

2023

The Artistry of Mediation: A Look at Mediation's Effectiveness for Resolving Cross-Cultural Disputes Through the Leonardo da Vinci Conflict Between France's Louvre Museum and Italy's Uffizi Gallery

Sophia D. Casetta

Pepperdine University, sophia.casetta@pepperdine.edu

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/pjcr>



Part of the [Art and Materials Conservation Commons](#), [Art Practice Commons](#), [Comparative and Foreign Law Commons](#), [Critical and Cultural Studies Commons](#), [Cultural History Commons](#), [Diplomatic History Commons](#), [Dispute Resolution and Arbitration Commons](#), [European Languages and Societies Commons](#), [Fine Arts Commons](#), [Intellectual History Commons](#), [International and Intercultural Communication Commons](#), [International Law Commons](#), [International Trade Law Commons](#), [Law and Society Commons](#), [Museum Studies Commons](#), [Other History of Art, Architecture, and Archaeology Commons](#), [Other Languages, Societies, and Cultures Commons](#), and the [Transnational Law Commons](#)

Recommended Citation

Casetta, Sophia D. (2023) "The Artistry of Mediation: A Look at Mediation's Effectiveness for Resolving Cross-Cultural Disputes Through the Leonardo da Vinci Conflict Between France's Louvre Museum and Italy's Uffizi Gallery," *Pepperdine Journal of Communication Research*: Vol. 11, Article 6.

Available at: <https://digitalcommons.pepperdine.edu/pjcr/vol11/iss1/6>

This Article is brought to you for free and open access by the Communication at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Journal of Communication Research by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

The Artistry of Mediation: A Look at Mediation's Effectiveness for Resolving Cross-Cultural Disputes Through the Leonardo da Vinci Conflict Between France's Louvre Museum and Italy's Uffizi Gallery

Cover Page Footnote

"Learning never exhausts the mind." -Leonardo da Vinci

The Artistry of Mediation: A Look at Mediation's Effectiveness for Resolving Cross-Cultural Disputes Through the Leonardo da Vinci Conflict Between France's Louvre Museum and Italy's Uffizi Gallery

Sophia Casetta, Pepperdine University⁴

Abstract

Art is powerful, as it symbolizes the history and identity of the country that claims it. However, through timely transitions, such as trade and wars, the ownership of meaningful artworks blurs, with museums fighting to claim their heritage to put on honorable display for their people. Mediation can be a peaceful means to resolve art ownership disputes, as it accounts for respecting the individual cultures of the countries represented in the dispute. Using the key mediation traits described within this essay, a prepared mediator involved in such a cross-cultural conflict should be able to help resolve the issue at hand. The following tests this claim by analyzing a fictional analysis of a real dispute between France's Louvre Museum and Italy's Uffizi Gallery over a loan of artworks by Leonardo da Vinci.

Key Words

mediation, communications, international communications, art, cross-cultural, alternative dispute resolution, law, international law

⁴ Sophia Casetta is an International Studies Major and Great Books Minor at Seaver College.

Introduction

Art is powerful. Many of the timeless art pieces people find in museums represent the beauty of a nation's history, unifying a people over shared antiquity. Notable artists' narratives instill a sense of pride for their people, as the artist was able to creatively express the sublime of their region. Since art is held in such a high regard, it is reasonable for people to become protective of their national possessions. Art disputes is the overarching term that comprises a comprehensive array of disagreements in the realm of art and cultural heritage. It includes legal and nonlegal topics such as, but not limited to, ownership rights, digitalization, misappropriation of a culture, and copyrights. Parties in art disputes include "states, museums, indigenous communities, and – last but not least – artists or other individuals," often forming into a cross-cultural dispute (Rafal, 2018).

