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Filling the Gap Between Morality and Jurisprudence: *The Use of Binding Arbitration to Resolve Claims of Restitution Regarding Nazi-Stolen Art*

Rebecca Keim

It is a mistake to think that national revolution is only political and economic. It is above all cultural. . . . Art is not international. . . . If anyone would ask: what is left of freedom? He will be answered: there is no freedom for those who would weaken and destroy German art. . . there must be no remorse and no sentimentality in uprooting and crushing what was destroying our vitals.¹

I. INTRODUCTION

Of all the tragedies that have occurred throughout the history of the human race, one of the most horrific events, brought about by the dehumanization and execution of thousands of people, became known as “the Holocaust.” During the years of this mass tragedy, while Hitler waged war across Western Europe, he also implemented a policy that would change history forever.² Hitler’s plan, intended to benefit the Reich and all of Germany, entailed a sophisticated and systematic policy of destruction, extermination, and looting.³ As a result of Hitler’s looting, the Nazis spread artwork across Europe, and fed it into a market of dealers who then moved the works out of Nazi-controlled territory to neutral nations and beyond, generating a virtually untraceable history of these works of art.⁴

1. LYNN H. NICHOLAS, *THE RAPE OF EUROPA: THE FATE OF EUROPE’S TREASURES IN THE THIRD REICH AND THE SECOND WORLD WAR*, 6 (Knopf 1994)(quoting the Directors of a Nazi-affiliated Combat League for German Culture who were describing their new ideas on art only nine weeks after Hitler had become Chancellor of Germany). *Id.*

2. See *SURVIVORS OF THE HOLOCAUST*, Directed by Steven Spielberg (noting that Hitler’s policy of dehumanization and genocide resulted in massive losses of human lives and as a result the world would never be the same). *Id.*

3. See *Roundtable Discussion on Nazi-Looted Art* at <http://www.ita.doc.gov/media/assets1.htm> visited October 18, 2001 (hereinafter “Roundtable Discussion”).

4. See HECTOR FELICIANO, *THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD’S GREATEST WORKS OF ART*, 50 (1997); see also NICHOLAS, *supra* note 1, at 90 (noting that in addition to the Nazi sale of stolen works of art, some works were moved to different countries, particularly France, by private Jewish owners in order preserve their personal collections and avoid Nazi confiscation). *Id.*

The Holocaust created an insurmountable and undeniable loss of human life. While comparatively insignificant to the loss of lives, the loss of artwork has recently created great controversy as Holocaust survivors and their families try to retrieve Nazi-stolen artwork.⁵ The exact number of stolen works of art is unknown; however, experts have calculated that thousands of works looted during the Holocaust are currently owned by museums, art dealers and private collectors.⁶

Modernly, the expense and inconvenience of lawsuits, as well as the complex nature of claims and the unpredictability of court decisions, has led to dissatisfaction with the courts as a forum for resolving disputes regarding the return of looted artwork. Such discontent with the adjudicative system has created the desire to find alternative methods.⁷ Unfortunately, the judicial system currently provides neither an effective forum nor clear remedies for bereft claimants. The system, as it stands, ultimately forces these disputes into the court system.⁸ The inflexibility of the judicial process is extremely detrimental considering the legitimate competing interests of the museums and the victims of the Holocaust.⁹ The existing laws create confusion and contradiction as legal barriers impede the success of adjudication.¹⁰ In order to pro-

5. See Howard Reich, *Answers Just Out of Reach in Art Hunt Christie's Won't Reveal Possible Holder of Painting*, CHI. TRIB., Dec. 22, 2002, at 1 (detailing difficulties that auction houses can pose in trying to locate artwork confiscated by the Nazis and in identifying the current "owner" of artwork); see also Judy Rumbold, *Portrait of the Robber as an Artist*, GUARDIAN WKLY., Feb. 1992, at 24 (stating that recent surveys show worldwide art thefts are rising, while recovery rates fell from 22% to 5%). *Id.*

6. See G. Robert Blakey & Michael Goldsmith, *Criminal Redistribution of Stolen Property: The Need for Law Reform*, 74 MICH. L. REV. 1512, 1519 (1976).

7. See Alan G. Artner, *Ethics and Art Museums Struggle For Correct Response to Stolen Art Claims*, CHI. TRIB., Aug. 16, 1998, at 6.

8. See, e.g., *Autocephalous Greek-Orthodox Church v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D.Ind. 1989); *Kunstsammlugen Zu Weimar v. Elicofon*, 678 F.2d 1150 (2d Cir. 1982); *DeWeerth v. Baldinger*, 836 F.2d 103(2d Cir. 1987); *U.S. v. McClain*, 593 F.2d 658 (5th Cir. 1979); *U.S. v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974).

9. See Artner, *supra* note 7. Many Holocaust survivors, and their family members, seek to have their artwork returned to them. *Id.* Museums, however, fear this will deprive the public of valuable educational and historical works. *Id.*

10. Ashton Hawkins & Richard A. Rothman, et. al, *A Tale of Two Innocents: Creating an Equitable Balance Between the Rights of Former Owners and Good Faith Purchasers of Stolen Art*, 64 FORDHAM L. REV. 49 (1995). For example, good-faith purchasers of looted or stolen artwork in Italy are absolutely protected and title is recognized from the moment of purchase. *Id.* at 54-64. On the other hand, France, Germany and Switzerland "allow bona fide purchasers to acquire good title to looted or stolen goods once the applicable limitations period has run, which period generally begins at the time of theft." *Id.* In England, a bona fide purchaser is able to acquire good title if he or she bought the goods under certain circumstances without any suspicion that they were stolen. *Id.*

mote an amalgamated compromise addressing the interests of all parties, the nations of those affected by Nazi-stolen art claims should create a process by which to determine the outcome of these disputes.

