DISTANT CULTURES, IMMEDIATE VOICES: PROVENANCE RESEARCH IN AMERICAN MUSEUMS

*By: MacKenzie Mallon**

I. INTRODUCTION

Good afternoon. It is a pleasure to be here. I want to thank Megan Gannon and everyone at the *Kansas Journal of Law and Public Policy* for their kind invitation to participate in this symposium. It is fortuitous that I am the last speaker today, as my colleagues have brilliantly presented the complex pairing of art and law in their respective fields, and some of what I plan to discuss draws on the foundation they laid. My goal is to consider how these issues affect American museum practice today, looking specifically at the importance of provenance research, and to touch on how this research contributes to both the legal and ethical stewardship of museum collections. I plan to introduce you to the methodology behind this research, consider its inherent challenges, and outline the opportunities provenance research affords.

I recognize that many of us here today have worked in museums or the field of art law and are already familiar with the concept of provenance. However, I also acknowledge that there are likely some here who are less familiar with this concept, so I thought it best to begin with a basic overview of provenance that will hopefully set the stage for an expanded discussion of the topic. I also recognize that American museums have very different policies for, and approaches to, provenance research. Some carry out extensive research and maintain robust provenance projects, others do little or no provenance research, for many different reasons. For the purpose of my talk today, I am speaking primarily from the perspective of my role at the Nelson-Atkins, but much of my work there has been shaped by my experience working within the broader field of provenance over the last thirteen years.

II. PROVENANCE RESEARCH

Provenance refers to the ownership history of a work of art, beginning with its creation by the artist, all the way down to the present day. This means that some objects will have a very lengthy provenance; for example, works of art that are 200 years old will have a longer history of ownership than an object created twenty years ago. When we research the provenance of an object, we seek to

learn the identities of who owned it and when, and how it changed hands between one owner and the next. Our primary goal in this work is to ensure, as best we can, that the museum has clear title to every object it holds; we try to determine if it has ever been stolen, looted or otherwise displaced from the possession of a past owner and not legally returned to that owner before the museum acquired it.

Provenance research is, at its best, a team effort. An increasing number of museums employ dedicated provenance researchers; at other museums, provenance research is conducted by curatorial staff, registrars, or librarians. At the Nelson-Atkins, this work is done within the curatorial departments, and part of my role as the Provenance Specialist is to coordinate research policies and procedures while also conducting my own research projects. I work alongside our outstanding curators and conservators, whose expertise on the cultural importance and physical attributes of an object is essential to better understanding its history. We also rely on the expertise of our counsel, who keeps us informed of the numerous legal considerations we must consider, many of which we have heard discussed already today.

The results of our collective research efforts are recorded in a provenance narrative—or the written description of an object's provenance. Narratives can take many different formats, but always include the names of past owners, dates of ownership, and the nature of transactions, when such information is known. The Nelson-Atkins uses a variation of the format suggested by *The AAM Guide to Provenance Research*.[1] Provenance is listed in chronological order, beginning with the earliest known owner. Methods of transactions and relationships between owners, if known, are included, and uncertain information is preceded by the terms "possibly" or "probably." Footnotes are used to document or clarify information.

A. Categorizing Provenance Research

Considering the immense variety of types of objects that can be found within a museum, including ancient sculptures, Renaissance armor, Central American pottery, and Cubist paintings, just to name a few, provenance research is just as wide-ranging in scope, covering as many different historical periods, geographies, and cultures as can be found represented in a museum's collection. Casting such a wide net requires that we focus our efforts and approach provenance research with intentionality and method. For this we look to the guidance of the American Alliance of Museums ("AAM") and the Association

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[1] NANCY YEIDE, THE AAM GUIDE TO PROVENANCE RESEARCH 33–34 (2001).

of Art Museum Directors ("AAMD").[2] These professional organizations recommend we pay special attention to the provenance of objects that fall within three categories: those which may have been looted or otherwise misappropriated under the Nazi regime; acquisitions of ancient art or archaeological material that may have been illicitly excavated or otherwise illegally removed from their country of modern discovery; and objects removed from colonial contexts.[3]

