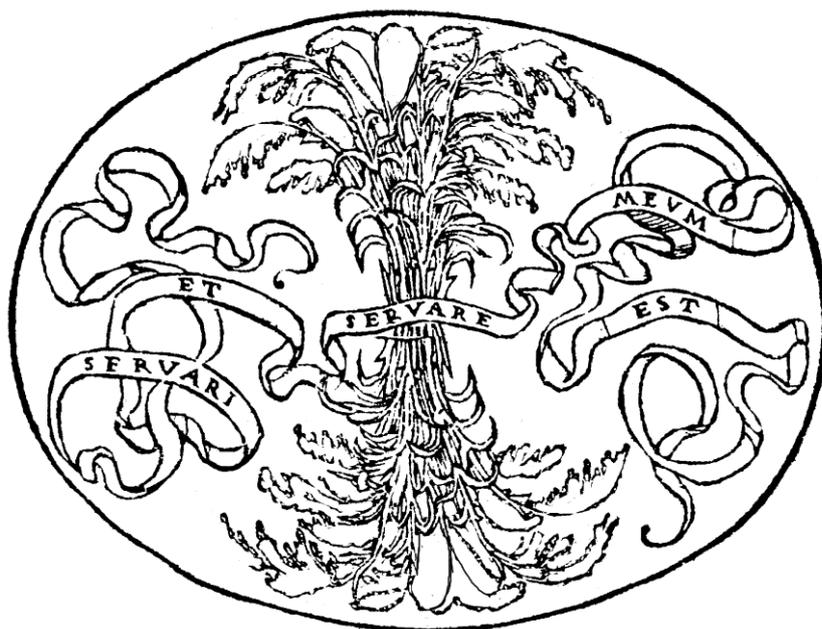


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MUSEUM ACQUISITIONS IN THE ERA OF THE WASHINGTON PRINCIPLES: PORCELAIN FROM THE EMMA BUDGE ESTATE

The Emma Budge Collection

In the spring of 2017, the Museum of Fine Arts, Boston (MFA) acquired seven pieces of eighteenth-century German porcelain from the estate of Emma Budge and promptly installed them in the European decorative arts galleries. The *commedia dell'arte* figures, made by the porcelain manufactories Höchst, Fürstenberg, and Fulda, were left to the Museum in a 2006 bequest from the New York-based porcelain collectors Edward and Kathleen Pflueger. While the other works of art from the Pflueger collection were immediately accessioned, or formally made a part of the Museum's permanent collection, the MFA withheld these seven figures and delayed accessioning them until the process of provenance research was complete¹. All of them had belonged to Emma Lazarus Budge (1852-1937), who built a large collection of decorative arts in her home in Hamburg, Germany; the figures are illustrated in the posthumous sale of her collection, which took place in Berlin in 1937. At the time of the bequest in 2006, an attorney representing the Budge estate contacted the Museum. He alleged that since Mrs. Budge and all of her heirs were Jewish, and none of the heirs had been able to realize the proceeds from this sale, the auction was invalid and therefore the porcelain figures still rightfully belonged to the estate, not to the MFA. The Museum could not bring the porcelain figures into the collection until these ownership issues had been fully resolved, and this process of research and assessment took approximately ten years.

It is unusual for any museum to wait a decade before formally accessioning a work of art that has been offered as part of a gift or bequest. Resolving a restitution claim for works of art that changed hands during the World War II and Nazi era, however, can take anywhere from months – in cases where the process of research is straightforward – to years, in cases where the historical issues are extremely complicated. The Budge claim fell into the latter category². Between 1933, when Adolf Hitler came to power in Germany, and 1945, when World War II ended, works of art in Europe were subject to different kinds of theft and acts of expropriation. Many works of art were stolen, often randomly, from cultural institutions or private homes during the upheaval of the war. Jewish collectors throughout continental Europe were robbed of thousands of works of art through outright confiscation by Nazi agencies; these objects were retained for state use, auctioned off, traded, or otherwise dispersed³. A third group of art objects can be broadly defined for having changed hands under equally insidious circumstances; these were sold or disposed of not at the behest of the state, but under duress, due to circumstances brought about by the racial persecution that is inextricable from the National Socialist era.

It is seldom possible to tell, simply from looking at its provenance, whether a work of art has changed hands under duress. Researching the question of a forced sale, as the Budge estate auction was alleged to have been, does not involve tracing the ownership history of an

I am most grateful to my colleagues Julia McCarthy and Laurie Stein for reading and commenting on a draft of this article.

¹ On the definition of accessioning, see MALARO 1998, pp. 60-64, esp. 60: «The word *collection* implies permanence; so should the word *accession*. A museum should accession only those objects that it intends to retain for the foreseeable future».

² Communication between the MFA and the Budge estate was suspended between 2006, when the law firm of Rosbach and Frey (Berlin) wrote on behalf of the estate, and 2011, when the Law Offices of Mel Urbach (New York) began to correspond on the estate's behalf.

³ For an overview of art loss between 1933 and 1945, see NICHOLAS 1994.

object as much as it does analyzing the political, historical, and financial circumstances under which that object changed hands. At the Museum of Fine Arts, there are several questions the staff routinely asks as a means of guiding the research process in response to claims such as this⁴. First, would the work (or works) of art have been sold if the Nazis had not been in power? Second, did the seller have a choice about how and to whom to sell? And third, did the seller receive fair proceeds over which he or she had full and free disposal (as opposed, for example, to proceeds that were put into a blocked account, or used to pay discriminatory fines and taxes)? These questions are not intended to be comprehensive, nor is it always possible to answer all of them; but attempting to address them requires that, in addition to traditional art historical criteria, we consider previous owners' personal relationships, financial circumstances, biographical details, and, not least, the broader context of National Socialist history.

