

Paved with Good Intentions:  
The Development of German and American  
Holocaust-era Looted Art Restitution Institutions

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## Abstract

### Paved with Good Intentions: The Development of German and American Holocaust-era Looted Art Restitution Institutions

Alyssa Stokvis-Hauer

This thesis presents insights into how conceptualizing and pursuing Nazi-looted art and cultural heritage restitution has changed since 1945 in the United States and Germany. The text presents historical and institutional analyses of the two major restitution institutions in these countries; the New York Financial Service Department's Holocaust Claims Processing Office (HCPO), and the Magdeburg-based federal institution known widely as the German Lost Art Foundation, or more correctly as the *Deutsches Zentrum Kulturgutverluste*, formerly the *Koordinierungsstelle für Kulturgutverluste* located first in Bremen and then Magdeburg.

The past views of guilt, justice, and restitution as a moral imperative in the years immediately following World War II vary substantially from the contemporary ethos that characterizes the restitution of Holocaust-era spoliated cultural objects. Through the 1940s and 1950s German suffering shaped post-war German imperatives, while the American approach was heavily influenced by media coverage which highlighted American heroism and virtue, alongside a reluctant custodianship balanced with efforts to engage in effective restitution prerogatives. As such, the ascendancy of moral purpose and a politics of memory and regret in the 1990s is a significant shift.<sup>1</sup> Filling a gap in World War II era spoliated art restitution research, this text uses institutional and cultural comparisons to bring to the fore patterns and changes within national self-narration or identification that influence institutional organization or practices. Drawing from archival documents, interviews, and secondary literature, this shift is approached and analyzed through a framework of discursive institutionalism, collective memory, and national identity construction.

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<sup>1</sup> Robert G. Moeller, *War Stories: The Search for the Usable Past in the Federal Republic of Germany* (Berkeley & Los Angeles: University of California Press, 2002), 2; Lynn H. Nicholas, *The Rape of Europa: the fate of Europe's treasures in the Third Reich and Second World War* (New York: Knopf, 1994), 370, 390-391; "Further Receipt of Restitution Claims: Draft correspondence from Property Division Restitution Branch to K.A. de Keyserlingk and Richard F. Roward," Records Relating to the Property Division 1945-1949, Records of the Control Office, box 703, record group 260 Records of the U.S. Occupation Headquarters, World War II, National Archives and Registration II, College Park, Maryland.

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## List of Abbreviations

<b>ACC</b>	Allied Control Commission
<b>DZK</b>	<i>Deutsches Zentrum (für) Kulturgutverluste</i> or The German Lost Art Foundation
<b>FRG</b>	West Germany ( <i>Bundesrepublik Deutschland</i> /Federal Republic of Germany)
<b>GDR</b>	East Germany ( <i>Deutsche Demokratische Republik</i> /German Democratic Republic)
<b>HCPO</b>	Holocaust Claims Procession Office
<b>HEAR</b>	Holocaust Expropriated Art Recovery Act of 2016 (Public Law 114-308)
<b>MFA&amp;A</b>	Monuments, Fine Art and Archives
<b>NSDAP</b>	Nationalsozialistische Deutsche Arbeiterpartei (The National Socialist German Workers' Party, or the Nazi party)
<b>NYDFS</b>	New York State Department of Financial Services
<b>OMGUS</b>	Office of Military Government, United States



“His eyes are staring, mouth is open, his wings are spread. This is how one pictures the angel of history. His face is turned towards the past. Where we perceive a chain of events, he sees on single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise; it has got caught in his wings with such violence that the angel can no longer close them. This storm irresistibly propels him into the future to which his back is turned, while the pile of debris before him grows skyward. This storm is what we call progress.”

– Walter Benjamin, *Theses on the Philosophy of History* (1940)

“The past is never dead. It is not even past.”

– William Faulkner, from Act 1, Scene 3, *Requiem for a Nun* (1951)

## Introduction

By the spring of 1945, to say that Nazi looting and confiscation had moved mountains was hardly a euphemism. Estimates put the number of cultural objects stolen and displaced – from priceless Vermeers to modest family heirlooms – in the millions.<sup>2</sup> Through a concentrated and highly efficient program of confiscation, spoliation, and exploitation, which in some areas lasted for over a decade, the NSDAP project of amassing the great cultural treasures of Europe from state institutions and private individuals alike was a vast, well-funded endeavour.<sup>3</sup> Three central bodies oversaw this unprecedented prerogative of spoliation: the *Sonderauftrag Linz*, which saw to ‘acquiring’ thousands of objects intended for the grandiose national museum Hitler planned to establish in his Austrian hometown; the *Ahnenerbe* group which specialized in archeological finds; and the infamous *Einsatzstab Reichsleiter Rosenberg für die Besetzten Gebiete*, or ERR, headed by Alfred Rosenberg, which began by collecting Jewish cultural heritage to bolster anti-Semitic ‘studies,’ but would later notoriously expand its purview to become the most prolific NSDAP institution impounding and stockpiling *objet d’art* across Europe.<sup>4</sup> The influence of the Nazi elite, especially as the Third Reich increased its power and occupation of Europe, allowed them to use these institutions as their personal dealers, and the greatest collections of the continent as their private purchasing galleries.<sup>5</sup>

Great pains were made to pass laws that made segregation and degradation of Nazi ‘opponents’ (whether they be actual political dissenters, or maligned racial, religious, or other groups)

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<sup>2</sup> Lynn H. Nicholas, “World War II and the Displacement of Art and Cultural Property,” in *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, Inc., 1997), 39, 41.

<sup>3</sup> It should be noted that the spoliation discussed does not take into full account the arbitrary pillaging done by soldiers: Hector Feliciano, *The Lost Museum* (New York: Basic Books, 1997), 3-4; Nicholas, “World War II and the Displacement of Art and Cultural Property,” 40.

<sup>4</sup> Nicholas, “World War II and the Displacement of Art and Cultural Property,” 40; Feliciano, *The Lost Museum*, 4-5.

<sup>5</sup> Nicholas, “World War II and the Displacement of Art and Cultural Property,” 40; Nicholas, *The Rape of Europa* (New York: Alfred A. Knopf, 1994), 104-110; James S. Plaut, “Investigation of the Major Nazi Art-Confiscation Agencies,” *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, Inc., 1997), 124; Bernard Taper, “Investigating Art Looting for the MFA&A,” *The Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, Inc., 1997), 136; Hermann Göring may be the most renowned for his collecting appetite, and Kenneth D. Alford provides an engaging and robust overview of the Reichsmarschall’s appropriation and looting, from his estate Carinhall to his purchases of van Megreen’s famously forged Vermeer in *Hermann Göring and the Nazi Art Collection: the Looting of Europe’s Art Treasures and their Dispersal After World War II* (Jefferson: McFarland & Company, Inc., 2012).

technically legal. This was much the same in the case of NSDAP campaigns concerning cultural heritage and art.<sup>6</sup> Beginning in 1933 with the Nazi ascension to power, the NSDAP passed increasingly restrictive and racist laws against German-Jews; jobs and public spaces were made legally off-limits and exorbitant taxes were levied against Jewish citizens to systematically impoverish and disenfranchise them in the name of bettering ‘Aryan’ Germans.<sup>7</sup> To even leave the increasingly restrictive and antagonistic Reich, Jews were required to pay a 20% fine on their net worth, a 25% ‘Reich flight tax’ on amounts above 50,000 marks, and a 100% tax on all property purchased after 1933.<sup>8</sup> Many had no choice but to sell their art and other cultural objects – or use them as bribes – in order to escape the tightening fist of the Third Reich.<sup>9</sup> This means that works we now think of as looted art began to enter the market as early as 1933, leading to their dispersal through Europe and beyond. Germany’s own museums were targeted and pressed to be rid of objects the Reich deemed ‘degenerate’; in 1937, resisting galleries and museums were forced to receive “committees of Nazi artists and theorists” who saw that more than 16,000

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<sup>6</sup> Nicholas, “World War II and the Displacement of Art and Cultural Property,” 42; Michael J. Kurtz, *America and the Return of Nazi Contraband: The Recovery of Europe’s Cultural Treasures*, (Cambridge: Cambridge University Press, 2006), 17.

<sup>7</sup> Wolf Gruner, “Poverty and Persecution: The Reichsvereinigung, the Jewish Population, and Anti-Jewish Policy in the Nazi State, 1939-1945,” *Shoah Resource Center, The International School for Holocaust Studies* based upon a paper presented at “Jews and Poverty” conference convened by the Simon Dubnow Institute for Jewish History and Culture at the University of Leipzig in September 1997, accessed 19 December 2017, [http://www.yadvashem.org/odot\\_pdf/Microsoft%20Word%20-%20203214.pdf](http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%20203214.pdf).

<sup>8</sup> “Nazi Restrictions, Special taxes strip Jews of Wealth,” *Jewish Telegraph Agency*, 25 December 1938, accessed 17 December 2017, <https://www.jta.org/1938/12/25/archive/nazi-restrictions-special-taxes-strip-jews-of-wealth>.

<sup>9</sup> Nicholas, “I. Prologue: They had Four years: Germany before the War: The Nazi Art Purges,” in *The Rape of Europa*, 3-25. Between 1933-1938, prior to the outbreak of World War II, a disproportionate amount of Jewish property was acquired by ‘Aryan’ buyers – both private and governmental – as a result of increasing pressure and exploitation of German Jews under the Nazi regime. A notable example of pre-war forced sales and complex legal quick-stepping undertaken by the NSDAP to liquidate the wealth and property of German Jews for Nazi gain can be seen with the seizing and closure of the Van Dieman Galerie in Berlin. A subsidiary of the Jewish-owned Margraf Group, the gallery was run by German-Jewish art dealer Jakob Oppenheimer, who had inherited the Margraf Group following its owner’s death. In 1933, the Nazis attempted to intern Oppenheimer and his wife Rosa, who escaped by fleeing to France. With the Oppenheimers outside the country, the NSDAP took the opportunity to legally forbid Jakob from undertaking any legal acts on behalf of the Margraf Group, and reassigned Bolko Freiherr von Richthofen, Reichmarshall Hermann Göring’s friend, as the company’s administrator. Von Richthofen liquidated the Margraf group’s assets, which included the Van Dieman art collection, in 1938 at auction. Jakob Oppenheimer died in France in 1941, and Rosa was deported to Auschwitz in 1943 where she died. Theirs is but one story that underlines the NSDAP’s pre-war methods of targeting non-‘Aryan’ Germans for profit. “Tapestry ‘Chastity with two putti’ (Oppenheimer III): Recommendation regarding Oppenheimer III RC 1.133,” *Restitutiecommissie*, 8 April 2013, accessed 17 December 2017, [http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_1133.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_1133.html); Judy Dempsey, “Reich Bureaucrats Seen in a New Light,” *The New York Times*, 26 December 2010, accessed 17 December 2017, <http://www.nytimes.com/2010/12/27/world/europe/27iht-berlin27.html>.

works were confiscated.<sup>10</sup> In 1938, following the *Anschluss*, Jews in both Germany and now-annexed Austria were legally forced to register their property and sell all their assets in order to emigrate.<sup>11</sup> Later as the war drew on, items left behind in homes, safe deposit boxes, galleries, or storage facilities by those who had fled or been deported to concentration or death camps were deemed ‘abandoned’ and therefore open to Nazi seizure.<sup>12</sup> Works deemed worthy by the standards of the NSDAP to not be sold or destroyed were scattered throughout the Reich. Castles and salt mines were repurposed as storage facilities and crammed with priceless paintings, sculptures, Judaica, books; troves which would be discovered or laboriously tracked down – and sometimes pilfered from<sup>13</sup> – by the Allies immediately preceding and following the end of the war (fig. 1).<sup>14</sup>

The Third Reich’s project of accumulation and dispossession held two interconnected purposes central to Nazi thought. The first was aesthetic: a project of separating ‘aryan’ from ‘un-aryan’ cultural objects – a designation which did not exclusively refer to the producer or owner of the work, but whether the work itself was deemed to represent ‘Judeo-Bolshevist’ or ‘degenerate’ influences – and either destroying, selling or auctioning off the latter for Nazi gain.<sup>15</sup> The second

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<sup>10</sup> Nicholas, “World War II and the Displacement of Art and Cultural Property,” 39; Olaf Peters, “From Nordau to Hitler: ‘Degeneration’ and Anti-Modernism between the Fin-de-Siècle and the National Socialist Takeover of Power,” in *Degenerate Art: The Attack on Modern Art in Nazi Germany 1937*, ed. Olaf Peters (Munich, London, New York: Prestel Publishing Ltd, 2014), 21.

<sup>11</sup> Kurtz, *America and the Return of Nazi Contraband*, 17.

<sup>12</sup> Nicholas, “World War II and the Displacement of Art and Cultural Property,” 42.

<sup>13</sup> The Allied armies also played a role in displacing cultural objects through individual thefts and ‘trophy-taking’ during the war. Though this aspect of cultural object displacement is not specifically focused upon in this text, it must be included in any discussion of Holocaust-era object restitution. One of the most famed thefts of this kind was of the so-called Quedlinberg Treasures. A collection of exquisite medieval art pieces and illuminated manuscripts was stolen by American army lieutenant Joe Tom Meador from a cave where they had been deposited for safekeeping by the Nazi regime during the war. Lt. Meador mailed the artifacts home to Whitewright, Texas in 1945. They remained there until their discovery, in the possession of Meador’s heirs, thanks to the determination of lost art investigator and historian Willi A. Korte in the 90s. The Quedlinberg Treasures were returned to Germany in 1992. Jo Ann Lewis, “On the Trail of Stolen Treasures,” *The Washington Post*, 11 July 1990, accessed 2 January 2018, [https://www.washingtonpost.com/archive/lifestyle/1990/07/11/on-the-trail-of-stolen-treasures/c170a64e-a555-4d3a-8784-332e367e31bf/?utm\\_term=.905830f364d8](https://www.washingtonpost.com/archive/lifestyle/1990/07/11/on-the-trail-of-stolen-treasures/c170a64e-a555-4d3a-8784-332e367e31bf/?utm_term=.905830f364d8); William H. Honan, “A Trove of Medieval Art Turns Up in Texas,” *The New York Times*, 14 June 1990, accessed 19 December, <http://www.nytimes.com/1990/06/14/arts/a-trove-of-medieval-art-turns-up-in-texas.html?pagewanted=all>; William H. Honan, “Letters Show Thief Knew Value Of The Quedlinberg Treasures,” *The New York Times*, 3 September 1994, accessed 19 December 2017, <http://www.nytimes.com/1994/09/03/arts/letters-show-thief-knew-value-of-the-quedlinburg-treasures.html>.

<sup>14</sup> Robert M. Edsel, *The Monuments Men* (New York: Center Street, 2009), 277-300; Feliciano, *The Lost Museum*, 50.

<sup>15</sup> It bears remark that there was a receptive market for the selling off of confiscated works at the time, as Lynn H. Nicholas writes: “many countries took full advantage of deaccessioning by the Nazis authorities, and the rejects

was reinforcing the supremacy of the Third Reich through ownership of Europe's greatest cultural achievements.<sup>16</sup> Both these purposes reinforced the false and genocidal dogma of Nazi racial ideology, and "[b]y telling Germans what art is the right art and what art is subversive[...] could move on to say what people are the right people, what religions are the right religions, and eventually who could live and who would die."<sup>17</sup> Additionally, the process of forced sales and confiscation further dehumanized the victims of the Third Reich, robbing them of their personhood to the point that they were deemed unworthy or unable to own objects of any value.<sup>18</sup>

The project of restituting the works displaced during WWII, as we have known it since the 1990s, sought to right these wrongs on a much deeper level than the restitution projects tackled during the Allied-occupation from 1945-1949.<sup>19</sup> The Allies' occupation of Germany not only came with the responsibility of over-seeing the shattered country and its populace, but also millions of displaced cultural objects. The Monuments, Fine Arts, and Archives division of the Office of the Military Government had been formed to protect priceless sites and objects in the European theatre, and now found itself hunting down caches of objects. Collecting points were set up, with "50 million artworks of all kinds [...] placed in 1,400 repositories in the U.S. occupation zone of Germany and ultimately returned to the country of origin."<sup>20</sup> Where earlier restitution initiatives sought to right the unlawful wrong of theft in an efficient manner, the end

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ended up in collections worldwide": Nicholas, "World War II and the Displacement of Art and Cultural Property," 39-40; Kurtz, *America and the Return of Nazi Contraband*, 12-13; Peters, "From Nordau to Hitler," 17-26.

<sup>16</sup> What the Nazis deemed Europe's greatest cultural achievements fell in line with the spurious rules set by Nazi ideologues regarding form, aesthetics, and subject – rules which even Nazi elites often found confusing, or bent based upon their own artistic tastes and preferences: Lisa Pine, *Hitler's 'National Community': Society and Culture in Nazi Germany* (London: Hodder Education, 2007), 207.

<sup>17</sup> Ronald S. Lauder, "Preface," in *Degenerate Art: The Attack on Modern Art in Nazi Germany 1937*, ed. Olaf Peters (Munich, London, New York: Prestel Publishing Ltd, 2014), 8; Kurtz gives a succinct outline, borrowed from Jonathan Petropoulos, of the increasing intensity of spoliation and confiscation by the Nazis, which links their looting projects and mechanisms to their racist and genocidal prerogatives, as well as internal NSDAP power struggles: Kurtz, *America and the Return of Nazi Contraband*, 14-15.

<sup>18</sup> Thérèse O'Donnell, "The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?" *The European Journal of International Law* 22:1 (2011): 50; Michael Berenbaum, "Confronting History: Restitution and the Historians," in *Holocaust Restitution: Perspectives on the Litigations and its legacy*, eds. Bazylar, Michael J., and Roger P. Alford (New York & London: New York University Press, 2006), 44.

<sup>19</sup> Kurtz, *America and the Return of Nazi Contraband*, 83-87, 103; Lynn Nicholas, "XII: Mixed Motives: The Temptation of Germany's Homeless Collection" in *The Rape of Europa*, 369-405.

<sup>20</sup> Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: Public Affairs, 2003), 194.

of the 20<sup>th</sup> century saw this mantle taken up with the added notion of reaffirming the personhood and memory of these victims and their heirs through the act of return and restitution. Through combining archival documentation, contemporary interviews,<sup>21</sup> and historical and theoretical studies, the research for this thesis will provide critical, constructive insight into how thinking about and pursuing restitution has changed since 1945 in the United States and Germany. By focusing on two states historically and presently at the centre of the question of Nazi looted art restitution, I hope to shed light on new scholarly approaches to understanding restitution and possible avenues for practical improvement in the field.

In recent years, the mantra of Holocaust-era asset restitution has become the neat, bifurcated sentiment of ‘just and fair solutions.’ In 1998, over 40 national and special interest group delegations gathered in Washington, DC to take part in the Washington Conference on Holocaust Era Assets.<sup>22</sup> Convened at the United States Holocaust Memorial Museum, it was the first-ever international effort to address, coordinate, and share information on restitution efforts related to assets lost, stolen, or confiscated by the Third Reich. From this gathering of national and non-governmental delegations, the “Washington Conference Principles on Nazi-Confiscated Art,” (appendix A) emerged, formulated using the United States’ Association of Art Museum Directors recommendations on dealing with Nazi looted art.<sup>23</sup> These eleven Principles were (and are) recognized as the legally non-binding guidelines by which the signatory nations should pursue the restitution of the hundreds of thousands of objects still unclaimed by the victims, or their heirs, of Nazi persecution.<sup>24</sup> The overarching framework predicated on “just and fair

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<sup>21</sup> All interviews undertaken by the author for the purpose of this thesis research are reproduced in a clean, edited format as appendixes C-F.

<sup>22</sup> Donald S. Burris, “From Tragedy to Triumph in the Pursuit of Looted Art: Altmann, Benningson, Portrait of Wally, Von Saher and their Progeny,” *The John Marshall Review of Intellectual Property Law* 15 (2016): 406, accessed 12 July, 2016, <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1383&context=ripl>.

<sup>23</sup> The Association of Art Museum Directors began working on their recommendations and guidelines February 1998, and published them in June, 1998: US Congress, House of Representatives, Committee of Financial Services, *Review of the Repatriation of Holocaust Art Assets in the United States*, 109<sup>th</sup> cong., 2<sup>nd</sup> sess., 2006, 41.

<sup>24</sup> Of the nations which attended the 1998 Washington Conference, there were no major nations from the Americas or Europe which did not participate, with the exception of Mexico and Ireland, the latter of which participated at the 2009 Prague Holocaust Era Assets Conference. No Asian or African countries participated in either conference with the exception of Turkey and Israel. Commitment to the Washington Conference Principles was reaffirmed at the Prague Conference, held 26-30 June, 2009, through the Terezin Declaration on Holocaust Era Assets and Related Issues (30 June, 2009). The Declaration restates the undersigned nations’ support to continue pursuing the restitution of Holocaust-era looted assets. Mostly, it re-affirms their convictions in the moral responsibilities laid out in the 1998 Washington Conference Principles, and the need to strengthen and support all efforts towards just and fair solutions, especially emanating from national state governments. “Appendix F: Conference Participants,” from

solution[s]”<sup>25</sup> was extolled as an important, supranational step towards righting an historical wrong; the first cooperative initiative after 50 years of inactivity since the end of the Allied Occupation of Germany.

Yet, what was once a fresh initiative in 1998 to pursue just and fair solutions for victims of Nazi persecution and their heirs, has resurfaced as of late as a rhetorical totem in the face of legal loopholes and tangles of red tape that have come to characterize the majority of Holocaust-era spoliated art claims. Though all signatory nations ascribe to the same principles, the mantra of “just and fair solutions” erases the unique challenges, developments, and realities that exist on the ground, and offers very little indication of the complexities that have plagued the arena of Holocaust-era restitution.<sup>26</sup> The respective national characterizations formed in and after World War II of ‘aggressive victor’ and ‘defeated aggressor,’ have proven to shape the form and substance of American and German restitution initiatives.

The import of national identity on restitution activity and institutional development has been touched upon in analyses of the ethos of restitution development and post-war national memories.<sup>27</sup> But it has not been taken up explicitly, nor in a comparative framework utilizing Germany and the United States as case studies. The emergence of the Washington Principles can be seen as the coalescence of a rising tide of interest in the 1990s towards the specific issue of Nazi looted art. In 1997 on the international political stage, the United States had entered into the Swiss Bank Settlement dispute as a mediator, investigations pertaining to which brought about the creation of the Holocaust Claims Processing Office in New York.<sup>28</sup> Earlier in 1994 in

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*Conference on Holocaust-Era Assets Proceedings (November 20-December 3, 1998)*, ed. J.D. Bindenagel (Washington DC: Government Printing Office, 1999), accessed 4 January 2018, <https://fcit.usf.edu/holocaust/resource/assets/heacappe.pdf>; Holocaust Era Assets Conference, “Terezin Declaration,” 30 June, 2009, accessed 17 July, 2017, [http://www.holocausteraassets.eu/files/200000215-35d8ef1a36/TEREZIN\\_DECLARATION\\_FINAL.pdf](http://www.holocausteraassets.eu/files/200000215-35d8ef1a36/TEREZIN_DECLARATION_FINAL.pdf).

<sup>25</sup> U.S. Department of State, “Washington Conference Principles on Nazi-Confiscated Art,” 3 December 1998, accessed 2 August, 2016, <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.

<sup>26</sup> Wesley A. Fisher, and Ruth Weinberger, “Holocaust-Era Looted Art: A Current World-Wide Overview” paper presented at the ICOM Museum & Politics Conference, St. Petersburg, Russia, 11 September 2014, 2, accessed 7 November, 2014, [http://www.lootedart.com/web\\_images/pdf2014/Worldwide-Overview.pdf](http://www.lootedart.com/web_images/pdf2014/Worldwide-Overview.pdf).

<sup>27</sup> Vivian Grosswald Curran, “Competing Frameworks for Assessing Contemporary Holocaust Era Claims,” *Fordham International Journal of Law Symposium Issue* 25:6 (2001): S-107- S-132.; O’Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 49-80.

<sup>28</sup> Anna B. Rubin, esq., (Director of the Holocaust Claims Processing Office, New York), interview with Alyssa Stokvis-Hauer, 4 May 2016; Monica Dugot, “The Holocaust Claims Processing Office’s Handling of Art Claims,”

Germany, in the midst of the repercussions of the fall of the Berlin Wall and reunification bringing forth a host of new claimants and objects out of former-East Germany, the *Koordinierungsstelle* (now subsumed into the umbrella institution *Deutsches Zentrum Kulturgutverluste*) was founded to oversee the documentation of trophy art displaced in the war.

Both these institutions incorporated, although on different schedules, the ethos of the 1998 Washington Principles within their mandates, and it is their emergence, activities, and contextual histories that form the basis of my inquiry. By focusing on the central, government-run restitution institutions in each of these countries - the Holocaust Claims Processing Office in New York and *Deutsches Zentrum Kulturgutverluste* in Magdeburg - it is my intent to explore how these institutions are shaped by cultural differences, regional contexts, and national collective memories. I intend to establish the salience of collective national identities and memories in understanding the development and trajectory of restitution initiatives. It is important to clarify the idea of trajectories as the result of culturally-fomented conceptions of nationhood, national memory, and national interest; though they appear real to the actors who pursue them, this does not indicate their objective reality, fixed nature, or that my analysis asserts that restitution institutional development is teleologically prescriptive.<sup>29</sup>

To investigate the unique development of restitution activity in each of these countries, my thesis strives to locate these institutions within the wider field of art restitution, memories of the Holocaust and World War II, and shifting notions of justice and guilt. It is divided into three parts. The first will address the relevance of neo-institutionalism in understanding restitution, and restitution-related organizations as products of discrete, cultural circumstances despite their touted common goal. The Holocaust Claims Processing Office (HCPO) and the former-

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*Fordham International Journal of Law Symposium Issue 25:6* (2001): S-133, accessed 6 November, 2014, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1854&context=ilj>. For those interested in an in-depth account of these investigations, and the considerable drama that accompanied these inquiries see: John Authers and Richard Wolffe, *The Victim's Fortune: Inside the Epic Battle over the Debts of the Holocaust* (New York: Perennial, 2002).

<sup>29</sup> Rogers Brubaker, *Ethnicity Without Groups* (Cambridge & London: Harvard University Press, 2004), 17; Rogers Brubaker, "Rethinking nationhood: nation as institutionalized form, practical category, contingent event," in *Nationalism reframed: Nationhood and the national question in the New Europe*, Rogers Brubaker (Cambridge, UK: Press Syndicate of the University of Cambridge, 1996), 13, 16, 21; Rogers Brubaker and Margit Feischmidt, "1848 in 1998: The Politics of Commemoration in Hungary, Romania, and Slovakia," *Comparative Studies in Society and History*, 44:4 (October 2002): 700.



*Koordinierungsstelle/Deutsches Zentrum Kulturgutverluste (DZK)*, the two central case studies, will then be introduced within the context of the 1990s, and their functions and development until the present. The second section will take up the notion of collective memory, as well as national guilt and responsibility, before traveling back in time to address post-war restitution and realities. The ethos surrounding early World War II restitution initiatives, illustrated through archival materials and case studies, will act as a foil to the rise of memory work and a “politics of regret” which have more recently guided transnational and national initiatives surrounding looted art objects.<sup>30</sup> The final section will draw together themes raised within the previous sections, highlighting continuities and patterns within national self-narration or identification, media coverage, public perception, and the portrayal of national morality. In contemplating how my two case studies bear the marks of their specific, regional histories and memories in their development, current events unfolding within the field will be addressed along with concluding remarks on the future of the field.

To delve into a discussion of the development of nationally-specific restitution bodies - especially those related to Holocaust-era looted or confiscated assets - necessitates a certain amount of ‘scene setting,’ in regard to a shifting international climate that galvanized scrutiny of the legacy of the Nazi regime in relation to looted art and cultural heritage. Examining questions pertaining to art and objects acquired through Nazi persecution is notoriously convoluted. From international treaties and conventions, to their application in wildly varying legislative contexts, to the popular rhetorical flourish of spotlighting figures, organizations, or key moments, both heroic and dastardly, stories of restitution demand elaborate narratives. Of necessity, when recounting and analyzing a current issue that spans borders, disciplines, and the popular, political and legal spheres, choices will be made that inherently provide only a facet of the whole. It is this text’s purpose to shed light on a facet that has yet to be coherently described and analyzed - that of the comparative development of the HCPO and the *Koordinierungsstelle/DZK* utilizing collective-memory and identity to explicate regional specificities in institutional organization and activities. As a result, the construction of an international ethic and responsibility for the treatment of cultural property is implicit, but will not be addressed concretely, nor the specifics

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<sup>30</sup> Jeffrey K. Olick, *The Politics of Regret: On Collective Memory and Historical Responsibility* (New York: Routledge, 2007), vii, 3-7.

of each international convention, and their resulting principles, the myriad of multi-level organizations and associations associated with this sphere, nor a thorough exegesis on international law.<sup>31</sup> This is by no means a calculated move to peripheralize their importance or the centrality of understanding their effect, but an analysis of such a sprawling cast of characters and venues must be reserved for a different format.

### **Institutional Case Study Overview: Foundings, Functions, and Developments**

The international consensus that restitution is a moral, worthwhile endeavour is itself, by the expanded standards of new institutionalism, an institution. This analysis is therefore a study of institutions in the sense of an established organization, but also the sociological institutions – such as norms, ideas, symbols, and myths – that influence their development and activities.<sup>32</sup> As Elazar Barkan and Alexander Karn have identified, a general trend is apparent within national and international politics to “legislate good will and political justice”; a notion which flies in the face of discourse that maintains *realpolitik* ideology or rational choice.<sup>33</sup> This discourse as a staple of international relations and politics, asserts that realism and pragmatism rather than ethics and ideology “drive” politics.<sup>34</sup> Where rational choice theory fails, certain branches of new institutionalism provide explanatory frameworks for the spread of restitution as an ethic, and the simultaneous influence of international and regional cultures on the institutional organizations founded as a result.

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<sup>31</sup> Many books and articles robustly address this development, and some pertinent reading for those interested include: Patrick J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)* (London: Department of Arts Policy and Management, City University, 1993), UNESDOC Database (CLT.93/WS/12); Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: Public Affairs, 2003), Marilyn Henry, *Confronting the Perpetrators: A History of the Claims Conference* (London & Portland: Vallentine Mitchell, 2007); Michael J. Kurtz, *America and the Return of Nazi Contraband: The Recovery of Europe's Cultural Treasures*, (New York & Cambridge, UK: Cambridge University Press, 2006): 3-56; Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government- Proposals for Redress* (Washington D.C.: Carnegie Endowment for International Peace, 1944), DOI:10.1093/ejil/chr004; Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge, UK: Cambridge University Press, 2008).

<sup>32</sup> Walter W. Powell and Paul J. Dimaggio, “Introduction” in *The New Institutionalism in Organizational Analysis*, eds. Walter W. Powell, and Paul J. Dimaggio, (Chicago: The University of Chicago Press, 1991), 8-9.

<sup>33</sup> Elazar Barkan and Alexander Karn, “Group Apology as an Ethical Imperative,” in *Taking Wrongs Seriously: Apologies and Reconciliation*, eds. Elazar Barkan and Alexander Karn (Stanford: Stanford University Press 2006), 4.

<sup>34</sup> Elazar Barkan, *The Guilt of Nations* (New York: W.W. Norton & Company, 2000), xvi.

As a pursuit deriving from liberal ideas of human dignity and individual rights, the global spread of restitution as an ethical given which accompanies a “politics of regret,” falls within the purview of world society theory.<sup>35</sup> Scholar Pertti Alasuutari explains, borrowing heavily from John Meyer, that “norms and knowledge [...] which are rooted in 19th-century Western culture, [...] have become globalized,” and as a result “many ideas and principles are shared across state boundaries, and the desire and pressures to keep up with global trends are infiltrated to domestic politics through many routes.”<sup>36</sup> This is entirely true in both the case of German and American restitution, as is this theory’s observation that such norms do not always fit the national situation into which they are subsumed or pursued. But world society theory’s proclivity to insinuate centre-periphery models of institutional diffusion is both problematic and fails to acknowledge that “[l]ocal actors are not passive, nor are nations mindless emulators.”<sup>37</sup> This text therefore tempers world society frameworks with discursive institutionalism’s emphasis on national or regional influence to reshape or “translate” institutions.<sup>38</sup> As Peter Fritzsche astutely sums up in his assessment of the viability of Fukuyama’s “end of history” versus Huntington’s “clash of civilizations” theses in the post-Cold War world: “the hardness of culture is very likely an effect of historical development, rather than essential to the timeless reproductions of modes of behavior.”<sup>39</sup> Cultural realities on-the-ground retain agency and can be utilized to investigate how the “traveling idea” of fair and just solutions has incentivized “nation-states [to] change their policies,” while “the ways states react to new ideas vary so that they hold onto their specific trajectories.”<sup>40</sup>

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<sup>35</sup> Ibid., xvi-xviii; O’Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 53; Olick, *The Politics of Regret*, 4-5, 155, 171-172; Pertti Alasuutari, “The Discursive Side of New Institutionalism,” *Cultural Sociology* 9:2 (2015): 165.

<sup>36</sup> Alasuutari “The Discursive Side of New Institutionalism,” 165.

<sup>37</sup> Alasuutari using Vivien Schmidt’s Discursive Institutionalism in “The Discursive Side of New Institutionalism,” 169, 174.

<sup>38</sup> Ibid., 170, 172; Brubaker and Feischmidt, “1848 in 1998,” 708-710.

<sup>39</sup> Peter Fritzsche, “1989 and the Chronological Imagination,” in *Debating German Identity Since 1989*, eds. Anne Fuchs, Kathleen James-Chakraborty, and Linda Shortt (Rochester NY & Suffolk UK: Camden House, 2011), 1, 22.

<sup>40</sup> Alasuutari, “The Discursive Side of New Institutionalism,” 174.

*“Keep doing what we’re doing”<sup>41</sup>: the Holocaust Claims Processing Office*

In the realm of Holocaust-era assets restitution, the United States embodies a leadership role, founded and cemented within public perception and through practical action specifically in the 1990s - an auspicious moment for issues pertaining to Holocaust-era justice to be revisited.<sup>42</sup> This decade saw a host of 50-year anniversaries related to WWII commemorated in the United States, where the war was and has remained a “default symbol of national virtue.”<sup>43</sup> A pervasive willingness bordering on enthusiasm to engage in remembrance of World War II – specifically as it reinforces positive national collective imaginings of American leadership, integrity, and ‘goodness’ - positioned the United States to revisit “issues of delayed justice” with gusto.<sup>44</sup> Yet, this ‘mainstream’ memory was not true for all Americans. For victims of the Holocaust residing in America, a different motivating factor saw the 1990s bring forth a wave of survivor testimonies. As survivors grew older, it seemed a new, vital urge grew to pass on their memories and ensure they would not be forgotten: “[t]hinking that when we die, no one will be able to persuade people that the Holocaust occurred.”<sup>45</sup> For many, long-suppressed traumatic memories of the Holocaust, packed up and brought along to new lives in America, were brought to light. This relative increase in shared stories of traumatic pasts and experiences both stood in contrast to *and* fostered more focus on war memories alongside the hegemonic triumphant WWII narratives of American patriotism.<sup>46</sup> Beyond these priming societal factors, the pursuit of Nazi looted art restitution is often tied to the efforts of Stuart E. Eizenstat,<sup>47</sup> a veteran within U.S.

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<sup>41</sup> Anna B. Rubin, esq. (Director of the Holocaust Claims Processing Office, New York), interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>42</sup> Ibid.; J.D. Bindenagel, “Justice, Apology, Reconciliation, and the German Foundation: ‘Remembrance, Responsibility, and the Future’” in *Taking Wrongs Seriously: Apologies and Reconciliation*, eds. Elazar Barkan & Alexander Karn, (Stanford: Stanford University Press 2006), xi, 26, 55.

<sup>43</sup> David Hoogland Noon, “Operation Enduring Analogy: World War II, the War on Terror, and the Uses of Historical Memory,” *Rhetoric & Public Affairs*, 7:3 (2004): 343; Thérèse O’Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 51.

<sup>44</sup> Hoogland Noon, “Operation Enduring Analogy,” 343-344, 346; Bindenagel, “Justice, Apology, Reconciliation, and the German Foundation,” 291.

<sup>45</sup> This quote is from Holocaust survivor and author Elie Weisel, describing a recurring nightmare: Judith Miller, *One, by One, by One*, (New York: Simon and Schuster, 1990), 220.

<sup>46</sup> Miller, *One, by One, by One*, 220-221, 233. For those interested in a brief but informative overview on the American reaction to the Holocaust, specifically its comparative absence and growing presence over time in the American collective conscious, see Stuart E. Eizenstat, “Introduction,” in *Imperfect Justice*, 7-21.

<sup>47</sup> Often seen as the face of “the forceful voice of the U.S. government -- the world’s only superpower” (Authers & Wolfe, *The Victim’s Fortune*, 49) where Holocaust victims’ justice was concerned, Eizenstat is frequently credited as the most important player at the Federal level to bring these issues into the mainstream of politics during the 1990s. Under the Carter Administration, Eizenstat secured a Presidential commitment to build an American

federal politics, who championed the issue at-home and abroad as a question of moral responsibility, including heading the American delegation at the Washington Conference.<sup>48</sup> The perception of American historical leadership in the sector of WWII restitution, increased accessibility to information with the detente of the Cold War, and a growing “phenomenon, involving truth commissions, international criminal trials, and claims to justice for historic wrongs”<sup>49</sup> further conspired to buoy a resurgence of interest which birthed the Holocaust Claims Processing Office.<sup>50</sup>

The Holocaust Claims Processing Office (HCPO) was established in 1997 in the State of New York by Republican Governor George Pataki, as a branch of the New York Banking Department. The office grew out of the Department’s investigation in the mid-1990s, spurred on by Alfonse D’Amato, Republican New York Senator and Chair of the Senate Banking Committee, into the wartime activities of certain New York financial institutions, and was set up to provide victims with institutional assistance for claims against Swiss financial institutions.<sup>51</sup> The narrative of the

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Holocaust memorial site, the first outside Israel. This commemorative site would be realized as the United State Holocaust Memorial Museum. He was instrumental in the investigations into looted Nazi gold held in Swiss Banks, summarized in the so-called Eizenstat Report (1997), which thoroughly disrupted any narrative of Swiss neutrality in World War II. Additionally, he oversaw the mounting of the 1998 Washington Conference, and the diplomatic quickstepping to ensure agreement on the 11 principles (for the full story, see Eizenstat, *Imperfect Justice*, 194-199). U.S. Department of State, “Stuart E. Eizenstat,” accessed March 12, 2017, <https://2009-2017.state.gov/r/pa/ei/biog/218946.htm>. For an introduction to Eizenstat’s involvement in the Swiss Bank Settlements, see John Authers and Richard Wolffe, “Rewriting History” in *The Victim’s Fortune*, 49-61.

<sup>48</sup> Michael Marrus, *Some Measure of Justice* (Madison: University of Wisconsin Press, 2009), 56; Stuart E. Eizenstat “Opening Ceremony Remarks at the United States Holocaust Memorial Museum” from *Washington Conference on Holocaust-Era Assets Proceedings (November 20-December 3, 1998)*, ed. J.D. Bindenagel (Washington DC: Government Printing Office, 1999): 7, accessed 12 February, 2016, <http://shoahlegacy.org/wp-content/uploads/2015/03/Washington-Conference-on-Holocaust-Era-Assets-Proceedings.pdf>.

<sup>49</sup> This phenomenon extends beyond responsibility and guilt concerning the Holocaust. For example, in 1988 the United States extended an apology to its Japanese-American citizens for their treatment and internment during WWII: Bindenagel, “Justice, Apology, Reconciliation and the German Foundation,” 291; Marrus, *Some Measure of Justice*, xii.

<sup>50</sup> Ronald J. Bettauer, “Stefan A. Riesenfeld Symposium 2001 March 8-9, 2001, Berkley California Key Note Address: The Role of the United States Government in Recent Holocaust Claims Resolution,” *Berkeley Journal of International Law* 20:1 (2002): 2; Bindenagel, “Justice, Apology, Reconciliation, and the German Foundation,” 286-291; Eizenstat, *Imperfect Justice*, 3-5: though Eizenstat complicates – most interestingly – the moral imperative of the United States combined with self-interest, and his judgement of American failure to provide for the victims of the Holocaust immediately following the War; Marrus, *Some Measure of Justice* xi – xii: for those interested, the author provides a robust contextualization of the 90s resurgence of interest in restitution in his book, which takes into account the landscape of the American legal system.

<sup>51</sup> This assistance is more or less consistent with the current aid the HCPO provides to victims; collecting pertinent documents to support claims, facilitating the claims process by contacting and coordinating with the relevant institutions in the process of the claim, and providing advice and assistance in settling claims. Authers and Wolffe, *The Victim’s Fortune*, 14, 83; Dugot, “The Holocaust Claims Processing Office’s Handling of Art Claims,” S-133.

Swiss Gold scandal and growing attention to seeking Holocaust-era insurance payments is commonly pointed to in tracking the increased American attention and action towards settling Holocaust-era claims.<sup>52</sup> It was found that dormant and seized Swiss bank accounts not only often held funds, but also art works or liquidated insurance claims which had been taken out against art collections.<sup>53</sup> Consequently and unexpectedly, long lost or looted art began to play a central role in what had begun as an investigation centred around gold and other less glamorous assets such as insurance policies. The incident concerning Egon Schiele's *Portrait of Wally* (fig. 2) in 1998 only proved to draw more attention (and heighten the drama) to the issue of unreturned Nazi-looted art objects.<sup>54</sup> One of many paintings in a loaned exhibition from Austria's Leopold Foundation to New York's Museum of Modern Art (MoMA), the portrait of Schiele's lover was claimed, in the final days of the exhibition, by the heirs of Lea Bondi, a former Viennese gallery owner. As stolen property, the painting was barred from return to Austria. It was seized, much to the chagrin of the Leopold Foundation, MoMA, and a collection of other museums, who feared the ramifications of this seizure upon their ability to borrow art from abroad.<sup>55</sup> And so, the issue of looted art became an unpredicted and resonant aspect of the story of just reparations.<sup>56</sup>

This narrative holds true in light of the expansion of the HCPO's mandate in 1998, under the directorship of Catherine Lillie, to cases dealing with art objects lost, looted, stolen, or sold under duress between 1933 and 1945.<sup>57</sup> Though the New York Banking Department has since

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<sup>52</sup> In the mid-1990s, the World Jewish Congress began looking into the role of Swiss banks in the course of their investigation into the disposition of Nazi gold, as well as the fate of dormant accounts and insurance policies of Nazi victims. Documents were uncovered that indicated large amounts of illicit Nazi gold were still held in Swiss bank accounts. This investigation also incentivized new scrutiny of states formerly considered 'neutral.' *Testimony of Catherine A. Lillie, Director, Holocaust Claims Processing Office on Behalf of the New York State Bank Department: before the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology*, United States House of Representatives (July 27, 2006): 12, accessed 19 July, 2016, <http://www.dfs.ny.gov/consumer/holocaust/sp060727.pdf>; Authers and Wolffe, *The Victim's Fortune*, 2, 135-136; Kurtz, *America and the Return of Nazi Contraband*, 215-216; Marrus, *Some Measure of Justice*; 55; O'Donnell, "The Restitution of Holocaust Looted Art and Transitional Justice," 51.

