

## Charles Dickens and Christmas Traditions

How Scrooge and Cratchit personalized the holidays for the Victorians and their descendants

Kathryn DeGraff

**A** *Christmas Carol* is Dickens' most known Christmas story, perhaps his best known work. It was with this book that Samuel Baldwin Bradford began his Dickens Collection, which was given to DePaul University Library in 1972. It was his intent to extra-illustrate *A Christmas Carol* by obtaining every illustrator's idea of the characters and scenes in the story. His collection, which we have added to over time, now contains almost 100 editions of *A Christmas Carol*, as well as over a hundred more Dickens Christmas books and stories in collections, as public readings, in play form, in many forms. In literature, imagery and popular culture, Christmas and Dickens are linked in many ways.

Those links between Dickens and Christmas can be found in his Christmas books and also through the concepts and social ideals he included throughout his work. But they are most clearly expressed in *A Christmas Carol*. The publication of this work provided a foundation on which the observances of Christmas in Victorian times could be reshaped and provide the source for our modern day celebrations.

Bogged down in the writing of *Martin Chuzzlewit*, beset by debts, Dickens conceived of the idea of writing a Christmas book on October 17, 1843. *A Christmas Carol* appeared on the stands on December 19, 1843. The book caught hold of the imagination of the public and the spirit of the times; 6,000 copies were sold the first day, 4,000 the next and it has never since



This Christmas Carol, illustrated by Roberto Innocenti, was published in 1990.

been out of print.

In subsequent years Dickens wrote *The Chimes* (1844), *Cricket on the Hearth* (1845), *Battle of Life* (1846), and *Haunted Man* (1848), as well as regularly writing Christmas stories for his periodical, *Household Words*. However, nothing else he wrote for Christmas ever attained the lasting success of *A Christmas Carol*.

The link between Christmas and Dickens can be found in many aspects of the man and his work. His life outside his novels embodied elements of the charity

commonly associated with Christmas time. He tried to help women who had become prostitutes. He encouraged personal charity as opposed to organized charities.

The actual themes of *A Christmas Carol* can be found in other Dickens stories and novels: he used Christmas as a setting for one piece in *Sketches by Boz* (1836) where Christmas dinner included an empty chair where a small child formerly sat. *Pickwick Papers* (1836-7) depicts a rousing country Christmas at Dingley Dell; *Great Expectations* (1861) opens on a dismal Christmas Eve; snow falls on a quiet Christmas Eve in *Cloisterham* in *Edwin Drood* (1870).

More important in linking Dickens and the spirit of Christmas are the moral themes he included in his writings. The family-centered world—with its ideals of redemption, of the triumphant spirit of the common man, of the redemptive power of children, of virtue triumphant, of

natural human goodness, of benevolence—permeates his work. Those same ideals and values find expression and focus in contemporary observances of and attitudes about Christmas.

Whether as the underlying theme in *Tale of Two Cities* (where Sidney Carton gives the gift of life so that the child of Evremond can live happily ever after) or through the images of domestic unity, children, family life that close *David Copperfield*, Dickens fiction amplified and expanded on the

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family values he expressed in *A Christmas Carol*. The connection of Dickens with Christmas became part of the Victorian understanding of Christmas so much so that in 1870, when Charles Dickens died, Theodore Watts-Dunton reported that he heard a beggar woman on the street exclaim "Dickens dead? Then will Father Christmas die too?" In discussing the incident in later years, Watts-Dunton remarked "It was from her I learnt that there were at the time thousands and thousands of the London populace who never read a line of Dickens—who never, indeed, had had an opportunity of reading a line—but who were, nevertheless, familiar with his name. They looked upon Dickens as the spirit of Christmas incarnate: as being, in a word, Father Christmas himself."

The spirit and traditions represented in Dickens as part of Christmas become so important to Victorian society in part because for almost two hundred years prior to Dickens, the holiday was not celebrated as it had been in medieval times—and is today.

Dickens did not single-handedly create Christmas for Victorian England, but he and his work served as a focus for the changes that were occurring in Christmas observances at this time. In 1843, the same year *A Christmas Carol* was published, Henry Cole, a London businessman, had hand-colored lithographs printed so he did not have to hand write thank you notes to customers at Christmastime. Thus, Dickens' story of Christmas coincided with the first printed and mailed Christmas cards. About the same time, Prince Albert introduced the German Christmas traditions, including the decorated evergreen tree. Old Christmas carols were being collected in the countryside and sung in the city. Even still, Christmas was not observed as the full festive season it is today, or had been in Elizabethan times.

For almost 300 years, the observance of Christmas had diminished throughout England, particularly in urban areas. In Robert Southey's words: "All persons say how differently this season was observed in their fathers' days, and speak of old ceremonies and old festivities as things which are obsolete." In particular, it was observed in 1830 that: "It is said of the English, that formerly they were remarkable for the manner in which they celebrated the festival of Christmas; at which season they admitted variety of sports and pas-

times not known, or little practiced in other countries.... The lord of misrule whose reign began after Halloween and continued through Christmas, when the King of the Bean would take his place till 12th Night, has been extinct for many years, and his name and his offices are nearly forgotten." Little wonder these medieval observances were forgotten or suppressed. Heathen companies in churches, their members clothed in garments of wanton colors, would turn their plea for alms into holding up churchgoers for money. Revelers would dress as priests, men would dress as women and indulge in obscene jests, and lewd and vulgar speech—all as part of the ancient celebrations of the Christmas season.

Some three hundred years before Dickens wrote *A Christmas Carol*, in 1542, Henry VIII first began to place restrictions on lewd observances of Christmas. The overthrow of the monarchy in 1643 and the changes in Christmas observances which the Puritans instituted are described in 1646 by John Taylor in his "The Complaint of Christmas...":

"All the liberty and harmless sports, the merry gambols, dances and friscols, with which the toiling ploughman and labourer once a year were wont to be recreated, and their spirits and hopes revived for a whole twelvemonth, are now extinct and put out of use, in such a fashion as if they never had been." The ban on observances "extended itself to the very vegetables; senseless trees, herbs, holly, ivy, mistletoe, rosemary, bays, are accounted ungodly branches of superstition.

