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Lost Art and Lost Lives: Nazi Art Looting and Art Restitution

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Lost Art and Lost Lives: Nazi Art Looting and Art Restitution

Abstract

During the Nazi Regime, Adolf Hitler and the Nazis seized an estimated one fifth of all art in Europe and more than 5 million cultural objects before 1945. The Nazis established control over the regime and furthered their racist ambitions through stealing art of any cultural or monetary value to them. They stole “degenerate” art in an attempt to annihilate “racially inferior” races, and “racially pure” art for the glorification of the “Aryan” race. Since the end of WWII, the return of Nazi-looted art to its original owners or their heirs has been an important avenue for remembrance of and belated justice for Holocaust victims and their families. Some have suggested a parallel between lost art and lost lives, where art restitution provides a form of justice. However, the path to justice is not an easy one. Many heirs do not know they have a claim to their family’s stolen art or do not know it still exists, and the claims that go to trial often do not go soundly in favor of the victim or his or her heir. Many museums, galleries, art dealers, and collectors have failed to do proper provenance research, or know the jaded history of their artworks and argue that they received the looted artwork in good faith. In order to highlight the importance of Nazi-looted art restitution and justice for Holocaust victims and their families, this paper focuses on the way art was used by the Nazis as a means of control, the structure of the looting system, and the systems of art restitution. Three artworks seized from Jewish art collectors are used to exemplify “degenerate” and “pure” art, discuss the impact of the legal system on restitution, and emphasize provenance as a means of honoring Holocaust victims. Gustav Klimt’s Portrait of Adele Bloch-Bauer, Camille Pissarro’s Shepherdess Bringing in Sheep, and the pair of paintings, Adam and Eve, by Lucas Cranach the Elder illustrate why art collectors, museums, and galleries must confront the vicious Nazi history of such beautiful works of art. Though it will never be possible to return all that was stolen from Nazi victims, the art world can provide justice by doing more thorough provenance research and displaying the provenance information for viewers.

Keywords

nazi-looted art, art restitution, provenance

Disciplines

History of Art, Architecture, and Archaeology | Holocaust and Genocide Studies | Museum Studies | Social Justice

Comments

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Lost Art and Lost Lives: Nazi Art Looting and Art Restitution

Introduction

“They...tried to paint a picture of me as a looter of art treasures. In the first place, during a war everybody loots a little bit...,” said Nazi official Hermann Goering in his Nuremberg jail cell.¹ During the Nazi Regime, Adolf Hitler and the Nazis seized an estimated one fifth of all art in Europe and more than 5 million cultural objects before 1945.² Initially, artworks were stolen to furnish Hitler’s dream museum in Linz and other regional museums, but the scope of the project quickly broadened to secure the Nazi’s racist cultural and political ambitions through art. The Nazis established control over the regime through stealing art of any cultural or monetary value to them. They stole “degenerate” art in an attempt to annihilate “racially inferior” cultures, and “racially pure” art for the glorification of the “Aryan” race. By 1940, Nazis would take anything from their victims in order to destroy non- “Aryan” races and their cultures.³

Since the end of WWII in 1945, the return of Nazi-looted art to its original owners or their heirs has been an important avenue for remembrance of and belated justice for Holocaust victims and their families. Art restitution has received increasing attention since the 1990s, as more art records are declassified and more tools for finding lost art, such as the internet, become

¹ Robert M. Edsel. *Rescuing Da Vinci: Hitler and the Nazis Stole Europe’s Great Art: America and Her Allies Recovered It* (Dallas: Laurel Pub., 2006), 107.

² Robert M. Edsel, and Bret. Witter. *The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History* (New York, N.Y: Center Street, 2009), xiv.

³ Edsel and Witter, *The Monuments Men*, 106.

available.⁴ In 2014, newly uncovered records helped facilitate the return of stolen family heirlooms to descendants of a Jewish citizen of Lüneberg, Germany. One of Marcus Heinemann’s heirs reflected on the meaning of the restitution:

We reclaimed the restitution items that amounted to much more than their monetary value. ... We reclaimed the legacy of Marcus Heinemann. ... We reclaimed a painful and tragic past. ... We reclaimed an enormous family. ... We reclaimed the many contributions of the [Heinemann] descendants. ... Finally, we reclaimed our standing in Lüneberg, once the beloved home of our family.⁵

Though successful restitution stories are inspiring, the path to justice is not always an easy one. Many heirs do not know they have a claim to their family’s stolen art, or simply do not know it exists.⁶ The claims that do go to trial do not always go soundly in favor of the victim or his or her heir.

In order to highlight the importance of Nazi-looted art restitution and justice for Holocaust victims and their families, this paper examines the ways art and looting were used as mean of control, and how art is reunited with its rightful owners. Three works of art seized from Jewish art collectors are used to discuss the impact of the legal system on restitution, and emphasize art as a means of honoring Holocaust victims. Legal cases involving the priceless works of art *Portrait of Adele Bloch-Bauer* by Gustav Klimt (Figure 1), Camille Pissarro’s *Shepherdess Bringing in Sheep* (Figure 2), and the pair of paintings, *Adam and Eve* (Figures 3 and 4), by Lucas Cranach the Elder illustrate why art collectors, museums, and galleries must confront the vicious Nazi history of such beautiful works of art. The three legal cases exhibit

⁴ Michael J. Kurtz. *America and the Return of Nazi Contraband: the Recovery of Europe’s Cultural Treasures*. (Cambridge: Cambridge University Press, 2006), 215.

⁵ Debbie De Girolamo. “The Conflation of Morality and ‘the Fair and just Solution’ in the Determination of Restitution Claims Involving Nazi-Looted Art: An Unsatisfactory Premise in Need of Change.” *International Journal of Cultural Property* 26, no. 4 (November, 2019): 358. Doi:<http://dx.doi.org/10.1017/S0940739119000316>.

⁶ Saski Hufnagel and Dunkin Chappell. “The Gurlitt ‘Collection’ and Nazi-Looted Art.” In *The Palgrave Handbook on Art Crime*, ed. Hufnagel S., Chappell D (London: Palgrave Macmillan, 2019). https://doi-org.ezpro.cc.gettysburg.edu/10.1057/978-1-137-54405-6_27.

common outcomes of the legal processes such as partial restitution, a “fair” agreement between both parties, and no restitution. The various arguments and outcomes of the court cases highlight the shortcomings of the legal system in restitution claims. There is no simple solution, but provenance will be explored as a form of honoring victims and educating the viewer. If Nazi victims cannot get restitution for their stolen property within the bounds of the law, the art world has a responsibility to provide justice.

Art in Service of the Nazi Regime

Art is a powerful rhetorical device. During the National Socialist regime, Adolf Hitler and the Nazis stole art from non-“Aryans” and used it to manipulate the public into embracing Nazi ideology. “Aryans” were Caucasian, Christian, and German, and “degenerates” or non-“Aryans” included immigrants, foreigners, Jews, Marxists, and anyone else he deemed “racially inferior.”⁷ Hitler was inspired by the work of eugenicist Dr. Hans Günther, who theorized the connection between art and race. According to historian Susan Ronald, art in any form has the capacity to influence the public by targeting their emotions.⁸ Hitler, guided by Günther’s theories, honed in on the emotional impact of art and “coherently united art and the racist in an unholy alliance....”⁹

Creating a positive spin on racist Nazi ideology, the regime presented itself as the “guardian of culture,”¹⁰ whose goal was to preserve and protect German culture from decay.¹¹ This protection involved the theft of any art of value to the regime in order to advance an

⁷ Edsel and Witter, 11.

⁸ Susan Ronald. *Hitler’s Art Thief: Hildebrand Gurlitt, the Nazis, and the Looting of Europe’s Treasures*. First edition. (New York: St. Martin’s Press, 2015), 137.

⁹ Ronald, *Hitler’s Art Thief*, 137.

¹⁰ Wistrich and Holland, *Weekend in Munich*, 22.

¹¹ Wistrich and Holland, 38.

