Too Much Property

Ravit Reichman*

Abstract

Property’s role in postwar justice has been dominated primarily by litigation, with its emphasis on the restitution of valuable cultural or financial goods. The prominence of such litigation, however, has eclipsed a far more common experience of property, namely inheritance—the grounds of a social rather than a public or legal realm. With the recent Israeli documentary The Flat as its case study, this article proposes to shift the focus on postwar property to ownership’s other life, that of the passing on of trivial things outside the public interest. The sheer volume of these ordinary things opens the door to a different understanding of justice, one invested in the excess and unpredictability of property, yet still unable to shed fully the adversarial tenor that has largely constituted our sense of ownership after the Holocaust.

“We get used to reality. The truth we repress.”
—Jacques Lacan1

I.

“How objects are handed on is all about storytelling,” the ceramicist Edmund de Waal wrote in The Hare with Amber Eyes, his account of inheriting his family’s property. In particular, he was speaking about netsuke, Japanese miniature carvings that, unlike the rest of the family’s material possessions, were neither confiscated nor destroyed in the Second World War. “I am giving you this because I love you. Or because it was given to me. Because I bought it somewhere special. Because you will care for it. Because it will complicate your life . . . . There is no easy story in legacy.”2 And sometimes, one might add, there seems to be no story at all. This apparent absence is precisely what incites de Waal to pursue his narrative, writing his family’s history through the netsuke’s unlikely endurance. His account moves and arrests us in its improbability of scale, in the astonishing way that these tiny works of art unlock the epic of a family devastated by history’s torrent.

But the potency of property and inheritance in de Waal’s story is rarely expressed in such eloquent terms. Some things, even when they form part of an inheritance, can hardly said to be handed on at all. They enter our lives messily, without any evident aesthetic or monetary value—likelier candidates for the trash than the display case. More common than the inheritance of valuable objects is the inheritance of useless things, and

* Associate Professor of English, Brown University.


2 Edmund de Waal, The Hare with Amber Eyes: A Family’s Century of Art and Loss 17 (2010).
the task of clearing away the literal stuff of life thus proves a muddled reckoning for those who come into property.

This thicket of things is precisely where Israeli filmmaker Arnon Goldfinger finds himself when his family gathers to empty his grandmother’s apartment after her death. His film, unassuminingly titled The Flat (2011), begins as a record of this process as his family sifts through the endless bric-a-brac of his grandparents’ life. The unexpected discovery of their longtime friendship with a Nazi official, however, sends the film in a very different direction, recasting it as a struggle with a traumatic history rather than a strictly private affair. In what follows, I look closely at Goldfinger’s documentary as a case study in property after the Holocaust, which I propose should be read against the grain of litigation that has dominated our understanding of property’s connection with postwar justice. Focused on valuable cultural or financial goods, the restitution claims that have been so prominent after the war have brought to the fore in dramatic fashion our public interest in property, investing ownership with the potential to right a historical wrong. The prominence of such litigation, however, has eclipsed a far more common experience of property, namely inheritance—the grounds of a social rather than a public or legal realm. By considering The Flat as a property story for our time, I propose to shift the focus to ownership’s other life: not of litigation, but nonetheless of conflict, which arises differently because it concerns the handing on—and passing around—of trivial things outside the public interest. The sheer volume of these ordinary things, the sense that they don’t count because they are too numerous to be counted, opens the door to a different understanding of justice, one invested in the excess and unpredictability of property without end. I approach this endlessness not in its nihilistic sense as in Bleak House or Kafka’s works—that is, as justice perpetually deferred or ground down by a faceless bureaucracy. Instead, I take the unlimited potential of this property story (and the way it speaks to perhaps all property stories) to be a necessary, counteracting force to the many paths of legal resolution. For while such resolutions instruct us in a civic discourse of justice, they have not given us a grammar for the more intimate, less procedural encounters that happen outside the public sphere.

The documentary form, moreover, offers a fitting means to this discovery, allowing for a gradual unfolding and genuine surprise, in contrast to the adversarial dynamic of litigation or its more limited outcomes, in which one side or the other wins the day. Goldfinger could not, in other words, have anticipated the turns his work would take; the film he thought he was making bore no resemblance to the one he ultimately made. The documentary thus stages something like the process (rather than the product) of novel writing as E.L. Doctorow described it. Writing a novel is “like driving a car at night,” he reflected. “You never see further than your headlights, but you can make the whole trip that way.”

Doctorow captures something vital to the documentary form: the dense relationship be-

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3 The Flat (Arnon Goldfinger dir., Zero One Film 2011).
between anticipation and search—the sense that a destination lies ahead, but that the incremental movement between here and there can cast far, veer wide, on occasion hit what appears to be a dead end. The shorter range of illumination forms a necessary part of inheritance’s slow burn, its gradualness and uncertainty.

