

OPENING REMARKS

RICHARD BRILLIANT (Director, The Italian Academy for Advanced Studies in America): We gave this conference the general title “Who Owns Culture?” We did not define what “culture” is, and perhaps that definition will emerge over the next two and a half days.

We are here in a very opportune moment. The nature or dimension of cultural property has been under serious consideration for the last several years. We are concerned here about not only the nature of cultural property, but also the distinction that might be developed between intellectual and material property.

I think there is an issue here, an important one, of knowledge. Sometimes, by looking at culture as if it was “the other side,” we are aware that acculturation is a matter of the increase in knowledge. I would like to think that one of the most important properties of culture itself is that a work of art—a work of thought—creates opportunities for greater knowledge, which is our responsibility to share.

MICHAEL JANEWAY (Director, National Arts Journalism Program): Conferences have taken place within the world of cultural-property expertise. But between that world and the public lies a vast gulf that only journalism can bridge. In attempting to build such bridges, we acknowledge that the universe of issues that fall under the headings of “cultural property” and “cultural patrimony” is vast. Some of those issues are separate, some intersect, almost all are thorny, and some are the cause of tension or dispute. In taking on so many of those issues here, we risk being too far-flung. And we haven’t even taken on intellectual property, landmark and preservation issues, and cultural property issues in the age of the Internet.

A reason for spreading the canvas so broadly is to enrich awareness among journalists and experts alike, so that when we talk and write about a piece of the cultural-property or patri-

mony puzzle, we’re talking at least implicitly about wholes that are much more than the sums of their parts. Because in or out of dispute, these pieces of the larger cultural-property story have the potential to leap way past the providence disputes or the finite limits of market price or aesthetic value to claims like nationhood and nationalism, bitter legacies of persecution and war, cultural identity and cultural war, plunder and atonement, pride, possession, and obsession. None of these fit easily with such rational values as openness, access or free exchange. We need look no further than to the terrible events in the former Yugoslavia for cases of looting of cultural property.

A few notes that others might find useful to expand on or to dispute: First, the arrival of so many once-arcane cultural-property issues on the front pages of newspapers of late raises the larger question, “Why now?” What part of the cultural-property phenomenon flows from the end of the cold war? From statutes of limitations running out? From trends in art markets? From the contemporary cult of “the market”? From shifts in relations between countries of origin and countries in which collectors and traders are active? From trends in globalization and international agreement? From trends in sociopolitical fragmentation or separatism?

Second, the international scope of this conference underscores the distance between Americans’ experience of cultural-property and patrimony issues and the experience of older nations.

Third, on a personal note, it strikes me that—as the kind of investigative-reportorial interest that cultural-property issues have aroused in the U.S. is in many cases new—for many in the art world, the idea of being covered journalistically as government or business routinely are is also new and even shocking. In this forum are some chances to develop better mutual awareness of what will, in the nature of active journalistic inquiry, always be to some extent an adversarial relationship.

OPENING ADDRESS:
 “WHO OWNS CULTURE?
 WHY NOW AN INTERNATIONAL
 CONFERENCE ON CULTURAL
 PATRIMONY?”

SPEAKER:

DEREK WALCOTT, 1992 Nobel Laureate
 in Literature

WALCOTT: I’m going to read a couple of sections from a play of mine called “Dream on Monkey Mountain.” I think that what I’m going to read may demonstrate or encapsulate the topic that we have for the next couple of days.

In this scene, a mulatto corporal called Lestrade, because he straddles two cultures, is talking to Makak, who has been arrested for drunken behavior in a small village. Makak, or “the ape,” which is what we are all supposed to come from, is the most-reduced human being possible. He is ugly, he feels old, he is black, he is poor, his occupation is that of a charcoal burner. When he is arrested, his inquisitor is this man Lestrade, who’s such a complete convert to his culture that he serves as a policeman. And he serves it with the total fury of someone who is a convert, and who in that position may have a great deal of self-contempt, as well as admiration for the thing he is supposed to be a part of but doesn’t quite feel that he is. So the corporal is talking to Makak who is in his cell, and there are two other thieves next to him. And this is the gist of the corporal’s contempt for this black man he has arrested.

“In the beginning was the ape, and the ape had no name so God called him Man. Now there were various tribes of the ape; it had gorilla, baboon, orangutan, chimpanzee, the blue-arsed monkey, and God looked at his handiwork and saw that it

was OK. For some of the apes had straightened their backbone and started walking upright, but there was one tribe, unfortunately that lingered behind. And that was the nigger. If you apes will behave like gentlemen, who knows what could happen? The battle could go round. But first it behooves me, Corporal Lestrade, to perform my duty according to the rules of the majesty’s government so don’t interrupt. Please let me examine the Lion of Judah.”

So he examines him. And this is the consequence of the examination.

“You forget your name. You’re a racist coward, your denominational affiliation is Catholic. Therefore, as the Roman law had pity on our blessed Savior, by giving him in extremis a draught of vinegar which in your own language you would call ‘vinegre,’ I shall give all and Sunday here, including these two thieves, a handful of rum before I press my charge.”

When he speaks in the passion of his contempt, he makes a number of mistakes grammatically but he does them with a lot of confidence.

“My noble judges. When this crime has been categorically examined by due process of law, and when the motive of the hereby accused by whereas and ad hoc shall be established without dichotomy, and long after we have perambulated through the labyrinthine bewilderment of the defendant’s ignorance, let us hope that justice, whom we all serve, will not only be done, but will appear, my lords, to have itself been done. Ignorance is no excuse. Ignorance of the law is no excuse. Ignorance of one’s own ignorance is no excuse. This is a prisoner. I will ask the prisoner to lift up his face.

“My lords, as you can see, this is a being without a mind, a will, a name, a tribe of its own. I will ask the prisoner to turn out his hands. I will spare you the sound of that voice which shall come from a cave of darkness, dripping with horror. These hands are the hands of Esau, the fingers are like roots, the arteries as hard as twine, and the palms are seamed with coal. But the animal is tamed and obedient. Walk around the cage.”

Now he makes his procession.

“His rightful name is unknown, yet on Saturday evening July 25, to wit tonight, at exactly three hours ago, to wit 5:30 p.m., having tried to dispose of four bags of charcoal in the market of Quatre Chemin, to wit this place, my lords, in which aforesaid market your alias, to wit Makak, is well-known to all and Sunday. The prisoner, in a state of incomprehensible intoxication from money or monies accrued by the sale of self-said bags, is reputed to have entered the licensed alcoholic premises of one Felicien Alcindor, whom the prisoner described as an agent of the devil, the same Felicien Alcindor, being known to all and Sunday as a God-fearing honest Catholic. When some intervention was attempted by those present, the prisoner then began to become vile and violent. He engaged in a blasphemous, obscene debate with two other villagers, Hannibal Dolcis and Market Inspector Caifas Joseph Pamphilion, describing in a foul, incomprehensible manner, a dream which he claims to have experienced, a vile, ambitious, and obscene dream, elaborating on the dream with vile words and a variety of sexual obscenities both in language and posture. Further, the prisoner, in defiance of Her Majesty’s government, urged the aforementioned villagers to join him in sedition and defilement of the flag. And when

all this was rightly received with civic laughter and horror, the prisoner, in desperation and shame, began to willfully damage the premises of the proprietor, Felicien Alcindor, urging destruction on church and state, claiming that he was the direct descendant of African kings, a healer of leprosy, and the savior of his race.

