

The Nazi Looted Art Restitution Claim: An exploration of claimant interests through claimant voice

“My memories, my feelings, everything that mattered to me, all the things I wanted to say but was never able to formulate – finally it was all taking shape. I was finding my voice.”¹

Pauline Baer de Perignon

Introduction

In an earlier article, I explored the use of morality in the determination of a claimant's entitlement to restitution of their cultural property looted during the period 1933-45.² The article considered the application of moral standards for the just and fair determination of restitution claims under the Washington Conference Principles on Nazi-Confiscated Art (the Washington Principles), an 1998 international document signed by 44 states which sets out fundamental principles by which Nazi-looted restitution claims should be determined, the most relevant of which is the call for fair and just solutions for these claims.³ Four claimant experiences were explored for their perspective on the Washington Principles' objectives for the achievement of a fair and just solution and in particular, whether morality came into play in their consideration of what they consider a fair and just solution.⁴ What became clear from those experiences is that the process of restitution mattered to these claimants in terms of procedural

¹ Pauline Baer de Perignon, *The Vanished Collection* (New Vessel Press 2022) 18.

² Debbie De Girolamo, “The Conflation of Morality and ‘the Fair and Just Solution’ in the Determination of Restitution Claims Involving Nazi-Looted Art: An Unsatisfactory Premise in Need of Change” (2019) 26(4) *International Journal of Cultural Property* 357-385.

³ The Washington Conference Principles on Nazi-Confiscated Art, Articles 8 & 9 at <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>; see also, <https://www.lootedartcommission.com/Washington-principles>

⁴ Three of these claimant interviews are published in Evelien Campfens, ed. 2015. *Fair and Just Solutions: Alternatives to Litigation in Nazi-Looted Art Disputes: Status Quo and New Developments*. The Hague: Eleven International Publishing at 103-106; 141-148; 223-228. These interviews are set within the context of the fair and just solution of the Washington Principles. In them, the claimants speak about their experiences and what restitution means to them, within the context of finding a fair and just solution under the Washington Principles. The fourth claimant is discussed in Debbie De Girolamo, “The Conflation of Morality and ‘the Fair and Just Solution’ in the Determination of Restitution Claims Involving Nazi-Looted Art: An Unsatisfactory Premise in Need of Change” (2019) 26(4) *International Journal of Cultural Property* 357-385 at 379. In this latter article, the Campfens interviews are acknowledged as being a good initial source of claimant data obtained for a particular context, and it is also noted that more full exploration is needed; see at 375.

justice and reconciliation, rather than on a reliance of the application of some form of moral standard. These views of what a just and fair solution means to them highlighted a need for further exploration of the claimant perspective regarding restitution processes and outcomes for purposes of improving them for claimants.⁵

The individual claimant has not been at the forefront of the restitution discussion, particularly with regard to the consideration of how best to resolve their claims. The literature often presumes to speak for claimants without their voice being heard - it tends to offer theoretical views on better processes and outcomes for restitution claims and on what claimants may need in this process.⁶ It is time to shift the focus to the claimant to ensure such analysis takes into account their views and experiences.

While the literature on Nazi-looted restitution claims has focused heavily on the goal of reaching fair and just solutions as articulated by the Washington Principles, this article takes an alternative approach to restitution claims: it explores claimant interests underlying their pursuit for restitution of their stolen property.⁷ This approach sits within the negotiation paradigm of integrative bargaining where interests are integral to achieving optimal outcomes and argues that the discovery of claimant interests can ameliorate restitution processes and

⁵ Debbie De Girolamo, "The Conflation of Morality and 'the Fair and Just Solution' in the Determination of Restitution Claims Involving Nazi-Looted Art: An Unsatisfactory Premise in Need of Change" (2019) 26(4) *International Journal of Cultural Property* 357-385 at 380-81. In that article at 381, it was noted that, in 1999, Warren suggested a new conceptual framework was needed to deal with cultural property claims, and the need to move away from an adversarial framework to an integrative framework which takes into account party interests; see Warren, Karen J. 1999. "A Philosophical Perspective on the Ethics and Resolution of Cultural Property Issues." In *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*, edited by Phyllis Mauch Messenger, 1–26 at 11-12, 21-22. Albuquerque: University of New Mexico Press.

⁶ See for example, Eveliens Campfens, (2021, November 11) *Cross-border title claims to cultural objects: property or heritage?* Meijers-reeks. Eleven. Ch 4 and 6. At <https://scholarlypublications.universiteitleiden.nl/handle/1887/3239199> accessed April 13, 2023; Renold, Marc-Andre, and Alessandro Chechi. 2015. "Just and Fair Solutions: An Analysis of International Practice and Trends." In Campfens, *Fair and Just Solutions?*, 187–200.

⁷ This article is not seeking to determine a claimant's view as to what would constitute a fair and just solution pursuant to the Washington Principles nor is it intending to define what is fair and just on the basis of claimant interests. Whether meeting claimant interests would lead to a fair and just solution is a matter for another day with further consideration of the question encouraged. For literature on fair and just solutions, see for example, Evelien Campfens, ed. 2015. *Fair and Just Solutions: Alternatives to Litigation in Nazi-Looted Art Disputes: Status Quo and New Developments*. The Hague: Eleven International Publishing.

outcomes for them on the basis that processes and outcomes meet claimant interests. This, it is suggested, will better inform the current discussion in the field about process and outcome design for the resolution of Nazi looted art claims.⁸

To uncover these interests, this article explores the experiences and views of ten restitution claimants through their spoken and written words. In so doing, common elements to their claims are articulated: difficult searches for current possessors of artwork; construction of a gapless provenance history; provision of acceptable documentation proving entitlement to artwork; strenuous efforts to engage in constructive dialogue with possessors for resolution; and resort to legal action when all else fails.

The claimants of this article are the children, grandchildren, great grandchildren, great great nephews, or other family members of persons from whom art was looted by the Nazis across Europe including Germany, the Netherlands, Austria, Hungary and France. They are the heirs to property found in the possession of museums (including university, regional, city and state museums), of states (such as Germany, Hungary and France), of religious-affiliated organisations (the Catholic Cathedral Association in Xanten Austria and Jewish Museum in Prague), and in the possession of private individuals (American, British and Swiss art collectors). They have used negotiation, spoliation and litigation processes to resolve claims, and some have used third party assistance such as the Commission for Looted Art in Europe, the American Federal Bureau of Investigation, and The Holocaust Claims Processing Office in New York. The claims involve great effort at locating and proving entitlement to return, taking years to resolve. Some claimants die before resolution occurs, leaving the fight to the next generation of family members.

By distilling claimant interests as revealed by their words, this article will disclose: where the claims process fails a claimant and how it can be improved; the negative impact of the lack of

⁸ For example, Max Weller & Tess Scheller, "Why a 'Restatement of Restitution Rules for Nazi-Confiscated Art?'" Observations on the 'weighing of interests' in light of the Kohnstamm Report, Newsletter, December 2021, No. 12, Addendum, Restitutions Committee at <https://www.restitutiecommissie.nl/wp-content/uploads/2021/12/Network-Newsletter-no.12-December2021.pdf> (last accessed April 10, 2023)

search and provenance assistance on a claimant's ability to recover their stolen property; and, specific needs that, if met, would assist a claimant with their claims such as access to information and to private collectors.

To reach its conclusions, the article will first turn to the negotiation literature to discuss the relevance of interests in the integrative model of strategic bargaining and to describe categories of interests, illustrating the broad scope of interests which include reference to a party's needs, motivations, concerns, hopes and fears. It will then explore the restitution literature in terms of what it says about claimant interests. Having discovered that relatively little has been explored in this context, the next section of the article comprises the claimant stories, focusing on claimant words spoken about their restitution efforts, as recorded in various media and literary platforms, and a distillation of these words in relation to the interests that are being articulated. Claimant interests disclosed by these narratives will then be analysed in relation to three categories of interests described in the article. It will make clear the deficiencies in the restitution processes experienced by claimants as well as claimant views as to what needs to be done to ensure that process and outcome meet their interests. The final section of the article posits that any discussion about creating processes and solutions acceptable to claimants requires a shift from an objective consideration of what is best for claimants to a subjective consideration of claimant interests in the context of their experience of restitution claims and views developed as a result.

This article makes a valuable contribution to the restitution literature in several ways. First, it brings the claimant voice to the forefront of the Nazi looted art restitution discussion, a perspective that has been missing. Second, it explores what claimants have said specifically about their experiences and views regarding their restitution efforts, exposing their interests underlying their pursuit for the return of their Nazi-looted property. Third, by focusing on claimant interests, the field is better positioned to craft processes and solutions that may reach that ephemeral standard of being fair and just for claimants through the satisfaction of their interests. Four, it also contributes more generally to the broader restitution and repatriation field involving claimants seeking the return, for example, of colonial looted cultural property, war spoils, and indigenous cultural heritage, offering a framework within

which to situate the search for resolution.

The Negotiation Framework of Interests

(a) Relevance of Interests

As stated above, the exploration of claimant interests in this article is positioned within the negotiation framework of integrative bargaining where interests are critical to the achievement of a mutually acceptable solution to a disputed issue. Scholars such as Menkel-Meadow and Fisher have considered the importance of interests to strategic bargaining: they argue that satisfying party interests can lead to mutually acceptable resolutions due to the development of creative options for resolution made possible once party interests are made known.⁹ Menkel-Meadow and Fisher's seminal works speak to the relevance of interests in the dispute resolution field, a relevance that extends beyond issues of strategy in negotiation, as this article intends to illustrate. For the restitution field, the integrative model of bargaining with its emphasis on interests offers another way to distill what is important to claimants which may lead to improved resolution processes, expanded opportunities for resolution, satisfaction of their interests and beneficial outcomes for them.

(b) Interests defined: Three categories

A critical aspect of the integrative bargaining process is the identification of party interests underlying party positions in order to be able to create solutions which can meet those interests. Interests is a broad concept: they can be about the party's needs, wants, desires, fears, concerns, hopes and motivations; all of which can underlie a party's position in a dispute. A consideration of interests helps move parties beyond positional stances, which tend to limit the frame by which a negotiation is approached.¹⁰

⁹ Carrie Menkel-Meadow, "Toward Another View of Legal Negotiation: The Structure of Problem Solving" (1984) 31 UCLA L. Rev. 754; Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 1991).

¹⁰ In addition to the discussion of interests by Menkel-Meadow and Fisher et al, see also, Robert H. Mnookin, Scott R. Peppet and Andrew S. Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (The Belknap

Interests can also vary in nature. For purposes of this article, interests are classified into three categories: substantive, procedural and psychological.¹¹ They can be substantive in the sense of being objective needs a party would like to have satisfied or exchanged as a result of the negotiation. They can be procedural, referring to the process used to seek resolution such as the nature of the process, level of party participation, third party involvement and evidentiary requirements. They can also be psychological in nature, evoking emotions, generating strong feelings or involving value issues such as principles of fairness, justice, equity, ethics and acceptable negotiation behaviour, for example.¹² Not all interests are mutually exclusive. There may be common interests among parties that can be met to all parties' satisfaction. Further, not all parties prioritise their interests in a similar manner which allows for increased possibilities for exchange where something of less value may be exchanged for an item of greater value.

The underlying objective of the integrative approach to negotiation is to seek a solution that will benefit all parties, achievable once party interests are known.¹³ The integrative bargainers argue that if a potential resolution is mutually beneficial, the more likely parties will come to agreement over the issue in dispute. The disclosure of party interests fuels the identification

Press of Harvard University, Cambridge Massachusetts, 2000) at 28-30.

¹¹ There is extensive discussion in the literature about the nature of interests as well as categories of interests, with different scholars categorizing interests in different ways. See for example, David A. Lax and James K. Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (The Free Press, 1986 New York) at 70-74 where they speak of intrinsic and instrumental interests with process, relationship and principles as categories of interests; Jay Folberg and Dwight Golann, *Lawyer Negotiation Theory, Practice, and Law*, 2nd Edition (Aspen Publishers, New York, 2011) at 43 – 44 where categories of interest include process, personal, relational and economic interests; Douglas N. Frenkel & James H. Stark, *The Practice of Mediation* (2008, Aspen Publishers, New York) at 35 – 36 define interests, and categorise them as economic, moral and psychological interests, ego or psychic interests, influence interests, ideological interests, social or relational interests, freedom of action interests, and efficiency interests; and Colleen M Hanycz, Trevor C.W. Farrow, Frederick H. Zemans, *The Theory and Practice of Representative Negotiation* (2008 Emond Montgomery Publications Limited, Toronto) at 48 – 50 discuss interests generally and refer to interests in principle, process interests, substance interests, and relationship interests; see also following footnote for discussion of these three categories.

¹² I am very grateful to Professor Simon Roberts (London School of Economics and Political Science) for the simplification of these categories discussed in a lecture he presented in 2005, and which I have been applying since; see above footnote for other categorisations.

¹³ Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 1991). It should be noted that for purposes of this article, only claimant interests are being explored and therefore not all party interests despite the literature's emphasis on all party interests and that possessors also have interests which may impact a resolution of a restitution claim. An exploration of their interests is an area for future exploration.

and creation of possible options for resolution that can meet those interests by expanding the ways in which interests can be met. This in turn results in a greater opportunity for a solution that is not merely a compromise of interests, but one that acceptably meets party interests.¹⁴ As such, the integrative bargaining model can provide a valuable negotiation approach aimed at creating opportunities to achieve mutually beneficial solutions for parties to a negotiation.

What does the restitution literature say about claimant interests?

It is not controversial to say that the claimant perspective must be taken into account when speaking about restitution processes for Nazi looted art. For example, Campfens says: “These cases, based on historical injustices that were not repaired in a timely manner, are not regular property or title claims: claims regarding specific artefacts that were owned by families that were torn apart are interrelated with histories of suffering. In that sense, an important role of a procedure is to ensure that those stories are told and heard.”¹⁵ Oost, in her consideration of the application of the public interest as a factor in Dutch spoliation cases, says that the claimant’s perspective must be given ‘due consideration’.¹⁶ Masurovsky says that restitution should not be seen as transactional justice but reparatory justice where the needs of the claimants are key: “New relationships of power need to be defined, and narratives need to be redrawn and shaped - allowing the voices of the aggrieved to permeate the story and history of displaced objects that sit far from the scene of the crime.”¹⁷

While these respected commentators note the relevance of the claimant story and the need for its articulation, there has been little focused exploration of the particular interests of claimants in the context of what claimants have specifically said about their restitution efforts.¹⁸

¹⁴ Carrie Menkel-Meadow, “Toward Another View of Legal Negotiation: The Structure of Problem Solving” (1984) 31 *UCLA L. Rev.* 754; Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 1991).

¹⁵ Evelien Campfens, 'Bridging the Gap between Ethics and Law: The Dutch Framework for Nazi-Looted Art' (2020) 25 *Art Antiquity & L* 1-24, 24

¹⁶ Tabitha Oost, 'From “Leader to Pariah”? On the Dutch Restitutions Committee and the inclusion of the public interest in assessing Nazi-spoliated art claims' (2021) 28 *Int J Cult Prop* 55, 82.

¹⁷ Marc Masurovsky, 'A Comparative Look at Nazi Plundered Art, Looted Antiquities, and Stolen Indigenous Objects' (2020) 45 *NC J Int'l L* 497, 524

¹⁸ With the exception of Campfens and De Girolamo as noted earlier.

Generalisations tend to be made about claimant interests such as the need for justice, reclaiming lost property and memorialisation. For example, when Thompson and Kreder speak to claimant interests, they do so broadly and in the context of their particular study: Thompson, in examining the role of museums as fulfilling a public interest, suggests briefly that claimants view restitution in terms of family reunification, memorialising and righting historical wrongs; Kreder speaks of the emotional aspect of the claims before exploring the Altmann dispute.¹⁹

Discussion of claimant interests also arise in the context of the procedural frameworks of European and UK spoliation panels where they may be a factor in the determinations they make. Such consideration may also raise more controversial issues such as whether the possessor's interests should also be taken into account in determining a restitution claim and, if yes, to what extent; or whether the balance of interests should favour claimants.²⁰

The literature is also peppered with discussions about the need for better processes for these looted art claimants and suggestions for such processes. For example, Campfens states: "To address the interests of former owners more efficiently, standards need to be clarified and neutral claims procedures – with guarantees in terms of due process – should be more widely available."²¹ Weller says that to achieve justice from a spoliation process, notions of the weighing of party interests should be determined in favour of the claimant where legal barriers obstruct a claimant's entitlement.²²

¹⁹ Erin L. Thompson, 'Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims against Public Institutions' (2011) 33 *Hastings Comm & Ent LJ* 407, 427-430; Jennifer Anglim Kreder, 'Reconciling Individual and Group Justice with the Need for Repose in Nazi-Looted Art Disputes - Creation of an International Tribunal' (2007) 73 *Brook L Rev* 155, 189-190

²⁰ See for example, Emily Gould, 'Twenty Years of the Washington Principles: Roadmap for the Future' (2018) 23 *Art Antiquity & L* 369; Evelien Campfens, 'Restitution of Looted Art: What about Access to Justice' (2018) 2018 *Santander Art & Culture L Rev* 185; Evelien Campfens, 'Bridging the Gap between Ethics and Law: The Dutch Framework for Nazi-Looted Art' (2020) 25 *Art Antiquity & L* 1-24; Tabitha Oost, 'From "Leader to Pariah"? On the Dutch Restitutions Committee and the inclusion of the public interest in assessing Nazi-spoliated art claims' (2021) 28 *Int J Cult Prop* 55; Newsletter, December 2021, Restitution's Committee, Appendix, Report by Weller et al. Restatement Necessary at 46. Weller suggests the balance should be weighed in favour of the claimant for justice to be achieved; see at 47-8, 51-2.

