

Museums, the Market and Antiquities

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I. Introduction: Perspectives

The framework of analysis for the study of cultural property, at least in the United States, was established by Professor John Henry Merryman of Stanford University. Professor Merryman posited in several influential articles, one of which is titled *Two Ways of Thinking About Cultural Property*, that there are, in fact, two ways (and only two ways) of thinking about cultural property, and this framework is often viewed as the starting point for any analysis of cultural property law. Professor Merryman labeled these two "ways" cultural nationalism and cultural internationalism. According to his characterization of cultural nationalism, cultural property serves to enhance national identity and to allow self-fulfillment of a particular community or nation. This view obviously leads to laws which restrict the free movement of cultural property. It also leads to what Merryman calls "negative retentionism"--that is the retention of cultural objects by particular nations that are unable to care for them properly, or to appreciate them sufficiently, or to pay for them what the international market demands.

The other perspective Professor Merryman labels cultural internationalism, according to which the purpose of cultural property is to increase the understanding of human civilization everywhere, but, paradoxically, according to this perspective, it is the object viewed in isolation that has the ability to impart this knowledge. Therefore, it does not matter whether the cultural object is located within a particular society or nation; in fact, it should be allowed to circulate freely and should be placed where the most people will be able to see it and learn from it. Obviously, cultural nationalism tends to disfavor the international art market, while cultural internationalism tends to favor the unregulated art market across national boundaries--although most proponents of this view do not generally consider whether the object ends up in a private collection, where it cannot be seen by many people, or whether it should be required that the object be placed in public museums and other institutions.

I suggest that this dichotomy between cultural nationalism and internationalism is, in fact, a false one and that it omits other values inherent in cultural heritage. Not only can both national and internationalist values be melded into a single approach, but other values should be incorporated into a perspective that embraces the unique characteristics of cultural heritage. This perspective is

context-centered and focuses on the preservation of the archaeological and historical record in which cultural objects are found. The contextual approach encourages appreciation of the aesthetic value of objects, while *at the same time* enhancing human understanding, and it is this which demands a distinctive protective regime for antiquities.

For the archaeological and historical record of the world

comprises all vestiges of human existence and ... all manifestations of human activity, abandoned structures, and remains of all kinds ..., together with all portable cultural material associated with them. ... The archaeological heritage is a fragile and non-renewable cultural resource The protection of the archaeological heritage should be considered as a moral obligation upon all human beings; it is also a collective public responsibility. [ICOMOS charter]

Only carefully preserved, original contexts can furnish the data upon which the reconstruction of our past depends. Archaeologists study the past through the careful excavation of sites and the retrieval of an array of material culture with archaeological, historical, artistic, religious, cultural and aesthetic significance which offers evidence of a history otherwise lost. Archaeological sites range from large urban centers to single burials. The archaeologist excavates each layer of a site in reverse chronological order, regarding all remains of human activity as potentially valuable sources of knowledge. This process allows each object to be placed in its proper chronological sequence and in association with architectural features, such as houses, industrial areas, and burials. This, in turn, aids the reconstruction of each of a site's time periods, societal structure, culture, trade and living patterns, and the connections among sites located throughout the world. What is learned from the complete reconstruction of past societies and civilizations enhances our understanding and appreciation of modern societies and our own cultural development. The legal protection of archaeological sites, particularly against the devastating effects of looting, most often caused by demand in the illicit art market, is essential to maintaining this evidence of our histories.

This contextualized approach to our understanding of cultural objects is both internationalist and nationalist. Contextualism is international because it increases our understanding of the past, which is beneficial to everyone, all humankind. It is also nationalist because it may enhance understanding of particular cultures or groups found within the borders of modern nations. It has fallen to the nation-state to protect these physical remains through its legal regime, although neither the nation-state nor the legal regime has always been a perfect guardian of the past. Some international organizations, both intergovernmental ones, such as UNESCO, and non-governmental ones, aid in this preservationist effort. Voluntarism and public education also play important roles. However, because laws and their enforcement are the product of the

nation, the nation remains the only entity with the ability to protect the physical remains of the past. While protective national laws are what some would likely categorize as the product of Aromantic Byronism, many nations today, including the United States, use them as one method to reduce incentives to purchase undocumented antiquities and thus prevent the looting and destruction of archaeological sites.

