

## EVERY OBJECT HAS AN OWNER – TAKING RESPONSIBILITY ON THE FUTURE OF LOOTED ART

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**Abstract:** *This paper aims to analyze the difficulties of conducting a provenance research for Nazi era looted art, in order to function within the premise that every object has an owner. Public and private collections worldwide contain an unknown number of objects for which there is no provenance, no history. Therefore, there is no understanding of who owned these objects. The purpose of this paper is to illuminate the axiom that no object is heirless unless it is labeled as such. Every object begins with an owner, its maker or its creator. Therefore, once it leaves its original, primal owner, the path of the object will be either licit or illicit depending on the circumstances of its removal, transfer, transactions that it was subjected to and the larger historical context in which these movements or translocations took place. This paper begins with a brief history of Nazi's organized plunder. The paper then moves to describe Provenance research and its importance within the field of Looted Art of Nazi Era. Furthermore, the paper reviews the efforts made by various actors, to raise the issue of looted art to an international level, and the attempts made to set various European Governments Cultural agendas. We will then discuss the Gurlitt Trove, which will lead us to describe the German national initiative, and raise questions as for what can be done to change the ongoing situation within European Culture, what can be done with lack of due diligence and can there be change by increased scrutiny of the trade.*

**Keywords:** *Provenance Research; Looted Art; Nazi Era; Heirless Object; European Culture*

### 1. INTRODUCTION

A new display at the Tel Aviv Museum of Art tells a surprising story of how a painting, seized by the Nazis in 1933 from the Jewish German media mogul Rudolf Mosse, entered the Israeli museum's collection 60 years later.

The painting, "*From Darkness to Light*" (1871) by the Dutch painter Jozef Israels, was identified by the Mosse Art Research Initiative in 2017. The painting was sold at an auction in 1934 and resurfaced on the market in 1993, when it was bought in good faith by the Tel Aviv-based art dealer, Meir Stern, an Auschwitz survivor himself. Stern sold the work to a private collector who donated it to the museum the same year. The case illuminates the challenges still involved in identifying and restituting Nazi-looted art. The Mosse Art Research Initiative is a provenance research project, which was set up by Mosse's heirs and the German government.

All through history, plunder and pillage of cultural assets was an integral part of war. Cities which contained private and public collections of

valuable goods were looted through time. The rise of the National Socialist party (NS) in 1933 showed to us all how a national revolution can be a cultural revolution as well as political or economic one. The forbidden fruits of this so called revolution have haunted us till this day and age.

This paper aims to analyze the difficulties of conducting a provenance research for Nazi era looted art in order to function within the premise that every object has an owner. This paper emphasizes that every object begins with an owner, its maker or its creator, and once it leaves its original, primal owner, the object will be either licit or illicit depending on the circumstances of its removal, transfer, and transactions that it was subjected to and the larger historical context in which these movements or translocations took place. This paper begins with a brief history of the Nazi organized plunder. It describes what consists of looted art and then moves to describe Provenance research and its importance within the field of Looted Art of Nazi Era. This paper will review the efforts made, by different actors, to raise the issue of looted art to an international level, and the attempts

made to set various European Governments Cultural agendas. We will then discuss the Gurlitt Trove, the story which brought the issue of provenance research, and its importance, back to the public international debate. The Gurlitt Affair will lead us to describe the German national initiative compared to Israel's helplessness in the situation, and raise questions as to what can be done to change the ongoing situation within European Culture, how we can create a cultural education towards due diligence, which should be integrated into the daily routine of anyone who handles cultural, artistic and ritual objects, and how we can increase scrutiny of the trade. The paper concludes by arguing that every object has an owner and to be true to that axiom research has to be conducted into the history of the objects so that something is known.

