

The Wall Street Journal

“Another 'Legal Theft'?”

"Art held hostage" may never be free.

By John Anderson

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Since Saturday, official Philadelphia--the politicians, the newspapers, the convention center authorities and, above all, three of the city's biggest foundations--have been in a state of high celebration. After a short and remarkably nasty final battle, the keys to the Barnes Foundation and its incomparable \$6.5 billion collection of Impressionist and Post-Impressionist art have been surrendered to them.

To read only the pages of the *Inquirer*, the city's leading newspaper, you would think that these three grand philanthropies--Annenberg, Pew and Lenfest--were the Barnes's saviors, rather than the victors in a hostile takeover.

In 1925, Albert Coombs Barnes (1872-1951) opened his eponymous foundation in Lower Merion, outside Philadelphia, as an educational institution whose texts were to be found in his own books of art criticism and on its walls--in the multitude of Cézannes, Matisses, Picassos and other paintings by the European modern masters he had collected. Visiting the foundation in 1930, Matisse described it as "the only sane place" for the display of art in America.

Barnes spent virtually his whole life at war with the Philadelphia cultural establishment, believing its members more interested in money and influence than art. He'd also seen the collection of his friend and lawyer, John G. Johnson, posthumously hijacked in the 1930s when the Philadelphia Museum of Art went to court to break Johnson's will so the art could be transferred to the museum.

Thus Barnes had his lawyers draw up an airtight trust indenture to allow the Barnes to continue after his death as it had in his life: The paintings would not be lent, sold or rearranged. In addition, nearby Lincoln University, a historically black college, would gradually assume control as the original trustees died or retired.

Dr. Barnes, though, reckoned wrong. His indenture has been under legal assault for the past decade by the Barnes's own board. Alas, by 1999 legal fees for these and related battles had bankrupted the Barnes, and the newly appointed director, Kimberly Camp, found herself publicly begging for money.

You'd think the city's philanthropic and cultural elite would have been eager to help an internationally renowned institution in its own backyard. But things weren't that simple. When Ms. Camp went begging for financial support, its members said no--or gave a dribble here and a drab there. On one occasion, says Ms. Camp, she approached Raymond Perelman, the multimillionaire father of billionaire Ron Perelman, who was then board chairman of the Philadelphia Museum of Art. He "stuck out his hand, and he said he'd be happy to give money, 'as soon as you give me this.' And I said: 'Give you what?' And he said: 'The keys--the keys to the Barnes.' "

Once again, powerful forces within the Philadelphia art community were conspiring to take over a priceless collection.

So what was one to make of the Sept. 25, 2002, announcement by Barnes president Bernard Watson that the foundation would go to court to break Dr. Barnes's trust indenture? This time the plan was to expand the board to 15 from five members and to move the collection from Lower Merion to center

city--just down the street from the Philadelphia Museum of Art. The Pew, Annenberg and Lenfest foundations, he said, would raise the \$150 million to \$180 million necessary for the move and nominate seven of the additional 10 board members.

This plan was being painted as a boon to all parties: The Barnes would be saved, and Philadelphia would derive lucrative tourist income from the relocation. But you didn't have to scratch too far beneath the surface to reveal a web of influence that indicates that what is really under way is a raid on a beleaguered, helpless art collection.

The founder of the Lenfest Foundation is Gerry Lenfest, who just happens to be chairman of the Philadelphia Museum of Art. The vice president of the Barnes is Stephen J. Harmelin, managing partner of the Philadelphia law firm of Dilworth Paxson, among whose most important clients are the Annenbergs.

Outraged at the prospect of being dealt out of control of the Barnes without having been consulted--they'd been told nothing about the plan until the press conference called to announce it--the trustees of Lincoln University went to court last October to try to block the move to center city. The Barnes trustees fought back, their legal fees paid for by the three foundations.

This summer, when it looked as if Lincoln might prevail in its suit, the foundations played The Big Card. They threatened to pull out of the "rescue" if Lincoln didn't go along, raising the prospect that were that to happen, State Attorney General Michael Fisher, in his capacity as overseer of charities, would take over the Barnes and sell off the collection. No one believed for a moment that that would happen. But it was a good ploy.

Apparently, even this wasn't enough to persuade the Lincoln trustees to abrogate their fiduciary responsibilities. Still heavier artillery was called for, this time in the person of Pennsylvania Gov. Edward G. Rendell, a longtime political operative not known for having a sentimental streak. He and Attorney General Fisher--who despite his oversight responsibilities had, in his four years as chief custodian of the commonwealth's charities, shown scant interest in the Barnes or the widely reported mismanagement that had led to its current financial plight--posed as the people's champions and called on the Lincoln trustees to "do the right thing" and hand over the keys. A supine Inquirer applauded their moves on its editorial page.

The clock was ticking: The Lincoln board was scheduled to vote on this new proposal at a meeting last Saturday. So last week the governor announced that if Lincoln would give up its quest to retain control of the Barnes, he would free \$50 million of state money for capital improvements at the cash-strapped college, would work to get Lincoln an additional \$30 million in state funding over the next three years, and would personally lead the effort to raise \$100 million for its endowment. Heaven forbid, Gov. Rendell's supporters were quick to insist, that this should be construed as a quid pro quo. No, it is something far more interesting: the shrewd calculus of a man who understands that everyone has his price.

For, indeed, at the meeting last Saturday, Lincoln's board voted 16-1 (with five abstentions) to drop its opposition to the "rescue," in effect selling \$6.5 billion in art for \$180 million--in promises. Sadly, despite the fact that this was one of the most important board meetings in Lincoln's history, just slightly more than half of Lincoln's 39 trustees bothered to attend.

The agreement awaits only court approval--Judge Stanley Ott is scheduled to hear the case in early December, but given what's happened so far, it's hard to imagine him ruling against it. And so the Barnes comes one step closer to sharing the same fate as the Johnson collection--a "legal theft," as it was described at the time.

Who, now, will speak for Dr. Barnes?

Mr. Anderson is author of "Art Held Hostage: The Battle Over the Barnes Collection."