

**Allegorical Realist Jack Beal/Penn's Beautiful People**

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# ARTnews

**A LEGACY  
OF SHAME:  
Nazi Art Loot  
in Austria**

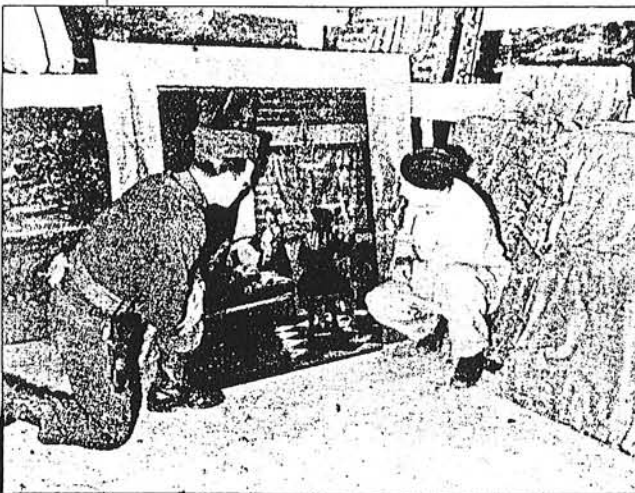




# A LEGACY OF SHAME

Austria's handling of the return of works of art stolen by the Nazis has been marked by neglect, ineptness and questionable legal maneuvers, an ARTnews investigation reveals. Forty years after World War II, thousands of officially 'heirless' paintings and other objects are still hidden in a monastery outside Vienna that is off limits to everyone except Austrian officials

U.S. ARMY PHOTO



COURTESY THOMAS CARR HOWE, JR.

**OPPOSITE PAGE**  
Art treasures plundered by the Nazis and stored in salt mines during the war were inspected after Germany's surrender in April 1945 by General Dwight D. Eisenhower, and General Omar N. Bradley (left).

**ABOVE** Among the works uncovered was Vermeer's *The Artist in His Studio*, which had been earmarked for Hitler's proposed museum in Linz.

**BY ANDREW DECKER**

**H**ERBERT STEINER LIVED IN VIENNA, Austria, until December 1938, when he was 16 years old. His parents arranged for him to be smuggled to Holland but were less fortunate themselves. They were killed in a Nazi concentration camp in 1942.

Steiner returned to Vienna in 1945 and went to the ten-unit apartment building where he and his parents had lived. While visiting a former neighbor there, he says, "The first thing, I saw a painting that had been owned by my parents." Steiner, who founded and is head of the Dokumentationsarchiv des Oesterreichischen Widerstandes in Vienna—an organization that collects and stores documents relating to the Nazi regime in Austria—does not remember the name of the artist who painted the picture. "I remember this picture because it was in my room and once it fell on me. In 1928 we had an earthquake in Vienna," he recalls. The neighbor told Steiner she had accepted the picture from his mother in trust until Steiner returned. He thanked the neighbor, though, he says, "I had no way of checking this story, of course." He asked her to hold the picture until he found an apartment. She agreed.

"A few months later I had found an apartment and I called on the lady to pick up the painting, and she said, 'What sort of picture? I don't remember.' I said, 'We talked about it.' 'Oh,' the woman said, 'I remember. We had to sell it to buy food on the black market.'" At that time, Steiner explains, "there really was a food shortage." Though the woman no longer had Steiner's family's painting, she offered him some food and they sat down to eat. "On the fork was the monogram of my mother before she was married. I saw this and she realized I saw this, and she

said, 'I only saved these for you.' " After an awkward silence, Steiner remembers, "the woman said, 'If you go down to the apartment under mine, you will find the furniture from your sitting room.' I went, and there was the furniture. The people there said, 'Go to this other apartment and you will find tapestries from your parents' apartment.' " Steiner went through each of the ten apartments in the building. "In every apartment there was some of my parents' furniture, almost everything they had. You know what I did? I never entered that house again. I never went to get those things.

"These people, they all in a small way profited by the Holocaust and the killing of the Jews."

George Leitmann left Vienna with his family for the United States in 1940 and is now a professor of engineering science and the graduate dean of engineering at the University of California, Berkeley. Leitmann says that his father and grandfather (who was an officer in the Austrian army during World War I) owned a few paintings, including a Jan Steen and a Jacob van Ruysdael, although, he adds,

**Off limits to all but Austrian officials is the interior of the 14th-century Carthusian monastery in Mauerbach, near Vienna (below), which holds several thousand art objects described by the government as "heirless." Custodian of the property is the Federal Monument Office, whose president, Gerhard Sailer (right), says that the period for reclaiming objects has expired.**



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"there was a question as to whether the van Ruysdael had in fact been painted by Jacob or by his uncle." Both paintings were confiscated before the Leitmanns emigrated.

The Steen was stolen during the lootings and destruction of Jewish homes and businesses on November 9, 1938—*Kristallnacht*—when, as Leitmann describes it, "people were simply breaking into houses. There were storm troopers and other people who came into our house—my mother was there, but my father was out and I was away at school. They broke into a lot of homes, and ours was just one of them." Leitmann's family was living in Vienna's Second District, then a predominantly Jewish area across the Danube from the historic center of the city. "Storm troopers took my father's coin collection," says Leitmann, who was 13 at the time. "They took many things, including the Steen."

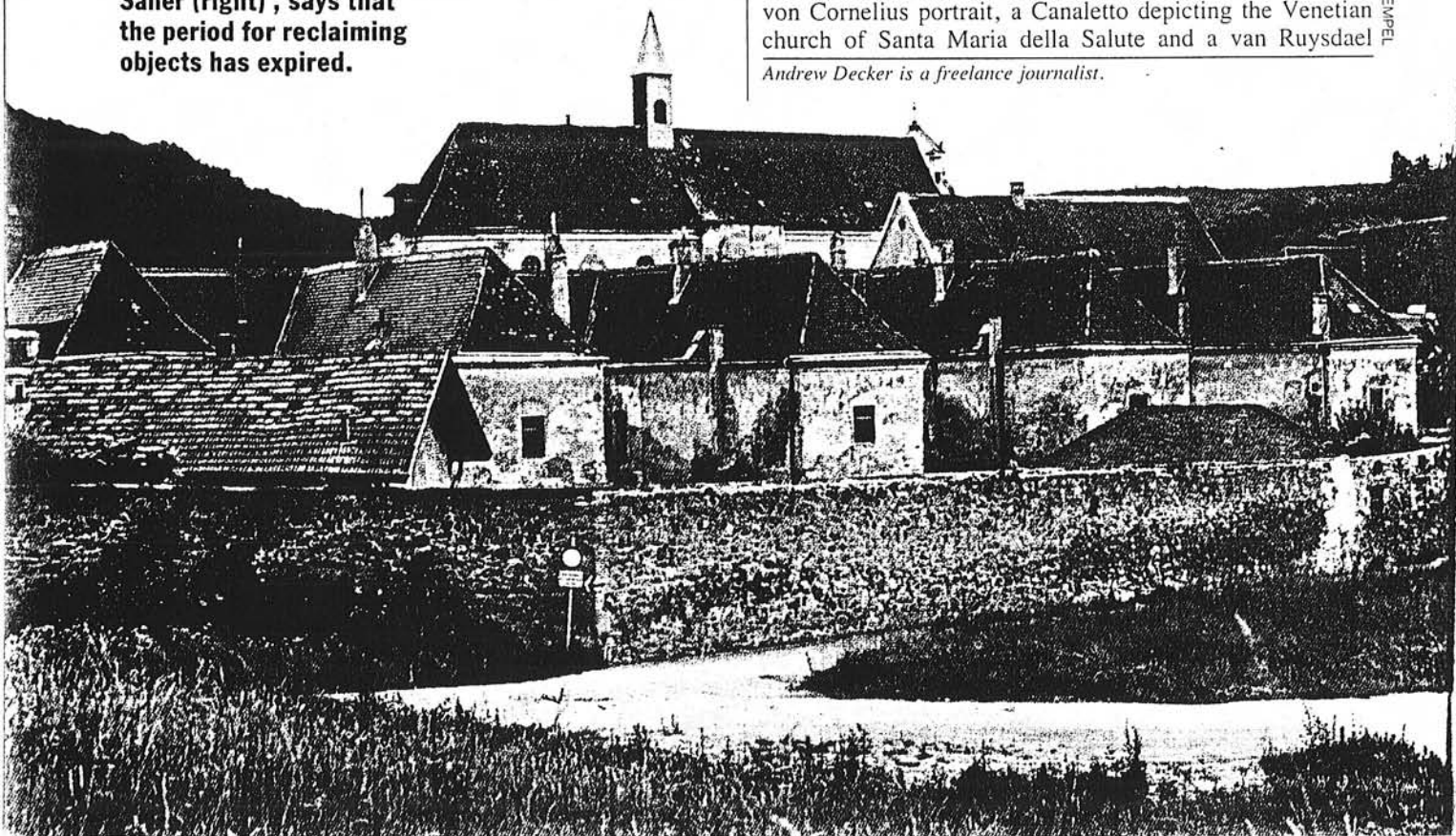
Leitmann says his family had acquired visas to leave Austria and had packed the van Ruysdael and other artworks for shipment to the United States. The cases arrived after the family, and when they were opened, he says, "the paintings weren't there. Of course there was no recourse—the war had started by that time. Other things that did make it were an Emil Schindler painting and portraits of my maternal grandparents, but nothing of great value. They took everything of value."

Richard Herzog was a Jewish lawyer who lived in Vienna and who died in a German concentration camp in Minsk in the Soviet Union in 1942. His daughter, Madelaine Duke (a pseudonym), who managed to escape from Austria in January 1939 and went to England, is a writer living in Spain, who has written a fictional account, entitled *The Bormann Receipt*, of her attempts to reclaim her family's property confiscated by the Nazis.

Altogether, says Duke, her family owned 60 important paintings, including Botticelli's *A Florentine Lady*, Lucas Cranach's *Adam and Eve*, a Rembrandt self-portrait, a Peter von Cornelius portrait, a Canaletto depicting the Venetian church of Santa Maria della Salute and a van Ruysdael

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INGE KITLISCHKA-STREMPER



landscape. In addition, there were other decorative paintings, tapestries and antiques.

Under the Aryanization laws then in force, Jewish property had to be registered with Nazi offices, but, according to Duke, the Herzogs had been advised by a friend in the SS not to list their paintings because recording the property would most likely ensure its confiscation. Although the Herzogs took their friend's advice and made no official record of their artworks, SS officers came to their home several times and on each occasion left with paintings from the collection. The SS officer who had led the troops to the Herzog home had worked as a restorer and had cleaned the Herzogs' paintings before the Anschluss (the German annexation of Austria).

Duke says the lootings started about a month after the Anschluss in 1938 and continued until 1942, when her parents were sent to the concentration camp. "The SS officers usually came by night," she recalls. "The first time they came with a furniture van and took half the stuff. The paintings had always been in my family, many of them since the 16th century."

The last time Katherine Fent saw her family's paintings was on the day of the Anschluss. "My late husband and I were living on Colloredogasse [in Vienna] and left on March 13, 1938," says Fent, who now lives in Geneva, Switzerland. "We went to Yugoslavia first, where my late husband's firm had a factory. We left Vienna within ten minutes and took nothing with us, and we had paintings and antiques."

Fent's father, Leo Fridezko, had collected mostly German and Austrian 19th-century paintings. Among them was a portrait of a woman by Friedrich von Amerling, a gift from her father that Fent was particularly fond of. "We thought it's worth living without anything at all," she recalls. "Very soon, within a few days, the SS people arrived and stole things from our house. A neighbor saw them taking things out and putting them on a truck."

**T**HE PAINTINGS AND OTHER TREASURED objects taken from these families were among the more than three million works of art displaced during the convulsions brought on by the Nazi regime. Objects were removed from museums for storage away from strategic areas; others were stolen or looted by SS troops from enemies of the Third Reich, or went to Nazi collectors in forced sales. The lootings, thefts and forced sales constitute one of history's most extensive and systematic plunders of art.

