
Restitution or Repetition? How the Justice for Uncompensated Survivors Today (JUST) Act Is Inevitably Another Ineffective Restoration Attempt

*“Chronological analysis reveals that none of the adopted instruments of public international law imposed any enforceable legal duty on the government of the signatory states, let alone any additional legal right for the victims of Nazi era spoliation.”*¹

I. INTRODUCTION

The Holocaust, one of, if not the most, devastating genocides in world history, resulted in the mass murder of millions of Jewish people across Europe.² In addition to these atrocities, the Nazi regime stole countless possessions from Jewish families including art, jewelry, and other property.³ The rationales behind Nazi looting vary.⁴ Some stole because of underlying racial ideologies, whereas others focused more on the Nazis’ personal benefits.⁵ Regardless of the

1. Bert Demarsin, *Let’s Not Talk About Terezin: Restitution of Nazi Era Looted Art and the Tenuousness of Public International Law*, 37 BROOK. J. INT’L L. 117, 145 (2011) [hereinafter Demarsin, *Restitution of Nazi Era Looted Art*].

2. See Alyssa Bickford, Article, *Nazi-Looted Art: Preserving a Legacy*, 49 CASE W. RES. J. INT’L L. 115, 115 (2017) (providing background information about Holocaust); *The Holocaust*, HISTORY (Oct. 14, 2009), <https://www.history.com/topics/world-war-ii/the-holocaust> [<https://perma.cc/5RKC-3Z3U>] (explaining Holocaust aftermath). Nazis murdered an estimated 5.8 million Jews, which was almost one-third of the world’s Jewish population. See Julia Parker, Note, *World War II & Heirless Art: Unleashing the Final Prisoners of War*, 13 CARDOZO J. INT’L & COMP. L. 661, 665-66 (2005) (highlighting statistics to show death count); see also EUGENE DAVIDSON, THE TRIAL OF THE GERMANS: AN ACCOUNT OF THE TWENTY-TWO DEFENDANTS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG 583 (1966) (highlighting Holocaust’s unique nature). No other mass killing in history was like the Holocaust. See DAVIDSON, *supra*, at 583. Whereas other racial murders throughout history were spontaneous, the Holocaust was an organized, well-considered crime of mass murder, making it a more complicated occurrence of cruelty. *Id.*

3. See Parker, *supra* note 2, at 670 (estimating aftermath of Nazi looting); see also MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA’S COURTS 294 (2003) (giving examples of confiscated possessions). The Nazis burned, destroyed, sold, or kept nearly one-fifth of art in the Western world. See Parker, *supra* note 2, at 670.

4. See Bickford, *supra* note 2, at 115 (explaining various reasons behind Nazi looting).

5. See MICHAEL J. KURTZ, AMERICA AND THE RETURN OF NAZI CONTRABAND: THE RECOVERY OF EUROPE’S CULTURAL TREASURES 25 (2006) (noting racial ideology one reason for looting). Nazis believed all artwork created in Germany or by a German belonged to the Reich. *Id.*; Jennifer Anglim Kreder, *Reconciling Individual and Group Justice with the Need for Repose in Nazi-Looted Art Disputes: Creation of an International Tribunal*, 73 BROOK. L. REV. 155, 160 (2007) [hereinafter Kreder, *Creation of an International Tribunal*] (discussing Nazis’ goal of destroying Jewish culture); Bickford, *supra* note 2, at 115 (stating Nazis stole for personal benefit). One main objective of the Nazis’ “Final Solution” was to destroy Jewish culture because Hitler

reasoning behind Nazi looting, these “incalculable” losses still haunt Holocaust victims and their heirs as they seek justice through the restoration and return of their stolen property.⁶

Nazi confiscation of Jewish-owned property, one of the “greatest dislocation[s] of cultural property in history[,]” remains a problem Holocaust victims and their heirs face today.⁷ One mechanism to restore losses from the Holocaust is restitution of stolen assets.⁸ Restitution is an extremely important process in transitional justice because it acknowledges historical wrongs and also encourages education and discussions of history.⁹ Recognizing the desperate need for restoration of stolen property was not a priority for the United States or

deemed Jewish art “degenerate.” See JONATHAN PETROPOULOS, *ART AS POLITICS IN THE THIRD REICH* 9 (1996) (describing government’s intolerance for modern art); see also STUART E. EIZENSTAT, *IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II* 188 (2003) (noting Nazis rejected modern art); Hector Feliciano et al., *Nazi-Stolen Art*, 20 *WHITTIER L. REV.* 67, 70 (1998) (asserting Nazis’ distaste for degenerate art).

6. See Michael J. Bazylar & Amber L. Fitzgerald, *Trading with the Enemy: Holocaust Restitution, the United States Government, and American Industry*, 28 *BROOK. J. INT’L L.* 683, 789 (2003) (providing synopsis of current status of restitution). The United States has not examined its past conduct the same way it has encouraged Europe to reflect on its complicity, and in doing so has allowed the injustices of the Holocaust to remain injustices. See *id.* at 789-90. In order for the United States to be more successful in righting the wrongdoings of World War II, there needs to be a push for self-recognition as well as a remedy for the victims. See *id.*; see also MICHAEL R. MARRUS, *SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990S* 115 (2009) (estimating number of items returned). One calculation approximates that less than 20% of assets stolen by the Nazis has been returned. See MARRUS, *supra*, at 115 (indicating only small proportion of Holocaust survivors received restitution); KURTZ, *supra* note 5, at 41-42 (providing approximate value of losses). The British Ministry of Economic Warfare estimated losses to be \$144 million, but the United States Foreign Economic Administration estimated losses to be over \$2 billion. See KURTZ, *supra* note 5, at 41-42. Throughout Europe, Nazis looted over 650,000 objects of art alone. See Parker, *supra* note 2, at 662 (emphasizing immense amount of stolen artwork).

7. See KURTZ, *supra* note 5, at 24 (emphasizing impact of Nazis stealing artwork); Jennifer Anglim Kreder, *Analysis of the Holocaust Expropriated Art Recovery Act of 2016*, 20 *CHAP. L. REV.* 1, 1 (2017) [hereinafter Kreder, *Analysis*] (noting recovering stolen art still current problem). Out of the estimated 500,000 Holocaust survivors still alive today, approximately half live in poverty, highlighting the importance of providing adequate restitution. See Daniel Boffey, *Eastern Europe Failing on Jewish Restitution Pledges, Study Finds*, *GUARDIAN* (Apr. 24, 2017, 9:59 AM), <https://www.theguardian.com/world/2017/apr/24/eastern-europe-failing-on-jewish-restitution-pledges-study-finds-poland-terezin-declaration-theft-holocaust-communist-eras> [https://perma.cc/3D48-QMR8] (highlighting lasting economic impact on Holocaust survivors). Victims and their families are fighting especially hard to reclaim stolen art, as it is a connection to their family members who suffered during the Holocaust. See Feliciano et al., *supra* note 5, at 72 (distinguishing art’s special importance to families).

8. See Thérèse O’Donnell, *The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?*, 22 *EUR. J. INT’L L.* 49, 52 (2011) (observing historical importance of restitution). Restitution is defined as “a remedy involving return.” Patty Gerstenblith, *The Public Interest in the Restitution of Cultural Objects*, 16 *CONN. J. INT’L L.* 197, 197 (2001) (providing basic definition of restitution).

9. See O’Donnell, *supra* note 8, at 52 (highlighting impact of restitution). Restitution not only plays a role in property return, but also helps reveal stories about the past. *Id.* Specifically, by uncovering stories from past lootings, restitution efforts promote discussion about cultural identities of those who were victims, perpetrators, and beneficiaries of the wrongdoings. *Id.* at 53. Restitution does not provide a “whitewashing voucher,” and does not ignore the important process of seeking the truth, but is an essential part of the healing process. *Id.* at 55.

many other countries at the end of the World War II.¹⁰ Recently, however, more efforts have been made to return Nazi-looted property to Holocaust victims and their heirs.¹¹

Congress enacted the Justice for Uncompensated Survivors Today (JUST) Act in 2018 as another effort to promote restoration of Nazi-looted property.¹² The JUST Act requires the U.S. Secretary of State to report the nature and extent of laws and policies created by various countries regarding restitution of Nazi-looted assets.¹³ By assessing and describing the extent of restitution efforts created in different countries, the JUST Act seeks to support returning wrongfully-seized property, or, in the case of heirless property, compensating

10. See KURTZ, *supra* note 5, at 45 (recognizing area regarding restitution lacks concrete policies).

11. See Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. No. 115-171, 132 Stat. 1288 (2018) (mandating U.S. Secretary of State report international restitution efforts); Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (providing statute of limitations for claimants of Nazi-stolen property); Nazi War Crimes Disclosure Act, Pub. L. No. 105-246, 112 Stat. 1859 (1998) (requiring disclosing Nazi war criminal records); U.S. Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, 112 Stat. 611 (establishing method to explore issues and make recommendations regarding Holocaust-era assets); Holocaust Victims Redress Act, Pub. L. No. 105-158, 112 Stat. 15 (1998) (calling for governments to encourage good faith efforts to return Nazi-stolen property); National Stolen Property Act, Pub. L. No. 73-246, ch. 333, 48 Stat. 794 (1934) (codified as amended at 18 U.S.C. §§ 2311-2323 (2018)) (expanding National Motor Vehicle Theft Act to include other stolen property). In 1997, a U.S. magistrate judge issued a warrant based on a finding that the Leopold Museum-Privatstiftung violated the National Stolen Property Act in transporting the *Portrait of Wally*, a painting by Egon Schiele, in foreign commerce while knowing it was stolen. See *United States v. Portrait of Wally*, 663 F. Supp. 2d 232, 237, 246 (S.D.N.Y. 2009) (detailing grounds for seizure warrant); Jennifer Anglim Kreder, *The New Battleground of Museum Ethics and Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?*, 88 OR. L. REV. 37, 52-53 (2009) [hereinafter Kreder, *The New Battleground*] (summarizing *Portrait of Wally* case). This was the first modern Nazi-looted art case. See Kreder, *The New Battleground*, *supra*, at 52; see also Bureau of European & Eurasian Affairs, *Prague Holocaust Era Assets Conference: Terezin Declaration*, U.S. DEP'T STATE (June 30, 2009), <https://www.state.gov/p/eur/rls/or/126162.htm> [<https://perma.cc/W55K-WM7F>] (highlighting importance of restitution and urging countries to make restitution efforts); PRESIDENTIAL ADVISORY COMM'N ON HOLOCAUST ASSETS IN THE U.S., PLUNDER AND RESTITUTION: THE U.S. AND HOLOCAUST VICTIMS' ASSETS 1-2 (2000), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d019594497&view=1up&seq=1> [<https://perma.cc/7CFP-NPDH>] (summarizing duties under U.S. Holocaust Assets Commission Act). See generally BAZYLER, *supra* note 3, at 286-306 (listing initiatives launched because of Holocaust restitution movement); LYNN H. NICHOLAS, *THE RAPE OF EUROPE: THE FATE OF EUROPE'S TREASURES IN THE THIRD REICH AND THE SECOND WORLD WAR* 426-28 (1994) (providing examples of restitution efforts made in the Netherlands and Germany); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 145-46 (criticizing various nonbinding agreements promoting restitution); O'Donnell, *supra* note 8, at 62 (discussing seven laws passed in Austria to restore Nazi-stolen property).

12. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Poe) (describing JUST Act's objectives). See generally Justice for Uncompensated Survivors Today (JUST) Act of 2017 (instructing action to promote restitution). Representative Poe of Texas addressed Congress to explain the purpose of the JUST Act and how it would help hold governments accountable that have fallen short of their commitments to restore wrongfully-seized property. See 164 CONG. REC. H3460-61 (daily ed. Apr. 24, 2018) (statement of Rep. Poe).

13. See Justice for Uncompensated Survivors Today (JUST) Act of 2017 § 2(b) (mandating reports by U.S. Secretary of State); *Simon v. Republic of Hung.*, 911 F.3d 1172, 1189 (D.C. Cir. 2018) (summarizing JUST Act); see also Kreder, *Analysis*, *supra* note 7, at 23 (explaining requirements of JUST Act); Hagay Hacohen, *Antisemitic Hate-Wave Floods Poland, France, Spain, and Greece*, JERUSALEM POST (Feb. 25, 2019, 6:04 PM), <https://www.jpost.com/Diaspora/Antisemitic-hate-wave-floods-Europe-Poland-France-Spain-and-Greece-581727> [<https://perma.cc/H2K3-L57Y>] (providing summary and purpose of JUST Act).

Holocaust survivors in need and encouraging Holocaust education.¹⁴ This recent effort thus demonstrates the recognition of the continued need to promote restitution in order to help provide justice to victims and their heirs.¹⁵

Although Congress's intent behind the JUST Act is to promote tremendously important restitution goals, the desired outcome of this Act will likely not transpire.¹⁶ The JUST Act is too similar to other nonbinding efforts established to encourage restitution, and thus will not result in the "justice" it intends to promote.¹⁷ This Note will examine the JUST Act as an effort made by the United States to encourage other countries to increase their restitution efforts.¹⁸ Part II will examine the progression of restitution efforts made from the end of World War II through today and the outcomes of such efforts.¹⁹ Part III will then compare the JUST Act to prior efforts and argue that it is too similar to other failed efforts to encourage restitution, and that its enactment will not achieve its intended objectives.²⁰ Finally, Part IV will suggest solutions for the United States and other countries to implement in order to better advance restitution efforts.²¹

II. HISTORY

A. Holocaust Background and History of Nazi Looting

Between 1933 and 1945, the German Nazi regime systematically killed approximately six million European Jews and members of other persecuted groups.²² Adolf Hitler, a man obsessed with the concept of a "pure" German

14. See Justice for Uncompensated Survivors Today (JUST) Act of 2017 § 2(b) (providing direction for allocating heirless property); see also Kreder, *Analysis*, *supra* note 7, at 22-23 (discussing JUST Act's purpose).

15. See Kreder, *Analysis*, *supra* note 7, at 22 (noting JUST Act will help survivors obtain justice for Nazi wrongdoings).

16. See 164 CONG. REC. H3460-61 (daily ed. Apr. 24, 2018) (statement of Rep. Poe) (criticizing JUST Act because law does not provide justice for Holocaust victims and families). Representative Ros-Lehtinen argued the JUST Act is merely a reporting requirement and that survivors do not gain anything from it. *Id.* at H3461 (statement of Rep. Ros-Lehtinen); see Kreder, *Analysis*, *supra* note 7, at 23 (questioning future impact of JUST Act); Kreder, *The New Battleground*, *supra* note 11, at 39 (noting newly-opened archives highlight inadequacy of restitution efforts).

17. See 164 CONG. REC. H3464 (daily ed. Apr. 24, 2018) (statement of Rep. Deutch) (noting failure to address needs of survivors). Representative Ros-Lehtinen criticized the name of the JUST Act, saying that "[i]t has a fancy name, but there is no justice." *Id.* at H3461 (statement of Rep. Ros-Lehtinen); see Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 120 (considering nonbinding policies ineffective); Kelly Ann Falconer, Comment, *When Honor Will Not Suffice: The Need for a Legally Binding International Agreement Regarding Ownership of Nazi-Looted Art*, 21 U. PA. J. INT'L ECON. L. 383, 386 (2000) (noting international efforts will continue unsuccessfully due to nonbinding nature); Parker, *supra* note 2, at 693 (suggesting need for binding agreement).

18. See *infra* Part III.

19. See *infra* Part II.

20. See *infra* Part III.

21. See *infra* Part IV.

22. See *The Holocaust*, *supra* note 2 (summarizing Holocaust's impact); see also Bickford, *supra* note 2, at

race, led the mass murder.²³ Hitler initially proposed the idea of racial ideology in his autobiography, *Mein Kampf*, which called for eliminating “inferior” races.²⁴

The proposition to eliminate the Jewish population spread, and as a result the Nazis began gradually stripping Jews of their possessions.²⁵ They started by passing a law requiring Jews with more than five thousand Reichmarks in property to periodically declare and inventory their assets.²⁶ Eventually, Jews were prohibited from selling their property without Nazi approval.²⁷ Nazis “threatened, coerced, and murdered to amass what Hitler hoped would be the greatest collection of art” before ultimately arranging to extinguish Jewish culture altogether by eliminating anyone not of “pure” Germanic race.²⁸

In order to further this goal of eliminating the “inferior” races, the Nazis opened a network of Jewish ghettos and concentration camps to enslave and exterminate their targets.²⁹ The Nazis forced countless Jewish families out of their homes and made them forfeit most of their possessions, including valuable cultural property.³⁰ At the same time, Hitler expanded the German army to grow

115 (explaining devastations of Holocaust). The Holocaust is particularly horrific due to the fact it was systematically planned by Hitler and the Nazis. See Parker, *supra* note 2, at 665 (highlighting organized nature of Holocaust killings); see also Rebecca Keim, Article, *Filling the Gap Between Morality and Jurisprudence: The Use of Binding Arbitration to Resolve Claims of Restitution Regarding Nazi-Stolen Art*, 3 PEPP. DISP. RESOL. L.J. 295, 295 (2003) (indicating methodical nature of Nazi crimes).

23. See *The Holocaust*, *supra* note 2 (providing history of Hitler’s rise to power). Anti-Semitism was not initiated by Hitler—there is evidence of discrimination against Jews dating back to the ancient world, when the Jewish temple in Jerusalem was destroyed by Roman authorities, forcing Jews to leave Palestine. *Id.*

24. See Paulina McCarter Collins, Comment, *Has “The Lost Museum” Been Found? Declassification of Government Documents and Report on Holocaust Assets Offer Real Opportunity to “Do Justice” for Holocaust Victims on the Issue of Nazi-Looted Art*, 54 ME. L. REV. 115, 123 (2002) (articulating beginning of Nazis’ plan to mass murder non-Germans).

25. See Michael J. Bazylar, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 37 (2000) (articulating Nazis’ theft and murder part of systematic plan); Collins, *supra* note 24, at 123 (commenting on systematic plan implemented by Nazis).

26. See Kreder, *Analysis*, *supra* note 7, at 2 (describing Nazis’ “Final Solution”).

27. See *id.* (summarizing Nazi laws regarding Jewish property).

28. See Collins, *supra* note 24, at 123 (noting development of Nazis’ plans); Robert Schwartz, *The Limits of the Law: A Call for a New Attitude Toward Artwork Stolen During World War II*, 32 COLUM. J.L. & SOC. PROBS. 1, 1 (1998) (describing progression of Nazi theft).

29. See Bazylar & Fitzgerald, *supra* note 6, at 691 (estimating between eight and ten million forced laborers); *The Holocaust*, *supra* note 2 (describing creation of concentration camps and death tolls at each camp). Those the Nazis imprisoned lived in horrendous conditions, where they were brutally assaulted both physically and psychologically. See INGA CLENDINNEN, *READING THE HOLOCAUST* 32 (1999); MARRUS, *supra* note 6, at 20 (emphasizing forced labor another way of mass murder). Jews were not the only targeted group, as groups of individuals with disabilities, homosexual individuals, and individuals of Roma background were also deported to concentration camps where they were forced to work, subjected to medical experiments, and became victims of systematic mass murder. See Madison Horne, *Holocaust Photos Reveal Horrors of Nazi Concentration Camps*, HISTORY (Oct. 22, 2018), <https://www.history.com/news/holocaust-concentration-camps-photos> [<https://perma.cc/SW9S-PNHB>] (noting various groups forced into concentration camps).

30. See *The Holocaust*, *supra* note 2 (noting Nazis forcibly displaced Jews); see also Lawrence M. Kaye, *Looted Art: What Can and Should Be Done*, 20 CARDOZO L. REV. 657, 657 (1998) (noting Nazi policy to steal

his empire throughout Europe, but was defeated by the end of World War II and ultimately committed suicide in April of 1945.³¹

Lives were not the only thing lost during the Holocaust.³² The atrocities of the Nazi regime and the war left many survivors homeless and robbed of valuable property.³³ Nazis often destroyed or sold valuable artwork they had stolen from Jews, leaving owners with no record of their possessions, and thus little ability to recover this stolen property after the war.³⁴ Assets that Jews deposited into bank accounts throughout Europe were also irretrievable after the war.³⁵ In particular, Swiss banks mishandled Jewish accounts by wrongfully retaining dormant accounts and mistreating heirs of deceased Holocaust victims.³⁶

The mass theft of artwork and other assets during the Holocaust is immeasurable.³⁷ The scale of Nazi looting was unprecedented in history, and even after the Holocaust, “Holocaust survivors—witnesses to brutal murders, torture, and heartless thievery of the Nazis and their accomplices—continue to be cheated and defrauded, inexplicably as they fight for the rightful return of their stolen property.”³⁸ As a result, victims, and eventually the international

art during World War II). Art was not the only cultural property that was stolen; Nazis also robbed Jews of their jewelry, gold pieces, clothing, furniture, and other valuables. *See* BAZYLER, *supra* note 3, at 294 (providing examples of types of stolen property).

