

Kate FitzGibbon, ed. *Who Owns the Past? Cultural Policy, Cultural Property and the Law*. New Brunswick and London: Rutgers University Press, 2005. xiii + 355 pp. \$34.95 (cloth), ISBN 978-0-8135-3687-3.



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Retentive Cultural Nationalism or Cultural Internationalism: That Is the Question

Who Owns the Past? Cultural Policy, Cultural Property and the Law is intended to “clarify the legal, moral, and practical issues raised by collecting and exhibiting works of art” (p. ix) and “to make the cultural property debate comprehensible to all” (p. xiii). The book was sponsored by the American Council for Cultural Policy, an organization founded in 2002 as a not-for-profit organization dedicated to informing the public on arts and associated issues. The book consists of twenty-nine articles, some re-published from other sources (and updated) and some commissioned for this volume.

Editor Kate FitzGibbon, specialist on Central Asian art and collections management consultant, abstracts each article briefly in her introduction and provides an overview of the chronology of cultural property legislation in the first chapter (viewable on Amazon.com). Covering international as well as national legislation and significant American case law, Fitzgibbon’s chapter sets the stage for the remaining essays. The first group focuses on the laws associated with cultural property including NAGPRA (the Native American Graves Protection and Repatriation Act of 1990). It includes discussions of such highly publicized cases as the 1997 litigation surrounding the loan of two works by Egon Schiele to MOMA by

a private museum in Austria; the international controversy surrounding the Sevso Treasure, a valuable hoard of late Roman silver; and a summary of the debate over the appropriate home and legal status of the Elgin marbles. Other articles describe aspects of U.S. laws that determine how U.S. courts evaluate competing claims, as in the case of stolen property—owners versus “good faith” purchasers, or the immunity against seizure of art owned by foreign governments while on loan to American exhibitions.

In the first and longest of the essays in this section, art law specialist William Pearlstein looks at the legal situation that most affects American museums, collectors, dealers, and scholars, namely the 1983 Implementation Act passed by Congress in relation to the 1970 UNESCO Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This is arguably the most important international agreement on the treatment of cultural property, having been signed by one hundred countries. According to Pearlstein, the implementation act was passed to allow foreign nations to request U.S. import restrictions on important categories of unprovenanced cultural objects while preserving the ability of the

United States to limit those categories of restricted objects (p. 9). It reflects an elaborate compromise designed to balance the competing interests of U.S. museums and the public; the art market; archaeologists; and source nations. It was intended to promote the international exchange of cultural property for the benefit of the U.S. public, setting up import barriers only when necessary to protect important archaeological sites or significant objects (p. 10). At odds with this legislation, however, are recent U.S. court decisions, based on an earlier decision (*United States v. McClain* 1979), that recognizes blanket national patrimony laws as giving foreign states an ownership interest in cultural property, enforceable in American courts, in what Pearlstein describes as “a classic example of judicial nullification of congressional intent” (p. 11).

The second section explores collecting (public and private) and the art trade, particularly in antiquities, and its importance to the continued growth of U.S. cultural institutions. Articles explore the central role of the museum in the stewardship and preservation of cultural heritage as well as the important role of private and corporate philanthropy in underwriting museum collections, exhibitions and development given the restricted role of direct government funding. A subtext in these essays concerns the encouragement or constraint on collecting activities imposed by U.S. laws and by the ethical guidelines established by museum organizations as well as by the changing social and moral justifications for collecting.

The next group of articles considers specific instances of looted archaeological sites and loss of cultural heritage through war (Afghanistan and Iraq, most recently) or through construction and infra-structure development in the source nations. Several essays reflect the belief, among at least a portion of the archaeological community, that abolishing the trade in all forms of illicitly excavated cultural patrimony is an essential first step in preserving archaeological sites intact; other authors make the “preservation through distribution” argument. Two of the more interesting articles in this section, however, concern arguments unfamiliar to most of us in African cultural studies. David Matsua’s work focuses on subsistence diggers, and their role and motivation within the “artifact economy,” and Andrew Solomon’s essay exposes the failure of the international community to save Afghanistan’s art treasures “not by irresponsible American bombing but by irresponsible Western non-intervention” (p. 240).

