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## The Plunder of Art as a War Crime: The Art Looting Investigation Unit Reports and the Hermann Goering Art Collection

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Walter Brudno's legal brief, *Plunder of Art Treasures*, summarizes the argument made at Nuremberg that Nazi confiscation of artistic and cultural property in occupied countries, particularly under the offices of defendant Alfred Rosenberg, was an officially sanctioned and implemented policy of plunder, and thus, a war crime under both the Charter of the International Military Tribunal and the Hague Convention.<sup>1</sup> To this end, the document cites orders, statements and reports of high-ranking Nazi officials including Hermann Goering and Adolf Hitler himself. As a legal argument, the brief leaves little room for doubt regarding either the intention of the Nazi bureaucracy or the culpability of its participants in looting, confiscating and otherwise appropriating both public and private art treasures of conquered nations. However, by its very nature, the brief only grazes the surface of the scale of these activities and the persons involved. In contrast, a series of reports, created in the late summer and fall of 1945 by the Art Looting Investigation Unit (ALIU) of the Office of Strategic Services, document not just the extent of Nazi looting in occupied Europe, but also the art collections of Nazi leaders, and the key dealers and collaborators in the trade in confiscated art.<sup>2</sup> In fact, the members of the Art Looting Investigation Unit served as advisors to the Judge Advocate General (JAG), Third US Army, which was investigating art looting on behalf of the Judge Advocate (War Crimes).<sup>3</sup> The Brudno document served the impetus to prosecute as war criminals those engaged in the plunder of cultural property. As the repercussions of that plunder reverberate in the art market even to this day, the reports created by the Art Looting Investigation Unit remain a primary source for World War II art provenance researchers.

The ALIU was created in November 1944 under the auspices of the counter-intelligence branch of the Office of Strategic Services (OSS) and with the backing of the American

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<sup>1</sup> Walter W. Brudno, WAR CRIMES AND CRIMES AGAINST HUMANITY PART II: PLUNDER OF ART TREASURES (located at the Rutgers Journal of Law and Religion website, at <http://org.law.rutgers.edu/publications/law-religion/installments.shtml>). An image of Brudno presenting his case can be found at Truman Presidential Museum & Library, <http://www.trumanlibrary.org/photographs/displayimage.php?pointer=2741&people=Brudno,+Walter&listid=0> (last modified Mar. 20, 2007).

<sup>2</sup> OSS ART LOOTING INVESTIGATION UNIT REPORTS, 1945-1946, Records of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas, RG 239/Entries 74-75/Boxes 84, 84A, 85, 85A (United States National Archives Microfilm publication M1782, 2001).

<sup>3</sup> *Id.* at 2. See also LYNN NICHOLAS, THE RAPE OF EUROPA 378 (Vintage 1995).

Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe (The Roberts Commission).<sup>4</sup> Its mission, defined in a directive dated November 21, 1944, was:

[T]o collect and disseminate such information bearing on the looting, confiscation and transfer by the enemy of art properties in Europe and on individuals and organizations involved in such operations or transactions.<sup>5</sup>

The ALIU operations began in Germany in May 1945 with three members: James S. Plaut, Theodore Rousseau and S. Lane Faison, Jr. An interrogation center was set up at Alt Aussee, Austria, where these men interviewed the primary suspects involved in Nazi looting operations. The suspects had been identified and apprehended based on a master list of over 2000 individuals compiled by the ALIU prior to their arrival in Germany. The intelligence garnered from interviews was compiled into twelve Detailed Interrogation Reports (DIRs) and further condensed into three Consolidated Interrogation Reports (CIRs) on the most important of the looting operations: the activities of the Einsatzstab Reichsleiter Rosenberg, prepared by Plaut; Hermann Goering's art collection, assigned to Rousseau; and the planned Führermuseum at Linz, compiled by Faison.

Art historian James S. Plaut (1912-1996), director of the Institute for Modern Art (now the Institute of Contemporary Art) in Boston before enlisting in the Navy in 1942, described the Einsatzstab Reichsleiter Rosenberg (ERR) as the "most elaborate and extensive art looting operation undertaken by the Germans in World War II."<sup>6</sup> His opinion was based not only on interviews with leading participants in the looting activities, but also on his access to original ERR documentation.

