

# Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce



Edited by  
**James A.R. Nafziger**  
**Ann M. Nicgorski**

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**Cultural Heritage Issues:  
The Legacy of Conquest, Colonization,  
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The image reproduced on the front cover of this book is the original excavation photo of the famous female head from the ancient Sumerian site of Uruk (modern Warka, Iraq), ca. 3500–3000 BCE, which was looted from the Iraq Museum in Baghdad in April of 2003 but recovered and returned to the museum a few months later. The long history of this “Sumerian Mona Lisa,” already a fragmentary survivor of many past wars, civilizations, and the ravages of time, represents all the themes of this volume including the effects of conquest, colonization, and commerce on our shared cultural heritage as well as the important role of museums in preserving it for future generations.

*Courtesy of the Deutsches Archäologisches Institut, Orient-Abteilung*

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## PREFACE AND ACKNOWLEDGMENTS

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The chapters in this volume represent a groundbreaking international conference entitled “Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce” that took place October 12–14, 2006, at Willamette University. The conference featured some 30 distinguished panelists who addressed five themes: the legacy of indigenous conquest, the legacy of international conquest and colonization, the legacy of commerce, avoidance and resolution of cultural heritage disputes, and issues related directly to museums and sites. Papers drew on the panelists’ expertise in a broad range of disciplines, from archaeology to law enforcement. Two evening lectures explored, respectively, the ownership of culture from a philosophical perspective (Kwame Anthony Appiah) and the recovery of objects stolen from the Iraq National Museum (Matthew Bogdanos). On the final day, the luncheon speaker, Richard M. Leventhal, presented a lively exchange with another museum director whose videotaped remarks were projected on a screen. The constructed dialogue centered on the responsibilities of museums to preserve objects as well as their archaeological contexts, as well as the ethical implications of museum acquisitions whose origins lie in colonized, war-torn, or impoverished source countries.

The conference was organized by a diverse group of Willamette University faculty members that included the editors of this volume and our colleagues Rebecca Dobkins (Anthropology), Ortwin Knorr (Classics), David McCreery (Religious Studies), John Olbrantz (Hallie Ford Museum of Art), and Scott Pike (Geology). During the conference these faculty members also led or co-lead discussion groups for the conferees on specific cultural heritage topics of interest including copyright protection for Maori art, the Amber Room, the Dead Sea Scrolls, the R.M.S. Titanic, the Elgin Marbles, and the Seattle Matisse. Other colleagues and students of Willamette University contributed behind the scenes to the success of the 2006 conference. Without their expertise, dedication, and patience, the event would not have been possible.

In extending our thanks beyond Willamette University, we first acknowledge the original people of the Willamette Valley (the Kalapuyans), whose descendants today are members of the Grand Ronde and Siletz Confederated Tribes. They have been vigorous supporters of the arts and contributors to the dialogue about cultural heritage. We also thank our supporting and cooperating professional organizations, which include the Archaeological Institute of America, the American Branch of the International Law Association, the American School of Classical Studies at Athens, the American Schools of Oriental Research, the American Society of Comparative Law, the American Society of International Law, and the German Archaeological Institute.

The conference was made possible in part by grants and donations from the Oregon Council for the Humanities, a statewide non-profit organization that is an independent affiliate of the National Endowment for the Humanities, the Foreign Affairs Canada Grant Program, and the Archaeological Institute of America. Willamette University's Colleges of Law and Liberal Arts as well as the Departments of Art, Art History, History and Religious Studies, and the Dwight and Margaret Lear Chair in American History provided further funding. Deans Carol Long and Symeon Symeonides were supportive throughout the planning and publishing process. We are also grateful for the financial support from the Hallie Ford Museum of Art, Willamette University's Indian Country Conversation Series, and the Lilly Project at Willamette for providing us with this remarkable opportunity to reflect on our collective vocation as well-educated citizens, many of us representing the most powerful nations on earth, to protect and preserve the significant cultural heritage of all peoples.

Several Willamette staff members have been indispensable in making arrangements and designing publicity for the conference as well as in providing assistance for the publication of this volume, in particular, Andrea Foust, Candace Bolen, Kendra Mingo, Carrie Mosar, Linda Nelson, Patricia Alley, Allison Towers, and especially the indispensable Andrea Whalen.

Finally, we thank Heike Fenton, Lindy Melman, Maria Angelini, and Maxine Idakus of Martinus Nijhoff Publishers for their support and assistance in the preparation and publication of this book.

