

# INTRODUCTION FROM THE EDITOR

## The Human Factor – How can a generational handover of art succeed?

In recent decades, the art market has grown to become an economic driver with a turnover of more than eight billion euros in Germany alone. All works of art – created and traded – will eventually be passed on to the next generation. Passing down art to the next generation is thus a mass phenomenon. However, a closer look at a particular aspect of this transformational process is still missing: the human factor.

### **Why is the human factor so important?**

Art is made, collected and traded by people. And it is handed down to people. If art is handed down not to people, but instead is handed over to institutions, these foundations and museums are in turn run by people. However, these fundamental conditions so far have barely played a role in how we structure the handling of art inheritance. The applies to those affected as well as those in the advisory professions. In part, this is probably due to the fact that there is no awareness of any problem of material inheritance, but rather heirs are associated with the passing on of money assets. However, sheer money is easy to handle on both sides of the generational transition. It is easy for the testator to divide it, and heirs can use it as they wish. However, inheriting art means facing an assembly of things, often without a recognizable structure and on top of that, charged with significance or meaning. Due to the general increase in life expectancy, the generational transfer is increasingly taking place at a stage of life when the heirs themselves are already advanced in age and have established themselves on many levels. With regard to inheritances related to art, the problem tends to be one of isolated issues. The (impending) inheritance tax, (dreaded) restrictions on ownership through protection of *Kulturgutschutzgesetz* (Cultural Property Protection Act) and the possibilities for the institutionalization of art under the keywords: “foundation” and “museum”. These are all the topics that need to be brought out into the open.

### **Who's ready?**

Taking into consideration who has the necessary resources and is willing to use them to provide for art in the future is either not done at all or in an attenuated form. Instead, the protagonists vacillate between concerned and biased assumptions that reflect neither the *Lebenspolitik* (*Lebenspolitik is a term coined by the philosopher Hans-Peter Krüger which refers to the choices and philosophies a person makes by which they live.*) of the possible successors nor the legal and current environment. In particular, the question remains unanswered as to whether or under what conditions the art holdings will be able to remain competitive over the long term. Sometimes this question is not even asked, but a positive answer is simply assumed. An extreme but not uncommon approach of the testators is to assume their own indispensability. An open-ended discussion with possible successors thus falls completely to the wayside. Depending on the form of the day, the protagonists of this concept imagine that an

unspecified miracle will happen or that their life's achievements will culminate in a crashing final act like an exploitative auction. (In reality, far more art is "disposed of" than spectacularly marketed.) Sometimes testators assume that successors are mentally prepared simply because of the fact that someone is needed. The social conditions in which potential successors grew up are not taken into account. For to place oneself in the service of the collection or one's artistic life's work collides as a fulfillment of duty with the ideas of free self-realization and the invention of one's own biography. In traditional structures, fulfilling one's duties is regarded as a sufficient condition for successors to take responsibility. This no longer appears socially adequate. Apparently, following the laws of a free society, today's testators say that their successors take "pleasure" and "fun" in art. What is not perceived is the conflict that successors are now supposed to do this in a way derived not only out of a sense of responsibility, but also "voluntarily" and with the "fun" the predecessor had in mind.

The professional work of lawyers, tax advisors, estate administrators, experts, gallery owners, museum people and sometimes psychologists demonstrates that a closer look at the inner processes of the parties involved, which we touched upon before, is worthwhile. Because whenever consultations meander with no clear result in sight, clients migrate from one lawyer/tax consultant to the next, and the collection is offered to "every" museum, and works are not or cannot be authenticated after the artist's death, and inheritance disputes escalate even though all prerequisites were known during his or her lifetime, this failure is not based on professionally insoluble questions.

### **Integrate expertise as a model for success**

Critical to success are extraneous factors. Models that don't take into account the (hidden) motivations of those involved when clarifying factual issues, such as the preservation of the collection or the transfer of copyright in the cases of artists, are doomed to failure. The interplay of professional expertise in areas of law, taxes, art **and** motivation appears to be a model for success. This is where the interdisciplinary project "The human factor" comes in. The interdisciplinary approach of the congress will be deepened in the following essays. The content of the lectures and the insights gained from the panel discussions were used for the respective essays.