1. Objects Misappropriated Under the Nazi Regime

As we have heard in previous presentations today, thousands of works of art were stolen, looted, misappropriated, or illegally exchanged during the Nazi period.[4] Although Allied Forces recovered many of these objects after the war and returned them to the countries from which they were taken for subsequent restitution, thousands of objects remained unlocated and entered the international art market.[5] Our research in relation to Nazi-looted art focuses on objects which changed hands or might have changed hands between January 1933 and May 1945, and which were or may have been in continental Europe between those dates. Within these criteria, we further prioritize objects that are known to have been owned by Jewish collectors prior to the Nazis' rise to power. For example, if we know an object was in a private Jewish collection in Berlin in 1935, but we have no further information on its whereabouts until 1960, it would be a prime candidate for additional research. It is important to note that the subject matter of an artwork does not preclude it from having been owned by a certain collector. For example, many Jewish collectors owned objects with Christian iconography. Just because a painting depicts the Madonna and Child doesn't mean it couldn't have been stolen from a Jewish collector. In addition to the AAM and AAMD recommendations, our work in Nazi-era provenance is also directed by the Washington Principles, a set of eleven guidelines for identifying unrestituted Nazi-looted art and for finding "just and fair" solutions

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[2] *See generally Unlawful Appropriation of Objects During the Nazi Era*, AM. ALL. OF MUSEUMS (April 2001), https://www.aam-us.org/programs/ethics-standards-and-professional-practices/unlawful-appropriation-of-objects-during-the-nazi-era/ [https://perma.cc/8HXA-SB9J] (guidance statement for stewardship of sensitive collections); REPORT OF THE AAMD TASK FORCE ON THE SPOLIATION OF ART DURING THE NAZI/WORLD WAR II ERA (1933-1945), ASS'N OF ART MUSEUM DIRS. (June 4, 1998), https://aamd.org/sites/default/files/document/Report%20on%20the%20Spoliation%20of%20Nazi%20Era%20Art.pdf [https://perma.cc/RBJ4-L9FU] (professional standards and guidelines to assist museums in stewarding sensitive objects).

[3] *Id.*

[4] *See generally* LYNN NICHOLAS, THE RAPE OF EUROPA: THE FATE OF EUROPE'S TREASURES IN THE THIRD REICH AND THE SECOND WORLD WAR (1994) (discussing Nazi art looting).

[5] *Id.*

to this issue.[6] The Principles were one result of the 1998 Washington Conference on Holocaust-Era Assets, hosted by the US Department of State, which brought together representatives from forty-four countries in Washington, DC to consider the problem of assets which had still not been restituted to Jewish owners fifty-three years after the end of the war.[7] These Principles are non-binding[8], but nonetheless guide many American museums, including the Nelson-Atkins, in how best to contribute to the resolution of this problem.

2. Acquisitions of Ancient Art and Archaeological Material

Regarding the acquisition of ancient art and archaeological material, AAM and AAMD guidelines suggest using the date of the 1970 UNESCO Convention—November 17, 1970—as a threshold to evaluate the provenance of acquisitions of these objects.[9] The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property aims to diminish the looting and trafficking of such objects, in part by recommending museums in its party states only acquire these objects if they can be documented as outside their country of probable modern discovery prior to the date of the Convention's adoption, or accompanied by documentation that the object was legally exported after this date.[10] Thus as a member of AAM and AAMD, any work of ancient art or archaeological material the Nelson-Atkins considers for acquisition must meet these standards. It can, however, be very difficult to completely document an object's provenance going back fifty-four years, especially since export and import documentation has often not been retained by prior owners. There are certain conditions under which the AAMD guidance allows museums to make an informed decision in favor of an acquisition in the absence of this documentation, such as extensive exhibition or publication history of an object, but those situations are considered on a case-by-case basis.

3. Objects Removed from Colonial Contexts

The third provenance research priority as suggested by AAM and AAMD guidelines, involves objects removed from their source culture under

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[6] *Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEP'T OF STATE (Dec. 3, 1998), https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/ [https://perma.cc/J7FM-3TBX]; *Washington Conference Principles on Nazi-Confiscated Art*, COMMISSION FOR LOOTED ART IN EUROPE, https://www.lootedartcommission.com/Washington-principles [https://perma.cc/Y3QM-Z29C].

[7] COMMISSION FOR LOOTED ART IN EUROPE, *supra* note 6.