<sup>53</sup> Marrus, *Some Measure of Justice*, 39-42; Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>54</sup> Howard N. Spiegler, "Portrait of Wally: The U.S. Government's Role in Recovering Holocaust Looted Art," in *Holocaust Restitution*, ed. Bazyler and Alford, 280.

<sup>55</sup> It is salient to note that Austria may have acquired this work as a result of American military restitutionary error following the war, which led to Lea Bondi's unsuccessful attempts to locate her artwork. The American post-war program of restitution to national governments will be further discussed in section two, *American Prerogatives: The 'Good' Fight and Internal Disputes*. Marrus, *Some Measure of Justice*, 47-48.

<sup>56</sup> Eizenstat, *Imperfect Justice*, 191; Marrus, *Some Measure of Justice*, 39-42; Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>57</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.; *Testimony of Catherine A. Lillie*, 2.

merged with the New York Insurance Department in October 2011 to become the New York Department of Financial Services (NYDFS), the HCPO's functions, mandate, and method of operation have stayed remarkably constant: "to provide institutional assistance to individuals seeking to recover assets lost due to Nazi persecution" with no cost for this service.<sup>58</sup> HCPO director Anna B. Rubin, esq., who has been with the Office since 2001 and took over the directorship after Lillie in 2007,<sup>59</sup> strongly underscores the claimant-centric, and research-heavy function of the organization:

[At the HCPO] we handle claims for assets lost because of Nazi persecution and our focus is on bank accounts, insurance policies, and works of art. For people who have existing claims with us, we assist them with other material loss claims. [...] And for all three instances we act as a facilitator and advocate for the claimant. So, we will do research to help them shore up any claims that they might have or think they have, and then once we've determined if there is [a basis for a claim], we will approach whatever the [necessary] entity may be, be it a bank or insurance company, some holder of artwork, and attempt to negotiate the restitution of whatever the asset might be.<sup>60</sup>

The HCPO therefore deals directly with claimants, guiding them through filing restitution claims and supporting them through subsequent processes. It is the only American governmental institution that deals directly with looted art claims.<sup>61</sup> All one ostensibly needs to do is visit their website, fill in a claims form, and contact the office either via a toll-free number, general e-mail, or post. In fact, former-Director Lillie's 2006 statement remains true to this day: "[The Holocaust Claims Processing Office] remains the only government agency in the world to offer international Holocaust survivors or the heirs of Holocaust victims and survivors assistance with a vast array of multinational claims processes at no cost."<sup>62</sup> Additionally, the Office undertakes research when contacted by cultural institutions such as museums, maintains close working relationships with a variety of claims-related agencies, and acts as a researcher or advisor for

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<sup>58</sup> Shirin Emami (Acting Superintendent New York State Department of Financial Services), "Holocaust Claims Processing Office: Report to the Governor and the Legislature," (15 January, 2016): 2, accessed 30 July, 2016, <http://www.dfs.ny.gov/reportpub/hcporeport15.pdf>.

<sup>59</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>60</sup> Ibid.

<sup>61</sup> For the most up-to-date overview of the Holocaust Claim Processing Office's order of operations in handling claims, which highlights the claimant-focused nature of their work, see Maria T. Vullo (Superintendent of Banks New York State Banking Department) "Holocaust Claims Processing Office: Report to the Governor and the Legislature," (January 15, 2017): 2, accessed 10 March, 2017, <http://www.dfs.ny.gov/reportpub/hcpo/hcporeport16.pdf>, 2.

<sup>62</sup> *Testimony of Catherine A. Lillie*, 2; Dugot, "The Holocaust Claims Processing Office's Handling of Art Claims," S-134.

certain issues concerning Holocaust-era asset restitution.<sup>63</sup> This is exemplified by their past assistance with and advisory position in relation to the International Commission on Holocaust Era Insurance Claims (ICHEIC).<sup>64</sup> However, it is interesting to further note that of the museums that have contacted the Holocaust Claims Processing Office for help concerning potentially looted objects or to research potential heirs, none thus far have been American.<sup>65</sup>

A state-level agency, the HCPO is free to enjoy an international purview: technically non-representative of the American government, it avoids the “constraints” to which federal-level organizations like the State Department are beholden, such as their ability to only represent American citizens, and limitations due to treaties and the contingencies of diplomacy for the most powerful nation on earth.<sup>66</sup> As of writing this text, of the 170 art claims submitted through the Office from 15 countries, the HCPO has “facilitated restitution settlements involving 130 cultural objects from 33 different collections.”<sup>67</sup> This supranational purview seems at first a puzzle; how could a state-funded, government body of civil servants acquire the funding to engage in work which reaches far beyond the perimeter of the state of New York, yet operates using New York state funds? The answer lies in a tidy solution, which somewhat ironically is linked to the HCPO’s *naissance*:

[The HCPO is] an agency of the State of New York, but the Department of Financial Services, the way the funding is sourced for this department as a whole, is through industry. So industry is assessed, banks and insurance companies are assessed, and there are various activities [that] take place [for which] fees are charged and whatnot, and so their fees pay for the Department, and [the HCPO is] part of the department. So we don’t come from taxpayer revenue.<sup>68</sup>

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<sup>63</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016; Diana L. Taylor (Superintendent of Banks New York State Banking Department) “Holocaust Claims Processing Office: Report to the Governor and the Legislature,” (January 14, 2007): 2, accessed 30 July, 2016, <http://www.dfs.ny.gov/reportpub/hcporeport06.pdf>.

<sup>64</sup> ICHEIC was dissolved March 30, 2007. The HCPO’s 2007 report gives further details on how the HCPO was involved with ICHEIC: Richard H. Neiman (Superintendent of Banks New York State Banking Department) “Holocaust Claims Processing Office: Report to the Governor and the Legislature,” (January 14, 2008): 11-13, accessed July 30, 2016, <http://www.dfs.ny.gov/reportpub/hcporeport07.pdf>.

<sup>65</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>66</sup> *Ibid.*

<sup>67</sup> Vullo, “Holocaust Claims Processing Office: Report to the Governor and the Legislature,” 10; it is important to note that the facilitation of a restitution settlement does not necessarily mean the restitution of a physical object. Based on the Holocaust Claims Processing Office report’s stipulation appearing on page 6 regarding compensation sums, it is unclear whether the numbers listed concerning looted art objects includes the facilitation of offered settlement terms (surrounding either an object, a settlement sum, or both) that were not accepted by the claimant.

<sup>68</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.



Expenditures consequently range year to year, though the average from the past five fiscal years is slightly under \$650 000 USD.<sup>69</sup> Thanks to the cornucopia of financial industries within New York, the HCPO is funded to engage in restitution work that is singular the world over as a national governmental institution with an international, claimant-focused nature. But it is similarly because of this diversity and concentration of “banks and insurance companies” in the Empire State that initial investigations concerning Holocaust-era insurance policies and Swiss bank accounts were of particular concern in New York. This neat circle of cause and effect is rare within the narrative of restitution activities and institutional development.<sup>70</sup>

This said, funding for restitution-related institutions anywhere is rarely sufficient to cover the mountainous costs of the varied steps in formulating looted art claims; provenance research alone can be a notoriously expensive and lengthy affair, necessitating international travel, teams of researchers versed in various languages, and time to sift through yellowing auction lists or appraisal forms. This reality has seen the HCPO consult with relevant experts and coordinate with any researchers their claimants may have previously engaged.<sup>71</sup> As a sub-division of the Department of Financial Service’s Financial Frauds and Consumer Protection Division, the Office is currently headed by director Anna B. Rubin, esq. and deputy director Connie Walsh, who oversee three claims specialists and a claims assistant. This comparatively small office boasts a personnel with varied skill sets – from legal training to language abilities; art historical knowledge to information technology expertise – though, with the exception of a recent linked YouTube video, they remain unlisted on the HCPO’s webpage.<sup>72</sup> According to Ms. Rubin, the current size of the Office is almost half of what it once was, though for extraneous reasons such

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<sup>69</sup> Numbers taken from total operating costs (in USD) listed in the HCPO Annual Reports 2012 (\$641,188), 2013 (\$599,179), 2014 (\$645,269), 2015 (\$715, 517) & 2016 (\$761,890). These are available at: <http://www.dfs.ny.gov/reportpub/annualrep.htm>

<sup>70</sup> *Testimony of Catherine A. Lillie*, 2; Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016; Authers and Wolffe, *The Victim’s Fortune*, 14.

<sup>71</sup> Anna B. Rubin, e-mail with Alyssa Stokvis-Hauer, 10 August 2016.

<sup>72</sup> “DFS Anne Frank Award 051216,” YouTube video, 2:20, posted by “NYDFS,” July 21, 2016, accessed 2 September 2016, [https://www.youtube.com/watch?v=X\\_Y0L7zG7is](https://www.youtube.com/watch?v=X_Y0L7zG7is); the New York Department of Financial Services released a video on their YouTube account to celebrate the HCPO receiving the Outstanding Citizens Award from the Anne Frank Center for Mutual Respect, which includes all the members of the HCPO. This video has been featured on the HCPO’s front page since summer 2016, and is a rare mention of the individual team members that comprise the small, dedicated office. “Holocaust Claims Processing Office Receives Anne Frank Award,” *Insurance Journal*, 16 June 2016, accessed 27 June, 2016, <http://www.insurancejournal.com/news/east/2016/06/16/417073.htm>; Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

as former-employees moving out of state.<sup>73</sup> A small team fosters what has been described as a symbiotic environment, where team members understand each other's strengths and collaborate as needed on pursuing their individually assigned cases.<sup>74</sup>

In the pursuit of resolutions and settlements for the cases brought to the HCPO, it is central to the Office's mandate to explore all opportunities outside legal action to achieve resolutions and settlements in order to prevent their claimants from needing to resort to litigation.<sup>75</sup> This not only speaks to concern over the financial and emotional strain court cases put on claimants, but also demonstrates a shift from treating looted art objects as simple property in a legal context. Instead, Alternative Dispute Resolution (ADR) – through actions like mediation and cooperative settlements – reinforce the post-1990s conceptual turn in the restitution of looted art.<sup>76</sup> As Thérèse O'Donnell elaborates, ADR can facilitate the “recogni[tion of] historical wrongs while facilitating wider discussions of historical context,” which “[a]llows discussions of complex questions about cultural identities of victims, perpetrators, and beneficiaries.”<sup>77</sup> It is generally agreed that this kind of memory work is excluded from the courtroom, where the stringency of laws rarely allow for the nuances of history to be explored.<sup>78</sup> Additionally, the publicity often associated with Holocaust-era looted art cases, while potentially a vehicle to share the memory and history of victims, can be an unwanted intrusion for victims and their heirs.<sup>79</sup> It bears remarking that nuanced, respectful memory work may not always be present in Alternative Dispute Resolution but, unlike most cases which go to trial, the HCPO's willingness to take on cases where “investigative expense [can] outstri[p] artworks' value” at least opens up the possibility to a wider pool of claimants.<sup>80</sup>

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<sup>73</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>74</sup> Ibid.

<sup>75</sup> Monica S. Dugot, “The Holocaust Claims Processing Office: New York State's Approach to Resolving Holocaust-Era Art Claims,” in *Holocaust Restitution*, eds. Michael J. Bazylar and Roger P. Alford (New York and London: New York University Press, 2006), 274-275

<sup>76</sup> O'Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 71, 73-74.

<sup>77</sup> Ibid., 53; it is salient to note that O'Donnell draws attention to Alternative Dispute Resolution's capacity to resolve disputes between two (or more) actors, but also with actors and their pasts.

<sup>78</sup> Ibid., 54; Dugot, “The Holocaust Claims Processing Office's Handling of Art Claims,” S-134, S-137; Marrus, *Some Measure of Justice*, 54.

<sup>79</sup> Dugot, *The Holocaust Claims Processing Office*, 275; O'Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 74.

<sup>80</sup> O'Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 73.

This non-aggressive approach to pursuing looted art claims is at the core of the HCPO's ethos. Concern with best practices in order to ensure victims are not re-traumatized factors highly into the workings of the Office.<sup>81</sup> While the moral aspect of facing the past contributes to this approach, it also achieves practical results. As former-Deputy Director of the HCPO Monica Dugot noted in 2001:

Unless those involved in the various aspects of research and restitution coordinate efforts and willingly share all available information, and unless government archives across the globe make relevant records accessible to the public, successful location and return of items to Holocaust survivors and heirs will be unlikely.<sup>82</sup>

Cooperation, and the building of trusting, mutually-respectful relationships are key for an institution whose purpose is to facilitate art claims processes through a global array of institutions and agencies. By steering clear of media-shaming, or dogged badgering of institutions, agencies, or government, the HCPO increases the likelihood of maintaining a collegial working relationship. This outlook remains consistent today, as explained by Rubin:

“we just keep our heads down and keep doing what we’re doing and [...] people find their way to us and I think we try just to help people as much as we can, [and] within the insurance, bank, art world community, I think we have fostered a relationship with them so that we work on friendly terms”<sup>83</sup>

A focus on ADR establishes the HCPO's institutional basis in claimant-centric work that espouses an ethic towards historical justice and memory work; their more recent media presence at once supports this characterization and complicates it. In line with this more passive method of operations, the HCPO has a relatively small online and media presence. The main HCPO webpage (fig. 3), available in over 90 languages (albeit through an embedded Google translate option, which can often result in somewhat dubious interpretations), within the Department of Financial Services' domain, provides an overview of their operations, contact and claims filing information, and *Recent Press*, though as of December 2017 this latter section has not been

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<sup>81</sup> This concern can be readily seen in Dugot's text: “The Holocaust Claims Processing Office's Handling of Art Claims,” S-137 - S-138; it is further exemplified in Lillie's best practice suggestion that claimants be contacted via writing rather than telephone by those handling their claims to avoid “exacerbate[ing] claimants' sense of powerlessness and inequity”: *Testimony of Catherine A. Lillie*, 15.

<sup>82</sup> Monica Dugot, following her tenure as Deputy Director at the HCPO, took on the position of International Director of Restitution at Christie's, which she continues to hold. Dugot, “The Holocaust Claims Processing Office's Handling of Art Claims,” S-134.

<sup>83</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016; Dugot, “The Holocaust Claims Processing Office's Handling of Art Claims,” S-134.

updated beyond 2015. As of 2015, the HCPO website has also featured an online virtual gallery (fig. 4) titled “The Art of Recovery: An Exhibition of Art Lost During the Holocaust Era” and a database of missing works.<sup>84</sup> The exhibition is comprised of eight sections: *Laws of Persecution and Principles of Restitution*; *Looting in Art, Film and Literature*; *The Perpetrators*; *The Allies*; *The Collectors*; *Spotlight*; *Recovered*; and *Still Missing*. The exhibition identifies itself as a “gallery [that] illustrates how the HCPO assists claimants with the recovery of art works lost between 1933-1945 [while also] provid[ing] historical details describing the Nazi looting machine and resources for those seeking to recover lost works of art.”<sup>85</sup>

The HCPO online gallery fulfills an important role in establishing accessible information without thrusting specific cases or individuals unnecessarily into the limelight. The gallery map makes navigation simple through the exhibition, and provides resources at once useful to potential claimants and the general public. The short expository write-ups within each exhibition section, and the myriad of important links to crucial conferences, conventions, and principles act as an excellent round-up of information, though the exhibition section “The Allies” (as opposed to its foil “The Perpetrators”) does lack any critical voice in American missteps in immediate post-war restitution efforts, or regarding World War II-era American policy as a whole.<sup>86</sup> Indeed, a critical reading of the materials of the HCPO website indicate remnants of an American victor’s mentality, which will be explained and developed later in this text. The database itself, while theoretically an important tool to foster transparency and publicize those objects still sought by heirs, is not an intuitive platform nor does it supports Boolean searches, which somewhat narrows its efficacy. Since the Office’s receipt of the 2016 Outstanding Citizens Award from the Anne Frank Center for Mutual Respect, their website has been somewhat updated, for instance the posting of the aforementioned video, and additional links including an interactive world map

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<sup>84</sup>“Department of Financial Services Announces Return of 17<sup>th</sup> Century Painting from France to Heir of Victim of Nazi Persecution,” New York State Department of Financial Services, 5 May, 2005, accessed 12 July, 2017, <http://www.dfs.ny.gov/about/press/pr1505051.htm>.

<sup>85</sup>“The Art of Recovery,” New York State Department of Financial Services, Holocaust Claims Processing Office, accessed 19 December, 2017, [http://www.dfs.ny.gov/consumer/holocaust/gallery\\_map.htm](http://www.dfs.ny.gov/consumer/holocaust/gallery_map.htm).

<sup>86</sup>“The Allies,” New York State Department of Financial Services, Holocaust Claims Processing Office, accessed 19 December, 2017, [http://www.dfs.ny.gov/consumer/holocaust/history\\_art\\_looting\\_restitution/allies.htm](http://www.dfs.ny.gov/consumer/holocaust/history_art_looting_restitution/allies.htm); “The Allies – The Collecting Points,” New York State Department of Financial Services, Holocaust Claims Processing Office, accessed 19 December, 2017, [http://www.dfs.ny.gov/consumer/holocaust/history\\_art\\_looting\\_restitution/loot\\_res\\_allies\\_collecting\\_points.htm](http://www.dfs.ny.gov/consumer/holocaust/history_art_looting_restitution/loot_res_allies_collecting_points.htm).

of various national resources related to Nazi-era looting and restitution.<sup>87</sup> While this may indicate a new trend at the HCPO to build and ameliorate their online presence, on the whole it does not bear the marks of an accessible platform. Though educationally informative materials are made freely available, the collation of all its media, press releases, and yearly reports in one easily navigable online space would be a significant step forward for usability and transparency.

Though there does not appear to be a desire emanating from the HCPO to maintain a high degree of public visibility of their work in the media,<sup>88</sup> their restitution triumphs are made public through ‘return ceremonies.’<sup>89</sup> Through press releases that coincide with these ‘return ceremonies,’ the HCPO seems to attempt to balance the potentially beneficial and harmful ramifications of the media upon restitution claims by centring the narrative of the victims and their heirs. The most recent of these ceremonies, held in February 2017 at the Museum of Jewish Heritage, was for the return of *Young Man as Bacchus*, a 17<sup>th</sup> century painting by Jan Franse Verzijl, to the Max Stern estate.<sup>90</sup> In line with preceding return ceremonies, the corresponding press release highlighted the work of the HCPO, the persecution of the original owners of the object(s) or work(s), the history of the object being returned, and the many collaborations with other officials or institutions that facilitated the return. This demonstrates both the benefits of ADR and the HCPO’s conscientious use of limited media to promote memory work and knowledge. Yet, the HCPO’s public presence does not immediately point to Monica Dugot’s assertion that:

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<sup>87</sup> Though the interactive map presents itself as a user-friendly repository of international resources and information, it lacks any formal explanation of its intended purpose; uninformed users find only the uninformative title “Interactive World Map.” The degree to which the map is updated and accurate is further called into question by some countries’ hyperlinks leading to pages that state only “resources coming” (such as Morocco and Chile), while Canada, the central location of the Max Stern Foundation which has partnered on restitution claims with the HCPO, has no link at all:

“Interactive World Map,” New York State Department of Financial Services, Holocaust Claims Processing Office, 10 January, 2018, <http://www.dfs.ny.gov/consumer/holocaust/map/index.html>.

<sup>88</sup> Despite this fact, during my interview at the HCPO’s office in New York with Ms. Rubin, a member of the NYDFS Press Office was present; a notable difference from my interviews conducted at the DZK and German Ministry, where no PR or Press Office personnel was present.

<sup>89</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>90</sup> “FBI seizes and returns Nazi-looted Stern art,” *Canadian Jewish News*, 16 Feb 2017, accessed 12 July 2017, <https://www.pressreader.com/canada/the-canadian-jewish-news-montreal/20170216/281736974210502>; “Vullo Announces 17<sup>th</sup> Century Painting Lost During Nazi Persecution Restored to Rightful Heirs,” New York State Department of Financial Services, 8 February, 2017, accessed 12 July 2017, <http://www.dfs.ny.gov/about/press/pr1702081.htm>.

The office has been able to leverage this unique position [as a recognized authority on matters relating to Holocaust-era losses, compensation and restitution], as well as its position as an office within the New York State Banking Department, to exert pressure on other entities such as state-funded museums and financial institutions, thereby making these entities more responsive to claimants.<sup>91</sup>

This characterization by the former deputy director stands in contrast to the portrayal of the Office's practices put forth by Anna Rubin, and the general tenor of press releases and available media on the HCPO.

Perhaps as a result of such a low public profile, the HCPO's involvement in discussions with the Department of State over the creation of a federal U.S. Art Commission is often passed over. Spurred by the Terezin Declaration, serious consideration was being given to the creation of such a commission during 2009 and 2010. The proposal, drafted by Ambassador Eizenstat and Ambassador J. Christian Kennedy, Special Envoy for Holocaust Issues, foresaw the HCPO playing a key role in the process of such a commission's development.<sup>92</sup> Unfortunately, this initiative never came to pass, with the 2012 announcement that the United States could not afford to set up an alternative dispute resolution commission.<sup>93</sup> Thus the HCPO remains the only American government-sponsored office that offers institutional support in relation to Holocaust era looted claims. The HCPO's purported passivity has come under fire in the past, notably from the National Association of Jewish Holocaust Survivors and the Holocaust Survivors Foundation USA,<sup>94</sup> but despite these criticisms, a consistent ethos is discernible through the writings and comments of past and present HCPO officers and their online educational presence that suggests virtuous humanitarianism.<sup>95</sup> Therefore, the Office enjoys a quiet reputation of hard work and

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<sup>91</sup> Dugot, "The Holocaust Claims Processing Office," 275.

<sup>92</sup> Neiman, "Holocaust Claims Processing Office: Report to the Governor and the Legislature," 11, 36.

<sup>93</sup> This is in some ways a surprising fact, as many nations such as the United Kingdom, the Netherlands, and Germany have seriously supported the development of a commission, and in doing so have upheld principles 10 and 11 of the 1998 Washington Conference which concern the creation of a commission, and the development of national processes to support alternative dispute resolution for Nazi-era looted art claims. Irina Tarsis, "Pragmatic not Sympathetic US rejects ADR forum for Nazi looted art," *Center for Art Law*, 25 January, 2013, accessed 12 July, 2017, <https://itsartlaw.com/2013/01/25/pragmatic-not-sympathetic-us-rejects-adr-forum-for-nazi-looted-art/>.

<sup>94</sup> Stewart Ain, "Holocaust Claims Going Unpaid, Investigation Says," *The Jewish Week*, 26 December 2011, accessed 28 June, 2016,

[http://www.thejewishweek.com/news/new\\_york/holocaust\\_claims\\_going\\_unpaid\\_investigation\\_says](http://www.thejewishweek.com/news/new_york/holocaust_claims_going_unpaid_investigation_says).

<sup>95</sup> Despite these criticisms, the HCPO received the 2016 Outstanding Citizen Award from the Anne Frank Center for Mutual Respect in New York "Holocaust Claims Processing Office Receives Anne Frank Award," *Insurance Journal*, 16 June, 2016, accessed 28 June 2016,

<https://www.insurancejournal.com/news/east/2016/06/16/417073.htm>.

consistency with relatively little media attention. This reality and institutional personification, combined with a distinctly international patronage will be revisited in light of the earlier American approach to restitution characterized by high media-visibility and a negligible concern for memory work, and the persistent American sense of self in relation to the memory of World War II.

*“Some kind of Ewigkeitsgarantie”*.<sup>96</sup> *the Former- Koordinierungsstelle/Deutsches Zentrum Kulturgutverluste*

Some three years prior to the State of New York’s 1997 investigations which laid the foundation for the establishment of the HCPO, the nuances of Germany’s history of looted and lost art objects had begun to rise to the fore in the newly reunified country.<sup>97</sup> With the fall of the Berlin Wall in 1989, a reassessment was underway of cultural material claims procedures and regulations. This was a sizable task considering the halting and unresolved initiatives which largely characterized the former-GDR’s stance on restitution and lost objects, but bolstered by the sudden possibility to access former-GDR documents and archives.<sup>98</sup> Almost half a century after the shattered, occupied nation emerged in the post-war period as two distinct states, it was faced with the epic task of forging a new, consolidated Germany.

Synthesizing two halves whose core political identities and populaces represented the two sides of the most bitter geopolitical divide of the second half of the twentieth century – Communism

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<sup>96</sup>*Ewigkeitsgarantie*: an eternal guarantee. This term was used by Dr. Michael Franz to describe institutions and foundations in Germany. Dr. Michael Franz (Head of Department for General and Administrative Matters, *Deutsches Zentrum Kulturgutverluste*, Magdeburg), interview with Alyssa Stokvis-Hauer, 24 February, 2016.

<sup>97</sup> Georg Crezelius, “What are Fair and Just Solutions in Dealing with Looted Art?” in *Verantwortung wahrnehmen / Taking Responsibility. NS-Raubkunst - eine Herausforderung an Museen, Bibliotheken und Archive / Nazi-looted Art - a Challenge for Museums, Libraries and Archives*, ed. Andrea Baresel-Brand (Magdeburg: Koordinierungsstelle für Kulturgutverluste Magdeburg, 2009), 147.

<sup>98</sup> Post-war restitution was essentially non-existent within the GDR. During the 1970s and 1980s, the government of East Germany began to approach the issue of restitution claims, engaging in negotiations with the World Jewish Congress and the Conference on Jewish Material Claims against Germany (Claims Conference), though these talks never evolved into a settlement or consensus. It was not until reunification that West Germany, East Germany, and the Claims Conference re-entered into negotiations, which this time proved fruitful: the eventual outcome was the Law for the Settlement of Open Property Questions, which sought to address both property issues related to the GDR but also restitution to Jewish victims of the Holocaust. Annemarie Marck and Eelke Muller, “National Panels Advising on Nazi-looted Art in Austria, France, the United Kingdom, the Netherlands and Germany – A Brief Overview,” in *Fair and just solutions?* ed. Evelien Campfens (The Hague: Eleven International Publishing, 2015), 84-85; Dr. Anja Heuß (former employee of the *Koordinierungsstelle* Bremen, provenance research expert and museum professional), interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

and Liberal Capitalist Democracy – was a monumental endeavour of statecraft, legislation, and identity reformation.<sup>99</sup> Simply put; Germany in the early 1990s had its hands full with Germany. The conception of a new Germany all over again in the 1990s has found hold and taken root in the German collective historical understanding; the *Deutsches Institut für Internationale Pädagogische Forschung* noted the popularity of referencing the “two German dictatorships” in its 2012 report to the International Holocaust Remembrance Alliance.<sup>100</sup> Further discussion of the problematics of flattening these two distinctive historical eras - that of the Third Reich and East German Communism - may be apparent, and will be explored in more depth below. But for the purpose of situating the beginnings of the *Koordinierungsstelle*, it is salient to introduce the tenor of this era where relative political and social uncertainty incited a national feeling akin to “it started all again.”<sup>101</sup> This will help to explain the German approach and developments in restitution activities, in light of collective German understandings and reckonings with its difficult past, that internally centre German trauma while balancing German guilt and responsibility on the international stage.

Where the continuity of the HCPO’s mandate and operations is its mainstay, the former-*Koordinierungsstelle*, now subsumed into the *Deutsches Zentrum Kulturgutverluste (DZK)*, is the true institutional child of a highly federalized state born in a moment of national political flux and international restlessness around the fate of World War II assets. As a result, its development is characterized by multiple changes to its location, structure and mandate. I will strive to maintain clarity between the entities involved; *Koordinierungsstelle der Länder für die Rückführung von Kulturgütern* in Bremen (1994-1998), the *Koordinierungsstelle* Magdeburg (1998-2015), and the *Deutsches Zentrum Kulturgutverluste (DZK)* (2015-present). In addition, unlike the HCPO, the former-*Koordinierungsstelle/DZK* engages in an impressive array of pedagogical initiatives, having published multiple newsletters, a book series, and hosting conferences. As a result, there is a prodigious collection of informational and scholarly

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<sup>99</sup> Anne Fuchs, Kathleen James-Chakraborty, and Linda Shortt, “Introduction,” in *Debating German Cultural Identity Since 1989*, 8-10.

<sup>100</sup> Deutsches Institut für Internationale Pädagogische Forschung (DIPF), *German Delegation in the International Holocaust Remembrance Alliance (IHRA): Country report Germany June 2012*, PeDocs, 2013: 30, accessed 17 May, 2015, [http://www.pedocs.de/volltexte/2013/8433/pdf/IHRA\\_2012\\_Country\\_report.pdf](http://www.pedocs.de/volltexte/2013/8433/pdf/IHRA_2012_Country_report.pdf).

<sup>101</sup> Anonymous (Government Official with a German Federal Ministry, Berlin), interview with Alyssa Stokvis-Hauer, 19 February 2016; the interviewee requested to remain anonymous, and for any indication of the specific Ministry in which he/she works to remain undisclosed.



documents linked to this institution, both a boon for research and a bane for clear summarization. Their online presence puts forth and demonstrates a considerable commitment to public and scholarly engagement - both in terms of basic institutional transparency<sup>102</sup> and concerning the general field of spoliated objects - in comparison to the New York Claims office. Itemization of each of these projects might be pedantic, but the scholarly facet of the *Koordinierungsstelle* acts as a key starting point for the institution's beginnings.<sup>103</sup>

Founded in 1994 in the Hanseatic city of Bremen, the *Koordinierungsstelle*'s initial, sole prerogative was the documentation of cultural losses sustained by German museums, and on rarer occasions German private owners. Funded by the Senate of Education, Science, Culture and Sports of the Free Hanseatic City of Bremen, and nine other *Länder*,<sup>104</sup> this mandate to investigate wartime *beutekunst*, or trophy art - and importantly distinct from *raubkunst*, or looted art - focused heavily on German cultural losses to the Soviet Union.<sup>105</sup> It wouldn't be until 1998 that all 16 of the German *Länder* would become party to this cooperative, government initiative because, as explained by a former-*Koordinierungsstelle* Bremen employee Dr. Anja Heuß:

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<sup>102</sup> While comparatively institutional information is much easier to find through the *DZK*'s webpage (the inclusion of all available materials in English is a recent occurrence, as are sleek upgrades to their online presence), there is only the most basic information about the Bremen office under "Chronology," Deutsches Zentrum Kulturgutverluste, <https://www.kulturgutverluste.de/Webs/DE/Stiftung/Geschichte/Index.html>.

<sup>103</sup> For the benefit of the reader, these projects include (but are not limited to) an international newsletter which was published and distributed between 1995 and 2003 (all available in digital form at <http://www.lostart.de/Webs/EN/LostArt/Publikationen/Index.html>), nine edited scholarly volumes on the topic of spoliated art objects, and international conferences such as "Taking Responsibility," held in 2008 and "New Perspectives on Provenance Research in Germany," in November 2015.

<sup>104</sup> These were Berlin, Brandenburg, Hamburg, Mecklenburg-Vorpommern, Lower Saxony, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. The German *Länder* are more or less equivalent to states in the context of a federalized country; three of these states are *Stadtstaaten* or city-states: Berlin, Bremen, and Hamburg.

<sup>105</sup> Conceptualized as a form of "restitution-in-kind" for the heavy losses and damages sustained by the Soviet Union as a result of German aggression in the war, the Soviet army undertook a highly organized and strategic looting (or, according to the Soviet position, 'compensation') campaign in Germany at the end of the war and during the occupation. The Soviet Trophy Brigades made off with hundreds of thousands of objects and art pieces – both German and those which the Germans had themselves looted. Some of these have since been returned, but the majority of them still reside in Russian institutions, like the Pushkin and Hermitage. Many of the pieces taken by the Soviet Trophy Brigades were nationalised under the 1998 Russian Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation. Konstantin Akinsha and Grigorii Kozlov, "Top Ten ARTnews stories: Tracking the Trophy Brigade," *ARTnews*, 11 January 2007, accessed 19 December, 2017, <http://www.artnews.com/2007/11/01/top-ten-artnews-stories-tracking-the-trophy-brigade/>; Wolfgang Eichwede, "Trophy Art as Ambassadors: Reflections Beyond Diplomatic Deadlock in German-Russian Dialogue," *International Journal of Cultural Property* 17:387 (2010): 396-398, doi:10.1017/S0940739110000159; Audrey A. Hogan, "The Lost Museum: Engaging with the past and reimagining the future of the Bode Museum 70 years after World War II," masters thesis, Leiden University, 2016; Noah Charney, "A Brief History of Art Theft in Conflict Zones," *Journal of Art Crime* 12 (2014): 83.

[N]ot all the federal states were willing to pay for the *Koordinierungsstelle* at that time. Naturally the states in former [East Germany]<sup>106</sup> were more interested in the existence of this institution than the states in [West Germany], because the museums in the former [German Democratic Republic] had suffered more cultural losses by the Soviet trophy commissions.<sup>107</sup>

In addition, a pervading sense in West Germany that “everything had been restituted or compensated after the war,” which had resulted in institutional stagnation, was not shared in the newly democratized East.<sup>108</sup> It was this interest in German cultural losses, intensely shared by the *Kunsthalle Bremen* which had “suffered severely” from Soviet looting, that had previously given birth to the University of Bremen’s *Forschungsstelle Osteuropa* in 1982.<sup>109</sup> Under the direction of Dr. Wolfgang Eichwede, the institute had been researching cultural object looting by German forces in Soviet Russia. Dr. Heuß, now a provenance researcher with the *Staatsgalerie Stuttgart* who has undertaken work concerning the documentation of Nazi looted art in German museums, had been a researcher with the *Forschungsstelle* and recalls the circumstances under which the *Koordinierungsstelle* began in 1994:

[Dr. Doris] Lemmermaier had been working for [Dr. Eichwede at the *Forschungsstelle Osteuropa*] before and now started the foundation of the *Koordinierungsstelle für Kulturgutverluste*. She was going to be the head of the *Koordinierungsstelle* and asked me to take part in this new project. Prof. Eichwede was not amused by that and tried to prevent the foundation of the *Koordinierungsstelle*. [...] Prof[essor] Eichwede tried to attack the *Koordinierungsstelle* behind the scenes. The Minister of Culture was a former student of his, so he had some influence.<sup>110</sup>

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<sup>106</sup> Within this text, references to the “DDR” have been replaced with East Germany, and “GDR” with German Democratic Republic for the sake of clarity. For similar reasons, references to the BDR have been changed to West Germany.

<sup>107</sup> Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

<sup>108</sup> Ibid.; Olick, *The Politics of Regret*, 45-46; Kurt Siehr, “‘Their Own History,’ Provenance research in German Art Museums Compared with the Situation in Other Countries Hamburg (Germany) (February 20-22, 2002),” *International Journal of Cultural Property*, 11:2 (2002): 343. Dr. Wolfgang Eichwede’s own writing indicates connotations of a similar sentiment: “Since Germany, for historical reasons, has less to return but wants to match the other side, and because she is aware of her guilt, having initiated the murderous activities more than fifty year ago, she is looking for a means to balance the disparity and convey her goodwill.” Wolfgang Eichwede, “Models of Restitution (Germany, Russia, Ukraine),” *Spoils of War*, ed. Elizabeth Simpson (New York: Harry N. Abrams, Inc., 1997), 216.

<sup>109</sup> Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016; Eichwede, “Models of Restitution,” 218. The *Forschungsstelle Osteuropa* is still in operation in Bremen, with information concerning its researchers and projects found here: <https://www.forschungsstelle.uni-bremen.de/>.

<sup>110</sup> Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

With a reportedly difficult start, the *Koordinierungsstelle* began its work with an office comprised of distinctly academic personnel; Dr. Lemmermaier, Dr. Heuß, an additional “academic employee,” and a secretary.<sup>111</sup> Despite this noticeably small staff and continued “political conflicts” between the *Koordinierungsstelle* and *Forschungsstelle*, the institution organized and visited international conferences, forged a number of international partners, worked closely with German museums to research German cultural losses, and attempted to document these losses in a database.<sup>112</sup> Additionally, the *Koordinierungsstelle* founded a newsletter with said international partners titled “Spoils of War.”<sup>113</sup> This newsletter was published up until 2003, following the office’s relocation to Magdeburg which was accompanied with a complete re-staffing and notable expansion of the mandate.<sup>114</sup>

At this point, it has most likely become obvious to the reader that in no discernable way was the *Koordinierungsstelle* Bremen involved in questions of cultural losses as a result of Nazi persecution. In the years between 1998 and 2001, the *Koordinierungsstelle* went through a number of substantial changes. Within the literature, the drastic shifts of the *Koordinierungsstelle* between its Bremen and Magdeburg incarnations are rarely covered, and never in detail. As a result, many of the events are drawn from the memory of Dr. Heuß. Combining her recollections with political factors and the organization’s history relayed by Dr. Michael Franz, the current head of the *DZK*’s General and Administrative Matters and former Director of the *Koordinierungsstelle* Magdeburg, does however suggest a number of external and internal political interests which motivated this institutional reinvention. First, in 1997, Dieter Opper, the head of the Department of Culture and champion of the *Koordinierungsstelle* within Bremen’s Senate of Education, Science, Culture and Sports, died. Considering the conflict between the *Koordinierungsstelle* and the *Forschungsstelle*, a relocation offer from the federal

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> According to Dr. Heuß, this newsletter was an international effort – which may explicate the English title: “We were in contact with international institutions, especially in the Netherlands, France, Belgium, and the USA [...] Together with our international partners we founded a newsletter in 1995 (also named “Spoils of War”)...” Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016. It is also interesting to note that the Bard Graduate Center for the Studies in the Decorative Arts hosted a conference of the same name in 1995, which saw German, American, and Russian experts gather together for the first time to discuss looted art: Eizenstat, *Imperfect Justice*, 190.

<sup>114</sup> The content of these newsletters proves an insightful means to see the gradual shift in focus from *beutekunst* to *raubkunst* amongst those professionals writing and researching on World War II-era looted art, specifically from Germany.

state of Sachsen-Anhalt, formerly located in East Germany, was politically opportune. It is not entirely clear why the entire Bremen office staff refused to follow the *Koordinierungsstelle* to Magdeburg.<sup>115</sup> However, as a result the 1998 opening of the *Koordinierungsstelle* in Sachsen-Anhalt's capital Magdeburg featured an entirely new staff. Dr. Michael Franz became the new director in January of 1999, only a few days after the Washington Conference was held.<sup>116</sup> In keeping with the scholarly foundation set in Bremen, Dr. Franz brought to the Magdeburg office his training as a legal scholar and background on German civil law and the theft of cultural property. He held the directorship for the next 16 years, and continues to work now with the *DZK* as the head of the Department of General and Administrative Matters.<sup>117</sup>

In the year of the Washington Conference, the *Koordinierungsstelle* Magdeburg expanded their mandate to include the documentation of trophy art taken from private persons. It would not be until 2001 that the institution expanded its mandate again to include documentation related to Nazi-looted art, and founded what has come to be their cornerstone project; the Lost Art Database. Lostart.de is a free and open-access online database where information on heirless objects<sup>118</sup> can be posted, or claimants can post information on art objects for which they are searching (fig. 5).<sup>119</sup> 2001 also saw the publication of *Beiträge öffentlicher Einrichtungen der Bundesrepublik Deutschland zum Umgang mit Kulturgütern aus ehemaligem jüdischem Besitz*. This was the first in a 9-book series running from 2001 to 2012 of collected writings from a wide range of contributors, ranging from museum professionals to civil servants to academics writing on topics which pertain to looted, plundered, or trophy art (fig. 6). It is of interest to note that an

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<sup>115</sup> Dr. Heuß (who by 1998 was no longer working with the institution) opaquely references both a difficult workplace, and vague individual personal reasons to address why none of the Bremen staff relocated to Magdeburg. Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

<sup>116</sup> Dr. Franz did not attend the Washington Conference. Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016.

<sup>117</sup> Ibid., Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

<sup>118</sup> Heirless objects are items whose provenance reveals spoliation or looting, but which have no claimants or heirs, whether because they are dead or have yet to be ascertained. Unlike cultural institutions which keep archival and collections documents, private property is rarely catalogued or recorded, thus compounding the complexity of discovering the original owners of heirs to heirless objects; Nicholas, *Rape of Europa*, 432-433; Simpson, "Introduction," 13.

<sup>119</sup> During our interview, Dr. Franz impressed upon me the importance and centrality of the Lost Art Database, and its status as a key activity initiated by the *Koordinierungsstelle* and now under the purview of the *DZK*. In Dr. Franz's words: "it was one [of] our main key works to provide transparency, service, and documentation. These are the three pillars on which the *Koordinierungsstelle* worked." The importance of transparency is outlined in article 6 of the Washington Principles, see appendix A.

additional external factor which may have galvanized this expansion of the *Koordinierungsstelle*'s mandate may have been the 2001 agreement reached between the United States and Austria, wherein Austria committed to a General Settlement Fund for survivors, and making "good faith progress on the implementation of the additional measures for victims of the National Socialist era" by encouraging all levels of government to research the provenance and engage in restitution of spoliated and/or looted art under their purview.<sup>120</sup>

Soon after, in 2003, the *Koordinierungsstelle* also began to serve as the administrative office for the *Beratende Kommission*, more colloquially known as the Advisory, or sometimes the Limbach Commission.<sup>121</sup> It presides as a mediating council over restitution cases concerning "cultural assets which were confiscated during the Third Reich, especially from persecuted Jewish citizens and are now held by museums, libraries, archives or other public institutions in the Federal Republic of Germany."<sup>122</sup> It is only convened when *both* parties desire to enter into mediation, does not offer funding support for claimants' research, and is able then to offer only non-binding recommendations. This commission is comprised of German academics, and former-political and judicial professionals,<sup>123</sup> whose membership was broadened from eight to ten in order to include two Jewish members as of 2016 following backlash to comments made concerning the cultural composition of the Commission's sitting members by Minister of Media and Culture

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<sup>120</sup> "Agreement Between the UNITED STATES OF AMERICA and AUSTRIA Relating to the Agreement of October 24, 2000," *U.S. Department of State*, TIAS no. 13143, Treaties and Other International Acts, 23 January, 2001, accessed 26 November, 2017, <https://www.state.gov/documents/organization/129563.pdf>.