*James A.R. Nafziger, College of Law, and  
Ann M. Nicgorski, Department of Art and Art History,  
Willamette University, Salem, Oregon, July 2009*

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## ABOUT THE EDITORS AND AUTHORS

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**James A.R. Nafziger** is the Thomas B. Stoel Professor of Law and Director of International Programs at the Willamette University College of Law. The author of numerous books and articles on international and comparative law, he is a former Fulbright lecturer at the National Autonomous University of Mexico and Scholar-in-Residence at the Rockefeller Foundation's Study Center in Bellagio, Italy. He chairs both the Cultural Heritage Law Committee of the International Law Association and the executive committee of the ILA's American Branch. A member of the American Law Institute, Professor Nafziger served in 2005 as the English-speaking Director of Research at The Hague Academy of International Law on the theme that year of the cultural heritage of mankind.

**Ann M. Nicgorski** is professor of art history at Willamette University, where she also serves as faculty curator at the Hallie Ford Museum of Art. She has extensive archaeological field experience in Greece at the sites of Corinth, as well as Halasmenos and Mochlos on Crete. Professor Nicgorski is a founding member and officer of the Salem Society Archaeological Institute of America (1995). Her publications include contributions to the Mochlos excavation series and various articles on Greek sculpture including the Parthenon frieze.

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**Kwame Anthony Appiah** is Laurance S. Rockefeller University Professor of Philosophy and the University Center for Human Values at Princeton University. He was born in London and grew up in Ghana. Among his books are *In My Father's House: Africa in the Philosophy of Culture*, *Color Conscious: The Political Morality of Race* (with Amy Gutmann) and *The Ethics of Identity*, and *Cosmopolitanism: Ethics in a World of Strangers*. His most recent book is *Experiments in Ethics*.

**Catherine Bell** is a professor of law at the University of Alberta specializing in Aboriginal legal issues, dispute resolution, property law, cultural heritage law, and interdisciplinary, community-based legal research. Professor Bell is published widely on Métis and First Nation legal issues and has acted as an advisor to First Nation, Canadian government, and Métis organizations. Recent publications relating to cultural heritage include two collections of essays published by UBC Press (2008): *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (with Val Napoleon) and *Protection of First Nations Cultural Heritage: Laws, Policy and Reform* (with Robert K. Paterson).

**Colonel Matthew Bogdanos** has been an assistant district attorney in Manhattan since 1988. A colonel in the U.S. Marine Corps Reserves, middleweight boxer, author, and native New Yorker, he holds advanced degrees in law, classics, and

military strategy. Recalled to active duty after September 11, 2001, he received a Bronze Star for counter-terrorist operations in Afghanistan, served multiple tours in Iraq and the Horn of Africa, and received a 2005 National Humanities Medal for his work recovering Iraq's treasures. He has returned to the DA's office and continues the hunt for stolen antiquities. Royalties from his book, *Thieves of Baghdad*, go to the Iraq Museum.

**Ricardo J. Elia** is associate professor and chair of the department of archaeology at Boston University. He teaches archaeological ethics, law, and heritage management, and his research interests include archaeological protection, policy, and the antiquities market.

**Margarete van Ess** is scientific director at the German Archaeological Institute—Orient Department. She is a member of a UNESCO experts group on Iraq. She was born in Frankfurt/M and grew up in Beirut, Lebanon, and Tübingen. Among her publications are *Uruk. Architektur II. Von der Akkad- bis zur mittelbabylonischen Zeit, Teil I: Das Eanna-Heiligtum zur Ur III- und altbabylonischen Zeit* and most recently "Baalbek/Heliopolis. Results of Archaeological and Architectural Research 2002–2005," in *Bulletin d'archéologie et d'architecture libanaises, hors serie 4*.

**Patty Gerstenblith** is professor of law at DePaul University College of Law and director of its Center for Art, Museum and Cultural Heritage Law. She is founding president of the Lawyers' Committee for Cultural Heritage Preservation. She previously served as a public representative on the President's Cultural Property Advisory Committee, editor-in-chief of the *International Journal of Cultural Property*, and co-chair of the American Bar Association's Art and Cultural Property Committee. She is the author of *Art, Cultural Heritage and the Law* and co-author of *Iraq Beyond the Headlines: History, Archaeology, and War*.

