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# Labeling “the Last Prisoners:” New Legislation Requires New York Museums to Identify Nazi-looted Artwork

BY STEPHANNY AVSHALOMOV / ON OCTOBER 4, 2022



*Photo from Daniel Tong on Unsplash*

“[S]he walked through the apartment and she turned to the SS men and she said, ‘Ich habe gernes. Alles.’ – ‘I like it. All of it.’ ... they took everything out of [ ] our house.”<sup>1</sup>

The “greatest art theft in history” was executed alongside the largest mass murder in history.<sup>2</sup> In 1940, Hitler established the Einsatzstab Reichsleiter Rosenberg (ERR) solely to confiscate and destroy art in German-occupied territories.<sup>3</sup> When discussing the Holocaust, which included the grueling systematic annihilation of European Jews, the importance of artwork seems trivial. It, however, must be recognized: “You can wipe out an entire generation, you can burn their homes to the ground and somehow they’ll still find their way back. But if you destroy their history, you destroy their achievements and it’s as if they never existed.”<sup>4</sup> Adolf Hitler and his Nazi regime machinated an ethnic cleansing and directed an aesthetic cleansing simultaneously, seizing the property of Jews, specifically artwork, to dehumanize and strip them of their cultural and religious identity.<sup>5</sup>

The warriors of the Holocaust and their surviving families have and continue to seek restitution of what was once theirs. Often referred to as the “last prisoners of war,” repossessing artwork allows one to reclaim a piece of their stolen identity and celebrate their survival.<sup>6</sup> The *Monuments Man*, a movie based on a true story, portrays a treasure

hunt-like, “seemingly impossible mission” to rescue Nazi-looted artwork to “avoid the destruction of 1,000 years of culture.”<sup>7</sup> However, even once the art is located, the journey to reunite the artwork with its rightful owner has only begun. There have been both domestic and international efforts to help streamline the process, though success is an anomaly, and most efforts have been discouraging and infeasible procedurally.

In 2016, President Barack Obama signed the Holocaust Expropriated Art Recovery

(HEAR) Act into law.<sup>8</sup> The HEAR Act attempted to reduce the number of procedural hurdles litigants face in bringing suit to recover their stolen art by limiting the number of claims “rejected under the guise of equity and procedural defenses.”<sup>9</sup> The Act created a federal statute of limitations period and aimed to ensure that claims are not unfairly barred by the statute of limitations but rather resolved on the merits.<sup>10</sup> Unfortunately, the potential of this Act in aiding the restitution of Nazi-looted art has been unfulfilled. There exists many interpretative challenges as the text is unclear, ambiguous, and the application and scope of the statute are uncertain, so courts “have not applied the Act faithfully or fairly.”<sup>11</sup>

Governor of New York Kathy Hochul’s legislative package aimed at honoring Holocaust survivors in educational, cultural, and financial institutions is a step in the right direction. It requires museums to identify and provide information about Nazi-looted art with a “prominently [placed] placard,” schools to provide Holocaust education, and the New York State Department of Financial Services to aid in reparation payments.<sup>12</sup> A 2020 study revealed that “nearly [20%] of millennials and Gen Z in New York feel the Jews caused the Holocaust.”<sup>13</sup> This abhorrent statistic was corroborated by the 60% of New York millennials, unaware that six million Jews were killed in the Holocaust, and 58% unable to name a concentration camp or ghetto.<sup>14</sup>

In a press release, Governor Hochul said, “We owe it to them, their families, and the six million Jews who perished in the Holocaust to honor their memories and ensure future generations understand the horrors of this era.” New York State Senator Anna M. Kaplan stated that “600,000 paintings were stolen from Jewish people not only for their value, but to wipe our culture and identity off the face of the Earth. Today, artwork previously stolen by the Nazis can be found hanging in museums around New York with no recognition of the dark paths they traveled there.”<sup>15</sup> Passively displaying stolen artwork means condoning the actions that led to its possession, thus undermining legal and moral values.<sup>16</sup> To put things into perspective, the Museum of Modern Art is home to about 800 paintings that may have been in Europe during the Nazi era with no indication to the public of their history.<sup>17</sup> Museums must now sift, determine, and note which pieces were looted during the Holocaust era in an effort to educate and be transparent with the public about the artwork’s dark journey.<sup>18</sup>

