

Name: IJCP 1994 abstracts

¶1: Some Recent Practical Experience in the Implementation of the 1954 Hague Convention

¶2: Recent conflicts in the Gulf and in Yugoslavia have cast a strong light on the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Museum professionals, in particular, understand very well the importance of protecting cultural heritage and were among the first to alert the international community to the threats to museum collections in countries recently affected by war, such as Yugoslavia. It is indeed the right time to evaluate the impact of the first universal instrument for the protection of cultural heritage.

¶3: The United States Reconsiders the 1954 Hague Convention

¶4: Respecting Ancestors, Archaeologists, and the World Art Community: Enacting a Post-Excavation Cultural Preservation Policy

¶5: The Nation and the Object

¶6: This essay attempts to add a second dimension to the traditionally one-dimensional discussion of cultural property policy.² It does so by addressing a central policy question: when, if ever, may museums, collectors and dealers properly provide a market for cultural objects that have been exported from a foreign nation contrary to that nation's laws.³ A related policy question is whether the legal authorities of one nation should enforce the cultural property export controls of another. Two different approaches to these questions lead to divergent results in some situations but are mutually reinforcing in others. We can call these approaches "nation-oriented" and "object-oriented." The policies of most source nations and the international dialogue about cultural property still are heavily nation-oriented. I suggest that the dialogue would be enriched and that institutional, national and international cultural property policies would be improved by placing less emphasis on the nation and more on the object.

¶7: The Reunification of Germany as a Challenge for the Protection of Historical Monuments

¶8: At the time of the reunification in Germany everything was new: from (on the one hand) the economic system, unemployment, investigation problems because of the unsolved question of ownership, the high rate of crime and drug abuse, racism, to (on the other hand) the new organisation of the administrative body, the set-up of the juridical system and the restructured police force. Everything was changing, everything was new. Amidst all this chaos the protection of historical monuments was pushed into the background. Even so, there were important challenges in this field. There is no town which better exemplifies the pace and depth of change than the formerly-divided city of Berlin. Wall to wall there lived two contrary ideologies, which clashed after the fall of the Wall. This essay offers three examples of the manner in which events in Berlin illustrate the effects of German reunification on the protection of historical monuments: The Brandenburger Tor, the East-Side Gallery and the Palace Project.

¶9: Who's Afraid of Red, Yellow and Blue III?

¶10: The recent dispute over the restoration work carried out by Daniel Goldreyer on the painting by Barnett Newman Who's Afraid of Red, Yellow and Blue III raises issues of importance for several disciplines concerned with the restoration of important works of art. The Goldreyer case teaches that it is now essential to improve the status of restorers and to recognise that art restoration is highly skilled, professional work involving complicated and controversial exercises of judgment and,

in particular, is not simply a technical matter.² For museum administrators the case gives a salutary warning of the need to maintain - at all stages of the restoration - adequate supervision over restoration work.³ For lawyers there are important lessons too. The account which follows explains the current state of play as far as is possible at this early stage and outlines the possible legal issues arising from these events.

¶11: Chronicles

¶12: Works of Art in EC Customs Law: The Problem of Paperweights

¶13: Treasure Trove: Challenging the Decisions of Coroner's Courts

¶14: Treaties and EC Matters

¶15: European Community Free Movement of Cultural Goods and European Community Law Part V: A Summary of Current Legislative Initiatives and a Note on the Progress of the European Convention on Protection of the Archaeological Heritage (Revised)

¶16: Legislation

¶17: The Museums and Galleries Act 1992

¶18: An Annotated Chronological Index of People's Republic of China Statutory and other Materials Relating to Cultural Property

¶19:

¶20: Conference Reports

¶21: The Cultural Heritage in the Risk of Modernity: A Symposium, Salzburg, 8–10 October 1992

¶22: Australia ICOMOS: Events, Sidney, 19–20 November 1992

¶23: Australian Institute of Maritime Archaeology: Eleventh Annual Conference, Sydney, 12–17 November 1992

¶24: Treasure, Treasure-trove and the Nation's Heritage: Whose Past is it Anyway? York, 23–25 April 1993

¶25:

¶26: A Report on the Information Day organised by the Swiss National Commission for UNESCO, Berne, 2 July 1993

¶27: Portable Antiquities: A Statement of Principles Council for British Archaeology, Museums Association, Society of Antiquaries, London (Co-Sponsors)

¶28: Resolution over Art Trade and International Cultural Exchange: The German Archaeological Society¹

¶29: Book Reviews

¶30: Chomsky Noam, Year 501: The Conquest Continues, London: Verso (April 1993). Paperback £11.95/Hardback £34.95

¶31: Gaines J. M., Contested Culture. The Image, the Voice, and the Law (1991) Chapel Hill, N. C. and London, The University of North Carolina Press, 340 pp.

¶132: Phyllis Mauch Messenger (ed.), *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?* University of New Mexico Press, Albuquerque (1991) 266 pp. Softback \$15.95.

¶133: ISSUE 2

¶134: 'Editorial

¶135: Protecting Ireland's Archaeological Heritage

¶136: The People's Republic of China and the Illicit Trade in Cultural Property: Is the Embargo Approach the Answer?

¶137: Contemporary Legal Problems of Return of Cultural Property to its Country of Origin in Russia and the Confederation of Independent States

¶138: The cultural heritage of the past should be preserved not only for ourselves but also for future generations. Achieving this objective may be supported both by a country's internal legislation and by the international legislative system arising from the conclusion, of international agreements. Naturally, such a system of regulations requires particularly careful consideration and should serve, the interest of preservation of both a nation's own cultural heritage and the cultural heritage, of the whole of humanity. The aim of the present article is to review and analyse the international legal practice related solely to the problem of possible return of the cultural and historic property from the country where it is located to its country of origin.

¶139: The Looting of a Site in South Russia

¶140: Case Note

¶141: Foreign Investment and the World Heritage Convention

¶142: Treaties and EU Matters

¶143: European Union Hallmarking

¶144: Legislation

¶145: The Protection of Turkey's Underwater Archaeological Heritage – Legislative Measures and Other Approaches

¶146: Mauritius Scheme for the Protection of the Material Cultural Heritage

¶147: The UNIDROIT Draft Convention on the International Protection of Cultural Property

¶148: In September/October 1993 the third last session of .government representatives.and delegates of international organisations met in Rome and prepared a new. version of the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Property.' This version will be submitted to a diplomatic conference in 1994 .which may formulate a final draft to be opened for signature of the participating States. Apart from substantial.formal improvements the new draft Convention differs from the preliminary draft² in several respects. Five issues should be summarized briefly.

¶149: International Congress of Maritime Museums, 21 September 1993

¶150: Code of Conduct of the Antiquities Dealers Association

¶151: Theft and Smuggling of Cultural Relics in China and Counter-Measures Against Them

¶152: Chronicles

¶153: October 1993–March 1994

¶154: News from Correspondents

¶155: United States News Notes

¶156: Conference Reports

¶157: Treasure from East Anglia: Norwich, 2 October 1993

¶158: War Damage: The Cultural Heritage of Bosnia-Herzegovina: London, 25 November 1993

¶159: Conservation and the Antiquities Trade: London, 2 – 3 December 1993

¶160: Legal Issues in the Trade of Antiquities

¶161: Book Review

¶162: Beck James with Daley Michael Art restoration: the culture, the business and the scandal
London: John Murray, 1993 xiv + 210 pages, 27 plates. £ 17.99. ISBN 0-7195-5169-2.

¶163: Christopher Chippindale

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¶1: Editorial

¶2: A Licit International Trade in Cultural Objects

¶3: Retentive nationalism has until recently dominated thinking about the international movement of cultural property, while the international interest in an active licit trade has been ignored and the interests of museums, collectors and the art and antiquities trade have been denigrated. An active licit market in cultural property advances the international interest, provides income to source nations and reduces the harm done by the black market. Trade in "culturally moveable" objects in private hands serves the international interest and is internationally licit, even when it offends national export controls. Source nations can reduce the damage from clandestine excavations by employing more sophisticated domestic controls and feeding surplus archaeological objects to the licit market. The "commodification" objection to an active trade in cultural objects lacks substance. Market nations can provide the most effective political force for development of an active market. They, and the art and antiquities trade, can help source nations finance organization of their cultural property resources for effective participation in a licit international trade.

¶4: A Licit International Traffic in Ancient Art: Let There Be Light!

¶5: Vers un trafic licite des biens culturels? Quelques réflexions et questions à partir d'une perspective anthropologique

¶6: Les questions liées au commerce licite ou illicite des biens culturels soulèvent généralement des débats passionnés derrière lesquels se profilent des intérêts différents et difficilement conciliables. L'objectif de cette communication n'est pas de retracer l'histoire complexe de ce problème dont de nombreux aspects ont été examinés dans divers travaux¹ et lors de rencontres internationales, sans oublier les articles parus dans la presse. Le Conseil International des Musées (ICOM) lui a récemment consacré un atelier international (Arusha, Tanzanie, 1993). Le but de cette contribution n'est pas non plus de proposer des solutions toutes faites et universelles: la complexité du sujet ne le permet pas et une approche simplificatrice ne paraît pas devoir aboutir à des résultats positifs. L'objectif ici sera plutôt, en considérant les objets culturels habituellement désignés comme "ethnographiques", et sur la base d'exemples africains, de faire ressortir certains aspects qui ne sont pas uniquement (ni prioritairement) d'ordre légal, mais dont la prise en compte paraît inévitable pour aboutir à un contexte de consensus.

¶7: Licit International Traffic in Cultural Objects for Art's Sake

¶8: The Egyptian Monuments: Problems and Solutions

¶9: Greece v. Ward: The Return of Mycenaean Artifacts

¶10: The Legal Protection of Traditional Commercial Activities: Two Decisions of the Italian Constitutional Court

¶11: Chronicles

¶12: April 1994–September 1994

¶13: Country Land Owners Association Guidance Note on Metal Detecting

¶14: Treaties and EU Matters

¶15: European Union

¶16: Regional Workshop on Measures against Illicit Traffic in Cultural Property for Eastern and Southern African Countries. Arusha, 24–30 October 1993

¶17: The first workshop ever organised on this topic in Africa took place in Arusha, Tanzania, from 24 to 30 September 1993. It was jointly organised by UNESCO, ICOM (International Council of Museums and SADCCAM (Southern African Development Co-operation Conference Association of Museums). The participants were museums professionals, police and customs officers from 21 African countries. An observer from INTERPOL was also present. Information was provided on legal and practical measures to counter illicit traffic in cultural property at national and international levels. In working groups session recommendations were adopted, among which "the Arusha Appeal" (see below) calling for the ratification and the implementation of the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Countries of destination of stolen and illegally exported cultural objects from Africa were also requested to seriously consider this problem, currently of endemic proportions in the continent.

¶18: Intergovernmental Working Meeting on the Situation of Movable Heritage in Central and Eastern European Countries. Prague, 9–10 November 1993

¶19: This meeting was organized by the Council of Europe and hosted by the Minister of Culture of the Czech Republic in Prague from 9 to 10 November 1993. Twenty-three countries were represented, as well as observers from INTERPOL and UNESCO. A substantial document containing a list of urgent measures against illicit traffic in cultural property was produced and recommended for consideration by the European countries. These measures deal with inventories, export, presumption of mala fide, information and education, restitution and market regulation. Among the conclusions adopted at the meeting support was given for wider ratification of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and for a larger participation in the preparation of the UNIDROIT Convention on Return of stolen and illegally exported cultural objects.

¶20: The Protection of the Cultural Heritage of the Middle East and North Africa: A Regional Symposium on the Effects of Public Policy. Cairo, 14–18 November 1993

¶21: Rolzer Rudolf/Jayme Erik/Mußnug Reinhard (editors), Rechtsfragen des internationalen Kulturgüterschutzes (Legal Problems of International Protection of Cultural Property) C. F. Müller Verlag. Heidelberg 1994, ISBN 3-8114-1192-2, X, 235 pp. Hardback DM 94,-, (Vol. 87 of Heidelberger Forum)

¶22: Rogers David, The Bodleian Library and its Treasures 1320–1700. Henley-on-Thames: Aidan Ellis Publishing Limited (1991). ISBN 0-85628- X. £ 50.00

¶23: Hunter John and Ralston Ian, Archaeological Resource Management in the UK: An Introduction. Alan Sutton Publishing, Institute of Field Archaeologists, Bath, 1993. ISBN 07059 0275 2

¶24: Echo-Hawk Walter (Guest Ed.) 16 (2) American Indian Culture and Research Journal (1993) Special Edition "Repatriation of American Indian Remains" American Indian Studies Center, UCLA, Los Angeles, 268 pp. Softback \$5.00 (\$20.00 per annum)

¶125: Goepfert Alexander, Haftungsprobleme im Kunst- and Auktionshandel [Liability Problems in Art Trade and Art Auctions]. 23.5×15.5 cm. pp. 146. Berlin: Duncker & Humblot 1991. ISBN 3-428-07225-1. Paperback DM 74.00 (Schriften zum Bürgerlichen Recht [Studies on Private Law], vol. 149)

¶126: Watson Peter, From Manet to Manhattan – The Rise of the Modern Art Market. Hutchinson. London 1992. 538 + xxviii pp. £ 25.00

¶127: Belting Hans, Die Deutschen und ihre Kunst – Ein schwieriges Erbe [The Germans and their Art – A problematic heritage]. München 1992. Verlag C. H. Beck. 89 pp, DM 20,–

¶128: La libre circulation des collection d'objets d'art [The Free Circulation of Art Collections] (Studies in Art Law, Vol. 3); 240 pages, Schulthess Polygraphischer Verlag AG, Zürich 1993. 52 SFr; ISBN 3-7255-3134 X

¶129: Lury C., Cultural Rights: Technology, Legality and Personality London and New York, Routledge, 239 pp.

¶130: ISSUE 2

¶131: Editorial

¶132: The Protection of Australia's Movable Cultural Heritage

¶133: Hong Kong, 1997, and the International Movement of Antiquities

¶134: Breach of Trust Over Gifts of Collections

¶135: The Legal Protection of Archaeological Heritage in Greece in View of the European Union Legislation: A Review

¶136: Lately, much ink has been spilt over the sensitive (politically and otherwise) topic of the free movement of cultural goods within the single European market. From this, it has become clear that a rapprochement of national legislations is essential to a deeper understanding of the different attitudes governing the protection of cultural heritage. In this context, the present paper illustrates briefly the history of the Greek legislation concerning the protection of national archaeological treasures and takes as its focal point an exploration of the current legal regime. Since the interpretation of Article 36 of the Treaty of Rome has been thoroughly discussed in recent years,¹ the last part aims at examining the compatibility of Greek legislation on the issue of protecting cultural heritage with existing European legislation.

¶137: Irina Shchukina's Suit (On the Decision of a French Court)

¶138: Works of Art in EC Customs Law: The Problem of Photographs

¶139: Chronicles

¶140: October 1994–March 1995

¶141: Conference Reports

¶142: The Future of Asia's Past: An International Conference on the Preservation of Asia's Architectural Heritage, Chiang Mai, Thailand January 11–14, 1995

¶143: Heritages for Europe

¶144: First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples

¶145: Cultural Agency/Cultural Authority: Politics and Poetics of Intellectual Property in the Post-Colonial Era

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¶3: The UNIDROIT Convention: Three Significant Departures from the Urtext

¶4: The text of the *Unidroit Convention on Stolen or Illegally Exported Cultural Objects* (the Convention) had its origin in a Unidroit Study Group which produced the *Preliminary Draft Unidroit Convention on Stolen or Illegally Exported Cultural Objects* (hereinafter PDC or *Urtext*) in 1991. With the PDC as their working text, four conferences of National Experts produced the *Draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects*, and a Diplomatic Conference held in June, 1995, produced the Convention.

¶5: The Case Against Statutes of Limitations for Stolen Art

¶6: When a thief steals a work of art and resells it to a bona fide purchaser, most commentators favor protecting the buyer's title against a claim by the original owner. American law on this issue has been in flux, and today most American States resolve these disputes by balancing the buyer's blameworthiness against the owner's delay and fault. Such ad hoc statutes of limitations are misguided because they encourage art theft, reward morally culpable buyers, and leave the law unclear and unpredictable. Instead, the law should award title automatically to theft victims who immediately report their losses to the police and an international computerized database of art thefts. Doing so would create clear incentives for owners to report thefts and for buyers and art merchants to check the database, thus drying up the market for stolen art.

¶7: The World of Tuscan Tomb Robbers: Living with the Local Community and the Ancestors

¶8: Grave robbers, we all know, loot tombs for material gain. Recently, however, Italian tomb robbers, or *tombaroli*, have sought public attention by publishing their biographies and appearing on television to present an entirely new image of their *métier*. They depict themselves as heroes who bring the treasures of the past to the public and boast of an expertise, which remains unrecognised by official archaeologists. Rather than merely dismissing these stories as a justification, or glorification of an illegal activity, a more careful reading reveals many issues, which are of considerable importance to heritage management and archaeological research. These accounts contain a wealth of information on the identity of the people who loot tombs; their backgrounds, motivations and attempts to legitimate their actions. Moreover, they provide a unique insight into the relations between tomb robbers and the communities within which they operate. It is well known that public opinion in Italy and elsewhere to some extent sanctions illegal digging and, in my view, changing these attitudes could prove to be one of the most important steps towards a more effective policy of protecting the cultural patrimony.

¶9: Licit International Art Trade in Times of Armed Conflict?

¶10: The articles concerning a licit international trade in artistic and other cultural objects published recently in the first volume of the 1995 *International Journal for Cultural Property* address a great number of issues concerning current trends in the law governing the exportation, importation and transfer of ownership of cultural property. What is barely mentioned in these articles, however, is the problem of the trade in art objects originating from occupied territories in times of armed conflict.

¶11: Restitution of Archaeological Artifacts: The Arab-Israeli Aspects

¶12: Since the second half of the last century, public international law has been developing rules regulating the restitution of cultural objects removed from occupied territories during armed conflict. Today it is generally recognized that customary international law forbids pillage. The Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict further mandates that artifacts removed from an occupied territory must be returned to the competent authorities of that territory at the close of hostilities. The Arab-Israeli case highlights the problematic side of this solution. Following the Six Day War in 1967, the Sinai Peninsula, the Golan Heights, the Gaza strip and the territory known as the "West Bank" came under Israeli control. Israeli archaeologists carried out numerous excavations, and discovered artifacts of special importance to Jewish cultural heritage. It is regrettable that, as a result of the peace treaty with Egypt, these artifacts can no longer be exhibited and appreciated at the Israel Museum in Jerusalem, but had to be delivered to Egypt, where they now face an uncertain future. A similar fate may befall the artifacts excavated in the Golan Heights. The Palestinian claim for restitution cannot be based on the Protocol. The Problem is nevertheless the same in all cases; if the artifacts are to be preserved, properly appreciated and made available for purposes of study and research, it may be more appropriate to distribute them among the states by way of compromise and agreement, that will seek to enhance their cultural significance, rather than use the arbitrary sole criterion of the place of discovery.

¶13: UNIDROIT Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects

¶14: The Case of Thomas Holloway's Picture Collection

¶15: United States v. Pre-Columbian Artifacts and the Republic of Guatemala: Expansion of National Stolen Property Act in its Application to Illegally Exported Cultural Property

¶16: One of the major issues confronting U. S. courts in international cultural property cases is the significance of foreign export restriction violations. This is a particularly sensitive issue for museums in art purchasing nations since aggressive support of the view that export restriction violation is theft could result in the return of much of a museum's collection. In fact, Thomas Hoving, past director of New York's Metropolitan Museum of Art stated, "almost every antiquity that has arrived in America in the past ten to twenty years has broken the laws of the country from which it came."

¶17: Principles for Partnership in Cross-Cultural Human Sciences Research with a Particular View to Archaeology

¶18: Material Culture in Flux: The Law and Policy of the Repatriation of Cultural Property. Faculty of Law, University of British Columbia. Vancouver, Canada. May 19–21, 1994

¶19: Theodore Steinberg Slide Mountain: On the Folly of Owning Nature.

¶20: Mark Reutter Exklusivverträge zwischen Künstler und Händler

¶21: ISSUE 2

¶22: Cultural Heritage Legislation and Management in Nigeria

¶23: Cultural heritage legislation and management commenced in Nigeria seventy years ago. Nonetheless, the Nigerian commission for museums and monuments remains a marginal institution without adequate resources to manage and protect the country's cultural heritage. The consolidating legislation of 1979 was hurriedly enacted and has many defects. The sanctions and protective measures enshrined in the Act are now hopelessly inadequate. In short, the legislation is in need of urgent revision and re-enactment. The cultural heritage managers need to evince a greater commitment and a higher sense of probity than hitherto in order to have a comprehensive cultural heritage management programme for the country. Cultural heritage management in Nigeria

today is neither well organized nor co-ordinated. The authorities must appreciate that cultural heritage management has an ideological basis, which is sustaining the cultural identity of a people.

¶124: The Protection of British Heritage: Woburn Abbey and The Three Graces

¶125: This article describes the removal of Canova's sculpture, The Three Graces, from Woburn Abbey and the British laws that determined its subsequent treatment and ownership. In this case, the group of laws intended to protect the integrity of Woburn Abbey's Sculpture Gallery was deemed to be less important than the goal of retaining the sculpture within the country. It is therefore necessary to examine the relationship between the object and the building and the effectiveness of the laws designed to preserve objects and buildings for the benefit of the public. This article examines the implications of the laws regulating the preservation of historic buildings and the export of works of art for definitions of cultural property and national patrimony.

¶126: The Protection of Cultural Heritage in the Sultanate of Oman

¶127: The Sultanate of Oman has enacted a modern and detailed statute protecting its cultural heritage. It is one of the newest and most modern pieces of legislation within the Arab world and provides broad protection for the rich cultural heritage of the country. The enactment of the statute and its application to protect culture and the nation's cultural heritage became an important political aim, and the year 1994 was officially declared as the "Year of National Heritage".