You claimed that with the camera of your eye you had taken a photograph of God, and all that you could see was blackness. Blackness, my lords. What did the prisoner imply? That God was neither white nor black but nothing? That God was not white but black, that he had lost his faith, or what?”

This is in Act I. In Act II, after a lot of changes, the corporal is a total convert to being a complete African. He is against anything white in the second half of the play. And he addresses the court. Makak has now become king of his tribe, and the corporal now talks to the assembled tribes.

“Wives, warriors, chieftains! The law takes no sides. It changes the complexion of things. History is without pardon, justice is hawk-swift, but mercy everlasting. We have prisoners and traitors, and they must be judged swiftly. The law of a country is the law of that country. Roman law, my friends, is not tribal law. Tribal law, in conclusion, is not Roman law. Therefore, wherever we are, let us have justice. We have no time for patient reforms. Mindless as the hawk, impetuous as lions, as dried of compassion as the bowels of a jackal. Elsewhere, the swiftness of justice is barbarously slow, but our progress cannot stop to think. In a short while, the prisoners shall be summoned, so prepare them, Basil and Pamphilion. First, the accused. After them, the tributes. Read them, Basil!

Basil reads:

“They are Noah, but not the son of Ham, Aristotle, I’m skipping a bit, Abraham Lincoln, Alexander of Macedon, Shakespeare, I can cite relevant texts, Plato, Copernicus, Galileo, and perhaps Ptolemy, Christopher Marlowe, Robert E. Lee, Sir John Hawkins, Sir Francis Drake, the Phantom, Mandrake the Magician... Tarzan, Dante, Sir Cecil Rhodes, William Wilberforce, the unidentified author of “The Song of Solomon,” Lorenzo de Medici, Florence Nightingale, Al Jolson, Horatio Nelson, but why go on? Their crime, whatever their plea, whatever extenuation of circumstances, whether of genius or geography, is that they are indubitably, with the possible exception of Alexandre Dumas, Sr. and Jr., and Alexis, I think it is Pushkin, white. Some are dead and cannot speak for themselves. But a drop of milk is enough to condemn them, to banish them from the archives of the bo-leaf and papyrus, from waxen tablet and the tribal stone. For you, my Lords, are shapers of history. We wait your judgment, O tribes.”

I’ve used these sections to demonstrate the modern ambiguity that can happen in the Third World, or in any culture when its policies and its tenets are reversed. Nothing much changes in terms of the conduct of the powerless becoming powerful.

In this poem, called “The Sea is History,” there are two voices. One of them may be the voice of culture, the proprietary voice, the one that owns and examines and says, “When are you going to be as great as we are? When will you stop imitating? When will you, in fact, become us?”

The response to that by the other voice is perhaps feeble, but convinced that what it

believes in is not in the works of man but in the authentication of the works of a force beyond man.

*Where are your monuments, your battles,
martyrs?*

*Where is your tribal memory? Sirs,
in that gray vault. The sea. The sea
has locked them up. The sea is History.*

*First, there was the heaving oil,
heavy as chaos;
then, like a light at the end of a tunnel,
the lantern of a caravel,
and that was Genesis.*

*Then there were the packed cries,
the shit, the moaning:
Exodus.*

*Bone soldered by coral to bone,
mosaics
mantled by the benediction of the shark’s shadow,
that was the Ark of the Covenant.*

*Then came from the plucked wires
of sunlight on the sea floor
the plangent harps of the Babylonian bondage,
as the white cowries clustered like manacles
on the drowned women,
and those were the ivory bracelets
of the Song of Solomon,
but the ocean kept turning blank pages
looking for History.*

*Then came the men with eyes heavy as anchors
who sank without tombs,
brigands who barbecued cattle,
leaving their charred ribs like palm leaves on the
shore,*

*then the foaming, rabid maw
of the tidal wave swallowing Port Royal,
and that was Jonah,*

*but where is your Renaissance?
Sir, it is locked in them sea sands
out there past the reef’s moiling shelf,
where the men-o’-war floated down;
strap on these goggles, I’ll guide you there myself.
It’s all subtle and submarine,
through colonnades of coral,
past the gothic windows of sea fans
to where the crusty grouper, onyx-eyed,*

“If we own,
how deeply,
how truly, do
we own?”

*blinks, weighted by its jewels, like a bald queen;
and these groined caves with barnacles
pitted like stone
are our cathedrals,
and the furnace before the hurricanes:
Gomorrhah. Bones ground by windmills
into marl and cornmeal,
and that was Lamentations—
that was just Lamentations,
it was not History;
then came, like scum on the river's drying lip,
the brown reeds of villages
mantling and congealing into towns,
and at evening, the midges' choirs,
and above them, the spires
lancing the side of God
as His Son set, and that was the New Testament.
Then came the white sisters clapping
to the waves' progress,
and that was Emancipation—
jubilation, O jubilation—
vanishing swiftly
as the sea's lace dries in the sun,
but that was not History,
that was only faith,
and then each rock broke into its own nation;
then came the synod of flies,
then came the secretarial heron,
then came the bullfrog bellowing for a vote,
fireflies with bright ideas
and bats like jetting ambassadors
and the mantis, like khaki police,
and the furred caterpillars of judges
examining each case closely,
and then in the dark ears of ferns
and in the salt chuckle of rocks
with their sea pools, there was the sound
like a rumor without any echo
of History, really beginning.*

Our position in the Caribbean and perhaps in the New World is very much that of the corporal in the play: a position of bewilderment. It is a question that has to do with the depth of possession. If we own, how deeply, how truly, do we own? How truly does a Colombian own the Spanish language? How

truly does someone in Martinique own the French language? And how much of a loss has there been, how much of a gain?

I think the answer is that it is both increasing and diminishing, and that it diminishes as it gets closer and closer to the point of absurdity. To ask that question now is to avoid the reality that what has happened to the Spanish language with writers such as Marqu ez and Paz, or what has happened to the English language with writers like V.S. Naipaul or Rushdie, means that it is no longer a matter of the empire owning the language. But does that mean that if the empire does not own the language, that it shares it, or even is willing to do that? I do not think that it is, because I think the reservoir of preservation lies in criticism and the reality of the continuation of power, in terms of publishing, distribution, and simple economics.

So the whole concept of asking "Who owns culture?" is immediately answered by "Whoever has the money." That is the answer. And whoever has the most money owns the culture, because the way to manipulate the ownership of that culture is via books and publicity and other things.

That may be too crass a reply, but I think it is true. If you asked, "Who owns film?" you'd have to say, "Six people in Hollywood own film." And if you said that, you'd say that the social influence of film of the world is really one that emanates out of Hollywood. This is very clich ed, but when you go outside it will be true, because you will see the billboards telling you "Don't miss X or Y."

