

legal entities to search for documents concerning their property. These archive records are also becoming an important source for academic research on the era of the Second World War.

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**A NEW PARADIGM FOR RESTITUTING
LOOTED CULTURAL PROPERTY**

First, I would like to dedicate this presentation to the memory of Officer Stephen Jones who lost his life on June 10, 2009, at the hands of an American neo-Nazi, while protecting the US Holocaust Memorial Museum in Washington, DC.

Second, I regret the absence of a number of veterans of art restitution like Willi Korte, Ori Soltes, Konstantin Akinsha, Randy Schoenberg, and many others.

Third, I would like to restate the obvious:

- ▷ The Holocaust is a very personal matter. It engulfed the lives of six million Jews and five million non-Jews across continental Europe and North Africa. Those men, women, and children died in a network of 20,000 prisons, ghettos, camps and extermination centers, stretching from the Channel Islands to the far reaches of Estonia and the shores of Tunisia.
- ▷ The Holocaust, in particular, and the WW II, in more general terms, went hand in hand with the forcible transfer

and seizure of property of all kinds belonging to the victims of Nazi/Fascist persecutions.

- ▷ These forcible transfers and seizures reshaped the wartime economies of Europe and laid the foundations of a new economic order that stretched into the postwar era.
- ▷ The highly selective punishment of collaborators and war criminals prevented the victimized populations from achieving a badly-needed measure of justice and closure, which is one reason why we meet here in Prague, 64 years later.
- ▷ All in all, after war's end, 55 million people were dead, one third of Europe's infrastructure lay in tatters, in some countries, like the Soviet Union, a third of the male population had been killed, creating a multi-generational trauma with severe consequences on the social, cultural, economic and spiritual life of the survivors.

The artistic legacy of all nations under Nazi/Fascist occupation or control was amputated, embodied in the loss of creative power of thousands of visual and performing artists, most of them Jewish or belonging to groups targeted for special treatment by the occupiers and their collaborators. Those left to survive were, for a large part, either collaborators themselves or those whose styles conformed to the needs of the regimes in place.

The works of art stolen by the Nazis and their local henchmen belonged to these persecuted artists, as well as to collectors, dealers, and institutions. If we look only at the Jewish community and accept a broad definition of cultural property, several million objects were looted. If we add cultural property forcibly

removed from all other victimized households across occupied Europe, we can easily think of at least 5 million objects, excluding books, silverware and accessories.

Where are those objects? What are those objects? Who owned them? Who took them? Where did they go? Were they sold? Who acquired them? For those seeking restitution of their cultural losses, the answers lie in part in historical archives. It comes as no surprise, therefore, that restitution and documentation are organically linked. Ultimately, no one can argue against the fact that open access to historical archives can only facilitate the reconstruction of a racially – and politically – motivated criminal act associated with mass murder, genocide and persecution on a continental scale. Restricting access to those records would thus signal an avowed reluctance to come to terms with an obvious historical reality, an attempt to rewrite history through concealment of documentary proof of crimes which occurred over a twelve-year period.

Every nation on the continent of Europe is implicated because it is in the very nature of bureaucratic societies to build walls of silence and secrecy around the historical truth. What is there to hide that is so dangerous after 64 years? For starters, the names of collaborators, their ties to ruling elites, their illegal and immoral transactions on wartime art markets, the protections they sought then and in the postwar period, murky tie-ins with intelligence agencies, government bureaucrats, war criminals seeking refuge in safe havens. Cynical dealers, museum curators, and directors, politicians from right, left and center who profited from illicit acts. In sum, the many facets of a highly corrupt art world and its attendant coterie of politicians, businessmen and oddities from fading aristocracies. I guess that might pose a problem, although it is a historical problem, but it might resonate today

only because the sins of the fathers, mothers and uncles are transferred to their progeny and subsequent generations. It is true then: access to information is dangerous, at least for those who have built their careers on deceit, secrecy, and the protection of their privileges.

