



## .... news flashes from the Ethnic Arts Council

March 2011

### Questions of Provenance/Questionable Provenance

by Alan D. Grinnell

Several members of the EAC attended a mini-symposium on **Questions of Provenance**, held at the De Young Museum on February 10, 2011. Provenance, which is the documentary record of origin and ownership of an object, is a subject of particular importance to museums and collectors, especially those who wonder about purchase, sale, or donation of material. The panel speakers were Barbara T. Hoffman, a prominent New York arts lawyer and editor of *Art and Cultural Heritage: Law, Policy and Practice* (2006), Kate Fitz Gibbon, a member of the President's Cultural Property Advisory Committee under Presidents Bill Clinton and George W. Bush and editor of *Who Owns the Past? Cultural Policy, Cultural Property and the Law* (2005), and Hermione Waterfield, a freelance researcher in issues of provenance and a long-time consultant to Christies, in London.

There are two major issues involved in discussion of provenance: the legality of buying, owning, selling, or donating cultural objects that have questionable provenance, and the ethical/moral issues of collecting objects that have been looted, removing them from the context –*in situ*– that provides archaeologists and scholars the maximal amount of data about them and the culture they come from.

Barbara Hoffman spoke principally on the legal history of cultural property law in the U.S. Many of us are already fairly well acquainted with most of the relevant laws, although in practice such laws keep being reinterpreted. The first international treaty focusing exclusively on the protection of culturally significant objects and architecture was the **Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict** (1954), created in the wake of widespread destruction of cultural heritage in World War II. For most collectors of ethnic art, the international agreement that is most cited is the **UNESCO Convention on Cultural Property** (1970), which called on all signing states to develop mechanisms for preventing illicit trade in cultural artifacts. So far, 120 nations, including the U.S., have signed onto this agreement. The Convention, by itself, however, did not specify how these aims would be enforced.

In the late 1970s, a Texas dealer had a shipment of pre-Columbian objects from Mexico intercepted and was charged with violating the **National Stolen Property Act (NSPA)** (various dates), based on the 1970 agreement and the claim, by Mexico, that all objects of historical interest coming out of the ground were government property and could not be exported legally without a government-issued permit. Due to the ambiguity of the Mexican laws that were cited, the case went through several appeals, but eventually the dealer was convicted. Under this legislation the criteria for guilt is **probable knowledge** that it is illegal



to import the objects (ignorance of the law is no excuse) and a threshold value of \$5000. Because some members of the U.S. Congress felt it was inappropriate for the U.S. to use our Stolen Property Act to blindly enforce other country's laws, legislation was written and passed in 1983 called the **Convention on Cultural Property Implementation Act (CPIA) of 1983**. This act creating the **President's Cultural Property Advisory Committee**, which was charged with considering applications from other countries requesting that the U.S. intercept and prevent importation of specific, identified valuable cultural property or categories of property. Criteria for setting up such an agreement were: 1) that the cultural patrimony of the requesting nation is in jeopardy from the pillage of archaeological materials; (2) that the requesting nation has taken measures to protect its cultural patrimony; (3) that U.S. import restrictions, either alone or in concert with actions taken by other market nations, would be of substantial benefit in deterring the serious situation of pillage, and (4) import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes. If these criteria were met, the committee could recommend that the U.S. enter into a **bilateral** treaty with the other country to intercept and prevent their importation into the U.S. These treaties would be reconsidered for renewal every five years. Several nations applied for such agreements and treaties were written, for example, criminalizing importation of gold from Sipan (Peru), certain categories of textiles from Bolivia, etc. Relatively few nations applied, however, including only one from Africa (Mali). There are now only fourteen such bilateral treaties. Fitz Gibbon added that the Committee was further handicapped by the lack of transparency and accountability, since all their meetings were private and there was no reporting necessary to Congress.

The 1983 law governed legal practice with regard to cultural property until the late 1990s, when a prominent New York antiquities dealer, Frederick Schultz, was charged with conspiring to import a valuable Egyptian artifact, in violation of the **NSPA**. Schultz fought the charge, arguing that cultural property should be subject to the 1983 law, and that a bilateral treaty with Egypt covering such material did not exist. He was convicted and the appeals court upheld the conviction. The irony is that, although Schultz had clearly made arrangements to falsify import descriptions and provenance information, he never actually imported the artifact, which was sold out from under him by the English dealer to a client in Switzerland. This conviction was a game changer. Since then, the 1983 implementation law and the President's **CPIA** have become largely irrelevant. Other nations have found it much easier to simply declare anything found in the ground to be government property, as long as the U.S. uses the **NSPA** to prosecute those attempting to import anything looking like cultural property. Consistent with the spirit of the times, the President's **CPIA** has recently taken the view that all trade in cultural artifacts is bad.

