

Looted Jewish Cultural Property-Issues of Research, Ownership and Return

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In recent months a number of news stories related to Nazi-era looted art have focused public attention on provenance issues. They include the discovery of hundreds of artworks hidden in Munich and Salzburg by Cornelius Gurlitt, son of the Nazi art trader Hildebrandt Gurlitt, and the release of *The Monuments Men*, a Hollywood film starring George Clooney. Next year a feature film entitled “The Woman in Gold” will be released. The movie centers on Maria Altmann and her quest for the return of a Klimt painting of her aunt, Adele Bloch-Bauer. The international cast includes Dame Helen Mirren, Ryan Reynolds and Katie Holmes. Public focus on issues of Nazi-era looted art will surely be renewed by the film if the initial obsession with the actors, their clothing and their stories is any indication of interest.

With this attention there has been an increasing awareness that in addition to the looting of art and property from individuals and museums, large parts of historic European Judaica holdings disappeared between 1938 and 1945 as well as in the postwar period, or were assigned to the “wrong” collections. Additionally, there are a number of Jewish cultural objects in the holdings of museums throughout the world that legally do not belong there.

This paper illustrates the complexity of research ownership and return issues with regard to looted Judaica and Jewish communal cultural property. The two cases described here deal with objects taken from Jewish communities and museums, and issues of their restitution, tracing their complicated histories once separated from their original owners, and determining

to whom they should be returned. The principles established and questions asked are universal to looted Jewish cultural property that may be found in any museum or might have belonged to a museum.

This paper will also outline the activities of the European Shoah Legacy Institute Judaica and Jewish Cultural Property Working Group that has been established to “seek international solutions to the problem of the restitution of ... Judaica...”.¹

Research into Judaica, that is, into objects that are linked to a Jewish religious or Jewish cultural context, is highly complex because of specific historical, legal, and religious-traditional factors. Judaica is comprised not so much of art works in the classic sense, but rather of artisan craftwork in the broadest sense.² Methodologies that have been developed in

¹ http://shoahlegacy.org/wp-content/uploads/2014/06/TEREZIN_DECLARATION_FINAL-4.pdf

² Definition of Judaica according to the Descriptive Catalogue on Looted Judaica, researched by the Conference on Jewish Material Claims against New Germany, York 2009, pp.7.8.:

By “Judaica” is meant historical and literary materials relating to Judaism. Included are not only objects that carry a quality of holiness (*tashmishey kedusha*) or that are essential to the performance of a particular ritual or commandment (*tashmishey mitzvah*), but also those that have no intrinsic quality that can be defined as sacred or holy. Included are not only archives, libraries, and objects relating to Judaism as a religion but also those relating to Jewish organizations and Jewish life generally.

As for the first category, objects that are labeled as *tashmishey kedusha*, “accessories of holiness” or “objects which carry holiness,” the classic example is a Torah scroll. However, there are other objects that fulfill the criterion of carrying a quality of holiness. These objects include

- a) the mantle that is used to cover a Torah scroll in Askenazic communities, as well as the binder that keeps the scroll closed and silver and gold ornaments that are added after the mantle is in place, or the special hinged wooden Torah case used by Sephardic and Oriental Jews;
- b) the Torah ark curtains;
- c) the chair, or holder, on which the Torah is placed when it is removed from the ark;
- d) tefillin, including the leather cases, the biblical texts written on parchment that are inside, the leather straps used to fasten them to the head and arm during prayer, and any bag specifically made to hold them and used for that purpose on a regular basis;
- e) the mezuzza, which is fastened to the doorpost of a house, including both the case and the handwritten text inside; and
- f) cases for books, specifically a container for either a scroll or bound volume that contains one or more of the books of the Bible.

In summary, objects labeled as carrying a quality of holiness all “contain words, specifically the name of God, but by extension any words divinely written or inspired, from which the quality of holiness is derived.”

The category of holy objects includes not only other handwritten Biblical texts (such as the Scroll of Esther) but also printed Bibles, prayer books, volumes of the Talmud, law codes, and commentaries, and not only in Hebrew but in other languages as well.

