

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

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Day 3

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MIAMILAW
UNIVERSITY OF MIAMI SCHOOL OF LAW



**University of
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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

Madonna
Edvard Munch (1863–1944)



I. Just and Fair Solution

1. Forced Sale (Motive)

16. On 19 May, the closing day of the second auction, Glaser wrote to Edvard Munch in a letter now in the custody of the Munch Museum in Oslo as follows:

“Since the death of my wife the whole world of my past has gradually crumbled (...) until there was nothing left. It started with something apparently quite trivial, the death of my dog. For me this was a sign from which the rest ensued. I had to give up my apartment, I lost my position. Since I found it pointless to rent a large new home at this point, I have freed myself of all my possessions, so that I might start over again completely new. Your pictures are on loan, hanging at the Kronprinzenpalais [the Nationalgalerie], and they could stay there. Everything that burdened me had to go. Since then I have felt freer, and fortunately, out of all that failure, a new beginning has emerged.

For some time now I have been living with a woman much younger than me but very close to me. I would never have imagined that this could happen and I did nothing to bring it about. But I am not made to be alone and now, when it would be particularly difficult to sustain the blows of fate without the help and love of another, I am doubly happy to have found this woman.”

I. Just and Fair Solution

1. Forced Sale (Motive)



RETURN TO AN ADDRESS OF THE
HONOURABLE THE HOUSE OF COMMONS
DATED WEDNESDAY 24 JUNE 2009 FOR THE

37. On balance we have concluded that Nazi persecution was the predominant motive in this case. However, we do not accept the claimants' submission that this is itself decisive, since, as already noted, our moral assessment must take account of all relevant circumstances.

I. Just and Fair Solution

1. Forced Sale (Motive)

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

Curt Glaser is a victim of National Socialism. He held an exposed position at the time the National Socialists seized power and was the target of the unjust regime. There is no evidence that Curt Glaser was personally in fear for his life and limb at the time of his emigration. From the point of view of the Kunstkommission, however, this is irrelevant, since his decision to emigrate was undoubtedly justified by objective circumstances.

The Kunstkommission also finds the precise point of the decision to sell irrelevant. That Curt Glaser recognized the signs of the times earlier than others should not be a disadvantage. His far-sightedness must not be held against him. Accordingly, this question can be left open. In the assessment of the Kunstkommission, subject to the surfacing of new documents, it is not possible to clarify the exact timing of the decision to sell any further.

I. Just and Fair Solution

1. Forced Sale (Duress)

REPORT OF THE SPOILIATION ADVISORY

18. Shortly after his arrival in Switzerland, Glaser arranged for 14 large crates to be shipped from Berlin to Ronco, as described by Marie in an affidavit dated 22 December 1962, sworn in the German compensation proceedings referred to below, as follows:

“Before leaving Berlin Curt Glaser had stored about 14 boxes with a freight forwarder. These crates contained art objects, silver, valuable porcelain, carpets and other treasures. I know that the contents of these boxes were highly insured. Moreover I know that Curt Glaser had paid the storage and forwarding costs. Of course I can no longer recall the amount. After renting the house in Ronco, my husband had the boxes sent to him. I recall that the crates were very large. I do not remember whether the delivery was paid in Switzerland, or in advance in Germany.”

I. Just and Fair Solution

1. Forced Sale (Duress)

REPORT OF THE SPOILIATION ADVISORY

35. The considerations cited by the Courtauld are in our view significant factors. The letter to Munch clearly demonstrates that Glaser was looking forward to starting a new life and, to that extent, his release from previous responsibilities was not unwelcome, although we must bear in mind that it was written at a moment when his emotions may have clouded his judgement. His removal of valuable possessions after his departure from Germany signifies that he had retained some room for manoeuvre; the same applies to his pension.

I. Just and Fair Solution

1. Forced Sale (Duress)

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

Regarding the circumstances of the auction: At the time of his emigration, Curt Glaser had a comparatively large degree of freedom to sell certain works of art and to keep others. How many works of art Curt Glaser took with him to Switzerland cannot be determined with certainty. Fourteen large crates of goods were reported. At the time of the auction, Curt Glaser was also not subject to the Reich Flight Tax, and until the end of 1933 he drew the salary he had been paid prior to his dismissal. This in no way relativizes his persecution, but the extent of the duress to divest himself under unfavorable conditions is doubtless less in Curt Glaser's case than in others, not least because of Curt Glaser's far-sightedness.

