete action has been taken.<sup>29</sup> This will focus on two of the largest restorations in terms of scope and controversy: the Sistine Chapel<sup>30</sup> and the National Gallery in London's collection.<sup>31</sup> These studies

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<sup>24</sup> See Sarah E. Botha, *Art Conservation: Problems Encountered in an Unregulated Industry*, 26 COLUM. J. L. & ART 251, 262 (2003).

<sup>25</sup> Daniel Grant, *Restoring the Value of Damaged Art*, WALL ST. J. (Sep. 20, 2015), <http://www.wsj.com/articles/restoring-the-value-of-damaged-art-1442800932>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* There is the argument that the works discussed in this Comment are priceless. However, Part III will discuss how this argument fails because the monetary value of the art and the integrity of the work go hand-in-hand in the art market, meaning that a piece of art is worth more because it is unchanged from the original or as close to the original as possible. To argue that these works are priceless would commit the logical flaw of reducing their value to nothing, meaning that it could be damaged as much as possible and not hurt the artwork's value, which is clearly an incorrect result.

<sup>28</sup> Botha, *supra* note 24, at 262. See generally Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 1037 U.N.T.S. 151, available at <http://whc.unesco.org/en/conventiontext/>.

<sup>29</sup> Beck, *supra* note 23, at 2.

<sup>30</sup> Kimmelman, *supra* note 17.

<sup>31</sup> BECK & DALEY, *supra* note 21, at 130. In particular, Holbein's *Ambassadors* displays the failure to adhere to proper restorative etiquette that would preserve what the artist had intended and what the painting

highlight the underlying principles of the controversy and the potential costs if the practice of art conservation should continue completely free of regulation. Finally, Part III will suggest a cost-benefit analysis modeled on tort law that is essentially already applied in the private art market. This Comment proposes that a regulatory body should exist, and that it would work closely with museums and public art holders. It would monitor the research and promulgate decisions about whether conservation efforts should move forward on a case-by-case basis. This Comment demonstrates how this analysis could result in the decision to halt or proceed with these conservations, depending on the potential costs, benefits, and risks involved.

## I. CULTURAL PRESERVATION LAW & SUCCESSFUL RESTORATIONS

### A. *Relevant Cultural Preservation Law*

International law is widely silent on the issue of art conservation projects when it comes to paintings.<sup>32</sup> The Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) would arguably be the best source of authority to create and enforce regulations concerning art conservation. However, the World Heritage Convention largely applies only to naturally occurring or manmade archeological sites that are of great significance.<sup>33</sup> The process of protecting a site under the World Heritage Convention is arduous, and it would be essentially impossible if the World Heritage Convention's protection extended to every significant piece of cultural heritage in the world, especially every great painting. While the World Heritage Convention extends its authority to the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre) (ICCROM),<sup>34</sup> the ICCROM exists primarily to facilitate restorations and does not have any method for evaluating whether or not restorations should occur.<sup>35</sup>

In terms of non-governmental organizations (NGOs), there are two relevant bodies: The International Institute for Conservation (IIC) and the International

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originally looked like, even when the restorations are not clearly so distinct as with the Sistine Chapel; *see also* Michael Daley, *The "World's Worst Restoration" and the Death of Authenticity*, ART WATCH UK, <http://artwatch.org.uk/the-worlds-worst-restoration-and-the-death-of-authenticity/> (last visited Jan. 19, 2018).

<sup>32</sup> *See* Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28, art 13, 14.

<sup>33</sup> *Id.*

<sup>34</sup> *Member States*, INT'L CTR. FOR THE STUDY OF THE PRESERVATION & RESTORATION OF CULTURAL PROP., <https://www.iccrom.org/about/overview/member-states> (last visited Jan. 19, 2018).

<sup>35</sup> *About*, INT'L INST. FOR CONSERVATION OF HIST. & ARTISTIC WORKS, <https://www.iiconservation.org/about> (last visited Jan. 19, 2018).

Council of Museums (ICOM). Neither of these bodies has any enforceable authority. The IIC is a professional organization.<sup>36</sup> Like the ICCROM, the IIC primarily facilitates conservation efforts and provides a platform for conservationists to communicate and share techniques.<sup>37</sup> The ICOM is a diplomatic international body created by museums for museums.<sup>38</sup> Membership is almost universal among prominent museums.<sup>39</sup> Under the ICOM, a Committee for Conservation exists that sets up a test to determine whether restorations should take place.<sup>40</sup> This Committee is the closest to holding art restorers accountable and providing a system for evaluating whether conservation projects are necessary. However, its lack of enforceability is a fatal flaw.

### 1. *World Heritage Convention*

When it comes to cultural preservation law, UNESCO is at the forefront of a relatively lackluster body of law simply because it is the most enforceable.<sup>41</sup> While there is no international law perfectly on point, the World Heritage Convention comes closest to providing a tool for promulgating and enforcing a set of regulations for art conservation projects.<sup>42</sup> States that play a foremost role in art conservation, such as Italy, Germany, and the United Kingdom, have all ratified the World Heritage Convention.<sup>43</sup> The World Heritage Convention covers artwork under the category of “cultural heritage,” which includes monuments, groups of buildings, and sites.<sup>44</sup> Paintings, in particular, are considered monuments for the purpose of the convention’s language.<sup>45</sup> However, it is important to note that, because UNESCO focuses mostly on

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *ICOM in Brief*, INT’L COUNCIL OF MUSEUMS, <http://icom.museum/the-organisation/icom-in-brief/> (last visited Jan. 19, 2018).

<sup>41</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28; see also Stefan Gruber, *Convention Concerning the Protection of the World Cultural and Natural Heritage 1972*, in ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW: MULTILATERAL ENVIRONMENTAL TREATIES 60, 64–66 (Malgosia Fitzmaurice, Attila Tanzi & Angeliki Papantoniou eds., 2017).

<sup>42</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28, art. 4.

<sup>43</sup> *Id.* France, on the other hand, has accepted the Convention but has yet to ratify it as of June 27, 1975. *Id.* For the purposes of this Comment, it is important to note that the Vatican is considered an independent state according to international law and has not ratified this Convention. *Id.*

<sup>44</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28, art. 1.

