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Historical Truth Impossible? Nazi-Looted Schiele Paintings and the New York and Los Angeles Court Cases

When Jonathan Petropoulos and I presented papers on looted art restitution issues in Switzerland and Austria on a panel concerning “Kunstraub and Memory” at the 1997 (Sept. 26th) GSA meeting our commentator, Professor Henry Friedländer, was nice to us “young boys”, but clearly indicated that what we were dealing with was not real business, not real holocaust history. Property issues should be left to the lawyers, and we should care more about victim’s and genocide history. Friedländer’s views represented a mainstream perception at that time, which, by the way, has negatively affected the otherwise perfect archival microfilming policy of documents all over the world by the Holocaust Memorial Museum in Washington, DC, where, until recently, property issues have been completely marginalized.

However, just a few month later, on Christmas Eve 1997, the international media and the Clinton administration began to respond to a new debate in a new era led by a younger generation that focussed on property issues as a symbol for renegotiating World War II and Holocaust history. In a time of globalisation and growing importance and interest in individual human rights (overruling the traditional reparation issues of states and state agreements that create a permanent closure of these issues), World II and post-war looted art issues became media icons.

With respect to historiography, applied history around the holocaust era assets debate became quite trendy despite the broad methodological shift around postmodernism and the widely acknowledged assumption that historians cannot produce absolute truth, and history, thus, is not fundamentally different from myth or fiction. Suddenly, even advocates of cultural studies accepted the idea that historians still can contribute to debates on values in the holocaust era assets discussions, not by each side simply asserting its own values, but by empirical evidence and thorough analysis and interpretation of this evidence.

In Austria, general public opinion shifted focus to specific individual Nazi era art claims by two families concerning two paintings from the Austrian expressionist Schiele. The paintings were on display at the Museum of Modern Art in New York, on loan from the private (state subsidized) Leopold Foundation.¹ On January 7, 1998, the Manhattan District Attorney confiscated the two paintings (“Portrait of Wally” and “Dead City”) starting a criminal investigation into the ownership of the paintings and providing evidence for a possible trial before a grand jury.²

It should be noted that this incident was not merely on the sidelines of the “Swiss Nazi Gold Bank” discussion, but became part of a much broader debate in the US dealing with the sometimes dubious ownership of alleged Nazi loot on display in several museums in the US and Canada – paintings claimed by heirs of Holocaust victims.³ A painting, which I presented in 1997 as missing art (stolen by the Reichs- und Gauleiter Baldur von Schirach in 1942) turned up in North Carolina.

¹ New York Times, December 24, 1997.

² New York Times, January 8, 1998.

³ Boston Globe, July 24, 1997.

The painting in question is "Madonna and child in a landscape", circa 1518, by Lucas Cranach the Elder, and it now hangs in a place of prominence in the North Carolina Museum of Art in Raleigh, which values it at some \$750,000. The Cranach had been the property of the Viennese Austrian collector Philipp Gomperz, who fled Austria. After the war, Schirach was imprisoned for war crimes (asserting that the "Russians" had stolen the painting when they liberated Vienna in 1945), but the Cranach was sold to the New York dealer Siegfried Thalheimer, who sold it to Abraham Silberman, another dealer, who sold it to a collector in Beverly Hills, George Khuner. Mr Khuner, like Mr Silberman an Austrian Jew, had the picture authenticated by William R. Valentiner, who founded the North Carolina Museum of Art in 1955. The whole issue was settled in perfect mediation, the museum paying compensation to the two sisters who were the heirs of the Gomperz collection after the painting was unearthed by the World Jewish Congress "Commission for Art Recovery." This commission, chaired by former US Ambassador to Austria, Ronald Lauder, who also happens to be the chairman of the MOMA, was established before the MOMA-Schiele incident.

