Series on Art Restitution - Nazi Looted Art

Introduction

The field of art restitution generally concerns itself with artworks that were confiscated or seized from, forcibly sold by, or otherwise lost by their previous owners. Generally, these owners were subject to persecution.

There has been an array of (sometimes inconsistent) court decisions and differing opinions on how art restitution claims should be treated. This series of brief articles seeks to provide a non-exhaustive overview of categories of claims that have been considered.

Nazi-looted art

By Nazi-looted art, we mean artworks stolen, seized, looted or otherwise misappropriated by the Nazi regime between 1933 and 1945 in territories controlled and/or occupied by Nazi-Germany.

It is well documented that the Nazis looted thousands of paintings, drawings, sculptures, ceramics, books and religious treasures of considerable cultural significance, in particular from Jewish families fleeing for their lives. But Nazi-looted art also includes artworks raided from museums and galleries. In particular, artworks that were branded “degenerate” were removed and monetised. The most notorious dealers of degenerate art were Berhard A. Böchner, Karl Buchholz, Hildebrand Gurlitt and Ferdinand Möller. After public collections were depleted, the Nazis moved on to the looting of private collections.

Background

The US National Archives estimates that upwards of 20 per cent of all European art was stolen by the Nazis. This staggering figure reflects the importance that was attached to artworks by Hitler (erstwhile a failed art student) and Hermann Göring (a keen “collector” who amassed approximately 1,400 important works, as well as many sculptures and tapestries looted by the Nazis for his private enjoyment).

The allies were quick to react to this large-scale looting of art by their enemies. In 1943, the Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation and Control was agreed upon, signalling the signatories’ determination “to do their utmost to defeat the methods of dispossession practised by the [Nazis] against the countries and peoples who have been so wantonly assaulted and despoiled.”

While efforts were made in post-war Germany and elsewhere to compensate victims of Nazi looting, it wasn’t until the 1990s that the subject of Nazi-looted art was re-visited on an international scale. The Washington Conference Principles on Nazi-Confiscated Art of 1998 stipulated, inter alia, that “steps should be taken expeditiously to achieve a just and fair solution” to cases where a pre-war owner of an artwork that had been stolen by the Nazis could be identified.

Since the 1990s, there have been renewed efforts at provenance research by public galleries, museums and collections. In 2012, the sensational discovery of Cornelius Gurlitt’s (Hildebrand Gurlitt’s son) collection of more than 1,280 artworks in Munich sent shock waves through the art world. Many of these works were taken from German museums, but others are thought to have belonged to Jewish collectors who had been forced to sell their art well below market value as they fled from Nazi persecution or simply had them confiscated before or after being murdered. This story, along with an increasing number of claims
being made by the heirs of the original possessors of works, has led to considerable impetus in this area and Nazi-looted art continues to be at the forefront of the headlines.

**What do the precedents say?**

Nazi-looted artworks have formed the subject matter of significant and high profile litigation cases, both in the U.S. and internationally. Examples of such cases include the landmark U.S. litigation brought by Marei von Saher against the Norton Simon Museum. The subject matter of this claim is the restitution of two sixteenth-century oil paintings Adam and Eve by Lucas Cranach the Elder, which were originally owned by Dutch Jewish art collector and dealer Jacques Goudstikker. Most recently, the Norton Simon museum was awarded summary judgment against von Saher by the court (see judgment Marei von Saher - v- Norton Simon Museum of Art At Pasadena, et al.). For full details of this case and an analysis on the key conclusions drawn by the court please see our article here.

Other noteworthy litigations include Maria Altmann’s claim against the Republic of Austria for six Klimt paintings once owned by her uncle, Ferdinand Bloch-Bauer, which were taken by the Nazis and entered the Austrian National Gallery’s collection after the war, and Claude Cassirer’s claim against the Kingdom of Spain for Camille Pissaro’s work Rue St. Honoré, après-midi, effet de pluie from the Thyssen-Bornemisza Collection. A non-exhaustive list of claims which have been litigated, are pending or have been settled out of court in this area are helpfully listed on the International Foundation for Art Research’s (IFAR) website.

While some Nazi-looted cases have been litigated, more often than not, these cases have been settled privately by the parties involved with possessors commonly reaching an out-of-court settlement with the heirs of the victims without the need for legal action. Recent restitution cases outside the United States have been based on decisions from restitution panels such as the German Limbach Commission and the UK Spoliation Advisory Panel.