I think that the journey of inquiry, while it has been worth it, is probably answered not only by my own resolution in terms of my direction, but also with what I've seen happen to ownership, in terms of the possession of a language and of culture.

"The whole concept of asking 'Who owns culture?' is immediately answered by 'Whoever has the money.'"

My education was on the island of St. Lucia, in English. It was the equivalent in the curriculum of an English public school. I had a very subtle grounding in French, Latin, history, and of course, English literature. When we look back on what we in the Third World did, when we look back on what we were taught and how we were taught, we have a lot of contradictions inside us that have to be resolved by our work.

For instance, if someone had told me then that I was being “colonized,” my boyhood might have been doctrinal and joyless. If I knew that I was being inducted, drafted into something called “English culture,” by the English School of Masters, or by someone who imitated both the accent and the conduct of an English schoolmaster, I don’t know that my reaction would have been satisfactory. I think I would have resisted that idea, not because it wasn’t political or true, but because there is something much more important than that political truth. The doctrine of being told that I was a colonial would have created a kind of joylessness in me. What I had then was delight: a delight in verse, a delight in English poetry, a delight in English literature, things I was entitled to as much as any English schoolboy.

I do not believe that my possibilities were ruined or my vocation curtailed because of the politics of culture. The two backgrounds I was inheriting were enriching each other even when they appeared different. I brought in a culture that was bilingual. I grew up with French Creole and English. I’m not sure if there was such a sense of division in the two experiences that now one could write about it as I do. I don’t really remember division or distance. When I left where I was and went outside, I had to be defiant, and I had to accept or reject definitions of myself.

The two cultures—something bisected them. And when I entered the world beyond the

island, when I left St. Lucia and went to a bigger place like Jamaica or Trinidad, the threat of division widened into a chasm. It certainly widened once I got to America. I had to put on my passport what I was and where I was from. There was a time when you had to put everything on your passport: color of eyes, color of skin, all that detail. Now it’s simpler. When I entered the world beyond the island, the threat of division widened into a chasm, into melodrama, into a second-rate tragedy of race.

When I wrote the phrase “second-rate tragedy,” and if I think of myself entering that second-rate tragedy, I can be a victim of that tragedy if I accept that definition. I can be a victim of it anyway, whether I accept it or not. And when we begin to make definitions as to who owns what, who is entitled to persecute, who is entitled to steal from, who is entitled to murder en masse, then that conduct is beneath the spirit of man. It is beneath the reality of the possibility of the achievement of man.

If I write from the outside about my love of Dante, who am I, loving Dante? I am defined, then, as a writer from the Caribbean who, like everybody else, loves Dante but will bring something special in terms of homage to the man called Dante who was an Italian who lived at a certain time. That’s not the definition that I can live by. I cannot live as if my contribution to the love of Dante were defined and restricted—or even enlarged or forgiven—by the definition of myself in lineaments of people who look at me, critics or other human beings.

When racial difference is inflicted—defined from the outside by authority—the writer can reject it. But that definition would be preserved and pursued for the sake of some kind of cultural purity that is not much different from being shot 41 times by police or dragged on the road behind a pickup. This could have happened to me, even though I have a Nobel Prize.

The assailants own the culture. They are defending it. People assail and kill and murder in the name of culture, in the name of religion. All these definitions are secondary to what they really are in terms of their real function. It has become difficult to define “culture” without violence, since culture includes religion, manners and art. The once-great empires of Europe, France, Spain, Portugal, Holland have faded, quite apart from England. But certainly their original—even their pure—cultures have been enriched by the corrupting vigor of miscegenation, by an English literature broadened and varied by writers in India, Africa and the Caribbean. “What is the complexion of that culture?” is what the corporal asks in the play.

One reads Frost and Whitman, and one says of Frost, “He is a true great American poet.” You hear his language and you hear our language, your language, in the language of his poems. “The land was ours before we were the land.”

Who gives Frost the right to say that? What did he ask the Indians about the land? Who entitles him to begin a poem about America as if the Indians have never existed? And who says the land is his because of the feeling that explorer or pilgrim has in taking it?

So even when you look at what appears to be a manifestation of modesty, of humility, of direction (and that is also true in Whitman), you have to take a few steps backward and say, “If American culture, American poetry begins around here, do we draw a line between the power of Navajo poetry and the beginning of Frost? Do we make a distinction in time by using dates to make those distinctions?”

It is chronology that is the enemy. Chronology is acquiring and ascribing things by time, and it is what causes the conceit of the kind of authority that happens when an empire begins with an augustine figure like Frost. But what we have is this sense of destiny, however mod-

estly employed. The reality of America is that it is an empire, and the beauty of America is that it does not want to be one, and that is what preserves it from it, that it keeps its conscience. It does not want to conquer, it does not want to take people’s property.

As a reverse of this, you get Indian- and Afro-American literature of poignancy, of neglect, of indifference and exclusion. When this grows (and I think it does grow into a benign kind of acceptance), the questions that will be asked here are manifestations of that inquiry into that kind of equanimity of spirit that is required for a truly great democracy. One of the things that at least may be said about the Nobel Prize is that it is race-less and nation-less and that it ascribes its gift to whoever it considers to be worthy of it. It manifests the reality of what can happen in terms of thinking of culture not in a partisan way, but in a universal or global way.

I would like to read, finally, the equivalent of prayer, a vision of peace that must be heard continually.

“The Season of Phantasmal Peace”

*Then all the nations of birds lifted together
the huge net of the shadows of this earth
in multitudinous dialects, twittering tongues,
stitching and crossing it. They lifted up
the shadows of long pines down trackless slopes,
the shadows of glass-faced towers down
evening streets,
the shadow of a frail plant on a city sill—
the net rising soundless as night, the birds’ cries
soundless, until
there was no longer dusk, or season, decline, or
weather,
only this passage of phantasmal light
that not the narrowest shadow dared to sever.
And men could not see, looking up, what the
wild geese drew,
what the ospreys trailed behind them in
silvery ropes*

“When we begin to make definitions as to who owns what, who is entitled to persecute, who is entitled to steal from. . . then that conduct is beneath the spirit of man.”

*that flashed in the icy sunlight; they could
 not hear
 battalions of starlings waging peaceful cries,
 bearing the net higher, covering this world
 like the vines of an orchard, or a mother drawing
 the trembling gauze over the trembling eyes
 of a child fluttering to sleep;
 it was the light
 that you will see at evening on the side of a hill
 in yellow October, and no one hearing knew
 what change had brought into the raven's
 cawing,
 the killdeer's screech, the ember-circling chough
 such an immense, soundless, and high concern*

*for the fields and cities where the birds belong,
 except it was their seasonal passing, Love,
 made seasonless, or, from the high privilege of
 their birth,
 something brighter than pity for the wingless ones
 below them who shared dark holes in windows
 and in houses,
 and higher they lifted the net with soundless
 voices
 above all change, betrayals of falling suns,
 and this season lasted one moment, like the pause
 between dusk and darkness, between fury and
 peace,
 but, for such as our earth is now, it lasted long.*

WHAT IS CULTURAL PROPERTY? AN OVERVIEW

MODERATOR:

STEPHEN URICE, Officer, Culture Program, The Pew Charitable Trusts

PANELISTS:

FRANCO FERRAROTTI, Professor Emeritus, University of Rome

ASHTON HAWKINS, Executive Vice President, The Metropolitan Museum of Art

ARIELLE KOZLOFF, Vice President, Ancient Art, The Merrin Gallery

JOHN MERRYMAN, Professor Emeritus, Stanford Law School

KARL MEYER, Journalist, Author, “The Plundered Past: The Traffic in Art Treasures”

URICE: For those new to the field of cultural-property policy and law, I imagine your wonder akin to Supreme Court Justice Potter Stewart when he was asked to define pornography. Stewart uttered his famously commonsensical observation that while he could not define pornography, he knew it when he saw it. So too, virtually all of us know cultural property when we see it. But defining what it is, determining who, if anyone, should own it, and setting rules governing how it should move around the world if at all, are issues that elude consensus.

