



MEMORANDUM

AUSTRIAN ART RESTITUTION

New York, New York
March 4-5, 2010

INTRODUCTION

I attended two days of presentations regarding Austria's history of art restitution at the Austrian Cultural Forum in New York. The primary subject was the Austrian art restitution law of 1998, as amended in 2009.

SUMMARY

The Nazis plundered art, mainly Jewish owned art, throughout Europe during World War II. In Austria, this process began with the Anschluss in 1938. Vienna had the 2nd or 3rd largest Jewish population in Europe and they were active art patrons and collectors. The Nazi regime imposed various requirements on the Jewish population requiring them to register, sell and then contribute their property, including personal property such as furniture, art, Judaica and other valuable objects. Art from Austria and elsewhere was assembled, mainly in Linz, the city chosen to be the art capital of the 3rd Reich. As the war neared an end, much of the art was transported to salt mines.

At the end of the war, the allied armies took control of the art. The Americans took much of it and moved it to Munich for sorting out. Many objects were returned to the pre-war owners or their families. In 1952 the Americans turned over the remaining art to the Austrian government. Some of it in US control "walked off" as "souvenirs."

Between 1952 and 1986, Austria passed a series of laws which purported to have as their purpose restoring art and other valuable property to their old owners. In fact, these laws were intended to discourage such claims and ultimately to give good title to the art to Austrian museums. Claimants had difficulty getting access to records. Sales under Nazi threat or worse were treated as having been valid. A 1918 law restricting the export of art (initially applied to the deposed Hapsburgs) ironically also applied to Jewish survivors. To be able to export and sell any recovered art, Jews often had to make a gift of some of the art to Austrian museums.

Despite these problems with determining ownership, collectors – some motivated by greed and some simply passionate collectors - continued to collect. They had to deal with the uncertainty of whether the seller was the true owner and at the same time the competition presented by other collectors. Many Jewish survivors needed to sell their art simply as a source of funds. A substantial portion of the art in the market had been at one point in illegitimate hands. Making matters more difficult, some art was not accurately described and had been created by relatively unknown artists.

Until 1986 when Kurt Waldheim (1918-2007) ran for President of Austria, Austria portrayed itself as a victim of Nazi aggression. History taught in Austrian schools often ended in 1918. Waldheim's personal involvement in World War II sparked a closer look at Austria's role.

As a result of the Waldheim reexamination, Austria made a new attempt to identify and return works in Austrian museums. Some items were in fact returned. The "Mauerbach auction" of "ownerless" works was held at the MAK (Applied Arts Museum) in Vienna in 1996 and the proceeds given to the Jewish community. Critics of the sale claim that Austrian authorities did not expend adequate effort to find the true owners.

The current phase of Austrian efforts was triggered by an exhibition of works by Egon Schiele at the Museum of Modern Art ending in January 1998.

<http://www.moma.org/interactives/exhibitions/1997/schiele/>

These works had been collected by Dr. Rudolf Leopold and were to be the core of a newly created museum in Vienna, the Leopold Museum. A series of New York Times articles by Judith Dobrzynski on the subject resulted in two works from the show being confiscated by the Manhattan District Attorney.

<http://www.nytimes.com/1997/12/24/arts/zealous-collector-special-report-singular-passion-for-amassing-art-one-way.html?scp=1&sq=schiele&st=nyt>

One work, *Dead City*, was determined to have been properly sold to Dr. Leopold. The second work, *Portrait of Wally*, remains the subject of litigation in New York, 12 years later.

The US State Department became involved in the dispute and shortly thereafter Austria passed new legislation. Conferences were held in Washington and Prague. It is this latest Austrian legislation, amended recently, which was the subject of the conference.

Basically the current Austrian law sets up a commission to study the provenance of any work of art (paintings, silver, books, etc.) located in Austrian federal museums and obtained since 1938. The provinces and cities have adopted similar legislation and similar committees. This is an administrative process, without warring lawyers and appeals. The investigation includes works obtained in connection with the export of art objects under the 1918 law. Even if a museum paid full market value of a work well after the war's end, if the owner had been forced to sell by reason of Nazi pressure or the 1918 export law, the work is to be returned. The provenance researchers make a recommendation only that the museum keep or return the object in question. They cannot suggest half measures or compromises. Basically they determine whether the sale was voluntary and whether title obtained by the museum is

good. People in the audience (possibly US lawyers) suggested that claimants should be able to participate, that appeals should be permitted, that dealers should be forced to disclose their files and that police should be given power to take objects (even though they are found in Austrian museums).