In the case of the *commedia dell'arte* figures, the provenance of all seven pieces of porcelain was known at the time of the bequest. The group included figures of the characters *Il Capitano*, *Harlequin*, and *Harlequine* by the Höchst manufactory (Figs. 1-2); *Ragonda*, *Colombine*, and *Scaramouche* by Fürstenberg; and a Fulda *Harlequin*⁵. They were securely in the collection of Emma Budge in Hamburg by the 1930s, and were probably acquired decades earlier⁶. Emma Lazarus had married Henry Budge shortly after meeting him in 1879⁷. Though they were both German-born, they attained American citizenship and lived in the United States until 1903, at which time they returned to Germany. The couple purchased a home on the Harvestehuderweg in Hamburg, which became known as the Budge-Palais (Budge Palace). There, Emma Budge built an extensive collection of porcelain and decorative arts under the guidance of Justus Brinckmann (1843-1915), first director of the Museum of Decorative Arts in Hamburg, as well as the art dealership J. Rosenbaum of Frankfurt.⁸ Henry Budge died on October 20, 1928; Emma Budge's death followed on February 14, 1937.

Mrs. Budge had revised her last will and testament in 1933, as she explained, due to the changing economic and political circumstances in Germany⁹. Between 1933 and 1936, she amended this will through five codicils. In the fourth codicil, written shortly after the so-called

⁴ These questions are based on the postwar Military Government Law 59 on the Restitution of Identifiable Property (U.S. Area of Control, Germany), available online at <http://images.library.wisc.edu/History/EFacs/GerRecon/PropControl/reference/history.propcontrol.i0034.pdf> <August, 2018>. According to Military Law 59, the transfer or relinquishment of property by a persecuted class of individuals between 1935 and 1945 was presumed to have been made under duress, unless it could be shown that the transfer would have taken place in the absence of National Socialism. This could be determined, in part, by whether the seller offered to transfer the property to the buyer, or whether the seller received a fair purchase price over which he or she had free disposal. As well, the presumption of duress could be rebutted if the transferee demonstrably protected the property interests of the claimant, as for example, by transferring the funds abroad on his or her behalf. While it is singularly useful as a guide today, Military Law 59 was by no means the only restitution law of the postwar period.

⁵ MFA accession nos. 2017.76 – 82.

⁶ Mrs. Budge probably built her porcelain collection in the decade of the 1910s. The Höchst figures of *Harlequin* (MFA accession no. 2017.76) and *Capitano* (2017.78) were sold at the Carl Jourdan auction, Lepke, Berlin, October 18-20, 1910; and *Harlequine* (2017.77) was in the Francis Baer auction, Helbing, Munich, March 12, 1913.

⁷ On Henry and Emma Budge and their art collection, see ARNSBERG 1972, KÖNKE 1991, HEUSS 1997; MÖLLER –BERSWORDT-WALLRABE 2001; HAUSCHILD–THIESSEN 2006; HEUSS 2008; WERNER 2011, pp. 243-248, 326-332; REUTHER 2014.

⁸ As noted by REUTHER 2014, p. 24, the Budges' relationship to the Decorative Arts museum was particularly strong when Max Sauerlandt (1880-1934) was director, beginning in 1919. Sauerlandt was forced to leave this position under the Nazi regime, in 1933.

⁹ Amtsgericht Hamburg (AG Hbg), 73 IV 1105/08, Nachlassakte Emma Budge. The will is dated October 5, 1933; the codicils followed on December 23, 1933; June 11, 1934; December 20, 1934; November 21, 1935; and February 10, 1936. What her earlier will specified is unknown, but she noted in the 1933 will that she had made dispositions to benefit the city of Hamburg.

Nuremberg Laws were passed in the fall of 1935, Mrs. Budge named four estate executors: Max M. Warburg (1867-1946), head of the Warburg Bank in Hamburg; Hermann Samson (1860-1940), a lawyer in Hamburg and relative of her late husband; Max Kronheimer (1875-1951), her nephew, in Hamburg; and Ludwig Bernstein (1878-1942), another nephew, also in Hamburg. Attorney Rudolf Samson (1897-1938) of Hamburg was named the alternate executor. Mrs. Budge specified that there should be no fewer than three executors in office at any one time, and that «all estate executors shall belong to the Jewish religion.» Regarding the disposition of her art collection, Mrs. Budge ultimately declared that

[T]he liquidation of possessions by the executors of my estate remains according to requirements of the provisions made earlier. I recommend, regarding the sale of my collections, that they avail themselves not only of the advice of the Rosenbaum firm, now only in Amsterdam, for the porcelain collection, but also the advice of Mr. Börner in Leipzig, especially for the paintings and the prints. A sale of all these objects within the German Reich will probably not be advisable¹⁰.

Despite her wishes, during the summer of 1937, the estate executors began preparing to sell the art collection through the auction house run by Paul Graupe in Berlin¹¹. At that time, however, Graupe, who had been expelled from the Reich Chamber of Fine Arts because he was Jewish, fled Germany and settled in Paris. His Berlin business was sold to Hans W. Lange, and though it kept the name Paul Graupe for a few months longer, by the fall, Lange was working as the auctioneer¹². Between October 4 and October 6, 1937, a large portion of the Budge art collection was sold at auction, including each of the porcelain figures now at the MFA.

