

## Ben Ward\*

Phyllis Mauch Messenger (ed.), *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?* University of New Mexico Press, Albuquerque (1991) 266 pp. Softback \$15.95.

This collection of papers was collated in the main from two conferences: the theme of the first (held in Minneapolis in 1986) being the ethics of collecting cultural property; two additional papers were first aired at the 1987 Society for American Archaeology conference in Toronto. A number of the contributions were prepared specifically for this publication which first appeared in hardback in 1989. The preface places emphasis on the *McClain* case which is discussed by many of the contributors – in the light of particularly the important analysis of that decision by Paul Bator.<sup>1</sup> The date of these symposia thus precludes discussion of more recent decisions such as *Peru v Johnson* and *US v Swetnam*.<sup>2</sup>

In common with many such collections of papers that were first presented at conferences, the volume suffers from the in-

clusion of a few weak contributions. The book is admirably ambitious in scope covering a geographical area that ranges from Nepal to Arkansas; but the majority of the contributors devote themselves to the complex relationship that exists between the USA and central America in terms of cultural property trade and repatriation of illegally exported objects.

The volume is divided into four parts: the first is a collection of case studies entitled “Perspectives of the Victims”. It is unfortunate that author of the first paper (Karen Warren) purports to redefine current thinking on cultural property issues but her argument is presented in the jargon of “politically correct speak” which plagues so much of contemporary American academia. Warren asks the usual question “Who Owns the Past?” – and the initial discussion of that question is strong and well presented. Warren’s analysis of the conceptual framework that surrounds the cultural property question (in fact, there are many questions and few answers) is couched in a feminist theoretical model and constitutes a challenge to the “Up-Down” process that characterises (in her

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view) “[t]raditionally Western male-identified beliefs, values, attitudes and assumptions”.<sup>3</sup> Warren repeats the assertion of philosopher Kathryn Pyne Addelson that “[t]here is a bias in the dominant world view which results from the near exclusion of women from the domain of intellectual pursuits”. Although in a footnote Warren distances herself from a complete endorsement of Addelson’s theories this writer would maintain that it is typically in the context of “traditionally Western male-identified” societies that women have contributed to and in many cases have led scholarly debate.<sup>4</sup>

The section continues with a discussion by field archaeologists of the destruction and desecration of Indian sites from New England to Arizona and includes a useful case-study from Arkansas (Ann Early) which strives to identify the motives and methods of the “treasure seekers”. David Sassoon – resident in Nepal for a number of years – describes his shock upon walking into a Manhattan art gallery and recognising a piece of Nepalese religious art which had clearly been ripped from its context (as an object of religious devotion) and was now offered for sale as a “nice piece of art”. Sassoon makes an appeal to “common sense” and concludes with what he feels to be the crucial point in the cultural property debate: “Nepalese culture belongs to the Nepalese first and foremost, and so do their antiquities”.<sup>5</sup> A discussion by Thomas K Seligman ends

the first part of the book: here Seligman describes the bequest to the Fine Arts Museum of San Francisco of several important fragments of murals from Teotihuacan; and the attempts made by the Museum to involve The National Institute of Anthropology and History in Mexico City in their restoration with the ultimate goal of returning some or all of the murals to Mexico. Seligman provides an instructive insight into the practical effect that statutory provisions and case-law can have for a museum involved in delicate legal negotiations and highlights the importance and usefulness of the provisions of the 1979 UNESCO study (carried out by ICOM) “[o]n the Principles, Conditions and Means for the Restitution or Return of Cultural Property in View of Reconstituting Dispersed Cultural Heritages”.

The second part of the publication is devoted to the question of “Cultural Stewardship.” Alan Shestack opens the debate with an informative piece detailing the moral dilemma that faces many a museum curator or director: their mandate is to collect fascinating and unique objects – when confronted with the problem of a dubious provenance how does the curator respond? Shestack is unequivocal in his response:

[t]he buyer of cultural property, or the donee...[m]ust ask the donor or seller where the object came from, insisting on proof of ownership

– legitimate ownership – and insisting on an answer that is documented and verifiable.<sup>6</sup>

