

LESSONS FROM THE SECOND WORLD WAR:
REPATRIATION OF CULTURAL HERITAGE

by

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THESIS ABSTRACT

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The Second World War continues to shape the world to this day as academics and novices alike research and evaluate the cataclysmic conflict. Amongst their other atrocities, Hitler and the Nazi Party systematically looted artifacts throughout Europe. Leaving not only millions of European families displaced but their possessions as well. For a better understanding of the effects of cultural theft, this thesis examines the role of historic preservation within repatriation, using the Second World War as an overarching case study. Despite the efforts made through international conferences, domestic agreements, and formal commitments to return pieces, the path toward repatriating stolen cultural heritage remains difficult. In light of the growing displacement of cultural artifacts, this thesis proposes that historic preservationists possess a position to influence the American repatriation process.

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To my parents and husband, with love.

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CHAPTER I

INTRODUCTION

Historic preservation in different countries and disciplines within the greater field interpret the needs of their communities in different ways. While this creates inconsistencies in determining the expectation of historic preservation, the variety of jobs suits the needs of that community. Historic preservationists within the United States evaluate broad cultural concerns surrounding historic places, buildings, landscapes, and artifacts as identifiable connections to the past. The first national historic preservation organization recognized in the United States in the Mount Vernon Ladies' Association starting in 1853.¹ Congress establishes Yellowstone National Park within Montana and Wyoming under the direct control of the Secretary of Interior in 1872. Not until President Woodrow Wilson in 1916, however, does the National Park Service (NPS) become a federal bureau under the Department of the Interior.² The National Park Service has since worked diligently to predominantly protect buildings, landscapes, and sacred sites with historical integrity from deterioration and destruction.

This thesis argues that the field of historic preservation in the United States would benefit from a better understanding of cultural theft during the Second World War. My research aims to identify and evaluate the need for a repatriation sector within

¹ Mount Vernon Ladies Association of the Union, "Mount Vernon Ladies' Association," George Washington's Mount Vernon, 2014, <https://www.mountvernon.org/preservation/mount-vernon-ladies-association>.

² National Park Service, "Quick History of the National Park Service (U.S. National Park Service)," Nps.gov, May 14, 2018, <https://www.nps.gov/articles/quick-nps-history.htm>.

preservation departments. There is an opportunity for the federal government to create a repatriation department for cultural theft from the Second World War within the National Park Service. This chapter will provide a brief overview of the study, including background and surrounding context, the research problem, aims, objectives, and questions, as well as the significance and limitations.

Historic preservation does not have a universal definition as there are subcategories throughout the field with overlapping and independent interests. Interpretations of terminology evolve with cultural trends and the expansion of knowledge throughout time. For instance, the terms ‘restoration’ and ‘rehabilitation’ in the non-preservation world are often used interchangeably. Whereas for historic preservation standards, these words have strict guidelines and characteristics that determine their meaning and treatment.³ Another example is the expression ‘spoils of war’ derives from the Latin *spolium*, originally meaning the hide stripped from an enemy. However, today, the term is commonly associated with the acquisition of cultural property after a war.⁴

Disagreements persist in the preservation field within the United States over the definition of cultural heritage. Perhaps the most influential definition is that of UNESCO (United Nations Educational, Scientific, and Cultural Organization) from the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

³ National Park Service, “Rehabilitation as a Treatment and Standards for Rehabilitation—Technical Preservation Services, National Park Service,” Nps.gov, 2019, <https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>.

⁴ Jeanette Greenfield, “The Spoils of War,” in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York, NY: Harry N. Abrams, 1997), pp. 34.

(Hague 1954 Convention), which described cultural heritage as monuments or artworks with an outstanding value from the point of view of history, art, or science.⁵ Such expansiveness causes inconsistencies. While the intention of protecting cultural heritage is clear, there is difficulty in determining the definition encompasses.⁶ For this thesis, when claimants seek repatriation or restitution of an item, the inherent belief is that the object is of outstanding value to that claimant's cultural heritage. Repatriation is the return of possession or control of items to lineal heirs, where the restitution of an object is to give monetary or other forms of compensation for that loss.⁷

The unique interests of Adolf Hitler in the arts are well known. However, few people realize the extent his aspirations extended or the direct consequences of his actions still experienced today in the world. Hitler's ambition for being a dominant figure within the art world manifests in his treatment of material cultural heritage throughout Europe. As Führer, Hitler became the deciding factor for what determined good or degenerate art and ultimately controlled who had access to cultural heritage. This sociocultural evolution is the paradigm shift for the irreversible damage the Nazi regime creates. On March 14, 1933, Hitler approves the creation of the Reich Ministry of Public Enlightenment and Propaganda (RMVP), headed by Joseph Goebbels. Effectively

⁵ Guiomar Alonso and Melika Medici, *UNESCO Culture for Development Indicators: Methodology Manual* (France: United Nations Educational, Scientific and Cultural Organization, 2014), https://en.unesco.org/creativity/sites/creativity/files/cdis_methodology_manual_0_0.pdf, pp. 134.

⁶ Janet Blake, "On Defining the Cultural Heritage," *The International and Comparative Law Quarterly* 49, no. 1 (2000): 61–85, <http://www.jstor.org/stable/761578>.

⁷ "Repatriation," in *Nps.gov* (U.S. Department of the Interior, March 2, 2022), <https://www.nps.gov/subjects/nagpra/glossary.htm>.; "Restitution," in *Merriam-Webster.com*, 2017, <https://www.merriam-webster.com/dictionary/restitution>.

weaponizing art for propaganda purposes, Goebbels pushes the ideologies of Hitler to the German public, persuading the agenda of a *'pure German'* versus *'otherness'* in a visually comparable narrative.

Radicalization of the Nazi regime substituted non-violent measures with the legalization of malignant treatment towards their fellow man starting in 1937 (with a few exceptions).⁸ The German people became willing participants in an ideology that elevated those who they considered culturally and ethically *'pure'* and marginalized all other cultural identities. Germany's displacement of artifacts through looting and active warfare on European soil allowed the Second World War to be the largest attack on cultural heritage in modern history. The displacement of cultural property furthered Nazi power when sold to support military expansion. Estimates place the percentage of art confiscated by the Nazis between one-fourth and one-third of the total artworks in Europe.⁹ Their trove has an estimated total of nearly \$2.5 billion in 1944.¹⁰

Nazi property accumulation became more rampant as the legal framework supporting it expanded. Persecution directed towards those deemed *'unfit'* to own property representative of a specific culture escalated. Private collections of Hitler-approved artwork became a status symbol amongst high-ranking Third Reich officials.

The Führer and his subordinates began a plundering epidemic that ran rampant

⁸ Jonathan Petropoulos, "The Spoils of War : World War II and Its Aftermath : The Loss, Reappearance, and Recovery of Cultural Property," in *Spoils of War*, ed. Elizabeth Simpson (New York: H.N. Abrams In Association With The Bard Graduate Center For Studies In The Decorative Arts, 1997), 106.

⁹ David Wissbroecker, *Six Klimts, a Picasso, & a Schiele: Recent Litigation Attempts to Recover Nazi Stolen Art*, 14 DEPAUL-LCA J. ART & ENT. L. & POL'Y 39, 40 (2004).

¹⁰ Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* 202 (N.Y. University Press 2003).

throughout Europe destroying and displacing culture they deemed unworthy of their expansive Fatherland. Hermann Göring, Joseph Goebbels, Heinrich Himmler, Hildebrand Gurlitt, Alfred Rosenberg, and Albert Speer would collect and often gift one another artworks that appropriately depict Germanic heritage to validate their status in the Nazi party.¹¹ Hitler intended to house his vast collection of cultural artifacts in the Führermuseum. Planned for Linz, the museum and artifacts were to demonstrate the superiority of the Germanic culture and establish his hometown as the new cultural capital of Europe.

The displacement of cultural property in warfare is not new; military tactics have included the appropriation of sacred sites, land, and artifacts for millennia. International conferences in the past have discussed the appropriate steps to be taken toward the protection of historical artifacts and their repatriation. Increases in scholarly publications in recent years regarding World War II looting have provided crucial information for claimants as not every survivor felt comfortable discussing personal traumas experienced from the war. Claimants seeking repatriation of their artifacts appear to be working against the governmental systems as the United States and Europe have stated fear of setting a precedent of relinquishing any artifacts obtained over dubious circumstances.

While there is an overarching agreement that the stolen cultural property from World War II deserves repatriation to its rightful owner, the moral dilemma gets shrouded by an international game of chess. For example, the NPS has repatriation as a solely defined term within the scope of the Native American Graves Protection and

¹¹ Lynn H. Nicholas, "World War II and the Displacement of Art and Cultural Property," in *Spoils of War*, ed. Elizabeth Simpson (New York: H.N. Abrams In Association With The Bard Graduate Center For Studies In The Decorative Arts, 1997), 39.

Repatriation Act (NAGPRA). Under the NPS, repatriation is defined as a problem strictly relating to the culture of Indian Tribes and Native Hawaiians. Though NAGPRA continues to work towards the inclusion of cultural heritage to the American historic preservation discussion, they primarily work towards repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony.¹² This is different than the needs of Holocaust era claimants requesting the repatriation of artwork. However, they seek the common goal of opening the lines of communication between those who have been wronged and the institutions withholding the looted property.

The complexity surrounding cultural heritage property and ownership is experienced internationally and domestically. Internationally, even after creating universally accepted terms for repatriation, there is a lack of jurisdiction or an enforcement mechanism that requires any country to follow predetermined guidelines. In the United States, there is an absence of continuity as each state determines their regulations rather than a standard being set federally. There is also a lack of requirements for American museums to consult lost art databases before accepting a piece. Both of these cause repatriation efforts to be hampered. The monetary value of an artifact can also impede repatriation efforts because an illegitimate owner stands to lose millions.

Organization

Chapter II provides an overview of research methods as well as the literature review for the existing relevant research surrounding the topic of repatriation of World War II

¹² National Park Service, “Native American Graves Protection and Repatriation Act (U.S. National Park Service),” Nps.gov (U.S. Department of the Interior, 2019), <https://www.nps.gov/subjects/nagpra/index.htm>.

artifacts. Chapter III addresses the historical context of the Second World War, which includes the early contributing factors, the war itself, and incidents following the war. Chapter IV examines case studies, detailing the concerns surrounding the implementation of repatriation needs of heirs and the various laws impeding or assisting current work. The subheadings in this chapter detail cases in specific categories to show how the implementation of historic preservation techniques can better assist in the repatriation of Holocaust victims. Chapter V comprises a general analysis for the successes in the American repatriation system and gives recommendations for resolving issues that preservationists may come across. The sixth and final chapter briefly summarizes the lasting effects of a lack of repatriation efforts on the understanding and gives suggestions for furthering research. While focusing predominantly on the lingering effects of repatriation from the Second World War, looting is a timely topic that reveals a preservationist's potential to protect and reconnect lost possessions of the past to the rightful heirs. As wars continue to plague the world, the need to safeguard cultural heritage must not stop. This thesis will be in the interest of American preservationists interested in museum studies in addition to the policymakers faced with determining the protection levels of cultural heritage.

CHAPTER II

METHODOLOGY AND LITERATURE REVIEW

Methods and Limitations

This study uses qualitative data to identify, analyze, and interpret patterns of meaning that appear through research of historic preservation practices, current domestic and international law, and art history. By organizing this data by theme, I gain a further understanding of cultural heritage by extracting from the broad topic of repatriation for some attainable goals.

Close readings of documentary evidence make up the core form of qualitative analysis for this thesis as the cultural heritage theft and subsequent repatriation issues cross over several fields of study. Because cultural theft is interdisciplinary, research required glimpses into topics such as history, governmental proceedings related to cultural heritage, and law. Overlapping these fields with historic preservation offers a more holistic understanding of the complexities encountered during repatriation of cultural artifacts. The background provided by the historical narratives gives context to the circumstances surrounding the Second World War informed by recently declassified primary documents of influential players. Examining domestic and international law situates the international conferences and decisions made in court cases. American historic preservationists can learn a great deal from the Europeans as to how they handle repatriation of World War II artifacts – both positive and negative. The intersection for researching law gives pivotal information regarding defenses and final decisions of the

court as they relate to cultural heritage. Court cases presented in this project demonstrate their relevance to the topic of repatriation, arguments made by the defendants, and the final judgment reached by the court.

Due to the complicated nature of the international theme presented in the repatriation of Second World War artifacts, the scope has been limited to the United States as it would be disingenuous for an American historic preservationist to assume the intricacies of another country's needs. There is a lack of research provided on repatriation needs from the viewpoint of an American preservationist that goes beyond the Native American Graves Protection and Repatriation Act (NAGPRA).¹³ The United States Congress issued NAGPRA in 1990 to establish "a requirement and procedure for museums and federal agencies to return certain Native American cultural items (including human remains) to lineal descendants, tribally affiliated Indian tribes, or Native Hawaiian organizations."¹⁴ As such, NAGPRA is a program dedicated to assisting the reconnection of cultural artifacts to lineal heirs of Native American and Hawaiian heirs. Thus, the needs of World War II victims are beyond the scope of their dedicated initiative.

This framework, however, has been proven effective and can be used for aiding other groups with claims to their cultural heritage. Additional limitations to the project include time and funding constraints as a majority of this research is conducted within a calendar academic year. While traveling to Germany or other relevant countries would be beneficial for examining primary documents, it was not feasible due to cost and the

¹³ National Park Service, "NAGPRA."

¹⁴ Ibid.

COVID-19 pandemic. I am rely upon the translations of digitized primary documents, though am unable to verify their accuracy.