Despite the Nazis' intent to eradicate the Jewish people from whom art objects were confiscated in France and elsewhere under the ERR, the organization kept meticulous records of its activities, including the sources of the plunder. As reported in July 1944 by Robert Scholz, an advisor to the ERR, the organization had seized and inventoried 21,903 art objects in France in the preceding three years.<sup>7</sup> ERR staff prepared inventory cards for each object, arranged by an alpha-numeric code derived from the name of the collector from whom the object had been seized and the number of individual items within that collection.<sup>8</sup> The ERR card file is astonishing in its level of detail. Objects are catalogued not only physically (i.e., media, dimensions, condition) but also given a brief textual description and, in some cases, an art historical bibliography. Moreover the cards are augmented by photographs arranged by the same alpha-numeric code. The Allies discovered the card file, as well as other ERR records and

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<sup>4</sup> Anne Rothfeld, Project ORION: An Administrative History of the Art Looting Investigation Unit (ALIU): An Overlooked Page in Intelligence Gathering (2002) (unpublished thesis) (on file with University of Maryland).

<sup>5</sup> GREG BRADSHER, HOLOCAUST-ERA ASSETS: A FINDING AID TO RECORDS AT THE NATIONAL ARCHIVES AT COLLEGE PARK, MARYLAND 919 (National Archives and Records Administration 1999).

<sup>6</sup> JAMES S. PLAUT, OFFICE OF STRATEGIC SERVICES ART LOOTING INVESTIGATION UNIT CONSOLIDATED INTERROGATION REPORT (CIR) #1: ACTIVITY OF THE EINSATZSTAB REICHSLEITER ROSENBERG 2 (United States National Archives 1945) [hereinafter CIR 1].

<sup>7</sup> Brudno, *supra* note 1, at 13; *see also* CIR 1, *supra* note 6, at 20. The latter also includes the list of collections from which art objects had been confiscated in Attachment 10.

<sup>8</sup> ERR CARD FILE (United States National Archives Microfilm publication M1943, 2003).

photographs, in an unexpected location: the Bavarian castle of Neuschwanstein, near Füssen. The ERR materials provided Plaut and the other ALIU members the documentation needed to assess the scope of ERR activities in occupied France. Moreover, the materials were of vital use in the identification of recovered art and the restitution of art to pre-war owners.

Brudno describes what he calls the “cooperation of Hermann Goering” with the ERR and cites an order of the Reichsmarshall’s, dated November 5, 1940, in which Goering claims for himself the loot not selected by Hitler personally.<sup>9</sup> In the context of the Brudno brief, this order serves to demonstrate the complicity of the highest ranking Nazis in the plunder of private property in occupied France.<sup>10</sup> Within the context of Goering’s art collecting activities, the order has an even broader significance.

Reichsmarshall Hermann Goering, second in command in Nazi Germany, was second only to Hitler in the acquisition of art by whatever means necessary.<sup>11</sup> In fact, his collecting activities were even more passionate than those of Hitler, whose ultimate goal was the creation of the world’s largest museum to glorify the German people. In contrast, Goering’s motive was significantly more egotistic – his desire was his own glorification. Goering planned for his collection to become a museum, probably housed in his estate at Carinhall, on the occasion of his 60th birthday.<sup>12</sup>

Brudno notes that the ERR loot was to be brought to the Louvre for further distribution.<sup>13</sup> In this context, the “Louvre” refers to the Jeu de Paume museum, the repository to which collections confiscated by the ERR were sent to be catalogued. Initially, the ERR used the German Embassy in Paris to store the loot, but this was soon filled to capacity. Briefly the Louvre itself, evacuated of French national collections, was utilized, but it was quickly replaced by the smaller Jeu de Paume museum in the nearby Tuilerie gardens.<sup>14</sup>

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<sup>9</sup> Brudno, *supra* note 1, at 7 (the Goering order is document 141-PS); *see also* THEODORE ROUSSEAU, JR. OFFICE OF STRATEGIC SERVICES ART LOOTING INVESTIGATION UNIT CONSOLIDATED INTERROGATION REPORT (CIR) #2: THE GOERING COLLECTION, Attachment 3 (United States National Archives 1945) [hereinafter CIR 2].

