

Lynn H. Nicholas**Restitution Panel**

Ten years ago I addressed the Washington Conference and nearly 30 years have passed since I first began research in the area of the World War II era displacement of art. I was far from the first to have done so: from the first post-war years there had been a thin but steady stream of books and articles on the subject. But by the 70's the extraordinary and highly successful restitution and compensation efforts carried on in the post-war years in every affected nation had come to an end, overtaken by more immediate issues. Because it is so often misstated that "nothing has been done" to reconstitute works for 50 (or by now 70 years) I think it is vital to remember the vast number of works that were returned and advertise the extraordinary amount of investigative work that was done after the war first, by Allied military and recuperation officials and, later, by the claims and compensation agencies of both Germany and the occupied nations, all of which generated invaluable, and still extant, archives.

As we all know, attention to the looting issue was revived in a major way in the mid-nineties. There were many reasons for this revival: the advancement of Holocaust Studies, renewed interest in World War II, spawned by commemorative activities, and, especially, the opening of Eastern Europe and its archives, with the revelation of the terrible destruction and confiscations that had taken place in the former Soviet Union, and the fact that large quantities of objects and archives from the West, long thought to have been lost forever, were, in fact, in Eastern Europe. The media took notice and the issue of looted art became hot. In this early stage, passions ran high and accusations were often wild. But the spotlights were on, and it soon became clear that the task of restitution had not been completed.

Interest in the issue led to political involvement at very high levels in many nations and a plethora of suggestions for action. As is natural in human events many of these suggestions were, and still are, agenda driven and not free of chauvinism. There was a search for global solutions to restitution which culminated in the highly emotional Mauerbach Auction, whose

limitations and mistakes are now evident. The addition of the issues of Swiss Gold, real estate, insurance and slave labor to the mix brought even more attention to these 50 year old events and led eventually to the Washington Conference and, for the art world, the promulgation of the Washington Principles.

The Principles, and their accompanying guidelines for museums and others, are now a universal reference point for restitution issues. But while they are morally admirable, they are not laws, and their vague terminology makes them open to all sorts of interpretation and exploitation, both good and bad.

There is no question that the Principles have done a lot of good. Special adjudication commissions have been established in a number of European nations. Investigative commissions have proliferated. Hundreds of museums have posted objects acquired during the Nazi era on their websites. There is now a large corps of expert researchers, many of them at this conference, who know how to navigate archives and the rather too many data bases that have sprung up world wide. Archives previously closed have been opened and the many already available ones made easier to use by improved finding aids and digitalization. Colloquia and hearings take place almost monthly. Major auction houses and museums have their own in-house provenance experts-and so forth. Generally, it is safe to say that no one in the art world can now claim to be unaware that a work "displaced" in the WWII era might have been looted in some way. The result of these improvements has been the discovery and restitution of numerous works both through negotiation and litigation, and even, but not often enough, voluntarily, which was the whole idea of the Principles in the first place.

But all is not perfect. For one thing, the issues are not clearly defined for museums, collectors, dealers or auction houses and their reactions are very uneven. Some have major, continuing research efforts but this is not possible to sustain except for the largest institutions. Some, trying to avoid the subject, adhere too precisely to the letter of the vague guidelines, feeling that the simple posting of works and "compliance with best practices" (whatever that means) is sufficient. If a work in their collections is challenged, they will, sometimes to their surprise, soon find that such basic compliance is not enough. And, unfortunately, the very fact that

they have listed a work may expose them to accusations of wrongdoing and force them to prove that an item is not looted, even if there is no serious evidence that it was. This process may require the hasty use of scarce resources to no avail. Thus, greater awareness of issues and continuing, more sophisticated training of museum staffs is essential and could well be funded by governments and relevant NGOs.

