

ETHICS AND CURRENT CLAIMS: IS THERE A FAIR SOLUTION?

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MUCHNIC: This penultimate panel is charged with finding solutions to the kinds of disputes that have arisen over the years regarding the ownership, stewardship and travels of cultural property.

This group has been asked for the resolution of some differences, or if nothing else, to find some common ground on which to build consensus. Our mission here is also to focus on current cases. It's far more productive to look to the present situation and toward the future.

I've collected a number of ideas regarding solutions from conversations, in the press and in the conference. One is the idea of establishing an international art tribunal, or board of arbitration. Another is to establish an international art fund of some kind, particularly pertaining to the Nazi-confiscated material. As to where the money might come from, the suggestions are a little more vague. Perhaps there could be contributions solicited from private donors, or perhaps there could be a levy on dealers and auction houses, which inevitably would be

passed on to the buyers. Another idea is that museums should simply stop collecting the cultural properties of other countries and instead work out cooperative loan exhibitions. Another is that source countries should have incentives for reporting archaeological finds, or make incentives more attractive. Another is that universities, colleges, art schools and other educational institutions, perhaps even at the elementary and high-school level, should do a better job in educating our students about the issues of cultural property.

Yet another issue is getting the word out about all these issues. We might try to develop some strategy or mechanism for working with a core group of journalists who are interested in these issues to translate very complex ideas and issues in the press, and tell compelling stories that convey the broader implications of these problems to the public. There's also a lot of interest in the possibility of communicating on the Internet.

In the case of the Nazi-looted material, the Association of Art Museum Directors and the Art Dealers Association of America have both adopted guidelines for their members. But they include no practical suggestions as to the resolution of claims. So it has been suggested that these groups take the next step and try to establish some procedures for reaching equitable solutions.

Professor Jaime King suggested a few more possibilities. One is a private initiative that would endow and support foundations in developing countries for the preservation of cultural property. Another is the backing of efforts toward scientific endeavors in the developing world. And finally, the creation and use of databases.

However, until we can even define cultural property and agree upon what it is and differentiate between the movable property and various other distinctions that should be made, it's very difficult to make any progress at all.

So one basic suggestion has been to start from there, with some good definitions.

JESSUP: I feel a burden of responsibility. I'm the only representative here from one of the largest and most culturally threatened areas of south and southeast Asia. Because of this vulnerability and responsibility, I feel I need to address a broad range of issues.

There are three parts to my presentation. First, I will address some arguments that have been made to protest limitations on the trade of cultural artifacts that are deemed "off limits" by the source countries. Second, I will analyze conditions in Cambodia. And finally I will suggest possible solutions, either accidental or deliberate, to some of the problems.

Many points made by dealers and collectors—that museums are the chief agents of cultural understanding, that museums are largely stocked by private collectors' contributions, and that there has thus been an enriching interchange of cultural objects—are perfectly valid. We are all deeply indebted to museums and the collectors who supply them. No one disputes this role of art objects in the insights into other cultures and the resultant increase in international understanding and tolerance.

What is questionable is the assumption, by some, that only the international market value of an object establishes its validity in the eyes of its own source country. That claim has actually been made. Also questionable is that retentionist policies are nationalistic in the wrong sense and ultimately foster the black market. Arguments that limitations on the trade of art objects from exotic civilizations will deprive our society of insights into other cultures are well-answered by Dr. True's description of the recent Getty policy of long-term loans connected to conservation projects. If every major museum and every major collector reached an agreement with a source country, the money that might have been

spent on acquisition would be spent on loan exhibition/conservation projects similar to the Getty's and those of other foundations who underwrite exhibitions. Our high-minded anxieties about cultural isolation would be resolved. So would the contention that most source countries are incapable of looking after their own heritage, a subject that was well-presented by Professor Gerstenblith. Furthermore, such commitments to partnerships between technically and economically rich countries and individuals on the one hand, and countries with threatened cultural treasures on the other, would make clear the distinction between participation in cultural revelation and protection, and the insistence on sale and ownership, which are instances of the all-too-human need to profit and possess.

The argument is not that either profit or possession is intrinsically wrong, only that neither should be pursued in the teeth of the will and rights of the original creators or heirs. Many argue that adopting any specific date for abolition or condemnation is arbitrary. Why 1970? '72? '83? One of the chief problems confronting all the interested parties in the current debate is that the situation is too complex to be contained in one resolution, and that sooner or later something arbitrary is bound to come up. Attempts to be all things to all people are doomed to failure, because each country is unique and needs a specific formula to foster its development and protect its past for the sake of its future.

