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### "Berlin Street Scene" by Ernst Ludwig Kirchner

#### A BRIEF HISTORY OF THE OWNERSHIP OF KIRCHNER'S BERLIN STREET SCENE

**1913-14** Ernst Ludwig Kirchner painted Berlin Street Scene in his apartment-turned-studio at Körnerstrasse 45, in Berlin's Friedenau district. Sometime before selling it he photographed the front and back of the canvas. The latter bears a landscape scene.

**1918-23** In 1918, Alfred Hess (1879-1931), a Jewish businessman and co-proprietor of M. & L. Hess Schuhfabrik A. G., a shoe factory in Erfurt, began assembling what was to become one of the most important collections of German Expressionist art.

Hess was initially advised by Edwin Redslob (1884-1973), director of the Städtisches Museum in Erfurt (today the Angermuseum) from 1912 -1919. He started to collect Kirchner paintings by 1918 with the aim of giving them to the museum along with other works from his growing collection. In 1920, the art historian Walter Kaesbach (1879-1961) became the new director of the museum. He soon developed a close friendship with Hess that would result in the collector's continued financial support and loans to the museum. Nevertheless, Hess's name was never mentioned in the museum's annual reports. This was due to the strong antisemitism in and around Erfurt. Long before the National Socialists came to power, nationalistic groups in this area of Germany already started to harass Jews, especially collectors such as Hess, and disparaged modern works of art.

Although it is not known precisely when Hess acquired Berlin Street Scene, it is likely that he did so sometime between 1918 and 1921, possibly directly from the artist.

In 1923, the art historian Walter Passarge (1898-1958) made the first written reference to Berlin Street Scene in the art magazine Cicerone. In his article "Junge Kunst in Erfurt" - a report about modern art in museums and private collections in Erfurt - he wrote, "Kirchner [is represented in Erfurt] by numerous characteristic works, including a street scene filled with crowded life." He did not, however, name the owner of this "Street Scene" painting.

Hess exhibited the painting in a room devoted to Kirchner's work within his spacious Erfurt villa at Richard-Breslau-Strasse 14, designed by the architect Paul Schultze-Naumburg and constructed between 1910 and 1912. Thanks to the generous hospitality of the collector and his wife, Tekla, née Pauson (1884- 1968), the villa was a meeting point for artists, writers, and musicians in the 1920s.

**1924** In the summer of 1924 an illustration of Berlin Street Scene appeared in the catalogue for an exhibition at the Neue Staatsgalerie in Munich entitled "Deutsche Malerei in den letzten fünfzig Jahren: Ausstellung von Meisterwerken aus öffentlichem und privatem Besitz", organized by the Bayerische Staatsgemäldesammlungen. The painting was listed as no. 93 bearing the title "Street Scene" (Strassenszene) and belonging to "Herr Alfred Hess, Erfurt".

**1930-31** As a consequence of the world economic crisis the M. & L. Hess Schuhfabrik entered a period of financial difficulties in 1930 which lasted until 1933.

On December 24, 1931, Alfred Hess died unexpectedly in Jena, at the age of 52. A number of art magazines and newspapers published obituaries about the respected art collector. One obituary read: "Alfred Hess was the kind of

collector that German art needs more than ever nowadays, if it is to survive these dreadful times without damage. He did not only collect pleasing French art but also demure German art: this not only out of personal preference but overall out of a certain sense of responsibility for the future of German culture". Alfred Hess left behind a collection of some 80 paintings, 220 watercolors and drawings, and 4,000 graphic works. Tekla Hess waived her right to this inheritance. As a result it became the property of their son, Hans Hess (1908-1975). Hans transferred administration of the collection to his mother, in trust, until at least 1939. On January 14, 1931, he moved to Berlin-Charlottenburg.

**1932** Hans Hess sold his parents' Erfurt villa to his uncle Georg Hess in mid-September. Tekla Hess, some six months earlier, had already moved to Lichtenfels, Bavaria, the town where she was born, to live with her mother and two brothers. The increasing hostility against Jews in Erfurt caused this move.

Tekla Hess tried to find a suitable home for the collection. She contacted the Anger Museum and the Kunstmuseum in Basel. Knowing that she did not have any appropriate storage space for the collection and conscious of the growing threats against expressionist art promoted by the Nazi party, she wanted the collection to go to a major museum which would be able to safeguard it appropriately. Except for a few occasional sales, the art collection consisting of 4,000 items, remained intact until January 30, 1933.

