



RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 10 SEPTEMBER 2015 FOR THE

**SUPPLEMENTARY REPORT OF THE SPOILIATION
ADVISORY PANEL IN RESPECT OF AN OIL
PAINTING BY JOHN CONSTABLE 'BEACHING A
BOAT, BRIGHTON' NOW IN THE POSSESSION OF
THE TATE GALLERY**

This Report supplements the Panel's Report of 26 March 2014 (HC 1016)

The Honourable Sir Donnell Deeny

*Ordered by the House of Commons
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SUPPLEMENTARY REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF AN OIL PAINTING BY JOHN CONSTABLE 'BEACHING A BOAT, BRIGHTON' NOW IN THE POSSESSION OF THE TATE GALLERY

1. This is the second report of the Spoliation Advisory Panel in respect of a sketch in oil, on paper laid on canvas, painted by John Constable (1776-1837) during a visit to Brighton in 1824 (the Painting). The dimensions are approximately 26 x 30 centimetres.
2. It is the subject of a claim by the heirs (the Claimants) of a Hungarian art collector. Since our first Report the collector has been publicly identified as Baron Ferenc Hatvany. The oil sketch is in the Tate Gallery (the Tate).
3. On 26 March 2014 the Panel concluded, taking into account all the circumstances set out in the Report, that the moral strength of the Claimants' case and the moral obligation on the Tate warranted a recommendation that the Painting should be returned by the Tate to the Claimants.
4. This recommendation was subject to the conditions set out in paragraphs 54 and 55 of the report to the effect that the Claimants will reimburse the German Federal Government for any relevant compensation previously received in 1974 for loss suffered by the family following the German invasion of Hungary in 1944.
5. The Panel also concluded, as a necessary part of its determination, that, on the balance of probabilities, the Painting was in the possession of the collector, Baron Hatvany, until it was looted following the German invasion of Hungary in 1944.
6. At their meeting of 21 May 2014, the Trustees of the Tate authorised the de-accessioning of the work pursuant to the recommendation of the Panel and the Holocaust (Return of Cultural Objects) Act 2009. The following week, however, new evidence was brought to the attention of the Tate by the Museum of Fine Arts in Budapest. This was an export licence bearing the

date 17 December 1946. Among the three works of art named on the application for an export licence, which was granted, was the following entry:-

“Constable: Fishing Boat, oil canvas 24 x 29”.

7. It is accepted by both the Claimants and the Tate that this is a reference to the Painting. We turn below to the consideration of this licence in further detail. Following this disclosure the Tate understandably stayed the return of the work. It commissioned considerable further research, including a visit by a senior curator to Budapest during the summer of 2014 to ascertain the validity of the document.
8. On 6 October 2014, Sir Nicholas Serota, Director of the Tate, wrote to the Chairman of the Spoliation Advisory Panel seeking the counsel of the Panel on the evidence that had newly emerged. The Chairman of the Panel replied on 22 October 2014 confirming that it was a matter for the Secretary of State to designate a Panel to reconsider the claim, if he considered it appropriate to do so. The Chairman of the Panel encouraged the Tate to research the matter as thoroughly as possible and to share the information it obtained with the Claimants.
9. On 29 January 2015 the Tate wrote to the Right Honourable Sajid Javid MP, Secretary of State for Culture, Media and Sport inviting him to request the Spoliation Advisory Panel to offer further guidance on the matter.
10. Having considered the matter, the Secretary of State did designate a Panel to reconsider the claim in the light of the new material and invited it to advise on whether there was anything therein which would lead the Panel to reach a different conclusion and recommendation from its original Report in 2014. The Panel has met twice to do so. The Panel has carefully considered a detailed and scholarly research document prepared and delivered on behalf of the Tate. It has also considered the responses of the Claimants' lawyers to the material provided by the Tate.