"And to roast a sirloin of beef, to tough a collar of brawn, to take a pie, to put a plum in the pottage pot, to burn a great candle, or to lay one block the more in the fire for your sake, Master Christmas, is enough to make a man to be suspected and taken for a Christian [Catholic], for which he shall be apprehended for committing high Parliament Treason and mighty malignancy against the general Council of the Directorian private Presbyterian Conventicle."

In 1652, the Puritan Parliament proclaimed that "no observance shall be had of the five and twentieth day of December, commonly called Christmas Day; nor any solemnity used or exercised in churches upon that day in respect thereof." Mince pies were described as "an abomination, idolatry, superstition and Popish observance." Carols were forbidden to be publicly sung.

There was some restoration of Christmas, as could be expected, with the restoration of the



Detail from cover of the Arion Press Christmas Carol published in 1993 to celebrate the 150th anniversary of the first printing.

monarchy in 1660, but the old customs never regained their full force. By the end of the eighteenth century, the old trappings and entertainments had greatly diminished, particularly from urban settings. The traditional observances that remained—taking a lengthy holiday; gathering family, servants, staff together around a fireside in a great hall for feasting and games; time off from routine labors—these were more suited to the cycles of an agrarian world than the increasingly industrialized one inhabited by Scrooge, Cratchit, and Charles Dickens. What remained of the religious traditions were fading in light of the expansion of scientific knowledge that challenged the roots of faith for Victorians.

Victorian manufacturing and consumer society, whose rhythms were set by artificial lights, clocks, bells, and cash rather than the seasonal changes of Mother Nature, had no way to incorporate the agrarian, religious holiday of the past. Christmas needed to be remade for the secular and capitalist world. In addition to seasonal greetings as represented by Henry Cole's card, there was beginning to be a modest revival in urban households of some of the medieval traditions, such as use of mistletoe and holly, as well as the introduction of the Christmas tree and carols. But the element missing

was linkage to the growing consumer/ manufacturing/ work outside the home economy.

So, *A Christmas Carol* caught the public imagination and became the center on which Victorian Christmas observances found their focus. Building on these observances, by the early days of the 20th century, Christmas traditions were being established by those who had been children when Dickens lived, and were passing on their childhood traditions to their children and grandchildren. Bits of Scrooge and Cratchit, a nostalgia for Victorian customs, memories of Dickens himself, had become part of a generalized fiction called "The Dickens Christmas." The focus included all the aspects of Dickens that connected to Christmas, but *A Christmas Carol* was always the cornerstone. His great contribution was the personalizing of the experience of Christmas. He offered readers a way of thinking about the festival, not just as an occasion when the community remembers ancient customs, but also as one when the individual remembers previous Christmases, and can profit from the act of remembering.



This picture of the poor but happy Cratchit family appeared in the first American illustrated edition, published in 1868.

Dickens made his great gift through the elements and illustrations in the story. The story of Scrooge is a mythical tale told through bending time. The chronological start to the story is Fezziwig's Ball, where young Scrooge felt the power of the kindness of his master. The dance of Old Fezziwig and Mrs. Fezziwig is strongly recalled by Scrooge and is one of the scenes that is always illustrated in editions of the story. Fezziwig and the Ball stand in stark contrast to Scrooge's treatment of his own clerk, Bob Cratchit. The chronological story ends with that clerk on the day after Christmas, when Scrooge greets him cheerily at the door. They share the bowl of smoking bishop in front of the roaring fire and Scrooge also gives his clerk a raise. The story begins where it ends, with a friendly office Christmas party.

The roast fowl as centerpiece to the family holiday dinner, the food tradition that prevails today, is repeated in many settings, from the Cratchit family dinner to

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Scrooge's dinner with nephew Fred on Christmas Day. Gifts are exchanged, particularly by the family of Scrooge's former sweetheart. Anyone who has been part of a family Christmas with young children will appreciate the description of the children who came rushing "just in time to greet the father, who, came home attended by a man laden with Christmas toys and presents. Then the shouting and struggling and the onslaught on the defenseless porter." Scrooge travels home from school at Christmas through snow and evergreens. At nephew Fred's, games are made of kissing beneath the mistletoe. Since, for many of us, time off at the holidays includes reading, it is interesting to note that the young Scrooge spent his lonely holidays there reading *Arabian Nights* and *Robinson Crusoe*.

These holiday themes find their place in a serious work by Dickens, who is writing about poverty, ignorance, hunger, and the selfishness of the human spirit isolated from others. Illustrations abundantly show the wretched and lonely, the ghosts and graves. Dickens' tale of human regeneration is propelled by powers of the spirit world affecting the movement of Scrooge from a lonely and bitter old man to one surrounded by family and friends. From Jacob Marley's summoning him on the journey through time to the unseen ghost of Tiny Tim and then to the spectre beside his own grave, spirits help Scrooge understand his own nature and his connection to all of humanity. Led by ghosts on his journey through time, he encounters traditions of Christmas in other people. And he finds his redemption through reconnecting with the spirit of humanity as witnessed in the observances of Christmas. In the space of two months' time, Dickens wrote a story that had enduring and significant appeal.

The story was pirated within the first



Chapman and Hall's first London edition of 1844 featured illustrations by John Leech.

month of its publication. By New Year's day, 1844, there was an adaptation of the story on the British stage; by the end of January, unauthorized editions had appeared in book stalls. Writing in the middle of the nineteenth century, William Thackeray referred to *A Christmas Carol* as "a national treasure." When World War II paper rationing ended and book publishing could resume, *A Christmas Carol* was the first book printed in England.

Performances, recordings, even an early film version had appeared by 1908. Every classic American television series—from *Topper*, *The Honeymooners*, *Our Miss Brooks*, to *Moonlighting*—has done Scrooge episodes. Some critics analyze Bill Murray's performance in *Groundhog Day* as the redemption of a modern day Scrooge, in his own version of reliving his past. There are over 340 play and reading versions. Since 1920 at least one new edition, adaptation, or public performance has appeared each year. The story is told again and again: by

Muppets, in store windows, by science fiction characters, and as a tool of merchandising and advertising. It is part of the culture of Christmas as it is lived today.

