

An Art Restitution Zeitgeist? Museum Ethics and the Law in the Early Twenty-First Century

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Fig. 1: Claude Monet, *Waterlily Pond*. 1904. Oil on canvas, 90 x 92 cm. Photo: Gérard Blot/Christian Jean. © RMN-Grand Palais / Art Resource, NY.

In April 1999, the Jeu de Paume museum hosted an official ceremony restituting a Monet water lily painting to the descendants of Paul Rosenberg, one of the most important dealers of modern art in the early twentieth century. The small museum was a fitting location for the ceremony, as it also had served as a Nazi collecting point for plundered art during the Occupation. Located in the Jardin de Tuileries, the museum is an architectural pendant to the Musée de l'Orangerie, famous for displaying Monet's stunning water lily murals. However, on this spring day, another

Monet painting was the source of excitement at the Jeu de Paume, bringing together French government officials, journalists, and Rosenberg descendants. The Nazis had stolen the canvas in September 1940, along with hundreds of other items that Rosenberg had stored near Bordeaux, and shipped it to Berlin for the collection of Joachim von Ribbentrop. After the war, the painting was repatriated to France by the Allied Monuments Fine Arts & Archives division of Allied forces – also known as the Monuments Men and Women. Nearly sixty years after the painting had been stolen, it finally returned to its rightful owners.¹

The spirited ceremony hosted by the Musées de France raises many interesting questions. Why did the restitution, involving an easily identified painting, once owned by one of the most important art dealers in France, occur several decades after the end of the war? Then Minister of Culture Catherine Trautmann presided over the ceremony and seemed puzzled by the delay. She said there would always be a “lingering mystery” as to why French officials had not identified the painting after the war.² The Monet, after all, had not been stashed away in storage; for nearly forty years it was prominently displayed at the Museum of Fine Arts in Caen.³

Contrary to Trautmann’s observations, the delayed restitution is actually a mystery we can solve. This article traces the turbulent ownership history of the painting as a case study that illustrates the broader mechanisms of Nazi plunder, and postwar misappropriation by the French government. It then examines recent restitution progress in France related to Nazi-era art, emphasizing the importance of provenance research, and connects these trends to recent debates on colonial items plundered by imperial agents from France and other European countries.

Museum stewardship of these contested items involves two key factors often in acute tension: ethics and the law. French law protects public museum collections with the principle of inalienability, requiring an act of parliament for deaccession. This legal structure helps conserve the French *patrimoine national* (national cultural heritage) and, at the same time, creates obstacles for restitution to private individuals and repatriation to sovereign nations and Indigenous communities. While laws restrict human activity and establish methods of compliance, ethics exceed the law to guide the actions of professionals in a given field based on widely held values. For those in the museum community, ethics shape decisions and behavior related to acquisition and deaccession, exhibition choices, gifted funds and objects, provenance research, and responses to restitution and repatriation claims.⁴

¹ David d’Arcy, “French relent over Rosenberg war loot claims,” *The Art Newspaper*, 31 May 1999, <https://www.theartnewspaper.com/1999/06/01/french-relent-over-rosenberg-war-loot-claims> .

² Catherine Trautmann, “Déclaration de Mme Catherine Trautmann, ministre de la culture et de la communication, sur la restitution du tableau de Claude Monet ‘Nymphéas’ à la famille de Paul Rosenberg spoliée par les nazis durant la seconde guerre mondiale, Paris le 29 avril 1999,” <https://www.vie-publique.fr/discours/188994-declaration-de-mme-catherine-trautmann-ministre-de-la-culture-et-de-la>.

³ See “Historique” on the Monet painting, MNR 214, Plateforme ouverte du patrimoine, <https://www.pop.culture.gouv.fr/notice/mnr/MNR00214>.

⁴ See Gary Edson, ed., *Museum Ethics: Theory and Practice* (New York: Routledge, 1997), 8; Andromache Gazi, “Exhibition Ethics - An Overview of Major Issues,” *Journal of Conservation and Museum Studies* 12, no. 1 (2014): 1-10, doi:10.5334/JCMS.1021213.

For Nazi-era art plunder, a striking political consensus in France has recently facilitated the deaccession of items acquired through anti-Semitic persecution and spoliation. Such a consensus does not exist, however, toward colonial items due to the complexities of international negotiations and, more crucially, competing French interpretations of the legacy of Empire. The example of Nazi-era art, examined through a case study of the Paul Rosenberg collection, demonstrates a needed shift in values among the public, museum community, and political leadership before change will occur in ethical standards and, eventually, the law.

The Paul Rosenberg Gallery in Paris

When Paul Rosenberg established his gallery on rue la Boétie in 1908, the family name was already well-known in the art world. His father, Alexandre, had built a successful business trading antiques in the 1880s. He initially specialized in eighteenth-century decorative art and over time established relationships with his artistic contemporaries, especially Impressionist and post-Impressionist artists.



Fig. 2: Paul Rosenberg in his offices at 21, rue la Boétie, Paris, ca. 1920s. Gelatin silver print. 7 × 9 7/16" (17.8 × 23.9 cm). Rosenberg Family Collection. © The Museum of Modern Art/Licensed by SCALA / Art Resource, NY.