²¹ Evelien Campfens, (2021, November 11) Cross-border title claims to cultural objects: property or heritage? Meijers-reeks. Eleven. At <https://scholarlypublications.universiteitleid.nl/handle/1887/3239199> at page 228; accessed April 13, 2023

²² Max Weller & Tess Scheller, "Why a 'Restatement of Restitution Rules for Nazi-Confiscated Art?'" Observations on

It is not suggested that claimant interests are not central in the literature on Nazi looted art restitution claims; they are. However, the nature of these claimant interests has not been not fully explored for its contribution to the field. It is this gap which this article seeks to address. Specifics about the needs, concerns, motivations and fears comprising claimant interests, as articulated by them, are relevant to the consideration of how best to deal with restitution claims. At the heart of the Nazi-looted art restitution claim is a claimant story pushing the claim forward, and therefore they should drive the discussion about solutions for the many difficult issues they experience with their restitution claims. It is with that aim that the following stories about claimant restitution experiences are told.

Claimant Interests: Their stories through their words

This section introduces ten claimant stories, highlighting claimant efforts to find and claim family property looted by the Nazi regime.²³ Together these stories form a collective voice, empowering the individual claimant to move from a position of relative obscurity when it comes to the assessment of restitution processes to a greater public awareness of their needs, concerns, aims, desires, motivations - interests, in other words - which underlie their restitution claims.

The data for the stories come from publicly available sources including media reporting, third party claimant interviews (both print and video), quotes attributed to claimants in the media and literature, recorded lectures given by them, statements given to various government or institutional committees, and their personal written outputs about their experiences. The search for data was broad and is contained in the public domain.²⁴

the 'weighing of interests' in light of the Kohnstamm Report, Newsletter, December 2021, No. 12, Addendum, Restitutions Committee at <https://www.restitutiecommissie.nl/wp-content/uploads/2021/12/Network-Newsletter-no.12-December2021.pdf> (last accessed April 10, 2023)

²³ It should be noted here that the stories of this article are not intended to sit within a particular theoretical frame such as legal storytelling (see for example, Nancy Levit, 'Legal Storytelling: The Theory and The Practice – Reflective Writing Across The Curriculum' [2009] *The Journal of the Legal Writing Institute* 259). They sit within common definitional usage: "a description of past events, experiences, etc" (see *Compact Oxford English Dictionary*, 3rd Edition, C. Soanes & S Hawker (eds) 2005, OUP at 1023)

²⁴ The primary search was conducted during the period June 2022 to April 2023.

The sample of data is purposive. The selection of the claimant stories was reliant on the availability of public data. These are claims that have received media and literary attention, through which claimants make known their views and experiences about seeking the return of their family Nazi-looted artworks. The data sources setting out claimant comments was broad, ranging from books written in first person about their experiences to various interviews by different interviewers at different time. As a result, there are limitations to the data such as its reflexivity and the context in which their narrative is set out: for example, claimants were not guided by one researcher in terms of the nature of data sought to be disclosed; claimants were not subject to a specific research protocol applicable to each claimant; and the timeline within which their data was disclosed was not consistent, spanning many years. Despite these limitations, the data offers a rich insight into the claimant experience through their voice.

The Henri Hinrichsen Collection - The Martha Hinrichsen Story

This story involves a claim for the return of Karl Spitzweg's *Playing the Piano*, a painting found in the Gurlitt Hoard in 2013.²⁵ The claimant, Martha Hinrichsen, was the daughter of Walter Hinrichsen, one of seven children of Henri Hinrichsen, Jewish owner of a music publishing company and art collector living in Leipzig, Germany whose property was confiscated in 1939.²⁶ Henri fled to Belgium in 1940 and was deported to Auschwitz in 1942 where he died.²⁷

²⁵ Catherine Hickey, January 13, 2021, "Spitzweg drawing from Gurlitt hoard returned to Jewish publisher's heirs" Art Newspaper at <https://www.theartnewspaper.com/2021/01/13/spitzweg-drawing-from-gurlitt-hoard-returned-to-jewish-publishers-heirs> accessed April 5, 2023.

²⁶ Martha's cousin Irene Lawford Hinrichsen, daughter of Max Hinrichsen, another of Henri and Martha's sons, has written a book about her grandparents and their struggles during wartime. Note too that Irene indicates in her book that she is not a claimant as she is not her father's heir; all was left to her father's wife; see Irene Lawford-Hinrichsen, *Five Hundred Years to Auschwitz: A Family Odyssey from the Inquisition to the Present* (Harrow: Edition Press, 2008) at 231-232. Martha is her father's heir; Catherine Hickey, January 13, 2021, "Spitzweg drawing from Gurlitt hoard returned to Jewish publisher's heirs" Art Newspaper at <https://www.theartnewspaper.com/2021/01/13/spitzweg-drawing-from-gurlitt-hoard-returned-to-jewish-publishers-heirs> accessed April 5, 2023.

²⁷ Task Force Schwabing Art Trove, 'Object record excerpt for Lost Art ID: 477912' (15 December 2015), available online: https://www.kulturgutverluste.de/Content/06_ProjektGurlitt/ORE/Spitzweg_ORE_477912.pdf?blob=publicationFile accessed April 5, 2023

The Spitzweg painting was sold by the Nazis to Hildebrandt Gurlitt in 1940.²⁸ A claim was made for its return by Martha soon after its 2013 discovery, which Germany acknowledged in 2014; in 2016, the German Lost Art Foundation took over the investigation; and the return occurred in 2021, after Martha's death.²⁹

It took seven years after acknowledgment of the claim for the return to be effected. The German government said it needed to ensure the claimant documentation fully established family succession.³⁰ Martha reflected on the government's delay: "The delay proved to me that Germany doesn't make it easy for legitimate heirs to get their art back. Especially as documents accepted in previous restitution cases are now invalid."³¹ Martha speaks to the need for documentation proving that the painting belonged to her family: "[You] have to have documents; by the grace of God, my Uncle Hans documented everything – [he had] meticulous documents as did the Nazis. After the war, Walter got access to the documents."³² In addition to the documents, the back of the Spitzweg was stamped as *Property of Hinrichsen, Leipzig*, providing further evidence of ownership.³³

The delay was also of concern to Martha, having searched for her family's looted property for

²⁸ Sarah Cascone, 'A Drawing Believed to Be the Final Nazi-Looted Artwork in the Gurlitt Collection Has Been Returned to Its Rightful Owners' (Artnet, 13 January 2021), available online: <https://news.artnet.com/art-world/gurlitt-nazi-looted-artwork-restituted-1936823> accessed April 5, 2023

²⁹ Sarah Cascone, 'A Drawing Believed to Be the Final Nazi-Looted Artwork in the Gurlitt Collection Has Been Returned to Its Rightful Owners' (Artnet, 13 January 2021), available online: <https://news.artnet.com/art-world/gurlitt-nazi-looted-artwork-restituted-1936823> accessed April 5, 2023

³⁰ Henri Neuendorf, "Germany Criticized for Bureaucratic 'Bullying' Over Gurlitt Restitution" March 24, 2015 in ArtNet at <https://news.artnet.com/art-world/gurlitt-jewish-heirs-restitution-germany-280518> accessed April 5 2023. In 2013, when the claim was made, there were five families with 45 heirs to be accounted for in any division of returned property; see "Art stolen by the Nazis hits close to home" in Republican American, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023.

³¹ Henri Neuendorf, "Germany Criticized for Bureaucratic 'Bullying' Over Gurlitt Restitution" March 24, 2015 in ArtNet at <https://news.artnet.com/art-world/gurlitt-jewish-heirs-restitution-germany-280518> accessed April 5 2023

³² CBC Interview with Martha Hinrichsen, As it Happens, February 21, 2014, "Woman claims art stolen by Nazi collector" at <https://www.cbc.ca/radio/asithappens/friday-ukraine-lviv-nazi-art-claimant-glowing-antlers-oddest-titles-and-more-1.2904199/woman-claims-art-stolen-by-nazi-collector-1.2904204> accessed April 5, 2023 (14 minutes)

³³ CBC Interview with Martha Hinrichsen, As it Happens, February 21, 2014, "Woman claims art stolen by Nazi collector" at <https://www.cbc.ca/radio/asithappens/friday-ukraine-lviv-nazi-art-claimant-glowing-antlers-oddest-titles-and-more-1.2904199/woman-claims-art-stolen-by-nazi-collector-1.2904204> accessed April 5, 2023 (14 minutes)

20 years.³⁴ In 2013, she said about the claim for the Spitzweg: “This is going to take years. ...Somebody asked me, ‘Are you excited?’ No. If I get this in my lifetime, it’ll be amazing. I have no illusions.”³⁵ Martha had little confidence in the government returning looted property: “Quite honestly, I don’t believe in my lifetime, because I think this is going to be a long, long battle.”³⁶ Unfortunately for Martha, this became prophetic as she died in 2016, five years before any return and three years after the claim was made.³⁷

Martha also opined on other problems facing claimants. She refers to the costs the family has incurred generally in its restitution efforts.³⁸ In 2014, she also spoke to the issue of limitation periods in addition to the difficulty of documenting entitlement to looted property. She says: “[on the] running of limitation period, what will people have to go through even if [they] have documents; you are rare that you have documents; how will people find their works...”³⁹

In terms of pursuing the return of her family’s looted property, Martha speaks of the burden on heirs: “...[it] became a duty. It was something I had to do. But it also became a tremendous burden.” She was passionate about obtaining the painting for her family: upon learning that Gurlitt had said that he would like to see the painting hanging again in his home, she responded: “I will do everything I can to get that painting back into our family,” she said.⁴⁰

³⁴ “Art stolen by the Nazis hits close to home” in *Republican American*, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023

³⁵ “Art stolen by the Nazis hits close to home” in *Republican American*, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023

³⁶ 60 Minutes Interview by Morley Safer, “Billion-dollar art battle steeped in WWII history, April 6, 2014; the video is only available on Paramount+, but the transcript is available at <https://www.cbsnews.com/news/billion-dollar-world-war-ii-art-battle-60-minutes/> accessed April 5, 2023

³⁷ Sarah Cascone, ‘A Drawing Believed to Be the Final Nazi-Looted Artwork in the Gurlitt Collection Has Been Returned to Its Rightful Owners’ (Artnet, 13 January 2021), available online: <https://news.artnet.com/art->

³⁸ Martha refers to the family’s costs of \$1million in pursuit of their property; this however could be in relation to the family’s efforts to reinstate the family’s publishing house in Germany as well as seeking the return of other property. It is not clear what costs have been incurred for the return of the Spitzweg, particularly since this statement was uttered in 2013 on first learning of the Spitzweg. See “Art stolen by the Nazis hits close to home” in *Republican American*, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023

³⁹ CBC Interview with Martha Hinrichsen, As it Happens, February 21, 2014, “Woman claims art stolen by Nazi collector” at <https://www.cbc.ca/radio/asithappens/friday-ukraine-lviv-nazi-art-claimant-glowing-antlers-oddest-titles-and-more-1.2904199/woman-claims-art-stolen-by-nazi-collector-1.2904204> accessed April 5, 2023 (14 minutes)

⁴⁰ “Art stolen by the Nazis hits close to home” in *Republican American*, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023

She thanks one interviewer for “the opportunity to tell my grandfather’s story.”⁴¹ The emotional impact of restitution (in connection with her family’s efforts to reclaim the publishing business and other property for over 60 years)⁴² is described by Martha: “I will probably cry because it is very emotional, it is a very emotional time”; “[I feel] tremendous; a total rebirth of [the family] legacy and it’s a return to their homeland and their home, to their actual home.”⁴³

This claimant voice emphasizes barriers to restitution: the need for documentation which meets legal standards of proof impedes restitution. Both the need for definitive proof of ownership as well as proof of succession created barriers to return. Martha is not confident that she will see the return within her lifetime; she knows it will take a ‘long, long time’. Indeed, she did not live to see the return of the Spitzweg. Barriers need to be overcome before a return can be effected and before claimants die.

As direct descendants die, the numbers of heirs increase, not only complicating the issue of ownership as was seen here with Germany’s demand for full succession reporting, but also impacting the future of the property as claimants may need to sell it on return. Martha said she would have liked to have lived with the painting but that it needed to be sold.⁴⁴ The delay in returning property exacerbates this need on the part of the claimants.

We also hear that the efforts are a personal duty for Martha: they are an onerous obligation

⁴¹ CBC Interview with Martha Hinrichsen, *As it Happens*, February 21, 2014, “Woman claims art stolen by Nazi collector” at <https://www.cbc.ca/radio/asithappens/friday-ukraine-lviv-nazi-art-claimant-glowing-antlers-oddest-titles-and-more-1.2904199/woman-claims-art-stolen-by-nazi-collector-1.2904204> accessed April 5, 2023 (14 minutes)

⁴² For a detailed history of the family’s efforts regarding restitution efforts dealing with the family publishing business, see Irene Lawford-Hinrichsen, *Five Hundred Years to Auschwitz* (Harrow: Edition Press, 2008) at 189-195.

⁵⁶ Interview with Martha H by Urbina, “Returning Home” on 10/30/2014 at <https://www.dw.com/en/returning-home-to-leipzig/audio-18029845> accessed April 5, 2023

⁴³ Interview with Martha H by Urbina, “Returning Home” on 10/30/2014 at <https://www.dw.com/en/returning-home-to-leipzig/audio-18029845> accessed April 5, 2023

⁴⁴ Martha was said to be ‘pragmatic’ in realising that she won’t ever be able to keep the artwork because it needs to be divided between 5 families and 45 survivors; “Art stolen by the Nazis hits close to home” in *Republican American*, December 15, 2013 at <https://archives.rep-am.com/2013/12/15/art-stolen-by-the-nazis-hits-close-to-home/> accessed April 5, 2023

requiring great effort on a personal and evidentiary front. Despite this, for Martha, the effort is needed to tell the family story and for the rebirth of the family's legacy.

The Jules Strauss Collection – The Pauline Baer de Perignon Story

This story is about the hunt for looted artworks and the need for a gap-less provenance.

Pauline Baer de Perignon, a great granddaughter of Jules Strauss, is one of many heirs to the Strauss estate. She was responsible for finding and claiming the return of two artworks for the family: *Portrait of a lady as Pomona* by Nicolas de Largilliere from Staatliche Kunstsammlungen in Dresden; and *A Shepherd* by Giovanni Battista Tiepolo from Musee Nationaux Recuperations/Louvre.⁴⁵

Jules Strauss was a banker and avid art collector, born in Germany and living in France for much of his life. His collection was looted by the Nazis in occupied Paris in 1941 and 1942. Strauss died in 1943; his wife, Marie Louise Strauss, initiated claims in France and Germany after the war, but most of the claimed objects were not returned due to 'insufficient evidence'.⁴⁶

Pauline began the search for the collection in 2014 after becoming aware that Jules' collection may have been looted. When she began her search, she knew very little about her great-grandfather as no one in the family spoke of him.⁴⁷

Pauline describes her efforts regarding these two artworks in her book, *The Vanished Collection*.⁴⁸ Notable is the feat of establishing provenance for the paintings once she locates

⁴⁵ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 171-180; 199-228

⁴⁶ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 61-62

⁴⁷ The information regarding the family history comes from Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022, at 38, 61, 62, 108, 109, 178

⁴⁸ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022

them,⁴⁹ and the reluctance of reputable museums to return the artworks despite strong indications that the artworks had been looted from the Strauss collection.⁵⁰ From 2014 until 2021 (by which point both paintings had been restituted), Pauline's life was consumed by both the search and claim, not unlike Martha Hinrichsen's discussed above or the experiences of David Toren or Simon Goodman discussed below.⁵¹

Regarding the return of the Tiepolo, Pauline suggests that the Louvre did nothing to identify Jules' artwork until such time as a claim was made by the family: "Slowly it began to dawn on me that perhaps the museum, which had been holding onto the drawing for over seventy years, had no intention of returning the work. It was clear from the documents in the Louvre archives that the museum had known for a long time that Jules had owned it before the war. Perhaps the museum was hoping to find inconsistencies and contradictions in the [Strauss's] notebook that might put my claim in doubt."⁵²

Further, she says: "When I found the Tiepolo drawing on the Ministry of Culture's looted art website, the text alongside was extremely detailed and included the name of its owner, Monsieur Strauss. In case there were any doubts about the owner, all I needed to do was to cross-check it with auction records, which show that the buyer of this drawing in 1928 was Jules Strauss, living at 60 Avenue du Bois (now Avenue Foch). Simply doing a quick online search for 'Strauss' would have brought up the name Michel Strauss. It would have been very easy to find this Monsieur Strauss and discuss the drawing with him. Yet no one ever did."⁵³ In

⁴⁹ For example, Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 33, 104, 105,171, 196, 199

⁵⁰ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 207-223

⁵¹ Sotheby's Talks, 'The Restitution of Nicolas de Largillière's 'Portrait of a Lady as Pomona'' (25 January 2022) available online: <https://www.sothebys.com/en/series/the-jules-strauss-legacy-a-conversation-about-the-restitution-of-nicolas-de-largillieres-portrait-of-a-lady-as-pomona> accessed April 3, 2023

⁵² Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 151; Pauline was in possession of Strauss's notebooks which describe his collection.