31. *See The Holocaust, supra* note 2 (providing history of World War II and how it ended). During his time in power, Hitler led his army to conquer Denmark, Norway, the Netherlands, Belgium, Luxembourg, and France. *Id.* But by the spring of 1945, German leadership was quickly dissolving. *Id.* Germany formally surrendered a week after Hitler’s suicide, on May 8, 1945. *Id.*

32. *See* Falconer, *supra* note 17, at 383 (emphasizing significant number of deaths and stolen artwork); Parker, *supra* note 2, at 665 (noting Holocaust’s impact on families even after World War II); *see also* Jessica Mullery, Note, *Fulfilling the Washington Principles: A Proposal for Arbitration Panels to Resolve Holocaust-Era Art Claims*, 11 CARDOZO J. CONFLICT RESOL. 643, 645 (2010) (highlighting stealing art another way Nazis destroyed Jewish culture).

33. *See* Bickford, *supra* note 2, at 115 (estimating Nazis stole between one-fourth and one-third of art in Europe); Parker, *supra* note 2, at 694 (describing Holocaust’s aftermath and displacement of Jewish families).

34. *See* Bickford, *supra* note 2, at 116 (explaining reasons for not returning stolen artwork). The Nazis did not destroy artwork they deemed valuable; they often kept it, and the stolen artwork eventually ended up in private collections. *Id.* at 115-16. Many of the records containing information about who previously owned the artwork and where it came from were lost in the process. *Id.* at 116; *see* Parker, *supra* note 2, at 668 (noting some artwork destroyed and other pieces sold). The Nazis documented many of their thefts to make them appear legal, but much of this documentation is still missing. *See* Kreder, *Analysis, supra* note 7, at 2 (outlining Nazi documentation).

35. *See* EIZENSTAT, *supra* note 5, at 47-48 (emphasizing banks uncooperative in providing support to families trying to track down assets); Mullery, *supra* note 32, at 648 (listing monetary assets stolen).

36. *See* EIZENSTAT, *supra* note 5, at 47 (providing information on Swiss banks’ involvement in theft); MARRUS, *supra* note 6, at 11 (describing Swiss banks’ role in stealing assets).

37. *See* KURTZ, *supra* note 5, at 26 (emphasizing impact of theft during Holocaust); Kreder, *Analysis, supra* note 7, at 8 (observing difficulty of estimating number of artworks stolen).

38. Press Release, Tammy Baldwin, U.S. Senator for Wis., U.S. Senators Tammy Baldwin and Marco Rubio and U.S. Representatives Joe Crowley and Chris Smith Introduce a Bill to Help Holocaust Survivors and the Families of Holocaust Victims (July 7, 2016), <https://www.baldwin.senate.gov/press-releases/the-just-act> [<https://perma.cc/4MX2-F38Z>] (emphasizing devastations survivors faced even after Holocaust ended); *see* Collins, *supra* note 24, at 123 (indicating scale of Nazi theft unprecedented).

community, called for international restitution efforts that would have to be equally as immense to provide justice and adequate compensation for those the Nazis wronged.³⁹

B. Post-World War II Early Restoration Efforts

1. Initial Restitution Efforts by Germany

Following World War II, efforts to restore these stolen assets to their lawful owners and their families were inadequate.⁴⁰ Smaller initiatives were taken; for example, in 1953, the German government made payments to Jewish people who had assets stolen as a form of restitution.⁴¹ This was the government's way of recognizing the German people's role in the crimes that were committed, but Germans themselves were still hesitant to acknowledge their own complicity in Nazi war crimes, and therefore did not favor reparations.⁴²

2. Allies' Early Restitution

One of the first restitution initiatives began in 1943 when the Allies became aware of the scale of Nazi theft, resulting in the announcement of the Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation or Control (Inter-Allied Declaration).⁴³ The Inter-Allied Declaration was a nonbinding announcement reserving all rights to declare invalid any transfers or dealings of any property rights and interests that occurred in Axis-controlled areas.⁴⁴ The Inter-Allied Declaration also applied to open

39. See Bureau of European & Eurasian Affairs, *supra* note 11 (emphasizing importance of international restitution efforts); see also EIZENSTAT, *supra* note 5, at 187 (highlighting scale of Nazi theft). But see MARRUS, *supra* note 6, at 137 (stating any restitution inadequate); Jolie Bell, Note, *Maybe Not the Best Solution, but a Solution: The German Foundation Agreement*, 6 CARDOZO J. CONFLICT RESOL. 107, 108 (2004) (asserting Holocaust victims will never receive sufficient justice).

40. See MARRUS, *supra* note 6, at 60 (acknowledging delay in restoration). "Practically nothing was done" to restore property stolen from Jewish families during the Holocaust for a number of reasons. See *id.* A few reasons for the lack of action include the widespread nonrecognition of the Holocaust's severity, incomplete denazification, preoccupation with the start of the Cold War, and lack of sympathy for the victims. See *id.*; Avi Beker, *Restitution*, in THE HOLOCAUST ENCYCLOPEDIA 560-61 (Walter Laqueur & Judith Tydor Baumel eds., 2001) (providing reasons for delay in restoring stolen property); see also EIZENSTAT, *supra* note 5, at 13 (observing restitution's shortcomings).

41. See EIZENSTAT, *supra* note 5, at 13 (observing Germany's initial role in restitution); Bazylar & Fitzgerald, *supra* note 6, at 690-91 (describing West Germany's restitution efforts during 1950s).

42. See Andrew Woolford & Stefan Wolejszo, *Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos*, 40 LAW & SOC'Y REV. 871, 889 (2006) (providing general public's opinion on German restoration). Honest conversations about Germany's complicity in the Holocaust did not really begin to take place until the 1960s and 1970s. *Id.* at 894.

43. See KURTZ, *supra* note 5, at 47 (outlining creation of Inter-Allied Declaration); O'Donnell, *supra* note 8, at 60 (summarizing Inter-Allied Declaration).

44. See O'Donnell, *supra* note 8, at 60 (noting policies Inter-Allied Declaration created). Sixteen governments proclaimed their goal to eliminate the dispossession of property. See KURTZ, *supra* note 5, at 47

looting, plunder, and sham transactions, allowing the Allies to strip the stolen property of its Nazi-fabricated legality.⁴⁵ It created a general restitution initiative, but was nonbinding and most countries were hesitant in enforcing the policies.⁴⁶

After the war, the Allies further undertook to aid in the return of stolen property to its lawful owners.⁴⁷ They established the Monuments, Fine Arts, and Archives (MFA&A) section of the Office of Military Government for Germany, United States to locate and document stolen art, and to ensure the pieces were not damaged or stolen again.⁴⁸ In order to do this, the U.S. Army established “collecting points” to gather and record the stolen assets.⁴⁹ But the volume of assets in Germany overwhelmed the MFA&A staff, resulting in artwork becoming damaged or stolen yet again.⁵⁰ This was just the beginning of the United States’ many attempted, yet failed restitution efforts.⁵¹

Western European nations also set up special claims commissions for victims of the war to reclaim their stolen property from the state.⁵² Occasionally, their property was returned to them, or even more rarely, they were compensated for the stolen property.⁵³ Nevertheless, these commissions were ineffective because the window of opportunity for victims to claim their property was extremely short, and those who did try to bring their claim usually did not have any evidence of their property.⁵⁴

(summarizing Inter-Allied Declaration lacked implementation provision).

45. See O’Donnell, *supra* note 8, at 60 (providing scope of Inter-Allied Declaration).

46. See KURTZ, *supra* note 5, at 47 (explaining lack of implementation plan made Inter-Allied Declaration ineffective); O’Donnell, *supra* note 8, at 60 (observing ineffectiveness of nonbinding declaration).

47. See Collins, *supra* note 24, at 123 (summarizing U.S. restitution policy after World War II). *But see* KURTZ, *supra* note 5, at 57 (asserting restitution issues negatively affected by political conflicts).

48. See Collins, *supra* note 24, at 126 (noting creation of MFA&A in Germany under U.S. military-established government). Another purpose of the MFA&A was to mitigate Nazi damage to cultural monuments. See Kreder, *Analysis*, *supra* note 7, at 7 (describing purposes of MFA&A).

49. See Collins, *supra* note 24, at 126 (explaining process of MFA&A’s work).

50. See *id.* (describing results of MFA&A efforts); Kreder, *Analysis*, *supra* note 7, at 7 (recognizing results of MFA&A).

51. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 185 (concluding commitments made by countries to restore stolen assets usually ignored). Congress enacted various statutes in the United States aimed at promoting restitution, but none of these efforts seemed to have the intended impact. See *infra* notes 89-93 and accompanying text (summarizing congressional action starting in 1998); *infra* notes 94-97 and accompanying text (explaining President Clinton’s attempts to provide restitution); *infra* notes 98-104 (discussing President Obama’s unique legislation extending statute of limitations for claimants).

52. See Kreder, *Analysis*, *supra* note 7, at 8 (describing claims commissions).

53. See *id.* (pointing out victims usually unsuccessful because they lacked evidence of ownership).

54. See *id.* (summarizing reasons for dysfunctional commissions).

C. Modern Approaches to Restitution

1. Switzerland

Restitution in Switzerland predominantly involved restoring money that was placed in Swiss banks during World War II.⁵⁵ In 1996, a class action suit was filed against the three largest banks in Switzerland for not returning money deposited by Jewish people.⁵⁶ Specifically, plaintiffs alleged their money was never returned from dormant bank accounts, and thus sought return of these assets, compensatory and punitive damages, and an imposition of a constructive trust upon the money.⁵⁷ The banks and the Swiss government were hardly cooperative and hesitated to take the claims seriously until the U.S. government issued a report actually confirming the legitimacy of these claims.⁵⁸ The United States' report effectively pressured Switzerland into settling for \$1.25 billion, which at the time was the largest settlement of a human rights case in U.S. history.⁵⁹

2. Austria

After World War II, Austria passed seven laws to restore Nazi-looted property.⁶⁰ Nevertheless, the Austrian government did not enact the most meaningful legislation until the 1990s, when Austrian leaders began to take more responsibility for the nation's role in the Holocaust.⁶¹ One notable law gave the

55. See EIZENSTAT, *supra* note 5, at 47 (providing purpose behind opening accounts to hide assets from Hitler); Bazylar, *supra* note 25, at 6 (describing class action suit filed against Swiss banks).

