

The Legal, the Ethical, and the Aesthetic: The Case of Gustav Klimt's *Woman in Gold*

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Abstract *Restitution*—"the act of restoring something to its original state," as in "the return of something to its rightful owner"—is a complex issue, given that "the original state" of the thing in question no longer exists and cannot in fact be "restored." A return to the "rightful owner" may be legally straightforward, but, I argue here, the *legal* is not *identical* to the *ethical* and certainly not to the *aesthetic*. My example is the famous portrait by the Viennese painter Gustav Klimt of Adele Bloch-Bauer—a painting known as *The Woman in Gold* and the subject of an acclaimed film made in 2015. In a prolonged courtroom case that went all the way to the Supreme Court, Maria Altmann, the heir to the Bloch-Bauer fortune, won *The Woman in Gold*, which had been in the Austrian National Museum in Vienna for more than sixty years since World War II. Altmann quickly sold the painting to Ronald Lauder, the founder and director of the Neue Galerie in New York for \$153 million—the highest price in history to date in 2007. What is the ethical import of such a "victory"? And how do we relate the aesthetic value of the painting to that of the film that made it so famous?

Key words restitution; law; justice; modernism; painting; art market; Gustav Klimt; *Portrait of Adele Bloch-Bauer*; Vienna; Maria Altmann; Belvedere; Neue Galerie; Holocaust; Nazis

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The noun *restitution* literally means “the act of restoring something to its original state, as in “the return of something to its rightful owner.” In the aftermath of World War II, a period when the Nazis had stolen and appropriated so much money, property, and artwork from its rightful Jewish owners, whom they had exiled or imprisoned in concentration camps or murdered, we have witnessed large-scale restitution on the part of the Austrian and German governments. As a refugee from Hitler in 1938, whose family lost all its property, valuables, and personal mementos when we fled Vienna, I myself was to receive, some sixty years after the fact and with my immediate relatives all dead, some payment to compensate for money evidently stolen by the Nazis from my grandfather’s Swiss bank account. Thus did the postwar Austrian government hope to atone for its earlier sins.

But restitution is never a simple matter. One cannot, after all, restore matters to their “original state,” for that state no longer exists. Even when the law is clear, the *legal* is not always the same thing as the *ethical*. A case in point—and it is a fascinating case—is that of the return to its owners’ heirs of the famous Gustav Klimt *Portrait of Adele Bloch-Bauer* [figure 1], also known as *The Woman in Gold* (1903-07). How Adele’s niece Maria Altmann, with the help of lawyer E. Randol Schoenberg, recovered this and four other valuable Klimt paintings in a lawsuit that was resolved, after years of struggle, in 2006 is the subject, first of a bestselling journalistic account called *The Lady in Gold* by Anne Marie O’Connor (Knopf, 2012), and of an acclaimed film made in 2015, directed by Simon Curtis and starring Helen Mirren as Maria Altmann and Ryan Reynolds as Randy Schoenberg. The message of this box office success was simple: in this long drawn battle over the Klimt *Woman in Gold*, which Maria Altmann won and then sold for \$153 million in 2007—at that time the highest price in history ever paid for a single painting—Good prevailed over Evil: the artwork, stolen by the murderous Nazi government during World War II, was returned to its rightful owner. It is regarded as a major victory and punishment for the Hitler regime.

But the case—like most cases of restitution—is hardly so simple. Let me lay out for you the astonishing Klimt story, noting where the film deviates from the facts—facts that are themselves often difficult to interpret.

In the 1990s, the eighty-year old Maria Altmann, who had fled Austria with her husband at the time of the Anschluss (1938) and settled in Los Angeles where she brought up her four children and then ran a little clothing boutique, was advised that she, the niece and last living heir of the fabulously wealthy Jewish sugar magnate Ferdinand Bloch-Bauer and his equally wealthy wife Adele [figure 2], the heir to one of the great Austrian Jewish banking and railroad fortunes, might have a case for recovering the Klimt paintings—especially the “gold” portrait of Adele commissioned by Ferdinand in 1903, which was then occupying a place of honor at the Austrian State Gallery in the Belvedere Palace [figures 3-4]. In the film, Maria comes to the idea of recovering the Klimts at the funeral of her sister Luise, whose letters, referring to the lost Klimt paintings she has been reading, but in fact Maria had been advised to make the effort by the Austrian investigative journalist Hubertus Czernin (a member of the aristocratic Czernin family), who longed to atone for his own father’s membership in the Nazi party. A new Austrian law had been passed in 1998, which facilitated the restitution rights of refugee claimants. At any rate, Maria sought the help of Randol (“Randy”) Schoenberg, the son of her friend Barbara Schoenberg and grandson of the great composer [figure 5] Arnold, a legend in Los Angeles where he had lived for decades after fleeing the Nazis in the late 1930s.

