

stand-alone ultimate recipient finds that there are other, guiltier people that can be brought in, other, more morally responsible people who could be included in the remedial pattern, I think that might make some ultimate holders actually less intransigent, less recalcitrant, more willing to come to the table and seek the solution. But of course, all this you might think is over ingenious or in some way lawyers' sand pit talk, nothing that any rational human being wants to deal with.

Let me say in conclusion that I cannot overemphasize my belief that all forms of legal remedy here and other procedural remedies should go hand in hand with education. Increasingly, I find the need for people to really understand what happened. If they understand what happened, they are much more responsive to means of finding solutions.

I will tell you this personal story because to me it does illustrate the need for education. In July 2001, I gave a talk on the subject in Melbourne, and at the end of this talk, two people came up to me. One was an old man. He had tears in his eyes, and he just said: "Thank you for helping to make sure that nobody forgets." The other was a young woman and she said to me: "So you are Jewish, then?" That was her take on what I was saying. The implication was that we have to be Jewish to be interested in this. And I think this is where the education comes in. And at the end of the day, I think enlightenment has been far more important than law.

Thank you.

The Search for Works of Art and Other Cultural Assets: A Business or Moral Obligation?

► Nawojka Cieslinska-Lobkowicz

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THE OBLIGATION OF THE STATE OR A HOBBY OF THE FEW. THE IMPLEMENTATION OF THE WASHINGTON PRINCIPLES IN POLAND

I am saddened that not much good can be said about the policy of my country regarding the problems discussed at this Conference. I do not want to use this opportunity to flatly condemn my country and thus "soil my own nest." However, I do want to call on the government of my country to recognize the commitment made through its signature of the Washington Principles in 1998.

This was the statement made in 2006 by the director of the Polish Ministry of Culture and National Heritage department that is responsible for the museum policy:¹

"We respect the decisions of the Washington conference. [...] But we have no such problem. Poland was not in coalition with Hitler and has looted nothing."

The same official announced elsewhere:

¹ *Gazeta Wyborcza*, February 22, 2006.

“The so-called problem of the Holocaust victims’ property has to consider the fact that the victims of Nazi looting were both Jews and Poles, and that the looted objects did not end up in Polish collections.”¹

Those statements have never been retracted by the Polish Ministry of Culture and National Heritage.

In spite of this opinion, Polish museums and libraries may still contain quite a large number of objects lost by their owners as a result of the German occupation and the Holocaust. Some objects may have even been stored since the beginning of the war, when art owners deposited their collections or (especially the Jewish collectors) made fictitious gifts to public institutions while still hoping that they might eventually get their property back.

During the occupation, the closed Polish museums and libraries were often used by the Germans as repositories for valuable cultural goods looted from the Jews during their deportation to the ghettos, and later during the ghetto liquidations. Such was the situation, for example, in Warsaw, Krakow, Łódź, Poznań, and Lublin.

We know that just after the war, some objects that were rescued this way were returned, if their prewar owners claimed them. But we cannot be sure if restitutions were consistently practiced. Moreover, a great majority of the confiscated objects was stored without any indication of to whom it belonged. All other goods found throughout the liberated Polish territories in warehouses, offices and apartments left by the fleeing Germans,

if unidentified, were routinely classified as abandoned property, which, according to the 1945 and 1946 state decrees, became property of the Polish State. In the former German territories gained by Poland as a result of the Potsdam Conference of 1945, practically all abandoned property was considered to have been abandoned by the Germans and was nationalized. That also included property confiscated by the Nazis from the German Jews.

Many art objects looted by the Germans or stolen or appropriated by the local populations became part of the public collections after the war. They were purchased from individuals or antique shops that were set up during the occupation years or shortly after the war, often selling objects from unknown or fictional sources.

After 1950, when the art trade was nationalized, provenance standards did not improve; in fact, the tendency to falsify provenance documents increased. This enabled the black market to blossom, and the smuggling of art abroad became commonplace. Since 1989, the displaced art works, especially polonica “privately” looted by Nazi functionaries or by German soldiers or smuggled after the war, have been returning to the Polish art market. Usually, their prewar owners and their whereabouts during the war years are not mentioned.

