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Nazi-Looted Art: Preserving a Legacy

Alyssa R. Bickford

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NAZI-LOOTED ART: PRESERVING A LEGACY

*Alyssa Bickford**

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I. INTRODUCTION

The Holocaust, recognized as one of, if not the most, terrible atrocities in world history, led to the massacre of millions of Jews in Europe.¹ In addition to murdering millions of people and effectively changing the lives of millions more around the world, the Nazi regime confiscated countless works of art from Jewish families.² Some sources estimate that [the Nazis] looted between one-fourth and one-third of Europe’s art.³ The Nazis stole artwork across Europe both to humiliate the Jews and for their personal benefit, as Nazis added many stolen pieces to their private collections, In so doing, the Nazis “created entire legal structures based around stripping Jewish people of their legal rights and their possessions, including art.”⁴ The Nazi regime passed

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1. Julia Parker, *World War II & Heirless Art: Unleashing the Final Prisoners of War*, 13 CARDOZO J. INT’L. L. 661, 665 (2005).

2. Simon J. Frankel and Ethan Forest, *Museums’ Initiation of Declaratory Judgment Actions and Assertion of Statutes of Limitations in Response to Nazi-Era Art Restitution Claims- A Defense*, 23 DEPAUL J. ART, TECH & INTELL. PROP. LAW 279, 281 (2012).

3. *Id.* at 285.

4. *Id.*

several “statutes and decrees designed to deprive Jews of civil, political, and economic rights,” setting the stage for the Holocaust.⁵

After World War II ended, European governments attempted to recover the stolen art and cultural artifacts belonging to Jewish families.⁶ The European governments failed, however, to recover or return large numbers of works because they were in private collections, records of the previous owners or locations had been lost, or other factors.⁷

In subsequent decades, pieces of art began to show up in U.S. art museums as a result of donations, bequests, and purchases.⁸ Seeing this, original owners and their heirs came forward in increasing numbers to reclaim these pieces.⁹ These claims marked the beginning of a decades-long struggle to determine the rightful owners of the pieces and the obligations museums have to research the provenance of pieces in their existing collections and for future gifts and purchases.¹⁰

In the 2014 case of *Meyer v. Bd. of Regents of the Univ. of Okla.*, victims of looting asked a court to resolve ownership of a piece of artwork that the Nazis had looted, and was sold several times, and ultimately donated to the University of Oklahoma.¹¹ This case provides just one example of the issues facing claimants, museums, and courts regarding Nazi-looted art. Although this case reached a settlement, the lack of consistency and uniformity in this area of the law necessitates stronger guidelines to protect the competing interests of claimants and museums to the disputed pieces of art.

II. BACKGROUND OF MEYER V. BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA

Meyer involved a painting by Camille Pissarro known as *La bergère rentrant des moutons (La Bergère)*, or *Shepherdess Bringing in Sheep*,¹² which is currently on display in the Fred Jones Jr. Museum of Art (the

5. Complaint at 10, *Meyer v. Bd. of Regents of the Univ. of Oklahoma*, No. 13 Civ. 3128(CM), 2014 WL 2039654 (S.D.N.Y. May 14, 2014).

6. Parker, *supra* note 1, at 671.

7. Parker, *supra* note 1, at 671.

8. Frankel, *supra* note 2, at 281.

9. Jessica Grimes, *Forgotten Prisoners of War: Returning Nazi-Looted Art by Relaxing the National Stolen Property Act*, 15 ROGER WILLIAMS U. L. REV. 521, 524 (2010).

10. See Frankel, *supra* note 2, at 281, 284 (discussing how recent changes have led to more claims).

11. See Complaint, *supra* note 5, at 2–3 (discussing art looted by the Nazis and that the University of Oklahoma now possesses the painting).

12. Complaint, *supra* note 5, at 2.

Museum).¹³ The plaintiff, Léone Meyer, is the daughter of Raoul Meyer, whose extensive art collection included *La Bergère*.¹⁴ The plaintiff alleged that the Nazis seized *La Bergère* during World War II.¹⁵ After she discovered the location of *La Bergère* at the Museum through a blog post in 2012, Meyer filed suit to recover the painting and return it to the possession of her family.¹⁶

Raoul Meyer was a prominent Jewish-French citizen who possessed a large collection of French art that he had placed in a branch of the French bank, Crédit Commercial de France, in March 1940, in an effort to protect it from confiscation by the Nazis.¹⁷ Despite his efforts, the Nazis looted Meyer's collection, as well as countless other works of art belonging to other French families, in early 1941.¹⁸ After the end of World War II in 1945, the French government created the "Commission de Récupération Artistique" (the Commission) to research the artworks looted from private collections during the war.¹⁹ Meyer gave the Commission an inventory of the works in his collections that the Nazis stole.²⁰ The Commission was able to return several works to Meyer between 1946 and 1949, but *La Bergère* was not among them.²¹ Meyer subsequently registered the painting as looted with the Répertoire des Biens Spoilés en France Pendant la Guerre de 1939-1945 (The Répertoire).²² The Répertoire was a list of looted but not yet returned works distributed to the governments of Europe and the Americas to alert them of looted works that might be located in their territories.²³ The Répertoire was also distributed to a number of museums, including the Metropolitan Museum of Art of the Frick Collection and other galleries in New York.²⁴

