

## The Monumental Effects of Genocidal Expropriation

Chloe Nichols



United States Courts have struggled for years to determine if the systematic, uncompensated stripping a group of all of their worldly possessions constitutes genocide under the definition provided by the United Nations. These possessions are often everything from homes, artwork, clothing, furniture, and businesses. In *Phillips*,<sup>1</sup> the Supreme Court refused to rule on the matter, and in *Simon*,<sup>2</sup> the D.C. District Court ruled that expropriation is genocide, while people who oppose that ruling say that expropriation is only an act that furthers genocide. This report aims to show that uncompensated takings of a group's worldly possessions by the

government falls under acts of genocide under the definition provided by the United Nations. This kind of taking shows a deliberate attempt to bring about the group's physical destruction in the moment of the taking through making the people destitute and bringing about the group's destruction in the future through the eliminating of any form of inheritance for that group. Since the United Nation's definition of genocide arose out of the atrocities of the Holocaust, this report will use cases arising out of that incident to help bolster the argument.

The United Nation's definition of genocide entails multiple scenarios in which the sufferings of a group can qualify as genocide. Paragraph (c) sets forth the arguments for when expropriation constituting genocide arise, and states that genocide is any act that "deliberately inflicting on group conditions of life calculated to bring about it's physical destruction in whole or in part."<sup>3</sup> A delegate to the drafting committee for this definition specifically stated that this section's intent was to provide relief for the destructive living conditions in the Jewish Ghettos of Nazi occupied Europe where so many people suffered at the hands of expropriation and ghettoization.<sup>4</sup> Even with this clear intent, United States Courts are still unclear as to how to tie together expropriation and genocide.

Courts have debated if expropriation constitutes genocide because the immediate taking of the property leaves the group vulnerable and destitute. In the landmark D.C. District Court case *Simon*, the Court ruled that expropriation is in and of itself genocide.<sup>5</sup> In this case, fourteen Hungarian Jews sued Hungarian and Austrian state owned railroad companies for a myriad of offenses including the uncompensated taking of worldly possessions.<sup>6</sup> They claimed that the taking of all worldly possessions from Jewish people at the ghettos and on the trains to concentration camps was a "wholesale plunder of Jewish property" where the aim was to "deprive Hungarian Jews of the resources needed to survive as a people."<sup>7</sup> The court is

essentially arguing that by stripping people of their property without compensation, these groups that have been targeted are left destitute, and the people in power are intentionally making them destitute as an attempt to destroy the group.

In contrast, the Supreme Court case *Phillip* refused to rule on whether or not expropriation was genocide.<sup>8</sup> This case revolved around the forced sale of an art collection called the Welfenschatz for a fraction of its price due to threats against Jewish art collectors by Nazi officials.<sup>9</sup> The Court feared that making a ruling on the matter would make “district court[s] sit as a war crimes tribunal to adjudicate claims of genocide, while clear[ing] the way for a wide range of litigation against foreign sovereigns for public acts committed within their own territories.”<sup>10</sup> Many of the Supreme Court’s fears stem from apprehension of irritating foreign countries with claims of genocide. The United States has made a very clear policy decision to only have a narrow list of reasons why a foreign country can be sued in United States Courts. That being said, in the *Phillip’s* decision, there is also this underlying tone of skepticism that property taking can be so severe as to label it genocide.

Legal Scholar Vivian Grosswald Curran expresses the same concerns in her article “The Foreign Sovereign Immunities Act’s Evolving Genocide Exception” where she worries that making expropriation genocide would be “to dilute it” and “can only heighten the risk that the victims of genocides will become even more powerless because those who have suffered from lesser offenses will be able to avail themselves of the term, and genocide will use it’s meaning and force.”<sup>11</sup> While Curran takes a hard stance that expropriation is not genocide, the Supreme Court refused to rule on it, and instead found that the law at issue in the case was not of genocide but of international expropriation, essentially punting the problem down the line.<sup>12</sup>

The issue of refusing to rule is that now current cases of expropriation from the Holocaust in the United States have to navigate complicated rule of law questions based on the parties at issue.<sup>13</sup> Currently, the case *Cassirer* is moving through the court system trying to figure out if Spanish or American law applies to a piece of Nazi stolen art bought by the Spanish government, where vastly different outcomes would arise based on the choice of law.<sup>14</sup> Under Spanish law, if a purchaser purchases a stolen good in good faith, they can obtain title after sufficient time; but under California law, good faith does not give the purchaser good title.<sup>15</sup> Beyond complicating and muddling the legal process of these type of cases, not classifying expropriation as genocide trivializes the pain and suffering groups like the Jews during the Holocaust experienced. It says that systematic physical torture and killing of groups of people is genocide, but taking a group of people's homes, clothing, furniture, money, and businesses does not rise the same level of atrocity. It is essentially ranking suffering when both actions destroy people's lives.