¶128: Archaeology and Construction of the Metro in Athens

¶129: Regional National Historic Peace Park of Troy and Urban Development

¶130: Construction of Highways and Rail Networks in Switzerland and Archaeology

¶131: The Marquis de Somerueles: Vice-Admiralty Court of Halifax, Nova Scotia Stewart's Vice-Admiralty Reports 482 (1813)

¶132: The "Curse of the London Nataraja"

¶133: Meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954

¶134: United Nations General Assembly Discusses the Return and Restitution of Cultural Property to the Countries of Origin at its 50th Session 1995

¶135: Prinzipien des Kulturgüterschutzes. Ansätze im deutschen, europäischen und internationalen Recht (Principles of the Protection of Cultural Property. Approaches of German, European and International Law).

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¶3: The Protection of Cultural Property in the Arab World

¶4: This article presents a comparative description of the national legislation concerning the protection of cultural property in the various Arab nations and the influence of regional and international agreements. These different legislative schemes are also discussed in the context of attempts to unify the treatment of cultural property among these nations which face similar problems.

¶5: Israeli Law, Jewish Law and the Archaeological Excavation of Tombs

¶6: The author discusses the conflict in Israel between the public interest in archaeological research and the religious convictions that human remains, once buried, should not be touched. The conflict is exacerbated by urban development, which, in this ancient land, necessitates rescue excavations of tombs, thus bringing the problem to a head. The article examines, first, the rules of Jewish law, which, the author contends, have made it possible to accommodate the interests of the living, and, secondly, the scientific value of the archaeological excavation of tombs, using recent examples as illustrations. The author concludes that Jewish law could be interpreted and applied more flexibly and could then be reconciled with Israeli law. However, even if such a development were not to take place, then, in keeping with democratic values, government officials and the courts would be required to follow the policies established by the legislator, a balance between the conflicting interests having already been embodied in the law.

¶7: The Fate of the Koenigs Collection: Public and Private International Law Aspects

¶8: The Koenigs Collection of Old Master drawings was transferred during the course of World War II from private ownership to the German government. Most of the collection recently appeared in the Pushkin Museum in Moscow. The author examines the validity of these transfers and the proper ownership of the collection today from both a public and private international law perspective. The dispute as to ownership between Russia and the Netherlands and the role of the German government is a difficult one to resolve, particularly in light of current claims for war reparations and recent developments in international law concerning the transfer of cultural property.

¶9: Valuing Art for Tax Purposes in Canada – The Sarick Case and its Aftermath

¶10: The Buenos Aires Draft Convention on the Protection of the Underwater Cultural Heritage

¶11: The Buenos Aires Draft Convention on the Protection of the Underwater Cultural Heritage Part 2

¶12: Annex: The ICOMOS International Charter on the Protection and Management of Underwater Cultural Heritage: (ratified by the 11th ICOMOS General Assembly, held in Sofia, Bulgaria, from 5–9 October 1996)

¶13: Return of Cultural Treasures to Germany

¶14:

¶15: Protocol on the Transfer of Cultural Objects by the Government of Ukraine to the Government of the Federal Republic of Germany

- ¶16: Protocol on the Transfer of Cultural Objects by the Government of the Federal Republic of Germany to the Government of Ukraine
- ¶17: Conference of Directors of the State Museums of Berlin
- ¶18: Regional Seminar on Illicit Traffic in Cultural Property Kinshasa, Zaire, 26–28 June 1996
- ¶19: International Law Association Committee on Cultural Heritage: Helsinki, 12–17 August 1996
- ¶20: International Association of Legal Science 1996 Conference on the Protection of Cultural Property: Rabat, 11–12 September 1996
- ¶21: UNESCO: Ninth Session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation
- ¶22: A Recent International Symposium on Patronage of the Arts Organised by the Geneva Art-Law Centre: Lausanne, 26 September 1996
- ¶23: Pillage and Restitution: What Became of Works of Art Removed from France to Germany during World War II?, Paris, 17 November 1996
- ¶24: Legal and Organisational Aspects of International Co-operation in the Field of Search and Restitution of Displaced Cultural Property: Kiev, December 11–15, 1996
- ¶25: International Council on Archives / Conseil international des archives (ed.), Archival Legislation 1981–1994 / Législation Archivistique 1981–1994 (Archivum), International Review on Archives / Revue internationale des archives, vols. XL and XLI.
- ¶26: Majah: Indigenous Peoples and the Law.
- ¶27: Fields of Vision: essays in film studies, visual anthropology, and photography.
- ¶28: ISSUE 2
- ¶29: Law and Identity: Negotiating Meaning in the Native American Graves Protection and Repatriation Act
- ¶30: The enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 represented the culmination of a long process of negotiation and ultimate compromise between representatives of Native American tribes and American museums. This paper focuses on the initial implementation stage of NAGPRA. That stage reveals that interaction between the two sides has entailed (and continues to entail) negotiations not only concerning the disposition of specific Native American cultural objects but also equally important concerning the professional identities of Native Americans and museum professionals, respectively. Viewed in this way, NAGPRA's post-enactment process is seen to illustrate the various functions of law (both symbolic and concrete) in maintaining the social and ideological dialectic of American society.
- ¶31: Evaluating Cultural Property: The Economic Approach
- ¶32: The preservation of cultural heritage is costly and one has to decide if and which items of cultural heritage are worth preserving. A method for determining the value of cultural heritage is therefore needed. In economics, several evaluation procedures are applied. This article briefly comments on impact studies and willingness- to-pay studies (hedonic market approach and the travel cost approach) and then focuses on contingent valuation surveys. The application of contingent valuation on the arts and related problems are discussed. Finally, the article combines

the evaluation methods with democratic decisions by referenda. Switzerland presents an example of referenda held on art policy.

¶133: The Auction of the “Mauerbach Treasure”

¶134: This article describes the history of the objects stored at the Mauerbach monastery in Austria from soon after the Second World War until their auction last year. During the war, the German National Socialists had collected art works throughout Europe in many different ways—through theft, confiscation, forced sales, and legitimate sales. Both the legal issues raised by the attempts to determine the rightful owners of these objects and the criticism which the Austrian government received for failing to find more of these owners are discussed. The situation was finally resolved last year when the remaining objects were auctioned and the proceeds given to various organizations representing the victims of the Nazis.

¶135: At long last, the story of the “Mauerbach Treasure” has been concluded. This hoard of art objects has been the source of many legends owing to the secrecy, including even the identification of the objects themselves, which had surrounded it for many years.

¶136: The Protection of Cultural Property in Internal Law

¶137: Protection of Cultural Heritage in Turkish Private Law

¶138: La protection des biens culturels dans le Droit espagnol

¶139: The Protection of Cultural Heritage and International Commerce

¶140: Civil Liability for Costs for Archaeological Investigation Necessitated by Criminal Negligence – A Swedish Supreme Court Case

¶141: Agent Judiciaire du Trésor v. Walter; Fait du Prince and a King's Ransom

¶142: Protecting the National Heritage: The Implications of the British Treasure Act 1996

¶143: Waverley Adrift

¶144: The Proposed American Declaration on the Rights of Indigenous Peoples

¶145: Protection of Cultural Property and Conflict of Laws: The Basel Resolution of the Institute of International Law

¶146: European Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods

¶147: European Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

¶148: A Dangerous Business

¶149: Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague) 1954–1995 Reports

¶150: [Economics and Art. Their Mutual Relationship and Regional Aspects]

¶151: Travel in Egypt. According to Drawings of the Lepsius-Expedition 1842–1845

¶152: Law and Art. Symposium in honour of the 80th Birthday of Wolfram Müller-Freienfels

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¶2: ISSUE 1

¶3: Thinking in terms of law and mortality

¶4: The author lays a blueprint for distinctions between legal and moral rules and socially accepted behavior, situations in which these distinctions set different standards of conduct, and the relationship among them. Several of the more common paradigms of cultural property disputes are then fit into the patterns of legal and moral rules and obligations, thus establishing a framework for the discussion of how to evaluate ethical or moral behaviors in varying circumstances. The author also considers the relevance of deontological and consequentialist arguments for the return of cultural property, as well as avoidance strategies by which a country of origin can make a claim for restitution while ignoring the long-term questions of the legitimacy, power, and responsibilities of national governments. The author concludes by emphasizing the difficulties in basing arguments concerning cultural property on moral evaluations and conclusions.

¶5: Cultural property ethics

¶6: After briefly discussing ethics in general, stating the public interest in cultural property, and positing that collecting and dealing in cultural objects are not inherently unethical activities, the writer contrasts ethical attitudes toward legal controls over the international movement of people and of cultural objects. He then discusses the ethical bases of cultural property export controls and ethical questions raised by dealing in and collecting cultural objects, and identifies particular applications of export controls that are ethically unproblematic or ethically clouded. He discusses the difficult area of antiquities and questions whether anyone involved in it - from source nations, archaeologists, and ethnographers to museums, collectors, and the art trade - has clean hands. Finally, he states a hypothetical case of invited theft and asks readers to decide what the ethical response would be.

¶7: Codes of ethics: form and function in cultural heritage management

¶8: Many institutions and organizations of professionals have promulgated 'codes' of ethics in recent years in order both to establish accepted practices of professionals in various disciplines and to deal with problems raised by the unique aspects of cultural heritage issues. The author follows the processes of formulation, role, influence, interpretation, and effectiveness of such codes, as well as their relationship to the legal system. While acknowledging that it is often difficult to enforce these codes, the author suggests that they serve a valuable role both in educating the members of the various organizations and the public and in establishing goals for which these professionals aspire.

¶9: United States cultural property legislation: observation of a combatant

¶10: A consideration of the U.S. initiatives in response to the loss of cultural property in Latin America and Canada, as seen by a participant in their formulation and implementation from 1969 to 1994; cultural and aesthetic viewpoints are seen to divide the cultural property constituencies, although the former is prevailing. The significance of the U.S. UNESCO cultural property implementing legislation for five requesting countries and for Mexico is discussed, with a final recommendation for its emendation so as to allow the United States to respond immediately to the requests of all parties to the convention.

¶11: When data become people: archaeological ethics, reburial, and the past as public heritage

¶12: In the United States, consideration of archaeological ethics has been relatively recent and concerned primarily with defining professionalism. By declaring that the past is a public heritage, claiming that archaeologists should be its stewards, and moving toward a positivist scientific approach, American archaeology has alienated its public. Prompted by pressure from Native Americans on the reburial issue, the Society for American Archaeology has attempted to address the problems by proposing an ethics code, but outsiders are likely to see the contradictions between stated principles and practice. These issues are examined from the perspective of the reburial issues, offering the possibility that an ethnocritical archaeology might provide mechanisms that will allow archaeologists to be more truly accountable and, in the long term, better stewards of the past.

¶13: The ethics of archaeology, subsistence digging, and artifact looting in Latin America: point muted counterpoint

¶14: The author portrays the indigenous populations who engage in subsistence digging of sites in Latin America both as a means of supporting themselves economically and as a way of connecting themselves to their past and their ancestors who left the buried remains as a type of gift to their descendants. The article is also critical of the mainstream archaeologists, who, according to the author, hide behind the veil of scientific objectivity. Finally, the author juxtaposes the varying competing interests, particularly against the backdrop of denial of basic human and economic rights in these regions, and poses the question, to whom should these cultural remains belong?

¶15: Codes of ethics for conservation

¶16: This article examines the codes of ethics of the British, Canadian, Australian, and American professional conservation organizations and evaluates their success in meeting the needs of the discipline as it grows and matures. Specific issues that are currently of concern to conservators are examined, including the application of a single document to a diverse profession, reversibility of treatment, preventive conservation, cultural sensitivity, and the antiquities trade. The fact that none of these codes are enforceable is considered as well as the issue of accreditation and what it means. While these codes are reasonably successful in setting forth the principles that should guide conservation work for straightforward cases, they are less successful in providing guidance for complex issues such as those presented by cultural sensitivity and the antiquities trade.

¶17: The ethics of art dealing

¶18: The ethics of dealing in antiquities may be discussed in two parts: first, the ethical standards that govern the trade and its relation to clients, and second, the new legal standards that affect dealers and collectors arising from political ambitions in the international relations between source and market nations. Friction between these competing interests began with the ratification of the UNESCO Convention in 1972 and the passage of the Cultural Property Implementation Act in 1983. Unrealistic political approaches to the illicit trade in antiquities have exacerbated rather than solved the problem. A resolution of the conflicts, contradictions, and ambiguities of the present situation can be achieved by stressing the safety of objects and archaeological sites over partisan goals. A satisfactory denouement can be achieved through a partnership between source countries and the market, through an abandonment of retentionist export controls, and through the establishment of an open, free, and rational coalition. Any solution to present difficulties ought to acknowledge the value of continuing to collect and preserve antiquities in private and public collections.

¶19: Ethics, the antiquities trade, and archaeology

¶120: This article presents the perspective of a long-time dealer in ancient art and antiquities on the many attacks on the antiquities trade. After a brief historical review of collecting and the different national approaches to control of export of archaeological materials, the author presents an analysis of why the more draconian of the legal systems defeat their intended purposes and are themselves unethical in that they promote the destruction of archaeological sites and the black market in antiquities.

¶121: The ethics of collecting

¶122: The author questions the concepts underlying ethnological collections of art and artifacts in the context of the Native American Graves Protection and Repatriation Act (NAGPRA). Alternatives to traditional Western anthropological and art historical methods of collection and display of sacred Native American material are found in traditional Native American philosophy and practice. The contemporary fashion among curators for contextualization of displayed objects from Indigenous cultures is critiqued in the light of broader ethical concerns regarding the appropriateness of collecting sacred objects from living Indigenous Peoples.

¶123: Museums and ethics: long history, new developments

¶124: The International Council of Museums, with a broad-based membership of nearly one thousand museums throughout the world, adopted its Code of Professional Ethics in 1986. The Code addresses both institutional and professional ethics and sets standards for the development of internal policies dealing with acquisitions, cooperation, loans and exhibitions, authentication, valuation, documentation, and the special problems raised by human remains. Although described as a conservative document that could garner widespread support from museums located in both market and 'victim' nations, the Code nonetheless prohibits acquisition of material that was illegally exported from its country of origin or derives from unscientific excavation or destruction or damage to sites and monuments.

¶125: Architectural heritage: the paradox of its current state of risk

¶126: The treatment of movable and immovable heritage is markedly different. While movable objects are highly valued and carefully protected, their immovable equivalents are often under a serious cloud of threat. This peril is the result of global mismanagement, failure of governments to provide adequate funds for their maintenance, and lack of recognition by the public that these disappearing resources are assets of major value. Conservators of immovables face special ethical and practical concerns in their efforts to preserve cultural heritage within its context - depicted in this article as case histories from the World Monuments Watch list of endangered sites. The legal and procedural mechanisms that support this task are ineffectual in the face of rapid change. The field needs new methodologies that harness public appreciation of a site's 'sense of place' to guarantee its future.

¶127: A Syrian odyssey: the return of Syrian mosaics by the Newark museum

¶128: In 1971, the Newark Museum purchased a Roman mosaic, which, it later learned, had been stolen from the Syrian site of Apamea. Upon formal request for return of the mosaic, the museum arranged for its return with the assistance of the U.S. State Department. The museum received compensation from the dealer from whom the mosaic was purchased. This restitution was undertaken in the hope that future cooperation, including long-term loans of duplicate material, would be fostered, but the author concludes that this hope was never realized.

¶129: A collector's odyssey

¶130: The author recounts the process of acquiring a work of art, focusing on one object but encapsulating the thoughts and experience of many years. In so doing, she reflects on the value added to the appreciation of artistic works and her joy in sharing this with others through public display of her collection.

¶131: Case note. California adopts an 'actual' discovery accrual rule for claims to recover stolen art

¶132: ISSUE 2

¶133: The treasure of the Berlin State museums and its allied capture: remarks and questions

¶134: Following the disclosure of archives in the former Soviet Union detailing art works taken from Germany at the end of World War II, it is now possible to reconstruct more accurately a history of those objects removed from Germany but never returned. Inconsistencies in the documentary evidence concerning both the location of objects sent West from Berlin and other repositories (particularly in the last few months of the war) and the number of objects returned to Germany indicate that the United States may have been involved in an unofficial policy of claiming as war booty art treasures from the conquered German nation. This article attempts to detail some of those inconsistencies by comparing what is known of the inventories of German museums before the war, the movements of art objects and repositories used during the war, and the inventories of the German museums today, in order to reconstruct some of this missing part.

¶135: The American archaeological record: authority to dig, power to interpret

¶136: Legal regulation of the archaeological record has played a subtle though instrumental role in the shaping of American anthropology. Most studies of connections between politics and archaeology in analogous contexts have, however, focused on nationalisms and the popular political orchestration of archaeology. This paper grounds an analysis of the American case in legal apparatuses, disciplinary changes in anthropology, and a shift in the expression of American nationalism between the Antiquities Act of 1906 and the Native American Graves Protection and Repatriation Act of 1990. The article argues that archaeology has attained broader social significance as archaeologists now consult native peoples in the practice of archaeology. Though archaeology remains a politicized science it has become a more broadly negotiated one and the historical and cultural issues it faces may yet find resolution through laws and responsive disciplinary practices that envision a society enhanced by cultural difference.

¶137: The fundamental aims of cultural property law

¶138: The law of cultural property is primarily based on the interests of the states concerned. If a cultural object is of high monetary or identificatory value, states will contest the ownership, and many of these cases are resolved by compromise. If a cultural object is of less monetary or identificatory value, states often neglect its preservation. Yet the law for protection of cultural property should not only be a method for the arbitration of national interests but should also take into account the interests of humankind in general, including preservation of the object in its original context, public accessibility, and the scientific, historic and aesthetic interests that can be associated with an object. While some states are unable to protect their cultural heritage, especially in times of war, public international law does not prevent a state from destroying its cultural heritage. Cultural heritage law is developing rapidly, and national laws and international conventions are in the process of creation. At this time, the author posits, it is therefore necessary to consider the reasons for the protection of cultural objects.

¶139: Cultural heritage protection: legitimacy, property, and functionalism

¶140: This article argues that the question of whether the nation-state or the international community is the legitimate guardian of cultural property can only be answered with reference to what we expect measures of protection of our cultural heritage to accomplish. The very concept of 'protection' is at stake, and two different schools (object-centrism versus functionalism) are to be distinguished. Whereas object centrism focuses on the cultural object and its protection as a value in its own right, functionalism argues that the cultural heritage cannot even be identified as such without reference to society and its meaning for societal processes of acculturation and socialization. This article endorses functionalism and develops a perspective that includes identity and cross-cultural communication as the most important functions of all cultural heritage. These two criteria should guide our thinking about the legitimate guardian of cultural heritage in general.

¶141: Property rights and protection of the cultural heritage in Sweden

¶142: This article presents a summary of the Swedish law pertaining to the treatment of the cultural heritage. After a review of the property rights implicated through such a protective scheme, the article examines the national legislation as well as its implementation at both the national and local levels through administrative procedures that define and regulate the protection of ancient sites and monuments, historic buildings, archaeological finds, church-owned property, and movable objects of cultural value.

¶143: Essay. A proposal for museum acquisition policies in the future

¶144: Essay. Cultural property: a museum director's perspective

¶145: In brief. The Soviet spoils commissions: on the removal of works of art from German museums and collections

¶146: In brief. Recent cases of repatriation of antiquities to Italy from the United States

¶147: In brief. Guardians of the law: the Ngarinyin and their heritage

¶148: Case note. The Brother Jonathan decision: treasure salvor's 'actual possession' of shipwreck gives rise to federal jurisdiction for title claim

¶149: The Supreme Court issued its decision in Spring 1998 in California and State Lands Commission v Deep Sea Research, Inc. making the noteworthy holding that treasure salvors that have 'actual possession' of shipwrecks located on a state's submerged lands will not be ousted from federal court jurisdiction on Eleventh Amendment immunity grounds. Calling into question the Supreme Court's previous opinion involving shipwreck litigation in Florida Dept. of State v. Treasure Salvors, Inc., decided in 1982, the Court has made clear that claims for title to such submerged artifacts can now be fully adjudicated in federal court. In making this significant ruling, and in redefining what constitutes a 'colorable claim' to title in shipwrecks under the Abandoned Shipwreck Act, the Court resuscitated legal precedent that predates the 1865 sinking of shipwrecked Brother Jonathan.

¶150: McMichael v. Ontario - one man's obsession

¶151: The 'Group of Seven' has a significant, though not totally uncontroversial, place in Canadian art. Robert McMichael's 'obsession' with the group led to the establishment of the McMichael Collection and then to an agreement between Mr. McMichael and his wife and the government of Ontario concerning the collection. The subsequent litigation as to whether the government had failed to comply with provisions in the agreement on the administration of the collection and on the policy to be followed in adding works to it did not entirely resolve these issues but highlighted a matter of

importance to donors of works of art and the bodies to which donations are made: how far may donors ensure compliance with the terms on which they make donations?

¶152: Russian federal law of 13 May 1997 on cultural values that have been displaced to the U.S.S.R. as a result of World War II and are to be found in the Russian Federation Territory

¶153: Russian federal law of 13 May 1997 on cultural values that have been displaced to the U.S.S.R. as a result of World War II and are to be found in the Russian Federation Territory

¶154: Protecting indigenous peoples and communities in the Philippines: the indigenous peoples rights act of 1997

¶155: Protecting cultural objects in the global information society, Amsterdam (May 27-28, 1997)

¶156: Museums in the global enterprise society - international opportunities and challenges, Paris (February 6, 1998)

Name: IJCP 1999 Abstracts

¶1: IJCP 1999 Abstracts

¶2: ISSUE 1

¶3: Indigenous peoples: issues of definition

¶4: The progress that has been made by 'indigenous peoples' in international forums has been aided by the political perception that this category of claimants is limited and in some respects unique, and that such claims can properly and safely be treated as a special case. Although the imprecision of the category and the expanding array of groups involved in the 'indigenous peoples movement' could eventually threaten this perception and provoke more sustained demands for precision, such a transformation has not yet occurred.

¶5: How do you patent a landscape? The perils of dichotomizing cultural and intellectual property

¶6: For a variety of conceptual, historical, and political reasons, contemporary international law distinguishes between 'natural' land forms, cultural monuments, movable cultural property, the performing arts, and scientific knowledge. Indigenous peoples do not make these distinctions. Rather, they tend to regard landscapes as inherently cultural products in which artworks, literature, performances, and scientific-knowledge systems are inextricably embedded. Scientific knowledge must periodically be rehearsed within the landscape in recitations and performances that remember the historical process by which people and their nonhuman kinfolk constructed the landscape. Detaching specific cultural or scientific 'objects' from the landscape and commodifying them, as is contemplated by most current proposals for protecting indigenous peoples' rights, will undermine the indigenous institutions and procedures necessary for perpetuating the quality and validity of local knowledge.

