



# The transitional justice potential of looted art claims

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▶ LEGAL DIFFICULTIES ASSOCIATED WITH RESTITUTING  
HOLOCAUST- LOOTED ART

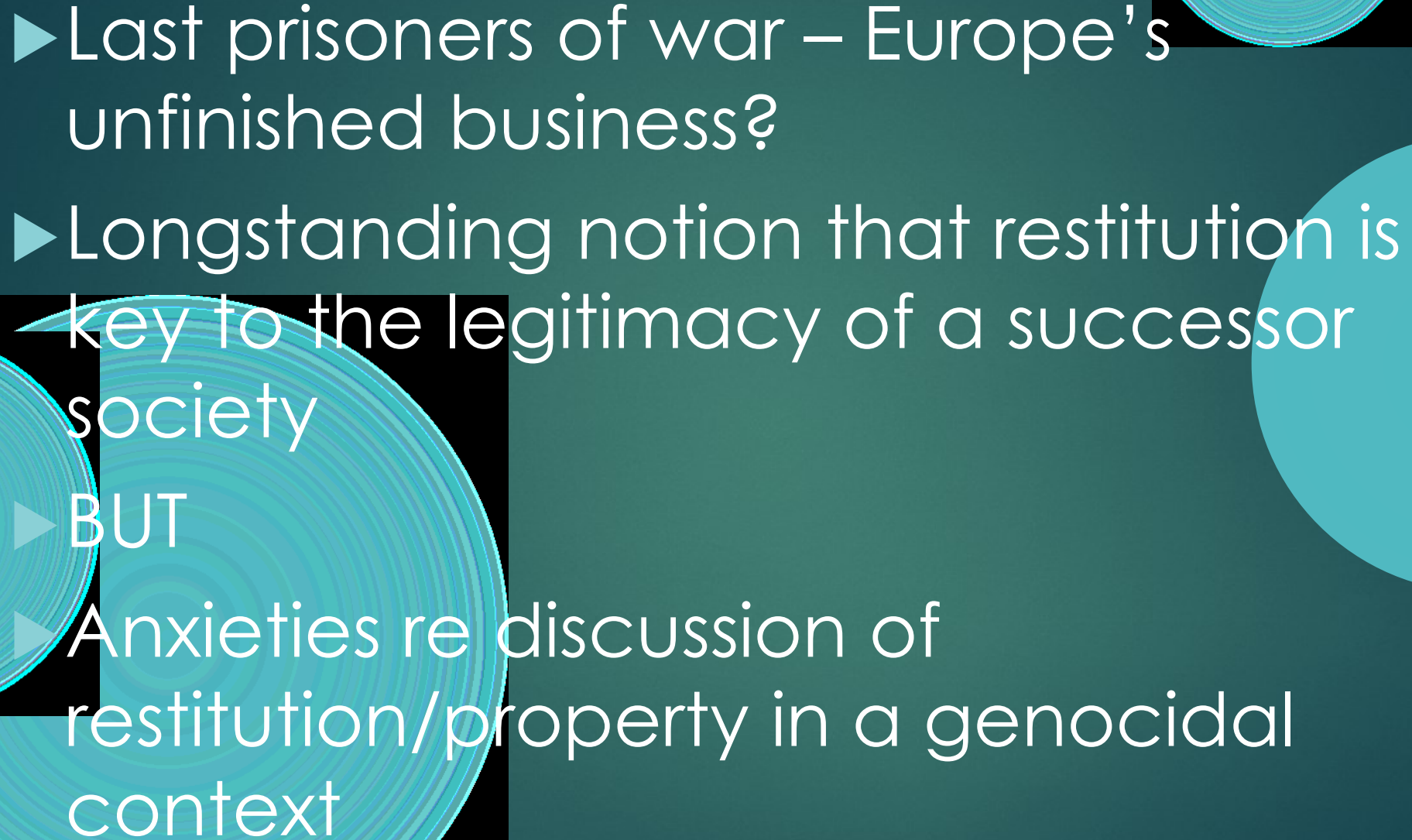
▶ POTENTIAL PLATFORM FOR CONSIDERING  
ASSOCIATED CULTURAL IMPLICATIONS OF BOTH  
LOOTING AND RESTITUTION PROGRAMMES?