Another convention affecting cultural property, the **UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**, grew out of a meeting in Rome in 1995 and is collecting signatories now, mainly among European nations. It deals primarily with provisions for restitution of stolen cultural artifacts and is quite draconian. The U.S. is not (yet) a signatory to this. On the other hand, the **Native American Grave Protection Act and Repatriation Act of 1990 (NAGPRA)** establishes strict provisions for possession and repatriation of materials (especially bones) from American Indian grave sites (which has



sometimes been interpreted to include groups outside the U.S.). This law has been applied selectively, but is often used to cover cultural property.

The evolution of the U.S. legal position on enforcement of cultural property laws of other nations clearly reflects two powerful and interrelated factors; (a) cultural artifacts have increased greatly in value as more people began collecting and museums have come to consider them as “art;” and (b) nations began to take interest and pride in their own cultural history (and its value). Because of the value of these materials, they have also become negotiating chips in political agreements between the U.S. and other nations, for example, the U.S. agreeing to prohibit importation of another country’s cultural artifacts in return for permission to spray coca and marijuana plantations.

Because of this welter of legislation affecting importation, ownership, and disposal of objects of cultural interest and value, auction houses and museums have become extremely nervous about accepting objects that don’t have clean provenance, establishing their legality in the U.S. In fact, the Association of Art Museum Directors has established a guideline of not accepting donations of any art not documented to have been in the U.S. prior to 1970 or to have had legal entry since that time. This is a non-binding guideline, but probably adhered to by most of the premier museums. It is up to the collector to do due diligence to establish that a piece being considered for purchase, sale, or donation, has the necessary pedigree.

This brings us to the ethical/moral issues. Both Barbara Hoffman and Kate Fitz Gibbon addressed the moral issues affecting collecting and repatriation of cultural artifacts. On the one hand, what is the justification for collecting an object that another country claims as its own and wants to keep, or wants back? In the past, when these artifacts were not highly valued, objects that were dug up in someone’s back yard were treated no differently than something they—or their grandfather— had made themselves, and happily sold to a visiting tourist or collector. Archaeologists quite rightly took umbrage at this, but the countries of origin didn’t care, and it provided some income for the local population. Moreover, there is truth to the argument—applicable to places like New Guinea and the Parthenon—that many objects were preserved that would otherwise most likely have been lost altogether. Now governments care. In some cases, such as Egypt’s Zahi Hawass, this goes to extremes. He would like to repatriate every Egyptian artifact, including the stele given to the city of New York by Egypt in the early 1900s. Given recent events in Egypt, how many non-Egyptians would be able to appreciate the marvels of classical Egyptian art if he had his way? Is it appropriate for states to control access to the art from their geographical territory, but very likely not from their genetic heritage? To control what shall be seen, and how? The ruling principle that both Hoffman and Fitz Gibbons espouse is that ownership of these cultural treasures is temporary. We are custodians for it, and it should be available to scholars, wherever it is. It is appropriate to repatriate cultural objects (from museums, in particular) when they are important, will continue to be available to scholars, and can result in negotiated loans of other great material to the returning museum. The litany is truth, preservation, and access.



The other large ethical problem is the encouragement of continued looting. This is one of the best reasons for trying to legally shut down the artifact trade. As Kate Fitz Gibbon pointed out, however, archaeologists tend to be too purist about this. Perhaps 98-99% of ethnographic material in museums is undocumented, i.e. looted or donated by someone who did not keep track of sites and circumstances of collection. Many archaeologists refuse to even look at it if it doesn't have this context; but most artifacts provide valuable comparative or art historical information, even if they have lost much of their archaeological value. More to the point, in the real world, where a great deal of significant, but undocumented, material exists, collected over decades before archaeologists began to become interested in the cultures it came from, it should not be ignored.

Hermione Waterfield related a number of interesting anecdotes about sales of ethnographic items at Christies, the main import of which was to illustrate the wisdom of the adage: "Buyer Beware". Claimed association with famous names or events can vastly increase the sales value of an item, and can often, by a little due diligence, be shown to be demonstrably untrue. **Provenance can indeed be faked.** So the same pitfalls exist for the major auction houses as on eBay.

