Looted Art, Booty Art, 'Degenerate Art': Aspects of Art Collecting in the Third Reich

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THE 'SCHWABING ART TROVE' (CORNELIUS GURLITT)

In the spring of 2012 the public prosecutor's office of Augsburg seized an extensive private art collection in the apartment of Cornelius Gurlitt in the Schwabing neighbourhood of Munich. This, however, only became publicly known as the 'Schwabing Art Trove' ('Schwabinger Kunstfund') – through the efforts of the media – at the beginning of November 2013.[1] Cornelius Gurlitt (1932–2014) was the son of Hildebrand Gurlitt (1895–1956). The Gurlitts are a family whose branches include scientists, artists, and art dealers. The patriarch of the family was the Hamburg painter Louis Gurlitt (1812–97). His son Friedrich, called Fritz Gurlitt (1854–93), established the famous Art Salon Fritz Gurlitt in Berlin. Louis Gurlitt's grandson Hildebrand Gurlitt (1895–1956) was one of only four art dealers who, in the time of National Socialism, had been authorized by the Nazi Propaganda Ministry ('Reichsministerium für Volksaufklärung und Propaganda') to trade in so-called 'degenerate art' ('Entartete Kunst').[2] He put together the collection which ended up in the possession of his son, Cornelius Gurlitt (1932–2014). Cornelius Gurlitt's confiscated collection includes numerous works connected to this 'degenerate art'. Another part of the collection is linked with Nazi looted art. The term 'looted art' ('Raubkunst'), or in this case, Nazi looted art, is used to designate artworks that were confiscated in the context of Nazi persecution. The victims of this robbery were

FIG. 5 Leonardo da Vinci, *Lady with an Ermine*, oil on wood, 55 × 40.5 cm, 1489–90, Cracow, Muzeum Narodowe, Czartoryski Collection, an example of booty art, seized in 1939 in the museum in Cracow for Hitler's planned 'Führer Museum' in Linz, brought back to Poland after the end of the war (artwork in the public domain, Photo: Christoph Zuschlag, 2016).

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1 See *Ersessene Kunst. Der Fall Gurlitt*, ed. by Johannes Heil and Annette Weber (Berlin: Metropol Verlag, 2015); Catherine Hickley, *The Munich Art Hoard. Hitler's Dealer and his Secret Legacy* (London: Thames & Hudson, 2015); Meike Hoffmann and Nicola Kuhn, *Hitlers Kunsthändler. Hildebrand Gurlitt 1895–1956. Die Biographie* (Munich: C. H. Beck, 2016); Stefan Koldehoff, *Die Bilder sind unter uns. Das Geschäft mit der NS-Raubkunst und der Fall Gurlitt* (Berlin: Galiani, 2014); Susan Ronald, *Hitler's Art Thief. Hildebrand Gurlitt, the Nazis, and the Looting of Europe's Treasures* (New York: St Martin's Press, 2015).

2 For an overview of the Nazi campaign against 'Degenerate Art' cf. *Angriff auf die Avantgarde. Kunst und Kunstpolitik im Nationalsozialismus*, ed. by Uwe Fleckner (Berlin: Akademie Verlag, 2007); *Moderne Meister. 'Entartete' im Kunstmuseum Bern*, ed. by Matthias Frehner and Daniel Spanke (Munich, London and New York: Prestel, 2016); Christoph Zuschlag, *'Entartete Kunst'. Ausstellungsstrategien im Nazi-Deutschland* (Worms: Wernersche Verlagsgesellschaft, 1995); *idem*, 'An "Educational Exhibition". The Precursors of "Entartete Kunst" and Its Individual Venues', in *'Degenerate Art'. The Fate of the Avant-Garde in Nazi-Germany*, ed. by Stephanie Barron (New York: Harry N. Abrams, 1991), pp. 83–103; *idem*, '"Chambers of Horrors of Art" and "Degenerate Art". On Censorship in the Visual Arts in Nazi Germany', in *Suspended License. Censorship and the Visual Arts*, ed. by Elizabeth Childs (Seattle and London: University of Washington Press, 1997), pp. 210–34; *idem*, 'Von "Schreckenskammern", "Horrorkabinetten" und "Schandausstellungen". Die NS-Kampagne gegen "Entartete Kunst"', in *Moderne am Pranger. Die NS-Aktion 'Entartete Kunst' vor 75 Jahren. Werke aus der Sammlung Gerhard Schneider*, ed. by Christiane Ladleif and Gerhard Schneider (Bönen: Kettler, 2012), pp. 21–31.

primarily Jews who were coerced by the NS regime to sell their collections, so that they could, for instance, pay the so-called Reich Flight Tax ('Reichsfluchtsteuer') if they sought to emigrate.[3]

The Reich Flight Tax had already been introduced in the final phase of the Weimar Republic, namely on 8 December 1931, in order to curb the flight of capital. It was a response to the global economic crisis of 1929. Wealthy citizens who sought to emigrate were forced to pay heavy taxes. The object was to deter German citizens from moving abroad. After 1933, the National Socialists systematically used the Reich Flight Tax as an instrument to divest Jewish emigrants of part of their wealth. Jews in Nazi Germany were increasingly persecuted and deprived of their rights, and up until 1941 the state expedited their emigration. In 1941 the Nazis changed their policy: concentration camps such as Auschwitz were built and Jews were systematically deported to them. In 1942 the Holocaust began. At this point even those paying the Reich Flight Tax were no longer simply allowed to take the remainder of their wealth with them into exile. Instead, bank balances and securities were transferred to frozen accounts and could only be transferred abroad in exchange for heavy payments. Under the pressure of persecution many Jewish families were forced to give up their worldly possessions. So-called Jewish auctions ('Judenauktionen') took place. Artworks and other objects (such as furnishings and silver) that Jews were relieved of by force of the Nazi regime are considered looted art today.

