

PANEL DISCUSSION*

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PROFESSOR EGON GUTTMAN: Let me ask the first question of Mr. Bradfield. He was talking about retention of records. In the United States, banks, after a period of time, have to make a report to the State, and the account escheats to the State. Is there a similar provision in Swiss law—i.e., that after a period of time these dormant accounts are to go to the State or the Canton so that maybe some record relating to these accounts could be found that way?

MICHAEL BRADFIELD: There is no escheat law in Switzerland, although Switzerland has legislation under consideration that would accomplish that objective. Some Cantons allow for something that is called “prescription,” which is similar to escheat but the property does not go to the state. In the Cantons, particularly, the dormant accounts have been published in some cases, and the unclaimed funds were donated to charity. However, this practice is not the usual system. The system is that the account remains on the books of the bank forever.

PROFESSOR GUTTMAN: So, there is no escheat law. Therefore, the assets are available to the bank in its own banking practices, such as making loans with the monies in such dormant accounts. The in-

* The panel discussion took place at the Conference on Neutrality, Morality, and the Holocaust, which took place at the American University Washington College of Law on April 23, 1998.

terest paid on such loans would be kept by the bank making the loan. There is, therefore, no inducement to look for an owner of a dormant account?

MR. BRADFIELD: That is one perspective. Switzerland had a very difficult period during the war; it had not been invaded nor had it been a battlefield, but Switzerland had been through a difficult period. The Swiss looked at this situation after the war and said bank secrecy and neutrality had been very beneficial for Switzerland, and that, rather than do something that undermined what seemed to be such a fundamentally protective environment, it should remain in place.

This conclusion was particularly appropriate in view of the situation in Europe after the war with the confrontation between East and West. Switzerland saw the likelihood of more warfare in Europe, or at least a substantial possibility of such recurring, and the Swiss wanted to protect what they saw as a wonderful environment for themselves.

PROFESSOR RUBIN: I will take the microphone again. Obviously this is not a statement that anybody here will believe. In connection with the Swiss situation, in 1946, when we signed the agreement with the Swiss, the Swiss did sign a letter that said they would give sympathetic attention to taking a census of, and would return heirless assets to the inter-governmental committee and to the refugees. That was not a firm commitment, but it was a letter signed by Mr. Rappard and Mr. Stuke, saying that they would do that.

In addition to that, they should have done something about all this very early on, because one of our demands on the Swiss at the time was that they identify all of the German assets in Switzerland because they were going to be liquidated, we said, for the account of the Allies. They said for our, Swiss, account. We divided it and agreed to split these assets up at the end. The Swiss had a firm understanding with us, the Allies, that they would take a complete census of all foreign assets. That included all the German assets, all Polish assets, and so forth.

Basically the Swiss did not fully comply with that. To a certain extent they did, because in 1962 we worked out an arrangement with them on the basis of which they divided some amount between the allied reparation account and their own.

AUDIENCE MEMBER: I thought that was only with respect to the Germans?

PROFESSOR RUBIN: They did not do a very good job of it. They had three sets of proposals, one which was different from the others.

AUDIENCE MEMBER: I thought that was just for the German accounts that they split up the money with the United States? Only with respect to the German assets in Switzerland.

PROFESSOR RUBIN: Well, that is right. Those were the only assets that were supposed to go into the reparations.

AUDIENCE MEMBER: This is a question to Mr. Kline or Ms. Nicholas. There was a rather intriguing piece in the paper about events that are happening in Russia, the former Soviet Union. Apparently there is a dispute between Germany and Russia over what appears to be a great deal of art that the Russians have, that they took out of Germany. Some of which apparently belonged to Germany, some of which belonged to Germany because Germany stole it from others or obtained it illegally or through extortion.

Apparently, there was some battle royal within the Russian government as to whether they should or should not give the art back. After listening to the speakers today, it seems to me that maybe a good portion of that art might be art that belongs to victims of the Holocaust. Any comments on that? It sounded like it might be a great deal.