To avoid the expensive and time-consuming process of handling art disputes within a court of law, mediation has been used to help parties find a consensual solution to art-related conflicts. Mediation draws attention to issues of "commercial, cultural, ethical, historical, moral, religious, or spiritual nature" in hopes to understand both sides of an argument (World Intellectual Property Organization). Furthermore, there is the intention that the parties involved will leave the mediation with mutual respect. To simplify the wide range of topic-specific areas art meditation covers, the following will discuss a real-life dispute between two notable European art museums that was not settled with mediation. This essay will dissect the intentions of Italy's Uffizi Gallery's withholding of several notable paintings created by Leonardo da Vinci from the Louvre Museum in France to conceptualize how mediation is a proper means to settle cross-cultural art disputes.⁵

⁵ While this dispute is based on true events, the parties did not use mediation to solve this dispute. References to an actual mediation are fictional to support the claim that using mediation tactics would have been beneficial to the parties involved in the da Vinci dispute.

General Overview of the Case

It is the beginning of 2019 and the 500th anniversary of Leonardo da Vinci's death is quickly approaching. The Louvre Museum, located in Paris, France, had spent a decade curating a collection to honor this famous Renaissance artist's inspiring works. A few of the Louvre's highly anticipated da Vinci artworks was set to come from the world-renowned Uffizi Gallery, located in Florence, Italy. After extensive negotiations, Italy's former minister of culture struck a deal with France's ministry of culture that the Uffizi Gallery would lend several of their da Vinci pieces to the Louvre for their showcase in the Fall of 2019 in exchange for The Louvre to lend a few works by Raphael for a 2020 Uffizi exhibit.

However, Italy had recently gone through a political shift, in which the previous centrist government was replaced with a populist régime. As the French and Italian take pride in their culture and history, the topic of which country could claim Leonardo da Vinci as their own has perpetually been an intense debate. The populist government blocked the loan, recoiling at the idea that the French will be in possession of this famous Italian artist's works (Crow, 2019). The Italian populists already view the French with contempt over the arts, claiming that their ownership of the Mona Lisa is unjust as it is an "important part" of Italian cultural heritage that was "stolen" by France (Micucci, 2020). They believed that the paintings ought to be returned to Italy, despite da Vinci originally passing down the painting to his assistant who thereafter sold it to the King of France. Undersecretary for the Italian Ministry of Culture Lucia Borgonzoni echoed the beliefs of Italy's populist government by stating "Leonardo is Italian; he only died in France[...] giving the Louvre all those paintings would mean putting Italy on the margins of a great cultural event" (Ruiz, 2021). While the da Vinci pieces outwardly seem like a simple transudatory loan between museums, the artwork represents the pride of the respective nations.

This art dispute has reached the attention of governmental leaders, thus needing to be settled by respectable political officials in preferable consolation with the museums' head curators. Due to high tensions and time being at the essence as the populist movement defends their repealing of the da Vinci loans, a mutual agreement using a mediator that deals specifically with high-profile art disputes would be a positive direction towards forming a reciprocal agreement. Through a mediator's expertise in facilitating a discussion that accounts for the mutual respect of the countries' customs and heritage, an immediate resolution could be made.

Alternative Dispute Resolution and Mediation

While litigation within a national court may be useful for resolving domestic art disputes, it should be noted that this process is often not preferable within international disputes. This is due to litigation results, in which there would be a "winning and a losing party" (Bandle & Theurich, 2011, p. 30). Having one country lose over another is detrimental to a country's nationalist identity, in which art ownership is a sort of pride. Moreover, it "may affect professional relationships," as the zero-sum process of litigation could damage rapport between nations and constraint future negotiations (Bandle & Theurich, 2011, p. 30). This would particularly be an issue with art museums that would want to continue to borrow pieces from each other, as seen with the working relationship between the Louvre and Uffizi museums. Furthermore, as art-related disputes are frequently international, there are multiple jurisdictions involved. There is not only potential for these settlements to be "costly and lengthy" due to the continuous negotiations between the courts and parties involved, but probable "conflict of laws" (Bandle & Theurich, 2011, p. 29). To remove bias, there is a need for a neutral body to help mitigate the outcomes of such disputes.

