

Varia

Report on the symposium “Restitution – problems, experiences, controversies on November 11, 2009 in Wiesbaden, Germany

- At least dating to the time that the Berlin Street Scene by Ernst Ludwig Kirchner was restituted from the Bruecke Museum in 2006, a growing public discussion has been conducted about restitution of cultural objects lost as a result of Nazi persecution. That museums still have a large need for an exchange of views raised by the return of cultural goods that had been lost due to Nazi persecution was demonstrated by the November 2009 symposium in Wiesbaden. As in the case of German media coverage the views of museums also dominated here, while the perspectives of victims were marginalized and the ethical basis for the work of museums was neglected. At the Wiesbaden Museum more voice was given to negative viewpoints than positive aspects. Options available to those currently in charge of museums were hardly discussed.

KIRM, the cultural initiative in the Rhine/Main area, organized a symposium at the Wiesbaden Museum on November 11, 2009 devoted to questions concerning cultural goods lost due to Nazi persecution. Following words of greeting from the host institution by *Volker Rattemeyer*, director of the Wiesbaden institution and concurrently KIRM Chairman of the Board, three presentations were held to stimulate discussion on the legal aspects of restitution in Germany, provenance research in the Federal Republic as well as all matters on restitution issues. These presentations formed the basis for discussions of the corresponding issues by three working groups.

First *Georg Crezelius*, chair of tax law studies at Bamberg University, presented an overview of legal basics in light of current claims involving cultural goods missing as a result of Nazi persecution – a situation fraught with much legal uncertainty as well as lack of knowledge. In his remarks *Crezelius* repeated observations he advanced at the December 2008 symposium on “*Recognizing Responsibilities: Nazi Looted Art – A Challenge for Museums, Libraries and Archives*”¹ taking the much criticized view that,

¹ In regard to the symposium held in Berlin, see the contributions of Kramer /v. Klitzing KUR 2009, 7 ff, as well as the summary of the panel discussion by Verbet KUR 2009, 206 ff, as well as the report on the proceedings by the coordination center (publisher) “*Recognizing Responsibilities: Nazi Looted Art – A Challenge for Museums, Libraries and Archives*”. Symposium organized by the Stiftung Preussischer Kulturbesitz (Prussian Cultural Heritage Foundation) and the coordinating center for losses of cultural assets, Berlin, on December 11 and 12, 2008; edited by Andrea Baresel-Brand, Magdeburg, 2009 (=publications of the coordinating center for losses of cultural assets, vol. 7).

lacking a legal basis (after all the Washington Principles were not adopted as [German] law), the current situation is untenable. That in turn led to a demand for closer legislative specifications of the prerequisites for returns. Such legal action, among others, is to put time limits on claims by legal successors and allow for the listing of valuable national artworks in an index (which would prevent return outside the country and thereby restrict the rights of former owners and legal successors dramatically; it is the reason why such an action was, for instance, prevented by the American military government after 1945) and define conditions under which an acquisition between January 1933 and May 1945 would have been legal. The latter demand represents a departure from the presumption of confiscation judicially developed after the Second World War because there is an almost 60-year old legal tradition whereby legal transactions with those persecuted by Nazis following January 30, 1933 were considered a confiscation, albeit allowing for proof of the legality of the acquisition. That is why no definition of legal acquisition is needed but merely the integration of existing regulations as they can be found in the Property Claims Act [Vermögensgesetz], for example.

A second presentation, prepared by *Anja Heuss* of the provenance research staff of the State Gallery in Stuttgart and member of the working group on provenance, was read by a representative because she had to cancel her appearance due to sudden illness. She traced the development of provenance research in Germany, specifically in terms of Nazi persecution, since the 1998 Washington Conference on Holocaust Era Assets and emphasized thereafter the interdisciplinary character of this research. In addition her presentation cited problems associated with such provenance research in museums, which - not in the least on account of the low esteem accorded to such research - cannot be pursued in most of institutions to the extent needed in order to locate missing cultural works lost on account of Nazi persecution. In conclusion she described the staffing and work of the provenance research group which was inspired by a meeting of interested researchers and has proven to be a valuable communications platform. However on account of the large number of participants in the meantime, *Heuss* now sees the need for stronger structuring of the meetings.

