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The Holocaust Claims Processing Office's Handling of Art Claims

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Abstract

Overview of the Holocaust Claims Processing Office (“HCPO”) and activities relating to Holocaust-era art claims filed with HCPO. Goes into the history of the HCPO and its mission to assist claimants seeking recovery of assets held in European banks, proceeds from Holocaust-era insurance policies, and lost, looted, or stolen art. Overall it is a description of the Deputy Director’s work in this field over the prior four years.

THE HOLOCAUST CLAIMS PROCESSING OFFICE'S HANDLING OF ART CLAIMS

*Monica Dugot**

Thank you for the invitation to come and speak here today. As Deputy Director of the Holocaust Claims Processing Office ("HCPO"), I oversee all activities relating to Holocaust-era art claims filed with the HCPO. As many of you probably already know, the HCPO is a division of the New York State Banking Department and was established by Governor George E. Pataki in the summer of 1997. Its mission is to assist claimants seeking recovery of assets held in European banks, proceeds from Holocaust-era insurance policies, and lost, looted, or stolen art. I would like to share with you brief observations from almost four years of close work with owners and heirs seeking to recover art collections lost or looted during the Holocaust.

The HCPO's experience provides evidence that non-litigious and just resolution of Holocaust-era art claims is possible, although it takes perseverance, particularly diverse skills, and the willingness amongst all parties involved to do the right thing. We have done our utmost to ease the difficulties often faced by claimants as they attempt to advance their legitimate claims. Our work has also shown that a fair and swift resolution cannot be arrived at by one party acting in isolation. In the last decade, via diplomatic initiatives, class action lawsuits, new laws, declarations, and guidelines, there has been an expansion of the legal framework, which has greatly facilitated resolution of these claims.

Given that each art claim involves a specific object, art claims have necessarily been resolved on a case-by-case basis. Where lawsuits have been filed on the art front, they have been individual lawsuits, rather than class action litigation. It is unclear whether a class approach to Holocaust-looted art could be formulated given the idiosyncratic nature of each case. I should

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also note that art was carved out of every Holocaust asset settlement to date and has therefore not been the subject of a systemic remedial process. Art cases raise serious allocation issues because each case may involve the laws of several countries, none of which may complement each other. Art cases may also involve the law of any given State, which may by itself seriously impede a claimant's ability to lodge or pursue a claim.

I speak from experience when I tell you that restituting a painting is not an easy task. Before the process of recovery can even begin, the looted art object must be located. Holocaust-era provenance research, research into the history of ownership, is a labor-intensive and time-consuming process and cooperation from museums, archivists, auction houses, and all other participants in the sale and transfer of artwork is critical. Although significant steps have been taken towards making much-needed information publicly available, full access to provenance data still remains elusive. The information needed to resolve a case is usually in more than one place. Pre-war collections have not survived in their entirety—they have been dispersed and consequently items can surface anywhere—presenting considerable challenges. It is a decidedly international issue and with claimants in fifty countries and forty-two states within the United States, the HCPO's outlook is by definition global. Unless those involved in the various aspects of research and restitution coordinate efforts and willingly share all available information, and unless government archives across the globe make relevant records accessible to the public, successful location and return of items to Holocaust survivors and heirs will be unlikely.

Locating the object is often the first of several hurdles we face as part of the recovery effort. As is evident from the handful of lawsuits filed in the United States involving World War II-looted art, courts do not offer the perfect solutions to these types of cases. The HCPO is committed to arriving at resolution outside of the parameters usually set by litigation, given the high financial and emotional costs associated with litigation. Not only is looted art extremely expensive to recover—one must also remember that the legal process can be a particularly lengthy and public one. Moreover, it often introduces a rancorous climate not conducive to amicable resolution and usually results in resolutions that are money and expense driven. The reality is that survivors are well into their eighties and simply cannot afford the

cost of a long drawn out battle. It is important to note that unlike the dormant Swiss bank account claims, where the perpetrators knew or were in a position to know that they were taking part in wrongful activities, a fair amount of current possessors of Nazi-looted art acquired objects in good faith, without knowledge of their dubious provenance.

As the HCPO has shown, an early dialogue between the claimant and the current possessor (before expenses have been incurred) presents many opportunities to resolve these types of disputes to the benefit and satisfaction of both parties. Permit me to provide an example from the HCPO's experience. The case of Lucas Cranach's *Madonna and Child* in the North Carolina Museum of Art ("NCMA") could serve as a model of how coordination amongst groups can provide an alternative to litigation. The claimants filed a claim with both the HCPO and the Commission for Art Recovery ("CAR"). CAR located the object in the NCMA and asked for the HCPO's assistance. We in turn worked with the claimants and the museum to ultimately reclaim the painting, which had originally belonged to Philip von Gomperz, the claimants' great-uncle.

The claimants had been trying to locate the family's collection and sought the return of individual paintings since the end of World War II. While the family successfully located part of his collection, more than half of the hundred paintings and objects once owned by von Gomperz remain missing to this day. With regards to these items, the family's efforts had resulted only in countless unsuccessful leads, generating lots of paper in the process. It was this paper trail, however, that proved critical. Containing pre-war, wartime, and post-war correspondence and research, the documentation illustrated the Cranach's seizure by the Gestapo as well as the painting's subsequent fate. When compiled correctly and read in context, the family's extensive documentation permitted the HCPO to approach the NCMA with a nearly comprehensive history. Although initially unsure how to respond, the museum's curators soon shared with the HCPO all documentation at their end and together we were able to piece together the painting's path.

