



Masterpieces & Mystery: Recovering Art Stolen From Victims of the Holocaust

Pennsylvania Academy of Fine Arts- Hamilton Auditorium
January 24, 2013
Federal Bar Association and Brandeis Law Society

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Fritz Grünbaum

Born April 7, 1880, Brno, Moravia

Died January 14, 1941, Dachau Concentration Camp



The Drawing – Egon Schiele’s *Seated Woman With Bent Left Leg* (“Torso”) – K 51 / JK 1974

THE DEPARTMENT OF STATE BULLETIN

JANUARY 9, 1943

VOL. VIII, No. 185—PUBLICATION 1863

DECLARATION REGARDING FORCED TRANSFERS OF PROPERTY IN ENEMY-CONTROLLED TERRITORY

The text of a declaration which has been made by the United States and certain others of the United Nations, regarding forced transfers of property in enemy-controlled territory, follows: [...]

“Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

“Accordingly the governments making this declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments

with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder,

or of transactions apparently legal in form, even when they purport to be voluntarily effected.

“The governments making this declaration and the French National Committee solemnly record their solidarity in this matter.”



New York Times November 16, 1964

Europe Is Still Hunting Its Plundered Art



Hundreds of Millions in Treasures Elude Postwar Search

By MILTON ESTEROW

Thousands of art treasures looted in Europe during World War II are still being sought throughout the world.

Nearly 20 years after the end of the war, government agencies in France, Italy, Germany, Austria, Poland and the Soviet Union are quietly working to track down paintings, sculpture, tapestries, rare books and ancient coins worth hundreds of millions of dollars, according to a survey by The New York Times.

Between 1945 and 1962, 3978 stolen art objects were recovered in this country by the State Department with the assistance of other Government Agencies, and returned to 14 nations overseas.

DEPARTMENT OF STATE
WASHINGTON



DIVISION OF LIBRARIES, INSTITUTES

DEC 11 1950
DEPARTMENT OF STATE

*Action
completed.
File ARH*

To Universities, Museums, Libraries, Art Dealers, and Booksellers.

It is the responsibility and desire of the Government of the United States to recover and return to owner nations those cultural objects, including works of art, archival material and books, looted, stolen or improperly dispersed from public and private collections in war areas and brought to the United States during and following World War II.

This responsibility has been shared by American institutions and American citizens. The response of museums, libraries, and dealers to a circular letter from the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas requesting information about objects without a clear title has led to the recovery by this Government of a number of items of artistic and historic importance. The continued vigilance of American institutions and individuals in identifying cultural objects improperly dispersed during World War II is needed.

Your cooperation in notifying the Secretary of State, Washington 25, D. C., concerning such objects which may come to your attention will be appreciated.

THE AMERICAN COMMISSION FOR THE PROTECTION AND SALVAGE
OF ARTISTIC AND HISTORIC MONUMENTS IN WAR AREAS

Office of the Secretary
National Gallery of Art
Washington 25, D.C.

TO MUSEUMS, ART AND ANTIQUE DEALERS AND AUCTION HOUSES:

This Commission has had numerous reports of objects being offered to museums and to the trade by present and former members of the armed forces. Where the source or origin of these objects may be obscure or suspicious and where the objects may be of special artistic importance, the Commission would appreciate being informed of the facts with as full and specific information as possible concerning the objects themselves and the circumstances under which they came to your attention.

The above information will be made available to the Customs and the Foreign Funds Control officials in the Treasury Department for their attention and any further investigation that may be required. The source of the information will be treated as confidential.

It is, of course, obvious that no clear title can be passed on objects that have been looted from public or private collections abroad. We believe, therefore, that it is to the advantage of both public institutions and the trade, as well as for the good name of this Government and its armed forces, that any specific examples of looting of works of art or cultural materials be brought to light as soon as possible.



Provenance Research

Research : Provenance

What is Provenance Research?

Provenance is an artwork's history of ownership. Information about the provenance of an individual work of art sheds light on its historical, social, and economic context, as well as its critical fortunes through time. Knowledge about individual collectors and their collections can provide insights into the history of taste and the habits of collectors, dealers, and the relationships between them.



Similarly, the Museum has discovered that two paintings in the collection were stolen from their Jewish owners during the war. After the war, the Allies returned both paintings to their rightful owners. The *Pensive Young Brunette* by Jean-Baptiste-Camille Corot was confiscated by the Nazi Einsatzstab Reichsleiter Rosenberg (ERR) from a private French collection. The *Nude Reclining by the Sea* by Gustave Courbet was also stolen from a French private collection and was selected for inclusion in Herman Göring's personal collection of looted works of art. After their return to their owners, the restituted paintings were subsequently purchased by Louis E. Stern, who donated them to the Philadelphia Museum of Art in 1963.



Collections : Provenance : Case Studies

Pensive Young Brunette

Nude Reclining by the Sea



Nude Reclining by the Sea, 1868
Gustave Courbet, French
Oil on canvas
18 5/16 x 21 7/8 inches (46.5 x 55.6 cm)
The Louis E. Stern Collection, 1963
1963-181-20
[\[More Details \]](#)

Courbet's *Nude Reclining by the Sea* (1963-181-20), has long been published as belonging during World War II to Paul Rosenberg, an art dealer with offices in Paris and New York. In April 1953, Rosenberg sold the painting to the New York collector Louis E. Stern (1886-1962). Overlooked within this history is the fact that the painting was stolen from Rosenberg by the Nazis in 1941, and spent part of the war in the private art collection of the Reichsmarschall Hermann Göring.

The World War II history of the painting was discovered in 1964 when curators at the Philadelphia Museum of Art prepared a catalogue of the recently acquired Louis E. Stern collection. Henry G. Gardiner, then the curator of European painting, was interested in the provenance of works in the collection and wrote to European and American dealers asking for information on Stern's purchases. On behalf of Paul Rosenberg & Co., Alexandre Rosenberg replied to Gardiner in June 1964 that the Courbet was acquired by his father's firm from another dealer in 1933 or 1934 and had been seized during the war by the Nazis. In the late 1940s, the Allies

returned the painting to Paul Rosenberg, who was then living in New York City.¹

Recent provenance research at the Philadelphia Museum of Art has further documented the wartime history of the painting. An examination of the back of the painting has confirmed that it was confiscated by the ERR, a Nazi task force responsible for the seizure of artworks owned by Jews and Freemasons.



Collections : Provenance : Case Studies



Pensive Young Brunette

Nude Reclining by the Sea



Pensive Young Brunette, 1845-50
Jean-Baptiste-Camille Corot, French
Oil on canvas
9 1/2 x 7 1/2 inches (24.1 x 19.1 cm)
Framed: 15 1/2 x 13 7/8 x 3 1/8 inches (39.4
x 35.2 x 7.9 cm)
The Louis E. Stern Collection, 1963
1963-181-18
[\[More Details \]](#)

In the course of provenance research on the European painting collection, the Museum discovered that a painting by Jean-Baptiste-Camille Corot, *Pensive Young Brunette* (1963-181-18), had been confiscated by the Nazis from the French collector Alphonse Kann. In 1945 the painting was found by the Allies in a salt mine in Austria, and in July 1946 it was returned to Kann. The World War II history of the painting highlights the systematic seizure of works of art by the Nazis and the activities of the Allies to return those works to their rightful owners, as well as the efforts of researchers today to understand fully and document these activities.

The Corot painting was sold in the posthumous sale of the artist on May 26–June 9, 1875, where it was purchased by Monsieur Legendre of Paris. It was subsequently in the collection of Alexis Rouart (1839–1911), a Parisian engineer whose collections were sold on his death in 1911. Prior to World War II, the Corot portrait formed part of the noted collection of Alphonse Kann (1870–1948). At his townhouse at Saint-Germain-en-Laye, near Paris, Kann assembled important Impressionist and Modern masters as well as Gothic tapestries, Medieval objects, and Pre-Columbian art.¹ Because his large collection was seized and meticulously catalogued by the Nazis, Kann's name is among the "red-flag" names in provenance research. In the spring of 1940, as the Nazis approached Paris, Kann fled Paris for London. He was unable to remove or hide his collection of more than 1202 objects, and it was confiscated



While World War II-era provenance research focuses primarily on determining rightful ownership, investigation also reveals that several works in the collection were legally sold from public museums in Germany in the late 1930s by the Nazi government because they were denounced as "degenerate art." Although these works were not stolen, their histories highlight the fact that German museums lost many art masterpieces under the cultural policies of the Third Reich. For more information, [click here](#).



Provenance research is a regular, ongoing part of curatorial work at the Philadelphia Museum of Art. The Museum has made a particular effort to investigate the World War II-era provenance of the European paintings, sculptures and decorative arts in the collection. The Museum's research aims to determine whether any objects that have entered the collection since 1932 could have been stolen and not subsequently returned to their rightful owners. In accordance with the American Association of Museums [Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era](#) of April 2001, the Museum has paid particular attention to works of art that changed hands during the years 1933–1945 and were—or could have been—in continental Europe at that time. To see a list of objects falling under these guidelines, with known provenance information, [click here](#).

Provenance research led to the Philadelphia Museum of Art returning in 1999 several pieces of armor that had disappeared during the war from the public collections of the Rüstkammer museum in Dresden, Germany. To read more about the restitution of the Dresden armor, [click here](#).

Painting set to return to rightful heirs

Artwork was stolen by Nazis during World War II

12:04 AM, Feb. 3, 2012 | [Comments](#)

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Girolamo Romanino's oil on canvas "Christ Carrying the Cross" (ca. 1542) will soon be returned to the heirs of the Jewish family from which it was stolen during World War II. / Special to the Democrat

[Purchase Image](#)

By [Jennifer Portman](#)
Democrat senior writer

Romanino to be returned by U.S. Immigration and Customs

Pending a final order by U.S. District Judge Robert Hinkle, the Nazi plundered painting "Christ Carrying the Cross Dragged by a Rascal," which was seized in November by federal officials from the Mary Brogan Museum of Art & Science, will be returned to the heirs of the Jewish family from which it was stolen during World War II.

A motion to dismiss the case was filed Thursday in U.S. District Court in Tallahassee seeking the judge's approval of a settlement agreement signed earlier this week between federal prosecutors and 10 heirs of Federico Gentili di Giuseppe.

The agreement calls for the circa 1538 painting by the Italian artist known as



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- >> Visit Rivera Court

DIA Home > Art at the DIA > Provenance

 [Print Page](#)

Establishing continuous ownership records

Provenance — the history of an artwork's ownership — has always been an important component of curatorial research at the Detroit Institute of Arts. Knowledge of the geographic, personal, and commercial path followed by works of art is not only helpful in establishing authenticity, it also provides insight into the history of collecting and the way in which the meaning and status of an object changes when moved from one environment to another. Establishing a continuous record of ownership

Nazi Era Looted Art

Looting has always occurred in time of war. In 1204, as participants in the so-called Fourth Crusade, the Venetians took from Constantinople the four bronze horses that now grace the portico of St Mark's Cathedral. Napoleon hauled huge quantities of art back to Paris (including the four horses of St Mark's) most of which were returned following his defeat. But this kind of looting pales to near insignificance when compared with Adolf Hitler's systematic and thoroughgoing campaign to gather together all of the greatest art in several museums within Germany and Austria.

On gaining power in 1932, the Nazis began instituting a series of punitive laws designed to victimize the Jewish community. A prime focus for Hitler was the superb – and often well-published - art collections assembled by wealthy Jewish collectors. Much of this art was seized out-right; simply taken or purchased for ridiculously low prices in exchange for passes to leave the country. Following his successful campaigns in 1939-1941, Hitler ordered the wholesale removal of what he considered the best art from across Europe for his new art museums. The situation was complicated by Hermann Göring's parallel efforts as well as those of other enterprising Nazi officials, many of whom exploited the market for the Modern art despised by Hitler as "degenerate."

Fortunately, the Nazis kept detailed records, and the Allies — led by a special office of the US Army — were able to restore the bulk of the hoarded art to its prior owners. Unfortunately, this program was abruptly curtailed in 1950 with the beginning of the Korean conflict and the deepening of the Cold War and its records were classified. Although the records were quietly de-classified in the mid-1970s, full awareness of the incomplete nature of the restitution only occurred following the collapse of the Soviet Union in 1989 and the opening of some of its archives. It has subsequently been estimated that approximately 20% of Nazi-era looted art remained in private hands and continued to circulate on the market, with much of it finding its way into US art museums.



