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# Editorial

Patty Gerstenblith

In the past few months, both the Journal and the Society have undergone significant changes which we hope will open new opportunities for all with an interest in this field. In the fall, the officers of the Society and many of the members of the Editorial Board had the first opportunity in several years to meet face-to-face in conjunction with a Round Table on the subject of cultural property sponsored by the Association of the Bar of the City of New York. Several decisions were taken at the meetings of the Society and of the Editorial Board, and I want to take the opportunity of this editorial space to inform the readership of these changes.

Perhaps the most significant of these changes is that the founder of the Society and of the Journal, Professor John Henry Merryman, has decided to step down as President of the Society. Everyone who works in the field of cultural property and in the broader field of law and the arts owes a tremendous debt to Professor Merryman. He was one of the first professors in the United States to offer a course in Law and the Arts and continues to do so at Stanford University. With his co-author, Professor Albert Elsen, he wrote one of the major treatises on this subject in the English language. Several years ago, he had the imagination and the vision to found the International Cultural Property Society and the Journal which was his brainchild. Under his leadership, the Society sponsored the Vienna Conference in 1994 and has had six years of successful publication of the Journal. Professor Merryman continues to be an active contributor. Most importantly, throughout his career, he has stimulated much thought and creativity in this field; his works will endure as the reference point for both those who agree and those who disagree with him. Many of us who have the honor of working with him are amazed by his boundless energy, the number of conferences in which he participates and the number of articles and other works which he continues to write. While we will miss his guidance, Professor Merryman has fortunately agreed to remain as an active member of the Journal's Editorial Board, and he has accepted the position of President Emeritus of the Society.

We are also fortunate to have Daniel Shapiro as Professor Merryman's successor as President of the Society. Having begun his career as a teacher of philosophy, Dr. Shapiro subsequently attended law school and became an active practitioner, now with an exclusive

practice in art law and cultural property. He presently is an Adjunct Professor at Cardozo Law School in New York teaching cultural property and art law. He also writes on cultural property issues, is actively involved with a number of not-for-profit organizations in the arts, and serves as a member of the Art Law Committee of the New York City Bar Association and as a trustee and member of the legal advisory committee of the International Foundation for Art Research. It is an added tribute to Professor Merryman that he has been able to hand over leadership of the Society to such an energetic and creative successor.

Under Dr. Shapiro's leadership, the Editorial Board has already begun to explore new and exciting options. One of the first has been the possibility of electronic publication of the Journal. Such publication could take several different forms, including electronic publication of a forthcoming article with an opportunity for readers to comment. A revised article would then be published in the paper copy. A first step has been taken in the creation of a home-page for the Journal. I invite you to visit the site at: <http://www.law.depaul.edu/snolley/cultprop.htm>. So far, the home page has been used only to list the editorial board members and the contents of upcoming issues. We will soon begin adding abstracts of the articles contained in the most recent issue. It is likely that we will remain committed to publishing the Journal in paper copy, but we are interested in exploring a variety of creative forms of publication, as well.

In my previous editorial, I reiterated the desire of the Journal to reach out both in terms of the disciplines addressed in the Journal's pages and in terms of the regions of the world which the Journal covers. One first step has been taken in that direction in that Professor Bruno Frey of Zürich, who is a leading economist, has joined the Editorial Board. Even as I welcome Professor Frey, we are continuing to seek diversification by disciplines and by geographic regions in both the membership of the Editorial Board and in the types of articles which we publish.

Included in this issue is a flyer which asks each reader to respond to a series of questions. The reason for this is that we want to learn more about the individuals who read the Journal, what their fields of expertise are, their fields of employment, and the types of topics which they would like to see discussed in the Journal. I urge each reader to complete the "questionnaire" and return it to me so that we can gain a better understanding of our audience.

The offerings in this issue shift much of our attention to the Middle East with two articles. One of these examines the legal treatment of cultural property in the various Arab nations, while a second article focusses on the conflict in Israel between the desire of the archaeological community to engage in the scientific excavation of burials and the precepts of religious law. A third article, by Andrea Gattini, discusses the current status of the Koenigs Collection of Old Master drawings which disappeared in the course of World War II

and has now appeared, at least in part, in Russia. This article also serves as a reminder of the longevity of the problems created by war for the safety and knowledge of a wide range of cultural property. The story of the Koenigs Collection is only one example of the numerous art works and other cultural treasures which disappeared during World War II and which are either still missing or are in dispute even today. This theme is picked up in the reports of new agreements reached between the governments of Ukraine and of the Federal Republic of Germany to return cultural objects. Examples of such agreements are, however, still too few.