As for the second category of ritual objects, labeled *tashmishey mitzvah*, “accessories of religious observance,” or, more clearly, “objects which make it possible to perform a commandment,” this category includes ritual objects that are essential to Jewish life. This category encompasses wine cups used on Sabbaths and holidays, Sabbath candlesticks, the spice box and candle holders used for the

recent years for provenance research into works of fine art are not applicable to provenance research into Judaica. Provenance research involves first and foremost the identification of the object in question . But identification of Judaica objects may be much more difficult than objects of art because

1. the lack of detailed professional pre-war descriptions of Judaica collections
2. the lack of pre-war photographs
3. the fact that ceremonial objects were often composed of prefabricated, non-distinguishable pieces
4. the serial or even mass production of ceremonial objects from the 2nd half of the 19th c. onwards
5. they were less accurately documented by Nazi looters and Allied rescuers than objects of fine art
6. in most cases knowledge of Hebrew or Yiddish is essential.

Furthermore, if identification of a Judaica object is successful, the provenance research is far from finished. Next step is the clarification of pre-war ownership which is much more complicated and contentious than the pre-war ownership of art works in public collections. This is due to many factors. A brief list gives some clue to the range of possible situations:

1. The legal succession of no longer existing Jewish prewar-communities must be resolved
2. The legal succession of no longer existing private prewar-owners must be resolved

Havdalah service at the end of the Sabbath, challah and matzah covers, wedding canopies, the Hanukkah menorah (*hanukiyah*), seder plates used on Passover, the *shofar*, the *tallit* (a prayer shawl with special knotted fringes, called *tzitzit*), the *sukkah* (temporary dwelling built on the holiday of Sukkot), etc.

3. Cases in which Judaica is found in museums and the pre-war owner is known
4. Cases in which Judaica is found in museums and the pre-war owner is not known
5. Cases in which Judaica objects were nationalized in eastern Europe, looted by the Nazis, and re-nationalized twice after that
6. Fragmentation of European Jewish cultural assets, which at the time were considered abandoned, did not stop with the War's end, but were distributed and thereby spread around the world by
 - a) the victorious powers, each in their own way (the Soviet Union and its policy of compensatory restitution; the Western Allies, led by the United States, and their policies of not restituting Judaica to areas under communist rule.)
 - b) Jewish organizations (Jewish Cultural Reconstruction (JCR), and the Jewish Restitution Successor Organization (JRSO): Today the national institutions that received those cultural assets must reconsider if they are the lawful owners.

Only after clarification of the legal pre-war ownership can the issue of a possible restitution be taken into consideration. But here national laws may come into play which cannot simply be brushed aside.

In 2009, the Holocaust-Era Assets Conference held in Prague, resulted in the Terezin Declaration, endorsed by 47 countries. The European Shoah Legacy Institute, with five working groups, was founded to carry out the recommendations set out by the Declaration.

The working group "Judaica and Jewish Cultural Property", chaired by Felicitas Heimann-Jelinek, is today comprised of museum and archival professionals from Austria, Greece, the Netherlands, the Czech Republic, Germany, Israel, Belgium, and the United States. The group deals with the critical and unique issues related to looted Judaica, and aims to create guidelines and best practices.

1. For implementation purposes, a manual on "Provenance Research Judaica" was identified as of primary importance to be compiled. In this area, joint standards should be created with colleagues of international museums that will benefit all institutions involved and can be utilized by museums worldwide.
2. A sustainable international research dialogue and knowledge pool on this subject can not only constitute a framework for future effective research, but can also help put into place new, up-to-date, and socially-relevant methods for dealing with provenance research and its possible consequences.
3. The group has initiated an ambitious project to create an online, virtual exhibition on the topic of what is to be done with objects of Jewish material culture looted, expropriated, or displaced from individual families and communities, where ownership is in question. We believe that we can help create standards and guidelines in this area.

