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Patrimony in Peril

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Patrimony in Peril

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I. Introduction

This Symposium was motivated by the fifteenth anniversary of the United States Supreme Court's decision in *Altmann v. Republic of Austria*,¹ and by the recent public attention to the risks that cultural heritage faces in conflict zones worldwide.² Over the past three decades, revolutions and international conflicts have swept across the archeologically-rich countries of the Fertile Crescent and the Maghreb.³ Where these conflicts have arisen, looting, war crimes, and destruction of highly significant world heritage sites have swiftly followed.⁴ Simultaneously, the victims of Nazi looting

¹ 541 U.S. 677 (2004).

² See, e.g., Dan Bilefsky, *ISIS Destroys Part of Roman Theater in Palmyra, Syria*, N.Y. TIMES (Jan. 20, 2017), <https://www.nytimes.com/2017/01/20/world/middleeast/palmyra-syria-isis-amphitheater.html> [<https://perma.cc/8Y96-66ZR>] (detailing destruction of Palmyra by ISIS); Ömür Harmanşah, *ISIS, Heritage, & the Spectacle of Destruction in the Global Media*, 78 NEAR EASTERN ARCHEOLOGY 170 (2015) (detailing ISIS's destruction of heritage sites in the Middle East); Christopher W. Jones, *Understanding ISIS's Destruction of Antiquities as a Rejection of Nationalism*, 6 J. EASTERN MEDITERRANEAN ARCHEOLOGY & HERITAGE STUD. 31 (2018) (cataloguing ISIS's destruction of antiquities).

³ See generally Derek Lutterbeck, *Arab Uprisings, Armed Forces, & Civil-Military Relations*, 39 ARMED FORCES & SOC'Y 28 (2013) (examining the role of armed forces in the different Arab Spring uprisings and providing a history of the different revolutions that have occurred in the region over the past three decades).

⁴ See, e.g., *Antiquities Coalition Warns that Political Unrest Continues to Threaten Cultural Heritage Across the Middle East & North Africa*, ANTIQUITIES COALITION (Mar. 13, 2019), <https://theantiquitiescoalition.org/antiquities-coalition-warns-that-political-unrest-continues-to-threaten-cultural-heritage-across-the-middle-east-and-north-africa/> [<https://perma.cc/A5JT-XPNX>] (documenting threats to cultural heritage); Amr Al-Azm & Katie A. Paul, *How Facebook Made It Easier than Ever to Traffic Middle Eastern Antiquities*, WORLD POL. REV. (Aug. 14, 2018), <https://www.worldpoliticsreview.com/insights/25532/how-facebook-made-it-easier-than->

during the Second World War and their heirs have staked claims to their stolen art, with increasing frequency and increasing success; *Altmann* is just one such example.⁵

Despite the prominence that stories of looted art hold in the public psyche, the vast majority of tales of looted art do *not* involve multi-million-dollar paintings of a claimant's aunt, by a renowned painter of the Belle Époque.⁶ Instead of flashy stories of Nazi looting and decades-old reminiscences of a painting hanging on a wall, the day-to-day focus of restitution work tends to center around looted antiquities.⁷ War in Europe led to looting in Europe, and

ever-to-traffic-middle-eastern-antiquities [<https://perma.cc/JCU7-N6MQ>] (discussing the impact of social media on antiquities trafficking).

⁵ See, e.g., *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 862 F.3d 951 (9th Cir. 2017) (restitution of a Picasso painting after the HEAR Act); *Vineberg v. Bissonette*, 548 F.3d 50 (1st Cir. 2008) (restitution of a Picasso painting before the HEAR Act); *Bakalar v. Vavra*, 619 F.3d 136 (2nd Cir. 2012) (restitution of a drawing by Egon Schiele). For a general overview of Nazi plunder and individual attempts to recover looted artwork, see generally Donald S. Burris, *Restoration of a Culture: A California Lawyer's Lengthy Quest to Restitute Nazi-Looted Art*, 45 N.C. J. INT'L L. 277 (2020) (providing an overview of Nazi looting and a chronology of American legal cases pertaining thereto); see also generally Marc Masurovsky, *A Comparative Look at Nazi Plundered Art, Looted Antiquities, & Stolen Indigenous Objects*, 45 N.C. J. INT'L L. 497 (2020) (discussing looted indigenous art and Nazi plunder, as well as the sociological implications thereof); Simon J. Frankel, *The HEAR Act & Laches After Three Years*, 45 N.C. J. INT'L L. 441 (2020) (discussing conflicting court decisions relating to Holocaust-era looted art, the 2016 HEAR Act, and the equitable doctrine of laches).

