



# Newsletter

January 2023 – N°15

Published by the Advisory Commission



Network of European  
Restitution Committees  
on Nazi-Looted Art

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## FOCUS ON SWITZERLAND

When it became publicly known in November 2013 that artworks from the possession of Cornelius Gurlitt had been seized, this triggered ongoing developments in the field of provenance research.

While the discussion surrounding the restitution of Ernst Ludwig Kirchner's *Berlin Street Scene* in 2006 had already led Germany's political leaders to declare that there would be a significant increase in the support provided for provenance research in future (Presse- und Informationsamt der Bundesregierung, Pressemitteilung 436, 14 November 2007), the so-called "Gurlitt Art Trove" further boosted the sense of determination to enhance the structures in this field of research and set about pooling resources. As a result, the Federal Government, the Länder and the national associations of local authorities passed the resolution to establish the German Lost Art Foundation as a public-law institution in Magdeburg on 1 January 2015. The "Gurlitt Art Trove" is also described as something of a milestone in terms of raising global awareness surrounding the complex of topics of National Socialist art looting, provenance research and restitution. By accepting the Gurlitt bequest in 2014, the Museum of Fine Arts Bern finally took on the exceptional responsibility of engaging with Hildebrand Gurlitt and his legacy, going on to establish Switzerland's first ever museum department dedicated to provenance research. After completion of the research in Germany, conducted through the *Schwabinger Kunstfund* Taskforce (2013-2015), the Gurlitt Provenance Research Project (2016-2017), and "Reviews, Dokumentation und anlassbezogene Forschungsarbeiten zum Kunstfund Gurlitt" (2018), the Kunstmuseum Bern assessed the results, according to its provenance

categories (see Brühlhart/Doll/Garbers-von Boehm/Raschér pp. IX-XIV). The museum's exhibition *Taking stock. Gurlitt in Review* (16.9.2022-15.01.2023) recently provided an in-depth insight into the Gurlitt legacy and its scholarly analysis. In addition, collaborative work was carried out with the Forschungsstelle "Entartete Kunst" at the University of Hamburg (2019-2022) to clarify the origin of the items of "degenerate art" in this collection, resulting in a supplementary publication entitled *Kunst, Konflikt, Kollaboration. Hildebrand Gurlitt und die Moderne*: The volume addresses the position of the museum director and curator Gurlitt with respect to German Modernism and his role as an art dealer during the National Socialist era and in the post-war period.

The long-standing research links between Germany and Switzerland have prompted us to change the structure of this newsletter: A Focus Switzerland in this issue specifically features topics relating to Switzerland (see pp. I-XIV). In view of the current debate and the agreement to set up an independent commission on Nazi-looted art, the special feature in this issue is not likely to be the last, and we look forward to engaging in close ongoing dialogue.

### GESA VIETZEN

Office of the Advisory Commission



Beratende Kommission  
im Zusammenhang mit der Rückgabe  
NS-verfolgungsbedingt entzogenen Kulturguts,  
insbesondere aus jüdischem Besitz



## Stay informed with the Newsletter: Cultural Goods World War II

In this newsletter, the Cultural Heritage Agency of the Netherlands (RCE) will inform you about activities in the area of cultural heritage objects which were looted, confiscated or sold under duress in the Netherlands before or during the Second World War. The newsletter also refers to interesting information from the organizations with which RCE closely collaborate, such as the Restitutions Committee and NIOD, Institute for War, Holocaust and Genocide Studies.

The newsletter is available in Dutch, English and Hebrew.

Use the following link to subscribe:

<https://subscribe.mailinglijst.nl/default.aspx?l=2436&lang=NL&lc=1694610>



Cultural Heritage Agency  
Ministry of Education, Culture and Science

### Newsletter Cultural Goods World War II

**In this Newsletter, we will inform you about activities of the Cultural Heritage Agency of the Netherlands (RCE) in the area of cultural heritage objects which were looted, confiscated or sold under duress in the Netherlands before or during the Second World War. We will also refer to interesting information from the organizations with which we closely collaborate, such as the Restitutions Committee and NIOD, Institute for War, Holocaust and Genocide Studies.**



**A Fragile Past: Meissen Porcelain**  
On the advice of the Restitutions Committee, the Minister of Education, Culture and Science decided in December 2019 to have 107 object groups of Meissen porcelain returned to the heirs of Dr Franz Oppenheimer. The objects bear silent witness to the poignant history of Franz Oppenheimer and his family. To their flight from Germany to Austria in 1938, and then to the United States in 1938. Oppenheimer sold the pieces to finance this, so it was a sale under duress.

In September 2021, the heirs had 177 pieces auctioned at Sotheby's in New York. More than half of the collection was purchased by the Rijksmuseum, as a result of which it was re-acquired by the museum. Under the title 'A fragile past', the museum created an [exhibition](#), a [film](#) and a [podcast](#) telling this extraordinary story.

You can read the Restitutions Committee's [advisory report](#) and [press release](#) here.

**NK Collection Research Team Expanded**  
Six young researchers got started at the Cultural Heritage Agency of the Netherlands (RCE) in September. They are part of the team that will focus over the coming years on renewed and supplementary provenance research of objects in the Netherlands Art Property Collection (NK collection) and will make the relevant information and data accessible for the long term. In addition, efforts will be made to draw attention to the NK collection and the provenance research, and to provide information about the restitution policy, through the use of additional communication and activities. The RCE hopes that by expanding the team, the NK collection will be given a significant boost with the aim of gaining even more insight into

the provenance of objects and enabling the handling of more restitution requests, as a result of which possessions can be returned to their rightful owners and heirs.



NK Collection Research Interpretation Team at the National Collection Centre.

**Supervisory Committee for Provenance Research**  
The independent committee announced previously by the Minister of Education, Culture and Science for the supervision of research has now been appointed. The committee oversees the quality of past and future research and assesses whether it meets the standard required in order to determine the provenance of objects from the NK collection as accurately as possible. In concrete terms, that means that it checks whether the right steps are taken and the right archives are consulted during the research. Of course the emergence of new archives or insights may lead to modifications being made to the research, which are then discussed with the committee. The committee consists of Prof. Rudi Ekkart



The supervisory committee with Henkile Verschuuren, Christian Ruppert, Gerdien Verschoor and Rudi Ekkart (from left to right).

(chair), Henkile Hövelmann MA, Dr Christiaan Ruppert and Gerdien Verschoor MA. They will be introduced to you in this newsletter. In this issue, you can [get acquainted](#) with Rudi Ekkart and Henkile Hövelmann.

NEWSLETTER november 2022 – Cultural Goods World War II





## New ruling after reconsideration based on new facts

The Restitutions Committee has ruled that the painting *Blick auf Murnau mit Kirche* (known in English as *View of Murnau with Church*) by the artist Wassily Kandinsky is to be restituted by Eindhoven City Council and the Van Abbemuseum to the heirs of Johanna Margaretha Stern-Lippmann (1874-1944).

The work has been in the collection of the Van Abbemuseum in Eindhoven since 1951. The Restitutions Committee concluded on the basis of new facts that it is sufficiently plausible that Margaretha Stern-Lippman lost possession of the painting involuntarily during the Nazi regime.

The Committee issued a binding ruling on 29 January 2018 rejecting an earlier application for restitution of this work. At the time it was not possible to estab-

lish that Margaretha Stern-Lippmann, the applicants' Jewish grandmother/great-grandmother, had lost possession of the work during the Nazi regime. Three indications emerged from the new investigation that make the loss of possession during the war plausible. This underpinning can be read on the Restitutions Committee's website.

Use the following link to read the complete ruling: [Binding opinion regarding Stern-Lippmann / Eindhoven City Council II](#)



BLICK AUF MURNAU MIT KIRCHE  
BY WASSILY KANDINSKY  
PHOTO: PETER COX, EINDHOVEN



## New recommendation and rulings: Six artworks to be returned to the beneficiaries of Emma Budge (1852-1937)

The Restitutions Committee's advice to the State Secretary for Culture and Media and its binding rulings concerning Amsterdam City Council and The Hague City Council are to the effect that a total of six artworks should be restituted to the beneficiaries of Emma Budge (1852-1937). Research has revealed that the artworks were part of the art collection of the Budes, who lived in Hamburg, and that it is sufficiently plausible that her beneficiaries involuntarily lost possession of them after her death.

The State Secretary for Culture and Media has accepted the advice, and Amsterdam City Council and The Hague City Council have concurred with the Restitutions Committee's binding rulings. The Dutch State and the City Councils will restate the artworks to the beneficiaries of Emma Budge.

The following works are involved:

- A set of four salts by the artist Johannes Lutma (1584-1669). The salts were purchased by Amsterdam City Council in 1960. Two of the salts are in the Rijksmuseum and the other two are in the Amsterdam Museum;
- A goblet holder by the artist Andries Grill (1604-1665) and a pottery dish (artist unknown, Sultanabad, c. 1285-1400). These artworks were purchased by The Hague City Council in 1937 and are in the Kunstmuseum Den Haag.

Use the following links to read the summaries, recommendation and rulings:

[Budge, Binding opinion Budge / The Hague City Council](#) and [Binding opinion Budge / Amsterdam City Council](#)



TWO PARCEL GILT SALTS  
MADE IN 1643 BY  
JOHANNES LUTMA  
PHOTO: AMSTERDAM  
MUSEUM



## New seminars at Institut national d'histoire de l'art (INHA) in Paris

As part of the seminars organised since 2019 under the title *Heritage looted during the period of Nazism (1933-1945)* by the Institut national d'histoire de l'art (INHA) and the Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 (M2RS) attached to the Ministry of Culture, in partnership with the *Institut national du Patrimoine*, the focus has been extended in 2022 with *Consequences, memories and traces of spoliation*.

In this regard, a conference entitled *After the research - The action of the Commission for the Compensation of Victims of Spoliation (CIVS)* took place in Paris on October 13.

Previous sessions had shown the progress made in research on looted cultural property. But in this field, the collective work of researchers, historians, curators and archivists does not only aim to perfect the memory of spoliation. It also supports the legal action taken by the public authorities. Since 1999, the Commission for the Compensation of Victims of Spoliation (CIVS) has been proposing restitution or compensation measures for spoliations that occurred during the Occupation. From research to the Prime Minister's decision, how is "fair" compensation determined? Using examples from its twenty years of activity, the Commission revealed the mechanisms of its action.

In his introduction, David Zivie, head of the M2RS mission, reminded the audience that the spoliations that occurred during the Occupation did not only concern cultural property. As such, the CIVS, deals with all types of spoliations and places at the centre of its action "*the policy of persecution and total spoliation linked to the policy of eradication and destruction of European Jews*". Jérôme Benezech, Director of the CIVS, and Michel Jeannoutot, Chairman of the CIVS, presented the Commission's work and issues before participating in a Q&A session.

Among the answers given, it is important to understand that the work of the Commission, and in a wider sense the action of the public authorities, is in all cases disconnected from the heritage value of the

property or the art object. And once again, the positive international cooperation was acknowledged and the importance of networking was underlined.

Find the whole conference (and all the conferences of the seminar) online (in French):

<https://www.youtube.com/watch?v=ro1MTzOFAAM>

The next conference will take place on January 25th and will be dedicated to *Despoiled artists, forgotten artists: looted artist workshops during the Occupation*, with Sylvie Harburger (author of the "catalogue raisonné" and daughter of the artist Francis Harburger) and Sophie Juliard (Université Lumière Lyon)

Find the entire program of the seminar: <https://www.inha.fr/fr/recherche/programmation-scientifique/en-2022-2023/patrimoine-spolie.html>

### Séminaire

#### Patrimoine spolié pendant la période du nazisme (1933-1945) – Conséquences, mémoires et traces de la spoliation

OCTOBRE - DÉCEMBRE 2022 18H30 - 20H

Institut national d'histoire de l'art  
Galerie Colbert, auditorium Jacqueline Lichtenstein



« Inventaire de la galerie Wildenstein » pendant l'Occupation après le départ du propriétaire © IAPL/Roger-Viollet



## The Museums of Strasbourg are organising an exhibition on their “National Recuperation Museums”



The Museums of Strasbourg are organising an exhibition on their “National Recuperation Museums” (Musées Nationaux Récupération - MNR): “Past, present, future of works recovered in Germany in 1945”. In the aftermath of the Second World War, 61,000 works of art were recovered from Germany by the Allied forces and brought back to France. Many of them had belonged to Jewish families who had been despoiled. Over 45,000 items were returned to their owners. Of the unclaimed property, approximately 2,200 works were placed under the responsibility of the Ministry of Foreign Affairs and entrusted to the custody of the national museums before some of them were deposited in regional museums. These works are not part of the national collections and remain on provisional inventories. These works are commonly referred to by the acronym “MNR” (Musées Nationaux Récupération).

Until 15 May 2023, the 27 MNR held by the Museums of the City of Strasbourg will be brought together in the Heitz Gallery. Seven objects from the Musée des Arts décoratifs and Musée de l'Œuvre Notre-Dame and 20 paintings from the Musée des Beaux-Arts and Musée d'Art moderne et contemporain are presented to the public. Like the other museums in France that hold MNR items (170 museums in total), the Museums of the City of Strasbourg are responsible for facilitating research to identify the owners of these works, with a view, if necessary, to restitution to their rightful owners, in order to ensure that they are not works looted between 1933 and 1945.

The Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 (M2RS) provides museums with various tools (presentation text of MNR works, model labels, indications for transmitting photographs to feed the Rose-Valland database (MNR-Jeu de Paume), etc.).

The University and the Museums of the City of Strasbourg are joining forces to study these objects and their legal status, and an international symposium organised in the spring of 2023 will complete this presentation at the Heitz Gallery.

Curator of the exhibition: Thibault de Ravel d'Esclapon, lecturer at the University of Strasbourg, and Dominique Jacquot, chief curator of the Musée des Beaux-Arts.

### For more information:

Galerie Heitz / Palais Rohan - 2 place du château, Strasbourg

Open every day from 10am to 1pm and from 2pm to 6pm - except Tuesday

+33 (0)3 68 98 50 00

<https://www.musees.strasbourg.eu/passe-present-avenir-d-oeuvres-recuperees-en-allemande-en-1945.-les-mnr-des-musees-de-strasbourg>



## New website of Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 (M2RS) / Ministry of Culture

The Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 (M2RS), attached to the French Ministry of Culture, has published new pages on the website of the French Ministry of Culture, dedicated to research and restitution of cultural property between 1933 and 1945, with documentation and tools for research for professionals and general audience. In particular:

- Claims process
- Information about [“MNR” artworks and restitution](#)
- Information about [restitutions](#)
- [Historical and legal section](#)
- [Methodology and presentation of databases](#)
- Presentation and access to the [Rose Valland “MNR” artworks database](#)
- Presentation and access to the [“Répertoire des biens spoliés”](#)

These pages can be automatically translated in English and German and other languages.

See also the description of the website on lootedart.com: <https://www.lootedart.com/VPPND6185661>



SCREENSHOT NEW WEBSITE OF MISSION DE RECHERCHE ET DE RESTITUTION DES BIENS CULTURELS SPOLIÉS ENTRE 1933 ET 1945 (M2RS) / MINISTRY OF CULTURE  
[WWW.CULTURE.GOUV.FR/SPOLIATIONS-RESTITUTIONS-1933-1945](http://WWW.CULTURE.GOUV.FR/SPOLIATIONS-RESTITUTIONS-1933-1945)

## LostLift database online soon

From 1933 onwards, Jews persecuted on the basis of Nazi ideology increasingly emigrated from the German Reich. Their belongings - stowed in liftvans and crates - were shipped to exile via various European ports. The beginning of World War II in September 1939 prevented the departure of civilian German ships from Reich. As a result, the cargoes already transported to the ports of Hamburg and Bremen could not be shipped forward and thus piled up in the warehouses. In addition, ships - that had previously departed - were ordered back and the cargoes were unloaded. Space got limited in both cities and the accumulated removal goods grew to about 6.-7.000 pieces of freight, equivalent to about 4.-5.000 owner families. The municipal authorities confiscated the removal goods from spring 1940 onwards and instructed bailiffs and auction houses to sell them to the highest bidders. Since 2018 two interlocking, ongoing research projects, third party funded by the *German Lost Art Foundation*, hosted by the *German Maritime Museum – Leibniz Institute for Maritime History* in Bremerhaven are investigating these processes of this particular form of dispossession of Jews. While Dr. Kathrin Kleibl's focus is on Hamburg, Susanne Kiel researches the confiscations in Bremen. The task is to bring together pieces of information from thousands of documents. One key tool to organise the data from these records was the development of the LostLift database that is able to bundle all these and makes them searchable. As far as available from the documents each entry reconstructs the route of an owner family's removal goods - leaving from the home with a freight forwarder until its confiscation in a port city and finally the auction of the belongings. The corresponding restitution files complete the picture. In addition, information can be found on the individual people involved; be it the damaged families themselves, the forwarding agents, bailiffs or buyers of the objects. The LostLift database will be accessible from spring 2023 online under [www.lostlift.dsm.museum](http://www.lostlift.dsm.museum) in German and soon as well in English, while the contents are in German, as it also appears in the documents. Scans of some of the original sources are behind each entry. If there are data protection requirements or other restrictions, the source is indicated.

Since the research is not yet complete, the LostLift database will continue to be updated at regular intervals. Certain features and search options will be released gradually in the ongoing process.

The decision to put the database online while research is still underway resulted from the interest of provenance researchers and the affected families in obtaining information. At the same time, the project hopes that by publishing information gaps, it will also receive tips and maybe even missing documents.

With this detailed research and reconstruction of the events surrounding the confiscated and auctioned belongings of thousands of Jewish families, this aspect of the plundering will be made sustainably transparent. The fates of the individual families behind each withdrawal are thus remembered. The publication of the auctioned possessions and its buyers is accompanied by the goal that some of the items can be identified, recovered, and returned to the owner families.