“aestheticized fantasy of racial perfection.”¹² “Non-German” or “degenerate” art was collected for ridicule at “degenerate” art exhibitions and/or for sale if they had monetary value, and “German” art was collected for “safeguarding” for Hitler’s museum in Linz or to satisfy the greed of prominent Nazis such as Göring.¹³ The regime’s ideals were expressed through the condemnation of modern or “degenerate” art and the veneration of sanctioned “Aryan” art.¹⁴ The tactic was extremely effective, as many Germans believed in the racist propaganda that permeated the art.¹⁵

Klimt’s *Portrait of Adele Bloch-Bauer* and Camille Pissarro’s *Shepherdess Bringing in Sheep* are examples of “degenerate” art. Hitler defined “degenerate” art as containing themes such as social and political revolution, and the celebration of ugliness pain, suffering, and individual torment. He disapproved of formal aspects of modern art like asymmetry, and abstraction, breakup of form, and fragmentation of the body. Hitler prohibited the use of “unfinished surfaces,” where pigment was applied with a palette knife, a technique associated with post-impressionism and expressionism.¹⁶ Hitler condemned any artwork made by “degenerates,” including anyone he deemed “racially inferior.”¹⁷ He saw these characteristics as “the inevitable reflection of a chaotic society that had lost its ‘racial purity’” and sought to eliminate this impurity to create a perfect “Aryan” race.¹⁸ The popular trends of modern art such as Dadaism, Cubism, Expressionism, and Surrealism were all considered “degenerate,” deemed

¹² Gregory Maertz, “Modernist Art in the Service of Nazi Culture,” *Patterns of Prejudice* 50, no. 4/5 (September 2016): 349. EBSCOhost, doi:10.1080/0031322X.2016.1237072.

¹³ Edsel. *Rescuing Da Vinci*, 106.

¹⁴ Wistrich and Holland, 22.

¹⁵ Wistrich and Holland, 22.

¹⁶ Gregory Maertz, “Modernist Art in the Service of Nazi Culture,” 351.

¹⁷ Edsel and Witter, 11.

¹⁸ Wistrich and Holland, 61.

“the poisonous flower of a Jewish parasitical plant” by leading Nazi educator, Dr. Reinhold Krause.¹⁹

According to a leader of the art looting scheme, Alfred Rosenberg, “German post-war art is that of mestizos laying claim to the license of depicting bastard excrescences, the product of syphilitic minds and painterly infantilism...”²⁰ Rosenberg accuses post-war artists of being racially “impure,” mentally ill, and sexually perverted. “Degenerate” artists were also accused of political anarchy, blasphemy against Germany and its army, mockery of religion, veneration of prostitution, and insulting German motherhood.²¹ Modern art was also linked to “bodily degeneration, sexual deviancy, criminality, insanity, and corruption,”²² showing the decay of culture after the loss of WWI. The Nazi Revolution and Hitler’s “cultural renaissance” was embraced by the German people because it promised to save them from the decay, criminality, corruption, and downfall that the regime blamed on modern art and “degenerates.” By criticizing and criminalizing modern art, the National Socialists were able to promote their own ideals, shaping a perfect German culture as a contrast to the corrupt modern culture.

Adolf Ziegler, painter and president of the Reich Chamber of Visual Arts, was charged with organizing the first Degenerate Art Exhibition in Munich. Ziegler stole all “decadent” art from Germany, including over 13,000 pieces of art. The exhibition consisted of works from 112 artists, including Nolde, Beckmann, Grosz, Picasso, Matisse, Van Gogh, Cézanne, and other prominent, both then and now, modern artists. The artworks were displayed unframed with captions such as “Thus did sick minds view Nature!” and “The Prostitute Raised to a Moral

¹⁹ Wistrich and Holland, 12.

²⁰ Wistrich and Holland, 57.

²¹ Wistrich and Holland, 57.

²² Wistrich and Holland, 59.

Ideal.”²³ Hitler’s propaganda team advertised the art in the exhibition as Marxist and Jewish products, but only six artists had Jewish ancestry and very few were actually Marxist.²⁴ The goal of the exhibition was to connect art with race by proving that “corrupt” art was made only by the racially inferior enemy, thus confirming German culture as superior to all others and creating urgency to protect German culture by eliminating the enemy.

Today, the world recognizes the priceless cultural and monetary value of art that was once called “degenerate.” Klimt’s *Portrait of Adele Bloch-Bauer* and Pissarro’s *Shepherdess Bringing in Sheep* were looted by the Nazis, but in the last two decades, museums went through lengthy legal battles in attempt to keep them. *Portrait of Adele Bloch-Bauer* depicts Adele, a woman from a prominent Jewish family in Vienna, seated on a golden throne, surrounded by a golden, speckled background. Klimt combines naturalistic and geometric elements to create an ethereal, mosaic-like effect, common in works from his “golden period.”²⁵ He took inspiration from a visit to Ravenna, Italy, where he viewed Byzantine mosaics at the Basilica of San Vitale.²⁶ The portrait is similar to Byzantine mosaics in the tessellation of geometric elements, the use of gold, the flatness of the pictorial space, and the stiffness of the sitter. According to Rogoyska, Klimt may have even modeled the portrait after a mosaic of Empress Theodora (Figure 5),²⁷ who was portrayed in San Vitale emphasizes her divine right to rule.

Despite the sophisticated references to such artworks and subject, the Nazis’ distaste of disapproved of the use of abstraction and breakup of form in the portrait. Even Adele’s face,

²³ Wistrich and Holland, 31, 62.

²⁴ Wistrich and Holland, 31.

²⁵ Jane Rogoyska and Patrick Bade, *Gustav Klimt* (New York: Parkstone International, 2012), 122, ProQuest Ebook Central.

²⁶ Rogoyska and Bade, *Gustav Klimt*, 146.

²⁷ Rogoyska and Bade, 146.

neck, and hands, the most naturalistic parts of the portrait, are flattened, harkening Manet.²⁸

Whitford argues that the gold background “[removes] Adele Bloch-Bauer from the earthly plane, [transforming] the flesh and blood into an apparition from a dream of sensuality and self-indulgence,” portraying the sitter as a religious icon.²⁹ This interpretation highlights the unacceptability of this work to the Nazis on multiple levels; the portrait’s sensuality was deemed inappropriate and corrupt, and her likening to religious portraiture may have been seen as a mockery of Christianity, raising a Jew to the level of a religious icon or comparing her to the Empress Theodora. This mosaic-inspired style was also revolutionary at the time, which Hitler criticized; he argued that “true art is and remains eternal,” venerating the “timeless” styles he loved such as Renaissance, Classicism, and Baroque, and criticizing the period of modern art that explored so many different styles in a short period of time.³⁰

Pissarro’s *Shepherdess Bringing in Sheep* depicts the humble scene of a woman in front of her home, looking at her flock of sheep. Pissarro uses a neo-impressionistic, pointillist technique to create overall effect of naturalistic color, but he uses thick, soft, swipes of color to create dimension, such as blue in shadows on the grass, sheep, and house. The woman’s facial features and the sheep are not defined, but rather suggested by shadows. Pissarro captures the complexities of the light, shadow, and golden atmosphere at what could be sunrise or sunset. The juxtaposition of contrasting patches of color creates a vibrant, shimmering effect. This painting was confiscated by the Nazi Regime because Hitler did not approve of non-naturalistic styles of painting, labeling it as “degenerate art,” representative of the corruption of modernity. Like Klimt’s mosaic-style art, pointillism was also a new style, part of the rapid change and

²⁸ Rogoyska and Bade, 146.

²⁹ Frank Whitford, *Klimt* (London: Thames and Hudson, 1990), 9.

³⁰ Wistrich and Holland, 60.

exploration of artistic styles in the 19th and early 20th centuries. The work also had significant monetary value, so its sale would have been useful to the regime as a way to attain foreign currency.