Binding arbitration is one way that claimants and current owners can achieve success. Some fear that binding arbitration could prove too private of a forum for the resolution of these types of disputes, or could even create a biased forum.¹¹ However, proponents say that the use of arbitration would create a more equitable and credible forum because the arbitrators would be well versed in the complexities of art.¹² Further, neutrals chosen for their expertise would come to the arbitration forum with a collective awareness of the difficulties faced by claimants, museums and private collectors, as well as critical knowledge of the laws regarding Nazi-stolen artwork.¹³ Arbitration, as a dispute resolution process, is also more flexible and less adversarial than litigation.¹⁴ Either way, the number of disputes regarding Nazi-stolen artwork will continue to rise, and many victims involved in these disputes do not have the financial capabilities to continue in the litigation arena.¹⁵

Recognizing the gaps in existing legislation, this article will argue that disputes arising between claimants and museums regarding the repatriation of Nazi-looted artwork should be decided by binding arbitration rather than litigation. To facilitate such arbitration, international law should support the creation of an arbitration commission, which would provide the most efficient and consistent way to resolve claims. Moreover, a neutral forum with clear rules of law and procedure capable of resolving claims would not only be more fair to claimants, but also to museums and personal collectors.¹⁶ This article will first discuss the severity and magnitude of Nazi looting during the Holocaust.¹⁷ Next, the article will examine post-war efforts to retrieve stolen artwork, focusing upon international laws regarding the disposition of looted

11. Marilyn Henry, *Holocaust Victims' Heirs Reach Compromise on Stolen Art*, JERUSALEM POST, Aug. 16, 1998, at 3, available at 1998 WL 6533973.

12. See Artner, *supra* note 7.

13. *Id.*

14. See Ed Anderson & Roger Haydock, *History of Arbitration As An Alternative to U.S. Litigation*, WLN 8257 (1996).

15. See Artner, *supra* note 7; see also Henry, *supra* note 11, at 3.

16. See Artner, *supra* note 7 (discussing museum support of the idea of using arbitration as a method to resolve looted artwork claims). *Id.*

17. See *infra* notes 21-61 and accompanying text.

assets.¹⁸ Further, this article will analyze particular lawsuits that illustrate the ineffective nature of litigation as a means to facilitate the resolution of these disputes.¹⁹ Finally, this article will argue for the creation of international law or a treaty designating arbitration as the forum to resolve claims of stolen art resulting from the Holocaust, presenting the arguments for and against the use of arbitration to resolve looted artwork claims.²⁰

II. GENERAL OVERVIEW OF LOOTING DURING THE HOLOCAUST

The systematic and widespread plundering of artwork and other assets from both European Jews and conquered European nations was not a rogue operation. Rather, such raiding existed as a deliberate policy of pilfering and hoarding irreplaceable art and other assets.²¹ As the Nuremberg trials and historians have demonstrated, the systematic looting of art was an extremely vital component of the German war machine.²² Proceeds of the art were used to finance the war, as well as the lavish lifestyles of its leaders.²³ Such tactics also served as an essential element in proving racial supremacy by psychologically dehumanizing the Jews and aiding in the attempted annihilation of the race.²⁴

A. Nazi Takeover of Jewish Property²⁵ Within the German State

The German state's control over art and the organized policy of the Third Reich to procure cultural property began to gain momentum with the implementation of the "degenerate art" campaign of 1937.²⁶ This policy entailed the removal of most modern artwork, or "works that featured abstraction or colors which did not conform to nature" from Germany's public col-

18. See *infra* notes 62-73 and accompanying text.

19. See *infra* notes 74-101 and accompanying text.

20. See *infra* notes 102-159 and accompanying text.

21. See *The Nuremberg Trial*, 6 F.R.D. 69, 122, 157-58 (1946).

22. See JOHN E. CONKLIN, *ART CRIME*, 218-19 (1994).

23. *Id.*

24. See ELIE WIESEL, *NIGHT*, 15 (1960)(describing first-hand accounts of the Nazi's plan of dehumanization).

25. See SAUL FRIEDLANDER, *NAZI GERMANY AND THE JEWS, VOLUME I: THE YEARS OF PERSECUTION, 1933-39*, 242-43(1997)(stating that the Property Transfer Office was set up to "promote[e] the Aryanization of Jewish economic assets. . . The funds made available by the confiscations and expropriations were used" to further the Nazis plans for the Jews). *Id.*

26. See CONKLIN, *supra* note 22, at 219 (discussing the Nazis' actions taken to ensure the looting of fine art by stating that "the Nazi party, the army, and the SS [were utilized] to plunder palaces, manor houses, churches, and museums The Nazis tried to justify their plunder in legal terms. Art could be appropriated if it belonged to the state's internal enemies [such as Jewish citizens throughout Europe]").

lections.²⁷ In order to gain public support of the campaign, the Fuhrer (Hitler) gave a speech to the German people, denouncing not only “degenerate” art, but also dealers in “degenerate” art and the artists of such work.²⁸ The speech specifically forbid these artists to use any shapes in their paintings which did not conform to those found in nature.²⁹ In one of his speeches Hitler stated, “[w]e will, from now on, lead an unrelenting war of purification, an unrelenting war of extermination against the last elements which have displaced our Art.”³⁰ Thus, as Hitler’s goal was to create a pure German state or, more particularly, a pure German race, he sought to purge the world of “impure” works of art.³¹ Thus, anything “degenerate” or “too Jewish” in appearance was eliminated.³²

Within the plan to create a pure German state, the looting policy contained two targets: (1) the art contained in public museums; and (2) that owned by individual civilians.³³ The first works of art targeted by the Nazis were those contained in public or state collections.³⁴ By 1937, protected by a decree from Hitler authorizing the confiscation of modernist and impressionist works, the Reich Chamber for the Visual Arts had confiscated over five thousand works of art.³⁵

The second target of the art expropriation program was the private collections of German and Austrian Jews.³⁶ Many Jews tried to flee leaving behind homes that were stripped of any valuables by Nazi military officers (the

27. See NICHOLAS, *supra* note 1, at 7. Unacceptable forms of artwork included those by Wagner, Mallarmé, Baudelaire, as well as those created by the Impressionists of the era, such as Kandinsky, Picasso, Matisse, and Van Gogh. *Id.*

28. See NICHOLAS, *supra* note 1, at 12.

29. *Id.* at 20 (quoting P.O. RAVE, *KUNSTDIKTATUR IM DRITTEN REICH* 66 (Rave trans., 1949)).

30. *Id.* Hitler’s allusion to a “war of extermination,” eerily foreshadows his ultimate plan against all European Jews. *Id.*

31. *Id.* at 38.

32. CONKLIN, *supra* note 22, at 218 (the author notes Hitler not only sought to eliminate “degenerate” art, but also lead his conquest across Europe in order to seize art “to fulfill Hitler’s plan to transform his boyhood home of Linz, Austria, into a pantheon of Aryan art”). *Id.*

33. *Id.*

34. *Id.*

35. See Jonathan Petropoulos, *German Laws and Directives Bearing on the Appropriation of Cultural Property in the Third Reich*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE, AND RECOVERY OF CULTURAL PROPERTY* 107 (Abrams 1997) (Elizabeth Simpson ed., 1997).

