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Combating Illicit Trade in Cultural Objects in the Staatliche Museen zu Berlin (State Museums in Berlin): Policies in Acquisitions and Loans and Research of Provenance

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Abstract: In March 2018 the Staatliche Museen zu Berlin-Preußischer Kulturbesitz (State Museums in Berlin) received a significant bequest from the estate of art historian Barbara Göpel (1922-2017), consisting of two paintings, 46 drawings, and 52 prints by Max Beckmann (1884-1950) and one painting by Hans Purrmann (1880-1966). This bequest represents an important addition to the collection of classical modernist works in the Nationalgalerie (National Gallery) and the Kupferstichkabinett (Museum of Prints and Drawings). In 1937 – during the time of National Socialism – the Nationalgalerie lost 505 artefacts as a result of the confiscation of “degenerate art”, among them eight works of Beckmann, who was in those times classified as a “degenerate artist”. But from whom did the Staatliche Museen zu Berlin receive this bequest? And is it generally important to ask from whom a museum receives an artefact? Where did the artworks come from? Is their provenance “clean” in the sense of the 1998 Washington Conference Principles on Nazi-Confiscated Art? Is it legitimate to make a distinction between the person of the collector/estate and the works of art? These are some of the – legal but also moral – questions a museum must address before accepting any cultural object that belonged to a collector who was actively working for a gigantic project like the “Führermuseum Linz”. Or should rejection of the bequest be considered?

Keywords: archives, museums, provenance research, Staatliche Museen zu Berlin

Marvellous Bequest for the Staatliche Museen zu Berlin

In March 2018 the Staatliche Museen zu Berlin – Preußischer Kulturbesitz (State Museums in Berlin) received a significant bequest from the estate of art historian Barbara Göpel (1922-2017), consisting of two paintings, 46 drawings, and 52 prints by Max Beckmann (1884-1950) and one painting by Hans Purrmann (1880-1966). The works have entered the collections of the Nationalgalerie (National Gallery) and the Kupferstichkabinett (Museum of Prints and Drawings). This bequest represents an important addition to the collection of classical modernist works in the Staatliche Museen zu Berlin.

In 1937 – during the time of National Socialism – the Nationalgalerie lost 505 artefacts¹ as a result of the confiscation of “degenerate art”, among them eight works of Beckmann, who in those times was classified as a “degenerate artist”.

¹ A. Janda, J. Grabowski, *Kunst in Deutschland 1905-1937: Die verlorene Sammlung der Nationalgalerie*, Bilderhefte der Staatlichen Museen zu Berlin Heft 70/72, Staatliche Museen zu Berlin – Preußischer Kulturbesitz, Berlin 1992.



Fig. 1: Max Beckmann, *Portrait of Erhard Göpel*, 1944, Inv. NG 2/18,
Neue Nationalgalerie – Staatliche Museen zu Berlin

Max Beckmann, *Bildnis Erhard Göpel*, 1944

© Staatliche Museen zu Berlin, Nationalgalerie, Schenkung Barbara und Erhard Göpel /
Foto: Andres Kilger

But from whom did the Staatliche Museen zu Berlin receive this bequest? And is it generally important to ask from whom a museum receives an artefact? Is it legitimate to make a separation between the person of the collector/estate and the works of art? These are some of the questions a museum must address before accepting any cultural object.

Barbara Göpel was the widow of the art historian Dr. Erhard Göpel (1906-1966) (Fig. 1), whose role under National Socialism appears to have been deeply ambivalent. An art historian and art critic, he belonged to a generation that could hardly remain without guilt during the 12 years of National Socialist rule. His professional biography already started before 1939/1942 and it did not end in May 1945. This connects him with other notable players in the Nazi cultural establishment, not least with Hans Posse and Hermann Voss, his superiors in the “Führermuseum Linz” project. Active from 1927/1928 until the 1930s as an assistant to Frits Lugt in the Netherlands, among others, Göpel was drafted into the Wehrmacht in October 1939 and, according to his own words, was deployed as an interpreter. He took part in the invasion of the Benelux countries and France. From 1 May 1942 on he worked as an advisor and buyer for the “Sonderauftrag Linz” – thus actively participating in the Nazi art theft from 1942 at the latest. Here, Göpel enjoyed a wide scope of action that meant power – power over the fate of Jewish art dealers and private collectors, who objectively did not have much choice but to cooperate with the “Sonderauftrag”.

There is no doubt that dependencies and networks of relationships existed here, which Göpel made use of in the sense of his mission, but which he apparently also used to protect individuals. For example, he supported and protected the artist Max Beckmann during his exile since 1937 in Amsterdam, saved him from military service, and transported paintings to Germany – in return, Göpel was allowed to choose artworks in Beckmann’s studio.

