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THE BACKLASH AGAINST CLAIMANTS

“The world should let go of the past and live in the present” – this uplifting advice comes from Sir Norman Rosenthal whose sweeping judgment on the invalidity of restitution claims reverberated through the art world last fall. In an op ed piece published in December 2008 by *The Art Newspaper*, the former exhibitions secretary of the Royal Academy of Arts provocatively called for a unilateral statute of limitations to inhibit Holocaust-era restitution claims, arguing that “each person should invent him or herself creatively in the present, and not on the back of the lost wealth of ancestors.” According to Rosenthal, artworks are inherently better off in public collections than returned to claimants “distanced by two or more generations from their original owners.” In an usual display of twisted logic, Rosenthal argued that the stain of Nazism, could not be cleansed by the restitution of masterworks from museums since “neither Rembrandt nor Klimt were responsible for those political crimes.”

Rosenthal’s position was enthusiastically seconded by Jonathan

Jones of *The Guardian* in January 2009. In a lengthy art blog, Jones argues that "nothing in today's art world is more absurd or insidiously destructive" than the return of artworks looted by the Nazis. Why? Because such works, according to Jones, are invariably sold on the market. Jones scathing commentary on the deaccessioning and subsequent sale of art works is that "memory is being vandalized in the name of memory." Museums, he says, are "beacons of civility and culture" and it would be brutish to weaken them through restitution claims.

Rosenthal's and Jones' arguments are indicative of a very serious and deeply disturbing backlash against Holocaust claims. Although it has to some extent accompanied restitution activity throughout the past decade, the assault on restitution regained momentum in 2006, following the return of five paintings by Gustav Klimt to the Bloch-Bauer heirs and of Ernst Ludwig Kirchner's *Streetscene* to the heirs of Alfred and Thekla Hess. In the wake of such monumental recoveries, skeptics gave in to the anxious perception that public institutions were being assailed by spurious claimants seeking undue reward for their families' suffering.

Reactions against restitution are triggered less by actual fact than by increased possibility. Both the Bloch-Bauer and the Hess recoveries were exceedingly rare and hard-won victories.

Overwhelmingly, Holocaust survivors have not received the compensation they deserve. In fact, the value of five Klimt paintings recovered by the Bloch-Bauer family exceeded the total sum that Austria pledged as global compensation for all Holocaust-related losses under the Austrian General Settlement Fund. Restitution critics – sometimes more so than its advocates – understand, however, that the issue at stake far exceeds the surrender of individual works. By subjecting museums to far-reaching scrutiny of their collections, provenance research questions the very premise on which such institutions rest. In anticipation of this imposing threat, critics fearfully monitor the increased stature being afforded to Holocaust-era claims. Ironically, Rosenthal's rigorously defensive attitude is the best indicator that we are making headway on restitution issues.

The most convenient discreditation of restitution claims is the passage of time since these crimes took place. Backlashers like

Rosenthal argue that the right to restitution should expire with the death of the original owners. They ignore the very real reason why we are dealing with claims today rather than fifty years ago. The fact that we are still undoing these wrongs simply demonstrates the extent of the Nazis' spoliation of Jewish property, as well as the inadequacy of restitution provisions in the post-war period to undo these crimes. Most governments did little to support Jewish restitution post-war, and at times actively conspired to deter such efforts. Many claims failed because court proceedings privileged owners of looted art over claimants. In Austria, art restitution was typically made contingent upon export embargos – a strategy used by the Austrian state to prevent the removal of artworks considered of national heritage. None of these factors that obstructed the timely return of Nazi loot lay in the responsibility or indeed in the realm of influence of Nazi victims.

Blaming the victim is doubly attractive when it is Jews who join in the lamentations against restitution. The son of Jewish refugees from Germany, Rosenthal has allowed himself to be recruited to attack the Jewish cause, and has put his own biography in the

service of restitution opponents. Commentators such as Diethard Leopold, the son of the Austrian collector Rudolf Leopold, eagerly snapped up what Rosenthal calls his “idiosyncratic, non-politically-correct” view that looted works, when in public hands, make up a “universal museum.” Writing for the Austrian newspaper *Der Standard*, Leopold junior suggests that the Washington Conference’s call for “fair and just solutions” might be better accommodated if paintings remained in the possession of museums rather than being returned to their rightful owners. A psychologist by training, he suggests that claims might be resolved on the premise of “what the original owners, indeed, what the artist himself would do with their paintings today,” going so far as to recommend that one let paintings “speak for themselves.” In a self-serving and bizarre hyperbole, Leopold junior concludes that paintings – if in fact they were able to do so – would no doubt choose to be publicly displayed.

