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Nazi Looted Art: Setting Precedence for Museum Decisions

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Submitted in partial fulfillment of the requirements for the degree of
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Loot hidden in church at Ellingen, Germany.

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I. Introduction

Detroit, Michigan 1950. The Detroit Institute of Art (DIA) discovered that the Claude Monet painting, “Seine at Asnières,” (c. 1870) in the museum’s collection contained a tainted provenance (See Figure 1). The museum was informed by The French government after they had compiled a list of works taken from French Jewish families and contacted the dealer. Based on sufficient evidence and a thorough investigation, it was determined that the Nazis looted the Monet painting from the Halphen collection in Paris in 1941. In 1948, Otto Gerson, through the Ralph Harmon Booth Fund, in a good faith purchase bought the painting from the Fine Arts Association¹ in New York. The Ralph Harmon Booth Fund later donated the Monet to the Detroit Institute of Art. The museum was ecstatic with its recent acquisition, which represented a pivotal moment in its development of early Modernism while strengthening an already heightened modern collection.

In 1949 Paul Grigaut, the curator of the Detroit Institute of Art, at the time wrote to Otto Gerson, requesting the painting’s provenance for an article that would be placed in the “Bulletin of The Detroit Institute of Art” volume XXIX. Gerson replied in writing that the painting was passed from the dealer Ambroise Vollard to a M. Victor Desfossés. The painting was published in Desfossés collection catalogue (cat. No.5) in 1899. Gerson completed his report of the provenance in an ambiguous statement that, “the painting was owned for the last thirty years or more by the same family who wish to remain anonymous. This also explains the fact why the painting was not exhibited (Beal, 2009).” The answer

¹ The Fine Arts Association had not known of the Monet’s tainted provenance and therefore was reimbursed for their purchase totaling \$13, 313. (IFAR.org)

received was vague and caused reason for concern regarding clear provenance history by Grigaut and fellow museum staff. This distressful incident ended when the French government contacted the museum with supporting evidence that in fact the Monet painting was stolen at the time of German occupation of Paris. At the request of the U.S. Department of State, the Detroit Institute of Art sent the painting to Washington, D.C. It was through the National Gallery of Art that the State Department arranged the return of the Monet to its rightful owner through the French embassy. This return marks the Detroit Institute of Art as the first American museum to publicly and explicitly return a work of art looted by the Nazis during World War II. Although this marks the first successful restitution case involving Nazi looted art, it was not until the 1990s that this issue was publicly acknowledged as a concern that needed to be researched and resolved.

Nazi looted art found in museums have set a precedent for other restitution cases while highlighting other unprovenanced objects found in museums collections. In Chapter II the historical background of how Hitler, from 1939-1945, systematically confiscated artwork from Jewish households, dealers, and even public institutions will be discussed. The confiscated art was not only his own personal collection (as well as well as for his top officers) but for a museum to be curated by Hitler himself. Additionally Chapter II describes how the art was dispersed in Europe and the various ways these objects arrived in museums around the world, especially in the United States.

Chapter III describes the protocols and procedures museums will face during an ownership claim that has very much been guided by organizations whose missions are to protect cultural property and cultural heritage. These organizations are the Washington

Conference on Holocaust Era Assets, the National Committee of the International Council of Museums (ICOM), the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA), the Association of Art Museum Directors (AAMD), and the Association of American Art Museums (AAM).

Chapter IV discusses the most common option museums take—returning the objects—when they find themselves in possession of unlawfully appropriated artwork. Court cases involving the National Gallery of Art in Washington, D.C., the Virginia Museum of Fine Arts, the North Carolina Museum of Art, and the Austrian National Collection will be discussed. These demonstrate that museums that give back the artwork quickly and efficiently are behaving in a moral and ethical manner typically of such institutions and are also being rewarded with positive publicity for their actions and establishment. Additionally, in returning artwork museums face certain challenges. These challenges include a continuous fear of their collection losing its masterpieces as well as a difficult choice to knowingly give up an object.

Using case studies, Chapter V demonstrates that museums that contest returns and eventually gain legal ownership of the artwork are able to keep the art in their collection. This chapter highlights the Detroit Institute of Art as one museum that has not immediately returned artwork to Holocaust survivors or family descendents. Although legally these museums do not own title, they refused to readily handover artwork and contested family claims to artwork. When museums contest the return of an object they face a tremendous amount of bad publicity for their institution because of the highly delicate nature of Nazi

looted art. This chapter then emphasizes the cautionary measures taken by museums that choose to resolve issues through litigation.

Chapter VI describes the position of a compromise that some museums take on Nazi looted art. The Kunstahalle Museum in Germany, the Art Institute of Chicago, the Museum of Fine Arts, Boston, the Montreal Museum of Fine Arts and the State Museum in Budapest, are examples of museums, whether through monetary compensation, joint-ownership, or part-donation part-purchase, have resolved ownership issues through compromise.

Chapter VII showcases that Nazi-era restitution cases are a precedent for other restitution cases in antiquities, cultural property, and Native American Graves Protection and Repatriation Act (NAGPRA). The procedures and protocols designed to resolve issues of Nazi looted art by organizations such as the International Committee of Museums (ICOM), Presidential Advisory Commission on Holocaust Assets (PCHA), the Association of Art Museum Directors (AAMD), and American Association of Museums (AAM) were created and completed well before the very same organizations began to write principles for other unlawfully appropriated property that can be found in museums collections. Museums have learned procedures from Nazi looted art, and the implications of such are that museums are more transparent in transactions and daily routines.

Although the Monet case at the Detroit Institute of Art was relatively simple, others have not been so fortunate. Nazi looted art found in museum collections is a complex issue that museums cannot morally or ethically ignore. It has been only recently that the museum

world has acknowledged this crisis, and it is through procedures and policies that museum organizations are slowly working on ways to resolve this issue of unclaimed artwork.

Artwork being displaced by warfare is not unprecedented. During the Napoleonic War after every conquest, Napoleon would systematically take the finest works of art from the conquered nations back to Paris to be placed in the Louvre. Although many works of art were returned after the war, several are still unclaimed or lost. According to United States Holocaust Memorial Museum, “The plunder and looting of art and other treasures was not limited to the Third Reich, however. The Soviet and American armies also participated, the former more thoroughly and systematically, the latter at the level of individuals stealing for personal gain (USHMM, 2006).”

Unfortunately Nazi looted art found in a collection is relatively new in terms of reparation and demands, and the return of such looted art cannot always be trusted. Every claim is different, and it is up to the individual museum and its staff to legally, ethically, and morally figure out the right course of action— to return the art, keep it in its collection, or reach a compromise.

II. Historical Background

In order to truly understand the problem of Nazi looted art and its migration into museums we first need to investigate the cause—World War II. World War II was the most devastating conflict in world history intertwining destruction and displacement of millions in both materials and people. Between 1939 and 1944, the Nazi regime systematically confiscated, stole or bought artworks from a large number of European collections or from privately owned collections belonging to wealthy Jewish families and political opponents. The scale of this methodical looting was unprecedented in history. In the five years of the Third Reich, as many works of art (including that of paintings, sculptures, manuscripts, and other cultural property) were displaced, stolen, and transported as during the Thirty Years War or the Napoleonic Wars. Although Holland and Belgium were heavily hit by Nazis plundering, France suffered the most out of all the Western European countries. At the time of the liberation of Paris in 1944, it was reported that one-third of all the art in private collections had been expropriated by the Nazis (Feliciano, 1995, p. 16). These works were part of Hitler's inventory intended for his planned museum of European art in the Austrian city of Linz (Feliciano, 1995, p. 16). Hitler envisioned his museum in Linz to be an extravagant centerpiece to Nazism. His objective was to emulate the grandeur of museums located in Munich, Nuremberg and Berlin for his own museum in Linz. The artwork Hitler rejected for his museum had gone to private collections of Nazi officials to decorate their offices or homes, sold or exchanged

on the European art market, or brought to Galerie Nationale du Jeu de Paume warehouse for temporary storage.

Galerie Nationale du Jeu de Paume, Paris, France, once a museum of foreign avant-garde art, was used for a very different function after the German Occupation in 1940. The Einsatzstab Reichsleiter Rosenberg Für die Besetzten Gebiete (ERR) was a group who took orders directly from Nazi Ideologue and Party leader Alfred Rosenberg. Hitler's governing style was based on calculation, greed, and competition. He often assigned several rival branches in government to the same task, and yet Hitler retained command and expertise over all divisions. This is exactly what occurred when Hitler assigned three separate government branches to oversee the confiscated art in Occupied France: the Kunstschutz, which took orders from Wehrmacht; the German embassy in Paris, which took orders from the Ministry of Foreign Affairs; and the ERR. The ERR in the end dominated the other two governmental branches under Hitler, and with the help of Hermann Wilhelm Goering, embarked on the largest confiscation of artwork from the most prominent Jewish collections (Feliciano, 1995).

The ERR used Jeu de Paume as space to deliver, sort out, and select the spoils gained through Nazi art looting. Some of the artwork was considered to be degenerate, (including works by Marc Chagall, Pablo Picasso, and Max Ernst) and these paintings were entered into the flourishing Parisian art market. Switzerland also had a prime market for illicit trafficking of artwork and objects. According to Swiss law, an owner in good faith after five years of possession is considered to be the rightful owner of the work in question; this obviously provided a place of security for both buyer and dealer. According to Feliciano,

the Parisian art market was the place to hoard priceless items, and Switzerland served as an outlet and refuge (Feliciano, 1995). Feliciano states that numerous works of art went to Switzerland and have remained in depositories of its citizens. Other works of art placed on the Parisian art market can be seen in Swiss museums by everyone publicly, yet still unattainable, and there are some that are simply misplaced (Feliciano, 1995). Unfortunately many of the paintings were purchased by dealers from various countries and switched hands so many times their trails have been lost.

Hector Feliciano, in *The Lost Museum* (1995), investigates and portrays the systematic hunt and confiscation of five private art collections belonging to French Jewish families and art dealers. The collections of the Rothchilds, the Paul Rosenbergs, the Bernheim-Jeunes, the David-Weills, and the Schlosses were selected by the Nazi party because of their size and importance. These collections were considered by the Nazis as top collections and included paintings by Vermeer, Delacroix, Cèzanne, Manet, Degas, Monet, Renoir, Picasso, and Bonnard. Although these five collections were targeted for their high quality, German forces plundered approximately twenty percent of Western art, as well as millions of books, manuscripts, furniture, and other cultural property that were taken across Europe² (Feliciano, 1995). According to Kenneth Alford, author of *Nazi Plunder: Great Treasure Stories of World War II*, “The artwork alone, looted under Adolf Hitler’s direction, exceeded the collections amassed by the Metropolitan Museum of Art in New York, The British Museum in London, the Louvre in Paris, and the Tretiaskov Gallery in Moscow (Arnold, 2001)”

² The total cost of items, some of which were one-of-a-kind pieces, is estimated to be billions of dollars.

At the start of the War, these five private art collectors stated by Feliciano as well as many others began to break down their collections and move them to more secure areas. Some sent a number of the major works to French national museums under the protection of the Director who forged documentation that ensured the paintings were donations; others sent their collections to countryside châteaux and warehouses, and yet others sent pieces to London and the United States. Unfortunately, most places in Europe were not left unturned by the Nazis, and the artwork was seized and sent to Jeu de Paume, France.

After the war, the Allies called for action on the restitution of confiscated works. The artwork found was carefully identified and returned to the various country governments where, in turn, it was the government's duty to give the artwork back to the owners. In the postwar years, the Allies and western restitution organizations examined and investigated thousands of paintings, sculptures, art objects, furniture and books that were sequestered by the Third Reich, and returned the artwork to their rightful owners.

While Nazis systematically looted artwork, they also kept highly detailed documentation of their looting, providing the Allies with a great start in returning objects. One particular document is the Schenker Papers (Appendix A), which proved to be a gold mine of information including records and documents from one of the largest transporting companies specializing in the shipment of stolen goods.

In addition to research in France, there were volumes published about artwork stolen between 1939-1945. Between June and August of 1946, the exhibition "Masterpieces from French Collections Found in Germany by the Commission for Artistic Recuperation and Allied Organizations" showcased 283 confiscated works of art at the Orangerie Museum in

Paris, France. The publicity from the press and museum visitors alerted the rightful owners about the pillaged art (Feliciano, 1995, p. 223). To further help in the return of Nazi looted art, museums in France placed unclaimed paintings among their public collections in an exhibition to help publicize the artwork that is still without known ownership. Additionally, a government decree in September 30, 1949, specified the Louvre and other museums would be *détenteurs précaires* , or “precious holders,” as well as protectors of the artwork (Feliciano, 1995, p. 224). The museums were also under other obligations to exhibit the artwork soon after receipt and to establish a provisional inventory. The majority of paintings were eventually returned to their owners or heirs. However, many remain in private hands, having never been found nor claimed by their owners.

III. Procedures and Policies

A Government intervention: Washington Conference on Holocaust Era Assets

For decades the search for art confiscated by the Nazis was the effort of only Holocaust survivors and their families. In the 1990's the unresolved issue of Nazi looted art reemerged and brought about a new found awareness of unrestituted works when war records that were previously classified were made available. Nicholas in "The Rape of Europa" and Feliciano in "The Lost Museum" both investigated the issues of unclaimed Nazi looted artwork, brought the investigations to the public's attention, and refueled families to reclaim what was rightfully theirs.