Literature Review

The literature surrounding the repatriation of World War II artifacts is incomplete in several significant ways. First, determining someone's right to ownership is complex and muddled with legal inconsistencies within the United States government; and second, from an American preservationist perspective, the scope of existing repatriation focus predominantly on the needs of Native Americans or Hawaiian tribes.¹⁵ Due to this, my research is conducted utilizing materials from different fields to give a more well-rounded glimpse into the potential for repatriation in historic preservation. Time has been an ally in some instances, as recently declassified primary sources are giving insights into the current whereabouts of looted property. This, alongside advances in scholarly research from the Second World War, are aiding claimants seeking repatriation for their familial objects.¹⁶ Secondary sources including scholarly articles and mass production non-fiction historical narratives analyze the impacts of the war and the dichotomy of looting versus those entrusted to save artifacts. American governmental documents, including court cases and international conventions, provide direction for interpreting how the United States situates itself in the global issue of repatriation. Collectively, the

¹⁵ Ibid.

¹⁶ Erin L. Thompson, "Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims against Public Institutions," *Hastings Communications and Entertainment Law Journal* 33, no. 3 (January 1, 2011): 410, https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1761&context=hastings_comm_ent_law_journal.

broad sampling of resources utilized for the background, creation, implementation, and results surrounding the repatriation of culturally significant artifacts taken in the Second World War proves to be a topic historic preservationists have an opportunity to take part in.

Right to Ownership

Deliberately eliminating Jewish culture in conjunction with their genocide ensured Hitler's ideology that the right to ownership of cultural property belonged only to those with Germanic heritage. Otto Kümmel, the director of the Staatliche Museen (State Museum) in Berlin, developed an inventory of artworks that represented the fundamental beliefs of Germanic heritage between the years 1500 and 1940.¹⁷ This detailed report provided Hitler a premise to claim that these cultural artifacts deserved to be owned by the German people. All works – regardless of whether they were bought or stolen – were to be collected once Germany won the war and displayed in the Linz museum. According to Stanford law professor and art collector John Henry Merryman, more recent issues surrounding an individual right to ownership coincide with the differences in national jurisdiction and independent property rights.¹⁸ To Merryman, two specific international

¹⁷ Kümmel, Otto, James J. Rorimer, and Germany. "2. Bericht Auf Erlass Des Reichministers Und Chefs Der Reichskanzlei RK 118 II a Vom 19. August 1940 Und Auf Erlass Des Herrn Reichministers Für Volksaufklärung Und Propaganda BK 9900 -- 02/13.8.40/89 -- 1/6 Vom 20. August 1940: Betr. Kunstwerke Und Geschichtlich Bedeutsame Gegenstände, Die Seit 1500 Ohne Unseren Willen Oder Auf Grund Zweifelhafter Rechtsgeschäfte In Ausländischen Besitz Gelangt Sind." Library Catalog. Library of Congress, 1941.
<https://catalog.loc.gov/vwebv/search?searchCode=LCCN&searchArg=68032292&searchType=1&permalink=y>.

¹⁸ Alan Shestack, "The Museum and Cultural Property: The Transformation of Institutional Ethics," in *The Ethics of Collecting Cultural Property*, ed. Phyllis Mauch Messenger (New Mexico: University of New Mexico Press, 2003), 99.

conventions influence these issues: the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague 1954 Convention), and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (UNESCO 1970). Alan Shestack, deputy director and chief curator at the National Gallery of Art from 1993 to 2008, agrees adding that the UNESCO 1970 Convention is excessively generalized, preventing a basis for rightful ownership litigation cases within the United States.¹⁹ Revealingly, the international conventions are not legally-binding, thus creating an opportunity for countries to ignore/reinterpret the meaning of the conventions to suit their needs.

Through repatriation narratives, editor of the *Art Law Report* Nicholas O'Donnell explores the ethical debate for repatriation of stolen property and how it intersects with domestic and international laws.²⁰ The compilation presents insights into property repatriation and ownership rights as seen in governmental proceedings. The domestic case of *Menzel v. List* upheld a statute within the 1907 Hague Convention that protects the pillaging of property not necessary for military operations.²¹ In contrast, the international court case of *Cassirer v. Thyssen-Bornemisza Collection Foundation* controversially upheld Spanish law.²² As international agreements are a set of guidelines

¹⁹ Shestack, "Museum and Cultural Property," 99-101.

²⁰ Nicholas M. O'Donnell, *A Tragic Fate: Law and Ethics in the Battle over Nazi-Looted Art* (Chicago, Illinois: American Bar Association, 2017), 1–104, 201–54.

²¹ O'Donnell, *A Tragic Fate*, 18.

²² *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 737 F. 3d 613 (2013). https://www.supremecourt.gov/opinions/21pdf/20-1566_15gm.pdf; *Cassirer v. Thyssen-Bornemisza Collection Foundation*, No. 20-1566 (2022). https://www.supremecourt.gov/opinions/21pdf/20-1566_15gm.pdf.

rather than enforceable mechanisms on an international scale, countries are at liberty to follow their own set laws. In this case, despite Spain agreeing to the Hague 1954 Convention, and the 2009 agreement of the Terezin Declaration on Holocaust Era Assets and Related Issues, Spanish law does not require the current owners to repatriate stolen property if the purchase is conducted in good faith.²³ Because of the vastly different treatment of court cases and the reinterpretation of previous convention agreements, claimants seeking repatriation for their cultural heritage are at a severe disadvantage. O'Donnell's, *A Tragic Fate*, gives the incomplete picture that repatriation of cultural property is a reoccurring quest made by individuals. In reality, it is also a representation of regaining community identities expressed through the repatriation efforts of individuals.

Mass Media Influence

The average American has steadily gained access to the issue of repatriation of Nazi-looted art over recent years as books, films, and documentaries hit the mass market. Mass market book releases *The Rape of Europa* (1994) from Lynn H. Nicholas, *The Monuments Men* (2009) by Robert M. Edsel, and *Hitler's Last Hostages* (2019) by Mary M. Lane shed light on the historical mistreatment of cultural property as handled by the Nazis and draws attention to the magnitude of property remaining displaced. Bringing awareness to this topic through accessible books and films can facilitate discussions on

²³ International Committee of the Red Cross, "Treaties, States Parties, and Commentaries," ihl-databases.icrc.org, 1999, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=590.; US Department of State, "2009 Terezin Declaration on Holocaust Era Assets and Related Issues," United States Department of State, 2009, <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>.

the importance of cultural property and why repatriation needs are necessary to those communities. Bianca Gaudenzi a research fellow of Modern European History, and Astrid Swenson a cultural historian, acknowledge that advancements towards public awareness of displaced cultural property come from mass market blockbusters and scholarly publications in their 2017 article on looted art with a global perspective in the twentieth century.²⁴

The increase in public awareness through popular culture coincides with Merryman's assertions that public interests assist the repatriation efforts of claimants as cultural property is a universal good even with the complications of international controversy.²⁵ His article considers cultural property an embodiment of the past that expresses both individual and community identities. Thompson, an art historian and lawyer, agrees with the argument set forth by Merryman. Thompson uses Merryman's interpretation of the conflict between art ethics and law as a basis for her justification for the public good of repatriation.²⁶ Hamon, Chief Heritage Curator for the French Ministry of Foreign Affairs, acknowledges that even with quantitative analysis of cultural property looted from France, the potential for recovery in the future grows as the development of working methods and the exchange of research techniques between countries increases.²⁷

²⁴ Bianca Gaudenzi and Astrid Swenson, "Looted Art and Restitution in the Twentieth Century – towards a Global Perspective," *Journal of Contemporary History* 52, no. 3 (July 2017): 491–518, <https://www.jstor.org/stable/44504060>.

²⁵ John Henry Merryman, "The Public Interest in Cultural Property," *California Law Review* 77, no. 2 (March 1989): 345-49, <https://doi.org/10.2307/3480607>.

²⁶ Thompson, "Cultural Losses and Cultural Gains," 415-417.

²⁷ Maria Hamon, "Spoilation and Recovery of Cultural Property in France, 1940-94," in *Spoils of War*, ed. Elizabeth Simpson (New York: H.N. Abrams In Association With The Bard Graduate Center For Studies In The Decorative Arts, 1997), 66.

Ralph Renwick Jr., assistant professor of communication skills at Michigan State University, acknowledges the influence mass media by way of films and television having both positive and negative effects on a society.²⁸ On the one hand, mass media provides visual representations of events that discuss historical narratives. Unfortunately, this information may be bloated for theatrical effect making mass media representation of historical events not altogether trustworthy. Mr. Renwick Jr. postulates communicative integrity must come through one's criticism of what one hears or reads rather than using mass media for educational purposes.

While work must be done by experts in history, archives, and historic preservation, an interest in the topic must begin somewhere. Using mass media as an opportunity to engage the public in otherwise unobtainable topics can be beneficial, despite its inherent issues. Historic preservation depends on community involvement to succeed. Therefore, public interest in the repatriation of stolen cultural property is required for the establishment of legal frameworks and administrative structures to promote the values of their communities.

Repatriation in the American Perspective

The joint operation between Britain and the United States known as the Monuments, Fine Arts, and Archives (MFAA) was formalized in late 1943 with the explicit backing of President Roosevelt. MFAA was overseen by the Civil Affairs Office of the Allied Military Government for Occupied Territories (AMGOT) and directly

²⁸ Ralph Renwick, "HISTORY and the MASS MEDIA of COMMUNICATION," *The Journal of General Education* 10, no. 1 (1957): 55–59, <https://www.jstor.org/stable/27795530>.

reported to the British War Office's M-5 division.²⁹ This division protected their namesake during the war to the best of their abilities, as well as created collection points for artifacts at the conclusion of the war. These locations include: the Offenbach Archival Depot, the Wiesbaden Collection Point, and the Munich Collection Point, all within Germany.³⁰ MFAA worked alongside the United States Office of Strategic Services (OSS) (a precursor to the CIA) to facilitate repatriations.³¹ OSS was in charge of interrogating art historians and art dealers to give insights into the Nazi art markets and potential current whereabouts of artifacts. Decades later, the United States government created the Art Crime Team in 2004 under the Federal Bureau of Investigation (FBI) which can only operate within the United States.³²

Recently declassified interrogation transcripts indicate the elaborate operations conducted by the Germans during their plundering escapade. Because the art trade is notoriously secretive, art historian Jonathan Petropoulos points out that dealers are free to trade in illicitly obtained cultural property without much interference.³³ Lane, a journalist turned book author, proves Petropoulos's point as she discusses in length the 1,200 piece

²⁹ Robert M Edsel and Bret Witter, *The Monuments Men : Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History*, 1st ed. (New York, NY: Center Street, 2010), 51-52.

³⁰ Kenneth D Alford, *Nazi Plunder: Great Treasure Stories of World War II* (New York: First Da Capo Press, 2003), 111-128.

³¹ Lynn H. Nicholas, *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War*, 1st ed. (New York: Viking Press, 1980), 380.

³² Federal Bureau of Investigation, "Art Theft," FBI - Violent Crime, 2016, <https://www.fbi.gov/investigate/violent-crime/art-theft>.; Melanie O'Brien, "Federal Register," *Www.govinfo.gov* 86, no. 76 (April 16, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-04-22/html/2021-08395.htm>.; Federal Bureau of Investigation, "Art Theft," FBI - Violent Crime, 2016, <https://www.fbi.gov/investigate/violent-crime/art-theft>.

³³ Jonathan Petropoulos, "Art Dealer Networks in the Third Reich and in the Postwar Period," *Journal of Contemporary History* 52, no. 3 (July 27, 2016): 548, <https://doi.org/10.1177/0022009416637417>.

art trove discovered in an apartment owned by the son of the interrogated Nazi art dealer, Hildebrand Gurlitt.³⁴

Repatriation within the historic preservation sector in the United States is predominantly seen through NAGPRA. From the 1990s to today, NAGPRA continues to be an accountability program for museums and Federal agencies in the United States for culturally affiliated objects belonging to Native Americans and Native Hawaiians. NAGPRA's use of explicit explanations regarding compliance with the law play an integral part in the success of the program. NAGPRA provides clear explanations of terms, expectations for excavation sites, Federal lands, and Tribal lands; and rules specifying who can claim what and the reasons why they are allowed to claim the item.³⁵ Part of this success is because NAGPRA is enforceable by law, unlike the Holocaust conventions where nations, including the United States, are expected but compelled to comply.

Potential for Contribution to the Field

Historic preservation in the United States would benefit from a better understanding of cultural theft during the Second World War. Though cultural theft is not specific to the Second World War, it allows for a starting point to discuss the mishandlings of culturally significant artifacts that exist throughout the United States. With cultural property theft,

³⁴ Mary M Lane, *Hitler's Last Hostages: Looted Art and the Soul of the Third Reich* (New York: PublicAffairs, 2019), 223.

³⁵ "NAGPRA Compliance," Association on American Indian Affairs, n.d., <https://www.indian-affairs.org/nagpra-compliance.html>.

illicit excavation, and export on the rise since the coronavirus pandemic in 2020, the time to discuss the safety and preservation of moveable cultural heritage is now.³⁶

The illicit stealing of artifacts alters the connection to cultural heritage and develops a false history. As the United States is the world's largest art importing market, it is imperative to know where these artifacts originate. While the discussion of repatriation has joined the historic preservationist vernacular by NAGPRA, the fight should not stop there. Recognition and dialogue surrounding the protection or repatriation of stolen cultural property will affect multiple groups: historic preservationists, museums, institutions, dealers, lawyers, and more. The task is daunting with the concept so wide-reaching. However, it is a worthy fight to undertake.

It is within the scope of a historic preservation's duties to protect culturally significant artifacts, yet there is a lack of infrastructure to support this ideology. Cultural practices and identities go beyond the built environment and thus requires a strong framework to rely on when discussing more obtuse topics like tangible and intangible cultural heritage. The impact of providing this framework will impact beyond that of historic preservationist and will include accountability for institutions wanting to represent historic cultural identity through artifacts. The purpose of the subsequent chapters will be to explain and evaluate this concept, and to demonstrate how it applies to the American historic preservation community.

