



## ‘All Art is Theft’ – Pablo Picasso (misquoted)

*“We saw it as a perk of the job; we were merely stealing from the dead”. This was from one of the ‘Cols Rouges’, the society of auction house porters at Hotel Drouot, the principal Paris art and antique auctioneers, on trial in March 2016. The ‘cols rouges’ soubriquet came from the red trim on the collars of the porters’ black uniforms, which they wore with white gloves. He was accused, along with 42 of his fellows and 6 auctioneers, of systematically stealing thousand of items worth millions of euros, most from deceased estates where detailed inventories did not exist – the pieces disappeared at the time that the houses were being cleared. If the non-appearance of an item at the auction rooms was queried, it miraculously re-appeared.*

Those pieces included many items from the estate of Marcel Marceau, the world famous mime, who died in 2007 leaving a tax debt of several million euros – his daughters were livid when it came out in court that many of his personal effects had been purloined by the porters, including personal items from a trunk. Two pieces of furniture by the Art Deco designer Eileen Gray disappeared from her estate for three months in 2006 and then turned up at auction, where they made a combined total of over 1,000,000 euros. One porter said that they had no idea of the value and that the items were to have been “hailed

away by the rag and bone man”. Other thefts included a Ming porcelain plate which fetched 325,000 euros, sketches by Picasso and a Marc Chagall oil painting.

Talk was of a “near-mafia” system and a practice which had become “habitual, even institutional”. As well as stealing complete items, part of an object would temporarily disappear, be sold at auction cheaply as it was not complete and be sold subsequently at a much higher price with the missing piece restored.

The investigation had begun in 2009, chasing a Gustave Courbet painting that had disappeared in transit in 2003. After 147 raids and the discovery of nearly 6,000 stolen items, estimated as weighing over 250 tons, the arrests were made. 30 of the porters, together with three of the auctioneers, were sentenced to up to three years in jail with eighteen months suspended, and each fined 60,000 euros, except for the auctioneers, who were each fined 25,000 euros. The 'Cols Rouges' were disbanded.

I could not help recalling that, when I worked in the London auction rooms many years ago, it was on the grapevine that one porter retired as the owner of eleven houses, but of course that could never be true!

How much art is stolen to order? How much is a target due to minimal security? How does the law differ from country to country in connection with legal ownership? When does stolen art become cultural appropriation? Let us dig deeper.

#### **How much art is stolen to order?**

The FBI reckon that about \$6 billion worth of art and antiques is stolen worldwide every year. Other opinion puts this closer to \$8 billion. That's more than 50,000 individual pieces. London alone accounts for about £500,000,000 each year. It is the third highest grossing criminal activity after drugs and arms dealing. The recovery rate is as low as 1.5% according to the *Art Newspaper*; others putting this up as high as 10%. However you look at it, it is low by any standards. London is a centre for stolen art as it is one of the centres of the global art market and moving art is commonplace. Nearly 50,000 are directly employed in the art and antiques market; it is reckoned that the UK has a 21% share of a \$56 billion per year global art market.

Given the sums involved, it is hardly surprising that stolen art is used as a currency to fund drugs, arms and terrorism. If you want to buy a £2,000,000 house, there will be weeks of paperwork and checks and balances. If you want to buy a £2,000,000 work of art, the entire transaction could consist of a telephone call and a money transfer. No wonder central government want to introduce more regulation.

But to return to the question. Most thefts are for a quick sale, involving pieces that are easy to sell on without detection. The more valuable works of art are less frequently targeted as their theft will often engender a great deal of money and resources spent on recovery and it would need a rich individual to buy a work known to be stolen which could never be put on show outside their own property and even then with extreme caution.

