



1. Tugendhat House, Brno, Czech Republic. Constructed 1928-30. Photograph 2004, courtesy World Monuments Fund.

In a short guide on historic preservation law, the opening sentence reads: "Historic preservation and the law have been surprising but comfortable bedfellows for well over a century Most people are unaware of the complex array of legal tools that generally lie behind a particular site's rehabilitation or preservation." The comfortable fit between preservation and law is, on the face of it, not at all surprising. Law and historic preservation emanate from the same institutional place, governmental legislation, and are bound by the same language, the "textual parsimony," of legal statutes.²

Insofar as historic preservation is a good thing, beneficial to culture as a whole and protective of cultural resources, it is good in the same sense that laws are good: laws adjudicate and smooth differences and synthesize, in practical ways, ideas of a common good. Laws allow us to live, somewhat as ourselves, in the midst of otherness. Historic preservation is not typically good in the sense that art is good; art emanates from personal expression and ruthlessly bares the question of the good to scrutiny.

On the other hand, because it is frequently involved with art and architecture, historic preservation's relation to law, and the language of the law, is precarious. One of preservation law's primary purposes is to protect against other actions emanating from its own civic and political base—city, state, federal government—that might damage or come into conflict with designated sites of preservation. It acts as an institutionalized homeopathy to government expansionism or avarice and is, therefore, itself always politically at risk.

Property owners who challenge historic preservation laws sometimes argue that "such laws ... amount to a taking of private property." The term "taking" refers to the fifth amendment in the U.S. Constitution, which states: "nor shall private property be taken for public use without just compensation." Eminent domain originates in this amendment, as do aspects of historic preservation that come into conflict with private property. Private property is the privileged domain of common law in Western cultures, and when such property is "taken" it is also, in legal terms, "weakened."³ In the United States, the right to property is understood, tacitly, as an originary entitlement, as powerful in its influence on public and private life as if it were one of those three, loudly enunciated, rights in the

Declaration of Independence: "life, liberty, and the pursuit of happiness."⁴ It is the unstated guarantor for "rights" as a juridical-and, more specifically, biojuridical-idea.

In takings cases, the Supreme Court has ruled that there must be "an essential nexus between the burdens placed on the property owners and a legitimate state interest affected by the proposed development. In other words, there should be a reasonable correlation between the conditions placed on the property owner and the public interest being served."S The words *nexus* and *correlation*, in this context, are quite interesting because they imply that private property, legally and hermeneutically, harbors negotiable principles based on both its alienable and inalienable character. Not only is most property alienable-able to be sold or given away-but it is also inalienable, able to be kept. I am not offering a political or ideological defense of private property but, instead, broadening the idea of private property to include an inalienable dimension. This will be, at best, a preliminary inclusion that certainly does not originate with me. But I want to open up an aspect of the subject slightly different from what historic preservation might typically bring to mind.

Maurice Godelier, an anthropologist working in the later part of the twentieth century, argued that there can be no human society without two domains: "the domain of *exchanges*, whatever is exchanged and whatever the form of this exchange ... and the domain in which individuals and groups carefully *keep* for themselves, then transmit to their descendents or fellow-believers, things, narratives, names, forms of thinking."⁶ Godelier was particularly interested in the problem of the gift-what is given and, in particular, what is kept rather than circulated in cultures. "Things that are kept," Godelier writes, "are always 'realities' which transport an individual or group back to another time, which place them once again before their origins, before the origin." These kept realities "give time its duration," he continues, and are "anchor points for the formation of individual and collective identities."⁷

