

RESTITUTION OF ART LOOTED DURING THE NAZI ERA, 1933-1945: IMPLICATIONS FOR AUSTRALIA

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Over the last few years in Australia disputes have arisen over the ownership of artworks which were confiscated from their Jewish owners during the Nazi era, 1933-1945. This article describes the confiscation and looting of artworks in Europe and the implications of those activities for the provenance of ownership after the Second World War. The article then surveys retrieval actions, and the various international conferences which addressed the restitution of looted artworks, including the Washington Conference on Holocaust-Era Assets of 1998, the 2000 Vilnius International Forum on Holocaust-Era Looted Cultural Assets and the 2009 Holocaust-Era Assets Conference in Prague. The domestic responses in the USA and UK to the confiscation principles enunciated in these conferences are surveyed with a view to exploring the possible responses of the Australian Government to the issue of restoring looted artworks to those claiming ownership. This is an issue which has not been considered in any detail in Australia and for which the initiatives of the USA and UK, in particular, provide useful precedents.

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I INTRODUCTION

In December 2013 the Australian Broadcasting Corporation reported that the National Gallery of Victoria (NGV) had been asked to hand over the gallery's "Head of a Man", apparently by Vincent Van Gogh, that once belonged to Richard Semmel, a Jewish textile factory owner and member of the German Democratic Party who fled to the Netherlands in April 1933.¹ He had settled in New York in 1941, dying there in poverty in 1950.² The painting had been bought in an auction in Amsterdam in June 1933 by the Parisian dealer Guy Stein who sold it in 1935 to Viscount Eccles, subsequently a UK Arts Minister, who mentioned in his book *On Collecting*³ that it had come from a from "a refugee from Hitler's Germany".⁴ Eccles then resold it six months later to British MP, Victor Cazalet, who then sold the portrait to the National Gallery of Victoria in 1940.⁵

The claimants to the painting were two sisters who were the granddaughters of Grete Gross-Eisenstaedt, who became the companion of Semmel and looked after him in New York after his wife died in 1945. The sisters were reported to have pursued claims for a number of the artworks that Semmel had owned. Without conceding that the painting was a Van Gogh or that it had been owned by Mr Semmel, the NGV stated that it "was committed to honouring the principle of restitution of art work confiscated or sold under duress due to Nazi occupation."⁶

The case is a good illustration of some of the difficulties involved in the provenance of despoiled art. The NGV had already established that the painting had been sold in the June 1933 auction in Amsterdam, but the auction house and its records were destroyed in the Second World War and the owner or consignee of the artworks was unknown. However, in 2011, gallery researchers located a copy of the auction catalogue and in tracing the lot

¹ See Michael Bleby, 'Questions for NGV as spectre of Nazi plunder haunts global art collections', *Business Review Weekly*, 13 November 2013 <http://www.brw.com.au/p/investing/questions_for_ng_art_spectre_collections_oRdereGiSgoCgfabR9n1cP>.

² Ibid.

³ (Longmans, 1968).

⁴ Martin Bailey, 'Heirs of refugee who fled Nazis seek portrait from Australian gallery', *The Art Newspaper*, 30 January 2014 <<http://www.theartnewspaper.com/articles/Heirs-of-refugee-who-fled-Nazis-seek-portrait-from-Australian-gallery/31613>>.

⁵ See ABC, 'NGV asked to hand over Van Gogh looted by Nazis', *AM*, 19 December 2013 (Samantha Donovan) <<http://www.abc.net.au/am/content/2013/s3914462.htm>>.

⁶ Ibid.

numbers of other works in the sale were able to confirm that the owner was Richard Semmel.⁷

The case also illustrates the importance for countries like Australia to establish procedures for the restitution of art looted by the Nazis, along the lines of those developed by other countries.

This article looks at the history of the confiscation and looting of art by the Nazis, the post War responses of countries to this “spoliation” and Australia’s introduction to this issue.

II CONFISCATION AND LOOTING OF ART IN WWII

From its accession to power in 1933 until the end of World War II, the Nazi regime and its collaborators orchestrated a system of confiscation, coercive transfer, looting and destruction of cultural objects in Europe. Art objects and other cultural items were unlawfully and often forcibly removed from their owners. Petropoulos, estimates that between 1933 and 1945 the Germans stole 650,000 works of art.⁸ These included paintings, sculpture, objets d’art and tapestries, but do not include other cultural property such as furniture and books.⁹ A particular target for despoliation was the European Jewish community.¹⁰ The acquisition of cultural property began with forced sales and seizures and from the “Aryanisation” of Jewish-owned art galleries and dealerships.¹¹ Art was exchanged for exit visas and then with the outbreak of war was simply confiscated from imprisoned owners.¹²

The Nuremberg War Tribunal traced the origins of the Nazi confiscation policy to a decree of Hitler of 29 January 1940 directing all sections of Party and State to cooperate with Nazi Party ideologue, Reichsleiter Alfred Rosenberg¹³ in

⁷ Bleby, above n 1.

⁸ House of Commons Culture, Media, and Sport Committee, UK Parliament, *Seventh Report: Cultural Property: Return and Illicit Trade* (2000) Minutes of Evidence, 110.

⁹ Ibid.

¹⁰ See Richard Z Chesnoff, *Pack of Thieves: How Hitler and Europe Plundered the Jews and Committed the Greatest Theft in History* (Doubleday, 1999).

¹¹ See Jonathan Petropoulos, *Art as Politics in the Third Reich* (University of North Carolina Press, 1996) 132.

¹² Chesnoff, above n 10.

¹³ See Robert Cecil, *The myth of the master race: Alfred Rosenberg and Nazi ideology* (Batsford, 1972); Fritz Nova, *Alfred Rosenberg, Nazi Theorist of the Holocaust* (Hippocrene Books, 1986); Ernst Piper, ‘Alfred Rosenberg – der Prophet des Seelenkrieges. Der gläubige Nazi in der Führungselite des

the establishment of a "Hohe Schule" as the centre for national-socialistic ideological and educational research.¹⁴ A further decree of 1 March 1942 authorized Rosenberg to seize, inter alia, relevant material in the possession of Jews.¹⁵ To coordinate seizures the Einsatzstab Reichsleiter Rosenberg (ERR) was established. Between 1940 and 1945 it operated in France, Belgium, the Netherlands, Luxembourg, Norway and Denmark.¹⁶ Activities were carried out throughout the Occupied Eastern Territories, including the Baltic states and the Ukraine, as well as in Hungary, Greece and Yugoslavia. The function of the ERR included not only the seizure of books and scientific materials specified in the original Hitler Order, but the seizure of private art treasures, public art treasures and household furnishings.

