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Restitution of Holocaust-Era Looted Art: The Italian Experience

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Introduction

Sixty years after the resolution of World War II, individuals and families continue to suffer the profound injustice of despoilment. Although the Washington Principles, promulgated by the 1998 Washington Conference on Holocaust-Era Assets contribute significantly to rectifying (this situation), broad variation in acceptance of the Principles among different countries complicates ongoing efforts to achieve successful resolution of claims. Reviewing a country’s experience during and after World War II can illuminate the current status of restitution efforts. In the case of Italy, this means examining the effects that Italian Fascist anti-Jewish legislation had on Jewish property beginning with the Fascist State’s adoption of a race policy in 1938.

Prior to the Badoglio Armistice of September 8, 1943, the Italian government pursued its anti-Jewish policy through laws, decrees and even ministerial circulars. Although this material has been collected for study and publication, little is known about how those measures were actually applied. More is known about the period after the Armistice, when the German army occupied part of the Italian peninsula and the Italian Social Republic began. During that period, the Republic of Salò issued decrees and laws concerning Jewish and the German occupation forces carried out government authorized measures on orders from Berlin. Legislation passed at this time provided for the seizure of possessions of artistic, cultural and religious significance.

Within the larger context of the period of racist persecution, it is also important to focus attention specifically on the activity of Jewish collectors in order to determine the fate of specific works.

Measures

First Period: September 1938 – July 1939

A systematic anti-Semitic policy gradually emerged between September 1938 and July 1939 although despite the absence of specific legislative or administrative measures aimed at depriving Jews and Jewish communities of their cultural possessions. The following points offer a brief recapitulation of the measures dating from this period:

- Rdl 1381/1938 (September 7, 1938), “Provisions regarding Foreign Jews”. Art. 4 of this law decree reads: “The foreign Jews who, at the date of the publication of this law decree, are within the Kingdom of Italy, Libya or Italian territory in the Aegean, and who took up their residence there after 1 January 1919 must leave Italian territory within six months of that publication. Those who have not done so within this deadline will be expelled from the Kingdom in conformity with art.150 of the public security laws [...]”. These provisions were reiterated in a subsequent law decree rdl 1728/1938 (17 November 1938) entitled “Provisions for the Defense of the Italian Race.”
- Circular n. 43 issued by the Ministry of Education (March 4, 1939), “Provisions for the Defense of the National Artistic Heritage now in the Hands of the Jews.” This circular charged the governmental offices responsible for granting export licenses for antiquities and works of art with discouraging and creating difficulties for attempted exports. In communicating this circular to the Office of the President of the Council of Ministers, the Head Office for Demography and Race pointed out that the Ministry of Education had urged the Ministry of the Interior “to send out instructions to Royal Customs Offices for them to exercise more rigorous surveillance in view of the imminent exodus of the Jews.”
- Circular n. 63886 issued by the Head Office for Public Security at the Ministry of the Interior (September 13, 1940), “Interdiction upon dealing in Antiquities and Works of Art for those who belonging to the Jewish Race, even those enjoying ‘discriminatory’ exemption.”

Second Period: September 1943 – April 1945

During this period, the Fascist government of the RSI (established September 1943) issued provisions for the sequestration of all Jewish property (November 30, 1943) and then for the complete confiscation and expropriation of all Jewish property (January 4, 1944). At the same time,

the RSI also issued specific provisions for the sequestration of all possessions of cultural or artistic significance owned by individual Jews or Jewish communities.

The following points provide the details of these and other relevant provisions:

- Law decree issued by Mussolini (ddl – *decreto legislativo del Duce*) concerning “the Sequestration of Works of Art and Archaeological, Historical and Bibliographical Artefacts belonging to Individual Jews or Jewish institutions.” Proposed by the Ministry of Education, the decree was approved by the Council of Ministers on November 24, 1943. Further passage of the measure was then delayed until March 17, 1944, when the Undersecretary of State issued a circular stating that the decree was “being published.” However, the decree was not, in fact, published even then since other, more stringent and severe, measures had already been approved.

Nevertheless, on December 1, 1943, the Head Office for Antiquities and Fine Arts at the Ministry of Education addressed a ‘registered and confidential’ circular (No.655) explaining the content of the decree “Requisition of Works of Art owned by Jews” to the Heads of Provinces, Superintendents of Monuments and Antiquities, Superintendents of Libraries and local revenue officers. Making reference to the already-mentioned “provisions undergoing approval”, the circular pointed out that the measure laid down “the sequestration of all works of arts belonging to Jews – whether or not they enjoy ‘discriminatory’ exemption – and to Jewish institutions”. The circular defined “works of art,” as “not only works of figurative art (painting, sculpture, engraving, etc), but also works of the applied arts when these are of such value that they cannot be considered as mere everyday use-objects.”

Detailed and precise, this circular was clearly inspired by the desire to gather comprehensive reports (including the quality, summary description, identity of creator, and present location of such works of art) that might then be used in ordering sequestration. Point 7 states, “all the works of that are not duly reported [by their owners] or for which incomplete or false information is provided, with the intention of avoiding sequestration, can be confiscated. The order for this is to be issued by the Head of Province, and the objects concerned will be handed over to the Superintendent of Art Galleries, if they are works of art, or to the Superintendents of Antiquities or of Libraries, should they be of either archaeological or bibliographical interest.”