Answers to those questions are not merely elusive but also deeply charged: emotionally, intellectually and rhetorically. Ralph Waldo Emerson once observed, “Property is an intellectual production. The game requires coolness, right reasoning, promptness, and patience in the players.”

First, John Henry Merryman will provide an introductory paper to which each of the panelists will respond.

MERRYMAN: Cultural property is a flexible and continually expanding category that at its core includes the works of art, artists and artisans, manuscripts, archives and libraries, antiquities and historical relics. Any human artifact may come to be valued as cultural property, from scientific and musical instruments to perfume bottles and fruit-box labels.

Having said that, I suggest that we can learn more that is interesting and useful about cultural property from a description of its history and its present intellectual milieu than from pursuit of a definition or an inclusive listing.

Cultural-property questions have attracted focused attention during three periods of modern history. The first grew out of the French appropriations of art during Napoleon’s Italian and low-countries campaigns, when the French looted Europe to fill the Musée Napoléon, now the Louvre.

Quatrèmere de Quincy protested the appropriations in his letter to General Miranda and his ideas were echoed in a little-known intellectual property case decided in Nova Scotia in 1813. During the same period, poets and politicians debated the morality and legality of Lord Elgin’s removal of sculptures from the Parthenon. This period of attention to cultural-property questions came to an inconclusive conclusion with the partial repatriations imposed on the French at the Congress of Vienna in 1815 and the purchase of the Elgin marbles by the British Parliament in 1816.

Under what conditions may the authorities of a nation properly remove cultural property from another nation or a subjected people? That question continues to arise. The Nazi art seizures in World War II and the Soviet retention, as cultural reparations, of works taken from Germany in 1945, are the most promi-

“The question at the heart of the current ethical and legal debate is whether market nations should assist source nations in enforcing their export controls.”

nent examples. The question is an important and continually fascinating one, recently brought to a new level of public attention by the work of Hector Feliciano and other extraordinary investigative journalists.

The second period began during the American Civil War. Francis Lieber, a German émigré polymath, was the protagonist. His draft of a set of rules to govern the conduct of soldiers in the field after approval by President Lincoln was adopted by Henry Wager Halleck, general in chief of the Union forces, and published as General Orders No. 100. Articles 34 to 36 of those general orders deal expressly with cultural property.

Now generally called the Lieber Code, General Orders No. 100 was widely admired as a humane document. It was frequently copied and it became the foundation of the modern international Law of War. The Lieber Code is the legal ancestor of the Hague Conventions on the Law of War, and the war crimes trials following World War II.

The cultural-property questions raised by the Lieber Code and subsequent developments in the Law of War can be summarized in this way: In the absence of military necessity, does a state of war justify the destruction or mistreatment of cultural treasures in enemy territory? The basically negative answer to that question is contained in the reigning international legislation, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (a convention to which the U.S. is only now moving toward ratification).

Today, we are immersed in a third period of focused interest on cultural property, beginning with the end of World War II and the creation of UNESCO (United Nations Educational, Scientific and Cultural Organization). For the first time, international trade and cultural property is receiving sus-

tained attention and is the subject of serious, often heated debate.

Most nations have adopted retentive legislation applicable to broad categories of cultural property. These employ one or more of three techniques: there are preemption laws, which create a right in the government and/or in domestic museums to acquire works offered for export; embargo laws, which simply prohibit export without prior governmental consent; and omnibus national ownership laws, which declare that major categories of cultural property (all pre-Columbian objects, for example) are property of the nation, or the people.

Such export controls apply primarily to privately-held cultural property. Many people knowingly disobey export control laws, leading to a substantial flow of illegally exported cultural objects in international commerce. The question at the heart of the current ethical and legal debate is whether market nations like the United States, Japan and Switzerland should assist source nations such as Greece, Italy and Mexico in enforcing their export controls.

We are not talking about stolen cultural property, about which there is little legal and ethical controversy. The theft of cultural objects, like other kinds of theft, is universally considered wrong. Courts of all nations are open to foreign owners seeking to recover stolen cultural objects, and the rules they apply are settled.

The debate, however, is about illegally exported cultural property. And the basic legal position was well-stated by Professor Bator: “The fundamental general rule is clear. The fact that an art object has been illegally exported does not in itself bar it from lawful importation into the United States. Illegal export does not itself render the importer, or one who took from her, in any way actionable in a U.S. court. The possession of an art object cannot lawfully be disturbed in the United States

solely because it was illegally exported from another country.”

That was the basic principle. That principle has been modified by Article 7A of the 1970 Municipal Convention, by the European Union Council Directive 93-7 of March 1993, and by Articles 3 and 5 of the 1995 UNIDROIT (International Institute for the Unification of Private Law) convention. But few of the interested parties are satisfied. And the debate about the free movement of cultural property continues.

I turn now to the competing ideologies and discourses in that debate. The rhetoric in which the various positions are typically expressed reflects and enforces their ideological sources. Here are the five major voices:

The first is the source-nation discourse. The guiding ideology among a large majority of art-rich nations and the international organization they dominate, UNESCO, combines cultural nationalism with retentionism. This discourse emphasizes the relations between cultural objects and national history, national culture and national identity. It employs emotive terms like “national cultural heritage” and “national cultural patrimony,” and prefers to speak of “protection” rather than “retention” of cultural property. Cultural objects within the national territory, according to this discourse, should remain there and, if they stray from it, should be returned. Other nations should respect and enforce source-nation export controls. The 1970 UNESCO convention supports this ideology and employs its rhetoric.

Next is the discourse of the archaeologists. The archaeologists’ ideology has, at its source, a laudable professional concern for the preservation of sites and contexts, and an archaeological monopoly on excavation, study and provocation. Archaeologists tell us that the unauthorized excavation and removal of objects from sites destroys context and causes

the loss of irreplaceable information. In their view, museums, collectors, dealers in the rich nations—by providing a market for antiquities—are principally responsible for the destruction.

Archaeologists do not like the antiquities market. They do not like commercialization, and buying and selling of antiquities, and some of them are at war with collectors, museums and the antiquities trade, whom they accuse of market-motivated rape, pillage and plunder. Archaeologists generally support more rigorous source-nation controls over the export of antiquities, and believe that they should be internationally enforced. The 1970 UNESCO convention gives weak support for that position, but the 1995 UNIDROIT convention strongly supports it.

