

June 30, 2013

Museums Faulted on Restitution of Nazi-Looted Art

By PATRICIA COHEN

Not until 1998, when 44 nations including the United States signed the groundbreaking Washington Principles on Nazi-Confiscated Art, did governments and museums formally embrace the idea that they have a special responsibility to repair the damage caused by the wholesale looting of art owned by Jews during the Third Reich's reign.

Now, 15 years later, historians, legal experts and Jewish groups say that some [American museums have backtracked on their pledge](#) to settle Holocaust recovery claims on the merits, and have resorted instead to legal and other tactics to block survivors or their heirs from pursuing claims.

In recent years judges have dismissed several cases after museums argued that recovery claims had been filed too late. California legislators were so disturbed by one blocked claim there that they passed a law in 2010 to help Nazi-era (and other) claimants avoid tripping over legal deadlines.

In some of the cases, museums like the Detroit Institute of Arts, the Toledo Museum of Art in Ohio, the Museum of Fine Arts in Boston and the Solomon R. Guggenheim Museum have tried to deter claimants from filing suit by beating them to the courthouse and asking judges to declare the museums the rightful owners.

Critics also charge that museums have not followed their own guidelines, which urge them to be forthcoming with provenance information that could help people trace the history of a contested work of art.

"The response of museums has really been lamentable," said Jonathan Petropoulos, the former research director for art and cultural property for the Presidential Advisory Commission on Holocaust Assets, who has been hired by claimants to do research. "It is now so daunting for an heir to go forward."

The question of whether museums are deciding claims on the merits has recently been pushed to center stage again by a series of law journal articles, legal forums and rulings in the United States and abroad. At stake in this emotional debate are the fate of valuable works of art, the reputations of elite cultural institutions and the legal issue of whether the American judicial system is capable of addressing restitution claims.

Both the [Association of Art Museum Directors](#) and the [American Alliance of Museums](#) insist that their members consistently follow ethical guidelines requiring them to respond "quickly and scrupulously" to restitution requests.

Christine Anagnos, executive director of the museum directors association, said its members were committed "to resolving questions about the status of objects in their custody." Most cases, she said, are

resolved through negotiation before claimants feel compelled to file suit.

Museum officials also say they turn to procedural tactics like invoking time limits only after they have carefully researched a claim and concluded that it is unfounded.

But [Stuart E. Eizenstat](#), a former special State Department envoy who negotiated the Washington Principles, said museums have adopted a harder line in the last seven years or so, partly in response to some court victories by art institutions and waning pressure from the government.

“The essence of the Washington Principles comes down to one sentence,” he said. “Let decisions be made on the merits of the case rather than technical defenses.”

No one disputes that, even with databases that list looted art, it takes considerable effort and money to track artworks from Nazi-occupied countries, which typically have gaping holes in their provenance.

There is also agreement that not all claims are valid, which requires that museum directors respond cautiously to safeguard their collections.

[Simon J. Frankel](#), a lawyer who has represented the Museum of Fine Arts in Boston, pointed out in a recent law journal article that since 2010, when the museum went to court to block a Nazi-era restitution claim, it has settled with the heirs of two Jewish art dealers and returned a 14th-century embroidered panel to a museum in Trento, Italy.

Neither side can agree on how many people have approached American museums with restitution claims. The museum directors association, which emphasizes that few cases end up before a judge, lists two dozen cases where institutions, including the Detroit Institute of Arts, returned art to individual heirs without going to court.

But critics, including the [Holocaust Art Restitution Project](#) and the Commission for Art Recovery, say problems arise in the less straightforward cases, where documentation is missing or it is unclear whether Jewish owners freely parted with a work of art or were coerced by the Nazi authorities into selling it for a pittance.

Mr. Eizenstat is among those who have long argued that the courts are inherently ill suited to resolving restitution cases and that to avoid litigation the United States should create an independent mediation board, as several European countries have. This spring, a New York chapter of the Federal Bar Association put forward a resolution calling for the creation of an American commission along those lines.

[Douglas Davidson](#), the State Department’s current special envoy for Holocaust issues, said at a conference at The Hague in November that “alternatives to litigation are preferable,” but he conceded that a similar American commission is unlikely to emerge. One major obstacle is that whereas in Europe, museums are typically government-owned, most American museums are privately run, making it difficult to mandate compliance.

Such panels are not necessarily insulated from criticism in any case. [The Dutch Restitutions Committee](#), for example, drew criticism last month after it ruled that the interest of two museums in retaining

paintings outweighed the heirs' interest in restitution.

Raymond Dowd, a partner at the Manhattan firm Dunnington, Bartholow & Miller who often handles restitution claims, complains that museums often review the evidence and decide on their own if a case is valid. Museums often fail to make their original research on a work's provenance or sale available or to submit the scholarship to peer review, he added.

He cited the case of a family that is seeking to recover art once owned by Fritz Grunbaum, a popular Viennese cabaret performer who died at a concentration camp. He said that 10 American museums including the Allen Memorial Art Museum at Oberlin College have works by Egon Schiele that were listed on a 1938 German government inventory created after Mr. Grunbaum was shipped to Dachau. Some of the museums failed to provide full information about the provenance of the works, he said, and the Allen did not even list Mr. Grunbaum in the Schiele's provenance.

Andria Derstine, the Allen's director, said in an e-mail that the museum had cooperated with Mr. Dowd's requests for information and that it has concluded after its own investigation that the claim had no merit. It did revise its online listing last month to reflect that Mr. Grunbaum once owned the Schiele.

For years, the family of the artist George Grosz has fought to recover three works from the Museum of Modern Art, arguing they were the subject of a forced sale after Grosz fled the Nazis in 1933.

A federal judge dismissed the Groszes' lawsuit in 2011, citing the statute of limitations. Before the case landed in court, the museum hired researchers at Yale University and the former United States attorney general Nicholas deB. Katzenbach (who died in 2012) to review their evidence. Katzenbach concluded that Grosz's Jewish dealer, Alfred Flechtheim, had fair title to the works and freely sold them. The Groszes' own experts, though, challenged his report and declared that Flechtheim was forced to flee Germany after his Düsseldorf gallery was "Aryanized" in 1933 and given to a Nazi Party member.

That interpretation was affirmed in April by a ruling from the German government's advisory commission on plundered art in an unrelated case involving the Museum Ludwig in Cologne. While there is "an absence of concrete evidence," the commission concluded that on balance, "it is to be assumed that **Alfred Flechtheim** was forced to sell the disputed painting because he was persecuted."

Margaret Doyle, a spokeswoman for MoMA, said the museum has no interest in retaining works to which it does not have clear title. "After years of extensive research," she said, "including numerous conversations with Grosz's estate, it was evident that we did in fact have good title to the works by Grosz in our collection and therefore an obligation to the public to defend our ownership appropriately."

But George Grosz's son Martin, 83, points to a letter his father wrote in 1953 after seeing one of the works, "**The Poet Max Herrmann-Neisse**," hanging at MoMA: "Modern Museum exhibits a painting stolen from me (I am powerless against that) they bought it from someone, who stole it."

"I can remember talking with my father about it," he said of the painting.

"He was very reluctant to in any way assail or complain about the treatment he got from anybody in the United States," Mr. Grosz said, explaining why his father never fought to recover the work.

When refugees complained, Mr. Grosz said, his father would respond: “You should kiss the ground you’re walking on because they let you in.”