In 1953, Raoul Meyer learned that Christoph Bernoulli, a Swiss art dealer, possessed *La Bergère*.²⁵ Upon discovering the painting's location, Meyer sued Bernoulli in Switzerland in an attempt to recover

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13. Complaint, *supra* note 5, at 2.
 14. Complaint, *supra* note 5, at 2.
 15. Complaint, *supra* note 5, at 11.
 16. Complaint, *supra* note 5, at 18.
 17. Complaint, *supra* note 5, at 11.
 18. Complaint, *supra* note 5, at 11.
 19. Complaint, *supra* note 5, at 12.
 20. Complaint, *supra* note 5, at 12.
 21. Complaint, *supra* note 5, at 12.
 22. Complaint, *supra* note 5, at 13.
 23. Complaint, *supra* note 5, at 13.
 24. Complaint, *supra* note 5, at 15.
 25. Complaint, *supra* note 5, at 14.

the painting.²⁶ On July 25, 1953, a Swiss court issued a written verdict in favor of Bernoulli, naming him the good-faith owner of *La Bergère*.²⁷ Meyer did not appeal the judgment.²⁸ Bernoulli offered to sell the painting back to Meyer, but Meyer rejected the offer and soon lost track of the painting.²⁹

In the winter of 1956, *La Bergère* was placed on display at David Findlay Galleries, in New York, as part of an exhibit of a collection belonging to an art dealer from Amsterdam.³⁰ The exhibit spanned from November 15, 1956, to December 15, 1956.³¹ After it ended, Aaron and Clara Weitzenhoffer purchased the painting from Bernoulli through the David Findlay Gallery.³² David Findlay was a family friend of Clara Weitzenhoffer, and he had encouraged her accumulation of French Impressionist works over the years.³³ Clara collected pieces for her private collection, including a number by Renoir, Monet, Degas, and Van Gogh, and eventually her collection grew to encompass each phase of the Impressionist movement.³⁴ According to the Weitzenhoffer's son, Clara purchased works of art because she liked them, not as an investment.³⁵ Clara nurtured and expanded her collection until her death.³⁶

In 2000, the Weitzenhoffers' estate made a \$50 million bequest to the Museum.³⁷ The donation was comprised of Clara's entire private collection of all 33 works, including *La Bergère*.³⁸ At the time of the bequest, no other public university in the U.S. had a collection to rival the Weitzenhoffer's gift.³⁹ Indeed, few people outside the Weitzenhoffer

26. Complaint, *supra* note 5, at 15.

27. Defendant's Motion to Dismiss at 4, *Meyer v. Bd. of Regents of the Univ. of Oklahoma*, No. 13 Civ. 3128(CM), 2014 WL 2039654 (S.D.N.Y. May 14, 2014).

28. *Id.*

29. Complaint, *supra* note 5, at 15.

30. Complaint, *supra* note 5, at 15.

31. Complaint, *supra* note 5, at 15.

32. Complaint, *supra* note 5, at 16.

33. Amended Complaint Exhibit "A" at 3, *Meyer v. Bd. of Regents of the Univ. of Oklahoma*, No. 5:15-cv- 00403-HE (W.D. Okla. filed Jul. 27, 2015).

34. *Id.* at 3–4.

35. *Id.* at 5.

36. *Id.* at 3.

37. *Id.* at 2.

38. *Id.* at 4.

39. *Id.* at 6.

family had even known of Clara's collection during her lifetime due to her fear of vandalism or theft, and her desire to retain her privacy.⁴⁰ After the initial exhibit concluded, the Museum designed a new wing to display Clara's collection.⁴¹ The wing was a replica of the Weitzenhoffer's home, which was filled with her collection of 17th and 18th century antiques, in addition to her lustrous art collection.⁴² The collection remained undisturbed and on permanent display in the new wing until 2012, when Léone Meyer learned of *La Bergère's* location through the blog post of an expert in the field of Nazi-looted art.⁴³ Shortly thereafter, she filed suit to recover *La Bergère*.⁴⁴

III. THE MUSEUM'S RESPONSIBILITY TO PERFORM DUE DILIGENCE IN DETERMINING THE PROVENANCE OF *LA BERGÈRE*

As a member of the American Alliance of Museums (the "Alliance"), the Museum is bound by the Alliance guidelines adopted in 1998 with respect to Nazi-confiscated art. Meyer argued that the Museum had the responsibility to take reasonable steps⁴⁵ to determine the provenance of the painting, as required by the Alliance's guidelines which were in effect at the time of Clara's bequest. Due to the nine-year gap between Weitzenhoffer's bequest and discovery of provenance information in 2009, Meyer alleged that the Museum failed to perform a meaningful investigation into title or perform sufficient provenance research since this information was attainable.⁴⁶ The creation of the Alliance's guidelines reflected a national attempt to return family heirlooms and art to Holocaust victims.⁴⁷

In the second half of the 1990s, the U.S. made several efforts to address the issues surrounding the conflicting claims of ownership and

40. *Id.* at 5.

41. *Id.* at 6.

42. *Id.* at 6.