The inheritance dramatized in *The Flat* represents but one of the countless stories of uncontested property, which, perhaps because they are so very familiar, tend to escape our field of vision. I propose to ask, in this more prevalent context, what it means to claim an inheritance, and how such a claim might illuminate differently our relationship to a traumatic past. *The Flat’s* surprising turns remind us of property’s other, more ordinary dimension, which remains unaccounted for in postwar litigation and underscores the problem of just how hard it is to take hold of an inheritance even when its transfer appears, in the legal sense, seamless.

II.

To call the passage of property from one generation to the next seamless, however, by no means implies that it takes place with ease. Wrenching for some, a hassle for others: the emotions accompanying this transfer are the stuff of a family’s private world. At first, Goldfinger appears to be taking up the modest task of recording all of it with his video camera, documenting a moment unique to his family but prosaic in the modern history of families. Gerda Tuchler, the filmmaker’s grandmother, immigrated to Palestine before the war but may as well have never left Berlin. The apartment seems out of time and place in contemporary Tel Aviv, a shrine to German culture in the first half of the twentieth century. Bookshelves are lined with European classics, shelves studded with fin-de-siècle figurines, and the stockpile of scarves, gloves, costume jewelry, and stoles appears to have no bottom. The project began with these objects, as a chronicle of the end of a way of life—the dying out of the generation of yekkes, German Jews who transplanted their culture in Israel, and whose ways and means were testaments to the cosmopolitan Germany of their youth.

It does not take long, however, before the film transforms into something else entirely, its stakes heightened by the discovery that the story of Goldfinger’s grandparents makes disturbingly comfortable contact with the history of the Third Reich. Among the many things that Gerda and Kurt Tuchler did not throw away was a Nazi newspaper, *Der Angriff*, which features a story about a Nazi’s unusual trip to Palestine. It is a strangely impersonal instance of property: not a letter or diary, but a yellowing, folded piece of public record, important enough to warrant its place in the Tuchlers’ personal archives. This puzzling artifact, buried in a pile of papers that might just have easily been discarded with

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5 “I think [cleaning out the flat] is a modern experience. Let’s say, 100 years ago, I’m not sure how many people had to empty out their relatives’ homes; they just stayed in the same house, because they lived there. Nowadays, almost everyone, at least once in their life, somehow, has to deal with this experience.” See Kristin McCracken, Arnon Goldfinger Discovers Family, History, and the Power of Denial in *The Flat*, The Blog, HuffPost (Oct. 22, 2012) (http://www.huffingtonpost.com/kristin-mccracken/aron-goldfinger-the-flat_b_1982461.html).
so much else in the flat, launches the film out of a family’s enclosed world and into the wider context of public history, setting it on a course that feels closer to restitution cases and even the criminal trials against Nazi perpetrators.

The strange find precipitates a shift in tone, from a family’s dutiful but upbeat dismantling of its matriarch’s home to a darker, emotionally-charged exploration of the buried past—and ultimately, the mystery—of Gerda and Kurt Tuchler’s lasting friendship with a high-ranking SS officer and his wife, Leopold and Gerta von Mildenstein. The friendship began when the von Mildensteins visited Palestine on a reconnaissance mission, leavened by the belief in a Judenrein Germany and drawn to the prospect of a land that might hasten its realization. The Tuchlers, who for clearly different yet related reasons saw their own future in Palestine, accompanied the Nazi tourists in hopes of encouraging von Mildenstein to report favorably about the viability of a Jewish homeland in the Middle East. Contrary to what they revealed to those who knew them, the friendship cemented during this trip endured well after the war. In trying to make sense of how a Jew who left Germany could remain friends with a prominent Nazi after 1945, Goldfinger learned that his great-grandmother Susanne Lehmann, about whom he knew next to nothing, had been deported from her home in Berlin and died in the Theresienstadt concentration camp. His grandparents never spoke about her death, just as they never mentioned their friendship with the man who, in his role as a Nazi insider, might have prevented it.

In its unsettling sense of betrayal, the story resonates with those of Holocaust collaboration, bound up as they were with the taboo of fraternization. Against this backdrop, the secret friendship between Goldfinger’s grandparents and the von Mildensteins appears as another instance of diaspora Jews whose divided loyalties prompted them to collude with their enemies. *The Flat’s* fact-finding mission thus comes into focus within a broader history of treason, a framework crucial to Zionism in the early years of Israel’s statehood, acquiring its most public, legal shape in the 1954-55 Kastner trial.6 It is hard, certainly, to deny the national narrative embedded in Goldfinger’s personal account, which becomes not only that of the disappearance of the generation of yekkes, but the concerted effort to distinguish them from the native-born “new Jews.” The yekkes, in other words, are not simply dying out here—they are discarded, along with their things, to make room for a new generation of more single-minded citizens. And yet, to read the film exclusively in national terms sidesteps its experience of genuine perplexity, flattening its attempts—the efforts of a confounded grandson—to find a foothold of sympathy in a place of alienation.