II. Illegal Activity and the Market

Archaeological sites and ancient monuments are a finite and nonrenewable cultural resource. The destruction of a site and the contextualized information it provides is an irretrievable loss to all. If buyers were to buy only those objects that have a fully documented provenience, then looted objects would no longer appear on the market. There would be no incentive for the looting of sites, and the archaeological context would be preserved for the future. Thus concern for the preservation of the archaeological record has focused attention on the art market, and legal rules and codes of ethics have developed to restrict the international art market in objects of undocumented origin. Those forms of illegal conduct which are involved in the international art market include theft, smuggling (illegal export and/or import), and illegal excavation.

A. Theft

The most obvious form of theft is the taking without permission of an object which is in the actual possession of an individual or institution with recognized legal title to the object. Theft is deterred through a variety of legal sanctions. The theft itself is criminalized; the economic motive of the thief and any middlemen is eliminated if stolen property cannot be re-sold. Putting the purchaser at risk of losing property thereby encourages the purchaser to avoid transactions in which the object derives ultimately from a theft. For this reason, in common law countries, such as the United States and the United Kingdom, a thief cannot transfer title to stolen property, even if the purchaser has acted in good faith. If a purchaser were allowed to retain stolen property, then there would no longer be a legal or economic motive to avoid dealing in stolen property.

A theft also occurs when antiquities that are subject to the laws of a national government vesting ownership in that government are taken without permission. Foreign governments have enacted these vesting laws as one method to reduce incentives to purchase undocumented antiquities and thus prevent the looting of archaeological sites. Some legal commentators advocate rejection of foreign vesting laws as a basis for ownership, suggesting that application of a very narrow definition is a way to reduce the number of antiquities defined as "stolen" under United States law. This "redefinition,"

however, is simply a semantic ploy that ignores the policy implications underlying the definition.

The basis of this argument is that the United States should not recognize ownership based only upon constructive possession of unexcavated objects rather than actual possession. Perhaps the biggest irony here is that the United States itself, including the federal government and Native American tribes, as well as every state government, declares ownership of cultural property found on publicly-owned land. The difference is that such laws in the United States generally apply only to antiquities found on publicly-owned land, not privately-owned land, while many foreign countries' laws apply to antiquities, regardless of where found. Approximately half of the states in the United States do deny the private landowner ownership rights in human remains and burial objects. Nonetheless, these aspects of U.S. law are often ignored by those who argue that the United States should not recognize foreign national ownership laws based on constructive possession.

Foreign countries that have attempted to recover stolen antiquities based on national ownership laws have had varying amounts of success. In the 1970's, first Guatemala and then Mexico succeeded in recovering antiquities which the nations claimed. However, the courts set requirements that the claimant had to prove that the antiquities came from within the modern political boundaries of the nation; that the national ownership law applied to these particular antiquities; and that the laws gave sufficient notice to the defendants of the national claims of ownership.

In 1991, Peru lost an attempt to recover antiquities of the Inca culture because it could not prove that the antiquities came from modern Peru and the Peruvian law was not sufficiently clear in vesting ownership of antiquities in the national government. In a 1993 case, involving the Sevso Treasure, a hoard of silver and other objects dating from the Roman Empire, the claimant country, Hungary, was unable to prove that the treasure originated from within its current national borders. Other decision in the 1990's recognized the vesting laws of Guatemala, Turkey and Italy as a basis for ownership.

The only way in which an owner can be denied the right to recover stolen property is through the operation of a statute of limitation which bars a cause of action brought more than a specified amount of time after the theft has occurred. In most states in the US, the statutory time period for the recovery of personal property is relatively brief, ranging between two to six years. Most art thefts, however, involve considerably longer periods of time because it is easy to conceal art works from the owner who cannot bring suit to recover the object until its current location and possessor are known. In the case of antiquities directly looted from the ground, it is even more difficult for the national government to obtain notice of the theft and of the location of the stolen object.

