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FACOLTÀ DI GIURISPRUDENZA  
Pubblicazione del Dipartimento di Scienze Giuridiche “Cesare Beccaria”  
Serie: Corso di dottorato in Scienze giuridiche “Cesare Beccaria”

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# SOGGETTI, DIRITTO E DISUGUAGLIANZE TRA PASSATO E PRESENTE

Un'analisi interdisciplinare

*a cura di*

FILIPPO ROSSI



G. Giappichelli Editore

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archives, notably the records of the Service de restitution artistique and the Art Recovery Fund held by the Ministry of Foreign Affairs<sup>30</sup>. The work of the *Office des biens et intérêts privés* (OBIP, later SBIP) had always been to document the dispossession of French citizens during the German occupation. Making these records accessible<sup>31</sup> became a foundational task for the historians and jurists who took up the challenge of confronting this complex legacy<sup>32</sup>. Among the 2,143 works identified as part of the *Musées Nationaux Récupération* (MNR), most held by the Louvre, an exhibition entitled *À qui appartenaient ces tableaux?*<sup>33</sup> was inaugurated in 2008 – first at the Israel Museum in Jerusalem, and later at the Musée d’Art et d’Histoire du Judaïsme in Paris. A bilingual catalogue accompanied the exhibition<sup>34</sup>.

In 2018, two reports by senior French officials provided a detailed summary of the current state of restitution<sup>35</sup>, offering recommendations aimed

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heirs for compensation for damages resulting from the spoliation of property under the anti-Semitic legislation enacted during the occupation by both the occupation forces and the Vichy authorities. The Commission, which is not a court of law, is also responsible for developing and proposing appropriate measures of reparation or compensation. It can make any useful recommendations, particularly about compensation. These recommendations are then forwarded to the Secretary General of the Gov. (Decr. n. 99-778 10 sept. 1999).

<sup>30</sup> This news brought to light the somewhat forgotten archives of Foreign Affairs (*Fond de la Récupération artistique, Fonds Rose Valland*).

<sup>31</sup> P.L. FRIER, *Patrimoine*, in D. ALLANDE-S. RIALS (eds.), *Dictionnaire de la culture juridique*, Presses Universitaires de France, Paris, 2003, p. 1134.

<sup>32</sup> Just to give an idea of the phenomenon, we can mention that the Deutsches Historisches Museum surveyed the paintings confiscated by the *Linz Special Commission* (Sonderrauftrag Linz (<http://www.dhm.de/datebank/linzdb/indexe.html>), while the Frei Universität Berlin catalogued the works purged from German museums from the 1937 exhibition ([http://www.geschkult.fu-berlin.de/e/db\\_entrat-kunst](http://www.geschkult.fu-berlin.de/e/db_entrat-kunst)). There are then national databases: *l’Art Database of the National Fund of Republic of Austria for Victims of National Socialism* (<http://www.kunstdatenbank.at/home.html>); the catalogue: *Musée Nationaux de Recupération* (<http://www.2.culture.gouv.fr/documentation/mnr/MnR-pres.html>) collects works returned to France, but for which the private provenance has not yet been identified.

<sup>33</sup> See VV. AA., *À qui appartenaient ces tableaux?*, *Catalogue d’exposition*, Musée d’art et d’histoire du judaïsme, Editions Flammarion, Paris, 2008. It was published on the exhibition presented at the Museum of Jewish Art and History in Paris. It traces the history of the government’s actions to return looted works of art to their owners.

<sup>34</sup> Feb. 19-June 3, 2008 in Jerusalem; June 24-Sept. 28, 2008 in Paris.

<sup>35</sup> D. ZIVIE, *Biens culturels spoliés pendant la Seconde Guerre Mondiale: une ambition pour rechercher, retrouver et expliquer. Mission sur le traitement des Ouvres et biens culturels ayant fait l’objet de spoliations pendant la Seconde Guerre Mondiale*, Rapport à Madame Françoise Nyssen, Ministre de la Culture, Février, 2018; M. LAMENIE, *La commission d’indemnisation des victimes de spoliations antisémites: vingt ans après, redonner un élan à la politique de réparation*, Commission des Finances, n. 550, Sénat, 2017-2018.

at fulfilling the French Republic's debt to memory<sup>36</sup>. For some, that duty had been clear since the earliest months of the Occupation; for others, its acknowledgment came far too late.

## 2. *A starway to heaven*

France was plundered by the Nazis, yet it was also, paradoxically, among the nations that achieved the most significant results in terms of post hoc restitution of looted artworks. For decades, however, this history remained in the shadows – forgotten or deliberately overlooked. It is only through sustained scholarly investigation, pursued over the last twenty years, that this narrative has been reassembled, culminating in the publication of *The Goering Catalog*<sup>37</sup>, which, together with *The Notebooks of Rose Valland*<sup>38</sup>,

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<sup>36</sup> *Commission for Looted Art in Europe* (CLAE) formed by art historians and lawyers representing of *European Council of Jewish Communities* (ECJC) and the and the *Conference of European Rabbis* (CER) from whose *Registry of Information on Looted Cultural Property 1933-1945* (<http://www.lootedart.com/home>).

