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## **HOLOCAUST ART: IT ISN'T ALWAYS “FINDERS KEEPERS, LOSERS WEEPERS”: A LOOK AT ART STOLEN DURING THE THIRD REICH**

*Emily A. Maples*<sup>†</sup>

### I. INTRODUCTION

The Holocaust is one of the worst crimes against humanity in modern times, yet many issues remain unresolved in the quest for reparations for Holocaust victims.<sup>1</sup> Today, thousands of artworks remain displaced as a result of Adolph Hitler's reign.<sup>2</sup> This comment is designed to provide a brief overview of art stolen from the Jews during the Third Reich, and will cover the following three areas that relate to recovering and returning the works stolen by the Nazis: the causes of lost and stolen art, the difficulties in retrieving the art, and what countries are currently doing to help return these lost works to their rightful owners. In order to resolve these issues, it is important to understand the methods by which art was taken from the Jewish people, the purposes being served by stealing the art, and the factors which encouraged the theft to continue. The second area covered in part three of this comment will provide some insight into the difficulties often associated with retrieving stolen art, those encountered both by the victim and by the heirs of the victim. To better explain the difficulties

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1. Neal M. Sher, Michael Berenbaum, Arthur K. Smith, Jr., & Burt Neuborne, *The Search for Nazi Assets: A Historical Perspective*, 20 WHITTIER L. REV. 7 (1998).

2. Kelly Ann Falconer, *When Honor Will Not Suffice: The Need for a Legally Binding International Agreement Regarding Ownership of Nazi-Looted Art*, 21 U. PA. J. INT'L ECON. L. 383, 384 (2000).

involved in this process, this comment will provide a glimpse into the much-needed uniformity and enforceability in various international treaties and laws of the nations most heavily involved in the theft of art from Jews. The third area of this comment, covered in part four, is designed to be an informative piece on what is currently being done to encourage the return of stolen art, including various pieces of legislation being passed in the United States and in foreign countries, as well as the development of museum policies.

## II. THE THEFT

### A. *Natural Process of War*

It is estimated that as a result of Hitler's Nazi reign, between \$230 billion and \$320 billion in assets were stolen from Jews during World War II.<sup>3</sup> Of these assets, an estimated \$20.5 billion were in artworks.<sup>4</sup> The great theft by the Third Reich was not the first time in history in which the conqueror looted from the conquered.<sup>5</sup> For example, records of looting art treasures date as far back as 700 B.C. to the Assyrian Empire.<sup>6</sup> Other examples of looting can be found in the Roman Empire, the Crusades, Napoleonic Wars and the Viking Age.<sup>7</sup> In Ancient Rome, seizing cultural property was not done for its value, but for symbolization of the victory.<sup>8</sup> Under the doctrine of *uit possidetis*, when a State was captured during wartime, the victor gained valid title to all of the property within the defeated country.<sup>9</sup> Jewish law also recognizes that to a certain extent, and

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3. Michael J. Bazylar, *Litigating the Holocaust*, 33 U. RICH. L. REV. 601, 602 (1999). Estimates are in 1999 value equivalents. *Id.*

4. *Id.* at 623.

5. In 1 Samuel, The Lord removes Saul as King of Israel for keeping some of the plunder after attacking the Amalekites. *1 Samuel* 15:1-35 (New International Revised Version Study Bible). Later, in the Book of Esther, King Xerxes grants the Jews the rights to destroy, kill, annihilate and plunder from any enemy that may attack them. Although the Jews do kill their enemies, they do not lay their hands on the plunder. *Esther* 8:11, 9:5-10 (New International Revised Version Study Bible). It is believed that the Jews did not take the plunder as a result of knowing what happened to Saul when he kept some of the loot. *Id.*

6. Stephan J. Schlegelmilch, Note, *Ghosts of the Holocaust: Holocaust Victim Fine Arts Litigation and a Statutory Application of the Discovery Rule*, 50 CASE W. RES. L. REV. 87, 92 (1999).

7. *Id.* at 92 n.24.

8. Trey G. Elmer, Comment, *A Question of Dignity: An Equitable Solution to the Trophy Art Debate*, 20 N.Y.L. SCH. J. INT'L & COMP. L. 117, 126 n.103 (2000).

9. *Id.* at 126 n.92.

under certain circumstances, ownership rights can be obtained through the “*kibosh milhamah*” (the right of conquest).<sup>10</sup>

Today the Louvre Museum in Paris, France contains artwork stolen by Napoleon’s armies.<sup>11</sup> In fact, the Nazis justified their looting by pointing to the Napoleonic Wars and World War I, believing they were only taking back what was rightfully theirs.<sup>12</sup> What makes Nazi art looting unique is the extent to which it was carried out.<sup>13</sup> It was not merely a case of victors claiming spoils of war,<sup>14</sup> but an example of hatred so unimaginable and intense, it almost annihilated a race and its culture.

## B. Nazi Policy

### 1. Purification of the Jewish Race

The act of stealing art from the Jews was not merely incidental to Germany’s ongoing war.<sup>15</sup> “[I]t was Nazi Germany’s policy to steal art from its conquered subjects who were considered to be culturally inferior—particularly from Jews.”<sup>16</sup> When Hitler became Chancellor of Germany in 1933, he used the German state to redefine culture and art, reflecting the anti-modernism priority of the Third Reich.<sup>17</sup> Separating Jews from their property was the first step in institutionally dehumanizing Jews.<sup>18</sup> By taking away cultural objects, Hitler furthered his plan to

10. Steven H. Resnicoff, *The Jewish Perspective on the Theft of Artworks Stolen During World War II*, 10 DEPAUL-LCA J. ART & ENT. L. & POL’Y 67, 74 (1999).

11. Amy L. Click, Comment, *German Pillage and Russian Revenge, Stolen Degas, Fifty Years Later—Who’s Art is it Anyway?*, 5 TULSA J. COMP. & INT’L L. 185, 198 (1997). The Louvre also contains *Vermeer Astronomer* by Eduoard de Rothschild, which was once a part of Hitler’s collection. Kelly Diane Walton, *Leave No Stone Unturned: The Search for Art Stolen by the Nazis and the Legal Rules Governing Restitution of Stolen Art*, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 549, 559 (1999).

12. Michelle I. Turner, Note, *The Innocent Buyer of Art Looted During World War II*, 32 VAND. J. TRANSNAT’L L. 1511, 1514-15 (1999).

13. Schlegelmilch, *supra* note 6, at 92.

14. Falconer, *supra* note 2, at 383.

15. Owen C. Pell, *The Potential for a Mediation/Arbitration Commission to Resolve Disputes Relating to Artworks Stolen or Looted During World War II*, 10 J. DEPAUL-LCA J. ART & ENT. L. & POL’Y 27, 29 (1999).

16. Thomas R. Kline, *Resolving Stolen Art Theft Claims*, AM. JEWISH CONG. MONTHLY, Nov.-Dec. 1999, at 3.

17. Robert K. Paterson, *Hitler and Picasso—Searching for “The Degenerate,”* 33 U. BRIT. COLUM. L. REV. 91, 92 (1999).

18. Derek Brown, Comment, *Litigating the Holocaust: A Consistent Theory in Tort for Private Enforcement of Human Rights Violations*, 27 PEPP. L. REV. 553, 560 (2000).

completely annihilate the existence of the Jewish culture.<sup>19</sup> Modern artworks such as those by Van Gogh, Chagall and Picasso were associated with, and thought to be as inferior as the Jews themselves, because of the artist's unidealized or exaggerated depictions of the human figure.<sup>20</sup> Anti-modernism and anti-Semitism became one in the same when the Nazis accused the Jews of controlling the art market and the press in order to create the prominence of modern art.<sup>21</sup>

Modern works of art were not the only pieces sought out by the Third Reich. Hitler wanted to rid Germany of any "degenerate art," which included anything depicting Jewish subjects, any works by Jewish artists, any works which were either critical of Germany or which did not reflect the Nazi's reality, and any modern or abstract works.<sup>22</sup> Included in these were paintings by Pissarro and Matisse,<sup>23</sup> as well as works displaying forms of Dadaism, Futurism and Cubism.<sup>24</sup> Hitler preferred works by Rembrandt, Pieter Bruegel the Elder, Vermeer, and other painters who, pursuant to Nazi aesthetic ideology, "represented 'pure' Northern European art of the highest order."<sup>25</sup> In July of 1937, Hitler opened the *Exhibition of Degenerate Art* in Munich, intended to illustrate the Nazi belief that the works displayed exemplified all types of degeneracy thought to seriously threaten the welfare of the German people.<sup>26</sup> Despite its supposed worthlessness, the exhibition attracted over two million visitors.<sup>27</sup>

Hitler carried out his attempt to create a pure culture by forbidding artists from working, and by closing many State exhibitions.<sup>28</sup> In the beginning, Hitler removed 16,000 pieces of art from German public or state collections.<sup>29</sup> This was not enough for Hitler, so following the occupation of Austria, Hitler turned his focus towards looting private collections of art.<sup>30</sup> Some Austrian Jews had fled quickly, leaving behind artwork that was quickly confiscated by the Reich, while those who wished

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19. Pell, *supra* note 15, at 30.

20. Walton, *supra* note 11, at 555.

21. *Id.*

22. *Id.*

23. Pell, *supra* note 15, at 30 n.8.

24. Schlegelmilch, *supra* note 6, at 94. These types of works were mentioned in Hitler's *Mein Kampf*. *Id.*

25. *Id.* at 93. However, the Nazis did find Rembrandt's fondness for Jewish subjects troubling. Turner, *supra* note 12, at 1515.

26. Paterson, *supra* note 17, at 92-93.

27. *Id.* at 93.

28. *Id.* at 92.