Dickens created a story where Scrooge recalled his emotional past and that recollection balanced his emotions and human relations. Scrooge learned how to live with his past, present and future selves. Dickens showed through Scrooge how memories healed and brought moral growth. *A Christmas Carol* links Christmas traditions with human emotions, and Dickens became part of those traditions because of this work.

In the eulogies of Charles Dickens after his death, he was called, "Father Christmas himself" and "the Apostle of Christmas." These names for him embody what he, through *A Christmas Carol*, became in the popular consciousness as the representative of Christmas. He himself wrote: "There seems a

magic in the very name of Christmas..." Little did he know that in time his name, and the names and words of his characters in *A Christmas Carol*, would become an inextricable part of that magic. Through *A Christmas Carol*, Dickens restored Christmas traditions to Victorian society by giving the world a new story to remake lost traditions in a new world. In doing so, he restored those traditions so that he is now a part of them himself. This is his enduring legacy to the season of peace and goodwill.

At Christmas time we remember our personal and collective past through our participation in the traditions of the holiday. Samuel Bradford and his Dickens Collection provide a way for us at DePaul to share in the memories and to pass on some of the traditions to others.

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Adapted from a Club luncheon presentation given on December 10, 2004. All illustrations reproduced from copies in the collection of DePaul University Library Special Collections.

# Holocaust Era Assets and the Extraterritorial Reach of US Law

Michael Thompson

Adapted from a talk presented at “Responsible Stewardship Towards Cultural Heritage Materials” sponsored by the International Federation of Library Associations—Rare Books and Manuscripts Section, Kongelige Bibliotek, Copenhagen, Denmark, August 11-12, 2005

Thank you for inviting me here to this informative program about the proper stewardship of rare books, manuscripts, and other important cultural materials. I’d like to thank specifically Susan Allen of the Getty Research Institute in Los Angeles for thinking of me for this topic. I’ve known Susan for several years and we’ve had numerous discussions over the years about the legal issues surrounding the acquisition of rare books and manuscripts.

The court system in the United States is not in the least straight-forward. The state and federal court systems operate largely independently of one another, although federal law controls whenever it applies, and all state law must meet some general federal principles, most significantly Constitutional principles protecting individual rights. Those rights extend to the ownership of property, including personal property such as a book or a manuscript, and a corollary of that right is the right not to be deprived of such property without due process of law.

One of the two cases I will talk about shortly will present a rather clear cut example of the independence of the federal and state judicial systems, and it will illustrate the troublesome issues that can arise when cultural property is lent to an exhibition in the United States. That case is called *United States v. Portrait of Wally*. The other case is a United States Supreme Court case involving an adjudication of ownership of cultural property that is not, and has never been, in the United States. That case is the *Republic of Austria v. Maria Altman*. Both of these cases involve competing claims of ownership between US and foreign nationals, and in each case the claim of the US national is derived from events that took place in Europe during and immediately



The Royal Library in Copenhagen, where the conference took place. Photograph by Karsten Bundegaard.

after World War II.

Before proceeding to these two significant cases, however, it may be a good idea to give you some background about American rules of property law and what it is about WWII that is still relevant today to US courts. The first salient event is the rise of the Third Reich in Germany, in particular in January of 1933 when Hitler became Chancellor. He wasted no time in commencing his campaign against Jewish interests, establishing a concentration camp at Dachau by March of that year and by April launching a boycott of Jewish businesses. The human devastation of the ensuing years is well known, but in recent years much attention has also been paid to the large scale looting of cultural property owned by various disfavored groups, primarily by Jews, both in Germany and throughout its occupied territories. Tens of thousands of stolen paintings, *objects d’art*, books, and manuscripts were recovered by the US army and other allied forces at the end of the war. These events still resonate loudly in US courtrooms.

After collecting the material from various Nazi depots and moving it to a handful of military collecting points, the Army

embarked on an elaborate restitution program under which it endeavored to return everything it collected to the governments of the nations from which it had been taken. These governments were then responsible for returning objects to their individual owners who, through the endless tragedies wrought by the war, included individuals then living in other countries, public institutions that had been destroyed, and the unknown heirs of individuals killed during the war.

The complexity of this monumental task obviously gave rise to disputes about title and ownership, and the Army did what it could to refer these disputes to the governments involved. US courts were rarely involved until the 1990s, when class action litigation was begun in New York against European banks and insurance companies to recover, respectively, abandoned bank accounts and the unclaimed proceeds of insurance policies.

This litigation and the resulting publicity it created led the US Congress to pass a law, unanimously, establishing in 1998 the Presidential Commission on Holocaust Assets, and to charge it with the responsibility. See *HOLOCAUST ERA ASSETS*, page 6

bility for investigating the Army's collection and disposition both of financial assets and cultural property, and to recommend to Congress and the President "such legislative, administrative, or other action as it deems necessary or appropriate." With respect to books and manuscripts, along with fine art and other cultural property, the Commission's work led not to legislation but to three letters of agreement with the Library of Congress, the American Association of Museums, and the Association of Art Museum Directors. In these letters, each group and its members agreed to undertake steps to identify and disseminate information about objects in their collections that did not have a complete and unblemished provenance, and that met all of the following criteria: they were created before 1946, acquired after 1932, and located in Europe at any time during that period. In addition, the Library of Congress offered to establish a virtual library of books acquired from the Jewish Cultural Reconstruction agency, the recipient of thousands of volumes for which owners could not be found. Books in the virtual library will have a special electronic tag for identification and will be given priority in cataloguing. Each individual record will indicate the book's special provenance.

If in the United States a public institution or a private collector has an object that turns out to have been stolen during WWII (or for that matter at any other time), then there is a significant cloud on the purported owner's title, and he can be dispossessed of the object through an action at law called replevin. Under the common law, courts follow the so-called rule of origin to the effect that a thief cannot convey good title to a subsequent purchaser, even to a purchaser who purchases in good faith and without knowledge of the theft. This rule continues to apply to every subsequent transaction, so that even a good faith purchaser who pays full market value to a reputable dealer, who in turn is several transactions removed from the actual thief, still does not acquire good title. The only recourse the good faith purchaser has is against his immediate seller, and that seller against his seller, and so forth on up

the line to the thief.