This sizeable segment of the contemporary Polish art trade which sometimes deals with the sudden appearance of high-class objects deemed lost during the previous decades helps to enrich the museum collections directly through purchases (rare because of the limited financial resources that public cultural institutions have at their disposal), or indirectly through deposits and gifts. I should also mention the completely forgotten category of artworks that found their way into the country’s museums

¹ *Muzealnictwo*, 2005, vol. 46, p. 168.

following the postwar emigration waves of the remaining Polish Jewry. These objects, although luckily rescued from the Holocaust, could not be legally taken out of the country because of official restrictions on cultural goods, and thus were bought from their emigrating owners at prices much lower than their market value.

For almost 20 years, the Ministry of Culture and National Heritage has been gathering documentation on the Polish cultural losses during the Second World War. Some data gathered by the Ministry has been published in books and online; plans exist to publish more information. This documentation mainly deals with the losses of the state and communal collections and a few well-known private collections that were owned by the aristocracy. Only these collections customarily (though not always) would have been registered or documented in some way before the war. Other private collections had not been catalogued, and their documentation would be fragmentary and dispersed or altogether lost.

The example of the 1932 exhibition of paintings by the Polish-Jewish artist Maurycy Gottlieb, which showed over seventy canvases from private Jewish collections whose owners were mentioned by name should suffice. Catalogues dating from the nineteen thirties of the exhibitions of famous Polish painters such as Jacek Malczewski, Józef Mehoffer, Leon Wyczółkowski or Teodor Axentowicz prove that a great number of their canvases had been owned by well-known Jewish collectors rather than persons who wished not to disclose their names.

Nevertheless, relatively few of these owners' names are mentioned in the published documentation of war losses. Maybe that is because, as written in 1977 in a confidential letter by the

director of the Ministry Museums Department, this would necessitate earlier "research in the museums, which had gotten some objects as a result of restitution or purchase."

It is understandable that during the first decades after the fall of communism in 1989, the Polish Ministries of Culture and of Foreign Affairs, as well as public cultural institutions, concentrated on documenting and listing the war losses suffered by the country in general. The purpose of creating these lists was to use them during the state's restitution negotiations with Germany, Russia, and the Ukraine concerning those Polish cultural goods, which, as a result of the war, were found within the current territories of these countries.

But in 2000, the Polish delegation to the Forum on Holocaust-Era Looted Cultural Assets in Vilnius declared the decision to undertake provenance research in our museums which:

"... will be closed with the list of works of art and other cultural properties, which have been saved during the war in the museums, but have been previously lost by the Holocaust victims resulting from obvious lawlessness. Every identified work of art of such provenance will be made public in order to undertake further steps according to the Washington principles adequate to the circumstances of the given case."¹

A special inter-ministerial commission was created for the coordination and monitoring of these actions; cooperation with Jewish congregations in Poland was planned for the future.

¹ Deputy Minister of Culture and National Heritage, was published at <http://vilniusforum.lt/proceedings>. The website is no longer available (editor's note).

All of this turned out to be nothing more than a bureaucratic and political ephemera, with no concrete results.

In practice, the Washington Principles have been used by the state authorities exclusively for the wholly legitimate goal of reclaiming cultural goods that, as a result of the Second World War, had been displaced outside the current borders of Poland. Thanks to the spirit, as well as the letter of the Principles, restitution was accomplished for a number of art objects belonging to prewar Polish museums and private collections, which after the war had been bought in good faith by American museums and private collectors in the USA and Great Britain, or objects that were withdrawn from foreign auctions.¹

In this context, it is worth mentioning four cases of restitution of Jewish-owned cultural goods that involved Polish authorities.

The first two cases concern countries abroad.

The first one was the return in 2004 of forty Hebrew manuscripts and incunabula from the legendary collection of Leon Vita Saraval (1771–1851).

