A MORAL PERSUASION:
THE NAZI-LOOTED ART RECOVERIES OF THE MAX STERN ART
RESTITUTION PROJECT, 2002-2013

by

Sara J. Angel

A thesis submitted in conformity with the requirements for the degree
of PhD
Graduate Department Art
University of Toronto

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PhD Abstract

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Sara J. Angel
Department of Art
University of Toronto
Year of convocation: 2017

In 1937, under Gestapo orders, the Nazis forced the Düsseldorf-born Jewish art dealer Max Stern to sell over 200 of his family’s paintings at Lempertz, a Cologne-based auction house. Stern kept this fact a secret for the rest of his life despite escaping from Europe to Montreal, Canada, where he settled and became one of the country’s leading art dealers by the mid-twentieth century.

A decade after Stern’s death in 1987, his heirs (McGill University, Concordia University, and The Hebrew University of Jerusalem) discovered the details of what he had lost, and how in the post-war years Stern travelled to Germany in an attempt to reclaim his art. To honour the memory of Max Stern, they founded the Montreal-based Max Stern Art Restitution Project in 2002, dedicated to regaining ownership of his art and to the study of Holocaust-era plunder and recovery. This dissertation presents the histories and circumstances of the first twelve paintings claimed by the organization in the context of the broader history of Nazi-looted art between 1933-2012.

Organized into thematic chapters, the dissertation documents how, by following a carefully devised approach of moral persuasion that combines practices like publicity, provenance studies, law enforcement, and legal precedents, the Max Stern Art Restitution Project set international precedents in the return of cultural property. The
dissertation reveals how the Max Stern Restitution Project used a self-generated methodology to recover works of Nazi-looted art from both private and public collections in countries including Spain, the United States, Germany, and the Netherlands. It addresses how in just over a decade, the Max Stern Art Restitution Project became one of the world’s leading advocates in the reclamation of Nazi-era spoliated art and an authority on the subject of a judicious approach toward cultural property.
Acknowledgements

The writing of this dissertation would not be possible without the support, direction, and patience of my PhD supervisor Dr. Elizabeth Legge. As well, my heartfelt thanks go to my committee members: Dr. Jordan Bear and Dr. Louis Kaplan. For its belief in my research and the financial backing of it, I gratefully acknowledge The Pierre Elliott Trudeau Foundation. I also extend my thanks to SSHRC for its generous support of this thesis.

The records of the Max Stern Restitution Project and the Holocaust Claims Processing Office have been critical to this study. To both organizations, I offer much gratitude. In particular I would like to thank Dr. Clarence Epstein who introduced me to the subject of the restitution of Nazi-looted art, which changed my outlook, and approach, to the subject of art history. This dissertation could not have been written without the encouragement of my husband Dr. Michael Angel who never waivered in his love and support. Finally, I offer thanks to my children Charles, Jackson, and Isabella. This dissertation is dedicated to them: may they know and remember the reasons for what Max Stern lost and understand the importance of correcting past injustices.

*Sara J. Angel, April 2017*
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INTRODUCTION

The Case for Studying Max Stern’s Art Restitutions
“One doesn’t need to be a lawyer to make a Nazi-era art claim. Rather, to be successful, one needs to understand art history.”

—Monica Dugot

“There is an enormous amount of work yet to be done. It’s 80 years after Hitler came to power and this still has not been dealt with. I think that’s a sign of the problem. I think it shows how much it means to people…. It’s an indication of how much resistance there still is to providing justice after all these years.”

—Anne Webber

“It never occurred to him that the art he kept in his 100-square-meter (1,076-square-foot) apartment, art that perhaps wasn’t entirely his, and could be used to help make amends for what the Nazis had done.”

—Özlem Gezer on interviewing Cornelius Gurlitt

In 2009, former Royal Academy chief Sir Norman Rosenthal wrote in a piece for The Art Newspaper that museums should not be forced to restitute Nazi looted artwork. The child of Jewish refugees who escaped Nazi Germany and who lost family members in the

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Holocaust, Rosenthal argued that institutions should be allowed to keep pieces plundered by the Third Reich. At the beginning of the twenty-first century, he claimed, relatives of people who had works of art or property stolen by the Nazis do not have an inalienable right to ownership. As he stated:

You can’t turn the clock back or make things good again through art. Ever since the beginning of recorded history, because of its value, art has been looted and as a result, arbitrarily distributed and disseminated throughout the world. Their claims can’t justify weakening public collections.

Rosenthal based his case against restituting Nazi-looted art on the following points: the practice makes the rich richer; the art market’s encouragement of restitution is motivated by its desire to facilitate its own business interests; and there is a long history of cultural objects migrating over time into the public sphere, an art-world fact that “that’s the way it is.”

Rosenthal’s comments gained traction quickly. “A work of art should never, ever be taken away from a public museum without the strongest of reasons,” wrote Jonathan Jones in The Guardian. “Making good the crimes of the Nazis may seem just that—but it is meaningless. No horrors are reversed. Instead, historical threads are broken, paintings are taken away from the cities where they have the deepest meaning, and money is made by the art market.” Klaus Albrecht Schröder, the director of the Albertina museum in Vienna, called for a deadline on all Nazi-loot restitution claims on art in public

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5 Rosenthal, “The Time Has Come.”
6 Ibid. Also see Thomas, “Museums Should Be Able.”
7 Ibid.
collections of somewhere between twenty and thirty years.9 “If we don’t set a time limit of around 100 years after the end of the Second World War,” he stated, “Then we should ask ourselves why claims regarding crimes committed during the First World War should not still be valid; why we don’t argue anymore about the consequences of the 1870-1871 Franco-Prussian war, and why we don’t claim restitution of works of art that have been stolen during previous wars?”10 In *Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s* (2009) historian Michael Marrus questioned the validity of restitution in the context of whether there can there ever be justice for the Holocaust.11 Citing the philosopher Jeremy Waldron, he noted that rights are “capable of ‘fading’ in their moral importance ... that after many years, historic injustices may be superseded as a result of the practical difficulties with repairing the past or unacceptable consequences.”12 Such opinions and others suggested that by the end of the first decade of the twenty-first century there was a notion that the topic of Nazi-looted art restitution might be nearing an end. Then a landmark event unfolded, which radically challenged this notion.

In November 2013, the German newsweekly *Focus* broke the story of the greatest art find of the twenty-first century. The magazine reported on Cornelius Gurlitt, an eighty-one-year-old living alone in Munich’s Schwabing neighbourhood who watched authorities

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10 Ibid.
cart out of his home 121 framed and 1,285 unframed pieces of art.\textsuperscript{13} The works—masterpieces kept neatly on shelves and estimated to be worth more than €1 billion ($1.35 billion)—included both “degenerate-art” that the Nazis had confiscated as well as such Old Masters pieces as a sixteenth-century copper engraving by Albrecht Dürer (1471-1528) of a crucifixion scene.\textsuperscript{14} As described by \textit{The Economist}, the collection, “read like the syllabus for a course in the history of art: Max Beckmann, Otto Dix, Emil Nolde, Ernst Ludwig Kirchner, Marc Chagall.”\textsuperscript{15} When Germany’s national newspaper \textit{Bild am Sonntag} investigated Nazi records they discovered that in May 1940 Joseph Goebbels, the Reich propaganda minister, sold to Cornelius Gurlitt’s father, Hildebrand Gurlitt, 200 paintings, including \textit{The Walk} (1918) by Marc Chagall (1887-1985) \textit{Farming Family} by Pablo Picasso (1881-1973), and \textit{Hamburg Harbour} (1910) by Emil Nolde, for a paltry SFr 4,000.\textsuperscript{16} When asked about the pieces that he had preserved for a lifetime in his home, Gurlitt Jr. said his father was a hero: a man who ensured that important art was not burned by the Nazis nor bombed by Russians or Americans.\textsuperscript{17}

The discovery of the Gurlitt hoard changed the conversation about Nazi-looted art restitution. The dominant discussion about art plundered during the Third Reich was no longer about the provocative debate that Rosenthal ignited just four years earlier—whether there should be a finite date for its recovery, whether the issue was motivated by auction houses seeking business, or whether keeping Nazi-looted art in museums served a public good. Now a new set of inquiries was on the table, including: Where did the paintings in Gurlitt’s apartment come from? How were they obtained? Were the works

\textsuperscript{15} Ibid.
\textsuperscript{17} Gezer, “Cornelius Gurlitt Shares His Secrets.”
stolen? Most importantly: How many hundreds of thousands of works of Nazi-looted art remain unrestituted? In light of the Gurlitt find, a critical issue gripped the art world: How does one address such newly found works, which are not part of museum collections and which reflect among the most heinous injustices of the past?18

These interrogations spread internationally, spawning a body of literature on Gurlitt (see appendix, pp. 28).19 Anger deepened when Focus revealed that German authorities had learned about Gurlitt’s trove in 2011, after Augsburg authorities discovered the elderly man on a train with 500-euro notes stuffed into an envelope. The situation prompted an investigation into whether he was committing tax fraud.20 In February 2012, officials with the Augsburg public prosecutor’s office entered the home of Gurlitt’s home and discovered one of the world’s largest undocumented collections of art. While German chancellor Angela Merkel was informed of the incident, it would take fifteen months before the facts were brought to the public’s attention.21

The Gurlitt case reinvigorated the discussion of Nazi-looted art and the vast body of literature that has been written on it (see appendix, pp. 1-53) starting in 1945 with the report “Consolidated Interrogation Report No. 4 (1945)” by the Art Looting Investigation Unit (see appendix, pp. 1-3). Among the first questions asked was: Who was Cornelius Gurlitt’s father? In her landmark book The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War (1994) Lynn Nicholas wrote that at his height, Gurlitt Sr. had a personal inventory of more than 1,500 art objects and that he sold art to domestic collectors, most famously to Bernhard Sprengel whose

18 Ibid.
20 Gezer, “Cornelius Gurlitt Shares His Secrets.”
21 “Hildebrand Gurlitt’s Secret,” The Economist.
eponymous gallery is at the heart of the Sprengel Museum Hannover. The 2013 Munich discovery offered a window into the body of literature on the Nazi art trade, auctioneers, dealers, and middlemen (see appendix, pp. 6-15), and how Gurlitt Sr., a part-Jewish German art critic and museum director, was appointed by Hermann Göring to the Commission for the Exploitation of Degenerate Art on instructions by the Reich minister of propaganda, Joseph Goebbels. Along with three other art dealers—Karl Buchholz, Ferdinand Möller, and Bernhard A. Böhmer—he sold art that did not fit into the purview of Nazi cultural policy (see appendix, pp. 4-6: The Art World Under the Third Reich & Linz) beyond Germany’s borders, and earned a return on the trade of these works.

The Gurlitt case turned the public’s attention to the history of Nazi-looted art restitution beginning in June 1945, and the flawed nature of the process (see appendix, pp. 15-17: Restitution History: Origins). At the end of the Second World War, US Army authorities, acting on behalf of the Allied armies’ Monuments, Fine Arts and Archives program (MFAA), interrogated Hildebrand Gurlitt about twenty boxes of art. They overlooked the holdings of Gurlitt Sr. because they focused on the MFAA’s core mission to preserve Europe’s centuries-old cultural history, which did not emphasize the Impressionist, Post-Impressionist, and “degenerate art” that he traded. Gurlitt Sr. told authorizes that much of his property was destroyed in the firebombing of Dresden in February 1945. Moreover, as Focus reported, he “painted himself as a victim of Nazi

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24 Nicholas, The Rape of Europa, 24.
26 “Hildebrand Gurlitt’s Secret,” The Economist.
persecution due to his Jewish heritage, and on those grounds he was released.”

When Hildebrand Gurlitt died in a car crash in 1956, his son inherited his art. The works never left his home except occasionally, when the jobless Cornelius needed to sell a piece to pay his bills. In 2011, he brought *The Lion Tamer* (1930) by Max Beckmann (1884-1950) to the Lempertz auction house in Cologne. The painting was one of the last works he brought to market (for which he received €864,000). The piece not only brought attention to the fact that German auction houses were selling Nazi-looted art, it connected the story of Hildebrand Gurlitt’s thefts to another Lempertz auction of Jewish property—one that took place seventy-four years earlier. In 1937, under Nazi duress, Max Stern was forced to sell the inventory of his family’s Düsseldorf gallery: more than 200 Old Master and Northern European works of art at the sale *Die Bestände der Galerie-Stern-Düsseldorf* (The Holdings of the Gallery Stern, Düsseldorf).

When the authorities seized the content of Cornelius Gurlitt’s apartment, he told the reporter Özlem Gezer that it never occurred to him that the art he kept in his home wasn’t entirely his, and that possibly it could be used to help make amends for the cultural property that the Third Reich stole from Jews. Although Gurlitt Jr. may have been unaware of the importance of Nazi-looted art restitution, his actions made it clear to the world that the discussion of this topic was not only far from over, it had a multitude of complexities that needed to be addressed.

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29 Mathias Lempertz, *Die Bestände der Galerie-Stern-Düsseldorf*, (Cologne: Mathias Lempertz, 1937)
30 Hall, “£1billion Art Collection.”
31 Gezer, “Cornelius Gurlitt Shares His Secrets.”
The writing of this dissertation began in April 2014, five months after the discovery of the Gurlitt hoard of art. In the wake of the most international visual arts news story, a Nazi-looted art restitution took place in Düsseldorf. Self Portrait of the Artist (1831) by the nineteenth-century German artist Wilhelm von Schadow (1789-1862) became the tenth recovery of the Max Stern Art Restitution Project, an organization created to recover spoliated paintings more than fifty years after they were sold under Nazi duress at the Lempertz auction house in the neighbouring city of Cologne.

In Canada after the Second World War, Max Stern was known as the formidable owner of Montreal’s Dominion Gallery, which played a key role in the careers of such Canadian painters as Emily Carr (1871-1945) and Paul-Émile Borduas (1905-1960), and represented international masters including Pablo Picasso, Henry Moore (1898-1986), and Auguste Rodin (1840-1917). Yet when he died in 1989, nothing was known about Max Stern’s life in Germany. More than a decade after his demise, when details surfaced that the Third Reich had persecuted Stern, his executors founded a not-for-profit organization to honour his memory. Based at Concordia University—one of Stern’s three heirs, along with McGill University and The Hebrew University of Jerusalem—the Max Stern Art Restitution Project was created to reclaim the losses Stern sustained under Nazi duress and, more fundamentally, to reclaim the story of his family, which had been erased from history.

Max Stern’s story belongs to a collection of writings about the restitution of Jewish art collections lost during the Nazi era (see appendix, pp. 17-22: Restitution of

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Introduction
The Case for Studying Max Stern’s Art Restitutions

_Jewish Collections_) This dissertation fills an important void in the landscape of restitution literature, however, because most studies in this category (for example, *Reclaimed: Paintings from the Collection of Jacques Goudstikker* [2008]) address art that has significant monetary value. Such restitutions, while worthy and important, have fed notions propagated by both the media as well as the professional art world that money rather than moral rectitude is at the heart of Holocaust-era restitution.

For more than twenty-five years, the Stadtmuseum Düsseldorf held Friedrich Wilhelm von Schadow’s *Self Portrait of the Artist*, unaware that the three-quarter profile of a cloaked, bearded, and wind-swept man with an austere stare had once belonged to Max Stern, one of the city’s most important dealers in the 1920s and 1930s. The work was not of great monetary value or art historical significance. It was also not a work that lawyers fought over or one that could make auction houses wealthier. Still, the Max Stern Art Restitution Project believed that the painting’s recovery was essential because the organization was created to put Max Stern and other Jewish art dealers expunged from history back into the cultural narrative. While significant consideration has been given to the loss of European Jews during the Holocaust (see appendix, pp. 4-5), scant attention has been paid to how art restitution—in particular art restitution of works kept by ordinary citizens—is critical to the reconstruction of Jewish history destroyed by the Nazis.

The Max Stern Art Restitution Project is particularly worthy of study because it is the only organization of its kind in the world. Its focus is almost exclusively on recovering works of art that were valuable during their day but no longer make

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35 Rosenthal, “The Time Has Come.”
37 Angel, “The Secret Life of Max Stern.”
headlines. Moreover, its claims come from three universities rather than a single individual or family member, which means that the project has no time limit, nor monetary incentives when recovering art, other than to further the understanding of restitution. The Max Stern Art Restitution Project is also a critical subject of study because it not only affords an opportunity to address the history of Nazi-looted art restitution from 1945 to the present, it also documents and surveys how restitution may be achieved through an extra-judicial moral persuasion and through a long-term strategy. It is a story that runs counter to the Hollywood narrative that restitution of spoliated art is a high-stakes court battle that ends with a multi-million dollar return on paintings like the 1907 masterpiece Portrait of Adele Bloch-Bauer I by Gustav Klimt (1862-1918).

This dissertation does not address the financial mechanisms of the Max Stern Restitution Project, including its sources and current state of available funds, the amount that the organization has spent to date in recovering works, the costs of individual restitution efforts, and monies paid for its consultant fees. These facts are not the focus of this dissertation for two reasons: first, this financial information is not available for public access; second, as the key goal of the Max Stern Restitution project is to counter the notion that money rather than moral rectitude is at the heart of Nazi-looted art recovery, a discussion of the economic workings of the initiative are outside of the purview of this study. Rather, the following chapters explore how, in 1937, when Stern’s art left his hands at the Lempertz auction house, it was scattered like seeds, blown around the globe. By 2002, when the Max Stern Art Restitution Project was initiated, the inventory that once filled his gallery had ended up in the United States, Spain, the Netherlands, throughout Germany, and as far abroad as Taiwan. This dissertation documents the first twelve recoveries of the Max Stern Art Restitution Project to address the issue raised by ARTnews in September 11, 2013, after it conducted a six-month
investigation into the state of restitution policies and practices in Europe and the United States. The magazine wrote:

Decades after the restitution effort started, hundreds of thousands of artworks and objects looted from victims of the Holocaust have yet to be returned to the owners or their heirs. Indeed, many of the experts interviewed in the United States and Europe are wondering if hundreds of millions of dollars worth of art stolen by the Nazis will ever be returned to its rightful owners.

Although the core of this dissertation is twelve restitution cases, these studies are organized thematically into seven thematic chapters, each one of which addresses an integral component of Nazi-looted art restitution today, including: publicity, moral persuasion, the art trade, the museum world, law enforcement, financial settlements, and provenance studies. Collectively, the dissertation’s chapters are intended to both illuminate the multifaceted nature of Nazi-looted art restitution and to provide a methodology for those who want to achieve it. At the same time, the project explores the simple question: What does Nazi-looted art restitution mean?

This question is critical because as the Stern cases illustrate and as Anna Rubin, current director of the Holocaust Claims Processing Office, states:

No system—be it a voluntary program or the courts—can resolve all the wrongs done during the Holocaust [however] not every resolution of a claim depends on the recovery of an asset or monetary settlement. Success can consist of obtaining closure for a claimant, for example, by providing documentation that shows earlier compensation of the property.

38 Cohan, “The Restitution Struggle.”
39 Ibid.
This study of the Max Stern art restitutions is significant because although numerous countries have taken important steps towards developing a process on how to address Nazi-looted art restitution, specifically the Netherlands, Germany, Austria, France, Italy, and the United States (see appendix, pp. 22–32: Restitution History: National Efforts), a study of the literature reveals that restitution policies, practices, and laws not only differ from country to country, they vary whether dealing with a private institution or a public one. Nazi-looted artworks have been the subject matter of significant and high-profile litigation cases both within the United States and internationally, and have been the subject of numerous major analytic studies (see appendix, pp. 39–53). While some Nazi-looted cases have been litigated, it is more common that cases are settled out-of-court. Of the twelve restitutions made by the Max Stern Art Restitution Project only one—Girl from the Sabine Mountains (c. 1846) by Franz Xaver Winterhalter (1805–1873)—was settled in a court of law. Instead of seeking legal redress, the Max Stern Art Restitution Project focuses on persuasion and ethically driven solutions. As Clarence Epstein, director of the Max Stern Art Restitution Project, explains, “Restitution is often a hit-or-miss prospect. It is largely dependent on the goodwill of the current owner and whether a country’s judicial system and law enforcement system is open to legal arguments on claims that have often expired. Although moral persuasion is a less defined strategy it is often more reliable.”

Only Germany, Austria, the Netherlands, Britain, and France—five countries—have state-mandated procedures for victims and other potential claimants to seek restitution of what was stolen. As reported in ARTnews, “Britain, Italy, Hungary, and

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42 See The US District Court for the District of Rhode Island, C.A. No. 06-211 (ML), June 1, 2007.
43 Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.
Poland do not have restitution laws that permit the return of looted Holocaust-era art and cultural property.” In Germany, the civil code states that property cannot be reclaimed more than thirty years after it was lost or stolen, which means the door to restituting works through German courts was shut in 1975. Moreover, in Germany there is no law that requires the return of Nazi-looted art, although as a signatory of the 1998 Washington Conference Principles on Nazi-Confiscated Art, Germany agreed that all of its public institutions would check their inventories for Nazi-looted goods and return them if found.

Against these uneven and challenging circumstances for art restitution, the Max Stern Art Restitution Project has had an impressive rate of success. From its inception in 2002 until 2013, the organization recovered twelve paintings, working at a rate of approximately one work per year. In large measure this is because, as Monica Dugot, international director of restitution for Christie’s, stated in 2009 at the Holocaust Era Assets Conference in Prague, “One doesn’t need to be a lawyer to make a Nazi-looted art claim. Rather, to be successful, one needs to understand art history.” Prior to working at Christie’s, Dugot served as deputy director of the Holocaust Claims Processing Office in New York, a recognized authority on matters relating to Holocaust-era losses, compensation, and restitution.

As Dugot explains, the restitution of a work of art is next to impossible without being supported by clear provenance. In other words, a claimant must be able to demonstrate the history of the work’s ownership and how it was forcibly removed. The

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44 Cohan, “The Restitution Struggle.”
47 Dugot, “Restitution and the Art Market.”
48 Cohan, “The Restitution Struggle.”
probability of finding complete records of a work of art’s documentation is exceptionally rare with Nazi-era looted art.\textsuperscript{49} Changes in attribution of a work’s creator constitute a major impediment to finding pieces. Whereas familiarity with a painting’s attribution history is vital to locating Nazi-era looted art, a single undocumented shift in attribution can often inadvertently can throw off the course of an investigation and cause it to go on for years.\textsuperscript{50}

As a high-profile example, one can look at the Gurlitt case. In January 2014, a research team was established to determine the ownership history of the Munich-based trove. They were given a year to do the job.\textsuperscript{51} By May 2014, experts were able to establish ownership for only five of the hundreds of works whose provenance was in doubt.\textsuperscript{52} After two years, €1.88 million were spent but only two paintings, a portrait of Max Liebermann (1847-1945) and a portrait of Henri Matisse (1869-1954), were restored to their rightful owners.\textsuperscript{53} According to Dr. Andrea Baresel-Brand, head of the special task force \textit{Schwabinger Kunstfund}, who was in charge of tracking down the provenance of the Gurlitt pieces, along with a team of international experts, it is “extraordinarily difficult to trace ownership back over the decades.”\textsuperscript{54}

In a report on Germany’s provenance efforts, \textit{Der Spiegel} stated that hundreds of thousands of artworks and artifacts whose provenances have not been investigated

\textsuperscript{49} Ibid.
\textsuperscript{50} Korte, Willi (chief investigator, Max Stern Art Restitution Project), interview with the author, July 17, 2016.
\textsuperscript{52} Of those five works the two paintings were restituted in 2015: A painting of a woman in a white blouse embroidered with flowers or “Seated Woman/Woman Sitting in an Armchair” (\textit{Femme Assise} [1938]) by Henri Matisse was returned to the descendants of the Paris art dealer, Paul Rosenberg. \textit{Two Riders on the Beach} (1901) by Max Liebermann was returned to David Friedmann, a Jewish lawyer in Breslau.
\textsuperscript{54} Eddy and Smale, “Ruling Paves Way.”
remain in museums and depositories. The country is not alone. In 2001, Russia, a nation with a significant repository of looted art, signed an agreement with Ronald S. Lauder, founder and then-chairman of the Commission for Art Recovery, to publicize provenance research of stolen artworks. However, since then little has been done. According to the ARTnews report, “The only country that is systematically studying its collections is Austria. Other countries are waiting for claims to be made, and they are more or less cooperative in researching them.” Although Italy states that there is no evidence of Holocaust-looted works in its public collections, it has also never done a formal study into works that may have questionable provenance.

There is a vast body of literature on how different nations have approached studying the provenance of their collections (see appendix, pp. 32-36) as well as on approaches to provenance (see appendix, pp. 36-37) and institutional responsibility with respect to provenance (see appendix, pp. 37-39). Yet as Sophie Lille, the Vienna-based art historian and author, writes:

I think one of the problems with restitution and provenance research is that it’s such a long process, and then you have museums to deal with or auction houses to contend with. It takes a long, long time.

How might the process of Nazi-era restitution be accelerated? The final objective of this dissertation is to make an argument that art history must change as a discipline in order to consider not only the front of a work of art but its verso as well. The 2013 Gurlitt discovery has proven that the world is far from being finished with the subject of the

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56 Cohan, “The Restitution Struggle.”
57 Ibid.
58 Ibid.
59 Ibid.
recovery of Nazi-looted art and no closer to knowing how to process the works that it has yielded. The matter of Nazi-looted art is decades away from being solved in terms of policy and law. Yet as the following pages will show, one element is common to every successful restitution case: a claimant who can demonstrates his or her connection to a work’s provenance. Today, research on provenances is at odds with the academic world. A subject that does not fit neatly into the traditional disciplines, provenance research requires a mix of methods, approaches, and competences.\(^6\) What a study of the Max Stern Art Restitution cases demonstrates, however, is that one does not need to be a lawyer to make an impact on moral justice; one needs to understand art history. The following pages are intended to show the inextricable link between visual culture and moral rectitude as presented through the recovery of twelve paintings sold under Nazi duress in 1937.

\(^6\) Christian Fuhrmeister, letter to Sara Angel, January 6, 2017.
Chapter 1
The Discovery of Lempertz Auction 392:
Die Bestände der Galerie-Stern-Düsseldorf

CHAPTER ONE

The Discovery of Lempertz Auction 392:
Die Bestände der Galerie-Stern-Düsseldorf
Chapter 1
The Discovery of Lempertz Auction 392:
Die Bestände der Galerie-Stern-Düsseldorf

Portrait of Max Stern
By Yousuf Karsh, 1956.
Reproduced with the permission of the Max Stern Estate and the National Gallery of Canada.
In mid-twentieth-century Canada, Max Stern’s knack for being able to forecast the future made him one of the country’s most important art dealers. In 1942, he arrived penniless in Montreal, where he vowed to make his name selling Canadian art. “You’ll starve,” opinion-makers told him, doubting that a German immigrant could promote the nation’s painters.¹ By the sixties, however, Stern’s talent for timing and spotting a good thing led him to become director of the Dominion Gallery, where he represented the country’s leading painters—including Emily Carr (1871-1945), Paul-Émile Borduas (1905-1960), and Goodridge Roberts (1904-1974)—as well as international masters Auguste Rodin (1840-1917) and Wassily Kandinsky (1866-1944). Sometimes, as Stern took in the

masterpieces that filled his Sherbrooke Street gallery and recounted the warnings of early days, he liked to jest, “You can see how I am starving.”

Remarkably, Stern’s posthumous reputation has little to do with his forty-five-year directorship of the Dominion Gallery; rather, his name is linked to one of the most critical art-world issues of the early twentieth-first century: the restitution of millions of Nazi-looted works of art, assets estimated at between $143 and $215 billion (US) in today’s dollars. Stern would not have expected that by the twenty-first century his name would become tied to this critical art-world issue, because after the mid-1950s he never spoke about how under Gestapo orders in November 1937 he was forced to liquidate his family’s business at auction 392 at the Cologne auction house Lempertz. After he died of a heart attack in May 1987 during a buying trip to Paris, no obituary mentioned how in Canada Stern had rebuilt a life and an art dealership that had been destroyed in Düsseldorf because he was a Jew.

Stern’s rise as a Canadian art dealer began in the unlikeliest of places: a prison camp. He escaped Düsseldorf and arrived in London in 1938, but the move didn’t make him a free man. After the outbreak of the Second World War in September 1939, Stern was interned in England as an enemy alien. As Hitler’s push across the English Channel became increasingly likely, Scotland Yard detained more than 2,000 German and Austrian

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2 Ibid.
civilian refugees from Nazism, mostly Jews, whom they incarcerated as dangerous aliens in an internment camp on the Isle of Man for fear that they might be enemy agents. In early 1940, after three months of confinement, Stern heard that some internees were being transported to Canada and Australia to free up British soldiers used to guard the detainees. He asked to be sent to North America, where he believed he would be best situated to help his mother, Selma, and sister Hedwig, both living in England, as well as his other sister, Gerda, and her family, living in France. What Stern never expected was that bayonet-carrying soldiers would greet him in Canada and escort him to an internment camp where, as a German-speaking man, he remained for nearly two years as an enemy alien. “We had to stage a hunger strike to convince the authorities that we were not Nazis,” Stern later wrote, “but, on the contrary, anti-Nazi.”

Stern’s first home in North America was a camp for “civilian aliens” near Fredericton in New Brunswick, where he worked cutting down trees for eight hours a day. Still, he remained optimistic, thankful for the pay of $0.20 per day, as well as the opportunity to teach art history to others in the camp. Ten years earlier, he had earned a doctorate in art history, which he put to use, teaching the camp’s detainees.

From New Brunswick, Stern was sent to another internment camp in Farnham, Quebec. There, his drive and positive outlook caught the attention of William Birks, whose family owned a renowned jewellery business. Birks played a key role in the country’s National Committee on Refugees and spoke openly about Canada’s restrictive and anti-Semitic immigration policy, which he called “narrow, bigoted, and short-
According to Birks, the government should have sent trade missionaries to Europe to plea for men like Stern to come to Canada, “not wait for them to seek and beg us.” In 1942, Birks sponsored Stern’s release from the internment camp and his move to Montreal.

In need of a job, Stern first applied to work in an airplane factory to assist in the war effort. When he was turned down he looked to the thing he understood best: selling art. Stern felt sure that he could be successful as a dealer in Montreal because of a void that he spotted in the Canadian cultural landscape. Most of Montreal’s galleries were promoting nineteenth-century European genre and landscape painting. The city lacked an outlet that was exclusively dedicated to selling Canadian art because, according to him, the country “didn’t have any confidence” in its own talent.

Stern pitched his vision to Rose Millman, who had just opened a space in the Keefer Building, 1448 Saint Catherine Street West, that she called the Dominion Gallery of Fine Art. He was successful and Millman offered him $12.50 a week to come work with her. Stern countered that he wanted $17.50 and a promise that his new employer would make him a full-fledged partner once he built up her business by conquering Canada, as he put it, “via the living Canadian artist.”

Millman hired Stern and within a year he was mounting exhibitions by leading contemporary Canadian painters. Soon he would come to represent artists including John Lyman (1886–1967), Goodridge Roberts, E. J. Hughes (1913–2007), Stanley Cosgrove (1911–2002), Jean-Paul Riopelle (1923–2002), and others whose names he

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13 Abella and Troper, None is Too Many.
14 Charles Hill (former curator, Canadian Art, National Gallery of Canada), interview with the author, April 10, 2014.
15 Stern, unpublished autobiography.
16 Seligson, 6.
17 Moreault, Gagnon, and Pageot, Max Stern.
18 Stern, unpublished autobiography and Seligson, 6.
would play a pivotal role in establishing.\textsuperscript{19} Stern secured the loyalty of these artists, and their best work, by providing them with monthly payments in exchange for an agreed upon number of works.\textsuperscript{20} It was a practice already in place in France, England, and the United States, but not yet established in Canada.\textsuperscript{21}

The first pivotal moment in Stern’s career came in 1944 after he visited Emily Carr in her Victoria home. When she showed him a room packed with 300 paintings, Stern asked if he could mount an exhibition of her work.\textsuperscript{22} In response to his question, Carr laughed. Although she had been the subject of critical praise, Carr’s art had yet to enjoy any commercial success. “You won’t sell anything,” she warned Stern. Undaunted, he replied, “If you let me choose the paintings I think I can make it a perfect success.”\textsuperscript{23}

Stern selected sixty canvases from every period and style Carr had created.\textsuperscript{24} Months later, when he sent her a cheque for the show’s sales, she wrote him back that she had never seen such a large amount of money.\textsuperscript{25} The following year, Carr died and Stern became her estate’s agent. He sold her work fast and effectively, but kept about forty of her paintings for his collection—a foundation of the significant wealth he would soon amass.\textsuperscript{26}

\textsuperscript{19} Moreault, Gagnon, and Pageot, \textit{Max Stern}.
\textsuperscript{20} Seligson, 6.
\textsuperscript{21} Ibid.
\textsuperscript{22} Moreault, Gagnon, and Pageot, \textit{Max Stern}.
\textsuperscript{23} Stern, unpublished autobiography.
\textsuperscript{24} Ibid.
\textsuperscript{25} Seligson, 4.
\textsuperscript{26} Ibid.
By 1945, Millman made Stern a partner. Thanks to his vision and the war economy, the Dominion Gallery of Fine Art thrived. Canadian wartime currency controls meant the country’s citizens were unable to export their money. Motivated to buy art domestically, customers streamed into Millman’s gallery. Soon, Canadian art history became a subject to study and write books about, and a topic that Stern promoted enthusiastically to museums and collectors.

In 1946, Stern married Iris Ester Westerberg, a Swedish émigré whom he had met through William Birks. The following year they purchased Millman’s business from her and shortened its name to the Dominion Gallery. Four years later, the pair bought a stately greystone building to house themselves and their gallery at 1435 Sherbrooke Street West. They took up residence in a five-room apartment on the building’s fourth floor and used its lower levels as showrooms—fourteen in total—for art.

For the next two decades, Stern’s foresight and conviction led him to become a critical figure in the North American art market. The Dominion Gallery became renowned both for its sale of work by living Canadian painters as well as its healthy inventory of modern international artists and Old European Masters, including pieces by Pablo Picasso (1881-1973), Georges Braque (1882-1963), and Kandinsky.

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27 Hill, interview, April 10, 2014.
28 Ibid.
30 Moreault, Gagnon, and Pageot, Max Stern.
In the 1950s, Stern took the gallery in a new direction. After predicting that the media bombardment of television and cinemas would make audiences yearn for the tactile and erode painting’s dominance, he turned his attention to dealing sculpture.\(^{34}\) He secured the North American rights to sell international works by the British sculptor Henry Moore (1898-1986), still little known in Canada, as well as those of Auguste Rodin, whose popularity and prices had fallen in postwar Europe.\(^{32}\) Stern’s judgment proved lucrative, and by the 1970s, the twenty pieces he bought from Moore in 1957 for $15,000 had skyrocketed in value.\(^{33}\) Meanwhile, French art dealers regularly visited the Dominion Gallery because apart from the Rodin Museum in Paris he had the largest collection of the sculptor’s works.\(^{34}\)

Stern’s success stemmed as much from his poise and welcoming manner as his intellectual acumen.\(^{35}\) When clients walked into his gallery, he introduced himself to customers as “Herr Doktor Stern,” a reference to his qualifications as both an art historian with a doctorate as well as a salesman—Canada’s only gallery owner at the time with such qualifications—then taught them about the pieces on his walls.\(^{36}\) That gave his clients confidence in the decisions they made; when they bought a work, he congratulated them on their excellent taste.\(^{37}\) Stern was not without detractors. Some criticized him for being too much a salesman and questioned his taste. Catherine MacKenzie observed that “he would talk to Goodridge Roberts like he was a salesman designing wallpaper [instructing him to] add something here, add something there.”\(^{38}\)

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\(^{31}\) Stern, unpublished autobiography.
\(^{32}\) Ibid.
\(^{33}\) Ibid.
\(^{34}\) Seligson.
\(^{35}\) David Silcox, (vice chair of the advisory board, Sotheby’s Canada) interview with the author, March 15, 2014. Catherine MacKenzie (professor, Department of Art History, Concordia University), interview with the author, July 8, 2015.
\(^{36}\) Silcox, interview with the author, March 15, 2014.
\(^{37}\) Ibid.
\(^{38}\) MacKenzie, interview, July 8, 2015.
Famously loquacious, Stern held informal lessons on art with his clients, during which he talked for hours about art, its importance, and its value.\textsuperscript{39} Still, during those sessions when he held court with his customers, there was one subject he remained silent about: his life in Europe. Stern’s thick German accent made it clear that he was from elsewhere. But when friends, colleagues, and clients pressed for details about his days before arriving in Montreal, Stern answered, “That’s the past, I’m interested in the present.”\textsuperscript{40}

Occasionally though, Stern dropped a clue about his life before Canada. Stern cautioned customers to avoid making purchases at auctions. In such sales, he explained, the provenance details of paintings or a sculptures were seldom fully revealed and often willfully obscured. “Pedigree is not only important in animals,” Stern warned clients.\textsuperscript{41} In this, Stern was not simply offering buying advice: He was talking about the most fundamental injustice of his life.

Stern died in 1987 of a heart attack while on a business trip to Paris. Stern’s commitment to Canadian art history and his profound love of the arts were recognized by his adopted country when he received the Order of Canada three years earlier.\textsuperscript{42} His life’s work was embodied in the legacy that he left for universities and museums across North America and Israel.\textsuperscript{43} Through his philanthropy, his name was connected to a gallery, a curatorship, a sculpture garden, scholarships, internships, exhibition programming,  

\textsuperscript{39} Silcox, interview, March 15, 2014.
\textsuperscript{40} Charlie Hill (former curator of Canadian art, National Gallery of Canada), funeral, April 10, 2014.
\textsuperscript{41} Seligson, 10.
\textsuperscript{42} Moreault, Gagnon, and Pageot, \textit{Max Stern}.
\textsuperscript{43} Clarence Epstein, (senior director of urban and cultural affairs, Concordia University), interview with the author, June 1, 2014.
museum staffing, art acquisition, and provenance research.\textsuperscript{44} Max and Iris Stern did not have children and he bequeathed all residue of his estate, including the Dominion Gallery and any works of art that were not specifically documented in his will, to the Max and Iris Stern Foundation, which was created to benefit three non-profit institutions: Concordia University in Montreal, Canada; McGill University in Montreal, Canada; and The Hebrew University of Jerusalem in Israel.\textsuperscript{45} Rather than ask his executors to wind down his art dealership, Stern’s will outlined a distinctly different request: that the Dominion Gallery should be kept open as long as possible.\textsuperscript{46} It was this single instruction that fundamentally transformed Stern’s posthumous reputation from being a Montreal art dealer to being a central figure in contemporary discussions of Nazi-looted art restitution.

During the late 1980s and early 1990s, an increasing number of Holocaust survivors and their heirs began demanding the return of artworks lost in Nazi Europe.\textsuperscript{47} In 1990, the Art Loss Register (ALR), a privately owned database, was established by the art trade (Sotheby’s remains one of its shareholders) to assist Holocaust survivors and their heirs in the recovery of works of art.\textsuperscript{48} In less than a decade, the ALR, which places all its findings online, grew into the world’s largest resource for tracking looted or lost works, while art theft came to be seen as a crime that demanded international

\begin{footnotesize}
\begin{enumerate}
\item Catherine MacKenzie, \textit{Auktion 392: Reclaiming the Galerie Stern, Düsseldorf} (Montreal: FOFA Gallery, Concordia University, 2006), 2.
\item HCPO, letter to the Dutch Restitution Committee, with the completed questionnaire and enclosures, February 25, 2009.
\item Moreault, Gagnon, and Pageot, \textit{Max Stern}. In accordance with Stern’s wishes, the Dominion Gallery remained in operation under Michel Moreault as did the supervision of the Dr. and Mrs. Max Stern Foundation. Stern bequeathed his private collection to Canadian museums (notably the Montreal Museum of Fine Arts and the Musée d’art contemporain de Montréal), two museums in the United States, and the Israel Museum, Jerusalem.
\end{enumerate}
\end{footnotesize}
cooperation.\textsuperscript{49} Previously classified archival material revealed that although after the Second World War the Allies facilitated the return of great quantities of looted art to the countries from where works had been stolen, countless works still remained missing—some looted by soldiers, others in private hands, as well as pieces in national museum collections.\textsuperscript{50}

The publication of such groundbreaking books as \textit{The Rape of Europa} (1995) brought to light the previously unknown story of how, for twelve years, the Third Reich systematically looted and deliberately destroyed art on an unprecedented scale.\textsuperscript{51} This research gave rise to other investigations about Nazi-era looted art when, fifty years after the end of the Second World War, access to previously classified files in Germany and other countries opened for the first time.\textsuperscript{52} Research efforts were aided by augmented archival access, which became increasingly accessible through the rise of Internet technology.

In large measure, claims for the restitution of Nazi-era looted art followed the 1996 Senate Banking Committee investigation into dormant Jewish bank accounts in Swiss banks.\textsuperscript{53} The organization argued that Swiss accounts held undisclosed sums which Holocaust survivors and their heirs were unable to retrieve. The Senate Banking Committee launched an international inquiry into locating $50 million worth of

\textsuperscript{49} Sarah Jackson; also see Sarah Jackson, “Fighting the Theft of Art,” The Getty Conservation Institute, http://www.getty.edu/conservation/publications_resources/newsletters/13_1/news1_1.html.


\textsuperscript{52} Sarah Jackson, “A Database for Nazi Looted Art Claims The Art Loss Register Ltd.”

\textsuperscript{53} \textit{Swiss Banks and the Status of Assets of Holocaust Survivors or Heirs: Hearing Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, One Hundred Fourth Congress, Second Session, on the Circumstances Surrounding the Deposit of Assets into Swiss Banks by European Jews and Others, the Methodology Utilized by the Financial Institutions in Recording and Maintaining These Accounts, and the Response by Swiss Banks to Claims and Inquiries Made by Holocaust Survivors or Heirs Regarding These Accounts, April 23, 1996} (Washington: US G.P.O, 1996).
Holocaust-era gold. Fiftieth commemorative anniversaries of the Second World War and survivors’ attendance at such events cohered activism. The year 1998 was pivotal, as extremely high-profile restitution claims began to attract attention. In January, two paintings by Egon Schiele (1890-1918), on loan from the Leopold Collection in Vienna, were seized from the Museum of Modern Art (MoMA) in New York. This precipitated Austria’s 1998 decision to establish the Commission for Provenance Research in March, and the Art Restitution Law in December.

Also in 1998, the Viennese journalist Hubertus Czernin found documents proving that the Nazis had seized Portrait of Adele Bloch-Bauer I (1907) a painting by Gustav Klimt (1862-1918), informally known as The Woman in Gold, and a work frequently referred to as “Austria’s Mona Lisa.” The painting had hung for sixty years in Vienna’s Belvedere Palace near The Kiss (1907–8), another Klimt masterpiece. Under pressure,

54 Eizenstat, Imperfect Justice, 114.
56 Such claims included, e.g., the Silberberg claims concerning a van Gogh from the Foundation for Prussian Cultural Heritage in Germany and a Pissarro from the Israel Museum; the Littmann claims (see www.claims.state.ny.us/pr030617.htm); Warin v. Wildenstein and Co. (medieval Christian manuscripts); Bennigson 2004 WL 803616; Alsdorf, 2004 WL 2806301 (concerning a Picasso).
57 Bayzler, and Alford, Holocaust Restitution.
58 Commissioned by Ferdinand Bloch-Bauer, an avid art collector, for his Vienna palace, the canvas took three years to paint. In 1925, the painting’s sitter Adele Bloch-Bauer died of meningitis. After Germany annexed Austria in March 1938, Ferdinand Bloch-Bauer fled, without any of his belongings, to Switzerland where he died in November 1945. The new Nazi government confiscated his property, placing three of the Klimt paintings in the Belvedere and selling the rest. In his will, Ferdinand Bloch-Bauer left his estate to his heirs: the three children of his brother, Gustav: Robert, Luise, and the youngest, Maria Altmann.

After the war, Ferdinand Bloch-Bauer’s descendants engaged a Viennese lawyer to try to regain their stolen possessions, including their paintings. However, Austrian authorities ruled that Adele had bequeathed the Klimts to Austria. In 1998, in the Bloch-Bauer family file, Adele’s will was discovered which made it clear that this was not the case. The same year, Maria Altmann engaged lawyer Randy Schoenberg to regain the paintings. In August 2000, he sued the Austrian government in the United States under a little-used clause in the Foreign Sovereign Immunities Act. A federal court in California (and ultimately the US Supreme Court) ruled that Altmann could sue the Republic of Austria in the US courts for the return of the paintings, stolen by the Nazis during the Second World War. When the Austrian government claimed immunity as a sovereign nation, its case was turned down.

The crucial evidence supplied by Schoenberg was Adele Bloch-Bauer’s will, made in 1923, two years before her death. Since the war, Belvedere officials had insisted that Adele had bequeathed the two Klimt
Austria passed one law, and then another, to permit the reopening of the case that the
painting was a work of looted art. Then in 1998, Austria unsealed its archives for public
examination and passed the Art Restitution Act, a law that made the recovery of Nazi-era
spoliated art possible.

Although the case of Portrait of Adele Bloch-Bauer I was not settled until 2006,
throughout her litigation for the painting Maria Altmann repeatedly explained that she
was fighting for the work so that Austria would acknowledge the long-forgotten historical
and cultural significance of families such as hers, who were persecuted and murdered.
Altmann argued that her goal was to establish the truth about how the country had
wilfully obscured the provenance of Portrait of Adele Bloch-Bauer I and its legacy,
despite its passing of the Art Restitution Act.59 Her efforts were critical to publicizing the
notion that there could be justice for those who had lost art under the Nazi regime.

As the twentieth century came to a close, the view that stolen art was the last prisoner of
war gained significant ground.60 In 1998, the World Jewish Congress established the
Commission for Art Recovery in an effort to bring the restitution of Holocaust-looted art
portraits of herself and three landscapes to the gallery. In 1948, Gustav Rinesch, the heirs’ lawyer, had asked
to see the will but was told that it was mislaid. By barring the export of works of national heritage, the
Austrian government was able to blackmail many refugees living abroad into surrendering valuable property.
A claimant could get export permits for works of art only by letting the state retain its choice of many of their
more valuable items. Therefore, before Rinesch could begin to reclaim some minor remnants of Ferdinand
Bloch-Bauer’s art collection, he had to “donate” the Klimts to the Belvedere.

59 Waxman, “A Homecoming.” In 2006, Altmann was awarded the work—which she then sold at a record-
setting amount to cosmetics magnate Ronald S. Lauder.
60 Barbara Kirshenblatt-Gimblett and Jonathan Karp, eds., The Art of Being Jewish in Modern Times
(Philadelphia: University of Pennsylvania Press, 2008), 321. Elan Steinberg, the fierce strategist and former
leader of the World Jewish Congress, first used this phrase in 1998, when Jewish groups sought restitution
for art and property that had been looted by Nazi Germany. He called the missing possessions “the last
prisoners of war.”
to the fore.⁶¹ Also in 1998, forty-four countries signed the Washington Conference Principles on Nazi-Confiscated Art (Washington Principles), an agreement pledging to search their public collections for Nazi-looted art and to collectively identify and resolve claims for their restitution.⁶²

In 1998, the US Congress adopted the Holocaust Victims Redress Act, which authorized $20 million for restitution payments and $5 million for archival research.⁶³ In signing this act into law, President Clinton noted the importance of “long-overdue archival research to set the historical record straight.” The president also stated that his administration was committed to “bring[ing] whatever measure of justice might be possible to Holocaust survivors, their families, and the heirs of those who perished.”⁶⁴

In 1998, Nazi war crime records in America were declassified.⁶⁵ In the same year, Landscape with Smokestacks (c. 1890), a pastel by Edgar Degas (1834-1917), became the first instance of Nazi-looted art to be settled in the United States, after Simon Goodman identified the work as having belonged to his grandparents.⁶⁶ As Thomas Kline, his attorney, pointed out, whereas he had once assumed that stolen art was sold to some mysterious collector, “Now it’s apparent that a lot of the Nazis’ loot moved into prominent museums through the regular, above-ground, art market.”⁶⁷


As the end of the millennium approached, interest in Holocaust restitution claims continued after the location of Nazi gold that had disappeared into European banking institutions during the Second World War came to light. In particular, the Swiss National Bank received $440 million in gold from Nazi sources, of which $316 million is estimated to have been looted. This topic became the subject of several books, as well as a civil suit brought in January 2000 in California against the Vatican Bank, the Franciscan Order, and other defendants.\(^6\)

Meanwhile in the United States in 2000, Congress granted further monies to the Nazi Persecutee Relief Fund.\(^6\) In the same year, Washington’s National Gallery returned its first work of art that it found to be looted. *Still Life with Fruit and Game* (1615–20), a Flemish painting by Frans Snyders (1579–1657), was restituted to the heirs of Marguerite Stern, the widow of a Jewish banker from France whose art collection was seized by the Nazis when they occupied Paris. The provenance details of the work demonstrated its ownership by the notorious Paris-based Nazi collaborator and Berlin-based art dealer, Karl Haberstock. “After researching this as exhaustively as we could, this was simply the right thing to do,” said Earl A. Powell III, director of the National Gallery in Washington. “There was very little to dispute.”\(^7\)

This case, as well as the awareness raised by the signing of the Washington Principles two years earlier, caused other countries and their cultural institutions to recognize that there was a moral imperative to take an initiative in the return of Nazi-looted art to its rightful heirs. In 2001, the Canadian Museums Association and the

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\(^7\) Cox and Wallace, *Archives and the Public Good*, 189–90.

Canadian Jewish Congress sponsored *A Matter of Justice: A Canadian Symposium on Holocaust-era Cultural Property*, which among its eight recommendations called for a countrywide assessment of Canadian cultural collections to find those at risk of holding spoliated property.\(^\text{71}\)

By the first years of the twenty-first century, an increasing number of claims surfaced for Nazi-era stolen art. Some criticized these demands as a “restitution culture.” Roman Kent, chairman of the American Gathering of Jewish Holocaust Survivors and treasurer of the Claims Conference, said the basis for the negotiations was “not founded on moral and humanitarian purposes, but that the matter was strictly business.”\(^\text{72}\) He argued that lawyers representing the claimants of Nazi-looted art were more interested in fees than justice. Still, according to Kent, restitution was worth pursuing because “the negotiations would bring official exposure and acknowledgement of the evil acts perpetrated by the Germans against mankind... [they] would show beyond the shadow of a doubt that not only Hitler and the Nazis were responsible for the atrocities, but the totality of the German nation was also responsible.”\(^\text{73}\)

As the debate about Nazi-looted art restitution waged on and intensified, the heirs of Max Stern inadvertently discovered that they were part of this international conversation. As Max Stern requested, following his death in 1987, the Dominion Gallery remained

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\(^\text{73}\) Ibid., 206.
open. By 1999, however, the business had run its course.\textsuperscript{74} To wind up the gallery’s affairs, Stern’s executors hired Dr. Clarence Epstein, a Montreal-born, British-trained expert in art estate management, to oversee the administration of and liquidation of an extensive portion of the Dominion Gallery’s European paintings on the international art market—approximately 400 works.\textsuperscript{75} Had this inventory been put up for sale immediately after Stern’s death, it would have shifted seamlessly into collections around the world. However, during the decade that the holdings of the Dominion Gallery remained housed on Sherbrooke Street, the spotlight that had been focused on Nazi-looted cultural property caused the international art market to undergo a fundamental transformation.

As part of the process of selling the contents of the Dominion Gallery, Epstein began conversations with international dealers and auction houses to establish a strategy to successfully bring Stern’s collection to market.\textsuperscript{76} During this process, one question repeatedly came back to the estate: What was the connection between the Dominion Gallery and the renowned early twentieth-century Düsseldorf art dealer Julius Stern? \textsuperscript{77}

Neither Epstein nor Stern’s executors could offer a reply.\textsuperscript{78} Then, in 2001, Lucian Simmons, senior vice-president of provenance and restitution at Sotheby’s in New York, presented an answer.\textsuperscript{79} Due to the recent interest in Nazi-era looted art, auction houses were at extreme risk if they sold any objects with a tainted provenance like \textit{Still Life with Fruit and Game} by Frans Snyders, which the National Gallery in Washington restituted after studying its genealogy. Aside from being a public relations disaster, as Sarah

\begin{footnotes}
\item[74] Epstein, interview with the author, June 1, 2014.
\item[75] Ibid.
\item[76] Ibid.
\item[77] Ibid.
\item[78] Ibid.
\item[79] Ibid.
\end{footnotes}
Jackson, director of the Art Loss Register, told the Los Angeles Times, “Once there is a known Holocaust survivor of a known work of art, it becomes virtually unsalable.”

For the major auction houses, Nazi-looted art restitution was not a matter to be taken lightly. Provenance experts like Simmons, who could trace the origins of every work they considered for sale, were added to their teams. These individuals began keeping files about questionable periods of art activity, and stockpiling European art catalogues of works placed on the market between the years 1933 and 1945. Simmons sent Epstein one such catalogue. Titled Die Bestände der Galerie-Stern-Düsseldorf (The Holdings of the Gallery Stern, Düsseldorf), it contained an inventory of more than 200 Old Master and Northern European works of art, sold at the Lempertz auction house in Cologne on November 13, 1937.

Upon receipt of the catalogue, Max Stern’s estate set out to discover the link between the Montreal dealer and the Düsseldorf gallery.

In 2002, the National Gallery of Canada provided the Stern heirs with the answer they were after. As part of the liquidation of the Dominion Gallery assets, Stern’s private papers—more than fifty boxes of records and photos—were bequeathed to the institution’s library in 2000. It charged the archivist Philip Dombowsky with

81 Epstein, interview, June 1, 2014.
83 Epstein, interview, June 1, 2014.
84 Moreault, Gagnon, and Pageot, Max Stern.
cataloguing the material and preparing for the estate a report, which contained a critical fact uncovered while creating a finding aid for the donated material. Not only did a connection exist between the Galerie Stern and the Dominion Gallery, archival material revealed that Julius Stern was Max’s father. In Max Stern’s personal papers, stored for years in his Sherbrooke Street residence, the life that he once lived in Germany came to light.

Stern’s papers revealed that he was born on April 18, 1904, in Mönchengladbach, Germany, (formerly known as München Gladbach) in North Rhine-Westphalia, halfway between Düsseldorf and the Dutch border, to the textile manufacturer and art collector Julius Stern (1867-1934) and Selma Heilbron (1871-1964). He had two older sisters, Hedwig (Hedi) and Gerda. In the late 1890s, after establishing himself as a successful textile merchant, Julius Stern relocated to Düsseldorf. Around 1916, he began selling art and opened a business called the Galerie Julius Stern, first located at 48 Charlottenstrasse, then in a building purchased at Königsallee 23-25, one of Germany’s most elegant high streets, renowned for the canal that runs along its centre. In addition to being an art dealership, in later years the Galerie Stern also organized auctions.

Julius Stern built his business into a highly respected Rhine Valley art dealership that made its mark selling the Düsseldorf School, a group of nineteenth-century Romantic painters who studied and taught under Wilhelm von Schadow (1789-1862). As well, it was a destination for an inventory of paintings by Northern European Old

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85 Philip Dombowsky (archivist, National Gallery of Canada), interview with the author, March 9, 2014.
86 MacKenzie, Auktion 392, 2. As the decision was taken by the executors to dispose of the Dominion Gallery in Montreal and consign to international auctions the five thousand art works in stock, ironically this definitive step, both voluntary and strategic, unexpectedly led to the rediscovery of another definitive art liquidation connected to Max Stern some sixty years earlier—albeit one that had taken place under great duress. Also see Dombowsky, interview, March 9, 2014.
88 The Galerie Julius Stern shortened its name to the Galerie Stern in 1938.
Masters. The aesthetic appeal and financial value of the gallery’s works were often of museum quality but of appeal to bourgeois tastes of early twentieth-century Germany. With a regional clientele, the Galerie Julius Stern was popular, but not avant-garde like the Düsseldorf dealer Alfred Flechtheim, who became Weimar Germany’s pre-eminent representative of more radical contemporary artists including Max Beckmann (1884-1950), Rudolf Belling (1886-1972), George Grosz (1893-1959), and Karl Hofer (1878-1955), as well as Picasso, Braque, and Marc Chagall (1887-1985). Although Max Stern’s personal taste and collection included such artists as Otto Dix (1891-1969), Julius Stern’s gallery did not represent Post-Impressionist artists, nor did they stock Expressionist artworks—which were outside the interests of its clientele.

Julius used the Königsallee building for both his personal and professional residence. Throughout his youth, Stern was groomed to inherit his father’s lucrative art dealership, which served museum officials, scholars, and the city’s business elite. Max Stern prepared for his future by studying art history in Cologne, Berlin, Vienna, and Paris, before earning his doctorate in Bonn in 1928, where he wrote his dissertation on the academic German painter Johann Peter von Langer (1756-1824). Upon graduation, he joined the family business, where he played an active role in the gallery.

In the final five years of Weimar Germany, Max Stern worked alongside his father, absorbing his example and words, which he put to use more than a decade later in

89 Dombowsky, Philip, 6.
93 Dombowsky, Philip, 5.
95 Dombowsky, Philip, 5.
96 Ibid.
Montreal. “Never put on an exhibition of just one period of an artist’s work,” Julius told his son. “Show a cross-section for variety.” The recommendation was critical to the success of Max Stern’s pivotal 1948 Emily Carr show. “An art dealer must know the future and where it is going,” the elder art dealer told his protégé. Arguably, these words guided the younger Stern in the 1950s as he expanded the Dominion Gallery inventory to include sculpture.

Then, in 1932, the life that Max Stern lived in Düsseldorf began to unravel. That January, Hitler gave a two-and-a-half hour speech at the city’s Park Hotel. In one of the most important and effective addresses of his career, Hitler convinced over 600 members of the Industry Club, some of Germany’s wealthiest men, that he was not a radical. Large contributions from heavy-industry magnates began to flow into the Nazi Party.

A year later, in 1933, the National Socialist Party rose to power and Hitler was Chancellor of Germany. A temple in Düsseldorf was defaced with a swastika and the ominous statement “Jew perish.” Hitler declared a national boycott of Jewish businesses on April 1, 1933. The Law for the Restoration of the Professional Civil Service passed on April 7, which excluded most Jews from the legal profession and civil service as the Nazis began to implement their policies, which included the formation of a Volksgemeinschaft (people’s community) based on race. Aryanism became a

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97 MacKenzie, Auktion 392.
98 Seligson, 7.
100 Ibid., Hitler and the Rise of the Nazi Party, 92.
101 Ibid.
requirement necessary to hold a civil service position and Nazi laws deemed the participation of Jews in German culture as racially unacceptable.\textsuperscript{103}

On September 22, 1933, the Reichskulturkammer (Reich Chamber of Culture, or RKK) was established by law to gain control over the entire cultural life of Germany in order to create and promote Aryan art consistent with Nazi ideals.\textsuperscript{104} The Nazi party required professionals to apply for membership to regulatory chambers, where the possession of “German” qualities were mandatory, in what would become known as the Aryanization of business.\textsuperscript{105} As an art dealer, Stern was required to apply for inclusion in the Reichskulturkammer, directed by Joseph Goebbels. Although he applied for the appropriate membership, the Chamber denied his application because he did not “possess the necessary qualities or reliability to promote German culture properly for the German people and nation.”\textsuperscript{106} He was not alone in his persecution. Jewish artists who taught were removed from their posts and prohibited by law from exhibiting their work. “Degenerate” painters were forbidden to buy art supplies; the scent of turpentine or a container of wet brushes could lead to arrest.\textsuperscript{107} In March 1933, Alexander Vömel, a member of the Sturmabteilung (SA), confiscated Flechtheim’s Düsseldorf gallery. He then Aryanized the business after the gallery owner fled Düsseldorf for Paris. Flechtheim wrote Alfred H. Barr, director of the MoMA, “I lost all my money and all my pictures.”\textsuperscript{108}

\textsuperscript{103} MacKenzie, \textit{Auktion 392}, 16.
\textsuperscript{104} The \textit{Reichskulturkammer} was founded in the course of the \textit{Gleichschaltung} process at the instigation of Reich Minister Joseph Goebbels as a professional organization of all German creative artists.
\textsuperscript{106} MacKenzie, \textit{Auktion 392}, 32.
\textsuperscript{108} William D. Cohan, “MoMA’s Problematic Provenances,” \textit{ARTnews}, November 17, 2011. http://www.artnews.com/2011/11/17/momas-problematic-provenances/. By November 1936, Flechtheim’s former gallery assistant, Curt Valentin, had made a deal with the Nazis that would allow him to emigrate to New York and to sell “degenerate art” to help fund the Nazi war effort. During the war, Valentin had permission to sell German art in America from the Nazi authorities. In 1937, he emigrated to America where he opened the Valentin Gallery. After the war, Vömel said he didn’t remember who Flechtheim was.
Broken by these events and others, the health of Julius Stern went into a steep decline and he died in October 1934, leaving his son as the owner of the art dealership, which was renamed “Galerie Stern.”\textsuperscript{109} Although Max inherited his family’s gallery, his wish to continue his father’s legacy would not come to pass. On August 29, 1935, the German authorities informed Stern that he did not satisfy the conditions for membership of the Reich Chamber of Fine Arts, the Reichskammer der bildenden Künste.\textsuperscript{110} Stern was given four weeks for the “Umgruppierung oder Auflösung,” the reorganization or liquidation of his company.\textsuperscript{111}

In a letter from October 1935 to Hans Schneider, the director of the Netherlands Institute for Art History and Iconographical Documentation (later the Netherlands Institute for Art History, RKD), Stern wrote about these events:

\begin{quote}
As you heard from Dr. Gerson, we will have to liquidate our company. At our request, the matter is being looked into again before it is finalised. But sooner or later, I will have to look for a different means of existence.\textsuperscript{112}
\end{quote}

Despite orders to halt his professional activity, from 1935 to 1937 Stern fought in court against the Nazi directive to close his business.\textsuperscript{113} This bought him time to fulfill his goal: to keep the Galerie Stern open “under all circumstances,” as he later wrote, since “one

\textsuperscript{109} MacKenzie, \textit{Auktion 392}. Also see Letter from the HCPO to the RC, with the completed questionnaire and enclosures, February 25, 2009, and email from the Stadtarchiv Landeshauptstadt Düsseldorf to the RC, March 10, 2009.

\textsuperscript{110} Ibid.

\textsuperscript{111} Ibid.


\textsuperscript{113} Willi Korte (chief investigator, Max Stern Art Restitution Project), interview with the author, July 16, 2016.
day Hitler would be defeated,” at which point he would continue the family business.¹¹⁴

Stern then set out to find someone who would assume the title of the Galerie Stern, though in name only, while he remained “in reality the owner.”¹¹⁵ His friend Cornelis J.W. van de Wetering, the director of the Berlin Museum, agreed to help him, but this plan was rejected because van de Wetering was Dutch and the Nazis deemed the Galerie Stern too important to be put in the hands of a foreigner.¹¹⁶ Next Stern approached Dr. Karl Koetschau, the director of Berlin’s Kaiser-Friedrich-Museum, to transfer ownership into his hands. This too proved to be a dead end when it was discovered that one of Koetschau’s great-grandparents was Jewish.¹¹⁷ Meanwhile anti-Semitism further engulfed Düsseldorf. By 1936, its hospitals would no longer see Jewish patients. Jewish officers were expelled from the army and Jewish university students were not allowed to sit for doctoral exams.¹¹⁸ As for Stern, his clients refused to see him publicly. As circumstances for Jews in Germany deteriorated further, Stern sold the two buildings at Königsallee 23–25 that housed his family's art dealership and home.¹¹⁹

Without a solution in sight, in the spring of 1936, Stern’s family made preparations to flee Germany and to establish a new art dealership in England. Stern’s sister Hedwig (Hedi) Selbiger-Stern, who had also worked at Galerie Julius Stern for many years, left Düsseldorf to set up a business in London, taking with her an unknown number of paintings by Old Masters.¹²⁰ In January 1937, West’s Galleries Limited was

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¹¹⁴ Max Stern, unpublished autobiography.
¹¹⁵ Ibid.
¹¹⁶ MacKenzie, Auktion 392.
¹¹⁷ Ibid.
¹¹⁹ Ibid.
¹²⁰ MacKenzie, Auktion 392. 14. “In 1936, his older sister Hedi went to London (via Palestine), taking with her an unknown number of Old Master paintings.” In a note next to this passage, MacKenzie states: “Based on documents in the Max Sterns fonds, it is clear that Hedi had left Germany for Palestine sometime in 1935, possibly taking the paintings with her.”
established at 43 Duke Street, St. James’s in London.\textsuperscript{121} The directors of the art dealership were Hedwig Selbiger-Stern, van de Wetering (who left Düsseldorf in 1936), and John P. Halpin. The new gallery’s name was combination of both the first two letters of the surnames of Wetering and Stern.\textsuperscript{122} The firm specialized primarily in the works of the Holland and Zuid-Nederland Masters from the sixteenth and seventeenth centuries. Several of the works on display in West’s Galleries had previously been on show in Galerie Julius Stern in Düsseldorf.\textsuperscript{123}

While Hedwig Selbiger-Stern began to establish her family in London, Max remained in Germany with his mother.\textsuperscript{124} In Düsseldorf, Stern continued to buy and sell works of art in the Netherlands, Belgium, and throughout Germany, engaging in what Catherine MacKenzie describes as “a frenzy of buying and selling,” while transferring part of his collection—his better Old Master paintings—to London and Amsterdam.\textsuperscript{125}

In summer 1937, \textit{Die Ausstellung Entartete Kunst—The Degenerate Art Exhibition}—was mounted at a Munich gallery to display works that Hitler condemned as sick, poisonous, “filth for filth’s sake.”\textsuperscript{126} One of the most infamous and well-attended art shows in history, it marked a moment when the Nazi confiscation of art in museums


\textsuperscript{122} MacKenzie, \textit{Auktion 392}.