The protocols from the 1937 sale make clear that Otto Blohm acquired all of the MFA figures¹³. Otto (1870-1944) and his wife Magdalena Blohm (1897-1950) were not Jewish; they lived near the Budges on the Harvestehuderweg in Hamburg and had a comprehensive collection of European porcelain¹⁴. Like the Budges, they had begun to build their collection under the guidance of Brinckmann. Both couples were members of the Justus Brinckmann Gesellschaft (the friends of the decorative arts museum) in Hamburg; they shared close friends in common, namely the Warburgs; and they may well have been friendly with one another. Many collectors, museum curators, and even friends and family members of the Budges acquired works of art at the 1937 auction. Some of the executors, as well as the Rosenbaum dealership, undertook purchases to support the estate and boost sales¹⁵. It is not

¹⁰ «[B]leibt die Verwertung Sache meiner Testamentsvollstrecker nach Massgabe der früher darüber getroffenen Bestimmungen. Bei der Verwertung meiner Sammlungen empfehle ich ihnen, sich nicht nur des Rates der Firma Rosenbaum, jetzt nur in Amsterdam, für die Porzellansammlung zu bedienen, sondern auch des Rates des Herrn Börner in Leipzig, insbesondere wegen der Gemälde und Stiche. Eine Veräußerung all dieser Gegenstände innerhalb des Deutschen Reiches wird voraussichtlich nicht ratsam sein». 4th codicil, November 21, 1935. Earlier stipulations had advised that the art collection should be distributed to museums in Germany and the United States.

¹¹ WERNER 2011, p. 331, has argued that this was done to make funds available to the heirs as quickly as possible.

¹² A second sale of the Budge collection was held December 6-7, 1937 at Hans W. Lange, Berlin. On the Aryanization of the Graupe auction house, see ENDERLEIN 2006, p. 107 and GOLENIA 2011; on Graupe more generally, GOLENIA–KRATZ–KESSEMEIER–LE MASNE DE CHERMONT 2016. Periodical notices about the Budge sales include FALKE 1937 and LAUTS 1938.

¹³ Files of the Reichskammer der Bildenden Künste: Landesleitung Berlin, Auktionshaus Hans W. Lange. Landesarchiv, Berlin, A-Rep 243-04, Nr. 28.

¹⁴ On the Blohms, see SCHMIDT 1953, SOTHEBY'S 1960-1961, JEDDING 1968, STILLER 2005.

¹⁵ HEUSS 2008, pp. 85-86, noted that the estate executors made «support purchases» in the amount of RM 30,260. Also see the REPORT OF THE SPOLIATION ADVISORY PANEL 2014 regarding the acquisition of an object at the sale by Max Kronheimer, one of Mrs. Budge's estate executors. These reports can be downloaded at <https://www.gov.uk/government/policies/museums-and-galleries>, <August, 2018>.

possible to know for sure the Blohms' intentions; six of the seven objects that are now at the MFA sold at prices around 25 percent below their estimated valuation¹⁶.

The Blohms had business interests in Venezuela and considered themselves Venezuelan citizens, but they made their home in Germany where they kept their porcelain. They are said to have hidden it away during World War II. Otto Blohm died in 1944 and Magdalena shipped the collection to the United States with the assistance of Eric Warburg (1900-1990), Max Warburg's son. Eric had become a U.S. citizen in 1938 and was an officer in the military during the war (he was, in fact, a close friend of both the Budges and the Blohms)¹⁷. Once the collection was in New York, Edward M. Pflueger (1905-1997) and his wife, Katherine «Kiyi» Powers Pflueger (1915-2006) – likewise avid porcelain collectors – acquired the figures, some in the 1940s, directly from Mrs. Blohm, and others in the 1960s, when the collection was publicly auctioned through Sotheby's, London¹⁸ (Fig. 3).

The documented ownership history of the seven pieces of porcelain was, therefore, complete between 1937 and 2006. To assess the Budge estate's claim, the questions that remained to be answered related not to their provenance, but to the issue of whether and to what extent racial persecution played a part in the sale of the Budge collection, and if and how the proceeds from the sale were realized. The research process was facilitated by the copious secondary literature on the Budges; the willingness of the Budge estate attorneys to share primary source documentation; and the availability of resources pertaining to National Socialist legislation that was intended to strip Jewish residents of Europe of their economic and financial autonomy.

The sale held in October 1937 brought a total of RM 912,089, above the collection's appraised estimate¹⁹. There is no specific documentation of what happened to the proceeds from the sale, although it is very likely that the money was credited to the estate's account at Warburg Bank²⁰. For that reason, it is not possible to separate neatly the money brought by the sale of the art collection from the funds held in the estate account more generally. But how to prove a negative, that is, that Mrs. Budge's heirs never received this money? Understandably, the attorneys for the Budge estate were unable to supply documentation to that effect. The Museum had, therefore, to change the questions it asked, turning its attention instead to when any payments from the estate account would likely have been made to the heirs and whether, at that time, they would have been able to utilize the proceeds.

After the autumn of 1937, the situation for the executors and heirs of Emma Budge worsened drastically. In 1938, Max Warburg fled Germany and Warburg Bank was Aryanized,

¹⁶ Otto Blohm purchased lots 849-856 for RM 4600 (estimated at RM 6400); lot 906 for RM 600 (estimated at RM 800); lot 908 for RM 580 (estimated at RM 800); lot 909 for RM 540 (estimated at RM 800); and lot 974 for RM 1250 (estimated at RM 1000). The Blohms made a total of 43 purchases at the Budge sale; of these, 15 were acquired at prices above their estimates; two were acquired at their estimates; and 26 were below their estimates.

¹⁷ Eric Warburg would be responsible for revitalizing the Budge Foundations in Hamburg. On April 22, 1971, he recalled of the couple: «Henry und Emma Budge habe ich persönlich gekannt, war aber damals sehr jung. Ich habe sie als alte, sehr gütige Menschen in Erinnerung, die viel Gutes taten und für die Künste, insbesondere die Musik, sehr aufgeschlossen waren». ARNSBERG 1972, p. 64. Cai von Rumohr, grandson of Otto Blohm (telephone interview, April 25, 2011) confirmed that Eric Warburg was also a good friend of the Blohm family, and that he had the porcelain collection shipped to New York for them. Eric had been the former boyfriend of Otto and Magdalena's daughter, Beatrice; see CHERNOW 1993, p. 351.

¹⁸ MORLEY-FLETCHER 1993, I, pp. 116-117, 126-127, 134-135, 138-139, 144-145, 219-219.