56. See Bazylar & Fitzgerald, *supra* note 6, at 689 (explaining claims against Swiss banks); Burt Neuborne, *Preliminary Reflections on Aspects of Holocaust-Era Litigation in American Courts*, 80 WASH. U. L.Q. 795, 805 (2002) (providing history of litigation against Swiss banks). Plaintiffs filed claims against three banks: Credit Suisse, Union Bank of Switzerland, and Swiss Bank Corporation. See Bazylar, *supra* note 25, at 31 (listing largest Swiss banks involved in litigation).

57. See Bazylar, *supra* note 25, at 33-39 (summarizing plaintiffs' claims against Swiss banks); Neuborne, *supra* note 56, at 805-08 (providing details of litigation against Swiss banks).

58. See EIZENSTAT, *supra* note 5, at 51 (criticizing Switzerland's lack of cooperation). Eizenstat was heavily involved in negotiations with Switzerland over the unreturned assets and noted that during his experience negotiating, "[t]he Swiss banks were at best insensitive and at worst antagonistic . . . [t]he Swiss government was not cooperative." *Id.*; see Beker, *supra* note 40, at 560 (asserting Switzerland hesitant to acknowledge role in Holocaust); see also Bazylar & Fitzgerald, *supra* note 6, at 690 (commenting on United States' impact on plaintiffs' negotiations with Switzerland).

59. See Bazylar & Fitzgerald, *supra* note 6, at 690 (providing reasoning for Swiss compliance with litigation). The Swiss banks were ultimately influenced to settle because of pressure from the United States. *Id.*; see Neuborne, *supra* note 56, at 808-09 (providing details of settlement with Swiss banks). The settlement agreement was finalized on January 26, 1999. See Bazylar, *supra* note 25, at 76 (highlighting details of settlement with Swiss banks). The Swiss banks were to pay the settlement in two portions: \$250 million was owed no later than ninety days after the settlement was approved, followed by three payments of \$333 million, each to be paid on the first, second, and third anniversary of the settlement agreement approval date. *Id.* at 69.

60. See EIZENSTAT, *supra* note 5, at 281 (stating Austrian restitution efforts). Austria enacted the seven laws between 1946 and 1949. *Id.*

61. See *id.* at 282 (emphasizing Austrian leaders' complicity during Holocaust); Falconer, *supra* note 17, at

Austrian Jewish community ownership of heirless property the Nazis had stolen.⁶² In addition, the Austrian government created the National Fund for the Victims of National Socialism to make restitution payments to Austrian Holocaust survivors, Jewish museums, synagogues, and hospitals.⁶³ Lastly, the government created the Austrian Fund for Reconciliation, Peace, and Cooperation to compensate over 20,000 former slaves for their work during World War II.⁶⁴

3. France

France similarly was hesitant to acknowledge its role in the Holocaust, and it was not until 1995 that President Jacques Chirac first publicly acknowledged France's complicity in the Holocaust.⁶⁵ Shortly thereafter, in 1997, France created the Study Mission on the Spoliation of Jews in France to conduct research and issue a report regarding stolen property in France.⁶⁶ The report was also to include information on what forms of restitution had or had not been put in place to compensate for this stolen property.⁶⁷ In addition, similar to the Swiss banks, French banks faced lawsuits to compensate for looted assets and bank accounts.⁶⁸ These negotiations likewise ended in a considerable settlement agreement.⁶⁹

4. Germany

Germany failed to recognize and compensate the slaves who were forced to work for private German companies during World War II, until pressure from the United States came about during the 1990s.⁷⁰ In 1998, the first of fifty class action lawsuits was filed against Ford Motor Company (Ford) for knowingly

416 (providing history of Austria's 1995 restitution law).

62. See Falconer, *supra* note 17, at 416 (describing Austria's 1995 legislation); Kreder, *The New Battleground*, *supra* note 11, at 53-54 (explaining restitution legislation enacted in Austria). The Austrian government auctioned off the "heirless" art and profits to survivors and their heirs. Kreder, *The New Battleground*, *supra* note 11, at 53-54.

63. See EIZENSTAT, *supra* note 5, at 282-83 (noting Austrian government's restitution efforts).

64. See Bazzyler & Fitzgerald, *supra* note 6, at 699 (explaining Austrian legislation enacted to compensate former slave laborers). During World War II, the Nazis forcibly employed approximately ten million people. See EIZENSTAT, *supra* note 5, at 206 (discussing slave labor).

65. See EIZENSTAT, *supra* note 5, at 315-17 (explaining France's initial hesitation and later acceptance of responsibility in Holocaust); Bazzyler, *supra* note 25, at 243 (noting French banks claimed Nazis forced them to comply with Nazi orders).

66. See EIZENSTAT, *supra* note 5, at 318 (noting study in France).

67. See *id.* (providing purpose for study).

68. See Bazzyler & Fitzgerald, *supra* note 6, at 697 (noting lawsuits against French banks). The first lawsuit was filed in 1997. *Id.*

69. See EIZENSTAT, *supra* note 5, at 336 (explaining lawsuits against French banks). The parties reached a settlement agreement for \$22.5 million to compensate for stolen assets and bank accounts in France. *Id.*

70. See Bazzyler & Fitzgerald, *supra* note 6, at 691-92 (describing progression of German compensation to forced laborers). During World War II, between eight and ten million people were forced to work for private companies in Germany. *Id.* at 691.

using forced labor in Germany for economic benefits.⁷¹ The litigation sparked interest in the U.S. media, resulting in campaigns “naming and shaming” companies like Ford that participated in enslaving workers.⁷² Pressure from the United States quickly led the German government and industry leaders to negotiate a \$5 billion settlement to compensate the surviving Nazi-era forced laborers.⁷³ The settlement included an agreement precluding any future World War II-related legal claims against any German companies in exchange for enacting a law in Germany establishing a German Fund Foundation.⁷⁴

D. International Restitution Agreements

While nations undertook individual efforts, the 1998 Washington Conference on Holocaust-Era Assets (Washington Conference) was the first significant international meeting between forty-four countries to discuss issues regarding Nazi-looted assets.⁷⁵ The purpose of the Washington Conference was for the participating countries to develop an international agreement on how governments and private entities should approach returning assets stolen during the Holocaust.⁷⁶ The outcome of this meeting was an eleven-point plan generated to help those trying to recover property stolen by the Nazis.⁷⁷ The plan consisted of goals and guidelines to help promote research and publish data in order to encourage claimants to come forward.⁷⁸

Though the intentions of the commitments made at the Washington

71. See *id.* at 691-92 (summarizing lawsuit filed against Ford).

72. See *id.* at 692-93 (emphasizing media’s role in litigation).

73. See *id.* at 695 (providing settlement agreement synopsis); Stuart E. Eizenstat, Head of U.S. Delegation to the Prague Holocaust Era Assets Conference, Bureau of European & Eurasian Affairs, Opening Plenary Session Remarks at Prague Holocaust Era Assets Conference (June 28, 2009), <https://2009-2017.state.gov/p/eur/rls/rm/2009/126158.htm> [<https://perma.cc/NWS2-WFPW>] (summarizing settlement agreement with Germany to compensate over 1.6 million forced laborers).

74. See Bazzyler & Fitzgerald, *supra* note 6, at 695-96 (noting details of settlement agreed on by President Clinton and German Chancellor Schröder). Payments from the fund, which over 1,600 German companies contributed to, were distributed to survivors beginning in June 2001. *Id.* at 696.

75. See Kreder, *Creation of an International Tribunal*, *supra* note 5, at 169-71 (providing general overview of Washington Conference); Collins, *supra* note 24, at 141 (summarizing Washington Conference).

76. See Bazzyler & Fitzgerald, *supra* note 6, at 710 (providing general purpose of plan created at Washington Conference); Collins, *supra* note 24, at 141 (highlighting Washington Conference objectives).

77. See Bazzyler & Fitzgerald, *supra* note 6, at 710 (highlighting plan created at Washington Conference); Mullery, *supra* note 32, at 651 (noting key points of eleven principles). The Washington Conference objectives included pressuring countries to identify art that was not yet returned, creating a central registry for art that had been identified, and constructing alternative ways to resolve stolen property disputes. See Mullery, *supra* note 32, at 651; see also *Washington Conference Principles on Nazi-Confiscated Art*, COMMISSION FOR LOOTED ART EUR., <https://www.lootedartcommission.com/Washington-principles> [<https://perma.cc/sB5R-F2UT>] (providing full list of agreed-upon terms at Washington Conference).

78. See Kreder, *Creation of an International Tribunal*, *supra* note 5, at 170-71 (summarizing briefly Washington Conference’s purpose); see also Falconer, *supra* note 17, at 390 (summarizing purpose of countries gathering at Washington Conference). The guidelines at the Washington Conference called for a “just and fair solution.” See Falconer, *supra* note 17, at 423.

Conference were promising, the nature of these promises lacked formality.⁷⁹ Thus, they were unenforceable and ultimately overlooked.⁸⁰ Creating an agreement merely bound by a moral commitment to act was not satisfactory due to the lack of an official enforcement mechanism, which is why the progress made by these principles has been inconsistent.⁸¹

Another international effort with similar objectives to the Washington Conference was the four-day long Prague Holocaust Era Assets Conference.⁸² This conference aimed to refocus the attention on restitution and promote the sense of urgency that was not implicated during the Washington Conference, while also highlighting accomplishments made since 1998.⁸³ On the last day of

79. See MARRUS, *supra* note 6, at 57 (discussing agreement nonbinding). The agreements made at the Washington Conference were nonbinding, and therefore lacked a formal enforcement mechanism. *Id.* People were dissatisfied because the agreement solely relied on moral authority and had no other enforcement mechanism. *Id.* at 56; see Bickford, *supra* note 2, at 120 (emphasizing nonbinding nature of Washington Conference principles).

80. See Bazzyler & Fitzgerald, *supra* note 6, at 710 (noting minimal action taken after Washington Conference); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 139-40 (criticizing nonbinding nature and lack of remedy created at Washington Conference).