¶7: Human rights and the cultural heritage of Indian tribes in the United States

¶8: The native American graves protection and repatriation act in its first decade

¶9: The global effort to protect indigenous heritage relies on national legislation. The Native American Graves Protection and Repatriation Act (NAGPRA) of the United States provides one model for accomplishing a broad agenda of protective measures. NAGPRA confirms indigenous ownership of cultural items excavated or discovered on federal and tribal lands, criminalizes trafficking in indigenous human remains and cultural items, and establishes a process of repatriation of material to native groups. In implementing the law, questions related to cultural affiliation, culturally unidentifiable material, the status of native groups not recognized by the federal government, and the scope of a group's cultural patrimony have been particularly troublesome. A case study of the repatriation process highlights issues in implementing NAGPRA and benefits in fostering consultation and collaboration among native groups, museums, and federal agencies. Finally, the article considers the controversies that have come before a statutory review committee and the federal courts during NAGPRA's first decade. This experience demonstrates the limitations of formal dispute resolution as a means of developing and implementing the law.

¶10: Protecting Taonga: the cultural heritage of the New Zealand Maori

¶11: New Zealand concerns regarding cultural heritage focus almost exclusively on the indigenous Maori of that country. This article includes discussion of the way in which New Zealand regulates the

local sale and export of Maori material cultural objects. It examines recent proposals to reform this system, including allowing Maori custom to determine ownership of newly found objects.

¶12: A major development in New Zealand law concerns the role of a quasi-judicial body, the Waitangi Tribunal. Many tribunal decisions have contained lengthy discussions of Maori taonga (cultural treasures) and of alleged past misconduct by former governments and their agents in relation to such objects and Maori cultural heritage in general.

¶13: As is the case with legal systems elsewhere, New Zealand seeks to reconcile the claims of its indigenous peoples with other priorities, such as economic development and environmental protection. Maori concerns have led to major changes in New Zealand heritage conservation law. A Maori Heritage Council now acts to ensure that places and sites of Maori interest will be protected. The council also plays a role in mediating conflicting interests of Maori and others, such as scientists, in relation to the scientific investigation of various sites.

¶14: Despite these developments, New Zealand has yet to sign the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The changes proposed to New Zealand cultural property law have yet to be implemented, and there is evidence of uncertainty about the extent to which protecting indigenous Maori rights can be reconciled with the development of a national cultural identity and the pursuit of universal concerns, such as sustainable development.

¶15: The Lapps in Finland

¶16: The Lapps of Scandinavia constitute a small indigenous ethnic community divided between four states: Norway, Sweden, Finland and Russia. The Lapps used to depend on reindeer farming and lacked their own schools. Because of their low social status and the lack of governmental understanding for their cultural needs, most of the Finnish Lapps had been assimilated with the majority population. Only in recent years an effort has been made by the government to encourage the preservation of the Lapp language and the Lapp civilization. A Lapp parliament has been created and the Lapp Language Act makes it possible for the Lapps to communicate in their own language with the authorities. It is to be hoped that these measures will bring positive results in a situation where only few Lappish speaking people remain in Finland, many of them having difficulties finding a livelihood in their homeland, the northernmost part of Finland.

¶17: The Year Bearer's People: repatriation of ethnographic and sacred knowledge to the Jakaltek Maya of Guatemala

¶18: In the early decades of this century, ethnographers who believed that the indigenous cultures of the Americas were in imminent danger of extinction undertook a variety of methods to record the vestiges of these cultures. Often carried out in collaboration with the controlling political powers, these ethnographic nonetheless became both instruments of persecution against traditional religious practices and the last records of these practices. One such ethnography, The Year Bearer's People, recorded by Oliver La Farge in 1927, became the only remaining record of this religious ceremony that commemorated the new year and was central to the life of the Jakaltek Maya in the Kuchumatán highland region of Guatemala. In this article, the author recounts the translation of this ethnography and the return of this sacred knowledge to the Maya community.

¶19: Aboriginal rights to cultural property in Canada

¶20: This article explores the rights of Aboriginal peoples in Canada concerning movable Aboriginal cultural property. Although the Canadian constitution protects Aboriginal rights, the content of this

protection has only recently begun to be explored by the Supreme Court of Canada in a series of important cases. This article sets out the existing Aboriginal rights regime in Canada and assesses its likely application to claims for the return of Aboriginal cultural property. Canadian governments have shown little interest in attempting to resolve questions concerning ownership and possession of Aboriginal cultural property, and there have been few instances of litigation. Over the last decade a number of Canadian museums have entered into voluntary agreements to return cultural objects to Aboriginal peoples' representatives. Those agreements have often involved ongoing partnerships between Aboriginal peoples and museums concerning such matters as museum management and exhibition curatorship. A recent development has been the resolution of specific repatriation requests as part of modern land claims agreements. The compromise represented by these negotiated solutions also characterizes the legal standards being developed to reconcile existing Aboriginal rights and the legitimate policy concerns of the wider Canadian society.

¶121: Kennewick man and native American graves protection and repatriation act woes

¶122: The contentious, sometimes even raucous debate over the repatriation and reburial of Native American human remains has been calm compared to the clamor raised over the so-called Kennewick Man. Although the reburial debate has captured substantial worldwide media and public attention, the debate over the Kennewick find has done what no other case has so far managed - to raise a serious legal challenge to parts of the 1990 Native American Graves Protection and Repatriation Act (NAGPRA), a law providing for the return of human remains and burial artifacts to tribes. This case study examines the core issues surrounding the archaeological discovery, the entanglements related to NAGPRA, and possible impact of Kennewick on NAGPRA itself.

¶123: The native American graves protection and repatriation act: a benefit and a burden, refining NAGPRA's cultural patrimony definition

¶124: This note discusses the *United States v. Corrow* decision. It focuses on the interpretation of cultural patrimony as defined by NAGPRA and emphasizes the dangers presented by this vague definition. The court in *United States v. Corrow* was the first to address whether the statute is unconstitutional because it is vague. This case is the first and only authority on NAGPRA's definition of cultural patrimony; therefore, the case and this note present significant avenues to understanding and thinking about cultural patrimony.

¶125: Agreement between the government of the United States of America and the government of Canada concerning the imposition of import restrictions on certain categories of archaeological and ethnological material

¶126: Reducing the incentive for pillage: the Canada-U.S. bilateral agreement on cultural property

¶127: Commentary on the bilateral agreement between the United States and Canada

¶128: Native American graves protection and repatriation act: law, analysis, and context

¶129: Draft United Nations declaration on the rights on indigenous peoples

¶130: Principles and guidelines for the protection of the heritage of indigenous peoples

¶131: Art, antiquity, and the law: preserving our global cultural heritage (October 30-November 1, 1998)

¶132: The Washington Conference on Holocaust-Era Assets (November 30-December 3, 1998)

¶133: ISSUE 2

¶134: The Elgin Marbles: questions of stewardship and accountability

¶135: Settlement reached in Deep Sea Research, Inc. v. The Brother Jonathan, et al.

¶136: The California Court of Appeal's second decision in Naftzger v. The American Numismatic Society

¶137: Diplomatic conference on the Second Protocol to the Hague Convention for the protection of cultural property in the event of armed conflict, The Hague, Netherlands (March 15-26, 1999)

¶138: Second Protocol to the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict The Hague (March 26, 1999)

¶139: Economics and heritage conservation: concepts, values, and agendas for research, Getty conservation institute, Los Angeles (December 8-11, 1998)

¶140: Who owns culture? The international conference on cultural property and patrimony at the Casa Italiana, Columbia University New York City

¶141: Second meeting of governmental experts to consider the draft convention on the protection of underwater cultural heritage, Paris, UNESCO Headquarters (April 19-24 1999)

¶142: What kind of underwater heritage convention do we need?

Name: IJCP 2000 abstracts

¶1: IJCP 2000 abstracts

¶2: ISSUE 1

¶3: Site management at Giza Plateau: master plan for the conservation of the site

¶4: The Giza pyramids, one of the world's most important archaeological sites, are threatened by urban expansion, pollution, conservation challenges, and the pressures of tourism. A critical need exists for effective site management to protect the archaeological riches of this important site. The author describes the implementation of a four-phase management plan initiated in 1988. In the first phase, an organization scheme for the site was prepared. Phase II defined a conservation and archaeological plan for the east side of the Great Pyramid and for the queens' pyramids. Phase III, which is ongoing, will define conservation of the three main pyramids, includes a tourism management plan, and will complete development of a site master plan. Phase IV will outline a program for ongoing archaeological research and conservation. The site management plan for the Giza Plateau provides a model for addressing a wide spectrum of environmental issues affecting archaeological sites.

¶5: The poverty of documentary heritage management in Nigeria

¶6: Nigeria's national archival institution has been an object of neglect since its reluctant establishment in the colonial era to the present time. It was initially headed by a non-archivist on a part time and ad hoc basis, which blighted its prospects. The uniqueness of the National Archives of Nigeria as the nation's unflinching memory and one of the embodiments of its cultural heritage is not appreciated. There is an urgent need to improve radically the infrastructures of the institution, taking advantage of new technologies offered by the information revolution. Lack of democracy and accountability has been the bane of independent Nigeria. There is obviously a link between this state of affairs and the perilous state of the national and other archival institutions in the country. A sound records-management practice is urgently needed to ensure the managerial accountability so vital to good governance.

¶7: Second Circuit holds that false statements contained in customs forms warrant forfeiture of ancient Gold Phiale - hotly contested foreign patrimony issue not reached by the court: United States v. An Antique Platter of Gold

¶8: Laying claim to long-lost art: the Hoge Raad of the Netherlands and the question of limitation periods

¶9: American Association of Museums guidelines concerning the unlawful appropriation of objects during the Nazi era

¶10: The problem of unpublished archaeological excavations

¶11: Reform of the French Art Market, Lyon, France (February 25, 1998)

¶12: Second Partnership for Peace. Workshop on the Protection of Cultural Property, Klagenfurt, Austria (October 4-7, 1999)

¶13: Illicit Antiquities: The Destruction of the World's Archaeological Heritage, Illicit Antiquities Research Centre, McDonald Institute for Archaeological Research, Cambridge University, England (October 22-25, 1999)

¶14: The Fourth Meeting of the High Contracting Parties to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, Paris, France (November 18, 1999)

¶15: International Colloquium on the Mauritanian Cultural Heritage. Nouakchott, Mauritania (November 29-December 1, 1999)

¶16: ISSUE 2

¶17: The Elgin Marbles: matters of fact and opinion

¶18: William St. Clair's article in 8 International Journal of Cultural Property 391-521 (1999) raised questions about the cleaning of the Parthenon marbles in London in the 1930s and about Elgin's so-called bribery of Turkish officials. The latter is here dismissed as normal practice. An account is given of the building and purpose of the Parthenon, its history to the end of the eighteenth century, then of the marbles taken to London and of those left in Athens. The cleaning is judged to have been no more than the comparable treatment of marbles in other museums, though vigorous in places, the intention being to make them intelligible to the visiting public, but resulting in no serious loss of detail or academic value. Finally, a personal viewpoint is given of the purposes for which ancient art is conserved, along with criteria for the optimum place of display for collections of cultural property of more than local importance in human history.

¶19: Salvor in possession: friend or foe to marine archaeology

¶20: While the threat to the underwater cultural heritage from the treasure salvage industry is widely recognised, the approach to 'protection' ranges from absolute prohibition to the sale of state licences to the highest bidder. Even the former raises difficult problems of enforceability and the choice of mechanisms to determine whether in situ preservation is the preferred option for any particular wreck site. The common law jurisdictions have tended to prefer a regulated salvage regime, in which the courts themselves have a role in considering whether appropriate archaeological methodology is applied to the recovery of historic artefacts. This article examines the legal and economic basis of such an approach and evaluates whether the underwater cultural heritage has derived any discernible benefit from this judicial creativity. Inter alia, it concludes that the legal framework is itself flawed by uncertainty and that the deliberations of the court are hampered by procedural deficiencies.

¶21: The Basel Decisions: recognition of the blanket legislation vesting state ownership over the cultural property found within the country of origin

¶22: The restitution of cultural objects and the question of giving direct effect to the protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954

¶23: UNESCO celebrates thirtieth anniversary of its convention on illicit traffic

¶24: General Assembly at its 54th session adopts resolution on the return and restitution of cultural properties without a vote

¶25: The restitution of the Parthenon marbles and the European Union: a historical-cultural-legal approach.

¶26: Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures.

¶127: The Art Collection of the Prince of Liechtenstein. Legal Questions with Respect to the Removal of the Collection from Vienna to Vaduz in 1944/45

Name: IJCP 2001 abstracts

¶1: IJCP 2001 abstracts

¶2: ISSUE 1

¶3: Collecting the classical world: first steps in a quantitative history

¶4: Of the two values of ancient objects, the connoisseur's first concern is with the object today, and the archaeologist's is with its past place and the knowledge it offers about the past. Central to both is provenance, which comprises the 'archaeology' of the item - its story until it went to rest in the ground - and its 'history' - its story once found and brought to human awareness again. Our response to looting of antiquities depends on how serious is the impact on knowledge, so we need a 'quantitative history' of collecting - how much there was to start with, how much has been dug up, how much we know about it, how much remains. Four quantitative histories are reported: on Cycladic figures, on items in recent celebrated classical collections, on antiquities sold at auction in recent decades, and on classical collecting at the Ashmolean Museum, Oxford. These pioneering studies are not yet enough to make a clear overall picture; our preliminary conclusion is a glum view of the damage caused by the illicit pursuit of antiquities.

¶5: Restricting international trade in the national artistic patrimony: economic rationale and policy instruments

¶6: This article examines the rationale for restricting the international artistic patrimony. The meaning of national patrimony is analysed, and rationales for state funding and interventions in the art market are analysed in light of the nonprivate benefits that this category of art produces. Distributional concerns about the international movement of art are considered. The second part of the article provides a taxonomy of restrictions used to prevent art objects leaving a nation, namely export restrictions, import regulations, and tax policies and incentives.

¶7: The Elgin Marbles: questions of accuracy and reliability

¶8: The Elgin Marbles continue to be one of the more controversial issues of the contemporary debate over cultural property and questions of its moral ownership. Unfortunately but perhaps inevitably, the pace of discussion is often driven by emotion. In this highly charged atmosphere, misunderstandings and misrepresentations are so often repeated that they gain a reality of their own and are very rarely challenged.

¶9: Recently the corpus of disinformation was given sustenance from a new quarter. In two separate publications, one of them in this journal, William St. Clair launched an attack on the British Museum and its care of the Parthenon sculptures. As this work is now likely to enter the core bibliography of the Parthenon sculptures, I am grateful to the editors of IJCP for this opportunity to correct some of its many misrepresentations and errors of fact.

¶10: State preemption of foreign-owned painting and international law

¶11: Moral rights and the protection of cultural heritage: Amar Nath Sehgal v. Union of India

¶12: Section 12.03 of the New York arts and cultural affairs law: civil by association

¶13: Resolution of Disputes in International Art Trade, Third Annual Conference of the Venice Court of National and International Arbitration: Venice, Italy (September 29-30, 2000)

¶14: Vilnius International Forum on Holocaust-era Looted Cultural Assets: Vilnius, Lithuania (October 3-5, 2000)

¶15: Expert Meeting on the National Implementation of Rules for the Protection of Cultural Property in the Event of Armed Conflict: Chavannes-de-Bogis (Geneva, Switzerland (October 5-6, 2000)

¶16: ISSUE 2

¶17: White Law, Black Art

¶18: This article examines the issues surrounding the appropriation of indigenous culture, in particular art. It discusses the nature and context of Aboriginal and Torres Strait Islander art in Australia in order to establish why appropriation and reproduction are important issues. The article outlines some of the ways in which the Australian legal system has attempted to address the problem and looks at the recent introduction of the Label of Authenticity. At the same time, the article places these issues in the context of indigenous self-determination and examines the problematic use of such concepts as "authenticity." Finally, the article looks beyond the Label of Authenticity and existing law of intellectual and cultural property, to sketch another possible solution to the problem.

¶19: War and Cultural Property: The 1954 Hague Convention and the Status of U.S. Ratification

¶20: In May of 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) was adopted in an attempt to curb the destruction of movable and immovable cultural property during war. Recent conflicts, such as the continuing war in the Balkans, remind us that the Hague Convention is as relevant today as it was fifty years ago. Although this Convention is the most comprehensive and internationally recognized treaty to protect cultural property in time of war, the United States remains one of the few signatories that has yet to ratify it. In January 1999, former President William J. Clinton forwarded the Hague Convention to the Senate with the recommendation that it ratify the Convention and part of Protocol I. Although this presented perhaps the first real opportunity in nearly half a century for the United States to join one hundred countries and ratify the Hague Convention, its fate remains uncertain. Generally oriented towards the United States' policy and practice, this article broadly discusses the Hague Convention, its history, its weaknesses and strengths, and the current status of U.S. ratification.

¶21: Protecting Indigenous Heritage Resources in Canada: A Comment on *Kitkatla v. British Columbia*

¶22: The *Gentili di Giuseppe* Case in France

¶23: Extension of Express Abandonment Standard for Sovereign Shipwrecks in *Sea Hunt, Inc. et al.*, Raises Troublesome Issues Regarding Protection of Underwater Cultural Property

¶24: The International Transfer of Works of Art in the New Italian Consolidated Statute on Cultural Property

¶25: Thirtieth Anniversary of UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Name: IJCP 2002 abstracts

¶1: IJCP 2002 abstracts

¶2: ISSUE 1

¶3: “For the Greater Glory of Indian Art”: The Life of an Endangered Art Treasure in Modern India

¶4: The essay narrates the biography of a single art object—acclaimed in recent history as a “masterpiece” of ancient Indian sculpture—to invoke the larger spectrum of practices and discourses that came to constitute the field of art history in modern India. It explores the shifting locations and aesthetic trajectories that marked the transformation of this artifact from a curious archaeological “antiquity” into a national “art-treasure” and icon of Indian femininity, and later even into “a travelling emissary of ancient Indian art and culture.” On the one hand, the spectrum of travels of this object provides an ideal instance for mapping over the twentieth century the changing colonial, national and international stature of Indian art. On the other hand, its career also pointedly reveals the clash of contending claims and the politics of “return” and “restitution” that have attended the nationalization and artistic consecration of many such objects.

¶5: Cicero's Prosecution of Gaius Verres: A Roman View of the Ethics of Acquisition of Art

¶6: Cicero's speeches and essays—especially the Verrines—were widely read in France and England during the late eighteenth and early nineteenth centuries, when they were used in public debates about the fate of art in wartime. The early development of the concept of “cultural property” owed much to careful readings and citations of Cicero's views. The main charge brought against Verres in 70 B.C. was extortion during his term as governor of Sicily, but in the course of his prosecution Cicero depicts Verres as a rapacious collector of art who even took cult statues from temples for his private collection. This portrait of a “collector” who felt entitled to anything he could get and who abused his official authority to acquire works of art was recalled and used in debates about “collecting” many centuries later. This paper examines how Ciceronian views contributed to the development of the concept of art as cultural property.

¶7: The Trade in Looted Antiquities and the Return of Cultural Property: A British Parliamentary Inquiry

¶8: The British parliamentary report on Cultural Property: Return and Illicit Trade was published in 2000. Three key areas were addressed: the illicit excavation and looting of antiquities, the identification of works of art looted by Nazis, and the return of cultural property now residing in British collections. The evidence presented by interested parties—including law enforcement agencies and dealers in antiquities—to the Culture, Media and Sport Committee is assessed against the analysis of collecting patterns for antiquities. The lack of self regulation by those involved in the antiquities market supports the view that the British Government needs to adopt more stringent legislation to combat the destruction of archaeological sites by looting.

¶9: One Premier's Obsession? The McMichael Legislation in Ontario

¶10: U.S. District Court Decision Allows Lawsuit Claiming Looted Artworks in Austria to Proceed

¶11: UNESCO Convention on the Protection of the Underwater Cultural Heritage

¶12: The Universal Declaration on Cultural Diversity

¶13: Scheme for the Protection of Cultural Heritage within the Commonwealth (With Amendments Recommended by the Working Group in Rome Underlined)

¶14: The UNESCO–ICRC Regional Seminar for SADC States on Implementation of International Humanitarian Law and Cultural Heritage Law

¶15: The British Red Cross Conference “Heritage under Fire: The Protection of Cultural Property in Wartime”

¶16: The NATO/PFP Seminar “Protection of Cultural Property in the Event of Armed Conflict — A Challenge in Peace Support Operations”

¶17: Forth Meeting of Governmental Experts to Consider the Draft Convention on the Protection of Underwater Cultural Heritage

¶18: ISSUE 2

¶19: “Putting Reform Into Action” — Thirty Years of the World Heritage Convention: How to Reform a Convention without Changing Its Regulations

¶20: The World Heritage Convention, revolutionary in its conception thirty years ago, has today become the most widely accepted international legal instrument for the protection of cultural and natural heritage. Now, however, it requires adjustments if its successful implementation is to continue. These changes must not modify the Convention but must achieve an equivalent level of implementation. This article focuses on three issues, which are currently the subject of ongoing discussions: the representivity of the World Heritage List, equitable representation in the World Heritage Committee, and revision of the Operational Guidelines. The author not only describes the procedures for reform and the results achieved so far, but he also compares the legal provisions of this Convention to the other international legal instruments for the protection of cultural heritage.

¶21: The Illicit Movement of Underwater Cultural Heritage: The Case of the Dodington Coins

¶22: In October 1997 the Times of London announced the sale by auction of fourteen hundred gold coins that formed part of the hoard lost by Clive of India when the East Indiaman Dodington was wrecked in Algoa Bay on July 17, 1755. The wreck and its contents lie within South African territorial waters and are protected by South African heritage legislation. Very little gold has ever been reported recovered, despite ongoing excavations, and only a single permit has been issued for the export and sale of twenty–one gold coins. This article will consider the legal steps taken to repatriate the coins, and the difficulties encountered when taking such steps before a foreign court. It evaluates the extent to which existing international conventions, including the recently adopted UNESCO Convention on the Protection of Underwater Cultural Heritage, are able to assist states in repatriating stolen or illegally exported underwater cultural heritage.