Today several thousand objects—paintings, decorative arts, books, manuscripts, coins, medals and household furnishings—are stored in a 14th-century Carthusian monastery located 30 minutes away from central Vienna in the town of Mauerbach. An additional 359 paintings, prints and drawings are stored in Vienna's museums; Austrian officials would not disclose the number of coins, tapestries and pieces of furniture in these museums. The works of art and furnishings are described by Austrian officials as "heirless," and they now belong to Austria.

"We are not trying to get rich with these paintings," says Bruno Aigner, press secretary for the Austrian Ministry of Science and Research, which oversees museums and the storing of the works. They became possessions of the country as the result of an Austrian law passed in 1969, the Final Settlement of Heirless Property law, that required Austria to publish a list describing the property and to return the

items claimed provided the claimants could prove ownership at the time Austria was under Nazi rule. The law also stipulated that any property not returned to claimants or that remained unclaimed would belong to Austria.

Aigner says that the paintings have belonged to Austria for over a decade, but that his country has made no attempt to dispose of the works. "We could do what we like with the paintings but we don't—if someone comes to us and if they can prove that something we have belonged to their parents or belonged to them, then we give it back to them." Aigner neglects to mention that although there are laws on the Austrian books that allow for the restitution of such property to its pre-1945 owners, the laws are no longer valid and have not had force since 1972.

"The Republic of Austria does not want to profit from this," Aigner insisted for the third time in a 45-minute interview. He was one of 126 government officials, historians, art historians, museum directors, curators, survivors of concentration camps and emigrés interviewed in Austria, West Germany, Switzerland, England, Israel and the United States during an eight-month investigation by *ARTnews* into the history of Austria's handling of the return of works of art to victims of the Holocaust.

The investigation revealed neglect, ineptness and questionable legal maneuvers on the part of Austrian government officials since the end of World War II. Contradictions arose throughout the investigation. Officials frequently contradicted one another; some contradicted themselves. When the contradictions were brought to their attention, they were explained by such remarks as Aigner's: "[Heinz] Fischer has only been minister [of Science and Research] for one year. We haven't been involved in this whole thing." An aide in the Finance Ministry says, "We were given this problem; we didn't make it."

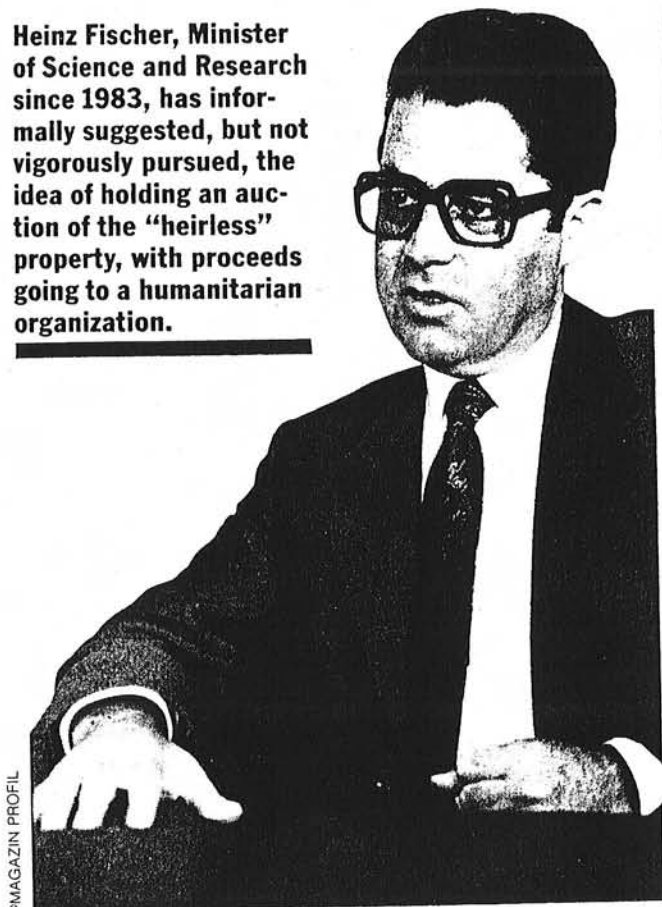
The contradictions begin with the question of who had owned the artworks before they were discovered by Allied forces as they moved through Europe in the final days of World War II and after its conclusion. Since the property that remains has not been claimed by anyone able to prove pre-1945 title to the works, in the eyes of the Austrian courts no one knows who owned it. Gerhard Sailer, president of the Federal Monument Office, which acts as custodian for state-owned tangible property, says that some of the artworks had belonged to Nazis who fled their homes following the collapse of the Reich—a notion that Aigner shares. Virtually all other Austrian officials, including Dr. Edith Podlessnig, who worked in the Monument Office as curator of state-owned or -controlled property between 1947 and 1983, say that the property had not been abandoned by Nazis but was confiscated by them from Jews and Catholics.

After the war the works of art and furnishings were found in various locations, according to a document furnished by an Austrian official who asked not to be named: salt mines of Alt Aussee near Salzburg, Austria, where Hitler stored the collection he had earmarked for his planned museum in Linz; the Brownhouse in Munich, which was meant to be Hitler's planned Bavarian headquarters; Posen Castle in Czechoslovakia, intended to be his Eastern European headquarters; an unspecified SS depot and storage rooms of the Finance Ministry near Vienna.

According to Podlessnig, virtually all of the paintings were given to Austria by United States military forces in 1955 under the Austrian State Treaty, which charged Austria with making "every effort to return the works to the extent

they had not already done so." From 1955 to 1969, the Austrian government did not try to find the pre-Nazi regime owners, says Podlessnig, although an attorney for the Austrian government, Winfried Bauernfeind, says that the Austrian government publicized the artworks throughout the 1960s and requested that people make claims for them; he could not say when or where the announcements were made. In either case, the government did establish an agency, the

**Heinz Fischer, Minister of Science and Research since 1983, has informally suggested, but not vigorously pursued, the idea of holding an auction of the "heirless" property, with proceeds going to a humanitarian organization.**



Sammelstelle A & B, a collecting point, that could claim title to works whose owners or heirs could be proved dead. The organization received "between eight and ten paintings," according to George Weis, who headed the Sammelstelle. The paintings were given to the Sammelstelle by the Monument Office, Weis says, and they brought 731,700 Austrian schillings (\$28,300) at auction.

By 1969, when the government listed the remaining property in the *Wiener Zeitung*, a semi-official newspaper circulated in Austria and sent to Austrian missions in other countries, over 10,000 objects had been returned, though Podlessnig admits that nearly all of those had been returned before 1955, when the Allied forces still had a hand in Austria's affairs. The listing published in 1969 included 8,423 objects and marked Austria's first public announcement of their existence, says Podlessnig.

Several Austrian refugees from the Nazi regime had never known of the listing until asked about it by *ARTnews* in connection with this article. Martin Weyl, the director of the Israel Museum in Jerusalem, says that he had heard about the paintings for years and had instructed Israeli diplomats in Vienna to get information about them. He says that the diplomats' inquiries were stonewalled. "The rumor

is that there are important works in vaults and that nobody ever saw them except a few Austrians." Until interviewed in connection with this article, Weyl did not know that the paintings actually existed.

"If the quality of the paintings is good, then I would be delighted to exhibit them," says Weyl. "We are very poor in art, and every good work would be an important addition to our museum."

As Weyl had heard, only Austrian officials are allowed into the monastery, which Sailer describes as "safeguarded like Fort Knox, and no one outside the government can enter it at all." In a later interview, however, Sailer admitted that concerts are given in the monastery's courtyard. "But to get from the courtyard to inside the monastery," Sailer says, wagging a forefinger, "that is impossible."

Whether the paintings are "important," as Weyl has heard, is another question. Austrian curators universally say that the paintings in the monastery and the nation's museums are of some art-historical interest but are not important. "Some people think there are Michelangelos here," says Aigner. "There are not." His claim is viewed skeptically by ex-Austrians whose paintings and other property were confiscated by the Nazis after 1938. Throughout the mid- and late 1960s, the Austrian government told Simon Wiesenthal that there was nothing interesting among the works. When the list appeared, it included two oil paintings attributed to Correggio, a Teniers oil and a Tiepolo drawing, among other notable works. Wiesenthal, the Nazi hunter who tracked down Adolf Eichmann and who now heads the Jewish Documentation Center in Vienna, says, "They say they've given away everything of importance. Are they lying? I don't know."

Members of the Austrian government—those who admit knowing about the artworks' existence—are reluctant to provide information concerning how the paintings have been stored and handled.

No government official would disclose how many paintings were returned to claimants, but Dr. Albert Schmidt, head of the Finanzlandesdirektion, or Austrian Internal Revenue Service, which is responsible for all government-owned assets, did say that only "a very few of them were given back." Schmidt adds that the Finance Ministry has not compiled reports providing statistics on how many claims were filed or how many objects were returned, nor will Austrian officials disclose how many paintings remain of those listed in 1969. There is little public information available on any aspect of the proceedings, and *ARTnews'* requests to see files and archives were denied, as were requests to enter the monastery to look at the paintings. Austria does not have a freedom-of-information act, and even such records as court proceedings are not available to the public without governmental permission, which was denied.

Contrary to Aigner's statement that Austria would honor a valid claim to one of the "heirless" works that now belong to Austria should a claimant appear, Sailer says in interviews that the claim period has passed; he has also signed at least one letter to that effect in the past two years. Schmidt says that no claims received since 1973 have been considered.

Until September 1984, when a new Finance Minister took office, the ministry was studying the possibility of holding an auction of the property and giving the proceeds to some humanitarian organization. Aigner says that Fischer has recommended such an auction to the Finance Ministry, though

who should receive the proceeds has not been decided. One official who asked not to be identified recently suggested that the proceeds be used for the aid of children in developing nations. Aigner says the proceeds could be used to benefit Jewish refugee organizations—an idea considered by ex-Chancellor Bruno Kreisky until 1981, according to Schmidt. Aigner adds that deciding which organization to give the proceeds to is "very hard because there are many organizations and maybe they are fighting each other." Benjamin Ferencz, a retired attorney living in New Rochelle, New York, who is counsel general to the Jewish Restitution Successor Organization (JRSO), terms Aigner's statement "nonsense. Absolute nonsense." Ferencz says that the JRSO, an umbrella organization, has recovered "hundreds, if not thousands, of paintings" looted by Nazis from Jews

with Albert Speer, first his architect and later Germany's Minister of Armaments, going over Speer's designs of buildings planned for the Third Reich.

One of Speer's projects was a cultural center in Linz, not far from Hitler's hometown of Braunau, which Hitler had visions of transforming into a cultural showplace that would overshadow Vienna in international importance; he also wanted to leave a legacy that would reflect his interest in art. The planned museum was to be built around the different collections of paintings that Hitler was amassing.

"There were to be two art collections in Hitler's Linz center—a lot of old master paintings, many of them over-attributed, up to about the end of the 18th century," says S. Lane Faison, Jr., a retired professor of art history at Williams College in Massachusetts. As a member of the

**Albert Schmidt, a senior official in the Ministry of Finance, states flatly that no claims for the property have been accepted since 1973 and that none would be considered now.**



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and distributed them to museums. "In principle, there were many attempts to get the Austrians to recognize a Jewish successor organization outside the Austrian Hilfsfonds [Austria's internal relief organization], which they refused to do," says Ferencz.

Aside from the options of keeping the paintings or auctioning all of them, the Austrian government may keep some works—those currently housed in Austria's museums—and sell the rest. If the government follows the lead of its courts, the paintings will remain the property of Austria and could be termed—as one lawyer described a Vermeer won by Austria in a lawsuit—a "legacy from Hitler."

**A**USTRIA INHERITED THE WORKS OF ART stored in its monastery, museums and government offices largely because members of the Nazi party avidly collected art. "It was a funny hobby of the Nazis—everybody wanted to have his own private gallery," notes Dr. Karl Moser, an Austrian historian associated with the Dokumentationsarchiv, Steiner's organization.

