setzes[30] kaum handhabbare – Listenprinzip anwenden? Die meisten Staaten legen ihrer Gesetzgebung andere Prinzipien, z.B. die Definition bestimmter Kulturgutgruppen zugrunde, die nicht exportiert werden dürfen. Analog arbeiten übrigens zahlreiche deutsche Denkmalschutzgesetze nach dem gleichen System, wenn sie definieren was ein „Kulturdenkmal" ist[31] – das sogenannte „nachrichtliche System" – und die EU bei ihrer eigenen Kulturexportgesetzgebung.[32]

30 Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung in der Fassung der Bekanntmachung vom 8. Juli 1999 (BGBl. I S. 1754), zuletzt geändert durch Artikel 2 des Gesetzes vom 18. Mai 2007 (BGBl. I S. 757).

31 So z.B. Hessen: § 2 Abs. 1: *Schutzwürdige Kulturdenkmäler* […] *sind Sachen, Sachgesamtheiten oder Sachteile, an deren Erhaltung aus künstlerischen, wissenschaftlichen, technischen, geschichtlichen oder städtebaulichen Gründen ein öffentliches Interesse besteht.*

32 Anhang zur VO (EWG) Nr. 3911/92 des Rates vom 9. Dezember 1992 über die Ausfuhr von Kulturgütern (Amtsblatt Nr. L 395 vom 31.12.1992, S. 1ff).

U.S. Declaratory Judgment Actions Concerning Art Displaced During the Holocaust

Jennifer Anglim Kreder*

Declaratory judgment actions filed by U.S. museums against claimants of purported Nazi-looted art are at the forefront of Holocaust-era litigation in the United States. The extent of Nazi looting of art has been well-documented. Much art was aryanized[1] in forced sales for prices significantly below market value (if any value ever actually materialized for the seller),[2] and some was sold at the infamous "Jew auctions" now universally recognized as illegal,[3] but quite a few sales were legitimate.[4] Some survivors were able to voluntarily sell art on the open market, which in some instances enabled them to obtain safe passage for themselves and their families out of Nazi territory.[5] Nonetheless, because so many were compelled to forfeit "flight assets"[6] to pay for their passage, it seems likely that the European art market reflected depressed prices.[7] Post-war restitution legislation in Western Germany presumed that all sales and transfers of property from a Jew to a non-Jew after the enactment of the Nuremberg laws in 1935 were forced sales unless the purchaser (or subsequent good faith purchaser) could demonstrate the sale was for fair market value.[8] The declaratory actions are inviting U.S. judges to draw the line between forced and voluntary sales – and to decide who must bear the burden of proof.

The heirs of Margarete Mauthner, who asserted a claim to Van Gogh's *Vue de l'Asile et de la Chapelle de Saint-Remy* against Elizabeth Taylor,[9] attempted to broaden legal grounds for restitution to situations where it seemed that the painting would not have been sold but for the rise of the illegal Nazi regime to power. The case did not

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1 The term "aryanized" property refers to property that was owned by Jews but which the Nazi regime forced Jewish owners to sell to an Aryan (as defined under Nazi law), or where the property was confiscated from the Jewish owner and given to an Aryan. See World Oxford Dictionary 672 (2d ed. 1989); Michael J. Bazyler, Nuremberg in America: Litigating the Holocaust in United States Courts, 34 U. Rich. L. Rev. 1, 107 n.441 (2000).

2 See, e.g., Douglas C. McGill, Met Painting Traced to Nazis, N.Y. Times, Nov. 24, 1987, at C19.

3 See, e.g., Norman Palmer, Museums and the Holocaust: Law, Principles and Practice 17 (2000).

4 Id. at 59-60; Jonathan Petropolous, The Faustian Bargain: The Art World IN Nazi Germany (2000).

5 Palmer, supra note 3, at 59-60; see also Adam Zagorin, Saving the Spoils of War, TIME, Dec. 1, 1997, at 87 (discussing opposition to compensating claimants for works sold in the 1930s at what seem to have been fair prices in that market and noting that the art market in New York "continued to function even as fighting raged in Europe").

6 See, e.g., Andrew Adler, Expanding the Scope of Museums' Ethical Guidelines With Respect to Nazi-Looted Art: Incorporating Restitution Claims Based on Private Sales Made As a Direct Result of Persecution, 14 Int'l J. of Cultural Property 57, 65 (2007).

7 *See* Zagorin, supra note 5, at 87 (quoting Willi Korte, a consultant on Holocaust losses to the Senate Banking Committee, as having stated: "The paintings came to America because for more than 10 years during and after the war there was no place else to sell them.").