The first official rounds of Nazi confiscations began in Austria after the 1938 Anschluss, when the collections of Vienna's prominent Jewish families were taken. Jews were required to register their personal property with the local police and artworks paid for exit visas and taxes.

In April 1938, Göring issued the "Decree Regarding the Reporting of Jewish Property," which stated that no later than June 30, 1938, every Jew in the Reich was required to assess all property owned, domestic and foreign, and to report these findings to Nazi authorities. Jewish business owners, including a number of very well known art dealers, were forced to sell their shops and assets to non-Jews.¹⁷

nationalsozialistischen Staates' in Michael Ley and Julius H Schoeps (eds), *Der Nationalsozialismus als politische Religion* (Bodenheim bei Mainz, 1997) 122.

¹⁴ Office of the United States Chief Counsel for Prosecution of Axis Criminality, *Nazi Conspiracy and Aggression: Opinion and Judgment* [chapter: The Plunder of Art Treasures] (US Government Printing Office, 1946) 1097. For discussion of Nazi art seizure policies and laws see Hellmut Lehmann-Haupt, *Art under a Dictatorship* (Oxford University Press, 1954); Hildegard Brenner, *Kunstpolitik des Nationalsozialismus* (Rowohlt, 1963); Berthold Hinz, *Art in the Third Reich* (Pantheon Books, 1979); Jonathan Petropoulos, *Art as Politics in the Third Reich* (University of North Carolina Press, 1996); Jonathan Petropoulos, 'German Laws and Directives Bearing on the Appropriation of Cultural Property in the Third Reich' in Elizabeth Simpson (ed.), *The Spoils of War: The Loss, Reappearance, and Recovery of Cultural Property During and After World War II* (Harry Abrams, 1996) 106-11; Monika Puloy, 'High Art and National Socialism Part I: The Linz Museum as Ideological Arena' (1996) 8(2) *Journal of the History of Collections* 201; Birgit Schwarz, *Hitler's Museum: Die Fotoalben Gemäldegalerie Linz* (Böhlau Verlag, 2004).

¹⁵ *Ibid.*

¹⁶ See House of Commons Culture, Media, and Sport Committee, above n 8, 1098.

¹⁷ See Jonathan Petropoulos, *The Faustian Bargain: The Art World in Nazi Germany* (Oxford University Press, 2000); Jonathan Petropoulos, 'The Art World in Nazi Germany: Choices,

Hitler's proposed grand museum (the Führermuseum) in Linz was planned as part of the glorification of the German race and as a cultural rival to Vienna, and the Hermann Göring established a personal collection at his country estate Carinhall.¹⁸ The ERR, located in the Jeu de Paume Museum in Paris from 1940 to 1944, confiscated more than 21,000 individual objects from over 200 Jewish-owned collections destined for Hitler and Göring's collections.¹⁹ Works considered to be "degenerate", such as cubist, impressionist and expressionist works were sold at auction in the international art markets, particularly in France and Switzerland to raise revenues.²⁰ The ERR maintained extensive documentation of its acquisitions which has proved to be useful in identifying looted art.

The process of stripping Jews of their property, or "spoliation" was the first step in the process leading to their genocide. Thus involvement in looting formed part of the accusations against several leading Nazis at the Nuremberg war trials.

III RESPONSES TO SPOILATION

The Pillaging of private property in occupied states in war-time was outlawed by the 1907 Hague Convention Respecting the Laws and Customs of War on Land, to which Germany was a signatory.²¹ Some awareness of this illegality

Rationalization, and Justice' in Frank Nicosia and Jonathan Huener (eds), *The Arts in Nazi Germany* (Berghahn Press, 2006).

¹⁸ See Günther Haase, *Die Kunstsammlung des Reichsmarschalls Herman Göring - Eine Dokumentation* (Edition q, 2000); Günther Haase, *Die Kunstsammlung Adolph Hitler - Eine Dokumentation* (Edition q, 2002); Nancy H Yeide, *Beyond the Dreams of Avarice: The Hermann Goering Collection* (Laurel Publishing, 2008); Kenneth D Alford, *Hermann Goring and the Nazi Art Collection: The Looting of Europe's Art Treasures and their Dispersal After World War II* (McFarland, 2012).

¹⁹ See Anne Rothfeld, 'Nazi Looted Art: The Holocaust Records Preservation Project' (2002) 34(2) *Prologue Magazine* < <https://www.archives.gov/publications/prologue/2002/summer/nazi-looted-art-1.html> > n 13.

²⁰ See David Roxan and Ken Wanstall, *Rape of Art: Hitler's Plunder of the Great Masterpieces of Europe* (Coward-McCann, 1965); Jonathan Petropoulos, 'Not a Case of 'Art for Art's Sake': The Collecting Practices of the Nazi Elite' (1994) 32 *German Politics and Society* 107; Lynn H Nicholas, *Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War* (Alfred A Knopf, 1994).

²¹ See Dietrich Schindler and Jiri Toman, *The Laws of Armed Conflicts* (Martinus Nihjoff, 3rd ed, 1988) 69-93; Lawrence M Kaye, 'Laws in Force at the Dawn of World War II: International Conventions and National Laws' in Elizabeth Simpson (ed.), *The Spoils of War: World War II and its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property* (Abrams, 1997) 100-5.

may explain the way in which pillagers sought to colour their confiscations as genuine sales transactions.²² On January 5, 1943, the seventeen Allied governments, including Australia and the French National Committee, issued the Inter-Allied Declaration against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control.²³ It declared that the allies “intend to do their utmost to defeat the methods of dispossession practised by the Governments with which they are at war against the counties and peoples who have been so wantonly assaulted and despoiled.” They reserved their rights “to declare invalid any transfers of, or dealings with, property, rights and interests of any description” whether such dealings had taken the form of open looting or plunder, “or of transactions apparently legal in form, even when they purport to be voluntarily effected.”