On Nazi-Looted Art:

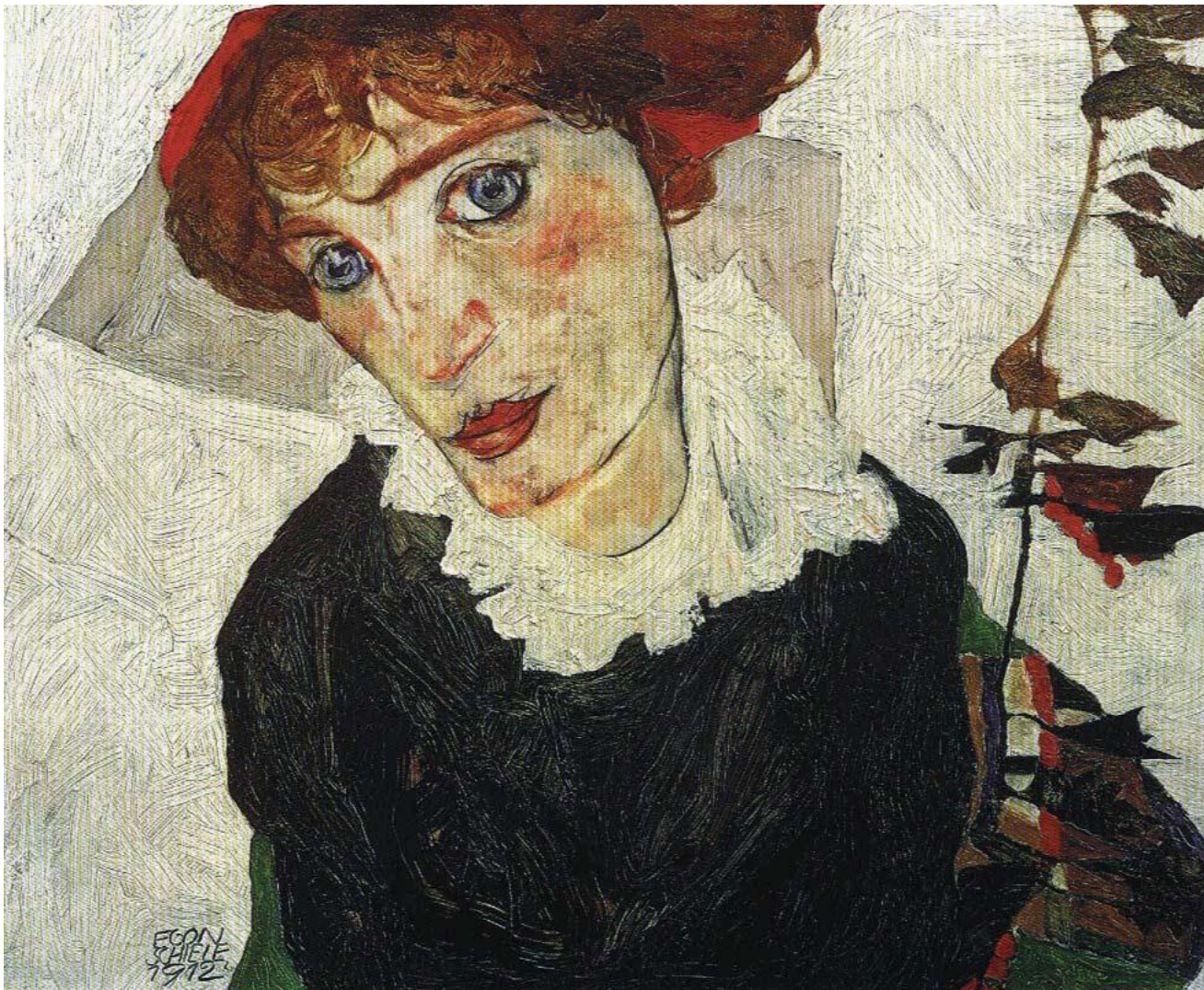
“This is such a gigantic issue,”
Cleveland Museum of Art Director
Robert P. Bergman said. “We're talking
about hundreds of thousands of
objects. I believe that **for the rest of
my professional career, this issue
will face the museums of the world.**”

(AP/Akron Beacon Journal 3/1/1998). Bergman died
at age 54 in 1999 after a two-week illness of a rare
blood disorder (NY Times 5/7/99).

Scope of current Nazi-art problem

- “the amount of research to be undertaken on the tens of thousands of works of art that, by definition, may have Nazi-era provenance problems is significant, requiring large allocations of staff time and money, allocations U.S. art museums have made and will make until the job is done.”

- Testimony of AAMD President James Cuno to Congress July 27, 2006



Egon Schiele's *Portrait of Wally* – 1998 Morgenthau Seizure from MOMA as stolen --- with Fritz Grunbaum's *Dead City*

1998 Seizure Quashed, U.S. Attorney Seizes *Portrait of Wally*

- Rita and Tim Reif assert claims in New York to Fritz Grunbaum's artworks, D.A. Morgenthau seizure at MoMA
- New York Court of Appeals quashes D.A. Morgenthau's subpoena of *Portrait of Wally* and *Dead City*
- Orders MoMA to return artworks to Austria
- Next day, U.S. Attorney seizes only *Portrait of Wally*
- Missing heirs for Grunbaum's *Dead City* – returned to Austria, now at Leopold Museum in Vienna
- *Portrait of Wally* case settled 11 years later after C.J. Preska in SDNY – ordered Rudolph Leopold to stand trial – and then he died



Egon Schiele's *Dead City*

Now in Leopold Museum in Vienna

1998 Morgenthau Seizure

- Tremendous international scandal
- Led to Austria opening archives to return Jewish property to comply with 1955 Austrian State Treaty
- Austria reformed laws to permit claims to stolen art in museums only
- Led to Washington Conference on stolen art
- Museums agreed to “Washington Principles” – research their collections, favorable evidentiary burdens, encouraging heirs to come forward
- Museums promised to publish all provenance research, welcome heirs
- www.lootedartcommission.com/Washington-principles

Washington Conference Principles on Nazi-Confiscated Art–12/3/1998

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

- I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
- II. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
- III. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
- IV. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.
- V. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

Washington Conference Principles on Nazi-Confiscated Art–12/3/1998

- VI. Efforts should be made to establish a central registry of such information.
- VII. **Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.**
- VIII. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously **to achieve a just and fair solution**, recognizing this may vary according to the facts and circumstances surrounding a specific case.
- IX. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.
- X. **Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.**
- XI. **Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.**

1998 Report of AAMD Task Force on Spoliation of Art-Nazi Era (1933-1945)

AAMD Statement of Purpose:

"The purpose of the AAMD is to aid its members in establishing and maintaining the highest professional standards for themselves and the museums they represent, thereby exerting leadership in increasing the contribution of art museums to society."

D. Discovery of Unlawfully Confiscated Works of Art [...]

2. In the event that a legitimate claimant comes forward, the museum should offer to resolve the matter in an **equitable, appropriate, and mutually agreeable manner**. [...]

1998 Report of AAMD Task Force on Spoliation of Art-Nazi Era (1933-1945)

E. Response to Claims Against the Museum

1. If a member museum receives a claim against a work of art in its collection **related to an illegal confiscation during the Nazi/World War II era**, it should seek to review such a claim promptly and thoroughly. The museum should request evidence of ownership from the claimant in order **to assist in determining the provenance of the work of art.**
2. If **after working with the claimant to determine the provenance**, a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, **the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.**
3. AAMD recommends that member museums consider using **mediation** wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.

U.S. Museums and Auction Houses Violate the Washington Principles

- Failed to hire provenance researchers and publish research
- Publishing false, misleading and incomplete provenance research making research impossible
- Failing to publish research subject to peer review, hiding behind lawyers
- Suing Jewish heirs, accusing heirs and lawyers of greed and extortion
- Auction houses peddle unprovenanced works
- Toledo and Detroit museums, Museum of Fine Arts Boston
- MoMA and Guggenheim sued heirs of Holocaust victims
- U.S. museums assert laches and statute of limitations defenses
- Falsely claim Jews voluntarily sold art during Holocaust
- Museums and auction houses falsely claim Holocaust-looted art was unknown until 1990's in U.S.

2009 Prague Conference on Holocaust-Era Assets

- June 26-31, 2009
- Decade after Washington Conference
- U.S. State Department sent envoy to get world's museums to agree to return stolen art, issued Terezin Declaration
- Issue for Obama Administration
- Proposal for a U.S. Restitution Commission made to U.S. State Department
- Wrongful actions of U.S. museums likely to be a future diplomatic sore spot

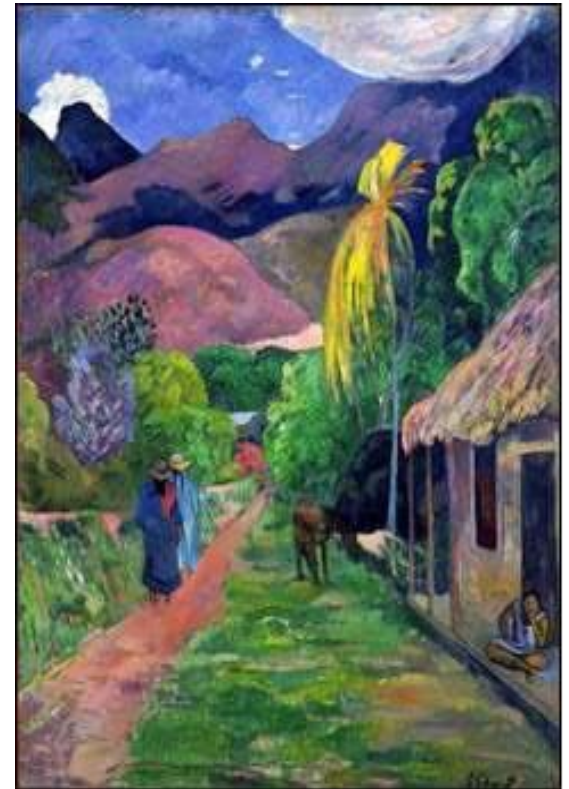
Toledo Museum of Art v. Ullin / Detroit Inst. of Arts v. Ullin.

DETROIT INSTITUTE OF ARTS



VINCENT VAN GOGH
The Diggers, 1889

TOLEDO MUSEUM OF ART



PAUL GAUGUIN
Street in Tahiti, 1891

Toledo Museum of Art v. Ullin (477 F. Supp.2d 802 N.D. OH 2006)

- During a settlement negotiation, Toledo Museum sued heirs of Holocaust victim for declaratory judgment
- Judgment granted and counterclaim dismissed *with prejudice* on Rule 12(b)(6) motion after extensive findings of fact against heirs
- Most aggressive action taken by any museum in the country
- *Detroit Institute of Arts v. Ullin*. 2007 WL 1016996. Same lawyers, filed same time, same result
- Key fact cited by both courts: purchasers were Jewish
- Highly unusual decisions - Rule 12(b)(6) motions generally construed in claimant's favor

Toledo Museum of Art v. Ullin (477 F. Supp.2d 802 N.D. OH 2006)

From decision:

- In December 1938 the three [Jewish art dealers] purchased the Painting from Martha Nathan for 30,000 Swiss francs (approximately U.S. \$6,900)
- FN Defendants refuse to acknowledge a “sale” citing to the lack of evidence as to negotiation, offer and acceptance, bill of sale, or exchange of consideration, or in the alternative the unconscionability of the sale price[.] Whether a “sale” occurred is immaterial to the current analysis. Even without a prior “sale,” there is no dispute that TMA acquired ownership through an arms length purchase from established art dealers.