43. Complaint, *supra* note 5, at 18.

44. Complaint, *supra* note 5, at 19.

45. Steps include: searching own records and contacting established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/WWII-era provenance information. (A)(2)

46. Complaint, *supra* note 5, at 18.

47. *See Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, AMERICAN ALLIANCE OF MUSEUMS, <http://www.aamus.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era> [https://perma.cc/9MLQ-PDXN] (last visited Oct. 29, 2016) [hereinafter *Unlawful Appropriation Standards*] (discussing the general history and principles of the organization).

determine obligations between museums and “good faith” purchasers of Nazi-confiscated art appearing in American museums.⁴⁸ Congress passed the Holocaust Victims Redress Act (HVRA) in 1998 to encourage “good faith efforts to facilitate the return” of Nazi-confiscated property, including irreplaceable works of art.⁴⁹ The HVRA set forth the “sense of Congress” to help Holocaust victims regarding Nazi-looted property. Additionally, in 1998, the U.S. government organized the Washington Conference to discuss solutions to provide redress to Holocaust victims and their families, including returning works of art or providing restitution. “Specifically, the goal [of the Washington Conference] was to create a consensus of how to manage the issues of recovery and restitution of looted art, religious, cultural and historical objects, communal property, insurance claims, and other related matters.”⁵⁰

The Conference resulted in the creation of eleven principles.⁵¹ Principle number eight states, “[i]f 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.”⁵²

Despite intense scrutiny and vigorous debate on the issue, the Principles were neither legally binding nor agreed to by formal agreement by the parties attending the Conference. Rather, the parties adopted the Principles as voluntary commitments “based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust [] victims should be returned to them or their heirs . . . in order to achieve just and fair solutions.”⁵³

While the U.S. government was working to provide guidance through the HVRA and the Washington Conference in anticipation of the issues that would accompany the discovery of Nazi-confiscated art in American museums, several museum organizations adopted principles and guidelines to aid in creating solutions to help return the art or give restitution to those people whose works of art had been

48. *See id.* (discussing U.S. efforts in dealing with conflicting claims).

49. Jessica Schubert, *Prisoners of War: Nazi-Era Looted Art and the Need for Reform in the United States*, 30 *TOURO L. REV.* 675, 680 (2014).

50. *Id.*

51. *Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/p/eur/rt/hlcst/122038.htm> [<https://perma.cc/T3LW-9JY7>] (last visited Oct. 29, 2016).

52. *Id.*

53. Schubert, *supra* note 49, at 682.

looted. Two organizations dedicated to this cause were the Alliance and the Association of Art Museum Directors (the Association). The Association presented its 1998 Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933 – 1945) (Guidelines).⁵⁴ Additionally, in 1999, the Alliance passed its Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era (Standards).⁵⁵ These organizations' Standards and Guidelines are particularly important in the *Meyer* case because the Museum was a member of both organizations.⁵⁶

Meyer asserted that because the Museum was a member of both of these organizations at the time of the Weitzenhoffer bequest, it had a duty to comply with these Standards and Guidelines, specifically to perform research to determine the provenance information of works already in its collection or those given through gift or bequest.⁵⁷ Furthermore, if a work is deemed to be Nazi-confiscated art under the standards or guidelines, Meyer argued the Museum had a duty to resolve the situation with the rightful owner, and it failed to do so with respect to *La Bergère*.⁵⁸

A. *The Alliance's Standards*

Members of the Alliance have access to the online resources library, custom research assistance and sample documents, and discounted or free professional development programs.⁵⁹ Access to these resources and the ability to readily communicate with other museum members is intended to aid in provenance research.⁶⁰ More importantly, membership also implies a promise to adhere to the Alliance's ethics, standards, and best practices (Standards).⁶¹ Because these Standards

54. Complaint, *supra* note 5, at 17.

55. *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, AMERICAN ALLIANCE OF MUSEUMS, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era> [<https://perma.cc/9MLQ-PDXN>] (last visited Oct. 29, 2016).

56. Complaint, *supra* note 5, at 33.

57. Complaint, *supra* note 5, at 18.

58. Complaint, *supra* note 5, at 18.

59. *See Museums*, AMERICAN ALLIANCE OF MUSEUMS, <http://aam-us.org/membership/more-information/museums> [<https://perma.cc/6R9W-N5J8>] (last visited Oct. 29, 2016) (explaining some of the benefits of being a member).

60. *Nazi Era Provenance*, AMERICAN ALLIANCE OF MUSEUMS, <http://www.aam-us.org/resources/nazi-era-provenance> [<https://perma.cc/UR5Q-JVQ3>] (last visited Oct. 29, 2016).

61. *See Ethics, Standards, and Best Practices*, AMERICAN ALLIANCE OF MUSEUMS, <http://aam-us.org/resources/ethics-standards-and-best-practices> [<https://perma.cc/L4YV-NSJN>] (last visited Oct. 29, 2016)

are only ideals that museums should strive to uphold, there are no legal consequences for failing to comply, as these Standards are self-regulating.⁶² One consequence of failing to adhere to the standards can be loss of accreditation from the Alliance; however, loss of accreditation is imposed only where there has been a dramatic change in the museum's mission, perhaps resulting from a merger, or organizational or physical changes at an already-accredited museum.⁶³ Loss of accreditation does not seem to be a serious threat to a museum failing to uphold the Standards of the Alliance regarding art that Nazis may have looted during World War II.

The Standards also dictate an ongoing responsibility for museums to continue provenance research on their existing collections: “[M]useums should make serious efforts to allocate time and funding to conduct research on covered objects in their collections whose provenance is incomplete or uncertain.”⁶⁴ This particular Alliance standard, in addition to another that states, “[M]useums should incorporate Nazi-era provenance research into their standard research on collections,”⁶⁵ emphasizes that conducting provenance research on World War II era works is an ongoing duty.

