

Disputed Dürers:
The Lubomirski drawings
and the complexities of restitution

Professors DeAngelis and Kline
MSTD 297.12: Seminar on Stolen and
Illegally Exported Art & Cultural Property

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Introduction

Without question, the world witnessed an incredible displacement of art and cultural property in World War II. According to estimates by the United States government, roughly 222,000 works of art representing nearly one-fifth of the world's cultural treasures changed hands illegally during the war.¹ As claims continue to surface for the return of stolen works, the restitution of art illegally appropriated during this period to its rightful owners remains an important, current topic for the art community, including the world's cultural institutions. In the face of uncertainty, museums find themselves charged with the difficult task of making decisions that balance their fiduciary obligations, the public interest, and an ethical responsibility toward victims of art theft during World War II.

In 1991, Andrea and Dian Woodner donated a spectacular two-sided drawing titled "Male Nude," by the German artist Albrecht Dürer, to the National Gallery of Art in Washington, DC. Though there are no gaps in the provenance of the work, this Old Master drawing nevertheless has become part of a complex case involving issues of Nazi-era art theft and restitution. The National Gallery, along with eleven other prominent museums in North America and Europe, presently faces claims by both the Polish and Ukrainian authorities for the return of important Dürer drawings, including "Male Nude," which once belonged to the Lubomirski Museum in the Austro-Hungarian Empire.² The Lubomirski collection of Dürers, consisting of twenty-seven drawings on twenty-four

¹Dobbs, Michael. "Stolen Beauty." The Washington Post Magazine. 21 March 1999, 14.

²The twelve institutions involved include the Courtauld Institute of Art, the Barber Institute at the University of Birmingham, the British Museum, the Boijmans van Beuningen Museum, the Metropolitan Museum of Art, the National Gallery of Art, the Museum of Fine Arts in Boston, the Art Institute of Chicago, the Cleveland Museum of Art, the Nelson-Atkins Museum, the Pierpont Morgan Library, and the National Gallery of Canada. There are 8 drawings from the Lubomirski Museum in private collections. From: Bailey, Martin. "Top museums face claims for Dürers." The Art Newspaper. No. 121, January 2002.

sheets of paper (three sheets have drawings on the front and back) has a long and troubled history. Over the course of more than five hundred years, they have been possessed by kings, emperors, individual collectors, and museums. Located at various points in the Austro-Hungarian empire, Poland, the Soviet Union, Ukraine, Nazi Germany, and now North America and Western Europe, they have been bought, sold, looted, recovered, restituted, and donated. Their tumultuous journey illustrates well the impact of foreign policy, diplomacy, and military action on the fate of works of art, as well as the cultural turmoil caused by World War II and the restitution efforts of the post-war era.

This paper will trace the long and complex history of these disputed Dürers, from the original donation of the works to the Ossolinski Institute in the Austro-Hungarian Empire, to the controversial and crucial 1950 decision by the United States State Department to abandon Allied restitution policy by turning the drawings over to Prince George Lubomirski. Next, the competing Polish and Ukrainian claims to the museums for the return of the drawings will be explored, and the response of the museums against ethical guidelines established for the museum community will be evaluated. Finally, possible resolutions of the dispute will be presented, as contributed by museum and art restitution experts.

Politics and Culture Collide: A Brief History of the Dürer Drawings up to World War I:

Though the very early provenance of the Lubomirski Dürers is unclear, according to art historians, they found their way to the Albertina in Vienna by the end of the eighteenth century.³ During the Napoleonic wars, they were removed from the Albertina in a “distinctly illegal manner by Napoleon’s chief confiscator,” and subsequently

³Dobbs, 15.

mysteriously appeared on the art market. According to scholar Lynn Nicholas, Hitler would later use this fact to declare the Dürers as “unequivocally part of German patrimony.”⁴ By 1834, the noble Polish Lubomirski family had assembled the twenty-seven Dürer drawings which would make up their infamous collection.⁵

In 1817, Count Jozef Maksymilian Ossolinski, “a distinguished writer, scholar, and collector,” founded the Ossolinski Institute in the city of Lemberg, located in the Austro-Hungarian empire. Dedicated to the “preservation of Polish cultural heritage,” the institute consisted of a library and publishing house. In 1823, Count Ossolinski entered into an agreement with his friend Prince Henryk Lubomirski for the donation of the Prince’s collection of books, medals, paintings, and antiquities to a separate part of the institute, to be known as the Lubomirski Museum. This agreement specified that the collection could not be separated or removed, but would “...irrevocably remain in the Library forever being subject to the orders of its Curator and supervision of its Director.”⁶

