

ARCHIVE	Federal Archive: Control Number File (according to Munich nr.) = arrival cards	Federal Archive: Restitution File (according to Munich nr.) = Property Cards (including M CCP and TVK cards) Federal Archive: Restitution File (according to owner) BADV: TVK inventory cards (by number) BADV: TVK inventory cards (by artist) – not included in the database	(1), (2) Federal Archive (3) BADV and Federal Archive (4) Austrian Federal Office for Care of Monuments (5) BADV
NUMBER OF CARDS AVAILABLE FOR SEARCH	43,183 Arrival cards (Federal Archive)	65,572 Property Cards, including TVK inventory cards (Federal Archive)	(1) 12,155 Inventory cards (2) 1,340 Inventory cards (3) 2,716 Inventory cards (4) 943 Inventory cards (5) 42,904 photographs
SEARCH LANGUAGE	English	Mostly English, German (after 1948)	(1) English with German annotations (2)–(4) English
DATABASE SEARCH	Information available at the new database on the Munich Central Collection Point: http://www.dhm.de/datenbank/ccp/ Search mask: inventory numbers, file / inventory, object title, object type, material / technique, artist, society (= provenance), and keyword		

Legal Issues

► Olaf S. Ossmann

THE INTERNATIONAL ASSOCIATION OF JEWISH
LAWYERS AND JURISTS, GERMANY

ONE COLLECTION, ONE PERSECUTION, ONE DECISION – BUT DIFFERENT IDEAS OF “JUST AND FAIR SOLUTIONS” – HURDLES IN DIFFERENT NATIONAL PROCESSES FOR HEIRS OF ART COLLECTIONS

Good morning, Ladies and Gentlemen:

Before I start my presentation, allow me some personal words about the issue. When my grandmother turned 80 in 1985, she had, as in all the years before, two parties. There was, of course, one with her small family and us as the offspring of that family. But there was, on the same day, another party where the family was not invited. The setting: a table with four people. As I learned over the years, everyone at this table including my grandma had a number on the arm and over the years I knew the first names of these people but this was all. From time to time, I was allowed to help my grandma prepare the food for this celebration: a clear hot chicken soup.

Unfortunately, in 1985, my grandma did not return from this party to today's world. She lost all of her power, all of her strength, and her brain returned to 1939 – as we learned from the doctor's

expertise. And until her death one year later, she suffered from and felt the same fears as in 1939.

My grandmother declined all her life to be acknowledged as a victim of the Nazis; she also declined the special pension provided for these victims. But her only daughter (my mother) could not afford the costs of the medical treatment (of course we hoped her life would endure until 120) and so I – who had started to study law one month before – was asked by my family to prepare the papers for the special pension application.

Since then, I have dealt with a significant number of such applications for insurance, pensions, and *Verschlimmerungsanträgen* (“Aggravation Applications”). The applications require the inclusion of a medical evaluation to assist in the determination of the causes of the illness and the relationship between persecution-related causes and “natural” causes, defined in percentages.

In all of my cases, the most difficult thing for me was to hand over this evaluation to the families, as the content and the language of these evaluations were, in my eyes, dehumanizing, so I felt guilty just by delivering such a document, guilty to be a part of such a system that called itself “just and fair.”

So, you may understand my approach to this topic. Again, we try to weigh several circumstances in the life of a victim. We try to judge arguments for an action seventy years ago.

This morning, I would like to invite you to forget for one moment the position that brought you here. Lean back and try to see, for this moment, my explanations through the eyes of a family.

Your family name for the next minutes will be Gutmann.¹ Your grandfather, Eugen Gutmann, was the founder, owner, and director of one of the leading banks in Germany, Dresdner Bank. Later, his son, your father, stepped into Eugen’s shoes and led the Bank.

In the 1950s, you were told that the son of Eugen, Herbert M. Gutmann, was responsible for the losses of the bank in the bank crises at the end of the 1920s. The board of the “new” Dresdner Bank added that, even if there had been some losses, it would have no influence as the “old” Dresdner Bank did not exist any longer, and no documents remained. You try to