Max Beckmann, who was recognized and successful as an artist in Germany and abroad, experienced hostility as a result of the German cultural policy beginning in the 1930s. In 1933, important exhibitions of his works were closed. Since his art was branded as “degenerate” by the National Socialists, he was ostracized as an artist and it became increasingly difficult for him to sell his works, so he decided in 1937 to live in exile in Amsterdam.²

When doing provenance research on works of art that belonged to a collector who was actively working for a gigantic project like the “Führermuseum Linz”, many questions quickly arise. The first: Are the works of art “Nazi-looted art”? First of all, questions about the origin of the objects in the Göpel collection arise: Where

² Max Beckmann – Die Zeit vor dem Exil, “Künste im Exil”, <https://kuenste-im-exil.de/KIE/Content/DE/Sonderausstellungen/MaxBeckmann/Themen/Einfuehrungstexte/01-zeit-vor-exil.html?single=1> [accessed: 15.09.2023].

did the artworks come from? Did the previous owners sell the works to Göpel voluntarily, or were they forced to do so due to Nazi persecution? More precisely, is the provenance of the works “clean” in the sense of the 1998 Washington Conference Principles on Nazi-Confiscated Art?³ And there are also moral questions: Is it legitimate to make a separation between the person of the collector/estate and the works of art? Or should rejection of the bequest be considered?

Provenance

The word “provenance” comes from the Latin word *provenire*, meaning “to come forth”. Provenance in the academic sense means to help to interpret the object: Who is the creator of the object; who ordered the production of the object; for which purpose and in which place was it created? Insofar as regards archaeological objects: Where and when was it excavated (archaeological objects without a known find or excavation site are of less interest for the research)? Provenance research (also known as research of the origin of an object) investigates the origin and changing ownership of a cultural object. Provenance research is one of the core tasks of every institution that preserves cultural property.⁴ In museums, provenance research is part of the job of curators.⁵

Provenance in the legal sense means to examine the legal circumstances of the acquisition. German civil law obliges the buyer to check whether the seller is the owner of the object. The buyer must be acting in “good faith” with respect to the ownership of the seller.⁶ For cultural objects, Section 41(1) of the Cultural Property Protection Act of 31 July 2016⁷ enlarges the duties for the seller: “Anyone who places cultural property on the market shall be obliged to exercise due diligence in checking whether the cultural property 1. has been lost; 2. has been unlawfully imported; or 3. has been unlawfully excavated”. Provenance research investigates the origin and history of ownership: Who were the former owners of the objects, what is the origin of the object, what were the legal circumstances at the time of the object’s import/export to Germany?

³ Washington Conference Principles on Nazi-Confiscated Art, 3 December 1998, <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/> [accessed: 15.09.2023].

⁴ See German Lost Art Foundation, *Nazi-Looted Cultural Property: Basics & Overview*, <https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property> [accessed: 15.09.2023].

⁵ See Section 2.2 of the *ICOM Code of Ethics for Museums*, 2017, <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf> [accessed: 15.09.2023].

⁶ See Section 932 of *Bürgerliches Gesetzbuch (BGB)* [German Civil Code], English translation: https://www.gesetze-im-internet.de/englisch_bgb/ [accessed: 15.09.2023].

⁷ *Kulturgutschutzgesetz (KGSG)*, 31 July 2016, *Bundesgesetzblatt 2016 Part I p. 1914*, English translation: https://www.gesetze-im-internet.de/englisch_kgsg/index.html [accessed: 15.09.2023].

Provenance research of acquisitions is the task of scientists charged with provenance research. At the Staatliche Museen zu Berlin eight research associates for provenance research are working in the Zentralarchiv (Central Archive): three colleagues for collections of art history; four colleagues for ethnological collections and cultural goods from Colonial Contexts; and one colleague for archaeological objects. Lawyers in the Stiftung Preußischer Kulturbesitz (Prussian Cultural Heritage Foundation) carry out the legal evaluation of the cases.

In cases of “Nazi-looted art” the *Provenance Research Manual to Identify Cultural Property Seized Due to Persecution during the National Socialist Era*⁸ serves as a practice-oriented toolbox for employees of museums, libraries, and archives; for the art and antiquarian book trade; and for private collections. If institutions have any doubts about the provenance of cultural assets in their holdings – whether paintings, sculptures, books, coins, porcelain, graphics, or silverware – they will find the necessary tools in the guide: practical tips, case studies, as well as all important addresses, sources, and Internet access. The guide is a joint project developed with the Arbeitskreis Provenienzforschung e. V. (Provenance Research Association); Arbeitskreis Provenienzforschung und Restitution – Bibliotheken (Provenance Research and Restitution Association of Libraries); the Deutscher Museumsbund e. V. (German Museums Association) representing the interests of museums; and its counterpart, the Deutsche Bibliotheksverband e. V. (German Library Association); and ICOM Germany e. V. (the German chapter of the International Council of Museums). The authors of the volume have played a decisive role in the scientific, methodological, and practical developments in the field in recent years and contribute their profound practical experience.⁹

Museums Combatting Illicit Trade

The policy of the Staatliche Museen zu Berlin

Museums are important actors in the national and international transfer of cultural objects. Usually they acquire or receive cultural objects. This results from the main aim of museums, i.e. to collect cultural objects. See for example the *ICOM Code of Ethics for Museums*: “Museums have the duty to acquire, preserve and promote their collections as a contribution to safeguarding the natural, cultural

⁸ German Lost Art Foundation et al., *Provenance Research Manual to Identify Cultural Property Seized Due to Persecution during the National Socialist Era*, November 2019, <https://kulturgutverluste.de/sites/default/files/2023-06/Manual.pdf> [accessed: 15.09.2023].