The Monuments, Fine Arts, and Archives (MFA&A) Programme was set up by the US War Department in 1943 to search for and salvage looted art.²⁴ Through seized inventory records each artwork was returned to its country of origin for disposition, although theft of some art by allied soldiers was a significant problem.²⁵ Artworks were sent to Collecting Points, the main one of which was located in Munich in 1949. The MFA&A documents, together with responsibility for restitution was handed over to the Bavarian government in 1952, which created the *Treuhandverwaltung* (Trust management).

Responsibility for determining rightful ownership and securing restitution was devolved upon the relevant national authorities.

²² See *ibid* 287.

²³ Available at <<http://www.lootedartcommission.com/inter-allied-declaration>>.

²⁴ See Walker Hancock, ‘Experiences of a Monuments Officer in Germany’ (1946) 5(4) *College Art Journal* 27; Thomas Carr Howe Jr., *Salt Mines and Castles: the discovery and restitution of looted European Art* (Bobbs-Merrill, 1946); Ardelia R Hall, ‘The U.S. Program for Return of Historic Objects to Countries of Origin, 1944-1954’, *Department of State Bulletin* 31, no 797 (October 4, 1954) 493-498; Michael J Kurtz, *Nazi Contraband: American Policy on the Return of European Cultural Treasures, 1945-1955* (Garland, 1985); Craig Hugh Smyth, *Repatriation of Art from the Collecting Point in Munich after WWII* (Gary Schwartz | SDU, 1988); Nicholas, above n 20; Jeannette Greenfield, *The Return of Cultural Treasures* (Cambridge University Press, 2nd ed, 1996); Elizabeth Simpson, *Spoils of War – World War II and its aftermath: the loss, reappearance, and recovery of cultural property* (Harry N Abrams, 1997); Walter I Farmer, *The Safekeepers: A Memoir of the Arts at the End of World War II* (Walter de Gruyter, 2000); Michael J Kurtz, *America and the Return of Nazi Contraband* (Cambridge University Press, 2006); Robert M Edsel with Bret Witter, *The Monuments Men: Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History* (Center Street, 2009).

²⁵ See Kenneth D Alford, *The Spoils of World War II: The American Military’s Role in Stealing Europe’s Treasures* (Birch Lane, 1994); Konstantin Akinsha and Grigorii Kozlov, *Beautiful Loot: The Soviet Plunder of Europe’s Art Treasures* (Random House, 1995).

IV HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (1954)

The primary convention protecting art, monuments, cultural institutions, and cultural property in general from destruction by war or removal by looting is the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).²⁶ As of 12 March 2015 this convention has been signed by 126 States²⁷ and thus the basic principles concerning respect for cultural property enshrined in it have become part of customary international law.

Article 4.1 requires signatories to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property which is likely to expose it to destruction or damage in the event of armed conflict and by refraining from any act of hostility, directed against such property. Article 4.3 provides that the High Contracting Parties

further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

“Cultural property” is defined in Art. 1(a) for the purposes of the Convention, to include “works of art; manuscripts, books and other objects of artistic, historical or archaeological interest”.

The First Protocol to the 1954 Hague Convention, which was adopted at the same time as the Convention in Article 1 requires contracting parties to undertake to prevent the export of cultural property as defined in the 1954 Hague Convention. Article 3 of the First Protocol requires the return of such cultural property. Article 4 requires contracting parties who fail to prevent the

²⁶ This convention is a descendent of Article 36 of the Instructions for the Government of Armies of the United States in the Field, General Order no 100 (Lieber Code) 24 April 1863, which provided: If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

²⁷ See http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html - STATE_PARTIES.

export of cultural property to “pay an indemnity to the holders in good faith of any cultural property which has to be returned”.

The 1954 Hague Convention has to be distinguished from the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted 14 November 1970. This was promulgated largely in response to the desire of former colonised peoples to retrieve their cultural heritage from their former colonial overlords. It operates on the request of despoiled countries for the restitution of their looted art, exported contrary to their laws.²⁸ In this regard, it is to be contrasted with the despoliation suffered by individuals during the Second World War.

V RETRIEVAL ACTIONS

International action and domestic enforcement concerning the theft and restitution of art looted during the Second World War was slow to get under way. In part this was attributable to the low priority of restitution compared with the egregious violations of human rights during the Holocaust. Many of the victims of confiscation had not survived the War, to be in a position to claim their property. It has been pointed out that “many claimants are elderly and do not have the money or stamina to file a lawsuit or pay for archival research.”²⁹ The identification of the location of stolen art has been time consuming causing its retrieval on occasion to be defeated by the time limitation of such actions in a number of jurisdictions. In some cases the art was sold under compelled sales and issues arise as to whether good consideration has been given. Given the secrecy which surrounds art transactions, some purchasers have claimed that ignorance of the origin of looted art, particularly where they have paid a fair market price to a vendor.

²⁸ For a discussion on the origin and effects of this convention see Patrick O’Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Institute of Art and Law, 2000); Paul Bator, ‘An Essay on the International Trade in Art’ (1982) 34 *Stanford Law Review* 275; Ronald Abramson and Stephen Huttler, ‘The Legal Response to the Illicit Movement of Cultural Property’ (1973) 5 *Law and Policy in International Business* 932; John Gordon, ‘The UNESCO Convention on the Illicit Movement of Art Treasures’ (1971) 12 *Harvard International Law Journal* 537.

²⁹ Molly Ann Torsen, ‘National Reactions to Cultural Property Looting in Nazi Germany: A Window on Individual Effort and International Disarray’ (2005) 9(4) *Electronic Journal of Comparative Law* <<http://www.ejcl.org/94/art94-1.html>> quoting Alan Riding, ‘Whatever Happened to the Art the Nazis Stole?’, *International Herald Tribune*, 13 May 2004, 2.