¶23: Cultural Property on the Move — Legally, Illegally

¶24: In 1999 a load of about sixty kilograms of ancient coins, looted from illegal excavations in Bulgaria and falsely declared, were stopped by German customs at the Frankfurt Airport, on its way to the United States. Notwithstanding any rights of ownership or administrative rights to confiscate the smuggled goods, in the end the coins were returned to the dealer. The main weakness proved to be the lack of interest in an “exotic” case like this and a lack of communication among all administrative agencies concerned.

¶25: End of the Era of Denial for Buyers of State–Owned Antiquities: United States v. Schultz

¶126: World Heritage, between Universalism and Globalization

¶127: The Resolution on the Return and Restitution of Cultural Property to the Countries of Origin Adopted by the General Assembly on December 13, 2001

¶128: "The Own History," Provenance Research in German Art Museums Compared with the Situation in Other Countries Hamburg (Germany) (February 20–22, 2002)

Name: IJCP 2005 Abstracts

¶1: IJCP 2005 Abstracts

¶2: ISSUE 1

¶3: Cultural Property and the International Cultural Property Society

¶4: Cultural property goes back a long way. It is probably fair to say that it originated with the beginnings of human creation, the earliest material and intellectual expressions of mankind. And as soon as there was cultural property, there likely was dispute, although in a most primitive form. The destruction, supplanting, and taking of another group's cultural creations may not unreasonably be thought of as the earliest form of cultural property debate.

¶5: (Re)Introducing the International Journal of Cultural Property

¶6: The term “cultural heritage” contains an inherent tension. On the one hand, “culture” suggests something dynamic: it represents the diverse values and practices of different social groups, which continually evolve as they interact with others and their membership changes. On the other hand, “heritage” (and likewise “property”) implies something more clearly defined and static: it refers to a specific object or tradition passed on from generation to generation with little to no significant change. The difficulty in resolving these opposing forces—change versus stability—underlies why protecting, controlling, and possessing cultural heritage is so difficult to regulate in law, policy, and practice.

¶7: Cultural Property Internationalism

¶8: Cultural property internationalism is shorthand for the proposition that everyone has an interest in the preservation and enjoyment of cultural property, wherever it is situated, from whatever cultural or geographic source it derives. This article describes its historical development and its expression in the international law of war, in the work of UNESCO, and in the international trade in cultural objects and assesses the ways in which cultural-property world actors support or resist the implications of cultural property internationalism.

¶9: Heritage Trouble: Recent Work on the Protection of Intangible Cultural Property

¶10: A major factor driving contemporary concerns about the fate of intangible cultural property is the rise of the Information Society, which has proven adept at stripping information from the cultural contexts that give it meaning. Efforts to preserve intangible heritage have tended to follow Information Society models by proposing that heritage be inventoried, then removed from the public domain and returned to the exclusive control of its putative creators. This essay reviews recent scholarly work and policy initiatives related to intangible cultural property, with an eye toward identifying their merits and flaws. It argues for a more ecological perspective, one that takes account of the unpredictable quality of information flows as well as the costs of attempting to manage them. Also explored are some of the difficult, unanswered questions about whether all intangible cultural heritage is equally worthy of protection.

¶11: The “Caring and Sharing” Alternative: Recent Progress in the International Law Association to Develop Draft Cultural Material Principles

¶12: Increasingly those concerned with cultural property favor an approach that focuses on protection and shared access over unequivocal demands for return to places of origin or insistence

on retention by museums and other institutions. This article starts by describing the International Law Association and discussing its role, along with that of other nongovernmental organizations, in connection with the development of cultural heritage principles and instruments. It then outlines the intent behind “Draft Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material” presently being developed by the Committee on Cultural Heritage Law of the International Law Association. The Committee favors a nonadversarial and collaborative approach to issues surrounding the return of cultural material to its place or people of origin. This article describes and discusses the draft principles being developed by the Committee. Its hope is that a set of principles could be developed that would form the basis for expediting the resolution of a variety of cultural property disputes. These principles are at an early stage in their development and the Committee welcomes suggestions for changes and additions to the draft principles as they now stand.

¶13: Cultural Nationalists, Internationalists, and “Intra-nationalists”: Who's Right and Whose Right?

¶14: This paper examines some of the complex issues that relate to the management of “heritage,” primarily as such issues relate to Indigenous populations and communities. Numerous authors such as Aplin, Aplin, Heritage Identification, Conservation, and Management. Barkan and Bush, Barkan and Bush, Claiming the Stones. Brown, Brown, Who Owns Native Culture? and Greenfield, Greenfield, Return of Cultural Treasures. recognize the social, political, and symbolic aspects of heritage and discuss such issues in detail. This paper, therefore, does not approach the broader issues of heritage, but instead focuses on the intricacies of relationships between the various populations that attempt to exert control over particular aspects of heritage. While many authors recognize the role of cultural nationalists and cultural internationalists in the debate over heritage issues, I argue that Indigenous populations and other enclaves within nations— cultural “intranationalists”—comprise a new and growing voice in the debate.

¶15: National Ownership Laws as Cultural Property Protection Policy: The Emerging Trend in United States v. Schultz

¶16: The conviction of Frederick Schultz is the most recent turn in a storm of controversy that began 25 years ago and does not appear to be dying down. Schultz is currently serving a prison term and owes a fine of \$50,000 to the United States government. He was convicted under the National Stolen Property Act (NSPA) for conspiring to purchase Egyptian antiquities that, according to Egyptian law, were owned by the Egyptian government. The Schultz case is the latest in an emerging trend whereby the NSPA, enacted to permit criminal federal prosecution for stolen cars taken across state borders, has been applied to help foreign governments with national ownership laws to keep antiquities within their borders.

¶17:

¶18: BOOK REVIEW

¶19: Michael F. Brown, Who Owns Native Culture?

¶20: Michael Brown has written a book that must be read by all who have a serious concern with heritage, particularly that where the interests of “native” peoples are involved. Throughout the book, there is evidence of extensive research and careful analysis of the often complex issues that he raises. But it is not a dry tome. A sense of humor appears. Describing the ethnobotanist Richard Schultes, of Harvard University, Brown says: “He may have been the only Republican in America who freely admitted to having sampled just about every mind-altering plant yet discovered in the New World” (p. 96). The book is written in a clear style with no use of jargon.

¶121: Instructions for Contributors

¶122: The International Journal of Cultural Property is a peer-reviewed journal which publishes papers and other materials representing a broad set of perspectives on problems relating to cultural property, cultural heritage, and related issues. Contributions are welcome from the wide variety of fields implicated in the debates—law, anthropology, public policy, archaeology, art history, preservation, museum-, tourism-, and heritage studies—and from a variety of perspectives and interests—indigenous, Western, and non-Western; academic, professional and amateur; consumers and producers—to promote meaningful discussion of the complexities, competing values, and other concerns that form the environment within which these disputes exist.

¶123: ISSUE 2

¶124: Forever Nearing the Finish Line: Heritage Policy and the Problem of Memory in Postwar Beirut

¶125: Between 1976 and 1991, central Beirut, repository of centuries of historic structures, was substantially destroyed by civil war. In 1994, a private company known by its French acronym Solidère was created by government decree and given the task of reconstructing the center of Beirut. Despite political problems, the Solidère project brought the hope of social recovery through economic renewal; yet progress should not come at the cost of memory.

¶126: How can Beirut, destroyed, be a site of both recovery and erasure? Even though traditional legal and political discourses acknowledge that cultural heritage holds a powerful position in reconstruction, there are few tools for capturing its functions. Using heuristics originally employed in archeology and art history, this article addresses psychological aspects of reconstruction by discussing contemporary Lebanese art. If culture is defined not only as what people do but how they make sense of what they have done, the enormity of the political problems of post-civil war reconstruction become clear. National governments hoping to consolidate authority would do well to consider how best to approach public places resonant with emotionally charged memories.

¶127: Policymakers should consider the complex benefits of negative heritage in drafting laws that will enable its protection. Legal reform carried out with the goal of balanced heritage policies that accommodate negative heritage is key for postconflict urban spaces. By acknowledging the weight of the past, such policies would also bolster confidence in the emergent government and the political process.

¶128: Art Historians and Cultural Property Internationalism

¶129: This article responds to John Merryman's article on cultural property internationalism in the last issue of the International Journal of Cultural Property (IJCP). It considers the increasing, although still limited, role that art historians working out of universities play in the debates around the ownership of cultural property. Although there are a number of principles embedded in cultural internationalism that are still widely supported, art historians seem to be moving away from cultural property internationalism. One reason for the increasing critique of cultural property internationalism is the rise of scholarship that questions traditional art history and its relationship to colonialism.

¶130: Museums and Cultural Property: A Retreat from the Internationalist Approach

¶131: Responding to J. H. Merryman's discussion of cultural property internationalism in the preceding IJCP issue, this article examines the currency of the internationalist perspective within the museum community. Perhaps surprisingly, there is little evidence of adherence to an internationalist

perspective, at least among the official policies and publications of museums and museum organizations. The article proposes that the current dissociation with cultural internationalism in the acquisitions arena signals an important shift, and bears significant long-term consequences for many museums.

¶132: The International Movement of Cultural Objects

¶133: The view that “cultural property internationalism” (Merryman) is represented by the Hague Convention 1954 and that it has been departed from in later UNESCO instruments can be challenged. Words which carry particular connotations can distort the argument—property is one of them, so cultural property is already a loaded term. The historical sources used to buttress the modern argument for more liberal trade in cultural objects bear other interpretations. Similarly, UNESCO's mandate has been narrowed in a way not justified by its constitution. UNESCO's later instruments, such as the 1970 Convention, do not represent an aversion to the art market, as is witnessed by its development on an international Code for Dealers. However, the art trade at present is based on the secrecy of transactions, and this has led to a number of scandals. Neither assessment of the interests at stake nor treaties on human rights or trade require tolerance of these practices.

¶134: *Bonnichsen v. United States*: Time, Place, and the Search for Identity

¶135: On its surface, *Bonnichsen v. United States* is an administrative law case, reviewing a decision by the Secretary of the Interior regarding the appropriate reach of a specific set of legislative and regulatory rules. As such, Judge Gould, writing for a panel of the Ninth Circuit of the United States Court of Appeals (Ninth Circuit) decided that the secretary's office had overstepped its bounds; in short, its interpretation of the rules in question was not reasonable. But underneath the legal categories, *Bonnichsen* is a much more complicated and politically charged case. It is about competing conceptions of history and spirituality. It is about sovereignty (although that word is not uttered once in the decision, aside from reciting a definition of Native Hawaiians) and the clash of cultures. It is less about the standards for decision making and more about who the appropriate decision makers are. It is a case about a man who lived 9,000 years ago and about how today we should understand his cultural identity.

¶136: Public Heritage, a Desire for a “White” History for America, and Some Impacts of the *Kennewick Man/ Ancient One* Decision

¶137: The most recent opinion in the so-called *Kennewick Man* or *Ancient One* (as many American Indians choose to call the skeleton) case by the United States Court of Appeals for the Ninth Circuit unfortunately resurrects some very old and contentious issues in America. Indians mostly view the opinion as one more echo of the same old story of Native American property issues raised in the courts, but they also understand that some implications may be broader. The most direct impact of the opinion is that the Umatilla people will not be allowed to return the *Ancient One* to the earth, but others could be portents of a larger resurgence of anti-Indian sentiment and scientific colonialism in America. Specifically, though not directly stated as such, the court's opinion supports a notion that archaeological materials are a public heritage, no matter their culture of origin. In addition, by affirming the plaintiffs' position, the court essentially declared archaeologists and associated scientists to be the primary stewards of that heritage, much to the chagrin of many American Indian people. Along the way, the court reinforced the idea that scientifically generated evidence has greater validity than oral tradition in court, outright denying oral tradition's validity and undercutting a major intention of the Native American Graves Protection and Repatriation Act

(NAGPRA). Worse still, the court reflects—and by its decision supports—an idea that there may be a “white” or European history for the Americas that predates the arrival of Indians. The most damaging and long-term impact is that the decision reinforces fundamentally erroneous definitions and stereotypes about Indians as tribes, which has plagued Indian-white relations for generations.

¶138: Remembering Humanity: How to Include Human Values in a Scientific Endeavor

¶139: The Bonnicksen decision has been heralded as a victory for anthropology, because it appears to vindicate the position of the plaintiffs who brought their suit in order to be allowed to conduct scientific research on a 9,000-year-old skeleton from North America. It appears to be a defeat for Native Americans, who view this skeleton as an ancestor and who would prefer to see the remains of this individual returned to the ground to continue the long journey back to the earth. In fact, this polarized view of the case returns the discourse surrounding repatriation to a previous level in which arguments were made over the question, “who owns the past?” While this may be a rhetorically satisfying problem to wrestle with, it does not capture the true nature of how archaeology can engage with Native people in the process of understanding ancient lives. It presumes that the past exists as a form of property. Under this simplistic construction, human remains can exist as property and can be owned by one group or another.

¶140: BOOK REVIEW

¶141: Kevin Chamberlain, *War and Cultural Heritage*.

¶142: ISSUE 3

¶143: Protecting Traditional Knowledge and Expanding Access to Scientific Data: Juxtaposing Intellectual Property Agendas via a “Some Rights Reserved” Model

¶144: The twenty-first century has ushered in new debates and social movements that aim to structure how culture is produced, owned, and distributed. At one side, open-knowledge advocates seek greater freedom for finding, distributing, using, and reusing information. On the other hand, traditional-knowledge rights advocates seek to protect certain forms of knowledge from appropriation and exploitation and seek recognition for communal and culturally situated notions of heritage and intellectual property. Understanding and bridging the tension between these movements represents a vital and significant challenge. This paper explores possible areas of where these seemingly divergent goals may converge, centered on the Creative Commons concept of some rights reserved. We argue that this concept can be extended into areas where scientific disciplines intersect with traditional knowledge. This model can help build a voluntary framework for negotiating more equitable and open communication between field researchers and diverse stakeholding communities.

¶145: Gone Digital: Aboriginal Remix and the Cultural Commons

¶146: Recently the commons has become a predominant metaphor for the types of social relationships between people, ideas, and new digital technologies. In IP debates, the commons signifies openness, the exclusion of intermediaries, and remix culture that is creative, innovative, and politically disobedient. This article examines the material and social implications of these debates (and the legal copyright regimes they interact with) in the translation and remix of Warumungu culture onto a set of locally produced DVDs. Although DVD technology can account for concerns such as monitoring access, preserving cultural knowledge, and reinforcing existing kinship networks, it also brings with it the possibility of multiple reproductions, knowledge sampling, and unintended mobilizations. Tracking the shifting mandates and emergent protocols in this digital

interface redirects the lines of the debate to include multiple structures of accountability, ongoing systems of inequity, and overlapping access regimes involved in the always tense processes of cultural innovation.

¶147: The Making of Indigenous Knowledge in Intellectual Property Law in Australia

¶148: The challenge of how to stop the unauthorized use of Indigenous knowledge has been firmly constituted as a problem to be solved by and managed through the legal domain. In this paper, my questions are directed to the way Indigenous knowledge has been made into a category of intellectual property law and consequently how law has sought to define and manage the boundaries of Indigenous knowledge.

¶149: The Incorporation of the Native American Past: Cultural Extermination, Archaeological Protection, and the Antiquities Act of 1906

¶150: In the late nineteenth century, while advocates garnered support for a law protecting America's archaeological resources, the U.S. government was seeking to dispossess Native Americans of traditional lands and eradicate native languages and cultural practices. That the government should safeguard Indian heritage in one way while simultaneously enacting policies of cultural obliteration deserves close scrutiny and provides insight into the ways in which archaeology is drawn into complex sociopolitical developments. Focusing on the American Southwest, this article argues that the Antiquities Act was fundamentally linked to the process of incorporating Native Americans into the web of national politics and markets. Whereas government programs such as boarding schools and missions sought to integrate living indigenous communities, the Antiquities Act served to place the Native American past under the explicit control of the American government and its agents of science. This story of archaeology is vital, because it helps explain the contemporary environment in which debates continue about the ownership and management of heritage.

¶151: Why Sanctions Seldom Work: Reflections on Cultural Property Internationalism

¶152: Heritage piety departs ever farther from reality. High-minded admonitions broaden the gulf between what happens to cultural property and what virtuous stewards feel should happen. Ever more of our patrimony gets looted, destroyed, mutilated, shorn of context, hidden from scrutiny, inadequately stored, poorly conserved, eBayed. Merryman cites three causes: the animus of UNESCO and archaeology against marketing cultural property, the sanguine view that trafficking abuse can be quashed by state fiat and moral suasion, and excessive constraint against heritage export by blanket diktats from source nations (and tribes and ethnic groups). These evils endure because heritage stewards commonly subscribe to four underlying sacrosanct fictions. (1) The heritage of all humanity deserves to be preserved in toto. (2) Cultural heritage matters above all for the information it can yield. (3) Collecting is reprehensible; it must be circumscribed if not outlawed. (4) Nations and tribes are enduring entities with sacred rights to time-honored legacies. I show why these views are mistaken yet remain embedded in heritage philosophy and protocol. In particular, although heritage is piously declared the legacy of all mankind, chauvinist sentiment continues to impede internationalism, partly because it buttresses the credentials of those in charge, who are forced into moral postures that promise unachievable stewardship. National and local self-esteem are holy writ for UNESCO and other cultural property agencies. Equating heritage with identity justifies every group's claim to the bones, the belongings, the riddles, and the refuse of every forebear back into the mists of time. All that stands in the way of everyone's reunion with all their ancestors and ancestral things is its utter impossibility. Heritage professionals once seen as selfless are now targets of suspicion, often thought backward looking, deluded, self-seeking, or hypocritical.

Small wonder that militant reformers who seek to suppress illicit cultural property dealings by treaties, court decisions, government fiats, and the moral artillery of shame and guilt are viewed with an increasingly cynical eye.

¶153: Is There an Expert in the House? Thomson v. Christie's: The Case of the Houghton Urns

¶154: The May 2004 decision of the London High Court in the matter of Thomson v. Christie's captured the interest of the salacious British press for its glamorous players: the Canadian heiress, the English aristocrat, and the international auction house. Taylor Thomson, the daughter of billionaire newspaper baron, Lord Thomson of Fleet, sued both the Marquess of Cholmondeley, a bachelor filmmaker with a fortune valued at over £100 million, and Christie's Auction House, for misrepresenting a pair of gilt and porphyry urns she purchased from Cholmondeley at a Christie's sale in London in 1994 for just under £2 million.

¶155: Jordanna Bailkin, *The Culture of Property: The Crisis of Liberalism in Modern Britain*.

¶156: The abundance of literature dealing with the Parthenon Marbles, the Benin Bronzes, and NAGPRA has made it seem that conflict over the fate of patrimonial property is always a story about contemporary society's encounter with its colonial past. Professor Bailkin's recent book reveals a considerably more varied, complex, and multi-layered history of cultural property controversies.

¶157: ISSUE 4

¶158: Convention for the Safeguarding of the Intangible Cultural Heritage 2003

¶159: Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, Secretariat of the Pacific Community: Model Law for the Protection of Traditional Knowledge and Expressions of Culture

¶160: Federal Act on the International Transfer of Cultural Property: (Cultural Property Transfer Act, CPTA) Dated June 20, 2003

¶161: The Federal Assembly of the Swiss Confederation, Pursuant to Articles 69, para. 2 and 95, para. 1, of the Swiss Federal Constitution, in execution of the UNESCO Convention from November 14, 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention 1970), after having examined the Message of the Federal Council dated November 21, 2001, decides.

¶162: The Export of Objects of Cultural Interest (Control) Order 2003

¶163: CONFERENCE REPORTS

¶164: Regional Workshop on the UNESCO Conventions Protecting Cultural Property

¶165: The closing years of the twentieth century and the early years of twenty-first century witnessed remarkable developments in the international attempts to protect the world's cultural heritage. For instance, in 1999 the Second Protocol to the Convention on the Protection of Cultural Property in the Event of Armed Conflict was adopted. In 2001, the Convention on the Protection of the Underwater Cultural Heritage was adopted whilst 2003 witnessed the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage. The United Nations declared 2002, as the UN Year for Cultural Heritage and appointed UNESCO as its Cultural Agent. There is no gainsaying that the UNESCO was faithfully committed to this mandate and discharged its responsibilities satisfactorily. However, the acknowledgment of the fact that lack of information and inadequate appreciation of the UNESCO Conventions on the protection of cultural property remained a

formidable obstacle to the realisation of the aspiration of the UN and UNESCO informed the 2003 Abuja Workshop convened primarily to promote the UNESCO Conventions protecting Cultural Property. What follows is report on the 2003 Abuja Workshop.

¶166: Report on the Conference: Imperialism, Art and Restitution

¶167: March 26–27, 2004, in St. Louis, Missouri, the Washington University School of Law's Whitney R. Harris Institute for Global Legal Studies and the School of Art hosted the Imperialism, Art and Restitution Conference. The conference brought together many of the world's leading experts on art and antiquities law, museum policy, and the larger cultural context surrounding these fields. The conference organizers chose several particularly controversial case studies to generate debate and discussion around the issues of whether Western states and their museums should return major works of art and antiquities, acquired during the Age of Imperialism, to the countries of origin. The case studies included the Elgin/Parthenon Marbles, the Bust of Nefertiti, and objects protected by the Native American Graves Protection and Repatriation Act (NAGPRA). The format produced a lively, interdisciplinary, and sometimes passionate debate that helped crystallize issues and expose complexities but certainly produced no consensus around a simple solution of return or retain.