On 1st January 2000 two thieves stole Paul Cezanne's view of 'Auvers-sur-Oise' from the Ashmolean Museum in Oxford, after breaking through a skylight, climbing down a rope and deploying a smoke bomb to cover the CCTV cameras. The painting has never been recovered and the police consider that this was stolen to order. It was considered in 2000 to have a value of about £3,000,000; now it would be consider-

ably more, probably at least £10,000,000 'Poppy Flowers' by Vincent Van Gogh has been stolen twice; the first theft was in 1977 when it was stolen from a museum in Cairo and was recovered in 1987 in Kuwait. In 2010 it was stolen from the same museum and has yet to be recovered. Given its current estimated value of \$55,000,000, perhaps the reward of \$175,000 was just not enough. As a known work of art which is not difficult to find an image of, it could not be sold in the auction market and is likely to grace some billionaire's wall for the time being - if not stored away for now.

#### **How much is a target due to minimal security?**

Security is always a headache, particularly for museums with limited budgets, but churches have to be on the lookout for thieves on a continual basis, particularly if the church is the custodian of a valuable painting. Italy has a large number of such lucky churches, so it was fascinating to read in March this year of a church in Castelnuovo Magra, Liguria, where a gang of thieves thought that they had stolen Pieter Breughel the Younger's 'The Crucifixion', worth 3,000,000 euros. After a tip off, a copy of the painting had been swapped by the police for the original and secret cameras installed to catch the thieves in the act. This ensured that the real work was not damaged in the smash and grab lunchtime raid.

Several thefts from museums are inside jobs, particularly as many are from the archives and involve items on which research may yet need to be carried out. The loss may not be detected for years and even then may not be reported. The Victoria and Albert Museum in London became aware that trays of coins were being borrowed "for study purposes", the most valuable then removed and replaced with forgeries. A few years ago, the FBI discovered that pages stolen from books in the Vatican Library had been removed by an American professor who had been working there on secondment.

In a private home, apart from arranging adequate insurance, the main purpose would be to stop art being stolen in the first place. Most would cavil at a £10,000,000 painting hanging on the wall and not be prepared to pay for the alarms and additional security that would now be mandatory. Indeed about 30 years ago I became involved in a minor role with advising a private client on the sale of 'The Opening of Waterloo Bridge', the last major painting by John Constable, exhibited at the Royal Academy in 1832. It had hung over the fireplace in the living room of a manor house until the point that it was on loan for six months in the year, principally in the USA and Japan, and was bought by the Tate Gallery as a private treaty sale. My clients bought a slightly later 19th century view of St Pauls from the river to replace it, costing five figures rather than seven or eight and everyone could relax.

#### **How is good title to a work of art gained?**

What if it is stolen? Common law in the United Kingdom states that you cannot acquire good title as the buyer if the seller never had it in the first place. In

Europe civil law is what is relevant and whether or not an item was bought in good faith. This might also go part of the way to explaining why a third of all paintings recovered after being stolen in the UK are found abroad.

There is also a special time limit in the case of theft as covered by the Limitation Act 1980. Under actions founded on tort, title to a converted chattel by the former owner is “extinguished”. But when theft is involved, different rules apply.

### **How does the law differ from country to country in connection with legal ownership?**

The Chinese government has, for a number of years, attempted to claim back any of the art and antiques looted from the sacking of the Summer Palace by British and French forces in Beijing in 1860 and occasionally put up for sale in the West. Many of the artworks, including porcelain, jade, gold objects and textiles, are now found in 47 museums around the world. Many have ended up at the Chinese Museum in the Palace of Fontainebleau, established by the Empress Eugenie to display these new acquisitions.

In the 19th century, nothing could be done to reclaim the stolen items, but the Chinese government now wishes to bring back to the country those pieces that were regarded as amongst the best examples of Chinese art and craftsmanship. 7 statuettes from the Garden of Eternal Spring have been returned. 7 of 21 columns on show at the KODE Art Museum in Bergen, Norway were returned to Beijing University in 2014 as part of an agreement with a millionaire philanthropist.

From time to time, an artwork is brought forward that has been in the possession of the descendants of one of the soldiers at the Summer Palace in 1860. However, when such items have been entered in auctioneer’s catalogues, the Chinese authorities have been in touch and the lot then removed from sale. Currently salerooms will not accept antiques with such a provenance.

