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Introduction: The Provenance Research and Restitution Debate

Alfred Flechtheim was undoubtedly one of the most fascinating and influential figures on the art scene of his time. Pablo Picasso, Juan Gris, Vincent van Gogh, Paul Klee, Max Beckmann or George Grosz – the art dealer collected or represented the most important artists of the avant-garde. His exhibitions and soirées in Düsseldorf and Berlin were legendary and his reputation as an art connoisseur and bon vivant extended far beyond the borders of Germany.

National Socialist rule drastically changed his life and the life of his family. As early as 1933, he decided to leave Germany due to the pressure of violent anti-Semitic attacks, which he was subjected to as a Jew. He had to close the Alfred Flechtheim GmbH galleries in Düsseldorf and Berlin. He transferred parts of the remaining art works abroad, in particular to London. In the English capital, he tried to continue his work as an art dealer from the Mayor Gallery and within the network of his art agents in Germany, Switzerland, France and the USA. In October 1936, he successfully re-launched his promising career there with the exhibition entitled “French Nineteenth-Century Painting”. Flechtheim's second career in London ended abruptly in the winter of 1936/37, when he slipped on ice. He died in March 1937 aged only 59 at London’s St. Pancras Hospital.

A life cut short, defamation, physical attacks, emigration, loss of property in Germany and the difficulties involved in gaining a foothold in a foreign country not only characterize Alfred Flechtheim’s history of persecution. These he shared with many other Jews from Germany, who had their rights and their property taken from them. Thanks to a multitude of publications, we have, in the meantime, become very well informed of their passage through life. Nevertheless, the name Flechtheim in particular has caused a great deal of upheaval in the last few years, both in the area of research and in the broader public sphere. In addition to some academic and popular-science publications, the German news magazine “Der Spiegel” alone dedicated several articles to this topic, with titles such as “Braune Beute” (“Brown Booty”), “Die Schatz-Erben” (“The Heirs to Treasure”) or “Nazi-Raubkunst” (“Nazi-Stolen Art”) in the first half of 2013.1

About 80 years after Alfred Flechtheim’s persecution and emigration, it may be surprising at first glance to see how contradictory and at times intense the debate has become. Today, hardly anyone would seriously question the basic moral obligation to address the atrocities of the Nazi regime and the suffering of its victims. The obligation to remember, or negative memory as Reinhart Koselleck once called it, has become a broad social consensus.2

However, whenever researchers, journalists or lawyers discuss Alfred Flechtheim, the core concern is essentially different. Questions of ownership are at the centre of the debate. It is about collected and traded works of art, about the attempt to again reallocate or at least modify financial circumstances which came about under the influence of the criminal Nazi regime. It is about shaping the morally established obligation to remember within a pragmatic frame of reference. It is about compensating the victims or their families for their losses, not only morally but also materially. The discussion therefore revolves around our current understanding of “guilt and liability”.3 It is not least this material or monetary dimension of the memory of the Nazi period which clearly demonstrates how extensively the concrete implementation of concepts of justice depends on tough negotiation processes, often seen as painful, and on the various interests of the respective negotiation partners. As a rule, the relationship between creditors and debtors is complicated – particularly if, as in the case of Alfred Flechtheim, this involves a significant amount, both materially and symbolically. The debate over the return of the paintings is paradigmatic for the material dimension of current engagement with the Nazi past. There are many reasons why works of art and cultural artefacts have attracted particular attention since the turn of the millennium. Firstly, this is due to the limitations of German restitution laws, which were to regulate the return of stolen assets and the compensation for injustices suffered from as early as the immediate postwar period. For example, only those items located in Germany and therefore coming under the authority of the restitution law could be returned.


It is because of such blind spots that looted art or flight assets have only been searched for and their return to the families of their former owners discussed with the current intensity since the end of the 1990s. On the basis of the so-called Guidelines on the implementation of the “Declaration of the Federal Government, the Länder (Federal States) and the National Associations of Local Authorities on the Tracing and Return of Nazi-Confiscated Art, especially from Jewish Property”, signed in 1999, public institutions have since then been required to examine their collections for valuable items of this kind. This applies primarily to museums, in whose possession the art objects are frequently to be found and which participated as national institutions in the persecution and dispossession of Jews under National Socialism. Museum directors, for example, were often called upon as experts on the value of “Jewish” art and cultural artefacts. The corresponding list of experts in all “Gaue” (administrative regions of Nazi Germany) from the “Reichskammer der bildenden Künste” (“Reich Chamber of Fine Arts”) dated 1941 is nine pages long and reads like a “Who’s Who” of art history and museum history.4 Many of the directors used their room for manoeuvre in order to expand their own collections or to gain access to cultural artefacts in the occupied neighbouring countries.

