

María Ruigómez Eraso

**FORGETTING? FORGET IT: NEGOTIATING SPANISH
NATIONAL MEMORY THROUGH ART**

MA Thesis in Cultural Heritage Studies: Academic Research, Policy, Management.

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by

María Ruigómez Eraso

(Spain)

Thesis submitted to the Department of Medieval Studies,
Central European University, Budapest, in partial fulfillment of the requirements
of the Master of Arts degree in Cultural Heritage Studies: Academic Research, Policy,
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Accepted in conformance with the standards of the CEU.

Chair, Examination Committee

Thesis Supervisor

Examiner

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I, the undersigned, **María Ruigómez Eraso**, candidate for the MA degree in Cultural Heritage Studies: Academic Research, Policy, Management declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 24 May 2024



Signature

I) Abstract

This thesis deals with the recent shift in Spanish memory politics and its influence on art restitutions in Spain. The first chapter will comprise a summary of relevant historical precedents. Art movements during the Spanish Civil War and Franco dictatorship, both under the Republican government and Rebel administration, and later on Franco dictatorship, will be traced. A section will be dedicated to the case study of the restitution of two artworks to the heirs of Ramón de la Sota. The second chapter will deal with collective memory theory. This will show helpful to understand which processes have shaped the recent growing interest in publicly processing the Franco dictatorship. I investigate two developments that have shaped Spanish memory politics in particular: the processing of the Holocaust, and the consequences of the Spanish Amnesty Agreement of 1977. Finally, I will return to the Ramón de la Sota case to test the applicability of these developments, as well as the applicability to the Law of Democratic Memory. The thesis will end with a conclusion.

II) Acknowledgements

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List of Abbreviations

ARMH: Asociación Para La Recuperación de la Memoria Histórica [Association for the Recovery of Historical Memory]

CNT: Confederación Nacional del Trabajo [National Confederation of Labor]

ETA: Euskadi Ta Askatasuna [Basque Country and Freedom]

JIPPA: Junta de Incautación y Protección del Patrimonio Artístico [Board of Seizure and Protection of the Artistic Heritage]

JTA: Junta Central del Tesoro Artístico [Central Board of the Artistic Treasure]

PNV: Partido Nacionalista Vasco [Basque Nationalist Party]

SDPAN: Servicio de Defensa del Patrimonio Artístico Nacional [National Artistic Heritage Defense Service]

Preface

Disclaimer:

In this thesis, all translations enclosed within square brackets are provided by me unless explicitly stated otherwise. In addition, some words are italicized for emphasis.

Introduction

*Al olmo viejo, hendido por el rayo
y en su mitad podrido,
con las lluvias de abril y el sol de mayo,
algunas hojas nuevas le han salido.*

- Antonio Machado

In 2023, the *Museo Nacional del Prado* published the results of a research project that investigated the provenance of artworks from the museum's collection. The museum served as a depository for artworks during the Spanish Civil War and the immediate post-war period – and thus, the museum wanted to investigate potential lootings from 1936 onwards. The investigation concluded that 166 artworks from the museum's collection had been originally seized by the Republican or the Rebel faction.^{1,2} These artworks had been consequently deposited in the *Museo Nacional del Prado*, and had remained in the museum ever since.³

The topic of the restitution of artworks is an issue that is gaining increasing public attention in Spain. Although common practice in other contexts (especially in Germany), restituting art as a means to repair historical damage is a relatively new phenomenon in the country. Only recently, with the enactment of the *Ley de Memoria Democrática* [Law of Democratic Memory] and the restitution act to the heirs of Ramón de la Sota y Llano (Ramón

¹ The Spanish Civil War was an armed conflict in Spain, fought from 1936-1939. It confronted two sides: the Republican faction and the Rebel faction. The details of this conflict will be explained in Chapter 1 of the thesis.

² The Rebel faction is also known as the Nationalist faction, which is the title they used to denominate themselves. This name was given to the Rebel faction by Joseph Goebbels. In my opinion, the most appropriate term to describe the group is '*bando sublevado*'. The term '*sublevación*' in Spanish translates to the English 'mutiny' or 'revolt'. Therefore, it is accurate to refer to them as the 'Rebel faction'. Nevertheless, the term '*bando sublevado*' is more impartial than 'Rebel faction', which, in my opinion, conveys a more romanticized image of the faction than its actual nature.

³ Museo Nacional del Prado, "Obras Incautadas. Un Proceso Abierto - Exposición," accessed May 16, 2024, <https://www.museodelprado.es/actualidad/exposicion/obras-incautadas-un-proceso-abierto/14a7f6e8-37f7-637e-0de2-7d84fd71c7c6>.

de la Sota),^{4,5} has the public debate surrounding restitutions as acts of atonement begun to grow. In this context, restitutions refer to an attempt to return looted property to pre-war owners, who were affected by seizures during the Spanish Civil War and the Franco dictatorship. During this time, countless works of art were confiscated, seized, and/or relocated.

Perhaps most interestingly of all, Spain already had a significant period of art restitutions. Immediately following its end, Franco's forces began restituting artworks that had been seized by Republican efforts during the Spanish Civil War.⁶ Especially the militarized organization *Servicio de Defensa del Patrimonio Artístico Nacional* (SDPAN) [National Artistic Heritage Defense Service] played an important role in the restitution of artworks in the immediate postwar period.⁷ However, this first wave of restitutions was influenced by the ideological convictions of Franco's regime. This ideological taint led to incomplete and chaotic restitutions. As I will explain in this thesis, Franco's administration treated them as a bureaucratic procedure – a political tool of anti-Republican propaganda, but above all a bureaucratic procedure after all.

The objective of this thesis is to provide a possible explanation for the shift in restitution practices in Spain. Why were restitutions treated as a primarily bureaucratic procedure under Franco, but are now being enacted as acts of atonement for an historical injustice? What has led to this shift in the way restitutions are conducted and framed? I propose to approach this question from the perspective of memory studies, and contend that an explanation for this

⁴ Peio H. Riaño, "Primera restitución de arte incautado por el franquismo a una familia," *elDiario.es*, last modified August 29, 2022, https://www.eldiario.es/cultura/arte/primera-restitucion-arte-incautado-franquismo-familia_1_9274129.html.

⁵ Due to the unwanted alliteration of the words 'the' and 'de', that would originate from writing 'the de la Sota heirs', I have decided to consistently refer to Ramón de la Sota y Llano by the name Ramón de la Sota.

⁶ Arturo Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*. (Madrid: Ediciones Cátedra, 2021), 120-125.

⁷ Alicia Alted Vigil, "Política Patrimonial Del Gobierno de Franco Durante La Guerra Civil," in *Patrimonio, Guerra Civil y Posguerra: Congreso Internacional*, ed. Arturo Colorado Castellary (Madrid: Universidad Complutense, 2010), 51–60.

development necessitates a closer examination of international Holocaust commemoration practices, and the memory of the Spanish Transition to democracy.

My thesis is divided into three chapters:

- Chapter 1 will be devoted to providing a historical overview of the Spanish Civil War. In particular, it will be concerned with heritage safeguarding practices of both the Republican government, and the Rebel faction. Furthermore, it will give an overview of the aforementioned first restitution wave, that happened during the Franco dictatorship. The first chapter will conclude with the restitution case to the Ramón de la Sota heirs in 2022.
- Chapter 2 will approach the question of the shift in restitution practices from the perspective of memory studies. I will present relevant theories from the field of memory studies, with a particular emphasis on restitution practices as acts of atonement. In this regard, it is inevitable to dedicate our attention to Holocaust commemoration practices as a transnational phenomenon, and how this has influenced Spanish memory politics. Another development is equally important to consider: the politics of memory surrounding the Spanish Transition to democracy. In the last part of the chapter, I will explain the relationship between the Memory of the Holocaust and the Memory of the Transition, in relation to art restitutions.
- Chapter 3 will provide an overview of recent developments and return to the Ramón de la Sota case. However, the final chapter will mainly focus on the Law of Democratic Memory. In particular, what this law means when approached from the perspective of memory studies.

Cultural heritage, as an interdisciplinary field, is concerned with the legacy of physical artifacts, as well as the intangible attributes of societies. The field provides a bridge between events in the past and projections into the future. By doing so, it provides theories to conceptualize changes in value systems. It is equally concerned with finding solutions to conflicts of interests emerging from ontological differences in cultural understandings.⁸ Over the last two years, the study of cultural heritage has given me the opportunity to approach the restitution of artworks in Spain from multiple perspectives. This thesis is the result of this multidisciplinary approach. In this way, the thesis begins by approaching the topic from a historical perspective. The analytical chapter, chapter two, focuses on the application of memory studies theories to the subject matter. In addition, I employ art historical methodologies to conduct provenance research, in relation to some artworks. Finally, on a more abstract level, this thesis is concerned with the tangible and intangible heritage of Spain: the tangible relocation of artworks during the Spanish Civil War and post-war, and the intangible shift in meaning of restitution practices in Spain.

As for my personal position, it is not easy to write about a conflict that continues to divide my country, at least in ideological terms. Especially when doing so from abroad, seemingly protected by geographical distance and far away from political tensions. The greatest risk that this distance conceals is the risk of romanticizing history, of narrating it and thus turning it into something *interesting*. I do not wish to exploit the bloody episodes of my country's recent history for their narrative quality. Rather, I want to treat this topic with the sobriety it requires and with respect for the hundreds of thousands of people who died and/or were affected by the Spanish Civil War and Franco dictatorship. To this end, I will try to use the perspective afforded by geographical distance to describe the processes I observe.

⁸ Central European University, "The Concept and History of Cultural Heritage | Cultural Heritage Studies," accessed May 18, 2024, <https://culturalheritagestudies.ceu.edu/concept-and-history-cultural-heritage>.

As a child and young adult, I did not have space, nor time, to reflect on my own past and family's history, until I moved abroad. Growing up in the Basque Country meant growing up aware of the terrible restrictions and bloody actions against the Basque population under the Rebel faction and the Franco dictatorship. The bombing of Gernika, the political purge of Basque workers after its fall in the war, and the cultural repression of euskera, are strong-felt memories. At the same time, it meant growing up aware of the terrible crimes of the Euskadi Ta Askatasuna (ETA) [Basque Country and Freedom] terrorist organization, including the lives they took and the terror they sowed among the Basque population. This is why trying to conceptualize Spanish collective and social memory in my thesis, coming from the Basque Country, is not an easy task. It involves contributing to painful conversations in a social climate that is only now beginning to take an interest in reconciling its past.

Although Spanish political parties treat the engagement with memory as a product of the political Left, I would like to distance my work from this forced attribution. The preoccupation with memory is a transnational phenomenon. This development, initiated by Germany in the context of commemorating the Holocaust, has spread to the memory politics of many other countries. As I will argue in my thesis, Spain is no exception to this trend and has also been influenced by German memory politics. The imposed silence by the Spanish government through the 1977 Amnesty Agreement cemented the crimes of the dictatorship and represented a missed chance to conceptualize the nation's recent past and potential future. Unraveling this silence represents a new opportunity to define a future for Spanish democracy. Therefore, I understand the project of contributing to conceptualizing Spanish memory shifts, as contributing to a project of unity. This project concerns all Spaniards and should stand above political disputes.

Chapter 1 - Art movements in the Spanish Civil War and postwar period

1.1. The Spanish Civil War: A brief overview

The Spanish Civil War officially began on July 18, 1936, when a faction of the Spanish Army rebelled in Melilla, against the government of the Second Republic. The military uprising, which had already started in the afternoon of July 17, 1936, would fail to secure an immediate control of Spain. Instead, it evolved into a three year long, bloody civil war: the Spanish Civil War. However, as Paul Preston rightly asserts, the Spanish Civil War “was the culmination of a series of uneven struggles between the forces of reform and reaction which had dominated Spanish history since 1808.”⁹ During the war, the confronted parties seized, relocated, and confiscated artworks. These relocation efforts were extraordinary, and gave rise to irregular distributions that still determine the whereabouts of thousands of artworks to this day. To understand the direct causes of these art relocations, it is necessary to briefly discuss the preceding political developments.

Spain’s neutrality in World War I resulted in an economic boom for the country, as it was able to supply both the *Entente* and the Central Powers. This, on the one hand, enriched landowners, and industrialists. However, it also led to a shift in power of the economic elite. The shift caused major frictions between the industrial bourgeoisie and the Spanish landowners. On the other hand, the economic boom impoverished the working class even more. The substantial exports for the war effort resulted in a shortage of materials and goods, a sharp increase in inflation, and a decline in general living standards. The gap between the rich and

⁹ Paul Preston, *The Spanish Civil War: 1936-39* (London: Weinfeld and Nicolson, 1986), 9.

the poor - the economic elite and the working class - reached a critical point in 1917. This led to a pervasive feeling of social injustice by those disadvantaged. The feeling of social injustice was especially pronounced between 1918 and 1921, during the so-called Bolshevik triennium, which witnessed the emergence of anarchist movements, strikes and armed escalation.¹⁰

On September 23, 1923, General Miguel Primo de Rivera initiated a *coup d'état* and assumed control of Spain. Primo de Rivera's military dictatorship brought two significant advantages to Spain: On the one hand, the *coup* brought a temporary end to the aggressive confrontations that had been occurring in Spain for the previous six years. On the other hand, the political stability brought by the dictatorship advanced Spain's economy through administrative reforms. The political repression of leftist movements was replaced by a short period of prosperity, that primarily benefitted the middle class. However, this situation would not last long: after losing the support of the economic elite (landowners, the bourgeoisie, and industrialists), Primo de Rivera resigned at the end of January 1930.¹¹

In the subsequent general elections of 1931, the socialist and liberal middle-class Republicans achieved an impressive victory. As a direct consequence of this victory, King Alfonso XIII had to leave Spain for (forced) exile to Marseille. On April 14, 1931, the Second Spanish Republic was established, and received with enthusiasm by its supporters.¹² The aggressive ideological division between defenders of the Republic and its opponents set the stage for the conflict that would begin only five years later. At its inception, the Republican government had a moderate left character. Ideologically, the Second Spanish Republic grouped together many different types of people: socialists, liberals, bourgeois Republicans - but also

¹⁰ During this time, landless peasants in the South of Spain revolted against their landowners. In addition, Barcelona saw a rise in violent conflicts between workers and employers. Unions reacted strongly to cuts in labor forces. The conflicts resulted in over 1.000 political murders in Barcelona between 1917 and 1923. For more information, see: Filipe Ribeiro de Menezes, *Franco and the Spanish Civil War* (London: Routledge, 2001), 11.

¹¹ Preston, *The Spanish Civil War: 1936-39*, 16.

¹² Julián Casanova, *Anarchism, the Republic and Civil War in Spain: 1931 - 1939* (London and New York: Routledge, 2004), 3.

workers' movements, communists, and anarchist movements.¹³ In contrast, the Republic was strongly opposed by defenders of the monarchy, the Church, and the Army, among others.

The Republican government sought to implement social reforms to advance Spanish society, including the introduction of public education, women's rights, important agrarian reforms, and others.¹⁴ Concurrently, there was a desire to limit the power of the Catholic Church and the Army. The reforms posed a challenge to the most powerful figures in Spain, including capitalists, the Church, the military, industrialists, landowners, and others. Because of the threat they represented, the reforms were vehemently opposed by the conservative block. This confrontation resulted in a first - and failed - military uprising in 1932.¹⁵

This brief overview of the historical antecedents explains the tense political landscape that preceded the year of 1936. To understand what would happen after, it is important to remember that the two ideological blocks were deeply divided. Thus, the war was not only fought militarily, but also in the field of propaganda. In this regard, the preservation of Spain's artistic heritage would be later on instrumentalized as a political tool.

On July 17 and 18, 1936, a second *coup d'état* began in Melilla. This *coup* was successful, and it quickly spread to the mainland.¹⁶ However, the insurgent soldiers did not

¹³ Anarchist support to the Second Spanish Republic was not necessarily out of ideological conviction. At the beginning of the Republic, members of the *Confederación Nacional del Trabajo* (CNT) [National Confederation of Labour] stated that the sensible approach was to "wait for the moral exhaustion of the Republic", to then be able to implement anarchist ideals. For more information, see: Julián Casanova, *Anarchism, the Republic and Civil War in Spain: 1931 - 1939* (London and New York: Routledge, 2004), 4.

¹⁴ This is a generalization. The Republican government faced initial problems to implement social reforms, especially in trying to modify labor relations: they were not supported enough by capitalists, and the inclusion of CNT representation also failed. However, the two-year period after the proclamation of the Republic (also known as '*bienio-reformista*') saw the enactment of important decrees and law. Among them, the reform of the Armed Forces, the decree on municipal boundaries, the creation of panels of arbitration for agrarian disputes, unemployment loans, the law on the eight-hour maximum working day, the declaration of voluntary religious education, etc. For more information, see: Casanova, *Anarchism, the Republic and Civil War in Spain: 1931 - 1939*.

¹⁵ Preston, *The Spanish Civil War: 1936-39*, 19-32.

¹⁶ The leaders of the *coup d'état* of 1936 were Sanjurjo, Mola, Queipo de Llano, and Franco. For more information on this matter, see: Casanova, *Anarchism, the Republic and Civil War in Spain: 1931 - 1939*.

manage to quickly take control of all of Spain. In this way, following the events of July 18, 1936, Spain got divided into two blocks: those territories under the control of the Republican government, and those under the control of the Rebel faction.¹⁷ As previously stated, the Republican faction was the ruling government of the Second Spanish Republic (1931 – 1939). During the war, this faction received support from leftist and socialist groups. Opposed to the government of the Republic was the Rebel faction. This faction was led by General Francisco Franco and was supported by fascist and conservative forces. In the war, the Rebels' primary objective was to overthrow the Republican government, and they ultimately succeeded. The final victory of the Rebel faction led to the establishment of the Franco dictatorship in 1939, which lasted until his death in 1975.¹⁸

During the Spanish Civil War, Spain experienced an extraordinary relocation of artworks as part of a national safeguarding strategy. As we will see in the next section, this safeguarding strategy was carried out first by the Republican government, and then by the Rebel administration in the conquered territories. In turn, once the Rebel faction won the Civil War and the Franco dictatorship was established, these safeguarded works were returned to individuals and organizations by Francoist heritage organizations (mainly the militarized SDPAN). Unfortunately, the return of artworks was not systematic and suffered from the ideological influence of the Franco dictatorship. This led to thousands of artworks being deposited in museums, churches, and other institutions, instead of being returned to the pre-war owners.¹⁹

In the next sections, I will provide an overview of how the Republican government and the Rebel administration managed the protection of Spanish heritage during the Civil War.

