

Restitution of Nazi-looted Art: the Next 25 Years

Online Conference

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Comment: Just and Fair Solutions – From Principles to Law

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Thank you, Professors Dr. Matthias Weller and Dr. Leora Bilsky, for the invitation to comment on the next twenty-five years of the Washington Principles on Nazi-confiscated Art.

As we gather to review and digest the work of the Bonn University Project on restating and reaffirming the Washington Principles, I am pleased to comment on implementing them to move from "Just and Fair" solutions to the established "law" or state practice over the next twenty-five years.

Ambassador Eizenstat has ably highlighted the progress made in the last 25 years. Equally important is Prof. Weller's observation that nations participating in the Washington Principles have exhibited varying commitments to devising and implementing "Just and Fair" solutions to confiscated art issues over this time. Thus, as important as it is to do comparative research on state practices, including developing consistent best practices, the significant issues of implementation highlight that broader issues now demand our attention.

All participants in the Washington Principles acknowledge the Holocaust as one of the greatest crimes of identity-based violence ever seen. It was a crime that was pre-meditated and explicitly planned to include attacking the property rights of those to be expelled or annihilated. That fact must be reflected in the work and workings of the Washington Principles.

Holocaust-related confiscation went beyond mere theft in several ways. It was not only about eliminating a people and their culture from European society and history but also about enriching the State with the property of those to be eliminated.

The theft thus went well beyond the higher-priced artworks that garner media attention. It included everyday cultural objects—such as china, crystal, silverware, jewelry, rugs, and keepsakes—i.e., family heirlooms that defined a Jewish culture and social history, a distinct segment of European society. The theft then went further. It ultimately included all household objects, including clothes, bedding, appliances, pots and pans, and even light bulbs.

Given the scope of the looting program, the Washington Principles have always been about more than the return of cultural property. There was no hope that all or most confiscated cultural property could or would be returned to its original owners or their families for various reasons.

Specifically, much of the property was too generic to be identified. European law also was not suited to undoing what the Holocaust had wrought, nor were post-World War II governments generally disposed to do the hard work of restitution even when the facts were fresh. If not just about restitution, what is the purpose of the Washington Principles?

The Washington Principles must use the legacy and lessons of Holocaust cultural property confiscation to prevent identity-based violence like this from ever happening again. This effort at "Never Again" will involve addressing two critical problems that have become clear over the last 25 years.

First, governments must stop hoarding information about provenance, the movement of Holocaust-era cultural property during and after World War II, and claims for restitution. This information relates to a proven and acknowledged genocide. Governments (and the museums, universities, auction houses, and art dealers they regulate) owe a public duty to collect, organize, and disseminate this information broadly and comprehensively.

This information will advance multiple goals. It will thwart denial, which has always been and remains a serious issue. It will honor the memory of victims by allowing them and their families to understand how the Holocaust unfolded against them. It will commemorate the

rich social and cultural history destroyed by the Holocaust, including by creating a basis for education, remembrance, and museum programming. Finally, it will serve as a powerful reminder of what must *never again* be allowed to happen—and as recognized by the United Nations under the principles of transitional justice, prevention of non-recurrence is perhaps the most essential duty that states owe to their citizens respect against the scourge of identity-based violence, as we have seen in the Russia aggression against Ukraine.

As such, governments should publish comprehensive information and statistics on research undertaken, findings achieved (even if partial), and lists of works identified, restituted, or otherwise subject to “*Just and Fair*” solutions. Information should also be published on all claims made, how quickly museums or other government departments respond to claims and inquiries, and outcomes achieved (giving due regard to confidentiality as to ultimate dispositions). Governments should mandate a time limit regarding how quickly museums must respond to inquiries and provide resources to assist museums struggling to react promptly and efficiently to inquiries.

Germany must lead on transparency. The Federal Government does not need to defer responsibility to the States "Länder" on Holocaust-looted art issues. The U.S. Department of State turned over looted art from the Monument Men's collection points to the German Federal Government in the 1950s. They are managed by the Federal Art Administration ("Kunstverwaltung des Bundes)." The Federal Art Administration loaned some objects to various government offices and other places for public viewing. Those objects not loaned are stored.