¹⁹ Graupe had appraised the collection at RM 716,650; December 12, 1938 Accounting Report for the Budge estate (provided to the MFA by the Law Offices of Mel Urbach).

²⁰ WERNER 2011, p. 331, noted that the funds went to Warburg Bank along with the other estate assets. The *REPORT OF THE SPOLIATION ADVISORY PANEL* 2014 has written that the «sum was paid into a blocked account in M.M. Warburg, a formerly Jewish bank by then controlled by Nazi supporters and the heirs had no access to it».

or sold to non-Jewish owners²¹. Estate executors Max Kronheimer and Ludwig Bernstein likewise fled, and as a result were forcibly dismissed from their duties on October 12, 1938 because as «Jews and Trustees of a Jewish estate [they were] hardly in a position to take into account German needs from abroad»²². Alternate executor Rudolf Samson died of a heart attack. Finally, the Devisenstelle, or the National Socialist foreign exchange office, ordered Hermann Samson to transfer all of Mrs. Budge's Swiss bank accounts to the Warburg Bank, where the funds would be converted from francs into Reichsmarks. If he did not comply, he was told, he too would be expelled from his role. He was eventually dismissed in March 1939 when he emigrated to England.

The settlement of the Budge estate was deliberately delayed until the Third Reich could successfully bring Mrs. Budge's Swiss bank accounts within the borders of Nazi Germany²³. To leverage its position, the Devisenstelle not only threatened Mrs. Budge's estate executors, it ordered the confiscation of the passports of several of her heirs, so that they could not leave the country. Gottfried Francke, one of Mrs. Budge's bookkeepers, who was not Jewish, was instrumental in this process of expropriation. Mrs. Budge's heirs were coerced into giving him their powers of representation. In March of 1939, Francke went to Zurich on behalf of the Devisenstelle. With none of the appointed executors in Germany, and three of the four dismissed from their roles entirely, Francke was able to remit about two-thirds of what Mrs. Budge had stored in Switzerland to the account of the Budge estate at Warburg Bank. Francke himself was then put in control of this account, at which point, Bernstein and Kronheimer were reinstated as executors. Max Warburg, however, irrevocably lost his role and Francke was appointed in his place. In May of 1939, with Mrs. Budge's funds finally at the disposal of the Third Reich, and with Francke administering the estate's account to benefit the government, Mrs. Budge's heirs were given back their passports and allowed to leave. Only then did the Nazi state recognize a partial settlement of the estate.

If payments from this estate account were remitted as early as the spring of 1939, would the heirs have had free disposal over the proceeds? Mrs. Budge left some thirteen beneficiaries (and several charitable foundations) as heirs upon her death²⁴. In 1939, some heirs were in Nazi Germany but many had left. Those heirs who were abroad in 1939 would not have had easy access to funds in Germany and, in any event, would not have been able to utilize Reichsmarks²⁵. Draconian financial laws were in place in Nazi Germany by this time. As of 1935, Germany's Law on Exchange Control authorized a license for acquiring foreign currency with Reichsmarks, or for transferring Reichsmarks abroad. A license was required to make payments to a foreigner, and had to be made via a blocked account, which inevitably

²¹ The city of Hamburg insisted that the bank keep its name after it was Aryanized. In 1941, it became Brinckmann, Wirtz, and Co. For further on the process of Aryanization see CHERNOW 1993, pp. 466-470 and the website of Warburg Bank <https://www.mmwarburggruppe.com/en/history/>, <August, 2018>.

²² «Juden und Verwalter eines jüdischen Nachlasses [...] schwerlich geneigt, vom Ausland aus auf die gesamtdeutschen Notwendigkeiten Rücksicht nehmen». ARNSBERG 1972, p. 30 and KÖNKE 1991, p. 660; also see Landgericht Hamburg, 1 WiK (Wiedergutmachungskammer 1), 51/57 Z. 487 5, Public Hearing, September 30, 1960, pp. 6-7 (under para. 3).

²³ For information about the forcible transfer of Swiss assets, see ARNSBERG 1972, REUTHER 2014, and Landgericht Hamburg, 1 WiK, 51/57 Z. 487 5.

²⁴ In December of 1938, Francke drew up appraisals of the Budge estate at the instruction of Dr. Samson. The heirs listed were Gertrud Lascar; Walter Lascar; Marie Lascar; Ludwig Bernstein; Herbert Kronheimer; Albert Rothbart; Siegfried Budge; Rudolf Ganz; Erich Ganz; Frieda Feisenberger; Marie Adler; Henny Reichenbach; Martha Ganz; Charitable Societies of the city of New York; Henry and Emma Budge Foundation, Hamburg; Emma Budge Foundation, Hamburg; and the Henry and Emma Budge Foundation, Frankfurt.

²⁵ Some of the heirs who had already fled Germany were, in fact, able to receive their portion of the Swiss inheritance in foreign currency; see KÖNKE 1991, and U.S. District Court, Eastern District of New York, *In Re: Holocaust Victim Assets Litigation*, case nos. 09-160 and 12-5798 (ERK) (JO). There is no indication, however, that they received shares of the money that was held in Germany.

limited the holder's ability to access the payment. Any foreign currency received in the Third Reich automatically had to be «offered» to the Reichsbank²⁶. Collectively, this historical evidence suggested that the heirs outside of Germany would not have been able to access any funds remitted from the Hamburg account. The heirs who remained in Germany were subject to increasing persecution and, by 1939, had little economic freedom²⁷. Any payments to those in Germany were mediated through Gottfried Francke. For example, in 1940 Francke requested authorization to make a monthly payment of RM 550 to heir Martha Ganz of Frankfurt. The amounts were to go into a restricted-access account from which Mrs. Ganz could only withdraw funds with the permission of the Devisenstelle²⁸. There was thus no indication that the heirs in Nazi Germany would have had «free disposal» over whatever money was paid to them from the estate.

