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THE ROLE OF GHETTO ART IN HOLOCAUST EDUCATION AND FIGHTING ANTISEMITISM

*Roberta Rosenthal Kwall**

INTRODUCTION

*Israel is the dream of 2000 years, the beautiful land and Jerusalem.
There we will plow, we will plant in tears. There we will reap, we will
reap in joy.¹*

These words are the opening of a poem titled *Palestina*, originally written in Hebrew by an unknown Greek Jew who did not survive imprisonment in the concentration camp of Auschwitz-Birkenau. The poem appears as part of a collection of poetry written by prisoners, most of whom were murdered in the Holocaust, that is mounted on the walls of the Testimony House Museum in Israel. The author of this poem attempted to transcend his or her surroundings by dreaming of both a personal redemption, as well as one for the Jewish people as a whole.

This Essay explores how the works of artistic enterprise, such as this poem, created by Jewish prisoners during the Holocaust, can provide widespread education while simultaneously serving as a much-needed mechanism for promoting Jewish unity and thwarting the escalating antisemitism plaguing our current society. Works of art in general are an important source of education because they have a special communicative power that can stimulate dialogue between the work's creator

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1. Translation by Rabbi Vernon Kurtz, contained in a sermon by Rabbi Kurtz titled *Dreams and Reality*, given on May 27, 2023, at a synagogue in Illinois.

and its viewer. But ghetto art, defined broadly as visual art, literature, music, theater, and other genres of creative endeavors, has an unparalleled communicative power given the unique circumstances under which it was created.

Recently, several Israeli legal scholars have written about the problematic aspects of copyright law as applied to ghetto art produced by Jews imprisoned in the concentration camps and ghettos during World War II.² These scholars focus largely on how the current application of copyright law cripples the public's ability to view these works because they are held captive in inappropriate institutions. They also discuss the inadequate legal protections for the authors' original messages and meanings of these works. Their arguments are grounded in recognition of the unique circumstances under which these works have been created, resulting in what two authors have called the most "inhuman copyright scene."³

My focus here is not on the specific applications of copyright law other scholars have mined, but instead on why ghetto art is a critical component of Holocaust education that can also mobilize communities and be utilized as an effective tool as part of a larger program for combatting antisemitism. All works of authorship tell a story about not just the author of the work, but also about the author's surrounding environment that played an integral part in a particular work's creation. Ghetto art represents a singular type of storytelling because it is a response to a distinct, unparalleled historical event—the systematic targeting and attempted extermination of the Jewish people and their entire culture.

Storytelling, known in scholarly circles as narrative, is now commonly utilized by scholars, activists, and others seeking to fight oppression. Within the legal academy, for example, scholars working in marginalized areas such as critical race theory, queer theory, and feminist jurisprudence began to rely on a narrative methodology beginning in the last two decades of the twentieth century.⁴ In his 1982 groundbreaking article, "Nomos and Narrative,"⁵ former Yale law professor Robert Cover

2. Lior Zemer & Anat Lior, *Inhuman Copyright Scene: The Forgotten Law of Art in the Holocaust*, 2022 UTAH L. REV. 353, 357 (2022) [hereinafter Zemer & Lior, *Inhuman Copyright Scene*]; Lior Zemer & Anat Lior, *Art and Copyright in Ghettos and Concentration Camps: A Manifesto of Third-Generation Holocaust Survivors*, 109 GEO L.J. 813, 867 (2021) [hereinafter Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*]; Guy Pessach & Michal Shur-Ofry, *Copyright and the Holocaust*, 30 YALE J.L. & HUMAN., 121, 131 (2018).

3. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 353–54.

4. See generally Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative Legal Storytelling*, 87 MICH. L. REV. 2411 (1988); Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994); Nancy Levit, *Critical of Race Theory: Race, Reason, Merit and Civility*, 87 GEO. L.J. 795 (1999).

5. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 11 (1983).

spoke of the importance of narrative as a tool in legal scholarship because stories “create and reveal the patterns of *commitment, resistance, and understanding*.”⁶

Since the end of World War II, there have been several decades of stability for Jews, particularly in the United States, but a noticeable shift occurred beginning in the early years of the second decade of the 21st century. This shift has gained frightening ground and now is the time for a major push reminding the world about the repugnant history of Jewish marginalization and oppression. Jews have the primary responsibility for self-advocacy and for keeping antisemitism front and center in the public discourse.

One especially disturbing complexity underlying today’s reality is that other historically marginalized groups have demonstrated hostility to Jewish storytelling on the grounds that the Jewish story of oppression is “tainted” by Israel. The events of Berkeley Law School in the fall of 2022 are illustrative. Nine student organizations amended their bylaws to prohibit Zionist speakers, even those speaking on totally unrelated topics.⁷ These groups, taken together, cut across a wide segment of Berkeley’s student population, given they included the Women of Berkeley Law, the Queer Caucus, and groups for Muslim, African American, and Asian Pacific American students. Ironically, several of these student groups hail from the same marginalized groups of scholars who raised our consciousness decades ago through narrative methodology.

Berkeley Law is just one example of so many incidents of antisemitism that have been normalized. Antisemitism abounds not just in sectors of education, but also in Hollywood, athletics, and, of course, the media. Despite the success Jews have enjoyed in the United States, we are now at a point when we need to re-prioritize Jewish narratives of persecution, discrimination, and isolation. Illustrative of the urgent need for this focus is the reality that in a world of endless professional DEI trainings, antisemitism is rarely a topic.⁸

6. *Id.* at 17 (emphasis supplied).