⁵³ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from

answer to Pauline's question as to why no effort was made to return the painting, the head of the Commission for the Compensation of Victims of Spoliation replied: "There were so many Strausses at the time, how could we have known which one it was" to which Pauline comments: "I could barely believe the ingratitude and injustice."⁵⁴

Similarly, the de Largilliere had been linked to the name of Jules Strauss since 1959, but the Dresden museum did nothing, says Pauline: "I think they knew. There was a gap in the provenance, they had a lot of details, they even had the name of Jules Strauss on the Lost Art Database, but I think they were waiting for us to show the evidence, you know, instead of really doing themselves the investigation. That is why it took a very long time. ... They could have come to France and investigate..."⁵⁵

With the de Largilliere, the Director of the Dresden Museum suggested that Strauss had sold the painting for a decent price before the confiscation. The museum wanted proof from Pauline to counter this, demanding documents and Strauss's notebooks. Pauline describes the meeting with the museum officials: "There followed three hours of tense, difficult discussion. No one raised their voice, of course. We had to justify our cause and furnish evidence that the painting belonged to the family and had been stolen by the Nazis. Henri and I had spent hours putting together the dossier, but we were unprepared for how upset we would be by the sense of injustice."⁵⁶ She realised: "I needed to find the final, irrefutable proof that the painting had been expropriated. ...If I couldn't find anything, would I be obliged to accept the museum's conditions? ...The portrait didn't belong in Germany. I didn't know if I had the courage and the patience to keep fighting for it."⁵⁷ The Museum required their provenance expert to review

French by Natasha Lehrer, 2022 at 171-72

⁵⁴ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 173; Pauline notes that Jules was an active benefactor of the Louvre, and therefore known to the Louvre, see at 177.

⁵⁵ Sotheby's Talks, 'The Restitution of Nicolas de Largillière's 'Portrait of a Lady as Pomona'' (25 January 2022) available online: <https://www.sothebys.com/en/series/the-jules-strauss-legacy-a-conversation-about-the-restitution-of-nicolas-de-largillieres-portrait-of-a-lady-as-pomona> accessed April 3, 2023

⁵⁶ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 208

⁵⁷ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for*

Pauline's documents and complete a report of the review before engaging in any further discussion.⁵⁸

The Museum's reticence to part with the de Largilliere was further evidenced by its threat to the family that it agree to restitution on condition that it would sell the painting back to the museum at an agreed price, and if the family did not do so, the Ministry would make a final decision which may not be favourable to the family. Pauline's reaction to the museum's offer: "I was absolutely furious, but I didn't know how to respond. ...their offer disgusted me...this was a second forced sale! ...A restitution that was conditional on us agreeing to sell the painting to the museum. It wasn't about the money. The money they gave us would never be enough."⁵⁹ In answer to the question posed by her husband as to how this would be different from the family selling the painting once restituted, she says: "...Restitution is a way of acknowledging persecution. When they spoke of 'complicated' circumstances, forcing us to agree to sell back the painting, was this not, in a way, denying that it had been stolen - and thus negating Jules's history?"⁶⁰ In further response to the Museum's position on its restitution: "When, a few months later, I read through the four pages of the 'Protocol for the Restitution of the *Portrait of a lady as Pomona* to the Descendants of Jules Strauss sent by the museum, I discovered that it wasn't justice after all. The German curators acknowledged neither the theft of the painting nor the conditions of the forced sale. ...I was unable to sign."⁶¹

Pauline's negative view of museums generally is not surprising given her experience with them: "Museums are interested in the art's provenance from an art history point of view, but they are

the truth (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 219; see also at 207 & 227

⁵⁸ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer at 209.

⁵⁹ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 218

⁶⁰ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 218-219

⁶¹ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 222.

not interested in giving it back to those it was stolen from. The burden of proof is on people like me, and it is psychologically exhausting.”⁶² She says: “There is a lot of waiting. The process is vague and not at all transparent. You feel powerless because of all the bureaucracy.”⁶³

Further, “Although the German Museum Association had officially declared its willingness to atone for crimes of the past by returning expropriated works of art to their owners, the law was vague, and for two years our request for the return of the de Largillière had been passed around between the museum, the Ministry of Arts and Culture, and the Finance Ministry.”⁶⁴

Pauline is also very concerned about the lack of urgency in dealing with these claims, telling the Director of the Dresden Museum, “Jules Strauss’s heirs are getting old, his four grandsons are now between 80 and 97 years old. And three of them do not have much time left.”⁶⁵

Elsewhere, she comments on the need to deal with these claims expeditiously: “...it is true that it is too long and the more you wait the more difficult it will get, because if we wait too much, the archives will get too difficult to find. The family won’t know anything anymore. I am a great grandchild, but imagine in two generations, it will be too late, who will remember everything?”⁶⁶

Despite the difficulties encountered and the effort required to achieve the return of the de Largilliere and the Tiepolo, Pauline is grateful. For her, Jules Strauss’s legacy as art collector and

⁶² Renee Ghertz-Zand, ‘After finding it, author to part with her family’s Nazi-looted 18th-century painting’, (Times of Israel, 27 January 2022) available online: <https://www.timesofisrael.com/after-finding-it-author-to-part-with-her-familys-nazi-looted-18th-century-painting/> accessed April 3, 2023

⁶³ Renee Ghertz-Zand, ‘After finding it, author to part with her family’s Nazi-looted 18th-century painting’, (Times of Israel, 27 January 2022) available online: <https://www.timesofisrael.com/after-finding-it-author-to-part-with-her-familys-nazi-looted-18th-century-painting/> accessed April 3, 2023

⁶⁴ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman’s quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 223

⁶⁵ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman’s quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 216

⁶⁶ Sotheby's Talks, ‘The Restitution of Nicolas de Largillière's 'Portrait of a Lady as Pomona'’ (25 January 2022) available online: <https://www.sothebys.com/en/series/the-jules-strauss-legacy-a-conversation-about-the-restitution-of-nicolas-de-largillieres-portrait-of-a-lady-as-pomona> accessed April 3, 2023

philanthropist has been restored;⁶⁷ her family's identity recaptured;⁶⁸ and the family's history is remembered.⁶⁹ This was part of her quest.

Pauline's experience brings to the fore what appears to be an almost insurmountable standard that must be achieved in order to lessen a museum's grip on a painting in its collection that had been looted by the Nazis, or whose provenance during the war years is questionable. Pauline speaks to process needs such as expeditious decision-making; transparency of requirements; reduction of bureaucratic levels of oversight; reduction of the evidentiary burdens placed on claimants; and, proactivity on the part of museums and states to find heirs and conduct full provenance searches. She speaks to the desire to regain looted artworks belonging to Jules Strauss; to restore his legacy and family history; to receive acknowledgment of the persecution her family has suffered; to reinstate a lost heritage; to restore a family's identity by making it known to the public once again; and to maintain a relationship between the looted artworks and the family. Pauline seeks a sense of justice (a concept that was elusive to her as suggested by her experience with the Dresden Museum) and wants to receive acknowledgment of injustices. Pauline's experience illustrates the sense of powerlessness claimants feel in pursuit of their claims.

The Friedrich Gutmann Collection – The Simon Goodman Story

This story parallels that of Pauline Baer de Perignon: it too involves an all-consuming search for looted property and claims for its return. Friedrich Gutmann was an avid Jewish art collector, living in the Netherlands during the war. Gutmann was forced to sell his collection to a Nazi art dealer in 1942. He was deported in 1943 and murdered in Theresienstadt in 1944. His son, Bernard Goodman, while living in the US after the war, sought the return of the looted

⁶⁷ Pauline Baer de Perignon, *The Vanished Collection: Stolen masterpieces, family secrets and one woman's quest for the truth* (London: Bloomsbury (Head of Zeus Ltd which is part of Bloomsbury Publishing Plc), 2022) Translated from French by Natasha Lehrer, 2022 at 179

⁶⁸ Sotheby's Talks, 'The Restitution of Nicolas de Largillière's 'Portrait of a Lady as Pomona'' (25 January 2022) available online: <https://www.sothebys.com/en/series/the-jules-strauss-legacy-a-conversation-about-the-restitution-of-nicolas-de-largillieres-portrait-of-a-lady-as-pomona> accessed April 3, 2023

⁶⁹ Sotheby's Talks, 'The Restitution of Nicolas de Largillière's 'Portrait of a Lady as Pomona'' (25 January 2022) available online: <https://www.sothebys.com/en/series/the-jules-strauss-legacy-a-conversation-about-the-restitution-of-nicolas-de-largillieres-portrait-of-a-lady-as-pomona> accessed April 3, 2023

property, but was generally unsuccessful. Simon, Bernard's son, continued Bernard's efforts. He, along with his brother, Nick are heirs to the Gutmann collection.⁷⁰

The context for this story is set by Simon when describing his father's restitution efforts after the war: "I would discover that throughout his life our father had to deal not only with the almost unbearable knowledge that his parents had been savagely murdered, but also the knowledge that their looted legacy, their paintings and other cherished artworks, were on display in someone else's gallery, hanging on someone else's wall, locked in someone else's safe - and that he could not get them back."⁷¹

Simon has been proactive in his quest. His story is a rich one, giving insight into the claims process and the skill, stamina and resources needed to progress it. He experiences the negative side of litigation as well as the positive side of a museum's decision to recognise his claim and a spoliation panel determination in his favour. His efforts are against public institutions and private possessors. As such, there is much to learn from Simon's views about these experiences.

(a) The Private Collector

A lawsuit against a private collector was instigated, says Simon, as a result of the collector's intransigence to engage in viable settlement discussions regarding the return of Degas' *Paysage*.⁷² Simon talks about how he tracked the painting to an exhibition at the Metropolitan Museum of Art in New York (the Met) where the painting was on loan. He describes the various defences and denials put forward by the possessor's legal team, such as

⁷⁰ For the information set out in this paragraph, see Michael Dolan, 8/7/2016, "Conversation with Simon Goodman" HistoryNet at <https://www.historynet.com/conversation-simon-goodman/> accessed April 10, 2023; and Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 73-84, 125-127, 132-139, 153

⁷¹ Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 15

⁷² Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 204-206, 214.

refusing to acknowledge that the painting was stolen and inviting the family to institute legal action for its return. During the suit, according to Simon, the possessor brought motions to dismiss, engaged in procedural delays, refused to engage in reasonable settlement discussions, and aggressively pursued the pre-trial oral examination process, particularly towards Simon's aunt who was elderly and had a heart condition.⁷³

Simon says of the compromise that was ultimately reached: "Reluctantly, my family had come to the realization that a truly just resolution was probably out of our reach. Given the intransigence of the opposition, along with the complexities of the law, it became apparent that some compromise would be inevitable. The legal realities were beginning to take their toll."⁷⁴ The parties agreed to an equal share in the ownership of the painting, with the possessor donating his share to the Met upon receipt of a tax receipt for the value donated; purchase by the museum of the Goodman share; and recognition of the painting as part of the collection of Friedrich and Louisa Gutmann in the painting's title card.⁷⁵ This latter point was important to Simon: "My grandfather didn't just die for nothing; he didn't just disappear."⁷⁶

(b) The University Museum

Simon's experience with a university museum was different from his experience with the private possessor above. Baldung Grien's *Portrait of a Young Man* was found in the Zimmerli Museum of Rutgers University. The University, upon examination of his documentation, agreed to return the painting in relatively short order. Some months passed, however, without

⁷³ The summary provided in this paragraph comes from Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 209-219. Regarding the settlement discussions, the possessor made a low-ball offer and rejected a compromise of equal sharing offered by the family. The equal sharing eventually formed the basis of a resolution between the parties; see at 214, 216.

⁷⁴ Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 214

⁷⁵ Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 216. The valuation of the Goodman share was another procedural hurdle Goodman says was unfavourable to the family; see his description at 218-219. A similar experience occurred with the return of a Botticelli and its valuation for a settlement agreement reached with the family in which the family received a percentage of the value of the painting, which was purchased by the possessor at auction; see 228-231.

⁷⁶ Brian Gaffrey, Fox Business, "California Brothers Reclaim Family's Nazi-Looted Art Worth Millions" March 10, 2017 at <https://www.foxbusiness.com/features/california-brothers-reclaim-familys-nazi-looted-art-worth-millions> accessed April 10, 2023

communication from the museum after this acknowledgment. As a result, Simon sought the help of the New York Holocaust Claims Processing Office to assist with the recovery.⁷⁷ Within a month of obtaining this help, the University agreed that the claim was legitimate, but requested some additional time to assess its value for purchase from the family. Upon completing its investigation, it decided to return the painting to the family.⁷⁸

Simon said of this return: “Rugters and the Zimmerli had behaved in an exemplary fashion, and their honorable decision was indeed an important milestone in our family’s history. ...I was also grateful for the relative speed of the whole affair.”⁷⁹ Further, at the restitution ceremony: “I wanted to express my gratitude for the humanity with which Rutgers and the Zimmerli had treated my family. Getting back the painting had reaffirmed my faith in justice. I felt it was also important to stress how many other museums and institutions had only paid lip service to the Washington Principles, but most had balked when it came to restituting artworks from their own collections.”⁸⁰

(c) A German Museum

The claim for the return of the *Orpheus Clock* involved the Landesmuseum Wurttemberg in Stuttgart Germany. While it agreed to return the clock, it demanded first right of refusal for its purchase. As a result, the parties had to engage in a valuation of the artwork which delayed the return. The German Ministry also required certain inheritance documents to effect any restitution. Simon was cognisant of time passing during this claim - one of the heirs died and a main beneficiary was 92 years old.⁸¹ He pressed the Museum to act quickly; in reply, the Museum said it would press the Ministry for “a quick

⁷⁷ Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 286.

⁷⁸ This summary provided in this paragraph comes from Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 282-289.

⁷⁹ Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 289

⁸⁰ Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 290-91

⁸¹ This summary comes from Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 299-309

decision. Nevertheless, the bureaucratic process ground on inexorably.”⁸² Of its return, Simon says: “To have the clock back is to reaffirm my family’s existence. This recovery marks a healing for a family that once lived in such enmity and silence that growing up in London I had cousins two miles away whom I never knew.”⁸³

(d) A Dutch Museum and the Restitutiecommissie (the Dutch Restitution Committee)

A claim was made to the Restitutiecommissie (Dutch Restitution Committee) in 2014 for the return of eleven maiolica dishes from the Museum Boijman Van Beuningen. Due to a gap in provenance, the Dutch Restitution Committee pressed the parties to come to a negotiated agreement, rather than request a recommendation. The matter came to conclusion in 2022, eight years later, with Simon receiving six dishes and the Museum holding onto five. As part of the settlement, the Gutmann name would be imprinted on a mirrored cladding panel of the Museum’s art storage building. Simon says of this restitution and process: “The Washington Principles made clear that consideration should be given to unavoidable gaps or ambiguities in the provenance, in light of the passage of time and the circumstances of the Holocaust era. This case, involving some of the finest pieces from the Gutmann maiolica collection, was a perfect example of those gaps and ambiguities. With the help of the Dutch Restitution Committee, a Solomonic solution was achieved. Ultimately to be reunited with any work of art that was lovingly collected before the Holocaust by my family is today a powerful moment.”⁸⁴

Seeking justice figures prominently in Simon’s claims for return. He says: “It’s not about the money,” he said. “It’s about the satisfaction of the justice I’ve brought about.”⁸⁵ Further, “It’s

⁸² Simon Goodman, *The Orpheus Clock: The search for my family’s art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 305

⁸³ Michael Dolan, 8/7/2016, “Conversation with Simon Goodman” HistoryNet at <https://www.historynet.com/conversation-simon-goodman/> accessed April 10, 2023

⁸⁴ Museum Boijmans press release, ‘Six maiolica dishes from Boijmans collection returned to Gutmann-family heirs’ (7 September 2022), <https://www.lootedart.com/news.php?r=VMWQV365591> accessed April 10, 2023

⁸⁵ Mike Boehm, Los Angeles Times, “A family’s 70-year quest to regain treasures stolen by Nazis” at <https://www.latimes.com/entertainment/arts/la-xpm-2014-feb-15-la-et-cm-simon-goodman-20140215-story.html> accessed April 10, 2023

about honour, so much was lost...We can't bring back the dead...This is all that's left....We were fighting for our birthright and for justice finally... ."86 As to why he is searching, he says: "I wanted to do justice for my grandparents and their family, which had been almost erased. I came to see how cheated my father must have felt by life. He had had everything—growing up in a beautiful house among beautiful things, going to Cambridge, captaining the ice hockey team, and all that—and it all was taken away, along with his parents. And when he tried to retrieve what was lost, he had door upon door slammed in his face. I wanted to see those doors open."87

On receiving a painting by Uccello through an agreement with the possessor, he says: "Rediscovering the Uccello is justice...I can touch something that my grandfather touched and that he loved."88 And further, again, referring to his comment that his search is not about money: "It's justice...It's about vindicating my father and my grandfather."89

Simon also shares his views about claimant needs. He speaks to the need first, for access to information on artworks in order to find them and second, for information to establish provenance: "I think the reason provenance research has become such a rarified pursuit is largely due to the fact that over the centuries the recording of provenance history has been handled in a very cavalier manner. It has long suited the art business to hide behind these opaque practices. There is no great mystery to art provenance if the data is readily available. Obviously we would all benefit from a national database to which all accredited museums would contribute – galleries too ideally."90

⁸⁶ Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 213.