THE SELBY TRANSPORTED LIFTVANS FROM HAMBURG TO LONDON.  
SOURCE: GUSTAV WERBECK/HHLA-ARCHIVE,  
SPEICHERSTADTMUSEUM HAMBURG

### KATHRIN KLEIBL

Provenance researcher at the German Maritime Museum – Leibniz Institute for Maritime History in Bremerhaven and head of both projects concerning the auctions of Jewish emigrants' removal goods in Bremen and Hamburg after 1939



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**Deutsches Schifffahrts Museum** HILFE MENÜ

**LOSTLIFT DATENBANK**

Suche  Erweiterte Suche

Suchen in der LostLift Datenbank

## Die LostLift Datenbank

### DER HISTORISCHE HINTERGRUND

Ab 1933 wanderten viele aufgrund der NS-Ideologie als Juden verfolgte Menschen aus dem Deutschen Reich aus. Ihr Hab und Gut wurde - verstaubt in Liftvans und Kisten - über verschiedene europäische Häfen ins Goll verschifft.

Der Beginn des Zweiten Weltkriegs im September 1939 verhinderte das Auslaufen der zivilen Schiffe aus dem Deutschen Reich. Infolgedessen konnten die bereits in die Häfen von **Hamburg** und **Bremen** transportierten Ladungen nicht weiterbefördert werden und stapelten sich in den Lagern. Außerdem wurden Schiffe, die bereits ausgelaufen waren, zurückbeordert und die Ladungen in den deutschen Häfen gelöscht.

In beiden Städten wuchs die Menge des Umzugsgutes auf etwa 6-7000 Frachtstücke an, was etwa 4-5000 Eigentümerfamilien entsprach. Die städtischen Behörden beschlagnahmten das Umzugsgut ab dem Frühjahr 1940 und beauftragten Gerichtsvollzieher und Auktionshäuser, es öffentlich an die Meistbietenden zu verkaufen.

### DAS PROJEKT

Seit 2018 untersuchen zwei ineinandergreifende, laufende und vom Deutschen Zentrum Kulturgutverluste geförderte Forschungsprojekte am Deutschen Schifffahrtsmuseum / Leibniz-Institut für Maritime Geschichte in Bremerhaven die Prozesse dieser besonderen Form der Enteignung von Juden.

Während Dr. Kathrin Kleibl ihren Schwerpunkt auf Hamburg legt, erforscht Susanne Kiel die Beschlagnahmungen in Bremen. Die Aufgabe besteht darin, Informationen aus Tausenden von Dokumenten zusammenzuführen.

### DIE DATENBANK

Ein wichtiges Hilfsmittel, um die Daten aus den erhaltenen Dokumenten zu organisieren, war die Entwicklung der LostLift Datenbank, die diese bündelt und durchsuchbar machen kann.

Soweit aus den Dokumenten ersichtlich, rekonstruiert jeder Eintrag den Weg des Umzugsgutes einer Eigentümerfamilie - vom Verlassen der Wohnung mit einem Spediteur bis zur Beschlagnahmung in einer Hafenstadt und schließlich der Versteigerung des Eigentums. Die entsprechenden Rückerstattungsakten vervollständigen das Bild. Darüber hinaus finden sich Informationen zu den einzelnen Beteiligten, seien es die geschädigten Familien selbst, die Spediteure, Gerichtsvollzieher oder Käufer der Gegenstände.

Die LostLift Datenbank ist in deutscher und englischer Sprache verfügbar, wobei die Inhalte in deutscher Sprache abgefasst sind, wie sie auch in den Dokumenten vorkommen. Hinter den Einträgen stehen Scans von einigen der Originalquellen. Die jeweiligen Quellen aller Daten sind angegeben.

### RECHERCHE & ZITATE

Da die Recherchen noch nicht abgeschlossen sind, wird die LostLift Datenbank weiterhin in regelmäßigen Abständen aktualisiert. Zugleich erhofft sich das Projekt durch die Veröffentlichung von Informationslücken auch Hinweise und vielleicht sogar fehlende Dokumente.

Werden Informationen/Inhalte aus der LostLift Datenbank genutzt, muss die Quelle angegeben werden. Zitierschema: **Kathrin Kleibl – Susanne Kiel (Hrsg.): LostLift Datenbank 2023, Deutsches Schifffahrtsmuseum – Leibniz-Institut für Maritime Geschichte, Name Datensatz xxx, Permalink xxx (Zugriff am: xx.xx.20xx).**


**Kontakt**  
lostlift@dsm.museum

Die Forschungsmuseen der **Leibniz** Gemeinschaft Facebook YouTube Instagram

**Kontakt**  
Haben Sie Anregungen, Hinweise und vielleicht sogar fehlende Dokumente? Dann teilen Sie uns diese unter [lostlift@dsm.museum](mailto:lostlift@dsm.museum) mit.

**Information**  
→ Veröffentlichungen  
→ Abkürzungen

**Service**  
Impressum  
Datenschutz  
Barrierefreiheitserklärung  
Hilfe



SCREENSHOT OF THE LOSTLIFT DATABASE, WHICH WILL BE ACCESSIBLE IN SPRING 2023. THE DATABASE AND THE ONLINE PUBLICATION HAS BEEN DEVELOPED BY SOLVATEC GMBH, BERLIN

## Law without Law. Past and present of the restitution of Nazi-confiscated art

### A multidisciplinary research project at the Europa-Universität Viadrina

When 44 states pledged in Washington in 1998 to identify works of art confiscated by the National Socialists and to find “just and fair” solutions, Germany responded in the *Common Statement* that “the Federal Republic of Germany has fulfilled merited claims [...] and set up the necessary procedures and institutions for enabling persons entitled to such indemnification to enforce their claims vis-à-vis other parties liable to restitution”. In the tradition that the “restitution law and the general civil law of the Federal Republic of Germany thus finally and comprehensively provide for issues of restitution and indemnification of Nazi-confiscated art, especially from Jewish property”, the moral recommendation was made that when assessing a claim, the guidelines were to be followed as set down by the Allied legislation in the immediate post-war period. Accordingly, the *Guidelines for implementing the Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999, New Edition 2019*, contains guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims: these verification guidelines are based on criteria derived from the Allied restitution provisions, even though the latter no longer have any legal force.

As set out in our article *Towards a restitution law?* (see [Newsletter 13, May 2022](#)), we consider it a matter of urgency that the moral concepts of the historical legislator be put into a modern-day context. This concern of ours is now being pursued in concrete form in a research project we have initiated to investigate the principles practised in the post-war period and their afterlife in the *Guidelines*. The project is based at the Lehrstuhl für Bürgerliches Recht und Neuere

Rechtsgeschichte der Europa-Universität Viadrina in Frankfurt (Oder) and is being funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) (see <https://www.stiftung-evz.de/was-wir-foerdern/drittmittel-programme/bildungsagenda-ns-unrecht/alle-projekte-der-bildungsagenda-ns-unrecht-2022/recht-ohne-recht/> and <https://www.rewi.europa-uni.de/de/lehrstuhl/br/rechtsgeschichte/Recht-ohne-Recht/index.html>).

Based on the understanding that any debate on restitution practice since the Washington Conference of 1998 can only be productive if it is able to draw on reliable research findings, the project takes on the task of clarifying the fundamental terminology of the guidelines in a historically informed manner. The aim is to systematically record current uncertainties in applying the verification guidelines and to analyse historical case law concerning reimbursement issues – taking into account research insights already obtained – in order to produce a commentary on the *Guidelines*. Although the project has adopted the legal method of commentary, it expands this on an interdisciplinary basis. Only by systematically combining the perspective of legal history, art history and economic history is it possible to arrive at a comprehensive scholarly evaluation.

In the process, it is important not to overlook the fact in connection with restitution claims submitted over the last 20 years that stereotypes and anti-Semitic clichés similar to those underlying the practices of the 1950s and 1960s have sometimes been promoted by the lack of clearly defined criteria underlying the decisions and also by the way such cases have been covered in the media. By reflecting on how such at-



titudes are perpetuated, the expectation is that it will be possible to do more to raise awareness – something we believe is crucial to the process of so-called “Wiedergutmachung” (retribution). By returning to the origins of the frame of reference for assessing the provenance of cultural property, we hope to provide current restitution practice with a basis for discussion, if not a fresh impetus for how restitution procedures can be handled in future.

### **BENJAMIN LAHUSEN** and **GESA VIETZEN**

Research project *Recht ohne Recht: Rückerstattung von NS-Raubgut nach 1945* at the Lehrstuhl für Bürgerliches Recht und Neuere Rechtsgeschichte, Europa-Universität Viadrina Frankfurt (Oder)



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The project is funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) under the Education Agenda NS-Injustice.

This publication does not constitute the expression of an opinion on the part of the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF). The author is solely responsible for the content.

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## Provenance Research in the Federal Art Administration

Last September, I took over as head of the department of inventory management and provenance research at the Federal Art Administration in Berlin, a higher federal authority subordinate to the Federal Government Commissioner for Culture and the Media. One of my previous activities was to be involved in research on the “Gurlitt art trove” at the Leibniz Institute of Contemporary History in Munich. I subsequently conducted provenance research at the Bavarian State Painting Collections, where I was responsible in particular for art objects from the collections of high-ranking National Socialist organisations and functionaries that had found their way into the holdings of the State Painting Collections after the Second World War. These two focus areas – the “Gurlitt art trove” and cultural objects formerly owned by Nazis – are central to the Federal Art Administration, too: in addition to performing administrative tasks and providing services specific to the arts, the agency conducts research into the origins of the Federal Government’s cultural assets, in particular in order to be able to identify and retribute works seized as a result of Nazi persecution as defined in the Washington Declaration of 1998. In the following I will discuss the challenges and goals of the provenance research that this involves.

### **Cultural assets from former Reich property**

The art holdings of the Federal Republic of Germany administered by the Federal Art Administration are made up of various sub-collections. One fundamental sub-collection comprises the works of art of the former German Reich that were transferred to federal property based on Article 134 of the Basic Law. After the end of the war from June 1945 onwards, acting within their area of responsibility, American forces gathered these and other cultural assets that had been in possession of the Reich and the National Socialist party at the Central Collecting Point (CCP) in Munich. Under American leadership, considerable efforts were made to clarify the provenance of these works in order to be able to retribute them to their rightful owners if possible. Fiduciary responsibility for these works fell to the Bavarian Premier from 1948/49 and

to the Federal Republic of Germany from 1952: this responsibility involved ensuring the safekeeping of those objects that had not yet been restituted and an obligation to conduct further research before the deadlines for the submission of restitution claims expired in the late 1950s.

The objects held by the Federal Art Administration that originate from these so-called residual holdings of the CCP primarily comprise art and cultural objects from Adolf Hitler’s *Sonderauftrag Linz* (“Special Commission Linz”), which from 1939 onwards was concerned with bringing together important works for a “Führermuseum” in Linz – a project that was planned but never came to fruition. Furthermore, this sub-collection includes cultural objects acquired for the Imperial Castle in Poznań (Schloss Posen) – the planned “Eastern residence” for Hitler, the NSDAP and the German Reich – as well as for furnishing various Reich departments. Purchases made by the Reich Chancellery from the *Haus der Deutschen Kunst* (“House of German Art”) and holdings from various relocation depots also fall into this category. In addition, this part includes objects of the former art collection of Hermann Göring. After the end of the war, the Free State of Bavaria also laid claim to these items: based on Allied directives, it was entitled to take possession of the assets of NSDAP functionaries and organisations that were located in Bavaria. Ultimately, however, it was not possible to resolve whether the works of art from the Göring collection were to be assessed as having belonged to the Reich, the National Socialist Party or Göring himself, as it was not clear exactly where the financial resources had come from that enabled Göring to assemble his collection – a reflection of the symbiosis between state and party that was typical of National Socialism. In December 1960 therefore, the Federal Government and the Free State of Bavaria agreed that each would take ownership of half of the works in the collection that had not been restituted by that time. As a result, a number of Bavarian museums – including the Bavarian State Painting Collections – also hold works of art originating from

this source. In total, the cultural assets that were formerly the property of the German Reich and are now held by the Federal Government include over 3,000 paintings, prints, drawings, arts and crafts objects, carpets and tapestries, as well as some 3,900 coins and more than 7,000 books and periodicals.

### Cultural objects from the “Gurlitt art trove”

Linked to some extent to the cultural objects formerly owned by the German Reich, there is an equally relevant though very small sub-collection held by the Federal Art Administration that comprises five objects from the “Gurlitt art trove”, having previously been in the possession of art historian, museum director and art dealer Hildebrand Gurlitt (1895-1956). Gurlitt’s advocacy of modern art put him in a difficult position at the beginning of the Nazi era, but from 1938 onwards he was officially commissioned to sell works of art that had been banned from German museums in connection with the “Degenerate Art” campaign. In the course of the Second World War, Gurlitt advanced to become one of the most important art dealers for Hitler’s *Sonderauftrag Linz*. Between 2012 and 2014, some 1,500 works of art were found at the residences of Gurlitt’s son Cornelius in Munich and Salzburg that can be traced back to Hildebrand Gurlitt’s activities. The Federal Government and the Free State of Bavaria conducted extensive research into the origin of these items. Cornelius Gurlitt died in May 2014, having appointed the Museum of Fine Arts Bern Foundation as the heir to this collection. In an agreement between the Federal Republic of Germany, the Free State of Bavaria and the Museum Foundation of 24 November 2014, the Foundation also committed itself to the researching and handling of the works in the spirit of the Washington Declaration. The agreement also permits the Foundation to exercise a right of choice and transfer ownership of works to the Federal Republic of Germany in cases where the provenance cannot be sufficiently resolved. For this reason, five works from the “Gurlitt art trove” became the responsibility of

the Federal Art Administration in January 2022.

### Cultural objects previously owned by the central administration of the GDR

Another group of objects that are likewise of potential relevance to provenance research comprises some 2,800 works of art transferred from the assets of the GDR to the Federal Government based on the Unification Treaty of 1990. Up until this transfer took place, the items were predominantly the property of central



A LOOK INTO THE DEPOT OF THE FEDERAL ART ADMINISTRATION IN BERLIN (© KUNSTVERWALTUNG DES BUNDES)

GDR state institutions such as the Palace of the Republic, the ministries and guest houses, having largely been acquired for furnishing purposes. No systematic research has been carried out on these works to date. Both at the Federal Art Administration and beyond, provenance research into the seizure of cultural property in the GDR is still relatively in its infancy. However, we do know that many of these items in the possession of the Federal Government were commissioned works created by contemporary GDR artists.



### Challenges and goals

Based on the Washington Declaration of 1998, it was at the turn of the millennium that the Federal Republic of Germany resumed the object-based research conducted after the Second World War into cultural assets that were previously in the possession of the Reich and the Nazi party. This is evidenced by the restitution of 68 art objects and an extensive library since 2000, as well as the Federal Government's provenance database, which now lists 2,187 objects, some of them with detailed provenance reports (via [kunstverwaltung.bund.de](https://kunstverwaltung.bund.de)). Despite the considerable wealth of research findings, it has to be said that there is still much to be done. This is also due to the fact that provenance research is an extremely dynamic discipline: relevant source material is constantly being made accessible, in part digitised, in part fed into databases, while research projects at libraries, museums and universities are constantly expanding our knowledge of National Socialist art looting and, last but not least, the criteria by which items are assessed as having been seized as a result of Nazi persecution are themselves subject to a certain degree of change.

It follows that the provenance research pursued by the Federal Art Administration – currently with a team of four researchers – is not solely concerned with current restitution claims and suspicious cases. It is also necessary to critically reappraise and systematically update past research findings in the light of new insights and research possibilities. In some cases, specific groups of objects – including coins and books – have to be subjected to in-depth examination for the first time. The Federal Art Administration also intends to use an improved database to document provenance research and its findings in the medium term, which should, among other features, enable optimized search functions. Here we too intend to introduce the well-established traffic light system, in which possible suspicious facts about the compiled object biographies are evaluated by traffic light colour. In addition to providing a general overview of the character of the holdings, this can also act as a ranking system for proactive research. In addition,

the Federal Art Administration is keen to intensify contact and dialogue with colleagues in Berlin and beyond, as well as promoting networking with the relevant institutions. Last but not least, the holdings administered by the Federal Art Administration are of enormous historical interest and offer the opportunity for in-depth contextual research: the object biographies as a whole bear witness to the networks of the art trade under National Socialism, the looting policy of the Nazi state, and the stories and fates of former owners, as well as offering insights into how the crimes of National Socialism were dealt with in the post-war period. This broad range of activities – which can be extended further – shows not only for the Federal Art Administration that provenance research remains an ongoing task that is important, necessary and rewarding.

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## “Reicher Fischzug für die Stadt” [Great catch for the city] An oil sketch by Peter Paul Rubens in the Wallraf-Richartz- Museum & Fondation Corboud in Cologne on loan from the Federal Republic of Germany

A fine and famous oil sketch by Peter Paul Rubens has been on display in the Wallraf-Richartz-Museum & Fondation Corboud for 55 years now. *The Miraculous Draught of Fish*, on loan from the Federal Republic of Germany, is one of around 2,100 objects formerly in the possession of the Reich [*Reichsbesitz*] that the Federal Government handed over to 110 German museums in the course of the 1960s after long and intense debates.<sup>(1)</sup> More than 20 artworks came to Cologne at that time.

Rubens's painting, depicting fishermen with over-

flowing nets, as described in Luke's gospel, hints towards the Rhine metropolis where the artist spent his childhood and is particularly fascinating to the museum visitors. However, few are aware of the history behind the artwork. The oil sketch by Rubens is not only linked to an advantageous exchange connected to the confiscation campaign “degenerate art” in 1937/38, but also to the Führermuseum in Linz, and finally to the Allies and the Federal Republic of Germany in their efforts to identify the artwork's origin that formerly belonged to the Reich after 1945.