<sup>10</sup> ERR staff also prepared special photograph albums of the loot to be sent to Hitler. These albums were used as evidence at the Military Tribunal. *See* Records of the Tribunal, RG238, Prosecution Exhibits USA no. 388 (United States National Archives).

<sup>11</sup> There have been many biographies of Goering, the most thorough of which is by controversial British historian David Irving. *See generally* DAVID IRVING, GOERING (Albin Michel 2000). Most treatments, including Irving’s, deal with his art collection in only a superficial fashion. *Id.* Publications specific to the art collection are fewer. *See generally* GUNTHER HAASE, DIE KUNSTSAMMLUNG DES REICHSMARCHALLS HERMANN GOERING: EINE DOCUMENTATION (ed. q 2000); ILSE VON ZUR MÜHLEN, DIE KUNSTSAMMLUNG HERMANN GOERINGS: EIN PROVENIENZBERICHT DER BAYERISCHEN STAATSGEMAEELDESAMMLUNGEN (Koln 2004). The present author has forthcoming the first complete catalogue of the Goering painting collection.

<sup>12</sup> *See* Interrogation of Hermann Goering, Palace of Justice, Nuremberg, RG260/Records of the Weisbaden Central Collecting Point/Box 169 17-18 (United States National Archives 1945).

<sup>13</sup> Brudno, *supra* note 1, at 7.

<sup>14</sup> NICHOLAS, *supra* note 3, at 125-26.

Goering had made twenty visits to the Jeu de Paume by November 1942.<sup>15</sup> His curator Walter Andreas Hofer (b. 1893) generally preceded him to make preliminary decisions on potential acquisitions for the collection, and then escorted Goering when he arrived. Both Kurt von Behr (1890-1945), head of the ERR operation in France, and art historian Bruno Lohse (b. 1911), Goering's representative to the ERR staff in Paris, were instrumental in facilitating Goering's access to, and exploitation of, the spoils of that looting organization. Lohse arranged for ten separate 'exhibitions' of confiscated works for Goering's review. Goering selected approximately 500 paintings from the ERR by late 1942, by which time the pace of new ERR confiscations had leveled off.<sup>16</sup>

Goering did not personally collect impressionist or modern pictures. Nevertheless, he recognized their monetary value. On his visits to the Jeu de Paume, Goering would often select such paintings to use as currency to obtain the old masters and German nineteenth century art he preferred. A letter from September 1941 from Hofer to Goering describes Hofer's recent finds:

Collection of the Jew Rosenberg: I have chosen for you and reserved with Mr. von Behr: 2 Ingres drawings, 7 pictures and one drawing by Corot, one watercolor by Daumier, three pictures by Courbet, one by Pissarro, four pastels and one picture by Degas, one picture by Manet, 5 by Sisley, 3 watercolors by Cézanne, 4 pictures by Monet, 3 drawings and 5 pictures by Renoir, one picture by van Gogh, one picture and two drawings by Seurat and one picture by Toulouse-Lautrec. All are of outstanding quality, and measured by the results of [a recent] . . . auction, exceedingly cheap and suitable for exchange. I shall bring you . . . very willing purchasers for it!<sup>17</sup>

Of those selected by Goering at the Jeu de Paume, over 100 pictures were used in transactions in which ERR booty was offered in exchange for objects more suited to Goering's taste. For the eighteen separate transactions documented by post-war investigators, an appraiser, Jacques Beltrand, provided Goering with an estimate of the ERR objects' worth. The appraisal was supposedly done so that Goering could reimburse the ERR for the objects' value, but this never occurred - it was merely a camouflage to distance Goering from the actual looting. Most of the exchanges went through Hofer's intermediaries, the most important of whom were Gustav Rochlitz (b. 1889), a German art dealer active in Paris, and Hans Wendland (b. 1880), a German lawyer and dealer based in Switzerland.<sup>18</sup>

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<sup>15</sup> CIR 1, *supra* note 6, at 6.