Randy—and the film does make this clear—was a young lawyer who was struggling to make a living: his own law firm in Pasadena had failed and he had just joined a big LA firm called Bergen, Brown & Sherman. Married with a small child, Randy, who had never known his famous Viennese grandfather, originally had no interest at all in the Altmann case. By his own account, he knew nothing of restitution law. In the film he asks Maria, “You’d like to be reunited with the paintings? You’d be a rich woman.” To which Maria responds, “Do you think that’s what this is all about?” Heaven forbid! The film implies throughout that Maria didn’t sue the Austrian government for financial gain but only to be reunited with “my Auntie Adele,” as if somehow the artwork were a real person.

In 1999, in any case, Maria Altmann and Randy Schoenberg, with Hubertus Czernin advising them, take a trip to Vienna to see whether the Austrian government would grant their appeal. Maria is very reluctant to go back to a country that had treated her so cruelly—she and her husband Fritz Altmann had barely escaped with their life—but Randy persuades her that she should return. The Austrian officials with whom they meet are intransigent, arguing that in her will, drafted shortly before her premature death from meningitis in 1925, when she was a mere 44, the childless Adele had deeded the paintings in question to the Belvedere. The will

states explicitly “As for my two portraits and the four landscapes by Gustav Klimt, I request that after my husband’s death, they be given to the Austrian State Gallery in Vienna.” The government had earlier returned to the family sixteen Klimt drawings and nineteen pieces of porcelain, which fell outside the request of the will, but, as for the paintings, their provenance seemed clear.

The Altmann counterargument, as made by Schoenberg, is that Adele’s will stipulates that the paintings should go to the Belvedere *after Ferdinand’s death*. In 1925, the plaintiffs argue, Adele could have had no idea what was to come, that the Anschluss would destroy Ferdinand’s life, stealing his entire estate, including the paintings, and sending him into exile in Switzerland. The paintings fell into the hands of a lawyer ironically named Erich Führer. Ferdinand, ill and suffering in Zurich, had lost everything—his factories, his palaces, and of course his art work. When he was found dead in his hotel room in November 1945, he evidently thought the paintings were irretrievably lost. His will left his entire state (yet to be recovered in any form or shape) to his nieces and nephew. Meanwhile, the paintings had come into the hands of a repatriation lawyer, who argued that, given Adele’s original will, the Klimt portraits belonged in the Belvedere, and a whole new room was opened where they could be shown to advantage.

Maria Altmann, Ferdinand’s last surviving niece, now sought to sue the Austrian government, on the grounds that Ferdinand’s later will voided that of his wife. But under Austrian law, the filing fee for such a lawsuit is determined as a percentage of the recoverable amount and since, at the time, the five paintings were estimated to be worth over \$100 million, the filing fee would have been beyond Maria’s means. Accordingly, she decides to drop the law suit, and she and Randy go home, stopping off en route to the airport to “pay their respects” to the Holocaust Memorial on the former Albertina Platz, renamed the Judenplatz.

But Randy, now that he knows the painting’s worth, cannot give up so readily. Within a few years he has quit his job at the law firm and devotes himself to researching the Altmann case. And before long, he has found a legal loophole: Maria, as a U.S. citizen, could sue the Austrian government as an entity, claiming that *The Woman in Gold*, by now a frequent art catalogue and exhibition item, now has a commercial value in the U.S. The case goes all the way to the Supreme Court—Republic of Austria v. Altmann—which rules in 2004 that Austria is not immune to such a lawsuit. The two parties agree to binding arbitration by a panel of three Austrian judges, and on January 16, 2006, the arbitration panel rules that Austria is legally required to return the art to Altmann. At the time, the Austrian government begs Maria to take the second portrait of Adele [figure 6] as well as

the three landscapes [figures 7-9] but to leave the iconic *Woman in Gold*, which, as a kind of Viennese counterpart to the *Mona Lisa*, holds pride of place in the Belvedere, where it is. The painting is, after all, a national treasure.