29. Pell, *supra* note 15, at 31.

30. *Id.* at 32.

to flee were allowed visas only upon surrendering of all their possessions<sup>31</sup> to the SS, or *Schutzstaffel*.<sup>32</sup> Eventually, all Jewish property was subject to the Reich by passage of the *Ordinance for the Registration of Jewish Property*.<sup>33</sup> When the legal means did not gain enough property, the Nazis simply took it by force, and sometimes violence.<sup>34</sup> The most famous of these violent incidents was “*Kristallnacht*,”<sup>35</sup> which in German means the “night of broken glass.”<sup>36</sup> *Kristallnacht* occurred in November of 1938, and was part of a systematic plundering of Jewish property and assets in which hundreds of synagogues and over 7,000 businesses were looted and burned.<sup>37</sup>

In order to help accomplish the Nazi goal of depriving inferior races of their cultural property, German ideologue, Alfred Rosenberg, headed the *Einsatzstab Reichsleiter Rosenberg (ERR)*.<sup>38</sup> Originally established in order to collect Jewish religious books and objects for anti-Semitic research purposes, the ERR developed into the main organization for confiscating art.<sup>39</sup> The ERR alone stole at least 21,000 works of art, mainly from France.<sup>40</sup> In addition, a German Art Commission, or “*Kunstschutz*,” was created to oversee art in the countries which the Nazis occupied.<sup>41</sup> In total, the Allies believe the Nazi Party stole approximately 249,683 paintings.<sup>42</sup>

## 2. Economic Gain

The Nazis were not unaware of the value of much of the art they were stealing.<sup>43</sup> Stolen art could be sold or bartered for on the international

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31. *Id.*

32. Turner, *supra* note 12, at 1516.

33. Pell, *supra* note 15, at 32-33. The Ordinance for the Registration of Jewish Property was one of at least 400 anti-Jewish measures passed by the Nazis. Walton, *supra* note 11, at 556.

34. Walton, *supra* note 11, at 557.

35. *Id.*

36. Neal M. Sher, et al., *supra* note 1, at 12 n.29.

37. *Id.* at 12.

38. Kline, *supra* note 16, at 4.

39. Turner, *supra* note 12, at 1514.

40. Pell, *supra* note 15, at 33. Many Jews living in France at the time had come from Germany. Walton, *supra* note 11, at 560.

41. Kline, *supra* note 16, at 4.

42. Walton, *supra* note 11, at 550. As of 1949, this was the number of artworks determined to be stolen. *Id.*

43. Falconer, *supra* note 2, at 394.

market, raising money to further fund the Nazi Party efforts.<sup>44</sup> Works by Picasso, Matisse, and Van Gogh were likely to fetch high bids and therefore, were auctioned off to private dealers.<sup>45</sup> Pieces of art that would not sell for a high price were traded for art that was acceptable to Hitler.<sup>46</sup> Generally, the only artworks acceptable to Hitler were pieces containing colors and subjects that aligned with what could be found in nature;<sup>47</sup> Hitler alone determined the outcome for much of the art looted.<sup>48</sup> Any art deemed unacceptable to Hitler and therefore, to the Reich, was destroyed or burned; thus, as many as 5,000 works of art may have faced this fate.<sup>49</sup>

Confiscating art in the Third Reich could either make or break a career in the Nazi party, prompting Nazis to devote a vast amount of time and energy to stealing art.<sup>50</sup> Much of what was stolen from the Jews ended up as gifts to high-ranking Nazis or as decorations for Nazi homes and offices.<sup>51</sup> Hitler had big plans for all of the art the Third Reich had stolen from public and private collections.<sup>52</sup> He wanted to create a super-museum of art that would display to the world the domination of the Nazis and the superiority of the Aryan race.<sup>53</sup> This super-museum was to be in Hitler's hometown of Linz, Austria.<sup>54</sup> Being a failed artist himself, Hitler wanted to transform Linz into the artistic capital of his new Europe.<sup>55</sup> Luckily, the works of art that were to be displayed in the museum were stored in an Austrian salt mine, saving them from the Allied air raids.<sup>56</sup> By

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44. Pell, *supra* note 15, at 31.

45. *Id.*

46. *Id.*

47. *Id.* at 30.

48. Walton, *supra* note 11, at 554-55.

49. Pell, *supra* note 15, at 31.

50. Walton, *supra* note 11, at 554.

51. *Id.* at 556. Hitler would also steal furniture, which when shipped back to Germany was marked with an "H." However, the Germans were not able to unpack these crates, and hence, the Allies were able to recover the furniture after the war. Hector Feliciano, Owen Pell & Nick Goodman, *Nazi-Stolen Art*, 20 WHITTIER L. REV. 67, 68 (1998).

52. Paterson, *supra* note 17, at 94.

53. Elmer, *supra* note 8, at 119.

54. Schlegelmilch, *supra* note 6, at 93.

55. Falconer, *supra* note 2, at 395.

56. Paterson, *supra* note 17, at 94. It has been debated whether or not Da Vinci's *Mona Lisa* was among the works protected in an Austrian salt mine. Recently, the Louvre Museum in Paris stated for the first time that "a 16th or 17th century copy of the painting was taken by the Germans. . . ." *Mona Lisa 'was saved from Nazis by British agent,'* UNITED PRESS INT'L, Dec. 7, 2000, LEXIS.

the end of the war, nearly one-fifth of the art in the Western world had been seized or forced into sale by German forces.<sup>57</sup>

### C. *Art in Transit*

#### 1. Russian Trophy Brigades: Retaliation

During World War II, the Nazis believed the Russians to be culturally inferior and hence, destroyed much of the Russian artwork they encountered during their invasion.<sup>58</sup> As many as 500 museums, 500 synagogues, and more than 1,200 churches were destroyed during Germany's siege on Russia.<sup>59</sup> After the war ended, Joseph Stalin wanted reparation for the wrongs committed against Russia by Germany, and ordered Trophy Brigades to retrieve "price and quality equivalents of the artworks destroyed or removed from Russia during the War."<sup>60</sup> Stalin developed plans to establish a super-museum in Moscow that would integrate three existing Moscow institutions: the Museum of Oriental Culture, the Pushkin Museum and the Museum of New Western Art. Stalin's world museum was intended to dwarf Hitler's super-museum.<sup>61</sup>

The Trophy Brigades stole an estimated 2.5 million pieces of Nazi art, which included art the Nazis themselves had stolen.<sup>62</sup> Many of these pieces were found in special shelters built by the Germans to protect the works from British and American bombardment.<sup>63</sup> Once brought back to Russia, the trophy pieces were distributed to organizations and museums throughout the country, giving museums the prime cultural pieces to display, while pieces deemed to be of lesser quality were sold at state antiquary shops.<sup>64</sup> However, not all the looting was done on behalf of the Soviet Union.<sup>65</sup> Soviet officers and soldiers were granted the right to take home the spoils, while the local citizens plundered depositories prior to the

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57. Pell, *supra* note 15, at 36.

58. Elmer, *supra* note 8, at 119.

59. *Id.*

60. *Id.* at 119-20.

61. Stephan Wilske, *International Law and the Spoils of War: To the Victor the Right of Spoils? The Claims for Repatriation of Art Removed from Germany by the Soviet Army During or as a Result of World War II*, 3 UCLA J. INT'L L. & FOREIGN AFF. 223, 232 (1998).

62. Elmer, *supra* note 8, at 120.

63. Wilske, *supra* note 61, at 233.

64. *Id.* at 235.

65. *Id.* at 234.



Allies' arrival.<sup>66</sup> In 1958, Russia finally surrendered 1.6 million pieces of those stolen works to Germany.<sup>67</sup>

## 2. International Movement

The Nazis conducted much of their business of trading and selling art at a museum storehouse near the Plaze de Concorde in France, called *Jeu de Paume*.<sup>68</sup> Swiss, French and German art brokers, as well as Nazi officials, visited the storehouse, realizing the opportunity for fortune it held.<sup>69</sup> Most dealers knew that these works of art were not being sold by the original owners, but were in fact taken illegally.<sup>70</sup> Works by Picasso, Cezanne and Matisse were traded for works by various Nordic painters, which were worth far less in the art world, but were prized by Nazis.<sup>71</sup> Because the Nazis dramatically undervalued impressionist and modern artworks, they would sometimes trade several Monets for one mediocre painting by a Flemish artist of unimportance.<sup>72</sup>

After Hitler's *Exhibition of Degenerate Art*,<sup>73</sup> he established the Commission for the Disposal of Products of Degenerate Art (Commission) in order to decide which artworks were most valuable on the international market.<sup>74</sup> Many of the items auctioned by the Commission ended up in American museums.<sup>75</sup> Since much of Europe was in ruins, a booming United States economy created a natural market for the art.<sup>76</sup> This market was further encouraged by the lack of governmental regulations and indifference to Nazi-looted art.<sup>77</sup>

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66. *Id.*

67. Elmer, *supra* note 8, at 120.

68. Feliciano et al., *supra* note 51, at 68.

69. Walton, *supra* note 11, at 563.

70. *Id.*

71. *Id.* at 564.

72. Turner, *supra* note 12, at 1517.

73. Paterson, *supra* note 17, at 92.

74. *Id.* at 93.

75. *Id.*

76. Kline, *supra* note 16, at 4-5.

77. *Id.*

### III. DIFFICULTIES IN RETRIEVING STOLEN ART AND RETURNING IT TO ITS RIGHTFUL OWNERS

#### A. *Making a Claim*

##### 1. Proving Theft

“[A]ny claim to recover a stolen object must begin with some proof that the claimant owned the object, or was at least in quiet possession of it, and then lost the object without the claimant’s consent.”<sup>78</sup> Because there are usually no witnesses to a theft, all that is required is proof that the person lost possession of the property without the owners authorization.<sup>79</sup> However, it must also be established that title to the piece was neither sold in a prior transaction nor was relinquished voluntarily.<sup>80</sup> Often courts will use circumstantial evidence “establishing that the object was put in storage or left behind when the owner fled, and later the object disappeared.”<sup>81</sup> The court may also consider whether or not there was a voluntary departure or abandonment of the property.<sup>82</sup> The most prevalent problem encountered arises when the true ownership of the piece must be determined.<sup>83</sup> Some detailed writings exist, which include indicia of ownership or title (i.e., bills of sale, insurance records, artists’ records, exhibition catalogs and personal testimony.)<sup>84</sup> Most often, the ownership evidence in existence today are faded photographs and memories.<sup>85</sup> Because it was rare that families would photograph their art collections,<sup>86</sup> the reality is that most proof of ownership exists only in the memories of the victims.

##### a. *Inadequate Records*

Many people were charged with inventorying the looted art at the Nazis primary storage facility at *Jeu de Paum*, but often the amount of art

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78. *Id.*

79. Thomas R. Kline, *The Recovery of Stolen Art Sold in the United States From a “Neutral” Country*, 14 AM. U. INT’L. L. REV. 243, 247-48 (1998).

