

## Articles

### "The New York State Law Initiative"

Thomas R. Kline  
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As I am sure you know, the law of New York State is of critical importance to art theft victims because the art market in that state has reached a position of pre-eminence in the world. In addition, New York has a sad history as the point of entry into the United States for much art that was stolen during the Second World War and its immediate aftermath as well as for antiquities looted from around the world.

New York has, up to now, attached a high priority to preventing the free movement of stolen art and cultural property. As part of that effort, New York's statute of limitations law presently permits theft victims to make claims on the possessor of their stolen property and declares that a subsequent lawsuit is timely if it is brought within three years after demand for return and refusal of that demand. If the current possessor asserts the defense of laches, arguing that he has been prejudiced by unreasonable delay on the part of the original owner in bringing the lawsuit, the current possessor will be called upon to establish that he took reasonable precautions in connection with the acquisition of the object. Under New York law, only in that way can the current possessor retain a stolen object whose recovery has been diligently pursued by the theft victim.

Under a proposed change to New York law that is currently being considered by the legislature of that state, all theft victims around the world would be required to list their claims with the Art Loss Register, a for-profit data base in London, if they wish to preserve their right ever to bring suit in New York State. Failure of a theft victim to register the claim within three years of the theft would forever bar the bringing of suit in New York, no matter how diligent the victim had otherwise been. Equally troubling, a prospective buyer of art would be considered diligent if he consulted with the Art Loss Register, even if he ignored many other potential sources of information about the theft.

It is apparent that this proposal springs from a depth of naivete about the world, and a desire to see art move briskly through New York markets at all costs. Given the thousands and thousands of outstanding and unresolved thefts, and those additional ones occurring daily, whether from museums, churches, private collections or out of the ground, it is inconceivable that the world's victims could ever register their claims on one data base. At the same time, many other sources of information exist that allow art buyers to research the history of particular art objects and obtain some comfort that the objects are lawfully being offered for sale. Only by ignoring the magnitude of theft—or by ceasing to care about the victims—could New York State ever enact such a sweeping revision to its law. For New York to go from being one of the jurisdictions with the highest regard for protecting theft victims' rights to one of the worst neglectors of those rights is hard to conceive. But, that is exactly what will occur if the dealers, collectors and museums in New York get their way and the proposed legislation is enacted.