Alternative Dispute Resolution (ADR) steps in to alleviate the limitations of litigation.

ADR is out-of-court dispute resolution process that provides parties more flexibility in a timely and cost-efficient matter. All parties must consent to the process and decide whether to defer their case to what kind of ADR experts, such as mediators and arbitrators. The parties are able to choose the third-party facilitator and the legal framework of the negotiation to avoid conflicting perspectives. ADR resolutions are not limited to monetary gain, as it allows for creative solutions that would mutually benefit the parties (Bandle & Theurich, 2011, p. 30). The privacy ADR offers allows for there to be a communal space in which the parties' voices could be heard and validated, allowing them to have input on the resolution.

A particular form of ADR that has been successfully used to resolve art disputes is mediation. In this method, an impartial mediator facilitates a non-binding negotiation between the parties in conflict so that a mutual solution can be reached. The process of mediation helps the parties better their relationship, "cultivating a co-operative approach" that is "tailored" to the requests of both parties (Mason, 1998, p. 32). Outside of the legal framework the mediator works in, they also account for the "sensitive non-legal issues" within a dispute (Bandle & Theurich, 2011, p. 30). For instance, while legal barriers may limit a court proceeding, mediation could lead parties to pursue "interest-based solutions that take account of moral elements" (Bandle & Theurich, 2011, p. 30). Mediation's ability to not only facilitate a solution, but enhance the parties' relationships, would be beneficial to the da Vinci dispute.

Prominent Art Mediation Services

Using ADR mechanisms to settle art related disputes has led for the creation of multiple prestigious art mediation services. For example, the European Union created the EU Directive of Mediation in 2008 to provide simple access to mediation for member states. However, their dispute mechanisms are meant to settle disagreements over a broad range of conflicts rather than the highly

specific care that art related disputes require (Kumar, 2017). When it comes to niche disputes, it has been found that using a mediator from organizations that has mediators with a proper background and sensitivity to the topical conflict at hand is preferred. Their expertise, after all, adds repour to their ability to facilitate.

Thus, international art dispute institutions have been created to accommodate this need. One example is the Court of Arbitration for Art, known as the CAfA, which was formed by the Netherland Arbitration Institute and the Hague's Authentication in Art to specialize in "museum exhibition and loan agreements" (Morek, 2018). While the CAfA may have experience with handling notable art disputes, the da Vinci conflict is much more than a museum exhibit, but rather the prevalence concerns of cultural identity. Afterall, a common feature of art disputes is the "cultural and immaterial value" imbedded within them, which is intensified within this international dispute due to the stakeholders within the conflict (Bryne-Sutton, 1998, p. 448). In addition to the CAfA, there are national ADR institutions specializing in art-related disputes for individual countries that have a notable art scene, such as France and Italy. However, if the case were to be settled with one of these institutions, there is a risk that there would be a bias from the mediator to help their country (Morek, 2018).

The da Vinci conflict needs an ADR body that has experience in moderating sensitive art disputes between nations. The International Council of Museums and the World Intellectual Property Organization jointly founded ICOM-WIPO Art and Cultural Heritage Mediation, a "not-for-profit mediation service specially designed for art and cultural heritage disputes" based on a set of "Mediation Rules" that emphasizes impartiality amongst their skilled mediators (World Intellectual Property Organization). As this organization has practice in mediating art disputes between States and museums, it would be appropriate that this conflict between the Louvre and

Uffizi would defer to the mediation services of the ICOM-WIPO (World Intellectual Property Organization). Due to the ICOM-WIPO's prestige, French and Italian representatives would assumingly be willing to defer to their judgment.