Thereafter *Uwe Hartmann*, head of the office of provenance research in Berlin, reported, while slightly diverging from the original meeting agenda, on "Provenance Research and Restitution", specifically on controversies, experiences and problems. At the outset he emphasized - and thereby deviated from *Crezelius* - that the Washington Principles had created a new basis for returns. He cited the return of the Berlin Street Scene by Ernst Ludwig Kirchner from the Bruecke Museum in 2006 as a turning point. Thereafter a structural strengthening of provenance research was seen as urgent and was treated accordingly politically. Based on experience with returns so far *Hartmann* indicated that the "Handreichung" established in 2001 for the implementation of the "Joint Declaration" was overcome by the practice because of the inability to provide adequate assistance in many cases. In addition he pointed out that the work of the Coordination Center in Magdeburg during the 2001-2008 period yielded only eight returns. That showed that the "Principle of Chance" does not suffice. Moreover in most of the cases it was not museums that took up the case but rather external researchers and attorneys. *Hartmann* identified inadequate provenance research infrastructure, lack of high-quality inventories and insufficient provenance research equipment as central problems. He closed his presentation with the wish for a switch from single cases to contextual research.

The meeting ended by dividing participants into three working groups designed to address the aforementioned themes in greater depth. In light of being in a publication

center and the participation of the author in the working group on basic issues facing restitutions, led by *Hans-Juergen Hellwig*, a specialist in commercial and civil law as well as honorary professor for European law at Heidelberg University, the focus for further considerations was to be on the experience gained. *Hellwig* emphasized at the outset that all deadlines of existing laws on restitution have expired, that the “Joint Declaration” does not include any deadlines and the “Handreichung”, too, points out that there is no legal claim for restitution. Based on that, he pointed out that without official regulations problems arise both for legal successors (the claim filers) as well as heads of public museums (in their function of opposing such claims).

Based on this introduction, which was definitely critical to restitution based on the Washington Principles, *Ludwig von Pufendorf* presented his established views, expressed already on the occasion of the return of the Kirchner painting, that those currently responsible for proceeding with restitutions leave themselves open for accusations of acting disloyally. This opinion was countered with an observation that despite numerous returns until now, no legal complaints have been filed. Actually none of those responsible have been subject to legal complaints. More likely a new attitude is being developed which, regardless of assertions to the contrary, is seeking an end to the returns, because demands for a law releases those responsible in museums from actively pursuing legal successors since right now they can claim that there is no legal basis for such a claim. Besides, the demand for a law is raised parallel with the demand for the federal government to pay for the compensation so that the art lost on account of Nazi persecution can remain in the museums. That means in effect that those now responsible for museums no longer have to be responsible for the actions of their predecessors. The looted art can stay but the public will have to pay. Acquirers of goods illegally acquired and art dealer would happily support such a demand.

Moreover the position taken by the Limbach Commission was examined critically and led also to asking for a change in structure and legal basis. Altogether the overwhelming majority of working group members favored an involvement by lawmakers, even though it has to be conceded that there is no political will behind such plan. It was rather conspicuous that very few persons adopted positions taken by former owners of cultural goods and their legal successors. As a result the issue of a legal basis and generally of restitutions was thereby narrowed to the position of museums under the threat of losing artworks. The fact that there is an ethical basis for the dealings of those responsible for museums and that part of the core value of such an ethical basis is that no stolen goods or illegally obtained objects should be in museums are issues simply being ignored. The limitation confined to the perspective of the museums is also reflected to the extent that the professional council of the Magdeburg Coordination Center or the Limbach Commission does not include any member of victim organizations.