Goldfinger’s narrative, I submit, tells us something about inheritance in relation to the traumatic past of the Holocaust, in striking contrast to more prominent contexts of litigation concerned with real estate, bank accounts, and perhaps most notably, looted artworks. Distinct from such headlines, the film’s quieter story helps us to answer differently the question of why property has come to feature so vitally in our sense of justice.

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6 For a lucid account of the trial’s role in national identity, see Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (2004).
after the Holocaust. When efforts to rescue victims and prosecute war criminals have been exhausted, why has the afterlife of trauma so often been played out, as a kind of second-wave justice, in the realm of property? It is not hard to come up with historic answers to such questions, beginning with the simple observation that property is deeply entwined with our sense of what it means to be a person, to count in a polity. Surely its ancient relationship to public personhood—only landowners could vote in ancient Greece—has a great deal to do with why property occupies such pride of place in our understanding of justice. Our sense of what it means to be a person cannot, it would seem, be uncoupled from the experience of ownership.\(^7\)

Still, there has been no shortage of anxiety over this postwar relationship between property and justice, a concern that staking historical claims in property amounts to little more than misguided materialism, and a damaging shift in emphasis from anti-Semitism to economics. This is the nature of the objection raised by Abe Foxman, Director of the Anti-Defamation League, at a moment when forty-four countries had signed a pact to find and restitute all stolen property from the Nazi era held in public hands:\(^8\)

I fear that all the talk about Holocaust era assets is skewing the Holocaust, making the century’s last word on the Holocaust that the Jews died not because they were Jews, but because they had bank accounts, gold, art and property. If you repeat it enough, you establish as “fact” that the reason the Jews were killed was because they had money. To me that is a desecration of the victims, a perversion of why the Nazis had a Final Solution, and too high a price to pay for a justice we can never achieve.\(^9\)

Seventeen years later, it would seem that his concerns have gone largely unheeded. In one sense, it is clear why this has been so: the return of property may well be the closest we can possibly come to a reversal of history. It rights a clear wrong, even as it renders incomprehensible loss in material form. Legal complexities notwithstanding—and these can be considerable, to say the least—such appeals nonetheless carry a compelling neatness in their promise of resolution and their hope (in the case of artworks) for cultural renewal at the prospect of museums restored and revitalized with priceless works of art. It is also clear why the critical mass of discussions about property and justice has focused on homes, frozen bank accounts, and works of art: though their precise financial or cultural value may be debatable, their worth is undisputable. They are, in short, desirable goods at least, or cultural treasures at most.

\(^7\) See, most notably, Margaret Jane Radin’s seminal work in Reinterpreting Property (1994), and Carol Rose, Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership (1994).


\(^9\) Abraham H. Foxman, The Dangers of Holocaust Restitution, Anti-Defamation League Archive (Dec. 1998) (http://archive.adl.org/opinion/holocaust_restitution.html#UxixKWRDvU); see also Gotz Aly’s economic argument in Hitler’s Beneficiaries: Plunder, Racial War, and the Nazi Welfare State (2005), which underscores these concerns in making the case that the widespread support of the Nazi regime ultimately boiled down to the economic benefits issuing from the plunder of Jewish property.
But the prominence of this kind of commodity—contested, dramatic, and culturally prized—has obscured a dimension of property that has been no less forceful in our reckoning with the past. The negative images of the works of art at the center of restitution claims are those mountains of personal effects—the shoes, books, or eyeglasses in photographs and museum displays at Yad Vashem or the United States Holocaust Memorial Museum. These chilling, haphazard piles speak to both the banal and the incalculable, standing as simple memorials to all the heirless property that no one would return to claim. The ordinary possessions also figure in the story of property after the war, precisely because they are so very common, because they are profane rather than precious—testaments, ultimately, to the loss of a social world rather than a cultural one. And in this social world, inheritance is the order of the day: a pile of shoes speaks metonymically to the millions of victims whose imprints they bear, but also calls up the innumerable instances of heirless property that no one would have to sort through, keep, or dispose of. These common things become monumental in their ordinariness, curated into those carefully jumbled piles that stand before us like devastating, condemnatory edifices.

It would be hard to discern the ordinary kinds of property I refer to here from the “stuff” that we do not quite think of as property, in that we do not imagine bequeathing or inheriting it, or consider it worthy of protection through a will. Yet these items, too, make up the site or scene of inheritance, which matters as much to my argument as the thing inherited: at issue here, in other words, is a process or experience rather than the internal value or designation of the thing itself. In this sense, inheritance does not confine itself to those solid objects with clear material value, such as a piece of art or jewelry. It inheres, too, in the discovery of the odds and ends that fall askew of this frame: newspaper clippings, photographs, letters. These, too, are contained within the parameters of what has been inherited, whether or not they are catalogued as such. They don’t quite fit the bill of what we think of when we imagine coming into property. Yet these vestiges of a life figure critically in the experience of inheritance: they are now ours to deal with—to cast off, save for later, or confront now.