36. *Id.* at 106-11.

SS).³⁷ Those who stayed were required to register their property with the Gestapo, thereby providing inventories for future confiscation.³⁸

The Ordinance for Registration of Jewish Property, enacted in 1938, set forth the policy requiring Jewish citizens to register their property.³⁹ Under the law, Hitler had the power to control all objects that had been “turned over” to the Reich, and thus existed as Nazi property.⁴⁰ Shortly following the Ordinance, other laws such as the ‘Ordinance for Attachment of the Property of the People’s and State’s Enemies’ and the ‘Ordinance for the Employment of Jewish Property,’ enabled Hitler and the Reich to “purify” Jewish businesses and seize Jewish property, particularly fine art.⁴¹

B. Nazi Takeover of Jewish Property Within Conquered Territories

Before the United States entered the war, Germany had conquered much of Eastern Europe. As a result, the Nazis expanded their raids to include artwork from conquered territories.⁴² Following the German occupation of France, Hitler ordered the “protection” of various monuments and works of art, and lists were assembled detailing the collection and safeguarding of certain valuables that were to be protected from the fighting and brought back to Germany.⁴³ One of the most famous of these lists was the Kummel Report created in 1940.⁴⁴ The Kummel Report was a secret three hundred-page document, listing every major piece of art that had left Germany since 1500.⁴⁵ The document ordered that these pieces of artwork be located and returned to Germany for the glory of the German State.⁴⁶ However, the Reich was not the only agency carrying out the looting policy.

The most productive of the art plundering agencies, and the most notable was the Einsatzstab Reichsleiter Rosenberg Agency (ERR).⁴⁷ Although the

37. See NICHOLAS, *supra* note 1, at 39.

38. *Id.*

39. *Id.* at 20.

40. *Id.*

41. Petropoulos, *supra* note 35, at 107.

42. See Courtney S. Perkins, *The Seattle Art Museum: A Good Faith Donee Injured in the Restoration of Art Stolen During World War II*, 34 J. MARSHALL L. REV. 613, 614-15 (2001).

43. See NICHOLAS, *supra* note 1, at 120.

44. *Id.* at 121-23.

45. *Id.* Only five typewritten copies of this top-secret report were produced. *Id.* at 122.

46. *Id.* This list was considered a “preliminary overview of everything that had been robbed from, or destroyed by, foreign wars in Germany for the last four hundred years. . . . It claimed collections taken from Alsatian aristocrats in the French Revolution, works ‘smuggled’ out of Germany after 1919 by dealers, jewelry melted down in various wars, and ‘many things, not actually proven to be lost, whose absence is still to be deplored.’” *Id.* at 121.

47. See Petropoulos, *supra* note 35, at 109. In total, the agency seized over twenty-one

ERR was a civilian agency, the unit worked in collaboration with the military, which granted the ERR the authority to seize privately owned property.⁴⁸ Eventually, the ERR came to seize over 21,000 pieces of art.⁴⁹

One of the countries most affected by Nazi plundering was France. At this time, France was the art “mecca” of the world.⁵⁰ However, as war swept across Europe, the Nazis looted and confiscated thousands of art collections belonging to French museums, galleries, Jewish families and art dealers.⁵¹ When the Nazis finally took Paris in June of 1940, the SS came prepared with their lists of collections to be looted.⁵² By the end of their occupation, the SS had stolen approximately 22,000 works of art, which were shipped from France to Germany.⁵³ Once in Germany, the artwork was placed in a room overflowing with other stolen twentieth century works.⁵⁴ While the Nazis were seemingly unappreciative of the paintings’ aesthetic value, they were greatly aware of the paintings’ financial value.⁵⁵ The paintings were bartered in exchange for more valuable works, and sold to art dealers in “neutral” countries in order to finance the costs of war, as well as provide tidy profits for members of the Reich.⁵⁶

These efforts of mass destruction and confiscation of artwork ultimately allowed Germany to gain control over almost one-fifth of all the art within

thousand cultural items. *Id.*

48. *Id.*

49. *Id.*

50. See Hector Feliciano, et al., *Nazi Stolen Art*, 20 WHITTIER L. REV. 67 (1998). While London and New York were great sellers of art, Paris was the world’s center for the sale of art. *Id.*

51. CONKLIN, *supra* note 22, at 218-19.

52. FELICIANO, *supra* note 4, at 53. Many families, fearing the theft of their paintings, arranged to have their artwork shown in America or placed in vaults in neutral countries. Perkins, *supra* note 41, at 615. The Rosenberg family alone deposited 162 priceless pieces of artwork, including paintings by Monet, Matisse, Degas and Picasso. NICHOLAS, *supra* note 1, at 91. In 1953, the Rosenberg family was still missing over 70 of these pictures, which were presumably confiscated by the SS following the occupation of France. *Id.* at 421.

53. CONKLIN, *supra* note 22, at 218.

54. Perkins, *supra* note 42, at n. 9. The paintings were kept in a room that was curtained-off, wherein more works of art would simply be stacked up, one upon another. *Id.*

55. *Id.*

56. NICHOLAS, *supra* note 1, at 34. Herman Goering, Hitler’s “right-hand” man confiscated his own private collection enabling him to personally benefit from the sale of stolen artwork. *Id.* at 34-37.

the Western hemisphere.⁵⁷ Experts have estimated that the total number of works looted by the Nazis by the end of World War II equaled over 650,000 works, including paintings, sculptures, and drawings by the greatest artists of the 20th century.⁵⁸ While the London Declaration of 1943 gave signatory countries the right to declare art transactions within Nazi-occupied territories invalid,⁵⁹ following the war, there were many pieces to pick up.

In an attempt to put post-war Europe and its citizens back together, the United States and other Allied nations created the Allied Control Council, an organization designed to return Nazi-stolen works of art to their rightful owners.⁶⁰ However, differing policies on restitution created confusion and contradictory outcomes regarding the return of looted artwork.⁶¹ As a result, following Germany's defeat in 1945, several issues flooded the forefront of American politics and the judicial system, particularly those regarding the restitution of stolen artwork.