The presenters made clear that the law does not apply to objects in private possession. In this respect the Leopold Museum came up several times. It is a private foundation funded to a large extent from Austrian state sources. Some of the lawyers in the audience suggested that it should be considered a state museum.

OBSERVATIONS

Even in 1950, determining a seller's motives would have been difficult. Postponing this determination 60 years has made it a process of competing presumptions and burdens of proof. A museum will have great difficulty overcoming a presumption that a Jewish owner voluntarily sold a painting in 1938. Furthermore, it is also impossible to separate the owners' general willingness to sell an asset from the compulsion to do it because of economic circumstances caused by war or more normal pressures.

Austria has adjusted its laws repeatedly since 1952, trying to find a formula that will be honored as legitimate by other developed countries. The application of the 1918 law to Jews not willing to live in post war Austria made no sense and weakened Austria's position.

US courts are willing to apply their own sense of justice to objects on loan here. The US action was clearly a slap at Austria's legal system (possibly earned). The Schieles were not protected by the New York State Exemption from Seizure Law – passed precisely to maintain New York City's role in the art world - or the role of MoMA in arranging the exhibition and giving (apparently inadequate) assurances to the Leopold Foundation. They were taken under US federal criminal stolen property laws. The US courts (last ruling September 30, 2009) applied Austrian law of ownership.¹

For the last 50 years, collecting art which existed pre-1938 has presented special problems. The development of computer digitization has made combing through piles of unsorted ownership data possible, adding to the uncertainty of people and institutions who may believe themselves to be rightful owners. So even though time usually makes it more difficult to collect evidence of ownership, computerization provides new means.

At least among Austrian intellectuals, the restitution process and related discussions change Austrians' view of themselves and their history, including the role of the Jewish community.

¹ I learned from a friend on the staff at the Metropolitan Museum of Art that there is a procedure for obtaining immunity from seizure that US museums routinely follow to prevent a repeat of the "Wally" experience. She did not know why MoMA had (apparently) not followed this procedure.
<http://www.rcaam.org/IMMUNITYFROMSEIZUREGUIDELINES.htm>

The topic of looted art has recently been addressed in Germany. <http://www.imberlin.de/raub-und-restitution/> There are also many websites on this topic generally. Some are accurate, others not.

DETAILED NOTES

The first day's presentations (approximately 5 hours) were directed at lawyers and other professionals. The second day's (3 hours) were directed at the general public. Mr. Andreas Stadler, Director of the Forum, greeted the attendees each day. He explained that the Forum was formed in 1941 by Austrian émigrés to New York. Mr. Stadler noted that he was born in 1965 and was taught that Austrians were victims of the Nazis. Not until the Kurt Waldheim affair (1987) did Austrians begin to see their role differently. In 1990 (actually 1988) Austrian Chancellor Franz Vranitzky addressed for the first time Austria's responsibility. So Austria has come late to the issue of responsibility for the crimes of the Nazi era.

Marc Masurovsky acted as moderator both days. He is co-founder of the Holocaust Art Restitution Project.

THURSDAY – Presentation to Lawyers and other Experts

DR. MICHAEL JOHN - University of Linz

Nazi Aryanization included excluding Jews from all aspects of economic life. Jews had a concentration of art and many high ranking Nazis were interested in art. Unlike real estate, art objects can be hidden and multiple countries' laws can apply to the same object.

In the 1930's Vienna had the second or third largest concentration of Jews in Europe (+/- 300,000; *but an Internet site says 180,000*), smaller only than Warsaw and possibly Budapest. A large portion of the Jewish community was middle or upper class. Many of them patronized artists. Often Jews were assimilated in the local society and highly cultured. Between 1933 and 38 only about 2% of the Austrian Jews left Austria. Jews believed in German-Austrian culture.