Backlash deceptively frames itself as a sophisticated “post”-restitution debate that transcends the boundaries of common law and morality, yet it is not above resorting to the rhetoric of moral outrage to castigate Holocaust claimants. In 2006, Michael

Kimmelman of the *New York Times* wrote of the Bloch-Bauer return: “Wouldn’t it have been remarkable...if the heirs had decided...to donate one or more of the paintings to a public institution?” In so doing, Kimmelman suggests, “they would have underscored the righteousness of their battle for restitution and in the process made clear that art, even in these money-mad days, isn’t only about money.” The underlying message is clear: Jews are expected to be modest and selfless – lest assertive or confident behavior harvest anti-Semitism. Moreover, Kimmelman suggests that victims bear the onus of making good on history. In a peculiar conflation of fact, backlash diverts responsibility away from Nazi perpetrators and instead faults the children and grandchildren of Holocaust victims for the insufficiencies of the restitution practice. Unfortunately, this bizarre conflation of villain and victim is something we are also seeing in cases such as Fritz Grünbaum, in which the reputation of Jewish victims such as Otto Kallir is being slandered and besmirched by suggesting that Kallir acted in cahoots with the Nazis.

Of course the opponents of restitution insinuate that the art market is the true catalyst of the “Shoah business.” Undoubtedly,

the art trade has proven beneficial for provenance research since the value afforded to art has ensured that the issue be taken seriously. There are obviously congruent interests. Auction houses must inhibit the resale of looted art and therefore actively investigate the provenances of works they sell. Needless to say, the ulterior motive informing this commitment is to sell works that are being deaccessioned from the world's finest institutions. But precisely because of this vested interest, art dealers have become potent allies in promoting and upholding the principle that looted art has no resale value and cannot be sold on the open market.

Backlashers like to argue that artworks are better kept in public than private collections. They ignore the fact that continental European museums were often intimately involved in the process of dispossession. When Jones praises museums as “beacons of civility and culture,” he erroneously points to the Hermitage in St. Petersburg and the Tretyakov Gallery in Moscow – institutions notorious for harboring trophy art collected from Nazi Germany. Similarly, Jones' sympathy for Vienna's Belvedere and Kunsthistorisches Museum overlooks these

museums' active role in dispossessing Austrian Jews during the Nazi era, and in preventing the return of looted art through the strategic enforcement of post-war export embargoes. "Memory is being vandalized in the name of memory," writes Jones. Indeed, it would be more appropriate to say that history is being vandalized by a new brand of revisionism.

Museums have no intrinsic, superior right to art over private individuals, and no inherent redemptive quality that justifies the display of looted art. Museums become "beacons of civility and culture" by returning looted art, not by holding on to it. They earn our respect by acknowledging the origins of their holdings, and not by concealing the questionable mechanisms by which they were acquired. And while today's museum administrators are not responsible for past injustices, they must be held morally and politically accountable as institutions for returning property that was unrightfully acquired or traded in the Nazi-era – even if such works were acquired in good faith. The backlash argument stands truth on its head by arguing that the very steps that have heightened the moral position of museums have in fact paved the way to their erosion and downfall.

Nazi looting not only destroyed Europe's finest private collections, but also erased from memory the names of countless individuals who collected and sponsored art at the turn of the twentieth century. The Holocaust eclipsed the singular contribution of Jewish collectors such as Heinrich Rieger, Oskar Reichel or the Zuckerkandl family and allowed their legacy to be superseded by the generation of collectors active during and after the Nazi era. Among the profiteers were such individuals as the German art dealer Wolfgang Gurlitt who copiously acquired and traded art in the Nazi era; in the 1950s, his collection became the foundation of the museum now known as the Lentos Museum in Linz. Another is Gustav Ucicky, a son of Gustav Klimt, who acquired numerous Klimt works from Nazi-looted collections, many of which he bequeathed to the Belvedere upon his death in 1961. Today's process of restitution reinvests these looted works with the history of their earliest owners from which they were severed.

Responding to Rosenthal's commentary, the Germany minister of culture, Bernd Neumann issued a statement pledging his

government's "unerring moral commitment" to restitution. Great Britain's Department for Culture, Media and Sport similarly affirmed that it would not resile from its restitution policies. Political commitment to restitution is crucial to transforming public opinion and to prevailing against backlash. Governments are called upon to implement the appropriate legal frameworks for the return of Holocaust-era art from publicly sponsored collections. They must provide adequate funding for comprehensive provenance research and the publication of its findings, and bind museums to uniform standards of professional conduct and good practice.

Similarly, museums must take a proactive stance towards art restitution to ensure that provenance research is accomplished speedily and of their own. Proactive research serves museums and claimants by disassociating itself from market politics and ensuring that artworks receive the attention they deserve regardless of their monetary value. Similarly, proactive research is the only way of inhibiting the scope of influence of those lawyers and commercial institutions – let's call them ambulance chasers, the guys who are giving restitution a bad name – who pursue high profile art claims for substantial financial gain and forfeit less rewarding claims like those of Miriam Morris who spoke so well on yesterday's panel about her lifelong quest for the lost art of her father, David Friedmann. Finally, we are called upon as scholars to establish provenance research firmly as an academic discipline, based on theoretical groundwork and specific methodologies, if we mean to set the restitution agenda

on our own terms. The justness of our cause is inalienable. We can and we shall resist the backlash against claimants to ensure the continued restitution of Holocaust-era art.