

29 May 2014

Statement regarding *Head of a man*

Overview:

In December 2013, the NGV received a request from the claimants for the return of *Head of a man*. The claimants provided detailed documentation to support the claim including background on Richard Semmel and the circumstances that led to the forced sale of the work in 1933. Following comprehensive research and consultation the NGV has determined that the claim is valid and the claimants are therefore the rightful owners of *Head of a man*.

Detailed statement:

Following comprehensive research based on detailed documentation provided by the claimants' legal representative and the NGV's own research and consultation, the NGV recognises that the claim for *Head of a man* put forward by Richard Semmel's heirs is valid.

The NGV acknowledges that the painting was auctioned by Richard Semmel as part of a forced sale in 1933 and the claimants are the heirs and therefore rightful owners of the work.

Taking into account the research and evidence provided about the work's history prior to its purchase by the NGV in 1940, and the NGV's commitment to honouring the Washington Conference Principles on Nazi-confiscated Art and the Terezin Declaration, we consider it appropriate to reconstitute the painting to Richard Semmel's heirs.

The NGV takes its responsibilities seriously in regard to determining the history of ownership of works of art, including the period from 1933 to 1945 when systematic looting, the confiscation of artworks, and persecutory anti-Semitic policies occurred under Nazi rule. Given this, we are encouraged that the NGV's own research and provenance research website have resulted in the discovery of the connection with Richard Semmel and facilitated the restitution of *Head of a man*.

As well as being guided by international law and the Washington Conference Principles to arrive at this decision, we also see this as a moral issue, on which it is important to take a strong position.

The NGV has been the custodian of *Head of a man* for over 70 years. It is now appropriate to play an active role in this next phase of the work's history by restituting the work to its rightful owners.

Q&A regarding *Head of a man*

1. What led to the claim being made for *Head of a man*?

In 1999 the NGV established a provenance research project and was the first Australian gallery to publish on its website the details of works that have incomplete provenance (history of ownership) during the years of Nazi rule. These details are published as an aid to researchers and also in the hope that those consulting this list may provide further information.

In December 2011 the NGV's provenance research website was updated to reflect new research by NGV staff. The new research revealed that one of the work's previous owners – known only as 'Collector S' – was a Richard Semmel. This new information was obtained through the study of a 1933 auction catalogue, which listed *Head of a man* as one of the works for sale. All the works in the sale were from the collection of Richard Semmel.

In August 2013, the NGV was contacted by a researcher from Facts and Files Historical Research Institute Berlin (a provenance research organisation), on behalf of the legal representative of the heirs of Mr Semmel, requesting information on the provenance of *Head of a man*. The NGV confirmed what it knew with the researcher from Facts and Files.

In December 2013, the NGV received correspondence from the legal representative of the heirs of Mr Semmel, requesting the return of the painting to its rightful owners.

2. What is the basis for restituting the artwork?

Australia is a signatory to the 1998 Washington Conference Principles on Nazi-confiscated Art. The Principles state that "if the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case."

In 2009, a follow up conference and resulting declaration (the Terezin Declaration) confirmed that forced sales do constitute confiscation.

Considering this, the NGV felt there were three relevant questions that needed to be satisfied before a decision could be made in regard to the claim:

1. Did *Head of a man* once belong to Richard Semmel?
2. Was the sale of the work by Richard Semmel at auction in 1933 a forced sale?
3. Are the claimants the rightful heirs of Richard Semmel?

After examining extensive documentation provided by the claimants, as well as the NGV's own research, the NGV was satisfied that it could confidently answer 'yes' to each of these

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questions.

The NGV did not consider the work's attribution (authorship of the work) to be a relevant factor in this instance.

3. Was the sale of the work a forced sale?

The NGV looked to international law for guidance. The Dutch Restitutions Committee (a tribunal established by the Dutch Government to adjudicate claims for Nazi-confiscated art) has so far adjudicated five claims involving the collection of Richard Semmel. In all five cases, the Committee accepted that Richard Semmel's auction sales in 1933 were the result of financial pressures caused by the anti-Semitic policies of the National Socialist government, and that this was sufficient to invoke the Washington Conference Principles on Nazi-confiscated Art.

4. How did you establish that the claimants were the rightful heirs?

The NGV was provided with a detailed research report by Facts and Files that included inheritance certificates documenting the line of inheritance from Richard Semmel to the claimants. This report was independently reviewed by the Victorian Government Solicitor's Office on behalf of the NGV.

The claimants have been recognised as the rightful heirs to Richard Semmel's estate in each of the five cases that have gone before the Dutch Restitutions Committee.

5. What was the process that led to this decision?

From the outset, the NGV was guided by a clear commitment to the Washington Conference Principles on Nazi-confiscated Art. The comprehensive reports and documentation provided by the claimants' legal representative were helpful and expedited the process of assessing the circumstances behind the work's provenance. The NGV sought advice and assistance from the Victorian Government Solicitor's Office, which included independently reviewing and evaluating the documentation.

The decision to restitute the work was made by the NGV Council of Trustees. In accordance with the *National Gallery of Victoria Act 1966*, the Governor in Council's approval was sought to deaccession the work, following a written recommendation by the Minister for the Arts.

6. Does this set a precedent?

As far as we are aware, this is the first case of its kind in Australia and any future claims would need to be considered on a case-by-case basis. The NGV remains committed to the

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Washington Conference Principles on Nazi-confiscated Art and would be guided by those should another claim arise in the future.

7. What if the work is a Van Gogh?

When the NGV (through the Felton Bequest) purchased *Head of a man* in 1940, the work was considered to be by Vincent Van Gogh.

When the work's attribution came under question by international scholars in 2006, the NGV sent the work to the Van Gogh Museum in Amsterdam, the leading institution for authentication of works by Vincent Van Gogh, for expert appraisal. A comprehensive report by the Van Gogh Museum concluded that the work is not by Van Gogh but was likely painted by another artist working at the same time as Van Gogh.

In 2007, the NGV announced the finding and a summary of the report was made publicly available. The NGV has since gained the permission of the Van Gogh Museum to release the full report.

Since 2007, the work has been attributed and catalogued as a work from the Netherlands, and has often been accompanied by didactic information explaining the history of its attribution when on public display.

The NGV did not consider the work's attribution to be relevant in coming to a decision regarding the restitution of the work.

8. Who did the NGV purchase the work from and was the NGV involved in the sale by Semmel?

The NGV (through the Felton Bequest) purchased *Head of a man* from Lieutenant Colonel Victor Alexander Cazalet, MP for Cranbrook, Kent and London, in 1940 following the painting's inclusion in the *Exhibition of French and British Contemporary Art*, Melbourne. The NGV was not involved in the 1933 auction of Richard Semmel's artworks and the painting changed hands several times between its sale by Semmel in 1933 and its purchase by the NGV in 1940. Details (as far as they are known) are published on the NGV's provenance research website.

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