The impact of the MOMA incident on the international debate about looted art was stunning, compared with the Austrian tradition of suppressing its Nazi past and reducing any restitution or compensation to a minimum. No one would have believed in 1997 that restitution issues would be renegotiated. Even the Grand Coalition of Social Democrats and Conservative People's Party, successor parties of the two dominant post-war forces who only unwillingly, and primarily under Allied pressure, carried out individual restitution after the end of World War II passed new legislation on the restitution of looted art. On November 5, 1998, the National Council of the Austrian Parliament unanimously passed a law to reconstitute looted art from the Nazi period (including the immoral trade off since the export prohibition law has been amended not to include these objects previously). Since this law is limited to State owned collections, provincial and municipal authorities have established research commissions to screen their collections for Nazi looted art (e.g. the Historical Museum of Vienna or the museums of the City and of the Province of Upper Austria in Linz, etc⁴). Smoking guns are still buried in Austria's Nazi past, but obviously a new generation of journalists, academics and politicians are prepared to face this past and unearth the truth - even if this hurts not only the national memory, but also means concrete efforts for restitution of material losses. Even one of the dominant figures in Austrian national heritage and identity, Johann Strauß, – the King of Vienna Waltz – was affected. His and his family's papers were restituted and then bought back by the City of Vienna⁵. Here, too, bureaucracy was pursuing a closed-door policy, but when a political and media debate started, all information was ultimately made available to the public on the Internet. This continued slow handling is a indicator that it takes time to accept the new perceptions in the looted art issue.

⁴ More details on provincial collections see: Vienna (<http://www.museum.vienna.at/dynamicPage.asp?MenuID=1906>), Residenzgalerie Salzburg (<http://www.residenzgalerie.at>), Rupertinum, Museum für moderne Kunst, Salzburg (<http://www.rupertinum.at>), Salzburger Museum Carolino Augusteum (<http://www.scma.at>), Inventarbuch der Landesgalerie Salzburg 1942-44. Mit Farbabbildungen der 19 aus Frankreich stammenden Kunstwerke (<http://www.salzburg.gv.at/inventarbuch/index.htm>), Restitution am Landesmuseum Joanneum, Graz <http://www.museum-joanneum.at/restitution>, Sammlung Gurlitt der Neuen Galerie der Stadt Linz (<http://www.linz.at/archiv/gurlitt/bericht.htm>)

⁵ More details on the so called *Sammlung Strauß-Meyszner* and *Sammlung Strauß-Simon*, in: Maria Wirth, Restitution von Bibliotheksbeständen nach 1945: Die Verhandlungen über die Strauß-Sammlungen in der Wiener Stadt- und Landesbibliothek, paper presented at "Raub und Restitution in Bibliotheken". Internationale Tagung im Wiener Rathaus, 23.-24. April 2003, published in: <http://www.stadtbibliothek.wien.at/bibliothek/veranstaltungen/restitution/abstracts/wirth.pdf>

Why is the looted art debate so strong?

The symbolism of art objects has always been extremely striking – especially art that has been looted during military aggression and has been transferred to the museums of the occupier and turned into rather archaic symbols of victory and continuing strength over the defeated opponent. (Even in the former Soviet Union, the sheer knowledge about “trophy art“ was politically strong enough so that the actual objects mostly were stored and not shown to the public). They are always visible in the minds of both the victors and the victims (and still are today if one follows the discussion about the return of looted art from Russia).

I would even argue that there is no difference between state organized collective memory about looted art and the individual private memory of art owners and their heirs – the video artist Vera Frenkel tried to express these feeling in three projects – transit bar, body missing and body missing web site⁶. Focussing on the planned Führermuseum in Linz and the already looted art objects (most of them from collections of Jews from all over Europe), Frenkel interprets state driven looted art as another form of cannibalism – to gain in strength through stealing the other (the enemy's) power symbols. She makes quite clear that this process does not end; according to Siegfried Kracauer's conception of history: History neither ends nor is she open to aesthetic redeem.

In the Austrian museum scene, directors and curators still had problems reversing the process, but the political elites in the government and US and media pressure overruled their perceptions – except in the case of the 5 (later 6) Klimt paintings from the Bloch-Bauer collection in the Österreichische Galerie in the Belvedere. After 1945 the identity of the Austrian elite in the depressing social, economic and political environment after 1945 very much needed high culture and art as symbols of power – leftovers of former power. Therefore, these constructive components of the Austrian small state identity, based on the fiction of representing the former glorious past of the Habsburg monarchy, seemed for decision makers and especially bureaucrats too important to be returned. In a secret plan, some art objects were even sent as a wandering exhibition overseas in the hot days of the Cold War in the 1940s and 1950s to be used in case of all out warfare as property for an Austrian government in exile. An all out restitution policy, too, was seen at that time as an acceptance of political responsibility for the destruction of the Jewish Community of Austria, World War II and the Holocaust.

