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

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

I. INTRODUCTION

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


2. See Alyssa Bickford, Article, Nazi-Looted Art: Preserving a Legacy, 49 CASE W. RES. J. INT’l L. 115, 115 (2017) (providing background information about Holocaust); The Holocaust, HISTORY (Oct. 14, 2009), https://www.history.com/topics/world-war-ii/the-holocaust [https://perma.cc/5RKC-3Z3U] (explaining Holocaust aftermath). Nazis murdered an estimated 5.8 million Jews, which was almost one-third of the world’s Jewish population. See Julia Parker, Note, World War II & Heirless Art: Unleashing the Final Prisoners of War, 13 CARDOZO J. INT’L & COMP. L. 661, 665-66 (2005) (highlighting statistics to show death count); see also Eugene Davidson, The Trial of the Germans: An Account of the Twenty-Two Defendants Before the International Military Tribunal at Nuremberg 583 (1966) (highlighting Holocaust’s unique nature). No other mass killing in history was like the Holocaust. See Davidson, supra, at 583. Whereas other racial murders throughout history were spontaneous, the Holocaust was an organized, well-considered crime of mass murder, making it a more complicated occurrence of cruelty. Id.

3. See Parker, supra note 2, at 670 (estimating aftermath of Nazi looting); see also Michael J. Bazyler, Holocaust Justice: The Battle for Restitution in America’s Courts 294 (2003) (giving examples of confiscated possessions). The Nazis burned, destroyed, sold, or kept nearly one-fifth of art in the Western world. See Parker, supra note 2, at 670.

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

5. See Michael J. Kurtz, America and the Return of Nazi Contraband: The Recovery of Europe’s Cultural Treasures 25 (2006) (noting racial ideology one reason for looting). Nazis believed all artwork created in Germany or by a German belonged to the Reich. Id.; Jennifer Anglim Kreder, Reconciling Individual and Group Justice with the Need for Repose in Nazi-Looted Art Disputes: Creation of an International Tribunal, 73 BROOK. L. REV. 155, 160 (2007) [hereinafter Kreder, Creation of an International Tribunal] (discussing Nazis’ goal of destroying Jewish culture); Bickford, supra note 2, at 115 (stating Nazis stole for personal benefit). One main objective of the Nazis’ “Final Solution” was to destroy Jewish culture because Hitler
reasoning behind Nazi looting, these “incalculable” losses still haunt Holocaust victims and their heirs as they seek justice through the restoration and return of their stolen property.6

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

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


9. See O’Donnell, supra note 8, at 52 (highlighting impact of restitution). Restitution not only plays a role in property return, but also helps reveal stories about the past. Id. Specifically, by uncovering stories from past lootings, restitution efforts promote discussion about cultural identities of those who were victims, perpetrators, and beneficiaries of the wrongdoings. Id. at 53. Restitution does not provide a “whitewashing voucher,” and does not ignore the important process of seeking the truth, but is an essential part of the healing process. Id. at 55.
In many other countries at the end of the World War II. Recently, however, more efforts have been made to return Nazi-looted property to Holocaust victims and their heirs. Congress enacted the Justice for Uncompensated Survivors Today (JUST) Act in 2018 as another effort to promote restoration of Nazi-looted property. The JUST Act requires the U.S. Secretary of State to report the nature and extent of laws and policies created by various countries regarding restitution of Nazi-looted assets. By assessing and describing the extent of restitution efforts created in different countries, the JUST Act seeks to support returning wrongfully-seized property, or, in the case of heirless property, compensating

10. See Kurtz, supra note 5, at 45 (recognizing area regarding restitution lacks concrete policies).
Holocaust survivors in need and encouraging Holocaust education. This recent effort thus demonstrates the recognition of the continued need to promote restitution in order to help provide justice to victims and their heirs.