III. POST-WAR LEGISLATIVE EFFORTS TO RETRIEVE STOLEN ART

The 1907 Hague Convention was the first international law of its kind, prohibiting acts such as the looting that so rampantly occurred during WWII.⁶² However, it failed to establish rights in individuals with respect to the return of their looted art.⁶³ Following World War II, international law has expanded giving individuals the right to be free from the abuses of certain rights defined in treaties and cited in a growing body of cases.⁶⁴ Further demonstrating the extent to which international law recognized that individuals are endowed with certain rights under international law, was the formation of the Charter of the Nuremberg Tribunal, and the determinations made by the Tribunal.⁶⁵ Ultimately, the Nuremberg Tribunal held that international law

57. Robert Schwartz, *The Limits of the Law: A Call for a New Attitude Toward Artwork Stolen During World War II*, 32 COLUM. J.L. & SOC. PROBS. 1, n. 2 (1998).

58. Jonathan Petropoulos, *Art Looting During Third Reich: An Overview with Recommendations for Further Research* at <http://www.state.gov/www/regions/eur/holocaust/heac4> (visited on Oct. 21, 2001)(discussing such painters as Kandisnky, Picasso, Matisse, and Van Gogh).

59. *Id.*

60. NICHOLAS, *supra* note 1, at 368.

61. *Id.* The United States and England sought to return art to the country of origin. *Id.* On the other hand, the Russian policy was to take all objects liberated by the Soviet Union back to Russia. *Id.* at 44.

62. Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 1 Bevans 631, C.T.I.A. Num. 8425.000, 1910 WL 4483 at 15 (arts. 46-47) (prohibiting seizure by a state of private property during war).

63. *Id.*

64. *Id.*

65. See Treaty Regarding the Prosecution and Punishment of Major War Criminals of the

prohibited Nazi genocidal policies and the looting of assets.⁶⁶

While international law was beginning to recognize individual rights, most post-war efforts to create binding solutions regarding the restitution of artwork to Holocaust survivors or victims' families resulted in failure. As one source notes, "[a]lthough the Allied forces initiated many discussions to address cultural restitution, political and logistical complications barred the culmination of a successful solution."⁶⁷ In terms of political differences among the Allied forces, the smaller nations supported the creation of a document that would bind all signatories to facilitate cultural restitution; however, larger nations blocked the call for such a solution.⁶⁸ A factor further delaying restitution efforts was that in the relative scheme of post-war Europe and the World, the restitution of artwork seemed insignificant at best.⁶⁹

While the Allied forces did come to a temporary solution regarding post-war *claims* to Nazi-confiscated artwork, most post-war efforts to *return* cultural property resulted in failure.⁷⁰ Recently, however, laws requiring identification of looted artwork have been created in response to the current resurfacing of artwork that was stolen during the Holocaust.⁷¹ New technology, which has arisen to help survivors and victims' families pursue claims, is aiding in these attempts at restitution.⁷²

European Axis and annexed Charter of the International Military Tribunal, Aug. 8, 1945, 82 U.N.T.S. 279 (hereinafter the "Nuremberg Charter"); see also Quincy Wright, *The Law of the Nuremberg Trial*, 41 AM. J. INT'L L. 38, 55-56 (1947); see finally, Henry T. King, *The Meaning of Nuremberg*, 30 CASE W. RES. J. INT'L L. 13, 144 (1998).

66. Nuremberg Charter, *supra* note 61, at 15.

67. Michael J. Kurtz, *The End of the War and the Occupation of Germany, 1944-52. Laws and Conventions Enacted to Counter German Appropriations: The Allied Control Council*, in THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE, AND RECOVERY OF CULTURAL PROPERTY, 112-16 (Abrams 1997) (Elizabeth Simpson ed., 1997).

68. *Id.* at 113. The British, Americans and Soviets resisted binding themselves to smaller powers primarily because they were hesitant to diminish any superiority during post-war negotiations. *Id.*

69. *Id.*

70. *Id.* at 372. Another factor in the inability to create a binding solution was the beginning of the Cold War. *Id.*

71. Reports Issued by the Independent Committee of Eminent Persons at <http://www.icep-iaep.org> (last visited Nov. 1, 2001); see also the Bergier Commission and the Swiss Special Task Force Reports at <http://www.switzerland.taskforce.ch.html> (last visited Nov. 1, 2001).

72. See The Art Loss Register, at <http://www.artlos.com/> (last visited Nov. 1, 2001); Getty Information Institute, at <http://www.getty.edu> (last visited Feb. 20, 2003). Such innovations include the Internet, the Art Loss Register which contains an international compilation of stolen and missing art, and the Getty Provenance Index, which contains information regarding over a

While this trend towards furthering restitution efforts is growing, the problem of international, even national, legal recognition of any agency or service has yet to be declared. Further, restitution efforts do not represent comprehensive legal solutions to the return of Nazi-looted artwork.⁷³ These efforts would undeniably benefit from a binding arbitration forum to resolve international claims.

IV. LITIGATING NAZI-STOLEN ART CLAIMS

Claims regarding the return of stolen artwork often come in one of two forms: (1) those against museums or (2) those against private collectors.⁷⁴ Currently, many in the art world highly suspect the Louvre in Paris and the Hermitage in Russia of possessing Nazi-stolen art.⁷⁵ While cases regarding stolen art surfaced following the end of World War II, two recent United States cases aptly demonstrate the unsuitability of litigation as a means to resolve claims of Nazi-stolen artwork.

A. *Goodman v. Searle*

The 1995 case of *Goodman v. Searle*⁷⁶ reveals the difficulties that claimants face in trying to regain possession of looted works. In the 1930s, when the Nazis began to advance across Europe, the Goodman family sent various valuable paintings to Paris for protection.⁷⁷ Following the war, the Goodmans were able to retrieve some of the original paintings.⁷⁸ However, upon the death of his father, Nicholas Goodman discovered that there were many paintings still missing.⁷⁹ After spending hundreds of thousands of dollars, the

half-million works of art. *Id.*

73. See Feliciano, et. al, *supra* note 50, at 73; see also Michael J. Bazylar, *Nuremberg in American: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 184 (2000) (quoting the parties from the *Goodman v. Searle* case); NICHOLAS, *supra* note 1, at 414 (noting that retrieving objects was particularly arduous due to the fact that many articles had been traded across multiple jurisdictions). *Id.*

74. See CONKLIN, *supra* note 22, at 218. As a historical note, Napoleon Bonaparte was the first dictator to systematically loot Europe's art treasures during his 1796-1797 campaign throughout Europe. *Id.* "Following France's defeat in 1814, the Allies seized the looted art. . . . Despite the resistance of the conquered French, most of the art was eventually returned to the countries from which it had been taken; that was a relatively easy task compared to the repatriation of Hitler's plunder because the French had housed most of the loot in museums and because the provenances of the works were usually known." *Id.*

75. Bazylar, *supra* note 73, at 161-62.

76. Complaint, *Goodman v. Searle*, No. 96 Civ. 5316 (S.D.N.Y. filed July 17, 1996).

77. Feliciano, et. al., *supra* note 50, at 86.

78. *Id.* at 89.