7. Jerusalem Post Staff, *UC Berkeley Law student groups ban Zionist speakers*, THE JERUSALEM POST (Oct. 2, 2022, 12:42 AM), <https://www.jpost.com/bds-threat/article-718702> [perma.cc/6AEU-942M]; Christian Martinez, *UC Berkeley student groups’ refusal to invite Zionist speakers draws civil rights complaint*, L.A. TIMES (Nov. 24, 2022, 6:00 AM), <https://www.latimes.com/california/story/2022-11-24/uc-berkeley-law-student-groups-ban-zionist-speakers> [https://perma.cc/VP2A-5V3D].

8. James D. Paul & Jay P. Greene, *Our research shows many DEI staff have a blind spot when it comes to Jews*, THE FORWARD (Dec. 28, 2021), <https://forward.com/opinion/480121/our-research-shows-many-dei-staffers-target-israel-ignore-antisemitism/> [perma.cc/TDT9-JR3Y]; Ira Bedzow, *DEI Training Needs To Take Antisemitism Seriously*, FORBES (Nov. 24, 2021, 3:41 PM), <https://www.forbes.com/sites/irabedzow/2021/11/24/dei-training-needs-to-take-antisemitism-seriously/?sh=1fa7ded4b746> [perma.cc/FWN8-T7CL]; Armin Rosen, *Campus Diversity, Equity and Inclusion (DEI) Excludes and Targets Jews*, TABLET (Oct. 03, 2022), <https://www.tabletmag.com/sections/news/articles/>

Given the rise in antisemitism throughout the world, Jews need to make self-advocacy and education a top priority. Holocaust education is an integral part of this project and ghetto art can play a critical role given the proven effectiveness of storytelling for raising awareness on the part of marginalized groups. Interestingly, the language that is often used in discussions about Holocaust survivors includes “knowing and telling their stories.”

The stories of all those who were imprisoned, including those who survived and the many more who did not, are important pieces of a cultural puzzle that must be preserved and retold. The ghetto art that embodies these stories presents a unique opportunity for us, and future generations, to dialogue with these artists, their peers, and even their captors. These narratives can pave the way for “conversations of change”⁹ because they represent unique vehicles that furnish “dialogical spaces within which a solid and effective public discourse can form.”¹⁰

This Essay explores why the dialogical spaces created by ghetto art provide such an important educational tool and can serve as a significant change agent for the discourse surrounding antisemitism. It seeks to contribute to a discourse about the Holocaust that situates the stories of those imprisoned and murdered as vehicles for positive global change that can help assure a vibrant Jewish present and future. Israeli author and theater director Michal Govrin has posed a relevant question that captures the essence of this project: “[H]ow can one transform the transmission of memory so that it not only looks to the past or perpetuates the trauma but also renders it into a force for life and becomes a commitment to the here and now?”¹¹

There is a lesson here for both non-Jews and Jews. It is vitally important that the positive global change for which I advocate is one that Jews themselves must also embrace in dealing with other Jews who do not share their religious or political beliefs. We cannot expect to mitigate, let alone eradicate, antisemitism unless Jews are willing to lead by example and treat other Jews with the civility and respect that currently is lacking across the Jewish spectrum.

Govrin advocates for a discourse about Holocaust education that is grounded in the voices of those prisoners who experienced the

campus-diversity-equity-inclusion-dei-excludes-targets-jews [perma.cc/2YG8-ZCMC]; Elizabeth Redden, *DEI Training Gone Wrong?*, INSIDE HIGHER ED (June 15, 2021), <https://www.insidehighered.com/news/2021/06/16/eoc-complaint-against-stanford-alleges-dei-program-created-hostile-environment> [perma.cc/WP46-77E9].

9. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 370.

10. *Id.*

11. Michal Govrin, *How to Remember the Shoah*, SOURCES JOURNAL (Sept. 30, 2021), <https://www.sourcesjournal.org/articles/how-to-remember-the-shoah> [perma.cc/J4KE-8JEE].

Holocaust not as victims but rather as people who were loved, and who, in turn, offered love to others.¹² She emphasizes that, during the Holocaust, “Jews did not see themselves as martyrs.”¹³ Instead, “staring destruction in the face, Jews fought for their spirit and their lives—in all their manifestations of humanity.” This light, Govrin argues, “breaks through the . . . evil darkness, inspiring awe for the human spirit”¹⁴ by contemplating the past “in order to act in the present.”¹⁵ As a genre and as individual works, ghetto art embraces the insight that the best way to honor the spirit of those who were imprisoned and murdered is to use their stories as a way of empowering people living in the present, as well as educating all people about past and current antisemitism.

This Essay contributes to this discourse by initially exploring the distinctive narrative power of ghetto art and its specific dialogical properties. Next, it discusses how the prisoners relied on various forms of ghetto art to exercise their spiritual resistance. This discussion enables us to better appreciate why, as narratives of hope and survival, ghetto art has such rich potential for education and prevention. The Essay concludes with some specific suggestions for how the appropriate preservation and utilization of ghetto art can bring people together, as well as foster critical educational opportunities to combat antisemitism and its escalating manifestations.