▶ RESTITUTION IS A CRUCIAL ASPECT OF  
TRANSITIONAL JUSTICE PROCESSES

▶ TRADITIONAL LEGAL/ADVERSARIAL MODEL  
(PARTICULARLY OF COMMON LAW SYSTEMS) IS  
UNHELPFUL



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- ▶ Last prisoners of war – Europe's unfinished business?
  - ▶ Longstanding notion that restitution is key to the legitimacy of a successor society
  - ▶ BUT
  - ▶ Anxieties re discussion of restitution/property in a genocidal context



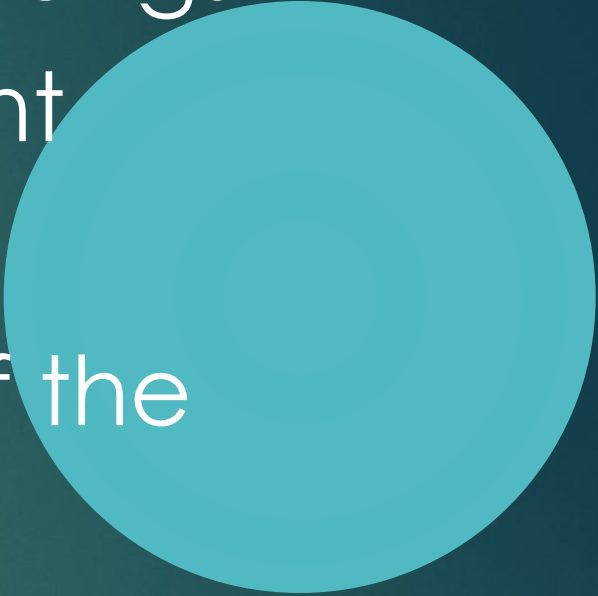

▶ GENERAL

▶ Restitution relating to historical wrongs

▶ 1) represents a form of atonement

▶ 2) recognises historical wrongs

▶ 3) facilitates a wider discussion of the historical context of the original 'taking'.





## ▶ NAZI CONTEXT

▶ Restitution illustrates

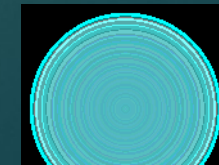
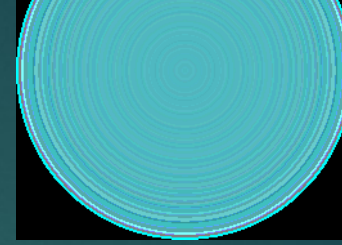
▶ 1) self-identity of Nazi perpetrators and associates