- Circular No. 5 issued by the Head Office for Antiquities and Fine Arts at the Ministry of Education (April 13, 1944) was inspired by the same spirit as its predecessor and reinforced the earlier directives. It laid down that: “In order to avoid the loss or disappearance of important works of art, [...] the superintendents of art galleries are to be appointed as sequestrators.”
- Police Order No. 5 (November 30, 1943) and the ddl 2/1944 (4 January 1944) containing “New Measures regarding the Possessions of Citizens of Jewish Race” (see previous reference). The police order and the new measures marked the most intense phase of the persecution as well as expropriation of the Jews. Together they reiterated, in a much more severe form, previously issued directives regarding works of art. Furthermore, they facilitated the seizure of all property – from everyday objects, to works of art or possessions of economic importance – through the arrest and deportation of Jewish citizens.

Period Since 1945

During this period, Italy undertook the long process of abrogating the racial laws. The process of reparation began with the introduction of measures that overturned the Fascist racial laws and restored the rights of Italian and foreign citizens considered of Jewish “race.”

The following points outline the main measures dating from this period:

- Rdl 9/1944 (January 6, 1944) provided for “Re-admission of those in employ serving government, local and state-controlled administration, as well as firms that manage public or national services, previously dismissed for political reasons.”
- Rdl 25/1944 (January 20, 1944) enacted “Measures for the restitution of civil and political rights to Italian and foreign citizens of Jewish race or considered to be of Jewish race.”
- Rdl 26/1944 (January 20, 1944) contained provisions for the restitution of property rights to Italian and foreign citizens of Jewish race or considered to be of “Jewish race.”

These measures laid the groundwork for the subsequent promulgation of statutes that covered restitution, compensation and reparation, which would be defined and amended over a period of fifty years. Among these, Law 94/1994 (January 29, 1994) and Law 233/1997 (July 18, 1997) are of particular importance in connection with dlcp 364/1947 (May 11, 1947) which ruled that: “Assets confiscated from Jewish citizens or persons considered as such for reasons of racial persecution, which have not been returned to their rightful owners due to the death or unknown fate of such persons and their heirs, which are still in the Italian State’s keeping under any title, are to be

consigned to the Union of Italian Jewish Communities, which shall arrange for the return of these assets to the individual Communities considering the origin of the said assets and the locations where dispossession took place.”

Methods

Four main categories divide the methods used in the seizure and destruction of property of artistic and cultural significance which were largely the same as for other types of property:

- a) Dispossession by means of the laws and administrative provisions.
- b) Dispossession outside the framework of the law.
- c) Destruction of synagogues and of furnishings of religious, cultural and artistic significance.
- d) Destruction caused by bombing raids and other events directly connected with the fighting.

The following individual points contribute to an orderly approach to the issue, especially given the development of various aspects over a certain period of time:

- Confiscation, sequestration or seizure of all kinds of possessions of cultural and artistic significance in general;
- Destruction or removal of archive or library material from Jewish communities;
- Destruction of the buildings of these Jewish communities, sequestration and confiscation of synagogues and their religious and artistic furnishings;
- Destruction of Jewish communities and synagogues caused by the war itself ;
- Recovery and restitution of objects of cultural and artistic significance, of archives and books and of synagogue furnishings;
- Rebuilding and restoration of synagogues;
- Property lost or unaccounted for.

Recovery and Restitution

Recovery and restitution efforts demand extreme circumspection. Ultimately, it is not always possible to discover the fate of the property concerned, and restitution efforts concerning such property often require further inquiry and research. The case of the Gentili collection

illustrates this point, and although it took place in France, the case involved the heirs of an Italian citizen of Jewish faith, Federico Gentili, formerly the representative of the Italian Finance Ministry in Paris.

A member of the *Légion d'Honneur* and of the *Gran Croce del Regno d'Italia*, as well as a patron of the arts, a collector and a scholar of the Renaissance, Gentili owned a very significant collection of paintings that included works by some of the most important artists of the Italian Renaissance. Gentili died in Paris on April 21, 1940. His two sons and heirs later fled the city in order to escape from the German occupation forces and traveled to America. An auction held on April 23, 1941—during their absence—sold off the Gentili collection as well as the family's other property. After the War some of the works surfaced in the collection of Herman Göring, who had acquired them through his agents; other works appeared in private possession or in public institutions.

On June 2, 1999, and after lengthy litigation, the Paris Court of Appeals declared sales related to the auction of Gentili property the April 23, 1941, to be null and void. The Court pointed out that the deceased Gentili's heirs, Adriana and Marcello, “had both left their Paris residence in June 1940, after the signing of the Armistice, to find refuge outside French territory then occupied by German troops, where there was an obvious threat hanging over them as members of the Jewish community.” The Court acknowledged that the heirs could not safely remain in Paris and, as a result, were unable to take the necessary provisions regarding their father's estate that might have prevented the dispersal of the Gentili collection. After the Court's ruling, the Louvre returned five paintings to the Gentili heirs, including one by Bernardo Strozzi and one by Giambattista Tiepolo. In addition, other institutions (Berlin, Cologne, Chicago and Lyons) have since returned important Tiepolo, Hobbema, and Ghislandi works.

In contrast, the Brera Collection in Italy still retains two paintings from the Gentili collection: Girolamo Romanino's *An Executioner Dragging forward Christ Bearing the Cross* and a *Madonna and Child* by Vincenzo Civerchio. The historical record shows that these paintings were among those sold, illegally, at the Paris auction referenced in Court's ruling. Nevertheless, the Superintendent for the Artistic and Historical Heritage in the Provinces of Milan, Bergamo, Como, Lecco, Lodi, Pavia, Sondrio and Varese wrote in a letter that “a study of the chronological registration of works becoming part of the Brera collection reveals that the Gallery did not acquire, either provisionally or permanently, any “works of art of owned by Jews” – that is, of those Italian

citizens who were defined as ‘Jews’.”

To date, Italy refuses the restitution of these two paintings.