80. Feliciano et al., *supra* note 51, at 74.

81. Kline, *supra* note 16, at 6.

82. *Id.*

83. Barbara J. Tyler & Saul Bellow, *The Stolen Museum: Have United States’ Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in World War II?* 30 RUTGERS L.J. 441, 455 (1999).

84. Feliciano et al., *supra* note 51, at 74.

85. Walton *supra* note 11, at 552.

86. Tyler & Bellow, *supra* note 83, at 455.

that flowed through made it difficult to keep track of where each piece came from.<sup>87</sup> Although these inventories may provide the best evidence for locating the artwork, it is extremely difficult to locate and examine the files in their entirety.<sup>88</sup> For example, the French have, until recently, “jealously guarded” such records,<sup>89</sup> allowing families to review only their own files, with no more than a “vertical view of the artwork’s history,” meaning that they may not have access to files related to the art outside the family.<sup>90</sup>

So far, no central registry for art has been legislatively recognized as definitive.<sup>91</sup> However, current resources available for tracking stolen art are the FBI and Interpol<sup>92</sup> databases, but the general public is restricted from accessing them.<sup>93</sup> Accessible resources available to the general public are the International Foundation for Art Research, which profiles lost or stolen art, and the Art Loss Register, which keeps current listings of all lost or stolen art.<sup>94</sup> Currently, the Getty Art Information Program is working with cultural institutions in order to create uniform standards of identification, which will help track stolen objects.<sup>95</sup> The Holocaust Art Restitution Project (HARP), located in the B’nai B’rith Klutznick National Jewish Museum in Washington, D.C.,<sup>96</sup> is also working to help Holocaust victims retrieve their lost art by establishing a database to help locate the art, as well as prove ownership.<sup>97</sup> Because of the lack of international cooperation to establish a central system of recovery,<sup>98</sup> searches now are a daunting

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87. Walton, *supra* note 11, at 560. Nazis inadvertently helped track stolen art by stamping each piece with a swastika. *Id.* at 568.

88. Feliciano et al., *supra* note 51, at 68.

89. Tyler & Bellow, *supra* note 83, at 455.

90. Feliciano et al., *supra* note 51, at 68.

91. *Id.* at 74.

92. Interpol is the International Criminal Police Organization, consisting of 176 police agencies in various countries. Walton, *supra* note 11, at 611. These agencies exchange information of stolen objects through reports filed and distributed among the belonging agencies. *Id.*

93. Feliciano et al., *supra* note 51, at 74.

94. Miguel Flores, *Wanted: Stolen Art*, available at <http://www.yale.edu/iform/Fall1996/ArtFall96.htm> (last visited Nov. 10, 2001). The not-for-profit International Foundation for Art Research is a major shareholder in the for-profit Art Loss Register. Sarah S. Conley, *International Art Theft*, 10 WIS. INT'L L.J. 493, 510 (1995).

95. Flores, *supra* note 94.

96. United States Holocaust Museum, *Art*, <http://www.ushmm.org/assets/ushmm4.htm> (last visited Nov. 10, 2001) [hereinafter *Art*].

97. Stephanie Cuba, Note, *Stop the Clock: The Case to Suspend the Statute of Limitations on Claims for Nazi-Looted Art*, 17 CARDOZO ARTS & ENT. L.J., 447, 449 n.24 (1999).

98. Conley, *supra* note 94, at 494.

task and must be done by investigating French records, British reports and the United States National Archives.<sup>99</sup>

One example showing the complicated situation can be seen in an important body of works of art having been on deposit since 1972 in the “Alte Nationalgalerie” of East Berlin and after reunification given to France in 1991 till the real owner is found. The 28 paintings and works on paper by artists as Delacroix, Courbet, Monet, Gauguin, Renoir, etc. since today could not be returned to their legal owners even though an exhibition with venues in Berlin and Paris was made to trace them. The story, as far as it could be clarified, was, that a priest (Solbach) had a soldier in confession who told him that he had been given a suitcase with valuable art works by a German officer in France who wanted to get it back after the war. The soldier, evidently stricken by bad conscience, handed the suitcase over to the priest who gave it to DDR officials in Halle in 1972, wherefrom it went to the East Berlin collections and could be restituted to the French authorities after reunification. Hopefully this unsolved riddle still can be clarified—showing once and again the importance of world-wide data information.<sup>100</sup>

*b. Hear No Evil, See No Evil*

Art deals are repeatedly transacted under a blanket of silence<sup>101</sup> and, more often than not, museums fail to inquire about the origins of donated art they receive. Stolen artworks travel without restraint through the international market under the “ask me no questions and I’ll tell you no lies” scheme.<sup>102</sup> This method is ironically based on business etiquette, or “dealer’s ethics,” which dictate that a seller’s dealer will not be asked about the seller’s identity by the buyer’s dealer—due to the fact that those within the art business are not so concerned about the title of a piece as they are about its authenticity.<sup>103</sup> This disposition of “turning a blind eye” does nothing but create an ideal setting for the less scrupulous to sell their

99. Tyler & Bellow, *supra* note 83, at 455-56.

100. Professor Dr. Carla Schulz-Hoffmann, *Address to the Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art* (Dec. 2, 1998), Washington Conference on Holocaust-Era Assets, at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf>.

101. Conley, *supra* note 94, at 493.

102. Kline, *supra* note 16, at 3.

103. *Id.* at 5.

goods.<sup>104</sup> When art dealers are questioned about this practice, they will often, in their defense, claim that a duty of inquiry would damage the art business.<sup>105</sup> Not surprisingly, the international art trafficking ranks only behind drug and weapons trafficking in international crimes.<sup>106</sup>

*c. Heirless Property*

Unfortunately, when stolen art is finally recovered, there are often no legal claimants.<sup>107</sup> Heirless property is the result of the tragic extermination of entire families, towns, villages and cities.<sup>108</sup> Often, any surviving distant relatives may not know which pieces of art their deceased relative owned;<sup>109</sup> consequently, in some countries, the heirless property will escheat to the state.<sup>110</sup> In 1944, the Board of Deputies of British Jews created a solution to deal with heirless property by proposing to create a Jewish Trusteeship for countries free of Nazi or Axis control.<sup>111</sup> Following the end of the war, the Allied Investigators returned the stolen art they had recovered to the countries from which they came, to be distributed by their governments to the rightful owners.<sup>112</sup> In cases where neither the owners nor heirs of owners could be found, nor the Jewish communities restored, the trustees were to represent all interests in compensation and restitution.

In this concept, the trustees would be recognized as the “heirs and successors of the Jews who left no other heirs and would be authorized to use the property of exterminated or vanished Jewish families for general Jewish needs, or for Jewish reconstruction and settlement.” Jewish leaders among the United Nations argued that heirless property should not revert to the local government, as was customary under international law, since many of these governments had committed crimes against the Jews.<sup>113</sup>

104. Conley, *supra* note 94, at 493.

105. Cuba, *supra* note 97, at 465.

106. Pell, *supra* note 15, at 50.

107. Resnicoff, *supra* note 10, at 67.

108. *Id.* at 67-68.

109. *Id.* at 68.

110. *Id.*

111. Michael J. Kurtz, *Resolving a Dilemma: The Inheritance of Jewish Property*, 20 CARDOZO L. REV. 625, 629 (1998).

112. Turner, *supra* note 12, at 1523.

113. Kurtz, *supra* note 111, at 629, *quoting* Jewish Trusteeship Over Property of Exterminated Jews Demanded By the Board of Deputies, JTA NEWS, Nov. 8, 1944 (on file

The idea of a Jewish Trusteeship obtained firm support by Jews in Great Britain, Israel and the United States.<sup>114</sup> Later, the United States withdrew their support of a Jewish Trusteeship in favor of a successor organization concept, which was accepted in 1948 with the incorporation of the Jewish Restitution Commission.<sup>115</sup> This Commission was to be responsible for filing any claim to heirless Jewish property, and in 1949, all heirless Jewish property held by the American Military Government in the United States Zone was transferred to the Commission.<sup>116</sup> The Jewish Restitution Commission was to act as “trustee . . . for the Jewish people and in distributing it to such public or quasi-public religious, cultural, or educational institutions as it sees fit to be used in the interest of perpetuating Jewish art and culture.”<sup>117</sup>

## 2. Statute of Limitations

The term “statute of limitations” describes a restraint on the amount of time in which a prospective plaintiff has the ability to assert a valid legal claim in a court of law.<sup>118</sup> Strict application of this statute eliminates any legal remedy for a creditable claim.<sup>119</sup> Applying the statute of limitations often turns on the diligence<sup>120</sup> of the owners in looking for their lost or stolen art.<sup>121</sup> Generally, the statute will be tolled when the original owner demands that the present possessor return the property but the present possessor refuses,<sup>122</sup> or during the time an owner is diligently searching for his or her lost art.<sup>123</sup> Upon locating the art, and/or making a demand for the return of the art, the time allowed to bring a claim begins to tick away.<sup>124</sup> The owner has the burden of proving that a diligent effort was

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with the National Archives, College Park, MD. (OSS Research and Analysis Branch—Jewish Desk, National Archives Gift Collection) (RG 200, Abraham G. Duker/Irving Dwok Papers, File “Folder 320—Restitution of Property”).

114. *Id.* at 629.

115. *Id.* at 639.

116. *Id.* at 640.

117. *Id.* at 640, quoting Owen R. McJunkins, Authorized Representative, U.S. Military Governor, Memorandum of Agreement, Jewish Cultural Property (Feb. 15, 1949).

118. Cuba, *supra* note 97, at 455. In the United States, this limitation is generally two to four years. *Id.*

119. *Id.* at 456.

120. Diligence means that the person must consistently look into the title, warranties, authenticity, and provenance of an object, through various means available prior to purchasing an object. Walton, *supra* note, 11 at 580.