Since 1854 and up to the beginning of 1939, the collection had been owned by the library of the *Jüdisch-Teologisches Seminar* in Breslau. The whole 20,000-volume library of that school was confiscated by the Gestapo and was transported to the *Reichssicherheitshauptamt* in Berlin. Then, in 1943, to protect it from possible bombardment, the library was moved to the territory of the Czech and Moravian Protectorate. Because of this route, the most valuable pieces of the Saraval collection ended up after the

war in the Czech National Library in Prague. The Commission for Art Recovery initiated the request to the Czech authorities to return these objects to the Jewish congregation in Wrocław (former Breslau), and the Polish Ministry of Foreign Affairs conducted the negotiations. The Polish-Czechoslovak agreement of 1946 that bound both countries to mutual restitution proved to be ineffective in this case, because it did [Archival data in author's possession] not take into account the territories gained by Poland as a result of the Potsdam Conference such as Lower Silesia, to which Wrocław belongs. Thus the restitution of the Saraval Judaica became possible only as a result of the Washington Principles, to which the Czech party agreed.

The second restitution case concerns the 17th century painting by Pieter de Grebber, which appeared at a London Christie's auction in 2006. The Art Loss Register identified this painting in the catalogue of Polish war losses and duly informed the auction house and the Polish Embassy in London. The Polish Foreign Affairs Ministry intervened and requested the return of the painting to Poland.

It was then that Polish diplomats in the USA informed Warsaw that the painting's owner's heirs are living in Philadelphia; the owner was a well-known prewar antiquarian from Warsaw, Abe Gutnajer, who had been murdered in the ghetto there in 1942. As a result, the Polish authorities decided to help the heirs disinterestedly. The matter was finalized in 2008 by an agreement between the current proprietor of the painting and Gutnajer's heirs. This was "the first case in which our Foreign Affairs Ministry acted for restitution on behalf of rightful heirs, who happen not to be Polish citizens."²

¹ See the website of the Polish Ministry of Foreign Affairs at <http://www.ms.gov.pl>.

² *Gazeta Wyborcza*, April 24, 2008.

Furthermore, to this day, the painting is mentioned on the Foreign Affairs Ministry's internet page as one of the objects restituted to Poland.

Two inland cases were solved in a different way.

The first case concerns the liturgical objects that were looted by the Germans from Warsaw's synagogues and survived in the storage of the capital's National Museum, which was closed during the occupation. After the war, these objects were registered in the Museum's inventory. The Association of Jewish Religious Congregations of the Polish Republic, according to the law of February 27, 1997 concerning the state's relation to Jewish congregations, claimed the restitution of these Judaica to the only synagogue currently existing in Warsaw.

The Museum returned the objects, but only as a long-term loan, and kept them on its inventory list. The basic argument against restitution was that in spite of the very high probability that these objects had been the property of the Warsaw congregation, it was impossible to be completely sure, because the objects were produced in series and thus were not unique.

Now to the last case of restitution. Goustaue Courbet's painting *Landscape Around Ornans* was mistakenly restituted to Poland by the Americans in 1946, from Fishhorn in Austria, as part of a group of paintings that had been looted by Germans from the Warsaw's National Museum. The Courbet had been part of the Budapest collection of Baron Herzog, which was confiscated by the Nazis in 1944. In 2001, the Warsaw Museum received a claim to return this painting to Herzog's heir, an American citizen. The Museum director finally decided to return the painting. But the Ministry of Culture refused to grant an export license. It refused

the heir's entitlement to the painting and voided the return. The Courbet remains in Warsaw's National Museum as its legal property to this day.

There are a few other restitution claims concerning several paintings and drawings of Old Masters and German painters in the Polish public collections. These are the claims of the heirs of German Jews from Breslau (Wrocław): Max Silberberg, Carl Sachs, and Leon Smoschewer, addressed to the National Museums in Wrocław and Warsaw; and the claims of the heirs of the Dutch collector and art dealer Jacques Goudstikker and of the Jewish family Zoellner that was forced to emigrate from the German Reich, addressed to the National Museum in Gdańsk.

The possessions of these families were looted by the Nazis under various circumstances, and they included their private art collections. The heirs and their lawyers succeeded in reconstructing the documentation of these collections to a considerable degree. In cases of Silberberg's and Goudstikker's property, the museums in Germany, Holland and Israel restituted the paintings identified as originally belonging to the confiscated collections, although it was not their legal duty. Polish museum directors, lacking political support or guidelines from the authorities, ignored or rejected the claims on the basis of Polish law.