⁹ See also J. Milosch, N. Pearce (eds.), *Collecting and Provenance: A Multidisciplinary Approach*, Smithsonian Provenance Research Initiative, Smithsonian Institution, Washington, DC and the University of Glasgow, New York-London 2019.

and scientific heritage. Their collections are a significant public inheritance, have a special position in law and are protected by international legislation”.¹⁰

The Staatliche Museen zu Berlin incorporates 17 museums and four research institutes which were established in the 19th century. Since 1957 they function as one institution as part of the Stiftung Preußischer Kulturbesitz, a public foundation responsible to the German government and shaped by Germany’s federal structure. It is a foundation with legal capacity under public law with its registered office in Berlin,¹¹ and can conclude legal transactions.¹² The Staatliche Museen zu Berlin are among the museums with the largest and most varied collections worldwide, incorporating archaeological, ethnological, art historical objects, archives, and libraries. The creation of its collections was spurred by the possessions gathered by the Brandenburg and later Prussian rulers. The collections expanded in the 19th century through numerous excavations in many different countries, the acquisition of collections from private and public individuals, and through purchases.

The destruction of cultural property during the Second World War and relocations of objects led to high losses for all museums. The division of Germany also divided the collections of the Staatliche Museen zu Berlin. They continued as two museums in East and West Berlin respectively until 1990. In principle, there was a great interest after the Second World War in compensating for the losses in the collections through new acquisitions. Today, all the collections of the 17 museums comprise 5 million cultural objects, including 1 million objects of non-European ethnology. The focus of the acquisition policy at the Staatliche Museen zu Berlin today is on the purchase of contemporary works.

Even though Germany introduced the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹³ only in 2016 by the Cultural Property Protection Act,¹⁴ this international law impacted on all cultural institutions from the beginning.

Museums – above all those governed by public law like the Staatliche Museen zu Berlin – reacted earlier, because they were directly confronted with the impact of illicit trade. They began to concern themselves with provenances and

¹⁰ ICOM Code of Ethics..., p. 8.

¹¹ Gesetz zur Errichtung einer Stiftung „Preußischer Kulturbesitz“ und zur Übertragung von Vermögenswerten des ehemaligen Landes Preußen auf die Stiftung [Law to Establish a Foundation of “Prussian Cultural Heritage” and to Transfer Assets of the Former State of Prussia to the Foundation], 25 July 1957, Bundesgesetzblatt 1957 Part I p. 841.

¹² J. Ellenberger in: Ch. Grüneberg et al. (eds.), *Bürgerliches Gesetzbuch*, C.H. Beck, München 2022, Sections 15-20, Title 2 *Legal persons*, introduction before para. 21 nos. 1-5.

¹³ 14 November 1970, 823 UNTS 231.

¹⁴ See footnote 7.

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the prevention of illicit trade for all acquisitions of archaeological objects already in the 1970s, shortly after the 1970 UNESCO Convention was issued. In 1976 the Staatliche Museen zu Berlin made a self-commitment not to buy objects if there is any doubt about the legal provenance or the legal import of the object.

At the Washington Conference on Holocaust-Era Assets on 3 December 1998, Germany declared its readiness to “look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow, and if necessary take all the necessary steps in order to find an equitable and fair solution”.¹⁵ This declaration enables public museums like the Staatlichen Museen zu Berlin to return cultural property that can be identified as having been seized as a result of Nazi persecution and can be attributed to specific aggrieved parties or to the legitimate former owners or their heirs after individual examination.¹⁶

On 25 May 2003 the participants of the conference “‘Illegal Archaeology?’ – International Conference on Future Problems concerning the Illicit Traffic of Antiquities” – issued the Berlin Resolution¹⁷ in response to the pillages taking place in Iraq at that time.¹⁸

In taking responsibility for their mission, museums are obliged to research their collections and to examine and publish the provenance of their objects, including with regard to the legal circumstances at the time of their acquisition in the past. Systematic provenance research of museum collections was established 20 years ago and is supported by the Deutsches Zentrum Kulturgutverluste (German Lost Art Foundation).¹⁹ Large museums such as the Staatliche Museen zu Berlin have their own provenance researchers, who are primarily charged with the provenance investigation of historical collections.

German law regulations

Acquisitions are governed by the German Civil Code (BGB).²⁰ German civil law distinguishes between the law of obligations and property law in the case of an acquisition. An obligation means that one party undertakes to perform a ser-

¹⁵ *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*, December 1999, English translation cited after: German Lost Art Foundation, *Nazi-Looted Cultural Property...*

¹⁶ See also J. Gramlich, C. Thielecke, *Provenance Research as a Voluntary Obligation*, in: German Lost Art Foundation et al., *Provenance Research Manual...*, pp. 13-22.