The masses of data I referred to need far better co-ordination in order to speed up their use. Perhaps most difficult is the fact that the Principles, terse and deceptively clear in their phraseology, do not allow for the complexity of the looting issue. The Nazi era lasted a long time and went through many stages. We must resist an oversimplification of history. Policies of confiscation developed gradually, Nazi enforcement was uneven and personal circumstances extremely varied. As Mauerbach demonstrated, there is no black and white here, and sweeping global solutions are not possible. This is also true of collaboration and forced sales. Indeed, just what is included under the latter rubric is the subject of very wide, and ever expanding interpretations, some more sensible than others. In the end, there is no way around considering each case within the exact context of the events of personal and wartime history.

It has been suggested that all Nazi era art transactions involving Jews be presumed to be confiscations or duress sales and that the burden of proof of valid title be the responsibility of the present owners. This is an impossible demand that would violate the rights of many present owners, especially some 70 years after a transaction, when the object may have changed hands numerous times. Much attention is focused on Military Law 59, published during the Allied occupation of Germany, and on the Allied Declaration of 1943. The Declaration states that the Allies reserve the right to declare a transaction void—clearly indicating that the action was not supposed to be automatic and that the facts must be examined first. If one reads the cases tried under Military Law 59, it is again clear that there was always a factual basis for the cases being brought. The entities examining these cases were multi-layered: there were preliminary panels that recommended that cases go to a higher tribunal and appeals were countenanced. The panels frequently demanded more

evidence and rejected spurious claims. This was no vague moral law, but one that emerged from the very pragmatic situations of the occupation period. I do not believe that one can make any absolute presumptions, one way or the other, in restitution cases. The facts in each case are unique and their proper consideration is the only fair way to proceed.

The Washington Principles, in their present form, are too far removed from the realities of the art world, to this day the world's largest unregulated international business, as it has always been, and never more so than in the Nazi era. A traditional refuge for assets in hard times, used in many ways for tax evasion, fraught with family disagreements and the competitive secrecy of eccentric collectors and some of the toughest dealers in any profession, the art world does not lend itself easily to regulation. That of course is part of its appeal. The vast sums that major works command today guarantee that major litigation, especially in the United States, will not go away and make the likelihood of an effective American commission of experts like those in other countries very small. Still, the effort to create one should be made. Ideally, such a panel could resolve smaller claims and evaluate the validity of large ones before they enter the court system.

In the end, just resolution of claims comes back to the integrity of those involved in the process. One might hope for some sort of self regulation by the legal fraternity. We must not harm victims by denying them their just heritage, but we must also not compound injustice or defile those who did suffer tragic loss by the misuse of information and the exploitation of the emotional aspects of the Holocaust.

I would like to suggest a few things:

1. Any commissions or tribunals should include not only art world experts and provenance researchers but also historians and economists who could put cases into historical context.
2. A professional organization for provenance researchers should be set up and they, like any other professionals, should be required to adhere to a code of ethics.

3. Governments should publish a simple how-to pamphlet to help claimants initiate cases. These could be widely distributed by the relevant agencies and concerned organizations.
4. The massive research that has already been done by commissions and independent researchers and in private litigation should be collected and made available, at the very least, to professional provenance researchers. Endless time and funds are wasted by repetition of research. Legal decisions in restitution suits should be published and explained, including the reasons for settlements. To protect privacy the exact amounts of any funds exchanged could be redacted. This would provide a body of precedents for future actions and guarantee more consistency in results. The present reliance on media reports on these cases is not acceptable as they are often inaccurate and, depending on who was interviewed, may distort the actual result.
5. In order to protect the rights and reputations of current good faith owners, previous claim settlements should be carefully analyzed and not voided frivolously. Current good faith owners deserve the same respect as claimants. After 70 years we should find ways to compensate good faith owners or, at the very least, protect them from defamation.
6. The revised principles, or declaration, should condemn any distortion and exploitation of the events and emotions of the Holocaust for political or financial gain.

To conclude, I think we must realize that it is our responsibility to be fair and avoid compounding injustice. The revival of restitution has done tremendous good and righted many wrongs. It will continue to do so as long as it remains honest. This good must not be undone by narrow agendas, excessive greed or false morality. 75 years after the beginning of Nazi era it is time to work out sensible solutions.