<sup>37</sup> J.M. DREYFUS (ed.), *Le catalogue Goering, Les Archives diplomatiques & Jean-Marc Dreyfus*, Flammarion, Paris, 2015. The Diplomatic Archives preserves under 209SUP/585/R43 a manuscript drafted in German and known under the designation “Goering Catalog”. The manuscript has been accessible to the public since 2009 and was found in boxes donated by Rose Valland at the end of her life, in October 1979 (Bequeathed to the Direction des Musées Nationaux, at which the *Archive De la recuperation artistique* was then located). Confirming the above, within the Dossier is a letter from Valland (July 12, 1952) to the High Commissioner of the French Republic in Germany reporting that she had just recovered an inventory of the collections and photographs of works belonging to Göring. The original of is instead in the federal archives at the Bundesarchiv in Koblenz, while another copy is available at the Diplomatic Archives, La Courneuve (209 SUP/149/A 102). The catalog takes the form of an “account book” of 286 pages (some are blank and some are missing), all the exact same format (23x35.5cm), intended for recording business transactions, rather than for repertorizing works of art. In terms of content, on the other hand, it meticulously collects all the information about the paintings collected by Göring during twelve years from 1933 to 1944, although the exact date of the beginning of its editing (certainly not before 1940), nor the date of the last edits, is unknown. In other words, it is his account book, the detailed report of his apprehensions, disbursements and provenance of the 1,376 works of art that adorned the walls of Carinhall, near Berlin. The French translation of the original was done by Oriane Legrand, with assistance from Mathilde Heitmann, under the supervision and direction of the French Diplomatic Archives. (I. VON ZUR MÜHLEN, *Die Kunstsammlung Hermann Görings: ein Provenienzbericht der Bayerischen Staatsgemäldesammlungen*, DuMont Buchverlag, Munich, 2004, p. 82).

<sup>38</sup> Valland had kept some research files in her rue de Navarre home and took on the task of writing a chronicle of the spoliations during the occupation. *Le Front de l'Art*, published in the early 1960s, and cited here several times, was in fact, supposed to have had a sequel with a history

constitutes the most dramatic and detailed documentation of this immense cultural plunder.

What concerns us today, however, is not merely the factual account of looting, but the underlying message. For behind this massive and methodical theft lies an aesthetic project of violence – an ideological campaign rooted in the desire to redeem the humiliation felt by Germany after its defeat in the First World War. This psychic wound demanded compensation, and cultural domination through art appropriation became one of its symbolic responses<sup>39</sup>. This logic of aesthetic revenge is traceable between the lines of Rose Valland's testimony. An unknown intern with no formal recognition, she became, starting in March 1941, and at great personal risk, an unwitting but indispensable eyewitness to the cultural raids orchestrated by the occupiers.

Rose Valland – discreet, constantly smoking American cigarettes, and without a formal academic degree but highly competent in the workings of local administration – emerged as the only clandestine chronicler of the systematic operations conducted by Alfred Rosenberg's team<sup>40</sup> and the upper echelons of the Nazi command. She was entrusted with this dangerous and delicate task by Jacques Jaujard (1895-1967), Director of the National Museums, who selected her as a contact for the Resistance. Her mission was

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of the recoveries made after the Liberation of the spoliated property, which, however, was never realized. (R. VALLAND, *Le Front de l'art. Défense des collections françaises 1939-1945*, Plon, Paris, 1961; F. AUGEREAU, "L'actiōne de Rose Valland", in F. CACHIN (ed.), *Pillages et restitutions*, cit., *passim*; C. BOUCHOUX, *Rose Valland la Résistance au musée*, La Geste, La Crèche, 2006; F. DESTREMAU, *Rose Valland. Résistance pour l'art*, Conservation du Patrimoine en Isère Musée Dauphinois, Grenoble, 2008; C. BOUILLHAC-M. CATEL, E. POLACK, *Rose Valland, Capitaine Beux-Arts*, Editions Dupuis, Paris, 2009; E. CERISIER-E. POLACK, *Rose Valland l'espionne du Jeu de Paume*, Gulf Stream Editeur, Nantes, 2009; P. DAGEN-E. POLACK, *Le Carnets de Rose Valland: Le pillage des collections privées des œuvres d'art en France durant la Seconde Guerre mondiale*, Fage Editions, Lyon, 2011).

<sup>39</sup> F. SPOTTS, *Hitler e il potere dell'estetica*, cit., pp. 198-201; R.J. OVERY, *Interrogations. Inside the Minds of the Nazi elite*, cit., p. 16.

