

Why and How Museums Avoid Returning Nazi-looted Art

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Introduction

Are museums trying to avoid returning Nazi-looted artwork in their collections? This paper will answer that question by examining arguments used against returning artwork and methods implemented to do so. The arguments made in this paper are limited to Nazi-looted artwork but can be applied to other works of art and cultural artifacts.

Throughout history artwork has been destroyed and stolen but never came close to the damage caused by the Nazis. Nazi-looted artwork is extremely significant because of how massive the scale of theft was, no pillaging in history ever coming (how to cite the guide). Further devastation the Nazis are responsible for regarding artwork, is the displacement of the works. They stole art from countries throughout Europe and the artwork was not returned to its respective place of origin. *Restitution*, the return of lost or looted cultural objects to their country of origin, former owners, or their heirs (Goldman & Oosterlinck, 2015) is widely associated with their plundering because of the means by which the art was acquired.

Adolf Hitler (1889-1945) appreciated art and envisioned building a large art museum, The Führermuseum, to be built in his birthplace of Linz, Austria (Tyler, 1997, p. 447). Plans found in his personal library illustrated several buildings that would house the artwork (Zinich, 2015, p. 335) and when he rose to power in 1933, he began amassing art that would fill his future institution. He expected what artwork would fill the collection and art that had to be destroyed. “Still, it estimated that 100,000 of the approximately 650,000 artworks looted and otherwise unlawfully appropriated by Nazi forces...remain unaccounted for,” (Karrels, 2014, p. 297).

Germany and Art

In order to promote Aryan culture, anything that did not align with such views had to be dealt with (Grimes, 2010, p. 524). An example of this being *Degenerate art*, the name for artwork that did not fall in line with arts policies of National Socialism, chiefly avant-garde work (Kühnel). Degenerate artwork was removed from national collections and the ERR was tasked with destroying it. It is estimated that between 16,000 (Nicholas 1994) – 17,000 (Karrels, 2014) Degenerate works were destroyed. Hitler was not the only Nazi official who appreciated art. High ranking Nazi leader Hermann Göring wanted to have an art gallery that could stand in the same category as the Führermuseum and bribed other ERR members to fetch objects and art for him (Zinich, 2015, p. 335). In addition to the Nazis, soldiers and civilians on both sides of the war also participated (Karrels, 2014, p. 299). Another group that contributed to the displacement was the soviets, who “Re-stole Art stolen by the Nazis from occupied countries and from Jews across Europe,” (Radzilowki, 2016, p. 8).

Many, but not all art collectors and dealers in western Europe were Jewish, and their collections would result in being seized, liquidated, and destroyed. “For pre-war Jews, art collecting was partially an indicator of Jewish assimilation into Western European, Christian society, with its attendant economic hierarchy and social values,” (O’Donnell, 2011, p. 57).

Reasons to Return Artwork

76 years later, the impetus for Nazi-looted art to be returned has not faded. After the Holocaust ended, some individuals who had sold or collected art prior to the war attempted to recover their collections, an exhaustive project that would outlive them. French art dealer Paul Rosenberg had 400 works of art (Bazyler, 2003, p. 222), Dutch collector and gallery owner Jacques Goudstikker had more than 1,200 pieces, (Kaye, 2006, pp. 248-249) and German gallery owner Max Stern, owned 200 works. Attempts to retrieve all three collections were made either by themselves or their heirs. Rosenberg’s daughter and Goudstikker’s granddaughter committed to continue the projects their ancestors began.

Max Stern did not have any heirs, so in 2002, three universities established The Max Stern Art Restitution Project, whose purpose is to reunite Max Stern's art collection.

Other organizations were formed to aid Holocaust survivors. The Conference on Jewish Material Claims Against Germany (Claims Conference) was founded in 1951 and negotiates for and disburses funds to individuals and organizations and seeks the return of Jewish property stolen during the Holocaust. The Claims Conference and World Jewish Restitution Organization (WJRO) worked together to form the Looted Art and Cultural Property Initiative, a project that initiates and supports the wide-ranging efforts toward the restitution of Jewish-owned art, Judaica, and other cultural property lost and plundered during the Holocaust. These organizations demonstrate that the desire to return the artwork will persist and the mission is not limited to individuals.