Maria refuses: in the film, she says, “NO, I must have my Auntie Adele back! I miss her so much!” and there are flashbacks of Adele hugging little Maria and giving her chocolates. Maria also remembers that Adele had promised her the beautiful choker necklace [see figure 13] that she wore while posing for *Woman in Gold* and which, during the war had been worn by Emy Goering, the wife of Hitler’s notorious Minister of Culture. “My Auntie Adele,” the film Maria tells the Director of the Belvedere, “will now make the same journey I made so many years ago and be with me.”

Within two months of her return to LA, Maria had sold the gold portrait of the beloved Auntie Adele she couldn’t live without to the cosmetics heir Ronald Lauder for his Neue Galerie in New York. The price is, as I noted earlier, \$135 million. The other four paintings were quickly sold at auction at Christie’s in New York, fetching \$192.7 million. The total intake was thus approximately \$325 million; the proceeds were divided up by Maria Altmann’s heirs—her four children and grandchildren. Randy received 40% of the proceeds, which is to say more than \$100 million. Thus, the young lawyer who, seven years earlier, had been out of a job, is now a multimillionaire. Evidently, he gave some of the money to support the Los Angeles Museum of the Holocaust, but how much? He now practices restitution law in Los Angeles and teaches the subject in occasional courses at USC. As for Maria Altmann, she died four years later in 2011, satisfied that she had triumphed over the evil regime that had deprived her of her rights. The second portrait of Adele (1912; see figure 6), incidentally, was bought by Oprah Winfrey for \$88 million; she recently sold it for \$150 million! This is how the art market works in the twenty-first century.

In the film, all this is presented as the triumph of good over evil, the triumph of the innocent Jewish victims over their wicked Nazi oppressors. There are countless flashbacks in which Maria’s family is depicted leading an idyllic life: dancing, for example, at Auntie Adele’s birthday party (a painfully inaccurate scene where the family dances the Jewish dance, the Hora and people say “Mazeltov,” contrary to how the assimilated High Society Jews of Vienna actually lived!) Maria’s father Gustav (Ferdinand’s brother and business partner) is depicted as playing the cello—his true love—no matter what is going on outside in the streets. This is, of course, a common stereotype about Jews—they are so “musical”—so given to playing the violin or piano! In one scene Gustav tells Maria, “You know, Maria, when we first

came to Vienna we were not rich people; we worked hard and we *contributed*; we were proud of what we did.” The reference is to the fact that many Viennese Jews originally came from elsewhere, from somewhere in the East—whether Russia or Romania or what is now the Ukraine—and “made good” in their adopted country. The actual business practices of these moguls, frequently satirized in their day by Karl Kraus, are never considered. And in an entirely fictional flashback, Maria bids her parents goodbye (why are they staying behind?) and she and husband Fritz escape from Vienna in a Hollywood-style cops-and-robbers chase that never occurred in real life.

Again—and this makes the film a very specious work of art—the Viennese Jews are uniformly depicted as brave and virtuous. In the maudlin scene in which Maria’s parents are bidding their daughter goodbye, her father announces that since Maria will be making her home in America, from now on, he too would speak English. As for the residents of Los Angeles, none of them ever mention money. Randy’s wife Pam, who goes into labor with their second child the very morning her husband is to leave for Washington to plead his case in front of the Supreme Court, tells Randy, “Go! Don’t worry about me! You’re doing the right thing!” implying that Right must be done, whereas what the real Pam no doubt had in mind is that it was imperative to go because the financial stakes were so high.