<sup>40</sup> Rosenberg oversaw the party's Foreign Affairs and, starting in 1941, Minister for the occupied territories. Founder of the Institute for Jewish Question Studies, with the ERR, he oversaw the plundering of every artistic asset from the latter, promoting the plundering and despoiling of areas subject to the Reich. Convicted of very serious crimes against humanity and as «responsible for a system of organized looting in all invaded countries in Europe» at Nuremberg, he was executed on Oct. 16, 1946. (K.D. ALFORD, *Hermann Göring and the Nazi Art Collection: The Looting of Europe's Art Treasures and Their Dispersal After World War II*, McFarland Publishing, Jefferson (N.C.), 2012; ID., *Sacking Aladdin's Cave: Plundering Göring's Nazi War Trophies*, Schiffer Publishing, Atglen (USA), 2013). The United States recently put online data-base compiling research on ERR supported by the United States Holocaust Memorial Museum (<http://www.errproject.org>).

formidable: to document, in real time and with the utmost secrecy, the neurotic artistic obsessions of the second man of the Reich, Reichsmarschall Hermann Göring, as well as of his inner circle – chiefly his art dealer Walter Andreas Hofer<sup>41</sup> and the art historian Bruno Lohse<sup>42</sup>.

There is no need to dwell at length on the ambience of Paris during those years; yet one must recall that, until 1942, much of the French population still believed in the inevitability of a Nazi victory. It is equally important to remember that the Vichy government implemented its own anti-Semitic legislation<sup>43</sup>, autonomous from that of the Reich, revealing a deeply rooted complicity. On 9 December 1940, the *Service du Contrôle des administrateurs provisoires* was established, and in July 1941 the collaborationist regime formally authorised the sale of Jewish-owned businesses under supervision<sup>44</sup>. However, the measures of economic exclusion<sup>45</sup> imposed by the

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<sup>41</sup> His role was so prominent that it appeared 162 times in the OSS Art Looting Investigation Unit Reports 1945-1946 (OSS -USS Office of Strategic Services- Art Looting Intelligence Unit (ALIU) Reports 1945-1946 and ALIU Red Flag Names List and Index). While not a member of the Nazi party and working for Göring as a freelancer (N. YEIDE, *Beyond the Dreams of Avarice. The Hermann Goering Collection*, Laurel Publishing, Dallas, 2009; K.D. ALFORD, *Hermann Göring and the Nazi Art Collection*, cit., p. 19), he managed to gain access to the most important art collections in Germany. After the war he continued to work as an art dealer in Munich.

<sup>42</sup> Bruno Lohse (1911-2007): Göring's Agent in Paris, Deputy Director of the ERR, and Post-war Art Dealer in Possession of Looted Works.

<sup>43</sup> Aryanization was a gradual process. An initial German order of May 20, '40 allowed the creation of (PA), provisional administrators, for farms abandoned by their owners and essential for feeding the population. (Vichy did not ratify the measure until September). Also in September, (on the 27th), the occupation authorities imposed a census of all Jewish businesses (a yellow poster was to be posted) and on October 18 a new German order required self-declaration of any Jewish property or activity. A special Instruction for commissioners-directors of Jewish businesses issued by the *Militärbefehlshaber* in Frankreich (MBF) was issued on November 12 with the specific task of permanently suppressing Jewish influence in the French economy (*Instruction Wi/ 1645/40 du Département de l'économie de l'état-major administratif du MBF*, Dossier AJ<sup>38</sup> 5000416, in *Inventaire des archives du Commissariat général aux affaires juives et du Service de restitution des biens des victimes des lois et mesures de spoliation*, AJ<sup>38</sup>, Archives nationales, Paris).

<sup>44</sup> R. MARRU-M. PAXTON, *Vichy e le juifs*, Calmann-Lévy, Paris, 1981; C. ANDRIEU, *L'aryanisation et les finances extérieures*, in *Le droit antisémite de Vichy*, Seuil, Paris, 1996, pp. 267-301.

<sup>45</sup> For a clearer view of the French situation, see also: J. MATTEOLI, *La Mission d'étude sur la spoliation des Juifs de France. Rapport général*, par J. Mattéoli, *La documentation Française*, Paris, 2000; LE MASNE DE CHERMONT-D. SCHULMANN, *Le pillage de l'art en France, passim*; A. PROST, R. SKOUTELSKY, *Aryanisation économique et restitution. Mission d'étude sur la spoliation des Juifs de France*, Paris, 2000; C. PIKETTY-C. DUBOIS-F. LAUNAY, *Guide des recherches dans les archives des spoliations et des restitutions*, La documentation Française, Paris, 2000; J.-K. DREYFUS-S. GENSBURGER, *Des camps dans Paris: Austerlitz, Léviton, Bassano (juillet 1943-août 1944)*, Fayard, Paris,

occupying forces preceded even the Vichy legislation. Notably, Field Marshal Wilhelm Keitel, head of the *Oberkommando der Wehrmacht*, issued Order no. 3812/40 on 17 September 1940<sup>46</sup>, directed to the High Command for the Military Administration of Occupied France, mandating the confiscation of cultural assets. This was followed on 18 November<sup>47</sup>, by the *Führerbefehl* in which Hitler unilaterally asserted his personal right to appropriate any artwork seized in the occupied territories.

It is under these directives that *Reichsleiter* Rosenberg received explicit instructions from the Führer<sup>48</sup>: to requisition, transfer, and transport to Germany all cultural goods of notable value belonging either to Jewish individuals or to those officially declared enemies of the Nazi regime or of Marshal Pétain's government. The designated collection point for these works was the *Jeu de Paume* museum<sup>49</sup>.