\textsuperscript{123} Ibid.


\textsuperscript{125} Ibid., 16. See also Koldehoff, \textit{Die Bilder sind unter uns}, 19. Later, on January 6, 2010, the Dutch Restitution Committee asked the applicant if the destination of the paintings brought to Amsterdam was known, to which the applicant responded, “Due to the dearth of available Galerie Stern records it is not possible to clearly reconstruct Dr. Stern’s activities during the relevant period or provide a complete and accurate accounting of the individuals in the Netherlands with whom he had dealings.” The applicant reported that they were only able to trace a couple of the paintings that Stern had in his possession and that ended up in the Netherlands. By way of example, the applicant mentions a painting by Lucas van Leyden (not the currently claimed artwork) that Stern had in his possession in March 1934 and that by the summer of 1936 was in the Amsterdam-based art dealership P. de Boer. See HCPO, letter to the RC, with enclosures, January 6, 2013.

designated “degenerate” went into full effect. A total of 15,997 works of fine art would be seized from 101 German museums.\textsuperscript{127} Stern was not prosecuted for his art. As art restitution expert Willi Korte states, “The Gestapo did not have much against him. Stern’s art was desirable. The only thing they had against him was, he was Jewish.”\textsuperscript{128} However, it was only a short while after \textit{Die Ausstellung Entartete Kunst} that Stern received the final, irrevocable order that he was forbidden to deal in cultural property and had to sell the gallery’s entire inventory through a Nazi-approved Reichskammer der bildenden Künste (RKdbK) dealer.\textsuperscript{129} On September 13, 1937, he received notice that as a “Nichtarier” (not-Aryan), his professional accreditation to deal art was officially revoked. The decision was not one that Stern could appeal. He had four weeks to sell or dissolve his gallery.\textsuperscript{130} In the correspondence that followed, Stern was given until December 15, 1937, to wind up his art dealership. The Reich Chamber of Fine Arts sent Stern a letter copied to the Düsseldorf Gestapo, which helped the RKdbK enforce its order.”\textsuperscript{131}

These events explain how the Galerie Stern and its liquidation became part of Hitler’s larger plan to eradicate the Jewish race by annihilating both its culture as well as those, like Max and Julius Stern, who played a critical role in the German cultural landscape.

From 1933 to 1945, the Nazis undertook an immense and systematic plan to remove

\textsuperscript{127} Ibid.
\textsuperscript{128} Willi Korte, interview with the author, July 16, 2017.
\textsuperscript{129} The Reichskammer der bildenden Künste was a Third Reich institution that both promoted visual art in accordance with the government policy and suppressed expressions of culture that violated it. HCPO, letter to the RC, with the completed questionnaire and enclosures, February 25, 2009. See also enclosures 2 and 3 in this letter.
\textsuperscript{130} MacKenzie, \textit{Auktion 392}.
\textsuperscript{131} HCPO, letter to the RC, with the completed questionnaire and enclosures, February 25, 2009. See also enclosures 2 and 3 in this letter.
non-German art, labelled “degenerate art”—a term adopted to describe the art of Jews, avant-garde German artists, and those whose vision echoed beliefs incompatible with Nazi ideology—from Germany and to recoup works of Aryan culture from outside of the country’s borders. The ensuing theft was epic and unprecedented: 600,000 artworks were stolen from public and private collections in Europe and the USSR.132 In the process, the Reich confiscated one-fifth of all Western art then in existence.133 After the war, in Germany alone, American forces recovered 10.7 million art and cultural objects worth an estimated $5 billion.134 By the time the Allies liberated France in 1944, one-third of all private art located within the country’s borders had been looted by German troops.135 The success of the Nazi pillages relied upon an immense and systematic policy to recoup cultural artifacts the German government claimed had been stolen from them and to blockade what were labelled “degenerate.”136 “German” art included the works by such non-Jewish Old Masters as Johannes Vermeer (1632-1675), Brueghel, and Rembrandt (1606-1679), whom Hitler found culturally valuable and exemplary of his view of a superior art and culture.137

Hitler confiscated private art owned by Jews living within the Reich by enacting laws like the April 26, 1938, decree requiring Jews to report personal assets. Jewish-


136 Ibid., 38; see also Lynn Nicholas, The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War (New York: Alfred A. Knopf, 1995), supra note 2, at 22–23, (describing ways the Nazis’ plan to steal Jewish artwork was carried out).

137 Ibid.
owned assets were first nationalized, then privatized.\textsuperscript{138} Across Europe, museums and private galleries closed. Nazi castles filled with looted artwork as Jewish art collectors were coerced into selling their collections for a pittance they would never receive. Through confiscation and forced auctioning of Jewish-owned galleries, members of the Reichskulturkammer ensured that Jewish collections and the works comprised in them were undone, dispersed, reclassified, and lost to history. Countless stolen works were sent to state institutions or given to high-ranking members of the Nazi Party. Conversely, “degenerate” works were meticulously catalogued for future sale abroad.\textsuperscript{139} In both cases, the original provenance information of the art was whitewashed.

This is what happened to countless pieces that Stern lost when in November 1937 he was forced to orchestrate his gallery’s demise. Through the Nazi-approved RKdbK dealer, the Lempertz auction house in Cologne, Stern placed the inventory up for sale. There is no single document in Stern’s archives that outlines the steps he took to terminate his business, but clues exist that can be pieced together showing how the end came to pass and that Stern executed the plan.

“The Nazi system of confiscation and theft was purposely convoluted and drawn out,” writes Lynn Nicholas in \textit{The Rape of Europa}. “The idea was to achieve their objective of eliminating Jews and other aliens from German society while exploiting their


\textsuperscript{139} See Nicholas, \textit{The Rape of Europa}, supranote 2, at 9, 22–24. “Degenerate” works included art with a Jewish subject, artist, or art whose subject matter was critical or offensive to the Reich. Such artists included Kandinsky, Chagall, Matisse, Picasso, and van Gogh.
assets and making the process appear legal.” This statement helps explains how the steps that Stern took could later be interpreted as lawful. He chose Lempertz auction house because his family had a long, trusted relationship with the establishment, going back decades to Julius’s days in Münchengladbach when he used the firm’s services to sell inventory before he moved to Düsseldorf.

The sale at Lempertz also had a sense of normalcy because its catalogue was executed in the same manner and style as other Galerie Stern marketing material. The handsomely designed 5 x 7 inch booklet, with elegant typography and thick white cover stock, indicates that Stern played a key role in the document’s design. No one knows who attended the auction of the Galerie Stern inventory. The Lempertz records were destroyed in a wartime bombing of Cologne. As for Stern, he was silent on the subject. But based on the event’s size, its brochure, newspaper publicity, and its four-day duration, we know it was a significant art-world affair intended for a serious and important audience. However, what made this auction different from others at Lempertz is that because it took place on the orders of the Reich Chamber of Fine Arts, the prices of the inventory in the sale were set far below fair market value. It has been estimated that by today’s prices Stern’s collection, which included a large quantity of Dutch Old Master paintings, could be worth tens of millions of dollars.

Writing about the event years later in a draft of a memoir, Stern offered only one line about how he participated in the event. “When the prices did not reach the limit that I had given, I very often gave a sign to the auctioneer, which we had made out, so that he

140 Nicholas, *The Rape of Europa.*
141 Max Stern, unpublished autobiography.
142 Dombowsky, interview with the author, March 9, 2014.
144 Dombowsky, interview, interview with the author, March 9, 2014.
145 Denise Dowling, “Spoils of War,” *Rhode Island Monthly,* July 2009. Dowling’s article quotes Will Korte saying that “the works were sold at a fraction of their value” and that Stern did not have access to the proceeds from the auction.
146 Ibid.
would know that I was accepting a lower offer.”¹⁴⁷ This is how Stern watched the inventory of his family’s gallery—288 paintings—leave his hands, as he sat in a room packed with his former peers, friends, and associates, now participants in bringing Galerie Stern to an end. Unquestionably, many of the business leaders, political officials, industrialists, and museum directors who had once frequented the Königsallee gallery travelled to Cologne to take advantage of what were guaranteed to be low prices on one of Düsseldorf’s most esteemed collections.

Yet as the gavel came down on the final price set for each work he sold, Stern still had hope. His plan was to join his sister in London, where they would use the proceeds of the Lempertz sale to create a new life. But this too would not come to pass. Stern never saw a cent of what he sold that November in Cologne.¹⁴⁸

Fearing for his life, on December 23, 1937, Stern fled Germany. He arrived in Paris the day before Christmas Eve carrying a single suitcase.¹⁴⁹ From there, he moved to London, England. Some of the paintings from Galerie Stern that went under the hammer at the auction in November 1937 did not sell. These works went back to the Galerie Stern in Düsseldorf and were offered for sale until December 15, 1937, in Max Stern’s final catalogue, No. 9.¹⁵⁰ In addition, before departing for England, Stern left paintings behind at the Lempertz auction house and at Josef Roggendorf, a storage-and-shipping

¹⁴⁷ Max Stern, unpublished autobiography.
¹⁴⁸ Ibid.
¹⁴⁹ Dowling, “Spoils of War.”
company in Cologne, because Stern was not permitted to take his works of art with him when he emigrated.\textsuperscript{151} Most of these paintings were later confiscated and sold by the Gestapo at Hufschmied, a second-rate auctioneer of household goods.\textsuperscript{152}

On January 26, 1938, shortly after Stern’s departure for London, the German authorities ordered his domestic assets and bank accounts, in particular, to be frozen.\textsuperscript{153} Hence, after January 1938, all transactions related to Stern’s German assets required government approval and Stern was no longer able to freely dispose of his property.\textsuperscript{154} Less than a year later, to obtain an exit visa for his mother, he was instructed to hand over his accounts to German authorities.\textsuperscript{155} Several of the works of art in his collection that had been left behind in Germany were also sold to cover the cost of his mother’s departure from Germany.\textsuperscript{156}

In September 1938, Selma Stern was allowed to go to London on one condition.\textsuperscript{157} Later, Stern described how in order to make this happen, “the Nazis at that time claimed my whole bank account as taxes.” As Stern wrote, “It was more or less blackmail.” He was told, “If you do not pay, Mrs. Stern will not get a passport.”\textsuperscript{158} This fact and the details of the liquidation of Galerie Stern would remain secret for six more decades.

\textsuperscript{152} Ibid.; HCPO, letter to the RC, with the completed questionnaire and enclosures, 25 February 2009.
\textsuperscript{153} Ibid. The HCPO refers to “Exhibit 11” in the letter.
\textsuperscript{154} Ibid.
\textsuperscript{155} MacKenzie, \textit{Auktion 392}, 14.
\textsuperscript{156} Ibid., 24n57.
\textsuperscript{157} Stadtarchiv Landeshauptstadt Düsseldorf, email to the RC, March 10, 2009.
\textsuperscript{158} Ibid., enclosure 3. Written in a letter to Stern’s lawyer on June 19, 1953, in which he discussed the terms of payments relating to his mother’s emigration. The amount in the bank account was 25,000 Reichsmarks.
Though Stern kept quiet about the November 1937 Lempertz auction throughout his life, his trustees resolved to break the silence. In 2003, they contacted the London-based Art Loss Register to see if there was a connection to any pieces listed in the 1937 Lempertz auction catalogue *Die Bestände der Galerie-Stern-Düsseldorf*. They matched the whereabouts of almost forty paintings.\(^{159}\) In 2004, the Max Stern Art Restitution Project launched when the executors of his estate agreed to formalize an effort to reclaim his paintings out of respect for Stern and what he had lost.\(^{160}\)

Some argued in the late 1990s that the works Jewish heirs were laying claim to, many valuable pieces of art hanging in German museums, should remain visible for public access and viewing.\(^{161}\) This overshadowed the more important story, which was that most Nazi-era looted art was not multi-million-dollar masterpieces hanging in museums, but works that hung in family homes, valued at modest amounts. In Hamburg alone, from 1941 to 1945, the property of 30,000 Jews was publicly auctioned. At least 100,000 inhabitants of the city and of its North German neighbouring regions may have acquired items of Jewish property in this period.\(^{162}\) As Frank Bajohr writes, a significant component of plundered art involved the passing on of the stolen property to an entire society, to boost its “domestic consumption and public morale with policies of mass murder and state organized terror.”\(^{163}\)

The executors of Stern’s estate realized that if they initiated a restitution project within one of the three universities that Stern named as his beneficiaries, the implications would be powerful. Its *raison d’être* could focus on the study of moral, legal,

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\(^{159}\) Dowling, “Spoils of War.”


\(^{161}\) Dowling, “Spoils of War.”


\(^{163}\) Ibid., p.88, FN 11.
and educational components associated with restitution.\textsuperscript{164} Moreover, it would have considerably more heft than a family seeking restitution. As an institutional setup, the organization would not end when a family member perished or grew tired of expending restitution efforts. As Epstein put it, those approached by the estate could either “work with us or leave their art to someone else who will get stuck with a tainted piece. We will never go away.”\textsuperscript{165}

In 2002, the Max Stern Art Restitution Project was officially launched at Concordia University with Clarence Epstein as its director.\textsuperscript{166} It was set up as a not-for-profit organization and so that all its proceeds would be returned to the initiative to continuously cover the costly nature of finding and reclaiming art. In short, it would be a perpetual plaintiff in pursuit of the works listed for sale by Lempertz in its November 1937 sale.\textsuperscript{167} As Epstein explains, the goal of the project was not only to correct what was a moral injustice, but also to rectify history: “In the 1930s, Stern along with other German art dealers were systematically removed from the European cultural landscape. These individuals need to be put back into the cultural narrative because they played a critical role in early twentieth-century European culture before their names and work were expunged from history.”\textsuperscript{168}

\textsuperscript{164} Epstein, interview, June 2, 2014.
\textsuperscript{165} Ibid.
\textsuperscript{166} Ibid. Epstein would also go on to serves as the university’s senior director of urban and cultural affairs.
\textsuperscript{167} Ibid.
\textsuperscript{168} Ibid.
CHAPTER TWO

Making the Private Public: *The Restitution of Aimée, A Young Egyptian*
Chapter 2
Making the Private Public:
The Restitution of
Aimée, A Young Egyptian

Restituted: October 2006
Émile C.H. Vernet-Lecomte (1821-1900)
Aimée, A Young Egyptian (1869)
Oil on canvas
130 x 88cm
Reproduced with the permission of the Max Stern Estate
On Thursday, October 19, 2006, the first major public initiative of the Max Stern Art Restitution Project took place. *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf* opened at the Concordia Faculty of Fine Arts Gallery (FOFA Gallery). The exhibition, presented in conjunction with the Office of the President at Concordia University, McGill University, and The Hebrew University of Jerusalem, was named for the 1937 sale at the auction house Lempertz, where under Nazi duress Max Stern liquidated his family’s art inventory: an event that the Cologne-based company documented as sale “number 392.”¹

The most notable aspect of *Auktion 392* was not its art—but the lack of works on display. As one visitor described it, the event was a “ghost exhibition,” because it comprised twenty-six black-and-white framed reproductions of works printed at their original scale that Stern had sold in November 1937.² The phantom-like pictures were eerie reminders of what the prominent Düsseldorf dealership once looked like and what it had lost.³

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³ Ibid.
Despite the tragic origins of the exhibition, the atmosphere at Auktion 392 was jubilant. At the centre of the show hung a single work that was not a black-and-white photocopy. Called *Aimée, eine junge Ägypterin* (*Aimée, A Young Egyptian*) (1869), and painted by Émile Charles Hippolyte Vernet-Lecomte (1821–1900), this exception to the exhibition was the first work recovered by the Max Stern Art Restitution Project. The Orientalist painting was a portrait of an opulent, sensuous young female dancer with finger cymbals. *Aimée*, which translates as “Beloved,” was a triumphant contrast to the works that surrounded it because it was real rather than a replica. It was proof that twenty-first-century art restitution was not only about paintings worth millions of dollars.

*Aimée* was a typical subject for Émile Charles Hippolyte Vernet-Lecomte, a Parisian-born member of one of France’s more significant art dynasties, who, starting in 1846, regularly exhibited his art at the Paris Salon. He was awarded a bronze medal when only twenty-five years old. However, whereas his relatives painted scenes from history, Vernet-Lecomte became best known for his portraits of eroticized women, often in imaginary costumes with parts that were amalgamations of North African, Turkish, and Greek female dress. These depictions caused Vernet-Lecomte’s reputation to be eclipsed by his relatives, whose subjects were esteemed by art academies. Still, *Aimée* was not an anomaly at the Galerie Stern.

In nineteenth-century Düsseldorf, Orientalism became a popular subject after Eduard Julius Friedrich Bendemann (1811–1889) painted the epic work *Captive Jews in Babylon* (c. 1831), which was declared the monumental masterpiece of the 1832

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5 Vernet-Lecomte’s father Hippolyte Lecomte (1781-1857) and grandfather Carle Vernet (1758-1836) were both renowned for their military orientalist works, created in the wake of Napoleon’s march into Egypt. Often Émile Charles Hippolyte Vernet-Lecomte is referred to as Émile Charles Hippolyte Lecomte-Vernet.

exhibition of the Berlin Academy. The work catapulted the young Bendemann to fame and paved his way to becoming director of the Düsseldorf Academy from 1859 to 1867.

More completely than any other German artist of his time, Bendemann captured the romantic intentions so characteristic of the early Düsseldorf School. When Max and Julius Stern made Aimée part of their gallery’s inventory it would have been with this art historical precedent in mind. The painting was part of a vast body of literary and artistic work associated with the narrative of the German cultural landscape via one of Düsseldorf’s most revered cultural figures. Moreover, though German Orientalism since the 1750s has often been viewed through Edward Said’s seminal Orientalism, which argues that Oriental studies legitimize colonial power, recent scholarship argues that works like Aimée need to be reconsidered as more than works of colonial oppression and part of a larger discussion of Orientalist motifs included in the works of such writers as Fatih Akin, Franz Kafka, Thomas Mann, and Johann Wolfgang von Goethe.

In addition to this multifaceted art historical legacy of Aimée, by 2006 the painting had taken on a contemporary importance—one that viewers could not see as they took in the works at Auktion 392. Aimée was not simply a work that had been restituted, but part of a carefully conceived plan that took the secret Max Stern had kept for over fifty years and turned it into an international story. It was evidence of the fact that in reclaiming Nazi-looted art, success comes from making the private public.

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6 Kathrin Wittler, “Good to Think,” in Orientalism, Gender, and the Jews: Literary and Artistic Transformations of European National Discourses, ed. Ulrike Brunotte, Anna-Dorothea Ludewig, and Axel Stähler (Berlin: Walter De Gruyter Oldenbourg, 2015), 68. Wittler writes, “The young Eduard Bendemann became a star virtually overnight after Captive Jews in Babylon was exhibited in Berlin.” It was showcased in various German cities, widely circulated in the form of copperplate reproductions and proved so popular that it was reproduced on embroidery designs, tobacco boxes, and colouring pages.

7 Wittler, “Good to Think,” 68.


Moreover, Aimé was part of the international conversation about how, by 2006, the sale of Nazi-restituted art had become a vast enterprise.

One of the key factors that motivated Max Stern’s trustees to break his silence was that during his life he sought the return of works he had lost. After the Second World War ended, and after Stern professionally re-established himself in Montreal, he began a correspondence with Lester Pearson, who was both a client and Canada’s minister of external affairs. Stern asked for Pearson’s assistance in finding art that had been lost during Nazi-era Germany. As well, Stern began using postwar restitution assistance efforts provided by the Canadian Military Mission, the British military government, and the German courts. In 2000, Stern’s heirs found these facts documented in his personal papers, which were deposited at the National Gallery of Canada following the sale of the Dominion Gallery.

In December 1948, Stern submitted a “Claim for Restitution of Property which has been Subject to Transfer in Accordance with Paragraph I of General Order No. 10” with the Zentralamt für Vermögensverwaltung (Britische Zone) in Bad Nenndorf (Central Office for Property Control – British Zone). Military Government Law No. 59 for the British Zone of Occupation supported Stern’s claim for lost real estate, bank accounts, the loss of goodwill for the Galerie Stern, and personal occupational losses.

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10 Philip Dombowsky (archivist, National Gallery of Canada), interview with the author, March 9, 2014. HCPO, letter to the RC, with the completed questionnaire and enclosures, February 25, 2009.
(earnings), as well as twenty works of art that he had left with the Cologne-based shipping agent Josef Roggendorf a decade earlier when he had fled Düsseldorf—items that were confiscated by the Gestapo. Stern listed these works in an attachment to his claims form, along with each work’s title, artist, measurements, and medium. Based on a statement from Roggendorf, Stern had clear evidence that the Gestapo had seized this inventory. Since Stern was forced to pay Reichsfluchtsteuer (Reich Flight Tax) and other prohibitively high taxes in order for him and his family to leave Germany, he also claimed for restitution of excessive taxes. Stern appealed to the German federal government for compensation on the grounds of the Federal Law of Compensation and the Federal Restitution Act.

In addition to seeking financial compensation, Stern set out in the postwar years to find the twenty paintings that he had left with Roggendorf. With the help of Pearson’s political connections, in 1952 Stern began an eight-year campaign in which he sleuthed over 32,000 kilometres. It was a lengthy and complicated undertaking that included placing an illustrated advertisement in the German art magazine Die Weltkunst to ask anyone with information about the works to come forth. Stern’s efforts took him through the cellars of Rome, Cologne, and Vienna, and attracted international press. The Daily Mail in London wrote, “The doctor-detective went to hundreds of sales, advertised rewards in newspapers, poked around half-remembered haunts in a dozen art centres and interviewed scores of dealers.”

For three of the paintings—Landschaft mit Figuren und Wassermühle (Landscape with Figures and Water Mill) (date unavailable) by François Knibbergen

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13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
18 MacKenzie, 8.
(1596-1674); *Winterlandschaft mit Eisläufern, Schlitten, Pferd und Häusern* (*Winter Landscape with Ice Skaters, Sled, Horses and Houses*) (date unavailable) by Willem van Bemmel (1630-1708); and *Selbstbildnis* (*Self-Portrait*) (date unavailable) by E. von Gebhardt (1838-1925)—Stern learned they had become part of Düsseldorf’s municipal art museum, the Städtische Kunsthalle (Municipal Art Museum). However, on November 6, 1950, the Wiedergutmachungsamt beim Landgericht Düsseldorf (Compensation Office at the Regional Court Düsseldorf – Rü 1271/50) rejected Stern’s claim for the three paintings as unfounded, arguing that the museum was never in possession of the works.

Stern’s detective work led him to the city of Leverkusen in North-Rhine Westphalia where he found two works—*Das jüngste Gericht* (*The Last Judgement*) (1500-05) by Hieronymus Bosch (1450-1516) and *Frauenbildnis* (*Woman’s Portrait*) (1930) by Otto Dix—in the personal possession of Kasimir Hagen. Stern initiated a claim for the paintings, which was settled on December 5, 1952, in front of the Wiedergutmachungsamt beim Landgericht Düsseldorf. As Hagen had purchased the works in good faith, Stern recovered the painting by Bosch and waived all restitution claims to the painting by Otto Dix.

In Hamburg, Stern discovered a fifteenth-century depiction of St. Anthony, by an unknown painter, which had once been part of his collection but was now owned by the collector Karl Herbert Geyer. Stern was compensated financially for his loss of this work on April 26, 1954. Geyer kept the painting and Stern waived all claims to the work. In Cologne, Stern found *Glaube und Lohn* (1902), a painting of Faith and Reward by the Dutch Symbolist artist Jan Toorop (1858-1928) in the collection of Dr. Maria Schulte. He

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20 Korte, “Dr. Max Stern and his Gallery.”
21 Ibid.
22 Ibid.
23 Ibid.
also made a claim for this work, which was settled on June 25, 1954, in front of the Wiedergutmachungsamt beim Landgericht Düsseldorf. Schulte kept the painting; Max Stern received DM 450 and waived all further ownership rights to the work.  

In 1958 Stern initiated judicial proceedings in Germany and in 1964 he was awarded with damages Verschleuderungsschaden (wear and tear) by the state of North Rhine-Westphalia limited to profits lost due to the forced sale of his art. This claim for damages was awarded based on the argument that at Lempertz Stern sold his paintings under force and at below-market prices. The 1964 decision held that the auction that brought an end to Galerie Stern was a distressed sale in which Stern was forced to participate for reasons of persecution. However, this claim was for damages against the German Reich and its successor, not for the loss of the paintings. It had nothing to do with recovery of the Galerie Stern art, which was lost during the its forced liquidation. Moreover, the compensation was paltry—the equivalent of approximately $40 for a painting worth hundreds of thousands.

Why did Stern seek the twenty pieces he left with his shipping agent but not challenge the courts on his right to retrieve 200 paintings that the Nazis ordered him to liquidate? Why did he talk to the press about the art that he had left and lost with the Roggendorf shipping agency, but not mention the forced auction at Lempertz? Put simply, there was no legal recourse available to Stern to facilitate the return of the paintings lost at the Lempertz sale. Postwar legislation offered assistance on only proven works confiscated or looted by the Nazis. If Jewish owners sold a painting to protect it from impending seizure by the Nazis or to generate income because the Nazis

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24 Ibid.
25 Reparations Chamber at the Regional Court Düsseldorf, February 24, 1964 – 26 0 (Entsch) 454/62.
26 Ibid.
27 Korte, “Dr. Max Stern and his Gallery.”
29 Dombowsky, interview, March 9, 2014.
had stripped them of their livelihood, it was a forced sale, but not necessarily a theft. To further complicate the issue, since Stern himself put his gallery’s inventory up for auction, he likely believed that the sale, even if it was a forced sale, was a sale.\textsuperscript{30}

With an awareness of these circumstances and others, Stern’s heirs contemplated questions about the broader goals of restitution. In particular they considered the problem that since the vast majority of art lost by Jews in Nazi Germany did not consist of items seized at gunpoint but of art-historically minor pieces sold at forced auctions, restitution, as it was presented in the media in the early twenty-first century, was addressing only a fraction of what had been stolen. Stern’s executors also began to think about how the Stern estate might augment the understanding of art restitution so that its practice would both “honour Stern’s legacy for all the things that he lost and for the fact that he had made attempts at restitution while alive.”\textsuperscript{31} In doing so, they would serve a much broader segment of individuals who were victims of cultural theft. Although in 1998, forty-four nations signed the Washington Principals to make a moral commitment to return Nazi-looted art, “none of these countries had yet instituted standard procedures to deal with restitution and none had a policy for dealing with forced sales.”\textsuperscript{32}

While Stern himself succeeded in recovering but a few pieces that he set out to find, the majority of his property was never returned. Committed to continuing where he left off, the Max Stern Art Restitution Project set out to be a perpetual plaintiff in pursuit of the works listed for sale by Lempertz in its November 1937 sale.\textsuperscript{33} It was agreed that

\textsuperscript{30} Charles Hill (former curator, Canadian Art, National Gallery of Canada, interview with the author, April 10, 2014.

\textsuperscript{31} Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.

\textsuperscript{32} Ibid.

\textsuperscript{33} Ibid.
the moral and financial imperatives underlining the initiative were worth pursuing for as long as necessary.\footnote{MacKenzie, Auktion 392.}

While Stern’s heirs knew that their cause was both morally worthy and of great interest to the public, the question of how they would motivate governments, educational institutions, museums, and the art trade to support their new initiative remained unanswered. Few of the artists that Stern represented were as culturally iconic as Egon Schiele and Gustav Klimt, let alone names recognized by art historians whose work focused on late nineteenth- and early twentieth-century German art. The estate knew that it needed to bring the world’s attention to Max Stern’s case and what he had lost in Düsseldorf. This became the genesis of the exhibition \textit{Auktion 392: Reclaiming the Galerie Stern, Düsseldorf}, the planning of which began in 2002. It was the same year that Lucian Simmons, senior vice-president of provenance and restitution at Sotheby’s New York, sent the 1937 Lemperz catalogue \textit{Die Bestände der Galerie-Stern-Düsseldorf} to the Stern heirs. As they considered how to initiate their restitution campaign, two landmark cases stood out on the cultural landscape of Nazi-looted art reclamation—both of which received extensive media attention.

The first case was the Chicago-based dispute over \textit{Landscape with Smokestacks}, a pastel by Edgar Degas, which in August 1998 became the first instance of Nazi-looted art to be settled in the United States.\footnote{Judith H. Dobrzynski, “Settlement in Dispute Over a Painting Looted by Nazis,” \textit{The New York Times}, August 14, 1998. The heirs included Ms. Gutmann, a seventy-nine-year-old resident of Florence; her brother,} In 1939, Friedrich and Louise Gutmann sent the
painting along with other works from their home in the Netherlands to Paris, before they were arrested and then murdered by the Nazis.\textsuperscript{36} In 1987, Daniel C. Searle, a pharmaceutical billionaire and trustee at the Art Institute of Chicago, bought \textit{Landscape with Smokestacks} for $850,000, unaware of its history.\textsuperscript{37} When the Gutmann heirs discovered the work at the Art Institute of Chicago they asked that Searle return the painting’s title to their grandparents to vindicate them. Unsuccessful in their request, they filed a suit in 1996, which was settled out of court two years later.\textsuperscript{38} The press described the resolution of \textit{Landscape with Smokestacks} as a “split the baby” solution, in which the Art Institute of Chicago acquired the work jointly from the Gutmann heirs and from Searle.\textsuperscript{39} Regardless of how one felt about the case, what could not be argued was that the media held significant sway. As Howard J. Trienens, Searle’s attorney, stated, the dispute over Edgar Degas’s \textit{Landscape with Smokestacks} was so publicized in newspapers and on television that the story behind the headlines was never properly publicly presented.\textsuperscript{40}

The other case that was on the minds of Stern’s executors was that of Maria Altmann. By June 2004, the US Supreme Court upheld her right to sue the Austrian government in the United States for the return of Gustav Klimt’s painting of her aunt, \textit{Portrait of Adele Bloch-Bauer I}, along with four other Klimt paintings seized by the

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\item Bernard Goodman, who died in 1994, and his sons, Nick Goodman and Simon Goodman, both residents of Los Angeles. \textsuperscript{36} Ibid. \textsuperscript{37} Ibid. \textsuperscript{38} Gutmann explained that her case was not so much for the money, much of which would go to satisfy their legal expenses. See Dobrzynski, “Settlement in Dispute.” Also see Ron Grossman, “Battle Over War-loot Degas Comes To Peaceful End,” \textit{Chicago Tribune}, August 14, 1998. The case was settled the same week as the Swiss banks’ offer of $1.2 billion to settle claims by Holocaust victims and their heirs. It was the first of a number of similar lawsuits that were happening across the United States over ownership of artworks alleged to have been illegally taken from European collectors during the war. \textsuperscript{39} Dobrzynski, “Settlement in Dispute.” The Art Institute of Chicago paid the Goodmans half of the fair-market value of the work. Mr. Searle donated his half-interest in the painting, while the names Friedrich and Louise Gutmann, who died in concentration camps, as well as that of Mr. Searle, are on the institute’s wall labels when the work is on display. \textsuperscript{40} Howard J. Trienens, \textit{Landscape with Smokestacks: The Case of the Allegedly Plundered Degas} (Evanston: Northwestern University Press, 2000).
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Nazis from her family during the Second World War. In August 2000, Altmann’s lawyer, Randol Schoenberg, had sued the Austrian government in the United States under a little-used clause in the Foreign Sovereign Immunities Act. While the suit was challenged by Austria, it was upheld in court and on subsequent appeals, all the way to the US Supreme Court decision.

It was widely acknowledged that the Klimt case gained traction in 1998 after the Vienna-born investigative journalist Hubertus Czernin wrote his first article on it. Of equal significance to the case was how Altmann herself became vocal about her claim when she agreed to speak at an art restitution conference in Vienna in March 1999. Her story caught the attention of Ronald S. Lauder, son of the cosmetic company founder Estée Lauder. In February 2000, he further put the spotlight on the issue when he spoke in front of the US House of Representatives, as well as the Commission for Art Recovery of the World Jewish Congress, stating that while the Austrian government had created legislation that “invited Maria Altmann to sue for the return of the Bloch-Bauer Klimts in Vienna courts,” they were reluctant to follow their own laws when it came to assessing the cases of their museum’s most prized piece.

As Anne-Marie O’Connor documented in *The Lady in Gold: The Extraordinary Tale of Gustav Klimt’s Masterpiece, Portrait of Adele Bloch-Bauer*, the writings of Czernin, followed by other investigative journalists, were critical in making the private an issue of public accountability and morality. The press found a “Pandora’s box [that] would be pried open.”

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42 Ibid.
43 Ibid.
In 2002, the Stern estate hired Willi Korte, the Bavarian-born, Washington-based lawyer and war crimes expert, to be its chief investigator. Few players in the world of Nazi-era looted art recovery understood the media as well as him. Korte offered the estate a key pieces of advice: once Max Stern’s story became internationally known, not only would the restitution of his art take on a moral imperative that would be difficult to ignore, but each time it recovered a work of art it would lay the foundation for other restitutions. Korte’s experience with the press and looted art came from firsthand experience with one of the greatest art thefts of the century and one of the most publicized restitution cases of the 1990s.

The story of Second World War-looted art is not only about properties that were stolen by the Nazis. A vast body of literature documents the history of what both the Soviet Army and the United States Army looted from German museums and repositories. In 1988, the West German Government, which had an agency dedicated to recovering looted national cultural property, hired Korte to find the lost church treasures of Quedlinburg, an ancient town in Germany’s Harz Mountains. For a thousand years, the treasures had been stored in the treasure chamber of the city’s cathedral. When American troops occupied the area in 1945, the treasures were moved outside of town, to

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49 Klaus-Dieter Lehmann, Günther Schauerte, and Uta Barbara Ullrich, *Cultural Assets—Transferred and Missing: An Inventory of the Prussian Cultural Heritage Foundation 60 Years after the End of World War II* (Berlin: Stiftung Preussischer Kulturbesitz, 2004); Kenneth D. Alford, *The Spoils of World War II: The American Military’s Role in the Stealing of Europe’s Treasures* (New York: Carol Publishing Group, 1994).
a cave, to protect them from air raids. Then ten artifacts disappeared—Quedlinburg’s most precious objects—including medieval reliquaries said to be from the Virgin’s robe, an elaborately carved ivory comb, and two manuscripts in jewelled covers. By the time Korte was on the case, professional estimates, as reported by The New York Times, valued the collection at a range of nearly $200 million to “priceless.”

Korte traced the treasure to Whitewright, Texas, a town of fewer than 2,000, where for thirty-five years it had been in the possession of Joe T. Meador, until he died in 1980 and left the looted pieces to his siblings. A first lieutenant stationed with the 87th Armored Field Artillery Battalion, which had occupied Quedlinburg, Meador stole the works and sent them home to his parents in the United States by mail. As Lynn Nicholas wrote about the Quedlinburg case, Korte, who was “Wise to the ways of America,” called William H. Honan, a cultural reporter for The New York Times, who documented and publicized the search for the Quedlinburg artifacts as well as their return. After a long search and judicial processes—in large measure aided by the significant documentation by the press—the medieval treasures were returned to Germany in 1992. The recovered art was exhibited in Munich and Berlin in 1993.

51 Ibid.
52 Jo Ann Lewis, “On the Trail of Stolen Treasures.”
54 Kenneth D. Alford, Nazi Plunder: Great Treasure Stories of World War II (Cambridge, Mass: Da Capo Press, 2001). For further discussion of the return of the Quedlinburg artifacts, see: US 5th Circuit Court of Appeals USA vs. Meador. Korte’s efforts resulted in a civil lawsuit brought in US District Court on behalf of the Quedlinburg church on June 18, 1990. In 1990, Ely Maurer, assistant legal adviser for cultural property at the State Department stated that under US law, legitimate ownership cannot be achieved through theft, nor can a person who buys or inherits a stolen object, knowing that it is stolen, become a legitimate owner. On January 4, 1996, Jack Meador, Jane Cook, and their lawyer, John Torigian, were indicted for “conspiring to receive, possess, conceal, store, barter, sell and dispose of stolen goods.”
case became famous. As *The Washington Post* wrote, it was documented in “newspapers around the world.”

The Quedlinburg case taught Korte that if the Stern heirs were going to be successful they needed a strategy that made the private public. He discussed the concept for *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf* because Max Stern lacked what Maria Altmann and the Quedlinburg Church had: famous and priceless works of art. Along with Clarence Epstein, Korte approached Catherine MacKenzie, a professor at Concordia University, to curate an exhibition on the Stern losses. Her immediate response to their overture was one of reluctance. She had misgivings about creating a show based on a gallery with an inventory that held limited art historical interest, and with merit that was largely limited to the time and place in which its works were made. Despite MacKenzie’s initial reservations, she was entreated to curate the show *Auktion 392* because it was an opportunity to bring to the fore an overlooked aspect of restitution history: forced auctions and the need for a greater awareness about them. Her work on the exhibition was particularly significant because with it the Max Stern Restitution Project took advantage of Internet technology to further its mandate and strategy. By creating a website to accompany the show—essentially an online exhibition—the organization made *Auktion 392* accessible to countless viewers internationally who were unable to see the exhibition in person. In doing so, the Max Stern Restitution Project became an example of how exhibitions can be used as a strategy for Nazi-looted

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55 Lewis, “On the Trail of Stolen Treasures.”
56 Catherine MacKenzie (professor, Department of Art History, Concordia University), interview with the author, July 8, 2015.
57 Henry, “The Ghost Exhibition.”
58 For MacKenzie, the intent of the exhibition would be to encourage governments, museums, collectors, and those in the art trade to focus on restitution. See Henry, “The Ghost Exhibition.”
art recovery. The website and its virtual exhibition (still online today) for Auktion 392 has allowed for the exhibition to continue to be viewed a decade after it was created. The website is a cornerstone of the Max Stern Restitution Project because it provides a public face for the organization and an opportunity to update research on the project. In this regard, the virtual exhibition component of Auktion 392 has also become a key communication tool of the organization. For all of these reasons, the exhibition Auktion 392 was a landmark step in the Max Stern Art Restitution Project. What MacKenzie did not anticipate, however, was that her work on the show would lead to the recovery of Aimée.

MacKenzie’s decision marked a critical moment in the history of the Max Stern Art Restitution Project. What MacKenzie did not anticipate, however, was that her work on the exhibition would lead to her discovery of Aimée and the painting’s restitution.

MacKenzie found the focus for the exhibition Auktion 392 in the Lempertz catalogue Die Bestände der Galerie-Stern-Düsseldorf. Of the 242 works in the catalogue, twenty-six were illustrated. For each one of these paintings, MacKenzie, with the assistance of her students, set out to research its history. By Collectively displaying reproductions of the twenty-six catalogue illustrations, MacKenzie aimed to show a cross-section of the types of works Stern sold and to simulate what viewers might have seen on the wall of the Cologne auction house in November 1937. The idea to display black-and-white reproductions of the paintings would signal to the exhibition’s visitors that the paintings

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59 This subject is outlined in Reesa Greenberg’s “Restitution Exhibitions: Issues of Ethnic Identity and Art.” Intermédialités 15 (2010): 105-117.
60 MacKenzie, interview, July 8, 2015.
61 Ibid.
were now missing. A benefit of this setup was that the flat, photographic replicas of the works featured in Auktion 392 facilitated the exhibition’s ability to easily travel. With the concept for Auktion 392 in place, Stern’s heirs secured a touring schedule for the exhibition. It travelled to the Leo Baeck Institute in New York from February 27 to May 31, 2007, then to Ben Uri Gallery of London, then in July 2008 to the Stern Gallery at The Hebrew University’s Mount Scopus campus in Jerusalem.62

Although MacKenzie decided that only illustrated works from the Lempertz catalogue would be featured in Auktion 392, she began to research the history of each painting listed in it—something made possible by Stern’s documentation of each work that he put up for sale. This led her to find Aimée, eine junge Ägypterin. Although the painting was not illustrated in Die Bestände der Galerie-Stern-Düsseldorf, the catalogue provided a critical piece of information: in 1895, the painting had been part of an art sale in The Hague by a collector named A. Preyer.63 This detail allowed MacKenzie to locate a copy of the 1895 catalogue.64 Although the catalogue published by A. Preyer did not include a painting called Aimée, eine junge Ägypterin, it contained a work with the same dimensions as Aimée, accompanied by a text that said that the painting was a portrait of a young woman in “Middle Eastern” dress.65 As well, the A. Preyer catalogue included a photograph of the work. This was critical as there was no photograph of Aimée, eine junge Ägypterin in the Lempertz catalogue; moreover, no picture of the Vernet-Lecomte painting was included in Max Stern’s personal records.66

In concert with MacKenzie’s efforts, Philip Dombowsky, the archivist at the National Gallery of Canada who had catalogued Stern’s personal papers, found another

63 Preyer & Co., Hotel de Brakke Grond, Amsterdam, September 10, 1895, (lot 110).
64 Ibid.
65 Ibid.
critical piece of information as he too undertook the extensive job of trying to find as much provenance information as possible on each Lempertz catalogue entry by searching German museum catalogues and running every painting through auction databases. As part of this research, Dombowsky noted that on November 2, 2001, at the “19th Century European Art” sale held at Sotheby’s New York, a painting called Cimbals [sic] was listed as lot 30, along with a colour illustration. Although the provenance information for the work, which sold for $69,750 (US), did not mention the Galerie Stern, Dombowsky guessed that Cimbals and Aimée, eine junge Ägypterin might be the same work. When he referenced the 1895 Hague catalogue, his assumption proved correct.

Since 1997, Sotheby’s had promoted the fact that it ran a due diligence program targeted at identifying possible provenance issues related to thousands of Second World War-era artworks sold by the auction house every year. It also created a policy to disclose in its catalogues the fullest possible provenance for the years 1933 to 1945. As explained by Lucian Simmons in 2009 at the Holocaust Era Assets Conference, held in Prague, it hired (and continues to maintain) a specialized international team of provenance researchers at its branches throughout the world. In the late 1990s, Sotheby’s began requiring that its sellers warrant that they have good and marketable title to the property that they are consigning and that both title and right to possession will pass to the buyer. The auction house also maintains that it asked sellers to provide all information they may have regarding the ownership history of any work of art for the period 1933 to 1945.

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67 Dombowsky, interview, March 9, 2014.
70 Ibid.
71 Ibid.
Sotheby’s reports that each work sold by the auction house since 1997 has been physically examined for the appearance of markings, labels, and brands that indicated they may have been displaced during the period 1933 to 1945, and that it checked for labels and seals of public collections that are known to have lost property during the war.\textsuperscript{72} As a further measure, Sotheby’s assessment process now involves checking works that come into the auction house against the principal public lists and publications for art looted from museums and individuals, including those from Austria, Belgium, France, Germany, Hungary, Italy, Poland, and Russia, to ensure that the work of art is not an extant loss. Such lists include the German Internet-based database www.lostart.de. Finally, according to Sotheby’s, it checks the names of a work of art’s prior owners against its own proprietary database of “red flag” names—a resource that is constantly updated and one that holds details of victims of spoliation (Jewish, noble, and political) as well as collaborators and Nazis.\textsuperscript{73}

To further demonstrate its commitment to publicize the need for the art market to conduct thorough provenance research, in June 1998, together with Aon Insurance, Sotheby’s took the lead in the financial sponsorship of the Art Loss Register’s initiative to enable all Holocaust claims to be registered on the ALR database free of charge.\textsuperscript{74} The same year, the ALR began to vet Sotheby’s catalogues for recently stolen property and art seized during the Holocaust.\textsuperscript{75} In 1999, Sotheby’s became an active participant and organizer of conferences and seminars on the subject of provenance research and

\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid.
\textsuperscript{75} Simmons, “Provenance and Private Ownership.”
restitution, and it has supported the digitization of Second World War–era documents, auction catalogues, and restitution records.\footnote{Ibid.}

By the early 2000s, Sotheby’s advocated the commercial interest of avoiding the sale of works of art with questionable provenance and acknowledged that the sale of such items was both damaging to its brand and harmful to the company’s shareholders.\footnote{Ibid.} Also at the Holocaust Era Assets Conference, held in Prague in June 2009, Lucian Simmons stated that Sotheby’s was “inherently the wrong place to sell stolen or looted art because of the international exposure given to a work offered at public auction, which gives potential claimants and research bodies a good opportunity to identify works which they believe may have been looted.”\footnote{Ibid.}

Yet, despite all the precautions Sotheby’s took to not sell works of Nazi-looted art, on November 2, 2001, its New York branch sold *Aimée* (lot 30) without mentioning in the catalogue for the painting’s sale that the work had been part of the 1937 forced sale at Lempertz, *Die Bestände der Galerie-Stern-Düsseldorf*.\footnote{Mathias Lempertz, *Die Bestände der Galerie-Stern-Düsseldorf*, (Cologne: Mathias Lempertz, 1937).} Should Sotheby’s have come across this fact while vetting the painting? Unquestionably. It was the New York auction house that gave a copy of *Die Bestände der Galerie-Stern-Düsseldorf* to the Stern estate. In the 1937 Lempertz catalogue, *Aimée* was described as “Das Gemälde ist Aufgeführt und abgebildet im Katalog von A. Preyer, Amsterdam, 1895, Nr. 110,” documenting that the painting was recorded in the illustrated catalogue of works owned by A. Preyer.\footnote{Ibid.} Had Sotheby’s reviewed the 1895 sales catalogues of A. Preyer, it would have discovered not only an entry for *Aimée*, but also a photograph, which proved that in 2001 Sotheby’s put this same looted work of art up for auction.
While Sotheby’s missed this piece of provenance history, Catherine MacKenzie did not. She approached the auction house with her discovery.\(^{81}\) Her findings made it clear that although Sotheby’s extensively vocalized its disdain for the sale of Nazi-looted art, its methods of vetting works were not as sound as it promoted. Pieces fell through the cracks. This is because, as MacKenzie explains, “tracing the story of works made by artists who aren’t famous is much harder than finding paintings that have well-documented exhibition histories.”\(^{82}\) Her research for *Auktion 392* also identified a key challenge that the Stern estate would face in the years to come when documenting provenance research: facts about a work of art—its title, its dimensions, and the name of its maker—change as it moves from one collection to another.\(^{83}\)

At the start of October 2006, less than three weeks before the opening of *Auktion 392*, Clarence Epstein had a conversation with Lucian Simmons about *Aimée*.\(^{84}\) Under terms that would remain confidential, Sotheby’s facilitated the restitution of *Aimée* to Max Stern’s estate.\(^{85}\)

When *Aimée* was unveiled at *Auktion 392*, the restitution was presented in a celebratory manner. At the exhibition’s opening, Simmons announced, “Sotheby’s is

\(^{81}\) MacKenzie, interview, July 8, 2015.
\(^{82}\) Ibid.
\(^{83}\) Ibid. Other problems include: many works traded in the international art market are not unique (such as prints or multiple paintings of the same subject by a single artist and his studio). The change in attribution of a work from one artist or maker to another may further frustrate research efforts. Finally, the names of paintings and works of art titles or descriptions often change over time because titles are often applied by the art trade and by owners rather than by the artist.
\(^{84}\) Clarence Epstein, email to Willi Korte, October 1, 2006. Note: Earlier, Sotheby’s had agreed to be a sponsor of the exhibition. Its endorsement was fitting as the auction house had helped launch the Max Stern Art Restitution Project when Lucian Simmons drew the estate’s attention to *Die Bestände der Galerie-Stern-Düsseldorf*.
\(^{85}\) Lucian Simmons (senior vice president, provenance and restitution, Sotheby’s), interview with author. February 8, 2016.
delighted to have been able to play a part in the recovery of this painting." In a press release for the event, Concordia University and Sotheby’s were applauded for their collaboration on the return of Aimée “upon discovery of its provenance as a Nazi-looted work of art”—the first of the more than 200 paintings listed in the Stern estate’s claim that were sold under duress at the 1937 Lempertz sale.

What the release for the exhibition didn’t mention was that, in concert with the opening of the Concordia show, the international media was captivated by the topic of how Nazi-looted art restitution had become a core business of major auction houses. Nor did it express the complexities of art restitution and the story of Aimée’s provenance history. In 2006, as Auktion 392 was in its final months of preparation, the global art market was in overdrive. In January 2006, a Viennese arbitration panel voted to return Gustav Klimt’s Portrait of Adele Bloch-Bauer I to Maria Altmann, as well as four other paintings by the artist, works that would soon be available for sale. Five months later, Ronald S. Lauder, in a private transaction, purchased the work for his New York-based Neue Galerie. He reputedly paid $135 million, the highest sum ever paid for a painting. To raise funds towards the purchase of Portrait of Adele Bloch-Bauer, Lauder’s Neue Galerie had consigned three works by Egon Schiele to Christie’s November 2006 auction.

As Sotheby’s and Christie’s organized their November 2006 fall sales of Impressionist and modern art, London’s Telegraph reported that £450 million worth of

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86 HCPO, “Painting Lost During Nazi Forced Sale.” The New York State Banking Department’s Holocaust Claims Processing Office (HCPO) announces the return of a painting, entitled Aimée, A Young Egyptian, “to its rightful owner,” the estate of Dr. Max Stern. This painting is the first of more than 200 listed in a claim the estate has filed with the HCPO. The painting is unveiled at a ceremony at Concordia University in Montreal on Thursday, October 19, 2006.

87 Ibid.

88 Alix Kirsta, “Glittering Prize,” The Telegraph, July 10, 2006. Instead of pursuing the lawsuit, however, Mr. Schoenberg persuaded Mrs. Altmann to enter into binding arbitration in Austria. http://www.telegraph.co.uk/culture/art/3653726/Glittering-prize.html.

art would trade (far in excess of the last art market spike in 1989-90). The amount was remarkable since experts had feared that the supply of great modern and Impressionist masterpieces was drying up. In November 2006, just after the opening of Auktion 392, the Telegraph reported, “Nazi loot a gold mine for auction houses.” The press also mentioned that Sotheby’s and Christie’s were so keen to compete for works that they would waive the normal sellers’ commission charge.

Meanwhile detractors, including Ludwig von Pufendorf, chairman of the Brücke Museum board and Berlin’s former state culture secretary, stated that in Germany too many deals were being made out of the Holocaust, and that lawyers and auction houses were actively soliciting heirs of Holocaust victims to make claims and then sell the art, a situation that was “commercializing an important aspect of our history.” He made his comment in response to the restitution of Berliner Strassenszene (Berlin Street Scene) (1913-14) by Ernst Ludwig Kirchner (1880-1938). In the summer of 2006, Berlin’s Brücke Museum returned the work to Anita Halpin, the Communist Party of Britain chair and granddaughter of Alfred and Tekla Hess, who had sold their art collection under duress. The restitution raised the ire of both politicians and art world professionals, who not only claimed that the work did not qualify as looted art but also stated that the restitution process may have become over-commercialized.

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91 Ibid.
92 Ibid. Landmark sales of Nazi-era looted art which had recently come to the fore included: a landscape by Egon Schiele that sold in June 2003 for £12.6 million; two eighteenth-century bronze busts by Franz Xaver Messerschmidt that brought a total of £4.4 million in January 2005; a painting by the Spanish Impressionist Joaquín Sorolla (1863-1923) that sold for £2.15 million in November 2005; and a painting by van Gogh that sold for £5.3 million.
93 Gleadell, “Nazi Loot a Goldmine for Auction Houses.”
94 Ibid. Christie’s answered the criticism in a statement saying, “When invited, Christie’s will bring its restitution expertise to bear by assisting families to locate unrestituted works or to act as brokers in negotiations. We do not pro-actively solicit heirs of Holocaust victims to make claims and then sell the art.”
95 Gunnar Schnabel and Monika Tatzkow, The Story of Street Scene: Restitution of Nazi Looted Art, Case and Controversy (Berlin: Proprietas, 2008); Schnabel and Tatzkow, Nazi Looted Art: A Handbook of Art Restitution Worldwide (Berlin: Proprietas-Verlag, 2007). Martin Roth, director of the Dresden State Art Collections, told Der Spiegel that “collectors and competing museums are deliberately seeking out stolen...
painting sold, Pufendorf stated on the German radio station Deutschlandradio Kultur that Christie’s financed the entire restitution process.\textsuperscript{96} Along with the Kirchner at the Christie’s sale in November 2006, the \textit{Telegraph} reported, “nearly half of its record-breaking £259 million auction was accounted for by the sale of restitution art.”\textsuperscript{97}

Could \textit{Aimée} have been restituted if a carefully calibrated set of circumstances had not been laid out? The answer is most likely not. In 2006, there were still more than 100,000 unclaimed works of art looted by the Nazis between 1933 and 1945, worth in total between £5.7 billion and £17 billion.\textsuperscript{98} For auction houses this was serious business. For the media this was a significant story. By bringing Max Stern’s previously untold story to international attention with \textit{Auktion 392}, his executors established a careful strategy that dovetailed with contemporary moral imperatives, market demands, and a subject that had become a media staple. Moreover, following the restitution of \textit{Aimée}, every subsequent work recovered by the Max Stern Restitution Project would be celebrated at a major public institution in a ceremony that further drew the press to the story of Max Stern.

\textsuperscript{97} Gleadell, “Nazi Loot a Goldmine for Auction Houses.”
\textsuperscript{98} Ibid.
CHAPTER THREE

A Moral Persuasion: *The Restitution of Portrait of Jan van Eversdijck*
Restituted: February 2007
Nicolas de Neufchatel (1527-1590)
Portrait of Jan van Eversdijck (1580)
Oil on wood
60 x 50.5 cm
Reproduced with the permission of the Max Stern Estate
When the Max Stern Art Restitution Project learned that *Portrait of Jan van Eversdijck* (1580) by Nicolas de Neufchatel (1527-1590) was in the Sa Bassa Blanca Museum in Mallorca, Spain, it appeared that the painting’s restitution would be a straightforward matter.¹ To begin with, there was no question that the work had left Stern’s hand as part of the 1937 forced sale at Lempertz, since an image of the work was reproduced as lot number 207 in the auction house’s catalogue for the event, *Die Bestände der Galerie-Stern-Düsseldorf*.²

More importantly though, the Sa Bassa Blanca Museum’s owner was Ben Jakober, a Viennese-born Jewish collector whose family had been forced out of Austria by the Nazis. His personal circumstances had similarities with Stern’s history of loss. Catherine MacKenzie, who had located the painting on the Sa Bassa Blanca Museum’s

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¹ There is an uncertainty about Nicolas de Neufchatel that begins with his name. The artist known as Nicolas de Neufchatel has also been identified as Colyn van Nieucastel, Nicolas de Novocastello, and Lucidel. The earliest reference to Neufchatel can be traced to the Antwerp Guild of St. Luke, where he was registered as Colyn van Nuecasteel (De Gruyter. *Allgemeines Künstlerlexikon - Internationale Künstlerdatenbank*). One of the earliest sources to document Neufchatel, Joachim von Sandrart (1606-1688), who founded the Academy for Painting in Nuremberg in 1674 and who is the author of *Teutsche Academie der Edlen Bau-, Bild- and Mahlerey- Künste (The German Academy of the Noble Arts of Architecture, Sculpture and Painting)*; 2 volumes, 1675 and 1679), an art historical work that is an important source of information about seventeenth-century painters; it adds that Neufchatel’s name was also often corrupted to Nutzschidell.

website, considered this a stroke of luck: surely Jakober would be sympathetic to Stern’s heirs.

Yet the opposite turned out to be the case. The restitution of *Portrait of Jan van Eversdijck* was anything but a sure thing. Not only did Jakober doubt the validity of the Stern estate’s claim, there were no legal precedents in Spain that supported Stern’s case. Moreover, *Portrait of Jan van Eversdijck* was a work of Spanish cultural heritage, which meant that its restitution would most certainly involve negotiations with the country’s government.

The return of *Portrait of Jan van Eversdijck*, the second work to be restituted to Stern’s heirs, illustrates a critical obstacle in the recovery of what Stern lost in 1937: each piece of restituted property constitutes a separate case, subject to different legislation and agreements, which vary from country to country. With *Portrait of Jan van Eversdijck*, matters would be especially challenging because it was deemed by law to be patrimony of the Balearic Islands province of Spain, which prohibited its removal from the country.3 This would mean that in conceptualizing a strategy for restitution, the Stern estate would have to construct a case in which its strongest argument would be moral persuasion.

Like *Aimée, eine junge Ägypterin*, *Portrait of Jan van Eversdijck* was discovered in the process of researching the October 2006 exhibition *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf*. In preparation for the exhibition, its curator Catherine MacKenzie

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began an online search for every painting that was illustrated in the 1937 Lempertz auction: twenty-six works in total. In the Cologne-based auction house’s catalogue, *Portrait of Jan van Eversdijck* was listed as follows:

Nicolas Neufchatel
Geb. 1527 in Bergen, gest 1590 in Nürnberg
Bildnis des Jean von Eversdijck im Jahre 1580 im Alter von 18 Jahren. Inschrift:
Aetatis suae XVIII. MDLXXX. Oel auf Holz. H. 60. B. 50,5 cm.
Abbildung Tafel 31
Des Gemalde befand sich ehemals in Bewitz eine rheinischen Freundes des Kaiser.
Eversdijck war ein wohlhabender Antwerpener Bürger, der spater gemeinsan mit seiner Fran Antoinette Canis der Karmeliterkirchen in Antwerpen ein Glasfenster stiftate.
Die naberen Angaben zu dem Büd verdanken wis Dir. Dr. H. Scheeider, Den Haag.⁴

As part of MacKenzie’s research on the work, she placed misspellings of Neufchatel’s name in Internet search engines. A preliminary study of the artist had revealed that scholars and curators were given to frequent and varied mistaken documentations of the painter’s appellation.⁵ For example, Nicolas was often recorded as Nicholas; Neufchatel as Neuchatel, or Neuchâtel. As well, the artist was occasionally referred to as Lucindel or Lucidel.⁶ In some records, the painter is called Colyn van Nieucastel, and in others he is named Nicolas de Novocastello.⁷ In her research, MacKenzie also entered into databases various spellings of the painting’s title *Jan van Eversdijck*—a name that was equally prone to being inaccurately recorded.

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⁵ Catherine MacKenzie (professor, Department of Art History, Concordia University), interview with the author, July 8, 2014.
⁶ See *Portrait de femme* (Inv. 4507) at the Royal Museums of Fine Arts in Belgium. The painter of this work is acknowledged as “Nicholas Neufchâtel, dit Lucidel.”
By following this method of trial and error, in 2005 MacKenzie found herself on the Sa Bassa Blanca Museum website, where *Portrait of Jan van Eversdijck* was posted as part of the institution’s collection. Although the painting had been listed on the Art Loss Register website since 2002, it was not caught in its database because the work’s title, dimensions, owner, and description had changed over time. This happens when paintings—particularly lesser-known ones like *Portrait of Jan van Eversdijck*—move from one collection to another, and often from one country another, causing details of provenance history to become lost in translation. The Max Stern Art Restitution Project did not find *Portrait of Jan van Eversdijck* via the Art Loss Register because it had been posted there with a title and specifications that were different from those published by the Sa Bassa Blanca Museum.

MacKenzie located *Portrait of Jan van Eversdijck* sitting in an old Mallorcan water reservoir that had been refashioned as a museum exhibition hall equipped to house and preserve paintings. The work was part of a unique assemblage of paintings, which thousands of visitors come to see every year: the renowned Nins Collection, which comprises more than 150 portraits of children painted in countries across Europe from the sixteenth century to the nineteenth century. This group of works has been exhibited internationally and is now renowned as one of the world’s most important holdings of art.

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9 MacKenzie, interview, July 8, 2014. This gets to the essence of the fallibility with the Art Loss Register and the challenge of provenance work. Descriptions of a work vary depending on the language in which they are recorded, and so do dimensions. Sometimes people document the size of a work from one side of its frame to the other; some just note the size of a canvas. Furthermore, with *Portrait of Jan van Eversdijck*, to some, the work looks like a child; to others it doesn’t. This is how *Portrait of Jan van Eversdijck*—and countless other paintings—passed through the Art Loss Register.
11 Ibid.
paintings depicting youth. In 1992, the Spanish government designated the singular collection as Spanish Historical Heritage.

*Portrait of Jan van Eversdijck* depicts an eighteen-year-old wealthy burgher, from head to knee, standing against a brown and grey background. The painting is an example of the Neufchatel’s signature style: half-length depictions, of which examples can be found in public collections, such as the Alte Pinakothek, Munich; the Royal Museums of Fine Arts of Belgium, Brussels; the Hermitage Museum, Saint Petersburg; and in London’s National Gallery. Frequently Neufchatel personalized works like *Portrait of Jan van Eversdijck* by inserting references to the sitter’s occupation, interests, or stature. For example, in *Portrait of Jan van Eversdijck*, the subject wears a dark grey doublet, ruff, and black velvet cap angled to the right, indicating his standing as a wealthy Antwerp citizen. The work, rendered in oil paint on panel in 1580, is not about power but about conveying its sitter’s confidence and strength through his assured gaze, as if to forecast a future illustriousness. Indeed that success came to pass: van Eversdijck, together with his wife, Antoinette Canis, became an important part of Antwerp’s social fabric and donated a stained-glass window to its Carmelite Church.

*Portrait of Jan van Eversdijck*, like so many of the paintings in the Nins Collection, was commissioned as a calling card for royal courts and noble homes, where prospective in-laws viewed the sitters’ images. This was part of a critical ritual in the

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12 Selected works have been exhibited in prominent museums, like the Museu de Arte Brasileira, Fundação Armando Alvares Penteado in São Paulo in 2000; the Museu de Belles Arts de Valéncia in 2000; the Kunst und Ausstellungshalle der Bundesrepublik Deutschland in Bonn in the winter of 2003/04; the Museum of Fine Arts of Coruña in 2004; the Frist Center for the Visual Arts in Nashville in the winter of 2004/05; the State Historical Museum in Moscow in the winter of 2005/06; the Columbus Museum of Art, the Huntsville Museum of Art, Alabama, The Society of the Four Arts, Palm Beach, Florida, and the Nassau County Museum of Art, Roslyn Harbor, New York, in 2008/09; and the Kunsthalle Krems, Austria, in 2011. Texts have been written by prominent Spanish, French, Italian, and Dutch art historians, many of which are included in international publications.

13 Sa Bassa Blanca Museum, Mallorca, Spain, run by the Yannick and Ben Jakober foundation, for more information see: http://www.fundacionjakober.org/la-fundacion/mision.


16 Ben Jakober, (Founder Yannick and Ben Jakober’s Foundation), interview with the author, May 9, 2015.
arranged marriages that were the foundation of a complex European network of political alliances and noble dynasties.17 This was a genre that Neufchatel painted with verve. One of the most successful portraitists of his time, he had a distinctive ability to combine the warm, atmospheric quality of Flemish portraiture with the clarity and physical presence of the German portraitist Christoph Amberger (1505-1562), a student of Hans Holbein the Younger (1497-1543). Neufchatel’s sophisticated portraits appealed to Netherlandish émigrés and the local Nuremberg elite alike. He favoured presenting his wealthy subjects in simple poses, their smooth, clear, and sober forms strongly lit against a monochrome background.18

The story of Portrait of Jan van Eversdijck’s entry into Ben Jakober’s Nins Collection is rooted in loss. Born in Vienna in 1930 to a Hungarian-born Jewish family, Jakober and his mother fled Nazi-occupied Austria in 1938.19 First they went to Romania, then to Switzerland, and on to England, where, like Max Stern, Jakober’s father was arrested as an enemy alien. Like Stern, he was sent to the Isle of Man. After the war, the Jakober family sought restitution for his family’s property that had been spolia ted by the Nazis.20

After Jakober did his military service in England, he moved to Paris, where he worked for Edmond de Rothschild. Because Jakober spoke German, de Rothschild enlisted his support in seeking restitution. Explains Jakober, “I went to Germany and I

20 Ben Jakober, (Founder Yannick and Ben Jakober Foundation), interview with the author, May 9, 2015.
got back a lot of things. So I know [restitution] very well. I know it very well.” Financial success came easily to Jakober—so much so that he decided to retire when he was thirty-eight and move to Spain. He settled in Mallorca, where he switched from being a businessman to being an artist. In 1972, Jakober married artist Yannick Vu. When the couple lost their daughter—killed in an accident at age eighteen—they began collecting paintings of children. Portrait of a Girl with Cherries, by the Mallorcan painter Joan Mestre i Bosch (1826-1893), spotted hanging in a haberdasher’s shop in Palma, was their first purchase. From there, says Jakober. “We started going to auctions. We bought in Sotheby’s, in Christie’s, and one or two things from Lempertz auction house.”