The extraordinary potential of the paintings to attract attention was added to by their importance within the cultural consciousness of Europe. Cultural heritage manifests itself in works of art; they are a special type of memory store.5 The importance of such storage media is gradually increasing in contemporary discourse on the National Socialist regime, as many of those who actually experienced this period first hand are no longer with us. The memory of National Socialism is no longer borne by individuals or groups of people, but rather has become a component of our culture which is not dependent on a particular generation; it has become cultural memory.6 It is no longer the generation who lived through this period reporting on the past, but rather other witnesses: for example buildings or books and paintings too. The works of art by many prominent artists, which Alfred Flechtheim collected and sold, are such semaphores and projection surfaces. They are very famous with a high recognition value; they are aesthetically appealing and of great significance from an art historical perspective. They represent a high and easily understandable symbolic value and facilitate a particularly emphatic understanding of possible experiences of loss by those from whom they were taken.

It is however not only the symbolic, but rather also the material value that resonates with the terms “stolen” or “looted” art. It is about money and often about a lot of money. The “monetization of memory” creates both excitement and discomfort in equal measures. Can the suffering of the victims really be measured as a monetary value? Is “commercialization” an appropriate approach?7 Valid arguments can clearly be made for this.

5 Goschler, Wiedergutmachungspolitik, p. 85.
Money in exchange for “forgiveness”, as Natan Sznaider argues, is essentially a feature of the 20th century and on an individual level also symbolizes recognition of the fact that these really were criminal acts. It is also difficult to imagine that stolen artefacts remain in the hands of the society and its institutions which were ultimately responsible for the looting, even decades after the crime was committed. In this light, the principle of monetary compensation and/or the restitution in kind of particularly valuable works of art and cultural artefacts, even 80 years after the actual dispossession process, appears to be a necessary component of our current responsibility for the mass crimes of National Socialism. In order to understand the intensity of the current debate, one should, however, not overlook the difficulties presented by the temporal distance from the crimes. The first of these is the original intention behind reparation. It was to help heal the fractures in the biographies and turn those who were persecuted into beneficiaries. Today, however, this can no longer be the case, as most of those concerned have passed away. It is not just the basic questions of “crime and punishment” which need to be discussed, but also the considerable problems regarding sources, which need to be taken into consideration. The victims themselves can no longer provide information on their experience of persecution, important documents were lost in the confusion of the war, archives are not always publicly accessible and ownership is often difficult or no longer reconstructible. This applies in particular for works of art, whose provenance is extremely difficult to establish. Flechtheim’s business records at the Mayor Gallery were destroyed during a London Blitz attack by the German Luftwaffe in September 1940. The Royal Air Force bombs destroyed the gallery in Düsseldorf in 1943 and no business records have survived from the gallery in Berlin. Complicating matters even more is the fact that Flechtheim’s profile regularly changed from collector to “Marchand Amateur” and finally to dealer. But what was privately owned and what belonged to the gallery? When, where and why did the art dealer sell his paintings, what did he actually own and what did he sell on commission?

These sort of knowledge gaps are particularly distressing with regard to the legal dimension of reparation. The legal bases for restitution and compensation no longer apply and the corresponding application deadlines expired years ago. The Federal Government has undertaken to find “just and fair solutions” for the return of art and cultural artefacts in the form of international and national agreements and recommends the standards of the restitution law as the basis of decision-making. However, the decision on restitution comes under the authority of the respondent to the application; a legal right to restitution no longer exists. This results in a strange conflict situation arising from legally established, though no longer actionable claims, historic analyzes and the results of art historical provenance research. However, legal interpretations and concepts of justice, history and art history each follow their own logic and cannot easily be brought into line with each other. In addition to this, the acceptance of monetary reparation comes with its own costs. It is not unusual for “intermediary institutions”, such as international legal consortia, to act as the initiators and main protagonists of claims for restitution. Their profiting

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from “aggressive commercialization”, an accusation which can clearly be heard, threatens to thwart the original concept of restitution and compensation.  