New York State Assemblymember Nily Rozic emphasized that “Never Again must serve as a call to action, not just empty words we say.”<sup>19</sup> Yes, this legislation largely does not touch upon nor aid with the challenges faced by victims and their heirs in Holocaust art restitution cases and procedure, but it does serve a different purpose. Greg Schneider, Executive Vice President at the Claims Conference, admits that “[e]ven if ultimately pieces are not returned to their rightful owners, this is still an important educational

opportunity... [for people] to know that they are looking at a looted piece is important and opens up a new avenue for teaching. The history is far greater than what you see hanging on the wall.”<sup>20</sup>

New York museums are some of many places housing Nazi-looted artwork. Amplifying this legislation on a national level would better ensure that transparency is relayed in the history and journey of the stolen work so that the world may Never Forget. Regarding the legal process, there has been discussion on amending the provisions of the HEAR Act to achieve Congress’ intent in justly and fairly resolving restitution claims, and alternatively to establish an alternative form of dispute resolution for Holocaust art restitution cases.<sup>21</sup> Composing an American independent adjudication panel with members of the international legal and arts communities has also been a proposed solution to better hear and resolve art restitution cases: Experts, and not judges, are needed to “rectify art theft.”<sup>22</sup>

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1. Interview with Bella Jakubowicz Tovey, U.S. Holocaust Mem’l Museum Collection (Feb. 15, 1990).
2. Stephanie J. Beach, Nazi-Confiscated Art: Eliminating Legal Barriers to Returning Stolen Treasures, 53 Loy. L.A. L. Rev. 853, 855 (2020).
3. Jennifer A. Kreder & Virginia L. Schell, The Constitutionality of the HEAR Act: Empowering American Courts to Return Holocaust-Era Artwork and Honor History, 30 DePaul J. Art Tech. & Intell. Prop. L. 1, 8 (2020).
4. The Monuments Men (Columbia Pictures Industries, Inc. & Twentieth Century Fox Film Corporation 2014).
5. Beach, supra note 2.
6. Thérèse O’Donnell, The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?, 22 Eur. J. Int’l L. 49, 50 (2011) (Eng.).
7. The Monuments Men, supra note 4.
8. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524.
9. Kreder & Schell, supra note 3, at 68.
10. Holocaust Expropriated Art Recovery (HEAR) Act Signed Into U.S. Law, Claims Conference-WJRO Looted Art & Cultural Property Initiative, <https://art.claimscon.org/advocacy/holocaust-expropriated-art-recovery-hear-act-signed-u-s-law/#:~:text=What%20the%20HEAR%20Act%20does,persecution%20during%20the%20Nazi%20era> [https://perma.cc/WC9J-TYFJ].
11. Simon J. Frankel & Sari Sharoni, Navigating the Ambiguities and Uncertainties of the Holocaust Expropriated Art Recovery Act of 2016, 42 Colum. J.L. & Arts 157, 158 (2019); Simon J. Frankel, The HEAR Act and Laches After Three Years, 45 N.C. J. Int’l L. 441, 443 (2020).

12. N.Y. S. B. S117A, <https://www.nysenate.gov/legislation/bills/2021/S117> [<https://perma.cc/6PUW-ZSL8>].
13. First-Ever 50-State Survey on Holocaust Knowledge of American Millennials and Gen Z Reveals Shocking Results, Claims Conference on Jewish Material Claims Against Germany (Sept. 16, 2020), <https://www.claimscon.org/millennial-study/> [<https://perma.cc/U45F-7YT2>].
14. Id.
15. Press Release, Department of Financial Services (Aug. 10, 2022), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202208101](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208101) [<https://perma.cc/2ZKF-7M88>].
16. Elisabeth K. Pomeroy, “Unlawfully Lost” Artwork from the Nazi Takeover: Redefining Forced Sales in the Holocaust Expropriated Art Recovery ACT of 2016, 21 Wake Forest J. Bus. & Intell. Prop. L. 468, 495 (2021).
17. Haley Cohen, NY Museums Scramble to Acknowledge Nazi-looted Art, The Jerusalem Post (Aug. 26, 2022, 21:52), <https://www.jpost.com/diaspora/article-715590> [<https://perma.cc/JKX6-D23A>].
18. Id.
19. See supra note 15.
20. Cohen, supra note 17.
21. Nicholas Joy, Cassirer v. Thyssen-Bornemisza Collection Foundation: The Holocaust Expropriated Art Recovery Act Was Unveiled but Congress Still Has Work to Do, 49 Golden Gate Univ. L. Rev. 3, 6 (2019).
22. Beach, supra note 2, at 884.