"One step at a time" is not a dramatic creed, but it has much greater chance of success than a policy that is so broad as to be meaningless, which is what is happening with the Hague Convention, or so sweeping as to be anathema to all. We need to go beyond the idea that our Eurocentric and market-based evaluation of an object from a foreign culture is the only valid basis, for its worth. Consider also, the presentation by Mr. Haskett of the objects of worship being treated as such even within an aesthetic

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setting like an exhibition. I can recall one particular sculpture of a kneeling figure. . .allegedly a portrait of a queen. . .mysteriously, constantly, every week was given flowers of offering. The flowers would magically appear, every Monday, at the knees of the sculpture. And the very last day of the exhibition, I found the woman who did it. She was a Cambodian, and she was kneeling in prayer in front of this object. I may add that this object has been in a museum for many decades. It has not, however, in the eyes of those who believe in it, lost its spiritual value.

Because generalization leads to perpetual disagreement, I would like to concentrate just on Cambodia, a country whose artistic heritage I have been overwhelmed by during my recent decade of work. A little background about Cambodia. Its earliest configuration, what the Chinese called Funan, is the oldest documented polity in Southeast Asia. The dynastic records go back to the third century of our era. It’s the nexus of the fusion of Indic civilization, with its export of treasures of Buddhistic and Brahmanistic culture, and the mystical cultures of the Austronesian and Mon-Dvaravati people who emerged from the region that is now southwest China. As with all sublime artistic achievements, the resulting architecture and sculpture transcend formulae of power and skill, though both were necessary for their evolution.

Cambodia’s surviving artistic heritage goes back more than 1,000 years in an unbroken, though not always peaceful, line. For complex reasons of international strategies and struggles, the last 30 years have been the most anguished years in that country’s long history. Although the monuments themselves were not targeted, almost all those who were trained to study and protect them and worship in them were killed. The disorganization and economic disaster that engulfed the country destroyed any system of maintenance, research, protection or trade. The recent attack on Banteay Chhmar, a 12th cen-

tury temple near the Thai border, has caught our attention just because it was reported by *The New York Times*.

What we don’t read about is that this very same temple was attacked about three years ago by people who went in on rocket launchers with chainsaws and hacked off 23 meters of bas-relief. Even the relatively well-protected national icon of Angkor Vat, which appears on the Cambodian flag, was attacked about two years ago. Robbers went across the causeway by night, and sawed off a piece of balustrade, which turned out to be too heavy and fell into the moat. This piece was too heavy to be carried away or fished out by the thieves, and it was eventually recovered.

But most such vandalism is unredressed. The extremely well-managed World Monuments Fund site at Preah Khan was targeted at least once a month until the last year by thieves who hacked off heads from reliefs, thus damaging all the surrounding context and, usually, damaging the head as well. Imagine the vulnerability of the well over 1,000 temples in parts of Cambodia other than the region where these two—which are in a well-protected area—are situated. These other areas have no guardian angels to protect them.

The paternalistic viewpoint is that such vulnerability mandates the intervention of foreign organizations to control the situation, either internally or by removing the objects for safe-keeping. The Cambodians are well aware of their nation’s shortcomings. They acknowledge that there is corruption in certain parts of the armed forces, military personnel who collude with dealers to smuggle and snatch. They acknowledge that the pitiful salary level of the minuscule force of guardians protecting the temples could never prevent the seduction of bounties paid by the front men of the international gang of supply and demand. They acknowledge that a lone temple guardian carrying an antiquated gun that, in all probability,

has no bullets can't possibly resist the threats of predators armed with AK-47s. Far from evading responsibility, the few cultural survivors of the Cambodian holocaust acknowledge that internal corruption plays a part in the crisis, and that they need international support and advice to cope with their problems.

In an unusually unchauvinistic way, they welcome foreign teams in the archaeological preservation scene. Right now, there are French, Japanese, Hungarian, German, British, American, Indian, Italian, Yugoslavian and Indonesian organizations working on Cambodian conservation in collaboration with Cambodian counterparts, many of whom are being trained as a result of these operations. Possibly no more compelling example exists of a people who desperately need our help in preserving every aspect of their cultural inheritance than that of the Cambodians. Most people are unaware of the highly professional ethics of a small group of Cambodians who have been gathering the statistics and facts necessary for the inscription of Angkor Vat as a World Heritage site. It is not easy to have a monument classified but this complex application was successfully achieved by Cambodians themselves. In addition, there is no publicity about the research currently being conducted by a small archaeological group to assess the current condition of important but relatively unknown sites.