Let us give you a few examples of objects that illustrate the categories of issues. The stories include discovery of the loss, identification of the object, process of return, roadblocks and political issues. The first case is still in progress. In the second case there was a more successful outcome. That case involved both the authors of this paper.

Torah Mantle from Holland

The first case was researched by our colleague Julie-Marthe Cohen from the Jewish Historical Museum in Amsterdam:

Before the Second World War a Dutch Ashkenazi, 18th century Torah mantle was in the collection of the Jewish Historical Museum Amsterdam, on loan from the Jewish community in Leiden since 1936. There is an existing photo of the mantle as it was exhibited at the Jewish Historical Museum.

A complex history of its travels will be briefly described here. The complete story may be found in the conference proceedings. According to several war documents, the mantle was confiscated by the Nazis in May 1943 as part of the museum collection and sent to the Institut zur Erforschung der Judenfrage in Frankfurt. At the end of 1943 the collection was moved to Hungen, 60 km north of Frankfurt, where the American Army discovered the loot in April 1945. Objects were transported to the Offenbach Archival Depot (OAD). We can assume that the Torah mantle was among these– there is no documentation of which objects arrived in the OAD. In 1946 Dutch Judaica objects were returned to the Netherlands, but the mantle was not among these objects. Jewish Cultural Reconstruction distributed the remaining unidentified, unclaimed objects, mostly to Israel and the United States. The Torah mantle was among the objects that were received by the Bezalel Museum in Jerusalem, which was later renamed The Israel Museum.

During research of the prewar-collection of the Jewish Historical Museum Amsterdam, the mantle was discovered on the World War II Provenance Research Online database of the Israel Museum. The database showed only one side of the mantle which has biblical symbols embroideries and Hebrew text. The prewar photograph showed a different image, because it

was the other side of the mantle that was shown. The Israel Museum was requested to send an image of the other side of the mantle. The identification of the object was confirmed.

Both parties (The Israel Museum and Leiden Jewish community) were then informed. Leiden registered an official claim in 2008; communication between the two parties has not resulted in a solution to date. The mantle is displayed in the permanent exhibition of the Israel Museum. Although the provenance of this object is known, the text on the label does not refer to it.³

To give an idea of how extensive research for this singular case was, a list of some sources follows: in Dutch and foreign archives: NIOD (Netherlands Institute for War Documentation) Amsterdam; archives of the Jewish Historical Museum; Stedelijk Museum Amsterdam; Municipal Archives; Jewish community Leiden; National Ashkenazi Community; National Archives College Park, Maryland U.S.A.; Archive of the History of the Jewish People, Jerusalem; Bundesarchiv Berlin. (This includes research in German archives, archives of the American Army, archives of Jewish Cultural Reconstruction). The work has also included: Photo research in several photo archives (Haarlem, Amsterdam, United States Holocaust Memorial Museum Washington D.C., Yad Vashem and other repositories); search in museum and exhibition catalogues; search in the Dutch press (acquisitions were announced in some newspapers); search on the Israel Museum Jerusalem database; search in the Survey of the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg (ERR).

(I don't believe we need this entire section that I have omitted)

³ As for this case compare: Julie-Marthe Cohen, Theft and Restitution of Judaica in the Netherlands During and After the Second World War, in: Julie-Marthe Cohen/Felicitas Heimann-Jelinek, *Neglected Witnesses. The fate of Judaica collections during World War II*, Crickadarn 2011, 199-252. All collected information to date has been put into the database of the Jewish Historical Museum, see www.jhm.nl/looted

Each case is different, but the steps taken in this case demonstrate the complexity of active research to establish the pre-war ownership of the object

The Israel Museum has returned art (paintings) to private owners in other cases. In this situation, however, the Museum has stated that Israeli law does not allow the return of Judaica to Jewish communities (non-individuals). This view is due to the fact that sacred objects were distributed to Jewish institutions after the War by the JCR in perpetuity, which did not apply to fine art. The Israel Museum requested the Leiden community further to provide documentation that the postwar community is the same legal institution as the prewar-community. Not all established Jewish communities in Europe today are considered legal successors of the pre-war communities. One would have to determine whether Israeli law is binding for a Dutch body. We note that comment from the Judaica and Jewish Cultural Property Working Group could be helpful in this case.