B. The Association's Guidelines

Three sections of the Association's Guidelines are pertinent to Meyer's argument: (1) research for existing collections; (2) research for future gifts, bequests, and purchases; and (3) responses to claims against museum property.⁶⁶ During the fifteen years the Museum owned the Weitzenhoffer collection, it had a duty under the Guidelines “to review the provenance of [the] works in [its] collection[s] to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.”⁶⁷ Additionally, the Museum had a duty to “take all reasonable steps to [determine] provenance information” to determine whether the works were looted

(explaining the goal of the AAM is to bring museums under a set of guidelines).

62. JUDITH C. STARK, *THE ROUTLEDGE COMPANION TO MUSEUM ETHICS* (Janet Marstine ed., 2011).
63. *Management Agreements and Memorandum of Understanding*, AMERICAN ALLIANCE OF MUSEUMS, <http://aam-us.org/docs/default-source/continuum/ac-policy-statements.pdf?sfvrsn=2> [<https://perma.cc/5MNT-RSVH>] (last visited Oct. 29, 2016).
64. *Unlawful Appropriation Standards*, *supra* note 47.
65. *Unlawful Appropriation Standards*, *supra* note 47.
66. REPORT OF THE AAMD TASK FORCE ON SPOILIATION OF ART DURING THE NAZI/WWII ERA (1933–1945) 2–4 (1998).
67. *Id.* at 3.

during World War II.⁶⁸ The Guidelines pertaining to future gifts, bequests, and purchases also would have applied because the Association passed the Guidelines in 1998, two years before the Weitzenhoffer bequest was made.⁶⁹ Because the Weitzenhoffer collection is a future bequest, the Museum had a duty to comply with these guidelines once it knew that it would be the recipient of the donation.⁷⁰ Specifically the guidelines provide that “when the Nazi/World War II era provenance is incomplete for a gift, bequest, or purchase, the museums should search available records and consult appropriate databases of unlawfully confiscated art.”⁷¹ This continual obligation, coupled with the lack of available evidence to show that the Museum took reasonable steps to research the provenance information with respect to the Museum’s existing collection, supported Meyer’s allegation that the Museum had breached its duty under the standards of both the Alliance and the Association.

Although these Guidelines provide presumptive evidence that member museums understand the obligation to research possible Nazi-looted art, like the Alliance’s Standards they are not legally binding rules.⁷² Meeting the Guidelines is a voluntary commitment, similar to adoption of the Washington Conference Principles.⁷³ Museums that belong to this organization are expected to uphold these Guidelines, but if they fail to do so there are no legal consequences.⁷⁴

Association member museums must adhere to the Association’s Code of Ethics (Code). The Code “stresses that the museum’s duty to the public is not to just act legally, but ethically as well.”⁷⁵ If a member museum violates the Code, the museum is subject to discipline in the form of reprimand, suspension, or expulsion from the organization.⁷⁶ But the Code is broader than the Guidelines as it emphasizes the Guidelines’ effort to avoid holding stolen artwork.⁷⁷ While a museum

68. *Id.*

69. Complaint, *supra* note 5, at 35.

70. Complaint, *supra* note 5, at 58.

71. REPORT OF THE AAMD TASK FORCE, *supra* note 66, at 3.

72. STARK, *supra* note 62, at 37.

73. CHARLES A. GOLDSTEIN, RESTITUTION EXPERIENCE SINCE THE WASHINGTON CONFERENCE (1998) 18 (2011).

74. STARK, *supra* note 62, at 37.

75. Emily A. Graefe, *The Conflicting Obligations of Museums Possession Nazi-Looted Art*, 51 B.C.L. REV., 473, 505 (2010).

76. *Code of Ethics*, ASSOCIATION OF ART MUSEUM DIRECTORS, <https://aamd.org/about/code-of-ethics> [<https://perma.cc/LX3E-VQT8>] (last visited Oct. 29, 2016).

77. *Id.*

that fails to abide by the Guidelines may be subject to discipline and or expulsion, expulsion is more likely to result more from a violation of the Code than from a failure to perfectly adhere to the Guidelines.⁷⁸ As a result, it seems the most serious consequence facing an Association member museum is expulsion for failing to uphold ethics but not for failing to do provenance research on suspected Nazi-looted art.

Although it is easy to determine whether a museum belongs to the Association, the public is unlikely to be aware of what Association membership entails.⁷⁹ Because artists, art enthusiasts, and those who work directly with museums may be familiar with Association membership, these groups may understand the importance of membership and expulsion. But it is unlikely to have a noticeable impact on public opinion or museum attendance. Though the Guidelines are an important step in righting egregious wrongs, they are self-regulating and require, at best, only reasonable adherence, not absolute compliance. While non-member museums are not necessarily afforded access to the databases so as to more easily ascertain provenance, provenance research is not an easy road for Association member museums either.⁸⁰ Provenance research can be expensive and time-consuming even for member museums, due to the availability of either too much or too little information.⁸¹ Moreover, there is no guarantee other member museums will contribute to the databases or update them regularly with new acquisitions. For this reason, member museums are expected only to take reasonable steps, and not every step possible, to determine the provenance of gifts, bequests, purchases, and works already in their collections.⁸²

Because the Weitzenhoffer bequest should have been researched as both a future bequest as well as part of an existing collection under the Guidelines, Meyer argued that the Museum had a duty to take reasonable steps to perform provenance research on both fronts upon receiving the bequest in 2000.⁸³ Meyer asserted that in 2009, Dr. Annette Schlagenhauft, associate curator at the Indianapolis Museum

78. See Graefe, *supra* note 75, at 506–08 (discussing the limits of the guidelines).

79. The Association's website lists member museums, and many museums list this information on their own websites. See *AAMD Maintains Seven Committees*, ASSOCIATION OF ART MUSEUM DIRECTORS, <https://www.aamd.org/about/committees> [<https://perma.cc/3NUU-S2GR>] (last visited Oct. 29, 2016).

