

4

Art–State Relations: Art and Power through the Lens of International Treaties

Sandra Braman

As one manifestation of the rising salience of information-policy issues that has been observable since the late 1980s, art is now of central interest to political scientists and practicing policymakers. Wallerstein's (1990) theoretical argument—"culture is the battleground of the world system"—has been operationalized in developments as diverse as research method innovations that investigate visual art in order to identify significant conflict variables (Smith, 2004) and the use of electronic game design for political purposes (Bogost, 2006). Several features of art become visible from the perspective of its functions in an information production chain that includes a variety of types of information creation, production, flows, and use, several of which are of particular importance for art-state relations. Many information industries specialize in one type of informational activity, but information can be simultaneously collected, generated, and created *de novo* in the course of producing artworks. Multiple forms of information processing may take place during a single art production process. Artistic production processes often emphasize non-linear rather than linear planning approaches, make outcomes less predictable statistically. And, increasingly, artworks should be treated as both goods and services.

From the perspective of those involved with the arts, this shift in the nature of art–state relations joins other transformations of the functions of art in society, resulting from informatization, that include its growing importance from an economic perspective (Braman, 1996a), contributions to phase transitions of the state as a complex adaptive system (Braman, 1996b), and new types of both threats to the right to create (Braman, 1998) and policies to promote or shape art (Braman, 1994). From the perspective of the informational state—the successor to the bureaucratic welfare state (Braman, 2007)—this is one among the many renegotiations of relations between the state and information industries (see, e.g., Braman (2000) on higher education–state relations and Braman (2008b) on library–state relations). From the perspective of the evolution of the law itself, these trends are among the laws in which legal globalization is taking place (Braman, 2009), as international treaties are being used to force harmonization across states that historically

differed significantly regarding the treatment of art (Grover, 1992). And from the perspective of international relations, this work can be read in conjunction with research on information policy in arms control treaties (Braman, 1991) and international trade agreements (Braman, 1990).

Data gathered from *The Art Newspaper* for a study on the impact of international treaties on art as an information industry since 1990 (Braman, 2008) are revisited here for the exemplars they provide of the ways in which states are using art in the exercise of power. The chapter opens with a discussion of the literature on art and treaties; goes on, in the following sections, to explore the diverse ways in which art is being used by states as a tool of instrumental, structural, symbolic, and informational power; and concludes with some thoughts regarding the impact of the use of art on the relative importance of power in its potential, actual, and virtual phases.¹ As is always the case with analyses of power, the effects of uses of art as a form of power are rarely quantifiable, and multiple forms of power may be exercised in any single instance, process, phenomenon, or event. The work is intended to be suggestive rather than comprehensive, using this limited set of cases to inductively build a framework for and raise questions to be addressed in future research.

Art and treaties

The literature on art and treaties to date falls into three categories of pertinent substance, and one of pleasure.² Research in the first category includes discussion of agreements that specifically focus on the arts and culture (e.g., UNESCO's World Heritage Convention); general agreements that include some provisions dealing with art and/or culture, such as the Maastricht Treaty; and agreements without any explicit provisions dealing with art or culture, but which have significant direct or indirect effects on the arts, such as the Treaty of Rome. The literature that is a source of at least personal pleasure involves ways in which artists themselves deal with treaties, from depiction of agreements and the effects of agreements all the way to the making of treaties themselves.

Culture-specific agreements

The literature dealing with culture-specific international agreements addresses a variety of types of questions. Beaudreau (2006), for example, examines the likely effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Perspectives from the perspective of relationships between consumer behavior and identity; it is rare for any discussions of other treaties to involve specific reference to the arts. Economists analyze the impact of UNESCO's World Heritage Convention (e.g., Gilley, 2001), suggest incentives for reporting newly discovered antiquities (Villanueva, 1995), and make policy recommendations intended to counter the extent to which network externalities in the

consumption of cultural goods can lead to under-production of diverse types of art in smaller countries (Rauch and Trindade, 2005). UNESCO's Convention on the Protection of the Underwater Cultural Heritage—which affects how artworks unearthed in the course of salvaging shipwrecks—has provoked discussion in marine policy circles (e.g., Fletcher-Tomenius and Forrest, 2000). The problem of how to protect works of art during periods of war is of growing interest (Toman, 1996). Works dealing with policy developments at the national level in response to such international agreements are rife; examples include analyses of legal developments after the 1970 UNESCO Convention on Cultural Property in the UK (Gaimster, 2004) and US (Edelson, 1984).

