

Newsletter

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Restitution Committees
on Nazi-Looted Art

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MINISTER INGRID VAN ENGELSHOVEN



Interview with the Dutch Minister of Education, Culture and Science

This year marks the 20th anniversary of the Restitutions Committee and the Netherlands' restitution policy. How do you see the past 20 years?

The Restitutions Committee does essential work. For 20 years, it has been working to give original owners and their heirs the opportunity to recover cultural heritage objects that they lost against their will during or immediately prior to the Second World War. Restitution is very important. Its significance goes

far beyond the material. It is about recognizing the injustice that was done to the original owners, and it also represents at least some form of redress for that injustice.

Since the launch of the current restitution policy, the Restitutions Committee has issued 164 (binding) recommendations. In total, it has ensured the return of 589 objects to their rightful owners or their heirs. I am very grateful to the committee and its members for the important work that they have done in all those years.

It has now been 76 years since the Netherlands was liberated from the Nazi regime, but the Second World War still leaves its mark on the present.

At the same time, I think it is very important to keep a watchful eye on our policy in this complex area, even after 20 years. What is going well, and what is going less well? Are any improvements needed? Are there new possibilities for conducting provenance research? These are the questions that we must continue to ask in the interest of the original owners and their heirs.

At the end of 2019, you asked the Dutch Council for Culture to evaluate the current restitution policy. Why was that?

It has now been 76 years since the Netherlands was liberated from the Nazi regime, but the Second World War still leaves its mark on the present. For example, there are still cultural heritage objects dating in the Netherlands, whose provenance during that period is suspicious and which may have been looted by the Nazi regime. It is the government's responsibility to deal with these objects fairly and prudently through its restitution policy.

That responsibility also means that restitution policy is subject to critical evaluation. But an evaluation across the board had never previously been carried. The controversies that have occurred in recent years, regarding

whether restitution policy continues to be adequate in its current form, were an additional reason for a thorough review.

For that reason, at the end of 2019 I asked the Council for Culture to analyse the policy in-depth and across the board, and to advise me on improvements. As far as I am concerned, the Council and the Kohnstamm Committee have conducted this review very thoroughly. They have highlighted some valid points on which our restitution policy can be improved, which I intend to implement forthwith. I already made a start on this last March, by updating the assessment framework for restitution requests. And now I am taking a number of further measures to improve restitution policy.

You announce¹ that you will be making €1.5 million available every year for the next four years in order to make these improvements to restitution policy. What will you achieve with this extra funding?

An important measure that we are going to take with this extra funding is that we are going to resume provenance research on a structural basis. In concrete terms, this means that the Cultural Heritage Agency

¹ 25 JUNE 2021

will review all objects in the so called NK-collection (this collection consists of artworks with a past related to the Second World War) and determine whether there are any gaps in their history of provenance. We aim to complete this work within four years. New insights will doubtlessly emerge, thanks to information from recent studies, new technological developments and the opening up of hitherto unknown archives. The aim of this research is, of course, to enable us to return more works to their rightful owners. That is certainly the hope. For this reason, based on the structural provenance research, we will also actively seek to trace and approach the original owners or their heirs, in the hope that this will lead to new restitution requests.

Will anything change for heirs or other interested parties? Who can they contact if they have questions?

The Council and the Kohnstamm Committee rightly concluded that the provision of information and communication around restitution policy could be improved. I am therefore going to take action in that area.

For example, a helpdesk function will be created that will become a permanent part of the Cultural Heritage Agency and actively disseminates knowledge. Potential claimants can contact them whenever they have questions about policy and procedures, but also regarding how to conduct provenance research and where to look. Museums and institutions that manage collections can also contact them with their questions.

In addition, a new portal is now available to provide relevant information about the National Art Collection and make it available to potential claimants and other interested parties. In the next few years I will be expanding that portal, for example by adding information generated by the provenance research or about possibly looted objects from other public collections.

What does the future look like for Dutch restitution policy?

Ideally, of course, restitution policy is temporary. After all, our goal is to return all looted artworks to their rightful owners. But at the same time, we have to be realistic: there is a good chance that we will never find the original owners or their heirs of some artworks. So I think it is important to start thinking now about the future of these objects.

My starting point is that the Jewish community can claim all the remaining unclaimed looted art in the National Art Collection. That means artworks that originally belonged to Jewish owners but for which it has been concluded that no rightful claimants can be found. We will continue to look for the rightful owners in the meantime, but once the restitution policy comes to an end, I wish to act in line with the Washington Principles on unclaimed looted art in a fair way. In the coming years, I am going to develop the plans in further detail in close partnership with the Jewish community.

<https://wo2.collectienederland.nl>



COLLECTION OF F.W. STAMMESHAUS, DISPLAYED IN HIS HOME IN SEULIMEUM (ACEH), 1912. PHOTO FROM THE STAMMESHAUS ARCHIVES, COURTESY OF JOHN KLEIN NAGELVOORT.



New research projects for NIOD's Restitution Expertise Centre

The primary task of the Restitution Expertise Centre (ECR), part of the Dutch Institute for War, Holocaust and Genocide Studies (NIOD), is to conduct independent investigations into facts relating to individual restitution applications. The Expertise Centre also researches historical and topical art looting and restitution, in particular with regard to the Nazi regime. The ECR recently obtained a number of grants for new research projects in this field.

Pilot Project Provenance Research on Objects of the Colonial Era (PPROCE)

The Pilot Project Provenance Research on Objects of the Colonial Era (PPROCE) is a project of the Rijksmuseum in Amsterdam, the National Museum of World Cultures and ECR/NIOD Institute for War, Holocaust and Genocide Studies that aims to develop a methodology for research on the provenance of collections with a colonial context. This project will determine and describe the steps required for doing provenance research on colonial collections. A number of selected cases from Indonesia and Sri Lanka will be researched in this pilot.

The aim of the project is to conduct joint scientific research on a number of objects from Indonesia and Sri Lanka in order to

identify the specific processes necessary for carrying out provenance research on colonial collections. Objects selected as cases for the research were items which had come into Dutch hands as a result of colonial conflicts; had been collected by colonial institutes; came into Dutch hands through private collectors and are now the property of the Dutch State; were selected in consultation with the Museum Nasional Indonesia in Jakarta and were selected following meetings with various universities and museums in Sri Lanka.

The aim of the project is to conduct joint scientific research on a number of objects from Indonesia and Sri Lanka in order to identify the specific processes necessary for carrying out provenance research on colonial collections

The results of the research will be written up in a report for the Minister of Education, Culture and Science, with conclusions and recommendations for research on the provenance of objects from the colonial era. These findings will also be useful for other museums with relevant objects. The report will also include a few dozen provenance reports on specific objects or groups of objects.



Almost every Jew in the Netherlands was affected by their activities and many bystanders witnessed the spoliation of household goods from houses whose inhabitants had often been deported.

Researcher/project manager Ellen Grabowsky, Jona Mooren and Klaas Stutje from the ECR are participating in PPROCE. The project runs from November 2019 to March 2022 and has been made possible by funding from the Dutch Ministry of Education, Culture and Science.

The paper witnesses to looting and deprivation of rights

The archives of the looting organisation Einsatzstab Reichsleiter Rosenberg (ERR) record in detail how the household goods in tens of thousands of houses of Jewish residents of the Netherlands were plundered. Crowdsourcing will contribute to improved access to this archive.

The looting organisation Einsatzstab Reichsleiter Rosenberg (ERR) was closely involved in the inventory and seizure of household effects of Jewish residents. Almost every Jew in the Netherlands was affected by their activities and many bystanders witnessed the spoliation of household goods from houses whose inhabitants had often been deported. These house clearances were commonly referred to as 'pulsing', after a moving company named Puls. The ERR archives contain lists of the houses that were cleared out and thousands of forms which document the details of this process. NIOD, ECR and Netwerk Oorlogsbronnen (NOB) are joining forces to improve the accessibility of the archive by means of crowdsourcing.

Hinke Piersma (NIOD) and Floris Kunert (ECR/NIOD) are the initiators of this project, which is managed by Eva van Leeuwen. The project was funded by the Mondriaan Fonds.