Third is the international free-trade discourse. The post-World War II international free-trade movement that produced the General Agreement on Tariffs and Trade (GATT), the World Trade Organization, and the Treaty of Rome seeks the removal of impediments and barriers to international trade. Free-traders consider nationally imposed impediments to trade—whether in the form of tariffs or non-tariff barriers like export controls—to be undesirable. The relevant treaties of GATT and the Treaty of Rome generally express and explicate this ideology, but each of them contains an exception for “national cultural treasures,” a term that remains undefined, either by litigation or by careful scholarship.

A related discourse is based on freedom of travel, which is guaranteed in many post-World War II constitutions and international human rights conventions as a basic human right. The argument is that a person who is not allowed to take her cultural property with her when she goes abroad is effectively denied the freedom to travel. An Italian collector who cannot take her collection with her when she moves to Israel is not really free to move to Israel.

Fourth is the discourse of the acquirers, the term I use to include museums, collectors and the art trade. Acquirers favor the freer international movement of privately held cultural objects and oppose the enforcement of what they regard as excessive source-nation export restrictions. At the most pragmatic level, museums exist to acquire and preserve cultural objects for study and display, and without free movement, there will be fewer opportunities for acquisition.

Acquirers also argue that providing objects with market value preserves cultural objects that might otherwise be destroyed or neglected. They say that in an open, legitimate trade, cultural objects can move to the people and institutions that are most likely to value and care for them. Museum collections are built on occasional market acquisitions and, often more important, gifts from the collectors, and the range and quality of major private collections depend on the existence of an internationally active and experienced art trade. National measures inhibiting the international movement of cultural objects drives the trade underground, producing a corruptive and destructive black market. In basic agreement with the international free-trade movement, this discourse argues that export control should receive, at most, only selective international importance.

Acquirers also argue that art is a good ambassador. Glenn Lowry, director of the Museum of Modern Art, said: “The more free works of art are to travel, the greater shall be the cultural awareness of the culture from which they come. Moreover, the more powerful and significant the works of art that travel, the greater the impact they will have.”

Finally, there is the discourse of the cultural internationalists, the central premise of which is that there is an ethically and legally cognizable international interest in cultural property.

In this century, the clearest such statement occurs in the preamble to the 1954 Hague Convention, which says: “Damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.” Within UNESCO, many of whose members strongly assert exclusive rights over cultural property within their jurisdictions, there is a small measure of support for cultural internationalism that occasionally creeps into non-binding provisions of treaties. Thus, the preamble to the 1970 UNESCO convention says that the interchange of cultural property among nations increases the knowledge of the civilization of man, enriches the cultural life of all peoples, and ensures mutual respect and appreciation among nations.

This conference provides a welcome opportunity to advance the dialogue about the international movement of cultural property: a dialogue that over several decades has been intermittent, unstructured and only marginally productive.

Continuity would improve matters. But it may be more important to identify two fundamental impediments to productive discussion. The first is that participants and symposia often do not address the same question, either because the question has been inadequately specified, or because they prefer to talk about something else.

The central question in the current cultural-property debate reduces to this: Should the traditional international-law rule—that a nation has no obligation to enforce another nation’s restrictions on the export of cultural property—be changed? That is a carefully crafted and focused question. But any attempt to answer it quickly leads to others. For example: Should all kinds of cultural property be treated as a “thing,” or do some kinds, such as archaeologi-

cal sites and objects and artifacts, raise considerations not obviously applicable to relocations? Should it make a difference if the objects involved lack any significant cultural and historical relations to the nation that seeks foreign enforcement of its export controls?

The central question thus raises a cluster of additional questions, which are connected by bonds of relevance and materiality, and a coherent dialogue becomes possible.

A second difficulty in productive dialogue is that three of the ideologies I have described have been effectively excluded from significant participation in it. The free-trade discourse, for one, is simply ignored. Collectors, including museums that collect, and the art trade are reviled and ostracized by archaeologists, viewed with cold hostility by representatives of source nations and given slight consideration, at best, in the preparation of UNESCO statements on the international exchange of cultural property. Cultural internationalism has had only limited success in engaging the attention of archaeologists and source nations, and its voice within UNESCO is muted. Retentive cultural nationalists and archaeologists dominate the dialogue, which is conducted on their terms.

Suppose we agree on two premises. First, that all five of the ideologies are legitimate, and second, that each of the discourses expresses a core interest of unchallengeable validity, surrounded by a conundra of more or less debatable implications. If we so agree, the possibility of an easy—some might say simplistic—resolution of the cultural property debate vanishes. The prospect becomes both more complex and more interesting, and the way to a productive dialogue opens.

FERRAROTTI: John Merryman has convinced me that the question of “who owns art” sounds rhetorical. Art is owned by anybody who can appreciate it, whomever can pretend

an exclusive right to the enjoyment of it. Since the beginning, art has been a community enterprise. And “art for art’s sake” is a relatively recent avant-garde invention in order to satisfy the bourgeois. Thus, art is actually owned by those who seem capable to find meaning in it and to enjoy it. Art goes beyond any strictly legal question.

It is true, however, contrary to some present-day trends in advertising (automobiles, toothpaste, etc.), that art should not be used out of context. Michelangelo’s “David” has its place in the Piazza della Signoria. Moreover, the holy quality of art is fast developing. The policy of “cultural resources” is not only concerned with the dust of the past. It is a living experience. Art is not only a dead heritage. It is, or it can be, a self-generating resource.

André Malraux remarked that so vital is the part played by art museums in our approach to works of art today that we find it difficult to realize that no museums exist in lands where the civilization is and was unknown. Museums are so much a part of our life that we forget they have, on the spectator, a whole new attitude toward the work of art for they have tended to estrange the works they bring together from their original functions. Thus, art becomes a decisive instrument toward the construction of mass consciousness and cultural identity.

This is perhaps why we find art in the primitive caves and in the Louvre, the Metropolitan Museum or the Hermitage (St. Petersburg). We know that the need for meaning is at least as urgent as the need for food, and that the lack of meaning may eventually lead to the destruction of man. Though the artist seems to be so unnecessary in some countries or, even in this one, something like a purely aesthetic axis is actually the fundamental water-diviner for any society not yet ready to dry up. Museums, from this point of view, are a form

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“More than ever today, cultures and their traditions cannot be self-enclosed, lest they risk impoverishment and extinction.”

of self-inflicted mutilation. Of what is the pride in the eager museum visitor that is all of us?

Cultural nationalism is the inevitable offspring of an archaic conception of cultural mission. Far from the notion of a nation as a community of ideas and lifestyles that one can choose at his will or desire, it's quite different from the constitutional covenant that legally binds together people from widely different backgrounds and provides the foundation of a nation. Cultural nationalism is rooted in blood and territory. Its special outcome is appetite and ethnic cleansing.

And ethnic cleansing is not only a linguistic metaphor but a tragic day-to-day experience right now. While one cannot renounce his memory and the artifacts that keep it alive and meaningful, one should also be fully aware of the abuses of memory. From this point of view, the circulation of artworks and artifacts is a solitary countermeasure. Museums, in this sense, are not what André Malraux feared they would become, collections of meaningless fragments of old and vanquished civilizations, put together trophies of expression and prowess and predatory spirit.