The Panel's Task

11. It is undoubtedly true, as the Tate has said in its correspondence, that the export licence “creates a number of questions that remain unanswered”. Sir Nicholas Serota has helpfully confirmed, in his letter of 29 January 2015 to the Secretary of State, that the Tate is not questioning the conclusion that the work was looted from Baron Hatvany during the Second World War. The Panel understands the approach of Tate in asking questions arising out of its research but the task facing the Panel is, in the light of the concession of Sir Nicholas above, to decide whether, on the balance of probabilities, Baron Hatvany had recovered possession of the Painting after it was looted but before 17 December 1946 and had either sold it or consigned it for sale or export. If he had done so, and in the absence of any evidence of further looting, or forced sale or sale at an undervalue, the moral pendulum could swing in favour of the Tate as making it probable that the Collector had given good title to whoever purchased it from him at or after that time. Such good title would then pass to Mr Meyer (over and above legal limitation issues) who is recorded as having been the owner of it in London in 1962 when it reappeared in recorded view.

12. The task of the Panel therefore is to examine the evidence and consider the comments made and questions raised by each party to see whether they render it more or less probable that Baron Hatvany had recovered possession of the Painting in 1945 or 1946 and reach a conclusion in that regard.

The Evidence

13. The key piece of evidence is the export licence to be found in the archives of the Museum of Fine Arts in Budapest. The Museum drew it to the attention of the Tate after seeing publicity following the decision of the Panel of 26 March 2014. A copy of it, with translation, appears at Appendix 1 to this report. It consists, as can be seen, of a request for a licence for the export of three works of art; that request is then granted on the same piece of paper. The granting of such a licence was delegated by the Hungarian Minister of

Religion and Public Education, who was then in charge of cultural matters, to the Hungarian National Museum of Fine Art.

14. The typed name of the applicant for the export licence is Karola Fábri. The author of *'Sacco di Budapest' Depredation of Hungary 1939-1949*, László Mravik, stated, in his affidavit of 5 December 2014 on behalf of the Claimants, that he knew Fábri and that she was "an art dealer who often lent help to 'Uncle Schatz' who was operating on the black market and who was known to the art world by his nickname and as a shady character". Her action in applying for an export licence for these three works of art under certificate number 356/1946 would be consistent with working as an art dealer, particularly as a second application by her relating to five works is the next application for a certificate - 357/1946. We note that none of the other seven works of art on these licences has been linked to Baron Hatvany. The address given by Fábri is the same as that of the major dealer Marton Porkay (1890-1967). His autobiography *"Auf dem Karussel der Kunst, 1956"* takes pride, inter alia, in exposing a fake Rembrandt acquired by the Museum of Fine Art. There is, therefore, a degree of conflict about the reputation of those with whom Karola Fabri was associated.

15. Despite its diligent research the Tate has not discovered any link between Hatvany and either Karola Fábri or Baron Ivan III von Wimpffen zu Mollberg (1903 -1990). A line has been drawn through Fábri's name on the licence and Wimpffen's name written in. Curiously his name is misspelt with only one 'f' instead of two. He was a Hungarian aristocrat who joined the diplomatic service of Hungary in 1942 and served as press attaché in its Madrid Embassy. He is said to have been withdrawn from Madrid because of his pro-ally and pro-Jewish friendships. In 1946 he joined the Ministry for Religion and Education. It could be that his name was substituted for that of Karola Fábri because he was a more reputable person holding office in the Ministry which supervised the Museum. László Mravik casts doubt on his identification but the Tate points out that the address given for him is that of his then apartment in Budapest. But does this point one way or another to Hatvany having recovered the Painting? It is true they were both Hungarian Barons

but of very different backgrounds. Conceivably von Wimpffen was acting as a consignee for the Collector but no evidence of dealings or friendship between them has been found.

16. The export licence puts a value of '8,000' on the Painting, under a column headed pengö. But on 1 August 1946 the forint had been introduced to replace the pengö because of extreme hyperinflation of that currency. We take it, therefore, that this refers to 8,000 forints. A forint in 1946 is believed to have been valued at about 47 to the pound sterling (see Board of Trade Journal, 22 October 1949, Bodleian Library, Oxford). It is common case between the parties that in the summer of 1946 Hatvany recovered ten paintings with money he had available. Why then, one might ask, would he sell this Constable? Against that, while the Painting, as we earlier found, is not inconsistent with his collection it was not central to it. Conceivably as he sought to recover his artworks and rebuild his fortune he chose to part with one of them extraneous to his main interests. A price of approaching £200 then, perhaps equivalent to £20,000 now, might or might not point against such a suggestion.