³⁶ Henry Pope, "Interpol: Cultural Property Thefts Rise in the Wake of Pandemic," www.occrp.org, October 25, 2021, <https://www.occrp.org/en/daily/15380-interpol-cultural-property-thefts-rise-in-the-wake-of-pandemic>.

CHAPTER III

HISTORICAL CONTEXT

Before the War

American historian Eugen Weber claims, “the 1930s begin in August 1914” (the start of the Great War), while academic Philip Towle, argues that World War II originated at the signing of the Treaty of Versailles in 1919.³⁷ Both recognize the Weimar Republic as a source of the discontent of the German people and also a catalyst to the events of the Second World War. Sole responsibility for the Great War to Germany, the treaty humiliated the German people while bankrupting the country (requiring roughly 130 billion gold marks in reparations).³⁸ Grievances about foreign policy and the treaty along with hyperinflation and other conditions provided an opportunity for the right-wing political group German Worker's Party (German: Deutsche Arbeiterpartei, DAP) in 1919 to take form as it steadily grew in popularity and radicalization. By 1925, DAP became a national organization known as the National Socialist German Worker’s Party (German: *Nationalsozialistische Deutsche Arbeiterpartei*, NSDAP or the Nazi Party), with Adolf Hitler as party leader.

The start of the Great Depression in 1929 created economic distress in an already downtrodden society. Unemployment increased nearly twenty percent from the summer

³⁷ Eugen Joseph Weber, *The Hollow Years : France in the 1930s* (London: Norton, 1996), 11. ; Philip Towle, *Democracy and Peacemaking: Negotiations and Debates, 1815-1973*, 2nd ed. (2000; repr., London: Routledge, 2003), 101.

³⁸ Lane, *Hitler’s Last Hostages*, 61.

of 1929 to June 1932 in Germany, affecting more than six million people.³⁹ With organized campaign strategies, Hitler swiftly characterized himself as a savior for the German people protecting them against Jews and communism. As the Nazi party popularity, Paul von Hindenburg, current President of Germany, appointed Hitler as interim Chancellor in January 1933 to improve von Hindenburg's political standing. Passing the Reichstag Fire Decree (*Reichstagsbrandverordnung*) was a first step in legalizing censorship and propaganda as the emergency power decree created a suspension of individual rights and due process of law.⁴⁰ Hitler assumed the titles of Führer and Commander in Chief of the Armed Forces upon von Hindenburg's passing in 1934. His fundamental belief that he was an artist first and a politician second is demonstrated through his persistence in implementing strict cultural policies and strategic looting operation.⁴¹

As a precursor to over 400 policies regarding the systematic persecution of the Jewish community, the Nuremberg Race Laws of 1935 established racial policies to define citizen status and dehumanize fellow countrymen. As anti-Jewish signs and propaganda traveled throughout German cities, these racially motivated mandates legalized mass destruction and rampant deportation of those deemed the 'inferior race'. German authorities began mass arrests and imprisonments in concentration camps for the

³⁹ Nicholas H. Dimsdale, Nicholas Horsewood, and Arthur van Riel, "Unemployment in Interwar Germany: An Analysis of the Labor Market, 1927-1936," *The Journal of Economic History* 66, no. 3 (2006): 778–808, <http://www.jstor.org/stable/3874859>.

⁴⁰ United States Holocaust Memorial Museum, "Reichstag Fire Decree — United States Holocaust Memorial Museum," Ushmm.org, 2019, <https://www.ushmm.org/learn/timeline-of-events/1933-1938/reichstag-fire-decree>.

⁴¹ Morton P. Levitt, "Hitler and the Power of Aesthetics," ed. Frederick Spotts, *Journal of Modern Literature* 26, no. 3/4 (2003): 175–78, <https://www.jstor.org/stable/30053245>.

Jewish community, along with recidivist criminals, Jehovah's Witnesses, Roma and Sinti (Gypsies), and German military deserters within one year.⁴²



Figures 1. and 2. Examples of Nazi propaganda (left) the cover of a 1933 Nazi propaganda children's book. Translation: 'Children, what do you know of the leader?' (right) A Nazi Party poster from the 1930s. Translation: 'The Struggle for Germany'. Courtesy of The Wiener Holocaust Library

Nazi propaganda escalated in 1937 with the Great German Exhibition (July 18), the Degenerate Art Museum (July 19), and the Eternal Jew Exhibition (November 8), all held in Munich. The Great German Art Exhibition was held at the House of German Art (Haus der Kunst), a specially designed museum by architect Paul Ludwig Troost. With 55,000 square feet in floor space and 19,000 square feet of wall space, this was a museum

⁴² United States Holocaust Memorial Museum, "Timeline of Events - 1933-1938 : United States Holocaust Memorial Museum," Ushmm.org, 2018, <https://www.ushmm.org/learn/timeline-of-events/1933-1938>.

like no other.⁴³ The newly designed Haus der Kunst exteriorly displayed Neoclassical designs that served to demonstrate National Socialist cultural politics and became the party's leading art institution.⁴⁴ Comparatively, the Degenerate Art Exhibition was held at the Institute of Archaeology at the Hofgarten. The dark Archaeology Institute felt overcrowded and overbearing. Paintings were half-hazard in placement with giant derogatory slogans; "Madness becomes method," "Revelation of the Jewish racial soul," and "the ideal – cretin and whore," to reinforce their inferiority. The items with the Degenerate Art Exhibition were considered confiscated, thus there was no intention of being returned to their owners. At the opening of the Great German Art Exhibition, Hitler states;

With the opening of this exhibition, the end of the mockery of German art and thus of the cultural destruction of our people has begun... We will, from now on, lead an unrelenting war of purification, and unrelenting war of extermination, against the last elements that have displaced out Art.⁴⁵

The *Der ewige Jude* (The Eternal Jew), held at the Library of the German Museum, portrays the Jewish community as conspirators against Germany. An extension of the 'degenerate' art movement, these gross mischaracterizations are racial stereotypes of the Jewish people. These exhibitions are blatant visual representations of strict government-determined cultural status in Germany. Degenerate art proved valuable to the Reich when Joseph Goebbels, the Minister of Public Enlightenment and Propaganda, orchestrated a network amongst art dealers to liquidate, exchange (having been marked with a 'T' for

⁴³ Lane, *Hitler's Last Hostages*, 112.

⁴⁴ "Haus Der Kunst's History Is Not Just Any History," Haus der Kunst, accessed March 24, 2022, <https://hausderkunst.de/en/history>.

⁴⁵ Lynn H. Nicholas, *The Rape of Europa*, 20 (1995) (quoting and translating P.O. Rave, *Kunst-Diktatur im Dritten Reich*, 55-56 (1949)).

‘Tausch’), or destroy stolen pieces.⁴⁶ These sales fund the military expenditures while controlling the cultural representations of the Germanic people by declaring Aryan art valuable and condemning degenerate art.⁴⁷



Figure 3. Interior of the Great German Art Exhibition, Munich, 1937. Courtesy of Haus der Kunst Historical Archive

By passing the Confiscation of the Products of Degenerate Art Law in May 1938, Hitler legalized all past and future confiscations. Confiscations required no compensation for any degenerate art in private or public collections. Nazis acquired more than 17,000 works of art from over a hundred museums and galleries in Germany within one year of passing the decree.⁴⁸

⁴⁶ Dr. Jacques Schuhmacher, “V&A - ‘Entartete Kunst’: The Nazis’ Inventory of ‘Degenerate Art,’” Victoria and Albert Museum, accessed March 24, 2022, <https://www.vam.ac.uk/articles/entartete-kunst-the-nazis-inventory-of-degenerate-art>.

⁴⁷ Lane, *Hitler’s Last Hostages*, 120.

⁴⁸ Richard J. Evans, *The Third Reich in Power: How the Nazis Won Over the Hearts and Minds of a Nation* (New York: Penguin Books, 2006), 176.



Figure 4. Room 3 in the exhibition of the Degenerate Art Museum, Munich, 1937. Courtesy of Stephanie Barron, Peter W. Guenther in *“Degenerate art”: the Fate of the Avant-Grade in Nazi Germany*, 1991.

During World War II

The Second World War officially started on September 1, 1939, when Germany invaded Poland. They were joined over the course of the war by Italy, and Japan forming the Axis powers and were opposed by the Allies, which includes France, Great Britain, the United States, and the Soviet Union. Technological advances in warfare including strategic bombing proved devastating to historical and culturally significant architecture, landscapes, and religious sites. Systematic plundering and pseudo-transactional seizures guised as purchases were conducted through the Reichsleiter Rosenberg Taskforce (*Einsatzstab Reichsleiter Rosenberg* or *ERR*) formed in July of 1940. The ERR was the most elaborate and effective Nazi confiscating agency having seized more than 21,000 individual objects from over two hundred Jewish-owned collections.⁴⁹ Originally a research project, it quickly came to include a search and seizure of any cultural

⁴⁹ Anne Rothfeld, “Nazi Looted Art, Part 3,” National Archives, August 15, 2016, <https://www.archives.gov/publications/prologue/2002/summer/nazi-looted-art-3.html#nt13>.

property. “They are confiscated for the benefit of the German Reich and are at the disposal of the Reich Commissioner for Strengthening of Germanism,” Heinrich Himmler (Reichsführer of the Schutzstaffel, Reich Leader-SS) stated in a decree on December 1, 1939.⁵⁰ This decree proved nothing was off-limits to Rosenberg and encouraged him to plunder his way through German-occupied Europe.



Figure 5. Processing of looted cultural property in one of the M-Aktion camps (either Austerlitz or Bassano) date unknown. Courtesy of the ERR Project at the Jeu de Paume.

Nazis screened the stolen cultural property for value and ranked them by importance. Select pieces were included in a catalog for Hitler to review and reserve for his ‘First Choice’ collection for the Führermuseum. Plans for the Führermuseum began after the *Anschluss* (the annexation of Austria to Nazi Germany) as Hitler intended Linz to be the new cultural capital of Europe. The small industrial town was to be transformed

⁵⁰ United States Government and United Kingdom Government, “Chapter XIV: The Plunder of Art Treasures,” in *Nazi Conspiracy and Aggression*, vol. 1 (United States of America: Office of United States Chief of Council for Prosecution of Axis Criminality, 1945), 1097–1116, https://www.loc.gov/rr/frd/Military_Law/NT_Nazi-conspiracy.html.

into a grand imperial city with opera houses, symphony halls, a library, a mausoleum with Hitler's tomb, and the crown jewel, the Führermuseum located in the center.⁵¹ Dr. Hans Posse, previously the director of the Dresden Art Gallery, became head of the Linz project at Hitler's request.⁵² Posse's assistants included; Dr. Fuerlich Wolffhardt, specializing in rare books and manuscripts; Dr. Fritz Dworschak, an expert in coin collections; Dr. Rudolf Oertel, aid to Posse in Dresden; Karl Haberstock, an aggressive art dealer; and Dr. Kajetan Mühlmann, an art historian.⁵³ Hitler entrusts this small group of men with the task of curating the greatest of European culture ever collected residing in one location. Aligning with the ERR by 1941, Posse had acquired about 1,200 paintings before being succeeded by Hermann Voss in 1942.



Figure 6. Hitler admiring the Führermuseum model in Führerbunker located near the Reich Chancellery in Berlin, 1945. Courtesy of The Collector.

⁵¹ *The Rape of Europa*, directed by Richard Berge (Actual Films, 2006), 17:16 to 18:51.

⁵² Jonathan Petropoulos, *The Faustian Bargain: The Art World in Nazi Germany* (London: Penguin, 2001), 52.

⁵³ David Roxan and Ken Wanstall, *The Rape of Art : The Story of Hitler's Plunder of the Great Masterpieces of Europe* (New York: Coward-McCann, 1965), 23.

Though not directly linked to Posse's active acquisitions, Joseph Goebbels suggested Dr. Otto Kümmel organize a thorough provenance report on all artworks representing Germanic culture from occupied western territories starting from the year 1500 to present-day 1940. Subsequently known as the Kümmel Report, this blueprint served as a rationale to target artworks across Europe as the 'provenance report' for artworks the Nazis believed belonged to Germanic heritage, and thus Germany. The report was divided into three parts which identified; "*one, works and collections where their location is known; two, works and collections whose whereabouts are unknown; and three, a list of confiscated works and collections as a result of the war in the possession of German nationals.*"⁵⁴ The Kümmel Report provided 319 pages worth of 'proof' that Germany deserved these cultural artifacts. Had the Kümmel Report been used to its full potential, it could have caused even more devastation of cultural heritage.

According to the Kümmel Report, the Napoleonic Wars (1803 – 1815) resulted in 'rightfully German' pieces being housed in Paris. Considered 'spoils of war' or received as parts of treaties, France began to amass a collection with arguably complicated provenances.⁵⁵ As the home to France's cultural patrimony, the Louvre recognized the inevitability of being looted and set forth to create wartime evacuation plans. Due to the number of workers enlisted in the military, the museum required volunteers from Paris to pack the masterpieces as the threat of destruction or displacement grew. Periodically moved throughout the war, a substantial amount of the French cultural artifacts remained

⁵⁴ Kümmel, "*The Kümmel Report*," 1-3.

⁵⁵ Gaudenzi and Swenson, "Looted Art and Restitution," 499-502.

intact, as did the city due to Hitler's need to prove Germany's cultural prowess. In a private conversation with Albert Speer and recounted later, Hitler confides,

Wasn't Paris beautiful? But Berlin must be made far more beautiful. In the past I often considered whether we would not have to destroy Paris,' he continued with great calm as if he were talking about the most natural thing in the world. 'But when we are finished in Berlin, Paris will only be a shadow. So why should we destroy it?'⁵⁶

Attitudes of superiority over different cultures is visually present in the high-ranking officials of the Third Reich as they curated their private collections. Some of these would include Adolf Hitler, Hermann Göring, Joseph Goebbels, Heinrich Himmler, Hildebrand Gurlitt, Alfred Rosenberg, and Albert Speer.⁵⁷ The Führer and his subordinates began a plundering epidemic that ran rampant throughout Europe destroying and displacing culture deemed unworthy of the Fatherland. Millions of objects fell victim to the ideological, legal, and political schemes of the Nazi party. Estimates place the percentage of art confiscated by the Nazis between one-fourth and one-third of the total artworks in Europe.⁵⁸ The estimated value of such a trove was nearly \$2.5 billion in 1944.⁵⁹

⁵⁶ Albert Speer, *Inside the Third Reich* (London: Weidenfeld & Nicolson, 1970), 172.