<sup>16</sup> Lists (prepared by ERR staff) of objects released to Goering are included in CIR 2, *supra* note 9, Attachment 5.

<sup>17</sup> CIR 2, *supra* note 9, Attachment 1.

<sup>18</sup> See Report on S/Ldr. Cooper's Visit to Switzerland, RG239/Entry 73/Box 82 (United States National Archives, Mar. 10, 1945); OTTO WITTMANN AND BERNARD TAPER, ART LOOTING INVESTIGATION UNIT DETAILED INTERROGATION REPORT (DIR) (unnumbered): HANS WENDLAND (Sept. 18, 1945); JAMES S. PLAUT, ART LOOTING INVESTIGATION UNIT DETAILED INTERROGATION REPORT (DIR) #4: GUSTAV ROCHLITZ (Aug. 15, 1945). On the role of Switzerland in the movement of art during World War II, see THOMAS BUOMBERGER, RAUBKUNST, KUNSTRAUB: DIE SCHWEIZ UND DER HANDEL MIT GESTOHLLENEN KULTURGÜTERN ZUR ZEIT DES ZWEITEN WELTKRIEGS (Orell Füssli 1998); ESTHER TISA FRANCINI, FLUCHTGUT--RAUBGUT: DER TRANSFER VON KULTURGÜTERN IN UND ÜBER DIE SCHWEIZ 1933-1945 UND DIE FRAGE DER RESTITUTION (Chronos 2001).

While the major players of the pre-war Parisian art market were Jews who had fled the country, leaving their stock and personal collections to be confiscated, there was also a ready network of dealers willing to sell to the Reichsmarschall. A lively art market flourished throughout the war in Paris. The Hôtel Drouot had its most successful years of the century during the German Occupation, resuming sales a few months after the Germans arrived in June 1940.<sup>19</sup> Goering purchased more paintings in France than any other country - over two hundred pictures were acquired on the open market by his representatives in Paris. Goering acquired paintings from some thirty different French dealers - this number would almost double if one included his sculpture, decorative arts and tapestry purchases.<sup>20</sup> However, most of those selling to Goering and other Nazis were merely vendors who just as easily could have sold any commodity they had on hand, rather than those recognized in the art trade. In total, Goering acquired more works from small time 'dealers' in France than from well established dealers, large or small.

In German-occupied Holland, most of Goering's art acquisitions were also through dealers. In general, fewer large Jewish collections were subject to confiscation in Holland than in France. For those that could be confiscated, the Nazi organization Dienststelle Kajetan Mühlmann functioned like an art dealer. It obtained works either through the Enemy Property Administration (Feindvermögensverwaltung) – which from 1942 onwards had access to the property that Jews were required to turn over to the Bankhaus Lippmann Rosenthal – or directly from dealers or collectors willing to sell. The Dienststelle then offered the assembled art objects to the Nazi elite, including Goering, Hitler, Himmler, Hoffmann and others, while turning a tidy profit.<sup>21</sup>

In addition, the open Dutch art market, in chaos in the late 1930s, came back to life with the German occupation,<sup>22</sup> and Goering was one of the first to capitalize. He sent Hofer on a scouting mission to the Netherlands within a week of the Dutch surrender. Although special Dutch laws issued by the government in exile proscribed doing business with the Germans except with the express permission of the Dutch government,<sup>23</sup> these laws had little practical effect on behavior during the war (while being of primary use in post-war investigations into collaboration). In general, the situation in Holland was not addressed in the Brudno document – perhaps because an ALIU-planned DIR on Kajetan Mühlmann was not produced until after the ALIU had issued its final report in May 1946, and therefore was unavailable to Brudno.<sup>24</sup> In any

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<sup>19</sup> NICHOLAS, *supra* note 3, at 153.

<sup>20</sup> CIR 2, *supra* note 9, at 35.