81. See MARRUS, *supra* note 6, at 56 (emphasizing lack of formal enforcement method and rather moral commitment made at Washington Conference); Falconer, *supra* note 17, at 391 (discussing inconsistent progress from nonbinding agreement). The principles created at the Washington Conference were “overly optimistic” because the countries that agreed on the principles were only bound by moral authority and had no further obligation. See MARRUS, *supra* note 6, at 56 (showing countries merely agreed to “cooperate”); Falconer, *supra* note 17, at 391 (describing flaws in nonbinding principles). Due to the nonbinding nature of the principles, most of the progress made after the Washington Conference has not been uniform or steady. See Falconer, *supra* note 17, at 391. *Contra* EIZENSTAT, *supra* note 5, at 199-200 (discussing Washington Conference’s positive impact). Many American museums, however, take the principles very seriously, and the principles changed the way people buy art today. *Id.* For the most part though, private art collectors do not abide by the principles. *Id.* at 203. More recently, five countries have been criticized for their lack of efforts in “identifying, publicizing, restituting and compensating for some of the looted art, cultural objects and books.” William D. Cohan, *Five Countries Slow to Address Nazi-Looted Art, U.S. Expert Says*, N.Y. TIMES (Nov. 26, 2018), <https://www.nytimes.com/2018/11/26/arts/design/five-countries-slow-to-address-nazi-looted-art-us-expert-says.html> [https://perma.cc/9NJJ-LM6C] (quoting Stuart E. Eizenstat, advisor to U.S. Department of State). Hungary, Poland, Spain, Russia, and Italy are “foot-dragging” and not upholding their promises made during the Washington Conference. *See id.*

82. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 144-45 (providing brief history of Prague Holocaust Era Assets Conference). The meeting was held in Terezin, one of the ghettos where Nazis held and persecuted thousands of Jews during World War II. *Id.* at 118.

83. See Bureau of European & Eurasian Affairs, *supra* note 11 (describing purpose behind Prague Holocaust Era Assets Conference). Poland was specifically criticized at the Prague Holocaust Era Assets Conference for not having made progress restoring stolen property to victims and their heirs. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 168 (highlighting countries lacking restitution efforts). Despite the fact that Nazis killed approximately 6.5 million Polish citizens, including 3.5 million Jews, the Polish government has been reluctant to establish firm restitution plans. See Cohan, *supra* note 81 (commenting on significant amount of Polish Holocaust victims); Nawojka Cieślińska-Lobkowitz, *The Obligation of the State or a Hobby of the Few. The Implementation of the Washington Principles in Poland*, in HOLOCAUST ERA ASSETS: CONFERENCE PROCEEDINGS 979, 980 (Jiří Schneider et al. eds., 2009), https://www.lootedart.com/web_images/pdf2018/1.1.4%20Holocaust_Era_Assets_Conference_Proceedings_2009.pdf [https://perma.cc/DHA7-W6KG] (noting lack of Polish action taken after Washington Conference); Samuel Osborne, *Many Countries Yet to Return Jewish Property Stolen by Nazis, Study Claims*, INDEPENDENT (Apr. 24, 2017), <https://www.>

the meeting, forty-six countries adopted the Terezín Declaration on Holocaust Era Assets and Related Issues (Terezín Declaration), which reaffirmed the signatories' support of the Washington Conference Principles on Nazi-Confiscated Art (Washington Principles) established more than a decade prior.⁸⁴ The Terezín Declaration called for government and private actors to enact just solutions regarding Nazi-stolen property, but due to the agreement's nonbinding nature, few of its signatories have acted upon this intention.⁸⁵

E. Restitution in the United States

More recently, heightened scholarship, new technology, and improved evidence increased the number of claims of stolen property in the United States.⁸⁶ This increase in claims highlighted the lack of restitution options for victims and

independent.co.uk/news/world/europe/nazi-germany-stolen-jewish-property-yet-to-return-shoah-immovable-property-restitution-study-world-a7698011.html [https://perma.cc/T389-2WDV] (acknowledging Poland's failure to enact restitution legislation).

84. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 145 (comparing Washington Principles to Terezín Declaration); Jennifer Anglim Kreder, *State Law Holocaust-Era Art Claims and Federal Executive Power*, 105 NW. U. L. REV. COLLOQUY 315, 322 (2011) [hereinafter Kreder, *State Law Claims*] (noting Terezín Declaration reinforced principles established at Washington Conference). The forty-six signatory countries to the Terezín Declaration are Albania, Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, FYROM (North Macedonia), Germany, Greece, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, and Uruguay. Bureau of European & Eurasian Affairs, *supra* note 11.

85. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 145, 163 (explaining failure of Terezín Declaration because nonbinding nature of agreement does not encourage restitution); Kreder, *The New Battleground*, *supra* note 11, at 39 (noting signatories not bound by Terezín Declaration); Bureau of European & Eurasian Affairs, *supra* note 11 (providing purpose of Terezín Declaration to encourage restitution efforts); Press Release, Charles E. Schumer, U.S. Senator for N.Y., On First Night of Hanukkah, Schumer Announces Senate Passage of Bipartisan Bill to Help Holocaust Victims & Families Achieve Some Justice; Bill Will Further Advance Efforts at Restitution of Assets Stolen by the Nazi Regime from Victims of the Holocaust; Senator Calls on House to Pass Legislation (Dec. 12, 2017), <https://www.schumer.senate.gov/newsroom/press-releases/on-first-night-of-hanukkah-schumer-announces-senate-passage-of-bipartisan-bill-to-help-holocaust-victims-and-families-achieve-some-justice-bill-will-further-advance-efforts-at-restitution-of-assets-stolen-by-the-nazi-regime-from-victims-of-the-holocaust-senator-calls-on-house-to-pass-legislation> [https://perma.cc/5SLL-P6JP] (declaring JUST Act will advance goals from Terezín Declaration). The Terezín Declaration, while reaffirming prior commitments to restitution, appeared to merely "parade[] old ideas as new ones" because it did not bind the signatory countries. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 145. It is also noteworthy that the preamble to the Terezín Declaration itself explicitly asserts that the Terezín Declaration is nonbinding. *Id.* Another significant result that came from the Prague Holocaust Era Assets Conference was an announcement Ambassador Eizenstat made stating that the United States was considering creating a body to assist claimants of stolen property. See Kreder, *The New Battleground*, *supra* note 11, at 39. This announcement was not included in the Terezín Declaration, but did affirm the United States' dedication to restoring stolen property to its rightful owners. See *id.* See generally Eizenstat, *supra* note 73 (highlighting progress made, but also indicating efforts need to continue).

86. See Jason Barnes, Note, *Holocaust Expropriated Art Recovery (HEAR) Act of 2016: A Federal Reform to State Statutes of Limitations for Art Restitution Claims*, 56 COLUM. J. TRANSNAT'L L. 593, 598-99 (2018) (summarizing reasons for increase in restitution claims).

their families, prompting the U.S. government to enact legislation focused on returning stolen assets.⁸⁷ Though these laws reflect the government's recognition of the need for increased restitution policies, none of them adequately provide justice for Holocaust victims and their families.⁸⁸

1. *The Presidential Advisory Commission on Holocaust Assets*

Congress created the Presidential Advisory Commission on Holocaust Assets (Commission) in 1998 to encourage efficient and meaningful restitution.⁸⁹ Its purpose was to conduct research in order to develop a historical record of Holocaust victims' assets that came into control of the U.S. government.⁹⁰ The investigation focused on the collection and disposition of victims' art, gold, and financial assets.⁹¹ The Commission discovered that Holocaust victims' property found in the United States was largely returned to its countries of origin, but was not returned directly to the victims themselves.⁹² As part of its role under the U.S. Holocaust Assets Commission Act, the Commission made recommendations relating to returning property; however, none of the Commission's recommendations were put in place, rendering the entire policy fruitless.⁹³

87. *See id.* at 599 (explaining increase in restitution claims encouraged government action). Congress began to reapproach restitution during the late 1980s and 1990s when the Iron Curtain fell, resulting in the release of records that the public previously could not access. *Id.* at 603.

88. *See id.* at 596 (noting negative repercussions for good-faith purchasers); Bert Demarsin, *The Third Time Is Not Always a Charm: The Troublesome Legacy of a Dutch Art Dealer—The Limitation and Act of State Defenses in Looted Art Cases*, 28 CARDOZO ARTS & ENT. L.J. 255, 291-92 (2010) [hereinafter Demarsin, *The Troublesome Legacy*] (criticizing statutes because ineffective to help survivors bringing claims). It is important to recognize “[t]here is still much work to be done.” EIZENSTAT, *supra* note 5, at 355.

89. U.S. Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, 112 Stat. 611 (establishing Commission); *see* Bazzyler & Fitzgerald, *supra* note 6, at 748 (noting Commission “was seen as an important symbol”).

90. *See* Bazzyler & Fitzgerald, *supra* note 6, at 749 (providing Commission's objectives to provide historical record of assets described); PRESIDENTIAL ADVISORY COMM'N ON HOLOCAUST ASSETS IN THE U.S., *supra* note 11, at 1-2 (stating Commission's purpose and importance of historical investigation). The research conducted would ultimately help establish history while also providing a form of justice. *See* PRESIDENTIAL ADVISORY COMM'N ON HOLOCAUST ASSETS IN THE U.S., *supra* note 11, at 2; *see also* Bazzyler & Fitzgerald, *supra* note 6, at 748-50 (detailing establishment and investigatory purpose of Commission); Demarsin, *The Troublesome Legacy*, *supra* note 88, at 291 (explaining Commission's mission).

91. *See* Bazzyler & Fitzgerald, *supra* note 6, at 751 (listing types of assets Commission researched).

92. *See id.* at 753 (summarizing results of Commission's investigation). The Commission also found that the United States did not monitor victims' property to ensure it was returned to its rightful owner, further minimizing victims' direct support from the United States in the restitution process. *See id.*; Kreder, *State Law Claims*, *supra* note 84, at 318 (stating property returned to country of origin because other issues took priority over restitution); Collins, *supra* note 24, at 127 (noting property returned to country of origin and not owner). At the time, the United States felt it was more appropriate and effective to return artwork to countries rather than specific individuals for three reasons: countries of origin could handle restitution how they best saw fit; it may have been nearly impossible to locate individual owners; and the countries of origin also had an interest in the looted property. *See* Von Saher v. Norton Simon Museum of Art, 592 F.3d 954, 962 (9th Cir. 2010).

93. *See* Bazzyler & Fitzgerald, *supra* note 6, at 754-55 (noting final results of Commission's investigation).