Immediately after the Anschluss (March 12, 1938) there was "wild", unregulated looting. In April 1938, laws were passed requiring Jewish registration and later contribution to the state of property including cultural objects. Confiscatory taxes were imposed as a condition to emigration. The Dorotheum, a major Viennese pawn and auction house, handled the sale of these objects. 16,500 Jews left in 1938-39. Jews living abroad in 1941 lost their citizenship and possessions. Being in a concentration camp was deemed to be "abroad." Inventories were made. The VUGESTA (also called VEGESTAP) was responsible for collecting and selling these items. The most valuable pieces went to high ranking Nazis.

Linz played a special role in Nazi art collection. Hitler enjoyed a "Fuehrervorbehalt" which permitted his collection of the best pieces for a museum to be created in Linz. Hitler viewed Linz as a sort of home. He wanted to increase Linz's importance and reduce the importance of Vienna, which he viewed as being under Jewish and Slavic influence. His favored cities were Linz, Berlin, Hamburg, Munich and Nurnberg. Hitler had plans made for the Linz museum – they looked similar to those for the Haus der Kunst in Munich. Art works were collected and taken to salt mines (such as Alt Aussee) for safekeeping. In 1945 US troops took control of the salt mines and other art depots. Nazi orders to destroy the art were not carried out, but many important documents pertaining to art ownership were destroyed.

For a long time after 1945, Austria viewed itself as having been invaded. The restitution procedure after 1952 was in Austrian hands. The Austrian BDA or Bundesdenkmalamt (www.bda.at) controlled the process. People who claimed to be owners had to file their claims with the BDA. Art which had not been returned by various deadlines became state property. One of these deadlines was 1995. Subsequently, in 1996 Christies managed the Mauerbach Benefit Sale, with the proceeds (\$14.6 million) going to the Jewish community. These transactions related to items held in state hands, not individual possession.

Returning to the chronology, shortly after the war, the US Command centralized art administration in Munich. By 1949, 13,000 items of 18,500 were given back to their owners (or people believed to be their heirs). The US ended its role by 1952, when Austria took some of the art. Some works in US hands were taken by US soldiers.

Adding to claimants' difficulties, Austrian law would not permit the export of important art. Subsequently, there was a deadline for making claims for "heirless art" in 1969, extended to 1970.

As an aside, art stored in Linz was to be moved to a safer location in 1942. But the trucks were unable to cross the passes in winter and 30 important paintings were stored in a remote pub. Post 1945 US forces became aware of the informal storage warehouse but ignored it. In 1947, the pub owner threatened to get rid of the art. What happened to the art is not clear.

Another example of odd behavior, in 1951, the new municipal gallery in Linz claimed paintings based on provisions in Hitler's will. Two people in particular were mentioned: Justus Schmidt and Wolfgang Gurlitt. Gurlitt sold looted art to museums. He waited until 1957 because a restitution law deadline had passed in 1956.

Q/A –

What art is considered "Austrian"? "Austrian" art is often simply art that was physically located in Austria, regardless of where it was collected from. In 1945 it was sent to Munich for sorting and return to the owners or their heirs.

Art located in the Soviet zone of Austria often ended up in East Germany. Recall that Austria was occupied by foreign troops from 1945-55. There was looting by all the foreign troops.

In Italy and Holland, Nazis "bought" art at depressed prices. The works were brought to Austria for the Linz museum. Most if not all of these items were given back. In 1941, Himmler sent Justus Schmidt to buy French art in Paris. It was returned. The Austrians informed the French about 20 pieces, but the French showed no interest. [I am not sure when this happened.]

The US restitution policy consisted of giving art to the Austrian state, not to individual owners. The US felt it did not have the manpower to decide the rightful owner. It gave this job to Austria, a job Austria did not fulfill. So this was really repatriation (country-to-country), not restitution.

GEORG GRAF – Vienna Wiesenthal Institute for Holocaust Studies

The Chancellorship of Kurt Waldheim started a new look at Austria's role in WWII. Art in museums was newly viewed as having been looted. So the law changed as to return of art of its owner or the owner's successor. The 2009 law was new, to try to make up for the shortcomings of prior laws.

