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### "Unfinished Business: Returning Looted War Assets," a Book Review by Thomas R. Kline

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#### **Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II.**

By Stuart E. Eizenstat, *Public Affairs*. 416 pages.

The world is undoubtedly a better place because of Stuart Eizenstat. While serving in a succession of high-positions in the Clinton Administration – U.S. Ambassador to the European Union, Under Secretary of the Treasury – he successfully negotiated a series of settlements that brought some measure of relief to victims of the Holocaust and their families. Beginning in 1995 with claims to recover confiscated property located in the newly-democratic countries of Eastern Europe, Eizenstat spent six years as Ambassador mediating Holocaust-related disputes. This effort culminated in frantic dual-track negotiations with Austria and France during the post-election chaos of November and December 2000 stretching into January 2001, with Ambassador Eizenstat clearing some of his final actions with Secretary of State-designate Colin Powell.

The vast scope of cruelty and human suffering of the Holocaust has been widely known since, at the least, the liberation of the Nazi death camps in 1945. The extent to which the Holocaust also included funding the Third Reich and lining individual pockets through the systematic theft of the assets and labor of Jews and others, however, only came into sharper focus in the 1990s.

The thefts ranged from what is euphemistically referred to as “victim gold,” to paintings, real estate, companies, accounts, etc. Likewise, millions of slave- and forced laborers powered the Third Reich. The primary distinction between the two was that death was an intended result for the primarily Jewish slave laborers. Forced laborers, most of whom were not Jewish, received sustenance and sometimes token pay to keep them alive. Many of these victims received little or no compensation before 1995.

Ambassador Eizenstat's mediations included claims against Swiss banks for unreasonably – and apparently in concert – denying heirs access to accounts created by family members who subsequently perished in the Holocaust. Eizenstat also (1) organized an effort to encourage the Western world's museums to take Holocaust-related art theft claims more seriously; (2) mediated settlements of claims against the German government and German companies that profited from the efforts of slave and forced laborers; (3) negotiated an agreement with the Austrian government over similar labor and property claims; and (4) reached a compromise with the French government and French banks over looted assets and accounts that were never returned to Holocaust survivors or their heirs.

In *Imperfect Justice*, Eizenstat takes us on a journey through his diplomatic accomplishments in trying to settle several extremely difficult disputes. Along the way, he describes his goals and accomplishments in both a disciplined, professional language suitable to a reporter and in highly personal terms that reveal his thoughts and ruminations as a lead character in the drama.

Eizenstat frankly describes his high and low points, his embarrassments and frustrations, his miscommunications, his many anger attacks, his “disappointments and mistakes,” and his failures, along with his many accomplishments. He modestly denies himself credit for the Swiss bank settlement, because it required judicial intervention to bridge the last gap that he could not, himself, close.

He gives an interesting portrayal of his own performance under high stress during an extremely significant period in the history of the world's belated and mostly ineffectual steps to redress the unprecedented and incomprehensible mountain of injuries and insults, murders, and thefts that defined the Holocaust.

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Eizenstat introduces himself as coming from a devout Atlanta Jewish family, and tells how, in the course of his work, he learned the unsurprising fate of the European branches of his family and visited the site of their murders. He emphasizes his pride in helping to right – if even in a limited way, some of the wrongs associated with the Holocaust. However, he also stresses both his loyalty to then-President Clinton, and his ultimate responsibility to protect and advance American foreign policy interests. It is in navigating these poles – pragmatic government bureaucrat and diplomat on the one hand, idealist and Jew on the other – that the reader strives to find the real Stuart Eizenstat, and to understand the import of his deeds.

Concerning the recovery of the looted art, the area of my own personal greatest involvement among the matters he covers, Eizenstat, as Ambassador, made some useful contributions, particularly by increasing awareness of the problem, opening long-sealed records in this country – and encouraging other nations to do likewise – and prodding museums to give consideration to the possible presence of Nazi loot in their collections.

He Briefly describes the systematic methods of Nazi looting and destroying of art and cultural objects – particularly art owned by Jews and others deemed “unworthy.” The Nazis destroyed or seized vast quantities of art, the looted art going to such venues as a planned Fuhrer museum in Hitler’s hometown of Linz, Austria, and the many houses and mansions of the Nazi inner circle. Works by Jewish artists as well as any modern artworks deemed “degenerate” were destroyed or recycled back into the art market to earn the foreign currency Nazi Germany desperately needed. It was common for such undesirable works to be routed through Switzerland, sometimes by diplomatic pouch. Although much Nazi-looted art was recovered and returned after the war, unknown but undoubtedly enormous quantities were never found.