Such jarring reminders of devastation on a more intimate scale suggest, moreover, that there is something else about property that cannot be captured in the focus on art or real estate, and that I believe accounts for its persistent hold on our juridical imagination. And it is simply this: the amount of property in existence will always exceed our ability to take stock of it. From this perspective, the promise of law is also its pitfall: it has a terminus, a statute of limitations where our accounting cannot. And perhaps most significantly, it cannot instruct us on how to live with the past—or more urgently, confront it—when the forces of history press down upon us.

In an era when litigation of Holocaust property continues apace, property functions as a testament to our juridical restlessness, a means by which to resist the dominance

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of the legal process in postwar justice. It offers such resistance because there is, quite simply, too much property—more than can ever be enumerated or, more crucially, litigated. This excess demands a conceptualization of ownership outside the bounds of restitution or reparations, one that opens a portal into the task and burden of finding new avenues into the past, new ways of confronting the violence that grows more distant with the passage of time. If the legal process functions as a kind of analysis terminable, the less prominent instances of property—the personal effects that never enter the labyrinths of litigation—serve as material markers of an analysis interminable. And we care about this interminability, I would argue, as much as we care about the justice that legal resolutions bring about.

III.

Too much property is the sign under which The Flat opens, its excess proving a source of gentle humor in the film’s early scenes. Against a jaunty soundtrack, Goldfinger’s relatives marvel at the seemingly infinite collection of odds and ends that Gerda Tuchler amassed over her lifetime. The process of inheritance, a family affair, is as far as one can imagine from a struggle over contested property. “Who wants what?” Goldfinger’s mother Hannah asks everyone as they arrive. But no one seems to want very much: even the leather-bound books, it turns out, have no value. “Nobody reads this nowadays,” remarks a German book aficionado who arrives to estimate the collection’s worth. If the film can be consolidated into a few signal images, one of these may well be the garbage bags that are filled over and over again in its early sequences and hauled down the stairwell, or heaved over the balcony to the sidewalk below. Far from precious, it turns out that Gerda and Kurt Tuchler’s things are worthless even to those dearest to them. Yet what is striking in the ritual of filling these bags is the great care taken, particularly by Goldfinger’s mother, to dispose of her inheritance with the meticulousness and patience of an archaeologist or a surgeon. Every envelope is examined, each slip of paper considered, before throwing it into the junk heap bound for the dumpster. The story of property in these opening scenes is of an inheritance discarded or dutifully, and selectively, preserved.

But with one small item, a copy of Der Angriff that proves too out of place to discard, it becomes clear that not everything that is kept will necessarily be claimed. As the story veers into a decidedly minor key and the relationship between the Jewish Tuchlers and the Nazi von Mildenstein’s comes dimly to light, the shareability of the family’s inheritance is called into question, pointing to a past that Hannah Goldfinger would prefer to leave untouched. “It’s interesting, but I’m not going to start looking into it. If I happen


11 The Flat, supra note 3, at 1:42.

12 Id. at 5:31.
upon it, fine,” she insists. The tension in the exchanges between mother and son registers most vividly in her pinched expressions, conveying simultaneous incredulity at the discovery of her parents’ hidden life, and fatigue from the effort to remain unmoved by it all. “What good will it do me?” she asks her son. “Will it make me see them differently? I had the burden of living with them. I don’t really care what happened years ago. No, I don’t care.”

Her son, less burdened by and more distant from the past, does care. “When my grandmother died,” Goldfinger reflects, “I realized that my family lives only in the present. So I take home anything that smells a hundred years old or older. For the first time in my life, I have a past.” The past he finds, however, disrupts the one he wants, and the conflict between the two becomes a struggle between what Lacan described in the epigraph to this essay as the reality one lives with and the truth one represses. This tension between reality and truth calls to mind an aphorism by the poet René Char, which sounds the opening note of Hannah Arendt’s Between Past and Future. “Our inheritance was left to us by no testament,” Char wrote enigmatically. Dilating on his words, Arendt recalls the aimlessness of those intellectuals involved in the resistance during World War II, whose moorings—the steadying forces of action and conviction—vanished after 1945. Gone was the urgency, the collective action, the passion and purpose; everyone retreated into the old enclaves, those once secure spaces of thinking and writing that no longer felt meaningful or good. Arendt here identifies a problem that underwrites Goldfinger’s film: the condition of living at a distance from any sense of

13 Id. at 24:40.
14 Id. at 3:48.
15 Id. at 25:36.
necessity, immediacy, or violence, submerged in “the ‘sad opaqueness’ of a private life centered about nothing but itself.”

It is worth pausing here to consider more fully the implications of Arendt’s claims, which help to explain why a story about filling garbage bags (and later, conducting archival research) can prove so arresting and, more trenchantly, illuminate a hard truth about our capacity to address a history of atrocity in contexts beyond the public forums of courtrooms or classrooms. But Arendt’s ideas do not simply provide an explanatory framework for what happens when a seemingly inconsequential piece of property forces a reordering of one’s world. The film, for its part, renders her argument in concrete terms, lending it a contemporary and ordinary exigency.