80. *Provenance Research*, THE CLEVELAND MUSEUM OF ART, <http://www.clevelandart.org/research/in-curatorial/provenance-research> [<https://perma.cc/W7XW-5ECA>] (last visited September 24, 2016).

81. *Id.*

82. *Unlawful Appropriation Standards*, *supra* note 49.

83. Complaint, *supra* note 5, at 21.

of Art in Indianapolis, provided provenance information to the Museum.⁸⁴ Because there was a nine-year period between the bequest and Dr. Schlagenhauff's discovery of provenance information, Meyer argued that the Museum did not take reasonable steps to perform its own provenance research on the pieces in the Weitzenhoffer bequest, particularly *La Bergère*.⁸⁵ Furthermore, Meyer claimed that because the Museum was a member of the Association and the Alliance, it would have had access to contact information to obtain records and additional provenance information from other member museums, which could have aided in its own provenance research.⁸⁶

Though the Museum may have taken reasonable steps to discern the provenance of the future bequest, it may have breached its duty concerning provenance in terms of its existing collection. The Museum received the bequest in 2000.⁸⁷ Dr. Schlaugenhauff discovered provenance information in 2009.⁸⁸ Because the Museum had nine years to find information, its failure to do so supports Meyer's contention that the Museum had failed to take reasonable steps to research provenance in its existing collection.

The obligation of the Association should be considered an ongoing responsibility. Because the databases of unlawfully confiscated art will continue to grow, thereby increasing the available provenance information, the definition of what qualifies as reasonable with respect to provenance research will also grow, thus broadening a museum's responsibility to address claims of ownership to potentially Nazi-confiscated art. The Museum's curatorial file shows that little ownership information was available at the time of the Weitzenhoffer bequest.⁸⁹ Additionally, because the parties subsequently reached a settlement, it may never be known whether the Museum adequately researched the provenance information and if so, what those efforts actually entailed.

The Guidelines also require that a museum take three necessary steps once a claim arises that the Nazis illegally confiscated a work of art during World War II that is currently in a museum's collection: "[First] it should seek to review such a claim promptly and

84. Complaint, *supra* note 5, at 18.

85. Complaint, *supra* note 5, at 18.

86. Complaint, *supra* note 5, at 17–18; *Museums*, AMERICAN ALLIANCE OF MUSEUMS, <http://aam-us.org/membership/more-information/museums> [<https://perma.cc/43Z8-KGBM>] (last visited Oct. 30, 2016).

87. Complaint, *supra* note 5, at 18.

88. Complaint, *supra* note 5, at 18.

89. Complaint, *supra* note 5, at 18.

thoroughly.”⁹⁰ Second, if the museum determines the work of art was illegally confiscated, then “the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.”⁹¹ Finally, “[The Association] recommends “using mediation where reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.”⁹²

Once Meyer brought a claim regarding *La Bergère*, which was part of the Museum’s permanent collection, the Museum had a duty to review the claim promptly and thoroughly.⁹³ Though the University of Oklahoma and the Museum sought to have the claim dismissed in court,⁹⁴ it is unclear how thoroughly the Museum had reviewed the claim under the Guidelines.⁹⁵ The Museum’s curatorial file contains little ownership information at the time of the Weitzenhoffer bequest,⁹⁶ but it should have considered both the ownership information available as well as Dr. Annette Schlagenhauff’s provenance information from 2009 in its review. This information would have put the Museum on notice the painting had been illegally confiscated. Once it knew *La Bergère* might have been illegally confiscated, the Museum owed an obligation to resolve the situation in an “equitable, appropriate, and mutually agreeable manner.”⁹⁷

A major hurdle is determining what constitutes “equitable, appropriate, and mutually agreeable” means. While these concepts may vary depending on the facts of each case, the challenges increase when both parties want actual possession of the disputed work of art. Obviously numerous works have no provenance information available because of the large number of records lost or destroyed during the War, and at this point it would be not only costly, but sometimes impossible to track and locate the rightful owners. Additionally, most Holocaust survivors and their heirs have had little success in bringing replevin claims, mainly due to the statute of limitation for such claims.⁹⁸

90. REPORT OF THE AAMD TASK FORCE, *supra* note 66, at 4; *Unlawful Appropriation Standards*, *supra* note 47.

91. REPORT OF THE AAMD TASK FORCE, *supra* note 66, at 4.

92. REPORT OF THE AAMD TASK FORCE, *supra* note 66, at 4.

93. *Unlawful Appropriation Standards*, *supra* note 47.

94. Reply Memorandum in Support of Motion to Dismiss, Meyer v. Bd. of Regents of the Univ. of Oklahoma, No. 13 Civ. 3128(CM), 2014 WL 2039654 (S.D.N.Y. May 14, 2014).