121. Kline, *supra* note 79, at 248.

122. Falconer, *supra* note 2, at 408-09.

123. Cuba, *supra* note 97, at 456-58.

124. *Id.* at 456-58.

made in attempting to recover the lost art as well as the burden of filing a timely lawsuit after making a demand for the return of the artwork.<sup>125</sup>

It is improbable that courts will require that Holocaust victims should have previously located their lost art.<sup>126</sup> Many owners were in concentration camps or fleeing for their lives when their art was stolen; thus, preventing them from searching for their lost art.<sup>127</sup> The heirs of Holocaust victims would also have had difficulty in knowing where to begin their search, especially considering many of them had no reason to believe their work(s) of art had survived the horrific terror of war.<sup>128</sup> Staying outside the statute of limitations may be a bit more difficult for wealthy art collectors who fled during the war, as they may still have had significant funds after their escape, as well as the resources and expertise, to find their missing artworks.<sup>129</sup> Still, because original owners of the stolen property were usually neither in a position to prevent the theft to begin with, nor capable of effectively searching for their property after the war, the statute of limitations should be irrelevant as it relates to Nazi stolen art.<sup>130</sup>

### 3. Rights of a Bona Fide Purchaser

Generally, common law jurisdictions do not allow good title to pass from a thief to anyone, including a good faith purchaser for value.<sup>131</sup> This is because a thief's title to the stolen goods is void.<sup>132</sup> Thus, when the bona fide purchaser sells the stolen object, the title he or she passes will be void unless the original owner endorses the transaction or,<sup>133</sup> the statute of limitations expires.<sup>134</sup> Civil law countries are much more protective of an innocent purchaser than is the United States in permitting good title to pass to the innocent buyer.<sup>135</sup>

If the bona fide purchaser is required to give up the artwork, he or she may have recourse; the bona fide purchaser may be able to demand compensation from the dealer who had the duty and ability to inspect the

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125. Robert Schwartz, *The Limits of the Law: A Call for a New Attitude Toward Artwork Stolen During World War II*, 32 COLUM. J.L. & SOC. PROBS. 1, 5 (1998).

126. Turner, *supra* note 12, at 1539.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 1541.

131. Pell, *supra* note 15, at 43.

132. Schwartz, *supra* note 125, at 4.

133. Pell, *supra* note 15, at 43.

134. Schwartz, *supra* note 125, at 4.

135. Turner, *supra* note 12, at 1540.

title.<sup>136</sup> "In theory, the line of purchasers could be traced all the way back to the first dealer who knowingly purchased the work from the Nazis or other looters."<sup>137</sup> Despite any existing theory on the ability to track artwork, the practical difficulties that are presently associated with searching and checking the title of a piece of art causes buyers to believe that the benefits of investing in the art outweigh the possibility of losing the artwork to bad title.<sup>138</sup>

#### 4. Jurisdiction<sup>139</sup>

Because of the array of existing municipal laws, the results of stolen art cases often turn on where the art has come to rest, regardless of the fact the victim of the theft had no control over the movement of their art to that particular place.<sup>140</sup> This is because the jurisdiction where the art is found will determine the standard of proof, the statute of limitations, and any rights through adverse possession.<sup>141</sup> With so many international treaties arising between different countries, there is an increasing susceptibility to multi-jurisdictional litigation.<sup>142</sup> One result of multi-jurisdictional litigation is the increased ability to interfere with international markets' movement of art and the ability to cloud title.<sup>143</sup> These problems present a need for a uniform law regarding thefts of art that violate international law.<sup>144</sup>

#### B. *International Law*

The movement of a piece of art almost always crosses the borders of many different countries. The various pieces of art stolen by the Nazis were sold in numerous countries, which in turn were sold in many other countries.<sup>145</sup> Because the law in the United States differs from the law among these various countries,<sup>146</sup> the issue of conflict of laws presents another hurdle for an owner trying to bring suit against a bona fide

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136. *Id.* at 1541.

137. *Id.*

138. *Id.* at 1542.

139. Jurisdiction is a court's power to decide a case or issue a decree. BLACK'S LAW DICTIONARY 855 (7th ed. 1999).

140. Pell, *supra* note 15, at 44.

141. *Id.*

142. *Id.* at 44-45.

143. *Id.* at 45.

144. *Id.*

145. Turner, *supra* note 12, at 1540.

146. Schwartz, *supra* note 125, at 19.



purchaser of his or her stolen art.<sup>147</sup> In resolving this issue, the vast majority of members of the art community, experts, and commissions aiding the recovery of art stolen during wartime, believe that a systematic plan is necessary.<sup>148</sup> Unfortunately, only a few of these people agree on what the universal systematic solution should entail.<sup>149</sup> In order for international law to become accepted as customary law in all major socio-economic and political systems, it must be, at the very least, practiced by a majority of nations.<sup>150</sup> When a law is accepted as customary international law, it can, and will, be binding on all nations regardless of their desire of the law.<sup>151</sup>

### 1. International Agreements

International Treaties have been diminutive thus far in resolving the problems currently encountered in returning the art stolen from Jews by the Nazis during World War II.<sup>152</sup> Despite the ability of the treaties to combat many of these problems, the treaties have indicated a consensus that the world will not tolerate such atrocious behavior during wartime.<sup>153</sup>

#### a. *The Hague*

The Hague Convention of 1907 prohibited the plundering of a nation during wartime, but failed to express or establish any rights regarding the return of stolen property, including cultural property.<sup>154</sup> Although this was the law during World War II, it is obvious that it was neither followed nor enforced. The first noteworthy endeavor to establish laws protecting cultural property during wartime did not arise until long after the end of World War II, when the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was held in 1954 (1954 Convention).<sup>155</sup> The 1954 Convention recognized the important contribution cultural property has on the culture of the world, as well as its value, and

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147. Turner, *supra* note 12, at 1540.

148. Schwartz, *supra* note 125, at 20.

149. *Id.*

150. Jessica Amanda Burdick, Casenote, *Burger-Fischer v. Degussa Ag.*, 16 T.M. COOLEY L. REV. 449, 454-55 (1999).

151. *Id.* at 455.

152. Schlegelmilch, *supra* note 6, at 98.

153. *Id.*

154. Pell, *supra* note 15, at 37-38.

155. The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, done on May 14, 1954, 249 U.N.T.S. 215 (entered into force Aug. 7, 1956) [hereinafter 1954 Hague Convention]. See also Cuba, *supra* note 97, at 475-76.

the need for its protection,<sup>156</sup> thus, it made cultural property immune from seizure<sup>157</sup> and required it to be marked with a special emblem.<sup>158</sup> However, use of the emblem was not allowed during times of war unless the property was being transported for its own safety.<sup>159</sup> If cultural property was transported to another country, the receiving country was to treat the property with the same care they would treat similar property of their own.<sup>160</sup> The task of taking the necessary steps to prosecute violators was placed in the hands of each country, allowing them to use their own criminal jurisdictional sanctions and penalties as punishment.<sup>161</sup> Although the 1954 Convention helped to bring attention to the problem of stolen property, it failed to remedy many of the problems faced by theft victims by ignoring the need to enact specific guidelines or rights regarding the return of stolen property. Therefore, Holocaust victims today cannot turn to the Hague Convention as a viable source for enforcing the return of lost art.

On March 26, 1999, The Hague established the Second Protocol to the 1954 Hague Convention.<sup>162</sup> Under the Second Protocol, each Party to a conflict was to

do everything feasible to verify that the objectives to be attacked are not cultural property . . . take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property . . . refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property . . . which would be excessive in relation to the concrete and direct military advantage anticipated; and cancel or suspend an attack if it becomes apparent: that the objective is cultural property . . . that the attack may be expected to cause incidental damage

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156. 1954 Hague Convention, *supra* note 155, 249 U.N.T.S. 240.

157. *Id.* art. 14, 249 U.N.T.S. at 252.

158. *Id.* art. 17, 249 U.N.T.S. at 254. Article 16 describes the emblem of the Convention in the form of "a shield, pointed below, per saltire blue and white (a shield consisting of a royal blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle." *Id.* art. 16, 249 U.N.T.S. at 252.

159. *Id.* art. 17, 249 U.N.T.S. at 254.

160. 1954 Hague Convention, *supra* note 155, art. 17, 249 U.N.T.S. at 284 (Regulations for the Execution of the Convention).

161. 1954 Hague Convention, *supra* note 155, art. 28, 249 U.N.T.S. at 260.

162. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, opened for signature Mar. 26, 1999, 38 I.L.M. 769 (not yet entered into force).

to cultural property . . . which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>163</sup>

Although the Second Protocol may do more than the 1954 Hague Convention to prevent looting during wartime, it still does nothing to ensure the return of stolen cultural property.

*b. United Nations Educational, Scientific and Cultural Organization (UNESCO)*

The UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (UNESCO Convention) was held in Paris, France in November of 1970.<sup>164</sup> The basis of the UNESCO Convention was the principal that all nations are to be imposed with an obligation to ensure protection of their own cultural property.<sup>165</sup> The UNESCO Convention was aimed at elevating the awareness of the moral obligations each State has to protect its own cultural heritage, as well as that of others;<sup>166</sup> thus, it broadened protection of cultural property to extend to wartime and included provisions to stop stolen national treasures from being traded on the international market.<sup>167</sup> The UNESCO Convention had several requirements, including that each State Party to the Convention create "one or more national services . . . for the protection of cultural heritage . . ."<sup>168</sup> These national services were to draft laws and regulations to "secure the protection of the cultural heritage and particularly [the] prevention of illicit import, export and transfer of ownership of important cultural property,"<sup>169</sup> to establish and keep a national inventory of protected property, to promote "the development or the establishment of scientific and technical institutions . . . required to ensure preservation of cultural property," to supervise archaeological excavations, and to publicize any disappearance of cultural property.<sup>170</sup> This nationalist approach failed to provide any individual protection or restitution for property stolen from

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163. *Id.* art. 7.

164. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, done on Nov. 14 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 (entered into force Apr. 24, 1972)[hereinafter UNESCO Convention].

165. *Id.*, 823 U.N.T.S. at 232.

166. *Id.*

167. Cuba, *supra* note 97, at 477.

168. UNESCO Convention, *supra* note 164, art. 5, 823 U.N.T.S. at 238.

169. *Id.* art. 5(a).