17. The export licence was signed by two people on behalf of the Museum. The first of those was Klára Garas, who was then a youthful curator in the Museum. She had no expertise in nineteenth century painting. There is no reason to think she would have been aware of it coming from the collection of Hatvany. A point raised on behalf of the Tate, for example, in the letter of Sir Nicholas Serota to Sir Donnell Deeny of 6 October 2014, is on the granting of the licence. "Such official blessing for licenced export would be highly unlikely for a work known to be on the black market." But as is acknowledged in the subsequent Tate document, there might be five possible explanations for naming the artist and the work in this application. Those consigning it may have been ignorant that it ever belonged to Hatvany but honest in their identification. Secondly, they may have known that it came from Hatvany but had bought it from him or were acting on his behalf. Thirdly they may have been ignorant of the Hatvany source but confident "that the process will not put them at risk". Fourthly they may have been aware that this had not been

lawfully obtained but “brazen in facing down the risk of exposure”. Fifthly, they may have been “enacting a double bluff in which identification protects them from reproach”.

18. At one stage it was thought that the licence had been signed by the then Director of the Museum, István Genthon. We find that that is not the case, as indeed the Tate now accepts. The translation of the Hungarian above the signature reads: “Signed in the place of the Chief Director of the Hungarian National Museum of Fine Art” albeit the words “Museum Director” appear below the signature. (The Panel’s underlining throughout). Given that there were approaching 400 applications a year, it would be a little unlikely that they were all examined by the Director of the Museum. In fact this is made more unlikely by two other pieces of evidence. The Claimants’ lawyer, Agnes Peresztegi, a Paris avocat, visited Klára Garas, now in her 90s. Klára Garas recognised her own signature and “guessed” that the other signatory was Zoltán Farkas. The Claimants’ lawyer submits, without claiming any expertise, that the signature does not look as though it is the name István Genthon and it might be Zoltán Farkas. This is important as István Genthon was very familiar with the Hatvany collection. Therefore if a thief or handler of looted goods was aware that the Constable came from Hatvany but had not been sold or consigned by him he would not want it to be examined by Genthon.

19. Another piece of evidence suggests that examination by Genthon would be unlikely. The Tate has discovered, also in the records of the Hungarian National Museum of Fine Art, a circular of 27 May 1946 signed by Genthon. It is predicated on a “churlish use of the Museum’s circular and long seal” with regard to export licences and assessments. It is aimed at tightening up the procedures for such assessment and licensing. At section (II) it specifies that verification of nineteenth century material should be carried out in the first place by Dr Jolán Balogh and in the second place by Zoltán Farkas. That makes it more likely that it was Farkas who counter-signed the licence and not Genthon.

20. The Tate seeks to draw from the circular the inference that procedures had been tightened up some months before December 1946 making it perhaps less likely that a looted or stolen work would be presented for an export licence and passed for an export licence. On the other hand, the circular is making the case that there was abuse of the export licence procedure. This would not necessarily have been remedied by one circular issued seven months before this licence. In any event given its modest size and, for Hungarians, perhaps unfamiliar nature of the work, it may well be that Zoltán Farkas was wholly unaware that it had belonged to Baron Hatvany.
21. One fact is clear: there is no evidence that provenance research was part of the export licensing procedure. Indeed the Claimants' lawyer quotes Klára Garas as saying that it was not.
22. It is equally clear that standards of examination of provenance of works of art have changed significantly in recent decades and that one should not ascribe to 1946 the standards that now apply.
23. A factor which we consider does weigh in favour of the proposition that the application might have been made on behalf of Baron Hatvany is that the licence sought the export of the work to the city of Zürich in Switzerland. Three months later Hatvany himself emigrated to Switzerland¹. Great weight, however, cannot be placed on this point as Switzerland was a very obvious place to which to send art for sale and for wealthy people to go to because it had remained neutral during and largely unaffected by the cataclysm of the Second World War.
24. A factor weighing in favour of the Claimants is that the new Hungarian Ministry of Culture's Commission for Art Works Looted from Public and Private Art Collections, which operated between 1946 and 1948, recorded this work as looted at number 768 on its register and noted that it was previously

