

Holocaust Art


By Charles Palmer

Fast Facts:

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Adele and Ferdinand Bloch-Bauer were paragons of turn of the century Viennese society. Ferdinand was a sugar magnate who owned some of the grand residences of Austria, and Adele was a noted intellectual and arts patron. They lived an elegant life surrounded by the luminaries of their day. In 1907, they hired the noted Vienna Secession artist, Gustav Klimt, to paint a portrait of Adele. Many years later, Klimt's iconic, intricately patterned portrait of Adele would become the subject of a groundbreaking United States Supreme Court case¹ and one of the biggest individual sales in the history of art.

Adele Bloch-Bauer unexpectedly died of meningitis at the age of 43, in 1925. Her will, written well before the specter of Nazi Germany, directed her husband to give her Klimt portrait to the Austrian National Museum after his death. Ferdinand asserted ownership of the painting in the probate proceedings, but said that he intended to follow his wife's wishes as to its disposal.

Things changed drastically in 1938 when the Nazis invaded Austria. Ferdinand, an assimilated Jew who celebrated Christmas and Easter, was forced to flee to Switzerland. His castle in Prague, his sugar factory, his porcelain collection—everything he owned was seized by the Nazis. The portrait of Adele ended up in the Austrian National Museum.

After the war, Ferdinand hired a Viennese lawyer to recover his property. The lawyer was partially successful, but the Austrian National Museum was intractable—it would not relinquish Klimt's portrait of Adele. The museum pointed to Adele's will, which expressed her desire that her portrait be given to the museum. Also, Ferdinand's heirs, as was common in postwar Austria, were forced to relinquish their rights to property such as the portrait of Adele in exchange for export licenses to get other—in this case, lesser—property out of the country.

Ferdinand's heirs were stymied in their efforts to claim their property until the 1990s when the Austrian minister of education and culture opened the previously restricted archives of the Austrian National Museum. The Austrian press wrote articles about the museum's complicity in the seizure of art from the Jews, and its refusal to return this property after the war. In

response, an art restitution law was passed in Austria in 1998. The law provided for a commission to evaluate the claims to property seized by the Nazis. The commission determined that 16 Klimt paintings and 19 porcelain settings should be returned to Ferdinand's heirs, but the Klimt portrait of Adele would not be returned because it had been willed to the Austrian National Museum. Ferdinand's heirs sued in Austria, but Austrian filing fees were prohibitively expensive. Filing fees were a percentage of the amount in controversy. Gustav Klimt paintings had grown in value, so the filing fees were over \$2 million. The fees were reduced to \$500,000, but that was still too expensive.

Ferdinand's heir, Maria Altman, filed suit against the Austrian National Museum in federal court in Los Angeles, where she lived. The case involved the Foreign Sovereign Immunities Act of 1976 and whether the Act applied to conduct that occurred before its enactment. The Supreme Court ruled that the United States courts do, indeed, have jurisdiction over these claims, i.e., United States federal courts have jurisdiction to decide claims for the return of Holocaust looted property even when the property is not in the United States.

After the Supreme Court decision determining that the United States courts did have jurisdiction, the parties agreed to arbitration in Austria. After a one-day hearing in September 2005, the arbitrators ruled that several of the Klimt paintings, including the portrait of Adele, should be returned to Ferdinand's heir, Maria Altman. The paintings were returned in March 2006, and in April, Maria Altman sold the portrait of Adele to the Neue Gallerie Museum for German and Austrian Art for \$135 million.

Claims for the return of Holocaust looted art are increasing. These lawsuits will become even more common as the federal courts assert jurisdiction in these matters. More records of the Nazi era and the looting of valuable works of art are being released for public research. For the art collector and the art lawyer, the prospect of defending one of these lawsuits is a nightmare. No one wants to be in a position of defending or supporting the product of the atrocities of the Nazis. The best advice is to avoid purchasing art that could be subject to these claims. There is no foolproof system to avoid Nazi looted art, but there are many ways to minimize the chances that an innocent collector or museum may end up with Nazi stolen art.



Nazi Interest in Art

Art was important to the Nazis. Hitler, a failed artist, collected art for his planned museum in Linz, Austria. Herman Goering, second in command of the Third Reich and head of the German Luftwaffe, was also an avid art collector.

The Nazis used art as propaganda,² so they had to control its content. Most favored late nineteenth-century German art as a manifestation of the Aryan culture. The un-German cubism, fauvism, expressionism, and some impressionism were offensive and “degenerate.” After a law was passed, the government was allowed to remove this undesirable art from museums, but the art could still be sold at auctions in Europe for money to support the war effort.