The state-run China Poly Group, which includes the world’s third largest auction house, and specifically its subsidiary Poly Cultural & Arts Co Ltd follows a programme which is dedicated to locating and recovering lost art. In 2009 a delegation was despatched to the West to locate looted Chinese art in museums around the world. Their main aim is to recover the 12 bronze zodiac fountain heads from the Summer Palace. Some have been bought back at auction, including two by a Chinese buyer in 2009 who refused to pay: the heads were then donated to China. Four of the heads remain undiscovered.

And it is not only the Chinese government that wishes to claw back its heritage. There is a new layer of Chinese super-rich collectors, thought by many experts to be behind recent thefts. In 2010 a gang broke into the Chinese Pavilion in the grounds of Drottningholm Palace, Sweden and stole pieces including a rhinoceros horn chalice, a green soapstone sculpture, a muskwood plate and a bronze teapot in just six min-

utes. In the same year 56 pieces were stolen from the KODE Museum; more were stolen in 2013. In 2012 a jade bowl and a porcelain sculpture were stolen from the Oriental Museum at Durham University and 18 items, including Chinese jades from the Fitzwilliam Museum in Cambridge. In 2015 22 further items from the Summer Palace were stolen from the Chinese Museum at Fontainebleau; this was a targeted theft as the other 1,500 rooms in the chateau were ignored.

Chinese billionaire art collectors now outnumber their American counterparts and, in the opinion of the Art Loss Register are the main buyers of Oriental art stolen from western museums. The Register notes: “There is also a widely held view that these pieces are not legitimately held in the West so there is nothing wrong acquiring them if they have been stolen from a western museum”.

### **When does stolen art become cultural appropriation?**

Probably the best known example of cultural appropriation is the Elgin marbles, removed from the Parthenon in Athens in the early 1800s and sold to the British government, who donated them to the British Museum in 1817. The museum has categorically refused to return them. At least they have been conserved for future generations to enjoy, wherever their location.

A continuing controversial area is the theft by the Nazis of art and antiques from German Jews. Hermann Goering hand wrote a catalogue of his large collection of art. This list includes details of Jews and others from whom the works were bought for minimal amounts or confiscated and where they were sent. The first entry dated April 1933 records the purchase of a Jacopo de’Barbari oil on wood, bought in Rome for 12,000 lira. Details of 1,375 paintings follow. Most of the works were gathered at Carinhall, a hunting estate outside Berlin. There were paintings by Monet, Van Gogh, Renoir, Corot, Rubens, Botticelli, Tintoretto and a large group of Lucas Cranachs. It is a fascinating insight into the changing taste of someone known for his brutality. In his hunting lodge the haul was carelessly displayed, without any consideration for presentation. The record stops suddenly in spring 1944. At the end of the Second World War the collection was packed into vans and Goering blew up Carinhall behind him as he left to flee south. Allied soldiers recovered the hoard in Bavaria. In 1945 the New York Times estimated the value of the works at \$200,000,000. On the witness stand at the Nuremberg Trials Goering said “I admit I had a passion for collection. And if they were to be confiscated, I wanted my small part”. The Reichsmarschall later took a cyanide pill before he could be hanged.

During the time that the Nazis were in power, they systematically plundered art and cultural property from every country that they occupied. Organisations were specially formed to determine which public and private collections would be most valuable. Some were earmarked for Hitler’s

Fuhrermuseum at Linz in Austria, which never came to fruition. Hitler believed that much of the finest art in the world belonged to Germany and had been taken during the Napoleonic and First World Wars.

For 45 years after the war, the Goering catalogue was in the hands of Rose Valland, who was a volunteer at the Jeu de Paume museum in Paris and made overseer during the Nazi occupation. The Jeu de Paume became a warehouse and a transit place for French art, particularly work that had been in Jewish hands, on its way to Germany. Goering visited the museum on 20 occasions to select 594 items for his own collection. The best was supposed to be reserved for Hitler and his cronies had the run of the rest. Some items, felt to be “degenerate”, were burnt, including works by Picasso, Braques and Dali. Just before 1 August 1944, Valland informed the Resistance of the last train bound to Germany to carry French art; the train made it no further than a yard just outside Paris. The book written by Valland about this entitled ‘Le Front de l’art’, was used as the basis for the 1965 film starring Burt Lancaster ‘The Train’. In the 2014 film ‘The Monuments Men’, Cate Blanchett plays the character of Claire Simone, which is loosely based on Valland. That film dramatizes the efforts of the Allies in 1944 and 1945 in finding and saving art and cultural items before the Nazis could destroy them.

