

## MUSEUMS AND THE ACQUISITION OF ANTIQUITIES

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Debate continues in this country over the acquisition of antiquities by art museums. In my brief remarks this afternoon, I will articulate the legal and ethical terms by which our art museums can make such acquisitions. These, I hasten to say, are grounded in our nation's laws as I understand them, as well as in reasonable international standards of professional practice.

In 1983, our nation implemented the *1970 United Nations Educational, Scientific, and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* ("UNESCO Convention")<sup>1</sup> by adopting the Convention on Cultural Property Implementation Act.<sup>2</sup> This Act empowers the U.S. Department of State to accept requests from countries seeking to place import restrictions on archaeological or ethnological artifacts, the pillage of which places their national cultural patrimony in jeopardy.<sup>3</sup> Such requests are reviewed by the President's Cultural Property Advisory Committee, which makes recommendations to the Department of State, which in turn makes decisions with regard to the requests and may enter into a cultural property agreement with the requesting parties.

The Cultural Property Advisory Committee bases its recommendations on four determinations, whether:

- (1) the cultural patrimony of a State Party to the Convention is in jeopardy from pillage of archaeological or ethnological

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<sup>1</sup> See Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 (1971), available at [http://www.unesco.org/culture/laws/1970/html\\_eng/page1.htm](http://www.unesco.org/culture/laws/1970/html_eng/page1.htm) (last visited Nov. 27, 2000) [hereinafter UNESCO]; see also PAUL M. BATOR, *THE INT'L TRADE IN ART* 94-108 (1981) (detailing the UNESCO Convention's legislative history, from drafting sessions to final approval).

<sup>2</sup> See H.R. 14171, 94th Cong. § 2 (1976); see also Leonard D. Duboff et al., *Proceedings of the Panel on the United States Enabling Legislation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 4 SYRACUSE J. INT'L L. & COM. 97, 98-139 (1976) (offering the text of the legislation and that of a panel discussion held by the Association of American Law Schools).

<sup>3</sup> See H.R. 14171.

materials, (2) the State Party has taken measures for the protection of its cultural patrimony, (3) import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage, and (4) the establishment of such import controls in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes . . .<sup>4</sup>

Of critical importance here is the distinction between cultural *patrimony* and cultural *property*. Article 1 of the *UNESCO Convention* defines cultural *property* broadly as, "products of archaeological excavation. . . ; elements of artistic or historical monuments or archaeological sites which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals. . . ; [and] property of artistic interest."<sup>5</sup> Differences between cultural *property* and cultural *patrimony* are often confused in these respects.<sup>6</sup> Common sense would hold that cultural *patri-*

<sup>4</sup> *Id.*

<sup>5</sup> UNESCO, *supra* note 1, at 358.

<sup>6</sup> Definitions of cultural property often fail to distinguish between "patrimony" and "property." The two words are frequently used interchangeably, sometimes together with "cultural heritage." Mark Feldman, Deputy Legal Advisor to the State Department during the drafting of the United States enabling legislation, pointed to these definitional problems in the *UNESCO Convention*.

The term 'cultural heritage' used in Article 4 of the *UNESCO Convention* does not appear anywhere else in the Convention and has no operational significance per se. It is one of the many imperfections in the *UNESCO Convention* resulting from the fact that the *UNESCO Convention* was revised over a two-week period. One result is that we have an article, which has no specific operating reference. This may raise definitional issues.

Duboff et al., *supra* note 2, at 130 (quoting Mark B. Feldman).

More inclusive definitions of cultural property (that do not distinguish between "patrimony" and "property") often cause more problems than they solve. As Frank Fechner has argued, "[t]he temptation to broaden the definition is particularly acute now, when the law of cultural property is in a state of flux. Yet, an overly inclusive definition of cultural property means not only a weakening of the notion itself but also a weakening of the legal rules for its protection. Thus, a broad notion of cultural property can be even more harmful than a too-narrow one; if a tight definition might exclude some objects worthy of protection, a too-broad one might well fail to be effective at all. Only a clear and narrow definition can prevent misuse of cultural property law and the loss of cultural property itself." Frank G. Fechner, *The Fundamental Aims of Cultural Property Law*, 7 INT'L J. CULTURAL PROP., 376, 377-78 (1998).