In the formal bequest of the museum in 1866, Prince Lubomirski entailed an estate, called Przeworsk, which was incorporated into the Ossolinski Institute and could never be dismantled. Moreover, the income from the estate was to be used to maintain the institute. The actual Lubomirski Museum was located in a house in which the Lubomirski family lived for part of the year, and the Lubomirski family retained certain rights as hereditary literary curators. In addition, the documents included provisions

⁴ Lynn H. Nicholas, The Rape of Europa: the Fate of Europe's Treasures in the Third Reich and the Second World War (New York: Knopf, 1994) 69. See also: Feliciano, Hector, The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art (Paris: Basic Books, 1997) 24-30. In this chapter, Feliciano describes the Nazis’ plan to repatriate the works of art taken from Germany and held in foreign countries since the beginning of the sixteenth century. In art historian Otto Kummel’s report, an exhaustive list of these works of art, the Nazis demanded the return from the Louvre seven Dürer works taken from the Albertina in 1809, during the Napoelonic Wars.

⁵Dobbs, 15.

⁶ Akinsha, Konstantin and Sylvia Hochfield. “Who own the Lubomirski Dürers?” Art News v100 no9 (Oct 2001): 159.

detailing that if the conditions of the trust were betrayed due to the institute's dissolution, then the Przeworsk estate would be separated from the institute, and the Lubomirski Museum would revert back to the family. However, if the relationship between the institute and the museum were broken but restored to their original state, in compliance with the Prince's original specifications, and no more than 50 years had elapsed since the disruption, then the relationship between the institute and museum "could be reestablished."⁷

At the end of World War I, the victorious Allied powers convened in Paris to sign treaties restructuring Europe's borders. As a result, the city of Lemberg, now known as Lvov, became part of the independent Polish nation.⁸ The Ossolinski National Institute and the Lubomirski Museum, established under Austro-Hungarian law, remained in tact. In 1927, a British art critic named H.S. Reitlinger came across the Dürer collection while passing through Lvov. He published an article in *Burlington Magazine* in which he described opening the box containing the drawings to find a collection representing the artist "in all his glory at nearly every phase of his development."⁹

On August 23, 1939, the USSR and Nazi Germany entered into their treaty of non-aggression and friendship and divided Poland between them. The Red Army occupied the eastern part of Poland, which included the city of Lvov, while the Nazis entered the west.¹⁰ In a letter to Hitler, Hans Posse, the man charged with acquiring art for Hitler's personal collection and for his intended museum in his hometown of Linz, described his findings upon reaching occupied Poland: "I further beg to point out that

⁷Akinsha and Hochfield, 159.

⁸Palmer, R.R. and Joel Cotton, A History of the Modern World Since 1815 (New York: Alfred A. Knopf, Inc., 1995) 722-731.

⁹Bailey, Martin. "Hitler, the prince and the Dürers." The Art Newspaper No. 47, April 1995.

¹⁰Palmer and Colton, 842-843.

together with the Lvov Museum, a series of beautiful drawings by Dürer and other German masters fell into Russian hands. Perhaps it will be possible later on to salvage for Germany the twenty-seven sheets by Dürer.”¹¹ Hitler, believing that “Dürer was one of the great German geniuses, and that works of genius were to be reclaimed at all costs,” negotiated, albeit unsuccessfully, with the Soviet Union for the Dürers. In the meantime, all private cultural organizations within the Soviet occupied territories had been nationalized and in 1940, in effect, the Ossolinski Institute and the Lubomirski Museum were dissolved. Soviet authorities transferred their collections, including the Dürers, into the newly established V. Stefanyk Library of the Academy of Sciences of Ukraine.¹² The short-lived Soviet-Nazi alliance ended in late June, 1941, when the Germans invaded Soviet Union.¹³

Within hours of the German capture of Lvov on June 30, 1941, Kajetan Muhlmann, the Special Commissioner for the Protection of Works of Art in the Occupied Territories who was responsible for much looting on behalf of the Reich, arrived with specific instructions from Goering to confiscate the Dürers, as stolen German patrimony. By July 2nd, he had located the drawings and was on his way back to Germany, where they were expedited to Hitler.¹⁴ Author Lynn Nicholas describes Hitler’s particular fondness for these drawings, which were among the few works he kept on hand throughout the war:

“He even took them with him to his Eastern Front field headquarters. In September 1941, visiting the HQ on other art business, Muhlmann mentioned to Hitler that he was worried about the drawings, as they were technically his responsibility. Hitler replied, ‘I have personally relieved you of this

¹¹Nicholas, 69.