8 E.g., Karen Heilig, From the Luxembourg Agreement to Today: Representing a People, 20 Berkeley J. Int'l L. 176, 188 n.69 (2002) (citing German Gesetz zur Regelung offener Vermögensfragen, v.28.9.1990 (BGB1. II S. 889, 1159), §1, P6).

9 *Adler v. Taylor*, No. CV-04-8472-RGK(FMOX), 2005 WL 4658511 (C.D. Cal. Feb. 2, 2005).

discuss whether the painting had been sold for fair market value. The court rather quickly dismissed the heirs' complaint on statute of limitations grounds. The decision was affirmed by the Ninth Circuit Court of Appeals on May 18, 2007.[10] The United States Supreme Court denied the claimant's petition for a writ for certiorari on October 29, 2007.[11] Nonetheless, the case has launched a small wave of claims attempting to increase the number of artworks subject to restitution because of their ownership histories during World War II – even if those histories would not seem to support a legal claim under current case law.

Those receiving such demands, particulary U.S. museums, have responded by filing declaratory judgment actions in U.S. courts to quash the claims and clarify legal title. First, two U.S. museums faced with claims by the heirs of Martha Nathan, the widow of Hugo Nathan, a prominent Jewish collector from Frankfurt, decided to file declaratory judgment actions to resolve ownership of two paintings.[12] Those museums were the Toledo Museum of Art and the Detroit Institute of Arts. The claimants' arguments were similar to those in the *Adler v. Taylor* case. This was the first time U.S. museums decided to initiate litigation when faced with demands for artwork by Holocaust survivors or their heirs. The museums won both cases on statute of limitations grounds.

Since then, more declaratory judgment actions have been filed to ward off potential claims to artworks with ownership histories showing a transfer during the Nazi era – where the transfer lacks certain indicia of looting, aryanization, or forced auction. The claimants argue that artworks sold by Jews into the depressed art market after Hitler's rise to power in 1933 and resulting economic oppression of Jews should be restituted. According to the claimants, the concept of an illegal "forced sale" includes sales made because of the economic pressure put on Jews by the Nuremberg laws – not just those sales made pursuant to a specific Nazi decree applicable to the artwork at issue or express threat of physical harm for failing to transfer the specific artwork.

First, the Museum of Modern Art and the Solomon R. Guggenheim Foundation filed a complaint for declaratory relief in the United States District Court for the Southern District of New York as to Pablo Picasso's *Boy Leading a Horse* (1906) and *Le Moulin de la Galette* (1909) against Julius H. Schoeps.[13] Both paintings' ownership histories have in common original ownership by Paul Robert Ernst von Mendelssohn-Bartholdy and subsequent ownership by Justin K. Thannhauser.

Mendelssohn-Bartholdy was "a prominent and affluent German banker and art collector, patriarch of one branch of an extraordinarily distinguished German family of Jewish descent, representative of that branch of the family as a director of Mendelssohn & Co. Bank, and proprietor of the ancestral estate outside of Berlin, Schloss Börnicke."[14] In 1927, he married his second wife, Elsa Lucy Emmy Lolo von Lavergue-Peguilhen (later Countess Kesselstatt), who was not Jewish. The Museums allege that Mendelssohn-Bartholdy gave the paintings to his second wife as a wedding gift in 1927, and hence the paintings were excluded from his will, which was executed by his estate in May 1935 after his death from heart problems.

Schoeps maintains that Mendelssohn-Bartholdy never gifted the paintings to his second wife. Schoeps maintains that after the Nuremberg laws began to devastate Mendelssohn-Bartholdy's wealth, he secretly sent the paintings on commission to Thannhauser in Switzerland. Further, Schoeps maintains that Mendelssohn-Bartholdy died unexpectedly of heart complications never having told anyone about his secret. Schoeps points to interesting documentation from the Thannhauser files to support his argument that Thannhauser either stole the paintings after Mendelssohn-Bartholdy's death or bought them for a price far below market value.

Thannhauser was a prominent Jewish art dealer in Berlin who fled Germany in 1937. He continued as a prominent art dealer and collector in Paris and then New York until his death in 1976. After the war, Thannhauser actively sought return of many artworks on behalf of himself and those who had consigned works to him. After his death, Thannhauser's extensive records were archived to assist in future restitutions. And much of his art collection was donated to the Museum of Modern Art.

