

Learning from History?

Current Developments in the Restitution of Nazi-Confiscated Property

By *Benjamin Lahusen*

The idea that one can learn from history has a long tradition and has materialized in various different shapes. In its most direct form, it says: History holds a pool of experiences from which guidance for action in the present can be gleaned. In the best case, history immunizes against committing a historical mistake again; in a less optimistic version, history at least allows to take precautions to ensure that certain events cannot happen again. For German history, the keyword “Weimar” receives much attention in this respect. I must confess that I am very skeptical when it comes to drawing certain “lessons” from Weimar, but that is not my topic now.

Not I would like to talk about a much less immediate form of learning from history, namely the German tradition of *Wiedergutmachung* – a typical German noun that is only inadequately translated as “reparation” or “retribution” –, and now *Wiedergutmachung* particularly with regard to cultural assets that were lost under the rule of National Socialism.

It is generally agreed that National Socialism was, among many other things, the greatest robbery in history. Between 1933 and 1945, hundreds of thousands of cultural assets, real estates and companies were sold, confiscated, expropriated, stolen under Nazi pressure in Germany and far beyond. An important goal of the Allies was the reversal of this looting, especially the notorious “Aryanisations”. In 1947, Law No. 59 of the US military government was enacted, which pursued the goal of restituting “identifiable assets” to persons persecuted under National Socialism. By shifting the burden of proof and excluding acquisition in good faith, the law went a long way towards accommodating the victims of the Nazi regime. A very short summary: The loss of property of a racially or politically persecuted person was considered to be due to persecution – that is the presumption of confiscation – and was subject to restitution unless the later owner could prove the opposite, i. e. in particular was able to show that an appropriate purchase price had been paid and the persecuted person had the free right of disposal of that purchase price. In principle, the aim of the law was in rem restitution, so the return of the objects themselves, not compensation payments.

For the most part, real estate and companies were not difficult to “identify” because there are corresponding public registers. The fate of looted art collections, however, could often only be clarified after decades; much remains in the dark to