My understanding of "patrimony" as distinct from "property" is supported by the definition of "cultural property" in Hague 1954. See discussion *infra* note 12; see also UNESCO, *supra* note 1, at 17 (quoting both the Convention and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954. Article 1 of the Convention states:

The term 'cultural property' shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as

*mony* is a subset of cultural *property*. For example, all old bells are cultural *property* but the Liberty Bell is cultural *patrimony*. Cultural *patrimony*, in other words, suggests a level of importance greater than that of cultural *property*. It is not something owned by a people, but something *of* them, a part of their defining collective identity.

Some countries, like the United Kingdom and Japan, have mechanisms for distinguishing between cultural *property* and cultural *patrimony*.<sup>7</sup> If, for example, a non-British museum sought to purchase an Elizabethan painting from a British source—or a non-Japanese museum sought to purchase a Kamakura-period scroll painting from a Japanese source—experts in the respective source country would examine the work to determine if it were truly worthy of the distinction "cultural patrimony." If it were, every effort would be made to retain it for that country. If it were not, it would be given an export license as cultural property. In the case of Japanese cultural *patrimony* already outside Japan, the Japanese government often seeks to conserve such works of art where they are located. The art is so important to the Japanese cultural identity that the government wants them preserved in the best possible condition as representative examples of Japanese patrimony. Indeed, a country's patrimony need not lie within its borders to be considered its patrimony. Wherever it is, a country's patrimony is what nourishes a country's identity at home and abroad.<sup>8</sup>

a whole, are of historical or artistic interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above . . .

*Id.* It is the emphasis on "great importance" that is significant; not just any kind of importance, but "great importance to the cultural heritage of every people." *Id.*

<sup>7</sup> See BONNIE BURNHAM, *THE PROTECTION OF CULTURAL PROPERTY* 82-83, 98-99 (1974); see also II UNESCO, *THE PROTECTION OF MOVABLE CULTURAL PROPERTY: COMPENDIUM OF LEGISLATIVE TEXTS* 112-48 (1984) (reprinting all articles and provisions drafted at the 1970 UNESCO including specific legislation from several countries that provides definitions relevant to the *UNESCO Convention*).

<sup>8</sup> The international trade in cultural property is most often regulated through export controls. (Through these bilateral agreements, the United States government has put into place discrete import controls.) The most extreme form of export control is a total embargo; in some cases, countries have imposed de facto embargoes, by which cultural property can be exported with an export license granted by an administrative authority. Such licenses are virtually never granted. The English and Japanese export models are based on screening export requests. Some countries employ both embargoes and screening, with certain important works of art embargoed and others reviewed before a license is granted. The United States is unusual in that it has made few laws protecting its cultural property, and these are limited to "historically, architecturally, or archaeologically significant objects on land that are owned, controlled or acquired by the federal government." Therefore, legislation such as the Native American Graves Protection and Repatriation Act "vests title to cultural objects discovered on tribal lands in the individual descendant or tribe on whose tribal land the object was discovered, not in the United States government. Even Native American cultural objects found on federal land become the property not of the