In the 1990s, however, the privatisation of the former state controlled banking and industry section started, and thus the return of state property seemed to be easier. One could even speak of the first steps towards privatisation as national symbols of identity. In the field of forced labour compensation, the Austrian Social Democratic Chancellor Viktor Klima even went so far as to declare that these issues were to be solved by industry and banks themselves since they were private businesses.

With regard to the MOMA-Schiele case and the 2 paintings from the Leopold collection, both were released in 1998 by a NY court. One, however confiscated by the US government and one returned to Austria. I shall not go into further details concerning this case, which has been relatively well documented but is still in legal dispute⁷ dominated by the key issue of who is the real heir. Several months after this seizure, evidence has been uncovered that seems to

⁶ Vera Frenkel, Die Macht der Abwesenheit: Schweigen, Schatten und Erinnerung, in: Sigrig Schade, Gottfried Fliedl, Martin Sturm (Hrsg.), Kunst als Beute: zur symbolischen Zirkulation von Kulturobjekten, Wien 2000, 143-170.

⁷ Compare for the legal background of this case Laurie Brook Zimmerman, The People of the State of New York Versus The Museum of Modern Art. A Case Study with Recommendations. Paper for a Masters Degree Candidate in Commercial Diplomacy to be presented on April 19, 2000, published in http://www.commercialdiplomacy.org/ma_projects/zimmerman.htm

indicate that neither the Reifs nor the Bondis had legitimate claims. In the instance of "Dead City III," the painting was claimed by the widow of a son of the pre-war owner's cousin. However the cousin was not an heir to the painting. In the case of "Portrait of Wally," the situation is even more convoluted. Henry Bondi, the claimant for his deceased aunt, Lea Bondi Jaray, wrote about his vivid recollections of having seen the painting in his aunt's house in Vienna before the war. But, according to the pre-war owner's grandson, the claimant never saw the painting, never set foot in the house in Vienna, and the claimant recently conceded in a British newspaper interview that he is not even an heir.

The second case I shall use to develop my theme about "historical truth" and the renegotiation of collective memory is the so-called Altmann-case⁸. Ms. Maria Altmann is one of the heirs of the Ferdinand Bloch-Bauer family. She filed a case in a federal district court in Los Angeles in August 2000 after the Austrian Kommission für Provenienzforschung recommended not restituting five Klimt paintings – the famous portraits "Adele Bloch-Bauer I und II", "Apfelbaum I", "Buchenwald (Birkenwald)" und "Häuser in Unterach am Attersee", which allegedly were acquired by the Österreichische Galerie based on the last will of Adele Bloch-Bauer, written in 1923. A legal case in an Austrian court would have cost \$400,000 in a deposit for the court costs. An international arbitration, as proposed by Schönberg, was not accepted by the Austrian state representatives. The Austrian legal situation is quite unclear. The two legal experts hired by Ms. Altmann's lawyer, E. Randol Schönberg (a grandson of Arnold Schönberg, the famous composer), Dr. Lintl, and the University Professor Welser, tend to back her views. The State authorities argue that, according to previous court decisions, they would win a court case. A professional historical analysis is still missing.

But with media representations shaping perceptions, neither a legal nor a historical analysis will work. After five years this case has already been decided with regard to the international perception due to the closed-door public relation policy of the Austrian government. Whatever the court decides, Ms. Altmann will win – even if she and/or other heirs never obtain the paintings.

Can collective memories be renegotiated by art restitution?

I fully agree with Elazar Barkan⁹ and his interpretation of "amending injustices in negotiations in which both victims and perpetrators can share "history and memory". I, however, would like to test his model for a shared, negotiated history, which should be different from the static and one-way narrative of previous historiography as well as of collective memory.