LYNN NICHOLAS: Yes. Well, at the end of the war it was Soviet policy to take anything they found, no matter who it belonged to, back to the Soviet Union. In that sweep, many things were taken which had been confiscated from Jewish victims.

A great deal of art was given back to Eastern Europe in the 1950s, but a great deal was kept in the Soviet Union. Certainly, among the things that we know are there now, are objects that belong to Jewish families in Hungary and a certain number of other ones in western Europe.

But most of what we know about is what belonged to German collectors, private collectors in Germany. The reason these things were not given back was (a) the collectors were in West Germany, and (b) the Soviet's excuse was that they did not believe in private property, so therefore it should not go back. But that does not cover

things like the Trojan gold, which belongs to the Berlin State Museums.

There has been a great effort at negotiations between the Germans and the Russians in the last ten years, to settle this dispute. I believe that at the museum level, the Russians would be quite happy to give back a great deal. But it has become very political and the Russian Parliament, or Duma, had twice voted to nationalize these things. They have said they will never give them back, because of the damage that was done to the Soviet Union by the Germans in the Second World War.

So far, President Yeltsin has not signed this legislation. He has taken it to the equivalent of the Russian Supreme Court. I think that court has said that it had to be signed, that would make it into Russian law. But now President Yeltsin is taking this issue to some other body. So, it is still not a totally done deal. What will happen to those things? I do not know. Certainly they should be returned under any kind of convention or law.

SIDNEY CLEARFIELD: I have an amusing story that was told to me by representatives of the World Jewish Restitution Organization. They went to see Cheromyrdin and they brought up these questions about restitution of art and property and an opportunity to access the archives.

Cheromyrdin said, "Ten million Russians were killed in the war, we're not giving anything back to anybody. Papers, if you want papers, you can have all the papers that you want."

THOMAS KLINE: It goes a little beyond the question, but let me just say that there were also multiple overlapping patterns of theft by the Soviets as well. In addition to some official trophy taking, there was an enormous volume of semi-official and unofficial looting.

By semi-official, I am referring not only to the taking of art under color of "uniform and authority," but also to art that immediately went back into the Berlin art market or that went into private possession.

Konstantin Akinsha, who is the leading authority on Soviet art looting, reports that Soviet generals had the ability to ship back to Russia as much as a train-car load of personal possessions.

Therefore, if you imagine the authority of a Soviet general to command troops, to gather things for his own interest, it is easy to imagine that there are enormous volumes of art in countries of the former Soviet Union that was taken under color of authority but were really semi-official looting.

From my perspective, again, when that art arrives in the United States, the questions are: What are the legal relationships that attached? Where it was taken? How it was taken? And, how it was moved? We have at least one case now where there are conflicting claims to property taken by Soviet forces.

AUDIENCE MEMBER: My question was how much of this art taken by the Soviets might be art that belonged to victims of the Holocaust that the Germans previously had stolen, that is still in Russia, that they do not want to give back, and they say this art is reparations for what the Germans did to us?

MR. KLINE: As far as we know, there is a considerable volume both from Hungarian families and from the Koenigs family in the Netherlands. There would seem to be a lot of art that was in transit that was taken by the Soviets.

MS. NICHOLAS: I mean, that issue has been suggested to the Russians. I mean, they all know this issue. At the moment, the way it stands is that their Parliament has voted to keep it. So, that's the way it stands right now.

AUDIENCE MEMBER: A viewpoint from Bern, Switzerland, as a foreign service officer before and after VE day, following up on Ambassador Rubin's comment.

Yes, we came back from the negotiations in 1946. That is when the word stonewalling originated. I think it is interesting that during the time that I was there, I was unaware of any individual claimants coming to the United States legation to register their claims or to ask for assistance. Keeping in mind that the legation was in about five private homes, conceivably the question was not raised at the staff meetings whether the legation was contacted by a claimant.

But I just thought it might be interesting to know what happened during that period—and I left in 1949.

PROFESSOR DETLEV F. VAGTS: I am motivated to take just a couple of moments of your time to remind people of what I think has

been an under-estimated part of these proceedings. I think this is something that you, Professor Guttman, wanted to have more of, which is the future dimension of this theme of neutrality. Somehow we are irresistibly drawn to the past, to World War II and what happened then.