The 1983 Cultural Property Implementation Act goes further and suggests that every example of a foreign country's cultural patrimony is not of equal value.<sup>9</sup> After all, the Cultural Property Advisory Committee is meant to determine whether the requesting country's cultural patrimony is *in jeopardy* before considering the merit of the request to restrict its importation.<sup>10</sup> In other words, under the legislation the Committee could determine that while there are precious few examples of significant, large-scale ancient bronze statuary still extant in Greece, there are enough, and thus, even though a particular object is of a kind with another which has been accepted as part of Greece's cultural patrimony, Greece's cultural patrimony is not itself in jeopardy and so the request for import restrictions may be denied. Paul Bator, former professor and associate dean of Harvard Law School and a principal architect of the Act, noted that it is "perfectly clear that the power to place import controls on art was seen as an extreme and dangerous step to be used only in cases of great necessity . . . There really has to be some specific showing that illegal export is destructive to some important category of art."<sup>11</sup> Further, the determination that an object is of sufficient importance to be designated part of a culture's patrimony and that that particular culture's patrimony is in jeopardy, are just two factors set within the larger context of our country's stated interest in the international exchange of works of art. As Mark Feldman, Deputy Legal Advisor for the State Department during the proceedings that led to the enabling legislation, put it, "[t]he idea is to have the legislation reflect our general sup-

government but of the tribe which has the 'closest affiliation' with the object." Brief *Amici Curiae* by Michael H. Steinhardt, at 14, *United States v. An Antique Platter of Gold*, 991 F. Supp. 222 (S.D.N.Y. 1997). Despite the seemingly lax cultural property laws of the United States, it can be argued that in effect the United States discourages the exportation of its cultural property (including archaeological and ethnological material found on U.S. soil and objects not made by Americans, such as Greek vases or Roman bronzes) by allowing significant tax benefits to individuals who give such property to our country's public institutions. See also BATOR, *supra* note 1, at 37-40 (discussing various export controls used in different countries to regulate international trade in art).

<sup>9</sup> See H.R. 14171, 94th Cong. § 2 (1976).

<sup>10</sup> See UNESCO, *supra* note 1.

<sup>11</sup> Duboff, et al., *supra* note 2, at 132 (quoting Paul M. Bator). Mark Feldman went further and stated:

The language of the legislation tracks that of the *UNESCO Convention*; the concept of cultural patrimony of a state being in jeopardy from the pillage of archaeological or ethnological materials. And I suppose that involves, at a minimum two considerations: One is the destruction of irreplaceable cultural resources through the illicit excavation of sites or the dismantling of ceremonial centers, which we've seen around the world in recent years; the other is the loss of a cultural patrimony through the outflow of important artistic objects. The question is what demonstration would be necessary to show jeopardy? And what remedies should be provided?

*Id.* at 131 (quoting Mark B. Feldman).

port for the international movement of art."<sup>12</sup>

This, then, is the legal background against which I want to pose the professional practice of museum acquisitions. Guiding such practice is the concept of "due diligence," as set forth in Article 4 (4) of the 1995 UNIDROIT Convention:

In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the prices 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 possessor consulted accessible agencies or took any step that a reasonable person would have taken in the circumstances.<sup>13</sup>

Inherent in the concept of "due diligence" is acceptance of the fact that at the time of acquisition all evidence may not be at

<sup>12</sup> *Id.* at 116 (quoting Mark B. Feldman). John Merryman offers a useful distinction between "cultural internationalists," such as the United States, and "retentive cultural nationalists," such as Italy. "Cultural internationalists" view cultural property "as components of a common human culture whatever their places of origin or present location, independent of property rights or national jurisdiction." John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831 (1986). "Retentive cultural nationalists" view cultural property "as part of a national cultural heritage. . . [which] gives nations a special interest, implies the attribution of national character to objects independently of their location or ownership, and legitimizes national export controls and demands for the 'repatriation' of cultural property." *Id.* at 832. Merryman traces the influence of these two points of view, from the appearance of the "internationalist" viewpoint in the Hague in 1954 to that of the "nationalist" viewpoint in UNESCO 1970. "Hague 1954 seeks to preserve cultural property from damage or destruction. UNESCO 1970 supports retention of cultural property by source nations. These different emphases—one cosmopolitan, the other nationalist; one protective, the other retentive—characterize two ways of thinking about cultural property." *Id.* at 846. Since 1970, cultural nationalism has dominated the debate on cultural property. See generally John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1871 (1985); John Henry Merryman, *The Nation and the Object*, 3 INT'L J. CULT. PROP. 61 (1994).