<sup>121</sup> Though sometimes still referred to as the Limbach Commission, Professor Jutta Limbach, the former chair and namesake of this shorthand for the Advisory Commission, died in 2016 and was initially replaced by the former president of the Federal Administrative Court Marion Eckertz-Höfer. As of November 9<sup>th</sup>, 2017 Professor Hans-Jürgen Papier is the chairman of the Advisory Commission. "Advisory Commission," Deutsches Zentrum Kulturgutverluste, last accessed 22 November, 2017, <http://www.kulturgutverluste.de/en/advisory-commission>.

<sup>122</sup> *Ibid.*

<sup>123</sup> The Commission is comprised of "[i]ndependent persons with legal, ethical, cultural or historical expertise who do not hold prominent political office..." Former members include the retired German President Dr. Richard von Weizsäcker, and art history professor and current director of the Getty Research Institute Dr. Thomas Gaehetgens. Members who have sat on the committee since 2005 include historian, professor, and Director of Berlin's Topography of Terror documentation centre, Dr. Reinhard Rürup, and philosopher, professor and chair of Philosophy at the University of Mannheim Dr. Ursula Wolf. The full list of current Commission members is available on the *DZK* website: "Advisory Commission," <https://www.kulturgutverluste.de/Webs/DE/BeratendeKommission/Index.html>. "The Return of Cultural Property Seized as a Result of Nazi Persecution – The First Recommendation of the Advisory Commission," Deutsches Zentrum Kulturgutverluste, 12 January 2005, accessed 19 December 2017, [https://www.kulturgutverluste.de/Content/06\\_Kommission/EN/Empfehlungen/05-01-12-Recommendation-Advisory-Commission-Freund-Germany.pdf?\\_\\_blob=publicationFile&v=8](https://www.kulturgutverluste.de/Content/06_Kommission/EN/Empfehlungen/05-01-12-Recommendation-Advisory-Commission-Freund-Germany.pdf?__blob=publicationFile&v=8).

Monica Grütters.<sup>124</sup> Along with updates to the Commission’s mandates concerning membership, the Commission’s members now have a 10-year limit to their tenure, can adjudicate on restitution claims where the property in question is held in a private collection,<sup>125</sup> and will publish its “schedule, agenda, and the rationale behind its decisions online,”<sup>126</sup> a movement towards transparency following significant and prolonged criticism concerning its operations.<sup>127</sup> While the specific duties of the *Koordinierungsstelle* Magdeburg in relation to the Limbach Commission are not entirely clear, the *DZK* details its current functions in relation to the Advisory Commission as “carry[ing] out the organization and administrative tasks to support the Advisory Commission.” This includes the delegation of “the preparation, implementation and follow-up of Commission meetings” to Dr. Franz, now head of the Department for General and Administrative Matters at the *DZK*, who also acts as the contact for claimants.<sup>128</sup> Given the Commission’s new initiative to improve transparency and efficacy, this work closely ties the recent steps towards improving both the public perception and real efficacy of the Commission to the *DZK*.

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<sup>124</sup> The *New York Times* reported Monica Grütters’ response to calls from the German-Jewish community to include a Jewish member on the Advisory Commission, which caused an immediate backlash. The article reported that Grütters said: “We did not [appoint a Jewish figure to the Advisory Commission], and for good reason [...as this appointee] would be the only voice who would be prejudiced.” Alison Smale, “Germany to Continue Funding to Establish Provenance of Looted Art, *New York Times*, 3 March, 2016, accessed 4 April, 2016, <https://www.nytimes.com/2016/03/04/arts/design/germany-to-continue-funding-to-establish-provenance-of-looted-art.html>.

<sup>125</sup> The Advisory Commission’s mandate stipulates that “private persons who hold cultural property and submit [...] a binding declaration [to agree to adhere to the Washington Principles of 1998 and the Joint Declaration of 1999 between the Federation, the federal states and the national associations of local authorities to implement the Washington Principles] may also lodge a request for mediation.” It bears repeating that both parties involved in the dispute must agree to mediation before the Commission can be convened, meaning that claimants cannot unilaterally file for restitution recommendations against private collections. “Rules of Procedure of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property as of 2 November 2016,” Deutsches Zentrum Kulturgutverluste, 2 November, 2016, accessed 19 December, 2017, <https://www.kulturgutverluste.de/Webs/EN/AdvisoryCommission/Rules-of-Procedure/Index.html>.

<sup>126</sup> Henri Neuendorf, “Germany Reforms Commission for Nazi-Era Art Restitution After Criticism from Jewish Groups,” *Art Net News*, 11 November, 2016, accessed 4 July, 2017, <https://news.artnet.com/art-world/germany-reforms-limbach-commission-744929>.

<sup>127</sup> Nicholas O’Donnell, “Time to Go – Flechtheim Heirs Withdraw from Limbach Commission That Has Outlived its Usefulness,” *Art Law Report*, 26 February, 2016, accessed 10 May, 2016, <http://blog.sandw.com/artlawreport/time-to-go-flechtheim-heirs-withdraw-from-limbach-commission-that-has-outlived-its-usefulness>; Marc Masurovsky “Monika Gruetters’ ‘Jewish problem’” *Plundered Art: a perspective from the Holocaust Art Restitution Project*, 11 March, 2016, accessed 2 June, 2016, <http://plundered-art.blogspot.ca/2016/03/monika-gruetters-jewish-problem.html>.

<sup>128</sup> Deutsches Zentrum Kulturgutverluste, “Advisory Commission.”

The significant movement of the *Koordinierungsstelle* in 2001 into the realm of Nazi-looted art was supported by the new participation of the *Bund* or Federal government. The 2001 budget for the institution was 500 000 euros, half from the *Bund* and half from the federal states.<sup>129</sup> Their expansion into the field of restitution for victims of German Nazi persecution demonstrates the progression of an institution equipped with the knowledge to pursue such research and activities, inspired and incentivized by the international concerns and developments around Holocaust-era looted assets in 1998 at Washington. The 1999 Joint Declaration or *Gemeinsame Erklärung* (appendix B) seems to be further evidence of a commitment to righting past wrongs committed by Germany, as opposed to solely focusing on justice for historical wrongs committed against Germany. A German non-binding set of statements, it reaffirms the commitment of the German Federal Government, the Federal States (*die Länder*), and the National Association of Local Authorities (*die kommunalen Spitzenverbände*) to “look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps in order to find an equitable and fair solution.”<sup>130</sup> The preamble of this document also provides a reminder of the Allied hand in formulating the basis of Western German restitution following WWII, and continuing through the years of the Cold War. Allied influence extended right up to reunification, as is apparent in the correspondence of United State Secretary of State James Addison Baker and Foreign Minister Hans Dietrich Genscher in 1990 which reaffirmed the pursuit of “compensation after unification.”<sup>131</sup>

It is no grand leap to read the 2001 mandate expansion as directly influenced by the American-led refocus on Nazi-looted art and the international support for the Washington Conference. A less obvious factor was posited by Dr. Heuß: the mandate expansion from a singular focus on the return of trophy art, taken from Germany and mainly residing in Russia, occurred when “the negotiations about the restitution of German works of art out of Russia had come to a standstill.”<sup>132</sup> After a year of delay due to reservations on the part of Boris Yeltsin, 1998 saw

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<sup>129</sup> Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016.

<sup>130</sup>“Gemeinsame Erklärung (Joint Declaration),” *Deutsche Bundesregierung, die Länder und die kommunalen Spitzenverbände*, 1999, accessed 25 January, 2016, <http://www.lostart.de/Webs/EN/Datenbank/Grundlagen/GemeinsameErklaerung.html>.

<sup>131</sup> Bindenagel, “Justice, Apology, Reconciliation, and the German Foundation: ‘Remembrance, Responsibility, and the Future,’” 286.

<sup>132</sup> Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

Russia sign into law the Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation. This statute effectively nationalized all said “displaced” objects in question, barring their restitution with the Russian Constitutional Court providing a loophole for “good-will gestures and exceptions to the rule.”<sup>133</sup> While certainly not the sole reason for the *Koordinierungsstelle*’s mandate shift, the dates do seem to support Heuß’ assertion.

In 2005, four years after the key expansion, an office was set up to offer support to the individual *Länder* and the *Bund*, as was a public relations office. German ministries connected to the pursuit of restitution - such as the Ministry for Media and Culture and the Finance Ministry - and the *Koordinierungsstelle* seem to have realized the importance of communicating their Nazi-era art restitution efforts concurrently.<sup>134</sup> This attention to media coverage, public perception, and the portrayal of national morality will represent itself further along in this discussion, especially in light of post-war media awareness and the HCPO’s self-admittedly news-shy persona. Finally, in 2010, an additional website for the protection and documentation of German cultural property was created – *Datenbank national wertvolles Kulturgut* (the Database of Cultural Property of National Significance) – which was described to me by Dr. Franz as an online platform where culturally meaningful German monuments or objects can be registered and searched.<sup>135</sup>

As of January 2015, all these activities are now under the new umbrella organization, the *Deutsches Zentrum Kulturgutverluste* (DZK). This new foundation has tied together the undertakings of the *Koordinierungsstelle* with those of the Freie University’s “Degenerate Art” research centre – the *Arbeitsstelle für Provenienzforschung* (Centre of Provenance Research) – in Berlin, and the Munich Artworks (Gurlitt) taskforce. The 500 000 euro funding carried over, with an additional 4.28 million euros for the 2016 financial year from the Federal Government

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<sup>133</sup> Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Sammlung 101-City of Bremen, Kunsthalle Bremen and Russia,” *Platform ArThemis* (April 2012): 2-3, accessed 27 July, 2016, <https://plone.unige.ch/art-adr/cases-affaires/sammlung-101-city-of-bremen-kunsthalle-bremen-and-russia-1/case-note-2013-sammlung-101-2013-city-of-bremen-and-kunsthalle-bremen-and-russia>.

<sup>134</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016; Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016.

<sup>135</sup> Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016. It is also of note that property which has been formally registered into this database cannot be transferred abroad.



intended largely for provenance research,<sup>136</sup> and which is available to support such projects in institutions across Germany via application.<sup>137</sup> From meeting with Dr. Franz, I learned that this expansion and reworking of the institution had been slated for full implementation only as of 2016. But in 2012, 1200 pieces of art were discovered in the Munich apartment of the now-deceased Cornelius Gurlitt – the son of a relatively infamous Nazi-era art dealer Hildebrand Gurlitt.<sup>138</sup> Due to the revelation of the Gurlitt art trove and the accompanying intense media scrutiny, the institutional reworking deadline was moved up. A source within a German Federal Ministry related to Nazi-looted art restitution and the decision to found the *DZK* opined that the in-gathering of these organizations into one centre was sparked by the Gurlitt case, but also was aimed to solve critiques of German federalism from abroad.<sup>139</sup>

This new “one-stop-shop” boasts about two dozen staff members, all of whom are listed by position accompanied with contact information on the *DZK*’s webpage.<sup>140</sup> The webpage itself has undergone significant upgrades from 2015 to 2018 (fig. 7 and fig. 8). The institutional expansion has been paired with a new, intuitive, and sleek online platform which has been routinely added to and updated. Most noticeably the website has all its relevant information published in English and German as of mid-late 2016. The *DZK* online presence features a wealth of well-organized information, including a detailed organization chart of their institution’s departments and members, the mandates and tasks of the *DZK*, the Advisory

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<sup>136</sup> In 2017, the *DZK* was allocated 5.33 million from the Federal Government, plus a “restricted grant” of 47 000 euros from the federal state of Saxony Anhalt: Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016; “Fact Sheet,” Deutsches Zentrum Kulturgutverluste, 20 November, 2017, [https://www.kulturgutverluste.de/Content/08\\_Downloads/EN/Fact-sheet.pdf?\\_\\_blob=publicationFile&v=17](https://www.kulturgutverluste.de/Content/08_Downloads/EN/Fact-sheet.pdf?__blob=publicationFile&v=17); “Frequently Asked Questions,” Deutsches Zentrum Kulturgutverluste, 20 November, 2017, <https://www.kulturgutverluste.de/Webs/EN/Start/FAQs/Index.html>.

<sup>137</sup>The *DZK* provides an interactive map which shows the location of all its funded projects, allowing viewers to sort through locations by institutional type (e.g. library, museum, archive, etc.), and click on a link which takes them to a description of the project. This feature is available at <http://www.kulturgutverluste.de/en/projects/project-map>. Additionally, the *DZK* has a very up-to-date, as of November 20, 2017, comprehensive fact sheet outlining its operations, mandate, and functions: [https://www.kulturgutverluste.de/Content/08\\_Downloads/EN/Fact-sheet.pdf?\\_\\_blob=publicationFile&v=17](https://www.kulturgutverluste.de/Content/08_Downloads/EN/Fact-sheet.pdf?__blob=publicationFile&v=17). Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016; Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, February 24, 2016.

<sup>138</sup> Later on in the investigation, more works were found in Gurlitt’s home in Salzburg, Austria. A special taskforce was created to investigate the provenance of the artworks. Efforts to determine the provenance of the hoard of works was slow and highly criticized; rightful ownership was only determined in five works, despite the taskforce’s two year working time. Melissa Eddy, “Few Answers on True Owners of Art Found in Gurlitt Trove,” *The New York Times*, 14 January, 2016, <http://www.nytimes.com/2016/01/15/world/europe/gurlitt-art-collection-germany.html>.

<sup>139</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016.

<sup>140</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016; “Team,” Deutsches Zentrum Kulturgutverluste, accessed 7 August, 2016, <http://www.kulturgutverluste.de/en/about-us/team>.

Commission, the Gurlitt Provenance Research Project,<sup>141</sup> and the Lost Art Database.<sup>142</sup> The Database itself allows for individuals and institutions to register either “search reports” – descriptions of objects that they are seeking – or “found reports” – descriptions of objects from prior to 1946 which can be “classified as having been seized as a result of persecution, or [have] gaps in [their] provenance [...] for the period 1933–1945.”<sup>143</sup> The database provides multiple search methods, along with Boolean search instructions, making it both user-friendly and accessible (fig. 9).

The *Koordinierungsstelle* – now the *DZK* – demonstrates a commitment to a conception of justice distanced from simplistic monetary or material reparations similar to their peers at the HCPO. In fact, the supposed American commitment to negotiation was consistently applauded in interviews, often accompanied by chagrined explanations of the strictures of German civil code and regulations which have not allowed such an ethos of alternative settlement dispute to develop.<sup>144</sup> With a system based upon a civil code as opposed to case law, it was put to me that a culture of negotiation had a much harder time taking root in German society.<sup>145</sup> The expression of this perception would seem to demonstrate a shared personal conviction that restitution matters should extend beyond the confines of property law to a more nuanced, emotional issue of confronting and rectifying historical injustice. In terms of inter-institutional relationships, the *DZK* can be classified as one of the national documentation or restitution agencies that the HCPO would contact on behalf of a claimant. This means the *DZK* (and before its existence, the *Koordinierungsstelle*) does not directly help claimants pursue claims. Rather, both iterations of the institution act as documentation and advisory resources, and provide funds for provenance research projects to institutions.<sup>146</sup> Additionally, the composite nature of the *DZK*'s purview,

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<sup>141</sup> The Taskforce's initial findings were met with such backlash that the *DZK* has launched a new project as of January 2016 to continue investigating the provenance of works within the collection. “Fact Sheet,” Deutsches Zentrum Kulturgutverluste; Melissa Eddy, “Few Answers on True Owners of Art Found in Gurlitt Trove.”

<sup>142</sup> “Organisation Chart,” Deutsches Zentrum Kulturgutverluste, last accessed 7 August, 2016, <http://www.kulturgutverluste.de/en/about-us/organisation-chart>.

<sup>143</sup> “Reporting Objects,” Lost Art Database, accessed 22 July, 2017, <http://www.lostart.de/Webs/EN/Datenbank/Melden.html>.

<sup>144</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016; Dr. Michael Franz, interview with Alyssa Stokvis-Hauer, 24 February, 2016.

<sup>145</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016.

<sup>146</sup> As of March 2017, the *DZK* has partnered with the Mosse Restitution Project (MARP) to fund the Mosse Art Research Initiative (MARI), a collaborative research effort based out of the Freie Universität in Berlin that works alongside the heirs of Rudolph Mosse to “identify and locate stolen artworks.” The project has brought together over

inherited from the *Koordinierungsstelle*, combines research and documentation activities pertinent to both cultural losses as a result of NSDAP persecution and German losses as a result of the war. This stands in contrast to the HCPO's singular objective to aid Nazi victims and their heirs.

## **National Identity & Restitution After the War**

Thus far, this text has laid out the recent histories, practices, and changes of the HCPO and *Koordinierungsstelle/DZK*, both in the interest of contextual background and as an expository contribution of organization information. These institutions, acting as the main governmental support in the sectors of Nazi looted or appropriated art restitution, have been situated in their national contexts within the 1990s until now, and more loosely attached to pervading ideas concerning righting historical wrongs. The HCPO as an institution has been shown to have a marked proclivity to stay out of the limelight, along with a 'white knight' mentality supported by a strongly victim-focused mandate. These institutional features are manifest in a small, consistent organization that uses neither stick nor carrot to unearth potential claims, with a widely international patronage. In contrast, the *Koordinierungsstelle* has a dynamic past, with consistent changes that have grown the mandate and purview of the organization. Though not a claimant-focused institution, the *DZK* and its predecessors have engaged in considerable academic projects which have spread awareness of Holocaust-era looted assets and their restitution, and manage a free database for lost and heirless objects. Growing in size and scope almost each

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a dozen German public institutions in an effort to determine the whereabouts of the newspaper publisher's immense collection, which was confiscated and auctioned off by the Nazi regime in 1934. MARI, which will be funded until February 2019, is an unprecedented collaborative provenance and restitution research endeavour in Germany, and bears special remark as funding from the DZK in this instance is being used by academic researchers at a University in partnership with Mosse's heirs. "Mosse Art Research Initiative (MARI)," Kunsthistorisches Institut, Freie Universität Berlin, accessed 5 January 2018, <http://www.geschkult.fu-berlin.de/e/khi/forschung/projekte/drittmittelprojekte/mari/index.html>; "Berliner Mäzenatentum. Die Kunstsammlung Rudolf Mosse (1843—1920). Aufbau — Bedeutung — Verlust," Deutsches Zentrum Kulturgutverluste, accessed 4 January, 2018, [https://www.kulturgutverluste.de/Content/03\\_Forschungsfoerderung/Projekt/Freie-Universitaet-Berlin/Projekt2\\_en.html?nn=102834](https://www.kulturgutverluste.de/Content/03_Forschungsfoerderung/Projekt/Freie-Universitaet-Berlin/Projekt2_en.html?nn=102834); Caroline Elbaor, "German Institutions Form Unprecedented Alliance to Identify Nazi-Looted Art," *Artnet News*, 7 March 2017, accessed 5 January 2018, <https://news.artnet.com/art-world/german-alliance-identify-nazi-loot-881309>; "The Mosse Art Research Initiative: German Institutions form an alliance to reconstitute Nazi-looted artefacts to heirs," Unite4Heritage, UNESCO, 28 March 201, accessed 5 January 2018, <http://www.unite4heritage.org/en/news/mosse-art-research-initiative-german-institutions-form-an-alliance-to-restitute-nazi-looted>.

consecutive year since its founding, the *Koordinierungsstelle* and now the *DZK* have had a highly visible media presence for about the past decade. The *DZK* has provided funding for German institutions to conduct provenance research and acts as the administrative office for the Advisory Commission, which has acted as a non-binding mediator between parties concerning objects located in Germany. Both institutions affirm the merit of non-litigious methods of settling restitution claims and, though both offer legal advice or consultation, do not engage in litigation directly. With this broad overview established, important aspects of these institutions' functions and operations begin to bubble to the fore; institutional media presence, mandate diversity and extension (or lack thereof), and organizational size. From the vantage point of the present, a turn to the past and an exploration of post-War constructions of memory, justice, and responsibility will elucidate trends and realities within American and German restitution institutions.

### *The Nation, Memory, and Regret*

The institutions introduced above positively demonstrate an increased focus on moral responsibility with respect to Holocaust-era art restitution in Germany and the United States. The development of these institutions underline the postmodern changes in political culture and a more general rise in the perceived worth and importance of victims' justice and national responsibility.<sup>147</sup> Attached to this conceptual turn, and of specific significance for the development of restitution, is that this moral responsibility is based upon a willingness to reopen difficult histories, accept guilt, and acknowledge regret.<sup>148</sup> The historical reflexivity inherent in the work of the HCPO and the former-*Koordinierungsstelle/DZK* – and by extension in the governmental structures that support them – demonstrates a willingness to revisit past traumas and pursue a means of corrective, restitutionary justice. Yet, this ethos was not always foremost for nation-states, and their representatives, nor their publics. A demonstrated readiness, or awareness of the importance of assessing memories and the national narratives to which they

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<sup>147</sup> Barkan, *The Guilt of Nations*, xi; Barkan & Karn, "Group Apology as an Ethical Imperative," 5-7; Olick, *The Politics of Regret*, 40, 52, 130-132.

<sup>148</sup> Barkan, *The Guilt of Nations*, xi; Barkan & Karn, "Group Apology as an Ethical Imperative," 17; Marrus, *Some Measure of Justice*, 37.

gave rise is what establishes the 1990s as such a unique moment in the history of restitution and confronting traumatic histories.<sup>149</sup>

In order to contextualize the shift during the 1990s towards addressing historical justice and memory work, it is important to understand a turn within the scholarship and understanding of nationalism at the end of the 20<sup>th</sup> century. The nation came to be widely understood as a collective, dynamic project of group self-understanding, rather than a homogenous, static, primordial entity.<sup>150</sup> Now thought of as a product of collective narratives of selfhood, influenced by common collective memories of the ‘usable’ past,<sup>151</sup> the nation and its identity is therefore susceptible to change and redefinition.<sup>152</sup> With memory, like the nation, situated as a process of selective construction, this necessitates the complementary practice of collective forgetting. As historian David Lowenthal notes, “[n]ations are unique not only in what they choose to remember but in what they feel forced to forget.”<sup>153</sup> As a result, what is being forgotten or suppressed is of equal importance to collective memory, and its study, as what is being

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<sup>149</sup> Barkan, *The Guilt of Nations*, xi; Marrus, *Some Measure of Justice*, 39; Olick, *The Politics of Regret*, 3-5; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 300.

<sup>150</sup> Brubaker, “Rethinking Nationhood,” 14; Alon Confino, *The Nation as Local Metaphor* (Chapel Hill & London: The University of North Carolina Press, 1997), 3, 7; John R. Gillis, “Memory and Identity: The history of a relationship,” in *Commemorations: The Politics of National Identity*, ed. John R. Gillis (Princeton: Princeton University Press, 1994), 3.

<sup>151</sup> The usable past constitutes those moments, events, people, etc... remembered from history that allow for a certain narrative to be formed and sustained. Consequently, it is often associated with the dual actions of forgetting/suppressing and remembering/commemorating that are central to collective memory. Additionally, the usable past is often referenced to discuss presentism and the political construction and maintenance of hegemonic national narratives. This is not to say the usable past is solely comprised of moments or markers that make individuals, or a collective, feel ‘good’ or ‘proud’ about their history and identity. Nor does it mean what is not currently usable is permanently forgotten; as Moeller asserts, we cannot confuse remembering selectively for wholly forgetting (Moeller, *War Stories*, 16). Due to a myriad of social, political, and cultural factors, if a society eventually engages in difficult, complex reckonings with questionable, objectionable, or even horrific moments in the collective’s past, the more varied and nuanced the usable past can become. This concept appears both concretely and nebulously in most robust discussions of collective memory, and national myth or narrative creation. My understanding of it for the purposes of this research have been nuanced by: Brubaker and Feischmidt, “1848 in 1998,” 700-701; Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, Mass: Harvard University Press, 1997), xi, 1-12; Moeller, *War Stories*, 3-20; Gillis, “Memory and Identity,” 17; Yael Zerubavel, *Recovered Roots* (Chicago: Chicago University Press, 1995), xiii-xix, 10-12, 220-237.

<sup>152</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London & New York: Verso, 1983), 7; Brubaker and Fleischmidt, “1848 in 1998,” 700-702; Confino, *The Nation as Local Metaphor*, 3; Eric Hobsbawm, “Introduction: Inventing Traditions,” in *The Invention of Tradition*, eds. Eric Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 1983), 2, 9, 12; Moeller, *War Stories*, 188,180.

<sup>153</sup> David Lowenthal, “Identity, Heritage, and History,” in *Commemorations: The Politics of National Identity*, ed. John R. Gillis (Princeton: Princeton University Press, 1994), 50.

remembered.<sup>154</sup> Particularly relevant to a discussion of memories of World War II is the acknowledgement that “[t]rauma and suffering are among the most powerful forces capable of shaping ‘communities of memory.’”<sup>155</sup> As has been briefly discussed, and will be explored in more detail below, the different forms of suffering and trauma produced by World War II significantly shaped the conventional collective identities of both Germany and America to produce very distinctive and lasting legacies which continue to exert influence.

The power of the past as an interpretative framework for the present finds expression in the idea of presentism.<sup>156</sup> Presentists use the past to forge memories that “serve the needs and interests of the present.”<sup>157</sup> Rogers Brubaker and Margit Feischmidt, borrowing from the work of scholars Jeffrey Olick and Joyce Robbins, divide presentism into two forms: the instrumental and the cultural – an important distinction in order to understand that the creation of collective memory is not simply and wholly the machinations of political elites.<sup>158</sup> Instrumental presentism, commonly known as “memory entrepreneurship,” is usually associated with elite and political manipulation.<sup>159</sup> Cultural presentism on the other hand is more nebulous as a process; “the less deliberate processes and mechanisms that govern the selectivity of memory.”<sup>160</sup> That collective memory, and therefore self-understandings of national identities and national histories is created at once from ‘above’ and ‘below’ is crucial in understanding how national identities and memories have formed and shifted.<sup>161</sup> This fact buoys up Barkan’s assertion that “[t]he discussion of identities, and consequently of restitution, centres not just on political philosophy or moral theory but also on political conditions and social movements.”<sup>162</sup> Practices cannot be understood outside their contextual and ongoing discourse.<sup>163</sup> Similarly, present practices, contexts, and discourses cannot be separated from those which preceded them; the shifting terrain of what constitutes the ‘useable pasts’ from which current realities emerged.

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<sup>154</sup> Brubaker and Feischmidt, “1848 in 1998,” 714; Anderson, *Imagined Communities*, 187-206.

<sup>155</sup> Moeller, *War Stories*, 12.

<sup>156</sup> Brubaker and Feischmidt, “1848 in 1998,” 710; Zerubavel, *Recovered Roots*, xix.

<sup>157</sup> Brubaker and Feischmidt, “1848 in 1998,” 710.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> Confino, *The Nation as Local Metaphor*, 4, 7.

<sup>162</sup> Barkan, *The Guilt of Nations*, xxii.

<sup>163</sup> Drawing upon Bakhtin’s understanding of memory formation as a dialogue, as unpacked by Olick, *The Politics of Regret*, 10-11.

*American Prerogatives: The 'Good' Fight and Internal Disputes*

What was mined from the useable past to construct the American memory of World War II, and therefore derive a collective perception of their role both in the war and the world after, similarly and typically 'forgets' the worst and 'remembers' the best. The narrative of the United States as the great defender of liberty, [belatedly] joining the fight for the betterment of the world was forged largely through the role the United States played – and pronounced itself to have played – in World War II. Fastened in the collective American consciousness as the 'Good War,'<sup>164</sup> it was seen as a moment of American "national sacrifice, of a public culture aligned against 'evil'..."<sup>165</sup> The creation of this perception was not entirely a result of a self-congratulatory mentality since, as Eisenhower said, "[p]ublic opinion wins wars."<sup>166</sup> The media, public relations officers, and advertising agencies were employed, often by generals and entire branches of the American military to "make sure they looked good."<sup>167</sup> Despite the role American immigration policy played in barring potential refugees fleeing Nazi persecution, or the post-War Operation Paperclip which covertly brought Nazi scientists and professionals to work in the United States, World War II remains a remembered moment of American leadership in the quest for 'good.'<sup>168</sup> The popular narrative of American leadership within the field of Holocaust-era restitution bears a striking resemblance; it too is one that privileges the assumption of "total Allied moral nobility" as opposed to a nuanced investigation of the choices, conflicting beliefs, and contradictions behind the beginnings of the American ethos towards restitution.<sup>169</sup>

Following the surrender of the German troops and the implementation of the four-way occupation of Germany as agreed upon during the 1945 Yalta Conference, the Allies were faced with the herculean task of overseeing the shattered infrastructure of the defeated nation, and filling the political void that was left with the defeat of the Nazis.<sup>170</sup> Having had previous

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<sup>164</sup> John Bodnar, "Chapter 7: The Victors," in *The "Good War" in American Memory* (Baltimore: The John Hopkins University Press, 2010), 200-234.

<sup>165</sup> Hoogland Noon, "Operation Enduring Analogy," 346, 344.

<sup>166</sup> Michael C.C. Adams, *The Best War Ever* (Baltimore: The John Hopkins University Press, 1994), 10.

<sup>167</sup> *Ibid.*

<sup>168</sup> Hoogland Noon, "Operation Enduring Analogy," 346; Eizenstat, *Imperfect Justice*, 10-12; Philip D. Beidler, *The Good War's Greatest Hits: World War II and American Remembering*, (Athens & London: The University of Georgia Press, 1998), 2; Bodnar, "The Victors," 201.

<sup>169</sup> Adams, *The Best War Ever*, 146.

<sup>170</sup> Nicholas, *The Rape of Europa*, 311, 384.

knowledge of the vast looting and art expropriation activities of the Third Reich, the question of looted cultural property and its return had been brought up early in the Allied campaign.<sup>171</sup> Nevertheless, the Allies were not prepared for the sheer quantity of stolen and spoliated objects that came under their direction upon Germany's defeat; despite the dedicated work of the Monuments, Fine Arts and Archives division (MFA&A)<sup>172</sup> within the army, there was a scarcity of personnel and supplies to cope with the supervision of such a glut of cultural objects.<sup>173</sup> As on-the-ground realities began to unfold in a divided, occupied Germany, the question of restitution and handling of spoliated cultural property became a contentious issue. Throughout the days of the Allied occupation of Germany,<sup>174</sup> which lasted from 1945-1949, the question of restitution became embroiled in the power struggles and interests of the United States, Britain, France, and the USSR.<sup>175</sup> Historian Michael J. Kurtz provides an overview of the conflicting interests and approaches towards cultural property, specifically noting the role of deputy military governor of the U.S. zone of occupation, General Lucius D. Clay:

The problems with restitution reflected the broader clashes of Great Power interests and ideologies. In the cultural restitution arena, as in everything else, there were four distinct approaches. American efforts were focused on shedding responsibility for cultural loot and German property in U.S. custody as quickly as possible. Clay's interim cultural restitution strategy, the creation of the collecting points, and the shipping of unopened

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<sup>171</sup> In 1942, FDR approved the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas, formalizing the work that would be taken up by the Monuments, Fine Arts and Archives program in 1943 as a joint American and British operation run through the Civil Affairs branch of the Allied Military Government for Occupied Territories. Further to this point, the Inter-Allied Declaration Against Acts of Dispossession committed in Territories under Enemy Occupation of Control, affirmed 5 January, 1943 asserted the "obligation to restore looted items and the assumption that all property transferred during the occupation was done under duress." Robert M. Edsel, *The Monuments Men*, 51-52; Nicholas, *The Rape of Europa*, 222; Kurtz, *America and the Return of Nazi Contraband*, 84; Wesley A. Fisher, "Looted Art, Looted Culture Provenance and Memory after the Holocaust," panel lecture and discussion for Holocaust Education Week at the Munk School for Global Affairs at the University of Toronto, Toronto, Canada, November 6, 2014.

<sup>172</sup> During its existence, the MFA&A was comprised of close to 350 people, and though the division was conceptualized and overseen by America and Britain, its members hailed from 13 different countries. This said, by VE Day, there were only a "handful of people" working to locate, transport, identify, and help reconstitute "displaced, misplaced, or looted artworks" as remembered by art-intelligence officer Bernard Taper, or more specifically about sixty officers serving in Europe, as reported by Robert M. Edsel. Edsel, *The Monuments Men*, xiv-xviii; Taper, "Investigating Art Looting for the MFA&A," 135.

<sup>173</sup> Eizenstat, *Imperfect Justice*, 194; Nicholas, *The Rape of Europa*, 371-376.

<sup>174</sup> The occupation officially lasted from 1945-1952, though in 1949 military governors in both the East and West Zones of Germany were replaced with German civilian heads; "Allied Occupation of Germany 1945-52," U.S. Department of State, accessed 19 December 2017, <https://2001-2009.state.gov/r/pa/ho/time/cwr/107189.htm>; Kurtz, *America and the Return of Nazi Contraband*, 125.

<sup>175</sup> Kenneth Alford, *Nazi Plunder: Great Treasure Stories of World War II*, (Cambridge, MA: Da Capo Press, 2001), 111; Kurtz, *America and the Return of Nazi Contraband*, 83.



crates back to the country of origin all indicate America's desire to meet - and complete - its responsibilities in the briefest period of time feasible.<sup>176</sup>

In the early months of occupation, Clay was largely uninterested in restitution, believing such a “complicated issue” should be the work of an independent inter-Allied commission.<sup>177</sup> But maneuvers to establish a quadripartite restitution policy to be implemented by the Allied Control Council (ACC) were consistently bogged down by deviating views on the treatment of occupied Germany, and the individual power of the occupying nations within their respective zones.<sup>178</sup> As a result, after continuous redrafts, delays, and relatively ambiguous policies, the directive that was handed down from the ACC in 1946 essentially left the responsibility concerning the implementation of restitution procedures up to zone commanders.<sup>179</sup> In the American case, this meant the Military Government – precisely the outcome Clay had wanted to avoid. It was at this time that the ACC adopted the 1946 Definition of the Term ‘Restitution,’ which effectuated the Allied program of ‘external restitution.’<sup>180</sup> This meant that the restitution of cultural objects and artworks was done between nation-states, and not conducted with individual claimants. Once assets had been handed over to the claiming government, the occupational force had no more purview over the disposition of the restituted objects; “[the receiving] State and its domestic laws governed the subsequent location of the recovered object.”<sup>181</sup> Under this scheme, it was further established that liberated and neutral countries would be given preference for restitution ahead of former-belligerent nations, such as Austria, a procedure that was as much an act of punishment as a means to practically manage the immense task of sorting through the displaced objects within the Allied zones.

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<sup>176</sup> Kurtz, *America and the Return of Nazi Contraband*, 103.

<sup>177</sup> Ibid., 114; Nicholas, *The Rape of Europa*, 370.

<sup>178</sup> Kurtz, *America and the Return of Nazi Contraband*, 82-83.

<sup>179</sup> The procedures outlined by the ACC included: “locating looted property, the custody and preservation of this property, and providing assistance to Allied restitution missions.” Ibid., 110.

<sup>180</sup> For a more thorough explanation of the conception of external restitution, complete with its definition as contingent on international law, the 1815 Congress of Vienna, and the 1919 Paris Peace treaties, see: Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 141-142.

<sup>181</sup> Fisher, “Looted Art, Looted Culture Provenance and Memory after the Holocaust”; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 142.

In the American zone, the question of managing the copious cultural objects under their protection gave rise to the Central Collecting Points.<sup>182</sup> Though dozens of collecting points were initially set up over the summer of 1945, only three became central fixtures, and lasted for the duration of the occupation.<sup>183</sup> The Munich Collecting Point housed primarily artworks taken from museums and individuals, while the Wiesbaden Collection Point oversaw mainly objects from German cultural institutions (fig. 10). The final Central Collecting Point in Offenbach specialized in archival materials and books.<sup>184</sup> The approach of many high ranking officials within the Office of Military Government (United States), or OMGUS, and their peers back in Washington, was that of “a reluctant occupying force, want[ing] to provide only the minimum assistance necessary and hasten the moment when it could return its responsibilities over to civilian authorities, either American or German.”<sup>185</sup> The desire to not only encourage and nurture new German political infrastructure, but also to lessen the role and responsibility of the United States, saw the creation of three German *Länder* – Bavaria, Württemberg-Baden, and Greater Hesse. Each *Länder* was the site of a military government office, run by its own director who was responsible for “coordinating with and gradually ceding authority to German civil police and all other German agencies.”<sup>186</sup> These fledgling German authorities took over the responsibility for cultural matters, with the exception of restitution, up until 1949.<sup>187</sup> Of the three collecting points only Offenbach was directly administered by OMGUS; Munich was overseen by the Bavarian military government office while Wiesbaden was under the Greater Hesse military government office.<sup>188</sup> Within the Collecting Points, American MFA&A officers worked alongside German counterparts, who were passed increasing levels of responsibility over the course of the occupation.<sup>189</sup>

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<sup>182</sup> Kurtz, *America and the Return of Nazi Contraband*, 82, 88: The idea for the collecting points was first floated by Major Mason Hammond in 1944 while acting as the head of the MFA&A policy at the Supreme Headquarters, Allied Expeditionary Forces. His idea was put into practice by Major L. Bancel La Farge. As the MFA&A’s chief in the field, he directed the scant MFA&A field officers to begin establishing collecting points.

<sup>183</sup> Kurtz, *America and the Return of Nazi Contraband*, 88, 92.

<sup>184</sup> Each of the Collection Points held an astounding number of objects; at the Munich storage facility there were about one million, Wiesbaden held 700 000, and Offenbach a colossal 3 million books and over 1.8 million other items. Alford, *Nazi Plunder*, 111.

<sup>185</sup> Kurtz, *America and the Return of Nazi Contraband*, 87.

<sup>186</sup> Walter M. Hudson, *Army Diplomacy: American Military Occupation and Foreign Policy after World War II* (Lexington: The University Press of Kentucky, 2015), 181-182.

<sup>187</sup> Kurtz, *America and the Return of Nazi Contraband*, 91.

<sup>188</sup> To further complicate matters, all the *Länder* military governments had discrete MFA&A offices, meaning there was no central, unified MFA&A structure during the occupation. *Ibid.*, 91-92.

<sup>189</sup> Alford, *Nazi Plunder*, 120; Nicholas, *The Rape of Europa*, 375.

American focus was therefore on expediting matters in the field of restitution, along with the importance of fostering positive public opinion in the post-war arena. This focus is further illustrated by the incident of the top secret Hungarian restitution program – sometimes referred to as the “Restitution of Silver Bullion to Hungary” or the Hungarian Silver Train.<sup>190</sup> As mentioned, it had been decided that former-belligerent nations would have to wait behind allied and neutral countries for the opportunity to espouse restitution claims. As a former Axis ally, this rule should have applied to Hungary; yet a myriad of conspiring factors saw a massive restitution project to the former-enemy nation carried out by the American military. Tensions between the United States and the USSR were mounting, resulting in a keen American interest in maintaining Western influence in Central and Eastern Europe. With the Hungarian economy becoming dangerously unstable, an agreement was reached at high levels of military government to undertake a restitution mission to Hungary, an endeavour that saw the “use of cultural restitution to maintain a foothold” in at least one of the satellite states.<sup>191</sup> In March 1947 correspondence between OMGUS and the War Department, it was decided that any “[d]elay in implementing the decision [to restitute the silver] would dissipate the benefits to be derived from the support given the Hungarian Govt.”<sup>192</sup> As this message makes clear, the value of restitution was often seen in terms of nurturing good faith in the American government, despite the fact that as a practical prerogative it was viewed not without a small amount of scorn from General Clay, as indicated through his unfulfilled desire for the aforementioned independent inter-Allied commission to relieve the task of restitution from the American military.<sup>193</sup>

This bid to garner support by the American government and military was, however, problematic based upon further missives between the offices of OMGUS and the War Department. Again, in

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<sup>190</sup> “Secret Restitution of Silver Bullion to Hungary folder,” file 602.3, box 632, entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland; Ellen Segal Huvelle, “De Csepel v Republic of Hungary, Civil Action No. 2010-1261, (District Court, D.C. 2016),” *Court Listener*, filed 14 March, 2016, 6, [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2010cv1261-124](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2010cv1261-124).

<sup>191</sup> Kurtz, *America and the Return of Nazi Contraband*, 189; Nicholas, *The Rape of Europa*, 431-432;

<sup>192</sup> “RECD 181568z March 1947 From AGWAR from WDSCA ES from S/W, To: OMGUS Personal for Clay,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>193</sup> Kurtz, *America and the Return of Nazi Contraband*, 87, 114; Nicholas, *The Rape of Europa*, 370.

March of 1947, an investigation of the boxes prepared for return to the Hungarian government yielded a discovery that they contained Romanian and Yugoslavian silver, along with a bevy of other international currencies. Despite this fact, no action was taken on the request by the Romanian government to investigate the Hungarian claim to the silver.<sup>194</sup> Instead great emphasis was put on the positive media coverage that the operation, the planning of which was classified secret, could produce.<sup>195</sup> A classified message of April 9, 1947 – only a few days from the set date for the silver to be shipped – from the War Department to OMGUS highlights that the “full publicity in Hungary on restitution” made the inclusion of “more important items [in the restitution project] desirable.”<sup>196</sup> Whether this message was directly responsible or further machinations were afoot, aboard the silver train bound for Budapest on April 22, 1947, was “\$23,000,000 worth of Nazi seized art.”<sup>197</sup> Along with 96 tonnes of silver, the paintings and drawings onboard included works by El Greco, Gauguin, Rembrandt, and Van Gogh; astoundingly valuable works which were not mentioned in the April 9<sup>th</sup> missive encouraging “more important items” for the restitution mission.<sup>198</sup> The chance for positive, restitution-related

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<sup>194</sup> “RECD 141640z March 1947 From AGWAR from WDSCA ES from S/W, To: OMGUS Personal for Clay,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>195</sup> “*Stars and Stripes*, Frankfurt 23 April 1947, ‘Art Worth 23 Million Restored to Hungary,’ by Nathan J. Margolin, Staff Correspondent,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>196</sup> “HQ US Forces European Theatre Staff Message Control From: War From Civ Affairs Div, To for Act: OMGUS, To for Info: EUCOM, ACC Budapest, Hungary,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>197</sup> “*Stars and Stripes*, Frankfurt 23 April 1947, ‘Art Worth 23 Million Restored to Hungary,’ by Nathan J. Margolin, Staff Correspondent,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland; Another article regarding the arrival of the train in Budapest states “\$ 3,000,000 worth of Nazi-held Hungarian silver and \$ 20,000,000 worth of art objects was released by American MPs [...] and turned over to the custody of the Hungarians.”: “*Stars and Stripes*, Frankfurt/Main, Wednesday, 23 April 1947, ‘Silver Arrives in Budapest,’ by Nathan J. Margolin, Staff Correspondent,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>198</sup> “HQ US Forces European Theatre Staff Message Control From: War From Civ Affairs Div, To for Act: OMGUS, To for Info: EUCOM, ACC Budapest, Hungary,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records (“Classified Decimal File”) 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland; “*Stars and Stripes*, Frankfurt 23 April 1947, ‘Art Worth 23 Million Restored to Hungary,’ by Nathan J. Margolin, Staff Correspondent,” File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General

publicity and decreasing – by even a small fraction – the number of objects under American responsibility in occupied Germany was evidently a significant driving factor for the American Occupation Military Government, and one which continues to impart significant ramifications on the pursuit of Holocaust-era looted art claims today.

