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The International Movement of Cultural Objects

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Abstract: The view that "cultural property internationalism" (Merryman) is represented by the Hague Convention 1954 and that it has been departed from in later UNESCO instruments can be challenged. Words which carry particular connotations can distort the argument—*property* is one of them, so *cultural property* is already a loaded term. The historical sources used to buttress the modern argument for more liberal trade in cultural objects bear other interpretations. Similarly, UNESCO's mandate has been narrowed in a way not justified by its constitution. UNESCO's later instruments, such as the 1970 Convention, do not represent an aversion to the art market, as is witnessed by its development on an international Code for Dealers. However, the art trade at present is based on the secrecy of transactions, and this has led to a number of scandals. Neither assessment of the interests at stake nor treaties on human rights or trade require tolerance of these practices.

In the last issue of this journal, a key contribution was the paper by John Merryman on *Cultural Property Internationalism*.[1] He made another strong assertion of his views last year in a publication of *The European Fine Arts Foundation* (TEFAF). These papers are an important restatement of a position he seems to have been developing for 30 years and are, therefore, to be seriously studied, since he has been one of the pioneers of academic discussion of these issues and has inspired and encouraged generations of students and colleagues to address them. He has set out a conceptual position that supports dealers and their organizations' views of the importance, even necessity, of a free market in cultural property, or at least its great liberalization. He has also clarified the very different types of objects that need to be considered in any debate on trade or illicit traffic: In particular his contribution to Article 5 of the International Institute for the Unification of Private Law (*UNIDROIT*) *Convention on Stolen or Illegally Exported Cultural Objects 1995*,

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even though he has considerable doubts as to the final text of that Convention, must not be forgotten, as well as his efforts to suggest ways of constructive liberalization of the trade.[2]

In the spirit of rational debate, which John Merryman, one of the founders of this journal, has always encouraged, I want to put forth an alternative view. His point that an initial value promoting cultural property internationalism has gradually disappeared in favor of cultural nationalism (or "national retention"[3]) is based on a reading of the historical and policy sources that is seriously misleading; I believe that the terminology of cultural property internationalism itself has to be questioned. Finally, some of the other arguments that follow from this view are also challenged.

LANGUAGE AND ARGUMENT

First, it must be said that the choice of terms in which to conduct such a discussion is unfortunately often predisposed toward a particular view. For example, *protection* for Merryman means *protection of the object* or *protection of the international interest*, whereas he terms the policy of states' protection of objects within their country, *retention*. The word protection in national heritage legislation, however, shows a wide variety of other interpretations: protection of access, protection of education of creative artists and of the public in their own cultural traditions, protection of minority communities' special requirements for the handling of their cultural creations, as well as protection of the object.

Similarly, cultural property, in my view, necessarily carries with the phrase a whole baggage of associations and implications, in particular, the view in the common law (based on a philosophy broadly shared by the legal systems of continental European countries) that property and ownership rights clearly authorize exploitation, alienation (that is, divestment to any other person at will), and exclusion of others from access—all elements that, in modern heritage law, may well be restricted. For this reason, I would argue that heritage should be preferred, as it is in all recent UNESCO instruments. (I leave aside the term patrimony, which seems to be a particular United States usage not reflected in the international instruments, with a single exception in Article 9 of the UNESCO 1970 Convention, incorporating a United States proposal and obviously not made consistent with the standard terminology in the rest of the Convention.) In a discussion of the experts who early on met to discuss the drafting of the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995*, Merryman urged the use of property, and I urged the use of heritage (which has associations of handing on and guardianship). The term *objects* in the title and text of the Convention was finally adopted as a compromise.

While it is perhaps inevitable that there are different interpretations of these terms, it is important that every scholar spells out his own usage, and it will be

clear from this that there are important implications attached to the terms currently in use.[4] These sometimes unconsciously steer the discussion into particular tracks.

Hoarding (national retention or "excessive retention"[5]) equally conveys a value judgment. One might, with an equal, glide from rational discussion to emotional and speak of "exploitation" rather than "interchange" by the "social subsystem" that he calls "the cultural property world". "A naïve and misguided anti-market prejudice" attributed to UNESCO, concerned states and archaeologists is surely less evident than the naive and misguided distrust of the international governmental system shown by the simple-minded insistence that private market interests could do it all better.[6]

Accusations that those who support stronger market controls indulge in "rhetoric"[7] also seem to me an argument that can be made on both sides. Is it any less rhetorical to call worries about the commodification of art "an effete prejudice"?[8] Talking about an object as "guilty until proven innocent" is seriously misleading to those lay persons who do not know the difference between civil and criminal law (or perhaps between persons and objects?).[9] This terminology has been widely used by nonlawyers opposed to the UNIDROIT Convention 1995, but I would not expect to see such sloppy use from lawyers. To be fair to Merryman, one should assume that his paper for TEFAF is more in the nature of a statement of conviction addressed to persons of the same persuasion, than of legal analysis.

What is Cultural Property?

Merryman is also critical of the definitions of cultural property or cultural objects used in the UNESCO 1970 and UNIDROIT Conventions (this "pallid definition"[10]). Both of these speak of objects "which, on religious or secular grounds," are "of importance for archaeology, prehistory, history, literature, art, or science and which belongs to the following categories."[11] "What else is there?" he asks. The reasons for this word drafting were clear. First, this was the phrasing used in the majority of national legislations on the subject, so there was wide agreement on it. Second, the variety of objects regarded as important cultural property is intriguing, and every culture should be able to protect what is essential cultural heritage for them. This means that in Samoa, orators' fly-whisks are protected; in Namibia and a number of other countries, petroglyphs; in South Africa, meteorites; in many others, ceremonial masks; in Bolivia, historic textiles; and so on. A more restrictive definition would be one that allows some countries to include in their protective system objects that are of importance to them but may not be recognized as of cultural importance in other countries.

Finally, it has been pointed out that the 1970 Convention, which was the first to use this phrasing, was designed to be exhaustive, describing the ambit within which objects are to be selected for export and import control; not exemplary, as was the case with the Hague Convention, which could be further expanded by the partici-

pating states[12] and where the definitions in Article 1(a) and (b) of the Convention both use the phrase *such as*. It may be that regional groups such as European countries could decide on a more explicit definition, but it would have been, at least until recently, very difficult to do at the universal level; this may gradually be cured by a better knowledge and acceptance of the versatility of culture in the diverse societies of the world.