I. THE DIALOGICAL POWER OF GHETTO ART

I began contemplating ghetto art many years ago as part of the theoretical model I developed in connection with how intellectual property law in the United States could better protect the personal interests of creators of copyrightable works. These personal, as opposed to economic, interests center on the right to be guaranteed attribution for one’s work, and the right to prevent unauthorized modifications that compromise the intended message and meaning of any artist’s work. Developing this model required me to think deeply about the process of human creativity because crafting a legal system that is appropriately responsive to the rights and needs of creators necessitates a complete understanding of all the forces underlying the creative process. My work here was motivated by what I perceived as an imbalance in American copyright law to the extent it elevates economic motivators, meaning the desire to make money, over other types of motivations for creativity. Tapping into the narratives of all types of creators, as well as

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* (emphasis supplied).

the work of social psychologists, and Jewish and Christian texts, enabled me to understand the importance of an intrinsic dimension of human creativity that operates at a level wholly separate from the pursuit of economic gain. These findings allowed me to demonstrate why and how American copyright law's lack of protection for the personal interests of creators relative to the rest of the world is totally deficient.¹⁶ They also persuaded me that there is something universal about the internal process of artistic creativity that reinforces art's potential for dialogue across wide spectrums of individuals.

As a result of my scholarship about human creativity, I have been critical of a postmodern view of authorship to the extent it de-emphasizes the unique contributions of creators and the factors motivating these contributions. I believe that the intrinsic dimension of creativity that drives human artistry reflects unique *individual* contributions made in the context of specific *external* circumstances. Specifically, when creators borrow from the cultural fabric in creating their work, the resulting products embody authors' singular, inviolate stamp in combination with their external milieu. As law professor Fred Yen has observed: "Authorship is therefore not the creation of works which spring like Athena from the head of Zeus, but the conscious and unconscious intake, digestion, and transformation of *input gained from the author's experience within a broader society*."¹⁷ This dynamic embodies what some have called the "we" of authorship.¹⁸

Elizabeth Kübler-Ross, the psychiatrist who outlined the five stages of grief in her groundbreaking work on the emotional components of dying, often spoke of her experience volunteering in a concentration camp after World War II as the catalyst influencing the course of her research.¹⁹ Specifically, she was struck by the beautiful butterflies carved all over the walls of the barracks housing the prisoners about to be put to death. She contemplated those butterflies for the rest of her life, as they helped her realize that even when people are in the throes of darkness, they can still create works of beauty. These butterflies illustrate how an author's internal artistic spirit works in tandem with unique external circumstances to foster the production of creative enterprise.

The Holocaust, considered "the largest event of genocide and mass atrocity,"²⁰ was the catalyst for the production of a widespread range

16. ROBERTA ROSENTHAL KWALL, *THE SOUL OF CREATIVITY: FORGING A MORAL RIGHTS LAW FOR THE UNITED STATES* 149–50 (2009).

17. Alfred Yen, *The Interdisciplinary Future of Copyright Theory*, 10 *CARDOZO ARTS & ENT. L.J.* 423, 430 (1992) (emphasis added).

18. See *infra* note 29.

19. Kwall, *supra* note 16, at 20.

20. Pessach & Shur-Ofry, *supra* note 2, at 121, 131.

of human creativity. The works of authorship created by the prisoners during the Holocaust were the result of a unique, complex set of internally motivated sources, spurred by an unprecedented set of externalities. Jews were the primary target of the Nazi regime and the creation of these works is a by-product of the large-scale atrocities to which they were subjected during the Holocaust. As a result, the emotional attachment of these creators to their works “is unparalleled in any other author-work relationship.”²¹ Today, the existence of this ghetto art affords all Jews with a unique opportunity to participate in creating a type of figurative shared language about collective Jewish memory, intention, and engagement. It also affords Jews, and non-Jews, with a unique educational opportunity about the importance of remembering and reaffirming “never again.”

Works of authorship have a unique potential for fostering genuine dialogue. According to the philosopher Martin Buber, the highest level of dialogue exists when “each of the participants has in mind the other or others in their present and particular being and turns to them with the intention of establishing living mutual relations between himself and them.”²² This type of genuine dialogue defined by Buber is rare, but copyright scholars Lior Zemer and Anat Lior argue that it is more commonly found in the context of copyrightable expression because of the innate “living mutual relation” that exists between authors and others during the creation process.²³

Zemer and Lior also demonstrate why ghetto art particularly reflects this high level of dialogue. The works of art created by inmates of the Nazi regime “authentically project the horrific reality of the ghettos to which the creators’ fellow inmates contributed by virtue of supplying the surroundings, the suffering, the faces, the lack of basic human traits—the properties of these works.”²⁴ They remind us that the “expressions of the atrocities, the unimaginable conditions of life in death camps, and the re-created identities and attempts at survival, both futile and successful, are all embedded in the artistic and authorial expressions created within the walls and barbed wire fences of ghettos and concentration camps.”²⁵ These unparalleled circumstances giving rise to the creation of ghetto art furnish the “we” in the creative process in the starkest terms: “The strong reciprocal connection between the author and the *other* . . . stands at the center of the creation of these works in an attempt to commemorate,

21. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 401.

22. MARTIN BUBER, *BETWEEN MAN AND MAN* 22 (Ronald Gregor-Smith trans., 2014).

23. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 353, 374–75 (quoting MARTIN BUBER, *BETWEEN MAN AND MAN* 22 (Ronald Gregor-Smith trans., 2014)).

24. *Id.* at 375.

25. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 865.

preserve, and immortalize the dialogue between the authors and *others* and the unspoken meaning behind the works.”²⁶

The primary focus of Zemer and Lior’s scholarship concerns how copyright law can best protect ghetto art by striking the most appropriate balance between safeguarding the public’s interest in its ongoing use while protecting the author’s original meaning and message. They develop a comprehensive set of copyright recommendations for ghetto art, while building on my theoretical model for protecting specifically the personal rights of authors. But the significance of their work extends well beyond their suggestions for how to best apply copyright law to these works because they also make the following bold observation: “Holocaust art should be defined as Jewish ‘cultural expressions’ and recognized as *part of Jewish collective identity* and ‘traditional knowledge’ of Jewish culture passed on from generation to generation.”²⁷

The need for a “collective Jewish identity” among American Jews is more pressing now than ever before. As our nation generally spirals into an abyss of polarization that appears to grow more intense with every year, it is becoming abundantly clear that the roughly eight million American Jews are following suit. This increased polarization has negatively impacted the relationship between different groups of Jews in this country. Other than Orthodox rabbis who engage in outreach (*kiruv*), and their followers, American Jews mostly interact with other Jews who mirror their own religious and political views. This reality can be explained by both a lack of opportunity as well as a lack of desire.

This reality raises the question of whether the notion of “we” that underscores the distinctive nature of ghetto art might help restore a continually shrinking sense of “we” among the Jewish people. Despite the rampant polarization plaguing the American Jewish community, virtually all Jews, regardless of their religious and political differences, are likely to agree that preserving the voices of those imprisoned during the Holocaust is imperative.²⁸ Ironically, this unifying aspect of the Holocaust for today’s Jews has a parallel for those who were imprisoned. The prisoners were unified in their horrific daily realities despite their differences in background, language, talents, economic status, and level of Jewish observance. Moreover, all creators of ghetto art faced the same insufferable environment shaping an intrinsic dimension of creativity unique to this group of artists. This distinct bond adds a richness to the “we” inherent in their work. For Jews today, the “we” manifested

26. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 378.

27. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 865 (emphasis supplied).

28. See *infra* notes 70–72.

in ghetto art serves as a powerful reminder of why it is so important that we strengthen our communal Jewish identity through building stronger bridges together. A strong sense of shared identity and unity of purpose is needed to combat the escalating external threats.

II. SPIRITUAL RESISTANCE SPURRED CREATIVITY

This discussion takes a closer look at the specific forces spurring the creation of ghetto art so we can more readily appreciate the “we” underlying its generative process.²⁹ A significant commonality of all ghetto art created during the Holocaust was the embodiment and reflection of the “brutalized personalities” of the authors and their fellow inmates.³⁰ But these works also reveal other significant forces that shaped the authors’ intrinsic dimension of creativity: a desire to maintain Jewish identity and tradition; the need to escape from reality; rebellion, documentation; and ultimately survival. These compelling motivators, taken together, composed a specific type of spiritual resistance³¹ to the Nazis that empowered these authors to create works of beauty, thereby transcending their status as victims. By doing so, the creators of ghetto art resisted the Nazis’ attempt to destroy the soul of the Jewish religion by eliminating not only all Jews, but also all Jewish speech. The creators of ghetto art resisted these Nazi efforts by creating works that “shed light on the cultural life of those who could not change their fate.”³² Notwithstanding the horrific circumstances of their reality, the prisoners managed to create and maintain their shared Jewish language, and collectively, they left substantial evidence of this language for posterity.

In 2021, as the Jewish world was just beginning to celebrate its second Passover during the Covid-19 pandemic, Rabbi Avi Shafran published an opinion piece in the *Wall Street Journal* illustrating a poignant example of spiritual resistance necessitated by the Holocaust.³³ Rabbi Shafran’s father fled to Lithuania to study in a yeshiva after the Nazis invaded his homeland of Poland. A couple of years later, he was arrested when the Soviets took control of the area where he was studying, and he was taken to a Siberian work camp. Upon his arrival, he and a few of his

29. Note that historically, discussions about art and the Holocaust have centered on the appropriate ownership of looted art. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 813, 825, 827, 835. But focus here is the speech of the victims, not their possessions. See also Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 353.

30. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 353, 401.

31. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 813, 837.

32. *Id.* at 813–14.

33. Avi Shafran, *My Father’s Passover—and Ours*, WALL ST. J. (Mar. 25, 2021, 6:11 PM), <https://www.wsj.com/articles/my-fathers-passoverand-ours-11616710280> [perma.cc/HL7X-SWEQ].

classmates began preparing for Passover, at that time months away, by hiding away some kernels of wheat which they later ground into coarse flour. As Passover approached, the group of young men subsequently “dismantled an old clock and fitted its gears to a whittled piece of wood, fashioning an approximation of the cleated rolling pin traditionally used to perforate matzos and ensure quick and thorough baking.”³⁴ The group huddled together in the middle of the night in a hut with an oven and baked their unleavened bread so they could satisfy their spiritual need to celebrate Passover no matter how difficult the circumstances.