Focussing on the looted art cases chosen for this paper, the first very important topic is related to the generational approach. In these cases, first, second and third generations negotiate about history through restitution, mixing family transformed historical artefacts with fragmentary historical constructions, which in most cases concentrate – like in a legal statement – only on one side of the "story" and very rarely integrate both the spoliation and the restitution issues. (In these cases, looting by the Nazis and fellow citizens in Germany, Austria, France, and Netherlands etc.).

⁸ A large documentary internet site by the Lawyer of Ms. Maria Altmann, Randolph Schönberg is www.adele.at. The commentaries are exclusively written from the point of view of Ms. Altmann and her lawyer, the documents include, however, the "other" side, too, but most of them are in German and will not be read from the majority of the international public.

⁹ Elazar Barkan, *Guilt of Nations: Restitution and Negotiating Historical Injustices*, New York: W. W. Norton. 2000.

In the looted art cases, you very rarely find “first” generations involved anymore. Primarily, second and third generations are part of the debate. Still the strongest cases with media attention and political power are those involving first generations, such as in the Klimt-Case of Ms. Maria Altmann, the niece of Ferdinand Bloch-Bauer, since they still are holocaust survivors and, during the last decades, have obtained considerable moral power in Western Europe and the US.

The second generation and the third generation have in many cases overcome the original traumatising of the first generation, which pursued their restitution claims in an unfriendly environment with the Cold War soon overruling even US official assistance for refugees and new US citizens if naturalized during or after World War II.

On the side of the second and third generations of the perpetrator and bystander groups in Germany, Austria, France, the Netherlands etc., the various national commissions have unearthed a considerable amount of non-Nazi collaboration of European societies, especially in the looting of mostly “Jewish property.” A broader awareness of the horrors of the Holocaust and the amount of collaboration, or even active participation, of their ancestors has taken place. However, the general tendency to “draw a line” still dominates the various societies, a tendency, however, not always accepted by elites and elite media.

However, compared with the role of perpetrators and bystanders during the immediate post-World War II restitution trials, these attitudes have changed. You will now find in all restitution trials a strong tendency to overrule the victims’ narratives by balancing these memories by personal memories of victimization during or after the war as a consequence of Allied bombing, looting, loss of family members on the battlefield, and during the de-Nazification period, which could include internment, confiscation, temporary job loss, etc.

The debates in the 1990s about “Swiss Nazi Gold” and Nazi Forced Labour have broadened public interest and awareness but are still not a strong component of national collective memories, maybe because of the narrow national approaches. A broadening of the debate and an end of national approaches would certainly strengthen this awareness.

A classical example for a neo-national, third generation victims only approach is the best selling book by Tina Walzer and Stephan Templ, *“Unser Wien: ‘Arisierung’ auf Österreichisch”, Berlin: Aufbau Verlag, 2001* which dealt with the wholesale seizure of Jewish property in Vienna by specifically linking the names of the original Jewish owners to the individual expropriators of their apartments, villas, art works, businesses, personal fortunes. The restitution issues, however, were completely neglected. It is a victim-oriented view, which is perceived as morally perfected. If you go into the details of the book, however, even this one-way narrative is not well researched, streamlining facts that do not correspond with the aryanization only views (e.g. a photograph from the Institute of Contemporary History of Vienna that shows Adolf Hitler at the train station in St. Pölten and a small advertisement of the Vienna auction house “Dorotheum” in the background is transformed into “Adolf Hitler visiting the Dorotheum”, a Vienna Banking house. According to the authors, Reitzes, from a well known family and a key target of Karl Lueger’s Anti-Semitism, is looted, but due to the fact that the last Jewish owner died before 1938 and his “Aryan” widow and there collaborators continued business until 1944, etc. etc.)

*To make it quite clear, this critique does not change my views and interpretations of the all-out, brutal and aggressive aryanization policies and Austrian collaboration in 1938 and the shameful half-hearted and perpetrator-friendly restitution and compensation policies. But I think that historiography should not focus solely on one-way narratives and analyse long-range

developments, but rather, it should deal with all narratives, both on the national and individual levels.