The whole case is thus sentimentalized, made one-dimensional, and turned into Kitsch. After all, Justice is being served! Surely Adele Bloch-Bauer would never have left the portraits to the Nazis! How could she have known in 1925 what would happen to her beloved Austria? And how great that a painting commissioned by a Jewish patron should end up, not in the Viennese Belvedere (there are still so many Nazis around!), but in New York’s Neue Galerie, co-founded by the Jewish Ronald Lauder. In the film’s final scene, Maria, rather than gloating over her victory, goes back to the beautiful old Palais on the Elisabeth Straße [figure 10], inhabited, before the war, by her Uncle Ferdinand and Aunt Adele. The four-story palace is now an office building. Having gotten permission from an amiable man behind the reception desk who tells her to make herself at home, Maria wanders through the old rooms, full of memories, weeping. Finally she remembers her father playing the cello and smiling, and on the note of this happy memory, the film ends. Only the fine print statement after the conclusion informs us about the sale and auction of the paintings.

The real story of *The Woman in Gold* is of course rather different and much more complex. To begin with: who was Gustav Klimt? Born in 1862 near Vienna to a large, lower-class family, he attended the Vienna Kunstgewerbe-Schule (School

of Arts and Crafts) and began by painting murals and ceilings in large public buildings, including the Burgtheater, the Kunsthistorisches Museum, and the ceiling of the Great Hall at the University of Vienna. The latter, however, was declared pornographic and the panels were never placed on the ceiling: here is one of the murals—*Pain* [figure 11] designed for the Medicine section of the ceiling (the others were Jurisprudence and Philosophy). The writhing bodies meant to depict the river of life, were too overtly erotic for turn-of-the-century public standards and the murals were rejected.

Klimt was soon one of the founding members and then president of the Vienna Secession, a group of artists who wanted to break out of the conservatism of the Vienna Künstlerhaus. The Secession Building [figure 12] is one of the great tourist attractions in Vienna, housing among other things Klimt's famous Beethoven frieze in its main gallery. By 1900, at any rate, Klimt was considered an important provocateur, the enfant terrible of the Viennese art scene. His work was widely criticized but he began to get lucrative commissions from the wealthy industrialists, largely Jewish, of Vienna.

Adele Bloch had met Klimt socially in the late '90s, before her arranged marriage in 1899 at age 18 to the 35-year old Ferdinand Bauer. The artist soon became part of her important salon, where the leading writers, artists, and intellectuals regularly met. In 1903 Ferdinand commissioned Klimt to paint her portrait, and Adele began going to sittings at his studio, where Klimt made hundreds of sketches over the course of the next five years. She seems, for starters, to have been the model for Klimt's painting *Judith and the Head of Holofernes*, in which the semi-nude heroine, closely resembling Adele, is wearing a heavily-jewelled gold choker given to her by Ferdinand [figure 13]. Rumors were rife that Adele and Klimt, known as a great womanizer, were having an affair, and, given various letters and diaries, it is hard to think otherwise although there has never been absolute proof.

Ferdinand, in any case, became one of Klimt's great patrons. In 1903 he purchased his first Klimt, the landscape *Buchenwald* [see figure 9], and in mid-1903 he commissioned Klimt to paint a portrait of his wife. The style of the portrait is characteristic of what is known as Klimt's Gold Period: he had recently visited Ravenna, with its gorgeous gold mosaics and created a technique of gold and silver leaf and then adding decorative motifs in bas-relief using gesso. In the painting [see figure 1], Adele sits on a golden throne or chair silhouetted against a golden starry background: she wears a triangular golden dress made of rectilinear forms with erotic import—triangles, eggs, shapes of eyes, and almonds, as well as variants of

the letters A and B—Adele’s initials. The scheme is geometric in sharp contrast to Adele’s hair, face, exposed neck, and hands, painted rather realistically in oil.

The contrast of the portrait’s realistic face and hands to their abstract golden setting is jarring, and indeed the painting was not well received. One critic, Eduard Pötzl described it as “mehr Blech als Bloch” (more brass than Bloch). Others, including Karl Kraus, dismissed it as decadent and kitschy. Klimt himself, for that matter, was known in Vienna for his questionable behavior: he boasted that forty-three illegitimate children in Vienna were his and in later life, he declared that he never wore anything underneath his work smock [figure 14]. Indeed, I can remember that my own Viennese family had little use for Klimt, who was considered a decadent, semi-pornographic provocateur—nothing like such true modernists as Picasso or Matisse. And art historians have largely ignored Klimt: such famous critics as Leo Steinberg, Rosalind Krauss, Thierry de Duve, or T. J. Clark—critics who have dissected the Modernism of Picasso or Malevich or Duchamp—have, to my knowledge, never written on him.