A museum without walls is of course an ideal museum. It bears the mark of local social memories. But memories, important as they are, should not be turned into idols. To idolize the memory tends to blur the fact that identity and other-ness are in a strange way necessary to one another. The Greeks knew all too well that the first glimpse of their own specific identity came from the existence of the *bàrbaroi*, the non-Greek-speaking people.

For this reason, works of art, as powerful testimonials of the common humanity of human beings, should be circulated and shown in all the museums and in the streets, everywhere, all over the world. This is not to imply stealing or looting. It is a plea for some kind of new, cosmopolitan outlook, which I consider

perhaps the only way out of the present-day crisis of the circulation of values and the dialogue among ideas. A recent movement known as “cultural differentialism” pretends to respect the dignity of each culture provided that no mixture among cultures, no breeding, is condoned. Each culture should be given respect, but in isolation, separate from other cultures. French author Pierre-André Taguieff has been quite vocal about the right to certain closed cultural worlds. His attitude can easily be summed up in Henry Kissinger's phrase, when he admitted one day that he did not know and, moreover, cared nothing to know about the world south of the Pyrenees. This supposedly splendid cultural isolationism and the radical ethnocentrism that goes naturally with it, these things are no longer terrible today, in a world in which we are all migrants, and in which works of art and artifacts come along with us as part of a mobile heritage and spiritual resource.

More than ever today, cultures and their traditions cannot be self-enclosed, lest they risk impoverishment and extinction. Culture is nothing but historical processes constructed and transported through time, which meet, clash and partly fuse with other cultures and other traditions, thus giving rise to cultural “whole” traditions or half-caste cultures.

Historically, there has been a constant flow of information among cultures and a continuous process of intellectual give-and-take. Paradoxically enough, the operation of cultural traditions would be even easier than in the past, especially with the present-day electronically-assisted communication. I'm aware, however, that the word “syncretism,” especially among academics, is not really well received in many intellectual milieu. Syncretism is simplistically equated with confusion, thus the way is paved to an attitude of contempt, and to an *a priori* rejection. It has already been observed that Hellenism was bound to failure not only because of the pre-

mature death of Alexander, but also the intrinsic difficulties.

According to Johann Gustav Droysen, just as God had separated the light from darkness and divided the peoples of the East from those of the West, he inspired at the same time in them a craving nostalgia and desire for reconciliation. It seems that the same anguish and need for unity is at work in each individual between two contrary and symmetrical poles.

It is hard to see any solution to discrimination without a concept of world citizenship assisted by a world circulation of the works of art. To this goal, artistic activity is bound to play a positive goal in terms of shared values and a common destiny. It might be true that man goes beyond his own legal and perhaps even artistic production.

HAWKINS: The Metropolitan Museum has had an ongoing project for the last five years. As we examine the legal, moral, and ethical framework of collecting, we must also examine the realities of it. And one of the great realities is the Metropolitan Museum. We actually have art. We actually study it, repair it, put it on display, publish it, learn from it, disseminate that knowledge in a broad variety of places, and seek other people's opinions. It's a great university of knowledge on the fine arts.

South of the Great Hall, on the main floor of the Met, is the area committed to the classical world as we see it. And for many years, especially up until the 1930s, the museum devoted a huge amount of space to those collections, which were immeasurably enhanced from 1900 to the beginning of the World War II. Enormous collecting went on, excavations, et cetera, and the collections grew very fast; much faster than anyone could really absorb or deal with.

As a result, a great percentage of these objects went into storage when they arrived in this

museum, were never properly studied, were never properly repaired and never properly examined. And only the big stars that were known from the outset were put out on view. And this process only increased in the 1950s when Francis Henry Taylor and the trustees decided that there be a dining room in the museum to feed the increasing number of people who came there. As a result, in 1953, the great Roman court was turned into a restaurant. This restaurant served a public function, but it also showed a retreat from the display and study of the classical world. Not an explicit retreat, an implicit one. And our great curator at the time was continually lobbying to increase the space devoted to classical art.

Over the last five years, we have done exactly that. We have spent an enormous amount of time and resources taking everything that was in storage, examining it, deciding what was really meritorious for display, study or loan, devoting enormous resources to conserving it and especially to restoring and redoing the galleries that have traditionally housed it.

We celebrate the opening of eight new Greek galleries. These galleries span the sixth century B.C. to the second century B.C. Bronze, clay, gold, silver, stone and glass are all displayed next to one another. This is a deliberate attempt to break down the barriers between specializations, because in many museums, galleries are only connected to one another because the subject matter in one will be all pots, or in another, all sculpture.

I would say that this act of the Met is an enormous commitment to culture and to a great collection. The publication, the dissemination of that knowledge, the display of these collections, will do an enormous amount to stimulate knowledge in this field. I think it's very important to know what happens to the reality of art—how it is dealt with. And you may come to realize that in many nations, incredibly rich nations in cultural terms, their

“The real way to preserve this stuff is stability, and it’s to get the things that we can save into the most stable environment.”

resources are not commanded or not used in this way for lack of funding and for other reasons. This is not a criticism of that.

On the other hand, we at the Met think that there is a great deal to be said in a cultural debate about what you do with what you have. It’s important to show everyone’s culture in other contexts. That is part of the argument that Professor Merryman puts forth, the international argument. I know that’s not necessarily a popular argument with some segments of the community, but I think it’s a very important one. Our museum is a monument to that.

KOZLOFF: I think the real problem lies within a battle of values. I have seen that battle as an archaeologist, as a museum curator, as an art dealer now, and it’s frustrating. It’s frustrating when I see a pot shard that has an absolutely unique inscription that’s never been published anywhere, never been seen before. It’s intensely valuable to me as someone who’s interested in ancient history in an academic way.

But, I know that a beautiful little cup with an owl painted on the front of it is worth money and will bring money on the art market, in the auction house, in the art gallery, in the antiquities gallery. But though the little pot shard with the unique inscription is worth no money, it has great academic, great historical importance.

And this is what so much of the battle is about. When we talk about adversarial relationships—the flyer inviting all of us to this symposium spoke about the drama and the winners and the losers—my first question to myself is, “Oh my God, which side am I on?”

But my next question is, why is this a drama? Why is this a conflict? Why is this an adversarial relationship?

I’d really like us to think about non-conflict. I’d like us to think not about drama, not about winners and losers, but about the cultural

property itself, and about what is the best way for us to join together and preserve it for the long term. And the long term doesn’t have to do just with, “Who owned it, when?” It has to do with, “Who’s going to own it 2,000 years from now? And what can happen in 2,000 years? Is this nation still going to be a nation 2,000 years from now? Are any of the empires or countries that were nations 2,000 years ago still in existence? How many of them are?”

The real way to preserve this stuff is stability, and it’s to get the things that we can save into the most stable environment. Museum people are all about that every day, trying to stabilize the environment. And the most stable environment is not always under the ground, because it gets bombed, because there are fertilizers used, because there are dams built.