<sup>45</sup> *Id.*

cultural heritage on a larger scale, many paintings would not qualify for protection under this Convention.<sup>46</sup> For the paintings that do qualify, UNESCO exists mostly to facilitate research and access to information with regard to art conservation and restoration.<sup>47</sup>

UNESCO provides a big picture system for monitoring the preservation of cultural heritage.<sup>48</sup> UNESCO does most of its regulation through a system of reporting and monitoring.<sup>49</sup> First, a site must be inscribed on the World Heritage List.<sup>50</sup> The selection criteria for inscription are intensive.<sup>51</sup> From the time of inscription, site managers and local authorities are required to uphold the UNESCO requirements, which include reports on the status of any conservation measures and steps taken to prevent any further damage to or deterioration of the site.<sup>52</sup> The States Parties must next prepare Periodic Reports on a six-year cycle, which provide “an assessment of the application of the World Heritage Convention by the States Parties.”<sup>53</sup>

Under the World Heritage Convention, states have a duty “of ensuring the identification, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage.”<sup>54</sup> This is significant, as it establishes that states have an affirmative duty to protect these great works of art. Additionally, the World Heritage Convention requires member states to “set up within their territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage.”<sup>55</sup> For the purpose of the World Heritage Convention, the

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<sup>46</sup> *Id.* art. 8(3).

<sup>47</sup> *What is ICCROM?*, INT’L CTR. FOR THE STUDY OF THE PRESERVATION & RESTORATION OF CULTURAL PROP., <http://www.icrom.org/about/what-iccrom/> (last visited Jan. 19, 2018).

<sup>48</sup> *Reporting and Monitoring*, UNESCO, <http://whc.unesco.org/en/118/> (last visited Jan. 19, 2018). The term “preservation” is used here, as opposed to “conservation,” because UNESCO’s work differs greatly from the concept of conservation, as defined for this Comment. “Preservation” more accurately describes UNESCO’s activities, and the author wishes to avoid confusion while emphasizing that there is no international regulatory body monitoring the quality of conservation initiatives, as well as evaluating whether such initiatives should even occur.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28, art. 11.

<sup>52</sup> *Reporting and Monitoring*, UNESCO, *supra* note 48.

<sup>53</sup> *Id.*

<sup>54</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28, art. 4.

<sup>55</sup> *Id.* art. 5(b).

term “conservation” has not been clearly defined.<sup>56</sup> Adding new paint or varnish is not mentioned at all in the World Heritage Convention.<sup>57</sup>

## 2. *International Centre for the Study of the Preservation and Restoration of Cultural Property*

However, the Convention does designate power to ICCROM.<sup>58</sup> ICCROM is a committee dedicated purely to conservation as that term has been defined for the purpose of this Comment.<sup>59</sup> France, Italy, and the United Kingdom, *inter alia*, are all Member States of ICCROM.<sup>60</sup> ICCROM membership requires yearly dues from Member States to facilitate the organization’s services.<sup>61</sup>

Although ICCROM works with professionals and institutions in order to provide tools, education, and innovation, when it comes to art conservation, ICCROM does not evaluate the alternatives to conservation or hold fora.<sup>62</sup> Like UNESCO, ICCROM encourages conservation but fails to hold projects accountable for failures when it comes to art conservation.<sup>63</sup> Similarly, there is no committee that must approve or guide conservation projects under ICCROM or any other international law body.<sup>64</sup>

## 3. *International Institute for Conservation (IIC)*

Much of cultural preservation law is in the form of organizations committed to art and the preservation of great pieces.<sup>65</sup> The next relevant organization is IIC.<sup>66</sup> IIC is an independent international body that also contributes to the field of conservation.<sup>67</sup> IIC membership is available to “conservators and restorers, to conservation scientists, architects, educators and

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* art. 8(3).

<sup>59</sup> *What is ICCROM?*, *supra* note 47. The United States is also a member. *Member States*, *supra* note 34.

<sup>60</sup> *Member States*, *supra* note 34.

<sup>61</sup> *ICCROM Newsletter 41*, INT’L CTR. FOR THE STUDY OF THE PRESERVATION AND RESTORATION OF CULTURAL PROPERTY, Nov. 11, 2015, at 28, <http://www.iccrom.org/iccrom-newsletter-41-annual-report/>.

<sup>62</sup> *What is ICCROM?*, *supra* note 47.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; *see also General Assembly*, INT’L CTR. FOR THE STUDY OF THE PRESERVATION AND RESTORATION OF CULTURAL PROPERTY, <http://www.iccrom.org/about/general-assembly/> (last visited Jan. 19, 2018).

<sup>65</sup> Botha, *supra* note 24, at 262.

<sup>66</sup> *About*, *supra* note 35.

<sup>67</sup> *Id.*

students, and to collection managers, curators, art historians and other cultural heritage professionals.”<sup>68</sup> Essentially, it is a professional organization. Again, this organization serves only to encourage art conservation and restoration.<sup>69</sup> It does not have any procedures for questioning the validity of a restoration or evaluating the benefits of restorations.<sup>70</sup> This organization depicts conservation in a consistently positive light. This is the challenge that Professor Beck faced and the problem that this Comment addresses: many analysts and organizations, including the IIC, regard conservation as an inherently good action taken to help artwork.