Which brings us back to Cornelius Gurlitt. Cornelius Gurlitt died on 6 May 2014. In his will he bequeathed his collection to the Museum of Fine Arts Berne (Kunstmuseum Bern) in Switzerland, a bequest that the museum subsequently accepted on 24 November 2014. At the same time the museum announced that it would identify 'looted art' and restore it to the heirs of the former collectors – and that it would return art labelled once as 'degenerate', as a loan, to those museums from which it had been confiscated in 1937. The Kunstmuseum Bern is currently publishing the inventory of Gurlitt's collection as a 'work in progress' on its website. A cousin of Cornelius Gurlitt has, however, contested the bequest, and a final legal decision is still pending. At the same time, the spectacular Gurlitt case has brought up a wide discussion about how to deal with the issues of NS art policy, because such a great amount of 'degenerate' and looted art had never before been discovered. For the first time a very personal history could be related to the role of art dealers in Nazi Germany and to the moral, legal, and theoretical questions that arise in this context.[4]

It is important to differentiate these two categories of so-called 'degenerate art' and looted art: 'degenerate art' is a term of Nazi propaganda, a kind of label used by the Nazis to incriminate modern art. The Nazis rejected modern art, such as Expressionism, Dadaism and the Bauhaus artists. Therefore they confiscated modern art in German museums, in order to use it in propagandistic exhibitions, to destroy it or to sell it for

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3   See *Die Verantwortung dauert an. Beiträge deutscher Institutionen zum Umgang mit NS-verfolgungsbedingt entzogenem Kulturgut*, ed. by Andrea Baresel-Brand (Magdeburg: Koordinierungsstelle für Kulturgutverluste, 2010); *Raub und Restitution. Kulturgut aus jüdischem Besitz von 1933 bis heute*, ed. by Inka Bertz and Michael Dorrmann (Göttingen: Wallstein Verlag, 2008); Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art. A Handbook of Art Restitution Worldwide* (Berlin: Proprietas Verlag, 2008). For the 'Reichsfluchtsteuer' see Dorothee Mußgnug, *Die Reichsfluchtsteuer: 1931–1953* (Berlin: Duncker und Humblot, 1993).

foreign currency. The art promoted by the Nazis was representational and close to nature, in the tradition of the nineteenth century. 'Degenerate art' was thus modern art seized from public museums. By contrast, 'looted art' had belonged to private, mostly Jewish collections until the Nazis seized it or forced its owners to sell it at less than fair value. That's why we call it art which was confiscated in the context of Nazi persecution ('NS-verfolgungsbedingter Entzug'). 'Looted art' includes not only modern art, but also Old Masters, decorative arts, and books. There is only one way to determine whether a work of art belongs to one or the other of the two categories – or to neither of them: investigate its provenance and thus reconstruct its history in all its detail. Provenance research has played an important role in Germany for several years now, and especially, of course, since the Gurlitt case.

I would like to just mention two works from the 'Schwabing Art Trove': one an example of 'looted art' and one of 'degenerate art'. The painting *Seated Woman*, also referred to as *Woman Sitting in Armchair* (fig. 1), by Henri Matisse (1869–1954) had once been in the possession of the Jewish art dealer Paul Rosenberg (1881–1959). It can be categorized as 'looted art' and was restituted to his heirs in the spring of 2015. The colour woodcut *Melancholy Girl* (fig. 2) by Ernst Ludwig Kirchner (1880–1938) was seized as 'degenerate art' in 1937 from the Art Museum Mannheim (Kunsthalle Mannheim). In 2014 the city of Mannheim demanded it back from the public prosecutor's office of Augsburg. This is unlikely to be successful, for reasons that I will explain later. I will come back to the Gurlitt case at the end of my chapter.

FIG. 1 Henri Matisse, *Femme assise dans un fauteuil (Woman Sitting in Armchair)*, oil on canvas, 55.4 × 46.5 cm, 1921, an example of looted art in the estate of Cornelius Gurlitt, restituted to the heirs of Paul Rosenberg in May 2015 (Photo: Christoph Zuschlag, 2016; © Succession H. Matisse / VG Bild-Kunst, Bonn 2017).

FIG. 2 Ernst Ludwig Kirchner, *Melancholisches Mädchen (Melancholy Girl)*, colour woodcut, 70 × 40 cm, 1922, an example of 'degenerate art' in the estate of Cornelius Gurlitt, confiscated in 1937 at the Kunsthalle Mannheim (Photo: Christoph Zuschlag, 2016).

4   For the significance of the Gurlitt case see Ingeborg Berggren-Merkel, 'Was bleibt? Der "Fall Cornelius Gurlitt" und seine Bedeutung für die Provenienzforschung', in *Ersessene Kunst*, ed. by Heil and Weber, pp. 119–34.

THE NAZI CAMPAIGN AGAINST 'DEGENERATE ART'

On 24 February 1920 Adolf Hitler (1889–1945) proclaimed the party program of the NSDAP, which at that time still called itself the German Workers' Party ('Deutsche Arbeiterpartei'). It states: 'We call for the legal struggle against a direction in art and literature that exerts a subversive influence on the life of our Volk'.[5] The struggle announced here against so-called 'subversive' art and its advocates, no less than thirteen years prior to the Nazis' assumption of power, was to begin with great vehemence right after 30 January 1933. By passing the Law for the Restoration of the Professional Civil Service ('Gesetz zur Wiederherstellung des Berufsbeamtentums') of 7 April 1933, the Nazis created for themselves the legal basis for dismissing without notice distrusted university professors and museum directors for so-called racial or political reasons. Around thirty museum directors lost their positions. Those losing their professorships at art academies included Max Beckmann (1884–1950, in Frankfurt), Otto Dix (1891–1969, in Dresden), Käthe Kollwitz (1867–1945, in Berlin) and Paul Klee (1879–1940, in Düsseldorf). These actions did not, however, come as a surprise. For years the ideological foundations for what took place here had been laid: in the massive attacks of radically nationalistic groups and traditional artists against the avant-garde, and against the progressive purchasing policies of museum directors.