While some parts of the world saw cultural and monetary value in the modern, explorative style that Hitler condemned, the ideals of the National Socialist regime were expressed through the veneration of sanctioned German art. Sanctioned “German” art was created by “Aryans” and glorified the regime. It was naturalistic, easy to understand, and straightforward in its message to the viewer. It was meant to appeal to the whole German community, not just intellectuals; Hitler condemned artwork that required interpretation.³¹ “Aryan” art most commonly depicted the beautiful and sublime, landscape, peasants, craftsmen, small events of country and farm life, motherhood and family, heroism, and biblical and mythological scenes.³² These themes worked in favor of the Nazi regime, innocuous as they seem; farmers and workers represented simple virtues of strength and rootedness in Nazi German values of hard work, and images of animals represented a heroic attitude and strength, all values which are needed in war. *Mural behind the wall clock of the Vienna office of the Reich Labor Service* (Figure 6) exemplifies typical “German” art, which advertises the ideals of the National Socialists. The mural depicts light-haired figures doing different activities, each ennobling a different value such as motherhood, family life, farming, heroism, hard work, and other “pure” values. The figures are simplified and rendered almost cartoonish, but are realistic and easily interpreted. The centrality of the nude, breastfeeding, child-rearing, and domestic women to the composition highlight the belief that female bodies were not sexual, but rather “microcosm[s] for

³¹ Wistrich and Holland, 73.

³² Wistrich and Holland, 65.

Peter Adam, *Art of the Third Reich* (New York: H.N. Abrams, 1992), 79.

the healthy state,”³³ vessels for the production of Aryan children in service of the state.

Ultimately, the German people were considered “...little more than soldiers of production in the folk community,” purveyors of the Nazi ideology.³⁴

“Aryan” art was also art from Classical Antiquity, the Baroque, the Renaissance, and other conservative styles.³⁵ Hitler considered these periods and their cultural products a “flowering of Aryan culture.”³⁶ He took inspiration for many of his values from antiquity, such as strength, health, obedience, bravery, and athleticism, but perverted them in service of his racist ambitions.³⁷ He wanted German art to create a cultural renaissance that would have a lasting impact on art, as Classical art did, and stated that humanity was never “...nearer to the ancient world than it is today.”³⁸ The purpose of Hitler’s ideal art was to teach, not experiment, to prescribe ideologies, rather than ask questions.³⁹ In service of the goals of the regime, the task of German art was to express and promote “Aryan” and racial consciousness, glorify the Nazi world-view, and to give a sense of community in the seemingly mundane tasks that benefited the regime.⁴⁰

In his attempt to create a revolution towards an “Aryan” race and culture, Hitler opened the Great German Art Exhibition and planned on opening a museum in Linz, the Führermuseum, to house “Aryan” art that was vetted by him and his associates.⁴¹ In June of 1939, Hitler commissioned the Führermuseum to house his personal art collection of “only the best and most

³³ Terri Gordon, “Fascism and the Female Form: Performance Art in the Third Reich: Sexuality and German Fascism.” *Journal of the History of Sexuality* 11, no. 1-2 (2002): 170. doi:10.1353/sex.2002.0004.

³⁴ Wistrich and Holland, 65.

³⁵ Wistrich and Holland, 60.

³⁶ Adam, *Art of the Third Reich*, 27

³⁷ Maertz, “Modernist Art in the Service of Nazi Culture,” 35.

³⁸ Wistrich and Holland, 75.

Wistrich and Holland, 61.

³⁹ Adam, 19.

⁴⁰ Wistrich and Holland, 73.

⁴¹ Edsel and Witter, 17.

perfect products of German art,” including works by Lucas Cranach the Elder, Johannes Vermeer, Michelangelo, and even the *Ghent Altarpiece* by Jan Van Eyck.⁴² Most of the works for the exhibit and the Führermuseum were stolen under the guise of relocation as a “safeguarding operation.”⁴³ Just hours before his suicide, Hitler wrote in his will regarding the theft of millions of artworks that he had orchestrated: “my pictures, and the collections which I have bought in the course of years, have never been collected for private purposes, but only for the extension of the gallery in my hometown of Linz ad Donau.”⁴⁴

Another work that was claimed for restitution is Cranach’s *Adam and Eve*. This pair of paintings was so coveted by the Nazis that Hermann Göring, one of Hitler’s most trusted advisors and second in command, personally retrieved them from the looted Nazi’s looted art storage facility for his private collection.⁴⁵ The pair of paintings are in a Northern Renaissance, Mannerist style, and depict the biblical scene of the Devil as a serpent, tempting Eve to take a bite of the Forbidden Fruit. The painting is naturalistic, as Cranach shows careful attention to anatomical accuracy of the body, the effects of light and shadow with the modeling of the figures’ musculature, and perspective in the foreshortening of the feet. The artist places the figures in classical contrapposto stances, with their weights shifted on one foot and a relaxed S-shaped curve of the body. Cranach’s composition also harkens antiquity in its balance and symmetry, where the figures mirror each other with one arm above and one below the shoulder. Their heads nod towards each other while avoiding each other’s gaze, and their bodies seem to move toward and away from each other simultaneously.⁴⁶

⁴² Wistrich and Holland, 73.

⁴³ Edsel and Witter, 106.

⁴⁴ Edsel and Witter, 105.

⁴⁵ Alford, 53.

⁴⁶ “Eve,” Norton Simon Museum (Norton Simon Museum, January 1, 1970), <https://www.nortonsimon.org/art/detail/M.1991.1.P>.

In *Adam and Eve*, the subject matter is clear and leaves no room for interpretation. The scene is highly recognizable to a European Christian audience, as one of the foundational stories from the Bible. The form is simple and easy to comprehend, with no decorporealization as seen in the modern art rejected by the Nazis. It is likely that the viewer during the Nazi regime would have felt intense nationalism at the sight of Lucas Cranach the Elder's works, explaining why these artworks were so coveted by Göring. Cranach was a model German, one of the most influential German artists in history and an important Renaissance artist. He was proof of the superiority of the "Aryan" race by rallying for Protestantism and producing the "flowers" of Aryanism. The feelings evoked by an image are often irreplicable by text; the power of images to promote an ideology is priceless.⁴⁷ By venerating styles that harken antiquity and the Renaissance, Hitler referenced the ideals that he hoped Germany would assume.

The Nazi regime employed art for propaganda and ideological manipulation, but also as a means of asserting more direct control. In order to gain power, the Nazis needed to legitimize their authority, seeking social recognition from the aristocratic class that had previously dictated societal mores. By celebrating the artistic styles associated with the aristocracy such as Renaissance, Baroque, and Classical, they achieved social acceptability. The "Aryan" aristocracy's acceptance was vital for Hitler's rise to power, but Hitler needed the working class as soldiers, so "German" art also had to appeal to working class values such as honest, hard work. Patronage and art collecting or theft "became vehicles to meet the upper class on a level field, and eventually, to supplant it," building an army of hard-working Germans.⁴⁸ In order to amass the most impressive collection, Hitler went as far as commissioning an inventory of every

⁴⁷ Ronald, 140.

⁴⁸ Kurtz, *America and the Return of Nazi Contraband*, 14.

“German” work of art in the western world, defining “German” art as anything of an acceptable style that had been taken from Germany since the 16th century, produced by an artist of German or Austrian descent, or commissioned or completed in Germany.⁴⁹

Hitler’s emphasis on culture was also therapeutic for Germans. The regime’s looting scheme was a fulfilling act for the perpetrators, “akin to an active religious salvation,”⁵⁰ whereby the Nazis, permitted by the Nuremberg Laws, returned German artifacts that had been spoiled, denigrated, and exploited by the Jews and other “inferior” groups. The emphasis on the enjoyment of sanctioned art also comforted the people, hiding the atrocities of Hitler’s war under a veil of beauty and high culture: “It gave it a false human face. People closed their eyes to the more horrendous side of the regime and wallowed in the artistic window dressing....”⁵¹ The Nazis synonymized art and politics,⁵² and art looting was engrained in Nazi laws racial ideology. Thus, restituting looted art can be an act of war reparations and reclamation of the power stolen from victims.⁵³

Art Looting: a Legal Process

In the Nazi regime, theft from Jews and other minority groups was legal, written into Nazi laws and bolstered by official systems of theft. The legal framework for theft began in the 1935 Nuremberg laws, which removed all citizenship and civil rights from Jews, and later black and Roma peoples.⁵⁴ Before the implementation of the Nuremberg laws, targeted groups were

⁴⁹ Edsel and Witter, 151.