2. *The Holocaust Victims Redress Act*

President Clinton also passed the Holocaust Victims Redress Act (HVRA) to provide compensation for inadequate restitution of assets that were taken from Holocaust victims by the U.S. government.⁹⁴ Requiring returning possessions confiscated by the Nazis to their lawful owners, the HVRA emphasizes the suggestion that governments have an obligation to act and ensure stolen property is returned to the true owner.⁹⁵ In addition, the HVRA authorized the President to appropriate up to \$25 million to organizations that provide relief to Holocaust survivors, as well as another \$5 million to be used for research in order to promote restitution of assets stolen from victims and their heirs.⁹⁶ Although Congress enacted the HVRA with good intention, it is heavily criticized for not providing a specific remedy for victims with claims of Holocaust-era stolen property—it merely gave the President the authority to allocate funds.⁹⁷

3. *The Holocaust Expropriated Art Recovery Act*

The United States recognized that looting of artwork was an especially unique aspect of Nazi destruction of Jewish culture, thus calling for a distinctive law to restore the damage done.⁹⁸ In an effort to provide victims and their heirs with a

The Commission spent \$6 million conducting its investigation in order to make recommendations to the government. *Id.* at 755. It was heavily criticized as there was little to show from these efforts. *See id.* Not only were none of the recommendations made by the Commission implemented, but the Commission also dissolved before it finished creating a database of assets still present in the United States, determining how much Nazi-looted art entered the United States, and inquiring into the conduct of nongovernment actors. *Id.* at 757; *see* BAZYLER, *supra* note 3, at 305 (classifying Commission not successful); MARRUS, *supra* note 6, at 59 (noting recommendations about identification, publication, and research never enforced); Demarsin, *The Troublesome Legacy*, *supra* note 88, at 291-92 (articulating criticism of Commission because recommendations never put in place).

94. Holocaust Victims Redress Act, Pub. L. No. 105-158, 112 Stat. 15 (1998); *see* Bickford, *supra* note 2, at 120 (providing purpose of HVRA). Congress passed the HVRA to “encourage ‘good faith efforts to facilitate the return’ of Nazi-confiscated property.” Bickford, *supra* note 2, at 120 (quoting Jessica Schubert, *Prisoners of War: Nazi-Era Looted Art and the Need for Reform in the United States*, 30 *TOURO L. REV.* 675, 680 (2014)).

95. *See* Stephanie Cuba, Note, *Stop the Clock: The Case to Suspend the Statute of Limitations on Claims for Nazi-Looted Art*, 17 *CARDOZO ARTS & ENT. L.J.* 447, 487-88 (1999) (explaining HVRA’s purpose). The legislative intent behind the HVRA was to aid Holocaust victims regain ownership of their stolen property. *Id.* at 481; *see* Orkin v. Taylor, 487 F.3d 734, 736 (9th Cir. 2007) (affirming HVRA does not create private right of action). In Orkin, actress Elizabeth Taylor filed for declaratory relief to establish her ownership of *Vue de l’Asile et de la Chapelle de Saint-Remy*—a painting the Nazis stole. *See* 487 F.3d at 738. The court affirmed the dismissal of her complaint because Congress did not intend the HVRA to create a private right of action; rather, it was enacted to promote research and action by other countries. *Id.* at 739.

96. *See* Holocaust Victims Redress Act § 103 (authorizing appropriations); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 147 (outlining authorizations created by HVRA); Kaye, *supra* note 30, at 666-67 (summarizing HVRA).

97. *See* Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 153 (noting HVRA’s lack of remedy); Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (acknowledging HVRA encourages victim claims, but criticizing Act for not providing specific remedies to claimants).

98. *See* Mullery, *supra* note 32, at 645 (stating Nazi looting of art systematic and unique). Nazis began looting artwork as early as 1933 by invading Jewish homes and museums. *Id.* By the end of World War II, Nazis

fair chance to recover artwork stolen by the Nazis, President Obama signed the Holocaust Expropriated Art Recovery (HEAR) Act of 2016 into law.⁹⁹ The HEAR Act provided a unique form of relief to victims as it extended the statute of limitations for claimants to recover artwork or other property lost because of the Nazis.¹⁰⁰

Prior to the HEAR Act, victims and their heirs faced procedural obstacles because of the statute of limitations, and were ultimately barred from bringing their claims.¹⁰¹ This restrictive time constraint limited victims' abilities to piece together their stories, heightening the burden to regain possession of their stolen artwork.¹⁰² The HEAR Act now allows individuals to have their day in court because their claims are heard on the merits, not dismissed because of burdensome and unreasonable time constraints.¹⁰³ Since the HEAR Act was passed, the resulting increase in restitution litigation in the United States has put good faith purchasers of art, including museums and private collectors, at risk of being forced to give up their purchases.¹⁰⁴

4. *The JUST Act*

Most recently, Senator Tammy Baldwin and Representative Joe Crowley introduced the JUST Act to help improve restitution efforts in assisting Holocaust survivors and their heirs.¹⁰⁵ By requiring the U.S. Department of State

had stolen hundreds of thousands of works of art, worth approximately \$20.5 billion today. *Id.* at 646-47. It is estimated that \$5 billion worth of that art is located in the United States. *Id.* at 647.

99. See Barnes, *supra* note 86, at 611-16 (providing legislative history of HEAR Act); Kreder, *Analysis*, *supra* note 7, at 18 (describing HEAR Act's purpose).

100. See Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, § 5(a), 130 Stat. 1524, 1526 (providing claimants must commence litigation no later than six years after discovery of stolen property); Barnes, *supra* note 86, at 619-20 (explaining statute of limitations under HEAR Act).

101. See Kreder, *Analysis*, *supra* note 7, at 18 (noting unfair time restraints for bringing claims for stolen artwork). For example, the defendant in *Toledo Museum of Art v. Ullin* was barred from bringing counterclaims for declaratory relief, restitution, and conversion in an action for quiet title against an art museum because the four-year statute of limitations under Ohio state law had run out. 477 F. Supp. 2d 802, 806, 808 (N.D. Ohio 2006). The court reasoned that even if the defendant did not have actual knowledge of the painting at issue, the defendant should have inquired about the painting well before 2002. *Id.* at 807.

102. See Kreder, *Analysis*, *supra* note 7, at 18-19 (summarizing unfairness of statute of limitations). Piecing together histories is a lengthy and costly process in itself, and having a time constraint on bringing claims further limits a claimant's ability to bring a case. *Id.* at 19.

103. See 164 CONG. REC. H3463 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (commending HEAR Act's effective method for claimants to litigate); Kreder, *Analysis*, *supra* note 7, at 18-19 (summarizing HEAR Act's benefits).

104. See Barnes, *supra* note 86, at 596, 625 (noting HEAR Act's consequences for good-faith purchasers).

105. See Press Release, Tammy Baldwin, U.S. Senator for Wis., U.S. Senator Tammy Baldwin and U.S. Senator Marco Rubio's JUST Act Wins Foreign Relations Committee Approval (Dec. 5, 2017), <https://www.baldwin.senate.gov/press-releases/senators-baldwin-rubios-just-act-wins-committee-approval> [<https://perma.cc/H4H4-DTXS>] (noting JUST Act's objectives); S. 447 (115th): *Justice for Uncompensated Survivors Today (JUST) Act of 2017*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/s447/summary> [<https://perma.cc/SA4C-6CHV>] (last updated May 4, 2018) (discussing introduction of JUST Act to Congress).

to report on countries' compliance with the Terezín Declaration, supporters of the JUST Act contended it would help create a public record, which in turn would encourage signatories of the Terezín Declaration to fulfill their restitution promises.¹⁰⁶ Supporters advocated that by exposing countries that have delayed returning Nazi-stolen assets to Holocaust victims and their heirs, the JUST Act would encourage these countries to keep their commitments they made in the Terezín Declaration and take steps to return that property.¹⁰⁷

The Act was supported by numerous organizations that sought justice for victims.¹⁰⁸ These organizations hoped to encourage countries to "continue working to make amends for the evils of the Holocaust."¹⁰⁹ Additionally, the JUST Act purportedly provided a sense of closure and justice for victims and their heirs, as many families feel regaining possession of property connects them with loved ones they lost during the Holocaust.¹¹⁰

There was significant opposition from legislators to the JUST Act as well.¹¹¹ One issue that was heavily stressed to the House of Representatives was that the Act was merely a reporting requirement, and because of this it would not actually compel any of the Terezín Declaration signatories to take any action regarding

106. Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. No. 115-171, 132 Stat. 1288 (2018) (mandating U.S. Department of State action); *see* 164 CONG. REC. H3462 (daily ed. Apr. 24, 2018) (statement of Rep. Royce) (presuming creating public records would incentivize countries to comply with Terezín Declaration); Press Release, *supra* note 105 (highlighting objectives of JUST Act in creating public record).

107. 164 CONG. REC. H3463 (daily ed. Apr. 24, 2018) (statement of Rep. Crowley) (advocating JUST Act would encourage countries to act).

108. *See id.* (listing organizations supporting JUST Act). In passing the JUST Act, Congress was largely influenced by the American Jewish Committee, the Anti-Defamation League, Jewish Federations of North America, B'nai B'rith International, HIAS Refugee Assistance Organization, Religious Action Center for Reform Judaism, the Orthodox Union, and others. *See id.*

109. *See id.* at 3464 (statement of Rep. Royce) (acknowledging organizations' goals behind JUST Act).

110. *See* Kreder, *Analysis*, *supra* note 7, at 22 (observing JUST Act's purpose to "help survivors get justice instead of excuses from their governments" (quoting Press Release, *supra* note 38)); Kreder, *The New Battleground*, *supra* note 11, at 44 (noting family members wish to recover property to connect with ancestors). There is skepticism about the JUST Act, as it is unclear how the legislation will actually bring about changes to restoration of stolen art specifically. *See* 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (questioning JUST Act because it does not require government action).