¹ 1879 – October 15, Herbert Max Magnus Gutmann, born in Dresden, Germany.
1884 – Head Office of Dresdner Bank, founded by Herbert’s father, Eugen moved to Berlin
1903 – Herbert M. Gutmann became the Vice Director of the London branch of the Dresdner Bank.
1906 – January 3, Eugen and Herbert M. Gutmann founded Deutsche Orientbank AG.
1910 – January 10, Herbert M. Gutmann joined the board of the Dresdner Bank AG.
1913 – September 27, Herbert married to Daisy von Frankenberg und Ludwigsdorf.
1914 – May, Herbert and Daisy moved to Herbertshof in Potsdam.
1921 – June 21, Trust en Administratie Maatschappij founded in Amsterdam.
1927 – January, Dresdner Bank Aktien – Syndikat established.
1931 – September 9, Herbert M. Gutmann was forced to retire from the board of the Dresdner Bank AG.
1933 – May The Dresdner Bank AG “calculated” Herbert M. Gutmann’s debts.
1934 – April, Herbert M. Gutmann sold his art collection at Paul Graupe Berlin.
1934 – June 30, H. M. Gutmann arrested by the SS.
1936 – Mid, The German property of the Eugen Trust with the Berlinische Bodengesellschaft AG was liquidated.
1936 – October, Herbert M. Gutmann immigrated to London.
1937 – The “Emigration Tax” for Herbert M. Gutmann is calculated with 89,000 Reichsmarks.
1937 – Herbert M. Gutmann was clear of debt.
1939 – Punitive tax calculated with 35,000 RM.
1939 – June 5, Herbertshof sold.
1940 – November 27, Gestapo seized the assets of Herbert and Daisy Gutmann in Germany.
1942 – December 22, Herbert M. Gutmann died in London.

make a living in England, the country to which Herbert escaped before he died in 1942, leaving Germany with nothing besides his famous name.

The situation changed after 1990. The reunification opened some archives. You start some research on the former family home “Herbertshof” in Potsdam. You find out that it was sold in 1938 and that Herbert got not a penny from this sale to the *Reichsvereinigung der Auslands-Deutschen*. You try to start a conversation with the Dresdner Bank again; the new and friendly board sends you a copy of the information from the 1950s and tells you that unfortunately, due to data security protection, they cannot permit entrance to their archives for your researchers.

Unfortunately for Dresdner Bank, because of the pressures of history,¹ Dresdner Bank had to establish an expert commission to research its activities in the Third Reich. One small chapter in this report from 2002 also deals with the “relation to the Jewish board members and employees.” This chapter explains that Herbert Gutmann was, according to the protocols of the board meetings, the “arranged scapegoat” from 1933 until 1935 and all of the debts presented to the family after 1945 were faked just to kick him out of the Bank.

So, you rethink your position. You start to research the assets and you research the art collection.

You find a specialized lawyer who works with research experts. In 2006, this team presents you with a first idea of what the collection was and when and how the title of ownership changed for several parts of the collection. You learn that even the former

property of Eugen Gutmann who died in 1925 is still “undivided” – a special topic for another lecture.

Your representatives start to send out letters to museums and collections where former parts of the collection are located. I will give you some examples of the answers and the ways to deal with these letters.

I will focus your attention on one auction in 1934, the year after the board of Dresdner Bank decided to finally get rid of Herbert Gutmann and one year after the “creation” of debts from risks caused by business dealings in the name of Dresdner Bank and their consortia that we would call today “option trades.”

The “Graupe Auction [of] April 12th 1934” included 848 pieces of art, including 64 paintings. Let’s speak about three of these paintings: Lenbach’s *Image of Bismarck*, Markart’s *Death of Pappenheim* and Rubens’ *Coronation of a Virgin or Coronation of Maria*.

First Example: Lenbach, *Image of Bismarck*

This painting was listed as item 17 in the auction catalogue.

I have had an ongoing conversation with the German Bundestag since 2007. The problem here: The identity of the painting is in question. Even if you are not an expert, you will recognize the painting from a family photo, as it is still in the same frame.

You should see a kind of identity, the same frame and although the *catalogue raison* of Lenbach shows more images of Bismarck, it includes only one with this specification: “*Bismarck standing with a head*.” Also, the provenience is clear:

¹ “Hinter jedem ersten Tank läuft Dr. Rasche von der Dresdner Bank”.

- ▷ Eugen Gutmann
1897 – present to Eugen Gutmann on the occasion of the 25th anniversary of Dresdner Bank as the founder and director
- ▷ Herbert M. Gutmann, Potsdam
12.14. April 1934 GraupeAuction Nr. 132, Lot 17, in Berlin
- ▷ Carl Rehn
21. February 1964 sold by Carl Rehn from Bopfinger to the “*Kunstsammlung des Deutschen Bundestages in Berlin*” (purchase price: 20,000 DM)
Deutscher Bundestag, Berlin

Second Example: Markart, *Death of Pappenheim*

Listed in the auction catalogue as number 20

After one year of negotiations, the Vienna Museum wrote the following letter:

GZ 35/2009 Vienna, January 20, 2009
Re: Restitution case of Herbert M. Gutmann

Dear Mr. Ossmann!