I. Just and Fair Solution

2. Loss

REPORT OF THE SPOILIATION ADVISORY

41. We prefer the contemporaneous and authoritative evidence of Burchard. By “correctly established” we think he meant that the prices accorded with the prevailing market value. Similarly, we regard it as likely that the auctioneers, when fixing the guide prices (no doubt in close consultation with Glaser) would have sought to reflect that general market. Consequently, we have concluded that the prices paid for the drawings at the second auction were reasonable market prices, reflecting the general market in such objects and were not depressed by circumstances attributable to the Nazi regime.

I. Just and Fair Solution

2. Loss

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

The Kunstkommission is also of the opinion that under the circumstances the sale of the works in May 1933 had proceeded nearly as well as possible. Curt Glaser was an expert on his art collection and the rest of the property. He divided his sales between two auctions in two auction houses, selecting what he wanted to retain. The auction catalogue is on the whole carefully compiled, even though certain errors have crept in in the form of gaps in the lots and works of graphic art have been subsumed in bundles. The fact that, as the best connoisseur of his own collection and also a professional observer of the market, he was in the best position to be able to estimate the prices is shown, for example, by the fact that the 200 prints purchased at the auction by the Kunstmuseum Basel deviated only by about 10% from the estimated price (and the Kunstmuseum paid considerably more than the estimated price for the two most valuable prints). A (definitive) statement regarding the extent to which the comparatively low prices in May 1933 can be explained as a result of National Socialist persecution or the extent to which the consequences of the global economic crisis were to blame - or how the two factors interacted - cannot be made on the basis of the existing scholarly literature either. There are no indications that the proceeds of the auction were not accessible to Curt Glaser. Nevertheless, the result of the auction was certainly disappointing for Curt Glaser. "Best possible" - under the given circumstances - cannot be equated with "good."

II. Further Aspects

1. Legal Situation

REPORT OF THE SPOILIATION ADVISORY

23. The Courtauld's legal title to the drawings is not contested, in our opinion properly so, since any legal claim appears to us to be time-barred under the Limitation Act 1939 (as amended). However, under our Terms of Reference, paragraph 12(e), we are required to give "due weight" to the moral strength of the claimants' case. This obligation widens the scope of our assessment beyond strict legal considerations.

II. Further Aspects

1. Legal Situation

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

a) *Lawfulness or illegality of the transaction*

The assessment of the present case is primarily based on the Washington Principles and subsequent sources. The Kunstkommission notes that, as far as it can tell, the ownership of the drawings and prints is not in question, or has already been considered to be virtually incontestable in the investigations carried out in 2008.

The legal status is not a decisive factor for the assessment under the Washington Principles. As an expression of a valid moral position, however, it appears appropriate. It argues against restitution of the works or compensation of the heirs, but should not be overestimated in light of the basic idea of the Washington Principles.

II. Further Aspects

2. Institution's Behaviour

REPORT OF THE SPOILIATION ADVISORY

45. Seilern was an eminent scholar who vehemently opposed the Nazi regime. He paid the market price for the drawings, and was advised by Burchard, who also had a friendly relationship with Glaser. It is highly unlikely that either Seilern or Burchard would have stooped to take advantage of Glaser. Moreover Seilern, far from practising any subterfuge, was completely candid about the drawings' provenance, identifying them meticulously in his catalogues of 1959, 1961 and 1971 as 'Provenance: Curt Glaser, sale, Max Perl, 18-19 May 1933' or in similar terms. We see no grounds for criticism of Seilern.

We see no grounds for criticism of the Courtauld.

II. Further Aspects

2. Institution's Behaviour

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

b) *Knowledge of the Kunstmuseum Basel at time of purchase*

The Kunstmuseum Basel had been aware in 1933 that the art objects offered for sale at Auction 180 at Max Perl on 18-19 May 1933 belonged to Curt Glaser. The political situation in Germany may be assumed to have been known in Basel.

The knowledge of the Kunstmuseum in 1933 appears to be a useful ancillary criterion for an assessment under the Washington Principles. On the one hand, it offers some indication of the appropriateness of the purchase price (**see Ch. VI. 4. a/b. Extent of financial loss and availability of equivalent value**). On the other hand, any consciousness of injustice on the part of the Kunstmuseum in 1933 would indicate that the transfer of ownership was already viewed critically at the time by contemporaries.