It is against this historical, legal, and political backdrop that the two high profile cases I mentioned earlier have arisen in the United States, and are still being pursued, and that involve the adjudication of ownership of foreign assets based upon WWII-vintage claims. Those of you with responsibility for important cultural materials may already have heard of these cases, and although the facts are complicated, the law is even more complicated, and avoiding similar problems with your own collections could be difficult.

The first case is *United States v. Portrait of Wally, a painting by Egon Schiele*. Lea Bondi Jaray, also known simply as Lea Bondi, was a Jewish art dealer in Vienna at the time of the *anschluss*, or the annexation of Austria by Germany in 1938. Her gallery was "Aryanized", *i.e.*, turned over to a Nazi party member without proper compensation, and then this individual apparently extorted *Portrait of Wally* from her private collection without any compensation at all. Lea escaped with her life, however, and that was no mean accomplishment.

After the war, the US Army collected *Portrait of Wally* and turned it over to the Bundesdenkmalamt (BDA), the agency established by the Austrian government to collect and restitute stolen and confiscated property to its proper owners. Through a series of errors, *Wally* ended up with twelve other Schiele paintings in another private collection, and then in the Austrian National Gallery, the Belvedere. The Belvedere sold *Wally* to a prominent Schiele collector, Dr. Rudolph Leopold, from whom Lea Bondi tried to regain possession after the war, but failed. Lea died in 1969.

In 1994, Dr. Leopold sold *Wally* to a museum he established, the Leopold Museum-Privatstiftung, and in 1997 the painting was lent to the Museum of Modern Art in New York for an exhibition in Manhattan of Schiele's works. There, it was first seized as stolen property by the Manhattan district attorney, Robert Morgenthau, a state official, but that seizure was later quashed by state courts on the basis of a state law protecting cultural objects temporarily in New York for an exhibition.

Faced with that failure, three days after the exhibition closed, the US Attorney for the Southern District of New York, a federal official, seized the painting under the auspices of the federal National Stolen Property Act. The painting is still there, and there it will stay until the federal district court determines its true ownership.

This determination will not be done directly, however, and although a complete description of this complex legal proceeding, in which the Republic of Austria and the American Association of Museums filed *amicus* briefs, is beyond the time permitted for my presentation, it might be useful at least to know exactly what the court will do, and what the implications may be for European curators.

The proceeding is a civil forfeiture proceeding alleging that the painting was imported into the US by the Leopold Museum knowing that it had been stolen, which is a felony. This is therefore a criminal proceeding, not a replevin action, and if the government at the end of the day were to win, the painting would end up as property of the United States. In such proceedings, however, anyone with a colorable claim to ownership, namely the ability to allege enough facts to survive a motion to dismiss, can intervene and challenge the civil forfeiture. Lea Bondi's heirs have done this, and as a result stand to recover title to the picture if they can meet the burden of proving that the Leopold does not have good title. This will not be easy after fifty years, and there are a number of defenses the Leopold can assert to defeat their claim.

The Leopold would very much prefer to assert those defenses in Austria rather than New York, however. Recall that under American law good title can never be obtained to stolen property, and that makes the United States a good place to try this issue for claimants like Lea Bondi's heirs. In Austria, good title can be obtained by prescription after a brief three-year waiting period so long as the possessor has no reason to doubt his lawful ownership. And under Austrian law, which is typical of continental civil law jurisdictions, the good faith of the possessor is presumed and would have to be disproved by the claimants.

There are defenses that the Leopold can assert even in the United States, of course, such as the statute of limitations and laches, but unlike prescription these are much more difficult to establish. These are a matter of domestic law, however, and beyond the scope of this international presentation. Suffice it to say that this case and much of the litigation involving Holocaust Era assets is taking place in New York, one of the states where I practice, and New York has become a particularly difficult place to defeat a claim on the basis of a statute-of-limitations defense.

The Leopold will argue, however, that American law should not apply to the adjudication of ownership, and in my view and I believe in the Court's view this argument should prevail. This painting has never been permanently in the United States, and the Leopold may well have established good title under Austrian law long before the painting left Austria. How all of this turns out is not yet known, although the government and the Bondi heirs have survived some crucial legal tests. The case is now in the discovery phase, where it's been for quite a while, but it's expected to go to trial later this year.

Could the Leopold Museum have avoided this problem? Given the nature of the facts involved here, probably not, and as we'll see in a few moments, not even keeping the picture in Austria would be a sure solution. A better question to ask might be what can any of you do to avoid a similar problem if one of your own books or manuscripts were to be lent to an exhibition in the United States. For that, I can offer a good suggestion.

The Immunity from Seizure Act provides for registration with the Department of State of objects of "cultural significance" that are imported into the United States for "temporary exhibition or display." An application is filed with the United States Information Agency, a subdivision of the State Department, and a decision is made as to whether or not the importation and display

of the object is in the national interest. If so, then the imported object is immune from judicial seizure.

Approval of the application is not automatic, however, and the filing requirements can be extensive. Among other things, one must file a copy of the exhibition loan agreement under which the object is being imported and also a copy of all "related commercial agreements" with all venues for



Portrait of Wally, as reproduced in news reports.

the show. The object's cultural significance must be supported by a "scholarly statement," presumably written by an authority in the relevant area. Most relevant to the discussion of the *Wally* proceeding is the requirement that the applicant certify that he has undertaken a complete review of the object's provenance and has evaluated any competing claims of ownership. This section of the application could be quite extensive, and failure to disclose all known facts fully might result in a nullification of the protection from seizure.

Neither the Museum of Modern Art nor the Leopold went through this State Department procedure, and I'm not sure it would have helped if they had. The facts that have been asserted in the civil forfeiture proceeding by the Department of Justice, which of course are disputed by the Leopold, indicate that an application to the State Department may very well have been denied. Does that mean one shouldn't risk

making loans of cultural property to the US? Perhaps, although that may be too drastic a response. If you do choose to lend something, I highly recommend going through the State Department registration procedure even though there may be some time and expense in doing so.