Manuscript from Vienna

A second example will provide insight into a successful restitution of a manuscript to the library of the Jewish Community Vienna (IKG). We refer to the history of a manuscript fragment, a history also extremely difficult to reconstruct, because several manuscripts and printed works from its holdings are in the Jewish Historical Institute in Warsaw.

In 1945, the Conference on Jewish Relations undertook a “Reconstruction of European Jewish Cultural Institutions,” among them under “Schedule B” the areas “Libraries-Museums-Archives.” An excerpt of the account of Moses Rath, the pre-war head of the library of the Jewish community Vienna, of the library’s fate is attached to the report: “Until November 10, the library remained intact... From March 11 until July 1938, the library was closed, but my colleagues and I were permitted to work internally. On July 15, 1938, Eichmann announced that the library and the archive will pass over into the possession of the German state... On

November 10, 1938, while the big temple was on fire, Nazi bandits wanted to burn down the library. The janitor, a Christian, immediately came upstairs and announced that the institute was in state ownership, under the administration of Obersturmbannführer Eichmann. The janitor called the Gestapo, and the police removed the intruders and put the library, whose treasures remained completely intact, under seal. Only in 1941 were all books, manuscripts, incunables, catalogs, etc. packed in crates and taken in toto to the *Institut zur Erforschung der Judenfrage*, the Institute for the Study of the Jewish Question in Frankfurt am Main, or to Munich. Hence, the library exists in its entirety.⁴

The fact that Moses Rath was mistaken in indicating the book crates' destination to be Frankfurt am Main and Munich and, thus, also in assuming that the library must have been complete in 1945, emerges from a report by Ernst Grumach, who had been in a forced labor unit that was in charge of registration of material at the central library of the Reichssicherheitshauptamt RSHA in Berlin. He wrote about the central library in the former building of the Grand Lodge of the Freemasons . Berlin W 30, Eisenacher Str. 12: "Here was, for instance, the former library of the Jewish Community Berlin, [...] the community libraries Breslau, Gleiwitz, Hamburg, Munich, Warsaw, Vienna as well as numerous other libraries from small communities and lodges.[...] Already under Nazi rule, however, this one-of-its-kind library was largely dispersed again and destroyed. Above all, also the various RSHA departments were relocated to other sites, mainly in Lower Silesia and North Bohemia. The Judaica department, as far as it was already sorted and set up, was relocated together with the theosophy and other departments to the Niemes (Mimoň) castle in Bohemia, where it was supposedly set up again in a similar way as in Berlin. [...] the whereabouts of the Jewish manuscripts (about 25 large crates) has yet to be identified. It is possible that they too, are in Niemes, but also the Schlesiersee (Sława) castle near Glogau (Głogów) or any other RSHA

⁴ Archive of the Skirball Museum Los Angeles, records holdings JCR, folder: Conference of Jewish Social Studies, C. (Grace Cohen Grossmann was kind enough to prepare the scans).

replacement site is a possibility. ... The largest part of the holdings left behind in Berlin was destroyed in the conflagration of the RSHA on November 22 and 23, 1943; mainly the holdings of the Warsaw and Viennese community and, unfortunately, also the library of the *Lehranstalt für die Wissenschaft des Judentums* fell prey to the fire. Only small parts of this library, which by chance were in rooms that remained intact—mainly their journal holdings—could be salvaged at the time.”⁵

The contemporary witness reports by Rath and Grumach provide a good overview of the events. To be sure, they are contradictory as far as the Viennese library holdings’ preservation or the lack of it is concerned.⁶ Yet, it is a fact that the manuscripts of the IKG Vienna could not have been destroyed; time and again they appear on the market, and Benjamin Richler has compiled a list of manuscripts from the IKG Vienna that are today in various libraries and private collections.⁷ Among them is, as mentioned, the Jewish Historical Institute Warsaw. One particularly valuable manuscript was able to be recovered:

