

# LOOTED ARTWORKS

*A portrait of justice*

Cécile Fabre

In 1999 Maria Altman, who had fled Austria in 1938 following the Anschluss with Germany, filed a lawsuit against the Austrian government. Her claim was that five paintings by Gustav Klimt had been looted by the Nazis from her uncle before falling into the possession of the Austrian authorities, and that these ought to be returned to her as the rightful heir. Two of the paintings included portraits of her aunt, such as the famous *Woman in Gold*. The Austrians initially refused to take her request seriously, but eventually gave in after several dramatic legal twists and turns.<sup>1</sup>

This story is now on our cinema screens under the title *A Woman in Gold*, with Helen Mirren in the starring role. The ending is clearly meant to be regarded as a happy one: after all, Altman does get the paintings back. And, generally, many think that stolen or plundered works of art ought to be returned to those from whom they were taken, or their heirs.

I do not think that those legal claims are supported by what I and other cosmopolitans regard as a plausible theory of justice, whereby all individuals, wherever they reside in the world, have rights to the resources needed for a flourishing life, and hold those rights not just against their compatriots but also against well-off distant strangers. At the bar of justice, the well-off are under obligations to do far more than they are currently doing; obligations that they could and should discharge by paying more taxes both on what they currently earn and own, and on what they receive from their forebears. The theory also implies that extant property holdings are unjust, resulting as they do from past generations' failure to meet their obligations of justice.

So what about restitutive claims made by the heirs of those who had artwork dispossessed by the Nazis? Those claims are often blocked on the grounds that claimants would not exist but for the fact that their ancestors were wronged. A refugee from the Nazis, who subsequently had children, would not have had these very same children had this upheaval in their life not have occurred. Interestingly, the objection is unlikely to work for all claimants in the case of looted artwork. Some heirs (indeed, Altman herself) were already born then. And even when it is true of some claimants that they would not exist but for the war during which the looting took place, it is not plausible to say that none of them would exist *but for the act of looting itself*.

And yet there are good reasons, grounded in considerations of justice, for resisting those restitutive claims. For under no plausible description of the world as it stood in 1939 can it be held that it was a just world; a world, that is, where all individuals, wherever they reside, enjoyed the basic necessities of life. To bring about a just world *then* would have required heavier taxation and considerably more stringent restrictions on inheritance than were in fact imposed. The wealthy—those who were able to acquire (or commission) paintings—did not have a legitimate title to their monetary resources and thus did not have a legitimate title to what they acquired with those resources (any more than I have a morally legitimate title to a painting I buy thanks to money I have stolen from you). If the war-time possessor was not in fact the painting's rightful owner, nor are his heirs. Moreover, *even if* he was the rightful owner, there are reasons to doubt that his heirs are. For under no plausible description of the world as it has stood since 1939 may we say that it has been a just world, for exactly the same reasons as given above.

The general point, then, is this: there are very good, justice-based reasons to think that the descendants of those from whom those objects were taken are not the rightful owners of those artefacts. Importantly, it does not follow that looters' descendants are entitled to hold on to those objects. For the claim that someone is not the rightful owner of a good *g* does not imply that *g* may be forcibly taken away from him, or withheld from him, by whomever so wishes: Austrian and German combatants who, either acting individually in a private capacity or collectively under the authority of their leadership, forcibly seized enemy property, wrongfully held on to those resources instead of using them to bring

about a just, or less unjust, world. In so far as they clearly were not those objects' rightful owners, nor are their descendants.

What, then, are we to do?

It seems to me that there are two different solutions to this problem. On the one hand, one could envisage a global redistribution of stolen artworks away from the art-rich towards the art-poor. Of the five paintings at the heart of Altman's case, one was bought for \$135 million by the Neue Gallery in Manhattan with the help of a wealthy philanthropist, and the others were bought by private collectors. But Manhattan is awash with great art; many places around the world are not. Access to art is (I believe) a component of a flourishing life; moreover, evidence suggests that engagement with the arts contributes to improving the socio-economic prospects of deprived populations.<sup>2</sup> The cash donation and the painting could have been put to better use, from the point of view of justice.

On the other hand, one could also envisage a system whereby artefacts that have been wrongfully taken away from a wrongful *de facto* possessor are sold to the highest bidder, with the proceeds to go either to the relief of worldwide poverty or to a global reparations and reconstruction fund for countries torn by war. Although access to art is important in the ways just suggested, access to the basic necessities of life is more urgent, which suggests that the latter solution is to be preferred to the former, so long as there still are individuals in the world who are dying of thirst and starvation. The other four paintings were sold to private collectors. We are told at the end of *A Woman in Gold* that Maria Altman donated the proceeds of the sale to (inter alia) various charities. At the bar of justice, one can only applaud. But overall, as a paradigm example of what ought to be done with stolen artworks—return them to their original legal owners, for them to do as they wish—I am not convinced at all that *A Woman in Gold* does have a happy ending.

## Notes

1. See <[http://www.nytimes.com/2011/02/09/arts/design/09altmann.html?\\_r=0](http://www.nytimes.com/2011/02/09/arts/design/09altmann.html?_r=0)> for details of the case.
2. See, e.g., <<http://borgenproject.org/5-ways-art-can-help-alleviate-poverty/>>