#### 4. *International Council of Museums (ICOM)*

Another relevant organization, and the organization that arguably has the most direct control over great works of art, is ICOM, which was created in 1946 “by and for museum professionals.”<sup>71</sup> ICOM is a diplomatic international body consisting of more than 136 countries and 35,000 members and museum professionals.<sup>72</sup> Within ICOM, there are several international committees.<sup>73</sup> One such committee is the Committee for Conservation (ICOM-CC).<sup>74</sup> ICOM-CC consists of working groups that give, “conservators, scientists, curators and other professionals the opportunity to collaborate, study and promote the conservation and analysis of culturally and historically significant works.”<sup>75</sup> Again, there is language only of promotion of conservation efforts, rather than scrutiny or, at the very least, deliberation about conservation projects. However, the ICOM-CC proclaims not only to promote art conservation, but also has within its mission the goal of forming standard techniques and manuals when it comes to art conservation and restoration.<sup>76</sup> The ICOM-CC does have a set procedure and questions that should be addressed when a conservation project is, or might be, undertaken to conserve the work.<sup>77</sup>

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *ICOM in Brief*, INT’L COUNCIL OF MUSEUMS, <http://icom.museum/the-organisation/icom-in-brief/> (last visited Jan. 19, 2018).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *About ICOM-CC*, ICOM-CC, <http://www.icom-cc.org/15/about/#.WBvfg5MrK8U> (last visited Jan. 19, 2018).

<sup>75</sup> *Welcome*, ICOM-CC, <http://www.icom-cc.org/home/#.WIVAhJM-fjA> (last visited Jan. 19, 2018).

<sup>76</sup> *About ICOM-CC*, *supra* note 74.

<sup>77</sup> *Id.*

The ICOM-CC asks three pertinent questions when it comes to art conservation: (1) is there a conservation problem?; (2) should there be treatment?; and (3) is there accessibility?<sup>78</sup> The ICOM-CC defines a conservation problem as a problem that “arises when the condition of the object has changed to such an extent that the perceived value and meaning of the object is in danger of being lost.”<sup>79</sup> Under the umbrella of the first question, the ICOM-CC first evaluates the meaning and value of the work—essentially, its significance in the art and historical world.<sup>80</sup> It also asks about the painting’s condition and compares it to the state in which the painting originally would have been.<sup>81</sup> This evaluation includes whether the top tempera layer has darkened the painting over time.<sup>82</sup> The ICOM-CC then breaks down treatment into two categories of conservation: preventative conservation<sup>83</sup> and remedial conservation.<sup>84</sup> Rather than referring to restoration as restoration, the ICOM-CC refers to restoration as “active conservation” under the category of remedial conservation.<sup>85</sup> While these steps demonstrated by the ICOM-CC show a move in the direction of regulation and standardization, the industry of art conservation still lacks any clear government body. In particular, the industry lacks a governing body that dictates *if* a work requires conservation and restoration rather than just addressing *how* or *when* the artwork should definitely undergo restoration.

As they exist now, the current existing regulatory bodies fail to protect works from damaging restorations. However, a committee with the enforceability of the World Heritage Convention and the scrutiny of the ICOM-CC could provide the perfect solution to the hole in international art law.

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<sup>78</sup> *Conservation: Who, What & Why?*, ICOM-CC, <http://www.icom-cc.org/330/about-icom-cc/what-is-conservation/conservation:-who,-what-amp;-why/#.WBvgIpMrK8V> (last visited Jan. 19, 2018).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* However, this Comment will later discuss that art historians have argued that layer is integral to the quality and overall aesthetic of the pieces. BECK & DALEY, *supra* note 21, at 126.

<sup>83</sup> Preventative conservation seeks to prevent the work from enduring any further damage by controlling the climate, lighting, and other elements that the work’s display may be exposed to. *Conservation: Who, What & Why?*, *supra* note 78. As mentioned above, the field of preventative conservation is not included in the definition of conservation for the purpose of this Comment.

<sup>84</sup> *Conservation: Who, What & Why?*, *supra* note 78.

<sup>85</sup> *Id.*

### B. *Restoration Success Story*

In many cases, art conservation can restore a work to its original glory or even shed light on information previously unknown to art historians.<sup>86</sup> For example, the cleaning of a portrait in the National Gallery in London allowed art historians to positively identify the previously mysterious painting as a portrait painted by the celebrated artist Titian.<sup>87</sup> In the same vein, the projected cleaning of the “Chandos” portrait at the National Gallery in London could give a better idea of Shakespeare’s actual appearance.<sup>88</sup> The “Chandos” portrait, attributed to artist John Taylor, is one of the oldest at the National Gallery.<sup>89</sup> The artist was believed to be a close personal friend of Shakespeare, and his depiction may be the most accurate, making this painting particularly famous.<sup>90</sup> The suggested conservation would not only include one of the first real cleanings of the painting,<sup>91</sup> but, interestingly, may reveal what Shakespeare actually looked like.<sup>92</sup> It may be able to do so because the conservation would entail removing any previous restoration or conservation efforts that adversely affected the original artist’s depiction of Shakespeare since the painting hung in the Duke’s Theatre in the 1660s.<sup>93</sup> The proposed cleaning is currently before the National Gallery’s Board of Trustees, who will decide if it should occur.<sup>94</sup> As it stands right now, this Board of Trustees consists of a filmmaker, a CEO, three accountants, two artists, a curator, a professor of visual neuroscience, a former governor of the Bank of England, a charity figure, and a former bank partner.<sup>95</sup> There are no art historians on the National Gallery Board of Trustees.<sup>96</sup>

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<sup>86</sup> Martin Bailey, *Cleaning of Chandos Portrait Could Confirm What Shakespeare Looked Like*, ART NEWSPAPER, <http://theartnewspaper.com/news/conservation/cleaning-could-confirm-portrait-is-of-the-bard/> (last visited Jan. 19, 2018).

<sup>87</sup> *Restoration Reveals Hidden Titian Portrait in the National Gallery Collection*, NAT’L GALLERY (Jan. 23, 2013), <https://www.nationalgallery.org.uk/documents/restoration-reveals-hidden-titian-portrait-in-the-national-gallery-collection>.

<sup>88</sup> Bailey, *supra* note 86. However, the National Gallery in London has come under much scrutiny for its harsh restorations and cleanings. Museumgoers often comment on the vibrancy of paintings in the National Gallery, not realizing that these paintings are so vibrant because the National Gallery is in the practice of removing the egg tempera layer from each painting, much to art historians’ dismay. BECK & DALEY, *supra* note 21, at 124.

<sup>89</sup> Bailey, *supra* note 86.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Bailey, *supra* note 86.