⁵⁰ Ronald, 187.

⁵¹ Adam, 21.

⁵² Elizabeth Campbell. “Claiming National Heritage: State Appropriation of Nazi Art Plunder in Postwar Western Europe.” *Journal of Contemporary History* 55, no. 4 (2020): 821. <https://doi.org/10.1177/0022009419893737>.

⁵³ Charlotte Woodhead. “Redressing Historic Wrongs, Returning Objects to Their Rightful Owners or Laundering Tainted Objects: 21st-Century UK Remedies for Nazi-Era Injustices,” *International Journal of Cultural Property* 21, no. 2 (2014): 114.

⁵⁴ “The Nuremberg Laws.” *Facing History and Ourselves*. Facing History and Ourselves, 2022. <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-6/nuremberg-laws>.

bribed or forced to sell their artworks undervalue. Extortion is considered looting in modern legal definitions.⁵⁵ Without citizenship or civil rights, individuals had no right to property, so anything the Nazis wanted was legally theirs to take, property of the state. In September of 1940, a German commanding officer released a statement that Hitler gave soldiers the right to seize and transport to Germany “cultural goods which appear valuable to him to safeguard them there....”⁵⁶ The guise of the looting operation as “safeguarding” was a distinction that would have soothed the consciences of Hitler’s foot soldiers. Even a German art conservationist, Dr. Hermann Bunjes, convinced himself that art was safer in the hands of Hitler or Göring than left to be looted in the chaos of wartime; “...you see, I acted to protect the art. It was conservation by acquisition.”⁵⁷

With protecting art as a facade, the Nazis systematically amassed an enormous collection of cultural artifacts. Alfred Rosenberg, one of the most prolific Nazi looters, was in charge of the *Einsatzstab* Rosenberg (Rosenberg Taskforce). His task was to investigate art in France, and with the help of the French police, he searched Jewish handbooks, warehouse inventories, and shipping firm receipts for any objects with artistic, cultural, and/or monetary value.⁵⁸ Beginning in Paris in October 1940, the *Einsatzstab* officers, provided with Rosenberg’s list of the names and locations, seized artworks belonging to Jews or Nazi enemies.⁵⁹ The officers first apprehended the most famous artworks such as works by Rembrandt, Ingres, and Van Gogh from the Jewish Rothschild family’s collection then searched all spaces owned by wealthy Jews.

⁵⁵ Charlotte Woodhead. “Redressing Historic Wrongs, Returning Objects to Their Rightful Owners or Laundering Tainted Objects: 21st-Century UK Remedies for Nazi-Era Injustices,” *International Journal of Cultural Property* 21, no. 2 (2014): 118.

⁵⁶ Edsel and Witter, 32.

⁵⁷ Edsel and Witter, 335.

⁵⁸ Kenneth D. Alford. *Hermann Göring and the Nazi Art Collection: the Looting of Europe’s Art Treasures and Their Dispersal after World War II* (Jefferson, North Carolina: McFarland & Company, Inc., Publishers, 2012), 51.

⁵⁹ Edsel and Witter, 17.

The Nazis were ruthless, but meticulous. They kept records of the history, scope, and scientific and political significance of every confiscation in France, totaling near 21,000.⁶⁰ In the early years of the operation, the most valuable artworks were shipped via train in special heated baggage cars, escorted by Nazi *Luftwaffe*.⁶¹ Art destined for the *Führermuseum* and other valuable works were stored in castles, monasteries, mines, barns, and museums. The most famous collection points for Hitler and Göring's prized art are Neuschwanstein and the Steinberg salt mine in Altaussee. Salt mines proved to be the perfect climate-controlled environment for preserving paintings and prints and were safe from air raids.⁶² Like the mine at Altaussee, most repositories had extensive archives, which led to more hiding places and helped researchers return works after the war; "...almost every day, [Allied] army units stumbled upon unfathomable treasures hidden basements, train cars, food caches, and oil barrels."⁶³ More than 1000 repositories discovered in southern Germany alone. Unfortunately, hundreds of thousands of cultural treasures simply have not been found or were destroyed,⁶⁴ contributing to the difficulty of restituting property to the victims.

During and after the Nazi regime, perpetrators showed ruthless greed for money and power by hoarding, hiding, and scheming for art. Hildebrand Gurlitt was one of the four prolific Nazi art dealers, including Karl Buchholz, Ferdinand Moeller and Bernhard Boehmer, who preyed on the desperation of once-wealthy people to buy artworks extremely under value.⁶⁵ The dealers were primarily charged with valuing artworks, especially works from the Degenerate Art Exhibitions, and choosing the ones to sell abroad, as they were not allowed to sell "degenerate"

⁶⁰ Alford. *Hermann Göring and the Nazi Art Collection*, 57.
Edsel and Witter, 443.

⁶¹ Alford, 57.

⁶² Edsel and Witter, 385.

⁶³ Edsel and Witter, 489.

⁶⁴ Edsel and Witter, 500.

⁶⁵ Ronald, 139.

art directly to Germans. Artworks that did not sell were eventually destroyed, like the 4000-plus paintings that were burned in a fire department training exercise 1939.⁶⁶ Joseph Goebbels, chief propagandist, recorded in his diary that “Paintings from the degenerate art auction will now be offered on the international art market. In doing so we hope at least to make some money from this garbage.”⁶⁷ The modern art that disgusted the Nazis was extremely valuable for export, especially in Britain, Switzerland, and the United States. Even at the typical discount of a third,⁶⁸ the exchange of the works for foreign currency was an important source of funding for Germany’s rearmament.⁶⁹ In 1941, Britain realized the wide scale of the Hitler’s art dealing program, and passed laws to prevent looted art from being sold in Britain or the United States, “[warning] the world that looted art was...Financing the Nazi war machine.”⁷⁰

The art dealers and other prominent Nazis also kept artworks for themselves. Hermann Göring viewed confiscated art as his for the taking, and reportedly made over twenty trips to the Jeu de Paum repository in France in just two years.⁷¹ Nearly half of his estimated \$200 million art collection consisted of works stolen by the *Einsatzstab* Rosenberg, and the other half was obtained through trading.⁷² Historians have records of all Göring’s artworks because his librarian kept detailed records of each purchase or trade; he amassed his collection of looted art under a veil of legality.⁷³

Though Göring aggressively pursued wealth and prestige through art, the corrupt art dealers did not always operate legally as Göring did. The four main Nazi dealers dealt in

⁶⁶ Edsel, 12.

⁶⁷ Edsel, 27.

⁶⁸ Ronald, 188.

⁶⁹ Ronald, 173.

⁷⁰ Ronald, 247.

⁷¹ Alford, 53.

⁷² Alford, 124.

⁷³ Alford, 126.

thousands of transactions, and, ironically, stole from Hitler, keeping the artwork they were meant to sell for themselves. Hildebrand Gurlitt's records were incomplete, laundered to hide the thousands of artworks that went missing when they passed through his hands.⁷⁴ After 1944, he and other art dealers sold art on the black market and documented fewer transactions.⁷⁵ Author Susan Ronald recalls a visit to a Swiss bank earlier in her career, where she saw the label "RLITT" by a 19th-century landscape painting that was accidentally left in view. She asked the banker if the painting was by the 19th-century painter, Gurlitt.⁷⁶ The banker responded, "'no, that's the 20th-century Nazi art dealer.'" ⁷⁷ Unknowingly, Ronald stumbled upon looted artwork that was still in hiding. The combination of the theft of the looted artworks, their sale on the black market, the destruction of artworks, and looted art repositories that have not been found all factor into the difficulty of locating and restituting the looted art today.