Common law rule: a thief in the chain of title means title is void thereafter

MOMA & Solomon R. Guggenheim Foundation v. Schoeps



Pablo Picasso
Boy Leading a Horse, 1906



Pablo Picasso
Le Moulin de la Galette, autumn 1900

MoMA and Guggenheim v. Schoeps

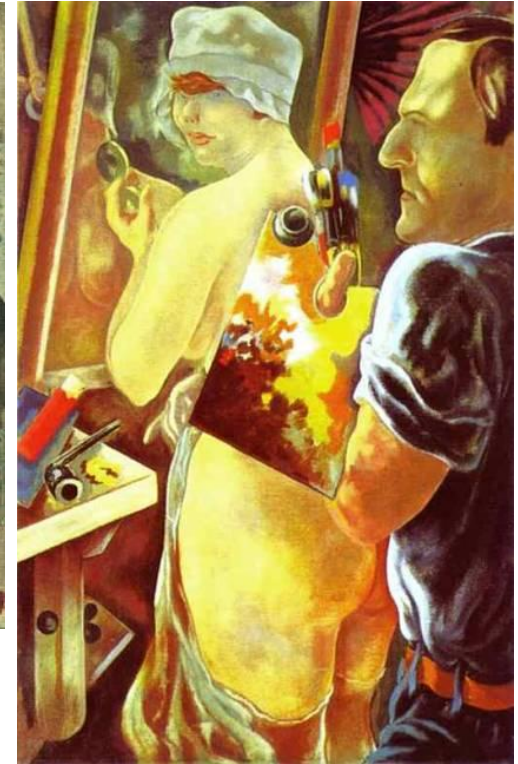
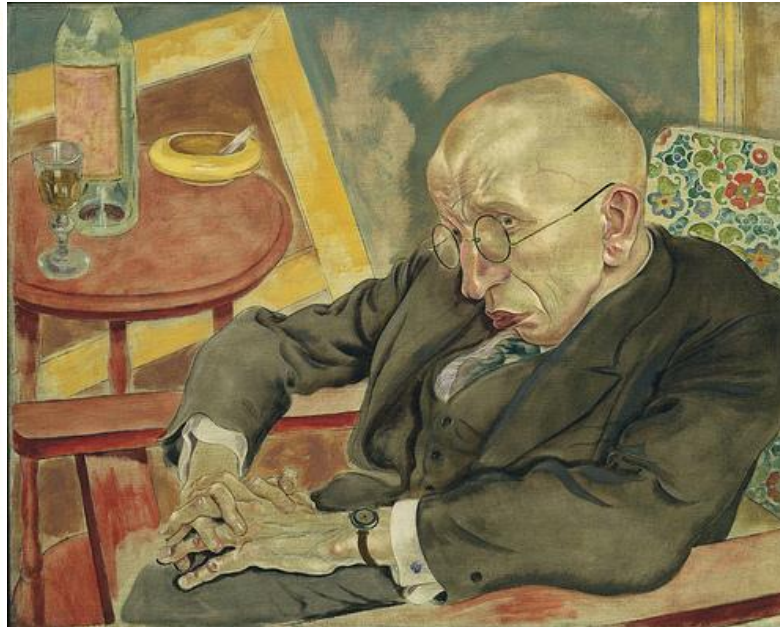
- Declaratory judgment action by two museums against one defendant
- Judge Rakoff denied Rule 56 summary judgment motion finding triable issues of fact
- Case settled on the eve of trial
- Court criticized Jewish heirs for keeping financial settlement confidential. 603 F. Supp.2d 273 (S.D.N.Y. 2009)

Grosz v. Museum of Modern Art, --- F. Supp.2d ---,
2010 WL 88003 (Jan. 6. ,2010) **aff'd** a (2d. Cir. Dec. 16, 2010.)
New York's demand and refusal rule weakened –
conversion and replevin claims accrue upon implied refusal

Portrait of the Poet Max-Herrmann Neisse (1927)
"Poet"



Republican Automatons
(1920)



Self-Portrait with Model
(1928)

06-56325, 06-56406 Cassirer v. Kingdom of Spain

9thcirc 39 videos

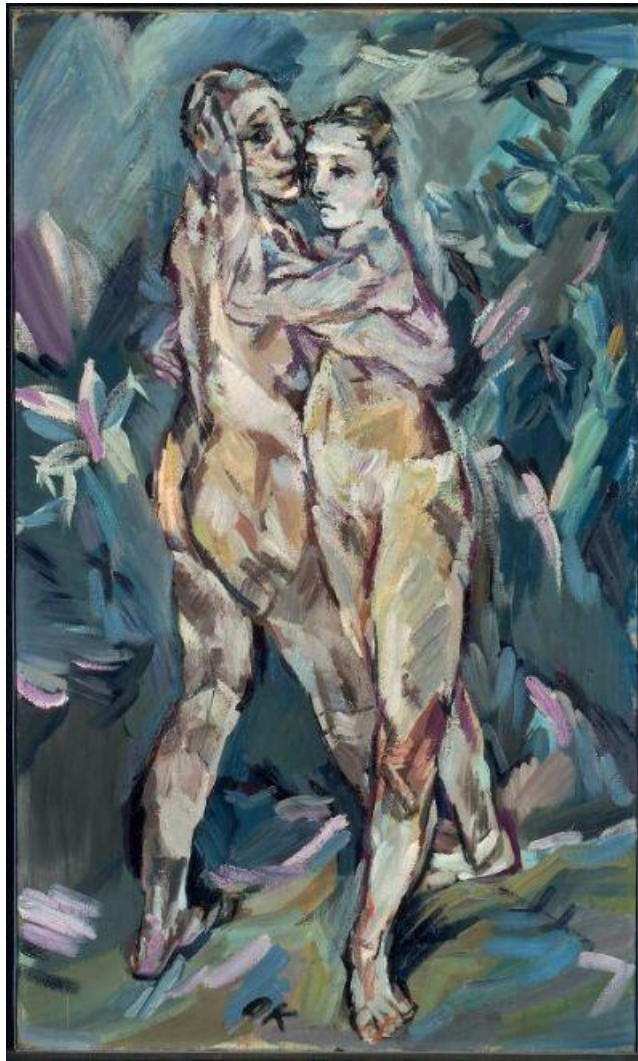


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369 views

9thcirc | May 19, 2010
 Argued En Banc on Wednesday, March 24th, 2010. The location was Courtroom On...

Cassirer v. Kingdom of Spain, 616 F.3d 1019 (9th Cir. August 12, 2010) – expropriation exception to Foreign Sovereign Immunities Act applies to Spain



Dunbar v. Seger-Thomschitz, 615 F.3d 574 (5th Cir. Aug. 20, 2010) (acquisitive prescription under Louisiana law)

Museum of Fine Arts Boston v. Seger-Thomschitz, 623 F.3d 1 (1st Cir. Oct. 14, 2010)(statute of limitations)



Von Saher v. Norton Simon Museum of Art at Pasadena, 131 S.Ct. 379 (Oct. 4, 2010)(inviting Solicitor General to file a brief); 592 F.3d 954 (9th Cir. 2010) (finding California's extension of statute of limitations preempted by foreign affairs doctrine)

INVEST IN REMARKABLE II

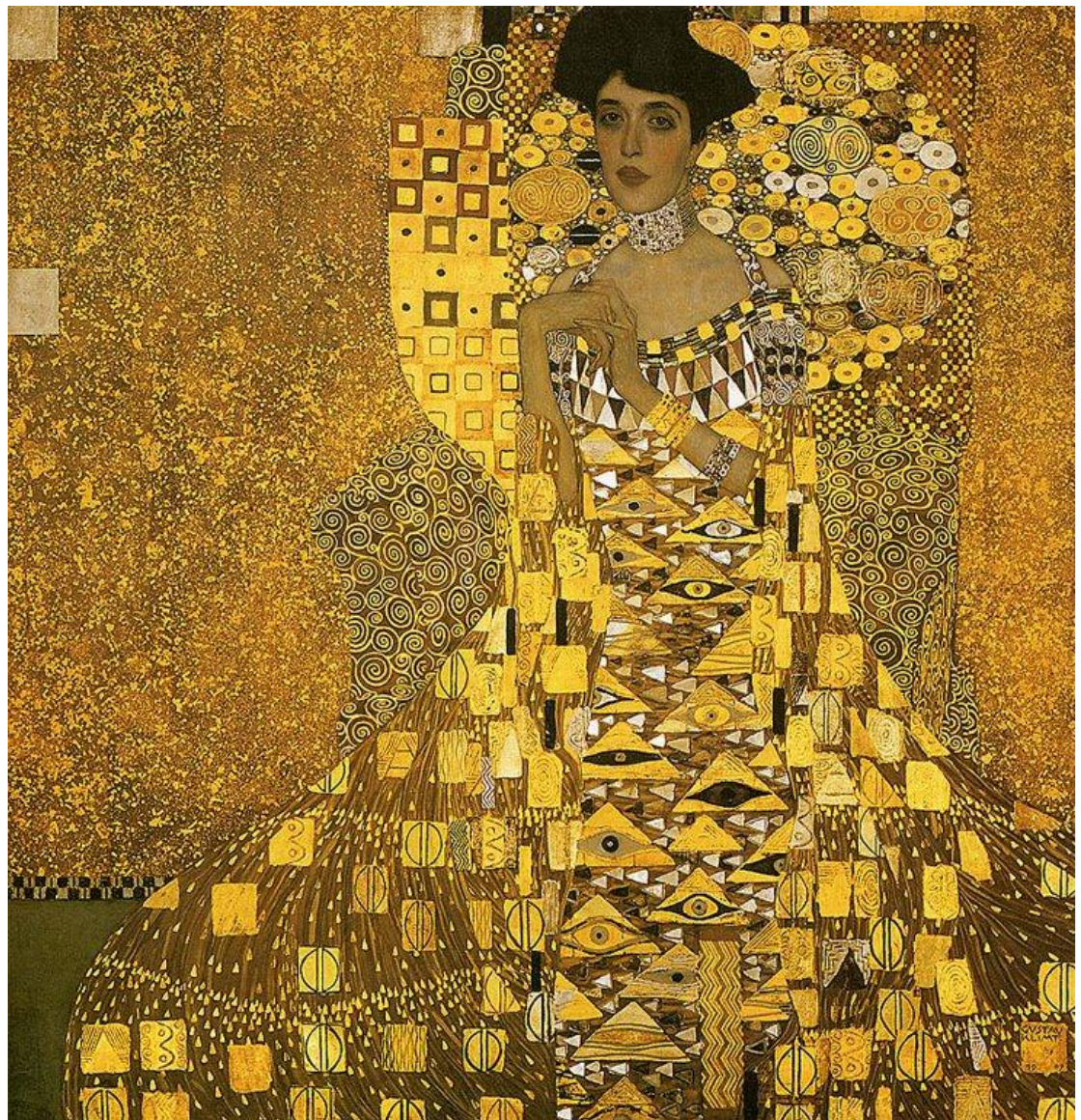
Nazi Victim's Family Sues Germany for Looted El Greco, Pissarro

By Catherine Hickley - October 26, 2008 19:40 EDT

Oct. 27 (Bloomberg) -- The family of Walter Westfeld, a Jewish art dealer killed at Auschwitz, is suing Germany in the U.S. for damages incurred by the Nazis' confiscation of his collection, including paintings by El Greco and Pissarro.

Westfield v. Federal Republic of Germany, (6th Cir. Feb. 2, 2011)(Nazi-era atrocities cloaked in sovereign immunity because no “direct effect” in United States) *compare* **Bernstein v. N.V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij**, 210 F.2d 375 (2d Cir. 1954)

Portrait of Adele Bloch-Bauer
Gustav Klimt (1907)



Republic of Austria v. Altman, 541 U.S. 677 (2004)(permitted Maria Altmann to sue Austria for stolen painting in Austrian museum)



In re Flamenbaum, 899 N.Y.S.2d 546 (Surrogate's Court Nassau Co. 2010) - Third Century gold tablet from Temple of Ishtar, stolen from German museum by Soviet Troops – museum lost due to laches

In re Flamenbaum

Supreme Court of the State of New York
Appellate Division: Second Department

In re Flamenbaum, ___AD3d___ - On May 30, 2012, a panel of three judges for the Second Department reversed the Surrogate Court's decision, and awarded the Vorderasiatisches Museum the rightful ownership and possession of the Tablet

“For the executor to establish, on behalf of the estate, an affirmative defense on the basis of the doctrine of laches, she must demonstrate that the museum failed to exercise reasonable diligence to locate the tablet and that such failure prejudiced the estate (*see Solomon R. Guggenheim Found. v Lubell*, 77 NY2d 311, 321). The executor did not establish that the museum failed to exercise reasonable diligence to locate the tablet (*id.*; *cf. Bakalar v Vavra*, 619 F3d 136, 147).”