¹⁷ Preston, *The Spanish Civil War: 1936-39*, 9-70.

¹⁸ Preston, 166-73.

¹⁹ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 61-140.

Furthermore, how Franco's regime restituted artworks to pre-war owners, and other institutions, in the immediate post-war.

1.2. Safeguarding and heritage preservation measures by the Republican government²⁰

This section examines the measures taken by the Republican government to protect Spain's cultural heritage from the vicissitudes of the Spanish Civil War. While the government initially sought for a national approach, regional challenges required local responses. And so, municipalities implemented different preservation strategies to prevent heritage destruction. The preservation efforts also benefitted from international collaborations. Particularly, on the collaboration of the 'International Committee for the Salvage of Spanish Art Treasures'. Furthermore, the Republican government extensively documented preservation activities. The produced documents were originally used as dissemination tools of Republican propaganda, but serve as relevant sources for contemporary provenance research.

As explained before, the Spanish *coup d'état* in Melilla by insurgent soldiers on July 18, 1936, failed to immediately secure control of Spain. As the military uprising against the Second Republic spread across the country, Spain became divided into two parts: the territories loyal to the government of the Second Republic, and the territories supporting the military insurrection. The war began to threaten Spain's cultural heritage. Sites began to suffer deliberate and accidental destruction as a consequence of intense fights between the two

²⁰ This section was partly written for the course CHSP5057 – Preserving Heritage: Science, Technology, and Documents 2023/2024 Winter. The section was modified accordingly to fit the topic of this thesis.

ideological blocks. The ideological character of the war affected the archeological, artistic, and historical heritage. Particularly affected was the immovable and movable religious heritage.²¹

One of the very early challenges faced by the Republican government, was the dilemma surrounding the destruction of religious monuments and aristocrats' palaces. Political organizations on the leftist spectrum, loyal to the Republic, reacted with anger against the military *coup*. This anger was expressed in the aggressive destruction of heritage ideologically associated with the *coup*. The deliberate attack and burning of churches, as well as the occupation of aristocrats' palaces by the Leftists, soon caused concern in the government. Especially concerning was the threat of loss of the artistic heritage inside the buildings. As a result, the Republican government swiftly implemented measures to redirect the Leftists' anger away from the destruction of artworks in occupied palaces.²²

For this intent, only five days after the *coup*, the government of José Giral (the president of the Republican government at the time) passed the 'Decree of July 23, 1936'. This decree ordered the constitution of a board whose task it was to "intervene with broad powers in all objects of art or historical and scientific objects found in the occupied palaces."^{23,24} This shows that, from the very beginning of the war, the preservation of artistic heritage was an important concern. However, as the board was established in haste, it did not receive a name.

And thus, on August 1, a new decree was passed that defined the board further and extended its powers. The developments of the war had put all Spanish heritage at risk – and

²¹ Alicia Alted Vigil, "Recuperación y Protección de Los Bienes Patrimoniales En La Zona Insurgente: El Servicio de Defensa Del Patrimonio Artístico Nacional," in *Arte Protegido. Memoria de La Junta Del Tesoro Artístico Durante La Guerra Civil*, eds. Isabel Argerich Fernández and Judith Ara Lázaro (Madrid: Instituto de Patrimonio Cultural de España - Museo Nacional del Prado, 2003), 97-124.

²² Colorado Castellary: *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 23.

²³ Agencia Estatal Boletín Oficial del Estado, "Gaceta de Madrid: Diario Oficial de La República," July 25, 1936, https://www.boe.es/diario_gazeta/comun/pdf.php?p=1936/07/25/pdfs/GMD-1936-207.pdf, 1.

²⁴ Text in the original reads: "Decreto disponiendo se constituye una Junta, en relación inmediata con el Director general de Bellas Artes, encargada de intervenir con amplias facultades cuantos objetos de arte o históricos y científicos se encuentren en los Palacios ocupados". See: footnote nr. 23.

not just heritage in aristocrats' palaces. The government needed an all-encompassing tool for the protection of heritage. In relation to artworks, the government understood protection of heritage as the practice of safeguarding artworks through their ordered seizure, with the goal of preserving them from the dangers of the war. The Decree of August 1, 1936, gave the original board its name: 'Junta de Incautación y Protección del Patrimonio Artístico' (JIPPA) [Board of Seizure and Protection of the Artistic Heritage].²⁵ In addition, the decree broadened the power of the board. The third article reads:

Artículo 3.º La Junta procederá a la incautación o conservación, en nombre del Estado, de todas las obras, muebles o inmuebles, de interés artístico, histórico o bibliográfico, que en razón de las anormales circunstancias presentes ofrezcan, a su juicio, peligro de ruina, pérdida o deterioro.²⁶

[Article 3: The Board shall seize or preserve, on behalf of the State, all works, movable or immovable, of artistic, historical or bibliographical interest, which, by reason of present abnormal circumstances, in its opinion, are in danger of ruin, loss or deterioration.]

Thus, already in the first month of the war, the Republican government established the JIPPA to manage the preservation of Spain's artistic, historical, and bibliographical heritage. Through this board, the government aimed to develop a national strategy to protect the country's heritage from destruction.

However, it soon became apparent that a decentralized approach was necessary to ensure the effective implementation of national guidelines. In response to the regional requirements, different cities established adjunct boards of the JIPPA. One particularly significant board was the 'Junta Delegada de Incautación, Protección y Salvamento del Tesoro Artístico' [Delegate Board of Seizure, Protection and Salvage of Artistic Treasures] in Madrid.

²⁵ Agencia Estatal Boletín Oficial del Estado, "Gaceta de Madrid: Diario Oficial de La República," August 2, 1936, <https://www.boe.es/gazeta/dias/1936/08/02/pdfs/GMD-1936-215.pdf>, 999.

²⁶ Agencia Estatal Boletín Oficial del Estado, "Gaceta de Madrid: Diario Oficial de La República."

After the *coup*, Madrid had remained loyal to the government of the Republic. However, on November 6, 1936, the Rebel forces entered Madrid and began to siege the city.²⁷ Therefore, the government of the Republic had to be moved to Valencia. Nevertheless, the government sought to still protect the artistic heritage in Madrid's museums. Additionally, almost the totality of the depositories where the JIPPA had safeguarded objects remained in Madrid. Because the government could not act from Valencia, it created the aforementioned adjunct board in Madrid for the protection of heritage (Appendix A).²⁸ The founding document of the board outlines two important things: on the one hand, it proves the existence of a decentralized approach. On the other hand, it mentions the importance given to inventorying seized artworks. Despite the hectic nature of the war, the government recognized the significance of creating inventories to preserve the provenance of the seized objects.²⁹

The boards and adjunct boards established in the latter half of 1936 were provisional in nature: artworks seized were never intended to be kept permanently by the boards.³⁰ Proof of this are the preserved receipts issued by the JIPPA to deliverers (fig. 1). These receipts also reflect the chaotic nature of these seizures. Upon close examination, one can discern that in this particular example the attributions are unclear. Artwork Nr. 2 and Nr. 13 are attributed to Murillo and van D[y]ck, respectively. However, the attributions are followed by a question mark. Van Dyck is misspelled as 'Van Dick'. It can be concluded, thus, that some seizures were made hastily or by individuals lacking expertise.

²⁷ The siege of Madrid, which began on November 8, 1936, would last for two and a half years, until March 28, 1939.

²⁸ Junta Delegada de Incautación, Protección y Salvamento del Tesoro Artístico, "Libro de Actas (JTA_L _ 8)" Archivo del Instituto del Patrimonio Cultural de España, December 16, 1936.

²⁹ Junta Delegada de Incautación, Protección y Salvamento del Tesoro Artístico, "Libro de Actas (JTA_L _ 8)."

³⁰ Colorado Castellary: *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 27.

As the conflict escalated, the Republican government decided to create an organization through a decree-law with a more permanent character. For this purpose, the government created the ‘Junta Central del Tesoro Artístico’ (JTA) [Central Board of the Artistic Treasure]. The previously established boards became dependent of the JTA.³³

During the war, the JTA became the most significant organization for protecting heritage on the Republican side. Through this body, the Republican government seized artworks and created depositories from April 1937 onwards. The JTA seized artworks from national, provincial, and municipal institutions, as well as from private individuals. It also accepted artworks that were delivered on a voluntary basis. The aim was to protect Spain’s artistic heritage from loss, deterioration, and the destruction of the war. Once seized, the artworks were stored in JTA depositories. In Madrid, the most important depositories were in ‘*Museo Nacional del Prado*’, ‘*Museo Arqueológico*’, ‘*Monasterio de la Encarnación*’, and in several important churches (fig. 2). In Barcelona, the ‘*Palacio de la Virreina*’ was used as a depository, and in Valencia, the ‘*Museo de Bellas Artes de San Carlos*’. The depositories of the JTA were selected to withstand potential air raids, a common tactic employed by the Nationalists.³⁴

³³ Agencia Estatal Boletín Oficial del Estado, “Gaceta de La República: Diario Oficial,” April 19, 1937, 282-83, https://www.boe.es/diario_gazeta/hemeroteca.php?a=1937&m=4&d=19.w.

³⁴ Colorado Castellary: *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 28.



Figure 2: Depository of stone statues in the church of San Francisco el Grande in Madrid.³⁵

Although the JTA was the most prominent seizing agency, other organizations also played an important role. These smaller organizations had originated due to local needs and continued to exist after the establishment of the JTA. Examples include the ‘*Agrupación Socialista Madrileña*’ [Madrid Socialist Group] or the ‘*FAI-CNT*’.³⁶ The problem with this proliferation is that the documentation standards varied. While the JTA kept inventory of the seizures (and with it, recorded the origin of the artworks and other relevant information), the smaller seizing organizations did not document any information on the seized artworks. This would turn out to be a problem later on, when the Rebel faction discovered the art depositories of the Republicans and began to organize restitutions to pre-war owners based on Republican

³⁵ Picture by Aurelio Pérez Rioja, *Estatuas de piedra recogidas por la Junta y depositadas en San Francisco el Grande*, 1937, Archivo Junta del Tesoro Artístico: Instituto del Patrimonio Cultural de España, Madrid, <http://catalogos.mecd.es/IPCE/cgi-ipce/ipcefototeca?TITN=335488>.

³⁶ The composites of “FAI-CNT” stand for the *Federación Anarquista Ibérica* [Iberian Anarchist Federation] and the *Confederación Nacional del Trabajo* [National Confederation of Labor], respectively. They are often referred to as ‘FAI-CNT’, for their close relationship.

inventories. This lack of documentation and information is one of the reasons why calculating an exact number of total seized artworks is difficult. An estimate of total artworks seized by Republican efforts, calculated by Arturo Colorado Castellary, amounts to 16.503 pieces.³⁷

The JTA also prepared for the possible evacuation of artworks from Spain. To this end, the government had already transported prominent artworks to the border with France during the first months of the war. While the protection of heritage was a national issue, practical matters were handled locally. The autonomous regions with access to the sea, such as the Basque Country and Catalonia, pursued different strategies than the inland communities. Particularly relevant for the inland communities was the evacuation of Madrid's most valuable artworks (mainly from the *Museo Nacional del Prado*) to Geneva. At an earlier stage of the war, the JTA had meticulously packed and transported artworks to Valencia (fig. 3). The transportation was slow due to the fragile nature of the artworks. The trucks travelled to Valencia (the location of the Republican government), before continuing north to the Ampurdán area of Catalonia.^{38,39}

³⁷ Colorado Castellary: *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 29.

³⁸ Colorado Castellary, 34.

³⁹ In this region, the JTA had three significant depositories in close proximity to the French border: the *Peralada* Palace, the *San Fernando de Figueras* Palace, and the mine in La Vajol. For more information, see Colorado Castellary, 34.



Figure 3. The transport of Goya's 'San Bernardino de Siena predicando ante Alfonso V de Aragón' from Madrid to Valencia in a truck of the JTA.⁴⁰

However, in February 1939, as Franco's forces advanced and the Rebel faction entered Catalonia, the Republican government decided to send the artworks to France to protect them from the Rebels. The Rebel faction was threatening to get a hold of the Republican depositories in Ampurdán. And so, the Republican government worked with international museums to transport 1,868 crates containing Spain's most valuable artistic heritage across the French border and to Geneva.⁴¹ This collaboration relied on the help of the '*Comité Internacional para el Salvamento de los Tesoros de Arte Españoles*' [International Committee for the Salvage of Spanish Art Treasures] (International Committee). Established urgently at the end of 1938, the International Committee was composed of the national museums of the European democratic countries that wanted to aid the Republican government. Among the collaborating museums were the *Musée du Louvre*, the Tate, the National Gallery (London), the *Rijksmuseum*, and the

⁴⁰ Picture by António Passaporte, *Traslado del Goya de San Francisco el Grande*, 1939, Archivo Junta del Tesoro Artístico: Instituto del Patrimonio Cultural de España, <http://catalogos.mecd.es/IPCE/cgi-ipce/ipcefototeca?TITN=330563>.

⁴¹ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 35.

Metropolitan Museum New York.⁴² The aim was to help the Republican government to preserve Spain's artistic treasure in the advent of a Rebel invasion.

On February 3, 1939, the International Committee signed an agreement to protect Spanish artworks. Between that day and February 9, 71 trucks loaded with Spanish artworks crossed the French border. The transport faced numerous adversities, including air raids by the Rebel air force on the roads, masses of refugees attempting to flee to France, cold weather, and a shortage of available trucks to transport the artworks.⁴³ Against all odds, it turned out successful. On February 12, 1939, a special train left Perpignan and arrived on the next day in the morning in Geneva. The Swiss government created an inventory of the artworks before depositing them in the *Palais des Nations*. During the final stages of the war, a second convoy of pieces arrived in Geneva. However, the International Committee had no time to create an inventory of the works on this convoy due to Francoist pressure to immediately return them.⁴⁴

The Basque and Catalan autonomous regions implemented their own salvage measures to France.⁴⁵ This was facilitated through the communities' access to the sea and closer geographical location to the French border. For instance, the Catalan government sent artworks to France for the exhibition *L'Art Catalan du Xème au Xvème Siècle* [Catalan art from the 10th to the 15th century]. The artworks remained in France until the end of the war. In the Basque Country, the *Museo de Arte Moderno* and *Museo Bellas Artes* sent artworks to Paris for the 'Exposition Internationale des Arts et Techniques dans la Vie Moderne' [International Exhibition of Arts and Techniques in Modern Life] in 1937. These movements were well-documented for the exhibition loans. Additionally, in accordance with national measures, a

⁴² Arturo Colorado Castellary, *Arte, revancha y propaganda: La instrumentalización franquista del patrimonio durante la Segunda Guerra Mundial*, (Madrid: Ediciones Cátedra, 2018), 58.

⁴³ *Las cajas españolas*, directed by Alberto Porlán (2013; RTVE Documaster), <https://www.rtve.es/play/videos/documaster/documaster-las-cajas-espanolas/5445549/>.

⁴⁴ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 37.

⁴⁵ Arturo Colorado Castellary et al., *Arte Salvado. 70 aniversario del salvamento del patrimonio artístico español y de la intervención internacional* (Madrid: Sociedad Estatal de Conmemoraciones Culturales, 2010).

depository of artworks had been established near the French border, in Uribitarte. A few days before the fall of Bilbao in June 1937, these artworks were transported by ship to the port of La Rochelle.⁴⁶

In addition to the aforementioned lists of records and inventories, a big source of information on the movement of artworks are the JTA's publications. The preservation of patrimony was used as a propagandistic tool to legitimize the Republic's national authority. This initiative began as a popular movement by students of Fine Arts in Madrid, who created vivid posters and displayed them throughout the city (fig. 4). However, this information dissemination strategy was soon adopted by the state - and preservation appeals and activities were broadcasted on the radio and in print. Following the creation of the JTA, reports on the organization's activities were printed and distributed in Republican territories (fig. 5). One of the initial reports was titled *El fascismo destruye los tesoros artísticos de España* [Fascism Destroys Spain's Artistic Treasures]. Some reports, such as *L'effort culturel du peuple espagnol en armes* [The Cultural Effort of the Spanish People in Arms], were translated and distributed internationally. The adjunct board of Madrid was particularly productive in publishing these reports.⁴⁷

⁴⁶ Colorado Castellary: *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 38-40.

⁴⁷ Colorado Castellary, 43-46.



Figure 4. Students of the Academy of Fine Arts in Madrid put up a poster that reads: "Citizen!! Do not destroy any old drawings or engravings, preserve them for the National Treasury."^{48,49}

⁴⁸ Picture by unknown author, *Alumnos de la Escuela de Bellas Artes fijando carteles originales, ejecutados por ellos mismos, en defensa del tesoro artístico*, 1937, Archivo Junta del Tesoro Artístico: Instituto del Patrimonio Cultural de España, <http://catalogos.mecd.es/IPCE/cgi-ipce/ipcefototeca?TITN=335245>.

⁴⁹ Text in the original reads: "¡¡Ciudadano!! No destruyas ningun grabado antiguo, conservalo para el Tesoro Nacional". See: footnote nr. 48.

However, the documentation on the movement of Spanish artworks during the Civil War remains scarce. The availability of public information depends on institutions' willingness to make their information accessible. If institutions served as depositories for the Republican seizing agencies, it is their decision to share information about their funds. The lack of a general inventory of Spanish heritage further complicates research.⁵¹

⁵⁰ José Lino Vaamonde, *Salvamento y Protección Del Tesoro Artístico Español Durante La Guerra*, 1937, Donación Vaamonde: Instituto del Patrimonio Cultural de España, <http://catalogos.mecd.es/IPCE/cgi-ipce/ipcefototeca?TITN=344934>.

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seized artworks from institutions and individuals, created strategic depositories, and inventoried the seized objects. Furthermore, they instrumentalized heritage preservation as a propaganda tool. However, the decentralized nature of the conflict soon required regional responses. Adjunct boards to the JTA – such as the one in Madrid – were created to address specific challenges. In addition, regional and independent seizing organizations emerged. These regional organizations played a crucial role in expanding preservation efforts within their respective areas, but they also worked with less diligence and meticulousness than the governmental boards. This especially concerns the documentation of processes - and poses research challenges today, as the whereabouts of many artworks remain untraceable. Furthermore, on an international level, the International Committee supported the safe evacuation of Spain's most valuable pieces to Geneva, assisting to mitigate the risk of loss or destruction. All of these efforts were carried out under time constraints, resulting in sometimes incorrect or incomplete documentation (even if the will was there). In the present day, accessing and using historical sources remains an ongoing challenge for researchers. This especially concerns contemporary attempts to conduct provenance research. The lack of documentation and information voluntarily provided by institutions that served as depositories further complicates this undertaking.