⁸⁷ Michael Dolan, 8/7/2016, "Conversation with Simon Goodman" HistoryNet at <https://www.historynet.com/conversation-simon-goodman/> accessed April 10, 2023

⁸⁸ Dalya Alberge, "A Renaissance masterpiece, Nazi looters, a double murder ... and a happy ending" July 26, 2020 at <https://www.theguardian.com/artanddesign/2020/jul/26/a-renaissance-masterpiece-nazi-looters-a-double-and-a-happy-ending> accessed April 10, 2023

⁸⁹ Brian Gaffrey, Fox Business, "California Brothers Reclaim Family's Nazi-Looted Art Worth Millions" March 10, 2017 at <https://www.foxbusiness.com/features/california-brothers-reclaim-familys-nazi-looted-art-worth-millions> accessed April 10, 2023

⁹⁰ Angelina Giovani, Interview with Simon Goodman, author of *The Orpheus Clock*, August 25, 2015 in *Plundered Art: a perspective from the Holocaust Art Restitution Project* at <https://plundered-art.blogspot.com/2015/08/interview-with-simon-goodman-author-of.html> (this is also at <https://plunderedart.org/2015/08/25/interview-with-simon-goodman-author-of-the-orpheus-clock/> (accessed April 11, 2023)

Additionally, Simon sees the difficulty of proving entitlement to an artwork, lamenting that the burden is solely on the claimant: “It's a point where the claimant has to prove exactly everything that took place and to document everything. In some cases people can say, well that's enough, we don't have any evidence to counter your proposition. They have nothing to counter what I'm claiming but still they demand more evidence.”⁹¹ On the difficulties claimants face to establish a history of ownership: “[we] were proud of how much we had been able to piece together after so much time had passed. Inevitably, though, after half a century or more, it was virtually impossible to fill in all the gaps of provenance. We were learning that the burden of proof lay with the victims. My family became increasingly aware of how hard it was to disprove a negative.”⁹²

Simon also refers to the great costs of hiring lawyers and experts, and so does the work himself.⁹³ He notes too that there needs to be some effort made to deal with good faith purchasers - the good faith defence needs to be reviewed, noting such purchaser does not have obligations to prove ownership in the same manner as does an heir.⁹⁴

For Simon, a perfect restitution is one where he has an opportunity to connect with a possessor on a human level, for that person to hear his story and to return an artwork without requiring anything in return: “...one of the highlights of my saga is definitely when Franz von Stuck's *Sensuality* was taken down off the wall by the man who had had it for 40 years. He then helped me carry it to my car, where we put it carefully in the trunk. This was perhaps the closest I have

⁹¹ Laurel Zuckerman, March 15, 2015 “A talk with Simon Goodman, author of *The Orpheus Clock*” Laurel Zuckerman's Paris Blog at <https://www.laurelzuckerman.com/2017/03/simon-goodman-wwii-nazi-art.html> (accessed April 10, 2023)

⁹² Simon Goodman, *The Orpheus Clock: The search for my family's art treasures stolen by the Nazis* (London: Scribe Publications, 2015) at 215, speaking of the Degas return from Searle (discussed above).

⁹³ Laurel Zuckerman, March 15, 2015 “A talk with Simon Goodman, author of *The Orpheus Clock*” Laurel Zuckerman's Paris Blog at <https://www.laurelzuckerman.com/2017/03/simon-goodman-wwii-nazi-art.html> (accessed April 10, 2023)

⁹⁴ The Holocaust Expropriated Art Recovery Act Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 Before the Subcomm. on the Constitution 6 Subcomm. on Oversight, Agency Action, Fed. Rights, and Fed. Courts of the S. Comm. on the Judiciary, 114th Cong. (2016) (statement of Simon Goodman)., available online: <https://www.judiciary.senate.gov/imo/media/doc/06-07-16%20Goodman%20Testimony.pdf> accessed April 6, 2023

got to a perfect restitution: no money changed hands and the legal work was kept to a minimum. After much conversation and deliberation, the collector just decided to do the right thing. This was an intensely gratifying moment. The return of the Baldung Grien [*Portrait of a Young Man* restituted from Rutgers University] comes fairly close behind, whereas all the other cases have involved considerable blood, sweat and tears.”⁹⁵

The Goodman story is rich in its offerings and is one where concepts of justice and injustice frame the story. It is about justice for the victims of the Holocaust - his grandfather and his father; justice for his family through an acknowledgement of its suffering and loss; and justice from possessors of art returning looted artworks that belonged to his family so that he can touch them, ensure his family is not forgotten, resurrect his family and receive reparations.

Justice, for Simon, is found in the recognition that there are gaps in provenance and that compromise is needed by all parties. Justice is being able to speak to a possessor directly to tell his story and be heard. Justice is receiving a looted artwork soon after a supported claim is made for it. Injustice is the lack of public data available to locate looted artworks and to establish provenance; injustice is the need to hire lawyers and other experts to pursue claims; injustice is an opaque art market where transactions are not transparent (with respect to valuations of the artworks, for example); injustice is an unreasonable burden on claimants to establish proof of ownership with no corresponding burden on possessors; and injustice is requiring claimants to pursue their claims through a difficult litigation process.

The Kraus Collection - The John Graykowski Story

⁹⁵ Angelina Giovani, Interview with Simon Goodman, author of *The Orpheus Clock*, August 25, 2015 in *Plundered Art: a perspective from the Holocaust Art Restitution Project* at <https://plundered-art.blogspot.com/2015/08/interview-with-simon-goodman-author-of.html> (this is also at <https://plunderedart.org/2015/08/25/interview-with-simon-goodman-author-of-the-orpheus-clock/> (accessed April 11, 2023)). The Baldug-Grien was the return involving Rutgers University and the Zimmerli Museum discussed above. For a further description of this perfect restitution, see Getty Research Institute, *Provenance: Exposing the Spoils of War*, Lecture by Simon Goodman, Welcome by Thomas W. Gaehtgens (Director of the Getty Research Institute), July 14, 2017 at <https://www.youtube.com/watch?v=EB0VdK9XtEw> accessed April 11, 2023

This too is a story couched in the framework of justice and injustice. John Graykowski is the great-grandson of Gottlieb and Mathilde Kraus. They were Jewish art collectors living in Vienna who fled to the USA in 1938, leaving behind their art collection. John leads the family's restitution efforts for the return of their collection which was confiscated by the Gestapo in 1941. The collection was sent to Munich after the war, with some paintings subsequently transferred to the possession of the (Free) State of Bavaria in 1959.⁹⁶

This claimant story is about the claim for the return of a painting by Van der Heyden, *View of a Dutch Square*, in the possession of Dombauverein Xanten (the Catholic Cathedral Association in Xanten).⁹⁷ This story is made more remarkable by the fact that the German Bavaria state sold the Van der Heyden in 1962 to the daughter of Heinrich Hoffmann, friend and photographer of Hitler and son-in-law of the then Nazi governor of Vienna for 300DM, who then sold it in 1963 to the Dombauverein for 16,000DM.⁹⁸

With the assistance of the Commission for Looted Art in Europe, John claimed the painting's return in 2011; the restitution took place in 2019, three years after the Dombauverein first advised that it would return the painting.⁹⁹ Extensive negotiations took place with

⁹⁶ This information is set out in Olivia B. Waxman, 'Looted by Nazis, Recovered, Sold Back to Hitler's Photographer's Daughter—How One Painting Got Back to Its Rightful Owners' (Time Magazine, 21 March 2019) available online: <https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

⁹⁷ The information set out in this paragraph is found in Joint Press Release by Commission for Looted Art Europe (representing the heirs of Gottlieb and Mathilde Kraus), and the Verein zur Erhaltung des Xantener Domes e.V. (Association for the Preservation of the Xanten Cathedral), 'View of a Dutch square' attributed to the Dutch 17th century painter Jan van der Heyden returned to the heirs of Gottlieb and Mathilde Kraus, (21 March 2019), available online: <https://www.lootedartcommission.com/TJTMUE84596> accessed April 4, 2023; see also, Olivia B. Waxman, 'Looted by Nazis, Recovered, Sold Back to Hitler's Photographer's Daughter—How One Painting Got Back to Its Rightful Owners' (Time Magazine, 21 March 2019) available online: <https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

⁹⁸ See for details, Commission for Looted Art Europe press release, 'Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting', (14 July 2016) available online: https://www.lootedartcommission.com/press-releases_subj;RXMWNY43298#RXMWO852181 accessed April 5, 2023

⁹⁹ Joint Press Release by Commission for Looted Art Europe (representing the heirs of Gottlieb and Mathilde Kraus), and the Verein zur Erhaltung des Xantener Domes e.V. (Association for the Preservation of the Xanten Cathedral), 'View of a Dutch square' attributed to the Dutch 17th century painter Jan van der Heyden returned to the heirs of Gottlieb and Mathilde Kraus, (21 March 2019), available online: <https://www.lootedartcommission.com/TJTMUE84596> accessed April 4, 2023

Dombauverein Church officials, who at one point, demanded payment for the value of the painting's care for 50 years as well as a payment for loss of future investment, to which John reacted: "It's very hard to understand this kind of response."¹⁰⁰ The Dombauverein also engaged in secret discussions with the Limbach Commission about the restitution and was of the view, "much to [John's] surprise and dismay" that the Dombauverein had no legal or moral obligation to the family and that the Washington Principles did not apply to it.¹⁰¹ In describing its decision to restitute the painting, the Church announced that it was not *returning* the painting but rather *surrendering* it because to return the painting implies it was not the legal owner of the painting.¹⁰²

For John, the journey was not an easy one to that point. In 2016, he said: "...this entire experience has been very painful. ...Of course, we fully expected that when the Dombauverein received details of the history of the painting, they would do the right thing straight away. ...Instead, in the five years since, the Dombauverein has never provided any documentation of any kind, not even to show the painting was acquired in good faith. They didn't once in those five years acknowledge the history of the painting, nor that of my family. The lack of compassion was particularly shocking because the Cathedral is known for its anti-Nazi past and even has a memorial in its crypt with ashes from the victims of Auschwitz and Dachau."¹⁰³

While later acknowledging the Dombauverein's "diligent care and custody of the painting, and

¹⁰⁰ Commission for Looted Art Europe press release, 'Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting', (14 July 2016) available online: https://www.lootedartcommission.com/press-releases_subj;RXMWN43298#RXMWO852181 accessed April 5, 2023

¹⁰¹ Commission for Looted Art Europe press release, 'Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting', (14 July 2016) available online: https://www.lootedartcommission.com/press-releases_subj;RXMWN43298#RXMWO852181 accessed April 5, 2023

¹⁰² Joint Press Release by Commission for Looted Art Europe (representing the heirs of Gottlieb and Mathilde Kraus), and the Verein zur Erhaltung des Xantener Domes e.V. (Association for the Preservation of the Xanten Cathedral), 'View of a Dutch square' attributed to the Dutch 17th century painter Jan van der Heyden returned to the heirs of Gottlieb and Mathilde Kraus, (21 March 2019), available online: <https://www.lootedartcommission.com/TJTMUE84596> accessed April 4, 2023

¹⁰³ The information in this paragraph comes from Commission for Looted Art Europe press release, 'Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting', (14 July 2016) available online: https://www.lootedartcommission.com/press-releases_subj;RXMWN43298#RXMWO852181 accessed April 5, 2023

for their willingness to reach this fair, just and proper resolution”,¹⁰⁴ John is critical of the Dombauverein for its approach to the claim: the lack of communication for prolonged periods;¹⁰⁵ lack of compassion for the family history and its claim;¹⁰⁶ lack of effort to establish its entitlement to the painting;¹⁰⁷ and lack of sufficient regard to “incontrovertible evidence that it belonged to my family.”¹⁰⁸

The claim was not about money for John: the painting was of low value.¹⁰⁹ For him, this is about getting back what was his: “This was my family’s property. It was stolen. I want it back. A very simple construct.”¹¹⁰ He sees this as a moral argument not a legal one.¹¹¹ The return granted “a measure of justice and compassion.”¹¹² He was “...excited and happy that it’s coming to a resolution, but I’m struck both by the weight of my family and the solemnity of the

¹⁰⁴ Joint Press Release by Commission for Looted Art Europe (representing the heirs of Gottlieb and Mathilde Kraus), and the Verein zur Erhaltung des Xantener Domes e.V. (Association for the Preservation of the Xanten Cathedral), ‘View of a Dutch square’ attributed to the Dutch 17th century painter Jan van der Heyden returned to the heirs of Gottlieb and Mathilde Kraus, (21 March 2019), available online:

<https://www.lootedartcommission.com/TJTMUE84596> accessed April 4, 2023

¹⁰⁵ Commission for Looted Art Europe press release, ‘Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting’, (14 July 2016) available online:

https://www.lootedartcommission.com/press-releases_subj;RXMWNY43298#RXMWO852181 accessed April 5, 2023

¹⁰⁶ Commission for Looted Art Europe press release, ‘Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting’, (14 July 2016) available online:

https://www.lootedartcommission.com/press-releases_subj;RXMWNY43298#RXMWO852181 accessed April 5, 2023

¹⁰⁷ Commission for Looted Art Europe press release, ‘Bavaria to investigate return of art to high-ranking Nazi families – Dombauverein commits to restitution of Kraus family painting’, (14 July 2016) available online:

https://www.lootedartcommission.com/press-releases_subj;RXMWNY43298#RXMWO852181 accessed April 5, 2023

¹⁰⁸ Nina Siegal, ‘A Painting Looted by and returned to Nazis Finally Goes to Its Jewish Owners’ (New York Times, 20 March 2019), available online: <https://www.nytimes.com/2019/03/20/arts/design/nazi-looted-art-cathedral.html> accessed April 5, 2023

¹⁰⁹ Olivia B. Waxman, ‘Looted by Nazis, Recovered, Sold Back to Hitler’s Photographer’s Daughter—How One Painting Got Back to Its Rightful Owners’ (Time Magazine, 21 March 2019) available online:

<https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

¹¹⁰ Olivia B. Waxman, ‘Looted by Nazis, Recovered, Sold Back to Hitler’s Photographer’s Daughter—How One Painting Got Back to Its Rightful Owners’ (Time Magazine, 21 March 2019) available online:

<https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

¹¹¹ Olivia B. Waxman, ‘Looted by Nazis, Recovered, Sold Back to Hitler’s Photographer’s Daughter—How One Painting Got Back to Its Rightful Owners’ (Time Magazine, 21 March 2019) available online:

<https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

¹¹² Joint Press Release by Commission for Looted Art Europe (representing the heirs of Gottlieb and Mathilde Kraus), and the Verein zur Erhaltung des Xantener Domes e.V. (Association for the Preservation of the Xanten Cathedral), ‘View of a Dutch square’ attributed to the Dutch 17th century painter Jan van der Heyden returned to the heirs of Gottlieb and Mathilde Kraus, (21 March 2019), available online:

<https://www.lootedartcommission.com/TJTMUE84596> accessed April 4, 2023

occasion.”¹¹³ He is also aware that the continuing search for his family’s looted property will take a lifetime.¹¹⁴

John offers some thoughts on what needs to be done to change the process for restitution claims. He opines: “Precise procedural rules for restitution procedures must be implemented and there must be a lot more transparency from the museum side. This is not about nuclear weapons, so all the secretiveness must come to an end. Although the Bavarian State Painting collection is obliged to hand over to the Central State Archive (Hauptstaatsarchiv), they still keep them under lock with them. These archives must finally be made freely accessible for families that search for looted art. Or does Germany really want that this inglorious chapter never comes to an end?”¹¹⁵ Further, he suggests that the process would go faster if governments paid private individuals or organizations to return looted art in their possession.¹¹⁶

This story emphasises the varying difficulties claimants may encounter. Even in the face of a possessor which, at first instance, appears to be a sympathetic organization and the important assistance of the Commission for Looted Art in Europe, the machinations of return impede quick resolution. John speaks in terms of process and the barriers that the family experienced with the Dombauverein. The idea of ownership and theft, for him, means that property should be returned. Evidence should be seriously considered. Justice is important in terms of what he sees as the right thing - to return stolen property. A better process is necessary - one which is

¹¹³ Nina Siegal, ‘A Painting Looted by and returned to Nazis Finally Goes to Its Jewish Owners’ (New York Times, 20 March 2019), available online: <https://www.nytimes.com/2019/03/20/arts/design/nazi-looted-art-cathedral.html> accessed April 5, 2023

¹¹⁴ Olivia B. Waxman, ‘Looted by Nazis, Recovered, Sold Back to Hitler’s Photographer’s Daughter—How One Painting Got Back to Its Rightful Owners’ (Time Magazine, 21 March 2019) available online: <https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

¹¹⁵ Tobias Timm, ‘Sie rücken nichts raus (They don’t give back anything)’ (Zeit, 14 July 2016) available online: <https://www.zeit.de/2016/28/raubkunst-rueckgabe-rechte-opfer/komplettansicht> accessed 25 July 2022; German interview excerpt translated by Felix Wahler.

¹¹⁶ Olivia B. Waxman, ‘Looted by Nazis, Recovered, Sold Back to Hitler’s Photographer’s Daughter—How One Painting Got Back to Its Rightful Owners’ (Time Magazine, 21 March 2019) available online: <https://www.lootedart.com/news.php?r=TK27UH614811> accessed April 5, 2023

expeditious, precise and transparent. A proactive provenance research system is needed and proactivity by a state in handling claims. Money is not important – return of artwork results in the restoration of family property and with it, family history. Restitution is about compassion for family history and suffering. All this is augmented by the fact that Bavaria sold his family's painting to a family with Nazi links, rather than investigating the painting's ownership when it received the painting into its possession.

The David Friedmann Collection (Artist) - The Miriam Friedman Morris Story

This is a story of a daughter, Miriam Friedman Morris seeking to recover artworks created by her artist father, David Friedmann which were confiscated by the Nazis. Her efforts resonate with the other stories in this article.