Several jurisdictions that are most involved in the art market have adopted definitions for the accrual of a cause of action with the public policy goal of preventing the statute of limitations from allowing a possessor to retain stolen property. New York State in *Menzel v. List* and more recently in *Guggenheim v. Lubell* followed the demand and refusal rule—that is, the cause of action does not accrue until the owner demands the return of the stolen property and the current possessor refuses. New Jersey courts in *O'Keeffe v. Snyder* (followed by the Seventh Circuit interpreting Indiana law in *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*) adopted a rule that delays the running of the statute of limitations so long as the original owner continues to search for the stolen property with due diligence. This rule places the burden on the true owner, who does not know the location of the property, to show due diligence in searching for it rather than on the purchaser, who has the property in hand, to demonstrate good faith in its acquisition. California courts have interpreted the state statute to define accrual as the time of *actual* discovery of the location of stolen objects, although it is uncertain how the amended statute will be interpreted. The New York Court of Appeals in *Guggenheim* added the possibility that a claim could be barred in equity, even if not at law. Equity allows a court to examine the reasonableness of the actions of both parties and to bar the claim if the defendant was prejudiced by the owner's lack of due diligence in searching for the stolen property, unreasonable failure to publicize the theft, or unreasonable delay in bringing suit. This approach was applied this past summer in *Greek Orthodox Patriarchate of Jerusalem v. Christie's* by federal district court in New York to bar the plaintiff's claim for return of the Archimedes palimpsest.

As these concepts have developed in US case law, the term "due diligence" in the O'Keeffe sense refers to the conduct of the original owner, while "good faith" refers to the actions of the purchaser in acquiring the stolen property. This terminology conflicts somewhat with the usage in European nations and in the 1995 Unidroit Convention on Stolen and Illegally Exported Cultural Objects in which due diligence is a way of determining the purchaser's good faith. Even in the United States museum professionals use "due diligence" to describe the routine check which a purchaser should undertake in deciding whether to acquire an object.

Another complication for the recovery of stolen art works lies in the fact that the civil law nations, which include most of continental Europe and Japan, do permit a thief to pass title to stolen objects when the purchaser is acting in good faith. It thus opens the possibility that one could "launder" an antiquity by selling it in a continental European nation to a bona fide purchaser who would thus get good title (which would then be recognized by a court in, for example, the United States or Great Britain).

Although the good faith or due diligence of the purchaser is generally thought to be relevant primarily in a European context, it is in fact becoming more significant in United States law, as well. First, the purchaser's good faith is

relevant in those jurisdictions which delay the accrual of the cause of action for the statute of limitations until the property transfers to a good faith possessor. Second, under the *Guggenheim* equitable defense of laches, a claim is barred only if the current possessor has been prejudiced by the claimant's unreasonable conduct. A current possessor will be prejudiced only if he or she undertook a search of the title and purchased the art work in good faith. Third, a purchaser who acquires cultural objects abroad may attempt to claim title under the civil law good faith purchaser doctrine. The underlying policy that permeates all these approaches is that good faith should be required so as to inhibit a buyer from purchasing undocumented cultural objects.

For an idea of how good faith may be defined, we may look to the discussion of the purchaser's actions in *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*. The court examined the purchaser's good faith because she attempted to claim title under Swiss law, which follows the good faith purchaser doctrine. The court concluded that the dealer did not act in good faith because she knew little about the people with whom she dealt; the little she knew indicated their questionable backgrounds; she completed the transaction with considerable haste; she possessed virtually no knowledge of Byzantine art, and she failed to consult with various governments involved and international agencies which track stolen art. A purchaser must take reasonable actions to search title in a meaningful way, including a formal search by a suitable agency, a full background search of the seller and his claim of title, insurance protection, and a contingency sales contract.

A recent Swiss case has taken a similar approach, concluding that the purchaser of a stolen painting did not act in good faith because, although he was experienced in business affairs, at the time of the purchase he did not take any precaution to determine the painting=s authenticity or background; he assumed the risk of dealing with unknown individuals and did not determine the regularity of the import of the painting into Switzerland until after the transaction was completed. This decision also cites the Unidroit Convention as reflecting Swiss law and defining a good faith possessor as one who "neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object." The determination of due diligence depends on "all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessors consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances." Thus a determination of good faith includes consideration of the purchase price of the art work, which indicates the resources available to the purchaser, and the rarity of the object involved, which indicates the purchaser's ability to trace title.