Merryman prefers to speak of cultural property as "the sorts of things that dealers deal in, collectors collect, and museums acquire and display: principally works of art, antiquities and ethnographic objects" that are "the foci of a social subsystem we can call 'the cultural property world' that is populated by artists, collectors, dealers and auction houses, museums and their professionals, art historians, archaeologists and ethnographers, and source nation cultural officials." Tellingly missing from this list are those groups not comfortable with having their cultural objects considered as commodities for the market: tribal and indigenous communities and creators of various sorts not regarded within their communities, or regarding themselves, as artists but as bearers of a communal tradition.

A similar viewpoint emerges from the suggestion that cultural internationalism is an observable fact because of the activities of London and Berlin ethnographic museums, the Metropolitan Museum (New York), Japanese and Swiss dealers, and Dutch and German collectors, who deal in, exhibit, and collect "important art and antiquity collections of works from Europe, Africa, East and South Asia, the Middle East" and both Americas. The one-sidedness of this kind of cultural internationalism is evident—it looks far more like *cultural imperialism*, based as it seems to be on the activities of those from wealthy countries with each other and with poorer states whose cultural resources are flowing in one direction, without an equal exchange. It is an observable fact that far more is flowing in the direction of wealthy countries than the reverse; it is far from an exchange and, indeed, looks rather more like exploitation.

THE HISTORICAL SOURCES OF CULTURAL INTERNATIONALISM

The suggestion that Grotius was the first since classical times to argue for moderation in destruction of cultural property, is not borne out by research into the ideas of other cultures. Both Muslim and Hindu rulers made rules against it many centuries before the West began to catch up.[13]

Merryman's reliance on Quatremère de Quincy's protest against the Napoleonic takings[14] has been criticized by Turner,[15] who points out that far from an argument to let the market regulate movement, the French author argues for a rationally planned exchange and in particular, points out the importance of the cultural historical context, the requirements for training creative artists, the unity of the cultural landscape, and the harmony with the natural landscape, which

have located the objects in the country concerned. Quatremère sees these as the universal principles accepted by the scholarly world, not as those of a national state.

The Marquis de Somerueles case cited does not seem to give greater support than Quatremère. True, Dr. Croke makes some fine pronouncements such as this:

> The arts and sciences belong to all Europe, and are no longer the exclusive property of one nation. . . It is as a member of this universal republic of the arts and sciences, and not as an inhabitant of this or that nation, that I shall discuss the concern of all parts in the preservation of the whole.[16]

However, the very fact that the phrase "not the property of one nation" is used by Dr. Croke to insist on the artworks in question being restored to the arrangements made by their owners is not to excuse their taking. Further notable is that he appears to equate "the universal republic of the arts and sciences" with "civilized Europe"—a position that hardly commends itself as a basis for assessing the problems of illicit trafficking among the 192 states of the contemporary world. Finally, after his study of Quatremère and Croke, Merryman's suggestion is bizarre that the conflict between the humane internationalist ideal to which he appealed and the nationalist glorification of military campaigns that the French under Bonaparte had embraced "persists today in the international law of cultural property;" there is no conflict about the wrongfulness of destruction of cultural property in wartime—a number of international treaties assert it, and its principle is now one of international customary law. These authors were not attempting to solve questions of trade and trafficking between nations at peace, and to use their arguments to justify ignoring the efforts of countries to preserve access to cultural heritage for their cultural communities is an argument that goes beyond interpretation. Moreover, an attentive reading of the penultimate paragraph above will suggest that Quatremère's words can equally be used, with a similar interpretive stretch, as a justification for precisely the opposite position.

Similar arguments can be made about Merryman's use of the later precedents from United States scholars, which were focused on protection in wartime. One dangerous statement, however, is that the *Roerich Pact* "is in practice a dead letter." I am not aware that it has been denounced by any of the parties to it (10 Latin American states and the United States), and it is therefore all the more important that no doubt be cast on its current validity, since a number of parties to it, including the United States, have refrained from becoming party to the Hague Convention and its protocols. No doubt many believe that the principles of the *Roerich Pact* are sufficient to protect them, assessing warlike threats from other parts of the world as unlikely. During the 1970s, suggestions were made that the Hague Convention itself was a dead letter; the emergence of new local conflicts has made its relevance very clear, and the fact that 113 states are now party to it is evidence of its vitality.

THE HAGUE CONVENTION 1954 AND CULTURAL INTERNATIONALISM

In support for his internationalist view, Merryman cites the wording of the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954*: "cultural property is 'the cultural heritage of all mankind.' " [17]. It is important to note the whole sentence (in paragraph 2 of the Preamble) in which these six words occur:

> *Being convinced* that 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

The phrases "belonging to any people" and "each people makes its contribution to the culture of the world" add an emphasis that is integral to this paragraph on the importance of culture to each people as well as to the heritage of mankind. They also assume importance in view of the content of the Convention, which requires states' parties to "support the competent national authorities of the occupied country in safeguarding and preserving *its* cultural property" (Article 5(1)—emphasis added), to refrain from requisitioning it (Article 4(3)), and to prevent its exportation (Protocol (1954) Article 1). It seems a strange interpretation to use this as the justification for wider market access. As Turner points out, the effect of the preamble is to provide that "the interests of the states possessing cultural objects are also seen as interests of the whole of the world community" [18] and to exclude an ethnocentric view that certain cultures need not be given equal value (an understandable reaction to the destruction of Jewish and Slav heritage by the Nazis).

Merryman's statement that "the international interest in protecting cultural property from the hazards of war began to expand into a more general cultural property internationalism" seems, therefore, to make a hazardous leap from a philosophy designed for a particular purpose to embrace first, a particular interpretation of the philosophy of the Convention, and second, to assume that the universalism of the European Enlightenment is the natural basis of any protective scheme, whereas protection first at the local level might seem to be a priority. It can also be argued that the protection from exploitative removal by military power expanded naturally in peacetime to protection from exploitation of economic or political power and has the same result—an interpretation of the Convention that is certainly equally valid.