Pressing Matter

Ownership, Value and the Question of Colonial Heritage in Museums

In 2021, the National Museum of World Cultures (NMVW) and Vrije Universiteit Amsterdam (VU) will launch the four-year research programme Pressing Matter: Ownership, Value, and the Question of Colonial Heritage in Museums. They do so with researchers from five academic institutions, five Dutch museums, and in cooperation with international partners on several continents. On behalf of ECR/NIOD, Kelly Breemen, Ellen Grabowsky, and Martijn Eickhoff will participate in the project. In this four-year research project, various parties will be concerning themselves with issues surrounding museum collections that were compiled in the colonial past. The project is part of the Dutch Research Agenda. A total of about 11 research positions will become available for this project. Learn more about the research project:

<https://www.materialculture.nl/en/research/projects/pressing-matter-ownership-value-and-question-colonial-heritage-museums>

<https://www.clue.vu.nl/en/projects/Pressing-Matter/index.aspx#:~:text=Pressing%20Matter%3A%20Ownership%2C%20Value%20and%20the%20Question%20of,return%20of%20objects%20to%20correc>



FRIEDRICH TREUER, LANDSCAPE

A landscape at Liechtensteinstraße 45 in Vienna

As described in the field report by Elisabeth Schroll (Newsletter No. 8), the provenance researchers in the Bureau of the Commission for Provenance Research are often asked to investigate the provenance chains of collection items in national and international museums and related institutions so as to clear up the suspicion of persecution-related Nazi expropriation.

Requests by private persons are frequently based on persecution histories and the loss of assets within the family, in the hope of recovering or at least of discovering the whereabouts of items lost during the Nazi regime. There are also occasional inquiries, however, in which the current owners of art objects or furniture are either unclear about the provenance or even fear that the provenance could be related to the Nazi period. Most times,

Requests by private persons are frequently based on persecution histories and the loss of assets within the family, in the hope of recovering or at least of discovering the whereabouts of items lost during the Nazi regime.

Unfortunately, these cases remain unsolved for lack of information that would enable the objects to be clearly traced to former owners persecuted by the Nazis. Occasionally, however, it is possible to establish contact between the current owners and the families of the original ones. The Commission for Provenance Research, which according to the Austrian Restitution Act has jurisdiction just for state-owned collection items and not for those owned privately, can only act as a mediator in these cases.

One interesting case involves a Viennese family who in 2020 consulted the Bureau of the Commission for Provenance Research to identify the former owners of a painting in its possession with a view to restituting it privately. They were motivated to do so because the expropriation of the picture in 1938 or 1939 was not merely suspected but based on concrete information. The painting, a landscape by Friedrich Treuer (1872–1942), had hung in an apartment owned by a Jewish family at Liechtensteinstraße 45 in the 9th district of Vienna. It had been removed by the janitor and given to an acquaintance. The remaining furnishings were destroyed. The aggrieved party, who returned to Vienna after 1945, did not have an inventory of the apartment and the request for evidence was refused.

The provenance research discovered that the majority of the persons registered in the building in 1938 had been persecuted by the Nazis on account of their Jewish origins and that not all of them had survived the Holocaust. Of those who managed to flee, none were registered in Vienna after the war.

Research into the restitution files in the archive of the Federal Monuments Authority, the Austrian State Archives and the Vienna City Archives based on the names of the former occupants of the building and their spouses and children has not produced any further information about Treuer's landscape and its former owners.

As the research to date has not revealed the provenance of the painting, any information would be gratefully received.

Contact: provenienzforschung@bda.gv.at.



Search for heirs and art restitution with the aid of diplomacy: interministerial collaboration in Austrian art restitution

The search for the successors of persons who were persecuted by the Nazis and whose artworks, libraries and interior furnishings were expropriated by them, is like a jigsaw puzzle with thousands of pieces. Austrian art restitution, guided by the 1998 Art Restitution Act, is not a claim-based procedure; rather, the museums and collections owned by the Republic are proactively investigated by the Commission for Provenance Research for Nazi-related acquisitions of art and cultural objects. When a suspicious item is identified, it is passed on to the Art Restitution Advisory Board. If the Board recommends its restitution and the federal minister follows this recommendation – as is normally the case – the drawn-out procedure of seeking heirs commences.

While the legal framework for this process in Austria has been clearly defined since 1998 by the Art Restitution Act, the search for the heirs of the aggrieved and persecuted parties presents a vast array of obstacles. In Austria, the foreign ministry – the Federal Ministry for European and International Affairs (BMEIA) – is not directly entrusted with this research. Most of the restitution cases are handled by the Vienna Jewish Community (IKG) at the request of the Federal Ministry of Arts, Culture, Civil Service and Sport (BMKÖS). This

was described in detail in Mathias Lichtenwagner's report in Newsletter 6/2020 "Seeking heirs for Austrian Art Restitution". Much of the research is conducted without the need for intervention by the foreign ministry, but most cases involve persons living in other countries, and here progress towards a solution and even the final transfer of the art objects is sometimes impossible without the foreign ministry's assistance. This article describes some of the ways in which cooperation between the BMKÖS, the BMEIA and the IKG can produce results.

After the annexation of Austria to Nazi Germany, he tried in vain to escape from Austria. To finance his escape, he offered a valuable manuscript by Friedrich Schiller to the Austrian National Library. His attempts to leave were unsuccessful.

The acquisition of documents

The acquisition of documents – often only possible with knowledge of the local legal and administrative situation – is the most frequent form of assistance provided by Austrian consulates abroad. This was the



AMBASSADOR MICHAEL ZIMMERMANN AND EMBASSY STAFF MEMBER CHRISTOPH WEINGARTNER AT THE AUSTRIAN EMBASSY IN LONDON, WHERE THREE RESTITUTED OBJECTS FROM THE MUSEUM OF FOLK LIFE AND FOLK ART IN VIENNA WERE HANDED OVER IN MAY 2019 TO TWO (OF THE FIVE) HEIRS, HELEN WILLIAMS AND ANTHONY ROBERTSON-JONAS, GRANDCHILDREN OF ROBERT JONAS (1883–1952) AND MARIANNE JONAS NÉE WEISS (1894–1965), WHO FLED FROM VIENNA IN AUTUMN 1938.

case with Max Berger. After the annexation of Austria to Nazi Germany, he tried in vain to escape from Austria. To finance his escape, he offered a valuable manuscript by Friedrich Schiller to the Austrian National Library. His attempts to leave were unsuccessful. Berger committed suicide in Vienna in 1941 when the major deportations of the Jewish population had already begun. In 2004, the Art Restitution Advisory Board recommended the restitution of the autograph and of several books to Berger's legal successors. Through the Austrian consulate-general in Los Angeles, it was possible to locate the death certificates that are essential for establishing the legal succession. But this is not normally the end of the matter, and further research is required.

Support

The support from Austrian diplomatic representatives abroad is not so much a question of official requests for foreign documents but rather of the establishment of points of contact that are difficult to achieve from Austria. This is well illustrated by the case of Siegfried Gerstl and the search for his legal successors. He was an expert in agricultural machines and in August 1938 offered objects from his extensive collection to the Technisches Museum Wien, stating: "As I might be forced as a Jew to leave [...] my home and will be unable to take the above-mentioned books, etc., with me, I would like to ask whether you would be interested in taking them free of



His possessions – 170 publications and photographs, autographs and manuscripts of significance above all for research purposes – were seized and at least some of them handed over to the National Library in Vienna.

charge in the event of my emigration.” Gerstl died shortly after making this offer. His wife Irma, whom he had made his sole heir, was deported to Theresienstadt in 1943 and murdered. Provenance researchers discovered Siegfried Gerstl’s extensive collection of glass slides in the Technisches Museum, but to this day his library of over five hundred books has not been found. The search for heirs of Irma Gerstl is also proving extremely difficult. Although the death certificate of the presumed heir was discovered in Spain by the Austrian embassy there, the further succession is still unclear and has required contact with her last places of work, residences and private and church institutions.