B. Smuggling (Illegal Export and Import)

Under international law, export controls are said to be recognized only pursuant to specific agreement between nations. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was devised to create an international treaty regime that would allow recovery of both illegally exported and stolen cultural objects. The United States implementing legislation, known as the Cultural Property Implementation Act, effectively enacted only two of the UNESCO Convention's provisions. The first of these allows for the recovery of cultural property which was in the inventory of a museum, religious or other public institution. This does not add much to pre-existing U.S. law because, under the principles which I have previously described, any individual, institution, or national government could already bring suit to recover stolen cultural property in U.S. courts.

The second provision of the CPIA allows the President, upon a request by a foreign country and with the advice of the Cultural Property Advisory Committee, to declare that an emergency situation exists in which cultural property is being plundered from a specific area and to enter into a bilateral agreement recognizing that nation=s export controls. Although there are eighty-nine parties to the Convention, the United States has received and granted relatively few requests. The United States currently has agreements with Guatemala, El Salvador, Peru, Mali and Canada. In the past year, emergency restrictions were imposed for Byzantine materials from Cyprus and sculpture and architectural fragments from Cambodia. Requests from Italy and Bolivia are now pending. The agreement with Canada is particularly interesting in that it provides reciprocal protections for cultural property illegally taken from the United States.

A case decided by the Second Circuit last summer illustrates a less typical example of smuggling. This case involved a gold phiale of Sicilian origin. Based on the Greek Doric inscription on the rim of the bowl it can be dated to the late 4th or early 3rd century B.C. It was traded by a Sicilian antiquities collector to a Sicilian coin dealer, then to a Swiss dealer and finally to a New York dealer and his client, collector Michael Steinhardt. In the process, the value went from \$20,000 to \$1.2 million. For artworks valued at about \$20,000, Steinhardt asked no questions about the dealer's claim to ownership, conditioning the sale only on the outcome of analysis as to its authenticity by experts at the Metropolitan Museum of Art, which has in its collection a near "twin" of the Phiale.

Pursuant to a request from Italy to investigate the phiale, US Customs agents seized it and the United States filed a civil forfeiture action. The Government alleged two bases for the seizure and forfeiture: first, that the Phiale had been imported illegally into the United States due to the materially false statements on the Customs forms relating to the Phiale's country of origin and value, and second, that the Phiale had been taken from Italy in violation of that country's 1939 Law on Protection of Objects of Artistic and Historic Interest.

In the fall of 1997, the federal District Court decided in the government's favor on both issues. The court concluded that a declaration of Italy as the country of origin would have alerted the Customs Service that the bowl was being exported from a country with strict cultural patrimony laws. Of interest is the District Court's clear statement that Italy is in fact the country of the Phiale's origin and not Switzerland, through which the Phiale passed for a short time en route from Italy to New York. The court stated: "Clearly, an object that has been within the geographic boundary of what is now Italy for over 2000 years, and that was purchased from an Italian dealer in Italy, is 'from Italy.' To declare it as being from Switzerland was a misstatement." (n.28) The value of the bowl was also misstated but this did not seem to be as significant a factor to the court. The requirement of listing Italy as the country of origin will have some effect on the art market which has for years passed objects through countries like Switzerland in order to "launder" the object and give it a respectable background. The Second Circuit affirmed the decision but addressed only the illegal import into the United States based on the misrepresentations on the customs forms.

C. Illegal Excavation

The recently promulgated Unidroit Convention adds another dimension to the definition of theft, one that complements the vesting laws, in that it equates illegal excavation with theft. Almost everyone at least purports to agree that this equation gets to the crux of the matter, that is, the problem of looting of sites and the loss of context, although mere illegal excavation does not produce "tainted" objects, unless the object involves another form of illegality. Yet this equation has elicited the greatest objection within the United States from the art market community, collectors, and some museums. It is relatively easy today to document whether a cultural artifact originated from a permitted excavation and to presume that undocumented artifacts did not come from such a source. The truth is, however, that many involved in the international market seem to ignore this point.