1.3. Heritage management under the Rebel administration

Until the end of the Civil War, the Rebel faction prioritized territorial conquest over the preservation of heritage. Thus, in the beginning of the war, no national or provincial heritage preservation measures were taken.⁵² But as more and more territories were secured, the Rebel faction created different organizations to manage cultural heritage under their protection. According to Alicia Alted Vigil, the creation of these organizations was linked to the design and organization of the ‘new state’.⁵³ As I will explain in the following section, some of the most important organizations included: the *Junta de Cultura y del Tesoro Artístico* [Historical Culture and Artistic Treasure Board], the *Servicio Artístico de Vanguardia* [Avant-garde Artistic Service] and the *Servicio de Defensa del Patrimonio Artístico Nacional* (SDPAN) [National Artistic Heritage Defense Service].

After the failed *coup d'état* in Melilla by insurgent soldiers on July 18, 1936, the soldiers and civilians who had supported it, created an alternative higher body of command on July 24, 1936, in Burgos: the *Junta de Defensa Nacional* [National Defense Board]. On September 29, 1936, the National Defense Board was dissolved after it designated Franco the head of the government of the Spanish State (fig. 6).⁵⁴

⁵² Colorado Castellary, 47.

⁵³ Alted Vigil, “Política Patrimonial Del Gobierno de Franco Durante La Guerra Civil”, 51–60.

⁵⁴ Alted Vigil, “Recuperación y Protección de Los Bienes Patrimoniales En La Zona Insurgente: El Servicio de Defensa Del Patrimonio Artístico Nacional”, 97-124.

Razones de todo linaje señalan la alta conveniencia de concentrar en un solo poder todos aquéllos que han de conducir a la victoria final, y al establecimiento, consolidación y desarrollo del nuevo Estado, con la asistencia fervorosa de la Nación.

En consideración a los motivos expuestos, y segura de interpretar el verdadero sentir nacional, esta Junta, al servicio de España, promulga el siguiente

DECRETO

Artículo primero.—En cumplimiento de acuerdo adoptado por la Junta de Defensa Nacional, se nombra Jefe del Gobierno del Estado Español al Excmo. Sr. General de División D. Francisco Franco Bahamonde, quien asumirá todos los poderes del nuevo Estado.

Artículo segundo.—Se le nombra asimismo Generalísimo de las fuerzas nacionales de tierra, mar y aire, y se le confiere el cargo de General Jefe de los Ejércitos de operaciones.

Artículo tercero.—Dicha proclamación será revestida de forma solemne, ante representación adecuada de todos los elementos nacionales que integran este movimiento liberador, y de ella se hará la oportuna comunicación a los Gobiernos extranjeros.

Artículo cuarto.—En el breve lapso que transcurra hasta la transmisión de poderes, la Junta de Defensa Nacional seguirá asumiendo cuantos actualmente ejerce.

Artículo quinto.—Quedan derogadas y sin vigor cuantas disposiciones se opongan a este Decreto.

Dado en Burgos a veintinueve de septiembre de mil novecientos treinta y seis.

MIGUEL CABANELLAS

Figure 6. Abstract of the document outlining the decision to proclaim Franco the head of the government of the Spanish State.⁵⁵

Two days later after Franco's proclamation as head of state, the National Defense Board was dissolved, and the *Junta Técnica del Estado* [Technical State Board] was established. The Technical State Board was an attempt to create a functioning state of which Franco could be the head of. Dependent on the Technical State Board were seven commissions, among them, the *Comisión de Cultura y Enseñanza* [Commission of Culture and Education].⁵⁶

Dependent on this commission, the Historical Culture and Artistic Treasure Board was established on 23 December 1936. The main task of this board was to regulate the sale and purchase of objects of artistic and/or historical value, and to collect data and draft reports to

⁵⁵ Agencia Estatal Boletín Oficial del Estado, "Boletín Oficial de La Junta de Defensa Nacional de España," September 30, 1936, https://www.boe.es/diario_gazeta/comun/pdf.php?p=1936/09/30/pdfs/BJD-1936-32.pdf&do=1.

⁵⁶ Paul Preston, *Franco: A Biography* (London: Fontana Press, 1995), 186.

create an inventory of buildings, objects, archives (historical and administrative), and libraries, that had been damaged since 14 April 1931.^{57,58} As part of the ideological war between Republicans and Rebels, the Rebel faction was concerned about the heritage the Republican government had damaged. Following the burning of churches and attacks on religious institutions, the Rebel faction instrumentalized the safeguarding of art (especially the safeguarding of religious heritage) for political purposes.⁵⁹ As previously explained, this instrumentalization was not unique to the Rebel faction, as a similar rhetoric was used by the Republicans.⁶⁰ The Rebel administration sought to identify damaged objects to attribute them to Republican destruction.

Another major area of concern for the Rebel administration was the protection and recovery of artistic and historical heritage in the contested areas on the fighting fronts. To act quickly in conquered areas, the Avant-Garde Artistic Service was established on January 14, 1937. The main task of this organization was to carry out rescue work of buildings, and safeguard works of historical or artistic value in areas that had been recently liberated.⁶¹

However, these initial efforts proved to be rather unsuccessful, at least as perceived by the Rebel administration. The lack of a centralized approach, and the emergence of smaller, parallel organizations, created the need for a supra-organization. To fill this need, on April 22, 1938, the Rebel administration created the militarized SDPAN. By the time the SDPAN was created, the propaganda war between the two ideological blocks was at its highest, and the repatriation of artworks sent abroad by the Republicans, a major concern for the Rebels. Even

⁵⁷ Alted Vigil, “Recuperación y Protección de Los Bienes Patrimoniales En La Zona Insurgente: El Servicio de Defensa Del Patrimonio Artístico Nacional”, 97-124.

⁵⁸ The Second Republic of Spain was established on April 14, 1931.

⁵⁹ Colorado Castellary, *Arte, Botín de Guerra : Expolio y Diáspora En La Posguerra Franquista*, 109.

⁶⁰ The propaganda war during the Spanish Civil War is a fascinating topic that goes beyond the scope of this thesis. For more information on this topic, consult: Paul Preston, *Arquitectos del terror: Franco y los artífices del odio* (Barcelona: Penguin Random House Grupo Editorial, 2021).

⁶¹ Alted Vigil, “Recuperación y Protección de Los Bienes Patrimoniales En La Zona Insurgente: El Servicio de Defensa Del Patrimonio Artístico Nacional”, 97-124.

though the SDPAN was designed to centralize heritage protection, the resources available to the organization for the pursuit of this task were scant. According to Colorado Castellary, in May 1939 the SDPAN had 115 agents - however, these agents did not receive a salary and worked without their own means of transportation.⁶²

On April 1, 1939, the Rebel faction achieved victory. The Spanish Civil War had ended. The official *communiqué*, issued by Francisco Franco, reads: “En el día de hoy, cautivo y desarmado el Ejército Rojo, han alcanzado las tropas nacionales sus últimos objetivos militares. La guerra ha terminado.”⁶³ [Today, the Red Army captured and disarmed, the National troops have achieved their final military objectives. The war is over.]

1.4. Restitutions of art in the Franco dictatorship

Shortly before the end of the war, certain agents of the JTA changed allegiance and disclosed the location of the Republican depositories to SDPAN agents. From then on, the SDPAN worked to recover objects from Republican depositories.⁶⁴ On the Rebel side, this was communicated as a means to *rescue* the heritage of Spain. This framing implies that there was an imminent perceived danger to Spain’s heritage. It aligns with anti-Republican propaganda: according to the Rebel faction, the artworks had to be rescued from the maladministration of the Republican faction.

⁶² Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 61.

⁶³ “Unidad Documental Simple 1 - Parte Oficial de Guerra Correspondiente al Día Primero de Abril de 1939. III Año Triunfal,” Real Academia Española: Archivo, accessed April 23, 2024, <https://archivo.rae.es/rmzg>.

⁶⁴ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 62.

One of Franco's highest priorities on the cultural front was the repatriation of artworks that had been safeguarded abroad by the Republican government. The repatriation of art was employed as a political tool. On the one hand, it was meant to discredit Republican preservation measures, portraying them as unnecessary and dangerous.⁶⁵ Conversely, the repatriation of artworks was employed to legitimize the Franco regime. In this context, the artworks that had been safeguarded abroad in Switzerland and France were of particular concern to Franco. Following the international recognition of Franco's regime - and particularly in the wake of the Bérard-Jordana agreement with France in February 1939 - Franco urged the Swiss and French governments to return the artworks that had been safeguarded abroad by the Republican government.^{66,67,68}

The campaign to recover artworks from abroad went hand in hand with a significant number of publications and museum exhibitions. These publications and exhibitions sought to reinforce the legitimacy of the Franco regime. They placed a particular emphasis on the 'destroyed' sacral art and the 'lost' art of Spain. A notable example is the *Museo Nacional del Prado*'s 1939's exhibition '*De Barnaba da Modena a Francisco de Goya: Exposición de pinturas de los siglos XIV al XIX recuperadas por España*' [From Barnaba da Modena to Francisco de Goya: Exhibition of paintings from the 14th to the 19th centuries recovered by Spain].⁶⁹

Within Spain, the SDPAN began the process of identifying and emptying Republican depositories of artworks. Once the artworks had been recovered, the SDPAN handled the

⁶⁵ Colorado Castellary, 65.

⁶⁶ "L'Espagne En 1939; Relations Diplomatiques Franco-Espagnoles (Missions Bérard, Nomination de Franco)," FranceArchives, accessed April 25, 2024, <https://francearchives.gouv.fr/en/facomponent/f8fc20b30e1bdca795a360461681895798db96ae>.

⁶⁷ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 37.

⁶⁸ Arturo Colorado Castellary, *Arte, revancha y propaganda: La instrumentalización franquista del patrimonio durante la Segunda Guerra Mundial*, 53-73.

⁶⁹ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 76.

restitution to pre-war owners. This task was relatively straightforward for works that had belonged to important collections, national museums, or cathedrals. Here, the artworks could be identified and given back without significant problems, as most of the items were inventoried. However, the restitution of artworks to individuals, small churches, and organizations proved more difficult administratively. The documentation of these seizures was less extensive than the documentation of bigger collections. This lack of documentation was further complicated by the different seizing agencies on the Republican side. Furthermore, the returns suffered from the ideological convictions of the Franco dictatorship, in addition to the post-war chaos.⁷⁰

As restitution activities increased, there was a growing need to systematize the activities of the SDPAN. Thus, on May 31, 1939, the Ministry of National Education decided to regulate the operations of the SDPAN through an official order (fig. 7).⁷¹

⁷⁰ Colorado Castellary, 61-140.

⁷¹ Agencia Estatal Boletín Oficial del Estado, “Boletín Oficial Del Estado,” June 11, 1939, https://www.boe.es/diario_gazeta/hemeroteca.php?a=1939&m=6&d=11.

MINISTERIO DE HACIENDA

ORDEN de 9 de junio de 1939 señalando el recargo que debe cobrarse por las Aduanas en las liquidaciones de los derechos de Arancel durante la segunda decena del mes de junio.

Ilmo. Sr.: De conformidad con lo prevenido en la Orden de la Junta Técnica del Estado, de 28 de enero de 1937, inserta en el BOLETIN OFICIAL DEL ESTADO de 31 del propio mes,

Este Ministerio se ha servido disponer que el recargo que debe cobrarse por las Aduanas en las liquidaciones de los derechos de

Arancel, correspondientes a las mercancías importadas y exportadas por las mismas durante la segunda decena del presente mes, y cuyo pago haya de efectuarse en moneda de plata española o billetes del Banco de España, en vez de hacerlo en oro, será de ciento noventa y cuatro enteros con siete centésimas por ciento.

Lo que comunico a V. I. para su conocimiento y efectos.

Dios guarde a V. I. muchos años.

Burgos, 9 de junio de 1939.—
Año de la Victoria.

AMADO.

Sr. Jefe del Servicio Nacional de Aduanas.

MINISTERIO DE EDUCACION NACIONAL

ORDEN de 31 de mayo de 1939 sobre devolución a entidades y particulares de los elementos y conjuntos rescatados por el Servicio Militar de Recuperación del Patrimonio Artístico Nacional.

Ilmo. Sr.: Con el fin de establecer las normas a que se ha de ajustar la devolución a entidades y particulares de los elementos y conjuntos que han sido rescatados por el Servicio Militar de Recuperación del Patrimonio Artístico Nacional,

Este Ministerio se ha servido disponer:

1.º Los elementos y conjuntos recuperados hasta el presente y cuantos en lo sucesivo se rescaten por el Servicio Militar de Recuperación del Patrimonio Artístico Nacional, serán identificados y almacenados en los lugares y locales que fijen los Comisarios de Zona respectivos, con arreglo a las condiciones de visualidad y acomodo que permita cada caso.

2.º Las Comisarias de Zona formarán relación de los lugares y locales de almacenado y formularán los inventarios del contenido de los mismos. En dichos inventarios se hará constar:

a) Los objetos de culto religioso sin valor esencialmente artístico.

b) Los objetos de culto religioso que tengan valor artístico.

c) Los objetos de arte cuyos propietarios sean plenamente conocidos.

d) Los objetos de arte cuyos propietarios no se hayan identificado.

e) Las alhajas, metales preciosos y objetos de valor que no tengan mérito artístico.

3.º La Comisaría General publicará en el BOLETIN OFICIAL DEL ESTADO y en la Prensa de mayor circulación los inventarios que formulen las Comisarias de Zona y anunciará el plazo durante el cual las entidades o particulares puedan deducir reclamaciones sobre la propiedad de los objetos enumerados en el apartado anterior.

Sin embargo, la Comisaría General y las Comisarias de Zona, con autorización de la General, podrán comunicar directamente la existencia de objetos en los depósitos o almacenes del Servicio a las entidades o personas cuya condición de propietario esté indudablemente probada.

4.º Tanto las reclamaciones de entidades o particulares como las comunicaciones que las Comisarias dirijan conforme a lo dispuesto en el párrafo segundo del apartado anterior, darán lugar al expediente de devolución respectivo, el cual habrá de ajustarse a las normas siguientes:

Toda solicitud o reclamación se-

rá dirigida a la Comisaría de Zona que corresponda y contendrá necesariamente el nombre, apellidos, profesión y domicilio del peticionario; el mayor número de datos posibles para la identificación del objeto, consignados por el reclamante o por persona o personas conocedoras de aquél, en cuyo caso estos datos se formularán en hoja aparte, bajo la firma de las mismas y en forma de declaración jurada; la fotografía del objeto y el título de propiedad, si lo hubiere, o en su defecto, una declaración jurada en que se haga constar tal derecho a favor de la persona o entidad reclamante, expedida por individuos o elementos directivos de entidades de solvencia material bastante, a juicio de la Comisaría.

Recibida la instancia, la Comisaría de Zona podrá ordenar las diligencias ampliatorias de información que estime pertinentes y anunciará toda reclamación en el "Boletín Oficial" de las provincias que abarque la Zona y en la Prensa. Dicho anuncio consignará el plazo de dos meses para recibir demanda de tercero debidamente razonada.

5.º Transcurrido el plazo a que se refiere el apartado anterior, el Comisario de Zona dictará la resolución que corresponda en el expediente, elevándola para su aprobación a la Comisaría General.

Acordada la devolución sin oposición de parte, el objeto reclamado será entregado al reclamante, con una guía en la que consten las características de aquél y la fecha de resolución del expediente.

6.º Toda demanda de tercero alegando cualquier derecho de propiedad, suspenderá el curso del expediente de devolución y el Comisario instructor del mismo, recibida que sea aquélla, decretará y notificará a los interesados la suspensión, previniéndoles de que hagan uso de su derecho ante Juez civil competente.

Si el tercero no acreditase haber hecho uso de su derecho, en el plazo de dos meses, ante el Juzgado correspondiente, el Comisario instructor proseguirá el trámite del expediente hasta su resolución.

Cuando la reclamación de terco-

Figure 7. Abstract of the Order of the Ministry of National Education from May 31, 1939, published on June 11, 1939, in the Boletín Oficial del Estado.⁷²

⁷² Agencia Estatal Boletín Oficial del Estado, "Boletín Oficial Del Estado."

This order dictated that the SDPAN should identify and safeguard the recovered artworks. Further, it was established that the SDPAN should create an inventory of the identified objects according to the following categories:

- (1) objects of religious worship of no special value,
- (2) objects of religious worship of artistic value,
- (3) objects of art whose owners are known,
- (4) objects of art whose owners could not be identified, and finally
- (5) jewelry, precious metals, and objects of value with no particular artistic merit.

According to the order, these inventories should be published in the press. The idea was that, through these publications, pre-war owners would be able to find their lost artworks and objects. To process a restitution claim, the order stipulated that claimants should write a letter to the local commissary, containing their personal details (name, surname, profession, and address), as well as details of the object being claimed, and an affidavit of the veracity of the information provided.⁷³

However, many artworks remained unclaimed. And so, on January 11, 1940, another order was passed to regulate the management of the unclaimed artworks. One of the things this order stipulated was that, if objects had not been claimed until that moment in time, they should be exhibited to the public for at least a month. These public exhibitions were meant to help

⁷³ Agencia Estatal Boletín Oficial del Estado, “Boletín Oficial Del Estado.”

individuals identify objects, to be able to later on claim them.⁷⁴ The exhibitions were not very successful, as most of the exhibited objects remained unclaimed.⁷⁵

Furthermore, and according to Colorado Castellary, these two orders were not correctly implemented. Only a few inventories were created, and even a smaller number of them were circulated in the press. To compensate for the lack of own inventories, the SDPAN made use of the inventories created by the JTA.⁷⁶

This unclear implementation of the restitution orders was compounded by the fact that the restitutions were influenced by the ideological convictions of the regime. For instance, the SDPAN refused restitutions to Republicans and war exiles that had supported the Republican government since 1934. Central to this was the *Ley de Responsabilidades Políticas* [Law of Political Responsibilities] passed in February 1939. The law, with a retroactive character, sanctioned collaborators of the Republican government, members of political parties opposed to the Francoist regime, and participants of anti-Francoist movements.⁷⁷ The law affected some 250.000 individuals, including important public figures. Manuel Azaña, ex-president of the Second Spanish Republic, was charged with a fine of 100 million pesetas. José Giral, the president of the Second Spanish Republic at the beginning of the Civil War, was charged with a fine of 50 million pesetas.⁷⁸ Furthermore, the *Ley de Represión de la Masonería y el Comunismo* [Suppression of Freemasonry and Communism Law], passed on March 1, 1940, outlawed freemasonry, and communism.⁷⁹ Penalties for the infringement of these laws

⁷⁴ Agencia Estatal Boletín Oficial del Estado, “Boletín Oficial Del Estado” January 13, 1940, https://www.boe.es/diario_gazeta/comun/pdf.php?p=1940/01/13/pdfs/BOE-1940-13.pdf.

