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**Artworks Looted during the Holocaust: The Unfinished Story
The Portrait of Wally by Egon Schiele
&
The Washington Principles on Nazi-confiscated Art**

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Introduction to Nazi-looted Art

William Penn, in a 1693 book, conveyed the idea: "To delay justice is injustice." Today, injustice continues in Nazi-confiscated art that was looted from victims of the National Socialists and has not been returned to its rightful owners. The injustice is now nearly 70 years after the artworks were looted. It would take the 1997 seizure of Egon Schiele's painting "The Portrait of Wally" to energize the public to demand the return of Nazi-looted art. That seizure of the Schiele painting led to the Washington Principles on Nazi-confiscated Art, agreed by some 44 nations in 1998.

In 1998 the international community addressed the injustice through The Washington Principles on Nazi-confiscated Art. The Principles are premised on the idea that wherever possible art looted during the Nazi-era (January 30, 1933 to May 9, 1945) via actual theft or plunder, or through forced sale, be returned to its rightful owner. This policy idea was first proclaimed by the Wartime Allies in the London Declaration of 1943, but in the post-war world was eclipsed by the onset of the Cold War and the division of Europe between Western and Soviet blocs.

Looting of art was an integral part of Nazi war plans. The first goal was to recover art removed from Germany according to the Versailles Treaty after World War I and also to collect art with the aim of re-ordering West European heritage for the greater glory of Nazi Germany. In East Europe artworks were to be eliminated and only "Germanic" artifacts preserved. Regarding Jews, they too, were to be eliminated in the Holocaust and their art (and property) seized.

Today the German Government estimates that thousands of works looted from Jews have not been returned.

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The story of art is poignant because art is different from other property. Artwork touches emotions, imagination and memories unlike other assets. Art is a tangible connection to those who perished in the Holocaust and to the suffering they endured. That is why we work so hard to see artwork returned to rightful owners.

The Gurlitt Art Trove ²

After the Portrait of “Wally” was seized in 1997, the Washington Principles guided the international process of restitution. Then in 1998 again renewed international interest in Nazi-looted art was stirred when a trove of some 1400 artworks, including pieces by Picasso, Chagall, Matisse, Beckmann, and others was discovered in a Munich apartment owned by Cornelius Gurlitt, whose father Hildebrand Gurlitt was among the few art dealers favored by the Nazi’s to handle “Degenerate Art” and to collect art for Adolf Hitler and the National Socialists. Today the German government estimates that thousands of these works may have been looted from Jews.

Although the World War II-generation is passing from the scene, looted art has been more and more in the news. Last year the German news magazine *Der Spiegel* reported on how little German authorities have done since 1945 to investigate and return 20,000 looted items known to be still in the hands of German agencies and museums. The new find, called the Gurlitt Collection after Cornelius Gurlitt, the reclusive 80-year-old man who had the art in his apartment, now provides Germany with the chance to show the world that it has the political will to find justice in returning looted art.

There is evidence that Mr. Gurlitt and his family may have attempted to hide the collection's origins and existence. The Gurlitt Collection vividly illustrates that the vast economic crimes perpetrated by the Nazis still have not been fully addressed, despite efforts to seek justice such as in the guidelines known as the Washington Principles on Nazi-Confiscated Art.

The story I am here to tell is one about Holocaust-looted art and a search for justice.

3

Nazi-confiscated art was ‘The Rape of Europa’ as portrayed by Lynn Nicholas in a book of the same name.

In her book “*The Rape of Europa*” Lynn Nicholas, tells the epic story of the systematic theft, deliberate destruction and miraculous survival of Europe’s art treasures during the Third Reich and World War II. Fanaticism, greed, and warfare threatened to wipe out the artistic heritage of Europe. For twelve long years, the Nazis looted and destroyed art – Europe’s cultural heart -- on a scale unprecedented in history. Egon Schiele’s “Wally” was caught in that systematic theft.

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Lynn Nicholas tells the epic and fascinating tale of the role ‘Monuments Men’ of World War II, who were deployed by the United States Government, played in the of collecting and returning Holocaust stolen assets.⁴

The Monuments Men

In 1943, President Roosevelt and General Eisenhower created the Monuments, Fine Arts, and Archives (MFAA) program to thwart Hitler’s heist. Allied governments had begun to set the stage for the work of the Monuments Men in early 1943, with the issuance of the “London Declaration” calling on neutral nations not to trade in art looted by the Nazis, and proclaiming that Allied nations would have the right to void transactions that were part of the Nazi-organized looting.

The ranks of the "Monuments Men" included men and women from 13 countries, military and civilian, including artists, art historians, and museum directors. These heroic young art historians and curators from America and across Europe fought back against the looting with an extraordinary campaign to rescue and return the millions of lost, hidden and stolen treasures. Many of the roughly 345 members were volunteers, with an average age of 40. They soon found themselves crisscrossing war-torn countries in search of masterpieces the Nazis had begun hiding as defeat became inevitable.