Gillett Griffin, in the following contribution, presents a view culled from personal experience of the role of the collector of cultural objects. Griffin puts emphasis on the “collector/scholar” and maintains that: “[C]ollecting can be fascinating, fun, and intellectually stimulating”.<sup>7</sup> Indeed, there can be few doubts that collecting objects can evoke all three of these emotions (fascination, fun and stimulation). Griffin’s argument that Third World countries are basically unstable and thus incapable of maintaining and appreciating their own cultural heritage is controversial but not without its supporters. That custodianship of cultural property is best vested in the hands of “scholars and experts” for their intellectual titillation is counteracted by the broader view as argued by Sassoon (above) and outlined by Warren that cultural property either belongs to “everyone” or to “no one”.<sup>8</sup> Even the archaeologists fail Griffin’s “test” for responsibility in dealing with cultural property: while politics and bitter infighting can diminish the position of archaeologists in the cultural property debate, it is unjustifiable to portray the collectors – whose avarice and irresponsibility in many cases have fuelled the despoliation and destruction of cultural property in its proper context – as occupying the moral high ground. To

be fair, Griffin does deplore the activities of “unscrupulous” collectors but his view of the “collector/scholar” does not address the reality that collecting involves the necessary deprivation of general access to cultural objects unless they are displayed through the largesse of the collector. Whether this matters or not is a debate that is beyond the confines of this review.

Ellen Herscher presents an appeal for the need for education in the field of collecting art and criticises the secrecy that surrounds the trade. Leo J Harris, whose contribution opens the third section (“Cultural Property Regulations: Perceptions and Conditions”) develops that argument in relation to the legality of the trade in pre-Columbian art. Harris discusses the *McClain* decision and its impact on the trade. He concludes that the principle “de minimus non curat lex” will overcome the current zeal of US Customs agents in searching for and seizing minor objects. Douglas Ewing’s criticisms of the *McClain* decision have been addressed in the more recent cases of *US v Swetnam* and *Peru v Johnson* (i. e., Peru had to show – and here failed to do so – that it had made a clear declaration of ownership of cultural property, that – in the case of specific objects – it had manifested some effort at control beyond the declaration and that the current possessor’s control was wrongful).<sup>9</sup> The section concludes with two contributions stressing the need for regulation

of the trade in cultural property on moral as well as practical grounds: particularly compelling is the rebuttal (by Mexico's Jaime Litvak King) of Gillet Griffin's justification of the sale by economically poor, but culturally rich countries of parts of their cultural heritage.<sup>10</sup>

The final section is presented as a debate between the contributors where many of the arguments presented in the earlier sections of the volume are reiterated. Despite some personal misgivings regarding the organisation and presentation of the papers in this volume, it succeeded in stimulating this reviewer to question his own ethical and moral considerations of cultural property.

## Notes

- 1 P Bator "An Essay on the International Trade in Art" (1982) 34 *Stanford L Rev* 275, P Bator *The International Art Trade* (Chicago University Press, 1982).
- 2 For a discussion of *Peru v Johnson* see John Henry Merryman "Limits on State Recovery of Stolen Artifacts: *Peru v Johnson*" (1992) 1 *IJCP* 169–173. For a more general overview of recent decisions in this area see Judith Church "Evolving US Case Law on Cultural Property Disputes" (1993) 1 *IJCP* 47–71.
- 3 *The Ethics of Collecting; Whose Culture? Whose Property?* p. 18
- 4 *Ibid.*, p. 13. The reviewer bases this observation on his experience studying archaeology in British universities.
- 5 *Supra* note 3, p. 62.
- 6 *Ibid.*, p. 100.
- 7 *Ibid.*, p. 103.
- 8 *Ibid.*, p. 3.
- 9 See Church, *supra* note 2 p. 61.
- 10 G Griffin "In Defence of the Collector" (1986) 169 (4) *National Geographic* 462–465. Griffin uses the hypothetical example of Japan as a nation willing to sell parts of its cultural heritage which appears disingenuous; his argument would apply more readily to poorer countries such as those on the South American continent. Nevertheless, there is a case to be put in favour of such an approach to "surplus" items of cultural heritage (if such objects can be defined as existing). A tour around a Greek (Thebes, for instance) provincial museum often elicits the reaction: "Surely they don't need all that stuff? Sell a few *pi-thoi* and generate the funds to care properly for the 'good stuff'". Obviously such an approach to a nation's cultural heritage is fraught with problems – definitions of "worthwhile" and "worthless" would employ an army of archaeologists, collectors and (naturally) lawyers. The central question remains: "Would a regulated trade in selected objects from the culturally rich 'exporting' nations satisfy demand from the 'importing' nations and curtail activity in the market for illicitly recovered and/or exported cultural objects?" The doubts remain.