¹ *This was at a time of increasing Communist domination of the post-war Hungarian government e.g. decrees abolishing the great landed estates and re-allocating the land to the village poor were enacted on 17 March 1947. See A History of Modern Hungary, JK Hoensch, 2nd. Ed.*

owned by Hatvany. If Hatvany had recovered it and was now, through agents, exporting it lawfully, or had sold it, why did he not inform the authorities that he had recovered it? It is interesting to note that the other works he is known to have taken out of Hungary were not submitted for export licences by the Baron.

25. A question posed by the Tate is this: “*The work is small; not much larger than A4 paper and could easily have been smuggled out of the country. Why would somebody risk going through the official (and recently tightened) process if they did not have legitimate possession?*” The most obvious answer to that question is that Karola Fábri or Baron Wimpffen or whoever was behind this application, if it was not them, wished to give the work legitimacy by having it the subject of an official export licence. They may well have calculated that no provenance checks would be carried out by the Museum and it would be unlikely to be seen by anyone who knew its origin.

26. We cannot accept the Tate’s assertion that the reviewers would “surely question and probe the issue of ownership”. As stated above there is no evidence that that was part of the procedure. Nor do we consider it correct to say that it would be highly unlikely that the reviewers, apart from the Director, would not recognise this small work by a foreign, albeit famous, artist. The question as to why Wimpffen’s name is put on the export licence is one that nobody can really answer in the present state of knowledge.

Conclusion

27. No link has been established between Baron Hatvany and the two persons named as applying for the export licence. The other seven works of art, the subject of applications 1946/ 356 and 357, have nothing to do with Hatvany. He himself did not apply for any export licences in the period. The work was still being described as looted in an official Government register compiled between 1946 and 1948. The procedures laid down in the Museum, even if scrupulously complied with, would not lead to the work being examined by the person who might well have recognised it, István Genthon. Hatvany was known to be buying works back at this time. There is no record of him selling

other works in 1946. While acknowledging the possibility that Hatvany had sold or consigned or exported this particular work, we consider that on the balance of probabilities he had not recovered it after it was looted and that the export licence was being sought by persons who were either ignorant of its pre-1944 provenance or, knowing it, were sufficiently confident that the work would not in all likelihood be identified as formerly part of the Hatvany collection by the procedures then in force in the Museum of Fine Art in Budapest.

28. Therefore, the Panel concludes that there is nothing in the new material which would lead it to reach a different conclusion and recommendation from its original Report of 26 March 2014. Its recommendation that the Painting should be returned by the Tate to the Claimants, subject to the conditions outlined in paragraph 4 above, should still stand.

10 September 2015

The Hon Sir Donnell Deeny – Chairman
Professor Sir Richard J Evans – Deputy Chairman
Tony Baumgartner
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Liba Taub

Appendix 1: Export licence for the Painting dated 17 December 1946 with translation.

Appendix 2: Constitution and Terms of Reference

Kiviteli engedély.

Alulírott tisztelettel kérem, hogy az alábbi műtárgyakra a kiviteli engedélyt
 Budapestről Svájc országba Zürich városba
 megadni méltóztassék. Eladás

A műtárgyakra az addicionális export-valuta kedvezményének megadását
 kérem és kötelezem magam, hogy az exportból befolyó devizáimat a Pesti Magyar
 Kereskedelmi Bank központjában (V., Gróf Tisza István-utca 2.) fogom értékesíteni.

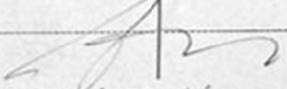
Budapest, 1946. évi december hó 17.n.