Monuments Men, with a sense of history and cultural heritage, collected art that would be returned to countries of origin. The Allies principle of restitution charged governments receiving looted art to take responsibility to return the art to rightful owners. That turned out later to be misplaced trust. Nevertheless, as Lynn Nicholas and Robert Edsel have shown in their books (and as George Clooney showed in his film) about the Monuments Men, notwithstanding meager resources, the unit saved a great deal of art and worked to return stolen works to the countries from which the art had been stolen. The temptation to keep art treasures was great and the system largely broke down after art was returned to governments.

In the U.S., after the War ended, Ardelia Hall of the U.S. State Department acted as a liaison with the MFAA.⁵ Upon her return home, she began working as the Fine Arts & Monuments Adviser to the U.S. State Department, where she remained until her retirement in 1964. As Chief of the Office of International Information and Cultural Affairs, Hall worked closely with her counterparts still in Europe working on restitutions from the MFAA Collecting Points. She kept detailed records which documented the “recovery and return to their countries of origin of cultural objects dispersed during the war.” During her career, Hall was the dominant force behind the American restitution effort at the State Department. Her successor, Ely Maurer, described her as “a persistent and zealous person, passionate in her attempts to recover stolen cultural property, and she succeeded greatly in that effort.”

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In the years after the war, Hall foresaw the coming problems of looted artworks circulating in the art market, and strove to prevent museums and dealers from purchasing such works. She publicly warned museums, university art faculties, and art dealers to watch for looted items and report them to the government – and stressed the Allied policy favoring return of looted property. Nearly 1600 works of art in some sixty-six such cases were eventually reported to the State Department by the time Hall retired.

The Portrait of Wally by Egon Schiele ⁶

After a long interregnum from the 1960's to the 1990's when little was done to recover and return looted art since the end of the Second World War, the issue arose with a storm with the seizure of “Wally” in 1997.

How did one painting shake the foundations of the art world?
Wally was seized by the Nazis from a private Jewish collection, captured by the American Forces at the end of the Second World War, returned to the Austrian Government, purchased by a private collector, and loaned to the Museum of Modern Art. Then it was seized by a New York prosecutor as stolen property, held by federal authorities, subjected to the Washington Principles for negotiation and displayed at the Museum of Jewish Heritage in New York before finally returning to Austria.

The story begins in 1912 when Austrian artist Egon Schiele painted a small portrait of his mistress, Walburga (“Wally”) Neuzil. This is the painting, which would reignite the effort to return looted art to rightful owners. In 1939, after Austria had been absorbed into the German Reich, the painting of *Wally* was stolen from art dealer Lea Bondi's personal collection by Friedrich Welz, a Nazi who had also taken over Bondi's gallery because she was Jewish. The MFAA returned the painting to Austria.

Shortly after the Second World War ended, the State Department closed the Monuments Men program. *Wally* had been transferred to the Austrian government, which under the principles of restitution was to identify rightful owners return it and other looted art to them. However, *Wally* was placed in the Austrian National Gallery (Österreichische Galerie Belvedere); Lea Bondi was not identified as the rightful owner.

The rest of this important restitution story of “Wally” begins with the particulars of the Bondi family, the seemingly ‘good faith purchase’ and ending with the case's impact on looted art restitution.

After Lea Bondi recovered her Vienna art gallery in 1946, she met a Schiele painting collector Rudolph Leopold in London in 1953 and asked for his assistance in retrieving her painting from the Austrian museum. However, Leopold purchased the painting from the museum and kept it for himself in 1954. In Leopold's collection the painting remained for more than 40 years.

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In 1997, nearly sixty years after Wally was seized from Lea Bondi, the Vienna-based Leopold Museum loaned “Portrait of Wally” to the New York Museum of Modern Art (MoMA) for a temporary exhibition. The painting entered the United States under a federal license under which MoMA vouched for the Leopold’s ownership of the work. Willi Korte, a researcher from the Holocaust Art Restitution Project, alerted the Manhattan District Attorney’s (DA) Office to the questionable ownership of Wally and the DA subpoenaed the painting. That subpoena was quashed initially by a New York state court under New York’s anti-seizure statute.

That same day, however, a Federal Magistrate issued a seizure warrant for the work based on probable cause that Dr. Leopold had violated the National Stolen Property Act by not correctly reporting the work’s ownership in connection with its importation to the United States. More than sixty years after the looting, the legacy of this tragic history would continue to play out.

⁷ After New York prosecutor Robert Morgenthau seized from the Museum of Modern Art that Egon Schiele painting “Portrait of Wally”, negotiations for justice arose from Wally’s seizure when Nazi looted art captured the imagination of the public. Museum directors panicked and worried such seizures would empty their collections.