¶168: A Future for Our Past: International Symposium for Redefining the Concept of Cultural Heritage: Organized by the Istanbul Initiative at the Istanbul Bilgi University, Dolapdere Campus, June 24–26 2004

¶169: The Istanbul Initiative was established in 2003 in response to concerns raised by the continuing episodes of cultural destruction that have accompanied armed conflicts in Cambodia, Lebanon, Afghanistan, the former Yugoslavia, and Iraq. The Initiative is comprised of Turkish academics, lawyers, and media professionals who aim to raise international awareness of the destruction of cultural heritage during wartime. Their first action was to organize the symposium A Future for Our Past in Istanbul from June 24 to 26 2004. The immediate impetus for the symposium was provided by the large-scale looting of museums, libraries, and archaeological sites that followed the Coalition invasion of Iraq in April 2003.

¶170: Regional Workshop on the Fight against Illicit Trafficking of Cultural Property: Cape Town, South Africa, September 27–30, 2004

¶171: In the last decade of the twentieth century three UNESCO/ICOM regional workshops were held in Africa (Arusha, Tanzania in 1993, Bamako, Mali in 1994 and Kinshasa, Democratic Republic of Congo in 1996) on the fight against illicit trafficking of cultural property. In the first decade of this century already two UNESCO regional workshops have been held in Africa on the same theme. The first was held in Abuja, Nigeria in 2003, and the second, which is the focus of this report, in Cape Town, South Africa in September 2004.

¶172: Information, Transparency and Justice: International Provenance Research Colloquium: (Washington, DC, November 2004)

¶173: Even now in 2006, sixty years after the end of World War II, the subject of cultural assets seized under Nazi persecution (“looted art”) and displaced during the war (“trophy art”), continues to be of interest to politicians, historians, legal experts, and many others. Thus, at a meeting in January 2005, Germany's Advisory Commission for the return of cultural assets seized as a result of Nazi persecution, particularly those cultural assets removed from Jewish ownership, recommended the return of four paintings presently in the possession of the Federal Republic of Germany to the community of heirs of Julius Freund. Also in January 2005, Germany's government, all federal states

and central organizations of municipalities called on German public bodies not to slow down in their search for cultural assets seized as a result of Nazi persecution and to report any items found to the Koordinierungsstelle für Kulturgutverluste (Coordination Office for Lost Cultural Assets) for display as part of its Internet database www.lostart.de. Furthermore, in February 2005, Franz von Lenbach's painting "Prinzessin zu Sayn-Wittgenstein-Sayn" which had been seized by the Nazis was identified through www.lostart.de and returned to the heirs of Bernhard Altmann. The painting was part of the Remaining Stock CCP ("Linzer Liste") within www.lostart.de enlisting cultural objects with provenance gaps in the administration of Germany's Bundesamt zur Regelung offener Vermögensfragen (Federal Office for the settlement of ownership issues). The object was on loan from the Bundesamt and in possession of the Wallraf-Richartz-Museum in Köln (Germany).

Name: IJCP 2006 Abstracts

¶1: IJCP 2006 Abstracts

¶2: ISSUE 1

¶3: Dignifying Carnival: The Politics of Heritage Recognition in Puebla, Mexico

¶4: This article problematizes the process of heritage declaration using ethnographic research on the working class carnival produced each year in the historic city center of Puebla, México. The author explores the ways in which the intersection of cultural and political practice in this case has not only called into question the authenticity of certain aspects of this local tradition, but have instead converted them into points of contention among carnival producers.

¶5: Diplomats, Banana Cowboys, and Archaeologists in Western Honduras: A History of the Trade in Pre-Columbian Materials

¶6: This paper explores access to the Honduran past with a focus on northwestern Honduras, particularly the Ulua Valley. The foundations of national patrimony legislation and the practice of collecting antiquities are used to explore whether the disassociation of the archaeological community from the collecting sphere over the last several decades has better protected the archaeological record. I argue that early field expeditions led by U.S. archaeologists, the shipment of their finds to U.S. institutions, and subsequent massive looting galvanized Honduran efforts aimed at national patrimony legislation. The roles of the U.S. government and U.S.-based businesses as negotiating bodies in the early days of Honduran expeditions from 1890 to 1940 are explored in detail, particularly in the sphere of opening up the region to collectors and the role of the U.S. antiquities market. We can understand the early days of collecting in Honduras precisely because of the close relationships once forged between collectors, museums, and archaeologists, networks that have now disappeared because of current conceptions of archaeological ethics. The changing definition of a collector represents a key point throughout this analysis; at one time archaeologists, museums, and businesses were the primary collectors. The shift from the label collector to archaeologist is explored through the lens of the development of archaeology as a discipline, with a particular emphasis on context, and the contemporary legislative efforts aimed at cultural heritage protection. The essay concludes with a look at recent archaeological work in the region and the increasingly strict cultural patrimony legislation, specifically the 2004 U.S.–Honduran Memorandum of Understanding.

¶7: Culture and the Digital Copyright Chimera: Assessing the International Regulatory System of the Music Industry in Relation to Cultural Diversity

¶8: This article examines the international legal regime that governs cultural commodities by providing an up-to-date stocktaking in the field. In doing so, this paper focuses on the music industry, both as the general backdrop and as a context in which to observe the evolution of the current regulatory regime. It includes a review of the history of the commoditization process of musical goods, the requisite legislative and judicial decisions, the international regulatory environment, and a tripartite case study. By reviewing various approaches and examining several recent arenas where the issues have been implicated, the author demonstrates that, in its current form, the international copyright regime is not sufficiently supportive of diversity in cultural property.

¶9: New Swiss Law on Cultural Property

¶10: On June 1, 2005, the Swiss Federal Act on the International Transfer of Cultural Property (Cultural Property Transfer Act [CPTA]) and the regulations thereof became effective. The CPTA implements the minimal standards of the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The CPTA fills a gap, because Switzerland is not a member state of the Convention of June 24, 1995, on Stolen or Illegally Exported Cultural Objects (Unidroit Convention 1995). In addition, as a nonmember state of the European Union (EU) and the European Economic Community (EEC), the Council Directive 93/7/EEC of March 15, 1993, on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State is not applicable. The CPTA enforces foreign export bans in Switzerland. However, claims in Switzerland for return of foreign, illegally exported cultural property are only successful when there is an agreement on the import and return of cultural property between Switzerland and the claiming foreign state. Like Switzerland, the claiming state must be a member state of the UNESCO Convention of 1970.

¶11: Vincent Noce, *La Collection Egoïste (The Selfish Collector)*

¶12: Few people who follow cases relating to the illicit trade can have missed the celebrated case of Stéphane Breitwieser, the Alsatian misfit who stole, over a period of 8 or so years, hundreds of objects from museums and churches to squirrel away in his attic rooms, or that of his mother Mireille Stengel, who destroyed almost all of it by disposal in the family garbage bin or by throwing it into a canal. This book, however, shows just how much a dedicated investigative journalist can add to the record, details that are not only useful in trying to understand the mentality of Breitwieser (by no means an isolated case as this account shows) and even more useful in showing the loopholes in the investigations, the lack of coordination between countries, and the sheer ineptitude of many institutions in securing their collections. Noce, editor of the cultural section of the French newspaper *Libération*, has joined the select company of Karl Meyer (articles in the *New York Times*) and Peter Watson who have added greatly to our knowledge of how the illicit trade works. French journalists, too, are greatly helping expose the unsavory details of these activities (see Noce's previous book *Descente aux Enchères* and that of Emmanuel de Roux and Roland-Pierre Paringaud, *Razzia sur L'art*).

¶13: *Monumental Queensland: Signposts on a Cultural Landscape*

¶14: By surveying and documenting outdoor cultural objects, the authors of this book seek to inform communities about the significance of their public art objects and to provide a starting point for people to value such artworks as expressing what is unique about their experience and understanding of Queensland, Australia (p. 7). However, this begs the question of public value. People in colonial times (nineteenth century) gave private subscriptions to have public monuments and memorials erected, and currently, Queensland has a Public Art Agency whose enabling legislation makes it mandatory for all public works projects to fund public art works associated with and integral to new construction, as part of the "Art Built-In" program. Queenslanders clearly like monuments!

¶15: ISSUE 2

¶16: *State Support for Audiovisual Products in the World Trade Organization: Protectionism or Cultural Policy?*

¶17: The failure to agree on the treatment of audiovisual products in the Uruguay Round led to an unsatisfactory result for all World Trade Organization (WTO) members. Yet a balanced evaluation of the arguments on both sides demonstrates that the stalemate need not continue indefinitely. The

audiovisual industry is a business, but audiovisual products have cultural features that distinguish them from other tradeable goods and services. If members see local audiovisual products as a means of communication among their people, or if they do not wish to stifle creativity, free speech, or the progressive development of culture, they may need to support local audiovisual products in a manner that discriminates expressly against foreign products. The same cannot be said of discrimination between foreign audiovisual products. If a member wishes to extend benefits to audiovisual products from countries with cultures similar to its own, it can do so by adopting objective criteria, such as language to distinguish between the relevant products. Cultural policy measures in relation to audiovisual products should be the least trade-restrictive necessary to achieve their objectives.

¶18: Making Heritage Legible: Who Owns Traditional Medical Knowledge?

¶19: In recent years an increasing number of state-based heritage protection schemes have asserted ownership over traditional medical knowledge (TMK) through various forms of cultural documentation such as archives, databases, texts, and inventories. Drawing on a close reading of cultural disputes over a single system of TMK—the classical South Asian medical tradition of Ayurveda—the paper traces some of the problems, ambiguities, and paradoxes of making heritage legible. The focus is on three recent state practices by the Indian government to protect Ayurvedic knowledge, each revolving around the production of a different cultural object: the translation of a seventeenth-century Dutch botanical text; the creation of an electronic database known as the Traditional Knowledge Digital Library (TKDL); and the discovery of an Ayurvedic drug as part of a bioprospecting benefit-sharing scheme. Examined together, they demonstrate that neither TMK, nor Ayurveda, nor even the process of cultural documentation can be treated as monoliths in heritage practice. They also reveal some complexities of heritage protection on the ground and the unintended consequences that policy imperatives and legibility set into motion. As the paper shows, state-based heritage protection schemes inspire surprising counterresponses by indigenous groups that challenge important assumptions about the ownership of TMK, such as locality, community, commensurability, and representation.

¶20: The Commodification and Exchange of Knowledge in the Case of Transnational Commercial Yoga

¶21: The practice of yoga outside India and for commercial exchange (transnational commercial yoga) is a multibillion-dollar industry that has been the site of increasing formal regulation. The primary questions these regulations are meant to resolve include the following: (1) What is yoga? (2) What is its proprietary nature? and (3) Who has the right to manage its expression? Two recent U.S. federal district court cases involving the Bikram Yoga College of India, a yoga franchise based in Los Angeles, have drawn international attention to the debate on whether yogic knowledge or practice resides in the public or private domain. This article asks, if given the monetary value at stake, did the global market for transnational commercial yoga set the stage for claims to individual IPRs? Furthermore, this article analyzes how yoga, due to its unique characteristics as an embodied practice and intangible form, serves as a platform for experimentation from which new meanings of open source, IPRs, and information management strategies emerge.

¶22: Revising the Concept for Cultural Heritage: The Argument for a Functional Approach

¶23: This article presents a more human, dynamic, and holistic perspective of cultural heritage, closely referring to the currently observed changes in its conceptual development. It argues that the conceptual focus of cultural heritage has shifted alongside three interrelated and complementary directions: 1) from monuments to people; 2) from objects to functions; and thus 3) from preservation per se to purposeful preservation, sustainable use, and development. The reappearing

and alive functional heritage is discussed as opposed to the objectified, glass-covered, and frozen heritage of the past by referring to both practical and theoretical heritage domains. Conclusions are drawn in favor of an adequate reexamination and readaptation of the conceptual framework of cultural heritage, based on accepting its new functional socioeconomic dimension and integrating multiple perspectives from a variety of academic fields.

¶124: *Creatures and Culture: Some Implications of Dugong v. Rumsfeld*

¶125: *Dugong v. Rumsfeld*, a case charging the United States Department of Defense with violation of Section 402 of the U.S. National Historic Preservation Act, highlights the cultural importance of animals and the value of addressing this kind of significance in the interpretation of natural and cultural heritage legislation on both national and international levels.

¶126: *The Dja Dja Wurrung Bark Etchings Case*

¶127: A recent Australian case has clearly illustrated the tensions between export regulations and the circulation of important cultural works through international exhibition. So far such claims have involved efforts of heirs of collectors to seize works of art appropriated in another country and temporarily located outside that country for exhibition, such as the claim by the Altman heirs in the United States or of Schuckina in France—a situation dealt with in many cases by indemnity statutes which prevent their seizure. This case involved the sensitivity of indigenous people who regard the work in question as part of their cultural heritage.

¶128: *Finishing the Interrupted Voyage: Papers of the UNESCO Asia-Pacific Workshop on the Protection of the Underwater Cultural Heritage*

¶129: Almost 5 years after its adoption, the UNESCO Convention on the Protection of the Underwater Cultural Heritage has a mere six state parties. It requires 20 parties for the convention to come into force. Although there may be numerous reasons why states have failed to ratify the convention, perhaps the most common is simply because many developing states, even those rich in underwater cultural heritage, have little experience or expertise with protecting underwater cultural heritage, both practical and legal; and they are hesitant to ratify the convention without ensuring that they can implement the then-binding international obligations. This is particularly the case in the Asia-Pacific region, rich in underwater cultural heritage but as yet not represented in those states party to the convention. The need to encourage ratification of the convention in the Asia-Pacific is best described in the paper by Jeremy Green:

¶130: *Kulturgut als Gegenstand des grenzüberschreitenden Leihverkehrs (Cultural Property as Objects of Transnational Loans)*

¶131: Almost every important art exhibition also exhibits art objects on loan from domestic or foreign institutions or private owners. Recently, this lending policy has been severely threatened by third parties trying to attach art objects on loan from foreign countries and claiming to be the rightful owners of these objects, which were expropriated many years ago by the Nazis or stolen, converted, or confiscated abroad. Also, creditors of lending institutions may try to get hold of these objects and liquidate them. The Schiele affair, the Malewicz case, and the Russian-Swiss controversy about loans to the Fondation Pierre Gianadda at Martigny, Switzerland, from the Pushkin Museum in Moscow illustrate these dangers. Therefore, any study dealing with these problems and offering solutions for preventing or mitigating such clashes of interest is welcome. Boos devoted her research for a doctoral thesis, submitted to the University of Düsseldorf, Germany, to these problems, mainly those of a return guarantee given to the foreign lending institution with respect to art objects on loan for a local exhibition.

¶132: ISSUE 3

¶133: History for Sale: The International Art Market and the Nation State

¶134: In April of 2003 the collection of André Breton, one of the founders of Surrealism, was auctioned off at the Hôtel Drouot in Paris. This article focuses on how the sale sparked a heated debate about the French state's role as the protector of French cultural patrimony and looks at the different interests involved, from Breton's daughter, who authorised the sale, to the Minister of Culture. Ultimately, the author argues that the state allowed the sale to occur, despite popular protest, in order to improve France's position in the global art market.

¶135: Artwork, Cultural Heritage Property, and the Foreign Sovereign Immunities Act

¶136: Recent developments in U.S. case law have strengthened the power of private individuals to sue foreign sovereigns in U.S. courts over claims for artwork and cultural heritage property. Traditionally, however, the U.S. government granted a large amount of deference to foreign sovereigns regarding ownership rights in such property. Principles such as grace and comity with other nations, respect for cultural heritage property ownership, and increasing public access to art are reflected in U.S. legislation. For example, the adoption of the Convention on Cultural Property Implementation Act (CPIA), the Archaeological Resources Protection Act (ARPA), and the Native American Graves Protection and Repatriation Act (NAGPRA) all demonstrate a strong position held by the United States to recognize and protect ownership rights in cultural heritage property.

¶137: From Boston to Rome: Reflections on Returning Antiquities

¶138: The return of 13 classical antiquities from Boston's Museum of Fine Arts (MFA) to Italy provides a glimpse into a major museum's acquisition patterns from 1971 to 1999. Evidence emerging during the trial of Marion True and Robert E. Hecht Jr. in Rome is allowing the Italian authorities to identify antiquities that have been removed from their archaeological contexts by illicit digging. Key dealers and galleries are identified, and with them other objects that have followed the same route. The fabrication of old collections to hide the recent surfacing of antiquities is also explored.

¶139: FEATURE SECTION: THE ICP'S 2005 CONFERENCE AT POCANTINO

¶140: Pocantico Conference Report

¶141: To draw on recent developments and find ways to break the deadlocks that have stymied discussions on cultural property and heritage, the International Cultural Property Society organized the conference, "What Heritage to Preserve?" held at the Pocantico Conference Center of the Rockefeller Brother's Fund from October 19 to 21, 2005.

¶142: What is Heritage Good For? Report on the Pocantico Conference for the International Journal of Cultural Property, October, 19–21, 2005.

¶143: The field of cultural property or heritage, as it appears to an outsider, is bedeviled by different, perhaps contradictory fundamental values and structuring metaphors, on one hand, and by large practical problems of enforcement and unintended consequence, on the other. I am an outsider to the field. I was asked to write a report with the hope that I might be able to provide a different perspective precisely because I am not a practitioner. I am taking it on faith that my lack of authority is, for the purposes of this essay, authoritative. I will focus on questions that seem important to me and suggest some answers that seem reasonable to me. I leave it in the hands of the readers to decide whether the exercise serves any purpose for them.

¶144: An Important Swiss Decision Relating to the International Transfer of Cultural Goods: The Swiss Supreme Court's Decision on the Giant Antique Mogul Gold Coins

¶145: Switzerland is undergoing a period of change from the perspective of fighting the illegal traffic of cultural goods. Effective January 3, 2004, Switzerland has ratified the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property. Furthermore the convention has been put into effect in Switzerland by the adoption of the Federal Act on the International Transfer of Cultural Property (CPTA) and its related ordinance, both of which took effect on June 1, 2005.

¶146: Going Going, Gone: Regulating the Market in Illicit Antiquities

¶147: "It's very rare to get something with a provenance, with an actual collection name. Usually it's entirely anonymous, especially in the London and New York trade. Just objects for sale in a shop ..." (p. 32). To anyone with an interest in the antiquities market, this Melbourne dealer's view is unsurprising. More surprising, perhaps, is the dealer's willingness to even discuss the issue of provenance and the extent to which the antiquities market is awash with unprovenanced illicit antiquities. Essentially, Simon Mackenzie's work is about provenance. He sets out to answer the question, "How should we regulate the antiquities market so as most appropriately to address the issue of looted antiquities in that market?" (p. 1). The first step in answering this question is to understand how the market actually functions. And what better way than to ask market participants themselves. Mackenzie does so through interviews with dealers, collectors, auction house representatives, and museum curators; and the work is substantially based around an analysis of these interviews. The extensive use of quotes allows readers a glimpse into the secretive and exclusive world of the antiquities market and lays bare the prevailing attitude of the interviewees, providing a rich (and dare I say, even entertaining) dialogue throughout the work.

¶148: ISSUE 4

¶149: Convention on the Protection and Promotion of the Diversity of Cultural Expressions

¶150: ICOM Code of Ethics for Museums—As approved by the 21st General Assembly of ICOM in Seoul, Republic of Korea, 8 October 2004

¶151: The cornerstone of ICOM is the ICOM Code of Ethics for Museums. It sets minimum standards of professional practice and performance for museums and their staff. In joining the organisation, ICOM members undertake to abide by this Code.

¶152: Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material—Adopted at the 72nd Conference of the International Law Association, held in Toronto, Canada, 4–8 June 2006

¶153: Conscious that cultural material forms a part of the world heritage and should be cherished and preserved for the benefit of all;

¶154: National Regional Meeting "Fight Against Illicit Trafficking of Cultural Heritage Objects—Tirana, Albania, 10 June 2006"

¶155: PIMA Code of Ethics for Pacific Islands Museums and Cultural Centres—Canberra, Australia, February 2006

¶156: The Pacific Islands Museums Association (PIMA) has existed as an Affiliated Organisation of the International Council of Museums (ICOM) since 1998. PIMA and its members fully endorse and support the ICOM Code of Ethics. In addition, PIMA is proud to produce this specialised code for

professional museum work particularly adapted to the values of Pacific Islands Museums and Cultural Centres.

¶157: Report of the AAMD Task Force on the Acquisition and Stewardship of Sacred Objects—June 1, 2006 Approved by AAMD Membership

¶158: Religion has inspired the creation of art throughout human history. Most religious works of art are not considered to be sacred objects. Instead, these works serve to express religious ideas, values or feelings. Some works of art are, however, considered sacred objects. While art museums are secular institutions, the acquisition, handling, treatment, and interpretation of works of art deemed to be sacred objects may warrant special consideration since these works possess multiple purposes as works of art and sacred objects.

¶159: The J. Paul Getty Museum Policy for Acquisitions—Approved by the Board of Trustees on October 23, 2006

¶160: The Getty Museum seeks to foster in a broad audience a greater appreciation and understanding of art by collecting and preserving, exhibiting, and interpreting works of art. Our collection is the principal means by which the Museum's mission is fulfilled, and the Museum is therefore committed to further developing the collection according to the highest ethical standards and in compliance with all applicable laws.

¶161: The Metropolitan Museum of Art-Republic of Italy Agreement of February 21, 2006

¶162: Mediterranean Crossroads: International Archaeological Conference on Movements of People and Movement of Cultures—Pierides Museum, Athens, Greece (May 10–13, 2005)

¶163: This conference brought together some 200 academics and administrators concerned with Mediterranean prehistory, history, and heritage. It was conceived and organized by Sophia Antoniadou, curator of the Pierides Museum, and Anthony Pace, superintendent of Cultural Heritage of Malta, who have also edited the proceedings, published in 2007. It was sponsored by the Pierides Foundation of Cyprus with the collaboration of the Foundation of the Hellenic Greek World, the Superintendence of Cultural Heritage of Malta, the Istituto per le Tecnologie Applicate ai Beni Culturali-Consiglio Nazionale delle Ricerche of Italy, and the Centre de Recherches en Arts, Images et Formes of the Université de Picardie Jules Verne of France; and support came from the Culture 2000 program of the European Union, the Greek Ministry of Education and Culture, and the Cyprus Tourism Organisation. Following an introductory lecture by Professor Harry Tzalas on Greek ships and seamanship, participants heard and discussed 40 papers by speakers from a dozen countries on topics ranging from pottery and mortuary practices to trade, shipping, identity, and heritage.