Even where it is established that an item has been wrongfully taken the court may allow a defendant to retain the work in exchange for the payment of financial compensation, or the artwork might be donated to a museum.

An illustration of all of these problems is the controversy surrounding the Degas painting “Smokestacks in a Landscape” looted from Friedrich and Louise Gutmann who both died in concentration camps.³⁰ The painting had been confiscated in Paris by the Germans and was transferred to a Swiss dealer and then in 1951 to a New York collector (Emile Wolf) who sold on in 1987 to Daniel Searle, Trustee of the Art Institute of Chicago and pharmaceutical magnate for \$850,000. The painting was displayed at the Art Institute of Chicago in 1994. In 1996 the Gutmann heirs filed an action against Daniel Searle claiming for the restitution of the painting. Searle claimed the Guttmanns had sold the painting at the beginning of the War, whereas the heirs said that it had been sent to Paris for safe keeping. None of these facts could be established, nor could the identity of the vendor in the 1951 sale. After four years of litigation and \$US200,000 in legal fees, the Gutmann heirs sought the assistance of Hector Feliciano, an expert on Nazi-looted art³¹, who arranged an out of court settlement under which both sides The Gutmann heirs and Searle agreed to halve the ownership of the painting. Searle transferred his share to the Art Institute of Chicago, where he was a Trustee. The Art Institute bought the heirs’ interest at fair market value, as assessed by an independent expert and they ultimately received about \$US500,000 which just covered the costs of litigation.³²

Observing the course of this litigation, Norman Palmer has observed that it can be questioned “whether anyone, other than a State, a State-supported party, an oil company, or a private individual of enormous wealth, could seriously contemplate” such litigation.³³

³⁰ The details of this case are discussed in Anne Laure Bandle, Alessandro Chechi and Marc-André Renold, ‘Case Landscape with Smokestacks – Gutmann Heirs and Daniel Searle’, Platform ArThemis, Art-Law Centre, University of Geneva (2012) <<https://plone.unige.ch/art-adr/cases-affaires/landscape-with-smokestacks-2013-friedrich-gutmann-heirs-and-daniel-searle>>.

³¹ Author of Hector Feliciano, *Le Musée disparu. Enquête sur le pillage des oeuvres d’art en France par les nazis* (Gallimard, 1995).

³² Ron Grossman, ‘Battle Over War-Loot Degas Comes to Peaceful End’, *Chicago Tribune*, 14 August 14 1998, referred to by Bandle, Chechi and Renold, above n 30. See also Howard J Trienens, *Landscape with Smokestacks: The Case of the Allegedly Plundered Degas* (Northwestern University Press, 2000).

³³ Norman Palmer, ‘Recovering Stolen Art’ [1994] 1 *Current Legal Problems* 215, 218.

VI HOLOCAUST ASSETS DECLARATIONS

Commencing in the 1990s there was a significant increase in the number of books published dealing with the laws policies and practices concerning the confiscation of cultural works by the Germans during the Second World War.³⁴ Also a number of books examined German wartime looting in Belgium³⁵, France³⁶, Hungary³⁷, Italy³⁸, Poland³⁹, Russia⁴⁰, and The Netherlands.⁴¹ The rise in profile of this issue was reflected in the interest of the US Government. In 1998 a number of congressional hearings were held on the subject. The Presidential Advisory Commission on Holocaust Assets (PCHA) was formed and the USA hosted the Washington Conference on Holocaust-Era Assets at which was promulgated the Washington Conference Principles on Nazi-Confiscated Art in 1998.

³⁴ See Petropoulos, above nn 11, 17 and 24, supra; Simpson, above n 24; Yeide, above n 18; Nicholas, above n 24; Greenfield, above n 24; Farmer, above n 24; Alford, above n 25; and Akinsha and Kozlov, above n 25.

³⁵ Office Belge de l'Economie et de l'Agriculture. Missing Art Works of Belgium Part 1: Public Domain. Belgische Dienst Voor Bedrufsleven En Landbouw, 1994.

³⁶ Hector Feliciano, *Le Musée disparu. Enquête sur le pillage des oeuvres d'art en France par les nazis* (Gallimard, 1995); Mission d'étude sur la spoliation des Juifs de France, *Le Pillage de l'art en France pendant l'Occupation et la situation des 2000 oeuvres confiées aux musées nationaux* (La Documentation Française, 2000); Mission d'étude sur la spoliation des Juifs de France, *Le Pillage des appartements et son indemnisation* (La Documentation Française, 2000). See also Jean Casso. *Pillage par les Allemands des Oeuvres d'Art et des Bibliothèques appartenant à des Juifs en France* (Editions du Centre, 1947); Rose Valland, *Le Front de L'Art; défense des collections francaises, 1939-1945* (Librairie Plon, 1961); Matila Simon, *Battle of the Louvre: the Struggle to Save French Art in World War II* (Hawthorn Books, 1971).

³⁷ László Mravik, *Sacco di Budapest: Depredation of Hungary 1938-1949* (Hungarian National Gallery for Joint Restitution Committee, 1998).

³⁸ Frederick Hartt, *Florentine Art under Fire* (Princeton University Press, 1949); Ministero Degli Affari Esteri & Per I Beni Culturali E Ambientali, *Treasures Untraced: An Inventory of the Italian Art Treasures Lost During the Second World War* (Rome, 1995); Ministero Della Pubblica Istruzione *La Ricostruzione del Patrimonio Artistico Italiano* (La Libreria Dello Stato, 1950).

³⁹ Aloysius Balawyder, *The Odyssey of the Polish Treasures* (Antigonish, 1978); Maria Romanowska-Zadrożna and Tadeusz Zadrożny, *Straty wojenne: Malarstwo obce: obrazy olejne, pastele, akwarele utracone w latach 1939-1945 w granicach Polski po 1945 bez ziem zachodnich i północnych* (Wartime Losses: Foreign Painting: Oil Paintings, Pastels, Watercolours, Lost Between 1939-1945 within post-1945 Borders of Poland Excluding the Western and Northern Territories) (Poznań, Ministerstwo Kultury i Sztuki, 2000).