No one foresaw a war over looted art would be launched when the “Portrait of Wally” was loaned to the Museum of Modern Art. Robert Morgenthau, the Manhattan District Attorney, who seized the painting upset museum directors who were immediately worried that claims would arise everywhere and their collections would be emptied. Holocaust survivors and heirs hoped to reclaim their lost treasures. Civil disputes over art could also be criminal complaints of theft at least in the United States.

Wally would indeed have an impact on the restitution of Nazi-confiscated art. At the time of the seizure, Glen Lowry, director of the Museum of Modern Art (MoMA) would convene other directors to write the American Art Museum Directors guidelines for looted art. The seizure of the Portrait of Wally, led to the Washington Principles that I negotiated, with the able help of a team under the leadership of Stuart Eizenstat. Nearly 13 years later a settlement was reached with the rightful owners and Wally was allowed to return to the Leopold Museum in Vienna.

MoMa Director Glen Lowry’s conference with leading art world museum directors, scholars, and other prominent persons convened for the AAMD to consider ways to assess the impact of the seizure of Wally on art collections.⁸ Seeking resolution of this and similar cases, the Association of Art Museum Directors (AAMD) promised U.S. Congressman James Leach of the Banking committee that it would write guidelines for resolving looted art disputes to avoid legislation.

Among the Lowry Conference participants was Craig Smythe, a Monuments Man who had participated in the heroic efforts to collect some 600,000 stolen art objects at the

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end and in the aftermath of the Second World War. Some 100,000 are believed to still be missing.

I was an American diplomat serving in the State Department and was invited to the Lowry conference as the representative of the U.S. Government. At the end of the meeting the AAMD directors decided to write Guidelines that for the first time required museums to review the provenance or history of their collections, focusing especially on art looted by the Nazis.

Those of us in the State Department working on this issue of justice for victims of Nazi Germany were galvanized by the controversy. The November 1998 planned State Department-U.S. Holocaust Memorial Museum international conference on Holocaust-era Assets could bring a measure of justice to Holocaust victims.

On June 9, 1998 as the State Department Conference Director I convened another group of lawyers, art historians, and representatives of AAMD and of the Art Dealers of America to discuss options. Out of this roundtable discussion, State Department Under Secretary of Economic and Business Affairs Stuart Eizenstat tasked me to internationalize the guidelines presented by AAMD and bring them to the conference.

In Europe I found strong resistance to the idea of art restitution so long after the Second World War, even with guidelines by American museum directors. In the Netherlands, which held in trust thousands of unclaimed looted art objects, and in France with its MNR collection, both held in trust art objects returned to them at the end of the war, I explored with governments and museums their willingness to create international principles to guide restitution. In the U.K., in Germany and other countries resistance to American-imposed principles was fierce. Good faith purchase laws and statute of limitations were among some of the objections to principles.

Russia was much more difficult. The Red Army's looting of public, religious and private art works from Germany was considered spoils of war by the Russian government, which treated all that property as nationalized state property – and still does to this day.

After I returned from Europe, Stuart Eizenstat hosted on June 30 an organizing seminar for a larger November 1998 conference to prepare for the Holocaust Era Assets Conference, scheduled for November 30- December 3, 1998.

With the urging of Earl "Rusty" Powell Director of the National Gallery, Chair of the MOMA Board Ron Lauder, Michael Kurtz of the National Archives and others all made the case that hundreds of thousands of art works remained lost to rightful owners.

The Europeans initially rejected any direct endorsement of the AAMD guidelines, our negotiating team then drafted what became the *Washington Principles on Nazi-confiscated Art* for consideration at the November Washington conference.

The *Washington Principles on Nazi-confiscated Art* mandate that Holocaust-looted works be identified through public exhibitions and broadly available archival information so that claimants may assess their rights. Most important, the Washington Principles direct national governments to create processes for "just and fair solutions" that are based on the merits of claims, not on technical legal defenses that may penalize claimants for failing to locate assets until too much time has passed. The goal is to reduce the burden on claimants to prove ownership, given that the Holocaust and subsequent efforts to hide looted art complicate efforts to prove claims. The Washington Principles provide a road map to bring some measure of justice to survivors and their families.

Recognizing that civilized society compels the public protection of privately held cultural assets, the international community gathered in Washington in 1998 and pledged themselves to an organized, albeit non-binding, global effort to research provenance, uncover looted art, publicize its existence and encourage just and fair solutions to conflicting claims of ownership — principles then embodied in the Washington Conference Principles on Nazi-confiscated Art.⁹

The Washington Conference Principles on Nazi-confiscated Art were agreed in 1998 by more than 40 nations.

