

Who Owns the Past?
Cultural Policy, Cultural Property, and the Law
Edited by Kate Fitz Gibbon
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“All great works of art are surely the common inheritance of humanity... [I]t is essential that there are places where the great creations of all civilizations can be seen together, and where the visitor can focus on what unites rather than what divides us.” This quote from Neil MacGregor, Director of the British Museum (appearing on page 145-6 of the book), concisely summarizes one side of a prominent and longstanding debate addressed in this new compendium of essays on the legal and ethical issues relating to the ownership of art works, antiquities, and other cultural property. Usually, the question of who owns the past and where it should reside, in the context of culture, has focused on antiquities. This book adds important essays on ownership issues pertaining to antiquities, including several that look back at seminal cases where complex issues, such as the application of statute of limitations and the meaning and effect of being of good faith purchaser, are addressed. It also looks at other topics such as ownership of works seized or otherwise lost during the Nazi era, and the protection of sacred remains and burial objects of Native American Indians.

Who owns the past, in this context, is a current with recent news articles addressing disputes and settlements such as: the Metropolitan Museum of Art's decision to return a vase, the Euphronios Krater and other works to Italy (assuming adequate proof of its having been stolen from Italy); of the criminal charges in Italy against a long time

curator of the Getty Museum relating to the purchase of antiquities for that Museum; of Yale University's dispute with Peru over Machu Picchu objects in its possession for nearly a century; and the recent binding arbitration decision in Austria to return five Gustav Klimt works to Maria Altman, which had been owned by her uncle and were confiscated by the Nazis, to mention a few. For those of us who might wish a better understanding of the underpinnings of these matters, this book provides contextual overviews and insights, presented thoughtfully, with rich factual and analytical texture, written from various points of views by individuals with years of experience with the issues. What's more, the material is eminently assessable and fascinating -- many of the essays read like good espionage stories.

Take for instance the essay "The Truth of the Sevso Treasure, an intriguing account of claims of ownership, by both Hungary and Croatia, of fourteen pieces of fourth-century Roman silver and a copper cauldron (wherein the treasure was believed to have been stored) against an entity called the Marquess of Northampton 1987. Its authors conclude that "[t]he Sevso Treasure case teaches that in the world of antiquities the line between speculation and fact is a thin one." This statement well summarizes the questions of fact in this case, but also states the truth about so many antiquities disputes.

That essay is no more fascinating than Kate Fitz Gibbon's (former member of the Cultural Property Advisory Committee to the president) account of the Elgin Marbles, which starts in the 1800's with an earl of Elgin's removal of the marbles from the Parthenon, then moves through to the first official claim by Greece for their return in 1982, and ends with the legal and moral arguments for both repose and return. There are no easy answers or solutions here.

An especially illuminating essay is Andrew Solomon's, "Art in Jeopardy" which relates the dreadfully sad and seemingly avoidable destruction of pre-Islamic art treasures in Afghanistan. The author recounts how, based on current laws, UNESCO declined to help the works leave the country. Prior to having read this essay, I had been of the impression, based on news stories that the lost, while great, was restricted to large outdoor statues, but unfortunately countless works from museums and other repositories were destroyed. This article points to the need for a better solution to protection of culture in time of war. Relevant to this André Emmerich, in his essay, references the recent destruction and looting of treasures in Iraq to so rightfully caution against the danger of amassing too much cultural heritage in any one place.

Looking at the role of museums, James Cuno, the director of the Chicago Institute (whose essay also provided this review's opening quote) says, "Museums are, or should be instruments for encouraging our skeptical inquiry into the simplistic notions of cultural identities. National policies and laws should respect this all-important contribution of the world's museums by encouraging a licit trade in antiquities and cultural property. Increasingly, in my view, such policies and laws are doing the opposite." This is a common theme in this book.

Others themes include: that collectors, dealers and museums, who were once viewed as the rescuers and preservations of antiquities, are now being regarded to being akin to drug trafficking or arms dealing (as noted by the art historian, Emma C Bunker in her essay); that current cultural property laws, particularly those of certain nations which broadly define their cultural property, are overreaching and/or otherwise flawed; and that the courts are a risky and costly venue for the resolution of cultural property claims.

The book rightfully concludes that “current laws do not work consistently.” Certain solutions are raised in some essays, such as a national registry, or a better licensing system for exporting cultural property and an international database to track ownership. These would be of help. One also concludes that there needs to be a further evolution of international law to help better preserve culture, which would hopefully accomplish a better balance between the proprietary interests in culture and the enhancement of its culture through its dispersement. These themes and conclusions provide just a glimpse of this books content – the substance is in their presentation.