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

II. HISTORY

A. Holocaust Background and History of Nazi Looting

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

14. See Justice for Uncompensated Survivors Today (JUST) Act of 2017 § 2(b) (providing direction for allocating heirless property); see also Kreder, Analysis, supra note 7, at 22-23 (discussing JUST Act’s purpose).
15. See Kreder, Analysis, supra note 7, at 22 (noting JUST Act will help survivors obtain justice for Nazi wrongdoings).
17. See 164 CONG. REC. H3464 (daily ed. Apr. 24, 2018) (statement of Rep. Deutch) (noting failure to address needs of survivors). Representative Ros-Lehtinen criticized the name of the JUST Act, saying that “[i]t has a fancy name, but there is no justice.” Id. at H3461 (statement of Rep. Ros-Lehtinen); see Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 120 (considering nonbinding policies ineffective); Kelly Ann Falconer, Comment, When Honor Will Not Suffice: The Need for a Legally Binding International Agreement Regarding Ownership of Nazi-Looted Art, 21 U. Pa. J. Int’l Econ. L. 383, 386 (2000) (noting international efforts will continue unsuccessfully due to nonbinding nature); Parker, supra note 2, at 693 (suggesting need for binding agreement).
18. See infra Part III.
19. See infra Part II.
20. See infra Part III.
21. See infra Part IV.
22. See The Holocaust, supra note 2 (summarizing Holocaust’s impact); see also Bickford, supra note 2, at
race, led the mass murder.23 Hitler initially proposed the idea of racial ideology
in his autobiography, *Mein Kampf*, which called for eliminating “inferior”
races.24

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

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

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

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

24. See Paulina McCarter Collins, *Comment, Has “The Lost Museum” Been Found? Declassification of
Government Documents and Report on Holocaust Assets Offer Real Opportunity to “Do Justice” for Holocaust
to mass murder non-Germans).

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


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

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

29. See Bazyler & Fitzgerald, *supra* note 6, at 691 (estimating between eight and ten million forced
laborers); *The Holocaust*, supra note 2 (describing creation of concentration camps and death tolls at each camp).
Those the Nazis imprisoned lived in horrendous conditions, where they were brutally assaulted both physically
and psychologically. See Inga Cleindinnen, *Reading the Holocaust* 32 (1999); Marrus, supra note 6, at
20 (emphasizing forced labor another way of mass murder). Jews were not the only targeted group, as groups of
individuals with disabilities, homosexual individuals, and individuals of Roma background were also deported
to concentration camps where they were forced to work, subjected to medical experiments, and became victims
of systematic mass murder. See Madison Horne, *Holocaust Photos Reveal Horrors of Nazi Concentration

30. See *The Holocaust*, supra note 2 (noting Nazis forcibly displaced Jews); see also Lawrence M. Kaye,
his empire throughout Europe, but was defeated by the end of World War II and ultimately committed suicide in April of 1945.31

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

The mass theft of artwork and other assets during the Holocaust is immeasurable.37 The scale of Nazi looting was unprecedented in history, and even after the Holocaust, “Holocaust survivors—witnesses to brutal murders, torture, and heartless thievery of the Nazis and their accomplices—continue to be cheated and defrauded, inexplicably as they fight for the rightful return of their stolen property.”38 As a result, victims, and eventually the international
community, called for international restitution efforts that would have to be equally as immense to provide justice and adequate compensation for those the Nazis wronged.39

B. Post-World War II Early Restoration Efforts

1. Initial Restitution Efforts by Germany

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

2. Allies’ Early Restitution

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

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

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

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

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

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

44. See O’Donnell, supra note 8, at 60 (noting policies Inter-Allied Declaration created). Sixteen governments proclaimed their goal to eliminate the dispossession of property. See KURTZ, supra note 5, at 47
looting, plunder, and sham transactions, allowing the Allies to strip the stolen property of its Nazi-fabricated legality.\textsuperscript{45} It created a general restitution initiative, but was nonbinding and most countries were hesitant in enforcing the policies.\textsuperscript{46}

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

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

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

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

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

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

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

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

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

\textsuperscript{52} See Kreder, Analysis, supra note 7, at 8 (describing claims commissions).

\textsuperscript{53} See id. (pointing out victims usually unsuccessful because they lacked evidence of ownership).

\textsuperscript{54} See id. (summarizing reasons for dysfunctional commissions).
1. Switzerland

