

art from circulating through the marketplace, I hope that we might be able to build on the very real foundations of the last decade of experience under the Washington Principles, and set new benchmarks in diligence and claims processing for the next decade. Christie's looks forward to working with you over the coming years on developing workable auction house guidelines and on addressing such other suggestions that would facilitate the just and fair resolution of claims as may be made during the course of this Conference.

► **Felicitas Thurn**

DOROTHEUM, AUSTRIA

DOROTHEUM: PROVENANCE RESEARCH AND DUE DILIGENCE IN THE ART TRADE IN CENTRAL EUROPE

History

More than 300 years after its foundation by Emperor Joseph I, the Dorotheum is one of the most important auction houses in the world and the leading auction house in the German-speaking area with offices in Milan, Munich, Düsseldorf, Prague, Tokyo, Zagreb, Brussels, Tel Aviv, Rome, and Paris. For the broad range offered by the Dorotheum, more than 100 specialists are available, as well as over 40 departments. The highlights range from contemporary art to modern art, from design to old master paintings. As an auctioneer, the Dorotheum sells, as an agent, other people's property. The Dorotheum stems from the Pawn & Query Bureau established in 1707, located in Vienna's inner city. When the auction business began to prosper at the end of the 19th century with auctions being held in 13 separate

rooms, Emperor Franz Joseph commissioned the rebuilding of a Palais on the grounds of an old monastery, which was inaugurated in 1901. Already in the first thirty years of the 20th century, the Dorotheum saw many great private collections passing through its premises and held numerous specialist sales of books, manuscripts, medals, coins and other art objects. During the Nazi era, important posts within the Dorotheum hierarchy were assigned to supporters of the regime. The institution's infrastructure was used to auction off aryanised property, and although the Dorotheum itself was not actively involved in aryanisations, it benefited extensively as a trading agent from consignments by administrative bodies such as the Gestapo, customs and financial authorities, or the City of Vienna.

When the Dorotheum was privatized in 2001, the management made coming to terms with the Dorotheum's history during the Nazi era one of its prime concerns. Upon the sale of the Dorotheum, the ÖIAG – the Austrian Republic's investment and privatization agency – as former owner of the auction house, paid USD 32 million into the General Settlement Fund as a compensation payment for their Austrian holdings that cooperated with the Nazi Regime. The year 2006 saw the publication of a report by independent historical experts on the history of the Dorotheum from 1938–1945.¹ At the same time, the Dorotheum handed over all historical archival material to the Austrian State Archive in order to make it available to all researchers. The establishment of a department of provenance research set up in 2003 by the new directors was groundbreaking in Central Europe and continues to be the only in-house department of provenance research dealing with restitution issues in an auction house in continental Europe.

¹ Lütgenau, Schröck, Niederacher, *Zwischen Staat und Wirtschaft. Das Dorotheum im Nationalsozialismus*, Oldenbourg Verlag 2006.

Provenance Research

The provenance or the full ownership history of an artwork is of great importance to an auction house not only in the context of looted art. The provenance helps establish the authenticity of a work of art, a provenance from a famous collection will enhance the importance and mostly also the value of an artwork and it gives an historical and art historical context to a work of art. In the past years, the whereabouts of an artwork between 1933 and 1948 have become increasingly important when researching its provenance. The Dorotheum is alert to various means of looting and dislocation in these years such as aryanizations, forced sales, seizures, theft, and spoliation or de-accessioning of degenerated art that can give rise to disputes. However, complete provenance of a given work of art is often difficult if not impossible to establish. Frequently ownership must be determined through secondary sources such as *catalogues raisonnés* and artist monographs, exhibition catalogues, annotated auction sales catalogues, publications or others. Whilst it is comparatively easy to establish the history of well-known artworks, less important works are more likely to have gaps in their provenance history. Provenance research is also undermined by the fact that many of the items are not unique (such as prints, or multiple paintings of the same subject by the same artist). Changes in attribution, title or description further complicate the work. The absence of a full provenance should therefore not automatically taint an artwork. Many works of art lack a clear history for legitimate reasons: Private records of sales frequently do not survive, many private collectors buy and sell anonymously through third parties and in numerous cases records of auction houses or dealers are at best incompletely preserved, if not lost, or destroyed.

Due Diligence

The possibility that an artwork with a tainted provenance might be offered to the Dorotheum on consignment gave rise to moral and legal considerations and led to a tight-knit system of due diligence: In the late 1990s, the Dorotheum took the Austrian lead in subscribing to the Art Loss Register, the world's largest private database of lost and stolen art, antiques and collectables, thus having all catalogues reviewed by the Art Loss Register's team. All catalogues are furthermore distributed to an international field of researchers and private and public institutions in order to give potential claimants and their representatives the opportunity to identify artworks. Additionally the internet provides the interested community with all information on the works of art sold at public auction. Most importantly, the Dorotheum takes an active part in the research of the objects up for sale to avoid the inadvertent sale of un-restituted looted art. Upon consignment the client has to share all known information about the provenance of the object and has to sign a confirmation that he is the legal owner of the piece.

