

The Constitutionality of the HEAR Act: Empowering American Courts to Return Holocaust-Era Artwork and Honor History

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In late 2016, Congress enacted with bipartisan support the Holocaust Expropriated Art Recovery Act (hereinafter the “HEAR Act”) to address problems faced by Holocaust survivors and their heirs in recovering artwork looted during the Holocaust-era. This article addresses recent literature maintaining that the HEAR Act is unconstitutional because its statute of limitations provision purportedly interferes with principles of federalism. Part One provides an overview of the relevant history from the Nazis’ rise to power through the end of World War II that serves as the backdrop for the provisions set forth in the HEAR Act and key cases demonstrating the problems the HEAR Act addresses. Part Two discusses the HEAR Act itself. Part Three reviews the constitutional authority granted to Congress and the Executive Branch in the areas of federal preemption and foreign policy. Part Four demonstrates the constitutionality of the HEAR Act. Part Five briefly concludes that the HEAR Act is constitutional and does not interfere with principles of federalism.

Bio: The author is Georgetown-educated Professor Jennifer A. Kreder has litigated the law of art and war for twenty years. She has appeared in cases about art that traded hands during both the Nazi era and the Russian Revolution on behalf of historians, the American Jewish Congress and the Commission for Art Recovery against the Museum of Modern Art, the Metropolitan Museum of Art, Yale University and others. At stake were works by such artists as Vincent Van Gogh, Egon Schiele, George Grosz and Paul Cézanne. Kreder is a prolific legal scholar who speaks to audiences around the world and has been quoted, interviewed or published in the New York Times, Chicago Tribune, Associated Press, NPR, Harvard International Law Journal and other media. She teaches at the Salmon P. Chase College of Law at Northern Kentucky University.

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