¹⁷ https://www.smb.museum/fileadmin/website/Institute/Rathgen-Forschungslabor/Dokumente/BerlinerResolution2003_en.pdf [accessed: 15.09.2023].

¹⁸ D. Kathmann, C. Thielecke, *Alles eine Frage der Herkunft: Die Erwerbungspraxis der Sammlungen der Stiftung Preußischer Kulturbesitz mit dem besonderen Blick auf archäologische Objekte*, “KUR – Kunst und Recht” 2016, Vol. 18(2), pp. 40-42.

¹⁹ German Lost Art Foundation, *Nazi-Looted Cultural Property...*

²⁰ *Bürgerliches Gesetzbuch (BGB)* [German Civil Code], English translation: https://www.gesetze-im-internet.de/englisch_bgb/ [accessed: 15.09.2023].

vice for another party,²¹ e.g. by means of a contract. Thus with the conclusion of a sales contract an obligation is legally created, which obligates the seller to make the property transfer and the acquirer to make the purchase price payment. If, for example, the seller (i.e. vendor) cannot transfer ownership of an item because he is not the owner, he is liable for non-performance. The debtor of a legal obligation is liable for intent and negligence according to Section 276 BGB. If, for example, the seller has disregarded the required care when checking the ownership, he acts negligently and is liable for possible damage to the acquirer (e.g. damages).

The *in rem* transfer of the property takes place only with the delivery transaction in accordance with Section 929 BGB:²²

Agreement and delivery

The transfer of the ownership of a movable thing requires the owner to deliver the thing to the acquirer and both to agree that ownership is to pass. If the acquirer is in possession of the thing, then agreement on the transfer of the ownership suffices.

If the vendor is not the owner the acquirer can become owner if he acts in good faith in accordance with Section 932 BGB:

Good faith acquisition from a person not entitled

- (1) As a result of an alienation carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the alienor, unless the acquirer is not in good faith at the time when under these provisions they would acquire ownership. In the case governed by section 929 sentence 2 however, this applies only if the acquirer had obtained possession from the alienor.
- (2) The acquirer is not in good faith if the acquirer is aware, or is unaware as a result of gross negligence, that the thing does not belong to the alienor.

This means the first duty *for the acquirer* is to check if the alienor – this can be the seller, the donor, or the heir – is the owner of the object.

According to Section 935 BGB the acquisition of lost property is restricted even in the case of good faith of the acquirer:

No good faith acquisition of lost things

- (1) The acquisition of ownership under sections 932 to 934 does not occur if the thing was stolen from the owner, is missing or has been lost in any other way. The same applies where the owner was only the indirect possessor, if the possessor had lost the thing.
- (2) These provisions do not apply to money or bearer instruments or to things that are alienated by way of public auction or in an auction pursuant to section 979 (1a).

²¹ Ch. Grüneberg in: Ch. Grüneberg et al. (eds.), *Bürgerliches Gesetzbuch...*, Division 8. *Particular types of obligations*, review before Section 433(1).

²² S. Herrler in: Ch. Grüneberg et al. (eds.), *Bürgerliches Gesetzbuch...*, Title 3. *Acquisition and loss of ownership of movable things*, Subtitle 1. *Transfer*, preliminary notes to Section 929.

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This regulation, together with the main regulation in Section 40 of the Cultural Property Protection Act (KGSG), regulates the ban on placing cultural objects on the market if they are lost, that means to transfer them.

Ban on the placing on the market

- (1) It shall be prohibited to place cultural property on the market that has been lost, unlawfully excavated or unlawfully imported.
- (2) Executory contracts and transfer agreements prohibited pursuant to subsection 1 shall be invalid.

Consequently, the obligation and the delivery transaction are void.²³ The KGSG finally also gives important definitions:

‘cultural property’ shall mean any movable object or aggregates of things of artistic, historical or archaeological value or from other areas of cultural heritage, in particular of paleontological, ethnographic, numismatic or scientific value.²⁴

‘placing on the market’ of cultural property shall mean offering, selling, brokering, distributing, marketing, passing or transferring free of charge for commercial exploitation or otherwise commercially exploiting cultural property on one’s own behalf or on behalf of another.²⁵

In spite of the regulations in Section 935 BGB and Section 40 KGSG, German civil law provides the possibility of acquisition even of a stolen object by acquisitive prescription in Section 937 BGB. If a person has a movable object in his proprietary possession for 10 years he acquires the ownership (acquisition by prescription). Acquisition by prescription is excluded if the acquirer on acquiring the proprietary possession is not acting in good faith or if he later discovers that he is not entitled to the ownership. Some scholars argue that the provision of Section 40(2) must also apply to acquisitions by prescription.²⁶

German law provides that claims arising from legal relationships are subject to a limitation period of either 3, 10, or 30 years. In accordance with Section 199(1) BGB, the regular limitation period of 3 years under Section 195 BGB does not begin until the creditor has become aware or should have become aware without gross negligence of the circumstances giving rise to his claim or of the person of the debtor. Claims for restitution of property and rights *in rem* shall

²³ L. Elmenhorst, H. Wiese, *Kulturgutschutzgesetz Kommentar*, C.H. Beck, München 2018, Section 40(1).