The concluding general meeting dealt briefly with the results developed by the various working groups. It has to be noted in this connection that the second working group, led by *Renate Petzinger* from the museum in Wiesbaden, on the subject of conducting provenance research, emphasized the greater need for provenance research. She called attention to work of her institution that brought several restitution cases to light. *Volker Rottemeyer* reported on behalf of the third working group that all museums have experienced restitution cases. This reflects once again the scope of looted art that took place during the Nazi period and the timeliness of the meeting. It also illustrated that in all cases inspiration for these actions originated externally and only then led to research on these objects. The passive attitude of the museums could not be demonstrated more

clearly. In addition *Rottemeyer* pointed out that museums in many cases were not equipped to perform such work and the initiatives taken as a consequence of art lost due to Nazi persecution overwhelmed museum directors. Without the inclusion of sponsors of the initiative or their legal advisers such proceedings could not be finalized.

Subsequently *Martin Roth*, Director General of the State Collection of Art in Dresden, drew a personal interim balance under the title: "10 Years Since the Berlin Declaration" which contained elements which he had presented earlier at the 2008 Berlin Symposium, like the link between loot and trophy art. Moreover he depicted the pervasively impressive efforts of the Free State of Saxony in regard to provenance research covering the State Art Collection. He asserted that provenance research had achieved a state of professionalism, but still had to be intensified. He believed that the funds furnished annually for this purpose by the office of provenance research did not suffice to that end. In conclusion he advanced a number of demands, including

1. Provenance research should change its methods and develop new approaches. Within the territory of the former German Democratic Republic (GDR) that means above all the search for objects confiscated by the GDR. In addition he demanded public discussion since it was after all of public concern.

2. The Limbach Commission should adopt a new structure and a new base. He singled out the commissions in the Netherlands and Great Britain as good examples.

3. At this stage *Roth* repeated a demand voiced several time earlier namely for "a fire brigade fund" for museums to finance the retention of affected exhibits.

4. The importance of provenance research should be invigorated by museums and universities because in the future it will be a subject of substantially greater importance, specifically in respect to ethnology, archeology and art. To this end museums require experts and at least medium-term planning backed by sufficient funding.

In the end it is difficult to evaluate this professional meeting. The timeliness of the topic was apparent, as was the need for exchanges among those staffing museums. However legal aspects predominated and, worse, in terms of the perspectives held by institutions which consider themselves as "those having to relinquish the goods". Above all, the lack of a legal basis for demanding returns was subjected to discussions, but not the immoral and total absence of a legal basis for the confiscation of these objects after January 30, 1933. Moreover, questions regarding the ethics of the dealings of the museums were not even being considered. Can it be legitimate to outlast looted art? Is it reasonable to store and exhibit looted art in a museum? An effort to take the position of those persecuted or their legal successors into consideration, a position which is necessarily quite different than that of museums, was recognized in only a few cases. Also the possibility for museums to actively approach earlier owners or their legal successors, as has happened several times since 1999, was hardly discussed. The meeting was dominated by attitudes that rejected restitution under the disguise of a lack of legal provisions. The KIRM report of the meeting reads accordingly.²

² This report is to be found under http://www.kirm.de/kirm/files/Bericht_Tagung_Restitution.pdf. The report is one-sided, professionally questionable and ignores the negotiated prior agreements concluded for instance by the Federal Republic and top communal associations.

In public debate reference is frequently made to attorneys who have made a business out of the restitution of art. At the same time persons representing this point of view asked for a law that will open a new line of business for these same attorneys. The accusation of breach of trust, a criminal offense, voiced at the meeting by attorney *von Pufendorf* against those responsible who are prepared to return objects of art lost by Nazi persecution creates a climate of fear for museums and prevents the search for fair and just solutions. Still worse are some media reports that promote anti-Semitic attitudes. It is not the reverse – it is not the legitimate demands of the legal successors that create such a climate. A bona-fide acquisition after the end of the Second World War is contrasted by a particular duty of care on the part of those responsible for museums in cases of acquisitions after May 1945, especially because those responsible for museums during the Nazi times were closely linked to the exploitations of former Jewish ownership. They enjoyed special access rights and often were familiar with Jewish-owned art collections, based on their own viewing. In the meantime enough examples have been published that prove illegal acquisitions by those responsible for museums. On that basis those who are responsible today should assume the moral obligation to identify and publicize works of arts in their collections confiscated by the Nazis and locate the legal successors in order to find a fair and just solution for these pieces together with them. Unfortunately this topic was not discussed in the meeting.

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