79. *Id.*

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Goodmans finally obtained a court order requiring Sotheby's to release the name of the paintings' most recent purchaser, Mr. Searle.⁸⁰ Following this court order, and accompanied by hundreds of documents proving the Goodman's ownership, the Goodman family initiated negotiations with Mr. Searle.⁸¹ According to Nicholas Goodman, grandson of the original owners, trying to negotiate a settlement was difficult:

[W]e are trying to negotiate a settlement. They are reluctant to settle. The problem we are finding is that any potential adversary . . . being wealthy enough to own a Degas or a Renoir, likely has the resources to engage in protracted litigation such as ours. The monetary expenses are unbelievable.⁸²

Not only does litigation require the expense of depositions, court reporters, and attorneys, it is also important to note that when dealing with international art claims, the need for translators may be essential.⁸³ While a settlement was offered in the dispute, it was "too ridiculous to even mention."⁸⁴ As a result, the case was drawn out for over three years.⁸⁵

B. Rosenberg v. Seattle Art Museum

The 1999 case *Rosenberg v. Seattle Art Museum* was the second Nazi-stolen art case filed within the United States.⁸⁶ When art dealer Paul Rosenberg fled Europe for New York City in 1940, he left behind more than 300 works in bank vaults and his gallery, including works by Cézanne, Renoir, Gauguin, and particularly an *Odalisque* by Matisse.⁸⁷ During the war, these works were confiscated by the Nazis.⁸⁸ However, decades later, the *Odalisque* reappeared in the Seattle Art Museum (SAM).⁸⁹ This resurfacing is not un-

80. *Id.* at 90.

81. *Id.*

82. *Id.* at 90.

83. *See id.*

84. *Id.* at 89.

85. *Id.* at 89 n. 75. *See also* Ron Grossman, *Battle Over War-Loot Degas Comes to a Peaceful End*, CHI. TRIB., Aug. 14, 1998, at 1. The case finally ended in settlement which required the Art Institute to acknowledge the work as a purchase from the Firtiz and Louise Gutmann collection and Mr. Searle. *Id.*

86. Complaint, *Rosenberg v. Seattle Art Museum*, No. C98-1073 D (W.D. Wash. filed July 31, 1998).

87. *See* NICHOLAS, *supra* note 1, at 91; *see also* Perkins, *supra* note 41, at 617.

88. *See* Perkins, *supra* note 42, at 617.

89. *Id.* at 619.

common, as most artwork stolen during the Holocaust ended up in museums and private collections.⁹⁰ While Rosenberg had recovered most of his stolen artwork, even after his death in 1950, the *Odalisque* went missing until its reappearance at the SAM.⁹¹ In July of 1998, Paul Rosenberg's heirs filed suit to recover the painting.⁹² In August of that same year, the SAM filed suit against the art gallery that sold SAM the painting, alleging breach of warranty of title.⁹³ While the Rosenberg's litigation was settled in 1999, the SAM's litigation against the art gallery continues.⁹⁴

The claim against the Seattle Art Museum is of particular import, for it marked the first United States Museum to become involved in a suit regarding the return of stolen art.⁹⁵ Following this suit, other prestigious museums throughout the United States received similar claims.⁹⁶ Since the late 1990s, various influential American museums and private collectors have been embarrassed to find that their collections include art stolen during the Holocaust.⁹⁷ Adding to the confusion over legal rights, cross petitions against the donee or the dealer who sold the donee the work invariably follow such findings or claims.⁹⁸

As evidenced by the aforementioned cases, rather than being settled out of court, claims regarding the disposition of Nazi-confiscated artwork ultimately end up in an unsuitable litigation forum.⁹⁹ As a means for resolving disputes involving such important issues, litigation serves an "anti-compromising" purpose, as it is adversarial in nature. In the end, the parties to such disputes will most likely despise one another, refuting the idea that any compromise will ever be achieved. This is particularly problematic given that many of these disputes could be resolved through cooperation, understanding, and the development of a positive relationship. Further, the cases demonstrate the proliferation of lawsuits generated by claims to recover stolen

90. *Id.* at 620.

91. Bazyler, *supra* note 73, at 17.

92. *Id.* at 172.

93. *Id.*

94. *Id.* at 174.

95. See Regina Hackett, *Seattle's Matissee Will Go Back to Owners: Museum Returning Art Stolen by Nazis*, SEATTLE POST-INTELLIGENCER (June 15, 1999), at A2.

96. *Id.* These museums include Chicago Art Institute, New York's Museum of Modern Art, the Minneapolis Institute of Arts, and the Cleveland Art Museum. Perkins, *supra* note 42, at 620.

97. See Bazyler, *supra* note 73, at 163.

98. *Id.* at 173. The museum's filing of cross petitions may be a way of saving face, as the SAM received the painting as a gift, yet sued the gallery which sold the painting to the donee. *Id.*

99. See *supra* notes 74-98 and accompanying text.

paintings from museums.¹⁰⁰ As a result, the need arises for a forum wherein the parties can work together with a neutral party to achieve a just resolution, effectively and efficiently.¹⁰¹

V. INTERNATIONAL LAW DESIGNATING ARBITRATION AS A FORUM TO RESOLVE HOLOCAUST RELATED STOLEN ART CLAIMS

Arbitration as a means of resolving international disputes is not a new concept. Various treaties include provisions designating arbitration as the forum for disputes over the terms of the agreement.¹⁰² The type of arbitration process used, however, often varies.¹⁰³ In regard to the resolution of Nazi-stolen art claims, the American arbitration system would be the most suitable process due to its well-established processes and procedures.