David was an artist across many mediums during both world wars and after. He painted, sketched portraits and worked as a press artist in Berlin in the 30s. Very little, says Miriam, remains of his collection of over 2,000 paintings, drawings, lithographs and etchings.¹¹⁷ David fled Berlin to Prague (as a Czech citizen) in 1938.¹¹⁸ He was subsequently deported first to the Lodz Ghetto and then to Auschwitz in 1941 with his wife and child.¹¹⁹ His property was confiscated by the Nazis in 1941.¹²⁰ David survived the death camp, but his wife and child did not. He eventually emigrated to America.¹²¹ He succeeded in obtaining a reparation payment

¹¹⁷ Jordan Moshe , “On a mission to find father’s artworks looted by Nazis”, South African Jewish Report, Oct 5, 2020 at <https://www.sajr.co.za/on-a-mission-to-find-fathers-artworks-looted-by-nazis/> last accessed Feb 25/23)

¹¹⁸ Interview with Miriam Friedmann Morris. Daughter of artist and Holocaust survivor David Friedmann, Dirk de Klein, 20-08-28 at <https://www.youtube.com/watch?v=xPX-FzQpyHA> (last accessed Feb 25, 2023)

¹¹⁹ Jordan Moshe , “On a mission to find father’s artworks looted by Nazis”, South African Jewish Report, Oct 5, 2020 at <https://www.sajr.co.za/on-a-mission-to-find-fathers-artworks-looted-by-nazis/> last accessed Feb 25/23)

¹²⁰ Crafting Heritage: Treasure Hunt: Finding the Lost Art Legacy of David Friedmann (Ghetto Fighters’ House Talking Memory Series), Interview with Miriam Friedmann Morris by Liz Elsby, 10/07/22 at <https://www.youtube.com/watch?v=uSxWvur7TWo> (last accessed Feb 25, 2023)

¹²¹ Interview with Miriam, “Chess Masters to the Holocaust and Beyond: Survivor David Friedman’s art, with Miri”, Y I love Jewish website at <https://eu-es.facebook.com/YILoveJewish/videos/chess-masters-to-the-holocaust-and-beyond-survivor-david-friedmans-art-with-miri/781441169145675/> (accessed Feb 25, 2023)

for his looted property from Germany in 1961 (from a claim made in 1954 which was initially awarded at a low amount but increased on appeal).¹²² Miriam recalls her father's joy upon his receiving a cheque for \$4,350: "It wasn't the money. It was the official recognition that his work actually meant something."¹²³

The payment however did not make up for David's victimization and his suffering, she says, and it did not take into account the impact on his career.¹²⁴ She refers to a diary entry made by her father in 1945: "What a personality I might have become? My development was destroyed."¹²⁵ She says: "I want to rescue him from obscurity. ... Stripped of the opportunity to become world-renowned, careers of hundreds of Jewish artists were cut short and their fate changed forever because of the German Reich. My father did not have the opportunity to fulfil his rise to be a 'world famous' artist."¹²⁶ She recalls him telling her upon finding a copy of his portraits of chess masters in a museum: "You see Miri, I was really a famous artist before the war. I was known for these portraits of chess masters."¹²⁷

Miriam wants recognition of her father's identity as an artist¹²⁸ and for his legacy in terms of what art enabled him to do: "...my father believed his greatest contribution was his eyewitness testament dedicated to the six million Jews who were killed by the Nazis. I want the world to see

¹²² Miriam Friedmann Morris, "How the Nazis Failed to Destroy the Life & Legacy of Artist David Friedmann", The J.C.A, August 2, 2020 at <https://www.thej.ca/2020/08/02/how-the-nazis-failed-to-destroy-the-life-and-legacy-of-artist-david-friedmann/> (accessed Feb 25/23)

¹²³ Sandy Eller, "A Legacy Restored", The Jewish Press, February 8, 2023 at

<https://www.jewishpress.com/sections/features/a-legacy-restored/2023/02/08/> (accessed Feb 25/23)

¹²⁴ Interview with Miriam, "Chess Masters to the Holocaust and Beyond: Survivor David Friedman's art, with Miri", Y I love Jewish website at

<https://eu-es.facebook.com/YILoveJewish/videos/chess-masters-to-the-holocaust-and-beyond-survivor-david-friedmans-art-with-miri/781441169145675/> (accessed Feb 25/23)

¹²⁵ Interview with Miriam Friedmann Morris. Daughter of artist and Holocaust survivor David Friedmann, Dirk de Klein, 20-08-28 at <https://www.youtube.com/watch?v=xPX-FzQpyHA> (last accessed Feb 25, 2023)

¹²⁶ Interview with Miriam Friedmann Morris. Daughter of artist and Holocaust survivor David Friedmann, Dirk de Klein, 20-08-28 at <https://www.youtube.com/watch?v=xPX-FzQpyHA> (last accessed Feb 25, 2023) ; and Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at

https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 883

¹²⁷ Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at

https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 883

¹²⁸ Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at

https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23)

his artwork in the hopes of preventing such barbarism from ever happening again.”¹²⁹ “After my father’s death, I grasped the enormity of his legacy and the responsibility that came with it. I had to rescue him from obscurity.”¹³⁰

Her mission to find her father’s artwork is fuelled by justice: “Finding the pieces of my father’s lost art legacy and recovering his career is gratifying and a bit of justice.”¹³¹ Further: “This is a little bit of justice for him - that there is interest in his work today and he is recognised. Makes me feel that my work to that end is very satisfying...”¹³²

Miriam’s search is not an easy one. In her search for the work her father did for a newspaper in Berlin, she says: “You need to go yourself to find the truth; there were archives of newspapers in Berlin even though I was told that everything had been bombed.”¹³³ She uses the internet to search, she receives information from other researchers who come across her father’s work, and she writes to institutions, such as university libraries and museums to try to obtain information about her father’s artworks.¹³⁴ When information is not forthcoming, she attends European museums and institutions to search for her father’s artworks.¹³⁵ She says that searching is difficult as she does not have access to information, such as identifying works in

¹²⁹ Sandy Eller, “A Legacy Restored”, The Jewish Press, February 8, 2023 at

<https://www.jewishpress.com/sections/features/a-legacy-restored/2023/02/08/> (accessed Feb 25/23)

¹³⁰ Jordan Moshe , “On a mission to find father’s artworks looted

by Nazis”, South African Jewish Report, Oct 5, 2020 at <https://www.sajr.co.za/on-a-mission-to-find-fathers-artworks-looted-by-nazis/> last accessed Feb 25/23)

¹³¹ Jordan Moshe , “On a mission to find father’s artworks looted

by Nazis”, South African Jewish Report, Oct 5, 2020 at <https://www.sajr.co.za/on-a-mission-to-find-fathers-artworks-looted-by-nazis/> last accessed Feb 25/23)

¹³² *Crafting History, Artist As Witness: The Holocaust Art of David Friedmann in the Lodz Ghetto (Ghetto Gighters House Talking Memory Series)* 26/06/22 with Miriam Friedman at https://www.youtube.com/watch?v=g06_r69rzBM (last accessed February 23)

¹³³ Interview with Miriam Friedmann Morris. Daughter of artist and Holocaust survivor David Friedmann, Dirk de Klein, 20-08-28 at <https://www.youtube.com/watch?v=xPX-FzQpyHA> (last accessed Feb 25, 2023)

¹³⁴ Interview with Miriam, “Chess Masters to the Holocaust and Beyond: Survivor David Friedman’s art, with Miri”, Y I love Jewish website at

<https://eu-es.facebook.com/YILoveJewish/videos/chess-masters-to-the-holocaust-and-beyond-survivor-david-friedmans-art-with-miri/781441169145675/> (accessed Feb 25/23)

¹³⁵ Miriam Friedman Morris, “Artist David Friedman: A Daughter’s Search” at

https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 894

private hands.¹³⁶ Of the over 2,000 pieces that were confiscated, she has found 50.¹³⁷

Miriam does not appear to be seeking the return of all of her father's art - some of the art was commissioned by portrait sitters, others formed part of his work for the Berlin press. However, she does make mention of some works that are in museums, which she asserts belong to her father, but which museums refuse to return to her. The nature of her claims against these museums are not clear, but her experience with their response to her overtures are relevant for purposes of this article. She speaks in a negative way about her experience with the Jewish Museum in Prague over a 1918 lithograph and a 1914 etching which she says had been looted from David: the Museum holds eight works by her father which are marked as owner unknown.¹³⁸

The Museum, Miriam asserts, requires her to prove her claim by "[furnishing] credible proof showing that [her father] was the owner of the object in question [stating that] there is no evidence at all that they were confiscated [from] Mr. David Friedmann [and that] the Jewish Museum Prague is not entitled to give out any items which could be a subject of other potential claims filed by other claimants."¹³⁹ Miriam responds: "The leadership of the Jewish Museum in Prague believes there could be other claimants. Where are they? What has been done to find them? What credible evidence does the Jewish Museum have that proves that these works did not belong to David Friedmann? The answer: As a refugee, he sold his works under duress to feed and support his family. There is near total absence of records detailing the confiscation of assets in the former Protectorate of Bohemia and Moravia. The Jewish

¹³⁶ Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23)

¹³⁷ Jordan Moshe, "On a mission to find father's artworks looted by Nazis", South African Jewish Report, Oct 5, 2020 at <https://www.sajr.co.za/on-a-mission-to-find-fathers-artworks-looted-by-nazis/> last accessed Feb 25/23)

¹³⁸ Crafting Heritage, Treasure Hunt: Finding the Lost Art Legacy of David Friedmann (Ghetto Fighters' House Talking Memory Series), Interview with Miriam Friedmann Morris by Liz Elsby, 10/07/22 at <https://www.youtube.com/watch?v=uSxWvur7TWo> (last accessed Feb 25, 2023); see also, Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 898.

¹³⁹ Miriam Friedman Morris, "Artist David Friedman: A Daughter's Search" at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 900-901

Museum cannot prove that David Friedmann is not the original and rightful owner of his works. It is impossible to do justice to the past and hold onto this art. There is no justice for the legacy of David Friedmann, which should be honored and valued because of what it represents - the surviving works of an accomplished artist who was denied the opportunity to become world renowned because of the criminal policies of the Deutsches Reich.”¹⁴⁰

As there is no trace of his confiscated objects, Miriam does not have proof to establish that they belong to her father.¹⁴¹ David recognised this difficulty early in his claim process as seen in a letter he submitted to support his claim for reparations in 1950: “Hence I ask the Wiedergutmachungsamt to replace somehow, what was taken from me. If it really wants to make reparations, then my case is definitely worth, even if my case cannot be proven. However, this is not my fault! I could have still been living in Berlin! However, a government came into power that preached racial hatred and so I lost my nice apartment, my studio, a good existence, my lift, and the things in the apartment at Wielandstrasse 29.”¹⁴²

Claimants need help with their search for their artworks, says Miriam: “I do not have the finances or the resources of museums and institutes to search for hundreds of David Friedmann works that remain undocumented and may be in private hands. European governments should help identify and track these works and provide expertise. After years of exhaustive research efforts, I would welcome help. To make matters more complicated, how does one differentiate between works that my father sold during his successful career and those that were stolen from him?I believe all art looted by the Nazis should be identified, not just works by famous artists found in prominent collections and galleries. Art of an obscure artist is more likely to hang on the wall of a private home than in a museum. I implore the European governments to

¹⁴⁰ Miriam Friedman Morris, “Artist David Friedman: A Daughter’s Search” at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 901

¹⁴¹ Crafting Heritage, Treasure Hunt: Finding the Lost Art Legacy of David Friedmann (Ghetto Fighters’ House Talking Memory Series), Interview with Miriam Friedmann Morris by Liz Elsby, 10/07/22 at <https://www.youtube.com/watch?v=uSxWvur7TWo> (last accessed Feb 25, 2023)

¹⁴² Miriam Friedman Morris, “Artist David Friedman: A Daughter’s Search” at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 891; a lift is a storage container which housed his goods and which was held by a shipping firm (see at 891)

publicize and help the heirs trace the undocumented and documented art theft.”¹⁴³

This is the story about a claimant who needs help to find lost artworks, whose individual search is overwhelming, and who pleads for help from the state to locate not only the artworks, but the possessors of confiscated artworks. It involves a claimant who cannot prove her right to an artwork because documentation is scant or there are no records regarding the confiscation. Museums require her to ‘credibly’ prove their claims, although they acknowledge that a particular work had been confiscated. The difficulty with her search is similar to the experiences of other claimants: they need help; they need access to information; they need skilled researchers; they need state support to identify lost art; and they need recognition that ‘credible’ proof may be difficult to establish.

Miriam’s story suggests that a new standard is needed against which to determine the history of an artwork and a claimant’s ownership. It suggests that possessors be required to show their entitlement to an artwork. Miriam recognises that her situation is more difficult than others: her father sold paintings and he had paintings taken from him. There is a need to distinguish between them; but records are not always available to her.

Miriam is fighting for her father’s legacy; for recognition of his work; and for his reinstatement in the artist community. She wants him to achieve what he lost due to Nazi persecution; that is, recognition of his value as an artist. It is more than a search for his work. It is about his identity as an artist. Miriam needs to carry on this search for her father. She seeks justice for her father: finding his work, valuing his work, and making his work known is justice for her father.

The David Friedmann Collection (Collector): The David Toren Story

This is primarily a story about procedure. David Toren was one of four heirs to the extensive collection of David Friedmann, a German Jewish industrialist.¹⁴⁴ Betrayed by close German

¹⁴³ Miriam Friedman Morris, “Artist David Friedman: A Daughter’s Search” at https://www.lootedart.com/web_images/pdf2018/Morris1.pdf (accessed Feb 25/23) at 903 and 905

¹⁴⁴ Larissa Neumayer, ‘Case Review: David Toren v. Federal Republic of Germany and Free State of Bavaria – Task

friends, Friedmann was forced to sign over his collection to the Nazis in 1938, with the family later deported to Auschwitz.¹⁴⁵ David is Friedmann's great-nephew, saved by his father who put him on a Kindertransport to Sweden just before the war commenced.¹⁴⁶

David died at the age of 94 in 2020, leaving his son and grandson to lead the family's current search for its looted art.¹⁴⁷

David sought the recovery of Max Liebermann's *Two Riders on the Beach*, a 1901 painting found in the Gurlitt Hoard. He submitted a claim to the Task Force set up by Germany to deal with Gurlitt Hoard claims. He became disillusioned however with the Task Force and its slow handling of his claim.¹⁴⁸ To instigate movement, he commenced litigation in Washington DC against Germany and Bavaria for return of the Liebermann. In response to the question about his view as to Germany's handling of restitution claims, he said: "Awful. This painting *Two Riders* surfaced more than two years ago in the apartment of Gurlitt in Munich. So why should it have taken two years? This slowness is the reason why I brought a lawsuit against Germany and Bavaria, which is going its course in a Federal Court in Washington to rush things."¹⁴⁹ He points out the importance of public awareness of the claim, believing that press coverage will

Force Confirms Origin of Liebermann Painting' (Centre for Art Law Blog, 31 October 2014), available online: <https://itsartlaw.org/2014/10/31/case-review-david-toren-v-federal-republic-of-germany-and-free-state-of-bavaria-task-force-confirms-origin-of-liebermann-painting/> accessed April 3, 2023

¹⁴⁵ Catherine Hickley, 'David Toren, Who Fought to Recover Nazi-Looted Art, Dies at 94' (NY Times, 30 April 2020), available online: <https://www.nytimes.com/2020/04/30/obituaries/david-toren-dead-coronavirus.html> accessed April 3, 2023; for discussion about the betrayals suffered by the family, see Dalya Alberge, 'Reunion with looted painting is 'second victory against the Nazis'' (The Guardian, 27 May 2015), available online: <https://www.theguardian.com/world/2015/may/27/looted-painting-victory-nazis-two-riders-beach-max-liebermann> accessed April 3, 2023; for deportation date, see Susanne Lenz-Gleissner, David Toren – Why wait so long?' (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁴⁶ Catherine Hickley, 'David Toren, Who Fought to Recover Nazi-Looted Art, Dies at 94' (NY Times, 30 April 2020), available online: <https://www.nytimes.com/2020/04/30/obituaries/david-toren-dead-coronavirus.html> accessed April 3, 2023

¹⁴⁷ Associated Press, 'Holocaust survivor David Toren reclaimed Nazi-looted artwork before dying of COVID-19' (NBC News, 15 May 2020), available online: <https://www.nbcnews.com/news/world/holocaust-survivor-david-toren-reclaimed-nazi-looted-artwork-dying-covid-n1207646> accessed April 3, 2023

¹⁴⁸ Toren discusses his view of the German effort and his action in Susanne Lenz-Gleissner, David Toren – Why wait so long?' (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁴⁹ Susanne Lenz-Gleissner, David Toren – Why wait so long?' (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

force Berlin and Munich to act.¹⁵⁰

He is conscious of the passing of time, pointing out that his brother, the other heir, died at the age of 93 before the claim was resolved: “This happened between 70 and 80 years ago. Most of these paintings were stolen by the Gestapo around 1938 and '39. That is now over 75 years ago. And the heirs - I will be 90 in April. My brother, who is co-heir, died four months ago. He was 93. So why wait so long?”¹⁵¹ In his view, it is “unfair in a sense that people like me - heirs of those whose paintings were stolen - should have to engage in expenses and time to get their rightful property back. It should go much faster.”¹⁵² Further, Germany “should investigate the provenance of the paintings, which sometimes isn't easy. But if it can be established that certain paintings belong to ‘Mr So and so,’ then they should look for the heirs, and if they find them, they should give the art to the heirs.”¹⁵³

The return of the painting matters to him because of the “principle of getting back some heirloom of my family. It belongs to my family. I have nothing. I have one photograph which I took with me to Sweden. I wasn't allowed to take anything with me. My parents were thrown out of the apartment around 1941 and lived in a small little room in a bad neighbourhood of Breslau [now Wroclaw] until they were deported and killed in a gas chamber in Auschwitz. The painting is an heirloom. It belongs to my family. No one else should have it. It could be one of the few things which could remind me of my background, of my family.”¹⁵⁴ The Liebermann was restituted to David in 2015, when he was still alive to receive it. Other paintings however remain lost, and are for his heirs to recover.