Nicholas states:

after the mid-fifties the question of Nazi loot was no longer of great interest except to museum professionals and dispossessed owners, though sporadic finds and returns did cause little flurries...For a long time there was little further news of the fate of missing objects...in all nations, most of the records relating to confiscation and recovery lay classified and often sealed for terms of fifty years or more. The United States Army retired and then destroyed files on which there had been no action for a number of years...The search for missing works of art still goes on. This is, therefore, a story without an end. It has been sixty years since the Nazi whirlwind took hold, sweeping the lives of millions before it. Never had works of art been so important to a political movement and never had they been moved about on such a vast scale, pawns in the cynical desperate games of ideology, greed, and survival. Many were lost and many are still in hiding. The miracle of it

all is the fact that infinitely more are safe, thanks almost entirely to the tiny number of “Monument men” of all nations who against overwhelming odds preserved them for us (Nicholas, p. 442-444).

Feliciano states:

I wanted to solve the numerous mysteries surrounding these artworks, follow and tell the full details of the persons and collections involved....What I quickly discovered was that to reconstruct these events, you had to find out step by step, exactly what had happened to these collections. Putting them back together again has been like finding long-lost pieces to a puzzle...Each looted individual, each confiscated collection, each and every seized painting, has a unique history. They all merit their own separate accounts and investigation...It has been a personal pleasure to have solved some of this puzzle. I wrote this book out of a sense of justice, and it is an unexpected satisfaction to know that it has helped increase interest in the Nazis’ confiscation of art while helping some families in Europe and the United States to reclaim their looted paintings...Investigative journalism doesn’t so much discover as contribute, connect, establish links, and, finally, disclose. Such has been my intent from the start (Feliciano, 1995, 8-10).

In the last few years Nazi looted art has become a serious international issue. This concern of Nazi looted art reached new heights when the U.S. Department of State and the United States Holocaust Memorial Museum co-hosted an international government-organized conference, the Washington Conference on Holocaust Era Assets (November 30 - December 3, 1998) in Washington, D.C. The conference gave new vigor to the work of restitution (Appendix B). Forty-four governments and thirteen non-governmental

organizations participated and addressed issues of assets taken by the Nazi party, specifically arts and cultural property. This conference highlighted the unprecedented scale of losses that occurred during World War II and to an extent have not yet been remedied. The conference concluded with the establishment of a set of principles that were created in order to assist in resolving conflicts about Nazi looted art.

The principles included:

(1) Art that had been confiscated by the Nazis and not subsequently restituted should be identified; (2) Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.; (3) 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; (4) 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; (5) 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; (6) Efforts should be made to establish a central registry of such information; (7) 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; (8) 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; (9) If the pre-War owners of art that is found to have been confiscated by the

Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution; (10) 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; and (11) Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues (U.S. Department of State, 1998).”

ICOM, PCHA, AAMD leave their mark on Nazi looted art

Alongside the *Washington Conference Principles on Nazi-Appropriated Art* (released in connection to the Washington Conference on Holocaust-Era Assets 1998), three other documents served as a starting point for the eventual guidelines created by the American Association of Museums. These include: International Committee of Museums (1999), *Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners*; Presidential Advisory Commission on Holocaust Assets (2000), *Plunder and Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report*; and Association of Art Museum Directors (1998), *Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)*. The National Committee of the International Council of Museums (ICOM), the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA), and Association of Art Museum Directors (AAMD) have encouraged museums to develop and execute policies for their own museums that address the issues in congruence with these guidelines. These organizations provide advice for museums that find objects of questionable appropriation in their collections and urge

museums to (1) identify all objects in their collection that were made before 1946 and that entered the museum after 1932, that have changed ownership between 1932 and 1946, and that have been in Europe during those dates; (2) make the provenance information accessible for all objects; and (3) allow for the continuance of provenance research. The guidelines also encourage museums to make collection information accessible globally and create a database to organize the information in order to aid in the recovery of Nazi looted art as well as to make archives and other resources available. These guidelines urge museums to resolve questions of provenance meticulously and methodically as new documentation is made available. They also encourage museums to find information that helps determine the status of an object regardless of what party will benefit in the end.

International Committee of Museums (ICOM)

In December 1998, the National Committee of the International Council of Museums (ICOM) discussed the issue of artwork confiscated from Jewish owners during World War II and kept in museums or other public collections. ICOM made recommendations to museums and museum professionals concerning Holocaust-Era artwork such as:

to actively investigate and identify all acquisitions of a museum, especially those acquired during or just after the Second World War, that might be regarded as of dubious provenance (notably objects once belonging to Jewish owners and stolen, looted or removed forcibly); to make such relevant information accessible to facilitate the research and identification of objects of doubtful provenance by potential rightful owners or their

heirs; to actively address and participate in drafting and establishing procedures, nationally and internationally, for disseminating information on these objects and facilitating their rightful return; to actively address the return of all objects of art that formerly belonged to Jewish owners or any other owner, and that are now in the possession of museums, to their rightful owners or their heirs, according to national legislation and where the legitimate ownership of these objects can clearly be established (ICOM, International Council of Museums, 1999).

Presidential Advisory Commission on Holocaust Assets (PCHA)

The Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) was created in June 1998 to study and report to the President of the United States of America on issues relating to the assets of Holocaust victims' in the United States. The AAMD and AAM worked with the PCHA to establish a standard for disclosure of collections information to assist in the discovery and identification of objects that were unlawfully appropriated. In January 2001, the PCHA issued a final report that recommended the creation of a central registry of the information museums disclose. The PCHA specifically states that the foundation should undertake the following:

(A) provide centralized repositories for research and information about Holocaust-era assets; (B) promote the development of tools to assist individuals and institutions to determine the ownership of Holocaust victims' assets; (C) work with the private sector to develop and promote common standards and best practices for research on Holocaust-era assets; (D) the Federal government should promote the review of Holocaust-era assets in federal, state and private institutions, and the return of such assets to victims or their heirs;

(E) the Federal government should preserve archival records of the Holocaust era and facilitate research into such records, (F) the Department of Defense should be prepared to address similar issues in future conflicts, (G) the United States should continue its leadership to promote the international community's commitment to addressing asset restitution issues, (H) the President should urge Congress to pass legislation that removes impediments to the identification and restitution of Holocaust victims' assets (PCHA, 2001).

The Association of Art Museum Directors (AAMD)

June 4, 1998, The Association of Art Museum Directors (AAMD) also developed a set of guidelines to help museums in resolving claims, reconciling interests of individuals along with the fiduciary and legal responsibilities of art museums toward the public for whom they hold works of art in their trust (AAMD, 1998, para. 1).

The main categories within the guidelines are:

(A) research regarding existing collections; (1) as part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted; (2) member museums should thoroughly search their own records, and take additional steps to contact all databases, archives, auction houses, donors, and art historians who may be able to identify and provide vital provenance information; and (3) the AAMD recognizes

that research will take years and in some instances research will be inconclusive. The AAMD will address such matters and how to facilitate it.

(B) Future gifts Bequests, and Purchases; (1) as part of standard research of art: (a) museums must ask donors to provide as much information as possible regarding the provenance of artwork; (b) member museums should ask sellers to provide as much information as possible with regard to Nazi-era artwork; (2) where provenance is incomplete for Nazi-era all gifts, bequests, and purchases, the museum should search available records and consult registries of unlawfully confiscated art; (3) As consistent with current practice, museums should publish, display and make accessible all recent gifts, bequests, and purchases thereby allowing them to be researched and examined;

(C) Access to museum records; (1) member museums should make possible easy access to provenance information of all works of art in their collections;

(D) Discovery of unlawfully confiscated works of art; (1) if museum discovers an illegally confiscated work of art in its collection and has not been restituted, the museum should make information public; (2) if a legitimate claimant comes forward, the museum should offer to resolve the matter in a reasonable, appropriate and agreeable manner as well as make information public if a work is determined to be illegally confiscated; (3) if no claimant comes forward, the museum should openly acknowledge history of artwork on all labels and publications;

(E) Response to Claimants; (1) if a member receive a response from a claimant about an illegally confiscated artwork during the Nazi-era, it should seek review of claim immediately and request evidence of ownership from claimant; (2) if after working with claimant, object is determined to have been illegally confiscated during the Nazi-era and not restituted, the museum should resolve matter in a agreeable manner; and the last category

(F) Incoming Loans; (1) museums, when preparing for an exhibit, should review all provenance history regarding incoming loans; and (2) member museums may not borrow works of art that are known to be unlawfully appropriated and not restituted (AAMD, 1998, "Guidelines," Sections A-F).

The AAMD also encourages museums to create a database that would include claimant names, works of art illegally confiscated, and works of art eventually restituted. The database would be essential for the research of unlawfully confiscated artwork during World War II.

The American Association of Museums: The Guidelines

Starting in November 1999, and encouraged and motivated by the Washington Conference of 1998, the U.S. National Committee of the International Council of Museums (ICOM), the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA), and the Association of Art Museum Directors (AAMD), the American Association of Museums (AAM) established "Guidelines Concerning the Unlawful

Appropriation of Objects During the Nazi Era” (Appendix C) for its affiliated members in order to achieve the highest standards of legal and ethical museum practices in regard to the discovery and publicity of possible looted artworks in their collections. The AAM guidelines were implemented in order to assist museums in addressing issues related to objects that have been unlawfully appropriated during the Nazi Era (1939-1945). According to the AAM Code of Ethics, “the stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal;” therefore, when faced with an object of questionable appropriation found in a museum’s custody, it is paramount that museums practice ethical stewardship. In order to identify and discover Nazi looted art in museums, the AAM suggests museums should strive to:

- (1) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, “covered objects”);
- (2) make currently available object and provenance (history of ownership) information on those objects accessible; and (3) give priority to continuing provenance research as resources allow (AAM, 1999, pp. 3-4).

The AAM also agreed that initial research should be focused on European paintings and Judaica as well as to urge museum collections to be accessible through internet portals. The four major categories in the guidelines are:

(A) Acquisitions in which, museums should take all reasonable steps to resolve the Nazi-era provenance status of objects before acquiring them for their collections whether by purchase, gift, bequest, or exchange; (B) Loans, in their role as temporary custodians of objects on loan, museums should be aware of their ethical responsibility to consider the status of material they borrow as well as the possibility of claims being brought against a loaned object in their custody; (C) Research existing collections museums should make serious efforts to allocate time and funding to conduct research on covered objects in their collections whose provenance is incomplete or uncertain; and (D) Claims of Ownership, museums should address claims of ownership asserted in connection with objects in their custody openly, seriously, responsively, and with respect for the dignity of all parties involved. Each claim should be considered on its own merits. (AAM, 1999, pp. 3-5)

These guidelines set forth by the AAM are intended to facilitate the aspirations and capabilities of museums to act ethically and lawfully as stewards of the objects in their care and collection, and should not be construed to place an undue burden on the ability of museums to achieve their missions (AAM, 1999, p. 3)

The Met and Philippe de Montebello

Philippe de Montebello, former Director of The Metropolitan Museum of Art³, released a statement on April 12, 2000 (Appendix E), explaining the museum's efforts and reassuring the public that the museum will do everything possible to seek the answers and justice to this quest of returning artwork to its rightful owners.

Montebello (2000) states:

And to this end we are releasing today a list of all the European paintings in the Met's collection for which full information about ownership during the Nazi era is still incomplete after 18 months of renewed research. The list has now been posted on our Web site. I would like to emphasize here, and to do so emphatically, that this list is not a list of "suspect" pictures. To so portray them would be to do a serious injustice to their donors, to the museum-going public, and to truth itself. Rather, the inclusion of a painting on this list indicates only that more information is required to complete our knowledge of its ownership during the Nazi era. Our list is an invitation for information that might help fill the elusive gaps during the Nazi era. Moreover, the list, which numbers 393 paintings, represents what remains in question after review of all of the 2,700 European paintings in the collection.... let me reiterate, in closing, our profound conviction that the unlawful and immoral spoliation of art during the Nazi period remains a bitter part of the horrific memory of this tragic time, and let me renew the Metropolitan Museum's pledge that every effort will be made to try to locate still-missing works of art. To this end, we sincerely hope that the list of paintings we have just released, paintings about which we seek more

³ The Detroit Institute of Art also provides a detailed listing of all European paintings where provenance indicates a change in ownership between 1939-1945 to ensure that the DIA does not retain Nazi looted art. (DIA.org)

information, will prove a useful resource in arriving at the truth and ensuring justice (para. 7-8).

American Association of Museums: Online Database

Similar to the Metropolitan Museum of Art's online database referenced by Montebello, the AAM implemented "AAM Recommended Procedures for Providing Information to the Public about Objects Transferred in Europe during the Nazi Era" (Appendix D) for listing incomplete provenance history of objects during 1939-1945. The procedures were formulated in December 2000 by the American Association of Museums after an agreement was reached in October 2000 between the AAM, the Association of Art Museum Directors (AMMD), and the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA). The parties concurred that the initial focus of these procedures, research and online postings should be on European paintings and Judaica. The provisions of the agreement are as follows:

(a) on the desirability of expanded online access to museum collection information that could aid in the discovery of objects unlawfully appropriated during the Nazi era, (b) on the need to identify the categories of objects for which this information should be made available, and (c) toward those ends, that every museum should (1) identify objects in their collection that were created before 1946 and underwent a change in ownership between 1939-1945, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, "covered objects"); (2) make currently available object and

provenance (history of ownership) information about covered objects accessible online; and (3) give priority to continuing provenance research (AAM, 2000, "Provisions of Agreement," para. 2).