A policy aimed at reducing American responsibility and increasing positive publicity – alongside the power of media backlash and dissenting opinions – is also readily seen in the earlier handling of a number of works from German museums by the American forces; an imbroglio commonly dubbed the German ‘202’.<sup>199</sup> In 1945, it was decided that the art ‘collection’ under the purview of the American Military government would be divided into three categories: Category A was comprised of easily identifiable publicly-owned works taken from countries occupied by Germany, and privately-owned seized works for which there had been no compensation; Category B works were those taken from private collections in over-taken countries for which there was some alleged compensation; and Category C was composed of “bona fide property of the German nation” residing in the U.S. Zone for safekeeping.<sup>200</sup> Clay’s wish to lessen the load of American responsibility in the realm of art management sought official approval to return Category A and B works to their rightful nations. But, for Category C works, the suggestion was made that they “be returned [sic] to the U.S. to be inventoried, identified, and cared for by our leading museums.”<sup>201</sup> Framed as a suggestion of “trusteeship” in light of insufficient personnel and facilities within the American Zone, a vindictive side to the project emerged with Clay’s comment that the works should be held until the “German nation [had] re-earned its right to be considered as a nation.”<sup>202</sup> The suggested disposition of Category C objects took on the tone of ‘to the victor go the spoils’ when Yalta Conference reparations negotiator Edwin Pauley and

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Correspondence and Other Records ("Classified Decimal File") 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>199</sup> A collection of news clippings held by the National Archives and Records Administration concerning the shipment of German works to the United States are digitally accessible via Fold3.com: “Shipment Of German-Owned Art To U.S. Press Clipping,” file 202, General Records, NARA M1941, Records Concerning the Central Collecting Points (“Ardelia Hall Collection”): OMGUS Headquarters Records, 1938-1951, fold3.com; Nicholas, *The Rape of Europa*, 390, 400; Charles L. Kuhn, “German Paintings in the National Gallery: A Protest,” *College Art Journal* 5:2 (January 1946): 78-82, <http://0-www.jstor.org/mercury.concordia.ca/stable/773581>.

<sup>200</sup> Nicholas, *The Rape of Europa*, 385.

<sup>201</sup> Alford, *Nazi Plunder*, 119; Nicholas, *The Rape of Europa*, 370.

<sup>202</sup> Nicholas, *The Rape of Europa*, 385.

Assistant Secretary of State William Clayton approved Clay's suggestion, but added in a memo that the works of arts' "eventual disposition will be subject to future Allied decision."<sup>203</sup>

Backlash to the proposal concerning Category C objects was swift. Sumner Crosby of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas – or the Roberts Commission<sup>204</sup> – resigned (though this resignation was later withdrawn); the official Advisor on Cultural Matters to General Clay, John Nicholas Brown, robustly decried the moral grounding of the proposal, labeling the endeavour "hypocritical"; MFA&A officer Stratton Hammond was so incensed he was granted a meeting with Clay where he lambasted the plan as immoral, impractical, and with severe implications for the perception of American control in Germany.<sup>205</sup> For their part, the British strongly encouraged the United States to rethink this approach.<sup>206</sup> Tempers were somewhat assuaged when it became clear that President Truman supported the return of the German works, but the official announcement of the plan to ship 202 works – mostly hailing from the Kaiser Friedrich Museum in Berlin<sup>207</sup> – from the Wiesbaden Collecting Point to the care of the National Gallery of Art still raised displeasure from many. German staff at Wiesbaden threatened resignation, refusing to aid in the shipment of the '202,'<sup>208</sup> and thirty-two of the thirty-five MFA&A officers at Wiesbaden drafted a manifesto in which they made it abundantly clear they felt the language of trusteeship harkened back to the double-speak of Nazi-orchestrated spoliation. Reinforcing their stance against the operation that had been sardonically nicknamed "Westward Ho, Watteau,"<sup>209</sup> they stated: "there

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<sup>203</sup> Ibid., 386.

<sup>204</sup> The Roberts Commission, whose shortened moniker came from its chairman Supreme Court Justice Owen J. Roberts, was created in 1943 and represented the American civilian museum community, and had a significant hand in encouraging the creation of the MFA&A. Press Release from the Department of State dated 20 August, 1943 on the creation of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe via Fold3.com, Record Group 239: Records of the American Commission for the Protection and Salvage of Artistic and Historical Monuments in War Areas (The Roberts Commission), 1943-1946, Roll 0016 "Press Releases," General Records, NARA M1944, Roberts Commission - Protection of Historical Monuments: Correspondence, compiled 1943-1946, fold3.com; "Civilian Agency Records RG 239: Department and Foreign Affairs Records - Records of the American Commission for the Protection and Salvage of Artistic and Historical Monuments in War Areas (The Roberts Commission), 1943-1946 (RB 239)," National Archives, accessed 7 January, 2018, <https://www.archives.gov/research/holocaust/finding-aid/civilian/rg-239.html>; Edsel, *Monuments Men*, 41, 53-54; Nicholas, *The Rape of Europa*, 222, 234-235.

<sup>205</sup> Nicholas, *The Rape of Europa*, 386-389

<sup>206</sup> Kurtz, *America and the Return of Nazi Contraband*, 95.

<sup>207</sup> Now known as the Bode Museum, located in Berlin on Museum Island.

<sup>208</sup> Alford, *Nazi Plunder*, 121.

<sup>209</sup> Kurtz, *America and the Return of Nazi Contraband*, 96

are yet further obligations to common justice, decency and the establishment of the power of right, not of expediency or might, among civilized nations.”<sup>210</sup> Despite such an eloquent, and forward-thinking expression on the treatment of cultural property, the paintings crossed the Atlantic in November 1945.<sup>211</sup>

Unfortunately for the supporters of the operation, such as Metropolitan Museum Director Francis Henry Taylor who was ecstatic that “the American people [...would] have an opportunity to see these collections” (and perhaps the Met have the opportunity to exhibit them), the controversy over the ‘202’ arrived in the United States before the works of art themselves.<sup>212</sup> *The New York Times* (fig. 11) took up the story, while the *Magazine of Art* and the *College Art Journal* relayed the contents of the Wiesbaden manifesto to a curious public.<sup>213</sup> The directors of the Whitney and the Frick led ninety-five art historians in writing a petition to President Truman which re-affirmed the manifesto “[many, including the Germans themselves,] may find it hard to distinguish between the resultant situation and the ‘protective custody’ of the Nazis.”<sup>214</sup> Tired of the uproar created within political, military, and public circles, the army and the Roberts Commission made the decision the works would not be exhibited, and instead would be held in storage in the National Gallery.<sup>215</sup> This remained the status quo until 1948. With an approaching change of responsibility of official authority over the governance of Germany from the army to the State Department, General Clay suggested the paintings be returned post-haste prior to his own departure from Germany. To avoid criticisms that the paintings had been brought to America without ever being shown, a hasty exhibition was mounted at the National Gallery. Despite the earlier scandal, the exhibition – titled “Paintings from the Berlin Museums Exhibited at the Request of the Department of the Army” – was a massive success. It was so well attended

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<sup>210</sup> Nicholas, *The Rape of Europa*, 395.

<sup>211</sup> Alford, *Nazi Plunder*, 120.

<sup>212</sup> Nicholas, *The Rape of Europa*, 395, 398; Kurtz, *America and the Return of Nazi Contraband*, 97.

<sup>213</sup> Nicholas, *The Rape of Europa*, 399; Charles L. Kuhn, “German Paintings in the National Gallery: A Protest,” *College Art Journal* 5:2 (January 1946): 78-82, <http://0-www.jstor.org.mercury.concordia.ca/stable/773581>; *The New York Times* press clipping titled “German Art Shift Stirs Storm Here,” Shipment Of German- Owned Art To U.S. Press Clipping File 202, NARA M1941. Records Concerning the Central Collecting Points (“Ardelia Hall Collection”): OMGUS Headquarters Records, 1938-1951, Digital Scan from Fold3, <https://www.fold3.com/image/291859683>.

<sup>214</sup> Nicholas, *The Rape of Europa*, 399-400; “Resolution to Truman,” *College Art Journal*, 5:4 (May, 1946), 379, [www.jstor.org.mercury.concordia.ca/stable/773227](http://www.jstor.org.mercury.concordia.ca/stable/773227).

<sup>215</sup> Nicholas, *The Rape of Europa*, 400-401.

in Washington, DC, that it was decided (after considerable debate) that the show would be allowed to tour through several American cities, with proceeds from the show going to UNICEF's project to prevent tuberculosis in German children.<sup>216</sup> Finally, on May 4, 1949, the '202' were returned to Germany.<sup>217</sup>

1949 saw the partial hand over of power from the Allied occupying forces to the newly minted German government,<sup>218</sup> and the growing problem of turning over matters of restitution to German jurisdiction. Two years earlier in 1947, tensions had risen between Jewish advocate agencies like Jewish Cultural Reconstruction, Inc., (JCR) and German officials. This hostility revolved around the disposition of 'heirless' or internally looted cultural property, the grand majority of which had been taken from Jewish individuals.<sup>219</sup> General Clay, having initially set a December 1948 deadline for action on restitution claims, ordered that internal loot would be eventually administered by the German *Länder* administrations.<sup>220</sup> The JCR lobbied for the American government to allow a Jewish trustee agency to take responsibility for the heirless Jewish property in its zone. Meanwhile, German officials insisted that German institutions were capable of administering the disposition of the property, and strongly protested against any "widespread, intrusive efforts to locate loot still in private hands."<sup>221</sup> In an effort to please both sides, General Clay authorized Military Government Law No. 59 in November 1947. This regulation stated that "Germans were required to report property falling under the terms of the law," though objects did not need to be turned in to authorities unless in the possession of "a suspected war criminal."<sup>222</sup> This caveat was designed to garner good faith from Germany, prevent new American responsibilities concerning cultural property, and facilitate the gradual turnover of responsibilities to Germany as America phased out its occupational governance

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<sup>216</sup> Ibid., 403.

<sup>217</sup> Ibid., 405.

<sup>218</sup> Though the military occupation of West Germany officially ended in 1949, the Allied High Commission's Statute of Occupation meant that Germany was not a sovereign state until 1955: Torsten Opelland, "Domestic Political Developments I: 1949-69," in *The Federal Republic of Germany since 1949: Politics, Society and Economy before and after Unification*, Klaus Larres and Panikos Panayi, eds (Oxon & New York: Routledge, 1996), 77; Fritz Stern, "Foreword," in *Adenauer's Germany and the Nazi Past*, Norbert Frei (New York: Columbia University Press, 2002), vii.

<sup>219</sup> Kurtz, *America and the Return of Nazi Contraband*, 159-161.

<sup>220</sup> Nicholas, 432.

<sup>221</sup> Kurtz, *America and the Return of Nazi Contraband*, 157, 159.

<sup>222</sup> Ibid., 160.



structure. In this vein, but to assuage Jewish advocates, Regulation 3 was added to Law No. 59 in 1948, which put into place procedures for “charitable or nonprofit organizations” to apply as successor organizations for heirless property.<sup>223</sup> This codification led to a massive transfer of objects to the JCR in 1949, who oversaw the distribution of heirless property out of the American Zone of Germany to Jewish communities who they deemed would benefit from and be able to care for them: the majority of these beneficiaries were in the United States and Israel.<sup>224</sup>

Despite Regulation 3 touted as empowering Jewish successor organizations such as the JCR or the Jewish Restitution Successor Organization (JRSO), German recalcitrance concerning the implementation of restitution procedures proved to complicate matters. When Clay had ordered the German *Länder* administrations to take over supervision of German property restitution (which included heirless property) in 1947, German officials complained that the proposed 1948 cutoff for claims to be filed “allowed too much time,” and refused to pass a general restitution law as it would not be applicable in the Russian Zone.<sup>225</sup> To overcome this impasse, OMGUS oversaw internal German restitution regulated by Law No. 59 in cooperation with the German courts, a fact which may have assuaged MFA&A officers who had feared objects would be returned by German officials without checking whether they had been looted.<sup>226</sup> However, the indulgent reporting stipulations of Law No. 59 meant that once property was turned over to German jurisdiction, it was difficult to incentivize thorough restitution procedures. As a result, by the time the final Central Collecting Point in Wiesbaden came to a close on December 31<sup>st</sup>, 1950, a great deal of internal loot was under German trusteeship. Though some efforts were made to return items to their owners, the reality in Germany was not conducive to the realization or support for a concerted restitution effort towards the victims of the Third Reich.<sup>227</sup> With the 1949 establishment of a new Federal Government, or *Bundestag*, in West Germany under the

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<sup>223</sup> Ibid.

<sup>224</sup> “PD-387 (Rep & Rest) Jewish Cultural Properties 19 Jan 1949, Legal Div OMGUS, PD Rep & Rest OMGUS,” Correspondence Files of Mr. Malcom Jones 1948-1949, Box 569, Records of the Executive Office of the Control Office: Records re: Property Division - Reparations and Restitution Branch 1945-49, RG 260, National Archives and Records Administration II, College Park, Maryland; Nicholas, *Rape of Europa*, 434; Presidential Advisory Commission on Holocaust Assets in the United States, “Chapter VI: Heirless Assets and the role of the Jewish Cultural Reconstruction, Inc.” in *Plunder and Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report*, December 2000, accessed 19 December 2017, <http://govinfo.library.unt.edu/pcha/PlunderRestitution.html/html/StaffChapter6.html>.

<sup>225</sup> Nicholas, *The Rape of Europa*, 432.

<sup>226</sup> Ibid., 432-433.

<sup>227</sup> Kurtz, *America and the Return of Nazi Contraband*, 172-173; Nicholas, *The Rape of Europe*, 434.

Chancellorship of Konrad Adenauer, a resounding emphasis at the popular level on German suffering became a mainstay within the ruling Christian Democratic Union Party.<sup>228</sup> “Too much memory,” it was decided, “would undermine a still fragile popular psyche.”<sup>229</sup> In light of the growing threat of Communism and the need for Germany to rebuild (both physically and psychologically), a tenuous relationship with the memory of the Third Reich was forged in the 1940s and 1950s that simultaneously embodied a focus on ‘German’ suffering, a suppression of ‘German’ crimes, and a level of atonement required by the international community.<sup>230</sup>

*German Trauma: “We, You and I”*<sup>231</sup>

Traumatic historical events are “among the most powerful forces capable of shaping ‘communities of memory,’” or national identities.<sup>232</sup> National elites will seek reinvention following these events by mining the “usable past” to reestablish international political faith, while the general populace will engage in this collective enterprise as a means to make sense of the present, their personhood within a community, and the ‘mistakes’ of the past.<sup>233</sup> As has been previously suggested, there exists a general correlation between the reconstructive periods following World War II in the 1940s and immediately after reunification in the 1990s. The link between the post-War years and the time of German reunification is based on the idea of the “multiple restoration”; a political and sociological process wherein national identity is reconstituted when its central features prove untenable or ruinous.<sup>234</sup> Jeffrey Herf, while exploring the differing social memories of World War II in East and West Germany, shows that these “restorations” sought to draw upon perceived German national traditions to demonstrate

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<sup>228</sup> Norbert Frei, *Adenauer’s Germany and the Nazi Past* (New York: Columbia University Press, 2002), xii-xiii, 4.

<sup>229</sup> Herf, *Divided Memory*, 225.

<sup>230</sup> Frei, *Adenauer’s Germany and the Nazi Past*, ix, xv; Herf, *Divided Memory*, 261, 330; Moeller, *War Stories*, 22.

<sup>231</sup> Phrase taken from a speech delivered by Konrad Adenauer as mayor of Cologne, October 1<sup>st</sup>, 1945 on the topic of German suffering. The entire passage is as follows: “We, you and I, are not the ones [...] guilty for this suffering. We, you and I, are condemned and impelled, impelled by love of our people, whom we do not want to see completely destroyed, to take upon ourselves this heavy and frightful burden so that at least the worst emergency conditions can be overcome.” Quote reproduced in: Herf, *Divided Memory*, 212-213.

<sup>232</sup> Anderson, *Imagined Communities*, 6; Brubaker, *Rethinking Nationhood*, 16; Moeller, *War Stories*, 12.

<sup>233</sup> Brubakers & Feischmidt, “1848 in 1998,” 700-701; Confino, “Collective Memory and Cultural History: Problems of Method,” *The American Historical Review* 102:5 (Dec. 1997): 1401; Herf, *Divided Memory*, 225, 229; Moeller, *War Stories*, 6.

<sup>234</sup> Norbert Frei provides a particularly engaging view of this in practice through Adenauer’s “policy for the past” as opposed to “overcoming the past,” as a means to stabilize a society freshly reintroduced to democracy from the Third Reich: Frei, *Adenauer’s Germany and the Nazi Past*, xi-xv; Herf, *Divided Memory*, 3-4, 270.

that Nazism was not a true or valid expression of German identity, but rather an aberration far from the ‘true’ reality of German-ness.<sup>235</sup> In doing this, Germans could create a space to exist as victims of a dictatorship that appropriated the name and idea of Germany for its own purposes, not as perpetrators whose national ethos and zeitgeist had given rise to a genocidal, German political force.<sup>236</sup> In addition to internal German politics, external geopolitical influences shaped national collective memories of the war years. German narratives of suffering used to describe Eastern expellees and prisoners of war bear similarities to language used to describe Jewish victims of Nazism in Soviet and American denazification programs.<sup>237</sup> By exposing Germans to the crimes of the Third Reich, the occupying forces provided the German population with “the language with which Germans could describe their own experiences.”<sup>238</sup> West Germany distanced itself from its Nazi past in order to be absolved and accepted by the Western World, but also to create a space to internally heal and carry-on through distancing – and avoiding – the crimes of the Third Reich.<sup>239</sup>

This was seen as of tantamount importance within the Adenauer Government of the 1950s. For Chancellor Konrad Adenauer, a focus on strengthening ideals of Western Democracy in Germany went hand-in-hand with avoiding the “unfavourable atmosphere” that could arise if too much focus was placed on what Germans had *done* in World War II, as opposed to what had been done *to* them.<sup>240</sup> Adenauer was particularly sensitive to the tenor of popular opinion in the post-war years: the majority of Germans were unwilling or unable to confront both the scope of

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<sup>235</sup> Frei, *Adenauer’s Germany and the Nazi Past*, 236; Herf, *Divided Memory*, 3, 216; Moeller, *War Stories*, 3-4, 76.

<sup>236</sup> An excerpt from a 1949 speech made by Kurt Schumacher, leader of the opposition in the new *Bundestag* and known for his more direct denouncements of the Third Reich, demonstrates this separation when he said “the Hiterlerian barbarism’ - *Hitlerbarbarei* - had dishonoured the German *Volk* through the extermination of 6 million Jewish human beings.” Guilt and action are located in Hitler, while passivity and victimhood are bestowed on the German populace, and the murdered Jews: Frei, *Adenauer’s Germany and the Nazi Past*, 4, 14.

<sup>237</sup> Moeller, *War Stories*, 79.

<sup>238</sup> *Ibid.*

<sup>239</sup> While it may seem I speak here in more nebulous tones of memory avoidance, this statement also applies to real-world side-stepping, especially exemplified in the Amnesty Law of 1949, passed under Adenauer’s government which granted amnesty to tens of thousands of Germans who had been prosecuted under the Allied denazification program. Norbert Frei’s chapter on the law provides a detailed and rich inspection of the inception of the law within the context of immediate postwar Germany, but most relevant for this analysis is his passage which reads: “the law constituted an act of high political symbolism. Superficially the amnesty was a simple sign of a new beginning. But through its partially open, partially masked relation to both Nazi rule and its occupation aftermath, it advanced the struggle for a recuperation of historical-political identity and political self-determination in regard to the past”: Norbert Frei, *Adenauer’s Germany and the Nazi Past*, 25.

<sup>240</sup> Frei, *Adenauer’s Germany and the Nazi Past*, 4; Herf, *Divided Memory*, 270.

destruction to their lives along with the devastation wreaked *by* the German forces. As Sebald discusses in his Zürich Lectures titled “Air War and Literature,” concerning the legacy of the Allied firebombing campaign of German city centres (fig. 12):<sup>241</sup> “the images of this horrifying chapter of our history have never really crossed the threshold of the [German] national consciousness.”<sup>242</sup> He adds :

The New Federal German society relegated the experiences of its own prehistory to the back of its mind and developed an almost perfectly functioning mechanism of repression, one which allowed it to recognize the fact of its own rise from total degradation while disengaging entirely from its stock of emotions, if not actually chalking up as another item to its credit its success in overcoming all tribulations without showing any sign of weakness.<sup>243</sup>

This nation-wide complicity in silence and ability to ‘overcome’ is explained by Sebald, and corroborated by Norbert Frei,<sup>244</sup> as a result of a history under totalitarian regime, but also notably “because a nation which had murdered and worked to death millions of people in its camps could hardly call on the victorious powers to explain the military and political logic that dictated the destruction of German cities.”<sup>245</sup>

Instead, rhetoric of post-war German governmental leaders often equated the treatment of German expellees<sup>246</sup> and POWs to concentration camp victims, positing both as the “most tragic figures of the politics of the Third Reich,”<sup>247</sup> while data collected from an OMGUS survey in April 1946 showed 33% of Germans in the American zone felt that the “[e]xtermination of the

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<sup>241</sup> To illustrate somewhat further, one-fifth of the buildings in Germany were in ruins in 1945: Lara Feigel, *The Bitter Taste of Victory: In the Ruins of the Reich* (New York & London: Bloomsbury Publishing, 2016), 1.

<sup>242</sup> W.G. Sebald, “Air War and Literature” in *On the Natural History of Destruction*, trans. Anthea Bell (New York: Modern Library: 2004), 11.

<sup>243</sup> *Ibid.*, 12.

<sup>244</sup> Frei, *Adenauer’s Germany and the Nazi Past*, xiv.

<sup>245</sup> Sebald, “Air War and Literature,” 13-14.

<sup>246</sup> At the conclusion of and in the years following the war, approximately 12 million Germans who had lived in communities in Eastern and Central European territories were displaced and forced to resettle within Occupied Germany. Some had left their homes fleeing the invading Soviet army, while others were forcibly expelled by the ruling authorities in their former homes as part of the Potsdam Agreement. Rainer Schulze, “The Struggle of Past and Present in Individual Identities: The Case of German Refugees and Expellees from the East,” in *Coming Home in Germany?: The Integration of Ethnic Germans from Central and Eastern Europe in the Federal Republic*, eds. David Rock and Stefan Wolff (New York & Oxford: Berghahn Books, 2002), 38-40.

<sup>247</sup> This was said by staff-member Margarete Hütter of the German Office for Peace in 1953, though similar sentiments are echoed by many others, which can be found in Moeller, *War Stories*, 32-35. Furthermore, this sentiment was not merely rhetoric espoused at the leadership level in the immediate post-war period; a 1995 public opinion poll taken by the newspaper *Der Spiegel* showed 36% of Germans saw the expulsion of their fellow nationals from the East as a crime of equal greatness to the Holocaust: Moeller, *War Stories*, 2.

Jews and Poles and other non-Aryans was...necessary for the security of Germans.”<sup>248</sup> With public opinion outlined as such, Adenauer was wary that too much of an emphasis on denazification would trigger further resentments within the population, potentially inflaming nationalistic sentiments and anti-Western Ally views.<sup>249</sup>

Denazification would evidently not be able to happen overnight, and in an effort to avoid alienating a large percentage of the German public,<sup>250</sup> Adenauer adopted a policy that prioritized amnesty, economic renewal, and democratization above “judicial confrontation.”<sup>251</sup> In contrast to Social Democrat Party leader Karl Schumacher, Adenauer shied away from rhetoric that addressed collective German guilt and the suffering of Nazi-targeted victims.<sup>252</sup> While Schumacher’s belief that Germany should address the crimes committed against Jews forged a strong Social Democrat Party bond with postwar Jewish survivors, Adenauer’s less confrontational stance on the past saw him win a majority in the *Bundestag* in 1949.<sup>253</sup> The drive in the 40s and 50s to construct a memory of the ‘German’ past to make sense of the ‘German’ present, and posit a trajectory for the ‘German’ future effectively erased Jewish, Roma, LGBTQ, and other victims of the Third Reich. Instead, focus was centred on transgressions against the German people as a result of the Third Reich – strangely divorced from what appears in political rhetoric as the ‘real’ Germans – and the devastation in the East due to the invading Soviet army.<sup>254</sup> But, as historian Claudia Koonz notes, “social realities at specific points can contribute to what is forgotten, rather than simple political manipulation. In West Germany, practical considerations over scarcity following the war may have contributed to amnesia over concentration camps.”<sup>255</sup> In Moeller’s account of memorialization and forgetting in post-World War II Germany, a mixture of popular sentiment, and political commemorative actions and

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<sup>248</sup> Richard L. Merrit, *Democracy Imposed: U.S. Occupation Policy and the German Public, 1945-1949* (New Haven & London: Yale University Press, 1995), 95.

<sup>249</sup> Herf, *Divided Memory*, 222-225.

<sup>250</sup> Frei, *Adenauer’s Germany and the Nazi Past*, 236.

<sup>251</sup> Frei, *Adenauer’s Germany and the Nazi Past*, xiii; Herf, *Divided Memory* 90.

<sup>252</sup> Moeller, *War Stories*, 25.

<sup>253</sup> Frei, *Adenauer’s Germany and the Nazi Past*, 4; Herf, *Divided Memory*, 271.

<sup>254</sup> Frei, *Adenauer’s Germany and the Nazi Past*, 28-29; Herf, *Divided Memory*, 21; Moeller, *War Stories*, 34; Olick, *Politics of Regret*, 109

<sup>255</sup> Claudia Koonz, “Between Memory and Oblivion: Concentration Camps in German Memory,” in *Commemorations: The Politics of National Identity*, ed. John R. Gillis (Princeton: Princeton University Press, 1994), 262.

rhetoric resulted in German victimhood eclipsing the victimhood of those who perished in the Holocaust in the memory of war-time suffering.<sup>256</sup> Though the memory of the Holocaust was not completely forgotten, ambiguous language in commemorative rhetoric marginalized its victims.<sup>257</sup> The idea of selective sympathy lends an interesting dual reading to Karl Jasper's idea that "[s]uffering differs in kind ... most people only have a sense for their kind."<sup>258</sup> While the kind of suffering Jasper refers to may be read as the type of or reason for the suffering, a play on words can also denote "kind" in the sense of group-member. This willingness to forget the suffering of 'Others' within collective memory constitutes a major theme in the study of collective memory formation.

Despite popular opinion in Germany that seemed to resent the 'victor's justice' and atonement demanded of the German people from the Allies, it was the issue of restitution which prompted Adenauer's first direct address on the topic of the Holocaust. A March 1951 note from the government of Israel framed restitution of stolen Jewish property and monetary assistance to survivors from Germany as a necessity if Germany wanted to enjoy "equal status [...] in the community of nations."<sup>259</sup> Adenauer's response, given in September of that same year, acknowledged the "immeasurable suffering brought to the Jews in Germany and in the occupied territories in the era of National Socialism," and committed to a program of "moral and material restitution," also known as *Wiedergutmachung*.<sup>260</sup> This program, which was hotly debated within the *Bundestag* between 1951 to 1953, was negotiated between West Germany, and Jewish representatives and the state of Israel concerning the restitution of stolen property, compensation for Holocaust victims, and other support to aid settling the 500,000 Jewish European immigrants in Israel.<sup>261</sup>

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<sup>256</sup> Moeller, *War Stories*, 4-6, 189.

<sup>257</sup> *Ibid.*, 34-35

<sup>258</sup> Moeller, *War Stories*, 4.

<sup>259</sup> Herf, *Divided Memory*, 281.

<sup>260</sup> *Wiedergutmachung* loosely translates as 'to make good again.' It is also worthwhile to note that, while Jewish suffering was specifically mentioned, Adenauer was delicate in the way he phrased the role of the general German public in contributing to this suffering: "In an overwhelming majority, the German people abhorred the crimes committed against the Jews and did not participate in them." Adenauer's address also mentioned instances of German resistance efforts to help Jews. Quoted from Konrad Adenauer's speech to the *Bundestag*, 27 September, 1951, as reproduced in Herf, *Divided Memory*, 282.

<sup>261</sup> Herf, *Divided Memory*, 283-288; Olick, *The Politics of Regret*, 95.

The reparations program was far from welcome by the majority of Germans, with some claiming that such payments violated the concept of democracy by giving certain people special privileges.<sup>262</sup> While accepting responsibility demanded from the international community and some leftist parties in the *Bundestag* (such as the Social Democrats), Adenauer was sure to frame the resulting reparations treaty with Israel not as an admission of collective guilt, but as amendments for crimes committed using the German name.<sup>263</sup> Even so, it was a challenge for Adenauer to have the *Bundestag* accept the *Wiedergutmachung* program,<sup>264</sup> a level of unpopularity that starkly contrasts with the support for the 1952 “law to equalize the burdens” which sought to financially stabilize Eastern German expellees through a redistribution of wealth in the FRG.<sup>265</sup>

While the *Wiedergutmachung* program was being formulated in parliament in the early 1950s, internal German restitution programs inherited from the days of the Allied occupation continued. As was discussed, over the course of the occupation increasing responsibility over the disposition of cultural goods held in the occupation zones was passed on to German authorities. As can be seen in documents from the Chief Finance President (*Oberfinanzpräsident*) in Hamburg, from February 1946 to May 1947 the Chief Finance President sought confirmation that their office had “been entrusted by [the] Military Governments with the administration of property owned by Jews who had their residence in Hamburg,” and could therefore begin their activities to bring restitution cases before German courts.<sup>266</sup> It was not until June 1947 that this confirmation would arrive from the Military Government’s Property Control Section, a clear indication of the red tape this multi-level and multi-national handover entailed. As a stipulation within the treaties on German partial-sovereignty at the close of the 1940s, the Allies required that West Germany

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<sup>262</sup> Moeller, *War Stories*, 30.

<sup>263</sup> *Ibid.*, 26.

<sup>264</sup> The final vote in the *Bundestag* that ratified the restitution agreement on March 18, 1953, saw 239 in agreement with the *Wiedergutmachung* program of the 360 members of parliament in attendance for the vote. Herf, *Divided Memory*, 288.

<sup>265</sup> Moeller, *War Stories*, 44.

<sup>266</sup> It is relevant to know that Hamburg was under the jurisdiction of the British Military Government during the years of the occupation, but this fact does not reduce the saliency of the examples of restitutionary efforts appearing in the Hamburg archival documents from this era. “Correspondence concerning Authorization for the Chief Finance President for the management of Jewish Assets by the Property Control Section of the Military Government,” Oberfinanzpräsident Hamburg Record Group 314-15.59, Staatsarchiv der Freien und Hansestadt Hamburg, Germany.

continue the restitution policies that had been launched during the occupation.<sup>267</sup> Evidence from the Hamburg archives demonstrates that restitution in the early 1950s would continue to be a highly bureaucratized and inconsistent area of jurisdiction and activity. One message from January 16, 1951 from Dr. Siemssen of the Hamburg Culture Department (*Kulturbehörde*) politely but curtly addresses the Finance Department, affirming the Culture Office's willingness to engage in art evaluations for the purpose of facilitating restitution but only if it will not incur any additional expenditures.<sup>268</sup> As a means to address restitution and normalize its activities under West German jurisdiction, the Federal Restitution Law was developed during the mid-1950s, and came into effect in 1957. Though under this law a reported 700,000 cases were dealt with, strict time limits for filing claims and distinct regulations that allowed for passing on the title of stolen goods through public auctions stymied the ability for many claimants to seek restitution.<sup>269</sup>

The largely reluctant approach to contending with the crimes of the Nazi era helps to explain why a certain level of German inactivity permeated the 1950s on the restitution front: "German politicians and bureaucrats had no intention of disturbing their cultural institutions and citizens [... and so,] much internal loot, a great deal Jewish, remained in German institutional or private hands."<sup>270</sup> It wasn't until a new generation – coming of age in the late 1960s – began to question the history of their parents that concerted attention began to be paid to the victims of the Holocaust.<sup>271</sup> This conceptual turn and willingness to engage more intimately and openly with the crimes committed during the Third Reich is often associated with Willy Brandt's *Warschauer Kniefall*.<sup>272</sup> Brandt, who held the Chancellorship from 1969-1974, became the first Chancellor to engage in an act of public commemoration that demonstrated remorse, regret, and

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<sup>267</sup> Annemarie Marck and Eelke Muller, "National Panels Advising on Nazi-looted Art in Austria, France, the United Kingdom, the Netherlands and Germany – A brief Overview," 83.

<sup>268</sup> "Hamburg, den 18. Januar 1951, Hansestadt Hamburg Kulturbehörde, An die Finanzbehörde Landesamt für Vermögenskontrolle," Oberfinanzpräsident Hamburg Record Group 314-15, 48.UA1 - 30, Staatsarchiv der Freien und Hansestadt Hamburg, Germany.

<sup>269</sup> Harald König, "Restitution Issues in Germany: Legal Foundations of Restitution since 1945," in *Verantwortung wahrnehmen / Taking Responsibility*, ed. Andrea Brand-Baresel, (Magdeburg, DE: Koordinierungsstelle für Kulturgutverluste Magdeburg, 2009), 123; Kurtz, *America and the Return of Nazi Contraband*, 172-173; Marck and Muller, "National Panels Advising on Nazi-looted Art in Austria, France, the United Kingdom, the Netherlands and Germany – A brief Overview," 84.

<sup>270</sup> Kurtz, *America and the Return of Nazi Contraband*, 171-173.

<sup>271</sup> Moeller, *War Stories*, 169, 176; Olick, *The Politics of Regret*, 47.

<sup>272</sup> *Warschauer Kniefall* translates to the Warsaw Genuflection.



sorrow.<sup>273</sup> Visiting the memorial to the Warsaw Ghetto Uprising in 1970, Brandt fell to his knees – a gesture memorialized in 2000 by the Willy Brandt monument in Warsaw (fig. 13). It was also at this time that the *Sonderweg* theory was re-interpreted; a more negative conception of Germany’s ‘unique path’ began to be discussed as a means to analyze what had led to the mass popularity of National Socialism.<sup>274</sup> Here then began a redress of the collective German memory of the war that had gone unexamined in the immediate post-war period of reconstruction under the weight of the developing Cold War.

In the years immediately following World War II, focus and energy on restitution for the United States was directed towards national repatriations and, especially for the Germans in the harrowing years after the War, as a matter that sought to balance German political interest internally and internationally.<sup>275</sup> The study of Ally-led restitution in postwar occupied Germany therefore serves as a means to see how the idea of restitution as a necessary moral commitment has shifted and changed. Additionally, it shows how the lingering national roles, memories, and identities as a result of World War II have shaped thinking about and pursuing restitution initiatives. These examples reinforce the myriad of reconstructions and reinterpretations memory can be subject to, while also demonstrating the importance of widening the scope of analysis to include the pressures and relationships between collective memory formation and the development of restitution.

### **The Marks of Regional History: Self-Narration, Institutional Organization, and Effective Change versus Good Intentions**

As has been demonstrated, the idea of guilt, justice, and restitution as a moral imperative in the years immediately following World War II for the United States and Germany vary substantially from the contemporary ethos that characterizes the restitution of Holocaust-era spoliated cultural objects. Through the 1940s and 1950s, German suffering shaped post-war German imperatives, while the American approach – heavily influenced by media coverage aimed to emphasize

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<sup>273</sup> Herf, *Divided Memory*, 344; Moeller, *War Stories*, 176; Olick, *The Politics of Regret*, 111.

<sup>274</sup> Moeller, *War Stories*, 175

<sup>275</sup> Fisher, Wesley A. and Michael Marrus, “Looted Art, Looted Culture Provenance and Memory after the Holocaust.” Panel lecture and discussion for Holocaust Education Week at the Munk School for Global Affairs at the University of Toronto, Toronto, Canada, November 6, 2014; Kurtz, *America and the Return of Nazi Contraband*, 87.

American heroism and morality – balanced a reluctant custodianship with efforts to engage in effective restitution prerogatives. The ascendancy of moral purpose and a politics of memory and regret in the 1990s is therefore a significant, international shift.<sup>276</sup> As stated in my introduction, the homogenization of institutional processes and region-specific cultural influences, the growth of a politics of regret, and the importance of memory within restitution during the 1990s may be discussed in a world system theory framework. But, this framework must be tempered with the reality that the “hardness of culture is very likely an effect of historical development.”<sup>277</sup> Therefore, discursive institutionalism’s assertion that “the ways states react to new ideas vary so that they hold onto their specific trajectories”<sup>278</sup> can help explain the present tenor of restitution institutions in Germany and the United States. It does so by acknowledging a global trend in the field of historical justice and restitution, *and* the region-specific historical realities that have shaped the adoption and conception of this trend. The actions and social trends of immediate post-war American and German society and politics can therefore be used to contrast and illuminate the markers of regional specificity within the structure and functions of the HCPO and *Koordinierungsstelle/DZK*.

This analysis is shaped by my shared conviction with scholar Elazar Barkan that cultural and art objects have considerable sociological power, especially as a fulcrum around which nations, groups, and individuals can confront historical traumas:<sup>279</sup> “Cultural property [...] occupies a middle ground that can provide the necessary space in which to negotiate identities and a mechanism to mediate between the histories of perpetrators and victims.”<sup>280</sup> Much like Barkan, legal scholar Thérèse O’Donnell notes how the role of returning property has become strongly

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<sup>276</sup> Moeller, *War Stories*, 2; Nicholas, *Rape of Europa*, 370, 390-391; “Further Receipt of Restitution Claims; Draft correspondence from Property Division Restitution Branch to K.A. de Keyserlingk and Richard F. Roward,” Records Relating to the Property Division 1945-1949, Records of the Control Office, box 703, record group 260 Records of the U.S. Occupation Headquarters, World War II, National Archives and Registration II, College Park, Maryland.

<sup>277</sup> Fritzsche, “1989 and the Chronological Imagination,” 22.

<sup>278</sup> Alasuutari, “The Discursive Side of New Institutionalism,” 174.

<sup>279</sup> Elazar Barkan, “Amending Historical Injustices: The Restitution of Cultural Property – An Overview” in *Claiming the Stones/Naming the Bones: cultural property and the negotiation of national and ethnic identity*, ed. Barkan Elazar and Ronald Bush (Los Angeles: Getty Research Institute, 2002), 16-17; Barkan, *The Guilt of Nations*, xxiv; Also note Confino’s emphasis on symbols that shift and inform people’s perceptions of the past: Alon Confino, “Collective Memory and Cultural History: Problems of Method,” 1389.

<sup>280</sup> Barkan, “Amending Historical Injustices,” 16.

linked with human rights, healing, and the restoration of dignity to victims.<sup>281</sup> Rather than a simple return of stolen goods, restitution can be “an act of catharsis for the collaborator, an end to lip service for the bystander, a rejection of denial of responsibility for the perpetrator, added armament against the Holocaust revisionist, and a final accounting for the victims - both Jewish and non-Jewish - and their heirs.”<sup>282</sup> Despite this progressively established value of restitution internationally, societies are “idiosyncratic systems in which the same component [...] may assume quite different roles and meanings.”<sup>283</sup> This section will therefore speak to continuities and changes within national self-narration or identification. It will also address public perception and the use of media by the restitution institutions in question, and consider the feasibility and reality of effective change balanced against the rhetoric of good intentions.

The decade following 1989, characterized by the consequences of the fall of the wall, connects within German historical self-understanding to the period of disorder and confusion following World War II. In the wake of another totalitarian regime, Germany once again became a venue where identity was in flux. The population had to grapple not only with the meaning of “German-ness” as two distinct spheres of German society were reunited, but also with the trauma and crimes visited upon the German people as a result of Communism. Like the years following World War II, German reunification was a project of identity recalibration involving, among other things, conversations about German suffering and the German past.<sup>284</sup> This is not to say these two periods are in fact equal; it is impossible to claim that the process of reunification matches the challenges of the devastation following World War II, in terms of casualties, destruction, and ruin. What is important, is that within the German consciousness these two

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<sup>281</sup> O’Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 50.

<sup>282</sup> Shimon Samuels “The French Bank Holocaust Settlement,” in *Holocaust Restitution: Perspectives on the Litigations and its legacy*, Bazylar, Michael J., and Roger P. Alford, eds. (New York & London: New York University Press, 2006): 150.

<sup>283</sup> Alasuutari, “The Discursive Side of New Institutionalism,” 165.

<sup>284</sup> Eric Langenbacher, “Changing Memory Regimes in Contemporary Germany?” *Germany Politics and Society*, 67:21 (Summer 2003): 54-55, 58. Langenbacher’s article provides insightful comments on the tension between (and establishment of) ‘Holocaust-centered’ memories of the German past, and ‘German-centered’ memories during the Cold War, and following the fall of the wall. Specifically, it is relevant to note that the unification of Germany brought forth concern that Holocaust-centered memory would be toppled by resurging focus on German-centered memory, which had come to be associated with the far-right in West Germany during the 1980s. Langenbacher is also careful to clarify – and I would like to share in this stipulation – that while certain memories may gain ascendancy at certain times, this does not mean alternative memories become defunct or are removed from public and political discourse; discourse focusing on the Holocaust existed within the post-War period, as did discourse that centred on German suffering following the *Warschauer Kniefall*.

historical moments have become equated, often referred to as the “two German dictatorships.”<sup>285</sup> This would suggest that the German collective understanding of these moments places the most importance on their similarities, rather than their differences, most notably with respect to the presence of ‘non-German’ victims. But, following both these immense moments of rebuilding and transition, there is also an eventual ‘turn’ towards critical reflection, and the acceptance of responsibility in historical injustices. In the first instance, occurring in the late 1960s to early 1970s, this can be seen in the *Warschauer Kniefall*, and in the second, in the mid to late 1990s, it is exemplified with the eventual incorporation of the Washington Conference Principles into the mandate of the *Koordinierungsstelle*.