General agreements with cultural provisions

A number of international treaties and conventions contain provisions that pertain to the arts even though the entire agreements are not devoted to the subject. For example, the cultural impact of international trade agreements at the level of General Agreements on Tariffs and Trade (GATT) has been discussed since the 1980s (Braman, 1989; Singh, 2008), and analysis has more recently expanded to include regional trade agreements both in general (Galperin, 1999) and as they affect specific countries (Crean, 2000). The Hague Convention of 1954, which includes provisions relating to treatment of cultural property, is receiving renewed attention because it is intended to protect artworks during times of war (Anglim, 2004; Sandholtz, 2005). The Maastricht Treaty, of course, has stimulated a great deal of discussion about the interactions between national and regional law and policy for the arts in Europe, including critiques of what Barnett (2001) refers to as the resulting “governmentalization” of culture at the EC level, recognition of art and other cultural forms as sources of resistance to the European community (Cunningham, 2001), and an analysis of case law treatment of cultural matters in the European Court of Justice (Chechi, 2004). The list of agreements with pertinent provisions is surprisingly long, including such treaties as the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, and the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

General agreements without culture-specific provisions

Studies of the impact on art of non-culture-specific treaties are more rare. Human rights treaties have raised two types of issues: there is the possibility that the universalism inherent in human rights treaties may be abusive of cultural and religious practices in ways that may have implications for the

arts (Zechenter, 1997). And there is a danger that extreme art practices, such as Santiago Sierra's practice of paying very poor individuals with cash or drugs to serve as a medium for his work (Mariño, 2006) may themselves be in abrogation of human rights treaties. Myers (2004) argues that issues important to subordinate cultures which are at a remove from those signing treaties but are affected by them should be taken into account in both developing and analyzing these political instruments. The same impact at a remove can be seen in the impact of treaties on arts-related sectors to which the legal instruments themselves do not directly apply, as Littoz-Monnet (2005) points out has happened with the book publishing industry in Europe. There are numerous instances, many discussed below, in which general commercial law such as the Treaty of Rome affects artists and arts institutions.

Treaties as subject and medium of art

Recent developments in the other direction—artistic depiction of or engagement with treaties—have been particularly interesting. There is a long history of artworks *depicting the signing of treaties* that receives attention from art critics; the painting of William Penn signing a treaty with tribal groups in the US—again for sale a decade ago (*The Art Newspaper*, 1973)—receives continuous attention (see, e.g., Palumbo, 1995; Rigal, 2000; Tobin, 2007). Sometimes such depictions are self-reflexive, as the image of a treaty that facilitated an art exchange between the King of Siam and Louis XIV on a medallion, identification of the role of Ramesses II of Egypt in negotiating the first peace treaty in recorded history (with the Hittites) as among the reasons the public should be interested in an exhibition of objects from his tomb at the Louvre, or exhibitions and/or catalogs organized around efforts to recuperate art transmitted between nations as a result of treaties in the past. New artworks are still being commissioned to celebrate treaties, as when New Zealand commissioned a new museum to celebrate the hundred and fiftieth anniversary celebrations of the Treaty of Waitangi between the British and the Maori that served as the founding document of modern New Zealand.