⁵⁷ Nicholas, "Displacement of Art," 39.

⁵⁸ David Wissbroecker, *Six Klimts, a Picasso, & a Schiele: Recent Litigation Attempts to Recover Nazi Stolen Art*, 14 DEPAUL-LCA J. ART & ENT. L. & POL'Y 39, 40 (2004).; Sarah Mann, "Seeking Recovery of Nazi-Looted Art, 5 Loy," *U. Chi. Int'l L. Rev.*, 2008, <https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1068&context=lucilr>.

⁵⁹ Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* 202 (N.Y. University Press 2003).



Figure 7. Empty frames sitting in the Louvre after Nazi occupation of France. Courtesy of Getty Images.

In response to the war on cultural heritage, the allies established the Monuments, Fine Arts, and Archives (MFAA) in June 1943. These men and women had no formalized military training, as their civilian occupations included being museum directors, curators, art historians, artists, architects, librarians, and educators. In further attempt to protect historically significant monuments, General Eisenhower issued an order in December 1943 stating, “We are bound to respect those monuments so far as war allows.”⁶⁰ Even with order, the destruction of monuments and historical sites in Europe did occur due to allied attacks. In contrast with moveable cultural heritage, the preservation of landmarks

⁶⁰ “History of Protection of Cultural Property,” Uscbs.org, 2018, <https://uscbs.org/world-war-ii---monuments-men.html>.

and historical sites are minimal, as very little can be done to prevent the destruction caused by mass bombings. Structures or shields were used in an attempt to protect the immovable cultural heritage within cities such as Florence. Despite this, several Italian monuments became collateral damage to allied bombings. Monte Cassino and the Basilica Papale di San Lorenzo fuori le Mura were reduced to rubble. The Santa Maria delle Grazie (where the mural *The Last Supper* by Leonardo da Vinci is) gets covered with sandbags and scaffolding in a preservation effort.⁶¹ In using the atomic bomb, the United States destroyed over 67% of the structures in the city of Hiroshima.⁶² The tragic reality is that monuments, cultural sites, and historical landmarks are often casualties of war as each side put military objectives over historical and arts considerations.

Jeu de Paume Museum in Paris fell under German jurisdiction with the fall of France in 1940. The Nazis converted the museum into the headquarters for the ERR providing a location for storing and trading looted artwork. Unbeknownst to the Nazis, a German speaking French art historian and member of the Monuments Men (a Monuments Woman), Rose Valland gathered critical intel relating to the original owners and current whereabouts of stolen French artifacts. Late in 1944, Valland entrusted fellow MFAA member Captain James Rorimer with meticulous records that led to the discovery of looted works in Neuschwanstein Castle in the Bavarian Alps.⁶³ Neuschwanstein Castle was designed for seclusion, its strategically unimportant location provided the perfect location for hiding the looted work until they reside in the Führermuseum. Diligent

⁶¹ *The Rape of Europa*, 0:00 – 1:57:00.

⁶² Major General Leslie R. Groves, “The Atomic Bombings of Hiroshima and Nagasaki,” Yale.edu (Government Printing Office, 2019), https://avalon.law.yale.edu/20th_century/mp09.asp.

⁶³ “Valland, Capt. Rose | Monuments Men Foundation,” Monuments Men Foundation, accessed March 24, 2022, <https://www.monumentsmenfoundation.org/valland-capt-rose>.

cataloging within Neuschwanstein Castle provided information for more than 21,000 pieces confiscated by the ERR.⁶⁴ Another infamous location the Nazis utilized for housing looted work was the Altaussee salt mine. Ideal temperatures and humidity control provide an optimal preservation location for looted works and the mine was secluded and impregnable to aerial bombings.⁶⁵

Even as Hitler's so-called 'thousand years Reich' started to come to a close after a mere twelve years, he still envisioned his Führermuseum. Requesting dictation of his last will and testimony from his personal secretary Gertrude Jung, he stated;

I collected the paintings in the collections I have bought over the years, never for private purposes, but always exclusively for enlarging a gallery in my hometown of Linz on the Danube. It would be my most fervent wish for this legacy to be realized.⁶⁶

Between April and May of 1945, three top Nazi officials, Hitler, Goebbels, and Himmler, committed suicide. Nazi propaganda continued to influence their citizens as they encouraged mass suicides. Over 10,000 German citizens complied.⁶⁷ After six years of active warfare, the Second World War came to a close on September 2, 1945.

⁶⁴ Edsel and Witter, *The Monuments Men*, 352.

⁶⁵ Ibid, 305-306.

⁶⁶ Adolf Hitler, "Part II - General Intelligence: The Discovery of Hitler's Wills," Eisenhower Library, April 29, 1945, <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/holocaust/hitler-will-general-intelligence.pdf>, 3.

⁶⁷ Christian Goeschel, "Suicide at the End of the Third Reich," *Journal of Contemporary History* 41, no. 1 (2006): 153–73, <https://www.jstor.org/stable/30036375>.



Figure 8. Piles of confiscated looted cultural property from France and Holland found in a church in Ellingen, Germany, 1945. Courtesy of The National Archives and Records.



Figure 9. Two soldiers holding Jan Vermeer's *The Astronomer* at the Altaussee salt mine in Austria, 1945. Courtesy of the Smithsonian Archives.

After the War

By any measure the cost of war is catastrophic. Estimations of deaths for civilians and military are near sixty million.⁶⁸ Over six million European Jews have been murdered in the Holocaust. Repercussions from the widespread dehumanization of many European citizens and their cultural identities required to regain society as if nothing happened. Their homes and belongings were scattered, if not altogether destroyed. Over 400,000 displaced European refugees emigrated to the United States between 1945 and 1952, nearly double from 1933 to 1945.⁶⁹ The mass exodus of people coincided with the decline of Paris as the epicenter of the art world. Since then, New York became the focal point for art.⁷⁰ Despite more than 80 years, heirs continue to try to recover stolen objects that represent their cultural heritage.

As America celebrated its victory, their European counterparts began a recovery and reconstruction process. In August of 1945, the United States, Great Britain, the Soviet Union, and France set up the International Military Tribunal (IMT) to prosecute and determine punishment for the major war criminals of the European Axis.⁷¹ Amongst their charges were; crimes against peace, war crimes, crimes against humanity, and the strategic plundering of art treasures.⁷² The IMT was responsible for issuing verdicts for

⁶⁸ The National WWII Museum, “Research Starters: Worldwide Deaths in World War II | the National WWII Museum | New Orleans,” The National WWII Museum | New Orleans, 2000, <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war>.

⁶⁹ United States Holocaust Memorial Museum, “Refugees,” Ushmm.org, 2019, <https://encyclopedia.ushmm.org/content/en/article/refugees>.

⁷⁰ Lane, *Hitler’s Last Hostages*, 195.

⁷¹ Office of the Historian, Foreign Service Institute United States Department of State, “Milestones: 1945–1952 - Office of the Historian,” State.gov, 2019, <https://history.state.gov/milestones/1945-1952/nuremberg>.

⁷² United States and United Kingdom Government, *Nazi Conspiracy and Aggression Vol. 1*, 1097.

177 Nazis. The court called for the execution of 24, a life sentence in prison for 20, varying prison terms for 98 others, and the acquittal of 25.⁷³ In tandem with the trial, repatriation efforts by the Americans continued to categorize and redistribute moveable cultural heritage to their country of origin. By the end of the war, these collection points were said to contain approximately 1/5 of the artwork in the entire world.⁷⁴ The Repatriations, Deliveries, and Restitution Directorate (DRDR) a unit under the Allied Control Council, found the task more complex as definitions for repatriation and restitution could not be agreed upon by the council members.⁷⁵ Ultimately, DRDR followed the Americans lead allowing for objects to be returned to the countries of origin to be redistributed to the previous owners.

The legal frameworks, treaties from with domestic and international considerations, and charters were established and crafted to discuss the issues towards the protection of cultural heritage that has grown following the Second World War. Focusing on the value of preserving and protecting cultural heritage, The Hague 1954 Convention is a direct response to the massive destruction and displacement seen during World War II. Defining cultural heritage as both immovable and movable, The Hague 1954 Convention includes: monuments, artifacts, archaeological sites, works of art, manuscripts, books, and other artifacts, as well as scientific collections of all kinds,

⁷³ The National WWII Museum, “The Nuremberg Trials,” The National WWII Museum | New Orleans, accessed March 24, 2022, <https://www.nationalww2museum.org/war/topics/nuremberg-trials>.

⁷⁴ Alford, *Nazi Plunder*, 111.

⁷⁵ Michael J. Kurtz, “The End of the War and the Occupation of Germany, 1944-52. Laws and Conventions Enacted to Counter German Appropriations: The Allied Control Council,” in *Spoils of War*, ed. Elizabeth Simpson (NY: H.N. Abrams In Association With the Bard Graduate Center For Studies In The Decorative Arts, 1997), 114.

regardless of their origin or ownership. During the Cold War, the United States initially refused to accept the terms of The Hague 1954 Convention because of concerns about military implications. The United States ratified this convention in 1999 by President Bill Clinton and ratified with full Senate vote in September of 2008.⁷⁶



Figure 10. Allied Central Collection Point (CCP), in Munich, Germany, 1945. Courtesy of The Jewish Museum, original photograph taken by Johannes Felbermeyer.

The UNESCO 1970 Convention designed to combat the illegal trade in cultural items. Concerns over black-market dealings required UNESCO to enact measures prohibiting imports, exports, and transfers of culturally significant property. As of 2022, 141 countries have agreed to the decrees within the UNESCO 1970 Convention.⁷⁷ The Washington Principles on Nazi-Confiscated Art from 1998 consists of eleven principles

⁷⁶ U.S. Committee of the Blue Shield, “U.S. Committee of the Blue Shield - 1954 HAGUE CONVENTION - Protecting Cultural Heritage Worldwide,” [uscbs.org](https://uscbs.org/1954-hague-convention.html), 2018, <https://uscbs.org/1954-hague-convention.html>.; Corine Wegener, “News - the 1954 Hague Convention and Preserving Cultural Heritage,” Archaeological Institute of America, October 19, 2010, <https://www.archaeological.org/the-1954-hague-convention-and-preserving-cultural-heritage/>.

⁷⁷ UNESCO, “The UNESCO 1970 Convention,” UNESCO, February 12, 2020, <https://en.unesco.org/fightrafficking/1970>.

used to assist in resolving issues regarding cultural property stolen under the Third Reich.⁷⁸ Additional international treaties include; the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.⁷⁹ Of course, these treaties do not mean the end to attacks on cultural heritage. As will be discussed in Chapter IV, several international court cases ignore agreed-upon conference or treaty guidelines because it benefits the accused to do so.

Conclusion

This historical context provides the circumstances for the complexities which make up the political, social, cultural, and economic setting that lead to current day events of repatriation discussions. The motivations of Hitler and his subordinates play a key role in recognizing that looted property has more than a monetary value and are culturally significant pieces of history. The dehumanization tactics and enforceable racially motivated laws provide the foundation for the current repatriation requests from Holocaust victims.

Understanding the war from this brief historical context synopsis allows us to take a preservationists approach to repatriation needs. As the National Register states in Bulletin 15A, “the significance of a historic property can be judged and explained when it

⁷⁸ US Department of State, “Washington Conference Principles on Nazi-Confiscated Art,” United States Department of State, December 3, 1998, <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

⁷⁹ UNIDROIT, “1995 Convention - UNIDROIT,” 1995 Convention: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 2021, <https://www.unidroit.org/instruments/cultural-property/1995-convention/>; UNESCO, “UNESCO - Text of the Convention for the Safeguarding of the Intangible Cultural Heritage,” Unesco.org, 2018, <https://ich.unesco.org/en/convention>.

is evaluated within its historic context”.⁸⁰ Consider the historic context for this the same as it would be to evaluate a community with numerous property types. While properties may have been made in different eras, they are collectively representative of that district. The same can be considered for these cultural artifacts that were looted – made in different time frames, but were stolen due to their collective representation of the communal identity.

Broadening the topic of historic preservation to include repatriation considerations of World War II victims reaffirms the legacy of a culture that nearly had their historical identity erased. The in-depth examination of the displaced cultural heritage is a daunting task. It is interdisciplinary, international, and transcends generations. Chapter IV will provide case studies that expand upon repatriation practices and five major obstacles experienced by claimants. These studies are representational of the millions of people who share similar stories of the personal and cultural catastrophe that was the Second World War.

⁸⁰ National Park Service, “NATIONAL REGISTER BULLETIN Technical Information on the National Register of Historic Places: Survey, Evaluation, Registration, and Preservation of Cultural Resources How to Apply the National Register Criteria for Evaluation,” 1995, https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf.

CHAPTER IV

CASE STUDIES

“We can never ease the horrors of Nazi Germany from history, but we can, and should, take every opportunity to deliver any justice we can including the return of property to rightful heirs,”

Acting U.S. Attorney Antoinette T. Bacon, Oct. 15, 2020

Some family names have become synonymous with Nazi looting by the number of pieces plundered or their subsequent cases. The Rothschilds had more than 5,000 pieces stolen from various families. The Alphonse Kann collection of 1,200 artifacts including furniture, prints, paintings, drawings, jewelry and rare books seized. Over 2,600 of David-Weill of Levy de Brnzion's collections were looted. Seligmann, a Jewish gallery owner in Paris, had more than 550 pieces stolen from his art merchants within a month of Paris's occupation.⁸¹ Maria Altmann is known for her successful international case against an Austrian museum to retrieve her aunt's portrait, *Portrait of Adele Bloch-Bauer I* by Gustav Klimt.⁸² Lea Bondi Jaray's heirs are known for their successful restitution settlement of \$19 million from the Leopold Museum over the Egon Schiele painting *Portrait of Wally*.⁸³ These cases are among hundreds of other examples of families attempting to repatriate stolen artifacts from World War II. Countless others continue to suffer from the systematic looting committed by the Nazis.