Hitler's interest in art spurred the wartime collecting procedures. As a young man he had aspired to be an artist or an architect, although he lacked talent. By 1908, when he was 19, he had been rejected twice by Vienna's Academy of Fine Art. After assuming power in Germany, Hitler liked to say that he would have pursued a career in the arts if he hadn't been drawn to politics; he enjoyed spending time

U.S. Army Intelligence branch that gathered information after the war about the Nazi plunder of art, Faison wrote the U.S. Army report on Hitler's collections. "Then there was to be another collection," says Faison, "19th century, but no French 19th-century paintings were to be allowed in there because of Hitler's German-supremacy ideas." Faison describes the German and Austrian works in Hitler's collection as "mostly 19th-century Neoclassical or Romantic—genre paintings, storytelling."

Hitler's taste in art, followed to some degree by his subordinates, was narrow. It included acknowledged masterpieces and what he considered unrecognized masterpieces: the works of 19th-century Austrian artists—Hans Makart (1840-1884), for example—and their German counterparts, whom he considered grossly underrated, according to Speer's *Inside the Third Reich*. Hitler did not collect Impressionist or 20th-century art, which he felt was "degenerate." In 1933 he described the latter as "Jewish-inspired Bolshevik art," according to Charles de Jaeger's *The Linz File: Hitler's Plunder of Europe's Art*. Hitler's negative opinions allowed for the confiscation of 16,500 "degenerate" paintings, drawings and sculptures from German museums between 1933 and 1940, 4,829 of which were burned in March 1939 as an example of Hitler's disdain for the works; another 125 were auctioned in Switzerland to raise money for the Reich, including German Expressionist works and several by van Gogh, Gauguin and Picasso.

The Nazi policies regarding artworks extended far beyond confiscating and ridding Germany of art considered degenerate. Aryanization laws were passed to transfer the assets and property of Jews to German ownership. Under these laws, Jews were required to register their property with various offices and then turn over the works to the offices—in Austria after the Anschluss to the Institut für Denkmalpflege, the predecessor of the postwar Bundesdenkmalamt, or Federal Monument Office—or they were taken from the owners at their homes by SS officers.

More systematic still was the Nazi policy of locating collections, before invading a country, under the guise of art-historical interest. Following the invasion, SS troops would be provided with lists of collections containing important works of art, which were then confiscated. Once Germany had invaded a country, even its greatest art treasures were often fair game. Germany regarded the Poles and Slavs as subhuman. By December 16, 1939, two decrees had been issued allowing for the confiscation of artworks in public and private collections, as well as ecclesiastical treasures, within Poland. In southeastern Europe an SS task force stripped both private and public collections of their holdings. The art historian who selected the works to be confiscated was Walter Frodl, who after the war was to become president of the Federal Monument Office.

Although Hitler did not confiscate works from the Louvre until late in the war, other French collections and those in the Netherlands were plundered through the Einsatzstab Reichsleiter Rosenberg (ERR), an organization named after its head, Alfred Rosenberg. Rosenberg guided the philosophical rationale for the Nazi party's policies, and his organization was empowered to gather material and property that would illustrate German superiority in creative expression, including literature and art. The ERR took a broad view of its responsibilities, stealing as well as buying works of art that had nothing to do with Germany. The finest paintings gathered by the ERR were supposed to be offered to Hitler first, then to Reich Air Marshal Hermann Goering; Goering, however, made arrangements with ERR personnel that allowed him to skim some of the finer works before Hitler could choose them. Rosenberg would then select works to hand out to Nazi leaders. The remainder were distributed among German museums first, French museums or auction houses last. During the ERR's first two months of operations, in the fall of 1940, 21,903 works of art had gone through the organization's offices in the Jeu de Paume in Paris.

Dealers and agents were other sources. Hitler and Goering had representatives in various parts of Europe looking for paintings to augment Hitler's planned museum and Goering's collection at his estate, Karinhall. The agents bid against each other, and on occasion Hitler or Goering would have two agents competing for the same painting; since they worked on commission, the agents had little interest in getting good buys.

"Goering's collection was enormous, but you'd have to say Hitler's was better," recalls Faison. "Theoretically Hitler had first choice. He had a number of outstanding pictures, including the Czernin Vermeer [*The Artist in His Studio*]. Goering never had anything like that. Hitler also had Michelangelo's *Madonna and Child* [a sculpture from the Cathedral of Notre Dame at Bruges] and the Ghent altarpiece [by van Eyck]." However, Faison notes that Hitler hadn't actually acquired the altarpiece, looted from the cathedral

at Ghent, though it was stored with other works slated for his museum. By the end of the war, Hitler's collection had a total of 6,755 paintings, of which 5,350 were old masters.

Hitler's and Goering's interest in art bred a mania for collecting that spread throughout Germany and Austria, as well as occupied countries, and there was an enormous supply for collectors. The exceptional demand for works of art generated greater market activity, with paintings that were willingly sold bringing exceptional prices. Although prices for the paintings were often high, payment was in reichsmarks or devalued currencies. The reichsmark had little value outside Germany and Austria, and the French franc, for example, was greatly devalued because of enormous occupation costs levied on France by Germany.

In Austria, says a judge who presided over restitution claims in that country in the 1970s, and who asked not to be identified, "After the lootings had stopped, the Reich Ministry of the Interior ordered the Gestapo to sell works at the Dorotheum [the state auction house]. This was Jewish property that had been gathered by confiscation." He adds, "The situation became worse and worse for the Jews. In the beginning they could leave the country and take their property. Then they couldn't leave, and then they were taken to concentration camps and killed. The property of the people taken to the camps remained behind."

Immediately after the Anschluss, the looting began. Most of the looting, according to the judge, "took place in the three or four days after the annexation. After that, the Reich tried to clamp down on unofficial confiscations."

**A**USTRIA WAS IN A PECULIAR SITUATION after the war. Although the Anschluss had occurred in 1938, Austrian sentiment had been strongly in favor of German annexation since the 1920s, based on the perception that Austria could not survive within the post-1919 boundaries established by the Treaty of Versailles. At the time, Austrians referred to Vienna, once capital of the Austro-Hungarian Empire, as an "encephalic head," disproportionately large, with a population of 1.9 million, for a country of 6.5 million people. A 1934 attempted Nazi coup in Vienna had failed, but in February 1938 Hitler met with Austrian chancellor Kurt von Schuschnigg and demanded concessions for Austrian Nazis, including greater power in Austria's government. Schuschnigg tried to hold him off until a plebiscite could address the question of whether Austrians wanted to be joined with Germany. Hitler offered him the choice of resigning or facing a war with Germany; Schuschnigg resigned on March 11, 1938, and on March 12 Arthur Seyss-Inquart, an Austrian Nazi, became chancellor of Austria and invited the Germany army to occupy the country. On April 11, 1938, a Nazi-controlled plebiscite was held, resulting in a 99.75 percent vote supporting the Anschluss.

After the war, the Allies decided to view Austria as an occupied country, even though Austria's army had willingly fought alongside the Germans. France, also occupied, did not provide the support to Germany that Austria did. While the French regarded the German rule as "the occupation" and the Allied victory as "the liberation," the Austrians to this day describe Germany's occupation as "the annexation" and the Allied victory as "the breakdown" [of German rule].

In the Potsdam Declaration, it was stipulated that reparations should not be extracted from Austria, while the Mos-

cow Declaration by the United Kingdom, the Soviet Union and the United States, published on November 1, 1943, described Austria as "the first free country to fall victim to Hitlerite aggression."

An independent Austrian government was established immediately after the war, and as early as 1946 the government had the authority to enact legislation that would take force if not overruled by the Allied Council within 31 days of its passage. This included laws affecting restitution proceedings between individuals and between the Austrian state and people persecuted for racial, religious or political reasons.

After the war, all the looted and displaced artworks that could be located were gathered and recorded by the Allies, in particular by two branches of the American forces: the Monuments, Fine Arts and Archives group, which was charged with documenting the destruction caused by bombing and battles, and the Art Looting Investigative Unit (ALIU). Although millions of objects had been confiscated, purchased or stored in repositories for safekeeping, the Na-

**Second only to Hitler's art collection was that of Reich Air Marshal Hermann Goering, shown (below) choosing a picture for his estate at Karinhall and (bottom) after the German surrender.**



U.S. ARMY PHOTO



zis' exhaustive recordkeeping greatly simplified the task of returning many artworks to their rightful owners. In the case of works confiscated by German officials from a family or a public institution, or works from museum collections that had been moved out of major cities (most museums in Europe were closed during the war), there were accompanying dockets listing their prewar owners. "This was the most beautifully documented affair you ever saw," says Faison, who worked with the ALIU. "I assure you that German efficiency and documentation were at a very high point in this operation."

The works of art discovered by U.S. forces in southern Germany and in Austria were shipped to Munich and stored in the Nazi party building, a vast Neoclassical structure on Meiserstrasse. At the Munich collecting point, representatives from occupied countries could file claims for objects that had been confiscated from their institutions or citizens. "The terms of the armistice were that anything acquired by Germans after the date of the occupation would go back to that country whether it was legitimately bought, stolen, done by murder, whatever," Faison recalls, "and then the individual from whom it was acquired had to present his case to the government and the decision was made by them. There were arguments, of course, about whether it was a forced sale or not, but that wasn't our problem."

"Among the restitutions to the Austrian government very early was a famous Vermeer—*The Artist in His Studio*, now called *Allegory of Painting*—which had belonged to the Czernin family. The minute we restituted the Vermeer [1946] the Czernin family went after it. The result of their claim is that the painting has been in the Kunsthistorisches Museum in Vienna ever since."

The Vermeer belonged to the late Jeromir Czernin-Morzin and his brother, the late Count Eugen Czernin, with Czernin owning a two-fifths interest and Czernin-Morzin the rest, according to Czernin's son, Count Rudolf Czernin, who now lives in Vienna. The Czernins are descendants of Count Ottokar Czernin, the Austro-Hungarian minister of foreign affairs from 1916 to 1918, who tried to extricate Austria-Hungary from World War I.

Hitler bought the Vermeer in 1940 for 1.65 million reichsmarks (\$660,000). After the war Czernin-Morzin claimed that it had been a forced sale, but Count Rudolf Czernin says that "he [Czernin-Morzin] was not forced to sell it to Hitler—he wasn't forced to sell it at all."

Count Rudolf Czernin says that because the painting was jointly owned, it could not be sold unless both brothers agreed. Czernin-Morzin approached his brother in 1939 and proposed selling the picture to Hitler, according to Czernin. "My father resisted for a long time," he says, "but a secretary of Hitler's, Baron von Doerenberg, came to my father and said, 'Please give your approval to sell the picture.' I was 14 years old, and Hitler's secretary was in my home for three days. He was very nice, a complete gentleman. Finally he said, 'If you don't sell it, Hitler will get it anyway—you will be forced to give it up.' " Czernin agreed to sell the painting.

Shortly before von Doerenberg approached Czernin, however, Hitler contacted the Reich Finance Ministry in Berlin. According to *The Rape of Art* by David Roxan and Ken Wanstall, Hitler inquired whether the Czernins owed estate taxes (which they did not). If they had, Hitler could have demanded that the Vermeer be sold at auction. Whether Hitler checked on the Czernins' financial situation before

or after Czernin-Morzin agreed to sell the painting is unclear. Count Rudolf Czernin, in any case, says he had not known of Hitler's inquiry.

The Vermeer was to be the centerpiece of Hitler's planned museum in Linz. It was illustrated on the cover of a 1943 catalogue entitled *Kunst dem Volk* (Art of the Masses) that listed artworks to be in the museum. In 1945, according to Charles de Jaeger's *The Linz File*, the Vermeer was featured in another catalogue of the Linz collections. Its anonymous author, notes de Jaeger, boasted that Hitler had prevented the Vermeer from being sold to a United States collector for \$6 million dollars.

After the war, U.S. forces discovered the Vermeer in the salt mines in Alt Aussee, where many of the paintings targeted for Hitler's museum had been stored. The Vermeer was returned to the Austrian government in accordance with the U.S. policy of returning property to the country from which it had been taken rather than to its last owner. At this point Czernin-Morzin made his claim.