Two sites from this list have been documented so far with great care. The results are daunting. There is evidence of much change and deterioration that cannot be ascribed to natural weathering. The stone is of the very hard pink variety found at Banteay Srey, a sandstone that cannot be broken except by violent blows. It should be emphasized that these are not well-known sites, so the conclusion is that the network of destruction and theft is widespread and well-organized. The funds for such essential research are frighteningly limited, so the Cambodians are proceeding rather slowly

with this inventory, even though the basic costs are minimal by our standards.

Most impressive is the thorough analysis by this meagerly staffed and financed group of dedicated Khmers of the myriad problems confronting them, and their willingness to admit their own shortcomings. They point out that pillage can be carried out on several pretexts, including that of political dissidence. They are aware that in some areas, there is little will to protect the patrimony, sometimes because there is no funding for adequate compensation to the finder. The art fund is a good idea, or a reward for people who find antiquities or who report plunder. Sometimes the problem is a result of dismaying ignorance of their own culture by certain Cambodians, who were forbidden even to learn to read in a period when dissidence was instantly punished by death.

A small force of patrimony police exists. They number, officially, 500. In fact, there are 200. They're badly paid. They have no equipment. There are more than 200 structures in the Angkor area alone, major temples, while the country as a whole has well over 1,000. It's not hard to see why the temples are subject to this kind of vandalism. There are few statistics about the number of thefts, and many people who could bear witness are afraid to speak. The night raids by dealers in a chain of gentrification, up to the "honorable foreign dealer," are often backed by ex-Khmer Rouge military who no longer have a cadre, salary or job. Museums have often been complicit in the thefts, though this is diminishing and it luckily does not affect the National Museum in Phnom Penh.

The priorities of the Ministry of Tourism and the Ministry of Culture are often in conflict. The Ministry of Tourism would like to see 20,000 people a day climb Angkor Vat. The Ministry of Culture knows that this will destroy the goose that lays the golden egg, not to speak of the cultural heritage.

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Private enterprise concessions based on political power and clout are often at odds with conservation. Another example: Permits were granted a couple of years ago for stone quarrying involving dynamiting that caused the complete collapse of one of the major temples in the important 10th-century site of Phnom Chisor. The Cambodian authorities are fully aware of these internal problems and very willing to accept foreign advice. The inhibiting factor is, again, drastic lack of resources.

As if all these political and economic problems were not gargantuan enough, the Khmers have to contend with the inherent problems of the engineering of their monuments and the nature of the materials from which they're constructed. In their millennium of glorious construction, they did not progress beyond the corbelled arch. Khmer architecture lacks the true arch. If Cambodia were not geologically stable, nothing would be left standing. Another problem is inherent in the sandstone used for most Khmer monuments. Its layers vary in their porosity, and the differing rates of absorption and release of water produces delamination. Sixty percent of the glorious and apparently very sound Apsaras reliefs on Angkor Vat itself are delaminating, although the casual viewer cannot see it. A study is being conducted at the moment by a German/English collaboration.

Short of external political influences, what solution can the developed world offer? The short answer is economic generosity, but that's simplistic. Probably the only effective aid is carefully detailed, specific projects involving training and supervision. The World Monuments Fund is doing just that. The World Bank should respond positively and quickly to its president's recent initiative to include cultural concerns in the social reconstruction agenda. Given the lack of resources, given the political confusion, the physical degradation and cultural deprivation in Cambodia, the vulnerability of its cultural

patrimony needs to be perceived as the responsibility of all who admire it. We should try to visit the country, enjoy the revelations of its architecture, borrow its sculpture.

It would be egregious to demand the end of all trading in antiquities. But surely a case can be made for a moratorium of five years on the trading, buying and selling of Cambodian art, unless it has clear proof (not a fabricated one, an increasingly common trend) of a pre-1970 provenance. And regardless of whether an acquisition may prove to be not only legal but also ethical, there should be no disagreement that any institution or individual collector that acquires an inadequately documented architectural fragment is complicit not just in trafficking in stolen cultural property, but also in vandalism and cultural obliteration.

One positive step that could be taken would be another conference such as this, with the addition of representatives of the Ministries of Culture of the affected countries, from NGOs, from the World Bank, and of course, UNESCO, ICOM, and the World Monuments Fund. Only through a direct airing of problems and priorities can the issues be addressed.