The major reason for restituting the artwork is to provide the Jewish people with the overdue acknowledgment they deserve. They were tortured, extorted, starved, euthanized among other atrocities. The Reich Flight Tax is one form of extortion that Jews encountered in order to survive. Initially the tax was instituted before Nazi control, but once they were in power the tax was manipulated and applied heavily to Jews trying to flee persecution (Kreder, 2012, p. 92).

Some Jews had the opportunity to prepare their belongings or make arrangements for them. they left most of their possessions, they had The acknowledgement serves multiple purposes, one being validation. Returning possessions exhibits they were unlawfully taken. Some people may view acknowledgment as being unnecessary, or a minor element in the grand scheme. Jewish people were robbed of so much: lost relatives, friends, neighbors, homes. They were even betrayed by their country when their citizenships were revoked, and their statelessness caused problems for many in the future. Acknowledgment also provides psychological benefits (O'Donnell, 2011, p. 56). There were survivors who did not attempt to reclaim their belongings or argue when denied, of there was a stigma they were ungrateful for surviving.

Arguments Used to Avoid Returning Artwork

In the 21st century, claimants now include descendants of Holocaust victims and survivors. There are feelings of opposition toward this because some people believe the original owner's children or grandchildren should not be eligible to receive the artwork, in the event they are not alive.

British curator and art historian Norman Rosenthal feels there should be a statute of limitations on art restitution. His argument is founded on the belief that people should move forward and not focus on previous events, no matter how significant they were.

There should now surely be a statute of limitations on this kind of restitution. If we were still in 1950 and the people who owned the Manet or the Monet were still alive, then it would surely be correct to give these paintings back, but not now and not to grandchildren and great-grandchildren. The world should let go of the past and live in the present...but we should not be overly obsessive about the worst of the past – it is not useful either to individuals or society as a whole. Each person should invent him or herself creatively in the present and not on the back of the lost wealth of ancestors.

Returning artwork to descendants serves a purpose larger than passing down wealth from each generation. The recipients are grateful for the acknowledgment, which was something their ancestors did not receive in their own lifetime.

The concern for what will happen to artwork once it leaves the museum is a widely held concern. 1943, Dina Gottliebowa Babbitt was transferred from Theresienstadt concentration camp and forced to work for Dr. Josef Mengele, known as the “Angel of Death” in the Birkenau concentration camp. He instructed her to paint watercolor portraits of Roma and Sinti people, one of the groups who underwent his medical experimentations. After Mengele allowed Babbitt's mother to join her and by the end of the Holocaust, the two of them survived four concentration camps, a death march, and witnessed additional atrocities committed by Mengele. Her paintings were purchased by the Auschwitz-Birkenau State Museum and after identifying her signatures in 1973, the museum contacted her to verify them. Babbitt lived in California at the time, and she traveled to the museum in Poland under the impression she would return to the United States with her paintings. (Kreder, 2008, pp. 21-

22). The museum refused to give her the paintings and a legal battle ensued that would go on for thirty years. Dina Babbitt passed away in 2009 without being granted her portraits (Weber 2009).

She understood the importance of having the portraits remain accessible to the public, which is why she wanted the portraits to remain in a museum. Babbitt wanted the portraits to be in a museum closer to where she lived, but importantly, not in a place where she was victimized and witnessed so much pain” (Kreder, 2008, p. 31).

One of the key components for restitution is know the *provenance*, the history of the ownership of an object or work of art (International Foundation for Art Research). Provenance research is important but is perceived as strenuous. In 2019, the German Lost Art Foundation published a Provenance Research Manual, covering various topics related “to identifying cultural property seized due to persecution during the National Socialist Era”. In addition to being an informative guide for how to perform the research, content about the importance of provenance research is included. (-) Different ways to approach the research and there are times when the material is hard to access, or unavailable. It is situations like these that require utilizing the context clues in order to fill in some gaps to determine if the work was sold under duress.

In January 2020, the Louvre Museum in France hired Emmanuelle Pollack, an art historian to inspect any work the museum may have obtained during the Vichy regime (1940-1944). Less than a month into her research, she identified ten works that belonged to a Jewish lawyer before their forced sale at auction. Pollack recognized the dates of acquisition and knew they corresponded to the National Socialist Era (Rea).

Another concern regarding provenance research is establishing up projects are expensive. There are alternatives to relying on internal funding. There are some organizations that support Nazi-era provenance research, such as the Samuel H. Kress Foundation (Karrels, 2014, p. 304). It is understandable for small museums to use this bring up this concern and a way to circumvent the

limited funding obstacle would be for small museums to collaborate on research projects. A project along this theme could result in good publicity.