The future of the legacy of Norbert Jokl

In another case handled by the Austrian embassy in Prague, the future of the legacy of Norbert Jokl, the most important Albanologist in the era of the Austro-Hungarian monarchy, was finally settled after the language barrier to one of the fifteen legal successors in northern Bohemia had been overcome. Jokl is thought to have been murdered in Maly Trostinec in 1942. His possessions – 170 publications and photographs, autographs and manuscripts of significance above all for research purposes – were seized and at least some of them handed over to the National Library in Vienna. Although the Advisory Board recommended

the restitution of these objects in 2004, the search for heirs in the widely ramified family was extremely drawn-out.

Industrialist Nathan Eidinger

The search for the legal successors of the industrialist Nathan Eidinger, owner of an important art collection, also proved quite tedious. The collection was seized and subsequently distributed among various museums in Austria, including the MAK – Museum of Applied Art / Contemporary Art in Vienna. Eidinger died in Zurich in 1945, and his legal successors turned out to be several charitable institutions in Israel, in other words legal entities, which adds a further complication. The Austrian embassy and Austrian Culture Forum in Tel Aviv contacted these institutions and studied documents on their legal personality. One particular challenge was the fact that some of them no longer existed or had been absorbed in new organizations. This required highly specific research to ascertain whether their claim to inheritance was justified. Thanks are due above all to the staff of the embassy, who carried out the necessary meticulous research.

Repeated cases

There are repeated cases in which Austrian embassies and cultural forums help to bring art restitution matters to a worthy conclu-

sion and hand over the objects in person or arrange for their delivery as requested by the recipients. Although in some cases the art objects could be collected in person in Austria, many of the beneficiaries are quite old and cannot easily travel at the moment on account of the restrictions imposed by the COVID-19 pandemic. In some cases, they refuse to come to Austria because of the personal family history of expulsion, persecution and expropriation. In these cases, the foreign ministry courier service transports the objects to the relevant diplomatic missions abroad.

The search for heirs now also offers an opportunity to provide information about the entitlement to Austrian citizenship for the successors of victims of the Nazi regime.

The search for heirs now also offers an opportunity to provide information about the entitlement to Austrian citizenship for the successors of victims of the Nazi regime. According to the new legal provisions in force since October 2019 (Section 58c para. 1a of the Staatsbürgerschaftsgesetz [Citizenship Act]), applicants can be granted Austrian citizenship by way of a “declaration” [Anzeige] without renouncing their former citizenship. If made abroad, the declaration is submitted to the Austrian diplomatic representation.

The foreign ministry does not have the main responsibility for this research, but some cases have been helped or even brought to a conclusion with the aid of the Austrian diplomatic representations abroad. This is a reflection of the statutory task of the state set forth in the Art Restitution Act as a whole to assist

in art restitutions and also of its moral obligation towards the successors and heirs of victims of National Socialism, many of whom no longer live in Austria.

Links

Max Berger decision

https://www.provenienzforschung.gv.at/beiratsbeschluesse/Berger_Max_2004-06-22.pdf

Siegfried Gerstl decisions

https://www.provenienzforschung.gv.at/beiratsbeschluesse/Gerstl_Siegfried_2006-06-28.pdf

https://www.provenienzforschung.gv.at/beiratsbeschluesse/Gerstl_Siegfried_2008-11-21.pdf

Entry on Siegfried Gerstl in the Lexicon of Austrian Provenance Research

<https://www.lexikon-provenienzforschung.org/gerstl-siegfried>

Norbert Jokl decision

https://www.provenienzforschung.gv.at/beiratsbeschluesse/Jokl_Norbert_2004-04-27_englisch.pdf

Nathan Eidinger decision

https://www.provenienzforschung.gv.at/beiratsbeschluesse/Eidinger_Nathan_2014-07-03.pdf

For further information on citizenship for victims of the National Socialist regime and their direct descendants see <https://www.bmeia.gv.at/en/travel-stay/living-abroad/citizenship-for-descendants-of-victims-of-national-socialism/>

Christian Autengruber is head of section in the Federal Ministry of European and International Affairs responsible for culture, scientific and technical cooperation agreements and foreign service (memorial, peace and social service abroad). He is also responsible for external aspects of art restitution. He worked previously at the Austrian embassies in Prague and Warsaw and was a university lecturer in Ruse, Bulgaria, and a university assistant in Budapest, financed by the Robert Bosch Foundation.

Three artworks from the national collections lost during World War II have been returned to France

These three paintings, commissioned by King Louis-Philippe in 1837 for the Historical Galleries of Versailles, had been deposited in 1913 at the Saint-Cyr Military School. It was occupied by the German army during the Second World War. They had been considered lost since the bombing of the school in July 1944.

German Soldier

In reality, they had been removed by a German soldier in July 1944, probably around the time of the evacuation of the school by the German army, before the bombing. The paintings were removed from their frames and stretchers, rolled up, and sent to Germany. They then remained in the home of this soldier, and later in his family, for many years.

In 2019, his grandson, a German citizen living in Bavaria, believed the paintings came from France, without knowing that they belonged to the Château de Versailles, and wished to return them. He began the process with the help of the German Centre for Missing Works of Art (Deutsches Zentrum Kulturgutverluste, DZK), the Commission for the Compensation of Victims of Spoliation (CIVS) and the Ministry of Culture's Mission for the Research and Restitution of Cultural Property Looted between 1933 and 1945 and this led to the return of the paintings to France at the end of 2020.

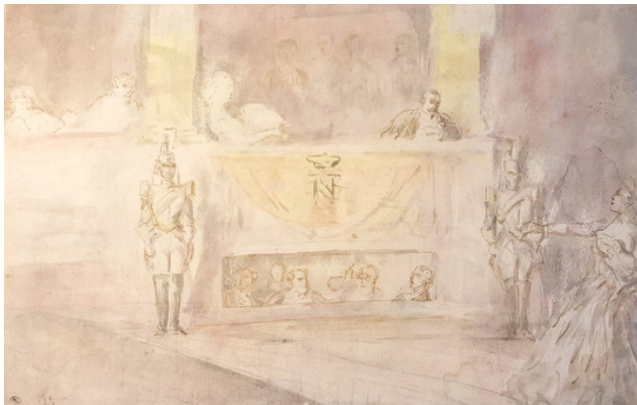
These works disappeared during the Second World War:

- Charles Caius Renoux (1795-1846), Combat de Monteilla, 10 April 1794, 1837, 126 x 65 cm;
- Hippolyte Bellangé (1800-1866), Combat under Charleroi, 26 May 1794, 1837, 125 x 62 cm;
- Joseph Jouy (1809-1880), Prise de Tirlémont, 13 March 1793, 1837, 125 x 64 cm.

Works on display

The works have now been returned to the national collections and the Château de Versailles. They are on display in the Chimay attic, located above the Queen's Apartments flat and dedicated to the history of France from the Revolution to the Consulate. Viewing has been possible since the reopening of the Château on 19 May 2021.

Return of 12 works to the heirs of Armand Dorville



LA LOGE DE L'EMPEREUR
CONSTANTIN GUYS



LA PRÉSENTATION DU VISITEUR
CONSTANTIN GUYS

Prime Minister Jean Castex has decided to return to the descendants of the Jewish lawyer Armand Dorville twelve works acquired by the French State in 1942.

Circumstances

Armand Dorville, a French Jewish lawyer, died in July 1941 at his home in the "southern zone" of France, under the authority of the Vichy government. In agreement with the heirs, his collection and furniture were put up for sale by his testamentary executor. On 24 June 1942, the first day of the sale in Nice, a provisional administrator was appointed by the General Commissariat for Jewish Affairs. The sale went well (app. 8 MF). The national museums bought twelve works for 270,000 francs. Six months later, in December 1942, the provisional administrator finally asked that the family be exempted from the provisional administration. The Vichy administration

agreed in July 1943 and the proceeds of the sales were then sent to the family's notary in form of government bonds. The heirs, however, were dispersed in the south of France, which prevented them from receiving what was owed to them. In March 1944, five members of the family, including a sister, two nieces who were heirs to Armand Dorville and two daughters of his nieces, were arrested, deported, and murdered in Auschwitz. The surviving heirs received the proceeds of the sales in 1947, which were included in the settlement of Armand Dorville's estate duty.