111. *See* 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (advocating against enacting JUST Act); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 185 (opposing creating nonbinding restitution agreements). It is argued that there is no need for "yet another nonbinding recital of good intentions[.]" and that instead the international community should implement the existing framework agreed on at the Washington Conference. *See* Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 185. There has also been international opposition to the JUST Act, specifically from Poland. *See* Vanessa Gera & Monika Scisłowska, *Trump Signs Holocaust Property Law that Has Angered Poland*, BOS. GLOBE (May 11, 2018), <https://www.bostonglobe.com/news/world/2018/05/10/trump-signs-holocaust-property-law-that-has-angered-poland/8p0Wg0qIF0iVzYFr7b5i4J/story.html> [<https://perma.cc/YR8W-GL67>] (summarizing Polish opposition to JUST Act). As the only signatory country that has not enacted any formal restitution legislation, Poland believes it should not be held responsible for the Nazis' actions and that the JUST Act discriminates against the nation. *Id.*; *see Why It Is Important to Stop Act S. 447?*, STOP ACT HR 1226 (Jan. 16, 2018), <https://stopacthr1226.org/why-it-is-important-to-stop-the-acts-s447-and-hr1226/> [<https://perma.cc/3PY3-62AD>] (noting Poland disapproves of JUST Act).

restitution.¹¹² Another opposition to the JUST Act was that it allows governments to use heirless property to provide for other survivors' needs, which ultimately encourages countries to stall.¹¹³ By allowing governments to pay off their own obligations with heirless property, they can wait for property to *become* heirless and compensate survivors with those assets, rather than pay off government obligations with the government's *current* assets, essentially stealing the property yet again.¹¹⁴

Despite this initial resistance, the Act passed in the Senate in December 2017 by a "unanimous consent" vote.¹¹⁵ It subsequently passed in the House of Representatives in April 2018.¹¹⁶ The JUST Act was officially enacted on May 9, 2018.¹¹⁷

III. ANALYSIS

A. Weaknesses of the JUST Act

The JUST Act was enacted with good intentions as it reiterates the United States' emphasis on the importance of compensating Holocaust victims for their innumerable losses.¹¹⁸ Further, it promotes the public interest in restoring stolen property by encouraging Terezín Declaration signatories to act on their agreement.¹¹⁹ Nevertheless, given that World War II ended over half a century ago, and in that time less than 20% of stolen assets have been returned, creating another nonbinding law after this substantial amount of time is not an adequate step towards restitution, despite Congress's good intentions in enacting it.¹²⁰ The JUST Act is yet another "nonbinding recital of good intentions" and because of

112. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (arguing nature of JUST Act renders law ineffective). Representative Ros-Lehtinen further discussed that a mere reporting requirement would not bring justice to victims and their heirs. See *id.*

113. See *id.* (criticizing further injustice created by stalling nature of JUST Act).

114. See *id.* (summarizing stalling by governments further deprives victims of justice).

115. See S. 447 (115th): *Justice for Uncompensated Survivors Today (JUST) Act of 2017*, *supra* note 105 (noting voting history of JUST Act).

116. See *id.* (providing timeline for enacting JUST Act).

117. *Justice for Uncompensated Survivors Today (JUST) Act of 2017*, Pub. L. No. 115-171, 132 Stat. 1288 (2018).

118. See Kreder, *Analysis*, *supra* note 7, at 23 (highlighting JUST Act another progressive step in furthering restitution).

119. See Gerstenblith, *supra* note 8, at 198 (noting public interest in restitution generally); see also *Simon v. Republic of Hung.*, 911 F.3d 1172, 1188-89 (D.C. Cir. 2018) (determining United States has important public interest in Holocaust-era restitution). In *Simon*, a case brought by Holocaust survivors against Hungary, the court cited the JUST Act as an example of the United States' clear public interest in restitution, supporting the court's *forum non conveniens* analysis. See 911 F.3d at 1182, 1189.

120. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (criticizing JUST Act because law allows for further wasting time without action); MARRUS, *supra* note 6, at 115 (providing statistics regarding amount of returned property).

this, the Act's objectives are unlikely to be obtained.¹²¹

One preliminary problem with the JUST Act is that, similar to previously enacted laws related to restitution in the United States, it is not even an initiative agreed upon by multiple countries as the Washington Principles and Terezín Declaration were; as a result, even the signatory countries of those agreements are under no moral or legal obligation to follow the JUST Act to further restitution efforts.¹²² Although the U.S. Secretary of State will be reporting the restitution efforts made by other countries, nothing about a mere reporting requirement compels the signatories to act.¹²³ This is undeniably problematic because any effective restitution effort would need compliance by the signatory countries to positively impact victims and their families, as a large portion of the property to be recovered is located in those countries.¹²⁴ Thus, the JUST Act is inadequate because it does not involve any collectively agreed upon initiative, and what is really required is “a united effort on all fronts . . . to resolve the current problem.”¹²⁵

In addition to the fact that the JUST Act does not obligate any action from other countries, its major shortcoming is its resemblance to various other unsuccessful Holocaust restitution efforts.¹²⁶ First, the JUST Act is similar to previous efforts in that countries are not legally bound by it to further

121. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 120 (reiterating disapproval of nonbinding restitution policies). The best way to encourage restitution is to broadly implement existing framework created by the Washington Principles, and not by creating additional policies. *Id.* Though the Terezín Declaration aimed at reaffirming the same objectives from the Washington Conference, it was still nonbinding, and thus ineffective. See *id.* at 145 (comparing Washington Principles to Terezín Declaration); Kreder, *State Law Claims*, *supra* note 84, at 322 (articulating Terezín Declaration reinforced principles established at Washington Conference).

122. See MARRUS, *supra* note 6, at 56 (discussing moral obligation created by Washington Principles); Falconer, *supra* note 17, at 396 (noting moral obligation insufficient to inspire restitution). The moral responsibility is described as “[b]ound only by honor,” and thus not adequate to promote restitution. See Falconer, *supra* note 17, at 387; see also *supra* Section II.E (discussing various U.S. laws enacted to promote restitution of stolen assets).

123. See Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. No. 115-171, 132 Stat. 1288 (2018) (requiring U.S. Secretary of State to report other countries' restitution efforts); 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (noting “[t]his bill is nothing more than a mere reporting requirement” with “a fancy name”). When the JUST Act was introduced to the House of Representatives, one of Representative Ros-Lehtinen's main objections was that it does not compel anybody to act, not even the U.S. government. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen). She also criticized that it was “nothing more than a mere reporting requirement[.]” and therefore would not be providing any justice to survivors. *Id.*

124. See Falconer, *supra* note 17, at 384 (emphasizing importance of international restitution efforts); Parker, *supra* note 2, at 663 (observing positive impact of international restitution policies).

125. See Schwartz, *supra* note 28, at 3-4 (describing desired solution); see also Kreder, *Creation of an International Tribunal*, *supra* note 5, at 216 (concluding collective policy most efficient approach to restitution).

126. See Kreder, *State Law Claims*, *supra* note 84, at 331 (arguing lack of fair restitution solutions in United States). There is a lack of “just and fair” solutions for victims and their families, and the JUST Act is another restitution effort that falls short. See *id.*

restitution.¹²⁷ For example, the JUST Act resembles the initial arrangement in the Inter-Allied Declaration in that it is not legally binding on countries to follow, and is purely an effort that does not force any action.¹²⁸ The JUST Act is also analogous to later initiatives, such as the Washington Principles and Terezin Declaration, because the pertinent countries involved in these agreements are not held legally accountable for failing to provide adequate restitution efforts.¹²⁹ This lack of a formal, binding agreement did not further restitution during previous attempts and will not result in an increase in restitution or any other adequate remedy for victims and their families in the future.¹³⁰

Additionally, like the HVRA, the JUST Act does not provide a specific remedy for Holocaust victims and their families.¹³¹ The JUST Act is a piece of American legislation that merely places an obligation on the U.S. Department of State to report on international restitution efforts.¹³² The reporting requirement has no direct impact on victims and their families, indicating its lack of any real remedy.¹³³ It is not unique from or different than previously enacted laws, and it is not the binding international agreement that is desperately needed to provide

127. See Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (highlighting lack of remedies in previous agreements); Kreder, *Analysis*, *supra* note 7, at 23 (summarizing JUST Act requires reports of countries' restitution progress and nothing more). A Ninth Circuit decision emphasizes the idea that litigation is the only way victims are able to regain possession of their stolen property, and that nonbinding initiatives do not promote the goals of restitution. See Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (referencing *Orkin v. Taylor*); see also note 95 (providing background to Ninth Circuit decision). Conversely, scholars have argued that even litigation is ineffective as it is too costly, so there still needs to be a more effective way for victims to seek restitution. See Mullery, *supra* note 32, at 658-59, 662 (criticizing both litigation and Washington Principles).

128. See KURTZ, *supra* note 5, at 47 (explaining lack of implementation plan rendered Inter-Allied Declaration ineffective); Gera & Scisłowska, *supra* note 111 (observing JUST Act does not give United States ability to act).

129. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (indicating similarities between JUST Act, Washington Principles, and Terezin Declaration); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 139-40 (criticizing nonbinding nature of Washington Principles); Kreder, *The New Battleground*, *supra* note 11, at 39 (reiterating Terezin Declaration does not bind signatory countries); Bickford, *supra* note 2, at 120 (emphasizing principles from Washington Conference nonbinding).

130. See Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (articulating disapproval of prior nonbinding solutions); Kreder, *Creation of an International Tribunal*, *supra* note 5, at 171 (arguing nonbinding agreement good start, but need more for meaningful restitution efforts).

131. See generally Holocaust Victims Redress Act, Pub. L. No. 105-158, 112 Stat. 15 (1998); Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 153 (noting HVRA did not create adequate remedy); Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (criticizing HVRA for not providing specific remedies to survivors bringing claims); Kreder, *Creation of an International Tribunal*, *supra* note 5, at 174-78 (summarizing HVRA's lack of remedy for victims and families).

132. Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. No. 115-171, 132 Stat. 1288 (2018) (mandating U.S. Department of State action). The JUST Act is similar to previously enacted legislation that is also only binding on the United States. See *supra* note 11 (listing various U.S. laws enacted to promote restitution).

133. See Demarsin, *The Troublesome Legacy*, *supra* note 88, at 292 (emphasizing importance of remedies for Holocaust victims and families); Kreder, *Creation of an International Tribunal*, *supra* note 5, at 170-71 (indicating laws lacking legal remedy basically ineffective).

justice for Holocaust victims and their families.¹³⁴

Moreover, though the JUST Act could be seen as a mechanism by the United States to trigger other countries to act, it still does not promote further restitution in or by the United States itself.¹³⁵ The JUST Act does not give the government any power to act, and therefore will not encourage more steps towards restitution in the United States.¹³⁶ Instead, the JUST Act is an example of another U.S. effort to encourage restitution in Europe while failing to acknowledge the need for larger restitution efforts domestically.¹³⁷ The JUST Act is part of a larger concern that “while the United States has forced Europe to examine its ignoble past, the U.S. government and U.S. private entities have been unwilling to apply the same scrutiny to their own acts during and after World War II.”¹³⁸ This is evident in that the United States had an important influence on countries such as Switzerland and France during their settlement negotiations, yet has not exerted the same pressures on itself.¹³⁹ Overall, the JUST Act is not likely to have an impact on restitution in the United States.¹⁴⁰

B. Proposed Solutions

1. The Creation of a Legally Binding International Agreement

Undoubtedly, there is a need for a legally binding international restitution

134. See Parker, *supra* note 2, at 693 (highlighting binding international agreement essential to accomplish adequate restitution). Another nonbinding solution is “necessary, but not sufficient, to ultimately resolve this issue.” See Falconer, *supra* note 17, at 384 (noting ineffectiveness of another international consensus).