THE MANDATE OF UNESCO

Merryman's discussion of UNESCO's mandate again reveals a particular view. UNESCO's constitution does not, in fact, mention cultural property. The full text of the relevant provisions is:

> (c) Maintain, increase and diffuse knowledge:
>
> By assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions;
>
> By encouraging cooperation among the nations in all branches of intellectual activity, including the international exchange of persons active in the fields of education, science and culture and the exchange of publications, objects of artistic and scientific interest and other materials of information;

Merryman argues that something is missing from this mandate; namely "preservation," which he describes as protecting the object and its context from impairment. In any event, the words conservation and protection seem quite adequate to cover the concept of preservation and have certainly been applied in that sense. Merryman's discussion of protection seems to leave out the interest of a community in the continuance of its cultural traditions. For example, an anthropologist might see the use of an object by its traditional community as a primary way of preserving centuries of traditional use and the vitality of rituals and practices of that community. The object's ultimate impairment and replacement, as has occurred since time immemorial for that community, may be a price that has to be paid. This problem is not solved by his emphasis on access; access to a museum collection (even when the museum is in an accessible locality, which is often not the case) does not ensure appropriate treatment of that object for that community. In fact, in the case of objects from wide swathes of humanity, it almost certainly ensures its inappropriate treatment. Such an object, even if displayed rather than hidden in a museum reserve collection, has lost its place in the cultural life of that community.

Merryman has argued for a "related triad of regulatory imperatives" [19]: preservation, the quest for knowledge (the scientific, cultural, and aesthetic truth the object and its context can provide), and optimal access to scholars for study and to the public for education and enjoyment. These he sums up as "preservation, truth and access."

However, truth for many does not reside only in contextual information but in the community's continued re-endorsement of value by use within that community. Scholars and the general public from wealthy countries can now have access to virtually any country in the world. Access to the universal museums of the West is denied simply on economic grounds to many communities distant from them. Private collections are, of course, not accessible to them at all.

So Merryman's triad of preservation, truth, and access leaves out substantial interests of large parts of the world's population.

There is also a universal concern to protect cultural diversity, and UNESCO in recent years has had no difficulty in reading this into its mandate. This concern builds on the need to preserve multiple human life styles (parallel to the concern

to preserve as much biological diversity as possible) and to respect other people's cultural traditions in order to avoid conflict. The display in many museums or dealers' windows of items that are of a sacred or secret nature to their makers does not engender intercommunal harmony. It is also a general concern that the care of an object be associated with its original creators, and this means fighting to keep their cultural traditions alive. How can a community continue to build boats when every major ocean-going vessel has now been out of their country for decades, as is the case of a once vibrant tradition in the Cook Islands? How can contemporary Easter Islanders have any idea of the unique and vigorous carving of their ancestors and adapt their skills to their current place in the world, when every major piece (numbering hundreds, if not thousands) are in museums remote from this distant community? In other words, whole chapters of a cultural tradition can be lost by inordinate trade and outright illegal acquisition. In these cases, exchange, even if it were to be more balanced, would not preserve or restore cultural traditions.

Why is this important? Because in the words of the Hague Convention, "each people makes its contribution to the culture of the world." As anthropologists and others have pointed out, it is not clear that agrarian and industrial societies (very recently developed, as measured against the lengthy survival of traditional hunter/gatherer communities) will survive a technological disaster or the exhaustion of resources. The life skills of those from nonindustrial, even nonagrarian, societies may prove to be essential for our descendants. Even a regional disruption of industrial products on which, in a globalized world, people in every community are increasingly reliant, could cause disaster: boats, fishing nets, and string bags will be needed when steel and plastic are no longer available.

THE UNESCO 1970 CONVENTION

Strangely, in view of his acceptance of the need for source nation regulations to protect the cultural heritage when it is fragile or of religious/ritual importance, to prevent dismemberment of monuments or the destruction of context, or to ensure a representative collection of at least the most important categories of its own cultural heritage,[20] Merryman finds "an apparent inconsistency between promoting international interchange and enforcing national export controls." Yet export controls are an important means of meeting that need. They have, therefore, a significant place in ensuring preservation both of objects and of cultures.

Merryman deprecates leaving states free to make "their own self-interested decisions," and also the way the Convention "condones and supports the widespread practice of overretention or, less politely, hoarding of cultural property."[21] The reasons for the breadth of the definition within which states must work have already been discussed earlier.

There are other issues that market supporters sometimes appear to be particularly unaware of. The push for the 1970 Convention came after decades of colonial exploitation and abuse of positions of power practiced on the emerging states. The policies that Merryman finds overretentive are in most cases a reaction against the losses that have already occurred when communities were unable, for one reason or another, to resist them. These events have created resentment and suspicion. The exposure of contemporary conspiracies to corrupt their officials and subvert their laws, such as the cases involving the London dealer Tokeley-Parry[22] and the New York dealer Schultz,[23] make such countries unlikely to be convinced by arguments on the basis of cultural property internationalism, which are made by theorists and dealers in the states with the most powerful markets. This is compounded by the intransigence of some of the great museums to open a dialog on these historical events and the resultant gaps in the collections of the newly independent states, showing, according to an African commentator "a residual colonization of thought and cultural structures."[24]

If countries with strong export prohibitions over all or most categories of cultural property are to loosen those prohibitions, it will not be as a result of accusations of hoarding. There is a need for a substantial effort to understand the important feelings involved and the arguments these countries make, while seeking to show that there are real advantages in the exhibition of, and resulting interest generated in, their culture in other countries. There are few countries that would not be proud to have their culture valued by others. Unfortunately, successful exhibitions such as that of *Te Maori* (New Zealand)[25] have in many cases led to increased thefts and illicit exports from the countries concerned: hardly an encouraging result.

In some of his other writings, Merryman has sought to confront some of the arguments of those supporting other countries' export prohibitions. For example, in several articles,[26] he deals with a painting by Poussin sold by the owner but, according to France, illegally exported to the Cleveland Museum in the United States. He asks, where is the injury to a significant French cultural interest? We might as well ask, who is in the best position to make that judgment? Is it a foreign museum? Or would it be the experts who have to assess whether this artist, undeniably of great importance in the French cultural tradition, is adequately represented within France? Another case he mentions is that of the *Afo-a-Kom*, a revered wooden figure illegally taken from a tribal society in Cameroon and offered for sale in the United States.