**1933** By May 1933, the Hess Schuhfabrik was able to pay off its debts and avoid insolvency. From then on the company recovered from its financial problems.

In June, Hans Hess was fired from his position at the Berlin publishing house Ullstein Verlag, where he had been employed in a well-paid position since October 1932. His dismissal was for "racial reasons". In 1967 he applied for and received some compensation from the German Government for the loss of his income due to Nazi persecution. After his apartment was raided by the Nazis and threats were made that they would soon return, he fled to Paris in June 1933 and emigrated to London in 1935 .

The "Kampfbund für Deutsche Kultur" [association fighting for German culture], led by the Nazi chief ideologist Alfred Rosenberg, swept through German cities and in defamation campaigns slandered expressionist artists and their artworks. Representatives of modern art were depicted as "anti-national cultural Bolsheviks" and promoters of world revolution who had to be attacked with all means at hand. The Hess art collection was despised in Nazi Germany as degenerate art. Hans Hess could no longer help his mother in securing and maintaining the artworks because he had already fled to Paris.

Sometime before mid-September, Tekla Hess decided to temporarily send nearly a hundred artworks from Germany to Switzerland, among them sixty paintings from her collection.

The paintings were shown in October 1933 at the Kunsthalle Basel at a show entitled "Modern German Paintings from Private Collections". The exhibition made it possible to declare the shipment of the Hess paintings to Basel from Nazi Germany as a loan therefore avoiding the allegation that it was an illegal permanent transfer of assets into a foreign country. Otherwise, the transaction would have been subject to severe penalties based on German tax and foreign exchange offenses.

Because Jews were forced to flee Germany due to the racial laws and other oppressive measures, their property was under close scrutiny from the GESTAPO and "illegal" property transfers could subject them to both economic penalties and prison. Jews were threatened in particular because any transfer of movable assets into a foreign country was subject to intense controls. Since the Nazis seized power, tax and foreign exchange laws were used as a means of repression against them. For this reason it was of highest importance that the artworks in the Hess collection were to be declared as loans for exhibition purposes so that they could be shipped freely to Basel and not be subjected to export duties. However, when the collection was not returned to Germany, the authorities began to ask questions as to when it would be returned.

Berlin Street Scene was shown at the Kunsthalle Basel from October 7 to October 29, 1933. The painting was listed in the exhibition catalogue under the title "Street in Paris" (Strasse in Paris), 1913, as number 60.

On October 19, 1933, a review of the show, with an illustration of Berlin Street Scene, appeared in Basel's newspaper, the Nationalzeitung. Written by the Basel art historian Georg Schmidt (1896-1965), it read in part:

"Kirchner's strongest painting in the exhibition is surely the street scene, in which the silhouettes of people, cars, and houses are endlessly layered over one another .... It is ... the big city around the year 1910, whose crisis is anticipated in such paintings."

In a letter dated October 24, 1933, the museum answered the inquiry of a private collector, who wanted to buy paintings from the Hess collection, telling him that they were not for sale.

In November 1933, the M. & L. Hess Schuhfabrik A.G. was converted into Hess Schuhfabrik A. G. and henceforth run by an "Aryan" director.

**1934** Tekla and Hans Hess continued to live from hand to mouth. To subsist it became inevitable to divest artworks. In keeping with their decision to keep the collection together, mother and son first tried to sell to a significant museum in Erfurt with whom the collection had a long association.

On June 1, 1934, at the request of Tekla Hess, the Kunsthalle Basel sent fifty-eight paintings, one reverse-glass painting, and a tapestry, as well as thirty-four watercolors, pastels, drawings, and woodcuts, to the Kunsthaus Zurich. The shipment included Kirchner's Berlin Street Scene-identified as Street in Paris (Big City Street) on the shipping list.

Wilhelm Wartmann organized the exhibition "Neue deutsche Malerei" at the Kunsthaus Zurich (June 21 - July 15). Works from the Hess collection comprised the core of the exhibition. Berlin Street Scene was listed in the catalogue under entry number 71 as Big City Street, Paris.

Only two works from the Hess collection were sold: a watercolor by Karl Schmidt-Rottluff and a watercolor by Christian Rohlf, each for 350 Swiss francs.

Some time in late September or early October, Walter Klug (1873-1952), business manager and director of the Kölnische Kunstverein since 1914, contacted Kirchner, who was living in Davos, Switzerland, to ask him if he would send some of his paintings to sell.