The old act covered "art works." The question arose whether that term included books and other objects. The new law's definition was expanded to cover moveable objects of cultural value. There are three types of cases:

- 1) Since 1918 Austria has had a law prohibiting the export of important art. The law was passed to limit exports by the newly deposed Hapsburgs. After 1945 it applied to victims of National Socialism. The victims had to "donate" some works in order to export others. The Rothschild collection was such a case. Later Austrians began to view this law as morally objectionable. In some cases, a payment was made for the art left in Austria, but the sale was still not voluntary. The 2009 law addressed this. The connection between any "gift" to the Austrian Republic and the export was also examined.
- 2) The second type has three elements: A) the work was taken during the Nazi period, B) it was transferred to Austria; C) it is still owned by Austria. So looted work is to be returned if now owned by the state. In the past, the authorities may have denied claims or the old owners may have simply given up. Austrian courts may have issued adverse decisions. Settlements may have been entered, leaving some art with the Austrian state. Some of these situations may not be covered by the new statute. One case is "Mondlandschaft" by Munch. The owner tried to recover it but the restitution court wrongly said the transfer had been voluntary. Later, the newly appointed advisory board decided that the work should be returned. In 2001, the General Settlement Fund implemented the Washington Agreement. This pertained to real estate – "natural restitution" – returning the item itself. Normally there is not "natural restitution" unless not to do so would be "extremely unjust." So the new law provides a chance to reconsider old decisions. The position on real estate applies to art by analogy.
- 3) The restitution proceeding occurred, but the art was not returned to anyone. It was treated as "unowned" or "heirless" property. If there were legal successors, the art was handed over. This part of the act does not have much practical effect today.

The law's applicability was expanded to cover all areas controlled by the Third Reich. So it covers art from Germany found in Austria.

How does this new law work in practice? A commission for provenance research has been established in an Austrian ministry. The purpose is to determine how Austria took title to the work of art. It has an advisory board making a recommendation – to return or not. So the board is the main decider. No court of law can review the decision. There is no action or recourse available if a claimant does not get his or her art back. Works returned are exempt for 25 years from the Austrian law restricting export.

Q/A –

Q - This law applies only to the state level, not to other, non-state owners, correct?

A - The Republic of Austria can apply this law only to federal museums. Provinces and cities in Austria have their own, similar laws. So there are three levels. No one body makes all the decisions or recommendations.

Q – The allies at the end of the war decided that ALL transactions had been null and void. None of the transfers were voluntary.

Q – Is there a definition of ownership by the “Republic of Austria”?

A – [The speaker focused on the word “ownership” when the questioner was focusing on the owning entity.] “Ownership” means having the right to dispose of and control an article.

Q – But if the Republic of Austria has paid for the work, doesn’t that mean the Republic owns it?

A- [Mr. Graf still did not understand the point of the question.]

Q – How does the definition apply to the Leopold Museum?

A – The Leopold Foundation is a legal entity in its own right. It is not owned by Austria. So the restitution act does NOT apply to the Leopold Museum. Yes, the Museum should return stolen art, but it is not legally subject to the act.

Q – In Germany there is a presumption that the transaction was done under duress. It is hard to overturn a presumption. Does Austria have a similar presumption?

A – There are no German restitution laws. The Allies handled the return of looted art. Austrian laws are stronger on this point than German. In Austria there is a presumption that a Jewish seller sold under duress, so the Jewish claimant does not have to prove duress. This also applies to the transfer of a Jewish spouse to his or her non-Jewish spouse.

The export cases under the new law are all post 1945 cases.

The act also does not say much about art from outside Austria.

Q – If looted art is in the Leopold Museum, why has the Austrian State not done something to fund an investigation of those pieces and support the Leopold Museum?

A – Austria is also investigating these works. The problem is Rudolf Leopold. He has a lot to say. He is 85. On his death, Austria will have more to say. Then the “stolen” paintings will be returned as soon as possible.

Each of the provinces has its own panel. So this makes matters complex. They are not connected to the federal panel.

Q – Isn't Austria violating Article 26 [of the Austrian State Treaty with the US – 1955] whereby Austria agreed to return property stolen from Jewish victims of Nazism?

A – No, Austria has to reopen its restitution files. Austria fulfilled its duties under the treaty.

Q – But the treaty has no time limits, so failure to return constitutes a breach.

A – This is a government to government obligation. Other countries such as France and Holland have similar problems.