A situation the Wadsworth Atheneum Museum of Art in Hartford, Connecticut found itself in. The Jacopo Zucchi painting, “The Bath of Bathsheba”, was stolen from the Italian Embassy in Berlin in 1945 and in 1970, the Italian government claimed its return. The painting was sold to the Wadsworth Atheneum Museum in 1965 and the museum was unwilling to return the painting for free. It was finally repatriated in 1998, after an agreement with the Italian government for the Gallerie Nazionale to lend the Wadsworth Atheneum Museum of Art 28 Baroque masterworks, which were exhibited in the show, “Caravaggio and Hist Italian Followers” alongside the Zucchi painting. Upon the conclusion of the exhibition, all of the works were returned to Italy and the museum’s attendance during the time of exhibition increased by 36%.

Disorganization and the inability to communicate were early factors that contributed to the integration of Nazi-looted art into museum collections. Immediately after the war, attempts to prevent the integration were taken immediately, such as returning artwork to their countries of origin. “Still, routine provenance research with an eye on Nazi-era spoliated art did not enter museums practice for several decades, and illicit art found its way into public collections. (Karrels, 2014, p. 299)

A huge achievement accomplished in the of restitution was made in the 1990s, when, at the end of the Cold War records that were unable prior were at long last made available to the public (Weiss, 2007, p. 867). Since sentence

The International Foundation for Art Research (IFAR) was established in 1969 to fill a need for an impartial and scholarly body to educate the public about problems and issues in the art world and to research the attribution and authenticity of works of art. In the 1970’s, IFAR’s purview expanded to include art theft and looting, and art and cultural property law and ethics. Finally, in 1991, IFAR created the first international archive of stolen art available to the public, the Art Loss Register (ALR).

In 1992, Professor Randolph Braham donated 184 microfilm reels that contained documents relating to the Jews in Hungary during World War II, to the Holocaust Memorial Center in Michigan. The microfilm reels have since been updated and made compatible with today's common viewing devices. A Hungarian Holocaust survivor, Clara Garbon-Radnoti volunteered at the center and worked for over a decade translating the documents on the microfilm reels, which contained the gradual progression of Jewish persecution (curfews, forced business closures, evictions, labor camp inspections, etc.), names, addresses, bank accounts, inventoried art collections, lists of other confiscated possessions, and more. Radnoti also created a digital reference guide, which is accessible on the Holocaust Memorial Center in Michigan's website.

By Radnoti digitizing the documents, she protected the microfilms and ensured future generations will be able to view the information. Digitizing archives is common, and it makes conducting research easier (Thompson, 2011, pp. 409-410). Now that museums have this capability, they should use it to inspect their collections for suspect works.

Purchasing artwork in "good-faith" means the person with whom the work resides was unaware that was stolen. Using this defense in American courts does not work because "title transfer does not apply to stolen property" (Gerstenblith, 2011, p. 403). Legal systems are not universal, and "good faith purchases" have a different bearing on rulings than the United States. "Under French law as it existed prior to June 2008, a good-faith possessor of movable property could acquire good title after three years from the date of the loss or theft..." (Prowda, 2013, p. 355). "Swiss law presumed that a purchaser acted in good faith," (Gerstenblith, 2011, p. 403). If the purchaser was acting in good-faith, he or she would have done their research. People conduct research before making an expensive purchase, so why should art be an exception?

After it became known that artwork was "contaminated" by Nazi crimes, ideally individuals should have looked into the histories of any artwork they own that may have been acquired during that

time or had suspicions about. This reiterated Nancy Karrel's statement mentioned earlier: "...routine provenance research with an eye on Nazi-era spoliated art did not enter museum practice for several decades, and illicit art found its way into public collections," (Karrels, 2014, p. 299). Practices were not consistent then, but upon learning there was a work already in the collection that may have been stolen, museums should have looked into it. Essentially, museums or individuals who do not investigate the artwork are making "blind purchases" and hint as to why provenance might not have been initially conducted: fear that looking into the past will reveal grounds for which museum will have to return to original owner.

How Museums are Able to Avoid Restitution

In 1998, the first of several international conferences on Nazi-looted art was held. Forty-four nations gathered in Washington DC to attend the "Washington Conference on Holocaust-Era Assets", where the "Washington Principles" was signed. "The Washington Principles" is a doctrine of eleven principles regarding the treatment of Nazi looted artwork but is considered more of a suggestion than a legal mandate. The principles are non-binding and the countries who signed are therefore not penalized if they do not uphold them (Bonadies, 2019, p. 676).