²⁴ Section 2(1)(10) KGSG.

²⁵ Section 2(1)(9) KGSG.

²⁶ Hamio Schack argues in favour of acquisition by acquisitive prescription, see H. Schack, *Zivilrechtliche Auswirkungen des KGSG: Importverbote und Transparenzpflichten*, in: U. Saß, M. Weller, Ch. Zuschlag (eds.), *Schriftenreihe der Forschungsstelle Provenienzforschung, Kunst- und Kulturgutschutzrecht*, De Gruyter, Berlin–Boston 2022, p. 71.

become time-barred after 30 years in accordance with Section 197(1)(2) BGB. Crimes committed during the National Socialist era are not subject to the statute of limitations, which is why some scholars claim that restitution claims of victims of National Socialist injustice or their heirs arising from civil law should also not be subject to the statute of limitations. The Joint Declaration of 1999²⁷ created a basis for public institutions to return objects to victims and heirs of Nazi injustice, even though their claims for restitution are time-barred under civil law.

For cultural property, the Cultural Property Protection Act provides a special regulation for the statute of limitations in Section 55(1). According to this provision, claims for the return of cultural property are not subject to the statute of limitations if the object

1. belongs to public collections pursuant to Article 2 no. 8 of Directive 2014/60/EU; or
2. is listed in inventories of ecclesiastical or other religious institutions in the member states where it is subject to special protection arrangements under national law.

The claims pursuant to the first sentence shall expire 75 years after they arose. A claim shall not expire pursuant to the second sentence if the requesting member state lays down national provisions stipulating that such claims for return shall not expire.

Except for these listed cultural objects, Paragraph 2 foresees a limitation period of 30 years for claims for return, irrespective of knowledge; and 30 years after the unlawful removal of the cultural property from the sovereign territory of the requesting member state or state party. And in Paragraph 3 it provides that all other claims for the return of cultural property referred to in this Part shall expire after 3 years.

International regulations

There are no museums guidelines law for German museums. The Staatliche Museen zu Berlin for example have had a Statute²⁸ since their foundation in 1830, which regulates the construction, competences of the museum personnel, and processes of decision for all museums and institutes. For acquisitions it stipulates who must be involved, for example the curator and director. It considers only facts of quality but not the facts of legality.

²⁷ See footnote 15.

²⁸ *Statut für die Staatlichen Museen zu Berlin Preußischer Kulturbesitz*, 11 December 2000, https://www.smb.museum/fileadmin/website/SMB_allgemein/SMB_Statut.pdf [accessed: 15.09.2023].

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As a member of the International Council of Museums (ICOM), the Staatliche Museen zu Berlin abide by its *Code of Ethics*, especially Section 2.3:

Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from, its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.²⁹

This means that provenance research plays an important role when acquiring objects.

The Deutscher Museumsbund (German Museums Association) refers, insofar as regards acquisitions by museums, to the *ICOM Code of Ethics*, which contains very specific information about which concrete factors are to be examined in detail.³⁰ In addition to a "Valid Title" (2.2) and "Provenance and Due Diligence" (2.3), the specifics of the objects and their circumstances are discussed, such as "Objects and Specimens from Unauthorised or Unscientific Fieldwork" (2.4); "Culturally Sensitive Material" (2.5); "Protected Biological or Geological Specimens" (2.6); or even "Living Collections" (2.7); and "Working Collections" (2.8). The *Code of Ethics* provides a regulation that in exceptional cases and after careful examination, museums can also acquire objects outside their collections policy (2.9):

The acquisition of objects or specimens outside the museum's stated policy should only be made in exceptional circumstances. The governing body should consider the professional opinions available to it and the views of all interested parties. Consideration will include the significance of the object or specimen, including its context in the cultural or natural heritage, and the special interests of other museums collecting such material. However, even in these circumstances, objects without a valid title should not be acquired (see also 3.4).

In addition, for Archaeological Museums the regulation of repository of Last Resort (2.11) is also important. This means that the museum acts as "an authorised repository for unprovenanced, illicitly collected or recovered specimens or objects from the territory over which it has lawful responsibility".

The German state refers above all to European and international law with respect to preventing illicit trade. In their acquisition policies, the Staatliche Museen zu Berlin follow the *Standards on Accessioning of the International Council of Museums* developed by the ICOM Ethics Committee and approved by the Executive Board in December 2020.³¹

²⁹ *ICOM Code of Ethics...*, Section 2.3.

³⁰ *Ibidem*, Sections 2.2-2.11.

³¹ https://icom.museum/wp-content/uploads/2022/03/Accessioning-Standards_EN.pdf [accessed: 15.09.2023].