> . . . what is the proper response to claims by tribal groups . . . for the return of ritual, ceremonial, or religious objects? In many cases the objects, if returned, will be exposed to the elements or consumed or otherwise destroyed or, if protected, will be kept in secret places, available for viewing only by a select few or on infrequent occasions and generally inaccessible for scholarly purposes or public enjoyment. Should the objects be returned . . . even though object-related values will consequently

> be seriously impaired? And if the answer is yes, what justifies this sacrifice of object-related values?[27]

The answer is, of course, person-related values. The damage done to the intangible heritage and the complex beliefs and practices of tribal peoples in this situation can produce a sense of desecration of sacred objects that has a profound effect on a society whose beliefs should be respected. By what moral principle does one justify values related to an object (which is, in any case, a value much more highly respected in commercial societies) above those related to people and central to their well being? By what right should an object meant by its creators to be seen only by authorized persons be made accessible to the public at large?

His redefinition of a licit trade in that same article[28] is a laudable attempt to distinguish different categories of objects that could be acceptably traded, and I agree that distinctions can be made between them. However, it ignores the historical and political legacies of the past, and unless these are brought into consideration, the chance of reaching agreement with resentful communities is unlikely to happen.

Merryman also argues that in "poorer countries, the orderly marketing of surplus cultural objects could *pro tanto* displace the black market, while providing a significant source of income to the source nation and its citizens."[29] Unfortunately, history does not bear out this optimistic view. Both Egypt and Syria previously had a system where licensed dealers were able to handle certain categories of materials legally. The situation, however, became impossible to police, and so rife was the substitution of restricted items for licit items, that the resulting burden of policing each dealer became enormous. Of course, policing a complete ban is burdensome also but at least not further complicated by the effort of showing that each particular item being offered for sale by a dealer is not one allowed as licit by the legislation. Several years of experience of the more liberal system convinced the authorities in both countries to move to the more restrictive system of today[30].

OTHER UNESCO INSTRUMENTS

Merryman criticizes three other UNESCO instruments, the *Recommendation Concerning the International Exchange of Cultural Property 1976*, *Recommendation for the Protection of Movable Cultural Property 1978*, and *Convention on the Protection of the Underwater Cultural Heritage 2001* as providing no place for private collectors or an active art trade, no scope for a licit market, and no recognition of the historic roles of collectors and dealers in supporting artists and promoting their work in building private collections that ultimately enrich museums, or in pioneering the collection of objects that eventually are recognized for their cultural importance. There seems no recognition that all these advantages are seen from the sole viewpoint of persons in wealthy, commercially oriented societies where artists are individually (not communally) responsible for their creations, where there are dealers who promote the role of creators in that society and ensure their

adequate representation, and where there are wealthy collectors who can afford private collections and indulge their personal tastes. Which are the museums that are enriched? Such arguments must sound hollow to many creative artists who do not regard their work as a commodity and who need and wish to respect communal rules as to how their creations are used, as was the case in *Milpurru v Indofurn*,[31] where the Aboriginal artists were personally responsible to their tribe for improper and unconsented use of their artworks by the defendant. The arguments must sound equally unconvincing to those whose chief contact with foreign dealers has been illegal entry, corruption of locals, and commissioning of thefts.[32] All those advantages listed by Merryman seem to accrue, once again, to wealthy commercial societies.

These arguments may be better appreciated among those countries where at least some artists live on the proceeds of their art and intend to sell at least a proportion of their output as a commodity. But even within the European Union (EU), *Council Directive of 15 March 1993 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State 1993*[33] has ensured at least a minimal mutual respect of the export laws of the different members of the Union. The increasing ratification of the 1970 UNESCO Convention also suggests that European countries are increasingly aware of the damage being done by the illicit trade and the need to restore respectability to their markets by outlawing the more egregious aspects of the illicit trade. In 1994, Merryman noted that Belgium, France, Germany, United Kingdom, Japan, the Netherlands, the Scandinavian countries, and Switzerland had not become parties and that the Convention "is now generally considered to be a failure."[34] There are currently 106 parties to this Convention, including Denmark, Finland, Iceland, and Sweden as well as France, Japan, Switzerland, and the United Kingdom, while the Netherlands and Germany are working toward it, and discussions have also begun in Belgium.

Merryman reserves particular opprobrium for the *UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001*. Its provision against commercial exploitation he regards as "breathtaking." However, one could see it as the natural result of an unregulated situation, such as Merryman would apparently approve, which has led to commercial salvage of, and treasure hunts for, historic shipwrecks with, in many cases, complete destruction of the historic shipwreck and no cultural benefit for any of the peoples associated with it, through history, location, origin of ship, or origin of cargo. Such a situation has not been tolerated in land excavations for decades, and the slowness of adopting controls in the maritime areas (due to complications with the law of the sea), has created a situation of such dire emergency that further commercial exploration is likely to wreck the last vestiges of an irreplaceable archaeological resource.

Interestingly enough, this provision and the *Rules of the Annex*, which spell this principle out in detail, were accepted by every single delegation without exception at the negotiations. Even states such as the United States, which is unlikely to ratify the Convention at present, has expressed its complete accord with it. In other

words, the difficulties of protecting historic shipwrecks are so apparent to both archaeologists and those responsible for the protection of the heritage that this was seen as the only possible way of ensuring it.

The *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003* does not have any provisions directly mentioning commerce. Merryman's questions as to how international trade or retention policies might be relevant overlook the most important one of all: the removal of key items used in the practice of intangible cultural heritage will cause damage and probably destruction of the intangible heritage. Bowls used in ritual ceremonies such as the Saanich bowl and regarded as desecrated;[35] musical instruments used in unique musical traditions; textiles that form an integral part of spiritual practices;[36] religious sculptures that are actively worshipped, such as those stolen from Nepal;[37] Zuni war gods;[38] the removal of all existing models of objects on which a "living treasure" exercises his craft or of all the tools of that trade (and the list could go on and on)—all suggest the importance of retention of certain objects as key to the survival of the intangible heritage.

In response to Merryman's argument that UNESCO has deviated from its internationalist mission, others might well argue that instead of adopting the views of a minority of countries and populations for a particular view of its internationalist mission, it has done its best to respect the views of all peoples in how best to protect the great diversity of cultures represented among its member states. Which is the more internationalist?

THE DEALERS' CODE

UNESCO has certainly not ignored the useful function of dealers and collectors. In 1997 the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation adopted a report[39] that recommended work to reach out better to this community. Up until that date, it was clear that despite invitations to international dealer groups to participate in that committee, which discusses the implementation of the 1970 Convention, dealers took little interest in the work of the organization. As a result of that study, work begun on an *International Code of Ethics for Dealers in Cultural Property* was finalized, and it was adopted by the committee in 1999 and endorsed by the 30th General Conference of UNESCO the same year, with the recommendation to states to bring it to the attention of the dealing community. A similar code for collectors was recommended in the 1997 report, but this recommendation has not yet been followed up.