Paul Rosenberg established his own networks of artists and collectors, focusing on nineteenth-century French pieces—works by Rodin, Degas and Renoir. But it was no easy feat to establish a business in the art dealing world, dominated at the time by Georges Petit, Paul Durand-Ruel, and the Bernheim-Jeune gallery. Rosenberg would later observe that in those early

years, it seemed that all contemporary works were handled through established dealers. He gambled by outbidding them for Impressionist paintings that were attracting some attention but were not yet top items sought by connoisseurs. The strategy lent gravitas to both the artists and Rosenberg, and soon works were flowing through his gallery. He quickly established a reputation as a dealer with great business acumen, “the shrewdest of the shrewd.”⁵

Rosenberg also had a keen eye for works by contemporary artists. In 1913, he became the exclusive dealer for Marie Laurencin, and established a similar privileged relationship with Picasso in 1918, Braque in 1923, Léger in 1926, and Matisse in 1936.⁶ His relationships with these artists were far more than commercial. He established friendships with the artists, encouraged and supported them, and even influenced their productions. His relationship with Picasso was especially important for both artist and dealer. Rosenberg’s granddaughter, French journalist and television broadcaster Anne Sinclair, describes Picasso’s lasting bond with the Rosenberg family in her book, *My Grandfather’s Gallery*, which includes a 1968 photograph of her with the aging artist.⁷

The Rosenberg gallery on rue la Boétie in the 8th arrondissement was, by all accounts, opulent. The right-wing writer Maurice Sachs offered a vivid description: “You step into Rosenberg’s gallery as if entering a temple: the deep leather armchairs, the walls lined with red silk, would lead you to think you were in a fine museum...He knew how to cast an extraordinary light on the painters he took under his wing. His knowledge of painting was deeper than that of his colleagues, and he had a very sure sense of his own taste.”⁸ In the words of artist Jacques-Emile Blanche, the gallery was a “Ritz-Palace.”⁹ The business thrived through the 1930s as Rosenberg became one of the top dealers in nineteenth- and twentieth-century French and contemporary painting, advising private and public collectors in Europe and the United States.¹⁰

The Plundered Rosenberg Collection

Although Rosenberg enjoyed a prominent position in the art world, he felt increasingly insecure throughout the 1930s as the Nazis consolidated power in Germany and political polarization deepened in France. With the threat of war on the horizon, he again showed great business acumen by transferring some of his stock to England, having established a branch in London, and to the United States. Even with these precautionary measures, several hundred works of art remained in France when the war began, and Rosenberg faced the difficult decision

⁵ Henry McBride, “Rosenberg and his private stock,” *Art News* 52, no. 8 (December 1953): 32.

⁶ MaryKate Cleary, “Paul Rosenberg and his Collection: Reconstructing the Fate of Nazi-spoliated art,” in Uwe Fleckner, Thomas Gaehtgens, Christian Huemer, eds., *Markt und Macht: Der Kunsthandel im “Dritten Reich”* (Berlin: Walter de Gruyter, 2017), 219-220; Anne Sinclair, *My Grandfather’s Gallery: A Family Memoir of Art and War*, trans. Shaun Whiteside (New York: Farrar, Straus and Giroux, 2014), 24.

⁷ Sinclair, *My Grandfather’s Gallery*, image insert 31.

⁸ Cited in Sinclair, *My Grandfather’s Gallery*, 24.

⁹ Cleary, “Paul Rosenberg and his Collection,” 219-220.

¹⁰ Cleary, “Paul Rosenberg and his Collection,” 221.

whether to leave the country. He stalled until the German invasion was underway. Through connections to French President Albert Lebrun, he was able to secure visas for himself and several other family members through the Portuguese Consul General in Bordeaux, Aristides de Sousa Mendes.¹¹ In an effort to secure his art stock and private collection, he deposited 162 pieces in a bank vault in Libourne, near Bordeaux. The stash included five Degas paintings, five by Monet, seven Bonnard, 21 Matisses, 14 Braques, and 33 Picassos. He also rented a chateau in nearby Floirac, where he stored another 100 pieces.¹² Next came the challenge of reaching Lisbon. With Spanish permission to cross the border, Rosenberg drove to Portugal accompanied by his wife Marguerite and daughter Micheline. Once in Lisbon, the family still had to wait for the highly coveted visas and, in the meantime, relied on food provisions from the British Relief Fund. Rosenberg later described the surreal scenario to an American journalist: “Imagine a man who has everything in life... and who, a week later, has lost his business, his fortune, his friends. I was sitting on a stone wall with a boiled egg and a crust of bread and I couldn’t help laughing.”¹³ His family was among the privileged and well-connected who did secure visas, eventually making their way to New York. With the art stock he had shipped to the United States, Rosenberg established a new gallery on East 57th Street and the business soon was once again thriving.¹⁴

Rosenberg had managed to escape the Nazis but by fleeing France all the assets he had left behind were left vulnerable—the remaining art stock, his private collection, and the gallery on rue la Boétie. He was among Jewish émigrés whose citizenship rights were stripped by the Vichy regime in July 1940.¹⁵ From his new base of operations in New York, Rosenberg was unaware of his denaturalization for nearly two years, until March 1942. Outraged, he wrote a quixotic five-page letter to the French Ministry of Justice: “I protest indignantly against the interpretation of the aforementioned text as regards my case...Being stripped of one’s nationality implies a dishonor that no worthy man can accept without attempting to defend himself. I am not begging for clemency for a crime I have not committed but calling for justice to which I have a right like any other citizen.”¹⁶ But, in fact, he did not have the rights of citizenship and German plundering agencies had already seized the art stock at Libourne and Floirac and taken over his Paris gallery. Exacerbating the injustice committed against Rosenberg, in May 1941 French authorities converted the property on rue la Boétie into the headquarters of the Institute for the Study of the Jewish Problem (Institut d’Étude des Questions Juives), with financial support from the German Propaganda Office. As Anne Sinclair observes, the walls once brightened with

¹¹ Sinclair, *My Grandfather’s Gallery*, 52; see also the website of the Sousa Mendes Foundation, <https://sousamendesfoundation.org/aristides-de-sousa-mendes-his-life-and-legacy/>.