**McGuire Gibson** is professor of Mesopotamian archaeology in the Oriental Institute and the department of near eastern civilizations at the University of Chicago. He has conducted archaeological research in Iraq since 1964, mainly at Nippur, and has also worked in Saudi Arabia, Yemen, and Syria, where he directed the investigations of the early city site of Hamoukar. He has authored or edited more than 12 books, including *The City and Area of Kish, Seals and Sealing in the Ancient Near East* and *The Organization of Power: Aspects of Bureaucracy in the Ancient Near East*. Theoretical articles include "Violation of Fallow and Engineered Disaster in Mesopotamian Civilization." He was the founder of the American Institute for Yemeni Studies and the American Academic Research Institute in Iraq. He served on UNESCO and the National Geographic Society fact-finding teams in Iraq in May 2003.

**Lawrence M. Kaye** is a partner at the New York law firm of Herrick, Feinstein LLP. He is engaged in all facets of international art law and represents a wide range of domestic and international clients. He is noted for his representation of foreign governments, victims of the Holocaust, families of renowned artists, and other claimants in connection with the recovery of art and antiquities. He most recently represented the heir of Jacques Goudstikker, a prominent Jewish art dealer in the Netherlands who died while fleeing the Nazis, in the 2006



restitution by the Dutch government of 200 old masters' paintings looted by the Nazis and the heirs of the famed Russian artist, Kazimir Malevich, in their litigation and 2008 settlement between the City of Amsterdam and the Stedelijk Museum.

**Maria P. Kouroupas** is director of the Cultural Heritage Center, Bureau of Educational and Cultural Affairs, U.S. Department of State. The center is responsible for the administrative and technical support requirements of U.S. implementation of the 1970 UNESCO Convention on Cultural Property and of the U.S. Ambassadors Fund for Cultural Preservation. The center also oversees State Department efforts in support of cultural preservation in Iraq. Prior to joining the State Department, Kouroupas administered the international program of the American Association of Museums where she developed "International Partnerships Among Museums" and contributed an international column to the AAM journal, *Museum*.

**Claire L. Lyons** is curator of antiquities at the J. Paul Getty Museum. Her research has focused on the afterlife of antiquity in the visual arts, culture, and politics. She co-authored the exhibition catalogue *Antiquity & Photography: Early Views of Ancient Mediterranean Sites* (2005), and was co-curator of "The Herculaneum Women and the Origins of Archaeology," and "Grecian Taste and Roman Spirit: The Society of Dilettanti." A specialist in ancient Italy, she has excavated at Murlo, Metaponto, Corinth, and Morgantina. Among her publications are *Morgantina: The Archaic Cemeteries* (1996), as well as the edited volumes *The Archaeology of Colonialism* (2002) and *Naked Truths: Women, Sexuality and Gender in Classical Art and Archaeology* (1997). Claire Lyons is a research associate of the Cotsen Institute of Archaeology at UCLA, and sits on the editorial boards of the *International Journal of Cultural Property*, *The Journal of the History of Collections*, and the *American Journal of Archaeology*.

**Patrick O'Keefe** is semi-retired but holds the positions of adjunct professor at the School of Pacific and Asian Studies, Australian National University and honorary professor at the University of Queensland. He has been awarded the Order of Australia and is a fellow of the Society of Antiquaries of London and the Australian Academy of the Humanities. A specialist in the law and management of cultural heritage, his latest book is the second edition of a commentary on the 1970 UNESCO Convention.

**Robert K. Paterson** is a professor of law at the University of British Columbia where he teaches and publishes in the area of cultural property law. He received his legal training in New Zealand and also holds a J.S.M. from Stanford Law School. He is the Rapporteur of the Cultural Heritage Law Committee of the International Law Association and an editor of the *International Journal of Cultural Property*. He was recently appointed a member of the advisory board of the University of British Columbia Museum of Anthropology.

**Lyndel V. Prott** has been responsible for over 260 books, reports, or articles and is currently based at the University of Queensland. She was closely associated with the negotiation of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995, the Second Protocol 1999 to The



Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, and the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001.

**Sabine von Schorlemer**, chair of international law and international relations at the University of Dresden since 2000, wrote her Ph.D. thesis on “Cultural Property Law in Peace and Armed Conflict” and obtained her habilitation in International Politics and Public International Law at the University of Munich in 1997. Being a legal advisor on U.N. policy for the German Foreign Ministry, she served both as an independent expert for the UNESCO director general in 2003/2004/2007 and as a member of the German delegation regarding the adoption of the “UNESCO Convention on the Promotion and Protection of Cultural Expressions” (2005). Professor von Schorlemer has been a member of the ILA Cultural Heritage Law Committee since 1993.