The degree to which conservative and nationalistic ideology was always part and parcel of the anti-modernist movements arising in parallel to modern art since the end of the nineteenth century, can be seen in the controversy surrounding French Impressionism at the turn of the century. One need only call to mind Hugo von Tschudi (1851–1911), Director of the Nationalgalerie in Berlin, whose commitment to French art led to open disputes with Kaiser Wilhelm II (1859–1941) and ultimately to Tschudi's dismissal in 1909. When Gustav Pauli (1866–1938) acquired a van Gogh painting in 1911 for the Bremen Art Gallery (Kunsthalle Bremen), it unleashed a storm of indignation. Carl Vinnen (1863–1922), a landscape painter from Cuxhaven associated with the artist colony at Worpswede, initiated a pamphlet entitled *Protest of German Artists* (*Protest deutscher Künstler*) in which 134 artists participated. The controversy surrounding Impressionism and its 'infiltration' of German museums marked both the beginning and high point of the dispute over modernity in Germany. It found its continuation during the German Empire and the Weimar Republic in numerous 'art scandals' around the work and public presentation of individual artists. Proposed purchases were blocked, exhibits censored or closed, artists had to stand trial. The stereotypes and vocabulary used to discredit modernity, which the National Socialists could then make use of, were formed in the course of these disputes. For instance, Max Nordau (1849–1923) had already transferred the concept of 'degeneration' from the field of psychiatry to the fine arts in his book of the same name published in 1892.[6] The role of the so-called Militant League for German Culture ('Kampfbund für deutsche Kultur'), which Alfred Rosenberg (1893–1946) founded in 1929, has to be stressed here, bringing together as it did a host of *völkisch* and nationalist-conservative associations.[7]

The civil servants dismissed from the museums and universities on the basis of the Law for the Restoration of the Professional Civil Service of 7 April 1933 were replaced by NSDAP party functionaries and like-minded persons. In many towns such as Mannheim, Karlsruhe, Nuremberg, Chemnitz, Stuttgart, Dessau, Ulm, Dresden, Breslau, and Halle an der Saale the first item of business for the new museum directors

– some of whom were artists themselves – was to put together the so-called 'Horror Chambers of Art' ('Schreckenskammern der Kunst').

The 'Horror Chambers of Art' consisted of special exhibitions in which any modern art holdings found at the given location, regardless of their particular style, were put on display in a defamatory manner. These vilifying attack exhibitions anticipated the 1937 *Degenerate Art* exhibition in terms of their political function, their ideological line of attack, and their propagandistic staging. They took place in Mannheim (entitled *Images of Cultural Bolshevism / Kulturbolschewistische Bilder*), Karlsruhe (*Government Art, 1918–1933 / Regierungskunst 1918–1933*), Nuremberg (*Horror Chamber / Schreckenskammer*), Chemnitz (*Art that Came Not from Our Soul / Kunst, die nicht aus unserer Seele kam*), Stuttgart (*Spirit of November. Art in the Service of Subversion / Novembergeist. Kunst im Dienste der Zersetzung*), Dessau (title unknown), Ulm (*10 Years of Ulm Art Policy / 10 Jahre Ulmer Kunstpolitik*), Dresden (*Degenerate Art / Entartete Kunst*), Breslau (*Art of the Intellectual Trend, 1918–1933 / Kunst der Geistesrichtung 1918–1933*), and finally Halle an der Saale (*Horror Chamber / Schreckenskammer*). The titles of the exhibitions make evident their purely political objective: the artworks were presented to the public as 'degenerate' phenomena of the Weimar Republic, in order to discredit the latter and ultimately to celebrate Hitler's victory as a revolutionary new beginning. Thus public outrage over modern art was one of several means of eliciting approval for the Nazi regime and contributing in this way to its domestic stabilization in an early period. In spite of their common ideological basis and objective, the forerunner exhibitions arose independently of one another, as local, individual operations. This distinguishes them significantly from the state-coordinated and centrally organized show of 1937.

The Dresden forerunner exhibition had particular significance. It was entitled *Entartete Kunst* (*Degenerate Art*) and put together from the holdings of Dresden's city museum (Stadtmuseum Dresden). It is important to note that the label 'degenerate art' was already used in Dresden in 1933 and not for the first time in Munich in 1937. The responsibility for its realization rests in part with the Nazi and antimodern artist, Richard Müller (1874–1954), who assumed the rectorship of the Dresden Art Academy in March 1933 and, in this capacity, dismissed Otto Dix from his position as professor. He evidently saw this as his chance to publicly discredit his political and artistic enemy. Around forty artists were represented in the exhibition. They belonged either to first- and second-generation Expressionist art or to the realistic, social-critical and politically leftist art of the post-war period and the 1920s. Otto Dix's monumental painting *Trench Warfare* stood at the centre of the exhibition. During a four-year tour from 1934 to 1937, the Dresden *Degenerate Art* exhibition made stops in twelve further cities. This took the exhibition beyond the normally locally limited impact of the so-called 'Horror Chambers of Art'. From among all of the forerunners, it attained by far the greatest attendance figures and publicity. After the end of the exhibit at the last venue, in Wiesbaden in March 1937, the exhibited pieces were probably transported to Berlin,

5 'Das 25-Punkte-Programm der Nationalsozialistischen Deutschen Arbeiterpartei', *documentArchiv.de* <http://www.documentarchiv.de/wr/1920/nsdap-programm.html> [accessed 11 May 2016].