One final question remained, which was whether the heirs had been able to recover the objects from the Budge estate sale after World War II, or whether any financial settlements were reached with subsequent owners. The MFA's seven objects are known to have remained in the Blohm collection, and were not restituted; nor was there any indication that Mrs. Blohm had been approached in the postwar period about her acquisition of these figures. Yet, the heirs did attempt to challenge the legitimacy of the sale. Hugo Emmerich (1884-1961), a New York-based attorney working on behalf of Holocaust victims after the war, sent copies of the Budge auction catalogue to the Allied collecting points in West Germany, asking if asking if any of its contents could be found²⁹. A silver drinking cup, which Berlin's Schlossmuseum purchased, was located at the Wiesbaden Central Collecting Point, and Emmerich asked for its return³⁰.

Berlin did not return the cup, and the matter was brought to trial in the 1950s. Emmerich represented Mrs. Budge's heirs Frieda Feisenberger and Marie Adler, both of whom remained in Germany through the spring of 1939. They stated that the 1937 sale was the result of needing to pay discriminatory fines; in other words, as Jews in Nazi Germany they did not have control over the auction proceeds. The Senator for Education in Berlin, Joachim Tiburtius, provided a statement in which he suggested that:

as far as we know, it was a straightforward estate auction, which took place by order of the heirs. We are not aware that the proceeds from the auction were not distributed to the heirs. Nor has this been asserted by the other side. [...] In our view, the preparation of the catalogue by Berlin museum employees may be seen as an extraordinary promotion of the financial interests of the Budge family. Moreover, I should note that the silver cup in question is not an object of very great value³¹.

²⁶ BAJOHR 2002, p. 155.

²⁷ Under the Decree for the Utilization of Jewish Property (December 3, 1938), Jewish residents of the Reich were subject to forcible sales of industrial enterprises; required to deposit their securities at a government-controlled foreign exchange bank; forbidden to buy or sell gold, silver, or precious stones (unless those sales were to agents of the Reich); unable legally to acquire real estate, or to sell real estate without authorization. An English translation of the law can be found at <http://avalon.law.yale.edu/imt/1409-ps.asp>, <August, 2018>.

²⁸ Letter from the Oberfinanzpräsident Hamburg (Devisenstelle) to Gottfried Francke, February 3, 1940 (supplied to the MFA by the Law Offices of Mel Urbach).

²⁹ Emmerich himself had fled Nazi Germany and settled in New York; his son, André Emmerich (1924-2007), became a well-known art and antiquities dealer.

³⁰ National Archives and Records Administration, College Park, MD, Microfilm Publication M1947 (RG 260, Records Concerning the Central Collecting Points [«Ardelia Hall Collection»]: Wiesbaden Central Collecting Point, 1945-1952), Roll 48, Claim: Budge (heirs).

³¹ «Bei der Versteigerung der Sammlung Budge handelte es sich nach unserer Kenntnis der Sachlage um eine reine Nachlassversteigerung, die im Auftrage der Erben erfolgte. Es ist uns nicht bekannt, dass der Erlös aus der Auktion den Erben nicht zugeflossen ist. Dieses wird wohl auch von der Gegenseite nicht angeführt. [...] Nach unserer Auffassung kann daher die Bearbeitung des Kataloges durch die Berliner Museumsbeamten als eine aussergewöhnliche Förderung der Vermögensinteressen der Familie Budge angesehen werden. Im übrigen darf

Gottfried Francke himself was called for testimony. He stated that he had been one of Emma Budge's estate executors since 1939, and had been working for her as a bookkeeper since before 1937. He attested that «The auction of a portion of the estate [...] is not the result of the estate having to pay discriminatory taxes. [...] Persecution played no role in the quick disposition of the estate»³². Adler and Feisenberger's claim was ultimately rejected on June 23, 1954. The court ruled that

Because of the credible testimony of the estate executor Francke, the chamber sees it as proven that, at the time of the auction of a portion of the estate, no discriminatory fees were to be paid; the auction took place only because the inheritance taxes had to be paid and other liquid assets were not available³³.

Some compensatory payments were, however, made to the heirs in subsequent years, and the Budge estate was closed out. Though the matter of the art sale had been litigated, the MFA found it difficult to agree with the court that a «just and fair solution» should rest on the testimony of Francke, who was working to benefit the Nazi state³⁴.

At this stage in the research process, the Museum returned to its initial questions: would the sale have taken place had the Nazis not been in power, and did the sellers have a choice about how to dispose of the collection? It is still difficult to answer these questions with certainty. Emma Budge passed away of natural causes, and left her estate executors to dispose of the collection as they saw fit. They were not necessarily forced into selling the collection, although they auctioned it quickly, presumably in order to bring in funds for the heirs to use. The more critical question in this instance was whether the sellers obtained the proceeds fully and freely. Although the estate, as an entity, received the sale proceeds, it is also true that as the direct result of Nazi persecution, any money that was distributed from that estate account would not have been truly realized by the individuals who were owed it. Those heirs who were abroad would have had no access to funds in Germany in 1939. Any funds disbursed to the heirs who remained in Germany would have been kept in accounts tightly controlled by a Nazi-appointed administrator. The Museum could not conclude that the sellers were able to access this money freely and, for that reason, agreed with the claimants that the 1937 sale was invalid.

ich darauf hinweisen, dass es sich bei dem fraglichen Silberbecher um kein sehr grosses Wertobjekt handelt». Hauptstaatsarchiv, Wiesbaden, Abt. 519/A, Nr. Wi 5157 S.

³² «Die Versteigerung eines Teiles des Nachlasses insbesondere von Wertsachen im Dezember 1937 ist nicht deswegen erfolgt, weil der Nachlass diskriminatorische Abgaben zu leisten gehabt hätte. [...] Etwaige Verfolgungsgründe spielten für die schnelle Verteilung des Nachlasses keine Rolle», *ibidem*.