¹²Akinsha, and Hochfield, 160.

¹³Dobbs, 16.

¹⁴Dobbs, 16

responsibility. Here...they are as sage as they would be in Cracow, and besides, I can see them more often.”¹⁵

As the Allies closed in on Berlin, the Dürers, along with several other works of art and war booty, were transferred to the Alt Aussee salt mines, near Salzburg for hiding and safekeeping. As the war drew to a close, American troops discovered the salt mines in May 1945, which contained 6,577 paintings, 954 prints, and 2,300 drawings, including the Lubomirski collection. Along with other cultural objects found in occupied territories, the drawings were transferred to the Munich Central Collecting Point, one of the several repositories established to accommodate works of art confiscated by the Nazis. The work of the Monuments, Fine Arts, and Archives (MFAA) officers at these collecting points was to identify, photograph, and coordinate the restitution of the hundreds of thousands of cultural objects recovered in the United States zone of occupation. The fate of the Dürers was now in their hands.¹⁶

The end of World War II: the politics of restitution

At the Potsdam Peace Conference in 1946, several decisions important to the fate of the Lubomirski drawings were made. The first defined new Polish borders, and as a result, the city of Lvov became part of the Soviet-controlled Ukraine.¹⁷ The second was the decision to return works of art “taken from the countries overrun by Germany readily identifiable as publicly owned, and works of art taken from private owners in the overrun countries by seizure and without compensation,” as well as works of art taken from

¹⁵Nicholas, 69.

¹⁶For information on the Munich Collecting Point and the MFAA, see also Simpson, Elizabeth, ed. The Spoils of War: World War II and Its Aftermath (New York: 1997)

¹⁷Palmer and Cotton, 865.

private individuals for which some compensation was said to have been made, to the countries from which they had been taken.¹⁸ However, the shifting borders of countries at the end of the war and the approach of the Cold War challenged the logic of this restitution policy. By 1947, people fleeing countries under the control of the Soviet Union were making individual claims for objects at the collecting points. As Lynn Nicholas explains, “Strict adherence to the tenet of returning things to the country from which they had been removed would, in these circumstances, have to bend to political realities.”¹⁹

The Allied restitution policy was specified in two separate documents in December of 1945 and April, 1946, and stated that “Only such claims as are submitted by or behalf of governments of claimant countries... will be accepted for processing.” No provisions were originally included for individual claimants. In December, 1946, the War Department recognized the Soviet Union “as proper claimant government regarding restitution to areas transferred from Poland to the USSR.” At that time, the city of Lvov was under Soviet control. Within a month, the diplomatic and political climate had changed considerably with the advent of the Cold War and as a result, the United States decided to return items to individuals who had fled the USSR or its satellites for religious or racial reasons. A year later, this was modified to include political refugees. Specifically, this mandate sought to avoid “...the restitution of property to the Soviet Union or a Soviet satellite which is claimed independently by a non-Nat’l or a refugee

¹⁸Nicholas, 385.

¹⁹Nicholas, 429.

Nat'l of the claimant government.” Any conflict between an individual refugee claimant and a claimant government would require the suspension of all restitution.²⁰

It was in this diplomatic context that in April, 1947, Prince George Lubomirski made a claim for the Dürer drawings as legal head of the Lubomirski family. Described by various accounts as “eccentric,” “talented,” “egotistical,” “charming,” and “dishonest,” Prince George, along with the other male members of the Lubomirski family, was imprisoned by the Nazis during the war. By bribing the Gestapo, George was able to get himself and his father out of prison. In 1943, he convinced his rather senile father to pass his rights as literary curator of the Lubomirski museum to him. As the Red Army descended upon Poland, he fled from Poland to Switzerland where he began searching for the family’s scattered art collection.²¹

According to Nicholas, when the Prince began his search for the Dürers in early 1947, they had “in truth been quite forgotten in the vastness of the Collecting Point, where they had remained in the packing case in which they had come from Alt Aussee.”²² The Prince wrote a letter to the MFAA indicating he wanted to claim the drawings and donate them to the fledgling National Gallery of Art in Washington, DC. At the same time, he had written to attorneys in the United States asking for help in recovering the drawings so that he could subsequently sell them. When the request reached the Munich collecting point in January 1948, director Stewart Leonard replied that in accordance with

