Introduction

Rue Saint-Honoré, après-midi, effet de pluie (*Rue Saint Honoré, Afternoon, Rain Effect*) was painted by Camille Pissarro in 1892. It shows the new Paris of Georges-Eugène Haussmann's design, with a sharp angular perspective rushing to the top left. The soft focus and muted colors mirror the subject: the wide boulevards on a rainy day. Carriages and pedestrians tread the cobblestones amidst leafless trees. It is a depiction of an ordinary day that would normally merit no commemoration. In this way, Pissarro's technique also reflects the history of the painting since World War II. On the surface, the dispute is similar to many others, but digging deeper one finds a multilayered puzzle that embodies the competing narratives often at play in restitution cases: persecution, obfuscation, the murky environment of the art market after the war, and the basic tension between legal systems and who should bear the burden of resolving the competing claims.

The painting once belonged to Fritz and Lilly Cassirer, members of a family that achieved monetary success in electrical component manufacturing and later in the collection and sale of art. The Cassirers were second-generation Jews, integrated members of the Germany of which they were citizens and supporters. They assembled a collection including numerous great works of Western art.

However, the Pissarro is no longer in their collection. Lilly Cassirer was targeted by a Nazi opportunist, and she sold the painting for a fraction of its value before escaping her home country. After a series of sales and

donations, the painting hangs today in the Thyssen-Bornemisza Museum in Madrid, a state-run institution that exhibits a world-class collection. One wonders why the painting is in Madrid and not with the Cassirer heirs. One also wonders why the question of who ought to have the artwork only came to a head in the 1990s.

Lilly Cassirer's painting met the same tragic fate as so much of the art that was stolen or purchased under duress during the Nazi occupation. The painting's murky history echoes its former owners' fate and the quiet beauty of the room where it once hung. Its current possessor, the Thyssen-Bornemisza Museum, is a complicated figure in its own right and like many others that will be discussed below, it is a public museum whose mission is dedicated to the display of and access to great art. Unfortunately, the museum's lofty mission only exists in a vacuum because the painting is in a foreign country that had no hand in the repression of the Cassirers and theft of Lilly's property. The case underscores the central paradox posed by disputes in the last twenty years: It is a painting that no one disputes was stolen by the Nazis, yet it has not been, and may never be, returned to the family who owned it.

Litigation is a last resort when there is no agreement to be made. Even to consider how to array the parties and issues in litigation about Nazi-looted art is a dizzying prospect. There are items of movable personal property around the world with heirs in Europe and the United States. The countries of continental Europe and the United States take very different approaches to the varying legal issues from the procedures of dispute resolutions to the substantive laws of property. There is no easy way to reconcile the different perspectives that these myriad jurisdictions offer, and rather than unifying the dispute resolution process, what has instead emerged is a fitful lurching from one victory or defeat to the next.

How did we arrive here? The victorious Allies, the United States in particular, committed massive amounts of energy to the restitution of stolen art after the war ended. The government announced legal principles in the sight of the great tragedy that had just unfolded governing the occupation in the first instance to try to dictate who should bear the burden of proof and who held some sort of presumptive right to restitution of the thousands and thousands of dislocated objects. While those principles—some of which turned into laws, some of which guided judicial

interpretations—cast a long shadow into the future, actual private party disputes were relatively rare for the better part of fifty years. After the war, the world was putting itself back together but was becoming entrenched in the new Cold War. It was not until the collapse of the Soviet Union and the breathing room created by that development in world affairs which afforded the various countries a look backwards with fresh eyes and slowly began a comprehensive effort to assess how stolen art ought to be restituted or not.

This book will address comprehensively those cases that have ended in litigation in U.S. courts. While the impact of dispute resolutions in other countries is of critical importance and relevance, this is not a treatise on those foreign processes. Litigation in the United States is based on neutral principles that are not necessarily related to the Holocaust, but the process does reveal a great deal about the policies that the United States has wrestled with for more than seventy years, policies that are interesting to compare with those of other affected countries. To try to recover personal property requires bringing common-law claims such as conversion (the unauthorized control over another's property), replevin (a legal action to compel the return of property in one's possession, often in tandem with a conversion claim), or arguments about bailment (the conditions under which one holds property for another). However, these torts usually have statutes of limitations of three years or so. Sometimes there are conditions under which those deadlines can be delayed and sometimes not.

That is the easiest part. The question of jurisdiction is thornier by far. What court has the power even to hear these disputes? Can a U.S. federal or state court compel a foreign defendant, or even a foreign nation, to defend itself in a U.S. court? Who gets to decide? Are there diplomatic issues to consider?

The nations of the world gathered in the late 1990s to try to answer many of these questions. They enunciated a set of principles that were to apply to the question of Nazi-looted art. These principles are forward-looking, normative rules. Yet again, without the teeth of some enforcement mechanisms, the extent of their effect continues to be debated today. The commitment that those countries have shown toward making real progress in achieving those principles has been inconsistent, and frustration has mounted in the decades since. The inconsistent application of

the principles has left many heirs to conclude that that they often have no choice but to go to court to seek legal remedies to recover family property.

Likewise, domestically, museum associations wrestle with how to create ethical rules for their members, yet the resulting lack of legal enforcement of the guidelines or principles causes those same association members to remain silent in the face of claims of irrefutably stolen art. Thus, while it is a truism that every case of looted art and quest for restitution is different, this generalization too often serves as an excuse for deflecting the hard questions and common themes that these cases raise because it requires each claimant to re-prove what should not be in question, to begin anew when so much is already known. The story of legal disputes within the United States regarding Nazi-looted art is also a pendulum. In any given period, the momentum is likely to have swung dramatically opposite to what occurred just a few years before. So, although as the 1990s ended there was little reason to see litigation as a major component of the issues, Maria Altmann's case against Austria, which occurred between 2000 and the Supreme Court's decision in 2004, threw open the courthouse doors. Then, as defendants honed their arguments, claimants' futures in U.S. courts looked dim. Later still, courts took an increasingly nuanced view of the role they had in this international issue and expanded their jurisdictional holdings in particular in recent years. Back and forth, it continues to go today.

However, make no mistake. The very possibility of litigation is in large part the reason that the conversation continues. Obsequious claims of commitments to fair and just solutions are worth just about that and no more. While the fear of litigation is not always salutary, one can be well sure that if the possibility were off the table entirely, the prospect of restitution would also wither before our eyes. In the end, there is no simple, unifying principle to these debates. When approached by the heirs of victims, many current possessors look for the right answer. Some are indifferent. Some see a more complicated story in which their own interests and public service are more important than what happened eighty years ago. Disputes not yet known or filed will be guided by the stories and cases that have already happened. The tactics of and choices made by the parties to such disputes many times reveal the heartbreaking struggles that began in the past and continue to affect the descendants of the original owners today. These are those stories.