"My father and I had nothing to do with the restitution trial," says Count Rudolf Czernin. "After the war Jeromir came to my father and said, 'We'll get this back from the Austrian government,' and asked my father to help him. My father said, 'But Jeromir, you are a liar. I didn't want to participate, but you weren't forced. The whole claim is based on a lie.' My father was not involved in the trial because he was the only man who knew that Jeromir was not forced to sell the painting, and he said he could not go to the court and lie. But he was forced."

According to Czernin, his family's wealth was based in Czechoslovakia, and they lost their property after the war. Czernin-Morzin's suit, he says, "was financed by an American dealer in the hope that Jeromir would win the trial, and the dealer could buy the painting and take it out of Austria. Jeromir lost in all three instances." Count Rudolf Czernin does not know the name of the American dealer.

Czernin-Morzin's claim is described by Dr. Helmut Denck, an attorney with the Vienna law firm of Michael Stern, who represented Czernin-Morzin. Denck's information is drawn from the firm's records of the case. "Because of all the circumstances, Czernin-Morzin was forced to sell the painting for an extremely low price," says Denck, "and he never would have sold it for less than \$1 million—at the time that was 2.5 million reichsmarks. Czernin-Morzin said he had planned to sell it to another country—he said Andrew Mellon wanted to buy it for \$6 million—but Hitler was interested in it for his Linz museum."

Although the figure of \$6 million has been widely reported, Count Rudolf Czernin says that Mellon had offered \$2 million for the Vermeer in 1932, but that there had been no subsequent offer from him in the late '30s. In the suit Czernin-Morzin also claimed that Hitler had sent him a telegram forbidding the export of the painting; Count Rudolf Czernin could not confirm or deny this.

"The claim was rejected in the civil courts between 1946 and 1948," says Denck. "Czernin tried the case everywhere—later in the administrative courts in the Finance Ministry, the Finanzlandesdirektion, the top financial administration. He didn't get the picture, even though he said he was forced by the circumstances. Finally in 1952 the claim went to the highest administrative court—not a civil court—and Czernin lost." The decision was handed down in May 1953. (Austrian government archives and records of legal proceedings are open to the public only



**When Alma Mahler-Werfel fled Austria in 1938 with her husband, Franz Werfel, among the paintings she left behind on loan to a Vienna museum was one by Edvard Munch. She fought in court to reclaim it but lost the case.**

with governmental permission; *ARTnews*' requests to review court records in this and other cases were denied.)

In the final court of appeals, the judge did not base his decision on whether the sale had been forced or not, in keeping with the peculiar character of the case. According to Count Rudolf Czernin, Czernin-Morzin claimed that the sale had been forced, when he had sought a buyer for the painting. Count Eugen Czernin, who *had* been forced to sell his share of the painting, refused to testify in court for fear of incriminating his brother, thereby waiving any right to gain restitution where it was due.

The judge ruled that the painting had belonged to Germany and that German property in Austria could be seized in accordance with Austrian postwar restitution laws, which considered such property a form of reparation.

Dr. Hermann Fillitz, director of the Kunsthistorisches Museum in Vienna, says that Austria legitimately owns the painting because Czernin sold it to Hitler for "an enormous amount of money at the time." He adds that an American judge ruled that the sale had been legitimate, though he

claims not to know the name of the judge and says that it would be too difficult to get the information from the museum's archives.

Denck says he found nothing in the court records to substantiate Fillitz's assertion that an American judge had adjudicated the case.

**A**MONG THOSE WHO FLED AUSTRIA AFTER the Anschluss were Alma Mahler-Werfel and her husband, the writer Franz Werfel, who was an Austrian Jew. Mahler-Werfel was the daughter of Austrian artist Emil Jakob Schindler and had been married to the Austrian composer Gustav Mahler until his death in 1911.

Less than a year before leaving Austria, on August 2, 1937, Mahler-Werfel had loaned the Oesterreichische Galerie in Vienna five paintings for a two-year period: three works by Emil Schindler, one by Edvard Munch and a portrait of herself by Oskar Kokoschka. On behalf of the museum's director, a senior staff member, Dr. Heinrich Schwarz, signed a receipt for the five works and presented Mahler-Werfel with a letter requesting that she "accept on this occasion the obliging thanks of the Oesterreichische Galerie."

In March 1938, a week after the Anschluss and Mahler-Werfel's departure, the museum handed over the paintings to Professor Carl Moll, Mahler-Werfel's stepfather. By 1946 Moll was dead and the paintings were back in the Oesterreichische Galerie, which now regarded them as its own property. Mahler-Werfel asked that the five paintings be returned to her, but the museum handed over only the Kokoschka, refusing to return the three Schindlers and the Munch. Mahler-Werfel sued for their return.

In 1952 a Vienna court ruled that the paintings had become German property as a result of the Anschluss, thereafter becoming Austrian property. Mahler-Werfel's attorney appealed the decision to the Reparations Commission, an administrative body that heard cases involving property whose ownership was contested. On April 9, 1953, the commission threw out the court's decision, describing it as "surprising," and ordered a retrial.

At the second trial the court granted the Munch to the museum and left open the question of who owned the Schindlers. A subsequent case involving the Schindlers had not been decided in 1964 when Mahler-Werfel died. Her daughter decided against pursuing the suit after 1967 when it was still pending.

The legal proceedings, including the testimony and arguments of the Oesterreichische Galerie's lawyer, are fascinating for the view they provide of Austria's position on art that has been separated from its prewar owners and subsequently become the possession of a state-affiliated institution.

The suit was straightforward enough. Mahler-Werfel said she owned the paintings, had loaned them to the Oesterreichische Galerie in 1937 and had fled the Nazi regime in 1938. She claimed that the museum should have contacted her in Paris—her home between 1938 and 1940—to make arrangements for the paintings; that the transfer to Moll had been illegal, as he had no power of attorney over her affairs; and that Moll had refused to give the Munch to a courier Mahler-Werfel had sent to Vienna to bring the painting to her in Paris.

The government attorney representing the museum argued that the Munch belonged to the Oesterreichische Galerie

because it had purchased the work from Moll in 1939 for 7,000 reichsmarks (\$2,800). According to the attorney, Moll had a right to sell the painting because he needed the money to make repairs on Mahler-Werfel's summer home. Later testimony by the repair crew revealed that this had cost 1,900 reichsmarks (\$760).

Still, Moll had sold the painting and the museum had bought it without determining whether he held title to the work. In fact, the museum stated in a document, "If we placed so much confidence in Moll that we delivered the pictures into his hands without proof of a power of attorney, we then could also place as much confidence in him to later acquire the paintings from him."

The final decision giving the Munch to the museum was reached in mid-July 1953. Until a week earlier, however, the defense believed that the ruling would be in favor of Mahler-Werfel. The director of the Oesterreichische Galerie, Dr. Carl Garzarolli, met with the late Dr. Otto Kallir to negotiate a settlement. Kallir was a friend of Mahler-Werfel's who had owned the Neue Galerie in Vienna before emigrating to the United States in 1938. He established the Galerie St. Etienne in New York in 1939. Both during and after the war Kallir maintained contact with Austrian officials in an effort to aid emigrés seeking property they had left in Austria as a result of the Anschluss.

Under the terms of the settlement, Mahler-Werfel would give the museum three Schindlers, and the museum would give her the Munch—by far the most valuable of the paintings being contested. The agreement was reached pending authorization from the Ministry of Education, which then had authority over public cultural institutions. Garzarolli told Kallir the authorization was merely a formality.

When the court handed down its decision, however, Garzarolli and the Ministry of Education refused to honor their signed agreement with Kallir and demanded that he return the agreement. He refused.

The hearings also made clear how the Oesterreichische Galerie ended up with the Schindlers after Moll's death. A memorandum prepared in 1959 by a source close to Mahler-Werfel reads: "Hitler was barely in Austria when Moll, who owed his whole existence to Jewish relations, became a fanatical Nazi. He lived with his daughter and son-in-law, Dr. Richard Eberstaller, and they were all such incriminated Nazis that when the Russians marched in, Eberstaller shot his wife, then Moll and then himself. Eberstaller had appointed the museum as his heir, and from the fact that Moll had died a few minutes earlier than Eberstaller the court presumed that Eberstaller was Moll's heir, and as such could 'dispose' of his property as well. In this way, the [Schindlers] came to the Oesterreichische Galerie as an inheritance from Eberstaller."

Moreover, the defense attorney dragged in Schindler's estate records, which failed to show that he had left the paintings to Mahler-Werfel. The omission was presumably an effort to avoid taxes. As a result, the defense argued that the paintings had never been Mahler-Werfel's in the first place.

The Schindlers became a vexing point for both prosecution and defense. Mahler-Werfel had loaned three Schindlers to the Oesterreichische Galerie, but Moll's estate included five paintings by the artist. He had bought several Schindlers at the Dorotheum auction house during the war, and the defense argued that he had sold others. The defense also claimed that Moll had sold the Schindlers loaned to the

museum by Mahler-Werfel, and that perhaps none of those at the museum in 1945 had ever belonged to her. Their case was bolstered by the titles of the paintings. Only one of the titles from the 1937 receipt matched the titles at the museum in 1945. To further confuse matters, Schindler's works were often titled according to their subject, and the artist sometimes depicted a subject more than once. The defense therefore claimed that Mahler-Werfel didn't own any of the Schindlers; her attorney responded that she was entitled to all of them because she should have been Moll's heir.

The suit involving the five Schindler paintings was never resolved. The hearings began in early 1954, but Mahler-Werfel's lawyer allowed for a postponement of the case until the courts had established precedents through other restitution cases. Mahler-Werfel's lawyer subsequently died, and the case was in limbo for the next five years. During that period the museum handed over two of the five Schindlers to Mahler-Werfel based on the testimony of a defense witness that he had seen the paintings in her home.

By 1960 Mahler-Werfel had a new lawyer; the three Schindlers were still the property of the museum. Because the court proceedings were fruitless, friends of Mahler-Werfel's, including Kallir, Heinrich Schwarz (who had signed the receipt for the five paintings she had left in the Oesterreichische Galerie 23 years earlier) and the late Fritz Novotny, director of the museum during the 1960s, were working through informal channels to win the Munch for Mahler-Werfel.

On June 22, 1960, Novotny met with Erwin Thalhammer, who was with the Ministry of Education in 1960 and later was president of the Federal Monument Office. Novotny asked if the Minister of Education could act independently of the legal proceedings. Shortly after his meeting with Thalhammer, Novotny wrote Mahler-Werfel: "I can unfortunately do nothing further. I have even asked whether Austria, in a noble gesture, could renounce the [Munch], although the case [regarding the Munch] has been judicially settled. Dr. Thalhammer told me that this would not be possible, that no authority or official board can do this. I really don't know who further I could ask about this; I have already asked the most important and most well-informed person [Thalhammer]."

Thalhammer, who is retired, was not willing to discuss either the case or Austria's position regarding restitution.

Although Mahler-Werfel did not get the paintings she had sought, the Austrian government did grant her "an honorary gift from the Federal Ministry of Education in the amount of 50,000 Austrian schillings [\$1,900], which is a symbol of the lasting bond between Austria and the great works of Mahler and Franz Werfel, as well as with your own great personality. . . ."

Mahler-Werfel viewed the award as a proposed settlement for the Munch and the three Schindlers still in the Oesterreichische Galerie. Shortly after receiving the letter announcing the award, she wrote Kallir that she would not think of letting herself be appeased by such an offer and asked whether the money could be used as a lever to gain possession of the paintings. Austria would not relinquish them, and the award was given on December 12, 1960, in the centennial year of Gustav Mahler's birth.

At the time the Austrian courts were adjudicating the Mahler-Werfel claim, the Western Allied powers were encouraging Austria to handle its affairs internally, including legal matters, without Allied supervision. The Allies were



**By the end of the war, Adolf Hitler, photographed at a Munich sculpture exhibition in 1939, had amassed a collection that included more than 5,000 old master paintings.**

unwilling to become involved in Austrian internal affairs, according to Benjamin Ferencz, who had served in the U.S. Army working on war-crimes investigations and had been a prosecutor at the Nuremberg trials. Ferencz has written on restitution problems and says, "Austria was recognized as sort of a neutral territory between the competing powers. Everyone was trying to woo Austria to see which camp they would come into, and the Austrians got the best of both deals."