The manuscript was originally part of a manuscript codex: Josef Gikatilia, *Sha‘are Orah*. Originally written in the end of the 13th century by the Spanish kabbalist and philosopher, it is a copy from the 15/16th century. It was part of the collection of famous Viennese 2nd chief rabbi and scholar Adolf Jellinek (1820-1893) in his Bet Hamidrash. After Jellinek’s death the manuscript was incorporated in the Viennese Israelitisch-Theologische Lehranstalt (Jewish Theological Seminary). The inventory number of the Jewish community was Hs. III, 14.⁸ Gikatilia’s work discusses the ten *sephirot*, the divine emanations on which the world is built.

⁵ Grumach’s confidential report to the Reich’s Association of the Jews in Germany on the confiscation and treatment of the former Jewish library holdings by the Gestapo offices in the years 1933-1945,” Central Archives of the History of the Jewish People, Jerusalem, file P205 17 b 1941-47.

⁶ See also: Ingo Zechner, *Die Bibliothek der Israelitischen Kultusgemeinde Wien. Entstehung – Entziehung – Restitution und sogenannte „herrenlose“ Bücher*, http://www.ingozechner.net/download/pdf/Zechner_Aufsatz_IKG-Bibliothek.pdf (retrieved: 28.09.2014).

⁷ Benjamin Richler, *Guide to Hebrew Manuscript Collections*, Jerusalem 1994.

⁸ Arthur Zacharias Schwarz, *Die hebräischen Handschriften in Österreich*, Leipzig 1931, p. 188-190.

The manuscript was not only used by Jellinek but also by famous bibliographer Moritz Steinschneider (1816-1907). The handwriting of both scholars must be found in this *Sha'are Orah*. The Sefer Yetzirah which was removed from the manuscript served as a source for Gikatilia's discussions of the *sephirot*.

The manuscript together with several others was taken to Warsaw in the manner described above. Since the manuscripts in Russia and Poland were kept under seal for more than fifty years, their whereabouts were unknown to the public. During this time thefts or illegal transfers of Hebrew manuscripts have apparently occurred. Manuscript codices such as *Sha'are Orah* were apparently divided up in this context.

In March 2002 the manuscript of the *Sefer Yetzirah* showed up on the market in an auction catalog. An observant librarian in Cincinnati noted that the catalog listing identified the manuscript as having belonged to the IKG. He expressed his concern to a dealer whom he knew to be knowledgeable in issues of looted Judaica. The dealer notified Karen Franklin, who contacted yet another colleague in Germany, who forwarded the inquiry to Felicitas Heimann-Jellinek, at that time chief curator at the Jewish Museum Vienna. As the Jewish Museum Vienna serves as custodian for the Jewish community holdings it aimed to reconstruct the community's prewar holdings and carried out the initial research. With this information, and at the very last day before the auction, it was possible for the Jewish community Vienna, whose staff members completed the research, to have the manuscript to be taken out of the auction, seized, and later convincingly claimed by and returned to the IKG Vienna, which handed over the manuscript to the Jewish museum after its return.

Though the return of this manuscript is significant as a precedent, it must again be acknowledged that this *Sefer Yetzirah* is but a fraction of the manuscript codex. The rest is still missing.

The examples here demonstrate but a small part of the complexity of research, ownership and return issues in the field of looted Jewish cultural property. They show a) that issues of legal ownership need permanent consideration and open discussion, especially when dealing with international bodies; b) that proper research can best be undertaken within an international and collegial network; and c) that active scientific research on Judaica collections should be carried out by all respective holders of Judaica collections. That issues of Jewish communal property may be complex should not deter an institution from taking on the task of provenance research and seeking help of experts who can navigate the issues of ownership.

ESLI's working group for Recovery and Study of Judaica and Jewish Cultural Property aims to stimulate collaborative efforts to carry out such research on an international level, and to involve experts who can add to the discussions and the search for fair and just solutions where legal ownership is in question.