Having its roots in English common law, the American arbitration system was evident as early as the 18th century.¹⁰⁴ In ensuing decades, arbitration

100. See, e.g., *Autocephalous Greek-Orthodox Church v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D.Ind. 1989); *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150 (2d Cir. 1982); *DeWeerth v. Baldinger*, 836 F.2d 103(2d Cir. 1987); *U.S. v. McClain*, 593 F.2d 658 (5th Cir. 1979); *U.S. v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974).

101. See Artner, *supra* note 7 (stating that “[arbitration] is certainly a possibility, because these cases — which keep arriving with alarming regularity — and the laws that have been made with them, particularly those involving World War II, are not well-known to most judges.”) *Id.* (quoting Constance Lowenthal, Director of the World Jewish Congress in New York).

102. See, e.g., *Australian Treaty Series 1946, No. 5 (Jan. 14, 1946) available at <http://www.austlii.edu.au/au/other/dfat/>*. The treaty regarding the restitution of gold following World War II states, “to the settlement of such questions by the Signatory Governments concerned shall be either by agreement or arbitration.” *Id.* Further, treaties can also reflect the *result* of arbitration. See “Griffin-Cutler” Affair, Handout from Professor Gentile’s Arbitration Class, Pepperdine University School of Law (Sept. 4, 2001)(on file with author). For example, when international diplomacy failed following the “Griffin-Cutler” Affair in 1859 on San Juan Island, and an arbitration was held in 1872, Kaiser Wilhelm I served as the arbitrator. *Id.*

103. Some treaties create a specific style of arbitration to be used in resolution of the disputes, while others base the process on various countries’ arbitration processes. See *id.*

104. Various past Presidents supported arbitration. For example, President George Washington included a provision in his will providing for the arbitration of any disputes arising therein, stating that “all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants, each having the choice of one, and the third by the two — which three men thus chosen, shall unfettered by Law, or legal constructions, declare their sense of the Testator’s intention; and such decision is, to all intents and purposes to be as binding on the Parties as if it had been given in the Supreme Court of the United States.” *George Washington’s Will*, Handout from Professor Gentile’s Arbitration Class, Pepperdine University School of Law (Sept. 4,

became an increasingly important and preferred form of dispute resolution.¹⁰⁵ This willingness to seek alternatives to the courtroom was reflected in the New York Chamber of Commerce's establishment of the first permanent independent board of arbitration in the United States in 1768, which had the power to enter its decisions directly as a rule of court.¹⁰⁶ However, arbitration was not formally accepted as a valuable method of dispute resolution until 1925, when the federal government enacted the Federal Arbitration Act.¹⁰⁷ Since this time, many judges, attorneys and litigants have come to view arbitration as a successful manner in which disputes can be resolved outside of the courtroom.¹⁰⁸

As a process of dispute resolution, arbitration involves the "submission of factual or legal issues to a neutral who renders a decision akin to the decision which a judge or jury would render in court."¹⁰⁹ The neutral third party, or panel of neutral third parties, is generally selected based upon expertise regarding the subject of the dispute.¹¹⁰ As one source notes:

[a]rbitration is well suited to disputes in which the parties need an expert opinion. . . . If such a case went to trial, each side would present experts to testify . . . and the court, which may have no expertise, would decide the issue.¹¹¹

This aspect of arbitration allows both parties to feel comfortable with the power the arbitrator possesses in making a final determination on the matter.¹¹²

In an arbitration proceeding, arbitrators render binding or non-binding decisions.¹¹³ These two types of arbitration, binding and non-binding, are very important to the determination of the dispute.¹¹⁴ In non-binding arbitration the decision is not legally enforceable and is similar to mediation in that it

2001)(on file with author). President Lincoln, as well, found alternative methods of dispute resolution preferable to litigation, believing that "the nominal winner is often a real loser-in fees, expenses, and waste of time." THE COLLECTED WORKS OF ABRAHAM LINCOLN, Vol. II, 81-82 (T. Basler et.al. eds., 1953-55).

105. See Ed Anderson & Roger Haydock, *History of Arbitration As An Alternative to U.S. Litigation*, WLN 8257 (1996).

106. *Id.* at 2.

107. *Id.*

108. MICHAEL S. FIELDS, CALIFORNIA ALTERNATIVE DISPUTE RESOLUTION PRACTICE: ARBITRATION MEDIATION REFERENCE OF TACTICS, STATUTES, & RULES 30-09(1999).

109. *Id.*

110. *Id.*

111. S. Sorton Jones, *International Arbitration*, 8 HASTINGS INT'L & COMP. L. REV. 213, 214 (1985).

112. FIELDS, *supra* note 108, at 30-10.

113. *Id.*

114. *Id.*

merely assists in settlement.¹¹⁵ Conversely, binding arbitration is final and the arbitrator's decision is legally enforceable.¹¹⁶ While non-binding is the most commonly used style of arbitration to facilitate compromised awards, binding arbitration can smooth the progress of compromise by incorporating its more relaxed procedures.¹¹⁷ Binding arbitration creates a situation where the injured party is compensated and the stolen objects are returned to their rightful owner.¹¹⁸

VI. PROPOSAL FOR ARBITRATION COMMISSION

One of the main reasons arbitration provides an ideal forum for Nazi-confiscated art claims is that art differs from other stolen property, such as gold, in that it cannot be hidden or "commingled" among other assets.¹¹⁹ Also, the fact that many judges are not familiar with the customs of art communities creates unpredictability and inconsistency of rulings in such disputes.¹²⁰ Furthermore, the legal differences from country to country and state to state, regarding property rights, good-faith purchasers, statutes of limitations, means of adjudication, costs and methods, complicate actions that may be taken by claimants.¹²¹ Because many restitution laws do not apply internationally, and as claims regarding the restitution of stolen artwork begin to grow within the United States, new legislative measures need to be taken to address the complexities of these claims.¹²²

The creation of an arbitration commission would provide the most efficient forum for the resolution of disputes relating to the disposition of art-

115. *Id.*

116. *Id.*

117. FIELDS, *supra* note 108, at 30-15.

118. *See* Artner, *supra* note 7.

119. Feliciano, et. al., *supra* note 50, at 69. As the art cannot be commingled with other assets, it is traceable and able to be positively identified. *Id.*

120. *See* Artner, *supra* note 7.

121. *See* Ashton Hawkins, Richard A. Rothman & David B. Goldstein, *A Tale of Two Innocents: Creating an Equitable Balance Between the Rights of Former Owners and Good Faith Purchasers of Stolen Art*, 64 *FORDHAM L. REV.* 49 (1995).