Beginning in June 1940, and for the next four years, Valland's Museum was transformed into a sorting centre for looted art. «*Une incroyable moisson!*» she would write in her notebooks, a harvest beyond imagination<sup>50</sup>.

But the Nazi machinery had been preparing for years. They were intimately familiar with the entirety of French artistic patrimony. Already in the

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2003, pp. 23-70; T. NOLDEN, *In Lieu of Memory: Contemporary Jewish Writing in France*, Syracuse University Press, New York, 2006; A. WIEVIORKA, *Éléments pour une histoire de la Mission Matéoli*, in *La Revue des droits de l'homme* [Online], 2, 2012 (<http://journals.openedition.org/revdh/249>).

<sup>46</sup>The text is reproduced in W. EDSSEL, *Monuments Men. Rose Valland et le commando d'experts à la recherche du plus grand trésor nazi*, Editions Gallimard, Paris, 2014.

<sup>47</sup>Decree issued by Reich Minister and Head of the Chancellery of the Reich, June 18, 1938, Wien, Federal Office for the Protection of Monuments, archive, restitution files, box 8/1, fasc. 1; T. BRÜCKLER (hrsg.), *Kunstraub, Kunstbergung und Restitution in Österreich 1938 bis heute*, Böhlau Verlag, Wien, 1999, p. 157.

<sup>48</sup>Reichsleiter Rosenberg is authorized to bring to Germany anything that seems valuable and worthy to him and to secure it. The Führer reserved for himself the decision of the future of these objects. The Gestapo (an acronym for *Geheime Staatspolizei*) oversees strongly discouraging any recourse action by citizens.

<sup>49</sup>The Führer himself had given the ERR authorization to «search homes, libraries and archives for valuable material for Germany and shelter it through the Gestapo» (VV. AA., *Nazy Conspiracy and Aggression*, Vol. III, United States Government printing office, Washington D.C., 2019, p. 186). Indeed, the official role of the facility was to procure study material for Alfred Rosenberg's research institutes, whose primary goal was to scientifically prove the racial inferiority of Jews. The ERR was, in short, the perfect cover for bringing the requisite treasures to Germany. So it was that in late October they launched an unprecedented operation to catalog, pack, and transport the spoils of war collected at the *Jeu de Paume*.

<sup>50</sup>R. VALLAND, *Le Front de l'art*, cit., p. 49.

early decades of the twentieth century, Germany had established the *Kunstschutz*, or Art Protection Agency<sup>51</sup>, under the direction of Professor Paul Clemen. This institution, ostensibly created to protect artworks in times of war, employed experts and critics to develop one of the most ambitious cultural classifications of the modern era. But the agency had never been characterised by internal discipline, and its operations soon gave way to opportunism. It was in this chaotic context that Franz Wolff-Metternich rose to prominence<sup>52</sup>. His approach, however, stood in stark contrast to the propaganda and ambitions of Joseph Goebbels<sup>53</sup>. Metternich sought to limit looting under the guise of legality, but his resistance would be short-lived. The *Kunstschutz*, although presented as a protective institution, served primarily to provide a veneer of legality to what was, in fact, an organised looting campaign. It was soon evident that those in command were more than willing to bend its principles in favour of nationalistic objectives<sup>54</sup>. From Berlin, Rosenberg and his local operatives continued to receive direct instructions. Metternich's opposition – particularly his resistance to the confiscation of the Ghent Altarpiece, which Hitler himself coveted – ultimately led to his removal<sup>55</sup>.

At that point, Hermann Göring seized control of operations with

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<sup>51</sup> E. KUBIN, *Raub oder Schutz? Der deutsche militärische Kunstschutz in Italien*, Leopold Stocker Verlag, Graz, 1994; C. FUHRMEISTER-J. GRIEBEL-S. KLINGEN-R. PETERS (eds.), *Kunsthistoriker im Krieg. Deutscher militärischer Kunstschutz in Italien 1943-1945*, Vandenhoeck & Ruprecht GmbH & Co, Köln, 2012.

<sup>52</sup> Count Franz von Wolff-Metternich oversaw *Kunstschutz* in France from 1940 to 1942. See M.C. ROSS, *The Kunstschutz in Occupied France*, in *College Art Journal*, Vol. 5, Nr. 4, 1946, pp. 336-352; A. HEUSS, *Kunst-und Kulturgutraub. Eine vergleichende Studie zur Besatzungspolitik der Nationalsozialistischen in Frankreich und der Sowjetunion*, Universitätsverlag C. Winter, Heidelberg, 2000, pp. 125-126 and G. HAASE, *Kunstraub und Kunstschutz*, I, Books on Demand GmbH, Norderstedt, 2008.