Key Mediator Traits

A good mediator would understand that this mediation is much more than a fight to retain famous artifacts, but a significant cross-cultural dispute (Bryne-Sutton, 1998, p. 448). As seen within the conflict between the Louvre and Uffizi, international art disputes could entail involvement of political powers and institutional relations, as country representatives actively fight to acquire or retain the art they believe represents their nation. Art disputes could be a highly sensitive subject, as art could represent the heritage and identity of a nation. It is essential that the mediator assigned to an art dispute uses the following traits.

Preparation

With art disputes, particularly in relation to pieces that hold much value pertaining to the culture of a region, it is vital that the mediator understands the history of the artifacts. For instance, in the conflict between the Louvre and the Uffizi, there has been a long-standing discord between the two nations on who can claim the works of the renowned Leonardo da Vinci. Before entering the mediation, the mediator should be well-versed in the knowledge concerning the history of Leonardo da Vinci and trace the locations of his major works, in particular the artwork that was in the blocked loan agreement. The knowledge of the artist's works is to help the mediator understand where the root of the tension between the two countries has stemmed from, as this issue of Italy wanting to retain da Vinci's artworks is based on a long-term rivalry.

To give further "context of a given negotiation," other "outside sources of information" to consider is the political regimes of both countries involved in the da Vinci dispute, particularly

Italy (Golann & Folberg, 2016, p. 49). Conflict over the da Vinci exhibit was brought to light due to a shift in Italian politics. Research of the mindset of the current populist party would help the mediator comprehend the deep-rooted intents behind this dispute. Further investigations on the parties would include researching how the parties dealt with past mediations and what were their outcomes, the credentials on who would be representing each country, and former relations between the museums.

Ask Questions to Promote Understanding

A key part of preparation is to discern “what you need to find out before you actually make a deal” (Golann & Folberg, 2016, p. 49). As the mediator can discover the facts behind the arts’ history through research, it would be useful for the mediator to prepare a list of possible questions they can default to asking to better understand why the countries are having difficulty making amends. At the very least, these questions could prompt discussion and collaboration if there were to be an impasse.

As art disputes often have emotional ties entangled within the conflict, it is wise to further conversation by asking questions that promote understanding between the parties (Bandle & Theurich, 2011, p. 30). This process is the “most obvious way to gather information[...] especially about the reasons behind positions taken by the other party” (Golann & Folberg, 2016, p. 49). These questions can be preplanned or inspired by the current state of the conversation. As the mediator, it is important to discern how to keep the conversation flowing towards a positive solution through assessing what is the best way for the parties to understand each other. A few questions that could be asked are for the parties to elaborate on the underlying principles in which they believe they are correct in this dispute, request further information, or question what type of relationship the parties intend to have with each other after the mediation is over (Golann &

Folberg, 2016, p. 45-46). With the da Vinci case, it is vital that the mediator ask questions to understand the emotions behind the dispute, as they would already know the facts through research. By asking questions, the mediator shows that they are invested in this case and want to understand all parties further to help them conclude a resolution.

To further emphasize the mediator's interest, it is vital they use their "hallmark [...] ability to listen" (Golann & Folberg, 2016, p. 48). There could be an underlying solution to an issue the mediator could detect by listening and paying attention to subtle "verbal and nonverbal cues that either reinforce or contradict the surface message conveyed" (Golann & Folberg, 2016, p. 49). The mediator's silent gathering of cues could lead towards a compromise that the other party may be shy from noticing as they are actively defending themselves. For example, the leaders representing each country in the da Vinci conflict may appear collected when sharing their thoughts on the matter in interviews. However, in the safe and private environment that is mediation, they could unveil how they truly feel about the situation through simple signals. Through paying attention to details, the mediator can strategize what are the appropriate questions to raise to prompt the parties to reach a resolution.

