

Art and cultural assets news - autumn: return of rare porcelain

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The Spoliation Advisory Panel has recently considered two claims by Mrs Bertha Gutmann against the British Museum and the Fitzwilliam Museum in respect of porcelain pieces in their collections. Mrs Gutmann made her claim as the sole heir of her uncle Heinrich Rothberger from whom the Gestapo seized the porcelain in Vienna in 1938.

The role of the Spoliation Advisory Panel

The task of the Spoliation Advisory Panel is to consider claims from individuals and their heirs, who lost possession of a cultural object during the Nazi era (1933-1945) where such an object is now in the possession of a UK national collection and to advise the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim.

Mrs Gutmann and the museums asked the Panel to consider the claims jointly. The museums did not dispute them.

The Panel has the power to recommend restitution of the objects to Mrs Gutmann, subject to the relevant institutions governing statutes, or to recommend a compensatory payment.

Background

Heinrich Rothberger was one of eight children of Jacob Rothberger (Mrs Gutmann's grandfather) who founded the first modern department store in Vienna in 1886. Following Jacob's death in 1899, Heinrich and his brothers ran the business up to 1938. Following the Anschluss of Austria to Nazi Germany, the business was 'aryanised' and the family's porcelain collection was seized by the Gestapo. Heinrich fled with his wife to Canada where he died in 1953.

The British Museum claim

The claim against the British Museum relates to a rare Du Paquier dish of hand paste porcelain. The size and décor of the dish which dates back to 1725-1730, make it unusual. Only four other examples of this dish have been traced.

William King, an employee of the museum, presented the dish to the museum in 1939. It is not known how he acquired it, but as an experienced ceramic specialist, fluent in several European languages and with many contacts in Europe, it is thought that he knew the Rothberger collection and may have seen it in Vienna.

The British Museum's curator considered that it was unlikely that the dish would have been sold by the Rothberger family before 1938 as it is an exceptional and attractive piece and they would not have needed to dispose of it for financial reasons. The general collecting practice of wealthy European families was to maintain collections intact over a long period of time.

The Panel accepted that the Museum's legal title to the dish was beyond doubt since any legal claim was time barred under the Limitation Act 1939. The Panel also accepted that the museum acquired the dish in good faith, as it was not universal practice in 1939 to investigate provenance at the time of acquisition.

Section 5 of the British Museum Act 1963 imposes restrictions on the British Museum in terms of disposing of objects in its collection, and in this case restitution of the dish by the Museum would not have been lawful. The Panel recommended that Mrs Gutmann should receive a compensatory payment of £18,000 (the current value of the dish) instead and that whenever the dish is published or exhibited, the British Museum should acknowledge that it once belonged to the Rothberger family and that the family have agreed that it should remain with the museum.

The Fitzwilliam Museum claim

The claim against the Fitzwilliam museum related to a porcelain monteith, used for cooling wine glasses, made in the Sèvres factory in 1768.

Louis Clarke, director of the Fitzwilliam museum from 1937 to 1946, gave the monteith to the Museum in 1960. It is not clear how Mr Clarke acquired the piece and the museum was not able to ascertain the circumstances of its acquisition.

The Panel raised the question of whether the museum should have investigated the provenance of the monteith, particularly as it was apparent from the Sotheby's inventory of Mr Clarke's collection in 1948 and the label on the monteith that it originated from the Rothberger collection. According to the museum's current Keeper of Applied Art, the museum was under-resourced at the time of the bequest and lacked the breadth of expertise which would have prompted further enquiry. There was evidence that the Keeper at the time began to catalogue objects in the museum's collection and that he researched the provenance of some objects but that he did not research the history of the monteith. The Panel made it clear that no criticism could be made of the museum's practice at that time.

Although the Panel recognised that the Museum's legal title to the monteith was beyond doubt and that the monteith was of considerable importance to the Museum's collection, there was no statutory bar to restitution, and the Panel acknowledged that Mrs Gutmann had a strong moral claim. Accordingly, the Panel recommended that the museum return the monteith to Mrs Gutmann.

Withers advised the Spoliation Advisory Panel.