122. *Id.* at 54-64. In addition to the differing laws regarding "good faith" purchasers, other international legal barriers such as jurisdictional qualifications can also hinder success. *Id.* *See also* Ralph E. Lerner, *The Nazi Art Theft Problem and the Role of the Museum: A Proposed Solution to Disputes Over Title*, 31 *N.Y.U. J. INT'L L. & POL.* 15 (1998). Many current owners of stolen artwork use the statute of limitations as a basis for refusing to return artwork. *Id.*

work stolen during the Holocaust.¹²³ Should a special arbitration committee be organized, inconsistent outcomes would end, and litigation, which wastes not only time and financial resources, but also burdens the courts, would not be needed.¹²⁴ As a result of the proposed arbitration legislation, four policies would go into effect: (1) the creation of a board of arbitrators; (2) adherence to the authority of the U.S. Federal Arbitration Act; (3) the creation of procedures which could be consistently applied by the arbitration board; and (4) the granting of a final and binding award.

A. Board of Arbitrators

Unlike most arbitration proceedings, which use the "Tri-Parte" model of arbitration, the Arbitration Committee should use a five-member board of third-party neutrals in order to reach a fair award.¹²⁵ While most arbitrators are fair individuals, they may not always be experts on art or the laws regarding such objects.¹²⁶ Creating a board of arbitrators where the arbitrators are selected due to their expertise is essential for the forum's factual determinations to receive the respect of the parties.¹²⁷ A board made up of experts also nearly guarantees acceptance by the parties involved in the arbitration.¹²⁸

B. Authority

One of the most attractive elements of arbitration is flexibility. Arbitration is not focused solely on strict legal interpretation, it is also concerned with fairness and common sense. Thus, in order to achieve a decision reflecting both the urgent public interest in allowing victims to recover lost assets, while at the same time allowing museums to display works of art for public knowledge and research, a uniform commission should be formed.¹²⁹

However, in order to ensure consistency, the governing principles should be spelled out in the treaty's or statute's arbitration provision. Combining the

123. See Artner, *supra* note 7. One of the reasons that litigation of art claims can be unpredictable is the fact that many juries are not prepared to handle such situations. *Id.*

124. *Id.*

125. A five-member board would ensure that each parties' interests would be adequately represented by the technical qualifications of each neutral. Further, having five members as opposed to three would help alleviate concern over a biased forum by not only bringing more experience and expertise to the decision, but also neutrals who hale from various different regions of the world.

126. See Artner, *supra* note 7.

127. See FIELDS, *supra* note 108, at 30-10.

128. *Id.*

129. See *Roundtable Discussion*, *supra* note 3. The uniformity of a commission would allow museums and private party litigants faster and more predictable outcomes to claims. *Id.*

needs, constraints, ethics and ways of the art world with the desires and needs of the individual victims would result in an equitable and legally justifiable award.¹³⁰ The equity of arbitration would be particularly beneficial to both parties, as most Holocaust victim claimants are seeking fairness in addressing the repatriation of their artwork, not punitive damages.¹³¹

C. Process and Policy

In order to ensure attempts at good faith negotiation, a period of time should exist between when a request is formally made and when the parties are permitted to come before the arbitration committee. According to many state statutes, which have created arbitration commissions to resolve conflicts over cultural objects, a reasonable period of time is anywhere from six months to one year.¹³² The length of time may be determined based upon the amount of time that would allow for fruitful discussions and negotiations between the parties. If good faith negotiations fail, then parties can file claims with the arbitration committee.

D. Binding Effect of Award

Lastly, the determination of the arbitration panel would be binding upon both parties, subject only to vacature upon a finding of bias or clear error of law.¹³³ Given the nature of the disputes and the common failure of good faith negotiation, it is essential that any determination on the matter be binding, forcing the parties to treat the compromise seriously and removing the litigation "safety net."¹³⁴

Given the binding nature of its decisions, the arbitration commission, the arbitration commission should be required to document and explain its conclusions. Publication of the commission's decisions would aid in providing

130. See Artner, *supra* note 7.

131. See Feliciano, et. al., *supra* note 50, at 87-90.

132. See, e.g. ALA. CODE §§ 11-17-1 to 11-17-16 (1989 & Supp. 1990); ALASKA STAT. §§10.30.010-.155 (1989); ARIZ. REV. STAT. ANN. § 32-2194 (1986); CAL. REV. STAT. §§ 8010-8029 (2001); COLO. REV. STAT. §§ 12-12-101 to 12-12-115 (1985 & Supp. 1989); NEB. REV. STAT. §§ 12-1-1 to 12-1121 (1987); and various other state statutes (holding that a reasonable period of time for good faith negotiations to take place before allowing mediation or arbitration is anywhere from six months to one year).

133. FIELDS, *supra* note 108, at 30-11.

134. *Id.*

predictability and encouraging the resolution of claims, while also providing anonymity for the parties involved.¹³⁵ In this same regard, principles of *stare decisis* should apply to the commission's rulings.¹³⁶

The most efficient remedy, therefore, involves the creation of an arbitration commission designed to resolve disputes regarding the disposition of claims regarding Nazi-confiscated artwork and given the power to issue awards that accord binding and legal force.

E. Negatives of Arbitration

First, while privacy is a very important benefit of arbitration, it can also be detrimental to the goals and benefits of the arbitration commission. A privacy policy would essentially allow parties to hide their actions from public scrutiny.¹³⁷ Ultimately, such behavior could lead to criticism of arbitration for its secrecy.¹³⁸

Another downside to arbitration, and perhaps the most troublesome, is the issue of party representation. Allowing dispute participants to retain counsel could frustrate the main purpose of such arbitration — compromise.¹³⁹ According to one source, “[a]gents may not fully understand a [party’s] interests, may not properly prioritize those interests, or may not articulate a [party’s] interests as well as the [party] could.”¹⁴⁰ Furthermore, hiding behind one’s lawyer is the best way to engage in malicious tactics against the “other side,” all within the self-proclaimed spirit of trying to resolve the dispute.¹⁴¹

By contrast, if both parties represent themselves, they may not understand their rights or the arbitration process itself, creating confusion and inadequate pleading. However, as one arbitrator has mentioned, many attorneys

135. In order to provide anonymity to the parties, the published decisions should leave the names of the parties out of the text.