However, a highly problematic issue is that the classical legal court procedure destroys the option for a broader public “mediation.” This is the primary weakness of Austrian legislation in looted art issues in that it still is state structured. In the specific cases of looted art, a major obstacle derives from different legal traditions and legal titles of obtaining property in good faith, with US legal traditions requiring a strict chain of legal ownership and a European tradition accepting obtaining property by good faith.

From the beginning, a key failure of the Austrian legislation, which was praised by the then US Undersecretary of State Stuart Eizenstat, was the lack of public transparency and mediation efforts. Even today, if you visit the Bundesdenkmalamt website (www.bda.at), there is no direct reference to the Commission for the Investigation of Provenance of Art Objects of the Federal Ministry for Education and Culture of Austria, led by Ernst Bacher, Generalkonservator Bundesdenkmalamt. At least in the Archive reference you find a list of the materials open for research on looted art.

In the Altmann-case, this closed procedure consisted of a group of experts including two historians, Helmut Konrad from Graz and the director of the Military Museum in Vienna, Manfred Rauchensteiner, both who have never worked or published in the field of looted art, was dominated by legal experts. The group composed an “Empfehlung”, a non-binding recommendation for the Minister of Education, and have still yet to return the disputed art objects or objects of unclear provenance to the rightful owners and their heirs. E. Randol Schönberg, the lawyer for Ms. Altmann, argues, “The Bloch-Bauer heirs and their attorney had been purposely excluded from the entire decision-making process”.

The positive part of the decision of the Commission (one member did not vote and left the Commission), to return 16 other Klimt drawings and 19 porcelain settings that had been donated by the family in 1948 as part of “deal under pressure” to obtain export permits, was not covered in the public debate because the decision not to return the remaining 5 paintings now in the Austrian Gallery at the Belvedere, valued at US\$ 150 Million, overruled the positive message. This closed-door policy destroyed the aim and spirit of the law and harmed the reputation of the commission, which is not a court under specific rules but just an expert commission for the Minister and does not hold public hearings. Still, state officials play an important role in the commission, which neither by composition nor by the legal framework could develop into an arbitration committee.

In general, the procedure – although extremely slow, too slow in my opinion – of late restitution functions well, having so far restituted art objects worth 5 billion Austrian schillings or, according to US sources, 400 Million US Dollars. After the media and political debate with regard to the restitution of the Rothschild property and the later auction by Christie’s (ending with the largest sale earnings in one auction in Europe, \$90,7 million), as well as the Strauß case, the Austrian public has rarely been informed about the cases. Neither the press nor the Kommission für Provenienzforschung reports regularly on these issues, the only exemption being the Altmann-case, which has defined and shaped the international and national perception of complete art restitution efforts in Austria since the late 1990s – at least according to the values returned, in a 1999 estimate 2 Billion Austrian Schillings, or 150 Million US Dollars).

To come back to the striking and dominating Altmann case, a recently discovered new series of documents from 1919 and the 1920s seems to prove that Adele Bloch-Bauer seemed to

earmark the five paintings for the Österreichische Galerie¹⁰ even before 1923. Already in October 1945, Ferdinand Bloch-Bauer allegedly knew that two paintings of Klimt, “Damenbildnis vor Goldgrund” und “Apfelbaum” “have been transferred to the Austrian Gallery according to the last will of his wife”, and he did not intervene.

With the exception of historical research and analysis, the debates have completely shifted to legal argumentation. The representatives of the Republic of Austria are advocating the validity of the last of will of Adele Bloch-Bauer and Ms. Altmann as well as her brother Robert Bentley, who each inherited 25% of the property of Ferdinand-Bloch Bauer, arguing that Adele never owned the paintings and Ferdinand’s last will of October 22, 1945 – only a few weeks before his death on November 13 in Zürich – did not mention specific properties. Therefore, they argue, the paintings belong to them.

One of the central facts left out in the public debate concerns the fact that 50% of the property of Ferdinand Bloch-Bauer should go to his niece Louise Baronin Gutmann (who survived in Zagreb). The public perception is that there is only one heir, the 87-year-old Ms. Altmann. Her lawyer, however, has even stated on his website that he represents 75% of the heirs, since both Ms. Gutmann and Mr. Bentley have died, Ms. Nelly Auersperg representing her 25% herself (which means that Ms. Altmann holds 25%, Mr. Francis Gutmann 25%, Francis Gutmann (25%), George Bentley 12,5%, Trevor Mantle (12,5)).

