

ART LOSS REGISTER

To:
Cultural Property Unit
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

Deadline 10 November

Re: Consultation on Restitution of Objects Spoliated in the Nazi-Era

The Art Loss Register (ALR) maintains the world's largest private database of stolen and missing works of art. Its database of 180,000 missing items includes many works that were displaced during World War II as a result of spoliation or forced sale and the ALR has a team of art historians specialising in provenance research, particularly relating to the period 1933 to 1945. Claimants worldwide have reported missing artworks to the ALR database to take advantage of the ALR's searching services. In over two million title checks on art objects in the last eight years, we have located 64 paintings that were lost between the years 1933 and 1945 from different collections and have clarified the provenance gaps relating to many other art objects. The Art Loss Register Ltd (ALR) welcomes the 'Consultation on Restitution of Objects Spoliated in the Nazi-Era' by the Department for Culture, Media and Sport.

In the light of the numerous international instruments, such as the 1943 Allied Declaration, the 1998 Washington Principles, the Vilnius Principles of 2000 and the 1205 Resolution of the European Council, the consultation and legislative changes are the "right thing" to do. However, and this has also been raised in your document, the proportionality principle must be considered, and the final legislative changes should reflect not only the unique nature of the looting during the between the years referred to above, but take account of the public interest as well. As a country that was not occupied during the Second World War, the current situation in the UK and its museums is different to that of countries that were occupied during the Second World War.

Q1 We agree with your provisional view that museums should have the power to dispose of items in their collections, which were lost during the years 1933 to 1945 as a result of the actions of the Nazis, their allies or collaborators.

Q2 Regarding the question of how broad the power to dispose of an object in a collection should be, we propose that the power should be as broad as possible. Of the three options presented in the consultation paper, option II is the broadest one, applicable to objects which were involuntarily lost by their owners during the period from 1933 to 1945 in circumstances arising from the actions of the Nazis, their collaborators or allies. Ideally, this would also cover the restitution of the Beneventan Missal under the general power to dispose of items lost during the relevant period. We would prefer this solution to a separate provision to enable the restitution of the Beneventan Missal. One general provision covering all cases of restitution of spoliated works of art would stress the uniqueness of this category. This would also reduce the risk of restitution claims for other cultural objects from, for example, a colonial background.

Should you opt for the first option mentioned in the consultation paper that refers to “objects wrongfully taken (...)” (para 3.14) we would recommend that the following be added to the concept of “wrongful taking”, as we encounter this scenario frequently in our work:

When it can be proven beyond reasonable doubt that the proceeds were not received by the (Jewish) seller or he/she did not have the right of free disposal of the proceeds or where the proceeds themselves were subject to tax demands levied on racial grounds.

As to whether the legislation should seek to define the entitlement which should be demonstrated by a claimant before museums are permitted to transfer objects in their collections to that claimant, or whether guidance on a claimant’s entitlement should be provided by a Code of Practice, we recommend that the entitlement should be generally defined in the legislation and should be further set out in a Code of Practice. This combination would do justice both to the legal security that is important to museums and claimants, while recognising that the restitution claims are not in the first place decided on legal questions. Therefore, a Code of Practice is the better medium to set out the entitlement, which should be demonstrated by a claimant before museums are permitted to transfer objects in their collections to that claimant.

Q3 Regarding your question who should take the decision whether a particular object should be transferred from a museum’s collection, the ALR recommends that the decision should be left entirely to the institution concerned (a), and should therefore not

be made dependent on a recommendation by the Spoliation Advisory Panel (b). Our recommendations re (a) and (b) make your questions (c) and (d) non-applicable. Also, the discretion of the institution concerned should not be limited by the requirement of consent of the Secretary of state, the Attorney General or the Charity Commission (e).

While we do not recommend an enforced role of the Spoliation Advisory Panel, we believe that it has and should continue to have an important role with regard to the restitution of spoliated works of art from museum collections. Despite their non-binding character, the recommendations of the Panel are often referred to and relied upon by claimants, the art trade, lawyers and journalists. The combination of the option to refer a claim to the Advisory Panel, and a Code of Practice setting out the steps a museum should take in ascertain a claim, should provide the guidance museum trustees might need, while guaranteeing their integrity and allowing each claim to be settled according to its merits. One option could be to give the Secretary of State the power to instruct the release of an object from the collection of a museum or gallery, which would serve as a measure of last resort in the case that negotiations, and, if relied upon, Alternative Dispute Resolution failed to persuade the museum trustees to make use of their power under the legislation to be introduced according to the outcome of this consultation.

Q4 We recommend that a general provision should be made to permit an institution to dispose of an object in its collection in response to a claim where that object is subject to any trust or other condition which prohibits disposal. In principle, the provision should allow the institution to override all non-statutory restrictions on disposal. That way, museum trustees are given sufficient room for manoeuvre and can balance all interests involved in a case: those of the claimants of a spoliated work of art, of the donor or the testator, as well as those of the general public.

Q5 Given the limited number of claims that have arisen so far and what is likely to be a small number of claims in the future based on the handful of cases identified to date, we do not think it is necessary that the Spoliation Advisory Panel should be transformed into a statutory body.

Q6 Given that the restoration of an object from a museum to a claimant at the same time means the loss of public access for the general public, the ALR thinks that it is fair that the claimant is liable to capital gains tax (a). Also, the value of a work of art or other

object restored to the claimant by a museum or gallery should be included in the claimant's estate for the purposes of inheritance tax as this would have also been case had they inherited it from e.g. their grandparents, i.e. had the object never been spoliated.

We agree that the donor of that item should not lose the benefit of any tax advantages accruing to him or her as a result of the donation (c). Donations to museums should be encouraged by all means.

While we in principle agree with the suggestion that a donor who was aware or had reason to be aware of the previous history should not be able to profit from the loss of victims of Nazi persecution, we do not consider the introduction of an exception feasible (d). It would be extremely difficult to prove such knowledge.

Q 7 The ALR suggests that the limited power proposed for museums and galleries to transfer items out of their collections should not be a permanent one. We believe that the cut-off point should be set at twenty years after the date on which legislation implementing it comes into force.

Q8 We agree that a museum or gallery which has transferred an item from its collection to a claimant should be protected against any further claim in relation to that item by a subsequent claimant. Instead, the legislation to be introduced should ensure that the museum could inform a subsequent claimant of the identity of the first claimant.

Julian Radcliffe
Chairman