Another reason to continue to make loans brings us to our next case, the *Republic of Austria v. Maria Altman*, which may indicate that the objects in your collections are not immune from the extraterritorial reach of US law even if they stay in your respective countries. Maria Altman was born in Austria in 1916 and stayed there until the *anschluss* in 1938. She escaped the Nazis, settled in California in 1942, and became a US citizen in 1945. Her uncle, Ferdinand Bloch-Bauer, a wealthy Czech Jew, also lived in Vienna at the time of the *anschluss* and had six paintings by Gustav Klimt, including one depicting his wife Adele, Maria's aunt. Ferdinand fled Austria successfully, ending up in Zurich, but had to leave most of his property behind, including the six Klimts. The paintings ended up in the hands of a Nazi lawyer with the unlikely name of

Erich Führrer. After the war, through various complicated routes, the paintings ended up in the Belvedere.

Maria Altman attempted to reclaim them at that time. She managed to reclaim some of Ferdinand's other property, but in order to export it she had to relinquish ownership of the six Klimts to the Austrian Gallery.

The coercive export control laws were changed, although not eliminated, in 1998, and Maria renewed her attempt to obtain the Klimts. She filed suit in Austria, but when faced with Austria's stringent bonding requirements and court costs, she was once again frustrated. Maria voluntarily dismissed her Austrian lawsuit and sued the Republic of Austria in the US District Court for the Central District of California, where she lives, with subject matter jurisdiction founded on the US Foreign Sovereign Immunities Act ("FSIA"). She did this even though the paintings had

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never been in the United States, and as far as I know had never left Austria from the moment of their creation on Gustav Klimt's easel. The jurisdiction of the California court was of course challenged by Austria, but it was upheld throughout the US federal court system, including the US Supreme Court, which issued its opinion last year.

So what are we to make of this case? What are we to make of a trial court judge in California taking upon himself the power, purportedly at least, to divest ownership of Austrian cultural property from the sovereign government of Austria? The explanation of this case and of the FSIA lies not so much in the world of art and rare books, or even in the emerging world of Holocaust Era litigation; it lies rather in the politically-charged world of foreign investment during the four and a half decades of the cold war.

During the decade of the nineties, I made my living as a lawyer by representing US investors in the telecommunications, energy, and transportation sectors. Those were the heady days of privatizations, and they were good days indeed for US investors and for their advisors. Before that, however, we were in the era of nationalization, also called expropriation, when countries principally in the less developed world were nationalizing assets owned by foreign investors and not paying compensation that was, in the words of the time, "prompt, adequate, and effective" (i.e., timely, equal to fair market value, and paid in an exchangeable currency). This failure to compensate properly was viewed by businessmen, diplomats, and politicians in the developed world as a violation of customary international law. But a heart-felt concern doesn't provide a remedy, and an aggrieved foreign investor, as a private citizen, essentially has no ability to enforce international law.

In 1976, Congress sought to provide a remedy to such investors. The Foreign Sovereign Immunities Act sets up a general rule that foreign governments are not susceptible to subject matter jurisdiction in US courts unless the subject of the proceeding falls into one or more of four specific exceptions. One of those exceptions, known as

the expropriation exception, permits federal courts to adjudicate claims involving "rights in property taken in violation of international law." This was the exception used by Maria Altman.

While the recovery of Holocaust Era assets was not the intended target of the FSIA, it nevertheless fits within the express words of the statute. The Republic of Austria argued that a statute passed in 1976 cannot be applied retroactively to conduct that occurred during World War II. At this early stage of the proceeding, this was the only issue to go to the Supreme Court, and in a lengthy majority opinion the Austrian position was rejected in a 6-3 vote. The trial court in California is now authorized to proceed to decide the fate of the six Klimt paintings.

What does this mean for the custodians of important cultural property in Europe? It might mean, and there are a number of lawyers in the US who would adopt this view, that any of you could be called upon to defend title to your own collection in a US court. Other cases have been filed in the wake of this decision, one against the Thyssen-Bornemisza Collection in Spain, over a Pissarro, and one against the Stedelijk Museum in Amsterdam over several Malevich paintings. In my view, however, the *Altman* decision will not have a far reaching impact for several reasons.

First, a claim filed under the FSIA must involve a violation of international law and that can be a very narrow class of cases. Not all immoral or reprehensible conduct violates international law. The US recognizes the Act of State Doctrine, for example, which insulates foreign sovereigns from liability under international law for most actions they take against their own citizens. Expropriation, therefore, only violates international law if the expropriation is of property owned by a foreigner.

Second, the statute permits actions against foreign sovereigns and their instrumentalities, not against private collectors or private libraries. Many of your institutions may fit within the instrumentality category, depending exactly upon how you've been organized, funded, and governed, but many of the assets that will be the targets of these suits are owned privately and will be

excluded by this requirement.

Third, I've been talking so far only about subject matter jurisdiction and not about personal, or *in personam*, jurisdiction. Courts in the United States need both in order to adjudicate a claim, and the source for *in personam* jurisdiction must come from outside the FSIA. In some cases it can be obtained easily, for example through museum sales or through a tourist office, but in the case of a library, even a government sponsored one, *in personam* jurisdiction could be a daunting problem.

And finally, there's the obvious issue of enforcement of a judgment obtained from an American court against property in a foreign country, especially against cultural property owned by the government of the foreign country. Maria Altman, even if she were to prevail on the merits of her proceeding in California, and she has a long way to go before she gets to that point, could have a formidable task in translating an American judgment into actual possession of the six Klimts in Vienna. Foreign judgments are enforceable by Austrian courts on the basis of international comity, but it's never easy to translate that rule of law into an actual and enforceable order. And even if Maria were to get over this hurdle and acquire ownership and possession of the paintings in Austria, they will no doubt be subject to valid export controls (although less coercive than before) and that will reduce the market value of the paintings to something below international levels.

In light of these and perhaps other problems, Maria Altman and her lawyers have agreed to dismiss the California proceeding despite the Supreme Court decision and go to a binding arbitration proceeding in Austria. She thereby avoids the cost of Austrian litigation, which had previously been a deterrent, and she is assured of getting an enforceable judgment if she prevails.