Portrait of Jan van Eversdijck was purchased at the May 18, 1996, sale of Old Master paintings at the Lempertz auction house in Cologne. In the catalogue for the sale, the work, listed as lot 1109, was described as follows:

NEUFCHATEL, NICOLAS, GEN. LUCIDEL
(1527 Bergen – 1590 Nuremberg)
Portrait of Jean van Eversdyck
Knee-length portrait
Oil on wood. H 60.5 x W 50.5 cm.
Eversdyck was a wealthy Antwerp citizen, who donated a stained glass window together with his wife, Antoinetta Canis, to the Carmelite Church in Antwerp.
Panel 50

21 Jakober, interview with author, May 9, 2015. Jakober worked with Hans Deutsch, a lawyer who specialized in getting spoliated property back for Jews. He worked on behalf of de Rothschild. “We had got back quite a lot of things. Restitution back then was challenging. So we went to court. We negotiated and we got a lot of money at the time. We got some paintings back and we got money back.”
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
The work had resonance with Jakober’s life. Neufchatel, like Jakober, was the subject of religious persecution. A Calvinist with militant fervour,27 at age twelve Neufchatel began an apprenticeship in the Antwerp workshop of Pieter Coecke van Aelst (1502-1550), the great sixteenth-century Netherlandish panel painter and tapestry artist.28 The city at the heart of the Counter-Reformation was an inhospitable home for the Calvinist painter, as Philip II of Spain, the self-proclaimed protector of the Counter-Reformation, started harsh persecution campaigns against Low Country Protestants.29 In 1561, Neufchatel left Belgium for Nuremberg, renowned for its artistic patrimony and central location, which made the city home to dozens of Netherlandish masters.30 While Neufchatel had no civil rights in Nuremberg, “he received the city’s protection on the condition that he would not engage in any Calvinist agitation.”31

While some portraits by Neufchatel have sold for amounts from $10,000 to $100,000 (US), the Portrait of Jan van Eversdijck is not such a work.32 Jakober’s purchase cost him DM 9,000 (approximately $5,837 [US]).33 As he described the work, it is “not a bad painting, but it’s not a masterpiece.”34 The last thing Jakober imagined was that Portrait

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33 Ibid.
34 Jakober, interview, May 9, 2015.
of Jan van Eversdijck would become an item of dispute or that on October 10, 2006, while on holiday in New York, he would receive a call from the Sa Bassa Blanca Museum’s director letting him know that there was a problem. Jakober had bought the painting at auction, in good faith. In his words: “This was not an underground thing that I smuggled out of Germany. I bought it at an open auction, where the work’s provenance was given.” Still, in 2005, the New York–based Holocaust Claims Processing Office (HCPO) contacted Jakober to let him know that the Stern estate had made a claim for the painting.35

In order to facilitate international legal claims, the Max Stern Art Restitution Project formalized a partnership with the HCPO in 2002.36 Founded in 1997 by the New York State Department of Financial Services to restitute assets deposited in European banks and monies never paid in connection with insurance policies issued by European insurers, and to reclaim lost or looted art to original owners and their heirs, the HCPO offers its services at no charge to claimants.37 On the estate’s behalf, the HCPO sent Jakober a registered letter to explain, “The Estate has recently discovered that one of Dr Stern’s lost paintings is located at the Museum Foundation.”38 The HCPO asked Jakober to share any additional information he had on the painting’s provenance.39

Since its inception, the HCPO, organized to do pro bono advocacy for claimants who have lost property in Nazi Europe—regardless of their geographic base—has received over 4,500 claims, from forty-eight US states and thirty-seven countries, regarding Holocaust-era bank accounts, insurance policies, and lost or stolen art.40

35 Ibid.
36 Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 24, 2015.
37 Anna Rubin, (Director Holocaust Claims Processing Office), interview with the author, May 20, 2015.
38 Rubin, interview, May 20, 2015.
39 Ibid.
40 Rubin, interview, May 20, 2015. Also see: “Painting Lost During Nazi Forced Sale Returned to Rightful Owners: Nicolas Neufchatel’s ‘Portrait of Jan van Eversdyck’ Restituted to Max Stern Estate,” New York State Department of Financial Services, February 27, 2007,
under the jurisdiction of the New York State Department of Financial Services, the HCPO is one of the world’s leading advocates for victims and their heirs, seeking the return of assets lost during the Third Reich.41

The HCPO advises parties who contact its offices that it is possible to make a claim for a work of Nazi-looted art without a lawyer.42 It is not necessary for a claimant to have proof or documentation when approaching the HCPO. For the HCPO, Nazi-looted art restitution is “a very subjective thing,” explains Anna Rubin, its director. When handling claims for spoliated art, the HCPO aims to get back works’ titles. “We don’t view financial restitution or financial settlement as a lesser form of restitution than getting the object back.”43 For the HCPO, restitution is not black and white. There are many ways and means to resolve an art restitution claim. Ultimately, says Rubin, “If the claimant feels that they have been made whole then my job is done.”44

By 2006, the HCPO had returned approximately $42 million (US) in bank claims, more than $18 million in insurance claims, and had settled thirteen art claims.45 Its staff—composed of lawyers, archivists, historians, political scientists, art historians, and linguists—work collectively to do the historical and technical research needed to demonstrate that their clients’ assertions are fair and just.46 When it comes to art claims, the market value of a work is immaterial and no case is more important than another. This makes the HCPO a particularly unique organization. Whereas it is seldom financially viable for a lawyer who charges for his or her time at a minimum billable rate...

http://www.dfs.ny.gov/about/press/pr070227.htm. As Rubin explains, “You don’t have to be a New Yorker for us to help you. You can come from absolutely anywhere in the world.”
41 “Painting Lost During Nazi Forced Sale Returned to Rightful Owners,” New York State Department of Financial Services. The aggregate assets of the depository institutions supervised by the Banking Department are more than $1.5 trillion.
43 Ibid.
44 Ibid.
45 “Painting Lost During Nazi Forced Sale Returned to Rightful Owners,” New York State Department of Financial Services.
46 Ibid.
of $250 per hour to pursue a work of art worth €100, this is something that the HCPO will do.\textsuperscript{47}

Upon receiving the HCPO’s letter, Jakober recalls, “I was mad.”\textsuperscript{48} He researched what Max and Julius Stern had in their gallery and said, “They were not great paintings. He was a small-time dealer. A small-time dealer in a small town.” As he put it, “A big deal was being made about a painting that wasn’t worth the attention.”\textsuperscript{49} Although his family had lost personal property to the Nazis and although he had worked to recover Nazi-looted art for the Rothschilds, Jakober didn’t feel empathy for the claim from Max Stern’s estate. As he describes it, “The shoe was on the other foot.”\textsuperscript{50}

Moreover, Jakober had reservations about the claim that \textit{Portrait of Jan van Eversdiick} was stolen. When Jakober worked for the Rothschilds, he sought restitution for art that had been physically seized by the Nazis, where the situation, as he put it, “was a clear-cut story.”\textsuperscript{51} Jakober questioned the HCPO’s claim that Stern’s paintings were sold under duress—works that had been taken by their owner to an auction house and sold. “Everything I’ve sold—whether it’s a building or a painting or whatever, or a motorcar—I always did badly on,” said Jakober, “because I should not have sold it, because it would be worth much more today.”\textsuperscript{52}

Jakober felt particularly grieved because he did not suspect that \textit{Portrait of Jan van Eversdiick} or any facts related to it were reason for concern. Upon purchase of the painting he had examined its verso, which revealed no questionable labels or markings. Moreover, in the catalogue entry for the auction where the work was purchased, the provenance of the painting indicated that it had last been sold in 1977 to a “Rhineland

\textsuperscript{47} Rubin, interview, May 20, 2015.
\textsuperscript{48} Jakober, interview, May 9, 2015.
\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid.
\textsuperscript{51} Ibid.
\textsuperscript{52} Ibid.
What was omitted from the 1996 catalogue entry was that Lempertz had also sold the painting in May 1986 at its “Old Masters Paintings” auction, which ran from May 22-24, 1986. Moreover, not one of the three times that Lempertz sold Portrait of Jan van Eversdijck did the provenance information provided for the work mention that it had been included in the November 13, 1937, auction Die Bestände der Galerie-Stern-Düsseldorf.

When Jakober approached Lempertz to ask how they had omitted this information, he was told that the auction house lost all records from before the war. Feeling certain that he had every right to keep Portrait of Jan van Eversdijck, Jakober retained the New York attorney James Janowitz to represent him.

Jakober had every right to be confident. While forty-four countries signed the Washington Conference Principles on Nazi-Confiscated Art in 1998—an ethical guideline intended to codify the return of Nazi-era stolen art—the document was non-binding. No international body was created to enforce the principles or resolve restitution disagreements and, unlike Austria, Britain, France, Germany, and the Netherlands, Spain did not establish an independent national commission to address restitution

53 Ibid.
54 Lempertz auction, “Old Masters Paintings” auction, May 22–24, 1986. Then the catalogue for the painting’s sale described it as follow: NEUFCHATEL, NICOLAS (1527 Bergen – 1590 Nuremburg); Portrait of Jean von Eversdijck; Knee-length portrait turned to the right in dark gray doublet, ruff and black velvet cap. Brownish gray background; Upper left coat-of-arms and inscription: Aetatis Suae XVIII, MDLXXX.; Oil on wood. H 60.5 x W 50.5 cm; Eversdyck was a wealthy Antwerp citizen, who donated a stained glass window together with his wife, Antoinetta Canis, to the Carmelite Church in Antwerp. Panel 6.
55 Jakober, interview, May 9, 2015.
56 Ibid.
claims following the Washington Principles.\textsuperscript{58}

In fact, just as the HCPO contacted Jakober, Spain was establishing itself as a nation with a stance on Nazi-looted art that was anything but threatening, as demonstrated by its handling of the case of Rue Saint-Honoré, Après-Midi, Effet de Pluie (Rue Saint-Honoré in the Afternoon. Effect of Rain) (1897) by Camille Pissarro (1830-1903), hanging in the Thyssen-Bornemisza Museum in Madrid.\textsuperscript{59} The Parisian street scene had been identified by the heirs of Julius and Lilly Cassirer as a work of Nazi-looted art, although their efforts to restitute the painting had little success.

Julius Cassirer was a German businessman who purchased the painting from Paul Durand-Ruel, Pissarro’s Paris dealer, at the turn of the twentieth century.\textsuperscript{60} He willed the painting to his son, Friedrich, and his daughter-in-law, also named Lilly Cassirer, who fled Nazi Germany in 1939, but not before they were obliged to sell the painting for $360 (US) in exchange for a visa to leave the country.\textsuperscript{61} The Gestapo then auctioned the painting in 1943.\textsuperscript{62}

After the war, Julius’s wife, Lilly Cassirer, took legal action to reclaim the work and in 1958 the West German government acknowledged that she was its legal owner. However, the location of the painting was unknown. As compensation, Cassirer received DM 120,000 and an agreement recognizing that she retained full rights to Rue Saint-Honoré, Après-Midi, Effet de Pluie. She died in 1962 before she found the work;


\textsuperscript{61} Ibid.

\textsuperscript{62} Ibid. In 2008 Claude Cassirer said that his grandmother was told that if she did not give up the painting she would be sent to one of the worst concentration camps near Munich. See Charlene Adams, “American Judge Rules Jewish Family Has NO Claim to $20m Painting that the Nazis Took from their Great-Grandmother, Telling Her to ‘Give It Up or Go to a Concentration Camp,” \textit{Mail Online}, June 11, 2015, http://www.dailymail.co.uk/news/article-3120663/US-judge-rules-against-family-Nazi-seized-masterpiece.html#ixzz4D5GC3snQ.
however, she designated that her grandson Claude was its sole heir. In 2000, Claude Cassirer discovered *Rue Saint-Honoré in the Afternoon. Effect of Rain* at the Thyssen-Bornemisza Museum. In 1951, the painting had come on the market in the United States, where it moved in and out of the collections of various dealers for the next two decades. Then, in 1976, Baron Hans Heinrich Thyssen-Bornemisza, one of the world’s most prolific art collectors and a scion of Germany’s Thyssen steel empire, bought the painting.

In 2001, the Commission for Art Recovery approached the Thyssen-Bornemisza Collection and unsuccessfully petitioned the Ministry of Culture of Spain to recover *Rue Saint-Honoré in the Afternoon. Effect of Rain*. After being rebuffed in his efforts to have the painting returned, in 2005 Claude filed suit against the Thyssen-Bornemisza Collection Foundation. The defendants then filed motions for dismissal, despite the fact that Spain was a party to four separate declarations committed to the return of looted art and expeditious settlements with victims’ families.

The litigation continued for almost a decade, during which Cassirer died and Ronald S. Lauder, World Jewish Congress president and chairman of the Commission for Art Recovery, called on Spain to fulfill its moral obligation. He pointed out that Spain had requested and received enormous assistance from the United States in recovering from a collector in Texas artwork stolen from a Spanish church, but had

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63 Daly, “American Says.”
64 Adams, “American Judge.”
66 “Ronald Lauder Urges Spanish Museum to Return Looted Painting to Jewish Owners,” World Jewish Congress, http://www.worldjewishcongress.org/en/news/ronald-lauder-urges-spanish-museum-to-return-looted-painting-to-jewish-owners. The four agreements, signed by dozens of nations, committing them to return looted art or settle with victims’ families expeditiously, included the Terezin Declaration, in which Spain (along with dozens of nations) agreed to uphold that Holocaust claims should be resolved on the merits, and not on the basis of technical legal defenses, such as the passage of time.
67 Ibid. After almost a decade of litigation, in June 2015, a California court ruled against the Cassirer family. The previous year Lauder argued that Spain and the Thyssen-Bornemisza Museum ignoring the International Principles in this litigation not only seriously undermines the efforts of families to recover stolen art, but also discourages others from asserting their rights to property stolen by the Nazis.
rebuffed all requests from the United States for the return of the Pissarro claimed by the Cassirer family.\textsuperscript{68}

Not only was there no precedent in Spain for the return of \textit{Portrait of Jan van Eversdijck}, in the United States museums had begun to take measures to protect themselves from having to return Nazi-era looted art. In January 2006, just months before Jakober was contacted by the HCPO, two American museums, the Toledo Museum of Art and the Detroit Institute of Arts, filed orders to quiet title against Claude George Ullin and the heirs of Martha Nathan.\textsuperscript{69}

After the Nazis came to power, Martha Nathan’s family was persecuted by the Nazis who Aryanized its business, J. Dreyfus & Co., one of the largest private banks in Germany. In November 1938, just after \textit{Kristallnacht} (Night of Broken Glass), Nathan was forced to flee Germany after first selling all of her assets and then paying exit taxes. These assets included four paintings, which she left in Switzerland with a consortium of three art dealers, Justin Thannhauser, Georges Wildenstein, and Alex Ball, who sold the works in New York for a profit of approximately 300 percent.\textsuperscript{70} One of the paintings, \textit{Street Scene in Tahiti} (1881) by Paul Gauguin (1848-1903), was bought by the Toledo Museum of Art; another, \textit{The Diggers} (1889) by Vincent van Gogh (1853-1890), was sold

\textsuperscript{68} Ibid. See also “Claude Cassirer v. Kingdom of Spain,” Commission for Art Recovery. The defendants moved to dismiss the action based on the California statute of limitations. Cassirer alleged that their claim was timely pursuant to Cal. Code. Civ. Proc. §338(c), which extended the statute of limitations for all stolen art claims to six years from the time of “actual” discovery of the location of the stolen artwork and the information about the theft needed by the victim to make the claim. However, the Court concluded that Cal. Code. Civ. Proc. §338(c) was an unconstitutional infringement on the federal government’s exclusive power to conduct foreign affairs as described in Von Saher and the motion to dismiss was granted.

\textsuperscript{69} Toledo Museum of Art v. Ullin, 477 F. Supp. 2d, at 803.

\textsuperscript{70} Ibid.
to a private collector who later donated it to the Detroit Institute of Arts.\textsuperscript{71} After seeing the paintings posted on the websites of both the Toledo Museum of Art and the Detroit Institute of Arts, Nathan’s heirs contacted the museums to discuss their claims to the paintings.

Both the museums refused to waive their statute of limitations and laches defenses, as provided for under the American Alliance of Museums and the Association of Art Museum Directors guidelines, and instead filed suits to quiet title against the Martha Nathan heirs in the respective local federal district courts where the museums were located.\textsuperscript{72} This legal tactic, instituted to assert a party’s title to a piece of property, was utilized by the museums to prevent claims to what it considered to be its assets.\textsuperscript{73} Ohio federal judge Jack Zouhary wrote in a 2006 decision, which rejected the claims of Nathan’s heirs: “The painting was not confiscated or looted by the Nazis; the sale was not at the direction of, nor did the proceeds benefit, the Nazi regime. . . . The painting was acquired from her by acquaintances who, like her, were Jews who suffered during Nazi-era Germany.” In both the Toledo and Detroit cases, the courts ruled that

\textsuperscript{71} Ibid.
\textsuperscript{73} The order to quiet title remains a popular yet controversial legal tactic. It was used in September 2013 when the J. Paul Getty Museum (The Getty), represented by Munger, Tolles & Olson LLP, sued in federal court in California for \textit{The Stigmatization of Saint Francis and The Crowning of Saints Cecilia and Valerian} (c. 1330s). The Getty asserts that Geraud Marie de Sabran-Ponteves’ claims are barred by California’s statute of limitations. According to The Getty, Sabran-Ponteves was aware of the artwork’s location as early as 1987; he even contacted The Getty staff in 1999 about the artwork for the purpose of valuing his family’s estate. To sue in California within the statute of limitations, Sabran-Ponteves needed to bring suit within three to six years of locating the artwork, which he failed to do.

The Getty took a public relations gamble in attempting to utilize the legal system to bar Sabran-Ponteves from bringing suit against it. Thus the anticipated resolution of this lawsuit by Judge Gary Feess may shed light on whether these legal tactics will continue to be favoured or disfavoured by museums.


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the claims for recovery of property were barred by the operative statute of limitations—four years in Ohio and three years in Michigan.  

Following the Martha Nathan decisions, US museums continue to bring declaratory judgment actions against Nazi-era victims who have come forward with their morally based claims under the Washington Principles, although no other country that is a signatory of the Washington Principles has permitted its museums to initiate such suits. As lawyer Raymond J. Dowd states, this places litigants in the “anomalous position of having to prove that the Holocaust really happened, and that a family member’s ‘sale’ of assets to the local Nazi-approved art dealer was not a voluntary, arms-length transaction.”

These cases show that the presence or absence of Nazi persecution with respect to the “seller” had become an important factual distinction and determinative of whether a

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74 The federal court in Toledo found that the statute of limitations expired in 2002, just four years after the Washington Conference in 1998, although the artworks were not posted on the museum’s website until a later date. The federal court in Detroit found that the statute of limitations expired four years after the 1938 sale of the artworks. With respect to Street Scene in Tahiti, which the museum had continuously possessed since purchasing it in 1939, the district court observed: In short, this sale occurred outside of Germany by and between private individuals who were familiar with each other. The Painting was not confiscated or looted by the Nazis; the sale was not at the direction of, nor did the proceeds benefit, the Nazi Regime. With respect to the The Diggers by van Gogh the Michigan court based its opinion on an “intentional abandonment of a known right”: the three-year statute of limitations barred Ullin’s restitution claim.

A much different result occurred in two very similar cases handled by art commissions in Europe. Only one year before the Martha Nathan suits were filed, the Advisory Commission in Germany issued a recommendation to return artworks to the heirs of Julius Freund. Similar to the Martha Nathan case, Julius Freund was forced to leave Germany with his family in 1939. After he died in 1941, his wife sold part of their collection at the Fischer auction house in Luzern because she was in serious financial difficulties due to her persecution by the Nazis. In the Freund case, the advisory commission recommended that the museum return the paintings. January 12, 2005, press release available at http://www.lootedart.com/MFEU4E88305_print;Y.

After the Martha Nathan cases were decided, another very similar case was decided by the Restitutions Committee in the Netherlands, involving the Flersheim family, which was forced to flee to the Netherlands from Frankfurt am Main, Germany, in 1937. While in exile because the Flersheims lacked funds to support themselves after being stripped of their property in Germany, they sold an artwork at under fair market value to an art dealer, who promptly sold it to a museum for a large profit. In the Flersheim case, the museum also opposed the return of the artwork, however the Dutch Restitutions Committee determined that the artworks were sold due to Nazi persecution and had to be returned. See Restitutions Committee Binding advice RC 3.48, available at http://www.restitutiecommissie.nl/en/pressreleases/press_release_rc_348.html. Although treated entirely differently in the United States, there is essentially no material difference between the facts of the Martha Nathan case and the facts of the Julius Freund and Flersheim cases. All three cases dealt with Nazi victims who were persecuted in Germany, were then forced to flee to another country where they sold artworks under value in order to have funds to sustain their existence.

sale was voluntary or coerced. Anglo-American law makes it clear that a thief cannot
pass good title, no matter how many subsequent owners buy in good faith.\(^\text{76}\) However, in
2006, what remained ambiguous was the answer to this question: What if a Jewish
owner—like Max Stern—sold his art to protect it from impending seizure by the Nazis or
to generate income for his family because the Nazis had stripped him of his livelihood? Is
this a “forced sale” amounting to theft?

With no precedents or legal grounds to stand on, the Max Stern Art Restitution Project
used moral persuasion to argue for the restitution of Portrait of Jan van Eversdijck.\(^\text{77}\) It
built a case using the following seven documents:

i) The catalogue record of the painting’s sale at the Lempertz auction house in
Cologne on November 13, 1937 (lot 207, plate 31).

ii) The catalogue record of the painting’s sale at the Lempertz auction house in
Cologne on 1977 (lot 133).

iii) The catalogue record of the painting’s sale at the Lempertz auction house in
Cologne on May 18, 1996 (lot 1109).

resolution of issues related to stolen art.

v) The International Council of Museums (ICOM)’s “Recommendations

vi) The RKdbK’s notice to Max Stern that as a Jew he did not fit membership
requirements to be an art dealer and that he was legally prohibited from
buying and selling art, August 29, 1935.

vii) Notice to Stern that he was forbidden to deal in cultural property and that he
had to sell the gallery’s entire inventory immediately through a Nazi-
approved RKdbK dealer, September 13, 1937.

\(^{76}\) Michael E. Jones, Art Law: A Concise Guide for Artists, Curators, and Art Educators (Lanham, MD:
Rowman & Littlefield, 2016), 83.

\(^{77}\) Rubin, interview, May 20, 2015.
Using these records, the HCPO established that before Max Stern’s father, Julius, died in 1934, the Nazi’s began regulating and controlling Germany’s cultural realm. Moreover, they argued that when the Reichskulturkammer (Reich Chamber of Culture, or RKK) was created in September 1933 to ensure that all forms of artistic creation reflected the Nazi viewpoint, a subsidiary organization was also created: the Reichskammer der bildenden Künste (Reich Chamber of Fine Arts, or RKdbK) that instituted mandatory membership in Reich sub-chambers for persons, such as art dealers, engaged in cultural fields, which barred Stern from the profession and denied him a livelihood.

The HCPO put forth a case that Stern lost his business as a result of Nazi persecution (as outlined in the August 29, 1935, document) when he received notice that as a Jew he did not fit into the RKdbK’s membership requirements and was legally prohibited from continuing to buy and sell art. The HCPO’s documentation proved that the Nazis made it illegal for Stern to deal in cultural property and that he had to sell the gallery’s entire inventory immediately through a Nazi-approved RKdbK dealer, an order that was enforced by the local Gestapo office.

The HCPO wrote Jakober that Stern consigned and liquidated more than 200 pictures with the Lempertz auction house not as a voluntary sale but as a “forced Jewish auction in which his paintings were sold for a fraction of their fair market value.” The approach of the HCPO was not litigious but an appeal for just action. Its letter to Jakober concluded that Stern lost possession of Portrait of Jan van Eversdijck—along with hundreds of other paintings—solely because he was persecuted for being Jewish. “In light of the historical circumstances and the applicable international principles

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78 Sherri North Cohen, Esq., on behalf of the Holocaust Claims Processing Office, New York State Banking Department, letter to President Marie-Claire Yannick Jakober, Fundación Yannick y Ben Jakober, Mallorca, October 10, 2006.
governing Holocaust-era looted art,” wrote Sherri North Cohen of the HCPO, the estate hoped for “an open, amicable, and candid discussion about the return of the Painting.”79

In late October 2006, North Cohen spoke with James Janowitz and informed him of how Sotheby’s had set an example with its willingness to restitute Aimée by Vernet-Lecomte.80 In a follow-up letter, she explained that like Aimée, Neufchatel’s Portrait of Jan van Eversdijck was also part of the 1937 Lempertz sale. In other words, there was now a moral precedent for the return of the Neufchatel painting. Given the work’s “clear provenance history,” wrote North Cohen, “I sincerely hope that the Jakober Foundation will promptly recognize the Neufchatel picture as Nazi-looted art … to achieve a just and fair solution.”81 By the start of 2007, Jakober agreed to return the title of Portrait of Jan van Eversdijck to the Stern heirs. Although he believes he would have legally been able to hold on to the ownership of the painting if his case had reached the courts, his change in heart took place just as a major case about what constituted stolen art grabbed international headlines.

Just months earlier, in fall 2006, the Brücke Museum in Berlin made the highly controversial return of Ernst Ludwig Kirchner’s Berliner Strassenzene to Anita Halpin, the heir of Alfred and Tekla Hess. The painting had hung in the German museum since its purchase in 1980 for about $1.2 million (US).82 The most notable—and contentious—factor surrounding the Berliner Strassenzene’s return was evidence that in the 1930s the painting was not lost as a result of Gestapo looting. Rather the Hess family “willingly” sold the work because of the need to flee Germany in the face of anti-Semitic law.

Barbara Kisseler, Berlin’s state secretary of culture, told the Frankfurt Allgemeine

79 Ibid.
80 Sherri North Cohen, Esq., letter to James Janowitz, October 26, 2006.
Zeitung (FAZ) that the work was returned because of how the Hess family had been treated during the Nazi dictatorship. “Moral considerations” played a significant role in the decision, she said.\textsuperscript{83} As Erik Nemeth writes, “The protracted but successful case indicated a redefinition of the basis for claims of restitution.”\textsuperscript{84}

On February 27, 2007, a press release announced the restitution of Portrait of Jan van Eversdijck to the Stern estate.\textsuperscript{85} What the release left out were the details of the negotiation, hammered out on Feb 8, 2007, when an agreement in principle was in place to transfer the title of Portrait of Jan van Eversdijck to the estate.

Although the terms of almost all restitution agreements are private, they “more than often acknowledge that the current holder is a good-faith purchaser,” says Anna Rubin.\textsuperscript{86} “When an institution or person says, ‘let’s make a settlement,’ we acknowledge this.” Generally, the organization then obtains two appraisals, takes the average value, and comes up with a number. The work’s value is either split 50/50, or 60/40, or 80/20.\textsuperscript{87} “It depends on the circumstances,” says Rubin. “We always try to get the highest amount for the heirs. But more often than not, because the current holder is a good-faith purchaser, the standard has become a 50/50 split.”\textsuperscript{88}

With the case of Portrait of Jan van Eversdijck, in many respects the solution was one of compromise, which involved two key conditions: The Jakober Foundation


\textsuperscript{85} “Painting Lost During Nazi Forced Sale Returned to Rightful Owners,” New York State Department of Financial Services.

\textsuperscript{86} Rubin, interview, May 20, 2015.

\textsuperscript{87} Ibid.

\textsuperscript{88} Ibid.
would transfer the painting’s title to the Stern estate and make a donation to the Max Stern Art Restitution Project. In turn, the Stern estate agreed *Portrait of Jan van Eversdijck* would remain on perpetual loan, at the Sa Bassa Blanca Museum, since Spanish law prevented it from leaving the country.

It was a Solomonic judgment that satisfied both parties. As Jakober commented, “We never want to sell the painting anyway.” For the Stern heirs, they attained their goal of returning the ownership of *Portrait of Jan van Eversdijck* to Max Stern’s estate. This was significant because the work is now exhibited with a label that states, “This painting is the property of the Stern Foundation.” More importantly, the label publicly identifies the fact that although Jakober bought the painting in good faith, the work is an example of a restitution case that was resolved through moral reasoning and cooperation.

While the changing of a museum label may seem like a minor detail, in fact, the case of *Portrait of Jan van Eversdijck* became an important part in the documentation of the history of European Nazi-looted art recovery. On February 26, 2007, The New York State Banking Department’s Holocaust Claims Processing Office announced the Stern estate and the HCPO’s restitution of the painting. The news made international headlines and within a year the notoriety and significance of *Portrait of Jan van Eversdijck* changed dramatically. The painting went from being a little-known work in a Spanish museum to an important part of the 2008 landmark exhibition *Looting and Restitution: Jewish-Owned Cultural Artifacts from 1933 to the Present* that opened at the Jewish Museum Berlin and travelled to the Jewish Museum Frankfurt. In part, the

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90 Ibid.
91 Ibid, interview, May 9, 2015.
92 Ibid.
93 “Painting Lost During Nazi Forced Sale Returned to Rightful Owners,” New York State Department of Financial Services.
show was organized in response to the debate ignited by Berlin’s Brücke Museum’s return of Kirchner’s *Berliner Strassenzene*, which launched international debates about what defined stolen art and what responsibilities museums had in its return.\textsuperscript{94}

Up until 2007, if a museum or other owner of Holocaust-looted art could show a reasonably credible chain of provenance, its title was presumed to be good and unassailable. Forced sales cases like those of *Berlin Street Scene* and *Portrait of Jan van Eversdijck* now cast doubt on this long-held presumption. Today, *Portrait of Jan van Eversdijck* is appreciated not only as a painting; it is an object of historical, political, and moral dimensions.


In 2008, the Berlin Museum was not the only institution to investigate the newly accessible topic. An exhibition called *Looking for Owners: Custody, Research and Restitution of Art stolen in France during World War II* opened in Jerusalem and is currently on display at the Museum of Jewish Art and History in Paris. Also see “Kirchner Painting At Heart of Restitution Dispute,” *Deutsche Welle*, 2006. http://www.dw.com/en/kirchner-painting-at-heart-of-restitution-dispute/a-2140203.
CHAPTER FOUR

Filling the Information Vacuum: The Restitutions of The Masters of the Goldsmiths Guild in Amsterdam, An Extensive Landscape, and Flight into Egypt
Chapter 4
Filling the Information Vacuum:
The Restitutions of The Masters of the Goldsmiths Guild,
An Extensive Landscape, and Flight into Egypt

Restituted: December 2007
François van Knibbergen (1597-1665)
*An Extensive Landscape with Travellers on a Track Near a Walled Town with a Castle and Church, a Village Beyond* (date unavailable)
Oil on canvas
73.6 x 96.5 cm. Reproduced with the permission of the Max Stern Estate.

Restituted: December 2008
Circle of Jan Wellens de Cock (c. 1480-1527)
*Flight into Egypt* (date unavailable)
Oil on panel
33.7 x 48 cm. Reproduced with the permission of the Max Stern Estate.

Restituted: October 2011
Juriaen Pool II (1665-1745)
*The Masters of the Goldsmiths Guild in Amsterdam* (1701)
Oil on canvas
152.5 x 198.5 cm. Reproduced with the permission of the Max Stern Estate.
On August 26, 2004, Sotheby’s contacted Max Stern’s estate about *The Masters of the Goldsmiths Guild in Amsterdam* (1701) by Juriaen Pool II (1665-1745).\(^1\) A client had brought the large-scale group portrait into the auction house’s Amsterdam office to consign it for sale. Following Sotheby’s typical investigation routines upon receipt of a work, it discovered evidence that the painting had belonged to the Galerie Stern in the 1930s. This did not mean that restitution of *The Masters of the Goldsmiths Guild in Amsterdam* was a forgone conclusion. If the Stern estate wanted to claim the painting, it would have to provide evidence to the consignor that it had left the Galerie Stern under Nazi-era duress.\(^2\) This started the six-year-long process of what would become the

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\(^1\) Juriaen Pool the Younger is also known as Juriaen Pool II. Lucian Simmons, email to Clarence Epstein, August 26, 2004. In the letter, the painting was titled *A Group Portrait of Headmen of the Amsterdam Gold and Silversmith’s Guild: Derick Schelte; Johannes de Vicq; Matheus Weyland; Hendrick de Hondt and Gerrit Lange*.

\(^2\) Lucian Simmons, email to Clarence Epstein, August 26, 2004. In reply, on August 31, 2004, Robert Vineberg writes Lucian Simmons: “I am writing in my capacity as an Executor of the Estate of the late Max Stern. We understand that Sotheby’s is in the possession of one work by Juriaen Pool. The Estate has reasonable cause to believe that the Work was owned by the late Max Stern and/or the Julius Stern Gallery of Düsseldorf and was acquired by third parties in 1936 or 1937 by, or as a direct result of persecution by the Nazi government. Accordingly, the Estate has reasonable cause to believe that the Work is rightfully the property of the Estate and intends to institute a claim for restitution with respect thereto.”
estate’s ninth restitution. It raised a new predicament for the Max Stern Art Restitution Project: How do you reclaim a painting that you did not even know was yours?

In mid-2006, this question was raised again as an exchange took place between the Stern estate and the world-renowned auction house Christie’s. Monica Dugot, international director of restitution at Christie’s, contacted Stern’s trustees about Flight into Egypt (date unavailable), an oil-on-panel work created by an early sixteenth-century Antwerp mannerist painter in the circle of Jan Wellens de Cock (1480-1527). Then, in August 2007, Dugot was in touch again, this time about An Extensive Landscape with Travellers on a Track Near a Walled Town with a Castle and Church, a Village Beyond (date unavailable), attributed to Jan van Goyen (1596-1656). Both paintings had been consigned to Christie’s, and both works—like The Masters of the Goldsmiths Guild in Amsterdam—were pieces that the Stern estate was not looking for, although Christie’s identified that they had been with the Stern Galerie in Düsseldorf.

The Stern estate would go on to recover all three of the above-mentioned paintings: An Extensive Landscape in December 2007; Flight into Egypt in December 2008; and The Masters of the Goldsmiths Guild in Amsterdam in October 2011. What makes the restitution of these works so unique, however, is that the estate had not been actively searching for any of them, since not one of the three works had been part of the 1937 Lempertz sale.

Learning about these three paintings had two critical implications for the Max Stern Art Restitution Project: The first is that to claim these works, the estate expanded its definition of Nazi-era theft. It was no longer only pursuing paintings that Max Stern was forced to sell at auction. Equally as significant, these cases took the estate into the

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3 Monica Dugot, letter to Clarence Epstein, June 2, 2006.
complicated realm of proving the provenance of the paintings. For each of the three works, which the auction houses had identified as property that likely belonged to Max Stern, the burden of proving ownership fell squarely into the estate’s hands.

In a paper delivered in 2009 at the Holocaust Era Assets Conference in Prague, Monica Dugot stated that one doesn’t need to be a lawyer to make a Nazi-looted art claim. Rather, to be successful, one needs to understand art history.\(^5\) Dugot, who prior to working at Christie’s served as deputy director of the Holocaust Claims Processing Office in New York, argued that this is because the restitution of a work of art is next to impossible without being able to present its genealogical history. A challenge faced by those trying to recover art, however, is that provenance studies is a subject not offered by most art history departments. As Christian Fuhrmeister, professor at Munich’s Central Institute for Art History, states, “Research on provenances is somehow at odds with the academic world, as it does not fit neatly into the traditional disciplines, and often requires a mix of methods, approaches, and competences.”\(^6\)

Determining a work of art’s provenance entails far more than listing its owners from the time it left its creators hands. The Provenance Guide of the International Foundation for Art Research documents that it involves considering the changing artistic tastes and collecting priorities with respect to a work, an awareness of records of social

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\(^6\) Christian Fuhrmeister, letter to Sara Angel, January 6, 2017.
and political alliances, and an understanding the economic and market conditions that influence the sale or transfer of a work of art.\textsuperscript{7} In other words, to understand a work’s provenance is as much about comprehending its historical context as its journeys from one collection to another. A work of art’s provenance history is pristine when documents exist that verify its owners and the dates of their ownership, as well as how it moved from one collection to another, either via inheritance or through a sale.\textsuperscript{8}

As Willi Korte explains, the likeliness of finding inclusive and unbroken records of a work of art’s documentation is “extremely rare with Nazi-era looted art—and most works contain holes in their provenance.”\textsuperscript{9} This is a significant complication that paintings pose to art historical scholarship and valuation. Similarly, changes in attribution also constitute a major impediment to finding works of art that were lost or looted. Whereas familiarity with a painting’s attribution history is vital to locating Nazi-era looted art, a single undocumented shift in attribution can often inadvertently throw off the course of an investigation and cause it to go on for years.\textsuperscript{10}

For these reasons, the recovery of the three paintings—\textit{Flight into Egypt}, \textit{An Extensive Landscape}, and \textit{The Masters of the Goldsmiths Guild in Amsterdam}—proved enormously challenging. In each of the cases, Sotheby’s and Christie’s let the Stern estate know that just because they believed the works belonged to Max Stern, restitution was not an inevitable outcome. “I’d be grateful if you could confirm for me as soon as you can that this is one of the works that you are looking to recover,” Dugot wrote Epstein about \textit{Flight into Egypt}.\textsuperscript{11} Although Christie’s and Sotheby’s had done due diligence by alerting

\hfill \textsuperscript{8} Ibid. Note: Although the term is sometimes used synonymously with “provenience,” the latter is an archaeological term referring to an artifact’s excavation site or findspot.
\hfill \textsuperscript{9} Willi Korte (chief investigator, Max Stern Art Restitution Project), interview with the author, July 17, 2016.
\hfill \textsuperscript{10} Ibid.
\hfill \textsuperscript{11} Monica Dugot, letter to Clarence Epstein, June 2, 2006.
the Max Stern Art Restitution Project that questionable works had come into their offices, the ball was in the estate’s court to document the provenance of each painting, to show that a lineage could be traced directly to the Galerie Stern, and to demonstrate that the works were lost because of Nazi persecution.

This meant, as Monica Dugot explained in her 2009 paper delivered at the Holocaust Era Assets Conference in Prague, that the estate had to identify the genealogy of each painting, researching the works’ histories against the backgrounds of idiosyncratic art markets in which the objects might have fallen out of sight, been sold and resold, or even been altered beyond recognition.12 In the study of a work’s provenance, the availability of archives and access to information is of paramount importance.13 Like Korte, Dugot argues that when researching and resolving Holocaust art restitution, matters of provenance are even more confused because there is an “information vacuum.”14 This is a void caused by an absence of documentation, confused by the passage of time, changes in ownership, and, finally, “legal and moral arguments—often pulling in different directions, and hostility over where the onus lies to ‘prove’ or ‘disprove’ a claim.”15 Provenance research is not a science or even a set methodology. Yet the successful demonstration of the ownership of a work is the foundation for all art restitution efforts, as the following three cases illustrate.

Based on the various challenges of determining a work of art’s provenance, in the

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12 Dugot, “Restitution and the Art Market.”
13 Ibid.
14 Ibid.
15 Ibid.
autumn of 2004 it appeared unlikely that the Stern estate would be able to restitute *The Masters of the Goldsmiths Guild in Amsterdam*. Joanne Monks, the associate general counsel for Sotheby’s, wrote: “The current owners of the work by Juriaen Pool are concerned that the Estate has not produced any evidence in support of their claim. They have therefore formally requested that Sotheby’s return the painting to them.” If this did not happen, the consignors threatened to initiate legal proceedings to obtain the release of the painting.”

*The Masters of the Goldsmiths Guild in Amsterdam* was consigned to Sotheby’s from the Spielbank Bad Neuenahr, the first licensed casino to re-open in Germany after the war, located off the Rhine River in Bad Neuenahr, in Germany’s Ahr Valley. The painting, which depicts the governors of the Amsterdam Gold-and-Silversmiths’ Guild, would have fit in well at the gaming club. In the work, gold vessels and silverware sit on the table, laid out for inspection by the powerful guild that both approved precious metals and protected its citizens from fraud. As money changed hands in the casino club, its customers would have felt at home before the physically grand and imposing image of financially comfortable men, presented as masters of their community’s financial destiny. In the clubby, masculine atmosphere of the casino, the decorative painting of a special room and important citizens would have echoed the ambiance of the Spielbank Bad Neuenahr.

According to its confidentiality terms with its clients, Sotheby’s could not let the Stern estate know that the Spielbank Bad Neuenahr was the work’s consignor. Nor could

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17 Lisette Aguilar, Associate General Counsel Sotheby’s, email to Willi Korte, May 23, 2008. The daughter of the managing director of the casino at that time recalls that he bought the painting. Also, an employee who has worked there recalls the painting was at the casino when she joined in 1955.
it tell them that sometime between 1948 and 1955 the casino acquired the painting.\textsuperscript{18}

This meant that the Stern estate had no facts to start its hunt for provenance information about the work. As a first step, the Stern estate decided to begin research on the creator of \textit{The Masters of the Goldsmiths Guild in Amsterdam}, Juriaen Pool II, an Amsterdam-born portrait painter, draftsman, and conservator, who would become most famous for his marriage to Rachel Ruysch (1664-1750), a still-life flower painter and the most esteemed woman artist of the Dutch Golden Age.\textsuperscript{19} Pool, who was orphaned as a young boy, met Ruysch, the daughter of an anatomy and botany professor, through his adopted father, the still-life painter Abraham Mignon (1640-1679).\textsuperscript{20} In 1701, the couple became members of The Hague painters’ guild, and in 1708 they relocated to Düsseldorf, where they became court painters to the Elector Palatinate Johann William until the prince’s death in 1716.\textsuperscript{21}

As the Stern estate commenced its investigations, Sotheby’s agreed to contact the consignors of \textit{The Masters of the Goldsmiths Guild in Amsterdam} to explain that in light of the estate’s stated intention to bring a claim for full restitution of the painting, the auction house, by law, was not at liberty to release it. Sotheby’s explained that though the consignors could commence legal proceedings to obtain the release of \textit{The Masters of the Goldsmiths Guild in Amsterdam}, such proceedings would be in no one’s interest, as Sotheby’s would be left with no alternative other than to join the estate to the litigation.\textsuperscript{22}

As Lucian Simmons explained at the 2009 Holocaust Era Assets Conference, when Sotheby’s discovers persuasive evidence that a work of art may have been involuntarily displaced between 1933 and 1945, it will inform the consignor and then work with them

\textsuperscript{18} Ibid.
\textsuperscript{19} George S. Keyes, \textit{Masters of Dutch Painting} (Detroit: Detroit Institute of Arts, 2004), 212–14.
\textsuperscript{21} Ibid.
\textsuperscript{22} Joanne Monks, letter to Robert Vineberg, October 15, 2004.
to build a strategy for resolving the potential legal, commercial, and ethical issues that could arise.\textsuperscript{23} This process was created to reduce the risk that a work in an impending auction might be subject to an adverse title claim. Potential provenance disputes are often resolved by the sale of the artwork concerned and the division of proceeds in a manner that fairly reflects the positions of the current owner and the heirs of the prior owners.\textsuperscript{24}

In November 2004, Willi Korte wrote to Sotheby’s legal department to ask:

Where is the painting currently located? Did Sotheby’s have knowledge of where and how long it was located at its consignor? When did Sotheby’s receive the work from the client? Did Sotheby’s have the painting on consignment for the purpose of a sale or did the client give it to the auction house for another reason?\textsuperscript{25} Without answers to these questions and others, there was little hope that the Stern estate would realize the restitution of \textit{The Masters of the Goldsmiths Guild in Amsterdam}. In light of this, Sotheby’s agreed to pass on Korte’s questions to its consignor. Through the HCPO, in December of 2005, the estate contacted Dr. Otto L. Adelberger, chairman of the board of Aktiengesellschaft Bad Neuenahr, the corporation that owned the work, to request information about the painting.\textsuperscript{26} On behalf of the HCPO, Sherri North Cohen wrote:


\textsuperscript{24} Ibid. In an eighteen-month period leading up to June 2009, Sotheby’s sold works of art pursuant to such settlements by artists including Cézanne, Gris, Degas, Sisley, von Brandt, Pissarro and van der Werff.

\textsuperscript{25} Willi Korte, letter to Joanne Monks, Associate General Counsel, Thursday, November 4, 2004.

\textsuperscript{26} Sherri North Cohen, letter to Dr. Otto Adelberger, December 15, 2005. In her letter, Sherri North Cohen details: “I have attempted to summarize Dr. Stern’s persecution during the Third Reich, the fate of his Düsseldorf gallery and what we know about Max Stern’s ownership and loss of possession of Juriae Pool’s the \textit{Masters of the Goldsmiths Guild in Amsterdam}…. Under the Nazi regime, Dr. Stern bravely continued to try to make a living and held an art exhibition from June 22 until Aug 31, 1935.” North Cohen continues that \textit{Masters of the Goldsmiths Guild in Amsterdam} was included in this exhibition as lot 58. The exhibition catalogue describes the picture as “Bildnis der Vorsteher der Amsterdamer Goldschmiede-Gilde aus dern Jahre 1701. Bezeichnet: J. Pool 1701. Leinwand H. 152, 5, B. 198.5 (exhibit 2).
It would be helpful to understand when and where you purchased [the painting], prior owners and their dates and places of ownership, methods of transfer, whether there are any marks or labels on the reverse, frame or mount and where it has been exhibited. In addition, the Estate would be grateful for photographs of the back of the Pool painting and to know where it is currently located.  

The process was slow. In the two years that had passed since Sotheby’s first questioned the provenance of *The Masters of the Goldsmiths Guild in Amsterdam*, the HCPO, working in conjunction with the Stern estate, had determined the painting was part of an art exhibition from June 22 until August 31, 1935, where it was exhibited as lot 58. The exhibition catalogue described the picture as “Bildnis der Vorsteher der Amsterdamer Goldschmiede-Gilde aus dern Jahre 1701. Bezeichnet: J. Pool 1701. Leinwand H. 152, 5, B. 198.5 (exhibit 2).” 

While this information provided clear documentation that the work was in Stern’s possession in 1935, it was not adequate evidence for the estate to claim ownership of the work. 

In March 2007, Sherri North Cohen contacted Adelberger again, imploring his organization to help provide answers. “The estate and I are eager to engage in a dialogue with you about the provenance history of the Pool picture,” she wrote. The same month, North Cohen contacted Lucian Simmons, stating, “I would greatly appreciate any assistance you might be able to provide to encourage the Aktiengesellschaft Bad  

North Cohen further explains: “Dr. Stern lost almost all of his German business records either due to the seizure of his belongings by the Gestapo or due to the destruction of his London home during a German air raid. Without such documents, we cannot determine whether or not the Pool painting was sold in conjunction with the 1935 summer exhibition. Thus we greatly depend on other sources of information to verify the history of Stern gallery pictures…. Given the facts and circumstances the Estate believes that Dr Stern’s loss of possession of the Pool painting occurred during the Holocaust era as a direct result of persecution by the National Socialist regime.”  

27 Ibid.  
28 Anna Rubin, email to Clarence Epstein, October 20, 2011; Sherri North Cohen, letter to Dr. Otto Adelberger, December 15, 2005.  
29 Anna Rubin, email to Clarence Epstein, October 20, 2011.  
Neuenahr to respond to my inquiries, and discuss the provenance history with the Stern Estate.”

As the Stern estate looked for evidence to support a restitution claim for *The Masters of the Goldsmiths Guild in Amsterdam*, in early 2006, a painting by an artist in the circle of Jan Wellens de Cock, *Flight into Egypt*, was consigned to Christie’s, London. *Flight into Egypt* depicts a scene in the Gospel of Matthew 2:13-23, in which Joseph follows the instructions of an angel: “Herod will seek the young child to destroy him.” Adhering to this warning, Joseph takes Mary and their infant son Jesus to seek refuge in Egypt. In a Northern European landscape, Joseph leads a donkey upon which Maria and Jesus are seated. They travel past a property where a woman closes the gate to indicate that they are refused lodging. In the distance is a ramshackle and dilapidated farmhouse, in front of which cockerels fight. On the left-hand side of the work a statue has burst into flames—a reference to how heathen objects of worship spontaneously collapsed as the infant Jesus passed by. In the painting’s background is Herod’s pursuing army.

As with *The Masters of the Goldsmiths Guild in Amsterdam*, the auction house flagged the painting during its pre-sale vetting—a routine process, like that at Sotheby’s, which involved its specialists looking for certain warning signs including owners listed in Christie’s “sensitive names” database consisting of thousands of art dealers, paintings, and victims who were forced to sell their property or had it seized. Aware of the 1937

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32 Monica Dugot, email to Clarence Epstein, June 2, 2006.  
34 Zuffi, *Gospel Figures in Art*.  
35 Renzetti, “Taken by Nazis.”
forced sale at Lempertz, when Christie’s discovered in catalogue records that *Flight into Egypt* had been owned by “J. Stern, Dusseldorf, 1936,” the information was a red flag.

The dimensions of *Flight into Egypt* and important notations about its provenance had been submitted to Christie’s by the consignor.36 This information included: that the painting had belonged to the Loeb Collection until it was sold by the Galerie Caldenhof in Berlin on June 8, 1929, as lot 16; that it was with J. Stern, Düsseldorf, in 1936; and that it was lot 32 at Christie’s London auction of pictures in the collection of Konrad Adenauer, held on June 26, 1970.37 Although these facts offered far more information on *Flight into Egypt* to the estate than it had on *The Masters of the Goldsmiths Guild in Amsterdam*, they still did not constitute enough evidence for Christie’s to restitute the painting. Corroboration was needed to demonstrate that this painting had been a work lost due to Nazi law. As Dugot explained, “At this early stage, we knew only that it had been in Dr. Stern’s hands but not when.”38

As is their standard practice, Christie’s asked the Stern estate—as it does with all other claimants pursuing Nazi-looted art restitution—to adhere to the following guidelines in presenting a consignor with a case: namely that a claim should be supported with as much information and documentation as possible, and be presented in sufficient time before the scheduled auction.39 As Dugot stated at the Holocaust Era Assets Conference in Prague, in order for Christie’s to take the serious step of withdrawing a work from sale, “there must be a threshold amount of information.”40 Like Sotheby’s, Christie’s will inform its consignor of a claim in the interest of facilitating a solution when it believes it has a work of Nazi-looted art. It will request that its consignor

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36 Dimensions given were 13 ¼ x 10 in. (35 x 48.3 cm).
37 Monica Dugot, letter to Clarence Epstein, June 2, 2006.
38 Monica Dugot, “Restitution and the Art Market.”
39 Ibid.
40 Ibid.
provides as much provenance information and documentation as is available, and it will encourage the consignor to engage in a negotiation process with an eye to achieving a just and fair solution based on historical facts. It cannot, however, take action where there is not a serious and substantiated cause for concern.

For this reason, in December 2006, Dugot wrote the Holocaust Claims Processing Office:

If this picture is indeed one that you are claiming, I’d be grateful if you could put together a letter to support the claim. I will then attach a cover note and forward to the consignor.

Determining the provenance information for *Flight into Egypt* posed a considerable challenge, starting with an uncertainty about who created the work. The verso of the painting offered no clues about the painting’s origins. The composition’s linear quality, its spacious landscape background, and its detailed rendition of foliage showed the influence of the Antwerp Mannerists including Jan de Beer (1475-1528), Cornelis Engebrechtsz (1462-1527), and Cornelis Massys (1510-1562), while the depiction of the holy family showed an indebtedness to Albrecht Dürer’s (1471-1528) famous treatment of the subject.

While the German art historian and curator Max Jakob Friedländer, a specialist in early Dutch painting and the Northern Renaissance, proposed *Flight into Egypt* as a work by Jan Wellens de Cock—comparing the treatment of drapery, which is almost

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41 Ibid.
42 Ibid.
43 Monica Dugot, letter to Clarence Epstein, June 2, 2006.
44 Monica Dugot, letter to Anna Rubin, July 26, 2006.
sculptural in appearance, to other works by the painter—this cannot be proven.\(^4^6\) Little is known about the enigmatic de Cock, beyond the fact that he was born in Leiden and registered in the Antwerp Guild of St. Luke in 1503.\(^4^7\)

Since a study of de Cock would yield few results in determining Max Stern’s ownership of *Flight into Egypt*, the estate began to explore the sales history that the painting’s consignor had provided to Christie’s. Through these records, it discovered that the last time the work appeared on the market was at Sotheby’s “Old Master Paintings” auction, held in London on December 9, 1992, where the work sold for £20,900.\(^4^8\) The catalogue for the 1992 sale described *Flight into Egypt* as being a work by Jan de Cock of the “South Netherlandish School, 2\(^{nd}\) Quarter of the 16\(^{th}\) Century” and the commentary on its provenance indicated that it belonged to “The Property of a Lady of Title” and was part of the 1970 sale “Highly Important Pictures from the Collection of Konrad Adenauer” held at Christie’s on June 26, 1970.\(^4^9\)

The painting’s connection to Konrad Adenauer opened a door. The 1970 sale of the first postwar chancellor of West Germany, who from 1949 to 1963 led his country out of the devastations of the Second World War, had been highly publicized. Newspapers commented that the sale was expected to raise an unprecedented £1 million.\(^5^0\)


\(^{4^9}\) *Highly Important Pictures from the Collection of Konrad Adenauer* (London: Christie, Manson & Woods, 1970), 77. The catalogue entry was as follows: “Jan De Cock, Lot 32, The Flight Into Egypt: The Holy Family in the centre, with a burning idol to left and a woman refusing them lodging to right; in the background Herod’s soldiers in pursuit—on panel; 12 ¾ x 19 inches.”

Chapter 4

Filling the Information Vacuum:

*The Restitutions of The Masters of the Goldsmiths Guild,*

*An Extensive Landscape,* and

*Flight into Egypt*

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*Egypt* was listed as lot 32, and a reserve price of GNS 5,500 had been set. And yet, of the thirty-six works put up for the 1970 sale, only four pieces found buyers. *Flight into Egypt* was not one of them. The 1970 Adenauer auction was an unequivocal failure due to allegations, well publicized by the media in the days leading up to the event, that a number of the paintings in the collection were fakes. Reports had also surfaced that Adenauer did not pay for any of the paintings in the Christie’s sale. Many were gifts from industrialists and other key figures in German life. The collection was curated and cared for by Herr Heinz Kisters, an art dealer and lifelong friend of Dr. Adenauer. But, as *The Guardian* asked on June 25, 1970: “The question still unanswered is how Konrad Adenauer came by items of such value. He was in eclipse under the Nazis and was never in big business.”

When *Flight into Egypt* failed to sell at auction it was purchased by Charles Allsopp, a low-ranking Christie’s employee who by 1985 would become chairman of Christie’s, where he earned international renown for his 1987 sale of van Gogh’s *Sunflowers* for £25 million. Despite these facts and the questionable state of affairs...
surrounding the Adenauer sale, none of them proved that Max Stern lost *Flight into Egypt* due to nefarious circumstances.

By December 2006, the estate was running out of time in claiming *Flight into Egypt*. Six months had passed since Christie’s first contacted Stern’s executors about the painting. Now, explained the auction house, the consignor, elderly and in ill health, wanted to resolve the matter.\(^5^8\) Christie's asked that a date be established by which point Max Stern’s estate would prove its clear title, adding, “We will be unable to retain the painting indefinitely as the matter now stands.”\(^5^9\)

In late 2006, the case of *Flight into Egypt* changed suddenly. The Stern estate invited Philip Dombowsky to review Galerie Stern’s business accounts, which had been donated to the National Gallery of Canada Library and Archives, to look for any reference to *Flight into Egypt*.\(^6^0\) In these records, Dombowsky discovered the painting was lot number 16 in the Galerie Caldenhof sale at Rudolph Lepke, Berlin, on June 8, 1929, where Stern had purchased the work. In looking through Stern’s inventory records, Dombowsky also found documentation that confirmed *Flight into Egypt* was in the Galerie Stern’s possession in 1936.\(^6^1\)

More importantly, however, Dombowsky located an illustrated catalogue for the Galerie Caldenhof sale at The Frick Collection in New York.\(^6^2\) In it, he discovered a critical fact: in the Galerie Caldenhof sale, *Flight into Egypt* was attributed not to Jans

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\(^{5^8}\) Monica Dugot, letter to Sherri North Cohen, December 5, 2006.
\(^{5^9}\) Ibid.
\(^{6^0}\) Sherri North Cohen, letter to Monica Dugot, December 13, 2006.
\(^{6^1}\) Philip Dombowsky, letter to Willi Korte, August 23, 2007.
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_An Extensive Landscape, and Flight into Egypt_

Wellens de Cock but to “Niederländischer Meister um 1520–1530.” Using this attribution, Dombowsky discovered that _Flight into Egypt_ was on the website of The Hague–based Netherlands Institute for Art History, best known as the RKD, an abbreviation of its Dutch name: the Rijksbureau voor Kunsthistorische Documentatie. This revelation would not only transform the outcome of _Flight into Egypt_, but also that of _The Masters of the Goldsmiths Guild in Amsterdam_ and a third painting that Christie’s brought to the Stern estate’s attention in August 2007: _An Extensive Landscape with Travellers on a Track Near a Walled Town with a Castle and Church, a Village Beyond_, attributed to Jan van Goyen. Dombowsky’s discovery of the Galerie Stern relationship with the RKD was the key to unlocking unresolved matters of provenance for three of the estate’s restitutions.

Monica Dugot brought details of _An Extensive Landscape_ to the Stern estate after a Christie’s client consigned the painting attributed to Jan van Goyen to the Amsterdam branch of the auction house for appraisal. A scene of two peasants with travel carts before a fortified city on a hill, the painting depicts a setting with a castle, town, village, and a church in the distance. In the lower right of the painting, the remnants of a

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63 Philip Dombowsky, letter to Willi Korte, August 23, 2007. The Galerie Caldenhof cataloguing information was as follows: “Niederländischer Meister; um 1520—1530; 16 _Die Flucht nach Ägypten_; Im Vordergrund auf einer Straße die heilige Familie. Joseph führt den Esel, auf dem Maria mit dem Kinde sitzt. Rechts Bauernhof, eine Frau schließt das Gitter des Zauns. Links Götztenbild (Amor), dessen Kopf beim Vorbeizug der heiligen Familie abgefallen ist; Landschaft; Eichenholz; Höhe 33,3 cm, Breite 48 cm. G.-R.” In the process, he also discovered that at least two other paintings from this sale ended up at the Galerie Stern: Der Meister von Flémalle, _Maria mit dem Kinde in Halbfigur_ (lot nr. 6) and Jan van Rillaer, _Das Martyrium des heiligen Erasmus_ (lot nr. 18).

64 Philip Dombowsky, letter to Willi Korte, August 23, 2007. Also at the RKD were records for the paintings: Der Meister von Flémalle, _Maria mit dem Kinde in Halbfigur_ (lot nr. 6), and Jan van Rillaer, _Das Martyrium des heiligen Erasmus_ (lot nr. 18).

65 Renzetti, “Taken by Nazis.”
signature and date are visible: “OYEN 16.”

In the process of inspecting the painting, Christie’s traced the work to the Galerie Stern when it turned to the most comprehensive volume on van Goyen: Kunstler um Jan van Goyen, published in 1991 by Hans-Ulrich Beck. In Beck’s book, he documented that in 1937 An Extensive Landscape was with Galerie Stern: “Kunsthandler Stern in Dusseldorf, 1937.” This information led Christie’s to notify both the consignor and subsequently the Stern estate about the painting’s tainted provenance.

As in the case of the Flight into Egypt, the provenance history of An Extensive Landscape was far from clear, beginning with questions about who made the work. There are on record approximately 1,200 paintings, etchings, and drawings by the Leiden-born van Goyen, who began working as an apprentice at age ten and who had a highly prolific and influential career that spanned more than thirty-five years.

Before 1630, Van Goyen was heavily influenced by his teacher Esaias van de Velde of Haarlem (1587-1630), renowned for his realism, intense placements of colour, and packed compositions. After 1630, he simplified his approach, with works such as The Getty museum’s View of Duurstede Castle at Wijk bij Duurstede (1649), featuring low horizons, a loose handling of brushwork, and a style in which the atmosphere of the image became a key subject matter. With such works, van Goyen ushered in a new

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68 Ibid.
69 Renzetti, “Taken by Nazis.”
72 View of Duurstede Castle at Wijk bij Duurstede by Jan van Goyen, 1649, oil on panel
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phase of Dutch landscape painting, distinguished by works with a low vantage point and limited colour palettes—a sharp contrast to the depictions of bright colours and fantastic spaces which made him famous.\(^7^3\) However, as argued by Hans-Ulrich Beck, van Goyen’s naturalistic style and techniques became so influential that it is now a challenge to make accurate attributions to the painter. For this reason Beck contested the authorship of An Extensive Landscape as being a work painted by Jan van Goyen. Rather, he stated that the piece is by van Goyen’s contemporary, the Dutch Golden Age landscape painter François van Knibbergen (1596–1674), whose family hailed from Vlaardingen in South Holland and settled in Utrecht in 1615, where he became known for Italianate landscapes, city views, and mountain scenes.\(^7^4\) When Max Stern bought An Extensive Landscape, he believed that he was purchasing a work by van Knibbergen, which is how the painting left Stern’s gallery in 1937. As Beck documented it:

Signatureste.  
Leinwand 73 x 96  
Versteigerung Dr. Martin Schubart in Munchen 23.10.1899 Nr. 34 als Fr. Van Knibbergen (Mk 1.250 Helbing)  
Kunsthandler Stern in Dusseldorf, 1937  
Privatsammlung in Mainz, Kat. 1968 Nr 46 mit Farbabb.  
Als Francois van Knibbergen\(^7^5\)

The last time An Extensive Landscape was publicly seen, before it was consigned to Christie’s in 2007, was at Privately Owned Old Masters Work, an exhibition at the

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\(^{73}\) Van Goyen’s work is represented in the National Gallery, London; the Fitzwilliam Museum, Cambridge; the Louvre, Paris; the National Museum, Stockholm; the Metropolitan Museum of Art, New York; the Museum of Fine Arts, Boston; and the Rijksmuseum, Amsterdam.


\(^{75}\) Beck, Künstler Um Jan van Goyen.
University of Mainz in 1968. The benefactor of the show and the lender of *An Extensive Landscape* was the paper industrialist Hans Klenk, best known for introducing the toilet paper roll to Germany in 1928. Research conducted by the Stern estate of more than sixty German newspaper articles from the late 1960s indicated that Klenk had an Old Masters collection of approximately 150 paintings, about half of which came from a Stuttgart dealer by the name of Friedrich Kohn.

Just as Christie’s June 26, 1970, auction of paintings from the Konrad Adenauer collection raised suspicion, so too did the 1968 University of Mainz exhibition. During the course of the show, more than two-dozen individuals came forward, claiming that they had once owned one or more of the exhibited works. Investigations ensued in Mainz, Stuttgart, and Munich in connection with pictures sold illegally by Kohn, as Klenk became the subject of a criminal investigation in connection with his collection and exhibition.

Although the exhibition *Privately Owned Old Masters Work* raised a furor, its exhibition catalogue proved invaluable to the Stern estate. Its author Richard Hamann-Mac Lean, also the curator of the Mainz University exhibition, included critical information that was absent from both previous and subsequent auction records for *An Extensive Landscape*: specifically, the fact that it left the hands of Galerie Stern in 1937.

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76 The exhibition, organized by the Society for Visual Artists, was called *Gesellschaft fur bildende kunst in Mainz, Weke Alter Meister, Aus Privatbesitz Ausstellung, Im Kunstgeschichtlichen Institut der Johannes Gutenberg-Universitat Mainz Im Gutenberg-Gedenkjahr 1968 vom 7. Mai bis 30. Juni.*


79 Ibid.

80 Ibid. Klenk attempted to have experts validate the works in his collection, however, this effort backfired because the reputation and credentials of these experts were questioned; one had a title from an Italian institution without an address, another had been arrested in the Netherlands for art fraud.
and that the painting had also been part of the collection of Martin Schubart. Hamann-Mac Lean’s research of An Extensive Landscape documented that on November 11, 1964, the painting, attributed to van Knibbergen, was sold as lot 104 (this, quite possibly, was when Klenk bought the work).