Nazi-Looted Art Restitution

The task of locating works of art and other cultural artifacts began with the Monuments, Fine Arts, and Archives Section (MFAA) in 1943. The MFAA, also known as the Monuments Men, was a group of Allied soldiers, museum leaders, art scholars, artists, architects, and archivists originally tasked with preventing damage to monuments and important buildings like churches and museums, but their responsibility shifted to locating missing and stolen artworks when the Allies breached the German borders.⁷⁸ After the war, the organization was responsible for continuing to recover lost and stolen artworks and returning them to their home countries. When Hermann Göring's looted art collection was discovered at the Altaussee mine, the works

⁷⁴ Ronald, 201.

⁷⁵ Ronald, 249.

⁷⁶ "Gurlitt" references Louis Gurlitt, Danish-German landscape painter and Hildebrand Gurlitt's great uncle.

⁷⁷ Ronald, 320.

⁷⁸ Edsel and Witter, xiv, 2.

were brought to a warehouse that functioned as a central collection point in Munich. Lieutenant Craig Smyth, an American Italian Renaissance art professor and scholar, organized a catalogue of all of the artwork, including the archival information from the mine collected by the *Einsatzstab* Rosenberg.⁷⁹ Art officers representing 11 liberated European countries then brought photographs and other documentation such as shipment records of missing artworks to the collection point to help identify objects in claims for looted artifacts. Each art officer was responsible for transporting the objects back to their countries of origin, and the respective governments were responsible for restitution to individual owners.⁸⁰ Lt. Smyth's cataloguing efforts were largely successful, with over 4,000 claims including 1.6 million objects returned from the American zone alone, and France regained an estimated 2/3 of its displaced artworks.⁸¹ The Successor Organization was created in November 1947 by American Military Law 59 to find a solution for heirless and unclaimed property. The Organization created one of the first and what would become one of the largest art crime databases in Europe, focusing on German-Jewish property. Victims looking for lost art were able to send in any information about paintings they had, but because photography was not widely available, most entries were detailed descriptions.⁸² By the end of 1947, most of the items in the Munich collection point were returned to their countries of origin.⁸³ Most restitution in receiving countries such as the Netherlands, France, and Austria was completed in the decade after the war.⁸⁴

⁷⁹ Alford, 164.

⁸⁰ Alford, 166.

⁸¹ Kurtz, 199.

⁸² Naomi Oosterman. "Regional Overviews of the Policing of Art Crime in the European Union." In *The Palgrave Handbook on Art Crime*, ed. Hufnagel S., Chappell D (London: Palgrave Macmillan, 2019). https://doi-org.ezpro.cc.gettysburg.edu/10.1057/978-1-137-54405-6_10

⁸³ Alford, 168.

⁸⁴ Kurtz, 204.

Though items from the American zone were successfully returned to their countries of origin, ultimately the Monuments Men's expectations for restitution were not always met. Because the American government's authority ended as soon as the goods were loaded for transportation, there was no way to ensure that the receiving countries would return the artworks to where or whom they were stolen from. According to Kurtz, American general Lucious Clay, in charge of the American-occupied zone after the war, fought unsuccessfully for a law that would ensure German and Allied cooperation in restituting looted and heirless property. Kurtz writes that the Germans "insisted that German courts and agencies administer the law" and did not support widespread efforts to locate looted artworks in private hands.⁸⁵ This position shows a lack of initiative to retribute Nazi-looted property, given that countless looted artworks were and still are in private hands. As discussed earlier, the Nazis sold many looted artworks to private individuals to finance the war machine, and greedy collectors such as Gurlitt kept countless others. Germany and other countries' contestation to General Clay's efforts was "a position unacceptable to Jews and other Nazi victims," and shows either a lack of knowledge about the looting scheme or lack of concern for the victims.

Because there was no international system or guarantee for proper restitution back to individuals once the artworks returned to their home countries, victims of Nazi art looting or their heirs often had to find justice for themselves. In the 1960s, looted art that had been in private hands began to resurface to the art market due to decreasing tensions over restitution, so there was a large increase in the number of legal cases disputing claims to the property.⁸⁶ European and North American courts of law became the main venue for these arguments, as these countries are home to the most abundant art collections and collectors, who bought art from

⁸⁵ Kurtz, 159.

⁸⁶ Kurtz, 205.

the Nazis.⁸⁷ In the late 1990s, Jews and Holocaust survivors, led by the World Jewish Congress at the Washington Conference in 1998, began to fight for restitution of their looted property. The surge in restitution during the '90s was aided by increased communication at the end of the Cold War, newly declassified records, wider accessibility to the internet allowing for easier communication and research, and the creation of databases, guidelines, and organizations to help with locating lost property.⁸⁸

The Successor Organization, Art Loss Register (ALR), Washington Principles, Association of Art Museum Directors (AAMD), and American Alliance of Museums (AAM), among others, have all aided in Nazi-looted art restitution by providing help for victims and guidelines for art acquisition and dispute resolution. The ALR was created in 1990 to address the problem of looted art in the art trade by working with “victims, insurers, police, loss adjusters, artists, their estates and foundations, lawyers, banks, trusts and, of course, the trade itself.”⁸⁹ It aims to prevent the purchase of looted art by providing art buyers with provenance research services and checking the artwork against its lost art database of over 500,000 items to determine if someone has a claim on it. If they do find that an artwork is subject to someone’s claim, the ALR also offers help reaching a resolution between the seller and claimant. If the artwork was looted in WWII, the organization first notifies the individual who registered the lost artwork, then notifies the seller’s lawyers.⁹⁰ The ALR carries out approximately 400,000 searches

⁸⁷ Hufnagel and Chappell, “The Gurlitt ‘Collection’ and Nazi-Looted Art.” Kurtz, 205.

⁸⁸ Kurtz, 215, 235.

⁸⁹ James Ratcliffe. “Recovering Stolen Artworks: A Practical Approach.” In *The Palgrave Handbook on Art Crime*, ed. Hufnagel S., Chappell D (London: Palgrave Macmillan, 2019), https://doi-org.ezpro.cc.gettysburg.edu/10.1057/978-1-137-54405-6_11.

⁹⁰ Ratcliff, “Recovering Stolen Artworks.”

annually, a “significant proportion of the identifiable items moving through the artworld,”⁹¹ positioning the organization as a powerful force against looted art trade.

The Washington Principles have also been influential in preventing and settling disputes about Nazi-looted art. These 11 non-binding principles were agreed upon by 44 nations and 13 NGOs in 1998 at the Holocaust Era Assets conference in Washington, D.C.⁹² The conference was held to address rising international concern about the thousands of looted artworks that had still not been restituted over 50 years after the end of the war.⁹³ The goals of the Washington Principles, then, were to create a widespread, international effort to increase provenance research, provide flexible solutions for questions in proving ownership, encourage flexible, “equitable and expeditious resolution” in claims to looted property, inspire governments to donate the proceeds of heirless art to Holocaust victims and Jewish communities, and add outside experts to related government committees.⁹⁴ The Washington Principles prove helpful in some cases, but unfortunately are non-binding suggestions and only apply to publicly funded museums and galleries, not private galleries or collectors,⁹⁵ where a bulk of looted art is still located.

The AAMD and AAM created guidelines for member museums in 1997 and 1998 respectively in response to the Washington Principles. These guidelines are “far more specific and directive in their scope and content,” providing detailed instructions on what to do if a claim arises, emphasizing the importance of ““equitable, appropriate, and mutually agreeable”” solutions and the necessity for mediation in restitution claims in order to reach such a solution

⁹¹ Ratcliff.

⁹² Hufnagel and Chappell.

⁹³ Hufnagel and Chappell.

⁹⁴ Kurtz, 219.