170. *Id.* art. 5(a)-(g).

private individuals because the UNESCO Convention only applies to objects that the government designates as belonging to the State.<sup>171</sup> Another problem exists in that not all countries ratified the UNESCO Convention because they do not agree with governmental involvement in cultural affairs.<sup>172</sup> As a result, Holocaust survivors and heirs who desire to retrieve their stolen art cannot do so under the UNESCO Convention.<sup>173</sup>

*c. International Institute for the Unification of Private Law  
UNIDROIT Convention*

The latest international effort to resolve disputes over cultural property is the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention), held in Rome in 1995.<sup>174</sup> UNIDROIT is a French word meaning “one-law” and is the first agreement offering restitution for stolen private property.<sup>175</sup> The UNIDROIT Convention was determined to effectively fight against illicit trade of cultural objects by establishing common, minimal rules for the return and restitution of cultural objects between Contracting States.<sup>176</sup> In deciding to whom the stolen property will be returned, the UNIDROIT Convention prefers the original owner of the stolen property to the present possessor,<sup>177</sup> but allows the present possessor compensation if the possessor “neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence in acquiring the object.”<sup>178</sup> To determine knowledge, such factors to be considered are, “the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information . . . which it could reasonably have obtained.”<sup>179</sup>

The problem with applying the UNIDROIT Convention to stolen art from Jews during World War II is that although claims under the UNIDROIT Convention are to be brought within three years of

171. Cuba, *supra* note 97, at 477.

172. *Id.* A complete listing of countries accepting UNESCO is available at [http://www.unesco.org/culture/laws/1970/html\\_eng/page3.htm](http://www.unesco.org/culture/laws/1970/html_eng/page3.htm) (last visited Nov. 10, 2001).

173. Cuba, *supra* note 97 at 477.

174. Final Act of the Diplomatic Conference for the Adoption of the Draft, UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, done on June 24, 1995, 34 I.L.M. 1332 [hereinafter UNIDROIT Convention].

175. Cuba, *supra* note 97 at 478.

176. UNIDROIT Convention, *supra* note 174.

177. *Id.* art. 3(1).

178. *Id.* art. 4(4).

179. *Id.*

discovering the location of the stolen property and the identity of the possessor, it limits the possible allowable time of bringing a claim to fifty years from the time of theft.<sup>180</sup> Another problem is that most countries, including the United States,<sup>181</sup> have resisted ratification of the UNIDROIT Convention for various reasons.<sup>182</sup> One reason behind the resistance is a fear that governments would also implement serious restrictions on art, making it difficult for museums to keep, let alone build their collections.<sup>183</sup> Thus, the UNIDROIT Convention concedes that implementation “will not by itself provide a solution to the problems raised by illicit trade, but that it initiates a process that will enhance international cultural cooperation . . . .”<sup>184</sup>

## 2. *Individual Country Policy and Cases*

### a. United States

After World War II ended, the United States' policy was to return artworks to the country from which they came, whether by confiscation or purchase.<sup>185</sup> Despite this policy, the U.S. military looted some of the art as well.<sup>186</sup> There are three ways to deal with stolen art claims in the United States: the common law doctrine of replevin, the National Stolen Properties Act, and the Convention on Cultural Property Implementation Act.<sup>187</sup>

The doctrine of replevin allows the original owner of goods to recover them from the person who has wrongfully retained or taken them.<sup>188</sup> This common law remedy is based on the traditional rule, codified in the Uniform Commercial Code,<sup>189</sup> of *nemo dat quad non habet* (you cannot

180. *Id.* art. 3(3). Article (3)(4) allows Contracting State to expand this limitation to seventy-five years or longer. *Id.*

181. The United States is actually one of the biggest critics of UNIDROIT. Flores, *supra* note 94.

182. Cuba, *supra* note 97, at 479. A complete listing of countries signing, ratifying and acceding to the UNIDROIT Convention, visit <http://www.unidroit.org/english/implementation/I-95.htm> (last visited Nov. 10, 2001).

183. Flores, *supra* note 94.

184. UNIDROIT Convention, *supra* note 174.

185. Pell, *supra* note 15, at 37. Britain joined the United States in this policy to return art. *Id.*

186. Falconer, *supra* note 2, at 398.

187. Tyler & Bellow, *supra* note 83, at 456.

188. *Id.*

189. The Uniform Commercial Code states: “(1) [T]here is in a contract for sale a warranty by the seller that (a) the title conveyed shall be good, and its transfer rightful; and (b) the

give what you do not have).<sup>190</sup> The only limits to this doctrine are that the rightful owner has a duty of due diligence in attempting to find the stolen property, and that before a claim can arise, the owner must demand the return of the property and the demand must be refused.<sup>191</sup> New York and California courts strongly favor original aggrieved owners,<sup>192</sup> primarily because the courts are uncomfortable awarding the art to buyers who purchase without inquiring into or without searching its title when they have good reason to—and are in the better position—to do so.<sup>193</sup> Under the Uniform Commercial Code, the buyers might still be able to recoup their losses through breach of warranty.<sup>194</sup>

The National Stolen Property Act (Act) was enacted as a means of slowing the theft of cultural property by including criminal penalties for violators of the Act.<sup>195</sup> To bring a conviction, it must be proven that the property was stolen, that the stolen property passed through interstate or foreign commerce, and that the property carries a value over \$5,000.00.<sup>196</sup> Criminal conviction is difficult under the Act because of the evidentiary requirement that ownership and origin of the art be documented, including the time of illegal import or excavation.<sup>197</sup> Holocaust art is unlikely to be pursued under the National Stolen Property Act because although a conviction can be obtained, there is no provision that allows for the return of the stolen property to the original owner.<sup>198</sup>

In 1983, the Cultural Property Implementation Act (CPIA) was the United States' legislation of the UNESCO Conventions provisions.<sup>199</sup> The CPIA is even more limited than UNESCO in that it requires that property receiving protection be documented by the government as a religious

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goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge." U.C.C. §2-312 (2000).

190. Tyler & Bellow, *supra* note 83, at 456.

191. *Id.* at 456-57.

192. New York and California also have the largest number of art transactions conducted within their borders than any of the other fifty states. *Id.*

193. Walton, *supra* note 11, at 603. Because art dealers have insurance to cover their losses, they are able to spread that loss better than anyone else. *Id.*

194. *Id.*

195. Tyler & Bellow, *supra* note 83, at 461-62.

196. *Id.* at 462.

197. *Id.*

198. *Id.*

199. Cultural Property Implementation Act, Pub. L. 97-446, Title III, 96 Stat. 2329, 2350 (1983) (codified at 19 U.S.C. §§2601-2613 1994)).

monument, museum inventory, or the like.<sup>200</sup> Like many other acts, the CPIA does not allow for any private or individual compensation.<sup>201</sup>

The United States was the first country to face a suit by the heir of a German Jew against an art collector, as well as a suit by the heirs of Jewish art dealer against a public museum.<sup>202</sup> The Alien Tort Claims Act allows for aliens to seek private, civil remedies in United States Federal Courts for violations of international human rights related to genocide, torture and other war crimes.<sup>203</sup>

b. Austria<sup>204</sup>

Austria's Leopold Museum-Privatsiftung has been embroiled in a legal battle with the United States over the return of a painting stolen from a Jewish family. Egon Schiele's "*Portrait of Wally*" was on loan from the Leopold Museum to the New York Museum of Modern Art.<sup>205</sup> The painting was originally owned by a Viennese Jew, Lea Bondi Jaray, and was confiscated by Nazi party member Friedrich Welz.<sup>206</sup> When Welz was incarcerated on suspicion of war crimes, all his possessions were confiscated, and the painting was erroneously returned to Heinrich Rieger, who later sold the painting.<sup>207</sup> The argument made by the Leopold Museum was that the painting ceased to be stolen when United States forces recovered it.<sup>208</sup> In December of 2000, a U.S. District Judge allowed the U.S. government to renew its efforts to force the museum to return the painting.<sup>209</sup>

c. France

Following the end of the war, Allied Investigators returned to France the artworks that they had been able to recover.<sup>210</sup> The French govern-

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200. Cuba, *supra* note 97, at 478.

201. *Id.*

202. Tyler & Bellow, *supra* note 83, at 448.

203. Brown, *supra* note 18, at 563-64.

204. Austria adopted the 1954 Hague Convention in 1964. 1954 Hague Convention, *supra* note 156. See also [http://www.unesco.org/culture/laws/hague70/html\\_eng/page9.htm](http://www.unesco.org/culture/laws/hague70/html_eng/page9.htm) (last visited Feb. 18, 2001).

205. Cable News Network, *U.S. Again Seeks Austrian Museum's Surrender of Nazi Stolen Art* (Dec. 29, 2000), at <http://europe.cnn.com/2000/STYLE/arts/12/29/arts.ruling.reut>.

206. *Id.*

207. *Id.*

208. *Id.*; see also *United States v. Portrait of Wally*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000).

209. *Id.*; see also *United States v. Portrait of Wally*, 2000 U.S. Dist. LEXIS 18713 (S.D.N.Y. Dec. 28, 2000).

210. Turner, *supra* note 12, at 1522-23.

ment was charged with the responsibility of locating and redistributing that art to the rightful owners;<sup>211</sup> however, “2,058 pieces went unclaimed because their origin was unknown.”<sup>212</sup> There has been much criticism in alleging that France did not do enough to research and locate the owners,<sup>213</sup> and it is even suspected that the Louvre Museum in Paris, is currently housing and exhibiting Nazi stolen art.<sup>214</sup> French law provides that once the applicable limitations period has run, a bona fide purchaser of stolen goods acquires good title to those goods.<sup>215</sup>

Paul Rosenberg was a prominent art dealer who fled France during Nazi occupation, losing more than 300 paintings.<sup>216</sup> After passing through various hands, the painting, “*Odalisque*,” was found in the Seattle Art Museum after a relative of the family who donated the painting saw it in a book of Nazi art thievery.<sup>217</sup> In October of 2000, the museum and the Rosenberg family reached a settlement in which the painting was returned to the family.<sup>218</sup>

#### d. Jewish Law

Jewish law has no provision regarding a statute of limitations.<sup>219</sup> If the present possessor purchased “the property in good faith, without knowing or having reason to know that the property had been stolen” the present possessor is allowed to retain possession.<sup>220</sup> However, the original owner is not always at such a loss. Jewish law has a doctrine known as “*ye’ush*,”<sup>221</sup> or despair, upon which the present English law of laches and adverse possession are based. “*Ye’ush* occurs if and when the original owner of a piece of property despairs of the possibility that he or his heirs will ever recover it,” and is determined by express statements by the owner or by

211. *Id.* at 1523.