It is unclear how Hamann-Mac Lean discovered An Extensive Landscape’s connection to Stern in 1937. Possibly he learned of the painting’s provenance from its lender. Or perhaps, he took the step of researching the François van Knibbergen file at the Netherlands Institute for Art History, where the Stern estate would also discover critical documents that would lead to the painting’s restitution.

The Netherlands Institute for Art History, or Rijksbureau voor Kunsthistorische Documentatie (RKD), is the world’s largest art history centre. Founded in 1930, the RKD grew out of the papers of the Dutch art historian, art collector, and museum curator Cornelis Hofstede de Groot. The author of more than seventy biographies of Dutch painters, Hofstede de Groot travelled extensively in Europe to study private and public collections of Dutch art, and in 1906, edited Die Urkunden über Rembrandt, the first catalogue of Rembrandt drawings. Methodologically, Hofstede de Groot was a proponent of stylistic analysis over iconographic references to authorize works of art, a topic he wrote about in the journal Oud Holland. He was also the author of numerous contributions to the Thieme-Becker artist reference guide, as well as the periodicals of private Prussian art collections.

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82 Holocaust Claims Processing Office, “Re: Jan de Vos I, Landscape with Travelers on a Track Near a Walled Town with a Castle and Church, Village Beyond,” oil on canvas, 73.7 x 97.1 cm,” August 16, 2007.
84 H. Dattenberg, "Totentafel: Hans Schneider" Kunstchronik 7, Periodical. Pg 23. Also see Sheila D.
By the end of Hofstede de Groot’s life, he had gathered such a huge collection of photographs and reproductions of Dutch works of art, documents, and exhibition catalogues that in 1926 he donated his archive to the state of the Netherlands. The task of organizing Hofstede de Groot’s material was given to his student Hans Schneider who in 1930 became the institute’s first director, a position he held until 1940. After the RKD opened in 1932, it quickly became the leading centre for the collection and categorization of art historical research, in particular the art of Dutch Masters. It also became a repository for records on Netherlandish art because, as a standard practice, reputable art dealers and curators from around the world—including Julius and Max Stern—sent the RKD updates, questions, and details about Dutch art in their possession.

In the fall of 2007, Elizabeth Nogrady travelled to the RKD on behalf of the HCPO. Her trip was prompted by Dombowsky’s finding a record of Flight into Egypt in the institute’s archives, where the work was attributed to the painter “Niederländischer Meister um 1520-1530.” At the RKD, Nogrady discovered photographs and letters between Julius Stern and Hans Schneider as well as letters between Hans Schneider and Max Stern from 1934 to 1937. Often, correspondence between the men was about works that the Galerie Stern was planning to sell, in which Julius and Max asked for Schneider’s opinion. Frequently, the Sterns included photos of the images that they

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Muller Dutch Art: An Encyclopedia (New Jersey: Routledge, 1997), 30.
87 Anna Rubin, letter to Monica Dugot, February 26, 2008. Elizabeth Nogrady is a “graduate student assistant.”
89 Ibid. In this cache of documents were Max Stern’s letters about Dutch Old Masters, painters who included Wouwermans (October 10, 1935), Jan de Cock, Hobbema, Pieter van de Plas, A. Willaerts
wrote about. Sometimes, in his communications, Stern would include personal details.
For example, on October 4, 1935, he wrote to Schneider about his attempts to halt the
dissolution of Galerie Stern: “On our petition the matter is being reviewed again before
being definitively settled.”

On December 6, 2007, at the Ben Uri Gallery, the London Jewish Museum of Art, *An
Extensive Landscape* was the third work to be returned to the Max Stern Restitution
Project. The painting then became part of the exhibition *Auktion 392* at the Ben Uri
Gallery. The event was predicated on the fact that the RKD files contained a black-and-
white photograph of the painting, attributed to Knibbergen, in its files. The image had
been sent to Schneider in 1937. It confirmed that the painting was part of Stern’s
collection the year that he was forced to flee Düsseldorf. The estate argued that this
image appeared identical to the work that Christie’s had received from its consignor. As
well, in addition to the RKD record, the estate discovered photographs of the front and
verso of *An Extensive Landscape* in the Galerie Stern fonds at the National Gallery in
Ottawa. On the photos there were handwritten notes in German about the painting’s
attribution to Knibbergen and about its prior owner, Dr. Martin Schubart. This
corroborated the provenance information put forth in the 1968 University of Mainz
exhibition catalogue, *Privately Owned Old Masters Work*, by Richard Hamann-

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(February 20, 1936), and Naiveu (March 23, 1937). Stern wrote Schneider the greatest number of
letters in 1936: more than thirty in all.
90 Stern wrote to Schneider: “Auf unsere Eingabe hin wird die Angelegenheit nochmals überprüft,
ehe sie endgültig erledigt wird” See Nogrady, “Max Stern File.”
91 See entry on “François van Knibbergen, Landschap met reizigers op een weg bij een ommuurde
stad, Christie’s (Amsterdam) 2007-05-09, nr. 1,” RKD, Netherlands Institute for Art History,
https://rkd.nl/en/explore/images/record?f%5Bkunstenaar%5D=Knibbergen%2C+François+van&q&que
ry=%26start=11.
MacLean, which recorded that the painting had been owned by Martin Schubart, Dresden/Munich in 1899, and Galerie Stern, Düsseldorf in 1937.\(^{92}\) In addition to these facts, the estate presented to Christie’s Galerie Stern records that confirmed that Max Stern offered to sell *An Extensive Landscape* to “Mr and/or Mrs Bergerhoff of Essen” first in March 1937, then again in May, July, and October 1937, further evidence that the painting was in Stern’s possession at the time that the Nazi’s had ordered him to liquidate his inventory.\(^{93}\)

Collectively, the documentation provided sufficient grounds for the Stern estate to prepare a formal restitution claim for *An Extensive Landscape*. In it, in addition to providing the above-outlined details on the work’s provenance, the claim put forth an argument of moral persuasion. It asserted that after several futile appeals to save his galleries once the Nazis came to power, Stern received the final irrevocable order on September 13, 1937, that he was forbidden to deal in cultural property and had to immediately shut down his gallery. As a result, in November 1937, Stern sold more than two hundred pictures with the Nazi-approved Lempertz auction house in Cologne.\(^{94}\)

Because *An Extensive Landscape* by Knibbergen was not included in the November 1937 Lempertz sale, and because, according to Nazi law, it would have been impossible for Stern to have exported it from Germany, the estate argued that Stern sold it under duress or involuntarily lost possession of it between October and November 1937 before he fled Nazi Germany in December 1937.\(^{95}\) Taking these facts into consideration, Christie’s withdrew the work from its September 5, 2007, sale in

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\(^{92}\) Monica Dugot, email to Willi Korte, August 16, 2007, 10:22 a.m., “Follower of Jan van Goyen (now reattributed to Jan de Vos I).”

\(^{93}\) Holocaust Claims Processing Office, letter to Christie’s “Re: Jan de Vos I, Landscape with Travelers on a Track Near a Walled Town with a Castle and Church, Village Beyond, oil on canvas, 73.7 x 97.1 cm,” August 16, 2007.

\(^{94}\) Ibid.

\(^{95}\) Holocaust Claims Processing Office, Letter to Christie’s “Re: Jan de Vos I, Landscape with travelers on a track near a walled town with a castle and church, village beyond, oil on canvas, 73.7 x 97.1 cm,” August 16, 2007.
Amsterdam. The title of *An Extensive Landscape* was restored to Max Stern (under conditions that remain undisclosed) and the painting then joined the touring exhibition *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf*.

However, the discussion about the provenance of *An Extensive Landscape* was far from over. One of the most notable features of the ceremony at the Ben Uri Gallery was that *An Extensive Landscape* was unveiled not as a work by Knibbergen, nor as a work by Jan van Goyen, but as a work by Jan de Vos I (1593-1649). In preparing catalogue information for the sale of *An Extensive Landscape*, Christie’s had reattributed the work to Jan de Vos I. A Leiden-based painter whose works were heavily influenced by The Hague studio of van Goyen, de Vos I became extremely popular in the Northern Netherlands by the mid-seventeenth century for his many paintings featuring brown, gold, and green landscapes with low horizon lines.

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96 Ibid. “Thank you for withdrawing the Jan de Vos painting, formerly attributed to Francois Knibbergen, from Christie’s September 5, 2007 Amsterdam sale. As discussed below, the estate asks the consignor to restitute and return the de Vos picture because Dr Stern sold it under duress and/or involuntarily lost possession of it in Düsseldorf in 1937 due to Nazi persecution.”

97 Concordia University, “Dutch Old Master painting returned to Max Stern Estate.”

98 At the restitution ceremony the painting was presented as Jan de Vos I (1593-1649) *An extensive landscape with travellers on a track near a walled town with a castle and church, a village beyond*, oil on canvas, unframed, 73.7 x 97.1 cm (Concordia University, “Dutch Old Master painting returned to Max Stern Estate”). Also see Renzetti, “Taken by Nazis”

99 Monica Dugot, email to Clarence Epstein, August 15, 2007, 11:07 a.m. As a draft catalogue entry for the 5 September 2007 fall exhibition, lot 1, Dugot included the following information in her letter to Epstein: “Pictures, Watercolours, and Drawings, Amsterdam, 5 September 2007, Follower of Jan van Goyen (now reattributed to Jan de Vos) *An extensive landscape with travellers on a track near a walled town with a castle and church, a village beyond*. Traces of a signature (lower centre) and with remains of a signature and date ‘oyen/16’ (lower right). Oil on canvas, unframed 73.7 x 97.1 cm; Provenance: Dr Martin Schubart; Helbing, Munich, 23 October 1899, lot 34 (as Knibbergen). Lempertz Cologne, 11 November 1964, lot 104. With Stern, Dusseldorf, 1937.”

100 For more on de Vos see the RKD records at https://rkd.nl/en/explore/artists/81905. Since the publication of Beck’s text, the oeuvre of artists in the de Vos family have been further refined. As a result, when the painting under discussion came to Christie’s in 2007, a specialist there reattributed this work to de Vos’s son, Jan de Vos II (c. 1615-after 1683). Following in his father’s footsteps, Jan de Vos II similarly produced city views (including those of Leiden and Gouda), landscapes, and riverscapes. Like his father, de Vos the Younger also favoured a limited palette and everyday subjects, an excellent example of which is the *An Extensive Landscape*. To succeed in an increasingly competitive market, artists influenced by van Goyen continually introduced new pictorial elements that were then ubiquitously employed by other artists, including de Vos. In short, the constant morphing of stylistic elements, and the rapid growth of the market for such works, created challenges for art historians and specialists in seventeenth-century Dutch landscape attempting to untangle the oeuvres of individuals working in this style.
Since the painting’s restitution to the Stern estate, the work has seen another two re-attributions. The first one happened in 2011, after *An Extensive Landscape* completed its tour in the *Auktion 392* exhibition. The Stern estate decided to sell the painting in Christie’s New York January 2011 auction “Old Master & 19th Century Paintings, Drawings & Watercolours (Part II).”\(^{101}\) In this sale, the painting was attributed to Knibbergen. It sold for $13,750 (US).\(^{102}\)

Then, just four months later, on May 17, 2011, the Madrid-based auction house Ansorena listed *An Extensive Landscape* as *Paisaje con personajes y vista de una ciudad* in its spring sale. In the provenance history for the painting, Ansorena identified that the work had been part of “Galerie Stern Düsseldorf 1937,” though it did not mentioned that the painting had been restituted.\(^{103}\) More surprising, however, was the re-attribution that Ansorena gave the painting. It claimed the work was by van Goyen, a painter whose market value is much higher than Knibbergen or de Vos I. When the hammer came down, as documented on Artnet, an online resource for the international art market, Ansorena sold the work for $99,056.00 (US), an increase of over 700 percent of what Christie’s had sold the painting for just months earlier—a mere $13,750.\(^{104}\) After years of effort on behalf of the Stern estate to establish the provenance of *An Extensive Landscape*, the market proved that when it comes to a work of art’s provenance, a critical factor is what a buyer wants to believe and is willing to pay.

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\(^{102}\) Ibid.

\(^{103}\) “Past Auction [Paisaje con personajes y vista de una ciudad],” [Artnet](http://www.artnet.com/artists/jan-josefsz-van-goyen/paisaje-con-personajes-y-vista-de-una-ciudad-Ow5Hq-H1WJ4B9sF3ETJkJ9w2).

On December 10, 2008, *Flight into Egypt* was the fifth Stern estate restitution and second of the three cases that relied heavily on documentation from the RKD.\footnote{105}{The New York State Banking Department’s Holocaust Claims Processing Office (HCPO), press release: “Painting Lost Due to Nazi Persecution Returned to Stern Estate: Restitution Ceremony Held Today in Berlin, Germany,” December 10, 2008.} Christie’s handed over the painting to the Stern estate, at the offices of University of Toronto in Berlin.\footnote{106}{Ibid.} This recovery as well was made possible because of a letter in the RKD files: on February 20, 1936, Max Stern wrote Schneider on Galerie Stern letterhead about *Flight into Egypt*, a painting he attributed to Jan Wellens de Cock. Along with the letter, Stern included images of the work.\footnote{107}{Dr. Max Stern, Düsseldorf, letter to Dr. H. Schneider, February 2, 1936, from Dr. H. Schneider, S’Gravenhage/Holland, Korte Vijverberg 7. In the letter, Stern wrote: “Dear Sir, I take the liberty of sending you separately by mail the photo of a painting, which was offered to me as a work by Hobbema from an old collection. I would be extremely grateful if you would kindly inform me whether you consider this work an original. Additionally, I have included some images of works we have recently acquired. At this time, please allow me to congratulate you on the move into your new house and conclude by expressing my gratitude for your assistance in advance. Yours faithfully, Dr. Max Stern.”} 

With this information from the RKD, the Stern estate had a case strong enough to make an appeal to the painting’s consignor. On March 28, 2008, Anna Rubin at the HCPO wrote to Monica Dugot at Christie’s: “the Estate’s investigation, which is also confirmed by Christie’s research efforts, suggests that Julius Stern likely acquired the painting in 1929 at the Galerie Caldenhof auction and in 1936 Max Stern contacted the RKD regarding this painting in connection with a possible sale.”\footnote{108}{Anna Rubin, HCPO, to Monica Dugot, March 28, 2008.} This conclusion was based upon the following findings, as outlined in Rubin’s letter to Dugot:

i) The painting was included in the Galerie Caldenhof sale held at Lepke on June 8, 1929, and was attributed to “Niederländischer Meister um 1520-1530” who was later referred to as de Cock. An illustrated copy of this sales catalogue was found at the Frick Art Reference Library.
Chapter 4
Filling the Information Vacuum:  
*The Restitutions of* The Masters of the Goldsmiths Guild,  
*An Extensive Landscape,* and *Flight into Egypt*

ii) Correspondence between RKD director Dr. Hans Schneider and Dr. Max Stern from February 1936 was filed at the RKD about the painting.  

iii) One of the RKD photo cards regarding this picture indicated that the painting was with Galerie Stern in 1936.  

iv) Several photographs of *Flight into Egypt* were found among Dr. Stern’s papers at the National Gallery of Canada. The photos were attributed to the Düsseldorf business “Foto J. Söhn.”

Although no specific sale records could be found to reveal how *Flight into Egypt* left Stern’s possession in 1936, once this case was assessed in the context of documented evidence as to how Stern was persecuted, the HCPO argued that a presumption could be made that his separation from the painting was not voluntary.

In April 2008, Dugot presented the Stern estate’s case to the consignor of *Flight into Egypt,* who she said, “bought the painting in 1993 in good faith, with no knowledge of its possible spoliation and many years before the spoliation of Max Stern’s collection was known.” In light of the consignor’s position, Dugot urged the Stern estate to take this fact into consideration when determining a settlement. “While I understand that a compromise might not be immediately acceptable to you,” she wrote, “In the spirit of the open dialogue you seek, we would suggest that this might be the best way to expedite the claim’s resolution.”

Both parties agreed upon an undisclosed settlement and the full title of the painting was returned to Max Stern’s heirs in December 2008. Following the recovery of the work, the painting sold at Christie’s “Old Master Paintings (Part II)” in January 2012. In the catalogue for the auction, the provenance history for *Flight into Egypt*

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109 Ibid.  
110 Monica Dugot, “Restitution and the Art Market.”  
111 Monica Dugot, letter to Anna Rubin, July 9, 2008.  
112 Ibid.  
113 Ibid.  
114 Clarence Epstein, letter to Monica Dugot, November 4, 2011. “On November 11, 2008, the Stern estate agreed to pay the possessor the amount of 15,000 pounds sterling in exchange for full title ownership of the De Cock painting. Christie’s will hand over the painting in Berlin, the week of December 8, 2008.”
acknowledged that the work was “with Galerie Stern, Düsseldorf, 1936 and sold under duress due to persecution by the National Socialists.” As for the work’s maker, the dispute will likely continue. The auction house attributed the painting to “Circle of de Cock.” As one of Christie’s employees put it, “The attribution to Jan de Cock, as it was sold in 1970, seems to us unlikely, just as so many of these early Netherlandish paintings were wrongly attributed in the past.”

On October 25, 2010, ownership of The Masters of the Goldsmiths Guild in Amsterdam by Juriaen Pool II was transferred to the Stern estate. It was the Max Stern Art Restitution Project’s ninth recovery. The location of the restitution ceremony, the Amsterdam Museum, was particularly significant as the building occupied a space that once housed the orphanage in which Pool was raised before Abraham Mignon adopted him. In June 2014, in a private agreement with Stern’s heirs, the painting was sold to the Tax & Customs Museum in Rotterdam, which undertook considerable efforts to have the painting restored, and where it remains on view today.

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117 Settlement agreement arranged by the Holocaust Claims Processing Office on behalf of the Stern Estate and the Spielbank Bad Neuenahr GmbH & Co. KG, November 11, 2010.
118 Frans Fox (Director, Tax & Customs Museum in Rotterdam), interview with the author, June 5, 2016.
The restitution was made possible because of information yielded by documents at the RKD. As the Stern estate stated in a letter to Dr. Otto L. Adelberger, the following facts had come to light through material at The Hague art institute: Records were discovered that the painting was exhibited at Galerie Stern from February 24 to March 31, 1934, in the show Gemälde Alter Meister aus Rheinisch-Westfälischem Privatbesitz. On August 29, 1935, Stern received notice that as a Jew he did not fit the RKdbK’s membership requirements and was legally prohibited from both buying and selling art. When Stern received this letter from the RKdbK, his gallery was two days away from concluding its summer exhibition, the final art exhibition held at his Düsseldorf gallery (from June 22, 1935, to August 31, 1935), which included The Masters of the Goldsmiths Guild in Amsterdam as lot 58. The exhibition catalogue described the picture as “Bildnis der Vorsteher der Amsterdammer Goldschmiede-Gilde aus dem Jahre 1701. Bezeichnet: J Pool 1701. Leinwand H. 152, 5, B. 198, 5.”

Using these facts, the HCPO put forth the argument that while it is difficult to assess—from the time the Nazis took power in Germany—the exact development and degree of persecution Stern suffered as a Jewish art dealer, it is evident that from August 1935 onwards that he was officially put on notice that the Nazi government strongly disapproved of his business activities and that he would have to end them promptly. The HCPO’s case referenced a letter that Stern wrote in October 1935 to Dr. Schneider,

http://www.concordia.ca/cunews/main/stories/2014/06/18/rotterdam-museumacquiresnazilootedartworkfromthemaxsternestate.html. The acquisition and restoration was realized with the financial support of the Friends of the Museum.

120 Anna Rubin, letter to Dr. Otto L. Adelberger, November 3, 2008.
121 Willi Korte, email to Clarence Epstein and Sherri Cohen, October 15, 2007.
123 Ibid.
124 Ibid.
in which he made it clear that he recognized that any efforts he undertook to try to save his business were destined to fail and that he would need to seek a new livelihood.\footnote{125}{Ibid. The letter to Schneider was presented as Exhibit 3.}

From a few surviving records from Galerie Stern, which include customer cards, the estate was able to prove that around May 1936 Stern showed \textit{The Masters of the Goldsmiths Guild in Amsterdam} to a potential client, Wilhelmine Heinemann of the Galerie Heinemann in Wiesbaden.\footnote{126}{Ibid.} Galerie Heinemann was amongst the most important art dealerships in Germany and, unusually, it managed to maintain its business despite the Nazi boycott of Jewish enterprises, until its Aryanization in 1938.\footnote{127}{In its day, the Galerie Heinemann, founded in 1872, was considered one of the most influential art dealers in the world: its headquarters had been located in Munich since 1883; in addition it had numerous branches in other cities, including Nice and New York, and served international clients from Tokyo to Seattle. In 1938, the National Socialist regime put an end to the Jewish gallery: it was Aryanized and the business operations were taken over by Friedrich Heinrich Zinckgraf (1878-1954), an employee of many years. With the renaming of the gallery as “Galerie am Lenbachplatz” in 1941, its name also disappeared from the cityscape of Munich. The Galerie Heinemann and its history faded into obscurity—even up to today, despite intensive cataloguing by the Deutsches Kunstarchiv of the business records, which were made accessible through a comprehensive Internet database.}

From the Galerie Stern’s inventory records, it could be determined that \textit{The Masters of the Goldsmiths Guild in Amsterdam} was still in its possession in August 1936.\footnote{128}{Anna Rubin, letter to Dr. Otto L. Adelberger, November 3, 2008.} As the painting was not in the Lempertz sale, it therefore must have left the Stern gallery between August 1936 and November 1937.\footnote{129}{Email from Anna Rubin to Lucian Simmons, April 9, 2008.} Whether or not the Galerie Heinemann purchased the painting from Dr. Stern—a fact that can’t be known as the Heinemann records were destroyed—the reality of Stern’s situation, the HCPO argued, was that he was compelled to sell the painting because of Nazi persecution.\footnote{130}{Anna Rubin, letter to Dr. Otto L. Adelberger, November 3, 2008; Britta Olenyi von Husen, email to Willi Korte, November 3, 2008.}

Today, the Juriaen Pool II group portrait of \textit{The Masters of the Goldsmiths Guild in Amsterdam} hangs at the Tax & Customs Museum in Rotterdam. The painting is on permanent view with a label that details the story of its restitution. Of the work the
museum director Frans Fox commented, “We can’t change history, but we can ensure that this remarkable story gets told.” 131
CHAPTER FIVE

Anything But Voluntary: *Law Enforcement and the Restitutions of Girl from the Sabine Mountains, Portrait of a Musician Playing a Bagpipe, and St. Jerome*
Chapter 5
Anything But Voluntary:
Law Enforcement and the Restitutions of
Girl from the Sabine Mountains,
Portrait of a Musician Playing a Bagpipe, and St. Jerome

Restituted: January 2008
Franz Xaver Winterhalter (1805-1873)
Girl from the Sabine Mountains (c. 1846)
Oil on canvas
74.5 x 63 cm. Reproduced with the permission of the Max Stern Estate.

Restituted: April 2009
Northern Netherlandish School
Portrait of a Musician Playing a Bagpipe (1632)
Oil on wood
41 x 31.3 cm. Reproduced with the permission of the Max Stern Estate.

Restituted: May 2009
Ludovico Carracci (1555-1619)
St. Jerome (date unavailable)
Oil on canvas
41 x 31 cm. Reproduced with the permission of the Max Stern Estate.
In January 2008, *Girl from the Sabine Mountains* (c. 1846) by Franz Xaver Winterhalter (1805-1873) became the fourth recovery of the Max Stern Art Restitution Project. The painting is of a young woman in traditional German rural costume, resting with her eyes closed, the arms of her billowing sleeves clasped behind her head. The specific interest of this case is that, to date, it has been the only one whose resolution involved legal action. The recovery of the painting marked a turning point because it set a legal precedent which resulted, in quick succession, of two more reclamations by the Stern estate: *Portrait of a Musician Playing a Bagpipe* (1632) by an unknown North Netherlandish painter, the estate’s sixth recovery, and *St. Jerome* (date unavailable) by Ludovico Carracci, the estate’s seventh recovery, returned respectively in April 2009 and May 2009. The significance of these cases arises from the ways they were tied to American law enforcement and to the landmark restitution case: Egon Schiele’s *Portrait of Wally* (1912).
Egon Schiele: The Leopold Collection, Vienna was a special exhibition that ran from mid-October 1997 to January 4, 1998, at New York’s Museum of Modern Art (MoMA).¹ The show featured more than 150 oil paintings on canvas, wood, and cardboard, and represented the most important works in the collection amassed by the Viennese physician Dr. Rudolf Leopold, who in the mid-1950s began buying important works, purchased inexpensively, by Egon Schiele, Gustav Klimt, and Oskar Kokoshka.²

The MoMA show was an unprecedented display of the best works from Schiele’s short career (he painted from 1905 to his untimely death in 1918 at the age of twenty-eight) presented together for the first time in the United States.³

From MoMA the paintings were scheduled to travel on exhibition before being returned to Austria, where in Leopold sold his collection to the state for $500 million (one-third of its appraised value) on the condition that the works would be displayed in a specially constructed Museum named for him, where he would be its director for life.⁴ But as the closing of the New York exhibition approached, MoMA received a request that Schiele’s Portrait of Wally—an oil portrait of Valerie “Wally” Neuzil, the artist’s mistress and model for many of his most memorable works—not be returned to the lender, the Leopold Museum.⁵

The appeal to the MoMA came after disturbing questions were raised in a New York Times article on December 24, 1997, about how Portrait of Wally had become part

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² Ibid.
³ Ibid.
of the Leopold Collection. The article’s author, Judith Dobrzynski, wrote that Lea Bondi Jaray, a Jewish art dealer who left Vienna for London in 1938, had been obliged to give the painting to the Nazi art dealer Friedrich Welz as she fled Vienna because of its anti-Semitic laws. Welz had seen the painting in her apartment and demanded that she turn it over to him. Her art gallery had already been Aryanized and all its paintings seized. In 1946, after the war ended, Bondi Jaray sought to recover ownership of Portrait of Wally, but she could not locate the work, which was placed in the Austrian National Gallery after US troops arrested Welz and seized his collection. The painting remained in the museum for almost a decade, until 1954, when Dr. Rudolf Leopold acquired Portrait of Wally in an exchange with the institution. When Leopold wrote his 1972 catalogue raisonné of Schiele’s works he omitted Lea Bondi Jaray’s ownership of the painting, despite an earlier catalogue by Otto Kallir citing her as its last owner in the 1930s. When Bondi Jaray died in 1969, her heirs picked up the trail she had been following.

The descendants of Bondi Jaray asked that MoMA detain the painting, which they claimed had been illegally taken first from Bondi Jaray by Welz, and then by the Austrian government. Despite the pleas of Bondi Jaray’s heirs, MoMA declined to detain Portrait of Wally, citing the museum’s contractual obligation with the Leopold Museum to ship it and the other paintings in the exhibition to their next destination in Barcelona. What happened next shocked the art world: Manhattan’s district attorney, Robert M. Morgenthau, subpoenaed the work, announcing that it would be evidence in a criminal

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6 Ibid.
7 Bazyler, Holocaust Justice.
investigation. Both MoMA and the Leopold Museum argued that the action would jeopardize all future lending of artworks for travelling exhibitions and special shows in other countries.\textsuperscript{10}

Morgenthau’s subpoena was invalidated by an order of the New York State Court of Appeals, which found the painting came under New York’s 1968 Arts and Cultural Affairs Law, preventing the state’s seizure of works of art.\textsuperscript{11} Soon after, however, the US attorney for Manhattan, Mary Jo White, filed a federal case under the National Stolen Property Act, arguing that \textit{Portrait of Wally} had been illegally brought into the country.\textsuperscript{12} Then, on April 11, 2002, chief judge Michael B. Mukasey of the US District Court in Manhattan ruled that the US Armed Forces had neither the responsibility nor the duty to restitute looted works of art, only to retrieve them.\textsuperscript{13} His judgment allowed the case to proceed toward a determination as to whether the Leopold Museum would have to forfeit title to the painting.\textsuperscript{14}

For the next seven years, \textit{Portrait of Wally} remained in the hands of the US Customs Service, pending a final decision in the case. Not until October 2009, after more than a decade of proceedings, which \textit{The New York Times} described as a “legal odyssey,” did Judge Loretta A. Preska rule that there was enough evidence regarding the ownership of the painting to allow a trial to proceed. Her decision was based on the fact that the Leopold Museum was aware of the painting’s questionable provenance when it

\textsuperscript{10} Ibid. Typically, works of art had been immune from such legal actions as Morgenthau’s, both under federal law and New York state law. However, with \textit{Portrait of Wally} the federal protection was inoperative because MoMA had not registered the painting with the US government, and Morgenthau argued that New York law applied to civil but not criminal matters.


\textsuperscript{12} Ibid.

\textsuperscript{13} Ibid.

\textsuperscript{14} Bazyler, \textit{Holocaust Justice}, 232–36.
sent the picture to MoMA twelve years earlier.\textsuperscript{15} In July 2010, just weeks before a civil trial was scheduled to start in the United States District Court—one that would focus on Leopold’s knowledge of the painting’s provenance—the Vienna museum settled out of court and agreed to pay $19 million to Jaray’s heirs.\textsuperscript{16} Today \textit{Portrait of Wally} hangs in Austria’s Leopold Museum.

Maria-Luise Bissonnette’s fate became connected to Lea Bondi Jaray when her stepfather, Karl Wilharm, gave her Franz Xaver Winterhalter’s \textit{Girl from the Sabine Mountains}, a painting that left Max Stern’s hands at the November 1937 Lempertz auction. Bissonnette grew up just north of Frankfurt, in a country estate that belonged to Wilharm. Later, important evidence pertaining to the painting’s provenance would confirm that \textit{Girl from the Sabine Mountains} hung in Bissonnette’s family’s living room opposite an Italian Renaissance oak desk.\textsuperscript{17}

The painting was a prized Wilharm possession and one of the most valuable works he owned. Winterhalter had risen to international acclaim in the second half of the 1830s after he painted the German Grand Duke and Duchess of Baden in 1835. Ironically, although the artist never received great accolades in Germany, Winterhalter was commissioned to create portraits for the royal families of England, France, and Belgium,

\textsuperscript{15} Fox, “Rudolf Leopold”; Also see Bazyler, \textit{Holocaust Justice}.
and he became court painter to Louis-Philippe of France.\textsuperscript{18} In May 1846, Queen Victoria wrote to the French king requesting that he release Winterhalter from his role as court painter so that he could complete her commission: a large picture of her family for Osborne House, her summer home on the Isle of Wight.\textsuperscript{19} Winterhalter then created his epic work, \textit{The Royal Family in 1846} (1846), skilfully depicting the queen as both sovereign and mother in a tableau of domestic harmony.\textsuperscript{20} Portraits like \textit{The Royal Family} made Winterhalter popular among patrons who appreciated his ability to create the images of themselves that they wished to project to their subjects.\textsuperscript{21} Around the same time that Winterhalter completed \textit{The Royal Family}, he painted \textit{Girl from the Sabine Mountains}.\textsuperscript{22} Unlike his more formal works, this lesser painting was of the same genre as \textit{Aimée} by Vernet-Lecomte: a work whose picturesque and vaguely erotic subject made it highly saleable.

In 1956, Maria-Luise married an American counterintelligence officer, Conrad Bissonnette, who was stationed in Germany during the war years. At the end of the decade the couple moved to the United States where he became a CIA employee. In 1959, she formally took possession of \textit{Girl from the Sabine Mountains}, which she inherited it

\textsuperscript{19} Franz Xaver Winterhalter, \textit{The Royal Family in 1846}; signed and dated 1846; oil on canvas; 250.5 x 317.3 cm (support, canvas/panel/str external); RCIN 405413, East Gallery, Buckingham Palace. https://www.royalcollection.org.uk/.
\textsuperscript{20} Ibid. As discussed on the Royal Collection web site: The painting, although intended for a private setting, was first exhibited in 1847 in St James’s Palace, where over 100,000 viewers saw it. Then in 1850, it was engraved for public circulation. The grandeur of the chairs upon which Victoria and Albert sit together with the red curtain and the landscape background give the effect of a stage set: a royal family on show to the world. In contrast to all previous royal family portraits, such as those by van Dyck or Zoffany, the figures seem unposed and relaxed giving the painting an intimate family feel.
\textsuperscript{21} Ibid. After the accession of Napoleon III, Winterhalter’s popularity grew. Under the Second Empire, he became the chief portraitist of the imperial family and court of France. In 1855, he painted his masterpiece: \textit{The Empress Eugénie Surrounded by her Ladies in Waiting} (1855). The painting was acclaimed, and exhibited in the 1855 universal exposition.
\textsuperscript{22} The exact date of \textit{Girl from the Sabine Mountains} is unknown, although the painting is dated to c. 1840.
from her family. For decades the painting hung in the dining-room alcove of her modest two-bedroom apartment in Woonsocket, Rhode Island, until she was diagnosed with breast cancer. In April 2003, Bissonnette decided to consign the painting to pay for treatment. She took the work to Estates Unlimited, a small auction house in Cranston, Rhode Island, which listed the work on its website in January 2005. After sixty-eight years of being out of sight Girl from the Sabine Mountains was on the market.

Once Girl from the Sabine Mountains was listed online, the Art Loss Register identified the painting as a spoliated work. The ALR identified the work as a piece of looted art, a painting that had been sold by Max Stern when he liquidated his family’s business under Nazi duress. On behalf of the Stern estate, Louisa von Lorninghoven of the Art Loss Register’s Historic Claims Department then informed the auction house of the match and asked that the painting be withdrawn from its sale.

At first, Estates Unlimited, a small organization that unlike Christie’s and Sotheby’s, lacked a formal restitution policy and department, refused to take calls from the Stern estate. In February 2005, Sherri North Cohen at the Holocaust Claims Processing Office (HCPO) sent Bissonnette a letter via Estates Unlimited asking that the painting be returned to the Stern estate, explaining, “It must be considered stolen art given the historical context.” Cohen added, “The art market does not look favorably at items with a potentially tainted past. I am sure that you will also agree that there are

24 Dowling, “Spoils of War.”
26 US Court of Appeals for the First Circuit, No. 08-1136.
27 Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.
28 Dowling, “Spoils of War.”
moral considerations in this case.”

Bissonette disagreed with the HCPO’s claim, stating that she had rightfully inherited the work from Wilharm, who purchased the work. She offered Wilharm’s bill of sale as evidence that Girl from the Sabine Mountains was rightfully hers. The receipt showed that Wilharm (or a buyer on his behalf) purchased the painting for 4,140 Reichsmarks (about $1,665 (US) at the time) from the Galerie Stern in Düsseldorf. “Why should I give the painting back?” Bissonette told the Providence Journal, claiming that while she had proof of sale, there was no evidence that showed Max Stern lost the work because of Nazi duress. With the auction only seventy-two hours away, the Stern estate had to figure out how to act. In order to stop the sale, it filed an injunction and a motion restraining Bissonnette from moving the painting from the auction house without permission from the court.

Bissonette hired John Weltman, a Jewish art litigator in Boston whose prior lost-art cases were on behalf of Jewish families. The painting was appraised at approximately $94,000 (US). In an effort to resolve the matter, the Stern estate offered Bissonette $25,000 (US). Discussions ensued with a caveat that Girl from the Sabine Mountains would remain at Estates Unlimited until the ownership issue was resolved. By spring 2005, Bissonette grew impatient. In fear that she would not get a fair trial in the United

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29 Sherri North Cohen, letter to Bissonette, February 8, 2005. Also see US Court of Appeals for the First Circuit, No. 08-1136.
30 Mulvaney, “Providence Couple.”
31 Epstein, interview, June 1, 2014.
32 Mulvaney, “Providence Couple.”
33 Epstein, interview, June 1, 2014.
34 The US District Court for the District of Rhode Island, C.A. No. 06-211 (ML), June 1, 2007.
States, she sent *Girl from the Sabine Mountains* to Germany to apply for a clear title.\(^{37}\)

She wanted the matter settled in a country that favoured her stance, explaining to the *Providence Journal*: “according to German law, it was not a forced sale.”\(^{38}\) Under US law, however, Bissonnette’s action was an overt and illegal act of defiance. According to the National Stolen Property Act, transferring stolen goods with a value in excess of $5,000 across international lines is a federal offense.\(^{39}\) Moreover, while shipping the painting Bissonnette listed the value of *Girl from the Sabine Mountains* at $50, which violated German customs laws.\(^{40}\) Weltman, unaware of his client’s decision, withdrew from the case because of “differences of opinion.”\(^{41}\)

When Stern’s executors learned that Bissonnette had initiated a lawsuit in Germany, they countered by filing a suit in US District Court in Rhode Island. Thomas R. Kline, a lawyer for the estate, said the German courts would be obligated to respect the First Circuit decision.\(^{42}\) They never suspected the ensuing case would make history.

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\(^{37}\) See Dowling, “Spoils of War”: “In twenty years of doing this, I have never seen somebody with the chutzpah or audacity, after over a year of good-faith negotiations, to respond by taking the painting physically out of the country,” Korte said when he learned of the voyage. “I was speechless and, at the same time, kind of impressed that this little old lady had the nerve to say, “To hell with you guys, to hell with the state of New York, to hell with any legal arguments. I know what’s right for myself, so I’m going to send the thing to Germany where it came from.”

\(^{38}\) Mulvaney, “Providence Couple.”

\(^{39}\) Federal Bureau of Investigation (Department of Justice) 18 U.S. Code § 2314 - Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting. The National Stolen Property Act of 1934, enacted May 22, 1934, prohibits the transportation in interstate or foreign commerce of any goods with a value of $5,000 or more with the knowledge that they were illegally obtained, and prohibits the “fencing” of such goods.


\(^{40}\) Epstein, interview, June 1, 2014.


\(^{42}\) Mulvaney, “Providence Couple.”
The Stern estate countered by petitioning the Rhode Island court that Bissonette had exported a work of stolen property. “We had this discussion early on about whether to focus on Stern’s loss of the painting or the acquisition by Wilharm,” commented Willi Korte, chief investigator on the Max Stern Art Restitution Project, in an interview with the *Rhode Island Monthly*. “We thought it best to look at the loss through the relationship between the victim and the regime, not the subsequent relationship of the victim and the buyer. We built that argument in hopes of applying a legal decision to the other 227 Stern paintings that were auctioned.”

Research by Korte and the Stern estate revealed that after the war, American occupation forces arrested Wilharm for his Nazi affiliations and occupied his home. Bissonnette’s stepfather was sent to a detention centre for fifteen months. In the Berlin Document Centre Korte found records that portrayed Wilharm as a high-ranking member of the Storm Troopers who joined the Nazi party in 1932, a year before it came to power. As reported in the press, Wilharm was a participant in brutalities of the Storm Troopers, which included rounding up Jews and opponents of the Nazi regime, taking them to an unused factory owned by Wilharm, and severely beating them—some until death. Wilharm was never accused of participation in the beatings, however the charges against him referred to his knowledge and encouragement of and consent to them.

In December 2007 this information, as well as the circumstances documenting

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43 Dowling, “Spoils of War.”
44 Dowling, “Spoils of War.” It was while Bissonnette’s stepfather was detained that she met her first husband, who lived at her family’s house while she and her mother stayed nearby in an unused factory.
45 Willi Korte (chief investigator, Max Stern Art Restitution Project), interview with the author, July 17, 2016.
46 Dowling, “Spoils of War”: “My stepfather did not belong to the Storm Troopers, but he treated them as patients,” says Bissonnette. “He didn’t know they were beating people and he was very upset when he found out. Everyone had to join the Nazi party or they wouldn’t be able to work; there were so many little Hitlers.”
how Max Stern had lost his livelihood and his property, was presented to chief judge of
the US District Court for Rhode Island, Mary Lisi. Her ruling instructed Bissonnette to
turn the painting over to the Stern estate. In her judgment, Lisi commented that Stern’s
relinquishment of his property was anything but voluntary. “[His sale] was ordered by
the Nazi authorities and therefore the equivalent of an official seizure or a theft.”
Lisi’s judgment argued that more than seventy years ago, the Nazi party took art from Jewish
citizens as part of a systematic plan to rob them of their property, their identity, and,
ultimately, their lives. According to her, Bissonnette’s stepfather, Karl Wilharm, never
rightly held ownership of the work. This ruling expanded the definition of what
constituted looted art in restitution claims. It was the first time in US history that a
forced sale was considered a theft. As for US precedent, Lisi emphasized certain
distinctions in this case: Stern did not receive compensation from the forced sale and he
attempted to recover the art. Her decision recognized that the majority of German and
Austrian Jews lost their artworks through Nazi coercion.

Unsuccessfully, Bissonnette appealed the case to the Federal Court of Appeals, in
a process that—much like that of Egon Schiele’s Portrait of Wally—kept Girl from the
Sabine Mountains in a German warehouse for two more years. Bissonnette argued that
the estate waited too long to bring its lawsuit and she should have been granted more
time for discovery. In November 2008, however, the court upheld Judge Lisi’s verdict

48 Ibid.
50 See Derek Fincham, “ICE Agents Seize Old Master,” Illicit Cultural Property, April 21, 2009,
http://illicitculturalproperty.com/ice-agents-seize-old-master/. Also see Karen Herland, “Concordia’s
Restitution Efforts Lead to Landmark Rulings in U.S. Court.” Concordia Journal, January 17, 2008,
http://cjournal.concordia.ca/archives/20080117/concordias_restitution_efforts_lead_to_landmark_ruling
—in_us_court.php?print=1. Note: Some European courts, however, had ruled similarly to Judge Lisi.
that Girl from the Sabine Mountains belonged to the Stern estate.\textsuperscript{51} In his judgment, senior circuit judge Bruce Selya wrote:

A de facto confiscation of a work of art that arose out of a notorious exercise of man’s inhumanity to man now ends with the righting of that wrong through the mundane application of common law principles. The mills of justice grind slowly, but they grind exceedingly fine.\textsuperscript{52} 

In 2009, Girl from the Sabine Mountains was shipped from a warehouse in Germany to Stern’s executors in Montreal.\textsuperscript{53} It took the estate significant time and effort to convince the German customs and cultural authorities that it was entitled to export a valuable piece of German culture since Bissonnette was the one who sent the piece.\textsuperscript{54} Today Girl from the Sabine Mountains is on loan to the Montreal Museum of Fine Arts.\textsuperscript{55} 

But the circumstances of the case remain contentious. When the media spoke to Cologne’s Lempertz auction house, where Girl from the Sabine Mountains left Stern’s hands, its proprietor Henrik Hanstein—whose family has owned the business since 1875—stated that he disagreed with the US court ruling, claiming that in the 1937 auction Max Stern sold his works by choice, not force.\textsuperscript{56} As Hanstein told journalist Catherine Hickley, “German law doesn’t view the Max Stern auction as a case for restitution. Under

\textsuperscript{51}US Court of Appeals for the First Circuit, No. 08-1136.
\textsuperscript{52}Ibid. After the Federal Court of Appeals verdict, Bissonnette weighed petitioning the Supreme Court to take her case. As she told Denise Dowling, “If the estate can prove it was Stern’s painting and he did not want to sell it, then I would certainly agree to give it to them. But they should pay me what my stepfather paid, plus interest on that money. I never said I wouldn’t give them the painting, but to not compensate me fairly is dirty and my family has been slandered. I hope I live long enough to see justice, but I don’t think that will happen in the American courts.” However, the allotted time to file—ninety days after the Federal Court decision—expired before she filed her papers. See: Dowling, “Spoils of War.”
\textsuperscript{53}Epstein, interview, June 24, 2015.
\textsuperscript{54}Ibid.
\textsuperscript{55}Ibid.
\textsuperscript{56}Catherine Hickley, “U.S. Seizes Old Master Lost in Nazi-Era Forced Sale,” Bloomberg, April 21, 2009.
German law, the US dealer would be the rightful owner. He bought in good faith. I don’t see it the way they see it in America.”

The ruling on *Girl from the Sabine Mountains* was a game changer for the Stern estate, with two key outcomes. Unlike in the case of Bondi Jaray’s heirs, who settled out of court, a legal precedent now existed for the recovery of *Girl from the Sabine Mountains*—one that would guide US law enforcement, specifically the US Customs Service, when handling other works owned by Max Stern found in the United States. Equally significant, however, was the fact that the Max Stern Art Restitution Project was now a subject of international recognition. Media outlets across North America and Europe wrote about the precedent-setting case of *Girl from the Sabine Mountains*. It was what the Stern heirs hoped for when they first introduced their mission to the public through the exhibition *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf*. As a direct result of Max Stern’s media notoriety, owners of paintings began to come forward, individuals who were concerned that they had in their possession works that Max Stern had lost under Nazi duress. For these reasons, two more paintings were returned to the Stern estate in 2009.

In 2008, the New York City art dealer Lawrence Steigrad Fine Arts listed on its website an oil-on-wood painting called *Portrait of a Musician Playing a Bagpipe* for

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57 Ibid.
58 Epstein, interview, June 24, 2015.
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$46,000 (US).\textsuperscript{59} An anonymous work, the image depicts an early seventeenth-century musician who stands with the tools of his trade behind him: an elaborately decorated bagpipe and violin rest on the wall. We know the sitter is fifty-seven, because his age, as well as the date of the work’s creation—the year 1632—are inscribed in gold across the top of the painting.\textsuperscript{60} In addition to his instruments, the subject’s simple clothes tell us he was probably a musician, employed to play at country weddings or on village feast days. The food and wine on the table suggest a rustic setting.\textsuperscript{61}

Steigrad had little reason to be concerned about the provenance of \textit{Portrait of a Musician Playing a Bagpipe}. He had purchased the painting in December 2008 from one of London’s most reputable art dealers, Philip Mould, who is also a renowned expert on stolen art.\textsuperscript{62} An honourary arts adviser to the House of Commons and the House of Lords, and a recipient of the Order of the British Empire for services to art, Mould is the author of \textit{Sleuth: The Amazing Quest For Lost Art Treasures} and is a resident expert on the BBC’s \textit{Antiques Roadshow}.\textsuperscript{63} Famous for his unwavering eye, Mould has repeatedly proven his connoisseurship. In 2009, he bought a painting by Thomas Gainsborough (1727-1788) for £120—a work a he spotted on eBay.\textsuperscript{64} The following year, he purchased a painting sold by Christie’s as an anonymous portrait of a girl, which turned out to be by


\textsuperscript{60} Philip Mould & Company, “\textit{Portrait of a Musician Playing a Bagpipe}” http://philipmould.com/browse-art/old-masters/16th-17th-century/portrait-of-a-musician-playing-a-bagpipe (link no longer in operation).

\textsuperscript{61} Ibid.


the Flemish master Anthony van Dyck (1599-1641). The presale estimate of €15,000 to €20,000 (£13,200 to £17,600) was a fraction of its value. After attending an auction preview where the work was on view, in a matter of days Mould unearthed an 1835 catalogue that attributed the painting to van Dyck, as well as information on other previous owners, including John Smith, a noted nineteenth-century connoisseur and art dealer, who purchased the painting from Christie’s in 1835 for 169 guineas, then detailed the picture, down to the colour of its sitter’s dress. All this information gave Mould the confidence to bid way beyond the estimate. Now, as a rare van Dyck child portrait, it is valued at £3.5 million. Asked how one of the world’s leading auction houses could have overlooked the work, Mould told the Observer: “Perhaps Christie’s didn’t have sufficient time to research these pictures.”

As Lawrence Steigrad would learn, however, even the world’s most renowned experts make mistakes. Mould purchased Portrait of a Musician Playing a Bagpipe from the Lempertz auction house’s “Old Masters” sale on November 17, 2007, where it was listed as lot 1173. In the catalogue for the sale, the provenance indicated that the painting came from the collection of the renowned German tobacco manufacturer, the Wallraf Rheydt family.

Flämischer Meister
Des 17. Jahrhunklers
1173 Bildnis Eines Musikers
Im Alter von 57 Jahren.

65 Dalya Alberge, “Van Dyck Paintings Unearthed by Saleroom Sleuth,” The Guardian, June 11 2011. Said Mould, “The sitter’s expression alone tells us that this is not a portrait of a miniature adult, as one so often sees in the 17th century, but of a child. Few artists were then capable of such a subtle characterisation—and perhaps the best was Van Dyck.”
66 Ibid.
67 Ibid.
68 Lempertz auction, “Old Masters” sale, November 17, 2007 (lot 1173), Cologne.
69 Hickley, “U.S. Seizes Old Master.”
The painting caught Mould’s eye because of its resemblance to *The Bagpipe Player* (c. 1638) by Jacob Jordaens (1593-1678), a student of Peter Paul Rubens (1577-1640), as well as *Peasant Wedding* (c. 1567) by Pieter Brueghel the Elder (c. 1525-1569) at the Kunsthistorische Museum in Vienna.\(^71\) What intrigued him in particular was that, unlike most depictions of musicians of the period, the painting appeared to be a portrait rather than a genre picture, such as *Een vrolijke vioolspeler* (1623) by Gerrit van Honthorst (1590-1656), the latter of which often depicted musicians either as drunks (perhaps in moral reflection of society as a whole) or happily playing their instruments in jovial rustic settings. The violin behind the bagpiper revealed the painting’s subject as a man of multiple musical talents; his stance indicated a readiness to play his instrument.\(^72\)

With these art historical details in mind, in March 2008, Steigrad bought *Portrait of a Musician Playing a Bagpipe*. Aside from Mould’s stellar reputation, Steigrad also felt confident about his purchase because when he checked the work on three separate stolen-art registries, including the London-based Art Loss Register, it wasn’t detected.

\(^70\) Lempertz, “Old Masters” sale, November 17, 2007 (lot 1173).
\(^71\) *The Bagpipe Player*, 1640-1645; Jacob Jordaens; oil on canvas; 81.5 x 61.5 cms; Léon Courtin-Marcelle Bouché Fund acquisition; The Rubens House, Antwerp; Philip Mould & Company, “Portrait of a Musician Playing a Bagpipe.”
\(^72\) Ibid. A silver coin in the work featuring an eagle suggests that the painting’s origins may be German, however, the picture’s style and technique, redolent of the musical subjects of Jan Miense Molenaer (1610-1668), points to both a Northern Netherlandish artist and sitter. For more on this see: Barron and Chan, “After 70 Years.”
Once Portrait of a Musician Playing a Bagpipe was on the Lawrence Steigrad’s website, it caught the attention of Elizabeth Nogrady, an art historian who had worked as an intern with the Holocaust Claims Processing Office.73 Nogrady knew that the painting had a suspicious provenance because two years earlier, in the fall of 2007, she had travelled on behalf of the HCPO to the Netherlands Institute for Art History archives, where she discovered letters and photographs exchanged between Julius and Max Stern and Hans Schneider—material that was critical to the recovery of the Circle of Jan Wellens de Cock’s Flight into Egypt, Juriaen Pool II’s The Masters of the Goldsmiths Guild in Amsterdam and Jan van Goyen’s An Extensive Landscape.74 Nogrady remembered seeing a photo of Portrait of a Musician Playing a Bagpipe while going through Stern Galerie files in The Hague, sent to the Netherlands Institute for Art History in late May 1936.75

By 2008, Nogrady had moved on from the HCPO to work as a curator at the Morgan Library and Museum in New York on a retrospective about Dürer. But when she saw Steigrad’s website, she contacted her former employer.76 In turn, the HCPO alerted federal officials to the situation, who assigned the case to senior special agent Bonnie Goldblatt of Immigration and Customs Enforcement (ICE), the largest investigative agency of the Department of Homeland Security, which handles investigations into

73 Barron and Chan, “After 70 Years.”
74 Anna Rubin, letter to Monica Dugot, February 26, 2008. Elizabeth Nogrady is a “graduate student assistant.”
cultural artifacts that show up on the world market.\textsuperscript{77}

Goldblatt, part of the Office of Holocaust Art Recovery Working Group, which represents US experts in the area of Holocaust-looted art in the government and private sector, was a pivotal figure in the detainment of Egon Schiele’s \textit{Portrait of Wally}. She had confiscated the painting from MoMA in 1998 as it was set to leave New York.\textsuperscript{78}

Commenting on the importance of the \textit{Portrait of Wally} case, Goldblatt stated that:

\begin{quote}
...all governments and museums should take a good look at the provenance of their inventory. If they have something they shouldn’t have ... they should return it. I don’t think museums should be treated any differently than individuals. They still have a duty to return things to their rightful owner.\textsuperscript{79}
\end{quote}

Around the time that Nogrady noticed \textit{Portrait of a Musician Playing a Bagpipe} on the Steigrad’s website, Philip Mould also discovered that there were problems with the painting that he had sold to the Manhattan gallery.\textsuperscript{80} On March 30, 2009, while researching a BBC program on looted art, one of Mould’s gallery employees came across details of the provenance of \textit{Portrait of a Musician Playing a Bagpipe} on the website for the Max Stern Art Restitution Project.\textsuperscript{81} Immediately, Mould telephoned Steigrad to discuss the return of the picture, a refund on its sale, and how to facilitate the return of \textit{Portrait of a Musician Playing a Bagpipe} to the Stern estate.

Before Mould and Steigrad could work out details, however, on April 2, Goldblatt, posing as a collector, made an appointment to visit Steigrad Fine Arts and see \textit{Portrait of...
a Musician Playing a Bagpipe. Upon her arrival she was notified that the work was no longer available for sale and that it was a Nazi-era stolen painting. Then, as reported by The New York Times, Goldblatt took out her badge and said, “Well, that’s why we’re here.” This seizure was the first time that an ICE law-enforcement authority recovered art sold in a forced auction before the Second World War, a direct result of the ruling on Girl from the Sabine Mountains. Steigrad felt shocked about the unfolding of events, as plans were already underway to return the painting. ICE’s actions, he told the press, made him feel as though he had taken criminal action. Still, Steigrad confirmed the painting was in his possession, consented to its seizure, and voluntarily facilitated its return to the Stern estate through ICE without the need for any judicial proceedings.

Steigrad was relieved that he had not yet sold Portrait of a Musician Playing a Bagpipe, which would have caused further problems. As he told The New York Times:

The last thing an art dealer wants is to have a picture which has got a shaky history or a dark history as this one had.... You work hard to avoid such calamities.

Indeed, Steigrad had worked to avoid such a situation, checking Portrait of a Musician Playing a Bagpipe on stolen art registries, just as Mould had. Yet, he had not spotted the painting even though it was registered on the German government website Lost Art and on the Stern site; moreover, it had been part of the Stern travelling exhibition shown

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82 Hickley, “U.S. Seizes Old Master.”
83 Barron and Chan, “After 70 Years.”
84 Chan, “A Postwar Reversal.”
85 Hickley, “U.S. Seizes Old Master.”
86 Lederman, “Undercover Avenger.”
88 Hickley, “U.S. Seizes Old Master.”
89 Chan, “A Postwar Reversal.”
90 When Philip Mould informed him about The Baggiper’s provenance, Steigrad was upset that “we had not found out before we purchased this painting, as we both had it checked.” See Chan, “A Postwar Reversal.”
in Montreal, New York, London, and Jerusalem. How had the painting slipped through his notice?

Louisa von Loringhoven of the Art Loss Register explained to the media that although her company vetted the provenance of paintings offered for sale by cross-referencing them against its database of missing works systematically and methodically, it had not caught Portrait of a Musician Playing a Bagpipe.\(^91\) In Lempertz’s catalogue, the auction house listed the painting’s title as Bildnis Eines Musikers, which translates as “Portrait of a Musician.” However, the Art Loss Register database described the painting as a portrait of a bagpipe player. Although the painting was searched by description and title, it was not identified as a looted work because of this difference in the work’s name.\(^92\) While the Art Loss Register carries out about 300,000 searches a year and endeavors to be as thorough and as accurate as possible, errors and omissions happen.\(^93\) This is particularly the case when a work of art, like Portrait of a Musician Playing a Bagpipe, does not have an identifiable artist.\(^94\) Moreover, the painting’s relatively low value—it was estimated at €2,500 to €3,000 in 2009—kept it off the radar.\(^95\)

By late April 2009, Mould compensated Steigrad. He then began seeking reimbursement from Lempertz.\(^96\) But Lempertz took the view that it owed no compensation. Its lawyer, Karl-Sax Feddersen, said its client had done diligence by working with the Art Loss Register.\(^97\) He responded to the press: How could Lempertz be held accountable when other parties had not detected this painting as being from the

\(^91\) Hickley, “U.S. Seizes Old Master.”
\(^92\) Fincham, “ICE Agents Seize Old Master.”
\(^93\) Hickley, “U.S. Seizes Old Master.”
\(^94\) Chan, “A Postwar Reversal.”
\(^95\) Hickley, “U.S. Seizes Old Master.”
\(^96\) Ibid.
\(^97\) Chan, “A Postwar Reversal.”
Stern estate? Moreover, Lempertz pointed to the US court ruling on the Winterhalter case and stated that it opposed the return of this work to the Stern estate, citing legal grounds.

Under German law, said Feddersen, the US dealer, who bought the work in good faith, was its rightful owner. When Lempertz was asked whether it would consider compensating Mould for his purchase of Portrait of a Musician Playing a Bagpipe, it replied that the decision would rest with the consignor—taking no responsibility that the work left Stern’s hands at the November 1937 Lempertz auction.

Portrait of a Musician Playing a Bagpipe may have had the same fate as Portrait of Wally—being held up for years in a legal odyssey—except for the fact that the law had changed. It affirmed that Max Stern was forced into selling works under the Nazi regime and that all sales in the 1937 Lempertz auction were a “de facto confiscation.” As Thomas R. Kline, the attorney for the Stern estate, stated: “With that decision, all artworks Stern sold under orders at the Lempertz sale are now considered stolen property, [and the estate] hopes to receive further assistance from law enforcement authorities in the US and elsewhere.”

The restitution of Portrait of a Musician Playing a Bagpipe garnered extensive media attention. The painting was returned on Holocaust Remembrance Day in 2009, at the

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98 Ibid.
99 Hickley, “U.S. Seizes Old Master.”
100 Ibid.
101 Ibid.
102 Fincham, “ICE Agents Seize Old Master.”
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Museum of Jewish Heritage in Lower Manhattan. Of the event, Bonnie Goldblatt remarked, “The more we do, the better we get. The more we do, the more our name gets out there.” Lev L. Dassin, the acting US attorney in Manhattan, noted, “Each work of art returned brings us one step closer to the goal of repatriating all of the surviving works of art stolen by the Nazis.” In his comments he remarked that Nazi-looted art restitution was critical as a means to remember the Holocaust:

To honor those lost, to affirm the sanctity of human life, and to prevent such an atrocity from happening again. The collaborative effort that brings us to the Museum of Jewish Heritage today attests to a simple, but important, truth: we remember.

Part of the ceremony for Portrait of a Musician Playing a Bagpipe involved an appeal on behalf of ICE that others pay attention to the issue of restitution and come forward. “We made a plea for art dealers everywhere to return all paintings stolen in the Holocaust,” said Peter J. Smith, special agent in charge of the ICE Office of Investigations in New York. These words made an impact on the Manhattan art dealer Richard L. Feigen, who famously played himself in Oliver Stone’s movie Wall Street. Just two weeks after the seizure of Portrait of a Musician Playing a Bagpipe, Feigen took a second look at a painting in his private collection, St. Jerome, by Ludovico Chan, “A Postwar Reversal.”

103 Chan, “A Postwar Reversal.”
104 Lederman, “Undercover Avenger”; Portrait of a Musician Playing the Bagpipes’s return involved a formal agreement signed between the US attorney for the Southern District of New York (Lev L. Dassin) and the Stern estate.
105 Chan, “A Postwar Reversal.”
Carracci (1555-1619). The work portrays the bare-chested saint, famed for his translation of most of the Bible into Latin, at the moment he turns from his book to greet two angels. It was part of the inventory of his four-storey townhouse on East 79th Street—an art gallery that has been likened to the trading floor at Salomon Brothers.

Feigen specialized in the Old Master trade, often buying works by artists including Rembrandt (1606-1669), J. M. W. Turner (1775-1851), Nicolas Poussin (1594-1665), El Greco (1541-1614), and the Carracci on behalf of collectors and major institutions. His business grew as prices of Impressionist and twentieth-century art soared, making the Old Master market—paintings created from the fourteenth century to about 1850—increasingly attractive to an audience that was put off by the higher prices and scarcity of great Impressionist and twentieth-century paintings. By the late 1980s, Feigen had opened offices in New York, Chicago, and London, and had sales of about $20 million of a broad-ranging inventory, consisting of 350 to 400 works that covered some 700 years, from early fourteenth-century paintings to works of twentieth-century Pop art. Still, he knew that for the uninitiated, the Old Master business was a complicated field to navigate. Not only is there a diminished supply of Old Master art due to a natural attrition of it over centuries, what remains is often subject to problems of attribution and condition. For these reasons, Feigen advertised his business as one that stayed in close consultation with scholars and conservators.

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111 Ibid. Feigen’s customers include Ronald S. Lauder, departing US Ambassador to Austria and son of Estée Lauder, the cosmetics queen, and the Baron Hans Heinrich Thyssen-Bornemisza, scion of the German steel family.
112 Ibid.
113 Ibid.
114 Ibid.
In order to find inventory, Feigen scoured small- and medium-sized European auction houses, which is how he found Ludovico Carracci’s *St. Jerome* for sale in Cologne on May 20, 2000, at Lempertz. Feigen was taken with the piece: the art historical importance of the painter from Bologna, deriving from such works as *The Lamentation* (1582), in which the subject—Christ—was based on a model, gives the biblical depiction an astonishing and startling degree of realism.\footnote{Keith Christiansen, Metropolitan Museum of Art catalogue entry, accession number 2000.68, 2010. http://www.metmuseum.org/art/collection/search/438427.}

Working alongside his cousins Agostino (1557-1602) and Annibale (1560-1609), Ludovico had founded the Carracci Academy, which deviated from what had become known as the Maniera style, characterized by Georgio Vasari as a return to the classical balance of the High Renaissance.\footnote{Liana Cheney, *Giorgio Vasari’s Teachers: Sacred & Profane Art* (New York: Peter Lang, 2007), 85.} As Ann Sutherland Harris explains, “In addition to copying the drawings and paintings of the local art establishment, they drew from life,” thus infusing their art with qualities of naturalism, authenticity, and warmth. By the late sixteenth century, the Carraccis had established themselves as Bologna’s most talented painters.\footnote{Ann Sutherland Harris, *Seventeenth-Century Art & Architecture* (Prentice Hall, Upper Saddle River, New Jersey: 2004), 7.} They became renowned for their collaborative fresco cycles, including *The Founding of Rome* (c. 1590), a frieze in the Palazzo Magnani.\footnote{Harris, *Seventeenth-century Art & Architecture*, 19.} As well, they attracted excellent students to their academy—including Guido Reni (1575-1642), Domenichino (1581-1641), and Francesco Albani (1578-1660)—which became renowned for its production of altarpieces and devotional pictures.\footnote{Diane De Grazia and Eric Garberson, *Italian Paintings of the Seventeenth and Eighteenth Centuries* (Washington: National Gallery of Art, 1996), 54.} Ludovico headed the Carracci
Academy, where, as Diane De Grazia and Eric Garberson explain, the artist’s sensuous quality of paint, the powerful, tangible evocation of solid form, innovative chiaroscuro, and the dynamic approach to composition opened a path toward the Baroque style. For all of these reasons, St. Jerome was one of the more important works to be sold by the Galerie Stern.

After reading about Portrait of a Musician Playing a Bagpipe in the New York Times, Feigen knew that he had to look into the provenance of St. Jerome. Feigen voluntarily revealed that he had purchased the work from the Lemperz auction house in Cologne, at the May 20, 2000, “Alte Kunst Lempertz” sale. The painting was valued at $55,324 (US). He paid DM 100,000 (then about $45,000) for the work.