¶164: The Use and Abuse of Archaeology for Indigenous Peoples—Auckland, New Zealand, November 8 to 12, 2005

¶165: The World Archaeological Congress' 2nd Indigenous Intercongress, The Uses and Abuses of Archaeology for Indigenous Peoples, convened between November 8 and 12, 2005, at the University of Auckland and Waipapa Marae to examine issues relating to and concerned with indigenous peoples and their past. The organization committee included coconvenors Dr. Joe Watkins, Dr. Caroline Phillips, and Dr. Des Kahotea along with Academic Program Chair Stephanie Ford and Conference Administrator Margaret Rika-Heke. The first Intercongress, on Archaeological Ethics and the Treatment of the Dead, was held in Vermillion, South Dakota, and focused on the topics of reburial and repatriation. The Vermillion Accord on the treatment of human remains, an outgrowth of that conference, forms one of the primary ethics documents for the World

Archaeological Congress, by which members of the WAC agree to abide in conjunction with the WAC First Code of Ethics.

¶166: Protocols for Native American Archival Materials—Northern Arizona University, Flagstaff, Arizona, April 2006

¶167: Over the past decade, tribal leaders, archivists, and librarians in the United States and Canada have expressed an interest in improving existing relationships and developing new relationships with nontribal institutions that hold American Indian archival material. In April 2006 a group of 19 Native American and non-Native American archivists, librarians, museum curators, historians, and anthropologists gathered at Northern Arizona University Cline Library in Flagstaff, Arizona. The participants included representatives from 15 Native American, First Nation, and Aboriginal communities. The group met to identify best professional practices for culturally responsive care and use of American Indian archival materials.

¶168: The Legal Protection of Cultural Objects: Its Challenges and Limits—Mexican Center of Uniform Law, September 6–8 2006, Mexico City

¶169: The Mexican Ministry of Foreign Affairs and the Mexican Center of Uniform Law, under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) based in Rome, organized an international seminar in Mexico City from September 6 to 8, 2006. The purpose of the seminar was to evaluate how efficiently international conventions protecting cultural objects. The seminar was attended mostly by Latin American colleagues and the secretaries of culture and general directors of cultural institutes of the Mexican Federal States.

¶170: Banja Luka Conference on Cultural and Natural Heritage in the Balkans—October 30 to November 1, 2006

¶171: The first regional conference on integrative protection, entitled Cultural Landscape: A Modern Approach to the Protection of Cultural and Natural Heritage in the Balkans, was held in Banja Luka (Bosnia and Herzegovina) on October 30 to November 1, 2006. The conference was organized by European Center for Peace and Development (ECPD) of the University for Peace established by the United Nations with support of the Ministry of Culture of the Republic of Serbia, Republican Institute for Protection of Cultural-Historical and Natural Heritage, Banja Luka, and the City of Banja Luka. More than 100 participants attended the conference, which consisted of papers on various issues prepared by experts from the Balkan region.

Name: IJCP 2007 Abstracts

¶1: IJCP 2007 Abstracts

¶2: ISSUE 1

¶3: Object Lessons: The Politics of Preservation and Museum Building in Western China in the Early Twentieth Century

¶4: The preservation of cultural property is never a neutral activity; and the question of who is to possess, care for, and interpret artifacts is highly politically charged. This paper examines how preservation was used as a justification for the removal of pieces of immovable archaeological sites in the early twentieth century, and became a tool for building museum collections. This study focuses on a collection of 12 wall painting fragments from the site of Dunhuang, China, which were removed by art historian Langdon Warner in 1924 for the Fogg Art Museum. The removal process resulted in significant damage to some of the fragments as well as to the site itself, calling into question what is preserved: an intact ancient artifact or an ancient artifact scarred by and embedded with its modern collection history? Using the Harvard collection as an example, I explore the contradictions and legacies of early preservation ethics.

¶5: What Does Not Move Any Hearts— Why Should It Be Saved? The Denkmalpflegediskussion in Germany

¶6: This paper is about the recent discussions (known as Denkmalpflegediskussion) on the principles and practices of state heritage management in Germany. In an expert report commissioned by the prominent German politician Antje Vollmer from Dieter Hoffmann-Axthelm, a number of fundamental criticisms were made. They concern existing practices of state heritage management, some of which are said to alienate and patronize people. One of the main issues discussed is therefore whether the management of the cultural heritage should be further decentralized ('entstaatlicht') and made the responsibility of individual citizens and other stake-holders. The overriding criterion for scheduling should be a site's ability to move people aesthetically and emotionally, rather than some complex academic reasoning about historical significance. The significance of beauty and feelings to heritage is illustrated by discussing a citizens' initiative promoting comprehensive reconstructions in the Dresden Neumarkt area, around the recently restored Frauenkirche. This paper seeks to review some of the key issues of the German debate and begin a discussion of how it might relate to states heritage management in other countries for which Sweden serves as an example. The question asked is to what extent heritage management elsewhere too can, and should, be further democratized

¶7: Expanding the Scope of Museums' Ethical Guidelines With Respect to Nazi-Looted Art: Incorporating Restitution Claims Based on Private Sales Made as a Direct Result of Persecution

¶8: Since the late 1990s, the American museum community has nobly sought to resolve restitution claims involving Nazi-looted art in an equitable fashion. Under the auspices of various ethical guidelines recognizing the horrific tragedies of the Holocaust, museums have made a commitment to purge their collections of artwork tainted by Nazi theft. It remains unclear, however, whether these guidelines govern restitution claims that are based not on Nazi theft but on coerced sales arising from Nazi persecution. This article argues that the scope of the guidelines should be expanded to govern restitution claims arising from coerced sales, and that coerced sales include not only sales in which the Nazis participated but also private sales made by individuals who, as a direct

result of Nazi persecution, who were forced to sell their artwork to flee or otherwise survive the Holocaust.

¶19: A DISCUSSION ON LANDSCAPES

¶10: A slightly edited discussion on the protection of landscapes is offered as an example of cross-disciplinary teaching in heritage studies. It was one of the online components linking students and facilitators from the disciplines of archaeology, communications, conservation, medieval studies, journalism, and law, located in Canberra, Kabul, Nagoya, Sydney, Melbourne, and Toowoomba. It shows the value of informal online discussion in developing understanding of heritage issues from different perspectives.

¶11: Rejecting Renvoi for Movable Cultural Property: The Islamic Republic of Iran v. Denyse Berend

¶12: In *Iran v. Berend*, the High Court in London had occasion to revisit one of the most enduring problems of private international law and cultural property. Effective regulation of the illicit market in cultural property is extremely difficult, because many measures aimed at stemming the illicit trade actually contribute to the black market. Courts in both England and the United States have shown that they are prepared to use criminal laws to convict persons involved in the illegal trade in antiquities exported in violation of foreign patrimony laws. As a result, much cultural property policy debate in recent years has focused on the extent to which the criminal law can impact the illicit trade. The extent to which national ownership declarations can be used in civil disputes remains less clear.

¶13: Sarah Dromgoole, ed. *The Protection of the Underwater Cultural Heritage: National Perspectives In Light of The UNESCO Convention 2001*

¶14: Until the last quarter of the twentieth century, few nations around the world felt compelled to protect historic shipwrecks and other underwater cultural heritage (UCH) from vandalism and exploitation. However, as long-lost shipwrecks became more accessible through the growing popularity of scuba diving and increasingly sophisticated underwater search and salvage technology, the need for such legislation became more apparent. Dromgoole's first edition of this book, *Legal Protection of the Underwater Cultural Heritage: National and International Perspectives* (The Hague: Kluwer, 1999), provided a much-needed look at how various nations were coming to grips with the problem through domestic legislation. In the first edition, 13 essays explored a wide variety of legislative schemes from as many nations. A final essay described the ongoing effort to create an international treaty to protect UCH in international waters.

¶15: ISSUE 2

¶16: A Semiotics of Cultural Property Argument

¶17: This article applies the tools of legal semiotics to examine the terms, modalities, and conventions of legal argument in the cultural property context. In a first instance, the author re-enacts Duncan Kennedy's study of recurrent patterns within legal argument to illustrate the highly structured nature of most cultural property argument. This mapping exercise shows how legal concepts draw their meaning in part from their place within a broader linguistic system, and as a result cannot by themselves form an adequate basis for ethical positions. Following this, the pervasive Elgin Marbles controversy is shown to resemble a myth (in Roland Barthes's sense of the term) behind which a series of value judgments and support systems are embedded into cultural property argument. The conclusion presents a number of observations sketching a framework centered on restitution as a starting point for resolution of cultural property disputes.

¶18: Response from Barton Beebe

¶19: My hope is that Alan Audi's important and necessary intervention represents a turning point in "cultural property argument." In Parts I and II of his critique, Audi expertly uses the tools of "legal semiotics" to do exactly what those tools were designed to do: demystify the language game of legal argument to reveal the "irreducibly antinomial" and dialectical nature of its maxims and countermaxims. Audi quite persuasively sets forth a disturbing vision of a discourse that functions by its nature not so much to generate meaning and normative force as to suppress them, all so that the status quo remains undisturbed. Just as the fact that the English are unlikely to give up the Elgin Marbles anytime soon "suggests a kind of idle or recreational character to cultural property argument," so too Audi's critique. Indeed, stripped of its legal features, the field of cultural property argument does look "rather barren."

¶20: Response from Patty Gerstenblith

¶21: The author sets out an assumption—that the law in the area of cultural heritage is unsettled. He uses this faulty assumption as a basis for criticizing the use of and reference to legal rules within the cultural heritage field. In his introduction Audi states that he will apply a "theoretical apparatus" derived from "legal reasoning as it relates to gaps, ambiguities, or conflicts in laws" but admits that this methodology is less appropriate for settled areas of the law. At this point he unwittingly undermines the premise of his article. He goes even further in attributing "more than a little bad faith behind lawyers and judges" who claim to be applying the law. He seems to confuse policy arguments, where admittedly commentators can offer conflicting views that seem to carry equal validity, with legal arguments. He also believes that the legal arguments cancel each other out as if a decision from a court or a statute that congress passes is on a par with arguments offered by those who favor or disapprove of the result.

¶22: Response from Yannis Hamilakis

¶23: I am in full agreement with Alan Audi's basic premise, so forcefully made in this article, that the legalistic discourse and the associated "argument-bites," as he calls them, are an inadequate and highly problematic lens through which to explore the issues of restitution of what we call "cultural property," another, equally problematic term. I would equally concur that any discussion on the subject that ignores the colonial past (and I would add, the neocolonial present), and the power inequities associated with it, is not only hypocritical but it also conceals an undeclared interest, effectively taking sides in the ongoing cultural and overtly political global battlegrounds. The issue of the Elgin or Parthenon Marbles is correctly identified by the author as the omnipresent shadow in all debates of restitution, the shadow that haunts museum professionals and politicians alike. It is this shadow that led the current director of the British Museum to start the initiative on the "Universal Museum," an initiative that falls apart only by looking at the list of signatories: 18 major museums, all located in Europe and North America. In his article in the Guardian in defence of this thesis (that museums such as the British Museum or the New York's Metropolitan, tell a universal story, hence their need to retain objects from all over the world), he even invoked Edward Said; but the title of this article gave the game away: "The Whole World in our Hands." Who has the right to represent the universal? Why is it that the exhibition of the global story of humanity, even if such an exercise were possible in supposedly neutral and depoliticized terms, must be staged in London, New York, or Paris, and not in Cairo, Sao Paulo, or Delhi? As Homi Bhabha reminded us, the desire to "grasp the whole," to represent and stage the universal, has always been at the core of the colonial imagination; we need only think of the nineteenth-century Grand Fairs and Universal Expositions, and the role of antiquities in them.

¶124: Response from Daniel Shapiro

¶125: Audi confronts what troubles many: the repetitive, stagnant nature of cultural property debates. Restitution certainly falls into this mold. So do other topics. He is also right that the debate is barely legal, carried on more in the press and media than in the courts. He is equally insightful that the Elgin Marbles play an inordinate role in these debates, and often set the framework for discussion even when not directly noted. What is unclear is whether calling attention to the debate as counter-balanced argument-bites will get beyond the constraints of past thinking and formulaic argument.

¶126: Rejoinder by Alan Audi

¶127: I am grateful for the responses to the piece. With admirable concision, Professor Beebe has summarized the promise and perils of legal semiotics and the challenges ahead. He is right to note that any “moral, ethical, and political” argument can be broken down with the same tools used to break down legal argument; but one might be tempted to add that having done away with law's aura of authority and diminished the persuasive force of legal arguments may be reward enough for now, at least in the realm of cultural property argument.

¶128: The Reform of the European Community Audiovisual Media Regulation: Television Without Cultural Diversity

¶129: In the profoundly changing and dynamic world of contemporary audiovisual media, what has remained surprisingly unaffected is regulation. In the European Union, the new Audiovisual Media Services Directive (AVMS), proposed by the European Commission on 13 December 2005, should allegedly rectify this situation. Amending the existing Television without Frontiers Directive, it should offer a “fresh approach” and meet the challenge of appropriately regulating media in a complex environment. It is meant to achieve a balance between the free circulation of TV broadcast and new audiovisual media and the preservation of values of cultural identity and diversity, while respecting the principles of subsidiarity and proportionality inherent to the European Community (EC). This paper examines whether and how the changes envisaged to the EC audiovisual media regime might influence cultural diversity in Europe. It addresses subsequently the question of whether the new AVMS properly safeguards the balance between competition and the public interest in this regard, or whether cultural diversity remains a mere political banner.

¶130: From Malibu to Rome: Further Developments on the Return of Antiquities

¶131: During 2006 three major North American Museums, the Metropolitan Museum of Art in New York, the Museum of Fine Arts in Boston, and the J. Paul Getty Museum in Malibu, agreed to return a significant number of antiquities to Italy. Acquisition information relating to the return of 26 items to Italy and 4 to Greece from the Getty can be added to the details known from the objects returned from Boston. A more detailed picture is emerging of how antiquities, apparently looted from Italy, were being passed through Switzerland on their way to dealers in Europe and North America. This information also points toward other antiquities that may be included in future agreements.A

¶132: A Line in the Sand? Explorations of the Cultural Heritage Value of Hominid, Pongid, and Robotid Artifacts

¶133: Although cultural heritage management is an inherently retrospective discipline, there is a need for strategic forward thinking. Too many valuable heritage places have been lost because they are not recognized and assessed in time. As cultural heritage management begins to examine modern structures and sites, this paper takes strategic thinking in cultural heritage management one step further and addresses the management of artifactual material created by our closest relatives, the

great apes. Given the increasing understanding that chimpanzees have cultures and traditions in tool use, there is a need to recognize their heritage value in reference to human evolution.

¶134: Expanding the concept of nonhuman heritage into the future, it is now also time to explore how to deal with the artifacts that the first artificial intelligence (AI)-imbued, self-reflecting robots will create. By extension, which artifacts will be kept along the way? The contemplation of the role of nonhuman heritage will ultimately foster a reappraisal of human heritage. The article outlines some of the conceptual issues that must be addressed if our heritage is to have an ethical future.

¶135: Art and Archaeology of Afghanistan: Its Fall and Survival.

¶136: Cultural heritage law is growing up in a paradoxical environment of global discourse. One might think that the amazing advancements in information technology and the gradual emergence of civil society throughout the world would help ensure more effective diplomacy and international collaboration to protect cultural material. Instead, the discourse about issues of cultural heritage too often reflects the worst of international relations in today's world: Diplomacy remains polarized and the legal framework adversarial. Afghanistan's recent experience is a case in point.

¶137: Archaeology, Cultural Heritage, and the Antiquities Trade.

¶138: This book is the second in the series of cultural heritage studies initiated by the University Press of Florida with Paul Shackel of the University of Maryland as the series editor. The series explores the uses of heritage and the meaning of its cultural forms as a way to interpret the present and the past. The first title in the series is *Heritage of Value, Archaeology of Renown: Reshaping Archaeological Assessment and Significance* (2005). *Archaeology, Cultural Heritage, and the Antiquities Trade* enumerates the ways that commodifying artifacts fuels the destruction of archaeological heritage and considers what can be done to protect it. The title of the book is apt. Archaeology is the bedrock of material cultural heritage, and it is illegal archaeology by looters or subsistence diggers that fuels the burgeoning trade in illicitly excavated artifacts.

¶139: ISSUE 3

¶140: Special Issue: Hunting as Heritage

¶141: Introduction: Hunting as Heritage: "Save a Whale, Harpoon a Makah"

¶142: This set of articles is not intended to deal comprehensively with the totality of the relationship between heritage and hunting. Rather, it is designed to emphasize the connection and bring out aspects such as sustainability, ethics, respect, and civility. The role of hunting as a way of life is emphasized. This creates heritage even if its practitioners do not recognize it as such. The heritage so created can take many forms; but in particular hunting has produced an important intangible heritage expressed through art, music, poetry, and literature to name but a few of its aspects. Finally, the set of papers shows that mandated changes affecting hunting need careful consideration; there is much to be lost if the creating force for this heritage disappears.

¶143: Prayers for the Whales: Spirituality and Ethics of a Former Whaling Community— Intangible Cultural Heritage for Sustainability

¶144: Kayoiura, located at the most easterly point of Omijima Island, Nagato City, Japan, is a small fishing village where community-based coastal whaling took place from late 1600 to early 1900. Today, more than 100 years since the end of whaling, the community maintains a number of cultural properties, both tangible and intangible, dedicated to the spirits of whales, including prayers for the whales given daily by two elderly Buddhist nuns. This article suggests that these cultural properties

convey the former whaling community's ethics and spirituality with a strong sense of reciprocity that acknowledges the undeniable human dependency on other lives. It is argued that such spirituality has an important implication for our understanding of sustainability. Whaling is no doubt one of the most contentious issues in today's environmental debates, where divisive arguments collide over a wide range of issues. Although any study on whaling would play a role in the debate, this article's intention is elsewhere: to acknowledge the importance of ethics and spirituality as intangible cultural heritage and their role in sustainability debate..

¶145: Conservation Clash and the Case for Exemptions: How Eagle Protection Conflicts With Hopi Cultural Preservation

¶146: A divide has emerged between traditional allies as environmental protections increasingly constrict efforts to support the preservation of cultural heritage. The U.S. Fish and Wildlife Service addressed this debate by hosting an open forum on the current policies for the hunting of migratory birds. Proposed changes could end the granting of exemptions to Native American tribes, who use golden eagles and feathers in religious ceremonies, and would destroy the cultural and religious significance of the birds for the tribes. Such stringent environmental legislation not only threatens to undermine the importance of cultural preservation but also neglects an opportunity to strengthen the broader conservation movement by increasing involvement through the valuing of both the physical existence of a species and also its broader cultural significance. A study of the Hopi tribe of Arizona demonstrates the importance of flexibility and exemptions.

¶147: Argungu Fishing Festival in Northwestern Nigeria: Promoting the Idea of a Sustainable Cultural Fest

¶148: There is a saying that Africa is the festival continent. Throughout the year in towns and villages across the continent, colorful and vibrant religious, harvest, fertility, and cultural festivals are held. Bare-hand fishing competition among thousands of fishermen, equipped with a hand net and large gourd, is the main event of the cultural extravaganza at Argungu in Kebbi State in northwestern Nigeria. The competitors splash into the stream, scouring the water for huge freshwater fish. The Argungu fishing festival (Fashin Ruwa) is a celebration of life. It is a tool of conserving natural resources, maintaining and promoting traditional life. It is the precursor of today's fishery management measure. The local people believe they have been fishermen for all time. The effective conservation of natural resources is closely linked to the use of the local knowledge and hence the life of the community. It is also part of an ancient fertility ritual which, from the point of view of the local Kebbawa people, is the most important aspect of the occasion. The festival takes place usually in February after all agricultural work is finished. It marks the end of the growing season, and it opens the fishing season with a bang.

¶149: English Foxhunting: A Prohibited Practice

¶150: In 2005 foxhunting was prohibited by an act of parliament in England. The Hunting Act 2004 forbade the highly formal and ritualized hunting of foxes with packs of hounds and thus brought to an end a practice that had been present in the countryside for some 200 years. In this article I explore the complexities of foxhunting as a social and cultural practice prior to the ban as well as the nature of the ban as it relates to killing foxes. I then explore the effects of the ban in terms of how, from the perspectives of the supporters of foxhunting, it is experienced as an attack on cherished notions of community, rural life, belonging, and connectivity with the countryside.

¶151: "What more were the pastures of Leicester to me?" Hunting, Landscape Character, and the Politics of Place

¶152: The debate leading up to the ban on hunting with dogs in England and Wales in 2005 focused on the practical aspects such as the possible economic and social affect and issues of animal welfare. The relationship between hunting and the landscape was not prioritized, nor was it acknowledged that hunting contributed to regional and social identities. This article explores the relationship between hunting and landscape in the “shires” of the East Midlands, where modern hunting developed as part of the radical landscape changes experienced from the late eighteenth century. It examines why hunting is not recognized within national initiatives to map historic landscape character and suggests that the lacunae is the result of established academic agendas, which focus on long-term processes of change, to facilitate the creation of a common European landscape heritage. As a result distinctive regional identities and landscape character are ignored and the modern landscape is depoliticized.

¶153: Hunting as Intangible Heritage: Some Notes on Its Manifestations

¶154: This article seeks to relate hunting practices, of which some good examples have been given in this volume, to the way such practices are dealt with in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003. The extraordinary ubiquity of hunting behavior, ritual, and representation creates an enormous field of study, which can only be touched lightly by such an international legal instrument.

¶155: ISSUE 4

¶156: United Nations Declaration on the Rights of Indigenous Peoples

¶157: Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities

¶158: Council of Europe Framework Convention on the Value of Cultural Heritage for Society, 27 October 2005

¶159: Memorandum of Understanding

¶160: Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Cyprus Concerning the Imposition of Import Restrictions on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material

¶161: Conference on Cultural Heritage Issues: The Legacy of Conquest, Colonization and Commerce,

¶162: On October 12 to 14, 2006, Willamette University hosted an international conference, “Cultural Heritage Issues: The Legacy of Conquest, Colonization and Commerce.” Some 30 distinguished panelists addressed five themes: the legacy of indigenous conquest, the legacy of international conquest and colonization, the legacy of commerce, avoidance and resolution of cultural heritage disputes, and issues related directly to museums and sites. Papers drew on the panelists' expertise in a broad range of disciplines, from archaeology to law enforcement. Topics included, for example, Repatriation of First Nations' Material Culture in Canada, the UNESCO Convention on the Protection of the Underwater Cultural Heritage, Recovery of Art Looted During the Holocaust, and The Effect of Colonization on the Cultural Property of Libya.