⁶ See *Altmann v. Republic of Austria*, 541 U.S. 677 (2004) (Maria Altmann sued to recover several paintings seized from her aunt's estate by the Austrian government during the Second World War). See also generally Burris, *Restoration of a Culture*, *supra* note 5 (discussing *Altmann*).

⁷ See, e.g., *United States v. Schultz*, 333 F.3d 393 (2d Cir. 2003) (restitution of Egyptian artifacts illegally exported with a false provenance); *United States v. Khouli, et al.*, Docket no. 11-CR-340 (E.D.N.Y.) (restitution of illegally-laundered cultural property); *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977) (restitution of illegally-exported artifacts). See also generally Karin Orenstein, *Risking Criminal Liability in Cultural Property Transactions*, 45 N.C. J. INT'L L. 527 (2020) (discussing the intersection of laws governing looted art and American criminal law); Leila Amineddoleh, *The Politicizing of Cultural Heritage*, 45 N.C. J. INT'L L. 333 (2020) (discussing the repatriation of cultural heritage, and the political calculations involved); Patty Gerstenblith, *Provenience & Provenance Intersecting with International Law in the Market for Antiquities*, 45 N.C. J. INT'L L. 457 (2020) (discussing the application of international laws and U.S. domestic laws on looted art to the context of plundered archaeological artifacts); Stefan Cassella, *Recovering Stolen Art & Antiquities Under the Forfeiture Laws: Who Is Entitled to the Property When There Are Conflicting Claims*, 45 N.C. J. INT'L L. 393 (2020) (providing an overview of civil asset forfeiture laws and how they work to assist in the recovery of looted cultural patrimony).

similarly, the past three decades of conflicts in the Middle East and North Africa have led to the spoliation of the heritage of these nations.⁸

This Foreword seeks to briefly explain the fields in which the seven symposium authors work, and notes the common threads tying their pieces together. Next, it summarizes the context within which the authors have focused their work: the looting of Europe during the Second World War, of Iraq after the United States' 2003 invasion, and most recently of the pillaging that has accompanied the unrest stemming from the Arab Spring. The seven articles should be read with this context in mind: without a thorough understanding of the significance of cultural heritage, or the history of looting that stretches across time and national borders, it is impossible to understand how the current law applies, on either a national or an international level.

II. Protecting Cultural Property Across Sectors

Recognizing the breadth of issues involved in cultural patrimony protection and looted art restitution work, this Symposium sought to bring together individuals from the different stakeholder constituencies involved. One author is not an attorney, but works exclusively in art restitution and in preventing future looting of cultural patrimony; other authors range from litigators who work exclusively with the victims of Nazi looting, attorneys who work as museum consultants, to internationally-recognized experts on provenance and authentication.

One of the authors who has contributed to this Symposium has founded an international non-profit organization that works to reunite looted artwork with its original owner's heirs. Two other authors work in the fields of provenance and provenience, as it relates to looted art and antiquities. Two authors have worked with the United States Department of Justice to identify and seize stolen, looted, and smuggled art and artifacts, and have made careers prosecuting those who are responsible for the spoliation of cultural patrimony worldwide. The final two authors work to help return

⁸ See, e.g., Sigal Samuel, *It's Disturbingly Easy to Buy Iraq's Archeological Treasures*, THE ATLANTIC (Mar. 19, 2018), <https://www.theatlantic.com/international/archive/2018/03/iraq-war-archeology-invasion/555200/> [<https://perma.cc/2MJS-VHXE>] (describing the black-market trade in Iraqi antiquities after the U.S. invasion).

looted works to their rightful owners.