In addition to the international treaties (the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954³² and 1999,³³ the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;³⁴ the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;³⁵ and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage³⁶), they also follow the 1998 Washington Principles.³⁷ And for the restitution of objects expropriated during the Soviet occupation in the former German Democratic Republic (GDR), the 1994 Law on Compensation in Accordance with the Law on the Settlement of Open Property Issues and on State Compensation for Expropriations on the Basis of Occupation Law or Occupation Sovereignty³⁸ is followed.

Provenance investigation form for acquisitions

Since 2016, the Staatliche Museen zu Berlin apply their internal acquisition guidelines, which require that provenance be clarified before any acquisition of an object. The first step is the delivery of a definition of acquisition – most usual are purchase, donation, legacy, and even long-term loans – and the establishment of obligatory regulations for every kind of acquisition.

If the provenance of an object is unclear, the Zentralarchiv and its team offer a “first check” to verify provenance prior to an acquisition. Provenance researchers then first check the relevant online databases for art trade, Nazi-looted art, Art Loss Register, etc., and of course the relevant research literature on the artist and the work itself. Another important step is the evaluation of information on the artwork itself, on the frame, and on other documents for donation, etc. (for a detailed description of the “first check” see the Göpel case below).

It is not always possible to obtain reliable provenance results within the short timeframe in which a “first check” is performed. It is therefore important to know how to deal with the results and existing gaps in provenance. In the context of searching for cultural property confiscated due to persecution during

³² 14 May 1954, 249 UNTS 240.

³³ 26 March 1999, 2253 UNTS 172.

³⁴ 14 November 1970, 823 UNTS 231.

³⁵ 24 June 1995, 2421 UNTS 457.

³⁶ 2 November 2001, 2562 UNTS 45964.

³⁷ See footnote 3.

³⁸ *Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen und über staatliche Ausgleichsleistungen für Enteignungen auf besatzungsrechtlicher oder besatzungshoheitlicher Grundlage (Entschädigungs- und Ausgleichsleistungsgesetz – EALG)*, 27 September 1994, Bundesgesetzblatt 1994 Part I p. 2624; 1995 Part I p. 110, as amended.

the National Socialist regime, the provenance investigation of an object is considered complete when it can be established whether or not the item was indeed confiscated based on National Socialist persecution. This result does not necessarily require an unbroken chain of provenance. Either clearance or firm suspicion can often be deduced from the context of known former owners. Gaps in a provenance chain tend to be the rule rather than the exception, and must be accepted when there are no further leads for successful research. The required research effort and chances of success should always be weighed against one another. Transparent documentation of gaps in a provenance chain requires three essential steps: (i) the gaps must be clearly marked and described; (ii) it should be cited in an appropriate document (e.g. research report, recording system) what the respective provenance information is based on (provenance markings, sources used, possibly other sources not accessible at the time of reporting); and (iii) the provenance gaps must be assessed with regard to any need for further action. The differentiation between critical and non-critical gaps should be guided by an assessment whether persecution-related confiscation seems possible within the timeframe of the existing gap. Critical provenance gaps are primarily missing information over long periods of time (several decades, as for instance between 1925 and 1955), or identification in a Jewish private collection before 1933 with a subsequent provenance gap until after 1945. Non-critical gaps are those where the transfer of ownership does not seem suspect. For example, when an object was bought from the family of an artist and there is no evidence that the sellers were persecuted, a provenance gap prior to that purchase is considered non-critical.³⁹

Insofar as regards the acquisition practice of the Staatliche Museen zu Berlin, this means that even if there are gaps in provenance, objects can be acquired (see the Göpel case below). The decisive factor is the evaluation of the gaps made by the provenance researcher. The close cooperation of the museums with the provenance researchers in the Zentralarchiv are therefore an important factor in a successful acquisition policy.

In the Staatliche Museen zu Berlin each process of acquisition begins with a provenance investigation form, which also serves as documentation in the museum object database.

Preliminary note

For their collections, the institutions of the Stiftung Preußischer Kulturbesitz (Prussian Cultural Heritage Foundation) exclusively acquire objects whose provenance has been checked. The careful investigation into the provenance of objects

³⁹ A. Baresel-Brand, M. Scheibe, P. Winter, *Results of Provenance Research*, in: German Lost Art Foundation et al., *Provenance Research Manual*..., pp. 77-78.

serves to forestall the acquisition of objects that have been unlawfully taken from their former owners, or whose transfer to Germany violates national and international law. Only after careful provenance investigation do those responsible for the collections decide to acquire objects. It is not necessary to clarify all details of the provenance of the objects. However, it must be ensured that enough information is available to exclude specific critical unlawful circumstances. The results of the investigation need to be documented.