<sup>21</sup> On the Dienststelle Mühlmann, see JONATHAN PETROPOULOS, *ART AS POLITICS IN THE THIRD REICH* 141 (North Carolina Press 1999); GERARD AALDERS, *ROOF: DE ONTVREEMDING VAN JOODS BEZIT TIJDENS DE TWEDE WERELDOORLOG* 82-85 (SDU 1999).

<sup>22</sup> On the art market in the Netherlands during the war, see ADRIAAN VENEMA, *KUNSTHANDEL IN NEDERLAND 1940-1945* (Arbeiderspers 1986); AALDERS, *supra* note 21, at 85-87.

<sup>23</sup> I am grateful to Gerard Aalders, of the Netherlands Institute for War Documentation (NIOD), for his generous explanations of Dutch laws A1, A6 (1940) and E100 (1944).

<sup>24</sup> The Mühlmann report was eventually issued in Dutch as a cooperative effort between the ALIU and Capt. Jan Vlug of the Royal Netherlands Army.

case, describing Dutch collaborators who sold to Germans would have been irrelevant to Brudno's point.

The information in the DIRs created by the ALIU was utilized in the CIRs, but the DIRs are useful documents in their own right. The DIRs summarize interviews with available key players involved in the Nazi confiscation of art and cultural property and are usefully checked against one another for confirmation or contradiction of alleged facts. Most relevant to the Goering collection are those dedicated to his curator Hofer, ERR liaison Bruno Lohse, and the dealer Hans Wendland.

Beginning in 1937, Walter Andreas Hofer acted as Goering's chief purchasing agent and had a hand in virtually every one of Goering's art transactions, while also maintaining himself as a private dealer in order to maximize personal profit and power.<sup>25</sup> Born the same year as Goering, Hofer began his art dealing career in 1920 under the tutelage of his then brother-in-law Kurt Bachstitz, who had operations in Berlin and The Hague. In 1934, Hofer opened his own business in Berlin; two years later he met Goering through his second wife Berta Fritsch, who did restoration work for Goering. Beginning in 1941, Hofer assumed the title, "Director of the Reichsmarshal's Collection," a designation ostentatiously illustrated on his letterhead. Hofer attended to all aspects of acquisitions from all sources. He was well-versed in the financial transactions involved and a key player in bargaining for the best deal for his chief or himself. The DIR on Hofer, written by Theodore Rousseau Jr., includes attachments listing Hofer's dealers and where he stored art objects in his possession in 1945 (which were rounded up by the Monuments, Fine Arts & Archives officers as probable war loot).

Rousseau (1912-1973), a Harvard-trained art historian who after the war went on to become Chief Curator of European Paintings at the Metropolitan Museum of Art, did not hold a very high opinion of Hofer. He recounted Hofer as having repeatedly lied and described him as a "small-time crook and hanger-on."<sup>26</sup> Rousseau recommended that Hofer be tried as a war criminal and held as a material witness against Goering. Rousseau interrogated Hofer at Alt Aussee between June and September 1945. Earlier, in May, Hofer made himself useful to the Allies by identifying a huge trove of artworks from Goering's collection recovered in nearby Berchtesgaden.

In early 1945, Goering ordered the art collection moved from his Carinhall estate to protect it from the advancing Russians; he and Hofer prioritized the objects to be evacuated. Two special trains went sent south from Berlin, one of which went via Goering's castle Veldenstein near Nuremberg, and eventually reached Berchtesgaden by April 1945. Hofer was aboard the train and began to unload the art into air raid shelters located on the road from Berchtesgaden to Königsee, but not all of the collection would fit in the shelters. Objects that did

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<sup>25</sup> On Hofer, see BUOMBERGER, *supra* note 18, at 67-69, 75-78; JONANTHAN PETROPOULOS, THE FAUSTIAN BARGAIN: THE ART WORLD IN NAZI GERMANY 100-05 (Oxford 2000); HAASE, *supra* note 11, at 24-27; Albert A. Feiber, *Hermann Göring als Kunstsammler*, in DIE KUNSTSAMMLUNG HERMANN GOERINGS: EIN PROVENIENZBERICHT DER BAYERISCHEN STAATSGEMAEELDESAMMLUNGEN 32-34 (Köln 2004).