“DER WUNDERBARE FISCHZUG”  
BY PETER PAUL RUBENS,  
CA. 1610  
LEIHGABE DER BUNDES-  
REPUBLIK DEUTSCHLAND  
(WRM DEP. 317).  
COPY: RHEINISCHES BILD-  
ARCHIV KÖLN, RBA\_D047234;  
[HTTPS://WWW.KULTURELLES-  
ERBE-KOELN.DE/DOCUMENTS/  
OBJ/05011392](https://www.kulturelles-erbe-koeln.de/documents/obj/05011392)  
DOK-NR.: OBJ 05011392



INTERIOR VIEW OF THE WALLRAF-RICHARTZ-MUSEUM WITH THE PAINTING "RIDER ON THE BEACH" BY PAUL GAUGUIN, 1930S  
 COPY: RHEINISCHES BILDARCHIV, KÖLN, RBA\_MF607915  
[HTTPS://WWW.KULTURELLES-ERBE-KOELN.DE/DOCUMENTS/OBJ/05723041/RBA\\_607915](https://www.kulturelles-erbe-koeln.de/documents/OBJ/05723041/RBA_607915)

To understand Cologne's role in these events, one has to look back to the years before the First World War when the Rhenish metropolis very briefly turned into a hub for modern art as a result of the widely acclaimed Sonderbund exhibition in 1912. One of the post-impressionist paintings in this exhibition was Paul Gauguin's *Cavaliers sur la plage* (Riders on the Beach, 1902). The lender of this exhibition, Kommerzienrat Emil vom Rath (1833-1923), gave it to the Wallraf-Richartz-Museum just a year later as one of the first paintings by Paul Gauguin that entered a public collection.<sup>(2)</sup> The generous gift was subsequently presented in the museum and displayed on the second floor in the Contemporary Art department until at least 1936.<sup>(3)</sup>

Only a few weeks after the first seizure of 'degenerate art' in Cologne on the 6th of July 1937, the commission, headed by Adolf Ziegler (1892-1959), President of the Chamber of Fine Arts (*Reichskammer der Bildenden Künste*) appeared in the Wallraf-Richartz-Museum again. This time the painting *Riders on the beach* by Gauguin and other French artworks were confiscated. The aim was to eliminate unwanted modern artworks by international artists in German museums and exchanging them for accumulating foreign currency.<sup>(4)</sup>

A few years earlier, the Berlin-based art dealer Karl Haberstock (1878-1956) had very clearly perceived the opportunity of trading these artworks, which were sought after abroad, but had fallen out of public favour due to ideological reasons.<sup>(5)</sup> In 1937, as a confidante of Adolf Hitler and influential member of the 'Commission for the Exploitation of Products of degenerate art' (*Kommission zur Verwertung der Produkte entarteter Kunst*), he was quick to recognize the business opportunities.<sup>(6)</sup> On the 19th of June 1938, he obtained the *Riders on the beach* by Gauguin that had been seized in Cologne. The propaganda ministry handed it over, and in exchange, Haberstock delivered Rubens' *The Wonderful Draught of Fish* for £2,100 to Adolf Hitler, or rather, the Reich Chancellery. Haberstock had acquired the sketch by Rubens on the 12th of May 1936 from the Neue Galerie GmbH in Vienna for £1,750. In June 1938, the art dealer sold the painting by Gauguin for £2,001 to the Wildenstein & Co. Gallery in London and finally paid the difference from this exchange into a special account of the Reich for 'degenerate art' (*Sonderkonto EK*) on the 10th of June 1939.<sup>(7)</sup> From this special account, the Wallraf-Richartz-Museum and other German public collections were to receive compensation for the seized artworks via the education ministry. However, only a few could realise the reimbursement.<sup>(8)</sup>

Due to this exchange, *The Wonderful Draught of Fish* ended up being one of the very early artworks in the inventory of Hitler's planned Führermuseum in Linz, Austria. It was taken to the salt mine Altaussee at the beginning of 1944 for safekeeping, where American troops secured the painting at the war's end.<sup>(9)</sup> On the 13th of July 1945, they transferred the artwork in good condition and 'rolled up small without frame' to the Central Collection Points (CCP) in Munich located in the former 'Führerbau', the administration building of the NSDAP on Königsplatz. The inventory number 4135 [so called *Mü(nchen)-Nr.*] can still be found on the back of the artwork. Karl Haberstock's interrogation report from the 11th of March 1949 and the examination of the art dealer's business books revealed that the sketch was not suspected of having been seized



due to Nazi persecution. With the release of the Monuments, Fine Arts and Archive Section, the Rubens sketch came into the trusteeship of the Prime Minister of the Free State of Bavaria on the 10th June 1949. In 1952, it then entered the 'Treuhandverwaltung von Kulturgut München' of the Federal Republic of Germany. Finally, in early 1963, it went to the Federal Treasury Minister with headquarters in Bad Godesberg.<sup>(10)</sup> After protracted disputes between the Free State of Bavaria and the Federal Republic of Germany were settled, the remainder of the former property of the Reich, which included the sketch and the remaining collection of the planned Führermuseum were given to the Federal Republic as the legal successor of the German Reich.<sup>(11)</sup>

After provenance research and restitution of the artworks to neighbouring countries and individual victims had been completed, the remains of the collection were finally handed over to the Federal Treasury Minister in 1963 and considerations began about how to proceed with these artworks. Since the 1950's various German museum directors claimed these works hoping to receive compensation for the losses their collections suffered from the 'degenerate art' campaign in 1937. They were supported by the Conference of Ministers of Education (*Ständige Konferenz der Kultusminister*), the German Association of Cities (*Deutscher Städtetag*) as well as the art historians association (*Verband deutscher Kunsthistoriker*) and the museums association (*Deutscher Museumsbund*).<sup>(12)</sup> According to them, a distribution of the remaining artworks would be an approach to try to compensate the German museums for losses caused by the seizure of 'degenerate art', wartime, and restitution losses.<sup>(13)</sup>

This form of compensation was reviewed and rejected by the Federal Government which denied the request to establish a connection between the seizure of 'degenerate art', the Führermuseum in Linz and possible claims to artworks formerly belonging to the Reich.<sup>(14)</sup> At the beginning of the 1960s, however, the idea of exhibiting the remaining collection in a national museum in the Bonn area was rejected as politically untenable, as Adolf Hitler's idea of a Führermuseum was by no means to be realized in any way

afterwards and any form of glorification was to be strictly avoided.<sup>(15)</sup>

As documented in the archives of the City of Cologne, losses suffered by the Wallraf-Richartz-Museum caused by the 'degenerate art' campaign were discussed on multiple occasions and were quantified by establishing the artworks estimates; the museum itself was seen as a victim of the seizure.<sup>(16)</sup> However, when the museum in Cologne approached the Federal Ministry of Treasury in nearby Bad Godesberg in 1961 to request loans from the former collection of the Reich for an exhibition celebrating the 100th anniversary of the Wallraf-Richartz-Museum, the matter of compensating wartime losses remained untouched. The loans of two significant paintings for their anniversary exhibition, *Self-portrait in a Circle of friends from Mantua* by Peter Paul Rubens and *View of Brussels from the North East* by Hercules Seghers, is primarily attributed to the recommendation of Konrad Adenauer (1876-1967), Chancellor and former Mayor of Cologne.<sup>(17)</sup>

Gert von der Osten (1910-1983), appointed director of the Wallraf-Richartz-Museum in 1960, played an essential role as an advisor in the lengthy process of distributing the former property of the Reich and in subsequent negotiations.<sup>(18)</sup> In January 1965, the Federal Minister of Treasury asked von der Osten to join a commission of seven art historians set to draft a proposal for the distribution of the objects as permanent loans to the German museums. In October 1965, the artworks were presented to the museum directors in a castle in Schleissheim near Munich. In the first round of distributing the property, von der Osten focused on securing the two important paintings by Rubens and Seghers that had been on loan to the Wallraf-Richartz-Museum since 1961. This was in line with instructions from the head of cultural affairs (*Kulturdezernent*) in Cologne, and von der Osten did not hesitate to put these two paintings on top of his wishlist of a total of eleven artworks the museum asked for.<sup>(19)</sup> He succeeded in securing the two paintings by Rubens and Seghers and seven more paintings and works on paper for his museum. In Janua-

ry 1967, Federal Treasury Minister, Kurt Schmücker (1919-1996) announced a second and last round. This time Gert von der Osten dared to ask for more. He had his eye on *The Miraculous Draught of Fish* by Rubens and several paintings that were to enhance the Renaissance section of the Wallraf-Richartz-Museum. When it came to Rubens's sketch, Cologne was competing with other museums and in particular with Oldenburg, Schmücker's hometown.<sup>(20)</sup> Only after a settlement with the museum in Oldenburg had been reached, *The Miraculous Draught of Fish* was transferred to Cologne together with a number of other paintings and a loan agreement was signed on the 29th of January 1968.<sup>(21)</sup>

A few months later, on the 3rd of May 1968, a ceremonial handover of the oil sketch by Rubens and the other artworks took place whereby Kurt Schmücker emphasized the importance of *The Miraculous Draught of Fish*. In his speech he expressed that the rare oil sketch was an important addition to the loan of Rubens *Self-portrait in a Circle of friends from Mantua*, but also to 'give an impression of the painter's artistic signature', who was so closely associated with Cologne.

Schmücker's speech was rounded up on the note that 'on a whole the Wallraf-Richartz-Museum has been given special treatment despite its humbleness when it comes to the federal loans as such.'<sup>(22)</sup> Most probably only few of those present at the occasion were aware of the fact that three decades earlier the Rubens sketch entered the collection of the Führermuseum in exchange for the painting by Paul Gauguin that had been seized from the Wallraf-Richartz-Museum in Cologne.

**MARCUS LEIFELD** and **BRITTA OLÉNYI VON HUSEN**  
Provenance researchers for the City of Cologne and responsible for the city's eight municipal museums. This also includes research regarding the history of the institutions and their collections

ARTIKEL DES KÖLNER  
STADT-ANZEIGERS VOM  
4./5. MAI 1968 ZUR FEIER-  
LICHEN ÜBERGABE DES  
GEMÄLDES "DER WUNDER-  
BAR FISCHZUG" VON PETER  
PAUL RUBENS;  
COPY: KÖLNER STADT-  
ANZEIGER MEDIEN/  
KÖLNER STADT-ANZEIGER  
MIT FOTO VON H. KOCH,  
KÖLN



- (1) Kölner Stadt-Anzeiger, 4./5. Mai 1968, Nr. 104, S. 15.
- (2) Vgl. Barbara Schaefer (Hrsg.), 1912. Mission Moderne. Die Jahrhundertschau des Sonderbundes, Ausstellungskatalog, Wallraf-Richartz-Museum, Köln 2012, hier S. 560 sowie Peter Kropmanns, Gauguins ‚Reiter am roten Strand‘ in Köln. Felix und Emil vom Rath – ein Sammler und ein Stifter der Moderne, in: Kölner Museums-Bulletin. Berichte und Forschungen aus den Museen der Stadt Köln, Heft 2/1998, S. 4-13.
- (3) Vgl. Hans W. Secker, Die Galerie der Neuzeit im Museum Wallraf-Richartz, Leipzig 1927, S. 116 sowie Wallraf-Richartz-Museum der Hansestadt Köln, Gemälde-Galerie. Wegweiser und Verzeichnis, Köln 1936, S. 27, 50.
- (4) Vgl. Britta Olényi von Husen u. Marcus Leifeld, Das Wallraf-Richartz-Museum. Ein rheinisches Kunstmuseum in der Zeit des Nationalsozialismus, in: LVR-Landesmuseum Bonn (Hrsg.): Kulturpolitik der Rheinischen Provinzialverwaltung 1920 bis 1945, Darmstadt 2019 (Beihefte der Bonner Jahrbücher, Bd. 59), S. 167-176, S. 173.
- (5) Vgl. Marcus Leifeld u. Britta Olényi von Husen, „Keines dieser Bilder ist so, dass die Gefahr einer Beanstandung wegen ‚Entartung‘ bestände“. Hildebrand Gurlitt und die Impressionisten des Wallraf-Richartz-Museums, in: Nikola Doll, Uwe Fleckner, Gesa Jeuthe Vietzen (Hrsg.), Kunst, Konflikt, Kollaboration: Hildebrand Gurlitt und die Moderne (Schriften der Forschungsstelle „Entartete Kunst“, 14), Berlin 2022, S. 169-191, S.172.
- (6) Vgl. Gesa Jeuthe Vietzen, Verfolgte und Verführte. Die Aktion „Entartete Kunst“ als propagandistisches Kapital, in: ebd., S. 95-122, S.98.
- (7) Vgl. [https://kunstverwaltung.bund.de/SharedDocs/Provenienzen/DE/4000\\_4999/4135.html](https://kunstverwaltung.bund.de/SharedDocs/Provenienzen/DE/4000_4999/4135.html). Zuletzt aufgerufen am 17. November 2022. Vgl. zudem Horst Keßler, Karl Haberstock. Umstrittener Kunsthändler und Mäzen, hrsg. Von Christof Trepesch, München/Berlin 2008, S. 268; Karl Haberstock an das Reichsministerium für Volksaufklärung und Propaganda, Berlin, 5. und 23. Juni 1939. Bundesarchiv (BArch) R55/21020, fol. 53f.
- (8) Rolf Hetsch an Dr. Lucerna, Reichsministerium für Propaganda und Volksaufklärung, Berlin, den 15. April 1942, BArch R55/21020, fol. 76 f.; Otto H. Förster, Der Ausbau der Gemäldegalerie des Wallraf-Richartz-Museums von 1933 bis 1944, Typoskript, Mehlem 1945, S. 1-4.
- (9) Vgl. Birgit Schwarz, Hitlers Museum. Die Fotoalben Gemäldegalerie Linz. Dokumente zum „Führermuseum“ Wien u.a. 2004, S.35, 207.
- (10) [https://kunstverwaltung.bund.de/SharedDocs/Provenienzen/DE/4000\\_4999/4135.html](https://kunstverwaltung.bund.de/SharedDocs/Provenienzen/DE/4000_4999/4135.html). Zuletzt aufgerufen am 18. November 2022; BArchiv Koblenz, B 323/655, Ministerpräsidentenkartei. Vgl. zur Übergabe der Werke im CCP München in die deutsche Verantwortung: Iris Lauterbach, Der Central Collecting Point in München, Kunstschutz, Restitution, Neubeginn, Berlin/München 2015, S. 185-194.
- (11) Johannes Gramlich, Begehrt, Beschwiegen, Belastet. Die Kunst der NS-Elite, die Alliierten und die Bayerischen Staatsgemäldesammlungen (Schriften der Bayerischen Staatsgemäldesammlungen; Bd. 4), München/Köln 2021, S. 42-46.
- (12) Vgl. Gramlich 2021, S. 234; Anfrage des Deutschen Städtetages vom 1. Juni 1960 zur Entschädigung für die Beschlagnahme von Werken sogenannter entarteter Kunst, Historisches Archiv der Stadt Köln (HASTK) 293/80, o.fol.
- (13) Gert von der Osten an Kurt Hackenberg, 27. Juni 1963. HASTK 293/80, o.fol.
- (14) Vgl. Gramlich 2021, S. 233.
- (15) [https://www.dhm.de/datenbank/ccp/prj\\_dhm\\_ccp/ccp\\_einleitung\\_de.pdf](https://www.dhm.de/datenbank/ccp/prj_dhm_ccp/ccp_einleitung_de.pdf). Zuletzt aufgerufen am 12. Dezember 2022; Deutsche Zeitung vom 27. Juni 1963; vgl. hierzu Gramlich 2021, S. 121.
- (16) Otto H. Förster an Oberstadtdirektor Max Adenauer, 14. Juli 1960; Kurt Hackenberg an Bundesschatzminister Werner Dollinger am 18. Februar 1965. HASTK 293/80, o.fol.
- (17) Leihvertrag vom 27. November 1961, BArch B126/207385, WRM Heft 1, fol. 103 f., 200-202.
- (18) Vgl. Gramlich 2021, S. 147. Dazu gehörten Kurt Martin als Vorsitzender, Hans Eichler, Robert Oertel, Eberhard Lutze, Karl vom Rath sowie Herbert von Einem. Letzterer wurde bald durch den Museumsdirektor in Karlsruhe (Jan Lauts) ersetzt. Vgl. Vermerk Bundesschatzministerium, 3. Juni 1965, BArch B 126/47204, fol. 53.
- (19) [Undatiertes] Verzeichnis der erbetenen Kunstwerke, BArch B 126/47204, fol. 61; Neuerwerbungen Wallraf-Richartz-Museums seit 1966, I. Stiftungen, Dauerleihgaben und Ankäufe von Gemälden und Bildwerken älterer Meister, Ausstellungskatalog, Wallraf-Richartz-Museum, Köln 1967, S. 31-33.
- (20) BArch B 126/207385, WRM Heft 2, fol.134.
- (21) Brief Gert von der Osten an Oberfinanzdirektion München, 5. Mai 1967; BArch B 126/207385, WRM Heft 3, fol.122.
- (22) Rede von Schmücker anlässlich der Übergabe in Köln am 3. Mai 1968, BArch B 126/207385, WRM Heft 3, fol.172.