³³ «Aufgrund der glaubwürdigen Aussage des Mittestamentsvollstreckers Francke sieht die Kammer als erwiesen, dass zur Zeit der Versteigerung eines Teils des Nachlasses keinerlei diskriminatorische Abgaben zu zahlen waren, die Versteigerung vielmehr nur deshalb erfolgte, weil die Erbschaftssteuer bezahlt werden musste und andere flüssige Mittel dafür nicht vorhanden waren», *ibidem*. In the December, 1938 schedule of distribution of the estate (see above, note 19), based on an appraisal of the estate at RM 4.5 million, Francke had calculated estate taxes for the heirs and deducted that amount from what they were to receive. The total amount due to the heirs after inheritance taxes was about RM 2.4 million.

³⁴ In 1958, Frieda Feisenberger and Marie Adler brought a claim against Germany for 100 pieces of Socony Vacuum Oil Co. Inc. stock for DM 1,340,141.73. The lower court denied their claim, but the appellate (Hanseatic) court overturned this decision on May 12, 1960. The court found that the plaintiffs suffered a loss of rights, and that their assets were expropriated when they were turned over to Francke. The fact that they were made to cede power of representation to Francke was also considered a persecutory measure. The court acknowledged that the German heirs were only able to emigrate once a (partial) settlement of the estate was recognized, and that Francke only served the interests of the Reich. Landgericht Hamburg, 1 WiK, 51/57 Z. 487 5.

In settling with the Budge estate in 2017, the Museum of Fine Arts effectively purchased the seven figures from their rightful owners, an arrangement that allowed the Museum to accept them into the collection legally and ethically. The figures are now in public view for perhaps the first time since the 1937 sale, and they are accompanied by annotations that discuss their Nazi-era history, so that their provenance is available to museum visitors.

Policy and guidelines

In 2006, the seven figures from the Emma Budge collection were identified and claimed before they could be accessioned, but the rest of the Pflueger bequest was given accession numbers, photographed for the MFA website, and formally accepted into the Museum's permanent collection, to be exhibited, lent, and published. To this day, the process of researching and documenting the provenance of these more than 350 objects is ongoing³⁵. This situation raises two critical questions. First, why did the MFA not accession the Budge objects with the rest of the collection in 2006, with the goal of sorting out their ownership issues at a future date? Second, the corollary question: why was the rest of the collection accessioned if the process of provenance research was not complete?

It should be self-evident that the Museum did not accession the Budge objects because they were subject to a legal restitution claim. On the most practical level, it is simpler for a museum to make decisions about the future disposition of a work of art – returning it to its rightful owners, if need be – without accessioning it and then, later, having to go to the additional step of deaccessioning it from the collection. There was, more critically, the possibility that the porcelain figures would be considered stolen property under United States law, in which case the Museum would not have been able to take title or valid ownership. The word *stolen* can apply not only to property that was taken during a burglary or plundered by Nazi forces; it can also apply to works of art that were included in a Holocaust-era duress sale³⁶. In 2007, Rhode Island judge Mary Lisi ruled, regarding the forcible auction of Jewish art dealer Max Stern's gallery stock, that «[t]he Nazi party's actions in this instance are ... properly classified as looting or stealing»³⁷. Even if a work of art stolen in this way was acquired in good faith, Lisi wrote, a basic tenet of American law is that once a theft occurs, the item continues to be considered stolen, until the break in its chain of ownership is repaired: a thief cannot convey title³⁸.

Putting aside these logistical and potential legal issues, which are not inconsiderable, the Museum would also be particularly hard-pressed to defend the ethics of its collecting practices if it accessioned works of art that were believed to have been lost to a Jewish owner during the Holocaust, especially without researching the matter first. To safeguard against acquiring stolen art, the MFA has specific wording in its acquisition and collection policy, which serves as an internal governing document for matters pertaining to the collection³⁹. The policy states:

³⁵ The provenance information that the MFA received in 2006 was based on information in MORLEY-FLETCHER 1993.

³⁶ YIP-SPENCER 2008.

³⁷ *Vineberg v. Bissonette* 2007, 529 F. Supp. 2d 300 (D.R.I. 2007).

³⁸ «Defendant's predecessor-in-interest, Wilharm, however, as a result of the acquisition of the Painting through the forced sale, did not acquire good title to the Painting. [...] Legal title to the Painting remained in Dr. Stern and was transferred to the Stern Estate upon Dr. Stern's death. Because Defendant's predecessor-in-interest did not have title to the Painting, Defendant cannot lay valid claim to ownership of the Painting. This Court concludes, therefore, that Defendant is in wrongful possession of the Painting», *ibidem*.

³⁹ On collection management policies, see MALARO 1998, pp. 45-57.

As part of its standard procedure for all proposed acquisitions, the Museum will [...] undertake [...] research to ensure that the proposed acquisition has not been illegally appropriated (without subsequent restitution). The Museum will not acquire a work of art if there is evidence of illegal appropriation without subsequent restitution or other satisfactory resolution of title⁴⁰.

As a matter of policy, the MFA could not acquire the Budge porcelain as long as there was evidence of illegal appropriation, such as a forced sale.

Language provided by the AAMD (Association of Art Museum Directors) and AAM (American Alliance of Museums), the two leading museum associations in North America, informs this statement in Boston's collection policy. The AAMD guidelines, for example, mandate:

Where the Nazi/World-War-II-era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art [...] (a) In the absence of evidence of unlawful confiscation, the work is presumed not to have been confiscated and the acquisition may proceed. (b) If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action⁴¹.

These guidelines were issued in 1998, shortly before the United States signed the Washington Conference Principles on Nazi-Confiscated Art and the country affirmed its commitment to identifying art that had been lost during the Holocaust. Rather than work to implement legislation, the museum associations issued these guidelines to outline best practices in collecting. This solution is sensible, given that most museums in the United States are, like the MFA, privately run and privately funded, and are therefore not subject to state governance the way that many European institutions are⁴².