⁴⁰ Sergei Varshavsky and Boris Rest, *The Ordeal of the Hermitage - The Siege of Leningrad 1941-1944* (Aurora Art Publishers, 1985); Vitaly Aksionov, *Fuhrer's Favorite Museum - Stolen Treasures* (Neva Publishing House, 2003).

⁴¹ Adriaan Venema, *Kunsthandel in Nederland 1940-1945* (Uitgeverij De Arbeiderspers, 1986); Pieter den Hollander, *De zaak Goudstikker* (Meulenhoff, 1998); Gerard Aalders, *Nazi Looting: The Plunder of Dutch Jewry during the Second World War* (Berg, 2004).

This had been anticipated by the 1997 London Nazi Gold Conference and was followed by the January 2000 Stockholm Declaration and the October 2000 Vilnius International Forum on Holocaust-Era Looted Cultural Assets and in 2009 by the Terezin Declaration that followed the Holocaust-Era Assets Conference in Prague. Each of these instruments is described below.

A *Washington Conference Principles on Nazi-Confiscated Art*⁴²

On June 9, 1998, the U.S. Department of State and the United States Holocaust Memorial Museum co-hosted a Roundtable Discussion on Nazi-Looted Art in preparation for the Washington Conference on Holocaust-Era Assets which was held at the State Department from November 30, 1998-December 3, 1998. This conference issued the *Washington Principles on Nazi Confiscated Art* in an attempt to develop “a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art”.⁴³ In Article I. It requires that art “that had been confiscated by the Nazis and not subsequently restituted should be identified.” Article II requires that relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.⁴⁴ Article III requires that resources and personnel should be made available “to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.” In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, Article IV requires that consideration should be given “to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.”

Article V requires that every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs and Article VI requires that efforts should be made to establish a central registry of such information.

⁴² Available at <<http://www.state.gov/p/eur/rt/hlcst/122038.htm>>.

⁴³ Ibid.

⁴⁴ The International Council on Archives (ICA) is a non-governmental organization “dedicated to the effective management of records and the preservation, care and use of the world’s archival heritage through its representation of records and archive professionals across the globe” with “approximately 1400 members in 199 countries and territories”. See <<http://www.ica.org/102/about-ica/an-introduction-to-our-organization.html>>.

If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, Article VIII requires steps to be “taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.” However, where the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, cannot be identified, Article IX requires that steps should be “taken expeditiously to achieve a just and fair solution.”

Article XI requires that nations “are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.” However, the Washington Conference Principles contain no mechanism to monitor progress by the 44 countries that endorsed the Principles.

B *Vilnius Forum Declaration*

In November 1999, in response to the Washington Conference, the Parliamentary Assembly of the Council of Europe passed Resolution 1205 concerning looted Jewish cultural property.⁴⁵ Paragraph 8 of the Resolution expressed the belief of the Assembly that restitution of looted cultural property to its original owners or their heirs “is a significant way of enabling the reconstitution of the place of Jewish culture in Europe itself.” The Assembly invited the parliaments of all member states “to give immediate consideration to ways in which they may be able to facilitate the return of looted Jewish cultural property.” Paragraph 11 of the Resolution advised that attention should be paid to the removal of all impediments to identification “such as laws, regulations or policies which prevent access to relevant information in government or public archives, and to records of sales and purchases, customs and other import and export records.”

Paragraph 12 provided that bodies in receipt of government funds which find themselves holding looted Jewish cultural property should return it, but where such works have been destroyed, damaged or are untraceable, “such bodies should be assisted to pay compensation at the full market value.”

To facilitate restitution paragraph 13 provided for legislative change with particular regard being paid to:

⁴⁵ Available at <<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta99/eres1205.htm>>.

- i. extending or removing statutory limitation periods;
- ii. removing restrictions on alienability;
- iii. providing immunity from actions for breach of duty on the part of those responsible for collections;
- iv. waiving export controls.

Paragraph 15 provided that consideration should also be given to:

- i. providing guarantees for those returning looted Jewish cultural property against subsequent claims;
- ii. relaxing or reversing anti-seizure statutes which currently protect from court action works of art on loan;
- iii. annulling later acquired titles, that is, subsequent to the divestment.

The Assembly in paragraph 16 encouraged the exploration and evolution of out of court forms of dispute resolution such as mediation and expert determination.

In paragraph 19 the Assembly called for the organisation 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.

The Vilnius International Forum in October 2000 was organised in response to Resolution 1205. The Declaration in clause 1 asked all “participating States to take all reasonable measures to implement the Washington Conference Principles on Nazi-Confiscated Art as well as Resolution 1205 of the Parliamentary Assembly of the Council of Europe.” The Vilnius Forum asked governments, museums, the art trade and other relevant agencies to provide all information necessary to restitution. Clause 3 called on each government to maintain or establish a central reference and point of inquiry to provide information and help on any query regarding looted cultural assets, archives and claims in each country.

The Vilnius Forum proposed in clause 5 for periodical international expert meetings to exchange views and experiences on the implementation of the Washington Principles, the Resolution 1205 of the Parliamentary Assembly of the Council of Europe and the Vilnius Declaration.

C *Terezin Declaration*⁴⁶

Australia, together with the representatives of 45 other countries subscribed to the Terezin Declaration which was issued by the Prague Holocaust Era Assets Conference organized by the Czech Republic and its partners in Prague and Terezin from 26-30 June 2009. Noting the tangible achievements of conferences listed above the subscribing countries recognized that there remained “substantial issues to be addressed, because only a part of the confiscated property has been recovered or compensated.”

Article 2 urged “that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.”

Article 4 called for “a coherent and more effective approach by States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation.”

In accordance with the Terezin Declaration, in 2010 the Government of the Czech Republic established the European Shoah Legacy Institute (ESLI). The Institute was expected to report on progress in relation to looted art in the signatory countries.

An overview of progress on the implementation of the Washington Conference Principles and associated resolutions and declarations was presented at the International Council of Museums (ICOM) Museum & Politics Conference, St. Petersburg, September 2014.⁴⁷ Of the 50 countries surveyed, only four (Austria, Czech Republic, Germany, Netherlands) were considered to have made major progress towards implementing the Washington Conference principles and the Terezin Declaration, while an additional 11 (Belgium, Canada, France, Israel, Liechtenstein Luxembourg, Norway, Slovakia, Switzerland, UK, USA) were considered to have made

⁴⁶ Available at <<http://www.holocausteraassets.eu/program/conference-proceedings/>>.