The procedure

More than 70 years later, on November 13, 2019, the descendants of Armand Dorville's legatees applied to the CIVS to have the auctions cancelled based on the order of 21 April 1945 (ruling on the nullity of acts of spoliation carried out by the enemy during World War II) and the restitution of 20 works.



LES VISITEURS
HENRY BONAVENTURE MONNIER

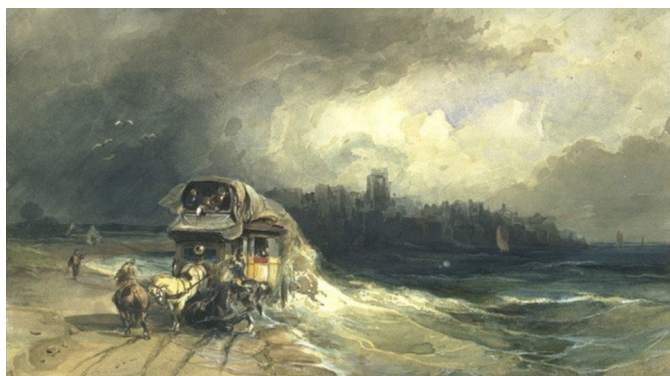
UNE SOIRÉE CHEZ MADAME X
HENRY BONAVENTURE MONNIER



JEUNE FEMME ET SA DUÈGNE
CONSTANTIN GUYS



UNE REVUE AUX INVALIDES
CONSTANTIN GUYS



LA LOGE DE L'EMPEREUR
CONSTANTIN GUYS

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This complex case has given rise to extensive research to establish the facts, on the part of the Ministry of Culture (Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945) and the CIVS. Several hundred pages of archives were examined, and the investigation was carried out by two CIVS magistrate rapporteurs instead of one normally.

The CIVS deliberative panel met on April 9, 2021, and the recommendation was issued 5 weeks later on May 17.

The CIVS recommendation

To cancel the sale, only the judge can rule on the application of the order of 21 April 1945. Consequently, the request of cancellation,

based on the application of this text, cannot be examined by the CIVS.

The CIVS considers that the sale has not been forced neither in its organisation nor in its execution for many reasons. It was decided by the heirs and organised by the executor (a friend and colleague of Armand Dorville). The appointment of the provisional administrator had no effect on the continuation of the sales. The rightful owners were free to exercise their right of withdrawal for 46 of these works and the proceeds of the sale were well above then estimated.

However, the sale under provisional administration did not allow the heirs to enjoy the proceeds of the sale. This particular Aryanization measure, carried out in application of the law of July 22, 1941, is considered to be an anti-Semitic spoliation within the meaning of

the decree of September 10, 1999, governing the principles of the CIVS. Also, the deportation and extermination of some of Armand Dorville's legatees, and the dispersal of the other heirs, which occurred as a result of the anti-Semitic persecutions, further delayed the payment of the proceeds of the sale. These circumstances give rise to a specific financial loss for which compensation is payable.

During the sales in June 1942, the French Administration, which knew that these sales were subject to the law of 22 July 1941, acquired 12 works. For these reasons the CIVS considers that these works should not be kept in public collections. However, the handing over is currently in conflict with the principle of inalienability of public property (referring to the Heritage Code).

Implementation of the recommendation

The Prime Minister decided to follow the recommendation of the CIVS and to hand over to the heirs of Armand Dorville the twelve artworks previously acquired in Nice in June 1942. These artworks are currently in the Louvre (5 works), the Musée d'Orsay (6 works) and the Château de Compiègne (1). They have to get a special authorization in order to be taken away out of the national collections as already mentioned above the 12 works cannot be handed over immediately as they are part of national public collections. Only a law could authorise this. The French Government will present a draft law to effectively implement this decision.

Armand Dorville's heirs will also be compensated for the loss resulting from the absence of the right of the ownership of the proceeds of the sale for at least two years, from mid-1942 to the end of the war.

List of the 12 works:

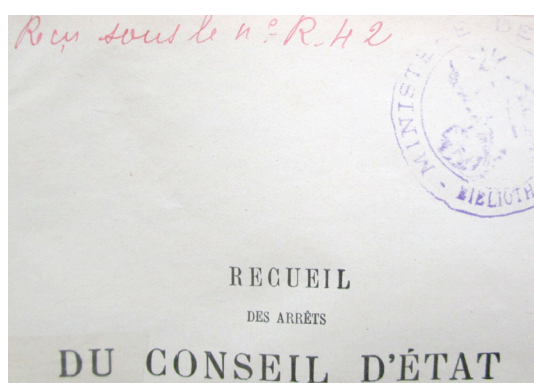
1. Henry Bonaventure Monnier, Portraits de Joseph Prudhomme et de Henry Monnier, aquarelle, musée du Louvre, RF 29339 ;
2. Henry Bonaventure Monnier, Les trois matrones, aquarelle, musée du Louvre, RF 29340 ;
3. Henry Bonaventure Monnier, Les visiteurs, aquarelle, musée du Louvre, RF 29341 ;
4. Henry Bonaventure Monnier, Une soirée chez Madame X, plume gouachée, musée du Louvre, RF 29341 bis ;
5. Jean-Louis Forain, Femme à la terrasse fleurie (ou Jeune femme debout sur un balcon, contemplant des toits parisiens), aquarelle, musée d'Orsay, RF 29342 ;
6. Constantin Guys, Jeune femme et sa duègne, aquarelle, musée d'Orsay, RF 29334 ;
7. Constantin Guys, La présentation du visiteur (ou Présentation de visiteur), plume et lavis, musée d'Orsay, RF 29335 ;
8. Constantin Guys, Cavaliers et amazones, plume et aquarelle, musée d'Orsay, RF 29336 ;
9. Constantin Guys, La loge de l'Empereur pendant une représentation de Madame Viardot dans « Orphée » (ou La loge de l'Empereur), plume et aquarelle, musée d'Orsay, RF 29337 ;
10. Constantin Guys, Revue aux Invalides par l'empereur Napoléon III (ou Une revue aux Invalides), plume et aquarelle, musée d'Orsay, RF 29338 ;
11. Pierre-Jules Mène, L'amazone présumée être Sa Majesté l'impératrice Eugénie, cire originale, château de Compiègne, C 42.064 ;
12. Camille Roqueplan, La diligence en danger, aquarelle, musée du Louvre, RF 29333.

The Zentral- und Landesbibliothek Berlin returns to the French Ministry of the Armed Forces a book looted during the Occupation

A casebook *Recueil des arrêts du Conseil d'Etat statuant au contentieux et des décisions du Tribunal des Conflits et de la Cour des Comptes*, Recueil Sirey, Paris, 1911, was seized by the German occupation forces from the library of the Ministère de l'Air (Ministry of Air) in Paris. The book was then passed on to the "Institut für Staatsforschung", a Nazi organ under the supervision of HIMMLER from 1939. During the Second World War, the Institut was directly commissioned by the National Socialist regime to produce notes and studies for propaganda purposes in the light of documents looted and plundered from the occupied territories. This mission justified the enrichment of this library through wartime looting and plundering.

After the dissolution of the Institut in 1947, a large part of the library's holdings were transferred, without any prior provenance research, to the collections of the Zentral- und Landesbibliothek Berlin, where they can still be found today.

Today the provenance is clear: the book was looted in 1941/1942 from the library of the Air Ministry. A stamp of the "Institut für Staatsforschung" is affixed to the title page. The date of entry into the Institut's collections is mentioned. A second stamp gives decisive information about the provenance of the book: it refers to the French Ministry of Air.



The Ministry of Air existed in France from 1928 to 1947. It was located in 1934 at 24, boulevard Victor, 75015 Paris. During the Second World War, this building was occupied and used by the German forces, particularly to carry out executions in reprisal for the actions of the Resistance.

The Ministry was gradually dissolved from 1945 onwards, and was finally abolished on 22 October 1947, when the services were merged into the Ministry of Defence. The Ministère des Armées (Ministry of the Armed Forces) therefore appears today as the public entity that should be considered as the successor to the former Ministry of the Air.

It has been possible to identify the object's route precisely. The Zentral- und Landesbibliothek Berlin now wishes to return the work to the competent ministerial authority, and it now appears the French Ministry of the Armed Forces is the rightful owner. To facilitate exchanges, the CIVS acts as a mediator between the various institutions mentioned above.