212. Ambassador Louis Amigues, *Address to the Break-out Session on Nazi-Confiscated Art Issues; Principles to Address Nazi-Confiscated Art* (Dec. 2, 1998), Washington Conference on Holocaust-Era Assets, at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf> (last visited Nov. 10, 2001).

213. Turner, *supra* note 12, at 1523.

214. Bazylar, *supra* note 3, at 624.

215. Pell, *supra* note 15, at 44.

216. Cable News Network, *Settlement Reached Over Matisse Painting Looted by Nazis* (Oct. 16, 2000), at <http://www.cnn.com/2000/STYLE/arts/10/16/stolen.matisse.ap/index/html>.

217. *Id.*

218. *Id.* The Rosenberg family has since donated the painting, which is on display at the Bellagio, a hotel-casino in Las Vegas. *Id.*

219. Resnicoff, *supra* note 10, at 70.

220. *Id.* at 70-71.

221. *Id.* at 71.



operation of law.<sup>222</sup> Title can pass only in the existence of *ye'ush*; therefore, if no *ye'ush* exists, title does not pass from a thief to a purchaser, even if the buyer makes the purchase in good faith.<sup>223</sup> The buyer, in such a case, must give the property back to the owner.<sup>224</sup>

Because potential purchasers may be alarmed by this rule, ancient Jewish sages have declared that the owner must compensate the good faith purchaser for the amount the purchaser paid for the property.<sup>225</sup> In sum, an owner who has not despaired of recovering lost property (no *ye'ush*) will be given back his property, but the good faith purchaser will retrieve his purchase price.<sup>226</sup> If *ye'ush* does exist, the good faith purchaser will acquire proper title to the property.<sup>227</sup> The good faith purchaser is required, however, to compensate the owner for the difference in value of the object and the amount the good faith purchaser paid for the object.<sup>228</sup>

A bad faith purchaser is not so lucky. If no *ye'ush* exists, a bad faith purchaser is under the same obligation as is a good faith purchaser to return the property.<sup>229</sup> However, if the purchaser knows the property was stolen, or if the seller is a known thief, the purchaser is not entitled to

222. *Id.*

223. *Id.*

224. Resnicoff, *supra* note 10, at 71.

225. *Id.* at 72.

226. *Id.*

227. *Id.* at 72-73.

228. *Id.* at 73. If the art had greatly appreciated in value since the purchase of the piece, this may result in a considerable amount of money. *Id.*

There is, however, an overarching principle that urges Jews to do more than the minimum required by law. While the corresponding secular expression might be to go "beyond the letter of the law," the Jewish expression is to go "within the scope of the law" (*lifnim mi-shurat ha-din*). This phraseology is said to reflect the notion that the real self is one of kindness. The law defines the maximum distance a person is permitted to stray from his core values. By doing more kindness than is technically required, a person dears closer to his essential self. Under Jewish law, a firmly established custom has the effect of law. According to a number of authorities, a custom developed among Jews—arguably based on the *lifnim mi-shurat ha-din* principle—that, even in cases in which there was *ye'ush*, one who buys stolen property must return it to the original owner if the owner reimburses him for the amount the buyer paid for it. Although the buyers in such instances technically obtained title to the stolen goods and were not strictly required to return them, Jews accepted upon themselves the duty to restore property to those from whom it was stolen. Resnicoff, *supra* note 10, at 73.

229. *Id.* at 72.

compensation from the owner.<sup>230</sup> If *ye'ush* exists and the property was purchased in bad faith, the bad faith purchaser gains title and is not obligated to return the property.<sup>231</sup> However, the bad faith purchaser must compensate the owner for the value of the property.<sup>232</sup>

e. Germany

Not surprisingly, German law in 1938 allowed bona fide purchasers of degenerate art to acquire good title.<sup>233</sup> However, German restitution laws, based on regulations issued by the Allies, were enacted specifically for persons who had been the victims of persecution and discrimination by the Nazis between January 30, 1933, and May 8, 1945.<sup>234</sup> This time period is covered by the Settlement of Property Claims Act (*Vermögensgesetz*), which applies to property taken away on religious, ideological or racial grounds.<sup>235</sup> If the property cannot be returned, compensation, based on the replacement value plus interest as of April 1, 1956, is obtained under the German Reich and Equivalent Legal Entities Act of 1957, or presently, in accordance with the Compensation for Persons Subjected to Nazi Persecution Act of 1994.<sup>236</sup> Under the restitution laws, heirless property was to go to the Conference on Jewish Material Claims Against Germany,<sup>237</sup> as the recognized successor organization.<sup>238</sup> As valiant as these efforts seem, these laws contained statutes of limitations, which have since expired and only applied to art which was recovered following the war, meaning it did not cover art purchased by bona fide purchasers.<sup>239</sup> Presently, German law allows a bona fide purchaser to gain good title to stolen art, but only as long as the statute of limitations has expired.<sup>240</sup> The

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230. *Id.*

231. *Id.* at 73.

232. *Id.*

233. Paterson, *supra* note 17, at 93 n.7.

234. United States Holocaust Memorial Museum, *German Restitution Law*, at [http://www.ushmm.org/assets/frg\\_restitution.htm](http://www.ushmm.org/assets/frg_restitution.htm) (last visited Nov. 10, 2001) [hereinafter *German Restitution Law*].

235. *Id.*

236. *Id.*

237. "The Claims Conference is a non-profit organization, headquartered in New York City, which continues to negotiate with Germany for compensation programs on behalf of Jewish victims of Nazi persecution." United States Holocaust Memorial Museum, *German Compensation for National Socialist Crimes*, at <http://www.ushmm.org/assets/frg.htm> (last visited Nov. 10, 2001).

238. *German Restitution Law*, *supra* note 234.

239. *Id.*

240. Pell, *supra* note 15, at 44.

law also requires that the unjustly enriched individuals return what it was with which they were unjustly enriched.<sup>241</sup>

f. Russia

Russian policy following the end of World War II was to take back to the Soviet Union any object liberated by their troops.<sup>242</sup> Although some of the items were returned to various Eastern European countries, many of the items remain in Russia today.<sup>243</sup> Russia continues to assert, without any supporting authority, that by surrendering unconditionally, Germany waived any legal claim regarding restitution.<sup>244</sup> In 1991, Russia admitted that the remaining Trophy Brigade artwork that had not previously been returned, had been sitting in museum basements.<sup>245</sup> Russia, however, would return the artworks to Germany only in exchange for "objects of equivalent artistic quality" stolen from Russia during the War.<sup>246</sup> In 1995, parts of the Trophy Brigade artworks were displayed at the Hermitage and Pushkin museums, sparking debate on whether or not these works should be returned.<sup>247</sup>

Recently a great deal has been said about the new Russian law on cultural assets that were removed and are currently located in the repositories of Russian museums. The law does in fact establish Russia's right of ownership in cultural assets that were taken to Russia as compensation for its enormous cultural losses. But I can assure you that in Russia there is no law which would stand in the way of just and legitimate restitution of cultural assets confiscated by the Nazis if convincing evidence that they belong to Holocaust victims is provided.<sup>248</sup>

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241. Michael J. Bazylar, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 219 (2000).

242. Pell, *supra* note 15, at 37.

243. *Id.* at 37.

244. Wilske, *supra* note 61, at 263.

245. Elmer, *supra* note 8, at 121.

246. *Id.*, quoting Konstantin Akinsha & Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures*, 239 (1995).

247. *Id.* at 121-22. The Pushkin exhibit was ironically named "Twice Saved." *Id.*

248. Valeriy D. Kulishov, *Address to the Plenary Session on Nazi-Confiscated Art Issues* (Dec. 1, 1998), Washington Conference on Holocaust-Era Assets, at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf>. In the same address, Kulishov was adamant that "Russian archives do not contain any information or documents which would indicate that the Soviet Military Administration knowingly or intentionally kept property that belonged to Holocaust victims, including cultural assets, when it was aware of the origin of these items." *Id.*

## g. Switzerland

Under Swiss law, a thief is capable of passing title to a bona fide purchaser.<sup>249</sup> The law allows acquisition of good title to bona fide purchasers of stolen goods, as long as the applicable limitations period has run.<sup>250</sup> If within five years no claim has been made, the good faith purchaser then has title to the object.<sup>251</sup> However, Switzerland does not apply their law unless the transaction occurs in the country, and there is a substantial connection to Swiss commerce.<sup>252</sup> Accusations have surfaced regarding Switzerland's role in aiding the Nazis in selling art, and the possibility that some of that art is still hidden in Swiss banks and museums.<sup>253</sup>

## IV. CURRENT POLICIES TO ENCOURAGE RETURN OF STOLEN ART

A. *International Policy: The Washington Conference on Holocaust-Era Assets*

The Washington Conference on Holocaust-Era Assets was sponsored by and held in the United States, and consisted of thirteen non-governmental institutions and forty-five nations,<sup>254</sup> including Austria, France, Germany, Israel, Russia, Switzerland, and the World Jewish Congress.<sup>255</sup> One purpose of the Conference was to establish principles regarding restitution of Holocaust art.<sup>256</sup> In an effort to be as comprehensive as possible, the organizers of the Conference met with "claimants, museums, art dealers, auction houses, researches, historians, non-governmental organization in the U.S. and abroad, and governments to open dialogue and to seek areas of congruence on the resolution of lost and stolen art from the Nazi regime."<sup>257</sup> Eleven non-binding principles were adopted as a result of the Conference, including an agreement that Holocaust art could be either returned to the original owners (or in the event the original owner cannot be located, their heirs) or auctioned off,

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249. Turner, *supra* note 12, at 1540.

250. Pell, *supra* note 15, at 44.

251. Kline, *supra* note 79, at 245.

252. *Id.*

253. Turner, *supra* note 12, at 1524.

254. Pell, *supra* note 15, at 47.

255. United States Holocaust Memorial Museum, *Participant List for the Washington Conference on Holocaust-Era Assets*, at <http://www.ushmm.org/assets/particip.htm> (last visited on Nov. 10, 2001).