The scope of the AAM and AAMD guidelines (and the MFA's policy after them) is not limited to new acquisitions. Both sets of guidelines specifically address the need to conduct research on existing collections, applying rigorous scrutiny to works of art that museums may have held for years, if not decades:

If [...] 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 manner⁴³.

Typically, this means if a work of art is determined to have been stolen during Nazi era, either deaccessioning the object for a return to its rightful owner, or, as in the case of the porcelain, reaching a financial settlement to compensate for the initial loss.

Under these guidelines, the MFA has reached several resolutions for works of art that had been in the collection for years before provenance research uncovered a loss due to Nazi persecution⁴⁴. In 2000, the MFA arranged a settlement for Corrado Giaquinto's *Adoration of the*

⁴⁰ See <https://www.mfa.org/collections/provenance/acquisitions-and-provenance-policy>, <August, 2018>.

⁴¹ *REPORT OF THE AAMD TASK FORCE* 1998, available for download at <https://aamd.org/standards-and-practices>. For the AAM standards on Unlawful Appropriation of Objects During the Nazi Era, see <https://www.aam-us.org/programs/ethics-standards-and-professional-practices/unlawful-appropriation-of-objects-during-the-nazi-era/>, <August, 2018>.

⁴² For example, in order to facilitate restitution from state-run museums, in 1998 Austria passed the Art Restitution Law (amended 2009); in 2009 the United Kingdom passed the Holocaust (Return of Cultural Objects) Act.

⁴³ *REPORT OF THE AAMD TASK FORCE* 1998.

⁴⁴ For more information on each of these resolutions, see <https://www.mfa.org/collections/provenance/nazi-era-provenance-research>, <August, 2018>.

Magi (acquired 1992), which had been part of the 1941 forced sale of Federico Gentili di Giuseppe's estate. In 2009, the MFA reached another settlement for four eighteenth-century Italian tapestries from the Barberini collection (acquired in the early 1950s), which had been part of the liquidation sale of the Jewish-owned gallery Altkunst Antiquitäten in 1935. In 2011, Eglon van der Neer's *Portrait of a Man and Woman in an Interior* (acquired 1941) was the subject of a financial agreement after research revealed that it had almost certainly been lost to Walter Westfeld, a persecuted Jewish art dealer, between 1936 and 1938⁴⁵. Each of these works of art had been exhibited and published on numerous occasions, and was well-known in scholarly literature. Only recent efforts to document fully their provenance in the 1930s and 1940s allowed the Museum to clarify their ownership. The MFA now holds these works of art legally and ethically.

In 2004, in addition to these resolutions, the MFA also deaccessioned and returned a Polish *Madonna and Child*, which had been plundered during the Warsaw Uprising; and, in 2010, it did the same for an embroidered panel depicting the *Death of Saint Vigilus*, stolen from the Museo Diocesano Tridentino during World War II⁴⁶. Although the AAM and AAMD guidelines do not specifically address types of loss beyond the Nazi period and World War II, the MFA has also deaccessioned and returned items that research showed had been otherwise stolen or smuggled before they reached the museum⁴⁷. For example, in 2006, thirteen unprovenanced classical antiquities were removed from the collection and repatriated to the Italian State. In 2011, the infamous «Weary Herakles», an ancient marble torso long claimed to have been looted from Turkish soil, was returned to Turkey.

This large number of settlements and returns raises the question of how the Museum of Fine Arts had acquired these illicit items in the first place. There are a number of complex factors contributing to the unlawful trade of art, not least of which is the privacy and opacity that pervades the art trade in general, and that allows stolen and smuggled items to slip more easily through the cracks. Even the most diligent participants on the market may find themselves in inadvertent possession of stolen goods. Nevertheless, the acquisitions listed above were all made long before the Washington Conference Principles were drafted, there were no AAM or AAMD acquisition guidelines at the time, and the MFA itself did not have a formal collection policy until 1996. Indeed, for many years, there was a relative lack of diligence in the art world when it came to legal ownership. When making acquisitions, museums, dealers, and collectors asked few questions about provenance, and presumed that works of art were on the market legitimately unless they had specific reason to believe they were not.

This point bears upon the second question posed above: why, if the process of provenance research was still incomplete, was the rest of Pflueger collection accessioned in 2006? Did the MFA presume that every work of art in the bequest could be accessioned legally and ethically, lacking evidence to the contrary? Even in the years immediately following the Washington Conference, the answer to this question is a qualified yes. In addition to the *commedia dell'arte* figures, one other Pflueger collection object was withheld from accessioning: a Meissen figure of Augustus the Strong, which was believed to have been stolen from the Porzellansammlungen of Dresden during World War II. Once curatorial staff verified this

⁴⁵ On this settlement, see REED 2015.

⁴⁶ REED 2011.

⁴⁷ Both the AAM and AAMD have issued guidelines on the acquisition of ancient and archaeological objects; the AAM urges research on existing collections, but neither organization has offered guidance on analyzing or redressing instances of archaeological looting. For the MFA returns, see <https://www.mfa.org/collections/provenance/antiquities-and-cultural-property>, <August, 2018>.

information, the figure was returned to Dresden in 2006⁴⁸. The rest of the collection was accessioned, and the process of provenance research continues today.

Going forward

Since 2010, in order to uphold MFA policy, the museum guidelines, and the Washington Principles – and to minimize the likelihood of new restitution claims emerging in the future – the MFA has instituted a system of provenance questionnaires, which are required for new acquisitions. The questionnaires are filled out by curatorial staff and must be approved by the Director of Collections before the any gift, purchase, or bequest can be accepted. The questions range from an object's publication and exhibition history to whether it has been run through art loss databases, and the form prompts an examination of any relevant legislation that would govern the object's movement across international borders. Finally, the questionnaires require a curatorial justification for the acquisition based on the cumulative facts about its provenance.