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Case Study: D^{oris} J. Klang

On 18 October 2019 the Austrian Art Restitution Advisory Board recommended the restitution of two books owned by the Natural History Museum Vienna (NHM) to the legal successors of Heinrich Klang.

The case had been preceded by intensive research; after the provenance researcher Claudia Spring, who worked at the NHM until 2014, discovered a book edited by Johann Kaspar Orelli *Johann Kaspar Lavanter's Physiognomik im Auszuge* from 1860 with the bookplate "D^{oris} J. Klang" during her systematic provenance research in the Library of the Department of Anthropology. Later on, a further copy in a publication by Ludwig Büchner, *Aus Natur und Wissenschaft: Studien, Kritiken und Abhandlungen* from 1869 was discovered in the Main Zoological Library. These were not isolated cases because similar bookplates had been found not only in Austrian but also in German libraries. It was originally assumed that "Doris" was the person's name, but it was soon realized that the superscript "oris" was a possessive genitive and that the presumed former owner was a Doctor J. Klang.

In the directory *Adolph Lehmann's allgemeiner Wohnungs-Anzeiger*, the only relevant entry for the time of a person with a doctor's title and the surname Klang was a Dr. James Klang. Born Jacob Moses in 1847, he was the director general of k. k. priv. Versicherungsgesellschaften Österreichischer Phoenix. He was married to Caroline, née Rooz, and had three children. The eldest son, Heinrich Adalbert Klang (b. 1875), also a jurist, who had studied law and political science at the University of Vienna, inherited the library after his father's death in 1914.



HEINRICH KLANG, SOURCE: WSTLA

In 1925 he was awarded an extraordinary professorship and transferred to the higher provincial court in Vienna.

Heinrich Klang's law activities took him to Vienna provincial court. From 1914, as an officer at the front in the First World War, he was an auditor in a military court and then until the end of the war at the Landwehrdivisionsgericht [military divisional court] in Vienna. He later became a judge at the provincial court for civil law matters. In addition to this activity, he habilitated in 1923 and taught at the University of Vienna. In 1925 he was awarded an extraordinary professorship and transferred to the higher provincial court in Vienna. He published numerous legal texts, edited the *Juristische Blätter* and wrote *Kommentar zum Allgemeinen bürgerlichen Gesetzbuch*, still referred to today as the Klang commentary.



BOOKPLATE DORIS J. KLANG

He was forced to sell his interior furnishings and the library comprising around 9,600 volumes through newspaper advertisements.

After the annexation of Austria to Nazi Germany in 1938, Klang lost his position as a judge and his teaching authorization on account of his Jewish origins. He was forced to sell his interior furnishings and the library comprising around 9,600 volumes through newspaper advertisements. After having failed to flee a number of times, he was deported in 1942 to the Nazi ghetto in Theresienstadt, where he was a guardianship judge and from 1944 presiding judge of the ghetto court. He was also a member of the Council of Elders. He survived and returned to Vienna in 1945. Although already of pensionable age, he was appointed presiding judge of the

Supreme Court of Justice that year and was a member of the Constitutional Court until 1946. He was involved in 1947 in the drafting of the Third Restitution Act and until 1949 was chairman of the Supreme Restitution Commission. He began publishing again and taught at the University of Vienna until 1951. The following year he married Helene Klang, née Artner, the former wife of his brother Fritz Dionys Klang – they divorced in 1938 – who died in the Jewish community hospital in Vienna in 1941. His second brother Marcell Klang was deported to Mauthausen in 1942 and murdered. Heinrich Klang himself died in Vienna in 1954.

The law books he had sold to a lawyer to raise money were returned voluntarily in 1946. Other books went to antiques dealers in Leipzig, Berlin, Frankfurt and Vienna. Through the newspaper advertisement some of his books were probably also purchased by Anti-

Thanks to the testimony of an employee of Leo Weiser, it is known that Wolf purchased books from departing Jews via newspaper advertisements.

quariats- und Exportbuchhandlung Alfred Wolf and ended up in German-speaking institutions such as the NHM.

In 1938, Alfred Wolf (1906–?) denounced his employer Hans Peter Kraus, who was deported to Dachau and Buchenwald, in order to obtain the books in his shop. With the aid of a partner Richard Riedmann (1886–1957) he acquired another bookshop from Leo Weiser (1883–?), who had fled. Thanks to the testimony of an employee of Leo Weiser, it is known that Wolf purchased books from departing Jews via newspaper advertisements. Evidence of the purchase from Wolf of the books in the NHM is provided by an invoice from the Library of the Anthropology Department and entries in the accession book in the Main Zoology Library, as well as an entry in the book itself and a handwritten code, “39/25” traceable to Antiquariat Alfred Wolf. The number 39 refers to the year of acquisition and 25 to the former owner. The code “39/25” occurs repeatedly in items with the bookplate Doris J. Klang.

Alfred Wolf was enlisted in the Wehrmacht in 1940 and nothing more is known of his fate after the war. Richard Riedmann was arrested temporarily in 1946. The prosecution by the Volksgericht under the War Criminals Act for illegal enrichment (§6) and denunciation (§7) were dropped in 1950 at the latest.

After the heirs had been identified (Mathias Lichtenwagner, “Seeking heirs for Austrian art restitution”, Newsletter No. 6) and confir-

med by the Office of the Financial Procurator, the documents were transferred by the NHM management in December 2020 to the authorized representative of the heirs. Further restitutions are currently being prepared by the Vienna University Library, the Library of the Vienna University of Economics and Business, the University of Graz Library, the Baden State Library in Karlsruhe, the Bavarian State Library in Munich, the Saxon State and University Library Dresden, the State and University Library in Bremen and the Central and State Library in Berlin.

Links

Decisions

www.provenienzforschung.gv.at/beiratsbeschluesse/Klang_Heinrich_2019-10-18.pdf
www.provenienzforschung.gv.at/beiratsbeschluesse/Kraus_HansPeter_2018-06-15.pdf

Lexicon of Austrian Provenance Research

www.lexikon-provenienzforschung.org/klang-heinrich
www.lexikon-provenienzforschung.org/kraus-hans-peter
www.lexikon-provenienzforschung.org/weiser-leo-versandbuchhandlung
www.lexikon-provenienzforschung.org/wolf-alfred-reise-und-versandbuchhandlung-antiquariat-und-export

Publications

Lisa Frank/Regina Zödl, “Das Exlibris Doris J. Klang als Beispiel eines bibliotheksübergreifenden Provenienzfalls”, in Christina Köstner-Pemsel/ Elisabeth Stadler/Markus Stumpf, eds., *Künstliche Intelligenz in Bibliotheken: 34. Österreichischer Bibliothekartag Graz 2019* (Graz 2020), pp. 313–25, doi.org/10.25364/guv.2020.voebs15.23 (open access)

Third Restitution Act

www.provenienzforschung.gv.at/wp-content/uploads/2014/04/DrittesRueckstellungsgesetz.pdf

War Criminals Act

www.ris.bka.gv.at/Dokumente/BgblPDF/1945_31_0/1945_31_0.pdf

Lisa Frank is a provenance researcher for the Commission for Provenance Research.



Intro

Whilst we continue to see a lack of claims in the UK, efforts continue to research UK collections and to keep the spotlight on this important work strand. My colleague, Jacques Schuhmacher, at the V&A, has contributed much in this regard through his work there as spoliation curator and I was grateful to him for suggesting two articles for this edition of the newsletter. The first is by Mary-Ann Middelkoop, who was the co-organiser of 'Thinking Provenance – Thinking Restitution' workshop, one of a series of online workshops. His second suggestion was to invite one of the speakers, Annika Dorn to write an article about the claims by the heirs of Curt Glaser and their consideration by the different committees and authorities in Europe. I am delighted that they have both agreed to share their thoughts with us.

For my part, I will be talking to international students who are enrolled on the Executive Master in Cultural Leadership course at the Royal Academy in London in early July. The theme for the day is 'Collections and Ethics' so I shall be sure to mention the excellent purpose and work of our Network.