The Washington Conference set a precedent for future conferences; An international gathering to discuss the status of restituting art Nazi-looted artwork and asses the progress, or lack thereof. In 2000, the Vilnius Forum on Holocaust-Era Cultural Assets was held in Lithuania and reviewed how much progress was made since the Washington conference. In 2009, the Conference on Holocaust-Era Assets was held in Prague, Czech Republic and upon the conference's conclusion, forty-six countries signed the "Terezín Declaration" in Terezín, Czech Republic, a document that further elaborated on matters discussed in the Washington Principles and yet again, were unbinding.

The topics covered by these principles include "Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted to locate its pre-

War owners, or their heir's," (Principle 5). Ultimately the declaration resembled the Washington Principles in that it reiterates the importance of and how to return looted artwork, and once again is non-binding (Bonadies, 2019, p. 677). The high attendance rate at these conferences gives the perception that countries are interested in following through with this cause. would be interested in returning the artwork. The lack of actions speaks differently and reinforces the lack of acknowledgment to Holocaust victims and survivors.

Resolutions

Cooperation between museums and claimants can yield a positive resolution for all. In 1999, the North Carolina Museum of Art was contacted by the Commission for Art Recovery of the World Jewish Congress on behalf of two heirs claiming one of the paintings belonged to their uncle. The painting, "Madonna and Child in a Landscape" by Lucas Cranach the Elder, was formerly part of Philipp von Gomperz's collection, a Viennese Jew who left his artwork behind when he fled with his family. The museum restituted the painting in 2000 and in turn, the sisters sold the painting back to the museum at a substantially reduced cost (Chechi et al., 2012). Additionally, their names and restitution story are visible on the museum's website.

Conclusion

This paper asked the question "Are museums trying to avoid returning Nazi-looted artwork in their collections?" The answer is yes. After examining different arguments made against returning artwork, it is clear that museums are not as proactive as they could be. The absence of legal accountability allows the museum to behave in the manner it would like to. At this point in time museums are unable to erase the mistakes made by previous museum administration, but they have the power to re-write them by acknowledging the atrocities Holocaust victims and survivors endured.

Works Cited

- Bazyler, M. J. (2003). *Holocaust Justice*. New York University Press.
- Bonadies, V. (2019). Taking Greater Responsibility: Austria's Art Restitution Act and the Need for Further Reform. *American University International Law Review*, 34(3), 671–699.
- Britannica, E. of E. (n.d.). Nazi Party. In *Encyclopaedia Britannica*.
<https://www.britannica.com/topic/Nazi-Party>
- Cechi, A., Contel, R., & Renold, M.-A. (2012a, January). *Bath of Bathsheba - Italy and Wadsworth Atheneum Museum of Art*. ArThemis. <https://plone.unige.ch/art-adr/cases-affaires/bath-of-bathsheba-2013-italy-and-wadsworth-atheneum-museum-of-art>
- Cechi, A., Contel, R., & Renold, M.-A. (2012b, January). *Case Madonna and Child in a Landscape – North Carolina Museum of Art and Philipp von Gomperz Heirs*. ArThemis. <https://plone.unige.ch/art-adr/cases-affaires/madonna-and-child-in-a-landscape-2013-north-carolina-museum>
- Feliciano, H. (1997). *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art*.
- Fisher, W., & Webber, A. (2018, December 8). Art Restitution in the Netherlands Turned on its Head. *NRC Handelsblad*.
- Gerstenblith, P. (2011). International Art and Cultural Heritage. *The International Lawyer*, 45(1), 395–408. <https://www.jstor.org/stable/23644021>
- Goldman, N., & Oosterlinck, K. (2015). Restitution. In *Grove Art Online*.
<https://www.oxfordartonline.com/groveart/view/10.1093/gao/9781884446054.001.0001/oao-9781884446054-e-7002277663>.
- Graefe, E. A. (2010). The Conflicting Obligations of Museums Possessing Nazi-Looted Art. *Boston College Law Review*, 51(2), 473–515.

https://lawdigitalcommons.bc.edu/bclr/vol51/iss2/4/?utm_source=lawdigitalcommons.bc.edu%2Fbclr%2Fvol51%2Fiss2%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages

Grimes, J. (2010). Forgotten Prisoners of War: Returning Nazi- Looted Art by Relaxing the National Stolen Property Act. *Roger Williams University Law Review*, 15(2), 521–546.

https://docs.rwu.edu/rwu_LR/vol15/iss2/4/?utm_source=docs.rwu.edu%2Frwu_LR%2Fvol15%2Fiss2%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages

Hellwege, P. (2016). Precluding the Statute of Limitations? How to Deal with Nazi-Looted Art After Cornelius Gurlitt. *Southwestern Journal of International Law*, 22(1), 105–161.