256. Pell, *supra* note 15, at 47.

257. D. Bindenagel, *Address to the Organizing Seminar for the Washington Conference on Holocaust-Era Assets* (Jun. 30, 1998), at <http://www.ushmm.org/assets/jdspeech.htm>.

with the proceeds of the sale to benefit Holocaust survivors.<sup>258</sup> The principles also recognize the need for a moral commitment as well as a fair solution to aiding the return of Holocaust art.<sup>259</sup>

The success of the Conference is still unknown. The progress that has been made since the Conference has been sporadic, illustrating that the Conference was not in itself a solution to the problem of Holocaust assets.<sup>260</sup>

### B. *United States*

The United States has arguably been the most active country in researching Holocaust art.<sup>261</sup> In order to encourage efforts toward discovery of stolen assets from Jews during the Holocaust, The United States Holocaust Assets Commission Act was enacted in June of 1998.<sup>262</sup> The Act establishes the Presidential Advisory Commission on Holocaust Assets in the United States, whose purpose is to investigate whether or not any assets held in the United States were stolen from the Jews during the Holocaust.<sup>263</sup> In order to help them with their research, the Presidential Advisory Commission has created a map detailing offices, divisions, government units and related entities that may have possibly handled Holocaust assets during World War II.<sup>264</sup>

The Holocaust Victim's Redress Act (HVA) requires that stolen art be returned to its original and rightful owner, or to the owner's heirs.<sup>265</sup> The HVA was passed in 1998, and authorized up to five million dollars for the purpose of archival research to assist the return and restitution of assets stolen and extorted from Holocaust victims.<sup>266</sup> The HVA also calls for all governments to make a good faith effort to return a work to its rightful owner in situations where there is reasonable proof of proper

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258. Cable News Network, *Guidelines Set for Returning Nazi-looted Art* (Dec. 3, 1998), at <http://www.cnn.com/US/9812/03/holocaust.conference/index.html>.

259. Falconer, *supra* note 2, at 390.

260. *Id.* at 391.

261. Ambassador Ronald S. Lauder, *Address to the Plenary Session on Nazi-Confiscated Art Issues* (Dec. 1, 1998), Washington Conference on Holocaust-Era Assets, at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf>.

262. U.S. Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, §1, 112 Stat. 611 (1998).

263. Cable News Network, *President Clinton Signs U.S. Holocaust Assets Commission Act*, (Jun. 23, 1998) at <http://www.cnn.com/ALLPOLITICS/1998/06/24/holocaust/index.html>.

264. Press Release, Presidential Advisory Commission on Holocaust Assets in the U.S., (Jun. 30, 1999), at <http://www.pcha.gov/pr996301.htm>.

265. Holocaust Victims Redress Act, Pub. L. No. 105-158, § 201, 112 Stat. 15, 17 (1998). *See also* Cuba, *supra* note 97, at 487.

266. Walton, *supra* note 11, at 605-06.

ownership.<sup>267</sup> Because the HVA is not binding on any other countries outside the U.S., this call will not work unless other governments accept the charge.<sup>268</sup> Additionally, an amendment to the HVA has been proposed to repeal the statute of limitations.<sup>269</sup> However, it seems that Congress is better at introducing legislation for Holocaust victims than they are at passing them.<sup>270</sup>

### C. Foreign Policy

Part of Europe has banded together in the creation of The Commission for Looted Art in Europe (CLAE). The CLAE is a non-profit organization working with the United States and thirty-five European countries,<sup>271</sup> and covers all aspects of the theft of art during 1933-1945.<sup>272</sup> The CLAE works to identify stolen art in public as well as in private collections and salesrooms, through their vast knowledge of families, dealer and auction houses known to have handled stolen art.<sup>273</sup> The CLAE also works toward promoting legislative and public policy change in Europe, and uses alternative dispute resolution models in dealing with restitution claims.<sup>274</sup>

An additional international movement is the World Jewish Congress Commission for Art Recovery (WJCCAR). The WJCCAR is "committed to finding works of art that Nazis took from Jews and dissidents. . . . [and] to reunite these works of art with the families who owned them and to recover heirless property for the Jewish community."<sup>275</sup> As a starting point for tracking art, the World Jewish Congress released a report by the Central Intelligence Agency, which was 170 pages long and listed more than 2,000 names of people who handled Holocaust art stolen by the Nazis.<sup>276</sup> The WJCCAR has also created a database that allows an original owner to make a match with the current owner of the art.<sup>277</sup> When a match

267. Falconer, *supra* note 2, at 400.

268. *Id.*

269. Cuba, *supra* note 97, at 487.

270. Falconer, *supra* note 2, at 401.

271. *Art*, *supra* note 96.

272. *Id.*

273. *Id.*

274. *Id.*

275. Constance Lowenthal, *Edited Presentation*, 31 N.Y.U. J. INT'L L. & POL. 133 (1999). As the director of The World Jewish Congress in 1998, Constance Lowenthal, stated that "[w]ith luck, I will be out of work." *Id.*

276. Cuba, *supra* note 97, at n.21.

277. Walton, *supra* note 11, at 609.

is made, the WJCCAR turns the artwork over to the parties, who will then decide on how to proceed.<sup>278</sup>

### 1. Austria

In the fall of 1996, the Mauerbach-Fonds was created to auction away heirless art that had once belonged to Holocaust victims.<sup>279</sup> The auction relieved the government of its long embarrassment of holding stolen art from World War II,<sup>280</sup> and distributed over ten million U.S. dollars to the Austrian Jewish Community.<sup>281</sup> Through legislation, the Austrian Jewish Community now has ownership of all heirless property.<sup>282</sup> In 1998, the *Kommission Provienzienforschung*<sup>283</sup> was created by the Austrian government.<sup>284</sup> It is comprised of members of Federal museums, among others, who are to be responsible for scholarly research on provenance objects existing between 1938 and 1960.<sup>285</sup>

Only about 6% of the claims filed by Holocaust survivors or descendants of survivors with the Austrian government have been successful.<sup>286</sup> In November of 1998, the government passed a law providing that art confiscated by Nazis had to be returned,<sup>287</sup> and repealed Austria's statute of limitations.<sup>288</sup> Austria's Minister of Education, Elisabeth Gehrler, stated that with this release of some 250 artworks, "Austria is signaling a new awareness in dealing with its past."<sup>289</sup> The Bruno Kreisky Archives Foundation created and maintains a website on Holocaust art, listing privately owned pieces of art which are still missing.<sup>290</sup>

Most recently, in January of 2001, the Austrian government entered into an agreement with the United States and with claimant's representatives, which provided for a settlement fund of 360 million dollars—but bars

278. *Id.*

279. *Art, supra* note 96.

280. Lowenthal, *supra* note 275, at 135.

281. *Art, supra* note 96.

282. Falconer, *supra* note 2, at 416.

283. "Commission for the Investigation of Provenance of Art Objects."

284. *Art, supra* note 96.

285. *Id.*

286. Flores, *supra* note 94.

287. *Art, supra* note 96.

288. Falconer, *supra* note 2, at 416. In February of 1999, art belonging to the Rothchild's was returned. Turner, *supra* note 12, at 1521-22. Art belonging to the Rothchild family was extorted in exchange for export permits to remove larger parts of their collection. *Art, supra* note 96.

289. *Art, supra* note 96.

290. *Id.*

future claims against Austria.<sup>291</sup> The Vienna Jewish Community is outraged by the settlement because it was passed without input from the community and was not comprehensive enough.<sup>292</sup>

## 2. France

In 1997, the French government displayed 987 works of Holocaust art in the Louvre, the Musée d'Orsay, the Centre Georges Pompidou, the National Ceramics Museum in Sèvres and the Château de Versailles in hopes that the original owners of the art, or their heirs, would recognize it and come forward to claim it.<sup>293</sup> Although millions of inquiries were made, only five pieces were returned to the original owners.<sup>294</sup> The same year, then Prime Minister Alain Juppe announced that France would be establishing a "working party to look into the circumstances under which movable and immovable property belonging to Jews living in France was confiscated or, generally speaking, acquired by fraud, violence or deceit, either by the occupying power or the Vichy authorities, between 1940 and 1944."<sup>295</sup> As a result, on March 25, 1997, the Matteoli Commission was created, consisting of seven members of various professional backgrounds and named for its chairman M. Jean Matteoli, Chairman of the Economic and Social Council.<sup>296</sup> The mission of the Matteoli Commission is to

assess the scale of the plunder; to indicate the specific categories of natural and legal persons who or which benefited from it; to determine the fate of this plundered property from the end of the war to the present day; to seek to identify its current whereabouts and legal status; to draw up an inventory of assets seized on French soil which are still in the possession of French or foreign public institutions and authorities; to make proposals to the government on the future of these assets.<sup>297</sup>

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291. *Austrian Parliament Approves Nazi Victim Fund*, DEUTSCHE PRESSE-AGENTUR, Jan. 31, 2001, LEXIS.

292. *Id.*

293. *Art, supra* note 96.

294. Ambassador Louis Amigues, *Address to the Break-out Session on Nazi-Confiscated Art Issues; Principles to Address Nazi-Confiscated Art* (Dec. 1, 1998), Washington Conference on Holocaust-Era Assets at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf>.

295. United States Holocaust Memorial Museum, *France*, at <http://www.ushmm.org/assets/france.htm> (last visited Nov. 5, 2001).

296. *Id.*

297. *Id.*



The Matteoli Commission released its findings in April of 2000; thus, a database of approximately 2,000 works of art seized by Nazi Germany and returned to France following the war, known as *Musées Nationaux Recupération*, is now maintained by the French Museums Directorate of the Ministry of Culture of France.<sup>298</sup>

### 3. Germany

To this date, Germany has not commissioned a committee for the purpose of identifying assets of Holocaust victims.<sup>299</sup> Instead, Germany relies on the precedent of a system of restitution established in 1951 for the injustices committed by the Third Reich.<sup>300</sup> With the reunification of Germany, the Compensation for Persons Subjected to Nazi Persecution Act and the Settlement of Property Claims Act were used, in conjunction with organizations representing Holocaust victims, to adopt similar provisions and to incorporate them into the Acts.<sup>301</sup> This legislation is unique in that it only applies to property lost because of Nazi persecution.<sup>302</sup> Germany has also established the Coordination Office of the States for the Return of Cultural Treasures (*Koordinierungsstelle*), which is creating a database of stolen cultural property and publishes the biannual newsletter *The Spoils of War*.<sup>303</sup> The Lost Art Internet Database has also been established by the German government and registers art stolen from Jews during National Socialism or World War II.<sup>304</sup> This database allows libraries, archives and museums to post any information they have concerning Holocaust art which may be in their possession.<sup>305</sup>

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298. *Id.* For more information (in French) on the database, including restitution applications and searchable catalogues, visit <http://www.culture.fr/documentation/mnr/pres.htm> (last visited Nov. 5, 2001).