Proving the Property Aspect of the Holocaust – Source Materials

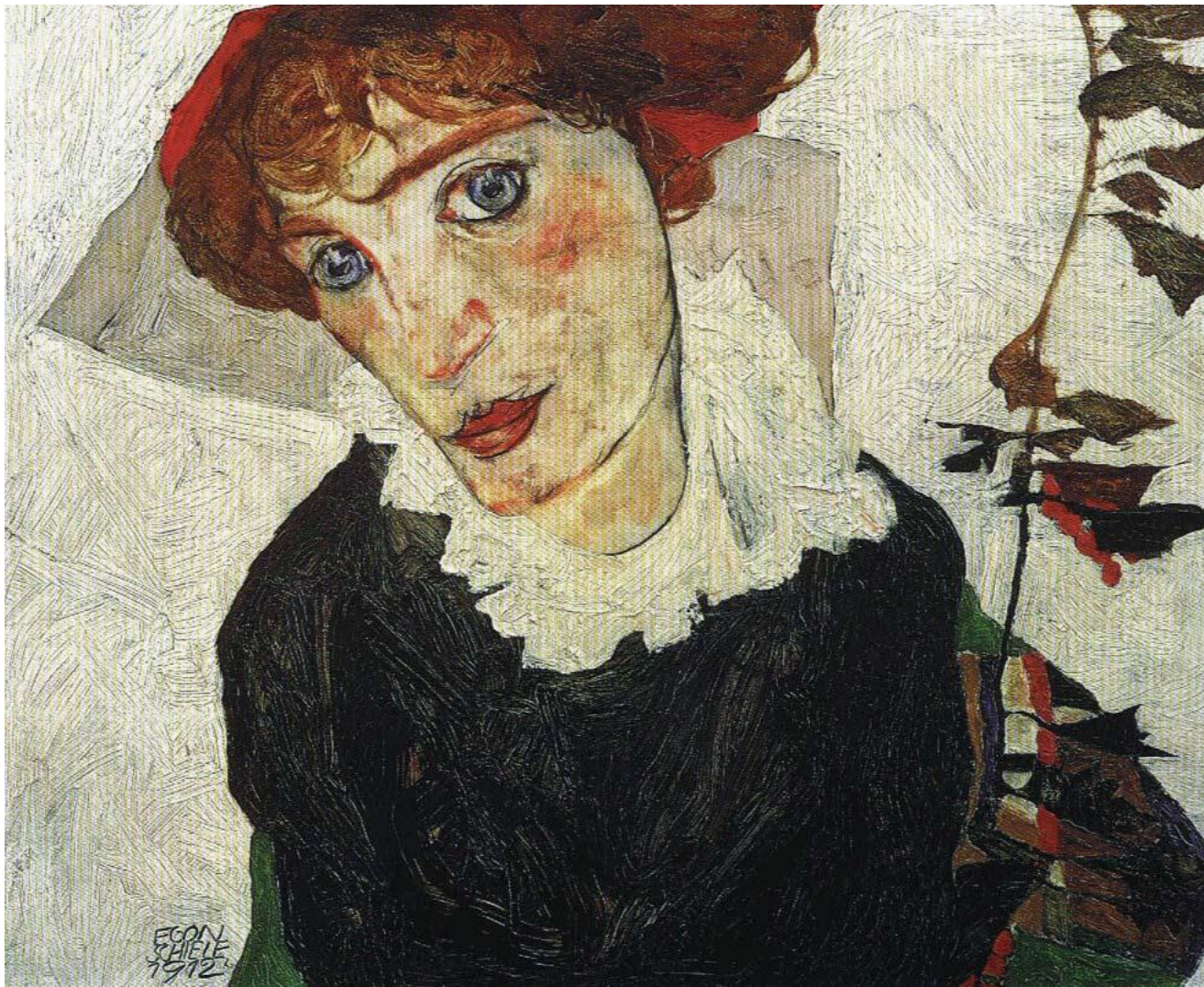
- Nuremberg Decision
- Nuremberg Trial Materials
- James G. McDonald Letter of Resignation December 27, 1935
- Nazi decrees (Germany and Austria)
- *New York Times* articles, *Aufbau*
- *Holzer v. Reichsbahn* (NY Court Appeals 1936)
- Nov. 18 1938 Nazi Decree on Jewish Property
- Post-war German and Austrian laws on evidentiary presumptions from transfers of persecutee's property

Proving the Property Aspect of the Holocaust – Source Materials II

- Secondary Sources
 - Dean, Martin *Robbing the Jews* (USHMM)
 - Petropoulos, Jonathan *Art as Politics in the Third Reich, The Faustian Bargain*
 - Aly, Goetz, *Hitler's Beneficiaries*
- Schenker Co. business history
- Pre- and Post-war art catalogs
- Provenances published by museums
- Documents in museum files (public and non-public)
- Probate files, Jewish property declarations
- Letters, Invoices, art dealer records
- Expert testimony (Dr. Jonathan Petropoulos)
- Testimony (Eberhard Kornfeld, Jane Kallir)

March 1933– Jews Stripped of All Legal Rights By Nazis

- March 23, 1933 – Hitler took power from Reichstag
- Governed by decree - *Fuhrerprinzip* – Nazis only party
- Nazi Party Platform is law “To buy or sell from a Jew is to be a traitor to the German people” – massive, persistent boycotts, Jews denied food/medicine
- *NY Times* “To be a Jew is a crime in Nazi Germany”
- Aryanization “Aryans” take over Jewish businesses by extortion, initially permit some Jews to get assets out
- Jewish lawyers and judges thrown out immediately
- 1936 NY opinion *Holzer v. Reichsbahn* declares Nazi legal system repugnant to NY law: “comity is not chloroform”, aff’d by Court of Appeals, Dachau survivor recovers for breach of contract against Deutsche Reichsbahn assets in NY



Egon Schiele's *Portrait of Wally* – 1998 Morgenthau Seizure from MOMA as stolen --- with Fritz Grunbaum's *Dead City*



Egon Schiele's *Dead City*

Now in Leopold Museum in Vienna



The Drawing – Egon Schiele’s *Seated Woman With Bent Left Leg* (“Torso”) – K 51 / JK 1974



Kornfeld 1956 Schiele Catalog

#1 *Dead City* with
provenance from Otto
Kallir's 1930 catalogue
raisonnée

53 other Schieles with no
provenance listed

Kornfeld testifies that all
Schieles in '56 catalog
came from Grunbaum

ELDON
SCHIELE

Dead City's Provenance Published in '56 Kornfeld Catalog Shows: 1925 Würthle Exhibition, 1928 Hagenbund Exhibition and Fritz Grunbaum's Ownership



213

Dead City III (City on the Blue River III)

Tote Stadt III (Stadt am blauen Fluss III)

Nirenstein 94 Kallir 140 Leopold 182
Oil and gouache on wood. Signed and dated, upper right.
Inscribed "Tote Stadt" by another hand, verso. 14 7/8 x 11 3/4"
(37.1 x 29.9 cm). Rudolf Leopold

Provenance: *Acquired from the artist; Arthur Roessler; Alfred Spitzer; Fritz Grünbaum; Gutekunst & Klipstein, Bern; Galerie St. Etienne, New York

Exhibitions: Vienna, 1912, no. 236; Galerie Würthle, Vienna, 1925, no. 11; Hagenbund/Neue Galerie, Vienna, 1928, no. 20; Bern, 1956, no. 1, ill.; Innsbruck, 1963, no. 4; London, 1964, no. 12, ill.; Guggenheim Museum, New York, 1965, no. 14, ill.; Österreichische Galerie, Vienna, 1968, no. 28, ill.; Munich, 1975, no. 34, ill.; Venice, 1984, no. 1177; Tokyo, 1986, no. 10, ill.; Zurich, 1988, no. 21, ill.

Literature: Karpfen, 1921, pl. 24; Mitsch, 1974, pl. 19; Whitford, 1981, fig. 74; Malafarina, 1982, no. 173; Marchetti, 1984, p. 232; Werkner, 1986, pl. XXIV; Nebhay, 1989, fig. 25

Comments: This appears to have been among the paintings sent by Arthur Roessler to Hans Goltz on September 30, 1911 (Nebhay, 1979, #262). **See:** P. 183, 209. **Compare:** P. 134. **Related to:** Sk. 3

May 19-20, 1938

VERSTEIGERUNG 58

MODERNE GRAPHIK

AUS DER SAMMLUNG

DR. HEINRICH STINNES †

II. TEIL

VERSTEIGERUNG

19. und 20. MAI 1938

~~REINHOLD PUPPEL~~

VORM. HOLLSTEIN & PUPPEL

KUNSTANTIQUARIAT UND KUNSTVERSTEIGERER

BERLIN W 15

FASANENSTRASSE 65

(VERSTEIGERER: REINHOLD PUPPEL)

Important notice

to foreigners desirous of buying at this sale.

*

According to a special permit granted by the competent German authorities it is possible to have auction-accounts for objects bought at a public auction in Germany

for an English or American Purchaser

settled through the intermediary of the association of trustees „Fides“ Treuhand-Vereinigung of Zürich, Switzerland, Orell-Füsslihof who will obtain a considerable reduction for the buyer.

The reduction, at the present time, amounts to about 30% of the price paid in the auction.

Should you wish to make use of the possibility of buying at such a reduced rate, please communicate at once, or immediately after the auction, with the „Fides“. Auction accounts showing that the purchases have been made by or for an English or American buyer must be sent to the „Fides“ who will take all steps necessary for the settlement of the accounts according to the special permit so that you will have no further work or inconvenience in the matter. Up to now all transactions handled by the „Fides“ have been carried through without any disputes.

Nazi Reich Laundered Artworks Through FIDES

- FIDES – Treuhand of Zurich
- Established 1910
- Subsidiary of Credit Suisse
- Offered 30% discounts to Americans and British
- Laundered sales of Nazi art
- Attempted to buy all degenerate art from Nazis
- Never investigated by the Swiss
- Visit www.fides.ch
- Bergier Report mentioning FIDES laundering www.uek.ch (best information in Vol. 1 not online)

Bakalar v. Vavra Allegations

The Drawing has an established and documented provenance. It originally belonged to the collection of Fritz Grunbaum, a well-known Viennese cabaret performer. In 1938, the Nazis confiscated Grunbaum's residence and inventoried the contents of his art collection. Grunbaum was deported to Dachau, where he died in 1941...(Complaint ¶ 5)



Fritz Grünbaum

Born April 7, 1880, Brno, Moravia

Died January 14, 1941, Dachau Concentration Camp

Minsk- Maly Trostinec

Lily Grunbaum was deported to Minsk where she died on October 5, 1942. Maly Trostinec was a death camp.



Hitler Invades Austria

March 12, 1938



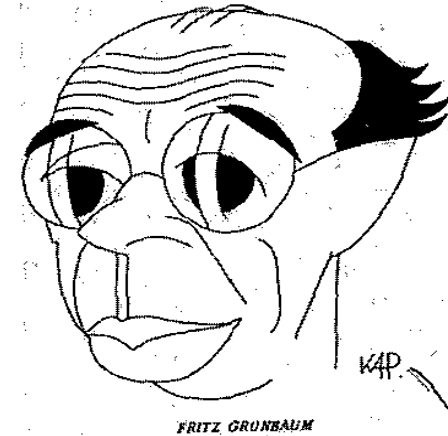
Hitler salutes his troops marching into Austria

The Nazis reach Vienna



Fritz at Dachau – Arrested 3/22/1938 – Died in Captivity

Ritter Adolars „Blutnacht“ in Dachau



While at Dachau, Fritz and other prisoners participated in Cabaret performances to keep spirits up.

Performances were supported by the Nazis and scheduled on the same day as trains taking prisoners to death camps.

Entartete Kunst “Degenerate Art”

In 1933 Nazis started exhibits in museums attacking on “degenerate “ art in museums, attacking modern and Jewish artists/dealers as “un-German” and depraved.

This culminated with “Entartete Kunst” a traveling art exhibit, in 1937. Art was stripped from museums, artists boycotted or exiled, artworks sold in Switzerland, US.