A post-colonial twist on "repatriation" from the nationalist perspective is offered by Irene Winter:

That international challenges even arise must be seen as part of a larger post-colonial universe. The successful negotiations resulting in Denmark's return of a group of medieval manuscripts to Iceland opened the door to former colonies worldwide to petition for redress against historical imbalances of power that permitted the removal of valued moveable goods. Indeed, the Greek delegation to the ICOM Working Group on the Return of Cultural Property in 1983 included in its statement, 'that all countries have the right to recover the most significant part of their respective cultural heritage lost during periods of colonial or foreign occupation.'

Irene J. Winter, *Cultural Property*, 52 ART J. 103, 105 (1993).

<sup>13</sup> *UNIDROIT Convention*, 5 INT'L J. CULT. PROP. 155 (1996) (special issue dedicated to the UNIDROIT Convention, including a reprinting of the text of the Convention); see also LYNDALL V. PROT, COMMENTARY ON THE UNIDROIT CONVENTION ON STOLEN AND ILLEGALLY EXPORTED CULTURAL OBJECTS 1995 (1997) (detailing both the text of the convention and the commentary on it).

hand regarding the legal standing of the work of art in question. A museum is free to make the acquisition without such evidence only after certain procedures have been followed. If after making the acquisition, convincing evidence is brought forward to prove that the work of art was illegally exported from its country of origin, then one is obliged to return it to the proper authorities in that country. It may result in money spent inappropriately, but that is part of the cost of doing business as a museum. The same would be true, of course, if a museum unknowingly purchased a "fake" work or a work later reattributed from a greater to a lesser master.<sup>14</sup>

Let me offer a couple of examples from my own experience of how and why museums should acquire works of antiquity.

### I.

Five years ago, our Sackler Museum acquired a group of vase fragments that had been acquired by a scholar of Greek vases, Robert Guy.<sup>15</sup> On seeing them, my first thought was how beautiful they were and how important they could be for teaching. They comprised more than two hundred fragments representing Greek vase painting from the sixth to the late fifth century B.C. The fragments contained Attic, Chalcidian, Corinthian, Laconian, and Etruscan examples. I saw immediately that a student could hold them in her hands and pass them around the seminar table, learning from the fragments things she could not from a complete pot. She could feel their texture and weight, see the depth of their clay walls, hold them up to raking light and see the clearly inscribed lines of their under drawings and the different reflective qualities of the blacks that comprise their outlines and painted bodies. Present and future students could learn a great deal about the materials and methods of Greek vase painting and about the particular stylistic qualities of some of its best and most influential artists. The vase

<sup>14</sup> The often-cited Harvard guidelines for the acquisition of works of art and antiquities places special emphasis on the curator's expertise and on "reasonable assurance" that the work of art or antiquity had not been "exported from its country of origin (and/or the country where it was last legally owned) in violation of that country's laws." Thus, "the Curator should have reasonable assurance under the circumstances that the object was not exported after July 1, 1971, in violation of the laws of the country of origin and/or the country where it was legally owned." The crux of the matter lies with the concept and practice of "reasonable assurance." I understand that to mean the same as "upon performing due diligence" as I have described it above. THE HARVARD REPORT (1971), reprinted in KARL E. MEYER, *THE PLUNDERED PAST*, at 255 (1973).

<sup>15</sup> Robert Guy is currently an associate at the antiquities dealership, *Michael Ward and Company*, in New York. He was formerly the curator of Ancient Art at the Princeton University Art Museum.

fragments were not, to my mind, so much display objects as they were teaching and research objects. That is what interested me most about them.

As we proceeded to acquire the fragments, we contacted Mr. Guy and asked how and when he had acquired them, and if he had written evidence to back up his claims. He said he had no such evidence and that he had acquired them over many years from friends and dealers. Some of my colleagues would have wanted us to stop at that point, believing that such objects are presumed "guilty until proven innocent," and that not having positive evidence that they had been legally and ethically acquired, was the same as admitting that they had been illegally and unethically acquired. I disagreed. We had no reason to believe that the fragments were illegally or unethically acquired. Just because other people had illegally acquired other fragments at other times—fragments that had been looted from archaeological sites—did not mean that ours were of dubious acquisition. The fact that many of ours had been acquired since the adoption of the *UNESCO Convention* did not mean that they had been removed from Italy (if, in fact, that is where they originated) after that date. They could just as easily have been out of the ground and on the market for many years prior to 1971. Who was to know?