²⁰ Becker, John P. The Albrecht Dürer Sketches and their Restitution (Office of the Special Envoy for Holocaust Issue, Bureau of European Affairs (EUR/OHI), U.S. Department of State: December 4, 2001). This annotated summary of recently declassified documents was used during the recent investigation of the 1950 decision by the State Department to turn the drawings over to Prince George Lubomirski. Provided to the author by John P. Becker, Property Restitution Advisor, U.S. Department of State. For a detailed analysis of the development and implementation of the Allied restitution policy, see Kurtz, Michael J. Nazi Contraband: American Policy on the Return of European Cultural Treasures, 1945-1955 (New York and London: Garland Publishing, Inc., 1985).

²¹Dobbs, 17.

²²Nicholas, 429.

the Allied restitution policy, works could only be released to a country claimant.

Nonetheless, Prince Lubomirski pursued his claim and on July 7, 1948, sent it directly to the United States Central Filing Agency.²³

A good deal of deliberation took place regarding the settlement of the Lubormirski claim among the various agencies within the Office of Military Government. In the end, the State Department was responsible for making the final decision. Correspondence between various officials indicates two primary concerns regarding the Prince's claim. The first was whether the quadripartite restitution agreement reached among the Allies at the end of the war was still applicable in the light of the breakdown of diplomatic communications with the USSR, and the second concerned the validity of the Prince's claim as the legal heir to the drawings.

As Chief of the Legal Advice Branch of the Legal Division, James Heath was responsible for investigating the Lubormirski case. In a memorandum dated February 21, 1949, he defined three conditions to be established prior to turning the works to the Prince:

- “(1) that...the properties...were to revert to the estate upon the occurrence of certain events, and that those events have occurred.
- (2) that the claimant is the only successor
- (3) there is no third party with rights to these drawings.”

According to the document summary produced recently by the State Department, “The records suggest that Heath had serious reservations about approving Prince George's claim, but that he avoided the policy issue of returning art to individuals and

²³Nicholas, 429-431. In a phone conversation, John Becker stated that he only saw one mention of the Prince's intention to donate the works to the National Gallery of Art in the documentation. Though several sources allude to the Prince's suspected interactions with US intelligence officials who may have helped his cause (see *Art Newspaper*), Becker explained that he failed to find documents indicating anything of this nature.

focused on legal issues. His goal appears to have been to provide a strong legal foundation on which the policy makers could base a decision.”²⁴ Heath was particularly skeptical of the documentation produced by Prince George, indicating a transfer of title from his aging father to his son, commenting that “Title to the Dürer drawings claimed by Prince Lubomirski is extremely doubtful. Many complex questions of law and uncertainties of fact must be decided before any determination of title can be made.”²⁵ Though everyone involved was under tremendous pressure to close out the restitution at the Collecting Points (the Dürers were among the last major works still held at the Munich Collecting Point and most of the MFAA officers had returned to the United States), Heath insisted that Prince George provide additional documentation, such as the formal bequest documents from 1823 and 1866 and evidence that he was the only legal successor. Throughout the decision-making process, Heath questioned George’s claim on several counts. First, he doubted the legitimacy of the transfer of title by Prince Andrew to his son, based on variations in English translations provided by George which appeared altered to support his position. Furthermore, questioned whether Prince Andrew actually owned the entail. He concluded the following on July 20, 1949:

“It appears that these issues can only be decided by court action...the probability of a future claim by the Polish government (or by other claimants) against the United States...seems strong. It is recommended that the Military Government deny the claim of Prince George Lubomirski pending submission of the matter to Washington for instructions.”²⁶

Yet, the claim was handed over to the State Department and on February 24, 1950, the decision to turn the works over to Prince George was issued. Focusing on the legal rights of the Lubomirskis to the works, rather than the issues of the quadripartite

²⁴Becker, 10.

²⁵Becker, 15.