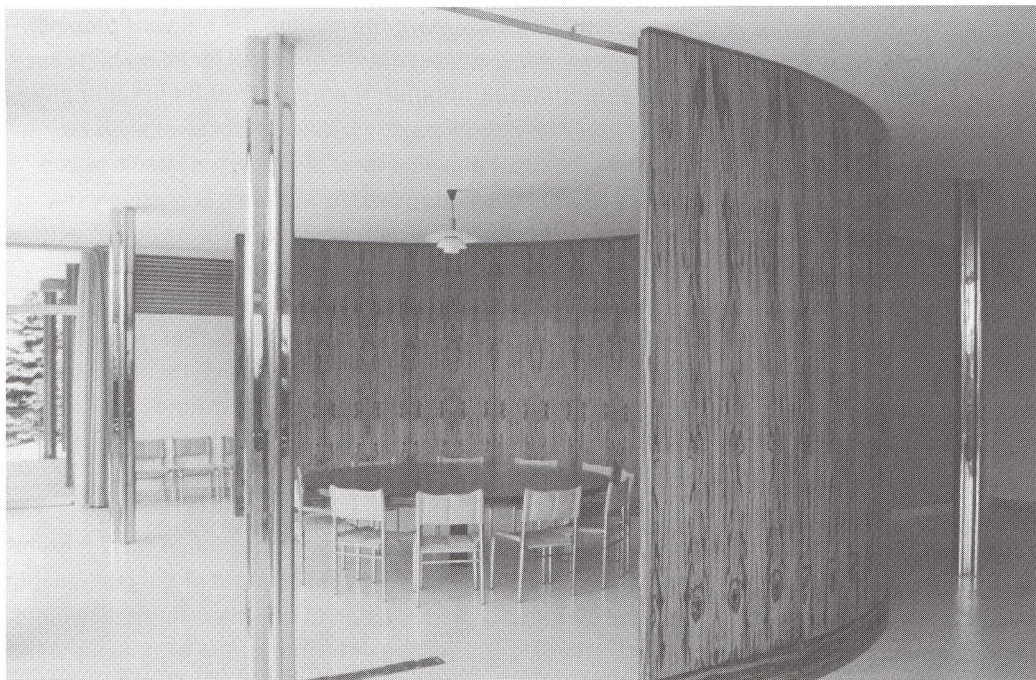
Marcel Mauss observed in the 1930s that, in certain cultures, lodged in objects are souls. Mauss's theory was that there is something in a "thing given" that needs to return to its original owner. Thus, in human social systems, according to Mauss, there is an "obligation to give because giving creates obligation."⁸ Godelier replaces Mauss's idea of soul with *rights*. Objects become attached to human beings through rights that mayor may not be part of a written body of law and mayor may not be alienable. Some objects are given as gifts, and when this happens, part of the rights of the original owner over the object, according to Godelier, travel with the gift.

We usually include, in the modern definition of property-whether taken, given, or sold - a potential for alienability such that a thing can be completely severed from its seller or giver and completely transferred to a buyer or receiver, with no remaining obligation. The power of property systems to corrupt, particularly private-property systems, is precisely the power of "alienability" to commodify everything and to act coldly, to sever relationships without any residue or obligation to restore them. Whether property is sold or given, some transfer of an object from one person to another is involved. However, gifts, in particular, engender a reciprocal dependence, an obligation that cannot be repaid in kind, and they follow, as Godelier argues, a "rule of law" that binds both giver and object:

Coming back to Mauss's second question, if there is some power in the thing, it is essentially that of the relationship which binds it to the person of the giver. This is a twofold relationship since the giver continues to be present in the thing given, which does not become detached from his [physical or legal] person, and this presence is a force, that of the rights he continues to exercise *over the thing given* and through it *over the recipient* who accepts it. In accepting a gift, one accepts more than a thing, one accepts the fact that the giver has rights over the receiver.⁹

In Western law, it is more difficult to see how things carry rights because, unlike kinship cultures such as those studied by Mauss, "people" and "things" are divided into separate systems.¹⁰ Mauss, Godelier argues, does not "take into account the fact that it is not only personal presence [that is, a spiritual quality in a thing that, in the cultures he studied, was regarded as a person and acted as one], but also *rights* that leave with the object in question."¹¹ And it is these rights that make an object valuable, as property, when it is removed from circulation. Godelier suggests that Mauss' avoidance of analyzing gift giving in culture from the "standpoint of the notion of inalienable property" - property that is not taken, given, or sold but kept-was related to "chaotic discussions that had surrounded the notions of collective and individual ownership since the end of the nineteenth century."¹² In Godelier's work, as already intimated, what is kept is also a kind of property and, he further claims, this kept property ensures the circulation of other kinds of things and people.