¶163: Conference on Repatriation of Cultural Heritage: Nuuk, Greenland, February 12 to 15, 2007

¶164: From February 12 to 15, 2007, the Greenland National Museum & Archive convened an international and crossdisciplinary conference on repatriation of cultural heritage. Nearly 90 people

attended the conference representing more than 20 different states and indigenous peoples. Based on experiences in relation to the recent return of 35,000 archaeological and ethnographic items from Denmark to the Greenlandic Home rule, the aim of the Greenlandic conference was to facilitate dialog and partnership between relevant stakeholders founded on mutual respect and understanding.

¶165: The Fourth International Meeting of Archaeological Theory in South America: WAC Inter-Congress, (World Archaeological Congress) Catamarca, Argentina

¶166: This meeting was held in the city of San Fernando del Valle de Catamarca, Northwest Argentina, from July 3 to 7, 2007. It was organized by the Doctorate in Human Sciences (Faculty of Humanities, Catamarca National University) and sponsored by the World Archaeological Congress (WAC), as well as by other national and international organizations. It was the fourth meeting of this nature held in South America after the fruitful ones organized at Vitória (Brazil, in 1998), Olavarría (Argentina, in 2000), and Bogotá (Colombia in 2002). As a result of these three meetings, a number of volumes were published and the first continental journal named Journal of South American Archaeology was launched as a joint publication of the National University of Catamarca (Argentina) and the University of the Cauca (Colombia).

¶167: CHRONICLES: January 1, 2006–December 31, 2006

¶168: In Italy the *droit de suite*, introduced by the European Union (EU) Directive of 2001/84/EEC, entered into force.

¶169: Also Germany amended the German copyright act accordingly.

Name: IJCP 2008 Abstracts

¶1: IJCP 2008 Abstracts

¶2: ISSUE 1

¶3: Cultural Heritage and International Investment Law: A Stormy Relationship

¶4: This paper investigates the relationship between international investment law and the protection of cultural heritage. Two questions arise in this connection. First, are investment agreements compatible with states' obligations to protect cultural heritage? Second, if internal measures aimed at protecting cultural heritage can be challenged by foreign investors, is mixed arbitration a suitable forum to protect public interests. Indeed, it seems that the regime established according to investment treaties does not strike an appropriate balance between the different interests concerned. After giving a brief look at the legal framework protecting foreign investments, the conflict areas between investment treaty provisions and national cultural policies are explored through an empirical analysis of the recent arbitral jurisprudence concerning cultural heritage. This paper holds that jurisprudential balancing may not provide an adequate protection to cultural heritage; thus, cultural exceptions should be included in investment agreements.

¶5: Nature and Culture: A New World Heritage Context

¶6: The understanding of the relationship between culture and nature as manifested in the UNESCO declarations and practices has changed over the last few years. The World Heritage Convention is continuing to evolve its definitions to reflect the increasing complexities of world cultures as they grapple with the heritage conservation policies that reflect their multiple stakeholders. They are also integrating a greater cultural perspective in their recent resolutions to the convention. Although the links between nature and culture have been clarified through this new attention to cultural landscapes, many countries and their bureaucracies have not yet adopted these new perspectives. The article suggests that to achieve an integrated approach to conservation, national, regional, and international bodies and their professionals must be involved. Two examples are discussed to address the shortcomings of the application of the convention and to illustrate the complexities of defining and conserving cultural landscapes.

¶7: The Law, Politics, and "Historical Wounds": The Dja Dja Warrung Bark Etchings Case in Australia

¶8: Last year, in volume 13 of this journal, Lyndel Prott published a Case Note entitled, "The Dja Dja Warrung Bark Etchings Case." Prott, "The Dja Dja Warrung Bark Etchings Case." In it she set out the background to a court case in Melbourne in 2004 to 2005 under the federal Administrative Decisions (Judicial Review) Act 1977. The case related to three nineteenth-century bark items made by Aboriginal people in northern Victoria, items now held in the collections of two London museums. The items had been borrowed by Museum Victoria and brought to Australia for an exhibition in the Melbourne Museum. During the exhibition, an inspector under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 had imposed a series of successive emergency declarations. The effect of these declarations had been to prevent Museum Victoria from fulfilling its contracts to return the three items to the overseas museums who had lent them for exhibition. The case went to court after several months of unsuccessful negotiations when Museum Victoria successfully challenged the legality of continuous emergency declarations. The inspector then failed in a request to the Victorian Minister for Aboriginal Affairs to make a permanent declaration to keep the objects in Australia, or to acquire the items compulsorily under the Heritage Protection Act. The objects were then returned to Britain.

¶19: I was the curator of the exhibition, *Etched on Bark 1854: Kulin barks from Northern Victoria*, which was held within the Aboriginal Gallery of Melbourne Museum between March and June 2004. This paper is a discussion of some of the issues raised by the exhibition and its aftermath, and it is written from the perspective of a curator and a historian.

¶10: The first part of the paper sets out the historical provenance of the three items, and discusses how the items came to be collected and sent overseas in the 1850s. I then describe how the debates at the time of the emergency declarations largely ignored this historical background, suggest some reasons why this occurred, and draw out some implications for the future. Last, I consider issues arising from the claims of 'ownership' that were made before and during the court case. This paper builds on two conference papers, one presented to the Museums Australia Conference in Brisbane in May 2006 and the second given to the Conference of the Australian Registrar's Committee in Hobart in November 2006. An expanded version of the first paper, "History, Strong Stories and New Traditions" appears in *History Australia*, June 2007.

¶11: RESPONSE ARTICLE

¶12: Built Heritage Management: An Australian Perspective

¶13: In a recent article published by the *International Journal of Cultural Property*, "What Does Not Move Any Hearts—Why Should It Be Saved? The Denkmalpflagediskussion in Germany," Dr. Cornelius Holtorf reviewed an expert report by Dieter Hoffmann-Axthelm, an architectural critic and author of several books on the history of architecture and urban planning, to the German Parliament on the principles and practices of state heritage management in that country. Of Hoffmann-Axthelm's criticisms, the most resonating was the view that heritage management processes in Germany were often patronizing, centralized, and undemocratic. Although his proposed remedies are abundant, some might be interpreted as being divisive, if not contentious. Hoffmann-Axthelm's central argument is that heritage management processes should be driven by the public and, thus, further decentralized.

¶14: This paper is a response to an invitation by Holtorf for international comparisons and discussion. It aims to present an overview of Australia's approach to heritage management and discuss a number of issues, raised by Hoffmann-Axthelm, and questions, particularly the merits associated with the concept of "democratising heritage," posed by Holtorf.

¶15: CASE NOTE

¶16: *Massachusetts Museum of Contemporary Art Foundation, Inc. v. Christoph Büchel*, U.S. District of Massachusetts, Case 3:07-cv-30089-MAP

¶17: On September 25, 2007, the Massachusetts Museum of Contemporary Art (MASS MoCA) won its declaratory judgment case against Swiss artist Christoph Büchel and potentially set additional Visual Artist Rights Act (VARA) precedent. Judge Ponsor agreed that Büchel's unfinished work *Training Ground for Democracy* was not protected by VARA. Artists cried foul. Journalists excoriated the museum with incendiary comments in the *New York Times* art section such as "the museum deserves to be scathed." Smith, "Is it Art Yet? And Who Decides?" Why did an artistic disagreement end up ensnared in a relatively nasty legal "custody" battle?

¶18: *Against Cultural Property: Archaeology, Heritage and Ownership*

¶19: Carman is a latecomer to archaeology. He worked in areas such as finance, law, and commercial administration and is thus well acquainted with legal and business issues otherwise outside the reach of ordinary archaeologists and even heritage scholars and managers. Thanks to his unique

background, Carman acknowledges from the start that archaeology does not exist in a vacuum; and notions from law, finance, economics, environmental science, and management are deeply intertwined with archaeological heritage. Starting with illicit antiquities and Merryman's arguments for licit trade in antiquities, the American lawyer argues that this promotes the values of the objects itself and of its traffic across the globe over those of the individual nation state from which it derives. The whole book by Carman is to dispute this approach, challenging the notion of ownership itself, because it is considered to be the problem in our treatment of ancient remains.

¶120: Proceedings of the Doha Conference of 'Ulama on Islam and Cultural Heritage

¶121: On February 26, 2001, the Islamic Emirate of Afghanistan ordered the destruction of "all statues and non-Islamic shrines" in the country. In March the ministers of culture and finance destroyed 2750 of the nation's art treasures; after a month of intensive shelling, the Taliban government obliterated the statues of the Buddha in Bamiyan. At the end of December 2001, a conference of Islamic legal scholars ('ulama) was convened on the subject of cultural heritage at Doha, Qatar. In between, of course, came the September 11, 2001, attacks (9/11).

¶122: ISSUE 2

¶123: Cultural Property, Museums, and the Pacific: Reframing the Debates

¶124: The following short articles were presented at a special session of the Pacific Arts Association, held at the College Arts Association annual meeting in New York in February 2007. Entitled "Cultural Properties—Reconnecting Pacific Arts," the panel brought together curators and anthropologists working in the Pacific, and with Pacific collections elsewhere, with the intention of presenting a series of case studies evoking the discourse around cultural property that has emerged within this institutional, social, and material framework. The panel was conceived in direct response to the ways that cultural property, specifically in relation to museum collections, has been discussed recently in major metropolitan art museums such as the British Museum and the Metropolitan Museum of Art (the Met). This prevailing cultural property discourse tends to use antiquities—that most ancient, valuable, and malleable of material culture, defined categorically by the very distancing of time that in turn becomes a primary justification for their circulation on the market or the covetous evocation of national identity—as a baseline for discussion of broader issues around national patrimony and ownership.

¶125: Promiscuous Things: Perspectives on Cultural Property Through Photographs in the Purari Delta of Papua New Guinea

¶126: Within this article I discuss the productive potentials of looking at historic photographs of the Purari Delta with indigenous communities today. A particular type of artifact, the meanings of photographs are promiscuous. Thinking about the shape of cultural property relations that are manifest photographs, I show how engagements with indigenous communities unsettles European preconceptions about what photographs are as well as how doing so raises issues about what cultural property is, and perhaps can be. Instead of being a discreet entity, cultural property for the I'ai emerges as a network of relationships that envelopes people, environment, and ancestors. This expansive notion of cultural property can help us rethink how we treat and handle objects within museums and archives.

¶127: Te Pahitauā: Border Negotiators

¶128: Objects were and still are pivotal in configuring intertribal relationships; and equally, they played a crucial role in negotiating the borders between early colonial situations and Māori, the indigenous people of Aotearoa New Zealand. This article explores the notion of object efficacy through

discussing further relational values such as place, oral and written histories, visionary leadership, and political and culturally defined imperatives, particularly as they contribute to reviving an object's embedded knowledge, in this case the entangled agencies of taonga.

¶129: Relational Objects: Connecting People and Things Through Pasifika Styles

¶130: Debates around cultural properties tend to focus on law and ethics, on appropriation and ownership, with media representations often producing stereotypes that reinforce and polarize the terms of the debate. The common, typically polemical, notion is that rapacious museums are merely a final resting point for captive static objects, with repatriation viewed as simply restorative compensation. A robust challenge to this view was developed in the Declaration on the Importance and Value of Universal Museums signed in 2002 by the directors of 19 leading museums in Europe and North America. The concept of the universal museum asserts that objects are cared for and held in trust for the world, overriding shifting political and ethnic boundaries and enabling the visitor to see “different parts of the world as indissolubly linked.” Although many would be in sympathy with the rhetorical position asserted, critics have argued that the declaration is a thinly veiled attempt to bolster immunity to repatriation claims. On both sides of the debate, the hegemonic position of many museums remains unsettling.

¶131: Hei Wai Ora: A Photo Essay

¶132: Over the last 20 years, museums have attracted unprecedented academic attention. For the first time in their history, museums as institutions have been the subject of theorizing as well as intense academic and public debates about their place in the contemporary world. Much of the theoretical work has taken place in the context of the New Museology, a critical goal of which has been to rethink the manifold and complex relationships between museums and the societies in which they exist. Advocates of the New Museology have prominently sought ways to make museums less elitist but more inclusive, that is more directly and democratically involved with their various constituencies such as the people who create and use the objects that museums collect or the audiences who visit museum exhibitions and participate in museum programs. Unfortunately, the New Museology has been rather long on theory and rather short on detailed explorations or accounts of the implications of its theoretical formulations for museum practice, that is for the day-to-day activities and interactions comprising the work that goes on in and around museums.

¶133: Intellectual Property Rights Systems and the Assemblage of Local Knowledge Systems

¶134: The mounting loss of the traditional knowledge of indigenous peoples presents environmental as well as ethical issues. Fundamental among these is the sustainability of indigenous societies and their ecosystems. Although the commercial expropriation of traditional knowledge grows, rooted in a global, corporate application of intellectual property rights (IPRs), the survival of indigenous societies becomes more problematic. One reason for this is an unresolved conflict between two perspectives. In the modernist view, traditional knowledge is a tool to use (or discard) for the development of indigenous society, and therefore it must be subordinated to Western science. Alternatively, in the postmodernist view, it is harmonious with nature, providing a new paradigm for human ecology, and must be preserved intact. We argue that this encumbering polarization can be allayed by shifting from a dualism of traditional and scientific knowledge to an assemblage of local knowledge, which is constituted by the interaction of both in a third space. We argue that IPR can be reconfigured to become the framework for creating such a third space.

¶135: Administrative Tribunal of Rouen, Decision No. 702737, December 27, 2007 (Maori Head case)

¶136: In October 2007, the mayor of the French city of Rouen agreed to return to New Zealand a preserved tattooed head of a Maori warrior (called *toi moko* by Maori) from that city's Museum of Natural History, whose collection the head had been part of since 1875. The decision to return the head was based on an initiative by the Museum of New Zealand (Te Papa Tongarewa), which has successfully secured the return of other such heads from museums in various European countries and the United States. Before the Rouen head could be handed over, however, the French Ministry of Culture intervened, arguing that its return was unauthorized under French law as being part of a French museum collection and thus inalienable.

¶137: ISSUE 3

¶138: Whose Responsibility? The Waverley System, Past and Present

¶139: This article explores the history and present operation of the Waverley system, the United Kingdom's art export policy established in 1952. A key component of the article is its attempt to illuminate the little-known story surrounding the birth of the system, which has been pieced together using treasury and Board of Trade papers held in the National Archives. The article then examines, both qualitatively and quantitatively, how responsibility for the system has evolved. The main pattern that emerges is the progressive detachment of the treasury: Although it spearheaded the formation of the Waverley system in 1952, today it is much more removed, in terms of administration and attitude, from the system.

¶140: Historical Threads: Intellectual Property Protection of Traditional Textile Designs: The Ghanaian Experience and African Perspectives

¶141: Defining the relationship between folklore and intellectual property continues to be an ongoing debate. Some challenges in defining this relationship center on the main characteristics of intellectual property, namely, the eligibility criteria and limited protection period that make the current construction of intellectual property incompatible with folklore protection. However, countries like Ghana have been using the intellectual property system as one of its tools to protect folklore. This article focuses on traditional textile design protection in Ghana, establishing the importance and significance of these designs in Ghana's history and culture and why Ghana is determined to protect these designs. After examining Ghana's efforts and the obstacles in its path as it uses the intellectual property law system to protect traditional textile designs, the article argues that there should be regional cooperation and international protection to strengthen individual national efforts.

¶142: Art in Dispute at the Beaverbrook Art Gallery

¶143: A long-running dispute between the Beaverbrook Art Gallery and its benefactor foundations illustrates the need for documentation of gifts or loans of artwork. At issue in this dispute is ownership of over 200 of the paintings on display at the gallery valued at up to \$200 million. None of the parties to the dispute has been able to produce records to establish that the paintings were either a gift or on loan to the Beaverbrook. Instead the parties have had to rely on newspaper and magazine articles, speeches, gallery catalogues, and export documents to substantiate their positions. Central to the dispute has been the role of the First Lord Beaverbrook and whether his actions amounted to a breach of his fiduciary duty to the gallery. This article examines the particulars of the parties' claims as well as the decisions that have been made to date. Final resolution of the dispute is not expected until all appeals have been decided.

¶144: The Protected Objects Act in New Zealand: Too Little, Too Late?

¶145: The Protected Objects Amendment Act (POA) was passed by the New Zealand Parliament in 2006, so New Zealand could fulfil its obligations under the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995. This represents a significant delay after the drafting of these two conventions. This article explores why New Zealand has taken so long to give domestic effect to these conventions and examines the manner in which they have been given domestic legal effect in the POA. The article also focuses on issues of Māori cultural property, the practical implementation of the POA, and the cultural heritage climate in New Zealand.

¶146: A Coordinated Legal and Policy Approach to Undiscovered Antiquities: Adapting the Cultural Heritage Policy of England and Wales to Other Nations of Origin

¶147: Blanket ownership laws, export restrictions, and the criminal law of market nations are the default legal strategies currently used by nations of origin to prevent the looting of archaeological sites. Although they have been remarkably successful at achieving the return of looted objects, they may not be the best strategies to maximize the recording and preservation of archaeological context. In England and Wales a more permissive legal regime broadly applied and adopted by the public at large has produced dramatically better results than the strong prescriptive regime of Scotland, which can be easily ignored.

¶148: This article attempts to clear up any misconceptions of the cultural policy framework in England and Wales. It accounts for the legal position accorded undiscovered portable antiquities, and describes how this legal framework is perfected by a voluntary program called the Portable Antiquities Scheme (PAS). This approach stands in stark contrast to Scotland, which has used a legal strategy adopted by most other nations of origin.

¶149: The domestic legal framework for portable antiquities in England and Wales is unique and differs from the typical approach. Coupled with the PAS, this legal structure has resulted in a better cultural policy, which leads to less looting of important archaeological sites, allows for a tailored cultural policy, and has produced more data and contextual information with which to conduct historical and archaeological research on an unprecedented scale. Compensating finders of antiquities may even preclude an illicit market in antiquities so long as this compensation is substantially similar to the market price of the object and effectively excludes looters from this reward system. Although the precise number of found versus looted objects that appear on the market is open to much speculation, an effective recording system is essential to ensure that individuals who find objects are encouraged to report them.

¶150: A Māori Head: Public Domain?

¶151: This case arose out of a controversy over the return of a Māori head from the collection of a city of Rouen museum to New Zealand. The case raised the issue of whether the head was a French public good that required declassification before it could be returned or a body part (and not a work of art) that could be immediately returned for appropriate treatment in its place of origin.

¶152: ISSUE 4

¶153: ICOMOS Charter for the Interpretation and Presentation of Cultural Heritage Sites: Prepared under the Auspices of the ICOMOS International Scientific Committee on Interpretation and Presentation of Cultural Heritage Sites. Ratified by the 16th General Assembly of ICOMOS, Québec (Canada), on 4 October 2008

¶154: ICOMOS Charter on Cultural Routes: Prepared by the International Scientific Committee on Cultural Routes (CIIC) of ICOMOS. Ratified by the 16th General Assembly of ICOMOS, Québec (Canada), on 4 October 2008

¶155: As a result of the development of the sciences of conservation of cultural heritage, the new concept of Cultural Routes shows the evolution of ideas with respect to the vision of cultural properties, as well as the growing importance of values related to their setting and territorial scale, and reveals the macrostructure of heritage on different levels. This concept introduces a model for a new ethics of conservation that considers these values as a common heritage that goes beyond national borders, and which requires joint efforts. By respecting the intrinsic value of each individual element, the Cultural Route recognizes and emphasizes the value of all of its elements as substantive parts of a whole. It also helps to illustrate the contemporary social conception of cultural heritage values as a resource for sustainable social and economic development.

¶156: Québec Declaration on the Preservation of the Spirit of Place: Adopted at Québec, Canada, October 4th 2008

¶157: Meeting in the historic city of Québec (Canada), from 29 September to 4 October 2008, at the invitation of ICOMOS Canada, on the occasion of the 16th General Assembly of ICOMOS and the celebrations marking the 400th anniversary of the founding of Québec, the participants adopt the following Declaration of principles and recommendations to preserve the spirit of place through the safeguarding of tangible and intangible heritage, which is regarded as an innovative and efficient manner of ensuring sustainable and social development throughout the world.

¶158: Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art (revised 2008)

¶159: The purpose of the Association of Art Museum Directors is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice; serving as a forum for the exchange of information and ideas to aid its members in their professional roles as art museum directors; acting as an advocate for art museums; and being a leader in shaping public discourse about the arts community and the role of art in society.

¶160: STANDARDS REGARDING ARCHAEOLOGICAL MATERIAL AND ANCIENT ART: Approved, July 2008, AAM Board of Directors

¶161: To promote public trust and accountability for U.S. museums, AAM offers the following standards to guide the operations of museums that own or acquire archaeological material and ancient art originating outside the United States.

¶162: The Museum of New Zealand Te Papa Tongarewa (Te Papa) and the Repatriation of Kōiwi Tangata (Māori and Moriori skeletal remains) and Toi Moko (Mummified Maori Tattooed Heads)

¶163: The Karanga Aotearoa Repatriation Programme at Te Papa was established in July 2003. It is mandated by the New Zealand government and supported by iwi (Māori and Moriori tribal groups) indigenous to New Zealand.