## **Tribal Art: Magical Pieces, Sensible Prices:**

**Build a museum – quality collection for under \$100,000.**

By Richard C. Thompson • Reprinted from Barron's Magazine • March 5, 2011

\*Includes a review of the San Francisco Tribal & Textile Art Show

Nearly 50 years ago, a young, bespectacled man named Michael Rockefeller went looking for tribal artifacts in the swampy coastlands of New Guinea. He was never seen again. He may have been attacked by sharks; he may have drowned; he may have encountered cannibals or headhunters. To this day, no one knows. Michael Rockefeller's memory, however, has lived on in a novel, a rock song, at least two plays and, spectacularly, the tribal-art wing of New York's Metropolitan Museum of Art. The wing is named after him, and many of its 1,600 pieces came from his father, former Vice President Nelson Rockefeller, the most voracious collector of such art the world has ever seen. For today's growing number of tribal-art fans, Rocky did good.

Luckily, you don't have to risk your own life to start collecting. You don't even need a giant bank account. Museum-quality objects from Africa, the Pacific and the Americas can be had for as little as \$5,000. Though prices have been rising lately, with some sales setting records, you can still build a striking collection of masks, figures, textiles and other tribal pieces for well under \$100,000. The works can lend an air of the exotic to any home; they show especially well in minimalist settings.



Courtesy of Kevin Conru Gallery

*A mask for rituals in Papua New Guinea. Price: \$15,000.*

Collectors' interest in tribal art was on full display in San Francisco last month at the 25th annual Tribal and Textile Art Show. Some 7,000 patrons buzzed through a veritable city of booths on an enclosed, antiquated pier. Sunlight from the windows above brought the objects to life. A highly rare, seventh-century turquoise and gold mosaic piece from Mexico, which served as an elite's funerary mask for transcendence into the afterlife, reflected piercing hues of blue and green. Dark wood and ivory handles of Indonesian daggers practically glowed, revealing intricate carvings.



Renowned tribal-art collector Bill Jamieson, who was followed by a television crew, purchased a coveted late-19th-century mask from the Ivory Coast for \$40,000. The mask, shown by the Milan-based Dalton Somaré gallery, is from the African tribe of the Dan People and was used in rituals to head off fires in the dry season. The wooden mask has wonderfully high cheekbones and an ultra-narrow chin. It has been unusually well preserved and boasts an impressive pedigree: It previously belonged to three leading collectors in Paris and Barcelona. Jamieson figures he got not just a striking piece of art but an entirely respectable investment. "I'm going to make more money on this mask than the same money would make sitting in a bank," he said.

If the label "tribal art" seems vague, it's because it is. An umbrella term that covers more than three continents, it encompasses thousands of vastly different cultures. During the late 19th century, European colonists whet the appetite of artists and art collectors when they returned with colorful "curiosities" that flouted realism. Even early modernist painters like Picasso and Matisse collected the art themselves and were quick to incorporate the exotic aesthetic into their own masterpieces.

However, the prices of modern art and tribal art remain worlds apart. While a Picasso sold last year for \$106.5 million, the highest price ever for a painting sold at auction, the top level for African art is about \$7 million. Only two pieces are known to have hit that level, including a stool from the Luba tribe in the Republic of the Congo that went for \$7.1 million at Sotheby's last year. Made in the 19th century by an artist known as the Buli Master, the stool is held up by an intricately carved woman who is leaning forward to bear the weight. With her eyebrows arched high on her elongated face, she seems both surprised and bemused to be lifting a leader, typically the users of such stools.

Demand for the best pieces of tribal art is almost always strong, reflecting the relatively limited supply of art and artifacts from these cultures. "I sold a very nice Easter Island figure 15 years ago for about a \$100,000 and now you couldn't buy one for under half a million," said dealer Kevin Conru, who operates out of Brussels.





Courtesy of Huber Primitive Art

*An Aztec vessel used for exotic hot chocolate, 13th-15th century.  
Price: \$24,000.*

But you do have to watch out for the traps: forgeries and smuggled items. The best defense is to find a dealer who is trusted and well regarded by others. Scientific technologies such as carbon dating can work with older pieces but are imperfect and expensive. Amyas Naegele, a top dealer based in Manhattan, advises collectors to carefully study museum pieces before buying similar objects. Shows like the one in San Francisco are also great places to learn more, and they often have committees that vet pieces and ensure authenticity.

Cultural patrimony laws have put a limit on the number of items that can be taken out of a country. The law is especially strict in Peru and other countries with art from the Pre-Colombian period -- early 15th century and older. Until recently, Yale University and Peru had a long-running feud over a collection of pieces that were obtained in 1912 by Yale archeologist Hiram Bingham III. Now, almost a century later, a resolution has been reached. Yale will send the pieces to a newly created center at Machu Picchu, a 15th-century Inca site in Peru, and the university and the country will run the center jointly.