The primacy of German suffering to the German collective identity in the immediate post-war years is reflected in the *Koordinierungsstelle*’s focus immediately following reunification on investigating *beutekunst* or trophy art taken from Germany.<sup>286</sup> Indeed, the founding of the *Koordinierungsstelle* in 1994 coincided with an uptick in popular focus on German suffering that came in 1995, the 50 year mark from the end of World War II.<sup>287</sup> The reality of international pressure and geopolitical influences guiding the first, initial steps towards restitution in the 1940s and 1950s – despite these projects not fully aligning with internal, popular German sentiments – are similarly present in the 1990s and early 2000s. As Dr. Heuß notes, the creation of the *Forschungsstelle Osteuropa* was initially a political action of good faith in the hope to incentivize the possibility of the return of German cultural objects from Russia.<sup>288</sup> Similarly, Konrad Adenauer’s speech concerning *Wiedergutmachung* came in response to the insinuation that, should Germany not take up some kind of responsibility through a compensation program, its place “in the community of nations” would be in jeopardy.<sup>289</sup> Yet, while the primacy of German cultural losses characterized the initial stage of the *Koordinierungsstelle*, its expansion into the realm of investigating Nazi-looted art was eventually integrated, and soon occupied a

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<sup>285</sup> Deutsches Institut für Internationale Pädagogische Forschung (DIPF), *German Delegation in the International Holocaust Remembrance Alliance (IHRA)*, 6.

<sup>286</sup> Moeller expands in great detail on the content of films in the post-war years, which emphasize German hardship, victimhood, and the effort to rebuild their *heimat* or home. These films often utilize the experience of the Eastern front, Eastern expellees, and prisoners of war, casting the war as “a natural catastrophe, it has no author but unsettling repercussions”: Frei, *Adenauer’s Germany*, xiii, 4; Herf, *Divided Memory* 205; Moeller, *War Stories*, 2, 125.

<sup>287</sup> Langenbacher, “Changing Memory Regimes in Contemporary Germany?,” 58-59.

<sup>288</sup> Dr. Anja Heuß, interview via e-mail with Alyssa Stokvis-Hauer, 24 March, 2016.

<sup>289</sup> Herf, *Divided Memory*, 281.

central position within the institution's mandate. Scrutiny of trauma inflicted upon others in the name of the German nation is mirrored in the shift of German memories of the War in the late-1960s and 1970s.<sup>290</sup>

In both these instances, we see the displacement of a past solely populated by German victims with one increasingly populated by German crimes.<sup>291</sup> It is here, in the *Koordinierungsstelle's* mandate shift, that we see evidence of a "traveling idea" of fair and just solutions, originating as a coordinated international imperative in the United States at the Washington Conference, shaping the policy and trajectory of German restitution.<sup>292</sup> That one of the more recent additions to the *DZK's* list of projects is a website for the registry and documentation of German Cultural Heritage and Property reaffirms that "the ways states react to new ideas vary so that they hold onto their specific trajectories."<sup>293</sup> This is by no means to say that the trauma of the East German's police state, nor the restitution and future maintenance of German cultural heritage is somehow of lesser concern. The presence of and attentiveness to a given memory does not automatically preclude the equal presence of and attentiveness to other memories. Langenbacher elaborates on this point, specifically in reference to memories of German suffering as opposed to the suffering of victims of the Holocaust: "[i]nstead of some sort of zero-sum outcome, the two memories can coexist and share dominance in a manner that will reinforce the progressive political influence of memory in general."<sup>294</sup> This illustrates a distinct difference in approaching and conceiving of the restitution of World War II-era looted art between the United States and Germany. The German context necessitates a different and difficult kind of memory work alongside the reality of *beutekunst*, in contrast with the position of guidance and trusteeship America has held within the field of restitution.

Where the *DZK* can be seen as a product of a "travelling idea," put into practice in a specific regional context, the Holocaust Claims Processing Office is the direct result of 'just and fair solutions' by virtue of the fact that this idea originated and was fostered by American leadership.

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<sup>290</sup> Langenbacher, "Changing Memory Regimes in Contemporary Germany?," 52.

<sup>291</sup> Moeller, *War Stories*, 177.

<sup>292</sup> Alasuutari, "The Discursive Side of New Institutionalism," 174.

<sup>293</sup> *Ibid.*

<sup>294</sup> Langenbacher, "Changing Memory Regimes in Contemporary Germany?," 62.

Though American leadership within this field is not new, the focus on pursuing multilateral cooperation and long-durée solutions is. The HCPO's focus on memory work and just solutions beyond legal decisions stands in stark contrast to the rhetoric espoused in memorandums within the Office of the Military Government United States (OMGUS) in post-war Occupied Germany. Primarily, the conscientious work of the HCPO greatly differs from the immediate post-war approach by OMGUS that sought to quickly 'clean-up' restitution and cultural heritage handling efforts, and transition responsibility away from the American military and government.<sup>295</sup>

Additionally, the HCPO's efforts – conducted in a relatively quiet manner and largely accessible to individuals seeking restitution thanks to full governmental funding – contrast starkly with those of post-war America. This shift from restitution projects largely influenced by media image, operational pragmatism, and directed at nation-states in the 1940s and 1950s to comparatively quiet, victim sensitive work from the 1990s until now is not an unexpected change given the shift in America's identity as a nascent world leader in the 1940s to a confidently cemented hegemon by the 1990s.<sup>296</sup> Unlike now, America during the time of the occupation would have been influenced by its efforts to balance American fledgling hegemonic ascendancy with a history of isolationist policies.<sup>297</sup> This self-interest extended beyond the economic and into the creation of a new American identity and place within the international sphere. The importance of public perception meant media coverage of American restitution efforts was more significant during the years of occupation, as was seen in its strategic use around the Hungarian silver train, though not always laudatory as evidenced by the backlash resulting from the '202.'<sup>298</sup> In relation to the historic event of the 202, Roberts Commission representative Sumner Crosby stated that the "United States must prove to the world that we have no intentions of fulfilling Nazi propaganda and that we are sufficiently civilized not to engage in looting ourselves."<sup>299</sup> Though Crosby is advocating for America to act both altruistically and morally, he

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<sup>295</sup> Kurtz, *America and the Return of Nazi Contraband*, 103; Hudson, *Army Diplomacy*, 181-182; G. John Ikenberry, "Rethinking American Hegemony," *Political Science Quarterly* 104:3 (1989): 376.

<sup>296</sup> Ikenberry, "Rethinking American Hegemony," 378; Hoogland Noon, "Operation Enduring Analogy," 344-345.

<sup>297</sup> Stephen Brooks, *As Others See Us* (Peterborough: Broadview Press Ltd., 2006), 17; Ikenberry, "Rethinking American Hegemony," 374-378.

<sup>298</sup> Nicholas, *The Rape of Europa*, 395, 399-401, 431-432; Kurtz, *America and the Return of Nazi Contraband*, 97, 189; "Stars and Stripes, Frankfurt 23 April 1947, File 602.3, Box 632, Entry 25, Records of the Adjutant General, Formerly Security-Classified General Correspondence and Other Records ("Classified Decimal File") 1945-1949, RG 260, National Archive and Records Administration II, College Park, Maryland.

<sup>299</sup> Nicholas, *The Rape of Europa*, 370.

does so by invoking the term ‘civilized.’ This provides an interesting consideration of American memory of World War II, and national identity and morality.<sup>300</sup> There is the connotation of America’s new-found leadership role in Crosby’s statement: America was to act as a role model for those nations who had lost their ‘civility’ and engaged in looting – here quite obviously referring to Germany. While American moral hegemony was ascending, Germany – Crosby indicates – had completely lost the world’s regard as ‘civilized.’

Crosby’s statement depicts how American restitution actions were judged as opposed to German actions; a beginning which continues to colour discussion of restitution developments in both nations today. Where postwar Germany was effectively beginning from nothing to earn back international trust, meaning mistakes would be perceived much more harshly, America’s moral capital in the world was already established and only needed routine maintenance. Slip-ups would not go unnoticed but they would certainly not garner the same level of ire. Though this discrepancy in immediate-post war national moral credibility may be obvious, it is important to note it persists, somewhat,<sup>301</sup> to today. The American memory of the war – the ‘Good War’ as it is often (sometimes sardonically) termed in scholarship focusing on American views of World War II<sup>302</sup> – is a heroic one, which when invoked reifies notions of American heroism and strength of character. This form of remembering the War has only affixed itself more securely within the popular memory since the 1980s cued a demographic shift in who is remembering. Those who experienced the brutality of war, or struggled with America’s problematic dimensions or actions in the war had either died or, in their old age, were more willing to accept

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<sup>300</sup> For additional reference to perceptions of moral handling of cultural heritage, see quote from Harvard classics professor and MFA&A officer Mason Hammond in Nicholas, *The Rape of Europa*, 389.

<sup>301</sup> It is in this researcher’s opinion that over the course of my research, significant erosion has occurred in general given the current state of American politics, and shifting hegemony in the international political landscape over claims to moral credibility. The Trump administration – as put by Fandos and Landler in their *New York Times* article cited below, “lacks sensitivity and has a tenuous grasp of history” as has been demonstrated in its treatment of Holocaust memory – is re-structuring this playing field in a way that will likely re-shape international views towards future actions around Holocaust-era restitution that the American government and associated representatives may take. For limited context on this comment: Josh Dawsey, Isaac Arnsdorf, Nahal Toosi, and Michael Crowley, “White House nixed Holocaust statement naming Jews,” *Politico*, 2 February 2017, accessed September 18, 2017, <https://www.politico.com/story/2017/02/white-house-holocaust-jews-234572>; Nicholas Fandos and Mark Landler, “Sean Spicer Raises Outcry with Talk of Hitler, Assad, and Poison Gas,” *New York Times*, 11 April 2017, accessed 18 September, 2018, <https://www.nytimes.com/2017/04/11/us/politics/sean-spicer-hitler-gas-holocaust-center.html>

<sup>302</sup> Beidler, *The Good War’s Greatest Hits*, 2; Jonathan Monroe Bullinger, “Remembering World War II in the Late 1990s: A Case of Prosthetic Memory,” doctoral dissertation (Rutgers, the State University of New Jersey, 2017), 15.

the praise of younger generations who had not experienced the war years.<sup>303</sup> As history professor John Bodnar notes: “a half century after the fighting stopped, millions of American talked about the war as a character-building experience that transformed citizens into heroes and moral paragons.”<sup>304</sup> Critical voices that address historical realities that complicate this view – such as the fire-bombing of civilian centres – like Dresden – in Germany, the atomic bombing of Hiroshima and Nagasaki, racism and anti-semitism within the American army and society at large, and the longevity and effect of post-war trauma on individual mental health – are present in the current landscape.<sup>305</sup> But, World War II was and continues to be largely a touchstone for America of America at its best, or perhaps as its citizens and exponents want their nation to be (and be seen): victorious, righteous, and a triumph of the human spirit over the forces of evil.<sup>306</sup> America therefore benefits to a greater extent than Germany not from what it *does* in the field of restitution, but rather what it is *seen to be*. This uneven ground provides a means of understanding why there is more scrutiny of German restitution practices in the media and – perhaps as a result – more institutional growth and amelioration in the *DZK* than the HCPO. Effectively, America still retains a connection to these early, idealized conceptions of American leadership, which continues the legacy of American guidance and moral integrity.<sup>307</sup>

Given what we know of America’s self-perception of its role in World War II, it is interesting to underscore again the HCPO’s distinctly different approach where the media is concerned from both the *DZK* and immediate postwar American restitution initiatives. Where early American restitution efforts occurred while the United States was on the cusp of cementing its international reputation, that same need is perhaps no longer necessary. As a result, the HCPO need not engage as concertedly in media image maintenance for state branding, nor to assuage external scrutiny: as Director of the HCPO Anna Rubin noted “It’s interesting; people are still surprised

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<sup>303</sup> Bodnar, *The "Good War" in American Memory* (Baltimore: The John Hopkins University Press, 2010), 234, 235

<sup>304</sup> Bodnar, *The "Good War" in American Memory*, 233-234.

<sup>305</sup> Adams, *The Best War Ever*, 145-148, 158; Bodnar, “Chapter 7: The Victors,” in *The "Good War" in American Memory*, 200-234; Hoogland Noon, “Operation Enduring Analogy,” 347.

<sup>306</sup> Beidler, *The Good War's Greatest Hits*, 2-4; Bodnar, *The "Good War" in American Memory*, 22-235.

<sup>307</sup> Bettauer, “The Role of the United States Government in Recent Holocaust Claims Resolution,” 1-10; Bindenagel, “Justice, Apology, Reconciliation, and the German Foundation: ‘Remembrance, Responsibility, and the Future,’” 290, 292, 294.



to find out that we're here, and that we exist, and what we do [...] You know, we don't advertise, and we don't really toot our own horn in any way."<sup>308</sup>

While this may be a purposeful decision to protect clients from exhausting media coverage, and the possibility of anti-Semitic backlash which has occurred sometimes in relation to Jewish claims for restitution, and to foster trust from institutions, it speaks to a dimension of American identity and place within the field of restitution.<sup>309</sup> It is undeniable that the HCPO does important and conscientious work in the field of Holocaust-era restitution. Additionally, the United States *has* incentivized new, concerted attention to the issue of Holocaust-era looted asset restitution through international conferences and developing the Washington Principles. But, there has been a domestic discrepancy in the fervour to ensure widespread adherence to the Principles.<sup>310</sup> Notably, American museums, in the absence of an external American commission on looted art, have “rel[ie]d on a self-policing system”<sup>311</sup> which has resulted in iterated disregard for the Principles in favour of court cases fought “on technical grounds, contrary to their own ethics guidelines and U.S. executive policy.”<sup>312</sup> Compared to the distinct pressures placed on Germany in relation to Holocaust-era looted art restitution, America is able to engage with the memory of World War II and its leading role in restitution free from the same level of guilt and external

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<sup>308</sup> Anna B. Rubin, esq., interview with Alyssa Stokvis-Hauer, 4 May 2016.

<sup>309</sup> Though Shimon Samuels (in “The French Bank Holocaust Settlement,” in *Holocaust Restitution: Perspectives on the Litigations and its legacy*, 151) argues that anti-Semitic backlash as a result of restitution claims is far-fetched, other authors and journalists have noted both subtle and overt anti-Semitic responses to claims: Jason Burke and Claudia Keller, “Backlash over return of looted art,” *The Guardian*, 10 December 2006, accessed 19 December 2017, <https://www.theguardian.com/world/2006/dec/10/arts.germany>; Rachel Nolan, “Berlin’s Jewish Museum Displays Looted Paintings,” *Spiegel Online*, 19 September, 2008, accessed 19 December, 2017, <http://www.spiegel.de/international/germany/art-and-war-berlin-s-jewish-museum-displays-looted-paintings-a-579224.html>; Anna Blume Huttenlauch, “Berlin Street Fight,” *Artnet*, accessed 19 December, 2017, <http://www.artnet.com/magazines/features/huttenlauch/huttenlauch11-7-06.asp>; Eizenstat, *An Imperfect Justice*, 195; Alexandra Herfroy-Mischler, “When the past seeps into the present: The role of press agencies in circulating new historical narratives and restructuring collective memory during and after the Holocaust transitional Justice,” *Journalism* 17:7 (2016): 833, 835.

<sup>310</sup> Marc Masurovsky, “Highlight from Senate Judiciary Committee hearing held on 7 June 2016 regarding s. 2763,” *Plundered Art Blog*, 18 June 2016, accessed 17 August 2016, <http://plundered-art.blogspot.ca/2016/06/highlights-from-senate-judiciary.html>; David Rowland, “Have U.S. Museums Lived up to the Promise of the Washington Conference?” in *Verantwortung wahrnehmen / Taking Responsibility*, ed. Andrea Brand-Baresel (Magdeburg, DE: Koordinierungsstelle für Kulturgutverluste Magdeburg, 2009) 159-160; World Jewish Restitution Organization, “Report Concerning Current Approaches of United States Museums to Holocaust-era Art Claims,” 25 June, 2015, 1-3, accessed July 17, 2016, <http://art.claimscon.org/wp-content/uploads/2015/06/WJRO-Report-Concerning-Approaches-of-United-States-Museums-to-Holocaust-Era-Art-Claims.pdf>.

<sup>311</sup> Burris, “From Tragedy to Triumph in the Pursuit of Looted Art,” 429.

<sup>312</sup> Jennifer Anglim Kreder, “Guarding the Historical Record from the Nazi-Era Art Litigation Tumbling toward the Supreme Court,” *University of Pennsylvania Law Review PENNumbra* 159:253 (2010): 253.

inquiries and check-ups. Conversely, the United States can draw upon World War II and Holocaust-era looted art restitution as a positive memory and narrative. It is perhaps due to this internal perception, but additionally the international identity the United States was able to cultivate, that American museums have yet to approach the Holocaust Claims Processing Office for their services, and that the HCPO is able to choose to have limited publicity, updates to their media, operate a small, intimate office with few questions regarding its staff reduction by half over the past 15 years,<sup>313</sup> and be relatively free of internal and external pressure to expand or change.

In contrast, the *DZK*'s press presence and institutional renovations – both in their mandate, actions, and media – seem to be a mainstay of the organization. What is of considerable note is its expansion, and highly bureaucratic composition as an umbrella institution with multiple departments.<sup>314</sup> Applying legal theory to organizational analysis, legal scholars David Luban, Alan Strudler, and David Wasserman engage in a number of thought experiments to assess moral and legal blame in bureaucratic organizations. The decentralization at the core of bureaucracy as an operational model divests responsibility for the ‘big picture’ from those who work within it; Luban, Strudler, and Wasserman suggest how to rethink the relationship between individuals, organizations, and moral accountability in order to overcome the persistent failure of this moral accountability.<sup>315</sup> Decentralization in bureaucracies purposefully seeks the fragmentation of knowledge (meant to foster specialization and efficiency) and permits individuals to invoke the “epistemological excuse” (“I didn’t know”) in the face of immoral actions perpetrated by their organization.<sup>316</sup> The solution for this is posited as a higher level of care taken by the individual, though the authors recognize this will be most realistically achieved through structural and cultural reform within organizations.<sup>317</sup> The *DZK*'s development from a diminutive office of four at its beginning as the *Koordinierungsstelle* in Bremen to a multi-departmental umbrella organization may speak to a German governmental openness to learn, expand, and react to external scrutiny. But, though this can be seen as a positive, this willingness to rise to new

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<sup>313</sup> Rubin, Interview with author, 4 May, 2016.

<sup>314</sup> “Fact Sheet,” Deutsches Zentrum Kulturgutverluste.

<sup>315</sup> David Luban, Alan Strudler and David Wasserman, “Moral Responsibility in the Age of Bureaucracy,” *The Michigan Law Review Association* 90:8 (August 1992), accessed May 18, 2015, 2355.

<sup>316</sup> *Ibid.*, 2352.

<sup>317</sup> *Ibid.*, 2367-2369, 2374-2375, 23483-2384.

challenges and pursue progress may be detrimental due to its development into an unwieldy bureaucratic organization; this is only exacerbated by the fragmented power and decision-making of the highly federalized German government system.<sup>318</sup>

Though more static, the HCPO has the benefit of pursuing its activities in an atmosphere of relative intimacy, where the sharing of knowledge is expedited by a small office diminishing the viability of the epistemological excuse.<sup>319</sup> Additionally, it may prove to be more attractive to claimants; the personal character of a small office is most often less intimidating and alienating than a large government agency. Conversely, the space created by the HCPO, as a claimant-focused ‘guide’ along the path of pursuing a claim, is more readily positioned to be successful in negotiating histories between perpetrators and victims. As an institution that, essentially, seeks to connect victims with ‘perpetrators’<sup>320</sup> and mediate between them, its activities manage to be at once morally sound while simultaneously reinforcing the ability to continue this good work without giving heed to the possible benefits of growth, new development, or the internal negotiation of identities and histories. An anti-shaming, low media-profile may bear the marks of resilient, righteous working operations within the HCPO, but it also means that the American narrative continues to be shaped predominantly by such popular culture representations as the *Monuments Men* (2014) and the *Lady in Gold* (2015), which continue to reify the tenets of the ‘Good War’ in the popular American collective conscious.<sup>321</sup> In short; the HCPO seems to exist in a space of relatively few incentives to reflect upon itself, American identity, or history in the context of Holocaust-era looted art restitution.

As David Rowland notes in his critique of American museums and their history of actions contrary to the Washington Principles, when an institution holds the ultimate decision to return a work, often claimants can do little else “other than take the case to the media where the museum

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<sup>318</sup> Smale, “Germany to Continue Funding to Establish Provenance of Looted Art.”

<sup>319</sup> Anna Rubin, interview with Alyssa Stokvis-Hauer, 4 May, 2016.

<sup>320</sup> The term perpetrators is put in quotations, as sometimes the defendant in a restitution case may have truly purchased looted art in good faith, making them an unwitting party to the crime of spoliation. Whether the title of perpetrator stands in regards to institutions who knowingly block restitution through legal gamesmanship is a matter of individual opinion.

<sup>321</sup> Here I am specifically referring to the films, though it bears note that the original books – Anne-Marie O’Connor’s *The Lady in Gold* (New York: Knopf, 2012), and Robert M. Edsel’s *The Monuments Men* (New York: Centre Street, 2010) – also garnered widespread success and attention. Bullinger, “Remembering World War II in the Late 1990s: A Case of Prosthetic Memory,” 168-169; 226; 294-296.

must face public scrutiny.”<sup>322</sup> While claimants may not desire media attention – and those wishes should be respected – it is worth considering the HCPO’s aversion to the media may in some part functionally contribute to a culture where institutions are able to continue avoiding restitution through appealing to statutes of limitations and laches, failing to undertake provenance research, or suppressing transparency of their collections and exhibited pieces.<sup>323</sup> Indeed, the notion that public attention and pressure can galvanize large-scale action was utilized by America in their dealing with Austria over that nation’s reticence to confront Holocaust-era looted art restitution.<sup>324</sup> But, since the Holocaust Expropriated Art Recovery (HEAR) Act was passed on December 16, 2016 by U.S. Congress,<sup>325</sup> there is finally codification of the Washington Principles’ imperative of ‘fair and just solutions’ in the country under whose initiative and direction the Principles were developed, through extending statutes of limitations, notoriously

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<sup>322</sup> Rowland, “Have U.S. Museums Lived up to the Promise of the Washington Conference?,” 163.

<sup>323</sup> Ibid., 159. It is crucial to note that this is not in any way solely a U.S. specific issue: please see my later discussion of the cancellation of the Max Stern exhibition by Düsseldorf city officials in the conclusion of this thesis as just one example. For limited, but further examples, of this behaviour in America and Europe see: Bianca Acquavaria, “The Latest in Nazi-Era Art Restitution Efforts,” *Center for Art Law*, 24 March 2016, accessed 24 November, 2017, <https://itsartlaw.com/2016/03/24/the-latest-in-nazi-era-restitution-efforts/>; Patricia Cohen, “Museums Faulted on Restitution of Nazi Looted Art,” *The New York Times*, 30 June 2013, accessed 24 November 2017, <http://www.nytimes.com/2013/07/01/arts/design/museums-faulted-on-efforts-to-return-art-looted-by-nazis.html>; Ulrike Knöfel, “US Congress Demands Action on Nazi Looted Art,” *Der Spiegel Online*, 26 November 2015, accessed 24 November 2017, <http://www.spiegel.de/international/germany/bavarian-museums-reluctant-to-return-nazi-looted-art-a-1064113.html>; Nicholas O’Donnell, “Methinks Thou Doth Protest Too Much-Bavaria Scrambles Defensively After Revelation of Looted Art Sales to Nazi Families,” *Art Law Report*, 1 July, 2016, accessed 3 July, 2016, <http://blog.sandw.com/artlawreport/methinks-thou-doth-protest-too-much-bavaria-scrambles-defensively-after-revelation-of-looted-art-sales-to-nazi-families>; John Wilkens, “Family’s suit revived over Pissarro painting looted by the Nazis,” *The San Diego Union-Tribune*, 10 July 2017, accessed 24 November 2017, <http://www.sandiegouniontribune.com/news/courts/sd-me-pissarro-painting-20170710-story.html>.

<sup>324</sup> Eizenstat explicitly states: “I believed that if we could persuade one country to take the lead [on signing onto guidelines addressing the problem of looted artworks], others might be shamed into taking action. Austria seemed like a good candidate.” Eizenstat met with the Austrian minister of education and culture, and only some weeks later on November 30, 1998, the Austrian Parliament passed new legislation to push forward the identification and restitution of objects that had not yet been returned to victims or heirs. Eizenstat, *An Imperfect Justice*, 193-196.

<sup>325</sup> Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 22 USC 1621 (2016), <https://www.congress.gov/114/plaws/publ308/PLAW-114publ308.pdf>. The HEAR Act sets out “[t]o ensure that claims to artwork and other property stolen or misappropriated by the Nazis [between 1933 and 1945] are not unfairly barred by statutes of limitations but are resolved in a just and fair manner” (Section 2, subsection (1)) by asserting a normalized statute of limitations of 6 years for claims or causes of action by a claimant or their agent “after the actual discovery” of the identity and location of the property, or a “possessory interest” of said property (Section 5, subsections (a)). The Act applies to all claims filed before December 31, 2026, including pending claims at the time of the law’s enactment. The Act will no longer “have effect on January 1, 2027,” with the exception of claims still pending by that date (Section 5, subsection (g)) It does not apply to claims and causes of action that were barred prior to the passage of HEAR (Section 5, subsection (e)) if the identity and location, or possessory interest of property was made “on or after January 1, 1999” (Section 5, Subsection (e)(1)) and more than 6 years has elapsed “during which time the civil claim or cause of action was not barred by a Federal or State statute of limitations” (Section 5, Subsection (e)(2)).

harnessed by recalcitrant museums against claimants.<sup>326</sup> Perhaps new scrutiny of American collections will begin that goes further than the online blogs of provenance scholars and restitution lawyers. Perhaps a more aggressive campaign to hold American museums accountable from within the HCPO is entirely unneeded. Certainly, with the codification of this bill, a study on the internal and external pressures of popular media and opinion, combined with Olick's theories on a politic of regret, could result in a worthwhile study of and further recommendations for America's development in the restitution sector.<sup>327</sup>

Yet, if restitution institutions are increasingly bureaucratized and are perceived to only react to public outcry, as can be seen in the German model, this could explain the disjuncture between collective commitments to the moral worth of restitution versus the activities carried out by the institutions. As a result, the creation of a "new space," as described by Elazar Barkan in which "the victim and the perpetrator, both as subjective identities [...enter] a new form of political negotiation that enables the rewriting of memory and historical identity in ways that both can share" becomes less and less likely.<sup>328</sup> There exists an opportunity for the *DZK* to occupy this space, especially with their capacity to forward discourse and make information accessible – exemplified in their yearly fall conference on varying themes related to World War II era confiscated property, and the LostArt Database – and as the body which oversees the Gurlitt Provenance Research project, and "prepar[es], implement[ts] and follow[s]-up [on Limbach] Commission meetings."<sup>329</sup> The transparency of projects and bodies under the *DZK*'s administrative purview have come under iterated attack, notably concerning the Gurlitt art trove which came to light in 2012. Furthermore, as previously mentioned in this text, in March 2016 Head Culture Minister and *DZK* Foundation Board Chairwoman Monica Grütters came under

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<sup>326</sup> Adam Kredo, "Congress Moves to Spur Return of Artwork Stolen by Nazis," *The Washington Free Beacon*, 8 April 2016, accessed 4 May 2016, <http://freebeacon.com/issues/congress-return-artwork-stolen-nazis/>; Nicholas O'Donnell, "Hear Act: Senate Judiciary Committee Considers Nazi-Looted Art Statute of Limitations Bill," *JD Supra*, 9 June, 2016, accessed 2 August, 2016, <http://www.wiesenthal.com/site/apps/nlnet/content.aspx?c=lsKWLbPJLnF&b=8776547&ct=14842287>; David J. Rowland, esq, "Nazi Looted Art Commissions After the 1998 Washington Conference: Comparing the European and American Experiences," presented at The New York County Lawyers Association's Panel *Should Stolen Holocaust Art Be Returned? Legal and Policy Perspectives and Recent Case Developments* (March 21, 2003): 6-8, accessed 12 July, 2016, <http://www.commartrecovery.org/docs/NaziLootedArtCommissions.pdf>.

<sup>327</sup> Olick, *The Politics of Regret*, 40-41.

<sup>328</sup> Barkan, "Amending Historical Injustices," xvii-xviii.

<sup>329</sup> "Advisory Commission," Deutsches Zentrum Kulturgutverluste.

fire over her espoused opinion that there should be no German-Jewish committee members on the *Beratende Kommission*, which the *DZK* administers, as they would be the only ‘biased’ members on the Commission.<sup>330</sup>

The apparent capacity to pursue improvements, especially following public recrimination, seems to once again be taking hold within German restitution initiatives. The *DZK* website, in April 2016, published a slew of reports and other information pertaining to the Gurlitt Provenance Research Project.<sup>331</sup> In a related movement towards increased transparency, the German Ministry of Culture and Media followed through on a pledge to revisit the *Beratende Kommission*, and enacted reforms in 2016, including limited tenures on the Commission, the inclusion of two Jewish members, and – notably for the *DZK* who oversees this activity – publish all their schedules, agendas, decisions, and the rationales behind those decisions online for public viewing.<sup>332</sup> Unfortunately, the stipulation that both parties involved in a restitution claim must agree before the Commission can be convened has not changed.<sup>333</sup> It remains to be seen if these

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<sup>330</sup> Eddy, “Few Answers on True Owners of Art Found in Gurlitt Trove.”; Crezelius, “What are Fair and Just Solutions in Dealing with Looted Art?”, 425; Smale, “Germany to Continue Funding to Establish Provenance of Looted Art.”; Nicholas O’Donnell has a number of blog posts on *Art Law Report* critiquing the Commission, for example: Nicholas O’Donnell, “Time to Go- Flechtheim Heirs Withdraw from Limbach Commission that has Outlives its Usefulness”; “Germany Keeps Digging – Explanation for Excluding Jewish Member from Nazi-looted Art Advisory Commission is Worse than Before,” *Art Law Report*, March 9, 2016, accessed May 10, 2016, <https://blog.sandw.com/artlawreport/germany-keeps-digging-explanation-for-excluding-jewish-member-from-nazi-looted-art-advisory-commission-is-worse-than-before>; “Gurlitt and the State of Restitution: Triumphalist Moment Looking More Like Premature ‘Mission Accomplished,’” *Art Law Report*, February 19, 2015, accessed May 10, 2016, <https://blog.sandw.com/artlawreport/2015/02/19/gurlitt-and-the-state-of-restitution-triumphalist-moment-looking-more-like-premature-mission-accomplished/>; “Guelph Treasure Heirs Explain Why Case Belongs in U.S. Court,” *Art Law Report*, May 12, 2016, accessed June 12, 2016, <http://blog.sandw.com/artlawreport/guelph-treasure-heirs-explain-why-case-belongs-in-u.s.-court>. Additionally, Marc Masurovsky offers his own scathing views on the commission here: Marc Masurovsky, “The Gurlitt Indictment: Washington Principles vs. the German government and its partners,” *Plundered Art*, 14 February 2015, accessed 22 July, 2016, <http://plundered-art.blogspot.ca/2015/02/the-gurlitt-indictment-washington.html>.

<sup>331</sup> “‘Efficient, transparent and expeditious’: Current information on the progress of the ‘Gurlitt Provenance Research’ project is now available on the website of the German Lost Art Foundation,” Deutsches Zentrum Kulturgutverluste, accessed 24 November, 2017, [https://www.kulturgutverluste.de/Content/02\\_Aktuelles/EN/News/2016/April/16-04-18\\_Information-Gurlitt-Provenance-Research-Website.html](https://www.kulturgutverluste.de/Content/02_Aktuelles/EN/News/2016/April/16-04-18_Information-Gurlitt-Provenance-Research-Website.html); “Gurlitt Provenance Research Project: Materials,” Deutsches Zentrum Kulturgutverluste, accessed 24 November, 2017, <https://www.kulturgutverluste.de/Webs/EN/ProjectGurlitt/Materials/Index.html>.

<sup>332</sup> Catherine Hickley, “German culture minister promises reform Limbach Commission after mounting criticism,” *The Art Newspaper*, 5 August 2016, accessed 8 August, 2016, <https://web.archive.org/web/20160807115542/http://theartnewspaper.com/news/minister-promises-to-reform-nazi-era-loot-expert-panel-after-mounting-criticism/>; Neuendorf, “Germany Reforms Commission for Nazi-Era Art Restitution After Criticism from Jewish Groups.”

<sup>333</sup> Hickley, “German culture minister promises reform Limbach Commission after mounting criticism.”

other reforms will actually bring results, and if Germany – and the United States – will find a reliable way to close loop holes for its cultural institutions to avoid engaging in provenance research, or resist engaging in restitution claims.<sup>334</sup>

**Conclusion: “confident but not too optimistic”<sup>335</sup>**

Though the path of restitution from the 1940s to now has turned towards increased attention to memory work and ethics, I do not propose that it is solely teleological. The memory work and continued affirmation of the trauma of victims of the Holocaust at the centre of contemporary restitution prerogatives should be without end. The pursuit of the restitution of Holocaust-era looted art should never be viewed as a means to close the chapter on the atrocities of World War II and relegate them to the annals of history; restitution is an act of remembering and reflection, as much as a way to bring justice to victims, and forward the struggle against injustice, xenophobia, and prejudice. Furthermore, it would be naïve to suppose total cooperation, international treaties with a real means of enforcement, and the total return of all illegally taken Holocaust-era property anytime in the near future. While some claims may cross borders in litigation, restitution that privileges negotiation before legal suits is at the behest of national institutions and infrastructures. Given the salience of regional specificity to the ideation, formation, and progress of restitution organizations and their activities, it is equally untenable to proclaim a singular model to which all nation-states should or even could adhere. It seems to be a recurring bleak joke of international politics; there is no easy way to solve the question of sovereignty in the face of international treaties, no matter how good the intentions that seem to pave the path...

To further complicate matters, Dr. Michael Marrus suggests in his inquiry into the renewed efforts of the 1990s that the American-led “road to a new regime” within Holocaust restitution has resulted in frictions between the United States and Europe.<sup>336</sup> Marrus hints that the purported “moral authority” that polices signatories to the Washington Principles emanates directly from

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<sup>334</sup> Michael Franz and Nicholas O’Donnell, “The Limbach Commission: What is it and will reforms make a difference?” *Apollo*, 26 September 2016, accessed 26 November, 2017, <https://www.apollo-magazine.com/the-limbach-commission-what-is-it-and-will-reforms-make-a-difference/>.

<sup>335</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016.

<sup>336</sup> Marrus, *Some Measure of Justice*, 56.

America, and has resulted in displeasure amongst other signatory nations.<sup>337</sup> This mantle of American stewardship in Holocaust restitution was recently reinforced by the passing of the Justice for Uncompensated Survivors Today in the Senate in the fall of 2017.<sup>338</sup> The bill directs the Department of State to “report an assessment of the nature and extent of national laws or enforceable policies regarding the identification, return, or restitution of wrongfully seized or transferred Holocaust era assets and compliance with the goals of the Terezin Declaration on Holocaust Era Assets and Related Issues.”<sup>339</sup> How this reinforced stance as a regulator of those nations signed to the Terezin Declaration will be received internationally and will positively affect restitution activity – if at all – remains to be seen.

The relationship between the United States and other nations in the field of Holocaust-era assets restitution is further complicated by *Lex Americana*’s more recent and – as of this year<sup>340</sup> – comparatively precipitous fall from grace as a trustworthy hegemon and moral political overseer.<sup>341</sup> As early as the Washington Conference, America’s identity as defenders of “the sphere of liberty” became a point of irritation with other nations whose memories and identities formed through wartime and post-1945 experiences were less triumphant and affirmative.<sup>342</sup> Intending to assure Washington Conference delegates, U.S. Ambassador to Germany Bindenagel’s comments bear the marks of America’s self-perceived command of post-war justice:

The bottom line of our effort [...] is historical honesty, memory, and openness. We recognize that it is painful for any country to confront historical events that reopen old wounds or raise new questions that affect national identity or international reputation. We

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<sup>337</sup> Ibid.; Eizenstat, *An Imperfect Justice*, 195, 198.

<sup>338</sup> As of 14 January, 2018, the bill must still be passed in the House of Representatives. Jewish Telegraph Agency “Senate Unanimously Passes Bill to Help Holocaust Survivors Obtain Restitution,” *Forward*, 12 December, 2017, accessed 19 December 2017, <https://forward.com/fast-forward/389861/senate-unanimously-passes-bill-to-help-holocaust-survivors-obtain-restituti/>; Rafael Hoffman, “JUST Act Pushes for More Accountability On Holocaust Restitution,” *Hamodia*, 7 March, 2017, <http://hamodia.com/2017/03/07/just-act-pushes-holocaust-restitution/>.

<sup>339</sup> Justice for Uncompensated Survivors Today (JUST) Act of 2017, H.R. 1226, 115<sup>th</sup> Congress (2017), accessed 22 November, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/1226>.

<sup>340</sup> “Global Indicators Database: Opinion of the United States 2002-2017,” *Pew Research Center*, 2017, accessed 25 November, 2017, <http://www.pewglobal.org/database/indicator/1/survey/all/>.

<sup>341</sup> Marrus, *Some Measure of Justice*, 135.

<sup>342</sup> Hoogland Noon, “Operation Enduring Analogy,” 345; Eizenstat, *An Imperfect Justice*, 198; Howard N. Spiegler, “Portrait of Wally: The U.S. Government’s Role in Recovering Holocaust Looted Art,” in *Holocaust Restitution: Perspectives on the Litigation and its Legacy*, ed. Michael J. Bazyler and Roger P. Alford (New York: New York University Press, 2006), 280.



know, too, that the horrors of the Holocaust and the fate of its victims' assets inescapably touch on sensitive memories.<sup>343</sup>

While the content is conciliatory and understanding, it is coloured with the high-handed tone of the victors in a war from which they largely did not need to rebuild; recognition or sympathy is very different than the reality of confronting that which you have not experienced. For the HCPO, with America relatively, in this specific historical episode, free from the label of perpetrator internally and internationally, the incentive to aid victims and pursue restitution claimants is proclaimed as emanating from a feeling of 'doing the right thing.' Just like the constructed American role in World War II, the fight to restitute the spoliated art of the Holocaust is a 'Good War' in the American consciousness, where once again the United States is able to play the protagonist who enters the scene to galvanize action and resolve. As a result, it seems the HCPO is allowed to enjoy a certain level of anonymity, a fact which allows it to continue to provide discreet and dedicated service to their clients, but also does not create incentive to expand or adapt, due to the privilege it holds as an American institution. Yet, a determination and conviction to pursue just and fair solutions as an ethical imperative also permeates German institutional organizations. Driven by combined forces of morality and guilt, the German federal government, certain cultural institutions, and academic initiatives have continually worked with the *Koordinierungsstelle* and now the *DZK* to better and expand their mandates and actions, confronting the burden of righting a historical wrong of their forbearers' making. Though this has resulted in a large, perhaps unwieldy umbrella organization susceptible to the short-comings elucidated by Luban et al., there is a will to continue, learn, and grow galvanized by both internal and external pressures.<sup>344</sup>

The claimant-based work of the HCPO is no less important or worthy of praise, but it is apparent that due to historical, regional contingencies there has been no pressure to incentivize a more rigorous application of the Washington Principles at home. It is important, perhaps now more than ever, that those institutions which seek justice for victims of the Holocaust utilize their platform to inspect their own nation's complacencies, histories, and actions (or lack thereof),

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<sup>343</sup> From J.D. Bindenagel's June 30<sup>th</sup>, 1998 address to the Organizing Seminar for the Washington Conference on Holocaust-Era Assets, as quoted by Marrus, *Some Measure of Justice*, 56.

<sup>344</sup> Luban, et al., "Moral Responsibility in the Age of Bureaucracy," 2355.

while simultaneously agitating for continued forward movement in the realm of Holocaust-era looted art restitution. With the HEAR Act freshly voted into law, now may be an advantageous moment for the HCPO to become a more vocal presence in the American media as a proponent of vigilance within museums towards their collections, historical pedagogy, memory transmission, and justice for victims of oppression and xenophobia.

The grim allusion of my title – the road to hell is paved with good intentions – is a reference to the overwhelming amount of work left to do, and the quagmire of laws, counter-claims, and bigotry that have been and surely will come again; as each object opens a window of remembrance onto the histories of victims, it awakens the hellish trauma of the Third Reich. And, despite the conventions and principles in place as a result of an international political arena which has accepted and affirmed the moral worth of Holocaust-era restitution, as professor and lawyer B.V.A Röling allegedly said: “The road to hell is paved with good conventions.”<sup>345</sup> Good intentions – and conventions – may exist, but they cannot replace the value of efficacy, especially where the righting of gross historical injustices are concerned. This said, the good intentions which have galvanized action have both shifted and grown as a result of changes in national memories and conceptions of justice. Despite flaws and faults in restitution initiatives, such intentions cannot be discounted. But, neither can a gesture towards good intentions lead to complacency; an acknowledgement of just and fair solutions is not the same as a just and fair solution.

As such, there is no question that there is still much to do, both in the realm of truly activating the words laid down in the Washington Principles and by dint of the countless objects and cases yet to be found or addressed.<sup>346</sup> In Germany, the Limbach Commission has received its long called-for reassessment and a positive institutional overhaul. Yet, the commitment to restitution endeavours fails to consistently permeate all sectors of German government. Just as the *Bundeskunsthalle* in Bonn opens an exhibition on Cornelius Gurlitt’s collection – whose provenance is infamously murky given his art dealer’s father’s ties to the NSDAP – an exhibition on Max Stern, meant to tell the story of the forced sale and on-going search for and restitution of

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<sup>345</sup> O’Donnell, “The Restitution of Holocaust Looted Art and Transitional Justice,” 172.