¹² Lynn Nicholas, *The Rape of Europa: The Fate of Europe’s Treasures in the Third Reich and the Second World War* (New York: Vintage Books, 1995), 91.

¹³ Quoted in Sinclair, *My Grandfather’s Gallery*, 54.

¹⁴ Cleary, “Paul Rosenberg and his Collection,” 224.

¹⁵ “Loi relative à la déchéance de la nationalité à l’égard des Français qui ont quitté la France,” *Journal officiel de la République Française*, 24 July 1940, 4569.

¹⁶ Quoted in Sinclair, *My Grandfather’s Gallery*, 180.

paintings by Braque, Picasso, and Léger now displayed a portrait of Pétain and anti-Semitic quotations by Edouard Drumont.¹⁷

Incomplete Art Recovery

Even having suffered these losses and indignities, Paul Rosenberg recognized that he was among the fortunate Jewish collectors who not only survived the war but also regained many of their plundered artworks. In an especially dramatic episode during the Liberation of Paris, the Nazis made a last-ditch effort to export numerous works from the Rosenberg collection during the Liberation of Paris. Rose Valland, an employee of the Musées Nationaux who tracked the plunder at the Jeu de Paume, convinced French railway workers to prevent the train from reaching Germany. The shipment only reached the town of Aulnay-sous-Bois in the Ile-de-France, where French forces from the 2nd armored division secured the cargo. Among the French soldiers involved in the recovery of works from the Rosenberg collection was Paul's son, Alexandre, who had chosen to join the Free French in July 1940 rather than accompany his family to the United States.¹⁸ While this coordinated effort to save art plundered in France was heroic, tragically there was no commensurate effort to stop the trains deporting Jewish people.

The items recovered from the train, like some 60,000 objects repatriated to France after the war, were overseen by the Commission de Récupération Artistique (CRA), created by the Provisional Government in 1944 to manage the restitution of recovered items to rightful owners. Rosenberg had lost more than 400 works from both his business stock and personal collection and foresaw that he would never recover them all. In April 1945, he assessed the yet incomplete restitution process: "We recovered some paintings looted by the Germans or by dishonest Frenchmen. But I am not going to complain, it's...nothing when you look at the horrors that the Nazis inflicted on human beings of all races, creeds, and colors."¹⁹ Rosenberg also recovered his gallery on rue la Boétie but sold it in 1953, not wanting to occupy a space so tainted by anti-Semitism.²⁰ And, ultimately, the family did recover many pieces in the late 1940s, thanks in part to the Nazis' documentation of the plunder and Rose Valland's important records. Many of the pieces were found in the Neuschwanstein and Hohenschwangau castles in Bavaria, and the CRA restituted some 160 pieces to Rosenberg toward the end of 1945.²¹ One Braque painting was found

¹⁷ Sinclair, *My Grandfather's Gallery*, 33.

¹⁸ Valland, *Le front de l'art*, 184-186. The episode is dramatized in the John Frankenheimer film *The Train* (1964). Burt Lancaster plays a hardened railway manager and Resistance fighter, more interested in thwarting the Germans than saving art. Other railway workers are determined to save "the glory of France," with no mention of the private Jewish collection, conveying the heritage argument used by the Musées Nationaux in the early postwar years.

¹⁹ Quoted in Sinclair, *My Grandfather's Gallery*, 209.

²⁰ Sinclair, *My Grandfather's Gallery*, 26.

²¹ List of restitutions, 14 September 1945, Archives of the Ministry of European and Foreign Affairs (MEAE) 209SUP/1/45.15, dossier Rosenberg.

in Belgium, leading to protracted discussions between authorities of the two countries, ultimately leading to restitution to Rosenberg in 1947.²²

Rosenberg also doggedly pursued restitution in Switzerland, a safe haven for plundered art traded by dealers working for Hitler, Göring, and other top Nazis. He traveled there a dozen times to confront Swiss dealers who had traded his stock and still held some items, notably Theodor Fischer in Lucerne. Rosenberg's determination paid off: in 1948 he won a legal battle against Fischer and several other Swiss dealers, recovering twenty-eight paintings—a remarkable victory for a foreign claimant in a Swiss court.²³ Additional modern masterpieces were returned to him in 1950, including paintings by Manet, Courbet, Picasso, and Utrillo.²⁴ Yet even for Rosenberg, one of the most prominent dealers in the European and American art market, restitution proved a complicated and grueling process. As Lynn Nicholas puts it, “No case illustrates these difficulties better than the decades-long struggle of Paul Rosenberg and his heirs.”²⁵