### **Valuation and assessment**

The starting point for all professional considerations is the social consensus that art has a monetary value at all. Sociologist Jens Beckert provides an overview of the state of research into the emergence of value concepts and the price formation mechanisms for contemporary art, also in contrast to other luxury goods. The determination of the economic value of art objects is thus basically intersubjective between the participants in this "Reputationsmarkt" (reputation market). Beckert introduces the protagonists of the "Betriebsystem Kunst" (art operating system), whose influence determines the commercial success of art.

The methods used by experts who determine monetary values for art when handing over art holdings, for example for the purposes of inheritance tax returns, a distribution of inheritance, a donation certificate or the determination of the

compulsory portion, are based on these general findings. The so-called comparative value method is used to determine the monetary value of art for a particular occasion on the basis of the parameters of the art reputation market: authenticity, provenance, quality, technique, format, significance within the work, timely comparable sales on the relevant markets, etc. Legal components, especially possible tax privileges of private collections, which lead to massive value reductions and tax exemptions, are added. Finally, the application of the concept of value in the range between fair market value and replacement value is decisive. Whether the dealer purchase price is to be applied for the respective valuation occasion or the selling price in the gallery, how surcharges at auctions are to be weighed against gallery prices, all this is difficult to judge by laypersons. The term layman is to be understood very broadly here. After all, the art expertise of the museum director or market participation as a gallery owner is not sufficient. An expert evaluation weighs up the different markets against each other and incorporates legal criteria. For complex valuations such as the determination of a collection value, which cannot be determined by simple addition, a special expertise is required.

## Estate planning: law and taxes

Testators draw consequences for their creative goals from their ideas of the value of art. Although "Verteilungsgerechtigkeit" (fair distribution) is almost always mentioned as important in creative consultations, a professional value assignment is generally only made when there is already a dispute. Making expert – i.e. resilient – valuations the starting point for legal designs could contribute to solutions that are accepted by all those involved. Anyone who has to share an item without a fixed value – unlike, for example, an account balance or securities account on a key date – should first generate facts that are accepted by all those involved or at least stand up to judicial review. The fact that understandings about the economic value of the portfolio regularly diverge drastically depends in part on the fact that the mechanisms of the market and valuation are unknown or that the tax consequences cannot be distinguished from the distribution of inheritance. In any case, at this point, the generational handover presents itself as a matter with a very high incidence of "alternativen Fakten" (alternative facts). One could even go so far as to say that a post-factual state predominates in this area. Objectification is necessary. In his essay, Michael Holtz, specialist lawyer for tax law and for inheritance law, first explains the framework conditions that are actually given by civil and tax law.

Wherever the mandatory framework is abandoned and one's own design begins, Holtz sharpens the eye for the fact that the application of legal and tax instruments is always preceded by judgmental decisions. The author makes it clear that at the beginning of the will, the marriage contract, the contract of inheritance or even the establishment of a foundation, there is always an individually made decision as to what should be just. Those involved sometimes have a tendency to make their decision appear to be intended as quasi natural law. This is because in the balancing of interests with others, it is difficult to take a position that contains obvious evaluative elements. Accordingly, the key to success is how the explosive question of distributive justice is answered and how the resulting arrangements are legally and fiscally embedded. If an arrangement does not succeed, then the inheritance intended as a gift - defined as a service without compensation - turns into the opposite: the gift becomes a burden and an explosive experience among individuals.