Rabbi Shafran’s story does not involve a work product of art, music, or writing, but it still offers a perfect example of the type of spiritual resistance embodied by all ghetto art. Creative activity was present to a surprisingly high degree throughout the camps and prisons but Theresienstadt, also known as Terezin, was particularly known for its artistically creative environment. Established as a “model” camp that was designed to show the world the Nazis’ humane treatment of the Jews, Terezin was disproportionately populated by prominent intellectuals, artists, and scholars whose presence would “help perpetuate the hoax of the model ghetto.”³⁵ Beneath the trappings of this subterfuge, conditions were extremely dire, but “the density of such talent, the severity of their awful situation, the anxiety about their future gave rise to a rich cultural life surrounded by an all-pervasive sense of death.”³⁶ The spiritual resistance of the inmates of Terezin is exemplified by two books: *I Never Saw Another Butterfly*,³⁷ containing the poetry and drawings of child inmates of the camp, and the cookbook *In Memory’s Kitchen*, containing old-world recipes from starving female prisoners who composed a hand-sewn volume as they “cooked with their mouth” and longed for the past and a better future.³⁸ Both works embody what the prisoners of Terezin called the “revolt of the spirit” by resort to creative enterprise.³⁹ This revolt reflected the spiritual resistance that spurred the creativity of all ghetto art created during the Holocaust.⁴⁰

34. *Id.*

35. Michel Berenbaum, *Foreword* to *IN MEMORY’S KITCHEN: A LEGACY FROM THE WOMEN OF TEREZIN*, at xii (Cara De Silva ed., Bianca Steiner Brown trans., Jason Aronson Inc. 1996).

36. *Id.*

37. See generally HANA VOLAVKOVA, *I NEVER SAW ANOTHER BUTTERFLY: CHILDREN’S DRAWINGS AND POEMS FROM THE TEREZIN CONCENTRATION CAMP, 1942–1944*, (2d ed. 1994).

38. Terezin and Auschwitz survivor Professor Susan E. Cernyak-Spatz has noted that in these camps people spoke about food so much that the camp expression “cooking with the mouth” was coined. Cara De Silva, *Introduction* to *IN MEMORY’S KITCHEN: A LEGACY FROM THE WOMEN OF TEREZIN*, at xxviii–xxix (Cara De Silva ed., Bianca Steiner Brown trans., Jason Aronson Inc. 1996).

39. *Id.* at xxxiv.

40. As detailed on the book’s back cover, the story of how the original book got to the daughter of one of the book’s primary authors is itself a fascinating story of spiritual resistance blended with a bit of miracle that spanned about twenty-five years.

Rabbi Shafran's story also illustrates another significant feature of the works created by prisoners during the Holocaust—namely, that ghetto art usually involved not only highly creative outcomes, but also enormous ingenuity in the actual process of creating, a reality born of necessity. For example, much of the music written by the prisoners was hastily scribbled on scraps of paper, including toilet paper.⁴¹ We also know that undercover theater performances that put the actors at great personal risk took place in the camps. Additionally, there were hundreds of drawings, photographs, and portraits created in secret depicting the horrors of ghetto life. Artists used any available material they could find for their portraits such as “pieces of wood, baking paper, the backs of old letters, and even sculptures made from stale bread and toothbrushes.”⁴² These are just a few of the examples of how the prisoners successfully rose above their status as victims and employed the distinctive “mythical and cultural models” Govrin emphasizes. The range of creativity, both in process and result, demonstrated by the prisoners illustrates that, despite the Nazis' efforts to extinguish every trace of Jewish life, they could not “extinguish the prisoners' sense of their inner worth, which they expressed through the creative act.”⁴³

Scholars have also noted that creative enterprise played a critical role allowing the prisoners to retain some semblance of their Jewish identity and traditions, which served as a means of counteracting the Nazis' intent to eliminate everything related to Judaism.⁴⁴ Rabbi Shafran's piece provides a moving example of this type of spiritual resistance involving his father-in-law, who was intent upon maintaining some type of Passover celebration despite being imprisoned in a concentration camp. On the evening of Passover, he and a friend chanted the parts of the *Haggadah* that they could remember, even though they lacked wine, matzos, and all the other necessary foods for a proper *Seder*.⁴⁵ Their vocalization of

41. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 820–21. The Italian musician Francesco Lotoro collected about 4000 songs, symphonies, and operas that he published as a collection of twenty-four CDs titled *The Encyclopedia of Concentrationary Music*, which was performed in a 2018 concert in Jerusalem. *See also infra* note 78 and accompanying text.

42. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 836 (citing Chris Boyette, *Auschwitz's forbidden art*, CNN (Jan. 26, 2015, 9:59 AM), <https://edition.cnn.com/2015/01/23/world/art-auschwitz> [perma.cc/A6BG-6W62]).

43. *Id.* at 821 (citing *Lagertheater*, MUSEUM CONTEMPORARY ART KRAKOW, <https://en.mocak.pl/lagertheater> [https://perma.cc/RVA6-TGY7] (last visited June 5, 2023)).

44. *Id.* at 820 (discussing specifically Guido Fackler's work about ghetto music).

45. Shafran, *supra* note 33. The *Haggadah* is the book that is used as the primary text for the Passover *Seder*, a festive family dinner that marks the beginning of Passover. The *Haggadah* contains the story of the Israelites' exodus from Egypt as well as prayers, songs, and other texts that are traditionally recited during this meal. Jews in Israel have a *Seder* only on the first night of Passover, and Jews living everywhere else traditionally celebrate a *Seder* on the first two nights of the holiday.

the *Haggadah* is a form of ghetto art despite its lack of a fixed quality. But tangible examples also exist, such as the book *In Memory's Kitchen* that showcased traditional Jewish cooking. The work of Rabbi Ephraim Oshry, the rabbi of the Kovno ghetto in Lithuania, provides an example concerning Jewish law. He was often asked ritually based questions such as “can you use a cracked *shofar* [ram’s horn] on Rosh Hashanah if it is the only one you have?” He recorded his responses and buried them with the hope they would be found. He survived the Holocaust and found many of his writings which were eventually published.⁴⁶