The Courts that have debated if expropriation is genocide have focused on the immediate harm to a group based on the destitution that victims of expropriation face, but there is another side of expropriation that shows attempted physical destruction of a group. By stripping a group of their worldly possessions, the group is deprived of their ability to pass on their property through inheritance which can destroy a group in a different way. The concept of inheritance has three unique goals that when taken out of a group of people can have devastating effects.<sup>16</sup>

The original goal of inheritance was a bargaining tool older people used to ensure that younger generations would remember them.<sup>17</sup> In this sense, inheritance served as the confirmation that a person's legacy would remain. By stripping people of their ability to give their goods to their descendants, an antagonizing power essentially is erasing that person's

legacy. In following the line of thinking that the property we leave behind is evidence of our lives, taking away that property and the ability to pass it on to descendant's who know where it comes from essentially erases the expropriated person's entire existence. On a larger scale, it can destroy all evidence that a group ever existed, which lines up exactly with the definition of genocide.

The second goal of inheritance was another bargaining tool that older generations used to ensure that younger generations would care and provide for their elders in older age.<sup>18</sup> This goal was more of a payment for a service. Older generations would use the threat of disinheritance to make sure their children would give them medical care and provide food and lodging for them.<sup>19</sup> By stripping older generations of that bargaining power, older generations are at risk of being neglected in their older years. Of course, this is a rather callous line of thinking because many family members care for older family members because they have love and affection for them. Even if it is a callous way of thinking, the thought process has some merit because when the younger generations have also been stripped of their goods and are struggling to provide for themselves, the loss of that inheritance is felt a lot stronger. Without inheritance as a form of payment for services in older age, older people's lives can be destroyed, again matching up with the definition of genocide.

Finally, a third goal of inheritance switches the benefiting party from the older generation to the younger generation. When older people pass down inheritance, they are passing down both financial security to their children as well as evidence of cultural and national heritage.<sup>20</sup> If property is stripped from these groups, the younger generation is stripped of the financial security they believed they were going to inherit, leaving them vulnerable. Not only are they stripped of some financial security, many groups' cultural and national heritage's are passed

generation to generation through items. They could be religious in nature or familial in nature, but these goods have deep meanings and taking them away has the capacity to destroy a central part of that group's culture. If done on a large scale, it has the capacity to completely destroy that cultural group, once again fitting with the definition of genocide provided by the United Nations.

While United States courts have been reluctant to rule on whether or not the uncompensated taking of property counts as genocide under the definition provided by the United Nations, the taking of property without compensation has the capacity to be an attempt by a power to physically destroy a group of people. The court system has discussed that the physical destruction of a group can be the poverty and destitution they face when all of their worldly goods are taken from them, but has not explored the idea that expropriation has the capacity to destroy a group of people through eliminating their ability to give their possessions through inheritance. It has the capacity to erase the legacy and memory of the group, leaves older generations of the group more vulnerable, and can inhibit groups from being able to pass down their cultural and national heritage. Expropriation and its lasting effects should not be trivialized; the courts should understand the pain and anguish groups of people endure when their lives are uprooted through expropriation. United States Courts should recognize that expropriation is in and of itself an act of genocide.

---

<sup>1</sup> Fed. Republic of Ger. V. Philipp, 141 S.Ct. 703 (2021).

<sup>2</sup> Simon v. Republic of Hung., 812 F.3d 127 (D.C. Cir. 2016).

<sup>3</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, art. 2, para. 3.

<sup>4</sup> Simon v. Republic of Hung., 812 F.3d 127, 143 (D.C. Cir. 2016).

<sup>5</sup> *Id.* at 142.

<sup>6</sup> *Id.* at 134.

<sup>7</sup> *Id.* at 143.

<sup>8</sup> Fed. Republic of Ger. v. Philipp, 141 S.Ct. 703, 712 (2021).

<sup>9</sup> Fed. Republic of Ger. V. Philipp, 141 S.Ct. 703, 708 (2021).

<sup>10</sup> *Id.* at 709.

<sup>11</sup> Vivian Grosswald Curran, *The Foreign Sovereign Immunities Act's Evolving Genocide Exception*, 23 UCLA J. OF INT'L LAW AND FOREIGN AFFS. 46, 68 (2019).

<sup>12</sup> Fed. Republic of Ger. v. Philipp, 141 S.Ct. 703, 712 (2021).

---

<sup>13</sup> Zachary Clopton, *Update of Cassirer*, TRANSNATIONAL LITIGATION BLOG (Aug. 16, 2023)

<https://tlblog.org/update-on-cassirer/>.

<sup>14</sup> Vivian Grosswald Curran, *Nazi Stolen Art: Uses and Misuses of the Foreign Sovereign Immunities Act 22-23* (2022), [https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1548&context=fac\\_articles](https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1548&context=fac_articles).

<sup>15</sup> *Id.* at 23.

<sup>16</sup> Sigrid Weigel, *Inheritance Law, Heritage, Heredity: European Perspectives*, 20 LAW AND LITERATURE 279, 279 (2008).

<sup>17</sup> *Id.* at 279.

<sup>18</sup> *Id.* at 279.

<sup>19</sup> *Id.* at 279.

<sup>20</sup> *Id.* at 283.