<sup>346</sup> Dugot, “The Holocaust Claims Processing Office”, 271.

the deceased German-Jewish art collector's collection, was cancelled (and then hastily reinstated) by Düsseldorf city officials.<sup>347</sup> Meanwhile, during the writing of this thesis, the United States Congress has passed the HEAR bill, which has finally opened the door in America to codification of some tenets of the Washington Principles; the actual potency of this bill will undoubtedly be revealed over the coming years, with concerns already raised. Beyond the scope of Germany and the United States, the question of restitution is coming to the fore internationally. Poland's continued refusal to establish a program for Holocaust-era claims was recently reaffirmed by the Polish Constitutional Tribunal, a continuation of worrying behaviour reinforced by Polish laws passed that makes reference to Polish complicity or collaboration for Nazi crimes illegal.<sup>348</sup> But, in Romania – a former-Axis partner up until 1944 – the government has finally accepted new legislation as of May 2016 that prioritizes the claims of Holocaust survivors seeking the restitution of private or communal property.<sup>349</sup> Serbia too has recently passed legislation – the first Eastern European country to codify monetary restitution for heirless Jewish property seized during and following the Holocaust.<sup>350</sup> Regressions and malfeasances

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<sup>347</sup> This cancellation is especially disturbing not only due to it being so abrupt (intended to open in February 2018, it was cancelled November 2017), but because the premise for the cancellation, according to Düsseldorf's mayor and city officials was "restitution claims in connection to Max Stern." "Private Collector Claims Innocence in Restitution Tussle," *Art Law & More from Boodle Hatfield*, 14 July, 2017, accessed 24 November, 2017, <https://artlawandmore.com/2017/07/14/private-collector-claims-innocence-in-restitution-tussle/>; Sara Angel, "Restoration Drama," *The Globe and Mail*, 24 November, 2017, accessed 27 November, 2017, <https://www.theglobeandmail.com/arts/art-and-architecture/dusseldorfs-cancellation-of-show-about-jewish-art-dealer-max-stern-sparksoutrage/article37080276/>; Montreal Gazette Editorial Board, "Editorial: Cancellation of Max Stern exhibition an affront to memory," *Montreal Gazette*, 17 November, 2017, accessed 17 November, 2017, <http://montrealgazette.com/opinion/editorials/editorial-cancellation-of-max-stern-exhibition-an-affront-to-memory>. After international outcry and media coverage, the cancellation of the exhibition was reversed by the Mayor of Düsseldorf: Catherine Hickley, "In Reversal, Düsseldorf Will Hold Exhibition About Jewish Art Dealer," *New York Times*, 21 December, 2017, accessed 4 January 2018, <https://www.nytimes.com/2017/12/21/arts/design/dusseldorf-jewish-dealer-max-stern-exhibition.html>.

<sup>348</sup> "WJRO Disappointed with Decision by Polish Constitutional Tribunal on Law Limiting Warsaw Restitution Claims," *World Jewish Organization*, 27 July, 2016, accessed 24 July 2017, <http://wjro.org.il/wjro-disappointed-decision-polish-constitutional-tribunal-law-limiting-warsaw-restitution-claims/>; The Associated Press, "Poland Plans Prison Terms for Using Term 'Polish Death Camp,'" *The New York Times*, August 16, 2016, accessed 24 July, 2017, <http://www.nytimes.com/aponline/2016/08/16/world/europe/ap-eu-poland-holocaust-law.html>.

<sup>349</sup> The World Jewish Restitution Organization notes that, despite this new legislation, "Romania has not addressed heirless or unclaimed property left by victims of the Holocaust." "WJRO Romania Operations," *World Jewish Restitution Organization*, accessed November 22, 2017, <https://wjro.org.il/our-work/restitution-by-country/romania/>; Kit Gillet, "Romania Takes Steps Toward Restitution to Holocaust Survivors," *The New York Times*, 10 May, 2016, accessed 22 November, 2017, <http://www.nytimes.com/2016/05/11/world/europe/romania-holocaust-survivors-jews-restitution-claims.html>.

<sup>350</sup> Cnaan Lipshitz, "Serbia to offer restitution to Holocaust survivors abroad," *Jewish Telegraph Agency*, 5 April 2017, accessed 22 November, 2017, <https://www.jta.org/2017/04/05/news-opinion/world/serbia-to-offer-restitution-to-holocaust-survivors-abroad>.

come in waves, contingencies and resistance to take responsibility beleaguer development, and yet advancements slowly but consistently unfold; “confident but not too optimistic.”<sup>351</sup>

It is my hope that contributing to a history of restitution and highlighting regional institutional development within an international system will assist in dismantling complacencies, push discourse forward, and aid in the development of further restitution and reparatory endeavours. Continuing to pursue this campaign, especially as we encounter the final living years of survivors of the Holocaust, is a means of remembrance, teaching, and of affirming survival and human rights. For the slow, painful process of restitution and the amelioration of the means to pursue it requires if not our optimism, then certainly our dedicated work and confidence.

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<sup>351</sup> Anonymous, interview with Alyssa Stokvis-Hauer, 19 February 2016.

**Figures**



Fig. 1 – Unidentified photographer. *Soldiers evacuating looted art from Neuschwanstein Castle, 1945.* Thomas Carr Howe papers, 1932-1984. Archives of American Art, Smithsonian Institution.





Fig. 2 – Egon Schiele, *Portrait of Wally Neuzil*. 1912. Oil on Wood, 398 x 320 cm. Leopold Museum, Vienna. Source: Google Art Project.

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**CONSUMER ALERT:**  
**Holocaust Survivors Now Eligible to Receive Pensions from Poland and Czech Republic**

**About the HCPO**

Since 1997 the Holocaust Claims Processing Office (HCPO) has advocated on behalf of Holocaust victims and their heirs, seeking the just and orderly return of assets to their original owners. In fulfilling this mission, as of December 31, 2015, the HCPO has facilitated the restitution of over \$173 million in bank accounts, insurance policies, and other material losses and the resolution of cases involving more than 114 works of art.

The HCPO works as a bridge between claimants and the various international compensation organizations and/or the current holder(s) of the asset be it a bank account, insurance policy or artwork. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. Our goal is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

We provide institutional assistance to individuals seeking to recover:

1. Assets deposited in banks.
2. Monies that insurance companies failed to pay policy beneficiaries.
3. Artwork that was lost, stolen, or sold under duress between 1933 and 1945.

In response to the complex nature of restitution claims, which range from the purely anecdotal to partially or even fully documented, the HCPO developed a systematic method to handle cases. After assessing the viability of a claim, the HCPO strives to document the prewar ownership, wartime loss and a claimant's postwar entitlement to an asset, this being a major hurdle faced by all parties in the restitution process. To accomplish this task, HCPO staff members undertake three types of research: (1) genealogical; (2) archival research for prewar, wartime, and postwar records; and (3) the search for the missing objects, provenance research being one component of this effort.

Once all of the HCPO's research is complete, and the missing asset has been located, our role changes from that of detective to advocate and facilitator. At this stage the HCPO submits claim information to the appropriate companies, authorities, museums, or organizations with the request that a complete and thorough search be made. By sharing all supporting documentation and through open and amicable discussion the HCPO facilitates cooperation between parties. Our successes repeatedly demonstrate that candid dialogue between parties can lead to the mutually beneficial resolution of these disputes.

The continued success of the HCPO's work demonstrates that the non-litigious and fair resolution of Holocaust-era asset claims is possible.

**The Art of Recovery**  
 An Exhibition of Art Lost During the Holocaust Era >

**DFS Anne Frank Award 0...**  
 Anna Rathkopf  
 CLAIMS SPECIALIST

**Interactive World Map**

**International Claims Process**

**HCPO Art Claims Process**

HCPO Press Holocaust Claims FAQs

Fig. 3 – Compiled screenshots of the “Holocaust Claims Processing Office homepage.” New York State Department of Financial Services, Holocaust Claims Processing Office. Accessed 10 January, 2018. <http://www.dfs.ny.gov/consumer/holocaust/hcpointindex.htm>



**HCPO HOME**  
**Bank Claims**  
**Insurance Claims**  
**Art Claims**  
**Contact Us**

•••

**Art of Recovery**  
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**The Perpetrators and Their Methods**  
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**The Art of Recovery Exhibit**

The HCPO Virtual Gallery highlights artworks restituted to HCPO claimants as well as works of art that have been reported to the HCPO as lost as a result of Nazi persecution. In addition, the gallery illustrates how the HCPO assists claimants with the recovery of art works lost between 1933 - 1945. This exhibition also provides historical details describing the Nazi looting machine and resources for those seeking to recover lost works of art.

Fig. 4 - Screenshot of “The Art of Recovery Exhibit Gallery Map.” New York State Department of Financial Services Holocaust Claims Processing Office. Accessed July 12, 2017. [http://www.dfs.ny.gov/consumer/holocaust/gallery\\_map.htm](http://www.dfs.ny.gov/consumer/holocaust/gallery_map.htm).



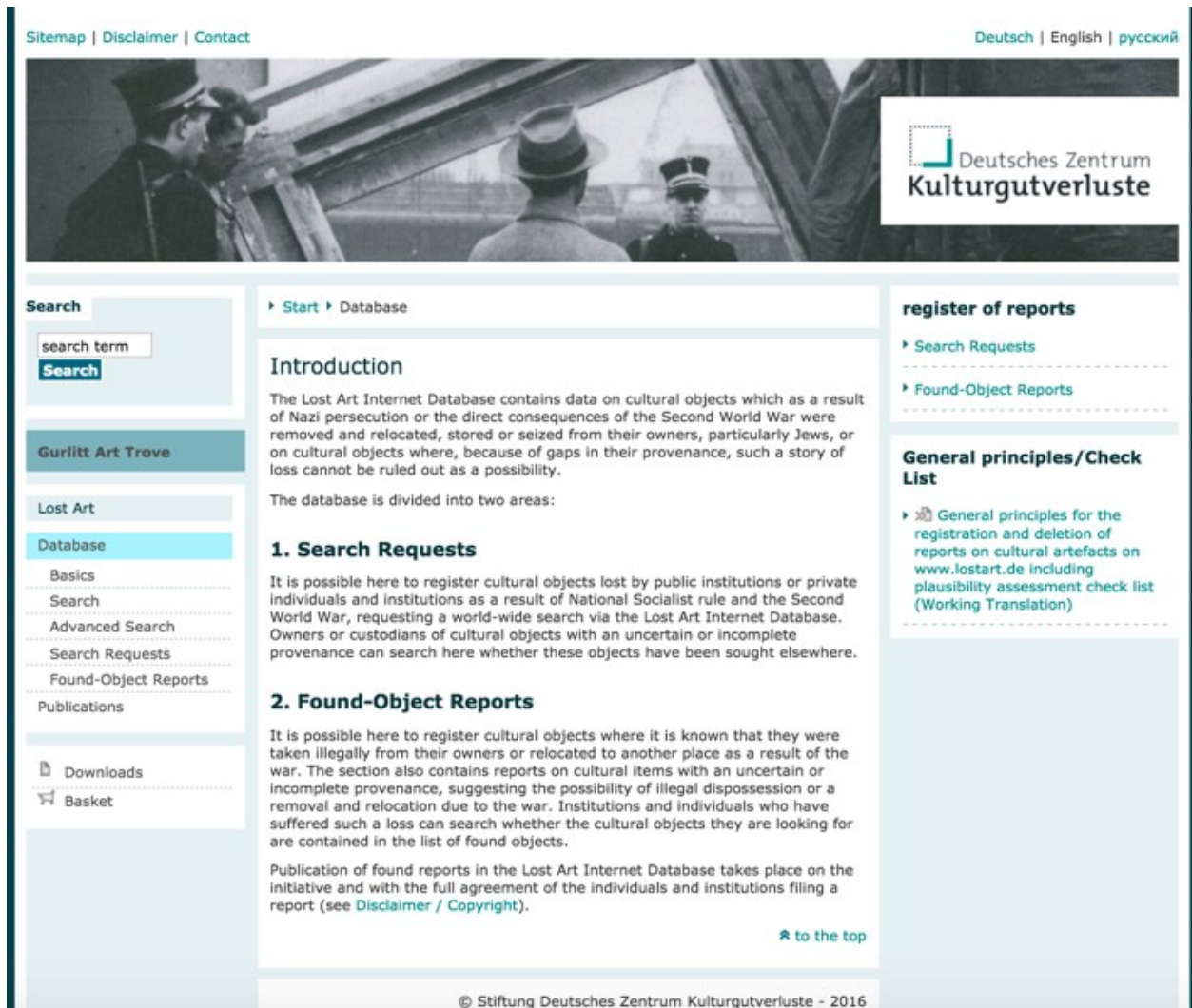


Fig. 5 –Screenshot of “Lost Art Database.” Stiftung Deutsches Zentrum Kulturgutverluste. Accessed August 15, 2016. <http://www.lostart.de/Webs/EN/Datenbank/Index.html>.



Fig. 6 – Front cover of volume 8 of the *Koordinierungsstelle*'s publications, which shows the back of a Nazi-looted piece of artwork (Bernardo Daddi's *The Beheading of Saint Reparata*.) *Die Verantwortung dauert an: Beiträge deutscher Institutionen zum Umgang mit NS-verfolgungsbedingt entzogenem Kulturgut*, edited by Andrea Baresel-Brand. Magdeburg, DE: *Koordinierungsstelle* Magdeburg, 2010. Photo by author.

Gurlitt Provenance Research

The German Lost Art Foundation is the national and international contact partner for all matters pertaining to the illegal seizure of cultural assets in Germany in the 20th century. The main activities of the Foundation focus on cultural assets confiscated by the National Socialists through persecution, in particular, from former Jewish owners (so-called "Nazi confiscated art"). The *Washington Principles* of 1998 serve as the basis for its efforts in this field, to which end Germany officially pledged to fulfil its historic and moral obligations in a *Common Declaration* in 1999. The Foundation is also responsible for investigating the war-related removal or relocation of cultural assets (so-called "looted art") as well as the loss of cultural assets under Soviet occupation and in the GDR. The Foundation supports provenance research with research grants and provides information on reports of lost and found cultural assets via its open-access "Lost Art" database.

The German federal government, the Länder of the Federal Republic of Germany and the three national associations of local authorities founded the German Lost Art Foundation on 1 January 2015 as an incorporated foundation under civil law with headquarters in Magdeburg.

[More about the Foundation »](#)

Project funding

The German Lost Art Foundation provides financial support to projects which conduct provenance research on cultural assets that were confiscated by the Nazi regime. As a rule, all publicly funded organisations are eligible to apply for project funding. Funding can also be awarded to private museums and collections as long as they adhere to the *Washington Principles* and pursue research of public interest.

[More information on project funding »](#)

Lost Art-Database

The Foundation's "Lost Art" database allows users around the world to access information on cultural assets which were displaced or relocated as a result of National Socialism and/or World War II. These also include works, particularly from former Jewish owners, which were confiscated by the Nazis or, because of gaps in their provenance history, cannot be completely ruled out as such.

[Visit the "Lost Art" database »](#)

News

**[The German Lost Art Foundation lauds establishment of Foundation Professorships](#)**  
2015-12-17 - [More detail](#)

**[Bavarian State Library and the Central and Regional Library of Berlin return books – German Lost Art Foundation to fund provenance research](#)**  
2015-12-10 - [More detail](#)

**[Urgent appeal by the German Lost Art Foundation succeeds in ensuring funding for the "Degenerate Art" research group at the Freie Universität for 2016](#)**  
2015-12-09 - [More detail](#)

Events

Website "Protection of Cultural Assets in Germany" and "National Cultural Treasures" database

[Visit website and database »](#)

Fig. 7 – Screenshot of archived “the *Deutsches Zentrum Kulturgutverluste* homepage” from 14 March, 2016. German Lost Art Foundation/Deutsches Zentrum Kulturgutverluste. Accessed 10 January 12, 2018.

<https://web.archive.org/web/20160314143344/http://www.kulturgutverluste.de:80/en/>.

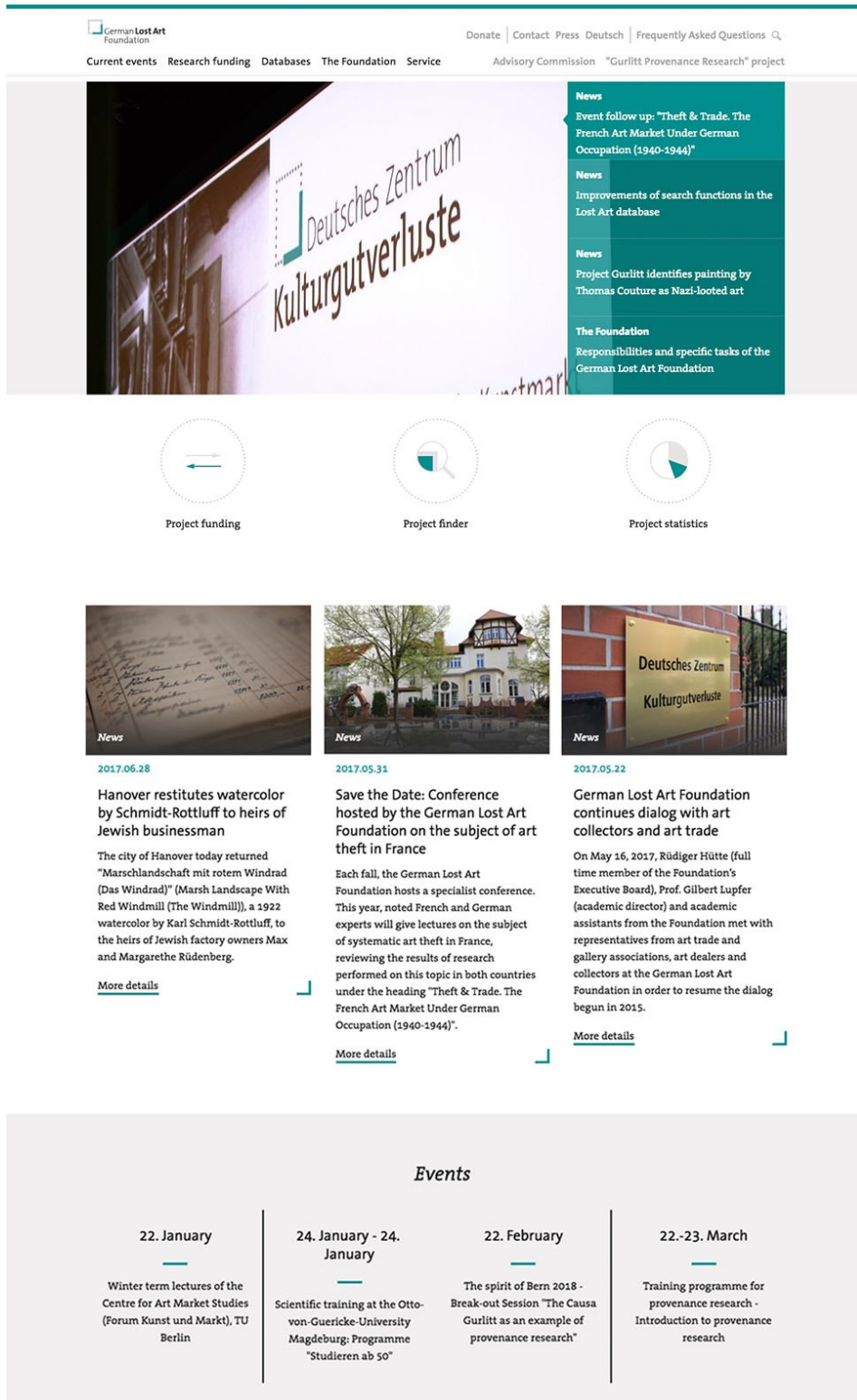


Fig. 8 – Compiled screenshots of the top half of “the *Deutsches Zentrum Kulturgutverluste* homepage.” German Lost Art Foundation/Deutsches Zentrum Kulturgutverluste. Accessed 10 January 12, 2018. <https://www.kulturgutverluste.de/Webs/EN/Start/Index.html>.





Search

search ...

Gurlitt Art Trove

Lost Art-Database

Basics

Search

Advanced Search

Search Requests

Found-Object Reports

Reporting objects

Publications

Downloads

Basket

Start > Lost Art-Database > Advanced Search

Advanced search

Title / Description  ?

Artist / Author  ?

Type of object  ?

Material / Technique  ?

Dating  ?

Provenance  ?

Institution / Person / Collection  ?

Inventory number  ?

Lost Art-ID  ?

Kind of report

- All
- Search Requests
  - removed through/after World War II
  - seized under National Socialist persecution
- Found-Object Reports

Help

The fields of the search form are propositions; just enter information, that are known and are pertinent for the results. It's possible to put in several terms.

The given terms are connected with an AND-join, so all of them have to appear every single data set of the results.

The searched words are also found as part of the same stem or a word combination.

It's possible to use wildcards as well: (\*) stands for any string of letters and a (?) for a single unknown letter. The tilde-sing (~) put at the end of the term supports a proximity search.

To precise a search on a single term or specific phrase put them between two quotes ("").

Fig. 9 – Screenshot of “Lost Art Database – Advanced Search.” Stiftung Deutsches Zentrum Kulturgutverluste, 2017. Accessed 10 January, 2018. <http://www.lostart.de/Webs/EN/Datenbank/Index.html>.



Fig. 10 – Unidentified photographer. *Storage rooms inside Museum Wiesbaden filled with wooden crates, not after 1946 March.* James J. Rorimer papers, 1921-1982, bulk 1943-1950. Archives of American Art, Smithsonian Institution.

# GERMAN ART SHIFT STIRS STORM HERE

## TRANSFERRED TO NATIONAL GALLERY OF ART IN WASHINGTON

Continued From Page 1

Armed Forces of the United States at the Verwaltungsbau, the Third Army collecting point, in Munich. They reached the United States in the Army transport James Parker Dec. 6.

Army officials were inclined to be mysterious about the paintings when they were landed, and the general belief arose that they were art treasures the Germans had taken from invaded countries.

A week after their arrival, though, word came out of Washington that the trustees of the National Gallery, through Chief Justice Stone, had accepted custody of the paintings at the request of Secretary of State James F. Byrnes, and that they included no German war loot.

How removal of the German art treasures came about has not been officially explained, but it is understood that President Truman and the heads of the other Allied Nations represented at the Potsdam Conference worked it out at that meeting.

The current Magazine of Art, published by the American Federation of Arts, has assembled the various protests made against transfer of the German art treasures.

### 32 Specialists Issue Protest

It has also printed a copy of a memorandum on the subject prepared on Nov. 7, 1945, in Germany.



"Assumption of the Virgin," by Castagno, a fifteenth century panel from the Kaiser Friedrich Museum

Fig. 11 – “Scanned copy of New York Times Article ‘German Art Shift Stirs Storm Here.’” File 202 Shipment Of German- Owned Art To U.S. Press Clipping, General Records, compiled 1946 - 1948, documenting the period 1938 – 1948, Record Group 260, Records Concerning the Central Collecting Points (“Ardelia Hall Collection”): OMGUS Headquarters Records, 1938-1951. National Archives and Records Administration. Digitized publication by Fold3, 2011. Reproduced with permission from Fold3.



Fig. 12 – “(Bremen, Germany) Bombing: Incendiary bombs follow marker bombs into center of city. Numerous fires under way.” Copied 1 January, 1944 from General H.H. Arnold’s Book “8<sup>th</sup> Bomber Command 43.” Record Group 342, Black and White and Color Photographs of U.S. Air Force and Predecessor Agencies Activities, Facilities, and Personnel - World War II. National Archives and Records Administration. Digitized publication by Fold3, 2007. Reproduced with permission from Fold3.





Fig. 13 – “Willy Brandt Memorial Plate in Warsaw.” Digital image, 2 July 2009. Source: Wikimedia Commons.

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**Appendix A:** *Washington Conference Principles on Nazi-Confiscated Art* released on December 3<sup>rd</sup>, 1998

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
3. 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.
4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, 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.
5. 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.
6. Efforts should be made to establish a central registry of such information.
7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
8. 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, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.
9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.
10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.
11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

## **Appendix B:** *The Joint/Common Declaration or Gemeinsame Erklärung (1999)*

The preamble and four articles of the 1999 *Erklärung zur Auffindung und Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz* or Statement of the German Federal Government, the Länder, and the National Associations of Local Authorities regarding the tracing and return of Nazi-Confiscated Art, especially with regard to Jewish property. This is more commonly known as the Joint Declaration or *Gemeinsame Erklärung*. The following is the English translation made available through the *Deutsches Zentrum Kulturgutverluste*.

### **Common Statement (Gemeinsame Erklärung)**

In accordance with the requirements of the Allied restitution provisions, the Federal Act on Restitution and the Federal Indemnification Act, the Federal Republic of Germany has fulfilled merited claims on grounds the confiscation of works of art by the Nazi regime after WW II, and set up the necessary procedures and institutions for enabling persons entitled to such indemnification to enforce their claims vis-à-vis other parties liable to restitution. The claims primarily arose to those who immediately suffered damage and their legal successors or, in case of Jewish assets without heirs or Jewish assets that were not claimed, to the successor organisations established in the Western zones and Berlin. The material restitution was effected either on a case-to-case basis or by global settlement. The restitution law and the general civil law of the Federal Republic of Germany thus finally and comprehensively provide for issues of restitution and indemnification of Nazi-confiscated art , especially from Jewish property.

In the German Democratic Republic (GDR) the compensation pursuant to Allied law of wrongs perpetrated under National Socialism did not go beyond a rudimentary stage. In the course of German reunification, the Federal Republic of Germany has undertaken to apply the principles of the restitution and indemnification law. Nazi-confiscated art was returned or indemnified in accordance with the provisions of the Vermögensgesetz (Property settlement Act) and the NS-Verfolgtenentschädigungsgesetz (Federal Indemnification Act concerning persons who suffered damage at the hands of the National Socialist regime). Thanks to the global filing of claims on the part of the Conference on Jewish Material Claims against Germany Inc. (JCC) in its capacity as today's association of successor organisations claims situated in the accession area with

regard to cultural property of Jewish parties having suffered loss. As formerly in the West German *Länder*, material indemnification on a case-to-case basis was sought; where this was not possible, compensation was effected by global settlement.

## I.

Irrespective of such material compensation, the Federal Republic of Germany declared its readiness at the Washington Conference on Holocaust-Era Assets on 3 December 1998 to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps in order to find an equitable and fair solution. Against this background, the decision by the Foundation Board of the Prussian Cultural Heritage Foundation of 4 June 1999 is welcomed.

The Federal Government, the Laender and the national associations of local authorities will bring their influence to bear in the responsible bodies of the relevant statutory institutions that works of art that have been identified as Nazi-confiscated property and can be attributed to specific claimants are returned, upon individual examination, to the legitimate former owners or their heirs, respectively. This examination includes a match with material compensation already provided. Such a procedure allows to identify the legitimate owners and avoid duplicate compensation (e. g. by repayment of compensations already paid).

The relevant institutions are recommended to negotiate the extent and procedure of return or other material indemnification (e. g. in the form of permanent loans, financial or material equalisation) with the clearly identified legitimate former owners or their heirs, respectively.

## II.

The German public institutions such as museums, archives and libraries have supported the tracing of Nazi-confiscated art already in the past by means of

1. exploitation of and access to the data research findings and records available to them
2. investigations in case of concrete inquiries and research, on their own initiative, in case of new acquisitions,
3. search activities in the framework of the institutions' tasks

4. providing information on the history of Nazi-confiscated art in collections, exhibitions and publications.

These efforts shall be carried on wherever there is sufficient reason.

### III.

Furthermore, the Federal Government, the Laender and the national associations of local authorities consider in accordance with the principles of the Washington Conference to provide a website on the Internet with information on the following:

1. What the institutions involved can do for publicising art of unclear origin to the extent that is presumed to have been confiscated by the Nazis.
2. A search list in which every claimant may enter the items he is looking for and thus report for investigation by the relevant institutions and the interested public.
3. Information on the transfer abroad of Nazi-confiscated art during or immediately after the war.
4. Establishing a virtual information platform where the interested public institutions and third parties may enter their findings relating to the tracing of Nazi-confiscated art in order to avoid duplicate work on the same subjects (e. g. at which auction was Jewish cultural property of which collection sold?) and make such information available by way of fulltext retrieval.

### IV.

This statement refers to archives maintained by public institutions, museums, libraries and their inventory. The public bodies funding these institutions are called upon to ensure the implementation of these principles by taking decisions to this effect. Institutions under private law and individuals are called upon also to apply the principles and procedures laid down at the Washington Conference

## Appendix C

The following is an edited and cleaned transcript (minimal grammatical and spelling corrections done with the permission of the interviewee) of an e-mail interview with Dr. Anja Heuß, former employee of the *Koordinierungsstelle* Bremen, provenance research expert & museum professional, in response to questions on 24 March, 2016. Further clarifications from this initial interview were provided 18 August, 2016 and 15 September 2016 and integrated into the below text.

Key:

*Alyssa Stokvis-Hauer - ASH*

*Dr. Anja Heuß - DH*

**ASH:** Would you describe to me how it was you came to be involved with/work for the Bremen Koordinierungsstelle? What was your position title, and how long did you work there?

**DH:** I was an academic employee during the first year of the Koordinierungsstelle (1994/1995). Its official name at the time was: Koordinierungsstelle der Länder für die Rückführung von Kulturgütern at the Senate of Education, Science, Culture and Sports of the Free Hanseatic City of Bremen. It was founded in the smallest federal state in Germany. Before I started working for the Koordinierungsstelle, I was working as a free-lancer for the Forschungsstelle Osteuropa at the University of Bremen. This institute conducted scientific research on the looting of art and cultural objects by the Germans in Soviet Russia. The head of the Forschungsstelle Osteuropa was Prof. Wolfgang Eichwede. Ms. Lemmermaier had been working for him before and then started the formation of the Koordinierungsstelle für Kulturgutverluste. She was going to be the head of the Koordinierungsstelle and asked me to take part in this new project. I got the impression that Prof. Eichwede was not amused by that and tried to obstruct the Koordinierungsstelle. Actually the two institutions were complimentary twins: one institution researching the looting of cultural goods by the Germans in former Soviet Russia, the other researching the looting of cultural goods by the Soviets in Germany after WWII. The political reason why these institutions were located in Bremen was that the Kunsthalle Bremen had suffered severe losses of their collection by the Soviets. At that time the Kunsthalle Bremen knew precisely where parts of their collection were and tried to get them restituted from Russia.

[*Clarification of the research conducted by the Forschungsstelle Osteuropa was provided August 18, 2016 by Dr Heuß:* It was very well known that a great part of [the Bremen Kunsthalle's] losses of works of art, especially drawings, were in depots in Russia and Ukraine. So there were political interests in Bremen to get in contact with Russian authorities behind the scenes. The Forschungsstelle Osteuropa Bremen was, of course, such a link. Prof. Eichwede once told me that he could convince the municipal authorities of Bremen of the fact that Bremen – as part of Germany – couldn't ask for restitution (for moral reasons, because Germany had been the aggressor), if they didn't offer to conduct research on the Soviet-Russian losses as a return favour. So the project of the Soviet-Russian losses was founded at the Forschungsstelle Osteuropa Bremen as a political signal with the aim to find Russian objects of art in Germany (and further on to exchange them for the Bremen losses). Prof. Eichwede didn't succeed, because

he couldn't find any significant works of art in Germany.]

**ASH:** How would you describe the mandate of the Bremen Koordinierungsstelle during your time working there?

**DH:** I was researching the losses of cultural goods from German museums, doing it partly by myself, partly asking the museums for lists. At the same time we tried to create a database for these losses.

**ASH:** How would you describe the efficacy of the Bremen Koordinierungsstelle? What are your major criticisms? What would you say were its greatest successes?

**DH:** My major criticism was that we took over the lists of losses without checking when and how the museums had acquired these works of art. I proposed this to Ms. Lemmermeier, but she wasn't interested. In my opinion she was afraid to risk the political support of the museums.

**ASH:** How would you describe the functions and operations of the Bremen Koordinierungsstelle during your time working there?

**DH:** Gathering or producing the lists of cultural losses of German museums or sometimes of German private owners

**ASH:** What, if any, would you say were the greatest hurdles to the Bremen Koordinierungsstelle's capacity to pursue the restitution of Holocaust-era looted art?

**DH:** I cannot answer this, because the Koordinierungsstelle engaged in Holocaust-era looted art after they had moved to Magdeburg in 1998. It was quite obvious though, that they put up their engagement in Holocaust-era assets at that moment when the negotiations about the restitution of German works of art out of Russia had come to a standstill.

**ASH:** How would you describe the resources (whether from the government, or donors, etc...; and in terms of money, facilities, personnel) that were made available to the Bremen Koordinierungsstelle during your time working there?

**DH:** At that time, part of the money came from the ministry of culture in Bremen; we also had our offices in this ministry. 10 federal states also paid for our work. As far as I remember, not all the federal states were willing to pay for the Koordinierungsstelle at that time. Naturally the states in the former DDR were more interested in the existence of this institution than the states in BRD, because the museums in the former DDR had suffered more cultural losses by the soviet trophy commissions.

**ASH:** Would you explain your position at the Bremen Koordinierungsstelle, and how your positions interacted (or did not interact) with other positions and/or departments within the Koordinierungsstelle?

**DH:** There were no departments. The Koordinierungsstelle engaged Ms. Doris Lemmermeier as head, Mr. Hansen and me as academic employees and one secretary. The cooperation was quite bad due to personal conflicts.

**ASH:** During your time with the Bremen Koordinierungsstelle, did the institution often collaborate with other parties within Germany in their operations (whether research facilities, universities, other government parties, museums, etc...)?

**DH:** There were continuously contacts with museums and other cultural institutions and the ministries of culture of the participating states.

**ASH:** How about collaborative efforts with international governments or institutions?

**DH:** We were in contact with international institutions, especially in the Netherlands, France, Belgium, and the USA. For example, we organized an international conference on looted art in Bremen in 1994 und vice versa visited an international conference named “Spoils of War” organized by the Commission for Art Recovery of the World Jewish Congress (Conny Lowenthal) in New York in January 1995. Together with our international partners we founded a newsletter in 1995 (also named “Spoils of War”), which was continued by Mr. Franz in Magdeburg for several years.

**ASH:** What was the state of art restitution, and perception towards art restitution in Germany before the Washington Conference? What about after?

**DH:** Before the Washington Conference the looting and restitution of art was a matter in the newspapers, but most museums were quite unwilling to retribute anything or even conduct research. Restitution of art was separated into two parts in Germany: In West-Germany the museums had the position that everything had been restituted or compensated after WWII. So they had the opinion that any “new claims” would be statute-barred. In East-Germany there was installed a new law after reunification, which made it possible to make claims referring to looted Holocaust art by private owners and also by the Jewish Claims Conference. Actually I have been working several years for the Jewish Claims Conference, visiting the museums and looking for looted art there. But this is another story...

**ASH:** Would you give me an overview of the events which led up to and surrounded the closing of the Bremen Koordinierungsstelle and its reopening in Magdeburg?

**DH:** There were several reasons. First there were political conflicts in Bremen between the Koordinierungsstelle and the Forschungsstelle Osteuropa. In my view Prof. Eichwede tried to attack the Koordinierungsstelle behind the scenes. The minister of culture was a former student of his, so I guess that he had some political influence. Then the supporter of this project in the ministry, Mr. Dieter Opper, died suddenly in 1997. He had been director of the Department of Culture of the Senate of Education, Science, Culture and Sports of the Free Hanseatic City of Bremen at the same time. On the other hand the federal state Sachsen-Anhalt made a lot of offers to the Koordinierungsstelle to move to Magdeburg. Anyway it was quite opportune for the Koordinierungsstelle to be situated in a state of the former DDR. So the Koordinierungsstelle

moved to Magdeburg in 1998. Ms. Lemmermeier refused to move to Magdeburg, the capital city of Sachsen-Anhalt. I had left already, the secretary couldn't move for familiar reasons, I think Mr. Hansen didn't move, too. So there was a total change in the staff of the institution. In Magdeburg the Koordinierungsstelle got a new head (Dr. Franz). The extension of the responsibilities happened some time later when it became clear that the Russian government refused any restitution of German cultural goods. Because I lost contact with the Koordinierungsstelle, I don't know the exact date of the "political turn", you should ask that [of] the Koordinierungsstelle.

**ASH:** In what ways would you say the American approach to restitution differs from the German approach to restitution currently?

**DH:** I heard from many American colleagues that they don't follow the Washington principles so literally as German museums do at the moment. Maybe the different traditions of law (public law vs. continental law) have [an] effect on the process.



## Appendix D

The following is an edited and cleaned transcript of an interview conducted with a German government official, 19 February 2016. The interviewee requested that his/her name, and the specific federal ministry where she/he is employed be removed from the transcript.

Key:

*Alyssa Stokvis-Hauer - ASH*

*Unnamed Official - UO*

**Alyssa Stokvis-Hauer(ASH):** Ok, so we can begin.

**Unnamed Official (UO):** Ok.

**ASH:** And again, thank you for agreeing to speak with me. So the first question just to get started off - so that I have more context - is: how did you come to be involved with art restitution here at the [German] Ministry?

[...]

**UO:** I first...wanted to stay in Schleswig-Holstein where I was first employed, because at that time I already had [...] children - small children - finally I didn't find the right job in that country, so I decided to try to...go to the upper class! [*both laugh*] And I had some talks here in the Ministry and finally I was accepted in May 2001 and there was a phase of six months where they saw whether I was able to work in the Ministry and they accepted me and then I became...how do you say in English...a[n officer].

[...]

**UO:** *Ja, ja...* So I have had my job for my whole life now in the Ministry and so I worked in very different fields, I started with the office of legal questions, because I'm... not a lawyer, but how do you say... I am a legal person?

**ASH:** Trained...with legal background

**UO:** *Ja*, so I was in this service for three years, and then the Director asked me if I could assist for the implementation of modernization of the administration, it was called 'controlling' but it was much more than that, because it was the idea of being more modern in the leadership and the way ... how to deal with the personnel. And that I did for five years and then... I changed for this subject where I work today, so I'm here... I think... 8 or 9 years now? With two years where I didn't work too much on it because I attended this master's program -- which is called Master of European Governance and Administration.

**ASH:** Ok.

**UO:** So that was the idea for Europeans to have officers who are able to communicate [*both laugh*] in Europe, in Brussels, and who know the other cultures... the administrative cultures of

the member states of the European Union. So that was not really related to the restitution of art objects. But, for the time being I'm still working in the field [...]

[...]

**ASH:** [...] So, when you say a *fonctionnaire d'échange* is this continuing modernization approaches and... --is this within restitution and provenance research or...--

**UO:** No, no.

**ASH:** More in administration?

**UO:** More in the modernization of the administration.

[...]

**ASH:** Interesting. So your path to this specific restitution related job wasn't always what you had planned, I guess?

**UO:** *Ja*.

**ASH:** Ok, very interesting!

**UO:** It was very interesting for me because it was a field where I had absolutely no knowledge when I started. I started in 2008.

**ASH:** Ok.

**UO:** And I think I'm quite an expert now [*both laugh*]. I have much experience, I have seen a lot. The first thing I had to do at that time, when I started, was the preparation of the Prague Conference on...

**ASH:** Ah, I was going to ask if you had been!

**UO:** *Ja*, and I was very much involved. I didn't go to Prague myself, but for the preparation I did a lot. I made suggestions, formulations... so... *Ja*, that was really my start! And after that I got a lot of experience with the different cases and the media, and what I saw was that it was really very important to have a talk, a good connection, with the media because if you do a good job and you don't talk about it, this will not be valued, this will not be recognized...

**ASH:** And transparency is always...

**UO:** [*unintelligible*] appreciated by the public. I saw that and I made a... *formation continue* [*both laugh*] for a couple of days, 'twas a week which was very good - we have always this possibility free of charge to have this further training in the Ministry - and so I took part in a training [program] on how to deal with the media and that helped me a lot because I saw ... there

were civil servants who were not at all experienced in working with the media and they didn't know how to deal with them... [laugh] and the representatives of the press didn't know that part of the Ministry. The training was really helpful because it gave an impression of how to formulate and how to deal with press relations. That's very important. So as I am in charge of the *surveillance* of the body who is really dealing with the cases. We don't read the cases ourselves, we just [oversee] [...] *Ja*, oversee what the body is doing, and so I always said: "if you have decided to retribute because you have found it was stolen from a Jewish person, please make a short notice for the press - for the media - telling what had happened and why you decided to retribute." And they did it and that helped really --

ASH: *Ja*.

UO: -- to have a different approach --

ASH: And communicate to the public what is going on--

UO: --[indistinct] exactly, of what is going on. Very important.

ASH: So, along with media relations obviously, do you mind describing for me what your position encapsulates, and what you do on a --

[...]

UO: We have in our service all questions which are related to -- the restitution of art objects, and we also have the overview of the art collection we own as a federal art collection of [this ministry's administration] and for a couple of years it was my duty to see that all the objects from the times of Hitler, who had been in the Central Collecting Point and who stayed there because it was not clear whom they belonged to - there were about 2300 objects which became the property of the Federal Republic of Germany - and it was the duty of that body I overviewed to see whether there were objects to be restituted to [...d]escendants of the Jewish owners. [...] So... that was my main task and then it was the preparation of the Terezin Declaration...the conference in Prague, and the other part was: if there were press demands or questions from the press, to give the necessary information to our press office.

ASH: Ok.

UO: because ...[laugh] My Ministry is an authority that has different department [...] It's... always important to know who is responsible for what, and so [...] It's normally the press who asks us for all the details on the case [...] Expert details.

ASH: So with this body are there many sub-departments? Or--

UO: *Ja*, we have I think ten--

ASH: Oh wow!

**UO:** --directions...*directions* [both laugh] I don't know the English expression!<sup>352</sup> And our *direction* -- is dealing a lot with what happened in the past, so they had first all questions about World War I, World War II, and later on - when there was the reunification of Germany - East and West - it started all again [both laugh]. Of course, a lot of questions, and especially the question of the restitution of objects which were stolen from the Jews was not dealt with in the times of ... the German Democratic Republic. And so, that made our Department quite big [both laugh] since there were a lot of questions to deal with and a lot of laws to be created...a lot of work to do, so...that's one part, and the other part of our Department deals with the relations in the Federal state, so the relation between the Republic and the --

**ASH:** *Länder*?

**UO:** -- *Länder* and the *Kommunen*...(laughs, pause)--

**ASH:** Which I imagine must be complicated because of the federalized nature of the government here?

**UO:** *Ja*, and that was also a problem. What we dealt with when I was attending my German-French program, was the Gurlitt case.

**ASH:** [emphatically] Yes! [both laugh]

**UO:** Because that was really tremendous...especially a lot of work for the *Beauftragter für Kultur und Medien*<sup>353</sup> but it was also important for us, because our Ministry is always involved if... [unintelligible, both laugh] there's some trouble... [both laugh] and so there we had a lot of work to do to see how to deal with this new case, and in fact it was *der Beauftragte für Kultur und Medien* who really handled the case...-- who spoke with Gurlitt and so on. That was not our task, but what is also now a topic to discuss is whether there should be new regulations or new aspects to be considered and, finally, it was also my Ministry who agreed to have the *Zentrum für Kulturgutverluste* founded [...].