⁷⁵ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 92.

⁷⁶ Colorado Castellary, 83-6.

⁷⁷ Agencia Estatal Boletín Oficial del Estado, “Ley de Responsabilidades Políticas,” February 13, 1939, <https://www.boe.es/buscar/doc.php?id=BOE-A-1939-1451>.

⁷⁸ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 113.

⁷⁹ Agencia Estatal Boletín Oficial del Estado, “Ley de 1 de Marzo de 1949 Sobre Represión de La Masonería y Del Comunismo,” March 1, 1940, <https://www.boe.es/datos/pdfs/BOE/1940/062/A01537-01539.pdf>.

included the expropriation of property, the loss of civic rights, incarceration, and execution.⁸⁰ The laws consolidated the Francoist control over the Spanish population and led to the institutionalization of selective repression.

Consequently, works of art deposited to the JTA by left-wingers or masons were not returned. In addition to this, artworks not deposited during the war, but still in Republican possession, were seized by the Franco regime.⁸¹ Furthermore, the laws offered a solution to the problem of unclaimed artworks: artworks which were not claimed could be handed to new owners, under the assumption that they had belonged to enemies of the regime.⁸² The artworks, orphaned from their owners, were handed over to the Church, museums, and other institutions.

In other cases, artworks were redistributed to relatives and friends of the dictator with some even coming to decorate Franco's own residences. Especially significant in this regard are the artworks that the SDPAN gave to Franco for his first residence in Madrid, the palace of Viñuelas. Between October 10 and 18, 1939, the SDPAN delivered a lot of 123 pieces to the palace. This lot came from the depositary of the *Museo Nacional del Prado* and included paintings, engravings, watercolors, and sculptures. When Franco changed his residence to the palace of El Pardo, he received a new lot of artworks from the SDPAN. This time, the artworks came from the Republican depositaries of the *Museo Arqueológico*, *Jai-Alai*, and the *Museo de Arte Moderno*.⁸³

In addition, while many artworks were eventually restituted to their rightful owners during the postwar, it is important to note that proof of ownership was not required until 1940, leading

⁸⁰ Agencia Estatal Boletín Oficial del Estado, "Ley de Responsabilidades Políticas."

⁸¹ It is important to note that the interpretation of what constituted affiliation with left-wing parties or Masonic lodges was very broad. As an example, some Jewish families were affected by the legislation, facing accusation of involvement in a Judeo-Masonic conspiracy – despite having no connection to any Masonic lodge.

⁸² Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 112-14.

⁸³ Colorado Castellary, 270-72.

to some instances of fraudulent returns. The most prominent example is the one of the self-proclaimed Marquise of Arnuossa, who in the years 1939 to 1941 received 23 paintings (including works by Goya, el Greco or Murillo) and 72 furniture pieces. Under oath by God and her honor, the lady acquired these possessions illegitimately. Of these, she only had to return a few objects when they were claimed, for a second time, by their rightful owners.⁸⁴

The dictatorship showed some haste in the restitutions they conducted. The SDPAN was demilitarized in May 1942. From then on, the organization's activities declined. Returns of artworks still took place, but at a much slower rate. While in the year 1939 and 1940 the SDPAN returned 4.328 and 4.596 artworks, respectively, after 1945 only 292 artworks were returned.⁸⁵ The returns were a steady trickle that lasted until the 1960s. As for the unclaimed artworks of the exhibitions, the state declared that these would be sold at auction (although there is no documentation that these auctions actually took place).⁸⁶

All of these examples help illustrate the situation of chaos and corruption that marked the restitution of property after the war. What is most striking is the fact that – after Franco's death in 1975 and the Spanish transition to democracy – these works of art did not return to their rightful owners. Thus, the restitutions and redistributions conducted by the Franco regime in the postwar ended up being final. However, the discussion around the restitution of artworks is gaining new public and academic interest in Spain. Decisive factors are the new politics of memory and efforts by national museums to shed light on the history of their collections. In this context, the precedent set by the Ramón de la Sota restitution case, restituted to the family from the *Parador de Turismo de Almagro*, plays a decisive role.

⁸⁴ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 230-36.

⁸⁵ Colorado Castellary, 283.

⁸⁶ Colorado Castellary, 284.

1.5. The first restitution in Spanish democracy: the Ramón de la Sota case

On September 3, 2022, the two artworks ‘Retrato de Caballero’ by Cornelis van der Voort and ‘Retrato de la Reina María Cristina de Borbón’ by Luis de la Cruz y Ríos (fig. 8) were restituted to the heirs of Ramón de la Sota in an act without precedent.⁸⁷



Figure 8. ‘Retrato de caballero’ (left) and ‘Retrato de la reina María Cristina de Borbón’ (right).⁸⁸

Ramón de la Sota was a Basque entrepreneur who, at the beginning of the 20th century, amassed one of the largest fortunes and one of the most important ship fleets in Spain. During his lifetime, he created several important businesses, like the shipbuilding company *Euskalduna*, the insurance company *La Polar*, and the shipping company *Sota y Aznar*. He was also involved in the foundation of the banks of Bilbao and Biscay. Through these businesses,

⁸⁷ “Presentación Depósito Sota,” Museo de Bellas Artes de Bilbao, September 2, 2022, <https://bilbaomuseoa.eus/presentacion-deposito-sota/>.

⁸⁸ “El Bellas Artes de Bilbao expone ya los dos cuadros incautados por el franquismo y ahora devueltos a la familia,” *elDiario.es*, September 2, 2022, https://www.eldiario.es/euskadi/bellas-artes-bilbao-expone-cuadros-incautados-franquismo-ahora-devueltos-familia_1_9285289.html.

Ramón de la Sota was able to amass a great fortune and naval fleet. He was also militarily and politically active. For his support of the British Army during World War I he earned the title *sir*. He was politically involved in the Basque Nationalist Party *Partido Nacionalista Vasco* (PNV). Thus, in 1936, he supported the enactment of the Statute of Autonomy of the Basque Country.⁸⁹ His position and personal interest allowed him to become an avid art collector. Ramón de la Sota died on August 17, 1936.⁹⁰

The surprise for his heirs would come after his death. In 1937, as punishment for alleged nationalism and separatism,⁹¹ Ramón de la Sota's assets (including his art collection) were confiscated by the *Tribunal franquista de Responsabilidades Políticas* [Francoist Tribunal of Political Responsibilities]. This decision was made after he passed away. Once the two artworks 'Retrato de caballero' and 'Retrato de la reina María Cristina de Borbón' had been removed from Ramón de la Sota's residence in Bilbao, they were transported to Burgos, and subsequently Madrid.⁹² On June 10, 1969, a special court, responsible for the return of deposits for political responsibilities, ordered the return of this lot to his heirs. However, upon the court's declaration that the paintings could not be found at that given time, they were ultimately not returned to the family.⁹³

The claim for these two artworks was initiated again – this time successfully – by one of the heirs in 2018. The great-great-grandson of Ramón de la Sota attended the *Colección*

⁸⁹ This statute declared the Basque Country an autonomous region, and established an independent agreement between the Basque Country's administration and the Treasury of the State. Further, it granted the Basque Country the right to create its own parliament, and government.

⁹⁰ Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 120-25.

⁹¹ Colorado Castellary, 121.

⁹² This lot should not be confused with another lot of artworks from the same collection, which were evacuated to France and deposited in the port of La Rochelle until 1939, after which they returned to Spain. For more information on this other lot, see: Colorado Castellary, *Arte, Botín de Guerra: Expolio y Diáspora En La Posguerra Franquista*, 121.

⁹³ Rafael Mateu de Ros Cerezo and Patricia Fernández Lorenzo, "Restituciones de bienes incautados en la Guerra Civil y en la posguerra española. La nueva Ley de Memoria Democrática," *Patrimonio cultural y derecho*, no. 26 (2022): 493.

Artística de Paradores [Paradores Art Collection] exhibition held at the Mapfre Foundation in Madrid in 2015.⁹⁴ During this exhibition, he was able to identify the two lost family paintings.

A *parador* is a Spanish-operated hostelry, usually run by the government. In Spain, they represent a unique model of heritage preservation of historical buildings. The Spanish network of *paradores* (Paradores network), dependent on the state, preserves a variety of historic buildings - including castles, palaces, old abbeys - by converting them into boutique hotels. This original model of heritage preservation has been adapted by other countries to preserve their historic architecture.⁹⁵ The first *parador*, the *Parador de Gredos*,⁹⁶ opened already in 1928. During the Second Spanish Republic and the Spanish Civil War, tourism activity in Spain declined. Following the establishment of the Franco dictatorship, and facilitated by the improvement of air travel, tourism activity experienced a resurgence in the 1960s. For this reason, after 1990, the *paradores* were promoted abroad by the organization IMPROTUR (renamed TURESPAÑA in 1990). This organization is a Spanish autonomous entity, dependent on the Ministry of Industry, Commerce, and Tourism.⁹⁷ As of May 2024, the Paradores network comprises 98 hotels. Since 1928, the Paradores network has collected an impressive amount of over 10.000 artworks. In 2015, the only exhibition to date (of a sample of 60 these artworks) was held in Madrid.⁹⁸

At the aforementioned exhibition in 2015, the great-great-grandson of Ramón de la Sota discovered two artworks that appeared to be familiar. The two paintings had been expropriated from the family in 1937, but the heirs had never stopped looking for them. Since the *parador*

⁹⁴ Cultura I love Paradores Experiencias y Planes, “Paradores muestra su colección artística en Fundación Mapfre,” Paradores, September 25, 2015, <https://paradores.es/es/blog/paradores-muestra-su-coleccion-artistica-en-fundacion-mapfre>.

⁹⁵ “National Paradores de Turismo,” Europa Nostra Awards in Spain, accessed May 6, 2024, <https://www.premiosen.hispanianostra.org/premio-europa-nostra/national-paradores-de-turismo/?lang=en>.

⁹⁶ “Parador de Gredos | Paradores,” Paradores, accessed May 6, 2024, <https://paradores.es/es/parador-de-gredos>.

⁹⁷ Fernando Almeida Garcia, “A Comparative Study of the Evolution of Tourism Policy in Spain and Portugal,” *Tourism Management Perspectives* 11 (July 1, 2014): 34–50, <https://doi.org/10.1016/j.tmp.2014.03.001>.

⁹⁸ Cultura I love Paradores Experiencias y Planes, “Paradores muestra su colección artística en Fundación Mapfre.”

where the two artworks were housed in belonged to the national Paradores network (and was therefore dependent on the Spanish Ministry of Industry, Commerce, and Tourism), the family initiated legal proceedings against the ministry for the restitution of the two artworks. The claim was settled on May 30, 2022, when the Ministry of Industry, Commerce, and Tourism returned the two paintings to the heirs. Subsequently, the heirs agreed to lend the paintings to the *Museo Bellas Artes de Bilbao* for a period of two years.⁹⁹

The restitution of these two artworks stands in complete opposition to the restitutions carried out during the Franco regime. While the latter were chaotic, routinized, and treated like a bureaucratic procedure foremost, the former represented an exceptional, highly performative act. In this context, performativity is understood as an act in which memory is staged. The restitution act was exceptional in that it represented the first art restitution from the Franco era in Spanish democracy. More importantly, it sets a legal and moral precedent for future cases. As such, the event received extensive media coverage. The performative character of this restitution becomes evident when considering the staging of the restitution, but mainly how the Spanish government decided to frame the act. The restitution was conducted at the *Museo de Bellas Artes Bilbao*, an impressive building and one of the most respected museums of Spain. Important guests to the act included the family and heirs of Ramón de la Sota, as well as María Reyes Maroto, the Spanish Minister of Industry, Commerce, and Tourism at the time. While one of the heirs, Ramón de la Sota Chalbaud, asserted that for the family the restitution act was not a political act, but rather, an attempt to recover the family's patrimony, the minister stated that with this restitution, the state was repairing an injustice that had lasted for the last 85 years. Furthermore, and most importantly for the purposes of this thesis, that this act demonstrated

⁹⁹ Sergio C. Fanjul, "La devolución a la familia De la Sota de dos cuadros incautados por el franquismo abre la vía a nuevas reclamaciones," *El País* (Madrid), September 3, 2022, <https://elpais.com/cultura/2022-09-03/la-devolucion-a-la-familia-de-la-sota-de-dos-cuadros-incautados-por-el-franquismo-abre-la-via-a-nuevas-reclamaciones.html>.

the government's priority to 'recover historical memory'.¹⁰⁰ The act can be interpreted as a performance of memory, in which the Spanish government sought to portray the restitution as an attempt to rectify an historical injustice, and by doing so, to recover Spain's historical memory. What, then, did the minister intend to convey when employing this term?

The restitution carried out by the Spanish government must be understood as taking place in a broader watershed moment in Spanish cultural life. It is part of an ongoing shift in the country's memory politics, which have never before held such a central position in public life. With the introduction of the Law of Democratic Memory in 2022, the discourse around the Franco dictatorship has started to undergo fundamental, institutional change. Finally, the debates around memory politics have only gained momentum through their politization in the current political panorama.

The central question that arises is what developments have caused this shift in restitution practices. The restitution in 2022 was an act of atonement that the minister framed in terms of memory. How is this shift in restitution practices related to memory studies?

The social implications of art restitutions in Spain can only be understood by paying attention to how collectivities negotiate their understandings of history, and how this process shapes societal order in the present. I therefore suggest approaching the change in Spanish restitution policies through theories of collective and social memory, and its relationship to the concept of atonement. In particular, I identify two important developments: On the one hand, restitutions of Nazi-looted art as a transnational phenomenon, and their influence on Spanish memory politics. On the other hand, the influence of the Spanish Transition, and particularly the Amnesty Agreement of 1977, on Spanish memory politics. I contend that these two memory developments help explain the recent shift in Spanish art restitution efforts. Therefore, the next

¹⁰⁰ Fanjul, "La devolución a la familia De la Sota de dos cuadros incautados por el franquismo abre la vía a nuevas reclamaciones."

chapter offers a survey of these theoretical approaches. These theoretical approaches will provide the conceptual and terminological foundation for the analysis that follows.

Chapter 2 - Restitutions as enactments of memory

2.1. Memory and atonement¹⁰¹

The study of collective memory is an approach in the social sciences and academic history, which takes as its point of departure the idea that the formation of a common memory of the past is a complex political and collective process. One of the first and most notable mentions dates to 1925, when the philosopher and sociologist Maurice Halbwachs defined the concept of shared remembering - a term hitherto floating around in literature - as 'collective memory'.

Influenced by the philosopher Henri Bergson and the anthropologist Emile Durkheim, he argued that individual memory had an important social component, since group contexts were guarantors of the consistent recall of events. Individual memory thus does not exist on its own *per se*, but is rather shaped by the social dynamics it is embedded in. According to Halbwachs, this collective memory is permeated by long-term structures fixed and inexorably resistant to being modified by individual wills. Furthermore, for him, collective memory is plural, as the social frameworks of individual memories can be multiple.¹⁰² An experience will be remembered differently depending on the standpoint of the rememberer.¹⁰³

¹⁰¹ Some parts of this section were written for the course SO/DO5010 – Regimes of Culture and Historical Preservation 2022/23 Winter, and some others for the course HIST5491 – Belonging in the Museum I 2023/24 Fall. The section was modified and expanded accordingly to fit the topic of this thesis.

¹⁰² Maurice Halbwachs, "From The Collective Memory," in *The Collective Memory Reader*, eds. Jeffrey K. Olick, Vered Vinitzky-Seroussi and Daniel Levy (Oxford: Oxford University Press, 2011), 139 - 49.

¹⁰³ The literature persistently confuses the terms collective memory and social memory, to the extent that they are treated as somewhat interchangeable terms. According to Halbwachs, social memory is the phenomenon that encompasses both individual and collective memory. Collective memory emerges from the social interactions of individuals, and thus, can only exist in a social setting. Important contributions to the attempt to clarify, and expand, these terminological distinctions include (1) Aleida Assmann's distinction of individual, social, political and cultural memory (See: Aleida Assmann, "Memory, Individual and Collective," in *The Oxford Handbook of Contextual Political Analysis*, eds. Robert Goodin and Charles Tilly (Oxford: Oxford University Press, 2006), 210-24; (2) Jan Assmann's introduction of the term communicative memory (See: Jan Assmann, "Communicative and Cultural Memory," in *Cultural Memories. Knowledge and Space 4*, eds. Peter Meusburger, Michael Heffernan and Edgar Wunder (Berlin: Springer, 2011), 15-27.

Although early attempts to engage in the research of collective memory were fruitful, they rapidly lost academic focus. The growing orientation towards the past is a rather new phenomenon that only started in the 1980s and fully developed in the 1990s. This memory boom resulted in the development of the academic field of memory studies. Since then, the field has proposed a myriad of theories used to analyze countless case studies through the lens of memory.

In their article “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory”, Daniel Levy and Natan Sznaider explain the emergence of a new type of memory based on global remembrance patterns. They call this type of memory *cosmopolitan memory*. They observe that, as a consequence of globalization and the overcoming of nation-state feelings, a new type of memory has emerged that transcends national and ethnic belongings. They suggest that the foundation to cosmopolitan memory can be found in the Holocaust. Furthermore, they describe the emergence of ‘internal globalization’. This describes the way in which global concerns permeate local experiences: “national memories are subjected to a common patterning.”¹⁰⁴

Linked to the concept of cosmopolitan memory are theories that understand reconciliation as part of the overcoming process of collective trauma. Michel-Rolph Trouillot found that the number of apologies to communities has increased dramatically since the 1980s.¹⁰⁵ For him, collective apologies present three main challenges: first, they imply a transfer of attributes from liberal subjects to collectivities; second, they entail an assumed continuity of states that is not always apparent; and finally, their setting is the new constellation of a globalized world.¹⁰⁶ Be

¹⁰⁴ Daniel Levy and Natan Sznaider, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” *European Journal of Social Theory* 5, no. 1 (February 1, 2002): 87–106, 89, <https://doi.org/10.1177/1368431002005001002>.