<sup>53</sup> The looting of private homes and the withdrawal in various bank deposits will be carried out by ERR in complete violation of Article 46 of the 1907 Hague International Convention. The anti-Semitic legislation, and particularly the legislation on the forfeiture of nationality for fleeing French nationals favored the acquisition of the remaining property. Abundant correspondence from Jacques Jaujard (Archives des Musées Nationaux, R. 20.4.2) points out his misgivings about the irregularity of the procedures followed by the German authorities and the danger of storing all the goods at the Jeu de Paume whose inventory authorization he requested, which was denied.

<sup>54</sup> M. RAYSSAC, *L'Exode des musées: histoires des œuvres d'art sous l'occupation*, Payot, Paris, 2007, p. 853 ff.

<sup>55</sup> *Archives des Musées Nationaux*, R29, *Rapport sur l'activité du comte de Metternich pendant la guerre, daté du 13 sep. 45*.

extraordinary assertiveness<sup>56</sup>. His loyal subordinate, Kurt von Behr<sup>57</sup>, set up the Einsatzstab Reichsleiter Rosenberg (ERR) headquarters at the Hotel Commodore<sup>58</sup>. By the beginning of November 1940, the *Jeu de Paume* museum had been fully requisitioned for their purposes<sup>59</sup>.

### 3. *The new look: Hermann Göring «at, showy, and pretentious, yet with a very mediocre taste»*<sup>60</sup>

Meanwhile, the dignitaries of the Third Reich vied for control over the ERR command, dominated by the powerful alliance of Rosenberg and Göring. The Nazis had prepared meticulously. When the conquerors first appeared at the *Jeu de Paume* on 1 November 1940, Rose Valland immediately sensed that something was amiss. Expecting civilian administrators, she instead encountered uniformed soldiers. The preparations were vast and precise: the seized artworks were carefully arranged and classified, selected specifically to appeal to the personal tastes of Hermann Göring.

The *Reichsmarschall* revelled in such attentions. Vain and insatiable, he relished the theatre of power. Valland, observing him closely on that very first day, described him as «fat, showy, and pretentious, yet with a very mediocre taste»<sup>61</sup>. His presence was calculated and cautious – he was there not to admire, but to assess, to take measurements, to plan. The art market in occupied France was teeming with collaborators, parasites, opportunists, and ambiguous intermediaries – men eager to steal, trade, and profit.

Göring, for his part, was no less ruthless or strategic. He operated with ruthless efficiency and enormous influence. That November day at the *Jeu*

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<sup>56</sup> Order of Reichsmarschall H. Göring concerning the distribution of Jewish art, 5 November 1940.

<sup>57</sup> Kurt von Behr (1890-1945): Head of the Einsatzstab Reichsleiter Rosenberg (ERR) in Paris. Following the transfer to the M-Aktion in 1942, he helped Lohse increase his influence within the looting agency. He committed suicide with his wife Joy Clarke at the end of the war.

<sup>58</sup> Subsequently, the ERR moved to 54 Rue d'Iéna, in XVI<sup>e</sup> arrondissement.

<sup>59</sup> This secluded property with the terrace in the Tuileries gardens and overlooking the Place de la Concorde has many advantages the main one being sheltered from prying eyes.

<sup>60</sup> «It used to be called looting. But today things must have a more human aspect. Despite that. I intend to pillage, and I intend to do it totally», Göring, *Conference of Military Commanders and Reich Commissioners*, Berlin, 6 August 1942.

<sup>61</sup> R. VALLAND, *Le Front de l'art*, cit., p. 59.

*de Paume*, he recognised an irreplaceable opportunity – and seized it. France's artistic treasures were now within his grasp. Why bother to negotiate or compromise? Rosenberg had full authority, and existing regulations conferred on him the legal power to confiscate. Hofer, Von Behr, and Bunjes<sup>62</sup> had already internalised this predatory logic and declared their readiness to serve it without question.

Within forty-eight hours, Göring had outlined a hierarchical distribution plan. He even drafted a personal proclamation: Hitler would have first choice, Göring the second, Rosenberg the third. Rosenberg protested, but to no avail<sup>63</sup>. The *Reichsmarschall* had prevailed. Such was Göring's unstop-pable power.

The origins of Göring's collection dated back to 1928, when he was still a member of the Reichstag. Over time, it would grow into an unprecedented assemblage<sup>64</sup>, rivaling even that of Hitler in both quantity and quality. But was this an expression of genuine passion for art – or merely an act of ego-tistical appropriation? Could art and violence ever truly coexist?

We may never have a definitive answer, but a plausible reconstruction is possible. For Göring – as for Hitler – the possession of masterpieces was far from accidental. It was a deliberate political act, aimed at inscribing oneself within the long lineage of princes and sovereigns of the Holy Roman Empire, rulers who had traditionally patronised the arts and sciences as a form of power projection. In this sense, the collection became not merely decorative, but symbolic: it asserted the legitimacy and cultural supremacy of the new Reich.

Within the ideological framework of National Socialism, art was expected to reflect the essential traits of the Aryan race and German destiny. The German nation could only thrive, according to Nazi doctrine, if kept pure from foreign contamination. Modern art – seen as decadent, subversive, and

<sup>62</sup> Hermann Bunjes, a corrupt art historian, had shifted from the noble *Kunstschutz* under Wolff-Metternich to serving the ERR and Göring.