**ASH:** I'm [...] wondering if you could explain to me -- because I know the *Zentrum* came into effect last year,<sup>354</sup> so it's very new, and what was the decision-making process and rationale behind deciding this was a better direction to go in?

**UO:** Yup, yup. The cause was really the Gurlitt case, because before we had the *Koordinierungsstelle für Kulturgutverluste* in Magdeburg. And that was an institution with a database, information system for those ...who [searching for their missing art.] [...] And those who had found something -- in their collection, something that could be an artwork which had to be restituted. Which is always...-- not an obligation, but for the Federal state and also for the *Länder*, we've agreed and it's -- certainly you know this *Gemeinsame Erklärung*.<sup>355</sup>

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<sup>352</sup> The French use of *directions* can be understood as departments.

<sup>353</sup> Department of Culture and Media

<sup>354</sup> 1 January, 2015 was the official date the *DZK* as a new institution came into effect.

<sup>355</sup> See Appendix B.

**ASH:** Yes! [*both laugh*]

**UO:** So, they have agreed that ...if it is clear and if it is found that some work of art was stolen in the times of the Nazi regime, and it belongs to a Jew, it will be restituted, or -- another fair and just solution will be found, because sometimes there is of course an interest of the museum to have this work of art in their collection, and then they pay money to... --

**ASH:** Permanent loan?

**UO:** --to find another solution - that depends also on the former owners and their descendants and what they want to do or if they want to have the object itself...it's very diverse -- there are some solutions, sometimes two for one - one is paid, two are left, there are different possibilities. I find it very good, because you are here in a field which is very sensitive, it's very difficult to deal with, a lot of emotions in it...it's not just [...] a question of money, but it's a question of "my family" and "the members of my family I lost in a concentration camp..." and things like that...and: "they had this work of art and now I have the possibility to get it back ..." There are a lot of questions which you cannot really deal with when you have just cold regulations. [...] It's much better to have these negotiations to see what are the interests and how you can better deal with what is really important for the other person, because sometimes it's really to say sorry; sometimes it's more important than other things, you see? Because you cannot make a person who died in the concentration camp, you cannot make him or her alive again, but you can say that I am deeply sorry for what happened...I cannot do anything, really, but at least I can say what is on my heart for these people. And so, I think it is very important to see each case and consider it very -- very deeply in the details. Always to see what happened, and it's always a bit different; it's not one case like the other.

[...]

**UO:** It was such a horror, what happened at that time, and that's why I think it was always a bit difficult...for me especially, I was always thinking: if I had lived at that time I would also have ended in a concentration camp. So... I feel a bit... the way somebody must have felt at that time and for me it was very difficult at the beginning, because my first case I had to deal with was a very small case from Bavaria, -- where the question - the legal question - was whether an object of art was the property of the *Deutsches Reich* - the German Reich - or it was the property of Adolf Hitler himself. [...] And so, I said: [*tone of fear/incredulity*] "What am I doing here? [*both laugh*] That doesn't interest me at all! If it's his own property, or the property of the German Reich!" Of course, it makes a difference from a legal point of view [...] but for me it was horrible, you know because...that's not a topic I want to deal with. But that was only this first case which...made me a bit nervous that I have to deal with Hitler - I didn't really want to. But, as for the other cases, -- you are always concerned...with this stuff, with what happened to the person. It's a life that comes out of the paper you read...it's a whole life and it's so-- it makes you so sorrowful...--

**ASH:** Emotional...

**UO:** *Ja*, you feel the tears in your eyes, because what you see - people who had lived integrated in Germany, Jewish people who were bankers, they loved art, they loved music, they collected their paintings, and they -- all of a sudden they were deprived of everything. That is just so...for our generation it is so unbelievable that things like that happened. I always said to my French colleagues, during my studies: I think...what created this horror was really that the Germans are always trying to be 100 percent perfect, and so even in this case, they created laws, they created regulations, they created everything to deprive and to destroy a person 100 percent. And that, for our generation was something ...we felt sorry for; we felt guilty for what our ancestors had done. And, so, I'm very vigilant to see that -- and our government also is always - more than other countries in Europe I think - aware of not starting such a period again, –

**ASH:** Yeah.

**UO:** So, I think we don't have these nationalist movements, like in France with Le Pen...We have a bit of it now...we have a bit...PEGIDA, a bit AfD.<sup>356</sup> But, they are not in the middle of this society, whereas Marine Le Pen is very much...heard. She is heard by the others, in the audience. I was very astonished when I was in Paris for two months during my studies, to hear that in a very decent radio program, at ten o'clock in the morning, there was an interview - one hour! - with Marine Le Pen [...] and I was very astonished, because I thought that could never happen in our country ...because normally we try to make these nationalist parties very small, and don't give them too much possibility to talk in the media, and so on. We even tried to forbid the existence of the NPD<sup>357</sup> so that it will not to be a party anymore - which unfortunately didn't work in the court. But, the feeling of the society that we should not go back to nationalism is very strong [...] and especially in the young generation of people, who travel all over Europe and travel to the United States or China or other countries, they don't feel so much nationalist, at least in our country. And so I hope that also in France [*laughs*] Le Pen will not be president --

[...]

**ASH:** [...] So you mentioned - along the same lines with the nationalism question - that your generation feels this guilt and responsibility --

**UO:** *Ja*, my generation, yes -- the generation of my children, they say that is all past, and "we have nothing to do with that."

**ASH:** Interesting.

**UO:** You know, they say: "we are citizens of the world, we are citizens of Europe, and sorry for what happened, but that's not our business."

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<sup>356</sup> PEGIDA stands for *Patriotische Europäer gegen die Islamisierung des Abendlandes* or Patriotic Europeans Against the Islamisation of the West, and is a far-right, nationalistic political movement founded in 2014 in Dresden, though which now has divisions in various European and North American locations; AfD is an acronym for *Alternative für Deutschland* or Alternative for Germany, a right-wing German political party founded in 2013 often associated with socially conservative policies, anti-immigration, and Euroscepticism.

<sup>357</sup> The *Nationaldemokratische Partei Deutschlands* (NPD) is a far-right, ultra-nationalistic German political party founded in 1964.

**ASH:** Interesting. So do you think in terms of the restitution question, that the efforts that have happened will continue as the new generation starts to [enter] the workforce, and starts to have higher positions?

**UO:** I don't know, because what I see at the moment is: any time somebody comes in a higher position, -- he or she has to be very cautious with all questions related to the life of the Jews. And it's quite forbidden for politicians in Germany to say something negative concerning the Israeli government or what they do with the Palestinians. And... I think if a young person of today will become minister or president or chancellor they will change to be cautious as well.

**ASH:** Interesting.

**UO:** I think, it will be like this also for the next generations, because I think in the Jewish families - wherever they are in the world - there is still this grief and mourning for what happened to their ancestors, and that will continue to be alive in the conscience, and -- we have also the *Zentralrat der Juden* in Deutschland, this organization who always is warning not to forget what happened, and I think that these institutions are very important for us, and future governments will always be open to discuss -- about Jewish topics, because it is not only what happened in the past, but what's done in the present [...] and -- we had the Israeli-German consultations just [...] two days ago I think. [...] so I think we will also in the future generations be aware of the questions which are important for the Israeli government, too.

**ASH:** *Ja*. So, with the-- we were talking about the institutions that will continue [...] with the switch over from there being the *Koordinierungsstelle*, which it sounded like was more database-focused, and then to the *Zentrum*: did the *Zentrum* also incorporate other institutions, or were there new ones created under its control?

**UO:** *Ja*, the idea of the foundation of the *Zentrum für Kulturgutverluste* was that seen from abroad -- the federalism in Germany was not a good idea [*laughs*].

**ASH:** Ok [*laughs*].

**UO:** Because there were too many different institutions, and nobody was really able to see who could be the main partner in Germany.

**ASH:** Right.

**UO:** The idea of the *Zentrum* was to say: "we create this centre for having one...one-stop-shop?" -- [*both laugh*]

**ASH:** *Ja!*

**UO:** for all questions which are related to the restitution of spoliated art works [...] Concerning the spoliation several topics were integrated in the *Zentrum*: It was the *Koordinierungsstelle für Kulturgutverluste*, the work that was done by the Taskforce Gurlitt - *Schwabinger Kunstfund*. This work's also done now at the *Zentrum*, and besides, another topic was integrated: there is

also research now on the art problems which occurred during the German Democratic Republic period, where German people left the German Democratic Republic, and were deprived of all their property [...] And so they are also looking for art objects. And that is not related to the Jewish questions. And yeah, provenance research is also a main topic of the *Zentrum für Kulturgutverluste*.

**ASH:** Which is expensive and time-consuming so--

[...]

**UO:** But that is very important to know that formerly the provenance research was partly financed by the *Arbeitsstelle für Provenienzforschung*, it was called, which was part of the *Stiftung Preußischer Kulturbesitz*--

**ASH:** Ok.

**UO:** And this is money the *Beauftragter für Kultur und Medien* gives for provenance research also to the *Länder* and *Kommunen* that have museums. And they started in the beginning with one million euro, and this is now up to six million euro.

**ASH:** Oh wow, ok. So it's gone up.

**UO:** *Ja*, for the provenance research, and so people can apply...for the money to--

**ASH:** And I assume that museums do so[unintelligible] --

**UO:** -- *Ja*, and that was really an incentive to make the *Länder* and *Kommunen* more willing to research, because they don't have the money to pay somebody to see if this work of art, which came to the museum in 1938 was spoliated. So, that is really very useful. It changed really a lot of the awareness and the conscience of the museums, and as they can now really do the research, they can be sure that it was not spoliated, or they can see "aha! This is an object which..." --

**ASH:** *Ja*.

**UO:** -- "formerly belonged to somebody who has a right to get it back." So - at least morally - the right to get it back. I think it's quite a good idea to have this all in one institution. And I'm very positive for this *Zentrum für Kulturgutverluste*. The people who worked already in the *Koordinierungsstelle* in Magdeburg are now employees of the *Zentrum für Kulturgutverluste*. I'm sure that this is really an institution with a lot of expertise.

[...]

**ASH:** [...] Was this question about looking into the art in museums, or even the art that was owned by the federal government as a result of spoliation during the Reich, was this a thing that was out in the public, or did this become more of an issue later on?



**UO:** In my childhood, I don't remember seeing any... advertising that this work of art was stolen... or deprived from a Jew or something like that... no. I think in school it was -- in my time - the last thing we learned. The Second World War was, I think, at the end of the history lessons...I went to school in the beginning of the seventies...I mean I was thirteen [*both laugh*] --

**ASH:** Right.

**UO:** -- in the beginning of the seventies. And at that time, we learned a lot about the Romans and the old Greek culture, and when it came to the First World War, it was not very pleasant and very short.

**ASH:** Ok.

**UO:** And so, there was no time left for the Second World War, so this was even shorter.

**ASH:** Ok.

**UO:** But that has changed a lot in the meanwhile, because my children - especially my youngest daughter, who has spent one year in America!

**ASH:** Ok!

**UO:** In a school in California said, "I am really fed up with all these Second World War stories." When she was in primary school, they started talking about the Second World War, and Hitler and the Nazi regime. She came to secondary school, they talked about the Second World War and the Nazi Regime. She came to America, they talked about the Second World War and the [...] Nazi regime. And she came back to Germany, in school: they talked again about the Second World War and the Nazi Regime. And she said, "I'm so fed up with that topic, I don't want to hear anything, I'm not interested! [*some laughter*] I've heard enough! That's really enough for me." So these are really two different worlds: --

**ASH:** *Ja.*

**UO:** Me, where people were very shy to talk about what happened in that period; and the generations today where a lot is explained about the period. And I think, it's really related to history and school. It's not related to art, because in art they do other things. They learn how to create advertisements, and things like that...so...there is no idea of restitution of artworks in school. But the period and what happened is a thing that is really very, very much dealt with in school. So, everybody knows it. And so, it sometimes can have an effect that I think is a bit dangerous, because as I said to my youngest daughter, who said, "I don't want to hear anything anymore," ...she isn't really concerned with the problem that still exists. [...] And, my second daughter who was in a school with a very good reputation in Berlin, an open-minded school, but there again there was so much talk about black and white --

**ASH:** Ok.

UO: -- Israeli are white, and Palestinians are black --

ASH: Interesting. Ok.

UO: That my daughter became very critical and said, “That’s not right, and it cannot be that the Israeli, if they kill the Palestinians, that they are always right, it cannot be.” And so, I tried to explain to her and said: “keep calm and... you know the Jewish and our history and...”, but she said, “No. I strongly believe that not every Israeli is right because he’s Israeli.” Which I can understand --

ASH: Yeah.

UO: -- It’s not necessarily that one person is always right.

ASH: Yeah.

UO: And so I think for the young generation it’s really a topic that they don’t consider to be of great importance for their life, because...--

ASH: It happened so long ago?

UO: It’s the past, it’s not what they have done, and if you do too much in school, I think ...-- It can have the effect that is negative. And so, I think it’s better to have this sort of remembrance that, for example: the *E.V.Z*<sup>358</sup> [...] the *Stiftung*<sup>359</sup> that was founded for the *Zwangsarbeiter*.<sup>360</sup> [...] That is the organization founded when the United States asked the German government to pay money for the *Zwangsarbeiter* [...] Forced labour during the Nazi period. And there was founded a *Stiftung* of 10 billion euro, I think...it’s quite a long time ago it was in the time of...Schröder [...] And, this *Stiftung* had this sum of 10 million D-Mark, maybe euro...I’m not sure. Five billion from the German government, and five billion from the companies who had made their profit with the work of the forced labour. [...] This organization had on one side the mission to find the persons who had done the forced labour, to give money to them, and they have a small part - which still exists now - where they give money to projects who deal with remembrance of the Holocaust. [...] And that is, I think, something which is very useful and if, for example instead of talking in school too much about World War II, if you take a group of young people and you go to visit a concentration camp in Munich or in Poland or somewhere else -- in that area...

ASH: It’s very powerful?

UO: *Ja*, that is much more powerful because it goes to your emotions. [...] When I was a student at the age of 23, I [visited] a concentration camp in Majdanek, [*unintelligible word*] in Poland, and they showed the old films - and they showed the film before, where you see the Jewish

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<sup>358</sup> *E.V.Z.: Erinnerung, Verantwortung und Zukunft*, translates to Remembrance, Responsibility, and the Future.

<sup>359</sup> Translation: foundation.

<sup>360</sup> Translation: forced labourers.

people who are still alive...they are very small and not in a good condition, but you see them alive. And then you go to the room, for example where the...*Ärzte? Les Médecins?*

**ASH:** Ah, *ja*: the doctors.

**UO:** *Ja*, the doctors. The doctors cut the dead body to take the gold ring out of the stomach, and things like that, you know? And you go to this room where all this happened, and then you go to this room where the gas shower was installed and things like that. Or you go to where they burnt the dead bodies, and so on. And this really gives you an impression that you don't forget for the whole of your life. And I really couldn't sleep anymore when I had seen this, and I think this is much better. It's much better to make people feel what happened, and not just say, "Ok, six million Jews were killed in..." That's just a figure, that's just a number.

**ASH:** It's too abstract?

**UO:** Very abstract, *ja*. I think it's very important -- to make the young generation feel what happened. Then I'm sure they will never do such things again. Never do -- Everything they can do to avoid political movements of that kind.

[...]

**ASH:** [...] I just have one more question --

**UO:** Ok.

**ASH:** -- because I think we are running out of time. I was wondering - I don't know how familiar you are with American restitution, or if you've worked with any American institutions in your time with the Ministry - but if you would be willing to speak about what you think the differences are between the German -- either culturally or practically on the ground?

**UO:** Concerning the United States restitution, I don't have so much experience. I saw a bit that the lawyers also had difficulties...

**ASH:** American lawyers?

**UO:** American lawyers, to ask for restitution, because the time that has past made that...there's no right to have a litigation to get things back. And, what I like about America is that I have the idea - perhaps it's a prejudice - but I have the idea that they are more on the idea of negotiating, because the right is more based on case law, and so on real events, not so much on rules and regulations like our law. So if in Germany you don't have a written law on a topic, you are a bit lost, because Germans are not so much used to negotiating. [...] What I saw in the United States is that, also in court, it's often the judge who says, "Have you had a mediation before?" [...] So, the idea is that the people who have problems should first discuss with each other and try to find a solution. If they cannot at all find the solution, then the judge must say what is wrong and right. And that, I think, is a good idea. And, concerning art, we have the Limbach Commission and there we have this idea that only if the two parties are really willing to discuss, then you can go

to the *Beratende Kommission*.<sup>361</sup> If one of the parties doesn't want it, there is no way to the *Beratende Kommission*. So that's also a bit the idea of negotiating, but it's different from the American system because the judge can really force a bit the people to negotiate, whereas here you are free to negotiate or not. [...] But I think in this field it is really good to have the possibility to talk with each other. Whereas normally in Germany, you often have people who say, "I'm right. I go with my lawyer to court." And so this *marge de manoeuvre*<sup>362</sup> is missing. And I hope that in the United States there are more cases of restitution which can be solved by negotiating.

**ASH:** Yeah.

**UO:** But I have no experience.

**ASH:** Ok.

**UO:** Because we are, here, focused on Europe.

[...]

**ASH:** [...] What would you say has been the biggest change - and it can be positive or negative - but what would be the biggest change over the course of time of you working within this specific field?

**UO:** There are two things: one is that I think the first conference on Holocaust-era assets in Washington --

**ASH:** Mm, in '98.

**UO:** In '98, was very positive for the restitution of art because people became more aware of what must be done to find a solution, especially in Germany. I think that helped a lot. And what I find difficult for the future is - but this is a bit ambivalent - is that on one side you have 70 years, 80 years which passed and in some aspects it's more difficult to research the details of what happened. But on the other side, I'm a bit optimistic because the opening of archives and a lot of new databases...

**ASH:** Digitization is --

**UO:** *Ja*, computerization of information in this field can also help [...] to research and lead to more successful research, and the re-opening of cases. Last year this new information helped us

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<sup>361</sup> This translates to Advisory Commission, part of the formal name of the Limbach Commission (see pages 29-30, and footnotes 124 and 126).

*"Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz"* or "Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property."

<sup>362</sup> In French, "room to negotiate," "leeway," or "flexibility."

to find a different decision because we found out it was really Nazi looted art, and then we restituted the art work, which we couldn't do before.

**ASH:** Right.

**UO:** So, it can help, but it can also happen - when time passes - that some information can never be found.

**ASH:** Yeah.

**UO:** And so, yeah: I am confident but not too optimistic. [*both laugh*]

[...]

## Appendix E

The following is an edited and cleaned transcript of an interview conducted with Dr. Michael Franz, former Director of the *Koordinierungsstelle* Magdeburg & Head of the Department for General and Administrative Matters at the *Deutsches Zentrum Kulturgutverluste* (DZK), at the DZK offices in Magdeburg, 24 February, 2016.

Key:

*Alyssa Stokvis-Hauer* - ASH

*Dr. Michael Franz* - MF

[...]

**ASH:** Ok! So the first question is: if you wouldn't mind, could you tell me how you came to be involved working for the *Koordinierungsstelle*.

**MF:** Yes...It's a question with regard to my profession. I studied law at the University of Giessen and at the beginning of the 1990s the topic of the so-called 'trophy art' became a very famous topic. It was in the beginning of the 1990s, then it became clear that a lot of German cultural objects were not destroyed, but located in the Soviet Union - Russia - and against this background, I made some parts on my doctoral thesis with regard to the questions concerning German civil law with regard to cultural property, the theft of cultural property, the good faith acquisition, and that's one of the reason I thought that this field was very interesting, and against this background then, since 1999, I worked as Director of the *Koordinierungsstelle*. Perhaps it's helpful for you that I have prepared for you some information--

**ASH:** Oh! Wonderful.

**MF:** -- To see the scheme of the development from the *Koordinierungsstelle* from 1994 to 2015, one has to say, since starting with January last year, the *Deutsches Zentrum Kulturgutverluste* also absorbed the *Koordinierungsstelle* in its corporation, and that's the reason also why the *Deutsches Zentrum Kulturgutverluste* is located at Magdeburg. So, as you can see, when we started, it also refers to some of your further questions, in 1994 at Bremen, we had only one task: it was the documentation of the trophy losses from public institutions. For example, from museums, archives, libraries, and against this background this was the start by 9 *Länder* - Germany - it would be the federal states. I don't know if you are familiar with the difference between the federal state and the federal government.

**ASH:** Yes.

**MF:** The key expression is, so-called, *Kulturföderalismus*, which means that there are 16 federal states, each of these 16 states is independent with regard to its decisions concerning, for example, school politics or cultural politics and against this background nine of these states formed the so-called *Koordinierungsstelle der Länder für die Rückführung von Kulturgütern*, the first form of the *Koordinierungsstelle*. In 1998, a second task came to the *Koordinierungsstelle*: it's the documentation of the private losses. For example, Siemens or Thyssen, the collections which are

located until today in Russia, and this was the second task for the *Koordinierungsstelle*, and starting in 1998 all 16 federal states became so called *Träger*, which means carrier of the *Koordinierungsstelle*, and after this then, with regard to the Washington Principles as well the German Declaration, further tasks came to the *Koordinierungsstelle* with regard to documentation of the looted art, which are the objects which have been seized, for example from former Jewish citizens between 1933 and 1945, and then we also started the Lost Art Database, as well as served since then as the administrative office for the so-called *Beratende Kommission*,<sup>363</sup> which is some kind of institution which gives recommendations in cases of looted art if both parties wish this. For example, perhaps you are familiar with the case of the so-called *Welfenschatz*<sup>364</sup> which is today at trial in Washington, and this -- beginning in 2001 was the mandate of the *Koordinierungsstelle* together with the Federal government, the so-called *Bund*. And, as you see in the following years we had further tasks: the so-called public relations work; support for federal government and the federal states; we realized during the time of the *Koordinierungsstelle* nine volumes in our literature series and I've allowed myself to give to you one of the volumes --

**ASH:** Oh, thank you!

**MF:** Called *Die Verantwortung dauert an*.<sup>365</sup> You'll find some examples on how German institutions deal with the questions of looted art and if you are interested you see there are the other nine -- eight volumes[...]

[...]

**MF:** Well, with regard to the time starting in 2010, we had another completely different task by the federal government and the federal states, it's the website *Kulturgutschutz-deutschland.de*, and this is something completely different from looted art and trophy art because the website summarizes and illustrates the so-called national treasure objects. It's in Germany, *National wertvolles Kulturgut* which means that, for example, famous objects from specific cities or states have been compiled by each single of the 16 federal states, have been put in a website. It's very interesting to see because something -- someone might think that these are only famous objects, but they aren't. They are very small items sometimes, sometimes only some books or some archival records, and it's very interesting to check through the website, also with regard to the fact that it is not possible if something is registered to the website to export it abroad, which means you can only trade with these objects within the frontiers of Germany, and this was our former, or last, period from 2010 - originally planned to 2016 - but then came the Gurlitt case in 2013. And this was some kind of starting for the idea on the *Deutsches Zentrum Kulturgutverluste*, in which all activities in Germany concerning looted art, trophy art, cultural property, and the loss of cultural property has been combined into one institution. And against this background, I served from 1999 to 2014 as Director of the *Koordinierungsstelle*. Since 2015, as the - as you see - the responsible person for *Grundsatzfragen*, which can be translated as basic matters concerning the *Stiftung*, as well as administrative matters, because I am a lawyer, and against this background it's a very nice job. (*laughs*)

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<sup>363</sup> The Advisory Commission, or the Limbach Commission (see pages 29-30, and footnotes 124 and 126).

<sup>364</sup> The *Welfenschatz* is commonly referred to as the Guelph Treasures in English.

<sup>365</sup> Translation: *The Responsibility Continues*.

[...]

**ASH:** [...] So you said the Gurlitt case [...] Sort of set off this initiative that things had to be brought together, that there needed to be--

**MF:** Yes

**ASH:** -- So was this a decision that came from the *Länder* or was it the *Bund*, or was it a cooperative movement?

**MF:** Cooperative movement. We have -- we had the situation that, as you know, Gurlitt lived in the area of the city of Munich, concerning his collection also it became -- also via the media, great interest to publish the information, that's also the reason we put the items, some of the items, nearly 500 on the Lost Art website. But, with regard to the so-called *Kulturföderalismus* it was very important to realize some kind of common initiative between federal government and the federal states, and also so-called *Kommunale Spitzenverband* which means, the municipalities. I think some can translate it; it's *Landkreis*, the *Städtekreis*, or *Gemeindeverband*.<sup>366</sup> These are the institutions on the level under the government and under the federal states level. That's also the reason why, for example, the Common Declaration, *Gemeinsame Erklärung*, or the *Beratende Kommission* all initiatives from these three institutions. And against this background, also with regard to the *Deutsches Zentrum*, it's also -- it was an initiative for all three institutions together.

**ASH:** Ok, so collaborative--

**MF:** Yes, indeed.

[...]

**ASH:** [...W]hat would you say are the greatest strengths or successes that the *Koordinierungsstelle* had during its time?

**MF:** Yes. This is a very important question, especially against the background of the Gurlitt case as well as the Washington Principles, which state in the number 6 of the Washington Principles, the effort to provide transparency. And the Lost Art Database was, and is until today, the main German international database to provide this kind of transparency which means you have the possibility to put information for example on search items, but also on found items with provenance gaps into the Lost Art Database and this is the first step for every step which follows. Which means, for example, provenance research, or to check what kind of collection has been documented on the Lost Art website, everything builds on this transparency, and against this background it is also one of our main key works, during the time of the *Koordinierungsstelle* it

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<sup>366</sup> *Kommunale Spitzenverband* can be translated to Head Local (or Municipal) Association: an umbrella organization that is part of the German federal government system, and is comprised of the German Association of Cities (*Städtekreis* or officially “*Deutscher Städtetag*”); the German Association of Counties (*Landkreis Verband* or officially “*Deutscher Landkreistag*”); and The German Association of Towns and Municipalities (*Gemeindeverband* or officially “*Deutscher Städte- und Gemeindebund*”).



was one [of] our main key works to provide transparency, service, and documentation. These are the three pillars on which the *Koordinierungsstelle* worked and on which it provided starting with the books, and conferences, and checklists, and individual talks, workshops, *et cetera* to build some kind of information centre for those who are interested to get information in the field of looted, but also in the field of trophy art, which is - in Germany - it's the so-called *Beutekunst*. *Schatz des Priamos*<sup>367</sup> for example, or the Gutenberg Bible, which are located until today in Russia, but which is very often confused because there is no legal definition; what is trophy art and what is looted art, and against this background you find very often articles for example in which it is described in the headline "Looted Art" but if you're going to read it and you see that it is indeed, it is trophy art. But this is only one of the specifics of the field, which is based on very highly political initiatives on one hand, but which for example in Germany, has not any laws; it is always based on the Washington Principles, or the *Gemeinsame Erklärung*, but both declarations are legally non-binding, which means that it is some kind of moral, ethical base on which we are working, and against this background it is some kind of offer we gave with the *Koordinierungsstelle* and we give today with the *Zentrum*.

**ASH:** Which I find really interesting. And to go back to what you said about how in the 90s when you were doing your doctoral thesis [...] It sort of came to your attention. Would say that movement towards moral and ethical pursuits, versus having to have a law that binds it was something that started to come more to attention in the 90s?

**MF:** Well... at the beginning of the 90s, the topic of trophy art, with *Beutekunst* objects located in Russia, became very familiar also to the media, for example--

**ASH:** Yeah.

**MF:** -- Also, through the exhibition in Moscow or St. Petersburg, against this background starting with the Washington Conference in 1998, the topic of looted art then became more and more also some kind of media topic, but also with regard to the scientific level. Germany, for example, we have some institutions, one of them is the *Arbeitskreis Provenienzforschung*, which is some kind of provenance research institution, some years ago only with a few members and today it has a lot of different persons involved in the activities of the *Arbeitskreis*, but this shows how much the topic of looted art, became more and more important. The *Koordinierungsstelle* itself was only, for each of this period, limited: carried by the federal government and the federal states, for example. This was the period from 1994-1997. Then there came another period from 1998-2000, from 2000, and so on. And against this background, it always was important for us to see how the developments on these matters -- not only on the media level, but also on the scientific and ethical level, to be followed. It is sometimes interesting to see, if you are going to discuss the topic, for example with a lawyer or with a scientist or with a philosopher as well, that you can discuss it on several levels, and each of these levels is independent, which means that, for example, if you are going to talk to a lawyer, then he is going to tell you a lot about restitution possibilities today or the question of, for example, statutes of limitation; in Germany, it is called *Verjährung*. But if you are going to talk to a philosopher or to, for example, a scientist, they have completely [an]other approach on this level, on this topic. Which means that you can discuss this from several aspects, and you have always the impression that they are

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<sup>367</sup> Translation: Priam's Treasure.

specific aspects which are more important in these levels, as in, for example, if you're going to look [at] it for other levels, then this regard to other aspects. It's very interesting also to see, in case of a discussion on a philosophical level, for example the work of the *Beratende Kommission* is very important because the Advisory Commission gives recommendations, which are legally non-binding, and that's the reason why, for example, in the case of the *Welfenschatz* - the Guelph Treasure - the Commission gave the recommendation not to return it to the owners and as a consequence, the civil trial started then in Washington.

**ASH:** So, on the other hand, what do you think have been the greatest hurdles for the *Koordinierungsstelle*?

**MF:** I would not say that these are hurdles, but I think that with regard to the developments during the years, I always understood it as some kind of challenge, which means to deal with new tasks, to deal also with new aspects, and you can see it on this paper, that with the years nearly automatically new tasks became clear. For example, with regard to the trophy art and to the looted objects, in difference to the trophy art objects, or when the Advisory Commission has been established, or the Lost Art Database has been set online. At the beginning of the 1990s, the internet was no topic at all, and against this background, they -- the institutions for example, made -- realized a lot of catalogues on their losses which was very complicated to modify or to add additional information into the catalogues, and since some ha[ve] the possibility also to put a database online, of course they used it, and against this background until today the Lost Art Database grows over the years steadily, which means that, for example, today you have at the Lost Art Database entries from more than 1400 institutions and persons nationally and internationally, and they have described about 150 000 objects in detail, which means artist, or topic, or title, and millions of objects which are only described in a summarized way, for example "one shelf of books" or "one box of archival records" but they are not described in detail, and we see today also that -- also with regards to the provenance research, and the efforts of the scientists in the field, also the database develops continuously, there is no stop on a specific point, but with regard to further activities in the field of science as well in the field of the provenance research, also the results were put on the Lost Art Database then.

**ASH:** Ok. So just to clarify for me, because you have so very many different projects that are being carried out, so there is this office here,<sup>368</sup> and within this office what are the different positions or sectors? Is it divided up by each of these you've laid out here<sup>369</sup> or is it more holistic?

**MF:** No, the *Koordinierungsstelle* is one of two institutions which have been gathered by the *Deutsches Zentrum Kulturgutverluste*. I don't know...have you seen our *Organigramm*, our scheme on the website?

**ASH:** Yes, I have.

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<sup>368</sup> By "this office" I am referring to the house in Magdeburg where the interview took place, and out of which the *Deutsches Zentrum Kulturgutverluste* currently operates.

<sup>369</sup> Referring to paper copy of the *Koordinierungsstelle*'s developments along a timeline; unavailable for reproduction by request of Dr. Franz.

**MF:** Then you have a...(long pause)<sup>370</sup> It is easier to explain this...

**ASH:** Ok.

**MF:** We have within the *Deutsches Zentrum Kulturgutverluste* four departments, which is this [*Fachbereich Grundsatz und Verwaltung*] department - it's my department - then you have the Department of Provenance Research, so *Provenienzforschung*. You have the Department of Lost Art Documentation, and you have the Department of Public Relations and these are the four departments in which different tasks are combined, and you see so-to-speak tasks of the former-*Arbeitsstelle für Provenienzforschung* it's this field [the *Fachbereich Provenienzforschung*], the former-*Koordinierungsstelle* is this field [the *Fachbereich Grundsatz und Verwaltung*] and this is some kind of completely new office [the *Fachbereich Kommunikation und Öffentlichkeitsarbeit*], because the federal government and the federal states, it was very important for them that the results of our work are also communicated via the media. Against this background, it's a new office and this *Fachbereich Kommunikation*. And as you also see there are bodies, such as *Stiftungsrat, Kuratorium, Förderbeirat*,<sup>371</sup> as well as the project Gurlitt, which is also one task of the *Zentrum*, but it is timely limited at the moment, until the end of this year.

[...]

**MF:** And, [on our website] you also find the *Satzung...Satzung* is the German term for statutes of the *Deutsches Zentrum*, and I also can send it to you in an English working translation if it is easier for you.<sup>372</sup>

[...]

**ASH:** [...] So would you mind describing to me the resources for funding, and the way that has worked perhaps from, maybe around 2001?

**MF:** Yeah, well the budget of the *Koordinierungsstelle* was exactly 500 000 euros, 250 000 from each the federal government and the federal states, and this much has then transferred also into the *Zentrum*, and additionally four million euro by the federal government with regard to the support of provenance research. So this is our budget until today, nearly 5 million euro and against this background, the main part of our budget goes into the support of the projects with regard to provenance research in different the institutions: museums, for example.

**ASH:** Ok, wonderful. And so in terms of...within institutions like museums, do you often collaborate with other institutions? And do they usually reach out to you to say: "we think we need to be doing some more research, or we have a collection of objects..." --

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<sup>370</sup> This elongated pause was due to the fact that Dr. Franz was retrieving a paper copy of the *Organigramm* or Organization Chart, which can be found on the *DZK* website, available at <http://www.kulturgutverluste.de/en/about-us/organisation-chart>.

<sup>371</sup> These words translate (in order): Foundation Board, Board of Trustees, Funding Committee

<sup>372</sup> This English translation of the *Zentrum*'s statutes is now available online through the *DZK* website, at <http://www.kulturgutverluste.de/en/about-us/statute>.

**MF:** Hmm, yeah.

**ASH:** How does that relationship...

**MF:** Well this is something very important for us, because with regard to our chance to support, for example the museums in their work on provenance research, it is also important for us to build some kind of network. Against this background, already the *Koordinierungsstelle* was part of a great network, for example in our Advisory Board, we had the *Stiftung Preußischer Kulturbesitz* this is the Prussian Heritage Foundation, or the *Staatlichen Kunstsammlung Dresden*<sup>373</sup> as well as the institutions of ICOM, or the *Deutscher Museumsbund*, which is the institutions for all German museums in Germany, and we continue this cooperation by also the so-called *Kuratorium* of the *Stiftung Deutsches Zentrum Kulturgutverluste* because it's very important for us to check our initiatives via those who are the ones who have to work then with the initiatives. Like some in the book and our conferences, or the relaunch of the LostArt website have been discussed with our institutions before, for example, something is going to realize, because it's very important for us that one is able then to work with our different kinds of service measures, and it wouldn't make any sense to make some ideas - wonderful thoughts - which are not then for the practical work available, And against this background it's some kind of test for the practical work. How someone is going to use, for example, the volume: is it useful for him to see the different aspects to check the different sources of knowledge also, and this is something which is very important for us with regard to the work of the *Zentrum*.

**ASH:** Ok. So, I wanted to jump back just for a second to when you began working as the Director. So that would have been right after the Washington Conference occurred. Were you at the Washington Conference?

**MF:** No.

**ASH:** Ok.

**MF:** It was a few days before I started on January 1, 1999, and Washington Conference was in December 1998, and against this background was only a few days...

**ASH:** Ok. Would you mind speaking to the Washington Conference in the sense of how it changed or facilitated things that were already happening in Germany, and just what the import of the Conference itself was on...

**MF:** Well, I think that the Washington Conference was very important, especially with regard to the fact that, as I said concerning for example the -- to provide transparency on one hand, but also to put the med-- to put the topic into the public awareness, and against this background as a consequence, not one year later, Germany has adopted the Washington Principles, with its own Common Declaration, so-called *Gemeinsame Erklärung*. In the *Gemeinsame Erklärung* you find at number three, also an internet database which was the start then, as it started to give this kind of transparency also to everyone, nationally and internationally, who's interested in information

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<sup>373</sup> State Art Collection of Dresden.

on looted art and on trophy art.<sup>374</sup> Against this background it was very important to start this whole process and until today, you also see that for example there are further declarations such as the Vilnius Declaration, or the Terezin Declaration, and the Washington Principles, which are only eleven principles, are still of very high importance today with regard to the essentials. In Germany you would say: “It’s some kind of essence” – *ratio*<sup>375</sup> – which are important also today, they have not changed in their meaning, and their willing to restitute and especially also with regard to the fact that it is a legally non-binding declaration, which means that it depends on the parties how to deal with the questions of looted art, and to find as it is written in the Washington Principles, some kind of fair and just solution, which is very, very difficult sometimes. The media, sometimes, only concentrates on “Restitution: yes or no?” but this is not the aim for me because with regard also to solutions, for example some kind of donation or loan or other possibilities, there is a very wide range of fair and just solutions. That’s the reason why we put on the LostArt website also some kind of small menu point called “Solutions,” to show to those who are interested, what kind of practical solutions can be summarized under the topic of fair and just solutions.

**ASH:** So does the *Zentrum* ever get involved with negotiations between parties, or is that--

**MF:** No, the centre itself is an independent, neutral institution, but with regard for example [to] the work as administrative office for the Advisory Commission, of course we make the offer to those who need some kind of recommendation, or look what can be done in a specific case, to also contact the Advisory Commission, to give also those parties not only financial support but also as some kind of support with regard to the, for example, Advisory Commission, but also to find some fair and just solution. This is also in our statutes, very clearly -- very explicit written that the Centre has also the task to support fair and just solution, although it cannot decide because as I said it’s a neutral institution; the parties themselves, they have to decide what kind of solution it is possible for them to choose then.

**ASH:** [...] Would you mind or would you be able to describe the way in which you think public or popular perception of the work at the *Koordinierungsstelle* and at the *Zentrum* is viewed in Germany? Because you were saying the media has gotten more focused on these things over time, and do you think that has trickled down to maybe more support for the *Zentrum*? Or are people not, perhaps, as aware of how complex issues are? [...]

**MF:** Yes, I think that with regard -- that’s also one of the reasons we have established this new department, *Kommunikation und Öffentlichkeitsarbeit*, but this is one important focus of our work, and perhaps you have seen we have realized already November last year [a] great conference, called *Herbstkonferenz*<sup>376</sup> at the Jewish Museum in Berlin, and it was visited very, very well by different kind of professions: lawyers; scientists; provenance researchers. And this is, until today, one of the reasons we also tried to communicate our offer as well as our initiatives via the media. Since Gurlitt, a lot of things have changed fundamentally, which means that for

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<sup>374</sup> See Appendix B.

<sup>375</sup> Translation: reason

<sup>376</sup> Translation: Autumn conference. The title of the conference was “*Neue Perspektiven der Provenienzforschung in Deutschland* – New Perspective on Provenance Research in Germany.”

example the Lost Art Database is now an internationally known database, as well it is some kind of database which is firmly connected with not only the task of the *Koordinierungsstelle* but also the *Zentrum* with regard to the documentation and the transparency aspect. And, as I said, especially with the Lost Art Database one always could check since November 2013 what kind of development took place concerning the Gurlitt art trove with nearly 500 objects registered, it is possible for everyone to check what kind of objects they are. And, this is one basic element in the topic of looted art and trophy art which you find, starting with the activities for example in 1994 when the idea of how to distribute information and how to publish information became very important issue[s], firstly via catalogues, then via the database Lost Art and we made also the experience to assist other institutions with this possibility. For example, there are also losses from the Ukraine which means on their territory museums, libraries have suffered a lot of losses due to World War II and we put also their losses on the Lost Art website. Therefore the Lost Art website does not only present losses from German institutions, or German persons, but also from international institutions, for example Ukrainian search items, or found items from Austria, and so this is going to build during the years some kind of database nationally and internationally to check, not only to check, but used by different kind of professions, for example the provenance researcher that check Lost Art with regard, for example, provenance gaps but are also interested in the topic of looted art or trophy art check the Lost Art Database to see what kind of information could be useful for them.

**ASH:** Yes, the Lost Art Database is such a -- it's amazing and expansive and I can't imagine what it must have been like to set something like that up.

**MF:** Yeah, it's as I say in other topics, very often, it's some kind of work which is ... hm, how to express this...which changes according to the circumstance, which means that the first version of the Lost Art Database, which went public in April 2000, was a completely other version than you see of the Lost Art database 16 years later. It's always interesting to see how -- that's also the reason why I said that it's very important for us to check with our institutions before something is going to go online for example or something is going to look, what kind of impression for example Lost Art will make to those who have to work with the database. And this is very interesting because as long as you are in such a complicated and difficult field, you [become] some kind of specialist, but on the other hand you have to put some kind -- a database as Lost Art, useful for every kind of... every group of user. In Germany we would say that it is some kind of *niedrigschwellig*<sup>377</sup> which means it is not a scientific database, for example from the "*Forschungsstelle Entartete Kunst*" or from other university's databases, but you have to keep in mind that everyone has to deal with the database, and everyone has to -- also has to find information he is looking for, and this is some real kind of challenge to modify the database, to make it accessible to everyone, starting in 2000, until today, 2016, and it changes continuously which means that we had a few years ago some time period in which it was important to put a lot of information in the database, every information you get, but also this changes, because today we make experience with regard to the connection of this information. It is important for someone to see, for example, from the famous art collections if there is one item located here, and the other item is located there, that there is some kind of combination of information, which is very interesting to see because the art collections are very often distributed over the whole

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<sup>377</sup> Direct translation is low threshold, but seems to connote something that is user-friendly, or widely accessible to different levels of experience/expertise.

world, and against this background it is very interesting for some kind of expert to see what fate an object has, or had with regard to, for example, institutions in the United States, or Max Stern project of course, as well as other institutions, for example in Western Europe. And this is really interesting.

[...]

**ASH:** [...]. You mentioned that you had visited the HCPO in the early days of when you were working here. Would you mind describing for me the different approaches to the way that you see it between Germany and the United States, let's say maybe earlier on when you first began when it was still the *Koordinierungsstelle*.