## 2. HISTORICAL OVERVIEW

**2.1 The Nazi's Organized Plunder.** Several scholars state that the theft of cultural property during WWII was not a mere incidence of war, but an official policy. In 1933, after Hitler's appointment as Chancellor (on January 30<sup>th</sup> 1933), the Nazi affiliated Combat League for German Culture held their first meeting in Stuttgart. New ideas were then revealed - the national revolution above all was a cultural revolution. Nazi art looting would not have been a war priority if Hitler and Goering were less passionate for the arts. In that case it would not have happened in the methodical manner and on the overwhelming scale it did in Occupied Europe (Feliciano, 1997:4).

Looted Art consists of artworks, including paintings, prints and sculptures, as well as other cultural property plundered from Jews by the Nazis, their allies and collaborators. It includes Judaica, meaning not only the ritual objects but also libraries and archival materials relating to Judaism and to Jewish organizations and Jewish life generally (Fisher, Weinberger, 2014:3).

During WW2 the Third Reich amassed hundreds of thousands of objects from occupied nations and stored them in several key locations in Europe (Kurtz 2006: 12-18). Several scholars review the following entities who carried out the plan to collect the appropriate art of Europe: **The Sonderauftrag Linz (Linz Special Commission)** – Operated directly under Hitler in order to turn the Austrian town of Linz into Europe's art capital. It was achieved by theft, confiscation, and forced sales. For example, the Rothschild collection in Vienna was seized for this purpose of serving as the core of the museum's collection. **The**

**Einsatzstab Reichsleiter Rosenberg (Special Command Force of Reich Leader Rosenberg) or ERR** - The Nazi looting agencies, created in 1939 by Alfred Rosenberg. Rosenberg, chief ideologue of the Nazi party, was authorized to collect libraries and archives that would become the core of the Institute for Biological and Racial Studies in Stuttgart and the Institute for Jewish Research in Frankfurt – both branches of the Nazi "Hohe Schule" he planned to establish after the war. In late 1940 the ERR was authorized to seize all property belonging to the Jews of France (Kurtz 2006: 20-24). **Reichsmarschall Hermann Göring** - Göring who was an eager and greedy art collector, controlled the ERR for a short period of time. Göring chose for himself the best of the confiscated artworks, mostly from what had been gathered at the Musée du Jeu de Paume in Paris. **Heinrich Himmler, the Reichsführer-SS, head of the Gestapo and the Waffen SS** - In order to establish the prehistoric roots of the Aryan race, Himmler led plunder operations in Poland and the Baltic states, focusing on archaeological items. By controlling the Reich's Security Main Office (RSHA), his men were ordered to loot every archive and library. At the end of WWII and even after, huge quantities of looted art and cultural goods were found by allied forces. A special task force was assembled by allied forces to handle the goods and first step was to transfer the goods to collection points. Collections points were established all over Germany, transferred goods were to be sorted and later on to be returned to their rightful owners. There was no controversy over what should be done with the object which had been seized or without compensation from the overrun countries. Those were to be returned to the countries from which they were taken. The question of how they should be returned had no simple answer (Nicholas, 1995:407). In May 1945 an immediate return of a number of universally recognized works of art had occurred, a program of "ad interim" restitution was to be agreed upon between the U.S. Army and the respective recipient nations. For the Americans it was an unwanted burden and they wanted a quick and unilateral action. By late June 1945, the principle of ad interim return was approved and reaffirmed at Potsdam (Nicholas, 1995:408). United States Military Law no. 59 went into effect in November 1947. It provided the legal basis for internal restitution. Similar restitution laws went into effect in France and in the Netherlands as well. Military Law 59 aimed for a "full and speedy" recovery, but the regulations adopted made it difficult to achieve.