## The ICOM Museum Definition of the 21st Century

At the 26th General Conference of the International Council of Museums (ICOM) in Prague on 24 August 2022, a new definition of what museums should be was adopted with 92.41% approval. For the time being, this has brought to a close a six-year process in which the organisation attempted to answer the question of how museums define themselves – or would like to define themselves – in the 21st century. The human act of creating a definition so to establish clarity naturally does not stop at museums as institutions – especially given that the term “museum” per se is not copyrighted. No doubt many a sleepless night is caused by the very idea of how the term might potentially be misused, and the confusion and contradiction that would result if it were left to anarchists. Consequently, the International Council of Museums (ICOM), which was founded in 1946 in cooperation with UNESCO at the latter’s first plenary assembly, resolved to establish clarity in its founding year, declaring a museum to be an institution in which: “[...] all collections, open to the public, of artistic, technical, scientific, historical or archaeological material, including zoos and botanical gardens [...]”<sup>(1)</sup> This definition was repeatedly revised in the years that followed. Although neither the functions nor the mission of museums (in Germany) have been legally defined, *collecting, preserving, researching, exhibiting and communicating* have been considered their core mission since 1974, if not before. The ICOM defined the framework conditions for museum work in its globally recognised *Code of Ethics for Museums*.<sup>(2)</sup> Based on this code, the museum as an institution was defined as follows in 2007: “[...] a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.”<sup>(3)</sup> But international and national museum associ-

ations are not the only actors attempting to define what a museum is as an institution. Since the 1970s, museologists and curators themselves have increasingly been engaged in rethinking the role of the museum as a representational space: “It separates an inside from an outside, closes this inner sphere within itself and surrounds it with value. A museum can only take this step from the inside to the outside by excluding what is arbitrarily classified as not worthy of being in a museum. It is through the exclusion of these unnameable objects and stories that the institutional space of the museum is defined [...]”<sup>(4)</sup> From the outset, as a result of the principle of *inclusion and exclusion*, certain social groups, cultures and their narratives have been continuously excluded in the history of museum practice: “otherness” has been consistently negated and marginalised. No wonder, then, that in the last few decades this has led to an “uprising of the subjugated ways of knowing”<sup>(5)</sup> which has increasingly found its way into the museum space, forcing exhibition makers to rethink what a museum is as a cultural concept. As long as there are museums with collections and exhibition spaces, according to curators, concrete solutions must be developed “that show complex operations such as deconstruction, ambivalences, processes and polyphony and point out gaps. These have to be visible in the display of individual items and in their multimedia-based spatial arrangement, which has never been neutral.”<sup>(6)</sup> Museums thus increasingly became aware of their role as “agents of social change and development”<sup>(7)</sup>, causing ICOM to initiate a revision of its museum definition in 2016. Not least in the context of social debates and activist movements such as *Fridays for Future*, *Black Lives Matter*, *Ni una menos* and *#MeToo* – driven by ecological, anti-capitalist and anti-classist, feminist, queer and trans agendas – there was a need for critical scrutiny of the demands and expectations of museums as institutions in the 21st century in the light of these diversity-oriented and transcultural debates.

Shortly before the 25th ICOM General Assembly in Kyoto in 2019, the Standing Committee on Museum Definition, Prospects and Potentials (MDPP), chaired by Jette Sandahl, presented a new, more progressive proposal for a museum definition which was the subject of widespread and indeed controversial debate: “Museums are democratising, inclusive and polyphonic spaces for critical dialogue about the pasts and the futures. Acknowledging and addressing the conflicts and challenges of the present, they hold artefacts and specimens in trust for society, safeguard diverse memories for future generations and guarantee equal rights and equal access to heritage for all people. Museums are not for profit. They are participatory and transparent, and work in active partnership with and for diverse communities to collect, preserve, research, interpret, exhibit, and enhance understandings of the world, aiming to contribute to human dignity and social justice, global equality and planetary wellbeing.”<sup>(8)</sup> Some critics felt that this engagement with new aspects tended to neglect the institutional focus on *collecting, preserving, researching, exhibiting* and *communicating* tangible and intangible cultural heritage. The text was rejected, the decision to amend the definition of a museum was postponed and a debate on the definition was initiated among ICOM National Committees and Working Groups which was to last a number of years. In a press release issued in April 2021, the President of ICOM Germany, Beate Reifenscheid, stated that the question of the definition of the word “museum” encompassed significantly more fields of activity than ever before. She said this served to make visible and strengthen a globalised museum community in which aspects of sustainability, climate change, historical reappraisal in provenance research, restitution and the addressing of colonial guilt were particularly relevant, as well as issues such as gender justice and diverse societies. In view of this, she continued, it was crucial to engage with this shift in values as well as the

changing ideas and future concepts of museums.<sup>(9)</sup> After various resolutions, resignations, open letters, panel discussions and member consultations, the long-awaited and up-to-date version of the museum definition was finally issued at an extraordinary General Assembly held at the 26th ICOM General Conference in Prague on 24 August 2022: “A museum is a not-for-profit, permanent institution in the service of society that researches, collects, conserves, interprets and exhibits tangible and intangible heritage. Open to the public, accessible and inclusive, museums foster diversity and sustainability. They operate and communicate ethically, professionally and with the participation of communities, offering varied experiences for education, enjoyment, reflection and knowledge sharing.”<sup>(10)</sup> This new version is not a revolution. Any obligation on the part of museums vis-à-vis society by definition still seems obsolete at this point, if one understands the idea of a “museum” as already being a socially oriented concept. Only under the paradigm of linking culture, history and the present through participatory exchange can museums fulfil their role “in the service of society”. (After all, no object finds its way into a museum of its own accord. This is the responsibility of people who belong to a society – those who act on *behalf* of society and as *a part of* it. Museums are made by people for people, so it goes without saying that society should be considered to be both an object and a driving force for the future development of museums.) With regard to provenance research, the new ICOM version does reflect a certain shift in that the word “researches” now appears first in the order of the fields of activity described. Nonetheless, it deliberately refrains from using terms such as “restitution” and “decolonisation”. Engagement with a historically burdened past – in particular conscious engagement – seems at least implied by the definition in the words “they operate and communicate ethically”. But if provenance research is envisaged

more comprehensively than as the mere clarification of ownership, “culture of remembrance” and “reparation” could likewise become defining standards for museums. This is something that at least every person who works at a museum should be aware of. In addition, sustainability, inclusion and diversity are given greater emphasis: this is very gratifying and one can only hope the sentiment will be more than just words on paper! But where will all the energy end up that was spent on the process of arriving at a new definition? Hopefully in its implementation! It remains to be hoped that all actors will have the courage to dare more “museum”.

### KATHRIN BARRERA NICHOLSON

Studied Museology at HTW Berlin – University of Applied Sciences. After some work in the museum sector, she has since September 2022 been employed at the office of the Advisory Commission

- (1) ICOM in: 224 Years of Defining the Museum, Czech-Republic, online, URL: [https://icom.museum/wp-content/uploads/2020/12/2020\\_ICOM-Czech-Republic\\_224-years-of-defining-the-museum.pdf](https://icom.museum/wp-content/uploads/2020/12/2020_ICOM-Czech-Republic_224-years-of-defining-the-museum.pdf) [23.11.2022]
- (2) The ICOM’s Code of Ethics for Museums were unanimously adopted on 4 November 1986 at the 15th General Assembly in Buenos Aires, supplemented on 6 July 2001 at the 20th General Assembly in Barcelona and revised on 8 October 2004 at the 21st General Assembly in Seoul.
- (3) ICOM: Article 3 Section 1 of the Statutes of ICOM, English version, online at: <https://icom-deutschland.de/de/nachrichten/147-museumsdefinition.html> [21.11.2022]
- (4) Muttenthaler, Roswitha and Wonisch, Regina (2006): Gesten des Zeigens: Zur Repräsentation von Gender und Race in Ausstellungen. Bielefeld: transcript, p. 13.
- (5) Cf. Sternfeld, Nora (2009): Aufstand der unterworfenen Wissensarten – Museale Gegenerzählungen, In: Charlotte Martinz-Turek, Monika Sommer Sieghart (eds.) Storyline: Narrationen im Museum, Ausstellungstheorie und Praxis, Vol. 2. Vienna: Turia + Kant, p. 30.
- (6) Wernsing, Susanne (2020): Display it! Das Museum der Zukunft in der Warteschleife, In: Baur, Joachim (ed.) (2020): Das Museum der Zukunft. 43 neue Beiträge zur Diskussion über die Zukunft des Museums. Bielefeld: transcript, pp. 275-280.
- (7) International Museum Day 2008 was held under the motto Museums as agents of change and development. International Muse-

um Day was established by the ICOM in 1977.

- (8) ICOM in: 224 Years of Defining the Museum, online, URL: [https://icom.museum/wp-content/uploads/2020/12/2020\\_ICOM-Czech-Republic\\_224-years-of-defining-the-museum.pdf](https://icom.museum/wp-content/uploads/2020/12/2020_ICOM-Czech-Republic_224-years-of-defining-the-museum.pdf) [23.11.2022]
- (9) Cf. Reifenscheid, Beate, ICOM Germany: press release, Berlin, 22 April 2021,  
Online at URL: [https://icom-deutschland.de/images/Nachrichten/Bild/2021\\_04-23-PM\\_ICOM-Museumsdefinition\\_a.pdf](https://icom-deutschland.de/images/Nachrichten/Bild/2021_04-23-PM_ICOM-Museumsdefinition_a.pdf) [23.11.2022]
- (10) ICOM Germany: New version of the definition adopted, online at: URL: <https://icom-deutschland.de/de/component/content/article/551-neufassung-der-icom-museumsdefinition-beschlossen.html?catid=31&Itemid=114> [23.11.2022]





## Report on the symposium “The spoliation of musical instruments in Europe, 1933-1945”

The symposium “The spoliation of musical instruments in Europe. 1933-1945” from 7 to 9 April 2022 at the Philharmonie de Paris was the first analogue event for most of the participants since the start of the pandemic. It was therefore all the more of a pleasure to meet and discuss again with long-standing colleagues and to make new contacts. The symposium, in English and French, was organized as a hybrid event by the Museum of Music in cooperation with the Foundation for the Memory of the Shoah and the Goethe-Institut. The recording of the symposium in French and English is available [online](#).

The Philharmonie de Paris and in particular the Museum of Music and its conservation and research team were keen on making a contribution to the investigation of Nazi looted musical objects. On the agenda were therefore items such as provenance research, the market and circulation of musical instruments, stakeholders and their networks, and access to sources. In the past ten years, the history of music and instruments during the Nazi period in Europe has been the subject of numerous studies and works in France. Events include the conference “La musique à Paris sous l’Occupation / Music in Paris under the occupation” at Cité de la musique in May 2013, which looked at the work of composers and musicians during that time, and the workshop “La musique spoliée / looted music” at Sciences Po in January 2020. A key actor in this regard was the association [Musique et Spoliations / Looted Music](#), founded in 2017 by Pascale Bernheim and Corinne Hershkovitch with the aim of identifying looted musical instruments, music books and scores and also of heightening public awareness.

Carla Shapreau, Senior Fellow at the Institute of European Studies of the University of California, Berkeley, gave the keynote address. She is head of the Lost Music Project there, the aim of which is to reconstruct the history of the loss of musical assets from the Nazi period. She reviewed the situation with looted musical instruments, pointing out that for a long time no research had been conducted on the fate of the large

numbers of instruments that were seized, stolen, lost, stored or purchased and sold under duress. Few musical instruments are documented in the Central Collecting Point in Munich, for example. She mentioned specific cases such as the musical instruments formerly belonging to the famous Viennese pianist Paul Wittgenstein or the Berlin banker Robert Mendelssohn, the whereabouts of which are still unknown. She also spoke of the challenges regarding access to major sources and the need for public access to important privately owned archive material.

Referring to privately owned archives, in the roundtable session “Sources to use when investigating spoliations” Christine Laloue, curator at the Museum of Music, spoke of the [instrument maker archive in her museum](#). The museum is aware of the significance of these sources and is preserving and digitizing them for online publication, in particular documents relating to the period from 1933 to 1945. These inconsistent and incomplete archives remain difficult to understand, read and interpret and are in need of critical analysis.

Two sessions were devoted to provenance research in museums. Pascale Vandervellen, curator for keyboard instruments, and Claire Chantrenne, archivist and librarian, spoke on the origins of the collections at the MIM, Musical Instruments Museum, in Brussels. They presented a set of virginals formally owned by the Polish-French harpsichord player and pianist Wanda Landowska. They were seized in 1941 by the Nazis, restituted after 1945 and subsequently donated to the museum by Landowska. The fate of most of the other instruments is unfortunately much less well documented.

Mathilde Caer, provenance researcher, and Fabienne Gaudin, head of documentation, presented the current state of provenance research in the Museum of Music since its commencement in October 2021. They mentioned a particularly interesting example, the collection of Geneviève Thibault de Chambure, who



from the 1920s until her death in 1975 was a key figure in the acquisition of instruments for the museum.

Unlike most of the other participants, the Austrian provenance researchers Monika Löscher and Christian Klösch from the Commission for Provenance Research were able to present not only research results but also specific restitutions. Over seventy objects from the Collection of Historic Musical Instruments at the Kunsthistorisches Museum and sixteen from the Museum of Science and Technology in Vienna have been returned to their rightful owners or legal successors.

The programme was rounded off by a visit to the [Musical Instrument Museum](#) opened in 1997 in the Cité de la musique. The Museum of Music has a collection of over 7,000 instruments and art objects, of which almost 1,000 can be seen in the permanent exhibition. In six sections, visitors are guided through the history of music in Europe and the world from the seventeenth century until the present day. Curators and restorers were available in each section to answer questions by conference participants.

The event clearly showed that Nazi looting was a pan-European phenomenon and that transnational research will be in greater demand in future as a result. The musical instrument museums in Europe will have to focus increasingly on systematic and proactive provenance research. Participants look forward with interest to a follow-up event to be held at the latest in five years to report on research findings.

Thanks are due to the organization committee – Marie-Pauline Martin, Christine Laloue, Jean-Philippe Echard, Mathilde Thomas, Julia Ténier and Bérénice Vives – for the smooth running of the event. The group photo below offers a pleasant souvenir of this noteworthy event.

#### **MONIKA LÖSCHER**

Provenance researcher at the Kunsthistorisches Museum Vienna since 2009



[HTTPS://PHILHARMONIEPARIS.FR/EN/ACTIVITY/COLLOQUE/23014-LA-SPOLIATION-DES-INSTRUMENTS-DE-MUSIQUE-EN-EUROPE-1933-1945](https://philharmonieparis.fr/en/activity/colloque/23014-la-spoliation-des-instruments-de-musique-en-europe-1933-1945)  
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PARIS



## 100th meeting of the Austrian Art Restitution Advisory Board - five recommendations adopted

In its 100th meeting on 29 November 2022 the Austrian Art Restitution Advisory Board made recommendations on objects from the Museum of Military History / Military Historical Institute, the Theatre Museum, the Vienna University Library, the Natural History Museum Vienna and the mumok - Museum moderner Kunst Stiftung Ludwig Wien.

The first case focused on the collection of the Jewish meat trader Saul Juer. After the “Anschluss” in 1938, the license for his stall in the market hall in Wien-Landstraße was revoked and he was forced to close his business in June 1938. When he also had to give up his flat shortly afterwards, Juer, who was a member of the Association of Friends of Asian Art and Culture and had built up an extensive collection of art and cultural objects, Judaica and ceramics within thirty years, offered works for sale to today’s Museum of

Act of 1946 and recommended that they be returned. The Board also dealt with the provenance of two watercolour costume designs by Giovanni Battista Minghi, which have been in the Theatre Museum (KHM-Museumsverband) since 1950. They were part of the art collection of Julius Neumann (1864-1923), the entrepreneur and co-founder of the prominent men’s clothing store “M. Neumann” in the Kärntnerstraße. Today the famous department store “Steffl” is located there. After the “Anschluss”, Neumann’s widow Martha included the two watercolours in her declaration of assets. She managed to escape from Vienna in May 1938 and finally met up with two of her children, who had also fled, in New York in August 1941. In the meantime, her valuable furnishings and art objects had been stored at the forwarding agency E. Bäuml and parts of them had been offered for auction at the art auction house Adolf Weinmüller Vienna. The rest was confiscated at Bäuml by the Gestapo in 1940 and subsequently disposed of by the Vugesta – “Verwaltungsstelle für jüdisches Umzugsgut der Gestapo” (Gestapo Office for the Disposal of the Property of Jewish Emigrants) at the Dorotheum. Although Martha Brown-Neumann located the watercolours in the antiquarian bookshop V.A. Heck after the end of the war, they were never returned. Heck eventually sold the pieces to what is now the Theatre Museum. The Advisory Board considered these legal acts null and void according to the Annulment Act and recommended the return of the two costume designs to the legal successors to Martha Brown-Neumann. As with Saul Juer, the Board presumably only dealt with a small part of the collection. The overwhelming majority of the respective original collection has been lost to this day.