III. Critique of the Antiquities Market

Arguments in support of an unregulated market focus first on the benefits that will accrue to the individual or institution that acquires the cultural object; second, the acquirer asserts a right to the object based on a moral or intellectual superiority. Third is an expression of altruism--because the possessor has a greater ability to care for the object, the possessor is, in fact, not acting primarily for its own benefit but rather for the benefit of everyone else, including the original owner. I want to analyze some of these attitudes and their consequences for the preservation of the past in greater detail.

1. First, it is said that the market is able to find those collectors, both public and private, that are best suited to care for cultural objects. Those who would encourage the art market often suggest that placing a high monetary value on cultural objects is the best means of ensuring their physical protection. Yet, we should recognize that even what the market purports to do best--protect the integrity of individual objects--does not always succeed, due to both intentional and unintentional damage. For example, tomb robbers and site looters often inadvertently or intentionally destroy objects, either in order to make them transportable or simply out of ignorance.

In the case involving pre-Iconoclastic Byzantine mosaics stolen from the Kanakaria Church in northern Cyprus, the mosaics had been taken from the curved wall of the church apse. Not only were the mosaics injured in the course of their removal by the thieves, but the Indianapolis dealer who purchased them, thinking that the mosaics would be more "saleable" if flattened, had a conservator reset the tiles. In the process, many of the tiles were broken, and much of their depth and perspective lost. Particularly for objects that end up in private collections, there are no guarantees of appropriate conservation and objects are sometimes re-cut or altered in other ways to suit the modern decorating tastes of their owners.

2. The market serves to move objects throughout the world so that more people can enjoy the object and learn from it. Yet the market's appreciation for decontextualized objects remains mired in a one-dimensional view of the value of objects as exclusively aesthetic. While scientific and historical inquiry does not impede appreciation of this aesthetic value, the unregulated market certainly impedes scientific study. Several recent studies utilizing quantitative methods have compared the appearance of particularly distinctive categories of archaeological objects on the market with the evidence of looted sites that are known to be the only sources for these categories. For example, Dr. David Gill and Dr. Christopher Chippindale conducted an extensive study of Cycladic figurines of the 3rd millennium B.C., which have been highly prized by collectors for their eerie resemblance to Brancusi sculptures, and determined that 90% of the known figurines do not have a documented provenience, which means that we do not know anything about their archaeological contexts. An entire field of connoisseurship has been distorted beyond recognition because it is not possible to determine which of the figures are genuine and which are fake. At the same time, an estimated 85% of Cycladic burial sites have been destroyed by looting.

Another study utilizing quantitative methodology was a study of Apulian red-figured vases by Professor Ricardo Elia of Boston University. The category of Apulian red-figured vases is both discrete and distinctive in that they are stylistically distinct and come exclusively from sites in South Italy. In addition, they were extensively catalogued and published between 1978 and 1993. Again, some of the statistics that emerged from this study are particularly striking. For example, it was possible for the author to determine based on

excavated tombs that, on average, 9 tombs will produce one Apulian vase (the exact numbers vary depending on the relative wealth of the individuals buried in the various tombs). One tomb will contain perhaps 40-50 other types of objects. Thus, for one Apulian vase that is looted, perhaps as many as 400 other objects will also be looted with their contexts destroyed. The data therefore demonstrate that thousands of tombs must have been looted to produce the known corpus of Apulian vases. Elia's study also compiled data on the current locations of Apulian vases (both by type of collection and by country). While 9423 vases were known as of 1980 (which represented approximately two hundred years of collecting activity), some 4295 new vases appeared in just the twelve years following 1980. Of the total corpus of known Apulian vases, only 5.5% have been recovered archaeologically and the rest have no contextual information. Finally, a study of Sotheby's auction catalogues revealed that between 1980 and 1993, Sotheby's auctioned 30% of the Apulian market. Of the vases auctioned by Sotheby's, an archaeological find spot was listed for none; 85% had no provenience information at all, and the remaining 15% had information relating only to previous owners.