On the one hand, there was a strict deadline for filing petitions for restitution (December 31, 1948 which was later extended to May 1, 1949) and on the other hand, it involved complicated and expensive procedures, which prevented many from claiming their property. Governments placed the burden of initiating and proving claims on the victims and their heirs. As we well know, most of them were struggling to survive and rebuild their lives again. They were mainly occupied with looking for their lost relatives and the remains of their families. By early 1947, several hundreds of paintings and drawings, thousands of Jewish ceremonial and ritual objects, and innumerable books remained in the Collecting points, unclaimed by the representatives of France, Holland, Italy, or any other European countries from which the Nazis had looted the artifacts. All these so called “displaced objects” were to be transferred to charitable organizations. Property at the American zone that was identified as having been looted from Jews or Jewish communal institutions but remained heirless and unclaimed was released in June 1948 by the Americans, to the Jewish Restitution Successor Organization (JRSO) (Sofer, 2003). JRSO’s goal was to institute proceedings in the American occupation zone for the restitution of heirless property of murdered people and dissolved organizations that had been pursued on racial grounds under the Nazi regime. The assets obtained in this manner were distributed by JRSO to Jewish institutions and organizations, primarily in the USA and Israel (Steinberg, 2009). Kagan and Weismann, who worked for the JRSO, reported that in February 1949, the Munich Collecting Point of the U.S. Military Government transferred to the JRSO eleven crates containing nearly 700 art objects. These were shipped to New York and were transferred to the storage rooms of the Jewish Museum in the city for examination and appraisal by experts and art dealers. Thirty-five old paintings that had undergone restoration were shipped to the Bezalel Museum in Israel. The remaining objects – among them some 100 paintings, 150 drawings and prints, 200 miniatures, a number of carved angels in wood, and a large figure of St. Ambrosius – were offered at a public sale in New York. The existence of the collection was publicly advertised so as to enable individual owners or their heirs to come forward, and several paintings were indeed claimed and withdrawn from the sale (Kagan, Weismann, 1949:31). The unclaimed items from the Munich collection point were distributed by the JCR as follows: 40% to Israel, 40% to the United States, and the remaining

20% to be divided between the Jewish communities of England, South Africa, Canada, and Argentina, where large congregations resided (Narkiss, 1954).

**2.2 Provenance Research and A New Awareness.** At the end of WWII, looted objects kept on changing hands, were transferred to dealers, art galleries and museums collections, and various private hands. Ultimately, it was up to the receiving governments of each nation if and under which circumstances they would return the objects to its rightful owners.

In recent years we can see that, museums in Europe and in United States have received and resolved an increasing number of restitution claims, for works of art in their collections, particularly the returns of Nazi era looted art. Such claims forced the collections handlers to clarify how those objects provenance, therefore, looking into their history of ownership – conducting provenance research. Provenance is the history of ownership of a valued object. It tells the story of the object’s journey. A full provenance provides us with a documented history of an object that can help prove its ownership, assign the object to a known artist, and establish the object’s authenticity. It is often used to establish an object’s value.

A new awareness of the increasing value of art and of the legal possibilities of recovering Jewish property arose in the late 1990s. Until then the world had 30 years of a relative silence. Europe post war was a wounded nation trying to rebuild itself. The unification of Germany in 1990 and dissolution of the Soviet Union in 1991 were followed by a number of goodwill agreements between Germany and the countries of the former USSR, as well as the opening of official negotiations on repatriation (Konstantin & Kozlov, 1991). Several books were published regarding cultural and art restitution, books which mapped out the scope of the Nazi’s plunder and the subject of looted art and the destruction of cultural heritage during WWII.

Significant developments can be found between the end of the 1980s and the 1990s. Among these developments we can find ICOM Code of Professional Ethics and in particular Principle 2.3, which deals with Provenance and due diligence, an international symposium named *The Spoils of War—World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property* was held in New York City in 1995 (Simpson, 1997), this international symposium addressed another dimension of the

war and elevated the topic to a public forum. But in 1998 a clear statement concerning art restitution, confiscated by the Nazi regime in Germany before and during WWII, was made for the first time. The Washington Conference Principles on Nazi-Confiscated Art was held from November 30 to December 3, 1998 and was attended by 44 states' representatives, 13 nongovernmental organizations, art museums and auction houses. The conference goal was to discuss Jewish losses in particular, including artworks, books, and archives, as well as insurance claims.