UNDATED LITHOGRAPH FROM THE SAUL JUER COLLECTION “OMER PASHA AT THE BATTLE OF OLTENIZZA”, PUBLISHED BY MATHIAS TRENTSENSKY (1790-1868). © HGM

Military History. The museum ultimately acquired over 570 objects, including paintings, engravings, books and faiences. After his wife Helene died at the end of 1941, Saul Juer was forced to move into a collective flat, from which he was deported first to the Nazi ghetto Theresienstadt and two years later, in May 1944, to the concentration and extermination camp Auschwitz, where he suffered a violent death at an unknown time. The Advisory Board considered the acquisitions of the Museum of Military History to be void legal transactions in the sense of the Annulment

With regard to 83 books from the library of the ethnologist and researcher on fairy tales Albert Wesselski, which are now in the Vienna University Library and are in the possession of the Republic of Austria due to their date of publication before 1800, the Advisory Board did not recommend the return of the books. It could not be proven that Albert Wesselski or his wife Maria belonged to the circle of persons persecuted by the Nazis. Instead, Wesselski’s authorization to teach at the University of Graz was suspended in April 1938





due to his failure to comply with the applicable habilitation standard of 1920. After his death in 1939, Maria Wesselski continued the sale negotiations of her husband's library of around 9,000 works. However, as a result of Adolf Hitler's invasion of Prague and the establishment of the Protectorate of Bohemia and Moravia, Indiana University (USA) fell away as the most important interested party up to then. Instead, Walter Grothe lobbied for a purchase by the "Central Library of the High School of the NSDAP" in Berlin in order to transfer the Wesselski Library to the Mythology research department, which was set up at the time – with success. The Advisory Board concluded that the beginning of the Second World War in particular reduced the circle of prospective buyers to the Central Library of the High School of the NSDAP. However, the sale itself was not to be qualified as null and void in the sense of the Annulment Act, which is why the Advisory Council recommended that the books not be returned. The Board argued similarly with regard to the acquisition of an Egyptian mummy head by the Natural History Museum Vienna in 1941/42, which was brought in by Maria Engländer according to the inventory book. Her husband Otto Engländer was the managing director of Skodawerke-Wetzler AG (SWW), the largest chemical company in Austria at the time. Although Maria and Otto Engländer, as the Advisory Board determined, were not to be counted among those persecuted by the Nazis, Otto's professional situation changed fundamentally as a result of the "Anschluss", as the German IG Farben intended to take over the SWW. After the approval by Nazi State Commissioner Walter Rafelsberger, several Austrian chemical companies merged in June 1938 to form Donau-Chemie, owned by IG Farben. After Otto Engländer had initially remained interim general director of SWW, he took early retirement in June 1939. Shortly afterwards he was forced to sell his shareholdings in the company Sprengstoffwerke Blumau AG. Although the Advisory Board acknowledged the economic and professional situation Otto Engländer faced after the "Anschluss", it could not see any connection with the sale of the mummy by Maria Engländer.

Finally, the Advisory Board dealt with eight works by Raoul Hausmann, all titled "Abstrakte Bildidee" ("Abstract Image Idea"), which the then Museum of the



COSTUME DESIGN BY GIOVANNI BATISTA MINGHI ENTITLED "DEITÀ SELVAGGIA" ("WILD GODDESS"). © THEATERMUSEUM WIEN / KHM-MUSEUMSVERBAND

20th Century had purchased in 1961 from Sibyl Moholy-Nagy. She was the widow of the artist and former friend of Hausmann, László Moholy-Nagy, who died in 1946. Numerous correspondences bear witness to a longstanding dispute between her and Hausmann as to whether he had donated the pieces to his friend, as his widow claimed, or had merely given them into safekeeping for resale. Extensive research undertaken by the Commission for Provenance Research revealed that the works had been at the disposal of Raoul Hausmann until 1946, i.e. that the handover took place after 8 May 1945. The artworks were thus in possession of Raoul Hausmann during the National Socialist era. According to this, the Board considered no null and void legal act, which is why no restitution was recommended.

After the 100th meeting, the Chairman of the Art Restitution Advisory Board, Clemens Jabloner, honored the high productivity of the Commission for Provenance Research whose work forms the basis for the recommendations made by the Advisory Board. In one hundred meetings since 1998, the Board has made recommendations on 390 cases. At the same time, Jabloner reminded that the process of coming to terms with the National Socialist confiscation of property is by no means complete as far as its effects on the collections of the federal government, especially the federal museums, are concerned.

On the memorable occasion of the 100th meeting, the Austrian Vice-Chancellor – and Federal Minister for art and culture – Werner Kogler gave a reception in the columned hall of the MAK – Museum of Applied Art Vienna on 5 December. Active and former art restitution advisors as well as provenance researchers and representatives of friendly and associated institutions were present. In his speech, Kogler especially emphasized the great trust that all federal governments have placed in the Advisory Board since the Art Restitution Act was adopted. Beyond that, these Board's recommendations would not have been possible without the persistent work of the Commission for Provenance Research. Thanks to that, essential



THE MEMBERS OF THE ART RESTITUTION ADVISORY BOARD AT ITS 100TH MEETING WITH THE MEMBERS OF THE BOARD'S REGISTERED OFFICE OF THE ADVISORY BOARD. BACK ROW LTR: REINHARD BINDER-KRIEGLSTEIN, EBERHARD SCHRUTKA-RECHTENSTAMM, SABINE PLAKOLM-FORSTHUBER, FRANZ-PHILIPP SUTTER, ILSEBILL BARTA, AND CHRISTOPH HATSCHKE. FRONT ROW LTR: EVA REICHEL, HANNAH LEODOLTER, EVA B. OTTILLINGER, MONIKA ANDERL, CHAIRMAN CLEMENS JABLONER, BIRGIT KIRCHMAYR, PIA SCHÖLNBERGER AND JULIA UNTERWEGER © KOMMISSION FÜR PROVENIENZFORSCHUNG



facts have been brought to light, historical contexts have been made comprehensible and people who had been forgotten for years have been given back their names: “Every Advisory Board recommendation as well as every published essay, every lecture, every lexicon or database entry is a memorial that makes Austria a republic of ‚Never Forget‘.”

All decisions of the Advisory Board since 1998, including the five recent, can be found on the website of the Commission for Provenance Research at [www.provenienzforschung.gv.at](http://www.provenienzforschung.gv.at).

### PIA SCHÖLNBERGER

Administrative director of the Commission for Provenance Research and head of the office of the Austrian Art Restitution Advisory Board at the Federal Ministry of Art, Culture, the Civil Service and Sport

RECEPTION EVENT  
FOR THE 100TH  
MEETING OF THE  
ART RESTITUTION  
ADVISORY BOARD AT  
THE MAK –  
MUSEUM OF AP-  
PLIED ARTS.  
PIA SCHÖLNBERGER  
(BMKÖS),  
VICE-CHANCELLOR  
OF AUSTRIA  
WERNER KOGLER,  
MAK GENERAL  
DIRECTOR LILLI  
HOLLEIN,  
CELLIST SOPHIE  
ABRAHAM AND  
CHAIRMAN OF THE  
ART RESTITUTION  
ADVISORY BOARD  
CLEMENS JABLONER  
© BMKÖS







## The Hanns Fischl collection – new insights to a well-known case

On 5 November 2021, the Austrian Art Restitution Advisory Board [recommended](#) in its 98th session the restitution of objects from the Museum of Military History /Military History Institute in Vienna to the legal successors of the former owner, Hanns Fischl. In the meantime, the museum has been able to hand over 200 objects to the rightful heir and subsequently buy them back from her. The Museum of Military History thus joined a comparatively long line of Viennese museums and collections that have dealt with the respective acquisitions from the Fischl Collection since the first and fundamental research by today's Wien Museum in 2000. Nevertheless, it is worth taking another look at the Fischl Collection, especially since its diversity illustrates the breadth of the spectrum of objects with which Nazi provenance research is concerned. Beyond that, the biography of the collector has recently been supplemented by hitherto unnoticed sources.

Hanns Fischl was born in Brno on 8 June 1883 and lived in Vienna since 1893. Although he had been president of the Academic Sports Club of the Jewish Students Vienna for a time and wrote articles for Zionist magazines between 1906 and 1917, he resigned from the Jewish Community in September 1918 and converted to Protestantism. In 1927 he married Gertrude Gatscha, with whom he later had two children. The First World War interrupted his professional career, but in August 1918 he was able to start to work as a lawyer in Lower Austria. In 1928 he moved his law office to Vienna. Until now, little attention has been paid to the fact that Fischl was also active as a writer beyond his legal profession: Apart from his involvement in Zionist publications, Fischl wrote fiction and journalistic articles for the “Kriegszeitung der k. u. k. 10. Armee” in 1918 and published several novellas between 1914 and 1917. Fischl continued to write occasional articles for newspapers and magazines after 1918, but he emerged primarily as the author of legal textbooks on topics such as injunctions, tenant protection legislation and aviation law.

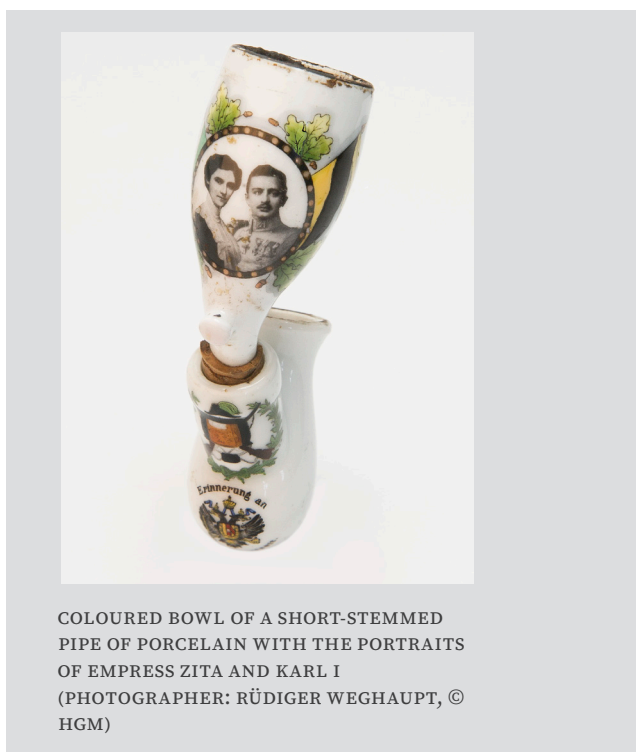


THE FORMER RESERVE OFFICER HANNS FISCHL, WHO WAS ACTIVE IN VETERANS ASSOCIATIONS IN THE 1930S, IN THE UNIFORM OF A SECOND LIEUTENANT OF THE 21ST IMPERIAL-ROYAL LANDWEHR INFANTRY REGIMENT OF THE HABSBURG EMPIRE, 1934 (HGM)

Meanwhile, Fischl gathered a rich and extensive cultural-historical collection. In 1935 a newspaper characterized it as a collection of thousands of newspaper articles, pamphlets and posters with a contemporary-historical focus. Beyond that, however, it also included hundreds of other objects such as art prints, photos, maps, postcards, books as well as watercolours, paintings, drawings and other objects. In thematic terms, Fischl was interested in objects with contemporary historical, military historical, theatre-, opera- and literary historical as well as topographical references. The collection also contained objects

from India, East and Southeast Asia. Despite the low market value of the majority of items, the collection undoubtedly had a high idealistic significance for Fischl himself.

After the so-called “Anschluss” of Austria to the German Reich in March 1938, Fischl was persecuted as a Jew. As his assets were below the mark of 5,000 Reichsmark, Fischl was not affected by the discriminatory regulations that required Jews to declare their property or pay a “property tax” and his non-Jewish wife was not subject to the property tax. However, he was severely affected by the “Fifth Ordinance to the Reich Citizenship Law” of 27 September 1938, which effectively meant a professional ban for Jewish



lawyers. In November 1938, in order to avoid being removed from the list of authorized lawyers, which was inevitable at the end of the year, Fischl declared his renunciation of the profession, which could be interpreted as an attempt to offer at least symbolic resistance. For Fischl this meant the loss of his economic livelihood. At this time, Fischl first tried to sell parts of his poster and pamphlet collection to the Vienna Military Archives and the Vienna Army Museum after he had already sold at least one collotype to the National Library in Vienna that year.



PHOTO OF A CURING AND SMOKING PLANT IN TRENTO DURING WORLD WAR I. FROM THE HANNS FISCHL COLLECTION

In January 1939, the Fischl family also had to leave their long-time flat in Albertgasse in Vienna’s 8th district. Shortly afterwards Fischl apparently tried to realize his intention to flee, which he had already expressed to the Jewish Community in May 1938. In May 1938 he had mentioned “Erez Israel” as his desired destination, where he wanted to help build political and military structures. In March 1939, however, he applied for an export permit for parts of his collection with the destination Dijon/France and named himself as the recipient. In fact, some of the paintings crossed the border on 19 July 1939, but it is unknown whether he himself was able to get to France. In any case, Fischl was back in Vienna by autumn 1940 at the latest.

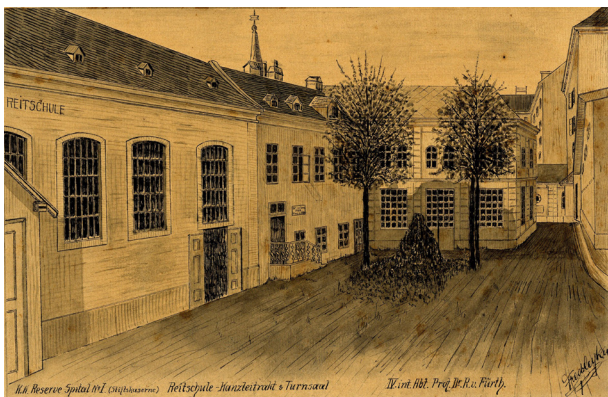
When the prospect of escape finally had failed, Fischl apparently felt compelled to sell his collection to various Viennese museums and libraries to save his family’s livelihood after being banned from his profession. So far it is known that Fischl sold more than 230 items to the then theatre collection of the Vienna National Library, at least 30 items to the National Library itself, around 160 items to the Museum of Ethnology and more than 100 items to the Vienna Municipal Collections. The sale of three books to the Göttingen University Library in 1941 is also documented. The then Vienna Army Museum acquired 292 items and a cardboard with letter seals. These included photographs, postcards, lithographs, engravings and prints, letter seals and books as well as posters, pipe bowls,





drawings, watercolours, patriotic badges and arm-bands, a bread sack, a dinner set, two sabres and two battlefield memorabilia.

Due to his marriage to a non-Jewish woman, and two Christian baptised children, Hanns Fischl was considered to be in a “privileged mixed marriage”. This should actually have protected him from deportation. The Gestapo nevertheless first targeted him in 1940, when they apparently seized parts of his library for unknown reasons and handed it over to the Vienna National Library for custody. On 6 September 1943 the Gestapo arrested Fischl. Among other things, they accused him of illicit sales of returned relocation goods from France, of having written begging letters to foreign personalities and of having been a member of the Social Democratic Party and editor of a socialist newspaper. However, the latter hardly seems plausible, since Fischl was extremely critical of the Social Democratic Party, Social Democratic housing policy and tenant protection legislation in publications, at lectures and even in court cases. It is therefore reasonable to assume that this accusation was based on a confusion with the social democratic functionary and reform pedagogue Dr. phil. Hans Fischl.



DRAWING BY FRED CEYKA: K. K. RESERVE HOSPITAL NO. I (STIFTSKASERNE) RIDING SCHOOL AND ADMINISTRATION WING AND GYM, UNDATED (HGM)

Fischl was then deported to Auschwitz on 16 October 1943. Shortly before its liberation in January 1945, Fischl was transferred to Buchenwald, where he was registered as a “political Jew” on 22 January 1945. On 24 January 1945 he was taken to the subcamp S III in Ohrdruf, where the prisoners had to build underground tunnels under the most severe conditions.



BRASSARD FOR MEMBERS OF THE AUSTRIAN SOCIETY OF THE RED CROSS (HGM)

The last reference to Fischl’s fate is found on 13 March 1945 when he was put on a death march to Bergen-Belsen concentration camp. Due to the catastrophic accommodation conditions and the particularly high mortality rate in that camp, where more than 18,000 people died in March 1945 alone, it can be assumed that Fischl died in that camp or on the death march. On 2 July 1947, Hanns Fischl was declared by the Vienna Regional Court for Civil Matters to have died on 8 May 1945.

In all cases of acquisitions from the Fischl Collection that have been processed since 2000, the Austrian Art Restitution Advisory Board or the Vienna Restitution Commission issued restitution recommendations. The objects finally returned to the heir of Hanns Fischl. This was most recently also the case with the objects of the Vienna Museum of Military History/Military History Institute. The author would like to thank Sabine Loitfellner of the Jewish Community of Vienna for her excellent cooperation in the implementation of the restitution and Gabriele Anderl of the Austrian Commission for Provenance Research and Gerhard Milchram of the Wien Museum for their valuable inputs.

#### STEFAN KURZ

is historian and provenance researcher (since 2020) at the Museum of Military History/Military History Institute in Vienna





## Vienna University Library: return of a book to the descendants of Raoul Fernand Mercedes-Jelinek

As a result of provenance research concerning Nazi looted art at the Vienna University Library, an item dating from the eighteenth century was found in the Theatre, Film and Media Studies Library. It originally belonged to Raoul Fernand Mercedes-Jelinek from Vienna – whose name is better known today in connection with the automobile.

In 2018 the Art Restitution Advisory Board recommended the return of the item which consists of two books bound together: *Réflexions sur l'opéra* by Toussaint Rémond de Saint-Mard and *La Patte du chat* by Jacques Cazotte from 1741. Both authors lived in France in the eighteenth century. Whereas Toussaint Rémond de Saint-Mard (1682-1757) was known above all as the author of texts on aesthetics and opera, Jacques Cazotte (1719-1792) was a novelist. He was guillotined during the French Revolution in 1792 on account of his counter-revolutionary letters.

The book was owned by Raoul Fernand Jelinek-Mercedes a journalist who contributed articles to the *Badener-Zeitung* and other media. He was a sponsoring member of the Musikverein in Vienna and beside his library, he owned a large collection of musical scores and paintings.

Although he married Leopoldine Weiss (1885-1981) according to the Roman Catholic ritual 1910, he suffered increasing persecution because he was considered as a Jew according to the Nuremberg Laws after the annexation of Austria to the German Reich. When the Nazi regime ultimately froze his accounts, he was forced to sell his assets, including parts of his private library, to booksellers and antique dealers. Increasing pressure from the Gestapo and the Property Transaction Office (Vermögensverkehrsstelle) finally led him to commit suicide in Baden on 10 February 1939.