Let's go back to the end of the WW II. Although we are not here to debate the pros and cons of Allied restitution policies, I would argue that, all in all, Allied officials – American, British, French, Soviet and others – were unable to address the full extent and scope of the plunder, despite valiant attempts by individual officials to mitigate the horrors of the war. For the Soviets, the solution was relatively simple. Faced with massive destruction at home, their armed forces resorted to wholesale removals of property under their care with some notable exceptions and they proceeded to appropriate those items *manu militari*. However, what was true on the west bank of the Oder River equally applied to the east bank of the Oder River. Cultural property from Russia, Poland, and Latvia ended up in the Western Allied zones of occupation, while Dutch, Belgian, and French collections found their way into Slovakia, Silesia and as far as the Ukraine, deep within the Soviet sphere of influence and control. Similarly, German and other administrative records pertaining to the special handling of cultural property in occupied territories ended up in hundreds of depots, administrative buildings, and bunkers scattered about battlefields. Those documents either went east or were apportioned like a deck of cards among the Allied powers. One could spend half a lifetime untangling the tortured path of those archives seized by military units, and my colleague, Pat Grimsted, is an extraordinary living example of such an endeavor.

When searching for information on stolen cultural property, Allied transfers and removals of property and records have only

complicated the task of restitution-minded individuals to find the evidence needed to facilitate the return of stolen objects to their rightful owners. And yet, documents in governmental archives only provide us with a partial understanding of how objects were seized, where they may have ended up, and who might have been their owners after the war's end. The rest of the story is buried in the records created by private owners, gallery directors, museum officials, art historians, insurance executives, corporate officers, foundations, auction houses and so forth. When we speak of access to archives we must emphasize all archives, public as well as private.

In retrospect, the postwar era was characterized by the wholesale recycling of millions of stolen cultural objects, through private hands, institutions and corporate entities. Each transaction produced some kind of record, however flimsy, at some point in time. And yet, nothing has really been done to demand an accounting of such transactions since 1945. Those who bought, sold, or traded stolen cultural property in the immediate postwar years, did so oftentimes knowingly with the consent of public officials in all countries involved in the Second World War. The double standard which has shielded the art market from inconvenient scrutiny in the postwar era prevails even today with the silent consent of public officials, even those who clamor for restitution. It is a type of hypocrisy that should end here in Prague, but for that to occur, decision-makers need to display a modicum of courage.

I spoke about a new paradigm for restitution. A paradigm is a fancy way of saying that a number of conditions have to be met in order to produce a tectonic shift in the way we approach restitution. First, there has to be a willingness to engage in such a process. Rather than using concerns over privacy rights of

individuals as an excuse for denying access to historical records that are over 64 years old, each national government present today must examine ways in which historical research on racially and politically motivated thefts of cultural property can proceed without viewing these efforts as infringements on the rights of individuals who, for the most part, are long dead.

As hinted earlier, most of the negative fallout from any opening of archives pertaining to stolen property may result in embarrassment and red faces for those who are implicated in thefts that occurred two generations ago, assuming that they are still alive. Added to a willingness to engage in such a process, there needs to be a recognition and acceptance that access to specific archival collections is inextricably tied to restitution. Any movement to open an archive must go hand in hand with a national commitment to enact laws to permit restitution or to enforce existing laws or establish new mechanisms to return stolen objects to their rightful owners.

An arrangement needs to be reached with the players – major and minor – of the private art market whereby access to information pertaining to the present whereabouts of a stolen object can be guaranteed without compromising sources.

Where institutions are the custodians of stolen cultural property which their governments view as war reparations, another discussion needs to take place between consenting adults who are mature enough to hold such a discussion. After all, 64 years have elapsed since the Allied victory brought to its knees the National Socialist behemoth and its fascist cohorts. For 64 years, an untold number of objects have been sitting in a *netherland* of omission, neither exhibited nor destroyed, just sitting. Once in a while, some surface. What does it take to obtain the release of

these objects so that they can be identified, and returned to their rightful owners whoever they might be, Jew, non-Jew, private individual, institution?

