

PROVENANCE RESEARCH AND THE ART TRADE

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AUCTION CATALOGS AND PROVENANCE RESEARCH

“Property of a Lady”, “Property of a Nobleman”, “Property of a Gentleman”, “From an Important Private Collection”, such headers regularly appear, particularly in Anglo-Saxon auction catalogs, above individual lots (*see fig. 2*). Under ‘Provenance’, we often find the reference ‘Private Collection’, followed by the city or country. Places with a prominent collection history, such as the Rhineland and Switzerland, are particularly widespread, as they imply previous owners with serious interest in art.

Reading both the one and the other information, provenance researchers are torn between resentment and despair. They point out that information is clearly being withheld or concealed, and they are not entirely wrong. From the art trade’s perspective, however, such criticism is beside the point: an auction catalog is not primarily an academic publication, but a sales tool. It is only the more recent restitution departments in the art trade that take pride in compiling a complete provenance history that identifies all previous owners and respective changes of ownership. They would like to see equivalent standards applied to any object in the sales catalog.

On how to read auction catalogs

Information regarding the provenance of art objects provided in auction catalogs – apart from well-known previous owners whose names were traditionally referenced to increase the sale value – has specific objectives. On the one hand, interested readers indirectly learn whether an object comes from private ownership or from the trade. In other words, if the above-mentioned header is missing, the consignor is likely a dealer (and the object may well not be fresh to the market). In addition, from a historical perspective, an auction catalog is an ephemeral printed product and not a sustainable source of reference: once the auction is over, it is already out of date. It was only provenance research into the National

Fig. previous page: Detail from fig. 1.

Image credits: Rijksmuseum Amsterdam. Estate of Mr. S. Emmering, Amsterdam <http://hdl.handle.net/10934/RM0001.COLLECT.601166> (last accessed on July 20, 2023)



Abb. 1: Thomas Rowlandson (1757–1827), *Auction of Relics at Avignon*, 1818, aquatint etching, hand-colored, 12.7 x 19.4 cm (*Ackermann's Repository of arts, literature, commerce, manufactures, fashions, and politics*, London February 1, 1818).

Image credits: Rijksmuseum Amsterdam. Estate of Mr. S. Emmering, Amsterdam <http://hdl.handle.net/10934/RM0001.COLLECT.601166> (last accessed on July 20, 2023)

Socialist era which changed the perspective. The resulting need for historical catalogs with contemporary hand-written annotations shifted the focus on catalogs as archival sources.¹

Secondly, a complete provenance covering the years from 1933 to 1945 presented in a sale catalog is an indication that, based on the current state of research, the object in question is highly unlikely to be subject to a restitution claim resulting from persecution of its previous owners. Potential bidders can therefore largely rely on acquiring title in the event of a successful bid.

Provenance information in auction catalogs outside the context of Nazi plunder, on the other hand, raises no claim to completeness. Especially in the case of objects made centuries ago, a complete chain of provenance is the exception. An Old Master painting re-discovered under three thick layers of varnish that is attributed to a great artist after cleaning, will rarely be documented from creation to restoration. In such a case, there may well be a gap reaching from the 17th to the 21st century.

Hence the provenance mentioned in the catalog is just as much a part of the sales offer as the printed estimate. The latter is not an indication of the actual market value. It is determined on the basis of thorough considerations and accommodates current market conditions. It provides potential buyers with an approximate minimum price below which the consignor is not willing to sell, but it also fulfills the essential task of not putting off

prospective bidders. An 'estimate' is therefore a relatively vague, albeit carefully calibrated figure. For a more precise profit calculation, on the other hand, a 'will-make' (a non-public value that requires many years of market experience and precise knowledge of the target group) is necessary.

The purpose of the printed catalog is to make the object as attractive as possible, in order to tempt bidders. Gaps can certainly have strategic purposes (but not by default dishonest): If a picture was offered by the competition four times over the last three years, and on three occasions left unsold, there is no need to emphasize this information. After all, this would do a disservice to those for whom the firm acts as an intermediary: the consignors. With rare exceptions of financial self-interest, which must be indicated in the catalog, an auction house usually acts as an agent with a clear assignment to do everything required to fetch the best possible sales price for the consignor.

Individual supplements

When reading auction catalogs, both historical and contemporary ones, it is important to bear the strict purpose of this genre in mind, which may well result in a selective account of information – for reputable dealers this applies only in cases not connected with a possibly problematic provenance. Therefore, bidders should, of course, have their own diligence in mind. A reputable house will walk new clients through these questions. After all, the goal is to win them as long-term customers. It is also possible to browse past auctions online for the object of desire. On request, employees of such a company will supplement provenance information where possible. Enquiries can also be made about unspecified references to private collections. Where possible, concerns about potential problems arising from a provenance history will be taken seriously and resolved. The firm wants to still do business with the customer in ten- or twenty-years' time, when buyers may become consignors. Provenance researchers can also reach out to the auction house and inquire about the availability of further information on a lot that – due to the publication genre – was not shared.