Historic preservation -which works inside both legal and economic structures-frequently takes alienable property and makes it inalienable by, in effect, depositing objects inside a cultural vault.¹³ Thus are we placed before our "origins"-



2. Interior view of Tugendhat House, 2004. Courtesy World Monuments Fund.

"beginnings," as Edward Said called them -that include both historical and genealogical dimensions. Politically, preservation is interested in stabilizing culture around generational, as well as historical, values-which often accounts for its conservative position. Because a correlation is required between what an owner will lose, and his or her compensation in the form of a public gain, historic preservation must make the case - particularly in architectural restorations -that there is a commensurate, or compensatory, value in isolating the kept aspect of property from its exchange potential. Nexus arguments almost always lean on philosophical conceptions of the "common good," which refer to historical ideas, generic human isms, and, in ways less easily tracked, the exercise of aesthetic judgment.

By way of a conclusion - in this very broad array of proposals that are radically inconclusive at this stage -I want to briefly look at the architectural restoration of the Tugendhat House. This house was not given as a gift but taken in the property melee that ensued after World War II. My discussion, therefore, concerns what is taken and then kept, not what is given or kept from being given. Godelier's remarks have, accordingly, a limited bearing on this example, but the transmission of rights in the transfer of objects is germane to the peculiar web of architectural, bio-juridical, and property rights issues within which the house is now caught.

The Tugendhat House in Brno, Czech Republic, designed by Mies van der Rohe and Lilly Reich in the 1920S, has recently been in the news.⁴ Heirs of the Tugendhat family, who fled

from Brno in 1938, are attempting to recover the house from the city in order to supervise a badly needed restoration. During the war, the house was occupied by the Gestapo and, later, the Messerschmidt aircraft factory office, and, even later, by the Russian Calvary. After the war, it served for a time as a school of modern rhythm and dance and was then "nationalized" and appropriated by the government. It served then as a rehabilitation department of the local Children's Hospital. In the early 1960s, the villa was renovated and listed as a culturally significant building.⁵ Laws governing the return of property to its rightful owners, as part of the War Reparations Act, expired in 1995. It is thus too late for the Tugendhat family to reclaim the house under reparations. In order to justify the return of the house, the family is standing on moral grounds, although nothing has yet been settled in favor of, or against, them.⁶ The Tugendhats' lawyers are arguing that the house was an artwork stolen from the family and implicitly, perhaps, that the family would be better curators of the house's restoration than the city.

Property transactions, smooth or disputed, often reveal incomplete histories—in this case, the history of postwar communism in Brno and the history of the Tugendhat family. Ethical and juridical structures are activated by the transfer of property partly because property is, by definition, owned by people. It is not a denatured thing. The legal scholar Joseph William Singer defines property as the "relations among people with regard to things."⁷ Because the Tugendhat house is a World Heritage Site and an architectural icon - "studied by every architectural student," as Barry Bergdoll has stated⁸—we might also ask whether the architectural meaning of the house, which is sunk into its property meaning, belongs primarily to "relations among people" (family, government, historians, students) or to "things" (the "architectural house" designed and built in Brno). This question cannot be entirely satisfied by a historical account of events or legal arguments.

The Roman natural historian Pliny the Elder (first century AD) might have seen, in the various transfers of the Tugendhat House from family to Nazis to Russians to city, not the direct expression of architectural issues, property rights, or world politics, but a story of failed proprieties in a particular family. He might have seen the family as failing to act according to genealogical laws, which would entail—in Pliny's simultaneously fundamentalist and expansive world—a particular relationship to the artistic objects under its care. The city of Brno is suggesting something similar. The family apparently recently sold a Wilhelm Lehmbruck statue, "Torso of a Walking Woman," a replica of which now stands in the house, for two million dollars at Sotheby's.⁹ The city is suggesting that the sale of

this original statue indicates that the family does not have the house, as an "original historical" entity, foremost in its thoughts.