Even though the chain of events leading to the library's acquisition cannot be reconstructed in detail, the ex libris in the books can be assigned to Raoul Jelinek-Mercedes. At least, his emergency sales can be seen as precondition for the book ended up in the library of the Theatre Studies Institute of the University of Vienna. As the works were published before 1801, the case was submitted to the Austrian Art Restitution Advisory Board. At its meeting on 15 October 2018, the Board recommended the return

of the book to the legal successors of Raoul Fernand Jelinek-Mercedes, since the acquisition was deemed to have been the result of an invalid legal transaction according to the Annulment Act from 1946. The then Federal Minister of Education, Science and Research approved the return. After the Vienna Jewish Community was able to identify the legal successors Raoul Ferdinand Jelinek-Mercedes in United Kingdom, Italy and Austria, the book was returned on 28 September 2022 to a representative of the community of heirs. In accordance with the heirs, the University of Vienna Library subsequently repurchased the items on the basis of an independent estimate.



L. TO R.: MARIA SEISSL (DIRECTOR OF VIENNA UNIVERSITY LIBRARY), KARINA GANTSID-BROSCHKEK REPRESENTING THE HEIRS, MARKUS STUMPF  
(©CHRISTINA KÖSTNER-PEMSEL)

**Note:** The case will be dealt with in the next volume of the *Commission for Provenance Research book series* (vol. 9, 2023).

### MARKUS STUMPF

(1969), works as a librarian at Vienna University Library, as a historian and as a provenance researcher. He heads the Contemporary History Library and the provenance research of the University of Vienna. He is also board member of the Austrian Library Association and research fellow in the Department of Contemporary History at the University of Vienna



## A German family hands over to France two paintings stolen in Brittany during the Occupation

**Long kept in an attic, two paintings by the painter Lionel Floch were handed over in September by the descendants of a German soldier to the city council of Audierne in Brittany pending their restitution.**



VUE DE LA CÔTE SUD DE LA BAIE DE DOUARNENEZ. LIONEL FLOCH

### A German soldier stationed in Brittany

The soldier's granddaughter said that her grandfather was a carpenter in the heart of the Erzgebirge Mountains in Saxony, where he and his wife led an ordinary life, but were interested in the arts. His grandfather loved to paint. He married in 1933, the same year his mother was born.

In 1939 he was enrolled in a training centre in the Czech Republic and soon afterwards he was sent to France.

After arriving in France via Paris in June 1940, two postcards found in private archives show that the young soldier spent at least several months in Brittany via Brest and Audierne. He returned via Metz (Lorraine) in January 1942 and was then sent to the Eastern Front in 1943, where he was reported missing in 1944 in the Odessa region.

In unknown circumstances, the soldier brought back to Germany, most probably during a leave, two paintings by the Quimper painter Lionel Floch (1895-1972). The German citizen does not want to make a hero out of her maternal grandfather, nor does she want to

give him a false image, she simply asks herself "what does war do to a man?" She thinks that the paintings must have pleased her grandfather and that they were removed from their respective frames.

In the late 1980s, her parents discovered the paintings rolled up on the floor, they had never been exhibited. They had not yet been framed. Ten years later, when the house was cleared out, they decided to have the paintings framed and hung them on the walls of the flat. In 2004, his widowed mother moved to a smaller flat and had no room to display the paintings.

In 2017, the soldier's granddaughter inherited the works, but did not want to exhibit them, "they do not belong to me", and she preferred to hide them. She repeats, "I am not the owner of these works, legally speaking perhaps, but it is not my feeling".



SCÈNE DE MARCHÉ À GUARDA. LIONEL FLOCH

### A first step in Berlin

In 2021, the family contacted the French embassy in Berlin and was sure that they wanted to return the two paintings to France, hoping that this restitution and the research undertaken could be used by the younger generation as a means of raising awareness about the Second World War.

On 25 May 2021, the CIVS office based at the French Embassy in Berlin agreed to provisionally receive the two paintings from the soldier's family under contract.



### The two paintings by Lionel Floch, an artist from Brittany

Lionel Floch was born and died in Quimper (1895-1972). He came from a Breton bourgeois family deeply rooted in its land. L. Floch was a painter of notable reputation, friend of Max Jacob and Jean Moulin, close to the Resistance during the Second World War. Some of his works are notably exhibited today at the Musée des Beaux-Arts in Quimper.

Lionel Floch's career is that of a professional painter wishing to sell and exhibit his paintings. Some of his works are therefore an effort of repetition. This is the case of the first painting (oil on canvas; 55 x 72 cm) which represents a scene of gathering or burning of seaweed, a recurrent theme for the Quimper artist. The work shows signs of deterioration, cracks in the lower right-hand corner and tears in the upper and central part of the canvas, with no notable indication of provenance.

This effort at repetition testifies to the artist's desire to sell motifs that he thought would be successful on the regional art market. The present painting could thus have been exhibited or traded. The reproduction of the theme of seaweed harvesting, considered typical of his region, can be interpreted as a commercial strategy, designed to meet the growing demand for tourism in Brittany during the interwar period, as well as commissions from the local bourgeoisie.

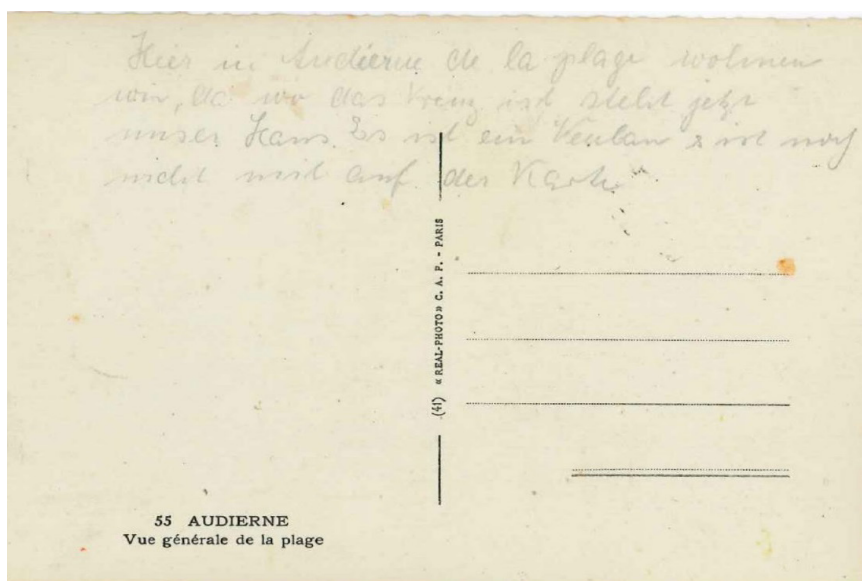
Later, during his travels in Spain and Portugal in the 1930s, market scenes, street scenes and Mediterranean landscapes were his favourite subjects. The second painting (oil on canvas; 55 x 72 cm) could therefore date from this period of travel and be the result of one of the painter's visits to the Iberian Peninsula.

### A deposit at the Audierne town hall

Although the precise circumstances of the spoliation and the exact manner in which Mr Müller came into possession of these two paintings are not known, there is no doubt that these events took place in Brittany, and more precisely in Audierne. This is why the works have been entrusted to the town hall of Audierne (Finistère) pending their restitution.

### Research into the provenance

The research, carried out jointly by the Commission for the Compensation of Victims of Spoliation (CIVS) and the Mission for the Research and Restitution of Cultural Property Spoliated between 1933 and 1945 (M2RS), has made it possible to identify the spoliated person. Lionel Floch's works had been stolen from him in Audierne by German troops. The person who was looted during the Occupation had even reported the theft after the War. Genealogical research is underway to identify the rightful owners and to proceed with the restitution.





## Annual Conference - Arbeitskreis Provenienzforschung e. V. at the Kunstmuseum Basel, 23 November 2022

The Arbeitskreis Provenienzforschung e. V. (Provenance Research Association) networks nearly 450 scholars and experts from Germany, Austria, Switzerland, the Netherlands, the USA, France, Great Britain, Israel and Italy who are dedicated to researching the provenance of cultural objects at public and private institutions, in the art market, in the legal system, in academia or as freelancers. Their focus is particularly on property seized as a result of Nazi persecution, but also on cultural property expropriated in the Soviet occupation zone and the GDR or originating from colonial contexts.

The Arbeitskreis sees provenance research as an integral part of the fundamental tasks of institutions that manage collections: Collecting, researching, preserving and imparting. Against this backdrop, it is an expert and contact partner for all questions concerning provenance research, its documentation and mediation. In order to promote exchange among its members, the association meets once a year for a general meeting and supports specialist conferences and workshops. Smaller working groups deal with regional or thematic focal points and develop practical guidelines.

On 23 November 2022, the annual Arbeitskreis conference took place at the Kunstmuseum Basel. Organised by the museum's Provenance Research Department in cooperation with the Swiss Provenance Research Association (SAP/ASP) and generously supported by the Kunstmuseum Basel, the conference focused on the Swiss research landscape for a whole day. The day started with four lectures on how museums in Basel, Zurich and Bern impart the topics of cultural property displacements from colonial and Nazi contexts in respective exhibitions. The conference continued with the presentation of new research projects, like the so-called "Benin Initiative" and two more in Germany and Switzerland, which will be useful for evaluating the art trade during the nationalist socialist government. Presentations of national archival material regarding flight routes into Switzerland, laws regarding and documentation of immigrants complimented the two examples on how to evaluate "flight property" ("Fluchtgut") issues. The day concluded with a discussion entitled "Where is

Switzerland heading? Commission, legal adjustments or other solutions? Dealing with collections and requests for information". Five representatives from museums, the art trade, history, politics and law discussed what solutions are in store for the country in order to settle open questions regarding cultural property losses. After the experts commented on what they would value politically and practically in order to adequately deal with losses resulting from national socialist persecution as well illegitimately transferred objects of colonial heritage, the do's and don'ts for the envisaged commission in Switzerland were drawn from examples in other countries. The event, which was fully booked well in advance, was attended by around 255 researchers and interested parties from Germany, France, Great Britain, Austria, Poland, Norway, Switzerland, the USA and the Netherlands.



CLOSING PANEL DISCUSSION AT THE KUNSTMUSEUM BASEL  
PHOTO: MEIKE HOPP

More information can be found:

[Tagung Provenienzforschung 2022 – Kunstmuseum Basel](#)

**Fokus Schweiz: Ausstellungen und aktuelle Fragen zur Provenienzforschung, Jahrestreffen des Arbeitskreises Provenienzforschung e. V.,**

23. November 2022, ausgetragen vom Kunstmuseum Basel in Kooperation mit dem Schweizerischen Arbeitskreis Provenienzforschung (SAP/ASP)

**PROGRAMM**

9.00–9.30h Registrierung und Kaffee

9.30h–9.45h Einführung durch **Meike Hopp**, Vorsitzende AKP; **Tessa Rosebrock**, Kunstmuseum Basel; **Joachim Sieber**, Präsident SAP/ASP

9.45–10.15h Grußworte und Einführung

**Josef Helfenstein**, Direktor Kunstmuseum Basel

**Katrin Grögel**, Leiterin der Abteilung Kultur beim Kanton Basel-Stadt

**Yves Fischer**, Stellvertretender Direktor Bundesamt für Kultur: *Ausgangslage und Perspektiven aus Sicht des Bundes*

10.15–11.50h Vorstellung ausgewählter Ausstellungen in der Schweiz 2022/2023

Moderation: **Béatrice Voirol**, Museum der Kulturen Basel

10.15–10.35h **Anita Haldemann**, Kunstmuseum Basel: *Curt Glaser. Vom Verfechter der Moderne zum Verfolgten (22. Oktober 2022 – 19. Februar 2023)*

10.35–10.55h **Esther Tisa Francini**, Museum Rietberg, Zürich: *Wege der Kunst. Wie die Objekte ins Museum kommen (17. Juni 2022 – 25. Juni 2023)*

10.55–11.15h **Nikola Doll**, Kunstmuseum Bern: *Gurlitt: eine Bilanz (16. September 2022 – 15. Januar 2023)*

11.15–11.35h **Tessa Rosebrock**, Kunstmuseum Basel: *Zerrissene Moderne. Die Basler Ankäufe "entarteter" Kunst (22. Oktober 2022 – 19. Februar 2023)*

11.35–11.50h Fragen und Diskussion

11.50–12.45h Aktuelles/Mitteilungen aus dem Arbeitskreis

**Meike Hopp**, Vorstand Arbeitskreis Provenienzforschung e.V.: *Letzte und nächste Tagung; Publikation zu 20 Jahren Arbeitskreis Provenienzforschung e.V.*

**Nadine Oberste-Hetbleck**, ZADIK Köln: *Zentralarchiv für deutsche und internationale Kunstmarktforschung. Provenienzforschungsrelevante Archivbestände und Zugangsmöglichkeiten*

**Laurie Stein**, Art Research LLC, Chicago/Berlin: *Sammlung Bührle: Forschung, Präsentation und (Miss-)Kommunikation. Eine Lehre für die Provenienzwelt*

Fragen 12.30–12.45

12.45–14.45h Mittagspause und Ausstellungsbesuch

14.45–16.10h Vorträge zu "Schweizer Themen" (Teil 1)

Moderation: **Guðrun Föttinger**, Bernisches Historisches Museum / Vorstandsmitglied SAP/ASP

14.45–15.05h **Alice Hertzog**, Museum Rietberg Zürich: *Benin Initiative Schweiz. Forschung und Dialog mit Nigeria*

15.05–15.25h **Tabea Schindler**, SIK-ISEA Zürich: *"Akteure und Akteurinnen des Kunsthandels in der Schweiz". Ein neues Forschungsprojekt und dessen Nutzen für die Provenienzforschung*

15.25–15.45h **Joachim Sieber**, Kunsthau Zürich: *Zugang erleichtern! Digitalisierung und Onlinepublikation der Archivbestände des Kunsthau Zürich und des Archivs der Sammlung Emil Bührle*

15.45–16.10h Fragen und Diskussion

16.10–16.40h Kaffeepause

16.40–18.00h Vorträge zu "Schweizer Themen" (Teil 2)

Moderation: **Gitta Ho**, Mission de recherche et de restitution des biens spoliés, Ministère de la Culture, France / Kunstmuseum Bern

16.40–17.00h **Marc Perrenoud**, Forschungsstelle dodis.ch: *Konditionen für Einreise, Aufenthalt, Arbeitserlaubnis und Abweisung (jüdischer) und anderer Flüchtlinge in der Schweiz zwischen 1933 bis 1945*

17.00–17.20h **Vanessa von Kolpinski** und **Katharina Georgi-Schaub**, Kunstmuseum Basel: *"Ohne die Hitlerei hätte ich mich niemals von den kostbaren Blättern getrennt" - Zwei Fälle von "Fluchtgut" am Kunstmuseum Basel*

17.20–17.40h **Pierre Flückiger**, Staatsarchiv Genf: *Fonds arrondissement territorial Genève: contenu et limites*

17.40–18.00h Fragen und Diskussion

18.00–19.00h Podiumsdiskussion: *Wohin geht es in der Schweiz? Kommissionsgründung, gesetzliche Anpassungen oder andere Lösungen? Zum Umgang mit Sammlungen und Auskunftsbegehren*

Moderation: **Tessa Rosebrock**, Leiterin der Abteilung Provenienzforschung, Kunstmuseum Basel

**Annette Bhagwati** (Direktorin Museum Rietberg, Zürich/Provenienzforschung im kolonialen Kontext)

**Benjamin Lahusen** (Berater der Geschäftsstelle der "Beratenden Kommission" Berlin/Lehrstuhl für Bürgerliches Recht und Neuere Rechtsgeschichte, Viadrina)

**Bernhard Bischof** (Vorstand Verband Schweizer Auktionatoren von Kunst- und Kulturgut)

**Werner Hanak** (Stellvertretender Leiter Abteilung Kultur Kanton Basel-Stadt)

**Jakob Tanner** (Prof. em. für Geschichte der Neuzeit und Schweizer Geschichte, Universität Zürich)

## Portrait: Schweizerischer Arbeitskreis Provenienzforschung (SAP/ASP)

The role of Switzerland as a politically neutral state in the international structure, the high density of public and private collections as well as its top position on the international art market – these are weighty reasons to advance provenance research with a specific focus on the Swiss Confederation. Areas of research include Swiss cultural policy, acquisitions for private and public collections, and the transnational interconnections of cultural property transfers, especially in the context of injustice under colonial rule or the Nazi regime.

Scholars from all language regions of Switzerland spanning the fields of museums, archives and libraries, as well as of universities and the art market, joined together in March 2020 to form an association with the aim of exchanging information on provenance research in Switzerland and sharing their knowledge.

The Schweizerischer Arbeitskreis Provenienzforschung (SAP/ASP) had been preceded by the “Arbeitsgruppe Schweiz” within the Arbeitskreis Provenienzforschung e.V., based in Germany (*see p. 1*). The decision to found an association of its own arose from the need to achieve better visibility, not least politically, within Switzerland. Moreover, the steadily growing circle of interested parties required better structures for networking and the exchange of research knowledge along with a strategy and common goals to promote provenance research in Switzerland.

### Membership & Newsletter

Membership consists primarily of professionals working in Switzerland, most of them being members of the international network of the Arbeitskreis Provenienzforschung e.V. as well. However, SAP/ASP is open to colleagues working abroad whose fields of activity are essentially connected with Switzerland. Interested parties are welcome to attend the meetings of the SAP/ASP held in Switzerland twice a year, as guests by appointment, or to contact the association directly with research concerns. Regular updates on the activities of the association and on provenance events in Switzerland are provided in a monthly newsletter. To be included in the distributi-

on list, simply send a short e-mail with details of your current activities to [info@provenienzforschung.ch](mailto:info@provenienzforschung.ch). In addition, the SAP/ASP homepage (<https://provenienzforschung.ch/>) offers useful tools for provenance research on Nazi looted art as well as colonial collections and provides a survey of Swiss archives with relevant holdings.