Incidentally, it is also very rare that the provenance mentioned in a catalogue raisonné is without gaps.² Anyone working in cataloging in the art trade has experienced this at some point. In the art historical literature, however, an academic approach and a reflection of the state of research are desiderata. In trade publications, conversely, there is room for interpretation.

Provenance chains in the auction catalog

A great deal of information can also be derived from the way the provenance is presented, as it can be subject to different formats, even within one and the same auction house. When experts in Old Master paintings at international auction houses specify 'with Richard Green' in the catalog, they indicate a context in which the abovementioned dealer either purchased the respective object or had it on consignment. The exact financial structure of the situation – would other dealers have a share in the investment, or is the sale part

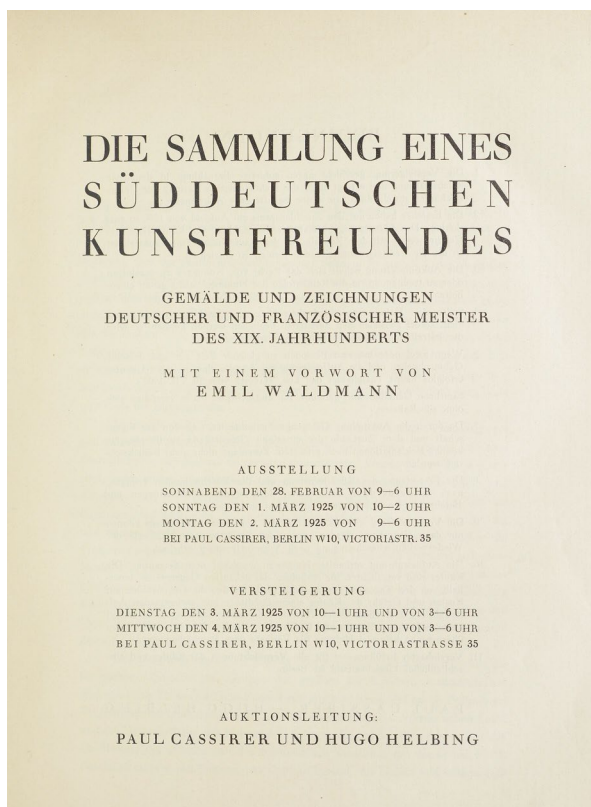


Fig. 2: Kunstsalon Paul Cassirer and Hugo Helbing, *Die Sammlung eines süddeutschen Kunstfreundes: Gemälde und Zeichnungen deutscher und französischer Meister des XIX. Jahrhunderts*, auction on March 3–4, 1925, title page [= Zitzmann Collection].

Image credits: <https://doi.org/10.11588/digit.53576#0005>
(last accessed on July 20, 2023)

of an exchange of objects – remains unknown. Anglo-Saxon catalogs for Impressionists and Modern art would however tend not to use ‘with’. They mention the name of a previous owner without making the distinction between a previous owner from the art trade and one without a trading background (such as ‘Ambroise Vollard, Paris’), which can give rise to another issue: the difficult distinction between stock-in-trade and the assumption of a private collection. Without the context of the procedures in the trade, one can get the impression that the provenance of a work of modern art offered in the catalog is a clear indication of a (private) ownership of a particular dealer – and thus potentially subject to a restitution claim if the named person was the victim of persecution and had lost his property. Extensive subsequent correspondence on the subject of goods on consignment and meta-transactions may be necessary.



Fig. 3: Thomas Rowlandson (1757–1827), *Christie's Auction Room*, 1808, etching and aquatint, hand-colored, 24 x 29.8 cm.

Image credits: Rijksmuseum Amsterdam, estate of Mr. S. Emmering, Amsterdam, <http://hdl.handle.net/10934/RM0001.COLLECT.625004> (last accessed on July 20, 2023)

Provenance research in the auction industry: pragmatic approaches

Naturally, reputable auction houses will do everything to make sure that a bidder actually acquires title once the hammer goes down. If an item was stolen in the past, this is not a given. In this context, statutory periods of limitation only play a limited role. For example, the Art Loss Register also reports past losses that do not have a Nazi plunder background but could nevertheless cause significant complications in a sale without prior agreement or legal clarification.

Today the art trade employs provenance research as a tool to increase value and to conduct risk management. Provenance research at auction houses is defined by the auction calendar and helps to make initial decisions: Can the object be put up for sale or are there any signs of a seizure and potential future title claims? At the same time, the trade identified an enormous potential here: the context of restitution claims gives objects that have

been in museums for decades a chance to be offered fresh to the market, albeit only at a price of considerable efforts in terms of time and staff for research and possible mediation between the parties involved: an endeavor certainly worthwhile for high-priced objects.