<https://www.swlaw.edu/curriculum/law-review-journals/southwestern-journal-international-law>

Hull, A. (2019). Shoring Up the HEAR Act: Proposed Amendments to Federal Legislation Designed to Assist Heirs and Claimants of Nazi- Looted Art. *Brooklyn Works Journal of Law and Policy*, 28(1), 238–275.

Karrels, N. (2014). Renewing Nazi-Era Provenance Research Efforts: Case Studies and Recommendations. *Museum Management and Curatorship*, 29(4), 297–310.

<https://doi.org/10.1080/09647775.2014.934050>

Kaye, L. M. (2006). Avoidance and Resolution of Cultural Heritage Disputes of Art Looted During the Holocaust. *Willamette Journal of International Law and Dispute Resolution*, 14(2), 243–268.

<https://www.jstor.org/stable/26211230>

Kreder, J. A. (2012). Fighting Corruption of the Historical Record: Nazi-Looted Art Litigation. *Kansas Law Review*, 61(1), 75–137. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2042116

Madonna and Child in a Landscape. (n.d.). North Carolina Art Museum.

https://ncartmuseum.org/art/detail/madonna_and_child_in_a_landscape1

Max Stern Art Restitution Project. (2002). Concordia University. <https://www.concordia.ca/arts/max-stern/about.html>

- Murphy, N. (2009). SPLITTING IMAGES: SHARED-VALUE SETTLEMENTS IN NAZI-ERA ART RESTITUTION CLAIMS. *Florida Entertainment Law Review*, 3, 41–79.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1559373
- Nicholas, L. H. (1994). *The Rape Of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War*.
- O'Donnell, T. (2011). The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa? *The European Journal of International Law*, 22(1), 49–80.
<https://doi.org/https://doi.org/10.1093/ejil/chr004>
- Prowda, J. B. (2013). *Visual Arts and the Law A Handbook for Professionals*. Lund Humphries.
- Radzilowski, J. (2016). Thieves Stealing from Thieves, Victims from Victims: The Culture, Morality, and Politics of Stolen Art in Twentieth Century Poland. *The Polish Review*, 61(4), 3–17.
<https://doi.org/https://doi.org/10.5406/polishreview.61.4.0003>
- Rea, N. (2020, January 22). *Less Than a Month After the Louvre Hired a Nazi Loot Expert to Investigate Its Collection, She Found 10 Ill-Gotten Works Hiding in Plain Sight*. Artnet News.
<https://news.artnet.com/art-world/restitution-nazi-loot-louvre-france-1758900>
- Rosenthal, N. (2008, December 1). *The time has come for a statute of limitations on restitution: stemming the flow of works from museums*. The Art Newspaper. <https://www.theartnewspaper.com/archive/the-time-has-come-for-a-statute-of-limitations>
- Shindell, L. M. (2016). Provenance and title risks in the art industry: mitigating these risks in museum management and curatorship. *Museum Management and Curatorship*, 31(5), 406–417.
<https://www.tandfonline.com/doi/full/10.1080/09647775.2016.1227569>
- Tam, S. (2016). In Museums We Trust: Analyzing the Mission of Museums, Deaccessioning Policies, and the Public Trust. *Fordham Urban Law Journal*, 39(3), 849–901.

Tenacious researcher IDs records of Nazi thefts from Jews in Holocaust. (n.d.).

https://www.voicenews.com/life/tenacious-researcher-ids-records-of-nazi-thefts-from-jews-in-holocaust/article_c028b6ab-a5b5-5045-80bb-84c86d37f0a9.html

Weber, B. (2009, August 1). Dina Babbitt, Artist at Auschwitz, Is Dead at 86. *New York Times*.

<https://www.nytimes.com/2009/08/02/arts/02babbitt.html>

Weiss, L. J. (2007). The Role of Museums in Sustaining The Illicit Trade in Cultural Property. *Cardozo*

Arts & Entertainment, 25, 837–875.