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

2. Austria

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

55. See Eizenstat, supra note 5, at 47 (providing purpose behind opening accounts to hide assets from Hitler); Bazyler, supra note 25, at 6 (describing class action suit filed against Swiss banks).
57. See Bazyler, supra note 25, at 33-39 (summarizing plaintiffs’ claims against Swiss banks); Neuborne, supra note 56, at 805-08 (providing details of litigation against Swiss banks).
58. See Eizenstat, supra note 5, at 51 (criticizing Switzerland’s lack of cooperation). Eizenstat was heavily involved in negotiations with Switzerland over the unreturned assets and noted that during his experience negotiating, “[t]he Swiss banks were at best insensitive and at worst antagonistic . . . [t]he Swiss government was not cooperative.” Id.; see Beker, supra note 40, at 560 (asserting Switzerland hesitant to acknowledge role in Holocaust); see also Bazyler & Fitzgerald, supra note 6, at 690 (commenting on United States’ impact on plaintiffs’ negotiations with Switzerland).
59. See Bazyler & Fitzgerald, supra note 6, at 690 (providing reasoning for Swiss compliance with litigation). The Swiss banks were ultimately influenced to settle because of pressure from the United States. Id.; see Neuborne, supra note 56, at 808-09 (providing details of settlement with Swiss banks). The settlement agreement was finalized on January 26, 1999. See Bazyler, supra note 25, at 76 (highlighting details of settlement with Swiss banks). The Swiss banks were to pay the settlement in two portions: $250 million was owed no later than ninety days after the settlement was approved, followed by three payments of $333 million, each to be paid on the first, second, and third anniversary of the settlement agreement approval date. Id. at 69.
60. See Eizenstat, supra note 5, at 281 (stating Austrian restitution efforts). Austria enacted the seven laws between 1946 and 1949. Id.
61. See id. at 282 (emphasizing Austrian leaders’ complicity during Holocaust); Falconer, supra note 17, at
Austrian Jewish community ownership of heirless property the Nazis had stolen.62 In addition, the Austrian government created the National Fund for the Victims of National Socialism to make restitution payments to Austrian Holocaust survivors, Jewish museums, synagogues, and hospitals.63 Lastly, the government created the Austrian Fund for Reconciliation, Peace, and Cooperation to compensate over 20,000 former slaves for their work during World War II.64

3. France

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

4. Germany

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

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


63. See Eizenstat, supra note 5, at 282-83 (noting Austrian government’s restitution efforts).

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

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

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

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

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

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

70. See Bazyler & Fitzgerald, supra note 6, at 691-92 (describing progression of German compensation to forced laborers). During World War II, between eight and ten million people were forced to work for private companies in Germany. Id. at 691.
using forced labor in Germany for economic benefits. The litigation sparked interest in the U.S. media, resulting in campaigns “naming and shaming” companies like Ford that participated in enslaving workers. Pressure from the United States quickly led the German government and industry leaders to negotiate a $5 billion settlement to compensate the surviving Nazi-era forced laborers. The settlement included an agreement precluding any future World War II-related legal claims against any German companies in exchange for enacting a law in Germany establishing a German Fund Foundation.

D. International Restitution Agreements

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

Though the intentions of the commitments made at the Washington

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71. See id. at 691-92 (summarizing lawsuit filed against Ford).
72. See id. at 692-93 (emphasizing media’s role in litigation).
74. See Bazyler & Fitzgerald, supra note 6, at 695-96 (noting details of settlement agreed on by President Clinton and German Chancellor Schröder). Payments from the fund, which over 1,600 German companies contributed to, were distributed to survivors beginning in June 2001. Id. at 696.
75. See Kreder, Creation of an International Tribunal, supra note 5, at 169-71 (providing general overview of Washington Conference); Collins, supra note 24, at 141 (summarizing Washington Conference).
76. See Bazyler & Fitzgerald, supra note 6, at 710 (providing general purpose of plan created at Washington Conference); Collins, supra note 24, at 141 (highlighting Washington Conference objectives).
77. See Bazyler & Fitzgerald, supra note 6, at 710 (highlighting plan created at Washington Conference); Mullery, supra note 32, at 651 (noting key points of eleven principles). The Washington Conference objectives included pressuring countries to identify art that was not yet returned, creating a central registry for art that had been identified, and constructing alternative ways to resolve stolen property disputes. See Mullery, supra note 32, at 651; see also Washington Conference Principles on Nazi-Confiscated Art, COMMISSION FOR LOOTED ART EUR., https://www.lootedartcommission.com/Washington-principles [https://perma.cc/sB5R-F2UT] (providing full list of agreed-upon terms at Washington Conference).
78. See Kreder, Creation of an International Tribunal, supra note 5, at 170-71 (summarizing briefly Washington Conference’s purpose); see also Falconer, supra note 17, at 390 (summarizing purpose of countries gathering at Washington Conference). The guidelines at the Washington Conference called for a “just and fair solution.” See Falconer, supra note 17, at 423.
Conference was promising, the nature of these promises lacked formality.\textsuperscript{79} Thus, they were unenforceable and ultimately overlooked.\textsuperscript{80} Creating an agreement merely bound by a moral commitment to act was not satisfactory due to the lack of an official enforcement mechanism, which is why the progress made by these principles has been inconsistent.\textsuperscript{81}