I’m going to speak against conflict. Someone else spoke about objects as ambassadors today. But there are source nations who also consider their works of art to be ambassadors. Mohammed Salah, who is the director of the Cairo Museum, visited Sydney, Australia a few months ago to join the head of a statue from the Cairo museum onto the body of a statue that belongs to the Nicholson Museum in Sydney. And he said, “Egyptian monuments abroad are ambassadors for the homeland. And as long as they are exhibited in a distinguished place and are exhibited in a respectful way, we are very happy to have them exhibited outside Egypt.”

MEYER: As a designated journalist, I’ll try to start off some conflict. While I was impressed by Professor Merryman’s learning, I think on this issue, we live in different worlds. What he sees as a legal problem, I view as one of ethics and behavior.

Let me illustrate by describing the burning of a portrait of Winston Churchill. The portrait was painted by a British artist of repute, Graham Sutherland, and was commissioned

by the British Parliament to be presented to Churchill on the occasion of his 80th birthday in 1954. Trying unsuccessfully to suppress his feelings, Churchill said to the assembled worthies, “The portrait is a remarkable example of modern art. It certainly combines force with candor,” at which a gust of laughter swept through Westminster Hall.

In fact, Churchill hated the picture, which perhaps too directly spoke truth to power. It did not flatter him, but showed his jowls and his willful chin. “I think it is malignant,” Churchill told his physician, Lord Moran. Two years later, on her own initiative, Lady Clementine Churchill burnt the picture in secret, explaining to Lord Beaverbrook, the press lord, that it would never see the light of day. In fact, it became known only after both Churchills had died. (In July 1999, Sutherland’s primary sketch for the portrait went on public view for the first time at Canada House in London, but nothing new has come to light about the fate of the full portrait.)

Doubtless in terms of law, Lady Churchill committed no crime. But in terms of ethics, it was an act of vandalism. The painting, after all, had a public character. It was presented by a parliament on an important occasion. Like it or not, it was a document and a social artifact as well as a work of art. This seems to me the important point: Lady Churchill was not just the owner of the portrait, she was its steward and its trustee. She had what lawyers term a “fiduciary relationship” to the painting. According to “Webster’s Third New International Dictionary,” a “fiduciary relationship” is a relation existing “when one person justifiably reposes confidence, faith and reliance in another whose aid, advice and protection is sought.”

By my own reading, this means we expect a higher standard of ethical behavior from people or institutions to which we have a fiduciary relationship when we give them steward-

ship of cultural property. Specifically, in the case of museums, it seems reasonable for the public to expect that: 1) any cultural property given for a public purpose should not be treated as private property by surreptitiously selling or swapping the works of art, in a process known as “deaccessioning,” 2) that the museum should not acquire cultural property that it knows to have been stolen or illicitly smuggled from its country of origin, 3) that this also applies to cultural property that was seized before and during World War II by the Nazi regime, which is a very special case.

I think most museum ethicists would concur in these points, or at least broadly concur. Where I think we might differ is on the curiosity, or lack of it, too often shown by museums about the provenance of cultural property that museums cover. It does seem to me that the transparency should not be confined to color slides in the museum shop, but that museum labels and catalogs should divulge every relevant detail about the acquisition of the cultural property to which the museum is the steward and not the owner. In short, this is not just a matter of law but of ethical standards that we ought to expect from all stewards of cultural property, collectors, dealers, auction houses, as well as museums.

As an ethical matter, of course, every country ought to respect another nation’s laws regarding the protection of cultural property, just as we expect China, for example, and other countries to respect our laws that protect patents, trademarks and copyrights.

URICE: There is also something in Karl’s paper that I want to raise. This is a very interesting problem, because it brings us back to the legal concerns. Lady Churchill committed no crime in a common-law jurisdiction that did not have, at the time, enacted moral rights legislation. Had she done the same thing in France, however, she certainly would have exposed herself to civil liability, though she

“Museum labels and catalogs should divulge every relevant detail about the acquisition of the cultural property to which the museum is the steward and not the owner.”

still would not have been exposed to criminal liability. Certainly she should be an object of ridicule, but in some jurisdictions she actually would have had legal liability, which brings us back to “What do we do with different legal systems approaching the very same object from very different perspectives?”

But before we get into the legal side of things, I want to refocus on “What is cultural property?” Derek Walcott, in one of his poems, implicitly was stating—as the UNESCO convention in 1970 states explicitly—that flora and fauna are cultural property. By starting this conference with a poet, implicitly we are understanding among ourselves that the literary arts are cultural property. The focus of the panelists today was very much on art.

(Addressing the panelists) Would any of the panelists comment on a broader definition of cultural property, and how you see a broader definition perhaps affecting some of your conclusions?

AUDIENCE QUESTION FOR JOHN

MERRYMAN: Given the conclusions that were reached in your presentation and the panelists responses, which focused primarily on cultural property defined by works of art, would your conclusions have differed had we broadened the definition—for example, as the UNESCO 1970 convention does—to include examples of flora and fauna, literary arts and other forms of cultural property?

MERRYMAN: No. As I tried to indicate, whatever is valued by people—that is, a cultural artifact—is certainly cultural property, and that would include literature, certainly. Flora and fauna is a little more difficult, but to the extent that man has somehow intervened on it, it is definitely a cultural artifact. What we’re talking about here is the intervention of man. Objects of whatever kind that represent the human past in some way, or evoke the human past, are cultural objects. And cultural objects

are, from an ethical and legal point of view, generally thought of as objects of property, objects in which there can be a legal interest. If we think of cultural and intellectual property, patents, copyrights, works of culture, Hollywood movies, as also part of cultural property, we may begin to see some of the resentments on the other side. Countries that have no natural resistance to protect their cultures against what they regard as an intrusion, I think, rightfully regard the United States as using a protectionist device that’s contrary to the laws that should apply. Yet there should be a broad reciprocity if we expect them to respect trademark laws, so that when you’re in Mexico City, you do not get counterfeit Vuitton luggage sold to you. We should also respect their right to decide what is an exportable work of art. And if they say that everything below ground belongs to the people of Mexico, under the system that we work, then it’s their right to do so.

URICE: Certainly trademark and copyright issues are mutually enforceable because of explicit treaty provisions to that effect. In the area of cultural-property law, we have been particularly deficient in trying to reach the kind of consensus that has been reached in such fields as intellectual property. Do you see a difference there? In the absence of treaty provisions adopted by the nations, what is your foundation for supporting that reciprocity?

MEYER: My foundation is what lawyers call equity—that we’re in a position where we have lots of trademarks, lots of works of art, Walt Disney films, but we don’t have antiquities. In China, they have lots of antiquities, but they don’t have a lot of the things they covet here. That’s the basis for global barter, and it would be interesting to recognize their rights in return for their recognizing our rights on copyrights and intellectual patents.

KOZLOFF: I think again we’re getting into this adversarial thing—our rights, their rights.

And when we take the very broadest view of cultural property, we do come up with things that are very easily replaceable, like trademarks, Coca-Cola, CDs and so on. What concerns me when we make this subject too broad, when we say that everything should stay under the ground, or everything should belong where it is, that there are many things that are simply going to be destroyed. And that worries me. I'm not a proponent of looting, but looting is not the other side of the coin. Preservation is the other side of the coin.