I *did* know that Robert Guy was a scholar of considerable renown, former curator of ancient art at Princeton University and at Oxford, that he had built the collection over time with an eye to its potential for teaching, that we would publish an announcement about the collection in full and that his name would forever be associated with the fragments. He knew that the press and his colleagues, who would come to know of it through our publication, would scrutinize the acquisition carefully. If he thought that they had been illegally exported and acquired, or that his association with the collection would be detrimental to his standing as a scholar, he could easily have instructed the dealer who sold them to us to sell them a few at a time to private collectors, where they would have attracted little or no attention. Instead, he wanted the collection to be made public and to be held by a teaching museum, where it could be studied and appreciated by students, scholars, and the general public for many years to come.

I also knew that these were vase fragments, of which there are no doubt tens of thousands in Italian museums. There was no evidence that these had come from a looted archaeological site, let alone an important archaeological site (as opposed to, say, found in a farmer's field). Thus, I had no reason to suspect that our ac-

quiring these fragments was jeopardizing Italy's cultural patrimony. The matter would have been different if the objects in question had been Khmer temple sculptures for one would have been instantly suspicious of their status. (In this sense, I am reminded of Professor Colin Renfrew's statement that for many years the British Museum has followed a stringent policy, "which is to avoid acquisition [whether by purchase or bequest] of unprovenanced antiquities, defined as those on the market subsequent to 1970. Exception is made for minor antiquities and, in certain circumstances, for those originating from within the British Isles, for which the British Museum is the repository of last resort.")<sup>16</sup> On these terms, so far as we could tell—and "the price paid" part of the due diligence guidelines I cited above would support this—the vase fragments were "minor antiquities."<sup>17</sup>

Subsequently, I agreed that we should acquire the fragments and thus directed the Department of Ancient Art at the Arthur M. Sackler Museum to research them further and to prepare them for publication and exhibition. In December 1997, they were exhibited at our Fogg Art Museum. A fully illustrated and descriptive catalogue of the fragments was published and distributed.<sup>18</sup> To date and to my knowledge, with the exception of letters from officials of the Archaeological Institute of America, a mention in the President's Column in the AIA's popular journal, *Archaeology*,<sup>19</sup> and in conversations with a faculty colleague, we have been criticized only in the local press.<sup>20</sup> No foreign government or cultural authority has suggested that the fragments were looted or illegally exported, despite our sending the Director General of the Italian Ministero per i Beni Culturali e Ambientali a copy of our publication and asking his assistance in identifying any problems with the

<sup>16</sup> The Trustees recognize, however, that in practice many minor antiquities that are legitimately on the market are not accompanied by detailed documentary history or proof of origin and they reserve the right for the Museum's curators to use their best [sic] judgment as to whether such antiquities should be recommended for acquisition. Colin Renfrew, *Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology*, Address Before the Stichting Nederlands Museum voor Anthropologie en Praehistorie te Amsterdam (Oct. 15, 1999) in *LOOT, LEGITIMACY AND OWNERSHIP*, at 83-84.

<sup>17</sup> *Id.*

<sup>18</sup> See Aaron J. Paul, *Fragments of Antiquity: Drawing Upon Greek Vases*, 5 *HARV. U. ART MUSEUMS BULLETIN* (1997).

<sup>19</sup> The AIA officials were Stephen L. Dyson, President, and Claire Lyons, Vice-President for Professional Responsibilities. See Stephen L. Dyson, *From the President of the Archaeological Institute of America*, *ARCHAEOLOGY*, May/June 1998, at 6 (reprinting the president's column).