Although the Code was based on the existing codes of dealer organizations and on discussions with them, its promulgation has been met with either apathy or criticism from the dealer community. It seems rather unfair to speak of UNESCO's "market aversion;"[40] it would seem more just to speak of the dealers' aversion to

UNESCO. Merryman would understand this, because he thinks that although the Code is reasonable and constructive, many of the "trade restraints" that the other UNESCO instruments seem to support are excessive. Again, who is to decide what is excessive? Cultural experts such as archaeologists, anthropologists, architectural historians, art historians with firsthand experience in the countries in which they specialize, managers of cultural resources, and representatives of tribal and indigenous peoples make up the majority of the cultural heritage world that UNESCO inhabits. These are people who have a wider view of the cultural needs of the societies in which they work and who regard themselves as having primarily public responsibilities. While some dealers and collectors may feel some of that public responsibility, many also make significant personal financial gains from cultural property internationalism, going far beyond those of the great variety of cultural experts already mentioned.

What has always been surprising in this debate is that the dealers themselves have done nothing to distance themselves from the more disreputable elements of the trade. After all, there is no particular qualification that distinguishes a dealer of the highest expertise and ethical standards from the dodgy character who buys from a thief and sells from the back of a truck. A number of cases have shown exactly how easy it is to arrange passage from a source country through the hands of a number of villains into the hands of a dealer of the highest repute. Peter Wilson, in a personal capacity but with his reputation as chairman of Sotheby's behind him, sold the *Sevso* treasure to Lord Northampton. The export certificates accompanying them were found to be forged, and Lord Northampton subsequently recovered damages both from Wilson and from his legal advisers. Robert Huber, an art dealer from New York, sold to Steinhardt a gold *phiale* from Sicily that was held by the U.S. 2nd Circuit of Appeals to be stolen according to Italian law. A treasure from Aidonia in Greece was displayed in New York in his gallery by the dealer Michael Ward before it was claimed by the Greek government.[41] Ward was a member of the Cultural Property Advisory Committee that advised the president on the implementation of the 1970 Convention.

Even more worrisome is the direct implication of some apparently respectable dealers carrying high positions in the art trade, in some extraordinarily unethical behavior. The *Schultz* case[42] is an example of a well-respected dealer who frequently appeared before the U.S. Cultural Property Advisory Committee, was formerly president of the National Association of Dealers in Ancient, Oriental and Primitive Art, and who was convicted of conspiracy to receive stolen goods. The goods came from the world heritage site of Saqqara in Egypt. He had also concocted a false provenance and bribed Egyptian antiquities police.[43] He was supported in his legal travails by an *amicus curiae* brief of the association as well as others from the International Association of Professional Numismatists and the Art Dealers' Association of America, and the Antique Tribal Art Dealers' Association, the Professional Numismatists Guild, and the American Society of Appraisers all filed briefs in Schultz's support. Briefs in support of the prosecution position

were filed by the Archaeological Institute of America, the American Anthropological Association, the Society for American Archaeology, and the United States Committee for the International Council on Monuments and Sites. Tokeley-Parry, with whom he had conspired, was jailed for six years in England.[44]

Another example is provided by the *Bumper Development* case.[45] In that case, a landless agricultural laborer in the southern Indian state of Tamil Nadu sold an idol, which he found by chance, to a dealer's runner Meivel for about £12 sterling. The dealer Chandran sold it to Hussain, who sold it to Nadar, who sold it on to a man named Prakash. The characters of these various operators were assessed by Judge Kennedy, who heard the claim for the idol, a *Siva Nataraja*, before the Queen's Bench in London. Meivel was Chandran's henchman, who did not impress the judge as having any great regard for the truth. Chandran was a man known to be of bad character and who was at the time on bail pending appeal of a sentence of five years imprisonment for attempted murder; there was a related conviction for rioting with a deadly weapon. Hussain had been found in possession of two other idols, at least one of which was, to his knowledge, stolen. The judge found that Nadar was a dishonest man and a practiced receiver of stolen goods. Prakash was never traced. The judge was left with the clear impression that each of the persons handling the idol, with the exception of the finder Ramamoorthi, was seeking to cheat the others. The idol was eventually sold to the agent of the Bumper Development Corporation by the dealer Julian Sherrier in London, who provided a provenance from his mother, known by him to be false.

Unless the ethical dealers make some greater effort to control the unethical and illegal practices in the trade, one can hardly wonder that those concerned with heritage protection trust governmental and intergovernmental agencies more than they do private persons and their organizations, most of whom have not only made no particular effort to screen the licit trade from the results of scandalous activity but have even actively supported some of the perpetrators of it.

Why have dealer groups not joined actively with UNESCO to stamp out organized criminal mafias who have taken over sectors of the trade? UNESCO has close relations with INTERPOL on these matters, and it is a serious concern. A dealer in icons in Berlin was murdered some years ago at a time when border controls with the former Eastern Bloc had weakened, and icons were arriving in truckloads from Russia and other countries formerly out of bounds to the illegal trade. Press speculation circulated that the dealer had failed to agree with his suppliers or perhaps to pay protection money. Should this not be a very serious concern to the dealers?

THE REALITY OF THE TRADE

Behind all this debate, behind the mutual suspicion and criticism, there is one undeniable fact: the art trade is the only major sector of international trade where it is regarded as normal, indeed essential, that provenance is not required as a

normal element of any acquisition. The natural reaction of any lawyer new to the field to this practice is one of amazement. Even Bator expressed this view:

> The most striking thing to a lawyer who comes upon the art world is how deep and uncritical is the assumption that transactions within it should normally be—are certainly *entitled* to be—secret. . . No dealer or auction house will normally reveal the provenance of an object offered for sale; it is assumed that buyers and the public have no business knowing where and when and for how much the object was acquired. . . . Indeed, the tradition is that such information is rarely even *sought* . . . [T]he art treasure with a full and documented pedigree is rare precisely because the custom has always been to ask as few questions as possible. Too much information may spoil the acquisition of a stunning and desirable treasure. It is the propriety of secrecy which is assumed; and it is a secrecy which enables persons, otherwise aspiring to the highest standards of personal probity, to become accomplices in the acquisition of looted masterpieces.[46]

The results of this willful blindness have, alas, been only too clear to see with the revelation of just how many museums, collectors, and dealers handled material looted during the Second World War, although evidence of its tainted source and its illegality, such as catalogs of missing objects, was available.