Another international effort with similar objectives to the Washington Conference was the four-day long Prague Holocaust Era Assets Conference.\textsuperscript{82} This conference aimed to refocus the attention on restitution and promote the sense of urgency that was not implicated during the Washington Conference, while also highlighting accomplishments made since 1998.\textsuperscript{83} On the last day of

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\item \textsuperscript{79} See MARRUS, supra note 6, at 57 (discussing agreement nonbinding). The agreements made at the Washington Conference were nonbinding, and therefore lacked a formal enforcement mechanism. Id. People were dissatisfied because the agreement solely relied on moral authority and had no other enforcement mechanism. Id. at 56; see Bickford, supra note 2, at 120 (emphasizing nonbinding nature of Washington Conference principles).
\item \textsuperscript{80} See Bazyler & Fitzgerald, supra note 6, at 710 (noting minimal action taken after Washington Conference); Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 139-40 (criticizing nonbinding nature and lack of remedy created at Washington Conference).
\item \textsuperscript{81} See MARRUS, supra note 6, at 56 (emphasizing lack of formal enforcement method and rather moral commitment made at Washington Conference); Falconer, supra note 17, at 391 (discussing inconsistent progress from nonbinding agreement). The principles created at the Washington Conference were “overly optimistic” because the countries that agreed on the principles were only bound by moral authority and had no further obligation. See MARRUS, supra note 6, at 56 (showing countries merely agreed to “cooperate”); Falconer, supra note 17, at 391 (describing flaws in nonbinding principles). Due to the nonbinding nature of the principles, most of the progress made after the Washington Conference has not been uniform or steady. See Falconer, supra note 17, at 391. \textit{Contra} EIZENSTAT, supra note 5, at 199-200 (discussing Washington Conference’s positive impact). Many American museums, however, take the principles very seriously, and the principles changed the way people buy art today. Id. For the most part though, private art collectors do not abide by the principles. Id. at 203. More recently, five countries have been criticized for their lack of efforts in “identifying, publicizing, restituting and compensating for some of the looted art, cultural objects and books.” William D. Cohan, \textit{Five Countries Slow to Address Nazi-Looted Art, U.S. Expert Says}, N.Y. TIMES (Nov. 26, 2018), https://www.nytimes.com/2018/11/26/arts/design/five-countries-slow-to-address-nazi-looted-art-us-expert-says.html [https://perma.cc/9NJN-LM6C] (quoting Stuart E. Eizenstat, advisor to U.S. Department of State). Hungary, Poland, Spain, Russia, and Italy are “foot-dragging” and not upholding their promises made during the Washington Conference.
\item \textsuperscript{82} See Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 144-45 (providing brief history of Prague Holocaust Era Assets Conference). The meeting was held in Terezín, one of the ghettos where Nazis held and persecuted thousands of Jews during World War II. Id. at 118.
\item \textsuperscript{83} See Bureau of European & Eurasian Affairs, supra note 11 (describing purpose behind Prague Holocaust Era Assets Conference). Poland was specifically criticized at the Prague Holocaust Era Assets Conference for not having made progress restoring stolen property to victims and their heirs. See Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 168 (highlighting countries lacking restitution efforts). Despite the fact that Nazis killed approximately 6.5 million Polish citizens, including 3.5 million Jews, the Polish government has been reluctant to establish firm restitution plans. See Cohan, supra note 81 (commenting on significant amount of Polish Holocaust victims); Nawojka Cieślińska-Lobkowicz, \textit{The Obligation of the State or a Hobby of the Few. The Implementation of the Washington Principles in Poland}, in HOLOCAUST ERA ASSETS: CONFERENCE PROCEEDINGS 979, 980 (Jith Schneider et al. eds., 2009), https://www.lootedart.com/web_images/pdf2018/1.1.4%20Holocaust_Era_Assets_Conference_Proceedings_2009.pdf [https://perma.cc/DHA7-W6KG] (noting lack of Polish action taken after Washington Conference); Samuel Osborne, \textit{Many Countries Yet to Return Jewish Property Stolen by Nazis, Study Claims}, INDEPENDENT (Apr. 24, 2017), https://www.
the meeting, forty-six countries adopted the Terezín Declaration on Holocaust Era Assets and Related Issues (Terezín Declaration), which reaffirmed the signatories’ support of the Washington Conference Principles on Nazi-Confiscated Art (Washington Principles) established more than a decade prior. The Terezín Declaration called for government and private actors to enact just solutions regarding Nazi-stolen property, but due to the agreement’s nonbinding nature, few of its signatories have acted upon this intention.