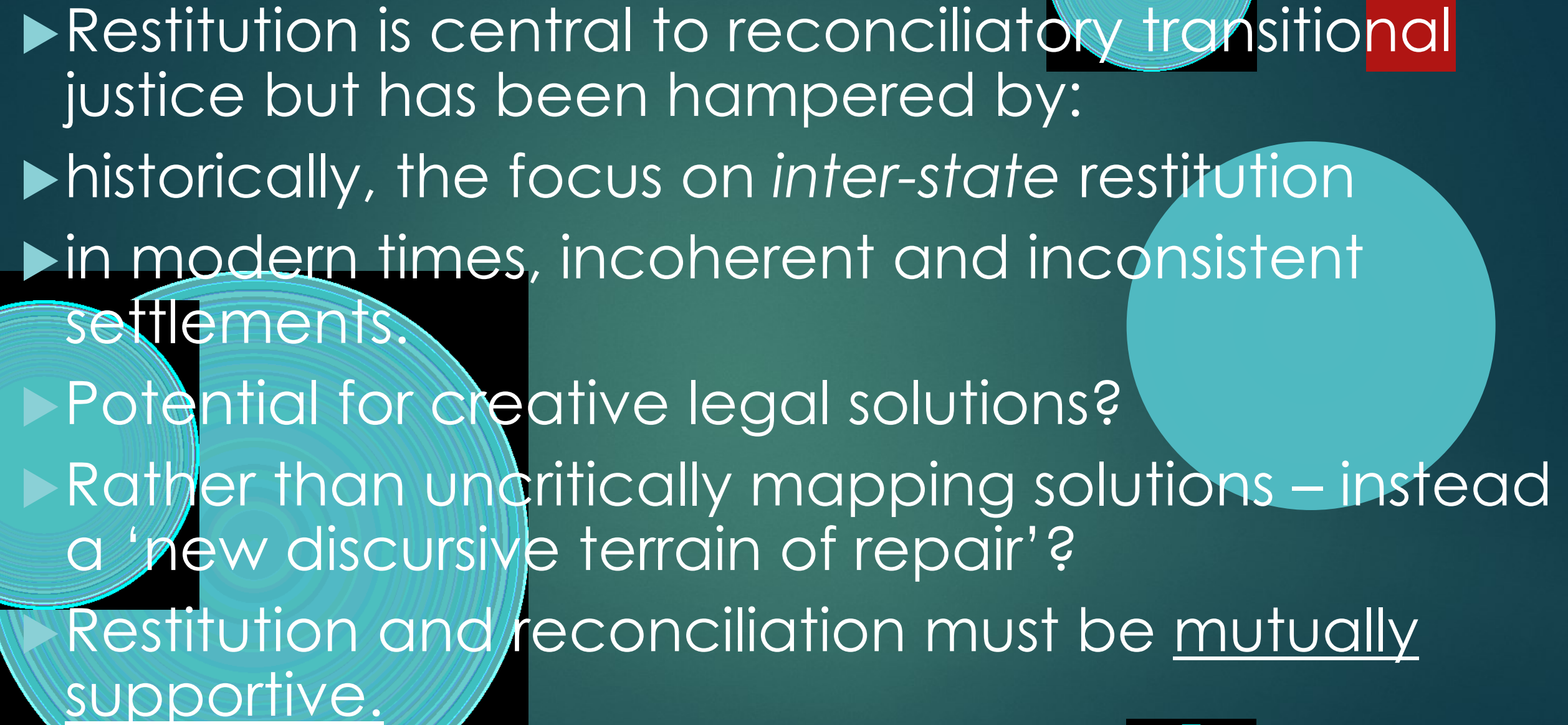
▶ 2) their view of victims/survivors

▶ 3) survivors' views of their own pasts & the role of relics therein



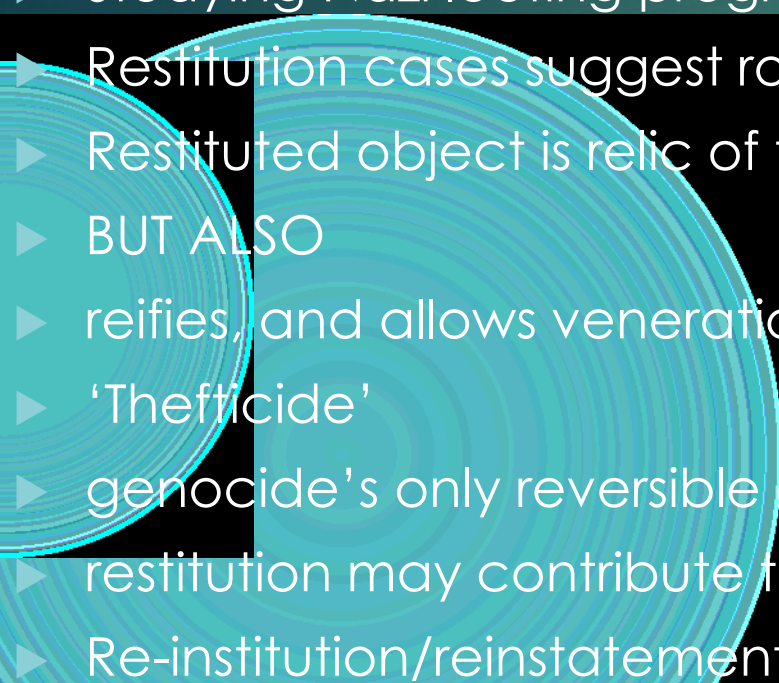
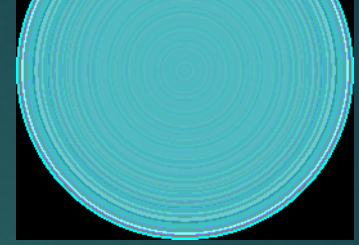