[8] *Id.*

[9] *Archaeological Material and Ancient Art*, AM. ALL. OF MUSEUMS (July 2008), https://www.aam-us.org/programs/ethics-standards-and-professional-practices/archaeological-material-and-ancient-art/ [https://perma.cc/U97F-XNKU]; GUIDELINES ON THE ACQUISITION OF ARCHAEOLOGICAL MATERIAL AND ANCIENT ART (REVISED 2013), ASS'N OF ART MUSEUM DIRS. (Jan. 29, 2013), https://aamd.org/sites/default/files/document/AAMD%20Guidelines%202013.pdf [https://perma.cc/PS5K-8ZT5].

[10] UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Nov. 17, 1970, T.I.A.S. 83-1202, 823 U.N.T.S. 231.

colonialism. This research priority category includes objects from many different countries and cultures, requiring that we consider the cultural property laws in the source country, memoranda of understanding between the United States and other countries, and import/export restrictions governing their trade. In these situations, our counsel is an invaluable resource for navigating this legal landscape. Curatorial expertise is also paramount, including an understanding of the historical periods of conflict that may have affected the displacement of objects from a particular area, or the likelihood that a source culture would have parted with an object willingly. Part of our work on the provenance of colonially sourced objects includes our compliance with the 1990 Native American Graves Protection and Repatriation Act ("NAGPRA"), a federal law that governs the return of Native American remains, funerary and sacred objects, and objects of cultural patrimony to lineal descendants, culturally-affiliated Indian Tribes, and Native Hawaiian organizations.[11] The Nelson-Atkins complies with NAGPRA by providing inventories of our Native American collections, consulting with descendants, tribes and cultural organizations and working with them on claims for repatriation and disposition.

B. The Process of Provenance Research

With an understanding of how we prioritize provenance research, now I would like to turn to how we go about it. Although the objects we research are made of varying types of media, come from disparate source cultures and geographies, and from many different time periods, provenance research almost always begins in the same way: with the object itself. Clues to past ownership are often found in the form of marks, stamps or labels on an object. These clues can tell us who owned the object in the past, where it was exhibited, and in what countries it passed through customs. Other information already at hand can also help establish a foundation on which to build a research strategy. Existing documentation, such as publications, correspondence, or purchase records, can also provide important information we can use to begin our research. We always attempt to verify any information we are given by an outside source, such as a dealer or donor, but existing documentation can be a helpful place to start.

Once we gather what information we already have, we then follow whatever leads these initial sources may reveal, usually working backwards through time. Most provenance research is done in archives and libraries, digging into the records of art dealers, collectors, galleries and government entities; scouring publications such as artist monographs, journals, newspapers and auction catalogues. Maintaining a network of colleagues in the field, and keeping informed of projects they are working on, can also be an invaluable asset.

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[11] *See* 25 U.S.C. § 3005.

To illustrate how these various sources might be used, consider an example from the Nelson-Atkins collection: an 18th-century Meissen clock designed by Johann Joachim Kändler.[12] Since we knew very little about this clock's ownership history, and it was made in Germany, we needed to learn more about its provenance during the Nazi era. There were no marks or labels on the clock to give us a starting point, and to our knowledge it didn't appear in any scholarly publications on the subject, so we began by assembling what purchase information already existed in the museum's files. Here we found the invoice from the New York-based art dealer Rosenberg & Stiebel, from whom the clock was purchased by the Nelson-Atkins in 1954. This was the only lead we found in the museum's records, and the invoice did not include the clock's provenance. So, our next step was to try to determine when and from whom Rosenberg & Stiebel acquired the clock.

Rosenberg & Stiebel is no longer in business, but their business archive is held by the Frick Art Reference Library in New York, one of the most important art libraries for provenance research.[13] The Rosenberg & Stiebel records at the Frick include the dealer's stock books, which record purchases and sales, correspondence, inventories and photographs. We reached out to the Frick Library, and their archivists were incredibly helpful. They searched for the clock in the dealer's records and sent us numerous scans of stock books and correspondence, which document that Rosenberg & Stiebel acquired the clock from the estate of German collector Maximilian von Goldschmidt-Rothschild in 1950.