Thannhauser was an active purchaser of art from European Jews at least through 1939. For example, Thannhauser was one of the three Jewish art dealers who purchased *The Diggers* (1899) and *Street Scene in Tahiti* (1891) from Ms.

10 *Orkin v. Taylor*, 487 F.3d 734 (9th Cir. May 18, 2007).
11 *Orkin v. Taylor*, 128 S.Ct. 491 (Oct. 29, 2007).
12 *Detroit Institute of Arts v. Ullin*, No. 06-10333, Slip Copy, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007); *Toledo Museum of Art v. Ullin*, No. 3:06 CV 7031, 2006 WL 3827512 (N.D. Ohio Dec. 28, 2006). For more detail, see Jennifer Anglim Kreder, *U.S. Declaratory Judgment Actions*, INTERNATIONAL BAR ASSOCIATION, SECTION OF INTERNATIONAL LAW, ART & CULTURAL HERITAGE LAW COMMITTEE NEWSLETTER 7-8 (Oct. 2007).
13 Civil Action No. 07 Civ. 11074 (JSR).
14 Complt. at ¶2.

Nathan in 1938. Additionally, Thannhauser's name was in the ownership history of Picasso's *Femme en Blanc* (1922), which was recently restituted from Art Institute of Chicago benefactor Mrs. Marilynn Alsdorf to Thomas Benningson. Benningson is the grandson of Ms. Carlota Landsberg who had sent the artwork to Thannhauser in Paris for safekeeping in or around 1939.[15] Thannhauser's name was listed in connection with the painting in the 1947 list of wartime art losses in France, the *Repertoire des Biens Spolies En France Durant La Guerre 1939-1945*. After a prospective purchaser of the painting ran a search in the Art Loss Register in 2001, Thannhauser's archives were then checked, and the correct owner revealed.

Schoeps' suit compels one to ask whether Thannhauser's purchases should be viewed as benevolent acts, neutral business or immoral profiteering. Schoeps plainly states: "Thannhauser trafficked in stolen and Nazi-looted art during his career as a dealer. Both during and after World War II, Thannhauser partnered with art dealers such as Nazi Cesar Mange de Hauke and Albert Skira, both of whom the U.S. State Department and others identified as traffickers in Nazi-looted art."[16] No doubt Thannhauser's family would vehemently deny the allegation that Thannhauser acted immorally, particularly in light of his post-war efforts to assist Jews seeking restitution of works sent to him on commission. But this is not the first time accusations regarding Thannhauser's wartime conduct have been made.[17]

Logically, Schoeps lacks any documentational evidence as to his views that Mendelssohn-Bartholdy never gifted the paintings to his second wife and only secretly sent the paintings to Thannhauser on commission. Schoeps states:

> The Museums' claims that Mendelssohn-Bartholdy gifted all his art collection to Elsa in 1927 at the time of their wedding is far-fetched. There is no record of such a gift any time near the wedding. Indeed, the only evidence of any Mendelssohn-Bartholdy transfer of art to Elsa is Mendelssohn-Bartholdy's February 1935 Contract for the Disposition of Property, which Schoeps will establish was a mere device to protect the Paintings from Nazi predation by creating a false impression that Elsa was the owner from 1927 forward.[18]

Schoeps describes the sale as "a textbook example of a 'fencing' operation for stolen merchandise and a conspiracy to traffic in stolen art."[19] Schoeps relies, in part, on William S. Paley, As It Happened, A Memoir by William S. Paley, Founder and Chairman, CBS (1979), for the following rendition of the sale in 1936:

> Thannhauser, while peering through a window outside watching the sale go down – used Swiss art dealer Albert Skira (who later developed a reputation as a notorious trafficker in Nazi-looted art) to make the sale to Paley in Switzerland, already widely known as a venue for unloading Nazi-looted art. In addition, Skira seemed desparate to make the

15 An excerpt from the case is instructive as to Thannhauser's conduct during and after the war:

> In 1938 or 1939, Mrs. Landsberg sent the painting to Paris art dealer Justin K. Thannhauser for safekeeping. In August 1939, Thannhauser fled Paris to escape Nazi persecution. In 1940, the contents of Thannhauser's home, including the painting, were looted by the Nazis.
>
> On June 12, 1958, Thannhauser wrote to Mrs. Landsberg that, "[u]pon the occupation of Paris in 1940, when we were no longer in Paris and the house was closed, the entire contents of the four-story building-and with it your painting-were stolen." Thannhauser wrote that, "during the four day long violent German national socialist plundering everything was taken out of the four-story house during the night and in trucks" by the Nazis.