Valland spent the rest of her life looking for pieces that had not been returned to their rightful owners, searching museums for pieces, particularly in Eastern Europe. It is not known exactly how the Goering catalogue ended up in her possession, but it turned up in one of approximately 1,000 boxes that were passed to the French Ministry of Culture just before her death in 1980.

Despite all the efforts there is still a great deal that has yet to be returned to its rightful owners. And the state is not always as helpful as it might be. Let us look at the Netherlands, where there are tens of thousands of works of art, worth unofficially up to 600 million guilders, that are held by the Dutch government and in museums. It is unlikely that they will ever give many of them back.

Early in 2017 Bergkerk Cathedral, Deventer in Holland held an exhibition of 75 works of art stolen from the Jews. One of those involved was Professor Rudi Ekkart, who runs the Origins Unknown Agency dealing with looted art in Holland.

Holland was the home to a large number of art dealers, particularly in Amsterdam, many of whom were Jews who had settled there from Germany after suffering anti-Semitic persecution in Germany. Holland was neutral and felt to be democratic. There was a global depression and prices were relatively low, so some large collections were put together. In 1940 the country was overrun in four days, with no time for many to flee. Many Jews had to give up their art at bargain basement prices. During the next five years, thousands of paintings were moved to Germany, most confiscated or extorted from the Jews. An institution named the Liro Bank handled the sale of looted Jew-

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ish property, using the money gained to deport the Jews, who were forced to pay out of their own pockets for their movement into ghettos and later to the concentration and extermination camps, primarily Auschwitz and Sobibor.

Some Jewish art dealers managed to sell their businesses to non-Jewish trustees, but many fled to the UK or the USA, either abandoning their art in Holland or selling them to raise money for their escape. Assets left behind were seized by the Nazis, with the excuse that they were enemy property. Many ended up in the hands of Hitler or Goering. There were also a large number of suicides with the property of those who took their own lives confiscated and sent to Germany.

During the war, the Allies decided to return all plundered property to its country of origin, without compensation to the then-current owner. In 1945 the Dutch government set up the Netherlands Art Property Foundation (SNK) to deal with this and anyone who was aware of artworks being stolen from their family could fill out a form. This was partially successful with many items being returned, but it still left tens of thousands of artworks in the hands of the Dutch state authorities. The SNK was dissolved in 1957 and the responsibility passed to the Ministry of Education, Culture and Science. In the 1970s the ministry decided to sell many works and the proceeds went to the state.

At the end of the 1990s, with fresh international pressure to return art to its former owners, the Dutch government began to establish commissions,

including the Origins Unknown Agency, to follow new lines of enquiry. One discovery was that many items that were supposed to have been returned were still in the possession of the state. In many cases the Netherlands government had demanded payment of the amount that they had been obliged to pay to reclaim the works from Germany. However there have been some happier results. In 1942 Friedrich Gutmann was forced to sell his art to German dealers. He and his wife, both converted Jews, died during the war, he in Theresienstadt, she in Auschwitz. The entire collection was returned to the Dutch government after the war had ended. The two Gutmann sons went to court to regain possession of the works. In 1952 the court ruled that the collection should be returned on condition that the sons pay the amount their father had received from the Germans. In 2002 the public commission ruled to return the collection to the family without them having to pay after a further 50 years of upset.

### **My own experience of stolen art**

Which leads me to my own experience of stolen art and antiques, perhaps not as high value, but nevertheless profoundly upsetting for a number of reasons.

It was February 1992 and I had been living in a house just outside Midhurst in Sussex since 1988. It was a 1950s detached building set on a bank above the road with the Cowdray Park golf course about a 5 iron away across the lane in front with the playing field of the local school behind beyond a brick wall. A shared drive with the house next door ran up a shallow incline.