E. Restitution in the United States

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

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

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

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

1. The Presidential Advisory Commission on Holocaust Assets

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

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

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

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

90. See id. at 596 (noting negative repercussions for good-faith purchasers); see id. at 749 (providing Commission’s objectives to provide historical record of assets described); PRESIDENTIAL ADVISORY COMM’N ON HOLOCAUST ASSETS IN THE U.S., supra note 11, at 1-2 (stating Commission’s purpose and importance of historical investigation). The research conducted would ultimately help establish history while also providing a form of justice. See PRESIDENTIAL ADVISORY COMM’N ON HOLOCAUST ASSETS IN THE U.S., supra note 11, at 2; see also Bazyler & Fitzgerald, supra note 6, at 748-50 (detailing establishment and investigatory purpose of Commission); Demarsin, The Troublesome Legacy, supra note 88, at 291 (explaining Commission’s mission).

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

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

93. See Bazyler & Fitzgerald, supra note 6, at 754-55 (noting final results of Commission’s investigation).
2. The Holocaust Victims Redress Act

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

3. The Holocaust Expropriated Art Recovery Act

The United States recognized that looting of artwork was an especially unique aspect of Nazi destruction of Jewish culture, thus calling for a distinctive law to restore the damage done.\(^{98}\) In an effort to provide victims and their heirs with a
fair chance to recover artwork stolen by the Nazis, President Obama signed the Holocaust Expropriated Art Recovery (HEAR) Act of 2016 into law. The HEAR Act provided a unique form of relief to victims as it extended the statute of limitations for claimants to recover artwork or other property lost because of the Nazis.

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

4. The JUST Act

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

had stolen hundreds of thousands of works of art, worth approximately $20.5 billion today. It is estimated that $5 billion worth of that art is located in the United States. 99 See Barnes, supra note 86, at 611-16 (providing legislative history of HEAR Act); Kreder, Analysis, supra note 7, at 18 (describing HEAR Act’s purpose).


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

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


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

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

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

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

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\textsuperscript{108} See id. (listing organizations supporting JUST Act). In passing the JUST Act, Congress was largely influenced by the American Jewish Committee, the Anti-Defamation League, Jewish Federations of North America, B’nai B’rith International, HIAS Refugee Assistance Organization, Religious Action Center for Reform Judaism, the Orthodox Union, and others. See id.
\textsuperscript{109} See id. at 3464 (statement of Rep. Royce) (acknowledging organizations’ goals behind JUST Act).
\textsuperscript{110} See Kreder, Analysis, supra note 7, at 22 (observing JUST Act’s purpose to “help survivors get justice instead of excuses from their governments” (quoting Press Release, supra note 38)); Kreder, The New Battleground, supra note 11, at 44 (noting family members wish to recover property to connect with ancestors). There is skepticism about the JUST Act, as it is unclear how the legislation will actually bring about changes to restoration of stolen art specifically. See 164 Cong. Rec. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (questioning JUST Act because it does not require government action).
\textsuperscript{111} See 164 Cong. Rec. H3461 (daily ed. Apr. 24, 2018) (statement of Rep. Ros-Lehtinen) (advocating against enacting JUST Act); Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 185 (opposing creating nonbinding restitution agreements). It is argued that there is no need for “yet another nonbinding recital of good intentions[,]” and that instead the international community should implement the existing framework agreed on at the Washington Conference. See Demarsin, Restitution of Nazi Era Looted Art, supra note 1, at 185. There has also been international opposition to the JUST Act, specifically from Poland. See Vanessa Gera & Monika Scislowska, Trump Signs Holocaust Property Law that Has Angered Poland, Bos. GLOBE (May 11, 2018), https://www.bostonglobe.com/news/world/2018/05/10/trump-signs-holocaust-property-law-that-has-angered-poland/8p0Wg0qJF0iVzYFr7b5i4J/story.html [https://perma.cc/YR8W-GL67] (summarizing Polish opposition to JUST Act). As the only signatory country that has not enacted any formal restitution legislation, Poland believes it should not be held responsible for the Nazis’ actions and that the JUST Act discriminates against the nation. Id.; see Why It Is Important to Stop Act S. 447?, Stop Act HR 1226 (Jan. 16, 2018), https://stopacthr1226.org/why-it-is-important-to-stop-the-acts-s447-and-hr1226/ [https://perma.cc/3PY3-62AD] (noting Poland disapproves of JUST Act).
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Another opposition to the JUST Act was that it allows governments to use heirless property to provide for other survivors’ needs, which ultimately encourages countries to stall. By allowing governments to pay off their own obligations with heirless property, they can wait for property to become heirless and compensate survivors with those assets, rather than pay off government obligations with the government’s current assets, essentially stealing the property yet again.

