

COMMISSION FOR LOOTED ART IN EUROPE

www.lootedartcommission.com

RESTITUTION: ISSUES AND DIRECTIONS

Anne Webber

**Commission for Looted Art in Europe & Central Registry of Information on
Looted Cultural Property 1933-1945
23 September 2004 Berlin**

Ladies and Gentlemen

The premise of this conference is the importance of sharing information, experience, and results. There is a question of what assistance is needed by those involved in this work to make that work more effective. And the question of how to prepare and implement restitution.

I am very pleased to be here to talk about these issues, which are special areas of expertise of both the Commission for Looted Art in Europe of which I am the co-chair and of our Central Registry of Information on Looted Cultural Property, of which I am the director. At the head of both bodies is Stuart Eizenstat, the convenor of the 1998 Washington Conference and author of its Eleven Principles on Nazi confiscated art. Together our two organisations are the only expert international and representative bodies actively working in this field today.

I shall focus my talk on the critical issues facing public collections. But let me start by telling you something about our work, as background for what I shall be saying.

*Co-Chairs: Anne Webber, David Lewis
annewebber@lootedartcommission.com*

*76 Gloucester Place London W1U 6HJ
Tel: +44 (0)20 7487 3401 Fax: +44 (0)20 7487 4211*

Hon. President: Ambassador Stuart E. Eizenstat

COMMISSION FOR LOOTED ART IN EUROPE LIMITED REGISTERED IN ENGLAND NO: 3829123

The Commission for Looted Art, a non-profit body, was set up in 1999 and has a number of functions. One is to assist individuals, families and communities with research into, and the identification and recovery of looted cultural property.

We have several hundred claimants, and they come to us from all over the world, from South America to North America and Australia, and all points in between. Some are looking for a handful of objects. Others, the majority, are looking for anything from 20 to 200 to 2,000 objects of all kinds, including paintings and books, sculpture and Judaica. Our total search list comprises many thousands of objects.

The claimants come to us with every kind of evidence of their losses, from the most detailed to the most insubstantial. The evidence may be a photograph taken in a Charlottenburg apartment in 1938, showing a clearly identifiable painting on a wall, and a young boy, not born till 1936, riding on his rocking horse in front of it. Others bring photograph albums of their lost collections, or detailed inventories, or the binding of a book from a looted library. Some have their claim forms from the post war period. Others have only memories, and in those cases, like in all others, we work very hard to establish evidence and proof of ownership. We never take a claim forward until we have such proofs, and until we ourselves are convinced of the merits of the claim.

Every object must be researched individually – a collection may have been confiscated at one time and in one place, but the prior and subsequent history of each object will usually be unique to that object. It is not unusual for the work to research, identify and locate a single object to take very many months. Then comes the work to recover it.

In the last four years our Commission uniquely has recovered and restituted over 400 looted items of cultural property; ranging from paintings and drawings to books and tapestries. These have been recovered from museums and galleries, from libraries and embassies, from auction houses and private collectors, in many countries, from east to west. Every recovery so far has been achieved through negotiation. In none have we used litigation. That is one of the principles by which we work, and which we think is the best approach for reaching appropriate solutions. Of course, it is not always possible to avoid litigation, but by preference we do so.

New cases and new claimants come to us every week, and there is no sign of their numbers slowing down. This is not altogether surprising when one thinks of how many thousands of looted objects are still located in museums and libraries in so many countries.

So, on the one side, our work comes to us. The other side of our work is to act as a centre of expertise, and assist with the work to research and identify looted objects in collections worldwide.

We undertake this work on our own initiative and also help institutions and governments with their provenance research. As a centre of expertise, we have knowledge of the location of dealer records, of the content of collections, and other evidential materials, on which we are regularly consulted. I am personally a member of the British Spoliation Advisory Committee which supervises the provenance research of the British Museums, and was closely involved in devising the parameters for the research and its publication. So we have a great deal of experience in establishing models and standards for provenance research as well as for its publication. In the last four years over 60 UK museums, all the major ones and many of the minor ones, have regularly reported to the public, each of them publishing both consistently detailed provenance information and in depth reports on their progress in each area of their collections on a single website at www.nationalmuseums.org.uk/spoliation. It's a good example of what a serious commitment can achieve, and on very modest resources.