This story is about process, ownership, and a sense of reparation. For David, it is imperative

¹⁵⁰ Susanne Lenz-Gleissner, ‘David Toren – Why wait so long?’ (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁵¹ Susanne Lenz-Gleissner, ‘David Toren – Why wait so long?’ (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁵² Susanne Lenz-Gleissner, ‘David Toren – Why wait so long?’ (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁵³ Susanne Lenz-Gleissner, ‘David Toren – Why wait so long?’ (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

¹⁵⁴ Susanne Lenz-Gleissner, ‘David Toren – Why wait so long?’ (Deutsche Welle, without date), available online: <https://learngerman.dw.com/en/david-toren-why-wait-so-long/a-18051950> accessed April 3, 2023

that the claims be processed quickly - heirs are dying. The process should be simpler, cost efficient and proactive on the part of the state. The state should be responsible for establishing provenance and for locating heirs in order to return the paintings to them. There is also an element of reparation in David's words: the family lost everything; they were killed; the artwork is all that remains. Its value is in the relationship it has to the family. As he says, it is an heirloom and a reminder of family. A sense of ownership underlies this story. The painting belonged to his family: the painting is more than an object; it is a belonging.¹⁵⁵

The Collection of Joan Hendrik Smidt van Gelder – The Charlotte Bischoff van Heemskerck Story

This is a story about the emotional impact of a restitution. Charlotte Bischoff van Heemskerck is a direct descendant of a Dutch collector whose artworks were confiscated in the Netherlands during its occupation. She is the daughter of Joan Hendrik Smidt van Gelder, a former Director of a Children's Hospital in Arnhem, Netherlands. Upon the German invasion of the Netherlands in 1940, Joan attempted to safeguard 14 of his artworks. In 1944 and 1945, the Nazis looted the town, including the bank vaults which stored Joan's artworks. Eight were recovered after the war but six remain missing.¹⁵⁶ Charlotte's restitution story involves returns from local government and from a private collector.

With the assistance of the Commission for Looted Art in Europe (the Commission), and specifically Anne Webber, whom Charlotte acknowledges in thanks,¹⁵⁷ two paintings have been returned to the family: Jacob Ochtervelt's *The Oyster Meal* from the Harold Samuel Collection in the Guildhall, London; and Casper Netscher's *Portrait of Steven Wolters* from a private collector. At

¹⁵⁵ Kent Monkman Lecture at the Royal Ontario Museum on March 22, 2023 during which Monkman spoke of objects in his paintings as 'belongings'; notes on file with author

¹⁵⁶ For this family history, see Commission for Looted Art Europe Press Release, 'Old Master Painting from Eminent Dutch Collection is Recovered and Restored to 101-year-old Heir and Her Family, 22 June 2022, available online: https://www.lootedartcommission.com/press-releases_subj:VI0BD811016 accessed April 4 2023; see also, Sotheby's sale, London, 4 July 2018, lot 48, available online: <https://www.sothebys.com/en/auctions/ecatalogue/2018/old-masters-evening-118033/lot.48.html> accessed April 4 2023

¹⁵⁷ Video, 'Woman re-united with looted Nazi painting' (6 November 2017) Getty Images at <https://www.gettyimages.co.nz/detail/video/woman-re-united-with-looted-nazi-painting-charlotte-news-footage/901100628> accessed April 4, 2023

the time of the second successful restitution in 2021, Charlotte was 101 years old.

Charlotte has vivid memories of both paintings hanging in her family home while growing up. Of the *Wolters* portrait, she says: “I was so happy to see the painting again which always hung behind my chair in the dining room. We all missed this painting very much because it was so much part of our daily life. It is a beautiful painting, beautifully painted, with its subtle combination of colours on the wonderful coat and the expression on the face of the sitter which shows him to be a generous man, an impressive man.”¹⁵⁸ Of the *Oyster Meal*, she recalls not only its place in her home, but also the discussions about it with her father: “I recognised it immediately. It was very moving to be honest. I was very happy to see it back and I feel at home here now that our painting is hanging here on a white wall like it was hanging in my father’s waiting room. It is beautiful. I am very lucky that I may live to that.”¹⁵⁹ “I loved her beautiful dress, the red coat,” she said. “My father taught me how to look at it, how he painted the light and dark. It was one of our favorites.”¹⁶⁰

Regarding the *Oyster Meal*, the City of London agreed to return the painting after receiving a full provenance history of the painting (a gap from 1936 to 1965 had to be accounted for by the claimant: the Commission assisted with this chore) and with agreement from the donor family.¹⁶¹ Charlotte was grateful to the City of London “for honouring our claim in such a professional manner, and for taking such a constructive and positive approach.” She also thanked the donor’s family. Charlotte noted that the Commission spent “countless hours” to establish the painting’s history.¹⁶² It took approximately one year to establish provenance, and

¹⁵⁸ Commission for Looted Art Europe Press Release, ‘Old Master Painting from Eminent Dutch Collection is Recovered and Restored to 101-year-old Heir and Her Family, 22 June 2022, available online:

https://www.lootedartcommission.com/press-releases_subj:VI0BD811016 accessed April 4 2023

¹⁵⁹ Sotheby’s Video, ‘The 97-Year-Old Reunited with her Nazi-Looted Masterpiece’ (2017), Youtube at

https://www.youtube.com/watch?v=70266v3h_LE&t=3s accessed April 2023

¹⁶⁰ Nina Siegal, “The Saga of the ‘Oyster Meal’”, July 6, 2018 at

<https://www.lootedart.com/news.php?r=T55HW7853431> accessed April 4, 2023

¹⁶¹ Nina Siegal, “The Saga of the ‘Oyster Meal’”, July 6, 2018 at

<https://www.lootedart.com/news.php?r=T55HW7853431> accessed April 4, 2023

¹⁶² Commission for Looted Art Europe Press Release, ‘Old Master painting looted by Nazis in WW2 reunited with Dutch family’ (6 November 2017), available online: https://www.lootedartcommission.com/press-releases_subj:SPX6T520322 accessed April 4, 2023

a further three-month review by the City of London before the restitution occurred.¹⁶³ The *Wolters* portrait took longer to be restituted due to a period of negotiation with the private possessor once the painting was located in its possession.¹⁶⁴

These restitutions were very emotive for Charlotte. She says about the *Oyster Meal*: “This painting was one looted from our family during the plunder of Arnhem which impacted so many families in our community. For me, its return is representative of the co-operation between the Allies, which helped save our way of life so many years ago. Although it is a bittersweet recovery in the context of the great devastation and loss of the war, it is very meaningful to my family, and we are delighted to bring it home again to honour my father’s legacy.”¹⁶⁵ On receiving the painting at the restitution ceremony: “I feel so very lucky today. It is like the day, the 5th of May 1945, when the war ended and that was a feeling that we were free from that terrible war. So, I have this feeling, I am the luckiest woman on earth today.”¹⁶⁶

To the BBC, she says: “It gave me a shock. It is nice to see your father’s painting there.... I thought it to be a miracle, to be honest. I would never thought this could happen.... I am very happy with it, to be honest. I was very happy that we got it back.”¹⁶⁷ Thanking Anne Webber specifically, she said: “thank you for what you did for us; you found out what happened to this painting, it is unbelievable, I recognised it immediately because it we loved it; I am so happy that I can touch it; thank you for that - we love you for that.”¹⁶⁸

¹⁶³ Nina Siegal, “The Saga of the ‘Oyster Meal’”, July 6, 2018 at

<https://www.lootedart.com/news.php?r=T55HW7853431> accessed April 4, 2023

¹⁶⁴ Commission for Looted Art Europe Press Release, ‘Old Master Painting from Eminent Dutch Collection is Recovered and Restored to 101-year-old Heir and Her Family, 22 June 2022, available online:

https://www.lootedartcommission.com/press-releases_subj:VI0BD811016 accessed April 4 2023

¹⁶⁵ Commission for Looted Art Europe Press Release, ‘Old Master painting looted by Nazis in WW2 reunited with Dutch family’, (6 November 2017), available online: https://www.lootedartcommission.com/press-releases_subj:SPX6T520322 accessed April 4, 2023

¹⁶⁶ Video, ‘Woman re-united with looted Nazi painting’ (6 November 2017) Getty Images at <https://www.gettyimages.co.nz/detail/video/woman-re-united-with-looted-nazi-painting-charlotte-news-footage/901100628> accessed April 4, 2023

¹⁶⁷ BBC Newsnight, Twitter “I thought it was a miracle” video at <https://twitter.com/BBCNewsnight/status/1010281953055182848> accessed April 4, 2023

¹⁶⁸ Video, ‘Woman re-united with looted Nazi painting’ (6 November 2017) Getty Images at <https://www.gettyimages.co.nz/detail/video/woman-re-united-with-looted-nazi-painting-charlotte-news-footage/901100628> accessed April 4, 2023

Charlotte's story also speaks to process. Assistance from the Commission was critical - the Commission found the paintings, completed the provenance research necessary to establish ownership, and then worked to effect their return. Charlotte's age also brings to bear the issue of time, and the need for fast and efficient outcomes. Further, the willingness of a private collector to engage in negotiations over the *Wolters* portrait and the ready willingness of both the City of London and a donor's estate to recognise Charlotte's entitlement to the *Oyster Meal* is a success story.

For Charlotte, these paintings reconnected her to her childhood and family life in Arnhem. The paintings were part of their everyday lives - hanging in the dining room and in her father's office. They are paintings loved by her and by her father. She connects the return of the paintings to liberation, drawing an analogy to the liberation of the Netherlands during the war. This is a story about the memories evoked by a return of looted art, the feelings generated by these returns, and the importance of touching these paintings. Family history and legacy are honoured in the return.

The Mosse Collection - The Mosse Art Restitution Project Story

This is a story about the efforts made to seek the return of over 1,000 artworks belonging to Rudolph, Hilde and George Mosse which had been amassed by their grandfather Rudolf Mosse and confiscated by the Nazis after the family fled Berlin in 1933.¹⁶⁹

Heirs of the Mosse collection are represented by the Mosse Art Restitution Project (MARP),¹⁷⁰

¹⁶⁹ Roger Strauch, "The Mosse Art Restitution Project: A Collaborative Approach Manuskript" (transcription of Strauch's presentation at a press conference on March 7, 2017 described in *Lootedart.com* News Release dated March 9th 2017, "Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection" in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author

¹⁷⁰ Catherine Hickley, "FBI recovers painting suspected as Nazi loot from US museum" *The Art Newspaper*, 24 October 2019 at <https://www.theartnewspaper.com/2019/10/24/fbi-recovers-painting-suspected-as-nazi-loot-from-us-museum> (accessed February 25, 2023). The heirs are the Mosse

led by Roger Strauch. Roger is a member of the Mosse family by marriage. His grandmother, Carola married Rudolf Mosse's son-in-law Hans after the death of Rudolf's only daughter, Hilde. Karl Strauch, Carola's son and Roger's father, grew up with Hilde and Hans's three children, Rudolph, Hilde and George.¹⁷¹ Strauch is at the heart of the family's restitution efforts. While not a direct heir, his story is an important one - he articulates the family's interests.

MARP was established for the purpose of seeking the restitution of Mosse artworks. Strauch says: "We are tenaciously and diligently identifying and verifying Mosse family ownership of any claimed object. We represent the memory of our family as a proud, successful and impactful German family – a century ago, leaders in Berlin's Reformed Jewish community – who were wronged during the Third Reich and are deserving of asset restitution according to the Washington Principles."¹⁷² Since its establishment in 2012, 50 works have been restituted.¹⁷³

In 2017, the MARP entered into an arrangement with Freie Universität, funded by the German Lost Art Foundation (MARI) pursuant to which researchers at Freie Universität search for Mosse cultural property throughout Europe.¹⁷⁴ It did so because, according to Strauch: "Our

Foundation (a philanthropic organisation of which Strauch is President), Joy Mosse, daughter of Hilde Mosse, and the University of Wisconsin; see Interview with Roger Strauch, representative of the co-heirs of Rudolf Mosse, by Stephanie Tasch & Johannes Fellmann, Kulturstiftung der Länder, March 7, 2017 at https://www.kulturstiftung.de/wp-content/uploads/2017/03/English-Version_Interview-Roger-Strauch_final.pdf accessed Feb 25/23; see Michael Hill, "Jewish family's painting looted by Nazis in 1933 is returned", The Associated Press, 15 October 2020 at <https://toronto.citynews.ca/2020/10/15/jewish-family's-painting-looted-by-nazis-in-1933-is-returned/> accessed Feb 25, 2023

¹⁷¹ Interview with Roger Strauch, representative of the co-heirs of Rudolf Mosse, by Stephanie Tasch & Johannes Fellmann, Kulturstiftung der Länder, March 7, 2017 at https://www.kulturstiftung.de/wp-content/uploads/2017/03/English-Version_Interview-Roger-Strauch_final.pdf accessed Feb 25/23

¹⁷² Roger Strauch, "The Mosse Art Restitution Project: A Collaborative Approach Manuskript" (transcription of Strauch's presentation at a press conference on March 7, 2017 described in Lootedart.com News Release dated March 9th 2017, "Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection" in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author

¹⁷³ Press Conference Video, "The FBI returns painting stolen by Nazis to owner's heirs", Times Union (2020) at <https://www.youtube.com/watch?v=LmzABuA5AxE> accessed March 13, 2023

¹⁷⁴ Lootedart.com News Release dated March 9th 2017, "Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection" at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March

first priority is to ensure the remembrance of the Mosse family. The second is to make use of the tremendous provenance talent in Germany, who are deeply dedicated to finding the truth about what happened to these works.”¹⁷⁵ This collaboration is part of MARP’s restitution efforts: “We have been building constructive and positive relationships with the German public institutions that are either custodians of Mosse artifacts or are in a position to help us locate these objects. The objective of MARP is to develop deeper relationships with public and private institutions to facilitate our restitution efforts.”¹⁷⁶ MARI has assisted locating 36 artworks from which 9 have been restituted.¹⁷⁷

MARP has the assistance of not only MARI, but also of American and German lawyers as well as professional investigators in the EU, US and Asia.¹⁷⁸ It has also made use of the American Federal Bureau of Investigation (FBI) to seize paintings where title has been disputed.¹⁷⁹

Three restitutions seem to be the focus of media coverage and interviews with Strauch. Of the

10, 2023)

¹⁷⁵ Kate Connolly, “Nazi art theft: Germany helps Jewish collector's heirs hunt stolen works” The Guardian, 7 March 2017 at <https://www.theguardian.com/artanddesign/2017/mar/07/nazi-art-theft-germany-helps-jewish-collector-rudolf-mosse-heirs-hunt-stolen-works> accessed Feb 25, 2023

¹⁷⁶ Interview with Roger Strauch, representative of the co-heirs of Rudolf Mosse, by Stephanie Tasch & Johannes Fellmann, Kulturstiftung der Lander, March 7, 2017 at https://www.kulturstiftung.de/wp-content/uploads/2017/03/English-Version_Interview-Roger-Strauch_final.pdf accessed Feb 25/23

¹⁷⁷ Kate Connolly, “Nazi art theft: Germany helps Jewish collector's heirs hunt stolen works” The Guardian, 7 March 2017 at <https://www.theguardian.com/artanddesign/2017/mar/07/nazi-art-theft-germany-helps-jewish-collector-rudolf-mosse-heirs-hunt-stolen-works> accessed Feb 25, 2023

¹⁷⁸ Interview with Roger Strauch, representative of the co-heirs of Rudolf Mosse, by Stephanie Tasch & Johannes Fellmann, Kulturstiftung der Lander, March 7, 2017 at https://www.kulturstiftung.de/wp-content/uploads/2017/03/English-Version_Interview-Roger-Strauch_final.pdf accessed Feb 25/23; see also Press Conference Video, “The FBI returns painting stolen by Nazis to owner’s heirs”, Times Union (2020) the return of Winter to Mosse Foundation with FBI, Arkell and Mosse speaking, 2020 – at <https://www.youtube.com/watch?v=LmzABuA5AxE> accessed March 13, 2023

¹⁷⁹ United States Attorney’s Office Press Release, “United States Secures Return of Artwork 87 Years After Nazis Looted it From Jewish Family in Berlin” at <https://www.justice.gov/usao-ndny/pr/united-states-secures-return-artwork-87-years-after-nazis-looted-it-jewish-family> accessed February 25, 2023; see also Strauch stating that the FBI was requested to act when the initial approach by the Mosse Foundation was not positive, with the reaction to the FBI seizure being “impressive and effective” in Catherine Hickley, “FBI recovers painting suspected as Nazi loot from US museum” The Art Newspaper, 24 October 2019 at <https://www.theartnewspaper.com/2019/10/24/fbi-recovers-painting-suspected-as-nazi-loot-from-us-museum> (accessed February 25, 2023)

2020 Arkell Museum return of Gary Melcher's *Winter*, Strauch says that the initial overture to the Museum did not elicit a positive response, so MARP sought the help of the FBI to seize the painting.¹⁸⁰ MARP & Arkell negotiated the MARP claim following seizure, with Strauch subsequently acknowledging the efforts of the Director of the Museum in helping to establish Mosse ownership.¹⁸¹

In a claim against the Staatliche Kunsthall Karlsruhe over a Blechen painting, Strauch says that the museum and MARP worked together to do 'the right thing' which included: the museum assisting to establish provenance; acknowledgement of Mosse ownership; negotiating a price for the painting so that the museum could retain the painting; and giving the museum time to raise the funds needed for its purchase after agreeing to sell the painting at the 'low end of its value'.¹⁸²