Despite this initial resistance, the Act passed in the Senate in December 2017 by a “unanimous consent” vote. It subsequently passed in the House of Representatives in April 2018. The JUST Act was officially enacted on May 9, 2018.

III. ANALYSIS

A. Weaknesses of the JUST Act

The JUST Act was enacted with good intentions as it reiterates the United States’ emphasis on the importance of compensating Holocaust victims for their innumerable losses. Further, it promotes the public interest in restoring stolen property by encouraging Terezín Declaration signatories to act on their agreement. Nevertheless, given that World War II ended over half a century ago, and in that time less than 20% of stolen assets have been returned, creating another nonbinding law after this substantial amount of time is not an adequate step towards restitution, despite Congress’s good intentions in enacting it. The JUST Act is yet another “nonbinding recital of good intentions” and because of
this, the Act’s objectives are unlikely to be obtained.121

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

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

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

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

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

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

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

126. See Kreder, State Law Claims, supra note 84, at 331 (arguing lack of fair restitution solutions in United States). There is a lack of “just and fair” solutions for victims and their families, and the JUST Act is another restitution effort that falls short. See id.
restitution. For example, the JUST Act resembles the initial arrangement in the Inter-Allied Declaration in that it is not legally binding on countries to follow, and is purely an effort that does not force any action. The JUST Act is also analogous to later initiatives, such as the Washington Principles and Terezín Declaration, because the pertinent countries involved in these agreements are not held legally accountable for failing to provide adequate restitution efforts. This lack of a formal, binding agreement did not further restitution during previous attempts and will not result in an increase in restitution or any other adequate remedy for victims and their families in the future.

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

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

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


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


133. See Demarsin, *The Troublesome Legacy*, supra note 88, at 292 (emphasizing importance of remedies for Holocaust victims and families); Kreder, *Creation of an International Tribunal*, supra note 5, at 170-71 (indicating laws lacking legal remedy basically ineffective).
justice for Holocaust victims and their families.134

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

B. Proposed Solutions

1. The Creation of a Legally Binding International Agreement

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

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

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


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

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

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

140. See Gera & Scislowska, supra note 111 (noting JUST Act does not grant United States ability to act).
An effective and sufficient solution includes an agreement that would “explicitly preempt individual statutes of limitations and set forth a uniform policy agreed upon by all nations regarding the time in which to raise claims.” Because U.S. law regarding the return of stolen art is vastly different than most European laws, this would require countries to apply rules outside their existing legal framework and instead collaborate with other countries to reach a legally binding agreement. Specifically, if countries could agree on a uniform policy promoting claims to lost property, fewer people would be barred by legal technicalities. This agreement would have to be binding on the signatory countries in order to hold them accountable, as mere promises have already proven to be inadequate.

2. Establishing a Central Database

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

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

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

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

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

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

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

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

148. See Kreder, Creation of an International Tribunal, supra note 5, at 171-72 (criticizing Washington Principles for lack of firm arrangement to create central registry).
Commission Act, and though this effort failed, it still shows the intention and importance of creating a historical record.\textsuperscript{149}

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

3. An Increase in Public Awareness

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

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

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

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

\textsuperscript{152} See Schwartz, supra note 28, at 28 (portraying example of benefits to accessing public records).

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

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

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

\textsuperscript{156} See id. at 25 (emphasizing positive impact of public awareness on international community); see also Kaye, supra note 30, at 669 (acknowledging public attention creates positive influence).
achieve this.\textsuperscript{157} Though an increase in public awareness would not be a sufficient solution on its own, promoting publicizing claims is still crucial for the restitution process.\textsuperscript{158}

IV. Conclusion

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

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

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