<sup>95</sup> *Board of Trustees*, NAT’L GALLERY, <https://www.nationalgallery.org.uk/about-us/organisation/board-of-trustees> (last visited Jan. 19, 2018).

<sup>96</sup> *Id.*

## II. CONTROVERSIAL RESTORATIONS

Art restoration has arguably always been controversial.<sup>97</sup> However, as great works of art grow older and artworks have been through multiple restorations, the fear is that original artworks will be unrecognizable under a hodgepodge of conservations, intense cleanings, and the restorative efforts of multiple artists.<sup>98</sup> Professor Beck summed up this issue when he stated: “It is no exaggeration to declare that the historical past of England, France, Germany, and Italy, as it has been preserved through art and architecture, is becoming unrecognizable.”<sup>99</sup>

### A. *The Sistine Chapel: The Rise and The Fall*

The cleaning of the Sistine Chapel in the twentieth century is likely the greatest art conservation undertaking in the history of art.<sup>100</sup> Michelangelo’s frescos on the ceiling took him four years to complete.<sup>101</sup> The cleaning of his masterpiece frescoes began in 1980 and were unveiled in 1990.<sup>102</sup> The cleaning is significant not only because it completely changed the appearance of one of the greatest works of art, but also because it vastly reshaped the view of Michelangelo as an artist.<sup>103</sup> Prior to the cleaning of the Sistine Chapel, the name Michelangelo was associated with dark shadowing, heavy colors, and deep intricacies.<sup>104</sup> However, the cleaning revealed shockingly vivid colors and images free from the previously oblique and defining shadows.<sup>105</sup> While some have celebrated the revelation of bright colors and light figures, others have lamented the loss of the original work’s shadowed details and Michelangelo’s previously signature dark tones.<sup>106</sup>

Nippon Television Corporation, a Japanese company, sponsored the cleaning in exchange for the exclusive copyright to all photographs and videos of the Sistine Chapel ceiling and the cleaning process for the duration of the ten-year project.<sup>107</sup> This sponsorship arrangement only added to the

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<sup>97</sup> See, e.g., Yuriko Saito, *Why Restore Works of Art?*, 44 J. OF AESTHETICS AND ART CRITICISM 141 (1985).

<sup>98</sup> Beck, *supra* note 23, at 1.

<sup>99</sup> *Id.*

<sup>100</sup> Kimmelman, *supra* note 17.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* BECK & DALEY, *supra* note 21, at 64.

<sup>104</sup> See Kimmelman, *supra* note 17.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See BECK & DALEY, *supra* note 21, at 64.

controversy surrounding the restoration project. On the one hand, if the Vatican managed to get a private company to pay entirely for a restoration that some have deemed a “revelation,” that is quite an accomplishment and any additional costs seem a small price to pay.<sup>108</sup> On the other hand, the financing aspect of the restoration plays nicely into the argument that restoration has become a business of commodities rather than a business of art.<sup>109</sup> Restorations not only benefit their private sponsors, but also have generated an entirely new business of education and training.<sup>110</sup> There are now numerous schools and training programs charging tuition to educate future restorers with no uniform standards for certification or enumerated courses.<sup>111</sup>

The artistic controversy of the Sistine Chapel restoration centers on the difference between *fresco* and *a secco* layers of painting.<sup>112</sup> When Michelangelo applied the *fresco* layers of the Sistine Chapel ceiling, he would have painted the images with wet plaster.<sup>113</sup> *A secco* layers would have been added after the plaster had dried, if at all.<sup>114</sup> Proponents of the cleaning argue that history tells us that Michelangelo painted the Sistine Chapel almost exclusively in *fresco* and that instances of *a secco* would have been few and far between.<sup>115</sup> This is because of where the scaffolding stood during the painting of the ceiling and because Michelangelo would not have been able to get back to some of the previous areas in order to apply an *a secco* layer to the *fresco* layers below.<sup>116</sup> Therefore, the *a secco* work largely would have been applied by previous restorers long after Michelangelo completed his famous work.<sup>117</sup> Fans of the restoration conceded that there are some instances of *a secco* on the ceiling that, at the very least, *could* have been Michelangelo’s own work and that those instances have been lost during the cleaning process.<sup>118</sup>

Opponents of the cleaning contend that Michelangelo would have used *a secco* across the entire ceiling in order to correct and enhance the initial *fresco* layer.<sup>119</sup> As concluded by Beck and Daley, “[i]f Michelangelo had wanted to

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<sup>108</sup> Kimmelman, *supra* note 17; *see also* BECK & DALEY, *supra* note 21, at 64.

<sup>109</sup> *See generally* Beck, *supra* note 23.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *See* BECK & DALEY, *supra* note 21, at 65.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; *see also* Kimmelman, *supra* note 17.

<sup>116</sup> Kimmelman, *supra* note 17.

<sup>117</sup> *See* BECK & DALEY, *supra* note 21, at 65; *see also* Kimmelman, *supra* note 17.

<sup>118</sup> *Id.*

<sup>119</sup> *See* BECK & DALEY, *supra* note 21, at 65.

deepen shadows, strengthen the sense of three-dimensionality, create an impression of coloured form emerging into light, and enhance the rhythm and balance of the whole composition with darker accents, he could only have done so *a secco*.”<sup>120</sup> This evaluative statement embodies one of the strongest arguments purported by the anti-restoration camp: that the richness of the Sistine Chapel could only have come from *a secco* painting. In fact, the originality of the *a secco* work was never clearly disproven by restorers before the cleaning began.<sup>121</sup> Some remained unconvinced or even turned against the restoration during the process.<sup>122</sup> Of significance is the fact that the restoration, its extent, and its process never faced open debate within the art community or the public before it commenced.<sup>123</sup> Therefore, those who expressed these concerns did so to powerless ears.<sup>124</sup>

Aside from the form of the restoration, one of the largest gaps in the argument that the restoration is a “revelation” is the fundamental assumption that the Sistine Chapel *required* this level of restoration in the first place.<sup>125</sup> The heart of the issue is that, “while the controversy raged, few have asked whether a cleaning was in fact necessary, or whether the risks outweighed the benefits.”<sup>126</sup> In fact, there is evidence, to a moderate degree, that the Sistine Chapel was in good shape for its age and, if it did require cleaning, it certainly did not require the large scale cleaning that occurred with such gusto.<sup>127</sup> The problem is that the practice of art restoration has started to automatically fall back on the default inclination to proceed with restorations rather than refrain when there are arguments for both sides. A prominent theme and question when it comes to art conservation is: How far is too far? Even when restorers began to retract their support for the project, the Vatican proceeded because, at that point, a half-cleaned ceiling looked ridiculous.<sup>128</sup> Thus, another important question becomes: Is the prevalence of restoration reducing the ability to distinguish art that has been diminished by the restoration process from art that truly has undergone a spectacular revitalization?