How to use this form

The provenance of the object must be carefully investigated prior to any purchase. All results are to be entered into the form. Acquisition is defined as any type of acquisition of property (purchase, gift, exchange, bequest). The form must be filled out even if acquisition for a given collection is by third parties (e.g. friends' association of the respective institution, Kulturstiftung der Länder [Cultural Foundation of the German Federal States]). ONE form is sufficient even if several objects at a time are acquired from an alienator. Please attach a list of objects in such cases. Filling out separate forms for objects from such lots is only necessary if there are indications that the provenance of specific individual objects needs to be checked.

It is not necessary to fill out the form: if the object has been acquired from the person who made it, either directly or through an intermediary (e.g. a gallery); if the object was NEW when acquired.

Provenance investigation form

Type of acquisition [please specify: purchase, gift, exchange, bequest]

Object: [specification of the object (artist/maker, term for object; if applicable: title, geographical reference), dating, manufacturing technique used, or reference to list of objects]

Ident. No.: [will be entered after the object has been acquired]

Collection: [collection for which the object is to be acquired]

Alienator: [name of the seller, donator, etc.]

Value:

A.

The object/objects is/are mass-produced objects produced in series or several editions, such as books, other printed works, or utility articles. To exclude problematic provenance, the objects have been carefully examined for features that may indicate such provenance (ex libris, inventory numbers or signatures, etc.), and it has been made sure that other circumstances do not suggest problematic provenance, either.

Yes

No

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B. The following questions must only be answered if NO has been checked under A:

1.	Provenance with regard to the time from 1933 until 1945 is known, and it can be safely excluded that the object is a loss of property caused by Nazi persecution. This becomes evident from the following facts: <input type="checkbox"/> The object/objects dates/date from the time after 1945. <input type="checkbox"/> The object/objects dates/date from the time prior to 1945. Provenance with regard to 1933-1945 is as follows:
2.	It can be safely excluded that the object/objects was/were illegally exported from a foreign country AFTER 1970. This becomes evident from the following facts: <input type="checkbox"/> The object/objects was/were made in Germany, and has/have never left Germany. <input type="checkbox"/> Other facts:
3.	It can be safely excluded that the object/objects has/have not been exported in violation of existing antiquities laws, e.g. those in force in Italy or Greece. This becomes evident from the following facts: <input type="checkbox"/> Antiquities laws not applicable (e.g. in the case of books). <input type="checkbox"/> Other facts:
4.	It can be safely excluded that the object/objects was/were taken from its/their owner under unfair circumstances in the period between 1945 and 1989 on the territory of the GDR. This becomes evident from the following facts: <input type="checkbox"/> The object/objects was/were not on GDR territory between 1945 and 1989. <input type="checkbox"/> Other facts:
5.	It can be safely excluded that the object/objects was/were formerly kept in the collection of another public cultural institution, either domestic or foreign, and was/were stolen from there. This becomes evident from the following facts:

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Case Study: The Erhard Göpel Art Collection

In the case of Erhard Göpel, who worked for the “Sonderauftrag Linz”, the examination of the provenance of the works seems particularly important. The crucial questions concerning the Beckmann stock discussed here are: Where did Göpel acquire the artworks and who were the previous owners?



Fig. 2: Max Beckmann, *The Battle of the Amazons*, 1911, KdZ 31455,
Kupferstichkabinett – Staatliche Museen zu Berlin

Max Beckmann, *Amazonenschlacht*, 1911

© Staatliche Museen zu Berlin, Kupferstichkabinett, Schenkung Barbara und Erhard Göpel /
Foto: Dietmar Katz



Fig. 3: Back side of KdZ 31455 with labels.

The donation of a total of 100 works by Max Beckmann posed major challenges for provenance research in Zentralarchiv, because we make the claim that our museums exclusively acquire objects whose provenance has been checked.

Before accepting the donation, all works were therefore checked for their provenance; the so-called “first check”. The “first check” includes several steps of investigation, for instance: (i) search for the works of art in relevant online databases for art trade, Nazi-looted art, finds and search reports, Art Loss Register; (ii) research in relevant research literature on the artist and the work; (iii) evaluation of information on the artwork itself, on the frame, and on other documents for donation, etc.; (iv) a particular challenge is always the research on multiple works such as prints (occasionally you find some clues on the back side and can follow these tracks).

As a result, this multi-stage first check did not reveal any suspicions of cultural assets that were looted or acquired through Nazi persecution, in particular Jewish property. Because the first check had to be done in a very short time, and usually provenance research takes a lot of time, the Staatliche Museen zu Berlin committed to on-going research into the provenance of these artworks. The following explanations of some results of the research should therefore be understood as a workshop report of an ongoing investigation.

The more in-depth research after the acceptance of the donation initially focused on the bundle of 46 drawings by Beckmann, which were created between 1900 and 1947 and thus represent a broad spectrum of his creative period. The goal was to bundle information on provenance from catalogues of works, exhibition and auction catalogues, new research, as well as assessments by experts. In parallel, the works in the Kupferstichkabinett (Museum of Prints and Drawings) were viewed and inventoried. In addition to the in-depth evaluation of written and oral information, the recording and assessment of characteristics on the individual object was a central factor of the in-depth research. The works themselves were included in the investigation as an important source. In this step, all 46 works were viewed, photographed, and inscriptions, stamps, or stickers on the leaves themselves, the backs, or the passe-partout were documented.

