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Emily Carballi

Cardozo International & Comparative Law Review, carballi@law.cardozo.yu.edu

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The Current State of Art Restitution Laws

By: Emily Carballi



New York's Solomon R. Guggenheim Museum is currently in litigation regarding the Blue Period painting "Women Ironing" by Pablo Picasso.[1] The painting was originally owned by Karl Adler and his wife Rosi Jacobi.[2] Their heirs filed a suit in New York Supreme Court last week arguing that the painting would not have been sold but for the owner's duress due to Nazi persecution.[3] The family seeks return of the painting or compensation at the painting's current market value, estimated at up to \$200 million.[4]

Governments and institutions around the world are working to resolve art restitution cases.[5] The number of artworks in dispute taken during the Nazi regime may continue to rise quickly as it is estimated that over 650,000 pieces were stolen at the time.[6] Two examples of recent high-profile restitutions of Holocaust-related artworks are the return of Painting with Houses, a 1909 painting by Wassily Kandinsky, and the restitution of 15 paintings by Gustav Klimt and Marc Chagall sold under duress or looted by the Nazis.[7] Moreover, in 2021 and 2022 different museums in the United States agreed to return Benin Bronzes pieces to Nigeria.[8] This includes the Smithsonian and the Metropolitan Museum of Art.[9] Other countries have not put in efforts to rectify the stealing of artwork. For example, according to a report published in 2014, it seems that the Italian government has not put in sufficient efforts or legal resources in place to allow for the restitution of stolen property.[10]

While art restitution is clearly not a new concept, the scale at which it is currently happening has set the stage for new legal precedent for art cases around the world.[11] In 1998, the Austrian Parliament passed a law that required museums to allow their archives to be searched in order to return stolen property.[12] The Austrian government also set up the Austrian Art Restitution Advisory Board which is a panel assigned to deal with claims of stole art.[13] In 1999, the German government and sixteen individual German federal states adopted a declaration known as Gemeinsame Erklärung der

Bundesregierung, der Länder, und der kommunale Spitzenverbände zur Auffindung und zur Rückgabe NSverfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz.[14] Through this declaration, the national and state public museums pledged to use their best efforts to identify stolen items.[15] Germany also established the Limback Commission which is an advisory to hear and resolve claims regarding stolen art.[16] In December 2016, then-President Barack Obama signed the Holocaust Expropriated Art Recovery Act (“HEAR Act”).[17] The HEAR Act allows victims and their descendants six years from when they discover the artwork was stolen between January 1, 1933 and December 31, 1945 to establish right of ownership.[18] The Act extended the statute of limitations to bring a claim and was a substantial step in the United States.[19] In France, the Parliament has found that a national law protecting art did not apply to stolen works.[20] The Heritage Code states that works of art held in national French collections cannot be taken or transferred out.[21] The French Parliament has argued around the Heritage Code and approved restitutions by arguing that the artwork is outside of the scope of protection for French public collections.[22] In the United Kingdom, a law was passed in 2009 called the Holocaust (Return of Cultural Objects) Act.[23] The act allows national museums to “restitute objects looted or subject to forced sales during the 1933-45 period.”[24]

Though the laws have been changing and expanding to further protect victims of art theft and their families, there are still many issues and difficulties with the discovery and subsequent restitution of the stolen art.[25] In the Holocaust Expropriated Art Recovery Act of 2016: An Ineffective Remedy for Returning Nazi-Looted Art by Soffia H. Kuehner Gray, the author recommends that governments across the world enact laws that (1) further extend the statute of limitations on stolen art claims, (2) require museum compliance with restitution laws, (3) require private collector compliance with restitution laws, and (4) create a government-sponsored registry which allows victims and their families to identify missing artwork and file claims to seek their return.[26]

Emily Carballi is a Staff Editor at CICLR.

[1] *More Restitution Problems for Picasso, Van Gogh and British Museum Antiques*, Artlyst (Jan. 25, 2023), <https://artlyst.com/news/more-restitution-problems-for-picasso-van-gogh-and-british-museum-antiquities/> [https://perma.cc/VCU6-RVBU].

[2] *Id.*

[3] Adam Schrader, *Jewish Family Sues NYC’s Guggenheim Museum Seeking Return of Picasso Painting*, United Press Int’l (Jan. 29, 2023, 11:58 AM), https://www.upi.com/Top_News/US/2023/01/29/jewish-family-sues-guggenheim-museum-nyc-return-picasso-painting/6461675011172/ [https://perma.cc/E9X8-6Z6V]. The painting was sold for \$1,552, which would be worth \$32,000 today. *Id.*

[4] *Id.*

[5] *Id.*

[6] Soffia H. Kuehner Gray, *The Holocaust Expropriated Art Recovery Act of 2016: An Ineffective Remedy for Returning Nazi-Looted Art*, 2019 Univ. Ill. L. Rev. 363, 365 (2019).

[7] Constanza Ontiveros Valdés, *The Changing Landscape of Art Restitution Around the World*, Art Collection (July 20, 2022), <https://artcollection.io/blog/the-changing-landscape-of-art-restitution-around-the-world> [https://perma.cc/45U4-W9KM].

[8] *Id.*

[9] *Id.*

[10] Gray, *supra* note 6, at 378-79.

[11] Valdés, *supra* note 7.

[12] Gray, *supra* note 6, at 377.

[13] *Id.* at 377.

[14] *Id.* at 375.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 366.

[18] Gray, *supra* note 6, at 366.

[19] *Id.*

[20] Charity Gates, *Who Owns African Art? Envisioning a Legal Framework for the Restitution of African Cultural Heritage*, 3 *Cardozo Int'l & Compar. L. Rev.* 1131, 1142 (2020).

[21] *Id.*

[22] *Id.*

[23] *Id.* at 1143.

[24] *Id.*

[25] Gray, *supra* note 6, at 367.

[26] *Id.* at 392-98.