Kirchner declined, writing: "I received your card. As you know, due to present-day exchange regulations, it is totally impossible to sell something over there [in Germany]. I therefore cannot give you any works to sell on commission. Plenty of my works, however, are floating around in the art trade from the collections of people who have fled or been forced to emigrate".

**1935** On February 4, 1935, Tekla Hess asked the Kunsthaus Zurich to send three oil paintings, two by Emil Nolde and one by Oskar Kokoschka, to the Kölnische Kunstverein in Cologne for a Nolde exhibition that had opened there early in January.

In March 1935, Hans Hess, Adolf Hess and Georg Hess had to sell a parcel of land for a price far under market value. After a claim was filed for its return, the German restitution office decided that the property was lost due to Nazi persecution and returned it to them in 1997.

On August 31, 1935, Tekla Hess instructed the Kunsthaus Zurich to send several paintings to Erfurt, among them two by Kirchner. These were listed on the shipping order as "The Trapeze" (Das Trapez), insured for 900 reichsmarks, and "House on Fehmarn" (Haus auf Fehmarn), insured for 1200 reichsmarks.

On September 15, 1935 the German parliament enacted the Nuremberg racial laws which severely restricted both the economic and civil rights of Jews in Germany. This set the stage for the plundering of Jewish property and forced many Jewish families to flee Germany. In addition, Jews were also forced to pay prohibitive exit taxes and Jewish taxes which effectively stripped them of their property.

**1936-39** In mid-August 1936, Tekla Hess wrote again to the Kunsthaus Zurich: "May I trouble you to send my Marc paintings that are stored with you ... to the Köln Kunsthalle as freight goods for the large 'Marc-Memorial' exhibition, scheduled to open there in early September .... Please send as well 4-5 Kirchner paintings - Friedrichstrasse, Potsdamerplatz [actually Berlin Street Scene], Bucht [Bay], Hängematte [Hammock] , and perhaps the small Kirchner oil painting, Frauen im Walde [Women in the Forest].... Cologne will carry all the costs ... as long as crates of mine are still there. The Kunstverein is very happy to be able to borrow these beautiful works for [the exhibition], which I very reluctantly approved because transport always results in damage."

Later, in a 1958 affidavit, Tekla Hess stated her reasons for instructing that the works be sent from Zurich to Cologne: "In 1936, during the late evening hours, two agents of the secret police [GESTAPO] from Nuremberg coerced me under threat to have the pictures in the Hess collection which were kept at the time at 'Kunsthaus Zurich' returned to Germany immediately. Even though I fully understood that this threat could result in the complete loss of the entire collection, I had no choice other than to give in to the pressure being exerted by this all-powerful agency of the [Nazi] government, in the hope that my own life and that of my family would not be further jeopardized."

The "loan" of the Hess collection to Switzerland was thus called back by Nazi authorities who threatened dire consequences if the collection was not returned.

By the spring of 1939, Tekla Hess had left her home in Lichtenfels to emigrate to London, writing to Wilhelm Wartmann on April 4: "I've been in London for a few days .... I couldn't leave Germany sooner."

In September 1936, the Marc Retrospective was ultimately forbidden by the Nazis. Waler Klug, who had received the paintings from Tekla Hess, took some into safekeeping, most notably the four Kirchner paintings. He then offered them for sale, presumably on commission.

At the end of September 1936, the economic consultant to the NSDAP ordered that all the shares of the Hess Schuhfabrik and its successor companies that were still owned by Jewish shareholders be aryanized (transferred into

non-jewish ownership). In a decision issued in 2002, after claims for restitution were filed, the administrative court found the shares to have been lost due to Nazi persecution.

In the fall of 1936, Carl Hagemann (1867-1940), a retired chemist and the former manager of IG Farben, then living in Frankfurt am Main - a longtime friend of Kirchner and one of the most important collectors of his work - informed Kirchner that several of Kirchner's paintings had been offered to him.

In a letter dated October 31, 1936, Kirchner wrote to him: "The Street Scene must be the one that is exhibited here in Zurich with red and blue, not green. I think these paintings belong to Jewish people that must leave."