Whether one wishes to acquire a motor vehicle, shares, real property, a mining lease, or any other valuable property on the international market, a thorough search of title is required of any purchaser if he expects protection of his acquisition by the legal system. Yet any effort to require this in respect of cultural objects has been virulently opposed by those in the art trade. Why is this so, especially as this attitude goes along with assertions that the illicit trade is only a tiny, indeed virtually negligible, proportion of the trade as a whole? If this is the case, where are the thousands of objects looted from archaeological sites, the untraced thefts from museums, churches, and other institutions going? In the *Bumper Development* case, an Inspector General of Police for the CID in the state of Tamil Nadu (one of the 28 states and seven territories of the Indian Union) said that there had been 800–1,000 thefts of idols in that state alone during the preceding 10 years. It is not surprising that those in source countries battling to preserve a reasonable representation of their own cultural heritage and those in communities faced with continuing losses of significance regard with extreme skepticism the suggestion that concealment of sources is a necessary step in a legitimate art trade.

The failure to accept any responsible change in that practice has increased reliance on steps that Merryman deprecates, such as countries taking ownership of undiscovered antiquities and more draconian export regulations than he would wish. If source countries had any confidence that there would be some real control over the transition of suspicious material into the licit market, they would perhaps be more inclined to lessen controls at their end.

In the introductory section of his most recent article, Merryman states that

> No thinking person argues for free trade in cultural property. Regulation is necessary in order to preserve cultural property and to support its proper international circulation. . .
>
> . . . [S]ource nation regulations preserve the cultural heritage when and to the extent that they protect fragile objects that are likely to be damaged or destroyed by movement and when they prevent the dismemberment of complex objects, like the panels of an altarpiece or the components of a sculptural group. When antiquities are removed from their contexts in order to preserve, study and enjoy them, archaeologists rightly urge and source nations rightly require that the removal be done with care and that it be accompanied by full documentation. It seems right that objects of ritual/religious importance to living cultures remain with or be returned to the representatives of those cultures . . . And finally, it is internationally important that the inhabitants of every nation, including the poorest survivors of colonial exploitation, have access to a fully representative collection of objects that represent their history and culture.[47]

The list includes important concessions that, interestingly enough, are not listed in the TEFAF article. However, the big problem with this position is that, given the insistence on the secrecy of transactions, how can one distinguish those objects that may properly be traded and those which, because retention is justified and protected by national export prohibition, may not? Once an object arrives in the licit market, detached from any information as to its provenance (origin) or provenience (subsequent transactions), how can anyone possibly tell whether it is being legitimately traded or not, or indeed, stolen? Provision in the UNIDROIT Convention that an object be returned without compensation unless due diligence (that is, proper inquiry made by the purchaser) has been shown, is being furiously resisted. Why? If the illicit trade is such a small part of the market, this provision is not threatening. Cynics may take the view that it is exactly because many in the art trade know that such objects are a principal source of their stock that they so vehemently resist it.

THE INTERESTS AT STAKE

In his TEFAF article, Merryman also justifies his defense of the art trade by assessing the interests at stake. Though superficially attractive, this argument is defective. The articulators of this theory recognized that some interests are usually asserted as social or public interests, but others are more familiar to us as assertions of interests of the citizen seen as an individual. Roscoe Pound, the originator of this kind of analysis of legal policymaking in the United States, is insistent, however, that these are not separate categories. Social or public interests are still interests of individuals, just as individual interests may be looked upon as public or social interests. It is axiomatic that the same interest may be looked at from each standpoint, and Pound was unambiguously insistent that interests, however

labeled, must be mutually translatable to one level to allow comparison. This is important, for if an interest is labeled as individual, it may, if your bent is individualism, automatically be given priority over a public or social interest. If you are, on the other hand, from a culture where the focus is on the community rather than the individual, you may naturally give priority to an interest expressed in that way.[48]

Merryman's comparison of archaeologists pursuing their own, as opposed to the international interest, falls precisely into that trap. Archaeologists' and other cultural workers' interest in the survival of cultural objects and their proper handling can be seen as a social interest, as can the anthropologists' interest in the survival of threatened cultures.

If the interests of the art trade are asserted as international, so must the interests of the others be categorized on the same level.[49] If that is done, we are left with a factual question on which there may be persistent disagreement; not just that there are conflicting interests, but on what is the best way to ensure that survival and flourishing of cultures. This is not a conflict that can be resolved by an analysis of the interests being asserted.

I would also suggest that in analyzing interests to be accounted for in making legal policy, *all* the interests involved must be taken into account. This is not the place to enter into a full analysis of all the interests involved in the protection of the cultural heritage: elsewhere Patrick O'Keefe and I have attempted to do so, at least for the protection of the archaeological heritage.[50] Suffice it here to say that there are far more than those of dealers, collectors, and archaeologists.

HUMAN RIGHTS INSTRUMENTS

Merryman regards as an established principle of private international law the fact that courts judicially enforce foreign private law rights (such as ownership) but not foreign public law rights (such as export regulations).[51] This may have been the case decades ago, but new rules have emerged with the increasing movement of people between jurisdictions and their consequent entanglement in both the private and public law of more than one, and sometimes many, states. For example, the Institut de Droit International, made up of experts in international law from all over the world, adopted a resolution in 1975 condemning the traditional view that foreign public laws should not be applied in other jurisdictions.[52] In a number of areas such as family law (child abduction), consumer protection, and other administrative law, countries have been prepared to implement foreign laws. Furthermore, the distinction between public and private law is becoming more and more difficult to sustain, as areas that have traditionally been considered private law increasingly fall under areas of public law, such as that of the European Union or the general international law.