For instance, on 17 June 2013, Oskar Kokoschka’s Portrait of Tilla Durieux was returned to the heirs of Jewish art dealer Alfred Flechtheim by the city of Cologne. The return of the Kokoschka painting followed an unsuccessful attempt by the then possessor, the Cologne-based Museum Ludwig, to enter into a re-purchase agreement with the Flechtheim heirs. The return of the artwork was the result of a recommendation made by the German Limbach Commission, which had reviewed the matter and arrived at the conclusion that the painting had been lost by Flechtheim in consequence of persecution by the Nazis, making it capable of restitution. Flechtheim’s gallery and auction house had been forcibly shut by the Nazis in 1933 and the business then underwent liquidation. Later, the premises of the Flechtheim business, was taken over by Flechtheim’s previous Managing Director, Alexander Vömel. Vömel is believed to have taken paintings from the Flechtheim business and Flechtheim’s private collection alike (although it is not clear whether the Kokoschka was taken in that manner). In June 1934, Vömel sold the Kokoschka to the art collector Haubrich. Upon Haubrich’s death, the painting and other items in Haubrich’s estate were left to one of Cologne’s most important museums, the Wallraf-Richartz Museum. As part of a subsequent re-organisation of Cologne’s museums, the Kokoschka finally ended up in the hands of the Museum Ludwig. In 2008, the Flechtheim heirs made a first request for restitution of the Kokoschka, claiming there was no evidence Flechtheim had ever received any proceeds of sale for the Kokoschka. The City of Cologne denied that argument. While it admitted that Flechtheim had been persecuted as a Jew, in this particular instance the sale of the Kokoschka was the result of Flechtheim’s financial difficulties that originated before the relevant period in which the Nazis were in power. The parties therefore asked the Limbach Commission to consider the case and make a recommendation as to how to proceed. The Limbach Commission held that the case was not capable of being determined
beyond doubt. However, the assumption had to be made that Flechtheim was forced to forego paintings in his collection because he was being persecuted by the Nazis. On that basis, the City of Cologne ultimately returned the Kokoschka to the Flechtheim heirs.

By way of another example, on 24 March 2015, El Greco’s Portrait of a Gentleman was returned to the heirs of Julius Priester. Priester was a Jewish industrialist and art collector in Vienna in the 1930s. He escaped Europe in 1938 and spent the war years in Mexico. In 1944, the El Greco was seized by the Nazi’s secret police, the Gestapo, from a deposit belonging to Priester in Vienna. It is unclear what happened to the painting after 1944. However, in 1951 it re-surfaced when it was sold from Vienna to a New York-based art dealer, who then sold the painting on to an art dealer in London. For a period of time in the early 2000s, the painting formed part of a private collection in Switzerland. In 2014, the El Greco was offered for sale in New York. At this point, the claimants’ representatives stepped in and made a claim for the painting. Settlement was reached quickly, as the evidence was conclusive, and the painting was returned to Priester’s heirs.

What can claimants do?

As a first step, potential claimants of Nazi-looted art should try to establish where the artwork is located. This can be done, for instance, by making use of research tools, such as the ‘Lostart.de’ database, which registers cultural objects that were relocated, moved or seized during Nazi rule. In a similar vein, potential claimants may use the services of art detectives, other databases such as the Art Loss Register or provenance researchers. Sometimes claimants are alerted as to the whereabouts of an artwork when it is being auctioned, sold, loaned, exhibited or published. Any transaction relating to an artwork that is subject to a search notice (e.g. on Lostart.de) or is known to have been stolen will be almost impossible to sell in the international art market.

Where potential claimants have knowledge of the location of the artwork the claim pertains to, they might wish to make direct contact with the current possessor(s) with a view to arriving at an amicable settlement. Failing that, the potential claimant may consider taking legal action in the appropriate venue.

An alternative option is for a potential claimant to approach one of the ad hoc panels, such as the Dutch Restitutions Commission or the UK Spoliation Advisory Panel, typically established to advise the government on artworks in public collections that may have been unlawfully dispossessed by the Nazis. These panels will consider claims from parties and their heirs who lost possession of a cultural object during the Nazi era and will make recommendations on whether a particular case merits restitution, often relying on moral grounds. Although these recommendations are generally not legally binding, it will be difficult for a public museum to disregard such a panel’s findings.

What are chances of making a successful claim?

As a result of developments since the 1990s, many heirs of owners who had been persecuted and despoiled have gained confidence in coming forward and bringing claims. However, litigation is expensive and without any guarantee of success. In fact, on a number of occasions the families that have sought the return of looted artworks have been unsuccessful when the defendant has successfully relied on technical legal defences.

The two key defences used to defeat claims for the restitution of Nazi looted art have been (i) time limitations; and (ii) the rights of the good faith purchaser. The two defences may be linked, for example in England where the current possessor may be able to defeat the claim on grounds of limitation if he can
show that more than 6 years passed since the first acquisition in good faith after the artwork was stolen. As research into provenance becomes more sophisticated, this may become easier to evidence. It is often the case that these types of works have since been inherited, meaning that there are now two sets of heirs seeking to either hold onto or reclaim their family’s history.

In New York, the original owner must seek to reclaim stolen property within a period of three years after making a demand for its return and after refusal by the good faith purchaser. Although this has enabled more claims to be brought in the New York courts, groups advocating for the restitution of Nazi-looted art say that the reliance on time limitations to prevent restitution goes against the principles and values which came out of the Washington Principles and later the Terezin Declaration.

This use of legal defences - as opposed to seeking ethically driven solutions - has been heavily criticised in the press. In particular, certain museums have come under significant fire for defending their right to ownership on purely legal grounds.

The chances of a claimant achieving a successful outcome for Nazi-looted art, whether by litigation or out-of-court settlement, is undoubtedly higher than for other categories of looted art such as Stasi, Bolshevik and Fluchtgut. This is in part because of the increased number of Nazi-looted cases and the trend towards moral solutions. More claimant-friendly outcomes are much more commonplace than only 10-20 years ago. The chances of making a successful claim for Nazi-looted art are increased also due to the pressure that has been put on high profile galleries, dealers, auction houses and museums. It is, however, not guaranteed by any means and inconsistent approaches internationally have meant it is difficult to anticipate how future cases will unfold.

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