**MF:** *Ja*. We had a lot of contact during the last years, not only with the HCPO but also, for example, with other institutions. And--also an example is the Advisory Commission as you know, there are other European restitution committees, for example in the Netherlands, or in Great Britain, or in France, or in Austria, and we always, of course, have this specific history of Germany - keep in mind - also with regard to the institutions and initiatives in Germany which means that on one hand the cooperation for example, with of the HCPO or AAMD, the American Association of Museum Directors, or the Max Stern Project, or the CIVS<sup>378</sup> very important, but always -- but one always has to keep in mind that the mandates are not the same with regard, for example, to the *Deutsches Zentrum* on one hand, and the CIVS or the HCPO on the other hand. So, for example, the French committee also has the possibility to make some payments to the party, which is not possible for the *Beratende Kommission*, but what, irrespective of the differences between the institutions and committees and so on, is important is that there are also some kind of similar questions irrespective of the fact that they are different institutions and committees. For example, we had at the *Beratende Kommission* a few years ago, a case called *Graetz v. Berlin* and in this case, the heirs of Mr. Graetz asked for a painting located in the city of Berlin, and it was not possible for them to construct a provenance gap from 1935 to 1955, which means 20 years, a 20 year provenance gap, which is very unusual because they made a lot of efforts concerning provenance research, and they tried to check what happened during this period of time, but at the end it was not possible. And the Advisory Commission gave the recommendation to return the painting, and this problem of provenance gap, for example, is some kind of problem you have in different institutions nationally and abroad and according - from our point of view, it is very important to keep these contacts on an international cooperation in a firm way, which means that you are going to, for example with the meeting of the commissions, have some kind of information basis on which it is also possible to discuss these questions, because when some started with the topic in 1991 or 1992 he or she, I think, would very -- it would not [be easy] to imagine in 2016, still the topic of trophy art or looted art is such an important topic. This also, as I said, specifically for the German situation is very important since it's on one hand the historical past, on the other hand the case of Gurlitt serves as some kind of initiative for the *Zentrum* and to put all these different activities in Germany into one institution. So coming back to your question, I think that this kind of international cooperation is very important on one hand to see, on the other hand, what kind of questions for example with provenance gaps, but legal questions and questions on the level of research, or the possibility to

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<sup>378</sup> *Commission pour l'Indemnisation des Victimes de Spoliations* - France's restitution commission for the victims of Nazi spoliation.

support someone have to be discussed, still today. And this is some kind of interesting development, because not only as the scheme of the *Koordinierungsstelle* shows during the years more tasks came to the *Koordinierungsstelle*, also as the scheme of the *Zentrum* shows, that it is very detailed for example, I don't know if you are familiar with the topic of losses due to the former-GDR --

**ASH:** *Ja.*

**MF:** --or with regard to the possibility on, for example, human remains, which is also some kind of topic which became more and more important during the last years, but which is also something which is on a legal level as well as on a historical and on a scientific level very complicated.

**ASH:** Yes. And, I would also say there's - and correct me if I am interpreting it wrong - the more that these question are considered, the more lines [of questioning] begin to appear, and it expands.

**MF:** Yes, indeed. Yes.

**ASH:** Ok. So you mentioned briefly the specificity of German history playing into the role that Germany takes in pursuing either the return of looted art or research on trophy art, would you say that creates a difference in the initiatives that are pursued and perhaps the importance of institutions like the *Koordinierungsstelle* as opposed to other countries?

**MF:** Well with regard to the German specifics: yes, of course. I think that it is very important also to keep in mind the historical background, that's something I also told and am going to tell my colleagues, that it is a very special task we are dealing with, that it is firmly connected with the German history, and with the mandate of the-- in Germany you would say *Wiedergutmachung*,<sup>379</sup> which is one of the reasons over which the *Zentrum* has established. But, on the other hand, it - I think - would be very difficult to make some kind of comparison on one hand between German institutions, on the other hand European institutions, because the mandates are specific and against this background, for us very important to look for the possibilities of cooperation, but also always have to keep in mind that it is, of course, a specific German task we are dealing with on one hand, and as I said, the idea of the *Zentrum* has been established after Gurlitt at the beginning of 2014, and only within a few months which is very unusual in regard to the different players in the field - the federal government, the 16 federal states, the municipalities - it was possible to realize some kind of institutions in the form of the *Zentrum* and which started then its work on January first last year, which is very, very fast. Which also means that, of course with regard to the colleagues and the possibilities to work in such a foundation, ideas to continue the former cooperations of the former-*Koordinierungsstelle* and the former-*Arbeitsstelle*, you need to have a foundation which is, which gives some kind of new impressions for someone who does not know, who doesn't know the former institutions then. In a few years the *Koordinierungsstelle* as well as the *Arbeitsstelle* will be forgotten, which is also absolutely fine because we are looking into the future, and we have our mandate and as

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<sup>379</sup> This translates approximately as "to make right again," and is the term used to describe the reparations and restitution payments made from the German government to survivors of the Holocaust.



you see, it is also with regard to specific new aspects, for example the GDR questions, or the public relations. These are new tasks, so when someone can say you can put these schemes exactly in this form, so that you can see that it is some kind of development [...] starting with the *Koordinierungsstelle* into the Centre, with a new approach, which is not timely limited. In Germany there is a saying that institutions such as a foundation, they have some kind of *Ewigkeitsgarantie*<sup>380</sup> which means that they last forever, huh? (*both laugh*) Which is a very long time!

[...]

**ASH:** [...G]oing back to the Washington Conference and Principles, how would you say, or sort of describe the leadership...or maybe it's better described as collaboration of coming to these principles, but it was hosted in the United States. I'm always very curious to know sort of how the ball got rolling with the conference, and the way in which it coalesced together with all these countries coming to talk on this subject.

**MF:** I think that I have to disappoint you with regard to the fact--

**ASH:** That's ok.

**MF:** -- That I started my job as director on January 1, 1999 and I was not involved in the preparation or the realization of the Washington Conference. But only a few weeks after I started we had offered to press talks, and the federal government, and the federal states with regard to the so-called *Gemeinsame Erklärung*, which as I said they transferred the principles of the Washington Principles into the German Declaration, but I was not involved in the preparation or the ...the Washington Conference itself.

**ASH:** Ok. I wasn't sure if maybe you had heard or...

**MF:** Well, of course the...Germany was present at the Conference, and one very specific aspect until today, not only with regard to the German position, but also with—no, the Washington Principles but also the Principles which followed after this, was that they are legally non-binding, which means that the parties have to decide how to deal with the matter on some kind of fair and just solution way which, as is the cases of the *Welfenschatz* or the poster collection of Hans Sachs, very clearly show some kind of difficult way, because in the case of the *Welfenschatz* or the poster collection of Hans Sachs the recommendations of the Advisory Commission and the party which was not satisfied by the recommendation then went to court. And against this background, as I said, it's some kind of multi-level topic, especially with regard to looted art and until today I have not found a way which combines all these different aspects into one solution so to speak, because there are too many different... targets, and too many different interests also to combine, but this is ok because it's familiar...-- it's clear for everyone who is going to deal with the topic that of course, you can check it on the legal level and you have some kind of result. You can check it on a scientific level, and have some kind of results; it's a little bit difficult when you are going to discuss the questions on a moral ethical level, which means that the difficulty of such a discussion, whether the reason therefore is that every one of us has

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<sup>380</sup> Translation: eternal guarantee

different ethical approaches, and against this background it is also for some kind of -- for the Advisory Commission which is going to find recommendations on a moral ethical level, also a difficult task to find something like this then with regard to a fair and just solution. But, I don-- I'm not sure for example with regard to the actual initiatives in Germany concerning the restitution of looted, how it's going to develop in the next months or years, but this is something I also made -- I made very, very often the experience that for example, with regard to the German civil law, it is very, very difficult for some kind of international audience, or some kind of listener from the United States or Great Britain, it's very difficult for them to understand that in German civil law it is possible to acquire new ownership, also on looted and trophy art, via a public auction. It's in the so-called *Bürgerliches Gesetzbuch*<sup>381</sup> which is written in paragraphs 929 and following, that it is possible to get new ownership also on stolen objects, and I made this clear a few years ago during some conference in Manchester when I made a presentation on our tasks and one of the colleagues stood up and asked me: "it can't be possible!" (*Alyssa laughs*) with regard to the looted art and trophy, and I tried to explain to him that since the *Bürgerliches Gesetzbuch* has been written in 1899, the idea of the authors of the *Bürgerliches Gesetzbuch* was to find some kind of clearance, which means that more than 100 years ago, for example, if you are going to sell cattle or something like that on a public market, no farmer has to fear that there is something wrong for example with the cattle, and against this background it was possible, by a public institution and public auctions, also to get new ownership on some stolen items. It's very complicated, some very specific German regulation in the civil - the German civil code, but that's also one of the reasons why it's nearly not possible to get, for example, looted objects or trophy art objects before German courts. "Statute of limitations": this is something you always hear that, with regard to the so-called *Verjährung*, more than -- it's the German term for statute of limitations - that it is not possible to get anything from someone 30 years after the seizure for example, or the sale has taken place. Which of course in the cases of looted art and trophy art started then in 1975 and the following years, of course.

**ASH:** So, has there ever been a push to change this law that was written in 1899, or has it more been understood that there are other methods to deal with looted art and trophy art, that don't necessarily need to take it to court and --

**MF:** Yeah.

**ASH:** --so there's no need--

**MF:** Yeah.

**ASH:** Ok.

**MF:** That's exactly -- you are absolutely right. That's the *ratio* -- the essence of the Washington Principles and the German Declaration, to find, as I said, some kind of fair and just solutions. It is not described what a fair and just solution can be, but there are numerous possibilities, starting with restitution, loan, and donation and something like that. But it's the basic idea to...to get the

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<sup>381</sup> The *Bürgerliches Gesetzbuch* is the German civil code, which was drafted and developed in the 1880s, passed by the Reichstag in 1896, and came into effect in 1900. It has inspired multiple other state civil codes, for example in Latvia, South Korea, and Greece.

parties into the position that they find their solution together, and not via court and trials which went over the years. This is one, until today, it is one of the basic ideas also for the Advisory Commission.

**ASH:** Hm, Ok. So with the Common Declaration you were saying that came out of - obviously - the Washington Conference Principles. What are - I have read it before, but I can't recall it as well as I'm sure you can - what were the main differences, or were there things that were gone into with more specificity in the Common Declaration as opposed to the Washington Conference Principles?

**MF:** One example -- this for example -- this.... Is how to provide transparency, and why - in the Washington principles, number six, there is only very shortly written some kind of transparency has to be provided by internet database, and in number three of the German Declaration it is described in a more detailed way, which means that you are going -- if you check the German Declaration, there is for example a search list in which everyone can put his objects into it and then there's a list of found reports. These are objects with provenance gaps and some kind of virtual mark place on information which the whole website mean -- with which, you know, the whole websites means. And this is one example which shows, also with regard to the Lost Art Database, that there are some differences, although...no, differences is not the exact term...additional! Additional ideas and thoughts and regulations by the federal government in comparison to the Washington Principles, because Germany also adopted the Principles, the Washington Principles, and they put it into the German Declaration, and they put these two declarations together and one does not exclude the other one.

[...]

## Appendix F

The following is an edited and cleaned transcript of an interview conducted with Anna B. Rubin, esq., director of the Holocaust Claims Processing Office at the New York State Department of Financial Services, in New York on 4 May, 2016.

Key:

*Alyssa Stokvis-Hauer - ASH*

*Anna B. Rubin, esq. - ABR*

**Alyssa Stokvis-Hauer(ASH):** Ok so, the first question is pretty generic and basic: how did you come to be interested in this field of work, and sort of how di-... what was your path to coming to the HCPO?

**Anna B. Rubin (ABR):** I have a BA in History, and a law degree (*both laugh*) that in retrospect I probably would not have.

**ASH:** Ok.

**ABR:** But, I have it and so be it. And I- when I finished law school I worked for a small non-profit organization that worked in Jewish education and I was just...I outgrew it, it was time to move on, looked for a new job, found the HCPO, applied, and here I am! [...] I've been here since...August 2001.

[...]

**ASH:** So restitution wasn't really something you --

**ABR:** It was nowhere near my radar screen --

**ASH:** Ok.

**ABR:** -- Whatsoever. What my goal was, was to do something kind of humanitarian, like service, save the world type work. I found the HCPO, I loved the mission of it, its goals, and I was like: "wow I can really see myself doing something here." It really played into my history knowledge, more than my legal knowledge because we don't litigate. The law has no real part of how we handle the claim; certainly we are aware of the law and knowledge of the law but it's not something... like we don't write briefs, and we don't do anything court oriented, and so this really played into my inner historian more than my lawyer. And my knowledge of history and historical research plays a greater part in it. And so, having come to the realization post-law school that law school probably wasn't the best direction for my career... [...] This really appealed to me as a, you know, historian. And so, I just...loved it! Got here, started working, and really loved it even more.

**ASH:** Out of curiosity, with your history background, was it sort of more World War II?

**ABR:** Yes. [...] My focus on history, I took like every conceivable class that covered anything in the world between 1890 and 1950. [...] So, this is like my general area... covers my general area of knowledge.

**ASH:** Ok. That's perfect.

**ABR:** Yeah! It's like: "wow! It's an excuse to use my history degree!" (*laughing*)

**ASH:** "When does that happen!" (*also laughing*)

**ABR:** There's few jobs where there's a practical application for a history degree. [...] So, uh it was very exciting to found (*sic*) this office and... fell in love with the people working here, the mission, the claimants most of all, and...yeah.

**ASH:** So you talked about the mission, would you be able to just sort of state, in your own words I guess, what the mandate or mission of the HCPO is?

**ABR:** Um...very simply put: we handle claims for assets lost because of Nazi persecution and our focus is on bank accounts, insurance policies, and works of art. For people who have existing claims with us, we assist them with other material loss claims. So, when we're working on a French claim for looted art, if they happen to have other material losses, we're not going to... (*Ms. Rubin makes a motion as if to say "no" or "no more", Alyssa laughs with understanding in response*) Right?...we're not going to do everything but, so we do other -- you know we do handle other material losses as well. But, our mission is really those three prongs.

**ASH:** Ok, so within those three prongs I guess could you kind of outline the function of the HCPO in relation to the claimant and, once a claimant gets in contact with you -- or do you ever contact claimants? -- how does it go from there?

**ABR:** We don't solicit claims. It's just not part of our MO. Claimants generally contact us. There will be occasions where people will ask us to look for heirs, so a museum might contact us and say "hey, we've researched this as far as we can go, can you help us find the heirs today?" And we'll do that.

**ASH:** Ok.

**ABR:** And we, you know, if they want us to reach out to the family we'll reach out to the family, or we'll just pass along the contact information and let the museum or the insurance company or whoever do the outreach to the individuals. [...] But we don't really solicit claims that way... And for all three instances we act as a facilitator and advocate for the claimant. So we will do research to help them shore up any claims that they might have or think they have, and then once we've determined if there is, we will approach whatever the entity may be, be it a bank or insurance company, some holder of artwork, and attempt to negotiate the restitution of whatever the asset might be. [...] And it's generally the same for all three -- our function. It doesn't really change much. The type of research we might do obviously will change, and where we'll look for information obviously will change, but underlying basic function is the same.

**ASH:** So in terms of the way you would go about handling a case, are there teams that get assigned individually to like each case that comes in, or...how is the office made up of different researchers, and director, and press office...?

**ABR:** Well, uh, we.... I'm a historian, Connie has a background in human rights - Connie is the deputy director.

**ASH:** Ok.

**ABR:** Rebecca, who is a claims' specialist has a background in Art History, and she has a law degree as well. And she has a Masters in Art History. Inna is a computer scientist, so she really helps us with our data. And Anna has a background in Jewish history -- there's another Anna (*both laugh*). And we kind of work collectively as a team; we all have our own cases that we pursue, but we all kind of collaborate. So, Rebecca will say "I need help with this" and, you know we've over the years all developed our little niches of [...e]xcellence and expertise, and so I've...I love looking for people. [...] I love the genealogy aspect of it, the hunt for the person! [...] And more and more stuff becomes available online, so it just feeds the inner genealogy beast. So if Rebecca needs help finding somebody, they'll come to me and ask because they know it's just like this obsession I have. But I need help with something art historical - I have zero knowledge of art --

**ASH:** Ok.

**ABR:** -- First protocol is Rebecca. So generally Rebecca handles all of our art claims. I do a few, but she really does like 95% of them. You know, we bounce ideas off each other. We'll collaborate on research and do things together, but in terms of pursuing it forward, Rebecca will take it or I will take it depending on the claim. Connie primarily focuses on French claims and German claims, and she does insurance claims as well. Anna is Czech, and so she does a lot of Czech and Polish claims. And so we've kind of divided up who does what based on our background and skills and general interests, though we all, I think, find them all interesting...Which is why we are all here! [...] There's no real kind of...team -- no sub teams -- There's only six people.

**ASH:** [...] I wasn't exactly sure how many people were here.

**ABR:** There's only six of us.

**ASH:** Ok.

**ABR:** To further divide us is a little --

**ASH:** Yeah, that would be --

**ABR:** -- Hard.

**ASH:** Yeah. So, you were talking about how you guys take international claims, and I was just wondering what the protocol is with that, in terms of, does there need to be any connection to the states in order for them to contact you? Or is it just wide-open?

**ABR:** Just wide-open.

**ASH:** Ok, that's amazing. So, with that I was wondering how funding works? Because, I'm assuming you are funded by the State of New York, but what other sort of resources are at your disposal? Do you have private, federal?

**ABR:** So we are technically not funded by the State of New York.

[...]

We are an agency of the State of New York, but the Department of Financial Services, the way the funding is sourced for this department as a whole, is through industry. So industry is assessed, banks and insurance companies are assessed, and there are various activities take place that fees are charged and whatnot, and so their fees pay for the Department, and we are part of the department. So we don't come from like taxpayer revenue.

**ASH:** Ok, interesting.

**ABR:** So yes we are funded by the state of New York but it's a little --

**ASH:** But in a different way

**ABR:** You know, it's not quite the State of New York. We are an agency of the State, and the fees get assessed and are paid to the State, but they are budgeted to us -- like tax payer revenue does not pay for us.

**ASH:** That is interesting.

[...]

**ASH:** Ok! So, what would you say are the greatest strengths or the successes of the HCPO's capacity to pursue restitution of art, specifically?

**ABR:** I think our greatest strength is that we have -- our approach being non-litigious and therefore less confrontational and less adversarial from minute one, has enabled us to foster these relationships with institutions and dealers everywhere, and they...that automatically sets of the tone in a more collegial way. And so, we're able to have discussions and probably, I think, take discussions in a route that others can't, simply because of the nature of how we pursue claims. And I think when people receive claims from us, they are -- while clearly looking from their own perspective -- they're not automatically fearing litigation is on the horizon [...b]ecause they know we don't do that. We also have the ability to pursue anything. For us -- because we don't take any fees and everything goes straight to the family -- we'll pursue anything regardless of its value. For us it's not the object or its worth that is --

**ASH:** It doesn't need to be a blockbuster piece.

**ABR:** Not by any means. So we can help people that might not otherwise be able to find assistance elsewhere, because of the underlying costs of pursuing it privately.

**ASH:** Yeah, and it seems like you guys are one of the few, few places that --

**ABR:** We are.

**ASH:** [...] I find it really interesting that this is the only office that not only does that, but is located in the U.S. and it's not technically a federal initiative, so I was wondering if maybe you could kind of speak on the history of the HCPO – I mean I know about its set up and coming out of the Swiss Bank Settlements, and it was the Governor's initiative at that time, but just... Have there ever been talks about making a federal office?

**ABR:** Well, we're State so what happens on the Federal level --

**ASH:** Is, yeah, is separate.

**ABR:** -- Is kind of not, not under our purview.

**ASH:** But was there ever... Was that an idea at any point? Or was it always --

**ABR:** Uh... *(long pause, both laugh)*

**ASH:** Right, ok. *(laughs)*

**ABR:** I know that back in the late 90s, when ambassador Eizenstat<sup>382</sup> was really starting to pursue the issues, and he was doing the gold – the Nazi gold – and the London Conference, there were obviously things that were coming up, but the -- From – just for your background knowledge – federally the U.S. government can't espouse claims for non-US citizens. [...] And so, you have to be a U.S. citizen for the federal government to be able to espouse your claim with a foreign entity. And even then, there are – within that structure – there are restrictions. [...] So there could never really be a federal agency to do what we do because they are barred by certain --

**ASH:** Right, they'd only be able to represent American citizens.

**ABR:** But even then, how they represent American citizens, and against who they represent American citizens is further contained. You know, there's the Foreign Claims Settlement Commission that does things, but again you have to be a U.S. citizen to pursue those claims and there's certain...it falls under the auspices of certain treaties on how they can do things, and what they can do. There are certainly instances where, I know, claimants have tried to pursue things through a diplomatic avenue and they call upon the State Department. And the State Department, and the State Department as a result of Ambassador Eizenstat's effort did establish the office of

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<sup>382</sup> Ms. Rubin is referring to Stuart E. Eizenstat, U.S. ambassador to the E.U. 1993-1996.



Holocaust issues. [...] They don't do what we do...they do other things and they represent the United States government globally on issues of Holocaust Education, things that affect um...Archives of Holocaust era records, things like that, but they don't...yeah.

**ASH:** Ok. So in the context of it kind of coming out in New York, and this office being created –

**ABR:** Well it was the Governor, and at the time Senator D'Amato was very much involved in the whole banking issues, he was – I think – on the Senate Banking Committee at the time, and so he had an inherent interest in it. The Swiss banks were based out of -- their agencies were based out of New York. And, the nexus there is that in...in '39 they started to transfer Swiss accounts to their New York agencies, fearing Nazi's invasion through Switzerland and occupation. They went around, obviously, but they're right in the middle! (*both laugh*) So, they kind of feared that the Germans would go through Switzerland and occupy Switzerland, and in order to protect those assets they shipped them abroad and they ended up here, unknow[n] to account holders. Some went back, some stayed, some escheated to the state of New York, some escheated to the federal government, which is the nexus that really started bringing our department – the then Banking Department – into the discussions, and Senator D'Amato and the hearings and all of that. So it's, it's uh... a very complex banking story, I highly recommend reading John Authers' book [...] *Victim's Fortune*. It is an excellent resource for what went down in 1996, and he does a really good play-by-play.

**ASH:** [...] I was wondering if there was anything else happening within... either at a governmental level or even at a more popular level in the 90s that --

**ABR:** Well, I mean there were a lot of things coming to ahead. There was the London Gold Conference, that sort of kick-started the whole discussion of: "Wait a second, there's still [...]tuff going on that needs to get distributed." And then there was Christoph Meal...Mealé... I butcher his name (*both laugh*).<sup>383</sup> He's the Swiss bank employee who's like "They're shredding the records!" (*Both laugh*)

**ASH:** "Sound the alarm!"

**ABR:** Pretty much! He's like the whistleblower; he used to work at, I want to say, UBS, and he just went public. He's like "they're shredding all these documents!" and that's when it was just like --

**ASH:** It blew up?

**ABR:** Yup. And people had always, you know, I don't think there was ever a time when people weren't complaining about it but that's really when it exploded. [...] And there's a lot going on at the time, and so then the Banking Department at the time was like "oh, wait a second..." and internally we started discussions with the bank, we were participants in the audit of the bank like through our offices here, we held hearings and because we regulated the Swiss bank agencies in New York at the time, you know we had access to information and certain abilities with regard to

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<sup>383</sup> Ms. Rubin is referring to Michel Christopher "Christoph" Meili.

the banks and that's how the department got involved, the governor set up a commission to start reviewing these things. And, it was also the time that UBS and SPC wanted to merge and because they're both licensed here as agencies, we have to approve that merger here and so it was... *Victim's Fortune* really lays it out very well. [...] It predates my actual involvement with the office [...] because I didn't come on until 2001 and this is all playing out in '96, '97. So, [Authers] does a really good, kind of... --

**ASH:** Overview?

**ABR:** Yeah, of what was happening. And so there was all that going on, and then the Banking Department superintendent became the Insurance Department superintendent, and he kind of brought this issue with him, and at that same time there's the whole Generali insurance isn't paying things. [...] And so you had all this happening, and the superintendent, being the same, kind of took this issue with him. They had hearings on insurance issues and unpaid insurance policies, the then Insurance Department was a party to the *Memorandum of Understanding* with insurance companies creating ICHEIC<sup>384</sup> so we were a member, and sat on the regulatory committee of ICHEIC. And then, people started coming to us with claims and, you know, insurance policies and bank accounts, and they were mentioning artwork. You know, property policies covering their artwork, in bank accounts and safe deposit boxes holding their artwork, and so it became a very natural progression for us. And at the same time, *the Portrait of Wally* was seized. So, there was a clear need for further assistance in this field, so... --

**ASH:** This bloomed up, and filled the niche!

**ABR:** There we are!

**ASH:** So, what would you say – if any – are the greatest hurdles in pursuing the restitution of art within the HCPO's mandate?

**ABR:** I think the greatest hurdle – not just for us but for everybody – it's just information. [...] Everybody, I think it's a known hurdle around the world, just getting information, access to information, and willingness of parties to share information. We put everything out on the table, we lay it out up front, we don't hold anything back. You want it; we'll give it to you. And it's hard when not everyone has that...

**ASH:** Open book policy?

**ABR:** Yeah.

**ASH:** Has the HCPO ever been involved in trying to either lobby or discuss with institutions that they should open up their information, or their archives, or anything like that?

**ABR:** We were participants at both the Washington Conference in '98 and Prague in 2009 --

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<sup>384</sup> The International Commission of Holocaust-Era Insurance Claims.

**ASH:** Hm, Terezin.<sup>385</sup>

**ABR:** -- And so to the extent that we were part of the delegations and discussing issues, to that.... but we don't really lobby. [...] We leave that part to --

**ASH:** (*jokingly*) The lobbyists?

**ABR:** --The State Department. I mean that's their role: the State Department's role is to work with other foreign governments in releasing and opening up their records.

**ASH:** Ok.

**ABR:** So that's what the State Department's office really kind of specializes in.

**ASH:** Ok.

**ABR:** That, you know, national political discussion because it's a political issue that goes to the national level. And data protection issues. So that's where our state department and their office kind of [...] can focus. We're not really...not really us. But, you know, people at this point know us and so when we write to archives, they know who we are, and they're comfortable with us, and so we generally get information from archives, for the most part, it's the private holdings --

**ASH:** That's what I was going to say, I meant more either private holdings, or maybe auctions houses, or private museums – places like that.

**ABR:** Yeah, it's, well... --

**ASH:** They might be more reticent --

**ABR:** Yeah, the...it...it becomes a very difficult issue because there are laws in place to protect [...] a civil person's data, and so it's really hard for us...we have to work within the confines of the law.

**ASH:** Naturally. (*Both laugh a little*)

**ABR:** We call upon our State Department to say: (*exaggerated gentle soothing voice*) "Hey...ohh...."

**ASH:** Ok.

**ABR:** And they do.

[...]

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<sup>385</sup> Here, I am referencing the Terezin Declaration, produced from the 2009 Prague Conference.

**ASH:** [...W]hat would you say - if anything - has sort of changed or shifted since, maybe when you first came here, in 2001 to now, whether it be - I mean you mentioned technology, obviously, the internet, digital files --

**ABR:** Well, I mean it's amazing! I think back to 2001[...] And even just like internet research [...]has changed *drastically* in that time period. It is evolving very rapidly, and even within the last five years alone, more records from this period that's relevant for us have been digitized and put online. So, you know, I only see that growing more – it's...it's a very time-consuming and costly project for the archives, and so it's slow going. But once it's up there, it's like a beautiful thing [...] It is just a beautiful thing...I mean, on the art front, like all those digitized auction records now, through the Getty and Heidelberg, wasn't there when I started. [...] And they're searchable! It's amazing! It didn't exist before. And so, while access to information is a hurdle, it's also become a little bit less of a hurdle. There are different hurdles --

**ASH:** It's gaining strength.

**ABR:** -- yes, so that has *drastically* changed. And so our methodology has kind of evolved as well, as technology and information have evolved, so has our method for, you know, looking at a claim. So when a claim came into us 20 years ago, you know, it was very much paper-heavy, time-consu-- there were a lot of time delays in terms of getting details and getting records, to corroborate information and then pursue a claim, the time is drastically decreased for that.

**ASH:** Which means more claims can be --

**ABR:** Which -- yeah, to some extent. So, I mean, there's that. We've also -- we've perfected what we look for, we now know exactly what the other side is going to say. So before we get there, we anticipate what we're going to need, so we can get those things upfront so the end result can happen a lot more --

**ASH:** Right, the prep is more robust.

**ABR:** So, that's changed... We've shrunk. By half--

**ASH:** Oh really?

**ABR:** -- since I started.

**ASH:** Ok. Was that like a slow progression, or--

**ABR:** Yes.

**ASH:** Ok.

**ABR:** We've been haemorrhaging people.

**ASH:** Is that just because of circumstance or--

**ABR:** Life.

**ASH:** Ok, it's not necessarily like--

**ABR:** Not the -- not cuts.[...] No, no; it's people moved, people.... People mostly move (*both laugh*). [...] Pretty much, that's like number one reason, is move. And so, we've shrunk. But so has the various claims processes out there. So the Austrians have closed their process for material losses, so we can't really do anything with the people there. The Swiss Bank Claims Settlement is closed; so as these other entities have closed, it's kind of gone hand-in-hand with our shrinking so it hasn't really diminished or impacted our ability to effectively function and pursue our mission....'cause there's just less out there...

[...]

**ASH:** Well you mentioned the Austrians closing down, have there been collaborations that have either closed down because they've actually been closed down by the national government, or new ones that have been forged or sort of new avenues. You mentioned that museums -- because I didn't realize museums will sometimes contact you to say "can you try to find someone, we've looked into this," I always thought it was the other way around.

**ABR:** No! We -- I've always made it, or it's taken a while I think for people to really sink their teeth into it, but whenever people have met with us, you know, we want to help. We want to help see that the asset, whatever it is, gets back to whoever it really belongs to. And if it's the museum asking us to help find someone, great! [...] We're here, I love to do genealogy; research; bring it! And I wish more would take us up on that offer than do.

**ASH:** Hopefully more will, now that this is becoming--

**ABR:** And I wish they would take us up on that offer before they put an article in the press going "we've researched this, and we know it's looted, but we don't know who it belongs to."

[...]

**ABR:** Yes, so I want them to come to us, you know...we do that!

**ASH:** (*comically*) That's what you do!

**ABR:** That's what we do! And so we had a few instances where people have asked us: the French have asked us; the German insurance companies have asked us. And when they ask we, we help as best -- you know we do our best. And so, yeah, we're happy to play that role for either...

[...]

**ASH:** Do American museums ever....

**ABR:** Um...

**ASH:** Or is it more across the pond?

**ABR:** So far it's been European.

**ASH:** Ok.

**ABR:** The American museums know we're here.

**ASH:** Yeah.

**ABR:** They know...obviously.

**ASH:** Yeah (*laughs*)

**ABR:** And I don't think it's ever really...kind of...come up in that way in the U.S.

**ASH:** Ok.

**ABR:** So.... What was the question?

**ASH:** Um...just new--

**ABR:** Oh, new!

**ASH:** New things.

**ABR:** So yes, the Austrians closed. We can still pursue art, but their material losses claims closed. And other countries are slowly bringing online programs, so last week, I think, Romania is poised to pass legislation. For most of it relates to real property, or communal property - not something that really would fall within our mandate. I hope it's a first step, so we'll see.

Generally it, you know, it's...the Western and Central European countries have pretty much done what they're going to do. It's those Eastern...

**ASH:** Former Bloc?

**ABR:** (*confirming*) Former Bloc countries, and they tend to have fewer resources --

**ASH:** Yep.

**ABR:** --to begin with, and so at this point, I think they're dealing with communal and real property. And we'll take it....We'll see what happens there. I think it could be many years before [...]you see anything up and running of a material loss coming out of Romania, if ever... But never say never.

[...]

**ASH:** [During my visit to the *Deutsches Zentrum*] I was talking to them about the Washington Conference, and about sort of the idea of U.S. leadership within the area of art restitution, as the Conference was convened in Washington, you guys have this amazing office here, the Conference Principles were based off of the American Museum Association, and I'm wondering if you feel like that...that is true, that that statement applies? That there is kind of a leadership position within the U.S. in pursuing restitution claims. Maybe not just art specific, but in relation to the Holocaust.

**ABR:** And I think it was just, at the -- the time was ripe, back then. With Ambassador Eizenstat at the helm, you know, he saw a void and, you know, saw there was this need, and so he jumped on a horse and charged at it. So, yeah - I don't think ... I think that historically that's, that's quite true: the U.S. has...had launched a modern era discussion [...] of these issues, the U.S. was party to the various -- instigator and party to the various treaties: The U.S.-France Agreement; the U.S.-Austria Agreement; the Swiss Bank Settlement happened here in New York; there's the Austrian Bank Settlement also here in New York; the Generali Settlement happened here in New York; ICHEIC was formed based on U.S. regulators and their discussions with insurance companies. So I think it's fair to say that a lot of the modern era of restitution was an outgrowth of activities here in the U.S. There were some things that were...pre-dated that, like the reunification of Germany involved a reassessment of the restitution laws because the East Germans had [...]othing! [...] So, they had to be able to do something there too, so I think in 1991, you know, that and the release of information and the sharing of records, that started to pave the way for what went down in '96, '97.

[...]

**ASH:** [S]o there was a positive feedback loop a little bit? Like with the Reunification, and then seeing that that was happening, that sort of incentivized - along with, of course, a *myriad* of other factors; it's hard to distill just --

**ABR:** Yes.

**ASH:** -- one thing.

**ABR:** But you know, I think...I think there had always been ongoing things. People were pursuing their art still, even in the intervening years; the bigger claims, generally speaking --

**ASH:** Cezannes --

**ABR:** -- Rothschilds! [...] The people who had never lost touch with that period, and their property. There are a whole host of second and third generations that had no clue, that only realized it after the fact. [...] But I think, I think you can start the modern-day era discussion back in '91 with the German Reunification, property restitution laws [...] To me that's kind of -- then you -- five years later you have the London Conference on Nazi Gold, so I think it...it... --

**ASH:** Sort of the spark that fed into the 90s resurgence.

**ABR:** The touchstone there. [...] The fall of -- I mean the opening up, the opening of information back in '89, '90, 91, that really like--

**ASH:** And for restitution, you *need* -- that's what it's all based on -- is information--

**ABR:** [unintelligible] yes, yes, so that really is the beginning.

**ASH:** [A]re there any aspects of the Washington Conference Principles that you think...that you could isolate as being the most helpful within the practice - the everyday practice - of what you do here (*extended pause*) That's a bit of a broad question, I know, but...(pause)

**ABR:** At this point, the Washington Conference is almost 20 years old, right? It's 20 years gone. I think, in terms of the people we interact with, it's not something we necessarily vocalize. At this point I think we take it for granted that everyone knows we're making the claim based on a moral, you know, a moral certitude, and that we're pursuing it from this angle of doing justice and it's not something we call upon verbally so much anymore. I think, just, you know, the museums know it's there, they know the Berlin Declaration is there, they know that's why we're contacting them. So, I don't really draw upon any particular [...a]spect of it in my practice, I just take it on a whole.

**ASH:** It's so foundational that it's kind of just --

**ABR:** They know

**ASH:** -- it just *is*.

**ABR:** It's...it's like...yeah. Innocent until proven guilty; I don't have to tell you that [...] You know? So I don't really...I can't really say that there is any one particular component, because I just...I don't use it in that regard?

[...]

**ASH:** [...S]o you had mentioned earlier about how you hope that museums contact you more - especially before they start publishing: "oh, we've researched it and we think this might be looted." In general what do you -- how do you see, I guess, popular media playing into what you do here, or maybe more generally what the popular perception is of either the HCPO or American art restitution?

**ABR:** It's interesting; people are still surprised to find out that we're here, and that we exist, and what we do.[...] So, I don't know that I can speak to the popular perception of what we do.

**ASH:** Well, I think you just did! (*Laughter*) They're surprised!



**ABR:** Some people! Some people, not so much. You know, we don't advertise, and we don't really toot our own horn in any way. Now, we will issue a press release, but it's more celebratory for the claimant rather than about us in any way. And so we.... we just keep our heads down and keep doing what we're doing and, you know, people find their way to us and I think we try just to help people as much as we can, however we can, and, you know, I think within the...the insurance, bank, art world community, I think we have fostered a relationship with them so that we work on friendly terms. Insurance companies, you know, we've built trust over the years. You know, much like in the museum case, there are times where we've had to explain to people that "no, this insurance policy was not lost because of persecution, no the insurance company didn't do something wrong, it's -- this is ok." [...] And so, you know, they know that we will do that. We're not out to get anybody.

**ASH:** Right.

[...]

**ABR:** And so, you know, we help explain that. So it, you know -- I think we've developed this relationship, so I know that within that sector I think our role is appreciated. [...] And I think claimants, you know, appreciate being able to have someone help them. You know, I still find things for people today, that come to us who have rudimentary knowledge of their family and their family history, and we are able to shed light on this generation...past, that they have no real direct connection to other than, maybe whispers that they heard, or some stories that some grandparent might have told them in passing. And we can make them more tangible, you know? I've given someone a birth certificate of their uncle, and he's like "oh my god" (*Alyssa laughs appreciatively*) And it has the name of his grandfather on there, and that alone sheds light because he thought it was one way, but it's really another, and there's this sort of hyphenated type name they did back then that he didn't even know about. And I'm like "well that's why your uncle is listed under this name on the.... you know, memorial list, rather than this name and that's how we can find him. And he wasn't sure what his aunt's birth date was, and well we can [...] work on this. And so, you know, the claimants really do appreciate this aspect that...of what we do, that it would be very difficult for them to do on their own. And at this point, you know, we know where to go; "oh, ok you're Austrian, I know where to look." For them it's not necessarily so...apparent, which can be very daunting. [...] And, you know: I know. I know where to start! And so I think the claimant community can appreciate...I think they do.

**ASH:** [...]it seems like you guys are guides along this uncovering of information...of the past and also mediators, as opposed to going around yelling at people.

**ABR:** Yes, we don't really like to do that. At all. We don't do that, at all. It's not something we want to do.

**ASH:** Yeah.

**ABR:** It's certainly not something that we *do* do. And we like that we don't. [...] I think it's created an environment where we can get things accomplished. And I think that's why we're all here, because we don't...--

**ASH:** Want to antagonize? Well antagonism doesn't get you as far as --

**ABR:** No, we --

**ASH:** -- research! (*laughs*)

**ABR:** Yeah. We don't do press shaming, we don't do...we don't do it, it's just...it's not constructive --

**ASH:** Yeah.

**ABR:** -- For what we do, so...we like our...we like our way.

[...]

**ASH:** Since I am doing a comparative study between the HCPO and the *DZK* - you might not be able to answer this question, I know in Germany they had a little bit of a hard time - but would you be able to say what you perceive as being the differences between the American approach - maybe in the 90s - to the German approach to restitution, or currently depending on what you feel more comfortable... (*Long pause*) Or maybe specifically between the HCPO and the *Koordinierungsstelle/DZK* now?

**ABR:** Well they don't represent claimants. [...] They don't do what we do. They do a lot of...they just don't do what we do. And we don't do what they do! [...] So, you know, we're two different...two different organizations, created by two different types of entities, with different goals and functions.

**ASH:** But you work with them sometimes, right? They are one of the outre-

**ABR:** Yes! Yeah. [...] And we, you know, they've referred people to us; we post our stuff on their website. [...] We are friends (*both laugh*), we certainly commiserate and share stories and, you know, collaborate where we can, definitely. I think they are...they have an educational component that we don't really have. We're very much just claimant advocates...You know, I don't know if they've published anything in a while, but they used to publish...

**ASH:** They have some pretty great, thick publications.

**ABR:** Yeah, and like with amazing articles. [...] Yeah, we don't do that. [...] And they have...they kind of share through their journal what's going on academically, and I think in research fields related to the topic in general, not specific to any one aspect of the Holocaust. That...you know, we're not really an academic institution in that way. In terms of...-- I think our approach has pretty much remained consistent from the beginning in terms of how we advocate on behalf of claimants. This is what we do, this is what we've always done, this is what we will continue to do. You know, as the environment changes around us, that aspect of how we pursue claims really hasn't - more things have come online, things will end, but our basic method and

goals - changed? I don't know that it has in Europe either, or in Germany. You know, it was - again - it was different when it started in '91: it was very much related...I don't think they had initially conceived of this eight billion dollar Deutsch - or eight billion D-Mark settlement to cover slave labour issues and things like that. I think they were: "Ok we've unified now, let's give our Eastern brothers a chance." And so, I don't know that they necessarily anticipated what was going to happen by the end of the decade, when they started their reunification and discussions in ninety, ninety-one. So I don't... -- but that's not something that's an active thing right now, those processes have ended. [...] And so restitution in Germany is a very much...-- you know there's East German property that's still on-going for the BADV,<sup>386</sup> but otherwise it's very much a private issue on the art front, that doesn't really have - you know Gurlitt aside - doesn't really have that federal component that the slave labour and those other things had. I think they've changed because...

**ASH:** Out of necessity --

**ABR:** Yeah.

**ASH:** --for what they are.

**ABR:** But ultimately, I think everybody's goal remains the same... Yeah, that's a tough question (*a couple unintelligible words*) ... (*Alyssa laughs*).

**ASH:** So, moving forward, I guess into the future, you did say that you have always done the same...-- the same mandate; still are, and continue to do so - *will* continue to do so - but are there initiatives, or goals the HCPO wants to pursue in the future specifically that might be different from now? Or things that are kind of in the works now that are goals for the future? I guess where do you see the HCPO going, or is it just, it's going to keep on doing exactly what it has been?

**ABR:** It's going to keep on doing what it's been doing. [...] I don't know...you know, I don't think we need to fabricate anything, you know? There's still people out there looking for basic justice for the return of their stuff, and that's what we're here to do. We don't need to [...] There's nothing, you know...I leave it to the diplomats to negotiate whatever voids need to be filled.

**ASH:** Yeah.

**ABR:** But I'll be here to help the people that need it to get done.

**ASH:** That's fantastic.

**ABR:** Yup...just keep on doing what we're doing.

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<sup>386</sup> *Bundesamt für zentrale Dienste und offene Vermögensfragen*, which translates as the Federal Office for Central Services and Unresolved Property Issues, and is under the jurisdiction of the German Federal Ministry of Finance.

**ASH:** Ok, great. And then I just have one last questions on... - and this is more your personal views - on the Limbach commission, and the comment Grütters made recently - I don't know if you read about it in the New York Times - about the "prejudiced voice," whether or not there should be a Jewish member of the German community on the Limbach commission, if you had any views on that? Whether you think it's either a good idea that they should maybe include a Jewish-German voice, or --

[...]

**ABR:** It's their call.

**ASH:** Yeah, ok.

**ABR:** I leave it to them to sort out their commission. However, as with all things related to restitution and with adjudicating bodies, we hope for a balanced, clearly defined and transparent approach/entity.

[...]