The corollary to this part of the market justification is that the market allows objects to move throughout the world, thereby making them accessible to larger numbers of people. But the object is likely to end up in a private collection or in one of a handful of well-endowed institutions, often in storage, to be displayed occasionally, not necessarily accessible to either the general public or for scholarly research. Finally, the argument always seems to assume a one-way flow "from areas of the world that are rich in cultural heritage to collections in a few major cities" primarily New York, London, Paris, and Switzerland and Japan. Yet the numbers of people to whom these collections are actually accessible remain small. Some parts of the world today, because of 19th century colonialism and the 20th century market, are now almost entirely devoid of their cultural heritage and their people are not in a position to travel to the centers of the art market to see these objects.

3. Source nations have an excess of cultural objects and are not capable of caring for those they have. Some use this argument as an excuse to justify smuggling and theft and as part of a semantic ploy to redefine what is legal and illegal. In response, I would note that the museums of North America and Western Europe are also filled with art works and antiquities. In some U.S. museums, only a small percentage of the collections are catalogued and an even smaller quantity of acquisitions is on display.

Even if one were to posit a world in which countries rich in cultural resources might decide to enter into a legal market, what little evidence there is indicates that such a legal trade would not stop the looting. In those countries that have permitted a legal trade to be conducted, sites were still looted. According to a study by Dr. Patrick O'Keefe, it is as likely that an influx of objects on the market will stimulate additional demand as it is to satisfy the current demand. In addition, individuals and institutions with considerable wealth and prestige to

back them will not be content with anything less than the unique, "museum-quality" piece. As one museum curator has written:

The suggestion that a licit trade in duplicates and minor objects will defeat the illicit traffic is a specious one. The illicit trade is fueled by the growing interest in unique objects of great monetary value, not seconds and minor artifacts. Such pieces rarely appear in auctions but are sold quickly and quietly by private dealers. The more minor objects that show up in many public sales are often the ancillary material that was found during the discovery of the more important pieces. Major museums (such as my own) and knowledgeable collectors generally compete only for objects of real artistic cultural significance, not the material that can readily be found in any excavation or museum storeroom. The pieces they are after are the very ones that would never be allowed to leave the country of origin, either in a licit trade or as the shared fruits of excavations.

Unfortunately, one must loot many tombs and destroy many cultural objects with less aesthetic appeal in the search for the exact right piece to satisfy a "high-end" collector or museum.

IV. Implications for Museum Policies

In this section, I want to suggest some changes in museum policies and, in particular, their acquisition practices. Both museums and private collectors are acquisitors of cultural objects through the market. Museums acquire objects not only through purchase, but also through donations from private collectors (both inter vivos and testamentary) and through loans and temporary exhibitions. Unlike private collectors, many museums have codes of ethics and belong to larger organizations, such as the American Association of Museums (which is, in turn, a member of the International Council of Museums), which also have codes of ethics. In addition, museums are public charitable organizations with the purpose of furthering educational and scientific values. As such, the museum and its Board of Trustees owe a fiduciary duty to the public. When the museum ignores the educational and scientific value of cultural objects, then it is committing a breach of these public obligations.

One of the biggest problems is the gap between what the law in the United States requires and the violation of the laws of other nations. As I have previously outlined, these foreign laws are often designed to reduce the incentives to pillage and destroy archaeological sites. Yet, laws that prohibit unauthorized excavation or illegal export are not automatically enforceable within the United States. This lacuna is often filled by ethical codes of conduct, which admittedly do not have any legal effect. For example, the ICOM code prohibits the acquisition of antiquities that were obtained contrary to the law of the country of origin. As part of ICOM, the American Association of Museums and its constituent members within the United States are supposed to follow

these principles. Yet the individual museums often take contrary positions and the AAM itself has entered litigation as an amicus to argue that there should be no impediment to the acquisition of antiquities contrary to these laws.

Despite differences, there is a close symbiotic relationship between museums and private collectors. Often this relationship is beneficial, in that collectors may donate their collections to a museum and they also donate funds with which museums acquire additional art works. In exchange, donors receive psychological benefits and public recognition for their altruistic actions. Sometimes, however, the relationship becomes too close and it becomes too easy for museums to evade the law or their own ethical codes by defining donations out of their policies for acquisitions. Donors may purchase art works that a museum has brought to their attention, has recommended, researched and validated for the donor, as recently happened with the Degas monotype purchased by the collector Daniel Searle, upon the advice of Art Institute curators, in the hope that he would later donate it. In the case of the gold phiale mesomphalos, stolen from Italy, New York collector Michael Steinhardt purchased it. It was then authenticated for him by the Metropolitan Museum of Art, which happens to possess the near-twin of the phiale. A collector may purchase an antiquity, under a much lower standard of care or concern for the legal issues, and then donate it to a museum with the advantage of a tax deduction. The museum benefits, not only from the donation itself, but also from a potential loophole in its code of ethics.