One other solution? A very renegade one: the evolution of better and better fakes. There are marvelous fakes on the market. They protect the real things. I'm all for them. It cannot be too strongly emphasized that the sculpture, the reliefs, and the temples they come from are not just supremely beautiful objects, they're active components of the religion and society of the Khmers. Much more than tourist destinations, they are the very essence of Khmer identity—an identity that has been brutalized and almost destroyed by decades of war and astonishing, perhaps unique examples of self-genocide. We should all focus on this inseparable link between the Cambodians and their cultural patrimony and vow to respect it. I would like to conclude with a remark made

in a completely different situation, for a completely different reason, but that seems very relevant. It was made by Eldridge Cleaver: “If you’re not part of the solution, then you’re part of the problem.”

EMMERICH: I have some comments. The first is in regards to the very affecting story of the Cambodian lady found praying and offering flowers. I would underline the fact that this happened in this country. This incident documents the case for American exceptionalism. We are a country of immigrants. Don’t these immigrants have a moral right to their fair share of the art and culture of their ancestors? If you think for a moment about where their ancestors came from, of the people that inhabit our cities, you will see that a fair case can be made.

The other point that was just made is about the inherent vice of Cambodian stone, which was handled in a way that promotes self-destruction. The solution is the expenditure of a great deal of money. It is here where the art market makes its great contribution. In endowing works of art with value, a society can preserve only a few things. It’s very expensive to preserve things. You need air conditioning, you need heating, you need guards in the museum and at sites. Only a few things can be preserved. Things without value are destroyed.

Think of the plight of costume institutes, museums of old costumes. There are very few. Why? Because clothing, when it’s worn out, has no value, and it’s allowed to self-destruct, become rags, disappear. Once in a blue moon, a great-grandfather’s uniform or grandmother’s wedding dress survives. It’s very rare, because these things have little value. Now that designer dresses from the earlier part of this century suddenly appear to have value, you may be sure they will be protected. The current interest in Alvar Aalto and Danish modern furniture has made the original pieces from the ’50s suddenly valuable, after the

immense destruction caused by it having no value and ending up on the junk heap.

Most source countries have laws preventing the export. It’s all right to collect in the country as long as you don’t take it out. It is this retentiveness that exposes a weak case, because grave robbers are as destructive if the work stays in the country as if the work goes out of the country.

An important distinction needs to be made between architectural monuments—which are indeed defaced and destroyed by brutal vandals, use of chainsaws and such—and the great majority of finds, which are things found in tombs. As a culture, we do not like to deal with death. It isn’t mentioned in polite society. As a dealer, I was very conscious of showing, say, a Greek vase or Mayan vessel, and when someone would say, “But Mr. Emmerich, this is 2,000 years old. How come it is still intact?” And I would answer, truthfully, that it was buried as an offering. If I were to say, “an offering with the dead,” the collector would probably walk out. We don’t want to know about death.

The fact is, in antiquity, in almost every culture, the dead were buried with status symbols, with artifacts that are, by their nature, quite repetitive. I believe there are 19 forms of Greek vases. Once you have 19 forms 100 times over, how many more can you possibly store in the warehouse of your museum? Indeed in Rome, in Athens, in Cairo, in Mexico City, in Lima, the museum warehouses are filled to the rafters and then some, allowing things to slowly crumble, things that would have enormous appreciation and value in museums and in collectors’ hands here. The retentiveness of source countries should be looked at carefully, because they apply one rule within the country, and another rule when things are exported.

The anxiety of source countries about retaining important pieces could easily be solved by

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an export scheme. For instance, if you want to export anything, you must submit it to an export board with a declaration of the price you put on the object. The government has the right to pre-empt, at the price you declare, and you pay a 25-percent tax for the export. That is about the cost of smuggling, anyway, and exporters, dealers, and collectors would gladly pay the 25 percent in exchange for a clear export permit and a piece of paper allowing them to export and show future buyers that the piece is exported legally. One in four, which is what 25 percent would give you, is more than enough for all those home furnishings exported now illicitly from China, Peru, Mexico, Egypt and every other country that had a great ancient culture.

It's a very practical solution. It has not been tried. Why? For internal political reasons. Let's assume there are the reds and the blues, and the blues would propose such an export scheme. "There they go, selling our national patrimony," you hear from the reds. It is the easiest nationalist cry, but there is a solution. It would be self-enforcing. It would produce all the revenue a country would need. It would give all the revenue to retain the truly great pieces, while at the same time sending abroad the surplus works that cannot help but create interest in the country, interest in the culture, interest in tourism.