**Tullio Scovazzi** is professor of International Law at the University of Milano-Bicocca, Milan, Italy. He frequently serves as a legal expert for the government of Italy at international meetings relating to law of sea, the environment, cultural properties, and human rights. He is the author or editor of numerous articles and books on topics of international and comparative law, including two co-edited works: *The Protection of the Underwater Cultural Heritage* (2003) and *Biotechnology and International Law* (2006). In 2005, Professor Scovazzi served as the French-speaking Director of Research at The Hague Academy of International Law on the theme that year of the cultural heritage of mankind.

**Folarin Shyllon** is a professor of law at Olabisi Olabanjo University, Ago-Iwoye, Ogun State, Nigeria where he is the dean of the faculty of law. He was also a professor of law at the University of Ibadan, Ibadan, Oyo State, Nigeria where he was the foundation dean of the faculty of law from 1984 to 1991. He was educated at King's College, London. His current teaching and research interests are in the fields of cultural property law and intellectual property law. The author of *Intellectual Property Law in Nigeria* (Munich, Germany, 2004), he was a contributor to UNESCO's maiden issue of *World Culture Report* (1998) and contributed a chapter to Halina Niec's *Cultural Rights and Wrongs* (Paris, UNESCO, 1998), published to mark the 50th anniversary of the Universal Declaration of Human Rights of 1948. He is a member of the Nigerian Bar, a former president of the Nigerian Association of Law Teachers, a former member of the Nigerian Institute of Advanced Legal Studies, and a member (2007–) of the Council of Legal Education (CLE). He is on the editorial board of the *International Journal of Cultural Property* and *Art Antiquity and Law*.

**Anastasia Telesetsky** is currently Assistant Professor in the School of Law at the University of Idaho. She is a graduate of Boalt Hall School of Law, University of California at Berkeley with legal fieldwork experience in the Philippines and Papua New Guinea. She was a member of the Centre for Studies and Research at The Hague Academy of International Law in 2005 and published a chapter on the protection of traditional knowledge in the resulting volume of reports (2008).

**Rebecca Tsosie** joined the faculty of the Sandra Day O'Connor College of Law at Arizona State University in 1993 and teaches in the areas of Indian law, property, bioethics, and critical race theory. She has served there as executive director of the Indian Legal Program since 1996 and was appointed as a Willard H. Pedrick Distinguished Research Scholar in 2005. She has published widely on issues related to tribal sovereignty, environmental policy, and cultural rights, resources and pluralism, as well as Native rights to genetic resources. Tsosie, who is of Yaqui descent, also serves as a Supreme Court Justice for the Fort McDowell Yavapai Nation. She is the co-author with Robert Clinton and Carole Goldberg of a federal Indian law casebook entitled *American Indian Law: Native Nations and the Federal System*.

**Nancy C. Wilkie** is William H. Laird Professor of Classics, Anthropology and the Liberal Arts, and director of the archaeology concentration at Carleton College. She served as president of the Archaeological Institute of America from 1998–2002 and has been a member of the Cultural Property Advisory Committee of the U.S. Department of State since 2003. She has conducted archaeological research in Greece and Egypt and also in Nepal where she was a Senior Fulbright Visiting Lecturer.

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# INTRODUCTION

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The global community, dependent as always on the cooperation of nation states, is gradually learning to address the serious threats to the cultural heritage of our disparate but shared civilizations. The legacy of conquest, colonialization, and commerce looms large in defining and explaining these threats.

The international conference on cultural heritage issues that took place at Willamette University in October 2006 sought to generate fresh ideas about these cultural heritage issues; offer a good sense of their nuances and complexities; and reveal how culture, law, and ethics can interact, complement, diverge, and contradict one another. The chapters that follow in this book, written by conference participants, seek to accomplish these purposes. In 2006, the dramatic looting of the Iraq National Museum, as well as libraries and archaeological sites in that country, following the armed intervention there three years earlier, was still paramount in the minds of many if not most panelists and conferees. But the threats to cultural heritage are nothing new.

Indeed, the Willamette conference marked the centennial of two important developments in the history of threats to the cultural heritage in the United States. The Antiquities Act of 1906 was the first comprehensive legislation to address the plight of the fragile and non-renewable archaeological heritage in this country. Although much of the act was later gutted by the courts and superseded by other federal and state laws, it remains a foundation for national heritage protection, including the designation of national monuments.