Reasoned dialogue ensured the painting's return without undue legal expenses being incurred on either side. The parties' mutual respect for one another was critical in another sense too. When all was said and done, the owners were able to arrive

at an amicable solution that helped preserve the painting for the museum and the North Carolina public, and in a manner which paid tribute to the original owner.

Cooperation and coordination between groups is one aspect of successful restitution. Another key facet to successful resolution has been the critical review countries have given to their past which, in some instances, has resulted in new laws, directives, and declarations concerning art restitution matters. These new laws, while often limited in scope, are an encouraging and significant step forward and make positive contributions to the moral climate surrounding Holocaust-era restitution, the importance of which should be underscored.

Another example from the HCPO's experience might illustrate this best. A painting by Lesser Ury, owned by a German businessman and sold under duress in 1941, was located in the Neue Galerie in Linz, Austria and returned to the grandson of the original owner. In December 1998, the Austrian National Council passed a federal law stating that all works of art that had become Austrian State property as a consequence of Aryanization or which had been extorted from owners as part of export proceedings after 1945, should be returned.¹ Given that this law only covers art objects from Austrian federal collections, the Neue Galerie, a municipal museum, fell outside its direct scope. However, this case was resolved as a direct result of climatic change in Austria triggered by this new legislation—in early 1999, the Neue Galerie looked into the provenance of their collection, published a report of its findings and made the information freely accessible. As a result, the HCPO was able to successfully match the Lesser Ury with its rightful owner. It appears that the new legal climate encouraged the mayor of Linz and the City Council to act on what they believed was their moral obligation to return the painting.

As a final example, last January, the HCPO was able to assist the heirs of Dr. Ismar Littmann recover Alexander Kanoldt's *Olevano*, which hung in Berlin's Nationalgalerie since 1951. *Olevano* was part of a large collection originally owned by Dr. Littmann, a prominent attorney, art collector, and supporter of the arts in pre-war Breslau. With the Nazis' rise to power, Dr.

1. §4 Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlung BGBl 181/1998.

Littmann faced overt persecution, culminating in his suicide in 1934. Part of his considerable collection was sold at auction and many other pieces of the collection were confiscated. The Nationalgalerie acknowledged the legitimacy of the Littmann claim and ultimately released the painting to the Littmann heirs relatively soon after being presented with the claim. This and other more recent claims were expeditiously settled, in part, thanks to a new policy adopted by the Prussian Cultural Heritage Foundation (an umbrella organization of cultural institutions under the state's administration) and supported by a subsequent government declaration to speed the return of art works that Jews were forced to sell, often at bargain basement prices, under the Nazi regime. The Foundation has made clear that it feels a moral obligation to return these art objects to their rightful owners not only because they were wrongfully taken, but also because Berlin museums had benefited greatly from the generosity of Jewish collectors and patrons for decades leading up to the mid-1930s. Although lacking statutory authority, the declaration reflects a strong political commitment to swiftly settle Holocaust-era claims. Thus, although attention needs to be paid to legal aspects, to truly assist claimants in recovering their art objects, the discussion needs to be taken out of an exclusively legal context and elevated to a moral and political level.

In closing, I would like to leave you with some additional thoughts. Art restitution is a painful exercise for everyone involved and requires all of us to think creatively and find solutions that at first glance may appear unusual. But there is nothing "usual" about the events that have led up to this point. Museums and private and public collections find themselves faced with doing things that are not in the normal course of business, rewriting provenance, conceding the legitimacy of claims and on occasion, "de-accessioning" valued objects. The art market as a whole finds itself suffering from the effects of uncertainty. European countries are finally undergoing historical self-examination. And claimants, in an effort to reclaim a family painting, find themselves having to confront traumatic events that took place some sixty years ago. Moreover, while successful return of a family treasure is a happy and momentous occasion worth celebrating, it is also a bittersweet moment that reinforces painful loss.

Of course, the thievery of Nazi Germany pales in compari-

son to the genocide perpetrated upon its millions of innocent victims. But theft, unlike murder, is a wrong that we can, and therefore, must put right. Failure to act in the full knowledge of the facts only compounds the original crime. The restitution process is both complicated and painful for all persons involved—claimants and current owners alike. The HCPO's experience, however, shows that it can be less complicated and less painful by means of a frank and reasoned dialogue, and in a spirit of cooperation that sets out to avoid the rancor inherent in litigation. The HCPO's commitment to these ground-rules stems from our belief that survivors should not be traumatized anew through their recovery efforts. But in addition, the HCPO philosophy is based on the recognition that it is in all our interests to arrive at just resolution of these claims—in an effort to achieve closure for claimants, current possessors, and future generations alike.

We must keep in mind that for all the hard work that has gone into researching Nazi-era looting in the last few years, including museums' efforts to clarify and publicize the provenance of objects in their collections, and for all the new legislation that has been passed to assist claimants in their efforts to recover family property, this is only a beginning. There is still much that remains to be done.