Merryman also considers the rights of private owners to be preferred over the rights of the state as owner, the more so as state assertions of ownership may in fact be "merely a disguised form of export control." [53] In fact, the failure of some states to recognize and apply foreign export controls in this area has had the effect in some cases of persuading states that would rather not claim state ownership over categories of cultural objects to do so. An example is given by the case of *Attorney-General of New Zealand v. Ortiz*,[54] where the House of Lords both misinterpreted the New Zealand export legislation on which New Zealand had based its case, and failed to apply it. Ownership rights over the object concerned were vested in one of the Maori tribes, and its elucidation was a very complex issue. To avoid this issue being argued before a tribunal with no experience in Maori law and custom, the New Zealand government decided to sue on the ground of illegal export. The decision of the court confronted it with the dilemma of taking state ownership of all antiquities in order to ensure that it would be able to sue on behalf of the traditional owners with some prospect of success (a decision not easily understood by Maori people) or be unable to ensure their access to key items of their own culture. Is this really the end desired? Would it not be better to enforce export controls for the truly significant items such as that in the *Ortiz* case, rather than force governments into claiming ownership in order to defend the rights of the bearers of the culture concerned?

Human rights arguments are to be handled with care by nonspecialists in this important area. There have been many debates about whether certain human rights should have precedence over others, in particular whether civil and political rights should be regarded as having a legal character denied to the economic, social, and cultural rights. After decades of debate, numerous international declarations uphold their equal validity, such as that of the World Conference on Human Rights in Vienna in 1993 that "[all] human rights are universal, indivisible and interdependent and inter-related." [55]

This applies of course to property rights and cultural rights. To state the latter at the most basic level, Article 15 of the *International Covenant on Economic Social and Cultural Rights* provides:

> 1. The States Parties to the present Covenant recognize the right of everyone:
>
> (a) To take part in cultural life;
> (b) To enjoy the benefits of scientific progress and its applications;
> (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
>
> 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

> 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
>
> 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

There is in this formulation a careful balancing of the needs of individuals in respect to their own culture and its support by preservation or by interchange ("take part in cultural life", "conservation, . . development and . . . diffusion of . . . culture", "international contacts and cooperation in the scientific and cultural fields"). The rights guaranteed by it are not put into a hierarchy; the rights of citizens are regarded both in their individuality and in their collectivity. International cooperation is essential; so is access. Neither has priority. So there is no priority among cultural rights themselves, and there is no priority between property rights and cultural rights.

This leaves us with a delicate balancing act to perform in order to do justice between states and individuals. With an observable movement of cultural objects in one particular direction (to Europe, United States, and Japan), the need for countervailing mechanisms seems clear.

TRADE TREATIES

A final legal justification for increased liberalization of trade in cultural movables is based by Merryman on trade agreements.[56]

He cites Article 30 of *the Consolidated Treaty of the European Community* as admitting exception for the "protection of national cultural treasures" to the rule prohibiting export controls, but argues that this phrase should be interpreted narrowly. However; that treaty also contains the following clause:

> This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.
>
> Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.

The French text refers to "protection des trésors nationaux ayant une valeur artistique, historique ou archéologique." It is the only one of the many other official texts currently available to me that reflects the concept of treasures. The others seem to state rather clearly that cultural heritage is within the exception: "beskyttelse af nationale skatte af kunstnerisk, historisk eller arkæologisk værdi" (Danish); "het nationaal artistiek historisch en archeologisch bezit" (Dutch); zum Schutze . . . des nationalen Kulturguts von künstlerischem, geschichtlichem oder

archäologischem Wert" (German);" "protezione del patrimonio artistico, storico o archeologico nazionale" (Italian); "protección del patrimonio artístico, histórico o arqueológico nacional" (Spanish); "bevara växter, att skydda nationella skatter av konstnärligt, historiskt eller arkeologiskt värde" (Swedish); "protecção do património nacional de valor artístico, histórico ou arqueológico" (Portuguese) (listed, according to international practice, by alphabetical order of language). Note also that these phrases accurately reflect the definition in the 1970 Convention that Merryman found inadequate.

In support of his view, Merryman quotes Pierre Pescatore as saying that "[t]he Exception's purpose is not to preserve the totality of an artistic patrimony" but to safeguard its "essential and fundamental elements."[57] It is notable that most of commentators on this point seem to have been working from the English or French text alone. Stamatoudi has pointed out that the evolution of the European Union, notably through the Maastricht Treaty, may lead to a more generous interpretation of this article.[58] There are certainly grounds for views that would support a more liberal interpretation of Article 30 in respect of cultural objects than Merryman is prepared to give.

Merryman also cites a similar text in the World Trade Organization (WTO) treaty (a full citation of the treaty is not given), but again, only the English text is cited, and there are other equally authentic language versions to be consulted. One also needs to be aware that so far the decisions that have been taken about this article, have been taken by tribunals that, like the International Court of Justice in the *Preah Vihear* case (a dispute about a temple on the Thai/Khmer border), have no professional background in heritage matters.

There is, as everyone is aware, a strong move, particularly by the United States, to remove the "cultural exception" from the general trade agreement (*General Agreement on Tariffs and Trade 1947*, taken over by the *World Trade Organization Agreement 1994*). A number of states are deeply concerned about this, and there will certainly be very tough negotiations on the subject.

All in all, I think the assessment that "a naive and misguided anti-market prejudice, excessive source nation retentionism and the excesses of the archaeologists' Crusade . . . supports [*sic*] source nation actions that *violate* (emphasis added) the cultural property provision of the WTO and EU treaties and related international arrangements" is certainly premature and may well be proven wrong.

One other thing needs to be said on the question of trade agreements. An argument frequently urged in favor of more liberal trade in antiquities and other movables is that they are not properly looked after in their homeland. If those in industrialized states concerned with their welfare were to lobby in their own states as hard for reduction of tariffs for agricultural and other goods produced by poorer countries as they do for liberalization of trade in cultural property, not only would millions of people no longer live in the most dire poverty, but increasing wealth would enable those countries to devote a greater proportion of their national resources to policing and conservation. A *general* liberalization of trade, rather than

the partial one that has been occurring, would, in terms of assertions of interest and human rights, be a solution to some of the problems that Merryman has outlined. But a one-sided solution will only make things worse.

CONCLUSION

In this reality, it seems far-fetched to suggest that excessive restraints thwart internationalist goals and that there has been an artificial expansion of the meaning of illicit to reduce the possibilities of a licit cultural property trade. To the contrary, the restraints seek to ensure internationalist goals by ensuring that there is a fairer distribution of cultural objects and not a one-way flow.