The Museums of the City of Vienna regret the accrued delay in the matter of Herbert M. Gutmann, which was, however, not within their purview since, after the Vienna City Council determined that the painting by Hans Makart was eligible for restitution in June 2008, it was first necessary for the unique “heritage quality” of the work to be clarified with the help of documents provided to the Museums

of the City of Vienna by Mrs. Schreiber. Because this determination has now been made, it was further required that the Museums of the City of Vienna receive from the Vienna Cultural Council a letter containing its political decision as to which legal successor the painting should ultimately be delivered to. [...] The painting is ready for you, as the beneficiary’s representative, and can be picked up at any time at the premises of the Museums of the City of Vienna, Karlsplatz, 1040 Vienna.

The provenance of the painting was indisputable, the circumstances of loss were verified by the Restitution Committee in Austria, and the painting was restituted even though this case was not covered by the existing law in Austria.

Provenance:

- ▷ 1885 Theodor Freiherr von Dreifus, Vienna;
- ▷ Collection of Herbert M. Gutmann until 1934; then
- ▷ April 12–14, 1934 Graupe Auction No. 132, lot 20;
- ▷ From 1934 privately owned in Potsdam; and from thence [in]
- ▷ 1945 into the art trade (according to an undated partial copy of a letter from Gottfried Günther to Frede Møller);
- ▷ Acquired at an unknown time by Frede Møller, Østrigs-gade 11/3, Kopenhagen and in his possession until November 1968; then sold to the

- ▷ Historical Museum of the City of Vienna (today: the Vienna Museum) on February 12, 1968 for the price of 35,000 Austrian Schillings.

So the grandson of Herbert Gutmann and I went to Vienna and picked up the painting in April of this year.

Third Example: Rubens, *Coronation of a Virgin or Coronation of Maria*

This painting was listed in the auction catalogue as number 43.

The painting was already on the Courtauld list of questionable paintings. The provenance shows that it was the property of Mr. Gutmann.

Since 2008, we have been standing in a line of claimants as the Courtauld Institute can only deal with one claim at the time. After the (in my eyes tragic) “Glaser” decision of June 2009, we are next in line at the spoliation advisory panel.

These three examples should give you an idea of different approaches to the topic and to the different views ending in persecution by finding different answers to the same questions. The bases for these different views are the different legal bases in the different countries.

Austrian Law reflects only the situation of Jews in Austria¹ after

¹ Österreich
Bundesgesetz vom 15. Mai 1946 über die Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind.
§ 1. Entgeltliche und unentgeltliche Rechtsgeschäfte und sonstige Rechtshandlungen während der deutschen Besetzung Österreichs sind null und nichtig, wenn sie im

the annexation (*Anschluss*) and the persecution there. Germany² starts from the present owner and reflects from there to a persecuted pre-owner. England³ reviews all kinds of artwork if there is a request from a former owner who claims a loss in ownership between 1933 and 1945 because of persecution.

This British position sounds good but as the Glaser file showed, the idea of grading different levels of persecution and then creating a kind of cause-and-effect chain using fragmented archive

Zuge seiner durch das Deutsche Reich erfolgten politischen oder wirtschaftlichen Durchdringung vorgenommen worden sind, um natürlichen oder juristischen Personen Vermögensschaften oder Vermögensrechte zu entziehen, die ihnen am 13. März 1938 zugestanden sind.

² Deutschland
Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände Die Bundesregierung, die Länder und die kommunalen Spitzenverbände werden im Sinne der Washingtoner Erklärung in den verantwortlichen Gremien der Träger einschlägiger öffentlicher Einrichtungen darauf hinwirken, dass Kulturgüter, die als NS – verfolgungs – bedingt entzogen und bestimmten Geschädigten zugeordnet werden können, nach individueller Prüfung den legitimierten früheren Eigentümern bzw. deren Erben zurückgegeben werden. Diese Prüfung schließt den Abgleich mit bereits erfolgten materiellen Wiedergutmachungsleistungen ein. Ein derartiges Verfahren ermöglicht es, die wahren Berechtigten festzustellen und dabei Doppelentschädigungen (z.B. durch Rückzahlungen von geleisteten Entschädigungen) zu vermeiden.

Den jeweiligen Einrichtungen wird empfohlen, mit zweifelsfrei legitimierten früheren Eigentümern bzw. deren Erben über Umfang sowie Art und Weise einer Rückgabe oder anderweitige materielle Wiedergutmachung (z.B. gegebenenfalls in Verbindung mit Dauerleihgaben, finanziellem oder materiellem Wertausgleich) zu verhandeln, soweit diese nicht bereits anderweitig geregelt sind (z.B. durch Rückerstattungsvergleich).