Litigation in the United States of Holocaust Era claims continues unabated, and in the last two years there have been significant strides towards extraterritoriality. This is not surprising given the aggressiveness of the American bar and the inher-

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# Caxton Club/Newberry Library Symposium

Looking Ahead to April 1, 2006: "The Past and Future of Intellectual Property"

Paul Gehl

Please mark your calendars now for the next in what we hope will become an annual Caxton Club event, a symposium on the book cosponsored by The Newberry Library. Our goal is to bring nationally recognized scholars of history, literature, communications, law, and other book-related fields to Chicago for an intensive day of formal talks and informal discussions with a broad public audience. This coming year's theme is the history of intellectual property, chosen as a follow-up to the symposium on book-breaking that accompanied the Club's leaf-book exhibit last spring.

The 2006 program will be a day-long symposium entitled *The Past and Future of Intellectual Property*. The date is Saturday, April 1, 2006, with morning lectures at The Newberry Library and an afternoon roundtable at The Fortnightly Club. The day will conclude with cocktails at the Fortnightly.

Intellectual property includes not only copyright for printed and manuscript texts but also other kinds of rights in music and other artistic works, electronic publications, and cultural properties of all sorts. The symposium will explore a variety of philosophical and legal approaches to intellectual property, recognizing first of all that there are several alternative notions to traditional copyright within our own Anglo-American tradition—not in case law but in the history of authorship before and since the first copyright laws. Speakers will then explore some more recent historical situations that offer still other perspectives. The program will conclude with a look to the future. Here is an overview of the speakers and topics.

*From Caxton to Copyright: Authorship in the First Age of Printing*. Speaker: Joseph Loewenstein (Professor of English, Washington University). Before the copyright laws of the early eighteenth century, the largest intellectual property issues concerned the nature of authorship and the subordinate relationship of the author to the copyholder, typically a publisher. Professor Loewenstein will adduce a variety of cases from the early seventeenth to the mid-

twentieth century that show how perennial the problem really is—Hamlet and Martin Guerre and the Red Cross Knight; *North by Northwest*, *The Runaway Bride*, and *His Girl Friday*. Loewenstein is the author of the widely cited critical study, *The Author's Due: Printing and the Prehistory of Copyright*, and many studies on Ben Jonson and Edmund Spenser.

*Enlightenment Literature and the Law*. Speaker: James Caudle (Associate Editor, James Boswell Papers, Yale University). The English authors of the eighteenth century vigorously debated copyright and frequently took their publishers (and each other) to law. The issues included the proper duration of copyright; its origin in natural, common, or statute law; the question of property rights in unpublished works, and the proper role of the government in the censorship of printed matter. These issues are still debated in recent case law, largely because the writers and jurists of the Enlightenment placed them at the center of notions of intellectual property embodied in all subsequent legislation. Dr. Caudle is a noted expert on the legal and cultural life of eighteenth-century England, especially matters of censorship and freedom of the press.

*Internationalizing Copyright, 1850-2000*. Speaker: Martha Woodmansee (Professor of English and Law, Case Western Reserve University). Professor Woodmansee's essay, "The Genius and the Copyright" is now considered a classic in the fields of literary and legal history. For the symposium she will consider how 19th-century translations, literary piracies, and unauthorized reprinting led to the forging of our modern international conventions on intellectual property. Woodmansee would like to recover some of the more communal impulses from the period of copyright's origin in the eighteenth and early nineteenth centuries that may serve as models as well as inspiration in our effort to rethink and adapt this system to a post-colonial, global world.

*The Global Copyright Crisis: Three Trends and Conflicts in the Information Age*. Speaker: Siva Vaidyanathan (Associ-

ate Professor of Culture and Communication, New York University). Author of two popular books on our topic, *Copyrights and Copywrongs* (2001) and *The Anarchist in the Library* (2003), Professor Vaidyanathan is also a noted journalist who publishes regularly on copyright and intellectual property issues. He will describe how the United States and Western Europe are striving to standardize the laws, technologies, and practices of information distribution in such a way as to lock in their early competitive advantages. There are two competing streams of resistance to this standardization effort: the inchoate yet liberally informed "Free Culture Movement" and the more established albeit politically marginalized "Native Culture Movement." Vaidyanathan will examine the points of friction among these three movements and outline some ways of reaching common ground.

The afternoon session will take the form of a roundtable discussion: *Lessons from the Past and For the Future*. Participating will be the four speakers above and moderator, Caxtonian C. Steven Tomashefsky. All four of our invited speakers will have strong opinions about where copyright can and should go forward. Steve, of course, is himself a specialist on copyright, so we may expect him to have some strong opinions of his own, and not necessarily ones that agree with those of our speakers!

Morning sessions will begin at 9 a.m. in Ruggles Hall of The Newberry Library, 60 West Walton. The afternoon session will take place at the Fortnightly Club, 120 East Bellevue.

The program is free and open to the public but space is limited, so *advance registration is required*, and you should specify if you will attend the morning or afternoon session or both. We urge club members to register early to ensure that you have a place. Look for announcements and a registration form on the Caxton Club website. You will also get a mailing from the club in January.

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## Book and manuscript-related exhibitions: a selective list

Compiled by John Blew

"From Poetry to Verse: The Making of Modern Poetry" (closes 12 February '06) and "City Lights Pocket Poets Series, 1955-2005: From the Collection of Donald A. Heneghan" (closes 7 January 06), both at the Special Collections Research Center, Joseph Regenstein Library, The University of Chicago, 1100 East 57th St. 773-702-8705

"Little Acorns and Budding Artists—Kids Who Followed Their Dreams" (Donald Culross Peattie, Edwin Way Teale and other naturalists with Midwestern roots) at The Sterling Morton Library, Morton Arboretum, 4100 Illinois Route 53, Lisle, IL 630-968-0074 (closes 14 January 06)

"Lewis & Clark and the Indian Country" at the Newberry Library, 60 West Walton Street 312-255-3700 (closes 14 January 06)

"Timuel D. Black, Jr.: Seven Decades in the Struggle for Human Rights," at Woodson Regional Library of the Chicago Public Library, 9525 S. Halsted St. 312-747-6900 (closes 31 July 06)