Maximilian von Goldschmidt-Rothschild was a German Jewish collector who was persecuted under the Nazi government.[14] In 1938, he was forced to sell his home and collection to the city of Frankfurt.[15] Since the Rosenberg & Stiebel archive records that they purchased the clock from the Goldschmidt-Rothschild estate, we were confident that if the clock had been part of this misappropriation, it must have been returned to the family after the war. However, we needed to confirm the clock's wartime history with documentation if possible. We reached out to the Museum Angewandte Kunst in Frankfurt, which had been given supervision of the Goldschmidt-Rothschild collection following its forced sale, and which recently completed a multi-year project to research this part of their museum's history. They shared documentation from their research with us, both from their own museum's files and from German

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[12] Modeler: Johann Joachim Kändler (German, 1706–1775). Manufacturer: Meissen Porcelain Manufactory (German, founded in 1710). *Clock*, ca. 1744. Ormolu and porcelain with clock mechanism. Purchase: William Rockhill Nelson Trust, 54–31: https://art.nelson-atkins.org/objects/3562/clock?ctx=e0238e42-03c1-41ec-8222-9134b448b3df&idx=0 [https://perma.cc/6LGV-Q6VL].

[13] *Frick Collection Acquires Rosenberg & Stiebel Archive*, THE FRICK COLLECTION (Jan. 24, 2022), https://www.frick.org/press/frick_collection_acquires_rosenberg_stiebel_archive [https://perma.cc/6AWH-J786].

[14] For more on Goldschmidt-Rothschild and the misappropriation of his collection, *see* THE COLLECTION OF MAXIMILIAN VON GOLDSCHMIDT-ROTHSCHILD (Matthias K. Wagner & Katharina Weiler eds., 2023).

[15] *Id.*

state archives, which recorded that the clock was indeed one of the objects Goldschmidt-Rothschild was forced to sell under the Nazi regime and that it was returned to the Goldschmidt-Rothschild family in 1949. Through this team effort, with the assistance of colleagues in New York and Frankfurt, we were able to document the history of this clock during the Nazi era.

The example of the Goldschmidt-Rothschild clock, however, is as close to an ideal provenance research situation as we can come. Rarely do things fall so perfectly in place. Despite the wealth of archival resources, library holdings, and other sources available to us today, the reality is that much has been lost over time. The Goldschmidt-Rothschilds were wealthy, prominent citizens in Frankfurt and owned an enormous collection of the highest quality, which was therefore well-documented. For many other collections, especially smaller ones, records have been misplaced, discarded or destroyed. Those records that do survive are often inaccessible, difficult to utilize, or only available by visiting an archive in person.

Beyond the challenges inherent in the work itself, provenance research also comes with human and capital resource challenges. It requires a unique skill set, including an understanding of library methodology, a broad knowledge of world history, and the ability to conduct research in multiple languages. Training opportunities are still limited in the United States, so many who undertake this work must learn under the tutelage of the limited number of experienced researchers, or by teaching themselves. Provenance research takes time, sometimes months of work researching a single object, which is especially challenging when researching a potential acquisition coming up for auction, the lead time for which is usually only a few weeks. And finally, provenance research requires financial resources. Funding is necessary for staffing and for the travel required to conduct research in necessary archives.

Successful provenance research requires a commitment of resources, but also affords valuable opportunities, most of which are manifested through the transparency of our research findings. Placing the results of our research in a file or a drawer has no lasting value. Rather, by making the results of this research public, we make it easier for potential heirs and source cultures to locate their lost objects, and we indicate our openness to working with them toward finding solutions to problematic provenance issues. This transparency can take a variety of forms, including an online database of the museum's collection, publications such as exhibition catalogues or collection handbooks that include the provenance of objects, provenance-based exhibitions, and public-facing events.

The most common method of transparency, and perhaps the most far-reaching, is the listing of provenance within an online database of the museum's collection. Ideally, provenance is searchable in this database, enabling potential claimants to search for a family name, location, an artist's name, the title of an artwork, or a description. The more ways information can be searched, the more

useful it is. In the Nelson-Atkins online collection database, provenance is free-text searchable.[16] Many other American museums have similar databases.

Publications that include provenance can also be effective transparency tools. Although provenance has often been included in hardcopy versions of an artist's catalogue raisonné, auction catalogues, and other publications, these are increasingly becoming more available online. At the Nelson-Atkins we are publishing a digital catalogue of our French paintings, which is available on our website.[17] This fifteen–year project combines the benefits of a traditional collection catalogue with the transparency and accessibility of an online platform. It includes the most detailed, in-depth provenance research we have ever conducted, the results of which are fully searchable online, along with high-resolution photography.