Unbeknownst to Rosenberg, several of his items remained in the custody of the French government into the 1950s. While the CRA was restituting thousands of artworks - some 45,000 total - it also developed a strategy to keep for the French government the best of the unclaimed items. These were objects considered part of the patrimoine national and worthy of the Louvre, the Musée national d'art moderne, and smaller art museums in the provinces. In 1949, the Musées Nationaux convened a commission of curators and other art experts who selected items for French museums and public buildings—ministry offices, embassies, and other public sites – that would benefit from new décor. The members of the commission determined that items unclaimed by 1949 were likely to remain so as the former owners and their descendants had perished or, they reasoned, chosen not to file a claim for financial reasons. If owners did not come forward with convincing claims backed by evidence, the state was under no legal obligation to determine rightful ownership through more extensive provenance research. The minutes of the commission meetings reflect little concern over the ethics of the policy, nor whether rightful owners might actually exist.²⁶ Between 1949 and 1953, the commission selected some 2,100 objects for state custodianship, commonly known as the “Musées Nationaux recuperation,” or MNR. The state did not legally acquire the items. Instead, the items remained under custodianship and were listed on a separate inventory, which enabled the government to continue accepting restitution claims.²⁷

²² CRA restitution notice, 12 September 1947, MEAE 209/SUP/1/45.15, dossier Rosenberg.

²³ Cleary, “Paul Rosenberg and his Collection,” 230-31.

²⁴ CRA restitution notice, 20 January 1950, MEAE 209SUP/635.

²⁵ Nicholas, *The Rape of Europa*, 415.

²⁶ Minutes from selection committee meeting, 21 December 1949, Archives Nationales (AN) AMN Z15 B 2.

²⁷ Campbell, “Claiming National Heritage: State Appropriation of Nazi Art Plunder in Postwar Western Europe,” *Journal of Contemporary History* 55, no. 4 (October 2020): 808.

Paul Rosenberg was among the few owners to claim an MNR item in the early 1950s. In 1951 he successfully recovered one of his Courbet paintings, MNR 191.²⁸ The *Nymphéas* (MNR 214) by Monet, however, eluded him. Commission meeting minutes indicate that it was designated an MNR painting on 21 December 1949, along with some 500 other items selected on the same day.²⁹ The designation is all the more puzzling given that Rosenberg and French authorities knew he was missing a Monet water lily painting. In 1947, details about the canvas, including its exact dimensions, appeared in the official French registry of plundered assets (*Répertoire des biens spoliés*) as item number 5280, owned by Paul Rosenberg. Moreover, an asterisk flagged the entry as among the missing pieces of “undeniable cultural value” and “an outstanding class.”³⁰ In 1955, Rosenberg furnished a list to the French government of his missing works, including the *Nymphéas*.³¹ Still, it remained under French custody as MNR 214.

It may seem surprising that the art dealer, who knew his own stock so well, did not identify the Monet painting. But after examining lists of hundreds of missing items owned by Rosenberg, one understands how a Monet might slip through the cracks. We must imagine him working before the internet age, when it was far more difficult for claimants to connect disparate bits of information in their spare time and without access to government archives.³² Compounding potential confusion and misidentification, Monet created numerous water lily paintings. One had to prove ownership of the exact piece, differentiating it from other works with the same title, produced around the same time, and with similar dimensions.³³ From the perspective of the museums, at a time when there was no press attention or public pressure, there was no incentive to disrupt the status quo and proactively initiate provenance research. All these factors combined to assure the painting remained in the care of the French government, and in 1960, it was allocated to the Museum of Fine Arts in Caen. The museum displayed this coveted piece of the French patrimoine for nearly forty years.³⁴

Belated Restitution

After Rosenberg’s death in 1959, there was a lull in the family’s efforts to recover his artworks. The end of the Cold War and the 50th anniversary of the war’s end in the 1990s,

²⁸ Restitution notice, 19 June 1951, MEAE 209SUP/1/45.15, dossier Rosenberg.

²⁹ Compte-rendu de la quatrième réunion de la Commission de Choix des Oeuvres d’art, 21 December 1949, AN AMN Z15 B 2.

³⁰ Commandement en Chef Français en Allemagne, *Répertoire des biens spoliés en France durant la guerre*, vol. 2. English translation of preface by G. Glasser on works of exceptional cultural value, vii; the Monet water lily painting owned by Paul Rosenberg listed on p. 236.

³¹ “Liste de tableaux non-récupérés,” 13 September 1955, MEAE 209SUP/1/45.15, dossier Rosenberg.

³² List of stock, Getty Research Institute Collectors Files, Paul Rosenberg.

³³ Michael Bazylar, *Holocaust Justice: The Battle for Restitution in America’s Courts* (New York: New York University Press, 2003), 225.

³⁴ See “Historique” on the Monet painting, MNR 214, Plateforme ouverte du patrimoine, <https://www.pop.culture.gouv.fr/notice/mnr/MNR00214>.

however, ushered in a period of renewed public discussion of Nazi-era art theft. European governments declassified archives related to the war, allowing journalists and historians to investigate the plunder of Jewish assets. Journalist Hector Feliciano, in particular, shed light on MNR objects in his book, *Le musée disparu* (1995, English translation *The Lost Museum*, 1997), featuring a case study of the Rosenberg collection.³⁵ In 1997, French Prime Minister Alain Juppé convened a commission charged with studying the plunder of Jewish assets, including works of art, and Vichy spoliation.³⁶ A year later, the United States hosted a major international conference on Holocaust-era assets, which led to an agreement signed by forty-four countries pledging to facilitate museum transparency and research on Nazi-looted art.³⁷

Amid these developments, Paul Rosenberg's daughter Micheline, his daughter-in-law Elaine, and granddaughter Marianne revived his vigorous restitution efforts. In the case of the Monet water lily painting, the key turning point came in 1999 when the French government loaned it to the Museum of Fine Arts, Boston for an exhibition on Monet in the twentieth century. Rosenberg's descendants spotted the canvas and determined it was the same Monet water lily painting that had long eluded him.³⁸