Another central focus of the Commission's work is the identification and tracing of the rightful owners or heirs of looted works of art which have been identified. This is a very skilled area of research, to which the Commission for Looted Art has dedicated extensive effort. As a result, we are probably one of the most expert bodies in this field. We increasingly carry out this work on behalf of institutions in a number of countries. Tracing heirs is a central issue today and I will talk more about it later.

In our representative role, we are consulted and undertake negotiations on restitution policies and procedures as well as disclosure of information issues with governments, and

public bodies throughout Europe, including the pan European institutions. We co-drafted the 1999 Council of Europe Resolution on the restitution of looted Jewish cultural property in Europe on which the European Commission's Legal Directive on Nazi looted cultural property, due shortly, is based.

In this same representative role, we monitor the implementation of the Washington Principles, and publish this on our Central Registry website, www.lootedart.com. The Registry, an independent, charitable initiative, is a key resource for the art trade as well as for claimants and researchers internationally. We maintain an ever expanding database of currently more than 20,000 objects from over 12 countries, looted, missing or under investigation. The Registry also provides information from over 40 countries on laws, policies, art trade records, cases, official reports, family tracing resources, and it publishes lists of families being sought.

I have gone into some detail about our work, partly because I was asked to do so by the organisers of this conference, and also because it will, I believe, help in understanding the context of our approach to today's issues.

In this Conference's Overview it was stated that the uniqueness of this conference is that political, administrative and professional issues are given equal weight. This is of fundamental importance. In our experience they cannot be disentangled one from the other. If the political area is lacking in will, in action, in commitment, then it holds down the administrative and professional actors; if the professional actors are failing, or not undertaking the work to the appropriate degree or depth, then the importance of the political and administrative commitments is diminished.

The context in which I will speak therefore, is the position in which we find ourselves today internationally. Where we are, what has been achieved, what needs to be done. I want to raise the question of what is necessary to make restitution real, not illusory, what is necessary to make the achievement of justice actual, and not just empty rhetoric, what is required to make the issue of moral responsibility a real commitment, and not simply a hollow slogan.

There are some hard questions to be asked about the continuing disappointment of the dispossessed. About the large amount of looted property that remains unidentified in institutions. About the large numbers of heirs who remain untraced, and unlooked for. About why it is that despite the adoption of policies and principles, so few have been implemented. About the culpability of delay when claimants are already disadvantaged by age, by history, by language, by resources. About why it is that there remain so many impediments to restitution and why we are still so far away from achieving a comprehensive solution to this ongoing problem.

These are questions that are pertinent to the experience of many countries and institutions, across Europe, in the United States and elsewhere. Far from being addressed to Germany alone, these questions are relevant to the experience of many countries, across Europe, in the United States, and elsewhere. But they are relevant too, to the German experience. And we very much hope that Germany will take a lead in these matters and set an example of how they should be dealt with in order to right the historic injustices which the international community, since the 1998 Washington Conference, has acknowledged cannot be left unaddressed.

In a moment I will come to talk about current processes, the shortcomings and the ways forward. But let me start by going back to first principles and make sure we are all looking at this with a common frame of reference.

Let's start with the question of whether it is even appropriate to talk of restitution for Holocaust looted works. What is unique about the circumstances of the Nazi era and the Holocaust that requires restitution of works looted in this period? Where does one draw the line historically?

At the most basic level, the reason why the Nazi era and the Holocaust is in a special position is because it is within living memory. We are still dealing with survivors and their families and with questions of personal loss, not with remote issues of dispossession in the dim distant past, recalled only through the pages of history books. And a special responsibility rests on those who are charged with remedying such wrongs and

maintaining the dignity and credibility of the new societies that have emerged in the aftermath of those conflicts.

The second and perhaps the more important reason these claims are in a special category is because probably for the first time in history in a clear and unambiguous way looting on this scale was acknowledged to be criminal, and contrary to established principles of international law which predated the Nazi and Holocaust period. We are therefore not simply talking about a moral obligation to redress some kind of perceived imbalance in a time of chaos. We are talking about a moral obligation to remedy violations of law, and return the proceeds of crimes to their rightful owners.