The Einsatzstab Reichsleiter Rosenberg (ERR) was the primary organization looting art in the Nazi-occupied territories. Originally formed to collect political material, the ERR started confiscating “ownerless” Jewish property in France. Initially, the looted art went to the German embassy in Paris, but that building was soon filled. The Jeu de Paume Museum in the Tuileries Gardens then became the warehouse for stolen art. There, art historians and clerks catalogued the confiscated property. Hitler took some of it, and Goering visited the Jeu De Paume regularly to review and select works of art. But the Nazis did not acquire all of their art by looting. There was a booming art market in Europe. The Nazis had money from the sale of “degenerate art,” so they often purchased works through dealers and public auctions. They were even the victims of outright fake Vermeers painted by Van Meerger and other art forgers.³

Avoiding Holocaust Art

To avoid purchasing or possessing Holocaust art, the first step is to carefully examine the written history of ownership, or the provenance, of the work. Most valuable works of art come with a written history of ownership. Provenance research ideally seeks to establish an unbroken chain of ownership from the present back to the artist. Although an unbroken chain of ownership is unusual, the careful buyer/researcher should critically evaluate suspicious ownership between 1933 and 1945, the period of Nazi power.

The Nazis were primarily a European scourge. African, Asian, South American, and American art is less likely to have been stolen by the Nazis than European art. Even within European art, the Nazis preferred German Renaissance, Flemish, and Dutch art, because those works were thought to be manifestations of the superior Aryan culture. Suspicious ownership between 1933, when the Nazis came to power in Germany, and 1938, the year of the Anschluss (union) with Austria, is of particular interest if the art or its owners were in Germany. During those years, most of Germany’s Jewish population was attempting to get out of Germany, leaving behind property and valuable art. The looting was geographically expanded by the union with Austria in 1938 and the invasions of Poland in 1939 and Holland and France in 1940. Even sales in Switzerland were a major dumping ground for

looted art. But Europe had a booming art market in legitimate art during the 1930s. Therefore, an examination of the gaps or suspicious ownership of art does not complete the required search, since many legitimate art sales occurred during that time.

The researcher must study the increasingly available records for names of looters of holocaust art, names of victims, and reports of stolen art. In 1944, the United States Secretary of State ordered all State Department, Treasury, and foreign service personnel to investigate and prepare reports on Nazi looted assets. Many of these reports are scattered throughout the records of United States government agencies. Good starting points for research in this area include the AAM Guide to Provenance Research⁴ and Holocaust-Era Assets: A Finding Aid to Records at the National Archives at College Park, Maryland.⁵

The Looters

The Art Looting Investigation Unit (ALIU) of the Office of Strategic Services was one of the primary U.S. government organizations investigating the looters. The ALIU compiled a *Biographical Index of Individuals Involved in Art Looting*,⁶ which listed every person interviewed or investigated by the ALIU. However, even if a looter’s name shows up in the provenance of a work of art, it does not necessarily mean that the work was stolen. Many of these individuals were involved in the sale of legitimate as well as stolen art. Even Karl Haberstock, Hitler’s art dealer, was involved in many legitimate art transactions.

The ERR was brutally efficient in confiscating over 17,000 works of art in France alone. They were also meticulous record keepers. Teams of clerks compiled inventory cards of seized art, and many were photographed. Most of these records and photographs are at the National Archives.⁷

One of the record keepers of looted art in France was the unlikely spy, Rose Valland. Valland was the person who watered plants and took care of the maintenance staff at the Jeu de Paume Museum in Paris. The Nazis took over the Jeu de Paume to store the fruits of their looting in France. Valland closely observed the stolen art at the Jeu de Paume and recorded her daily observations each evening at home. The ERR, always rigorous record keepers, took photographs of their daily plunder. Valland took the negatives home to make copies. These records of Nazi plunder were passed to the French Resistance. Valland kept track of where the stolen art was going in Germany and alerted the Resistance to avoid blowing up trains carrying looted property. At



the end of the war, Valland provided information about a train that was loaded with plunder and scheduled to leave Paris for Germany just before the Allies were to arrive. The Resistance was able to delay the train until the Allies captured Paris.⁸

The Looted

One source of names of victims of Nazi looting is the lists of those who submitted post-war restitution claims. There is not one list of claimants, but the National Archives has several separate lists of individual claim files. Some of the names of claimants listed by country can be found at the AAM Guide to Provenance Research.⁹ But the researcher must remember that most of those who lost art to the Nazis did not survive the war.

Stolen Art

The Art Loss Register¹⁰ has compiled a large database of more than 100,000 stolen works of art worldwide. Over 4,000 of these items are works stolen during the Holocaust. This is certainly important in provenance research of Holocaust art.