- ▶ 1990s saw surge in activity
- ▶ Establishment of the World Jewish Congress Commission for Art Recovery
- ▶ 1998 Washington Principles

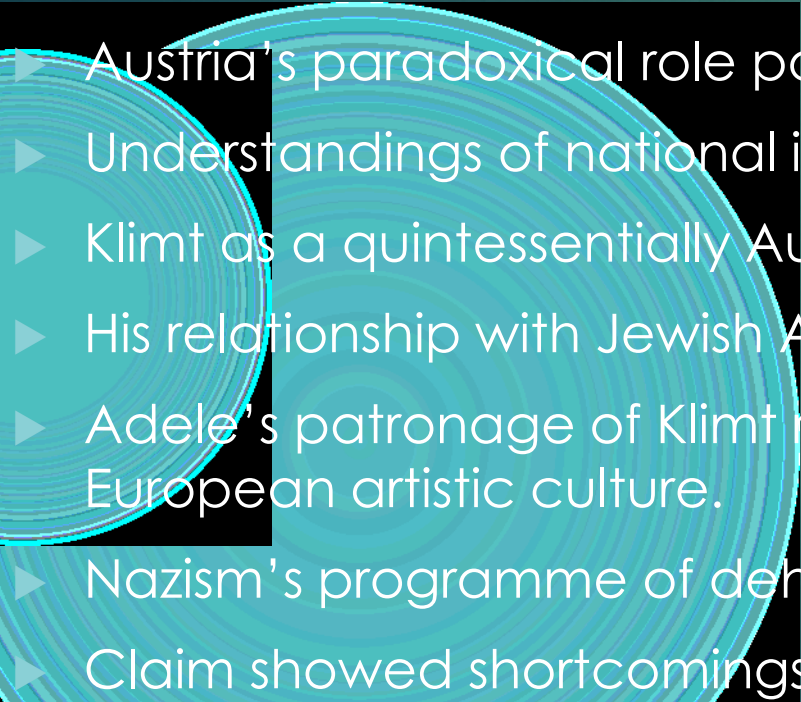

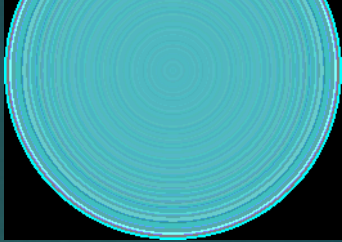




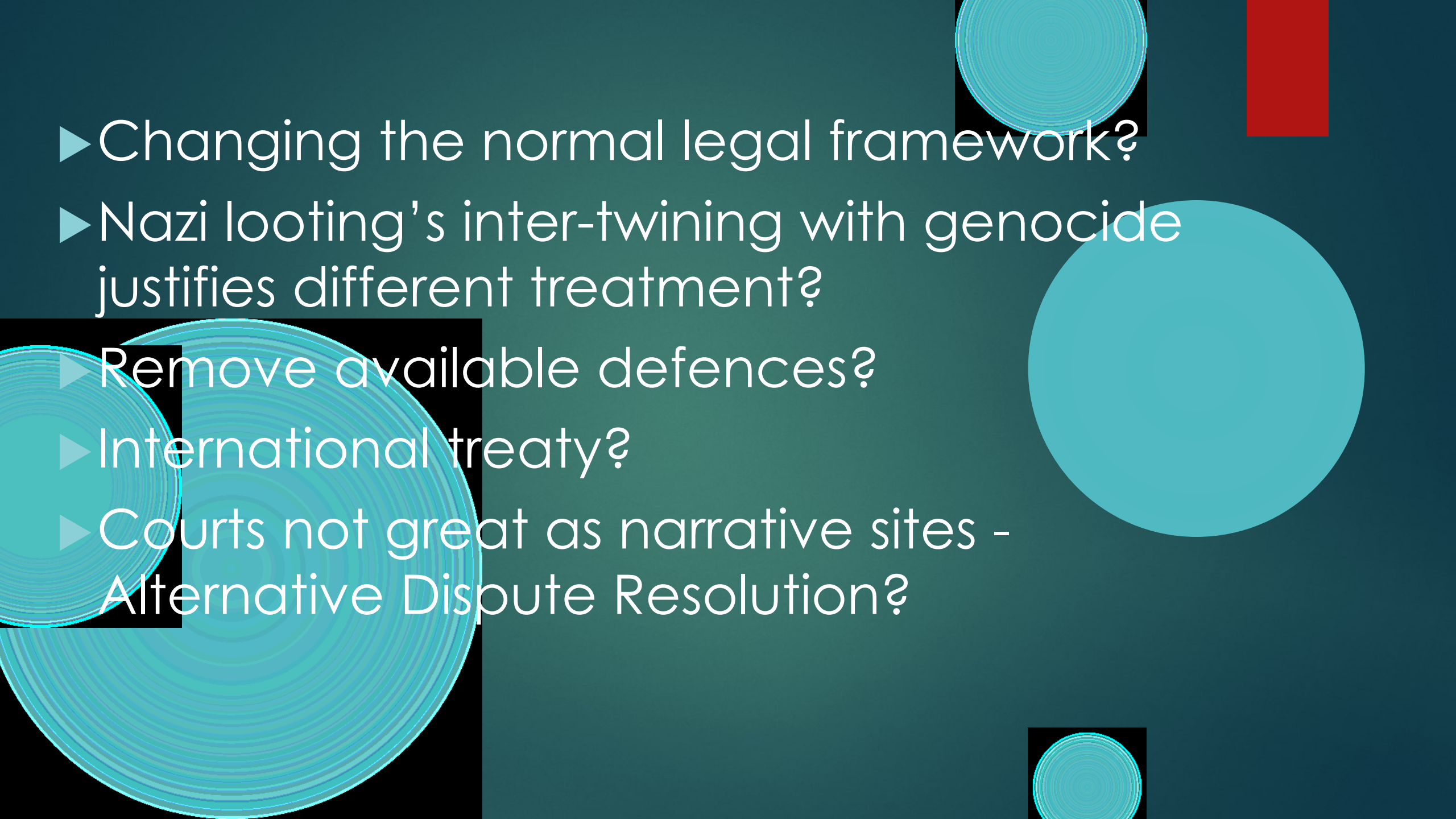
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- ▶ Restitution is central to reconciliatory transitional justice but has been hampered by:
  - ▶ historically, the focus on *inter-state* restitution
  - ▶ in modern times, incoherent and inconsistent settlements.
  - ▶ Potential for creative legal solutions?
  - ▶ Rather than uncritically mapping solutions – instead a ‘new discursive terrain of repair’?
  - ▶ Restitution and reconciliation must be mutually supportive.

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- ▶ Claims emerging from a nationally heterogeneous diaspora
  - ▶ Aryanisation's public and widespread nature rendered visible Nazism's discriminatory nature
  - ▶ Goering's salted away masterpieces only tiny part of the story.
  - ▶ In Hamburg alone, more than 100,000 private 'ordinary' individuals acquired formerly Jewish-owned objects.
  - ▶ Widened field of relevant actors comprising Nazi perpetrators and passive beneficiaries emerges.
  - ▶ Addressing Aryanising social processes is crucial to reconciliatory transitional justice.
  - ▶ BUT
  - ▶ Looting's association with mass murder meant that restitution endured oversight by historians. Accusations of exploitation from both Jewish and non-Jewish quarters.
  - ▶ For transitional justice, property return, not sole focus.
  - ▶ Restitution processes uncover narratives about the past, revealing various prioritised considerations.
  - ▶ Holocaust restitutions may offer creatively crafted legal resources for other post-atrocity reckonings.



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- ▶ Behind every looted piece lurks the Holocaust narrative.
  - ▶ ‘Holocaust survivors’ were ordinary people too with families, homes, possessions, jobs, social lives and positions.
  - ▶ ‘pre-survivorhood’ life
  - ▶ Studying Nazi looting programmes offers insights into the route to Auschwitz.
  - ▶ Restitution cases suggest road from Auschwitz
  - ▶ Restituted object is relic of the past
  - ▶ BUT ALSO
  - ▶ reifies, and allows veneration of an attacked culture
  - ▶ ‘Thefticide’
  - ▶ genocide’s only reversible aspect
  - ▶ restitution may contribute to reconstitution of pre-war identity or memory
  - ▶ Re-institution/reinstatement leads to rebirth