The Musées de France, however, initially rebuffed their claim. According to Marianne, Director Françoise Cachin was "very, very defensive and aggressive," arguing that the family should have claimed the painting sooner as it had been on display for decades. To Marianne, Cachin's response was "the perfect embodiment" of the attitude that the French state had no obligation to search for owners, "even though we [the Musées de France] are holding these things, and we know that they are not ours, and we know that they are looted from people who fled, successfully or not."³⁹

With a formal claim submitted by the descendants, the French government finally carried out provenance research that connected the painting to Paul Rosenberg. Researchers found a Rosenberg stock number on the back of the frame and determined that the Germans most likely had looted it from the chateau in Floirac in September 1940. Infrared technology also revealed a partially hidden number on the back of the canvas corresponding to a Monet piece known to have been in the Ribbentrop collection.⁴⁰

³⁵ Hector Feliciano, *Le musée disparu: Enquête sur le pillage des oeuvres d'art en France par les nazis* (Paris: Austral, 1995).

³⁶ See Mission d'étude sur la spoliation des Juifs de France, Rapport general, 1 January 2000, <https://www.vie-publique.fr/rapport/24212-mission-detude-sur-la-spoliation-des-juifs-de-france-rapport-general>.

³⁷ See Washington Conference Principles on Nazi-Confiscated Art, 3 December 1998, <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

³⁸ Walter Robinson, "MFA exhibition acknowledges background, theft of Monet work," *Boston Globe*, 5 December 1998, B1.

³⁹ Interview with Marianne Rosenberg, 18 October 2019.

⁴⁰ HA-Dienst Telegraph Service, "Hamburg: Paintings 'acquired' by Ribbentrop found," 30 October 1945, United States National Archives and Records Administration, Record Group 239, <https://www.fold3.com/image/271388196>.

During the restitution ceremony in April 1999, Minister of Culture Catherine Trautmann said the case showed the complexity of provenance research and the willingness of the Musées de France to work through challenges and “achieve legitimate restitutions.”⁴¹ Trautmann’s statement was disingenuous at best, as this supposed display of goodwill had been forced on the government by the Rosenberg claim. According to Marianne, the family was able to recover the Monet painting “totally by happenstance.”⁴² In this case, the descendants were successful and sold the painting for an estimated \$20 to \$25 million.⁴³

Shifting Museum Ethics: Nazi-Era and Colonial Items

Since the restitution of the Monet *Nymphéas*, progress in this area of French provenance research was slow at first but has accelerated. In 2000, the Study Mission on the Spoliation of Jews in France created by the Juppé government published a multivolume report, including one on works of art plundered by the Nazis and the ongoing custodianship of the MNR pieces.⁴⁴ Edited by Isabelle le Masne de Chermont, then head of Musées de France libraries and archives, and Didier Schulmann, curator and head of documentation at the Musée national d’art moderne at the Pompidou Center, the report shed new light on some aspects of Nazi art plunder but elided French efforts to acquire Jewish-owned works during the Occupation.⁴⁵ Neither did it lead to systematic provenance research on the MNR items. Over the next thirteen years, a mere twenty-two objects were returned to rightful owners.⁴⁶ In January 2013, French senator and historian Corinne Bouchoux spearheaded a report that was highly critical of the government’s inaction. Due to growing public pressure, and amid press coverage of George Clooney’s film *The Monuments Men*, the Ministry of Culture finally intensified provenance research efforts in 2014, enlisting the assistance of genealogists to trace objects to increasingly distant heirs. The research

⁴¹ Catherine Trautmann, “Déclaration de Mme Catherine Trautmann, ministre de la culture et de la communication, sur la restitution du tableau de Claude Monet ‘Nymphéas’ à la famille de Paul Rosenberg spoliée par les nazis durant la seconde guerre mondiale, Paris le 29 avril 1999,” <https://www.vie-publique.fr/discours/188994-declaration-de-mme-catherine-trautmann-ministre-de-la-culture-et-de-la>.

⁴² Interview with Marianne Rosenberg, 18 October 2019.

⁴³ Bazylar, *Holocaust Justice*, 225.

⁴⁴ Isabelle le Masne de Chermont and Didier Schulmann, eds., *Le pillage de l’art en France pendant l’Occupation et la situation des 2000 oeuvres d’art confiées aux Musées Nationaux* (Paris: La Documentation Française, 2000).

⁴⁵ See Elizabeth Campbell Karlsgodt, *Defending National Treasures: French Art and Heritage under Vichy* (Stanford: Stanford University Press, 2011),

⁴⁶ Restitution statistics in Ministère de la Culture, dossier de presse “Restitution du tableau ‘Triptyque de la Crucifixion’,” 12 February 2018, 11-12. Available at: <http://www.culture.gouv.fr/Presse/Dossiers-de-presse/Restitution-du-tableau-Triptyque-de-la-Crucifixion-attribue-a-l-atelier-de-Joachim-Patinir-MNR-386-aux-ayants-droit-d-Hertha-et-Henry-Bromberg>.

led to some progress, as eight works were restituted from 2015 to 2017.⁴⁷ But more could have been done.