### Activities

In February 2022, in the course of political initiatives, the Commission for Science, Education and Culture of the Swiss National Council (WBK-N) convened a consultation on provenance research in Switzerland. Joachim Sieber, president of SAP/ASP, was among the experts invited. In autumn 2022, the Swiss Parliament adopted two motions: one calling for the establishment of an independent commission for cultural property seized as a result of Nazi persecution, and the other for the creation of a digital platform for provenance research on cultural property in Switzerland. Since the founding of the association, two sets of guidelines on provenance research have been published together with the Association of Swiss Museums (VMS/AMS) (<https://www.museums.ch/publikationen/standards/>). Finally, SAP/ASP has (co-)organized meetings and conferences in various locations in Switzerland, such as the annual conference together with the Arbeitskreis Provenienzforschung e.V. held in Basel in November 2022.

### GUDRUN FÖTTINGER and KATHARINA GEORGI-SCHAUB

Members of the Executive Board SAP/ASP



Schweizerischer Arbeitskreis Provenienzforschung  
Association Suisse de Recherche en Provenance  
Associazione Svizzera di Ricerca sulla Provenienza



## Players in the Swiss art trade

### A new large-scale research project at the Swiss Institute for Art Research (SIK-ISEA) in Zurich

#### The art trade as a research topic

In 2021 Switzerland (together with Germany) held the fifth largest financial share of the global art market, following the United States, China, the United Kingdom and France. This is reason enough for us to look into the history and players of the Swiss art trade more thoroughly. Research into the art trade has hitherto focused largely on the events of the 1930s and 1940s, the resulting issues around provenance and restitution, and recent developments in the art market or its legal framework. There remains a need for a study of the Swiss art trade that embraces a broad period of time. This gap in the research is to be addressed over a period of four years (2022-2026) by the project “Players in the Swiss Art Trade”, which was launched in February 2022 at the Swiss Institute for Art Research (SIK-ISEA) in Zurich under the management of Roger Fayet (Director) and Tabea Schindler (head of the Art History department). According to the project’s title, our focus lies specifically on the players – i. e.

individuals, institutions, platforms – of the Swiss art trade, and we mainly look into the early modern to contemporary trading with visual arts. The cities of Basel, Bern and Geneva were early hubs of the Swiss art trade, joined in the 19th century by Zurich and later Lausanne and Lucerne.

#### A long history

The trade in fine art in Switzerland can be traced back to the first half of the 16th century, when the book printer Johann Froben opened up his print shop in Basel for a division of labour, which included the production of prints, by collaborating with well-known artists such as Urs Graf senior and the brothers Ambrosius and Hans (the Younger) Holbein. The market for art prints grew in the 17th century and over the course of the 18th century Switzerland witnessed a rise in art collecting and trading alike. A sustainable factor in this growth was the increase in tourism to Switzerland during that period. Auctions and com-



DAVID HERRLIBERGER, ZÜRCHERISCHE AUSTRUFF-BILDER [...], 1748-1751, A COLLECTION OF 18 COPPERPLATES ILLUSTRATING STREET VENDORS IN ZURICH WITH THEIR WARES AND CHARACTERISTIC CRIES, DETAIL FROM FOLIO VIII, ZURICH, ZENTRALBIBLIOTHEK, KK 236 | G

mercial exhibitions originated as practices in the 18th century and evolved over the following hundred years to become established formats for the art trade. Whereas antiques dealers were common in the 19th century, “programme galleries” specialising in modern art did not emerge until the decades around 1900.

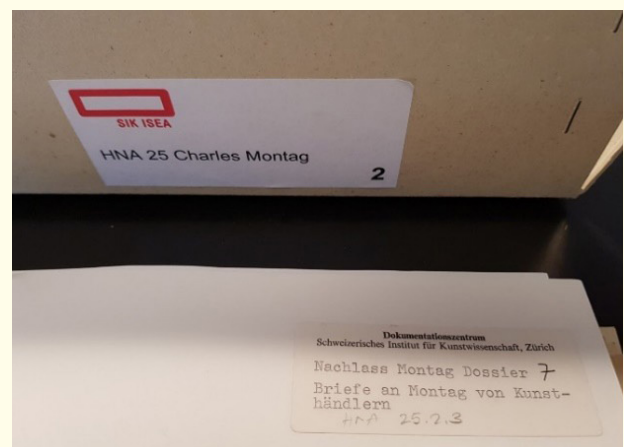
The art trade in Switzerland flourished in the period between the two world wars, not least due to an influx of German dealers and the stabilisation of the Swiss franc. Alongside the creation of galleries for contemporary art, there was a noticeable expansion of the auction business in Switzerland during those years. In the run-up to and during the Second World War in particular, Switzerland’s trade-friendly legislation (taxes, customs and excise, export rules) made it a linchpin of the international art trade with far-reaching consequences, as it encouraged the storage and sale of art that had been looted or acquired under duress and also of “degenerate art”.

In the years after the Second World War, the Swiss art trade, and especially auctions, experienced another boom, triggering the foundation of various auction houses between the 1940s and 1960s. This major expansion intensified the competition between galle-

ries and auction houses, ultimately blurring the once clear-cut boundaries between the so-called primary and secondary markets. Whereas the history of auctions dates back to the 18th century and that of galleries to the 19th century, art fairs are a 20th-century phenomenon. The founding of Art Basel in 1970 created a fair for modern and contemporary art that continued to dominate the international arena in this field. Finally, one of the most recent developments in the art market is the online trade which, even if it has only taken root as a singular procedure in the low-price segment, is now nevertheless firmly established as a complement to the traditional channels.

### Goals of the project

Our research project divides into three sub-sections, the findings of which will be published in 2026 using Open Access and to some extent in book form: a co-authored monograph on the broad history of the art trade in Switzerland, a database of players in the Swiss art trade, and three doctoral dissertations. All three sub-sections are dedicated to basic research, thereby laying the foundations for further studies of the history and players of the Swiss art trade and related areas. Our monograph, written jointly by the project team and selected external authors, will



IMPRESSIONS FROM THE SWISS ART ARCHIVES AT THE SWISS INSTITUTE FOR ART RESEARCH (SIK-ISEA), LEFT: ARCHIVE FILES DEVOTED TO THE ART MARKET, RIGHT: A FOLDER FROM THE DOCUMENTARY ESTATE OF ART DEALER CHARLES MONTAG (1880-1956), © SIK-ISEA

be the first work providing an overview of the history of the Swiss art trade and those active within it from the early modern age until the present day and therefore become a reference for further research in the field. The database is grounded on the technical infrastructure and to some extent on the content of the SIK-ISEA database and will be integrated into the Institute's new research portal (<https://recherche.sik-isea.ch/de/>). Due to the substantial need for thoroughly researched and easily accessible information about the individuals and institutions who played a part in the Swiss art trade, we aim at establishing the leading digital tool for art market and provenance research in Switzerland. Finally, one key aspect of our project is that it is promoting junior academics by creating three doctoral positions. As their dissertation projects address topics likewise rarely examined in the past, these studies will also be fundamental references for further research specifically on the Swiss art trade in the decades around 1800 and in the period of the Second World War.

### People

Our project team consists of Roger Fayet and Tabea Schindler (principal investigators, supervision of doctoral students), Monika Brunner (management of the subproject "publications"), Bärbel Küster (Professor of Modern and Contemporary Art, University of Zurich, project partner), the doctoral students Sina Knopf (PhD project "The positioning of the art dealer Hans Wendland within the Nazi art trade"), Viviane Maeder (PhD project "The role of the 'Schweizer Kleinmeister' for the Swiss art trade around 1800", starting in February 2023) and Simone-Tamara Nold (PhD project "Deposits from private collections in Swiss museums, 1920s to 1940s"), and Anik van der Reijden (research assistant).

### Starting point and networks

By documenting artistic output in Switzerland and conducting research into artists, SIK-ISEA has essentially focussed since its inauguration in 1951 on the production side, i. e. on artists. In the course of this research over many decades, the Swiss Art Archives and SIK-ISEA's in-house database have accumulated an abundance of source material and information about players in the Swiss art trade on which our project is able to build. One unique feature of SIK-ISEA, from which the project "Players in the Swiss Art Trade" benefits on various levels, is thus the close networking between departments and specialised units at the Institute. The exchange between the Art History department (where the project is based), the Art Documentation teams (with the library, the Swiss Art Archives and the database) and the Antenne romande with its spotlight on the French-speaking regions of Switzerland will prove especially fruitful. Moreover, the project team is able to rely on a diverse range of partnerships with institutions, research teams and individuals in Switzerland and abroad, and seeks further exchange with external researchers in the fields of art market studies, provenance research and digital humanities as well as with practitioners.

### TABEA SCHINDLER

Head of the art history department at the Swiss Institute for Art Research (SIK-ISEA) in Zurich and senior lecturer (Privatdozentin) at the University of Bern



## Round Table on the Evaluation of Bührle Collection Provenance Research: An Interim Report

With the opening of the extension in October 2021, the Kunsthau Zürich took over three important permanent loans. The Bührle Collection has aroused an enormous interest. On the one hand, this is due to the person of Emil Bührle, whose biography and public reception read like a mirror of recent Swiss history. On the other hand, provenance research on the Bührle Collection has been the subject of a controversial debate.

The Bührle Collection is explicitly regulated in the new subsidy contract between the Zürcher Kunstgesellschaft, the patron association of the Kunsthau, and the city of Zurich. The contract not only contains obligations with regard to provenance research and the handling of its results in the Kunsthau Zürich, but also the obligation that previous provenance research on the works in the Bührle Collection be subjected to an independent external evaluation. The Kunsthau Zürich should not exhibit works where there are substantiated indications that they are cultural property confiscated as a result of Nazi persecution (“NS-verfolgungsbedingt entzogene Kulturgüter”).

The Kunsthau, the City of Zurich and the Canton of Zurich have implemented this obligation by appointing a delegate who will in turn convene a Round Table at which critical voices are to be included. What is important is that the Round Table does not assess the Bührle Collection itself, but only prepares the mandate for third parties. The procedure for evaluating the provenance research of the Bührle Collection is therefore a two-phase process. It is also important to see that the Kunsthau, the city of Zurich and the canton of Zurich are not themselves members of the Round Table. This is intended to rule out any doubts of influencing the mandate.

The idea of a Round Table is new and there is no blueprint, at least not from the field of provenance research. Irrespective of the result, it is worth thinking about such and similar procedures that may advance

the discussion and offer possible solutions in a stuck situation. This applies in particular to Switzerland, which, unlike other countries, has not (or at least not yet) appointed an independent committee for Nazi looted art.

The Round Table is not an independent committee. It is supposed to hear voices that have already positioned themselves in the public debate and that might be considered biased in a strictly legal sense if they had to express themselves on the matter. This also applies to the author of this newsletter and the delegate of Kunsthau Zurich, the City of Zurich and the Canton of Zurich: It would be debatable whether, as President of the Board for the Kunstmuseum Basel and thus as a representative of a comparable institution such as the Kunsthau Zürich, he would be fully impartial to comment on the Bührle Collection in substance. The standard is less strict for the preparation of the mandate and proposals for experts. Professional associations from provenance research and museums, Jewish organizations, state authorities (Federal Office for Culture) and associations that have already voiced their opinion of the Bührle Collection (IG Transparency, members of the former Independent Commission of Experts Switzerland – Second World War) all take part in the Round Table. There are 15 people in total, including the delegate and his assistant.

The press is not represented at the Round Table. After completion, however, the minutes of the round table and other documents will be available to the public. Individual votes by the members of the Round Table and the names of possible mandated persons will not be apparent from the documents, or only in exceptional cases.

In contrast to a committee, the Round Table has no actual decision-making powers. If no consensus or at least no clear majority opinion emerges from the discussions, it is the task of the delegate to pass on

the range of opinions with a recommendation to the Kunsthaus Zurich, the City of Zurich and the Canton of Zurich. Incidentally, this is also the mechanism if the Round Table fails (because of non-participation, leaks, etc.): the delegate gathers what can be gathered as meaningful feedback from the Round Table and passes this to the Kunsthaus Zurich, the City of Zurich and the Canton of Zurich, together with a recommendation. This is intended to prevent that the Round Table is just a loss of time.

The main tasks of the Round Table consist of a more precise description of the mandate and a proposal for experts. These works are of general interest beyond the Bührle Collection. They touch on the very definition of provenance research. At this point, it is safe to say that there is no clear consensus on the term. The interweaving of historical and normative questions is a particular challenge. These are perhaps not new or surprising findings, but they are questions that were intensively discussed at the Round Table.

Discussions about which disciplines are needed for provenance research, what weight they are given and how the disciplines can best work together are of similar importance. Such questions of composition will also have to be discussed if Switzerland introduces a restitution committee, as demanded in a parliamentary motion. They were central for the debate at the Round Table. This is particularly demanding because the evaluation of the Bührle Collection is not on an original research or an individual case, but on existing work to be reviewed.

Speaking of individual cases, there are also many practical challenges to be resolved. The Bührle Collection in the Kunsthaus Zurich comprises around 200 works. Kunsthaus Zurich, the City of Zurich and the Canton of Zurich expect answers in the first half of 2024. The question of prioritization - and thus necessarily also of posteriorization - is obvious. Such topics are well known to all major museums.

The discussions at the Round Table are not yet over, so it is obviously too early for an overall assessment. The author of this article can only assert that he found the discussions at the Round Table to be very constructive and helpful. He expresses his gratitude to all members for their great efforts.

#### **FELIX UHLMANN**

Lehrstuhl für Staats- und Verwaltungsrecht sowie Rechtsetzungslehre, Universität Zürich. Head of Round Table

#### **Members of the Round Table:**

Valérie Arato *Schweizerischer Israelitischer Gemeindebund*

Tobia Bezzola *ICOM Schweiz*

Konrad Bitterli *Vereinigung Schweizer Kunstmuseen*

Thomas Buomberger *IG Transparenz*

Yves Fischer *Bundesamt für Kultur*

Moritz Hany *Assistent Delegierter*

Tanja Hetzer *ehemalige Unabhängige Expertenkommission Schweiz – Zweiter Weltkrieg*

Erich Keller

Markus Knauss *IG Transparenz*

Jacques Lande *Israelitische Cultusgemeinde Zürich*

Ralph Lewin *Schweizerischer Israelitischer Gemeindebund*

Tessa Rosebrock *Schweizerischer Arbeitskreis Provenienzforschung*

Esther Tisa Francini *Schweizerischer Arbeitskreis Provenienzforschung*

Felix Uhlmann *Delegierter*

Benno Widmer *Bundesamt für Kultur*

# Taking fair and just decisions based on findings leading to an incomplete or uncertain state of evidence

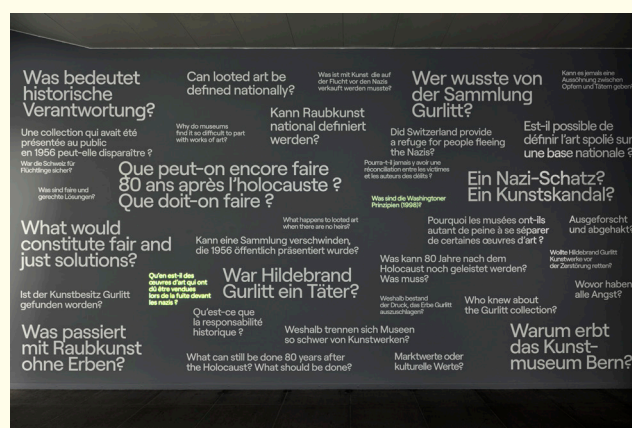
## The decision of the Kunstmuseum Bern in the restitution claim asserted by the heirs of Dr. Ismar Littmann

In December 2021, after several years of research on the bequest of Cornelius Gurlitt comprising some 1,600 works, the Stiftung Kunstmuseum Bern [Museum of Fine Arts Bern Foundation, hereinafter also: Foundation] made a decision regarding the definitive acceptance of artworks of incomplete provenance (1), as well as in the case of the restitution claim asserted by the heirs of Dr. Ismar Littmann for the Otto Dix watercolours *Dompteuse* (1922) and *Dame in der Loge* (1922).

These decisions were the result of deliberations and investigations carried out by the Stiftung Kunstmuseum Bern following the acceptance of Cornelius Gurlitt's estate in May 2014, which were made in consideration of internationally recognised principles of museum ethics such as the ICOM – Code of Ethics for Museums, the 1998 Washington Principles on Nazi-confiscated Art and the 2009 Terezín Declaration on Holocaust Era Assets and Related Issues. One key aspect here was to adopt a responsible approach despite the findings being incomplete, patchy and uncertain. Since such a situation is a regular occurrence in provenance research when it comes to establishing the historical facts of a case, this aspect is also reflected in the revised provenance categories which the Kunstmuseum Bern [Museum of Fine Arts Berne] has developed in a critical examination of the evaluation systems which are in use in Germany and Switzerland: the aim here is to enable decisions to be made in this type of essentially ambivalent situation where the state of evidence is fragmentary. After all, with reference to principle number four of the Washington Principles, arriving at a categorisation always implies the question of what the consequence might be where there is no conclusive evidence or reconstruction is not possible with a high degree of probability.

### The bequest of Cornelius Gurlitt 2014

Rolf Nikolaus Cornelius Gurlitt died on 6 May 2014, having previously designated the Stiftung Kunstmuseum Bern as his sole heir by will. On 22 November 2014, after careful consideration, the Foundation decided to accept the Gurlitt bequest. In the six months between the opening of the will and the end of the period to disclaim the inheritance, it was possible to arrive at an agreement with the Federal Republic of Germany and the Free State of Bavaria [2014 Agreement].(2)



KUNSTMUSEUM BERN, RAUBKUNST? [LOOTED ART?], INSTALLATION IN THE EXHIBITION GURLITT. TAKING STOCK, KUNSTMUSEUM BERN, 16.09.2022-15.01.2023 (COPYRIGHT: KUNSTMUSEUM BERN, PHOTOGRAPHER: ROLF SIEGENTHALER)

In signing this agreement, the Foundation accepted the interpretation of the term “Nazi-confiscated art” in accordance with the “Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property” [Joint Declaration](3) of December 1999, thereby becoming the first institution in Switzerland to align itself with the German interpretation of Nazi-confiscated art as having been withdrawn as a result of persecution [“NS-verfolgungsbedingter Entzug”].