The exacerbation of this problem is exemplified by the recent enactment in Russia of a new law which will make it even more difficult for art works seized by the Soviet Union during the War to be returned. The lower house of the Russian Parliament voted 291–1 on February 5, 1997, to strengthen a similar bill which was passed last year.<sup>1</sup> The new bill “makes a distinction between art objects ‘transferred’ to the Soviet Union as a part of Germany’s compensation for war damages and artworks brought in ‘illegally.’”<sup>2</sup> The former are now to be considered Russian national property, while the latter may be returned to former owners. However, art works will only be returned pursuant to an official request by a foreign government, while claims brought by individuals or private organizations will not be considered.

The difficulty of both protecting art works from destruction and making them available to future generations in the aftermath of war must be remembered as we cite the more recent examples of large-scale destruction of cultural property caused by war. The fighting in the former Yugoslavia, and most particularly in Bosnia, caused massive destruction of cultural property, the most egregious example of which was probably the shelling of the National and University Library in Sarajevo. Reports of looting of sites and emptying of museums in Iraq continue to surface, not only as the result of the Gulf War but also of the embargo in the years after the war. Scholars are undertaking valiant efforts to document and publicize the archaeological materials taken from Iraq, ranging from cylinder seals to Assyrian wall reliefs, in the hope of alerting dealers and collectors to the background of these objects.<sup>3</sup> A recent report adds that thirteen fragments of relief sculpture were stolen from the Sennacherib Palace Site Museum at Nineveh.<sup>4</sup> Finally, the National Museum in Kabul has suffered repeated attacks and looting over the last eighteen years of fighting in Afghanistan.<sup>5</sup> At least 70 percent of the collection, which once spanned 50,000 years of history, is now reported to be missing.<sup>6</sup>

While we lament these losses, it is all the more ironic that the United States has still failed to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. While the United States should be urged to join this important international agreement, perhaps it is also time that wilful destruc-

tion of the cultural heritage take its place as a crime against humanity. Although this issue is not as urgent or as tragic as the loss of human life which occurs during warfare, the international community should recognize that destruction of the past leads to irretrievable loss as well.

## Notes

- 1 *Russia Seeks to Keep Seized Artworks*, N. Y. TIMES, Feb. 6, 1997, at A8. Although President Boris Yeltsin vetoed this legislation, both houses of the Russian Parliament subsequently voted by overwhelming majorities to override the presidential veto. The status of this legislation is now unclear. Michael R. Gordon, *Slap at Yeltsin as Legislators Veto Return of Art Booty*. N. Y. TIMES, May 14, 1997, at A3.
- 2 *Id.*
- 3 A series of fascicles seeking to document materials looted from a number of Iraqi museums during and after the Gulf War is being published, the most recent of which appeared at the end of 1996. HIDEO FUJII & KAZUMI OGUCHI. *LOST HERITAGE: ANTIQUITIES STOLEN FROM IRAQ'S REGIONAL MUSEUMS*. Fascicle 3. Tokyo, Institute for Cultural Studies of Ancient Iraq, Kokushikan University 1996. The two earlier volumes are: MCGUIRE GIBSON & AUGUSTA MCMAHON. *LOST HERITAGE: ANTIQUITIES STOLEN FROM IRAQ'S REGIONAL MUSEUMS*. Fascicle 1. Chicago, American Association for Research in Baghdad 1992; H. D. BAKER, R. J. MATTHEWS, & J. N. POSTGATE. *LOST HERITAGE: ANTIQUITIES STOLEN FROM IRAQ'S REGIONAL MUSEUMS*. Fascicle 2. London, British School of Archaeology in Iraq 1993.
- 4 Information provided by John M. Russell (posting on AIA-L Bulletin Board, 31 Dec 1996); see also *Assyrian Wall-Reliefs for Sale*, 49:6 *ARCHAEOLOGY* 20 (Nov./Dec. 1996) (noting appearance of three wall reliefs from Sennacherib's palace at Nineveh on the antiquities market).
- 5 John F. Burns, *Kabul's Museum: The Past Ruined by the Present*, N. Y. TIMES, Nov. 30, 1996, at A1.
- 6 Even when peace comes, destruction of the past may continue. After fifteen years of civil war, Beirut is being rebuilt, and the desire to create a modern city and the efforts to preserve the past are now on a collision course. While some sections of the ancient city are being meticulously excavated and their architecture carefully restored, controversy has raged as to whether other sections, particularly in the area of the sea port, are receiving adequate protection. Marilyn Raschka, *Beirut Digs Out*, 49:4 *ARCHAEOLOGY* 44 (July/Aug. 1996).