During her brief tenure as Minister of Culture from February 2016 to May 2017, Audrey Azoulay commissioned a report, authored by David Zivie of the cultural heritage administration, on the current state of research on the MNR items. In his 2018 analysis submitted to Azoulay's successor, Françoise Nyssen, Zivie accurately diagnosed and criticized the French government's continued "inefficiency and a lack of ambition" to determine rightful ownership of the objects. Zivie's report led to the creation of a task force to intensify research efforts.⁴⁸ In 2019, the number of restitutions spiked to thirty-five, the most since 1951.⁴⁹ Due to the special legal status of the MNR pieces, they escape the inalienability of works in public museum collections, and the executive branch alone may approve restitution.

Other Nazi-era items, however, have been identified in French public institutions, requiring an act of parliament for deaccession and restitution. In early 2022, the National Assembly voted unanimously to return fifteen artworks plundered from Jewish owners and held by the French state. They included a Gustav Klimt painting held at the Musée d'Orsay and a canvas by Marc Chagall at the Musée national d'art moderne. The measure made international news and appeared to signal an important recognition that Nazi-plundered art in French museums should be returned to descendants of victims.⁵⁰

However, a close reading of the law indicates approval of "restitution or remission (*remise*)," the latter term meaning that certain descendants would need to provide the equivalent

⁴⁷ See Corinne Bouchoux, "Oeuvres culturelles spoliées ou au passé flou et musées publics: bilan et perspectives," January 2013, http://www.senat.fr/fileadmin/Fichiers/amdcom/cult/6P_C_Bouchoux_oeuvres_spoliees.pdf; Ministère de la Culture, dossier de presse "Restitution du tableau 'Triptyque de la Crucifixion'," 12 February 2018, 7. Available at: <http://www.culture.gouv.fr/Presse/Dossiers-de-presse/Restitution-du-tableau-Triptyque-de-la-Crucifixion-attribue-a-l-atelier-de-Joachim-Patinir-MNR-386-aux-ayants-droit-d-Hertha-et-Henry-Bromberg>.

⁴⁸ See David Zivie, "'Des traces subsistent dans les registres...': Biens culturels spoliés pendant la Seconde Guerre mondiale: une ambition pour rechercher, retrouver, restituer et expliquer," <https://www.culture.gouv.fr/Espace-documentation/Rapports/Rapport-de-David-Zivie-Des-traces-subsistent-dans-des-registres-Biens-culturels-spolies-pendant-la-Seconde-Guerre-mondiale-une-ambition-pou>.

⁴⁹ David Zivie, "The Search for and Return of Looted Cultural Property: A New Turn," presentation for the Association of Art Museum Directors advanced provenance research training workshop, Washington, D.C., 19 November 2019.

⁵⁰ See "France to return 15 artworks stolen from Jews during WWII," 15 February 2022, <https://www.france24.com/en/europe/20220215-france-to-return-15-artworks-stolen-from-jews-during-wwii>; "French parliament authorises 'historic' return of art by Klimt and Chagall to Jewish families," 21 February 2022, <https://www.euronews.com/culture/2022/02/16/french-parliament-authorises-historic-return-of-art-by-klimt-and-chagall-to-jewish-familie>.

purchase price paid by the French state.⁵¹ In this case, the law refers to twelve items, eleven drawings and one wax figure, claimed by the heirs of Armand Dorville, a lawyer and art collector who died in the south of France in 1941. The following year, family members - in the context of German and French anti-Semitic persecution - sold 450 items from the collection at prices well below market value at an auction in Nice, a sale placed under the authority of a provisional administrator appointed by Vichy. In response to the descendants' recent claim, in May 2021 the Commission for the Compensation of Victims of Spoliation (CIVS) granted "remission" of the twelve items from the Dorville collection purchased by the French government during the Occupation and held ever since in public museums. The decision acknowledged the anti-Semitic persecution of the family, including the deportation and murder of several individuals, and the belated transfer of funds in 1944 to other family members who had survived the war. The Commission also granted a reparation payment of €350,000.⁵² At the same time, the CIVS concluded that the 1942 auction was not a forced sale, a finding contested by the descendants as they continued their legal action against the state.⁵³ The Dorville case illustrates the ongoing battles over Vichy spoliation, and difficulties determining whether sales by Jewish owners, in the context of the Shoah, were forced or voluntary.

Challenges remain in other collection areas as well, notably human remains and items plundered from former European colonies. Museums across North America and Europe are grappling with repatriation demands from numerous source communities. As Louise Tythacott and Kostas Arvanitis put it, this dynamic "reflects changing global power relations and increasingly vocal criticisms of the historical concentration of the world's heritage in the museums of the West."⁵⁴ But it also continues a decades-old struggle that dates to the era of decolonization. The demands of newly independent countries shaped UNESCO's 1970 Convention to prevent the trafficking of cultural property, an important feature of the postcolonial order. Repatriation guidelines are included in the International Council of Museums (ICOM) Code of Ethics (provisions 6.2 and 6.3), initially adopted in 1986 and updated in 2001 and

⁵¹ "Loi du 21 février 2022 relative à la restitution ou la remise de certains biens culturels aux ayants droit de leurs propriétaires victimes de persécutions antisémites," 22 February 2022, <https://www.vie-publique.fr/loi/282265-loi-restitution-spoliation-nazies-klimt-collection-dorville>.

⁵² With AFP, "Le combat de la famille Dorville pour récupérer les œuvres spoliées à leur aïeul," *The Times of Israel*, 1 March 2022, <https://fr.timesofisrael.com/le-combat-de-la-famille-dorville-pour-recuperer-les-oeuvres-spoliees-a-leur-aieul/>.