Over the last decade, however, artists have also gone further. There is work *depicting the effects of treaties*, such as massive migrations of asylum seekers responding to the consequences of treaties and the shifting of national borders (Faulkner, 2003). *Artwork by treaty negotiators* has also appeared: *The Art Newspaper* reported on doodles by President John F. Kennedy, who drew a sailboat with the words "Blockade Cuba," "NATO," and "Fidel Castro" during the Cuban Missile Crisis in October of 1962, and sketched a large mushroom cloud with the word "bomb" during the 1963 Nuclear Test Ban Treaty period (*The Art Newspaper*, 1999). Short stories written by Singapore's Foreign Minister before he took office have been analyzed as sources of insight regarding the types of international arrangements he might favor (Holden, 2006). Artists have begun to use *treaties as an art medium*. NATOarts,

for example, is a conceptual art group that presents itself as the cultural arm of NATO, governed by a board of directors with representation from each of the NATO member states. Its works include a project to prove that the Danube is actually pollution-free, an international competition to design a uniform for NATO, and a CD of ambient music called “Distant Early Warning,” described as the first record ever to be funded by NATO (Dannatt, 2000). The Yes Men similarly present themselves as representatives of the World Trade Organization (WTO) and set up a website on the GATT, the international treaty dealing with trade (Dzuverovic-Russell, 2003).

Finally, there are instances in which work presents *artists as diplomats* themselves, as in an exhibition of work by Venetian painter Gentile Bellini from the period in which he served as a diplomat as well as a court artist in Istanbul (1479–80) following the signing of a peace treaty between Venice and Turkey. Perhaps most striking of all are the creation of *artists’ treaties*, modeled in 1988 by Palestinian and Israeli artists who wished to further exchanges between the two communities, stimulate political treaty-making, and enable collaborative work (Seikaly, 1989).

Instrumental power

The exercise of instrumental power shapes, constrains, and directs behavior through control over the material world. We are most accustomed to thinking about instrumental power in the form of weaponry, but art can be used in the exercise of this form of power in ways that include the use of force and as a limit to the use of force. We can include some types of interactions between art and capital in this category, as well, for fundamentally the concept of capital refers to the capacity to make things happen (in the material world) in future.

Art and force

In relation to international treaties, art becomes involved with physical force when artworks are treated as prisoners of war, when concern over the treatment of art under international treaties stimulates physical resistance, and when the consequences of treaties yield disruptions of the material environment in pursuit of art. Interactions between art and force that are beyond the scope of this chapter include funding for art as a means of support for the military (the US Army marching band receives more funds than the National Endowment for the Arts), and relatively new uses of electronic media to take advantage of the ability of information to act as an agent on its own.

Prisoners of war

Parker (2005) describes artworks as prisoners of war when they are captured during wartime and not returned to their rightful owners or their heirs

afterwards. Following the most massive taking of such prisoners in history during World War II, legal and political battles over the return of such prisoners—"restitution"—continues into the first decade of the twenty-first century and is likely to go on for decades more in processes that involve not only the signing of treaties, but also their ratification, and subsequent internal harmonization of national laws with treaty terms once agreed to.

The struggle is so complex because these artworks involve intricate interactions between national heritage, human rights, diverse economic concerns, and the survival needs of the artworks themselves. Because so many artworks are involved, neither comprehensively listing the items nor quantifying their value is an easily accomplishable task; the issue of restitution has stimulated the development of cultural policy itself through a turn from specific works to general concepts of cultural property (Monten, 2004). When restitution works, the return of artworks taken during time of war to the source country offers high moments in political life. In Berlin, for example, the reuniting of paintings from the former East Germany with those of West Germany was deemed worthy of a national celebration. There are times, however, when the problems raised by restitution appear to be irresolvable. The Austrian government, for example, simply refused to pay the market price in order to return paintings by Gustav Klimt to their rightful immigrant American owner, and Istrian artworks were never returned to the former Yugoslavia because the treaties mandating restitution were never formally signed.

Physical resistance

Restitution issues that used to be a matter only of interest to the cognoscenti are now becoming the subjects of popular culture, getting such wide coverage in tabloids and televised investigative reporting that it can stimulate crowds to physical action. A vivid example is provided by the growth of popular interest in the return of a fourth-century Ethiopian obelisk taken by Mussolini in the 1930s from the Italians, an artwork specifically mentioned in the 1947 peace treaty between the two countries. Decades of demands and alternative proposals—such as the building of a hospital in Ethiopia instead—led nowhere. By the early 1990s, however, interest in the matter had risen to such a feverish pitch that 40,000 soccer fans chanting "Let It Return" carried posters with their demands during a match that was broadcast on television. (It was only after the work was damaged by natural causes, however, that Italy agreed to return the work.)