There have been several speakers who have said that one of the things to remember is to see that it does not happen again. In fact, if you abstract from the specificities of the Holocaust and generalize it to genocide, it has happened again and again. It has happened in Indonesia a couple of times. Stalin, after all, killed more people with starvation than even Hitler was able to do. Bangladesh, Rwanda, Bosnia, and so forth.

We really need to be on our guard so that fifty years from now there is not a conference that says what were all those people doing in 1999, talking about fifty years before that when right before their eyes, through CNN, other terrible things were still happening.

PROFESSOR GUTTMAN: Thank you very much Professor Vagts. That is really what I hope to see, that we will not let this happen again and that may require a move away from 1907 strict legalism. We must reach an understanding that the element of morality cannot be neglected on the basis of a strict reading, a strict legal reading.

I have been involved in one case here in the District of Columbia that you will have read about. This time it was not a neutral, it was the German government that took a strictly legalistic approach to who would be entitled to reparations under Germany's post-war legislation.

An American citizen was imprisoned by the German Gestapo at the outbreak of the war. When he and his family asked to be repatriated back to the United States in the exchange of nationals that took place at that time, they were told that they were not American citizens, they were Jews.

He and his family were sent to a concentration camp, where all his family but he perished. United States Army troops took him off a train destined for an extermination camp. In typical legalistic manner, his tunic bore the stamp "USA."

The American Army, which was able to prevent his train getting to an extermination camp, took him off that train. An officer asked him

why he had "USA" stenciled on his tunic. Mr. Prinz told his story, that he was an American citizen, born of American naturalized parents in Slovakia and, therefore, he was an American.

After being nursed back to some semblance of health in a military hospital, Mr. Prinz went back to Slovakia to wait for his family. He then came back to the United States, because there were no family members able to return to his Slovakian town. They had all perished in the Holocaust. When he sued the German government, they pleaded, the Foreign Sovereign Immunities Act. That is where I got involved in this case.

What was interesting was that the argument made by the German government for turning down his request was: Under their German restitution law, he was not entitled to restitution because he was a United States citizen and not a citizen of Germany nor a citizen of an occupied country. At one stage he was even told that if he were to renounce his United States citizenship, they might give him the pension of a minor civil servant based on his birth in Slovakia. The matter was ultimately settled. But it shows you where legalism, taken to the "nth degree," can get you.

There are also other instances under another German restitution law. You would have to have been in hiding or in prison for eighteen months to qualify under one of these laws. I know of a case, which was made known generally through the *Washington Post Magazine*. The young lady involved in this case was in hiding for sixteen months, and therefore, was not entitled to compensation under the applicable German law. Germany does not look upon its law as providing for the payment of damages for injury inflicted, but as providing an *ex gratia* payment to a petitioner, a victim of the Holocaust, granted in the discretion of a nation that inflicted this injury. Should such payment not be for damages for a wrong done? Then does it make a difference whether the incarceration or hiding was for eighteen or sixteen months?

When it comes to neutrality, I think the same problem arises. The law has to be looked at with some humanity. There must be some kind of morality applied to its interpretation. These "neutrals" have strayed from the moral laws. To hold otherwise means we end up by saying it was not the government that was supplying arms to one of the belligerents, rather it was an individual, private entity, or a com-

mercial entity that supplied the arms. A strict reading of the 1907 Convention says that commercial transactions between citizens of neutrals and belligerents is all right. The citizen of a neutral country runs the risk of asset confiscation when "running a blockade." But, in effect, without the consent of the "neutral" government, its commercial entities could not enter into a commercial transaction with the government of a belligerent.

Now, what I am hoping is that we have started the germ of thinking and that maybe something will develop. Maybe not in my lifetime but in some future time—and I hope not fifty years later. I hope that we see that neutrality is not solely an international law concept, but that morality is a basis of international law, just like *jus cogens* is the basis of international law. As a result, neutrality in the face of inhumanity at that time will generally be unacceptable.

Thank you.