The prisoners’ innate instincts to escape from their reality also played a prominent role in the intrinsic dimension of creativity shared by those who created ghetto art. A surprisingly large variety of creative endeavors such as music, theater, art, and writing—including even cookbooks—provided the prisoners with an “emotional haven.” This haven often was insufficient to overcome the probability of death, but for those who managed to stay alive, there are numerous accounts of how creative activity offered sufficient emotional comfort for the prisoners to endure their existence.⁴⁷ As one former inmate of Terezin remarked: “In order to survive, you had to have an imagination.”⁴⁸

Additionally, many prisoners evidenced spiritual resistance by invoking creativity as a form of rebellion against the Nazis. Rebellion has been a recognized motivation for original lyrics and melodies written by inmates who were forced to labor in dire circumstances.⁴⁹ Similarly, theater survived and even flourished in the camps because performances were understood as important acts of rebellion and resistance, “with satire as the main ingredient of camp cabarets.”⁵⁰ Also, visual artists created portraits of the prisoners, reproducing the facial features of their subjects and adding other information about them, as a way of giving them back their souls and restoring their individuality, thus thwarting the Nazis’ objective of total erasure.⁵¹

Portraits of the prisoners also sought to immortalize their subjects by providing documentation for future generations. In fact, documentation of ghetto life probably was one of the strongest dynamics motivating

46. Rabbi Elliot Goldberg, *Water and wood.*, YEVAMONT 108 (June 23, 2022), <https://www.myjewishlearning.com/article/yevamot-108/> [perma.cc/85UC-4QUR].

47. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 819–34.

48. De Silva, *supra* note 38, at xxviii (quoting Bianca Steiner Brown).

49. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 820.

50. Zemer & Lior, *Inhuman Copyright Scene*, *supra* note 2, at 360 (quoting Alvin Goldfarb, *Theatrical Activities in Nazi Concentration Camps*, 1 PERFORMING ARTS J. 3, 10 (1976)).

51. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 836–37. See also *Last Portrait: Painting for Posterity*, YAD VASHEM, <https://store.yadvashem.org/en/last-portrait-17> [https://perma.cc/WJP9-X49Y] (last visited June 5, 2023).

all types of creative output on the part of the prisoners. Recall Rabbi Oshry's decision to record and bury his answers to the ritually oriented questions that the prisoners posed.⁵² In researching this topic, I encountered way too many heart-wrenching stories of prisoners using various forms of art to ensure that future generations would know their stories. Polish Jew Henryk Ross, the official photographer of the Lodz ghetto, was forced to shoot pictures for identification cards and propaganda. But he also risked his personal safety by secretly taking pictures of the inmates and their reality so that future generations would know exactly what happened inside the ghetto's barbed wire borders. Ross survived and later uncovered the 6,000 negative film images he buried, about half of which were preserved, to leave a historical record of his documentation.⁵³

The documentation effort of individual creators such as Ross were augmented by what can best be termed "semi-structured documentation contained in clandestine archives."⁵⁴ Among the well-known examples of the more coordinated variety are the *Oyneg Shabes Archives*, containing thousands of documents from the Warsaw ghetto that were buried in ten metal boxes and three milk cans by a group of Jewish intellectuals and scholars, most of whom perished during the Holocaust. A last-minute note by a teenager who assisted in the project read: "What we were unable to cry and shriek out to the world we buried in the ground . . . I would love to see the moment in which the great treasure will be dug up and scream the truth at the world."⁵⁵ A similar archive documenting life in the Kovno, Lithuanian ghetto covers the years 1941–1942 and reflects an awareness that the authors were documenting for future historians the end of their community.⁵⁶ Perhaps the most gruesome example of these hidden archival documentations are the manuscripts that the Jewish prisoners working in the gas chambers and crematoria at Auschwitz-Birkenau buried beneath the crematoria's ashes with the hope that they would one day be discovered.⁵⁷ One thing all of these creators and archivists had in common was the desire to provide a future audience with "a message in a bottle."⁵⁸

Taken together, these unique elements comprising the internal motivations for the creativity of ghetto art fostered and conveyed "a

52. See Goldberg, *supra* note 46.

53. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 820–23 (describing this and numerous other examples).

54. Pessach & Shur-Ofry, *supra* note 2, at 142.

55. *Id.* at 123.

56. *Id.* at 141.

57. *Id.* at 150.

58. *Id.* at 143 (citing Michal Bilstiger, *Viktor Ullmann's Kaiser von Atlantis* ("The Emperor of Atlantis"), *MUZIKALIYA VIII/JUDAICA* 5–6 (2012)).

feeling of brotherhood” among the prisoners. Zemer and Lior make this observation with respect to the portraits that artists painted of themselves and the other inmates, the point of which was “to immortalize their subjects out of respect and empathy.”⁵⁹ But the same can be said for so much of the ghetto art, such as the theatrical productions, orchestras, and even the semi-structured documentation efforts. This unity was driven, in a very real sense, by the collective spiritual resistance embodied in all these works. Author Walter Kirn has compared human artists with artificial intelligence (A.I.) art by observing that A.I. “doesn’t dare. It takes no risks. Only humans, our vulnerable species, can.”⁶⁰ Despite an unparalleled vulnerability, ghetto artists forged ahead to produce their craft, impelled by their unique intrinsic dimension of creativity.

