

# An Introduction to the Washington Conference Principles on Nazi-Confiscated Art

Felix Uhlmann

Day 1

Miami, January 22, 2024

**MIAMILAW**  
UNIVERSITY OF MIAMI SCHOOL OF LAW



**University of  
Zurich<sup>UZH</sup>**

# Introduction

## The New York Times



### ***A Nazi Legacy Haunts a Museum's New Galleries***

The Kunsthaus Zurich built an extension to display masterpieces from a private Swiss collection. But critics say the works are tainted by the source of their owner's wealth. [...]

An airy atrium leads to a newly installed garden, and marble staircases take visitors to spacious galleries bathed in filtered daylight. On the second floor, they can admire masterpieces by Monet, Cézanne, Gauguin, van Gogh and Degas.

These works once belonged to Emil Georg Bührle, a Swiss industrialist who died in 1956 but whose dark legacy haunted the opening of the new \$220-million extension. Although it has long been known that Bührle made his fortune by selling arms to Nazi Germany, and that he bought art that was looted by the regime, new revelations keep emerging. (NYT Oct. 11, 2021)

# Introduction

## **COURSE DESCRIPTION**

The Washington Principles, yet soft law, have an enormous effect on the work of museums and collections that possess works of art that changed hands between 1933 and 1945. The course "*An Introduction to the Washington Conference Principles on Nazi-Confiscated Art*" will analyze the basic ideas of this document and its legal and ethical implications. It will look at the practices of courts and restitution committees in their search for just and fair solutions.

## **LEARNING OUTCOMES**

In this course, students will be introduced to the Washington Conference Principles on Nazi-Confiscated Art which play a major role for provenance research in public and private art collections. Students will understand the basic ideas of these principles, both in substance and procedure. The course will confront students with the crossroads of law and ethics in an important practical field. Students are invited to think beyond the relatively narrow scope of the Washington Principles and discuss the reparation of other historical injustices through the lens of these principles.

# Introduction

## **An Introduction to the Washington Conference Principles on Nazi-Confiscated Art**

**COURSE SYLLABUS**  
**Prof. Felix Uhlmann**  
**LAW965 A**  
**Spring 2024**  
**1 Credit**  
**Room [F209]**

Prof. Dr. Felix Uhlmann, LL.M. (Harvard), is a full professor of constitutional and administrative law as well as legislative theory at the University of Zurich, Switzerland. He regularly publishes on artistic freedom and cultural promotion. He was a board member of the Swiss Arts Council and is now president of the board of trustees for the Kunstmuseum Basel, dealing with restitution cases of Nazi-confiscated art. Most recently, he presided the round table to find experts to evaluate the provenance research of the Bührle Collection in the Kunsthaus Zurich and is a part of an international group of experts to advise the German government to reform the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property.

See for further information (mostly in German):

<https://www.ius.uzh.ch/de/staff/professorships/alphabetical/uhlmann/KKR.html>

### **CONTACT INFORMATION**

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# Introduction

## COURSE SCHEDULE

<p><b>Session 1</b></p> <p><b>Monday, Jan. 22, 2024</b> 12:30-1:50pm (80 minutes)</p>	<p><b>Legal Hurdles to the Restitution of Nazi-Confiscated Art</b></p> <p>Description: The restitution of Nazi-confiscated art is confronted with many legal obstacles. To dismiss a case on the grounds that the limitation period has expired, is the most obvious but other defenses as good faith may also effectively bar legal action. Additionally, practical difficulties may pose substantial hurdles.</p> <p>Reading:</p> <ul style="list-style-type: none"><li>- <i>Grosz v. Museum of Modern Art</i>, 772 F. Supp. 2d 472 (S.D.N.Y. 2010); 403 Fed. Appx. 575 (2d Cir. 2010)</li><li>- Washington Conference Principles on Nazi-Confiscated Art, Released in connection with the Washington Conference on Holocaust-Era Assets, Washington D.C. (December 3, 1998). (<a href="https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/">https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/</a>)</li><li>- Terezin Declaration on Holocaust Era Assets and Related Issues, Terezin (June 30, 2009). (<a href="https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/">https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/</a>)</li></ul>
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# Introduction