1933-1945 – Jews Stripped of Artworks

- 25% Reich Flight Tax (started 1931 – pre-Hitler)
- 25% Atonement Tax
- 96% Confiscatory foreign exchange rate for Jews
- Blocked bank accounts
- Sham transactions
- Wholesale confiscations Jewish property
- Tens of thousands of artworks left Germany and entered the U.S. directly and through Switzerland
- Snapped up by U.S. museums and wealthy collectors



The Drawing – Egon Schiele’s *Seated Woman With Bent Left Leg* (“Torso”) – K 51 / JK 1974

Bakalar v. Vavra Allegations

- Aside from the Drawing, there are a number of works from the Fritz Grunbaum collection that were part of the 1956 selling exhibition at Gutekunst & Klipstein which are now in museums around the world including at least one work in each of the following institutions: Leopold Foundation, Vienna; Albertina Museum, Vienna; Museum of Modern Art, New York; Allen Memorial Museum, Oberlin College, Ohio; Coninx Museum, Zurich; Santa Barbara (California) Museum of Art; Art Institute of Chicago; and the Carnegie Institute Museum of Art, Pittsburgh... (Cplt ¶ 40).

Heirs' Claim to Title: Heirs of Fritz Grunbaum

- Austrian co-heirs under 2003 Estate Assignment Certificate (Probate Decree)
- Fritz predeceased wife, no issue
- Fritz and Elizabeth (“Lily”) had separate property

Under Austrian law:

- Fritz’s heirs take 50% of Fritz’s property
- Elizabeth’s (“Lily”) heirs take 50% of Fritz’s property
- Austrian law governs question of title

Jewish Property Declarations

Signatur: ÖStA, AdR 06, VVSt, VA 44614, Fritz Grünbaum

Vermögensbekenntnis.

Diese Erklärung ist für jene Personen abzugeben (bei Minderjährigen die Eltern, oder deren Rechtsinhaber) die in den Bestimmungen fallen, der durch die Kundmachung 102 vom 28. April 1938, betreffend der Anmeldung des jüdischen Vermögens erfüllt wurde. Bei der Ausfertigung des Bekenntnisses hat sich der Meldende genau an die umseitige Erklärung zu halten. Zum Unterschied von der Vermögensermittlung, sind hier in den eingeleisten Nachträgen, nur die Endbeträge des jeweiligen Vermögensbestandes einzusetzen.

Nr. und Wohnort: Paul Friedl, Maria Grünbaum, 7.4.1880
 derzeitige Anschrift: 4. Reichsbrunnengasse, d. d. Reichsbrunnengasse - Baden

| | Vom Einreicher anzugeben | | Wahrscheinliche Wertsetzung für die Vermögensgegenstände |
|--|---|-----------------|--|
| | Stand v. 27. April 1938 | Stand von heute | |
| I. Barg- und Forderungsmittel aller Art | Keines | Keines | |
| II. Grundvermögen (Grund - Boden Gebäude) | Keines | Keines | |
| III. Betriebsvermögen | Keines | Keines | |
| IV. Sonstiges Vermögen (Bauspar, Guthaben, Beteiligungen, Wertpapiere, etc.) (siehe Einleitung) | Rm 56047.50 | Rm 8.270.- | |
| V. Schulden und Bauspar | Keine | Keine | 1.1.1939 |
| VI. Wertloses Vermögen | Wertloses Vermögen, was nicht durch die Kundmachung 102 vom 28. April 1938, betreffend der Anmeldung des jüdischen Vermögens erfasst wurde, sondern durch die Kundmachung 102 vom 28. April 1938, betreffend der Anmeldung des jüdischen Vermögens erfasst wurde. | | Es befinden sich die Werte? |

Ich versichere, die vorstehenden Angaben nach bestem Wissen und Gewissen gemacht zu haben. Von der umseitigen Erklärung bin ich nicht abgewichen.

Ort, am Fritz 1939. Paul Friedl, Maria Grünbaum
Paul Friedl, Maria Grünbaum

- April 26, 1938 Law - penalty of imprisonment/confiscation
- Required for Jews with over 5,000 RM
- Filed every three months until property gone or left Reich
- Systematically liquidated through Aryan trustees
- Art Collection Category IV "Other Property"

Fritz Grunbaum Jewish Property Declarations

- Found in Austrian probate files
- Austria's probate system predated Nazis, Kafkaesque bureaucracy persisted
- Filed by Lily under power of attorney, pain of imprisonment
- Six declarations filed July, 1938 through June 30, 1939
- Contained art collection Franz Kieslinger appraisal at 5,791 RM
- Last time art collection declared was June 30, 1939

The Kieslinger Inventory

Dr. FRANZ KIESLINGER
PERCHTOLDSDORF N.Ö.
HOCHSTRASSE 133

"Large drawing by Schiele, 55
works colored, 20 drawings
and 1 print by Schiele"

Dead City

Schätzungsgutachten

Über den Kunstbesitz des Herrn Franz Friedrich Grünbaum, in Wien IV.,
Rechte Wienzeile 29, nach dem gemeinen Wert vom 1. Jänner 1938 beziehungsweise (unverändert) vom 27. April 1938.

P.Z. Gegenstand Schätzwert in R. Mark.

A) Herrenzimmer.

| | | |
|-----|---|--------|
| 1. | E. Schiele, der Selbstseher, Oel, Lw. | 300.-- |
| 2. | " Frauenportratt, Oel, Lw. | 200.-- |
| 3. | " Stadt am Fluss | 25.-- |
| 4. | " Kleine Landschaft mit Bäumen | 20.-- |
| 5. | " Schiffe im Hafen | 15.-- |
| 6. | M. Oppenheimer, (Mopp) Bläserquintett | 30.-- |
| 7. | Russisches Ikon auf Goldgrund, Fragment | 20.-- |
| 8. | Französisches Aquarell, modern, Wäichen in Landschaft | 10.-- |
| 9. | Franz, Aquarell, Modern, Landschaft mit Häuserzeile und wolkgem blauen Himmel | 30.-- |
| 10. | G. Harpignis, Landschaft mit entlaubten Bäumen, Aquarell | 10.-- |
| 11. | P. Signac, Fluss mit grossem Boot, Stadt im Mittelgrund, aquarellierte Zeichnung | 40.-- |
| 12. | Holzstatuette, Reste von alter Fassung, Barock, deutsch, Christus, stark beschädigt | 30.-- |
| 13. | Holzstatuette, Engel, spanisch um 1600 | 30.-- |
| 14. | " heiliger Franziskus, Ob.Cest. um 1600 | 50.-- |
| 15. | E. Orlik, Dschunken am Fluss, farbige Radierung | 8.-- |
| 16. | E. von Stuck, Zentaur, aquarellierte Zeichnung | 200.-- |
| 17. | Egger-Lienz, 2 Soldaten vor Gebirgslandschaft, Aquarell | 60.-- |
| 18. | E. Huber, Dalmatinischer Marktplatz | 30.-- |
| 19. | " Dalmatinische Stadt mit Meeresbucht | 30.-- |
| 20. | Willy Nowak, Strasse bei Nacht, links vorne Wagen, Aquarell | 25.-- |
| 21. | Viktor Tischler, Landschaft, Oel, Lw. | 20.-- |
| 22. | H. Canal, Landschaft mit Mühle bei Mondenschein, Oel, Lw. | 20.-- |
| 23. | Zwei Initialen aus illuminierten Gedices | |
| | a) aus grossem Missale mit Noten | |
| | b) kleines Gebetbuch, Holzschnitt von Dürrer, Aufl. Druck | |
| | | 45.-- |

Transport R.M. 1.248.--

44614

Dr. FRANZ KIESLINGER
PERCHTOLDSDORF N.Ö.
HOCHSTRASSE 133

2

P.Z. Gegenstand Schätzwert in R. Mark.

| P.Z. | Gegenstand | Schätzwert in R. Mark. |
|------|--|------------------------|
| | Transport | 1248.-- |
| 24. | Stefano della Bella, Radierungen, 20 Stück, | 15.-- |
| 25. | a) Rembrandt-Radierungen, 4 Stück, spätere Strucks, b) Kreis des Rembrandt, Gelehrter. | 250.-- |
| 26. | Ein Konvolut deutscher Radierungen, 13 Blatt Penz, 2 Beham, 2 Lucas v. Leyden, 1 H. Hopfer, 1 Urs Graf, (Neudruck) 1 Schongauer (nach ihm ?) 1 Aldegraver, 1 Altdorfer | 180.-- |
| 27. | 3 Kupferstiche von Dürer, Auferstehung (Duplette der Bremer-Kunsthalle, stark beschritten), Barthelomäus, das monströse Schwein | 100.-- |
| 28. | 1 Konvolut, 2 Nielli, 3 holländische Radierungen, 1 Schrotblatt | 9.-- |
| 29. | 7 Blatt Kupferstiche Beham | 40.-- |
| 30. | 1 Konvolut: 1 Farbholzschnitt a.e. Livre d'Heure, 4 franz. Stiche (2 Callot, Demarne, Delacroix) 6 italienische Stiche (Tiepolo, Castiglioni, Reni), 2 Radierungen Ostade, 2 dtte. Karel Dujardin, 2 dtte. Bega, 1 Kupferstich von Goltzius, 1 Radierung von Dietricy 1 Radierung von Roos | 15.-- |
| 31. | 23 zeitgenössische Radierungen | 10.-- |
| 32. | Zeitgenössische Graphik, Orlik, Pechstein, Liebermann u.a. 21 Stück | 15.-- |
| 33. | Druckgraphik von Dore und Daumier 9 Blatt | 20.-- |
| 34. | Zeitgenössische Graphik 10 Blatt (Kellwitz, Harta, Tischler etc.) | 15.-- |
| 35. | 5 Blatt grosse Graphiken, Münzer, Mepp, Klinger, Faistauer Kriehuber | 10.-- |
| 36. | 12 Kupferstiche des 17. und 18. Jahrhunderts und 3 Handzeichnungen, 1 nach Carracci und 2 Blatt 19. Jh. deutsch | 20.-- |
| 37. | Grosse Handzeichnungen von Schiele 55 Blatt mit Farben | 1200.-- |
| 38. | 20 Bleistiftzeichnungen und 1 Radierung v. Schiele | 300.-- |
| 39. | Zeitgenössische Aquarelle und Zeichnungen (Schatz, Vitasek Kokoschka, Mepp, Gütersloh etc.) 24 Blatt | 30.-- |
| 40. | Zeitgenössische Zeichnungen u. Aquarelle, grosse Formate (Mopp, Faistauer, Kolik, etc.) 18 Blatt | 90.-- |
| 41. | 2 grosse Kokoschka, weibliche Köpfe, Hdz. | 50.-- |
| 42. | Tafel Blatt, Englisch, 2 Kutscherstudien | 15.-- |
| 43. | Reproduktion nach Genarino, Lithogr. | 10.-- |
| 44. | Deckenentwurf, Aquarell, ital. 18. Jh. | 30.-- |
| 45. | 2 franz. Blätter, Art des Gavarni Mädchen mit Kind 18. Jh. | 20.-- |
| 46. | Ital. Barockzeichnung, Mitte des 18. Jh. Deckenentwurf | 12.-- |
| 47. | 1 Konvolut von 3 Handz. Calame, Israels, Tiroler Barokmaler Zeichnungen des 18. u. 19. Jh., (die wichtigeren Zuschreibungen falsch, wie Gauguin, Chodowiecki etc.) 20 Blatt | 30.-- |
| | | 80.-- |

Transport R.M. 2.814.--

Who were Kajetan Muhlmann and Franz Kieslinger?



Muhlmann described as “arguably the single most prodigious art plunderer in the history of human civilization”*

- Muhlmann based Nazi operations in Holland to oversee laundering of title to artworks looted throughout the Reich.
- Franz Kieslinger was Muhlmann’s henchman
- In July, 1938 Kieslinger inventoried Fritz Grunbaum’s art collection

* Petropoulos, Jonathan, *The Faustian Bargain* (Oxford University Press 1990) at 170-204).

At least nine percent of the Nazi total government budget in 1938-39 was stolen from Jews (approximately 1.5 billion Reichsmarks).

Aly, Goetz, Hitler's Beneficiaries

(Metropolitan Books 2006) at 48.