A way to ask these intentional questions is to determine whether they should be said within a joint session or during a caucus, a private meeting between the mediator and a party. It is difficult to discern prematurely on whether the French and Italian representatives would want to collaborate upon entering the da Vinci mediation. Depending on if the "parties are interested in exploring an interest-based resolution or, especially, repairing a broken relationship," which could be assumed that the museums would want to do so to continue to loan art pieces with each other in the future, joint discussions would be the assumingly best way to handle this mediation (Golann & Folberg, 2016, p. 76). While a joint session would allow for the parties to help communicate openly, a skill

needed if the art museums in question would like to peaceably negotiate in the future, differing perspectives could lead to a stalemate. Furthermore, the conversation could become heated due to nationalist ties causing passionate outbursts (Bryne-Sutton, 1998, p. 452). It is possible for the mediation to get intense, as the representatives could easily begin to ardently defend the rights of both their countries. Within a caucus, the “mediator can shape the disputants' dialogue in productive ways” upon returning to a joint session (Golann & Folberg, 2016, p. 76). When emotions become more prevalent in the mediation, as seen by a person’s “facial expressions, body language, tone of voice, or how [they] relates to other people in the room,” it is “necessary to ask questions, usually in a private setting” to understand how the mediator can help (Golann & Folberg, 2016, p. 180). Caucuses should be used to assist in getting both parties’ interests across without the defensive ties that could offend the other side. Afterall, caucuses give the space often leads to parties being more “apt to express their feelings” (Bryne-Sutton, 1998, p. 452). It is the mediator’s job to discern when to facilitate the mediation within a joint session or caucus setting.

Respect

It is important for the mediator to recognize the value of the dispute art to the conflicting parties. Through their knowledge of the art in question, the mediator needs to show they understand the reverence of the pieces. The mediator can state their understanding of the value of the art within their opening statement to reassure the parties that they comprehend the importance of what the art means to each of them as a sign of mutual respect. For instance, the mediator of the da Vinci case could begin their mediation by affirming emphatically that they recognize that the Leonardo da Vinci works in both the Louvre and the Uffizi are held there with much pride and that it is rational that both counties safeguard this man’s works. These remarks should not be limited to the opening statement, however, as the mediator needs to continuously respect the value the art has to

the parties.

Another key element to the da Vinci conflict that the mediator must respect the parties' anger. Italy's Undersecretary for Culture Borgonzoni deems that France is "showing 'a lack of respect' and treating Italy like a cultural 'supermarket'" by wanting their da Vinci pieces (Nayeri, 2019). The mediator must neutrally acknowledge the individuals represented, ensuring that both parties are validated in their emotions. The mediator must simultaneously do this while ensuring the parties "work together and make decisions together" (Golann & Folberg, 2016, p. 106). During the mediation, it is essential that the mediator mutually empowers each party to negotiate, while facilitating the conversation to conclude in a peaceful resolve.

Art brings out the passion of individuals. Consequently, art related disputes can bring to the surface the emotions of the parties. What may appear as simple artifacts, the da Vinci artworks is part of the identity of two nations who want to claim it solely as their own. Nationalism incites a wild energy, emotionally charged to express individuals' pride for their nation. Anger, in particular, is a "prevalent emotional response," as the parties "feel threatened" when their cultural heritage is at stake (Golann & Folberg, 2016, p. 69). Both France and Italy want their people to be proud to be citizens of their countries, which the ownership of the da Vinci incites. Empathy is an essential tool for the mediator to use, as they want the parties to realize that they unilaterally understand both of their sides.

Conclusion

While the tensions between the Louvre and Uffizi were high during the Italian populist government's blockage of the da Vinci artwork, the issue was resolved close to the opening date of the Louvre's da Vinci exhibit. In the Spring of 2019, French President Emmanuel Macron assisted the attempts in removing the da Vinci blockage by inviting Italian President Sergio

Mattarella to visit the château in Amboise, where da Vinci spent his last three years of his life (Crow, 2019). Nonetheless, the French president's endeavors of getting over this impasse did not lead to the populist government reneging on their decision. A solution was concluded after the change in Italian political leadership to a more centralist regime, in which the original loaning of the da Vinci art pieces from the Uffizi would be exchanged for a loaning of Raphael artwork from the Louvre (Crow, 2019).