For in spite of all its displays of archival materials—newspapers, photographs, diaries, letters—it can hardly be said that The Flat is a film about the past. It seems, in fact, that the more these materials are marshaled as evidence, the more history becomes a variable with no fixed value. The film’s real tectonics lie in the present: in the growing sense that its action occurs in a space of time whose significance remains suspended. Something hangs in the balance—but it is unclear just what that is. In this alien, self-conscious breach, as Arendt describes it, we “become aware of an interval in time which is altogether determined by things that are no longer and by things that are not yet. In history, these intervals have shown more than once that they may contain the moment of truth.” This truth, however, is not a reassuring passing of the torch, an object moved forward along history’s timeline. Inheritance demands more than one’s openness to receiving it. It is, rather, a contested site, born of a struggle that occurs when the past is experienced not as a burden—a weight to be tolerated or cast off—but as a force. Arendt draws this out in her reading of a Kafka parable titled simply yet emphatically “HE.” For the individual experiencing history’s force, she advances,

time is not a continuum, a flow of uninterrupted succession; it is broken in the middle, at the point where “he” stands; and “his” standpoint is not the present as we usually understand it but rather a gap in time which “his” constant fighting, “his” making a stand against past and future, keeps in existence. Only because man is inserted into time and only to the extent that he stands his ground does the flow of indifferent time break up into tenses.

The story she relates becomes her model for reviving a series of key terms that have faded from view, ideals like freedom, responsibility, power, and virtue. Following Arendt, I would add inheritance to this list, and return it to its literal (and legal) place in personal, historical and political life as a concept that needs to be claimed anew. Its reclaiming begins with the rupture of time’s passage and the insertion of the individual—the deliberate disturbance of this passage—who experiences, in conflicted and bewildering fashion, time without continuity, in which tenses and tensions feel like so many sutures on an injured body.

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18 Id. at 4.
19 Id. at 9.
20 Id. at 11.
To say, “our inheritance was left to us by no testament” does not imply that no testament is required, but that it needs to be written in a moment of resistance, and that only the heirs, not the testator, can write this unscripted moment—of “standing one’s ground”—into being. It is no small observation, moreover, to note that the act of writing, even as it connotes creativity, in fact proves slow going and laborious; “each new generation, indeed every new human being as he inserts himself between an infinite past and an infinite future, must discover and ploddingly pave it anew,” 21 Arendt remarks.

The Flat, to be sure, is not short on such plodding, tracing a path of painstaking research with trips to archives and interviews with experts, which together reveal Leopold von Mildenstein’s vital role in Hitler’s Final Solution as a colleague of Joseph Goebbels and Hermann Goering, and as the person who installed Adolf Eichmann in the Department of Jewish Affairs. The work of unearthing these connections, laborious for anyone but the most historically minded, does little to account for the narrative’s drama. What gives the film its plot, makes it a test of viewers’ nerves, is its effort to bring to light painful material in a context less public than a courtroom but more public than one’s living room—a place that, for lack of a better term, we might call simply the social world. In “simply” calling it that, I invoke the term in its most fundamental sense, as Arendt did when she designated it as that realm that was neither private nor public, and one divorced from the political. 22 Unlike Arendt, whose concept of the social was vast and menacing—arguably the vaguest and most contradictory of her ideas 23—I do not attach this realm to some of her other claims about it, such as conformism or economics. The social, like property itself, operates here along the lines of a transitional object, a means of moving outside a more constricted frame to turn an individual concern into a collective, or at least sharable one, and a reaching toward (rather than a turning from) a political register. It is here, when we cross the threshold of the social, that we reach the heart of the film, in the sense of both its truth and its limits.

IV.

Goldfinger enters this social world when he leaves the intimacy of his family circle and travels to Wuppertal, Germany, to share his newfound inheritance with the only other person he can find who might also care about it: the daughter of his grandparents’ Nazi friends, Edda Milz von Mildenstein. His two trips to Wuppertal—first alone, and later, accompanied by his mother—inaugurate the film’s parallel structure, introducing us to a second flat, and another daughter who did not press her parents with questions of their life during the war.