November 18, 1938 Nazi Finance Ministry Decree on Jewish Property

The enclosed coverage of Jewish property, now available for all of the Reich, gives reason to the following remarks:

Bundesarchiv

Reichswirtschaftsministerium

- (1) the property of the Jews of German citizenship, and
- (2) the property of the stateless Jews.

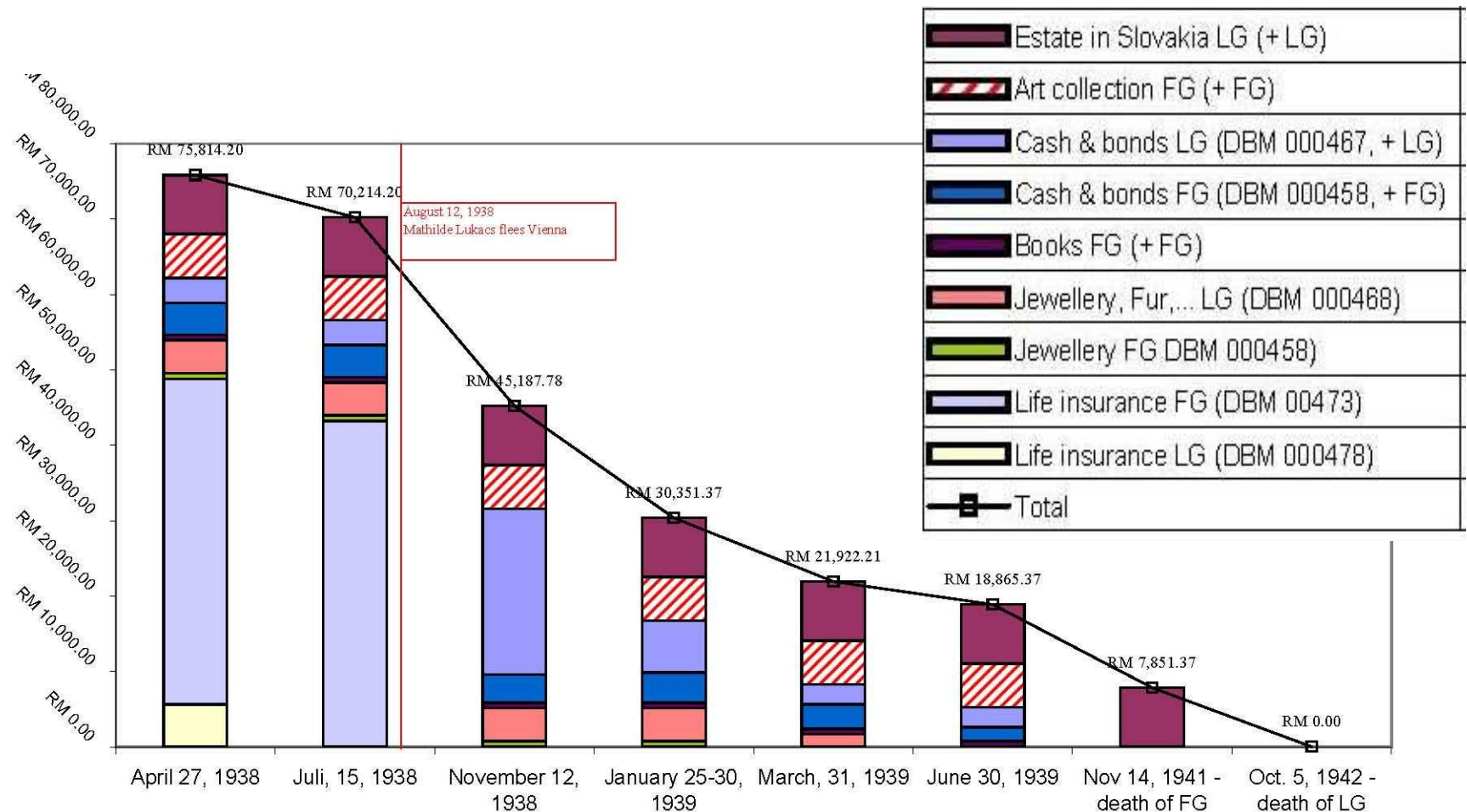
The addition of the property values shows the following picture:

| | |
|---|-------------------------|
| (a) farming and foresting property | 112 million RM |
| (b) real property | 2,343 million RM |
| (c) business property (after payment of the business's debts) | 1,195 million RM |
| (d) other property | <u>4,881 million RM</u> |
| (e) gross property (addition of a - d) | 8,531 million RM |
| from that, debts and claims not regarding business property will be deducted in the amount of | 1,408 million RM |
| (f) net property (reported property after the deduction of all debts) | 7,123 million RM |

The examination of this assailable property, from the viewpoint of liquidity, shows the following picture:

Grunbaum Assets 1938-1942

(Per Jewish Property Declarations)



Powers of Attorney

“There is a curious respect for legal formalities. The signature of the person despoiled is always obtained, even if the person in question has to be sent to Dachau in order to break down his resistance.”

- U.S. Consul General in Vienna

Grunbaum's Dachau Power of Attorney

- July 1938 - in Dachau Concentration Camp Fritz Grunbaum executes a power of attorney permitting his wife to liquidate his property, including life insurance policies
- 1946 Austrian Nullification Act – After World War II - Austria nullifies all transactions flowing from powers of attorney of concentration camp inmates

Why use a power of attorney to steal Fritz's property?

- “Holocaust” liquidation in Vienna largely “voluntary” cooperation from brutalized minority
- Art collection listed as Fritz's in Jewish Property Declarations
- Lily needed power of attorney from Fritz to liquidate his property and Italian life insurance policy and give Nazis proceeds
- Powers of attorney used to systematically force Jews in concentration camps to liquidate property
- Jews never saw the money, paid into blocked accounts or Sperrmarks
- Any sales by Jews presumptively duress sales
- Nazis kept up pretense of legality, still confuses scholars, historians and judges today

Dr. LUDWIG ROCHLITZER
RECHTSANWALT
WIEN I, FÜHRICHGASSE 10
TELEPHON R-23-203
POSTSPARKASSEN-KONTO 148.339

Sehr geehrte gnädige Frau !

Auf Ihre Anfrage teile ich Ihnen als
Mannes Vermögen von der Devisenstelle Wien
mit, dass das Honorar des Herrn Dr. Alexander
Spesen und Reiseauslagen
mein Honorar
die Spesen (Telefon, Reisen etc)
zusammen
betragen.

Weiters haben Sie die Friedhof-Rechnung per
und etliche kleinere Rechnungen zu begleichen,
sodass Ihr Debet mit
anzusetzen ist. Zu weiteren Auskünften selbstverständlich
jederzeit gerne bereit.
Hochachtungsvoll

Frau
Elisabeth Grünbaum
Wien 19.
Hofzeile 27

Ludwig Rochlitzer



Dear Mrs. Grunbaum!

The Department of Foreign Exchange appointed me to deal with the whole property of the Grunbaums. You asked me what you owe me and Dr. Alexander Bayer, Munich.

| | | |
|--|------|----|
| Expenses and travels | 3000 | RM |
| My fee | 2500 | RM |
| My expenses (telephone, travel) | 600 | RM |
| Total | 6100 | RM |
| Furthermore the cemetery bill is about | 238 | RM |
| And with several smaller bill | | |
| The total is | 6500 | RM |

For further information I am here any time.

Best regards,

Ludwig Rochlitzer

Letter dated January 31, 1939

Establishes Lily and Fritz lost legal control of assets practical ability to transfer any assets as of January 31, 1939

Bakalar v. Vavra, 2008 WL 4067335 (S.D.N.Y. Sept. 2, 2008)

- First Holocaust-era art trial in U.S. history
- Judge found Schiele's Torso – to have been owned by Fritz Grunbaum
- Grunbaum Jewish cabaret performer who died in Dachau
- Grunbaum's apartment in Vienna inventoried by Nazis shortly after Gestapo arrested him – 81 works by Schiele
- Judge applied Swiss law
- 147-day period in Switzerland sufficient to clean title
- Appealed to the Second Circuit



Bakalar v. Vavra, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010) – vacates and remands for “further proceedings and a new trial, if necessary”

Bakalar v. Vavra, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010) - I

- Acknowledged Nazi mass confiscation of Jewish assets
- Acknowledged legal effect of Dachau Power of Attorney
- Scholarly decision relying on historical scholarship not in the trial record
- Trial judge had excluded expert historians



Bakalar v. Vavra, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010) - II

- Rejected trial court's application of "law of the situs" conflicts rule
- Instead applied "interest analysis"
- "the law of the jurisdiction having the greatest interest in the litigation is applied and the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict



***Bakalar v. Vavra*, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010) - III**

- Applied New York, rather than Swiss law
- Swiss law places insurmountable obstacles to recovery of stolen art
- Under Swiss law, five year statute of limitations from acquisition, purchaser gains clean title from a thief
- New York good faith purchaser cannot acquire title from a thief
- New York protective of true owners of stolen art – “demand and refusal” rule
- New York’s interest to protect the integrity of the market



Bakalar v. Vavra, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010) - IV

- Notwithstanding its conclusion that the manner in which the Drawing was acquired from Grunbaum would not have affected the outcome of the case, the district judge found that the Grunbaum heirs had failed to produce “any concrete evidence that the Nazis looted the Drawing or that it was otherwise taken from Grunbaum.” *Bakalar v. Vavra*, 2008 WL 4067335, at *8 (S.D.N.Y. Sept. 2, 2008). **Our reading of the record suggests that there may be such evidence, and that the district judge, by applying Swiss Law, erred in placing the burden of proof on the Grunbaum heirs in this regard.** Indeed, as discussed earlier, if the district judge determines that Vavra and Fischer have made a threshold showing that they have an arguable claim to the Drawing, **New York law places the burden on Bakalar, the current possessor, to prove that the Drawing was not stolen.**



Bakalar v. Vavra, 619 F.3d 136, 2010 WL 3435375 (2d Cir. Sept 2, 2010)

- Following vacatur and remand for further proceedings, trial court declined to permit expert testimony
- Held that Bakalar could not establish title
- Held that since a Swiss art dealer testified he'd bought it from a family member, the Nazis must not have looted the work
- Found that claims of Grunbaum's heirs barred by laches
- Appeal filed with 2d Cir on Monday September 26, 2011



Bakalar v. Vavra,
2d Cir. Oct. 11, 2012

“the District Court found that the Drawing was not looted by the Nazis”

“Vavra and Fischer’s hypothesis – that the Nazis stole the Drawing from Grunbaum only to subsequently return or sell it to his Jewish sister-in-law—does not come close to showing that the district court’s finding was clearly erroneous.”

- Vavra and Fischer never made this argument

Bakalar v. Vavra,
2d Cir. Oct. 11, 2012

- “The district court found that Vavra and Fischer’s ancestors were aware of – or should have been aware of—their potential intestate rights to Grunbaum property,” and that the ancestors “were not diligent in pursuing their claims to the Drawing.”
- Second Circuit found “no clear error”.

U.S. Museums Falsifying Provenance - Example

Oberlin College – Egon Schiele’s *Girl With
Black Hair*

Kornfeld 1956 Schiele Catalog

#14 – *Girl With Black Hair*



ELON
SCHIELE



- [Ancient Art](#)
- [African Art](#)
- [Asian Art](#)
- [Italian Renaissance and Baroque Art](#)
- [Dutch and Flemish Art](#)
- [Modern Landscapes](#)
- [Expressionist Art](#)
- [Art Since 1945](#)
- [Frank Lloyd Wright House](#)

Expressionist Art

Egon Schiele (Austrian, Tulln an der Donau, near Vienna 1890 - 1918 Vienna)
Girl with Black Hair, 1911
 Signed and dated lower left: Schiele Egon 11
 Watercolor and graphite pencil on paper
 17 3/4 x 12 7/16 in. (45 x 31.6 cm)
 Friends of Art Fund, 1958
 AMAM 1958.41

This drawing is closely related to Schiele's *Black Girl*, a lost oil portrait depicting the same model and executed in the same year.¹ Not only does the drawing serve as the sole memento of the painting, it is more subtle, lively, and immediate in its approach to the adolescent sitter.