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<sup>120</sup> *Id.*

<sup>121</sup> *See id.* at 66.

<sup>122</sup> *See id.* at 67.

<sup>123</sup> *See id.* at 66.

<sup>124</sup> *Id.*

<sup>125</sup> *See id.* at 67.

<sup>126</sup> *Id.*

<sup>127</sup> *See id.* at 69.

<sup>128</sup> Stephen R. Wilson, *Halfway through Restoration: Which is Real Michelangelo?*, ASSOCIATED PRESS (Feb. 7, 1987), <http://www.apnewsarchive.com/1987/Halfway-Though-Restoration-Which-is-Real-Michelangelo-/id-57df055833db5e8e759f42f841f6abef>.

### B. *The National Gallery*

While art restorations are traceable back to the Middle Ages, art conservation projects as we think of them today began in the 1800s.<sup>129</sup> The National Gallery was, and still is, at the forefront of the celebration of art restorations.<sup>130</sup> A key to understanding the practice that the National Gallery has wholeheartedly embraced is to recognize the role of varnish in oil paintings. Essentially, varnish is the glue-like layer that holds the painting together and seals the work, making it more durable.<sup>131</sup> It is this layer that yellows and browns as artworks age, giving paintings an older appearance.<sup>132</sup> During the conservation or restoration process, the varnish may be removed either physically or chemically, but both processes expose the painting to great risk of further damage.<sup>133</sup> At times, these varnishes were removed and replaced with new clear varnishes that eventually would also yellow with age.<sup>134</sup> In the mid-1800s, the authorities at the National Gallery began the practice of “cleaning” great artworks by removing the varnishes and glazes from their surfaces.<sup>135</sup> At the time, critics and museumgoers immediately noticed a stark contrast between these naked works and those that still held their varnishes and glazes.<sup>136</sup> One viewer commented that the cleaned paintings looked as if they had been “flayed.”<sup>137</sup>

A significant problem for the National Gallery is that ceasing the process of removing the varnish would highlight the stark contrast between an untouched painting and a restored painting. Therefore, the National Gallery has been forced to commit to this procedure. Authorities at the National Gallery have themselves confessed that a great number of cleanings are done to make the paintings more attractive rather than to restore the original work or illuminate the old master’s technical skill and innovation.<sup>138</sup> In 1956, the

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<sup>129</sup> BECK & DALEY, *supra* note 21, at 130.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* The authors argue that conservation and science are not, as some commonly view them, “better together.” *Id.* They encourage a less technological approach of training restorers to think like the old masters in order to preserve the overall aesthetic of an artwork, rather than attempting to “fix” a painting using a medium that would not have been available to the original artist where there is no way to know if the artist would have condoned its results. *Id.*

<sup>134</sup> *The Controversial Restoration of Holbein’s “Ambassadors”*, WEB ART ACAD. (Apr. 21, 2016), <http://webartacademy.com/the-controversial-restoration-of-holbeins-ambassadors>.

<sup>135</sup> BECK & DALEY, *supra* note 21, at 129.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 130.

<sup>138</sup> Daley, *supra* note 31.

painter Pietro Annigoni wrote to *The Times*: “A few days ago, at the National Gallery, I noticed once more the ever-increasing number of masterpieces which have been ruined by excessive cleaning.”<sup>139</sup>

In 2012, the National Gallery undertook restorations on a painting famed for the technical skill and innovation that the artist employed in his use of perspective.<sup>140</sup> In 1998, Holbein’s *Ambassadors* went under the restorer’s knife, where it remained for years. In the process, the painting underwent substantial changes to the overall aesthetic and defining characteristics that made it a famous work of art in the first place.<sup>141</sup> Like the cleaning of the Sistine Chapel, this restoration was also privately sponsored and a video was made about the success of the restoration.<sup>142</sup>

Holbein’s *Ambassadors* has long been famous, not for the two men that occupy most of the large masterpiece, but for the skull at the bottom of the canvas.<sup>143</sup> Using perspective in a new and viewer-perplexing manner, Holbein painted a skull that is not visible from the front. The viewer who wishes to see the skull’s shape and features properly must view the painting from the right side, where the previously distorted skull takes its shape. Holbein’s use of perspective is not only intriguing but also wonderfully skillful when one considers the technicality and innovation he must have employed in order to achieve such a striking result. Restorers at the National Gallery, however, found the perspective-bound skull lacking in the face of modern technology.<sup>144</sup> The National Gallery’s restoration team utilized digital imaging to “perfect” the skull. Instead of utilizing perspective, the team reconstructed the skull using a distorted image of a skull.<sup>145</sup> Therefore, the skull as it is in the painting today is not the genius use of perspective that Holbein employed but rather a digital image of a skull, stretched and turned to mimic the style of its predecessor.<sup>146</sup>

As a ratifying member of the World Heritage Convention, the United Kingdom has a duty to protect monuments, including these oil paintings.<sup>147</sup>

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<sup>139</sup> Pietro Annigoni, *Letter to the Times*, JOURNEY INTO ART (July 1956), <http://journeyintoart-journeyman.blogspot.com/2011/08/more-about-restoration-game.html>.

<sup>140</sup> Daley, *supra* note 31.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Ambassadors*, NAT’L GALLERY, <https://www.nationalgallery.org.uk/paintings/hans-holbein-the-younger-the-ambassadors> (last visited Jan. 19, 2018).