According to Ferencz, Austria felt no compulsion to make restitution to people who had been considered enemies of the Third Reich. He adds, "The U.S. legal position toward Austria as a liberated country encouraged the Austrian refusal to recognize any restitution obligation. The U.S. position was that the Austrians were liberated and were not to be put in the same category as Nazis. Austria was a hotbed of Nazism—it was the birthplace of Adolf Hitler, and to treat the Austrians as if they were the poor innocent victims was just for the birds, but that was the way they got treated and that was reflected in everything else that the Austrians did after the war."

The Austrian logic about restitution cases is illustrated by a claim—this one unrelated to art—made by concentration-camp inmates who were used as slave labor at an Austrian company during the war. According to Ferencz, who discussed the case in his book *Less than Slaves*, the former inmates sued the firm seeking pay for their labor during the war. "The Austrian courts dismissed the plaintiffs' case," states Ferencz, "with the implication being that the company had saved their lives—if they hadn't been working as slaves for the company they probably would have gone to the gas chamber immediately." The company did not have to make any restitution payment. Although the Allied Council was supposed to be reviewing Austrian court decisions, this one was not contested.

**T**HE SLAVE-LABOR CASE DID NOT COME TO light until after the Allies left Austria, but as early as 1948 Austrian restitution procedures were being criticized. According to a 1948 report of the U.S. High Commissioner for Austria, "Restitution legislation and

procedure was the subject of two resolutions adopted by the World Jewish Congress at Geneva. The first resolution points to the legislative delays in enacting promised restitution laws and to the lackadaisical and haphazard enforcement of laws already voted. The second calls upon Austrian authorities to expedite the return of all 'aryanized' property [forced transfers from Jews] to its rightful owners and to transfer to Jewish trustees any of such property that cannot be thus restored."

Complaints against Austria's handling of restitution cases hadn't slackened significantly by 1952, at which time, the report notes, "As in the past, the three Western Powers [England, France and the United States] maintained the view that the Austrian courts should be allowed to adjudicate restitution claims in accordance with Austrian legislation."

That same year the U.S. Military Commission transferred 960 paintings from the Munich collecting point to Salzburg. As the staffs at the collecting point had been unable to determine the owners of these paintings, they were "turned over to representatives of the Austrian Federal Monument Office for custody and safekeeping with the right of disposition or removal reserved to the Office of the U.S. High Commissioner," according to the 1952 report of the U.S. High Commissioner for Austria.

Faison, who closed down the collecting point, recalls, "The U.S. policy, it turns out, was that anything not otherwise identified was to go to Austria"—a policy he disagreed with but had to carry out. "The official view was that we liberated Austria, so it was to be treated as if it were France, Belgium or whatever," he says, but "there was no revolution in Austria against Germany. The Germans simply took over and got a lot of good art in the process."

According to Faison, the paintings shipped to Austria were "mostly 19th-century German and Austrian art. That we were giving paintings to the Austrians unfortunately made for great headlines—'Correggio.' But it was Anton von Correggio, a German 19th-century painter. My name hit the papers—that I was giving Correggios to Austria."

Although the paintings that initially went to Austria were under U.S. control, by 1955 they had been handed over to Austria to return to victims of the Nazi regime. The transfer is peculiar from the standpoint of U.S.-Austrian relations between 1952 and 1954, so far as restitutions went. A U.S. Department of State letter dated October 16, 1952, reads in part: "The Austrian Government has failed to answer our notes of December 20, 1951, and July 18, 1952, concerning action by the Austrian Government concerning restitution to victims of Nazi persecution."

At the time the United States was involved in negotiations between Austria and Jewish war-claims organizations. According to a further State Department letter, dated December 1, 1952, "The Austrian Government has made no progress in the matter of restitution or indemnification since the visit of Chancellor Leopold Figl to Washington and, in fact, has endeavored to make effective legislation which would compensate former Nazis ahead of victims of Nazi persecution. Although Figl and [Austrian ambassador Dr. Karl] Gruber some time ago indicated a willingness to discuss the restitution problem with representatives of the Jewish organizations, which recently negotiated a restitution agreement with Germany, the Austrian Government has failed to invite such representatives."

It was during this year that the United States was favoring the adjudication of restitution claims by Austrian courts

without Allied supervision.

By 1954 U.S. officials had some reason to hope that Austria would assume some degree of responsibility for the persecution of Jews during the war: the Austrian ambassador to the United States was meeting with representatives of the Committee for Jewish Claims—which were not restricted to works of art. The results, however, were hardly sterling; a State Department letter dated May 6, 1954, reads, “The Austrian Government had been somewhat surprised by [the Committee for Jewish Claims’ representative’s] demand for a settlement of 300 million schillings [\$11.6 million] (which Gruber took to mean a willingness to settle for 150 million) and had replied with an offer of 30 million.”

Within a year the Austrian State Treaty had been signed, granting Austria independence from the Allied occupation. In one section of the treaty, the Western Allies gave Austria “all property, rights, and interests held or claimed by or on behalf of any of [the Western Allies] in Austria as former German assets or war booty.”

A subsequent section of the treaty demanded that Austria return property—real estate, businesses, cultural artifacts—to people from whom it had been confiscated after the Anschluss if the confiscations were “on account of the racial origins or religion of the owner.” The treaty also required that any property not claimed by January 1956 should be handed over by Austria within 18 months to assistance organizations established by the Allies; these organizations would use the property, or proceeds from its sale, “for the relief or rehabilitation of victims of persecution by the Axis powers.”

Thus Austria was charged with two responsibilities. The first was fairly straightforward: If a person who had been persecuted for political, racial or religious reasons claimed property and could prove his or her claim, the property would be turned over. If the decision went against the claimant, the judgment could be appealed. If the property had been destroyed during the war, the claimant was entitled to restitution.

The second responsibility was more difficult to fulfill. The government had to determine the ownership of a particular work of art and then ascertain whether the owner was still alive—a procedure that involved checking deportation records and files of concentration camps. Because so many refugees had left the country illegally, the standard sources on immigration were of limited help. If the government determined that the owner was dead, it had to find out whether there were any living heirs.

Given that all this had to be accomplished within an 18-month period, the proposition was nearly hopeless from the start. But if the government were to recognize its inability to track down owners, the matter could be handled quite simply: unclaimed works of art could be turned over to restitution, refugee and successor organizations at the beginning of 1957.

In 1957, when the claims period had expired, the Austrian government established an independent organization, the *Sammelstelle A & B*, a collecting point, which was entitled to property such as paintings that had not been claimed and whose owners and heirs could be proved dead. This property would be sold, with its proceeds to be distributed to successor organizations. The *Sammelstelle* was also responsible for aiding in making claims if specific restitution laws had expired. Although a number of claims had been submitted between 1955 and 1957, according to Podlessnig of the

Monument Office, it was clear that more would be filed.

The Austrian government was having little success in determining the owners of artworks in its possession. One reason, according to Podlessnig, was that Austria made no public announcement that it was looking after the “heirless” property, although Dr. Winfried Bauernfeind, counsel for the Finance Ministry, claims that this was done on radio and in newspapers.

Dr. Albert Schmidt of the Finance Ministry stated that most of the post-1955 claims were made by 1960, with more complicated claims resolved by 1965.

Although most claims may have been settled by 1965, some were being ignored, according to Simon Wiesenthal. He says that in the mid-’60s he started receiving letters from people whose claims had been stonewalled by the Austrian government. He called the Federal Monument Office and spoke to Podlessnig, whose position was roughly that of state curator of government properties. According to Wiesenthal, she refused to give him any information about the paintings and suggested that he call the Finance Ministry. “When she talked to me,” he says, “her voice was like a knife.”

Wiesenthal met with an official at the Finance Ministry and suggested that a catalogue of the paintings be printed and distributed to Austrian consulates throughout the world. The official said that the ministry lacked the staff to handle the inquiries and that the entire matter was too complicated to be solved by simply printing a list of the works.

The unproductive meeting, Wiesenthal says, led him to make an appointment with an official of the State Department for the Securing of Property. That official was no more helpful than the one at the Finance Ministry, though he did admit that claimants could apply for restitution only until the end of 1967—29 years after the Nazis had annexed Austria and begun their confiscation of artworks. “They were just waiting for the statute of limitations to run out,” Wiesenthal believes.

Wiesenthal then wrote to the ministers of education, finance and foreign affairs criticizing Austria’s policy of trying to retain works of art looted from its citizens. On April 6, 1966, he received a letter from Dr. Wolfgang Schmitz, then Minister of Finance, later printed in Wiesenthal’s book *The Murderers Among Us*: “The solution of the problem that you brought up will be a new federal law. . . . I’ve already given orders to prepare a draft of such a law. It will enable people to present their claims within a certain time after the law becomes effective. I hope this agrees with your intentions.”

To this day, says Wiesenthal, “some of the people from the Federal Monument Office—how they hate me! They look at me as if I raped their paintings.”

The law for the return of the artworks was to be accompanied by a list of the objects held in storage, but there was a problem. “This law violated the State Treaty that gave these pictures to the *Sammelstelle A & B*,” explains George Weis, the *Sammelstelle*’s director. “Some gentleman in the Ministry of Finance had the brilliant idea of establishing a separate law covering the pictures. What he forgot was the existence of the *Sammelstelle A & B*. Some of this property had probably belonged to families that were annihilated during the war. So I went to the ministry and said, ‘You have appropriated the property of the *Sammelstelle*.’ ”

The *Sammelstelle A & B* asked for a settlement of ten million schillings and received five million (\$193,000). It

was satisfied with the arrangement at the time, says Weis, who had heard that the property was of no significant value. "I was very happy because I could not prove that the owners had disappeared," he says. "I had first to prove to whom the pictures belonged, and then I had to prove that they were not alive and then that their heirs—three generations forward or back—were not alive."

By 1969, the Sammelstelle A & B had ceased operations. Most of the organization's funds came from claims made on businesses and real estate that had been confiscated. With regard to works of art, the Sammelstelle received the five million schillings from the settlement with the Republic of Austria and 732,000 schillings (\$28,000) from the sale of eight to ten paintings (works whose owners had been proved dead and without heirs) for a total of \$221,000. Weis could not give the exact number of paintings, and the Austrian government would not grant access to the archives to research the subject.

Over the course of four years the government, with the aid of the Monument Office, prepared a list of the paintings held in storage. The president of the office at the time was Walter Frodl, who during the early 1940s had helped the Nazis loot artworks from Eastern Europe. The 1965 project was headed by Podlessnig, who called in personnel from Vienna's museums to catalogue the property. The descriptions, according to Schmidt, were intentionally vague: "The people working on the list had to describe the things well enough so someone could [recognize that a work might be his and] make a claim, but not so well that people who hadn't owned them could make a valid claim on the works."

"It was up to the owners to make detailed remarks about the paintings," says a museum curator who asked not to be identified who catalogued some of the property. "There were lots of terrible, dreadful things—what we call 'kitsch'—especially 19th-century things."

**T**HE LIST WAS PUBLISHED ON SEPTEMBER 2, 1969, in the *Wiener Zeitung's* *Amtsblatt* section, where government public announcements are printed, such as invitations to bid on construction jobs. This semi-official daily newspaper, however, is not widely circulated outside Austria; according to a member of the paper's staff, its circulation is roughly 30,000 today. Gerhard Sailer, current president of the Federal Monument Office and a civil servant for the past 27 years, says that he knew only through hearsay of the property at the Mauerbach monastery before he was appointed to his present post. He hadn't noticed the 17-page listing of paintings and other property at the time it was published in the newspaper. One senior government official, who asked not to be identified, says, "I do not read the *Wiener Zeitung* every day. It bores me."

The *New York Times* and *The Times* of London ran brief stories on the publication of the list, and Weis, via the Jewish successor organizations, was able to get information about the law in various newspapers in Israel and the United States. According to Weis, the listing received little publicity in South America because there are few organizations of Jewish interest there.