The Jewish Historical Institute in Warsaw also rejected the claim to return two paintings by Ralf Immergluck, a Jewish artist from Krakow, who perished in the Holocaust. The claim was submitted by the artist's family. In this case, the decisive argument for the refusal was insufficient proof of ownership, even though the painting had been purchased soon after the war in a Krakow antique shop, without any provenance data.

The Ministry of Culture and National Heritage was unable to provide me with answers as to the number of claims made in recent years by owners' heirs. As the Ministry stated in a letter addressed to me on June 4, 2009:

"The claims for return of specific objects are submitted directly to the interested institutions that, according to prevailing laws, are sole managers of their collections. Therefore, the ministry does not have the possibility to conduct statistics of this type. This does not mean that restitutions were not conducted."

Knowing that without the consent of the Minister of Culture no director of a public museum can remove items from the inventory of his collection, we can presume that during the last years not a single object from Polish museums has been restituted to the heirs of Jewish owners.

The slowness of the authorities and cultural institutions in verifying the provenance of public art collections, accompanied by lack of transparency, has caused some independent initiatives to arise.

In the years 2002–2006, the Stefan Batory Foundation organized a series of international and national conferences, seminars and debates that were dedicated to the ownership, restitution and re-privatization of cultural property, and involved interested professionals, representatives of Jewish communities and former owners, lawyers and journalists.

In 2002, the Museums' Commission of the Polish Art Historians' Association established the Forum for Displaced Works of Art. This Forum attempted to inform the professional

community and media about the Washington Principles, and to promote cooperation among museums in the field of provenance research, to encourage open proceedings and to serve as an independent advisory body for the anticipated restitution claims.

The Polish ICOM requested the successive Ministers of Culture to create specific guidelines for the realization of the Washington Principles. It also directed attention to the need to regulate the ownership of collected items, as an act necessary for the legitimacy of the museums in Poland and abroad.

The Polish ICOM even conducted a statistical analysis of our museums' ownership status, which showed that a high percentage of items listed in the inventories as well as in the deposits were of unknown provenance. The majority of these items are not objects lost by owners during the German occupation. Unofficially, museum experts estimate that about one percent of all items in Polish collections were Jewish-owned.

All of the activities that I have described here were looked at by the authorities without much understanding. Supported by the media on a case-by-case basis, they had a limited effect. Careful provenance research of the museum items in the exhibition – and (still seldom) collection – catalogues remains an achievement of a small number of individual researchers.

Fortunately, during the last decade great progress has been made in Poland in the research and understanding concerning Holocaust issues and the history of Polish–Jewish relations in general, especially during the occupation and the postwar periods. This progress is not just quantitative; this is a qualitative change concerning not just specialists but the general public as well.

No doubt the catalysts for this process were the two great public debates caused by the books by Jan T. Gross: *Neighbors* (2000) and *Fear* (published in Polish in 2008).

The uncovering of the 1941 Jedwabne crime and the description of postwar criminal anti-Semitic acts in Poland (resulting in unlawful appropriation of abandoned Jewish property by the Poles) caused a shock and opened the eyes of many. Thus museum specialists, librarians and archivists became willing to join the growing group of individuals who for years has been calling for the adoption of the Washington Principles. This group tried to stay informed about the restitution issues, to write and lecture on this subject, to continue the provenance research, to mediate between the parties, and to monitor the art market. More than that could not have been done by private means.

Various solutions that were used for restitution purposes in other countries can certainly prove useful in choosing an optimal formula for a concrete program of the Washington Principles' implementation in Poland. In my opinion, besides the involvement of a governmental agent and public cultural institutions, the necessary condition for a successful implementation would be the participation of the NGOs, representatives of the Jewish communities, independent experts, and trusted public figures. Another indispensable condition would be statutory transparency of procedures, open actions, and information on the results of the proceedings made accessible to the public. Independent consultants to the museum directors and to the Ministry of Culture should also advise in matters of restitution claims.