¹⁰⁵ Michel-Rolph Trouillot, “From Abortive Rituals: Historical Apologies in the Global Era,” in *The Collective Memory Reader*, eds. Jeffrey K. Olick, Vered Vinitzky-Seroussi and Daniel Levy (Oxford: Oxford University Press, 2011), 458–64.

¹⁰⁶ Trouillot, “From Abortive Rituals: Historical Apologies in the Global Era,” 458–64.

that as it may, the amount of collective apologies has increased exponentially since the end of the 20th century. Their biggest role is to signify a temporal transition, where through the recognition and apology for a wrongdoing in the past a new temporal frame is implemented. After this transition, parties can orient themselves towards the future: “In claiming a past, they create pastness.”¹⁰⁷

According to Mischa Gabowitsch, a crucial explanation for this shift is how the role of ‘the past’ has changed in recent years. What we once understood as a source for inspiration and instruction, we now see as a “dark age to be left behind with no regret.”¹⁰⁸ Recent developments attest increasing efforts to work through – with the final purpose of overcoming – the traumata of the past. Through atonement, collectivities are trying to achieve what Gabowitsch calls transitional justice. In this context, he defines atonement as “public expressions of emotions such as guilt, shame, and remorse.”¹⁰⁹ This also includes penal or financial measures such as restitution acts.¹¹⁰ Gabowitsch observes how atonement practices often occur by analogy:

Other countries are held up as examples, as models to emulate or as unreachable gold standards of atonement. Germany in particular is often referred to as a master atoner, a country with an exemplary track record of ‘coming to terms with its past’ that holds valuable lessons for other nations.¹¹¹

The observation that commemoration acts of different traumatic episodes hold a relationship to each other, was also made by Michael Rothberg in his book *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*.¹¹² Here, he elaborates on the relationship between the remembrance of different traumatic historical episodes, e.g. the relationship between remembrance of slavery and Holocaust in the United States. His point of

¹⁰⁷ Trouillot, 459.

¹⁰⁸ Mischa Gabowitsch, “Replicating Atonement: The German Model and Beyond,” in *Replicating Atonement: Foreign Models in the Commemoration of Atrocities*, ed. Mischa Gabowitsch (Berlin: Springer, 2017), 1.

¹⁰⁹ Gabowitsch, “Replicating Atonement: The German Model and Beyond,” 1.

¹¹⁰ Gabowitsch, 2.

¹¹¹ Gabowitsch, 2.

departure is the attempt to provide a theoretical framework for the “relationship between different social groups’ histories of victimization.”¹¹² Rothberg suggests rejecting the understanding of collective memory as *competitive* memory, but to rather see it as multidirectional. This is: as “subject to ongoing negotiation, cross-referencing, and borrowing; as productive and not privative.”¹¹³ Rothberg argues that, while the memory of the Holocaust is usually the dominant one, it has opened a path for the articulation of other histories. As a prime instance of the horrors of genocide and repression, it serves as a model for other histories of oppression to find their voice.¹¹⁴

When it comes to whose duty it is to remember and process the past, Marc Augé elaborates on the distinction between direct witnesses and descendants. According to him, the duty of memory is the duty of descendants. This duty must be implemented through the practice of remembrance and vigilance. However, survivors must be given the choice of forgetting be able to live in the present.¹¹⁵

As for the relationship between memory and history: In his work *Between Memory and History: Les Lieux de Mémoire*, Pierre Nora explores the factors that inform French national memory and historical consciousness.¹¹⁶ He presents spontaneous memory as antithetical to history: in a critical discourse, history should have as its goal to destroy memory, for it is a distortion of the former. The task of remembering has decentralized history – and thus, awakened a historical consciousness in everyone. The state, as a centralizing tool, uses individual historical consciousness to reinforce a certain national narrative. Historical memory,

¹¹² Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009), 2.

¹¹³ Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*, 3.

¹¹⁴ Rothberg, 1-3.

¹¹⁵ Marc Augé, “From Oblivion,” in *The Collective Memory Reader*, eds. Jeffrey K. Olick, Vered Vinitzky-Seroussi and Daniel Levy (Oxford: Oxford University Press, 2011), 473-74.

¹¹⁶ Pierre Nora, “Between Memory and History: Les Lieux de Mémoire,” *University of California Press Representations*, No. 26, no. Special Issue: Memory and Counter-Memory (1989): 7–24.

as a form of collective memory, helps collectivities create meaning in the present from the past. At the same time, it serves as a political tool to shape public perception.¹¹⁷

What did the minister Reyes Maroto mean, then, when framing the restitution act to the heirs of Ramón de la Sota as the government's priority to 'recover historical memory'? It is rather unlikely that she adhered to Nora's definition, for that would have implied a factor of manipulation by the state – and with it, undermined the importance of the act.

I suspect that she was referring to her previous point of repairing a historical injustice, as the term 'recover' implies a previous loss. But where does the preoccupation with memory come from? And what loss of memory was the act trying to repair?

The recent restitution of artworks in Spain illustrates a development in atonement practices. To explain this dynamic from the perspective of memory, I have identified two main factors that have shaped this development: (1) the influence of atonement acts in relation to the Holocaust on Spanish Memory Politics, and (2) the influence of the 'Pact of Forgetting' on Spanish Memory Politics. These two factors will be explained in more detail in the next chapter.

¹¹⁷ Nora, "Between Memory and History: Les Lieux de Mémoire."

2.2. Memory shifts driving Spanish restitution efforts

2.2.1. Memory of the Holocaust¹¹⁸

As explained by Levy and Sznajder, global commemoration patterns have the Holocaust as their source. As a transnational phenomenon, the commemoration of the Holocaust and the public display of atonement have shaped the memory politics of many countries.^{119,120} Spain is no exception to this trend. In the context of art restitutions as acts of atonement, Spain has a long-standing commitment that is directly linked to the Holocaust: the acceptance of the Washington Principles in 1998.

The acceptance of the Washington Principles by Spain in 1998 meant an *ethical* commitment to restitute Nazi-looted artworks located on Spanish territory. Nevertheless, since 1998, not much has been done to implement them. To understand the significance of these principles for Spanish art restitution policies, the following section will provide a historical overview, starting with expropriations by the NS-regime in Germany, and concluding with the signing of the Washington Principles. This will help elucidate Spain's long-standing relationship to German memory politics in relation to art restitutions.

According to Michael J. Bazyler, the Holocaust was not only the greatest murder in history; it was also the greatest theft. When it comes to stolen assets from European Jews, he estimates that the Nazi party stole property worth between \$230 billion and \$320 billion in 2003's dollars.^{121,122}

¹¹⁸ This section was partly written for the course CHSP5045 – Jewish Heritage 2023/24 Winter. The section was modified accordingly to fit the topic of this thesis.

¹¹⁹ Levy and Sznajder, "Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory," 89.

¹²⁰ Gabowitsch, "Replicating Atonement: The German Model and Beyond," 1-2.

¹²¹ Michael J. Bazyler, *Holocaust Justice: The Battle for Restitution in America's Courts* (New York: NYU Press, 2003), xi-xix.

¹²² This estimation is meant to create an idea of the scope of the lootings, but it is unlikely to be accurate. At the end of World War II, no audit of Jewish losses was done.

Art expropriations by the NS-regime were marked by a specific understanding of art. The understanding of what constituted art was broad in scope (including important artworks and sculptures – but also lamps, cutlery, or porcelain), but restrictive through the state’s ideological convictions. As with every other part of public life, the NS-regime sought to control the arts. The creation of the *Reichskulturkammer* [Reich Chamber of Culture] (under the direct responsibility of Joseph Goebbels) and the enactment of the *Nürnberger Gesetze* [Nuremberg Laws]¹²³ legalized the discrimination and segregation of Jewish people in Nazi Germany. Furthermore, the laws created the legal framework for the state’s expropriation of Jewish property (including artistic assets). This political and legal climate affected Jewish art owners in several ways. Starting in 1935, the NS-regime organized a systematic boycott of Jewish galleries and shops, and further used propaganda and violence to directly attack Jewish galleries. The NS-regime then systematically expropriated art from Jewish families, institutions, and galleries under the legal theory that Jewish collections were not sufficiently German. In some cases, the argumentation given was that the state had to expropriate collections to make them available to the public. Jewish art collectors and dealers were forced to sell their artworks for symbolic prices to escape repression, or to donate them to museums favored by the regime.¹²⁴

As a consequence of this ingrained legality of expropriation and violence, prominent Nazis were able to build up their art collections.¹²⁵ Hermann Göring and Adolf Hitler competed to get the best pieces for their private art collections, as well as the ‘*Führermuseum*’-project.¹²⁶

¹²³ Not to confuse with the Nurnberg Trials of 1945 and 1946.

¹²⁴ Jonathan Petropoulos, *The Faustian Bargain: The Art World in Nazi Germany* (Oxford: Oxford University Press, 2000), 65-69.

¹²⁵ “Jüdische Kunstsammlungen – NS-Kunstraub | Think Tank,” Europäisches Parlament, accessed February 18, 2024, [https://www.europarl.europa.eu/thinktank/de/document/EPRS_BRI\(2022\)698872](https://www.europarl.europa.eu/thinktank/de/document/EPRS_BRI(2022)698872).

¹²⁶ Ira Mazzoni, “NS-Raubkunst: Sammlung von Hermann Göring,” *Süddeutsche Zeitung* (Munich), October 24, 2014, <https://www.sueddeutsche.de/kultur/ns-raubkunst-goerings-beute-1.2185420>.

This was facilitated by the willingness of art dealers to buy artworks from Jewish people under pressure to leave Nazi-Germany and all occupied territories.¹²⁷

The *Reichspogromnacht*¹²⁸ on November 9 to 10, 1939, marked a change in the scale of violence towards the German and Austrian Jewish population – and a transition from discrimination to systematic extermination. After that night, Jews were deported, discriminated against, and persecuted on an unprecedented scale.¹²⁹ In the art world, right after the *Reichspogromnacht*, the *Geheime Staatspolizei* (Gestapo) [Secret State Police] seized about 2,200 cultural objects from about 70 Jewish households. Complicit in this expropriation raid were artists, art dealers and museum directors (among others).¹³⁰ Especially Hans Buchheit (director of the *Bayerisches Nationalmuseum* [Bavarian National Museum]), Ernst Buchner (general-director of the *Bayerische Staatsgemäldesammlungen* [Bavarian State Art Collections]) and Konrad Schießl (head of the *Historisches Stadtmuseum* [Historical City Museum] (of Munich)) eagerly collaborated with government authorities in these raids.¹³¹

The worst of the looting began after the *Reichspogromnacht*. The beginning of World War II began the wholesale expropriation of Jewish assets in Germany, Austria, and all the occupied territories. Particularly instrumental in these actions was the *Einsatzstab Reichsleiter*

¹²⁷ Jonathan Petropoulos, “Art Dealer Networks in the Third Reich and in the PostWar Period,” *Journal of Contemporary History* 52, no. 3 (2017): 546–65.

¹²⁸ Also known historically as ‘Reichskristallnacht’, the night has been subject to discussion surrounding its name. For more information, see Ulrich Baumann and François Guesnet, “Kristallnacht—Pogrom—State Terror: A Terminological Reflection,” in *New Perspectives on Kristallnacht: After 80 Years, the Nazi Pogrom in Global Comparison*, edited by Steven J. Ross, Wolf Gruner, and Lisa Ansell, 1–24, Purdue University Press, 2019. <https://doi.org/10.2307/j.ctvh9w1k7.5>.

¹²⁹ “Reichspogromnacht: 9./10.11.1938,” Landeszentrale für politische Bildung, accessed February 19, 2024, <https://www.lpb-bw.de/reichspogromnacht>.

¹³⁰ “Raub von Kulturgut: Der Zugriff Des NS-Staats Auf Jüdischen Kunstbesitz in München Und Seine Nachgeschichte,” The Central Registry of Information on Looted Cultural Property 1933-1945, accessed February 19, 2024, <https://www.lootedart.com/SF5MUX645281>.

¹³¹ Catrin Lorch, “Hitlers Kuratoren,” *Süddeutsche Zeitung* (Munich), November 29, 2016, <https://www.sueddeutsche.de/kultur/ns-raubkunst-hitlers-kuratoren-1.3271744>.

Rosenberg [Reichsleiter Rosenberg taskforce], a governmental agency specifically established to confiscate cultural collections from Jews and Freemasons.¹³²

According to Nicholas, transactions of looted Jewish art outside of Germany peaked in 1941-1942. The rapine of the sellers was equally met by the hunger for art of the buyers. Particularly the Netherlands and Italy profited from a strong exchange with Nazi art dealers, but also business with France flourished. In this way, the looted properties did not only land in museums and salons of Nazi-leaders, but they also spread around the world through the art market.¹³³ For this reason, many of the looted properties remain untraceable to this day.

However, these international transactions of art were met with Allied resistance. Over the first part of the 20th century, the idea had emerged that cultural objects were an international concern - heritage to humankind as a whole. This put forward the need to protect foreign cultural assets. Despite of the hunger for looted artworks on the international art market, the Allied international community reacted to Nazi-lootings in an unprecedented way.^{134,135}

The international efforts in World War II and immediate postwar culminated in the ratification of the Hague ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’¹³⁶ in 1954 and the UNESCO ‘Convention on the Means of Prohibiting and

¹³² Donald E. Collins and Herbert P. Rothfeder, “The Einsatzstab Reichsleiter Rosenberg and the Looting of Jewish and Masonic Libraries during World War II,” *The Journal of Library History* (1974-1987) 18, no. 1 (1983): 21–36.

¹³³ Lynn H. Nicholas, *The Rape of Europe: The Fate of Europe’s Treasures in the Third Reich and the Second World War* (New York: Vintage, 1995), 81-184.

¹³⁴ Bianca Gaudenzi and Astrid Swenson, “Looted Art and Restitution in the Twentieth Century – Towards a Global Perspective,” *Journal of Contemporary History* 52, no. 3 (2017): 491–518.

¹³⁵ The scope of this thesis does not allow for a detailed explanation of the different institutions and the roles they had. For more information, see the activities of the MFA&A, the Roberts and Vaucher Comissions, the ‘Art Looting Intelligence Unit’, the ‘Jewish Cultural Reconstruction’ and the ‘Jewish Restitution Successor Organization’, in: Nicholas, *The Rape of Europe: The Fate of Europe’s Treasures in the Third Reich and the Second World War*.

¹³⁶ “Cultural Heritage & Armed Conflicts (Convention 1954),” UNESCO, accessed May 20, 2024, <https://en.unesco.org/protecting-heritage/convention-and-protocols/1954-convention>.

Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property’¹³⁷ in 1970.¹³⁸ All of these efforts provided important historical sources used to this day in provenance research. Further, they set the ethical precedents and legal framework for provenance research in the 21st century, as we will see later on.

In 1998, representatives of 44 governments met in Washington DC, to develop a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art.¹³⁹ The resulting document – the ‘Washington Conference Principles on Nazi-looted Art’ (Washington Principles) - is perhaps the most significant result of international cooperation on restitution of Nazi-looted art. Since their inception, the Washington Principles have served as a moral compass for restitution claims. In addition, they have helped shape national legislations like Austria’s *Kunstrückgabegesetz*¹⁴⁰ [Law for the Return of Art].

According to Tabitha I. Oost, the Washington Conference was the first follow-up to the ‘London Conference on Nazi Gold’ of December 1997.¹⁴¹ In the words of Ambassador Stuart E. Eizenstat, the conference in London was “instrumental in [humanity’s] task of completing some of the most important unfinished business of [the 20th century]”.¹⁴² Further, Eizenstat argued that it could be estimated that the amount of “looted gold traded to Switzerland was around \$335 million.”¹⁴³ While the focus of London’s Conference had been gold assets, it was necessary to continue research into other assets – “including real property, securities, bonds,

¹³⁷ “Fight Illicit Trafficking (1970 Convention)” UNESCO, accessed May 20, 2024, <https://en.unesco.org/fighttrafficking/1970>.

¹³⁸ Gaudenzi and Swenson, “Looted Art and Restitution in the Twentieth Century – Towards a Global Perspective.”

¹³⁹ Tabitha I. Oost, *In an Effort to Do Justice? Restitution Policies and the Washington Principles* (Amsterdam: Centre of Art, Law and Policy, University of Amsterdam, 2012), 1.

¹⁴⁰ “Kunstrückgabegesetz,” Bundesministerium Kunst, Kultur, öffentlicher Dienst und Sport, accessed February 26, 2024, <https://provenienzforschung.gv.at/empfehlungen-des-beirats/kunstruckgabegesetze/>.

¹⁴¹ Oost, *In an Effort to Do Justice? Restitution Policies and the Washington Principles*, 7.

¹⁴² “Under Secretary Stuart Eizenstat. Closing Plenary Statement at the London Conference on Nazi Gold, December 4, 1997,” United States Department of State, accessed February 21, 2024, https://1997-2001.state.gov/policy_remarks/971204_eizen_nazigold.html.

¹⁴³ United States Department of State, “Under Secretary Stuart Eizenstat. Closing Plenary at the London Conference on Nazi Gold. December 4, 1997.”

insurance, and artworks.”¹⁴⁴ A follow-up conference was needed. For this purpose, the US Holocaust Museum had agreed to host the conference that would later be known as the ‘Washington Conference on Holocaust-Era Assets’.^{145,146}

The endorsement of the Washington Principles was a reaction to a growing public pressure and debate to resolve the illicit distribution of Jewish assets by the NS-regime. If one wants to pretend that history can be dissected in distinct parts, then one would argue that the Washington Principles were prompted by the 1995 discovery of Nazi-gold in Swiss bank holdings.¹⁴⁷ The Washington Principles have shaped contemporary provenance research and remain highly influential today. Proof of this holistic influence on the art world can be seen, as an example, in the attention Christie’s has given to the 25th anniversary of the Washington Principles in the past year.¹⁴⁸

The endorsement of the Washington Principles by 44 countries prompted two things: on the one hand, an exponential interest in recovering looted artworks from both private and public collections around the globe;¹⁴⁹ and on the other hand, the enactment of similar declarations and legally binding resolutions.¹⁵⁰ In 1999, the Council of Europe passed the Resolution 1205 on ‘Looted Jewish Cultural Property’. This resolution called upon member states to adjust national legislations to avoid obstruction of restitution efforts.¹⁵¹ Further, in 2000, the

¹⁴⁴ United States Department of State.

¹⁴⁵ United States Department of State.