⁹⁵ Ronald, 311.

for both parties.⁹⁶ Like the Washington Principles, these guidelines are non-binding suggestions, so if a dispute involving a member museum is brought to court, the museum's membership "does not create any legal obligations or mandatory rules."⁹⁷ Organizations and guidelines such as the Washington Principles were designed to keep restitution claims out of the court system, but can be used to support parties if the disputes go to court.

When restitution cases go to court, other countries' involvement and the passage of time complicates cases. Legal technicalities such as governmental jurisdiction and statutes of limitations have affected the outcomes of restitution cases in court. Courts have been hesitant to interfere with other countries' official acts and areas of jurisdiction. Statutes of limitations prevent a claimant from taking legal action after a prescribed amount of time. Kay quotes law professor Wouter Veraart, who describes statutes of limitations as "legal forgetting,"⁹⁸ an apt definition as applied to Nazi-looted art. Failing to facilitate restorative justice for Holocaust victims is an insult to remembrances of them and efforts to redress past wrongs.

Veraart suggests that restorative justice is nearly impossible within the framework of current laws.⁹⁹ Recognizing the failure of statutes of limitations in providing fair solutions for victims of Nazi-looted art, Congress enacted the Holocaust Expropriated Art Recovery Act (the HEAR Act) in 2016. The HEAR Act adjusts statutes of limitations in applicable cases to six years from the time the victim or claimant learned about the existence and location of the lost property. In New York, the courts have established a precedence of qualifying a victim's demand for the return of the property as the action needed in order to bar the invocation of a statute of

⁹⁶ Hufnagel and Chappell.

⁹⁷ Hufnagel and Chappell.

⁹⁸ Kaye, "The Restitution of Nazi-Looted Art and Other Cultural Property", 120.

⁹⁹ Kaye, 120.

limitations.¹⁰⁰ If the defendant can prove that victim or heir knew the location of the artwork longer than six years before taking steps to reclaim the work, the claim is void and the victim has no legal right to their stolen property. Unfortunately, small details and technicalities such as time passed or governmental jurisdiction can ruin an heir's claim to their heirlooms.

Restituting *Shepherdess Bringing in Sheep*: a “fair” Solution

The restitution claim for *Shepherdess Bringing in Sheep* by prominent impressionist artist, Camille Pissarro, is an example of a “fair” solution. The solution was impacted by small details and technicalities brought up during the case. The work was stolen by the Nazis as “degenerate” art in 1941 from Raoul Meyer, a wealthy French-Jewish art collector and dealer. After the war in 1953, Raoul was able to locate the painting, which had been acquired by a Swiss art dealer, Bernoulli. Raoul sued the dealer in Switzerland, and Switzerland ruled in the dealer's favor, judging that the painting had not been stolen and was acquired in good faith. Raoul did not appeal the decision and lost track of the painting.¹⁰¹ By 1956, the dealer had sold the painting to another dealer in Amsterdam, then the work was sold again to Clara and Aaron Weitzenhoffer, who bequeathed the work to the Fred Jones Jr. Museum of Art at the University of Oklahoma.¹⁰² It remained there on permanent display until 2012, when Raoul's daughter, Leone Meyer, discovered the painting and filed a suit for restitution.¹⁰³

In legal proceedings, the University of Oklahoma argued that because the litigation in Switzerland ruled that Bernoulli had acquired the painting in good faith and her father did not

¹⁰⁰ Patty Gerstenblith. “Statutes of Limitation and Other Legal Challenges to the Recovery of Stolen Art.” In *The Palgrave Handbook on Art Crime*, ed. Hufnagel S., Chappell D (London: Palgrave Macmillan, 2019). https://doi-org.ezpro.cc.gettysburg.edu/10.1057/978-1-137-54405-6_13.

¹⁰¹ Alyssa Bickford. “Nazi-Looted Art: Preserving A Legacy.” *Case Western Reserve Journal of International Law* 49, no. 1 (Spring, 2017): 117. <http://ezpro.cc.gettysburg.edu:2048/login?url=https://www.proquest.com/scholarly-journals/nazi-looted-art-preserving-legacy/docview/1935730554/se-2?accountid=2694>.

¹⁰² Bickford. “Nazi-Looted Art: Preserving A Legacy,” 118.

¹⁰³ Bickford, 119.

appeal the decision, they then had also acquired it in good faith. Meyer argued that Oklahoma law states that a thief cannot acquire a “good” title, and the ruling in Switzerland is not evidence of a good title. She also argued that the Museum, as a museum bound by the Washington Principles and member of AAM, regulating the appropriation of artworks stolen by the Nazis, the Museum was obligated to have investigated the work’s provenance.¹⁰⁴ Supported by the directions in the AAM guidelines, Meyer and the Museum reached an equitable settlement agreement that stipulated the painting be transported to a French museum for display from 2016-2021, then will be displayed alternately between the Fred Jones Jr. Museum and a museum in France for three years each, and Meyer must gift the painting to a mutually agreed upon art institution in France before or upon her death.¹⁰⁵ The painting is currently on display at the Musée d'Orsay with ample provenance information.

In this case, governmental jurisdiction and Raoul’s earlier defeat with Switzerland’s ruling were the technicalities that prevented restitution to the claimant. Lawrence Kay, an American litigator for Holocaust cases, writes that due to the scrupulous nature of litigation, “Claimants will be compelled to forfeit perfect justice and even corrective justice, to achieve closure with dignity and some recognition of their lost history.”¹⁰⁶ Indeed, Meyer wrote in a 2021 statement that “After all these years, I have no other choice but to take heed of the inescapable conclusion that it will be impossible to persuade the different parties to whose attention I have brought this matter... I was heard but not listened to.”¹⁰⁷ The settlement does

¹⁰⁴ Bickford, 119.

¹⁰⁵ Bickford, 129.

¹⁰⁶ Lawrence M. Kaye. “The Restitution of Nazi-Looted Art and Other Cultural Property: Have We Gone Too Far or Not Far Enough?” *New German Critique* 130, 44, no. 1 (February 1, 2017): 120. <https://doi.org/10.1215/0094033x-3705721>.

¹⁰⁷ David D'Arcy, “French Heir Ends Fight to Reclaim Nazi-Looted Pissarro Painting Found in Oklahoma,” CNN (Cable News Network, June 7, 2021), <https://www.cnn.com/style/article/camille-pissarro-painting-meyer-oklahoma-university/index.html>.

not give ownership back to the heir and she has not found justice for herself. However, perhaps the Jewish community as a whole would feel satisfied by this equitable solution, as the museums display the disturbing history of the work and honor Meyer's family.

Restituting *Adele Bloch-Bauer I*: a Favorable Solution for the Heir

The restitution claim of *Adele Bloch-Bauer I* is an example of a case that worked in favor of the heir. Matters of foreign jurisdiction were important arguments against restitution. In 1938, *Adele Bloch-Bauer I* and six other paintings by world-renowned post-impressionist Gustav Klimt were seized by the Nazis from Austrian-Jewish art collector Ferdinand Bloch-Bauer's collection. The paintings deemed "degenerate" by Hitler ended up in the Austrian National Gallery after the war.¹⁰⁸ Ferdinand died in exile during the war, and his brother hired a lawyer in 1948 to get the Klimts back, but was unsuccessful. In 1999, Maria Altmann, Ferdinand's niece, requested the paintings again in the US, and was denied. In 2000, Altmann then sued the Republic of Austria and the Austrian National Gallery in California (*Republic of Austria V. Altmann*). Austria asked for dismissal on the grounds that the US did not have jurisdiction, and Austria had foreign immunity. Austria's request was denied, appealed, then went to the US Supreme Court, where it was determined that foreign immunity did not apply because the theft of the paintings was a violation of international law. In 2006, Altmann and Austria settled via arbitration, and all of the Klimt paintings except for *Portrait of Amalie Zuckerlandl* (Figure 7) were returned to Altmann. Altmann sold the paintings that year.¹⁰⁹

Adele Bloch-Bauer I is on permanent display at the Neue Galerie in New York City, and is the most expensive painting ever purchased. Neue Galerie displays the jaded Nazi past of the

¹⁰⁸ John Paul Stevens. "Republic of Austria v. Altmann." *Cornell Law School* (June 7, 2004). <https://www.law.cornell.edu/supct/html/03-13.ZO.html>.