"75 Years of Collecting at the Adler Planetarium," at the Adler Planetarium & Astronomy Museum, Chicago Museum Campus 312-922-7827 (closes 31 January 06)

A display of materials that document the chronology of the Art Institute's bronze sculpture of George Washington, cast in 1917 by the Gorham Manufacturing Company, one of numerous authorized copies of the original white marble sculpture of 1785-91 by Houdon. Ryerson and Burnham Libraries, Art Institute of Chicago 312-443-3671 (closes 6 January 06)

*Members who have information about current or forthcoming exhibitions that might be of interest to Caxtonians, please call or e-mail John Blew (phone: 312-807-4317, e-mail: jblew@bellboyd.com).*

## Membership report

To the members of the Membership Committee, (yes, "Every Caxtonian is a member of the Membership Committee"), from Bill Mulliken, committee chair:

**Elected 19 October 2005:** David Spadafora, The Newberry Library [collecting interest, 18th Century British Thought]. Lauren Holhut, The Newberry Library [collecting interest, Art and Art History, Law, Literary Criticism]. David Weinburg, book dealer [collecting interest, Lincolniana, Civil War, U. S. Presidents].

**Elected 21 September 2005:** John Neal Hoover, Mercantile Library, St Louis. Matthew Bird, Law Librarian at Gardner, Carton. William J.O. Roberts, Investment Accounting [collecting interest, Classical Arts].

Junie Sinson has challenged the Membership Committee to increase the membership of the Club by 100 members. Fortunately, he set the target, but not the date. So I hope to increase membership by thirty new members during the 2005/06 fiscal year. We have added three new members each month for the last two months. We have eight more months left in the fiscal year, so we need three new members each remaining month.

I am asking for your help on meeting this goal. Please search your mind for prospective members and give their names to me. Also I would love any of your thoughts about how to increase membership. Contact me by phone at 773-794-9504 or email at billmulliken@mac.com.

I am pleased to announce that Dan 'Skip' Landt, a fellow new Council member, has agreed to act as Co-Chair of the Membership Committee, to cover me when I am not in Chicago for Council meetings.

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box, or if not, then a box-like functional decoration we call a binding. We may or may not have an idea of what's inside, but even if we do, there will plenty of surprises within." He got started early: he worked in his high school library, and the library bindery in college.

He admits that he does not make it to as many meetings as he would like. "Sometimes the subject of the talk really interests me, but I can't make it because of a schedul-

ing conflict. Other times, I could come, but the topic is not anything I'm really curious about. But when I do end up coming, even if thinking I'm not interested in the topic, it usually turns out to be really interesting. And even if the talk isn't, talking to other members is always enlightening. It's such a varied group that I'm sure to get a new perspective on something."

Jahns lives in Edgewater's Lakewood-Balmoral neighborhood with his wife, Jill Metcoff Jahns. She is a professional photog-

rapher, primarily of natural subjects. Her most recent gallery show was of prairie burns, shown in the galleries of the Chicago Botanic Garden in Glencoe last winter. She has also published a book, *Along the Wisconsin Riverway*, from the University of Wisconsin Press. They have three daughters, the youngest of whom is currently attending Smith College in Northhampton, MA—and taking a typography course this year.

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ently international nature of these disputes. As the largest economy in the world, and without a doubt the most litigious, these legal developments in the US are something of which you all should be aware.

Both of the cases I've summarized here are still in their preliminary, procedural stages where the legal issues I have been discussing are typically resolved. Still ahead in both cases is the fact finding stage, where the claimants will have a heavy burden of

proof to establish their ownership, and they will have to do this before any of these cultural assets are actually divested. Stay alert for further developments.

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# Caxtonians Collect: Jeffrey Jahns

Thirteenth in a series of interviews with members.

Interviewed by Robert McCamant

Jeff Jahns joined the Caxton Club in 1982. His sponsor was Frank Williams. He is a lawyer at Seyfarth Shaw. His area of specialization is commercial real estate and construction. It's not surprising, therefore, that his area of book collecting is architecture. But not just glossy picture books of pretty buildings: he looks for books with character. He talked about several from his collection.

His earliest book is the 1513 edition of Vitruvius' *De Architectura*, published by Giunta based on the manuscript of the Roman architect's first century B.C. treatise on buildings. A text version of "Vitruvius" was first published in the 1490's and an illustrated quarto edition was published in 1511. "The manuscript referred to illustrations, but no illustrations have ever been found. So the 1511 edition included woodcuts which were created for the book. My 1513 edition is an octavo, a pocket book. It also has illustrations, which were adapted from the quarto." Not surprisingly, such an old book has seen some use. It has marginalia in several languages. Jahns cannot document the book's complete provenance, but is sure it passed through several abbeys in the course of its nearly 500-year existence. The Vitruvius was one of 49 books in a "Personal Treasures" show at the Newberry in 1995. Jahns demurs with Ed Quattrochi's recent list of great Renaissance texts; the publication of Vitruvius, which went through scores of editions, should have been among them, or if it is to be omitted on definitional grounds, then surely Palladio's 1570 *I Quattro Libri Dell' Architettura*, which Jahns also owns.

Another favorite book was acquired on a trip to Japan. He and his wife spent some time in Kyoto, touring famous gardens and temples, most of them several hundred years old. So when he discovered, in a used bookstore in Tokyo (behind the counter), a late 18th-century guide to Kyoto, *Miyako Rinsen Meisho-Zue*, that he was familiar with from his preparatory reading, he naturally purchased it. It is printed in Japanese, but despite his inability to read it, it has



provided great fun to figure out which illustrations represent gardens they had seen. He has explored historic prints and photos of the gardens and temples to help identify them. "One remarkable thing about this book is that it is printed on incredibly thin rice paper. It's more than 200 years old, yet it is still perfectly clear and crisp."

He has the boxed *Bauhausbucher 1*, the first of a series published by the famous design school, and one that featured the work of Mies van der Rohe and other Bauhaus architects who subsequently emigrated to Chicago. It includes a photograph of the Mies model of a building which was adapted by a student to become Lake Point Tower in Chicago.

He thinks the first book he "collected"—as opposed to buying to just read—was a seminal architecture book by Robert Venturi, *Complexity and Contradiction in Architecture* (1966).