It can only help the country. How many people go to Libya as tourists? They go to Egypt because they've seen Egypt in museums, they've read about Egypt, it is the ancient art of Egypt that fascinated people, the tomb of Tutankhamen. Having seen the actual things creates one of the main underpinnings of the Egyptian economy: tourism. In Libya, whether under the current dictator or not, there's no tourism. And yet there are great Roman sites on the coast of Libya. But they're not known. Our museums don't have anything.

I would like to make a special case for the dis-

persal of art. Assuming that we're all agreed in the wish to preserve art, let me read a litany of art lost: The shelling of the Louvain library in Belgium in 1914. The shelling of the Rheims Cathedral in World War I. The bombing raids of the Germans on English cultural sites in 1940. The deliberate destruction by the Germans during World War II of cultural sites in Poland. In Russia, Chekhov's house, Tolstoy's house, churches, synagogues, the old city of Warsaw. The shelling of Montecasino. The destruction in the wake of the India/Pakistan partition. The spreading urbanization and consequent destruction of archaeological sites in Mexico City, Rome, the Athens subway, Guatemala City, etc. The flood of Florence. The impending flooding of Venice. The Cultural Revolution in China. The Khmer Rouge. The flooding produced by dam construction. The Aswan Dam in Egypt. The Seven Gorges in China. The recent Assisi earthquake. The Mafia bombing of the Uffizi. The potential earthquakes we've got right where the Getty is, on the fault line, and in Japan. The Yugoslav destruction of the bridge at Dubrovnik. The vandalization caused by deranged individuals. The Pieta in the Vatican. Rembrandt's "Night Watch" and a Barnett Newman in Amsterdam. The theft of the Vermeers and others from the Isabella Gardner museum, still unresolved. The reported decapitation of statues now at Notre Dame de Paris. And so forth.

I'm sure if we put our heads together, we could triple the length of this list. The point is that it is very dangerous to keep everything in one place. Just in this century, the destruction has been horrendous. Dispersal is the great solution for the preservation of art.

KAYE: I fear that the debate over cultural property or cultural patrimony has not changed all that much over the past 15 years. In fact, I remember a panel discussion at the New York City Bar Association entitled, "Who Owns the Past?"—not too different a title from this event,

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tion of art."

with many of the same combatants, chaired by Professor Merryman, a panel including Marion True and many other participants and guests at this conference. The same arguments made then, I have heard here, with the same results: an agreement not to agree.

The debate has been noisy throughout that period, and I fear it at times has offered more heat than light. We all hope for progress. A few years ago, I chaired a round of experts at the Bar Association with no audience. We assumed that without having an audience to play to, we would get down to the real issues. But I fear no one walked out with any different views than they had when they walked in. And I fear that the polarization may even be increasing, at least in public debate.

If progress is to be made, I think we need to stop depicting the debate as some sort of war, with dealers, collectors, and museums, and art-importing countries on the one hand, and archaeologists and source nations on the other. But the remarks of the last few days suggest that the central issues in this debate remain unabated. There is the charge of the so-called “acquirers”—that the source nations and the archaeologists are overprotective, that cultural property belongs to all mankind, and only a free trade subjected to limited restraints will provide the requisite access to all antiquities—and the retort that it is the illicit market that feeds museums, collections and dealers in the West that perpetuates the worldwide plague of looting and smuggling.

To those who persist in viewing this debate as a battle between good and evil, I will say that the solution will not come through a continuation of the rhetoric of the past. We simply cannot continue to view this issue as framed only by moral arguments or solely as a function of policy. Of course, morality and policy play a role. But I believe—and I don’t think this is surprising coming from a lawyer—that while our academic debate has continued, there has emerged

a jurisprudence that is defining and enforcing cultural-property issues as a function of basic property rights. Especially in the United States. And to the extent that different legal principles are being applied in different jurisdictions, a cogent international response is needed, and as UNESCO and UNIDROIT show, that is beginning to occur and be addressed. Our courts in the U.S. have established that properly drafted laws vesting ownership of cultural property in the state will be recognized and applied, even where criminal penalties may result.

This is purely and simply a question of sovereignty. We in the U.S. would not want foreign courts fiddling with our domestic laws. Thus, as owners of illegally excavated antiquities, sovereign plaintiffs will prevail in U.S. courts, but only if they have a good claim.

We have heard the cry that all of our great museums will be empty if these laws are honored. Indeed, it was suggested by one of the panelists here. A few years ago, when I was giving what I thought was a lecture on the Lydian Horde case, André (Emmerich) asked for equal time and said that the only looting in that case occurred when the Metropolitan Museum’s showcases were emptied and the objects returned to Turkey.