⁴⁷ Wesley A Fisher and Ruth Weinberger, ‘Holocaust-Era Looted Art: A Current World-Wide Overview’ (Paper presented at Conference on Jewish Material Claims Against Germany and World Jewish Restitution Organization, St Petersburg, 10 September 2014).

substantial progress.⁴⁸ Australia was described as having taken “some steps” in this direction.⁴⁹

VII THE “SCHWABING ART TROVE”

The discovery in March 2012 by German authorities of looted artworks in the Munich apartment of Cornelius Gurlitt, the son of Nazi-associated art dealer Hildebrand Gurlitt, caused a sensation when it was revealed in November 2013 not only in Germany but throughout the world.⁵⁰ The “Schwabing Art Trove” which included works by Picasso, Toulouse-Lautrec, Canaletto and Courbet was initially valued at about €1 billion. The discovery generated renewed interest in Nazi-era looted art. In Germany the “*Schwabing Art Trove*” Task Force was set up including the appointment of national and international experts in provenance research.⁵¹ In October 2014 the German Culture Minister, Monika Grütters, proposed the establishment of a *Deutsches Zentrum Kulturgutverluste* (German Centre for Cultural Property Losses) to serve as a central contact point for institutions that adhere to the Washington Principles and the Terezin Declaration.⁵² The Foundation combines the *Koordinierungsstelle Magdeburg*, the *Arbeitsstelle für Provenienzforschung*, the “*Schwabing Art Trove*” Task Force and the *Entartete Kunst* research project at the Freie Universität Berlin.

⁴⁸ Ibid 5.

⁴⁹ Ibid.

⁵⁰ See Munich Art Trove, accessible at Deutsches Zentrum Kulturgutverluste , ‘Gurlitt Art Trove’ <<http://www.lostart.de/Webs/EN/Datenbank/KunstfundMuenchen.html>>.

⁵¹ See Deutsches Zentrum Kulturgutverluste, “Schwabing Art Trove” Task Force announces members’ (Press Release, 28 January 2014) <http://www.lostart.de/Content/02_Aktuelles/2014/14-01-28_EN_PM_Taskforce_Besetzungx.html>.

⁵² See Nicholas O’Donnell, ‘Germany Announces “Center for Cultural Property Losses”: Real Progress or Window Dressing?’ on *Art Law Report* (9 October 2014) <<http://www.artlawreport.com/2014/10/09/germany-announces-center-for-cultural-property-losses-real-progress-or-window-dressing/>>.

VIII PROVENANCE DATABASES

The International Council of Museums (ICOM) adopted the ICOM Code of Professional Ethics in 1986. The Code contains a number of provisions that are relevant to cultural property looted during the Second World War. Principle 2 called upon museums to establish the full provenance of items in their collections. A number of online databases art works looted during the Nazi era have been established. The more important of these are listed below.

The website of the Conference on Jewish Material Claims Against Germany (Claims Conference) and the World Jewish Restitution Organization (WJRO) Looted Art and Cultural Property Initiative provides links looted art and provenance research databases worldwide.⁵³

The International Research Portal for Records Related to Nazi-Era Cultural Property was launched in 2011 at the National Archives and Records Administration of the USA.⁵⁴

The German Historical Museum database lists the artworks confiscated primarily for the museum planned for Linz and the Hermann Göring Database which shows the artworks acquired by Göring intended mainly for the "North German gallery" in the Schorfheide near Berlin.⁵⁵

The intelligence reports, interrogation reports, captured documents, and general information regarding German art looting assembled by the MFAA and recorded on microfilm comprise the "Ardelia Hall Collection"⁵⁶ which is also available online.⁵⁷

The Victoria & Albert Museum in London holds the only known copy of a complete inventory of "Entartete Kunst" ("degenerate art") confiscated by the

⁵³ See Claims Conference/WJRO, 'Research Databases', *Looted Art & Cultural Property Initiative* <<http://art.claimscon.org/resources/overview-of-worldwide-looted-art-and-provenance-research-databases/>>. The Claims Conference has established a database *Cultural Plunder of the Einsatzstab Reichsleiter Rosenberg: Art Objects at the Jeu de Paume* which comprises registration cards and photographs produced by the ERR covering more than 20,000 art objects taken from Jews in German-occupied France and Belgium, with information on the original owners and whether or not the objects have been restored. See <<http://errproject.org/>>.

⁵⁴ The Portal links researchers to descriptions of records and digital images of the records that relate to cultural property that was stolen, looted, seized, forcibly sold, or otherwise lost during the Nazi era. See <<http://www.archives.gov/research/holocaust/international-resources/>>.

⁵⁵ See <<http://www.dhm.de/datenbank/linzdb/indexe.html>>.

⁵⁶ Described in US National Archives and Records Administration, *Records concerning the central collecting points ("Ardelia Hall Collection"): OMGUS Headquarters Records, 1938-1951* (2004).

⁵⁷ <http://go.fold3.com/holocaust_art/>.

Nazi regime from public institutions between 1937 and 1938. The list, with more than 16,000 entries, was produced by the Reichsministerium für Volksaufklärung und Propaganda (Reich Ministry for Public Enlightenment and Propaganda) in 1942 and is accessible online.⁵⁸

The Commission for Looted Art in Europe (CLAE), “is an international, expert and non-profit representative body which researches, identifies and recovers looted property on behalf of families, communities, institutions and governments worldwide”.⁵⁹ It provides a “Central Registry of Information on Looted Cultural Property 1933-1945”.⁶⁰

IX DOMESTIC LEGISLATION

Following the end of the Second World War the USA and the UK enacted legislation to deal with the issue of looted art.