The downside was a resulting need to increase internal due diligence. An auction house that would shrug off a claim, referring to the legal statutes of limitation and thus publicly oppose the necessity of Nazi restitution, would certainly not be considered for an auction of restituted objects, which can reap benefits both in terms of proceeds and reputation. Hence employees were gradually hired or assigned to investigate possible conflicts arising from consignments with questionable provenances between 1933 and 1945. The art trade's handling of provenance research into heritage items that were seized in due to persecution is therefore part of its risk management, which has to be constantly adapted, and is reflected in contractual texts and internal compliance regulations on due diligence.

Thus, the Washington Principles had an indirect impact on the art market. Auction houses routinely react to changes in legislation, political initiatives and changes in society as a whole. In Germany, for example, it was the 2016 Kulturgutschutzgesetz (Cultural Property Protection Act) that redefined the rules for provenance research in the industry. Changes in legislation or sanctions can also have an impact on, for example, the sale of certain materials. The CITES regulations on the protection of species have an impact on cultural property that contains elements of animal and botanical species. In this context, marquetry on antique furniture, or butterflies on early works by Damian Hirst became subject to meticulous inspection. In some cases, the jewelry industry has maintained restrictions beyond the introduction and termination of political sanctions – this applies to, for example, rubies from Myanmar. Human remains from historical anatomical or ethnological contexts have not been offered for sale by international auction houses for decades as part of a tacit voluntary commitment (although continental European auction houses still handle this sensitive matter differently from time to time). For the most part, in dealing with provenances from the Nazi era, the art trade also goes beyond what is legally required and implements the Washington Principles with commendable pragmatism.

There is a fundamental reason behind such voluntary commitments: The company's reputation, particularly in the art industry and the related luxury goods industry, is crucial for sales. Customers may keep their money or spend it elsewhere if a company is criticized or its trustworthiness is in doubt.

Formal side effects

The practice of Nazi provenance research and potential restitution has also had an impact on consignment contracts, at least at international auction houses. In the meantime, the guarantee of ownership is no longer the only component of consignment contracts, which in the past already minimized the auction house's risk of offering unlawfully acquired items. There have also been variants of in-built consent to support the auction house in finding a solution in the event that a seizure due to persecution should be found.

It always makes sense to read the small print. International auction houses only guarantee two lines in the catalog (and only for five years): the name of the artist and the title of

the work. This means that an incomplete provenance in the catalog does not provide sufficient grounds to sue the company for insufficient information or lack of expertise. In the course of further research, a new owner's name – including the resulting restitution claim – can also fill an existing gap at a later date. If, on the other hand, indisputable proof is presented within five years of sale that the acquired Rembrandt is a forgery, compensation can be claimed from international auction houses.

Another positive side effect of the requirements of Nazi-era provenance research in retail is the routine photographic documentation of a picture's reverse side. Whereas decades ago, a request for such a photo meant that an employee had to be sent to the basement to take a blurred Polaroid in poor lighting, a photo of the reverse side shot by the professional in-house photographer is part of today's object file. This is a welcome development for research both within and outside the trade, even if traces such as numbers and labels on the reverse side of paintings may have become invisible due to historical relining or cradling.

In summary, it should be noted: The handling of provenance research is pragmatic and is adapted to political and social developments. Most auction houses have in-house legal staff with expertise in the field, which, owing to the 'soft law' of the Washington Principles that often makes the industry uneasy, enjoys a freedom of action that public collections can only dream of. In addition, negotiation skills are part of the art trade's DNA: usually directors of public cultural institutions neither have regular practice in advising actual or budding art owners, nor much experience in convincing them of a strategy.

Meanwhile, provenance research at museums and universities has become closely interlinked with provenance research in the art trade, not least thanks to the Washington Principles. Projects such as those of the Zentralinstitut für Kunstgeschichte in Munich or the digitization on the platform 'arthistoricum.net' broaden the view of the art trade's practices and promote a dialogue from which both sides should benefit, even if, owing to the sparse availability of data in a sector characterized by discretion, many questions regarding procedures and regulations of the historical art trade may remain unanswered.

ANNOTATIONS

- 1 The best known is the online project 'German Sales' initiated by the Getty Institute, <https://www.arthistoricum.net/themen/portale/german-sales/institutions> (last access on July 18, 2023).
- 2 On the catalogue raisonné and its current requirements, see Pérez de Laborda, Ingrid/Soika, Aya/Wiederkehr Sladeczek, Eva (eds.): *Handbuch Werkverzeichnis - Œuvrekatalog - Catalogue raisonné*. Berlin 2023.

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