Protection of Cultural Objects on Loan
The Israeli Perspective

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In the early years of World War II French police, in collaboration with the Gestapo, rounded-up 84,000 Jews and, at gunpoint, shipped them to Nazi concentration camps where almost all were murdered or died from abuse or starvation. French gendarmerie tactics included dragnets of about 11,000 Jewish school children, many of whom "disappeared" without their parents' knowledge.

During the course of this program of genocide, which constituted a crime against humanity under international law, French authorities also confiscated and assisted Nazi agents in the looting of the victims' property as well as the property of other Jews, most especially their fine art. The confiscation and looting under these circumstances, according to the Nuremberg Tribunal, constituted a crime against humanity.

After the War some of the looted fine art that was in possession of the French Government was returned --- but only when victims or their heirs survived in France, knew of the official claims procedure and made claims within a short period. The rest was kept by the French Government which made little or no effort to locate owners, i.e., either the victims or their heirs. The "collection" of loot was purposely and quietly divided up and sent to museums around France, making it virtually impossible for victims or their heirs even to find their paintings. About fifty years later, after the U.S. Department of State sponsored the Washington Conference on Holocaust-Era Assets, the French Government revisited the matter and pledged to make an effort to publicize its holdings of looted art and to make it possible for surviving victims and their heirs to make claims. Informal procedures (which turned out to be very slow and which were, in any event, non-binding) were devised to achieve the "just and fair" disposition of claims to which France had agreed in endorsing the "Washington Principles" that had been unanimously adopted by the forty-four countries attending the Washington Conference.

On February 18, 2008, the French Government presented an exhibit at the Israel Museum of 53 of some 2000 of its holdings of unreturned looted art misleadingly

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titled "Looking for Owners: Custody, Research and Restitution of Art Stolen in France during World War II." Previously, the French Government had insisted that the Government of Israel immunize the art that would be loaned to the Israel Museum against judicial seizure in connection with possible Israeli court determinations that Holocaust victims and heirs had valid claims to the art. [1] At the request of the Israel Museum, a law had been passed by the Knesset in 2007 precisely for this purpose[2] which allowed the Israel Government to comply with the French Government's demand. However, the law went considerably beyond the scope of the French Government's actual requirements by allowing the Minister of Justice, in his discretion, to close the doors of Israeli courts to Holocaust claimants if Holocaust victims or their heirs failed to submit proof, within thirty days after publication of an "official notice" in an obscure government publication, that they had a right to recover any of the art. Despite the declaration by the Knesset that temporary art exhibitions such as this should be encouraged "without affecting" the claims of the Jewish People to their rights in property looted from them in the Holocaust, the Minister was given the power, which he would exercise, to prevent Holocaust victims and their heirs from seeking any redress in Israeli courts (not just seizure of their art) if he concluded that there existed "adequate" procedures in France to resolve their claims.

The intention and effect of the Minister's action was to "protect" France from Israeli justice, presumably desired by France because of some concern that Israeli courts might unduly favor Holocaust claimants and a French preference for its own non-binding claims system that favored small compensation awards rather than restitution. Recall that Hitler's French collaborators unlawfully looted the property of their Jewish victims and successive French Governments effectively kept the loot for more than a half century for the benefit of French museums. Now the Israel Minister of Justice, at the request of the Israel Museum and French Government, would protect the French museums' interest in holding on to the loot by obstructing even valid claims of Holocaust victims and their heirs in Israeli courts of justice.

Whatever the merits of the French position[3], I am astounded at the complicity of the Israel Museum, the Minister of Science, Culture and Sport, the Minister of

[1] "France would not have allowed the pictures to be shown …without such a law…". NEW YORK TIMES, Feb. 29, 2008.
[2] Immunity from Seizure for Loans to Israel, "sheparded through the Knesset by the Education, Culture and Sports Committee and its Chairman, MK Michael Melchior (Labor)", JERUSALEM POST, February 14, 2008.
[3] "[O]ne also needs to ask if, by protecting these works under an Israeli law, we are not giving tacit agreement to the assertion that these art works legally and morally belong to the French Government." A Curator's Opinion, Stephanie Rochume (2008).

Justice and the Knesset in depriving Holocaust victims and their heirs of an opportunity to be heard in Israeli courts, to prove their valid ownership claims and to seek any form of relief whatever upon the acceptance of their claims by the Israel judiciary. All in the name of culture, or at least, the desire of the Israel Museum to display art that was stolen from Jews destined to be murdered after a journey on the French railways to Poland.

To be sure, anti-seizure laws relating to temporary art exhibitions have been adopted in other countries. Most recently, the impetus has come from demands by Russian museum officials (who have vowed repeatedly not to return artworks stolen from Jews by Nazis during the Holocaust or otherwise looted by Red Army Trophy Brigades and then shipped to the Soviet Union in violation of international law). The Russians do not want to defend their ownership claims to artworks that were confiscated by the Soviet Union or nationalized by the Russian Federation or otherwise forcibly taken away from museums or Jews in violation of the laws of war. Since virtually all countries long ago recognized the right of the Soviet Union to nationalize property taken from its own citizens after the Russian Revolution, the Russians Government's real concern relates to claims by Jews and other victims of Nazi persecution and Red Army plunder. For all practical purposes, the anti-seizure laws are intended to prevent lawful seizure (i.e., through judicial process) by Jews of their own property even though there is no effective way for them to recover the art in present day Russia and none has been returned.