He has, at first inadvertently, developed a collection of "presentation books." "Frequently when a large building is looking for backers they produce a picture book to generate interest and make the project seem more real. As a result, I have collected a fair number of these, some for projects which were never constructed," he says.

A book which got away was one by the 19th century German architect Karl

Friedrich Schinkel. It was published in two forms, a complete, unified edition and an earlier two-part one. "I had a chance at the two-part one at a bookstore in England, but I was holding out for the complete one." Of course, none has ever crossed his path since.

Jahns favors buying directly from dealers and through catalogs, generally beyond Chicago. "The internet takes the fun out of collecting. If my checkbook could stand it, I could sit down with my top ten want list and have all ten books here within the week. What would be the fun of that?" However, he admits to using the internet to double-check prices and other information. But for him, shopping for books is entertainment. "Lots of bookstores are gone. But in their place are booksellers who work from their homes and even their garages. When you're able to hold the books and talk to the dealer, you learn a great deal more." He admits to favorites in Rome, Paris and Cambridge, MA.

"But you know," Jahns says, "I put books ahead of architecture books. Sure, I specialize in them, but I have an awful lot of other books, too. If I were to be marooned on a desert island, I'd take Milton's *Paradise Lost*. It's an incredibly good book, and it's worth spending plenty of time with. In its essence, a book is a gift. Sometimes it comes in a

See JAHNS page 10

# Bookmarks...

## Luncheon Program

December 9, 2005

Caxton Members:

“This Book Changed My Life”

Tom Joyce, Bill Mulliken, Paul Ruxin, Junie Sinson, and Karen Skubish have worn many hats: specialty book store owners (2), Newberry Director of Events, attorneys (3), Caxton Presidents (3), Club program and membership chairs.

Non-attending contributors to this program are: Denton Cooley M.D., John Grisham, and Bob Woodward.

The life-altering books to be discussed include: *The Grapes of Wrath* by John Steinbeck, 1939; *Handbook for Boys*, The Boy Scouts of America, 1942; *The Life of Samuel Johnson* by James Boswell, 1791, *The Thread That Runs So True* by Jesse Stuart, 1949; *Seven Storey Mountain* by Thomas Merton, 1915; *Miss Susie Slagle's* by Augusta Tucker, 1939; *The World Almanac*, 1949; and *All the King's Men*, by Robert Penn Warren, 1946.

## Collectors and Their Collections

Sunday, December 11, noon and 2 pm

A Visit with Helen Sclair

Caxtonian Helen Sclair will open her mausoleum—er—home to show us her remarkable collection of materials on cemeteries, funerals, and burial practices. Helen is known as one of the world's experts on those subjects and has a particular interest in the cemeteries of the Chicago area. She knows not only where the bodies are buried, but also how and why. Her collection serves as the basis for her research and includes over 28,000 items.

Trained as a singer, Helen retains her flair for the dramatic, but her scholarship is unsurpassed. In 2004, she received the Harriette Merrifield Forbes Award from the Association for Grave-stone Studies. She was interviewed by Studs Terkel for his book *Will the Circle Be Unbroken?* (2001) and is a contributor to the *Encyclopedia of Chicago*. Last October she gave a lunch presentation to the Club on the strange history of Al Capone's gravestone.

Often called “The Cemetery Lady,” Helen lives on the grounds of the Bohemian National Cemetery on Chicago's northwest side. Weather permitting, there will also be an opportunity to visit the Cemetery's outstanding grounds.

Space is limited, so please reserve in advance by calling the Club at 312-255-3710 and leaving a message with your name and telephone number or e-mail address so we can send you directions on how to get there. Because Helen's home is small, we will break the visit into two sessions, one at noon and one at 2 p.m. Please indicate which session you prefer; we may need to shift you to the other session, so please be flexible. The usual attendance fee of \$25, which benefits the Club, will be collected at the door.

## Dinner Program

December 21, 2005

Annual Holiday Revels and Auction

We will gather again to enjoy an evening of each others' bibliophilic company, wit and bidding techniques. Our pleasures will be enhanced by music and magic, in the forms of a strolling master of legerdemain from within our own ranks and an equally magical musician from the outside world. The array of treasures will arouse the acquisitive instincts of all Caxtonians, incited further by excellent food and drink and the company of kindred spirits. Donations to the auction of books, manuscripts, ephemera, book-related services and memberships or tours are invited and encouraged. Contact Dorothy Sinson at 630-832-7438 or dsinson3@comcast.net for donation information or questions.

## Beyond December...

### JANUARY LUNCHEON:

January 13, Caxtonian Vincent Golden, curator of newspapers and periodicals at the American Antiquarian Society in Worcester, Massachusetts speaks. His talk: “The Sorry State of Newspaper Survival / The Attack of the 50 Foot Dumpster.”

### JANUARY DINNER:

On January 18, Caxtonian Tony Batko, former Co-Chair of the Chicago Public Library Group, a coalition that stopped the City from putting the main library in an abandoned department store, will tell the inside story of library intrigue in the 1980s.

### FEBRUARY LUNCHEON:

Just 2 days shy of Abraham Lincoln's 197th birthday, scholar, author and Abraham Lincoln Bookshop owner Daniel Weinberg will speak about our 16th President at the February 10th Luncheon.

### FEBRUARY DINNER:

On February 15, Daria D'Arienzo and John Lancaster of the Amherst College Library will talk about the 1925-1942 Harbor Press, which did lovely work, and had wonderful fun under the management of John Fass and Roland Wood.

All luncheon and dinner meetings, unless otherwise noted, are held in the Mid-Day Club, 56th floor of Chase Tower, Madison and Clark, Chicago. Luncheon: buffet opens at 11:30; program 12:30-1:30. Dinner meetings: spirits at 5 pm, dinner at 6 pm, lecture at 7:30 pm. For reservations call

312-255-3710 or email [caxtonclub@newberry.org](mailto:caxtonclub@newberry.org). Members and guests: Lunch \$25, Dinner \$45. Discount parking available for evening meetings, with a stamped ticket, at Standard Self-Park, 172 W. Madison. Call Steve Masello at 847-905-2247 if you need a ride or can offer one.