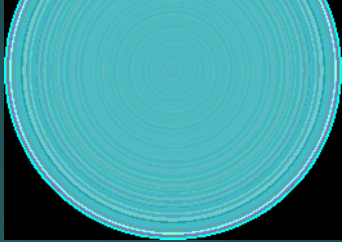



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- ▶ Art ownership projects group and individual identities
  - ▶ Undoing the art looting process allows discussion of complex questions about cultural identities of victims, perpetrators and beneficiaries.
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  - ▶ **Altmann** claim considered
    - ▶ Austria's paradoxical role post-*Anschluss* was examined.
    - ▶ Understandings of national identity
    - ▶ Klimt as a quintessentially Austrian artist
    - ▶ His relationship with Jewish Adele Bloch Bauer
    - ▶ Adele's patronage of Klimt revealed Jewish acculturation of and contribution to Western European artistic culture.
    - ▶ Nazism's programme of dehumanisation and self-advancement.
    - ▶ Claim showed shortcomings of traditional legal routes.

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- ▶ Changing the normal legal framework?
  - ▶ Nazi looting's inter-twining with genocide justifies different treatment?
  - ▶ Remove available defences?
  - ▶ International treaty?
  - ▶ Courts not great as narrative sites -  
Alternative Dispute Resolution?

# SPOILIATION ADVISORY PANEL

- ▶ Established in April 2000,
- ▶ Operates under the auspices of the UK Department for Culture, Media and Sport.
- ▶ Considers claims from anyone (including heirs) who lost possession of a cultural object during the Nazi era (1933-1945) where the object is now possessed by a UK national collection or one established for the public benefit.
- ▶ May advise on claims regarding items in private collections at the joint request of claimants and owners.
- ▶ Function is not to determine legal rights
- ▶ Proceedings take place in confidence.
- ▶ Attempts to bridge apparent dichotomies between morality and law-considers moral strength of the claimant's case and an institution's moral obligations.
- ▶ The first claim concerned a Tate-held Jan Griffier the Elder painting. Tate had good legal title but SAP upheld the claim on its moral strength, and awarded an *ex gratia* payment.
- ▶ Decides on the balance of probabilities while recognising claimants' specific difficulties.
- ▶ Not pro-claimant, SAP seeks solutions equitable to both claimants and institutions.
- ▶ Provided the model for the equivalent Dutch Restitution Committee
- ▶ Deaccessioning ameliorated by the Holocaust (Return of Cultural Objects) Act 2009
- ▶ SAP cannot investigate *ex proprio motu*.
- ▶ Example of art world assuming moral duties.

- ▶ SAP DECISION JUN 2014 – BICCHERNA PANEL – BRITISH LIBRARY – SURVIVING HEIRS OF 5 FORMER SHAREHOLDERS OF MUNICH ART GALLERY
- ▶ FORMER SHAREHOLDERS OF ART GALLERY WERE OF JEWISH ORIGIN
- ▶ PANEL/TABLET USED AS DOCUMENT COVER – HAD BEEN MISSED IN 1999/2000 'PROVENANCE SWEEP' – MISSED ALSO BECAUSE CLASSIFIED AS BIBLIOGRAPHIC RATHER THAN ARTWORK
- ▶ 1930 COST PRICE WAS 15,000 REICHSMARKS, SOLD IN 1936 FOR 2,800 REICHSMARKS
- ▶ GRAUPE AUCTION SALE IN 1936 FOLLOWING A 1935 EXTORTIONATE TAX DEMAND – CLEARLY A FORCED SALE – AROSE AS A DIRECT RESULT OF ANTISEMITIC DISCRIMINATORY MEASURES
- ▶ CLAIMANTS HAD LOST LEGAL TITLE BY 1948 BUT HAD A STRONG MORAL CASE
- ▶ BRITISH LIBRARY WANTED IT TO REMAIN IN COLLECTION FOR (1) PUBLIC ACCESSIBILITY, (2) IN UNIQUELY STIMULATING RESEARCH ENVIRONMENT, (3) SEEN IN CONTEXT OF OTHER WORKS, (4) REFLECTS PETRUCCI PATRONAGE, (5) CONSERVATION GROUNDS, (6) WORK LENT OUT FOR WIDER ACCESS.
- ▶ SAP CLEAR THAT IMPORTANCE WITHIN NATIONAL COLLECTION OR ENSURING NATIONAL COLLECTION'S INTEGRITY IS NOT PRIORITY BUT FAIR & JUST SOLUTION.