The AAM assembled a task of museum professionals and experts to advise staff on developing procedures for making object provenance information accessible on museum websites and to making all information accessible to the public through a single online database. The task force acknowledged 20 categories of information about objects of questionable provenance in a museum's collection. These procedures call for investigation into the object's ownership history, and provenance of all art objects in museums that have a change in ownership in Continental Europe between 1933 to 1945.

The twenty categories are:

(1) category, (2) artist/maker, (3) nationality of artist/maker, (4) life dates of artist/maker, (5) place or culture of object, (6) object title/ name, (7) date of work, (8) medium/material, (9) measurements, (10) date of acquisition, (11) accession number, (12) object type, (13) subject type, (14) signature and marks, (15) labels marks, (16) description, (17) provenance, (18) exhibition history, (19) background history, (20) other relevant information (anything useful in identifying object), and image for their collections; museums are encouraged to add additional information available (not just the specified twenty categories) to further assist the process of discovery (AAM,1999, "Recommended Procedures," para. 4).

The highlight of the AAM procedures was the development of an extensive provenance research database in 2000, Nazi-Era Provenance Internet Portal (NEPIP). Its mission states that the NEPIP “provides a searchable registry of objects in U.S. museum collections that changed hands in Continental Europe during the Nazi era (1933-1945). By providing a searchable online registry of objects, the Portal helps U.S. museums fulfill their responsibility to make information about objects in their collections centrally accessible (AAM, 2003, “U.S. Museums,” para. 1).” Each museum will be able to control the research, presentation and maintenance of the information about their collections, which allows museums to organize their information according to their own preferences and explain their own avenues of research. The registry according to its records currently lists 28281 objects from 169 participating museums. The portal allows the public to search by artist, culture of object, nationality of artist, description and object type, or by specific museum. The information provided will be basic information posted by the museum as well as links to further information also controlled by the museums. Several museums in response to the new AAM stance on Nazi-era art have issued statements to the public regarding their own efforts in re-examining their collections for unlawfully confiscated artwork by the Nazis that was never returned.

Both the guidelines and procedures provide the museums with the proper steps and tools in order for them to take responsibility for their collections and to rectify problems regarding unlawfully appropriated Nazi era art. The Metropolitan Museum of Art is one of an outstanding few (for its thoroughness) that have listed all European paintings in its collection that does not contain full information about ownership during the Nazi era after

months of renewed research. The AAM suggests that in order to resolve such conflicts with a competing party the museum should strive to maintain a calm and cooperative climate. In fact, the AAM state; “When appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims that an object was unlawfully appropriated during the Nazi era without subsequent restitution (AAM, 1999, pp. Section 4, part E).” Unfortunately some cases do end up in court.

IV. Museums That Give Back

Museums are expected by the Washington Conference to seek “fair and just solutions” to Nazi-era claims. This approach and many others outlined by the Washington Conference are termed “soft laws” because they are based on the moral code of the claimant (Rowland, 2009). The moral aspect of such claims, and of the subject of Nazi looted art itself, is what forces museums to purge their collections of such artwork. Alongside the moral aspect, a guarantee of positive publicity for the museum is a highly motivating factor in returning artwork to pre-war owners or heirs. The moral aspect, the conduct between right and wrong, is intertwined within the International Committee of Museums (ICOM) Code of Professional Ethics which asserts, “in all activities, museum employees must act with integrity and in accordance with the most stringent ethical principles as well as the highest standards of objectivity (ICOM, 1999, para. 2).”

As previously discussed, the guidelines set forth by the American Association of Museums (AAM) explicitly state that museums, adhering to the highest public trust, must practice ethical stewardship regarding their collections which includes comprehensive and accurate documentation and proof of ownership. The guidelines stress the importance of transparency concerning questionable artwork. The AAM issued a statement that encourages museums to take whatever action necessary to resolve conflict without ending in litigation. It is recommended by the AAM that museums should consider and apply all other methods for resolution before taking legal action in order to resolve claims of unlawfully appropriated artwork by families in Nazi Germany (AAM, 1999, pp. Section 4,

part E). The implementation of such guidelines and the delicate nature of Nazi looted art almost demand that museums always return artwork where no clear transfer of title was recorded creating an incorrect provenance history of the artwork during the years 1939-1945. It can be said that the return of Nazi looted art is the fallback position of museums which has both positive and negative effects.

Publicity involves the representation of the museum and the preservation of its positive reputation as an institution. Museums are established to serve society and their community, and therefore they are held up to a high ethical and moral standard by the public they serve and by the associations of which they are a part. This is the ideology behind such decisions like returning artwork to families who have lost their belongings during World War II. Included in this dilemma are the National Gallery of Art in Washington, D.C., the Virginia Museum of Fine Arts, and the North Carolina Museum of Art. In each one of these cases the museums the artwork was returned.

On November 20, 2000 The National Gallery of Art in Washington, D.C. followed the path that many museums have walked down before—returning artwork to heirs of families plagued by the Nazi regime. The artwork in question was a seventeenth century Flemish painting by Frans Snyder, “Still Life with Fruit and Game,” (1615) originally owned by Marguerite Stern, a widow of a Jewish banker in Paris, France whose art collection was seized by the Nazis (see Figure 2). How the painting arrived in the museum’s collection is not an unusual story for works of art stolen by Hitler and the Nazi party. During the year 1940 the Nazi party seized hundreds of works from the Stern family’s apartment in France. According to archival records, the painting in question was taken from the then widowed,

Marguerite Stern, and registered at Jeu de Paume on May 3, 1941. On June 17, 1941 the Snyder painting was traded in a deal with a Berlin-based art dealer, Karl Haberstock, where it then switched hands again to another dealer linked closely with the Nazi party, Baron von Pöllnitz. In 1968 the painting was sold through a third party to Hermann Shickmann who in 1990 donated the painting to the National Gallery of Art for its fiftieth anniversary celebration. While doing research on an upcoming exhibition, curator Arthur Wheelock, discovered the missing link that connected the painting with Haberstock. Once this connection was verified, it immediately raised red flags for museum officers, and in turn, the museum posted their findings on the museum website that documents in meticulous detail the provenance of artwork acquired after World War II (in accordance with AAM guidelines and recommendations). A family member of the Stern family stumbled upon the Snyder painting a few months after its posting on the Museum's website. With sufficient evidence, including an "ST" printed on the back of the painting signifying Stern ownership, the heirs of the Stern family were reunited with their ancestral belonging (Bohlen, 2001).

In this case The National Gallery chose to forego a lengthy court battle in order to keep the painting in their collection, a decision that is extremely common among museums. Earl A. Powell III, Director of The National Gallery of Art at the time, settled the claim without court intervention stating, "after researching this as exhaustively as we could, this was simply the right thing to do. There was very little to dispute." According to the Stern family, the National Gallery responded to the claim in a prompt manner.

In another case, the Virginia Museum of Fine Arts returned a painting to the descendents of rightful Polish owners. The owners stated:

We are extremely grateful to VMFA for its efforts to address the issue of looted and displaced works of art, conducted according to the highest standards of scholarship and in the spirit of upholding the principles of public trust, openness and transparency (VMFA, 2005)

In the case of the North Carolina Museum of Art, heirs of Philipp von Gomperz were “ecstatic” that the museum was able to help correct “a huge injustice” that took place during their lifetime (Yellin, 2000, para. 8). Such museums have received high praise and admiration from both the media and public for their swift and legal free approach to returning Nazi looted art.

Unfortunately for every good deed done there are always some negative consequences that arise for museums. Similar to other restitution cases, many museums fear that once they begin to return Nazi looted artwork to the rightful owners it will cause a catalyst for other claims. The Detroit Institute of Art alone has received over five claims for pieces by Claude Monet, Vincent Van Gogh, Ludolf Backhuysen, and Paul Cezanne (Beal, 2009) all because they have in the past set a precedent for returning artwork to victims of the Holocaust or their descendents.

In some instances heirs are providing museums with a different argument of “forced sale” (Yip and Spencer, 2008, para. 1). For instance, the family of Mrs. Martha Nathan tried to regain the painting, “The Diggers,” but evidence reported that Mrs. Nathan willingly sold the painting before she fled for safety (IFAR, *Detroit Institute of Art v. Ullin*, 2007). This case is discussed further in greater detail on page 37.

Museums must be careful about claims that are false either in facts or family history. As Sharon Waxman author of “Loot” (2008) has stated, “the real fear is that repatriating them and other treasures would open the door to the emptying not only of the British Museum but of all the great museums of the world (Waxman, 2008, p. 270).”

V. Museums that Contest Returns

Although the American Association of Museums explicitly states, “When appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims that an object was unlawfully appropriated during the Nazi era without subsequent restitution (AAM, 1999, pp. Section 4, Part E).” However, some cases do end up in court. Museums mostly bring restitution claims to court if they feel that the claim is invalid or unfounded. Since Nazi looted art is a delicate topic, museums must be very confident in their own information to almost guarantee that the artwork will remain in their possession. There are a handful of museums including the Detroit Institute of Art, Toledo Museum of Art, and Metropolitan Museum of Art that have taken a stand for their collection and for the people they serve by denying claimants their initial requests for restitution. However, these instances lead to legal moderators or litigation. The museum can contest the return of works of art because they feel they are risking their reputation for the betterment of their institution, and practicing their moral and ethical vows of stewardship. The British Museum states “that some artefacts symbolize the cultural heritage of all humankind through the ages in the world’s museums and private collections (Belegriou, 2009, para. 3).” The bad publicity aspect of this dilemma is the damage that can be inflicted on the institution’s reputation. No museum wants to be associated with legislation by being portrayed as enemies to the public. One museum that has challenged the return of artwork is the Detroit Institute of Art.

In the 1990's a new wave of Nazi looted art claims came to the forefront after previously classified war records were made available. This thesis will describe The Detroit Institute of Art vs. Ullin court case as an example of a museum that contested the return of Nazi looted artwork.

The heirs of Martha Nathan asserted claim over Vincent Van Gogh's "Les Becheurs," 1889 (also known as "The Diggers"). The painting was being held in the collection of the Detroit Institute of Art (See Figure 3). Martha Nathan was the wife of Hugo Nathan, a well-known German art collector who died in 1922, leaving his wife his entire collection with the purpose of selling some of the works in order to have financial security. In 1937, Martha fled to Paris from Nazi Germany. In 1938, she returned briefly in order to sell her home and was then forced by the Nazis to donate six paintings to the Staedel Institute. *Les Becheurs* was not included as she had moved the painting to her home in Switzerland. Before moving to Switzerland herself in 1939, where she planned to stay for the duration of the war, Martha sold several paintings to three prominent European art dealers. During this exchange the Van Gogh ("*Les Becheurs*") in question was sold. The dealer bought the work for 40,920 Swiss Francs, approximately \$9,360 dollars. In 1941, the dealer, George Wildenstein sold the work to Robert Tannahill, a Detroit collector, for \$34,000 dollars. In 1969, Tannahill died and donated the work to the Detroit Institute of Arts. Once the war was over, Martha Nathan actively persisted in regaining her wartime losses. She requested compensation for her forced leave of Germany, her home, the paintings confiscated by the Staedel Institute, and other household items. Interestingly,

she never filed claim for the van Gogh painting. Martha Nathan died in 1958. (IFAR, Detroit Institute of Art v. Ullin, 2007)

In 1999, in accordance with the AAM guidelines, the Detroit Institute of Arts posted artwork with the Nazi-era provenance on its website. In May 2004, the heirs of Martha Nathan contacted the Institute insisting they were the rightful owners of “Les Becheurs.” The Detroit Institute of Art reviewed history of the painting and rejected the claim. The claim was then brought to Federal Court in Michigan. The heirs claimed conversion⁴, restitution⁵ and declaratory judgment⁶ insisting either the return of the painting or monetary compensation for their loss. The family lawyer, David J. Rowland, argued that the sale would not have taken place if it were not for Nazi persecution. Consequently because Martha Nathan was forced to sell the painting to survive, she sold the painting for significantly less than market value. The United States District Court Judge, Denis Page Hood, declared that the heir’s claim was disqualified by the Michigan statute of limitations⁷, which in Michigan is three years. The Michigan Court also stated

⁴ Conversion- a civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying "steals." Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft. ([Http://dictionary.law.com](http://dictionary.law.com))

⁵ Restitution- 1) returning to the proper owner property or the monetary value of loss. Sometimes restitution is made part of a judgment in negligence and/or contracts cases. 2) in criminal cases, one of the penalties imposed is requiring return of stolen goods to the victim or payment to the victim for harm caused. Restitution may be a condition of granting a defendant probation or giving him/her a shorter sentence than normal. (Black’s Law Dictionary, 4th Edition)

⁶ Declaratory Judgment- a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages. While this borders on the prohibited "advisory opinion," it is allowed to nip controversies in the bud. Examples: a party to a contract may seek the legal interpretation of a contract to determine the parties' rights, or a corporation may ask a court to decide whether a new tax is truly applicable to that business before it pays it. (Black’s Law Dictionary, 4th Edition)

⁷ A law that bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predic

that the discovery rule⁸ does not apply in this case because the heirs should have discovered their claim in 1973 when the Nathan estate made additional claims. The heirs also contended that the DIA waived their statute of limitations argument when they posted the work on their website. The heirs saw this as an invitation to claim their family's artwork. The court ruled that the claim was without merit and the case was dismissed. In Michigan, a waiver is "'intentional abandonment of a known right,' and the museum did not intend to waive that defense (IFAR, Detroit Institute of Art v. Ullin, 2007)."