44 countries endorsed the Washington Principles and the task laid on each country was to adopt these principles to their own judicial system, and to legislate appropriate laws. Only 5 countries initiated some moves to implement the Principles to their internal laws, but only Austria legislated in 1998 the Federal Art Restitution Law. In 2009, Austria updated and amended its Restitution Law in order for it to be less restrictive. The Restitution Law allows state-run museums to de-accession artworks if they are proven to have been looted or otherwise misappropriated. In November 2018 the German Lost Art Foundation organized a follow up conference to mark the 20<sup>th</sup> anniversary of the Washington Conference to take stock of progress and examine what remains to be done to improve access to the just and fair solution. Twenty years on, and Nazi-looted art is still regularly restituted and many families are still seeking stolen art and cultural artifacts.

The main criticism over the Washington Principles is that firstly these Principles are not legally binding, second, the principles were devised only for public institutions and museums and some of the terms used are vague on purpose. The principles focus on artworks which were "confiscated by the Nazis" and other forms of dispossession during the Nazi dictatorship can equally be resolved in a "just and fair" manner. In 1999 the European Union issued the *Resolution 1205 of the Parliamentary Assembly of the Council of Europe* (PACE 1205/1999). The Assembly added its weight to the process of restitution of looted Jewish cultural property to original owners or their heirs (individuals, institutions or communities). It called for the organization of a European conference, further to that held in Washington on the Holocaust Era assets, with special reference to the return of cultural property and the relevant legislative reform.

In October 2000, The Council of Europe held the Vilnius International Forum in Lithuania as a follow-up to the Washington Conference of

December 1998. As a result, the Vilnius Forum Declaration was drafted. All participated governments were asked to reach just and fair solutions to retribute looted art. By 2001 the American Association of Museum's (AAM) published its seminal Guide to Provenance Research (Yeide *et al.*, 2001). Even before these written guidelines, museums were conducting Provenance research but its focus was different. The years 1933-1945 needed to be dealt differently, but did not receive the extra care needed. Some museums chose to turn a blind eye to this gap in information and received works of art from donors or purchased them while taking a chance on what the future will hold (Steinberg, 2009).

In 2009 a non-binding declaration was issued by 47 countries, agreeing on measures to right economic wrongs that accompanied the Holocaust against the Jews and other victims of Nazi persecution in Europe, i.e., the Terezin Declaration. The Terezin declaration is neither a treaty nor legally binding international agreement. A year later, 43 of the signatories (excluding Belarus, Malta, Russia and Poland) endorsed a companion document, the *2010 Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property*, which set best practices for immovable property. According to the guidelines, restitution of the property itself (*in rem*) is preferred, however when that is not possible, payment or substitute property that is fair and satisfactory is possible.

**2.3 The Gurlitt Trove and Germany National Initiative.** On September 22, 2010, Cornelius Gurlitt returned from Switzerland to Germany. German customs officials stopped him at the German-Switzerland border holding a large amount of cash. He claimed that he carried the allowed amount of cash over the border, explaining the money was proceeds from a sale of a painting. Suspicion of illegal actions led to a search warrant of his apartment in Munich. While searching his apartment, German custom found more than 100 framed art works and more than 1,000 unframed art works. The collection was left to Cornelius by his father Hildebrand Gurlitt. The Germans realized the importance of their findings, and demanded a full understanding of its ramifications before announcing their findings to the public. The collection was hidden for almost 70 years, sold piecemeal to cover 81-year-old so called "owner" Cornelius Gurlitt's medical bills. Cornelius's father was Hitler's art dealer. He traded art, mainly in Paris from 1941 to 1945, as one of four agents

tasked by the Commission for the Exploitation of Degenerate Art with selling the modern art which Hitler thought was un-nationalistic. Gurlitt's task was to liquidate funds through the modern art's sale and then purchase masterpieces for Hermann Goering's personal collection and Hitler's planned Linz museum. While doing so he built his own private collection by cheating his employers and work unauthorized transactions. Most of the collected art, it seems, was purchased in coerced sales or confiscated from Jewish houses, or from artists and collectors of degenerate art Hoffmann. (2018). After 1945, the Gurlitt family spent three years in house arrest until he convinced the authorities that he himself was prosecuted by the Nazis for his paternal grandmother who was Jewish. They let the family go and by 1948 they moved to Dusseldorf, where he became the director of a museum. His art collection returned to him in 1950 and was even part of a New York exhibition on 1956.