¹⁴⁶ Eizenstat’s statement alone does not provide a full picture. His statement, as noted by Marc Masurovsky, needs to be qualified, as Eizenstat had a specific political agenda and did not necessarily understand the art issue. However, given the scope of the thesis, and the influence Eizenstat has had on the Spanish discourse (which is the focus of this thesis), it is still relevant to mention his statement.

¹⁴⁷ Oost, *In an Effort to Do Justice? Restitution Policies and the Washington Principles*, 7.

¹⁴⁸ “Reflecting on Restitution: 25 Years of the Washington Principles on Nazi Confiscated Art,” Christie’s, accessed February 26, 2024, <https://www.christies.com/events/special-events/reflecting-on-restitution-25-years-of-the-washington-principles/about>.

¹⁴⁹ “25 Years of the Washington Principles: The Strides and Stumbles in Reclaiming Nazi-Confiscated Art,” Center for Art Law, October 30, 2023, <https://itsartlaw.org/2023/10/30/25-years-of-the-washington-principles-the-strides-and-stumbles-in-reclaiming-nazi-confiscated-art/>.

¹⁵⁰ Oost, *In an Effort to Do Justice? Restitution Policies and the Washington Principles*, 1.

¹⁵¹ “Looted Jewish cultural property,” Parliamentary Assembly of the Council of Europe, accessed February 22, 2024, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16726&lang=en>.

International Forum on ‘Holocaust-Era Looted Cultural Assets’ took place in Vilnius. The forum focused on a broader range of looted objects¹⁵² – unlike the Washington Conference, that was mainly concerned with art. Finally, in 2009, the ‘Terezin Declaration on Holocaust Era Assets and Related Issues’ was passed.¹⁵³ This declaration again underlined the need to focus on *all* Nazi-looted assets in restitution matters.¹⁵⁴

Since the enactment of the Washington Principles, restitution of Holocaust-assets has found a greater resonance with governments. Provenance research has become standard practice in the art world to investigate potential connections objects may bare to the NS-regime. Some governments, however, have taken greater interest than others in implementing these principles.

The development of restitution mechanisms in the context of commemorating the Holocaust is of particular significance for Spain. Spain participated in the Washington Conference of 1998 and approved of the Washington Principles. Through this, Spain has *ethically* committed itself to achieving ‘just and fair solutions’ in matters of Nazi-Confiscated Art.¹⁵⁵ Nevertheless, in the twenty-five years since the passing of the Principles Spain has not made significant progress in the restitution of looted artworks. In a report issued directly after the Washington Conference in 1998, Spain declared itself a transit country during the

¹⁵² “Vilnius International Forum on Holocaust-Era Looted Cultural Assets, 3-5 October 2000,” The Central Registry of Information on Looted Cultural Property 1933-1945, accessed February 22, 2024, <https://www.lootedart.com/MG8D3S66604>.

¹⁵³ “2009 Terezin Declaration on Holocaust Era Assets and Related Issues,” United States Department of State, accessed May 20, 2024, <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>.

¹⁵⁴ Oost, *In an Effort to Do Justice? Restitution Policies and the Washington Principles*, 1.

¹⁵⁵ “Washington Conference Principles on Nazi-Confiscated Art,” United States Department of State, accessed May 20, 2024, <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

Holocaust, but not a destination for looted artworks. The report dismissed any practical consequences of approving the Washington Principles.^{156,157}

The rejection of this ethical obligation has resulted in a number of legal disputes. One particularly noteworthy example is the dispute surrounding Pissarro's 'Rue Saint-Honoré, dans l'après midi. Effet de pluie'. The painting, which is currently housed in the *Thyssen-Bornemisza Museo Nacional* in Madrid, has been the subject of an ownership dispute for decades.

In 1939, Lilly Cassirer sold the aforementioned painting to Nazi officials. Cassirer, a Jewish woman from Berlin, was in need for liquidity in order to be able to flee Germany with her husband. In exchange for her painting, the Nazi officials promised her \$360 and visas for both her and her husband. Not only does this represent a case of coercion, but the Cassirers never received the promised money. Nonetheless, the couple was able to successfully flee to the United States. In 1962, the German government paid Cassirer a legal settlement of \$13,000 for her case. However, this settlement did not represent a formal waiver of her right of possession of the Pissarro, as her heirs argue. The artwork subsequently traveled to the United States, underwent several transfers of ownership, and was finally acquired by Baron Hans Heinrich Thyssen-Bornemisza in 1976 in New York.

It was in 1993 when the Baron sold a portion of his art collection in Madrid to the Spanish government. The *Thyssen-Bornemisza Museo Nacional*, now a national museum, is bound by the ethical commitment set out in the Washington Principles. Consequently, the Cassirer heirs

¹⁵⁶ Miguel Martorell Linares, "Spain and the Looting of European Art Collections during World War II," Commission for Art Recovery, accessed May 22, 2024, https://www.lootedart.com/web_images/pdf2020/SPAIN%20AND%20THE%20LOOTING%20OF%20EUROPEAN%20ART%20COLLECTIONS%20DURING%20WORLD%20WAR%20II%20By%20Miguel%20Martorell%20Linares%201998.pdf.

¹⁵⁷ Ana Carbajosa, "La restitución del arte robado por los nazis sigue pendiente 20 años después," *El País* (Madrid), December 2, 2018, https://elpais.com/cultura/2018/12/01/actualidad/1543675044_999521.html.an.

have been asserting their claim to the museum's return of the painting for several years. However, according to Spanish law, public possession of property for a period of at least six years is sufficient to transfer good title. This holds true even if the possession was stolen.¹⁵⁸ Based on this argumentation, the Spanish court has refused to restitute this particular painting. However, critics argue that this attitude goes against Spain's expressed ethical commitment to restitute Nazi-looted artworks (as expressed through the approval of the Washington Principles).^{159,160,161} Particularly important in this context is the criticism issued by Eizenstat. On November 26, 2018, he criticized Spain's lack of action in implementing the Washington Principles at the international specialist conference '20 Years Washington Principles: Roadmap for the Future'.¹⁶² He asserted that:

Spain also has taken no steps to implement the Washington Principles, and in one dispute involving a Nazi-looted artwork that belonged to an American family, the Spanish government took the position that the Thyssen Museum which possessed it was a private museum not covered by the Washington Principles.¹⁶³

However, this dismissal can be explained by reference to Spain's process of collective 'dememorization' as part of the transition to democracy, as I will explain below. In particular, the Amnesty Agreement of 1977 served to reinforce the politics of silence surrounding the

¹⁵⁸ The legal technicalities of this case, as well as the technicalities of the Spanish legal term *usucapión*, are explored in: Rafael Mateu de Ros Cerezo and Patricia Fernández Lorenzo, "Restituciones de bienes incautados en la Guerra Civil y en la posguerra española. La nueva Ley de Memoria Democrática," *Patrimonio cultural y derecho*, no. 26 (2022): 481–500.

¹⁵⁹ Iker Seisdedos, "La guerra por el 'pissarro' del Thyssen expoliado por los nazis se enquistó en los tribunales," *El País* (Madrid), December 13, 2022, <https://elpais.com/cultura/2022-12-13/la-guerra-por-el-pissarro-expoliado-del-thyssen-se-enquista-en-los-tribunales.html>.

¹⁶⁰ Tessa Solomon, "The U.S. Supreme Court Sends Decades-Long Case over Nazi-Looted Pissarro Back to California Court," *ARTnews.Com*, April 22, 2022, <https://www.artnews.com/art-news/news/the-u-s-supreme-court-sends-decades-long-case-over-nazi-looted-pissarro-back-to-california-court-1234626316/>.

¹⁶¹ Hans-Christian Rößler, "Raubkunst Im Nationalmuseum Thyssen-Bornemisza Madrid," *Frankfurter Allgemeine Zeitung* (Madrid), accessed March 29, 2024, <https://www.faz.net/aktuell/feuilleton/kunst-und-architektur/raubkunst-im-nationalmuseum-thyssen-bornemisza-madrid-19455133.html>.

¹⁶² "Specialist Conference '20 Years Washington Principles: Roadmap for the Future' | Kulturgutverluste," German Lost Art Foundation, November 26, 2018, <https://kulturgutverluste.de/en/eventdocumentation/specialist-conference-20-years-washington-principles-roadmap-future>.

¹⁶³ "Eizenstat_Stuart_Manuskript_0.Pdf," Deutsches Zentrum Kulturgutverluste, accessed May 7, 2024, 9 https://kulturgutverluste.de/sites/default/files/2023-07/Eizenstat_Stuart_Manuskript_0.pdf.

crimes committed during the Franco dictatorship. As I will demonstrate in the subsequent chapter, the interrelationship between the Amnesty Agreement of 1977 and the rejection of the Washington Principles can be approached through the lens of Rothberg's theory of multidirectional memory. Thus, the following chapter provides an overview of the Spanish transition to democracy. Particularly, the chapter will explain why the so-called 'Pact of Forgetting', that originated from the Amnesty Agreement of 1977, was pivotal in shaping Spain's dememorization of the Francoist past.

2.2.2. Memory of the Transition¹⁶⁴

Spain's transition to democracy at the end of the 20th century was pivotal in shaping Spain's national memory. Franco's death on November 20, 1975, marked the beginning of a new chapter in Spanish national history: the dictator of the last four decades was dead. This created a political vacuum in Spain and raised many questions about the future of the country. The provisional government installed after Franco's death consisted of Juan Carlos I (the son of the exiled king and Franco's chosen successor) and Carlos Arias Navarro (Franco's right hand), who later was replaced by the first democratically elected president of Spain, Adolfo Suárez.¹⁶⁵

Upon assuming power, the provisional government initiated a diplomatic and non-violent turn to democracy, which would go down in posterity under the name of *la Transición* (the Transition). In a global setting, this process represents a rather solitary historical example of drastic political changes occurring in a relatively peaceful and harmonious manner. However, the dramatic change made use of the existing political apparatus for its rapid unraveling. And

¹⁶⁴ This section was partly written for the course SO/DO5010 – Regimes of Culture and Historical Preservation 2022/23 Winter. The section was modified accordingly to fit the topic of this thesis.

¹⁶⁵ Giles Tremlett, *Ghosts of Spain: Travels Through a Country's Hidden Past* (London: Faber and Faber, 2006), 69-75.

so, almost overnight, prominent supporters of the Franco regime reinvented themselves as fierce advocates of democracy. The leaders of the Transition, often lauded as heroes, were affiliates of the Francoist party who had the upper hand in making decisions about the nascent Spanish democracy. The political opposition had to pay for change by remaining silent about the crimes committed during the Civil War and Franco dictatorship.¹⁶⁶

At the end of 1977, political leaders and their opposition carefully orchestrated a general amnesty. This Amnesty Agreement was communicated to the Spanish population as an act of national reconciliation. The law decriminalized the return of exiled political refugees and released regime prisoners, but also guaranteed impunity for all crimes committed during the dictatorship. The unwritten part of this Amnesty Agreement has gone down in history as the *Pacto del Olvido* [Pact of Forgetting]. Through this pact, silence and forgetting became the heart of the Spanish transition to democracy. However, the Amnesty Agreement of 1977 represented a missed opportunity to collectively reflect on Spain's difficult past. No official acts of atonement or official apologies took place, and no truth commissions were created.¹⁶⁷

With these decisions, Spain's collective memory and traumata were swept under the rug and deliberately made to be forgotten to ensure a new social cohesion in the form of democracy. The 1977 Amnesty Agreement institutionalized silence and forgetting and served as a pillar for the nascent democracy. Upon this pillar, a new sense of collective memory and Spanish identity was fabricated. According to Gregorio Morán, the transition implied a *collective dememorization* of the past in which individuals were expected to give up any concrete re-evaluation of the Franco dictatorship.¹⁶⁸ The collective memory of the Civil War and dictatorship was replaced from one day to the next by a national memory with a narrative of unity to guarantee the democratic turn. In relation to extensive expropriation acts and the

¹⁶⁶ Tremlett, *Ghosts of Spain: Travels Through a Country's Hidden Past*, 69-95.

¹⁶⁷ Tremlett, 71-7.

¹⁶⁸ Gregorio Morán, *El precio de la transición* (Barcelona: Planeta, 1991), 75-108.

thousands of seized artworks, the 1977 Amnesty Agreement also implied giving up claims relating to illegitimate seizures of property. The Amnesty Agreement represented not only a suppression of memory and identity, but perpetuated the material losses that many families unjustly faced under Francoist repression. The suppression of memory was carefully orchestrated and fabricated by the political apparatus after Franco's death. It intended to ensure a peaceful democratic turn. This fabricated suppression of memory has become the national narrative and glue of Spanish democracy.

When looking at how this national narrative was introduced to suppress a discussion of the Francoist past, the key difference to Augé's theory lies in the fact that forgetting was not a *choice* for the generations that experienced the trauma.¹⁶⁹ Rather, it was imposed upon them, orchestrated by the still influential Francoist powers.¹⁷⁰ At the same time, forgetting became the new state's national narrative, backed by the government and its many institutions. This affected public life, private life, but also importantly education. In this sense, the duty to remember was institutionally stripped from the new generations.¹⁷¹

As explained before, Gabowitsch proposes atonement as a possible solution to achieve transitional justice.¹⁷² During the Spanish Transition, no acts of atonement took place. In the context of Spanish politics, atonement is a difficult undertaking that poses complex political challenges not necessarily evident at first glance. Not only is it a national issue emerging from a civil war and its aftermath – and thus free from international pressures to resolve it - but the boundaries between victims and perpetrators are blurred and the role of the state obfuscated.

Some official apologies on behalf of the state have taken place, but these were formulated full of conditionalities and without the direct assumption of governmental responsibility. The

¹⁶⁹ Augé, "From Oblivion," 473-74.

¹⁷⁰ Madeleine Davis, "Is Spain Recovering Its Memory? Breaking the 'Pacto Del Olvido,'" *Human Rights Quarterly* 27, no. 3 (2005): 858-80.

¹⁷¹ Davis, "Is Spain Recovering Its Memory? Breaking the 'Pacto Del Olvido,'" 858-80.

¹⁷² Gabowitsch, "Replicating Atonement: The German Model and Beyond," 1-2.

reason behind this can be explained with Trouillot's analysis of collective apologies.¹⁷³ On the one hand, an official apology from the Spanish government would imply an assumption of guilt and, therefore, signify an apparent continuity of the dictatorship. On the other hand, a consequent processing of the past would unveil the non-democratic aspects of the Transition.¹⁷⁴ This, in turn, would undermine the cements on which Spanish democracy is built. As a result, gestures of public atonement from the side of the government have been traditionally rare and occurred predominantly in a concealed manner.¹⁷⁵

This attitude towards the Francoist past helps to elucidate the reasons behind the dismissal of the Washington Principles in 1998. In 1998, only twenty years had passed since the Pact of Forgetting was signed. Spain had successfully managed the transition from a dictatorship to a democracy. Given the close relationship between the Franco dictatorship and Nazi art collectors, as I will explain below, it seems plausible to assume that the ethical commitment to restitute Nazi-looted art, expressed through the approval of the Washington Principles, was dismissed.

¹⁷³ Trouillot, "From Abortive Rituals: Historical Apologies in the Global Era," 458-64.

¹⁷⁴ Salvador Cardús i Ros, "Politics and the Invention of Memory. For a Sociology of the Transition to Democracy in Spain," in *Disremembering the Dictatorship: The Politics of Memory in the Spanish Transition to Democracy*, ed. Joan Ramon Resina (Amsterdam – Atlanta: Editions Rodopi B.V., 2000), 17 – 28.

¹⁷⁵ A good example of a concealed act of atonement is the 2019's exhumation of Franco's body from the heritage site of the Valley of Cuelgamuros. The official governmental reason for the decision to exhumate the dictator's body was that the place should remain a commemoration site for the Fallen of the Civil War, to which Franco did not belong. Franco's exhumation, then, was a concealed act of atonement. It constituted an action to repair an historical damage - however, the government did not make use of the opportunity to condemn the dictatorship.

2.3. Intersecting memories: the Memory of the Holocaust and the Memory of the Transition

Although Rothberg's concept of multidirectional memory takes the US context as its focus, the concept of multidirectional memory is useful to understand why the Washington Principles could have been dismissed by Spain. As explained previously, Rothberg argues that the processing of the Holocaust has opened the path for the articulation of other stories.¹⁷⁶ With this conceptual framework in mind, it seems reasonable to believe that public performances of atonement in relation to the Holocaust – like restitution acts – would have posed difficult questions about Spain's recent past. As one account of repression often helps articulate other accounts of repression, addressing the issue of Nazi-looted art in Spain would have prompted similar questions regarding Francoist art lootings. This would have necessitated the examination of the dictatorship, a subject the country was not yet prepared to address in 1998. Of course, it is unclear to what extent the dismissal of the Washington Principles was a conscious choice, or rather, a disinterest in the research and implementation of these principles.

However, there are indications that point towards a conscious dismissal of the Washington Principles. A report issued by Miguel Martorell Linares in 1998 (directly after the Washington Conference) analyzes Spain's involvement in the distribution of artistic heritage stolen by the NS-regime. The report concluded that, while Spain had been a transit country during the Holocaust, it had not been a place of final destination for looted artworks.¹⁷⁷ This report also laid out the strong connections between the NS-regime and the Franco dictatorship. The Nazi

¹⁷⁶ Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*.

¹⁷⁷ Martorell Linares, "Spain and the Looting of European Art Collections during World War II."

art collectors Alois Miedl and Hans Lazarich Lazar both found refuge in Francoist Spain, as well as other European smugglers, such as Adrien Otlet, Alfred Zantop, and Pierre Lottier.¹⁷⁸

Alois Miedl was one of the main artificers of German networks of art smuggling to other countries. Married to Theodore ‘Dorie’ Fleischer, a German Jewish woman, and friends with Göring, he profited from his ambiguous position to develop his business model. Miedl bought art collections from Jewish citizens, who, under coercion to leave the country, sold their artworks for lower prices. Göring was one of Miedl’s main recipients. Miedl also collaborated with the *Führermuseum*-project. His most important acquisition was the Goudstikker collection, which included more than a thousand looted paintings that Miedl bought in 1940. In 1944, Miedl started to process his residence permit in Spain. His artworks, which had arrived in the port of Bilbao, were initially seized by the Spanish government after the Netherlands accused Miedl of smuggling looted art. The United States and Great Britain supported these claims. However, the Spanish government demanded substantial evidence to judge on the claim. In 1948, Miedl demanded the release of his assets. This release was granted, even though the Allies expressed concerns. After the release, the final destination of the artworks remained unknown. Especially interesting is that the *Museo Nacional del Prado*, allegedly, tried to buy two paintings of Miedl’s retained collection “for a very low price” in 1947, according to Miedl.¹⁷⁹

Miedl was not the only one who profited from Spain’s protection. Hans Lazarich Lazar arrived in Spain in 1938, and initially served as a journalist for the Rebel administration. In Madrid, he worked for the German embassy. After Germany surrendered in the war, the building of the German embassy was looted, including the embassy’s artworks. Lazar was accused of being responsible for the looting. To avoid the consequences of this accusation,

¹⁷⁸ Martorell Linares.