One's sympathies can lie with the families who were forced to give up their possessions by the Nazis. One cannot know if Mrs. Nathan would ever have sold *Les Becheurs* if not for Nazi persecution, but the fact remains that no claim was submitted in 1973 for the painting along with the rest of Mrs. Nathan's belongings. This small but important bit of evidence weighed heavily in the Federal Court at Michigan. The Court ruled in favor of the museum on March 31, 2007. In May 2007, the heirs made a statement stating that they would drop the appeal of this court case and that they have requested that their claim be looked at by an impartial expert. The painting can still be found in the Detroit Institute of Arts (IFAR, Detroit Institute of Art v. Ullin, 2007).

For many families, a listing of the correct provenance provides them with a sense of validation for their claims and a sense of closure for families who have lost relatives in the Holocaust. Museums that contend the return of Nazi looted art are acting in accordance with its purpose of being established for the public trust and for public service. As

tability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. 2) A statute establishing a time limit for prosecuting a crime, based on the date when the offense occurred (IFAR.org)

⁸The rule that a limitations period does not begin to run until a plaintiff discovers (or reasonably should have discovered) the injury giving rise to a claim (IFAR.org).

museums they are required to put the objects above all else; promising to practice due diligence regarding their collections. By allowing museums to keep Nazi looted art, there is a guarantee for the objects safety, care, practice of good stewardship and assurance that the object will be there for its primary purpose which is to educate and be showcased for the public. Of course, AAM policy states that each custody case has to be decided on its own merits, but when proof of ownership is provided by claimants the museum is legally obligated to return artwork otherwise it is considered theft. According to the International Council of Museums (ICOM) a museum is “A non-profitmaking, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment (ICOM, 2007, para. 1).” The stewardship of collections that is promised by museums is ensured when museums retain the objects in their collection. Philippe de Montebello, Director of the Metropolitan Museum of Art (1977-2008), likened objects with no known provenance to “orphans.” He stated: “as archaeologists have said, these unprovenanced objects are orphans, as their parentage, through the absence of a known find spot, is lost. But would these same archaeologists abandon a shivering orphaned child on the cold rainy day in the street?” Mr. de Montebello concluded, “we museums are the orphanage of these objects (Berman, 2006).” De Montebello’s statement suggests that these objects will remain as “orphans” until research points to “parents.” Although de Montebello was referring to the pursuit of antiquities by museums, the same mentality can be said for museums that keep Nazi looted art; unprovenanced or murky provenances are orphans and it is the museum’s fiduciary

duty to protect their collections until true families of the art are acknowledged and the artwork is rightfully returned.

VI. A Compromise

The Detroit Institute of Art (DIA) provided one instance that resulted in a successful reconciliation. The museum contested to keep the artwork and the family received recognition for its loss. Many other museums have followed the path that the DIA paved, including the Metropolitan Museum of Art. These two museums primary goal is to keep the objects in their collection in order to provide a holding place for people to see priceless works of art, and, in turn, the artwork makes the collection more prominent. However, it must be noted that in cases of Nazi looted art museums are holding stolen property that are not legally, morally, or rightfully theirs to keep. Some museums anticipate possible actions that are taken by claimants and successfully reach a compromise.

Nazi looted art is a colossal and challenging issue and as with all complicated issues, often the best resolution is a compromise between the offended parties. The Kunsthalle Museum in Emden, Germany; The Museum of Fine Arts, Boston; the Chicago Institute of Art; the Montreal Museum of Fine Arts and the Budapest Museum of Fine Arts are all institutions that have found ways to achieve a conciliation that is mutually beneficial for all parties involved whether it be monetary compensation, part-purchase part-donation, or a joint-ownership agreements. Museums that try to reach a concession with the claimants are also striving to maintain their integrity as a public institution. Although it is a fine line to walk, these museums are redefining the practice of restitution now and creating new directions for the future.

Monetary Compensation

A common incentive generated by museums is to provide monetary compensation in order to continue to retain the artworks in their collection. Museums, if financially able, will offer to purchase the artwork in order to keep them in the public eye. However, a large majority of museums are suffering economically because of the current financial crisis, and to propose payment for a legal acquisition is impossible. One museum that was fortunate enough to have funds readily available to legally purchase and compensate a family for an artwork that was looted by the Nazis during the Holocaust was the Kunsthalle Museum in Emden, Germany.

“Bauernhof,” (See Figure 4) a painting by Emil Nolde was registered, as required for Jews by the Nazis, by Elizabeth Bamberger in 1938. The 1924 expressionist painting was left in the care of Mr. Wurzberger in 1940 when Mrs. Bamberger fled Germany in 1940. Mr. Wurzberger, a cantor in Mrs. Bamberger’s synagogue, died in the Holocaust and the painting was seized by a Nazi appraiser and vanished. Elizabeth Bamberger survived the Holocaust and ended up in Ecuador where she actively pursued her belongings and the search was continued by the next two generations of her family. The painting resurfaced in 1984 in the Kunsthalle Museum as a bequest from the Henri Nannen Foundation⁹ (Bohlen, 2002).

In 1999, Bamberger’s American grandson, David, contacted the Holocaust Claims Processing Office of the New York State Banking Department to research the theft of the painting. On December 2, 2002 the Kunsthalle negotiations with the Bamberger heirs

⁹ Henri Nannen Foundation was formed by the prominent German Journalist and collector. (Bohlen, Settlement On Painting Captured In Holocaust, 2002)

reached an agreement that has remained confidential. Through the private settlement the Bamberger family received compensation for the painting of an undisclosed sum. The painting will remain on display at the Kunsthalle with a plaque listing the correct provenance, which includes the Bamberger family as prewar owners (IFAR, 2002).

This situation and others with similar outcomes tend to please both parties involved. The museums are able to retain the objects to ensure the artwork's care, protection and accessibility while the offended families receive compensation for their losses and an official acknowledgment of their family's previous ownership.

Compromise: Part-Purchase, Part-Donation

Another agreement museums enter with heirs is a part-purchase, part-donation compromise. This type of arrangement allows for the museum to not only remain in possession of the artwork, but to gain legal title and ownership. The heirs also benefit from this type of negotiation. The heirs in a part-purchase, part-donation agreement receive monetary compensation for the artwork and a tax deduction because of the charitable donation. But beyond the economics of such a compromise the heirs are also publicly acknowledged as past owners of the artwork which emotionally is priceless. Two museums have successfully accomplished this type of compromise: The Art Institute of Chicago regarding a Francesco Mochi "Bust of Youth" and The Museum of Fine Arts, Boston regarding the painting "Adoration of the Magi" by Corrado Giaquinto.

In the months of February through June 2000, the descendents of Fedrico di Guiseppo filed separate claims with the Art Institute of Chicago and The Museum of Fine

Arts, Boston regarding a sculpture and painting, respectively. In 1941, upon the death of Federico Gentili di Guiseppe, the French court ordered an auction of all 155 works in his collection. In 1998, the heirs of di Guiseppe brought suit against the Louvre and the French government to have the sales of the auction voided. In 1999, the sales were invalidated by the French courts on the grounds that the family was unable to manage the estate due to German occupation of France.

In February 2000 the heirs of Fredrico Gentili di Guiseppe reached a compromise with The Museum of Fine Arts, Boston for the painting “Adoration of the Magi” by Corrado Giaquinto (c. 1725). Di Giuseppe’s heirs contested the legality of the auction and requested the return of a number of works, “including five paintings in the Louvre Museum, which a French court ordered returned to the family in 1999 (IFAR, 2000).”¹⁰ After receiving paintings from the Louvre and the Germaldegalerie in Berlin, the heirs contacted the Museum of Fine Arts, Boston (MFA). The MFA purchased the “Adoration of the Magi” in good faith in April 1992. Recognizing the purchase was made in good faith, the heirs agreed to another part purchase, part donation settlement in October 2000. The painting remains in the Museum of Fine Arts collection and a label was added acknowledging the past ownership of the painting.

The di Guiseppe family reached a similar compromise in June 2000 with the Art Institute of Chicago regarding the ownership of Francesco Mochi’s “Bust of Youth” (c. 1630). The Art Institute of Chicago purchased the sculpture in good faith in 1989 from a London dealer. Mochi’s “Bust of Youth” was part of the large collection that was

¹⁰ According to ArtNews Magazine (2000) the five paintings recovered by the Gentili di Guiseppe family included works by *Teipolo, Bernardo Strozzi and Alessandro Magnasco*. Four of the five pieces at the Louvre were sold for \$3.7 million at Christie’s auction house in New York City.

auctioned off by the French Government during Nazi occupation in 1941. The Art Institute of Chicago recognized the family's claim to the Mochi bust and, in a confidential settlement, retained the work through what the museum calls a "purchase and donation agreement." The museum paid an undisclosed amount to the heirs for a partial interest of the marble bust and in turn the family will donate the sculpture as the remaining partial interest to the institute (IFAR, 2000).

Co-Ownership or Joint Ownership

Another proposed compromise between families and museums or museums and museums, is a co-ownership, or a joint ownership. More than a decade ago, the State Museum in Budapest contacted the Montreal Museum of Fine Arts regarding a portrait that was believed to be stolen by the Nazis. The art in question was a small sixteenth century oil portrait, "Marriage Feast at Cana," by Giorgio Vasari (1511-1574) portraying Jesus turning water into wine. The Montreal Museum of Fine Arts purchased the painting fifteen years after World War II in good faith with a respectable accounting of the provenance history. This painting was part of the famous Esterhazy collection amassed by an important family of the Austro-Hungarian Empire. The painting is now estimated to be worth half a million dollars.

The State Museum in Budapest acquired the painting in 1870 and had in its possession complete documentation of purchase and exhibition history until the painting was lent to the Hungarian ministry of finance. In 1944, the ministry was bombed and the painting was believed to be destroyed. During World War II, the Nazis carted off many of

Budapest's treasures to Germany, and though many came back in the late 1940's, some were still missing. It was later discovered that a Hungarian collector apparently bought the painting for the equivalent of \$100 from a state-run consignment store in 1961. The Hungarian collector gave the painting to his daughter in Canada who sold it to Montreal's Museum of Fine Arts for \$2,000. According to Goldberg (2002), ever since officials saw the painting listed in the Montreal Museum of Fine Arts' new acquisitions in 1964, the State Museum in Budapest has been trying periodically to retrieve the painting back. (Goldberg, 2002)

In 1993, after Hungary's communist regime fell, the Montreal museum offered a co-ownership arrangement. However officials in Budapest rejected the proposition. In the end Montreal returned the painting and as part of the settlement Budapest will lend the Canadian museum anything they want including works of art that have never left Europe (Goldberg, 2002).

Although the Montreal Museum of Fine Arts and the State Museum in Budapest could not resolve the issue with a co-ownership compromise, these museums did reach an agreement that is beneficial to both parties. This court cases indicate a new way that museums are deliberators about repatriation. Such a resolution can be a positive step in honoring the current owners while simultaneously recognizing the previous owners (an individual or museum). A joint-ownership between museums also acknowledges the past and present care that the individual museums have given to the work. An agreeable arrangement between the claimant and museum, whether through part-purchase part-donation or a joint-ownership, is mutually beneficial for both parties; the museum is shown

in a positive light while retaining the object in their custody and continuing to uphold their obligations as a public institution. In this type of compromise, the Holocaust survivors or heirs of Holocaust survivors will be acknowledged for the wrongs that have been committed against their families, and will be recognized as owners of the art itself. The idea of a compromise, although it is a new approach and in its beginning phases as a plausible arrangement, is definitely a favorable option to be considered by both parties.

VII. Setting a Precedent

Nazi looted art is a relatively new phenomenon in the museum world. The first restitution case involving art confiscated during World War II was in 1950. However, it took another forty-eight years for museum organizations and government agencies to develop policies and procedures for the many artworks that have been displaced and stolen under the Nazi regime. The principles and guidelines that have been implemented in the last twelve years have had tremendous effect on other types of restitution cases that museums have had to navigate and resolve. It is only since 2000 that The American Association of Museums (AAM), Association of Art Museum Directors (AAMD) and International Council of Museums (ICOM) have all employed standards of professional practice and code of ethics involving cultural property. These very same organizations that implemented policies during the 1990s and revised through 2001 for Nazi looted art have provided a template for other procedures for different restitution cases. Museums such as the Denver Art Museum, the Metropolitan Museum of Art, the Peabody Museum of Natural History at Yale University, The J. Paul Getty Museum, and the University of Michigan Museum of Anthropology all possess procedures for illegally confiscated art that have been influenced by the earlier policies of Nazi looted art.

ICOM's New Policy

The International Committee of Museums (ICOM) developed and revised its own code of conduct for provenance documentation as a result of the implementation of Nazi

looted art policies. ICOM states, “every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in or exported from, its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item from discovery or production (ICOM, 2006).” Museums evolve their professional practices as the world changes, and it is the past policies regarding Nazi looted art that provide museums with guidance for future actions regarding restitution cases.