The year 2006 also marked the centennial of the controversial donation to the American Museum of Natural History in New York of the Willamette Meteorite (Tomonowos in the Clackamas tribal language). It is the largest meteorite ever found in the United States and the sixth largest in the world. After coming to rest in the Willamette Valley of Oregon thousands of years ago, it eventually endured a questionable series of commercial transactions and litigation early in the last century that resulted in the relocation of most but not all of it in a specially built exhibit area at the museum. Several broken-off pieces migrated elsewhere, including a small piece that Willamette University recently rediscovered and returned to the Confederated Tribes of Grand Ronde community near Salem, Oregon. Since 2000, the meteorite lodged in New York has been subject to an agreement that ensures special access to it by members of the Grand Ronde community for cultural, religious, and historical purposes, including an annual ceremonial visit.

Despite a long history of issues and responses to them, it is only in the last few decades that the global community has acted to construct a specific, comprehensive regime of law for regulating and protecting the cultural

heritage of humankind. Among the earliest multilateral agreements was the Roerich Pact of 1935 to protect monuments in western hemispheric states and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

In the late 1960s, however, four developments sparked a series of further initiatives to construct an effective regime of supervision and control. First, concerned archaeologists began to blow their whistles on questionable excavations, illegal trafficking in cultural objects, and acquisitions of them by collectors, museums, and other institutions. Second, governments, notably Mexico, brought pressure on import states, particularly the United States, to cooperate in barring the import of significant cultural material and returning such contraband to countries of origin. Third, the Native Peoples Movement inspired efforts to regain possession of indigenous material. And fourth, more sophisticated thefts of cultural material and their growing links with money-laundering as well as other organized crime alerted law enforcement authorities to the need for better policing of transactions involving important cultural objects. It was truly alarming to find that illegal trafficking in cultural material had assumed third place behind drugs and weapons as international contraband. In response to these developments, inter-governmental and non-governmental organizations, particularly the United Nations Educational, Scientific and Cultural Organization (UNESCO), enlisted the cooperation of national governments and private institutions in fashioning and enforcing the rules and procedures that now form the general framework of cultural heritage law.

The emerging regime for protecting the global heritage performs five interrelated functions: *protection, cooperation, rectification, criminal justice, and dispute resolution*. Accordingly, the law seeks to protect the physical integrity and contextualization of cultural material; facilitate cooperation in its management, appropriate transfer, and safe return to legitimate claimants; rectify wrongful activity by means of civil remedies and otherwise; impose penal sanctions for illegal activity involving cultural material; and provide formal and informal mechanisms and rules for resolving related disputes.

In particular, claims for the return, restitution, or repatriation of cultural heritage have been of central importance. On the domestic level, for example, the historical and cultural identity of tribal and other indigenous groups is often at stake in efforts to reclaim significant artifacts from museums, art galleries, and private collections. On the international level, the recovery of stolen cultural material, whose value is estimated to be as high as \$3 billion annually, requires substantial diligence by customs officials and cooperation among international organizations, governments, private institutions, and individuals. Not surprisingly, the claims can easily beget complexity.

Some claims seek to right the wrongs of conquest and colonialization, particularly by native and colonial peoples seeking to reclaim material looted from them, while other claims address issues of illegal commercial activity. Often all three dimensions of the cultural heritage predicament—conquest,

colonialization, and commerce—converge. For example, almost as soon as the British military had looted scores of extraordinary Benin bronze sculptures from West Africa in 1897, they found their way into private collections and museums, primarily in Europe. This combined legacy of conquest, colonialization, and commerce continues to generate tensions and provoke ethical and legal questions, even as the cultural objects at issue continue to excite people's imaginations around the world and encourage notions of cross-cultural pride and human solidarity. In the course of the two years during which this book was in preparation, an unprecedented exhibition of Benin bronzes toured four countries. One sentence in the preface to the exhibition catalogue reflects the characteristic ambiguities of contested heritage derived, in the case of the Benin bronzes, from an "unjustifiable" military acquisition that has nevertheless brought the works of art to "far broader attention."<sup>1</sup>

Until recently, requirements to return cultural material to territories of origin, dating back to Persian, Greek, and Roman times, were addressed almost exclusively to military-related problems of plunder, the spoils of warfare, and occupation. For example, The Hague Conventions of 1899 and 1907 on the laws and customs of war, followed by the reparation provisions of the Treaties of Versailles and Saint-Germain after the First World War, underscored the illegality of military plunder and articulated basic remedies for victim states. The spoils of war and occupation still threaten the world's cultural heritage, as in the wake of the 2003 military intervention in Iraq, but for several decades a booming art market has shifted attention to peacetime trafficking as well.