<sup>144</sup> Daley, *supra* note 31.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28.

However, the United Kingdom's own National Gallery is considered by some to be one of the greatest villains in the battle against destructive restorations.<sup>148</sup> The National Gallery's practices highlight how ineffective international bodies are at enforcing and monitoring the fates of great paintings. Even from the point of view of those who favor restorations, the National Gallery's actions exemplify the issue that entities are acting unilaterally in making decisions of when and how to restore great works of art.

### III. A COST-BENEFIT ANALYSIS

#### A. *Procedural Configuration*

In line with Professor Beck's comment that, "while the controversy raged, few have asked whether a cleaning was in fact necessary, or whether the risks outweighed the benefits,"<sup>149</sup> a cost-benefit analysis should be performed to determine if restorations should proceed. The first hurdle in this proposed procedure is that a regulatory body to oversee such a process does not currently exist. Ideally, a regulatory body would require a committee proceeding from the World Heritage Convention in order to have the force of international law behind it.<sup>150</sup> The ICOM and ICOM-CC could possibly become enforcement mechanisms under the World Heritage Convention, simplifying the problem of forming a new committee from scratch. Committee members would be remunerated from member dues, which are already a part of the World Heritage Convention and the ICCROM. Unlike the ICCROM, this organization should not be focused solely on innovation and encouragement of art conservation.<sup>151</sup> The committee should consist of art historians and restorers who are unattached to specific restoration schools, organizations, or potential or current sponsors of restorations. The ICOM would be an ideal organization to act as a foundation because most museums are already members and because it is an international body of diplomats committed to art and practical restoration projects. Communication between the committee and states should become an integral part of any large restorative undertaking.

The problem with many conservation efforts that have gone awry is not only a lack of regulation, but also a lack of focus. Unlike private conservations, there are so many interested parties that it is difficult to please everyone, and

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<sup>148</sup> See Daley, *supra* note 31.

<sup>149</sup> BECK & DALEY, *supra* note 21, at 67.

<sup>150</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28.

<sup>151</sup> *Conservation: Who, What & Why?*, *supra* note 78; *About*, *supra* note 35; *What is ICCROM?*, *supra* note 47.

there are simply too many voices in the mix. While this Comment proposes the creation of a regulatory body proceeding from the World Heritage Convention, the committee should be an umbrella organization for small, focused groups. Each member state should have a subcommittee that closely governs the conservations that occur in its territory. As is currently done for sites registered with the World Heritage Convention, there should be a system for reporting and monitoring. Because the European countries at issue, such as Italy and the United Kingdom, are relatively small, one governing committee is likely feasible.<sup>152</sup>

Museums and other holders of art should be held responsible for proposing art conservation projects. Like insurance companies in the private art market, there is a need for someone who is capable of valuing the art and determining if the restoration would be worthwhile. It would be most beneficial for the person(s) responsible for mediating between the museums and the regulatory body to work almost exclusively with a particular museum or owner, mirroring the relationships between private art collectors and insurance companies.

There should be two clear general rules. First, preventative conservation should take precedence over active restoration. The World Heritage Convention outlines the external factors that deteriorate artworks, such as lighting, camera flashes, and pollution.<sup>153</sup> The first step for art conservation should begin with optimizing the conditions in which owners display or store the artworks. This seems to be the most passive form of conservation and may not be immediate enough to satisfy supporters of art conservation. However, when discussing works of art commissioned centuries ago, the long-term is significantly more relevant than the short-term.<sup>154</sup>

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<sup>152</sup> In places like the United States, committees could exist in each state.

<sup>153</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 28.

<sup>154</sup> An interesting case study of the effects of small actions over time is the statue of Juliet. Lovers were encouraged to rub her hand or breast for good luck in their romantic lives. Nick Squires, *Verona Commissions Replica 'Juliet' Statue After One Too Many Brushes with Tourists*, TELEGRAPH (Feb. 25, 2014), <http://www.telegraph.co.uk/news/worldnews/europe/italy/10660642/Verona-commissions-replica-Juliet-statue-after-one-too-many-brushes-with-tourists.html>. While each rub seemed like a small action, over time the number of people touching the statue increased. *Id.* The arm and the breast of the statue were eventually so smoothed out that the piece had lost its detail and was beginning to lose those parts entirely. *Id.* A replacement statue had to be put in its place. *Id.* Consider also the bridge in Paris that almost collapsed as lovers attached a lock on the bridge in order to lock in their love. Alissa J. Rubin & Aurelien Breeden, *Paris Bridge's Love Locks Are Taken Down*, N.Y. TIMES (June 1, 2015), [http://www.nytimes.com/2015/06/02/world/europe/paris-bridges-locks-of-love-taken-down.html?\\_r=0](http://www.nytimes.com/2015/06/02/world/europe/paris-bridges-locks-of-love-taken-down.html?_r=0). Visitors are now no longer allowed to attach locks to the bridge. *Id.* The message behind these case studies is clear: small actions over time do have a significant effect on physical objects. *Id.* One other, controversial point is that countries should consider banning lovers from getting near cultural and historical items of significance, lest they be permanently damaged. *Cf. id.*

The second general rule should be that small-scale restorations should be stopped entirely. In many cases, it seems evident that small restoration projects over time have transformed paintings from an original to a collection of myriad small additions and cleanings that have accumulated over the centuries. Ironically, conservationists often cite multiple conservations as support for their decision to proceed with yet another conservation.<sup>155</sup> Conservationists will argue that a painting needs to be cleaned because a previous restoration has marred the painting or covered the original.<sup>156</sup> The cyclical and counterproductive nature of that argument exacerbates the problem.