Pliny was working, as the art historian Georges Didi-Huberman writes, in a more open epistemic field than we normally attribute to art history. Included under the heading of "art" were medicine, agriculture, and a multitude of practices and things that Pliny explores in his *Natural History*. In his world, art occurs "every time people use, instrumentalize, imitate, or go beyond nature."²⁰ Very little of this art is based on aesthetic evaluation, which, Didi-Huberman argues, is a key difference between Pliny's antique theory of art and Vasari's Renaissance theory of art, from which our modern theory of art is precipitated. Pliny's theory of representation refers to what he calls "barren" matter that "relates to the natural world, that is to say, to life"²¹—"brute materials" such as metal and rocks, and artisanal activities such as engraving, molding, and dyeing. His temporality is that of biology as it is distilled through genealogical lines. "Historical *teleology*, which will be Vasari's prime concern," Didi-Huberman argues, is opposed to a "*genealogy* of the image and of resemblance, which Pliny expresses in terms of law, justice, and right."²² By "imago," images, he means not paintings but molded wax likenesses of heroic ancestors. These were kept in niches in one's house, in a family archive. "Outside the house and in its doorway, there would be other representations of these [ancestors] ... with spoils taken from the enemy fastened to them, which even those who subsequently bought the house were not permitted to unfasten. Thus the house would celebrate for eternity, and irrespective of changes in ownership, the triumphs of those that had lived there."²³ A family house, in Pliny's terms, was meant to house the aggregation of a family's ancestral life. This "anthropology of resemblance" could be just or unjust, legal or illegal, and took its legitimacy "from a juridical space on the boundary of public and private law."²⁴

In Pliny's terms, one could argue that the Tugendhat family was both not free and free to sell Wilhelm Lehmbruck's statue, which, in a larger sense, stood for the possibility of recovering the house as a genealogical object in spite of the massive damage it had sustained from its temporary occupations during and after the war. The statue, if it authentically belongs to the furnishings of the house (damaged furnishings that will require meticulous restoration), would be part of what a historic preservationist would attempt to keep in the house in order to dramatize a particular historic moment in the development of architectural modernism.

But the family was also free to sell the statue because it had been given to them, they owned it, and it was detachable

and, therefore, alienable property. In addition, in Pliny's terms, the woman depicted in the "Torso" represented a "stranger," who bore no resemblance to any members of the Tugendhat family. It was an idealized sculpture of a human form that could be seen as an "unjust" work of art that had no place in the house to begin with.

I am not making a legal or aesthetic judgment of any kind about what should happen in this case, since I am neither a lawyer nor do I know all the details of the case. My interest, instead, is to bring to mind, when we think of architecture and, in this case, a restoration of an iconographic house, certain questions of rights - historical and genealogical- that are residual in property and might be activated by property transfers or disputes such as those taking place around the Tugendhat House. And my further interest is to explore how inalienable property, *kept* property, sequesters these rights in a particular way that, if Godelier is correct, allows other objects and relations among people to circulate.

Georges Didi-Huberman is an art historian and does not, therefore, seem particularly struck by the spectacle of a house filled with wax molds of people's heads adorned with war fetishes preserved in niches in the walls. But Pliny's examples of the failure of art to act "legally" are almost all architectural in character. One of the most virulent transgressions of genealogical law, according to Pliny, is a cultivation of *luxuria*, an excess of materials, which is the very definition of architecture after Vasari. Architecture is excess, it exists over and above mere building, thickens and makes more extravagant, and artificial, the use of materials. It also claims transcendental meanings. Didi-Huberman notes Pliny's objections to the "'moral insanity' of 'carrying the entrails of the earth - marble - into their bedrooms.'"²⁵ Gilded walls are "obscenities" of precious metals and are "portraits of money" that, to Pliny, are incidents of *permutatio*. ²⁶*Permutatio* refers to the loss of the dignity and tradition of generational transmission - resemblances that touch, literally, the face of the subject and natural laws that control the passage of objects from one person to the next. These have been replaced, Pliny complains, by "exchange, of commerce, of money."²⁷ The conservative, severely delimited aspects of Pliny's oppositions frame larger relations between conceptions of temporal continuity-generational structures connected through time and space-and what we now define as a temporal discontinuity of time and space, that is, history. Generational logic is based on an implacable system of biological heredity and reproduction, which Pliny theorizes into natural law, and historical logic is based on epistemology, teleology, and a broad conception of culture.