¹⁰⁹ Stevens, "Republic of Austria v. Altmann."

portrait both on its website and at the gallery beside the portrait on the wall plaque. *Portrait of Amalie Zuckerlandl* is housed at the Belvedere in Vienna, where there is no mention of the provenance. Though one painting escaped Altmann, this is a triumphant example of justice for Nazi-looted art victims and the use of legal technicalities in litigation. Governmental jurisdiction often hinders restitution of looted art to its original owners or their heirs, and further complicates the fastidious claims. US state and Supreme Courts are hesitant to abrogate other countries' official decisions, but because of the unique nature of the Holocaust and restitution claims, countries must be willing to go outside of the bounds of the law or create new laws to help provide restorative justice to Holocaust victims.

Restituting Adam and Eve: an Unfavorable Solution for the Heir

A case where technicalities cost an heir restorative justice is *von Saher v. Norton Simon Museum of Art at Pasadena*, in which the parties disputed the ownership of *Adam and Eve* by Lucas Cranach the Elder, a celebrated Renaissance artist. In 1940, Jewish art dealer Jacques Goudstikker was forced to sell his art to the Nazis in order to have money to flee to Holland. Goudstikker died in travel, but his wife, Desi, kept a book listing all of the paintings in the gallery, including the Cranachs. Hermann Göring acquired *Adam and Eve* for his private collection, where they remained until the end of the war.¹¹⁰ In the 1950s, the Dutch government seized Goudstikker's artworks from their post-war collection points as "enemy assets," creating a barrier for Desi to retrieve her stolen property.¹¹¹ She decided not to pursue legal action and passed ownership to the Dutch government, which would prove to be a fatal technicality for her

¹¹⁰ Margaret McKeown. "Von Saher v. Norton Simon Museum of Art at Pasadena, No. 16-56308 (9th Cir. 2018)" *Justia Law* (2018), <https://law.justia.com/cases/federal/appellate-courts/ca9/16-56308/16-56308-2018-07-30.html>, 7.

¹¹¹ McKeown, "Von Saher v. Norton Simon Museum of Art at Pasadena, No. 16-56308 (9th Cir. 2018)," 10.

heir. In 1966, the Dutch government sold *Adam* and *Eve* to an art dealer, who then sold them to Norton Simon Museum in 1971.

In the late 1990s, Marei von Saher, Goudstikker's last surviving heir, petitioned the Dutch government for restitution of all of the Goudstikker paintings, but was denied on the grounds that Desi had decided not to retrieve the paintings in the '50s. In 2001, the Dutch government amended its restitution process and returned all of the paintings from the Goudstikkers' collection still in the government's possession.¹¹² But despite this victory, in 2007, von Saher sued the Norton Simon Museum of Art in California for the return of *Adam* and *Eve*, citing a special California law that "allowed the rightful owners of confiscated Holocaust-era artwork to recover their items from museums or galleries" before 2010, but the special law was deemed unconstitutional and the case was dismissed.¹¹³ After the court's decision that the law was unconstitutional, the California legislature amended the law and von Saher sued the Museum again in 2018. However, the case was dismissed once more on grounds of conflict with governmental jurisdiction, as the sale of the pair of paintings to the art dealer was an official act of the Dutch government.¹¹⁴

The repeated outcomes against restituting the Goudstikker collection to its heirs are problematic on a few levels. First, the case highlights how legal technicalities and one small decision decades ago can be the difference between restorative justice or defeat. Falconer writes about the importance of recognizing the unique nature of the Holocaust, and calls for countries to "come to a moral recognition" that legal technicalities should not prevent legitimate claims to looted art, and that governments must look outside of the bounds of the law in such unique

¹¹² McKeown, 12.

¹¹³ McKeown, 13.

¹¹⁴ McKeown, 15.

cases.¹¹⁵ Further, the Dutch government’s seizure of the collection as “enemy assets” was a thinly veiled act of greed, supported by a royal decree that would pass the ownership of any property of the enemy state to the Netherlands. Judge McKeown writes that the law was enacted “in order to compensate the Netherlands for losses it suffered” in WWII.¹¹⁶ The state’s efforts to rebuild after the war caused more harm to Holocaust victims. In 2001, while the Dutch government decided to return all of the Goudstikker paintings still in their possession, they still profited from the paintings they had already sold, such as *Adam and Eve*, a morally questionable situation where the government profits again from Nazi theft from Jews. Finally, the Norton Simon Museum also shows greed and lack of responsibility not only in their refusal to provide justice or a fair solution for von Sayer, but also in their failure to publicize the provenance of the works. Until recently, the paintings were on display for almost 50 years.¹¹⁷ In an email exchange from March 30, 2022, when asked about plans to put the paintings back on display and include provenance information, the curator’s office replied that

...our curatorial staff... are currently reviewing provenance details, which once finalized, will be available for viewing on our website. I have asked how this process is going, and they have relayed it is still in progress for the next several weeks.¹¹⁸

Until then, the Museum profits off Nazi crimes, hiding how they got their beautiful Cranachs from the unsuspecting public. Now, ironically, the Museum hides them from public view in general, preventing any educational value or other positive effects of the case at all.

Missing and Heirless Art

¹¹⁵ Kelly Ann Falconer. “When Honor Will Not Suffice: The Need for a Legally Binding International Agreement Regarding Ownership of Nazi-Looted Art.” *University of Pennsylvania Journal of International Economic Law* 21, no. 2 (2000): 423.

¹¹⁶ McKeown, 10.

¹¹⁷ McKeown, 5.

¹¹⁸ Britta Traub. ‘Norton Simon Museum - Contact Us Form - Cranach's Adam and Eve.’ Email, 2022.

Although the legal system is a key factor in restitution cases, the vast majority of lost art cases make it nowhere near that point because they have not been located or owners have not been identified. As discussed earlier, it is estimated that hundreds of thousands of cultural treasures have not been found.¹¹⁹ Some paintings from the Göring collection disappeared, including Hans Memling's *Madonna and Child*, *Angel with a Viola*, and *Angel with Psalter*, and a portrait of Melanchthon by Cranach the Elder went missing from the Phillips collection.¹²⁰ These and other missing works may still be in hidden repositories, destroyed, or due to the massive Nazi exporting scheme where art was sold to private collectors in exchange for foreign currency,¹²¹ scattered internationally in private hands. Those private collectors may or may not know the provenance of their artworks, especially if it passed through multiple art dealers. ALR employee James Ratcliffe writes that it is "exceptionally difficult" to locate artwork or heirs without a record of what has been taken.¹²² Many private collectors would not have had record of property they did not know was valuable, and undoubtedly countless records did not survive, thus heirs do not know they have a claim to artworks. Artworks that are unclaimed or have been proven to have no heir "[become] a means to make the nation culturally whole by bolstering state museum and furniture collections,"¹²³ or, per the Washington Principles, are sold to benefit Holocaust victims and Jewish communities.¹²⁴

Conclusion

Because restitution is made so difficult by various barriers such as statutes of limitations, governmental jurisdiction, or that it simply cannot be found, art consumers can take steps to

¹¹⁹ Edsel and Witter, 500.

¹²⁰ Alford, 163.

¹²¹ Ronald, 173.

¹²² Ratcliffe.

¹²³ Campbell, "Claiming National Heritage," 821.

¹²⁴ Kurtz, 219.

provide justice for and honor Holocaust victims without the law. To prevent victims and their heirs from needing to make claims in the first place, art buyers and owners can do more thorough provenance research using the help of organizations like the ALR to make sure they are not acquiring someone's looted art. Likewise, when individuals and organizations are in possession of Nazi-looted art, they must display the work's history. Provenance information is a tool for providing voices to those who cannot speak for themselves. Woodhead writes that explanatory labels and provenance notes "may not compensate for harm done...,[but] they humbly recognize tainted possession."¹²⁵ The galleries and museums exhibiting *Shepherdess Bringing In Sheep* and *Portrait of Adele Bloch-Bauer I* do the public and the Jewish community a service by displaying the Nazi-looted provenance. It can serve as an educative device by reminding and teaching viewers about the Holocaust,¹²⁶ or as a memorial to the person or family the property was stolen from.