U.S. v. One Oil Painting Entitled "Femme en Blanc" by Pablo Picasso, 362 F. Supp. 2d 1175, 1178 (2005) (internal citations to Complaint omitted).

16 Countercl. at ¶40 (citing Maureen Goggin & Walter V. Robinson, *Murky Histories Cloud Some Local Art*, Boston Globe, Nov. 9, 1997) (on file with author).

17 *See id.*

18 Countercl. at ¶42. Such a contract is known in German as a *Verfolgten Testament*.

19 Countercl. at ¶24. Additionally, the Art Loss Register's letter provided to the Museum of Modern Art in the course of its provenance research states in part:

> Paul von Mendelssohn – Bartholdy, Berlin might have been related to Francesco Mendelssohn, whose collection underwent a forced sale. The Thannhauser archives are in Geneva now, and the name generally does not mean good things. Sigfried Rosengart records are now in Lucerne, Switzerland. It might be worth checking with them to get a date of sale, as Albert Skira is a red flag list name, although it might be alright as the painting went to New York so early on.
>
> [The next 1.5 pages are redacted, but it is not stated by whom or why]
>
> [Remainder omitted by author.]

Countercl. Ex. 2 (Letter from Lucy Haverland, Art Loss Register to Christel Hollevoet-Force, Research Assistant, Provenance, The Museum of Modern Art, Sept. 18, 2001).

> sale. He and Thannhauser were offering *Boy Leading a Horse* for an artificially low price, and Skira even refused to tell Paley who the owner was. Yet, somehow the "modest" price for *Boy Leading a Horse* enabled Skira, Thannhauser – and possibly another dealer, Rosengart – to make enough of a profit that it was worth driving the entire length of Switzerland through the Alps to make sure the sale occurred. . . . . Moreover, any time Thannhauser was asked about the provenance of these five significant Picasso artworks he obtained from the well-known Mendelssohn-Bartholdy, Thannhauser was uncharacteristically vague and non-specific. For example, in 1964 when he sold *Madame Soler* to the Pinakothek der Moderne Museum in Munich, Thannhauser provided detailed information regarding the history of *Madame Soler*. However, when it came time to [provide] past owners (provenance), Thannhauser merely inserted "Sammlung (collection) Paul von Mendelssohn-Bartholdy" without providing any dates – the only entry on the page with no dates. When Thannhauser donated *Le Moulin de la Galette* and *Head of a Woman* to the Guggenheim, he was equally vague. Thannhauser stated that he acquired *Le Moulin de la Galette* from Mendelssohn-Bartholdy "ca. [around] 1935."[20]

As the parties have opposing views of the evidence, which party bears the burden of proof in the litigation will be extremely important. Schoeps' Answer lays out the legal theories supporting his expansive view of the term "forced sales" and how, in his view, the applicable law requires a presumption of this classification as to *all* transfers of property from a Jew to a non-Jew in Nazi Germany between 1933 and 1945.[21] Such a presumption would mean that the museums must bear the burden of proof in the litigation. The museums' Complaint tries to head off this argument:

> Even if there were such a presumption of duress, that presumption is rebutted by the evidence. The facts and circumstances establish that both von Mendelssohn-Bartholdy and his wife were free to decide whether or not to sell their artwork, were free to move artwork in and out of Germany without discrimination, were not under financial pressure to sell as the Paintings represented a negligible percentage of their net worth, and neither the German State nor the Nazi party played any role in directing, urging or otherwise threatening any adverse consequences if the Paintings were not sold to Thannhauser. . . . . The allegation that the Nazi government would force von Mendelssohn-Bartholdy and his wife to sell their Paintings to the Jewish art dealer Thannhauser, whom they knew and with whom they had done business for years, is completely implausible, as is the claim that they had to sell the Paintings because Nazi persecution left them impoverished.[22]

At this point, the case is still in its incipient stages, with the court recently having denied Schoeps' motion to dismiss.[23] The court likely will look at statute of limitations and laches issues next, which in light of the cases against the Ullin heirs, does not bode well for Schoeps.

Meanwhile the Museum of Fine Arts in Boston filed a declaratory judgment action in the United States District Court for the District of Massachusetts.[24] This case concerns a preliminary claim to Oskar Kokoschka's *Two Nudes (Lovers)* (1913) made by Dr. Claudia Seger-Thomschitz, and the facts seem to be ambiguous.