<sup>26</sup> THEODORE ROUSSEAU, JR., ART LOOTING INVESTIGATION UNIT DETAILED INTERROGATION REPORT (DIR) #9: WALTER ANDREAS HOFER 9 (Sept. 15, 1945).

not fit were reloaded onto the train. This was the situation when US troops arrived in Berchtesgaden on May 5, 1945.<sup>27</sup>

U.S. troops apprehended Hofer and took him to the air raid shelters, where he met Captain Harry Anderson, the Military Government Officer with the U.S. 101<sup>st</sup> Airborne upon whom responsibility for the security of the Goering collection had fallen. Under Anderson's supervision, the trains and bunkers were unloaded into the former Bavarian Hotel (requisitioned for this express purpose), where the paintings alone filled forty rooms.<sup>28</sup> Shortly thereafter, Anderson was responsible for the exhibition of "Hermann Goering's Art Collection, courtesy of the 101st Airborne Division," much to the amusement of the soldiers and press. Hofer, anxious to ingratiate, was allowed to wander freely about Berchtesgaden while providing information about the collection. Eventually, he and his wife were taken into 'protective custody' while remaining on hand to assist with identifying and securing the condition of the recovered art.<sup>29</sup>

Goering was the highest ranking Nazi official to be tried at the military tribunals at Nuremberg. He was sentenced to death but took his own life just hours before his scheduled execution in October 1946. His curator Hofer fared much better. After his stint as gentleman in residence in Berchtesgaden, and his interrogation by Rousseau at Alt Aussee, he laid low long enough to reemerge as a dealer in the 1960s, living a comfortable life in Munich.

While the ALIU's primary mission was to gather intelligence on the nature and scope of Nazi looting, in performing this mission it contributed directly to the prosecution of war criminals at the Nuremberg Tribunal. Not only did the ALIU make recommendations as to who should be tried and who should be held as key witnesses, it also provided its reports to the War Crimes Commission. In Plaut's words:

I learned almost at once that there was little that any member of this unit could do at Nuremberg at this stage of the game, inasmuch as the briefs were all but completed. It was, however, a source of great gratification that our material, notably the E.R.R. [Einsatzstab Reichsleiter Rosenberg] and the H.G. [Hermann Göring] reports, had been exploited fully both from the standpoint of text and accompanying documentation. . . . I believe that our obligation to the War Crimes interests has now been discharged fully and effectively.<sup>30</sup>

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<sup>27</sup> On the movement of the collection between Carinhall and Berchtesgaden, see Bernard Taper and Edgar Breitenbach, Memo regarding field trip to Berchtesgaden, RG260/Records of the Central Collecting Point/Restitution Research Records/Box 432 (United States National Archives, Sept. 1, 1947); Charles L. Kuhn, Memo, RG 260/ Records of the Central Collecting Point/Restitution Research Records/Box 438 (United States National Archives, May 1945); ORION Interim Report on Hermann Goering's Collection of Looted Art, 6 June 1945, Appendix C: French Works of Art Obtained by Former Reichsmarschall Hermann Goering, 19 May 1945, Paul Kubala, Maj, MI, Commanding, RG239/Roberts Commission Subject Files (United States National Archives Microfilm Publication M1944, Reel 89). A third shipment was supposedly to be made; how and if this shipment was consolidated with the other two shipments is unclear. CIR 2, *supra* note 9, at 170-72.

<sup>28</sup> THOMAS CARR HOWE, JR., SALT MINES AND CASTLES: THE DISCOVERY AND RESTITUTION OF LOOTED EUROPEAN ART 188-90 (Bobbs Merrill 1946).

<sup>29</sup> JAMES RORIMER, SURVIVAL: THE SALVAGE AND PROTECTION OF ART IN WAR 205-08 (Abelard Press 1950). For Hofer's account, see his declarations from June 1945 and September 1947 in RG 260/Box 481 (United States National Archives).

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<sup>30</sup> Plaut to Wittmann, "Cables," RG226/Entry 190/Box 533 (United States National Archives, Nov. 8, 1945) (citation courtesy of Rothfeld).