Recognizing the different sectors in which these authors work, the Symposium opened with a general overview of restitution work, as well as with a retrospective analysis of *Altmann*, fifteen years on. Panels then discussed how to address the risks of looting and theft through the use of cataloguing, database creation, and chemical tracking of artifacts; the intersections of time and space in dealing with the provenance, provenience, and diplomacy involved in repatriation of looted works; and how the United States legal system assists in the seizure and recovery of looted works through the civil asset forfeiture system and through other legislative mechanisms.

III. The Context Within Which Art Is Looted

Art and archeological artifacts have been looted for as long as humanity has valued artistic expression.⁹ The ancient Romans seized the riches of their enemies, and the *spolia optima* (“best spoils”—that is, the most coveted loot from war, including armor and other war trophies) was reserved for the most outstanding examples of valor among their ranks.¹⁰ Indeed, for the centuries leading up to the Enlightenment, invaders would seize the art, riches, and other moveable goods of those whose countries they sacked.¹¹ No better example of such pillage exists than that of the sack of Constantinople in 1204 A.D., during the Fourth Crusade.¹² While the idiom “to the victor goes the spoils” originated in the context of early American politics,¹³ it aptly summarizes the norm

⁹ See, e.g., Masurovsky, *A Comparative Look*, *supra* note 5, at 505–07.

¹⁰ Piero Treves & Tim Cornell, *Spolia Optima*, OXFORD CLASSICAL DICTIONARY (2016) <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-6046> [<https://perma.cc/6OX4-PTXH>]. These highest honors were only awarded three times in Roman history: when (mythically) Romulus was awarded them for killing King Acron of Caenina, when A. Cornelius Cossus killed Lars Tolumnius of the Veii in 437 B.C., and when M. Claudius Marcellus killed the Celtic chieftain Viridomarus in 222 B.C. *Id.*

¹¹ See Masurovsky, *A Comparative Look*, *supra* note 5, at 506–07.

¹² Rupert Matthews, *Sack of Constantinople*, ENCYCLOPÆDIA BRITANNICA (2017), <https://www.britannica.com/event/Sack-of-Constantinople-1204> [<https://perma.cc/UDM7-HJDU>].

¹³ See 8 REG. DEB. 1325 (1832) (statement of Sen. Marcy on Jan. 25, 1832) (“[T]he politicians of the United States are not so fastidious as some gentlemen are, as to disclosing the principles on which they act . . . If they are successful, they claim, as a matter of right, the advantages of success. They see nothing wrong in the rule, that to the victor belong the spoils of the enemy.”).

for the vast majority of human history.

At the start of the nineteenth century, Napoleon all but institutionalized the sacking of conquered countries' artistic patrimony.¹⁴ While baggage trains headed out from Paris with armaments and supplies for the Grande Armée, they returned in equal number with the paintings, sculptures, and archeological riches of countries as distant as Portugal, Russia, and Egypt.¹⁵ After the fall of the First Empire, some of this looted art, including treasures like the Venus de Milo,¹⁶ remained in Paris: *to the victor goes the spoils*.

During the American Civil War, President Lincoln and Secretary of War Edwin Stanton commissioned the scholar Franz Lieber to write a directive on how Union Army soldiers should comport themselves in wartime.¹⁷ Article 35 of the resulting Lieber Code provided that “classical works of art, libraries, scientific collections, or precious instruments . . . must be secured against all avoidable injury.”¹⁸ This code in turn inspired Article 27 of the 1907 Hague Regulations, which directs that “[i]n sieges and bombardments all necessary steps must be taken to spare, as far as possible . . . historic monuments.”¹⁹ Furthermore, the 1977 Additional Protocol I to the four 1949 Geneva Conventions directs in Article 53(a) that it is prohibited to “commit any acts of hostility directed against the historic monuments . . . which constitute the cultural or spiritual heritage of peoples.”²⁰

From 1933 to 1945, the Nazi Regime deliberately plundered and

¹⁴ See generally Dorothy Mackay Quynn, *The Art Confiscations of the Napoleonic Wars*, 50 AM. HIST. REV. 437 (1945) (cataloguing Napoleon's looting).