<sup>63</sup> Rosenberg was hated in Berlin. Nobody really respected him at home. He was an inflexible racist. He cared nothing for art and neither did he have the power he had: the right to transfer any useful object to Germany.

<sup>64</sup> Göring first collected mainly German authors: above all Lucas Cranach. He considered German art to be the best as art of the "chosen race". However, he was also interested in the Dutch and Flemish of the 17th century. He wanted a Vermeer at all costs, but recovered a forgery made by Han van Meegeren. Among the Cranachs he collected, some were very beautiful (*Judgement of Paris* today in Basel (Kunstmuseum) or the *Pyramus and Thisbe* – *Staatgalerie*, Bamberg), many were just schoolwork but he did not realise this. His wife was also a level-headed "predator". There were many Impressionists in Carinhall in the Catalogue the works are presented with photo, author, description, manner and time of "purchase".

«degenerate» – was therefore excluded<sup>65</sup>. Instead, Göring gravitated toward the Old Masters, whose aesthetic could be interpreted as reflecting the grandeur and order of the Reich.

The ideological project was far-reaching. National Socialist thinkers envisioned the *repatriation* of all European artworks from the sixteenth century onwards – works they viewed not as foreign objects, but as exiles, wrongfully taken from German hands. In their eyes, these masterpieces were victims of a historical injustice that had to be corrected. The Reich claimed, paradoxically, that it was merely retrieving what rightfully belonged to the German people. Hitler's obsession with art has often been the subject of ridicule, but such treatments are reductive. In truth, his aesthetic sensibility played a central role in his rise to power and his vision of empire. Art became both the medium and the message of conquest. In this project, Göring was the ideal accomplice – ambitious, image-conscious, and entirely devoid of scruples. If Hitler was to be the primary beneficiary of the confiscated collections, Göring was determined to be the second. He publicly claimed that his collection was «the most important in all of Germany, if not Europe»<sup>66</sup>.

What emerged was a closed and exclusive market – a *plunder salon* of the Nazi elite<sup>67</sup>. Von Behr, charismatic despite his glass eye and fluent in French, quickly revealed himself to be a brutal looter, utterly subservient to Göring. Yet, he lacked any genuine expertise in art. That role was filled by Dr. Bruno Lohse, a young art historian specialising in seventeenth-century Flemish painting. Lohse, as head of purchasing operations and curator of exhibitions for «recovered» works<sup>68</sup>, enjoyed immense authority. He could issue orders to civilian and military personnel alike in pursuit of his objectives<sup>69</sup>.

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<sup>65</sup> On defining the characteristics of “degenerate” art and aesthetics, see H. GROSSMANS, *Hitler and the Artists*, Holmes & Meier, New York, 1983; S. BARRON, “*Degenerate Art*”: *The Fate of the Avant-Garde in Nazi Germany*, Harry N. Abrams, New York, 1991; H. FELICIANO, *Le musée disparu*, passim; A. SHOUMATOFF, *The Devil and the Art Dealer*, in *Vanity Fair* (Apr. 2014) (<http://www.vanityfair.com/news/2014/04/degenerate-art-cornelius-gurlitt-munich-apartment>).

<sup>66</sup> J. CASSAU, *Pillage par les Allemands des Œuvres d'Art et des Bibliothèques appartenant à des Juifs en France*, Centre de Documentation Juive Contemporaine, Paris, 1947, p. 53.

<sup>67</sup> There are at least twenty of them. But Göring's visits are not all recorded. The work still in progress on the extensive fund de la recuperation artistique by the conservators of the Archives du Ministère des Affaires étrangères et européennes will be able to give more precise information. Rose Valland in any case offers us precise information in her notebooks: *Carnets R.V.*, folii 7, 9, 32, 14, 36, 63, concerning the years from '41 to '43.

<sup>68</sup> *Archives du Ministère des Affaires étrangère et européennes*; RV 516P 210.

<sup>69</sup> «Pendant les quatre années que j'ai passées au Jeu de paume avec l'ERR, toute mon activité a tendu uniquement à obtenir le maximum d'informations sur les spoliations en cours» (R. VALLAND, *Le front de l'art*, cit., p. 81).

A small, select group of dealers participated in this artificial market<sup>70</sup>: six Germans, one Dutchman, one Frenchman, and one Hungarian. The documented transactions – twenty-eight in total – were all concluded via the ERR between 1941 and November 1943<sup>71</sup>. On 17 April 1942, Colonel Von Behr was also appointed to lead the *Möbel-Aktion*<sup>72</sup>, thereby consolidating his position as head of the *Leiter die Dienststelle Westen des Ostministerium*. A significant portion of the items obtained in this new operation were likewise sent to the *Jeu de Paume*. Once again, Valland provides us with chilling figures: 69,619 Jewish-owned apartments emptied and looted – 38,000 in Paris alone<sup>73</sup>.