⁵³ See Philippe Dagen, "Dix œuvres du Louvre sont issues de la collection d'Armand Dorville, spolié sous Vichy," *Le Monde*, 22 January 2020, https://www.lemonde.fr/culture/article/2020/01/22/dix-uvres-du-louvre-sont-issues-de-la-collection-d-armand-dorville-spolie-sous-vichy_6026791_3246.html; Vincent Noce, "French museums face fresh legal action over refusal to retribute works to Jewish families," 15 July 2021, <https://www.theartnewspaper.com/2021/07/15/french-museums-face-fresh-legal-action-over-refusal-to-restitute-works-to-jewish-families>.

⁵⁴ Louise Tythacott and Kostas Arvanitis, "Museums and Restitution: An Introduction," in *Museums and Restitution: New Practices, New Approaches*, eds. Louise Tythacott and Kostas Arvanitis (New York: Routledge, 2014), 1.

2004.⁵⁵ Antiquities-rich European countries such as Greece and Italy have aggressively pursued claims against museums. Feeling attacked from all sides, in 2002 the directors from eighteen of the most influential museums in the United States and Europe published in the *Wall Street Journal* a “Declaration on the Importance and Value of Universal Museums.” Signatories included directors of the Art Institute of Chicago, the Metropolitan Museum of Art in New York, the Getty Museum, and the Louvre.⁵⁶ Yet within a few years, prestigious institutions relented on some Italian claims. In 2006, the Metropolitan Museum returned twenty-one items and the following year the Getty restituted forty pieces; the latter’s antiquities curator was charged with art trafficking, and eventually acquitted, in an Italian court. The Greek case against the British Museum for the Parthenon Marbles remains an emblematic cultural heritage dispute.⁵⁷ In the Middle East, the U.S. invasion of Iraq in 2003 led to tragic plundering of some fifteen thousand objects from the National Museum in Baghdad. The outbreak of civil war in Syria in 2012 led to looting of museums and art repositories, and damage to several UNESCO World Heritage Sites, including Palmyra and the ancient city of Aleppo.⁵⁸

Amid intensifying efforts by source communities across the globe to secure the cultural repatriation of their objects, the French Musée du Quai Branly opened in 2006, becoming the country’s flagship ethnographic museum with Indigenous items from Africa, Asia, Oceania, and the Americas. The claimants have succeeded in some cases. In 2010, France repatriated *Toi moko* (Māori preserved heads) to New Zealand after several years of negotiations, finally leading to the passage of a French law specific to that case.⁵⁹

Several years later in November 2017, French President Emmanuel Macron intensified international debates over colonial items by proclaiming to several hundred university students in Burkina Faso that he advocated facilitating “the temporary or definitive restitution of African cultural heritage to Africa.”⁶⁰ The announcement shocked many in the museum establishment across the Western world. Given the inalienability of items in national collections, critics doubted

⁵⁵ See “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,” 14 November 1970, <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural>; International Council of Museums Code of Ethics, 2004, <https://icom.museum/en/resources/standards-guidelines/code-of-ethics/>.

⁵⁶ See Declaration in “‘Museums Serve Every Nation,’” *Wall Street Journal*, 12 December 2002, D10.

⁵⁷ See Alexander Herman, *Restitution: The Return of Cultural Artefacts* (London: Lund Humphries, 2021), 17-29, 74-75.

⁵⁸ See Lawrence Rothfield, *The Rape of Mesopotamia: Behind the Looting of the Iraq Museum* (Chicago: University of Chicago Press, 2009); UNESCO reports on threatened cultural patrimony in Syria available at <https://www.unesco.org/en/node/66288>, and <https://whc.unesco.org/en/decisions/7689>.

⁵⁹ See Simon Jean-Nabbache, “Toward the Repatriation of Human Remains as a Postcolonial Museum Practice,” *Museum Worlds: Advances in Research* 10 (2022): 193-198.

⁶⁰ Anna Codrea-Rado, “Emmanuel Macron Says Return of African Artifacts is a Top Priority,” *New York Times*, 29 November 2017, <https://www.nytimes.com/2017/11/29/arts/emmanuel-macron-africa.html>.

that Macron could follow through on such a lofty declaration. Undeterred, the French president doubled down and in 2018 commissioned a report by Senegalese economist and writer Felwine Sarr and French art historian Bénédicte Savoy. The authors advocated full restitution—not loans or “temporary” restitution—of numerous African items in French collections, a position many in the museum community rejected as too radical.⁶¹ Nonetheless, some items did return to Africa. By December 2020, the French National Assembly approved a bill restituting twenty-six items to the Republic of Benin, and a sword to Senegal.⁶²

Coinciding with these debates, in 2020 Dan Hicks, Professor of Contemporary Archaeology and Curator at the Pitt Rivers Museum of the University of Oxford, published *The Brutish Museums*. It is a strident condemnation of museums around the world that held items violently stolen by British forces at the end of the nineteenth century from the Kingdom of Benin in present-day Nigeria.⁶³ Press coverage of Hicks’ book and intense social media attention fueled controversy around pieces at the British Museum and during the long-awaited opening of the Humboldt Forum in Berlin. Featuring items from Africa, Asia, the Americas, Oceania, and Australia, the German museum opened in 2021 amid high-profile repatriation claims from Namibia, Cameroon, and Nigeria.⁶⁴ Elsewhere in Europe, public pressure in the early 2020s led Belgium and the Netherlands to form study commissions on colonial items and develop procedures for repatriation.⁶⁵

In the case of France, the government continues to rely on an untenable case-by-case approach to the repatriation of colonial items, in each instance requiring an act of parliament—the same dilemma that affected Nazi-era items in public collections. Working to rectify this legal quagmire, Minister of Culture Rima Abdul-Malak proposed three framework laws (*lois-cadres*) in early 2023 to facilitate the deaccession of three categories of works and objects from national

⁶¹ Felwine Sarr and Bénédicte Savoy, “Rapport sur la restitution du patrimoine culturel africain – Vers une nouvelle éthique relationnelle,” 29 November 2018, <https://www.vie-publique.fr/rapport/38563-la-restitution-du-patrimoine-culturel-africain>.