Eizenstat also mentions the innumerable Soviet postwar seizures of art from Germany and its wartime allies, in which the Red Army swept up both German-owned and Nazi-looted artworks and shipped them East. He notes the irony that the work of Stalin’s retributive trophy brigades was, like Hitler’s art-looting enterprise, partly intended to supply a never-constructed museum that would serve as a monument to its tyrannical sponsor.

Eizenstat discussed the groundbreaking books and conferences of the early 1990s that had, by 1998, brought the legacy of Nazi and other wartime looting out of the shadows. By that time, it had also become clear that more than five decades of art market intrigue – particularly secrecy on the part of sellers and lack of diligence by buyers in ask-me-no-questions-I’ll-tell-you-no-lies art transactions – had led to the redistribution of much of the looted art into museum, private, and even government collections throughout Europe and the United States.

In *Imperfect Justice*, Eizenstat describes his organizing of the 1998 Washington Conference on Holocaust-Era Assets as his signature effort in dealing with art looted during the Nazi era. That conference brought together representative of western countries to discuss art, insurance, communal property, and other nagging issues, but Eizenstat considers its handling of art claims to be its centerpiece. Following his direction, the conference adopted the “Washington Principles,” which Eizenstat presents as his chief contribution, encouraging research by museums to identify paintings whose history is uncertain or difficult to trace and to facilitate settlement of disputes concerning ownership of art looted by the Nazis.

I crossed paths with Ambassador Eizenstat only once during his labors: at the stolen-art planning session for the 1998 Washington Conference. As a lawyer who represents claimants to stolen art (whether it be art the Nazis looted from Jews or others, or art treasures that Allied soldiers, officers, and civilians stole from German museums, churches, libraries, or private collections during the conquest and occupation of Germany), I was one of many persons Ambassador Eizenstat considered too controversial to be invited to the Washington Conference itself. (Eizenstat mentions that he was particularly concerned that the Russians would boycott his conference if they felt threatened.)

Ambassador Eizenstat briefly visited the planning session on art issues I attended. He now laments that “the looting on both sides continues to haunt the art world to this day.” At the time, however, he rejected my plea that the Conference include all issues of art displaced during the wartime and immediate postwar years, and not merely those raised by Nazi looting.

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In these simple steps – excluding claimants’ representatives and limiting the conference to Holocaust losses alone – we see both the genius and the flaws in the pragmatic approach Ambassador Eizenstat repeatedly took to the imperfect and perpetually unfinished business of righting Holocaust wrongs.

In the conclusion to his book, Eizenstat proclaims that looted art should be “returned to its owners.” Yet, this simple goal of restitution cannot be found in Washington Principles Eizenstat championed and now extols. Like much of his work, they are based on access to information and process, or “transparency” as he would say. Rather than emphasizing return, the Washington Principles, Eizenstat freely admits, merely allow museums to exercise “leeway in accepting claims” concerning stolen art “during the Hitler era.” Eizenstat further acknowledges that he agreed to make the Washington Principles nonbinding, to ensure that they would be accepted by the Conference.

The Washington Principles were, thus, the stepchild of many compromises, and I viewed them cynically at the time. They have, however, proven to be influential outside the United States, particularly in Germany, where all publicly-owned museums now accept the notion that virtually any transfer of artwork by a Jew during the Nazi era – even if formally a sale or exchange – was improper. While I agree with Eizenstat that the Principles have had impact in some quarters, and told him so when he was planning this book, there are limits. For example, it has taken Russia more than four years to launch a website of Nazi-looted objects in Russian museum collections. Russian authorities started one in February 2003 with 10,000 objects described only in Russian, according to a recent report in the *New York Times*, with plans to post 500,000 objects not limited to Nazi loot, by 2005. There is no indication when, if at all, Ukraine and Belarus will follow suit.

Imperfect Justice also explores the controversial actions of the Swiss government during the World War II, including turning away Jewish refugees (even, according to Eizenstat, imploring Nazi Germany to place the capital letter “J” on the passports of Jews to ease identification at the border). The Swiss also turned a blind eye to the trans-shipment of art looted from countries occupied by the Nazis. The Swiss accepted gold from the Reichsbank long after Hitler’s invasion of Russia, when, Eizenstat writes, the Swiss knew the gold could only have been loot from the state treasuries of conquered countries or from individual victims. This particular episode gives the book its controversial cover, which depicts bars of gold with Reichsbank markings laid out in the form of a swastika atop the white cross and red background of the Swiss national flag.