Impact on the material environment

Perhaps one of the most counter-intuitive ways in which the implementation of international treaties reveals the impact of art as a tool of instrumental power is treaty facilitation of massive amounts of physical activity that changes the natural environment itself. In one example of growing

importance, the activity of salvaging the thousands of shipwrecks that litter the ocean floor must abide by international treaties dealing with protection of “underwater cultural heritage.” And in a particularly dismaying but revealing example, the digging up of landmines in Cambodia following the 1996 peace treaty between the Khmer Rouge and the Cambodian government was followed by illicit excavations all over the country by people seeking artifacts to sell on the international art market.

Art and limits to force

Art is being used in the exercise of instrumental power as a limit to force as well. This occurs when agreements to protect artworks are put in place to set the limits to war, and when artworks are treated as a fundamental element of human rights.

Limits to war

The first suggestions that cultural property should be protected during war appeared during the Renaissance, but it was not until the nineteenth century that specific provisions were developed to protect works of art during wartime (Merryman, 1986). The Lieber Code of 1863, which bound the Union forces during the US Civil War, required soldiers to move works of art rather than harm them, if necessary. The Lieber Code influenced a number of subsequent nineteenth- and twentieth-century agreements including, recently, treaties between the Czech and Slovak republics regarding ownership of works of art, the division of cultural property, and the care of cultural objects and monuments that could not be moved prior to the dissolution of Czechoslovakia in 1994 (Cook, 1993).

The Nuremberg Trials, however, marked a turning point in holding states accountable to such agreements by treating damage to artworks as a matter of human rights (Gottlieb, 2005). Since then, the problem of how to protect works of art during periods of war has been of growing interest (Toman, 1996). The Hague Convention of 1954, for example, is playing an important role because its provisions relating to treatment of cultural property are intended to provide such protections (Anglim, 2004; Sandholtz, 2005). These international treaties must, in turn, be translated into law at the national level, as exemplified in legal developments after the 1970 UNESCO Convention on Cultural Property in the UK (Gaimster, 2004) and US (Edelson, 1984).

Art and human rights

Over the last couple of centuries, debate over issues involving the transfer of artworks across borders have increasingly come to be viewed as a matter of human rights. The polity first appeared in state considerations regarding how artwork would be handled under treaties in 1815 at the Paris Conference. A request for the return of artwork Napoleon had taken from Italy to France

was rejected because, it was argued, doing so would disperse the objects involved with the result that they would become unavailable to the public. It was only when the promise was made that the artworks involved would be made accessible in a public gallery that the negotiators supported the return of the works of art from France to their places of origin (Jayme, 2005).

The concept of universal human rights was embedded in the World Heritage Treaty, which was set up in 1972 after a major rescue operation was mounted to save the temples of Upper Egypt by UNESCO in 1960 (Haywood, 1995). This is one of UNESCO's most prestigious and visible programs; even when the UK and the US were not members of UNESCO, they continued to adhere to this treaty. Unfortunately, this link with human rights has not prevented governments from using the treaty for political purposes: China refused to add Tibetan sites it occupied since the 1950s until very recently, Turkey refuses to put forward any proposals relating to Armenian culture, Chile was very slow to move on Easter Island, and Syria chooses to ignore sites that are reminders of the Crusaders' presence during the Middle Ages. For sites that are designated as world heritage under the treaty, however, there is an additional feature that serves the public interest—no polluting facilities can be built near world heritage sites.

On the model of the Nuremberg Trials, successful prosecutions of military commanding officers before the International Criminal Tribunal for ex-Yugoslavia were important landmarks for legal protection of cultural property. Similar issues have been raised in discussions of the conduct of the second Iraqi War. Concern about public access to works as a human right continues to be voiced in a number of contemporary cases involving restitution. At times, however, the notion of a right to individual access to works becomes blended with the concept of competitor access to markets or services. Thus international tours, museums, art fairs, and international exhibitions are all now being discussed in terms of the equity and fairness with which dealers or gallery owners may have access.