The first baby step or Level 1 towards such an ambitious goal is the inventory. Inventories are important documents because they tell us something about the content and scope of cultural property assets, sometimes value, identification of the work, and perhaps even something about an owner. Inventories also help to recreate itineraries of works of art forcibly removed from homes, offices, display cases, walls. If the inventory of the objects sitting in *netherland* exists, we should discuss ways of making that inventory available for consultation and study so that we can all understand what we are dealing with here. Without the inventory, we will not know what is in storage, thereby continuing to deny restitution to someone and preventing that someone from achieving a painful closure after so many decades. If the inventory does not exist, then I would like to propose that a mechanism be put into place by impartial, fair-minded people to draw up such an inventory under the watchful eye of the current custodian, with the proviso that the contents of the inventory can be carefully studied with a view to matching works with owners. It is a baby step, but a necessary one if we are to engage in an irreversible process of putting the past behind us and moving on. We cannot move on without justice.

Such an inventory becomes a powerful tool, the basis for Level 2 – a discussion amongst fair-minded, pragmatic individuals who seek only to do the right thing, acknowledging past wrongs and traumas, founded on mutual empathy and desire to move forward in the name of justice for all. In other words, a dream. Level 2 consists in drawing up a plan of restitution of those objects that have been readily identified as rightfully belonging to someone,

somewhere. Level 3 consists in drawing up a plan to dispose of property that is not identifiable. And there is the rub. Traditionally, back in the late 1940s and early 1950s, organizations responsible for heirless property took the simple way out and said: let's sell! And assign proceeds to needy survivors. However, we might run into some serious opposition here since the custodian might want some type of compensation for having "held on" to those objects for 64 years. This task might best be left to lawyers to hash out, but then, we might never get out of the barn; that is assuming that we can even enter the barn... But, as in all dreams, we are in the barn, and we are discussing among individuals who may or not become friends, how best to handle so-called heirless or unidentifiable property. In today's mercenary, hyper-materialistic and insensitive world, one approach is to share the proceeds of sales of heirless property along carefully delineated lines. It is just an idea, but the issue of looted cultural property from the Second World War will never, and I mean never, go away without some form of global political and financial settlement of those stolen works that have been left in *netherland*.

So, when I speak arrogantly of a new paradigm for restitution, that paradigm requires the following elements before we even register a semblance of a tectonic shift on our restitution seismograph:

- ▷ A will to act;
- ▷ Giving exclusive primacy to ethical and moral considerations, laying all legalistic and bureaucratic considerations aside;
- ▷ Unfettered access to private and public archives that are directly relevant to the thefts of which we speak;

- ▷ Cooperation with the private sector to locate and confirm the present whereabouts of stolen objects;
- ▷ Negotiated solutions with custodian institutions holding stolen works of art as war reparations, which might include financial or other incentives;
- ▷ Cooperation of law enforcement agencies, national and international, in locating and recovering stolen cultural property; and
- ▷ Creation of an international entity responsible for the return of such objects to their rightful owners and for disposing of so-called heirless objects in a manner that is of ultimate benefit to the families of victims, and which underwrites and promotes further research into the fate of such objects.

The least attractive solution is the one that no one dares to contemplate: Regulating the art market to ensure cooperation in locating, identifying, and returning stolen cultural property to rightful owners.

I work for an institution in Washington, DC, called the United States Holocaust Memorial Museum. Its archives hold more than 120 collections of documents pertaining to the persecution of the Jews and other groups. These documents come from Europe, North Africa, Central Asia, and even Shanghai. There is no other institution of its kind in the world today which provides access to so much information under a single roof.

Why cannot such a similar but far more modest establishment exist that is solely devoted to the documentation of Nazi-Fascist

plunder and spoliation of cultural property? If it were to be created, the history of plunder could be easily rewritten, the pace of restitutions substantially accelerated, and a quantum boost given to badly-needed scholarship in an area stymied by continual obstructions on all fronts.

That is my dream and I hope that part of it will unfold before my dying breath. Remember, historical archives help us write the story of wrongs committed against people as much as they help us right the wrongs committed against people.

Thank you.