The spiritual resistance discussed here was fueled by a singularly powerful force—the goal of survival that united all the prisoners and forced alliances between the hugely diverse groups of imprisoned Jews.⁶¹ Today, when most Jews are aligned only with Jews who believe and practice as they do, and who often decide where they live in the United States based on whether the area is blue or red, it is worth contemplating what has been said about these bonds forged in the darkness of the ghettos. Michal Govrin tells a touching story about how her mother, a non-religious woman, was saved “thanks to the willpower of” a close group of ultra-Orthodox women who went by the name of the *Zehnerschaft*. Govrin also quotes the writer Aharon Appelfeld, a child survivor of the Holocaust, who wrote of *the love* that for him was at the center of his Holocaust experience:

On the personal level . . . there was extraordinary devotion. If you said a nice word to someone, you had saved him, because he had been on the brink of death. Not to mention someone handing you a slice of bread . . . On the brink of death, there was tremendous love . . . my world did not remain that of unending evil that has no repair . . . I remained with people, and I loved them.⁶²

The lesson here is that there was a distinctive type of unity present among the imprisoned Jews that often manifested itself during the Holocaust, and the creative spirit of the prisoners embodied this unity in a particularly unique way. All creators of ghetto art drew inspiration from their fellow inmates as much as from themselves. And the art that was produced also served as a source of strength and inspiration,

59. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 837.

60. Walter Kirn, *There is No Such Thing as A.I. Art*, THE FREE PRESS (Sept. 25, 2022), <https://www.thefp.com/p/there-is-no-such-thing-as-ai-art> [perma.cc/82RZ-KXR7].

61. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 836.

62. Govrin, *supra* note 11, at 1–2.

not only for the artist, but also for the other prisoners with whom they lived. This mutuality reflects the dialogue, the “we,” that creativity entails.

III. GHETTO ART’S POTENTIAL FOR BUILDING BRIDGES AND FIGHTING ANTISEMITISM

The narratives of Appelfeld and Govrin are fascinating because they suggest that the ghetto environments at the prisoner level were, at least in certain instances, characterized by altruism rather than self-interest. There are, of course, other sides to this story and clearly not everyone who survived shared the positive perspectives of Appelfeld and Govrin. But the fact that such positivity has surfaced at all is remarkable.

The creation and survival of ghetto art not only illustrates a unity of purpose among both the ghetto artists and their audiences, but also provides a compelling lesson for everyone alive today. We must continue to educate the world, but we must also strive to do better with one another in our greater Jewish community and beyond. Ghetto art can be used as an important tool in accomplishing both objectives.

In their legal scholarship, Zemer and Lior assert that “Holocaust art should be recognized as an undeniable and integral part of Jewish heritage and tradition.”⁶³ They recognize this unifying potential when they observe that ghetto art has an unsurpassed capacity when it comes to its “limitless moral message to the world and its strong moral ties to the remaining Jewish community.”⁶⁴ Further, “these ties and limitless moral messages . . . play a critical role in defining collective Jewish identity.”⁶⁵ This perspective also aligns with Govrin’s reminder that the future should emphasize positivity rather than trauma.⁶⁶

According to Zemer and Lior, ghetto art is a “living body of knowledge” that “can re-create meanings and identities” in the present, thus serving as a bridge to the collective Jewish community today.⁶⁷ The idea here is that ghetto art is a unique form of cultural property that is inseparable from Jewish heritage.⁶⁸ Their position draws from my own work claiming that both Jewish law (*halakhah*) and the transmission of Jewish religious tradition are cultural products of creative human

63. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 866.

64. *Id.* at 839.

65. *Id.*

66. See Govrin, *supra* note 11.

67. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 867–68.

68. *Id.* at 871.

activity designed to be transmitted to future generations.⁶⁹ But, although both Jewish law and ghetto art are living bodies of knowledge representing Jewish tradition, ghetto art has greater potential for promoting a sense of unity across the religious and political spectrum. According to the two most recent studies of the American Jewish community conducted by the Pew Research Center, remembering the Holocaust is the most widely shared element of Jewish identity.⁷⁰

The idea of collective intention can help shape the parameters for bridging diverse Jewish communities. Cultural property scholars speak of the importance of collective intention among members of a particular culture to preserve that culture and identity. This intention can exist among a large group of people who share a particular joint commitment, and who express a mutual willingness to be jointly committed, even if they do not actually know one another on a personal level.⁷¹ Zemer and Lior's observation below applies not only to their vision of copyright reform but also to art's potential for facilitating communication across Jewish communities through a shared language:

Defining works of art and authorship created within the ghettos as part of Jewish heritage and tradition presupposes groupness, a collective intention to preserve the memory of the Holocaust This collective intention shared by the Jewish people everywhere enhances our argument that Holocaust artworks should be treated as a part of Jewish heritage in an attempt to preserve it. This is because this art is embedded in the "we" of the Jewish people, and its effect is engraved in the hearts and minds of all those who consider themselves a part of the Jewish community.⁷²

Note the inclusiveness of their approach with respect to the idea that collective intention can be exercised by anyone who considers themselves to be a part of the greater Jewish community. Indeed, some believe that "art is a portal for the entry into Jewish peoplehood,"⁷³

69. See Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 865–66 (citing Roberta Rosenthal Kwall, *Is the Jewish Tradition Intellectual Property*, 4 WIPO J. 129 (2012)); see generally ROBERTA ROSENTHAL KWALL, *THE MYTH OF THE CULTURAL JEW: CULTURE AND LAW IN JEWISH TRADITION* (2015).