²⁶Becker, 15.

restitution policy, John M. Raymond, the legal counsel for the State Department argued that the dissolution of the Ossolinski Institute by the Soviet Union and the transfer of its assets to Poland betrayed the terms of the original trust. He concluded that “The drawings may be returned to Prince Andrew or to his son, Prince George, as his father’s representative upon the execution of a receipt and an undertaking by both to hold the United States harmless with regard to any claims arising from the retention of the drawings by the United States government of their return.”²⁷ The drawings were turned over to Prince George on May 26, 1950, with the aforementioned document releasing the United States from liability signed and completed. In the five years that the drawings sat at the Munich Collecting Point and the United States government deliberated their restitution to Prince George, neither the Soviet Union or Poland made any claims for the works.

The Prince, in turn, sold them through art dealers and without distributing any of the proceeds to the rest of the family, lived quite comfortably until his death in 1978 at the age of 91.²⁸ George’s family was dismayed at the turn of events. Though little concrete information is available on this subject, there is mention of members of the Lubomirski hiring a Swiss attorney to try to prevent the return of the Dürers and to contest the restitution to George of other works of art belonging to the family and unconnected to the Lubomirski Museum.²⁹

Disputed Dürers: The claims

²⁷Becker, 17.

²⁸Nicholas, 430-431.

²⁹Akinsha and Hochfield, 162-163.

Though neither the Soviet Union or Poland made any claims for the return of the drawings while they were at the Munich Collecting Point, the fate of the Dürer drawings was well known in both the Ukraine and Poland. *Art News* reports that the Soviets used the restitution of the drawings as propaganda to prove that the United States had stolen Soviet works of art during the post-war period and were storing them in American museums, such as the Metropolitan.³⁰ As local nationalist sentiment gained momentum in Eastern Europe and the Soviet Union in the early 1990's, the Dürer drawings became something of a political issue in Ukraine. In 1998, Laryssa Krushelnytska, director of the Lviv V. Stefanyk Scientific Library, issued a claim to the museums that the drawings were “stolen property looted from the library during World War II by the Nazis and then traded illegally after the war on the international art market.” She also wrote to the United States State Department, arguing that the drawings were incorrectly restituted to Prince George in 1950 and that they should be returned to the library in the city of Lviv.³¹

To complicate this claim, on January 25, 2001, the Ossolinski Institute also made claims against the 12 museums for their return.³² In 1946, the Poles had “reactivated” the Ossolinski Institute in Wroclaw, Poland. Upon Stalin’s orders, any Polish-related cultural property held in the collections of Lviv’s libraries and museums (including from the collections of the former Ossolinski Institute and Lubomirski Museum) were “donated” or transferred to the Polish government between 1946-45. Cultural property of Western European or Ukrainian origin remained in Lviv. In 1995, after the collapse of

³⁰Akinsha and Hochfield, 163/

³¹Dobbs, 14.

³²email from polish

communism, the Polish parliament reconstituted the Ossolinski Institute as legal successor to the former institution.³³

The Poles supported their initial claim with the 1866 trust documents. Both the director and deputy director of the new Ossolinski Institute issued statements to journalists affirming the State Department's decision to return the drawings to George as literary curator of the institute. What they contested was the Prince's subsequent sale of the works, arguing that George had an obligation to wait fifty years, since less than fifty years had elapsed since the disruption of the museum and the possibility existed that relationship between the institute and museum (and therefore, the Dürer drawings in its collection) could have been reestablished.³⁴ However, in a recent email, Anna Pankiewicz at the Polish Embassy asserted that these earlier statements no longer represent the present Polish position, which she summarizes as the following:

The drawings were bequeathed to the Polish nation with clauses that left no doubt as to the intention of the donors. We believe that the decision made after World War II to restitute the drawings to Prince Lubomirski was not justified (as it was not a private collection anymore, but it belonged to a foundation). On the other hand, in our view, by deciding to sell the drawings Prince George Lubomirski acted in contradiction with the provisions of the Przeworska Ordinance. We are strongly convinced that the drawings should be returned to the Ossolinski National Institute in Wroclaw.³⁵

The Poles have retained the services of the law firm White and Case and plan to present their new claim, which represents the interests of the Ossolineum, members of the

³³Dobbs, 29 and Akinsha and Hochfield, 163.

³⁴Akinsha and Hochfield, 163.

³⁵Pankiewicz, Anna, Polish Embassy, Washington DC email correspondence, 22 April 2002.