20 Countercl. at ¶41 (internal citations omitted). Schoeps relies on a document from Pinakothek der Moderne, given to the Museum of Modern Art by Thannhauser in or around 1964, which is attached to the Counterclaim as Exhibit 3, and Guggenheim records attached as Exhibits 4 and 5.

21 Primarily, he relies on Military Government Law No. 59 and related European post-war restitution laws.

22 Compl. at ¶ 55.

23 549 F. Supp. 2d 543 (S.D.N.Y. Apr. 14, 2008). *See also Schoeps v. Andrew Lloyd Webber Art Found.*, 2007 Slip Op. 52183U, 17 Misc. 3d 1128, 851 N.Y.S.2d 74 (2007) (holding that Schoeps could not initiate a suit on behalf of the entire estate without complying with additional requirements). Schoeps intends to re-file the suit against the Andrew Lloyd Webber Art Foundation after complying with the requirements.

24 Civil Action No. 08-10097-RWZ. Ms. Seger-Thomschitz also has been sued in a declaratory action filed in the United States District Court for the Eastern District of Louisiana by the current holder of Kokoschka's *Portrait of a Youth (Hans Reichel)* (1910).

The museum alleges that the sale by Dr. Oskar Reichel, a Jewish doctor, art collector and owner of a Viennese gallery that was aryanized after the *Anschluss* of Austria into the Third Reich on March 12, 1938, was voluntary. The purchaser of the painting (and three other Kokoschka paintings) was Otto Kallir, a Viennese art dealer who had moved to Paris by the time of the sale in February 1939. The museum alleges that Reichel and Kallir had known each other for many years and often had done business together. Reichel died in Vienna of natural causes in 1943.

When Reichel's son via a Viennese lawyer asserted post-war restitution claims to Reichel's art collection, he never sought recovery of the Kokoschka paintings. *Two Nudes (Lovers)* was subsequently purchased by another dealer and sold to Sarah Blodgett in late 1947 or early 1948, and she bequeathed it to the museum upon her death in 1972. It has been publicly displayed since.

Seger-Thomschitz makes factual allegations that, if proven, could provide the court with sufficient grounds to clarify the line between forced and voluntary sales, as well as refine courts' statute of limitations and laches analysis in such cases. Seger-Thomschitz argues that because of the dispersal of the family resulting from Nazi persecution, including the murder of one of Reichel's sons in 1940 or 1941, it is excusable that the son pursuing post-war restitution did not know of his father's claims to the Kokoschka paintings. Another son, Hans, fled Austria by June 1938. A third son, Raimund, fled in March 1939. In November 1938, Reichel's art gallery, including its paintings which were mostly by Romako, was liquidated because of his Jewish heritage. The family's apartment house was liquidated in 1941. Reichel's wife, Malvine, was deported to Theresienstadt in January 1943 where she survived the war and eventually joined Hans in the United States.

The brothers' post-war restitution application included a notarized statement by Raimund asserting: "A large art collection [owned by my father] was sold by force: 47 pictures by the painter Anton Romako." No mention was made of the Kokoschka paintings. Seger-Thomschitz explains this omission as follows: Because Dr. Reichel died after his wife was deported to Theresienstadt and his sons had fled, the sons could only go by memory and did not know about the Kokoschka paintings because they lacked access to Austrian records containing the Property Declaration on which Reichel was forced to declare all of his assets in June 1938. They were made public to academics in 1993 for the first time, and Raimund died in 1997 at 94 years of age.

Significantly, Exhibit 1 of the Answer shows that Seger-Thomschitz herself was put on notice to investigate any remaining claims of Reichel's heirs to art when the Vienna Community Council for Culture and Science contacted her upon its own more recent review of Viennese public collections. In a November 10, 2003, letter to Seger-Thomschitz expressing its conclusion that it must restitute certain Romako paintings, it noted as follows:

> In January 1939, Vita Künstler, whom Otto Kallir, after his escape to the USA, had appointed as director of the "New Gallery" . . . approached the Municipal Collections with offers of "particularly high-quality pictures by Romako," whom [*sic*] she "just so happened to have in the gallery." Thereafter, the Municipal Collections acquired five paintings by Anton Romako.....
>
> It is certain that these paintings involved art objects from the property of Dr. Oskar Reichel and which, in connection with the power seizure by National Socialism, he had to sell due to his persecution as a Jew to the galleries mentioned.....