A USA

Following Hearings held from late January 1998 by the US House of Representatives Banking and Financial Services Committee into *World War II-Era Looted Artworks and Insurance Policies*⁶¹ on 13 February 1998, President William J. Clinton signed into law the *Holocaust Victims Redress Act*,⁶² which reflected the view that “all governments should undertake good faith efforts to facilitate the return of Nazi-confiscated property.”⁶³ This Act gave the president the authority to commit up to \$US5 million for research and provenance work to help resolve the issue of ownership.⁶⁴

On 22 June 1998 President Clinton signed the *Holocaust Assets Commission Act*,⁶⁵ which created the Presidential Advisory Commission on Holocaust Assets (Advisory Commission). The Advisory Commission’s final

⁵⁸ <<http://www.vam.ac.uk/content/articles/e/entartete-kunst/>>.

⁵⁹ See <<http://www.lootedartcommission.com/Services>>.

⁶⁰ <<http://www.lootedart.com/>>.

⁶¹ 114 *Congressional Record* vol 1 (1998, House of Representatives).

⁶² Pub L No 105-158, 112 Stat 15 (1998)

⁶³ William J Clinton: "Statement on Signing the Holocaust Victims Redress Act," February 13, 1998. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=55479>.

⁶⁴ *Holocaust Victims Redress Act*, Pub L No 105-158, 112 Stat 15 (1998) § 103(b).

⁶⁵ Pub L No 105-186, 112 Stat 611 (1998).

report recommended legislation to facilitate restitution and to create a foundation to support research.⁶⁶ The Commission investigated claims by holding hearings, accepting information from federal departments or agencies, examining existing research and locating documents found by US or foreign governments, in order to identify any Holocaust-era assets arriving in the US after January 30, 1933. The Commission was required to report its findings to the President by the end of 1999.⁶⁷

The Advisory Commission's final report recommended legislation to facilitate restitution and to create a foundation to support research.⁶⁸ These recommendations have not yet been implemented, but on 16 January 2013, then Secretary of State Hillary Clinton issued a press statement marking the seventieth anniversary of the 1943 London Declaration on the looting of art and other property by the Axis powers, which summarized US policy regarding restitution of Nazi-confiscated art.⁶⁹ She stated that "U.S. policy will continue to support the fair and just resolution of claims involving Nazi-confiscated art, in light of the provenance and rightful ownership of each particular work," while also respecting the bona fide internal restitution proceedings of foreign governments.⁷⁰

B UK

In response to the Washington Conference Principles on Nazi-confiscated Art a Spoliation Advisory Panel (the Panel) was established in February 2000 by the Department for Culture, Media and Sport as an advisory non-departmental public body (NDPB) to help resolve claims from people or their heirs who lost cultural property during the Nazi era which was held in UK national

⁶⁶ Presidential Advisory Commission on Holocaust Assets in the United States, *Plunder and Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report* (US Government Printing Office, 2000).

⁶⁷ See Barbara J Tyler, 'The Stolen Museum: Have United States Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in World War II?' (1999) 30 *Rutgers Law Journal* 441.

⁶⁸ Presidential Advisory Commission on Holocaust Assets in the United States, above n 66.

⁶⁹ US Department of State, 'Holocaust-Era Looted Art', Press Release No 2013/0032, 16 January 2013 <<http://www.state.gov/secretary/rm/2013/01/202932.htm>>.

⁷⁰ *Ibid.*

collections.⁷¹ The Panel's proceedings are an alternative to litigation. Its recommendations are only enforceable if a claimant accepts them. On 12 April 2010 the Panel was dissolved as an advisory NDPB and pursuant to s.3 of the Holocaust (Return of Cultural Objects) Act 2009 (the 2009 Act) reconstituted as a group of expert advisers under the same name. The task of the Spoliation Advisory Panel is to consider claims from anyone, or their heirs, who lost possession of a cultural object during the Nazi era (1933 –1945) where such an object is now in the possession of a UK museum or gallery established for the public benefit; and to advise the claimant, the institution and, where it considers it appropriate, the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim.

One of the functions of the 2009 Act was to overcome statutory obstacles to certain national institutions prevented from de-accessioning objects in their collections to which they had good title. The 2009 Act by virtue of section 4(7), will cease to have effect on 12 November 2019, ten years after it was passed.

The Panel conceives of its task to evaluate the legal title to a contested item; to weigh the moral strength of the Claimants' case; to decide whether any moral obligation rests on the recipient; and to advise the Claimants, the recipient, and the Secretary of State in order to achieve a solution which is fair and just both to the Claimants and to the recipient. Thus, for example, in relation to a claim by the heirs of a Hungarian art collector in respect of an oil sketch by John Constable, "Beaching a Boat, Brighton" in the possession of Tate Britain, the Panel concluded that the Tate was under a moral obligation to pursue the possibility, that the painting had been the object of spoliation during the War.⁷² The Panel pointed out that the German invasion of Hungary in 1944 and the consequent maltreatment, spoliation and murder of the majority of the country's Jewish population were matters of general knowledge and that the Tate should have been aware of the Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation of Control

⁷¹ Sir Paul Jenkins KCB QC, *Independent Review of the Spoliation Advisory Panel*, March 2015 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415966/SAP_-_Final_Report.pdf> [3.4].

⁷² Spoliation Advisory Panel, 'Report of the Spoliation Advisory Panel: Constable painting in the Tate Gallery', 26 March 2014 <<https://www.gov.uk/government/publications/report-of-the-spoliation-advisory-panel-constable-painting-in-the-tate-gallery>> [49].

issued in London on 5 January 1943 and the International Council of Museums Code of Ethics, adopted in 1986.⁷³

A review of the work of the Spoliation Advisory Panel was undertaken at the beginning of 2015 as part of the UK Government's programme to review the effective operation of public bodies.⁷⁴ The report of the review, which was released in March 2015, generally approved of the operation of the Panel, but made a number of suggestions as to the streamlining of procedures.⁷⁵

X AUSTRALIA AND SPOLIATION

A *Legislation*

Australia has no specific legislation dealing with art that was looted during Nazi rule, unlike the UK's Holocaust (Return of Cultural Objects) Act 2009. The Australian Protection of Movable Cultural Heritage Act 1986 (PMCH Act) implements Australia's obligations under the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (1970 UNESCO Convention) to which Australia is a State Party.