Lubomirski family, and the Polish government, to the museums in a meeting scheduled for the end of 2002.³⁶

The museum response: legal and ethical responsibilities

In the late 1990's, the museum community set out to address the role of museums in the restitution of art stolen during the Nazi era. In 1998, the Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) was established to study and report on issues relating to assets of Holocaust victims in the United States. The Association of Art Museum Directors (AAMD) and the American Association of Museums (AAM), prominent professional associations representing the museum community, developed guidelines for museums to follow in handling objects in their collections which may have been unlawfully appropriated between 1933 and 1945. Working together, the three groups sought "to establish a standard for disclosure of collections information to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums."³⁷ Essentially, the PCHA, the AAMD, and AAM have agreed that museums have an obligation to:

1. identify all objects in their collections that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, "covered objects);
2. make currently available object and provenance (history of ownership) information on those objects accessible;
3. give priority to continuing provenance research as resources allow.³⁸

³⁶Pankiewicz, Anna, Polish Embassy, Washington DC, telephone interview, 8 April 2002. Additional e-mail correspondence 23 September, 2002.

³⁷American Association of Museums, "Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era." Issued November 1999, amended April, 2001. Available at www.aam-us.org/nazi_guidelines.htm

³⁸Ibid.

The AAMD and the AAM guidelines address appropriate practices of acquisition, loans, researching existing collections, handling claims of ownership, and the fiduciary responsibilities of museums as they relate to covered objects. Moreover, both sets of guidelines emphasize the need to address questions of provenance and claims of ownership on a case by case basis.

In the case of the disputed Lubomirski Dürers, the museums had an ethical obligation to address the claims. However, even guided by ethics and professional practices, the situation is complex. Disclosure is not an issue in this example, since the location of the works has been well-known for years and there are no gaps in their well-documented provenance. And, while there is consensus that the works were unlawfully appropriated when Muhlmann confiscated the Lubomirski Dürers in 1941, the central question is whether they were subsequently returned to “the object’s original owner or legal successor.”³⁹ This crucial determination relies on the validity of the State Department’s 1950 decision.

Regardless of validity, the AAM specifically outlines procedures for museums to follow regarding claims of ownership, insisting that “museums should address claims of ownership asserted in connection with objects in their custody openly, seriously, responsively, and with respect for the dignity of all parties involved.”⁴⁰ The museums have done just that. In accordance with these guidelines, representatives from the twelve museums met at the Metropolitan Museum of Art in December of 2001 to discuss the claims. In a press released issued after the meeting, the institutions explicitly stated that the meeting was called “in conformity with standards for considering World War II-era

³⁹Ibid.

⁴⁰Ibid.

claims,” as established by the aforementioned associations.⁴¹ At the meeting, Ambassador J.D. Bindenagel, the State Department’s Special Envoy for Holocaust Issues, shared with the museums a large volume of recently declassified documents representing the research conducted by the State Department to investigate the 1950 decision. Without addressing the validity of the Polish or Ukrainian claims, he stated “We have recently completed a review of the decision made in 1950 and reaffirmed that the United States government processed the restitution claim for the Dürers with due diligence, deliberation, and care, and made a prudent decisions based on the facts and on Allied restitution policy.”⁴² The State Department also shared its documents and findings with the Polish and Ukrainian authorities. Though the museums supported the State Department’s decision, they have invited Polish representatives to New York for discussion. Originally planned for April 2002, the meeting was postponed to allow the Poles time to prepare their new claim.⁴³

So far, the museums involved have acted appropriately in accordance with established guidelines. Though they have not denied the claims outright, the unique nature of this case places them in an awkward position. First of all, it is generally acknowledged that the museums acquired, either by purchase or donation, the drawings in good faith. Moreover, there were no gaps in their provenance and the decision to turn

⁴¹Holzer, Harold (Vice President for Communications and Marketing, Metropolitan Museum of Art), “Twelve Museum Meet in New York to Discuss Lubomirski Dürers.” Press Release, December 4, 2001.

⁴²Holzer, Press Release.

⁴³In the course of completing this project, all 12 museums were contacted for a statement regarding the institution’s official position. The Art Institute of Chicago, the Metropolitan Museum of Art, the Cleveland Museum of Art, and the Nelson-Atkins Museum responded to the inquiry, and cited Harold Holzer’s press release from December, 2001 as their official position. The Boijmans van Beuningen Museum explained that the law in the Netherlands differs from UK and US law and that they had not made any public statements or press releases concerning the matter. The National Gallery of Canada also wrote that they had not made any public statements or issued press releases concerning the Lubomirski Dürers. Several museums failed to respond to the inquiry.

the works over to George was made by a governing legal body, the United States Department of State. Though certainly the State Department's affirmation of its original decision works in favor of these institutions to retain the drawings, on what basis would they reconstitute the drawings if they so chose? Museums have a fiduciary responsibility to care for their collections, which are held in trust for the public. In many cases, museums have to weigh their sympathies and ethical obligations toward victims of Nazi looting with their legal responsibilities to protect their collections.