The AAMD’s New Report on Acquisitions

The AAMD revised its report as an outcome of the Nazi looted art policies, and included advice on cautious and careful documentation and knowledge of the collections provenance history. The AAMD states, “every effort should be made to provide information about the collection, to visually document it, and to respond appropriately to serious inquiries regarding it,” and “the director must ensure that best efforts are made to determine the provenance of a work of art considered for acquisition. The director must not knowingly acquire or allow to be recommended for acquisition any work of art that has been stolen, illegally imported into the jurisdiction in which the museum is located, or removed in contravention of treaties and international conventions to which the jurisdiction is signatory (Merryman, 2007, p. 236).”

Additionally, in 2008, The AAMD published, “2008 Report of the AAMD Subcommittee on the Acquisition of Archeological and Materials and Ancient Art.” The

new report recognizes that the United States and Canada have adopted the threshold date of 1970 (the same date declared in the Unesco Convention) for applying more rigid acquisition principles for antiquities. Museums that are members of the Association of Art Museums were given a directive to undertake provenance research to corroborate that the object was “outside the country of probable modern discovery before 1970 or was legally exported after 1970 (AAMD, 2008, p. 1).” The new report also states that members of the AAMD should not acquire works of art unless research validates that the artwork was outside the country of origin before 1970 or that the artwork was legally exported from its country after 1970 (AAMD, 2008, p. 1). Additionally, the AAMD “announces a new section of the AAMD website where museums will publish images and information on acquisitions of ancient works, in order to make such information readily and publicly accessible (AAMD, 2008, p.1).” Museums, in light of this execution by the AAMD, had to recheck their entire collections and actively inform the countries of origin if in fact stolen works appear during the inventory.

Denver Art Museum

The Denver Art Museum returned a looted wooden lintel to the Petén region of Guatemala. With only a few in existence, the lintel (carved ca. A.D. 550-650) was believed to be stolen between 1966 and 1968 from temple I near the site’s main plaza. The lintel was purchased by the Denver Art Museum in 1973, before the United States implemented laws regarding the prohibition of importing Pre-Columbian art. Lewis Sharp, Director of the Denver Art Museum stated, “When we gathered all of the information surrounding the

lintel's acquisition, returning it was simply the right thing to do (Schuster, 1999).” The lintel was welcomed back by the Instituto Guatemalteco de Antropología in a repatriation ceremony.

This decision, reminiscent of the National Gallery of Art in Washington, D.C., was voluntarily made in 1999 right around the time when the Washington Conference on Holocaust Era Assets, the creation of Presidential Advisory Commission on Holocaust Assets in the United States (PCHA), the conference in France by the National Committee of the International Council of Museums (ICOM), and the guidelines issued by the Association of Art Museum Directors (AAMD) and the Association of American Museums (AAM) all began addressing the issue of Nazi looted art and developing proper procedures for museums.

Peabody Museum of Natural History at Yale University

In 1911, Yale archaeologist Hiram Bingham rediscovered the grand Inca city Machu Picchu. The city was constructed in 1450 by the Inca elite and in the early sixteenth century the Inca Empire fell to the Spanish. In 1912, and again later in 1916, the Peruvian government allowed Bingham to carry out excavations at the site Machu Picchu as well as neighboring areas. Bingham received a written document from the Peruvian government granting him access to the site. He returned to Yale with over four thousand objects, of which three hundred and fifty were considered to be museum quality. The artifacts consisted of ceramic, stone, and metal objects as well as fragments of human remains (IFAR, Peru v. Yale University, 2009).

In 1921, Yale returned a large amount of the artifacts allegedly including everything from the 1916 excavation; retaining only objects for which Yale had full title. Peru contested this claim, contending that Yale did not return all artifacts. The Peruvian objects Yale retained were stored in the Peabody Museum of Natural History. In 2003, the artifacts were part of a traveling exhibition that highlighted Incan culture. The exhibit attracted over one million visitors nationwide. Peru, in that same year, publicly claimed the artifacts and commanded the return of the Inca objects, insisting that Yale's possession of them violated the decrees Bingham received. Peru and Yale immediately started negotiations regarding both the transfer of title and possession of some or all of the objects to Peru (IFAR, *Peru v. Yale University*, 2009).

An agreement was reached in 2007, which gives legal title of all the Inca artifacts to Peru. However, Yale would be permitted to keep possession of some of the lesser-quality objects for research. Additionally, the agreement established an extensive collaborative relationship between Yale and Peru, providing a co-curated international traveling exhibition. The admission fees will be put towards building a museum and research center in Cuzco, the city closest to Machu Picchu (IFAR, *Peru v. Yale University*, 2009). Yale's President, Richard C. Levine, commented on the agreement, "We aim to create a new model for resolving competing interests in cultural property... this can best be achieved by building a collaborative relationship — one which involves scholars and researchers from Yale and Peru — that serves science and human understanding (Kennedy, 2007, para. 6)."

Unfortunately the agreement collapsed when neither party could decide on which artifacts would remain at the Peabody Museum of Natural History. In December 2008,

Peru filed suit claiming that Yale's possession of the artifacts was in violation of the 1912 and 1916 agreements made between Peru and Bingham. Peru sought not only the return of all the objects, but monetary compensation. Yale asserted that the 1912 decree had carved out an exception to the Peruvian laws, and that the 1929 national patrimony law (which grants Peru legal title to all artifacts excavated in its borders) did not apply to these particular artifacts because the law was not in effect at the time of the excavations (IFAR, *Peru v. Yale University*, 2009).

In January 2010, Yale moved to dismiss the case because the Peruvian government had known of the artifacts taken by Bingham. Therefore, Yale contends that Peru's suit be barred by the three year statute of limitations in Connecticut, and Yale declared laches¹¹ on the grounds that it took Peru almost fifty years to file suit. The case is pending in the Federal Court in Connecticut. (IFAR, *Peru v. Yale University*, 2009).

Even though the initial agreement was terminated, this case is indicative of the joint-ownership position some museums try to negotiate. Similar to the Montreal Museum of Fine Arts and the State Museum in Budapest, Yale University and the Peruvian government attempted to reach a compromise that would serve as a model for not only international cooperation, but for setting an example of collaborative stewardship of cultural property. Unfortunately, like Nazi looted art restitution cases, the Yale University situation has wound up in court, but similar to Nazi looted art cases, the Peabody Museum is seeking litigation to resolve the claim that these artifacts were unlawfully appropriated without restitution, exactly what the AAM recommends. The Peabody Museum, like the

¹¹ Laches- unreasonable delay in pursuing a right or claim, almost always an equitable one, in a way that is prejudices the party against whom relief is sought. (Garner, 2004)

Detroit Institute of Art v. Nathan, is taking a stand on its collection and contesting the return of the artifacts because of an invalid claim.

Victorious Youth at the Getty Villa

In 1964 an Italian fishing trawler from Fano, a small seaside town, unexpectedly discovered a life-size bronze statue “Victorious Youth” (see fig. 5). The statue was most likely created in ancient Greece and lost at sea after the Romans looted the area. The bronze is now at the Getty villa, part of the J. Paul Getty Museum in Los Angeles (Povoledo, 2010, para. 1).

In January 2006, Italy approached the Getty with a list of fifty-two works that they believe to have been illegally removed from Italy and asked for their return. In August of the same year, the Getty Museum reached an agreement with Italy to return forty pieces that were repatriated. Not included in this agreement was the “Victorious Youth” bronze statue. In exchange for the forty objects that were returned, similar to their agreement with the Metropolitan Museum of Art, Italy consented to lend the Getty objects of equivalent significance for future exhibitions (IFAR, 2007).

A few months later, Italy approached the Getty Museum once again to demand the return of the bronze statue. Italy is contending that the Getty was not acting in good faith when it purchased the statute in 1977 for less than four million dollars. The Italian prosecutors asserted that the statue was smuggled out of the country without proper export papers, and the Getty Museum willfully neglected to practice due diligence before purchasing the work. The Getty claims that it owns the bronze with proof in a legal

memorandum dated November 2006 and addressed to the Italian ministry of culture. The memo concludes that because the statue was found outside of Italian territorial waters it never became Italian state property under Italy's 1939 antiquities ownership law. The Getty Museum rejects Italy's claim, and for now the statue remains at the Getty Villa. However, Italy has not given up the war and litigations still continue. The Getty Museum reasons that the normal ethical reasons to restitute artwork does not apply in this situation because it is Greek in origin, not Italian and was likely removed from ancient Greece by the Romans before lost at sea (Lufkin, 2010).

Metropolitan Museum of Art versus Italy Agreement

Another incident, similar to the Getty Museum and a rather renowned case, which demonstrates the influence of Nazi looted art policies on restitution cases post 1998 was the Metropolitan Museum of Art's agreement with the Italian Ministry of Culture in 2006. The agreement involved the return of the Euphronios Krater (see fig. 4) and twenty other pieces. Under the tutelage of Thomas Hoving, former Director of the Metropolitan Museum of Art, the Euphronios Krater was bought for an extraordinary amount of one million dollars from the American antiquities dealer, Robert E. Hecht¹². The museum's Greek and Roman curator, Dietrich von Bothmer, was contacted by Robert Hecht. Von Bothmer was a curator at a time when standards of collecting and acquisitioning were not so carefully scrutinized; authenticity always came first. Hecht provided provenance history that the krater was acquired from a Lebanese dealer, Sarrafian, whose family obtained it

¹² Robert Hecht, a very successful antiquities dealer who had a reputation for smuggling antiquities by both Turkey and Italy. He was on trial for illicit trafficking of antiquities, involved with Marion True and the Getty Museum (IFAR, 2005).

before 1939, the date in which Italy declared all items excavated on Italian soil “sovereign property (IFAR, 2005).” Hoving states, “We had landed a work that I guessed would be the last monumental piece to come out of Italy...slipping in just underneath the crack in the door of the imminent Unesco treaty, which would drastically limit future trade in antiquities (Hoving, 1993, p. 318).” To the dismay of Thomas Hoving, suspicions about the krater’s origins began to circulate. Investigation of the provenance immediately followed, and soon led to the discovery of Hecht’s illegal past and that Sarrafian never did have the krater in his possession for as many years as he claimed (Waxman, 2008, p. 190). In 1995, Swiss police raided the warehouse of Giacomo Medici, a known antiquities dealer, who frequently worked with Robert Hecht. Eventually the police raided Hecht’s apartment in Paris in 2001 and discovered his memoirs, which recorded the real story of the Euphronios krater (Merryman, 2007, p. 404). Fueled by the trove of evidence on Medici and Hecht, Italy asked the Met to return the krater and twenty other objects they believed were looted. In 2006, an agreement was struck in which the Met would return the objects to Italy in exchange for long-term loans of antiquities “of equivalent beauty and importance (IFAR, 2006).” Among the first loans was the Euphronios krater which remained in New York for two more years allowing its inclusion in the grand reopening of the Greek and Roman galleries. In 2008, the Met lost one million dollars and twenty-one objects including the Euphronios krater. In the negotiations, the Metropolitan Museum of Art also has the option of conducting excavations in Italy at its own expense, with any excavated objects lent to the Met “for the time necessary for their study and restoration (IFAR, 2006).” Italy

hopes this agreement will serve as a model for future negotiations regarding the return of objects by other museums.

This particular agreement between the Metropolitan Museum of Art and Italy serves as a wonderful example that demonstrates how Nazi looted art policies affect other restitution cases, but also perfect conduct and conciliation between a prominent museum in one nation and an international government. Philippe de Montebello, former Director of the Metropolitan Museum of Art, states,

It is with a recognition of its institutional responsibility—coupled with the highest hopes for continued, mutually beneficial relationships with our many colleagues in Italy—that the Metropolitan has concluded these negotiations...this is the appropriate solution to a complex problem, which redresses past improprieties in the acquisitions process through a highly equitable arrangement. The Met is particularly gratified that, through this agreement, its millions of annual visitors will continue to see comparably great works of ancient art on long-term loan from Italy to this institution (MET, 2006, para. 6).

The collaborations between Italy and the Metropolitan Museum of Art past, present, and future showcase a mutual compromise¹³ and the possibilities of prospective restitution cases.

¹³ Italy also entered similar agreements with the Museum of Fine Arts Boston and Cleveland Museum of Art (IFAR, 2005).

VIII. Conclusion

The detrimental destruction that Nazi Germany accomplished in twelve years is tremendous. An outrageous act that destroyed both people and their belongings, an act so great that even now, sixty years later, we are still trying to resolve and seek justice for not only the lost six million Jews, but for the thousands of lost paintings, manuscripts, furniture, and sculptures. From April 1941 to July 1944 alone 138 railcars were packed with 4,174 cases of stolen artwork and shipped to Germany (Zborowski & Krasnyanskiy, 2010); a massive and unprecedented scale. The orchestrated system of confiscation and theft of Jewish families throughout Europe has dispersed thousands of works of art worldwide and have been traced to both private collections and museums. It has only been in the last twelve years that this issue has become increasingly publicized and, in turn, has instigated museum organizations and associations to implement specific guidelines.

Several studies and books (i.e. Feliciano, Lynn) emerged in the late 1990s that began to scrutinize and explore the history of the massive looting by the Nazis during World War II. Since there was such an outcry in reaction to the research done by Feliciano and Lynn, as well as many others, it led several organizations and committees to create a set of guiding principles for museum staff and personnel in order to achieve proper conduct of Nazi era art and excellence in museum ethical practices.

On June 4, 1998, the Association of Art Museum Directors (AAMD) issued a *Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933–1945)*. The report, as mentioned on page 22, focuses on “unlawful confiscation,” that

encourages museums to conduct provenance research of their collections, create new databases to facilitate access to museum records, and resolve legitimate claims in an equitable and agreeable manner.