Mark Caldon
Secretary to the Spoliation Advisory Panel



‘Thinking Provenance Thinking Restitution’

Workshop Series 2020 – 2021
University of Cambridge | University of Bonn

MARY-ANN MIDDELKOOP

In the two decades since the 1998 ‘Washington Conference on Holocaust-Era Assets’, public awareness of Nazi era looting, provenance research and restitution has slowly been on the rise. At Washington, governments from across the world committed to research objects in their care, and to publicise their findings with a view to achieving ‘fair and just solutions’. Museums and the art market have followed suit, with many directing new resources to investigate objects that changed hands in Europe between 1933 and 1945. In the last five years public interest in this subject has increased significantly. Beyond the historical focus on Nazi-era lootings, new contexts of ‘wrongful displacement’ have come into focus. Though holdings of ethnographic artefacts have long been contested, the histories of such collections have come under renewed scrutiny. Restitution of artefacts has also increasingly been advocated, and cases are extensively discussed in the media.

The time feels ripe for a critical engagement with these developments, to bring together international experts and to encourage European comparisons and exchange. Alongside the important technical work to establish

the facts, there is more than ever a need for a conceptual and theoretical base in provenance. While the political urgency of these projects is obvious, provenance research has often been approached technically and in positivistic terms. Yet provenance attends to much more than just dates, names and incidents of appropriation. It needs to be thought of more as an ‘expanded field’. This involves not only critically addressing identities of works of art, but also the agency of those involved in their transfer and transactions, and the morality attributed to those movements at the time of transaction and subsequently.

Taking Stock

With that aim, the History of Art Department at the University of Cambridge and the Centre for Provenance Research, Art and Cultural Heritage Law at the University of Bonn organised five online international workshops and a roundtable discussion over a period of six months, from December 2020 until May 2021. The workshop series was organized in six thematic sessions. The first, ‘*Taking Stock*’, considered ways in which provenance research and restitution are seen today. Professor Christian Fuhrmeister opened the series with a fascinating paper titled ‘Towards an Accurate Understanding of Achievements and Short-



We need to ‘re-think’ provenance, Fuhrmeister argued, and ask ourselves ‘what constitutes good provenance research?’

comings’. We need to ‘re-think’ provenance, Fuhrmeister argued, and ask ourselves ‘what constitutes good provenance research?’ He further made a plea for fundamental change in our cultural institutions and academic disciplines. Professor Meike Hopp and Dr Larissa Förster addressed the question of what Nazi era and postcolonial provenance research could learn from each other. Both presented thought-provoking parallels and differences between the theoretical, methodological and legal frameworks in which these two strands of provenance research operate. Based on this, Hopp and Förster, reiterated the necessity of its expansion as an academic field.

Provenance as Form of Knowledge

In the second workshop titled ‘*Provenance as Form of Knowledge*’, the focus turned to the role of language in provenance texts and pedagogical approaches to provenance research in institutions of higher education. Gareth Fletcher reminded us of the implicit subjectivity in published records, which, Fletcher argued, are at risk of introducing biases through their perceived objectivity. To verify the correctness, completeness and relevancy of such textual records, Fletcher proposed an interpretative framework based on a hermeneutic analysis of provenance texts. MaryKate Cleary focused on approaches to teaching provenance research at post-graduate level, and argued for the pedagogy of provenance being interpreted as a practice of transformative knowledge. Students will need an

action-based praxis, in order to engage and contribute to a so-called working through the past, Cleary argued.

The Past and Present of Provenance Research

The third session on ‘*The Past and Present of Provenance Research*’, addressed the complex subjects of historicity and morality. Dr Damiana Otoiu presented a revealing account of the first provenance research projects in human remains and anthropology collections at Iziko Museums in South-Africa in the 1990s, as a result of which the normative framework of museum collections has been modified. Dr Charlotte Woodhead followed with a paper focusing on the concept of inter-generational moral obligations of museums. How far, Woodhead asked, have circumstances of acquisition been identified as a relevant consideration in reparation policy guidelines? The question followed from the 2015 *Jenkins Review* of the UK’s Spoliation Advisory Panel’s work which seemed to point at a diminishing importance of this factor in its evaluations.

Digital Provenances

The fourth workshop considered the role and meaning of ‘*Digital Provenances*’. Marcel Marée and Maxence Garde drew attention to the *Circulating Artefacts* project (2018), a collaborative online platform that aims to counteract looting and trafficking of cultural property or ‘orphan objects’ from Egypt and the Sudan,



The differences between provenances and the challenges scholars face in accessing digital provenances of individual objects, McClain reminded us, should be at the forefront of our recollections and thinking of provenance and restitution.

and monitors sales. The CircArt project links objects and data and uses visualisations to spot patterns in the histories of objects and associated events, actors and places. Eli E. McClain followed with a paper on the potential and limitations of digital databases, by looking at the Chauncey Murch collections in three different museums. The differences between provenances and the challenges scholars face in accessing digital provenances of individual objects, McClain reminded us, should be at the forefront of our recollections and thinking of provenance and restitution.

Law, Provenance and Restitution

The fifth workshop session focused on '*Law, Provenance and Restitution*'. Taking the rule of law as a point of departure, Dr Matthias Goldmann and Beatriz von o claims for restitution of colonial era artefacts. Goldmann and Von Loebenstein discussed 'critical legal provenance research', which is inspired by postcolonial thinking, as an alternative to interpreting colonial law as mere pretext to justify illegitimate acquisitions. Additionally, Annika Dorn argued for comparative restitution practices, taking the Glaser case as a point of departure, which illustrates the many difficulties surrounding proceedings of Nazi-era related restitution. Dorn described the Dutch, Swiss, British and German decision

making in the case of Glaser, outlining the need for a framework of abstract criteria that could be taken into account when searching for 'just and fair solutions'.

Provenance Practices in Museums

The sixth and final session 'Provenance Practices in Museums' opened with remarks by Professor Christoph Zuschlag, followed by brief talks and a roundtable discussion with Dr Jacques Schuhmacher, Andrea Berger and Dr Matthias Weniger. The speakers discussed specific provenance research projects – ranging from restitution of silver objects at the Bavarian National Museum to Nazi and colonial-era provenance at the Victoria & Albert Museum – that have posed interpretive and museological challenges in their daily work. During the roundtable discussion, chaired by Dr Lucy Wasensteiner, participants further presented prospects for considering the relationship between provenance and restitution practices, reflecting again on their own praxis. Professor Nicholas Thomas provided the closing remarks to the event.

The 'Thinking Provenance, Thinking Restitution' Workshop Series 2020-2021 was convened by Dr Mary-Ann Middelkoop and Dr Lucy Wasensteiner, with support from Alexandra Germer, and generously funded by the DAAD Cambridge Research Hub for German Studies. For more information about the programme, please visit: <https://www.daad.cam.ac.uk/workshops/thinking-provenance-thinking-restitution>

To be kept informed about our forthcoming publication and/or to be added to the 'Thinking Provenance, Thinking Restitution' mailing list, please email Dr Mary-Ann Middelkoop (maem2@cam.ac.uk)



Why comparing with others can be a good thing

ANNIKA DORN



BERLIN ART LIBRARY

In the first Newsletter, published by the Network of European Restitution Committees on Nazi-Looted Art, the Chairman of the CIVS - the Restitution Committee in France - wrote: "The study of a case [...] can [...] enrich our reflections and question our practices."¹ This holds even truer for a case which was the subject of multiple decisions issued by different national bodies, such as the one about Curt Glaser.² A comparative study will not only address the facts of the case - especially the circumstances of loss - but also, and foremost, the way each restitution system

has reached its decision. In particular, comparison will offer a unique opportunity to look at the normative considerations underlying each decision in order to find a just and fair solution. This article will illustrate similarities and differences in the decision-making-process of different national bodies dealing with the *causa Glaser*, the effects pluralistic approaches have on international restitution practices today and why comparing with others can be a starting point for dealing with future cases in a more coherent, predictable and comprehensible way.