6 See Max Nordau, *Entartung*, 2 vols (Berlin: Duncker, 1892/93); *Nordau, Max: Entartung*, ed. by. Karin Tebben (Berlin and Boston: de Gruyter, 2014).

7 Zuschlag, *Entartete Kunst*, pp. 32–37.

FIG. 3 *Interior shot of the Great German Art Exhibition at the 'House of German Art'*, Munich, 1937 (Photo: bpk-Bildagentur, Nr. 30026891).
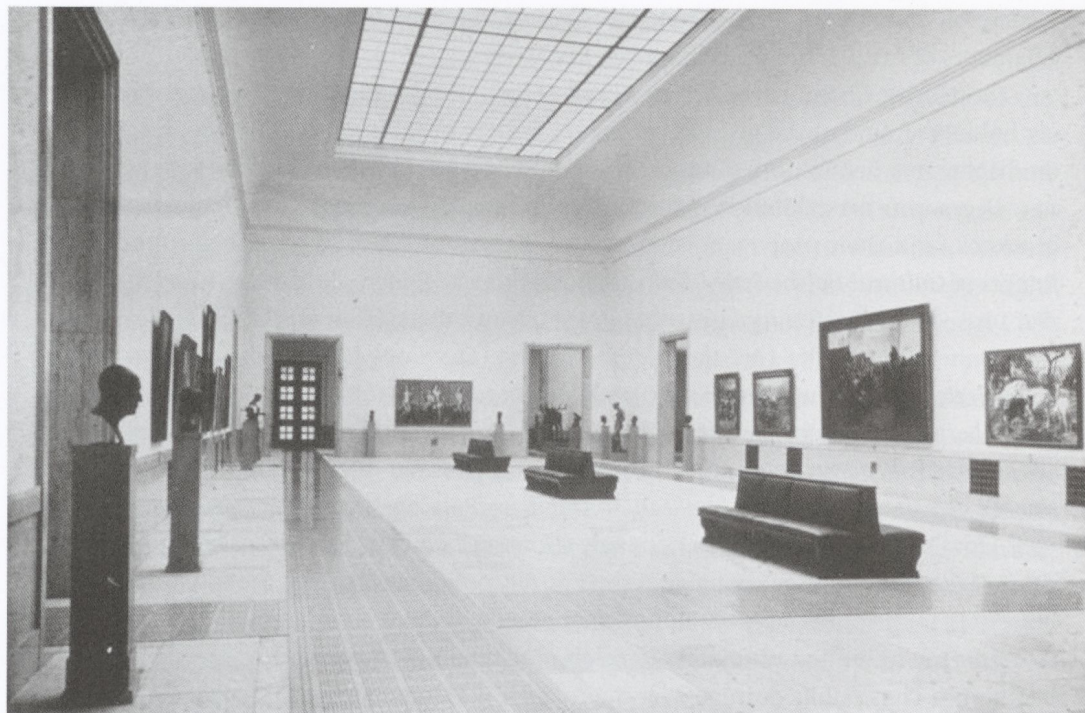
FIG. 4 *Interior shot of the Degenerate Art exhibition*, Munich, Hofgarten-Arkaden, 1937 (Photo: Archiv Bildende Kunst der Akademie der Künste Berlin, George-Grosz-Archiv, Nr. 1189/200).

in order to then make their way to Munich, where they were incorporated into the *Degenerate Art* exhibition. Thus the Dresden *Degenerate Art* exhibition became part of the Munich one of the same name.[8]

By 1937 the phase of domestic consolidation of power had been largely completed. While Hitler's policy of alliances stabilized Germany's standing abroad, the economy began to prosper. The time had come for the rulers to offer an 'account' of their first four years in power, in order to secure the consent of the people for future undertakings. As an instrument of propagandistic self-presentation, the exhibition became one of their favoured forms. Thus the 'new German artistic creativity' was also to be celebrated within the framework of a representative show in the so-called 'capital of the movement', Munich, which was considered the cultural cradle of National Socialism. Accordingly, on 18 July 1937, the ceremonial inauguration of the *Great German Art Exhibition* (*Große Deutsche Kunstausstellung*) took place in the newly built 'House of German Art' ('Haus der Deutschen Kunst') in Munich. As a parallel event the *Degenerate Art* exhibition was opened on the following day.[9]

At the *Great German Art Exhibition* 1,200 sculptures, paintings, and prints from 557 artists were presented in forty spacious halls, flooded with natural light, in an emphatically clear and spatially generous manner (fig. 3). Nonetheless, what was presented here as the highest artistic achievements of a reputedly new and revolutionary art, as the expression of a new era, turned out to be largely a second- and third-rate rehash of traditional historical, landscape, and nude painting. While Hitler announced an 'unrelenting war of cleansing' against 'decadent art'[10] in his inaugural address in front of the House of German Art, feverish work was going on in the neighbouring Court Garden. In the emptied rooms of the plaster cast collection of the university's archaeology department, the tribunal *Degenerate Art* show was very hastily erected. As the counterpoint event to 'German' art, it was opened, on 19 July 1937, with an inaugural speech by Adolf Ziegler (1892–1959), painter and President of the Reich Chamber of Visual Arts ('Reichskammer der bildenden Künste'), which was broadcast live on all German radio stations. In a lightning-fast operation Ziegler – armed with a decree from Propaganda Minister Joseph Goebbels – had descended upon the most important collections of modern art in Germany, seized hundreds of artworks, and had them carted off to Munich. A second, much more comprehensive seizure operation was soon to follow upon this initial foray. In this latter operation, several committees set up by Ziegler seized thousands of artworks in 101 museums and collections. Whereas the first operation represented a hasty search under immense time pressure for the purpose of securing exhibit pieces for the Munich exhibition, now the systematic and country-wide liquidation of modernity was involved. In all, approximately 21,500 artworks were seized (of these, about one-third were paintings, sculptures, watercolours, and drawings, and two-thirds were prints).[11] What happened to the confiscated artworks?