LEONHARD WEIDINGER – Historian, Museum of Applied Arts, Vienna (MAK)

Two pictures seized in New York in 1998 started a new discussion. Austria opened its archives. In February 1998 a commission for provenance research was started. Its purpose was to inspect Austrian archives to locate works still in Austrian state possession. The commission started by focusing on large, famous collections. Then a series of articles in the Vienna newspaper Der Standard dealt with looted and how Austria kept it. The Austrian state was very involved in the looting in the Nazi Period. The Art Restitution Law was passed in November 1998. 1998 also saw the Holocaust Era Assets Conference. In February 1999 some restitution began. In 2003 the Austrian historical commission published its report.

Christoph Bazil (a conference presenter) has been co-chairman since January 1, 2009. The task of the Commission is to inspect archives and locate objects. A researcher determines how Austria obtained the art, especially during the period 1938-45. If Austria became owner during the 1938-45 period, then the researcher conducts intense research. This research is made more difficult if the work was obtained from dealers.

An example is the Bloch Bauer collection of porcelain and Klimt paintings. Bloch Bauer died in 1925. His porcelain collection was taken in 1938 and sold at auction at the Kaentnerstrasse Auction Haus. In 1938, Jews were prohibited from selling jewelry. In 1939 they had to turn their valuable goods into pawnbrokers, including the Dorotheum, which was then state-owned. Some objects at the MAK (Museum fuer angewandte Kunst) in Vienna were purchased at the Dorotheum in the 1940s. Dr. Weidinger found 18,000 file cards from this period at the Dorotheum. He tried to match the MAK records with those from the Dorotheum. He then digitized them. They were scanned electronically and then checked by hand. In this process he also found the names and addresses of former owners. Often the owners were not real collectors. The goods were simply household wares, not part of larger collections. He also digitized 265 catalogues with about 20,000 items. German catalogues are now being digitized. It has now been a 10 year process and a significant book will be published soon.

Q/A –

Q – How does one get access to these records? [It was not clear what was meant by “these records.”]

A – We first have to know where the records *are* in order to get access. No one says, no, you cannot see them. [I am not sure whether this means (1) that the original records are simply lost and that museum curators are not refusing to permit access to the researchers or (2) that claimants can get access to the digitized works.] There are 20-30 databases. Not all are accessible. Some are proprietary. The inventory for items at MAK is quite good. But if someone actively tries to hide records, the provenance researcher probably cannot find them.

Q – What about non-Holocaust research?

A – Unless the work is of great value, there is not much research in this area. There IS a bureaucratic tradition of noting where something came from.

Q – Isn’t more time spent on the big, valuable pieces?

A – Yes, but now all are treated the same.

Q – Does Austria give the researchers legal powers?

A – The process works without such powers. It just happens. Other museum officials cooperate without threats.

Q – What about Swiss art dealers?

A – The researchers have no power to compel them to cooperate. But there are databases on line where people can spot missing art.

Q – Do the researchers cooperate with independent agents?

A – There is some cooperation. Researchers accept help, but they won’t undertake projects for claimants.

Q – Austria is a better example of dealing with looted art. Are victims included on the commissions? True, the Jewish Committee is involved and this involvement is better than in, for example, Holland. At the MAK show on restitution there was something regarding missing art registers. Also, what about art lost by Austria to, say, Russia?

A – There was no loss in Austria like there was in East Germany to the Soviets. The US has archives at College Park, Maryland. US officers brought back Austrian “souvenirs.” This was sort of “self serve.”

Q – Art dealers don’t just give out information. Are they cooperating?

A – Usually they are no help. They are a weak link.

A – [Statement by a representative of the Dorotheum who was present in the audience] – In 2006 there was a report which is public. A lot of material is gone. It was not destroyed until the 1960's. But after the last restitution deadline had passed, the records were simply destroyed. American research was done at the Dorotheum and so some information on the Dorotheum may be at College Park, Maryland.

CHRISTOPH BAZIL - Head of the Department of Restitution and Co-Chair of the Commission for Provenance Research

The decisions of the commission are not arbitrary. They are based on the recommendations by the advisory board. A dossier is created and presented. Then it undergoes legal assessment. There have been 250 recommendations regarding all sorts of things held in various museums. 20,000 objects have been returned.

There are only two kinds of recommendations, return the works or not. There is no compromise or valuation proposal. In most cases the proposal has been to return the works. If not, it is because either the law does not apply or the facts are uncertain.