The experts are educated to recognize signs of looting on artworks during cataloguing and handling: brands, signs, numbers, labels, and seals on the frame or stretcher that may lead to a Holocaust victim or a public collection that has lost property during the war. Trainings held by the department of provenance research raise the awareness of issues in provenance. Generally, the experts will establish the provenance of an artwork, which the department for restitution issues will then check for suspicious names. Since the Dorotheum is dealing with a number of artworks worth a few hundred or thousand euros and the establishment of any provenance is almost impossible for these pieces, we need to go even further: the specialist department for provenance research checks

all identifiable artworks against a number of databases and listings. Online databases that are consulted include *lostart.de*, a database set up by the Federal Republic of Germany; *trace.com*, the world's largest database of lost and stolen property; or the object database of *lootedart.com*, containing details of over 25,000 missing objects. National databases of looted art are also screened by skilled Dorotheum personnel as well as property listings in books or on CDs. Major tools in this research are the internal database of lost property, the record of "red flag" names holding details of thousands of individuals who were victims or collaborators of the Nazi regime as well as data from sales catalogues of the Nazi era, all of which are constantly updated and extended. For all questions regarding the provenance, the identification of labels, the search for previous owners and other questions in regard to Nazi era looted art, the Dorotheum works closely with Austrian and international public and private archives, the Jewish Community in Vienna, the Austrian Commission for Provenance Research, the German "Arbeitskreis Provenienzforschung" and other research bodies.

Looted Art

If a work which is offered to the Dorotheum on consignment is detected as possibly being looted art, the Dorotheum will convince the consignor that it is inappropriate to offer it for sale regardless of whether the consignor can establish clear legal title. The artwork will be withdrawn from the sale until either all suspicion is cleared or until a mutual agreement between all parties involved has been reached. In order to avoid litigation for reasons of time and cost and complexity, the Dorotheum experts help the consignor to reach an agreement with the possible plaintiff. There are various possible solutions to these mostly ethical disputes: restitution, payment of compensation, or a joint sale where the proceeds of sale are split between the current owner and the claimant(s).

Initiatives and Remarks

In order for the Dorotheum to be aware of displaced art it is of utter necessity that looted objects wanted by private individuals, museums, and governments are registered with public databases. Cooperation between institutions, individuals, and the trade is also a major key to the solution of questions of provenance and the Dorotheum experts are happy to share their knowledge with research professionals. At the same time one always has to bear the following in mind:

- ▷ Every case is singular and has to be treated on such a basis; there is no such thing as a general rule.
- ▷ The increased attention of auction houses to looted art does not translate into an affirmative duty to seize works when their research turns up suspicious findings. As discussed above, provenance is often indeterminate and gaps in a work's history are not de facto evidence of illegal appropriation. Seizure can generally only be ordered by courts or state authorities; a similar measure taken by an auction house would constitute an infringement of private rights.
- ▷ Since in most European countries the acquisition of full legal title is possible through a bona fide purchase and is facilitated by statutes of limitations, the situation of someone who is suddenly confronted with the fact that he or she may own looted art is very complex. A prudent course of action is required and the principle of "just and fair" solutions must consider the situation of the bona fide possessor. This also applies to the right of privacy for all parties.

- ▷ Comprehensive research is the foundation of any claim and any rejection of such. The Dorotheum strongly encourages projects leading to a broader knowledge of the art trade in the Nazi era and the looting of works of art. We also strongly support open online access to documents concerning the ownership history of cultural property in one international database.
- ▷ Finally, due diligence should also be exercised by victims of spoliation and their successors through identifying their losses and notifying the art trade about losses.

The policy is clear: The Dorotheum will not knowingly sell any work of art that has been looted and has not been restituted since. In order to avoid inadvertent sales, we need every piece of information available.

Provenance Research

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MUSICAL CULTURAL PROPERTY: THE NAZI ERA AND POSTWAR PROVENANCE CHALLENGES

I want to thank the Czech Republic and the conference organizers for hosting this Conference and including me as one of the speakers in the Looted Art Working Group, so that I can address the subject of musical cultural property. Musical instruments, musical manuscripts, printed music, rare books and other music-related objects were looted, surrendered, lost, hastily left behind, or purchased in significant numbers in Europe as a result of the Nazi Era. Additional musical losses were incurred as musical materials were swept up as war trophies.

The utilitarian nature and portability of many musical objects contribute to provenance challenges, as does the fact that musical losses often accrued to individual musicians and composers, who may not have maintained records or photographs for title and authentication purposes. The history and fate of such lost musical materials and intellectual property, an integral part of the fabric of musical culture and aesthetics, remains relatively unknown.

Ten years after the Washington Conference on Holocaust-Era Assets in 1998, little progress in provenance research has occurred