8 Zuschlag, *Entartete Kunst*, pp. 123–56.

9 Ines Schlenker, *Hitler's Salon: the Große Deutsche Kunstausstellung at the Haus der Deutschen Kunst in Munich 1937–1944* (Oxford, Bern, Berlin, Frankfurt am Main and Vienna: Lang, 2007).

10 "Hitlers Rede zur Eröffnung der 'Großen Deutschen Kunstausstellung' im Haus der Kunst, München 1937", *kunstzitate.de* <http://www.kunstzitate.de/bildendekunst/manifeste/nationalsozialismus/hitler_haus_der_kunst_37.htm> [accessed 11 May 2016].

11 The 'Degenerate Art' Research Center at the Free University Berlin (Forschungsstelle 'Entartete Kunst', Freie Universität Berlin) is currently publishing the Nazi inventory of 'Degenerate Art' as a 'work in progress' on the internet: Database, *'Degenerate Art' Research Center, Free University Berlin* <http://www.geschkult.fu-berlin.de/en/e/db_entart_kunst/datenbank/index.html> [accessed 12 May 2016]. As of March 2016 12,809 records were online.

46% were sold or traded off, 33% were destroyed, and 21% were unsold commissioned goods, part of the travelling exhibition *Degenerate Art*, pieces returned to the museums, etc.[12] After 1945 some of the works found their way back to their original museums or even to other museums, but for many of the works all traces of their existence have been lost. Some of these did, however, resurface when the collection of Cornelius Gurlitt was discovered a few years ago.[13]

In the Munich *Degenerate Art* exhibition, about seven hundred paintings, sculptures, prints, photographs, and books from about 120 artists were packed together (fig. 4). The spectrum of the art styles represented ranged from German Impressionism via Expressionism all the way to Dadaism and Constructivism, from the artists of Bauhaus and abstract art to those of the New Objectivity (*Neue Sachlichkeit*). The attacks against the Expressionists were particularly fierce, especially against the artists of 'Die Brücke' group. The exhibition was characterized by a specific presentational concept. By hanging the paintings extremely closely together in cramped and dimly lit rooms, an impression of chaos was created. The purchasing prices (sometimes enormous due to hyperinflation) were posted, in order to provoke the viewers' outrage over the supposed squandering of their taxes. Discriminatory, aggressively polemical writings on the walls appealed to already existing aversions against modernity and at the same time stoked anti-Semitic and anticommunist fears (such as the NS slogan 'Jewish Bolshevist art', a synonym for 'degenerate art'). On the one hand, it is fair to say that the viewers (numbering over two million!) were conditioned by the propagandistic organization and design of the exhibition. On the other hand, it seems clear that the larger part of the public must have been very receptive to the hate propaganda, since very few were truly well-acquainted with modern art. After all in the 1930s modern art had not yet even gained recognition in wider circles.

After the spectacular debut in Munich, the Propaganda Ministry sent the exhibition on the road until 1941, although with a constantly changing selection of works. For the second venue of the tour, in Berlin in the spring of 1938, the exhibition was assembled anew, its profile fundamentally changed: whereas in Munich the Expressionists stood at the centre of attack, now a greater part was dedicated to socially critical, politically motivated art. After Berlin the exhibition *Degenerate Art* travelled in 1938 to Leipzig, Düsseldorf, Salzburg, and Hamburg. In 1939 the show could be seen in Stettin, Weimar, Vienna, Frankfurt am Main, and Chemnitz. With the beginning of the Second World War, the exhibition disappeared from view – only to reappear again in January 1941 in Silesia. Until 2006 research knew of only two exhibition venues in 1941: Waldenburg in Silesia (now Walbrzych), which is southwest of Breslau in Poland, and Halle an der Saale. It then came to light that the show had also been presented in Görlitz. Finally, it was only in 2012 that we were able to establish three further exhibition venues in what is today Poland: Liegnitz (Legnica), Oppeln (Opole), and Beuthen (Bytom). The last known venue was Halle an der Saale, where the exhibition took place in April 1941. On 12 November 1941 the exhibit pieces were returned to the Propaganda Ministry.[14]

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12   See Andreas Hüneke, 'Beschlagnahmte Kunstwerke im Atelier Ernst Barlachs. Böhmer als Händler der Aktion "Entartete Kunst" und die Auslagerung von deren Restbeständen nach Güstrow', in *Ein Händler "Entarteter" Kunst. Bernhard A. Böhmer und sein Nachlass*, ed. by Meike Hoffmann (Berlin: Akademie Verlag, 2010), pp. 73–88 (p. 77).

13   See *Ersessene Kunst*, ed. by Heil and Weber; Hickley; Hoffmann and Kuhn; Koldehoff; Ronald.

14   See the list of returned items in Zuschlag, *Entartete Kunst*, pp. 295 f.

15   *Ibid.*, p. 214.

