

Contested cultural property : the return of nazi spoliated art and human remains from public collections

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Contested Cultural Property – The Return of Nazi Spoliated Art and Human Remains from Public Collections

Katja Lubina

1. Despite the gradual increase since ancient times of the protection of cultural property, legally enforceable rights providing for the return of cultural objects are still mainly limited to situations qualifying as armed conflicts. Outside the *ius in bello*, states are wary of creating or recognising legally enforceable rights.
2. The declarations, principles and resolutions adopted at the international level in reaction to the increase in claims for the return of Nazi spoliated art and human remains all qualify as instruments of ‘soft law’. Despite not providing for hard legal standards, they have exerted significant influence on the course of restitution, which indicates that ‘soft law’ must not be dismissed simply for not being ‘hard law’.
3. Whereas national legal rules applicable to public collections in the Netherlands do not stand in the way of intended returns, the rules applicable to public collections in the United Kingdom and France must be relaxed if they are to allow for the possibility of meeting claims for the return of cultural objects from their public collections.
4. With regard to Nazi spoliated art, policy makers and the academic and public debate need to pay greater attention to the question of how financial compensation payments received during the process of restoration of rights during the 1950s and 60s should be factored into the equation of “just and fair solutions”.
5. The studying of the Nazi appropriation of cultural property during the Third Reich can generate an understanding of the Nazi reign unmatched by other approaches that try to understand or represent the mechanisms and horrors that led to the Second World War and the Holocaust in particular. By putting art works - rather than human lives - at the centre of the research, the study of Nazi spoliated art constitutes a spectrum by which to grasp the horrors of the Holocaust.

6. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is overrated as to the protection it grants to cultural property. In this light, the belated ratification of the convention by the Netherlands is even more incomprehensible.
7. In order to grasp the Dutch legal regime applicable to works of art in case of theft it helps to realise that the law treats them as second hand goods rather than as unique objects.
8. Jean Monnet is often quoted as having said that *"If I had to begin the project of European integration again, I would start with culture"*. Luckily, he started the process with goods as tangible and concrete as coal and steel. If he had had his way, we would have an even more elaborate discourse on the concept of culture but less integration.
9. "Time" magazine was more than correct to identify "The Simpsons" as being one of the 20th century's greatest achievements in arts and entertainment. By dedicating an episode ("Raging Abe Simpson and His Grumbling Grandson in "The Curse of the Flying Hellfish"") to the subject of art looting during WWII as early as 1996, the sitcom's writing team exhibited great insight into human nature and society.
10. Ph.D. candidates in the field of law should be encouraged to obtain their doctoral degree in the form of published articles. In addition to improving the quantity and quality of completed dissertations, obtaining a doctorate as articles would also result in happier and better trained young scholars.
11. It is typical Dutch etiquette that, when crackers and spread are served, one member of the party will assume responsibility for spreading the crackers for all. While this habit clearly embodies the Dutch concept of "gezelligheid", it remains to be seen whether it will be recognised as Dutch intangible cultural heritage.