Feigen was certain that he had a work of spoliated art in his inventory. He did his own research and discovered that Max Stern owned the painting and that Lempertz had sold it in its 1937 sale. He then contacted the Stern estate. As had Lawrence Steigrad, Feigen experienced shock over how events transpired. When making his purchase at Lempertz, Feigen saw that the auction catalogue entry listed that the painting had belonged to the Galerie Stern. In light of this, and the fact that Stern is a Jewish name,

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120 Ibid., 55.
122 Epstein, interview, June 24, 2015. Also see Alte Kunst; Gemalde, Zeichnungen, Skulpturen, 20 Mai, 2000 (Cologne: Kunstaus Lempertz), lot number 625.
125 Sherry Hutt and David Tarler, Yearbook of Cultural Property Law: 2010 (Walnut Creek, CA: Left Coast Press, 2010). Also see Alte Kunst, lot number 625.
before making his purchase, Feigen asked Henrik Hanstein, Lempertz’s owner, if the work’s provenance was problematic. Feigen reports that he was told there were no reasons for concern.\footnote{126} Moreover, Lempertz claimed it had checked the painting with the Art Loss Register.\footnote{127} Feigen says that had he known the true circumstances, he would not have bid on the painting: “I would never buy stolen property.”\footnote{128} As with Portrait of a Musician Playing a Bagpipe, US Immigration and Customs Enforcement facilitated the return of St. Jerome. Agent Bonnie Goldblatt picked up the picture from Feigen’s gallery.\footnote{129} It was the second of many other works of art that Goldblatt would restitute using law enforcement.\footnote{130} On May 6, 2009, at the Leo Baeck Institute for the study of the history and culture of German-speaking Jewry, ICE and the US Attorneys Office returned St. Jerome to the Stern estate.\footnote{131}

Feigen expected that since Lempertz is an important firm with affiliates in other countries, he could trust the auction house that it would not re-auction Holocaust

\footnote{126} “ICE returns second painting stolen during Holocaust,” Department of Homeland Security.
\footnote{127} Ibid.
\footnote{128} Ibid.
\footnote{129} Hickley, “Dealer Returns Painting.”
\footnote{130} For more on this see Hutt and Tarler, Yearbook of Cultural Property Law. After the Carracci return, Goldblatt seized a rare Antoine Carte portrait, which depicted a little girl with blonde pigtails wearing a blue dress and sitting beside her pet rabbit. The painting had belonged to a Jewish family in Belgium who had been forced to flee during the war. The Art Loss Register, an international database of lost and stolen art, antiques, and collectibles, located the painting at a Long Island dealership. See Lederman, “Undercover Avenger.”
\footnote{131} On September 22, 2010, a Polish pre-1939 standard, stolen from the Polish Non-Commissioned Officers (NCO) Association in Rawa Ruska (District of Lvov) at the beginning of the Second World War by Nazi German soldiers, was returned to Poland thanks to Goldblatt, who facilitated an agreement between Poland’s minister of foreign affairs, Mr. Radoslaw Sikorski, and representatives of the US Immigration and Customs Enforcement, Department of Homeland Security. The standard was offered for sale at auction by upstate New York collectors Raymond & Joseph Zyla (Mohawk Arms Inc.), who in the 1960s purchased the item from an American soldier who brought it from Germany after the war in 1945. A New York lawyer and collector Przemyslaw J. Bloch informed the Polish Consulate about the sale and made the auctioneers aware of the origin of the standard as well as of the fact it had been looted. When ICE provided supporting documentation relating to the Polish Government’s claim, the consignors agreed to abandon the standard to ICE for the return to the Polish government. See September 22, 2010, “Ministerstwo Spraw Zagranicznych RP” Ministry of Foreign Affairs of the Republic of Poland.
\footnote{132} Epstein, interview, June 24, 2015. Epstein stated that at the event it was acknowledged that “ICE and the US Attorney cooperated with the other art dealer Richard Feigen in the recovery of the Carracci and hope that his leadership would encourage his peers in the trade to take a good look at their own works.”
plunder, particularly since they themselves knew the circumstances of the forced 1937 sale. He also expected that Lempertz would refund his payment made in good faith.\textsuperscript{132} As with \textit{Portrait of a Musician Playing a Bagpipe}, however, Feigen was told that Lempertz disagreed with the US court ruling that the \textit{Girl from the Sabine Mountains} was a precedent for the seizure of art sold in the 1937 Lempertz auction. Furthermore, Feigen was told that his demand was not legitimate since Max Stern was compensated for his losses in 1964.\textsuperscript{133}

Henrik Hanstein said that, under German law, he could not expect the consignor of the painting to compensate Feigen for his loss nine years later because in Germany, there is no legal basis for compensation.\textsuperscript{134} Legally, Feigen was the rightful owner because he bought the painting in good faith.\textsuperscript{135} The owner of Lempertz then sent Feigen a letter from the company’s legal counsel stating:

> It is needless to tell you how harmful and offending the results of your defamation can be....We will therefore not tolerate that you continue to discredit our house publicly. It is simply false that we have been recycling plundered art. When we offered the Ludovico Carracci in our auction 786 in May 2000 we laid open the entire provenance of the painting as it is known to us....The Stern collection was at the time not known as a restitution case.\textsuperscript{136}

> Neither the late Dr Stern nor the Stern Estate had at that time ever claimed restitution of a painting from the Stern collection or gallery. You bought the painting in full awareness of its provenance and had yourself not seen the Stern provenance as reason to abstain from the purchase. Almost ten years later we have learned to view the cases from a different angle. With the knowledge that we have today we would of course not offer a painting from the Stern collection without prior consent of the estate.\textsuperscript{137}

\textsuperscript{133} Karl-Sax Feddersen (Berlin legal counsel), letter to Lempertz to Richard L. Feigen; Re: Lempertz Auction 786, Lot 625, Ludovico Carracci “Der Hl. Hieronymus,” May 29, 2009.
\textsuperscript{135} Hickley, “Dealer Returns Painting.”
\textsuperscript{136} Karl-Sax Feddersen (Berlin legal counsel), letter to Lempertz to Richard L. Feigen; Re: Lempertz Auction 786, Lot 625, Ludovico Carracci “Der Hl. Hieronymus,” May 29, 2009.
\textsuperscript{137} Ibid.
Hanstein had a point that Lempertz alone could not be held accountable when other parties had not detected this painting as being from the Stern estate. Moreover, Lempertz did check *St. Jerome* with the Art Loss Register, but the painting was not listed on its database (WWII.04.40) until 2004—four years after Feigen purchased the work.

Hanstein’s remarks make it clear that while *Girl from the Sabine Mountains* marked an important turning point in the history of the Max Stern Art Restitution Project—namely that all artworks Stern sold under orders at the Lempertz sale are now considered stolen property in the United States—it also signaled the complexity of the issue. While the judicial precedent bolstered the Stern estate’s ability to claim the numerous other works owned by Stern, it quickly brought to light the fact that the US decision has no legal application in Europe, where countless paintings remain. Moreover, it demonstrated firsthand Bonnie Goldblatt’s argument that to effectively move forward with solving future restitution cases, it is essential “to establish guidelines that other countries will adhere to that make it easier for us to identify and possibly return artwork that was taken during the Holocaust.”

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138 Hickley, “U.S. Seizes Old Master.”
139 Hickley, “Dealer Returns Painting.”
140 Lederman, “Undercover Avenger.”
CHAPTER SIX

“A Bloodletting for Some Museums”: Dutch Restitution Policy and the Recovery of An Allegory of Water and Earth
Restituted: November 2010
Jan Brueghel the Younger (Brueghel II) (1601-1678)
An Allegory of Water and Earth (date unavailable)
Oil on panel
61 x 89 cm
Reproduced with the permission of the Max Stern Estate
On October 26, 1945, the first plane packed with restituted art arrived at Amsterdam Airport Schipol.¹ In the following months, countless other vehicles would also arrive, crowded with valuable cargo—carpets, furniture, decorative objects, and tens of thousands of paintings—property that had once been held in the private collections of Dutch Jews before being looted by the Nazis.² A number of these pieces had been hidden in mines and remote castles. In the Altaußsee salt mine near Bad Ischl, approximately 15,000 paintings were discovered.³ After the war, the Allies decided that all artworks recovered in

³ Aalders, *Nazi Looting.*
Germany were to be returned to the country of origin from which they were looted.⁴

The October arrival at Schipol marked the end of twelve years during which Nazi-era art looting impacted the Netherlands. As early as 1933, Dutch art dealers and collectors began purchasing art that Jews sold in Nazi-era German-forced auctions.⁵ In the Netherlands, Dutch Jews gave up their art and other property lost through mandatory sales, Nazi looting, and confiscation.⁶ In 1941, Dutch Jews had to move their bank accounts to branches of the Lippmann, Rosenthal & Co., or Liro for short, a Jewish bank in Amsterdam, where they were no longer able to access their money freely.⁷

In May 1940, Kajetan Mühlmann established Dienststelle Mühlmann to acquire important artworks in the Netherlands for Germany.⁸ He and his competitor Erhard Göpel bought millions of guilders worth of art for Hitler’s planned Führer Museum, to be built in Linz, Austria.⁹ By 1942, Jews were required to surrender all their jewellery, artworks, and precious metals to the Liro. Shortly afterwards, when the Nazis began deporting Jews to concentration camps, the household belongings they were forced to leave behind were confiscated. When it came to fine art, a network of Nazi-appointed experts was placed in charge of selecting and selling works that once belonged to Jews.¹⁰ Aware that the Nazis were exporting significant amounts of Dutch cultural property from the occupied territories to Germany, the Dutch government in exile in London made efforts to halt the illicit exports. According to the Dutch Office of the Restitutions

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⁵ Van Beurden and Gebhardt, *The Return of Cultural and Historical Treasures*.
⁶ Ibid.
⁷ Aalders, *Nazi Looting*.
¹⁰ Aalders, *Nazi Looting*. 
Committee, it “attempted to prevent this economic plundering and enacted emergency laws, which forbade all transactions with the enemy and pre-emptively declared all such transactions null and void. It also signed the Inter-Allied Declaration on 5 January 1943.”

At the end of the Second World War, when Holland began to see the return of its cultural property, the Netherlands Art Property Foundation, best known as the Stichting Nederlands Kunstbezit or by its abbreviation SNK, was established on June 11, 1945. This body had a two-fold purpose: to be a provisional custodian of the works of art that the Allies had agreed were the rightful property of the Dutch State, and to recover and return Nazi-looted art to its previous owners. Many works of art eventually found their way back to the country after the war as a result of the foundation’s work.

The SNK was mandated to restitute cultural goods to their previous owners under the direction of the Nederlandse Beheersinstituut or NBI (Netherlands Property Administration Institute). The objects that were given into the custody of the Dutch State formed a collection entitled the Netherlands Art Property Collection, Nederlands Kunstbezit (NK). In 1949 and 1950, the SNK produced three exhibitions of recovered artworks to give people who had reported their possessions stolen an opportunity to identify and recover works. The SNK also searched for former owners of artworks. When owners could not be found, however, the property was auctioned, with the

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12 Simpson, Spoils of War.
14 Ibid.
15 Simpson, Spoils of War.
proceeds going to the state. In 1950, the matter of cultural restitution was transferred to the Bureau Herstelbetalings- en Recuperatiegoederen, or Hergo (Bureau for Restoration Payments and the Restoration of Property) in the Ministry of Finance. In the 1950s, after the deadline for submitting claims for restitution lapsed, the agency was abolished. According to today’s Office of the Restitutions Committee, “The difficult period of art restitution appeared to have ended.”

Countless Jews who lost their art never reclaimed what was theirs when works were returned to the Netherlands from Germany. The SNK was able to return only a portion of the art it recovered on behalf of the Dutch State to its rightful owners. In many cases, Jews who had lost their property did not come claim it. In other cases, strict bureaucratic and financial conditions from the state made art restitution prohibitively difficult. By the mid-1950s, more than 4,000 unclaimed works were passed on to the state. These works continue to be held by the state in the NK. Today the collection of 3,800 pieces is part of the Dutch National Art Collection, run by the Rijksdienst voor het Cultureel Erfgoed or RCE (Cultural Heritage Agency) of the Ministry of Education, Culture and Science. The NK collection includes paintings, drawings, sculpture, and decorative art. Some objects are in museums, others in storage, others in government buildings.

One such work was An Allegory of Water and Earth by Jan Brueghel II (1601-

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17 “Tracing Missing Art,” Restitutiecommissie.
18 Ibid.
19 Ibid.
20 Simpson, Spoils of War.
21 Ibid.
24 Simpson, Spoils of War.
For more than sixty years, this painting, once the property of Max Stern, hung on the wall of the Noordbrabants Museum in Den Bosch, Netherlands. Its return to the Stern estate in November 2010—the eighth recovery of the Max Stern Art Restitution Project—was significant for several reasons. Among the lost works of Stern, the painting was among the most valuable pieces. (The highest price paid for a painting by Brueghel II is almost $3 million.)26 More importantly, however, the genealogy of An Allegory of Water and Earth is tied to two men: Jacques Goudstikker, who, like Max Stern, inherited his father’s gallery, and Goustikker’s employee Jan Dik Jr., who in 1949 was sentenced, in absentia, to three years in prison by the Special Criminal Court in Amsterdam for “intentionally aiding and abetting the enemy in times of war in connection with his activities as an art dealer.”27

In 1997, a major art controversy ensued in the Netherlands after Pieter den Hollander, a Dutch investigative journalist, discovered that more than 200 of Goudstikker’s paintings had hung in seventeen museums and other government buildings since the 1950s, including the Rijksmuseum in Amsterdam, the Mauritshuis in The Hague, the Frans Hals Museum in Haarlem, the Boijmans van Beuningen museum in Rotterdam, and the Bonnefantenmuseum in Maastricht.28 Den Hollander’s discovery

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25 Today this work is accredited to Jan Breughel II and Frans Francken II. The painting was exhibited at the Noordbrabants Museum, on long-term loan, 1949-2010, as Jan Breughel II and Frans Francken II. Venlo, Limburgs Museum, Asperges in olieverf: een koninklijke groente in de zeventiende eeuw, April 22, 2005-July 17, 2005, no. 4C.
27 Ibid., inv. No. 76957 I and II. He was sentenced for “Opzettelijk in tijd van oorlog de vijand hulp verlenen” on February 10, 1949.
led to the restitution of much of Goudstikker’s collection—the largest Nazi-looted art recovery of its kind and one only matched by some 250 artworks returned to the Viennese branch of the Rothschild family by the Austrian government in 1999.29 Most importantly, it prompted the Dutch government to establish a rigorous cultural process and procedure with respect to Nazi-era plundered art.30 Part of this policy involved the creation of the Origins Unknown Agency website www.herkomstgezocht.nl, which explains that it was founded “in 1998 at the request of the State Secretary for Education, Culture and Science in order to conduct provenance research into the Netherlands Art Property Collection (NK collection).”31 If not for this Dutch initiative, An Allegory of Water and Earth would likely still hang in the Noordbrabants Museum today.

Although when An Allegory of Water and Earth was in Max Stern’s collection it was attributed to Jan Brueghel II, in 2010 Christie’s attributed the work to the hand of both Jan Brueghel II and Frans Francken II (1581-1642).32 Collectively, the pair created this highly detailed depiction of the Earth’s abundance. Two women, one an allegory of

Rijksmuseum, which will surrender 15 paintings, identified two ‘iconic’ works: Daniel Vosmaer’s 1663 ‘View of Delft’ and Mostaert’s 1540 ‘Episode From the Conquest of America.’


32 The change in attribution came before the sale of the work at the Christie’s “Old Master & British Paintings” evening sale, July 3, 2012, London, King Street.
Water, the other of Earth, sit in the painting’s centre. On one side, aquatic creatures surround them: fish, a lobster, ducks, and shells. On another side, terrestrial inhabitants flank them: guinea pigs, flowers, vegetables, and parrots. On the horizon we see the chariot of Neptune and Amphitrite, as well as pastoral figures climbing a tree and a group of revellers eating, drinking, and walking in a field.\textsuperscript{33}

Both painters of the work came from major artistic families in Antwerp (Jan Brueghel II’s father was Jan Brueghel the Elder [1568-1625], and his grandfather was Pieter Brueghel the Elder), renowned for implementing new and innovative systems of artistic production in which collaboration was a common working method. Both devoted their careers to continuing their fathers’ painting styles, sometimes copying their works to meet demands for epic landscape scenes.\textsuperscript{34} In An Allegory of Water and Earth, Brueghel II is now credited with the composition of the painting’s landscape while Francken II is believed to have realized its figures.\textsuperscript{35} The pair’s partnership was repeated on other occasions, including for a single panel now in the J. Paul Getty Museum, Los Angeles, and in a series owned by a member of the Belgian Royal Family.\textsuperscript{36} An Allegory of Water and Earth, once possibly paired with a scene of Air and Fire, illustrates the classical notion that the world is composed of four elements, which in

\textsuperscript{35} Ibid.
\textsuperscript{36} See the J. Paul Getty Museum, Los Angeles, inventory no. 71.PB.28. Re: series owned by a member of the Belgian Royal Family, the painting sold at Christie’s, New York on 27 January 2010, lot 10.
sixteenth-century Europe fit the popular preoccupation with accumulating encyclopedic knowledge of the universe.\footnote{Klaus Ertz, Jan Breughel Der Jungere (1601-1678): Die Gemälde Mit Kritischem Katalog (Freren: Luca, 1984), 369–70, nos. 205–6. Such notions of accumulating encyclopedic knowledge of the universe were manifested in the cabinets of curiosities amassed by figures, such as Holy Roman Emperor Rudolf II in Prague, whom Breughel’s father Jan the Elder visited in 1604.} In creating this scene together, Brueghel II and Francken II paid homage to works produced by their fathers, who worked in conjunction with other major artists, including Peter Paul Rubens.\footnote{Anne T. Woollett and Ariane van Suchtelen, Rubens & Brueghel: A Working Friendship (Los Angeles: Getty Publications, 2006), 90–9, among others.} An Allegory of Water and Earth was exactly the sort of painting that embodied the ideals that constituted art in the Third Reich: its subject and style was classically inspired, its vision was uplifting and celebratory, combining pagan history and Christianity. Moreover, its creator was an iconic Northern European painter whose work, like that of Rembrandt and Rubens, Hitler favoured for his Linz museum.\footnote{Jonathan Petropoulos, Art as Politics in the Third Reich (Chapel Hill: University of North Carolina Press, 1996). Also see Frederic Spotts, Hitler and the Power of Aesthetics (Woodstock: Overlook Press, 2003), 206.} Works by these painters hung in the Goudstikker gallery, where Jan Dik Jr. learned his trade, alongside masterpieces of a similar vintage by artists including Jan Steen (1626-1679), Filippo Lippi (1406-1469), Anthony van Dyck, Salomon van Ruysdael (1602-1670), Jan Mostaert (1475-1555), and Jan van Goyen.\footnote{Sutton, Reclaimed.}

Born in Amsterdam in 1897, Jacques Goudstikker grew his family’s business, through the 1920s and 1930s, into one of Europe’s most prominent prewar art dealers and
collectors. By the 1930s, his clients included the Metropolitan Museum of Art in New York, the Nelson-Atkins Museum of Art in Kansas City, and the National Gallery in London, along with many major museums in the Netherlands and Germany. His success afforded him celebrity and a lavish lifestyle. He bought a castle, Nyenrode, and married the Viennese opera singer Desirée von Halban-Kurz.

In 1940, with Nazi troops advancing into the Netherlands, Goudstikker fled the country with Desirée and their infant son, Eduard. Goudstikker was well known for his inventory that included a broad range of French, Italian, Dutch, and German works from the fifteenth to the nineteenth centuries, constituting more a dealer’s inventory than an art collection, and sold to a broad clientele for a wide range of prices. Of the few possessions that Goudstikker took with him when he fled Amsterdam was a small black inventory book in which he listed all the paintings he left behind—1,113 works by artists including van Gogh, Rembrandt, Diego Velázquez (1599-1660), Charles Le Brun (1619-1690), Francisco Goya (1746-1828), Rubens, Jacob van Ruisdael (1628-1682), Titian (1490-1576), and Tintoretto (1519-1594). Although Goudstikker made a successful escape from Amsterdam, tragedy ensued days later while he was at sea. At age forty-two, he broke his neck and died when he fell aboard the ship that was taking the family to England.

Shortly after Goudstikker’s departure from the Netherlands, Hermann Göring, Hitler’s air force chief and an avid art collector, and Göring’s dealer, Alois Miedl,
purchased Goudstikker’s collection in July 1940. Together, they handpicked an estimated 779 paintings from Goudstikker’s collection. The works were transferred to Germany as part of a forced sale for a fraction of their true value. The transaction was allegedly sanctioned by two of Mr. Goudstikker’s employees and his mother, Emily, who gave her approval in exchange for a promise of protection from anti-Jewish reprisals. From her refuge in New York, where she and her son had settled, Desirée Goudstikker objected to the sale.

Goudstikker’s gallery was Aryanized and taken over by Miedl. Throughout the war it was used to sell thousands of other artworks, many once belonging to Jews. Jan Dik Jr., a painting restorer who had worked for Goudstikker, first operated within this new environment before setting out as a painting expert at the Amsterdam-based firm Denijs until February 1944, after which he went into business in collaboration with Johanna Elisabeth Agema, and independently to represent Göring. Jan Dik Jr.’s business boomed in a string of different partnerships. Renowned for having few scruples about the provenance of the paintings he bought and sold, Dik Jr. directly put Jewish owners under pressure to sell him artworks for low prices.

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49 Sutton, *Reclaimed*.
50 Riding, “Dutch to Return Art Seized by Nazis.”
51 Ibid.
52 Ibid.
54 Ibid.
After the war, some 400 of Goudstikker’s artworks were sent to the Dutch government.\textsuperscript{55} Desirée Goudstikker returned to Amsterdam with the small black book in which her husband had inventoried his stock of more than 1,000 paintings, and sought to recover what she could of the returned artworks.\textsuperscript{56} In the late 1940s, she returned to America with 165 paintings found in the Goudstikker gallery.\textsuperscript{57} In 1952, Desirée Goudstikker signed an agreement with the Dutch government renouncing her claim to works acquired by Miedl, although she made her dissatisfaction known by attaching a statement, which stated that she found the situation to be unfair.\textsuperscript{58} After that, Desirée Goudstikker moved on with her life in America, which included marrying A. E. D. von Saher in 1950, whose name both she and her son, Eduard, took.\textsuperscript{59} As she tried to forget about the past, 267 works that the Nazi’s seized from Goudstikker were incorporated into the NK collection of Dutch art property overseen by the state.\textsuperscript{60}

In 1997, when the journalist Pieter den Hollander set out to approach Jacques Goudstikker’s heirs about his findings, he learned that the art dealer’s widow, Desirée, and her son, Eduard, had died recently. He contacted Eduard’s widow, Marei von Saher,
who knew nothing about the Goudstikker legacy. Like Max Stern, who started a new life in North America and chose not to speak about the past, so too did Desirée Goudstikker von Saher. However, like the Stern heirs, her daughter-in-law (German by birth, and not Jewish) told Alan Riding of The New York Times, “There was a need to end the silence, and to right a historical wrong begun by the Nazis then compounded by the Dutch government.”

In 1997, den Hollander was not the only person in the Netherlands thinking about art restitution. Largely influenced by the exposure of Jewish gold in Swiss banks, the state established the Dutch National Art Collections foundation and the Origins Unknown Committee (which is best known as the Ekkart Committee, named after its chairman Prof. Dr. R. E. O. Ekkart). In 1998, the Netherlands was one of forty-four countries that endorsed the Washington Conference Principles on Nazi-Confiscated Art, an international consensus on returning art stolen from the mainly Jewish collectors who were victims of Adolf Hitler’s regime. Yet, despite the Dutch government’s recognition that Nazi-looted art restitution was a critical matter, in March 1998, just two months after Marei von Saher formally requested the return of her father-in-law’s paintings from the Netherland’s public galleries and institutions, she was rebuffed. Von Saher was told that the sale of Jacques Goudstikker’s paintings to Göring and Miedl were voluntary because they were approved by two of Mr. Goudstikker’s employees and his

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61 Ibid.
62 Riding, “Dutch to Return Art Seized by Nazis.”
mother, Emily. Moreover, she was told that Desirée Goudstikker had renounced her rights to the works and that they now belonged to the Dutch people.  

Von Saher appealed this decision, but in December 1999 a Dutch court said that it was unable to overrule the government and that the application to reopen the entire case was inadmissible because it was made after a statute of limitations went into force in 1951. In large measure, the controversy surrounding this case led to the establishment of the Netherlands’ Bureau Herkomst Gezocht, its Origins Unknown Agency (BHG), whose role became the investigation of the provenance of all objects in the NK collection, including the provenance and history of all NK art in its museums, with the aim of clarifying the war history of the NK collection and finding the rightful owner of the pieces of art that it held. In 2004, the Ekkart Committee reported that the manner in which the SNK had dealt with the claims after the war was bureaucratic, even heartless. After making this assessment, the Ekkart Committee was tasked with advising the government on the appropriate restitution policy. The committee’s suggestions for a liberalized restitution policy argued that the conditions for returning works of art should be made much more flexible. Based on the Ekkart Committee’s recommendations, the Dutch government instructed the Origins Unknown Agency to try to find the original owners of the artworks. The state also established that if a claim in

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65 Sutton, Reclaimed.
66 Sandholtz, Prohibiting Plunder, 227.
69 Ibid.
writing were submitted to the Ministry of Education, Culture and Science (OCW), the case would be presented to a seven-member Restitutions Committee.\footnote{Ibid.}

In April 2004, Marei von Saher applied to the Restitutions Committee to recover 267 artworks.\footnote{Riding, “Dutch to Return Art Seized by Nazis.”} Although in February 2006 the Dutch justice minister, Piet Hein Donner, objected to the fact that the Restitutions Committee could overrule the 1999 court verdict, he reversed this stance, stating that the verdict should be overruled on moral and ethical grounds. Moreover, there was another precedent: in 2002, the Dutch Government restituted a large number of artworks from the Dutch National Art Collections foundation (SNK) to the heirs of Friedrich Gutmann.\footnote{Michael J. Bazyler, Holocaust Justice: The Battle for Restitution in America’s Courts (New York: New York University Press, 2003), 221.}

In 2006, the Dutch cabinet approved the decision to return 202 of the 267 paintings claimed by von Saher and advised that Goudstikker’s heirs should not be required to pay for the restituted works.\footnote{Riding, “Dutch to Return Art Seized by Nazis.” “[The committee] noted that 40 could not be related to Goudstikker; 21 were Miedl paintings covered by the 1952 accord; and four paintings were either lost or missing. One of those missing is Parmigianino’s ‘St. John as a Child,’ a small oil that was recovered from Hitler’s collection in 1945 and disappeared inexplicably from the Dutch collection in 1959.”} The committee noted that the Dutch government had sold sixty-three paintings—or more—from Goudstikker’s collection and kept the proceeds. Moreover, the Dutch government had use of the paintings for almost sixty years without payment.\footnote{Sutton, Reclaimed.} The committee acknowledged that the sale of Goudstikker’s art, including the property that went to Göring and Miedl, was “involuntary.”\footnote{Riding, “Dutch to Return Art Seized by Nazis.”}

As reported by The New York Times, after the decision Medy van der Laan, the Dutch deputy culture minister, said her government had concluded that
returning the works was morally correct, but that it was “a bloodletting for some of our museums,” who would receive no compensation for their losses.\textsuperscript{77}

One of the most critical outcomes of the Ekkart Committee was the creation of the Origins Unknown website which as a pilot project posted a selection of artworks from the NK collection. The website allowed users to search its database for art objects or family names. Using this database, the HCPO located An Allegory of Water and Earth and discovered that the painting was part of the Netherlands Art Property Collection, and that the painting was on loan to the Noordbrabants Museum in Den Bosch.\textsuperscript{78}

Although An Allegory of Water and Earth was not part of the 1937 sale at Lempertz, the HCPO and the Stern estate knew that the painting had been with Galerie Stern because of records that had been found recently at the Netherlands Institute for Art History, best know by its Dutch, abbreviated name RKD. There, correspondence about the painting between Stern and RKD director Hans Schneider was found. A letter dated September 3, 1936—accompanied by a photo—from Stern to Hans Schneider confirmed that Stern had acquired the painting at this time.\textsuperscript{79} In his letter Stern wrote:

\textsuperscript{77} Ibid.
\textsuperscript{78} Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.
\textsuperscript{79} Galerie Stern, letter to H. Schneider, September 3, 1936, RKD, correspondence archive. From ‘Galerie Stern / Düsseldorf / Albert-Leo-Schlageter-Allee 23 / (früher Königs-Allee)’ to H. Schneider of the Netherlands Institute for Art History and Iconographical Documentation.
Please find enclosed pictures of some new acquisitions for your archive. The painting by Jan Brueghel the Elder and Hendrik v. Balen, Water and Earth, was recently appraised by privy councillor Friedländer.\(^{80}\)

In September 1936, Schneider wrote back to Stern, advising him:

> The painting must originate from the collection of a museum, I presume the Wiesbaden Museum or possibly a major older collection from the Middle Rhine area, as it has an older, printed inventory note on the back.\(^{81}\)

As part of the RKD’s classification process, it mounted the photo sent by Stern onto thick card stock—which would then be used as a reference tool—on which it inscribed: *Gal. Stern, Dusserdorp [sic] (1936).*\(^{82}\) The Stern estate then looked into the records of the Galerie Stern at the National Gallery of Canada and found that the photo came from Foto J. Söhn, an established studio in Düsseldorf frequently retained by Stern to photograph works from his gallery.\(^{83}\) In Stern’s private records he also kept a photo, which he marked on the back: “Wood. H 60.5, W 89 cm / Appraised by privy councillor Friedländer.” These combined pieces of information allowed the Stern estate to demonstrate that the photo from Stern’s archive was identical to the image on file at the

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81 H. Schneider, letter to Galerie Stern, September 3, 1936, RKD, correspondence archive. “Das Gemälde muss aus dem Bestand eines Museums, ich nehme an aus dem Wiesbaden Museum oder andernfalls aus einer grösseren, mittelrheinischen, älteren Sammlung stammen, da es auf der Rückseite eine ältere gedruckte Inventar-notiz trägt.” In response to Stern’s letter, the Netherlands Institute for Art History and Iconographical Documentation wrote him on September 10, 1936, that the institute had found no further provenance details relating to the painting in old catalogues concerning Wiesbaden. (HCPO, letter to the RC, with enclosures, January 6, 2010.)

82 RKD photo documentation, photo card concerning the currently claimed painting.

83 Ibid.
RKD, the very same image Dr. Stern sent to the RKD in 1936, along with a letter of inquiry.\textsuperscript{84}

The Stern estate also found further documentation that Max Stern had the painting in his collection in 1936. To keep track of his clientele, Stern created customer cards (now kept at the National Gallery in Canada) where he recorded notes about his inventory and potential buyers.\textsuperscript{85} On a card for his customer “Nicolaus, Dr. Heinr., Günzach,” Stern documented that he had shown him a work by Jan Brueghel on “4/9.36.” As well, he indicated that on “16/9.36” that “he will not be buying anything for the time being.”\textsuperscript{86} From this card, it could be inferred that, on September 4, 1936, Stern showed a painting by Jan Brueghel to a potential client. Since no purchase price was mentioned—something Stern customarily included when he sold a painting—the estate argued that Stern did not sell the Brueghel painting.\textsuperscript{87}

Were it not for the RKD records, as well as the painting’s posting on the Origins Unknown website, the Stern estate would have been unable to make a case for the painting. When the Noordbrabants Museum examined the verso of An Allegory of Water and Earth, it yielded no clues about the provenance of the work. In addition to various postwar labels from Dutch institutions, the rear of the painting contained only several indistinct marks. Upon closer studies of the inscriptions, the museum concluded that

\textsuperscript{84} Ibid. He wrote, “Holz. H. 60,5, B. 89 cm./ ‘Gutachten Geheimrat Friedländer.’”
\textsuperscript{85} Enclosure 1 in: letter from the HCPO to the RC, with enclosures, January 6, 2010.
\textsuperscript{86} Ibid.
\textsuperscript{87} Philip Dombowsky, (archivist, National Gallery of Canada), interview with the author, March 9, 2014.
they provided no further information regarding the provenance of An Allegory of Water and Earth.\textsuperscript{88}

On May 30, 2007, the Stern estate submitted an application for restitution of An Allegory of Water and Earth (item 2303 in the NK collection), via the HCPO, to the Dutch Minister for Education, Culture and Science.\textsuperscript{89} On October 17, 2008, the minister for the Origins Unknown Agency submitted the Stern estate’s application to its Restitutions Committee.\textsuperscript{90}

In its application, the estate contended that Stern sold An Allegory of Water and Earth as a direct result of Nazi persecution in Germany in the period between September 1936 and November 1937. The estate argued that Stern tried to save what he could, while being subjected to “a stream of official signals constituting nothing short of persecution.”\textsuperscript{91} In light of the Nazi’s policies, Stern began to find escape routes for some of his gallery’s holdings. Of the works that he sought to deaccession first were those that were most valuable. In comparison to the Galerie Stern records, there were far fewer Old

\textsuperscript{88} HCPO, letter to the RC, March 9, 2010.
Master paintings at the Lempertz sale in Cologne than what the gallery usually held in its inventory. This indicated that Stern had already sold a number of works. As Catherine MacKenzie wrote, Stern continued to buy and sell works of art: “Travelling to Holland and Belgium and throughout Germany, he engaged in a frenzy of buying and selling.”

One of Stern’s sisters, Hedwig Selbiger-Stern, who had worked in Galerie Julius Stern for many years, left Germany in 1936 to set up a new art dealership in England, West’s Galleries Limited, established at 43 Duke Street, St. James’s in London. When she emigrated, Hedwig took an unknown number of paintings by Old Masters with her. The firm specialized primarily in the works of Netherlandish masters from the sixteenth and seventeenth centuries, including Jan Brueghel. Several of the works on display in West’s Galleries had previously been on show in Galerie Julius Stern in Düsseldorf.

Did Stern bring An Allegory of Water and Earth to Amsterdam? Due to a lack of available Galerie Stern records it is not possible to reconstruct a complete and accurate accounting of the individuals in the Netherlands with whom he had dealings. There is, however, clear evidence that a number of the paintings in Stern’s inventory ended up in the Netherlands. For example, Stern had in his possession a painting by Lucas van

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93 Ibid. See also Koldehoff, Die Bilder sind unter uns, 20.
94 “West’s Galleries Limited fonds: Finding Aid, Administrative History,” National Gallery of Canada, https://www.gallery.ca/fr/bibliotheque/ngc031.html. In January 1937, the directors of the art dealership during this initial period were Hedwig Selbiger-Stern, Cornelis J.W. van de Wetering (a Dutch art historian who, like Hedwig Selbiger-Stern, had come to London from Düsseldorf in 1936) and John P. Halpin.
95 MacKenzie, Auktion 392, 14. “In 1936, his older sister Hedi went to London (via Palestine), taking with an unknown number of Old Master paintings.” In a note next to this passage, MacKenzie states, “Based on documents in the Max Sterns fonds, it is clear that Hedi had left Germany for Palestine sometime in 1935, possibly taking the paintings with her.”
96 Some of the paintings in West’s Galleries were transferred during the mid-1940s to the Dominion Gallery, the art dealership that Max Stern later established in Canada (see “Residence in Canada” below).
97 HCPO, letter to the RC, with enclosures, January 6, 2010, 3.
Leyden (1494-1533) in March 1934. By the summer of 1936, it was in the Amsterdam-based art dealership P. de Boer.\textsuperscript{98} Since \textit{An Allegory of Water and Earth} was neither in the 1937 Lempertz auction nor part of Stern’s private collection left behind in Germany when he fled later that year, the HCPO contended that Stern must have involuntarily sold \textit{An Allegory of Water and Earth} in Germany in the period between September 1936 and November 1937.\textsuperscript{99}

Although there were no known provenance details about \textit{An Allegory of Water and Earth} for the period prior to when the Nazis took power, postwar documentation of the work revealed the following: “Provenance Mensing & Zn., Amsterdam; at dealership J. Dick, (Dik, RC) Jr., Amsterdam.”\textsuperscript{100} This description indicated that both Antonius Wilhelmus Maria Mensing and his son Bernardus Franciscus Maria Mensing, partners in the Amsterdam-based auction house Frederik Muller & Co., owned the painting in addition to the dealership of J. Dick.\textsuperscript{101}

Auction catalogues from Frederik Muller & Co. failed to yield any details concerning its possession of \textit{An Allegory of Water and Earth}.\textsuperscript{102} Nor could it be determined when and from whom this company may have acquired or sold the work. However, important information could be found concerning J. Dick (better known as Dik Jr.), the restorer of paintings and art dealer who had worked for the Amsterdam art

\textsuperscript{98} Ibid. Although the RC conducted research into O. Hirschmann in the RKD and submitted a request for information concerning \textit{An Allegory of Water and Earth} to art dealership P. de Boer in Amsterdam, this failed to provide any other provenance details regarding the currently claimed painting.

\textsuperscript{99} HCPO, letter to the RC, with the completed questionnaire and enclosures, February 25, 2009.


\textsuperscript{101} Archive of the Province of Noord-Holland, archive of the Chamber of Commerce, file no. 3745; NA, CABR archive, inv. No. 99713. The firm also traded under the name “Mensing & Zn.”

\textsuperscript{102} HCPO, letter to the RC, with enclosures, March 1, 2010.
dealership Voorheen J. Goudstikker N.V. during the war, until late 1940. Today, provenance that points to the involvement of Dik Jr. is a warning that the work may have formerly belonged to Jewish owners. As mentioned, on February 10, 1949, the Special Criminal Court in Amsterdam sentenced Jan Dik Jr., in absentia, to three years in prison by for “Intentionally aiding and abetting the enemy in times of war” in connection with his activities as an art dealer. In 1947, Dik Jr. was arrested for his crimes; however, he managed to escape to Switzerland. Although no evidence exists as to how Dik Jr. acquired *An Allegory of Water and Earth*, the Dutch Restitutions Committee discovered that he sold the painting in 1943 to the Hamburger Kunsthalle, which purchased the work for a sum of NGL 120,000.

Stern’s sale of *An Allegory of Water and Earth* fit within the Ekkart Committee’s definition (which was adopted by the Dutch government) of an “involuntary sale” by a Jewish dealer in Germany. Pursuant to its recommendations, sales by Jewish owners, including art dealers, in Germany are generally deemed forced sales from 1933 onwards, unless there is contrary proof, which in the case of *An Allegory of Water and Earth* there

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103 Archive of the Province of Noord-Holland, inv. Nos. 76957 I and II.
104 Archive of the Province of Noord-Holland, inv. No. 76957 I and II.
105 Documentation from the Federal Archive in Koblenz concerning the current NK 2303. Federal Archive Koblenz, B323, no. 574; SNK inventory card concerning the current NK 2303. NA, SNK archive, inv. No. 863; E.K. Waterhouse, “Catalogue of pictures acquired abroad by the HAMBURG Kunsthalle during the war.” Enclosed with: letter from the applicant to the RC, August 24, 2009. In a list from the archive of the SNK concerning “Hamburg Art Gallery / Works of Art bought in Foreign Countries since 1939,” *An Allegory of Water and Earth* is mentioned among pieces that the museum had acquired from Jan Dik Jr. in 1943.
was not.\textsuperscript{106} The Restitutions Committee concluded that in postwar years, Stern was unable to file claims for paintings and objects that were not part of the Lempertz sale or confiscated at Roggendorf because postwar compensation regulations did not allow claims for objects that were sold under duress as a result of Nazi persecution.\textsuperscript{107} In light of these facts, the Restitutions Committee recommended in May 2010 that \textit{An Allegory of Water and Earth} should be returned to the Stern estate, in agreement with the estate’s position that it was unlikely that Stern was able “to sell the Brueghel for a fair market price and in any event could not have freely disposed of the proceeds.”\textsuperscript{108}

The Restitutions Committee decided that Stern may have sold \textit{Allegory of Water and Earth} to help his mother escape Germany, or that the painting may have been among the possessions he left when he fled, which were all later seized and sold by the Nazis. As reported by Catherine Hickley, the committee decided “Stern’s predicament at the time of the loss was so menacing and dangerous that, had he succeeded in selling the claimed painting during this period, it should be considered to have been under duress.”\textsuperscript{109} It reached the conclusion that “the loss of possession was involuntary, as a result of circumstances directly related to the Nazi regime,” and that the painting should be fully restituted to its heirs.\textsuperscript{110}

\textsuperscript{107} Ibid.
\textsuperscript{108} Ibid. As the HCPO wrote the Dutch Ministry of OCW: “All money paid into Dr. Stern’s bank accounts from late 1936 until the end of 1937 was used to pay various discriminatory taxes. In addition, Dr. Stern’s bank accounts were blocked in December 1937 after he fled Germany. As a person of Jewish descent, Dr. Stern lost his German citizenship in July 1938 and all of his property eventually fell to the German Reich per the decision of April 18, 1942 based on the 11\textsuperscript{th} Verordnung zum Reichsbuergergesetz.”
\textsuperscript{109} Hickley, “Netherlands Returns Brueghel.”
\textsuperscript{110} Ibid.
By 2010, the Restitutions Committee panel advised that ninety-three works of art in state hands be returned to owners that lost them under Nazi duress. 111 *An Allegory of Water and Earth* was among its recommendations. The painting was restituted to the estate of Max Stern on Wednesday, November 17, 2010, at the Netherlands Institute for Cultural Heritage (Instituut Collectie Nederland) Visseringlaan 3, Rijswijk, The Hague (Den Haag). 112 At the ceremony, Judith Woodsworth, then president of Concordia University, spoke of the “hundreds of Stern’s works—most notably, those currently hanging in other European museums,” and of her hope that the world would see their recovery in the years to come. 113

The recovery of *An Allegory of Water and Earth* consolidated the Stern Estate’s assertion that after 1935, whether at the Lempertz auction or in a personal commercial transaction, anything that Stern sold was sold out of necessity, not choice. Moreover, although Stern did not present any applications for restitution of his lost art collection to the Dutch authorities after the war—something that he arguably could have done—the Dutch authorities recognized that the statute of limitations put in place for postwar claims had to be reconsidered.

After the restitution ceremony of *An Allegory of Water and Earth*, the painting was loaned to the Montreal Museum of Fine Arts. 114 Two years later, it was part of the “Old Master & British Paintings” evening sale held on July 3, 2012, in London, King

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111 Ibid.
113 Hickley, “Netherlands Returns Brueghel.”
114 Hickley, “Netherlands Returns Brueghel.”
Street, where the painting sold as lot 39 for $566,801 (US).

Critics continue to argue that such actions take restituted art out of the public view and place it into private hands. On this matter, it is worth considering the comments of Charlène von Saher. In 2008, sales of Goudstikker’s restituted art (about two-thirds of the reclaimed works) yielded approximately $25 million at auction. As von Saher explained, the sale was not made without careful thought. The more important works in the Goudstikker collection were sold privately to ensure they would be bequeathed and donated to museums. As well, von Saher gave *A Child on Its Deathbed* (1645) by Bartholomeus van der Helst (1613-1670) to Museum Gouda in the Netherlands. More importantly, however, as von Saher told the media:

You also have to understand that as far as I am concerned, the Dutch government never owned these pictures. They really belonged to my family. The Dutch people were able to enjoy them free for 60 years.

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115 Christie’s “Old Master & British Paintings” evening sale July 3, 2012, London, King Street. “Jan Breughel II Sale Lot 39/ Sale 5602 Jan Breughel II (Antwerp) 1601-1678/. And Frans Francken II (Antwerp 1581-1642) Frans Francken II; An Allegory of Water and Earth; Price Realized £361,250 ($566,801); Estimate £250,000 - £350,000 ($391,250 – $547,750); Sale Information; Sale 5602; Old Master & British Paintings Evening Sale; 3 July 2012; London, King Street; Pre-Lot Text; Property From The Estate Of Dr Max Stern; Provenance With Galerie Stern, Düsseldorf, 1936, as Jan Breughel I and Hendrick van Balen; sold under duress due to persecution by the National Socialists, September 1936-September 1938; With Mensing & Zn., Amsterdam, circa 1943-1944; With J. Dik Jr., Huizen, 1944, when acquired by Kunsthalle, Hamburg, 1944; Recovered by the Western Allies; Transferred to Stichting Nederlands Kunstbezit, The Hague, as Jan Breughel I, 1946 (inventory no. NK2303); Instituut Collectie Nederland, Amsterdam (formerly the Dienst voor’s Rijks Verspreide Kunstvoorwerpen), 1949; Restituted to the Estate of Max Stern, November 2010.”


117 Genocchio, “Seized, Reclaimed and Now on View.” In 2003, the Goodman family received criticism when it sold more than 90 of its restituted works at auction at Christie’s.

118 Ibid.

119 Ibid.
Like the von Saher family, for Max Stern’s estate the matter of restituting *An Allegory of Water and Earth* was a lengthy, complicated, and expensive multi-year process; however, despite the value of the painting, money was never at the heart of the matter.\textsuperscript{120} As with the von Sahers’ sales of their paintings taken from museums and sold to private collectors, the Stern estate took this measure in order to cover the costs associated with the complicated process of reclaiming cultural property.\textsuperscript{121} For the Stern executors, the proceeds of *An Allegory of Water and Earth* were necessary to ensure the future of the Max Stern Art Restitution Project, an organization that has much work ahead of itself, as its goal is to claim more than 200 more paintings.

In 2007, the exhibition *Looted, But From Whom?* marked the 2007 closure of the Origins Unknown Agency investigation. Yet the issue of Nazi-era looted art hanging in Dutch museums is ongoing.\textsuperscript{122} In October 2013, the Dutch Museum Association released the findings of a four-year study, which revealed that there are still over 130 works of stolen art in the country’s public collections. Such items, looted by the Nazis or forcibly sold in the years before the Second World War, include *Odalisque* (1921) by Henri Matisse (1869-1954), now on display in the Stedelijk Museum. As well, works by Wassily Kandinsky, Moritz Calisch (1819-1870), and Jan Toorop can be found in the Stedelijk and the Rijksmuseum.\textsuperscript{123} Meanwhile, Lawrence M. Kaye of the New York law firm Herrick, Feinstein, who represents Marei von Saher, said that an estimated 1,000 works

\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} The exhibition’s original title is *Geroofd, maar van wie?* The exhibition ran from November 30, 2006, to March 18, 2007, in the Hollandsche Schouwburg (Dutch Theatre) in Amsterdam. It used fifty paintings and other works of art to tell the story of the intensive investigative work carried out by the Origins Unknown Agency as reported on its website: http://www.geroofdmaarvanwie.nl/en/v5.html (no longer in operation).
from the Goudstikker collection are still missing. As for paintings that belong to Max Stern, based on the inventory he sold and his interest in Northern Old Master paintings, it is almost certain that *An Allegory of Water and Earth* will not be the last case that the Max Stern Art Restitution Project will make before the Dutch government.

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124 Riding, “Dutch to Return Art Seized by Nazis.”
CHAPTER SEVEN

One Recovery; Two Losses: The Restitution of Scandinavian Landscape by Andreas Achenbach
Restituted: October 2013
Andreas Achenbach (1815-1910)
Scandinavian Landscape (1837)
Oil on canvas
25.8 x 37.2 cm
Reproduced with the permission of the Max Stern Estate
“Often there are really two victims: the person from whom it was stolen and the institution or person who bought it in good faith.”
—Sotheby’s specialist Philip Hook.¹

“The trade component of restitution and museum component of restitution are totally different.”
—Markus Eisenbeis, managing director of Van Ham Kunstauctionen KG²

On October 29, 2013, *Scandinavian Landscape*, painted in 1837 by the Kassel-born artist Andreas Achenbach (1815-1910), was returned to the estate of Max Stern in a ceremony at the Canadian Embassy in Berlin.³ On behalf of Stern’s heirs—Concordia University, McGill University, and The Hebrew University of Jerusalem—the Canadian ambassador to Berlin, Marie Gervais-Vidricaire, unveiled the painting, which Max Stern sold in the November 13, 1937, liquidation sale of Galerie Stern at the Lempertz auction house in Cologne.⁴

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² Markus Eisenbeis, (managing director, Van Ham Kunstauctionen KG), interview with the author, May 14, 2015.
⁴ “Nazi Loot Returns to Montreal Heirs of Max Stern,” BlouinArtinfo, http://ca.blouinartinfo.com/news/story/978588/nazi-loot-returns-to-montreal-heirs-of-max-stern#. “We are grateful to Van Ham and the HCPO for facilitating the return of this painting. Concordia president Alan Shepard said in a statement posted on the University’s website. ‘Our close ties with European and American restitution agencies, together with sustained diplomatic efforts, continue to demonstrate that international
The painting was hanging in Stern’s Düsseldorf gallery when he learned that, because of his religion, he could no longer sell art. It would be another seven decades before the work surfaced again—only miles from where it left Stern’s hands. In spring 2013 Scandinavian Landscape was listed in the catalogue for the “Alte Kunst” auction of Cologne’s Van Ham Kunstauktionen KG. Although the mood should have been triumphant as Scandinavian Landscape was returned to the Stern estate, a sense of defeat hung in the air. While the painting marked an important recovery, it also signaled a loss. Scandinavian Landscape was not the only painting once owned by the Galerie Stern that was put up for sale by Van Ham in its spring 2013 “Old Masters” sale. Two other works that belonged to Stern, Canal in Dordrecht (Kanal in Dordrecht) (date unavailable) by Emil Rudolf Johann (“Hans”) Herrmann (1858-1942) and Children’s Festival in the Country (Dorffest mit einem Aufzug der Kinder) (date unavailable) by Jakob Becker (1810-1872) were also offered in the 1937 Lempertz sale—Herrmann’s painting as lot 687 and Becker’s painting as lot 830.

In the Van Ham catalogue for its spring 2013 “Old Masters” sale, none of the catalogue entries for the three above-mentioned paintings listed that the provenance of the works included ownership by the Galerie Stern. How then were Scandinavian Landscape, Canal in Dordrecht, and Children’s Festival in the Country found—and why was only one of the three paintings restituted? In answer to this question, one must understand the crucial and complex, moral and commercial distinction that Markus Eisenbeis, the director of Van Ham, articulated about the difference between the trade
component of restitution and museum component of restitution: “They are totally different.”

From the early 1820s, the Kunstkademie Düsseldorf, the city’s Arts Academy, became one of Europe’s most significant schools of visual art, drawing talent from cities throughout Germany and abroad. Its third director, Peter von Cornelius (1784-1867), considered one of the most promising painters of the Lukasbund, also known as the Nazarene Brotherhood, managed during the span of his career to turn international attention toward Germany. Von Cornelius’s success was so significant that in 1855 the French writer and critic Théophile Gautier said he “enjoyed a celebrity such as few artists enjoy in one’s lifetime” and that he was admired “as if he were already dead.” The accomplishment was considerable as the Northern Renaissance had marked Germany’s great moment of renown, leaving the nation’s artistic prestige lagging behind France, Italy, England, and the Netherlands at the start of the nineteenth century. For these reasons, Scandinavian Landscape, Canal in Dordrecht, and Children’s Festival in the Country were important Galerie Stern pieces, each painting an example of works related to the Düsseldorf school and a moment when the gallery’s city gained international attention for its art.

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8 Eisenbeis, interview, May 14, 2015.
9 Founded by Lambert Krahe in 1762 as a school of drawing, in the years following the Napoleonic Wars, when the Prussian government annexed the Düsseldorf region, the institution became the Royal Arts Academy in Düsseldorf in 1819.
10 Some sources refer to the brotherhood as the Lukasbruder Brotherhood; see https://www.nationalgallery.org.uk/paintings/glossary/nazarene-brotherhood.
Of the three works that Van Ham put up for auction in spring 2013, by far the most significant painting was *Scandinavian Landscape* by Achenbach. Among Germany’s most accomplished painters of the early nineteenth century, Achenbach is revered as the “father” of German realism.¹² His works, such as *Scandinavian Landscape*, which frequently present a sublime landscape in which a human is dwarfed by the natural world’s power and passion, made him famous worldwide. In the centre of *Scandinavian Landscape*, a man stares skyward at dusk, his body blown backwards so that it echoes a tree also being pulled toward the earth. Above these central figures, sunlight emerges from the stormy sky to illuminate the swelling river, one so close to flooding that the water might seem in danger of lapping over the bottom edge of the painting.

In 1832, Achenbach embarked with his father on a sketching trip to the Netherlands where his art saw a turning point. Influenced by the freer, more realistic style of seventeenth-century Dutch masters, his painting distanced itself from the austere, ecclesiastic style of the Nazarene school, led by his teacher at the Düsseldorf Academy, Wilhelm von Schadow. In 1833, Achenbach returned to Düsseldorf where he re-entered the Academy. While von Schadow’s interest in religious art as practiced by the Italian masters brought a revival of religious Christian painting to the academy—making its students and professors highly revered for interior church commissions in Germany and abroad—Achenbach found this classical approach to be restrictive. He left Düsseldorf in 1835.¹³ It was a move that would have an impact on his twenty-first-century legacy: his status as an innovator earned greater value for his art over time.

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Achenbach secured his reputation with landscapes and seascapes based on sketches he made on trips to Norway, Denmark, Sweden, and southern Germany in the 1830s. Increasingly, his art derived from *plein-air* sketches earned him notoriety. Although Achenbach never became an instructor at the Düsseldorf Academy (unlike his younger brother Oswald), after 1846 his graphic, free, and convincing depictions of landscape exerted a profound influence on German art, attracting the attention and emulation of aspiring painters.\(^{14}\) Moreover, his work, exhibited in New York from 1860 to 1866, caught the attention of North American art buyers, including the Manhattan art collector and philanthropist Catharine Lorillard Wolfe, who bought Achenbach’s *Sunset after a Storm on the Coast of Sicily* (1853), which now hangs in the Metropolitan Museum of Art.\(^ {15}\)

While the paintings by Jakob Becker and Hans Herrmann, which Van Ham put up for sale in its spring 2013 “Old Masters” sale, were on a very different level of monetary value than Achenbach’s *Scandinavian Landscape*, their worth would have been equally meaningful to Julius and Max Stern. Like Achenbach, Becker left Dittelsheim-Hessloch to study under Wilhem von Schadow from 1833 to 1841, and quickly he became associated with the Düsseldorf school. For Becker, as Achenbach before him, the rigidity of the Nazarene style proved confining. In a search for greater artistic freedom, he moved to Frankfurt in 1842, where he accepted employment as the Städelschule’s first professor of genre and landscape painting, a position he held for thirty years. In Frankfurt, Becker’s art became concerned with the tenets of realism, as articulated by Gustave Courbet (1819-1877) (with whom Becker offered to share his

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\(^{14}\) Peiffer, 32.

\(^{15}\) Ibid. 46.
Hans Herrmann was a generation younger than Achenbach and Becker, but like them he studied at the Art Academy in Düsseldorf in the 1880s. The Berlin-born painter came to Düsseldorf, where he worked alongside Eugen Dümmer (1841-1916) and started his own studio in 1883. Along with Dümmer, Herrmann set out in 1885 for the Dutch shore at Katwijk, Scheveningen, where he concentrated on coastal scenes. Herrmann’s style, like that of Dümmer, drew inspiration from both French realism and Impressionism, interpreting everyday moments into an unmistakably Northern, German idiom. Like the French Impressionists, he painted light, space, and texture, but introduced a Northern mystical tradition of being one with nature. His preference was to paint scenes of villages, beaches, and harbours *en plein air*, featuring human figures, with attention to elements of Netherlandish folklore.¹⁷

Herrmann painted *Canal in Dordrecht* in the northwestern Netherlands before depicting similar settings in other Dutch cities, including Amsterdam, Rotterdam, Flushing, and Volendam. In the 1890s, Becker moved to Berlin where he became part of the Berlin-based school Gruppe der XI (Group of Eleven), which included the renowned German Impressionist Max Liebermann (1847-1935). He was made an honourary citizen of the city, where he died in 1942 at eighty-two years of age.

¹⁷ Ibid, 68.
¹⁸ Marion Deshmukh, François Forster-Hahn, and Barbara Gaehtgens, eds., *Max Liebermann and International Modernism: An Artist’s Career from Empire to Third Reich* (New York: Berghahn Books, 2011), 58. The Gruppe der XI was also known as “Vereinigung der XI,” (Union of XI).
Eight years before Van Ham put *Scandinavian Landscape*, *Canal in Dordrecht*, and *Children’s Festival in the Country* up for sale in its spring 2013 auction, these works were identified as stolen art on the Lost Art Internet Database, www.lostart.de, the German government’s online database of art missing after the Second World War. This fact was confirmed by Michael Franz, the director of the Lost Art Coordination Office Koordinierungsstelle in Magdeburg (Saxony-Anhalt), who administrates the website.19

How did Van Ham come to consign three paintings that had been identified as Nazi-looted art for almost a decade?

In 1994, the Lost Art Coordination Office was established to find cultural assets confiscated by the National Socialists.20 The organization was created in the years leading up to the Washington Conference Principles on Nazi-Confiscated Art (1998), when more than forty nations committed themselves to identifying artworks confiscated during the National Socialist period and returning them to the owners or their heirs.21

Today, the Lost Art Coordination Office focuses on two categories of work: recovering cultural assets that the National Socialists appropriated during their regime in Germany; as well, the organization looks for cultural assets that were misappropriated during, or as a consequence of, the Second World War—namely works that were taken by the Allies, from German collections, to their home countries.22 The work of Franz and the Lost Art Coordination Office is—literally—endless and highly difficult. On

19 Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
www.lostart.de, anyone from anywhere in the world can enter a cultural asset that he or she is seeking, or an asset that has been found but whose provenance is unknown. The Lost Art Coordination Office often does research on the basis of the images entered into the data bank. The process is laborious and slow not only because more than seventy years have passed since the end of the Second World War, but because of a lack of provenance information about most items. In 2014, there were 154,000 cultural assets described in detail and stored on www.lostart.de, a statistic that did not include lost books or archive materials, items which number in the millions.

At the Lost Art Coordination Office, the list of missing cultural properties grows longer by the day. Often the search for assets takes years to resolve, as its staff depends on information from the public. “Our work begins the moment an application for a search or a report of a sighting has been received,” stated Michael Franz in a 2014 interview with the Goethe-Institute. Applications are then investigated—in particular, their provenance—by the Lost Art Coordination Office Advisory Commission (also headquartered in Magdeburg), which makes recommendations about whether the claims are credible. However, each case involves a unique set of circumstances. As Franz explains, there is no uniform solution to the problem of stolen art: “Each case must be evaluated individually.” In light of this, the Lost Art Coordination Office focuses its efforts on dealing with Nazi-era looted art, and on helping parties come together to find a fair and just solution.

Arguably, however, the greatest challenge facing the Lost Art Coordination Office

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23 Lukas, “Hunters of Lost Treasures.”
25 Lukas, “Hunters of Lost Treasures.”
26 Ibid.
27 Ibid.
28 Ibid.
is that the Washington Principles are not legally binding. This is particularly problematic because, according to German law, cases of theft and confiscation dating back to the Second World War are criminal acts committed too far in the past for ownership of Nazi-looted art by a private citizen to be considered an offense. While www.lostart.de and the Lost Art Coordination Office exist to address matters of restitution, Germany has no laws to enforce the important work of these two organizations.

When the researchers at the Lost Art Coordination Office saw the catalogue for Van Ham’s spring 2013 “Alte Kunst” auction, they identified *Scandinavian Landscape, Canal in Dordrecht*, and *Children’s Festival in the Country* as exact matches for Stern’s paintings that had been listed with Interpol as works of Nazi-era looted art since 2005. Why then, hadn’t Van Ham—or the consignors of *Scandinavian Landscape, Canal in Dordrecht*, and *Children’s Festival in the Country*—also noticed what was presented on the Lost Art website?

The answer lies in the fact that different countries have different definitions of what constitutes stolen art. In recent years, Sotheby’s and Christie’s, whose offices are focused on business in New York and London, have built up considerable provenance expertise. Both houses now frequently coordinate with buyers, sellers, restitution lawyers, and private art-loss databases to broker deals on art they discover was looted by

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30 Lane, “Art Stolen by Nazis Goes to Auction.”
the Nazis.\textsuperscript{31} Van Ham, however, is a family-owned business that was founded in 1959 by the art historian Carola van Ham, Europe’s first female auctioneer. Her considerable skill turned van Ham’s company into one of Germany’s leading auction houses, a business now run by her son, Markus, who became its director in 1996.\textsuperscript{32} Today Van Ham conducts an average of sixteen auctions annually in categories that include “Modern Art,” “European Applied Arts,” “Carpets,” and “Tapestries.”\textsuperscript{33}

In recent years, the public has focused its attention on Van Ham, due to its success in initiating the restitution and compensation of Nazi-era looted art.\textsuperscript{34} In large part, explains Eisenbeis, his business has changed because after the fall of the iron curtain there was a time when many archives opened. “Year after year, archives became accessible so that much more research could be done than before. By the end of the nineties much more knowledge was available,” he says, explaining how the number of restitution cases increased dramatically. “And, of course, this became a topic for the trade as well, because we had to prove these restitution cases. We became mediators.”\textsuperscript{35}

Though international auction houses like Christie’s and Sotheby’s also became mediators, this element of the trade follows different rules in Germany. To begin with, Van Ham does not have a provenance department and set policies for how works of dubious origin are verified in order to ensure that they aren’t pieces of Nazi-looted art.\textsuperscript{36} Where Sotheby’s and Christie’s have teams of researchers checking provenance, German auction houses rely uniquely on the services of the Art Loss Register.\textsuperscript{37} Van Ham’s website advertises that as soon as a work of art indicates signs of a problematic or

\textsuperscript{31} Ibid. \\
\textsuperscript{33} Ibid. \\
\textsuperscript{34} Ibid. \\
\textsuperscript{35} Eisenbeis, interview, May 14, 2015. \\
\textsuperscript{36} Ibid. \\
\textsuperscript{37} Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
questionable nature, the auction house begins extensive research in conjunction with other well-known institutions such as the Art Loss Register in London, the Lost Art Coordination Office in Magdeburg and the Holocaust Claims Processing Office in New York. However, the key difference between Van Ham’s practice and that of Sotheby’s and Christie’s is that in most cases, its research does not begin until a work of art is shown to be problematic.

As Eisenbeis explains, only if a consigned work is “an important painting” or a piece that he has serious doubts about will it be checked with the Lost Art Coordination Office in Magdeburg before it is listed for sale at auction. For financial reasons, typically paintings worth less than €1,000, €2,000, or €3,000 are not checked with Magdeburg. As Eisenbeis explains, “Who pays Van Ham to do such work? I have to see it from the economics side. It doesn’t have anything to do with my attitude towards restitutions.”

As a mid-sized auction house, Van Ham says it can’t afford to have its own restitution department so it outsources the vetting of its paintings to the Art Loss Register.

Eisenbeis’s explanation of how Van Ham accounts for placing stolen art into its auctions can be best described by the maxim: “It is easier to get forgiveness than permission.” Although Van Ham’s website says that it checks all objects valued at over €1,000 for theft and looting with the Art Loss Register, this doesn’t mean that it won’t place Nazi-looted art in its auctions. According to Van Ham spokesperson Anne Srikiow, the auction house sends its catalogues to the Art Loss Register to be vetted, but only after all works of art are listed for sale. This gives the Art Loss Register a brief

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40 Ibid.
41 Ibid.
42 Ibid.
44 Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
window in which to check the works. With reference to the Stern Galerie items that were listed in the 2013 “Alte Kunst” spring sale, Srikow explained that it was not company policy to routinely check www.lostart.de.\textsuperscript{45}

Van Ham feels that this approach is fair and forthright; if it’s in the catalogue, everybody sees it. If there’s a problem with a work of art, Van Ham will withdraw the work from one of its sales.\textsuperscript{46} In contrast, before Sotheby’s places works in an auction catalogue, it checks all paintings.\textsuperscript{47} Moreover, for provenance research, Sotheby’s has its own database, one built up over fifteen years, that includes artists’ catalogue raisonnés and lists of lost works published by national governments.\textsuperscript{48} After Sotheby’s does an initial check, it then sends data to the Art Loss Register, which runs a second check.\textsuperscript{49} Of approximately 5,000 lots that Sotheby’s examines each year, fifty to sixty may raise concerns that facilitate further research. Out of those maybe ten to fifteen will be unrestituted Nazi-looted artworks.\textsuperscript{50}

Van Ham doesn’t need to follow the same methods as Sotheby’s and Christie’s because it has German law on its side. When Nazi-looted works of art appear on the market at auction in Germany, claimants may not be able to stop a sale, even if they succeed in tracking down the work. “Claimants are often powerless in the process,” said Anne Webber, co-chair of the Commission for Looted Art in Europe, because “the balance of power is in favor of the possessor of the art.”\textsuperscript{51} Moreover, as René Allonge, the officer who leads the art crime department of the Berlin Landeskriminalamtes (State Criminal Police Office), told journalist Catherine Hickley, “Heirs are often dependent on

\begin{itemize}
\item \textsuperscript{45} Ibid.
\item \textsuperscript{46} Eisenbeis, interview, May 14, 2015.
\item \textsuperscript{47} Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
\item \textsuperscript{48} Ibid.
\item \textsuperscript{49} Ibid.
\item \textsuperscript{50} Ibid.
\item \textsuperscript{51} Ibid.
\end{itemize}
the goodwill of private owners.”52 In the German auction trade, if consignors of suspected works of Nazi-looted art are not willing or do not want to address the reality behind how a work of art entered their hands, the heir pursuing the work has little recourse.