Provenance research on drawings poses particular difficulties. The reason for this lies in the object genre itself, which comes across as quieter and more modest than painting. In terms of provenance and ownership history, this is reflected concretely in the scholarly output (e.g. in the incompleteness of catalogues of works), the lack of knowledge about individual works (e.g. through sale via convolutes), and the lower market value and thus potentially lower popularity (e.g. no illustrations in auction catalogues, fewer documented exhibitions). Not infrequently, drawings were owned by people who did not necessarily perceive themselves as classical collectors and about whose biography little is known. In addition, as the Göpel collection also shows, drawings often preceded later works as studies, and



Fig. 4: Max Beckmann, *Head Study for Portrait of Erhard Göpel*, 1944, KdZ 31486, Kupferstichkabinett – Staatliche Museen zu Berlin
Max Beckmann, *Kopfstudie zum Bildnis Erhard Göpel*, 1944
© Staatliche Museen zu Berlin, Kupferstichkabinett, Schenkung Barbara und Erhard Göpel / Foto: Dietmar Katz

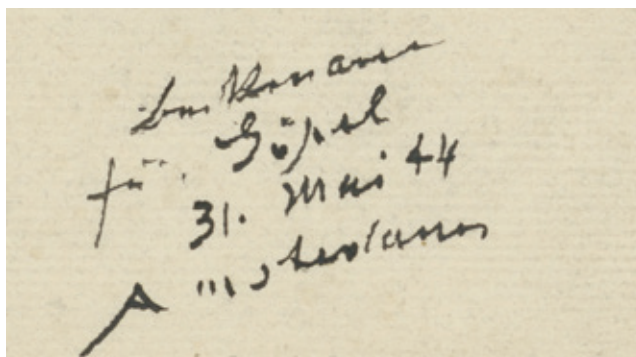


Fig. 5: Dedication from Max Beckmann to Erhard Göpel on KdZ 31486 (detail of Fig. 4)

it is not clear in every case how many variants the artist created. Finally, in general the sheer mass of drawings and their imprecise titling often make it difficult to identify individual sheets.

Thankfully, acquisition groups crystallized during the investigation. At least 17 of the 46 drawings now in the Kupferstichkabinett were acquired by Göpel directly from the artist's studio in Amsterdam during the Second World War. The provenance of these 17 sheets can be regarded as unproblematic, because acquisitions by Göpel from Beckmann in Amsterdam were frequent, so there was no further provenance step between the artist and Göpel. Göpel himself also noted this information on the works and small sketches. He seems to have made these annotations at a later date, because their wording is almost always the same: "Acquired from MB +/- 1943, Atelier A'dam".

At least 23 works, including both paintings and 21 drawings, were acquired by Göpel directly in the artist's studio in Amsterdam during the Second World War or received as gifts from the couple Max and Quappi Beckmann. Göpel purchased the painting directly from Hans Purrmann in 1955.

Five drawings each came from the collections of Walter J. Carl from Frankfurt and from the collection of Baron Rudolf von Simolin. After 1946, Göpel acquired the drawings with the provenance of Carl mainly at the Ketterer Art Cabinet in Stuttgart, whereas he purchased the works that once belonged to Simolin at the Kornfeld auction house in Bern. Since both Carl and Simolin were friends of Beckmann, it is reasonable to assume that both acquired their drawings directly from him or received them as gifts.

In the case of 15 drawings, no clear previous owners have been identified to date, and the investigations are ongoing. Provenance research on prints is generally difficult, as the works were reproduced in several editions and often little is known about individual sheets.

Final Remarks

Provenance research on prints in the donated holdings, the so-called multiples, which exist in several variants, is similarly tricky. Without exact knowledge of the number of editions and precise title information, it is already difficult to begin research on individual works of this genre. Criteria for distinguishing individual items from other variants and states could be, in addition to individual markings on the prints themselves, their paper quality. Among the 52 prints from the bequest of Barbara Göpel are many special and proof prints, which differ from the regular copies, for example by the use of Japanese paper or coloured handmade paper. Some of the prints Beckmann added later with a pencil, such as an early, rare self-portrait from 1904 executed as an etching.

But why did the museums accept this donation – with gaps in the provenances of the objects? Provenance research always has to deal with gaps.

It's important to ask the right questions concerning the object, and to evaluate the results of the research. The outcome of historical research depends largely on the questions that the historian asks; or does not ask. In the case of the biography of Erhard Göpel, many questions were not asked for a long time in view of his undisputed merits insofar as concerns research on classical modernism and especially on Max Beckmann. The extensive donation of works of art from the Göpel family created an obligation on the part of the Staatliche Museen zu Berlin to continue to deal with Göpel's biography in a differentiated manner. The Museum decided to accept the donation also in order to advance the critical examination of the biography of the collector and art historian Erhard Göpel.

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