The 1997-8 MoMA-Leopold Museum loan began a new era. The Leopold Foundation was formed in part with public money, so it is a unique case. For the time being, no action is being taken. A special committee is being formed to deal with it. The first meeting is March 8, 2010. A report should be made by the summer.

Mr. Bazil then discussed four cases. [Mr. Bazil had a cold and was difficult to understand, so this section is a bit sketchy.] One painting was located in the Vienna Fine Art Museum. It had been owned by a Jewish industrialist born in 1880. He ended up in Canada. His collection was confiscated in 1938. He got back part. To obtain the right to export most of the art, he had to agree to leave some paintings in Austria. In 1947 he wrote two letters to the museum, one donating some of the art and the other regarding exporting the rest. The committee decided it was not credible that the donation was not connected to the export and so the family got back the work donated to the museum.

A second case involved a painting know as "Der Flussler." The owner was married to a Jewish woman. They fled to Italy and the Nazis took the painting. US troops obtained the work and it was later found hanging in an Austrian tax official's office. It was clearly looted art. Even though the act did not specifically refer to a piece not found in a museum, it was returned.

Two paintings by Casper David Friedrich were found in an Austrian museum and they remain there. The owner was persecuted as a Jew. He died in Brazil in 1950. Beginning in 1932 he tried to sell his collection. In 1934 the two pieces were displayed for sale in Zurich. But they failed to sell. He continued to try to sell them. They were given to an art dealer in 1939. They were sold after his escape and outside German controlled territory. The advisory board decided that the owner showed

signs of wanting to sell the art before the Germans were in control. And he sold after his escape in neutral Switzerland. So the committee did not recommend restoration.

The final work was in the Albertina and was owned by a Czech lawyer. He had tried to sell but unsuccessfully. After 1945 it appeared in the art market. A British subject bought the work and finally sold it in 1989 to the Albertina. In 2005 the advisory board did not recommend returning it since it was sold before the German occupation of Czechoslovakia and the owner had already tried to sell in the early 1930's. But the committee decided that further research was needed.

Q/A

Q – Is there an appeals procedure?

A – The law is federal law and deals with constitution issues. There are lots of items that need a quick answer. Some items are simply not worth that much. There is no enemy in the process. This is an internal Austrian process. Austria does not want to give away its art works but it doesn't want a collection tainted by Nazi crimes. The advisory boards are not bound by the letter of the law. They take the historical context into account.

Q – Victim group involvement would help. There will be fatigue at some point. The attitude of the Austrian people will change.

Q – Austria has dealt with these issues in a systematic way. Germany has a handbook of presumptions. Does Austria?

A – The commission was formed but the process took longer than expected. Before 207 it was less systematic and more dependent on the individual researcher.

Q – After a claim is made, does the individual have a possible role?

A – Information help with claims is welcome. The former owner does not have legal standing of a party or clamant. There have not been formal hearings. Researchers can take information for any source. Formal requests are part of the file.

Q – How many cases have been rejected? In those cases was the art particularly valuable? Does the commission allocate its time depending of the value of the object?

A – Only doubtful cases go to the commission. So there are many more cases that those justifying a dossier. There have been 30-40 recommendations not to return, but some of those recommendations have been reversed (so there is some double counting). The results do not depend on the value. There is a case of a Schiele owned by Jenny Steiner which will be reconsidered because it was sold to Austria to get an export license.

Q – In 1998 the Greenbaum Schiele “Dead City” was seized. Is there a system of police seizure with respect to the Albertina or the Leopold Museum?

A –Police action does not make sense since this is property in the possession of the Republic of Austria.

PANEL DISCUSSION

A lot of attention has been paid to restitution for foreign consumption. What do Austrians think? The Austrian state has changed its mind. It used to be that the spot in display cases where pieces had been displayed were marked with a card “temporarily not on display.” This has changed. Austrians want to “get it right” this time.

The significance is bigger than just art. It is a matter of rethinking the Austrian past. The Jewish community was part of Austria’s past. It is part of Austria’s history and its identity. True, there is an estimate that 30% of the Austrian public does not accept this new view.

No political party is officially against restitution. In 2000-2001 there was a major political change in Austria. Now 58% of Austrians are for restitution. This new law is a real improvement. Austria is the only country that has taken a poll on the restitution question.