Almost half the book is devoted to the intricate ins and outs of the Swiss bank negotiations. The result, \$1.25 billion for victims of Swiss bank scams, is the most impressive, if not the largest, of the settlements Ambassador Eizenstat worked on, perhaps because of the decades of Swiss intransigence on this issue. The later settlements with the Germans, Austrians, and French came somewhat easier, but required, in one case, “creative accounting that would make even Arthur Andersen blink” in order to bring the parties together.

Dealings with the Swiss also provided one of the lowest points for Ambassador Eizenstat. That episode concerned the U.S. government report on the conduct of the neutral nations, including Switzerland, during the War. Eizenstat now regrets his comment in the introduction that the neutrals “prolonged” the war. He still believes this comment was correct and only regrets writing it because he could have made the same point more diplomatically, by saying merely that “the neutrals helped ‘sustain’ the German war effort rather than ‘prolonging’ it.”

These strong words, Eizenstat now believes, undermined his ability to project himself as the perfect neutral mediator of the Swiss bank disputes. However, he appears doomed, Sisyphus-like, to repeat this unpleasant task of annoying the Swiss and then placating them, since they objected to the cover of his book, and he, yet again, apologized to them for causing offense.

In the chapters dealing with the German negotiations, the narrative comes to life. There, we see the full array of post-War interests colliding at full tilt. Continuing a postwar pattern, the Germans were far more accommodating than the Swiss had been, with the German government joining the talks and participating financially in the settlement, things the Swiss had declined to do. For its many efforts at postwar compensation and for the younger generations’ efforts to come to terms with Germany’s past, Eizenstat delivers the ironic compliment that: “Germany clearly was not Switzerland.”

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Nonetheless, the German government was not anxious to spend more than necessary, emphasizing that it was paying with taxpayers' funds during difficult economic times. The German companies made a similar point, if foolishly, arguing that they must respect the interests of their "shareholders, many of whom are Jewish." The U.S. lawyers defending class action lawsuits against the German companies believe they would succeed in having the cases dismissed, and wanted to be turned loose. But, their clients knew that winning in court might only antagonize U.S. public opinion. "These were cases they could not afford to win." Eizenstat observes. In return for settling, both German companies and the German government wanted to be guaranteed "legal peace" – that is, an end to all Holocaust-related claims and litigation.

Some of the best action comes in the complex interplay of the claimants jockeying with each other for position. The goal of legal peace and the Swiss experience motivated Ambassador Eizenstat to bring all the potential claimants together under a big tent. This included Jewish slaver-labor claimants represented by American class action lawyers and by the Conference on Jewish Material Claims Against Germany, and unstable mix by itself. Israel, reluctant to alienate its longtime sponsor, the Federal Republic of Germany, participated, but remained mostly on the sidelines. (Elsewhere in the book, Eizenstat chides Israel for its reluctance to support measures to improve the lot of Eastern European Jews in a way that might reduce their desire to emigrate.) Also on the claimant side were the Eastern European governments, led by Poland, which weighed in on behalf of their mostly-non-Jewish citizens who had been slave-or-forced-laborers. Ambassador Eizenstat is at his negotiating best in this episode, gradually herding all these characters towards agreement.

But, where do we find Stuart Eizenstat, himself, in this book? Eizenstat says he is most satisfied that he helped "remove, in a modest way, some of the moral stain on the record of the Roosevelt administration, which fought the war so valiantly but abandoned the refugees to Hitler's grim fate, and on the record of later presidents who allowed the victims' plight to be pushed aside in favor of other priorities." Yet, at the same time, he wanted to demonstrate "complete loyalty to Bill Clinton," and, as a diplomat, it was his responsibility to "always place the U.S. government's broader interests at the forefront." In his efforts to reach agreement with Germany, he was also motivated, in part, by his desire to help them at least as much as he had helped Switzerland.

Eizenstat, in this way, demonstrates his awareness of these many conflicting pressures, noting, for example, that he assured a Swiss official that "everything I did came from my government responsibilities." In a sense, this begs the question, since Eizenstat also tells us that he was charged both to respond to "domestic political demands" and also to preserve relations with friendly nations. In short, both personally and professionally, Eizenstat served many masters. As author, he has not satisfactorily resolved the implications of these roles. He has left that job for the reader.

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