We also contribute the results of our research to provenance projects that are coordinated by other museums or institutions, such as Digital Benin.[18] Hosted by the Museum am Rothenbaum Kulturen und Künste der Welt, Digital Benin is an online platform that brings together photographs and documentation about objects from the historic Benin Kingdom which are found today in museums around the globe.[19] Three objects from the Nelson-Atkins collection are included in the database, with photographs along with the results of our in-house provenance research on these objects.[20]

Being transparent with the results of our research also gives us a new way to engage with museum visitors and our broader communities, especially through exhibitions. In 2019 at the Nelson-Atkins, we held an exhibition titled *Discriminating Thieves: Nazi-Looted Art and Restitution*, in which we brought together four artworks from our collection that had either been looted from Jewish owners or confiscated from Germany's own museums by the Nazi government.[21] We chose to focus particularly on the former owners of these objects: who were they, what were their lives like, what did they experience? The objects in this exhibition which came from Jewish collections had all been restituted after the war, so we were also able to trace their path from restitution to the Nelson-Atkins. The exhibition's digital interactive allowed visitors to take an even deeper dive into the histories of these objects, utilizing photographs, digital scans of documents, and animated maps to illustrate each artwork's history. In addition to being an opportunity to transparently include our research findings in our galleries, this exhibition was a chance for us to help our visitors

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[16] *Advanced Search*, THE NELSON-ATKINS MUSEUM OF ART, https://art.nelson-atkins.org/advancedsearch [https://perma.cc/52TZ-DPR2].

[17] *French Paintings Catalogue*, THE NELSON-ATKINS MUSEUM OF ART, https://nelson-atkins.org/french-painting/ [https://perma.cc/5JEH-Z6XT].

[18] *Provenance*, DIGITAL BENIN, https://digitalbenin.org/provenance [https://perma.cc/P8BE-G5JW].

[19] *Project Funding and Host*, DIGITAL BENIN, https://digitalbenin.org/funding-and-host [https://perma.cc/ML2C-VZTL].

[20] *Nelson-Atkins Museum of Art*, DIGITAL BENIN, https://digitalbenin.org/institutions/216 [https://perma.cc/T3WL-HU4P].

[21] MacKenzie Mallon, *Discriminating Thieves: Exhibiting Nazi-Era Provenance*, 65 CURATOR MUSEUM J. 43, 47 (2022).

understand the importance of provenance research, and more importantly, the tragedy of persecution suffered by Jews during the Third Reich.

In 2021, the exhibition *Origins: Collecting to Create the Nelson-Atkins* focused on the beginnings of the museum's collection, with an emphasis on the dealers, agents and donors who helped the museum acquire objects during its first fifteen years. *Origins* was also an opportunity to spotlight areas of the collection's provenance we know less about, such as the Asian objects the museum purchased from dealer C. T. Loo, or the objects Harvard student Laurence Sickman bought for the Nelson-Atkins in China in the early 1930s, before Sickman became the museum's first curator of Asian Art.[22]

III. CONCLUSION

Ultimately, conducting provenance research and being transparent with the results, are key elements of both legal and ethical collections stewardship in American museums. Having a better understanding of an object's ownership history helps us ensure that we hold good legal title to the objects in the museum's collection, but provenance research can also help us make more informed decisions in cases in which legal requirements are met but ethical considerations may apply. As we navigate this rapidly changing field, with all its challenges but also its opportunities, it helps to stay focused on why we are doing this important work. At the Nelson-Atkins, our provenance research program aligns with our strategic plan, in which we acknowledge that art gives expression not only to distant cultures and times, but also to immediate voices and issues, and provides avenues for exploring the world, past and present, and for informing our future.[23] Provenance research can bring together these distant cultures and immediate voices, helping us chart a path forward for stewarding our collections.

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[22] For more on this exhibition, *see* MacKenzie Mallon, *Origins: Collecting to Create the Nelson-Atkins*, KC STUDIO (Sep. 22, 2021), https://kcstudio.org/origins-collecting-to-create-the-nelson-atkins/ [https://perma.cc/MQB2-Z2VL].

[23] *2021 Strategic Plan*, THE NELSON-ATKINS MUSEUM OF ART, https://nelson-atkins.org/about/2021-strategic-plan/ [https://perma.cc/V7CW-VXTW].