In the negotiations for the Principles, the Director of Metropolitan Museum of Art and chair of the Association of Art Museum Directors (AAMD) Task Force on Spoliation of Art, Philippe De Montebello, rightly proclaimed of these Principles: **"The art world will never be the same."**

The hallmark of the Washington Conference was the way in which the Principles grew out of the cooperative effort of many disparate parties: American as well as European museum directors dialogued continuously and various governments compromised at the very highest levels to achieve consensus.

Stuart Eizenstat sought a compromise with the conflicting legal systems in Europe and the U.S. in a preamble to the principles that read:

"In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws."

In the end, forty-four governments joined together to advocate positive action on this issue.

U.S. Congressman James Leach of Iowa led the fight for the legal implementation of the Washington Principles when he modified the eleventh compromise article at the Conference to include:

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“Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.”

Article XI would set the course for national legislation that would change the art world.

Austria was moved to action and would be the first to pass a law on restitution of Nazi-confiscated art. Austrian Culture Minister Elizabeth Gehrler, the Austrians, incensed at the New York seizure of the Egon Schiele paintings belonging to Austria, urged the Austrian parliament to pass a looted art restitution law, which it did on November 30 while the conference was still in session.

Because the Washington Conference participants spelled out the way for each country to create its own legal responsibility to continue the search for justice, they should implement Article XI of the Washington Principles; i.e., governments need to create the legal basis for research and dispute resolution.

The call on all involved in the art world is to continue restitution to rightful owners and to demand establishing rule of law for post conflict justice. The Washington Conference Principles on Nazi-confiscated Art were finally adopted by consensus by the Conference Chairman and former Congressman Abner Mikva.

Following the Washington Conference an international consensus for consistent and efficient resolution of claims developed. In 1999 the International Council of Museums called on its members to follow the Washington Principles. The 1999 Council of Europe Resolution 1205, the 2000 Vilnius Forum Declaration, the 2003 Hearings of the European Parliament and, ultimately the 2003 European Parliament Resolution 408 all called for action to facilitate methods to resolve claims.

Promises

The Washington Principles, and the work of the other conferences that followed it, have provided guidelines for return of art to rightful owners. The Washington Conference Principles have indeed, as Philippe de Montebello observed, "changed the art world forever." And as with any significant change, there is anxiety that accompanies it.

With the threat of judicial seizure hanging over museum cultural exchange programs, museums seek immunity from seizure when borrowing art work from abroad. The Washington Conference Principles are now part of the determination made by the State Department in advising the Justice Department whether the "national interest" warrants granting a request for immunity from seizure. Such immunity preserves this vital cultural exchange.

The American Association of Museums (AAM), a coalition of over 3,000 institutions, has created an online Nazi Era-Provenance Portal. The database contains over

28,000 objects from 165 museums. The database's mission is to "provide a searchable registry of objects in U.S. museum collections that changed hands in Continental Europe during the Nazi era (1933-1945)." Access to this database is free and users can sign up to be notified when new objects are added. AAM has become a leader in publishing inventories and making information available to the public. The website is <http://www.nepip.org/>

Similarly, the Smithsonian's Freer Gallery of Art and the Arthur M. Sackler Gallery have launched a web site that allows public access to research being conducted as part of the galleries' World War II era provenance research project. The goal of the project was to identify the ownership history for works of art in the collections that might have been unlawfully taken by the Nazis during the World War II era and to make this information available to the public.

In addition, professionals and experts in the field continue to strive to share information that could facilitate claim identification and resolution. For example, in December 1999 Germany set forth the implementation of the Washington Principles through its Joint Declaration by the Federal Government, the Länder (Federal States) and the National Associations of Local Authorities on the tracing and return of Nazi-confiscated art, especially Jewish property. The German Government created its Lost Art database (www.lostart.de) and broadened its definition of looted art, voiding the requirement to demonstrate forced sales.

Again in December 11-12, 2008 the German government addressed Nazi-looted Art in a Conference – "Challenge for Libraries, Archives and Museums," which was held in Berlin. To mark the tenth anniversary of the Washington Principles, the Stiftung Preußischer Kulturbesitz and the Koordinierungsstelle für Kulturgutverluste hosted an international symposium and the speakers reviewed past developments in the field, examined perspectives and spoke about fundamental issues concerning the restitution of cultural artifacts, provenance research and possible "fair and just solutions". A panel discussion brought together representatives of cultural institutions, the law, advocacy groups and the host organizations concluded the symposium.

In Paris, a conference was held September 14- 15, 2008 on "Spoliation, Restitution, Compensation and Provenance Research: The Fate of Works of Art recovered after the Second World War". The conference was organized by the Management of the Museums of France and the Museum of art and history of Judaism. It was conceived by Isabelle Masne de Chermont, preserving general the Management of the Museums of France, with Jean-Pierre Bady, main adviser at the Court of Auditors, member of the CIVS, chair commission of verification of the works of art and Laurence Sigal, director of the Museum of art and history of the Judaism.