A few months later on December 3, 1998, the 44 governments participating in the Washington Conference on Holocaust-Era Assets adopted a set of principles to deal with Nazi-Confiscated Art. These principles included identifying confiscated art, making accessible relevant records and archives, establishing a central registry, encouraging heirs to come forward with their claims, and achieving a just and fair result when legitimate claims are brought.

On January 14, 1999, the International Council of Museums (ICOM) released *Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners*. These recommendations (see page 17-18) similarly encourage an active investigation and identification of works acquired with dubious provenance especially during World War II, the creation of procedures for making such information accessible for research and identification, and the adoption of national legislation to facilitate the dissemination of information regarding the return of objects (Adler, 2007).

The creation of the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) in June of 1998 was to report to the President on issues related to assets belonging to Holocaust survivors in the United States (see Appendix D). Alongside the AAM and AAMD, the PCHA established guidelines identifying and discovering confiscated objects that are in custody in museum collections. The final report included

the agreed guidelines for disclosure of museum collections and the recommendation that a searchable registry of the information disclosed by museums be created.

In November 1999, the AAM adopted “Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era”. The AAM guidelines lay out greater detail the similar goals of identifying objects in museums collections (see Appendix C). These included ascertaining that objects were created before 1946 and acquired after 1932, increasing provenance research, providing greater access to the public, and achieving equitable and appropriate resolution of claims. The AAM states that “these guidelines are intended to assist museums in addressing issues relating to objects that may have been unlawfully appropriated during the Nazi era (1933–1945) as a result of actions in furtherance of the Holocaust or that were taken by the Nazis or their collaborators. For the purposes of these guidelines, objects that were acquired through *theft, confiscation, coercive transfer, or other methods of wrongful expropriation* may be considered to have been unlawfully appropriated, depending on the specific circumstances (AAM, 1999, “General Principles,” para. 8).”

All these policies provide guidance to help museums in attending to the problems of objects that were unlawfully appropriated during the Nazi era without subsequent restitution. They also emphasize and insist that “museums act in the public interest when acquiring, exhibiting, and studying objects... the desire and ability of museums to act ethically and lawfully as stewards of the objects in their care, and should not be interpreted to place an undue burden on the ability of museums to achieve their missions (AAM, 1999).”

Museums have opted to partake in three different actions to resolve issues of unlawfully appropriated objects found in their collection. One, give the artwork back; two, keep the artwork; or three, reach a compromise. As we have seen each path a museum chooses to take has its own benefits as well as its own damages. Some believe that the return of objects will eventually empty out all museums of their unique collections leaving in the dust this idea of “universal and cross-cultural” institutions. Others believe returning objects is a moral and ethical obligation that museums must adhere to. What is clear however is that the phenomenon of Nazi looted art has set precedence for other restitution cases as well as the initiation of better regulations for museum collections.

Museums are here for the public and are held accountable to a higher standard of morals and ethics, and therefore must continuously practice ethical stewardship. Today, especially in the United States, museums are careful with their acquisitions (by gift or purchase) and require full title and provenance history; museums are also rechecking provenance history of already owned artwork. It is vital that museums be not only transparent and open about their collections, but that museums and their staffs be aware and conscious of looted art entering their collections.

In addition to inspiring proper diligence and conduct for future acquisitions as well as for the objects currently held in the museum collections, Nazi looted art policies and live instances have set precedence for other restitution cases. The policies created for other restitution cases designed in the early twenty first century have reconstructed and amended the very same policies for Nazi looted art. As seen with various case studies, recent occurrences of unlawfully appropriated artwork have been influenced by the Nazi looted

art guidelines influencing future acquisition, codes of conduct, and cultural property policies. In less than ten years, these policies and their creators have revolutionized past guidelines in order to motivate a new wave of awareness for other types of repatriation including those of Native American Graves Protection and Repatriation Act (NAGPRA) and United Nations Educational, Scientific and Cultural Organizations (UNESCO). These ground breaking procedures and innovative actions was a direct cause from the positive acceptance and immediate response to the awareness of Nazi looted art and the documentation that was developed. As long as restitution cases continue to exist, Nazi looted art policies will continue to influence the decisions and resolutions museums make on behalf of their institution and collection. In only a few short years, we have seen some astounding restitution agreements both across countries and between institutions that were inspired and stimulated by Nazi-era cases. It is unfathomable to think of what can be accomplished in future years.

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Appendix A

Schenker Papers

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Appendix A

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(Attributed to) BOUSSIN	Country Road with monument					
PUGET, P.	Design for monument to Louis XIV	Pen & Wash		Maurice Gobin (ex collection Vivant-Denon)	10,000 fr:	
RENOIR	2 Girls				25,000 mks (Sic)	
PICCI	Fertility	(Canvas)		Leegenhoeck	45,000 fr:	17/7/43
(Attributed to) RIZOIS	Romantic Landscape about 1826.				40,000 fr:	33/4/43
ROBERT Hubert	Broken Pitcher	(Canvas)	63 x 79	Jacques signed & dated 1758.	225,000 fr:	
"	"Les Gorges d'Ollioules"	Oil	Signed & dated	Gailleur	300,00 fr:	10/7/41
RUSLIN	2 Girls				25,000 Mks. (Sic)	
SISLEY	Landscape				50,000 Mks. (Sic)	
SOLDNERA (Attributed to)	Project for Ceiling			Schmit	10,100 fr:	30/6/41
STILLBERG	Girl at Toilet in a Garden		Signed & dated 166-		60,000 fr:	
TIEPOLO J.B.	Adoration of Magi	Pen & Wash drawing	Signed (Monogram)	Maurice Gobin	28,500 fr:	
"	Caprices (de Vesme Nos. 3-12)			" "	7,000 fr:	
TIEPOLD, D.	Marys at Tomb	Pen & Wash drawing.	Signed	" "	13,500 fr:	
VERGILIO	Country Road					
VAN COYEN	Country Road					
VINCENT	Allegory					
WATTEAU (Attributed to)	Nymphs : (original carved wood gilt frame).	Paint on Paper.	31 x 38	Schmit	500,000 fr:	9/5/41.

Appendix B

Washington Conference Principles.



The State Department web site below is a permanent electronic archive of information released prior to January 20, 2001. Please see www.state.gov for material released since President George W. Bush took office on that date. This site is not updated so external links may no longer function. [Contact us](#) with any questions about finding information.

NOTE: External links to other Internet sites should not be construed as an endorsement of the views contained therein.



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, can not 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.

[End of Document]

Appendix C

Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era *Approved, November 1999, Amended, April 2001, AAM Board of Directors*

Introduction

From the time it came into power in 1933 through the end of World War II in 1945, the Nazi regime orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust, public and private museums and galleries, and religious, educational and other institutions.

In recent years, public awareness of the extent and significance of Nazi looting of cultural property has grown significantly. The American museum community, the American Association of Museums (AAM), and the U.S. National Committee of the International Council of Museums (AAM/ICOM) are committed to continually identifying and implementing the highest standard of legal and ethical practices. AAM recognizes that the atrocities of the Nazi era demand that it specifically address this topic in an effort to guide American museums as they strive to achieve excellence in ethical museum practice.

The AAM Board of Directors and the AAM/ICOM Board formed a joint working group in January 1999 to study issues of cultural property and to make recommendations to the boards for action. The report that resulted from the initial meeting of the Joint Working Group on Cultural Property included the recommendation that AAM and AAM/ICOM offer guidance to assist museums in addressing the problems of objects that were unlawfully appropriated during the Nazi

era without subsequent restitution (i.e., return of the object or payment of compensation to the object's original owner or legal successor).

The efforts of the Working Group were greatly informed by the important work on the topic that had gone before. In particular, three documents served as a starting point for the AAM guidelines, and portions of them have been incorporated into this document. These include: *Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)*; *ICOM Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners*; and *Washington Conference Principles on Nazi-Appropriated Art* (released in connection with the Washington Conference on Holocaust-Era Assets co-hosted by the U.S. Department of State and the United States Holocaust Memorial Museum).

The Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) was created in June 1998 to study and report to the President on issues relating to Holocaust victims' assets in the United States. AAM and the Association of Art Museum Directors (AAMD) worked with the PCHA to establish a standard for disclosure of collections information to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums. In January 2001, the PCHA issued its final report, which incorporated the agreed standard for disclosure and recommended the creation of a searchable central registry of the information museums disclose in accordance with the new standard. AAM and AAMD agreed to support this recommendation, and these guidelines have been amended to reflect the agreed standard for disclosure of information.

Finally, AAM and AAM/ICOM acknowledge the tremendous efforts that were made by the Allied forces and governments following World War II to return objects to their countries of origin and to original owners. Much of the cultural property that was unlawfully appropriated was recovered and returned, or owners received compensation. AAM and AAM/ICOM take pride in the fact that members of the American museum community are widely recognized to have been instrumental in the success of the post-war restitution effort. Today, the responsibility of the museum community is to strive to identify any material for which restitution was never made.

General Principles

AAM, AAM/ICOM, and the American museum community are committed to continually identifying and achieving the highest standard of legal and ethical collections stewardship practices. The AAM Code of Ethics for Museums states that the "stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal."

When faced with the possibility that an object in a museum's custody might have been unlawfully appropriated as part of the abhorrent practices of the Nazi regime, the museum's responsibility to practice ethical stewardship is paramount. Museums should develop and implement policies and practices that address this issue in accordance with these guidelines.

These guidelines are intended to assist museums in addressing issues relating to objects that may have been unlawfully appropriated during the Nazi era (1933-1945) as a result of actions in furtherance of the Holocaust or that were taken by the Nazis or their collaborators. For the purposes of these guidelines, objects that were acquired through theft, confiscation, coercive transfer, or other methods of wrongful expropriation may be considered to have been unlawfully appropriated, depending on the specific circumstances.

In order to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums, the PCHA, AAMD, and AAM have agreed that museums should strive to: (1) identify all objects in their collections that were created before 1946 and

acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, "covered objects"); (2) make currently available object and provenance (history of ownership) information on those objects accessible; and (3) give priority to continuing provenance research as resources allow. AAM, AAMD, and PCHA also agreed that the initial focus of research should be European paintings and Judaica.

Because of the Internet's global accessibility, museums are encouraged to expand online access to collection information that could aid in the discovery of objects unlawfully appropriated during the Nazi era without subsequent restitution.

AAM and AAM/ICOM acknowledge that during World War II and the years following the end of the war, much of the information needed to establish provenance and prove ownership was dispersed or lost. In determining whether an object may have been unlawfully appropriated without restitution, reasonable consideration should be given to gaps or ambiguities in provenance in light of the passage of time and the circumstances of the Holocaust era. AAM and AAM/ICOM support efforts to make archives and other resources more accessible and to establish databases that help track and organize information.

AAM urges museums to handle questions of provenance on a case-by-case basis in light of the complexity of this problem. Museums should work to produce information that will help to clarify the status of objects with an uncertain Nazi-era provenance. Where competing interests may arise, museums should strive to foster a climate of cooperation, reconciliation, and commonality of purpose.

AAM affirms that museums act in the public interest when acquiring, exhibiting, and studying objects. These guidelines are intended to facilitate the desire and ability of museums to act ethically and lawfully as stewards of the objects in their care, and should not be interpreted to place an undue burden on the ability of museums to achieve their missions.

Guidelines

1. Acquisitions

It is the position of AAM that museums should take all reasonable steps to resolve the Nazi-era provenance status of objects before acquiring them for their collections whether by purchase, gift, bequest, or exchange.

a) Standard research on objects being considered for acquisition should include a request that the sellers, donors, or estate executors offering an object provide as much provenance information as they have available, with particular regard to the Nazi era.

b) Where the Nazi-era provenance is incomplete or uncertain for a proposed acquisition, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before acquiring it. Such research may involve consulting appropriate sources of information, including available records and outside databases that track information concerning unlawfully appropriated objects.

c) In the absence of evidence of unlawful appropriation without subsequent restitution, the museum may proceed with the acquisition. Currently available object and provenance information about any covered object should be made public as soon as practicable after the acquisition.

d) If credible evidence of unlawful appropriation without subsequent restitution is discovered, the museum should notify the donor, seller, or estate executor of the nature of the evidence and should not proceed with acquisition of the object until taking further action to resolve these issues. Depending on the circumstances of the particular case, prudent or necessary actions may include

consulting with qualified legal counsel and notifying other interested parties of the museum's findings.

e) AAM acknowledges that under certain circumstances acquisition of objects with uncertain provenance may reveal further information about the object and may facilitate the possible resolution of its status. In such circumstances, the museum may choose to proceed with the acquisition after determining that it would be lawful, appropriate, and prudent and provided that currently available object and provenance information is made public as soon as practicable after the acquisition.

f) Museums should document their research into the Nazi-era provenance of acquisitions.

g) Consistent with current practice in the museum field, museums should publish, display, or otherwise make accessible recent gifts, bequests, and purchases, thereby making all acquisitions available for further research, examination, and public review and accountability.