Finally, the so-called utilization ('Verwertung') of 'Degenerate Art' started. On 31 May 1938 the 'Law on Confiscations of Degenerate Art' ('Gesetz über Einziehung von Erzeugnissen entarteter Kunst') was enacted. It established the compensation-less appropriation of artworks seized on behalf of the Reich and authorized Propaganda Minister Joseph Goebbels (1897–1945) to implement it. The aim here was to legalize retroactively the decimation of the museums and to create a legal basis for the systematic utilization of the art confiscated in 1937. The 'utilization' began with the establishment of the 'Commission for the Utilization of Products of Degenerate Art' ('Kommission zur Verwertung der Produkte entarteter Kunst') presided over by Goebbels. As a result, the 'internationally useful' artworks, that is, those that were convertible into foreign currencies by being sold abroad, were separated from the general holdings of seized items in the Köpenicker Street depot in Berlin-Kreuzberg and, between the end of July and the middle of September 1938, taken to the Schönhausen Palace on the northern outskirts of Berlin. What happened, however, to the 'unutilizable remainder' of the seized works? It was destroyed. On 20 March 1939, in the courtyard of the main fire station of Berlin-Kreuzberg, about 1,000 oil paintings and sculptures, as well as almost 4,000 watercolours, drawings, and prints were burned.[15]

The Utilization Commission collaborated with four art dealers who had been authorized by the Propaganda Ministry, on the basis of their international experience, to trade in 'degenerate art': Bernhard A. Böhmer (1892–1945) from Güstrow, Ferdinand Möller (1882–1956) from Berlin, Karl Buchholz (1901–92) also from Berlin, and Hildebrand Gurlitt (1895–1956) from Hamburg. The main purchasers of 'degenerate art' included both museums and private individuals in the United States, Switzerland, Denmark, Holland, Belgium, England, and Norway. Some of them were granted personal access to the Schönhausen depot. Even though the four dealers were officially only allowed to sell abroad for foreign currency, they all also made domestic transactions. The most famous sales operation of the Third Reich came about – without any assistance on the part of the four dealers – as a result of direct negotiations between the Propaganda Ministry and the auctioneer Theodor Fischer (1878–1957) from Lucerne. On 30 June 1939, at an auction at the Fischer Gallery in Lucerne, 125 prime works from the seized stocks were offered for sale to an international public.[16]

LOOTED ART AND BOOTY ART PREVIOUSLY FOUND IN PRIVATE COLLECTIONS OF NS OFFICIALS AND NOW IN GERMAN PUBLIC MUSEUMS

'Hitler was not just the central figure in the Third Reich: he was also the central figure in Nazi art robbery, which encompassed all of Europe and the repercussions of which still convulse the museum and art world today'.[17] So begins Birgit Schwarz's 2014 book on Hitler and Nazi art robbery. Hitler amassed a considerable art collection, which

16 Gesa Jeuthe, 'Die Moderne unter dem Hammer. Zur "Verwertung" der "entarteten" Kunst durch die Luzerner Galerie Fischer 1939', in *Angriff auf die Avantgarde. Kunst und Kunstpolitik im Nationalsozialismus*, ed. by Uwe Fleckner (Berlin: Akademie Verlag, 2007), pp. 189–305; *eadem*, *Kunstwerte im Wandel. Die Preisentwicklung der* *deutschen Moderne im nationalen und internationalen Kunstmarkt 1925 bis 1955* (Berlin: Akademie Verlag, 2011), p. 76.

17 Birgit Schwarz, *Auf Befehl des Führers. Hitler und der NS-Kunstraub* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2014), p. 9.

included between 5,000 and 7,000 paintings, ranging from Old Master paintings to genre painting of the nineteenth century and contemporary Nazi art, which he acquired at the annual 'Great German Art Exhibitions' in Munich. At the same time, in the years of the Second World War in the areas of occupation, he had public and private collections (the latter primarily Jewish) looted, in order to fill the 'Führer Museum' he had planned for the Austrian city of Linz (this was the so-called 'Special Mission Linz' / 'Sonderauftrag Linz').[18] The 'Linz Führer Museum', which never came to be, was supposed to bring together, following Hitler's 'final victory', Hitler's own collection of paintings, the artworks seized in the occupied areas, as well as the acquisitions made on the European art market. One of Hitler's buyers and art agents was Hildebrand Gurlitt, the father of Cornelius Gurlitt. Some of the purchases made on behalf of Hitler were coerced. A prominent example of such a coerced sale is Jan Vermeer (1632–1675)'s *The Art of Painting*, a major work of the artist, which was in the possession of the Counts of Czernin (Jaromir Czernin, 1908–1966) in Austria and that Hitler procured in October 1940 through the authorized art dealer Hans Posse (1879–1942). Hitler had the picture brought to the Berghof, his country residence in Obersalzberg. Toward the end of the war, the picture, along with numerous other artworks from the 'Special Mission Linz', was stored away in the Austrian salt mine, Altaussee. There it was recovered in April 1945 by American soldiers and taken to the Central Collecting Point in Munich.[19] The restitution to Austria followed in 1946. Since 1952 the painting has been on display at the Kunsthistorisches Museum in Vienna. Other works came as war booty into the collections for Linz. An example of this is Leonardo da Vinci's *Lady with an Ermine* (fig. 5), which Hans Posse, Hitler's aforementioned special representative for the 'Special Mission Linz', seized in 1939 in the Muzeum Narodowe in Cracow and which was brought back to Poland after the end of the war.

Alongside 'degenerate art' (modern art from museum holdings) and 'looted art' (art previously owned by Jews), 'booty art' (*Beutekunst*) represents a further, important category. 'Booty art' is a term used to identify cultural property seized in war. It thus involves art robbery, whereby artworks are part of the booty and trophies of war, a phenomenon that is probably as old as war or art itself. Motives here include a demonstration of power and dominance. We know – from sources both written and pictorial – of spectacular cases of art robbery going as far back as the ancient Near East and Greco-Roman antiquity, as indicated in the introduction, and Chapters One, Two and Four. Even today the three obelisks in Rome attest to the conquest of Egypt by Octavius, later Emperor Augustus. On a relief on the Arch of Titus in Rome, Roman soldiers, after the conquest of Jerusalem, carry war booty out of the city's Temple, and this includes the golden Menorah (see Fig. 1 of the introduction).