We do not know what Ferdinand Bloch-Bauer paid Klimt to paint his wife, a project that took five years to complete. But given Klimt’s controversial standing in the early decades of the century, we can surmise that in 1925, when Adele willed the portraits (the second one is less daring than the first) to the Belvedere, they would not have been worth a great deal of money. Nor would the situation have been vastly different by 1945, when the Belvedere acquired the paintings. The public taste for Klimt developed slowly and no doubt the restitution brouhaha helped to inflate the price.

What does all this have to do with the ethics of the case? If *restitution* is “the restoration of something to its *original* state,” the “return” of the paintings to Maria Altmann, sixty years after her uncle’s death and almost a hundred years after they were commissioned, is problematic. For of course, *The Woman in Gold*’s original state no longer exists. The fortunes of the Bloch-Bauers, beginning with their many palaces, their sumptuous furnishings, their huge staff of servants, no longer exist and their milieu cannot be recreated in the early twenty-first century. True, the Bloch-Bauer family lost everything to the Nazis but so did poor Jews from all over Europe-- Jews who were never able to recover their loved possessions such as photo albums, documents, pieces of furniture and mementos. These Other Jews had to begin a new life in a new world with no compensation. Then, too, the Second World War changed life forever: the countless deaths, the great post-war migrations, the end of empire and colonialism: in view of these transformative movements, what does it mean to return private property to its “rightful” owner? Who “deserves”

what?

But, it is argued, isn't the return of these art works—works like the Klimt paintings that had been cruelly looted by the Nazis—a necessary act of retribution for the Holocaust, a necessary form of purgation? The Nazis, after all, had to be punished for what they had done to the Jews; they could not be allowed to “get away with it.” In “returning” the Klimt paintings to the Bloch-Bauer family that owned them—in this case, to the rightful heir Maria Altmann—the balance is thus righted.

Or is it? When the Altmann case came before the Supreme Court, one of the initial objections to Randy's case was that the lawsuit of an individual against a sovereign state is usually a detriment to international relations. In this case, the plaintiff prevailed but there is no doubt that resentment on the part of the Austrians was wide-spread. As Anne-Marie O'Connor report in her book, Viennese curators and museum personel declared themselves aghast, the press wrote angry editorials, and soon the trams and busses were bearing posters inscribed *Ciao Adele* [figure 15]. In the film, there is no doubt that the Austrian officials are the “bad guys,” even though these officials were born decades after the war and the Holocaust. At the same time, no doubt there are Austrians who are now saying in private, “You see, the greedy Jews are once again robbing our people of what should belong to them!”

How, then, should the case be understood? The ethical crux has to do with the interpretation of the word *original*. Schoenberg, following what is today the going wisdom, argued that, *had* Adele known in 1925 what was in store for Austria, she would never have left her paintings to the Belvedere, and that Ferdinand's suffering and deprivation at the hands of the Nazis makes it only fair and just to return the paintings to the family. An eye for an eye, with the ironic result that the man who ultimately got the painting, Ronald Lauder, the heir of the Estee Lauder fortune, never suffered during the war at all and neither did the young Randy Schoenberg. Still, if we assume, as Maria Altmann herself evidently did, that Austria has not really changed, that it is still essentially dominated by anti-Semitic neo-Nazis, then the transfer of wealth from national museum to private American ownership is surely justified.

But suppose Austria really HAS changed? Suppose the Vienna of 2020 is closer in spirit to that of 1920 than to that of 1945? Given that at least three generations have gone by since 1945, can we assume that Austria is still the same evil place it was on the eve of the Anschluss? Which is the *original* that we want to restore? And if we assume that once a Nazi nation, always a Nazi nation, what can the future hold? What, moreover, about the artist and where he might have liked his

paintings to live? Does Klimt himself count for nothing?