Moreover, the increased awareness of looted art issues, coupled with a heightened commitment among many institutions to the Washington Principles have helped encourage the resolution of some looted art disputes.

While the Washington Principles changed the way art ownership is viewed, they have also helped researchers like Willi Korte and lawyers like Thomas Kline to tap organizations such as the Art Loss Register to discover lost art and recover looted art for rightful owners. They have made possible the recovery of looted art that was out of reach for much of the past half century.

The dispute over the Portrait of Wally was settled in 2010, thirteen years after it was seized from the MoMA. One part of the settlement of the Portrait of Wally called for the painting's saga of looting and the Holocaust to be told with Wally whenever it is shown. Tom Freudenheim, formerly of the Smithsonian Institution and art historian with a degree from Harvard College, noted that the settlement placed the Portrait of Wally in an "alternate, extra-artistic perceptual universe." Signage next to the painting will set "forth the true provenance of the painting, including Lea Bondi Jaray's prior ownership and its theft from her by a Nazi agent before she fled to London in 1939."

Justice will be served if provenance research, critical to identifying Nazi-confiscated art, is a lasting requirement for governments, museums, private collectors or others such as foundations or ngo's.

Unfilled Promises

Of course, the story does not end here with the settlement of Wally. Governments still have not created the legal framework for clearing title of art whose ownership is likely to be contested. Nor has research gone far enough to discover art lost to the Nazi plundering in the Second World War.

While there has been some progress on the way the art market functions and some important artworks have been returned, there have also been some areas where there has been only minimal progress or no change at all. The Washington Principles called for a number of improvements in the handling of artworks displaced in the 1933-1945 period. But a comparison of the provisions of the Washington Principles with the current reality is disappointing.

It is high time that all countries fulfill their World War II obligation to return Nazi-looted art to rightful owners following the Washington Principles. Justice delayed is justice denied for those people who have not recovered their Nazi-looted art works. Too many artworks still remain held in trust in museums in Europe and around the world. We should not be misled by the few examples of spectacular recoveries into believing that there has been a systematic effort at restitution of Nazi looted art by public and private museums and collections around the world. It should be said that the Washington Principles should cover both public and private museums and private collections.

The 1999 Council of Europe Resolution 1205 and the 2003 European Parliament Resolution called for action to facilitate the resolution of claims and to encourage mechanisms which favor the return of art and property to their rightful owners. It is time for Europe to embrace the 2003 European Parliament Resolution and actually seek to take

concrete steps to develop and implement common principles with respect to issues of looted art, cultural and movable property.

These principles will make it more likely that claims may be understood and resolved more efficiently, more certainly, and more fairly. Hundreds of pieces of art have been returned to their rightful owners. Several countries, led by Austria, the Netherlands, and the UK, have actually incorporated the essence of the Washington Principles into domestic legislation. However, large gaps have occurred in implementing these principles, from the use of technical defenses to prevent restitution, to inadequate archive access and/or provenance research by most countries and their museums.

What are “Fair and Just Solutions”? Consider these examples of the principles and the reality of dispute resolution. Justice comes in four complicated ways.

1. Negotiation-Settlement ¹⁰

When the North Carolina Museum of Art discovered its prized possession, “Madonna and Child in a Landscape” by Lucas Cranach was looted by the Nazis and taken to Hitler in 1943, they identified the rightful owners and negotiated with them to keep the painting in North Carolina. As part of the settlement, the museum offered to tell the painting’s story as part of its gallery presentation. Thus, rather than stand on legality, the museum chose to act morally.

Another outstanding example of settlement that keeps the artwork on public display is “The Lighthouse with Rotating Beam” in the Kunstmuseum Bonn, which agreed to pay heirs of Alfred Flechtheim half of its market value to keep the painting in the museum. ¹¹

2. Judicial Claim – Negotiation

The Seattle Art Museum – heirs of Paul Rosenberg case of the “Odalisque or Oriental Woman Seated on the Floor” by Henri Matisse was resolved when the museum decided to return it after a thorough and independent investigation confirmed it was stolen by the Nazi’s from Paul Rosenberg’s collection in the 1940’s. ¹²

3. Judicial Claim – Negotiation – Settlement Agreement

¹³ “Landscape with Smokestacks” by Edgar Degas in the Art Institute of Chicago was disputed and as the parties headed for court after spending hundreds of the thousands of dollars in fees, they agreed to a settlement in 1998. The painting remained in the Art Institute.