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- ▶ BICCHERNA PANEL (CONTINUED)
  - ▶ PREVIOUS COMPENSATION FOR LOSS OF COLLECTION WAS IRRELEVANT
  - ▶ IMPORTANCE OF SPOLIATED OBJECT IN NATIONAL COLLECTION IS NOT PARAMOUNT CONSIDERATION
  - ▶ JUST AND FAIR SOLUTION WAS THE TRANSFER OF WORK TO THE CLAIMANTS
  - ▶ UNDER THE TERMS OF THE 2009 ACT SAP RECOMMENDED TO SECRETARY OF STATE THAT TRANSFER TAKE PLACE
  - ▶ HAD NO OBJECTION IF CLAIMANTS CHOSE COMPENSATION *IN LIEU* OF RESTITUTION – MATTER FOR THE PARTIES.
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- ▶ SAP DECISION SEP 2015 – OIL PAINTING BY RENOIR ‘THE COAST AT CAGNES’ – IN POSSESSION BRISTOL CITY COUNCIL – CLAIMANT IS MAGRAF & CO. GmbH (in liquidation)
- ▶ JAKOB & ROSA OPPENHEIMER OF JEWISH ORIGIN – WORKED FOR MAGRAF FOR MANY YEARS AND WHEN OWNER (MR. LOESKE) DIED IN 1929 HE BEQUEATHED SHARES TO THEM. LOESKE’S FAMILY CHALLENGED WILL UNSUCCESSFULLY, RESOLVED IN 1933.
- ▶ INHERITANCE TAX OF RM 5,000,000 LEVIED ON BEQUEST.
- ▶ NAZIS TARGETED MAGRAF, SINGLED OUT OPPENHEIMERS WHO FLED TO FRANCE IN MARCH 1933. JAKOB DIED IN FRANCE IN 1941 AFTER INTERNMENT, ROSA MURDER IN AUSCHWITZ IN 1943. 3 CHILDREN AND 7 GRANDCHILDREN SURVIVED THEM.
- ▶ NAZIS TOOK CONTROL OF MAGRAF & APPOINTED BARON VON RICHTHOFEN
- ▶ 1935 & 1937 SOLD AT GRAUPE AUCTIONS. RENOIR SOLD IN 1935.
- ▶ NOT CLEAR THAT MAGRAF OWNED PAINTING IN 1935, OR WHAT SALE PRICE WAS OR WHERE PROCEEDS WENT.
- ▶ ULTIMATELY PAINTING ACQUIRED BY ANOTHER JEWISH REFUGEE WHO FLED GERMANY AND WHOSE (NON-JEWISH) WIFE MANAGED TO BRING THEIR PROPERTY TO UK.

▶ SAP DECISION

- ▶ THE SALE AT AUCTION CAME ABOUT BECAUSE OF INHERITANCE TAX AND BANK DEBT WHICH PRE-DATED NAZI ACQUISITION OF POWER. THE KEY DEBT AROSE IN 1929. MAGRAF WAS IN DEEP FINANCIAL TROUBLE BEFORE 1933 (WALL STREET CRASH, BATTLE OVER LOESKE'S WILL , INHEIRTANCE TAX).
- ▶ SAP VERY MUCH KEPT IN MIND THE POTENTIAL PARTIALITY OF THE BADV FILES
- ▶ RATIONALE FOR 1935 AUCTION WAS COMMERCIAL RATHER THAN PERSECUTORY
- ▶ IT WAS A FORCED SALE, BUT IT WAS A COMMERCIALY-FORCED SALE, RATHER THAN A NAZI FORCED SALE.
- ▶ NOT CLEAR THAT 1935 AUCTION WAS AT UNDERVALUE.
- ▶ HEIRS COULD ONLY CLAIM FOR SHARES IN MAGRAF GROUP BUT SHARES DON'T FALL WITHIN SAP'S REMIT.
- ▶ BECAUSE A COMMERCIALY-FORCED SALE, THE MORAL CLAIM WAS WEAK & THE PAINTING WAS NOT SPOLIATED.