The 1970 UNESCO Convention requires State Parties to ensure that no collecting institution accepts illegally exported items. The Convention defines "cultural property" as "property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science." The Convention entered into force on 24 April 1972. Thus far, the wide range of art confiscated from Jewish owners or art dealers during the Nazi era has not been designated as a prohibited export and it came into force well after much of the looted art had been exported.

The PMCH Act focuses upon "the movable cultural heritage of a foreign country".⁷⁶ It is difficult to classify the wide range of looted art as the cultural heritage of a particular country. The PMCH Act is more concerned with such

⁷³ Ibid [48].

⁷⁴ See <<https://www.gov.uk/government/groups/spoliation-advisory-panel>>.

⁷⁵ Jenkins, above n 71.

⁷⁶ See Craig Forrest, 'Australia's Protection of Foreign States' Cultural Heritage' (2004) 27(3) *University of New South Wales Law Journal* 1.

things as the artefacts of indigenous peoples and the cultural items which are directly linked to the history of a particular country.

B Case Studies

The Australian newspaper reported on 21 August 2006 on the basis of documents obtained under freedom of information legislation, that in 2004 demands had been made to the NGV that it handed over to the Chile-based heirs of Jewish retail magnate Max Emden, the painting “Lady with a fan” by Gerard ter Borch. Emden had fled Hamburg and then Switzerland, leaving behind much of his art collection.⁷⁷ The Emden heirs had apparently identified at least eight paintings in galleries in the US and Europe stolen from his Max Emden, two works by the 16th-century German painter Bernhard Strigel in the National Gallery of Art in Washington, and two urban landscapes by Bernardo Bellotto stolen for Hitler's private museum in Linz and held by the German Government.⁷⁸

The NGV's head of public affairs was reported in 2007 as stating that the gallery was making a detailed assessment of the claim and that it was seeking “clarification of the provenance and whereabouts of the painting for the 30-year period after it entered the Bromberg collection in 1907, the work's last known owner until it was purchased by a dealer, Loebel, in Paris in 1938, its source of purchase unknown”.⁷⁹ This painting remains in the NGV collection in 2016.⁸⁰ Its provenance website now states that it was “possibly purchased by Allen Loebel (of Galerie F. Kleinberger), Paris by 1938; half interest acquired by Wildenstein & Co. (dealer), London, 1938; ... acquired from Wildenstein & Co. ... for the Felton Bequest, 1945.”⁸¹

⁷⁷ Rick Wallace and Michael McKinnon ‘Gallery’s masterwork may be Nazi loot’, *The Australian*, 21 August 2006. Article reproduced in <<http://www.lootedart.com/news.php?r=MKTOWA423511>>.

⁷⁸ Ibid.

⁷⁹ John Mangan, ‘Nazi loot claim fuels demand for art's return’, *The Age* (online), 8 July 2007 <<http://www.theage.com.au/news/national/nazi-loot-claim-fuels-demand-for-arts-return/2007/07/07/1183351523703.html>>.

⁸⁰ See <<http://www.ngv.vic.gov.au/explore/collection/work/4404/>>.

⁸¹ Ibid

Following the Semmel case, referred to in the introduction to this article, on 3 April 2014, the Council of Australasian Museum Directors, Council of Australian Art Museum Directors, ICOM-Australia and Museums Australia issued a Statement on Ethical Standards in Collections Development, which stressed that particular care be taken in due diligence and reported that museums and galleries have, “voluntarily revisited earlier acquisitions to rule out association with the looting by Nazis of cultural property during the Holocaust”.⁸² A number of Australian art galleries established online databases providing online provenance research information concerning possibly questionable acquisitions.⁸³

XI CONCLUSION

It has only been in the last few years that Australia has begun to address the possibility that art objects looted during the Nazi era might have found its way to the country. Australian representatives were present at the Washington, Vilnius and Terezin conferences, but more as observers than active participants.

By way of example of an Australian connection to looted art, Jonathan Petropoulos reported that Alois Miedl, an art dealer with extensive Nazi connections, was reported to “have plied his trade in Australia”.⁸⁴ Miedl, had acquired the Goudstikker collection of 1300 old master paintings and other artworks from which he sold 600 paintings to Hermann Goering. After the war Miedl was reported to have traded art on behalf of the ODESSA, the SS escape network that transported Nazi war criminals to safety in South America.⁸⁵

Unlike the USA and UK, Australia has not established any spoliation procedure or advisory body to adjudicate claims in relation to looted art. The absence of a uniform approach to provenance in the few cases which have come to light in Australia is an eloquent argument for the establishment of an Australia-wide spoliation procedure. For example, in relation to the claim to the NGV by the Emden heirs in relation to the ter Borch, mentioned above, the

⁸² See <<http://www.museumsaustralia.org.au/site/statement-ethics.php>>.

⁸³ [The National Gallery of Australia, Canberra](#), [The Art Gallery of New South Wales](#), [The Queensland Art Gallery/Gallery of Modern Art](#), [National Gallery of Victoria](#) and [Art Gallery of South Australia](#).

⁸⁴ Petropoulos, *The Faustian Bargain*, above n 17, 179.

⁸⁵ David Guyatt, ‘Princes of Plunder’, 12 *Nexus Magazine* (2005).

NGV Director was reported as “requiring evidence of a nature sustainable in court to be brought forward.”⁸⁶ This is in contrast to the approach of the UK Spoilation Panel which considers both legal and non-legal obligations, such as the moral strength of the claimant’s case, and whether any moral obligation rests on the holding institution.

In most cases, where there is doubt about the integrity of acquisition of art confiscated by the Nazis there would probably be no heirs to make any claims, given that the victims of the confiscation may have been murdered with no descendants. In such a case it may be appropriate for the art to be donated to Yad Vashem, the World Holocaust Remembrance Centre, or some equivalent institution.⁸⁷

⁸⁶ Quoted by David Marr, ‘Battle for a Lady’, *Good Weekend*, 10 November 2007, 38.

⁸⁷ I am grateful to Professor Aviva Freilich, Faculty of Law, UWA, for this suggestion.