¹⁵ See *id.*

¹⁶ Ivan Lindsay, *From Napoleon to the Nazis: The 10 Most Notorious Looted Artworks*, THE GUARDIAN (Nov. 13, 2014), <https://www.theguardian.com/artanddesign/2014/nov/13/10-most-notorious-looted-artworks-nazis-napoleon> [<https://perma.cc/7DSM-5GXD>].

¹⁷ Gen. Order No. 100 of Apr. 24, 1863, INSTRUCTIONS FOR THE GOVERNMENT OF THE ARMIES OF THE UNITED STATES IN THE FIELD, PREPARED BY FRANCIS LIEBER, LL.D., AND REVISED BY A BOARD OF DIRECTORS (D. Van Nostrand, 1st ed. 1863).

¹⁸ *Id.* art. 35.

¹⁹ Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land art. 27, Oct. 18, 1907, reprinted in D. SCHINDLER & J. TOMAN, THE LAWS OF ARMED CONFLICT 69 (1st ed. 1988).

²⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict (Protocol I) art. 53(a), Jan. 23, 1977, 1125 U.N.T.S. 3.

destroyed artwork across Europe, in what authors have since labelled the “Rape of Europa.”²¹ The aftereffects of this pillage are still felt worldwide to this day.²² As the Third Reich fell, the Soviet troops rushing westward similarly pillaged the art they encountered;²³ the American and British forces moving through Europe relied on the Monuments Men to return art to its *country* of origin, but not specifically to its *rightful owner*.²⁴ In the shadow of this turmoil, the international community established a new convention whose goal was to protect cultural property during conflict, the 1954 Hague Convention.²⁵ This convention was followed in 1970 by the UNESCO Convention, which prohibited the sale, export, and import of illicitly acquired cultural property.²⁶

Despite these advances in addressing the illicit trade of looted cultural property, the black market for stolen art remains vibrant to this day.²⁷ In Italy, for example, tomb robbers like Giacomo Medici looted hundreds of Etruscan gravesites in the 1960s, 1970s, and 1980s;²⁸ after the Turkish invasion of Cyprus in 1974, priceless

²¹ See LYNN H. NICHOLAS, *THE RAPE OF EUROPA: THE FATE OF EUROPE’S TREASURES IN THE THIRD REICH & THE SECOND WORLD WAR* (1st ed. 1994).

²² See, e.g., Milton Esterow, *The Hunt for the Nazi Loot Still Sitting on Library Shelves*, N.Y. TIMES (Jan. 14, 2019) <https://www.nytimes.com/2019/01/14/arts/nazi-loot-on-library-shelves.html> [<https://perma.cc/9KQD-VD2G>] (continued issues with the restitution of Nazi loot).

²³ See, e.g., KONSTANTIN AKINSHA & GRIGORII KOZLOV, *BEAUTIFUL LOOT: THE SOVIET PLUNDER OF EUROPE’S ART TREASURES* (1st ed. 1995) (cataloguing Soviet looting at the end of World War II).

²⁴ Joseph P. Fishman, *Locating the International Interest in International Cultural Property Disputes*, 35 YALE J. INT’L L. 327, 358 (2010); see also *Forced Transfers of Property in Enemy-Controlled Territory, 1943*, in 3 DEP’T OF STATE, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776–1949, 754 (C. Bevans Comp., 1969).

²⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215.

²⁶ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.