A third reason why Holocaust claims are in a special category is that the international community has in the last few years acknowledged that the circumstances of the Holocaust form a unique legacy of horror for the current generations and requires that every effort be made today to provide redress. That was the message of the 1998 Washington Conference. That is the appreciation that underpins the Council of Europe Resolution and the new European Union initiative.

It is thus clear that Holocaust spoliation is in a special category and that, as such, it demands special attention and a willingness on the part of States and their museum and gallery communities to take effective steps to remedy the wrongs of this period.

Against this background, the question is what is the appropriate remedy? Is it restitution? Would compensation be adequate? What about some other means of redressing the wrong?

It is generally accepted today that, in the face of such terrible crimes, restitution is the appropriate remedy. Of course, depending on the circumstances, there may be a number of ways in which to achieve suitable redress. But the overriding principle, in all cases however, is that the interests of the victims must have primacy. Where they seek restitution, the return of their stolen property, this must be the controlling objective. The onus is therefore on society to establish processes and institutions to ensure that restitution can be achieved and, particularly given the ages of many of the claimants, and

their infirmity, that it can be achieved without delay. The responsibility on society – whether it is Germany, the United Kingdom, the Czech Republic, the United States or elsewhere – is to ensure that individual claimants can exercise their rights and can do so effectively. Otherwise we are just paying lip service to the idea of redressing historic wrongs, and the acknowledgement of rights and remedies becomes simply illusory.

As far as the present situation in Germany is concerned, it is enormously positive that the rights of claimants are recognised and that restitution is broadly accepted as the appropriate remedy. It is however regrettable that these appreciations at the political and ethical level are not yet always complemented by the corresponding establishment of appropriate and comprehensive processes and procedures to ensure that the rights so fittingly recognised can be effectively exercised.

This is an issue that needs to be dealt with. I come back to my earlier point, that this is not a matter for Germany alone. It is an issue that faces all States. But I hope that it is a matter on which Germany will take the lead. Indeed, it should do so. It has a special responsibility in this area.

Against this background, I propose to spend a little time adding to the discussion a number of key stepping stones along the path of restitution, and sharing with you concrete examples from the experience of the Commission for Looted Art in Europe. I do so in the hope of contributing to the unblocking of the logjam many believe besets the debate.

The first stepping stone, or issue, is that of institutions, and the impact of institutional attitudes on the levels of achievement to date. How do institutions approach research and restitution from a philosophical or political point of view? How do they reconcile the interests of individuals with the interests of society, or with those of the institution, as they perceive them to be?

Frequently, it seems that the interests of individuals, the victims of these thefts, are quite simply lost, and the interest of the institution takes precedence. This interest is regularly characterised as maintaining the primacy or integrity of the collection. Such a belief is

indeed part of professional culture. Curators and librarians are trained to conserve their collections and not dismantle them. The problem is that these attitudes conflict with the political and ethical commitments referred to earlier and act to slow progress down, if not altogether stop it. Institutions regularly refer to their moral duty to carry out provenance research, but then describe it as being “cumbersome” or “too time consuming” or say they cannot do it to any depth. There is a curious disconnection here between the avowed role of public institutions in upholding the values of society, particularly in the realm of basic principles of right and wrong, and the desire of institutions to hold onto property, however it was acquired, in the belief that possession is more important than rightful ownership.

Another factor acting to prevent progress is the reluctance to scrutinise the way professional predecessors may have behaved in the past, particularly if they were knowingly acquiring or otherwise integrating Nazi looted property into their collections, also acts to prevent progress. Jonathan Petropoulos, an expert historian of these matters, referred to this behaviour in his eponymous book as striking a “Faustian bargain”. Thorough research cannot be carried out without looking at the role each institution has played in acquiring looted property. And it cannot plausibly be done except in the context of a commitment to ensure that wrongs done by predecessors are undone. In some cases, and including some of you here today, these issues have been the subject of fascinating research. But, in general, the attitudes of collecting institutions, which I have just sketched, dramatically impede the realisation of commitments made by governments and governing bodies. And they need to be addressed.