Everyone knew the surest way to gain the commander-in-chief's favour: demonstrate an interest, however superficial, in art. According to Albert Speer, even an accusation of «bad taste» could spell the end of a career<sup>74</sup>. In the vision of the Reich, a truly great Germany would not be remembered for its industrial capacity, but for its cultural legacy – its art, its grandeur, its permanence. But the tide turned. When Lohse and Hofer realised that the regime's days were numbered, they quickly turned against their former

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<sup>70</sup> As a result, 39 albums were produced as indictment evidence at the Nuremberg Trials. They were discovered by the US military at Neuschwanstein, where they had been deposited for safekeeping in April 1945. Used at Nuremberg; they are now in the US National Archives, with two others donated by Robert Edsel in 2007 and 2013.

<sup>71</sup> Between March 1941 and November 1943, a total of 28 such exchanges took place. The Einsatzstab disposed of at least 93 paintings. The main buyer of the looted works and supplier of old works was the German art dealer Gustav Rochlitz, who had already established himself in France many years before the Second World War. In addition, the Parisian art dealers Ali (Allen) Loebel, Arthur Pfannstiel, Max Stoecklin and Consul Adolf Wüster acted as business partners. Foreign buyers Maria Almas-Dietrich (Munich), Alfred Boedecker (Frankfurt), Jan Dik (Amsterdam) and Alexander von Frey (Zurich) also participated in these barter transactions. As a senior member of the Operations Staff in Paris, von Behr signed most of the contracts underlying these transactions until November '42, (*Office of strategic services art looting investigation unit*, CIR No. 1, S. 26-28, in NARA, AHC, MAR, RRR, ERR, CIR No. 1, S. 36-38, <https://www.fold3.com/image/269984673>).

<sup>72</sup> The office, in cooperation with local informants, investigated the flats of deported Jews. With the help of French transport companies, the "West" office then had the household effects thus found transported to temporary depots. There were several such temporary depots in Paris. There, French forced labourers sorted the delivered furniture and other household effects. They separated those that had to be shipped from those that had to be sold on the spot in Paris. In addition, the warehouses also contained repair workshops. During 1942, the "West" service extended its seizures to Belgium and the Netherlands, (*Bundesarchiv (BArch) Koblenz*, B323/259, Bl. 200-202, Bericht über die "M-Aktion" o D).

<sup>73</sup> R. VALLAND, *Le Front de l'art*, cit., p. 158.

<sup>74</sup> A. SPEER, *Memorie del Terzo Reich*, Mondadori, Milan, 2017, p. 166.

patron<sup>75</sup>. They began to cooperate with Allied authorities, revealing the locations of stolen works, hidden caches, and transport routes. The last looted painting reached *Carinball* in April 1944. By October of that year, Paris was liberated. Valland's hunt could finally begin.

Hermann Göring, fleeing the City of Light at the end of 1944, retreated to his home. In February 1945, desperate to salvage his collection, he loaded it onto a series of trains headed south. But this flight bore the unmistakable marks of decline, of invading armies in retreat, of destruction and chaos. The grand sculptures Göring had stolen from France were thrown into the lake at his estate, where they would not be recovered until after the fall of the Berlin Wall. *Carinball* was mined and blown up. As the Red Army advanced, eight of Göring's trains were looted by his own countrymen; others were destroyed by Allied bombing. Much, perhaps most, of the collection vanished without a trace.

#### 4. *A basic choice: equity rather than law*

In attempting to draw some concise conclusions, one must first acknowledge a sobering truth: looting – particularly of cultural and artistic patrimony – has been a recurring feature of human history. The nineteenth century, in particular, bore witness to the systematic plundering of colonised and economically vulnerable countries by Western powers, a practice often framed in legal or civilisational terms. Yet the looting of art during the Nazi era stands apart, marked by a specific historical and ideological configuration. It was not merely a campaign of appropriation across Europe; it was a deliberate and targeted effort to erase Jewish cultural identity. As recognised by the Nuremberg Tribunal, this economic devastation destroyed not only material assets but also the cultural heritage and historical continuity of an entire people, thereby laying the groundwork for their extermination<sup>76</sup>. In this context, the looting and destruction of cultural property constituted war crimes under international law, as established by the Special Tribunal<sup>77</sup>.

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<sup>75</sup> The betrayal paid off: Bruno Lohse got off with two years in prison and then went back to being an art dealer in Munich where he died in 2007. Walter Andreas Hofer will be sentenced by the French government to ten years in prison, which, however, he will not serve.

<sup>76</sup> O.C. PELL, *The Potential for a Mediation/Arbitration Commission to resolve Disputes relating to artworks stolen or looted during World War II*. In: *ASA Special Series*, n. 13, January 2000.

<sup>77</sup> See *Judgement of the International Military tribunal of 30 sep. 1946 in Trial of the major War*

Among the most infamous perpetrators was Alfred Rosenberg, who, as discussed, was convicted and executed for crimes related to the seizure of over 22,000 artworks<sup>78</sup>. Yet he was neither the sole actor nor the most powerful. Adolf Hitler, a failed artist turned collector, established an elaborate system of experts to amass works for his projected museum in Linz. Hermann Göring, driven by vanity and fanaticism, pursued his own obsessive campaign of acquisition. Even Heinrich Himmler developed a singular interest in early German painting. It was to serve these ambitions that the *Einsatzstab Reichsleiter Rosenberg* (ERR) was established on 5 July 1940 – an official apparatus tasked with identifying and seizing artworks belonging to Jews and transferring them to Germany, presenting itself as the long arm of a grand and nefarious vision.