However one wishes to weight up such arguments, they always draw attention to the necessity of a rational and research based examination of each individual case. That is the aim of this volume. Experts from the fields of art history, history and law approach the gallery owner and his art dealings from different perspectives, which focus on both the general social and political conditions and the history of persecution, as well as on the provenance of the works of art and the art dealer’s collection. Using this interdisciplinary approach, the various perspectives can be meaningfully interconnected. At the same time, multi-perspectivity opens up different points of view and enables a differentiated analysis of the history of persecution and Alfred Flechtheim’s loss of property.

The difficult circumstances surrounding the decision-making process in questions of restitution and the complicated conflict situation arising from the different approaches, which serve the justification or rejection of an application, has previously led to extremely heterogeneous reparation practices and, furthermore, has quite often led to ill-considered accusations against museums and provenance researchers. They are accused of lacking transparency and interest, and even of having anti-Semitic mentalities.

For restitution claims in Germany which cannot be resolved amicably by the museums and the representatives of the heirs, the option exists (if so desired by both parties) to defer to the so-called Advisory Commission (Beratende Kommission). In December 2014, the Kunstsammlung Nordrhein-Westfalen used this possibility. It wishes to bring about a decision about the restitution of a cubist still life by Juan Gris. The painting was part of Flechtheim’s collection and gallery and was sold in London in 1934. The Commission was also consulted on the restitution of the painting “Tilla Durieux” by Oskar Kokoschka at the Museum Ludwig in Cologne and recommended that the painting be returned to Flechtheim’s heirs. In Austria, a different decision was reached only a few months before the recommendation of the German Commission was made. In contrast to Germany, Austria has an Art Restitution Law, and the so-called Commission for Provenance Research, in the form of a committee made up of provenance experts, makes a binding decision on all cases pending in Austrian federal museums. In the Flechtheim case, it decided against handing over the work “Bündnis/Andenken” by George Grosz, and for it to remain at the Museum of Modern Art in Vienna. The Kunstmuseum Bonn took another approach to finding a solution. As the ownership issues could not be settled fully, in 2012 the museum sought a direct agreement with the lawyer representing the heirs and paid them a sum which corresponds to half of the current value of Paul Adolf Seehaus’s work, “Leuchtturm mit rotierenden Strahlen” (“Lighthouse with Rotating Beam”). Moreover, the art trade and private art owners have made different decisions with regard to the handling of works with the Flechtheim provenance, as works having the name Flechtheim in the provenance chain ensured that these were temporarily unsellable. The Beckmann-Gouache “Löwenbändiger” (“Lion Tamer”), with a Flechtheim provenance dated 1931 and a Gurlitt provenance from 1934, which was auctioned by the Lempertz auction house in Cologne in 2011, could only be sold by the auctioneers after the Flechtheim heirs had received an undisclosed sum of proportionate compensation.

10 Cf. on this Hockerts, Wiedergutmachung, p. 12, which refers to Stuart E. Eizenstat, Unvollkommene Gerechtigkeit. Der Streit um die Entschädigung der Opfer von Zwangsarbeit und Enteignung, Munich 2003, pp. 102-119.
It is also for this reason, that research based and differentiated consideration of each individual case is absolutely necessary. For the art trade and, above all, for those responsible for restitution, this is an indispensable basis of decision-making. Since 2008, art historians and historians at German and international museums have been addressing the provenance of works which were traded by Alfred Flechtheim. In this case, the extremely complex source material also led to more than 15 museums coordinating their research and using synergies for the first time at the suggestion of the Office for Provenance Research in Berlin (Arbeitsstelle für Provenienzforschung, AfP). Based on a request for information from the legal representation of the heirs of Alfred Flechtheim, almost 20 museums jointly carried out extensive research on the gallery inventory and the art dealer’s collection of art. The first thing which needed to be clarified was whether a subdivision into private property and gallery property was at all possible in the case of Flechtheim on the basis of the source material. Moreover, there was the question as to whether parts of these inventories were unlawfully confiscated after the National Socialist takeover and who was responsible for that. Following complex investigations, the results of which were included in several expert opinions financed by the AfP, the Institute for Contemporary History, Munich – Berlin and the Bayerische Staatsgemäldesammlungen (Bavarian State Painting Collections) held a workshop entitled “Stolen Art and Restitution” on the 25th of October 2011, which from the beginning took an interdisciplinary approach and provided the impetus for the present volume.