70. See *A Portrait of Jewish Americans*, PEW RSCH. CTR. (Oct. 1, 2013), <https://www.pewresearch.org/wp-content/uploads/sites/7/2013/10/jewish-american-full-report-for-web.pdf> [perma.cc/A6SP-6CZ5]; *Jewish Americans in 2020*, PEW RSCH. CTR. (May 11, 2021), <https://www.pewresearch.org/religion/2021/05/11/jewish-identity-and-belief/> [perma.cc/KEP6-Y7PR].

71. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 874 (citing MARGARET GILBERT, *A THEORY OF POLITICAL OBLIGATION: MEMBERSHIP, COMMITMENT, AND THE BONDS OF SOCIETY* 213 (2006) (discussing Margaret Gilbert's work on the topic of "society-wide convention.")).

72. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 875.

73. *Preparing for the Long-Term in Ukraine + Arts and Culture Shape Jewish Identity*, EJEWISH PHILANTHROPY (Mar. 4, 2022), <https://ejewishphilanthropy.com/your-daily-phil->

and this might be especially true with respect to ghetto art. By specifically invoking collective intention, along with the idea that ghetto art is part of Jewish heritage and tradition, Zemer and Lior are suggesting a model for positive dialogue among Jews today. This theoretical model can support a figurative Jewish language with potential for unity and communication among a broad spectrum of Jews.

We can best preserve the voices of ghetto artists by creating shared conversational spaces that emphasize the dialogic properties of ghetto art, and grapple with how the appropriate preservation and utilization of this art can foster additional conversational opportunities for all Jews, and those aligned with Jewish communities. One example of how such a shared conversational space can be actualized is the *Violins of Hope Project*.⁷⁴ This initiative involves the restoration of over seventy violins, violas, and cellos that belonged to Jews before and during the Holocaust, each with a story that reinforces the lessons of the Holocaust and brings messages emphasizing the importance of hope, humanity, and unity.⁷⁵ These instruments have travelled the world for exhibitions and performances as educational vehicles, and Jewish Community Center of Chicago (JCC Chicago) is developing an interactive, virtual tool that will provide a unique vehicle for perpetual Holocaust education. The virtual tool that JCC Chicago plans to develop will allow proactive participation by students who will be able to play the instruments virtually and create their own music online.⁷⁶

Another example, also involving music, is the *Holocaust Music Lost & Found*, a nonprofit organization founded by Janie Press to facilitate the recovery of music that was composed in the concentration camps and ghettos during the Holocaust.⁷⁷ Press is collaborating in this endeavor with Maestro Francesco Lotoro, an Italian musician who has been attempting to recover these works for the past thirty years. The goal of this nonprofit organization extends beyond the recovery of this music. Press has written that “in this time of rising antisemitism, discrimination and hate, we believe that the rescued music can play an

preparing-for-the-long-term-in-ukraine-arts-and-culture-shape-jewish-identity [perma.cc/H7AB-XH2B].

74. VIOLINS OF HOPE, <https://www.violins-of-hope.com/> [https://perma.cc/5PFF-H5P4] (last visited Sept. 30, 2023).

75. *Id.*

76. Conversation with Addie Goodman, President and CEO, JCC Chicago (May 12, 2022); see also *Violins of Hope Chicago*, JCC CHICAGO, <https://www.jccchicago.org/violins-of-hope/> [perma.cc/NG8T-N6J3] (last visited Sept. 30, 2023).

77. HOLOCAUST MUSIC LOST & FOUND, <https://hmlf.org/> [https://perma.cc/TH3V-4BVB] (last visited Sept. 30, 2023).

important role in educating Americans about the Holocaust and the power of survival through the medium of music.”⁷⁸

Virtually all types of ghetto art can be used in ways similar to these two examples as the basis for creative educational programming. Not only can this programming bring together diverse groups of Jews, as well as non-Jews, but it can also create opportunities for shared conversations about more than just Holocaust education. Such conversations can involve the larger questions of what this artwork represents for the Jewish past, the present, and its future, including the need to combat the growing antisemitism worldwide.

By its very nature, works of authorship have a unique way of challenging humans by presenting different points of view, as well as fostering empathy with “others” and affording “the opportunity to reflect on the human condition.”⁷⁹ The continued dissemination of ghetto art teaches the most important lesson for all Jews, namely “*never again*.”⁸⁰ Anyone who considers themselves to be part of the Jewish community, or seeks to align themselves with fighting antisemitism, can agree that a powerful, ongoing dialogue surrounding this message is critical to a Jewish future.

78. Janie Press, *The search for lost Holocaust music—and why it’s important*, EJEWISH PHILANTHROPY (Apr. 27, 2022), <https://ejewishphilanthropy.com/the-search-for-lost-holocaust-music-and-why-its-important> [perma.cc/X96S-BCBU].

79. Brian Kisida & Daniel H. Bowen, *New evidence of the benefits of arts education*, BROOKINGS (Feb. 12, 2019), <https://www.brookings.edu/blog/brown-center-chalkboard/2019/02/12/new-evidence-of-the-benefits-of-arts-education/> [perma.cc/5K4B-2ZPG].

80. Zemer & Lior, *Art and Copyright in Ghettos and Concentration Camps*, *supra* note 2, at 877.