Merryman asks in his conclusion, "Whither cultural property internationalism?" My own answer would be that cultural internationalism will flourish but not in terms of the very limited cultural property internationalism he espouses. I do not believe that the historical sources represent the form of internationalism that his description currently takes, and I think that many of the arguments being made in support of a far greater liberalization of trade in cultural movables are not well founded and ignore important social, political, and historical factors that have led to the current restrictiveness of many countries.

Finally, we should all be aware that problems like this are not solved by legal regulation alone. Where there are so many diverse and entrenched views, the involvement of the very wealthy, the utterly impoverished, and every level in between; states; private organizations; and individuals, all in active pursuit of their interests, will result in issues such as resources, education, and public awareness having a major impact on the solutions.

ENDNOTES

1. Merryman, "Cultural Property Internationalism."
2. Merryman, "A Licit Trade," 2004 The European Fine Arts Foundation (hereafter cited as TEFAF), 24–5.
3. "Mere retention" seems to have appeared first in Merryman and Elsen, "Hot Art," 8–11, where it was named as a separate interest from other specified interests of "exporting nations", an article written at the time of the debate on ratification of the 1970 Convention by the United States. It was developed with an emphasis on the "retentionism" of national protection or "hoarding" in the same authors' *Law, Ethics and the Visual Arts* 1 (2nd ed. 1987), 53–56.
4. Prott and O'Keefe, "'Cultural Heritage' or 'Cultural Property'?"
5. Merryman, TEFAF, 19.
6. Merryman, TEFAF, 31.
7. Merryman, TEFAF, 20.
8. Merryman, TEFAF, 16, 18.
9. Merryman, TEFAF, 34, 41.
10. Merryman, TEFAF, 21.
11. UNESCO Convention 1970 Article 1; UNIDROIT Convention 1995 Article 2.
12. Niec, *Ojczyzna Dzieta Szuki*; cf. Nahlik, "Review."

13. Bugnion, "Origin and Development," 4–8; Prott, "Cultural Heritage Law," 25–26.
14. Merryman, "Cultural Property Internationalism," 15.
15. Fiedler, *Internationaler Kulturgüterschutz* [International Protection of Cultural Property], 54–55 and n. 162.
16. Quatremère de Quincy, Lettres au général Miranda [Letters to General Miranda], 88, 99, cited by Merryman in "*Marquis de Somerueles*," 324.
17. Merryman, "Cultural Property Internationalism," 11. To be fair, he quotes the article in full on p. 19, but fails to analyze it in detail or to relate it to the later provisions of the Convention and Protocol.
18. Turner, in Fiedler, *Internationaler Kulturgüterschutz* [International Protection of Cultural Property], 67.
19. Merryman, "Cultural Property Internationalism," 11; "Nation and the Object," 64–65.
20. Merryman, "Cultural Property Internationalism," 12–13.
21. Merryman, "Cultural Property Internationalism," 22.
22. ⟨http://www.mcdonald.cam.ac.uk/IARC/cwoc/issue10/investigation.htm1⟩ (accessed 25 February 2005)
23. United States v. Schultz 178 F.Supp.2d 45 (2003); 333 F.3d 393 (2003).
24. Abranches, *Report on the Situation in Africa*, 3.
25. The successful *Te Maori* exhibition opened at the Metropolitan Museum of Art in New York in 1984, then toured several other United States cities. While the taonga (treasures) were created many generations ago, they are regarded as tupuna (ancestors) to whom Maori are personally linked, and so the taonga were appropriately accompanied by traditional rituals. Consequently, each exhibition of the taonga became an expression of te ao Maori (the Maori world) as a vibrant, living culture.
26. Such as Merryman, "Nation and the Object," 65–66; Merryman, TEFAF, 20; Merryman, "A Licit Trade," 21–22; Merryman, "Retention," 482–486.
27. Merryman, "A Licit Trade," 13.
28. Merryman, "A Licit Trade," 29.
29. Merryman, "Cultural Property Internationalism," 23.
30. Egypt's Law No. 117 on the Protection of Antiquities 1983 forbids trade in antiquities (ss. 6–7), replacing the system of the previous Law on the Protection of Antiquities No. 215 1952 ss. 22 ff. Syria repealed Chapter 5 ss.56–65 of its Ordinance No. 222 26 October 1963 in 1986.
31. *Intellectual Property Reports* (Australia, 1994) 209.
32. Watson, *Sotheby's*, 170–198.
33. Directive *93/7/EEC Official Journal L 74 of March 3, 1993*.
34. Merryman, "Nation and the Object," 63.
35. Henry, "Back from the Brink," 8–10.
36. The abstraction of textiles from the Altiplano area around Coroma in Bolivia is movingly related by members of one of these communities in the television documentary *El Camino de las Almas* produced by Cristina Bubba Zamora.
37. Schick, *The Gods are Leaving the Country*.
38. Merrill et al., "The Return of the Ahaya:da."
39. O'Keefe, *Trade in Antiquities*.
40. TEFAF, 13.
41. ⟨http://www.culture.gr/6/68/684/e68403.html⟩ (accessed February 25, 2005).
42. 333 F.R.(3rd) 393.
43. United States v. Schultz 333 F.3d 396, 397.
44. ⟨http://www.mcdonald.cam.ac.uk/IARC/cwoc/issue10/investigation.htm⟩ (accessed February 25, 2005).
45. Bumper Development Corp., Ltd. v. Commissioner of Police of the Metropolis and Others (Union of India and Others, Claimants) *All England Law Reports*, 4, 638 (1991).
46. Bator, "An Essay," 360.

47. Merryman, "Cultural Property Internationalism," 3.
48. Stone, *Social Dimensions*, 171–178,II181; Pound, *Social Control through Law*, 2.
49. Merryman's article "Public Interest" has the same problem.
50. Prott & O'Keefe, *Law and the Cultural Heritage*, 1: 15–28.
51. Merryman, TEFAF, 28.
52. Institut de Droit International, 157.
53. Merryman, TEFAF, 28.
54. Attorney-General of New Zealand v. Ortiz [1982] 1Q.B.349; [1982] 3 W.L.R. 571 (Court of Appeal); [1983]2 W.L.R. 809 (House of Lords).
55. Niec, "Casting the Foundations," 177.
56. Merryman, "Cultural Property Internationalism," 12; Merryman, TEFAF, 27–28.
57. Merryman, TEFAF, 29.
58. Stamatoudi, "National Treasures," 48.

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