Late in 1936 or early in 1937, Hagemann decided to acquire Berlin Street Scene. The sale to Hagemann caused a stir among collectors and museum officials as they realized the Hess collection was under pressure and this afforded them an opportunity to add to their collections. When a list of paintings from the Hess collection made the rounds amongst German art collectors, Hagemann's art consultant Ernst Gosebruch wrote to Hagemann, "I thought immediately of the Hess collection in Erfurt where your wonderful Street Scene by Kirchner came from. I called Heckel since a number of his paintings and watercolors are on the list. He indicated immediately that they had to be the remains of the Hess collection. Recently I learned from Schmitt-Rottluff that Mrs. Hess was intent on emigrating [...] at this point in time any collection of modern art which is to be sold quickly is likely to be a Jewish collection whose owner is forced to take up his walking stick."

Earlier Hagemann had intended to donate his entire collection - at the very least his graphic work - to the Folkwang Museum in Essen, whose director, Ernst Gosebruch (1872-1953), was a close friend. The repressive cultural politics of the National Socialists, however, caused him to change his plans. Put under pressure by the Nazis, Gosebruch resigned his post in the fall of 1933. By the end of 1937, a year in which thousands of modern artworks were confiscated from German museums and in which many of them were exhibited in the defamatory "Entartete Kunst" (degenerate art) exhibition that opened in Munich in June, Hagemann, a bachelor, designated his siblings as heirs. Thereafter, Hagemann came into closer contact with Ernst Holzinger (1901-1972), who in 1938 became the director of the Städelsches Kunstinstitut in Frankfurt.

On November 11, 1938, the night of the Kristallnacht, the SA shattered the storefronts of about 7500 Jewish stores and businesses, leaving the streets covered in smashed windows the next morning.

**1940-48** Hagemann died on November 20, 1940, run over by a streetcar in front of the Frankfurt train station. His collection of 90 paintings, 220 watercolors, 30 sculptures, and some 1,500 drawings and graphic works by important Expressionist artists went to Otto Hagemann (1869-1947) in Essen and Fritz Hagemann (1871-1963) in Hamm (Westphalia), as well as to Maria Helsing, nee Hagemann (1875- 1962), in Kiel. They remained joint heirs until 1948.

Holzinger, like other cultural officials who remained in official posts in Nazi Germany joined the Nazi party. Between 1941 and 1945, he served as an expert adviser for the district of Hessen-Nassau to the committee on "Sicherung und Verwertung von Kulturgut aus jüdischem Besitz für Zwecke des Reiches" (Securing and financially exploiting cultural goods owned by Jews for the purpose of the Reich). In this position, Holzinger examined Jewish art collections to determine what artworks should be confiscated as nationally valuable. These artworks were then confiscated and deposited with German museums as a condition for permitting their Jewish owners exit permits.

Due to the increasing bombing raids Holzinger was able to persuade the Hagemann heirs to store the Hagemann collection in a more secure place. On April 28, 1941, the collection was deposited for safekeeping in the Städelsches Kunstinstitut. Among the paintings was "Berlin Street Scene". During the course of the war, the Hagemann collection and the Städel's own holdings were evacuated from the museum and kept in various locations. Stored outside of Frankfurt, the paintings in the Hagemann collection survived the war, Carl Hagemann's house was completely destroyed by bombs.

At the end of World War II, many of the artworks in the Hagemann collection were brought to the Central Collecting Point in Wiesbaden, where American Allied troops guarded stolen and evacuated art until its ownership could be resolved to some degree. In 1947, the Hagemann collection was returned to the Städelsches Kunstinstitut.

Although Hagemann's heirs had wished to keep the collection together, because of material hardships suffered in the wake of the war, they divided the collection among themselves in late summer of 1948.

From September 26 to November 30, 1948, major artworks from the Hagemann collection were exhibited in "Expressionisten: Sammlung Hagemann" at the Städelsches Kunstinstitut. In accordance with a suggestion in their deceased brother's will, Else Hagemann (the widow of Otto Hagemann, who had died in 1947), Fritz Hagemann, and Maria Helsing decided to donate to the Städelsches Kunstinstitut all the prints and drawings they had inherited. Hagemann's heirs also decided to give Holzinger an artwork of his choice from their inheritance. Holzinger selected Kirchner's "Berlin Street Scene."

"Berlin Street Scene" thus ended up in the hands of Holzinger, a Nazi official, who had spent a good amount of his time in the Nazi period assisting in selecting and confiscating artworks from Jewish collections.

**1949-72** Holzinger lent Kirchner's "Berlin Street Scene" to the Städtisches Kunstinstitut, where it remained on loan from a "private collection" until his death in 1972.