18 See Hanns Christian Löhr, *Das Braune Haus der Kunst. Hitler und der 'Sonderauftrag Linz'. Kunstbeschaffung im Nationalsozialismus* (Berlin: Gebr. Mann Verlag, 2016); Birgit Schwarz, *Hitlers Museum. Die Fotoalben 'Gemäldegalerie Linz'. Dokumente zum 'Führermuseum'* (Vienna, Cologne and Weimar: Böhlau, 2004).

19 Iris Lauterbach, *Der Central Collecting Point in München. Kunstschutz, Restitution, Neubeginn* (Berlin and Munich: Deutscher Kunstverlag, 2015).

In Hitler's collections and those of other high-ranking Nazis there were countless artworks captured in foreign countries. This also holds for Hermann Göring (1893–1946)'s considerable collection, which he amassed at his country residence Carinhall and which in large part consisted of looted and booty art.[20] The studies by the American historian Jonathan Petropoulos have shown that aside from Göring many other members of the Nazi leadership followed Hitler's example and set up art collections.[21]

In the Second World War the Nazis captured countless artworks in foreign countries; after 1945 it was the Soviet troops that stole German art treasures earmarked for the booty museum that Stalin had planned. A dispute has been going on for years between Russia and Germany over some 200,000 art objects taken out of Germany, as well as some two million books and a considerable amount of archival material. This also includes the legendary 'Priam's Treasure', which Heinrich Schliemann (1822–1890) discovered and recovered in the nineteenth century from Troy. It has been shown in the permanent exhibition of the Pushkin State Museum in Moscow since 1996. A large part of the art looted and captured by the Nazis, including Hitler's and Göring's collections, were amassed by the U.S. Military Government at Central Holding Points and returned to the European states from which the cultural property had been stolen. In this way a total of over 250,000 artworks as well as countless books, archival papers, and documents have been returned. The first work to be restituted was the *Ghent Altarpiece* (1432) by Jan van Eyck (1390–1441), which was given back to Belgium. There is, however, an unallayed suspicion that there is still looted art amongst the cultural property found in German museums, archives, and libraries. Only intensive provenance research on individual objects can provide clarity. With the so-called Washington Declaration of 3 December 1998, which was also signed by the Federal Republic of Germany, basic principles governing the restitution of assets from the NS period were agreed upon. Systematic and intensive provenance research has been undertaken for many years in Germany, in the course of which numerous cases of looted art have been identified and restitution carried out. But there still remains much to do. As an example I point to silver holdings, previously in Jewish possession, that are now in the Arts and Crafts Museum (Museum für Kunst und Gewerbe) Hamburg (fig. 6). It has not yet been possible to determine who their original owners were.[22] This example demonstrates that looted art is by no means limited to the fine arts, but also encompasses decorative arts and everyday objects.

FIG. 6 *Silver holdings, previously Jewish-owned, in the depot of the Museum für Kunst und Gewerbe Hamburg* (Photo: Martin Luther / Dirk Fellenberg).

20 Hanns Christian Löhr, *Der Eiserne Sammler. Die Kollektion Hermann Göring. Kunst und Korruption im 'Dritten Reich'* (Berlin: Gebr. Mann, 2009); Nancy H. Yeide, *Beyond the Dreams of Avarice. The Hermann Goering Collection* (Dallas: Laurel Publishing, 2009). Göring possessed not just looted and booty art, in the spring of 1938 he also annexed thirteen paintings from the seized stocks of 'Degenerate Art' from five preeminent artists of classic modernism (Paul Cézanne, Vincent van Gogh, Franz Marc, Edvard Munch, and Paul Signac). His objective: to sell them abroad for foreign currency or to exchange them. See Andrea Hollmann and Roland März, *Hermann Göring und sein Agent Josef Angerer. Annexion und Verkauf*

'Entarteter Kunst' aus deutschem Museumsbesitz (Paderborn: Wilhelm Fink, 2014).

21 See Jonathan Petropoulos, *Art as Politics in the Third Reich* (Chapel Hill: The University of North Carolina Press, 1996); idem, *The Faustian Bargain. The Art World in Nazi Germany* (New York: Oxford University Press, 2000).

22 See *Raubkunst? Provenienzforschung zu den Sammlungen des Museums für Kunst und Gewerbe Hamburg*, ed. by Sabine Schulze and Silke Reuther (Hamburg: Museum für Kunst und Gewerbe, 2014).

PRESENT-DAY CONSEQUENCES AND REPERCUSSIONS

The NS confiscations of 'degenerate art' tore holes in museums' holdings, which even in the long run will not be closable, in spite of individual reacquisitions. Ironically, the NS sales actions brought about a previously unknown degree of movement on the international art market: modern art from Germany became internationally disseminated and more widely known. Works confiscated as 'degenerate art' and lost without a trace continue to surface unexpectedly today. Thus, in 2010, during excavations that were carried out for a new subway line in front of the Red City Hall (Rotes Rathaus) in the Mitte district of Berlin, sixteen sculptures or sculpture fragments were unearthed and could be identified as works of the Nazi confiscation campaign against 'degenerate art'.[23] With regard to the 'Schwabing Art Trove', it has already proven possible to classify approximately 380 works as resulting from the Nazi 'degenerate art' confiscation campaign.

This brings me to the problematic nature of property law as it applies to 'degenerate art'. Why can't the museums simply demand back the works that were confiscated in 1937 as 'degenerate' and then sold off? Because there is no legal foundation for such a demand, as the legal scholar Carl-Heinz Heuer describes:

> After the end of the war the Allied Control Council prohibited the continued application of numerous laws enacted under National Socialist rule. Criterion for nonapplication was whether the laws in question contained discrimination connected to race, nationality, religious affiliation, or political/ideological beliefs. For this very reason numerous regulations and legal acts of the National Socialist State were declared null and void in light of such discrimination. When the Law of Confiscation and the regulations enacted on its basis were reviewed

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23 See *Der Berliner Skulpturenfund. 'Entartete Kunst' im Bombenschutt. Entdeckung – Deutung – Perspektive. Begleitband zur Ausstellung mit den Beiträgen des Berliner Symposiums 15.–16. März 2012*, ed. by Matthias Wemhoff with Meike Hoffmann and Dieter Scholz (Regensburg: Schnell & Steiner, 2012).