More importantly, having violated the rights and dignity of persecuted groups under the National Socialist regime, it is the responsibility of the German Federal Government to take more direct steps to publish the looted art it still holds both for Holocaust remembrance and preventing future genocides. The Lost Art Database at <http://lostart.de> lists individual objects and collections that have been or are suspected of having been confiscated as a result of Nazi persecution.

As an example for other governments, the Federal Art Administration should publish the Federal Government's Nazi-looted art as a separate collection website. As with the French MNR or the Dutch NK collections, the Federal Art Administration should consider creating

an entry highlighting its collection and its provenance research rather than listing individual mixed objects. Its status can be determined only by organizing the Federal collection as a distinct and recognized collection. After all, the Website is the central contact point for information, advice, and help on its holdings and for queries regarding art, records, archives, research, and claims.

Second, governments must stop treating Holocaust-era confiscated property as if they own it. They do not and cannot. Not only is this stolen property, but it also is property in which governments were complicit in the theft and/or the subsequent movement and non-return. As important, at the end of World War II, the Allies were clear about one thing: Cultural property was to be returned to its country of origin so that it could be returned to its true owners. Governments were not owners of this property **but custodians**—a term used for cultural property moving through Allied collection points. There was never any agreement that countries would treat this stolen property as their own state property.

The Federal Art Administration has differentiated its position of ownership of Nazi-looted art objects, according to Article 134 of German Basic Law, applies to assets owned by the Reich and provides that these would be the property of the Federal level of the Federal Republic after its foundation. Applying this determination to Nazi-confiscated Art is problematic on two levels.

First, the Reich's so-called ownership has been recognized as illegal and void. The German State must make clear that it is only holding this property as a custodian and that its rights of possession are not superior to those of true owners. Similarly, cultural objects returned to the federal government by the Allied Collecting Points must also be recognized as property acquired under persecution. Again, the German State can be nothing more than a custodian of this property—in perpetuity if need be. It also is not enough for the Bund now to state that looted cultural objects are held in the Bund's "possession." Absent a clear and unequivocal statement by the German State, no one reading the website or Bund statements would understand that the German State was not claiming "ownership" to this property. That is unacceptable.

Treating Holocaust-era confiscated property as a "possession" of the federal government also opens the question of whether these objects could be somehow transformed

into state property. The answer has to be that they cannot be so transformed because to do so would be to confiscate this property again. Claiming possession could be seen as a form of ownership and risks also becoming a form of Holocaust denial by muddying the historical heritage of this property and by undermining our efforts to account for how this property left its actual owners and never was returned—something that will undermine what must be our continuing efforts to prevent the Holocaust from happening again.

Accordingly, governments adhering to the Washington Principles should mandate that any property in government or museum possession as to which Holocaust-related transfer or confiscation cannot be ruled out be *deemed held in perpetual trust*. As custodians of this property, governments and museums should publish each year:

1. A list of all works in the trusts;
2. The provenance information that exists as to each work in the trust;
3. Whether there is any information on the valid owner(s) of any trust property;
4. Whether steps had been taken to contact any rightful owner(s) identified.

Here, the Federal Government has the sovereign right to determine and declare the legal status of this Holocaust-looted property. Having stolen or caused the loss of this property (including through forced private sales), the German State may determine the status of that property to the extent it has come into the hands of the German State. In particular, the German State must make perfectly clear that it has decided that it may never gain or profit—even indirectly—from the wrongs committed during the National Socialist Era. As such, the German State should announce that it will treat Holocaust-looted property only as property to be held in *perpetual custodial trust* by the German State.

This act by the German State would be consistent with the foundational principles of German law and policy and with international law. It also would establish an important precedent for other nations, including under the Washington Principles, that would aid in preventing future genocides and mass atrocity crimes by undermining the profit motive that often accompanies them.

Finally, the idea's importance is to show that being true to the Washington Principles has always been about more than the return of property. At its core, the Washington Principles must be about creating processes and practices that help make any future Holocaust less likely.

Thank you.

James Bindenagel, as U.S. Ambassador for Holocaust Issues (1998-2002) negotiated the Washington Principles. He has served as an American Army officer, U.S. Diplomat, and Professor in three Germany from 1972 to 2024). He is the Henry Kissinger Professor Emeritus at Bonn University.