In cases of theft and confiscation dating back to the Second World War, according to German law, the criminal act is too far in the past. “The perpetrator is probably dead, and the statutes of limitations have expired,” says Allonge. Even in cases where it might be possible to open an investigation on suspicion of handling stolen goods, proving that the suspect was aware the object in question was stolen can be very difficult.53

German data protection laws prevent the country’s auction houses from passing the names of consignors of suspected Nazi-looted art to claimants.54 For foreign buyers, purchasing prewar art at auction in Germany is a case of “caveat emptor,” said Christian Bauschke, a lawyer at Bauschke Braeuer in Berlin.55 Bauschke was hired to represent the New York-based art dealer Richard L. Feigen, who in 2009 voluntarily returned the painting *St. Jerome* by Ludovico Carracci to the Max Stern estate after learning that it was spoliated art.56 Since the country’s civil code states that Nazi-era looted property

52 Ibid.
53 Ibid.
54 Ibid.
55 Ibid.
cannot be reclaimed more than thirty years after it was lost or stolen, the door to restituting works through German courts was shut in 1975.\textsuperscript{57}

To understand just how difficult it was for the Stern estate to assert ownership of Scandinavian Landscape, Children’s Festival in the Country, and Canal in Dordrecht, one needs to look at other cases where claims were made against German auction houses. In 2010, heirs of the German Impressionist artist Max Liebermann tried to prevent the sale of one of his sketches—Study for a Painting of Boys Bathing in the Sea—at the Hamburg auction house Hauswedell & Nolte.\textsuperscript{58} Forced to resign from his position at the Prussian Academy of Arts when the Nazis came to power, Liebermann died in 1935, leaving his estate to his widow, Martha. Through the sale of art from her collection, she tried to obtain a visa to Switzerland. Unable to do so, in 1938 she took poison to escape deportation to a concentration camp. Following Martha Liebermann’s death, the Gestapo seized the art that remained in her apartment.\textsuperscript{59}

Today, the grandchildren of Max and Martha Liebermann (who prefer to not be identified by name) are trying to trace thousands of works from their family’s estate—items both by their grandfather as well as works that he collected. In 2012, the Prussian Cultural Heritage Foundation, the organization that runs Berlin’s museums including the Kupferstichkabinett, returned to them four drawings by the painter Adolph Friedrich


\textsuperscript{58} Catherine Hickley, “Jewish Artist’s Heirs Pressure Museums on Nazi-Era Losses,” \textit{Bloomberg}, September 11, 2012. Liebermann was not only one of the most famous German Impressionists, he was also a great collector. Works by Edouard Manet, Edgar Degas, Claude Monet, and Auguste Renoir adorned his imposing home next to the Brandenburg Gate.

\textsuperscript{59} Hickley, “Jewish Artist’s Heirs Pressure Museums on Nazi-Era Losses.”
Erdmann von Menzel (1815–1905)—who Edgar Degas called “The greatest living master”—works that had been in Martha Liebermann’s possession until 1937. Before 2012, the German authorities questioned the claim of the Menzel drawings. But this belief was refuted after the Liebermann estate provided research that proved Martha Liebermann sold her works as a result of the Nuremberg Laws.

While the Liebermann heirs have had a measure of achievement in recovering their family’s property from museums, they had no success in 2010 when they approached Hauswedell & Nolte requesting more research before the sale of the sketch Study for a Painting of Boys Bathing in the Sea, which they believed had either been seized by the Nazis or sold by their grandparents under duress. Liebermann’s estate contacted Hauswedell & Nolte to state they were opposed to the sale before the provenance of the sketch was thoroughly investigated. However, Hauswedell & Nolte argued that there was no proof that the drawing had been looted, adding that the consignor of the drawing offered documentation of her legal ownership. However, the only provenance given in the catalogue for Study for a Painting of Boys Bathing in the Sea was “a Hamburg private collection.” The auction house argued that the consignor had proven legal title and said the heirs’ claim was unfounded. It then sold the sketch

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60 Kaethe Riezler, Max and Martha Liebermann’s daughter, escaped to the United States. For quotation on Menzel see Michael Fried, Menzel’s Realism: Art and Embodiment in Nineteenth-Century Berlin (London and New Haven: Yale University Press, 2002). While Berlin cooperated with the Liebermann estate, Portrait of Monsieur Arnaud on Horseback (c. 1875) by Manet, which was in the Liebermann collection until at least 1936, is now in the Galleria d’Arte Moderna in Milan, an institution that has failed to respond to requests for provenance information. “Without cooperation from the museums, we can’t get very far,” said Georg Castell of Heinichen Laudien von Nottebeck Rechtsanwaelte in Berlin, the lawyer representing the Liebermann estate. See Catherine Hickley, “Nazi Controversy Stirred as Liebermann Heirs Slam Auction Sale,” Bloomberg Business, July 1, 2010. http://www.bloomberg.com/news/articles/2010-07-01/nazi-controversy-stirred-as-liebermann-heirs-slam-auction-sale.


62 Catherine Hickley, “Nazi Controversy Stirred.”

63 Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
for €4,500 ($5,575 [US]).

In contrast, in 2013, Sotheby’s assisted a Hamburg-based corporate collection in returning *Summer Evening on the Alster*, a 1910 Max Liebermann painting, to Peter Ruta, the heir of Gustav Kirstein, who acquired the work in 1914. A co-owner of the well-known art-publishing house E. A. Seemann, chairman of the Leipzig Museum association, and a renowned art patron and collector, Kirstein died of a stroke in 1934 after his publishing business was taken over by the Nazis. His wife, Clara, who inherited his sizable art collection, committed suicide in 1939 after being informed of her impending deportation to Theresienstadt. The Nazis seized the Kirstein collection and gave *Summer Evening on the Alster* a false provenance to obfuscate its Jewish roots before selling it through C. G. Boerner to Hermann Voss for the Sonderauftrag Linz (Special Commission: Linz) in June 1943. It was subsequently consigned to the Galerie Fischer under a false provenance, and eventually made its way through several collections.

As reported in the media, Georg Castell expressed his shock at Hauswedell & Nolte’s stance on *Study for a Painting of Boys Bathing in the Sea*. “I would never have imagined that a German auction house would act like that in such a case,” he said. “I find it scandalous.” Scandalous, perhaps; but also legal.

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64 The amount the painting sold for was listed on the Hauswedell & Nolte’s website. Hickley, “Nazi Controversy Stirred.”
65 In February 2014, *Evening on the Alster* sold for £902,500 at Sotheby’s London. Sotheby’s declined to give the specifics of the Liebermann case, but the house has long worked with the Kirstein heirs. See Lane, “Art Stolen by Nazis Goes to Auction.”
67 Ibid.
68 Hickley, “Nazi Controversy Stirred.”
In May 2013, when the Holocaust Claims Processing Office (HCPO) contacted Van Ham about *Scandinavian Landscape*, *Canal in Dordrecht*, and *Children’s Festival in the Country*, it did so with caution—and for good reason.⁶⁹ Seven years earlier, in November 2006, the Stern estate had approached Van Ham about two paintings, both Roman city scenes, by Matthijs Naiveu (1647-1726), a Baroque artist who lived in the Netherlands and whose work had been listed for sale in the “Old Masters” sale. Each work was priced at €18,000 ($23,000 [US]).⁷⁰

After Stern’s estate presented a claim that the paintings had belonged to him, it asked the auction house to cancel the sale. As part of its argument that the paintings should be restituted, the estate referenced Sotheby’s practice as an example, highlighting how the international firm would not put up for auction paintings with a questionable provenance. When Van Ham ignored the Stern estate’s request, the estate asked Germany’s culture minister, Bernd Neumann, to step in.⁷¹ Van Ham, in accordance with German law, refused to disclose the identity of the paintings’ present owner. However, in large measure thanks to the intervention of Neumann, on the eve of the planned sale, the Stern estate was informed that Van Ham had retracted its plan to sell the paintings. This, however, did not facilitate the return of the work.⁷² Rather, in November 2006, Van Ham returned both Naiveu pieces to the consignor at the consignor’s request.

Why then was Van Ham considerably more helpful with the claims the Stern

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⁶⁹ Pontz, “Heirs of Jewish Art Gallery Owner Recover Painting.”
⁷² Ibid.
One Recovery; Two Losses: 
The Restitution of 
Scandinavian Landscape by Andreas Achenbach

estate made about works in its spring 2013 “Old Masters” sale? This is because between 2006 and 2013 a fundamental shift had taken place in the landscape of restitution. While a German auction house could legally sell a work of Nazi-looted art, or return a piece of Nazi-looted art to a consignor, a new reality had become very apparent. Media pressure could make it very challenging for a consignor to sell a work of art once it had been publicly labelled as a work of spoliated art. Once a work of art was identified as having been looted by the Nazis, its resale value vastly diminished unless the work was first restituted to its rightful heirs. As a result, in recent years, Van Ham has found itself increasingly in the position of being a facilitator between two parties: clients who want to sell works of art once stolen by the Nazis and estates that want to claim what their families lost. This situation came to pass with Scandinavian Landscape, Children’s Festival in the Country, and Canal in Dordrecht.

Since German’s privacy laws prevented Van Ham from giving the Stern estate the names of the three paintings’ consignors, the HCPO passed along two letters—one to the owner of Scandinavian Landscape, the other to the owner of both Children’s Festival in the Country and Canal in Dordrecht—through the auction house. Both letters began:

Mr. Eisenbeis of Van Ham Kunstauktionen KG has kindly agreed to pass this letter along to you. Due to Van Ham’s confidentiality policy, Mr. Eisenbeis has not provided me with your name or contact information and thus I apologize for the unavoidable impersonal nature of this letter.73

Both letters explained that Max Stern involuntarily lost possession of the paintings in question due to Nazi persecution. The HCPO asked the consignors to share any additional information they had about the paintings’ provenance, especially any

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73 Anna Rubin, letter to M. Eisenbeis, May 12, 2013.
documentation concerning their acquisition of the works, as well as details concerning prior known owners between 1937 and the time they acquired the paintings (if not in 1937), their dates of ownership, places of ownership, and methods of transfer.\textsuperscript{74}

Aware that the estate had no legal grounds upon which to make a case, the HCPO made an appeal of moral persuasion to the consignors, summarizing the following facts: circumstances of Stern’s persecution during the Third Reich; the fate of his Düsseldorf gallery; and the details about his ownership and loss of possession of the paintings in the 1937 Lempertz sale.\textsuperscript{75} Both letters stated, “It has been our experience that prompt, candid dialogues produce the most beneficial solutions for both original owners and current possessors of looted artwork.” And both letters asked the consignors to “please recognize” that Stern lost possession of the paintings “because he was persecuted by the Nazis for being Jewish.” In the spirit of conciliation, the letters ended, “We look forward to engaging in an open dialogue on this matter. Thank you in advance for your kind cooperation.”\textsuperscript{76}

Encouraged by Van Ham, the consignors agreed to negotiate with Stern’s estate.\textsuperscript{77} Since the consignors bought the paintings in good faith, or inherited the works unaware of their provenance, Eisenbeis approached them with terms that in his experience as a mediator had become standard. For Eisenbeis, there were two ways to address the situation: In the first, the painting could be transferred from the consignor to the heirs with the understanding that the work would be sold at auction, with the proceeds split

\textsuperscript{74} Ibid.
\textsuperscript{75} Anna Rubin, letter to M. Eisenbeis, May 12, 2013. The Becker painting appears in the Lempertz auction 392 catalogue as Kinderfest, oil on canvas, 49 x 65 cm, Lot 6, plate 9. (See Exhibit 4) while the Herrmann painting appears as Kanal in Dordrecht, oil on canvas, 58 x 79 cm, Lot 74, plate 25. (See Exhibit 5). On the photograph posted on Van Ham’s website of the verso of this painting there is a label with the number “74”; this is the lot number of the painting from the 1937 sale.
\textsuperscript{76} Anna Rubin, letter to M. Eisenbeis, May 2013.
\textsuperscript{77} Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
fifty-fifty. In this case, as Eisenbeis puts it, there is a “real restitution” in which legal title to the property is transferred. In the second case there is not a formal transfer of property. There is simply an agreement that all proceeds from the work’s sale at auction will be split fifty-fifty. 

According to Eisenbeis such financial terms are standard unless a work was outright seized by the Nazis. In terms of the first option, from Van Ham’s point of view, it is a formality but it allows for a public declaration that a work was successfully restituted. Without exception, the financial terms and agreement of restitution mediated through an auction house are done on conditions of confidentiality. On the matter of money, says Eisenbeis, “Everybody has to keep quiet.”

By the fall of 2013, it was confirmed that the consignor of Scandinavian Landscape would restitute the painting to the Stern estate. The consignor of Children’s Festival in the Country and Canal in Dordrecht, however, walked away from the negotiation. He said his grandfather bought the works legally at the 1937 Lempertz sale. By law, Van Ham had to return the two paintings to the consignor, who declined to reveal his name to Stern’s heirs, leaving them with little hope of recovering the pieces by Becker and Herrmann. According to law, even if a painting is worth millions, and no matter whether there’s a restitution case or not, the consigned works must be returned to their

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78 Eisenbeis, interview, May 14, 2015.
79 Ibid.
80 Eisenbeis, interview, May 14, 2015.
82 Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
83 Ibid.
84 Eisenbeis, interview, May 14, 2015.
owner. As Eisenbeis put it, “If they say I want to have it, I have to give it back to them.” 85

As Children’s Festival in the Country and Canal in Dordrecht went back to their legal owner, the Stern estate made plans to announce to the world its restitution of Scandinavian Landscape in a ceremony at the Canadian Embassy in Berlin. From the perspective of Van Ham, in the cases of Scandinavian Landscape, Children’s Festival in the Country, and Canal in Dordrecht—as with almost all restitution cases—the matter came down to money over morality. While Andreas Achenbach’s works routinely sell for over $100,000 (US), the value of Emil Rudolf Johann Herrmann and Jakob Becker’s work is not what it was a century ago. 86 According to Eisenbeis, Children’s Festival in the Country and Canal in Dordrecht were not worth enough for their consignors to spend time in negotiations. 87

In common with many experts, Van Ham argues that Nazi-looted art restitution is motivated by art-market values. In the 1970s, one of the reasons that fewer restitution cases existed is because art prices—particularly for German Impressionist and Expressionist art—were far lower than they are today. 88 In his view, as long as the art was not worth much, restitution of the art was not an issue. 89 According to Eisenbeis, in the 1990s US lawyers drove the big restitution cases because they could work on a contingency basis, which until several years ago was forbidden in Germany.

For the director of Van Ham auction house, the cases of Scandinavian

85 Ibid.
87 Eisenbeis, interview, May 14, 2015.
88 Eisenbeis also believed that the issue came down to time: “It was not our fault that the other paintings were not restituted. It was the fault of the Max Stern project because they took too much time. You have to do the deal when the topic is hot. It’s like going to a shop and finding something nice then saying, oh I’ll come back tomorrow. The shopkeeper already knows you will never come back.”
89 Ibid.
Landscape, Children’s Festival in the Country, and Canal in Dordrecht illustrate two key challenges with Nazi-looted art restitution—the laws in Germany and the country’s lack of set procedure or process in handling spoliated art make the matter particularly complicated when it comes to the commercial art trade. The Stern estate’s restitution of Scandinavian Landscape, and its loss of Children’s Festival in the Country and Canal in Dordrecht, spotlight the difficulties heirs face in tracing and reclaiming the countless Nazi-looted artworks that have vanished into German private collections, even when they are offered for sale by auction houses. 90 “Members of the art trade have been reluctant to work with claimants on the return of Holocaust-era works,” said Clarence Epstein, director of the Max Stern Art Restitution Project at Concordia University in Montreal. 91

While museums are morally accountable under international principles endorsed by the German government on returning Nazi-looted art, German art dealers and auction houses are subject to strictly legal arguments. As Anne Webber, co-chair of the Commission for Looted Art in Europe, states: “The claimants are powerless in the process. The balance of power is in favor of the possessor of the art.” 92 As a result, circumstances like those surrounding Children’s Festival in the Country and Canal in Dordrecht happen frequently. Heirs are dependent on the goodwill of private owners. As for consignors, they may—or may not—want to address the actions of their grandparents. 93

90 Hickley, “Heirs Win Back Nazi-Looted Art, Lose Others in Auction.”
91 Ibid.
92 Ibid.
93 Ibid.
CHAPTER EIGHT

Restitution in German Public Museums: *The Recoveries of The Virgin and Child and Wilhelm von Schadow, Self Portrait of the Artist*
Restituted: March 2013
Anonymous artist (active 1470-1480)
Virgin and Child (date unavailable)
Oil on panel
33 x 28.3 cm
Reproduced with the permission of the Max Stern Estate

Restituted: December 2013
Wilhelm von Schadow (1789-1862)
Self Portrait of the Artist (1831)
Oil on canvas
59 x 49 cm
Reproduced with the permission of the Max Stern Estate
In April 2014, with much ceremony and media coverage at the Stadtmuseum Düsseldorf, the painting *Self Portrait of the Artist* (1831) by the major nineteenth-century German artist Wilhelm von Schadow was restituted to Max Stern’s estate. The moody three-quarter profile of a cloaked, bearded, and wind-swept man with an austere stare was not a work of great monetary or art historical significance. Still, the portrait was important to Düsseldorf because of its subject: a man who profoundly shaped the Düsseldorf Academy, famous for its pupils including Joseph Beuys (1921-1986), Gerhard Richter (b. 1932), and Andreas Gursky (b. 1955).¹ As a member of the Nazarene school of art, von Schadow had set out to forge a spiritually charged movement in which an artist would not only live out the truths he attempted to paint, but elevate the country in doing so.²

As the tenth claim of the Max Stern Art Restitution Project, the circumstances of *Self Portrait of the Artist* had a strong degree of clarity, which suggested that the recovery of the painting would be straightforward. To begin with, the painting did not

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have a complicated provenance. The 1937 Lempertz auction catalogue listed the Schadow portrait as lot 135, complete with a photograph. Moreover, with the restitution of Girl from the Sabine Mountain having occurred in 2008 and Scandinavian Landscape having taken place in 2013, there were now precedents in place on both sides of the Atlantic for the return of Max Stern’s cultural property from the auction that he was forced to hold.

These previous cases, however, did not expedite Self Portrait of the Artist. Its restitution was a two-year-long process and one that likely would not have taken place without another prior Stern recovery from a German museum—the return of Virgin and Child from the Staatsgalerie in Stuttgart. “It was a lengthy process,” explains Clarence Epstein, the director of the Max Stern Art Restitution Project, “because in Germany there are no set rules for art restitution, and Germany still has no law outlining how to deal with such claims.”

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3 Lempertz, auction catalogue 392, 1937. Self Portrait of the Artist by Wilhelm von Schadow was listed as Lot 135 Wilhelm von Schadow; born 1789 Berlin. d. 1862 in Düsseldorf; Self portrait of the artist. Oil on canvas; W. 49cm; The counterpart, a portrait of the daughter of the artist Sophie Hasenclever, acquired the gallery in ... indicated in the gallery catalogue, Wiesbaden 1937.

4 Carsten Felgner of Kunsthaus Lempertz to Dr. Danelzik-Brüggemann, Düsseldorf City Council, Cologne, March 2, 2012.

5 I have chosen to refer to the painting as The Virgin and Child, which is consistent with the records of the Max Stern Art Restitution Project. For reference see the project’s website: https://www.concordia.ca/arts/max-stern/recovered-works.html. However, the painting has had other attributions, notably, the Stadtmuseum Stuttgart called the painting Madonna with Child. More recently, when the painting was listed for sale by Christie’s in January 2014, it was titled The Master of the Stern Virgin and Child.

6 Clarence Epstein, (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.
Self Portrait of the Artist shows Wilhelm von Schadow at age forty-two, a period of challenge in his life. The painter depicted himself against an olive background, facing to the right and wearing a dark fur-collared frock coat and black cravat. The work was painted in 1831, after Schadow returned from an extended study-abroad trip to Rome, a trip that likely influenced the work’s chiaroscuro and the bright spotlight on the right half of his face. In the same year, Schadow released his publication “Regulations for the Royal Art Academy in Düsseldorf,” a strict doctrine that set the course of education of his students from the elementary classes to the master studies.

In 1826, after serving as an instructor at the Berlin Academy, von Schadow was appointed as director of the Düsseldorf Arts Academy, where he refocused the school’s curriculum towards the production of Christian art. The move was contentious. Younger generations, for whom he established and built the Academy, no longer wanted to follow the strict doctrines of Nazarene art, which von Schadow came to when he moved to Rome between 1811 and 1819 and met Johann Friedrich Overbeck (1789-1869), Franz Pforr (1788-1812), Ludwig Vogel (1788-1879), and Johann Konrad Hottinger (1788-1828), who became known as the Nazarene Brotherhood. The Nazarenes reacted against Neoclassicism and countered it with art styles that drew on work of the early Renaissance and late Middle Ages that embodied spiritual values. The influence of the

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7 The counterpart to this work is a portrait of the daughter of the artist’s daughter, Sophie Hasenclever. As well, together with the portraits of Jakob Becker (Cat.-Por. No. 70) and Felix Mendelssohn Bartholdy (Cat.- Por. No. 73), this work is said to form a group of portraits of familiar style, all executed immediately following his return from Italy in 1831. They are all similar in head posture, direct expression, and the tense relationship between the brightly lit head and the dark mass of the clothes.


9 Ibid.


11 Gossman, “Unwilling Moderns.”

12 Fritz Novotny, Painting and Sculpture in Europe 1780–1880 (New Haven: Yale University Press, 1978), 113. In Rome, the Prussian Consul-General, General Jakob Salomon Bartholdy, commissioned von Schadow, along with Peter von Cornelius, Johann Friedrich, Philipp Veit, and Overbeck, to create a fresco for his home: two scenes of Joseph and his brethren, the Bloody Coat and Joseph in Prison.
Nazarenes led von Schadow to convert from Lutheranism to Catholicism, and shaped his teaching in the years ahead. Von Schadow’s ideals regarding the importance of compositions, which were rooted in Christian religion and history, were rejected by many of his students and had caused controversy by the time he painted his self portrait.

Increasingly, von Schadow receded into isolation and opposed the younger generations. In light of this history, _Self Portrait of the Artist_ has been interpreted as a depiction of vulnerability, uncertainty, and resignation. By the end of the 1850s, von Schadow was driven from the Academy, despite the fact that the frescoes created by his students at St. Apollinaris, the Rhine River chapel, are often acknowledged as the most celebrated example of the spiritual side of the Düsseldorf school, and that under his guidance the Academy attracted such internationally renowned artists as the Americans George Caleb Bingham (1811-1879), James M. Hart (1828-1901), William Morris Hunt (1824-1879), and the German-American Emanuel Leutze (1816-1868).

The rigidity visible in von Schadow’s portrait might serve here as a metaphor for the tension and uncertainty that underlies the history and policy of Nazi-looted art recovery in Germany. A first wave of Nazi-looted art restitution began shortly after the end of the war and continued through to the mid-1950s. As in other European countries, unclaimed art was distributed to museums and government offices across the new republic. These works remained largely forgotten until the Commission for Art Recovery brought them

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14 *German Masters of the Nineteenth Century*, entry 515 (no. 74–75).
15 Ibid.
to Germany’s attention in 2000, following the Washington Principles.\textsuperscript{18} As reported by \textit{Der Spiegel}, art historian Uwe Hartmann estimates that today there are more than 10,000 works that require investigation in German museums alone.\textsuperscript{19}

In 2013, \textit{ARTnews} began a six-month investigation into the state of restitution policies and practices in Europe. It concluded that, “in many respects, Germany is acknowledged to be a leader in Holocaust restitution.” It is one of only five countries—Austria, Britain, France, Germany, and the Netherlands—that has set up an independent national commission for handling claims.\textsuperscript{20} The state has paid nearly $70 billion (US) to Nazi victims since 1953, according to Wesley Fisher, director of the Conference on Jewish Material Claims Against Germany.\textsuperscript{21} The federal government and the governments of the Länder (or states) have given the issue considerable attention, including the establishment of Koordinierungsstelle Magdeburg (the Magdeburg Coordination Center), an institution which describes itself as an instrument “of the German federal and state governments, established in 1994, and the Koordinierungsstelle’s \textit{Lost Art Database}, created in 2001 to document and publish lost and found reports by institutions and private individuals.”\textsuperscript{22} In 2008, Bernd Neumann, the German federal culture minister, set up a Bureau for Provenance Research, which receives annual federal funding of €2 million ($2.6 million [US]) a year.\textsuperscript{23} Since then, German museums have seen an expansion of provenance research, but there are limits to its effects: though fifty-seven

\begin{footnotesize}
\textsuperscript{18} Ibid.
\textsuperscript{22} Lost Art Internet Database, http://www.lostart.de.
\end{footnotesize}
museum projects have been funded in total, this represents only a fraction of the
country’s museums, and often provenance findings are not published despite there being
a mandated obligation to do so.24

In spite of Germany’s leadership in Nazi-looted art restitution, there are also
counter examples. The mayor of a southern German town refused to hand over a
painting by the nineteenth-century German painter Franz von Lenbach (1836-1904),
arguing that there was no law forcing him to relinquish the work.25 As author Monika
Tatzkow told the press, the mayor said that the former owner, Walter Westfeld, just
happened to “go missing in a concentration camp.”26 There are also outspoken
opponents of restitution in Germany, in particular Bernd Schultz, the director of the
Berlin auction house Villa Grisebach. In a public speech, he accused heirs of Nazi-looted
art of having a purely financial interest in looted art: “They say Holocaust, but they mean
money.”27

Despite steps to raise public awareness and move German government policies
toward a more open stance to claimants, the process of claiming looted artwork can be
opaque, ad-hoc, expensive, and uncertain.28 Moreover, current law that is part of
Germany’s civil code often thwarts restitution efforts. Former owners can only seek the
return of their property for thirty years after it was taken from them.29 For property
stolen during the Second World War, this means that the door to seek legal restitution
was shut in 1975.30 Although Germany is among forty-four nations that voluntarily
committed, in the Washington Principles of 1998, to the restitution of art stolen by the

24 Cohan, “The Restitution Struggle.”
25 Knöfel, “A Question of Morality.”
26 Ibid.
27 Ibid.
28 Cohan, “The Restitution Struggle.”
29 Melissa Eddy, “Germans Propose Law to Ease Return of Art Looted by Nazis.” The New York Times,
30 Ibid.
As in other European countries, looted art is in many of Germany’s most significant and state-owned museums. This should make it simpler for such institutions to recognize artworks with questionable provenances and then, despite the passage of time, to take measures to return the works to their rightful owners. This should also permit the institutions to right the wrongs of previous generations. Yet, this is not the case. As Anne Webber, co-chair of the London-based Commission for Looted Art in Europe, explains, despite the seeming progress made in Germany since 1998, the subject of art restitution remains “very problematic, particularly with so many thousands of looted artworks in German public collections still un-researched and unidentified.”

According to the Commission for Looted Art in Europe, some museums (for instance the Brücke Museum in Berlin) that hold looted artworks are helpful and proactive, while others (such as the Thyssen-Bornemisza Collection Foundation in Madrid) are passive and obstructionist. For Webber, the issue is “a worrying lack of transparency which impedes the pace and possibility of restitution and defeats the purpose of the work.”

Provenance research in Germany is slow, sporadic, and varies from state to state. According to Artnet, in 2013 there was only one person researching several thousand artworks in the Bavarian State Painting Collections, working at a rate of eighteen months per painting. These works included property returned to the Bavarian State that had been recovered by the Allies in the late 1940s and early 1950s from the Nazis or sold under duress they caused, the pact is non-binding.

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33 Cohan, “The Restitution Struggle.”
34 Ibid.
35 Ibid.
36 Willi Korte (chief investigator, Max Stern Art Restitution Project), interview with the author, July 17, 2016.
37 Cohan, “The Restitution Struggle.”
collections of Nazi leaders and organizations. Little of the material has been restituted. Research and restitution in Germany has raised questions because there is scarce evidence of efforts being made to share information and records or to contact the rightful owners even when they are identified. When asked to comment on this fact in 2013, Isabel Pfeiffer-Poensgen, secretary general of the Kulturstiftung der Länder (Cultural Foundation of the German Federal States), was not available. In 2016, the Smithsonian reported that the German Limbach Commission, founded in 2003 to help mediate these kinds of ownership disputes, was lacklustre, opaque in procedure, and had little to show after a decade’s worth of work. Compared with restitution work in other European countries, the Limbach Commission has mediated only thirteen disputes since its founding, while its counterpart organization in the Netherlands has mediated and restored more than 140 artworks since its inception in 2002.

Although the five national claims processes created in Europe since 1998 have brought a measure of consistency, not all provide clear terms of reference as well as transparency of operation and decision making. The British claims process (Spoliation Advisory Panel), for example, fulfills those criteria. The Dutch Restitutions Committee sets out clearly the basis on which it makes decisions. People may not agree with the decisions, but at least one can know the reasoning behind them and understand how

38 Cohan, “The Restitution Struggle.”
39 Ibid.
40 Ibid.
41 Ibid.
43 Lewis, “Germany Is Reworking the Commission.” The article reported that the Limbach Commission’s inaction is partly due to the fact that it will only mediate cases where both sides agree to come to the table, which can be a tough proposition for a museum faced with having to give up an artwork currently in its collection. Also, the commission can only make recommendations for restitution if all its members unanimously agree. The commission has been criticized for failing to appoint a single Jewish person to serve on the commission.
45 Campfens, Fair and Just Solutions?
they’ve been reached. 46

In 2013, ARTnews reported that:

... the same is not true for Germany’s Advisory Commission. It has no rules of procedure. It has no terms of reference. It publishes a few paragraphs about each decision it has made. It doesn’t explain the principles by which it reaches those decisions, and the decisions anyway have no consistency from one to the next. So it doesn’t provide any confidence for claimants or expectation of fairness, and that’s very serious. This, after all, is the situation the Washington Principles were created to remedy. 47

With these facts in mind, it becomes much easier to understand why the restitution of von Schadow’s Self Portrait of the Artist from the Stadtmuseum Düsseldorf became problematic.

In mid-November 1972, almost thirty-five years to the day that Stern put Self Portrait of the Artist on the auction block at Lempertz, an undisclosed consignor brought it to the Cologne-based auction house where it was put up for sale for a second time. From Lempertz, it was sold to the Stadtmuseum Düsseldorf. 48 For more than forty years, the painting sat unnoticed in the institution’s collection, until 2012, when Philip Dombowsky, the Stern archivist at the National Gallery of Canada, spotted the painting in a catalogue for a 1976 exhibition of mid-nineteenth-century US artists at the Düsseldorf Kunstmuseum, The Hudson and the Rhine. The exhibition included the work of Emanuel Leutze, who painted the iconic Washington Crossing the Delaware (1851) and

46 Cohan, “The Restitution Struggle.”
47 Ibid.
48 Epstein, interview, June 1, 2014; Adams, “19th Century Schadow Painting Returned to Stern Estate.”
had studied at von Schadow’s celebrated Art Academy.\textsuperscript{49}

Anna Rubin of the Holocaust Claims Processing Office then wrote to the Düsseldorf Kunstmuseum to make a claim on behalf of the Stern estate. As the painting did not belong to the Kunstmuseum, its officials then sent the letter to Dr. Susanne Anna, director of the Stadtmuseum, whose institution had loaned \textit{Self Portrait of the Artist} to \textit{The Hudson and the Rhine} exhibition.\textsuperscript{50} Dr. Anna looked up her museum’s acquisition records for the work and discovered that when her institution purchased the painting from Lempertz, the auction house had made no reference to the fact that Max Stern had ever owned the work.\textsuperscript{51} In 2012, restitution discussions between the Max Stern Art Restitution Project and the Stadtmuseum Düsseldorf began, but they were slow and cautious.\textsuperscript{52} As Dr. Anna explains, the matter was not for her or her museum to decide.\textsuperscript{53} The restitution of the painting was a subject to be decided upon by the city council because the painting was municipal property.\textsuperscript{54}

The city of Düsseldorf then commissioned a Berlin-based law firm to respond to the HCPO claim. The law firm took its mandate seriously and started its own research.\textsuperscript{55} The following months were spent exchanging arguments and accumulating costs, which roughly equaled the assumed value of \textit{Self Portrait of the Artist}, before the process came to a standstill. The Stadtmuseum produced an interim provenance report and the city of Düsseldorf resisted returning the painting to the Stern estate.\textsuperscript{56}

Its argument was that the 1937 auction was a no-pressure auction since Stern

\begin{footnotesize}
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\item \textsuperscript{49} Rolf Andree, Ute R. Immel, and Wend von Kalnein, \textit{The Hudson and the Rhine: Die Amerikanische Malerkolonie in Düsseldorf Im 19. Jahrhundert; Ausstellung 4.4.-16.5.1976} (Kunstmuseum Düsseldorf, 1976).
\item \textsuperscript{50} Dr. Susanne Anna (director, Stadtmuseum Düsseldorf), interview with the author, April 8, 2014.
\item \textsuperscript{51} Ibid.
\item \textsuperscript{52} Epstein, interview, April 9, 2014.
\item \textsuperscript{53} Anna, interview, April 8, 2014.
\item \textsuperscript{54} Ibid. As Dr. Anna stated, the director of Düsseldorf’s cultural department—the theatre, the museum said, “Every restitution case has to be sent to me. It’s at a municipal level. He sat on the case and I never heard from him again.”
\item \textsuperscript{55} Anna, interview, April 8, 2014.
\item \textsuperscript{56} March 26, 2012, Interim Report, Provenance Research “Self-Portrait” by Wilhelm von Schadow in the Stadtmuseum Düsseldorf.
\end{itemize}
\end{footnotesize}
went to London and wanted to sell all his paintings.\textsuperscript{57} This stance was based on a letter that came from Lempertz, which proposed that the auction had taken place under amicable terms.\textsuperscript{58} Although Stern had sold his art at only a fraction of what it was worth, Lempertz argued that Stern had received compensation from the German state. Moreover, it argued that Stern’s heirs had no legal grounds because although Germany had signed the Washington Principles, they were not law. Finally, on behalf of Lempertz, its legal counsel Carsten Felgner wrote Dr. Danelzik-Brüggemann of the Düsseldorf City Council that significant doubt existed as to whether \textit{Self Portrait of the Artist} was even part of the 1937 auction:

In all likelihood, the Schadow painting was not sold in the November 13, 1937 auction. According to the handwritten annotations of two catalogues, the painting was called at 1,500 RM, however was not ‘hammered down’. Like the other unsold objects, the Schadow painting was sent back with Max Stern to Düsseldorf. He then struggled to sell it in Düsseldorf until he fled Germany. Since the Schadow painting is not included in the lists, which identify the works confiscated by the Gestapo after Max Stern’s exile, it can therefore be assumed, that Max Stern succeeded in selling the painting after the Lempertz auction. However, as to the identity of this potential buyer, understandably we have no further information.\textsuperscript{59}

Finally, Felgner pointed out that Max Stern freely created the catalogue for the November 13, 1937, auction himself. This could be concluded because of the format and design of the auction catalogue, which did not correspond to the Lempertz catalogues of this period but rather to the Galerie Stern catalogues, which were printed in Düsseldorf. Moreover, according to Felgner, the auction was of Max Stern’s own volition for the following reasons: he agreed on the limit price for the paintings; the unsold paintings were sent back to Düsseldorf with Stern; and the auction proceeds, which amounted to

\begin{itemize}
  \item \textsuperscript{57} Letter from Carsten Felgner of Kunsthaus Lempertz to Dr Danelzik-Brüggemann, Düsseldorf City Council, Cologne, March 2, 2012.
  \item \textsuperscript{58} Ibid.
  \item \textsuperscript{59} Ibid.
\end{itemize}
approximately 55,000 Reichsmarks, were paid to Max Stern’s account at Deutsche Bank in Düsseldorf.  

The issue of restituting *Self Portrait of the Artist* came to a halt as the municipality considered the matter as a commercial dispute. If it returned *Self Portrait of the Artist* to the Stern estate, it would show a loss on its financial register. It debated the question, “Why should it give up any property if it has a legal defense?” On this matter, Dr. Anna pressed her municipal associates with the question, “Is there legal or ethical obligation to hold on to stolen property just because you are legally entitled to do so?” For her, the question was not, “Why should the Stadtmuseum Düsseldorf give up any property if it has a legal defense?” but “What was the museum’s ethical responsibility in the face of the law?”

While talks about the von Schadow self-portrait remained at a standstill, another painting was restituted to the Stern estate. In 2008, the HCPO made a claim to the Württembergische Staatsgalerie in Stuttgart that *Virgin and Child*, a painting which had been on exhibit at the museum since 1948, was the property of Max Stern. In 2009, the institution made a commitment to investigate the work as part of the state of Baden-Württemberg’s agreement to do provenance research in its museums according to the recommendations of the Washington Principles. This initiative included hiring three provenance researchers for the museums of the state at Stuttgart and Karlsruhe to

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60 Ibid.
61 Anna, interview, April 8, 2014.
62 Ibid.
address claims from outside the state’s institutions as well as cases that it researches on its own initiative.  

Virgin and Child was not part of the Lempertz auction, but the HCPO knew about its connection to the Galerie Stern because of a file on it at the Netherlands Institute for Art History.  

When alerted to this fact, the Staatsgalerie made the case a priority because the painting’s donor, Heinrich Scheufelen, raised a red flag.  

On his death in January 1948, Scheufelen donated 122 paintings to the Staatsgalerie in Stuttgart. This bequest included detailed lists about his art inventory, handwritten and created by Scheufelen himself for his insurance.  

Scheufelen’s records showed that he had bought Virgin and Child from the art dealer Alexander Haas in Frankfurt for the high price of 48,000 Reichsmarks in the spring of 1939, believing that the work was an authentic painting created by the Master of Flémalle.  

Scheufelen’s lists also revealed that several other objects in his collection were bought in the thirties from Jewish art dealers who were under Nazi persecution—a fact that Scheufelen had knowledge about.  

While Scheufelen was aware that Virgin and Child had come from a Jewish collection, he didn’t know that his dealer had duped him: Hass had purchased Maria with The Virgin and Child for a tenth of what he sold it for—only 400 Reichsmarks.  

Once the painting was in the Staatsgalerie’s collection, the museum determined that it was an anonymous work from a Westphalian artist, created most probably at the end of 1937.

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64 Anja Heuss (Head of Provenance Research Staatsgalerie Stuttgart), interview with author, June 6, 2016. According to Heuss, since the Washington Conference, 1998, Baden-Württemberg has addressed approximately thirty cases—claims from outside the state’s institutions as well as cases that it researches on its own initiative. In the instance that a museum finds looted art on its own, it contacts the works’ heirs with a resolution to find a fair solution.

65 M.J. Friedländer, unpublished annotated photograph in the RKD Documentatie, The Hague, no. 51323, as possibly by the Master of the Legend Saint Mary Magdalene.


67 Comments from Anja Heuss at restitution ceremony for The Virgin and Child.

68 This amount would be roughly $20,000 US in 1939; an amount valued at $337,892.86 in 2016.

69 Heuss, interview, June 6, 2016.
the fifteenth century. A study of the work indicated that it was of north German or central Baltic rather than Netherlandish origin, painted on a single oak board, and that the work was by a follower of the Master of Flémalle, not by the artist himself. In light of this, the cost of 400 Reichsmarks was much too high. For those like Scheufelen, however, spotting this fact was difficult. The Master of Flémalle, usually assumed to be Robert Campin (1378/9-1444), was a key innovator in shifting the early Netherlandish school from the Gothic into the Renaissance. Although his life in Tournai is well recorded, none of his documented works survive in adequate condition to serve as a basis for attributing other paintings to him. Scholars generally accept, however, that a number of paintings grouped as the work of the Master of Flémalle are Campin’s. Nothing certain is known of his artistic training and background. Campin, however, was one of the first artists to experiment with the use of oil-based colours, in lieu of egg tempera, to achieve the brilliance of colour. This makes authentic works by him both important and expensive. Moreover, Campin’s use of the technique to convey strong, rounded characters in compositions of complex perspectives allowed for humanized subject matter, breaking with the aristocratic taste and the ornamental International style.

In the Staatsgalerie at Stuttgart’s Virgin and Child, a solemn-looking virgin tilts her head to the left and cradles her son in her arms. Her high-domed forehead, almond-shaped eyes, and a prominent sloping brow are set before a golden background. The painting was attributed to the Master of Flémalle because Mary wears a magnificent white headdress with a twisting angular drapery fold, a form which derives from the famous, near-life-sized depiction of Virgin and Child that is one of three panels

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70 Comments from Anja Heuss at restitution ceremony for Virgin and Child.
72 Rosalind Mutter, Early Netherlandish Painting (Maidstone: Crescent Moon, 2008), 31.
73 Ibid.
74 Ibid.
attributed to the Master of Flémalle at the Städel Museum in Frankfurt.\textsuperscript{75} The physiognomy of \textit{Virgin and Child}, the distinctive tilt of her head, and the manner in which she embraces her child with both hands, also recall the Frankfurt panel. These features suggest that the painter of \textit{Virgin and Child} was very aware of the technique and style of the Master of Flémalle. However, the distinctive face of the Christ child and the long, tapering, angular fingers of the Virgin closely recall the works of Rogier van der Weyden (1400-1464).\textsuperscript{76} The blending of these two styles suggests that the present panel was painted by a highly accomplished artist of a slightly later generation who was active in the late fifteenth century.\textsuperscript{77}

The art historian Maryan Ainsworth, who specializes in Early Netherlandish paintings, suggests that the primary source for \textit{Virgin and Child} was a lost composition by Rogier van der Weyden, which is known from a copy in the Louvre.\textsuperscript{78} She has also noted the connection to an engraving by Martin Schongauer (1448-1491), \textit{The Virgin and Child Crowned by Two Angels} (c. 1470), based on the distinctive motif of the Christ’s right arm resting on the Virgin’s breast. The art historian Till-Holger Borchert, chief curator of the Groeningemuseum and Arentshuis museums in Bruges, suggests that the tapered hands and angular feet are reminiscent of artists Hans Pleydenwurff (1420-1422) and Friedrich Herlin (1430-1500), both of whom were influenced by van der Weyden.\textsuperscript{79} Finally, the art historian Stephan Kemperdick suggests that the artist who created the Stuttgart \textit{Virgin and Child} may be another follower of Rogier van der

\textsuperscript{75} See Städel Museum in Frankfurt. Inv. Nos. 939, 939A, 939B. The size of the life-size panels are 160.2 x 68.2 cm, 151.8 x 61 cm, 148.7 x 61 cm.
\textsuperscript{76} Christie’s New York: “Renaissance Art Sale” catalogue.
\textsuperscript{77} Ibid.
\textsuperscript{78} Cabinet des Dessins, Paris, inv. 20.664; figure 3; see D. De Vos, Rogier van der Weyden, Christie’s New York: “Renaissance Art Sale” catalogue.
\textsuperscript{79} Ibid.
Weyden, the Master of the Legend of Mary Magdalene, based on the work’s similarities to *The Virgin and Child with a Flower* in the Louvre.\(^8\)

When Alexander Haas sold Heinrich Scheufelen *Virgin and Child* for 48,000 Reichsmarks, he knew that it was not an authentic Master of Flémalle—information that was not discovered until the Städel Museum did provenance research on the painting. In 1929, *Virgin and Child* was listed for sale at an auction house in Berlin, consigned by the Loeb family, who inherited the work in 1862 from Alexander Haindorf (1784-1862), whose daughter married Jacob Loeb.\(^8\) Haindorf bequeathed them *Virgin and Child* along with about 400 works of art that were part of his collection.\(^8\)

The Loeb family consigned the work to Rudolph Lepke’s Kunst-Auctions-Haus in Berlin, where the price for the work was set at 15,000 Reichsmarks. However, *Virgin and Child* did not sell because the painting was in a poor condition and doubts were raised as to whether the work could be attributed to the Master of Flémalle. Lepke tried once more to offer this painting in his auction in 1932, but failed again. Frustrated by these events, the Loeb family sent the painting to Max Stern in 1934, via Lepke, in order to see if he could make a sale of it in Düsseldorf. Stern succeeded in selling this painting in 1934 for 400 Reichsmarks to a client whose name remains unknown. However, shortly after the sale, the client returned *Virgin and Child* to Stern because of its poor condition.\(^8\)

\(80\) Ibid.

\(81\) Heuss, interview, June 6, 2016. Alexander Haindorf, a scholar of Jewish descent, who studied medicine, philosophy, and psychology, had a great interest in history and the history of art, and a castle called Caldenhof near Hamm in Westphalia.

\(82\) Comments from Anja Heuss at restitution ceremony for *Virgin and Child*.

\(83\) Ibid.
The restitution of the painting proved enormously complicated because Scheufelen’s records made no mention of the Galerie Stern. Without being able to prove a connection to the fact that he lost the painting under duress, the museum could not restitute the work. The case was only solved when Willi Korte, the Stern estate investigator, contacted the heirs of the Loeb family. In their private family archive, he found documents that filled the historical gaps. These documents proved that *Virgin and Child* was left unsold by the Loeb family in 1929 because of its poor condition and because of its questionable attribution. The documents also proved that the painting was sent to Max Stern in 1934.

A case could be made for the painting when this information was combined with Stern’s customer records. Located in the archives of the National Gallery of Canada, they documented the fact that Stern had sold *Virgin and Child* in the late 1930s to another person, most probably to the art dealer Alexander Haas in Frankfurt. By this point circumstances had changed for Stern: the Reichskulturkammer banned him from selling art and he had to manage his affairs before his emigration—evidence that Stern had sold the work under duress. According to Anja Heuss, who did the provenance work on *Virgin and Child* for the Staatsgalerie Stuttgart, claims by the heirs of Jewish art dealers are very difficult to solve because one never knows whether the art dealer was the owner of a painting or just had it on commission: “Normally there is a lack of historical documentation about this important point.” The circumstances surrounding *Virgin and Child* were particularly confusing because the prices realized for this painting went from a modest amount, to a low amount, to a very high amount: from 15,000 Reichsmarks in 1929 to “unsold,” then to 400 Reichsmarks in 1934, before it was sold for 48,000

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84 Ibid.
85 Ibid.
Reichsmarks in 1937. Very often, such price differences are a clue that the painting was sold under duress by a Jewish owner during the Nazi-period. But in this case, the reason for the price changes was the poor condition of the painting, and the fact that the work was sold as an authentic Master of Flémalle, after the work’s price had already been lowered because of questions about its attribution.

Confident that Stern had parted with *Virgin and Child* under involuntary conditions, Heuss recommended to the state of Baden-Württemberg that the painting be restituted to the Stern estate. On March 5, 2013, for the first time in the ten-year history of the Max Stern Art Restitution Project, a German museum returned a work to the Stern estate. It was the estate’s eleventh recovery. The restitution ceremony was held at the Canadian Embassy in Berlin, in the presence of representatives of the Government of Canada, the state of Baden-Württemberg and the Staatsgalerie Stuttgart. The Stuttgart recovery coincided with the one hundredth anniversary of the founding of the Galerie Stern in Düsseldorf by Max Stern’s father, Julius.

In January 2014, at the Christie’s (New York) sale of Renaissance art, the recovered painting was put up for auction with the title *Virgin and Child* (lot 155), attributed to “The Master of the Stern Virgin and Child.” Its estimate was $400,000-$600,000 (US). The painting sold for $557,000 (US).

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86 Ibid.
87 Ibid.
90 Ibid.
91 The catalogue entry for *Virgin and Child* by The Master of the Stern Virgin and Child was as follows: Dr. Alexander Haindorf, Hamm; Dr. Ernst Theodor Loeb, Galerie Hamm-Rynern, Germany sale, Lepke, Berlin, 8 June 1929; Lot 6, as the Master of Flémalle (entry by R. Verres), With Galerie Stern, Düsseldorf, by April 1936, as the Master of Flémalle Dr.–Ing. e. h. Heinrich Scheufelen, Oberlenningen, By whom donated in 1948 to the Württenbergische Staatsgalerie, Stuttgart; inv. No. 2318, as Circle of the Master of Flémalle, and later as Possibly by the Master of 1473. Restituted to the Estate of Dr. Max Stern, 2013. Christie’s, New York, Wednesday January 29, 2014. http://www.christies.com/lotfinder/paintings/the-master-of-the-stern-virgin-and-5766080-details.aspx.
event (sale 2819) gave a new provenance history for the painting, including details that had been previously missing from the painting’s genealogy: namely that it had been with the Galerie Stern in April 1936 and that it was restituted to the estate of Dr. Max Stern in 2013.\textsuperscript{92}

 Shortly after the ceremony at the Canadian Embassy in Berlin, Willi Korte met with the director of the Stadtmuseum Düsseldorf, Dr. Anna, and a representative for Hans-Georg Lohe, director of the city’s culture department.\textsuperscript{93} Korte argued that given the precedent of the restitutions of both \textit{Virgin and Child} and \textit{Scandinavian Landscape}, the Stadtmuseum Düsseldorf had no grounds for not returning von Schadow’s \textit{Self Portrait of the Artist} other than its legalistic stance that according to German law it was entitled to keep the painting.\textsuperscript{94} Later that year, in the summer of 2013, a second meeting took place, this time involving Dr. Anna as well as Clarence Epstein, representing the Stern heirs. As in the previous meeting, there were no lawyers involved. In November 2013, the Düsseldorf City Council followed a recommendation by the Culture Committee to restitute the von Schadow painting, which by this point had also been placed on an Interpol wanted list. The City Council voted to give the painting back. According to Dr. Anna, it was ultimately the political pressure and moral pressure that made them change their position.\textsuperscript{95}

 At the April 2014 restitution ceremony at the Stadtmuseum Düsseldorf, Dr. Anna announced that the von Schadow portrait would continue to hang in her institution but with an acknowledgment that it belongs to Max Stern’s estate, which had agreed to loan

\textsuperscript{92} Ibid.
\textsuperscript{93} Anna, interview, April 8, 2014.
\textsuperscript{94} Korte, interview, April 9, 2014.
\textsuperscript{95} Anna, interview, April 8, 2014.
it to the gallery. In other words, Stern’s story would become part of the portrait’s display. After the restitution, Dr. Anna said, “A painting presented in a museum without details of its context is nonsense.” She negotiated with the Stern estate to keep the work on view “not because it is a great painting” but to serve as a reminder of history:

Art was only one thing stolen by the Nazis to finance the war. They took everything—rugs, bicycles, cars, carpets, candlesticks, books—and turned Germany into a garage sale of Jewish goods to finance the war. We know about the most famous, museum-quality objects, but not about the rest.

There was an impressive larger outcome. Under Dr. Anna’s direction, the Stadtmuseum Düsseldorf committed to presenting a major exhibition on the Galerie Stern and Jewish life in city; as well, the museum will become a centre for education on provenance research. In large part, for Dr. Anna, a key component of improving Nazi-looted art restitution in Germany is to improve museum practices. As she explains, “The concept of the public museum is an eighteenth-century European development. In Germany, Frederick William III’s picture gallery, built in Berlin to house some of his collection, was opened to the public in 1830. Munich’s Alte Pinakothek, which was created to display the painting collections of the dukes of Wittelsbach, did not open until 1836.”

The necessity for political and public diligence is inextricably linked to the education of museum professionals. Yet museology has developed gradually, and only recently has become constituted as a discipline. Gallery personnel are frequently trained in a discipline specific to their collections, with little instruction on the overarching role

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96 Ibid.
97 Ibid.
98 Ibid.
99 Ibid.
100 Ibid.
101 Ibid.
of the museum or gallery and its societal role.\textsuperscript{102} At the Stadtmuseum Düsseldorf, there are 500,000 works in the collection, but only a fraction are inventoried. Says Dr. Anna: “This is the norm for most museums.”\textsuperscript{103} Most European museums do not know where their collections originate beyond the mid-nineteenth century because museology as we understand it today did not exist until the mid-twentieth century.\textsuperscript{104} Provenance research and protocols of collections management are relatively new elements of institutional administration. It was a common practice, at the Stadtmuseum Düsseldorf and elsewhere, for citizens to bequeath paintings to the museum without providing a history for the work. It was assumed that a work of art’s provenance was clean and in order.\textsuperscript{105}

As Sophie Lille, a Vienna-based art historian and author of \textit{Was Einmal War: A Handbook of Vienna’s Plundered Art Collections}, explains:

\begin{quote}
...one of the problems with restitution and provenance research is that it’s such a long process, and then you have museums to deal with or auction houses to contend with. It takes a long, long time.\textsuperscript{106}
\end{quote}

While the Stern estate’s recovery of \textit{Self Portrait of the Artist} and \textit{Virgin and Child} were critical steps in the organization’s mandate of recovering the paintings that Stern lost under Nazi duress, they do not set a precedent for nor guarantee the restitution of other Stern paintings in German museums. To understand this, one needs to look at the case of one of Düsseldorf’s other most important art dealers, Alfred Flechtheim. In 1909,

\begin{footnotes}
\footnote{102} Ibid. Also see Ivo Maroevic, \textit{Introduction to Museology: The European Approach} (Munich: Verlag Dr. Christian Müller-Straten, 1998), 54.
\footnote{103} Anna, interview, date. April 8, 2014.
\footnote{104} Ibid.
\footnote{105} Maroevic, \textit{Introduction to Museology}.
\footnote{106} Sophie Lille as quoted in Cohan, “The Restitution Struggle.”
\end{footnotes}
Flechtheim became involved with the Berlin Secession movement.\textsuperscript{107} As a symbolic figurehead for trade, with works by avant-garde artists at the time of the Weimar Republic and during the Third Reich, he became the dealer of Pablo Picasso, Georges Braque, André Derain (1880-1954), George Grosz (1893-1955), and Paul Klee (1879-1940).\textsuperscript{108}

In 1932, the Nazis published a caricature of him on the cover of their magazine \textit{Illustrierter Beobachter} alongside the headline “The Race Question is the Key to World History.”\textsuperscript{109} The same year, Flechtheim sold the most valuable works in his collection—six paintings by the famed German Expressionist Max Beckmann (1884-1950).\textsuperscript{110} One of the Beckman paintings, \textit{The Lion Tamer} (1930), was put up for auction catalogue in 2011 by Lempertz auction house. The consignor of the painting was Cornelius Gurlitt, the reclusive son of a Third Reich art dealer, who unloaded a work by the modern master Max Beckmann from his surreptitious hoard of 1,280 paintings.\textsuperscript{111} It is believed that Gurlitt’s father acquired it from Flechtheim’s gallery in Berlin, which at the time was being liquidated by an auditor.\textsuperscript{112}

After the SA member and art dealer Alexander Vömel confiscated Flechtheim’s Düsseldorf gallery in March 1933, he fled Germany for London where he died destitute in March 1937 at age fifty-eight.\textsuperscript{113} Five months later, in July 1937, the Nazis—not shying away from mocking the dead—published a caricature of him in an ad for their

\begin{itemize}
  \item \textsuperscript{108} Ibid.
  \item \textsuperscript{109} Ibid.
  \item \textsuperscript{110} Chana, “Why US Lawmakers Want Germany to Take Another Look in its Museums.”
  \item \textsuperscript{113} Malcolm Gee, “The Berlin Art World, 1918-1933” in \textit{The City in Central Europe: Culture and Society from 1800 to the Present}, ed. Malcolm Gee, Tim Kirk, and Jill Steward (Surrey, UK: Ashgate, 1999).
\end{itemize}
Degenerate Art exhibition. Flechtheim left behind his wife, Betty, who committed suicide in 1941 in the face of her imminent deportation. The remaining works of art in their flat in Berlin were confiscated and the works’ whereabouts remain unknown to this day.

In 2008, the American-British physician Michael Hulton, the great-nephew of Alfred Flechtheim, using photographs of the art in Flechtheim’s Berlin apartment, began claiming as his inheritance seventeen paintings and other works that were once in Flechtheim’s collection—including pieces by Beckmann, Picasso, and Klee, all paintings in German museums. Hulton and his lawyers valued the estate at some $124 million (US). However, Hulton has settled claims with only two museums regarding eight of the works. On the Beckmann paintings held by Munich’s Pinakothek der Moderne, the state-owned museum has been uncooperative and will no longer even discuss the matter.

This frustration led Hulton to seek help from members of Congress. In November 2015, twenty-nine members of the US House of Representatives demanded that Bavarian governor Horst Seehofer facilitate a dialogue between his state’s museums and Jewish families who still suspect the institutions of harbouring Nazi-looted art. Keeping lines of communication open, Hulton complained, is a matter of fairness at the very least. When contacted, the museum merely said that it had nothing to add to the

114 Knöfel, “US Congress Demands Action on Nazi Looted Art.”
117 Ibid.
118 Ibid.
119 The Pinakothek der Moderne contends that Flechtheim sold the Beckmann paintings to an art dealer in New York in 1932. When Flechtheim was later offered a fraction of the agreed sum, he responded with a letter protesting in French: “Tant pis!” Whether Flechtheim was turning down a sale that had not yet happened or regretting a sale he had already agreed on is up for debate. But the meaning of his protest is not: “The situation is regrettable!” See: Chana, “Why US Lawmakers Want Germany to Take Another Look in its Museums.”
120 Knöfel, “US Congress Demands Action on Nazi Looted Art.”
current “state of affairs.” Hulton told the press that Germany has not fulfilled its commitments under the Washington Principles, not to mention its historical obligations. He noted that state authorities set the bar very high for claimants of restitution, requiring them to prove that Nazi oppression directly contributed to the loss of the art in question. That can be difficult, especially where records are lacking.

Both art historians and curators have recognized the importance of Flechtheim’s case, as well as the obstacles associated with the restitution of his art. In 2009, provenance researchers at museums across Germany worked in unison to implement the Washington Principles, to find and return cultural assets seized as a result of Nazi persecution, especially from Jewish ownership, to gain a deeper knowledge of events and to answer open questions. This research formed the starting point for a project that ran from January 2013 to March 2014, in which fifteen museums showed works of art with provenance that had a connection with Flechtheim’s galleries. As well, the website www.alfredflechtheim.com was created to acknowledge “the exceptional influence Alfred Flechtheim had as an art dealer representing artists defamed by the Nazis, and the abrupt break in his biography, the feeling of loss this brought about and the tragic fate of his family.”

As the creators of www.alfredflechtheim.com have noted, however, one of the key obstacles to Hulton’s recovery of his great-uncle’s art is that its provenance cannot always be fully reconstructed because important evidence has been lost as a result of persecution, war, flight or emigration, or cannot be accessed as it is lies within the private sphere. Flechtheim’s business records at The Mayor Gallery in London were destroyed by the Luftwaffe during the Blitz in September 1940, and RAF bombs

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121 Ibid.
122 Ibid.
123 Ibid.
124 Ibid.
125 Ibid. 
126 “Alfred Flechtheim: Art Dealer of the Avant Garde,” Alfred Flechtheim.
127 Ibid.
destroyed the gallery in Düsseldorf in 1943, so there are no remaining records. Despite many years of international research, not all routes followed by his works of art have been completely explained.  

In addition to the Flechtheim situation, to understand the complexity of recovering Nazi-looted art from German museums, one can also turn to the case of *A Weekday in Paris* (1869) by Adolph von Menzel, a work now owned by the Düsseldorf Museum Kunstpalast. In early in 2015, the Limbach Commission rejected a claim from the heirs of the artwork’s one-time owner, Eduard Ludwig Behrens, who bought *A Weekday in Paris* in or around 1886 and left it to his son George E. Behrens. Though the Limbach Commission explicitly acknowledged that Behrens was classified as a “non-Aryan,” persecuted by Nazi Germany, and sent to a concentration camp in November 1938, the state-established panel rejected his family’s claim. Their argument was that Behrens was paid 30,000 Reichsmarks for the painting, which was in line with the market price of the day. The commission was not convinced that the sale was at an undervalued price and that George Behrens was forced to sell it as a result of the economic distress that the family’s banking operations had suffered at the time. In response to this decision, Marc Masurovsky, an art historian and co-founder of the Holocaust Art Restitution Project, stated, “One should ask: Why did Behrens sell? If it was to finance his exit from Germany, then we are within the reach of a forced sale.”

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126 Ibid.
127 Knöfel, “A Question of Morality?” The Limbach commission was founded in 2003 and named for Jutta Limbach, the former president of the German Constitutional Court.
129 Ibid.
130 Ibid.
131 Chana, “Why US Lawmakers Want Germany to Take Another Look in its Museums.”
Germany is showing that it is rethinking the way it restitutes Nazi-looted art to Jewish families. Sophie Lille, who has been involved in litigation on behalf of claimants for years, is cautiously optimistic about the outlook for restitution in Austria and Germany: “I think we’re somewhere totally different compared to fifteen years ago,” she stated in 2013, “because I think it is on people’s minds. People are aware of restitution, and I think it’s probably a broader spectrum of people that are aware of it than there ever would have been.”

In 2014, Bavarian Justice Minister Winfried Bausback acknowledged a need to re-examine German laws and the challenges they presented to Jews seeking to regain looted art, including the thirty-year statute of limitations in light of the Gurlitt findings. Bavarian authorities proposed a law—which has become known as “Lex Gurlitt”—that would lift the country’s thirty-year statute of limitations for certain cases involving stolen property. The legislation was a response to the 2013 discovery surrounding hundreds of possibly looted artworks in the Munich home of Cornelius Gurlitt, the son of an art dealer who worked for the Nazis during the Second World War. It was an acknowledgement that the restitution of art looted during the Third Reich was an issue far from being over. It was proposed to ease the process for Jewish families seeking the return of art, furniture, or other valuables taken from them by the

132 Cohan, “The Restitution Struggle.”
134 Eddy, “Germans Propose Law.”
Nazis.\textsuperscript{135} Critics, however, charged that the law would present hurdles, including claims against the current holder of the property that they failed to thoroughly research a work’s provenance before purchasing it, a practice that has only become commonplace only in the last fifteen years.\textsuperscript{136} If the law does pass, the change will signal a crucial willingness on the part of Germany to take more seriously the commitments that it agreed to in 1998 when it signed the Washington Principles.

In August 2016, culture minister Monika Grütters announced plans to reform the Limbach Commission, due to its lack of transparency and lengthy decision-making process. “Thirteen years after it was established, it is time to think about the future development of the commission in the interest of improved implementation of the Washington Principles,” said Grütters, acknowledging that while the Netherlands has made 140 recommendations since its commission was formed in 2002, the Limbach Commission has lagged noticeably behind, making only thirteen recommendations.\textsuperscript{137} Grütters says a working group comprised of cultural officials from sixteen German states will be formed to draft reform proposals for the Commission. Until such reforms happen, Germany will not be in a place to consistently act, as Philipp Missfelder, the German government’s coordinator for trans-Atlantic relations, stated, “on willingness” rather than according to law. As Missfelder explained, Germany must be aware of the moral, as well as the legal, implications involved in dealing with Nazi-looted art: “There is enormous interest in clearing up this issue.”\textsuperscript{138}

Until then, the Max Stern Art Restitution Project, which acts independently, following a strategy it established more than fifteen years ago, can never be sure of the

\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{137} On September 8, 2016, Alanna Martinez of The Observer reported in “German Culture Minister Pledges to Reform Nazi Art Restitution Commission” that unlike its counterparts, Germany’s commission is only able to make recommendations if its panel of eight members agrees unanimously, which may (in part) account for the holdup over the years. http://observer.com/2016/08/german-culture-minister-pledges-to-reform-nazi-art-restitution-commission/.
\textsuperscript{138} Eddy, “Germans Propose Law.”
outcome of claims that it makes at German public art institutions. It can only hope that with each recovery, it might come one step closer to provoking a debate about what Wilhelm von Schadow advocated as he painted his self portrait: the truth found through art.
CONCLUSION

Lessons from the Max Stern Recoveries
Art was only one thing stolen by the Nazis to finance the war. They took everything—rugs, bicycles, cars, carpets, candlesticks, books—and turned Germany into a garage sale of Jewish goods to finance the war. We know about the most famous, museum-quality objects, but not about the rest.  
—Dr. Susanne Anna, director of Stadtmuseum Düsseldorf

There is nothing straightforward about Nazi-looted art restitution, yet against difficult odds, the Max Stern Art Restitution Project has achieved a considerable measure of success. This conclusion explores the complexities of recovering a work of spoliated art. It also identifies measures that the Stern estate has employed in order to facilitate meaningful results. Not only do political and legal constraints stack the odds against an individual or heir who wishes to restitute a work of art that was confiscated or sold under Nazi-era duress; as well, art world practices further complicate possibilities for success. This means that moral authority and persuasion, rather than any formal enforcement mechanism, are ultimately the most important components of facilitating an effective restitution claim. Yet, as this chapter explores, moral persuasion alone cannot be relied upon to achieve a Nazi-looted art recovery.