24 Carl-Heinz Heuer, 'Die eigentumsrechtliche Problematik der "Entarteten Kunst"', in *Auf den Spuren der verlorenen Moderne. 10 Jahre Forschungsstelle 'Entartete Kunst' am Kunsthistorischen Institut der Freien Universität Berlin*, ed. by Meike Hoffmann and Andreas Hüneke (Berlin: Forschungsstelle 'Entartete Kunst' am Kunsthistorischen Institut der Freien Universität, 2013), pp. 10–14. The German quote reads: "Nach Kriegsende hat der Alliierte Kontrollrat die weitere Anwendung zahlreicher Gesetze verboten, die unter nationalsozialistischer Herrschaft ergingen. Kriterium für die Nichtanwendung war, ob die fraglichen Gesetze Diskriminierungen unter Anknüpfung an Rasse, Nationalität, Glaubenszugehörigkeit oder politische und weltanschauliche Überzeugungen enthielten. Zugleich wurden zahlreiche Verfügungen und Rechtsakte des nationalsozialistischen Staates angesichts derartiger Diskriminierungen für nichtig erklärt. Als das Einziehungsgesetz und die auf seiner Grundlage ergangenen Verfügungen von der Legal Advice Branch überprüft wurden, entschied man sich indes gegen eine Aufhebung. Die damals entscheidende Erwägung stützte sich darauf, den Erwerbern auf dem Kunstmarkt Rechtssicherheit zu gewähren und nicht die Grundlage der händlerischen Verwertung zu zerstören. Der bundesdeutsche Gesetzgeber hat ebenfalls von der Aufhebung des Einziehungsgesetzes abgesehen. [...] Bei der Einziehung 'entarteter' Kunst wurde ästhetische Barbarei betrieben, ohne dabei jedoch rassisch, politisch oder weltanschaulich zu diskriminieren. Die hohe Schwelle, um als 'gesetzliches Unrecht' eingeordnet zu werden, erfüllen das Einziehungsgesetz und die auf seiner Grundlage ergangenen Beschlagnahmungen damit nicht. Sie sind folglich rechtswirksam zustande gekommen, so dass auch die Folgeerwerber wirksames Eigentum an den Werken erlangen konnten. [...] So moralisch unhaltbar die Verfolgung 'entarteter' Kunst auch gewesen ist, aus rein juristischer Sicht kann grundsätzlich keine Restitution verlangt werden".

by the Legal Advice Branch, one decided here, however, against an annulment. The decisive consideration then was based on providing legal certainty to buyers on the art market and on not destroying the basis for market utilization. The Federal German lawmaker has also refrained from annulling the Law of Confiscation. [...] The confiscation of 'degenerate' art represents aesthetic barbarity without, however, discriminating on the basis of race, politics, or ideology. Thus the high threshold required for being classified as 'legal injustice' is not met by the Law of Confiscation and the confiscations enacted on its basis. Consequently they have come into being in a legally effective manner, such that subsequent purchasers were also able to attain effective ownership of the works. [...] As morally untenable as the persecution of 'degenerate' art has also been, from a purely legal standpoint no restitution can be demanded as a matter of principle.[24]

In the Gurlitt collection, 590 works are possibly Nazi looted art. These works can be found in the internet database lostart.de.[25] Lost Art is operated by the foundation German Centre for Cultural Losses (Deutsches Zentrum Kulturgutverluste) in Magdeburg. This institution was founded by the German federal government and the sixteen German states in order to pool the resources involved in provenance research and to expand their reach.

Now, what is the nature of property law as it applies to 'looted art'? As mentioned above, Germany signed the so-called Washington Declaration of 3 December 1998. It calls for a kind of voluntary commitment on the part of the signees to search for looted art in museums, libraries, and archives and, if warranted, to return such art to the heirs of its former owners. In Germany, there is no law of restitution (in contrast to Austria, where this has been the case since 1998). Nonetheless, as stated previously, for some years now there have been intensified efforts in this direction.[26]

And what is the legal status of booty art? There is no question that booty art represents a violation of international law. Accordingly, the Russian decision to declare the artworks looted during and after World War II to be Russian property is clearly a violation of this law. The question of booty art remains today a massive, still unresolved issue in German-Russian relations.[27]

It has become clear that the creation and dissolution of the Nazi regime has had grave consequences for public and private art collections, and will continue to have such consequences in the present and the future.

Translated from German to English by Neil Solomon

25 'Kunstfund Gurlitt', *Deutsches Zentrum Kulturgutverluste* <http://www.lostart.de/Webs/DE/Datenbank/KunstfundMuenchen.html> [accessed 11 May 2016].

26 For information on this topic in English cf. *Kulturgutverluste Website* <http://www.kulturgutverluste.de/en/> [accessed 13 September 2016].

27 Britta Kaiser-Schuster: 'Die Initiative "Deutsch-Russischer Museumsdialog"', in *Museumskunde*, ed. by Deutscher Museumbund, vol. 73: Provenienzforschung und Restitution (Berlin: G+H Verlag, 2008), pp. 41–56 and *eadem*, 'Die Kriegsschicksale der Sammlungen. Aktivitäten und Herausforderungen des deutsch-russischen Museumsdialogs', *Arsprototo*, 4 (2014), 20–24.

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