⁸¹ Rothfeld, “Nazi Looted Art.”

⁸² *Republic of Austria v. Altmann*, 124 S. Ct. 2240 (2004).
<https://www.supremecourt.gov/opinions/03pdf/03-13.pdf>.

⁸³ *United States v. Portrait of Wally*, 105 F. Supp. 2d 288 (2000).
https://scholar.google.com/scholar_case?case=14182579684999126866&hl=en&as_sdt=6,38.



Figure 11. Miscellaneous objects at the ERR depot in Neuschwanstein, Germany including clocks (from the Levy-Hermanos collection), Chinese XVIIIth Century majolica vases (from the Stern collection), late 15th century Italian Bust (foreground) from the Seligmann collection. Courtesy of the ERR Project at the Jeu de Paume

Cultural property is closely linked with a person's sense of identity and belonging. Destruction and displacement of cultural property become magnified during times of conflict as that sense of identity becomes a target of warfare. Beyond personal collections, cultural heritage within libraries, museums, archives, and religious sites are at risk of looting or destruction. Though commonly considered 'spoils of war,' these artifacts can result in a loss of cultural identity that is disregarded as collateral damage to the war-ridden community. Unresolved issues surrounding displaced tangible cultural heritage create a false history for the survivors and alter the connection to one's past. There are inextricable connections between this war and the Holocaust and the unspeakable atrocities against other humans. The purpose of this thesis is not to diminish these atrocities, nor does it minimize the emotional and physical turmoil that those victims must endure.

Repatriation of stolen World War II artifacts has layers of difficulties, including the following: (1) the passage of time; (2) families are reliant on a moral obligation to return property; (3) court case gets treated differently; (4) the financial ability and resources required to adequately search; and (5) mass murder during the Holocaust creates heirless property.

Passage of Time

Analyzing American court cases involving the repatriation of stolen artifacts from the Second World War reveals a set of recurring themes. One is the statute of limitations, general principle that a person cannot take legal action after a pre-determined timeframe of when the event occurs.⁸⁴ The United States commonly implements a discovery rule in which the statute of limitations begins once the plaintiff has knowledge of or can reasonably determine the location and ownership of the property. New York State, however, allows claimants three years following the previous owner's demand for the items return. New York's law provides heirs the opportunity to request their property before legal limitations are enforceable. With more than 35,000 museums within the United States and an underground black art market to contest with, discovering these pieces requires time.⁸⁵

In the case of *Menzel v. List (1969, New York Court of Appeals)*, nearly twenty years passed before the Menzel family located their lost Marc Chagall painting that the

⁸⁴ "Statute of Limitations," in *The Law Dictionary*, March 2, 2013, <https://thelawdictionary.org/statute-of-limitations/>.

⁸⁵ Giuliana Bullard, "Government Doubles Official Estimate: There Are 35,000 Active Museums in the U.S.," Institute of Museum and Library Services, May 19, 2014, <https://www.imls.gov/news/government-doubles-official-estimate-there-are-35000-active-museums-us>.

Nazis looted from their Brussels apartment in 1941. In the lawsuit, the defendant List argued several reasons for keeping the Chagall painting. The court heard arguments of property abandonment, legitimate spoil of war, and the Menzel's being barred by the statute of limitations. List interpreted the New York law to mean the original owners' three-year right to possession began in 1946 when the Menzel's discovered their painting missing, not in 1962. As the first case of its kind, the decision from the Supreme Court of New York concluded to repatriate or retribute the painting in favor of Mrs. Menzel.⁸⁶

Similarly, *Kunstsammlungen Zu Weimar (KZW) v. Elicofon (1981, US District Court for the Eastern District of New York)* heard the defense of the statute of limitations. In this case, Dürer paintings were made public after their discovery as a listing in a pamphlet for stolen art. Despite this fact, Elicofon refused to return the master's paintings due to purchasing them in good faith and believed the statute of limitations barred KZW from pursuing them.⁸⁷ While the statute of limitations ensures prompt prosecution of charges in federal cases, New York's interpretation of the law provides the heirs an opportunity to discover their artifacts before preventing legal action. Consequently, KZW proves they are the rightful owners, resulting in the painting's repatriation. If the rest of the United States were to accept this interpretation of the statute of limitations law, heirs would have time to collect funds and evidence required to pursue their case. While it does not guarantee repatriation, it does offer more time to do so.

⁸⁶ *Menzel v. List*, 49 Misc. 2d 300 (1966).
https://scholar.google.com/scholar_case?case=1130725189468803994&q=menzel+v+list&hl=en&as_sdt=6,38.

⁸⁷ *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F. 2d 1150 (1982).
https://scholar.google.com/scholar_case?case=15123592728719510841&q=Kunstsammlungen+Zu+Weimar+v.+Elicofon&hl=en&as_sdt=2006.

The passage of time is complicated for many World War II victims. The burden to recover missing pieces is passed on to the children, grandchildren, and great-grandchildren. For instance, the grandson of Fritz and Louise Gutmann, Simon Goodman, dedicated his life to reclaiming his family heritage. Goodman said that the Nazis forced his grandparents to sell everything they owned in exchange for a bus ticket that promised safety. These tickets ultimately led them to concentration camps, and their deaths.⁸⁸ For years Simon Goodman's father, Bernard, conducted private searches for his family's heritage, searching throughout Switzerland and the Soviet Bloc to no avail. Although he discovered pieces in the Netherlands, the Dutch government at the time, honored the bill of sale, regardless of the circumstances surrounding it. After Bernard's death, Goodman found documentation in his father's papers that proved his ownership of several art pieces found in America.⁸⁹ Goodman demonstrated a familial obligation many heirs feel devoting countless hours of energy to discovering lost family heritage. Because of the time, effort, and money it required to search for these pieces, Simon Goodman has become one of the most successful researchers in uncovering art stolen during the Nazi era. Though Goodman is not the original owner, as an heir, there comes a sense of peace to rediscovering these pieces. Regarding the return of a 16th-century gilded table clock known as the Orpheus Clock, Goodman states, "...to have the [Orpheus] Clock back is to reaffirm my family's existence. This recovery marks healing for a family that once lived in ... enmity and silence..."⁹⁰

⁸⁸ PBS NewsHour, "70 Years On, Searching for Artwork Looted by the Nazis," YouTube video, 10:11, <https://www.youtube.com/watch?v=6sV63ujPUUg>.

⁸⁹ Michael Dolan, "Conversation with Simon Goodman," HistoryNet (HistoryNet, February 13, 2019), <https://www.historynet.com/conversation-simon-goodman.htm>.

⁹⁰ PBS, "70 Years On," 10:11.



Figure 12. Simon Goodman with the Orpheus Clock, 2011. Courtesy of HistoryNet.

An argument is made for the length of time an heir has before making an effort to recover lost items. If a timeline should be set, I suggest 100 years from the close of the war for a family to include their lost item in a lost artifacts registry. This 100 years applies only to the inclusion of the piece to a database designed to assist in recovery. I would also suggest all of the United States adopt New York's statute of limitations providing 3 years from the request of repatriation date to make a legal claim against a person or institution withholding the lost artifact. As the original thieves have likely passed away, cultural property may start appearing on the open market if their families are unaware of the history and have no sentimental attachment to it.

Moral Obligation

Museums generally follow a code of ethics when it comes to locating Nazi art. Some have taken the initiative to repatriate stolen works of art, others return them after being requested, and some use the legal system to determine and sometimes dispute ownership. Dutch museums conducted research under the Museale Verwervingen Project, starting in 2009 to discover artworks with questionable provenances between the years 1933 and 1945. Allocating five experts to access of 163 institutional collections, the project uncovered 170 works of art that were improperly obtained.

This research is important to do justice to history,” Chris Janssen, a spokesman for Museale Verwervingen, told the Guardian. “A museum can only show a piece of art properly if the story and history behind the object are clear. In other words: a museum must know which road a piece of art has traveled before it came to the museum. That’s the way possible to inform visitors in a good way.⁹¹

Because of this project, the repatriation of several paintings is underway, including one within the Dutch royal family's private collection. The Dutch royal family were unaware that their collection contained Nazi-looted paintings and promptly returned the master painter's artwork.

The Museale Verwervingen Project is not alone. The Mosse Art Restitution Project a German project established in 2011, has resulted in the restitution of several works of art, including the painting, *Winter* by American artist Gari Melchers, at the Arkell Museum, an America museum, that immediately waived its legal rights to the painting upon learning of the Nazi ties. “We have been part of making something right, at

⁹¹ Sarah Cascone, “Dutch Museums Discover Hundreds of Artworks Stolen by the Nazis—and They’re Already Starting to Return Them,” Artnet News, October 11, 2018, <https://news.artnet.com/art-world/dutch-museums-nazi-loot-1369363>.

long last, and take that responsibility very seriously, and to heart,” executive director and chief curator Suzan D. Friedlander stated.⁹² Germany also returned a Carl Spitzweg painting to the heirs of Henri Hinrichsen, a victim of Auschwitz death camp in 1942. German Culture Minister Monika Grütters said the return of the work sends an “important signal,” and that while it could not make up for the deep suffering, it can “make a contribution to historical justice and fulfill our moral responsibility.”⁹³ In 2021, the Cultural Ministry within the German government has also set up a department staffed by an art historian to assist heirs seeking Nazi-looted art to navigate the German bureaucracy. Repatriation of the painting *Bouquet of Flowers in a Clay Vase* from the studio of Jan Brueghel the Elder, occurred when Countess Vichy-Thyssen prepared a collection to enter Bayerische Staatsgemäldesammlungen (Bavarian State Painting Collections, an art gallery in Munich, Germany). The museum conducted rudimentary preparation inspections of the labels written on the back of the painting proving questionable origin. On July 10, 2012, Countess Vichy-Thyssen returned *Bouquet of Flowers in a Clay Vase* to Jennifer Kien, granddaughter of the original owner Julius Kien.⁹⁴ The Neue Galerie in New York returned a Schmidt-Rottluff painting only to repurchase it in their settlement with the heirs. In 2021, the Italian government delivered a Nicolas Poussin piece to a 98-year-old Swiss heir who found her family painting on the

⁹² Jason Daley, “F.B.I. Recovers Nazi-Looted Painting from New York Museum,” *Smithsonian Magazine*, October 28, 2019, <https://www.smithsonianmag.com/smart-news/fbi-seizes-nazi-looted-painting-new-york-museum-180973411/>.

⁹³ “Gurlitt’s Last Nazi-Looted Work Returned to Owners,” *BBC News*, January 13, 2021, sec. Europe, <https://www.bbc.com/news/world-europe-55644230>.

⁹⁴ Central Registry, “Restitution of a Floral Still-Life from the Workshop of Jan Brueghel the Elder by the Bayerische Staatsgemäldesammlungen 10 July 2012,” *lootedart.com*, July 12, 2012, https://lootedart.com/PJALHJ638301_print.

French looted art database.⁹⁵ Culture Minister Roselyne Bachelot-Narquin told a Paris news conference that "the decision to return a major work from the public collections illustrates our commitment to the duty of justice and reparation vis-à-vis plundered families."⁹⁶ France subsequently returned the 1905 Gustav Klimt painting in March of 2021.

These instances are representational of the moral suggestion included within the Washington Principles to return artifacts displaced under the Nazi regime. It is important to note that the Washington Principles are a suggestion rather than an obligation. There is no legal responsibility for any agreeing country to follow the guidelines, despite agreeing to them in 1998. Some American organizations are reluctant to follow the Washington Principles. The American institutes of Detroit Institute of the Arts, Toledo Museum of Art, Museum of Fine Arts Boston, and the Solomon R. Guggenheim Museum have all gone to court in an attempt to deter claimants from bringing suit. They ask that the courts declare the museums the rightful owners of the works rendering heirs stalemated.⁹⁷ Other organizations like the German-based Georg Schäfer Foundation firmly believe that if work is purchased legally and in good faith, then the compensation for those victims

⁹⁵ Tessa Solomon, "Nazi-Looted Poussin Painting Found in Italy, Returned to Owners," ARTnews.com, April 1, 2021, <https://www.artnews.com/art-news/news/nicolas-poussin-painting-nazi-loot-recovered-1234588445/>.

⁹⁶ CBS Interactive Inc., "France Is Returning a Nazi-Looted Klimt Painting to Its Rightful Jewish Owners: 'an Act of Justice,'" www.cbsnews.com, March 16, 2021, <https://www.cbsnews.com/news/france-nazi-looted-klimt-painting-rightful-jewish-owners/>.

⁹⁷ Patricia Cohen, "Museums Faulted on Restitution of Nazi-Looted Artworks," Candid., July 7, 2013, <https://philanthropynewsdigest.org/news/museums-faulted-on-restitution-of-nazi-looted-artworks>.

should come from the German government, as the government is at fault for the Nazi's improper sales.⁹⁸

Heirs receiving pieces through projects like Museale Verwervingen Project or The Mosse Art Restitution Project are reliant on the moral obligation felt within the museum to return their pieces. There should, however, be no line of demarcation between moral obligation and proper research into the provenance of artifacts. Before accepting a piece into a collection, the provenance must be investigated thoroughly, including an examination of all markings on the reverse side of the piece. This should include work given to the institution on loan from an independent party. Museale Verwervingen Project offers museum reports about pieces that have an unclear history in hopes of identifying the rightful owners. Other institutions can adopt this process representing a commitment to articulating history to the fullest extent.⁹⁹

Dina Babbitt's story is considerably different from those of the other examples, yet not the only one of her kind. The repatriation request was made by Babbitt to the Auschwitz-Birkenau State Museum in Poland is because Babbitt is the creator of the paintings rather than a purchaser. In a moving oral history, Babbitt discusses her time in Auschwitz as a painter for Dr. Josef Mengele.¹⁰⁰ In exchange for the painting of Romani prisoners, Dr. Mengele agreed to spare Babbitt and her mother from experimentations

⁹⁸ Catherine Hickley, "She Tracked Nazi-Looted Art. She Quit When No One Returned It.," *The New York Times*, March 17, 2020, sec. Arts, <https://www.nytimes.com/2020/03/17/arts/design/georg-schafer-museum-nazi-looted-art.html>.