But there is almost no public discussion. The Austrian government does this *for* the people but not *with* the people. It is the intellectuals who care and who decide. The Austrian people want to put this issue behind it, but this is the wrong lesson.

[Representative in the audience from Dorotheum] – As a German she grew up with German history. The Nazi period was part of her growing up. Her mother had grown up in Austria. For her mother, Austrian history ended in 1918. Now there are more educational programs about this period for children in Austria. In Germany, these programs are “old hat.” So perhaps Austria is working through this now as Germany has.

Yes, there is now Holocaust education as well as pension payments to survivors living in Florida. People begin to forget what happened in 2000-2001. Austrians are now more concerned with immigration and other issues.

As to provenance research, there is a researcher now in every museum, sometimes more than one. They make notes on each item. If there is any hint of looting, they make a dossier on it. If the researcher believes the items was not looted, he/she notes why it was not looted.

As a closing remark, the head of the Austrian Cultural Center said this all began with Kurt Waldheim. The restitution law reflects a new view of the past. Yes, there is an inclination to “clean” the museums. Police do not play a role. This action is all Austria’s own inclination to deal with the past. The Leopold Museum is made up of art purchased by a foundation funded in large part with money from the Austrian state. Rudolf Leopold is a lifelong employee of the foundation. [The listener was left to draw his/her own conclusion.]

FRIDAY – Presentation to Interested Public

[Note – the two presenters for the most part repeated their Thursday Presentations. I will not repeat portions of their presentations already covered above. They presented in the order A, B, A, B.]

John Becker of the State Department was in attendance and introduced. [He was also present on Thursday.] He has been with the Office of Holocaust Issues since 1998 and was part of the Washington Conference.

[NOTE: the 1998 Conference was in DC; the Prague Conference was in June 1999; the Terezin Declaration was June 30, 2009.]

The US State Department Holocaust Office in DC is small, with about 5 people. They urge parties to find real, practical solutions. This approach has worked. The US Department of State has no muscle itself. Once a dispute goes to the courts, the Department of State has no role to play. The Department of State is looking into forming a commission and has had preliminary meetings.

LEONARD WEIDINGER –

Vienna was a center of art collecting. Under Hitler, Linz was to become an enormous museum. Not just large works were taken there.

Austria's early restitution laws (including the 3rd one) were primarily concerned with real estate. There is no register for art like there is for land. Art claimants did not know where to look for their property, in contrast to real estate. Did the object even survive the war?

In 1966 there were still 8,000+ items not claimed. To fulfill Article 26 of the 1955 treaty, these items were brought to a collection point. The Austrian Ministry of Finance handled the process. A list of items was published. The deadline was initially 1970, but it was extended to 1972. Only 270 items were returned. What was to be done with the remaining ones? In 1984 the National Assembly passed another law. If an item was not claimed, then it could be auctioned. There was an auction in 1996 and the proceeds went to the Jewish Community. Christies handled the auction, held at the MAK in Vienna. Jews living in Austria could apply for grants from the proceeds. [It was later claimed that the owners' families could have been found if real effort had been made and the auction was illegitimate.]

In 1997 another discussion began due to the New York confiscation of works by Egon Schiele. 152 works from the Leopold Foundation were on loan to MoMA in New York. An article in the NY Times spawned the interest in looted art. In January 1998 Egon Schiele paintings entitled Portrait of Wally and Dead City were taken by government authorities as stolen goods. Wally is still subject to dispute. It is not clear when this case will be decided. Dead City was determined to have been properly sold and was therefore returned to the Leopold Foundation.

Austrian museums met after the US gave the collected works to Austria and they decided among themselves who would get what. This was not a “grab bag” process. Art historians looked at each piece and decided what museum was appropriate.

Q/A

Q - How much of the Linz collection was from Austria?

A – There are many lists from these collection points. The Vienna salt mine collection list is quite extensive.

CHRISTOPH BAZIL -

The Advisory Board is made up of members from several government ministries and from art historians. Each member has a deputy. The recommendations of the provenance researchers are not binding but they have always been followed and the results are published in the internet. If art works have no owners, they are sold and the proceeds go to benefit victims. Many books are included, many without any indication of who owns them.