## Hurdles: psychology

Inheritance conflicts occur in all social classes. Even in families with objectively little wealth there are disputes. The psychoanalyst Angela Utermann explains the irrational and unproductive strategies of those involved by the fact that in the inheritance situation relationship problems are dealt with on a material level. The actual object of inheritance disputes is therefore the activation and re-staging of dysfunctional relationship patterns in the families. In the case of bequests related to the collection, the collecting of art often has an unconscious function for the testator that affects the shaping of his or her last will. The lack of reflection, often coupled with a narcissistically accentuated personality of the testator, leads to the bequest being designed as a monument to eternity. Whether the expectations of action contained in this model are fulfilled or rejected by the heirs depends on the dynamics of the relationship between the parties involved. Suppressed, frowned upon feelings such as envy, greed, jealousy and anger are expressed in excessive defensive reactions. Unforgiving conflicts between the participants and sometimes also those who were not considered are the result. Constructive solutions are blocked because the material heritage is read as an answer to the questions of appreciation and affection. Avoidance or settlement of inheritance conflicts through external advice can only have a limited impact, since the dynamics of the relationship are shifted to technical issues and are only seemingly objectively argued by those involved. It is seldom possible to penetrate to the actual conflicts. The aim of Utermann's contribution, which is deliberately focused on failure, is to work out occurring patterns in a vivid way.

Estate reality:  
Negotiate. Hope.  
Worst case scenarios.

In my article, insights from psychology are applied to the people involved in the creation of art. When old relationships patterns are activated in the inheritance situation, this means that the foundations for a successful generational handover are laid down for life. Accordingly, aspects of the history of the collection's origins and, in relation to the artistic legacy, the artist's handling of his or her work over a period of time are decisive for the success of the handover. The creation and handling of the collection are of central importance for an expert evaluation. After all, origin and state of preservation are important value-forming factors. The connection between the external handling of the art and the psychological causes opens up access to those involved and can, in the best case, have a mediating effect when the inventory is aligned for the future.

If sociological, legal, fiscal, psychological and expert aspects can be successfully brought together, negotiation between the generations appears to be a workable approach.

But it seems to be more difficult for creative personalities to consciously focus on their own finiteness than for people who do not claim to change the world and create something lasting. This is especially true for those involved in the arts, because creation is directed towards the future and not the past. Collectors are often entrepreneurs in their bread and butter professions and as such they regularly see themselves as the starting point of a dynasty. In the collection, too, patterns of action are pursued that are originally entrepreneurial: Success, effectiveness, visibility etc. Meanwhile, artists see themselves as the pacesetters of an idea that never existed before.

What is now at stake is the claim to eternity of the respective life achievements, which must be reflected upon. The narratives, the constructions of reality by the testators, must be examined to see whether they are compatible with the *Lebenspolitik* of the community. Utermann's theses, applied to the players of the art market, result in a cheerful overview of missteps and should help to identify patterns.

**Feasible solution:  
external estate management**

Putting the caesura of transition into a larger context, identifying parallel cases and getting help is difficult in a market that is characterized by successful charismatic lone fighters. Markus Eisenbeis and Thorsten Klinkner stand for the practical implementation of ways out of failures. Inheritance is generally perceived as a one-off event. In reality, however, it means taking on permanent responsibility. The lawyer and tax consultant Klinkner and the auctioneer and estate administrator Eisenbeis explain in their contribution how estates with an art component can be managed professionally and in the long term. In their respective companies, the authors offer external estate management services in modules up to and including global takeover. The main objectives are: personal relief for the heirs, objectivity and economic success. Their article reports on the key points of professional external support and raises awareness of the points that should ideally be emphasized when taking over estates with an art element.

## Island of success

The panel of the congress, now transformed into a team of authors for this publication, sees itself as the first beneficiary of the project thanks to the interweaving of various streams of expertise. The division of labor that has existed thus far in our field seems to have led to a focus on problems and being less solution oriented. Thanks to this interdisciplinary cooperation, the participants see themselves as well equipped to deal with the topic of generational handover of art holdings and thus see themselves as an island of success.

A special thanks to the collector Harald Falckenberg, who provides a blueprint for all visible private collecting. His expertise, his examination of the concerns of collectors and his thoughts on passing down his own collection enriched all of us on the day of the congress and provided important impulses for the authors of the essays. We hope you enjoy reading the individual essays and learning more about the intrinsic connections between the individual disciplines!

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