<p><b>Session 2</b></p> <p><b>Tuesday, Jan. 23, 2024</b> 12:30-1:50pm (80 minutes)</p>	<p><b>The Washington Principles on the Crossroad of Law and Ethics</b></p> <p>Description: The Washington Principles declare themselves as non-binding. Still, they may play a role in legal proceedings and if they are applied independently from a legal order before a committee, attention must be given to the questions if and to what extent the principles should be translated into a legal rationale. The Washington Principles are often supplemented to various degrees by national legislation.</p> <p>Reading:</p> <ul style="list-style-type: none"><li>- Washington Conference Principles on Nazi-Confiscated Art, Released in connection with the Washington Conference on Holocaust-Era Assets, Washington D.C. (December 3, 1998).</li><li>- Terezin Declaration on Holocaust Era Assets and Related Issues, Terezin (June 30, 2009).</li><li>- Austrian Statutory Regulation concerning the Art Restitution Law as amended on 25 January 2011 (Federal Law on the Restitution of Works of Art and Other Movable Cultural Assets from Austrian Federal Museums and Collections and Other Federal Property (Art Restitution Law – KRG) (NR: GP XX RV 1390 AB 1464 S. 146. BR: AB 5802 p. 646.) StF: BGBl. I Nr. 181/1998)</li></ul>
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# Introduction

## Session 3

**Wednesday,  
Jan. 24, 2024**  
12:30-1:50pm  
(80 minutes)

## **The Core of the Washington Principles – A Just and Fair Solution**

Description: At the core of the Washington Principles lies the idea of finding a just and fair solution. The principles give little instruction how this idea should be approached and which elements should be taken into consideration. It seems natural to start from the injustice of confiscation but other factors may – or may not – play a role such as good faith and interest of the institution, monetary interest of the claimant, relationship of the heirs to the previous owner etc.

### Reading:

- Report of the Spoliation Advisory Panel in respect of eight drawings now in the possession of the Samuel Courtauld Trust (HC 757), 24 June 2009
- Decision of the Kunstkommission Basel in the Matter of Curt Glaser of 21 November 2018



# Introduction

## Session 4

**Thursday,  
Jan. 25, 2024**  
12:30-1:50pm  
(80 minutes)

## Procedure and Institutions

Description: Different countries have opted for different solutions as far as procedure and institutions are concerned. The Washington Principles contain some basic procedural safeguards and guidelines. In combination with concepts of natural justice, these sources form an amalgam for a fair and effective procedure.

### Reading:

- NL Restitutions Committee, Recommendation regarding Herman Hamburger (RC 1.193), 18 September 2023
- Recommendation of the German Advisory Commission in the case of the Heirs of Kurt and Else Grawi v. Landeshauptstadt Düsseldorf, 18 March 2021
- CIVS, Recommendation No. 5446 M-5446 BCM, 12 February 2021



# Introduction

<p><b>Session 5</b></p> <p><b>Friday,</b> <b>Jan. 26, 2024</b> 2-5pm (180 minutes)</p>	<p><b>The Washington Principles: A Blueprint for the Correction of other Injustices?</b></p> <p>Description: The Washington Principles cover the relatively narrow frame of Nazi-Confiscated Art from 1933-1945. Countless other injustices have occurred throughout history such as slavery and racism, imperialism, exploitation of indigenous populations etc. Which concepts of the Washington Principles may be transposed into these settings, which not and why? What additional obstacles may be resolved on the path to just and fair solutions in these settings?</p> <p>Reading: On Benin Bronzes <a href="https://kulturgutverluste.de/en/contexts/colonial-contexts/returns">https://kulturgutverluste.de/en/contexts/colonial-contexts/returns</a> On Parthenon Marbles <a href="https://www.parthenon.newmentor.net/legal.htm">https://www.parthenon.newmentor.net/legal.htm</a></p>
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# Introduction