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4. Conciliation, International Facilitator, Judicial Claim, negotiation, settlement or arbitration and Arbitral Award

The art collection of Jacques Goudstikker looted and acquired by Herman Göring, was recovered by Allied Forces and returned to The Netherlands government, which decreed it as “Dutch National Property” and divided the art among Dutch museums. The Dutch government forced a partial settlement with Goudstikker’s wife in 1952 in which she relinquished claim to the remaining artworks. A 1998 claim by Marei Von Saher, the sole surviving heir, was denied by the Dutch government citing the 1952 agreement, which was upheld in court.

A Dutch Restitution Committee established in 2002 reviewed the Von Saher claim and finally in 2005 recommended restitution of 202 of the 267 paintings Saher claimed; 200 were eventually returned. The family donated to the Dutch Government one of the paintings -- “Child on Deathbed” by Bartholomeus Van der Helst. Von Saher, the daughter-in-law of Jacques Goudstikker, the Netherlands’ biggest art dealer in the 1930s, received 200 paintings earlier this year, estimated to be worth between \$79 million and \$110 million.¹⁴

Klimt¹⁵

Then there is the Klimt case. First denied, then in U.S. Court, then to arbitration that tested the Austrian law. Austria had established in 1998 a Restitution Committee. Maria Altman made a claim denied by the Austrian Government based on its own assessment the paintings were transferred to the Austrian Government before the Nazi era. Arbitration was proposed and the Austrians refused. Legal proceedings were initiated in the U.S. to avoid the bond requirement to access the Austrian court system. In the U.S. court case the Austrians sought sovereign immunity, which was denied by the U.S. Supreme Court.

Finally, the Austrian Government accepted arbitration to avoid a court battle in the U.S. The arbitration panel ruled that the paintings were not transferred under the terms of the will of Ferdinand Bloch-Bauer in 1925. In order to obtain export permits for the rest of the estate, heirs had earlier accepted the Austrian assertion of ownership. In the end, Austria was obligated to return to the rightful owners all five Klimt paintings.

Several restitution claims by Holocaust victims have been met since these institutions – Art Institute of Chicago, Museum of Fine Arts in Boston, the North Carolina Museum of Art – set a path for return to rightful owners. Of course, the story does not end here with the settlement of Wally.

Principles and the Reality

The Principles call for the identification of confiscated and looted artworks. The key to restoring artworks to rightful owners is access to information to allow good provenance research. Such research is complex, time consuming and expensive. It also

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requires a considerable amount of expertise. It is important that we take strong measures to make certain that archives, public and private, are open and available.

Sharing provenance data by putting it on the internet will help to reduce repetitive research. Countries should take the lead by doing the provenance research on the collections held in publicly owned museums. Some countries have taken commendable if small initiatives, but all countries need to do significantly better in this area. Indeed, public museums remain remarkably secretive about their collections and how works entered their collections.

Many museums and collections are unaware of what was looted because they have not developed the complete provenance of their holdings that were in Europe from 1933 to 1945. Except for a few countries, most have not undertaken thorough provenance research and published the results. In Germany, which has undertaken such research, Minister of State for Cultural Affairs Bernd Neumann, said in December 2008 that Germany has “thousands and thousands” of looted art in their museums today.

Russia may have the largest amount of Nazi-looted art, but despite an art restitution law passed by the Duma, the Russian Government has done little to publicize its inventories, implement its law, and has not created effective claims processes. Israel should do more systematic provenance research, as should museums in the United States.

The record of implementing the Principles is at best uneven, and the vision of an art world that gives the Principles a high priority remains elusive.

Some have been critical of the Principles because they do not include an enforcement mechanism. We were aware of that weakness when we were drafting the Principles, but we recognized at the time that it would never be possible to get all of the countries at the Conference to join in creating such a mechanism. Instead, we relied on moral suasion, and that the Principles embodied concepts of fundamental fairness that are part of U.S. and European law, and to some degree it has worked.

In a welcome contrast with these examples, some individuals and institutions holding art of questionable provenance have been amenable to discussing claims and resolving issues in an amicable manner. Frequently, the settlement provides that the object does not change hands.

I remain concerned about the number of cases that go through a lengthy litigation process. Frequently, such proceedings focus on the jurisdiction of the court to hear the case and other legal matters, without ever getting down to the facts of the case. For this reason the Washington Principles urged the use of alternative dispute resolution mechanisms.

Some holders of artworks have not honored the Principles and have gone to great lengths to retain objects in the face of valid claims. In the United States, courts declaratory judgments are being used to make it more difficult for claimants to prove their ownership.

Other holders of art have simply refused to consider claims, thereby forcing the claimants either to give up their claims or engage in expensive and difficult legal proceedings.

I am also concerned by the tendency of holders of disputed art to seek refuge in statutes of limitation and laches defenses in order to block otherwise meritorious claims even in situations where the claimant has not been provided with provenance information. Given the nature of the Holocaust and the Cold War that followed, many families simply were unaware or only partially aware of their heritage.