Further, no museum or collector should be able to profit or otherwise benefit from Nazi crimes. In the three cases discussed, Norton Simon Museum and the Belvedere benefit from displaying Nazi-looted art without provenance information. Omitting such significant information as the role of Nazi theft in destroying lives and a culture dishonors the looting-victim and all Holocaust victims. Woodhead writes that profiting off of looted art using unknowing visitors "makes [viewers] complicit in the immoral act that befell the original owner; the public's enjoyment of the object derives from the museum's unjust enrichment...,"¹²⁷ thus harming the viewers they are meant to be enlightening. Kaye goes further, claiming that "it is

¹²⁵ Woodhead, "Redressing Historic Wrongs," 129.

¹²⁶ Woodhead, "129.

¹²⁷ Woodhead, 123.

against the public interest” for Nazi-looted art “to remain in museum hands instead of being restituted to their rightful owners;”¹²⁸ this contention is hopeful, but unrealistic.

In whatever form it takes, the art world must take initiative to provide restorative justice for Holocaust victims, their heirs, and Jewish communities. As Campbell writes, in the Third Reich, “art *was* politics;”¹²⁹ because the denigration of modern art and celebration of “German” art was a vital part of Hitler’s plan to create an Aryan race, restitution must be a vital part of providing justice for victims of this plan. Restitution is an empowering act, involving strong emotions and notions of cultural identity.¹³⁰ Taking artwork back is a “[reassertion of] Jewish culture within society,” and when displayed publicly, provides a concrete Jewish relic for viewers to celebrate, venerating the culture and resilience of a people Hitler sought to eliminate.¹³¹ Art has the capacity to destroy lives and cultures, but it also has the power to enrich, educate, and memorialize. It will never be possible to give back all that was stolen from Holocaust victims. But successful Nazi-looted art restitutions tell stories of empowerment and restorative justice about the people it was stolen from, compelling viewers to remember the Holocaust and celebrate the indomitability of shared humanity and the will to survive.

¹²⁸ Kaye, 118.

¹²⁹ Campbell, 821.

¹³⁰ Woodhead, 117.

¹³¹ Woodhead, 114.

Figures



Figure 1: Klimt, Gustav. "Adele Bloch-Bauer I." 1907, Oil, silver, and gold on canvas, 140 cm x 140 cm. *Neue Galerie New York*, Neue Galerie. New York, New York. <https://www.neuegalerie.org/content/adele-bloch-bauer-i>.



Figure 2: Pissaro, Camille. “*Shepherdess bringing in sheep.*” 1886, oil on canvas, 46.0 x 38.0 cm. *Musee d'Orsay*, Dist. RMN-Grand Palais. Paris, France. <https://www.musee-orsay.fr/fr/oeuvres/bergere-rentrant-des-moutons-177948#artwork-history>.



Figure 3: Cranach the Elder, Lucas. "Adam." Ca. 1530, oil on panel (one of a pair), 275 x 27-1/2 in., 190.5 x 69.9 cm. *Norton Simon Museum*. Norton Simon Art Foundation, 2022. Norton Simon Museum. Pasadena, California. <https://www.nortonsimon.org/art/detail/M.1971.1.P>.



Figure 4: Cranach the Elder, Lucas. "Eve." Ca. 1530, oil on panel (one of a pair), 275 x 27-1/2 in., 190.5 x 69.9 cm. *Norton Simon Museum*. Norton Simon Art Foundation, 2022. Norton Simon Museum. Pasadena, California. <https://www.nortonsimon.org/art/detail/M.1971.1.P>.

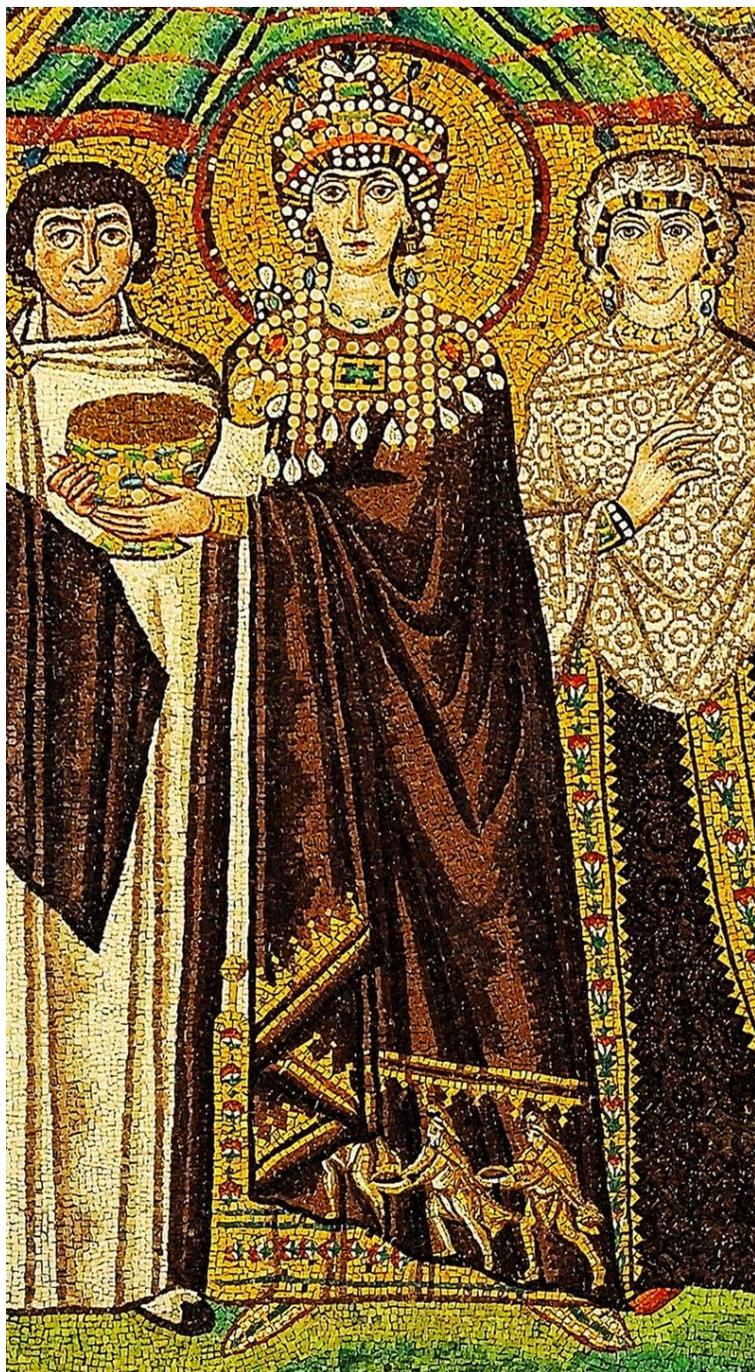


Figure 5: "Theodora Mosaic," detail. Ca. 540, mosaic, 104 x 144 x 5 in. Basilica of San Vitale, Ravenna, Italy.



Figure 6: Eisenmenger, Rudolf Hermann. "Mural behind the wall clock of the Vienna office of the Reich Labor Service" *Mourning the Ancient*, <http://www.mourningtheancient.com/truth-women-art-largecolorx.htm>



Figure 7: Klimt, Gustav. "Amalie Zuckerkandl." 1917/18 (Possibly started as early as 1913/14), oil on canvas, 128x128cm. *Austrian Gallery Belvedere*, Belvedere. Vienna, Austria. <https://sammlung.belvedere.at/objects/7488/amalie-zuckerkandl>.

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