299. United States Holocaust Memorial Museum, *Germany*, at <http://www.ushmm.org/assets/germany.htm> (last visited Nov. 10, 2001). This is not an indication of reluctance to recognize the horrors of Nazi Germany. In a recent case decided by the German Supreme Court, the Court ruled that "any Web publisher, no matter what his or her country of origin, is liable for any pro-Nazi or Holocaust denial information on their pages." Steve Gold, *German Landmark Nazi Ruling*, POST-NEWSWEEK BUSINESS INFORMATION, INC. NEWSBYTES, Dec. 12, 2000, LEXIS.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.* The newsletter is available at <http://www.lostart.de/kontakt/sow.php3?lang=english>, (last visited Nov. 10, 2001).

304. *Art, supra* note 96.

305. *Id.*

#### 4. Russia

In 1993, the Russian government established the Foundation for Mutual Understanding and Reconciliation of the Russian Federation for the purpose of compensating victims of Nazi persecution.<sup>306</sup> The Foundation is to distribute 400,000,000 Deuchmarks in compensation from the German government to victims residing in western regions of Russia that were occupied by the Nazis.<sup>307</sup>

Most recently, in October of 2000, Russia agreed to open their archives to a United States non-profit organization, which searches for lost and stolen Holocaust art.<sup>308</sup> This was a result of the Vilnius Forum, which asks "all governments to undertake every reasonable effort to achieve the restitution of cultural assets looted during the Holocaust era."<sup>309</sup> The Russian head of the Russian Federal Archival Service argues that the archives have been open for at least ten years.<sup>310</sup> Russia has agreed to help establish an international database for organizations and private citizens and to provide documents from Russian archives.<sup>311</sup>

#### 5. Switzerland

*Vergangenheitsbewaeltigung* is the German word the Swiss use in describing the painful process of investigating their role in World War II.<sup>312</sup> Simply put, it means "coming to terms with the past."<sup>313</sup> The Swiss government has conducted a more comprehensive examination of the history of their relationship with Nazi Germany than has any other country.<sup>314</sup> Despite their comprehensive look into their relationship with Nazi Germany, Switzerland has declined to participate in international agreements regarding cultural property, including failing to sign the 1970 UNESCO treaty.<sup>315</sup>

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306. United States Holocaust Memorial Museum, *Russian Federation*, at <http://www.ushmm.org/assets/russia.htm> (last visited Nov. 10, 2001).

307. *Id.*

308. Cable News Network, *Forum Appeals for More Action to Track Looted Jewish Art*, (Oct. 6, 2000) at <http://www.cnn.com/2000/STYLE/arts/10/06/lithuania.jewishart.ap/index.html>.

309. *Id.*

310. *Id.*

311. Kulishov, *supra* note 248.

312. Brown, *supra* note 18, at 576.

313. *Id.* at 576.

314. *Id.*

315. Conley, *supra* note 94, at 495 n.12.

The Bergier Commission<sup>316</sup> was created in December of 1996 and consists of 32 researchers in the United States, Germany, Italy and Switzerland.<sup>317</sup> One purpose of the commission is to investigate the

[d]ealings in works of art, jewelry, etc.; scope and relation of such trade to looted goods; degree of awareness as to the origin of these assets . . . [the] measures undertaken for the identification, control, restitution of looted goods . . . [the] treatment of assets which were unclaimed, [and the] measures undertaken to return looted assets to their owners and/or to their descendants/heirs. . . .<sup>318</sup>

The Swiss have modified their laws on stolen property so that it is no longer necessary for there to be concrete suspicious circumstances present in order to trigger the need for inquiry.<sup>319</sup> Unfortunately, Swiss citizens are not as enthusiastic about resolving Holocaust issues since the President of the World Jewish order declared "'total war' on Switzerland."<sup>320</sup>

#### D. Museum Policy

In June of 1998, North American museums made a promise to check their collections for the estimated 600,000 artworks stolen by the Nazis.<sup>321</sup> This policy was reaffirmed by an official vote of the Association of Art Museum Directors (AAMD) taken in the January, 1999 meeting of 165 American art museum directors.<sup>322</sup> The policy consists of eleven principles drafted by an AAMD Special Task Force,<sup>323</sup> and is the basis of the Washington Conference on Holocaust-Era Assets.<sup>324</sup> The AAMD is an adamant supporter of a central database of stolen Holocaust art in order to help American art museums comply with their policy,<sup>325</sup> despite the fact

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316. The Commission's official name is the "Independent Commission of Experts," but is referred to the Berger Commission after its leader, Professor J. F. Bergier. Brown, *supra* note 18, at 576-77.

317. United States Holocaust Memorial Museum, *Switzerland*, at <http://www.ushmm.org/assets/switzerland.htm> (last visited Feb. 1, 2001).

318. *Id.*

319. Kline, *supra* note 79, at 246.

320. Brown, *supra* note 18, at 578.

321. Cable News Network, *U.S. Galleries Probe Art the Nazis May Have Stolen* (Mar. 10, 2000), at <http://www.cnn.com/2000/US/03/10/holocaust.art/index.html>.

322. Press Release, American Association of Museum Directors (Feb. 9, 1999) (on file with author).

323. For a listing of these eleven principals, visit <http://www.aamd.org/guideln.shtml> (last visited Nov. 10, 2001).

324. Press Release, American Association of Museum Directors, *supra* note 322.

325. *Id.*

that they believe the estimated number of Holocaust artworks are less than twenty.<sup>326</sup> Because of the AAMD policy, museums were able to identify six paintings as works stolen by the Nazis and were able to return them to the heirs of the Holocaust victims; three of these paintings were graciously allowed to remain at the museum for public display.<sup>327</sup>

There is one controversial provision in the AAMD's policy which states: "member museums should not borrow works of art known to have been illegally confiscated during the Nazi/World War II era . . . [which have not been] restituted."<sup>328</sup> The controversy lies in the fact that some owners are not able to positively identify their works unless they are on display.<sup>329</sup> If American museums do not display loaned works, the opportunity for victims to discover the location of their artwork is greatly diminished.<sup>330</sup>

In 1970, the International Council of Museums adopted regulations that required "full, clear, and satisfactory documentation in relation to the origin of any object to be acquired."<sup>331</sup> However, these regulations are not binding on any museum unless the museum adopts them as their policy.<sup>332</sup> The international meeting of museum directors, "Rèunion de Musèes Nationaux," has discussed the AAMD's findings and views.<sup>333</sup> In response, some museum directors from various countries have indicated that they will adopt guidelines similar to those of the AAAMD.<sup>334</sup>

Sotherby's, on its own initiative, has already prevented from being sold several paintings from collections known to be stolen so that those involved could decide on the artworks fate.<sup>335</sup> In November of 2000, the National Gallery of Art announced that it would return a still life by Frans Snyders, after determining that the painting was probably looted from a

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326. American Association of Museum Directors, *Frequently Asked Questions*, at <http://www.aamd.org/faq.shtml> (last visited Nov. 10, 2001). The estimate is small due to the fact that many of the collections in American museums were formed prior to World War II. *Id.*

327. Press Release, American Association of Museum Directors, *Statement on the Issuance of the Report by the President's Commission on Holocaust Assets in the U.S.* (Jan. 16, 2001), available at <http://www.aamd.org/r011601.shtml>.

328. Falconer, *supra* note 2, at 414.

329. *Id.* at 414.

330. *Id.* at 414.

331. Walton, *supra* note 11, at 573.

332. *Id.*

333. Schulz-Hoffman, *supra* note 100.

334. Phillippe De Montebello, *Address to the Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art* (Dec. 2, 1998), Washington Conference on Holocaust-Era Assets, at <http://www.state.gov/www/regions/eur/holocaust/heac4.pdf>.

335. Kline, *supra* note 16, at 5.

French Jewish family by the Nazis during World War II.<sup>336</sup> Ironically, the painting had been donated to the Gallery in 1990 by a Jewish refugee of Nazi Germany who is now a wealthy New York art dealer.<sup>337</sup> The Art Loss Register has also agreed to waive its \$520.00 plus contingency recovery fees for listing art stolen during wartime.<sup>338</sup>

## V. CONCLUSION

Although it seems that much is being done to promote and secure the return of thousands of lost works of art, it is painfully obvious that the current, non-binding international agreements are not enough. The current laws designed to protect most transactions between buyers and bona fide purchasers do not take into account the special and harsh circumstances surrounding the loss of art during World War II. In order to solve these issues, it is imperative to establish a binding international agreement between all countries and not just merely impress a moral obligation upon them. However, the efforts made thus far are not to be seen as insignificant. It has not been easy for many countries to admit the atrocities that happened during World War II, and the efforts they are now making should be recognized and encouraged.

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336. Michael Dobbs, *Museum to Return Plundered Painting; Still Life was Looted by the Nazis*, THE WASHINGTON POST, Nov. 21, 2000, LEXIS. Following eighteen months of research, it was determined the previous owners of the piece included Hitler's favorite art dealer, Karl Haberstock, and Hitler's second in command, Hermann Goering. *Id.* When art museums are searching to determine whether or not a piece of work was stolen by the Nazis, Karl Haberstock's name always sends up a red flag, as "he was the most important art dealer in the Third Reich." *Id.*

337. *Id.* The Museum of Fine Art in Boston unveiled seven pieces of art whose incomplete history suggests they may be stolen Holocaust art. The Metropolitan Museum of Art released a list of 393 artworks also believed to be stolen Holocaust art. United States Holocaust Memorial Museum, *Art*, at <http://www.ushmm.org/assets/ushmm4.htm> (last visited Nov. 10, 2001).

338. NEW YORK TIMES, *Art Museums Promise to Review Holdings for Seized Nazi Loot* (Jun. 5, 1998), at <http://www.aamd.org/NYT.shtml>.