³ Great Britain
Spoliation Advisory Panel
Constitution and Terms of Reference: The task of the Panel is 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 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”). The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to such a 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.

material or even private correspondence of the former owner must lead to tragic and, in my eyes, wrong and misleading decisions. It is indisputable that the former owner was a victim of the Nazi system so even if he received an “appropriate” amount of money for the artwork – what was financed with that money? His escape, the losses caused by the persecution and so on. The view of the panel seems to me too academic. But hopefully we will hear more about it later.

Just to avoid the impression that you as a member of the Gutmann family now know all of the facets of restitution cases, the next negotiations are waiting in the Netherlands, the USA, and elsewhere.

Would you not agree that it would be a good idea to shorten all of these different procedures and to come to a standardized view at minimum for the specific and continuously repeating aspects of the claims? Remember, we speak about the same owner, the same collection, and the same circumstances of loss. So what are the complexes of expertise that we need to solve in our case and where is the best base of knowledge?

The expertise about the origin of the artwork (identity) exists where the collection was located.

The expertise about the person (owner) exists in the country where the persecution took place.

The expertise about the expropriation exists where the artwork was expropriated.

The expertise about obstacles against restitution exists in the country where the artwork is located today.

Why is it that we do not trust these knowledge bases and just clarify the really different aspects of a specific claim instead of starting the different national procedures from scratch each and every time?

How will we handle different ratings of persecutions in the EU in cases of identical persons and cases? Do we allow different levels of ethics?

My suggestion is to think about global, or at minimum European, acceptance of national pre-decisions in the following aspects and publication of such decisions as it is already standard in some European countries – but without any binding effect so far for other institutions dealing with the same subject.

This would make the life of the victims easier and the procedures in the various institutions dealing with this matter faster.

The aspects where binding (part-) decisions are possible and helpful are:

- ▷ Identity of the artwork;
- ▷ Ownership/persecution of the owner;
- ▷ Expropriation – legal nature of the “loss of property”;
- ▷ General obstacles against restitution;
- ▷ Succession.

My experience has shown me that the claimants have experienced a painful journey through the different ideas of “just and

fair solutions,” and since Washington, we did need ten years to reach the present situation. Do not let it be another ten years before we find ways to shorten the lengthy procedures for the claimants and the institutions. European standards for general aspects and cross-approval of the decisions of the national institutions worldwide, or at minimum in Europe, are the only way to make substantial progress. I will release you into your own perspective.

Thank you for your attention.

► **Georg Heuberger**

CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST
GERMANY, GERMANY

**HOLOCAUST ERA LOOTED ART: A WORLDWIDE
OVERVIEW**

The following is an overview based on preliminary data. It represents the results of the current best efforts research of the Conference on Jewish Material Claims Against Germany (“Claims Conference”) and the World Jewish Restitution Organization (WJRO) and is based upon information obtained by the Claim Conference/WJRO to date. It may contain factual or other errors. Governments, non-governmental organizations, and individual experts are invited to make corrections and comments on the website of the Claims Conference at www.claimscon.org.

Major intergovernmental conferences and resolutions during the past decade established international principles regarding the restitution of art and other cultural property, most notably

the *Washington Conference Principles on Nazi-Confiscated Art* (1998), *Resolution 1205* of the Parliamentary Assembly of the Council of Europe (1999), and the *Declaration of the Vilnius International Forum on Holocaust-Era Looted Cultural Assets* (2000). As a result, there have been some positive steps towards the restitution of movable artwork and cultural and religious property plundered from Jews, but progress has been slow, and there remains a very considerable amount of looted movable artwork and cultural and religious property that has not been recovered and that is still in private and public hands.

No mechanism was established to monitor progress by the over 40 governments that endorsed the Washington Conference Principles.

The main organizations of the world Jewish community that are active in the restitution of property looted from victims of the Holocaust, namely the Conference on Jewish Material Claims Against Germany and the World Jewish Restitution Organization, have been focusing on the systemic issues involved in art restitution throughout the world with the intent of improving and creating processes to enable more owners and heirs to recover their property. They have been working with Jewish communities around the world to bring increased attention to the restitution of looted artwork and movable cultural and religious property and in this regard have conducted extensive research over the past years on the status of provenance research and of claims processes for the restitution of artworks in most, if not all, relevant countries.

The variations among countries’ historical experiences and legal systems, as well as the complexities of provenance research and the establishment of claims processes, are such that it is not