This leads us finally to the necessity of fostering a new "culture" of collecting, one which focuses on the full story which cultural objects can tell. Perhaps the single most significant element in creating a new culture of collecting would be to examine the conduct of our leading museums. In the past, the major museums of the world built their collections primarily through the art market either as direct purchasers or as recipients of donated objects and art works.

A major step in altering this culture of collecting would be to place a moratorium on the acquisition of antiquities. Such a moratorium would grant the time, space and funds needed for museums to examine their own collections, develop cooperative arrangements with both foreign museums and smaller museums in the United States. It would likely also create a deterrent to private collecting, if collectors could no longer be assured of a sizeable charitable tax deduction and the prestige that accompanies such donations. A curator of a major museum, that recently adopted a policy prohibiting any acquisitions that do not have a clearly legal provenience (according to the laws of both the United States and the country of origin), has stated:

To the concern that Museums will be impoverished by not being able to acquire undocumented materials, I can speak as a professional to say that this is blatantly untrue. In fact, a decrease in acquisitions can encourage museums to provide much-needed resources for the existing collections that are often in need, allowing for more conservation work, photographic documentation and

publication. Focused exhibitions on these collections can provide great educational value. Also, the lack of purchasing power provides a great incentive for exchanges among collections and meaningful loan programs. As an example, we are currently borrowing two large Roman cuirass statues from the Pergamon Museum in Berlin. The pieces are badly in need of conservation that the Berlin museum cannot provide. We have well-trained conservators but few complete Roman Imperial sculptures. When the conservation process is fully documented and complete, the pieces will be exhibited in a special display that explains what they are and the work that has been done. After a period of 6 months, these pieces will be returned to Berlin for permanent display, and others will come to continue the restoration process.

In the future, museums should seek an alternative based on loans and exhibitions, which are grounded in inter-institutional cooperation. Although ownership of objects may have seemed to provide permanence to collections, this is questionable. Rather, an approach based on a spirit of cooperation brings several advantages.

First, it ensures that the world=s artistic and cultural heritage really does circulate throughout the world, rather than remaining in a few well-endowed institutions and private collections. Second, it allows these institutions to move away from reliance on the market which has often furnished aesthetically-pleasing, costly but unprovenienced objects whose story is muted for lack of scientific and historical context. Third, it permits the museums of Western Europe and North America to enter into mutually beneficial partnerships with the institutions and governments of other nations, rather than perpetuating an antagonistic stalemate. Exchange of objects allows sections of the same objects or several objects which originally formed a single corpus to be reunited. It also allows objects to be viewed through new eyes, and not only have advances in conservation techniques resulted, but new discoveries have been made when objects are placed on loan with different institutions.

Professor Willard Boyd, former President of the Field Museum of Natural History in Chicago, has described this needed transformation as follows:

Traditionally, museums have stressed the benefits of the Amovement@ of objects without adequate regard for the detrimental aspects of movement from the point of view of others. Certainly, the cross-cultural transfer of the human ideas surrounding objects is regarded positively in an age of communication. However, the movement of objects that results in cultural and environmental loss, destruction, and desecration cannot be justified. Museums must realign their acquisition and retention policies to promote cultural understanding and respect for the objects and ideas of others. An ethical attitudes requires that we do so.

International loans for exhibition purposes; longer-term international loans for

those museums that agree to abide by national and international laws, as well as ethical standards; international collaborations ranging from excavation to conservation and site preservation and interpretive projects are all examples of this contextual, collaborative perspective. If this view were accepted, then it would become possible (I believe) to increase the free exchange of cultural materials which will, in turn, enhance the acquisition of knowledge and appreciation of the past, from which everyone--in fact, all humankind--will benefit.

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