⁹⁹ "Dutch Royal Family to Return Nazi Looted Art," *BBC News*, March 31, 2015, sec. Entertainment & Arts, <https://www.bbc.com/news/entertainment-arts-32135127>.

¹⁰⁰ Dina Babbitt, Oral History Interview with Dina Babbitt, interview by Dr. David Rapaport, *United States Holocaust Memorial Museum Collection*, March 5, 2009, <https://collections.ushmm.org/search/catalog/irn37287>.

and the gas chambers. Babbitt and her mother fled after the liberation of Auschwitz in January 1945, leaving the watercolors she created behind in Dr. Mengele’s office. It was not until 1973 the Auschwitz-Birkenau State Museum reached out to Ms. Babbitt to discuss the origin of the recovered paintings that she saw them again. In Poland, she explained who the people are in the works and how Dr. Mengele exploited her talent for his pseudoscientific racist research. After the interview, Babbitt leaves empty-handed as the paintings ‘belong’ to the Auschwitz-Birkenau Museum. They wanted her story, not to repatriate her artwork. As she recalled that day, she equates her emotions with the emotions she once experienced in Nazi concentration camps. “All my rights, all my human rights, all my power has been taken away from me, exactly like when I was still an inmate in the camp.”¹⁰¹



Figure 13. Dina Babbitt with a recreation of her painting, and friend, Celine, 2009. Courtesy of The Telegraph.

¹⁰¹ Tom Jagninski, *Congress Aiding Holocaust Survivor Recover Paintings*, Isreal Faxx, January 10, 2002.

The Auschwitz-Birkenau State Museum argues their stance for keeping the paintings as prioritizing international human rights (the showcasing of different faces who experienced the Holocaust) over Babbitt's intellectual property (as the creator of the paintings). These visual representations document a fuller history, according to the Auschwitz-Birkenau State Museum,

...every single loss of even the smallest part of the documentation will be an irreparable loss and a shadow on the memory of Auschwitz Concentration Camp victims. [Babbitt's] watercolors are scarce surviving documents on the Holocaust committed on the Roma people.¹⁰²

So, what is the moral obligation of an institution? To the people or the artist? Surely, a middle ground could have been met by providing Dina Babbitt access to her paintings. As replicas exist for these paintings, the museum can still display the faces of the Holocaust without depriving Babbitt of her property. Mediation by professionals focusing on the preservation of historically significant artifacts and dealing with cultural heritage on a personal and communal scale may have assisted Babbitt in retrieving some of her property. Although the museum is currently unmoving in its stance, opening the dialogue with professionals trained in heritage preservation has the potential to discuss the repatriation topic beyond a moral obligation. Work at the Auschwitz-Birkenau State Museum is undoubtedly imperative as their preservation efforts provide a universal truth of the atrocities of the Holocaust. And while nothing can replace the originals, not even replicas, Dina Babbitt (and now her heirs) deserve the opportunity to decide how to

¹⁰² Elissa Einhorn, "She Was Forced to Paint in Auschwitz. Now Her Family Wants the Art Back.," The Jewish News, August 15, 2017, <https://www.jweekly.com/2017/08/15/auschwitz-forced-paint-now-family-wants-art-returned/>.

represent artwork that documents her experience in the concentration camps. In this instance, the museum is perpetuating the trauma of a survivor.

Variety of Outcomes in Court Cases

There is confusion in repatriation court cases due to the variety their varying outcomes. While each case is determined based on its merit, the laws and standards vary from state to state. Court cases get even more complicated when heirs use the American court system to file claims against another country. Countries like the United Kingdom fear World War II repatriation cases opening the flood gates to other cases where artifacts have been obtained under dubious circumstances. In 2005 British Attorney General Lord Goldsmith asked the high court to rule against returning four Old Master drawings looted by the Nazis as it would create a legal opening for Greece to pursue claims to the Parthenon marbles.¹⁰³ Court cases surrounding the repatriation of stolen World War II artifacts can have ramifications on national and international levels. Arguably, two of the most influential repatriation international cases are *Maria Altmann v. the Republic of Austria* (2004, United States Supreme Court) and *Cassirer v. the Kingdom of Spain* (ongoing, US Appeal Court). One saw success, while the other is currently (2022) in a legal battle lasting over 15 years.

¹⁰³ “Ruling Tightens Grip on Parthenon Marbles,” *The Guardian*, May 27, 2005, <https://www.theguardian.com/uk/2005/may/27/arts.parthenon>.; Abby Rose, “Should They Go Back? Problems of International Law and the Elgin Marbles,” *The Michigan Journal of International Law* 42 (February 18, 2021), <http://www.mjilonline.org/should-they-go-back-problems-of-international-law-and-the-elgin-marbles/>.

The case of *Maria Altmann v. the Republic of Austria* is complicated, as several arguments made within the case are not directly related to repatriation but rather US law. In part, Austria argued against the United States' right to litigate them using the Foreign Sovereign Immunities Act (FSIA) of 1976. FSIA is an American law that limits a foreign sovereign nation, giving immunity to an allied country within the American court system. According to Altmann, Austria was not immune from suit due to the "expropriation exception" of the Foreign Sovereign Immunities Act, since the claim involved property taken in violation of international law, and Austria was engaged in current commercial activities in the United States.¹⁰⁴ Altmann ultimately won the case paving the way for others, including the Cassirer family, to pursue similar cases against other countries.

However, Cassirer's case is vastly different than Altmann's. Despite proof of a painting being sold under duress to the Nazis, repatriation is refused by the current owners, the Thyssen-Bornemisza Collection Foundation. In this case, the Thyssen-Bornemisza Collection Foundation purchased the painting in 'good faith.' A 'good-faith' or 'bona fide' purchase is a purchase made by someone "*who paid for an object within the belief that the vendor had a right to sell ... or with no intention of fraud.*"¹⁰⁵ In California, a bona fide purchase does not mean the transfer of a good title, regardless of intention. Whereas under Spanish law, a museum or collector can keep another's cultural property if they do not know it was stolen. Even though the case is being tried in the state of California, the painting is in Spain. Therefore the California judge could not force the

¹⁰⁴ O'Donnell, *A Tragic Fate*, 91.

¹⁰⁵ "Bona Fide Purchaser," in *The Law Dictionary*, November 4, 2011, <https://thelawdictionary.org/bona-fide-purchaser/>.

Kingdom of Spain to return the painting.¹⁰⁶ Spain agreed to the 2009 agreement of the Terezin Declaration on Holocaust Era Assets and Related Issues that stated art confiscated by the Nazis should be returned to the victim's heirs.¹⁰⁷ The agreement here is an attempt at a code of ethics on the treatment of cases specifically involving World War II stolen artifacts agreed to by 47 countries. It raises questions as to the point of international conferences with promises to make "every effort ... to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property..." when an agreeing party can disregard the measures at will.¹⁰⁸ The most severe punishment for breaking an international treaty are sanctions or diplomatic pressure, ultimately, Spain revealed that these agreements are only attempts to at international cooperation on topics of a global scale. An inconsistency amongst international agreements, and thus laws, creates confusion and disheartens those attempting to take back their history.

As a historic preservationist and not an expert in domestic or international law, it is beyond my expertise to give implementable advice for lawyers. However, it would be beneficial for a standard to be set within the legal system for families to follow. When each state follows various rules and with a myriad of technicalities, it appears that the legal system is working against the community, rather than for it. This coincides with the

¹⁰⁶ *Cassirer v. Kingdom of Spain*, 616 F. 3d. 1019 (2010).
https://scholar.google.com/scholar_case?case=14349050652930994266&q=cassirer&hl=en&as_sdt=6,38.

¹⁰⁷ Bureau of European and Eurasian Affairs, "Prague Holocaust Era Assets Conference: Terezin Declaration," U.S. Department of State, June 30, 2009, <https://2009-2017.state.gov/p/eur/rls/or/126162.htm>.

¹⁰⁸ Eren Waitzman, "Terezin Declaration: The Restitution of Property," House of Lords Library (UK Parliament, July 20, 2020), <https://lordslibrary.parliament.uk/terezin-declaration-the-restitution-of-property/>.

financial ability for heirs to begin the process of repatriation as legal expenses can be high. The reality of a priceless family heirloom costing an expedient amount of money is daunting.

Financial Obligation

Since many of these families arrived in the United States on very limited means, attempting to meet the financial obligations to repatriate their artifacts would have been daunting. Their repatriation efforts may have been neglected due to more pressing concerns, such as food or shelter for the family. According to the International Chamber of Commerce Court of Arbitration, the filing fees are a non-refundable \$5,000.¹⁰⁹ This fee does not include lawyer costs, expert witnesses, mediation fees, travel expenses, or appeal fees (if necessary). While some lawyers like Christopher Marinello, one of the world's foremost experts in recovering stolen, looted, and missing works of art, offer pro-bono services, this is not always the case. Maria Altmann owed her lawyer Randy Schoenberg forty percent of the value of the paintings recovered, or over \$100 million.¹¹⁰

Financial limitations should not be a determining factor in returning stolen property. Arbitration offers potential for settlements, however, these typically result in the form of restitution over repatriation. For those with financial hardships looking for the courts assistance in a dispute regarding stolen property, third parties specializing in

¹⁰⁹International Chamber of Commerce, "Costs and Payments," International Chamber of Commerce, June 12, 2015, <https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/#paymentdetail>.

¹¹⁰ Marjorie Perloff, "The Legal, the Ethical, and the Aesthetic: The Case of Gustav Klimt's Woman in Gold," *Forum for World Literature Studies* 12, no. 2 (June 2020), <https://go-gale-com.libproxy.uoregon.edu/ps/i.do?p=AONE&u=euge94201&id=GALE%7CA635178560&v=2.1&it=r>.

litigation financing provide upfront costs for lawsuits requiring repayment at the end of the trial.

Heirless Property

At the end of the Second World War, the estimated death toll reached nearly 70 million people worldwide, millions were displaced persons and refugees, landscapes razed by bombing, and entire cities are reduced to rubble. Alongside the unimaginable death rate were the millions of assets without a surviving heir to claim them. These assets are known as ‘heirless property’. Attempts at restitution for private property, lands, and household items are extremely complicated, especially private immovable property. The Holocaust-Era Assets Conference noted “...most Eastern European countries have not addressed the issue of formerly Jewish-owned property, expropriated during the Holocaust era, that is now heirless, due primarily to the murder of former Jewish owners and their heirs during the Holocaust...”¹¹¹

Some countries such as the United States, Serbia, Hungary, Slovakia, and England, practice the common law doctrine of escheat.¹¹² Under escheat, heirless property reverts ownership to the state.¹¹³ For Holocaust victims it would be massively inappropriate to follow escheat as many of the states would benefit from acquiring the

¹¹¹ World Jewish Restitution Organization, “Holocaust-Era Confiscated Communal and Private Immoveable Property: Central and East Europe Holocaust-Era Confiscated Communal and Private Immoveable Property: Central and East Europe,” 2009, <https://wjro.org.il/cms/assets/uploads/2015/12/ClaimsOnImmoveableProperty.pdf>.

¹¹² Bureau of European and Eurasian Affairs, “Property Restitution in Central and Eastern Europe,” 2001-2009.state.gov, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>.

¹¹³ “Escheat,” in *The Law’s Dictionary*, accessed May 3, 2022, <https://thelawdictionary.org/escheat/>.

property of the people they allowed to be persecuted and plundered.¹¹⁴ For this reason, giving ownership to the state is massively inappropriate. Ernest Munz, a Jewish jurist writes;

In countries which will be found guilty of the mass extermination of the Jews, it would only be just to prevent the State from inheriting the estates of the murdered. These properties should be utilized ... for the relief of the surviving. ... In view of the tragedy of the situation, it may really be hoped that claims falling into this category will thus be made use of for Jewish reconstruction purposes.¹¹⁵

To combat valid concerns such as Munz's, the Jewish Cultural Reconstruction, Inc. (JCR,) was established in 1947 for the collection and redistribution of heirless Jewish property in American occupied zones of Germany following the war. Because of JCR, a Jewish community, association, or organization that values the continuity of their culture has received the unclaimed property when or if there are no heirs.¹¹⁶

¹¹⁴ Cultural Genocide and Restitution: The Early Wave of Jewish Cultural Restitution in the Aftermath of World War II – Leora Bilsky pg 11

¹¹⁵ Munz, Ernest. 1943 "Restitution in Postwar Europe." *Contemporary Jewish Records* 6, no. 4: 377.

¹¹⁶ Committee on International Relations, "Heirless Property Issues of the Holocaust," commdocs.house.gov, August 6, 1998, http://commdocs.house.gov/committees/intlrel/hfa51646.000/hfa51646_of.htm.



Figure 14. Orphaned ceremonial objects in temporary storage at the Jewish Museum, 1949. Courtesy of the Jewish Museum.