21 Id. at 13.
23 The most robust treatment of Arendt’s idea of the social is in Hanna Fenichel Pitkin’s The Attack of the Blob: Hannah Arendt’s Concept of the Social (1998).
Edda and her husband, Harald, welcome Goldfinger with all the enthusiasm of people who have been waiting a long time for a reunion. After thirty years in England, Edda now lives in her childhood home, where Goldfinger notes that, like him, “she didn’t have the courage to throw away her inheritance, so she stuck it in the basement.” Unlike her Israeli visitor, however, she is less inclined to sort through her parents’ paraphernalia, and it soon becomes clear how awkward and terse this German-Israeli meeting will be. Words that appear liberally in other contexts—Nazi, Jew—are here studiously avoided. Instead, Edda sets aside the matter of the relationship between the Tuchlers and von Mildensteins as something that defies explanation beyond the plain fact of friendship: “I think you just have to sort of hold your arms up and accept the fact that they were two lots of people who obviously got on very well,” she declares. Whether the “hands up” represent the shrug of mystification or the raised arms of surrender is hard to tell. But Goldfinger, for his part, refuses both; like Claude Lanzmann in Shoa, he wants all the details and knowledge he can find. But unlike Lanzmann, he also seems to be after a deeper exchange, an acknowledgment in the civil, even warm, tones of friendship; he is still a German Jew, after all. In this spirit, a new visual refrain now asserts itself in place of the discarded garbage bags that mark the film’s earlier moments. With each new inquiry, Goldfinger brings along (or comes armed with) a bouquet of flowers for his host: his grandmother’s closest friend in Israel, the German journalist who wrote an article about von Mildenstein after the war, and most importantly, Edda and Harald. “I tried to imagine my grandparents coming here with

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24 The Flat, supra note 3, at 32:25.
25 Id. at 39:40.
26 Id. at 36:14.
flowers and suitcases full of gifts,” he reflects. But he does not just imagine it; he reprises it, arriving with his own flowers and gifts, as though preparing a soft surface on which to ask the hard questions or circle around unuttered but serrated words.

In these efforts to meld talk of injustice and violence with gestures of social civility, one begins to feel as though the film does not so much reach into the past as set itself squarely at an impasse, where some new relationship between the past and present needs be worked out. In this gap, it is not enough for the past to be imagined differently; the present, more urgently and awkwardly, demands a reckoning as insistent and fraught as any struggle for restitution. Here, however, no court will hand down an opinion, and no resolution will be forthcoming. What remains, in the end, is the unsettling feeling that no amount of public airing—neither decades of trials, nor thousands of eyewitness accounts—has given us a way to acknowledge directly the violence of the past, even when the parties involved are well past being direct adversaries.

Significantly, it is no easier for Goldfinger to find common ground with his mother as it is with Edda. On the train to meet Edda and Harald, the Goldfingers discuss how they should broach the truth about Leopold von Mildenstein with his daughter.

Amon Goldfinger: The question is: what should we tell them?

Hannah Goldfinger: We should just be normal. We’ll see how things develop.

AG: My question is if we should mention the word “Nazi.” On the one hand, we know he was a Nazi. On the other hand, I don’t know if it’s nice to mention it. I don’t know how it is in Germany. If it’s something people are ashamed of, if it’s a stain or what . . . . How they see it.

HG: Of course it’s a stain. So we won’t mention the word. We’ll ask what he did at the time without mentioning the actual word.

AG: We don’t want to come across like we know something and are there to question them.

HG: We’re not going there to tell them: “We know something you don’t.” Why should we?

AG: Why not?

HG: It’s none of our business. Only things about our family concern us. Why mention things about their family? Would you tell a friend his father was a murderer if he didn’t already know? What for?29

In a moment of revealing irony, Hannah Goldfinger disavows the very thing she and her son are about to do: involve another family in their own trauma. “Only things about our family concern us,” she insists, as though family matters exist as discrete entities, lopped off from the broader course of history. The past, in word if not deed, retreats into the confines of the familial, concealed in the “sad opaqueness” of a life disengaged from politics or the public eye. It becomes clear, in the conflict between what she says and what she is about to do, just how hard it is to penetrate this opaqueness, to address in private things that have been aired in public for over half a century. “We don’t want to come

28 The Flat, supra note 3, at 36:44.

29 Id. at 1:08:40.
across like we know something and are there to question them,” Goldfinger notes as a way of distinguishing their visit from the work of a trial, though he doesn’t quite know how to go about traversing this *via negativa*. Even at a generous remove from history’s violence, we are no more adept at speaking to or navigating its brutality when the stakes are high—or more precisely, when they are different from those of the legal process.

V.

To say that *The Flat* is a film about family secrets, or to approach it as an account of how the Holocaust touches even those who had believed themselves to be outside its immediate reach, would be to miss the point. Had Goldfinger not discovered the newspaper—had he, for instance, learned about his grandparents’ past from a cousin who happened to know this chapter of the family history—the result would have been a very different film, and quite possibly, not a film at all. What makes its itinerary a story for our times is that it remains, from start to finish, a testament to property, relying doggedly on material claims rather than hearsay.