<sup>20</sup> See Walter V. Robinson and John Yemma, *Harvard Museum Acquisitions Shock Scholars*, *BOSTON GLOBE*, Jan. 16, 1998, at 12 (documenting the reaction by the local press).

acquisition. The collection has been used in teaching, just as its collector and we had intended.

This is the process a museum should undertake when acquiring antiquities. Within the limited period of time preceding acquisition, museums should research the objects thoroughly, inquiring with colleagues into any problems known or suspected with the objects, the collector, or the dealer in question, and notify the appropriate governmental authorities of the likely country of origin. If nothing discouraging turns up, one is free to acquire such objects. However, the museum is still obligated to research the works further in anticipation of their being published and exhibited.

## II.

Sometimes it is only through the post-acquisition process that one determines problems. This happened to us in 1991. We were given three Hellenistic, so-called Entella bronze tablets (from the Sicilian city of that name referred to in the inscriptions). They were given to the museum by someone who said he had acquired them in Europe in the early 1960s and had brought them to this country by 1965. We knew nothing about them and had no reason to disbelieve the donor, so we accepted them and set about cataloguing them. This required extensive research, undertaken by a graduate student in Harvard's Department of Classics.

Over the next few months we learned that the texts of the tablets had been published in an Italian journal in 1980, but that the whereabouts of the tablets themselves were then unknown (one could only conclude that the texts were preserved from rubbings taken from the tablets before our donor purchased them). We also learned that there were suspicions that these tablets, along with others, had been unearthed in clandestine excavations. With this information—that scholars did not know where our tablets were and that some believed them to have been excavated and exported illegally—we wrote the Soprintendente ai Beni Culturali of Palermo to report that we possessed the tablets. We asked for any evidence they had that showed they were indeed exported illegally. While waiting for a reply, we submitted our findings for publication in the international journal *Harvard Studies in Classical Philology*.<sup>21</sup>

<sup>21</sup> See William T. Loomis, *Entella Tablets VI (254-241 B.C.) and VII (20th.cent.A.D.?)*, 96 *HARVARD STUDIES IN CLASSICAL PHILOLOGY* 127 (1994). Loomis presented an oral summary of his findings at the 127th Annual Meeting of the American Philological Association in San Diego on December 30, 1995.

Finally, in February 1996, almost four years after we had reported our acquisition of the tablets, we received a reply that presented us with convincing evidence that the tablets were indeed illegally exported. We promptly turned the tablets over to the Museo Archeologico Regionale di Palermo.<sup>22</sup> I emphasize that the return of the tablets was made possible by our having acquired and researched them in the manner commonly practiced by art museums. Had they not been acquired by a museum, their whereabouts might not have been known for a very long time, if ever, and the tablets might never have made their way back to Palermo, where they belong. In the course of acquiring the tablets, we were able to rectify a wrong that had been done years before we acquired them.

Museum acquisitions are thus in the service of the public good. They are a means of transferring works of art from the private to the public realm, where scholars are more likely to learn of their whereabouts, and students and the general public will be given the chance to study and appreciate them. This is why I believe that museums should continue to acquire works of ancient art, albeit following the procedure outlined above. It is one way by which we can preserve the past for the benefit of generations to come.

Our critics, however, do not share this view. They believe that we should not acquire antiquities unless it can be proved that they were excavated and exported legally. They believe further that a work of ancient art is meaningless without knowledge of the archaeological circumstances of its "find spot." I disagree. Acquiring works of art advances knowledge. It is by making works of art available for study that we learn about their manufacture, style, iconography, date of execution, and relation to other works of art of similar characteristics. We may even learn about their original and subsequent uses and history. To declare, as some scholars have, that one should not publish, study, or teach from works of art without known provenance, and that museums should not acquire them, is not in the service of advancing knowledge but in opposition to it.<sup>23</sup>

<sup>22</sup> See Museo Archeologico Regionale, available at <http://www.comune.palermo.it/musei/archeologico/index.html> (last visited Nov. 30, 2000). The Museo Archeologico Regionale di Palermo is one of the most important archaeological museums in the Mediterranean area.