⁶² See Musée du Quai Branly Jacques Chirac, “Restitution de 26 oeuvres à la République du Bénin,” n.d., <https://www.quaibrantly.fr/fr/collections/vie-des-collections/actualites/restitution-de-26-oeuvres-a-la-republique-du-benin/>; Gareth Harris, “Looted African works that France has promised to return to Benin will be shown in Paris museum for one last time,” 15 September 2021, <https://www.theartnewspaper.com/2021/09/15/looted-african-works-that-france-has-promised-to-return-to-benin-will-be-shown-in-paris-museum-for-one-last-time>.

⁶³ Dan Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (London: Pluto Press, 2020).

⁶⁴ See the Humboldt Forum website, <https://www.humboldtforum.org>.

⁶⁵ See also Government of the Netherlands press release, “Colonial collections to be returned to Indonesia and Sri Lanka,” 6 July 2023, <https://www.government.nl/latest/news/2023/07/06/colonial-collections-to-be-returned-to-indonesia-and-sri-lanka>; Restitution Belgium, “Ethical Principles for the Management and Restitution of Colonial Collections in Belgium,” June 2021, <https://restitutionbelgium.be/en/report>.

collections: Nazi-era art, colonial items, and human remains.⁶⁶ Several months later, both houses of parliament voted unanimously to facilitate the deaccession of Nazi-era items acquired through anti-Semitic spoliation.⁶⁷ After several decades of inertia and several years of incremental reforms—and twenty-eight years after French president Jacques Chirac officially apologized for anti-Semitic policies under Vichy and French complicity in the Holocaust – voting against the measure had become politically infeasible across the political spectrum.⁶⁸ It was only after nearly three decades of public debates and education, activism, and research that a shift in widely held values, acknowledging the connection between plundered artworks and anti-Semitic persecution and the Shoah, led to a change in French law.

The measures taken since the belated restitution of the Rosenberg *Nymphéas* illustrate the recent shift in French attitudes and policy toward Nazi-era items in French museum collections. It is unlikely, however, that similar policy changes for colonial collections will quickly follow. As art law expert Alexander Herman explains, art repatriation is more likely when a strong link exists between “a wrong” or an act of violence widely condemned today, such as the 1897 British punitive expedition against the Kingdom of Benin, and the specific items plundered amid the transgression.⁶⁹ Attempts to reckon with the entire colonial past through repatriation are more politically problematic, especially at a moment when debates over the legacy of empire remain fraught.⁷⁰ As Herman puts it, “It is not, after all, returning artefacts alone that will address past or present inequality and suffering. Rather it is through dialogue and cooperation that these ills can be given their full and fair consideration.”⁷¹ Such cooperation, requiring domestic political consensus and successful international negotiations, is far from assured. It may emerge with continued press coverage, activism, social media attention, and public discussions about the intertwined histories of imperial violence and cultural plunder. The French government also could hasten these developments by investing in public education and provenance research. If restitution progress on Nazi-era art offers a precedent, a more just legal framework toward

⁶⁶ Roxana Azimi, “Trois lois-cadres sur les restitutions seront soumises au vote du Parlement en 2023,” *Le Monde*, 16 January 2023, https://www.lemonde.fr/culture/article/2023/01/16/trois-lois-cadres-sur-les-restitutions-seront-soumises-au-vote-du-parlement-en-2023_6158013_3246.html

⁶⁷ See Ministère de la Culture, “The National Assembly unanimously passes the bill on the restitution of stolen cultural property in the context of anti-Semitic persecution between 1933 and 1945,” <https://www.culture.gouv.fr/en/Know-us/Organisation-du-ministere/The-General-Secretariat/Mission-of-search-and-restitution-of-plundered-cultural-property-between-1933-and-1945/Actualites/L-Assemblee-nationale-adopte-a-l-unaninite-le-projet-de-loi-sur-la-restitution-des-biens-culturels-spolies-dans-le-contexte-des-persecutions-antise>.

⁶⁸ See Julie Fette, “Apology and the Past in Contemporary France,” *French Politics, Culture and Society* 26, no. 2 (Summer 2008): 78-113.

⁶⁹ Herman, *Restitution*, 81.

⁷⁰ For an example of press coverage of debates on the legacy of colonialism in the 2022 presidential campaign, see Romain Brunet and Grégoire Sauvage, “Le Pen vs. Macron: World views at odds,” section “On remembrance,” April 2022, <https://graphics.france24.com/le-pen-macron-world-views-at-odds-2022-france-presidential-election/>.

⁷¹ Herman, *Restitution*, 81.

colonial items will occur only with wide consensus among the public, museum professionals, and political leadership on the crucial role of cultural justice as part of a broader reckoning with the past.

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