Critics of conservation have noted the lack of a public hearing and opportunity for outsiders to comment as a factor that contributes not only to the destruction of the restoration, but also to the controversy that surrounded the Vatican conservation.<sup>157</sup> Transparency in the process could alleviate the sense from the public that great works of art are being destroyed or “flayed” behind closed doors.<sup>158</sup> But public fora would likely not have fixed these issues because it is almost exclusively well-trained art historians and artists, not the public, who would object to the restorations in the first place.<sup>159</sup>

Giving the public something “pretty” to look at is a motivating factor for restorations.<sup>160</sup> Large restorations, such as those of Leonardo da Vinci’s paintings, have been undertaken to make works of art more visually pleasing to a modern audience.<sup>161</sup> Unaware of the processes taking place in the conservation labs, viewers are under the impression that these works have simply been returned to some former grandeur: a grandeur that time has stolen from works of art that has not been restored.<sup>162</sup> That does not mean that audiences are uneducated—it simply means that media portrayal has made audiences implicitly trust the term “expertly restored.”<sup>163</sup>

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<sup>155</sup> Milan Schreuer, *A Master Work, the Ghent Altarpiece, Reawakens Stroke by Stroke*, N.Y. TIMES (Dec. 19, 2016), <http://www.nytimes.com/2016/12/19/science/ghent-altarpiece-restoration.html>.

<sup>156</sup> *Oil Painting Cleaning, Restoration, Repair & Conservation*, CLEAN OIL PAINTINGS, <http://cleanoilpainting.com/> (last visited Jan. 19, 2018).

<sup>157</sup> See BECK & DALEY, *supra* note 21, at 65–66, 68.

<sup>158</sup> *Id.* at 129–30, 133.

<sup>159</sup> Elaine Sciolino, *Leonardo Painting’s Restoration Bitterly Divides Art Critics*, NY TIMES, <http://www.nytimes.com/2012/01/04/arts/design/clash-over-restoration-of-leonardos-virgin-and-child.html> (Jan. 3, 2012).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* See also Philipson, *supra* note 3 (explaining that a da Vinci expert declared a painting’s restoration was an unnecessary measure taken for publicity).

### B. *Hand Formula Holds the Brush To Art Restoration*

In many ways, the destruction of art through conservation most closely resembles negligence. Therefore, a simple cost-benefit analysis would be the application of the formula created by Judge Learned Hand.<sup>164</sup> The Hand Formula weighs the burden of preventing a tort against the probability and magnitude of the potential harm.<sup>165</sup>

This formula could be applied to art conservation in two different ways, depending on whether the harm is the potential deterioration without conservation or the potential for harm results from a conservation. The latter formula works better. In this case, the committee would weigh the burden of not undertaking a conservation project against the likelihood of damage and the magnitude of the possible harm to the artwork and to world heritage. In doing so, the magnitude of restorations would likely be reduced in order to reach a more favorable result on the side of conserving the works. These smaller-scale restorations would prevent damage but would not rule out future restorations, if needed. One place where cost-benefit analysis is used in the art market to determine if conservation should occur is the private market.

### C. *Private Market as a Model*

While this Comment focuses on art held in museums, an interesting point of contrast is the way in which art conservation is handled in the world of private art dealings. The important distinction here is that these works typically will not be famous masterpieces such as the Sistine Chapel. It may be argued that the greater and more recognizable pieces require more conservation *because* of their significance to the art world. However, one response to this argument is: If a work is such an exhibit of genius and innovation, should anyone feel qualified to alter it?

Another important distinction is the limited number of parties involved.<sup>166</sup> When a privately owned piece of art is damaged, only the insurance company and the owner deliberate and decide the work's fate.<sup>167</sup> The insurance companies will step in to help clients determine if the cost of restoration is worth it when compared to the overall value of the piece.<sup>168</sup> Insurance

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<sup>164</sup> United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947).

<sup>165</sup> *Id.*

<sup>166</sup> See Grant, *supra* note 25.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

companies are not only well-versed in these issues, but they also have the financial incentive to maximize the value of the work.<sup>169</sup>

While critics to this analysis may argue that there is no value attributable to great works of art, in the private art world, monetary value and artistic integrity go hand-in-hand.<sup>170</sup> Art buyers can often negotiate a lower price or a better deal simply because a work of art has undergone restoration efforts, even those that have been well-done.<sup>171</sup> Essentially, the value of art derives from the integrity of the work—the closer it is to the original, the more valuable it is, and any changes will consistently make a work *less* valuable. The art market contrasts with other markets like automobiles, where changes would likely improve the value of the whole. For example, if one of these paintings was dipped in solid gold, it would entirely lose its value in the art market even though the value of the object should have increased. Is there any other market where this same distinction can be made? The answer is likely no, and it serves to underline the complex issue of art valuation. Attaching an exact number to a masterpiece is beyond the scope of this Comment.

Private art holders obviously also have the added benefit of not being subject to an audience. Unlike museums, it is unlikely that private owners rely on the public coming to see works of art as a means of revenue. While they may trade or sell art as income, there is no public expectation that viewers will come to see particular works, unless they choose to display them.<sup>172</sup> Tourists travel to specific locations to see particular pieces of art in the condition they expect. Consider the small Musée Rodin in Paris that is most famous for its statue, *The Thinker*—a piece by Auguste Rodin himself.<sup>173</sup> If that piece was damaged, the museum would likely take the same steps that the Vatican took after an attack on its famous *Pieta* statue and restore the statue as quickly as possible.<sup>174</sup> Unfortunately, some art critics feel that providing an audience with

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<sup>169</sup> *Id.*

<sup>170</sup> *See id.*

<sup>171</sup> *See id.*

<sup>172</sup> *Cf.* Middlehurts, *supra* note 1. Unfortunately, opening your private collection up to a public audience can result in permanent damage. *Id.* Porpora's painting discussed earlier in this Comment was privately held, and the exhibit was only open to a limited number of viewers when the boy lost his footing and punched a hole in the work. *Id.*

<sup>173</sup> *See The Thinker*, MUSEE RODIN, <http://www.musee-rodin.fr/en/collections/sculptures/thinker> (last visited Jan. 19, 2018).