In a third claim, two artworks in Berlin's SPK Institutions were sought. Strauch says that the museum recognised Mosse ownership, however, both parties had specific interests to be met before a resolution could be achieved: "We were at once trying to be honorable and just based on our respective responsibilities. We needed financial liquidity for restituted objects; SPK wanted options to retain some of the objects in their collection, compensation for restoration expenses, a reasonable market valuation and time to raise money to support a transaction. Together, along with our representatives, we were able on multiple occasions to come to a

¹⁸⁰ Catherine Hickley, "FBI recovers painting suspected as Nazi loot from US museum" *The Art Newspaper*, 24 October 2019 at <https://www.theartnewspaper.com/2019/10/24/fbi-recovers-painting-suspected-as-nazi-loot-from-us-museum> (accessed February 25, 2023); see also, United States Attorney's Office Press Release, "United States Secures Return of Artwork 87 Years After Nazis Looted it From Jewish Family in Berlin" at <https://www.justice.gov/usao-ndny/pr/united-states-secures-return-artwork-87-years-after-nazis-looted-it-jewish-family> accessed February 25, 2023

¹⁸¹ Michael Hill, "Jewish family's painting looted by Nazis in 1933 is returned", *The Associated Press*, 15 October 2020 at <https://toronto.citynews.ca/2020/10/15/jewish-familys-painting-looted-by-nazis-in-1933-is-returned/> accessed Feb 25, 2023

¹⁸² Roger Strauch, "The Mosse Art Restitution Project: A Collaborative Approach Manuskript" (transcription of Strauch's presentation at a press conference on March 7, 2017 described in *Lootedart.com* News Release dated March 9th 2017, "Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection" in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author

mutual agreement within a reasonable period of time.”¹⁸³

Not all claims are satisfied easily or at all: “Of course, there are ongoing difficulties associated with our restitution efforts. Individuals, communities, municipalities, and even states can take an inappropriate amount of time to respond to our inquiries. Even after acknowledgement of our rightful ownership, the restitution process can be unnecessarily lengthy.”¹⁸⁴ According to Strauch, it can be difficult to locate the missing works. Institutions which may know of their whereabouts are reluctant to disclose the information: “We’ve been in touch with the major auction houses, and they do know where some of these works are. But they are not going to tell us because they sold them. ... We’re asking them to contact their buyers and let them know that there is a public claim for these works.”¹⁸⁵

In this vein, Strauch states further: “We also believe that international auction houses could improve their efforts to promote the restitution of stolen art that has passed through their commercial channels over the last 75 plus years. We would like these institutions to confidentially contact their clients who are custodians of listed looted art, to encourage them to connect with claimants and constructively negotiate ownership with the legitimate artifact’s owners.”¹⁸⁶ The issue of time is also problematic says Strauch: “The issue of Nazi looted art

¹⁸³ Roger Strauch, “The Mosse Art Restitution Project: A Collaborative Approach Manuskript” (transcription of Strauch’s presentation at a press conference on March 7, 2017 described in Lootedart.com News Release dated March 9th 2017, “Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection” in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author. This restitution is also an example of the relevance of *all* party interests when seeking a solution to these claims as noted earlier in this article when speaking of interests in the negotiation literature.

¹⁸⁴ Roger Strauch, “The Mosse Art Restitution Project: A Collaborative Approach Manuskript” (transcription of Strauch’s presentation at a press conference on March 7, 2017 described in Lootedart.com News Release dated March 9th 2017, “Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection” in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author

¹⁸⁵ Kate Connolly, “Nazi art theft: Germany helps Jewish collector’s heirs hunt stolen works” The Guardian, 7 March 2017 at <https://www.theguardian.com/artanddesign/2017/mar/07/nazi-art-theft-germany-helps-jewish-collector-rudolf-mosse-heirs-hunt-stolen-works> accessed Feb 25, 2023

¹⁸⁶ Roger Strauch, “The Mosse Art Restitution Project: A Collaborative Approach Manuskript” (transcription of Strauch’s presentation at a press conference on March 7, 2017 described in Lootedart.com News Release dated March 9th 2017, “Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection” in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription

restitution is likely to be a multi-generational effort, unless, of course, all parties accelerate our collaborative work to seek reconciliation, justice, and recognition.”¹⁸⁷

This is a story about a well-organised claimant that has resources to establish collaborative networks to assist with locating missing artworks and establishing entitlement to them through provenance research. It has been methodical in its approach, using a network of legal, research, investigative, institutional and enforcement professionals to assist with its restitution efforts. The importance of the third party assistance appears to be an important factor in its successful restitutions.

The desire for the restoration of the Mosse legacy and return of property that belonged to the family drives the efforts, suggesting a sense of justice to be achieved for the losses endured. There appears to be a need for truth and reconciliation in the pursuit of these claims. The claimant is keen to work collaboratively with possessors; it recognises that negotiation must occur to obtain a return, but it is a negotiation that is supported by assisted provenance research which underpins entitlement, and when necessary, by law enforcement agents which gives impetus for conclusion.

The Rosenberg Collection - The Marianne Rosenberg Story

This is a story of a claimant’s crusade to seek the return of a family’s artwork from a private collector and from the Gurlitt Hoard. Paul Rosenberg was an active art dealer and gallery owner in Paris during the war. However, with the Nazi invasion of France, over 400 of his artworks were confiscated by the Nazi regime in 1940. Some of his artworks were saved or returned to him: several paintings by Picasso had been in New York on exhibition at the time of the confiscation; some had been seized by an allied military team before they were dispersed

on file with author

¹⁸⁷ Roger Strauch, “The Mosse Art Restitution Project: A Collaborative Approach Manuskript” (transcription of Strauch’s presentation at a press conference on March 7, 2017 described in [Lootedart.com](https://www.lootedart.com/news.php?r=SCC0H7701851) News Release dated March 9th 2017, “Bartko Zankel Bunzel & Miller Team Forge Historic Initiative to Locate Stolen Mosse Art Collection” in which the March 7, 2017 press conference is referenced at <https://www.lootedart.com/news.php?r=SCC0H7701851> (accessed March 10, 2023); copy of the English transcription on file with author

by the Nazis; and others were returned by the French government. Rosenberg escaped from Paris and settled in New York where he established a successful art gallery. He also continued to search for his looted art, with the search continuing by his granddaughter Marianne and her cousin Anne Sinclair, along with others.¹⁸⁸

These heirs are in a somewhat advantageous position with respect to their search for looted art. Paul had been a successful art dealer after the war leaving the family with sufficient resources to hire researchers, legal representatives and negotiators to assist with their search and claims.¹⁸⁹ Additionally, he kept excellent records of his transactions and was known to transact in quality art.¹⁹⁰

Two claims highlight the Rosenberg story: Matisse's *Woman with a Fan* found in the Gurlitt hoard and restituted from the German Ministry of Culture; and a Degas pastel portrait, in private hands, which has not been returned.¹⁹¹

The claim for the return of the Degas pastel portrait is illustrative of the difficulty claimants face when dealing with an individual possessor of looted art. The painting had been sold to a Swiss family by an art dealer. The Rosenberg family became aware of the location of the painting when the possessor intended to sell the painting. In response to the family's claim for the painting, the Swiss possessor offered to sell the painting to the Rosenberg heirs for the

¹⁸⁸ The summary provided in this paragraph comes from Anne Sinclair, *My Grandfather's Gallery: A legendary art dealer's escape from Vichy France* (London: Profile Books Ltd, 2014) (Translated from the French by Shaun Whiteside) at 194-5; Benjamin Sutton, "The Famed Jewish Art Dealer who Fought to Retrieve 400 Stolen Works from the Nazis, January 14, 2019 at <https://www.artsy.net/article/artsy-editorial-famed-jewish-art-dealer-fought-retrieve-400-stolen-works-nazis> Accessed February 26, 2023; Balasz Takac, "The Story of Paul Rosenberg and Modern Art Seized by the Nazis" September 8, 2021 at <https://www.widewalls.ch/magazine/paul-rosenberg> accessed February 26, 2023

¹⁸⁹ Patricia Cohen and Tom Mashberg, "Family 'Not Willing to Forget' Pursues Art It Lost to Nazis" New York Times, April 26, 2013 at <https://www.nytimes.com/2013/04/27/arts/design/rosenberg-family-quest-to-regain-art-stolen-by-nazis.html> accessed February 25, 2023

¹⁹⁰ Patricia Cohen and Tom Mashberg, "Family 'Not Willing to Forget' Pursues Art It Lost to Nazis" New York Times, April 26, 2013 at <https://www.nytimes.com/2013/04/27/arts/design/rosenberg-family-quest-to-regain-art-stolen-by-nazis.html> accessed February 25, 2023

¹⁹¹ Benjamin Sutton, "The Famed Jewish Art Dealer who Fought to Retrieve 400 Stolen Works from the Nazis, January 14, 2019 at <https://www.artsy.net/article/artsy-editorial-famed-jewish-art-dealer-fought-retrieve-400-stolen-works-nazis> accessed February 26, 2023

purchase price it paid in 1974 which was £3.4 million. Marianne says of this experience: “It’s been very frustrating. The picture appeared suddenly out of the blue in an art magazine. When [the dealer] was contacted since he was advertising the sale of the painting ... [he] was immediately non-cooperative. There was no dismay at peddling a looted work of art and it then just disappeared as quickly as it had appeared.”¹⁹²

As for her reaction to the possessor’s proposal, Marianne says: “What he’s asking for is for a repurchase of the painting — but we own the painting. It is our property, so I can’t buy back something that I own. We didn’t do anything inappropriate. It was looted from us by the Nazis.”¹⁹³ She does acknowledge though that a good faith purchaser should have some recompense, but they should be compensated by the intermediary or the [prior] seller, “but it sure as hell should not be us.”¹⁹⁴

The experience with the German authorities over a Matisse found in the Gurlitt hoard is another example of intransigence on the part of possessors of artworks, but this time, from the German government which had acknowledged that the hoard held looted art. Marianne says that the family learned about the existence of the Matisse by fluke: the German government had refused to disclose a list of found artworks, but during a press conference it held, a photo of the Matisse flashed on the screen and was seen by the Rosenberg family.¹⁹⁵ The return occurred after documentation establishing the heirs’ entitlement to succession was submitted to the satisfaction of the German authorities as part of the claims process.¹⁹⁶

¹⁹² Robert Philpot, “Art dealer’s heirs decry ‘ransom demand’ for Degas stolen by the Nazis” *Times of Israel*, 15 November 2018 at <https://www.timesofisrael.com/art-dealers-heirs-decry-ransom-demand-for-degas-stolen-by-the-nazis/> accessed February 26, 2023

¹⁹³ Robert Philpot, “Art dealer’s heirs decry ‘ransom demand’ for Degas stolen by the Nazis” *Times of Israel*, 15 November 2018 at <https://www.timesofisrael.com/art-dealers-heirs-decry-ransom-demand-for-degas-stolen-by-the-nazis/> accessed February 26, 2023

¹⁹⁴ Robert Philpot, “Art dealer’s heirs decry ‘ransom demand’ for Degas stolen by the Nazis” *Times of Israel*, 15 November 2018 at <https://www.timesofisrael.com/art-dealers-heirs-decry-ransom-demand-for-degas-stolen-by-the-nazis/> accessed February 26, 2023

¹⁹⁵ New York Public Radio, The Takeaway Podcast, “One Woman’s Question to Recover her Family’s artwork stolen by the Nazis” with Marianne Rosenberg at <https://www.wnyc.org/story/one-woman-quest-recover-her-familys-artwork-stolen-nazis/> accessed February 26, 2023

¹⁹⁶ Henri Neuendorf, “Rosenberg Heirs’ Claim to Gurlitt Matisse Stalled” *Artnet*, February 24, 2015 at <https://news.artnet.com/art-world/rosenberg-heirs-claim-to-gurlitt-matisse-stalled-updated-264866> accessed February 26, 2023

Of the family's search for its looted art, Marianne says they pursue the artworks "relentlessly" even if "some are of very little value, [we] still pursue equally because what matters is the moral principle of recovering those that were stolen while my family's lives were destroyed."¹⁹⁷ Further: "We are not willing to forget, or let it go. ... I think of it as a crusade."¹⁹⁸ Regarding the Degas portrait: its return "...would just be a lovely gesture of honour and homage to [her grandfather] as he deserves".¹⁹⁹

This story highlights the difficulty claimants face when dealing with a private collector. Locating lost artwork in the hands of a private collector is serendipitous and once found, constructive dialogue regarding its return is rare. Claimants may be put in a position of being requested to buy back their artworks from these possessors.²⁰⁰ The family acknowledges a need for possessor compensation, but stresses it should not come from the families, but from the institutions or dealers, for example.

The idea of a quest comes through in this story as well. The family will continue its efforts until all artworks have been claimed. It notes the length of time that it takes to find and claim an artwork, recognising that the next generation will have to continue the fight.²⁰¹ The idea of a

¹⁹⁷ New York Public Radio, The Takeaway Podcast, "One Woman's Question to Recover her Family's artwork stolen by the Nazis" with Marianne Rosenberg at <https://www.wnyc.org/story/one-woman-quest-recover-her-familys-artwork-stolen-nazis/> accessed February 26, 2023

¹⁹⁸ Patricia Cohen and Tom Mashberg, "Family 'Not Willing to Forget' Pursues Art It Lost to Nazis" New York Times, April 26, 2013 at <https://www.nytimes.com/2013/04/27/arts/design/rosenberg-familys-quest-to-regain-art-stolen-by-nazis.html> accessed February 25, 2023

¹⁹⁹ New York Public Radio, The Takeaway Podcast, "One Woman's Question to Recover her Family's artwork stolen by the Nazis" with Marianne Rosenberg at <https://www.wnyc.org/story/one-woman-quest-recover-her-familys-artwork-stolen-nazis/> accessed February 26, 2023

²⁰⁰ The story of Alexandre, one of Paul Rosenberg's sons, who did buy back a Degas in 1971, *Two Dancers*, having no choice if he wanted to recover it: "I do not like so enriching the successors to thieves," he wrote in a letter, "but have come to learn that the defense of one's own, and one's family's interests, is somewhat like politics and indeed life itself. It is principally the art of the possible" see in Patricia Cohen and Tom Mashberg, "Family 'Not Willing to Forget' Pursues Art It Lost to Nazis" New York Times, April 26, 2013 at <https://www.nytimes.com/2013/04/27/arts/design/rosenberg-familys-quest-to-regain-art-stolen-by-nazis.html> accessed February 25, 2023

²⁰¹ Patricia Cohen and Tom Mashberg, "Family 'Not Willing to Forget' Pursues Art It Lost to Nazis" New York Times, April 26, 2013 at <https://www.nytimes.com/2013/04/27/arts/design/rosenberg-familys-quest-to-regain-art-stolen-by-nazis.html> accessed February 25, 2023

moral principle is suggested: artwork belongs to the families and it should be returned. There has been suffering and loss; the families are victims; they are entitled to be reunited with their property taken forcefully from them; and they should not be required to pay for it or accept less than its full value. The crusade is onerous and leads to a sense of justice when a restitution occurs.

The Herzog Collection - The Martha Nierenberg Story

This story involves claims for looted art in Hungary, possessed by the Hungarian State. Martha Nierenberg began her fight for the return of several paintings that had been in her grandfather's collection which were inherited on his death in 1934 by his three children, one of whom was Martha's mother. The collection had been confiscated by the Nazis after its entry into Hungary in 1944 and sent to Germany. Between 1946 and 1947, some paintings were returned to Hungary from Germany, with the intention that they be held until their owners could be found. Instead, they were integrated into the collections of the Museum of Fine Art and the National Museum in Budapest, despite being identified as from the Herzog collection.²⁰²

It was not until the mid 90s that the family learned of the location of the paintings and soon after, in 1995, Martha made a claim to Hungary for their return. An Expert's Committee, with representatives of both the Hungarian government and the Herzog family, was established to determine ownership of the paintings. Based on the Committee's finding which was favourable to the family, the family made a proposal for resolution. A new government, however, came to power and no further progress occurred. The family then commenced litigation in order to progress its claim, first in Hungary in 1999 which was concluded unsuccessfully in 2008; and second, in the United States in 2010, which also concluded unsuccessfully as against Hungary in 2019.²⁰³ Almost twenty years was spent in litigation for unsuccessful outcomes.

²⁰² The information set out in this paragraph is found in Restitution of Holocaust Assets, U.S. House of Representatives, Committee on Banking and Financial Services, Washington, DC, February 10, 2000, Nierenberg Testimony at http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM at 227-230 accessed Feb 25/23.

²⁰³ The summary of facts in this paragraph comes from Restitution of Holocaust Assets, U.S. House of Representatives, Committee on Banking and Financial Services, Washington, DC, February 10, 2000, Nierenberg Testimony at http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM accessed Feb25/23

Despite Hungary's intransigence and its legal defences to the claims, Martha says: "I would like it to end and have peace, but I will not simply walk away and let the Hungarian government keep property that was stolen from my family. ...I am determined to do everything I can to obtain justice and recover my family's legacy."²⁰⁴ She says: "We love these paintings. ... We would dearly like to have something back."²⁰⁵ Martha was cognisant of the relevance of delay to Hungary and the importance of speedier resolution: "It would be so simple for the government to make this right, but our struggle goes on. ...I guess they're hoping they can wait me out."²⁰⁶ Her son, David L. de Csepel who leads the US claim along with two cousins, also sees time as a factor in these claims: "I want to see a resolution. ...I'm 54 years old and I don't want it passed onto the next generation."²⁰⁷ He comments on Hungary's conduct: "What happened in the Holocaust was reprehensible. But what Hungary is doing is also egregious, knowing that this art belonged to our family."²⁰⁸

In 2000, Martha appeared before a US government committee to discuss her experience with her claims against Hungary and her views about victims' claims.²⁰⁹ In her testimony, she

at 230-231; see also, Elizabeth Sawyer, Justine Ferland, Marc-André Renold, "Case Herzog Collection – De Csepel et al. v. Republic of Hungary et al.", June 2018, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva (for further discussion about the various legal actions against Hungary) and "Hungary on Trial: Herzog Family Sues for Return of Art Collection, the Last Hostage of the Holocaust" at <http://hungarylootedart.com> accessed February 25, 2023 (this appears to be a website created by the Herzog heirs; it includes details and documents about the various lawsuits in respect of their claims).