95. Complaint, *supra* note 5, at 18.

96. Complaint, *supra* note 5, at 18.

97. REPORT OF THE AAMD TASK FORCE, *supra* note 66, at 4.

98. Katherine N. Skinner, *Restitution Nazi-Looted Art: Domestic, Legislative, and Binding Intervention to Balance the Interests of Victims and Museums*, 15 VAND. J. ENT. & TECH. L. 673, 685 (2013).

While most cases involving Nazi-looted art have been dismissed on procedural grounds or because the statute of limitation has run, courts are faced with providing relief in an area with little precedence or consistency when these cases do proceed. As a result, the nonbinding but ambitious Guidelines and Standards offer courts essentially the only guidance available in settling the dispute. The Guidelines encourage the use of alternatives to litigation, focusing primarily on mediation and waiver of defenses.⁹⁹ Parties deserve the opportunity to voice their concerns, and mediation would be an efficient means to achieve that end. Settlements reduce litigation costs and also provide a way for parties to have their voices heard. Overall, parties should seek a settlement and fully explore that alternative first.

IV. UNIVERSITY OF OKLAHOMA'S BEST ARGUMENT

Ms. Meyer originally filed her claim in New York, as the gallery that sold the painting to the Weitzenhoffers is located within that jurisdiction.¹⁰⁰ The New York District Court granted the University of Oklahoma's motion to dismiss on the grounds it lacked personal jurisdiction, so it did not address the issue of the prior Swiss litigation.¹⁰¹ After the case was transferred to the Western District of Oklahoma, the University of Oklahoma again filed a motion to dismiss the case.¹⁰² In its motion, the University of Oklahoma noted that the litigation in Swiss court in the 1950s had awarded the title of the *La Bergère* to Bernoulli.¹⁰³ Furthermore, it was undisputed that Raoul Meyer had not appealed the Swiss court's judgment.¹⁰⁴ After the Swiss court found Bernoulli to be the good-faith owner of *La Bergère*, he offered to sell it to Raoul but without success, and Raoul Meyer subsequently lost track of the painting.¹⁰⁵

Though Ms. Meyer argued that Oklahoma follows the common law rule that a thief cannot acquire good title,¹⁰⁶ the Swiss court's determination that Bernoulli had good-faith title to *La Bergère* is evidence that Switzerland does not follow the common law rule as

99. Schubert, *supra* note 49, at 683.

100. Complaint, *supra* note 5, at 9.

101. *Meyer v. Bd. of Regents of the Univ. of Oklahoma*, No. 13 Civ. 3128(CM), 2014 WL 2039654, at *1 (S.D.N.Y. May 14, 2014).

102. Defendant's Motion to Dismiss, *supra* note 27, at 8.

103. Defendant's Motion to Dismiss, *supra* note 27, at 3–4.

104. *See* Complaint, *supra* note 5, at 15 (“Raoul Meyer attempted to negotiate the restitution of *La Bergère* from Bernoulli, including through judicial means, but to no avail. Raoul Meyer then lost the trail of *La Bergère*.”).

105. Complaint, *supra* note 5, at 15

106. Complaint, *supra* note 5, at 21.

Oklahoma does. It remains unknown if the transfer to Bernoulli was made in good faith, but it does not seem that he personally stole the painting.¹⁰⁷ Instead it appears he acquired it at some point following Nazi confiscation of *La Bergère*.¹⁰⁸ The fact the Swiss court did not force him to return the painting to Meyer and alternatively awarded him good faith title¹⁰⁹ shows that the Swiss court did not follow the common law in reaching its determination.

Because Raoul Meyer did not appeal the Swiss court's judgment, it stands as final judgment in quieting title in Bernoulli as the good-faith owner.¹¹⁰ Furthermore, if the Western District of Oklahoma had chosen to recognize the foreign judgment, then the court could have dismissed Meyer's claim under *res judicata*.¹¹¹ The previous Swiss judgment would bar a future suit on the same grounds based on the idea that Raoul Meyer had a fair opportunity to litigate his claim in court.¹¹² Thus, his daughter now could not bring a new suit on the same grounds. The Museum argued that the "Tenth Circuit has upheld dismissals on recognition of foreign judgments that bar later actions in courts of the United States."¹¹³ While this may have been the University of Oklahoma's best argument, the applicability of *res judicata* remains unresolved because the parties reached a settlement agreement. In the end, though the Museum might not have adhered to the Guidelines regarding provenance research, it did enter into negotiations to reach a settlement of all claims.¹¹⁴

107. See Memorandum of Law in Support of Motion to Dismiss at 4, Meyer v. Bd. of Regents of the Univ. of Oklahoma, No. 13 Civ. 3128(CM), 2014 WL 2039654 (S.D.N.Y. May 14, 2014) ("[T]he Swiss court returned a verdict in favor of Mr. Bernoulli . . .").

108. *Id.* at 3–4.

109. Complaint, *supra* note 5, at 19.

110. Memorandum of Law in Support of Motion to Dismiss, *supra* note 107, at 22.

111. Defendant's Motion to Dismiss, *supra* note 27, at 13 (finding that "[R]es judicata provides that a "final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the action.").

112. Memorandum of Law in Support of Motion to Dismiss, *supra* note 107, at 22.

113. Defendant's Motion to Dismiss, *supra* note 27, at 11.

114. Randy Ellis & Silas Allen, *University of Oklahoma Settlement Agreement Revealed in Nazi-Looted Art Case*, THE OKLAHOMAN (Feb. 23, 2016, 11:30 AM), <http://newsok.com/article/5480678> [<https://perma.cc/F5UQ-6HCH>].