<sup>174</sup> *See also* Philip Pulella, *Vatican Marks Anniversary of 1972 Attack on Michelangelo's Pieta*, REUTERS (May 21, 2013), <http://www.reuters.com/article/us-vatican-pieta-idUSBRE94K0KU20130521> (discussing the restoration of Michelangelo's *Pieta* after a man attacked it with a sledgehammer). While some sides argued that the statue should be left in its damaged state because it might not be recreated faithfully or simply as a testament to the violence of the times, the majority opinion felt that the statue was too beautiful to

a clearer but potentially less authentic image is a factor that museums consider when deciding whether to proceed with a restoration.<sup>175</sup>

#### D. Likelihood of Success

The successful functioning of the private art market proves that cost-benefit analyses would work well when applied to art restorations. In order to illustrate this point, consider the following two recent case studies.

In the case of Leonardo da Vinci's portrait of John the Baptist, it seems clear that careful consideration would have led restorers to pass on the project.<sup>176</sup> The dreadfully failed restoration of da Vinci's *The Virgin and Child with Saint Anne* illustrates the potential consequences of a cleaning when it comes to da Vinci's work. That restoration also illustrates that the Louvre has failed to take advantage of improved technologies.<sup>177</sup> Because the portrait of John the Baptist was not damaged, it should be evident that a cleaning is not immediately necessary.<sup>178</sup> The Louvre justified the cleaning because the painting had not been cleaned since 1802 and had darkened in the last two hundred years.<sup>179</sup> However, they offered no support for the fact that the painting may always have been dark, as one expert suggested.<sup>180</sup> Moreover, some critics feel that restorers are primarily concerned with the idea that a brighter painting will attract more viewers.<sup>181</sup> The experts suggest that da Vinci's work has become too light in recent years because of aggressive and frequent cleanings.<sup>182</sup>

If the committee and subcommittee proposed here existed, then these issues would need to be addressed. The museum and its restorers would have to answer these questions in order to proceed with the project. If they could not satisfactorily prove not only that a restoration is necessary to the work, but also that no damage would occur in the process, then the attempt at restoration

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not piece it back together. *Id.* Ultimately, restorers glued the statue of the Virgin Mary and Jesus back together with pieces found around the statue at the time of the attack. *Id.*

<sup>175</sup> Inti Landauro, *Louvre to Restore Da Vinci's 'St. John the Baptist'*, WALL ST. J (Jan. 13, 2016), <https://www.wsj.com/articles/louvre-to-restore-da-vincis-st-john-the-baptist-1452726060>.

<sup>176</sup> Philipson, *supra* note 3.

<sup>177</sup> Landauro, *supra* note 175.

<sup>178</sup> *Id.*

<sup>179</sup> Danny Lewis, *The Louvre Has Restored "St. John the Baptist"*, SMITHSONIAN (Nov. 9, 2016), <http://www.smithsonianmag.com/smart-news/the-louvre-has-restored-st-john-baptist-180961037/>.

<sup>180</sup> Sciolino, *supra* note 159.

<sup>181</sup> *Id.*

<sup>182</sup> *Cf. id.*

would not proceed. While the cleaning of this portrait is one of the latest examples of a risky restoration, there have also been success stories.

The *Ghent Altarpiece* recently underwent a significant restoration.<sup>183</sup> The twelve-panel polytypic high masterpiece has been deemed “the most influential painting ever,” and its recent cleaning has been almost universally applauded.<sup>184</sup> One significant aspect of the conservation effort in this case was the conservativeness of the restorers.<sup>185</sup> The restorers used a scanning technique that does not damage the painting; the use of this technique revealed the original work that was concealed under several previous restoration efforts.<sup>186</sup> It is of note that the restorers were only convinced to undertake the restoration project after careful study and a period of long deliberation.<sup>187</sup> Typically, museums commit to the restoration first, and justifications follow after the fact.<sup>188</sup> It is also significant that the historical value of the painting equals—if not exceeds—its artistic qualities.<sup>189</sup> The fact that this case allowed artists and art historians to learn more about Jan van Eyck and his techniques supports this proposal that restorations should not be stopped altogether, but should instead be carefully considered and deliberated first.

The regulatory body proposed here would likely have reached the same conclusions because this conservation was well researched and carefully deliberated. In this case, the Flemish government spent \$1.3 million, which illustrates that countries have a financial investment in even “priceless” pieces of art.<sup>190</sup> Because a significant amount of money is spent on these conservation efforts, governments should want to work with experts to maximize the value of their investments and reduce the risk of damaging rather than increasing the artwork’s value, however seemingly infinite. This sum paid by the government illustrates further the ways in which the public art market could mirror the beneficial practices of the private art market.

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<sup>183</sup> Schreuer, *supra* note 155; Noah Charney, *Restored and Ravishing: The Magnificent Ghent Altarpiece Gives Up its Centuries-Old Mysteries*, GUARDIAN (Oct. 12, 2016), <https://www.theguardian.com/artanddesign/2016/oct/12/ghent-altarpiece-restoration>. Interestingly, this is also the most stolen work of all time, and it has been the center of at least 13 crimes and 6 thefts. Adolf Hitler even stole the painting and only barely saved it from destruction. Schreuer, *supra* note 155.

<sup>184</sup> Charney, *supra* note 183; Schreuer, *supra* note 155.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Schreuer, *supra* note 155.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

## CONCLUSION

As great works of art continue to age, art enthusiasts and experts will face the difficult decision of when to step in and when to allow works of art to age naturally in order to prevent damaging them further. While conservations have always taken place, modern technology and the mistakes of the past mean that there is a new duty to protect art from damage and preserve the aesthetic innovation and the distinct look into history that art provides. Projects like the Sistine Chapel and the paintings in the United Kingdom's Portrait Gallery highlight the danger of allowing restorations to proceed without carefully weighing the options and considering that these may be the very restorations future generations will feel the need or desire to reverse.

By applying a careful cost-benefit analysis that considers the costs, benefits, and risks of restoration, the international community would be able to fill a gap in international law and preserve important artistic and cultural masterpieces. Because the private market has been more successful at preserving art and minimizing damage, mirroring that system would prevent repeating the hasty decisions that have permanently damaged some great works. The moral of the story is that, in the case of antique masterpieces, making them newer does not necessarily mean better.

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