Pre-Columbian objects from the Americas still surface from long-held private collections. Africa's laws are somewhat looser, meaning more new items are making their way to dealers. Naegele has been showing some new pieces from the less-collected Cameroon grasslands of Africa, including a vibrant blue and red headdress and an accompanying whisk that's topped off with a grinning feline figure. The beaded set would have been used by dancers at initiations, weddings and other ceremonies. The headdress is priced at \$15,000, the whisk at \$20,000.



Courtesy of Amyas Naegele

*Balanced on a flywhisk, this \$20,000 feline comes from Cameroon.*

Material from Indonesian cultures drew heavy attention at the show in San Francisco, partly because the region is yielding the most new finds. A mask from the Dayak tribe of Borneo, offered by the Mark A. Johnson Gallery, featured a captivatingly morphed face of a pig, dragon and bird, painted in red and black and adorned with a plume of feathers. Used during harvest ceremonies in the 1940s-50s, it's on the market at \$6,500.

Oceanic art like this is on prominent display at the Met. Items collected by Michael Rockefeller before that final trip are displayed in a stunning, slope-walled glass room. The de Young Museum in San Francisco also has a large collection of Oceanic works. But enjoyable as it is to look at all that, there is something even better: admiring great tribal art outside glass cases and inside your home.



## Central Nigeria Unmasked: Art of the Benue River • March 5, 2011



Speaking to a packed audience, Dr. Marla Berns, Director of the Fowler and one of the major curators of this original exhibit that showcased over 150 objects – some never seen before – spoke in depth about the development of this long-anticipated show, first conceived by her mentor, Arnold Rubin, will travel to three other sites, including the Musee du quai Branly in Paris. This geographic focus along the 650 miles Benue River displayed the dynamic interrelations of the peoples and their ritual arts. The 90-minute tour recalled Dr. Berns’ own involvement as a graduate student in the 80’s, working in the field and identifying objects, some which became part of her dissertation studies and others were displayed in the final room of the exhibition.

An elegant and refined Igala seated female by the famous artist Umale, loaned by EAC members Richard and Jan Baum, as well as a pair of Igala prestige bells (from a collection of 250 bells), owned by Mark Clayton and Mayde Herberg, were on full display.

The catalogue or “Bible”, which runs nearly 600 pages, is EAC funded and will appear in June, to much anticipation.

## Throw Down Your Heart • March 13, 2011 • 2 pm • Lenart Auditorium



In co-sponsorship with the Fowler Museum’s Public Programs, EAC offered its members and friends an unusual film, which follows the musical adventures of American banjo virtuoso Bela Fleck as he visits Uganda, Tanzania, Gambia, and Mali and explores the little-known African roots of the banjo. Using his banjo, Fleck transcends barriers of language and culture and creates some of the most meaningful music of his career.

Dr. Cheryl Keyes, a specialist in African music, lead the post-film discussion.



**Book of the Month:**



Our own April Dammann has completed a remarkable book on the legendary Earl Stendahl, one of the first dealers in Los Angeles to introduce modern art as well as pre-Columbian art to Southern California. The book is due April 1st, 2011 and will document his role in the explosion of the art scene. It coincides with the Getty initiative called Pacific Standard Time wherein more than 50 institutions – museums and galleries – will celebrate the birth of the art movement in Southern California. We are especially proud to have April’s book arrive at this auspicious time.

**EXHIBITIONIST: Earl Stendahl, Art Dealer as Impresario**

In 1911 a young candy-maker from Wisconsin had a vision unlike any other art dealer in provincial LA: develop local talent into famous, sought-after painters and bring the finest works of art from all over the world to S. California. Matisse, Picasso, Kandinsky, Siqueiros, Chagall to name a few were among hundreds of artists represented by Earl Stendahl, who moved among them like the ringmaster of a magnificent circus. No one was more passionate than Earl Stendahl about turning a client on to the joy of the hunt and the satisfaction of the perfect art acquisition. Stendahl's discovery in the 1930s of the beauty and mystery of Pre-Columbian art led to the **Stendahl Galleries** reputation as the foremost authority and promoter of ancient art of the Americas.

The Stendahl story (featuring more than two hundred photographs) is at its heart a Los Angeles story, peopled with celebrities, rocked by scandal, full of failure and triumph. The book is also personal. Stendahl was the grandfather of Ron Dammann, the husband of April. She knew him—the exhibitionist who prevailed against all odds and inspired a family business that has lasted one hundred years.



**Endnotes:**

Please send any relevant information, upcoming events, news, articles, or opinions for consideration for publication in future issues of the EAC e-news to Mark Johnson, current editor, at: [gallery@markajohnson.com](mailto:gallery@markajohnson.com).





**EAC e-news • Published: March 17, 2011**  
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