The letter mentions that as to the paintings on the Property Declaration, "only small equivalent amounts were deposited in blocked accounts."[25] Seger-Thomschitz argues that the fact that the Romako paintings were transferred to Kallir with payment transferred into blocked accounts is evidence of what likely happened in regard to the Kokoschka paintings, which also were listed on the Property Declaration. But, the Answer and Counterclaim do not clearly allege that the proceeds of the sale of the Kokoschkas actually went into a blocked account.[26]

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25 Answer ¶51, *et seq.* The Answer also states that "once the Painting was placed on Dr. Reichel's Property Declaration – which the Nazis required all Jews to file – the Paintings was effectively confiscated and owned by the Nazis." Answer ¶13. Such an argument would give legal force to Nazi confiscation policy. The fact that Dr. Reichel had to list the painting may be a relevant factor in determining whether the sale actually was a farce, but should not be determinative of his ability to legally transfer title.

26 Countercl. ¶4: "Indeed in Dr. Reichel's case in particular, proceeds realized from previous sales for his artworks had been placed in 'blocked' accounts accessible only to the Nazis.

If the allegation holds out, then the court could find in favor of the claimant without the need to adopt a new theory of recovery. The key difference between the Romako paintings and the Kokoschka paintings is that Kallir managed to get the Kokoschka paintings out of Vienna. Thus, what must be determined is whether Kallir and Reichel managed to defeat Nazi attempts to steal the Kokoschka painting and actually reached a voluntary sale for an amount close to fair market value – or whether Kallir alone or in conjunction with Viennese Nazis stole the painting.

The claimant, however, advocates for an aggressive burden of proof shift in all cases claiming art transferred during the Nazi era. Holding more than sixty years after the war that all sales by Jews in Nazi territory will be presumed involuntary as a matter of law would lay the groundwork for an unmanageable caseload for courts. A less grand legal theory, such as implementing a presumption of forced sale as to transfers at significantly below market value after application of the Nuremberg laws to the territory where the particular sale was made, might be manageable.

Should the judges deciding the new cases allow them to move beyond the statute of limitations and laches phases,[27] these cases may lay further precedent for drawing the line between a forced versus a voluntary sale in the context of Nazi persecution. The first case in the United States to do so was *Vineberg v. Bissonnette*, which is now up on appeal.[28] The facts involved such a clear-cut forced sale, at an infamous "Jew auction" now universally recognized as illegal, such that the court found it easy enough to grant summary judgment for the plaintiff, a relatively rare occurrence in U.S. courts.

Any precedent set most likely would not favor claimants of flight assets sold at close to fair market value when there is no evidence of looting or a direct link between the sale of the specific asset and a specific Nazi decree compelling its aryanization or auction. But, it should cause courts to look more closely to determine whether seemingly voluntary transfers were in fact forced sales engineered to look voluntary, to which Military Law 59 and parallel national restitution laws called attention immediately after the war. Whether the court also shifts the burden of proof when the evidence points to the possibility of such a sale will be a key factor in its outcome.

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Upon information and belief, even if Kallir had made any payment to Dr. Reichel, the money would have ended up in a 'blocked' account and in exclusive Nazi hands." *See also* Countercl. ¶¶52 and 81.

27 In its statute of limitations and laches analysis, the *Toledo Museum of Art v. Ullin* court found widely reported events in 1998 to factor into whether the claimant was put on notice of the need to search for lost art.

28 529 F. Supp. 2d 300 (D.R.I. Dec. 27, 2007).

Emanuel C. Hofacker,
Rückführung illegal verbrachter italienischer Kulturgüter nach dem Ende des 2. Weltkrieges,
Schriften zum Kulturgüterschutz, De Gruyter Recht, Berlin 2004, S. 222, € 84

Dr. Annette Froehlich*

Emanuel C. Hofacker befasst sich mit seiner im Jahre 2003 an der Rechtswissenschaftlichen Fakultät der Universität Zürich angenommenen Dissertation umfassend mit dem Verkauf von italienischen Kulturgütern an damals bedeutende Persönlichkeiten des NS-Regimes (wie die sich als Kunstliebhaber ausgebenden Hitler und Göring). In einem ersten Kapitel werden dabei interessante (für den deutschsprachigen Leser meist unbekannte) Vorgänge innerhalb der italienischen Führungsriege beschrieben, die den Verkauf von Kunstwerken nach Deutschland – teils unter Umgehung der geltenden italienischen Kunstschutzgesetze – überhaupt erst ermöglichten. So legt der Verfasser die diversen italienischen Regelungen bezüglich Verkauf und Export von Kulturgütern dar (sowie deren Unzulänglichkeiten), welche ein Außerlandesbringen der nationalen Kultur ver-

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