²⁰⁴ Statement of Martha Nierenberg to the Committee on Legal Affairs and the Internal Market of the European Parliament, March 17, 2003, p5 at <http://hungarylootedart.com/wp-content/uploads/StatementMarthaNierenbergEuropeanParliamentMarch182003.pdf> accessed March 2, 2023

²⁰⁵ Tom Mashberg, Martha Nierenberg, Entrepreneur, Who Sought Art's Return, dies at 96" July 30, 2020, New York Times at <https://www.nytimes.com/2020/07/30/arts/martha-nierenberg-entrepreneur-who-sought-arts-return-dies-at-96.html> accessed February 25, 2023

²⁰⁶ Tom Mashberg, Martha Nierenberg, Entrepreneur, Who Sought Art's Return, dies at 96" July 30, 2020, New York Times at <https://www.nytimes.com/2020/07/30/arts/martha-nierenberg-entrepreneur-who-sought-arts-return-dies-at-96.html> accessed February 25, 2023; Statement of Martha Nierenberg to the Committee on Legal Affairs and the Internal Market of the European Parliament, March 17, 2003, p3 at <http://hungarylootedart.com/wp-content/uploads/StatementMarthaNierenbergEuropeanParliamentMarch182003.pdf> accessed March 2, 2023

²⁰⁷ Milton Esterow, "After 75 Years and 15 Claims, a Bid to Regain Lost Art Inches Forward", New York Times, October 16, 2020 at <https://www.nytimes.com/2020/10/16/arts/design/herzog-art-collection-nazis.html> accessed March 1, 2023

²⁰⁸ BBC, "Family of art collector sues Hungary over Nazi loot," 29 July 2010 at <https://www.bbc.com/news/entertainment-arts-10799449> accessed February 25, 2023

²⁰⁹ Restitution of Holocaust Assets, U.S. House of Representatives, Committee on Banking and Financial Services,

described her family history and its search for and efforts to reclaim their artworks. In her view, “...The Hungarian government should do what is right. ...[it] should acknowledge my ownership rights and negotiate an end to the lawsuit. ...[it] should begin by acknowledging that it controls an unknown number of fine art pieces that were stolen from Jews and people of Jewish origin. It should make a serious and renewed effort to identify those artworks and return them to their rightful owners. It should also provide a clear, short, workable process for all others who may wish to assert art claims - a process that doesn’t require hiring lawyers or posting large sums of money dollars in bonds.”²¹⁰ Further she says: “[Instead] the Hungarian government has done everything it could to make it impractical and impossible for me to recover my paintings.”²¹¹

Again, in 2003, before a Committee of the European Parliament, Martha reiterated these comments and continued to speak of the need for a better process.²¹² Due to Hungary’s conduct, she says, “...the only choice I had for justice was to go to court. My hope is that the European Parliament will establish a new standard of justice for its member states and will remove the legal bases behind which Hungary and other governments hide in order to avoid their legal and moral obligations to return artworks stolen...”²¹³

This story highlights the difficulty of dealing with a state which uses the law to prevent a return of looted art. The paintings sought by the family are publicly acknowledged to be from the Herzog collection by the museums in which they are found. The Hungarian Expert Committee

Washington, DC, February 10, 2000, Nierenberg Testimony at http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM accessed Feb 25/23.

²¹⁰ Restitution of Holocaust Assets, U.S. House of Representatives, Committee on Banking and Financial Services, Washington, DC, February 10, 2000, Nierenberg Testimony at [http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM p . 2 3 2 ,](http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM_p_2_3_2_) accessed Feb 25/23.

²¹¹ Restitution of Holocaust Assets, U.S. House of Representatives, Committee on Banking and Financial Services, Washington, DC, February 10, 2000, Nierenberg Testimony at [http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM p . 2 3 3 ,](http://commdocs.house.gov/committees/bank/hba62679.000/hba62679_1.HTM_p_2_3_3_) accessed Feb 25/23.

²¹² Statement of Martha Nierenberg to the Committee on Legal Affairs and the Internal Market of the European Parliament, March 17, 2003, p5 at <http://hungarylootedart.com/wp-content/uploads/StatementMarthaNierenbergEuropeanParliamentMarch182003.pdf> accessed March 2, 2023

²¹³ Statement of Martha Nierenberg to the Committee on Legal Affairs and the Internal Market of the European Parliament, March 17, 2003, p4-6 at <http://hungarylootedart.com/wp-content/uploads/StatementMarthaNierenbergEuropeanParliamentMarch182003.pdf> accessed March 2, 2023; The statements were made in the context of Hungary’s conduct in dealing with the family’s claims.

first engaged to determine ownership recommended a return; lower court rulings ordered return; higher court rulings relied on technical issues to return the matter to the lower courts or to remove Hungary from the action.²¹⁴ It appears that Hungary will not relinquish possession of property that had been looted from the Herzog family by the Nazis without the force of law requiring it. Diplomatic intervention was also not successful.²¹⁵ The family in this sense is powerless. The family wants the artworks: they belong to them; they are a legacy. It will fight until the end; time though is against it as heirs die. A transparent and efficient process is needed. The family wants a process which will remove the legal barriers to restitution which favour possessors of looted art. Most of all, the family desires a new standard of justice, one that recognises that the right thing to do may not meet a legal standard of justice.

Claimant Interests Disclosed from Their Stories

Many claimant interests are exposed by these stories. Using the three categories of interests described earlier, claimant interests become more clearly defined. To recall, these categories relate to psychological, procedural and substantive interests. Each will be summarised in turn.

Regarding psychological interests, claimants engage in an extensive search for their family's property and pursue difficult claims for various reasons. They are motivated by interests which include: a determination to recover stolen property; reinstatement or preservation of a family legacy, identity, reputation, or history; paying homage to family; for remembrance; wanting a family heirloom, after having lost everything; desiring a relationship with their lost artwork; vindication; acknowledgment of persecution; recognition of the humanity of their stories; receiving compassion for their suffering; obtaining a sense of justice; and voicing a sense of injustice. There is also a sense of obligation and duty that propels the claimants to commence and continue the search for the recovery of their family artworks. These returns are emotive

²¹⁴ See "Hungary on Trial: Herzog Family Sues for Return of Art Collection, the Last Hostage of the Holocaust" at <http://hungarylootedart.com> accessed February 25, 2023 for details and documents relating to the various lawsuits in respect of the claims made against Hungary.

²¹⁵ Tom Mashberg, Martha Nierenberg, Entrepreneur, Who Sought Art's Return, dies at 96" July 30, 2020, New York Times at <https://www.nytimes.com/2020/07/30/arts/martha-nierenberg-entrepreneur-who-sought-arts-return-dies-at-96.html> accessed February 25, 2023

for claimants; they experience happiness and joy when their claims are successful and property is returned; they are angry, disappointed and desolate when they fail; they recall family memories; and they form bonds to the artworks during their search.

Regarding process interests, there are two processes that need to be addressed. The first process is an obvious one; that is, the claims process where a demand is made for return and a procedure is commenced in order to come to a resolution of the demand. A second relevant process has also emerged from the stories. Claimants need an established process for an effective search of artworks and once found, for provenance research to be conducted by a third party entity. Currently, unless claimants have financial resources to hire assistance, they must generally conduct searches themselves and establish an artwork's provenance, both of which can be difficult to do given data access issues, expense and time needed to do so. It is an all-consuming exercise for claimants. The burden is great, and a successful outcome difficult to achieve.

First, in terms of the claims process, there is a repeated theme for a change to the behaviour of museums, states, other institutional actors as well as private possessors when faced with a restitution claim. Claimants need a more compassionate approach from them. They speak of a process that recognises their humanity. There is also a lack of communication regarding the process as it unfolds - possessors stay silent after claims are made or do not update claimants regarding the progress of their claims. The latter appears an easy issue to resolve, yet remains problematic for claimants; it is indicative of their on-going struggles. Further, it is not surprising that claimants are interested in claims being determined in a more timely way since heirs are dying, and the relationship between the artwork and the claimant is growing more tenuous, including evidence linking families to lost art. Additionally, the process needs to be simplified: claimants are interested in a process which is easy to access and is understandable, which does not require legal or other expert representation, is transparent in terms of rules and requirements, has improved communication, allows them to be heard, and which engages possessors fully. Process too should be unencumbered by legal defences and other barriers.

Another claimant concern is the level of proof demanded of them to establish their right to the property. Although documentation in their possession may show that artwork belonged to the family before Nazi confiscations began, it is often insufficient to appease institutional, state or individual possessors. In other words, there is currently a lack of willingness to accept available evidence which, in all the circumstances, may be all there is that links the artwork to the family, suggesting a need to ease the usual requirement for full provenance documentation and to assess gaps in provenance in light of all the other evidence. In addition, claimants find themselves bearing the brunt of establishing that looted artworks belong to their families. The process currently does not require effort on the part of possessors to engage in the process, assist with establishing provenance or prove *their* entitlement to the artwork. A change in the burden of proof to require such participation or at minimum, disclosure of information about the artwork, would go a long way to easing evidentiary burdens for claimants.

The interest in an effective and accessible process which responds to the unique circumstances of the Nazi looted art claimant is made more clear when one considers the ‘good’ restitutions that are described by claimants. These ‘good’ restitutions are ones where the possessor works with the claimant to establish provenance and prove ownership; where a possessor immediately acknowledges that the artwork was looted and belonged to the claimant family when it was looted; where a possessor does not rely on a strict legal standard of proof to establish ownership but recognises suffering and loss, and acts compassionately towards a claimant. A ‘good’ restitution is one where a return is effected without undue delay; where an acknowledgement of a family’s suffering and destruction is made. A ‘good’ restitution is one where the possessor engages with the claimant in negotiation towards a resolution, with a willingness to satisfy a claimant’s interests, in their various forms.

Turning to the second aspect of process interests, these stories highlight the burden on claimants when dealing with the search for artworks and establishing their provenance. Claimants need to delve into their family history, government archives, and other sources of documentation in detail. They rely on others to help find evidence - from librarians, historians, lawyers, provenance researchers, diplomats, government officials, auction houses, friends, and strangers. Information is not always forthcoming; access to information about artworks and

their history is often lacking. Claimants speak of this 'search and provenance' process as one which should involve pro-active participation from states, museums, auction houses and other institutions to: assist claimants to find particular works of art; help them establish the provenance of an artwork, particularly with respect to any gaps in provenance that are barriers to a return; work to find the owners of 'ownerless' art in collections; engage with claimants to complete provenance for each and every piece in an institution's collection; and make private clients aware of restitution claims for artworks their possession.

It becomes clear from these stories that a good 'search and provenance' process is also critical to claimant success. Artworks must be found and once found, a good outcome is reliant on good provenance records. Without both, restitution is impeded. These particular processual interests are integral to an heir's claim.

Claimants also have substantive needs. They need access to information - availability of information is often restricted. They need increased power to achieve a successful restitution – their resources can be dwarfed by those of state, institutional and individual possessors. Claimants need states, museums, auction houses, other institutions and private possessors to take responsibility for the search for and return of looted art - the current burden is on claimants. They need access to private collectors - currently such access is serendipitous. They need a new standard of proof when it comes to establishing entitlement to an artwork - legal standards of proof impede return. Similarly, they need changes to the burden of proof – possessors tend to remain on the periphery of ownership issues. Claimants are also interested in the way in which good faith purchasers should be dealt with – the good faith purchaser presents an obstacle preventing return in jurisdictions where the law protects their purchases.

When examining some of these stated interests, it becomes clear that interests are important to the development of appropriate processes and outcomes. For example, claimant interests suggest a need for active state and institutional involvement with respect to the search for looted art, provenance research and dealing with good faith purchasers. They also speak to a need for new standards of proof: for example, a standard which sees a claimant be entitled to

restitution unless the entitlement is disproved by the possessor, or when it is clear that the artwork was looted and had been in the possession of the family. Other interests such as the need for compassion in the handling of their claims, acknowledgment of losses suffered and restoration of the family's existence in history are not only at the forefront of these stories but also underlie process and substantive interests such as those discussed above, giving important context to them. These are but a few examples of the way in which interests disclosed by these stories can be impactful in ameliorating the claimant restitution effort.

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Claimant interests are complex and multi-layered. To understand claimant interests is to get at the heart of a claim for the restitution of Nazi looted art. A recognition of their interests assists in the creation of appropriate and improved resolution processes for these claims as well as outcomes that meet their interests. Interests are relevant on both a macro level where institutional procedural change could be implemented to reflect these interests, and on a micro level where a claimant and possessor work together to achieve an appropriate outcome which meets claimant interests.

Conclusion

What becomes clear from the claimant voice expressed in these stories is that the search for lost art and the pursuit of claims for restitution is a life's work for many of these claimants. They must find the lost art; once found, they must establish provenance; they must document their entitlement; they must get in touch with the possessor of the artwork; they must engage in negotiation for its return; they must determine which process to use to compel return when negotiations fail; and they must start litigation or a spoliation claim when no other process leads to resolution. Even when the evidentiary documentation is relatively clear, their experience suggests a reluctance by institutions and individuals to return looted artwork. Processes are needed that will satisfy their many interests, or at minimum, those interests which a claimant prioritizes.

What comes out of these stories is the need to see these lost artworks as more than mere objects which can be monetised. They are memorials; they form part of the claimant's cultural identity; they create obligations to those who have died; they are reparations; they are tools of reconciliation; they are acknowledgements of injustices; they offer a form of justice to claimants (as defined by them). The artwork becomes symbolic of intangible qualities - as Pauline Baer de Perignon says, they are not paintings, they are memory and justice.²¹⁶ More

²¹⁶ Renee Ghertz-Zand, 'After finding it, author to part with her family's Nazi-looted 18th-century painting', Times of Israel, 27 January 2022 at <https://www.timesofisrael.com/after-finding-it-author-to-part-with-her-family-s-nazi-looted-18th-century-painting/> accessed April 3, 2023

simply, for claimants, these artworks belong to their families, having been looted from them in the most dire of circumstances and therefore should be returned without being required to fight for their return. These qualities lead restitution efforts: they are not only part of the claimant interests in pursuing claims as describe above, but they are also the underlying impetus for their efforts.

This article with its claimant stories makes a valuable contribution to the restitution literature. The claim for the return of an artwork can involve many interests as these stories have disclosed. Understanding claimant interests from the perspective of claimants as expressed by their words is important for: the development of effective restitution processes; the achievement of outcomes which satisfy these interests; and ensuring public awareness of the journey taken by claimants to get back their belongings so that effective change may be encouraged through an enhanced understanding of claimant interests and their underlying needs, motivations, fears and concerns.

First, as noted at the beginning of this article, much has been and continues to be written about appropriate processes for these Nazi-looted restitution claims, yet the claimant voice has rarely taken centre stage. The claimant perspective, as articulated by them, is relevant to discussion. Claimants must be part of any process design so that the process and its outcome will meet their interests. Process and substantive interests as described above, if met, may serve to establish more effective processes with broader consequences. For example, the stories suggest power imbalances between claimant and possessor with claimants often being disadvantaged as a result; imbalances in favour of the possessor can create barriers for claimants when pursuing their claim. Claimants often lack the necessary resources to support their claims. Attending to and satisfying claimant process and substantive interests may mitigate any such imbalance particularly when claimants do not have financial capacity to seek third party assistance with their claims.²¹⁷

²¹⁷ For example, the Bischoff van Heemskerck, Graykowski, Goodman, Rosenberg and MARP stories illustrate the effectiveness of third party assistance with their claims, effectively increasing a claimant's power in support of their claim.

Second, outcome too must take into consideration claimant needs and experiences. The questions that should be considered in formulating an outcome are: what claimant needs, motivations, desires, fears can be met or overcome? These interests could serve to design creative outcomes that would satisfy a claimant where a full return cannot be achieved. It is a simple premise: find out what is important to a claimant and then construct an outcome to deliver it. As such, interests offer an appropriate framework within which to situate the search for solutions to the restitution claim.

Third, it is important that the public be made aware of these claims and the burdens on claimants in seeking the return of their Nazi confiscated cultural property. Claimants often face insurmountable obstacles in locating and claiming the return of their belongings. These stories, and particularly, the claimant words which shape these stories, also speak to continuing suffering by these families; their suffering did not end with the war. Increased public awareness may serve to promote claimant interests through lobbying for procedural change for restitution claims, for persuading possessors to actively engage with claimants through a greater understanding of the interests underlying the claim, or for encouraging further research for the continuing development of the restitution literature.

On a final note, as noted in its introduction, this article also contributes to the wider field of repatriation disputes involving colonial looting, indigenous cultural heritage and spoils of war, for example. This too is an area that needs effective process and outcome design. An exploration of the interests of claimants, from their perspectives, offers a similar and viable framework through which to explore appropriate processes and outcomes of the repatriation claim as well, suggesting an appropriate direction for future research on the issues.