As the museum's director until 1972, Holzinger granted loan requests from numerous European and American museums wishing to show the painting. However, these loans were anonymous and Holzinger was never listed as the owner.

**1958** On March 25, Hans Hess filed for restitution of the artworks from the Hess collection with the German government. However, he was unable to specify specific artworks in the claim as he did not know the whereabouts of the artworks and a restitution award under the then applicable German restitution law was dependent on a showing that the lost assets were seized by the German government on German territory. Unable to prove these requirements, Hans Hess had to withdraw his restitution claim in order to be eligible for compensation. Under the compensation law, Hans Hess received compensation for the loss of the art collection as it was determined to be a loss due to Nazi persecution. However, the maximum amount was 75,000 marks for the entire collection which was only a symbolic compensation. Hans Hess continued to look for the artworks that were once in his parents collection. After Hans Hess died in January 1975, his daughter, Anita Halpin continued the quest.

**1973-80** Elisabeth Holzinger, Ernst Holzinger's widow, extended the loan of Berlin Street Scene to the Städtisches Kunstinstitut until 1980. In 1980, Leopold Reidemeister (1900-1987), founding director of the Brücke-Museum in Berlin and a friend of Holzinger's since their college days, negotiated the sale of Berlin Street Scene to the Federal State of Berlin.

No inquiry was made as to how Hagemann obtained the painting from the Hess family or as to how Holzinger, a Nazi official, obtained its possession.

The City of Berlin covered the cost of the painting with funds from the Museum Fund of the Senator for Cultural Affairs and transferred the painting to the Brücke-Museum in Berlin.

**1980-2006** The Brücke-Museum lent Berlin Street Scene to numerous institutions for exhibitions throughout Europe and the United States, but did not disclose its provenance.

**2004-06** On October 4, 2004, attorneys David J. Rowland, of Rowland & Associates in New York and Peter Schink of Schink & Studzinski in Berlin, requested the return of Kirchner's "Berlin Street Scene" from the Brücke-Museum in Berlin. Their claim was made on behalf of Anita Halpin, daughter of Hans Hess. The restitution claim was based on the fact that the sale took place at the end of 1936 or the beginning of 1937, after the Nuremberg racial laws came into effect, and that it was a forced sale due to Nazi persecution. According to German restitution law and policy concerning the restitution of property lost due to Nazi persecution, the Federal State of Berlin could only have rebutted the presumption of a forced sale due to Nazi persecution by showing that Tekla Hess received an appropriate purchase price and that Tekla Hess had access to the proceeds of the sale, and that Hans and Tekla Hess would have sold the painting in absence of the Nazi regime or that the buyer, at the time of the sale, specifically protected the pecuniary interests of Tekla and Hans Hess. The Senate Department for Science, Research, and Culture in Berlin, responsible for property of the Federal State of Berlin, handled the restitution claim. They hired attorneys who reviewed the matter and issued an expert opinion which stated that the painting was lost in a forced sale due to Nazi persecution. During nearly two years of negotiations, the possibility of retaining the painting in Berlin in return for financial compensation to Anita Halpin was discussed but no agreement was reached.

At the time, the city of Berlin had financial difficulties and was not able to pay fair compensation for the painting. Therefore, despite the goodwill of both parties, negotiations to keep the painting in Berlin failed.

On August 1, 2006, the Berlin Senat returned Kirchner's Berlin Street Scene to Anita Halpin. The Senat decided in favor of the return of the painting because the sale took place after the Nuremberg racial laws went into effect and the Hess family was persecuted by the Nazis and was forced to flee Germany. In addition, the presumption of a forced sale due to persecution could not be disproven by showing that the seller of the painting, Tekla Hess, "had received an appropriate sales price" in the winter of 1936-37 or "that the transaction, in its essential form, would ever have been carried out, if the National Socialists had not been in power". In return for the painting, Anita Halpin paid back to the City of Berlin the 1980 purchase price (approximately one million Euro) paid by the City of Berlin to the Holzinger family.

On Wednesday evening, November 8, 2006, the Neue Galerie New York and a private collector purchased Kirchner's Berlin Street Scene, paying the highest price to date for a work by the artist.

In the summer of 2007 the Neue Galerie exhibited the painting to rave reviews and thousands of visitors. A German newspaper reported that "Berlin Street Scene" was right at home in New York.

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