Stephen Weil, former director of the Hirshhorn Museum and Sculpture Garden, has stated that although in the past, he has generally resisted the use of the statute of limitations defense to bar Holocaust restitution claims, the Lubomirski Dürers may present a case where a statute of limitations defense is entirely appropriate. If the Polish or Ukrainian authorities could establish that the drawings were, in fact, erroneously reconstituted and filed suit against the museums, then the museums could respond with a statute of limitations defense, which requires "that claims be brought within a certain stated period of time or else the right to claim is barred. The purpose of such statutes is to urge plaintiffs to action in a timely manner so that claims do not become stale."⁴⁴ For one thing, he argues that the law may not be competent to resolve all the legal issues involved, including the interpretation of a 135 year old trust established under Austro-Hungarian law. Moreover, he points out that since the drawings sat at the Munich Collecting Point from 1945-50, with the Prince as the only claimant, and the Ukrainian

⁴⁴Malaro, Marie C., A Legal Primer on Managing Museum Collections (Washington and London: Smithsonian Institution Press, 1998) 285.

and Polish claims were not submitted for another 50 years, that these claimants may have been sitting on their claims for too long.⁴⁵

The hard questions: the issue of restitution

One question raised by these recent claims for restitution of the drawings to foreign institution, as their rightful owners, is how far back do we repatriate? At some point, a decision must be made as to who has legal title to these drawings. One could challenge the original acquisition of the collection by the Lubomirskis, the alleged result of the illegal plundering of the Albertina. In an e-mail, Lynn Nicholas conceded that the Poles may have a valid argument that Prince George had no rightful claim to the works, but notes that “The original Prince Henryk Lubomirski himself obtained some of the drawings in Vienna in the Napoleonic era in a wartime market which was also rife with ‘irregularities’ which might not stand up to today’s scrutiny.”⁴⁶ If Prince Henryk’s title was suspect, do either institutions have a legitimate claim to the works? Unless some parameters are placed on restitution, the problem of theft and ownership could be traced back to the Albertina, the original victim of theft during the Napoleonic wars.

There is, of course another tricky restitution question in this case. To whom would we retribute? The Ukrainians and the Poles have each presented competing claims assuming ownership. To resolve these competing claims, it is necessary to determine which is the legitimate successor to the original Ossolinski Institute and Lubomirski Museum. Anthony Potulicki, Prince George Lubomirski’s nephew, argues that the Ukrainians have no basis for claiming the drawings. “My family were Polish aristocrats.

⁴⁵Weil, Stephen E., personal interview, 17 April 2002.

⁴⁶Nicholas, Lynn, e-mail correspondence, 15 April 2002.

They would not have left their art to Ukrainians. The museum was set up as an endowment by my family for Polish culture. It had nothing to do with Ukraine.”⁴⁷ As scholar Willi Korte suggests, unless an agreement as to the legitimate successor is reached between the Ukrainians and Poles, it makes little sense for them to pursue any claims against the museums.⁴⁸

Hope for Resolution

Willi Korte suggests that since the crux of the problem seems to rest on the State Department’s 1950 decision, which the State Department has reviewed internally and upheld, perhaps an external review is necessary to assess the decision. In the meantime, the museums understand their acquisitions of the drawings to have been made in good faith.⁴⁹ Stephen Weil has posed a solution that the drawings be periodically reassembled as a collection and exhibited in Poland. Certainly, specific guarantees of their return would have to be worked out prior to any such traveling and exhibition.⁵⁰ Offering another perspective, Lynn Nicholas explains that “Personally, I would hope that some of the museums might see fit to make the gesture of returning their drawings, but that may be a rather sentimental idea.” Agreeing with Weil that a long and expensive legal battle might not represent the most productive solution, she proposes that, “Another, nicer, solution might be to arrange rotating, long-term loans of the drawings to Poland and Ukraine by a consortium of museums so that they could be seen by the public and scholars in those countries. This would, however, probably require careful safeguards or

⁴⁷Dobbs, 29.

⁴⁸Korte, Willi, personal interview, 23 April 2002.

⁴⁹Korte, Willi, personal interview, 23 April 2002.