Claims of universal human rights also support arguments that universalistic claims are actually repressive of particular cultural and religious practices (Zechenter, 1997). And there is the danger that extreme art practices, such as Santiago Sierra's practice of paying very poor individuals with cash or drugs to serve as a medium for his work (Mariño, 2006) may themselves be in abrogation of human rights treaties.

Art and capital

We can treat uses of art as a means of accumulating capital as a matter of instrumental power because, as mentioned above, capital is essentially the capacity to make things happen in the future. Analyses of art and other cultural property under international treaties has been the subject of a rapidly growing literature since the 1980s, when international flows of information became the focus of international trade negotiations.

International trade

This large and growing literature on cultural property and international trade includes both discussion of art, and the impact of treaties on art, in the international environment (Singh, 2006; Braman, 1990; Galperin, 1999; Lewis and Miller, 2002) and within specific countries (e.g., Crean, 2000). With the establishment of the WTO, the concept of cultural trade itself needed definition. Distinctions were drawn between cultural goods and services, core cultural tradeables and tradeables related to culture, and cultural hardware and cultural software (Grasstek, 2005). WTO agreements require specific commitments, by sector and mode, for each of the four different ways a cultural good or service can be exported: when *cross border supply* takes place, services by a supplier in one country are provided to a consumer in another country (direct broadcasting services [DBS] is an example). When *consumption takes place abroad*, a consumer travels to the point of delivery (tourism provides multiple examples). With *commercial presence*, there is temporary or permanent establishment abroad of a supplier through investment (film co-production, for example). And with the *presence of natural persons*, people move to a foreign country on a non-permanent basis to supply a service (e.g., a foreign cameraman is hired to work on a particular film). Illegal exports introduce another set of categorical distinctions, among goods that may have been stolen prior to being smuggled out of a country, goods that are smuggled out by their rightful owner with the purpose of being sold abroad, goods that are legally purchased within a country and then smuggled out, and objects that are not returned at the end of a lawful temporary export.

Tariffs

Recent developments under the World Trade Organization (WTO) set up in the 1990s rest upon a long history of differential design of tariffs (taxes applied when goods cross borders) specific to art (Fishman, 1977). Often these were set lower than tariffs on other kinds of goods to encourage cross-border flows of art. In a premiere example of interactions among diverse forms of power, such tariffs involve informational power as well as instrumental power because they rest upon establishing definitions of art as a distinct type of information creation, processing, flows, and use. The problem, of course, re-emerges with each new artistic genre, medium, or school of art. The representational test historically used by US Customs, for example, became problematic with the appearance of abstract art. In a famous court case, *Brancusi v. the United States* (1928), photographer Edward Steichen finally won the right to import a sculpture by Constantin Brancusi as an artwork for free (rather than as an object of manufactured metal to be taxed at 40 percent of its value)—but only after a 12-year battle. It took 30 more years before changes to the Tariff Act removed substantially all barriers to the free entry of modern and abstract works.

Conclusions

This secondary analysis of data gathered for a study of the impact of international treaties on the international art world has provided an opportunity to inductively explore the varieties of ways in which art is being used as a tool for the exercise of power in its instrumental, structural, symbolic, and informational forms by the informational state. As has long been important for our understanding of journalism, and is now important for other information industries given the particular features of the informational state, this exercise has utility as a contribution to a theory of art–state relations.

There was unfortunately not room in this piece for additional exploration of the relative importance of art as a tool for the exercise of power in its various phases: actual (in use), potential (available but not currently in use), and virtual (not currently in existence but could be brought into existence using existing knowledge and resources). Given the functions of art in boundary and phase transactions and as attractors during the transformations of complex adaptive systems—including those of politics—and given the growing use of tactical media practices and other means of using hardware and software as artistic media, this topic, too, is worthy of future exploration.

Notes

1. The theoretical framework for this piece is explicated most comprehensively in *Change of State: Information, Policy, and Power* (Braman, 2007). Space constraints in this book chapter preclude presentation of full citations for all of the information sources used in this earlier study. Readers are referred to that study both for more detail on the cases discussed and for full reference information on those materials.
2. Conventions, which serve many of the same functions as treaties though they are slightly less formal in nature, are included in this literature review and analysis.
3. The painting was *Nozze di Bacco e Arianna*.