1 Dr. Susanne Anna (director, Stadtmuseum Düsseldorf), interview with the author, April 8, 2014.
While forty-four countries signed the Washington Conference Principles in 1998, the document is non-binding.² Of all the nations that placed their names on the agreement, only five—Austria, Britain, France, Germany, and the Netherlands—have put government regulated bodies in place to resolve restitution disagreements.³ Of these countries, only one—Austria—has enacted legislation that exclusively addresses Nazi-looted art restitution.⁴ Still, this does not guarantee that restitution claims in Austria move swiftly or successfully through the courts. As Ronald S. Lauder, president of the World Jewish Congress, observed with respect to Maria Altmann’s case to recover Adele Bloch-Bauer I by Gustav Klimt, while Austria’s legislation “invited Maria Altmann to sue for the return of the Bloch-Bauer Klimts in Vienna courts, they were reluctant to follow their own laws when it came to assessing the cases of their museum’s most prized piece.”⁵ Nineteen years after the signing of the Washington Conference Principles, the document has become a series of recommendations that countries may or may not apply in accordance with their own national laws, policy, and practices.⁶

As outlined in Chapter 7, in the discussion of the restitution of Scandinavian Landscape by Andreas Achenbach, even within countries that have state-regulated policies to address Nazi-era looted art, they vary tremendously. Although Germany and the Netherlands both have state-sanctioned organizations to facilitate restitution claims, the two bodies function very differently in their methodologies. Matters are further dependent on whether a Nazi-spoliated work is held in a public collection or is for sale by the trade. As Markus Eisenbeis, director of Cologne’s Van Ham auction house, states,

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only if a consigned work is of art historical and financial significance will it be checked with Germany’s Lost Art Coordination Office in Magdeburg before it is listed for auction.\(^7\) This explains why paintings worth less than €1,000, €2,000, or €3,000 routinely come up for sale at Van Ham and other German houses.

Just as government-sanctioned policies on restitution range from country to country, there is also an array of interpretations among holders of Nazi-spoliated art about what deserves to be restituted. The passage of time has complicated the return of Nazi-plundered cultural property. Several generations after their theft, works of art of questionable origin have often passed through the hands of numerous owners. Wesley Fisher, director of research for the Conference on Jewish Material Claims Against Germany, points out: “Current possessors who paid for pieces in good faith feel an injustice is being done to them when they are asked to give it up to the original owner or his heirs.”\(^8\) This point is illustrated in Chapter 3, which outlines how the Stern estate thought that the restitution of *Portrait of Jan van Eversdijck* by Nicholas de Neufchatel would be a straightforward matter. Like Max Stern, the painting’s Jewish owner Ben Jakober had lost personal property to the Nazis because of anti-Semitic law. Then, in postwar France, he worked to recover Nazi-looted art for the Rothschild family. Yet Jakober didn’t feel empathy for the claim from Max Stern’s estate.\(^9\) He questioned whether Stern’s losses were a “clear-cut story” and was suspicious of the estate’s claim that Stern’s paintings were sold under duress since “they had been taken by their owner to an auction house and sold.”\(^10\)

Another factor that makes Nazi-looted art recovery an enormous challenge is that the burden of proof lies with the claimant. As demonstrated in Chapter 4, with the

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\(^7\) Markus Esenbeis, (managing director, Van Ham Kunstauktionen KG), interview with the author, May 14, 2015.


\(^9\) Ben Jakober (Founder Yannick and Ben Jakober’s Foundation), interview with the author, May 9, 2015.

\(^10\) Ibid.
restitutions of *The Masters of the Goldsmiths Guild in Amsterdam* by Juriaen Pool II, *Flight into Egypt* attributed to the circle of Jan Wellens de Cock, and *An Extensive Landscape* attributed to François van Knibbergen, international auction houses Sotheby’s and Christie’s will inform their consignors as well as a potential claimant when they believe to have a work of Nazi-looted art.\(^{11}\) Auction houses, however, may not take further action until there is serious and substantiated evidence of ownership provided by the claimant.\(^{12}\) The same basic rule applies with museums that believe they have a spoliated work in hand. As addressed in Chapter 8, *Virgin and Child*, held in the Staatsgalerie in Stuttgart, raised a red flag with the institution because it was a donation from Heinrich Scheufelen, a collector who in the thirties knowingly bought works from Jewish art dealers who were under Nazi persecution. The Staatsgalerie, however, would not return the painting to the Stern estate until it could provide evidence of ownership.\(^{13}\) As lawyer Raymond J. Dowd states, this often places litigants in the uneasy position “of having to prove that the Holocaust really happened, and that a family member’s ‘sale’ of assets to the local Nazi-approved art dealer was not a voluntary, arms-length transaction.”\(^{14}\)

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\(^{11}\) The complete title of this painting is *An Extensive Landscape with Travellers on a Track Near a Walled Town with a Castle and Church, a Village Beyond*. Note: Hereafter the painting is referred to in its abbreviated form: *An Extensive Landscape*.


\(^{13}\) Anja Heuss (Head of Provenance Research Staatsgalerie Stuttgart), interview with the author, June 6, 2016.

Just as Nazi-looted art restitution is an obstacle from a political and legal perspective, as the chapters of this dissertation illustrate, the very nature of the art world further complicates a claimant’s ability to successfully restitute a work for the following four reasons:

**i. The Variability of Art Historical Documentation**

Errors and omissions in the documentation of works of art are frequent. Sometimes omissions of information are nefarious, as in the case of *Portrait of Wally* by Egon Schiele. The painting became an object of international attention after it was revealed that Dr. Rudolf Leopold, who wrote the 1972 catalogue raisonné on Schiele and acquired the painting from the Austrian National Gallery, omitted mention of the fact that Lea Bondi Jaray had once owned the work. The painting was attributed to a different artist, and it was not until 1997 that it was revealed that Bondi Jaray was the last owner of *Portrait of Wally* in the 1930s, Leopold left this information out of his history of the work. Bondi Jaray, a Jewish art dealer who fled Vienna for London in 1938 because of Austria's anti-Semitic laws, was coerced to give the painting to the Nazi art dealer Friedrich Welz. When the war ended, Bondi Jaray sought to recover ownership of *Portrait of Wally* but she could not locate the work, which remained in the Austrian National Gallery until 1954 when Leopold purchased it.

Frequently documentation in a work of art changes for unknowable reasons, as illustrated in Chapter 4 with the case of *Flight into Egypt*. In 1929, at a sale at the Galerie Caldenhof in Berlin, the work was attributed to “Niederländischer Meister um 1520-“

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By 2006, Christie’s said the painting was by the circle of Jan Wellens de Cock. To reiterate a key point about the difficulty of provenance research: facts about a piece of art—its title, its dimensions, and the name of its maker—change as it moves from one collection to another.  

**ii. The Subjectivity of the Art Trade**

“Pedigree is not only important in animals,” Max Stern liked to tell his Dominion Gallery customers. The words were a caution to his clients that they may want to avoid making purchases at auctions. As discussed in Chapter 1, he explained that on the secondary art market, provenance details of a painting or a sculpture’s past were seldom fully revealed and often wilfully obscured. Sometimes, as with the case of *Aimée* by Émile Charles Hippolyte Vernet-Lecomte (discussed in Chapter 2), this is because auction houses fall short in doing the provenance research that they promise to deliver.

More often though, documentation about pieces of art fall through the cracks because, as Catherine MacKenzie observes, “Tracing the story of works made by artists who aren’t famous is much harder than finding paintings that have well-documented exhibition histories.” As well, as Chapter 5 reveals, it is common for art world enterprises—dealers, auction houses, and museums—to erroneously put their faith in one another’s reports and records. The New York art dealer Lawrence Steigrad felt confident in his 2008 purchase of *Portrait of a Musician Playing a Bagpipe* (by an unknown artist) because he bought it from one of the world’s most renowned experts on

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17 Anna Rubin, HCPO, letter to Monica Dugot, March 28, 2008.
18 Catherine MacKenzie (professor, Department of Art History, Concordia University), interview with the author, July 8, 2015. Other problems include: Many works traded in the international art market are not unique (such as prints or multiple paintings of the same subject by a single artist and his studio). The change in attribution of a work from one artist or maker to another may further frustrate research efforts. Finally, the names of paintings and works of art titles or descriptions often change over time because titles are often applied by the art trade and by owners rather than by the artist.
stolen art: Philip Mould.\textsuperscript{21} Mould felt secure about his purchase (and subsequent sale of the work to Steigrad) because the Lempertz auction house, where he bought the painting, assured him that it had checked the work on the Art Loss Register database to make sure that there wasn’t a claim on it and that the piece was clean.

Chapter 2, reveals how in November 2001, Sotheby’s New York sold a painting called \textit{Cimbals [sic]} for $69,750 (US). Despite all the public announcements made by Sotheby’s that it took careful and numerous precautions to not sell works of Nazi-looted art, the auction house sold the piece without noting that the work had been part of the 1937 forced sale at Lempertz, where it sold as \textit{Aimée, eine junge Ägypterin} by Émile Charles Hippolyte Vernet-Lecomte. This information was discovered by the Stern estate, which traced the painting to a collector named A. Preyer, who included a photograph of the work in an 1895 catalogue used to sell the work.\textsuperscript{22} If Sotheby’s was following the vetting procedures that it promoted extensively, it should have come across this fact. Had Sotheby’s done the provenance check that it promised, it would have discovered not only that \textit{Cimbals} had once been called \textit{Aimée}, but evidence that proved it was putting a Nazi-spoliated work of art up for auction.

\textbf{iii. The Fallibility of Databases}

Chapter 3, demonstrates that although \textit{Portrait of Jan van Eversdijck} by Nicolas de Neufchatel had been listed on the Art Loss Register website since 2002, it was never discovered on the ALR database. This is because over time the title, dimensions, owners, and descriptions of \textit{Portrait of Jan van Eversdijck} had changed. The Stern estate did not restitute the painting via the Art Loss Register because the ALR posted it with a title and


\textsuperscript{22} Baron N.A. Steengracht van Moyland sale September 10, 1895 (Preyer & Co., Hotel de Brakke Grond, Amsterdam, 1895) lot 110.
specifications that were different from those published by the Sa Bassa Blanca Museum, where *Portrait of Jan van Eversdijck* was part of the institution’s permanent collection.

The painting was found in 2005 by Catherine MacKenzie, who placed misspellings of Neufchatel’s name in Internet search engines, knowing that not only was the artist’s name often recorded incorrectly, so was the name of the painting’s subject. Following this method of chance, MacKenzie discovered that *Portrait of Jan van Eversdijck* had become part of the collection of a museum in Mallorca, Spain.\(^{23}\) As the painting travelled across borders and collections, its art historical details were lost in translation. This gets to the essence of the fallibility of the Art Loss Register, and to the challenge of provenance research. Descriptions of a work vary depending on the language in which they are recorded; dimensions vary depending on how a painting is measured. To some, *Portrait of Jan van Eversdijck* looked like a depiction of a child; to others it did not. This is how the work—and countless other paintings—get passed unnoticed through the Art Loss Register.\(^{24}\)

Chapter 5 also tells the account of another Stern estate painting that slipped through the net of the Art Loss Register: *Portrait of a Musician Playing a Bagpipe*. As mentioned previously, Lempertz auction house sold this painting to Philip Mould in 2007 after it vetted the painting by cross-referencing it against the database of missing works. But the title that Lempertz placed in databases was *Bildnis Eines Musikers*, which translates as “Portrait of a Musician.” The Art Loss Register database described the work as a portrait of a bagpipe player. Although the painting was searched by description and title, it was not identified as a looted work because of this difference in the work’s name. *Portrait of a Musician Playing a Bagpipe* was particularly prone to escaping the ALR database because the work’s artist was unknown and because the painting’s low value of


\(^{24}\) Ibid.
€2,500 to €3,000. These facts demonstrate that while registries of stolen art are unquestionably important, their reliability is only as accurate as the facts that are entered into them.

iv. The Unregulated Nature of the Art Market

The ability of a claimant to recover a work of Nazi-spoliated art is challenged by the lack of formal standards in the international art market, which has been described as second in scale and profitability only to the trafficking of illicit drugs.”25 As Gideon Taylor, executive vice president of the Claims Conference, writes, the issue of art restitution and looted cultural property has lagged because of “the ease with which art can be moved across international borders, the lack of public records documenting original ownership, the difficulty of tracing art transactions over the years and the absence of a central authority to arbitrate claims for art work.”26

These factors come into play in Chapter 4 in the case of the Stern estate’s 2007 recovery of An Extensive Landscape. Not only has the painting seen numerous changes in attribution, but also vastly diverse selling prices. At the restitution ceremony for the painting it was unveiled not as a work by Knibbergen (the painter who Max Stern believed had created the piece), but as a painting by Jan de Vos I.27 The reattribution of An Extensive Landscape was made by Christie’s, who sold the work in 2007.28 When the painting was re-sold in Christie’s New York January 2011 auction, it was reattributed again, this time to Knibbergen.29 Within five months, in May 2011, the painting was re-
attributed once more—this time by the Madrid-based auction house Ansorena, who stated that the piece was by van Goyen, an artist of significantly greater market value than Knibbergen or de Vos I. Ansorena sold the painting for close to a million dollars (US), demonstrating how easily the facts about a work of art’s history can change suddenly and significantly.

As outlined above, the ability to restitute Nazi-looted art is demanding not only for legal and political reasons but also because of the unregulated and fallible nature of the art world. Despite these facts, the Max Stern Art Restitution project was able to restitute twelve paintings between its inception in 2002 and 2014—working at a rate of recovery of approximately one painting per year. In light of this, it is worth noting the following five elements that have been critical to the accomplishments of the project:

**i. The Need to Make the Private Public**

When Willi Korte joined the Max Stern Art Restitution project as its lead investigator, he gave the estate a key piece of advice: Max Stern’s story had to be told publicly as an international story. Unless this happened, the restitution of Stern’s art would not take on a moral imperative. Korte spoke from experience. When he discovered the lost church treasures of Quedlinburg—one of the greatest art thefts of the century and one of the most publicized restitution cases of the 1990s—he did not keep quiet. He fed details of
the case to William H. Honan, a *New York Times* reporter, and before long it became internationally renowned as it was splashed “over newspapers around the world.”

As outlined in Chapter 2, a critical component of successful campaigns for Nazi-looted art restitution has been their media reception. It is widely acknowledged that the case for the restitution of *Portrait of Adele Bloch-Bauer I* by Klimt intensified in 1998 after the journalist Hubertus Czernin wrote about it. Of equal importance to the case was the fact that in March 1999 Maria Altmann became vocal about her claim when she spoke at an art restitution conference in Vienna. She caught the attention of Ronald S. Lauder, who in turn put the spotlight on the issue when he spoke in front of the US House of Representatives and the Commission for Art Recovery of the World Jewish Congress in 2000. As stated in the chapter, the commentary of Czernin and others who followed him gave the press a “Pandora’s box [that] would be pried open.”

Inspired by these international cases, in October 2006, the Max Stern Art Restitution Project saw the opening of an exhibition that it had created: *Auktion 392: Reclaiming the Galerie Stern, Düsseldorf*. Stern’s heirs knew that their goal to recover the paintings lost in November 1937 at the Lempertz auction was morally worthy. Yet they also knew that they would not be able to motivate governments, museums, and the art trade to support their initiative unless Stern’s story became internationally publicized. Critically, since few of the artists represented by Stern were names that even art historians recognized, the organization needed to create a compelling narrative that would attract attention. This was the genesis of *Auktion 392*, a show that travelled to New York in 2007, then to London, and to Jerusalem in 2008. As it moved from city to

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city, interest in Stern’s losses intensified.\textsuperscript{35} Moreover, as the case gained increasing media attention, an important message was disseminated: as Clarence Epstein, director of the Max Stern Art Restitution Project, remarked, it was made clear to both museums and individuals who held works once belonging to Stern that they could either “work with us or leave their art to someone else who will get stuck with a tainted piece.”\textsuperscript{36} As a not-for-profit organization run by three universities, the Max Stern Art Restitution Project became known as a perpetual plaintiff that, unlike an individual heir, would not die or run out of resources in its fight to recover Stern’s art. Said Epstein, “We will never go away.”\textsuperscript{37}

\textbf{ii. The Need to Prove Provenance}

As documented in Chapter 4, between 2004 and 2006, the Stern estate found itself having to answer the following question with respect to three separate works: How do you reclaim a painting that you did not even know was yours? First Sotheby’s contacted the organization about \textit{The Masters of the Goldsmiths Guild in Amsterdam} by Juriaen Pool II.\textsuperscript{38} Then Christie’s approached the estate about \textit{Flight into Egypt} by a painter in the circle of Jan Wellens de Cock.\textsuperscript{39} As well, Christie’s contacted the estate about \textit{An Extensive Landscape}, attributed to Knibbergen.\textsuperscript{40} Not one of the three works had been part of the 1937 Lempertz sale, yet Christie’s and Sotheby’s let the estate know that the pieces had been with the Galerie Stern in Düsseldorf while the Nazis were in power. While this made the paintings questionable items to put up for sale, it did not make their

\textsuperscript{36} Clarence Epstein (senior director of urban and cultural affairs, Concordia University [job title as per a Concordia post in 2015]), interview with the author, June 1, 2014.
\textsuperscript{37} Ibid.
\textsuperscript{38} Lucian Simmons, email to Clarence Epstein, August 26, 2004.
\textsuperscript{39} Monica Dugot, letter to Clarence Epstein, June 2, 2006.
\textsuperscript{40} Elizabeth Renzetti, “Taken by Nazis.”
restitution a foregone conclusion. Both Sotheby’s and Christie’s let the Stern estate know that if it wanted to claim the works, it would have to provide evidence that the three pieces left the Galerie Stern due to Nazi-era duress.41

For the Stern estate, this posed a new challenge. With its restitutions up until this time, it was able to point to the Lempertz catalogue as a source for demonstrating that Stern owned the works. The organization now came to realize what is an undeniable reality of Nazi-looted art restitution: it cannot take place unless a complete and documented provenance history for a claimed work proves that it once belonged to the claimant. For the Stern estate, this meant learning how to dig deeply into other records, including the Galerie Stern’s business accounts located at the National Gallery of Canada. In these records, the estate learned that *Flight into Egypt* was in the Galerie Caldhenhof sale at Rudolph Lepke, Berlin, on June 8, 1929, where the Galerie Stern had purchased the work.

When the estate located an illustrated catalogue for the Galerie Caldenhof sale at The Frick Collection, it discovered that *Flight into Egypt* was attributed not to Jans Wellens de Cock but to “Niederländischer Meister um 1520–1530.”42 Using this information the estate traced *Flight into Egypt* to the website of the Netherlands Institute for Art History, RKD.43 As Chapter 4 explains, this revelation not only transformed the outcome of *Flight into Egypt* but also *The Masters of the Goldsmiths Guild in Amsterdam*. At the RKD archives, the estate found correspondence between the Galerie Stern and Hans Schneider, the director of the RKD. In other words, it was able to find a key that unlocked unresolved matters of provenance for three of the estate’s restitutions.

43 Ibid.
iii. Nazi-Looted Art Restitution Is an Ongoing International Conversation

Although the focus of the Max Stern Art Restitution Project may not be recognized masterpieces, the project is closely tied to works of Nazi-spoliated art that have made international headlines. Moreover, the Stern estate’s efforts are tied to key events and issues in the international conversation about Nazi-era art theft. This is because the topic of how to address the recovery of Nazi-looted art is a constantly evolving international discussion. In order to be successful in making a claim, one must be aware of the changing circumstances at play.

As outlined in Chapter 2, the recovery of Aimée by Émile Charles Hippolyte Vernet-Lecomte, the first Stern restitution, cannot be understood without considering the global art market of 2006. In January of that year, a Viennese arbitration panel voted to return Gustav Klimt’s *Portrait of Adele Bloch-Bauer I* to Maria Altmann as well as four other paintings by the artist—works that the media publicized as items that would soon be placed on the market. In June, Ronald S. Lauder bought *Portrait of Adele Bloch-Bauer I* for a reported $135 million (US), the highest price ever paid for a work of art. In November, as Sotheby’s and Christie’s organized their fall sales of Impressionist and modern art, London’s *The Telegraph* wrote that £450 million worth of art would trade, adding: “Nazi loot a gold mine for auction houses.” It was against this backdrop that Sotheby’s—the sponsor of the Stern estate exhibition, *Auktion 392*—facilitated the return of Aimée. While the auction house’s actions were unquestionably guided by moral rectitude, it can also be argued that its decision was also motivated by the extensive press coverage that restitution was receiving that year.

Looked at collectively, the Stern cases remind us that Nazi-looted art recoveries

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are not isolated events. There may be no international law to address Nazi-looted art restitution, but art restitution cases do impact one another. In 2009, Bonnie Goldblatt, the Regional Field Subject Matter Expert—Art and Antiquities Investigations in the US Department of Homeland Security seized *Portrait of a Musician Playing a Bagpipe* by an unknown Netherlandish painter from the gallery of the New York art dealer Lawrence Steigrad. Eleven years earlier, Goldblatt (then working for the US Customs Service as a senior special agent, art fraud coordinator) was a pivotal figure in the detainment of Egon Schiele’s *Portrait of Wally*, which she confiscated from the MoMA in 1998 as it was set to leave New York.47 Commenting on the importance of the *Portrait of Wally* case, Goldblatt stated that:

> All governments and museums should take a good look at the provenance of their inventory. If they have something they shouldn’t have ... they should return it. I don’t think museums should be treated any differently than individuals. They still have a duty to return things to their rightful owner.48

As outlined in Chapter 6, the recovery of *An Allegory of Water and Earth* in 2010 can be linked to the case of the Amsterdam-based art dealer Jacques Goudstikker, who, like Max Stern, inherited his father’s gallery. In 1997, a major art controversy ensued after the Dutch press revealed that since the 1950s more than 200 of Goudstikker’s paintings hung in seventeen public buildings, including the Rijksmuseum.49 The public awareness of these facts led to the restitution of much of Goudstikker’s collection, one of the world’s largest Nazi-looted art recoveries.50 The matter prompted the Dutch government to establish a rigorous cultural process and procedure with respect to Nazi-

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48 Lederman, “Undercover Avenger.”


era plundered art, including the creation of the Origins Unknown Agency website. If not for the steps taken by the Dutch government—and more importantly if not for the Stern estate’s awareness of Netherland initiatives—An Allegory of Water and Earth would likely still be in Hertogenbosch, hanging in the Noordbrabants Museum.

In Chapter 7, the Stern estate’s 2013 restitution of Scandinavian Landscape is explored, a work that was for sale at the Cologne-based Van Ham auction house. Seven years earlier, in November 2006, when the Stern estate approached Van Ham about two paintings, both Roman city scenes by Matthijs Naiveu (which Stern sold in the November 13, 1937, Lempertz auction), it failed in its attempt to recover the works. Van Ham refused to take any action in the 2006 sale, arguing that it was acting in accordance with German law. Only when the estate asked Germany’s culture minister, Bernd Neumann, to step in did Van Ham retract its plan to sell the paintings. This, however, did not facilitate the return of the work. Rather, Van Ham returned both Naiveu pieces to the consignor at the consignor’s request.

By 2013, Van Ham had become considerably more helpful to the Stern estate. Although the Gurlitt case would not break until fall 2013, the previous seven years saw a fundamental shift take place in the landscape of Germany’s handling of Nazi-looted art restitution. In the summer of 2006, the Berlin senate confirmed that, after almost two years of negotiations, Berlin Street Scene by Ludwig Kirchner would be returned to the heirs of the Hess family. Of the announcement, Barbara Kisseler, Berlin’s state secretary of culture, stated that the masterpiece was restituted because of “moral

53 Ibid.
considerations.”

While in 2013 a German auction house could legally sell a work of Nazi-looted art, or return a piece of Nazi-looted art to a consignor, a new reality had become very apparent. Despite the fact that Germany’s civil code states that property cannot be reclaimed more than thirty years after it was lost or stolen, media pressure was now making it much more challenging for a consignor to sell a work of art once it had been publicly labelled as a spoliated item. By 2006, once a work of art was identified as having been looted by the Nazis, its resale value was vastly diminished unless the work was first restituted to its rightful heirs.

iv. The Importance of Legal Precedent

As detailed in Chapter 5, in December 2007, information documenting how Max Stern had lost his livelihood and his property was presented to chief judge of the US District Court for Rhode Island, Mary Lisi, with respect to the painting Girl from the Sabine Mountains by Franz Xaver Winterhalter. Her ruling stated that Stern’s relinquishment of his property was anything but voluntary. According to Lisi, Maria-Luise Bissonnette’s stepfather, Karl Wilharm, never rightly held ownership of the work since Stern had no choice but to sell the painting.

The Stern estate did not set out to enter into a legal contest. It was obligated to do so after the painting’s owner Maria-Luise Bissonette sent the work to Germany, which forced the Stern estate to petition the Rhode Island court that she had exported a work of stolen property. Of great significance is how the estate set up its petition: its approach relied upon morality over legal technicality. As Willi Korte stated, “We thought it best to look at the loss through the relationship between the victim and the regime, not the

55 Epstein, interview, June 1, 2014.
56 Case 1:06-cv-00211-ML-LDA Document 78 Filed December 27, 2007
subsequent relationship of the victim and the buyer.”  

In this method, Korte’s goal was “to build that argument in hopes of applying a legal decision to the other 227 Stern paintings that were auctioned.”

Korte’s strategy was the correct one. While the Max Stern Art Restitution Project has not relied on the courts as a means by which to achieve restitution, Lisi’s ruling expanded the definition of what constituted looted art in restitution claims because it was the first time in US history that a forced sale was considered a theft.

When *Girl from the Sabine Mountains* became the fourth recovery of the Max Stern Art Restitution Project in January 2008, it also set a legal precedent, which resulted, in quick succession, in two more Stern reclaims: *Portrait of a Musician Playing a Bagpipe* (artist unknown) and *St. Jerome* by Ludovico Carracci.

v. Compromise Is Essential to Restitution Solutions

As addressed in Chapter 2, when the grandchildren of Friedrich and Louise Gutmann discovered *Landscape with Smokestacks* by Degas at the Art Institute of Chicago, they made a claim against Daniel Searle—who purchased the work 1987 unaware of its tainted history—to return the painting’s title to their family. The heirs’ objective was to vindicate the Gutmanns’ loss in acknowledgement of their death in the Holocaust concentration camps. Unsuccessful in their request, the heirs filed a suit in 1996, which was settled out of court two years later when the Art Institute of Chicago acquired the

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58 Ibid.

In a derisive manner, the press described the resolution of \textit{Landscape with Smokestacks} as a “split the baby” solution. Yet the reality of most Nazi-looted art restitution is that compromise is essential. Today, the names of Friedrich and Louise Gutmann as well as that of Searle, are on the institute’s wall labels when the work is on display. Far from being a mediocre resolution, it is one that acknowledges an important reality of art history: the history of the art object is a rich and meaningful component of the image that is depicted on the canvas. This gainsays the argument often encountered in the media that Nazi-looted art restitution is about money.

Another key factor, as Anna Rubin, director of the Holocaust Claims Processing Office, explains, is that Nazi-looted art restitution is “a very subjective thing.”\footnote{Anna Rubin (director, Holocaust Claims Processing Office), interview with the author, May 9, 2015.} When handling claims for spoliated art, the HCPO aims to get back works’ titles—their legal ownership—for the Stern estate. This return of title or ownership does not necessarily involve a monetary transaction. A work’s title may be returned while it remains in the institution that holds it. “We don’t view financial restitution or financial settlement as a lesser form of restitution than getting the object back,” says Rubin.\footnote{Ibid.} As Edmund de Waal writes in \textit{The Hare with the Amber Eyes}, this is because Nazi-era restitution is about reclaiming the lost narratives of art objects. “Stories and objects share something.” It is how we tell the stories of loss that matters.\footnote{Edmund De Waal, \textit{The Hare with Amber Eyes: A Hidden Inheritance} (New York: Farrar, Straus and Giroux: 2010), 348–49.}

De Waal’s point is applicable to Chapter 3, which explains how the recovery of \textit{Portrait of Jan van Eversdijck} by Nicholas Neufchatel involved two key conditions: the Jakober Foundation would transfer the painting’s title to the Stern estate and make a
donation to the Max Stern Art Restitution Project.\textsuperscript{65} In turn, the Stern estate agreed *Portrait of Jan van Eversdijck* would remain, in perpetuity, at the Sa Bassa Blanca Museum.\textsuperscript{66} Chapter 8 describes how a component of the restitution of *Self Portrait of the Artist* by Wilhelm von Schadow in April 2014 was that it would continue to hang on public view in the Stadtmuseum Düsseldorf, but with an acknowledgment that it belongs to Max Stern’s estate, which had agreed to loan it to the gallery. Stern’s story is now part of the portrait’s display.\textsuperscript{67} Just as an extensive wall label hangs beside *Landscape with Smokestacks*, so do accounts of the history of *Portrait of Jan van Eversdijck* and *Self Portrait of the Artist*. These paintings now tell important accounts of tragedy and redemption made possible through compromise.

Concession is also addressed in Chapter 7, which explores the Stern estate’s approach to monetary compromise in reference to the recovery of *Scandinavian Landscape* by Andreas Achenbach. Since the consignors bought the painting unaware of its problematic provenance, Van Ham director Markus Eisenbeis approached them in 2013 with a proposed financial settlement. As he explains, there are two ways to address such situations where good-faith buyers are approached with valid restitution claims: In the first, the painting may be transferred from the consignor to the heirs with the understanding that the work would be sold at auction, with the proceeds split fifty-fifty. In the second case, there is not a formal transfer of property but an agreement that all proceeds from the work’s sale at auction will be split fifty-fifty.\textsuperscript{68} For *Scandinavian Landscape*, the Stern estate chose the first option. The painting was restituted on October 29, 2013, at the Canadian Embassy in Berlin, where the Canadian ambassador

\begin{itemize}
  \item \textsuperscript{65} Letter from Suyin So, Pryor Cashman Sherman & Flynn LLP to Sherri North Cohen, Holocaust Claims Processing Office, State of New York Banking Department, February 2, 2007.
  \item \textsuperscript{66} Ibid.
  \item \textsuperscript{67} Rubin, interview, May 9, 2015.
  \item \textsuperscript{68} Eisenbeis, interview, May 14, 2015.
\end{itemize}
to Berlin, Marie Gervais-Vidricaire, unveiled the painting. The event was more than a formality; it was a manifestation of the Max Stern Art Restitution Project principle that when it comes to Nazi-looted art restitution, the private must be made public.

Seen collectively, the above-outlined lessons based on twelve recoveries by the Max Stern Art Restitution Project reveal that the recovery of Nazi-looted art in the twenty-first century is far from the predatory stereotype often attached to it. As I noted at the start of this dissertation, restitution has been denigrated as a practice that makes the rich richer; that is motivated by the art market’s desire to further its own interests; and that takes important cultural property out of the public’s view. The Stern cases draw attention to the fact that Nazi-looted art restitution is a vastly complex and evolving subject that deserves considerable attention, particularly when one considers that the vast majority of works plundered during the Third Reich were not museum-quality pieces. They were works of modest value, which like other household items—rugs, bicycles, cars, carpets, candle sticks, books—turned Germany into what Susanne Anna describes as “a garage sale of Jewish goods to finance the war.”


The Stern estate’s restitution efforts as well as its methodologies are worthy of art historical attention. They constitute an ongoing history with crucial implications for potential international accords, museum research protocols, and art historical methodologies, in ways that might fundamentally impact social justic

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71 Anna, interview, April 8, 2014.
Conclusion
Lessons from the
Max Stern Recoveries
# APPENDIX I

List of Recoveries of the Max Stern Art Restitution Project

## 2002-2013

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List of Images in Order of Appearance

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APPENDIX III

Literature Review
The story of Julius Stern and Max Stern belongs to a vast body of research on the looting of artworks and cultural object by the Nazis, which has been extensively documented since the mid-1960s when David Roxan and Ken Wanstall wrote *The Rape of Art: The Story of Hitler’s Plunder of the Great Masterpieces of Europe* (1965) based on the report “Consolidated Interrogation Report No. 4 (1945)” by the Art Looting Investigation Unit.\(^1\) This journalistic account of the how Nazis collected art from parts of Europe under German control for the Führermuseum at Linz documented the roles of key figures who were architects of Nazi looting, including Dr. Hans Posse of the Staatliche Gemäldegalerie Dresden Martin Bormann, and Hermann Göring. However, as Roxan and Wanstall note in their book, the material they worked with was incomplete, as many documents on the subject of art looting were classified by the American government at the time of its publication.

The declassification of key archival documents in the 1990s has resulted in numerous publications in the past twenty years. Two seminal volumes on the topic of Nazi-era art theft are *The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War* by Lynn Nicholas (1995) and *The Lost Museum: The Nazi Conspiracy to Steal the World’s Greatest Works of Art* by Hector Feliciano (1997). Nicholas, a journalist, examined the impact of the Nazi pillages, drawing on archival research in Washington and Paris, as well as using interviews and secondary sources,

such as postwar memoirs by former museum officials. Her book was the first on the topic to receive widespread media and public attention.²

The widespread reception of Feliciano’s book was, in large measure, a result of his criticism of the French government’s lack of initiative in tracing the provenance of works in state collections.³ Several key, recently declassified French archives informed Feliciano’s viewpoint. Whereas Nicholas portrayed French museum officials in a heroic light and as protectors of French cultural heritage, Feliciano took a critical stance on the state’s role.

Prior to Nicholas’s and Feliciano’s books, others, in the late 1980s and 1990s contributed to the literature of this subject. Among them, Günther Haase wrote two volumes on the fate and whereabouts of artworks during and after 1945. He began his research in 1987, examining previously unreleased materials in libraries, archives, and museums in the United States and Europe. When his first volume Kunstraub und Kunstschutz: Eine Dokumentation was released in 1991, it was a unique and unprecedented account of Nazi-era theft. Haase’s second volume, published in 2008, builds on his initial findings and incorporates lists of cultural objects that Hitler and Göring stole for their own collections, as well inventories for the projected Linz Museum.⁴

The Spoils of War: World War II and its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property edited by Elizabeth Simpson, (1997) documents the proceedings of the Bard Graduate Centre symposium, held in New York in 1995 and attended by more than fifty art experts from the United States and Europe. The essays in this volume explore how the loss of cultural objects is tied to losses of community, culture, and spirit.⁵ Another significant conference from this period was the 2001 symposium at the United States Holocaust Memorial Museum. Papers from the event were published as Confiscation of Jewish Property in Europe, 1933-1945: New Sources and Perspectives. The symposium focused on access to previously restricted, or

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² Lynn H. Nicholas, The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War.
forgotten, archival collections in the past decade, demonstrating that the confiscation process was immensely bureaucratic in nature.

The Lost Masters: World War II and the Looting of Europe’s Treasurehouses by Peter Harclerode and Brendan Pittaway (2000) examines not only the Nazi’s systemic pillaging of important and priceless art collections, but also the aftermath of the War when Stalin’s Red Army, and even Allied armies, stole from the Nazi hoards. Nazi Plunder: Great Treasure Stories of World War II (2001) by Kenneth Alford addresses the story of the plundering of Europe’s historic treasures perpetrated by the German armed forces, as well as the Allied armies. Alford explores the extensive array of objects that were looted beyond art—including gold, silver, currency, coins, religious artefacts, and millions of books and other documents—and reveals how the treasures were taken and where they went.

Raub und Restitution: Kulturgut aus jüdischem Besitz von 1933 bis heute (2008), was an exhibition catalogue for the show of the same name held at the Jewish Museum Berlin, about the fate of individual cultural artifacts confiscated by the Nazis and the stories of their Jewish owners. The book includes essays by leading experts on Nazi-era restitution, including Michael Bazyler and Patricia Kennedy Grimsted, as well as specific case studies. Subjects include restitution, individual private collections, provenance research, and the art trade in Germany.

In Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945 (2008), Martin Dean provides a comprehensive study of the confiscation of Jewish property during the Holocaust. The book focuses on the economic persecution inside the Third Reich between 1933 and 1941 and on Jewish property and the European Holocaust, from 1939 to 1945. Dean demonstrates how the spoliation evolved in intensifying steps and how Western and Eastern Europe carried out this persecution in varying manners.

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Jewish Losses and Recovery Efforts

To understand the enormous extent of the cultural property that vanished with the Third Reich, there is a body of literature that documents European Jewish art collectors in the years prior to the Second World War. This is the cultural landscape that Julius Stern and Max Stern belonged to. Focusing broadly on the topic, Aufbruch in die Moderne: Sammler, Mäzene und Kunsthändler in Berlin 1880-1933 (2012) provides a general overview of the private art collectors, art dealers, patrons, and artists that contributed to the city of Berlin as an artistic centre of modernism. A collection of fourteen essays, this volume provides profiles of various personalities, including Max Liebermann, Alfred Flechtheim, and the Mendelssohn family, as well as a history of the destruction of these families by the Nazis. In a similar vein, Jüdische Sammler und ihr Beitrag zur Kultur der Moderne (2011) contains papers presented at a symposium held in Heidelberg in 2007 on the contribution of Jewish collecting of modern art. These essays address the international networking of Jewish collectors and collecting as a strategy for self-assurance and nation building. Focusing specifically on Hungary, “Lunching Under the Goya: Jewish Collectors in Budapest at the Beginning of the Twentieth Century” by Konstantin Akinsha (2011) looks at Jews in Budapest, in particular how Baron Mór Lipót Herzog influenced the development of European artistic taste.

How Did this Loss Take Place? The Art World Under the Third Reich & Linz

To understand the broader picture of why and how Julius Stern and Max Stern lost what they did involves a knowledge of the aesthetic policies under the National Socialist regime, specifically the politics and propaganda of the Third Reich and its art-collecting practices that followed suit during the Second World War.

Jonathan Petropoulos has written extensively on visual culture in the Third Reich. In his article “Not a Case of ‘Art for Art’s Sake’: The Collecting Practices of the Nazi Elite” (1994), he examines the manipulation of art collecting as a means for

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articulating power and cultural identity among the Nazi elite. Petropoulos argues that the creation of collections (through purchase, looting, and gift giving) became a means for privately communicating power relationships, cultural superiority among the Nazi leaders, and establishing a group identity that legitimized Nazi policy.

In *Art as Politics in the Third Reich* (1996), Petropoulos provides documents of the collecting practices of the Nazi elite. He traces the evolution of official aesthetic policy, from what German museums de-accessioned as “undesirable” to organized plundering. Arguing that art collecting offered senior officials a common cultural language, Petropoulos reconstructs the collections of Nazi officials, including Hitler, Göring, Goebbels, Himmler, Speer, and Ribbentrop, and explores how these private holdings defined their relationships to one another. In a similar light, *Wie Hitler den deutschen Geist zerstörte: Kulturpolitik im Dritten Reich* by Hermann Glaser (2005) documents Nazi Germany’s bourgeois cultural policy and its persecution of “degenerate art.”

These more recent titles build on a body of literature, which began in the 1950s and focused on the Nazis’ use of culture in public propaganda. Of note, *Art under a Dictatorship* by Hellmut Lehmann-Haupt (1954) is an early study of the aesthetic policy of Nazi Germany and describes how academic classicism was adopted as the official style in architecture and sentimental realism became the ideal of painting and sculpture. *Art in the Third Reich* by Berthold Linz (1979) reveals how the Nazis created a powerful dichotomy between so-called “degenerate art” and state-sanctioned art. *Art of the Third Reich* by Peter Adam (1992) offers an extensive study of the art of the National Socialists. He demonstrates how art linked to nature, family, and the homeland became the country’s official style while modern art became synonymous with large cities, internationalism, and decadence.

A key component to our understanding of Germany’s policy on visual culture is the literature that has documented Hitler’s plans for his museum in Linz. A body of literature is devoted to this topic, including *The Linz File: Hitler’s Plunder of Europe’s*

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Another key work on this topic is *Hitlers Museum Die Fotoalben “Gemäldegalerie Linz”: Dokumente zum “Führermuseum”* (2004) in which Birgit Schwarz explores how Hitler selected 1,000 masterpieces for Linz. The book features the entire history of Hitler’s plans for the Führermuseum as well as photographs of selected art objects, which were placed into albums and presented to Hitler.\(^{21}\) In *Kunstraub in Europa 1938-1945* by Jakob Kurz (1989), Kurz examines how Hitler’s dream of the world’s greatest museum could only be realized through the confiscation of hundreds of artworks from private collections across Europe.\(^{22}\)

*Hermann Voss—Direktor der Gemäldegalerie Dresden und “Sonderbeauftragter für Linz”* by Kathrin Iselt (2010) addresses the complicated legacy of Professor Hermann Voss, a revered specialist in late Renaissance and Baroque painting who served as “Special Representative” for the Linz Museum, a job that involved assembling art for the Führermuseum.\(^{23}\) Exiled initially by the Nazis for his liberal views, Voss ultimately utilized his talent to further the Reich and played active roles in several German museums during National Socialism, including the Landesmuseum Wiesbaden and the Staatliche Gemäldegalerie Dresden.

**The Nazi Art Trade, Auctioneers, Dealers and Middlemen**

The backdrop to understanding the system behind Max Stern’s losses is a body of literature on the art trade in Nazi-era Germany, including studies of Third Reich-sanctioned art dealers, and Nazi party officials who were involved in art trade and who would willingly cooperated with the Nazi regime.

Drawing on research interviews and declassified documents from eleven countries *Pack of Thieves: How Hitler and Europe Plundered the Jews and Committed the Greatest Theft in History* by Richard Chesnoff (1999) argues that the Nazis did not act alone in the systemic plunder of Jewish property during the Second World War. Chesnoff reveals how individuals and corporations in many countries took advantage of the plight of the Jews—including Swiss bankers, Italian insurance companies, and

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\(^{21}\) Birgit Schwarz, *Hitlers Museum: Die Fotoalben “Gemäldegalerie Linz”: Dokumente zum “Führermuseum”* [The Photograph Albums “Art Gallery Linz”: Documents of the “Führermuseum”] (Wien, Cologne, and Weimar: Böhlau, 2004). Of the entire thirty-one albums, nineteen were preserved in the Oberfinanzdirektion (Supreme Tax Authority) of Berlin. Schwarz reproduces the contents of the albums.


Swedish industrialists—to demonstrate that although looting began as a tool to help “Aryanize” Germany and German-held territory, the theft of Jewish property became an important element in financing the Nazi regime.  

*Kunstwerte im Wandel: Die Preisentwicklung der deutschen Moderne im nationalen und internationalen Kunstmarkt 1925 bis 1955* (2011) explores the development of the German art market from the Weimar Republic to the immediate postwar period and gives a detailed overview of the art trade in the Third Reich. Using the example of twelve now highly sought-after artists, including Emil Nolde, Max Beckmann, and Paul Klee, the book explores the cultural-political and economic impact of modernism. A central question is the influence of what the Nazis called “degenerate art” on the trade of the avant-garde in Germany after 1933 and how Nazi art policy impacted the pricing structures of the outlawed artists.

The catalogue *Gute Geschäfte: Kunsthandel in Berlin 1933-1945*, which was published in conjunction with the exhibition of the same name in 2011, looks at the art trade in Berlin between 1933 and 1945. The catalogue surveys Jewish art dealers still active in Berlin after 1933 (including Alfred Flechtheim, Paul Graupe, Karl Haberstock, and Karl Nierendorf). It explores how, after 1933, this group saw the Aryanization of their businesses and the confiscations of their collections, before being expelled from Germany. Finally, the book documents the social and political context of the art trade in Nazi times, including the work of the Reichskulturkammer (Reich Chamber of Culture); the Nazi supervision of the art trade; and the promotion of Hitler’s Linz Museum.

*Kurt Martin und das Musée des Beaux-Arts de Strasbourg: Museums- und Ausstellungspolitik im ‘Dritten Reich’ und in der unmittelbaren Nachkriegszeit* by Tessa Rosebrock (2012) looks at the career of Kurt Martin, who was responsible for German art policy and acquisitions over a forty-year period. He served as the director of the Karlsruhe Kunsthalle and the Badische Armeemuseum the “Authorized Representative for Art Collections in Alsace”; the “General Administrator of the

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Upper-Rhine Museums”; and the “Authorized Representative of the State responsible for Securing Art Collections belonging to Enemies of the Volk and the Reich in Alsace”—all Nazi appointments.

*Zwischen Politik und Kunst: Die Staatlichen Museen zu Berlin in der Zeit des Nationalsozialismus* (2013) reviews the role of the Germany’s state museums during the period of National Socialism. With twenty articles, the volume discusses the effects of the anti-Jewish policy of eviction, the relationship of the Nazi state to the museums, and their reactions to the erosion of democracy.\(^{28}\)

Assessing the relationship between culture and politics from a different angle, *Artists Under Hitler: Collaboration and Survival in Nazi Germany* by Jonathan Petropoulos (2014) documents how individual artists dealt with the regime’s public opposition to modern art. Petropoulos argues that contrary to popular belief, not all modern artists were anti-Nazi and not all Nazis were anti-modernists.\(^{29}\) Petropoulos provides examples of artists who failed to gain acceptance in Nazi Germany (Walter Gropius [1883-1969] and Emil Nolde), as well as others whose desire for official acceptance was realized (Leni Riefenstahl [1902-2003] and Albert Speer [1905-1981]). These personalities present the complex cultural history of Nazi Germany through its visual artists.

The collected volume *Werke und Werte: Über das Handeln und Sammeln von Kunst im Nationalsozialismus* (2010) features eleven papers written for “The Degenerate Art” Resource Centre in Berlin, including essays documenting the activities of Nazi art dealers Karl Buchholz, Günter Franke, Hildebrand Gurlitt, and Ferdinand Möller, as well as collectors who were victims of Nazi plunder, including Robert Graetz of Berlin, and Bernhard Sprengel of Hannover.\(^{30}\) The art journalist Stefan Koldehoff writes on the trade of “denegerate art” and looted art during the Nazi period and in postwar Germany in *Die Bilder sind unter uns: Das Geschäft mit der NS-Raubkunst* (2009).\(^{31}\) Koldehoff explains how, during the Nazi era, art dealers such as Bernhard Böhmer and Bruno Lohse concealed the correct provenance of art they traded, including *Le Quai*


\(^{31}\) Stefan Koldehoff, *Die Bilder sind unter uns: Das Geschäft mit der NS-Raubkunst* [The Paintings Are with Us: The Trade with Art Looted by the Nazis] (Frankfurt am Main: Eichborn 2009).
Malaquais (1903) by Camille Pissaro and Kohlfeld im Wannseegarten nach Westen (1917) by Max Liebermann.  

A body of literature is devoted to the network of individuals who implemented, managed, and profited from the visual arts in Nazi Germany. The Faustian Bargain: The Art World in Nazi Germany by Jonathan Petropoulos (2000) looks at the key figures in the art world of Nazi Germany and asks, What made thoughtful, educated, and artistic men and women put their talents in the service of a brutal regime? It also explores how a network of these individuals rehabilitated their careers and flourished in the postwar period, a fact that is key to locating the tens of thousands of looted artworks whose origins remain unknown.  

Paul Graupe (1881-1953): Ein Berliner Kusthändler zwischen Republik, Nationalsozialismus und Exil, edited by Patrick Golenia, Kristina Kratz-Kessemeier, and Isabelle le Masne de Chermont (2015), is a collection of essays that describes the activities of Berlin’s major art dealer and auctioneer from the 1930s, until his exile to the United States in 1937. Although he was of Jewish origin, many of the paintings Graupe sold came from Nazi-seized Jewish collections and are works that still circulate in the art market to this day.  

Kunsthandel im Nationalsozialismus: Adolf Weinmüller in München und Wien by Meike Hopp (2012) details the activities of the art dealer Adolf Weinmüller, who took over the auction house of the Jewish art dealer Hugo Helbing in Munich, and in 1938 the firm of the Jewish art dealer Herbert Kende in Vienna. His clients included Nazi party officials Martin Bormann and Maria Almas-Dietrich, both instrumental in gathering works for Hitler’s unrealized Linz Museum. The edited volume Ein Händler “entarteter” Kunst: Bernhard A. Böhmer und sein Nachlass looks the key role played by Bernhard Böhmer as one of the principal players in the sale of de-accessioned “degenerate art.” Similarly, Karl Haberstock: Umstrittener Kunsthändler und Mäzen

32 Ibid.
(2008) provides a comprehensive catalogue of the objects in the collection of Nazi art dealer Karl Haberstock; documentation of the account books of the Galerie Haberstock, Berlin; and images of objects purchased or sold at the Galerie Haberstock between 1933 and 1944.\textsuperscript{37}

\textit{Der Baron, die Kunst und das Nazigold} (2008) by Francesco Welti documents the life of Baron Eduard von der Heydt (1882-1964). A member of the Nazi party, von der Heydt lived in Switzerland during the Second World War, where as an art collector he donated works to the Rietberg Museum in Zurich and to the Von der Heydt-Museum in Wuppertal. His property was seized in 1951 under the Trading with the Enemy Act and he was not successful in recovering it.\textsuperscript{38}

A range of literature also exists on the Nazi-era art trade in Austria. In 1998, the Historical Commission of the Republic of Austria was established with the mandate to investigate expropriations in Austria during the Nazi era. The commission produced \textit{Zwischen Staat und Wirtschaft: Das Dorotheum im Nationalsozialismus} (2006) a detailed study of the history of the Dorotheum, one of the important auction houses engaged in trade of looted and expropriated art during the Nazi period in Central Europe.\textsuperscript{39} The book addresses topics including the Dorotheum’s personnel policy during the Nazi period; organizations commissioning the Dorotheum to auction expropriated art objects; and activity of the Dorotheum to acquire art objects offered or looted in occupied territories.

Switzerland played a central role in the movement of art during the Second World War, as a secure storage place for endangered art and as a center for negotiating the sale of artworks. \textit{Switzerland and the Looted Art Trade Linked to World War II} by

\textsuperscript{38} Francesco Welti, \textit{Der Baron, die Kunst und Nazigold} [The Baron, Art and Gold of the Nazis] (Frauenfeld: Huber, 2008).
Georg Kreis (1997) reports on the Swiss position as a storage site and marketplace beginning with the Gallery Fischer sale of German “degenerate art” in Lucerne in 1939.40

The workings of the art trade in Nazi-era Netherlands has been documented in *Kunsthandel in Nederland, 1940-1945* by the Dutch journalist and art dealer Adriaan Venema (1986), with an eye to the role played by the art trade in the sale German-looted art.41 Gerard Aalders published two volumes on the subject of the looting of Dutch cultural objects and the role of role Dutch collaborators in Nazi theft: *Geraubt! Die Enteignung jüdischen Besitzes im Zweiten Weltkrieg* (2000) and *Nazi Looting: The Plunder of Dutch Jewry During the Second World War* (2004). In his first publication, Aalders asks: Who bought the stolen goods and where are they?42 He draws attention to the efficiency with which the Nazi party confiscated Dutch property during the German occupation: Jewish shops were the first targets, then looting peaked in May 1942, when the Dutch Jews were forced to hand over all personal goods. *Nazi Looting* explores the role of the Einsatzstab Reichsleiter Rosenberg and other Nazi looting agencies such as the Dienststelle Mühllmann and describes the methods of seizure of the Chabot-, Lutz-, Gutmann-, Koenigs-, Lanz-, von Pannwitz- and Goudstikker-family collections.43

The art trade in France during the Nazi era is the subject of a vast body of literature. *L’Exode des musées: Histoire des œuvres d’art sous l’Occupation* by Michel Rayssac (2007) chronicles the years 1938 to 1946, following the movements and events concerning the evacuation, the return of French art objects to their museums, and how directors of French museums struggled to preserve their cultural patrimony.44 *Art of the Defeat: France 1940-1944* by Laurence Bertrand Dorléac (2008) looks at the art scene in France during the German occupation.45 Dorléac surveys Nazi and Vichy artistic policies, events, and individual acts of collaboration and resistance. With a focus on archival research and works by artists including Aristide Maillol (1861-1944), Henri Matisse (1869-1954), and Pablo Picasso, this book examines the demonization of foreigners and modernists, the looting of state museums and Jewish collections, and the glorification of Philippe Pétain and French national identity.

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The Shameful Peace: How French Artists and Intellectuals Survived the Nazi Occupation by Frederic Spotts (2008) investigates how France’s artistic leaders managed the German occupation of France from 1940 to 1945. While some fled the country, others who stayed, including Pablo Picasso, Henri Matisse, and Jean Cocteau (1889-1963), responded in separate ways. Spotts illuminates the disconcerting experience of French artists as they fought to preserve their country’s cultural identity in face of the Nazi goal to supplant French with German culture. And the Show Went On: Cultural Life in Nazi-Occupied Paris by Alan Riding (2010) looks at the approach of Paris’ artists and intellectuals under the occupation. Riding maintains the artistic life of Paris was important to the French to show that they had not been defeated, and he reveals the activities of writers and visual artists who continued to work throughout the occupation. Like Spotts, Riding explores the role of the creative class to show moral leadership.

The collection L’Irréparable: Itinéraires d’artistes et d’amateurs d’art juifs, réfugiés du ‘Troisième Reich’ en France edited by Anne Grynberg and Johanna Linsler (2013) is an account of Jewish artists and art collectors who sought protection from the Nazi regime in France, including Otto Freundlich (1878-1943), Leo Maillet (1902-1990), D. Jesekiel Kirszenbaum (1900-1954), Horst Rosenthal (1915-1942), Joanna Mandello (de Bauer) (1907-2001), Willibald Duschnitz, and Paul Westheim. While some earned a place in posterity, others saw their works destroyed and became “forgotten artists.”

In addition to the body of literature that surveys the extensive scope of looting carried out by the Nazis are volumes that address the subject according to country. The subject of Nazi looting in France was the basis for the 2008 the exhibition À qui appartenaient ces tableaux? La politique française de recherche de provenance, de garde et de restitution des œuvres d’art pillées durant la Seconde Guerre mondiale, which took place at The Israel Museum in Jerusalem and later in the Musée d’art et d’histoire du Judaïsme in Paris. The accompanying catalogue, by Isabelle le Masne de Chermont and Laurence Sigal-Klagsbald, documents Nazi looting in France during the

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Second World War and the transfer of art to Nazi Germany. The catalogue documents artworks recovered from German museums after the Second World War—including approximately 2,000 works that are still with the Musées nationaux récupération (MNR). Some of these works, whose owners are still unknown, were exhibited and shown in the catalogue.49

Much literature on the topic of Nazi looting in France is primarily based on the German occupation of France and how French officials were able to protect, through heroic efforts, their cultural patrimony. For example, Livres pillés, lectures surveillées: Les bibliothèques françaises sous l’Occupation by Martine Poulain (2008) investigates how more than ten million books were looted from institutional and private libraries. Poulain describes how during the invasion and liberation Jean Laran, curator of prints and director of the National Library protected the libraries and their holdings during the occupation.50 Similarly, Rose Valland: La résistance au musée by Corinne Bouchoux (2006)51 and Les carnets de Rose Valland: Le pillage des collections privées d’œuvres d’art en France durant la Seconde Guerre mondiale by Emmanuelle Polack and Philippe Dagen (2011) provide an account of Rose Valland (1898-1980), who during the German occupation worked at the Jeu de Paume museum, where the Nazis stored looted works of art destined to enrich Hitler’s personal collection.52 From 1941 to 1944, Valland kept a diary recording the art objects abducted by the Nazis (Einsatzstab Reichsleiter Rosenberg, or ERR). After the war, the artworks could thus be easily located and returned to France.

Witnessing the Robbing of the Jews: A Photographic Album, Paris, 1940-1944 by Sara Gensburger (2015) offers a visual documentation of the pillaging from Jewish families that occurred in Paris from 1942 onwards, mostly from poor families and recent immigrants from Eastern Europe. Drawn from an album of photographs found in the Federal Archives of Koblenz, the book does not depict the looting of cultural treasures or priceless artworks but of everyday items and household goods. Its images offer a window

51 Corinne Bouchoux, Rose Valland: Résistance au Musée (La Crèche: Geste Editions, 2006).
into how the Nazis went about their work and the scale of their greed and mass destruction.53

There is a body of literature specifically focused on Nazi looting in Austria. Titles of significance include Kunstraub, Kunstbergung und Restitution in Österreich 1938 Bis Heute by Theodor Brückler and others (1999), which provides an overview of Austrian looting, the fate of the country’s public and private art collections, such as the Rothschild collection and the Kunsthistorisches Museum, Vienna. Special attention is paid to the complicated legal relations during the Third Reich and after 1945 and an inventory of reclaimed artworks in Vienna, in the archive of the Federal Office of Historical Monuments.54

The volume NS-kunstraub in Österreich und die folgen edited by Gabriele Anderl and Alexandra Caruso (2005) is a collection of articles by nineteen Austrian, German, and Swiss authors who reveal the extent of art looting in Vienna between 1938 and 1945, the collaboration of art historians and art gallery owners, and the unwillingness of many persons and institutions to return or compensate the losses suffered during the Nazi period of Austria.55

The looting of Jewish property in Hungary is the subject of The Gold Train: The Destruction of the Jews and the Second World War’s Most Terrible Robbery by Ronald Zweig (2002).56 Although not exclusively about art, the book traces the renowned account of a train filled with Nazi loot (gold, diamonds, furs, and wedding rings), which left Budapest for a Nazi stronghold in the Alps. The train, commanded by Árpád Toldi, key organizer of the Hungarian Holocaust, would never arrive at its destination.

Other works on the art that nations lost during the Nazi era include Raub oder Schutz? Der deutsche militärische Kunstschutz in Italien by Ernst Kubin (1994), which focuses on how the Nazis veiled their theft in the guise of protecting important works of art.57 Two volumes devoted to art looted in Poland were published in 2000 and 2012, respectively, both issued by the Polish Ministry of Culture and National Heritage. The

57 Ernst Kubin, Raub oder Schutz? Der deutsche militärische Kunstschutz in Italien [Booty or Protection? The German Military Art Protection in Italy] (Graz, Stuttgart: Stocker, 1994).
first, *Straty wojenne: Malarstwo obce: obrazy olejne, pastele, akwarele utracone w latach 1939-1945 w granicach Polski po 1945 bez ziem zachodnich i południowych* addresses losses of works by foreign artists between 1939 and 1945 within the post-1945 borders of Poland; the second, *Straty Wojenne: Malarstwo Polskie: Obrazy Olejne, Pastele, Akwarele artystów Polskich I W Polsce Działających* documents the losses of paintings by domestic artists. The publications trace the history of the destruction and looting of historic buildings during the Second World War.58

*Plundered and Rebuilt: The Polish Military Museum during the Second World War and After* by Roman Matuszewski and Jolanta Kozimor (2007) is a catalogue of the history and the Second World War losses of the Polish Military Museum in Warsaw. The catalogue includes an illustrated “Review of Wartime Losses” documenting the most valuable objects lost during the Second World War. The objects depicted are mainly weapons and firearms, though also shown are paintings by Jan Chelminski (1851-1925). The Polish authorities hope that publicizing their list of losses, together with accompanying illustrations, will make the current holders of such objects aware of the issue and cause any institutional holders to consider ways of resolving the problem.59

**Restitution History: Origins**

Publications on post–Second World War restitution of stolen art commenced immediately after its end with *Salt Mines and Castles: The Discovery and Restitution of Looted European Art* by Thomas Carr Howe (1946), chronicling the work of the Monuments, Fine Arts and Archives Section of the United States Army (MFAA), at the end of the Second World War.60 Howe, a member of the Monuments Men taskforce, offers a first-hand account of the MFAA efforts to recover thousands of artworks hidden across Germany and Austria, as well as documenting their inventorying, identifying works’ owners, and repatriating works to their home countries. *Survival: The Salvage*


and Protection of Art in War by James Rorimer (1950) is another personal account of an MFAA officer. Rorimer focuses on the salvage of Paris and on loot discovered in Neuschwanstein Castle and other Nazi hiding places.61

These primary documents provided the basis for later publications on the MFAA, including three works by Robert Edsel: Rescuing da Vinci: Hitler and the Nazis Stole Europe’s Great Art: America and Her Allies Recovered It (2006) a photographic record of the looting carried out by the Nazis and the efforts of the MFAA officers; and The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History, co-authored with Brett Witter (2009), which includes personal diary entries, letters, and statements from interviews with the few remaining surviving unit members.62 Edsel’s 2013 publication Saving Italy: The Race to Rescue a Nation’s Treasures from the Nazis focuses on two Americans, artist Deane Keller and scholar Frank Hartt, and their role in tracking missing art in Naples beginning in 1944.63 The popularity of Edsel’s publications and their adaptation into a Hollywood movie The Monuments Men (2014) has brought the subject into the realm of popular culture.


Mission Michelangelo: wie die Bergleute von Altaussee Hitlers Raubkunst vor der Vernichtung rettet by Konrad Kramer (2013) is an account of how local miners saved countless masterpieces from the Austrian salt mine of Altaussee, which had been used as a Nazi repository during the war to house thousands of invaluable artworks, including works by Vermeer, Michelangelo (1475-1564), and Jan van Eyck (1390-1441).

63 Robert M. Edsel, Saving Italy: The Race to Rescue a Nation’s Treasures from the Nazis (New York: W.W. Norton & Company, 2013).
As Allied troops advanced in 1945, Nazi commander August Eigruber planned to destroy the works.\textsuperscript{66}

*The Venus Fixers: The Remarkable Story of the Allied Soldiers who Saved Italy’s Art During World War II* by Ilaria Dagnini Brey (2009) recounts the history of “Monument Officers,” a group of Allied-appointed art historians and curators who ensured the protection of the masterpieces of European art and architecture, safeguarding works by artists including Michelangelo and Giotto.\textsuperscript{67}

A critical component of understanding the origins of Nazi-era art restitution is presented in *Confronting the Perpetrators: A History of the Claims Conference* by Marilyn Henry (2007), which documents the history from 1951, when Jewish organizations received an invitation to negotiate with West Germany for “moral and material amends” for Nazi-era damages.\textsuperscript{68} The consortium became the Conference on Jewish Material Claims Against Germany (known as the Claims Conference). Henry, who was given full access to Claims Conference records and archives at its headquarters in New York and at its offices in Frankfurt and Jerusalem, looks at the achievements of the conference as a context for contemporary restitution claims.

Also essential to comprehending the background of Nazi-era art restitution is the Jewish Restitution Successor Organization (JRSO), formed in 1953 as a postwar initiative to return unclaimed works of art to Jewish institutions worldwide. An account of the JRSO is the subject of the catalogue *Orphaned Art: Looted Art from the Holocaust in the Israel Museum* (2008), as well as a study of works of art whose histories are completely unknown.\textsuperscript{69}

*The Last Chapter of the Holocaust? The Struggle over the Restitution of Jewish Property in Europe* by Itamar Levin (1998) examines the struggle for the restoration of Jewish property in Europe, with a focus on topics including the Swiss banking settlements; acknowledgment of the property seized by the Custodian of Enemy Property in the UK; and progress in Norway and France on the issue.\textsuperscript{70}
Restitution of Jewish Collections

A category of literature on restitution specifically addresses the reclamation of what Jewish art collectors lost. Monika Tatzkow’s scholarship on this topic includes *Verlorene Bilder, verlorene Leben: Jüdische Sammler und was aus ihren Kunstwerken wurde* (2009), a volume edited with Melissa Müller that explores the pressure placed on Jewish collectors in the Nazi era to surrender their collections or agree to one-sided sales of masterpieces at low prices in exchange for exit permits for themselves or a family member. This volume traces the dispersal of these collections and the fate of the collectors, including Jaques Goudstikker, the Bloch-Bauer family, and others. The volume also traces recent developments in the restitution of these collections to descendants.71 Also in conjunction with Melissa Müller, Tatzkow published *Lost Lives, Lost Art: Jewish Collectors, Nazi Art Theft, and the Quest for Justice* (2010), a further exploration of prominent Jewish collectors from the Nazi era. Each chapter—subjects include the Rothschilds, the Mendelssohns, and Alma Mahler-Werfel—addresses restitution efforts to reclaim the families’ lost works of art.72

Several publications have been written on the Dutch art dealer Jaques Goudstikker, whose impressive collection, including countless Old Masters, was looted by Hermann Göring and the Nazis. Pieter den Hollander first addressed this story in *De zaak Goudstikker* (1998).73 A more extensive look at Goudstikker’s collection can be found in *Reclaimed: Paintings from the Collection of Jacques Goudstikker* (2008), a catalogue by Peter C. Sutton, director of the Bruce Museum in Greenwich, Connecticut, for an exhibition of the same name.74

*Verwerving en restitutie: de zaak Toorop: Acquisition and Restitution* by Anita Hopmans (2008) looks at the case of German-Jewish businessman Ernst Flersheim, who fled to the Netherlands in 1937. In his possession were two works by Jan Toorop: *The Thames* (1885) and drawing *Faith in God* (1907). These works were located, respectively, in 1937 and 1943 at Museum Boijmans Van Beuningen. The Boijmans study describes

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the research of Anita Hopmans and the acquisition of these works and the restitution to the heirs Flersheim.75

*The Orpheus Clock: The Search for My Family’s Art Treasures Stolen by the Nazis* is by Simon Goodman (2015), grandchild of Holocaust victims Friedrich and Louise Gutmann, descendant of the owners of Dresdner, one of the biggest banks in Germany, as well as the Dutch banking dynasty and Bosbeek.76 Goodman’s account reveals the recovery efforts that he and his brother, Nick, took to restitute approximately 200 works of art, about half of the works formerly owned by their family—many of which whose whereabouts remain unknown. In some respects, *The Orpheus Clock* is a response to the publication in 2000 by Howard Trienens, *Landscape with Smokestacks: The Case of the Allegedly Plundered Degas*.77 “Landscape with Smokestacks” is the name of a Degas painting that Nick and Simon Goodman found in the possession of Daniel Searle, a Trustee of the Art Institute of Chicago, where the painting was on loan. The Goodmans filed a claim against Searle. After four years of litigation, during which Trienens represented Searle, the parties agreed to share the ownership of the painting.

