

# COMMENT & ANALYSIS

## Debate shows antiquities

*Our front-page story last month about the Association of Art Museum Directors' new guidelines provoked heated debate. Here, leading experts give their divergent views*

*"We are leading the public down the path of wilful ignorance"*

ARTHUR HOUGHTON

**T**he newly issued guidelines of the Association of Art Museum Directors (AAMD) on the acquisition of archaeological materials and ancient art have all the attributes of a camel: famously compared to a horse made by a committee. They are the AAMD's fifth iteration on the subject of acquisitions in the past 12 years, and they are surely not the last.

The guidelines evolved as panicky US museum directors responded to charges that collecting institutions abet looting by acquiring unprovenanced objects, claims by source countries against their collections, strident criticism by archaeologists and the spectre of aggressive intervention by federal agencies acting in support of foreign laws.

Even though the guidelines have been drafted by some of the most experienced and knowledgeable individuals in the profession, they are a disturbing puzzle, involving a peculiar preachiness (museums must comply with the law!) and severity of tone that summons up the image of a thin-lipped schoolmistress with whitened knuckles clutching a yardstick to smack the wrists of malefactors.

The oddness extends to the content. The guidelines suggest that the Unesco convention of 1970 has as a focus the preservation of archaeological materials and ancient art. This is a serious misunderstanding of what the convention actually states. Unesco deals principally with restrictions on trade that should apply to "important" cultural property, the export of which would constitute an "appreciable impoverishment" of the national cultural heritage. Unesco defines "cultural property" as items that are "specifically designated" by a state party as being "important". Unesco proposes a system in which antiquities markets are recognised and regulated and in which dealers register objects and follow the rules of an export certificate system established by the source country.

Beyond this evident misunderstanding, the guidelines do not



account for situations in which multiple countries of possible discovery exist. They also use certain terms – "ancient", "antique" – that have no commonly accepted meaning. As the guidelines' authors certainly know, different countries define these terms differently.

***A viable registration system would go far towards removing the incentive to loot sites, while forcing source countries to stop finger-pointing at the US and take more effective steps to protect their own archaeological patrimony***

Depending on which source country is involved, either term could reach into the 17th century or later (China demanded that the US ban the import of cultural material antedating its 1912 revolution; the ensuing US-China agreement includes a threshold date of 250 years for

certain types of art). What is intended?

As a knowledgeable observer has pointed out, the 2008 guidelines were adopted in a state of near-panic, with the hope that they would exonerate collecting museums of the presumption that acquiring unprovenanced

material provided, in the guidelines' words, "a direct and material incentive to looting".

The presumption falls apart on even cursory examination. Are all ancient (very old? A little old?) objects without substantiating documentation really likely to provide an incen-

tive to looting? The Palmyra head that a friend bought in Beirut in the 1960s? The tens of thousands of Chinese works of art that have come to the US during the past 200 years with no more than a bill of lading? The countless number of Egyptian artefacts that flooded the US in the mid-19th

century as Americans, crazed with a taste for the antique, bought them in bucketfuls? My grandmother's Italian clock, which must be "ancient" since it looks so old? All of these are potentially caught in the guidelines' vague linguistic net.

The presumption, in short, is

absurd. Worse, it does direct damage to the public interest. As their authors are fully aware, the 2008 guidelines were written with no objective analysis of their probable impact. Sadly, in the rush to do something to deflect criticism, the AAMD has taken itself – and the American public – down the path of wilful ignorance.

The consequences of the association's rule-making are not pretty. A recent study suggests that the volume of material excluded from museum acquisition by the guidelines is truly enormous. The study (available at [cprinst.org/home/issues/project-on-unprovenanced-ancient-objects-in-private-us-hands](http://cprinst.org/home/issues/project-on-unprovenanced-ancient-objects-in-private-us-hands)), which excludes objects under \$1,000 in value, fragments and coins, indicates that somewhere between 68,000 and 112,000 objects of Greek, Roman or related origin already in the US could

**“Tuition for the Sotheby’s Institute MA is actually a market norm, not a pricey exception. For example, the total tuition for an MBA from Stanford University is \$114,600”**

DAVID C. LEVY, LETTERS, P48

# question far from settled



beyond the requirements of current US cultural property law, and would require the resolution of thorny issues including, but not limited to, credible management and the protection of sources. But a viable registration system would go far towards removing the incentive to loot sites, while forcing source countries to stop finger-pointing at the US and take stronger and more effective steps to protect their own archaeological patrimony.

Such a plan can be made to work (a detailed model already exists), but it is difficult not to be deeply pessimistic about its adoption, or the adoption of any measure that can help. The need for reform that would provide a sensible legal framework for museums, art collectors, dealers and archaeologists to live by and end the cycle of seizure, forfeiture and forced repatriation is enormous, but in the view of most observers, all sides are too deeply dug into their trenches and too terrified to move.

Nevertheless, the attempt should be made. The negative consequences of inaction are too profound. The descent into ignorance that the AAMD’s guidelines threaten is exactly what our museums should not want. Refusing to accession material that is legitimate but unprovenanced not only damages our ability to understand the past, but also undermines our reasons for wanting to preserve it.

Somewhere in their deliberations, our art museum directors have lost their way. If they cannot find it, the public benefit can still be served. Museum directors are not responsible for making policy: by law, museum trustees do that. If our directors cannot bring themselves to change course, the trustees of our art museums should do it for them. It is not the best solution, but it would get us to where we should be.