The second stepping stone is the issue of research itself. Without research and its publication, restitution is illusory.

The Washington Principles stated that all necessary personnel and resources should be made available in order that institutions conduct provenance research to identify all unrestituted looted art and that they publish the results as widely as possible.

Internationally the implementation of these fundamental commitments leaves much to be desired. Many countries have done no research at all. Others limit it to short periods,

1938/9-1945 for example, without investigating the whole period from 1933 to the present. Without detailed and careful research to identify such works in collections and clarify their provenance, most of the works looted between the period 1933 to 1945 will not be identified.

With regard to publication, less than a quarter of the countries represented at Washington have published anything. Of those which have published information, much of it is incomplete. Some institutions, for example, have published only a fraction of the looted works they hold. Others publish, but provide no detailed provenance information. Without that, it is hard to identify the rightful owners. The language in which most of this research is published is a further factor impeding wide access to it. Most survivors or heirs fled Europe and do not today, for example, speak German, or Czech or Dutch. Indeed, the heirs may never have spoken these languages at all. In countries where the official language is not English, the research should be published in two languages: in the language of the country and in English. The purpose of publication, as the Washington Principles state, is after all to locate pre-war owners or their heirs, and information needs to be made as widely accessible and transparent as possible. I shall be talking more specifically about locating heirs in a moment.

In general, both independent experts and claimants are kept very much in the dark. Neither have a way of knowing which institutions have already carried out research, which institutions are currently carrying out research or if there is a publication programme, and, if so, what it is. This lack of transparency is unfortunately the norm.

Here in Germany the 1999 Joint Declaration stated that all relevant institutions would carry out provenance research, publicise it, seek out the rightful owners and return looted property. In the five years since 1999, however, it appears from www.lostart.de, the only place that this information is published, that only 18 institutions, at last count, out of a possible 500 art museums and out of 6,000 museums overall, plus seven libraries, have published the results of their research. And the details of that research have only been provided in German. I was very interested recently to read a German news report in which my colleague, Michael Franz, director of the www.lostart.de site, was quoted as saying that as many as 165 museums have reported and the majority have found nothing

suspicious. I'm afraid that we were not however aware that so much research had been undertaken and so much progress made. Nor that only museums who have actually found looted objects publish their results. And, if we, the Commission, as an expert organisation are unaware of this, it seems unlikely that claimants would know of these results and of how much work has been going on. In the interests of transparency and communication of this progress, we would like to propose therefore that there be a section on www.lostart.de dedicated to the publication of all research, in English as well as German, of all institutions undertaking research, regardless of whether the research identifies looted cultural property or not, in order to provide a regularly updated resource available to everyone on what research has been undertaken, where, with what methods and to what standards. We would suggest that this include information about ongoing research and current and future plans from each institution.

It is disappointing that the 18 institutions that have published their provenance research on www.lostart.de to date are not for the most part Germany's major museums. Over three years ago, the Bavarian State Painting Collections announced a plan to investigate the 6-7,000 paintings acquired by them between 1933 and 1945, as well as the 900 or so paintings in the collection which previously belonged to Nazi leaders. The Prussian Cultural Heritage Foundation also announced two years ago a programme of research into the archival records of 15 institutions. However there is currently no information on the www.lostart.de website about the status of these commitments, or of others, and it is very difficult to find such information independently.

Recently, of course, the Bavarian State Painting Collections did publish a fascinating book on the 126 paintings from the Goering Collection. I must admit to a special interest in this as I am a great admirer of both the General Director, Dr Baumstark, and of Dr Ilse von zur Mühlen who carried out the in-depth research. But it is a great shame that this important publication exists only in German, and that the results are not made available on the museum's website or on www.lostart.de and in a searchable form. Furthermore, as the press release states, the onus seems to be on potential claimants wherever they may live to find the book and within it their property, rather than on the museum to make the research as widely accessible as possible and trace the relevant families.