The discovery of the film is not just the puzzling relationship between the Tuchlers and the von Mildensteins, and the painful secret of Susanne Lehmann’s death. It is the realization of how hard it is to confront the past in person, and in the absence of material claims. In their first meeting, Edda presents Goldfinger with a turquoise necklace that his grandmother had given to her on one of their visits to Germany, as though submitting not only evidence of Gerda Tuchler’s presence in that house, but also proof of her parents’ decency—a kind of tacit alibi for whatever crimes she refuses to acknowledge her father was guilty of. The stream of objects continues. For the viewer—and clearly Goldfinger and even Edda—they begin to feel like pieces of evidence marshaled by a defendant’s attorney and handed to the prosecutor in a courtroom. When she brings out photographs of Goldfinger’s family that his grandparents had sent to the von Mildensteins, he asks incredulously, “So, how come you got this picture?”30 In answer to what her father did during the war years, she produces a newspaper article from the stacks of her unsorted inheritance, in which the editors retract allegations of his Nazi connections. Her neighbor, a lay historian and resident expert, cites a book of “relevant Germans”31 which lists von Mildenstein as a journalist, concluding that “everything is okay concerning that issue.”32

Goldfinger, for his part, does not so much develop an account of the past as accumulate it, collecting facts piece by piece, and finally, in one of the film’s last conversations, depositing them in Edda’s hands. He has just returned from a trip to the German National Archives with a c.v. in von Mildenstein’s handwriting, which lists his employment in the Security Service (*Sicherheitsdienst*, SD) under Goebbels. “My dilemma is not to believe or not to believe,” Goldfinger determines. “I have to decide what to do

30 Id. at 36:00.
31 Id. at 1:16:14.
32 Id. at 1:17:06.
with what I know.”

It is tempting to imagine an alternate path here, in which he takes the document back to Israel and incorporates it into his film, allowing it to speak for itself. Instead, he brings a copy to Wuppertal where, in Arendt’s terms, he stands his ground once more in Edda von Mildenstein’s study, presenting her with this final piece of evidence and asking her, as if she were a witness on the stand, to verify it (“That’s his handwriting, yeah?”).

“Nothing is less natural than the need for law,” Pierre Bourdieu observes in “The Force of Law.” And indeed, something feels unnatural here—forced, as it were, by the turn to a line of questioning that is well past being congenial. It begins, at this juncture, to test both boundaries and patience, applying new pressure on the declared friendship that, as Goldfinger says to Edda when he gives her the documents about her father, “started even between us.” With the delivery of von Mildenstein’s vita, the film’s interrogative tenor ebbs into the harder edges of interrogation: its examination begins to feel uneasily close to a cross-examination, and its latent adversarial structure—concealed thus far by overtures of friendship and cooperation—pierces the surface of civility. The contexts don’t mingle—they collide, confuse, make things awkward. Bourdieu has a term for contextual misunderstanding: he calls it postural discordance, and he describes it as “the structural basis of all the misunderstandings which may occur between the users of learned codes (e.g., physicians, judges) and simple laypeople, on the syntactic as well as on the lexicological level.” Simply put, postural discordance happens when “ordinary usage” collides with “learned usage”—when two words, or in this case, two tones—clash; when one usage is deemed wrong, inappropriate, or otherwise contested in a context inhospitable to it. In this moment, the legal seems to be domesticated into the film’s narrative, bringing it too close to the workings of a trial and prompting resistance to, or outrage over, the purported “procedural” nature of the film.

It would be fair to say that Edda feels as much. The c.v. is “a skeleton,” she remarks, on which she might pin this or that fragment with little hope of reaching a deeper understanding of what really happened and why. Goldfinger presses her again: she could consult the archives herself, he suggests. Edda’s response, polite but evasive, is that she wants “to learn around” the past, but to see it from a range of vantages. When she pauses, inhales sharply, and asks, in a voice betraying some combination of irritation and

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33 Id. at 1:30:52.
34 Id. at 1:32:09.
36 The Flat, supra note 3, at 1:31:15
37 Bourdieu, supra note 35, at 829.
38 The Flat, supra note 3, at 1:32:28.
39 Id. at 1:32:21.
resolve, “Anything else?”\textsuperscript{40} she effectively closes the book on Goldfinger’s efforts to implicate her in his inheritance.

The frustrated conversation in Wuppertal carries over into final exchange between the filmmaker and his mother as they attempt to find one last piece of property: the grave of Goldfinger’s great-grandfather in a Berlin cemetery. Here, at last, his restraint runs out, and he stages the confrontation that he has been keeping at bay. “Does it bother you that you’re not moved?” he demands. When his mother replies that she can’t really tell, he abandons the interrogative mode for a more pointed, reproving one: “It bothers me that you aren’t moved by what we’re seeing here. . . . It even makes me sad.” But here, too, in the film’s most direct confrontation, nothing boils over; no explicit conflict erupts: “Either you have it or you don’t,” Hannah Goldfinger offers weakly; “you can’t learn it or pretend.”\textsuperscript{41} Redirecting her efforts toward locating the grave, she pronounces—as though answering (or echoing) Edda’s “anything else?”—that the search has come up empty: “But there used to be many graves here, and they’re all gone. Who knows?”\textsuperscript{42}

Once more, we end a conversation with so much left unsaid, and where the unsaid is transacted through the transitional object—the property of the missing grave—that stands in for conflicts deflected or repressed. The public discourse represented in these objects crowds out any possibility of an off-the-record exchange—or perhaps more aptly, it shields those involved from having to wade into this exchange at all. Still, the tremors of potentially inflammatory confrontations rumble just beneath the surface of so many interactions, driving home how the public process of accounting for the past has taken the place of—come to stand in for—that which can scarcely be broached in private.