2. Loans

It is the position of AAM that in their role as temporary custodians of objects on loan, museums should be aware of their ethical responsibility to consider the status of material they borrow as well as the possibility of claims being brought against a loaned object in their custody.

a) Standard research on objects being considered for incoming loan should include a request that lenders provide as much provenance information as they have available, with particular regard to the Nazi era.

b) Where the Nazi-era provenance is incomplete or uncertain for a proposed loan, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before borrowing it.

c) In the absence of evidence of unlawful appropriation without subsequent restitution, the museum may proceed with the loan.

d) If credible evidence of unlawful appropriation without subsequent restitution is discovered, the museum should notify the lender of the nature of the evidence and should not proceed with the loan until taking further action to clarify these issues. Depending on the circumstances of the particular case, prudent or necessary actions may include consulting with qualified legal counsel and notifying other interested parties of the museum's findings.

e) AAM acknowledges that in certain circumstances public exhibition of objects with uncertain provenance may reveal further information about the object and may facilitate the resolution of its status. In such circumstances, the museum may choose to proceed with the loan after determining that it would be lawful and prudent and provided that the available provenance about the object is made public.

f) Museums should document their research into the Nazi-era provenance of loans.

3. Existing Collections

It is the position of AAM that museums should make serious efforts to allocate time and funding to conduct research on covered objects in their collections whose provenance is incomplete or uncertain. Recognizing that resources available for the often lengthy and arduous process of provenance research are limited, museums should establish priorities, taking into consideration available resources and the nature of their collections.

Research

- a) Museums should identify covered objects in their collections and make public currently available object and provenance information.
- b) Museums should review the covered objects in their collections to identify those whose characteristics or provenance suggest that research be conducted to determine whether they may have been unlawfully appropriated during the Nazi era without subsequent restitution.
- c) In undertaking provenance research, museums should search their own records thoroughly and, when necessary, contact established archives, databases, art dealers, auction houses, donors, scholars, and researchers who may be able to provide Nazi-era provenance information.
- d) Museums should incorporate Nazi-era provenance research into their standard research on collections.
- e) When seeking funds for applicable exhibition or public programs research, museums are encouraged to incorporate Nazi-era provenance research into their proposals. Depending on their particular circumstances, museums are also encouraged to pursue special funding to undertake Nazi-era provenance research.
- f) Museums should document their research into the Nazi-era provenance of objects in their collections.

Discovery of Evidence of Unlawfully Appropriated Objects

- g) If credible evidence of unlawful appropriation without subsequent restitution is discovered through research, the museum should take prudent and necessary steps to resolve the status of the object, in consultation with qualified legal counsel. Such steps should include making such information public and, if possible, notifying potential claimants.
- h) In the event that conclusive evidence of unlawful appropriation without subsequent restitution is found but no valid claim of ownership is made, the museum should take prudent and necessary steps to address the situation, in consultation with qualified legal counsel. These steps may include retaining the object in the collection or otherwise disposing of it.
- i) AAM acknowledges that retaining an unclaimed object that may have been unlawfully appropriated without subsequent restitution allows a museum to continue to care for, research, and exhibit the object for the benefit of the widest possible audience and provides the opportunity to inform the public about the object's history. If the museum retains such an object in its collection, it should acknowledge the object's history on labels and publications.

4. Claims of Ownership

It is the position of AAM that museums should address claims of ownership asserted in connection with objects in their custody openly, seriously, responsively, and with respect for the dignity of all parties involved. Each claim should be considered on its own merits.

- a) Museums should review promptly and thoroughly a claim that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution.
- b) In addition to conducting their own research, museums should request evidence of ownership from the claimant in order to assist in determining the provenance of the object.
- c) If a museum determines that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution, the museum should seek to resolve the matter with the claimant in an equitable, appropriate, and mutually agreeable manner.
- d) If a museum receives a claim that a borrowed object in its custody was unlawfully appropriated without subsequent restitution, it should promptly notify the lender and should comply with its legal obligations as temporary custodian of the object in consultation with qualified legal counsel.

e) When appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims that an object was unlawfully appropriated during the Nazi era without subsequent restitution.

f) AAM acknowledges that in order to achieve an equitable and appropriate resolution of claims, museums may elect to waive certain available defenses.

5. Fiduciary Obligations

Museums affirm that they hold their collections in the public trust when undertaking the activities listed above. Their stewardship duties and their responsibilities to the public they serve require that any decision to acquire, borrow, or dispose of objects be taken only after the completion of appropriate steps and careful consideration.

a) Toward this end, museums should develop policies and practices to address the issues discussed in these guidelines.

b) Museums should be prepared to respond appropriately and promptly to public and media inquiries.

Commitment of AAM

As part of its commitment to identifying and disseminating best practices, AAM will allocate resources:

a) to disseminate these guidelines widely and frequently along with references to other guidelines, principles, and statements that exist on the topic

b) to track the activity and purpose of the relevant databases and other resources and to compile bibliographies for dissemination to the United States museum community

c) to collect examples of best practices and policies on Nazi-era provenance research and claims resolution from the museum field, both in the United States and abroad, as guidelines for other museums

d) to make the above information available to the museum community through reports, conference sessions, and other appropriate mechanisms

e) to assist in the development of recommended procedures for object and provenance information disclosure

f) to provide electronic links from AAM's Web site to other resources for provenance research and investigate the feasibility of developing an Internet tool to allow researchers easier access to object and provenance information about covered objects in museum collections.

g) to encourage funding of Nazi-era provenance research.

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Appendix D

AAM Recommended Procedures for Providing Information to the Public about Objects Transferred in Europe during the Nazi Era

Introduction

These recommended procedures have been formulated by the American Association of Museums (AAM) pursuant to an agreement reached in October 2000 between AAM, the Association of Art Museum Directors (AAMD), and the Presidential Advisory Commission on Holocaust Assets in

the United States (PCHA). The PCHA was created in June 1998 to study and report to the President on issues relating to Holocaust victims' assets in the United States.

Provisions of the Agreement

Under this agreement the parties concurred (a) on the desirability of expanded online access to museum collection information that could aid in the discovery of objects unlawfully appropriated during the Nazi era, (b) on the need to identify the categories of objects for which this information should be made available, and (c) toward those ends, that every museum should:

- 1) Identify all objects in its collection that were created before 1946 and that it acquired after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, "covered objects"). In the event that a museum is unable to determine whether an object created before 1946 and acquired after 1932 (a) might have been in continental Europe between 1932 and 1946 and/or (b) underwent a change of ownership during that period, it should still be treated as a covered object;
- 2) Make currently available object and provenance (history of ownership) information about covered objects accessible online; and
- 3) Give priority to continuing provenance research on those objects as resources allow.

The parties also agreed on the creation of a search tool on the Internet that would assist claimants, claimants' advocates, and researchers in accessing information on covered objects in museum collections.

For practical and historic reasons, AAM, AAMD, and PCHA agreed that the initial focus of research and online postings should be on European paintings and Judaica¹. Other covered objects in collections should be dealt with in a similar manner as resources allow.

Previously, some museums had provided online information only about objects with an incomplete provenance or a provenance containing a problematic name. The agreement calls for a more inclusive approach that PCHA, AAM, and AAMD believe is the best way for museums to aid the discovery process.

Development of Recommended Procedures

In December 2000, AAM convened a task force of museum professionals and other experts to advise staff on developing procedures for posting object and provenance information on museum Web sites and to consider mechanisms for making this information accessible from a single Internet site. The task force also addressed the issue of access to such information from museums without online collection information.

The task force identified 20 categories of information about covered objects that museums should compile and make available. Any additional information a museum is able to make available could

further assist the process of discovery. The task force also developed the concept of a Nazi-era Provenance Internet Portal to assist users in conducting searches

AAM views these procedures as consonant with the fundamental mission of museums to document and publish their collections and recognizes that, because of the Internet's global reach, posting collection information online should be a goal. Museums are encouraged to construct online searchable databases in which the posting of information about covered objects should be a priority.

Recommended Procedures

1. Making Object and Provenance Information for Covered Objects Accessible

The following 20 categories of object and provenance information are key for aiding potential claimants in identifying or ruling out a specific object. Museums should make this information accessible, organizing it according to their own standards. Museums should also include an explanation of how to interpret their provenance listings.

Museums should identify objects that fit the definition of Judaica contained in this document even if such objects have not been classified as Judaica in their databases.

Museums should provide currently available information immediately, adding to it as time allows.

Category	Comments
Artist/Maker	To include artists' names, alternate names, and previous attributions.
Nationality of Artist/Maker	---
Life Dates of Artist/Maker	---
Place or Culture of Object	Only if artist unknown.
Object Title or Name	To include alternate titles.
Date of Work	To include approximate date, if specific date is unknown.
Medium/Materials	---

Measurements	---
Date of Acquisition	---
Accession Number	---
Object Type	Painting, sculpture, decorative arts, etc/
Subject Type	Landscape, portrait, mythological subject, historical, religious, genre, Judaica, etc.
Signature and Marks (obverse)	To include signatures, inscriptions, and marks; for paintings, what appears on the front
Labels and Marks (reverse, frame, mount, etc.)	To describe marks and labels (prior to 1960) on the reverse of an object (including frame, mount, etc.). Indicate if images are available.
Description	To contain description of object (its content, subject, etc.). Museums should make this a priority.
Provenance	To contain, at the minimum, known owners, dates of ownership, places of ownership, method of transfer (sale, gift, descent, etc.). To include, if known, lot numbers, sale prices, buyers, etc. To include information on unlawful appropriation during the Nazi era and subsequent restitution. Museums should ensure that provenance information is understandable and organized chronologically.
Exhibition History	---
Bibliographic History	---
Other Relevant Information	To contain anything about the object that would be useful in identifying it for this purpose. If the object fits the definition of Judaica contained in this document, so state.
Image	An image is key to identifying an object. Museums should make every effort to include an image with their records.

2. Nazi-era Provenance Internet Portal

It is the view of AAM that museums should control the research, presentation, and maintenance of information about covered objects in their collections. This allows museums to organize their information according to their own standards and provide all relevant introductions, explanations, and avenues for inquiry.

In order to expedite searches for information about covered objects in museum collections, AAM will launch a search tool called the Nazi-era Provenance Internet Portal. The Portal initially will allow users to search by the artist/maker and the nationality of the artist/maker (or of the object if the artist is unknown). Additionally, users will be able to learn which museums contain covered Judaica. The Portal will provide the user with basic information contributed by museums about objects that fit the search criteria as well as links to further information controlled by those museums. The Portal ultimately will have the capacity to allow users to search on additional categories of information, such as object type and description of the object.

Museums should submit to AAM a set of descriptive data about covered objects in their collections. This information will constitute the registry. It will be the responsibility of the museum to update this information whenever there are changes, additions, or deletions.

a. Submitting Information to the Portal Registry

The information that the Portal will use to assist searchers will be housed in a database. It will contain, for each museum, basic contact and URL information (if applicable) and an indication as to whether the museum's collection contains any covered Judaica. An associated searchable object registry will house object descriptive information that will be provided by museums in phases. In the initial phase, this will be artist/maker, nationality of artist/maker, and culture/nationality, if artist is not known. In later phases museums will be asked to add title, object type, and searchable free-text descriptions. In addition, museums without online collection information will be asked to supply one PDF file² for each covered object. A link will be created from the object registry to the PDF file. Instructions for converting a document to Adobe PDF will be available from AAM.

Information about museums and their covered objects may be entered directly onto the Portal's Web site or submitted electronically. Whether a museum's registry records are linked to its Web site or to a PDF, the museum will receive a password giving access through AAM's Web site to the data it contributes. Museums will be responsible for updating and adding to these data. Instructions for submitting data to these tables will be available from AAM.

Museums should strive to provide the 20 categories of information listed above either in their online collection information or in their PDF files.

b. Searching the Portal

When a search is conducted, the Portal will return the registry information for all objects that match the search criteria and either: (a) links to the Web site of each museum where more information about these objects can be found or (b) links to each PDF file that contains more information about these objects.

AAM will employ an enhanced search facility developed by the Getty based on the Union List of Artist Names® to increase the precision and recall of searches on the artist name by accommodating various spellings and making the searcher aware of related artists and artists who share the same name.

Commitment of AAM

Because of the urgent need to create a search tool for covered objects, AAM has committed to developing and managing the Portal for three years. However, in recognition that a project of this technological complexity falls outside the range of AAM's customary activities and services, after three years AAM will seek to transfer the project to a more appropriate organization.

To address any issues that may arise regarding the Portal, AAM will establish an independent commission to guide this effort. This independent commission will be appointed by the AAM Board of Directors and will include museum professionals and experts from outside the museum field. Significantly for the museum community, claimants, and researchers, it is envisioned that the commission will continue when the portal is transferred to another organization.

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Endnotes

1) The term "Judaica" is most broadly defined as the material culture of the Jewish people. First and foremost this includes ceremonial objects for communal or domestic use. In addition, Judaica comprises historical artifacts relating to important Jewish personalities, momentous events, and significant communal activities, as well as literature relating to Jews and Judaism. Many museums also have acquired material of everyday life that expresses a uniquely Jewish identity.

Appendix E

Philippe De Montebello, director, The Metropolitan Museum of Art, at a hearing of the Presidential Advisory Commission on Holocaust assets in the United States, Wednesday, April 12, 2000, The Association of the Bar of the City of New York:

Mr. Chairman, I am grateful to the Presidential Commission for the invitation to testify this morning. I appreciate this opportunity to update you, and through you, the public, on the efforts that The Metropolitan Museum has undertaken to re-examine its collections in order to ascertain whether any of its works were unlawfully confiscated by the Nazis and never restituted.