The difficulty in getting documentation and the uncertain nature of the current restitution process creates further uncertainty. For a defendant to take advantage of circumstances totally beyond the control of the claimant compounds the grotesque nature of the original crime.

Other defenses have been used to deny restitution beyond statutes of limitation, like de-accession laws in which suspect art reverts to the state, and export control laws, which are used to bar the export of looted art back to their rightful owner, even when its ownership has been established.

A museum in Europe has refused to return a work of art clearly belonging to a Jewish family in the United States, using as its defense the questionable argument that it is a private museum, and it is therefore not bound by the Washington Principles. There is nothing in the Washington Principles which excludes private museums. Many private museums in the United States apply the Washington Principles fully.

On the other hand, in our country, there are few choices short of litigation for unresolved cases as we lack a formal mechanism to try to mediate disputes before we go to court.

To mark the tenth anniversary of the Washington Principles, the Stiftung Preußischer Kulturbesitz and the Koordinierungsstelle für Kulturgutverluste hosted an international symposium and the speakers reviewed past developments in the field, examined perspectives and spoke about fundamental issues concerning the restitution of cultural artifacts, provenance research and possible “fair and just solutions”.

Governments still have not followed the Washington Principles and have not created the legal framework for clearing title of art whose ownership is likely to be contested. Justice will be served if provenance research, critical to identifying Nazi-confiscated art, is a lasting requirement for governments, museums, private collectors or others such as foundations or ngo's.

Alternative solutions in the U.S. are on-going. As part of Christie's willingness to be as open and approachable as possible, Monica Dugot noted in a recent speech that “in 2009 we [Christie's] made public our guidelines on how we handle claims for Nazi looted art. These guidelines establish how we act as an experienced and expert intermediary between the current holder and claimant in exchanging information and documentation so

that informed decisions can be achieved. Essentially we promote a non-litigious and amicable approach to claims which hears the historical facts of the claim and also balanced with the position of the current holder, who may well be the unwitting possessor of looted art, having no knowledge of its prior history.

Restitution claims are always sensitive and often complex and sometimes to get to common ground, the courts are not always the right forum for claims. This sensitivity is especially acute for those claims connected to works of relatively modest financial value. Indeed probably 95% of our Nazi-era claims are resolved by means of dialogue and without litigation, which means that we are highly successful in facilitating settlement of claims that come through our doors. We have also done well in helping parties settle cultural property claims. And this is not just our experience. If you look at the Art Law Centre of University of Geneva's database, ArThemis, which records cultural property claims that used alternative dispute resolution mechanisms rather than litigation, there are over 80 cases recorded."

The Gurlitt case ¹⁶

We were all thunderstruck when the Bavarian customs seized artworks held by Cornelius Gurlitt that were revealed in November 2013. That Gurlitt Art Trove included creations of Matisse, Picasso, Nolde, Beckmann, Chagall, Klee, Dürer and many other famous artists. The Gurlitt collection's fate includes art stolen from museums as degenerate art, from persecuted artists, and of course from Jews because they were Jewish.

We were reminded that art is treasured not simply through the illumination it brings to the world, but also what history and fate it has suffered. ¹⁷And the owners of looted artworks have suffered for decades.

Can Germany live up to its constitutional mandate to protect and promote human dignity? ¹⁸

Soon after the Gurlitt Art Trove was made public, Owen Pell and I wrote "*How to Handle that Nazi Art Trove*" for the Wall Street Journal, published November 19, 2013. Our answer was to recommend Germany follow the Washington Principles on Nazi-confiscated Art. ¹⁹This case now provides Germany with the chance to remind the world that it has changed and become a defender of human dignity. Germany has created an open and transparent process that will enhance the likelihood that looted works in the Gurlitt Collection are returned to their rightful owners.

¹⁶ [Slide 16]

¹⁷ [Slide 17]

¹⁸ [Slide 18]

¹⁹ [Slide 19]

On April 7 the German Government, the Bavarian State Government and the lawyers for Cornelius Gurlitt announced a voluntary agreement that allows the German government to research the provenance of all the works in the Gurlitt collection – Schwabing Art Trove.²⁰

That April 7, 2014 agreement on the “Schwabing (Gurlitt) Art Trove” from Gurlitt residence in Munich provides for provenance research to continue and restitution to heirs of rightful owners in accordance with the Washington Principles on a voluntary basis. The government will return to Mr. Gurlitt unproblematic works. Although Mr. Gurlitt has now died, his designated heir the Bern Kunstmuseum has pledged to abide by the agreement.

The agreement also ends the seizure of the Gurlitt property; he was not charged with a crime. Mr. Gurlitt appears to have hidden its existence, providing shaky grounds for the State to step in to safeguard what may be the stolen property of others.