The original law pertained to only Austrian loot. It has since been expanded to objects from all territories. If it was sold to a museum after 1945, it is also under consideration if it was transferred as part of the export process.

The Leopold Foundation was established with public money. It is not covered by the new law. Its special status raises constitutional issues. There is no action for the time being. In 2008 a new study committee was formed. The board of the Leopold Foundation is expected to act based on the recommendation of the committee.

LEONHARD WEIDINGER -

Much of the metal confiscated was melted down and used to buy war supplies. This is so called “victim gold”.

Often the chain of ownership is not simple. French works were prized by Austrian collectors. The Austrians did not go to France to make the purchase but engaged French agents. It is sometimes hard to tell what is a “normal” transaction.

Q – Is there a presumption of legitimacy?

A – If there is the slightest hint of impropriety, then a dossier is opened and research begun.

Objects have to be in state possession to be returned under the new act. Many items are in Austrian private ownership. There are huge obstacles to recover objects in private hands.

The lower the value of the item, the smaller the likelihood that the item will be found. Items held privately come to light only if the family tries to sell them at auction.

“Degenerate” art was all located in Germany. There are no collections of degenerate art in Austria. Sometimes officials simply decided paintings were not good and destroyed them. This happened in other countries as well.

The digitized records are presently used internally, but they should soon become available to the public.

The representative of the Dorotheum in the audience added that the Dorotheum was privatized 8 years ago. It created a database. Also it is possible to register lost objects on the Internet and to share information. The Dorotheum does not want to sell looted art. In 2006 the Dorotheum published a history of what it did during the war. In the Austrian art market, certain things simply are not known. When records pertaining to ownership or transfer are found, one can't always tell where they came from. Since 1998 all state archives had to be opened. This information is constantly developing. The Dorotheum was state owned, so it did not always think in economic terms. A private auction house keeps meticulous records because such records add to the value of the art. The old (pre-privatization) Dorotheum employees were state employees and did not collect all the information a private auction house would. Auction catalogues often simply went home with workers, for example.

Q – Why are lawyers involved? Why is the process so expensive?

A – Correct, this has been a broken process. It should have worked properly in 1945-50. There was favoritism. Countries did not honor their commitments. Achieving 40% restitution would be a great result, a reason for celebration. Indeed, wealthier families got better treatment because they had the funds necessary to hire lawyers and the political connections which drew attention to their claims. Some works are scattered. Technology helps. There are over 20 countries involved.

If the object is in private hands, there is no legal remedy. It is a matter of time and waiting for an auction. Various auction houses have different procedures regarding due diligence and checking the provenance. If the Dorotheum finds a problem, it will not sell the work and it will try to bring about a non-legal solution. The owner may not know that the art was looted. Art is beginning to surface now.

Once the art surfaces, the owners need to act. If the case gets into a courtroom, the judge will ask what the claimants did to try to get the work back. Both parties cannot have physical possession. There is a variety of creative solutions.

Q – The Austrian government has acknowledged trans-generational pain. People are searching for pieces of their families. The Austrian government is ahead of the US in this regard. However, once lawyers get involved, then the personal injustice and pain are forgotten, lost in the legal battles. Will the US become more active to resolve these disputes without lawyers? Will the Austrian government stop paying lawyers' fees to block restitution?

Q – How many objects are we talking about?

A – Probably 50 million people died in WW2. A rough estimate could be 50 million pieces. And they are all scattered.

Q – Some of this simply happens in war and cannot be undone. [Loud murmuring by many in the audience.]

Q – What does Austria do when there is a legal defense but a strong moral claim?

A – Even if the purchase was in good faith, for example, in 1970, if the work was looted, then it will be returned.

Q – As to the Casper David Friedrich paintings mentioned before, did the investigators check whether the sale was laundering?

A – It is a matter of defining what is looted art. The seller had been trying to sell and sold outside Germany, when he was no longer in Austria. The owner had managed to flee. Perhaps he might not have sold otherwise, but he had shown an intention to sell. All art dealers had some involvement with Nazi art.

Q – What about the enforceability of prior deadlines?

A – The statutes of limitations do not apply to this law.

Q – If Austria took art in return for an export permit and held the art for 50 years, what is the remedy? Does the owner get anything for lack of enjoyment?

A – The owner gets the work back. There is no payment for the delay.

Rudolph (Rob) Houck

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