Because the origins of international cultural heritage law lie in the battlegrounds of conflict and the underworld of crime, it is not surprising that the normative framework to protect the cultural heritage has been essentially adversarial. Historically, efforts to develop an effective body of cultural heritage law have emphasized formal remedies for past wrongs. Considerable emphasis has been placed on exclusive rights of ownership and the elaboration of rules for the restitution of stolen property or return of illegally exported property. In resolving related disputes, litigation has been a preferred means despite the voices of experience that have urged a greater recourse to mediation and other informal means of dispute resolution when that is feasible. Unfortunately, however, the stakes are often too high in the commercial art world to rely on mediation and other informal techniques.

The availability of adjudication and the articulation of applicable rules are essential, of course. Conversely, an absence of detailed rules may inhibit the resolution of cultural property disputes such as those arising out of the confiscation and transfer of cultural treasures during the Holocaust and World War II. But rules and formal processes for applying them are inadequate by themselves. As one of the conference speakers, Folarin Shyllon, has pointed out, a reliance on adversarial processes, particularly litigation, is bedeviled by

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<sup>1</sup> BARBARA PLANKENSTEINER ED., *BENIN KINGS AND RITUALS: COURT ARTS FROM NIGERIA* 17 (2007).

two intractable problems: evidentiary issues and refusals to recognize or enforce foreign export controls, not to mention the often prohibitive costs of litigation. And in addressing Native American and Native Hawaiian claims, it is likewise apparent that formal rules, scientific theories, and academic practices—the legacy of what Roger Echo-Hawk calls “conquest archaeology”—have inherent limitations in constructing our views of ancient human history and cultural traditions. The will to cooperate and collaborate in equitably sharing the global heritage—it is really a matter of *goodwill*—is essential.

It seems clear that the global community should seek a balance between rectification of what has gone wrong and advocacy of what seems right. This, however, will require a greater emphasis on a spirit of commonality, a commitment to the principle of sharing, and open, well-informed mechanisms of collaboration. We also need to refurbish our vocabulary and renovate our mind-sets, which have relied too heavily on such dichotomies as art-exporting versus art-importing countries; common heritage versus national patrimony; salvage of underwater wreck versus preservation of underwater heritage; and so on. Dichotomies of this sort are, of course, normal if not essential as analytical constructs in advancing any system of law and governance, but they are apt to blinker our vision of reality and inhibit constructive discourse and action.

A sharp division by some commentators between cultural internationalism and cultural nationalism is particularly questionable. The wordsmiths of the benign-sounding term “cultural internationalism” cleverly pirated a respectable term—internationalism—to justify *laissez-faire* practices that actually defy the fundamental requirements of cooperation and collaboration underlying internationalism in its normal sense. One of the conference speakers, Lyndel Prott, has effectively debunked this classification as simply a rhetorical construct to justify a perpetual legacy of commerce. It must yield and, indeed, is yielding to more cooperative approaches for accommodating the many diverse interests in the cultural heritage of humankind. An example is the broadly applicable Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material, which were adopted by the International Law Association in 2006.

Bilateral agreements now reflect this trend as well. So do concrete proposals for dispute resolution. For example, William St. Clair, an expert on the endless issue of the Elgin (Parthenon) Marbles, has suggested that the core of an agreement for their return to Greece need not be simply a transfer from one location and one museum management to another, but rather more of a universal trusteeship. Such an approach, in keeping with the more global vision of our times might, for example, impose specific duties on the trustees with regard to conservation, display, access, record keeping, needs of scholars, consultation, and accountability. Collaboration of this sort represents the best of cosmopolitanism, to use Kwame Anthony Appiah’s term.

Along with an emerging blend of adversarial and collaborative processes to address cultural heritage issues has come a substantial broadening of the normative framework in recent years. This framework now spans a welter of issues ranging from the creation of cultural safety zones during armed conflict, to the

ongoing rectification of genocidal conquest during the European Holocaust and World War II, to the treatment of shipwrecks and their cargo, to the protection of folklore and other intangibles, to the promotion of traditional knowledge in the interest of biological diversity. All of these topics are controversial, as are the legal instruments that incorporate them, but the issues they embrace are vital to us all, whether our viewpoint is in the global arena, a national legislature, a courtroom, a classroom, an archaeological site, or a museum.



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