But there is no legitimate cause for concern. In order to prevail, foreign states must show that proper laws were enforced at the time of the theft, and many of those laws are a recent vintage. Also, the statute of limitations is always there to be overcome, and identity is often difficult to prove, since thieves who operate in tombs in the dark of night most often don’t prepare detailed inventories. And eyewitnesses are hard to find. There have been only a handful of cases brought over the last few years for these and economic reasons.

Source nations are not out to destroy the great museums of the West. But they do not want

them to benefit at their expense, either. And the time has come to stop the arguments that only the West can save and preserve the cultures of the world. Resources are clearly an issue, especially for emerging nations, and it has already been suggested that economic cooperation, support for the developing museums of the world and developing conservation efforts and scientific effort would be better ways to spend our money than an acquisition of unprovenanced objects.

No one denies the contributions that collectors have made and hopefully will continue to make in their continuing efforts to discover and conserve. But this cannot be the price of acquisition without concern for provenance. Many of the museums have recognized this. We've heard of the Getty's efforts. There are efforts by other museums as well, and we've all read about recent voluntary returns. Remember that most nations, including the U.S., do not enforce other nations' export regulations, a concept that's often confused and has been confused here. And the few market countries, such as the U.S., that have adopted UNESCO are seeking to stem the importation of illegally exported artifacts.

More recently, efforts have been intensified—after years of not utilizing our adoption of the UNESCO statute, which was complete with major reservations and restrictions—to use that statute more flexibly. And we're seeing more bilateral agreements, more emergency decrees, and more returns. At the same time, there has been a concrete and cogent increase in international law enforcement and seizures abroad and in the United States as well under a variety of statutes.

There is increasing cooperation among nations. UNIDROIT has shown that there is an attempt to rationalize the laws of different countries and to make a concerted effort to create laws that favor return. Even though UNIDROIT is being considered slowly

throughout the world, it is a step in the right direction. The emerging focus on the Holocaust is also helping to direct attention to return. The efforts we are beginning to see, as some nations devise ways to return World War II properties, are encouraging. At the same time, there is much resistance to an overall solution.

But more international cooperation is needed. We see too many meetings where the rhetoric is right but solutions that address the rhetoric cannot emerge. The fact is that the rule of law in the United States has shown that ownership will be honored, and international approaches such as UNESCO, and hopefully UNIDROIT, will address objects that are not covered by specific ownership statutes. But unless it's covered by ownership or a particular statute, we can talk all day and all night, but the objects will not get returned.

Because the rule of law is the critical factor in the return process, the collectors, the museums and the dealers will continue to thrive. There's enough for all. But that's not to say there should be an illicit market in unprovenanced items or items of questionable provenance. I believe that the notion of sovereign nations selling off their sovereign property is not a viable solution. It's been considered by Mexico, and I believe, by Israel. The problem is you're dealing with a matter of sovereignty. And those countries don't talk of market value, but of a different kind of historical and cultural value. And what will happen is that the lesser objects will be sold off and there will not be any diminution of looting of the objects that the market really wants. An international forum and arbitration would be difficult when dealing with sovereign claims, because you're dealing with inconsistent legal regimes.

One hope is of a UNIDROIT-type of international convention, where there would be a consistent body of laws that arbitrators and

jurists could enforce. Maybe eventually, that kind of international approach will stem the tide. But for the moment, the rule of law applied domestically and internationally, rather than a continuing debate over moral imperatives, is the only thing that I believe will stem the illicit market. And the suggestions for cooperation, exchange of, and access to cultural property—I don't think they're silly, but I think they're the wave of the future.

I think the most valuable effect of these forums—and they're becoming more and more common—is the testimony, not only with respect to the ravages of old and new wars, but with respect to the ravaging of people's history and culture. The more we listen to that, the more we learn. And I think eventually, the response that's necessary will come as it sinks deeper and deeper into our heads.

SHAPIRO: This panel's title is "Ethics and Current Claims: Is There a Fair Solution?" I think that the conference as a whole can be fairly used to provide an answer. The issues are immensely complex, and I'm going to make some very general comments. Although a lawyer, I'm not going to speak as a lawyer. I'm going to speak more like a marriage counselor.

What makes this and other conferences so valuable is that it provides an opportunity to hear various sides of an issue. All of the participants in a dispute are needed for a fair resolution. The issues discussed here have a long history. Issues about the spoils of war go back at least as far as Roman times, when Polybius, a Greek, condemned Rome for taking advantage of Greece's adversity by Rome's conquests. Looting of remains goes as far back as Pharaonic times, with the record of a lawsuit of robbery from royal tombs during the reign of Ramses XI, which was over 3,000 years ago.