To add to our previous suggestions, perhaps the best way forward would be for the various governing authorities at each level, federal, state and municipal, to require and ensure regular publication by institutions of their plans, their focus of research, their progress, methods and standards employed and detailed results, in an agreed format and on their own sites as well as on www.lostart.de. At the moment there are many who believe that there is more commitment to investigating Germany's own losses rather than its looted acquisitions. We believe our proposal would do much to dispel this idea. It would also, by setting out clearly the necessary parameters of the work, clarify any self imposed limitations on research, for example, institutions that limit themselves to investigating only acquisitions from dealers or auction houses listed in the Handreichung, or only objects from the Linz list.

Without detailed, comprehensive and accessible research and wide international publication of the results, we cannot move effectively to redressing the wrongs of the Nazi era. In the German news report mentioned earlier, there was also a quote that only ten cases of restitution have occurred here in Germany as a result of the publication of the provenance research work. However, the total number of looted objects from just the 18 museums and 7 libraries whose research is published on www.lostart.de is some 20,000. So the scale of the imbalance is huge. One can only imagine what the real total of looted objects in German public collections must be and what scale of restitution needs to occur.

Hence my third stepping stone on the way to restitution is the tracing of heirs.

The Washington Principles addressed this issue, as they did, so presciently, most others. In fact, it's extraordinary to note that, if implemented, the Principles would enable a comprehensive solution of this whole problem.

Seeking out heirs is the critical centre of the current issue. Virtually no country does this as a matter of active policy. In fact virtually no country does it at all. At best, some institutions do it as a matter of individual commitment. But without an effective procedure for tracing heirs, provenance research becomes merely an academic and historical exercise, and the commitment to achieving justice illusory. It is not enough simply to say that people should come forward and make themselves known. We can't

expect families and heirs, some of whom don't even know of their family's losses, or speak a European language, to check every website in every language in every country every day. The onus must be on institutions and governments, who have the resources to do this, to seek them out.

Tracing heirs is hard work and skilled work. As noted earlier, we at the Commission work very actively in this area, and have dedicated a great deal of effort to developing extensive expertise in it. To be effective, wide ranging historical and genealogical knowledge as well as contacts in many countries at various levels and with various kinds of bodies are required. We have established partnerships with a number of museums and libraries in Europe and America, and carry out this tracing work successfully for them. As a result of our recent work for institutions, some 150 heirs have been traced and objects returned to them.

To give a recent example, we were approached a few weeks ago by a European institution which said it had been trying for two years to find the heirs to six families whose looted property they had in their collection. Despite using lawyers in some countries and employing whatever other resources they could find, they had made little progress in finding the families.

Within ten days we had found all the families – who live variously in Australia, America, Canada, and Europe - and proceeded to establish and document their histories and inheritance rights. This example is provided simply to illustrate what experts in this field can do to expedite such work.

The final issue is the question of statutory impediments to restitution. There is time only to touch upon this briefly. In Europe virtually every case is time barred or subject to laws on title or ownership which avail the current owner rather than the victims of Nazi looting. However in recent years restitution from institutions has occurred where public policy has determined to override these limitations. However claimants are totally reliant on the accident of where an object has come to rest. A claimant, for example, may be able to recover his looted property if it's here in Germany or France, but not if it's in Italy. There is general inconsistency, and claimants are at the mercy of policies,

procedures and attitudes which are rarely publicly articulated. Few institutions and processes light their path. The result is that restitution can be blocked at every turn. There is no transparency, no clarity. Officials often hide behind the law. Today, there are something of the order of 170 cases in the courts in various countries. As a result of what it calls this “serious infringement of the human rights of victims of Nazi acts of plunder”, the European Union plans to establish a level legal playing field so that wherever a claim occurs the claimant is entitled to the same high standard of justice.

In just three countries are specific processes, as envisaged at Washington, set up to deal with claims. Britain set up the first, but this is at present subject to very significant restraints. In particular, certain national museums and galleries are subject to a statutory bar against restitution. The Commission for Looted Art brought a case for the restitution of four looted Old Master drawings which are in the British Museum. The British Museum Trustees agreed the claim very speedily and stated their wish to return the works. The British Museum, however, cannot as yet return do this because of this statutory bar. However, we are working closely with the Museum to find a creative legal means of allowing restitution to take place.

The second national claims process is in the Netherlands, to whom the Commission successfully brought that Panel’s first case.