As the da Vinci dispute's participants used art as nationalist representation, the outcome of the legitimate conflict relied heavily on politics. If the populist Italian government did not return to its centralist regime, most likely the da Vinci impasse would have remained. However, through the fictional walkthrough on how mediation could have resolved this standoff, mediation could have served as a proper mechanism to untangle this dispute and repair the relationship France and Italy, and therefore that of the Louvre and the Uffizi. This would support future cultural exchanges and the loaning of artwork. The aforementioned mediation principles do not only apply to this case, as many other museums could validly resolve disputes likewise.

Many fine art related disputes could be resolved through the respectable means of mediation. After all, through the private conversing with a neutral third-party, there could be hopes to understand cross-cultural differences to repair relations. It gives a space where both parties' voices are heard and promotes bilateral relations, as the mediator helps those in conflict reach a mutual solution. Furthermore, for art disputes between museums or countries, the bilateral efforts for mutual solvency that mediation helps strengthen business relations, which is needed for future artistic cultural exchanges. Mediation builds rapport between those in conflict through understanding, boosting camaraderie between parties. When art represents the valued pride and respect of a culture, art mediation could be the key in uniting communities and national identities.

References

- Bandle, A., & Theurich, S. (2011). Alternative dispute resolution and art-law – A new research project of the Geneva Art-Law Centre. *Journal of International Commercial Law and Technology*, 6(1), 28-41.
- Bryne-Sutton, Q. (1998). Arbitration and mediation in art-related disputes. *Arbitration International*, 14(4), 447–456. <https://doi.org/10.1093/arbitration/14.4.447>
- Crow, K. (2019, October 22). *Inside the Louvre's Secret Negotiations to Mount the Biggest Leonardo da Vinci Show Ever*. The Wall Street Journal. Retrieved April 1, 2023, from <https://www.wsj.com/articles/inside-thelouvres-secret-negotiations-to-mount-thebiggest-leonardo-da-vinci-showever11571760902>
- Golann, D., & Folberg, J. (2016). *Mediation: The roles of advocate and neutral* (3rd ed.). Wolters Kluwer.
- WIPO Alternative Dispute Resolution (ADR) for Art and Cultural Heritage. World Intellectual Property Organization. (n.d.). Retrieved April 1, 2023, from <https://www.wipo.int/amc/en/center/specific-sectors/art/>
- Kumar, A. (2017). EU directive on mediation: Assessing the development and challenges. *Contemporary Developments in International Law: Some Random Reflections Satyam Law International*, 1st, 112–126. <https://doi.org/10.2139/ssrn.3354099>
- Mason, A. (1998). Mediation and art disputes. *Art Antiquity and Law*, 3(1), 3138.
- Micucci, M. (2020, August 23). *Should the French Return the Mona Lisa to Italy?* In Arte Matt. Retrieved April 1, 2023, from <https://inartematt.com/2020/08/27/should-the-french-return-the-mona-lisa-to-italy/>

- Morek, R. (2018, August 19). *The Art of Mediation and Mediation in Art Disputes*. Kluwer Mediation Blog. Retrieved April 1, 2023, from <http://mediationblog.kluwerarbitration.com/2018/08/19/art-mediation-mediation-art-disputes/>.
- Nayeri, F. (2019, September 24). *Italy to Lend Leonardo da Vinci Works to France in a Masterpiece Swap*. The New York Times. Retrieved April 1, 2023, from <https://www.nytimes.com/2019/09/24/arts/design/da-vinci-vitruvian-man.html>
- Ruiz, C. (2019, January 7). *Italy Blocks Leonardo Loans for Louvre Anniversary Show*. The Art Newspaper. Retrieved April 1, 2023, from <https://www.theartnewspaper.com/2019/01/07/italy-blocks-leonardo-loans-for-louvre-anniversary-show>