We can see, in the arguments surrounding the Tugendhat house, and in the house itself, influences from both of these logics. The human figuration of Lehmbruck's statue already mentioned, the use of natural stone and natural wood, the interior and exterior openness of the living room, and the fact that we refer to the house as the "Tugendhat House," contribute to the manner in which the house is closely, like most architectural houses, bound to some natural history of a family from which all the events that transpire in the house over its history have emanated. Simultaneously, the house is inseparable from its historical context, both architecturally and politically. An art market exists; art exists in the form of the "excess" of architectural beauty and rich materials; the house is a piece of property.

The final paragraph of the *New York Times* article states that, in spite of the contentious battles between city authorities and family authorities, the city sees cooperation with the family as a "long-term thing." These words are uttered as if to say, in a weary tone, "there is no getting rid of the family," as if we had, in fact, found a way out of our own genealogical time and space, through modernism, only to be drawn back through the very things and actions that had seemed to liberate us—the practices of art, architecture, science, progressive ideas of culture, notions of public and urban life, teleological history.

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Endnotes

¹Julia H. Miller, *A Layperson's Guide to Historic Preservation Law: A Survey of Federal, State, and Local Laws Governing Historic Resource Protection* (Washington, D.C.: National Trust for Historic Preservation, 2000), 1.

²Costas Douzinas and Lynda Nead, eds, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: The University of Chicago Press, 1999), 3.

³Ibid., 2.

⁴In the formation of the United States, and in spite of an abiding belief in principles of the public good, private property always was, and still is, the "privileged domain of common law." This is often seen as evidence of the strong influence of John Locke's theories of property and revolution had on the drafting of the American Constitution.

⁵Miller, *A Layperson's Guide*, 25.

⁶Maurice Godelier, *The Enigma of the Gift* (Chicago: The University of Chicago Press, 1999), 200; author's emphasis.

⁷Ibid., 200-201.

⁸Ibid., 15.

⁹Ibid., 44-45. Claude Lévi-Strauss, the structural anthropologist, replaced Mauss's mystical idea of some "soul of the giver" in a thing, which occasions its return to its source, with the more universal characterization of culture and society as a kinship system based on exchange. Exchange is not optional, according to Lévi-Strauss, but part of linguistic and unconscious mental structures to which institutions give us access. Symbolic systems are articulated by these unconscious

mental structures" and, for Levi-Strauss, "symbols are more real than what they signify" (23-27),

³⁰ Godelier, *Enigma*, 46, One can see this explicitly in William Blackstone's first treatises on law.

³¹ Ibid" 46-47,

"Ibid.,46

"Through the tax structure, as we know, the gift, in American philanthropic culture, has been the very basis of the transfer from corporate life of part of its profits to cultural life, The word *vault* may seem histrionic but it is accurate,

³⁴ Jim Rendon, "A Mies Masterwork, Deteriorating and in Dispute," *New York Times*, March 22, 2007,

³⁵ *The Villa of the Tugendhats Created by Mies van der Rohe in Brno*, (published by the Institute for the Protection of Monuments in Brno, Brno City Museum, 1995),

""The city says it recognizes the family's moral right to the home, and the family says it wants to keep it open for the people of the city, but neither side seems to trust the other's ability to manage the restoration work and maintenance that will be necessary" (Rendon, "A Mies Masterwork"),

" Joseph William Singer, *Introduction to Property* (New York: Aspen, 2005), 2,

³⁸ Bergdoll made this remark in Rendon's "A Mies Masterwork."

³⁹ "Daniela Hammer,Tugendhat, the youngest daughter of the original owners, Fritz and Grete Tugendhat, is well aware of the house's significance, An art history professor at the University of Applied Arts in Vienna, she has spent much of her life trying to make sure that it is properly cared for.. Though she never lived in the house-she was born in Venezuela after the war-it has become her obsession, For decades, she and her husband, Ivo Hammer, a professor of conservation at the University of Applied Sciences and Arts in Hildensheim, Germany, and a restorer of murals, petitioned the Communist and then post-Communist governments to have it opened to the public and then to have it properly restored" (Rendon, "A Mies Masterwork"),

⁴⁰ Georges Didi-Huberman, "The Molding Image," in *Law and the Image*, 73,

"Ibid.,74,

" Ibid" 76

""The family tree" would also be "traced in lines on the wall" (ibid" 78).

³⁴ Ibid., 79-80

³⁵ Ibid., 81.

"Ibid,

"Ibid.,84,