However, the US court in Los Angeles and possibly the US Supreme Court, which granted a temporary stay of the trial, only decide the formal issue of jurisdiction. Then the trial can start dealing with the relevant details.

The public debate in the US and partly in Austria already has been decided since a shift of moral awareness and the peculiarities US law have made it nearly impossible to decide on cases that involve a Holocaust survivor as the previous owner. Sarah Jackson from the London Art Loss register even goes further: “Once there is a known Holocaust survivor of a known work of art, it becomes virtually un-saleable”¹¹.

Neither the very active Lawyer E. Randol Schönberg nor the very inward working Finanzprokurator of the Republic of Austria have ever tried to place the Klimt paintings case into the larger context of the history of Ferdinand Bloch-Bauer and his family in Austria and the Czech Republic, including wartime and post-war correspondence in the broader aspect of all restitution issues. As a rich and highly influential businessman in Austria pre-1938 and President of the Austrian sugar industry, he and his family had supported the authoritarian, anti-Nazi Schuschnigg-Regime (although they were Czech citizens), but had high tax debts pre-1938¹². Only with starting from a complete picture of the business and private property interests pre-1938, 1938 and after 1945 can the Altmann-case be restructured from a professional historical perspective.

Even if Austria should win the Altmann case the six – Ms. Altmann claims an additional painting, which is claimed by the heirs of Berta Zuckerkandl as well – Klimt paintings are already

¹⁰ Frankfurter Allgemeine Zeitung, 9. Mai 2003, p.33: Wem gehört dieses Gemälde? Um die sechs berühmtesten Klimt-Bilder wird seit Jahren erbittert gestritten: Neue Dokumente zu einer dramatischen Affäre von Stefan Koja und Andreas Kugler.

¹¹ Los Angeles Times, May 20, 2003

¹² See: Historikerkommission der Republik Österreich (Hrsg.) Fritz Weber, Ulrike Felber, Peter Melichar, Markus Priller, Berthold Unfried, Eigentumsveränderungen in der österreichischen Industrie 1938 bis 1945, im Druck, Wien 2003.

perceived as looted art. However, few people really seem to care about that perception, which completely destroys the Barkan model of negotiated history.

This, by the way, is a general problem of looted art and restitution issues. The cases are researched in relatively narrowly defined sources, neglecting the broader framework of business and private as well as the political network of the art collectors.

To conclude I am well aware of the fact that neither the looted art debate nor the political and economic consequences have, from a short term perspective, created what the sociologists David Levy and Natan Sznaider¹³ have defined as "Globalisation of Memory" and thus ended the national memory discourses. I still think that one should not proclaim like Levy and Sznaider the victory of the second modernity (defined along the works of Ulrich Beck) over the first one (which co-created the Holocaust). However, there is a trend within globalisation to slowly open the national containers. But national views, and thus limits, still prevail.

I am well aware of the fact that, for example, German Restitution and Compensation payments to individuals and the State of Israel and the Jewish Claims Conference after 1945 and after 1989 can only, to some extent, be considered as representing a model of "national self critique", which could be used for other conflict solutions involving minorities, expulsion and looting as well as mass killings. Public opinion and collective memories are much more resistant to political change from above. I would dare say that in the 1950s both in Western Germany and in Austria, with the victims-only doctrine dominating and despite the different signals and policies on elite levels, that public support for an expression of guilt and responsibility was marginalized. Even in the 1990s, the public mood and the many negotiators involved expressed mixed feelings. Anti-Semitic arguments even popped up again in the restitution debates, but the trend towards the broader universal awareness continued, and was relatively strong in Austria compared to the 1960s-1980s and the Waldheim debates.

¹³ Daniel Levy, Natan Sznaider: *Erinnerung im globalen Zeitalter: Der Holocaust*, Frankfurt am Main: Suhrkamp Verlag, 2001.