It is in one of the film’s seemingly offhand moments, when Edda’s husband Harald uncorks a bottle of champagne and exclaims, “Friendly fire!”\textsuperscript{43} that the truth of what is being transacted is on full display. His throwaway line captures the film’s tensions and undercurrents more accurately than any conclusion drawn by filmmaker or participant, pointing to how hard it is to think of a way out of the paradoxical, terse encounters for which neither time nor history has paved the way.

VI.

“More and more often,” Walter Benjamin wrote in 1936 in “The Storyteller,” “there is embarrassment all around when the wish to hear a story is expressed. It is as if something that seemed inalienable to us, the securest among our possessions, were taken from us: the ability to exchange experiences.”\textsuperscript{44} So it is that these exchanges, I am suggesting, have

\begin{itemize}
  \item \textsuperscript{40} Id. at 1:33:33.
  \item \textsuperscript{41} Id. at 1:35:49.
  \item \textsuperscript{42} Id. at 1:38:38.
  \item \textsuperscript{43} Id. at 1:13:16.
  \item \textsuperscript{44} Walter Benjamin, The Storyteller: Reflections on the Works of Nikolai Leskov, in Illuminations 83, 83 (Harry Zohn trans., 1968).
\end{itemize}
been eclipsed by the most well-meaning and widespread of discourses: the public lexicon of legal redress, and specifically the central place occupied by restitution claims.

If The Flat tells a story, it may well be a folktale of frustration and embarrassment—of a desire that starts and stops in the same breath, a conversation that begins with flowers and gifts but ends with the closed door of “anything else?” The interactions are so halting, so laced with unspoken appeals or demands, that perhaps it should not surprise us when we feel strangely at home in the only instance of archival footage included in the film. It comes from the Eichmann trial and features an excerpt of prosecutor Gideon Hausner’s cross-examination of the accused. “During emigration the Jews were forced to relinquish their property. Correct?” asks Hausner. “Das ist richtig, aber nicht meine Schuld,” Eichmann replies, and the interpreter translates, “That’s correct, but not my fault.” For practical reasons, the inclusion of this footage makes perfect sense: Eichmann goes on to name von Mildenstein as one of the architects of the Nazis’ Jewish emigration policy. But this moment, I believe, anchors the film in a critical way—and affectively and intuitively rather than factually. So much of what will happen—Hannah Goldfinger’s resistance, Edda von Mildenstein’s reluctance—is compressed into this exchange, with its interlocking themes of property, violence, and the disavowal of responsibility in the face of irrefutable fact. Indeed, “Correct, but not my fault” may well be the refrain of a film that explores how individuals in both Israel and Germany have come to manage their reality even as they deny the truth about their past.

Unlike the social terrain that the film traverses, the ground of the Eichmann trial is familiar; its methods and structure are dictated by accepted judicial practice; and perhaps, above all, we know both how it ends and, more simply, that it ends. Yet if that trial brought out, as Arendt objected at the time, “private stories in public,” it would seem that we now find ourselves in an era when public stories also crowd out the social realm, obstructing efforts to have real exchanges about the war when the personal stakes are high. We do not yet have a language by which to address this violence, other than what some might call intuition: something that, as Hannah Goldfinger says, “Either you have…or you don’t; you can’t learn it or pretend.” If The Flat slips into and out of an adversarial mode, where evidence and witnesses begin to feel as though a trial is being conducted, it is not without good reason. For our inheritance has not, in the end, fully bequeathed to us a means of making sense of our legacy without the scaffolding of law.

But in spite of the recourse to this scaffolding, the process of inheriting, rather than litigating, property still carries with it the potential to reorient us in relation to a traumatic past, bringing us out of the realm of cultural or monetary value and into the murkier but more robust terrain of social life. When restituted property is returned or reparations made, the conceit is that something has been restored, though we fully acknowledge that the damage done cannot be undone. The claims of inheritance in the context of a traumatic history are different: they promise no restoration—in fact, they have no proper place. No public

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41 The Flat, supra note 3, at 26:40.
language (and certainly no political one) exists to explain the significance of ordinary, inherited things. They matter only insofar as they are handed, handled, carried over into potentially inhospitable territory—the complexities of a social world—and made to matter in ways that revise the past, rather than seeking to repair it. Even when the social realm fails us—when we run aground on the familiar shores of the legal—we might experience, however briefly, the unmoored feeling of a history still unfolding.