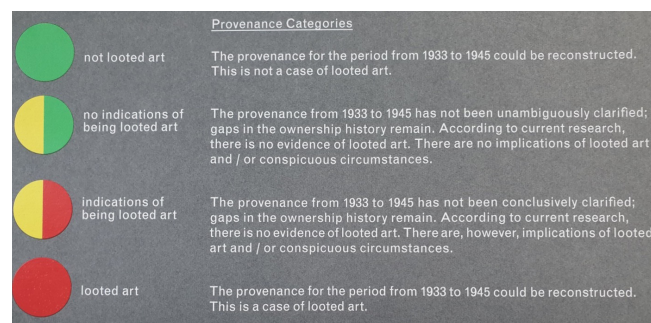
In the 2014 Agreement, the contracting parties also agreed on a procedure that draws a distinction between works the provenance of which is clearly established and works, the provenance of which is unresolved. This procedure was reflected in the so-called *Provenienzampel* [provenance traffic light system, 2014]. As a result, the Kunstmuseum Bern relinquished ownership of artworks which it was possible to identify as Nazi-looted art (“red”). These works were to remain in the fiduciary possession of the Federal Republic of Germany until they could be returned to their (former) rightful owners or the latter’s descendants. Works of art for which, based provenance research, it was possible to rule out any suspicion of Nazi-looted art with a probability bordering on certainty (“green”) were to remain the property of the Foundation. In the case of works with unclear changes of ownership during the period of National Socialist rule (1933-1945) without clear exclusion or clear confirmation of an act of looting (“yellow”), the Foundation had the right to relinquish ownership and hand the works over to the Federal Republic of Germany (the so-called right of choice).

**Provenance research 2013-2021**

The approximately 1,600 works in the bequest of Cornelius Gurlitt were initially subject of provenance research by the task force “Schwabinger Kunstfund” (2013-2015) as well as the projects “Gurlitt Provenance Research” (2016-2017) and “Reviews, documentation and claims related research for the Gurlitt art trove” (2018), which were carried out in Germany from 2015 onwards under the auspices of the Stiftung Deutsches Zentrum Kulturgutverluste [German Lost Art Foundation]. In 2017, Kunstmuseum Bern itself set up a Provenance Research Department which initially set out to clarify the provenance of works belonging to the group of so-called “degenerate art” in collaboration with the Forschungsstelle “Entartete Kunst” [“Degenerate Art” Research Centre] at the University of Hamburg. After handing over the research documentation compiled in the course of these German Lost Art Foundation projects to the Kunstmuseum Bern in March 2019, the museum’s provenance researchers conducted an evaluation up until June 2021 and established additional research strategies.

**Assessing findings: the provenance categories used by the Kunstmuseum Bern**

In the course of its evaluation and research, the Kunstmuseum Bern decided to introduce additional differentiations to the category for objects of unresolved provenance (“yellow” category, *Provenienzampel* 2014), namely the categories “yellow-green” and “yellow-red”.



KUNSTMUSEUM BERN, CATEGORIES FOR ASSESSING THE FINDINGS OF PROVENANCE RESEARCH, 2021. (COPYRIGHT: KUNSTMUSEUM BERN, GRAPHIC: 2XGOLDSTEIN, RHEINFELDEN)

The categories “Nazi-looted art” (“red”) and “not looted art” (“green”) were supplemented with the addition of the categories “yellow-green” and “yellow-red”: these reflect an incomplete state of evidence and, unlike the evaluation systems used by the Swiss Federal Office of Culture (BAK) and the German Lost Art Foundation, allow for a more qualified and verifiable assessment that can form the basis for decisions regarding transfer of ownership.<sup>(4)</sup>

According to the matrix used by the Kunstmuseum Bern, the categories “Nazi-looted art” (“red”) and “not looted art” (“green”) presuppose a verifiable and documented reconstruction of the ownership situation in the period 1933 to 1945; this is comparable to the definitions published by the German Lost Art Foundation in October 2019. The categories “yellow-green” and “yellow-red” are applied to cases where there are provenance gaps or the ownership status

cannot be clearly established. “Yellow-green” denotes that the provenance from 1933 to 1945 has not been unambiguously clarified; gaps in the ownership history remain. According to current research, there is no evidence of looted art. There are no implications of looted art and / or conspicuous circumstances. “Yellow-red” denotes that the provenance from 1933 to 1945 has not been conclusively clarified; gaps in the ownership history remain. According to current research, there is no evidence of looted art. There are, however, implications of looted art and / or conspicuous circumstances. These definitions allow for a differentiation also in cases in which the state of knowledge or the strength of evidence is below a justifiable level required at court.



OTTO DIX, DAME IN DER LOGE, 1922, WATERCOLOUR, PRIVATE COLLECTION (COPYRIGHT: KUNSTMUSEUM BERN, PHOTOGRAPHER: MICK VINCENZ)

According to the preliminary conclusion of the research as of 30 June 2021, it was possible to assign 1,091 works of art from the bequest of Cornelius Gurlitt the provenance of which in the period from 1933 to 1945 is incomplete to the category “yellow-green“, while the provenance of 29 works was assessed as “yellow-red”. In the case of works in the “yellow-

red” category, the Kunstmuseum Bern relinquished ownership by resolution of the Foundation Council passed on 5 November 2021 and handed over these works to the Federal Republic of Germany – provided research had been completed, no claims had been made and no potential beneficiaries were apparent. As a result, five works were handed over to the Federal Republic of Germany in December 2021. These are now the responsibility of the so called “Kunstverwaltung des Bundes” [Federal Art Administration, see pp. 14-16]. For 22 works of art in the “yellow-red” category, the Kunstmuseum Bern has since conducted further research in response to existing restitution claims, using research strategies that involve a substantially fresh approach.

In the event that a work of art permanently taken over by the Stiftung Kunstmuseum Bern (“green” or “yellow-green“), should reveal indications of Nazi-looted art and/or conspicuous circumstances based on further provenance research (“yellow-red“) or if evidence emerges of an actual case of Nazi-looted art (“red“), the institution will work on a “fair and just solution” with the (former) rightful owner(s) or their descendants according to the Washington Principles and the Terezín Declaration.

#### Handling uncertain states of evidence

The framework for the decision of the Stiftung Kunstmuseum Bern is based on internationally recognised principles of museum ethics, including the ICOM – Code of Ethics for Museums as well as the Washington Principles and the Terezín Declaration. One central importance, however, is the responsible handling of situations of an uncertain state of evidence – in accordance with principle number four of the Washington Principles:

“In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.”

What this means in practice will be illustrated by the surrender of property in the case of the claim for restitution of the heirs of Dr. Ismar Littmann.

In December 2021, the Foundation handed over two Otto Dix watercolours, transferring ownership jointly to the heirs of Dr. Ismar Littmann and descendants of Dr. Paul Schaefer. For these two works it was not pos-

sible to establish the provenance in the period from 1933 to 1945 without gaps, and no evidence of Nazi-looted art emerged from the research presented. Nonetheless, there were certain indications of Nazi-looted art and conspicuous circumstances (“yellow-red”).



OTTO DIX, DOMPTEUSE, 1922, WATERCOLOUR, PRIVATE COLLECTION (COPYRIGHT: KUNSTMUSEUM BERN, PHOTOGRAPHER: MICK VINCENZ)

Following the publication of artworks from Cornelius Gurlitt’s estate in the Lost Art database, the heirs of Dr. Ismar Littmann submitted a restitution claim to the “Schwabinger Kunstfund” task force, which was the responsible agency at that time. This claim initially applied to two watercolours by Otto Dix, *Dame in der Loge* (1922) (<https://gurlitt.kunstmuseumbern.ch/de/collection/item/154337/>, last accessed: 11.12.2022) and *Dompteuse* (1922) (<https://gurlitt.kunstmuseumbern.ch/de/collection/item/154336/>, last accessed: 11.12.2022). In October 2014, the community of heirs extended their submission to include a further 23 works. For these 25 works in total, the Federal Re-

public of Germany had refused restitution based on provenance research carried out by the “Schwabinger Kunstfund” task force (2013-2015) and investigations pursued under the project “Gurlitt Provenance Research” (2016-2017).

From 2019 onwards, the Kunstmuseum Bern continued to pursue its research while maintaining dialogue with the representatives of Dr. Ismar Littmann’s heirs: the aim here was to arrive at a joint assessment of the ownership status and circumstances of the loss. As a result of this dialogue, the heirs of Dr. Ismar Littmann and his wife Käthe Littmann abandoned their claim for restitution of 23 works of art from the bequest of Cornelius Gurlitt, while at the same time maintaining their claim for restitution of the Otto Dix watercolours *Dompteuse* (1922) and *Dame in der Loge* (1922). The research carried out from 2013 to 2017 did not lead to any conclusive findings for the watercolours *Dompteuse* (1922) and *Dame in der Loge* (1922) by Otto Dix: it was not possible to find any clear evidence that either of the works had been the property of Dr. Ismar Littmann (1887-1934) or his descendants or that the works had been confiscated due to persecution in the period between 30 January 1933 and 8 May 1945.

After a review by external experts, the project “Gurlitt Provenance Research” assessed the provenance of both works as being “unresolved” (“yellow”, *Provenienzampel* 2014).

After further investigations by the Kunstmuseum Bern, the situation as of June 2021 was as follows: The provenance of both works is highly ambiguous and incomplete with regard to work identity, ownership and withdrawal due to persecution for the period from 1933 to 1945. The research did not establish evidence of ownership status or evidence of changes of ownership during the period of National Socialist rule. Likewise, it was not possible to clearly prove a confiscation of the works carried out by the Prussian Secret State Police (Gestapo) in February 1935. Nonetheless, the findings did reveal a body of circumstantial evidence of sufficient substance and strength to enable a decision to be made as to the most likely potential scenario: according to this, both Dr. Ismar Littmann and Dr. Paul Schaefer (1881-1946) or their respective descendants may potentially have been ag-



grieved parties or legitimate claimants.

### Taking a decision despite an incomplete state of evidence

In the case of the two watercolours by Otto Dix, the conclusions regarding the identity of the work, its ownership and persecution-related withdrawal are largely based on meticulously developed circumstantial evidence. Although coherent, this remains outside the realm of certainty or high probability. There appears to be evidence of a persecution-related confiscation by the Gestapo on the premises of the auction house Max Perl, Berlin, prior to an auction. However, the ownership status of the works at the time of this confiscation remains unresolved. It was not possible to determine the time and nature of a transfer of ownership from Dr. Ismar Littmann to Dr. Paul Schaefer, both of whom were persecuted by the National Socialist regime. Accordingly, withdrawal due to persecution cannot be ruled out for either Dr. Ismar Littmann or Dr. Paul Schaefer; the works may even have been withdrawn twice. At the same time, there is no indication as to any other potentially aggrieved party.

From a legal point of view, the findings in both cases did not come close to a degree of clarity that could

be used as evidence. Accordingly, for both works an assessment was made in order to establish the most likely potential scenario outside categories of proof that presuppose certainty or strong probability. As a consequence, it was clear that the works could neither be classified Nazi-looted art (“red“) or not looted art (“green“). Due to the existing indications of Nazi-looted art based on circumstantial evidence, the works were assigned to the “yellow-red” category.

Any enforcement of restitution claims before a civil court would most likely have been futile due to the incomplete state of evidence based on the findings in the present case. Given the extent of the gaps in the evidence, the Foundation acted in the spirit of Washington and Terezín as well as in the spirit of the fundamental values of the legal system by following the maxim of a “fair and just solution”, which can be aptly applied in all situations in life. Accordingly, the Museum relinquished ownership of the watercolours *Dompteuse* (1922) and *Dame in der Loge* (1922) by Otto Dix to the benefit of the heirs of Dr. Ismar Littmann and the descendants of Dr. Paul Schaefer. The works were transferred to them jointly after the conclusion of a transfer agreement.



KUNSTMUSEUM BERN, WALL GRAPHIC ON THE PROVENANCE OF THE WORKS OTTO DIX, DAME IN DER LOGE (1922) AND DOMPTEUSE (1922), IN THE SECTION ENTITLED LEGITIMATE? AS PART OF THE EXHIBITION GURLITT. TAKING STOCK, KUNSTMUSEUM BERN, 16.09.2022-15.01.2023 (COPYRIGHT: KUNSTMUSEUM BERN, PHOTOGRAPHER: ROLF SIEGENTHALER)

The two families accepted this Solomonic solution as “fair and just”. As such, this solution constitutes one further option for dealing with incomplete provenances in the interest of a “fair and just solution”.

### Conclusion and further perspectives

Since 2013, the process of dealing with the Gurlitt collection has led to fundamental reflections as to how museums should handle Nazi-looted art. In accepting the bequest, the Kunstmuseum Bern has also initiated a process of reassessing questions of provenance and restitution. This is demonstrated not least by the decisions taken by the Nationalrat [Swiss National Council] and the Ständerat [Council of States] in the summer and autumn of 2022, which adopted both the motion to set up an independent commission for cultural property seized as a result of Nazi persecution and the motion to establish a central, digital platform to publish the results of provenance research. By accepting the Gurlitt bequest, the Stiftung Kunstmuseum Bern has committed itself to searching for and restituting cultural objects expropriated as a result of Nazi persecution. In dealing with this bequest in recent years, it has become clear that even in cases of very incomplete evidence, are possible that adequately take account of the interests of the current proprietors and (former) rightful owners. Aside from any discussion of terminology, a central element of each individual case is the fact that individuals lost

their possessions and their lives due to persecution by National Socialist Germany. It follows on from this that fair and responsible handling of cultural assets seized as a result of Nazi persecution is imperative. By being prepared to accept to make plausible decisions on the basis of findings leading to an incomplete or uncertain state of evidence below a justiciable level, museums can live up to the principles signed by more than 40 states in Washington in 1998 and in Terezín in 2009. In doing so, they can also show their willingness to engage in serious, respectful dialogue with the victims’ families.

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(1) <https://www.kunstmuseumbern.ch/de/service/medien/archiv-medienmitteilungen/medienmitteilungen-2021/10-12-2021-legal-cornelius-gurlitt-2592.html> (last accessed: 11.12.2022)

(2) Vereinbarung zwischen der Bundesrepublik Deutschland, dem Freistaat Bayern und der Stiftung Kunstmuseum Bern, 24.11.2014, [https://www.kunstmuseumbern.ch/admin/data/hosts/kmb/files/page\\_editorial\\_paragraph\\_file/file\\_en/1016/vereinbarung\\_kmb\\_endfassung.pdf?lm=1416827765](https://www.kunstmuseumbern.ch/admin/data/hosts/kmb/files/page_editorial_paragraph_file/file_en/1016/vereinbarung_kmb_endfassung.pdf?lm=1416827765) (last accessed: 11.12.2022).

(3) <https://www.kulturgutverluste.de/Webs/EN/Foundation/Basic-principles/Common-Statement/Index.html;jsessionid=FD962C7F78DE68BE19DBD835F843DB9A.m1> (last accessed: 11.12.2022)

(4) The evaluation systems used by the German Lost Art Foundation and the Swiss Federal Office of Culture (BAK) only stipulate a need for further research for the category “orange” or “C”. Cf. Leitfaden Provenienzforschung zur Identifizierung von Kulturgut, das während der nationalsozialistischen Herrschaft verfolgungsbe-

dingt entzogen wurde, ed. Stiftung Deutsches Zentrum Kulturgutverluste mit Arbeitskreis Provenienzforschung e. V., Arbeitskreis Provenienzforschung und Restitution – Bibliotheken, Deutscher Bibliotheksverband e. V., Deutscher Museumsbund e. V. and ICOM Deutschland e. V., Magdeburg 2019, pp. 89-90, <https://www.kulturgutverluste.de/Webs/DE/Recherche/Leitfaden/Index.html>, accessed: 08.05.2020; Bundesamt für Kultur (BAK), Wegleitung für die Erstellung des Schlussberichts für Projekte zur Erforschung der Provenienzen von Kunstwerken im Bereich NS-Raubkunst und zur Publikation der Resultate, status September 2020, <https://www.bak.admin.ch/raubkunst/merkblatt-hinweis>, last accessed: 08.05.2020; Verband der Museen der Schweiz / Association des musées suisses / Associazione die musei svizzeri, Provenienzforschung im Museum I. NS-Raubgut. Grundlagen und Einführung in die Praxis, series: Normen und Standards – Empfehlungen des VMS 2021, Zurich 2021, p. 6, [https://www.museums.ch/assets/files/dossiers\\_d/Standards/VMS\\_Standard\\_Provenienz\\_NS-Raubgut\\_D\\_Web\\_neu.pdf](https://www.museums.ch/assets/files/dossiers_d/Standards/VMS_Standard_Provenienz_NS-Raubgut_D_Web_neu.pdf) (last accessed: 11.12.2022)

 Bundesministerium  
Kunst, Kultur,  
öffentlicher Dienst und Sport  
Kommission für Provenienzforschung

 CIVS



Beratende Kommission  
im Zusammenhang mit der Rückgabe  
NS-verfolgungsbedingt entzogenen Kulturguts,  
insbesondere aus jüdischem Besitz

 Spoliation  
Advisory  
Panel

 Restitutions Committee

## IMPRINT

The Newsletter is published by  
the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property

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