¹⁷⁹ Martorell Linares, 17.

Lazar appealed to the Spanish government, arguing that he had supported the Rebel faction in the Spanish Civil War. The Allied demands for an inventory of Lazar's goods were ignored, and in 1949, the Spanish government released his assets and closed the case.¹⁸⁰

These two cases do not stand in isolation. Although, as it was later on discovered, Spain *was* a place of final destination for looted artworks,¹⁸¹ what the report proves is that, already in 1998, Spanish scholars circulated information on the close collaboration between Nazi art smugglers and the Spanish regime. Although the Spanish government did not *explicitly* support Nazi smugglers, they did offer them *implicit* protection. It seems plausible to assume then, that there could have been concerns on restituting Nazi-looted artworks from Spain after 1998, as this could have prompted a public debate regarding the close collaboration between the Franco dictatorship and Nazi art dealers – and thus, prompted conversations about the crimes committed during the dictatorship. This was not something Spain was ready to tackle in 1998.

In terms of memory, what can be observed are two parallel, but interconnected developments: (1) the development of an international culture of atonement, evidenced through the practice of restitutions. This culture of atonement has the goal to try to find 'just and fair solutions' in relation to Nazi-art lootings; and (2) the implementation of a 'dememorization' narrative by the Spanish government during the Spanish transition to democracy to guarantee the democratic turn. These two developments influence each other: in 1998, Spain's ethical commitment towards the restitution of Nazi-looted artworks was hindered by the country's recent Transition and the inherent collective process of 'dememorization'.¹⁸²

¹⁸⁰ Martorell Linares.

¹⁸¹ An example that proves this is the Czartoryski case. For more information on this particular case, see: Rafael Mateu de Ros Cerezo and Patricia Fernández Lorenzo, "Restituciones de bienes incautados en la Guerra Civil y en la posguerra española. La nueva Ley de Memoria Democrática," *Patrimonio cultural y derecho*, no. 26 (2022): 491-93.

¹⁸² A question that arises in this context is why Spain approved of the Washington Principles, if the country was not ready to implement them. I suspect that the reason behind this was the international pressure to commit to the restitution of Nazi looted artworks. Unfortunately, a closer examination of this question transcends the scope of this thesis.

Chapter 3 - Recent Developments¹⁸³

Spanish governmental attitude towards atonement has undergone a significant shift in recent times, with the Pact of Forgetting becoming increasingly fractured. The art world, and the restitution of artworks, have become a pivotal stage for this development.

The fracturing of the Pact of Forgetting is not a new phenomenon. In fact, the Pact of Forgetting has been contested for a considerable amount of time. Civil society movements have long contested the politics of forgetting introduced during the Transition. A prominent example of this resistance is Emilio Silva's *Asociación Para La Recuperación de la Memoria Histórica* (ARMH) [Association for the Recovery of Historical Memory]. The private association was established in the year 2000 with the objective of collecting testimonies about the Francoist repression. The main activities of the organization include excavating and identifying bodies that were dumped in mass graves during the Franco era. The rapid growth and influence of this association marked a significant first rupture with the Pact of Forgetting.¹⁸⁴ The ARMH's impact is not an isolated example; rather, it is indicative of a broader trend. The Pact of Forgetting is increasingly being challenged in a growing number of contexts.

¹⁸³ This section was partly written for the course SO/DO5010 – Regimes of Culture and Historical Preservation 2022/23 Winter. The section was modified accordingly to fit the topic of this thesis.

¹⁸⁴ Davis, "Is Spain Recovering Its Memory? Breaking the 'Pacto Del Olvido,'" 858-80.

Nevertheless, until 2022, these fractures originated from individuals or private organizations, rather than from the government itself. In this way, the government's national narrative was challenged, but never deconstructed from within. The pivotal shift in national narrative occurred in 2022 with the enactment of a new memory law, which also greatly affected the art world.

2022 marked a break with all previous Spanish memory politics with the approval of the Law of Democratic Memory. The foundation for this law had been laid in 2007, when the Socialist government presided by José Luis Rodríguez Zapatero approved the *Ley de Memoria Histórica* (Law of Historical Memory) to acknowledge *all* victims of Francoism.¹⁸⁵

It is interesting to briefly reflect on how this law defined historical memory. As explained before, historical memory is a term introduced by Pierre Nora, that describes the way in which collectivities make sense of the past in the present. At the same time, Nora ascribes a particular role for the state in the process of memory making. The law of 2007 did not delve into the technical implications of using the term historical memory.¹⁸⁶

The 2022 Law of Democratic Memory marked a break with previous memory politics in that it defines 'victims' in the context of Francoism for the first time. In addition, it outlaws crimes committed during the Civil War and the dictatorship.¹⁸⁷

In the context of art restitution, this law is especially relevant because - among many other things - it regulates the art world and right to compensation for seized goods. Specifically, article 31 of this law states as follows:

Artículo 31. Incautaciones de bienes y sanciones económicas.

¹⁸⁵ Agencia Estatal Boletín Oficial del Estado, "Ley de Memoria Histórica."

¹⁸⁶ Many of the mnemonic terms had not been defined yet, but the law did not define term 'historical memory' according to Nora's definition. The law defined 'historical memory' as the individual right to personal and family memory. Unfortunately, the considerations of the exact implications transcend the scope of this thesis.

¹⁸⁷ Agencia Estatal Boletín Oficial del Estado, "Ley de Memoria Democrática" (Gobierno de España, 2022), <https://www.boe.es/eli/es/l/2022/10/19/20/con>.

1. Se reconoce el derecho al resarcimiento de los bienes incautados y las sanciones económicas producidas por razones políticas, ideológicas, de conciencia o creencia religiosa durante la Guerra y la Dictadura, en los términos que se establezcan legalmente, así como en la normativa de desarrollo.
2. La Administración General del Estado promoverá las iniciativas necesarias para la investigación de las incautaciones producidas por razones políticas, ideológicas, de conciencia o creencia religiosa durante la Guerra y la Dictadura y, en particular, realizará una auditoría de los bienes expoliados en dicho periodo, incluyendo las obras de arte, el papel moneda u otros signos fiduciarios depositados por las autoridades franquistas, así como la imposición de sanciones económicas en aplicación de la normativa de responsabilidades políticas. Esta auditoría incluirá un inventario de bienes y derechos incautados. La auditoría deberá llevarse a cabo en el plazo de un año desde la entrada en vigor de la presente ley. La referida auditoría incluirá los bienes inmuebles y derechos de contenido patrimonial de los que fueran titulares los Ateneos, Cooperativas y entes asimilados.
3. Una vez finalizada la auditoría a que se refiere el apartado anterior, se implementarán las posibles vías de reconocimiento a los afectados, independientemente de lo previsto a este respecto en el artículo 5.4 de la presente ley.^{188,189}

In this way, the new memory law (1) recognizes the right to compensation for seized property during the Civil War and Franco dictatorship, (2) orders an audit of property plundered during this period and (3) *explicitly* names artworks as an example for the contexts in which this law should be implemented.

In the art world, one museum that is especially notable for their reappraisal of their collection (and thus, complying with the ordered audit) is the *Museo Nacional del Prado*. In 2023, the museum published a report that included an audit of the museum's collection, in relation to their Francoist past. The *Museo Nacional del Prado* is of particular significance as

¹⁸⁸ Agencia Estatal Boletín Oficial del Estado, “Ley de Memoria Democrática.”

¹⁸⁹ Translation: [Article 31. Seizures of property and economic sanctions. 1. The right to compensation for seized goods and economic sanctions produced for political, ideological, conscientious or religious reasons during the War and the Dictatorship is recognized, in the terms established by law, as well as in the implementing regulations. 2. The General State Administration shall promote the necessary initiatives for the investigation of the seizures made for political, ideological, conscientious or religious reasons during the War and the Dictatorship and, in particular, shall carry out an audit of the assets plundered during this period, including works of art, paper money or other fiduciary signs deposited by the Francoist authorities, as well as the imposition of economic sanctions in application of the regulations on political responsibilities. This audit will include an inventory of seized goods and rights. The audit shall be carried out within one year of the entry into force of this law. The aforementioned audit shall include the real estate assets and rights of patrimonial content of which the Athenaeums, Cooperatives and assimilated entities were holders. 3. Once the audit referred to in the preceding paragraph has been completed, the possible means of recognition to those affected shall be implemented, regardless of the provisions in this respect in Article 5.4 of this Law.]

it served as a depository for both the JTA and the SDPAN. Furthermore, the museum has demonstrated willingness to engage with lootings from the Civil War and Franco dictatorship, making its information and research resources available on its website.¹⁹⁰

With these developments, the restitution of artworks looted during the Francoist period is slowly gaining momentum. Moreover, the increasing public discourse surrounding the Francoist past of museums' collections represents an unraveling of the Pact of Forgetting. Significant national museums have begun to contest the 'dememorization' narrative introduced with the Pact of Forgetting. In light of these developments, the art world is becoming one of the stages in which the Pact of Forgetting is being deconstructed from within. Artworks, brought forward by new restitution attempts, are acting as a vessel for this change in discourse practice. Furthermore, they do not only represent a symbolic battle over ownership of discourses and memory, but also an economic one. What has begun now could potentially result in the most significant redistribution of property – and with it, of wealth – that the Spanish democracy has ever seen.¹⁹¹

What is especially interesting is that this new memory law shows signs of 'internal globalization', as described by Levy and Sznajder. The most tangible proof of this influence is the fact that the Holocaust is mentioned in the first sentence of the Law of Democratic Memory. This shows a development from the Law of Historical Memory from 2007, a law that did not mention the Holocaust once.

Despite the fact the Law of Democratic Memory deals with the memory of the Franco dictatorship, the Holocaust is mentioned in the first sentence of the law (fig. 9). This is

¹⁹⁰ "Confiscated Artifacts. A Work in Progress," Museo Nacional del Prado, accessed May 7, 2024, <https://www.museodelprado.es/en/confiscated-artifacts>.

¹⁹¹ The exact legal implications, and avenues for potential future art restitutions, are explored in: Mateu de Ros Cerezo, Rafael, and Patricia Fernández Lorenzo. "Restituciones de bienes incautados en la Guerra Civil y en la posguerra española. La nueva Ley de Memoria Democrática." *Patrimonio cultural y derecho*, no. 26 (2022): 481–500.

significant, because the Holocaust does not constitute one of the essential defining characteristics of the Spanish Civil War.

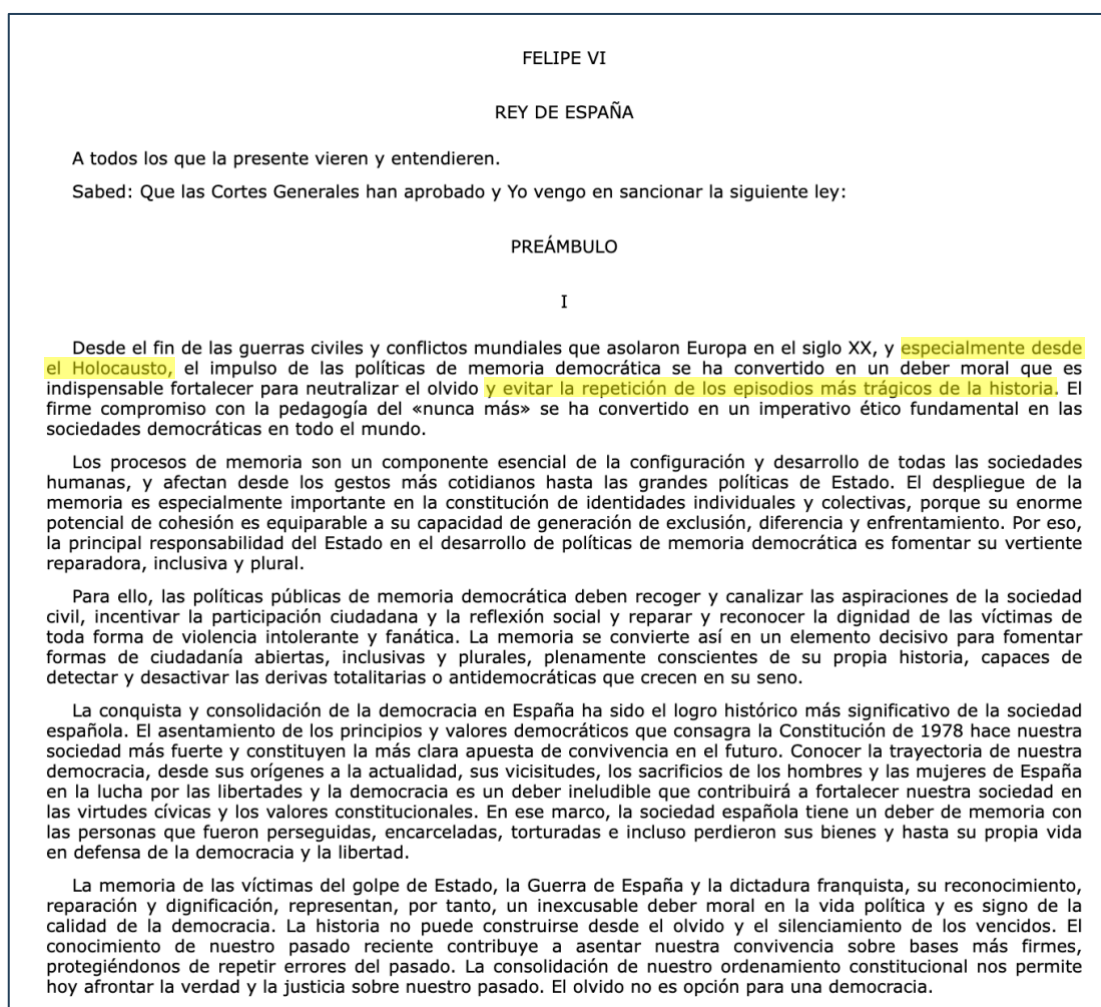


Figure 9. Preamble to the 'Law of Democratic Memory'. Highlighted sentence reads (translated): "Since the end of the civil wars and world conflicts that devastated Europe in the 20th century, and especially since the Holocaust, the promotion of democratic memory policies has become a moral duty that must be strengthened in order to neutralize forgetfulness and avoid the repetition of the most tragic episodes in history."¹⁹²

This is not to say that the Holocaust did not exert an influence on Franco's regime. As Preston notes, one of the Rebel faction's fundamental justifications for initiating the Spanish Civil War was the alleged presence of a 'Jewish-Masonic Bolshevik conspiracy' ("contubernio

¹⁹² Agencia Estatal Boletín Oficial del Estado, "Ley de Memoria Democrática."

judeo-masónico bolchevique”).¹⁹³ In the Rebel’s ideology, this conspiracy had to be fought against at all costs. Interestingly, in 1936 the estimated Jewish population was likely to have been less than 6,000 individuals in Spain. Even though the primary objective of the Rebels was to overthrow the Republican government in the war, for many decades the narrative prevailed that the real enemy defeated was the aforementioned conspiracy. In this way, antisemitism and the Holocaust *did* exert a significant influence on Spanish media, war rhetoric, and narratives.¹⁹⁴ Nevertheless, it is noteworthy that a law which explicitly attempts to challenge these narratives, acknowledges the very rhetoric it seeks to deconstruct.

In the context of this law, naming the Holocaust is employed as a rhetorical device to evoke a greater evil that must be avoided at all costs. After the Holocaust, it is the moral duty of societies to promote democratic memory policies. This must be strengthened, to neutralize forgetfulness and avoid to repeat the ‘most tragic episodes in history’ (“evitar la repetición de los episodios más trágicos de la historia”).¹⁹⁵

The derivation of the law in its preamble is also noteworthy. According to the preamble’s argumentation, the promotion of democratic memory policies is a moral duty that emerges from the conflicts of the 20th century in Europe. Implementing this duty is necessary to neutralize forgetting. To uphold this duty, democratic societies need to have the pedagogy of ‘never again’ as a fundamental ethical imperative. Since processes of memory are an essential component in developing human societies, it is the state’s responsibility to foster open, inclusive, and pluralistic forms of citizenship through the regulation of memory.¹⁹⁶

¹⁹³ Preston, *Arquitectos del terror: Franco y los artífices del odio*, 18.

¹⁹⁴ Preston, 45.

¹⁹⁵ Agencia Estatal Boletín Oficial del Estado.

¹⁹⁶ Agencia Estatal Boletín Oficial del Estado.

Thus, the preamble of the Spanish Law of Democratic Memory is directly and explicitly derived from memory politics that result from commemorating the Holocaust. The law explicitly refers to the Holocaust as the greatest possible evil and promotes a pedagogy of ‘never again’. This, in turn, serves as the premise to justify the regulation of memory of all victims of the Franco dictatorship.

The understanding that the Holocaust is the moral trigger for democratic memory policies stems directly from the concept of cosmopolitan memory. As previously stated, the concept of cosmopolitan memory explains the emergence of a type of memory that is based on global remembrance patterns. As explained by Levy and Sznajder, cosmopolitan memory finds its origin in the Holocaust. The internal globalization of the Holocaust is directly observable in the law: its justification is subjected to a common, global patterning, even though the need for this law emerges from very specific, Spanish historical settings.¹⁹⁷

The unraveling of the Pact of Forgetting from within, has let space for an assimilation of cosmopolitan memory practices. As a result, the Law of Democratic Memory shows traces of both cosmopolitan memory and a reconsideration of Spain’s national memory. Therefore, it seems to represent a resolution of the tension between cosmopolitan memory and Spanish national memory. This has been reflected in the development of restitution practices, and explains the shift from restitutions as primarily bureaucratic acts, to restitutions as primarily acts of atonement. While before the memory of the Transition inhibited the implementation of the Washington Principles, the slow fracture of the Pact of Forgetting has prompted an assimilation of cosmopolitan memory - but tailored to Spain’s specific historical needs. The current situation is the result of a negotiation between national memory politics, and the adoption of cosmopolitan memory practices.

¹⁹⁷ Levy and Sznajder, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory.”