⁵⁰Weil, Stephen E., personal interview, 17 April 2002.

exchanges to prevent the works from being seized once they get to Poland.”⁵¹ On the other hand, they could also be returned to Poland and made available for use by other museums.

Conclusion: To be continued?

Several components of the Lubomirski Dürers dispute have yet to be resolved. According to the Polish embassy in Washington, DC, the Poles continue to pursue their claim and have been redrafting a claim that they will present to the 12 museums by the end of 2002.⁵² The Ukrainian government, on the other hand, has been slower to follow through on their original claim. And this competition between the two countries and institutes as legal successor of the Ossolinski Institute with entitlement to the drawings, continues to work to their disadvantage. Though debates regarding the fate of the Dürers seems to return to the crucial 1950 State Department decision, at this point the State Department is confident with their decision. Having reported on their research and reaffirmed the decision’s validity, the State Department has backed out of the dispute and suggests that the issue now concerns only the museums and foreign authorities.⁵³ Though complying with guidelines established by professional associations, the museums remain caught in a difficult legal and ethical battle. If the State Department affirmed their decision and the drawings were acquired in good faith, how do the museums respond to sympathetic claims of Nazi looting? Certainly, art scholars and the international community of cultural institutions will wait to see what happens in 2002 to resolve the

⁵¹Nicholas, Lynn, email correspondence, 15 April 2002.

⁵²Pankiewicz, Anna, Polish Embassy, Washington DC, telephone interview, 8 April 2002.
Additional e-mail correspondence 23 September, 2002.

⁵³Becker, John, telephone interview, 10 April, 2002.

case of these disputed Dürers. As we await the outcome, we might focus on Lynn Nicholas' point that what is most important for the world's artistic heritage is that these coveted masterpieces remain protected and accessible for the coming centuries.

Time Line

- Late 1700's: The Dürers mysteriously disappear from the Albertina in Vienna and appear on the Vienna art market.
- 1823: Prince Henryk Lubomirski donates his collection of books, medals, paintings, and antiquities to the Ossolinski Institute (in a branch called the Lubomirski Museum).
- 1866: Formal bequest of the Lubomirski Museum, including the 50-year rule
- 1919: The independent nation of Poland is established at the end of WWI. The city of Lemberg becomes Lvov.
- 1927: British art critic publishes an article about the Lubomirski Dürers.
- August, 1939: Soviet Union and Nazi Germany enter into their pact of non-aggression. Lvov becomes part of the Soviet Union.
- 1940: All private cultural institutions in Soviet occupied territories are nationalized. In effect, the Ossolinski Institute and the Lubomirski Museum cease to exist. Their collections are transferred to the newly established V. Stefanyk Library of the Academy of Sciences.
- June, 1941: The Nazis invade the Soviet Union. Kajetan Muhlmann (Special Commissioner for the Protection of Works of Art in the Occupied Territories) arrives in Lviv with instructions to confiscate the drawings. Within days, the drawings are sent to Hitler.
- May, 1945: US troops discover the Alt Aussee salt mine.
- 1946: The Poles reactivate the Ossolinski Institute in Wroclaw, Poland.
- April, 1947: Prince George Lubomirski begins his search for the drawings.
- May 26, 1950: The US turns the Dürer drawings over to Prince George Lubomirski. The Prince subsequently sells the drawings through English and American art dealers.
- Nov., 1998: The Lviv V. Stefanyk Scientific Library (Ukraine) contacts State Department and makes a claim against the museums.
- Jan, 2001: The Ossolinski Institute (Poland) makes a claim against the museums.
- Dec. 4, 2001: Meeting with museum and State Department representatives.
- Sept., 2002: Scheduled meeting between the Polish authorities and museum representatives.

Where are they now?

An Index of Museums with the Lubomirski Dürers in their Collection

England:

Courtauld Institute of Art, London (1)
Barber Institute, University of Birmingham (1)
The British Museum (1)

Holland:

Boijmans van Beuningen Museum, Rotterdam (2)

United States:

Metropolitan Museum of Art, New York (3)
National Gallery of Art, Washington, DC (1)
Museum of Fine Arts, Boston (1)
Art Institute of Chicago (1)
Cleveland Museum of Art (2)
Nelson-Atkins Museum, Kansas City (1)
Pierpont Morgan Library (1)

Canada:

National Gallery of Canada, Ottawa (1)

Private Collections (8)

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