<sup>23</sup> The policy of the American Journal of Archaeology, the official journal of the Archaeological Institute of America, is as follows:

As the official journal of the Archaeological Institute of America, AJA will not serve for the announcement or initial scholarly presentation of any object in a private or public collection acquired after 30 December 1973, unless the object

This point was raised recently in a 1998 article on the long-standing debate among Mayan scholars over the value of studying and teaching from unprovenienced objects, as objects without archaeological evidence are called.<sup>24</sup> The debate is all the more significant because so little is known of the "Post-Classic Mayan" history, the period after the Mayans left their cities in the jungle lowlands of what is now Central America and moved to highlands in the south and the upper Yucatán Peninsula. During this time period, the Mayans no longer carved stone monuments but continued to practice their religion and write hieroglyphs. The Post-Classic period lasted until the seventeenth century, when the Spanish finally succeeded in stamping out the Mayan religion by burning books and conducting an extensive anti-literacy campaign. What little is known of the final eight hundred years of Mayan civilization is preserved primarily in the painted images and hieroglyphic texts on manuscripts and ceramic pots.

The debate focuses on what can be learned from an object if its archaeological context is unknown, and whether in fact it is ethical even to study an unprovenienced object. Clemency Coggins, a Mayanist who wrote an article thirty years ago that pointed to the presence of looted Mayan artifacts in American museums, stated, "[t]here's an aesthetic-versus-cultural division here. . . . One takes the short-term view—connoisseurship—and can't appreciate the broader view that sees the objects in historical context."<sup>25</sup> Another scholar, John Henderson from Cornell University, has said that unprovenienced "pieces have no research value, only aesthetic value."<sup>26</sup> On the one hand, the debate concerns aesthetic versus historical values, as if aesthetics bears no historical imprint. On the other, the debate focuses on the ethics of studying unprovenienced objects. While the points are, for the sake of argument, on different hands, the hands are clasped and the points, like fingers, intertwined.

David Stuart of Harvard's Peabody Museum of Archaeology and Ethnology, often described as the world's leading Mayan epigrapher, has said, "I work with looted objects routinely in my re-

was part of a previously existing collection or has been legally exported from the country of origin.

Fred S. Kleiner, *On the Publication of Recent Acquisitions of Antiquities*, 94 AM. J. ARCH. 525 (1990).

<sup>24</sup> See John Dorfman, *Getting Their Hands Dirty? Archaeologists and the Looting Trade*, 8 LINGUAFRANCA 28 (1998).

<sup>25</sup> *Id.* at 31; see also Clemency Coggins, *Illicit Traffic of Pre-Colombian Antiquities*, 29 ART J. 94 (1969). See generally, Clemency Coggins, *United States Cultural Property Legislation: Observations of a Combatant*, 7 INT'L J. CULT. PROP. 52 (1998).

<sup>26</sup> Dorfman, *supra* note 24, at 31.

search. I have no qualms about using material if it's going to be scientifically useful. If I'm looking for a glyph—say, the glyph for 'cave'—I'm going to look for as many examples as I can get."<sup>27</sup> Regarding context, he has said, "[s]o-called dirt archaeologists do things like survey sites and study settlement patterns and ceramic chronology; they tend to see objects taken out of context as useless. They're not aware of the intrinsic usefulness of visual material because they haven't been trained that way. There are different subcultures in the discipline, and that's where a lot of intellectual debate comes in."<sup>28</sup> The Yale Mayanist Michael Coe, author of *Breaking the Mayan Code and Art of the Maya Scribe*, is even more pointed in his remarks saying, "[i]f you have the Rosetta Stone, provenience doesn't matter! It's content!"<sup>29</sup> And while Ian Graham, director of Harvard's Maya Corpus Program, would strongly disagree with Coe, he emphasizes that refusing to consider a looted or unprovenienced object is absurd. "However much I despise the trade in pottery and stelae, from the decipherment point of view, there's an enormous value to be got from a text, even if you have no idea where it comes from."<sup>30</sup>