In the fourth section, several authors discuss the reasons why current legal and philosophical approaches have failed to prevent the continuing loss of cultural heritage, and propose innovative alternatives for remedy and regulation, ranging from overviews of the strategies developed by Japan to protect its cultural heritage, to the Kathmandu Valley Preservation Trust to serve as a “teaching laboratory” for heritage preservation, to the use of technology to set up collections management programs. Exemplary efforts include the Canadian Heritage Information network; the Taiwanese government’s e-Taiwan Plan to make available as digital images with descriptive text, all 650,000 pieces in the collection of the National Palace Museum as well as the museum’s 400,000 Qing-dynasty documents and rare books; and Peru’s project to inventory the cultural objects held by the Catholic Church as part of Peru’s cultural patrimony.

FitzGibbon notes that it takes very little to build a basic collections-management system today: a few computers, a server, networking connections, and a steady supply of electricity (p. 296). Complete museum-management software packages capable of organizing the complex relationships between tens of thousands of objects, images, text, conservation records, exhibitions, and storage are currently available for only a few thousand dollars per user license. It is likely that fewer than five computers would actually be used to input data in a specific developing world situation, even if multiple cultural institutions participated in a national, networked program. There would be additional costs for such equipment as scanners and digital cameras, but altogether she estimates the start-up costs could be kept below \$30,000—plus the cost of a trained operator and workers to move objects, input data, photograph them, and properly store them. She offers as an example of a low-budget, high return system, the program by the Royal Tropical Institute (KIT) Netherlands to digitize museum collections in the Third World (p. 297). The KIT Object ID project performs hands on training in basic documentation programs and provides museums with computer hardware, software, a back-up battery, and a digital camera. Active programs are in place at eighteen museums worldwide—including seven in Africa, three in South Asia and three in Vietnam. (The project has been financed by the Dutch Ministry for Development Cooperation, but KIT, www.kit.nl is seeking sponsors for additional museums [p. 302]). A final essay provides examples of successful repatriation and collection sharing as models for dispersing (but not necessarily owning) objects worldwide.

All of the essays revolve around the competing inter-

ests of “retentive cultural nationalists” and “cultural internationalists.” Retentive cultural nationalists consider all things found within the borders of a particular country to be part of the national patrimony, whether or not they relate to the history of the country and its people. Cultural internationalists argue that exposing everyone to works of art from the world’s many cultures is in everyone’s best interests and promotes cultural understanding. Archaeologists ally themselves with the cultural nationalists in their conviction that foreign patrimony laws will help protect and preserve pristine stratigraphic context in sites until professional excavation can take place. The severest critics of blanket national patrimony laws which give foreign states an ownership interest in cultural property, enforceable in American courts (and the Native American Graves Protection and Repatriation Act or NAGPRA, as a specifically American version of national patrimony law) believe that such laws threaten core western values like the scientific method, constitutional liberty, and the right to own private property.

Who Owns the Past is a well-organized and clearly written book, relatively free of jargon (some legal terminology excepted). It is an important reference book,

moderately priced, for anyone involved in cultural preservation and museum studies, not only for those essays printed between the covers, but for its information on web-based sources including full texts of many domestic and international laws, bilateral and emergency agreements, complete law journal articles, and other documentary materials (in appendix 2).

All of the essays make for good reading, but those providing an overview of the law and suggestions for solving the problem of preserving and sharing world heritage are the most useful. Although all the constituencies appear to be represented with well-argued rationalizations, there seems to be a bias towards the internationalist position rather than toward the nationalization of “cultural heritage”—a bias with which I sympathize. I agree with FitzGibbon that “the primary beneficiaries of the present system are corrupt source-country officials at all levels of government, and middlemen, most of whom are source country nationals who exploit the working digger. The main losers are source-country cultural institutions, legitimate government interests, and dealers, scholars, collectors, museums, and even archaeologists throughout the world” (p. 291).

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