The available documents show that the prices were regarded as "cheap" - not, however, as "rock-bottom," which might have been considered problematic. In this light, the assessment of the Kunstmuseum and the Kunstkommission at the time does not appear unethical. In the opinion of the Kunstkommission, the heirs cannot derive their claim from the knowledge of the Kunstmuseum at the time. However, the Kunstmuseum cannot derive anything in its favor from the committee minutes either. It cannot argue that the origin of the drawings and prints was unknown. Similarly, it may be assumed that an institution such as the Kunstkommission was aware of the conditions in Germany.

II. Further Aspects

2. Institution's Behaviour

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

c) *Behavior of the parties after the transfer of property*

As far as can be seen, during his stay in Switzerland, Curt Glaser was not critical of the Kunstmuseum as the purchaser of part of his art collection. His relationship with the Kunstmuseum does not appear to be disturbed in any way. Conversely, after the war, the Kunstmuseum Basel stored paintings for Mrs. Maria Glaser-Ash at no charge.

The Kunstkommission is however of the opinion that the behavior of the parties after the transfer of ownership can only be taken into account to a limited extent, if at all. It may be true that the legal system normally stipulates time limits within which the party concerned must dispute the lawfulness of the transfer of ownership once specific conditions of duress cease to exist (see Art. 21 and Art. 31 OR) and Curt Glaser did not do this during his stay in Switzerland. However, for an assessment under the Washington Principles, which primarily follow the moral attitudes of today, this point appears to be of only minor importance.

II. Further Aspects

3. Miscellaneous

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

- d)** *Personal circumstances of the affected parties*
- e)** *Proximity of the heirs*
- f)** *Assessment of the situation by other institutions*

- d)** *Present value*

III. Decision

REPORT OF THE SPOILIATION ADVISORY

The Panel's final conclusion

47. In all the circumstances, we consider that the claimants' moral claim is insufficiently strong to warrant a recommendation that the drawings should be transferred to them. We also consider that, whenever any of the drawings is on show, the Courtauld should display alongside it a brief account of its history and provenance during and since the Nazi era, with special reference to the claimants' relationship with and historical interest in the drawings. We recommend to the Secretary of State accordingly.

III. Decision

REPORT OF THE SPOLIATION ADVISORY

Scope of advice

13. If the Panel upholds the claim in principle, it may recommend either:
 - (a) the return of the object to the claimant; or
 - (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value; or
 - (c) an ex gratia payment to the claimant; or
 - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
 - (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.

III. Decision

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

VII. RECOMMENDED MEASURES

1. The Kunstkommission reaffirms the applicability of the Washington Principles to the deliberations of the Kunstmuseum Basel. The Terezin Declaration has been taken into consideration for the decision as well. The so-called *Handreichung* of the German government has been selectively consulted.
2. The Kunstkommission recognizes that Curt Glaser was a victim of National Socialism. His case must be assessed under the Washington Principles.
3. The Kunstkommission rejects any restitution of the works of Curt Glaser. It does not make any application to the Regierungsrat for the return of the works to the heirs.
4. The Kunstmuseum Basel will honor the history of Curt Glaser's drawings in an appropriate form and where possible in consultation with the heirs.
5. The Kunstkommission is in favor of entering into negotiations with the heirs regarding financial compensation.
6. The recommendation of the Kunstkommission (including its justification) will be made public.

III. Decision

DECISION OF THE KUNSTKOMMISSION IN THE MATTER OF CURT GLASER

c) *Informing the Public*

The Kunstkommission recognizes the public's interest in the reappraisal of the present case. Therefore, at its meeting on 30 January 2018, it had already expressed its support for the idea that the decision of the Kunstkommission should be thoroughly justified and made accessible to the public. It thus commits itself to transparency, as is also recommended by the Bund regarding questions of provenance.⁷

To the extent that it is authorized to do so, the Kommission is also publishing the relevant sources simultaneously with the decision. It is important to the Kunstkommission that its decision should at least be accepted as broadly as possible with regard to its procedure and justification, if perhaps not in its outcome

The Kunstkommission regrets the sometimes polemical reporting in the media. This form of reporting is not appropriate for difficult historical and moral questions. With the present decision, the Kunstkommission hopes to contribute to making the discussion more objective.

III. Decision