The first section of the publication concentrates on the context of looted art and restitution in which the persecution and emigration of Alfred Flechtheim must be positioned. Three articles reflect the current state of research and newest debates. Frank Bajohr and Anja Heuß focus on the basic characteristics and processes of economic persecution during the Nazi period, as well as the room for manoeuvre for Jewish art dealers during the time of National Socialism. The possibilities and limits of dealing in art, in particular “degenerate” art, and the extremely poor prospects those persecuted had of transferring their property abroad are introduced. Constantin Goschler addresses the aspects of reparation of Nazi injustice. He analyzes current trends and problems in the restitution of art and cultural objects.

The second section deals with the private and career biography of Alfred Flechtheim. Articles from new sources as well as lists compiled by Flechtheim himself attempt to shed light on the question whether Flechtheim was an art dealer or a collector and how these descriptions affect his ownership structure. The taxation ramifications for art dealers and collectors are mainly covered under the headings “Private” and “Gallery Owner” a differentiation that again plays a significant role regarding the question of restitution for the artwork. The question whether Alfred Flechtheim is to be integrated into the ranks of Berlin collectors has already been decided, as by his contemporary, Berlin museum director Ludwig Justi, who treated him as an art dealer and equal partner for the recruitment of important collector contacts. This topic is analyzed by Andrea Bambi and Isgard Kracht.

Axel Drecoll, Anja Deutsch, Roswitha Neu-Kock, and Gesa Jeuthe focus on the art collector and art dealer Alfred Flechtheim, his gallery and the conditions under which he had to give up his business activities in Germany. They analyze the relationship between the Jewish gallery owner and his business environment and, at the same time, focus on Alex Vömel, the possible “Aryanizer” of Alfred Flechtheim GmbH, and his special relationship to its proprietor. This primarily addresses the following questions: To what extent does the “Flechtheim case” reflect patterns of looting typically referred to as “Aryanization” or “de-Jewification” (“Entjudung”), which targeted Jewish assets, and how was the relationship between the Jewish
victim and his non-Jewish environment structured? How much freedom to act did Alfred Flechtheim have after the National Socialist attacks considerably restricted his room for manoeuvre with regard to commercial and private matters? Vanessa Voigt analyzes the questions regarding the provenance of Adolf Seehaus’s “Lighthouse with Rotating Beam” (Kunstmuseum Bonn), a work of art which is already the subject of restitution negotiations. Ottfried Dascher depicts Flechtheim’s career in emigration in England and investigates possibilities and limitations for a persecuted art dealer to work outside German borders. Finally Wiebke Krohn describes Flechtheim’s relationship to George Grosz as an art dealer and the conditions of commercial representation, as well as the circumstances surrounding the Amsterdam auction after Flechtheim’s death, which included 47 works by George Grosz.

A third section glances at and compares the fate of Alfred Flechtheim with others under similar circumstances. In Esther Tisa Francini’s contribution she initially presents the general emigration and retribution parameters which she exemplifies in four individual cases: Walter Feilchenfeldt in Berlin and Amsterdam, Curt Valentin in Berlin and New York, Arthur Kaufmann in Frankfurt and London as well as Alfred Flechtheim in London. With Johannes Nathan and Victoria Reed, a relative of a persecuted art dealer and an international expert correlate Alfred Flechtheim’s room for manoeuvre with the commercial possibilities and limitations of other art dealers in Nazi times.

The fourth section of the publication consists of contributions regarding individual art work of Flechtheim provenance which were subject to recent restitution claims. Selected acquisition histories are presented about artwork in German museums whose provenances show under which terms and conditions Flechtheim artworks of Juan Gris, Paul Klee, Max Beckmann, Ernst Barlach, Max Pechstein, Ernesto di Fiori were sold. This also includes the acquisition circumstances of the purchase of Oskar Kokoschka’s “Portrait of Tilla Durieux” (Museum Ludwig Cologne) and Pablo Picasso’s “Harlekin” (Museum Ludwig Cologne).

It is in the nature of things that the interpretations of Alfred Flechtheim and his artworks do not always conform, and in fact contradict each other. Neither the authors nor the publisher wished to force the different assessments to form a unified line of argument using compromise formulas. Academic debate is fueled by such tensions. If they challenge readers to draw their own conclusions, then this anthology has fulfilled its purpose. The publishers have therefore decided to include two already published studies in this anthology. Harald König covers the defining parameters of the legal formalities that play a deciding role in the current contention regarding the appropriate form of restitution of assets. In his article he focuses on developments and characteristics of restitutionary law. Already in 2010 Markus H. Stötzel, attorney for the heirs of Alfred Flechtheim, grappled with the restitution of artwork from the Flechtheim provenance. He takes a clear position that is partly very contradictory to some of the interpretations collected in this anthology.

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