One of the letters received by Simon Wiesenthal in 1965 was from an old woman who had moved to New Zealand after the war. She wrote that her father had left her a Frans Hals painting, which a friend of hers now wished to buy. The woman said she needed the money and asked Wiesenthal to find out if it was being held by the Austrian gov-

ernment. Before the list was published, says Wiesenthal, he asked the Austrian government about the painting. "No. No Frans Hals," they said. But they publish the list and there is a Frans Hals!" says Wiesenthal. "The woman, meanwhile, had died, and instead of her living a few years in comfort the painting stays with the government."

In the *Wiener Zeitung* listing, the painting was described as being in the style of Hals, Dutch School, mid-17th century, but whether the woman knew for certain that her painting was a Hals, and not a work in his style, is not known.

The list included a great many 19th-century German and Austrian paintings and drawings described by the museum curator as "kitsch": two oils by Rudolph von Alt, two oils and 40 watercolors by Jacob von Alt, 14 by or attributed to Franz von Lenbach, two oils and 200 drawings by Hans Makart, two oils by Jakob Schindler. Among the "kitsch," however, were paintings by Arnold Boecklin and Lovis Corinth and works attributed to or in the style of da Vinci, Tiepolo, Michelangelo, Ribera, Caravaggio, Canaletto and Bassano. Altogether, the list included 657 oil paintings, 4 miniatures, 84 watercolors, 250 pastels, 53 prints, 43 sculptures, 10 tapestries and 10 porcelains, as well as textiles, medals, coins and books. The 8,423 objects were grouped into 1,231 lots.

The list was published in conjunction with the Final Settlement of Heirless Property law, enacted in 1969. Because the Finance Ministry held the works in trust for the Austrian government, people who had lost property during the Nazi regime were required to file claims with the Finanzlandesdirektion.

The initial deadline for claims was December 31, 1970, but it was later extended to December 31, 1972. According to the terms of the Settlement law, claimants had to be able to prove ownership; since most claimants did not have documentation of ownership, many had to describe the works—a stipulation consistent with the Austrian Civil Code of 1811. Claimants were also requested to provide information about the date and place of confiscation.

The claims were reviewed by the Finanzlandesdirektion, which returned the property if the claim was deemed valid. However, according to the Viennese judge who presided over restitution claims in the 1970s, and who asked not to be identified, "The Finanzlandesdirektion could authorize the return of paintings if there was only one claimant, but if there was more than one claim on an object they could not return the property."

If the Finanzlandesdirektion rejected a claim or if the claim was in competition with other claims, the claimant had the right to sue the Republic of Austria in the Vienna civil court; the judge adds that a claim against Austria could be made only if the suit was initiated within three months of the rejection.

If the claimant sued, he or she could represent him- or herself or appoint a proxy. The Finanzprokuratur, or office of government attorneys handling civil cases, represented the state.

Evidence at the trials varied widely. One claimant, according to the judge, submitted photographs of the objects and negatives of the photographs; after the judge had sent the negatives to a film laboratory and learned that they had been made prior to 1938, he allowed the claim. Most cases were far less clear-cut. "What was important for claimants to prove was not that they had owned a painting, for example, by Friedrich Gauermann, but that they had owned

a particular painting by Gauermann. Perhaps 50 Gauermanns had been taken by the Nazis, and there were two remaining on the list, so we could have as many as 50 people claiming two Gauermanns," the judge notes.

Another problem often cited by Austrian officials was the greater number of claimants for valuable objects. "It's interesting that for the most valuable objects there were several claimants, but for the less valuable there were none," the judge states. According to Bauernfeind, "The most valuable paintings were claimed by several families. If five people claimed something, three of the families would have a [pre-1938] appraisal for the work."

Although appraisals and other documentation were allowed in the courts, they were viewed skeptically. Witnesses were allowed to give testimony, either in person or in depositions. The testimony, according to the judge and court documents, usually stated that the witness had seen a painting of a particular subject by a particular painter in the home of the claimant.

One of the greatest problems was the age of the claimants. Most of the looting had taken place in 1938, 31 years before the list appeared. "The parties making the claims, if they survived the war, were very old. Very often the next generation was making the claims," says the judge.

Wiesenthal notes that the claimants were mostly "children of the original owners. They say, 'I don't know if that's mine from the list, but when I see it I will remember.' In 1969 this was 31 years after the things were confiscated. The owners were not young when they bought the pictures."

As a result, descriptions were especially problematic. Both Austrian officials and critics of the government's handling of the property assert that it was unreasonable to expect people to remember accurately a painting they hadn't seen for more than 30 years. "I don't want to accuse anyone of trying to claim a painting that didn't belong to them," says Schmidt, "but after 30 years it was hard for people to remember just what the paintings looked like."

"People only saw paintings after they had described them. I was very strict about that because everybody had to have the same rights," says the judge, although he adds that other judges may have had different standards. Although a few people made plainly fraudulent claims, the judge says that most were honest.

Madelaine Duke, George Leitmann and Katherine Fent all filed claims under the Final Settlement of Heirless Property law of 1969. Fent had moved to Switzerland in 1960 and hadn't filed a claim earlier, she says, "because it looked pretty much hopeless." During the war, she says, a Nazi storm trooper was assigned to her family's house—according to documents in the Dokumentationsarchiv, at that time the mayor of Vienna repeatedly wrote to the SS requesting that they speed up the deportation of Jews to provide more housing—and after the war the SA officer tried to claim Fent's furniture. Fent says that by chance her lawyer heard about the claim and was able to secure the property for her. "We were just very glad to get what we could, so we didn't do anything about the other things."

Fent heard about the list published in the *Wiener Zeitung* from friends still living in Vienna and engaged a lawyer to pursue her claim there. In it she gave a description of the von Amerling portrait and the events surrounding its confiscation. She waited and ultimately had to sue the Republic of Austria.

The Finance Ministry did not begin hearings on claims

**Verkauf am 1969-Jahresverlauf 65.20 - Lebenshaltungskosten Index 1000 (65.20)**

**Wiener Zeitung**

Donnerstag, 3. September 1969

Preis 2.00 S.

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**Belgrad erwartet Gromyko**

**official Vienna news-  
paper is not widely cir-  
culated outside Austria  
the information received  
scant publicity.**

ANDREW DECKER

until January 1973, when the claim period had passed, partly, as Schmidt explains, because they were wary of returning a work to one claimant only to have another appear with more substantial proof of ownership. Austria was represented in the proceedings by the Finanzprokuratur.

Fent's case began soon after the claim period expired, and on February 22, 1973, the Finance Ministry's counsel filed a petition requesting "that the Court reject the request of the claimant for surrender of the painting ascribed to Amerling, 'Portrait of a Young Woman with a Lace Scarf,' number 16 of the *Wiener Zeitung* No. 202."

The Finance Ministry's counsel based his argument on Article 22 of the State Treaty, under which the Western Allies transferred to Austria "all property, rights and interests held or claimed by or on behalf of any of them in Austria as former German assets or war booty." The von Amerling claimed by Fent had been found by American forces in the salt mines at Alt Aussee, according to a deposition given by Podlessnig during the trial. According to her testimony, "The painting in question was acquired by Hitler for the Linz Museum." It was sent to the Munich collecting point on October 10, 1945, returned to Salzburg in January 1952 and then turned over to the Austrian government.

**Receipts from auction houses were often used by the Nazis to make it appear that confiscated paintings had been acquired legally. In the files of an Austrian**

**judge, Madelaine Duke discovered a receipt from a Berlin firm that supposedly had sold her family's paintings to Hitler's deputy, Martin Bormann.**

The lawyer for Austria claimed that because the von Amerling was in the "control of the German Reich before May 8, 1945, it is to be considered German property within the meaning of Article 22 of the State Treaty and became property of the Austrian Republic."

In addition to describing the painting, Fent had three witnesses testify that her family had owned a von Amerling and that they had seen it in her family's home.

The judge denied the state's motion to throw out Fent's claim, and the process continued. Fent says she repeatedly described the painting in response to inquiries from the Austrians. "I remembered every detail and described it at length in my claim. However, letter upon letter came from the authorities, asking for more and more details. I answered every question and was sure that all my descriptions must have conformed with those of the painting. Otherwise there would have been no sense in asking for more and more details. I thought this procedure had the purpose of making doubly sure of my claim."

Ultimately Fent went to the Carthusian monastery in Mauerbach where paintings and other property were stored. Fent describes the von Amerling as "a portrait of a lady in a tomato-colored dress with a very low neckline, and there was a pink rose on the neckline and white lace. She had dark hair with a part in the middle, and a scarf or a shawl, and it was on a dark, very dark brownish background. Finally the painting was brought in, the back toward me. I noticed immediately that this painting was a lot smaller than the measurements given in the list. Those on the list had conformed to the size, which I remember very well, of my stolen painting. The painting was turned around, with great ceremony, for me to see. It was, of course, not my von Amerling.

"I had the impression that they just found something they could show me. It seems they didn't want to show me the painting because then I would claim it, and it was a very valuable painting. So they brought out something that vaguely—well, you can hardly say resembled because hardly anything in it coincided with the description that I gave them. There was no red dress; there was no lace. There was a pink rose, but the pink rose looked very fishy to me. It looked like it was added to make it look like there was something that coincided with my description. I said I never owned such trash and turned to leave. The assembled group of experts and officials smiled with satisfaction." These unsuccessful proceedings ended Fent's claim to secure the von Amerling.

The government lawyers' arguments against Fent's claims

**GALERIE FÜR ALTE KUNST**  
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**A B S C H L A S S E**

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BRUNNENSTR. 18

31. Juli 1943

Munich No.: 12969

RECHNUNG Herrn Reichsleiter BORMANN, München, Braunos Haus.

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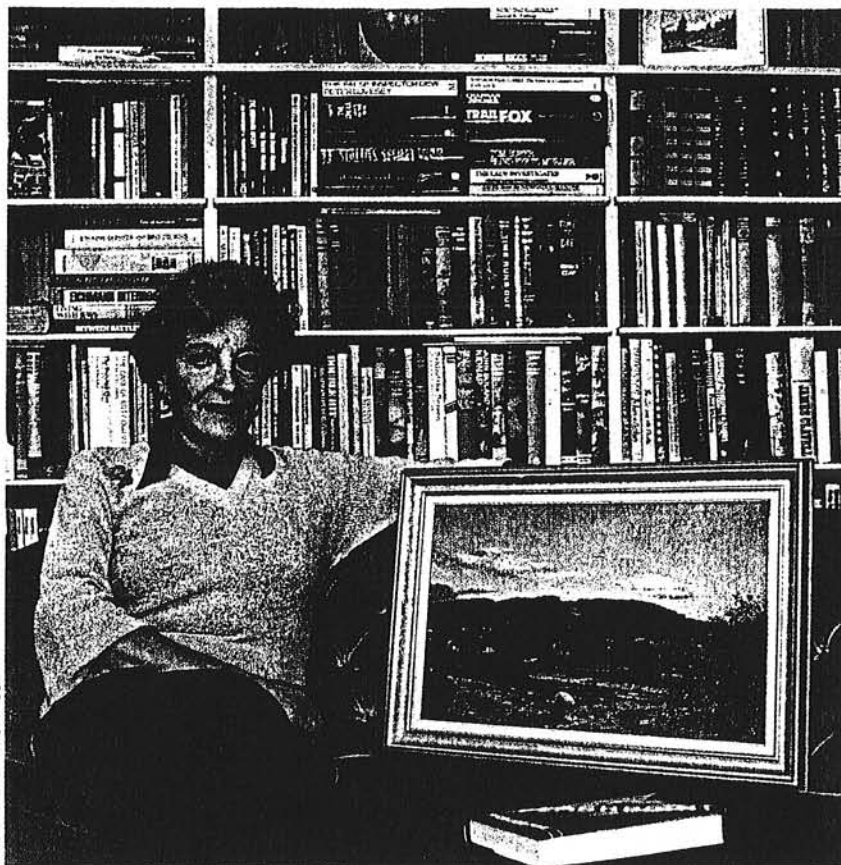
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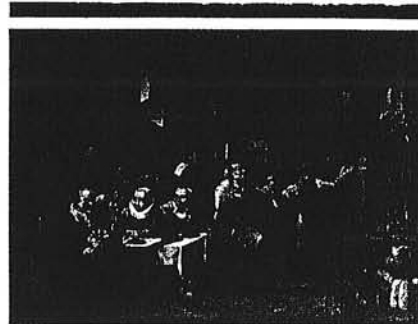
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*Mein Herr Reichsleiter Bormann:*  
*... sich befinden.*

*B: wichtig*  
*Herrn Bormann*  
*Haus bezahlt*



Most of the art collection of Madelaine Duke's family was lost, but after protracted and bitter legal proceedings she did succeed in regaining paintings by Herman Herzog (left) and David Teniers (below). Duke was also awarded a one-third share of a van Ruysdael landscape, which was sold at auction at Christie's in London in 1980.



were not unusual. On March 16, 1973, two and a half months after the proceedings had begun, Weis wrote to State Chancellor Bruno Kreisky. At the time, Weis was secretary general of an assistance fund that distributed money to people who had been persecuted. According to Weis, the government lawyers were not merely trying to establish whether the claimants had owned the property by requesting descriptions and witnesses but were asking them for proof that they had been in concentration camps or out of the country, that the storm troopers or Gestapo had confiscated the property, as well as other circumstances surrounding its loss. Weis pointed out that the state attorneys were routinely claiming that the property belonged to the state, whereas the purpose of the law was to give "the former owner an opportunity to establish a claim and to prevent Austria from retaining objects of art which it does not own." He concluded, "There is a discrepancy between the intent of the government and the practice of the [Finance Ministry's counsel] that makes the law a farce." He asserted that it was necessary to change the practices of the state counsel. Kreisky's response to Weis' letter is not known.