# ▶ SAP DECISION FEB 2016 – GOTHIC RELIEF IN IVORY IN POSSESSION OF ASHMOLEAN – ESTATE OF GERTA SILBERBERG

▶ GERTA'S FATHER IN LAW – MAX SILBERBERG (INDUSTRIALIST) – HE & WIFE JOHANNA IN BRESLAW (WROCLAW) – SILESIAN INTERMENT – THERESIENSTADT PERISHED IN AUSCHWITZ – SON (ALFRED) ESCAPED TO UK WITH HIS WIFE (GERTA)

▶ OCTOBER 1935 GRAUPE AUCTION - DEPRIVED AS A RESULT OF SPOLIATION?

▶ SON HAD RECEIVED COMPENSATION FOR (1) INCARCERATION OF PARENTS, (2) LOSS OF OWN ECONOMIC PROSPECTS, (3) COURBET PAINTING.

▶ SAP DECISION:

▶ 1) NO MORAL OBLIGATION ON MUSEUM (REPORTED PROVENANCE)

▶ 2) 1935 SALE HAD NOT BEEN AT UNDERVALUE

▶ 3) MAX HAD RECEIVED SALE PROCEEDS

▶ 4) NOT CLEAR IT WAS A NAZI FORCED SALE – PERSONAL FINANCIAL DIFFICULTIES (DESPITE SS OCCUPATION OF SILBERBERG HOME)

▶ 5) INSUFFICIENT MORAL CLAIM FOR RESTITUTION/EX GRATIA PAYMENT


▶ 6) RECOMMEND A DISPLAY ALONGSIDE WORK DETAILING SILBERBERG TRAGEDY



▶ SAP DECISION IN CLAIMS CONCERNING THE ESTATE OF EMMA BUDGE

- ▶ (1) 3 MEISSEN FIGURES IN POSSESSION OF VICTORIA & ALBERT MUSEUM (recommended return but suggested V& A get to keep one piece with appropriate signage)
- ▶ (2) SILVER GILT RENAISSANCE SALT IN POSSESSION OF ASHMOLEAN MUSEUM (recommended return of object)
- ▶ (3) TAPESTRY FRAGMENT IN POSSESSION OF THE BURRELL COLLECTION (suggest *ex gratia* payment (09 Act didn't apply to Burrell) and notice)
- ▶ (4) 4 NYMPHEMBURG PORCELAIN FIGURES IN POSSESSION OF HIGGINS GALLERY, BEDFORD (figures should be returned)

▶ HELPFUL THAT ONE BODY WITH EXPERTISE DECIDING CASES SINCE

- ▶ (1) EXPEDITIOUS CONTINUITY IN TERMS OF HANDLING INFORMATION – AVOIDED REPEATING UNNECESSARY DETAIL e.g. re whether or not a sale was forced
  - ▶ (2) AVOIDS THE NEED FOR WORKING BETWEEN TWO DIFFERENT LEGAL SYSTEMS AND JURISDICTIONS
  - ▶ (3) AVOIDS MULTIPLE CASES
  - ▶ (4) COULD SUGGEST DIFFERENT SOLUTIONS IN THE DIFFERING SCENARIOS WITHOUT A WINNER/LOSER PARADIGM
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▶ SAP DECISION OF SEPTEMBER 2015 RE CONSTABLE PAINTING 'BEACHING A BOAT, BRIGHTON' IN POSSESSION OF TATE GALLERY – CLAIMANTS ARE THE HEIRS OF BARON HATVANY

▶ SAP WAS PREPARED TO REVISIT EARLIER DECISION OF MARCH 2014

▶ NEW INFORMATION RECEIVED SINCE SUGGESTING THAT A VICTIM OF LOOTING (BARON HATVANY) HAD ACTUALLY RECOVERED PROPERTY IN 1940S & THEN RE-SOLD

▶ CONCERNED EXPORT LICENCE & SHADY FIGURES

▶ ULTIMATELY DID NOT CHANGE EARLIER DECISION THAT PAINTING SHOULD BE RETURNED.