V. THE MEYER SETTLEMENT AGREEMENT

Though the Guidelines outline necessary steps a museum should take in the event a claim arises that a piece of art was illegally confiscated, the Washington Conference also includes information on how to approach this situation. The principles of the Washington Conference reaffirm the duty of a museum to provide redress to the rightful owners whose collections were looted: “If the pre-War owners of art that is found to have 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.”¹¹⁵ Also, the Alliance’s Standards echo the Association’s Guidelines: “If a museum determines that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution, the museum should seek to resolve the matter with the claimant in an equitable, appropriate, and mutually agreeable manner.”¹¹⁶ Though courts have not reached a consensus as to what “equitable, appropriate, and mutually agreeable” means, one way to accomplish this is via a settlement agreement.

The Meyer settlement agreement includes the following provisions: (1) *La Bergère* will be transported to a French museum in summer of 2016 where it will be displayed for five years; (2) after the initial five-year period, the painting will be displayed for alternating three-year periods at the Fred Jones Jr. Museum of Art and a museum in France (yet to be determined); (3) neither Meyer nor the Museum can sell movie, television, or other commercial rights to the story about the legal dispute over the stolen painting without permission from the other (and if the rights are sold, then the parties are to split the proceeds); and (4) Meyer is required to make a gift of the painting to a mutually agreed upon art institution in France during her life or as a testamentary gift (so it is possible a French museum and OU will continue to share ownership over alternating three-year periods).¹¹⁷ Additionally, all pending litigation over the painting was dismissed as part of the settlement.¹¹⁸

This settlement agreement seems to be equitable and mutually agreeable for several reasons. Requiring the display of *La Bergère* to alternate between the Museum and a French Museum was equitable as both parties will have the opportunity to display the work every three

115. *Washington Conference Principles on Nazi-Confiscated Art*, *supra* note 51.

116. *Code of Ethics*, *supra* note 76.

117. Ellis & Allen, *supra* note 114.

118. Ellis & Allen, *supra* note 114.

years.¹¹⁹ Additionally, the agreement is mutually agreeable as both parties have to agree upon the French museum to which Meyer will gift *La Bergère*.¹²⁰ Furthermore, neither party is allowed to sell commercial rights to the story about the legal dispute without the permission of the other party, which speaks to both the equitable and mutually agreeable components of the agreement.¹²¹ Finally, since any pending litigation over the painting is to be dismissed, the agreement was equitable because neither party would be subject to drawn out litigation or additional expenses.¹²² This agreement acknowledges the Meyer family's right of ownership to the painting as well as allows the public to view the painting, thus promoting public education and the public good. Overall, the settlement agreement seems to meet the standard of being both equitable and mutually agreeable.

All relevant guidelines of these specific organizations and legislation were passed before the Weitzenhoffers' bequest in 2000,¹²³ so it is likely the Museum was aware of the public interest and national efforts being made to return the art looted during the Nazi regime to the rightful owners. The Guideline requiring the resolution of issues in an "equitable, appropriate, mutually agreeable manner" manner was undoubtedly influenced by this public interest and concern. Even if the Museum breached its duty of due diligence in failing to determine the provenance of *La Bergère*, the legal consequences imposed by the organizations for a failure to comply with the Association's Guidelines and the Alliance's Standards are weak at best. Thus, settlement and negotiation seem to benefit the parties more so than filing a lawsuit, which will always be time-consuming and expensive.

VI. POLICY CONCERNS

A strong public interest component favors allowing the Museum to retain possession of *La Bergère*. Society should encourage the development and preservation of museums because their collections provide an unparalleled cultural education: "[The Museum's] duty is to care for, interpret, and exhibit the collection and to preserve it for future generations in an enhanced form if possible."¹²⁴

119. Ellis & Allen, *supra* note 114.

120. Ellis & Allen, *supra* note 114.

121. Ellis & Allen, *supra* note 114.

122. Ellis & Allen, *supra* note 114.

123. *Code of Ethics*, *supra* note 76.

124. *FJJMA Mission*, FRED JONES JR. MUSEUM OF ART (Dec. 10, 2014), <http://www.ou.edu/content/fjjma/about/mission.html> [<https://perma.cc/3TQE-Y686>].

Museums are able to house priceless and historically rich works of art. Maximizing the ability for the public to share in the beauty and educational benefits with subsequent generations is a worthwhile concern: “[I]t is important that museum are no longer seen as part of the ivory tower, but as the new public forum . . . we want people to feel at home here and to keep coming back. We want these paintings to become like old friends.”¹²⁵ The Museum created an entire wing replicating Clara Weitzenhoffer’s home to showcase the collection in a way that she had always displayed and enjoyed it. It is clear the museum wanted to display the art for the public’s enjoyment.¹²⁶ *La Bergère* may not be the most important piece in the collection, but it represents a unique phase of the French Impressionist movement.¹²⁷ Museums are crucial in preserving cultural history around the world, and they help bridge the gap across generations and between communities. In fact, part of the Museum’s mission is to “provide students and visitors with a global perspective by creating international awareness and understanding through art.”¹²⁸ When the Museum first exhibited Clara Weitzenhoffer’s art in 2000, more than 33,000 people attended.¹²⁹ That is strong evidence that the Museum was a valuable contributor to public education and community prosperity. If *La Bergère* had been returned to Meyer without the shared-interest component of the parties’ settlement, both the Museum and the University of Oklahoma would have lost a valuable piece of art with enormous cultural value as well as suffering the negative impact of the litigation on their reputation.