The issues of heirless property has been reiterated over the years during governmental hearing. The House of Representatives Committee on International Relations articulated the difficulties of working around foreign government laws in 1998 and again at the Justice for Uncompensated Survivors Today Act (JUST) in 2018.¹¹⁷ Not unlike the difficulties faced in restitution and repatriation discussions with foreign governments, heirless property often contested and even not addressed in several foreign countries such as Romania, Lithuania, Luxembourg, and Russia.¹¹⁸ In some cases, Poland for example, governmental legislation prevents foreign citizens from making claims, including those who escaped Europe and sought citizenship elsewhere during the war.¹¹⁹

¹¹⁷ Committee on International Relations, “Heirless Property”.

¹¹⁸ World Jewish Restitution Organization, “Justice for Uncompensated Survivors Today Act (JUST Act) Report: Key Findings,” 2018, <https://wjro.org.il/cms/assets/uploads/2020/07/just-act-report-key-findings.pdf>.

¹¹⁹ World Jewish Restitution Organization, “JUST Act.”

Reaffirming that some of this property has surviving heirs, but due to technicalities, they are ineligible to retrieve it. It is easy to forget that property obtains more than a monetary value. Cultural property, in particular, is representative of heritage, belonging, or history where very little remains.

Conclusion

The destruction of a community's historical memory cannot be remedied overnight. Various agencies around the world have been working for decades to make amends for the historical injustices inflicted from the Second World War. Though there are several factors that hold back heirs from easily securing their looted artifacts, historic preservationists in the United States have an opportunity to provide guidance and research where very little exists.

Firmly and formally defining terms of illicit trading practices regarding World War II property will provide a standard for every collector and institution to follow taking away moral ambiguity and making it a professional or legal obligation. Both of which are enforceable in a court of law. Being reliant on moral obligation alone is a disservice to victims and their families. American historic preservationists have the ability to offer skills that assist in the search and recovery of culturally significant artifacts that heirs are searching for. This provides assistance beyond the court system which can be necessary as deep-pocketed defendants may be less likely to willingly part with the work. While very little can be done within the private art collection sector, American institutions will benefit from the implementation of a checks and balances system for potentially looted

artwork. As institutions generally promote representing work that values the historical importance of a community, it is disingenuous to represent stolen artifacts to the masses.

Crimes against cultural heritage are a continuing atrocity. The looting of an Iraq Museum in Baghdad took place in April 2003.¹²⁰ In 2016, ISIS issued ‘official’ looting permits in Syria, allowing thieves to steal from archaeological sites and then collect taxes on the looted goods.¹²¹ In the Spring of 2022, Russia conducted heavy bombing raids against Ukraine that destroy lives, historic buildings, religious monuments, cultural artifacts, memorials, and sacred sites. Condemnation from UNESCO has had no effect on these atrocities. These treaties and international conferences merely give strong recommendations for how countries should approach repatriation concerns after great devastation ensues. The chapter to follow will provide an analysis for current repatriation practices and give recommendations for resolving some of the known issues.

¹²⁰ U.S. Committee of the Blue Shield, “1954 Hague Convention on Protecting Cultural Heritage Worldwide,” [uscbs.org](https://uscbs.org/1954-hague-convention.html), 2018, <https://uscbs.org/1954-hague-convention.html>.

¹²¹ Molly Fannon, “The Looting of Cultural Heritage Has Been Happening since the Very Existence of Cultural Heritage, It Is Not Anything New, but What We See Now Is That Looting Has Become Highly Organized,” WCO News, n.d., <https://mag.wcoomd.org/magazine/wco-news-81/the-looting-of-cultural-heritage-has-been-happening-since-the-very-existence-of-cultural-heritage-it-is-not-anything-new-but-what-we-see-now-is-that-looting-has-become-highly-organized/>.

Chapter V

ANALYSIS

The case studies discussed in the previous chapter begin to illustrate the significance of preservationists assistance in the practice of repatriation. The overall schematic currently used by the United States government is limited in part to maintaining international relations and working within the confines of laws with these foreign nations. However, by starting a division dedicated to the repatriation of culturally significant artifacts from Holocaust heirs, there can be consistency as the division will provide guidance and clarity for requests made within the United States. Ultimately, the suggestions for furthering research discussed later in this chapter may be limited by the same issues related to a lack of enforcement as seen in other avenues. While this thesis deals primarily with repatriation efforts related to Holocaust era cultural heritage, the recommendations provided are relevant to and can be implemented for, more recent conflicts.

Discussions about establishing repatriation efforts within the American historic preservation system are not new. The creation of the Native American Graves Protection and Repatriation Act (NAGPRA) in the 1990s indicates that historic preservationists see value in preserving culturally significant artifacts beyond buildings, landscapes, and historic sites. Part of the National Park Service (NPS) mission is the preservation and documentation of tangible and intangible cultural heritage.¹²² The NPS has loosely

¹²² National Park Service, “Tangible and Intangible Cultural Heritage (U.S. National Park Service),” www.nps.gov, n.d., <https://www.nps.gov/articles/tangible-cultural-heritage.htm>.

defined these terms, however, are working on bringing expanding the representation of cultural expression. In broadening the definitions of tangible and intangible cultural heritage, there will need to be changes made throughout the agencies that deal directly with these issues. Collaboration with disciplines such as anthropology and art history will be vital to the success of the implementations of these concepts to government and independent systems.

Countries including Holland and Germany have developed private institutions or independent mediation boards specializing in aiding families recover cultural property stolen in World War II. As of 2022, the United States had not created any such relocation board. As a field dedicated to the research and preservation of culturally significant sites, buildings, and artifacts, historic preservation can play a role in addressing repatriation. There are two opportunities to further develop tools and approaches within the United States to assist with World War II repatriation efforts. Creating a sector within the US Department of the Interior and the development of a centralized database administered by the Monuments Men Foundation.

NAGPRA as a Guide

An option for furthering work towards the repatriation of culturally significant artifacts stolen from the Second World War is within the US Department of the Interior through one of their operating units, the NPS. The Department of the Interior is a multifaceted cabinet level government agency that protects America's natural resources and heritage. Within their scope of responsibilities is to preserve and understand our country's cultural

heritage, while also promoting the identification and repatriation of cultural items.¹²³ Currently, these items are representative of Native American Indian tribes and Native Hawaiians through the work of NAGPRA. Expanding NAGPRA's responsibilities to include other communities in need of assistance, such as Holocaust heirs, would not be in the best interest of either party because the work, while has similarities, is vastly different. Creating a separate bureau under the NPS for Holocaust heirs brings claimants to a division specialized in their needs and familiar with the history of surrounding events.

There are positive and negatives to the operations currently established at NAGPRA. Part of their success is a combination of years of legislation and regulation designed to protect antiquities and natural resources. The Antiquities Act of 1906 was the first law in the United States to provide such legal protection.¹²⁴ Later laws such as the Archaeological Resources Protection Act (ARPA) of 1979 expanded earlier legislation and provided clarity to the Antiquities Act and covered the excavation of archaeological sites on Federal and Indian lands.¹²⁵ The enactment of NAGPRA in 1990 focused on the repatriation of human remains and ritual objects to Native American, Indian or Hawaiian tribes.

¹²³ U.S. Department of the Interior, "Heritage," www.doi.gov, August 1, 2016, <https://www.doi.gov/international/what-we-do/heritage>.

¹²⁴ U.S. Department of the Interior, "Antiquities Act," www.doi.gov, July 27, 2016, <https://www.doi.gov/ocl/antiquities-act>; Chip Colwell-Chanthaphonh, "The Incorporation of the Native American Past: Cultural Extermination, Archaeological Protection, and the Antiquities Act of 1906," *International Journal of Cultural Property* 12, no. 3 (August 2005): 375–91, <https://doi.org/10.1017/s0940739105050198>.

¹²⁵ U.S. Department of Agriculture, "Archeological Resources Protection - Safety and Crime Prevention - LEI | USDA Forest Service," www.fs.fed.us, n.d., <https://www.fs.fed.us/lei/archeological-resources-protection.php>.

These federal laws assist in the protection of cultural heritage because while they broaden the duties for the preservationist, it gives clear and concise regulations within the scope to be followed. The vagueness expressed in the Antiquities Act resembles the vagueness expressed in the efforts to repatriate looted artifacts from the Second World War. Creating specific guidelines and expectations that are government backed is the next step for expanding the practice of repatriation. A historic preservationist, within the Department of the Interior, can provide these clarities and enforce the expectations towards repatriation of looted cultural heritage.

There are several guidelines and expectations that can be implemented for expanding the practice of repatriation. First and foremost, specify the group that can be assisted within the guidelines - direct heirs or those with legitimate claims to artifacts stolen between the years of 1933 and 1944. The second major concept to be determined are the definitions of terms that will be used for asserting these claims. Terms that will need to be specified include repatriation, restitution, and cultural heritage amongst others. Next is to define these terms within the scope of this division. These definitions provide clarity of expectations to claimants and to workers to determine qualifications for assistance.

If under a government statute, similar to NAGPRA, then this division will also be required to provide guidelines to institutions, government agencies, and museums. Objects in question are those only with ambiguous provenances between the years of 1933 and 1944. Those found to have a questionable history in the suggested time frame will be subject to further scrutiny by specialists within this division. Then, much like NAGPRA, if an artifact is discovered to have been looted, the Federal Bureau of

Investigation (FBI) can perform a detailed assessment of right to ownership using their Art Crime Team that was established in 2004.¹²⁶ Authorizing a statute such as this must also come with consequences for the groups that fail to comply. These consequences could include fines or criminal penalties. If a claim is made against an institution, the institution must provide provenance of the artifact to determine validity of the claim - the claim itself does not guarantee repatriation.

If established within the NPS an expanded NAGPRA-like system would give those working towards repatriation of World War II artifacts an official status under the United States government that would help them hold museums and collectors accountable for the objects entering or existing within their collections. Although international and domestic acts regarding World War II repatriation currently exist, an agency within the United States needs to be created that has legal backing. But such legal standing offers no guarantee for compliance. NAGPRA acknowledges this shortcoming that there are still difficulties obtaining ancestral remains and funerary objects from institutions and agencies. These difficulties have resulted in the Department of the Interior hiring a full-time investigator in January of 2022 to enhance museum compliance.¹²⁷

¹²⁶ Melanie O'Brien, "Federal Register."

¹²⁷ Damon Scott, "Tribes: NAGPRA Process Should Be Clearer, Faster," The Seminole Tribune, February 8, 2022, <https://seminoletribune.org/tribes-nagpra-process-should-be-clearer-faster/>.

Centralized Database

Another potential option for expanding the role United States preservationists could play in repatriation is the creation of a centralized database that museums, institutions, and dealers in the United States are required to consult to determine if an artifact is stolen. This alternative is perhaps the more challenging to create but could yield the most results. The first step would be to create a centralized database for all artifacts displaced during the Second World War. Much like the Lost Art Database created by Germany, the listing in the US artifact on the database would include: the artist, title, object type, material, provenance, and contact information from the claimant.¹²⁸ Unlike the UK's Art Loss Register, which requires a fee for use, the US database should be free and open to the public.¹²⁹ While the Art Loss Register has its merits, it includes no obligation to collaborate with other organizations to compile comprehensive data on artifacts. To this end, the second part of the recommendation is to require art market traders to verify whether the works appear on the list. Much like when dealing with auction houses such as Sotheby's and Christie's, standard consignor agreements require passing of a clear title for any artifact before they can be eligible for sale.¹³⁰ This practice should be utilized throughout art market traders, if not only to protect themselves from litigation or other consequences.

¹²⁸ Minister of State of Culture and the Media, "Lost Art Database," www.lostart.de, n.d., <https://www.lostart.de/en/start>.

¹²⁹ International Art and Antique Loss Register Limited, "About Us – Art Loss Register," Art Loss Register, n.d., <https://www.artloss.com/about-us/>.

¹³⁰ Hilary Jay, "A Picture Imperfect: The Rights of Art Consignor-Collectors When Their Art Dealer Files for Bankruptcy," *Duke Law Journal* 58, no. 7 (April 1, 2009): 1859–93, <https://scholarship.law.duke.edu/dlj/vol58/iss7/27/>.

Created with the intention to educate, retribute, and preserve the history of the Monuments Men, the Monuments Men Foundation may be an appropriate steward for such a database. The non-profit organization established in 2007 aims to educate the public on the legacy of the original men and women who served in the Monuments, Fine Arts, and Archives section during the Second World War. Their mission statement notes their objective includes the ‘preserving [of] our shared cultural heritage for future generations through education and restitution practices’.¹³¹ The database would address their ambition to include the general public in a discussion that reestablishes the connections to cultural heritage lost during the Second World War looting. Much of the work being done by the Monuments Men Foundation involves public education. Raising awareness of the topic of looted World War II artifacts through their activities and online presence could include a searchable database for members interested in wanting to ‘join the hunt’ could search through. Citizens could then assist as informal art historians and historic preservationists bolstering the volume of information that can be collected and sorted. Experts would oversee discoveries and verify the legitimacy of claims submitted.

The Monuments Men Foundation has established a list of Most Wanted World War II Art and has access to the Einsatzstab Reichsleiter Rosenberg, or ERR, albums. The Most Wanted Art is shown in a customized deck of playing cards. The cards show a photo of the art piece that is missing, the artist name, title, owner, information about the painting, the reward (if any) being offered, and the toll-free tip line for information

¹³¹ Monuments Men Foundation, “Restitution, Education, Preservation,” Monuments Men Foundation for the Preservation of Art, n.d., <https://www.monumentsmenfoundation.org/about>.

regarding the whereabouts of the work.¹³² Meticulous cataloging of the ERR albums may help with the return of stolen pieces to their original owners. The ERR catalogued each item on their inventory list with a letter indicating the family from which the item was taken and a photograph of the looted piece, as a further aid in returning looted pieces.

The development of such a meticulous database would require a team including computer programmer, library scientists, art historians, and historic preservationists. A project such as this would also require the collaboration of public and private organizations to share information regarding their current collections. It would be important to create a legal obligation for dealers, collectors, museums, galleries, and auction houses to cross-reference these items within the database for their authenticity of ownership. As these institutions should be conducting authenticity research towards a piece anyway, it should be a required step to include provenance in that research.