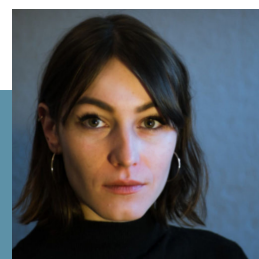
In an exchange of letters, he describes his changed life situation, stating, that his whole world had collapsed due to the loss of his wife, his job, and his apartment and that he got rid of all his possessions to start a new life with a woman, Marie, whom Glaser marries shortly after

Prof. Curt Glaser, the son of a Jewish family, was considered one of the leading chroniclers, critics and publicists in Berlin art life in the 1920s.³ The Director of the Berlin Art Library which was located in a prestigious building on Prinz-Albrecht-Strasse lived in an official apartment in the same building complex. Through his museum activities and the support of his wife Elsa, he increasingly established himself as a collector and patron of modern art. One of his close confidants was the painter Edvard Munch.⁴ Next to art works by Munch, the Glaser Collection included works by van Gogh, Matisse and Picasso. Elsa, who was a stimulator in art and philosophy herself, hosted so called *Monday Salons* in their apartment - a gathering of the Berlin art and cultural scene. While Curt Glaser was celebrating great professional success, he was struck by a stroke of fate in 1932 with the sudden death of Elsa. Shortly after, his situation worsened in professional terms. In April 1933, the National Socialists enacted a law, which empowered the regime to remove Jewish servants from the civil service.⁵

Glaser was suspended from his position at the Art Library and his official apartment was confiscated by the Gestapo. During this time, Glaser maintained close contact with Munch. In an exchange of letters, he describes his changed life situation, stating, that his whole world had collapsed due to the loss of his

wife, his job, and his apartment and that he got rid of all his possessions to start a new life with a woman, Marie, whom Glaser marries shortly after.⁶ The letter coincides with two auctions in Berlin in May 1933 at which Glaser is selling most of his art collection.⁷ After the collection was dissolved, Curt Glaser and his second wife left Germany and emigrated first to Switzerland and in 1941 to New York where he died two years later.

Following the two auctions in 1933, Glaser's collection entered the international art market ending up in public and private collections in Europe and the US. In the late 1990s, the surviving heirs started to claim the return of a large number of the art, stating that in view of the persecution by the Nazis, Glaser had no choice but to sell his collection. The sales were involuntary and therefore *forced*. Since 2007, a large number of decisions on the Glaser Collection have been issued by various German museums, a Dutch museum, a gallery in England and the Art Museum in Basel.⁸



Annika Dorn is a Research Assistant in the project "Restatement of Restitution Rules for Nazi Confiscated Art" at the Rheinische Friedrich Wilhelms University Bonn. This article was recently presented at the workshop series "Thinking Provenance - Thinking Restitution" at the University of Cambridge.



This statutory presumption eases the burden of proof for the claimants. Now the institution is obliged to prove that the transaction cannot be considered a forced sale by showing that the seller received a fair purchase price and that he or she was free to dispose of the purchase price as desired.

All these decisions were made on the basis of the *Washington Principles*, adopted in 1998 and signed by 44 governments. Art that has been confiscated by the Nazis is identified in the course of Provenance Research and in cases where such confiscation is established, *just and fair solutions* should be sought between the parties involved.⁹ In contrast to courts, which decide on the question of ownership in a binary manner and on the basis of statutory provisions¹⁰, the conceptual approach of the *Washington Principles* opens up a wide scope for the assessment of restitution claims. In view of the cultural, historical and legal differences existing between the signatories, each system developed its own approach to find just and fair solutions in the context of Nazi-looted art.

In dealing with *forced sales*¹¹, the different approaches could be divided roughly into two categories.¹² On the one hand, there are the restitution practices in Germany and the Netherlands, operating with *statutory presumptions*. On the other hand there are the approaches in England and - at least in the Glaser case¹³ - in Switzerland, which could be described as an *overall assessment* of the claim.

a. Germany and the Netherlands

Public institutions¹⁴ as well as the Restitution Committee in Germany operate on the basis of the *Guidelines*¹⁵ which provide a form of

evaluation program for assessing claims. The first step is to examine whether the claimants were subject to persecution in the period between January 1933 and May 1945, which is assumed if the seller was of Jewish origin. In a second step the type of loss is determined. In the case of assets lost as the result of a legal transaction during the period of persecution it is *presumed* that these losses are forced sales. This *statutory presumption* eases the burden of proof for the claimants. Now the institution is obliged to prove that the transaction *cannot* be considered a forced sale by showing that the *seller received a fair purchase price* and that *he or she was free to dispose of the purchase price as desired*. The Dutch Restitutiecommissie has a similar approach when evaluating forced sales. The *3rd recommendation of the Ekkart Committee (2001)*¹⁶ provides for a statutory presumption for forced sales if the vendor is of Jewish origin, which can be rebutted by *express evidence to the contrary*. In light of the statutory presumptions, the decision-makers in Germany and the Netherlands recognised the sale of Glaser's collection as a forced sale. Neither the German institutions nor the Dutch Restitutiecommissie found evidence which would rebut the presumptions.¹⁷ As a result, all institutions either returned the artworks to the heirs or paid compensation.

b. United Kingdom and Switzerland

Unlike in the aforementioned legal systems



Treating each case in isolation risks resulting in potentially unjustifiable inconsistencies of outcomes in identical cases, which call into question the legitimacy of each individual decision.

there is no statutory presumption for forced sales in British or Swiss restitution practices¹⁸. The Spoliation Advisory Panel in the United Kingdom (SAP) and the Art Commission Basel rather took an *overall assessment* of the claims brought by the Glaser heirs, taking into account all those criteria the deciding authorities considered to be relevant.

At the center of the assessment are the circumstances by which the original owner lost possession of the cultural object. Therefore both panels evaluated Glasers motives to sell his collection in 1933 and - aside from persecution measures - considered personal reasons of the collector. The SAP elaborated, that the stroke of fate Glaser had suffered through the death of his wife and its effects, which are expressed in the letter to Munch, would demonstrate that he *was also looking forward to starting a new life and, to that extent, his release from previous responsibilities was not unwelcome*¹⁹. In light of these *mixed motives* the SAP identified the *extent* to which the sale was attributed to Nazi oppression. Similar considerations can be found in the decision of the Art Commission Basel which pointed out, that the *extent of coercion in the case of Curt Glaser was less than in other cases*.²⁰ Nevertheless, both committees concluded, that the sale was predominantly motivated by persecution and thus forced. But - as the SAP states in its report - the evaluation of the claim has to include *all relevant factors* and not merely causation: Glaser had received a *purchase price*, which in view of the British Panel was fair; he could *freely dispose* of the proceeds

from the auction, his heirs had been *compensated* by the German government in the postwar period, and the institutions could not be accused of any wrongdoing²¹. After all, the committees decided that restitution would not constitute a just and fair solution in the Glaser case. Instead, the SAP recommended the display of a brief account of the object's history and provenance alongside the object, while in the Swiss Art Commissions view, the payment of compensation would do justice to the conflicting interests of the parties.

As has been shown, a decision under the just-and-fair rule of the Washington Principles can reflect a full range of possible solutions. What is *just and fair* is determined in view of the facts of each case by each decision-maker on the basis of diverging assessment frameworks. While recognising an interest in predictable and comprehensible decision-making-processes, this pluralistic approach can be viewed critically.²² Treating each case in isolation risks resulting in potentially unjustifiable inconsistencies of outcomes in identical cases, which call into question the legitimacy of each individual decision.²³ For the claimants, it seems to depend merely on chance in which country the claimed object is located and according to which criteria the national bodies decide. For the decision-makers, in turn, there is no possibility for orientation towards a binding restitution practice.

With a growing number of cases, however, recurring types of losses emerge. As their core elements are identical, they raise similar



WINTER LANDSCAPE
BY JAN VAN DE VELDE II

questions when assessing the claims. Based on these questions and the subsequent considerations the deciding bodies took into account when assessing previous cases, an abstract set of criteria can be developed from practice. Such a set does not constitute a valid statement about what *should* be considered just and fair. However, if the same criteria are applied by a number of decision-makers, this finding is to be taken as an indicator what just and fair solutions could be, subject to further discussion and deliberation.