While there is no way for the Museum to eliminate risk completely in the acquisition process, the questionnaires allow staff to consider very carefully what becomes part of the permanent collection, and they require the institution to keep a record of its research and decision-making. As a result, acquisitions proceed more cautiously and carefully than in previous years. In exceptional cases, museum staff have uncovered evidence of theft and looting in the history of works of art offered to the Museum, and those objects have been returned to their rightful owner or country of origin⁴⁹. The Museum has also been offered works of art that were not obviously claimable, but which had undeniable «red flags» in their provenance requiring further research and clarification. Unlike the situation with the porcelain from the Budge collection, in most cases the Museum does not have years to conduct research, but must make a decision about whether to acquire a work of art within just a few weeks. This means that the MFA must turn certain acquisitions down for lack of clear information.

In other cases, the questionnaire process allowed the Museum to document as fully as possible works of art that had been plundered by Nazi forces from Jewish collectors, but were returned to their rightful owners in the years following World War II. In these instances, proactive provenance research made it possible to tell the story of the objects in the galleries and online almost immediately. In 2015, for example, the MFA received the donation of 186 works of art that had been looted in 1938 from Alphonse and Clarice de Rothschild of Vienna. The works of art were returned to the Rothschild family at various dates after the war, and were given to the MFA by their descendants. The Museum marked the occasion of this generous gift with an exhibition that displayed a selection of these objects, and told the story of the Rothschild family and the fate of their art collection⁵⁰. In 2017, the porcelain figures from the Budge estate were installed in the Museum next to selected objects from the Rothschild gift. Both groups of objects are accompanied by labels discussing their Nazi-era histories. Indeed, provenance research should not be conducted solely to resolve potential legal disputes; it should be done to uncover the stories that works of art tell. It is, arguably, difficult to appreciate any work of art fully without an understanding of where it came from.

⁴⁸ See <https://www.mfa.org/collections/provenance/nazi-era-provenance-research>, <August, 2018>.

⁴⁹ After a stolen 17th-century German pendant was offered to the MFA in 2011, it was returned to Schloss Friedenstein, Gotha; see REED 2013, pp. 368-369. In 2014, the MFA repatriated to Nigeria eight stolen or smuggled antiquities that it had received in a bequest; see EDGERS 2014.

⁵⁰ *Restoring a Legacy: Rothschild Family Treasures*, MFA Boston, March 1-July 5, 2015.

To that end, the research any museum undertakes on Nazi-era provenance is not a burden, but it is a responsibility. Collecting institutions are responsible to their Boards of Trustees, to the local public who visit their galleries, and to the art world as a whole. The most important goal of provenance research is not necessarily restitution, but rather, sharing the results of the research process, whatever the outcome. Works of art, whether or not they were sold under duress or looted during World War II, all bear witness to certain memories. Provenance research uncovers these memories and allows museums to preserve and share them through curatorial records, gallery labels, exhibitions, and online. As long as museums are careful about researching the new works of art they acquire, they can be confident that they will be able to care for these objects, and share the stories they tell, well into the future.



Fig. 1: *Figure of Harlequin*, Höchst Manufactory (Germany), about 1752, Hard-paste porcelain. * Kiyi and Edward M. Pflueger Collection – Bequest of Edward M. Pflueger and Gift of Kiyi Powers Pflueger, from the Estate of Emma Lazarus Budge. * Photograph © Museum of Fine Arts, Boston



Fig. 2: *Figure of Harlequine*, Höchst Manufactory (Germany), about 1752, Hard-paste porcelain. * Kiyi and Edward M. Pflueger Collection – Bequest of Edward M. Pflueger and Gift of Kiyi Powers Pflueger, from the Estate of Emma Lazarus Budge. * Photograph © Museum of Fine Arts, Boston



Fig. 3: Underside of *Figure of Harlequin* (Fig. 1) showing a handwritten, nineteenth-century label; a round Budge («H.E.B.») collection label; the lot number from the 1937 auction (854); and a partially-hidden Pflueger collection label. Photograph by the author

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ABSTRACT

In the spring of 2017, the Museum of Fine Arts, Boston (MFA) acquired seven pieces of eighteenth-century German porcelain, all of which had been included in the 1937 estate auction of collector Emma Budge of Hamburg. These *commedia dell'arte* figures were left to the Museum in a 2006 bequest, but the MFA waited to accession them until the process of provenance research was complete. At the time of the bequest, the Museum was contacted by an attorney who alleged that the 1937 auction was a Nazi-era duress sale, and therefore that the figures still rightfully belonged to the Emma Budge estate, not the MFA. In this article, I examine the process of conducting research on the Budge porcelain in particular and on Nazi-era sales more generally. I discuss the guidelines and policies that have been issued for American museums since the Washington Conference on Holocaust-Era Assets of 1998, which mandate careful provenance research for new acquisitions. Finally, I look at current practices at the MFA, which are intended to diminish the likelihood that the Museum will accept looted works of art into its collection in the future.

Nella primavera del 2017, a Boston, il Museum of Fine Arts (MFA), ha acquisito sette figurine in porcellana di manifattura tedesca risalenti al XVIII secolo e donate al museo nel 2006. Le statuette della commedia dell'arte rientravano tra le proprietà della collezionista amburghese Emma Budge vendute all'asta nel 1937. Gli avvocati della proprietaria avrebbero contattato il museo al tempo della donazione, asserendo che la vendita altro non era se non una misura forzata dovuta alle politiche persecutorie messe in atto dalle autorità nazionalsocialiste, e che, per questo motivo, le statuette sarebbero sempre appartenute alla collezionista di Amburgo. Questo articolo ripercorre il processo di accertamento sulla provenienza delle figurine e, più in generale, le regole di condotta e i procedimenti messi in atto dal MFA per risolvere e prevenire la presenza di questo tipo di oggetti nelle proprie collezioni.