While the facts of the looting are well documented, the ideological and cultural rationale behind them remains less explored. The Nazi regime was obsessively committed to the appearance of legal formality. Looting was frequently masked as restitution or framed as lawful acquisition, often under the guise of auctions or regulated sales. This created a façade of legitimacy, in which the dispossession of Jewish families was presented as part of a broader and “justified” restructuring of ownership, sometimes even under the pretext of future peace negotiations<sup>79</sup>.

Thus, in the Nazi legal imaginary, looting extended beyond brute violence to encompass seemingly lawful transactions<sup>80</sup>. The result was not merely *spoils of war* – understood in the traditional sense, or according to the concept of *de iure praedae* in public international law – but a hybrid mechanism that blurred the lines between legality and plunder.

At the national level, most states have yet to enact comprehensive legislation addressing looted artworks. The early post-war regulatory frameworks have long since expired, leaving current restitution claims to rely on general provisions of national civil codes. France represents a partial

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*Criminals Before the international Military Tribunal*, Vol. 22, 1948, pp. 411-414 e 481-486, Retrieved from the Library of Congress, ([https://www.loc.gov/item/2011525338\\_NT\\_Vol-XXII/](https://www.loc.gov/item/2011525338_NT_Vol-XXII/)).

<sup>78</sup> See L.M. KAYE, *Cultural property Theft During war: Application of Statute of Limitations*, in *Proceedings of the Fifth Symposium on the Legal Aspects of International Trade in Art: Illicit Trade in Works of Art*, Vienna, 28-30 Sept., 1994 Paris and New York, 1996, p. 220 and the bibliography cited therein.

<sup>79</sup> E. KUBIN, *Sonderauftrag Linz: die Kunstsammlung Adolf Hitler*, Orac Verlag, Wien, p. 26.

<sup>80</sup> In 1999, the Cour d'Appel de Paris specifically confirmed the inclusion of perfectly legal transactions as falling within the notion of plundered art. This was the well-known *Gentili Case* (Paris Court of Appeal, Chamber 1A. Decision of 2 of June 1999, in N. PALMER, *Museums and the Holocaust*, cit., nt. 3, p. 270).

exception. Two institutional responses merit particular attention: the Draï Commission<sup>81</sup>, charged with evaluating restitution requests, and the Mat-téoli Mission<sup>82</sup>, tasked with determining the fate of confiscated property, identifying beneficiaries, and assessing whether public institutions continue to possess looted items.

There is, however, an increasingly discernible trend toward privileging *a just and fair solution* over strict legal formalism. This principle – enshrined in Articles 8 and 9 of the 1998 Washington Principles and echoed in Resolution No. 1205 of the Council of Europe (1999)<sup>83</sup> – advocates for flexibility in the application of legal rules, aligning them more closely with human rights considerations and the imperative to ensure, at the international level, the protection of property.

The development of this emerging *soft law* framework centres on two key concepts: the definition of the *bona fide* purchaser and the statute of limitations. A new legal subjectivity is beginning to take shape in the field of looted art, one that transcends the traditional binaries of legal ownership and good faith acquisition. This conceptual innovation, first articulated in Switzerland during the 1950s<sup>84</sup>, gains particular resonance in light of the historical reconstructions made possible by archival research.

If one accepts that art dealers and private collectors bear a heightened duty of diligence, it becomes nearly impossible to defend the acquisitions made during the four years of occupation at the *Jeu de Paume* by Göring and his cohort. Rose Valland's notebooks stand as a meticulous and unambiguous indictment of their greed, cynicism, and violent aesthetic ambition.

For many years, France treated the looted cultural assets of Jewish families as essentially part of its own national patrimony, which led to friction with American Jewish organisations that arrived in the post-war period to demand restitution of heirless property. Private claimants were often left unsupported by institutional structures. Even the issue of statutes of limitation has provided only partial relief. While most national laws impose deadlines for filing restitution claims – varying depending on whether the

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<sup>81</sup> Décret n. 99778 du 10 septembre 1999, modified by the subsequent Décret No. 142 (21.06.2001).

<sup>82</sup> See <http://www.ladocumentationfrancaise.fr/brp/notices/984000110.shtml>.

<sup>83</sup> *Council of Europe*, Res. N. 1205 on Looted Jewish Cultural property of 4 Nov. 1999, doc. 8563. See also P. O'KEEFE, *The draft resolution on looted Jewish Cultural property produced by the Parliamentary Assembly of the council of Europe*, in *Art antiquity and Law*, 4, 1999, p. 313 ff.

<sup>84</sup> Tribunal Fédéral Suisse, dec. 3 June 1948, *Paul Rosenberg v. Theodor Fischer and others*.