The date (1911) inscribed on the Oberlin drawing indicates that Schiele must have created it during his year in Knumau, the Bohemian birthplace of his mother, from which he was evicted later in the year because of his "corrupting influence on the youth."² By 1911, the twenty-one-year-old Schiele had already earned the respect of his older and better-known colleague, Gustav Klimt, whose own often controversial works were



Provenance

With Gutekunst & Klipstein, Bern (1956)

With Galerie St. Etienne, New York (1957), from whom purchased in 1958

Exhibitions

Bern, Gutekunst & Klipstein, 1956. *Egon Schiele: Bilder, Aquarelle, Zeichnungen, Graphik*. 8 September - 6 October. Cat. no. 14.

Litt, Steven: *Paintings In Oberlin Linked to War Looting*
The Plain Dealer, March 1, 1998

- “The Schiele drawing, which depicts a young woman nude from the waist up, may have been looted by the Nazis from the collection of Fritz Grunbaum, who died in Dachau in 1940”
- “Rudolph Leopold, benefactor of the Leopold Museum, has said that in addition to *Dead City*, 16 other Schieles in American museums, including *Girl With Black Hair in Oberlin*, share the same ownership history.”

(emphasis supplied)

Art Loss Register

- Oberlin asked Art Loss Register to check provenance of *Girl With Black Hair* in 2003
- ALR reported to Oberlin that *Girl* was possibly Grunbaum's
- ALR told Oberlin that the Mathilde Lukacs/Switzerland story was doubtful
- Told Oberlin to research pre-war catalogs
- Oberlin did nothing

1925 Wurthle and 1928 Hagenbund Provenances of *Girl with Black Hair*

ARCHIV
NEUE
GALERIE
NR.: 329/37

Liste der von Herrn Fritz Grünbaum übernommenen
Anderszeichnungen und Aquarellen von Egon Schiele.

- 1.) Stehender weiblicher Akt mit roten Strümpfen, 1914. - (32 x 48 1/2)
- 2.) Proletarierkinder, Aquarell nicht sign. - 31 x 45 1/2

6.) Mädchen mit schwarzen Haaren Halbakt 1911. - 31 x 44 1/2

- 6.) Mädchen mit schwarzen Haaren Halbakt 1911. - 31 x 44 1/2
- 7.) Der blaue Fluss, Aqu. 1910. - 31 x 45
- 8.) Liegender Frauenakt mit roten Strümpfen 1912. - Aqu. 31 1/2 x 48
- 9.) "Andacht" Aqu. 1913 Zwei Gestalten 32 x 48
- 10.) Studie zum Wasserfaß Aqu. 1917 29 x 46
- 11.) Knabe in Matrosenanzug Aqu. 1914. - 31 x 48
- 12.) Sitzende Frau mit nackten Schenkeln 31 x 48 Aqu. 1911
- 13.) Sonnenblumen 29 x 46 1/2 Aqu. 1916
- 14.) Frau im Hemd, Rückenansicht Aqu. 1917. - 29 x 46
- 15.) Russe. - aquar. Zeichnung (2 russische Wärter darauf) 1916. - 13 x 48
- 16.) Mädchen mit braunem Rock, roter Bluse, braunem Haar Aqu. 1912
31 1/2 x 48 1/2
- 17.) "Stehender Mann" in rotem Hemd Aqu. 1913 . - 32 x 48
- 18.) Knabe mit angez. blauem Anzug nicht sign. - 32 x 45
- 19.) Frauenkopf (Hände) Tochter Dr. Rieger Aqu. 1917. - 46 x 29 1/2
- 20.) Alter Mann mit angez. braunem u. grünem Anzug Aqu. 1917. - 46 x 29 1/2
- 21.) 2 Mädchen aquar. Zeichnung blau rot schwarz Aqu. 1913. - 31 x 45

60 Sitzendes Mädchen, Aquarell, sign. S. 1911.

Ausstellungskatalog

No.

791

E. Schiele

1925/26

XII I

EGON
SCHIELE

1928 Neue Galerie Receipt List of
Works from Fritz Grünbaum

1925 Wurthle Catalog Provenance

Sale of *Girl with Black Hair* on the same September 18, 1956 Invoice with *Dead City*

KLIPSTEIN & CO., VORM.
GUTEKUNST & KLIPSTEIN
KUNSTHANDLUNG

Telefon 3 46 31
Telegrams-Address: Artus
Bank: Kantonalbank Bern
Postcheck-Konto der Kantonalbank: III 106

BERN, den 18. Sept. 1956
Laupenstrasse 49

RECHNUNG

K 14 Girl with Black Hair

Herrn Otto Kallir, 46 West 57th Street, New York

| Egon Schiele | | | | | |
|--------------|-------|---|--------|--------|---------|
| (7) | 36766 | Knabenbildnis, Bleistift Tempera u. Kleisterfarbe | | | |
| (9) | 36783 | Skizze zur Stadt zum blauen Fluss. 136.47 | Fr. | 650. | 151.60 |
| (11) | 36781 | Sitzendes Mädchen. Aquarell u. Bleistift. | Fr. | 800. | 186.97 |
| (14) | 36520 | Halbakt. Schwarzes Mädchen. Aquarell u. Bleistift. | Fr. | 600. | 139.85 |
| (18) | 36775 | Zwei Proletkriekinder. Schwarze K Aquarell. | Fr. | 650. | 151.60 |
| (23) | 36518 | Stehende Frau. Aquarell Tempera u. | | | |
| (26) | 36776 | Stehender Mann mit feuerrotem Tuch Bleistift u. Tempera. | | | |
| (36) | 36527 | Bildnis Edith Schiele. Schwarze Kr | | | |
| (7) | 36241 | Mutter und Kind. Schwarze Kreide. | | | |
| (39) | 36765 | Bildnis eines gefangenen Russen. | | | |
| (42) | 36772 | Männliches Bildnis. Schwarze Kreide | | | |
| (44) | 36770 | Frauenbildnis. Schwarze Kreide u. Tempera | Fr. | 600. | 139.85 |
| (45) | 36515 | Vorstadthaus. Bleistift und farbige Kreide | Fr. | 450. | 104.89 |
| (46) | 36523 | Gebirgslandschaft. Schwarze Kreide. | Fr. | 450. | 104.89 |
| (47) | 36244 | Dächer von Hinterhäusern. Schwarze Kreide. | Fr. | 450. | 104.89 |
| (50) | 36232 | Halbakt mit grünen Strümpfen, seitlich vom Rücken. Kreide u. Tempera. | Fr. | 600. | 139.85 |
| (51) | 36777 | Sitzende mit angezogenem linkem Bein. Schwarze Kreide u. Tempera. | Fr. | 650. | 151.60 |
| (53) | 36243 | Sitzender Akt von vorn. Schwarze Kreide. | Fr. | 500. | 116.53 |
| | | | brutto | Fr. | 10800. |
| | | | netto | Fr. | 9100. |
| 1) | 36763 | Tote Stadt. Oel auf Holz. | netto | Fr. | 3650. |
| | | | netto | 836.04 | 3650.75 |
| 16) | 36921 | Selbstbildnis, Akt. Bleistift, Tempera u. Deckfarbe, weiss. | netto | Fr. | 12750. |
| | | | netto | Fr. | 520. |
| | | | | | 13270. |
| | | | | | 1093. |
| | | | | | 3093. |
| | | | | | 10 |

(14) 36520 Halbakt. Schwarzes Mädchen. Aquarell u. Bleistift.

Klipstein & Co., vorm.
GUTEKUNST & KLIPSTEIN

Evidence FG Owned Oberlin *Girl*

- Rudolph Leopold claim Grunbaum owned
- Jane Kallir testimony Grunbaum owned
- Eberhard Kornfeld writings and testimony
- claiming he acquired 78 Grunbaum Schieles
- including *Girl With Black Hair*
- Jewish Property Declaration showing FG owned
- 81 Schieles as of June 30, 1939
- Two pre-War catalogs listing *Girl with Black Hair* by name
- Independent historians ALR, journalists and scholars
- including Jewish Community (“IKG”) Research
- concluding Grunbaum ownership
- Expert report of Dr. Jonathan Petropoulos

Jane Kallir Testimony Grunbaum owned *Girl*

Q. Move to Girl with Black Hair, JK 861. Ms. Kallir, do you believe that this was once owned by Fritz Grunbaum?

A. Again, based on Kornfeld's statement and, you know, as indicated before, yes.

Q. And the references in the Wurthle and the Hagenbund catalog?

A. You know, if you want me to check those references, I'm going to have to do that each time. I'm not going to – you know, that is going to slow things down. I will do what I'm told.

Q. OK. Please check the references.

A. OK. I think that your Hagenbund identification here seems probable. I think that your Wurthle identification is fairly speculative.

Q. OK. But otherwise you believe that this was once Grunbaum's?

A. Again, based on the evidence that we now have at hand, yes.

Austria's Reaction To This Terrible Scandal?

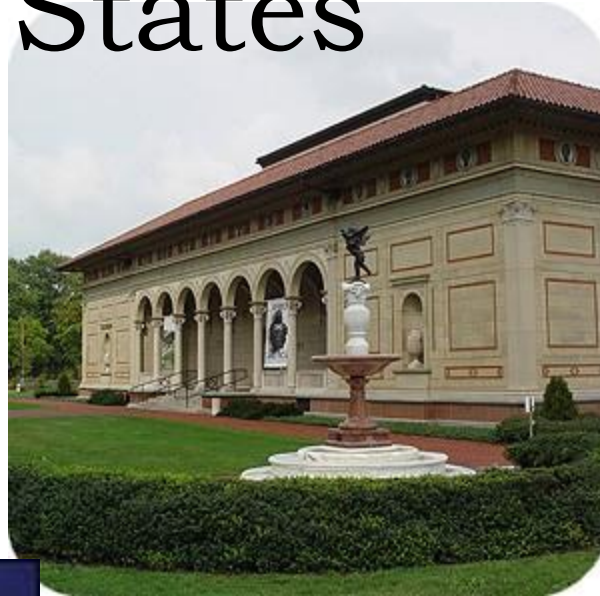
2008 Birthday Party/Exhibition of Kornfeld Private Collection at Albertina

ROUTES THROUGH MODERN ART. FROM THE COLLECTION OF EBERHARD W. KORNFELD

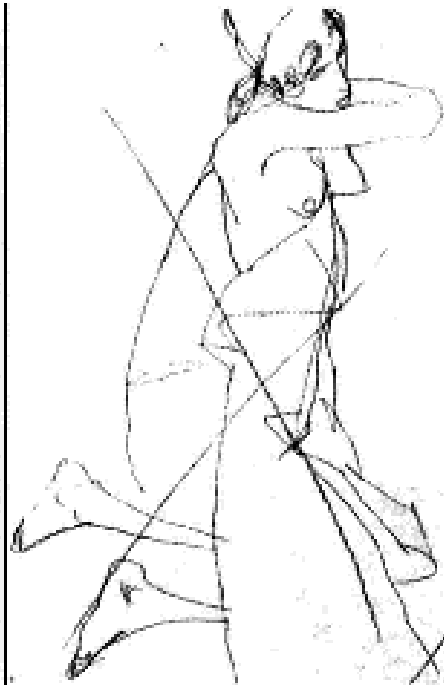
7 November 2008 - 8 February 2009

In honour of the 85th birthday of Swiss art dealer Eberhard W. Kornfeld, some 200 works from his remarkable private art collection are on exhibit at the Albertina. The auction house owner and art publisher is a distinguished expert on prints and the author of catalogues raisonnés on Ernst Ludwig Kirchner, Paul Klee, Marc Chagall, Käthe Kollwitz and numerous other artists. Like the collection as a whole, the exhibition focuses on multifaceted selections of their works, as well as works by the collector's close friends Pablo Picasso, Sam Francis and Alberto Giacometti.