I had been in New York getting my engagement proposal accepted in the Rainbow Room – so I was shocked to hear on landing back in London that my home had been burgled and that my Audi had been stolen as the getaway vehicle; my neighbours had reported the break-in. I discovered a jemmy in the vegetable patch and footprints through the vegetable patch leading to the rear wall. A visit to the local police station was the occasion for me to be cross-examined and made to feel that I was the mastermind who had planned everything, ensuring that I was out of the country whilst the crime was being committed. I had carefully handled the jemmy to ensure that any fingerprints were not compromised and presented this to the police, but they showed a complete lack of interest in pursuing the matter and were not prepared to revisit the house to take details of the footprints.

Fortunately, the insurers were much more objective and the loss adjuster who came to visit me was happy to agree fair values on all that had been lost. I had photographs of all my possessions and, in most cases, original receipts from auction rooms and dealers that helped build a picture. Art surveyors/antique valuers are not allowed to insure at replacement levels as we are expected to replace at auction, but the adjuster appeared to appreciate that I was approaching the claim realistically. What hurt most was that I had been

building collections of 18th century English porcelain, including a Derby figure of Neptune with his trident intact, George III wine-related silver with several sets of bottle tickets, my favourite being bucolic cherubs astride barrels, and small pieces of William IV mahogany furniture, including side tables and a set of dining chairs. All gone. The thieves had drunk most of the whisky and brandy and spilt what was not guzzled on to a favourite Heriz rug. Larger pieces, such as the dining table and sideboard were still there, as the object, once the keys of the car had been found, was to take only what was readily portable. You will have noted that I have not mentioned the theft of any pictures. Pictures are the least likely items to be stolen as they are so easily identifiable. Burglars take the pieces that they can sell on easily; this includes jewellery, silver and clocks.

This might well have been the end of the matter. I'd moved on, I had my money from insurers, the car was discovered in a supermarket car park outside Portsmouth about 6 weeks later, the odometer indicating that it had been driven there and abandoned immediately after Midhurst. There it sat until someone working at the supermarket thought to inform the police, possibly as the car had by now been vandalised. Fortunately, the car insurers also paid out.

Some months later I received a letter inviting me to attend at an address close to Brighton to examine the contents of what turned out to be two sizeable warehouses - with a view to identifying any of my stolen items. A gang of alleged burglars had been arrested and all the items then in their possession confiscated until it could be proved, one way or another, that these were indeed stolen items. The police believed that this was a gang that had been responsible to a spate of burglaries in Surrey and West Sussex over the last two years.

Unfortunately, I could not find any of my previously prized antiques, but I was professionally interested to note that there were several examples of the same item of ceramic spread around the viewing areas. In particular I saw 5 different examples of the Royal Doulton figurine 'The Old Balloon Seller', which portrays a seated woman in an apron holding a bunch of balloons. I spoke to the man in charge. "How does an owner prove that it was that particular 'Old Balloon Seller' that was stolen from them and not another example?" He explained that it would need an owner to identify a number of items as their own and produce some proof as to that prior ownership. All fair and good. "So, what happens if you have enough positive identification to convict based on, say, 10% of the total number of items in the warehouses? Who is the legal owner of the remaining 90%?" "If we cannot prove otherwise, that 90% remains the property of the accused." So, following a term in prison, a proven criminal could come out of jail, sell those items and pocket the money.

The question then is - how does Double Jeopardy apply? This prevents a person from being tried again

for the same crime. Has the law changed since 1992? Yes, it has for murder, but does not cover burglary, which is considered a lesser offence. The 2003 Criminal Justice Act does allow for a retrial if new evidence, in the form of DNA, fingerprints or compelling new evidence, is brought forward, as instanced in the case concerning the murder of Julie Hogg in 1989 by William Dunlop, who was finally convicted in 2006. Importantly, the Director of Public Prosecutions must personally consent to an investigation being reopened. Perhaps the law will change in due course, but currently it appears that the criminal can openly sell what the law cannot prove does not belong to him, whatever the circumstantial evidence may seem to imply.

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