There are several potential issues for success of this database. For this to be most effective, there would need to be compliance from institutions and federal organizations to divulge the information of their collections. Calling on these parties to comply without legal obligation and enforcement mechanisms will likely produce the same outcomes as the existing international agreements (e.g. *Cassirer v. the Kingdom of Spain*). While the focus for this project is on the Second World War, many more recent conflicts have also involved looting and call for the same type of assistance. Establishing this database within the Monuments Men Foundation would limit the usage of this database to World War II artifacts.

¹³² Monuments Men Foundation, “WWII Most Wanted,” Monuments Men Foundation for the Preservation of Art, n.d., <https://www.monumentsmenfoundation.org/wwii-most-wanted-van-huysum>.

Conclusion

The reestablishment of cultural heritage through repatriation is subsection within historic preservation that deserves exploration. As preservationists, it is our duty to provide guidance and assistance to those wanting to connect to their heritage. For Holocaust victims, that connection can be made through the repatriation of stolen property as it connects them to their history and family they may have lost. The two recommendations made in this chapter would serve two completely different functions. However, both assist in the repatriation efforts for World War II artifacts that is currently missing.

Creating an agency within the Department of the Interior specializing in repatriation of stolen World War II artifacts would provide legal mechanisms, governmental backing, and accountability to those involved. This organization would also benefit from being backed by the federal government and thus, giving legal obligations to museums or institutions who currently do not comply with the acts already in place. By utilizing the framework of NAGPRA, the NPS would not be starting from scratch to create this organization as the groundwork has already been established. American historic preservationists can also assist in the repatriation efforts by formulating a centralized database hosted by the Monuments Men Foundation. This private organization has a dedicated task force to developing an educational experience for people wanting to learn about or assist in finding lost cultural heritage. This database would be extensive and meticulous, yet has the most opportunities for finding original owners as everyday users can be mock historians and preservationists. Using the general public as extra sets of eyes for discovering looted cultural property which has been lost for over 80 years gives additional opportunities for heirs seeking their cultural heritage.

The suggestion of a repatriation agency with historic preservationists in mind establishes a need for these types of actions. Departments may be added within museums to accommodate the new regulations, providing more opportunities for preservationists to be involved with the museum sector. These recommendations also open the door to further repatriation efforts of either different communities or from other conflicts. While it is the unfortunate truth that looting still continues, by taking these beginning steps, historic preservationists can take part in reestablishing those lost connections.

CHAPTER VI

CONCLUSION

“To safeguard these things will show respect—of the beliefs and customs of all men and will bear witness that these things belong not only to a particular people but also to the heritage of mankind.”

Lieutenant Commander George Stout of the Monuments Men, 1943

The establishment of a program for the preservation of additional historic properties throughout the nation occurred in 1966. Under Title I of section 101, the Secretary of the Interior authorized implementation of historic preservation as the practice of preserving and conserving buildings, objects, landscapes, and other artifacts of historical significance.¹³³ Similar to many other professions, historic preservation does not have a singular correct answer for each problem. While this creates inconsistencies in determining the expectations of a historic preservationist, it also creates opportunities for expansion towards historically significant artifacts that have been displaced due to conflict. Though historic preservation describes cultural heritage as a significant attribute to a communal identity, it has struggled to define what constitutes cultural heritage beyond generalizations. This is not the fault of historic preservationists, as the international agency UNESCO finds it difficult to articulate universal terminology as well.

This study provided the opportunity to identify, analyze, and interpret patterns of meaning for the inclusion of repatriation in historic preservation. Besides historic

¹³³ *An Act to Establish a Program for the Preservation of Additional Historic Properties Throughout the Nation, and for Other Purposes*, Public Law 89-665, *U.S. Statutes at Large* 80 (1966): 915-916.

preservation practices, cultural theft is an interdisciplinary topic requiring a wide variety of research topics, including governmental proceedings, legal cases, international conventions and treaties, and law as applied to cultural heritage. The relationships between these interdisciplinary topics varied as each discipline prioritizes particular aspects of repatriation. For instance, some historians focus on the significance of missing paintings from a communal and social standing, while some lawyers focus on limitations of court actions due to jurisdiction or other constraints.¹³⁴ Both are discussing the consequences of repatriation but are characterizing it through their own lenses.

To better understand these different lenses, it was important to understand the mechanisms which allowed for looting to occur. Typically, documentaries, mass-produced books, and historical recounts discussing World War II lend themselves to the political agendas, military strategies, and the Holocaust, while other intricacies of the war are overlooked. Petropoulos, amongst other scholars, describe the ignored issues relating to Nazi looting and their subsequent lack of repatriation as ‘the unfinished business of World War II’ due to their lingering effects.¹³⁵ One of the first scholarly mass produced books with an in-depth discussion of Nazi looting, Nicholas’s *The Rape of Europa*, was published in 1994, nearly 50 years after the war. With decades passed, acknowledging the

¹³⁴ John Radzilowski, “Thieves Stealing from Thieves, Victims from Victims: The Culture, Morality, and Politics of Stolen Art in Twentieth Century Poland,” *The Polish Review* 61, no. 4 (2016): 3, <https://doi.org/10.5406/polishreview.61.4.0003>.; O’Donnell, *A Tragic Fate*, 1-104, 201-54.

¹³⁵ Petropoulos, “Art Dealers,” 564.; Stuart Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: Public Affairs, 2004).; Elizabeth Simpson, *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property* (New York: H.N. Abrams in Association with the Bard Graduate Center for Studies in the Decorative Arts, 1997).

systematic looting of the Nazi regime and discovering the current whereabouts of the lost artifacts can be impactful to a communal and individual's identity of Holocaust victims.

This thesis utilized the Second World War as an overarching theme because the scale of seized and coerced property was far greater than wars preceding it. Domestic and international agencies have been discussing the cultural aftermath of looted works since the Hague Convention of 1954 and continue to this day to do so. The 2018 Justice for Uncompensated Survivors Today Act or JUST Act, confirms that these discussions are necessary and are complex enough to require continuous recontributions. These case studies contribute to the analysis of the effectiveness of these international and domestic conventions. Though not every story could be told, the selected studies offer a general overview of the current efforts in place for repatriation concerns.

My first recommendation is to create a department within the United States Department of the Interior that can specialize in the repatriation requests from Holocaust victims and their heirs. There is a basis for this as the Department of the Interior has already assisted in the creation of Native American Graves Protection and Repatriation Act (NAGPRA) and can utilize the framework displayed there to assist in the resolution of some of these issues. The second recommendation is to create a centralized database administered by the Monuments Men Foundation. With the foundation's mission to educate and continue the work of the Monuments Men and Women from World War II, the database would fit well within their objectives. Though these recommendations would be beneficial, there is no guarantee that institutions will follow the new set of guidelines without real enforcement mechanisms. There is also the issue with cultural property that resides within private collections and the art underground that would not appear on either

list as there is no incentive for either party to participate in the database. Despite these potential limitations, it is crucial for historic preservationists to incorporate repatriation of looted artifacts into their professional identity. According to Interpol, the International Criminal Police Organization, cultural property theft, illicit excavation, and export on the rise since the coronavirus pandemic in 2020. Most notably are the increases in illicit excavations, which rose 187% in the Americas compared to 2019.¹³⁶ The time to devise a plan for the protection and preservation of moveable cultural heritage is now. Through the retelling of narratives from the perspective of the thief, there is a lack of appreciation and understanding of history for generations to come as a result of the lack of repatriation efforts. Historic preservationists within the United States have the skillsets to provide guidance and clarity for this ambiguous and interdisciplinary topic.

This thesis has offered new insights into the role of preservation within the implantation of repatriation to this field of practice. The research obtained here may also be utilized explore the benefits of repatriation amongst other communities who have experienced looting of their cultural heritage. The expansion of this project may see researchers exploring archives within the most prominently effected areas from Nazi looting such as Germany, Austria, France, or Holland. Educative benefits can be derived from collaborative preservation projects that have not yet been explored in literature of the potential benefits of multidisciplinary preservation. Scholarships for preservationists in museum studies can expand their line of duties to provenance location tactics which improve authenticity and legitimacy of ownership of artifacts within the museum itself.

¹³⁶ Hope, "Interpol.," Interpol, "Assessing Crimes against Cultural Property 2020," *Cultural Property Crime Thrives throughout Pandemic* (France: Interpol, 2021), <https://www.interpol.int/en/News-and-Events/News/2021/Cultural-property-crime-thrives-throughout-pandemic-says-new-INTERPOL-survey>.

Repatriation has many benefits, not least of which is the fact it is an integral part of redefining longstanding relationships as well as a means to introduce rich cultural heritage to future generations.¹³⁷ Through further research, the continuation of this project will provide opportunities for protection through the repatriation of cultural heritage displaced during times of conflict.

¹³⁷ S. J. Simms and John D. McIntyre, "Toxic Representations: Museum Collections and the Contamination of Native Culture.," *The Canadian Journal of Native Studies* 34, no. 1 (2014): 151–69, <https://www.proquest.com/docview/1626237873>.

APPENDIX A

TIMELINE

- June 1907* — The Hague Convention
- 28 June 1919* — Germany signs the Treaty of Versailles
- 26 February 1925* — Hitler becomes leader of the National Socialist German Worker's Party
- August 1929* — Start of the Great Depression
- 30 June 1933* — Hitler becomes Chancellor
- 14 March 1933* — Hitler founds the Reich Ministry of Public Enlightenment and Propaganda headed by Joseph Goebbels
- 15 September 1935* — Nazi regime announces the Nuremberg Race Laws
- 18 July 1937* — The Great German Art Exhibition opens in Munich
- 19 July 1937* — The Degenerate Art Museum opens in Munich
- 8 November 1937* — The Eternal Jew Exhibition opens in Munich
- 12 March 1938* — Germany annexes Austria
- 31 May 1938* — Nazi regime announces the Law on Confiscation of Products of Degenerate Art
- June 1939* — Hitler initiates the Führermuseum Project
- 1 September 1939* — Germany invades Poland
- July 1940* — Creation of the ERR
- 14 June 1940* — Germany occupies Paris
- September 1940* — Creation of the Kümmel Report
- 7 December 1941* — Japan bombs Pearl Harbor
- 20 January 1942* — Nazi officials plan Germany's extermination of Jewish Europeans at the Wannsee Conference
- 23 June 1943* — President Franklin D. Roosevelt establishes the "American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas" – a branch of which is the MFAA
- 1944* — Rose Valland gives Captain James Rorimer records leading to the discovery of looted artworks from Neuschwanstein Castle and the Altaussee Salt Mines
- 30 April 1945* — Hitler commits suicide
- August 1945* — The US, UK, Soviet Union, and France create the IMT to prosecute major war criminals
- 2 September 1945* — World War II Ends
- 16 November 1945* — UNESCO is formed
- April 1947* — Creation of JCR
- 14 May 1954* — The Hague 1954 signed
- January 1969* — *Menzel v. List*

- 14 November 1970 — UNESCO 1970
- 1973 — Dina Babbitt returns to Auschwitz-Birkenau and is denied repatriation of original works
- June 1981 — *KZW v. Elicofon*
- October 1990 — Congress enacts NAGPRA
- 6 August 1998 — Heirless Property Issues of the Holocaust is discussed before the Committee on International Relations – House of Representatives
- 3 December 1998 — The Washington Principles signed
- June 2004 — *Altmann v. The Republic of Austria*
- 6 January 2006 — USCBS is formed
- June 2009 — The Holocaust Era Assets Conference meets resulting in the Terezin Declaration on Holocaust Era Assets and Related Issues to be signed
- 2009 — The Museale Verwervingen Project begins in the Netherlands
- July 2010 — The Leopold Museum settlement of the *Portrait of Wally* for \$19 million
- 2011 — The Mosse Art Restitution Project begins in Germany
- July 2012 — Return of the stolen painting, *Bouquet of Flowers in Clay Vase* to heir
- August 2013 — *Cassirer v. Thyssen-Bornemisza Collection Foundation*
- September 2016 — The Neue Galerie in New York returns painting seized by Nazis and then rebuys it in settlement
- 9 May 2018 — President Trump signs executive order of JUST Act
- October 2021 — Christie’s auction house sells once seized Van Gogh painting for \$30 million
- March 2021 — France returns stolen Klimt painting to heir
- April 2021 — Italy returns stolen Poussin painting to heir
- September 30, 2021 — *Cassirer v. the Kingdom of Spain* appeal
- January 2022 — NAGPRA hires full-time investigator to enhance museum compliance
- February 2022 — Ukraine evacuates museums to protect culturally significant artifacts as Russian forces invade
- April 2022 — eBay accused of profiting from Holocaust ‘collectables’

**This timeline is in no way comprehensive and is designed to provide a general overview of events related to the topics discussed in this thesis.*

APPENDIX B

ABBREVIATIONS

AMGOT - Allied Military Government for Occupied Territories

ARPA - Archaeological Resources Protection Act

ALIU - Art Looting Investigation Unit

CIA - Central Intelligence Agency

DAP - German Worker's Party (German: Deutsche Arbeiterpartei)

DRDR - Deliveries and Restitution Directorate

ERR - The Einsatzstab Reichsleiter Rosenberg

FBI - Federal Bureau of Investigation

FSIA - Foreign Sovereign Immunities Act

IMT - International Military Tribunal

JCR - Jewish Cultural Reconstruction, Incorporated

JUST - Justice for Uncompensated Survivors Today Act

MFAA - Monuments, Fine Arts, and Archives

NAGPRA - Native American Graves Protection and Repatriation Act

NSDAP - National Socialist German Worker's Party (German: Nationalsozialistische Deutsche Arbeiterpartei)

OSS - United States Office of Strategic Services

RMVP - Reich Ministry of Public Enlightenment and Propaganda

UNESCO - United Nations Educational, Scientific, and Cultural Organization

USCBS - United States Committee of the Blue Shield

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