135. See Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 146 (noting nonbinding agreements sometimes useful in pressuring other countries to act).

136. See 164 CONG. REC. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (noting JUST Act does not compel U.S. government action); Gera & Scisłowska, *supra* note 111 (stating JUST Act does not grant United States additional powers).

137. See Bazzyler & Fitzgerald, *supra* note 6, at 789 (acknowledging pressure from United States). The United States has already had some success pressuring European countries to make efforts towards restitution before the JUST Act was even created, so it should redirect efforts towards restoring stolen property in the United States rather than continuing to pressure other nations to do so. See *id.* at 690, 692-93 (articulating United States meaningful role in European action, including Swiss settlement agreement and German restitution); see also EIZENSTAT, *supra* note 5, at 319-21, 324-25 (explaining United States’ involvement in lawsuits against French banks).

138. See Bazzyler & Fitzgerald, *supra* note 6, at 789 (criticizing U.S. government for encouraging Europe, but not itself, to act regarding lack of restitution). Some scholars note that “an injustice remains an injustice and requires both self-recognition and a remedy. This is especially so if it is an injustice committed by the lead enforcer of World War II restitution efforts. Work still needs to be done, both by the U.S. federal government and American private industry.” *Id.* at 790. There is concern that European countries resent the United States because of its previous role in encouraging settlements between European countries and companies, and this may impact Europe’s cooperation with the United States during restitution efforts now. See EIZENSTAT, *supra* note 5, at 340 (commenting on Europe’s preexisting resentment towards United States).

139. See Bazzyler & Fitzgerald, *supra* note 6, at 690-91, 697-99 (asserting pressure from United States reason for Swiss, German, and French compliance with litigation).

140. See Gera & Scisłowska, *supra* note 111 (noting JUST Act does not grant United States ability to act).

agreement.¹⁴¹ An effective and sufficient solution includes an agreement that would “explicitly preempt individual statutes of limitations and set forth a uniform policy agreed upon by all nations regarding the time in which to raise claims.”¹⁴² Because U.S. law regarding the return of stolen art is vastly different than most European laws, this would require countries to apply rules outside their existing legal framework and instead collaborate with other countries to reach a legally binding agreement.¹⁴³ Specifically, if countries could agree on a uniform policy promoting claims to lost property, fewer people would be barred by legal technicalities.¹⁴⁴ This agreement would have to be binding on the signatory countries in order to hold them accountable, as mere promises have already proven to be inadequate.¹⁴⁵

2. *Establishing a Central Database*

In addition to an international binding agreement, a central registry with a listing procedure of some sort could provide necessary clarity and structure for claimants.¹⁴⁶ A central registry was first proposed during the Washington Conference, noting that “[e]fforts should be made to establish a central registry of such information.”¹⁴⁷ This was insufficient though, as it was merely a suggestion rather than a firm agreement.¹⁴⁸ The concept of conducting research to create a historical record was also present in the U.S. Holocaust Assets

141. See Falconer, *supra* note 17, at 386 (stressing importance of creating international restitution agreement); Parker, *supra* note 2, at 693 (emphasizing necessity of binding international agreement between countries involved in restitution). “A treaty could embed cultural restitution principles and provide a bespoke, expert, binding forum via its own dispute resolution mechanism.” O’Donnell, *supra* note 8, at 58 (listing potential benefits of binding international treaty).

142. Falconer, *supra* note 17, at 385 (providing guidelines for effective international restitution agreement).

143. See *id.* at 423 (suggesting countries collaborate to create unified solution); *cf.* Demarsin, *Restitution of Nazi Era Looted Art*, *supra* note 1, at 120 (explaining best resolution involves implementing existing framework). In the United States, an individual cannot acquire title to a piece of stolen art because title remains with the true owner even after it has been stolen. See Schwartz, *supra* note 28, at 19. In contrast, many European courts have ruled that purchasers of stolen artwork can obtain title if their purchase was made in good faith. See *id.* at 19-20; see also Kreder, *Creation of an International Tribunal*, *supra* note 5, at 171, 204 (articulating concern for differences in legal systems regarding stolen art claims).

144. See Falconer, *supra* note 17, at 423 (criticizing legal difficulties claimants face during litigation related to stolen assets).

145. See Kreder, *The New Battleground*, *supra* note 11, at 39 (observing previous nonbinding agreements ineffective in promoting and increasing restitution); Mullery, *supra* note 32, at 644 (providing example of inadequate agreement); Parker, *supra* note 2, at 693 (calling for binding international agreement).

146. See Feliciano et al., *supra* note 5, at 74 (noting lack of central registry of stolen assets); Falconer, *supra* note 17, at 424 (proposing creating central registry to record stolen and returned assets); Mullery, *supra* note 32, at 651 (calling for creating central registry).

147. See *Washington Conference Principles on Nazi-Confiscated Art*, *supra* note 77 (calling for countries to make efforts to establish central registry); see also Kreder, *Creation of an International Tribunal*, *supra* note 5, at 171-72 (emphasizing inadequate portion of Washington Principles).

148. See Kreder, *Creation of an International Tribunal*, *supra* note 5, at 171-72 (criticizing Washington Principles for lack of firm arrangement to create central registry).

Commission Act, and though this effort failed, it still shows the intention and importance of creating a historical record.¹⁴⁹

The international community must agree upon a central database because organizing a convenient mechanism for accessing public records and documentation would further victims' chances at recovering stolen property as well as help identify owners and collections.¹⁵⁰ Further, it would also encourage research and education by historians and scholars alike.¹⁵¹ Lastly, creating a central registry could help guard against false claims because families would have access to records of previously restituted and then resold possessions.¹⁵²

3. *An Increase in Public Awareness*

Further, an increase in public awareness regarding restitution efforts is "an invaluable part of the solution."¹⁵³ Those claims that are made to recover stolen property, primarily artwork, should continue to be heavily publicized in order to promote a systematic solution.¹⁵⁴ Publicizing these efforts would continue to encourage individuals to come forward with their own claims.¹⁵⁵ It would also motivate the international community to improve policies towards victims seeking to recover stolen property.¹⁵⁶ The increase of public awareness in both France and Austria has already promoted positive changes for claimants looking to recover stolen art in those countries, proving the United States could also

149. See U.S. Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, 112 Stat. 611 (creating Commission). Originally, one of the objectives of the Commission was to create a database of stolen assets that were still present in the United States, but the Commission was dissolved before its work was finished, thus adding to the heavy criticism it faced. See Bazylar & Fitzgerald, *supra* note 6, at 757 (describing Commission failed to create asset database).

150. See MARRUS, *supra* note 6, at 58 (articulating growing importance of art databases and potential benefits of documenting history and ownership); Cieślińska-Lobkowitz, *supra* note 83, at 991 (calling for creation of online archive); Schwartz, *supra* note 28, at 28 (noting importance of allowing public to access records).

151. See Schwartz, *supra* note 28, at 28 (highlighting various benefits of accessing public records); see also Neuborne, *supra* note 56, at 830 (noting importance of creating historical record). Uncovering and publishing data allows countries and individuals to see World War II in a new light. See Neuborne, *supra* note 56, at 830.

152. See Schwartz, *supra* note 28, at 28 (portraying example of benefits to accessing public records).

153. See *id.* at 24 (emphasizing importance of increasing public awareness relating to stolen art claims). Although public attention in the United States increased significantly during the 1990s, further publicity on restitution is crucial to providing justice. See, e.g., Beker, *supra* note 40, at 556 (emphasizing public attention in 1990s prompted restitution); MARRUS, *supra* note 6, at 55 (recognizing publications during 1990s had positive impact); Kreder, *State Law Claims*, *supra* note 84, at 319 (discussing previous increase in public awareness).

154. See Schwartz, *supra* note 28, at 25 (encouraging publishing stolen art claims). Switzerland has also gained a different perspective of its involvement during World War II with an increase in access to factual data. See Neuborne, *supra* note 56, at 830 (realizing data on self-recognition has positive influence).

155. See Schwartz, *supra* note 28, at 24-25 (providing example of impact public awareness on individuals). Rita Reif, who claims title to the painting titled *Dead City III*, said she was inspired by another claimant's struggle to reclaim stolen artwork to bring forward her own claim. See *id.* *Dead City III* was part of a Museum of Modern Art exhibit when Reif claimed ownership, as it originally belonged to her relative, Fritz Grunbaum, who was killed during the Holocaust. See *id.* at 17.

156. See *id.* at 25 (emphasizing positive impact of public awareness on international community); see also Kaye, *supra* note 30, at 669 (acknowledging public attention creates positive influence).

achieve this.¹⁵⁷ Though an increase in public awareness would not be a sufficient solution on its own, promoting publicizing claims is still crucial for the restitution process.¹⁵⁸

IV. CONCLUSION

Congress passed the JUST Act as an effort to motivate signatories of the Terezin Declaration to fulfill their promises and promote restitution to Holocaust victims and their families. To achieve this, the JUST Act mandates that the U.S. Secretary of State report on the signatories' progress in restitution and note any legislation that they have enacted to further this objective. Though the JUST Act reflects the U.S. government's intent to provide justice for those that the Nazis robbed of their assets, it will not be entirely effective. In order to make substantial progress in restitution, there needs to be an international binding solution that holds signatory countries accountable for returning stolen property. Substantial time has already passed since the end of the Holocaust, and too many families have faced further injustice in not receiving compensation for their stolen property. Justice will only come about when countries are bound to an agreement that reflects the international community's dedication to returning dislocated property to its rightful owners.

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157. See Schwartz, *supra* note 28, at 25-26 (providing examples of countries where publication has improved restitution efforts).

158. See *id.* at 24 (articulating increase in public awareness relating to stolen art claims important for restitution); Barnes, *supra* note 86, at 614 (noting individual's desire to increase public awareness regarding restitution); see also Kaye, *supra* note 30, at 669 (observing public attention's positive impact).