Market forces, as you know, have been in existence for a long time. Rome was a great market for Greek art, and it was in large part because

of Rome's love of Greek culture that a lot of Greek culture remains, at least in copied form. And all cultures throughout time have taken and built upon other cultures that surrounded them, and we all benefit and participate in other cultures. And so, the perennial question is, who owns what? Who was there first?

There have always been looters, as in Pharaonic times. There have always been source countries, indigenous peoples, conquerors, other claimants, collectors, the equivalent of museums, which were, I believe, religious sites, which were given valuable relics and other precious cultural gifts as homage.

Greece's claim to the Elgin Marbles, although almost 200 years old, is very much alive. But there is one very big difference: this conference and others like it. The constituents are now talking, hopefully without fighting about these perennial issues.

So what is the fair solution? Well, there isn't one solution, there isn't one problem. I noted that the speakers before me gave at least 12 different suggested solutions, beginning with the remarks of our moderator. There are many problems.

And the first place to begin is separating out and teasing out the different issues and keeping them straight. I have to propose a solution. My solution is to keep talking, with perhaps this difference: Recognize that all of the participants are going to be part of the solution, just as they all are part of the problem. Each side has its strengths and weaknesses. The strengths don't go away by the opposing side arguing the weakness of their opponent. And similarly, weaknesses don't go away by a side ignoring their own failings.

Another and perhaps more important point: None of the sides are going away—source countries, indigenous peoples, archaeologists, anthropologists, collectors, museums, other

"Rome was a great market for Greek art, and it was in large part because of Rome's love of Greek culture that a lot of Greek culture remains, at least in copied form."

“The solution I suggest is: listen, listen hard, try to understand the other side, and maybe, just maybe, the fair solution will emerge.”

cultural institutions, dealers, and auctions. I predict for all of them a long and valuable life. The solution? Keep talking, but recognize that the other side is here to stay. And more important, recognize that the other side has its strengths as well as its weaknesses. And if you really want to make progress and add to the positive heritage on these issues, listen hardest to what is right about the other side. Also, listen very hard to what is wrong about your side.

Each of the constituents has been around for a long time because they have a real, valid and needed interest that serves the whole. For example, just as collectors and museums need archaeologists, archaeologists need collectors and museums. Museums exhibit the fruits of the research and study that create public interest in what archaeologists do, and so help provide a context for understanding what archaeologists do and help them obtain funding.

In short, the fair solution is in this room. The people who are here are the most interested, best-informed and most caring on the issues that have been discussed. And so, the solution I suggest is: listen, listen hard, try to understand the other side, and maybe, just maybe, the fair solution will emerge.

JESSUP: I have a very brief comment to make to Mr. Emmerich. I salute you for bringing up the example of textile conservation. But I would like to point out that the traditions are a little different. The textile traditions of almost all the world’s countries—and I think of Western fashion as part of our adaptive textile tradition—are, in most cases, if the conditions are right, renewable. Cloth made today is of the same value as a piece woven 150 years ago if the techniques are conserved and the materials are faithful to the original concept. In a way, a cloth woven last week is 1,000 years old in traditional ways and aesthetic values. Textiles are renewable because they are part of an undying and renewable tradition. A specific temple created in the 10th century is not the

same thing. It’s wonderful to conceive of all these as part of the same tradition, so I’m not disputing the value. I’m simply saying that there is a distinction to be made.

The other observation I would like to make is that the law of Cambodia is the same for internal as well as exportable possession of the objects. Cambodians themselves are not allowed to keep, collect or steal Cambodian artifacts.

KAYE: The word “incentives” was mentioned earlier regarding patrimony laws in different countries. Most of those laws, if not all, provide incentives for people to turn in anything they find inadvertently, or learn about having been illicitly uncovered, to the museums and the government. In certain countries, the reward can be equal to 100 percent of the value of the piece. So there are incentives. The problem, sometimes, is that the value is not as high as the value that people who want to take it out of the country will give them. But there are incentives.

There are educational schemes in all of these statutes, too. I know that in some of the countries I’ve dealt with, they have educational courses at the local museums. I believe that in these countries, there’s a great respect for education about the cultural history of the country, and it is not just done by a regime but it is something that filters down to all of the people.