The Gurlitt Scandal, once broken to the public, had a hard effect on the German government. The legal ramifications were so complicated that German authorities, while trying to understand how it should be dealt with, hid the discovery for a year. Once the story broke to the public, the undealt provenance research of Nazi looted art was raised again at the public debate. Public criticism was directed at public institutions: against museums, libraries and archives. The Gurlitt story was not the first one, the interest had already been awakened worldwide in the 1990s, initially by scholarly publications and in 1998 by a Egon Schiele's painting *Wally* (Heus, 2018). Another famous restitution case was the Adele Bloch-Bauer painting (later a Hollywood film). Not all cases have a happy ending, curators find themselves torn between their wish to do the right thing, and their concern about giving back a work of art which is of great importance to the unity of the collection they are in charge of (Steinberg, 2008).

In Germany the initial preoccupation with the subject of looted, confiscated art came to light with the German Unification. After the Washington Conference of 1998, in December 1999, the declaration to identify and retribute cultural assets confiscated by the NS especially from Jewish property was adopted by the federal government of Germany, the federal states and local umbrella organizations. Since the year 2000, an infrastructure has gradually been established in Germany, which has facilitated the necessary urgent exchange between experts as well as the financial support of provenance research.

Between 1998 and 2000, the first provenance research team in Germany began working in museums. In November 2000, a small circle of four provenance researchers met for the first time and founded the provenance research working group. Its aim was to encourage mutual exchange and thus facilitate research. During the years the group continued to grow and by 2014 amounted to 90 researchers (many from Austria and Germany, only one from Switzerland). By 2018 it grew to 200 researchers. Since 2006, the "Federal Office for Central Services and Unresolved Property Issues" handles looted art that is still in German governmental possession, including the Remainder of Stock CCP (Central Collecting Point) covering among other objects, approximately 2,300 paintings, sculptures, or graphics. In November 2007, culture minister Neumann created the *Arbeitsstelle für Provenienzrecherche/-forschung* (Bureau for Provenance Investigation & Research) which is jointly financed by Germany's regional culture foundations. In response to the Gurlitt affair and its collection which needed to be identified, in February 2014 Germany's culture minister Monika Grütters proposed the establishment of a *Deutsches Zentrum Kulturgutverluste – German Lost Art Foundation*. The center aims to research public institutions as well as private ones that adhere to the Washington Principles. In 2019 it published a *Guide on Provenance Research in Germany*. Furthermore, in 2019, the Foundation published the first volume of "Provenire". It presents 40 paper results and experiences of provenance research on Nazi looting in Germany and contains material from 10 years of research in cultural institutions, which was funded by the Foundation. The second volume will contain the research work on the Gurlitt Trove and is scheduled to be published in April 2020. In January 2020 the Foundation opened a *Help Desk* - a central point of contact in Berlin for enquiries from those whose cultural assets were seized as a result of persecution under the National Socialist regime, and their descendants.

It seems that Germany has understood the importance of Provenance research.

**2.4 What Does the Future Hold?** On October 4<sup>th</sup>, 2018, the Center Organizations of Holocaust Survivors in Israel, the Claims Conference and the Ministry of Equality of Israel held a conference on the future of looted art in Jerusalem, Israel. The goal of the conference was to put this issue of looted art again on the agenda of the various Governments. Provenance Research is about

learning the complex history of an object as well as about being ethical and addressing the problem of illicit ownership.