Previously the government had been responsible for decision making on claims for works of art in public ownership, and there were hardly any successful claims. In the three years since it was set up, the Dutch panel has returned over 300 works of art and has acted as a model of transparency and accountability, publishing annual reports on its work and setting out in full the reasons for its decisions. The effectiveness of the panel in bringing justice reflects the idea behind any national process – which is that the current holder of looted property cannot always guarantee the impartiality and objectivity which are essential to any fair and just claims process and which a claimant has the right to expect.

Here in Germany you have the Advisory Commission set up last year with a specific remit to mediate where there are differences between claimants and institutions. It has a

very illustrious membership which is a great source of confidence. However, like others outside Germany, we know very little about its work or about the procedures by which it functions. We urge that our organisation, other professionals and the international public be provided with comprehensive information on its operation and terms of reference and regular updates about the cases with which it deals. We hope that this will be supplied, so that the fullest understanding of it can be promoted and the fullest use of it made.

From this short tour of the factors limiting the possibilities of restitution today, it should be clear why so many are unhappy with the current situation. Much has been achieved since the Washington Conference, but often only in small, isolated pockets. There is, however, a great deal more that needs to be done. Claimants, whose hopes were raised, have not had their expectations met. Many are despairing at the delay.

I said I would conclude with some very specific proposals that will, I hope, contribute to the discussion.

Of all countries, Germany has the capacity, the talent and the skill to undertake the work that is required to the highest professional, ethical and moral standards. It is in a special position to take a lead in this area and to establish a model for other countries to follow.

What is that model?

- In research, adequate financial resources should be committed as a matter of priority and properly trained staff in each institution assigned to the work. There are no short cuts to thorough provenance research.
- To have value, this work must be carried out or supervised by skilled professionals in each institution who are familiar with the records and archives.
- There needs to be a timetable for that work, a research publication programme (in English and German), and the widest international dissemination of information and results.
- There must be a commitment to tracing heirs through international partnerships,

- Finally, there must be a commitment to restitution through a transparent and accountable claims procedure, all of which should be achieved within a specified time frame.

We can look at other areas of restitution, where lessons can be drawn from the expeditious and organised ways in which those assets have been dealt with, and where procedures and partnerships with expert and representative bodies have ensured that prompt solutions have been found.

This is an international problem requiring international solutions, international cooperation, international collaboration. Partnerships with expert international agencies will encourage international confidence, provide access to essential information, and help ensure that results are achieved. We at the Commission for Looted Art and the Central Registry are ready to work in partnership, nationally, at state level, at municipal level, at any level, also individually, and are very willing to provide our assistance and expertise as you may require.

We can assist in the tracing of families, we can ensure the most widespread publication of your research in the most commonly used languages, we can assist with the provenance research, and with claims and procedures. We can suggest other partners in many countries with whom to work and consult. We also have an internship programme and welcome applicants. Do contact us at any time with any kind of query, proposal or suggestion .

The remedies to this Nazi looted property issue are simple, and the principles, those of transparency, accountability and communication, clear. All that is required are the appropriate political, economic and professional commitments, and a proper level of correspondence between the three. All three need to ‘pull their weight’ to the same degree.

60 years after the end of the Second World War, there are still many thousands of people looking for their looted property, objects that mean so much. These are not just impersonal items from a lost collection, but objects that carry a huge symbolic and

emotional value, to many, part of the landscape of a lost family, of a life destroyed. You cannot perhaps imagine what it can mean to a family to recover just one small object. Last year we were contacted by a library which had found some looted books on its shelves. As a result, we tracked down and returned to one family a printed book on a religious subject, worth probably 1.5 Euros. It was as if they had recovered the greatest treasure in the world. That's what it was to them. The unexpected return from that lost past of one small book from a library of 1,500, packed up and taken in front of their eyes by the Gestapo 65 years ago.

That's what this work is all about. Finding the people who were dispossessed, and returning to them the looted objects from their collections. There are thousands of families searching, and there are many tens of thousands of looted objects seeking to be reunited with their owners. Unless there is movement on these matters, a cloud will remain over the artistic collections of Germany and many other States.