• The writer is a former member of the US Cultural Property Advisory Committee (for museums) and a former curator at the J. Paul Getty Museum

**“The guidelines represent a backsliding of ethical commitments”**

**RICHARD M. LEVENTHAL**

Museums are an integral part of cultural life in every city, large or small. Whether art museums, science museums or history museums, these institutions teach us about the world, past and present. They are also repositories for many of the things we hold dear in our culture and in our lives. We expect museums to develop collections that enhance their core

missions, to present these objects for the public and to curate these objects in an appropriate way.

But when museums in the US acquire antiquities with dubious provenance, they are at odds with these goals.

Many of the antiquities now available for acquisition and purchase come from the wanton and haphazard looting of archaeological sites. This situation is hardly new. More than 40 years ago, in 1970, Unesco made an effort to address the problem of looted objects with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. It represented a consensus among the world’s countries that objects acquired for museum collections need to have a provenance. Only acquisitions with this information were understood to be in the general public’s interest. So why is this still an issue today?

**Museums represent our individual and collective values. We support them through tax exemptions, philanthropy and ticket sales. Because they reflect our cultural commitments, we must insist that they act with integrity**

The primary difficulty has been that museums, particularly in the US, have been slow to recognise the shift in ethics regarding the collecting of ancient art. The Unesco convention achieved little because many museums in wealthy countries simply did not take its standards seriously.

Only in 2008 did the Association of Art Museum Directors (AAMD) agree to accept 14 November 1970 – the date of the Unesco convention’s adoption – as a cut-off. According to the AAMD’s 2008 guidelines, unprovenanced antiquities that came to light after this date ought not to be bought or acquired under normal circumstances. It was a clear statement of principle and came around to the moral position accepted by the international community.

This year, the AAMD has re-evaluated these guidelines and opened a series of exceptions to the 1970 date. Under these revised standards, member museums may now acquire objects with unknown or uncertain provenance so long as they have been offered by a donor under certain circumstances and before detailed provenance study. It represents a backsliding of the AAMD’s earlier ethical commitments.

There are many arguments as to why museums should not acquire unprovenanced antiquities. Many have pointed to the economics of the art trade, observing that the purchase of antiquities feeds into a supply and demand cycle and encourages looting. Others have noted that archaeologists lose valuable information about the past when it is looted from its original context through an unscientific excavation. There is an additional factor that should be emphasised: when museums acquire antiquities of dubious provenance, they undermine their status as moral institutions.

The impulse behind the 1970 convention was the recognition that a power imbalance between nations resulted in the transfer of the archaeological heritage found in one

country to another country’s museums. Although the solution was imperfect, the broader problem has been a tangible feeling of loss for people who want to use objects to express their history, identity and culture.

The desire for possession is hardly unusual, and it is for this reason that museums remain so vital in our civic life. In the US, our country owns and displays with great pride such objects as the Liberty Bell and the *Spirit of St Louis*. We display these artefacts to affirm the nature of our union and the history of our country. Antiquities found in Mexico, China or Italy similarly resonate with the people and cultures of those countries. All of us in the US, as global citizens, should respect the pride and identity of people and cultures around the world.

The AAMD has often argued that its member organisations appreciate other peoples and identities and that they want to use museums to educate

visitors about distant cultures by possessing an encyclopaedic collection: an important educational imperative. But a museum collection speaks to more than distant cultures in time and space.

Like objects, museums in our cities and communities represent our individual and collective values. We support them through tax exemptions, philanthropy and ticket sales. Because they reflect our economic and cultural commitments, we must insist that they act with integrity and in ways that represent our values. They need to become moral institutions.

Museums can take steps towards this goal by:

- affirming that they will not acquire unprovenanced archaeological material that came to light after 14 November 1970
- accepting the burden of proof when contemplating an acquisition by demonstrating conclusively that an artefact left its country of origin before 14 November 1970
- acquiring antiquities only when able to demonstrate that they had been exported from their country of origin before 14 November 1970
- developing future collections and exhibitions through loans and research projects with foreign museums and governments.

The acquisition of unprovenanced antiquities that may have been illegally excavated and spirited out of a country and into the US in contradiction of established laws and accepted international standards does not set a strong moral and ethical framework for museums. Such actions do not represent our values or our communities. We must expect and demand more from our cultural institutions.

• The writer is the executive director of the Penn Cultural Heritage Center at the University of Pennsylvania. Brian Daniels, the centre’s programme director, and Christina Luke, a senior lecturer in the department of archaeology at Boston University, also contributed to this piece

not be donated, shown to the public by our museums or conserved for the benefit of future generations. Extending the study to other cultures (Pre-Colombian, Near Eastern, South Asian, East Asian), the number of significant objects now excluded from museum acquisition almost certainly exceeds 1,000,000, and at a reasonable estimate may be double that.

It is unknowable why our public institutions would adopt such a damaging course.

Is there some solution that would allow US museums to acquire such “orphaned” objects to the general benefit of both the public and the objects themselves? Perhaps. But one would have to visualise our museums and the archaeological community taking a far more proactive course – perhaps by using a registry system not only to showcase

unprovenanced objects under consideration for acquisition, but also to impose an obligation for a claim to be made by a country within a reasonable time, and once that time has passed, to grant the object repose. If the goal is to halt looting, then there should be a balance between the restrictions on acquisition and the length of time an object can be shown to have been outside the source country. Congress adopted exactly such an approach when it enacted the Convention on Cultural Property Implementation Act of 1983 (the US’s own implementing legislation for the Unesco convention), which requires proof of export from the source country ten years before entry and grants safe harbours to published and museum-owned objects thereafter.

A registry that offers repose in exchange for transparency goes far