On January 17, 2019, the European Parliament passed resolution 2017/2023(INI) on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars. The EU resolution refers, among others, to the Washington Conference Principles on Nazi-Confiscated Art, the Vilnius Forum and the Terezin Declaration, which were mentioned above. It states that there is no complete list of artworks restituted in recent years, and artworks that are still missing, and waiting to be returned to their rightful owners or to their heirs. This resolution touches the problematic area of private law and the insufficiently developed dimension of it, both at an international and European level. The European Parliament stated that it is time to put an end to the years of convolutions and nuances if a responsible and ethical European art market is to be established. It called on the Commission, in this regard, to identify civil law measures to help overcome the difficult problems encountered by private parties seeking the restitution of works of art genuinely belonging to them. It called on the Commission to develop a new debating framework for the identification of best practices and solutions for the present and the future. The European Parliament stated that provenance research is closely linked to the due diligence obligation applicable when acquiring works of art and constitutes a major concern for all the actors in the art market as acquiring stolen artworks knowingly or through negligence, is punishable under certain national laws. Care should be taken to create a comprehensive listing of all cultural objects, including Jewish-owned cultural objects plundered by the Nazis and their allies, from the time of their spoliation to the present day. The EU Parliament urged the Commission to support a catalogue system, to be used also by public entities and private art collections, to gather data on the situation of looted, stolen or illegally obtained cultural goods and the exact status of existing claims. It urged the Commission to support digitization projects that would establish digital databases or connect existing ones in order to facilitate the exchange of such data and provenance research. Furthermore, it has considered that to enable proper provenance research, a documentary record or a transaction register that is as detailed as possible needs to be created. The Parliament urged the Commission to encourage provenance research activities

throughout the Union and to support it financially. It was also suggested that the Commission will organize a discussion forum in order to exchange best practices and find the best solutions for the present and the future.

The question remains, how can we achieve an appropriate solution to the issue of Nazi era looted art? What is a just and fair solution? What approach will serve the cause better - a legislative one or a diplomatic one? Will the European Union (EU Parliament and the Commission) move further in this area?

A study in the field of provenance research of Nazi looted art will aim to contribute an important tier to the currently available knowledge. It will enable access to a new perspective and interpretation of the international policy which takes place in the provenance research and restitution of Nazi looted art. The main research objective is to develop a policy model for European countries in regard to handling Jewish owned looted art. This policy model will hopefully be able to function along the premise that every object has an owner. The research will focus on the behavior patterns of focused European states with regard to provenance research of Nazi looted art. The research will explore and map selective states activity and will attempt to put into place which set of rules, standards, and practices have been used by the European countries who wish to address provenance research of Nazi looted art. The research aims to develop propositions regarding what needs to be done to create a more ethical moral international society and to offer insights that would form an important component in creating a government's strategy in cultural diplomacy.

### 3. CONCLUSIONS & ACKNOWLEDGMENT

Culture heritage cannot be effectively protected without the market transparency and due diligence. Every artwork has an owner, might be its maker of its creator, but no object is heirless unless it is labeled as one. Once an object leaves its maker/ creator it is connected at any given point to a person, to a location and to a date. Therefore, an object always has an owner, whether identified or not.

Dealing with provenance research of looted artwork is a long, expensive and complex process. There are legal issues and many difficulties in finding heirs. States need to make the efforts and seek justice despite the passage of time. When it comes to looted artworks the wheels of justice turn slowly and it is the duty of leaders to turn them faster. Governments need to be encouraged to

adopt the Washington and Terezin principles into their legal systems and legislate appropriate laws. Acts of research must be carried out at national and institutional levels so as to determine which works are looted art. We need to remember that behind every confiscated, looted work of art lies the fate of an individual. Without engaging with basic exercise of due diligent the problem of provenance research will remain unsolved. The stories of these so called heirless objects need to be told, as they are our past and therefore our presence.

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