A javítás hivatalból tartandó:

P. H.

Dom J.

Név Wimpfen János
~~Fabri Karola~~
 Allás kereskedő
~~Bécsi - n. 5.~~
 Cím Budapest, V. Dorottya u. 1.

M Ű T Á R G Y A K		Pengő
Diaz: Nő gyermekekkel	olaj fa 18.5 x 24	4,000.-
Constable: Halászbárka	olaj vász. 24 x 29	8,000.-
Ismeretlen festő 16.sz.németalföldi festő modorában	19 x 14.5 olaj fa	800.-
		12,800.-
<i>A fenti képek elhalt külföldi mesterek munkái.</i>		
<i>Bp. 1946 dec. 17 dr. János Klára</i>		
<p>3/1946. - 356 sz. Bizonylat. - A fent említett 3 db képnek, amelyek elhalt külföldi mesterek munkái s amelyeknek forgalmi értéke összesen 12.8000- forintra tehető, az ország területéről való kivitele ellen észrevétel nincs.</p> <p style="text-align: center;">Budapest, 1946. évi december hó 18-án.</p> <p style="text-align: center;">A magyar vallás- és közoktatásügyi miniszter ut. megbízásából: Az O.M. Szépművészeti Múzeum igazgatója helyett:</p>		
		 múzeumigazgató

Export licence

I, the undersigned, respectfully request that the export licence for the following works of art be granted from Budapest to Switzerland, to the city of Zurich. *Stamp: Sale*

I request the granting of the additional export currency allowance for the works of art and oblige myself to sell my foreign exchange incoming from the export in the headquarters of the Pesti Magyar Kereskedelmi Bank (Pest Hungarian Commercial Bank) (district V, Gróf Tisza István utca 2.)

Budapest, 17th of the month of December of the year 1946

Correction made *ex officio*.

Name ~~Karola Fábr~~ Iván *illegible*

Position ~~trader~~

Address Budapest, ~~district V Dorottya u. 1.~~ Bécsi u. 5.

Illegible inscriptions

WORKS OF ART	Pengő
Diaz: Woman with children oil wood 18.5x 24	4,000
Constable: Fishing boat oil canvass 24 x 29	8,000
Unknown painter in the style of a 16 th century Dutch painter 19 x 14.50 oil wood	800
	12,800
The above pictures are the works of deceased foreign masters.	
Budapest, 17 December 1946 <i>illegible signature</i>	
3/1946 – Certificate number 356. – There is no objection to the export from the territory of the country of the aforementioned 3 pictures, which are the works of deceased foreign masters and the market value of which may be judged as being a total of 12,8000 forints. Budapest, 18 th of the month of December of the year 1946 On the commission of the Hungarian Minister of Religion and Public Education: Signed in the place of the chief director of the Hungarian National Museum of Fine Art: <i>Illegible signature</i> Museum Director	

Seal: Hungarian National Museum 1802, Hungarian National Museum of Fine Art

31.098. – K. M. E. Ny. (Royal Hungarian University Printing Press)

**SPOILIATION ADVISORY PANEL
CONSTITUTION AND TERMS OF REFERENCE²**

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933-1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim received from on for in the collection of ("the claim").
3. The Secretary of State has designated as Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

Resources for the Panel

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

² Revised following enactment of the Holocaust (Return of Cultural Objects) Act 2009.

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State:
 - (a) on what action should be taken in relation to general issues raised by the claim, and/or
 - (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.
8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title;
9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g)).
10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State.
11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.
13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.

14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.
15. For this purpose the Panel shall:
 - (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;
 - (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
 - (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
 - (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
 - (e) give due weight to the moral strength of the claimant's case;
 - (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
 - (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
 - (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
 - (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
 - (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
 - (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and

- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

- 16. If the Panel upholds the claim in principle, it may recommend either:
 - (a) the return of the object to the claimant, or
 - (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or
 - (c) an ex gratia payment to the claimant, or
 - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
 - (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.
- 17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 7(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.

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