The Glaser case exemplifies, that there are indeed criteria that has been applied in various decisions to determine whether the sale was a forced sale. Since the concept of a forced sale is used as a typology for losses due to the Nazi regime, the involuntary nature of the loss must be attributable to it. As the

forementioned decisions show, the criteria establishing this causal link is the persecution of the original owner. On the other hand, all decision-makers assessed factors, that could speak against a forced sale, such as the fairness of the purchase price and the free availability of the proceeds. These similarities provide a starting point to formulate abstract criteria.

But what to do with factors that were taken into consideration only in some jurisdictions but not in others? In the Glaser case, one of the more apparent differences is the acknowledgment of personal motives. In Germany and the Netherlands, a forced sale is presumed (subject to narrow grounds for rebuttal by the holder) if the vendor was part of a persecuted group. Whether the decision to sell was additionally influenced by personal motives thus



remains irrelevant. Within such a framework, a forced sale comes close to an either-or-decision based upon persecution.

The British Panel, on the other hand, does assess all motives behind a sale and in cases of *mixed motives* identifies the *extent* to which the vendor's decision can be attributed to Nazi persecution. In the Glaser case the Panel concluded that persecution was the predominant motive and the sale therefore forced. But what would happen in a hypothetical case where the decision to sell stems from mixed motives but is not primarily based on persecution. A loss through a forced sale could be rejected, even though the original owner was persecuted. While developing an abstract set of criteria these differences in approaches lead to more general questions: Is the intensity of persecution the original

owners and their families had to sustain a consideration within the framework of a just and fair solution? In other words, how persecuted must the vendors have been that the transaction can be qualified as a forced sale? And do such considerations - as a counterweight - relativize the injustice suffered by those affected? The answers to these questions also depend on the understanding each restitution system has, as to which legal and moral obligations arise from the Washington Principles and how they should be reflected in the assessment of claims. Exploring these understandings by looking at previous decisions and developing a common frame of reference can help to overcome the obstacles, the claimants as well as the Committees are confronted with. This is why comparing with others might indeed be a good thing.

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- 1 Michel Jeannoutot, Network of European Restitution Committees On Nazi-Looted Art, Newsletter No. 1, March 2019, p. 1, online available at <https://www.restitutiecommissie.nl/en/system/files/Network-Newsletter-no.1-March2019.pdf> (accessed 3.6.2021).
 - 2 Cases which were subject of restitution proceedings in various jurisdictions do not occur infrequently. Reference can be made to the collections of Max Silberberg, Max Stern, Emma Budge, Heinrich Rothberger or Rosa and Jakob Oppenheimer.
 - 3 Joachim Brand / Hein-Thomas Schulze Altcapenberg, Curt Glaser und die Staatlichen Museen zu Berlin, in: Jahrbuch Preussischer Kulturbesitz 2012, Bd. XLVIII, Hermann Parzinger (ed.) Berlin, 2014, p. 375.
 - 4 See generally Art Commission Basel, Decision of the Kunstkommision in the matter of Curt Glaser, 2018, p. 109 et seq., online available at <https://kunstmuseumbasel.ch/de/forschung/provenienzforschung/curtglaser> (accessed 3.6.2021).
 - 5 Gesetz zur Wiederherstellung des Berufsbeamtentums (Law for the Restoration of the Professional Civil Service), RGBl. I, 7.4.1933, p. 175–177.
 - 6 Letter from Curt Glaser to Edvard Munch, 19.5.1933, Munchmuseet MM K 2387, available at https://www.emunch.no/HYBRIDNo-MM_K2387.xhtml (accessed 3.6.2021).
 - 7 The first auction took place on May 9, 1933, at the Internationale Kunst- und Auktions-Haus GmbH in Berlin, the second auction at the Berlin antiquarian Max Perl on May 18 and 19, 1933.
 - 8 For an overview of the decisions about the Glaser collection (until 2018), see Art Commission Basel (Fn. 4), p. 138 et seq. The decision of the Museum of Fine Arts in Boston, USA, which rejected restitution will not be considered, as the decision-makers explicitly referred to the Report of the UK Spoliation Advisory Panel. See publication on the website of the Museum of Fine Arts Boston, available at <https://collection.mfa.org/objects/33583> (accessed 3.6.2021).
 - 9 No. 8 of the Washington Conference Principles on Nazi-Confiscated Art, available at <https://www.lootedartcommission.com/Washington-principles> (accessed 3.6.2021).



- 10 Legal proceedings are somewhat of a flawed medium in the context of Nazi-looted art. Claims are statute-barred under the applicable limitation periods or might fail because the current holders have acquired ownership in good faith. Evidentiary difficulties due to the passage of time cannot be addressed adequately in legal proceedings, which should be taken into account according to No. 4 of the Washington Principles.
- 11 To date, there is no common definition of a „forced sale“ in the context of Nazi-looted art. The lack of consensus on definitions has been criticised before, see for example Anne Webber, Co-Chair of the Commission for Looted Art in Europe (CLEA), „70 years and counting: The final opportunity?“, Note of Proceedings, National Gallery, London, 12.9.2017, para 24; available at <https://www.gov.uk/government/groups/spoliation-advisory-panel#spoliation-conference-2017---70-years-and-counting-the-final-opportunity--note-of-proceedings> (accessed 3.6.2021).
- 12 This categorization serves to illustrate essential differences in restitution practices dealing with forced sales and is not intended to level out nuances within the individual systems.
- 13 Swiss restitution practice is organised in a decentralised manner. Decisions on restitution or compensation are predominantly made at the discretion of the (public) institutions, especially museums and collections, or their legal owners in each canton. A commission to solve disputed ownership issues in the context of Nazi-looted art has not been established. The decision in the Glaser case can therefore only represent one approach within the overall restitution system in Switzerland.
- 14 Similar to Switzerland, German restitution practice is organised in a decentralised manner. Decisions are mainly made by the individual institutions or their legal owners.
- 15 Handreichung zur Umsetzung der „Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz“, current version 2019, available at <https://www.kulturgutverluste.de/Web/EN/Research/Guidelines/Index.html;jsessionid=903262D8270038A9D-1686F1ACF8980F6.m1> (accessed 3.6.2021).
- 16 3rd Recommendation of the Ekkart Commission, 26.4.2001, available at https://www.restitutiecommissie.nl/en/policy_framework_regarding_the_national_art_collection.html (accessed 3.6.2021).
- 17 The Dutch Restitutiecommissie had no evidence of the amount of the purchase price received. The Committee considered it likely that Glaser could not freely dispose of the proceeds, but probably had to use them to finance his escape to the United States and to pay the exit taxes imposed by the Nazis, see Recommendation of the Restitutiecommissie, 4.10.2010, No. 1.99, para. 9, available at https://www.restitutiecommissie.nl/en/recommendations/recommendation_199.html (accessed 3.6.2021).
- 18 In assessing whether the object was lost through a forced sale, the Art Commission Basel makes reference to the German Guidelines. However, the statutory presumption is not applied, since an indiscriminate adoption of the Guidelines for Switzerland would be doubtful, see Art Commission Basel (Fn. 5), p. 150.
- 19 Report of the Spoliation Advisory Panel, HC 757, 24.6.2009, para 35, available at: https://assetpublishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248231/0757.pdf (accessed 3.6.2021). It should be mentioned that the Art Commission Basel assessed Glaser's personal motives also referring to the notion of „mixed motives“ from the SAP report. However, due to the clear presence of persecution, it were irrelevant whether the decision to sell might also be based on other motives since these possibilities did not form a solid basis for explaining the sale, Art Commission Basel (Fn. 5), p. 154 et seq.
- 20 Art Commission Basel (Fn. 5), p. 156. (if Fn. 5 is erased, the source would have to be mentioned here).
- 21 The same considerations can be found in the decision of the Art Commission Basel which additionally assessed various ancillary criteria, see Art Commission Basel (Fn. 5), p. 158 ff.
- 22 See generally Charlotte Woodhead, Action towards consistent „just and fair solutions“, in: Guide to the work of the Restitution Committees - Five ways of resolving claims, 2019, pp. 65-75.
- 23 See generally Matthias Weller, In search of „just and fair“ solutions: Towards the future of the Washington Principles on Nazi-confiscated Art“, in: Guide to the work of the Restitution Committees - Five ways of resolving claims, 2019, pp. 9-17.

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