Bavarian Minister of Justice Winfried Bausback stated: “This voluntary agreement of a private collector strengthens the value of the Washington Principles as a set of guidelines to resolve rightful ownership issues. The entire world is watching to see how we will answer these questions, and this agreement is a good answer.”

Minister of State Monika Grütters added: “This agreement creates the necessary basis for fair and just solutions, in particular by means of restitution, as Mr. Gurlitt has now explicitly stated...is so important that it sends a clear signal within Germany and beyond that we will not let Nazi injustice to stand, even 70 years after World War II.”

What the Gurlitt case shows is the limit of litigation/legal solutions to Nazi-confiscated art. Such cases are complex, but less for judicial or bureaucrats as for historians, art historians and provenance researchers to find fair and just solutions.

Conclusion

The Gurlitt Art Collection vividly illustrates that the vast economic crimes perpetrated by the Nazis still have not been fully addressed.

The April 7, 2014 decision by the German Federal and Bavarian Governments with Cornelius Gurlitt to continue the provenance research and restitution in accordance with the Washington Principles helps create the basis for fair and just solutions by means of restitution.

The voluntary agreement by Cornelius Gurlitt and the experience in managing the Munich Art Trove dies show a renewed determination in Germany that the Nazi injustices will not stand. The path chosen here will guide others in the search for justice.

The way forward is to use the Washington Principles that provide a road map to bring some measure of justice to survivors and their families.

²⁰ [Slide 20]

Once the German Government finishes investigating the provenance of the works of art, to see if any of them were acquired by confiscation or forced sale, it will have to face the decision on returning art to rightful owners.

Until those steps are taken the public and the international community simply won't know if justice is served. As I began, let me also conclude: "To delay justice is injustice." Today, injustice continues in Nazi-confiscated art that was looted from victims of the National Socialists and has not been returned to its rightful owners. Remember, this search is not only about art; it is about delivering justice and that will reveal us as the people we are. It is never too late to do the right thing.

Thank you. ²¹

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²¹ [Slide 21]



Washington Conference Principles On Nazi-Confiscated Art

Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, December 3, 1998

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

II. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.

III. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

IV. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

V. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

VI. Efforts should be made to establish a central registry of such information.

VII. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

VIII. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

IX. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, cannot be identified, steps should be taken expeditiously to achieve a just and fair solution.

X. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

XI. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

http://www.state.gov/www/regions/eur/981203_heac_art_princ.html

Thoughts Resolution of Nazi-confiscated art Restitution

Recent cases and the recognition that the German State continue to hold a great many objects that were likely unfairly procured from persecuted individuals during the Nazi era, highlight this as an important moment for the German Government to create a title-clearing process for Holocaust-related artworks. The central tenets would be that these artworks are held in trust by the State, pending resolution of ownership issues, with an eye toward facilitating restitution. The German government should urge other European nations and the EU to enact similar legislation, especially with respect to states waiving any possessory interest in Holocaust-looted property. The German Parliament should pass a law:

Giving legal status to your commitment that the State (i.e., federal or provincial) renounces any possessory interest beyond that of trust or custodianship in any cultural property that owned by persecuted persons and which came into State hands from January 30, 1933 to May 9, 1945.

Requiring State agencies, universities and museums to inventory and report to the State all art objects now in their custody that (i) were not in State hands prior to January 30, 1933, or (ii) were acquired after the end of Allied Occupation in the 1950s, but changed hands during the period January 30, 1933 to May 9, 1945 (all such property being "Unassigned Property"). Unassigned Property would carry a presumption that it was looted from its true owner (including through duress sales).

Creating a title-clearing process for Unassigned Property, for it to be inventoried, photographed and uploaded onto internet accessible databases. Any object not claimed after a defined time period (18-24 months) would be deemed heirless property as to which the Conference on Jewish Material Claims would have presumptive title. Religious property and other Judaica should be put in the hands of some organization chosen by the German government and the Claims Conference, which organization will loan such objects for use around the world.

Authorizing a special administrative tribunal to process claims to Unassigned Property, which claims would be resolved based on the Washington Principles with respect to lowered burdens of proof, and to presumptions of ownership running in favor of claimants who had listed property as listing since World War II. The administrative tribunal also would have the authority to issue documents of title as to unclaimed Unassigned Property.

Authorizing the German government and Claims Conference to undertake a program to assign certain of the Unassigned Property to museums within Germany and elsewhere for exhibitions associated with Holocaust remembrance and education, and to allow other Unassigned Property to be auctioned with the proceeds to be used to fund Holocaust-related compensation and reparations programs.

Putting in place tax regulations designed to prevent taxation relating to property being returned to its rightful owners (i.e., the basis in the property should be as of the moment of current sale or transfer so that no claimant is punished for recovering their property and then selling it to realize its value).