In the United States, under Federal law, Holocaust victims and their heirs can sue a government owned lender of stolen art that is displayed in temporary exhibitions for damages or for an order directing the lender to return the art. Only seizure of the art while it is in the U.S. on exhibition is prevented, and only if the U.S. State Department has been furnished, in advance, with evidence of the lender's rightful claim of ownership.

In Germany, which also adopted an anti-seizure law to promote art exhibitions, the government has made clear that no immunity will be granted for evidently misappropriated property of private individuals whether taken during the Holocaust or plundered by the Red Army.

In Israel, on the other hand, where most surviving Holocaust victims and heirs are thought to reside, claimants have been barred from entry into Israeli courts for the purpose of seeking confirmation of their ownership claims or for orders requiring the return wrongfully held property or for the recovery of damages from the governments or museums that withhold their cultural treasures even though, as

noted above, the law stated that it was not supposed to adversely affect the claims of the Jewish people to their rights in property looted in the Holocaust.

The exhibit of stolen artworks from France highlights the moral and constitutional issues raised by Israel's new law. Although this "collection" of paintings was effectively hidden by the French Government for more than 60 years, the Israeli Minister of Justice was authorized to issue an order preventing claims by victims or their heirs in Israeli courts unless their claims were made immediately. The Minister then promptly issued the order notwithstanding that he was on notice from the lender itself, i.e., the French Government, and also the title of the exhibition, that the property was stolen. His finding that "adequate" judicial or, actually, "*quasi-judicial*" remedies were available to claimants in France was, presumably, "tongue-in-cheek" and cynical at best. If an Israeli citizen (Holocaust victim, no less) cannot seek justice from an Israeli court, how could a very slow, non-binding extra-legal procedure for compensation (and not restitution) mandated in France be "adequate"? Access to an impartial judiciary for a fair hearing and decision is a fundamental right of any citizen of a democracy generally guaranteed by international treaty and constitution alike.[4] Anything less is, by definition, inadequate. Did the Minister consider why the French Government is unwilling to resolve, either in Israeli or French courts, ownership claims by Holocaust victims and heirs to artworks that the French Government admits, indeed asserts, were stolen during the War?

If you think that recourse to a French mediation system involving an adversary claim against the French Government and its museums is an adequate substitute for justice administered by the Israeli judiciary, think about the cost, the complexity, the delay, the language barrier and the distance facing a Holocaust victim who has no choice but to accept the French offer of "alternative" justice. You might take into account the fact that the French commission does not favor restitution and prefers to make small compensatory awards instead. Consider also that it has been made clear that France will not compensate for, or restitute art bought in the open French market by German dealers and collectors (like Hermann Göering) during the war even though the sales were "forced" by official Nazi action or threats of arrest although other countries in which such acts occurred (e.g., Germany and The Netherlands) have set aside such sales.[5]

[4] Probably in Israel also. Berman, Shoshanna, Protection of Cultural Objects on Loan - The Israeli Perspective, Art Antiquities and Law (June 2007) at p. 129.
[5] This is the largest category of art in the French exhibition. WALL STREET JOURNAL, March 25, 2008.

The adoption of an "anti-seizure law" in Israel at roughly the same time as the enactment of anti-seizure (read anti-Jewish) legislation elsewhere in Europe, all in the name of culture, is bizarre. As an example of perversion of justice, it is outstanding. When a Nazi conductor was invited to appear at a concert in New York not long after World War II some lovers of music applauded the invitation, angrily protested by many, as a triumph of music over politics. When the Olympics were held in Berlin in 1936 to glorify Nazi Germany, many sports lovers applauded the triumph of sport over politics. Now the Israel Museum and, perhaps, other art lovers (or at least people curious to see what Holocaust victims might have loved), encouraged by the Israel Museum, the Minister of Culture and the Minister of Justice, appear to applaud the presentation of an exhibit (of stolen art)[6] over the availability of justice to Holocaust victims.

What could the sponsors of the Israeli law have been thinking when they sought to protect the possessory "right" of the thief against the valid ownership rights of Holocaust victims? What was the Knesset thinking when it deprived Jews of access to the courts of Justice (being, I think, only the second time that Jews, as such, have been prevented from seeking the protection of the courts since laws having that purpose were first enacted in Nazi Germany)? How could the Minister of Justice take such discretionary action to protect stolen property while charged with the administration of justice? Justice for whom? All in the name of whose "culture"?[7] And for what? A "collection" of stolen art having importance not because of its quality but primarily because it consists of the painful legacy of Holocaust victims still being withheld by the French Government and its museums?

[6] The art included in the exhibition is also shown on a French Government website. Notwithstanding the title of the exhibition ("Looking for Owners") it seems clear that the exhibition was not intended to enable victims to reclaim their property. Rather it appears to have been conceived as simply another display of French culture or, as "French Culture Minister Christine Albanel, who attended the event, said, "as "part of an international effort to close a chapter on the hardest and darkest of history's hours." LOS ANGELES TIMES, February 25, 2008. Her desire to close the chapter is understandable.

[7] The position of the Israel Museum is no less astonishing. On May 19-20, 2008, the Museum convened a conference entitled, "Justice Matters - Restituting Holocaust-Era Art and Artifacts." Not a word was said in the "Looking for Owners" portion of the program about the anti-seizure law or the Museum's advocacy of it. Apparently, the matter was not considered worthy of discussion.