Meanwhile the global capitalist art market churns on, producing such distortions that it is difficult to know what “worth” really means. It is all a game, and no one can explain why *The Woman in Gold* should be the most expensive painting in the world. Fifty years from now its current value may have greatly diminished. The only conclusion to be reached is that the legal and the ethical are by no means identical, and neither are the legal and the aesthetic. Ferdinand, a hard-headed business man who came to connoisseurship largely through his wife, admired Klimt’s portraiture largely as a tribute to his beloved Adele. In real life, for that matter, she was hardly a beauty: it was Klimt who had made her so special. Then, too, it is not necessarily true that had Adele lived to witness the Nazi period, she would have changed her mind. Many of the super-rich assimilated Jews—for example Wittgenstein’s sisters—were willing to make large fortunes over to the Nazis in exchange for the right to stay in Vienna.

The Klimt paintings, in any case, have moved from their home in the Austrian National Gallery to their new home in a privately funded gallery in New York—the Neue Galerie. From one art museum to another, the “compensation,” as if there could be one, for the evils of the Nazi era, with two sets of heirs of refugee families—the Altmanns and the Schoenbergs—becoming as wealthy as their Jewish forebears in Vienna once were.

Is it an *ethical* solution? My own personal preference would have been for the following: Maria, having won back the paintings, might have taken the second portrait of Adele along with the three landscapes and sold them, as she did, at auction, receiving a great amount of money. Then she might have done the gracious thing that would have endeared her and her Bloch-Bauer relatives to the Austrian people. She would have let *The Woman in Gold* remain at the Belvedere where the painting had so long been “at home,” with the proviso that the museum didactic panels would have explained what had happened to the painting during the war years and their aftermath.

And the painting should then be captioned “Gift of Maria Altmann.” I like to think that such generosity would be rewarded by better relations between the U.S. and Austria and between Jews and Gentiles. *The Woman in Gold* would thus be, in a curious way, a real Holocaust memorial.

Figures Referred

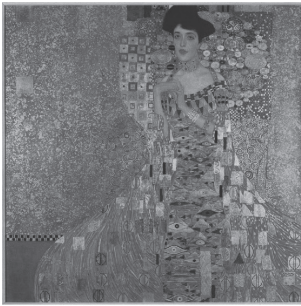


Figure 1: Gustav Klimt, *The Woman in Gold* (Portrait of Adele Bloch-Bauer, 1903-1907)



Figure 2: Photograph of Adele Bloch-Bauer, 1907



Figure 3: Belvedere Palace, Vienna



Figure 4: Klimt Gallery, Belvedere Palace, c. 2,000



Figure 5: Arnold Schoenberg painted by Man Ray, 1927



Figure 6: Gustav Klimt, *Portrait of Adele Bloch-Bauer*, 1912



Figure 7: Gustav Klimt, *Houses above the Altersee*, 1916

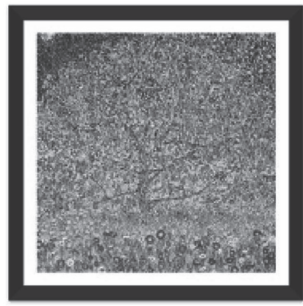


Figure 8:
Klimt, *Apple Tree*, 1912



Figure 9:
Klimt, *Buchenwald*, 1912



Figure 10: Palais Bloch Bauer, 18 Elisabeth Strasse, c. 1910

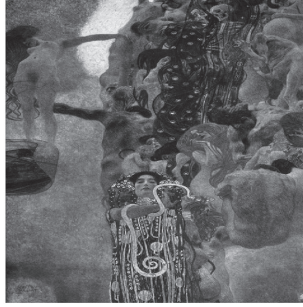


Figure 11: Klimt, *Pain* (part of Medicine panels) designed for U of Vienna ceiling

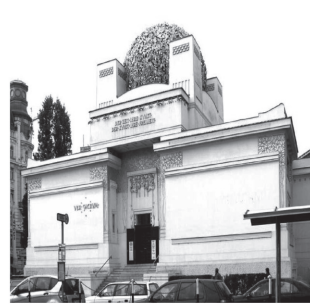


Figure 12: Secession Building, Josef-Maria Olbrich, 1897



Figure 13: Klimt, *Judith and Holofernes* (1901)



Figure 14: Gustav Klimt in his painter's smock, c. 1905



Figure 15: Poster CIAO ADELE in street car, Vienna, 2006