Grunbaum Works in the United States



Chief Inspector Benesch and His Son Otto



- JK 1403/1305
- Harvard University Art Museum



Kneeling Nude, Front View

- JK 1556
- Last seen at the Arkansas Art Center



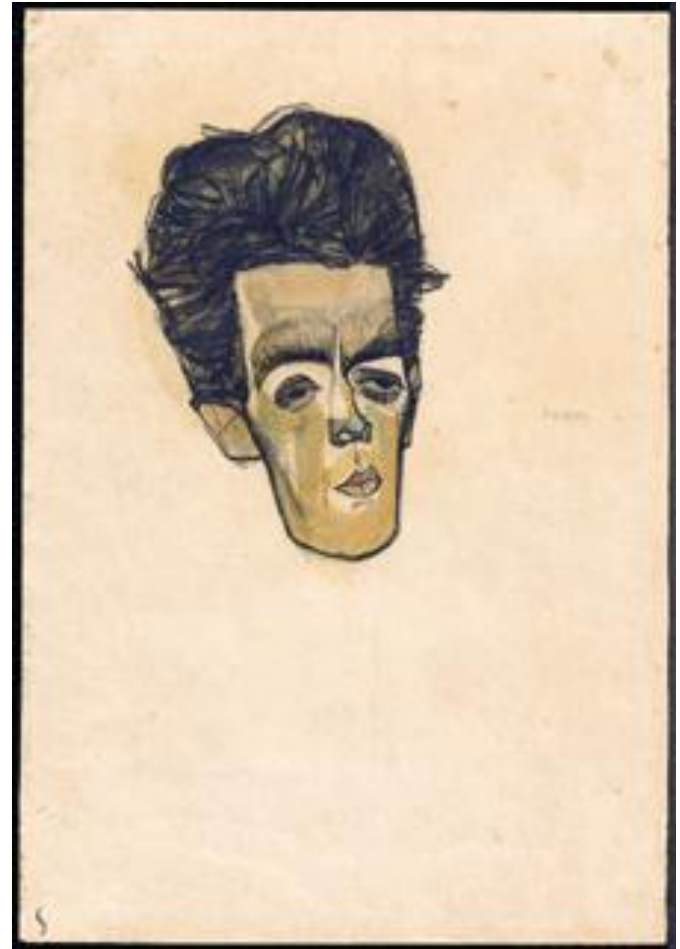
Embrace



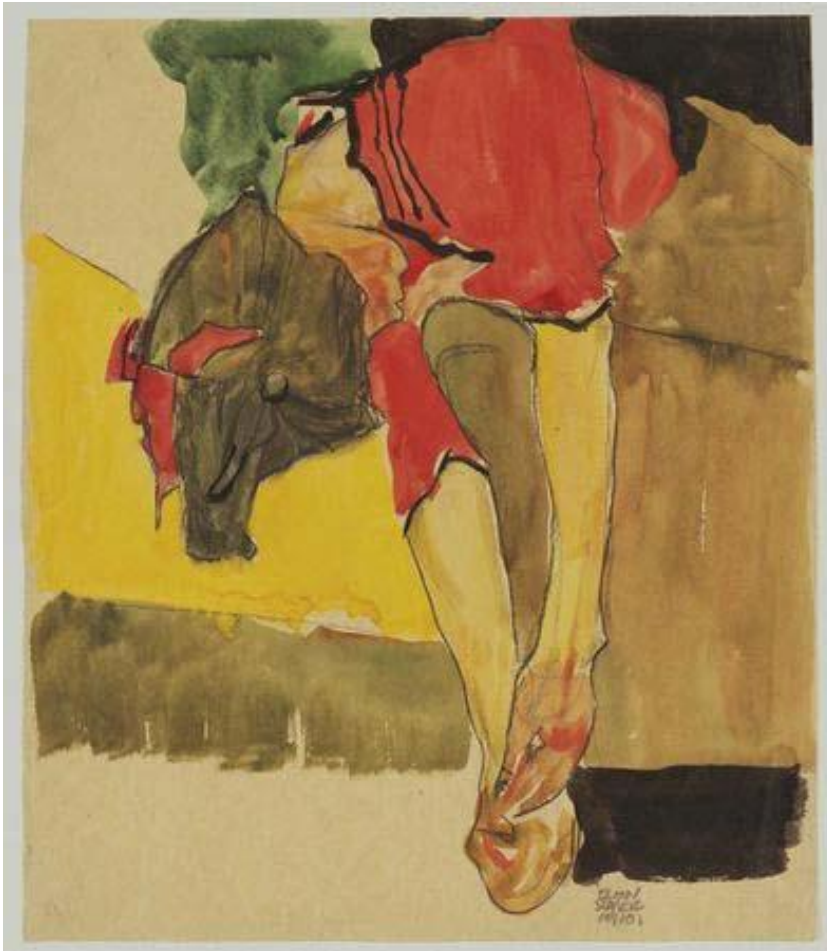
- JK 1674
- Currently at the Morgan Library (bequest of Fred Ebb)

Self Portrait

- JK 686
- Currently at the Morgan Library (bequest of Fred Ebb)



Girl Putting on Shoe



- JK 475
- Currently at the Museum of Modern Art in New York



Town on the Blue River

- JK 742
- Whereabouts unknown (formerly on permanent loan to MoMA), possibly with Gerstl family



Girl with Black Hair



- JK 861
- Currently at the Allen Memorial Art Museum at Oberlin College in Ohio



I Love Antitheses

- JK 1187
- Estee Lauder Trust



Sleeping Girl



- JK 769
- Currently at the Galerie St. Etienne in New York



Standing Woman (Prostitute)

- JK 1045
- Currently at the Museum of Modern Art in New York



Portrait of the Artist's Wife



- JK 1711
- Formerly Santa Barbara Museum of Art, whereabouts unknown



Russian Prisoner of War

- JK 1839/1449
- Currently at the Art Institute of Chicago



Portrait of a Man



- JK 2081
- Currently at the Carnegie Museum of Art in Pittsburgh



Grunbaum Works in Austria

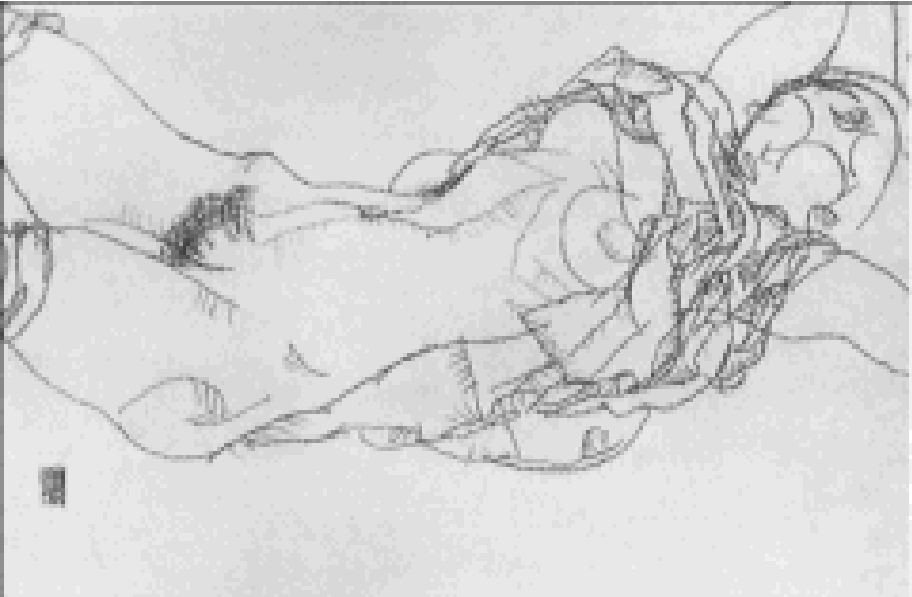


Currently at the Leopold Museum in
Vienna...



JK 213, *Dead City III*

Leopold Museum in Vienna



JK 1550, *Liegende mit hochgeschobener Unterwäsche*

JK 1147, *Verchlungene Akte (Umarmung)*



Leopold Museum in Vienna



JK 1278, *Seated Girl with Yellow Cloth*

JK 2482, *Crouching Nude (Self-Portrait)*



Leopold Museum in Vienna

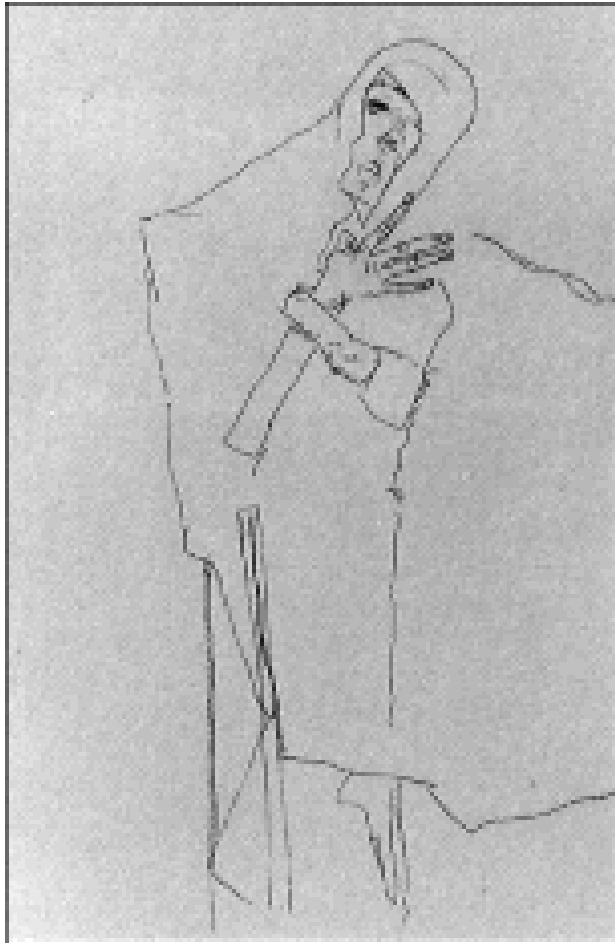
JK 705, *Grimacing Man*



JK 511/513, *Three Female Nudes and Backside Female Nude*



Leopold Museum in Vienna

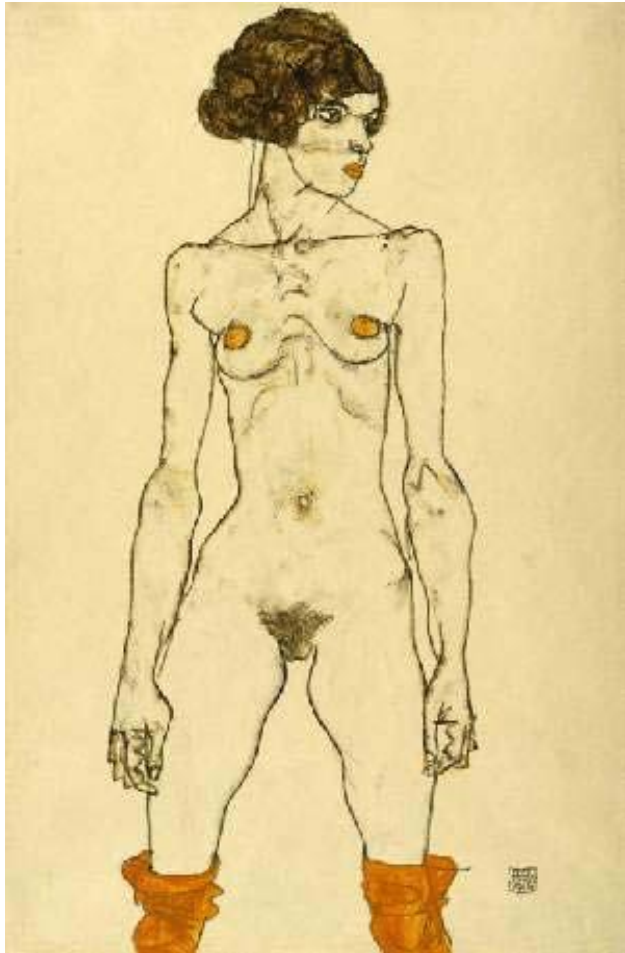


JK 942, *Self Portrait and Penitent*



JK 1084, *Two Standing Female Nudes*

Currently in the Leopold Collection...



JK 1488, *Standing Girl with Orange Stockings*



JK 1418, *Devotion*

Currently in Private Collection of Dr. Leopold...

JK 1420, *Standing Man Draped in Red Shawl*



Leopold Museum in Vienna

JK 1394, *Red Blouse*



JK 1606, *Embracing Nudes*

Currently at the Albertina in Vienna...



JK 1797, *Aunt and Nephew*

JK 1504, *Female Nude Seated on Red Draper, Back View*