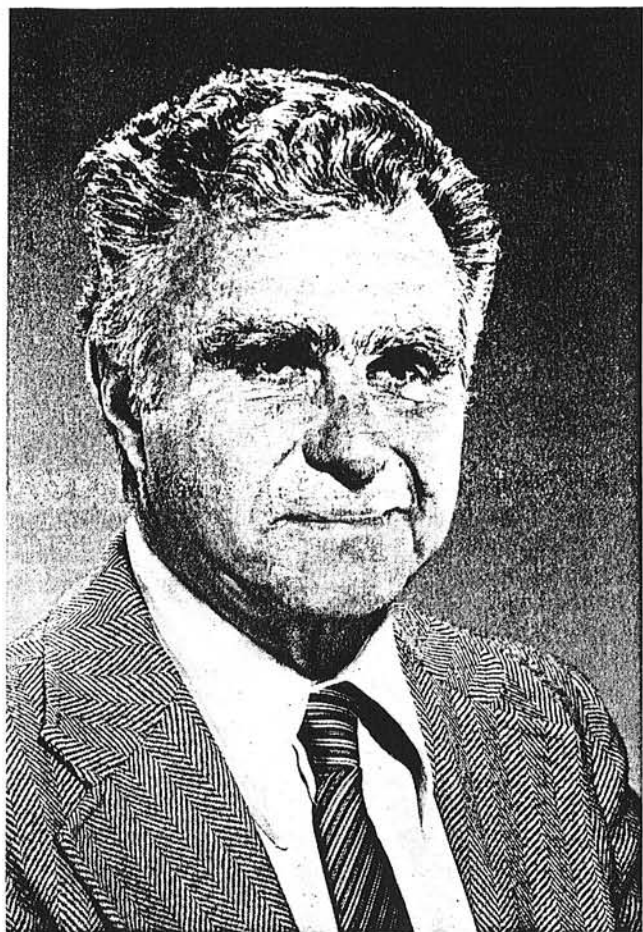
**B**OTH LEITMANN AND DUKE WERE MORE successful in their claims than Fent had been. For Duke it was an especially long and frustrating process. Following the war she worked in Vienna for the British Foreign Office, attached to the Allied Commission for Austria. "A friend of my father's returned from the concentration camp Theresienstadt to Vienna and persuaded me to register our losses with the Bundesdenkmalamt [Federal Monument Office] and to inform the British Property Control Officer," says Duke. She says she gave Podlessnig of the Monument Office a list of the paintings confiscated by the SS and left her address in England, with the request that she be notified if any of the artworks turned up.

No one from the Monument Office contacted Duke, but when the 1969 listing appeared in the *Wiener Zeitung*, Duke noticed a van Ruysdael and a Teniers, as well as some oriental carpets that she suspected might have belonged to her family. She filed several claims under the Final Settlement of Heirless Property law and ultimately—after nearly ten years of proceedings—was awarded one carpet, a Teniers, a Herman Herzog and a one-third share of the van Ruysdael. The judge who heard Duke's case, and who requested anonymity in discussing it as well as other cases, says, "If four people had equal claim to a work, but I couldn't determine who actually owned the painting, then it would be given to all of them and they would sell it and divide the proceeds."

Duke assumes a different reason for the division: "The court somehow managed to split up one painting between three parties because they wanted to get rid of as many claimants as possible in one go."

Duke was also frustrated by the length of the proceedings. "They changed judges four times," she says. "The first judge had his court hearings. This goes back to 1973, and he examined the witnesses. We had a hearing and even went to the monastery where the paintings were stored, and at the end of the hearing he said, 'I think we can conclude this in a few months.' The next thing I knew he had been replaced by another judge, and we were back at square one. And that happened four times."

After the third judge—Wilhelm Kremtsov—was appointed, in the mid-1970s, Duke was called to Vienna for a hearing. Shortly after she arrived, however, the hearing was canceled. "I was rather cross I had to come to Vienna, so I asked my lawyer to see the judge in his chambers. We went to see him and he began to discuss my case with my lawyer, who had been on television, so the judge began to ask him about it—the judge was very interested in talking



with the famous 'herr doktor.'

"I was being ignored, and there was a little table with a file on it, and I asked the judge if I could see the file, and he said, 'Sure,' over his shoulder. In this file was a receipt from a dealer who had sold my family's painting to Martin Bormann [Hitler's private secretary and unofficial deputy] in 1943. I then asked him if I could have copies of some of the documents in the file—I didn't say which ones, of course—and he said I couldn't."

Duke wanted to get the receipt, as well as others for additional paintings she was claiming, in order to track down where her family's collection had gone. She returned to the courthouse in the evening and got herself locked in, went into the judge's chambers and photographed the Bormann receipt.

"I wanted the first one I saw because it gave the name of the dealer who sold the painting to Bormann," says Duke. "I thought that there would be other receipts as well, and the judge had said I couldn't see them, so I got a copy of the document in my own way."

"I sent the judge a copy of the receipt I had acquired myself and said, 'Look, I have this one; why don't you give me the others?'" The judge gave in, and Duke learned that one of the receipts was from the H. W. Lange auction house in Berlin. Duke went to Berlin to get more information about Bormann's purchase and other paintings from her family's collection. "Lange had died at that point, and the person I spoke to said that he had died after the war in a Russian concentration camp in Berlin. I checked and found that there was no concentration camp where they said Lange had been." Duke adds that the person she spoke to at the auction

house claimed no knowledge of the matter and stated that the firm's records did not date back to the 1940s. "I doubt that the picture was ever given to Lange to sell. Bormann, as well as Goering, had SS or SA squads that stole paintings. The pictures went to Goering and Bormann, who asked people like Lange for receipts to make it appear that they had acquired the pictures legally."

Even after the judge released the receipt, says Duke, "they never mentioned the name 'Bormann' in the proceedings. It was always the *reichsleiter*."

The judge who was willing to be interviewed agrees that the rotation in judges hindered the proceedings. "Each time they changed judges, the new judge had to learn everything from the beginning." Moreover, he says, because cases such as Duke's were based on a law that hadn't existed previously, "everything was new in this area—you couldn't go back to previous cases."

A member of the Justice Ministry who asked not to be identified says that the judges were rotated so that none of them would have to hear the same kind of cases repeatedly.

Duke's book, *The Bormann Receipt*, was published in 1977, and she says that the judge who finally awarded her the property had a copy. "He said, 'There is a strong wind blowing from abroad,' referring to my book, and I said, 'Yes, I made it blow and there will be a gale before long if you don't conclude the proceedings.'"

Like Duke, George Leitmann also received a one-third share of the van Ruysdael. He first heard about the Final Settlement of Heirless Property law and the *Wiener Zeitung* listing in 1969 from a friend living in New York. On behalf of himself and his family, Leitmann claimed the van Ruysdael, the Steen and a coin collection that sounded like the one that had belonged to his father. "We put in the claim," he says. "That was in the early '70s, and we didn't hear anything for a while. Then I got a summons to the proceedings—it arrived the day before the hearing, so I called the Austrian consul in San Francisco, and he called an Austrian lawyer in Vienna, even though it was two in the morning there. It was that attorney who subsequently stayed with the court case. I wound up going to the proceedings twice, and other witnesses had to come to Vienna at my expense."

Between 1945 and 1969 the Leitmanns had never looked into whether the confiscated property could be traced. "We had absolutely no reason to believe that the paintings were in Austrian hands," says Leitmann. "I had never really thought about those things, and my mother was so disgusted with the whole thing that she had to be persuaded to file a claim. She has never gone back to Austria since we left."

Shortly into the claims proceedings, Leitmann found that the coin collection listed in the *Wiener Zeitung* wasn't his father's, so he withdrew that claim.

The final settlement on the van Ruysdael—Leitmann says that initially there were 13 or 14 claimants for the landscape—came down to him, Duke and a Dutch claimant. Leitmann's claim was based on his memory and his mother's. "My mother's description and mine were quite different," he says. "I was 13 years old [when the paintings were taken] and I wasn't particularly interested in Dutch master paintings."

His mother was unable to go to the proceedings, Leitmann says, so he presented her description to the court and stated his own. Leitmann says he was surprised when he finally saw the painting. His recollection of it had not been ac-



**Walter Maass filed a claim for a family painting by Claes Molenaer, a contemporary of Rembrandt. He got it back, but only on the condition that the painting be returned to the Austrian government upon his death.**

curate, while his mother's was. "I thought it showed men dancing in a courtyard," he says, "but my mother had described them as peasant couples. It was peasant couples, but because the women were dressed in baggy pants I had thought there were only men."

The Steen painting was claimed by 13 parties, but the judge reduced the possible owners to Leitmann and the same Dutch claimant who had filed for the van Ruysdael. After the final judgment had awarded Leitmann a half interest in the painting, the judge gave his lawyer a copy of the receipt showing that Hitler's agent had bought the painting through the Berlin auction house H. W. Lange in February 1942. The Dutch claimant had supported his claim with an inventory, purportedly from the dealer who had sold the Steen to an auction house. The inventory, however, was dated July or August of 1942, according to Leitmann, a half year after Hitler's agent had acquired the painting.

"From a personal point of view I thought it was interesting that someone from the Austrian Monument Office pointed out to the judge discrepancies in the Dutch claim," Leitmann says. "The person from the Monument Office said that no judgment should be given until the disputes were resolved." If the judge had followed the Monument Office's suggestion and if Leitmann and the Dutch claimant had not been able to settle the dispute, the painting would have remained in the custody of the Monument Office. It would later have become the property of Austria.

The judge, however, decided instead to grant both Leitmann and the Dutch claimant a half interest in the painting. "The judge told our attorneys that if we did not accept the judgment there would be no settlement," says Leitmann. "The Austrian consul from San Francisco, who was in Vienna at the time, advised me to accept the judgment. I

have a letter from him in which he told me that a bird in the hand is worth two in the bush. I wrote him at the time and said I considered this blackmail." Leitmann accepted the decision.

Leitmann found two aspects of the cases intriguing. "What is curious is that the Austrian government produced a television show about their restitution of stolen property that was aired in the early 1970s in Austria, in England on the BBC and in Denmark, and many claims were made after the program was aired. Many of the paintings were shown. The Dutch claimant for the Steen gave a rather close description of the painting. He was one of the people who admitted he had first seen the show before entering a claim." Leitmann says that the Steen was shown clearly in the television show, while the van Ruysdael was not; moreover, the Dutch claimant gave a better description of the Steen than of the van Ruysdael.