But very often, governments are not as interested in preserving as they are in the ownership rights. As I was once traveling through a country that borders the Mediterranean, I came across an obscure archaeological site I'd been searching for, and I found that an oil company had drilled and blasted, and I found a pile of marble chips in the middle of the site. I was very upset because I thought the company was an American firm. I called this American firm and I asked, "What are you doing blasting on this site to look for oil?" They said, "Oh, we're not allowed to do anything there. That's a protected site. Only the national oil company has the rights to that site."

So I really don't believe that strong patrimony laws are the very best way of preserving things, and lumping everything together into one pile doesn't help save the antiquities.

FERRAROTTI: I agree. There is a danger of amplification of a definition that doesn't define anything at a certain point. Culture means cultivation, cultivation needs fertilizers, and yet artifacts, cultural property, and even literary property should be protected.

In a sense, they are imbued with a special consciousness. They acquire a collective value for the community and for other communities potentially, so I do not favor the broadening of the definition of cultural artifacts and works of art to the point of considering flow-

ers, etc. As long as ecology is respected, then I think these particular aspects of human experience would be essentially respected. But that should not lead to the confusion between natural situations, even ecological imperatives, and works of art as such.

URICE: With the emphasis on preservation that Arielle has given, we are led away from definitions and into values. And one of the remarkable features of this field is that it has now been nearly 30 years since the first attempt to place this discussion on cultural property and who owns it and whether it should move across international boundaries, into a value-laden format. And that was Paul Bator's 1971 essay in the *Stanford Law Review*, later published as a monograph.

Since that time, the issue of values and a value-driven discussion is one that has all but disappeared. And I believe it is part of the reason why there has been so very little progress in the last 30 years and why we still find the archaeological perspective on one side, and the collecting perspective on the other, when it comes to cultural property of an archaeological nature.

(Addressing the panelists) What are the values that the panel finds particularly important, that could perhaps provide some sort of consensus?

MEYER: First of all, let's look at the American legal position. That position is really only defined through the ratification of the UNESCO convention on international movement of art. That ratification occurred in 1972. Between 1972 and 1983, the Senate debated four different versions of an implementing act. That is to say, when they ratified it in 1972, they ratified it with reservations. They said, "This will not take effect as an international treaty until we have implemented it with legislation that will cover all the points that we're concerned about."

"We still find the archaeological perspective on one side, and the collecting perspective on the other."

“Provenances
can be forged,
too.”

That led to a 11-year debate and discussion within the archaeological/collecting/academic community. Finally, in 1983, the implementing act was passed. It's worth noting that it was a compromise. All concerned groups were consulted, to some degree: the collecting community, the archaeological community, the academic community, museum community, dealer community, all of the communities that have a very ongoing and important commitment to works of art and their preservation.

This implementing legislation is in effect. It has not been a huge success. A lot of nations tend to bypass it. But it does have the merit of best defining the national consensus on what is important, and acknowledging that there have to be tradeoffs. For example, to get access to this treaty, if you're a nation applying for a bilateral agreement, you have to be able to demonstrate certain things. You have to demonstrate that you are taking steps within your own country to protect your cultural patrimony. You have to take steps to show that you're seeking international agreement, that it's not just the U.S. you're asking, that you're asking other people in the area for help.

These are threshold questions that were thought important before the U.S. would then grant a bilateral treaty. I think it's worth pointing out that the UNIDROIT convention mentioned in your remarks, John, has not been adopted by the United States and has in fact not been adopted by any Western nation that I know of except possibly France.

AUDIENCE QUESTION: The Association of Art Museum Directors recently instructed all its member museums to examine their collections and identify and possibly return art that was looted by the Nazis. Although these cases are very different, should the same type of self-examination occur with antiquities?

KOZLOFF: We've worked very hard to find out the background of works of art in our

collection in Cleveland, and I believe that most curators do that. In fact, looting is not the big issue in antiquities. It's the biggest story because there's a lot of conflict.

The biggest problem in an antiquities department in a museum is forgeries. Most museums really do try to display as many of their works of art as they possibly can. They try to research them. If there's a problem with their past ownership, that has to come to the fore. Museums lend things to other institutions, to exhibitions, and so forth. The number of problems that have occurred over the years—and there have been some—have been very, very few. And it's that it's such a great story of the winner versus the loser that makes it so flagrant, I guess.

FERRAROTTI: This view is not really popular, but it so happens that in certain areas north of Rome, in the Etruscan area, the activity of what I would have to call “pure and simple thieves” in the Etruscan tombs, strangely enough, has been at times very positive. They were responsible for great findings. Somehow, they were filling up the gaps left by professional archaeologists.

URICE [addressed to Kozloff]: You come from the background of a Greco-Roman department. Indeed, looting is the problem, particularly in pre-Columbian materials and new-world materials and in many other parts of the world. Do we here have a potential distinction between different kinds of cultural property, geographically limited? Do you think an equivalent curator in pre-Columbian would be able to say looting is not the problem?

KOZLOFF: I don't know if a curator in pre-Columbian would say that. I do think that equivalent curators in almost any field would say that the biggest culprit to the destruction of archaeological sites is simply human progress. And it is the fact that the popula-

tion is exploding all over the world; we need new houses, we need new roads, we need subways, we need shopping centers (or maybe we don't need them, we think we need them), hotels are built, apartment houses are built, and so on. One of the greatest finds that occurred in Alexandria, Egypt was when a hospital was built.

So yes, there is looting. There is looting in South America, Central America, there's looting in any archaeologically rich area. But that is not the biggest problem. It's the creep and crawl of civilization, or the explosion of civilization, if you will, especially in this century.

AUDIENCE QUESTION: Don't you think there's a relationship between looting and forgery: that is, particularly in the 1920s when curators were so eager to acquire things that they did not presume to ask questions about provenance, where things came from? They encouraged forgeries. I'm particularly thinking of the Metropolitan. . .that one wonderful Etruscan piece that is no longer on exhibit.

HAWKINS: I think you have an interesting point. The history of the acquisition of that piece, was that it was acquired in the 1920s. They were so flabbergasted by this gigantic

sculpture of such power and beauty (no one had ever seen anything in Etruscan art that was more than three inches high, with a few exceptions), that they plunged right ahead. And the forger kept one of the fingers and was later able to demonstrate how it fit on the hand. But there were grave doubts about the piece almost immediately. The Met just made a huge, blind mistake.

KOZLOFF: Concomitant to what you're saying is that if there is so much looting going on, and there are so many real antiquities coming out of source nations, why is it that there are so many forgeries? And there just aren't so many things coming out of source nations.

URICE: I think I would disagree with that and say that forgeries are kind of the venereal disorder of the international art market. They're punishment for excessive desire, and the problem of the lack of curiosity of a provenance is crucial to the willingness of museums to accept Etruscan masterpieces. I wonder why the Metropolitan Museum does not put some of these forgery masterpieces on display so that we can see them at least as an object lesson of mistakes past.

MERRYMAN: Provenances can be forged, too.