*Stolen Art* by Victor Perry (2000) investigates the art collection of Erich Šlomović, the Belgrade-raised assistant to the renowned Parisian art dealer Ambroise Vollard.78 Šlomović built a collection including works by Pablo Picasso, Henri Matisse, and Jean Cocteau, art he hid in a Parisian bank vault before fleeing Nazi-occupied France for Bačina in Serbia, where he was arrested and killed by the Gestapo. *Stolen Art* explores Šlomović’s family’s lawsuits in France, commenced in an attempt to recover the art he hid.79


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75 Anita Hopmans, *Verwervening En Restitutie, de zaak Toorop: Acquisition and Restitution, the Toorop Case: A Study into the Provenance of Two Art Works* (Rotterdam: Museum Boijmans Van Beuningen, 2008).
79 Legal proceedings surrounding Šlomović’s case continued until 2010, when Sotheby’s finally received clearance to sell the works.
portrait of the wife of Ferdinand Bloch-Bauer, the Austrian sugar industrialist.\(^8^1\) The story follows the confiscation of the painting in 1938 and its subsequent return to a family heir in 2006. The anthology *Die verkaufte Malkunst: Jan Vermeers Gemälde im 20: Jahrhundert* edited by Susanne Hehenberger and Monika Löscher (2013) documents the history of Jan Vermeer’s famous masterpiece, *The Art of Painting* (1666).\(^8^2\) Originally owned by the Czernin-Morzin family in Vienna, the painting was sold to Adolf Hitler in 1940 for 1.65 million Reichsmarks. The book’s chapters address the painting’s history and its sale; its recovery after 1945; as well as the cultural history and socio-political contexts surrounding the work’s genealogy.

*The Hare with Amber Eyes: A Hidden Inheritance* by Edmund de Waal (2010) is a family memoir of the Ephrussi family (de Waal’s great uncle), a wealthy European Jewish dynasty, centred in Odessa. As de Waal describes, until 1938, the Ephrussi family “burned like a comet” in Paris and Vienna society, before the Nazis Aryanized their property. The same year, the family’s palace in Austria was stormed by the Gestapo and much of their vast art collection was stolen, save for a collection of Japanese “netsuke,” 264 wood and ivory carvings that were carefully concealed during the Nazi invasion.\(^8^3\)

*Der Fall Feininger* by Petra Werner (2006) tells the story of the landmark case of forty-nine paintings by the German Expressionist painter Lyonel Feininger (1871–1956), who fled Germany for New York in 1937, leaving behind sixty-four paintings.\(^8^4\) In 1970, Feininger’s sons found the work in the hands of a private collector. For fourteen years, legal controversy ensued, until 1984 when the German Democratic Republic returned the works. The book addresses Feininger’s important works of classical modernism and the politics of the works’ return.

*Der Berliner Kunsthandel in der Weimarer Republik und im NS-Staat: Zum Schicksal der Sammlung Graetz*, Angelika Enderlein’s doctoral thesis (2006), is an account of the creation and dispersion of the heirs of textile manufacturer and art collector Robert Graetz who saw 200 pieces of his contemporary art confiscated before


\(^{8^2}\) Susanne Hehenberger and Monika Löscher, eds., *Die verkaufte Malkunst: Jan Vermeers Gemälde im 20: Jahrhundert* [The Sold Painting; A Painting by Jan Vermeer in the 20th Century] (Vienna: Böhlau Verlag, 2013).


\(^{8^4}\) Petra Werner, *Der Fall Feininger* [The Feininger Case] (Leipzig: Koehler & Amelang, 2006).
he was deported and killed at Auschwitz.\textsuperscript{85} Graetz’s heirs continue to try to get back the stolen paintings, relying on the Washington Principles of 1998.

The Story of Street Scene: Restitution of Nazi Looted Art: Case and Controversy by Gunnar Schnabel and Monika Tatzkow (2008) investigates the case of the Expressionist masterpiece, Berliner Strassenszene (1913) by Ernst Ludwig Kirchner.\textsuperscript{86} The painting was seized from the collection of Alfred Hess, a German shoe magnate based in Erfurt, central Germany, whose family business was Aryanized and whose property was stolen.\textsuperscript{87} Found in the collection of Berlin’s Brücke Museum, Berliner Strassenszene was, in late July 2006, unexpectedly returned by Berlin’s senate, which had been in possession of the painting, to Hess’s grand-daughter in England. The case was controversial—some suggested the claim was not legitimate, others that it was in public interest to ensure that such important pieces of art as this remain in the country—and much documented after the painting sold for $38.1 million at Christie’s, New York.

Das Erbe der Mendelssohns: Biographie einer Familie by Julius H. Schoeps (2009) tells the story, of the Jewish dynasty, the Mendelssohn family, that began with the merchant and philosopher Moses Mendelssohn in the eighteenth century and whose most famous scion was the composer Felix Mendelssohn Bartholdy.\textsuperscript{88} Although not specifically a book about art restitution, it addresses the seizure of the family’s art collection by the Nazis and the subsequent attempt to recover some of their paintings that had not been destroyed nor vanished.

Sammeln, Stiften, Fördern: Jüdische Mäzene in der deutschen Gesellschaft (2008) edited by the Koordinierungsstelle Magdeburg, the central German institution for the documentation of lost and found cultural assets looted by the Nazis, founded in 2001, is a collection of papers from its 2006 colloquium about German-Jewish art patrons who suffered losses during the Third Reich. Among those who were subjects of the colloquium include James Simon of Berlin, the Mosse family, the von Rothschild

\textsuperscript{85} Angelika Enderlein, Der Berliner Kunsthandel in der Weimarer Republik und im NS-Staat: Zum Schicksal der Sammlung Graetz [The Art Trade in Berlin during the Weimar Republic and the Nazi State: The Destiny of the Collection Graetz] (Berlin: Akademie Verlag, 2006).

\textsuperscript{86} Gunnar Schnabei and Monika Tatzkow, The Story of Street Scene: Restitution of Nazi Looted Art, Case and Controversy (Berlin: Proprietas, 2008).

\textsuperscript{87} Alfred Hess died unexpectedly in 1931 at the age of fifty-two. In 1933, his son Hans had fled to France after his apartment in Berlin was ransacked by a Nazi gang and he was fired from his job for being Jewish.

\textsuperscript{88} Julius H. Schoeps, Das Erbe der Mendelssohns: Biographie einer Familie [The Heritage of the Mendelssohns; A Biography of a Family] (Frankfurt am Main: Fischer 2009).
A body of literature has been written on Jewish art collections lost during the Nazi era, for which minimal success at restitution has taken place. Of these, a particularly notable volume includes *Alfred Flechtheim und George Grosz: Zwei deutsche Schicksale* by Ralph Jentsch (2008).  

Works address the well-documented case of the art dealer, collector, and journalist Alfred Flechtheim, who opened his first gallery in Düsseldorf in 1913, followed by galleries in Berlin, Frankfurt, Cologne, and Vienna, before his business was liquidated under the regime of Nazi Aryanization. Dascher and Schmitt-Föller’s more recent work is an interdisciplinary volume of essays that addresses controversial questions about the restitution of plundered art, with contributions by experts in art history, history, law, and science. The Flechtheim paintings have been called “Germany’s most complicated art restitution battle” because it is not entirely clear how extensive the estate actually is, which paintings were in fact confiscated or were sold out of necessity, and when exactly the paintings were sold, that is, before or after the Nazis seized power.

**Restitution History: National Efforts**

Literature about the history and development of cultural patrimony restitution has come out of every European country that experienced Nazi-era art looting.

**The Netherlands**

Starting in 1945, the Dutch government began returning art objects looted by the Nazis to their owners. However, if they could not be identified, the works were stored with the Stichting Nederlands Kunstbezit (SNK). In *Betwist Bezoek: de Stichting Nederlands Kunstbezit en de teruggave van rookkunst na 1945* by Eelke Muller and Helen Schretlen (2002) the history of the SNK is recounted, as are the legal status of art objects both

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returned to their owners and those unclaimed, which were either transferred to the Dutch national art possessions, the Nederlands Kunstbezit (NK), or they were sold.\textsuperscript{93}

Since 2002, the Dutch Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War—established by the Dutch parliament’s recognition of the discrepancy between the needs of those applying for the restitution of works of art and the government’s interest in preserving public art collections—has published annual reports. Heirs seeking restitution may claim items by filing an application. The published reports detail the cases put before the Dutch Advisory Committee on the Assessment of Restitution Applications as well as the committee’s recommendations.\textsuperscript{94}

*The Return of Cultural and Historical Treasures: The Case of the Netherlands* by Jos van Beurden (2012) documents specific cases of restitution in the Dutch state and Dutch heritage institutions in light of evolving social and political conditions, and what van Beurden calls the “shrinking division between a poor South and a rich North, colonizer and colonized.”\textsuperscript{95}

**Germany**

The literature on the history of restitution in Germany has two parts: works about how the country has addressed claims from other nations made in the country; and works about how Germany has managed the restitution of its cultural patrimony that was looted toward the end of the Nazi era.

In the first category, the early Federal Republic of Germany is the subject of *Raub, Recht und Restitution: Die Rückerstattung jüdischen Eigentums in der frühen Bundesrepublik* by Jürgen Lillteicher (2007).\textsuperscript{96} Lillteicher identifies four different phases: 1945 to 1952, when the Allies directed restitution policy; 1952 to 1957, described as the first results and reactive policy as well as the end of hope for a quick resolution to restitution; 1957 to 1964, when restitution was fully in the hands of the Federal Republic and subject to fiscal policy and restrictive practice; and 1964 to 1974, when restitution

\textsuperscript{93} Eelke Muller and Helen Schretlen, *Betwist Bezit: de Stichting Nederlands Kunstbezit en de teruggave van roofkunst na 1945* [Denies Released: The Dutch National Art Collection and Return of Looted Art After 1945] (Zwolle: Waanders, 2002).


became a type of “Vergangenheitsbewältigung” in which Germany entered into the process of coming to terms with the history of National Socialism and the Holocaust.

_Bergung, Evakuierung, Rückführung: Die Berliner Museen in Den Jahren 1939-1959: Ein Bericht Mit 43 Anlagen_ by Irene Kühnel-Kunze (1984) covers the fate of Berlin museums in the war and postwar years of 1939 to 1959, the return or transfer of art treasures by the Allies, the construction of a new museum management, and the recommencement of museum activities following the Second World War.\(^7\)

_Eine Debatte ohne Ende? Raubkunst und Restitution im deutschsprachigen Raum_ (2007) is a collection of papers from the Potsdam international conference on art looted during the Second World War and the efforts to locate these objects and to return them to their former owners or to their heirs.\(^8\) The conference covered the topic of restitution in Germany and Switzerland; the restitution of objects held by museums and libraries (Martin Roth, director general of the Dresden State Art Collections, stated that all looted objects in public museums or libraries should be returned to the former owners); legal aspects of restitution; and the final four papers cover the problem of restitution and the reaction of the public following the 2006 restitution of the Kirchner painting _Berliner Strassenszene_. The Potsdam Resolution on April 24, 2007, confirmed the Washington Conference Principles of 1998, urging German authorities to live up to these principles and to engage in provenance research, with recommendations to review the effects of the principles of 1998.

_Restitution von Kunstwerken aus jüdischem Besitz: dingliche Herausgabeansprüche nach deutschem Recht_ by Sabine Rudolph (2007) explores the complexity of German law and restitution with specific attention to section 985 of the German Civil Code (Claim for Restitution).\(^9\) The book examines how to address whether loss of ownership occurred as the result of a bona fides acquisition by a third party to whom the first purchaser or the Reich had resold the artwork. Finally, the book clarifies whether the elapsed time of more than a half-century serves to eliminate a restitution claim under section 985 or prevents its enforceability.

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Kulturgüter im Zweiten Weltkrieg: Verlagerung-Auffindung-Rückführung (2007) is an anthology published by the German Central Office for the Documentation of Lost Cultural Property in Magdeburg, in which papers address three issues central to cultural property during and after the Second World War: governmentally or militarily organized art theft and art robbery during the Second World War; the restitution of displaced art objects after the Second World War; and German efforts after 1990 to recover German art objects located in East European countries.100

Der NS-verfolgungsbedingte Entzug von Kunstwerken und deren Restitution by Leonie Schwarzmeier (2014) looks at how German state museums have participated in restitution by returning to their owners artworks taken during the Nazi rule, items that were secured using formal legal and enacted laws, regulations, decrees, and orders so as to legalize the “robbery” of the Jews.101

A vast body of writing on Second World War looting is on the story of what both the Soviet Army and the United States Army looted from German museums and repositories. The looting perpetrated by the Soviet Army following the Second World War remains an issue of contention, as much of the stolen work has yet to be located.

In the category of Germany reclaiming its cultural patrimony, Konstantin Akinsha, Grigorii Kozlov, and Sylvia Hochfield were among the first to undertake research on this topic in Beautiful Loot: The Soviet Plunder of Europe’s Art Treasures and Stolen Treasure: The Hunt for the World’s Lost Masterpieces, both published in 1995.102 The books’ authors, all former Soviet museum curators, investigate how approximately 2.5 million cultural objects were removed to the Soviet Union—an event that the Soviet press reported as “saving” art that would have been destroyed in Germany.103

The collection Cultural Assets—Transferred and Missing: An Inventory of the Prussian Cultural Heritage Foundation 60 Years after the End of World War II edited by Klaus-Dieter Lehmann and Günther Schauerte (2004) investigates the missing

cultural artifacts from twenty-one Berlin cultural institutions that were transferred to Russia. Kulturutbeschlagnahmen in bewaffneten Konflikten, ihre Rückabwicklung und der deutsch-russische Streit um die so genannte Beutekunst by Stefan Baufeld (2005) explores the unsolved problem of German cultural objects taken by the Soviet Soviet Army after the Second World War to the Soviet Union, which came to light after the fall of the Berlin Wall and the termination of the Cold War. Baufeld argues that Russia has a good claim to keep the German treasures as “restitution in kind,” to replace the destruction of art taken by German soldiers in the Second World War, items which have yet to be returned.

German Master Drawings from the Koenigs Collection: Return of a Lost Treasure edited by Albert J. Elen (2004) documents the recent return of missing drawings from Kiev, Ukraine, to the Netherlands. Die historische sammlung Otto Gerstenberg (2009) is a two-volume publication dedicated to the reconstruction of the historical collection of art collector Otto Gerstenberg, much of whose art was distributed in various Russian museums as war compensation.

Between 2008 and 2009, approximately seventy paintings were discovered in the possession of the Simferopol Art Museum in the Ukraine. A symposium was held in 2009 to discuss the losses caused by the Trophy Brigades of the Soviet Army and the legal problems of restitution to Germany. The outcome of the symposium is documented in the 2008 publication edited by Peter van den Brink and others on the Soviet looting of works of art from the Aachen Suermontd-Ludwig-Museum, Germany. Using archival negatives, this catalogue reproduces an inventory of missing paintings from the Aachen collection.

Beutekunst? Ein kritischer Blick auf die deutsche Kulturpolitik by Herbert Güttler (2010) documents the country’s efforts to recover looted and lost art from
Russia, Poland, Ukraine, France, Italy, and other countries, and argues that the German government made insignificant efforts to recover looted art.\textsuperscript{109} Güttler explains how Russian museums did not oblige as per agreed upon provisions. Discussions with Poland fared little better, and thousands of archives and manuscripts (the so-called Berlinska collection) remain in Poland, still unreturned.

The exhibition catalogue \textit{Verlust und Wiederkehr: Verlorene und zurückgewonnene Werke der Nationalgalerie} (2010) documents almost 800 works of art, roughly a third of the National Gallery of Berlin’s entire holding, taken during the Second World War.\textsuperscript{110} In \textit{Stalins Beutezug: Die Plünderung Deutschlands und der Aufstieg der Sowjetunion zur Weltmacht} by Bogdan Musial (2011) a research assistant of the Institute of National Remembrance in Warsaw looks into documents in Russia, Poland, and Germany in order to assess the extent of Russia’s looting of Germany. He concludes that the Russian looting of German cultural treasures has been justified as “restitution in kind.”\textsuperscript{111}

\textit{The Spoils of World War II: The American Military’s Role in the Stealing of Europe’s Treasures} by Kenneth Alford (1994) is instrumental in revealing the extent to which the American military forces looted at the end of the Second World War. As troops discovered vast storehouses of treasures pillaged by the Germans, some took from the German spoils as they were liberating.\textsuperscript{112} \textit{Treasure Hunt: A New York Times Reporter Tracks the Quedlinburg Hoard} by William H. Honan (1997) is an investigative account of how a thousand-year-old trove of artworks and manuscripts worth over $200 million, was looted from the Germans by an American soldier during the last days of the Second World War and discovered over half a century later in a small Texas farm town.\textsuperscript{113}

\textit{The Struggle for the Files: The Western Allies and the Return of German Archives after the Second World War} by Astrid Eckert (2012) explores West German diplomacy, international relations, and the consequences of the Allies’ confiscation of

\textsuperscript{112} Kenneth D. Alford, \textit{The Spoils of World War II: The American Military’s Role in the Stealing of Europe’s Treasures} (New York: Carol Publishing Group, 1994).
German government papers and archives, taken in the spring of 1945. Based on research in British, American, and German archives, Eckert’s work highlights the importance of the files and how they are directly tied to the ability to interpret German history in the twentieth century.

“Vorderasiatisches [Middle Eastern] Museum Berlin Loses World War II Trophy Art Case in New York; First German Cultural Institution to Fail on Claim for Return in United States Court” is an article by Thomas Kline (2010) that explores the first ruling in a US court to go against German museums seeking to recover their Second World War losses. In 2010, a New York judge ruled that a Berlin museum could not recover a gold tablet from Iraq lost during the Second World War, which surfaced on the New York art market in 1954 and is now in private possession.

**Germany and the Gurlitt Case**

In November 2013, the much-publicized case of Cornelius Gurlitt, the son of the Nazi-era art dealer Hildebrand Gurlitt, broke. During a tax investigation of Gurlitt, an estimated €1 billion worth of works of art—1,406 items in total, by painters including Picasso, Monet, Matisse, Chagall—were discovered by German authorities in his Munich residence. The event resulted in a wave of writing about the Nazi-era art market and the subject of art restitution. Such works include *Die Bilder sind unter uns: das Geschäft mit der NS-Raubkunst und der Fall Gurlitt* by Stefan Koldehoff (2014), which highlights the history of contradictions that follow this case, as well as the consequences of this discovery on the looted art debate; and *Hitler’s Art Thief: Hildebrand Gurlitt, the Nazis, and the Looting of Europe’s Treasures* by Susan Ronald (2015), which focuses on tracing the history of how Hildebrand Gurlitt was able to amass a huge number of paintings during his time as “official dealer” for Hitler and Goebbels, looting in the name of the Third Reich. The *Munich Art Hoard: Hitler’s Dealer and his Secret Legacy* by Catherine Hickley (2015) covers the early history of Hildebrand Gurlitt, and explores current

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controversy that has ensued in the wake of the unprecedented discovery.\textsuperscript{118} \textit{Ersessene Kunst: Der Fall Gurlitt}, an edited volume that resulted from a January 2014 Heidelberg colloquium to address art market and museum practice before and after 1945, argues that the Munich-based case is symptomatic of the insufficient attention paid to the aftermath of Nazi art theft.\textsuperscript{119}

Finally, in \textit{Schwarzbuch Bührle: Raubkunst für das Kunsthaus Zürich?} authors Thomas Buomberger and Guido Magnaguagno (2015) look to the future and question the ethics behind the proposed donation of the Gurlitt collection—with so many works that have an uncertain provenance—to the Kunsthaus Zürich in 2020.\textsuperscript{120}

\textbf{Austria}

The exhibition and accompanying catalogue \textit{Recollecting, Raub und Restitution} (2009), held at the Austrian Museum of Applied Art, surveys the organization and theft of art looted in Austria during the Nazi era; the restitution of the country’s art with several examples; the story of Austrian restitution policy, which started in 1998; and the challenges of provenance research and restitution.\textsuperscript{121}

\textit{Das Vermögen der jüdischen Bevölkerung Österreichs: NS Raub und Restitution nach 1945} published by the Austrian Historians’ Commission in 2004 documents the work of a committee established in 1998 to investigate the expropriations that took place in Austria during the Nazi period and to explore the degree to which victims of Nazi-era looting have been restored or compensated.\textsuperscript{122}

Essays in \textit{Enteignete Kunst: Raub und Rückgabe - Österreich von 1938 bis heute} edited by Verena Pawlowsky and Harald Wendelin (2006) address the restitution of a range of artifacts—visual art, music, rights of composers, books—in postwar Austria.\textsuperscript{123}

\begin{footnotes}
\footnotetext[118]{Catherine Hickley, \textit{The Munich Art Hoard: Hitler’s Dealer and His Secret Legacy} (London: Thames and Hudson, 2015).}
\footnotetext[119]{Johannes Heil and Annette Weber, eds., \textit{Ersessene Kunst: Der Fall Gurlitt} [Lost Art: The Gurlitt Case] (Berlin: Metropol Verlag, 2015).}
\footnotetext[120]{Thomas Buomberger and Guido Magnaguagno, \textit{Schwarzbuch Bührle: Raubkunst für das Kunsthaus Zürich?} [The Bührle Black Book: Looted Art for the Kunsthaus Zurich?] (Zurich: Rotpunktverlag, 2015).}
\footnotetext[121]{Alexandra Reininghaus, ed., \textit{Recollecting, Raub und Restitution} [Recollecting: Theft and Restitution] (Wien: Passagen, 2009).}
\footnotetext[123]{Verena Pawlowsky and Harald Wendelin, eds., \textit{Enteignete Kunst: Raub und Rückgabe - Österreich von 1938 bis heute} [Confiscated Art: Looting and Return, Austria from 1938 until Today] (Wien: Mandelbaum, 2006).}
\end{footnotes}
Specific works of art are detailed including *Amalie Zuckerkandl* (1918) by Klimt (formerly owned by the Bloch-Bauer family) and *Sommernacht am Strand* (1882) by Edvard Munch (1863-1944) owned by Alma Mahler-Werfel (restituted in November 2006).

**France**

*L’impossible réparation: Déportés, biens spoliés, or nazi, comptes bloqués, criminels de guerre* by Jean-Marc Dreyfus (2015) looks at the progression of foreign relations between the French and German governments since the end of the war, and particularly since 1960, when a diplomatic agreement was signed in Bonn, where the Federal Republic of Germany agreed to pay the total sum of DM 250 million for the benefit of French victims of National Socialism. Yet, as Dreyfus points out, this is only one step toward reparations while many other issues remain unresolved.124

**Italy**

In 1950, *Second National Exhibition of the Works of Art Recovered in Germany* was an exhibition organized by Rodolfo Siviero, who in the postwar years, headed the Italian restitution office under the auspices of the Ministry of Foreign Affairs, working closely with the Allied government and officials at the Munich Central Collecting Point to secure restitution of Italy’s national treasures.125 This exhibition catalogue includes essays and translations of documents pertaining to the plunder and return of many of Italy’s national art treasures by the Nazis during the Second World War.

*Rückführung Illegal Verbrachter Italienischer Kulturgüter Nachdem Ende des 2. Weltkriegs: Hintergründe, Entwicklung und Rechtliche Grundlagen der Italienischen Restitutionsforderungen*, a dissertation thesis by Emanuel Hofacker (2004), reveals the circumstances, drawn from documents in Rome, Florence, Koblenz, and Berlin, under which Italy, represented by Rodolfo Siviero, recovered almost all art objects allegedly illegally removed from the country during the time of German-Italian alliance as well as works looted during the last years of the Second World War.126

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**The United States**

Starting in the mid-1990s, a body of literature developed that addresses the Swiss banks’ attempts to hide dormant bank accounts belonging to Holocaust survivors; German private companies that used slave labourers during the Second World War (including American subsidiaries in Germany); Italian, Swiss, and German insurance companies owed compensation on prewar policies; and the ongoing legal disputes in American courts over art looted by the Nazis in wartime Europe.

In 1998, the Presidential Advisory Commission on Holocaust Assets (PCHA) in the United States was established by the US Holocaust Assets Commission Act of 1998 (P.L.105186) to conduct and review research on the fate of Holocaust victims’ assets that entered the possession of the US federal government and to advise on policy. Upon completion of its work, the PCHA published the report: *Plunder and Restitution: The U.S. and Holocaust Victims’ Assets, Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report* (2000), which is available online.\(^{127}\)

*Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* by Stuart E. Eizenstat (2003) is the author’s personal account of his work as a US foreign policy official in Europe in the late 1990s. During this time, matters related to the Holocaust had become diplomatically fraught as the issues of dormant bank accounts, slave labour, confiscated property, looted art, and unpaid insurance policies came to the fore in Europe and America.\(^{128}\)

*Holocaust Justice: The Battle for Restitution in American Courts* by Michael Bazyler (2003), a professor at the Whittier Law School and a fellow at the Center for Advanced Holocaust Studies in Washington, DC, documents the advent of laws that have forced European and American corporations to pay Holocaust survivors and other victims restitution for war crimes totalling billions of dollars.\(^{129}\) He addresses the enduring legacy of Holocaust restitution litigation being used as a model for obtaining justice for historical wrongs and its impact on the domestic and international stage.

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Bazyler, with Roger Alford, former legal advisor for the Swiss Claims Resolution Tribunal in Zürich, edited *Holocaust Restitution: Perspectives on the Litigation and Its Legacy* (2006). The book includes thirty-one essays on subjects of Holocaust-era litigation that commenced in the 1990s, including claims involving bank accounts, slave labour, insurance, and looted art. In addition to essays on the complexities of litigation in reference to international law, human rights, and procedural issues, the book explores looted art litigation, the role of the Holocaust Claims Processing Office, the proceedings surrounding *Portrait of Wally* by Egon Schiele, and the case of *Altmann v. Republic of Austria* concerning paintings by Gustav Klimt, including *Portrait of Adele Bloch-Bauer I*.

In the journal *The Federal Lawyer*, Raymond J. Dowd’s article “Federal Courts and Stolen Art: Our Duty to History” (2008) argues that the effect of strict privacy laws enacted by Germany and Austria following the war, ostensibly to protect minorities from a future Adolf Hitler, have had the effect of concealing the degree and nature of the looting and heightening the difficulty for families to recover lost property. The *Restitution of Cultural Assets: Causes of Action – Obstacles to Restitution – Developments* by Beat Schönenberger (2009) is a post-doctoral thesis that positions the debate over looted art within the wider context of other demands for the return of cultural assets. In this portrayal of comparative law, Schönenberger examines obstacles preventing restitution, including civil, criminal, and international law.

“Stolen Art: Who Owns it Often Depends on Whose Law Applies” by Arabella Yip (2010) explores the jurisdictional issues behind the settlement in February 2009 of a case involving the Museum of Modern Art (MoMA) in New York and one of its most valuable paintings, *Boy Leading a Horse* (1905-6) by Pablo Picasso. Under the terms of the settlement, the museum was allowed to keep the painting in exchange for paying an undisclosed sum of money to the claimant.

“Fighting Corruption of the Historical Record: Nazi-Looted Art Litigation,” by Jennifer Anglim Kreder (2012–13) examines the recent wave of litigation concerning Holocaust-era art and argues that some claims have been dismissed improperly, because

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they did not reconcile with judicial notions of common sense, and recommends that judges actively seek the input of historians while remaining vigilant not to allow the historical record to become politicized and biased in the advocacy process.\(^\text{134}\)

**Provenance**

*Cultural Treasures Moved Because of the War: A Cultural Legacy of the Second World War: Documentation of the International Meeting in Bremen (30.11.-2.12.1994)\(^\text{135}\)* was published following the International Meeting held in Bremen the previous year. The event—one of the first of its kind—brought together representatives from Germany, Italy, Poland, Belgium, Netherlands, Ukraine, Russia, Hungary, and Luxembourg to discuss cultural losses from the Second World War and provided the foundation for an ongoing international dialogue on the progress of tracing cultural losses. Discussion focused on the availability of archives relating to provenance research.

The historical turning point on this subject, however, took place between November 30 through December 3, 1998, when the Department of State and the United States Holocaust Memorial Museum hosted the Washington Conference on Holocaust-Era Assets. More than forty governments as well as numerous international non-governmental organizations were invited to send delegations to the conference, which built on the work of the December 1997 London Conference on Nazi Gold.\(^\text{136}\) The first major conference of its kind, it resulted in a commitment that Nazi-era art theft (from 1933 to 1945) would henceforth not be subjected to the statute of limitations.

The unanimously endorsed agreement, which became known as the “Washington Conference Principles on Nazi-Confiscated Art” laid a critical foundation in establishing a body of literature on issues surrounding provenance research, which became an important subject in the museum world and art trade. In the wake of the Washington Conference, other symposiums followed, in which individual nations sought to address the issue of provenance research.

In 2000, the French government published a report on the provenance of 2,000 artworks that were displaced from their owners during the Nazi occupation and


incorporated into the National Museum collection if unclaimed after the war. The report was created as a result of the 1996 establishment of the Mission d’étude sur la Spoliation des Juifs de France in response to claims that the Directorate of Museums of France had purposely avoided pursuing provenance research on works of art left unclaimed after the Second World War. Edited by Isabelle le Masne de Chermont, the head of libraries and archives for the Musées de France, and Didier Schulmann, head of documentation for the national museum of modern art in the Centre Georges-Pompidou, the benchmark report became the subject of controversy when claims were made that the French government did not undertake sufficient efforts in tracing the provenance of works in their collections.

The essay collection *Wesentlich mehr Fälle als angenommen: 10 Jahre Kommission für Provenienzforschung* (2009) documents Austria’s creation of the Commission for Provenance Research, established in 1998 under the Austrian Art Restitution Law, a significant piece of law in the history of provenance research and restitution. The book provides insight into the commission’s practices, as well addressing the provenance practices of Austria’s institutions, with an eye to specific cases and issues. The aftermath of Austria’s passing of restitution legislation in 1998 is the subject of *NS-Provenienzforschung an österreichischen Bibliotheken: Anspruch und Wirklichkeit* (2011), which documents a range of initiatives and projects that took place in Austrian libraries, national museums, and the government. Another important piece of literature on provenance studies in Austria is the essay collection from the 2012 international symposium in Vienna, *Kunst sammeln, Kunst handeln: Beiträge des Internationalen Symposiums in Wien*, which features thirty essays on the art trade and its role in Nazi cultural property theft.

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With an emphasis on Luxembourg, the publication *Looted! Current Questions Regarding the Cultural Looting by the National Socialists in Europe* (2008) is the documentation of the exhibition *Ausgeraubt! Neue Fragen zur Geschichte Luxemburgs während des Zweiten Weltkrieges*, which examined historic aspects of plundering, provenance research, legal frameworks, government commissions, museums, and auction houses. The book also includes papers presented at the international symposium in Luxembourg in October 2005 on current issues related to the country’s provenance research and restitution.¹⁴³

In 2005, the American Association of Museums published *Vitalizing Memory: International Perspectives on Provenance Research*, the accounts of its International Provenance Research Colloquium.¹⁴⁴ Key research topics include collections of the Nazi elite, case studies, and methodological approaches, many of them—until this point—unfamiliar to North American researchers.

In 2000, The United Kingdom’s Department for Culture, Media and Sport created the Spoliation Advisory Panel as a non-departmental public body to help resolve claims from people or their heirs who, during the Nazi era, lost cultural property that came into the possession of institutions in the UK. As well, the panel was created to determine the validity of ownership claims against museums and to advise on items that entered into the possession of British institutions. In January 2001, the panel published its first case—a compensation claim for *View of Hampton Court Palace* (1710) by Jan Giffier the Elder (c. 1652-1718) acquired by the Tate Gallery in 1961—which awarded an ex gratia payment to the claimant. Since then, the panel has published more than twenty-five reports, “Reports of the Spoliation Advisory Panel,” on various claims on the GOV.UK website.¹⁴⁵

Speakers from Austria, the Czech Republic, Finland, Germany, Latvia, Poland, Russia, the United Kingdom, and the United States addressed the topic of national efforts to repatriate cultural assets.

*Kunst-Transfers: Thesen und Visionen zur Restitution von Kunstwerken; Tagung am 2. Oktober 2008 im Residenzschloss Dresden* is a collection of papers given at a symposium that took place in Dresden. An article by Natalia Volkert explores negotiations between Germany and Russia concerning “trophy art.” Georg Heuberger asks what are fair and just procedures in conflicts concerning looted art. In 2009, the symposium organized that took place at the Museum Wiesbaden and was devoted to questions concerning cultural goods lost due to Nazi persecution. In his report “Restitution – problems, experiences, controversies on 11 November 2009 in Wiesbaden, Germany,” Jens Hoppe (2010) notes that three presentations were held to stimulate discussion on the legal aspects of restitution in Germany, provenance research in the Federal Republic, as well as all matters related to restitution issues.

Looking at provenance through the lens of conceptual art, *Restitutionspolitik: Politics of Restitution* (2004) by the contemporary Bamberg-born artist Maria Eichhorn (b.1962). Eichhorn investigates the provenance of sixteen paintings in Munich’s Städtische Galerie im Lenbachhaus. All the works selected by Maria Eichhorn are “tainted” because they are suspected of having been illegally confiscated from their owners by the Nazis. Eichhorn’s aim is “to develop an artistic methodology capable of representing and handling topics of such historical intricacy as the issue of Nazi-confiscated art in German museums, and their current restitution policies.”

In addition to various nations addressing the topic of provenance, so has the auction trade. In 2008, Katja Lubina published a summary of the proceedings of the

148 Jens Hoppe, “Report on the Symposium ‘Restitution – Problems, Experiences, Controversies on 11 November 2009 in Wiesbaden, Germany,’” *Kunst und Recht | Journal für Kunstrecht, Urheberrecht und Kulturpolitik* [Magazine for Art Law, Copyright Law and Cultural Policy] 12, no. 1 (2010): 22. In his report, Hoppe addresses the presentation by Georg Crezelius, chair of tax law studies at Bamberg University, on an overview of legal basics in light of current claims involving cultural goods missing as a result of Nazi persecution; the presentation by Anja Heuss of the provenance research staff of the State Gallery in Stuttgart on the development of provenance research in Germany, specifically in terms of Nazi persecution, since the 1998 Washington Conference on Holocaust Era Assets and emphasized thereafter the interdisciplinary character of this research; and the presentation by Uwe Hartmann, head of the office of provenance research in Berlin, on “Provenance Research and Restitution,” specifically on controversies, experiences, and problems.
symposium hosted by Sotheby’s Amsterdam in 2008, which included reports from Dutch provenance researchers, as well as delegates from the United States and Austria.150

**Provenance Methodology**

A category of literature on provenance research includes publications specifically focused on how to undertake provenance research. Following the Washington Conference, a number of guides were published on methodological approaches to Nazi-era provenance research. Among the most notable are the American Association of Museums’ publications *Museum Policy and Procedures for Nazi-Era Issues* and *The AAM Guide to Provenance Research*, both published in 2001.151 In a similar vein, *Guide des recherches dans les archives des spoliations et des restitutions* by Caroline Piketty (2000) is a reference book for researchers navigating the records on the Jews of France. The guide helps researchers identify an Aryanized art trade or a blocked bank account, for instance, as well as evidence of refunds or compensation for the property after the war.152

Methodology is the focus of *A Survey of the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg (ERR)* by Patricia Kennedy Grimsted.153 Her study looks at the dispersed archives of the ERR, one of the key Nazi agencies engaged in looting cultural assets in Nazi-occupied territories, and at how objects dispersed in twenty-nine repositories in nine countries was in fact aided by the detail in which the Nazi taskforce documented their stolen works. Grimsted’s survey of the dispersed repositories explores how the records of the dispersed repositories has proven invaluable in retrieving these objects.

**Museum Responsibility and Provenance**

A major aspect of the literature on provenance research surrounds the discussion of museum responsibility. In many ways, early conferences such as the International Meeting in Bremen (1994) and the Washington Conference (1998) were responding to a call for professional accountability within the field. Recent initiatives have focused on

best museum practices, for instance, the arms-length committees such as the Hunt Museum Evaluation Group, established in 2006 to deal with ownership claims at the Hunt Museum in Limerick, Ireland.\textsuperscript{154} The collection Museums and Restitution: New Practices, New Approaches edited by Louise Tythacott and Kostas Arvanitis (2014) addresses the issues of ownership and restitution from the perspective of museums and the need for new and innovative ways for museums to conceptualize and practise restitution.\textsuperscript{155}

Another book that explores the idea of museum responsibility and restitution is Chasing Aphrodite: The Hunt for Looted Antiquities at the World’s Richest Museum by Jason Felch and Ralph Frammolino (2011). This book looks at the Getty Museum and the inner workings behind and players involved in one of the world’s most prestigious, and troubled, museums.\textsuperscript{156}

A special issue of Collections: A Journal for Museum and Archive Professionals (2014) was recently dedicated to provenance research in American museums. With contributions from Nancy Yeide and Jane C. Milosch, the essays feature case studies on particular collections, such as the Smithsonian and the Harvard Art Museum, for instance, as well as resources, initiatives, and points of view on the topic, demonstrating the increased and widespread initiatives by institutions taking responsibility for the provenance of works in their collections.\textsuperscript{157}

“The Conflicting Obligations of Museums Possessing Nazi-Looted Art” by Emily Graefe (2010) looks at the conflicts faced by museums when an original owner or heir of artwork brings an ownership claim against a museum.\textsuperscript{158}

Museum professionals are charged with the conflicting responsibilities, on the one hand to be a custodian of cultural objects, and on the other, to act proactively when an ownership claim is made. This is made clear in the two publications (2009, 2010) by the Koordinierungsstelle Magdeburg, an institution of the German Federal Republic and


\textsuperscript{156} Jason Felch and Ralph Frammolino, Chasing Aphrodite: The Hunt for Looted Antiquities at the World’s Richest Museum (New York, 2011).


the German States that has been the driving force of German efforts to return art objects taken by the Nazis.\footnote{Koordinierungsstelle für Kulturgutverluste Magdeburg, ed., Verantwortung wahrnehmen: Taking Responsibility. NS-Raubkunst — Eine Herausforderung an Museen, Bibliotheken und Archive [Nazi-Looted Art—A Challenge for Museums, Libraries and Archives] (Magdeburg: Koordinierungsstelle, 2009); Koordinierungsstelle für Kulturgutverluste Magdeburg, ed., Die Verantwortung dauert an: Beiträge deutscher Institutionen zum Umgang mit NS-verfolgungsbedingt entzogenem Kulturgut [The Responsibility Continues: Essays of German Institutions in their Dealing with Art Objects Which Have Been Seized as a Result of Nazi Persecution] (Magdeburg: Koordinierungsstelle, 2010).}

In “Holocaust-Era Looted Art: A Current World-Wide Overview” Wesley Fisher and Ruth Weinberger (2014) argue for the necessity of “a mechanism” to monitor adherence to a code of ethics for museums, following the guidelines set forth in the 1998 Washington Conference Principles. To overcome the difficulty that lies in the variances amongst the international community they argue for a need to “take hold of the issue as a professional matter, and an International Association of Provenance Researchers needs to be formed.”\footnote{Ibid.}

Yet, in 2014, Wesley Fisher and Ruth Weinberger noted that although there had been international exchanges on the topic of provenance research in an effort to respond to, and build on, the 1998 Washington Principles, “The variations among countries’ historical experiences and legal systems, as well as the complexities of provenance research have made it difficult to establish uniform standards and policies in this field.”\footnote{Dr. Wesley A. Fisher and Dr. Ruth Weinberger, “Holocaust-Era Looted Art: A Current World-Wide Overview” (report presented at the Conference on Jewish Material Claims Against Germany and World Jewish Restitution Organization at the ICOM Museum and Politics Conference, St. Petersburg, September 2014).}

In “Renewing Nazi-era Provenance Research Efforts: Case Studies and Recommendations” Nancy Karrels (2014) argues for the need to establish a formal professional network to facilitate training and collaboration after examining active provenance programs in American museums and the ongoing progress of this field.\footnote{Ibid.}

**Law and Restitution**

“Restitution of Works of Art Pursuant to Private and Public International Law” by the Polish law professor Wojciech W. Kowalski (2002) addresses art law. Commencing with

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an historical introduction, Kowalski moves on to address the recovery of stolen art objects under national rules of private international law and under the 1995 UNIDROIT (Institut international pour l'unification du droit privé) Convention and offers extensive consideration of works of art looted in times of war, especially during the Second World War.\textsuperscript{163}

Kerstin Röhling of Saarbrücken examines the restitution within a framework of public international law in her dissertation thesis Restitution jüdischer Kulturgüter nach dem Zweiten Weltkrieg: eine völkerrechtliche Studie (2004), which analyzes the complexities of various methods of restitution. For instance, when property was not claimed by individuals after the war, the Jewish Restitution Commission and the Jewish Restitution Successor Organization acted as custodians and distributed unclaimed property to Jews, Jewish institutions, and Israel. By doing this, they deviated from normal practice in public international law, because they did not return the objects to the states of origin but to representatives of the persecuted Jewish people. The author compares various other methods of restitution in the study.\textsuperscript{164}

*Kunstraub in krieg und verfolgung: Die Restitution der beute- und raubkunst im kollisions- und völkerrecht* by German attorney Hannes Hartung (2005) surveys the German history of Nazi-era restitution while describing the challenges of the present-day situation. It explains German legislation on restitution and reparation, public international law, substantive German law, and conflicts law.\textsuperscript{165}

*Nazi Looted Art: Handbuch Kunstrestitution weltweit* is an international art restitution handbook by German lawyer Gunnar Schnabel and historian Monika Tatzkow (2007) that offers detailed summaries of many recent restitution cases and explains how the laws of different countries affect the possibilities of restitution. This resource summarizes the law of acquisition and loss of movable property in nine countries (Austria, France, Germany, Italy, the Netherlands, Russia, Switzerland, the United Kingdom, and the United States). It explores claims of public law and procedure in


twenty-two counties and reviews 112 national and international cases on cultural property.\footnote{166 Gunnar Schnabel and Monika Tatzkow, \textit{Nazi Looted Art: Handbuch Kunstrestitution weltweit} (Berlin: Proprietas-Verlag, 2007).}

The volume \textit{Claims for the Restitution of Looted Art} (2004) includes thirteen papers, given at a conference held on November 4, 2000, in Geneva, that address looted art in public international law (Manlio Frigo, Milan); private international law (Kurt Siehr, then Zürich); American case law (Stephen Urice, Philadelphia); French law (Leila Anglade, Paris and Dublin); and Swiss law (Andrea Raschèr, Bern); loans and the immunity from seizure (Kirk Reeves, Paris; Erik Jayme, Heidelberg; Wallace Stuart, Washington, DC); and indemnity programs for loans (Alice M. Whelihan, Washington, DC; Andrea Raschèr/Claudia Christen, Bern). The book also includes a chronological checklist of significant developments, publications, and cases regarding Holocaust-looted art in the United States; and a list of resolved stolen-art claims prepared by the attorneys Herrick Feinstein LLP, New York, covering cases in all countries resolved from the years 1998 to 2003.\footnote{167 Marc-André Renold and Pierre Gabus, eds., \textit{Claims for the Restitution of Looted Art: Studies in Art Law}, vol. 15 (Zürich: Schulthess, 2004).}

\textbf{Legal Arguments and Obstacles}


appendix reproduces international instruments as well as American and foreign legislation.\textsuperscript{169}

Christoff Jenschke’s doctoral thesis, \textit{Der völkerrechtliche Rückgabeanspruch auf in Kriegszeiten widerrechtlich verbrachte Kulturgüter} (2005), reviews the contractual obligations to protect and restore cultural property removed in times of war and also pays special regard to the bilateral treaties of Germany with the successor states of the Soviet Union. Jenschke argues there is no basis in international law where “nationalizing” illegally taken cultural property (e.g., the Russian statute of 1998) would be deemed valid. He also notes “restitution in kind” has not yet emerged as a right under customary international law.\textsuperscript{170}

The edited volume \textit{Im Labyrinth des Rechts? Wege zum Kulturgüterschutz [eine Konferenz des Beauftragten der Bundesregierung für Kultur und Medien vom 9. bis 10. Oktober 2006 in Bonn]} focuses on German cultural property taken to Russia in the aftermath of the Second World War and the examination and resolution of subsequent restitution claims. In three sections, the book discusses the looting of cultural property by the state and military (both Nazi and Soviet) during the Second World War; the restitution of displaced cultural property after the Second World War; and efforts to achieve the restitution of cultural property since 1990. Virtually all articles focus on the restitution of Germany’s public losses. Subjects covered include Germany’s approach to achieving restitution of its public collections from Russia and issues of international relations. The book includes a chronological index of restitutions to Germany from the years 1945 to 2006. The index provides details of where the objects were found, locations that range from private collections in Chile to government holdings in Kyrgyzstan.\textsuperscript{171}

The book \textit{Art and Cultural Heritage: Law, Policy and Practice} edited by Barbara Hoffman (2006) examines national and international laws regarding cultural heritage. In addition to being a resource to assist government and business policy makers, cultural resource professionals, and others whose activities impact the cultural and natural environment, it also examines the theoretical and philosophical underpinnings of the


cultural heritage debate and so assist readers seeking to gain an in-depth understanding of the critical issues facing the protection of global heritage in the twenty-first century.¹⁷²

Michael Anton’s multi-volume legal handbook, *Rechtshandbuch Kulturgüterschutz und Kunstrestitutionsrecht, Bd. 1: Illegaler Kulturgüterverkehr* and *Rechtshandbuch Kulturgüterschutz und Kunstrestitutionsrecht, Bd. 2: Zivilrecht—Guter Glaube im internationalen Kunsthandel* (2010), provides a reference for issues pertaining to various subjects, such as: “Illegal Art Trade as a Worldwide Business of Billions,” “Cultural Theft,” “Illegal Traffic in Cultural Property and Private Law,” and “Looted Art.” Special attention is paid to the legal problems of cross-border art trade violating the law of origin of the art object. The second volume delves into the obstacles to any return or restitution because the defendant is relying on good faith (bona fides) purchase, good faith prescription (usucapio), statutes of limitation, and laches. Though German law is his focus, he works on comparative and international bases. Cases from Austria, England, France, Germany, Italy, the Netherlands, Switzerland, and the United States are reported and discussed.¹⁷³

Katja Lubina’s doctoral thesis “Contested Cultural Property: The Return of Nazi Spoliated Art and Human Remains from Public Collections” (2009) examines the efforts to return Nazi spoliated art in the Netherlands, the United Kingdom, and France. An analysis of international law with regard to the rise of obligations to return cultural objects is included. The author also reviews international law in times of war with special emphasis on the Second World War and the 1954 Hague Convention. The protection of cultural objects in times of peace in Europe and the world is also considered, stressing the importance of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. For both cases, the author distinguishes the return to the state of origin versus return to the original owner.¹⁷⁴

*The Illicit Trade in Art and Antiquities: International Recovery and Criminal and Civil Liability* is a legal handbook prepared by Jane Ulph and Ian Smith (2012) that provides practical guidance on the modern law relating to cultural objects that have been stolen, looted, or illegally exported. Based on British criminal law principles, the handbook looks at money-laundering measures and how they apply to those who deal in

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¹⁷⁴ Katja Lubina, “Contested Cultural Property. The Return of Nazi Spoliated Art and Human Remains from Public Collections” (Maastricht University, 2009).
cultural objects in a domestic or international setting. It discusses the recovery of works of art and antiquities in the British courts when there are competing claims between private individuals, or between individuals and the UK government or a foreign state. The growth of relevant international instruments, which include not only those devoted to the protection of cultural heritage but also those concerned with money laundering and serious organized crime, provide a backdrop to this discussion. The UK’s ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 2002 is considered. The problems posed in attempting to curb trafficking in art and antiquities are explored and the effectiveness of the current law is analysed.\textsuperscript{175}

*The Art Collecting Legal Handbook: Jurisdictional Comparisons* (2013) is another edited volume and legal handbook that discusses international endeavours to help preserve national cultural heritage and combat illicit trafficking, such as the UNESCO conventions and the International Council of Museums (ICOM). Each chapter addresses a number of issues from the perspective of a different jurisdiction to help prevent collectors making errors that could be potentially illegal. The format of the chapters follows a question-and-answer style, thus enabling readers to make quick and accurate comparisons in multiple jurisdictions covering property law, insurance, customs, tax, inheritance, intellectual property, and more.\textsuperscript{176}

**International Restitution Challenges**

American historian Patricia Kennedy Grimsted explores the politics of restitution and problems of defining the cultural heritage of Ukraine vis-à-vis Russia in *Trophies of War and Empire: The Archival Heritage of Ukraine, World War II, and the International Politics of Restitution* (2001). Aspects of her research include international precedents for post-imperial archival devolutions and postwar restitution; intentional Soviet archival destruction in 1941; the Ukrainian component of Soviet library and archival trophies in Moscow and Kiev; Russia’s bitterly disputed 1998 law nationalizing cultural trophies; and post-1991 Ukrainian restitution policies.\textsuperscript{177}


Grimsted was a co-editor of the anthology *Returned from Russia: Nazi Archival Plunder in Western Europe and Recent Restitution Issues* (2007). The book explores the fate of archival records first plundered by the Nazis that found their way into Soviet hands as the Red Army rushed them to Moscow at war’s end. In the 2013 “Afterword,” Patricia Grimsted relates more recent developments, including continuing hope for the return of Greek and other Jewish records, offset by the lack of progress in returns from Russia to Poland and Germany, and the quandary of National Socialist–period records divided between Moscow and Germany. In conclusion, she recalls with hope the Russian commitments to facilitate the return of displaced cultural valuables still held in Russia.178

*Verlust + Rückgabe* edited by the Deutsch-Russischer Museumsdialog (2008) documents the occasion of the fiftieth anniversary of the return of German artworks from Russia in 1955 and 1958. Twenty-eight German museums saw the return of their treasures, while noting their disappointment regarding the art objects still withheld in Russia.179

*Robbery and Restitution: The Conflict Over Jewish Property in Europe* (2007) is a collection of essays that explores how a background of the mechanisms and scope of the European-wide program of plunder is necessary in order to understand the lawsuits and international agreements on the restoration of Jewish property of the late 1990s. The volume examines the developments in Germany, Poland, Italy, France, Belgium, Hungary, and the Czech Republic.180

*Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s* by Michael Marrus (2009) engages with larger questions about historical understanding and historical interpretation as they enter the legal arena to ask: What constitutes justice for a great historic wrong, and, is such justice possible? With respect to art restitution, Marrus explores the difference between questions of legality and history, and argues that although efforts to return Nazi-era looted art to its heirs may be sorted out in legal terms, the larger historical and moral questions are unaddressed.181

Die Rückführung unrechtmässig nach Deutschland verbrachten Kulturgutes an den Ursprungsstaat (2007) is a thesis written by Christina Schaffrath, submitted and accepted by the University of Würzburg Faculty of Law. First, the author enumerates the international instruments dealing with the restitution of cultural objects, with the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, and several European conventions on international assistance in criminal matters. The second part is devoted to the different legal claims and suits with which an object may be recovered. The final part deals with models for reform and new solutions.

Jennifer Kreder’s article “Reconciling Individual and Group Justice with the Need for Repose in Nazi-Looted Art Disputes: Creation of an International Tribunal,” published in the Brooklyn Law Review (2007), investigates how the ever-increasing claims to Nazi-looted art have created a tremendous problem for the art market. This article concludes that the best remedy for the problem is the creation of an international tribunal with compulsory jurisdiction to resolve claims to Nazi-looted art in a manner akin to an equitable hybrid of mediation and binding arbitration. The tribunal would provide justice to both individual claimants with strong claims and other claimants who probably could not win in court but are nonetheless deserving of relief. It also would provide the repose so desperately needed by the art community. Kreder is optimistic that this type of tribunal could realistically be implemented with cooperation of the United States government.182


Eric Ketelaar presented his article “Unravelling the Mesh: The ERR Survey as a Finding Aid” at the conference organized by the International Institute of Social History, the Jewish Historical Museum and the NIOD Institute for War, Holocaust, and Genocide Studies, October 2012.184

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184 Eric Ketelaar, “Unravelling the Mesh: The ERR Survey as a Finding Aid” (paper presented at the conference organized by the International Institute of Social History, the Jewish Historical Museum and the
Joseph F. Sawka’s article “Reconciling Policy And Equity: The Ability Of The Internal Revenue Code To Resolve Disputes Regarding Nazi-Looted Art,” published in the journal *University of Miami International and Comparative Law Review* (2009), looks at the trail of Nazi-looted art and the consequences of subsequent ownership by good-faith purchasers in the United States. Sawka notes that though claims for the return of stolen artworks have become more prevalent in recent years, it remains that principles of legislative policy and moral equity tend to conflict in litigation involving Nazi-looted art. Sawka asks, Should a good-faith purchaser with a large investment in an item be forced to surrender it? Are courts suited to handle the deep emotional, psychological, political, and moral underpinnings associated with the context of the Second World War? As litigation costs rise exponentially, it is often vital for parties to find alternatives to litigation. This article explores the ability of the Internal Revenue Code, via Section 501(c)(3), to solve disputes involving Nazi-looted art claims. When property, such as artwork, is indivisible, the result of litigation is usually winner-take-all. However, the Internal Revenue Code offers an alternative solution. It can allow the good-faith purchaser and claimant to emerge without a total loss.185

Nathan Murphy’s article “Splitting Images: Shared-Value Settlements in Nazi-Era Art Restitution Claims,” published in the *Florida Entertainment Law Review* (2009), demonstrates that the most economically efficient course of action in Nazi-era art restitution claims is almost always to share value by settling. But because art restitution claims are for ownership of a unique, apparently indivisible asset, settlement is sometimes overlooked as an option. Thus, many claims are litigated, even though litigation is far more expensive and far less efficient. However, there are more ways to share value, to effectively divide a piece of art, than parties seem to recognize. Using economic theory, this paper outlines five types of settlement that would enable parties to functionally split the value of a piece of art between them, thereby returning more value to the rightful owners of stolen art or their heirs. Its purpose is not to advocate for one approach over another but to suggest several possible options that might be appropriate, depending on the circumstances of a claim, all of which will normally be superior to litigation.186

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The volume *Fair and Just Solutions? Alternatives to Litigation in Nazi-Looted Art Disputes: Status Quo and New Developments* edited by Evelien Campfens (2015) examines what exactly is meant by the terms “fair and just” in regards to looted-art claims, as laid out by the Washington Principles in 1998. Sixteen years after the adoption of the Washington Principles, questions remain about the scope. In what sense do Nazi-looted art claims differ from other claims regarding spoliated art, and what is the position of someone who acquired the work in its more recent history? Moreover, what neutral procedures are available to parties seeking answers to these questions, taking into account that the Washington Principles describe alternative dispute resolution (ADR) mechanisms as an instrument for resolving ownership issues? Although a formal legalistic approach may not be an adequate response, this does not mean legal guidelines are not needed. This book aims to provide an overview of the current status quo in the field, both in countries where special committees have been installed and beyond. Through contributions from leading experts and a discussion amongst stakeholders, it explores a way to move forward and makes a case for international cooperation and neutral and transparent procedures for solving ownership issues.\(^\text{187}\)

**Need for Cultural Property Protection & Cultural Property Law**

The vast literature on the historic overview of cultural looting and destruction lays the groundwork for another body of writing: the necessity of cultural property protection. *Loot! The Heritage of Plunder* by Russell Chamberlin (1983) examines the history of looting and its consequences from major ancient civilizations through to the twentieth century.\(^\text{188}\) It explores the right of one country to hold the treasures of another against the will of nations to preserve and possess their cultural heritage and identity. It addresses the pillaging of important historical sites such as Greece and Egypt, perpetrated by conquerors, archaeologists, and tourists, and the significance of major symbols of nationhood, such as Scotland’s Stone of Scone, which in 1296 was captured by Edward I as a war trophy and taken to Westminster Abbey. Also discussed are the campaigns of Napoleon—the first to plunder not for personal trophies nor triumph but for the supposed greater glory of the state—and Hitler, the last of the great modern looters. *Museum of the Missing: A History of Art Theft* by Simon Houpt (2006) is an


overview of the history of art with attention to topics including theft in a time of war and the art market.189

In the 1998, the UNESCO published Cultural Rights and Wrongs: A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. The volume’s essays on the future development of cultural rights are by authors from all of the world’s continents. Their views reinforce the need for cultural property protection in today’s world.190 In the edited collection Who Owns the Past? Cultural Policy, Cultural Property, and the Law edited by Kate Fitz Gibbon (2005), who served on the Cultural Property Advisory Committee to the President of the United States, essays from legal scholars, museum professionals, anthropologists, archaeologists, and collectors offer a comprehensive overview of the development of cultural property law and practices, as well as recent case law affecting the ability of museums and private collectors to own art from other countries.191 This book’s essays discuss the notion of ethical ownership, the responsibilities of museums, threats to art from war, and international cooperation to preserve collections in the developing world.

Kunsthistoriker im Krieg: deutscher militärischer Kunstschutz in Italien 1943-1945 by Christian Fuhrmeister (2012) looks at the role of the German military in the protection of Italian cultural assets after the Allied landings in Sicily in July 1943 and the ousting of Mussolini as Allied air raids caused destruction to many artworks.192 The book also considers the implementation of protection of artworks during war as well as the limits and failures of those efforts.

The volume Ravaged: Art and Culture in Times of Conflict (2014) published in conjunction with an exhibition of the same title, held at Belgium’s Museum Leuven (the first town to fall victim to the German invasion in 1914, during which time the university halls and libraries were set on fire and hundreds of books were destroyed).193 With more than thirty essays discussing destruction, the volume features visual juxtapositions that are used to show the similarities of destruction during times of conflict from the sixteenth to the nineteenth centuries.

International Conventions

In the early 1970s, thefts were increasing at archaeological sites. Private collectors and, sometimes, official institutions were increasingly offered objects that had been fraudulently imported or were of unidentified origin. To address such situations, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was created in 1970. Rechtsfragen der Restitution von Kulturgut: Symposium Wien 12 Oktober 2007 is a collection of papers from a conference organized to encourage Austria to ratify and to implement the 1970 UNESCO Convention or to ratify the 1995 UNIDROIT Convention.\textsuperscript{194}

The publication La restitution international des biens culturels et des objets d’art volés ou illicITEMENT exportés: Droit commun, Directive CEE, Conventions de l’UNESCO et d’UNIDROIT (1997) also looks at the international agreements such as the UNESCO agreement of 1970 and the UNIDROIT convention of 1995 and how to ratify the principles of these conventions.\textsuperscript{195}

The volume Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries (2011) features commentaries from two of the leading experts in the law of cultural heritage, Patrick O’Keefe and Lyndel Prott, and offers texts on international law about the protection of heritage, specifically the most significant UNESCO Conventions, including that of 1970 on Illicit Trade, 2001 on Underwater Cultural Heritage, 2003 on Intangible Cultural Heritage, and the 1995 UNIDROIT Convention.\textsuperscript{196} A wide range of recommendations and declarations from UNESCO, the Council of Europe, and the United Nations are offered.

In Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law (2011) Irini Stamatoudi focuses on the protection of cultural property and, especially, on the question of return and restitution of art objects to their place of origin.\textsuperscript{197} Chapters are devoted to international conventions, including the 1970 UNESCO Convention; the 1995 UNIDROIT Convention;

\textsuperscript{196} Patrick J. O’Keefe and Lyndel V. Prott, Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries (Builth Wells, UK: Institute of Art and Law, 2011).
the situation in the European Union with the principle of free movement of goods, with the exception of cultural treasures for which there are regulations; and the important Directive 7/93 of March 15, 1993. Codes of conduct and their importance for art trade and the return of art objects are described. Stamatoudi advocates for cultural diplomacy as means of conciliation and compromise.

Kevin Chamberlain’s book War and Cultural Heritage: A Commentary on the Hague Convention 1954 and its Two Protocols (2004) provides an article-by-article commentary on the 1954 Hague Convention and its two Protocols. The book also analyzes other instruments of international humanitarian law relevant to the protection of cultural property. This includes the 1949 Geneva Conventions and the 1977 Additional Protocols, the first of which had a profound influence on the drafting of the 1954 Convention and the Second Protocol, respectively. The book also examines the extent to which the provisions of the 1954 Convention and its Protocols are part of customary international humanitarian law. The book takes into account the latest developments regarding the international efforts to secure restitution of Holocaust-looted cultural property, including the work of the UK’s Spoliation Advisory Panel. These incidents demonstrate the need for all parties engaged in armed conflict to have regard for the rules of international law concerning the protection of cultural property. The second edition of the book, published in 2013, takes into account additional developments in the ensuing decade.198

Who Owns Culture?
The question of “cultural ownership” is addressed by John Merryman and Albert Elsen in Law, Ethics and the Visual Arts (1979) one of the key manuals on the subject. Merryman is the founder of the International Journal of Cultural Property and professor of law at Stanford University. Currently in its fifth edition (2007), the manual aims to cover the evolving field of law and ethics in the visual-arts world. Legal issues pertaining to art and law are presented in their historical contexts, and the book incorporates recent changes in treaty, statutory, and case law. Later editions cover ongoing evolutions in international efforts in the protection of cultural heritage, such as the Washington Conference Principles on Nazi Confiscated Art (1998), the Vilnius


**Restitution Solutions**

*La restitution des oeuvres d'art: Solutions et impasses* by Corinne Hershkovitch and Didier Rykner (2012) explores the problems of restitution of cultural objects and art not limited to Nazi-looted art, including a number of French examples of successful and failed returns, among them three Nigerian Nok statues with three different outcomes; Nazi spoliated art including the role of the Vichy government; and Korean manuscripts that were returned recently. The authors conclude that a general recommendation for how to deal with returns is impossible and that, for now, each return requires its own approach. However, they advocate for a resolution that is “more global and less emotional.”

In the edited volume *Kulturgüter: Möglichkeiten und Perspektiveneiner Gesamteuropäischen Zusammenarbeit: Materialiender Internationalen Konferenz “Kulturelle Zusammenarbeit in Europa: Fragen der Erhaltung und des Schutzes von Kulturgütern” St. Petersburg, 12 Mai 2003* (2004) twenty papers in German and Russian deal with the import and export of cultural objects in the European Union; with the application of the Russian statute on German cultural objects removed after the Second World War to Russia; with temporarily imported cultural property, the preservation of libraries and archives; and with the restoration of the Amber Room in Zarskoe Selo.

Ana Filipa Vrdoljak’s book *International Law, Museums and the Return of Cultural Objects* (2006) focuses on the significant influence exerted by British, United States, and Australian governments and museums on international law and museum policy in response to restitution claims. It shows that these claims, far from heralding the

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long-feared dissolution of museums and their collections, provide museums with a vital, new role in the process of self-determination of cultural identity.  

Derek Gillman’s book *The Idea of Cultural Heritage* (2006) explores three main themes: “Claims about Heritage,” “Heritage and Narrative,” and “Regulation and Rights.” In the first part of his book, he takes the Bamiyan Buddhas (destroyed by the Taliban in 2001), Pablo Picasso’s painting *Guernica* (1937) (since 1981 in the Prado of Madrid), the Parthenon/Elgin Marbles (since 1816 exhibited in the British Museum), and Gilbert Stuart’s portrait of George Washington (*The Lansdowne Portrait* [1796], formerly owned by Lord Primrose of Scotland and now in Washington’s National Portrait Gallery) as examples of potential national treasures and confronts such treasures with the policy arguments as “internationalism or nationalism” (Merryman), “cosmopolitanism and particularism” (Hegel, Herder), and “primitivism and world culture” (Quatremère de Quincy, Gombrich). Gillman also discusses various means of protection of cultural property against destruction and export. Although pleading for a quite liberal cultural policy, he can imagine that certain cultural objects of national importance are correctly protected against illegal export.  

The edited volume *Art, Cultural Heritage and the Market: Ethical and Legal Issues* (2014) considers the emergence of cultural heritage as a new frontier of international law, attracting the varied interests of academics and policy makers, museum curators and collectors, human rights activists and investment lawyers, and artists and economists. Contemporary intersections between art, cultural heritage, and the market are complicated by a variety of ethical and legal issues, which often describe complex global relations. The book considers the relevant legal frameworks for cultural objects in museums that may have been looted and other such issues while highlighting the complex interplay between legal and ethical issues in the context of cultural governance. The approach is mainly legal, but interdisciplinary aspects are considered as well.

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Bibliography


Bibliography


Bibliography


**Government Documents, Museum Reports & Exhibitions**


Cultural Property, Art and Antiquities Investigations, “ICE Returns Second Painting Stolen During Holocaust: Italian Old Master Work Belonged to a Jewish Art Dealer who was Forced to Sell it by the Nazis,” News Releases, Department of Homeland Security, 05/06/2009