Conclusion

The Spanish Civil War saw an exceptional relocation of artworks on a national and international level. In this area too, the two factions worked against each other. Broadly speaking, while the Republicans worked to secure, catalog, and hide the thousands of artworks threatened by the war, Franco's forces concentrated their efforts on finding the Republican depositories, recovering the artworks, and returning them to their rightful owners.

From the outset of the Civil War, protection of heritage was a major concern for the Republican government. This is reflected in the 'Decree of July 23, 1938', enacted just five days after the military uprising. Through the establishment of different boards, the government sought to protect heritage by seizing it, and consequently safeguarding it in designated depositories. Through the JIPPA, and subsequently the JTA, the Republican government seized artworks for their protection. Additionally, other smaller, more local organizations participated in the seizing efforts. According to Colorado Castellary, the estimated number of seized artworks by Republican forces amounts to more than 16.000. Furthermore, the Republican government collaborated with international museums to safeguard artworks abroad, particularly in Geneva (Switzerland). All of these efforts were additionally instrumentalized as a political tool to legitimate the government in the war. Although inventories were created, and documents were circulated as part of the propaganda war, many of these documents are not publicly available to this day.

On the Rebel territories, the safeguarding of art was understood as a necessary means to undo the Republican maladministration. The most important bodies included the Historical Culture and Artistic Treasure Board, the Avant-Garde Artistic Service, and the militarized SDPAN. The recuperation efforts on the Rebel side were hindered by the lack of available

resources, mainly of the SDPAN. After the Rebels won the war and the Franco dictatorship was established, the SDPAN strongly focused its efforts on restituting artworks that had been seized by the Republicans. This included the artworks safeguarded abroad. To identify pre-war owners, the SDPAN created inventories and circulated information on retrieved objects in the press and radio. These first restitution attempts proved rather ineffective, and so the SDPAN began to exhibit the retrieved artworks. In spite of this, many artworks remained unclaimed, which prompted a redistribution following the ideological convictions of the dictatorship. The Church, national institutions, and Franco's inner circle benefitted from these redistributions. Enemies to the regime were excluded from the redistributions through the 'Law of Political Responsibilities' and the 'Suppression of Freemasonry and Communism Act'. The redistributions went on until the 1960s.

In 2022, the first restitution of artworks affected by Francoist seizures in Spanish democracy took place. The Spanish government restituted two artworks, 'Retrato de Caballero' by Cornelis van der Voort and 'Retrato de la Reina María Cristina de Borbón' by Luis de la Cruz y Ríos, to the heirs of Ramón de la Sota. Ramón de la Sota's properties were expropriated *post-mortem* by the Francoist administration due to alleged nationalism and separatism. The restitution act of 2022 had no precedent and sets a moral and legal standard for future restitution claims.

Furthermore, the restitution act stood in complete opposition to the regulated restitutions from the Franco era. Particularly significant in this regard is the statement provided by the Ministry of Industry, Commerce, and Tourism at the time, María Reyes Maroto. According to her, the restitution act represented a repair of an injustice that had lasted for the last 85 years. Furthermore, she stated that the act represented the Spanish government's priority to recover Spain's historical memory.

The framing of the restitution act in terms of memory indicates that the act represented an act of atonement. While art restitutions were understood as an administrative task under Franco, the restitution to the Ramón de la Sota heirs represented a performance of memory. The central aim of this thesis was to explore what developments might have contributed to this significant shift in the social character of restitution practices.

In my thesis, I contended that to explain this shift, it is necessary to pay close attention to how collectivities negotiate the perception of their own history, and how this perception affects contemporary societies. The angle of memory studies provides a useful theoretical framework to precisely explain this shift. The growing contemporary orientation towards the past has a focus on reconciliation as a tool to overcome collective trauma. According to Gabowitsch, this is due to the change in role the past has underwent in recent years, having become “a dark age to be left behind with no regret”. Furthermore, the concept of memory, and its different dependent terminologies, has been subject of extensive academic study. Especially relevant in this context is Nora’s engagement with the term of historical memory. The commemoration of the Holocaust is one of the prime instances of a shift towards a culture of reconciliation. According to Levy and Sznajder, the Holocaust has paved the way for the emergence of *cosmopolitan* memory, based on global remembrance patterns. These patterns have developed as a consequence of globalization and a decline in nation-state feelings. Further, Rothberg argues that a relationship exists between the remembrance of different traumatic historical episodes. According to him, the memory of the Holocaust has opened the path for other stories’ articulation.

In this context, particularly two developments are crucial to explain the shift in Spanish restitution practices: the effect of atonement acts as part of reconciling the Holocaust on

Spanish Memory Politics, and the influence of the so-called Pact of Forgetting on Spanish Memory Politics. This is especially significant in relation to restitutions of artworks.

During the Holocaust, art expropriations were common as part of the ingrained legality of violence and expropriation of the NS-regime. After the *Reichspogromnacht*, the Jewish population in Germany and Austria was persecuted on an unprecedented scale. In the art world, Jews under pressure to leave the country were coerced to sell their artistic assets, Jewish galleries were destroyed or sold, and a great number of artworks were simply seized. Many of these expropriated assets were sold on the international art market. After World War II, the international community became concerned about Nazi-lootings, especially because the 20th century saw a development in understanding artistic heritage as heritage to all humankind. This led to the ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’, and to the UNESCO ‘Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property’, in 1954 and in 1970, respectively. In matters of art restitution, the most significant international agreement was the Washington Principles, approved by 44 countries at the 1998 ‘Washington Conference on Holocaust-Era Assets’.

Although Spain also approved of the Washington Principles, after 1998 the country did not act on this ethical obligation. Particularly notable in this context is the decision to not retribute Picasso’s ‘Rue Saint-Honoré, dans l’après midi. Effet de pluie’ to the Cassirer heirs. This painting is currently housed in the national museum of the Thyssen-Bornemisza in Madrid. As shown in this thesis, the dismissal of the Washington Principles could be possibly explained by reference to Spain’s transition to democracy. Particularly, how the Amnesty Agreement of 1977 triggered a collective process of ‘dememorization’.

After Franco's death in 1975, Spain initiated the process of turning to democracy. This process was peaceful, but it made use of the existing political apparatus. At the end of 1977, the government negotiated an Amnesty Agreement that decriminalized the crimes of the dictatorship. At the same time, it guaranteed impunity to Francoists. According to Morán, this decision represented a collective 'dememorization' of the past. In the context of art restitutions, it seems plausible then that the Washington Principles were not implemented: an implementation would have necessitated a reconsideration of the Franco dictatorship. And with it, a contestation of the Pact of Forgetting. As mentioned before, there appears to be a strong connection between the Franco regime and the support of art smugglers that profited from the Holocaust. A consequent implementation of the Washington Principles would have initiated an inevitable reconsideration of the Franco past.

In this way, the implementation of international remembrance patterns was hindered by the Spanish Pact of Forgetting.

However, in recent years, Spain's governmental attitude towards commemorations of the past has started to undergo significant changes. While fractures with the Pact of Forgetting originated from outside of the government's sphere of activity before, now the Pact of Forgetting is being deconstructed from within. Pivotal in this shift is the Law of Democratic Memory, enacted in 2022. In relation to art restitutions, this law also offers an avenue for the restitution of artworks seized during the Civil War and dictatorship. At the same time, the Law of Democratic Memory is strongly linked to the memory of the Holocaust. This is particularly evident by looking at the preamble of the law, that directly draws from memory theories and commemoration of Holocaust movements.

By reconciling these two memory trends that stood in contrast to each other before, Spanish memory politics have successfully implemented the practice of cosmopolitan memory,

through the commemoration of its own past. This development could or could not prevail, depending on the next governmental elections and political developments of Spain. However, the fact that the Pact of Forgetting was contested from within the government is significant.

As for future avenues for research, it is evident that the artwork relocations that occurred during the Spanish Civil War and Franco dictatorship need closer examination. The lack of publicly available information, the novelty of the topic, and thus the scarce amount of research conducted to this day, are all factors that complicate the undertaking of conducting provenance research in this area. However, within the broadness of research possibilities in this field, there is one more narrow topic that has caught my interest: the art collection of the Paradores network in Spain. I believe their collection, composed of more than 10,000 artworks, needs closer examination. Given the fact that the first *parador* was founded in 1928, and that the *paradores* have always been dependent on the government, I suspect that this art collection could have been severely affected by Francoist relocations of artworks. I could imagine suggesting this topic for a future PhD project.

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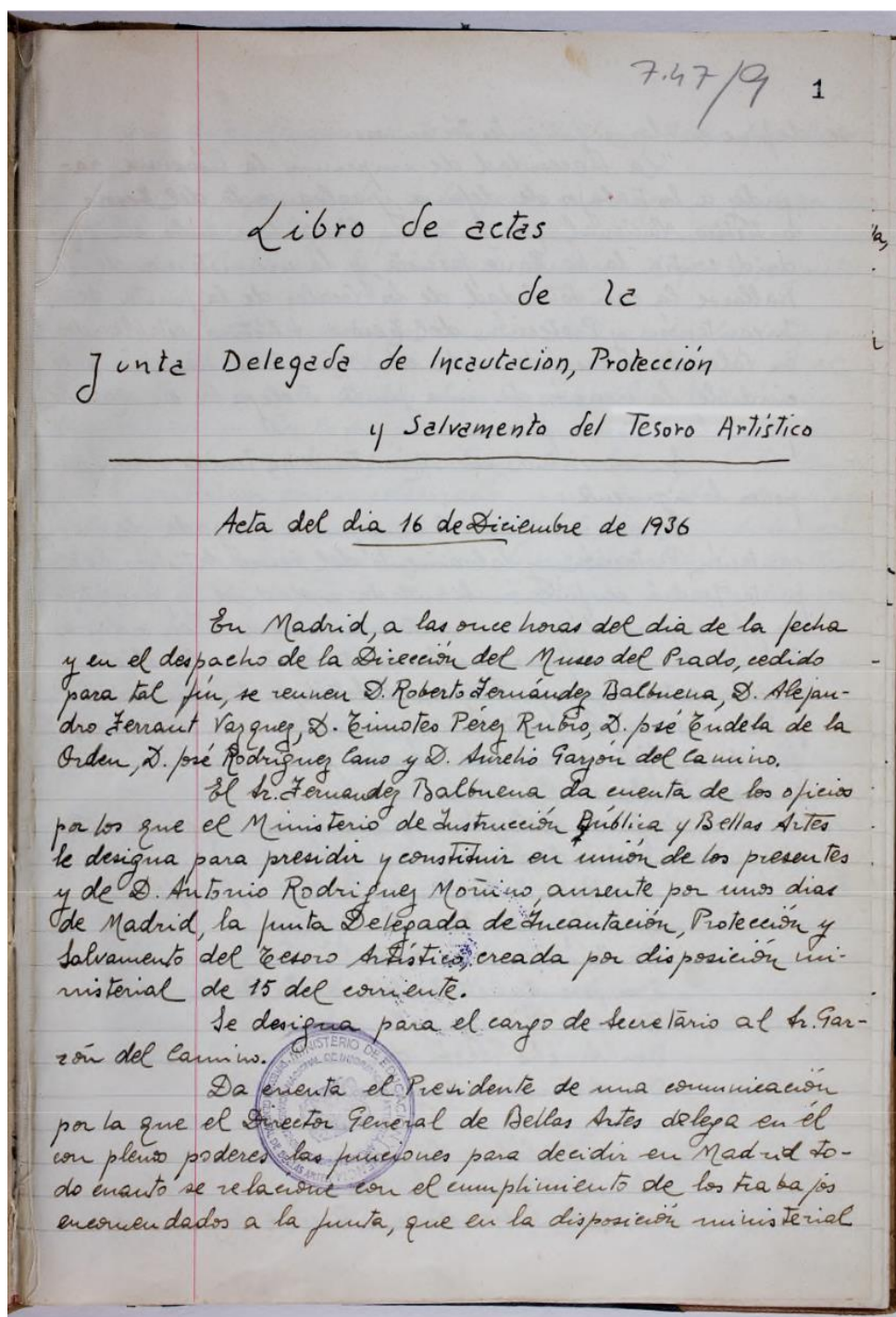
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Appendices

Appendix A: Junta Delegada de Incautación, Protección y Salvamento del Tesoro Artístico, “Libro de Actas (JTA_L _ 8)” (Archivo del Instituto del Patrimonio Cultural de España, December 16, 1936).



se define en los siguientes términos:

"La necesidad de imprimir la máxima rapidez a los trabajos de defensa y salvamento del Tesoro artístico Nacional que se están llevando a cabo en Madrid contra la barbarie fascista, y la circunstancia de hallarse la casi totalidad de los Vocales de la Junta de Incautación y Protección del Tesoro Artístico establecidos en Valencia a las órdenes de este Ministerio, hace imprescindible la creación de una Junta Delegada en Madrid para los mismos fines.

En su virtud, este Ministerio ha tenido a bien disponer lo siguiente:

Se crea en Madrid una Junta Delegada de Incautación, Protección y Salvamento del Tesoro Artístico. Esta Junta tendrá su función limitada a Madrid y facultades plenas para disponer cuanto crea necesario en orden a la incautación, defensa y salvamento de todos los objetos de valor artístico, ya pertenezcan al Estado, a otras entidades públicas, o sean de pertenencia particular, entendiéndose que dichos objetos deberán ser siempre puestos bajo inventario, a disposición de este Ministerio.

La Junta Delegada a que se refiere el párrafo anterior, se compondrá de las personas siguientes:

Don Roberto Fernandez Balbuena, Presidente.
Don Alejandro Ferrant Vazquez
Don Quintos Perez Rubio
Don José Aniceto Cudela de la Orden
Don José Rodríguez Caus
Don Aurelio Garzón del Camino
Don Antonio Rodríguez Moñino

Lo que traslado a V. para su conocimiento.

Valencia 15 Diciembre 1936

Firma el Subsecretario, W. Rocas. - Hay un sello

que dice: Ministerio de Instrucción Pública y Bellas Artes. Subsecretaría."

Para atender a los gastos que origina la labor de la Junta se ha entregado por el Ministerio al Presidente de aquella, Sr. Fernandez Balbuena la cantidad de diez mil pesetas, a justificar.

Se acuerda por unanimidad aceptar la designación del Ministerio, teniendo en cuenta que una vez decidida por el Gobierno la evacuación de las obras de arte de los Museos y de las colecciones particulares para sustraerles de los peligros de la guerra en Madrid, constituye un deber para los designados contribuir con su colaboración para que obras de importancia excepcional en la Historia del Arte, sean atendidas con todas las garantías que a juicio de aquellos, deban adoptarse dentro de la urgencia con que una decisión superior, irrevocable, decide respecto a su destino.

Se adopta por unanimidad la decisión de no proceder al traslado de las obras en tanto no puedan ser embaladas y transportadas en las condiciones de seguridad que se juzgan indispensables, previo detenido examen y una vez conocidos los pareceres de los miembros de la Junta, de D. Antonio Bisquet Pérez, a quien se designa asesor técnico de la Junta, y del subdirector del Museo del Prado y el restaurador afecto al mismo.

Respecto de aquellas obras que operen peligro de deterioro por su estado actual, y de las Tablas que han de verse expuestas por el cambio de clima y de las condiciones atmosféricas a alteraciones, se decide salvar el criterio de la Junta, mediante informe escrito y hacer el envío únicamente previa orden de la Superioridad.

Se decide además que las expediciones vayan provistas de los extintores para caso de incendio que a juicio de los técnicos operen las mayores garantías de eficacia, y se designa al Sr. Rodríguez Cano para que realice las oportunas gestiones.

Se conviene en la necesidad de que se trasladen

a Valencia dos restauradores del Museo del Prado para que atiendan a aquellas obras que en los viajes sufran los naturales alteraciones en sus barnices, soportes, materiales, etc. Con tal fin se requiere el consejo del Subdirector del Museo del Prado y se designa a Manuel Arpe Retamino y a Tomas Perez Aljerez, de la Junta de Conservación de obras de arte del Ministerio de Instrucción Pública y Bellas Artes que prestan sus servicios en el Museo del Prado.

Se nombra al Profesor D. Cayetano Mergelina Luna para el estudio y catalogación de los objetos arqueológicos incautados por la Junta.

Se acuerda que D. Alejandro Martinez Pita desempeñe el cargo de Habilitado y la señorita Francisca Serra Puig el de Auxiliar de la Secretaría, con la gratificación, esta última, de ciento setenta y cinco pesetas mensuales ya que trabaja durante todo el día, mañana y tarde, incluso los domingos, sin limitación de horas, en dicha Secretaría.

Se le asignan al Secretario de la Junta, D. Aurelio Garçon del Camino la cantidad de doscientas ochenta y cinco pesetas mensuales como remuneración por sus trabajos en la misma y en atención a que es el único de sus miembros que no percibe sueldo ni gratificación alguna, por no ser funcionario, como la mayoría de sus compañeros.

Asimismo se acuerda que el Delegado de la Junta, D. Thomas Malonyay, que se encuentra en idénticas circunstancias, perciba también doscientas ochenta y cinco pesetas mensuales.

Igual cantidad se le asigna al asesor técnico de la Junta, D. Antonio Disqueret Perez.

Las cantidades asignadas a los tres últimos quedarán reducidas a la de ciento quince pesetas mensuales cada una a partir del día en que comiencen a disputar sueldo o remuneración de fondos del Estado.

No habiendo otros asuntos de que tratar, se levanta

la sesión a la una y media de la tarde.

Madrid, 16 de Diciembre de 1936

El Secretario

Aurelio Gargori del Camino

Vº Bº, El Presidente
R. S. J. J.

Acta n.º 2

En Madrid, a la una y diez de la tarde y en el local de la Junta se reúnen el Presidente, Sr. Fernandez Belbueno y los vocales, señores Ferrant, Rodríguez Caro, Indela, Rodríguez Moñino y el que suscribe quien, como Secretario da lectura al acta de la sesión anterior, que es aprobada.

Se da cuenta por el Presidente, de la decisión adoptada por el Gobierno de que sean trasladados a Valencia las obras de mayor importancia existentes en las colecciones de los Museos y las de los particulares custodiadas por la Junta de Encantación, aún aquellas que a juicio de los miembros de la misma opezan peligro, por su estado de conservación, de sufrir alteraciones o deterioros de carácter grave, y se discute acerca de si tal decisión de la Superioridad contradice las atribuciones conferidas a la Junta Delegada, así como las que el Director General de Bellas Artes ha depositado en su Presidente, ya que unas y otras conceden a la Junta plenos poderes para decidir en todos los casos.