"The interesting thing is that the Austrian government charged storage," says Leitmann. The charge was 100,000 Austrian schillings—then about \$7,800—for each painting, with the charge to be divided among the claimants.

Although neither Schmidt nor a member of his staff would explain why Austria charged storage for property that had been confiscated, the latter did say that the storage was charged only for some property and that "if he had to pay a charge, it would have been legal."

The Steen was sold in an auction at Christie's in London, on November 30, 1979, for £70,000 (\$148,400); the van Ruysdael was sold at Christie's on July 11, 1980, for £13,000 (\$30,200).

According to Leitmann, once he had paid for all the lawyers' fees, travel expenses to and from Vienna for himself and witnesses to testify at the hearings, storage charges and the auction house's commissions, he had ended up losing money in the process of getting back the paintings. The financial loss, says Leitmann, "constituted restitution for the paintings that had been taken."

Although claimant Walter Maass did get back a painting, upon his death it will be given to the Finanzprokuratur. As Bauernfeind explains, "He said he would give the painting to the Finanzprokuratur because the proceedings were so fair."

The painting by Claes Molenaer, a contemporary of Rembrandt, was purchased by Maass' family in 1930. "In May 1938 whatever was in my parents' house was confiscated by the Gestapo," says Maass, who does not know exactly what happened to the painting. "You see, I never saw my parents again." Maass fled to Holland, where he stayed throughout the war, and then moved to New York in 1947. He is a chemist and lives in New York.

Maass was in Vienna when the *Wiener Zeitung* listing appeared in 1969, and he noted that it included a Molenaer. "Molenaer is not a painter who is very well known in Austria," he says, "and the brief description in the newspaper fit the subject of the painting." Maass filed a claim for the work in April 1970, giving a more complete description than that in the newspaper. Based on this claim, the Austrian government agreed to hear his case.

Proving that his family had owned the painting, says Maass, "was very complicated. Of course I didn't have any invoice. When the Nazis took over Austria, you did not take all your invoices with you—this is not the way things went at that time." Maass says that testimony from witnesses was also accepted, but "witnesses were hard to find



**Hundreds of unclaimed works of art—paintings, watercolors, prints and drawings—are stored in Austrian museums; this painting by Lovis Corinth hangs in the Galerie in der Stahlberg in Vienna. Other “heirless” works were dispersed to the offices of government bureaucrats and to storage depots.**

after so many years.” However, he did locate two friends of his parents who testified that they had seen a Molenauer at the Maass home.

“The judge asked me to draw the painting, believe it or not—I hadn’t seen it in 30 years. The painting depicts a Dutch winter scene. There are horses and people, and I remembered there was a tower in it, but I couldn’t remember where it was. I found it farfetched that they let a person draw a painting after 30 years. Ask yourself—would you be able to describe something you hadn’t seen for 30 years, unless it’s something very, very famous?”

Maass’ description and drawing were fairly accurate, he says. “Of course there were mistakes. I could not prove that I owned it 100 percent, and the case was very doubtful.” The judge showed Maass a photograph of the painting, which he recognized as his family’s, but the recognition, of course, did not add tangible proof to Maass’ case. He was, however, able to reach an agreement with the Finanzprokuratur and got back his painting in January 1979, nine years after filing his claim.

Bauernfeind, whom Maass describes as “a very nice, cooperative man,” was representing Austria at the hearing. Although Maass could not conclusively prove that he owned the work, “I got the painting back for my lifetime, and I declared myself willing to leave it to the Finanzprokuratur after I die.” The painting is now in Maass’ Vienna apartment, where he spends part of each year.

**N**O ONE IN THE FINANCE OR JUSTICE MINISTRIES or in the Federal Monument Office will disclose the number of paintings and other works of art returned under the Final Settlement of Heirless Property law. Schmidt says, “Very few of them were given back.” The judge previously mentioned, who adjudicated many claims

cases, says that although he does not know how much property was returned, claims were made on roughly 600 of the 1,231 lots, with approximately 80 percent, or 480, made on paintings, and the rest on tapestries, coins, medals and household furnishings.

Both Sailer and Schmidt say they have inherited the property from their predecessors and are not familiar with, or particularly concerned about, the subject. When asked if he knew how people filed claims, Sailer, who has been president of the Monument Office for two years, said, “I’ve never been interested in this. It wasn’t my job. It was done by a civil process. You have to apply through a court.”

The claims period ended January 1, 1973. Although an official in the Justice Ministry says that the last unresolved case was concluded in 1980, sources both within and close to the Justice Ministry have heard reports that some claims are still being contested.

Bruno Aigner, press secretary for the Science and Research Ministry, which oversees the Federal Monument Office and Austria’s museums, says that if someone were to present an ironclad claim even now, it would be reviewed. At the Finance Ministry, which reviews claims, Schmidt says flatly that no claims have been accepted since 1973 and none would be considered now. Sailer says that he is not involved in the question of whether claims can be accepted or not, although in 1971 he wrote to a woman in New Jersey who had inquired whether a painting from her family was being held by the Federal Monument Office. He informed her that the claims period had expired.

The bulk of the property remains in the monastery at Mauerbach, although after the claims proceedings were concluded, many paintings were dispersed to the offices of Austrian bureaucrats and to storage depots and museums. According to a government official who asked not to be named, many paintings were transferred from the monastery to museums, where they would be housed in an environment better suited to exhibiting them.

The Oesterreichische Galerie, aside from owning paintings that had belonged to Alma Mahler-Werfel, now stores 24 paintings from the *Wiener Zeitung* list. Gerbert Frodl, acting director of the museum and son of Walter Frodl, who headed the Federal Monument Office from 1965 to 1970, says that he chose them from among 50 to 60 works. “For Austrian art there are some very interesting paintings,” he says, although he describes them as having more historical than art-historical value. “Most of them have local importance, though they’re nice paintings, of course.” Among the works are four by Hans Makart, four by Albert Zimmermann, two by Rudolf Ribarz and two unattributed paintings described as “Austrian, 18th century.” According to Frodl, none are on exhibit.

The Albertina Gallery in Vienna serves as a repository for unclaimed prints, watercolors and drawings. “We didn’t choose anything,” says Walter Koschatzky, director of the gallery. “It has been here since the war.” He says that “the quality of the works is without interest. We have a small box [containing the prints and drawings], and the owners used to come here with a paper from the Finance Ministry to pick up their things. Maybe there are 25 prints left.”

According to a list provided by the Albertina, its collections include 252 prints and drawings from the *Wiener Zeitung* list. Among them are 19 watercolors by Rudolph von Alt (an exhibition of his work was held at the Albertina last March), a group of 200 drawings by Makart and 23 prints

by Ziegler-Schutz.

The Kunsthistorisches Museum holds 83 unclaimed paintings, including works attributed to Christoph Paudiss, Alessandro Magnasco, Jusepe de Ribera, Abraham Mignon, Francesco Zuccarelli, Oswald Achenbach and Alexandre Calame. Hanging in the Galerie in der Stahlberg—which is affiliated with the Kunsthistorisches—is a Lovis Corinth; its label, as of April 1984, reads "New Acquisition."

According to Herman Fillitz, director of the Kunsthistorisches, "We were asked if we would take over the paintings in a special inventory so that if the heirs came we could deliver them. The paintings are not in our inventory." The paintings were received in 1979 and 1980. Fillitz acknowledges that the museum was not compelled to hold the paintings, but 83 were chosen, "because of a certain quality of style. They're mostly 19th-century paintings. All these painters are second and third quality."

"We were also interested in them because we have to give paintings to special reception rooms—sitting rooms of embassies. All countries, naturally, must give furniture, paintings and carpets to embassy and ministry offices, and high officials must have well-appointed rooms. We have a lower quality of things in our storerooms [than in exhibitions], and it is useful to loan these things, which have a low value, to our embassies and ministries."

The heirless property belongs to the Republic of Austria, but from time to time a government official will give thought to auctioning the various objects, with proceeds going to a charitable organization.

Schmidt says that Austria's former chancellor, Bruno Kreisky, and the former Minister of Science and Research, Hertha Firnberg, had planned an auction in 1981 but decided against it before leaving office in 1983. Schmidt says he will recommend to the new Finance Minister, Franz Vranitzky, that the property at Mauerbach be auctioned and the rest kept by Austria. "They won't become more beautiful out in the monastery," he says, adding that the Ministers of Finance and of Science and Research should decide how the proceeds of the sale should be used. Bauernfeind says, "The individual civil servant doesn't know about this and isn't concerned with this decision." Sailer expressed a similar sentiment: "I do not know what will happen to the paintings. I am only here to store them. It's not my job to decide that sort of thing."

Fillitz believes it is appropriate for Austria to own and display the heirless paintings. "I think it's right that the objects for which the previous owners don't exist any longer should be made the property of the government under the condition that if one of the heirs claims a painting, it should be delivered to him. I think the solution is to wait and to keep the objects in a separate inventory. If we auction the paintings, what happens if five years from now somebody comes who proves that he is really an heir?"

A solution along those lines would require new legislation. The restitution of works of art was carried out under laws enacted to remedy Nazi looting. In standard Austrian law, according to the judge who consented to be interviewed by *ARTnews*, someone who buys stolen property from a seller who doesn't know it's stolen gains clear title to the work; the person from whom it was stolen cannot reclaim the work from the uninformed buyer. The restitution laws required even uninformed buyers of property looted from victims of the Nazi regime to return it to the original owners. According to the judge, however, although the restitution

laws are still on the books, they have no force because the claims periods have expired.

Although Heinz Fischer, the Minister of Science and Research, who took office in 1983, was unavailable for comment, Aigner says that as of mid-October 1984 his ministry had informally suggested to the Finance Ministry that an auction be held, with the proceeds going to a humanitarian organization. Although Aigner says the issue is on Fischer's agenda, it is not a subject that either he or Fischer pursues vigorously; he says he had not discussed the matter with Fischer at any time between April and October 1984; the topic had come up earlier, he says, only because he was asked about it.

Sailer sees no reason for holding an auction. He cites European legal practices that give heirless property to the state as the underlying reason for Austria's keeping the paintings: "Look, when a man dies and his estate has no heirs, it goes to the state. That is an old idea in all the countries of Europe." According to Sailer, the 1969 law allowed previous owners to claim their property. Asked if he sees the difference between a situation in which an estate becomes the property of Austria as the result of a person dying without heirs and a situation in which the state claims ownership after killing an individual, he initially says, "No. That is the same kind of lost owner as when someone dies and has no father or son-in-law. Who was the owner in former times? There is nobody to give it back to." He adds, "When I do not know who was the owner, what should I do? Put it on the street?"

As noted, both Aigner and Sailer believe that the paintings and other property did not necessarily belong to people persecuted by the Third Reich, though an official in the Justice Ministry, who asked not to be identified, says, "We're sure the objects were taken away from their owners by the National Socialists and, after the war, were given to the Austrian government by the Allies."

An official in the Justice Ministry who wants to maintain the status quo says, "Don't write this article. We have finally settled this and we might have to change everything."

Basically, many people in the Austrian government believe that the paintings and other works of art are rightfully the property of Austria. The judge who presided over the restitution claims filed under the 1969 law says that the American officer who transferred the works to Austria in 1952 on behalf of the American government said that Austria should be able to keep the paintings. Asked to provide documentation of the officer's statement, the judge says that he cannot remember whether he had read the comment in a letter or whether it was a verbal statement.

The property of Herbert Steiner's family may still be in the ten apartments of the building where he grew up; he has never made a claim for the paintings and furniture, and if he had, the claim would have been against the apartment owners rather than the federal government. "What should you do?" asks Steiner. "For me this is an emotional thing. I lost my parents. I last saw them when I was 16 years old. Nobody can give them back to me with money or carpets." He adds, "You mustn't blame the people who are in the apartments now. In this way, Hitler and Germany understood how to make people in Austria and Germany a part of their guilt."

There may be no one to blame, but there is no one to praise.