136. *Stare decisis* is a court policy wherein once a “point of law has been settled by decision, it forms precedent which is not afterwards to be departed from. . . [t]he doctrine is a salutary one, and should not ordinarily be departed from where decision is of longstanding and rights have been acquired under it, unless considerations of public policy demand it.” *Colonial Trust Co. v. Flanagan*, 25 A.2d 728-29 (Pa. 1942)(defining the use of *stare decisis*). By requiring that the principles of *stare decisis* be followed, the inconsistencies in arbitration awards would be avoided because the doctrine requires courts to follow the holdings of previous cases, unless public policy necessitates otherwise. *Id.*

137. See Perkins, *supra* note 42, at 632. For example, an art dealer may not want to deal with an auction house or museum that deals in stolen or looted works of art. However, if the parties’ actions are kept confidential, the art dealer would not be made aware of such dealings.

138. *Id.*

139. FIELDS, *supra* note 108, at 30-10.

140. *Id.* at 30.

141. *Id.*

themselves are not well-versed in the arbitration process.¹⁴² Therefore, if lawyers are not allowed in the proceedings, or allowed only as advisors rather than active participants, dialogue might be more easily cultivated and disputes more efficiently resolved.¹⁴³ In this regard, the absence of lawyers may create a potential benefit to both the rightful owners and museums.

F. Attributes of Arbitration

In analyzing the prospect of arbitrating claims regarding the disposition of Nazi-confiscated artwork, three very important benefits exist. One of the most obvious benefits is the ability to have expert arbitrators.¹⁴⁴ Most judges do not qualify as “experts” in the ways of the art world; thus, having arbitrators selected as a result of their knowledge and understanding of the constraints, needs, ethics, and practices of the art community, would allow the arbitrators to provide a resolution that best suits the desires of both parties.¹⁴⁵

Second, arbitration is a less adversarial forum.¹⁴⁶ In this regard, arbitration provides an atmosphere that is not as hostile as litigation, wherein compromise may be better facilitated.¹⁴⁷ This is a particularly attractive prospect in situations where much could be gained by both sides through the development of a positive relationship and cooperation.

Finally, arbitration provides privacy.¹⁴⁸ In disputes involving the sacredness of familial art and the imperative preservation of historical objects, both the families and the museums may have a great need for confidentiality.¹⁴⁹ Many of these cases are extremely emotional and most claimants do not want their personal tragedies or misfortunes publicly portrayed.¹⁵⁰ Thus, individual claimants may find the privacy of arbitration an appealing asset.¹⁵¹

142. Handout from Professor Gentile’s Arbitration Class, Pepperdine University School of Law (Oct. 9, 2001)(on file with author).

143. *Id.*

144. Artner, *supra* note 7.

145. *Id.* (quoting Constance Lowenthal, Director of the Commission for Art Recovery: “[The art world] is very specialized. And while many judges would love to have such a case, it’s almost always their first”).

146. *See* FIELDS, *supra* note 108, at 30-10.

147. *Id.*

148. *Id.*

149. Many victims’ families have no corporeal connections to those who were murdered during the Holocaust. For them, the artwork may provide a link to their ancestral past.

150. *See* Feliciano, et. al., *supra* note 50, at 87-90.

151. Since decisions would be published, yet the names of the claimants would be con-

Similarly, museums also may benefit from the confidential nature of arbitration. While federally funded museums are public institutions, as previously discussed, many of the works of art came to these institutions through questionable means.¹⁵² As a result, many institutions may fear embarrassment or damaged reputations should the public find out about the manner in which certain paintings were obtained.¹⁵³ In this respect, arbitration would allow all of the parties to resolve the dispute without being required to make potentially harmful or embarrassing public disclosures.

Other minor benefits of arbitration, as opposed to litigation, include cost and speed. While arbitration is by no means "cheap," it can be far less expensive than traditional litigation.¹⁵⁴ As evidenced by the *Goodman* case, litigation requires great expenditures of financial resources which neither individual claimants, nor museums, may be financially capable of making.¹⁵⁵

Further, litigation of claims dealing with such specialized areas as stolen art, have the tendency to result in drawn-out litigation and perpetual disagreement.¹⁵⁶ As one art expert notes:

Many [claims] are complex and convoluted. The families involved don't always know the truth. To avoid discussing painful experiences, Holocaust survivors often mixed lore with reality. Family branches were sometimes separated, leaving one side in the dark about the other's activities. Many works have changed hands many times.¹⁵⁷

Unlike litigation, the arbitration process would be quickly initiated and with relaxed rules of evidence and law, would ease the difficulties of suing a party with limitless legal resources.¹⁵⁸ As art and other family heirlooms are connected to families not only financially, but also emotionally, arbitration offers the best way to see these assets returned without having to go through a drawn-out court battle.

VII. CONCLUSION

As the parties in *Goodman* case stated, "the best approach to these complex issues would be a formal mechanism for mediation or arbitration, bal-

cealed, claimants would not have to face public scrutiny or media.

152. See Perkins, *supra* note 42, at 620.

153. *Id.* Various prestigious American museums and private collectors have been embarrassed to find that their collections include art stolen during the Holocaust. *Id.* at 618.

154. See FIELDS, *supra* note 108, at 30-10.

155. See Feliciano, et. al., *supra* note 50, at 87-90.

156. See Artner, *supra* note 7.

157. SCHWARTZ, *supra* note 57, at 23 (quoting Judith Dobrzynski, *Man in the Middle of the Schiele Case: Where's Ronald?* N.Y. TIMES, JAN. 29, 1998, AT E1).

158. See FIELDS, *supra* note 108, at 30-11.

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ancing the interests of legitimate claimants, innocent owners, and the public that most benefits if those works now in museums can remain there.”¹⁵⁹ It has been over sixty years since the Nazis plundered Europe and its people. While the passage of time has provided renewed investigations into the recognition and return of stolen works of art, it has also allowed many works to be sold or transferred, further complicating the search for missing art.¹⁶⁰ A uniform arbitration process may supply a means by which nations can resolve the disposition of heirless assets while at the same time finding ways to teach future generations the truth about the Holocaust. The need for a forum to devise equitable and just remedies for past and present owners is urgently needed.¹⁶¹ In the end, the arbitration of Nazi-stolen art claims may provide a means to fill the gap between the flexible nature of human morality and the strictness of international jurisprudence.

159. Bazylar, *supra* note 73, at 184.

160. See NICHOLAS, *supra* note 1, at 443.

161. *Id.*