The National Archives also has extensive records of Holocaust art. The records are voluminous, so it is a good idea to consult the Finding Aid to Records¹¹ at the National Archives at College Park, Maryland. The Finding Aid, with its extensive indexes and table of contents, is a necessary corollary to research of the archives.

After the war, numerous collecting points were set up throughout Germany as repositories of Holocaust art. In 1946, the repositories were consolidated in four places, at Munich, Wiesbaden, Marburg, and Offenbach. Looted art was identified, photographed, and sent back to the country of origin. Many of these vital records are also at the National Archives.

The system is far from perfect, and the search of provenance will never be foolproof. However, a recent development may promise some financial peace of mind for art collectors.

Art Title Insurance

Research is essential for the prospective purchaser-owner. No one wants to purchase or possess the fruits of Nazi plunder. But even the best research cannot discover all instances of Holocaust art. If the work of art was present in Europe between 1933 and 1945, the possibility exists that it was stolen. For this financial risk, there is a new game in town: title insurance for art.

The State of New York recently authorized a single-premium, indefinite term art title insurance policy with coverage that is similar to real estate title insurance.¹² These policies were meant to insure against the risk of acquiring Holocaust art, but they also cover the increasing seizures by the United States government of art produced under President Roosevelt's New Deal Works Progress Administration¹³ and the even more common divorce, judgment, UCC, and tax liens.

There are, of course, downsides to this new concept. Art title insurance can be rather expensive, with prices as high as 5 percent of the value of the work of art. These policies insure only the policy amount, so if the work significantly appreciates in value, additional insurance must be purchased. Art title insurance covers title or ownership risks, not the risk of damage by Steve Wynn's elbow¹⁴ or any questions of authenticity. Like real estate title insurance, art title insurance covers the work so long as the purchaser or his or her heirs own the art. New insurance will have to be purchased when the art is sold. Finally, this insurance is approved in the state of New York, not in Michigan. Most major art purchases have a connection to New York, so this is not a significant limitation, but it is certainly hoped that this new product will come to Michigan soon.

In Conclusion

As the records and archives of World War II are made more available to public viewing, there will be more claims by victims of Nazi looting and their heirs. Buyer-collectors should be careful, do the research, and, for valuable works, insure themselves against loss. ■



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FOOTNOTES

1. *Republic of Austria v Altman*, 541 US 677, 124 S Ct 2240, 159 L Ed 2d 1 (2004).
2. Yelde, Akinsha, and Walsh, *The AAM Guide to Provenance Research* (Washington, DC: American Association of Museums, 2001), ch 6, p 41.
3. Nicholas, *The Rape of Europa* (New York: Vintage Books, 1995), p 319.
4. Yelde, Akinsha, and Walsh, n 2, *supra*.
5. National Archives, *Holocaust-Era Assets: A Finding Aid to Records at the National Archives at College Park, Maryland* <<http://www.archives.gov/research/holocaust/finding-aid>> (accessed April 21, 2007).
6. Yelde, Akinsha, and Walsh, n 2, *supra*, Appendix H: The Art Looting Investigation Unit (ALIU), List of Red Flags, which is taken from Box #106, Folder 1 of the U.S. National Archives & Records Administration.
7. See Yelde, Akinsha, and Walsh, n 2, *supra*, pp 58–59.
8. This incident was the basis for the film, *The Train*, starring Burt Lancaster, with Suzanne Flon as Rose Valland, directed by John Frankenheimer, 1964.
9. Yelde, Akinsha, and Walsh, n 2, *supra*, pp 78–94.
10. Art Loss Register <<http://www.artloss.com>> (accessed April 20, 2007).
11. Greg Brandsher, *Holocaust-Era Assets: A Finding Aid to Records at the National Archives at College Park, Maryland* <<http://www.archives.gov/research/holocaust/finding-aid/index.html>> (accessed April 20, 2007).
12. Art title insurance is issued by Aris Title Insurance Corporation, 666 Fifth Avenue, 24th Floor, New York, New York 10103-3198.
13. Gottschall, *Mirror, Mural On the Wall*, 15 Nov CBA Record 38 (2001).
14. Casino mogul Steve Wynn accidentally stuck his elbow into a Pablo Picasso painting, *Le Reve* (The Dream) after agreeing to sell it for \$139 million. See Steve Wynn to keep Picasso he damaged, *Washington Post* (AP), October 11, 2006, p C07, available at <<http://www.washingtonpost.com/wp-dyn/content/article/2006/10/17/AR2006101701362.html>> (accessed August 11, 2007).