Obviously, the smuggling continues, so the statutes are not fully effective, because there is probably greater value on the international market. And as a result of the success that certain countries have had—Turkey, Greece, Germany—a lot of the illicit work has moved further east, which is why we’ve heard so much about the problems there.

EMMERICH: I don’t picture what happens in countries with reward schemes. What happens in reality is different, I believe. A good example is what happened in New York when

they found a Negro burial ground at the site of the new Federal Courthouse. It held up the works for years. And this is in New York, where they were able to move the gravesite and so forth and make a little park.

In the Third World, in developing countries, things are very often found when they're building a highway, digging ditches, excavating, and they'll be shut down, perhaps for two, three decades, a lifetime, until the archaeologists from the capital get around to digging it up. A farmer finding and reporting such a thing is much more likely to be beaten up and told by the police, "What have you stolen already?" It's a very tricky, risky thing, and there are disincentives for reporting anything enormous. The only way that anything gets saved is if the farmer has the notion that this stuff might be worth money, and perhaps there is somebody nearby who knows somebody at the capital, where the crazy gringos will pay a very good price. That, I think, is the real chain of events.

SHAPIRO: There are some countries in which reward schemes work. One is England, for the most part, and the other is Japan. There are a number of reasons that make them exceptions. One is a fairly homogenous culture. But more important than that, the purchase of the works by a government entity for which there is a delay in getting an export permit would be, if the money was available, at world market prices. Therefore, a person who has a work does not lose by it going into a museum or a private collection.

But the lottery system in England helps fund that. A lot of the problems we have might be remedied if countries pooled funds and made money available, so archaeologists would be able to get there first and discover the finds in context, in the ground. But a lot of the problem is very little allocation of real resources to deal with the culture in the right way. Instead, it's in terms of police actions after the fact, try-

ing to get things back, or trying to protect them from leaving at the border, and so on. A lot of the problems would be over if people really put money where they cared.

DAVID DARCY: You seem to be saying that the market is the most effective system for compensating people who find antiquities and preserving them, because they're going into the hands of collectors or institutions. Does this mean you advocate a complete laissez-faire attitude to antiquities, to the excavation and exchange of antiquities? Or do you envision any controls at all?

EMMERICH: I suggested an export scheme that would be self-enforcing and would allow whatever percentage you wished to make it—I suggested 25 percent—to remain in the country. No, I do not suggest a total laissez-faire attitude. But I suggest a controlled market. The instinct to collect and preserve is a very deep-seated one, and legislating against it is going to have as much success as legislating against sex outside of marriage. We've been at it a long time with limited success.

AUDIENCE QUESTION: Over the past few days, we've heard a few allusions but no specific remarks about fake provenance. And I wondered whether anyone would care to talk about how you examine a provenance and find it "good enough"?

JESSUP: It is extremely difficult to be sure of the provenance of an object made of stone, of gold, or of bronze, which is covering a great number of the categories that we're talking about. With a painting, you can do chemical tests on pigments, on paper, on support structures. There is a great deal written about, carried out, and charged for alleged "age testing" for certain sculptures and bronzes.

Just three months ago, I was at a conference conducted by metal and stone researchers, chemical experts and analysts. It is abundantly

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clear that most of the claims that these objects can be dated by scientific methods are not true. Patina can be marvelously faked on stone now—I was shown a month ago an example of an expert fake patina on a stone sculpture. The ceramic core of a bronze is probably dateable on certain levels, but it is amazing how many techniques there are for inserting old material into new so that the object does pass age resonance tests. Optically stimulated luminescence is a wonderful way of testing a single grain of quartz, providing you can remove the sample without any exposure to sunlight—it measures when the object was last exposed to sunlight. If it comes from core residues, that's fine. Otherwise, you're simply measuring the age of the stone. And no faker worth his salt—and many are worth a lot of salt these days—is going to work on stone that doesn't conform to the canon of the sculpture he is imitating. Some of these sculptors are very

fine artists. They have a soul—they're not just turning out rote things. So many of these pieces are made with great sensitivity.

Judging authenticity ultimately boils down to stylistic details that these days are rather summarily dismissed in the field of, say, Khmer sculpture. The French spent a century analyzing stylistic evolution in Khmer statuary. Many people think that this is petty, over-detailed, irrelevant and altogether too arbitrary. There is truth in some of these allegations. Nevertheless, it is the only carefully observed basis that we have. Looking at minute carved details of jewelry or the way a garment is draped and tied: these are the only stylistic criteria we have. Generally, it's up to certain feelings, proportions, patina and so forth. There are better and better fakes with every passing year, which offer a great protection for the real thing.