To give a sense of the magnitude of the effort, I hope you will remember that the Metropolitan's collections number more than two million works, works of art held in trust for the benefit and education of a broad public, which now numbers some 5.5 million visitors a year.

As a central part of its mission, the Met has long kept that public informed about all aspects of its collections through illustrated publications presenting both essential art-historical analysis as well as provenance and bibliographical information. And just a few months ago, we launched a new Web site that enables us to post on the Internet the provenance of works in the collection.

I think it is worth recalling, at this point, that there are at the Met, as in just about every other museum in the world, a great many works of art whose complete ownership history is not fully known, not just for the Nazi era, but for other frames of time as well. Many records are vexingly fragmentary and as is well known, dealers and auction houses have traditionally been disinclined to specify the origins of their stock, and this long before the Nazi period—a period for which, additionally, even less information has survived.

Today, I have been asked to update the Commission on the research into the Nazi era that the Metropolitan has conducted, pursuant to guidelines adopted in June 1998 by the Association of Art Museum Directors, acting on the recommendations of an AAMD Committee which I chaired. In doing so, let me reiterate what I said at the State Department Conference last year, namely that the Metropolitan remains committed to this research, and to the underlying principle that informs it: namely, that any legitimate claim of an owner stripped of property by the Nazis must be recognized and redressed.

As it turns out, we have not received any claim from a victim of Nazi spoliation, nor been asked to look for a missing work by a victim or an heir. It is, after all, easier to link a claimant to a specific work of art than to postulate that a work of art may somewhere have a claimant. On the other hand, we realize how difficult this can be, especially one or two generations removed, and so we are conscious of our own obligation in this regard and take it very seriously.

So we ask ourselves: what can we do to advance our research, to speed up the process, to give this quest—ultimately a quest for truth and justice—the best chance of yielding results? The answer, we feel, is to open up the inquiry yet further. And to this end we are releasing today a list of all the European paintings in the Met's collection for which full information about ownership during the Nazi era is still incomplete after 18 months of renewed research. The list has now been posted on our Web site.

I would like to emphasize here, and to do so emphatically, that this list is not a list of "suspect" pictures. To so portray them would be to do a serious injustice to their donors, to the museum-going public, and to truth itself. Rather, the inclusion of a painting on this list indicates only that more information is required to complete our knowledge of its ownership during the Nazi era. Our list is an invitation for information that might help fill the elusive gaps during the Nazi era. Moreover, the list, which numbers 393 paintings, represents what remains in question after review of all of the 2,700 European paintings in the collection. For all of the remainder, we have already been able to fill relevant provenance gaps or exclude the possibility of malfeasance. This pattern, mirrored in other museums, namely the gradual elimination of painting with gaps in Nazi-era provenance, tells us not to raise expectations that many pictures will yet be found suspect. But, as

I've said on previous occasions, even if only one work were demonstrably suspect, that is one too many.

May I also remind the members of the Commission and those present, that already, more than 2,200 of the 2,700 European paintings in The Metropolitan's collection are posted on our Web site, with illustrations, and the rest will ultimately be posted; that most provenance information is available in our publications, and that as early as practicable we will post the additional provenance on the Web site as well [www.metmuseum.org].

Ladies and gentlemen, in the belief that we have been invited here to testify because the Commission wants to hear all that may help resolve this painfully lingering chapter in the saga of the worst crime against humanity in modern history, I would like, at this point, to speak to another aspect of the issue, namely the nature of the recent discourse itself. If you will hear me out, I believe that you will see that this is a rather important point, for the degree to which this discourse has been inflected by misrepresentation and exaggeration is most disturbing—and sets a tone that is totally at odds with the search for truth that we are all pursuing.

So, let me try and dispel some misconceptions that continue to permeate the discourse:

First: One cannot equate the works of art seized by the Nazis and later deposited by the Allies with the governments of, among others, Austria, France, or the Netherlands, and the handful of once-looted works that have turned up, or may yet turn up, in American museums. American museums did not participate in the plunder of Jewish collections in Europe during the Nazi era, nor were works, recovered but unclaimed, deposited with them at the end of the war.

And second: there is no similarity between works of art in American museums and the hidden assets in European banks and insurance companies. American museums openly display their collections and make them available to a wide public; they publish them in print and now also in the electronic media.

Also further unnecessarily polarizing the discourse—where instead we should be working in harmony—is a disturbing tendency to rush to judgment about works of art, and by extension, about museums themselves. Let me briefly give you two recent examples.

The first followed the publication by museums in Great Britain of a list of 350 paintings with gaps in their provenance for the Nazi years, very much like the list we are releasing today. Although the British took pains to explain that inclusion was simply a call for more information—just as we are doing—one newspaper nonetheless described the list as "an unprecedented disclosure...that about 350 artworks in their museums' collections may have been looted from their owners during World War II." I would like to think that we, tomorrow, will not be reading headlines such as that one, or like another that ran in England: "Brits list names of Nazi stolen art." That was both inaccurate and irresponsible. And, may I point out, no claim has resulted to date.

The second example of such a "rush to judgment" dates back to only last month. Because our Portrait of a Man by Peter Paul Rubens had once been handled by a notorious dealer, Karl Haberstock—which fact was ascertained, incidentally, from information we ourselves had published—the Metropolitan was challenged in March to prove that the work was not stolen by the Nazis. One of the resulting press reports began with the statement: "The Nazi plunder of art has

touched home right here in America." The fact is, there was nothing the Metropolitan needed to prove. Our own publications indicated that the painting had been owned by a collector in Newark, New Jersey, as early as 1924, nine years before Hitler's rise to power.

Yet just a few days later, a wire service ran the following headline: "New York City Museum has famous painting seized by the Nazis"—in this case, a painting by the 17th-century Flemish master David Teniers the Younger. The reporter had garnered from one of our own catalogues, published on the Getty Provenance Index Web site, that the painting had been "seized by the German government during World War II". Yes, it had been looted, but as, once again, we had determined and published several years earlier, the picture had also been restituted to its owners, who brought it to the United States and subsequently gave it to the Metropolitan. The picture's title is clear and unambiguous.

Such false reports as those on the Rubens and the Teniers are simply not helpful. We are pledged to research and to disclosure. We would like to do so in an atmosphere of mutual trust.

Finally I should address briefly the question of numbers, since wildly inflated figures are too often invoked, to wit, that tens or even hundreds of thousands of paintings once plundered by the Nazis are now displayed in our museums. The fact is, there are fewer than 20,000 European paintings in all in the United States, including the thousands acquired before WWII. To suggest such fanciful—and daunting—numbers is not just cavalier, considering the gravity of the subject, but it must surely be dispiriting to the millions of people who visit museums. And, may I add, it cruelly raises false expectations among potential claimants and Holocaust survivors. I do not think it unreasonable for us to hope for more plausibility in the future discourse. To provide some perspective, let me simply point out that using six of the largest repositories of European paintings in the United States—the Met, the National Gallery, Boston's Museum of Fine Arts, the Art Institute of Chicago, the Philadelphia Museum and the Los Angeles County Museum of Art—we find that together they own just over 10,000 European paintings, a total that, of course, includes the thousands acquired before World War II.

Let me once again emphasize how important it is that the new electronic technologies become a gathering point for any and all information that could facilitate research on provenance; for example, we hope you will support the idea that the federal government provide funding to create an index, or concordance, of the voluminous Holocaust-era records on deposit at the National Archives. Conceivably, it would be one of the best research tools available to scholars seeking clues to wartime looting. Highly desirable as well would be a comprehensive central data base highlighting information about outstanding claims for missing works of art, surely the most effective way to link claimants to individual works that they suspect were looted and not returned.

As you contemplate the Commission's recommendations to the President, may I submit that you consider the option of supporting federal funding for such a resource, as well as the notion of federal funding to help research efforts, particularly among claimants and at small museums whose budgetary constraints might currently inhibit such undertakings. And we certainly endorse the swift appropriation of the \$5 million that Congress has already authorized for Holocaust-era research.

I should also say that I am pleased that the Art Loss Register has recently offered to make its own database available as a repository for such information. The Metropolitan endorses this approach in principle just as it would welcome other groups, such as the Art Museum Image Consortium

(AMICO), or the Art Museum Network of the AAMD, to create sites where relevant information could be posted and be linked to participating museum Web sites.

Ladies and gentlemen, let me reiterate, in closing, our profound conviction that the unlawful and immoral spoliation of art during the Nazi period remains a bitter part of the horrific memory of this tragic time, and let me renew the Metropolitan Museum's pledge that every effort will be made to try to locate still-missing works of art. To this end, we sincerely hope that the list of paintings we have just released, paintings about which we seek more information, will prove a useful resource in arriving at the truth and ensuring justice.

Thank you.

Figures

Fig. 1 “Seine at Asnières” by Claude Monet (1873)



Courtesy of Olga's Gallery.

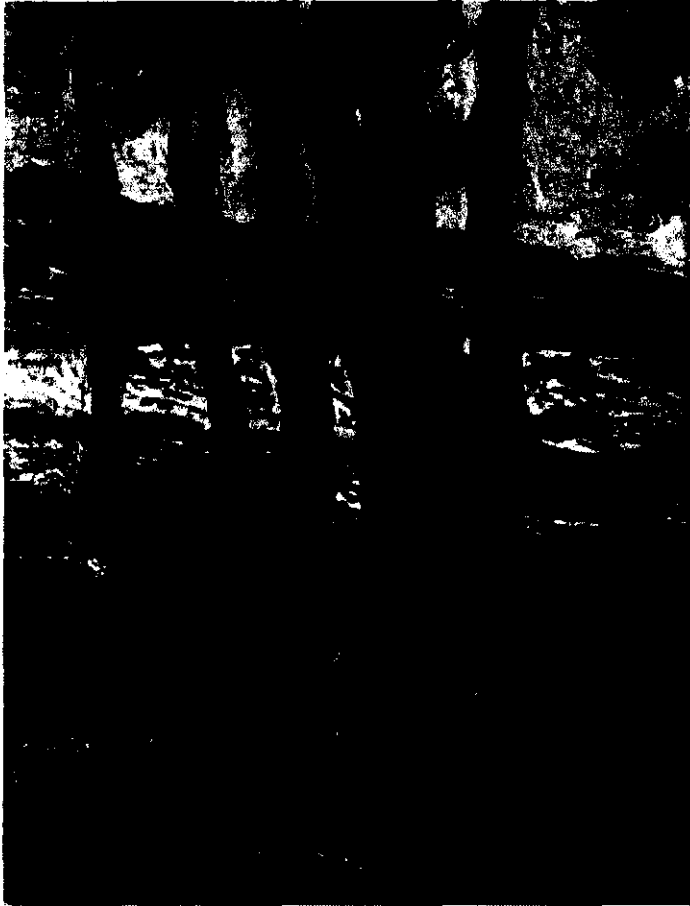
<http://www.abcgallery.com/M/monet/monet185.html>

Fig. 2 “Still Life with Fruit and Game” By Frans Snyder (1615)



Courtesy of the National Gallery of Art.
<http://www.nga.gov/resources/snydersfs.shtm>

Fig. 3 “The Diggers” by Vincent van Gogh (1889)



Courtesy of Detroit Institute of Art.
http://www.dia.org/the_collection/overview/full.asp?objectID=46067&image=1

Fig. 4 Peruvian Artifact



Courtesy of ABC News

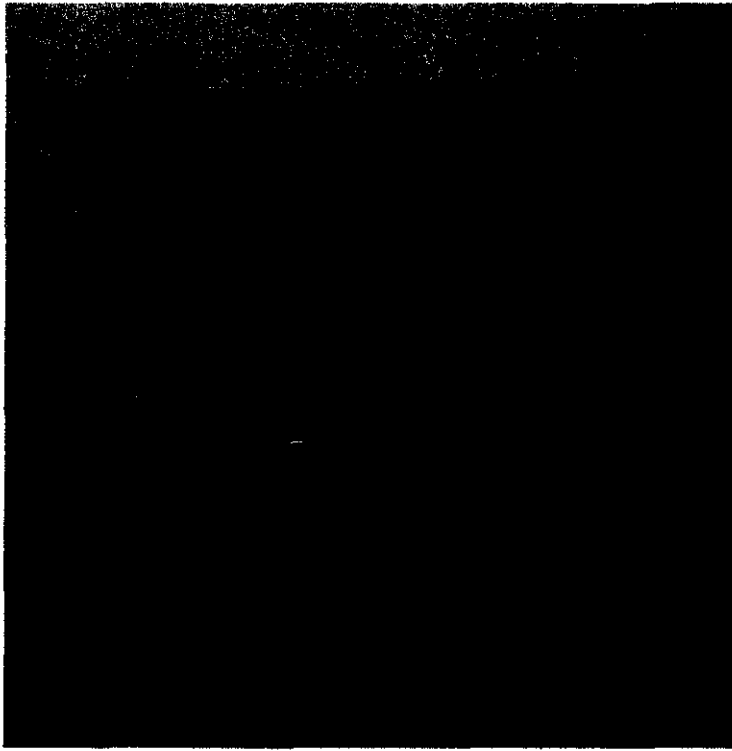
<http://abcnews.go.com/widgets/mediaViewer/image?id=36130>

Fig. 5 “Victorious Youth”



Courtesy of The New York Times
<http://graphics8.nytimes.com/images/2007/01/18/arts/Getty19>

Fig. 6 Euphronios Krater



Courtesy of The New York Times
<http://graphics8.nytimes.com/images/2008/01/10/arts/italy.jpg>