Is this not the same for works of antiquity from the Mediterranean world?<sup>31</sup> Isn't there equally enormous value to be gotten from an ancient Greek vase, even if one doesn't know where it came from? I have been told that an unprovenienced work of art has no historical value. The person to whom I was speaking also said that if she were to come across such an object, she would rather see it destroyed than "legitimized" by having it acquired by a museum. This position assumes that all unprovenienced objects were clandestinely ripped from their archaeological context, and that the acquisition of such objects only encourages further looting. First of all, how can one substantiate the claim that all unprovenienced objects were looted? It is easily possible that an object was found long divorced from its archaeological context—perhaps dug up by a farmer in a field in which there is no evidence to explain why the object was found there because there is no tomb, no building remains or other objects. Or, as in the case of Greek vases, it could have been produced for export in the first

<sup>27</sup> *Id.* at 32.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 36.

<sup>31</sup> See David Lowenthal, *Archaeology's Perilous Pleasures*, *ARCHAEOLOGY*, Mar./Apr. 2000, at 62; Christopher Chippindale, *Archaeology's Proper Place*, *ARCHAEOLOGY*, Mar./Apr. 2000, at 67 (presenting an interesting exchange on matters similar to those raised in the Dorfman article in *LINGUAFRANCA*).

place, purchased by a southern Italian, and buried by natural circumstances more than two thousand years ago, rediscovered years later, moved, buried again, rediscovered again, moved and buried again, until it was finally unearthed thirty years ago, sold in the trade, and acquired by a museum from a private collector with no documentation as to when it was unearthed and exported from its so-called "country of origin." Why should one assume the object was looted? And what could possibly be known of its archaeological context? Perhaps nothing. But what could be learned from its imagery if it showed, for example, social practices among Greek athletes, women, sculptors, slaves, or new twists in the representation of Greek gods and religious practices? Perhaps quite a lot. Should one then acquire, preserve, and study such an object even if it is unprovenienced? In my opinion, most emphatically yes.

The unprovenienced object should be studied not only for its iconography or the meaning of its text, but also for the beauty of its form and the quality of its decoration. This is not always appreciated by every archaeologist, as Stuart and Coe remind us. One such archaeologist—or more accurately perhaps, a historian of early material—wrote in an opinion piece not long ago in the *Boston Globe* that "without historical context, the objects retain little more than aesthetic appeal."<sup>32</sup> But what is so little about "aesthetic appeal?" It is a condition of works of art that they have aesthetic appeal, and it is legitimate to appreciate and articulate that appeal. Works of art are not merely documents that reflect the conditions in which they were found. They have meanings other than the historical. Yet, they have many historical meanings. These historical meanings include their archaeological circumstances, their forms, iconography, their material conditions (size, scale, material, technology, etc.), their public and critical reception, and their artistic influence. Works of art, in fact, have many categories of meaning. That is why they remain so interesting to us, millennia after they were manufactured, and that is why museums do and should acquire them.

#### CONCLUSION

The acquisition of antiquities will be debated for many years to come. And I believe there is a role for art museums to play in this debate, a moderate and civilizing role, one that is in keeping with the terms of the 1983 legislation by which the United States imple-

<sup>32</sup> Ricardo J. Elia, *Chopping Away Culture: Museums Routinely Accept Artifacts Stripped of Context by Looters*, *BOSTON GLOBE*, Dec. 21, 1997, at D1.

mented the *UNESCO Convention* and the guidelines of "due diligence" and one that respects our country's stated policy of general support for the international movement of art. Set within the context of these guidelines, and acknowledging that after acquisition, when convincing evidence is brought forward, museums should return objects to the proper authorities in their source country, museums are right to pursue the acquisition of antiquities for the benefit of our public's legitimate interest in works of art and their many meanings and complex values, not least of which is their profound and inherent beauty independent of archaeological context.