The specificity of the Polish restitution problems – the number of heirless victims of the Holocaust among Polish Jews, the lack of inventories of many prewar private collections, fragmentary and

dispersed documentation, illicit export of artworks, and the rules of the postwar art trade – demand the creation of a special team devoted to the provenance research of public collections. Such a team should include museum, library and archive collaborators, independent researchers, and, last but not least, those specialists who have spent years documenting Polish cultural losses.

Such a team would need full access to archives (this has not been the case until now) and to museum inventories. It should be a task of high priority to create an online archive of ownership signs and marks, and an online library of all documents, to help in identifying past owners and collections. An important aspect of the activity of such a team should be cooperation with foreign institutions and provenance researchers, as well as an attempt to gain understanding and cooperation of Polish auction houses. No less valuable would be contact with groups and persons who had emigrated from Poland before, during or after the Second World War, and who could supply knowledge and traces regarding lost collections or their postwar tracking. This, incidentally, touches on the problem of the access to the documentation kept by international auction houses.

To sum up, the goal of provenance research is not just the restitution of objects to the owners' heirs, or another fair and just solution. To no lesser extent, the goal is also, after decades of social amnesia, the restoration of memory of the prewar Jewish collectors and the fate of their collections. Museums, libraries, and archives that guard the common memory owe this not only to the heirs, but to their own mission, to the society they serve, and to the preservation of the historical memory of Polish Jewry.

Let me finish by making a gesture of returning two very modest but symbolic art objects to their owners.

The first object, which I found in Poland is a small watercolor by the Polish-Jewish painter Erno Erb who was murdered in the Lwów ghetto. On the back there is a note that it belonged to the Leon Braciejowski collection. Braciejowski was the owner of two elegant fashion stores in Krakow, a member of the town's Jewish elite and a respected art collector. His collection of more than seventy paintings, including works by famous Polish painters, disappeared without a trace during the German occupation. My search for the heirs of Leon Braciejowski ended successfully. His granddaughter, who lives in California, has only one prewar keepsake from her grandfather – a clothes hanger from the Braciejowski shops. I ask the representative of the US State Department to hand Erb's watercolor over to her.

The second object I found in Germany. It is a 1926 print of a lesser-known Polish artist. It was looted by the Germans during the Warsaw Uprising in 1944.

I am pleased to return this print to the Polish Ministry of Culture and National Heritage, because it belonged to the prewar State Collection of the Republic of Poland, as shown by the stamp and inventory number on the print's back.

► Lucien Simmons

SOTHEBY'S, USA

PROVENANCE AND PRIVATE OWNERSHIP: JUST AND FAIR SOLUTION IN THE COMMERCIAL ART MARKET

Sotheby's engages primarily in the public auction sale of fine and decorative works of art and has offices located in more than 40 countries. Auctions are conducted in 11 auction centers throughout the world. Sotheby's today is largely a combination of the London auctioneering firm of Sotheby's founded in London in 1744 and the New York auctioneer Parke Bernet which was founded in the autumn of 1937 from the ruins of the American Art Association.

Parke Bernet, Sotheby's predecessor, was one of a number of institutions in the United States to have been chosen by the International Refugee Organization and by the American government to assist in the liquidation of art objects recovered by the Allies in Germany and of art objects confiscated from Enemy Aliens on American soil. Numbers of auctions of such art objects were held after the cessation of hostilities.¹ Unfortunately, our records from these sales, save for the catalogues themselves, no longer exist.

In the years following WW II, Sotheby's was chosen by many private recipients of restituted property to handle their sales

¹ Four sales of property consigned by the IRO were held in 1948: Jewelry and Precious Stones (232 lots), June 21–22, 1948; Continental Silver, Porcelain, Glass and Ornaments (828 lots), June 23–25, 1948; Precious Stones and Gold Jewelry (461 lots), September 14–15, 1948 and Continental Silver, Porcelain, Glass, Gold and Enamel Watches and Rugs (834 lots), September 16–18, 1948. Sales for the alien property custodian of the U.S include the stock of the New York and Boston stores of Yamanaka & Co., Inc. which took place in 1944.