²⁷ See generally Amineddoleh, *The Politicizing of Cultural Heritage*, *supra* note 7 (outlining various looted patrimony cases); Orenstein, *Risking Criminal Liability in Cultural Property Transactions*, *supra* note 7 (discussing recent illicit cultural property cases); Gerstenblith, *Provenience & Provenance*, *supra* note 7 (discussing the risks to looting that the black market for cultural heritage artifacts creates).

²⁸ See PETER WATSON & CECILIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES—FROM ITALY’S TOMB RAIDERS TO THE WORLD’S GREATEST MUSEUMS* (1st ed. 2006).

Byzantine mosaics were stripped off the walls of churches and smuggled into private collections in the west;²⁹ and entire archeological sites in Cambodia were looted in the two decades following the 1979 collapse of the Khmer Rouge regime.³⁰ After the United States and joint forces invaded Iraq in 2003, the Baghdad Museum was sacked;³¹ looting in Afghanistan coincided with the Anglo-American invasion in 2004.³² Finally, the unrest caused by the Arab Spring has led to a marked increase in looting activities in Egypt, Syria, Libya, and Yemen over the past decade, as the antiquities departments of the old regimes in these countries have lost power along with the dictators who for so long supported them.³³

IV. Conclusion

It is in no way melodramatic to say that despite the advances in international law prohibiting the trade of looted art and cultural property over the past five decades, the twenty-first century is a golden age for the black market in stolen patrimony. By addressing a wide breadth of topics related to looted art at the Symposium and in this edition of the Journal, it was our hope to foster an increased

²⁹ See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Fedlman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990).

³⁰ See, e.g., *United States v. A 10th Century Cambodian Sandstone Sculpture*, No. 12 Civ. 2600(GBD), 2013 WL 1290515, at *1 (S.D.N.Y. Mar. 28, 2013) (looting in Cambodia after the Khmer Rouge). See also Amineddoleh, *The Politicizing of Cultural Heritage*, *supra* note 7, at 360–62.

³¹ See Mathew Bogdanos, *Thieves of Baghdad: The Global Traffic in Stolen Iraqi Antiquities*, in *CRIME IN THE ART AND ANTIQUITIES WORLD: ILLEGAL TRAFFICKING IN CULTURAL PROPERTY* 143, 161–62 (Stefano Manacorda & Duncan Chappell, eds.).

³² See generally Gil Stein, *The War-Ravaged Cultural Heritage of Afghanistan: An Overview of Projects of Assessment, Mitigation, & Preservation*, 78 *NEAR EASTERN ARCHAEOLOGY* 187 (2015) (providing an overview of the post-invasion looting and destruction in Afghanistan).

³³ See Press Release, *Manhattan D.A.'s Office Returns Ancient Gold Coffin to Egypt*, Manhattan D.A.'s Office (Sept. 25, 2019) <https://www.manhattanda.org/manhatta-das-office-returns-ancient-gold-coffin/> [<https://perma.cc/2LL9-NZ4F>]; Peter Szekely, *After New York Visit, Looted Coffin of Ancient Egyptian Priest Goes Home*, *REUTERS* (Sept. 25, 2019) <https://www.reuters.com/article/us-usa-egypt-coffin/after-new-york-visit-looted-coffin-of-ancient-egyptian-priest-goes-home-idUSKBN1WA35K> [<https://perma.cc/LHU4-SELA>]; Nancy Kenney, *Looted Coffin Acquired by Metropolitan Museum is Headed Back to Egypt*, *THE ART NEWSPAPER* (Sept. 26, 2019) <https://www.theartnewspaper.com/news/looted-coffin-acquired-by-metropolitan-museum-is-headed-back-to-egypt> [<https://perma.cc/M78S-2KJP>].

inter-practice dialogue on the international and domestic, criminal and civil, and social and political issues that looted art and threats to cultural patrimony implicate. In light of that purpose, and keeping the timeless and truly international history of looted art and cultural patrimony in mind, we invite you to engage with the following seven articles, to come away from this volume of our Journal more aware of the ever-constant threats that cultural property faces worldwide, and to appreciate the important role that domestic and international law play in protecting patrimony in peril, worldwide.

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