Though public interest tilts the scales in favor of *La Bergère* remaining in the possession of the Museum, those with valid claims to works of art who were victims of the Holocaust should be entitled to restitution for recovery of family property. The Washington Conference provided evidence of this concern: “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.”¹³⁰ Taking into consideration the efforts made by Congress, the Alliance, and the Association, it is apparent that all types of people

125. Amended Complaint Exhibit “A,” *supra* note 33, at 61.

126. Amended Complaint Exhibit “A,” *supra* note 33, at 61–62.

127. *European Art*, FRED JONES JR. MUSEUM OF ART (Oct. 1, 2015), <http://www.ou.edu/content/fjjma/collections/europeanArt/pissarroBergere.html> [<https://perma.cc/B9KY-S79N>].

128. *FJJMA Mission*, *supra* note 127.

129. Amended Complaint Exhibit “A,” *supra* note 33, at 57.

130. *Washington Conference Principles on Nazi-Confiscated Art*, *supra* note 51.

and organizations began working towards the common goal of providing redress and restitution to Holocaust victims.

VII. CONCLUSION AND ALTERNATIVE SOLUTIONS

Perhaps the lack of precedent and uniformity regarding Nazi-looted art arises from the fact that oftentimes the parties (both victims or their heirs and the museum) involved in the dispute over a work are both “two innocents.”¹³¹ As they are both innocent in a very real sense, their reasons for maintaining legal ownership of the art are even more compelling. Returning Nazi-looted art “brings emotional closure to the heirs of Holocaust victims for a past grievance” and lines up with public opinion and efforts to grant relief for those injustices.¹³² In contrast, museums display art to provide a “broader, public, educational good.”¹³³ In light of these competing interests, courts will have to determine which interest carries more weight on a case-by-case basis, which does not seem helpful since many of the works will find their way back into the market once the current owners die. This fact is evidence of the need for uniformity and consistency with respect to Nazi-looted art. There is little explicit statutory law addressing these claims.¹³⁴ Federal law imposing mandatory mediation would address the conflicting interests of granting relief to Holocaust victims and their heirs for the Nazi atrocities while allowing museums to serve the public good through education, as they were designed to do. A federal requirement for mediation and negotiation could be a beneficial first step in minimizing unmeritorious claims and reducing litigation. Furthermore, private mediation would limit unwanted publicity for a museum, and also allow a claimant to maintain privacy. Additionally, where there are multiple pieces of art all claimed to be in the possession of multiple people or museums, a single claim and mediation may provide a better outcome for the parties involved.

Mediation seems to be a better course for confronting conflicting claims of ownership of Nazi-looted art than does imposing strict and varying statutes of limitation. Although statutes of limitation promote “judicial economy and encourage timeliness if suits are brought,”¹³⁵ the limited amount of time to bring a claim is inherent in the name. Statutes of limitation vary among states, but it is the reason most

131. Skinner, *supra* note 98, at 675.

132. Skinner, *supra* note 98, at 675.

133. Skinner, *supra* note 98, at 675.

134. Erin L. Thompson, *Cultural Losses and Cultural Gains: Ethical Dilemmas in WWII-Looted Art Repatriation Claims Against Public Institutions*, 33 HASTINGS COMM. & ENT. L.J. 407, 419 (2011).

135. Graefe, *supra* note 75, at 481.

claims never make it to court:¹³⁶ “The merits of the case are typically never reviewed; the majority of Nazi-era looted art cases to date have been settled outside of the courthouse, so there is no relevant examination of the substantive facts and circumstances of a claim in which to provide a clear precedent for the artwork’s original owner or heirs.”¹³⁷ Mandated mediation would allow for claimants to have their voices heard, for both parties to avoid costly and timely litigation, and if conducted privately, reduce backlash against museums that could diminish public opinion of the museums and cause a decrease in attendance.

Meyer is just one example of the small number of claims regarding Nazi-looted art that make it to court. Even though the case reached a settlement and all pending litigation dismissed, the *Meyer* case provides a lens highlighting the difficulties a claimant faces in establishing a right to the disputed artwork and even getting a claim heard. On the other hand, this case is evidence of the duty of museums to foster public education, preserve art and cultural artifacts, and make these works of art accessible to the world. Though these competing interests are both compelling and rooted in strong public policy concerns, the lack of uniformity, consistency, and regulation regarding Nazi-looted art does not serve either side well. Additional or stricter statutes of limitation may impede the interests of victims seeking relief. Alternatively, mandatory mediation may provide a way to address differing policy concerns and public interests, creating consistency in this area of law. Though the settlement in *Meyer* seems to be both equitable and mutually agreeable, only time will tell if it is a positive result as well as an impetus to enact mandatory mediation.

136. See *Toledo Museum of Art v. Ullin*, 477 F. Supp. 2d 802, 803–06 (N.D. Ohio 2006) (holding that Ohio’s four-year statute of limitations bars recovery); but see *O’Keeffe v. Snyder*, 416 A.2d 862, 868 (N.J. 1980) (“The fulcrum on which the outcome turns is the statute of limitations in N.J.S.A. 2A:14-1, which provides that an action for replevin of goods or chattels must be commenced within six years after the accrual of the cause of action.”).

137. Schubert, *supra* note 49, at 689.