## **COURSE REQUIREMENTS AND EXAM FORMAT**

In lieu of a final examination, students will prepare a short research paper (5-10 pages) on a restitution committee's decision of their choice (or on a comparable document), discussing one (or more) research question(s) under the Washington Principles. Cases to choose from include:

*<https://www.gov.uk/government/groups/spoliation-advisory-panel>*

*<https://www.restitutiecommissie.nl/en/>*

*<https://www.civs.gouv.fr/home/>*

*<https://www.beratende-kommission.de/en>*

The proposed case with the research question(s) will be presented by the students on the last day in class (3-5 minutes). The research paper is due four weeks after completion of the course.

Class participation and attendance will affect students' final grade.

## **GRADING**

All students will be graded with a final letter grade as follows:

Research paper: 60%

Presentation of the proposed case and the research question(s) on the last day in class: 10%

Class participation and attendance: 30%

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<p><b>Session 6</b></p> <p><b>Saturday, Jan. 27, 2024</b> 10am-1pm (180 minutes)</p>	<p><b>Students Proposals</b></p> <p>Description: Students propose the content of their research paper on a restitution committee's decision of their choice (or on a comparable document), discussing one (or more) research question(s) under the Washington Principles. Cases to choose from include:</p> <p><i><a href="https://www.gov.uk/government/groups/spoliation-advisory-panel">https://www.gov.uk/government/groups/spoliation-advisory-panel</a></i> <i><a href="https://www.restitutiecommissie.nl/en/">https://www.restitutiecommissie.nl/en/</a></i> <i><a href="https://www.civs.gouv.fr/home/">https://www.civs.gouv.fr/home/</a></i> <i><a href="https://www.beratende-kommission.de/en">https://www.beratende-kommission.de/en</a></i></p> <p>Each student's presentation lasts 3-5 minutes, followed by questions and comments of classmates and course instructor. Time permitting, a free discussion on all questions of the Washington principles will follow.</p>
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# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 1. Grosz v. MoMa



# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 1. Grosz v. MoMa

No. 10-257  
United States Court of Appeals, Second Circuit

### **Grosz v. Museum of Modern Art**

403 F. App'x 575 (2d Cir. 2010)  
Decided Dec 16, 2010

The record indicates no fraud or misrepresentation on the part of MoMA, nor does it indicate evidence of reasonable reliance by plaintiffs on any alleged misrepresentations by MoMA. We therefore hold that the District Court correctly denied plaintiffs equitable tolling claim.

A simple case?

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

- **1933:** Expressionist artist and Nazi-opponent George **Grosz** was forced to flee **Nazi Germany**, leaving behind two important oil paintings and a watercolor with his Berlin dealer, **Alfred Flechtheim**. The three works included the portrait “**Poet Max Hermann-Neisse**” (1927), “**Self-Portrait With Model**” (1928) and the watercolor “**Republican Automatons**” (1920) (collectively, the Paintings). Flechtheim, who was Jewish, also fled Germany within months of Grosz’s departure.<sup>1</sup>
- **1937:** Flechtheim died and the **Paintings were lost in the course of Nazi persecution.**<sup>2</sup>
- **1940s-50s:** **The Museum of Modern Art (MoMA)** obtained “Poet Max Hermann-Neisse” and “Republican Automatons” by private purchase, and “Self-Portrait With Model” by donation.<sup>3</sup>
- **1953:** Grosz visited the Museum and saw “Poet Max Hermann-Neisse” hanging on its walls. He wrote to his brother-in-law that the MoMA exhibited a painting that had been stolen from him, but died six years later without ever contacting the museum to regain possession.<sup>4</sup>
- **1994:** Grosz’s son, Martin Grosz, and Martin’s sister-in-law, Lilian (hereafter Heirs), retained **Ralph Jentsch**, an art historian and author of the artist’s catalogue raisonné, to trace the artist’s stolen artworks.
- **24 November 2003:** After a decade-long search, Jentsch discovered the Paintings were in the possession of the MoMA and **made a first formal request for the Paintings’ return.**<sup>5</sup> Following receipt of the letter, MoMA engaged researchers from Yale to undertake provenance research with respect to the Paintings, met periodically with the Heirs’ representatives, and engaged in correspondence with Jentsch.<sup>6</sup>
- **20 July 2005:** The Museum’s director, Glenn D. Lowry, wrote to the Heirs’ representative that **evidence challenging the museum’s ownership was unpersuasive** “at this time,” and that the Paintings’ prior transfers had not been forced.<sup>7</sup>



# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 1. Grosz v. MoMa

Under New York State Law, "[a]n innocent purchaser of stolen goods becomes a wrongdoer only after refusing the owner's demand for their return." *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150, 1161 (2d Cir. 1982). This

The legal situation can be much worse ...



# 1. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 2. Good Faith etc.

**Articolo 1153** Codice Civile Effetti dell'acquisto del possesso. Colui al quale sono alienati beni mobili da parte di chi non ne e' proprietario, ne acquista la proprieta' mediante il possesso, purché sia in buona fede al momento della consegna e sussista un titolo idoneo al trasferimento della proprieta'.

(Effects of acquiring possession. Anyone to whom movable property is sold by someone who is not its owner acquires ownership through possession, provided that he or she is in good faith at the time of delivery and there is a suitable title for the transfer of ownership.)

# 1. Legal Hurdles to the Restitution of Nazi-Confiscated Art

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## 2. Good Faith etc.

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# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 2. Good Faith etc.

### **Swiss Civil Code of 10 December 1907**

#### **Art. 728 VII. Adverse possession**

<sup>1</sup> If a person has possessed a chattel belonging to another person uninter-  
ruptedly and without challenge for five years believing in good faith that he  
or she owns it, he or she becomes its owner by adverse possession.

[...]

<sup>1ter</sup> Subject to exceptions prescribed by law, the time limit for adverse pos-  
session in the case of objects of cultural heritage within the meaning of  
Art. 2 para. 1 of the Cultural Property Transfer Act of 20 June 2003 is 30  
years.

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 2. Good Faith etc.

### BRITISH MUSEUM ACT 1963

#### 1963 CHAPTER 24

#### **3 Keeping and inspection of collections**

(4) Objects vested in the Trustees as part of the collections of the Museum shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the Museums and Galleries Act 1992].

#### **5 Disposal of objects**

#### **9 Transfers to other institutions**

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

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## 2. Good Faith etc.

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### **Further Obstacles**

- Compensation of Possessors of Good Faith
- Domain Public and Ban on Deaccessioning
- State Immunities and Return Guarantees
- Practical Problems (Burden of Proof, Costs, Access to Documents, No Heirs etc.)

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 3. Washington Principles

- I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
- II. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
- III. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

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## 3. Washington Principles

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- IV. 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.
  
- V. Every effort should be made to **publicize art** that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.
  
- VI. Efforts should be made to establish a central registry of such information.



# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 3. Washington Principles

- VII. Pre-War owners and their heirs should be encouraged to **come forward** and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
- VIII. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, **or their heirs, can be identified**, steps should be taken expeditiously to achieve a **just and fair solution**, recognizing this may vary according to the facts and circumstances surrounding a **specific case**.

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 3. Washington Principles

- IX. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, **can not be identified**, steps should be taken expeditiously to achieve a just and fair solution.
  
- X. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a **balanced** membership.
  
- XI. Nations are encouraged to develop **national processes to implement** these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

# 1. Legal Hurdles to the Restitution of Nazi-Confiscated Art

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## 3. Washington Principles

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### WASHINGTON CONFERENCE PRINCIPLES ON NAZI-CONFISCATED ART

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

# I. Legal Hurdles to the Restitution of Nazi-Confiscated Art

## 4. Terezin Declaration

**Immovable (Real) Property**

**Judaica and Jewish Cultural Property**

**Education, Remembrance, Research and Memorial Sites**

**The Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution**

### **Nazi-Confiscated and Looted Art**

Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 and as an immediate consequence, and