¶164: Rogues, Robbers and Researchers: Robbery of Antiquities and Archaeology under the Present Legal Situation

¶165: The Institute for Archaeological Studies of the Johann Wolfgang Goethe-University of Frankfurt am Main, Germany, organized a conference on legal issues concerning archaeology and theft of antiquities. This meeting was stimulated by the German statute (Kulturgüterrückgabegesetz version

of May 18, 2007) implementing the UNESCO convention of November 14, 1970, the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Archaeologists are afraid that the new legal regime might encourage thieves and art dealers to localize their activities in Germany. Michael Müller-Karpe of the Roman-Germanic Central Museum in Mainz, Germany, articulated these fears. Five reports on tomb robbery in Africa (Peter Breunig), Europe (Rüdiger Krause), Mediterranean countries (Hans-Markus von Kaenel, Wulf Raeck), and the Near East (Jan-Waalke Meyer) gave a bleak picture of contemporary dangers to archaeological sites and archaeological objects. Kurt Siehr gave the paper, "Legal Aspects of the Protection of Cultural Property," stressing that the ratification and implementation of the 1970 UNESCO convention will improve the protection of cultural property in Germany. However, he also emphasized that the implementing statute could have provided stronger measures: Germany should ratify the UNIDROIT Convention of June 24, 1995, on Stolen or Illegally Exported Cultural Objects as already urged by most German archaeologists and museums.

¶166: Two Years Federal Act on the International Transfer of Cultural Property in Switzerland (Bern, Switzerland, May 31, 2007)

¶167: On June 1, 2005, the Swiss Cultural Property Transfer Act (CPTA) of 2003 entered into force. This statute implements for Switzerland the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. According to article 7 of the CPTA—along the line followed by the United States in their implementation statute—bilateral agreements must be stipulated with contracting states of the convention so these states will be protected in Switzerland with respect to the items mentioned in these agreements. Yves Fischer and Benno Widmer of the Federal Office for Culture explained the CPTA and the Ordinance on Cultural Property Transfer (CPTO) and mentioned that with Peru and Greece agreements have already been achieved and that agreements with Italy, Egypt, and Mexico are in preparation. Marc-André Renold, director of the Geneva-based Institute of Art and Law, presided the session when question were put to the Federal Office at the end of the conference.

¶168: International Law Association, Committee on Cultural Heritage Law (London, England, May 17–18, 2007)

¶169: The Committee on Cultural Heritage Law of the International Law Association (ILA) held an interim meeting in London on May 17–18, 2007. After completing the work on the Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material on the occasion of the Seventy-Second Conference in Toronto 2006, the committee has now two projects on its agenda. The first one is concerned with a study of the concept of safe havens for temporary deposit of cultural material rescued from circumstances of armed conflict and other serious threats; the second study deals with the relationship between international trade law and cultural heritage law.

¶170: 9th International Seminar "Art & Law" for Doctorate Candidates (Basel, Switzerland, July 6–9, 2007)

¶171: Under the auspices of Kurt Siehr (Hamburg, Zürich) the 9th International Seminar on "Art & Law" took place from July 6–9, 2007, in Basel, Switzerland. Originally conceived as a platform for doctorate candidates in Europe and over the last years enlarged to a platform for comprehensive discussions between lawyers as well as art historians, academics as well as practitioners, this year's seminar in Basel focused on three main issues: protection of cultural property, problems of stolen works of art (both including their international and European legal frame), and copyright protection.

¶172: Portable Antiquities in the Modern European Context: Law, Ethics, Policy and Practice (Pecz, Hungary, July 12–13, 2007)

¶173: July 12–13, 2007, the Institute of Art and Law, Leicester, invited numerous experts to an international meeting at Pecz, Hungary, about the legal and ethical issues of portable antiquities in Europe. Norman Palmer (Barrister, King's College, London) introduced the participants to the questions revolving around treasure trove and the various ways to legally structure claims for recovery of portable antiquities under both public and private law. In particular, he addressed the issue of interdependencies between potentially strong substantive law on treasure trove or protection of cultural property on the one hand and limits of implementation of such rules in cross-border cases on the other hand. Jeremy Scott (Withers LLP, London) further illustrated this issue with reference to the most recent English cases of *Iran v. Berend*—no *renvoi* in English choice of law on moveable property and (if there were *renvoi*) no *lex originis* under French choice of law—and *Iran v. Barakat*—no application of foreign public law such as Iranian patrimony law by English courts. In the meantime the latter case has been reversed on appeal. Kurt Siehr (Max-Planck-Institute for Private International and Foreign Law, Hamburg) outlined the mechanisms offered by community law, in particular under Directive 93/7/EEC, for the protection of cultural property of member states vis-à-vis other member states. Zsolt Visy (Pecz University) demonstrated the typical difficulties of the protection of archaeological objects found in the ground but illegally exported with reference to the highly problematic history of the Sevso Treasure. Visy also underlined the fact that most legal remedies depend on the precise attribution of the moveable object in question to a certain state. In the following a tour de raison was offered through various national legal systems on how treasure trove is regulated and to what extent claims for recovery of antiquities can be raised. Weller pointed to the peculiarity under German law that the rules on treasure trove are rather unsophisticated compared to the voluminous statutory regimes in other states and that the competency to rule on treasure trove primarily lies with the states of the Federal Republic of Germany—a situation that necessarily results in a variety of solutions. Although many rules of general nature supplement the regime of treasure trove under German law, the law on treasure trove appeared to be a suitable object for unification on the federal level, and on this occasion the protection of archaeological objects found in the ground should be strengthened. In the second part of the meeting, Guido Carducci (UNESCO, Paris) presented a comparison between the regimes of claims for recovery of antiquities under the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Patty Gerstenblith (DePaul University, United States) commented on the interaction between foreign patrimony law and domestic criminal prosecution under the National Stolen Property Act with reference to the famous case in *US v. Schultz*. In the following round table talk with Kurt Siehr, Jeremy Scott, and Weller, the crucial issue of the application of foreign public law such as patrimony law was discussed from a comparative perspective; and Weller drew the attention to the 1975 Wiesbaden Resolution on the Application of Foreign Public Law of the Institute of International Law, by which the world leading conflicts scholars of the time had already agreed on the principle that there was no good reason a priori to exclude foreign public law from its application by a domestic court. Further presentations on the relevance of soft law, codes of ethics, and practical issues of archaeological excavations provided a comprehensive picture of the legal and ethical issues of portable antiquities in Europe.

¶174: First Heidelberg Day of Art Law (Heidelberg, Germany, September 8, 2007)

¶175: On September 8, 2007, the Heidelberg Institut für Kunst und Recht (IFKUR, Institute of Art and Law) hosted guests interested in art and law from all over Germany, Switzerland, and Austria. More than 100 participants attended the institute's First Heidelberg Day of Art Law on “The Artist's Law—The Art of Law (Des Künstlers Rechte—Die Kunst des Rechts).” The conference was held in the Heidelberg Town Hall's ballroom. The first part of the day was dedicated to various legal aspects of the freedom of art, and the second part was devoted to legal challenges concerning the exploitation of artistic works.

¶176: Legal Problems of Restitution of Cultural Objects (Vienna, Austria, October 12, 2007)

¶177: The Austrian Federal Ministry of Unterricht, Kunst und Kultur in Vienna offered the perfect frame for the symposium “Rechtsfragen der Restitution von Kulturgut” on October 12, 2007. Under the direction of Gerte Reichelt, member of the Institut für Kunst und Recht (IFKUR) advisory board, the Ludwig Boltzmann Institut für Europarecht dedicated this day for the UNESCO convention in 1970 and the UNIDROIT convention in 1995.

¶178: Sotheby's Restitution Symposium: Sotheby's Amsterdam, The Netherlands (January 30, 2008)

¶179: This symposium on provenance research and the restitution of Nazi-looted art was organized by the auction house Sotheby's and sponsored by the Muggenthaler International Genealogical Research Institute. After prior meetings hosted by Sotheby's on the same topic in London and Vienna, some 90 provenance researchers, art historians, government representatives, lawyers, and academics met in Amsterdam to discuss the Dutch restitution regime in particular and, in general, the progress made since the passing of the Washington Principles on Nazi-looted art in December 1998.

¶180: “Standard-Setting Instruments Promoting Multilingualism”: Launch of the United Nations International Year of Mother Languages—UNESCO, Paris, February 21, 2008

¶181: UNESCO launched the United Nations (UN) International Year of Languages on February 21, 2008, International Mother Language Day, with an information workshop entitled “Standard-setting Instruments Promoting Multilingualism.” UNESCO is the lead agency for carrying out activities related to the international year in view of its extensive work in the area of promoting multilingualism (in education and cyberspace, for example), safeguarding endangered languages, and supporting indigenous languages linked with traditional ecological knowledge and environmental sustainability. The international year is accompanied by the slogan “languages matter!” and this reflects the wider context within which it and its related activities have been conceived.

¶182: The International Symposium “From Anatomic Collections to Objects of Worship: Conservation and Exhibition of Human Remains in Museums,” Paris (France), February 22–23, 2008

¶183: The Musée du Quay Branly held an international symposium, “From Anatomic Collections to Objects of Worship: Conservation and Exhibition of Human Remains in Museums,” in Paris on February 22–23, 2008, at the museum's Théâtre Claude Levy Strauss. The main purpose of the 2-day conference—opened by the French Ministry of Culture and Communication's Christine Albanel—was to stimulate an international debate on a multidisciplinary basis concerning the roles and responsibilities of museums in the exhibition and repatriation of human remains. The subject turned out to be topical, originating from the case of the toi moko, the Maori tattooed head belonging to the collection of the Natural History Museum in Rouen, France, since 1875. The restitution of the toi moko to the Papa Museum in Wellington, New Zealand, deliberated by the city of Rouen, was recently banned by the Administrative Tribunal of Rouen, on request of the Ministry of Culture at the end of 2007. The head actually belonged to a municipal museum, which was in fact part of the Musées de France, and therefore it was considered part of a public collection. Accordingly, the 2002 French statute providing for the inalienability of state properties was applicable.

¶184: Ename International Colloquium: Between Objects and Ideas: Rethinking the Role of Intangible Heritage: Ghent, Belgium, March 26–28, 2008

¶185: The Fourth Annual Ename International Colloquium, entitled “Between Objects and Ideas: Rethinking the Role of Intangible Heritage,” was held in Ghent, Belgium, March 26–28, 2008.

Focusing on the intellectual and practical relationship between tangible and intangible heritage and its implications for the shaping of international heritage policy, it featured 40 speakers representing universities, museums, universities, and heritage organizations in Belgium, Canada, China, France, Greece, Hungary, Italy, the Netherlands, Poland, Thailand, Turkey, Sweden, the United Kingdom, and the United States. As in previous years, the colloquium was organized by the Ename Center for Public Archaeology and Heritage Presentation, with support from the Province of East Flanders.

¶186: Report on the 16th ICOMOS General Assembly: September 29–October 4, 2008, Quebec, Canada

¶187: The 16th General Assembly of the International Council on Monuments and Sites (ICOMOS) was held in Quebec, Canada, from September 29 to October 4, 2008. The events included the scientific, advisory, and executive committee meetings; Young Professional's Forum; a Scientific Symposium; and the General Assembly meeting including elections for the new executive committee. According to the ICOMOS official report, 853 participants from 77 different countries attended the event.

¶188: *International Law, Museums and the Return of Cultural Objects*, pp. xxxviii, 342. Cambridge

¶189: *Cultural Heritage and Human Rights*.

¶190:

Name: IJCP 2009 Abstracts

¶1: IJCP 2009 Abstracts

¶2: ISSUE 1

¶3: Building Destruction: The Consequences of Rising Urbanization on Cultural Heritage in the Ramallah Province

¶4: Urbanization, particularly in terms of private housing construction, constitutes a mounting threat to cultural heritage sites in Palestine. At risk are not only archaeological sites, but traditional architecture and other locations of cultural heritage. The Ramallah province serves as a practical case study by which to examine how this process of urbanization affects the cultural heritage of the region, because of the increased rate of development the province has experienced over the past decade. This urbanization has proceeded with relatively little governmental oversight and administration by the Palestinian National Authority (PNA) and is typified by an absence of planning, which often places sites of cultural, historical, and archaeological significance in severe jeopardy. This article considers both the internal and external factors affecting the urbanization of Ramallah and proposes solutions to mitigate the dangers to cultural heritage posed by unchecked urban growth.

¶5: Presenting Past Landscapes: An Approach to Visual Landscape Integrity as a Tool for Archeological Heritage Management

¶6: Archaeological sites are composed of unique, complex landscape settings including architectural remains, visually and spatially interrelated spaces, and ecologies with topographical features and landforms framing them. Today, they are subject to many pressures caused by developmental changes as well as improper conservation and planning strategies. One reason is that heritage conservation is still heavily focused on architectural features and less on the landscape setting. Wider landscape components set an authentic backdrop for cultural heritage and make the setting vivid and legible. Concentrating on this trend, this article explores the visual values of archaeological sites from the tripartite conceptualization view of visual landscape integrity, namely considering the archaeological landscape setting as an artifact, three-dimensional space, and scenery. Using the archaeological site complex of Bergama in Western Turkey as a case study, I propose a visual landscape-oriented approach as a tool for the sustainable conservation and presentation of heritage sites in the process of cultural resource management.

¶7: Ethical Rules and Codes of Honor Related to Museum Activities: A Complementary Support to the Private International Law Approach Concerning the Circulation of Cultural Property

¶8: The role of ethical rules and codes of conduct in the field of art law and international protection of cultural property, together with the adoption of the relevant international conventions, has constantly increased in the last decades. This article considers the main codes of conduct drafted by international organizations as well as international, national, public, and private institutions, federations, and associations. The focus is on their influence on international trade as instruments of art market regulation. Specific attention is paid to the interaction with the private international law approach and to a survey of both direct and indirect effects of these rules on the international circulation of cultural property.

¶9: A Tug of War Between Heritage Conservation and Property Rights: Some Success at Last for Heritage Conservation—City of Cape Town v. Oudekraal Estates (Pty) Ltd. [2007] JOL 20887 (C)

¶10: When the idea of heritage conservation arises, one specific facet of the ensuing reflection is bound to emerge at some stage: the (inevitable) tension between property rights, on the one hand, and the right to culture (of which heritage conservation is an aspect), on the other. This tension intensifies when the cultural material to be conserved concerns a traditionally sensitive issue—that of the burial places of the ancestors of people designated in the South African context as previously disadvantaged.

¶11: The Market Overt Method to Obtain Ownership of Lost or Stolen Goods: Comment on Manning v. Algard Estate, [2008] BCSC 1129

¶12: Stephanie Manning's mother, Marina Ovsenek, had a penchant for garage sales. In 2000 the daughter was driving the mother to the hospital for her cancer treatment when they stopped at one of these garage sales. The mother paid \$5 to buy a box containing a brooch and five gold-colored coins. She kept these in the room in her house that was used to store various items, including other trinkets bought at garage sales.

¶13: Archaeology and Capitalism: From Ethics to Politics.

¶14: ISSUE 2

¶15: Property Rights of Ancient DNA: The Impact of Cultural Importance on the Ownership of Genetic Information

¶16: This article examines the way property rights can be applied to DNA from ancient sources. In particular, it examines the ways in which the legal classification of a source as a “cultural artifact” can influence the assignment of property rights over genetic information. I explore the discrepancy between the legal ability to own ancient dead bodies but not nonancient dead bodies, illustrating how dead bodies with a perceived cultural value are legally distinct from those which are not considered to have cultural value. Second, I address the way such cultural preservation laws fail to influence ownership rights over genetic information. Finally, I propose a model for the best way to deal with genetic information from ancient sources, based on the policies of the International Ancient Egyptian Mummy Tissue Bank.

¶17: Decoding Implications of the Genographic Project for Archaeology and Cultural Heritage

¶18: Recent controversies surrounding the Genographic Project, sponsored by the National Geographic Society and IBM, and its predecessors call attention to a need to better understand the broader ethical and practical implications of uses of ancient and contemporary human genetic information, which is today a form of cultural property. Although technological advances continue to facilitate the kinds of information available to researchers, concerns about appropriation and the potential misuse or commodification of human genetic material and the data extracted from it have been raised by a number of stakeholders. Misconceptions and apprehensions about the topic also abound. These issues were addressed in a forum, “Decoding Implications of the Genographic Project,” which we convened at the 39th Annual Chacmool Conference in 2006, “Decolonizing Archaeology.” The purpose of the panel was to explore and discuss some of the salient issues from a range of perspectives, in the hope of moving beyond a polarized debate to generate productive dialogue and delineate further questions about intellectual property, cultural identity, and research ethics. We later solicited seven commentaries on the transcript from a range of scholars, which are included here. Some of the issues addressed by the panelists and commentators include access to samples, permissions for research and analysis, ownership and dissemination of data, and potential consequences of archaeological or historical interpretation of results. The event was co-sponsored

by the Intellectual Property Issues in Cultural Heritage Project (IPinCH) and the World Archaeological Congress.

¶19: Introduction

¶20: In November 2006, a discussion thread erupted on the online discussion list of the World Archaeological Congress (WAC) concerning the National Geographic Society's Genographic Project (which is also sponsored by IBM and the Waitt Family Foundation). Initiated in 2005, the Genographic Project is designed to study human population movements in the past based on the analysis of DNA samples voluntarily contributed from people around the world. This project was also designed to move beyond the kinds of ethical and other concerns relating to indigenous rights, appropriation, and group consent (to name a few) that led to the demise of its predecessor, the Human Genome Diversity Project, which began in 1991 and continued until the late 1990s. Such projects owe their origins to significant advancements in biomolecular research and technology studies, which have not only resulted in a genetic revolution in archaeology and related studies but also witnessed growing public interest in ancestry tracing through genetic means.

¶21: Decoding Implications of the Genographic Project for Archaeology and Cultural Heritage: Transcript of A Panel Discussion Held at the Chacmool Conference “Decolonizing Archaeology”, University of Calgary, Alberta, Canada, November 2006

¶22: The panel began with an acknowledgment that we were assembled in the traditional territory of the Blood Nation. The panelists were then introduced and, in alphabetical order, gave their initial opening comments.

¶23: Response to Decoding Implications of the Genographic Project

¶24: In spring 2007, the transcript of the forum discussion was sent to all of the panelists for their review and approval. That summer we invited a number of people—several of them individuals who had been invited to attend the Chacmool Conference but were unable to do so—to contribute essays to be published as commentaries on the forum proceedings or the topic of the forum itself. We made a concerted effort to seek people from a wide range of backgrounds and perspectives; however, not everyone responded to the invitation. It took another full year, until late summer 2008, to gather and edit the commentaries, with several glitches along the way. But, as a result, this special section includes seven stimulating essays from scholars who are passionate about the topic and the issues it raises.

¶25: In May 2007, I gave a talk at the Institute for Public Health Genetics (IPHG) at the University of Washington (UW), Seattle. My topic was the Genographic Project, specifically the colonial history and racial narratives that I see as shaping the work of the project. I left IPHG encouraged by my conversations with UW researchers, including native researchers and program administrators who organize collaborative and ethically rigorous research. The individuals I met work in multiple native communities, especially those in the Pacific Northwest.

¶26: Implications of the Genographic Project for Molecular Anthropologists

¶27: Many molecular anthropologists no longer incorporate a field component into their research; rather, they rely on analyzing existing data sets and/or on collaborating with field researchers to obtain samples for analysis. This trend in molecular anthropology, combined with the aggressive agenda of the Genographic Project, has an important implication for the future of the discipline. If Native American communities are exposed to genetic ancestry research largely through the Genographic Project, they are less likely to see that there are multiple ways for Native American communities to interact with genetic researchers. Molecular anthropologists are in a position to

offer an alternative approach to research by pursuing enduring and mutually beneficial collaborative projects with Native American communities.

¶128: Science and Humanity

¶129: The Genographic Project is a fantasy of an idea. It represents the instinct of humankind to seek to understand ourselves, right down to the smallest pieces of our essential being. To follow this longing for knowledge is to be in the company of every great explorer that has ever been, from the first hominid moving beyond the boundaries of African Eden to the intrepid women, men, and children who sailed the seas beyond the mainland of Southeast Asia to become the first occupants of the continent of Australia, to the men and women perhaps not yet born who will seek to land on and inhabit planets other than this one. Such journeys reveal ways of relating to new worlds and, in that process, instruct us in new ways of being human. As another great journey of exploration, this search within ourselves may teach us equally as much. To be certain, none of our journeys thus far have been without hardship, and it is naive to think that this or any exploration is free from challenges.

¶130: Lessons from History

¶131: Anthropological genetics is an oddly liminal field—not quite anthropology, yet not quite genetics either. Anthropologists are trained to be attuned to the people they work with; without the goodwill of its objects, the profession cannot exist—but one does not have to secure the goodwill of the fruit fly, *Drosophila melanogaster*, to study its DNA haplotypes in depth. Geneticists, however, are more prestigious and better funded—and what scientist doesn't aspire to that?

¶132: “Anti-colonial Genomic Practice?” Learning from the Genographic Project and the Chacmool Conference

¶133: I want to commend the organizers of the Chacmool Conference panel. All too often attempts to discuss the broader social and cultural dimensions of genetic studies of ancient human migrations devolve into simplistic celebrations or condemnations. It is heartening to find here an example of a conference session that managed to avoid these dangerous poles, and to grapple instead with the hard task of discerning the issues raised and not raised by genomic studies of human migrations and history. I would like to devote my commentary to exploring what might be learned from the discussions at Chacmool.

¶134: Commentary on Implications of the Genographic Project

¶135: First, I would like to thank George Nicholas and Julie Hollowell for inviting me to comment on this important panel discussion. Second, I would like to thank all the panelists for their articulate and highly stimulating discussion, which deftly illustrates the range of cultural, historical, and political complexities that inform not only the Genographic Project but also research conducted with Indigenous peoples and indigenous communities more generally.

¶136: ISSUE 3

¶137: **Pacific Discourses About Cultural Heritage and Its Protection**

¶138: Pacific Discourses About Cultural Heritage and Its Protection: An Introduction

¶139: The articles collected in this special issue aim at addressing the debate about the protection and use of cultural heritage in the Pacific within the context of globalization. Contributions aim specifically at analyzing the tension that exists between, on the one hand, political, legal and

economic discourses of Pacific peoples who wish to retain control and who seek protection of the use of their cultural heritage, and, on the other hand, the view of others arguing that it is in the interest of the general public to lift as many embargos as possible in order to stimulate research and to increase economic growth. All authors approach the subject of cultural and intellectual property rights as a discourse, with specific attention for the concepts of property and ownership, particularly in relation to cultural heritage and cultural knowledge; the potential benefits of property; appropriate protection mechanisms; the complexities of the discourses about rights, especially property rights; the appropriation of property or its misappropriation, often associated with what is freely available in the public domain; and, finally, the use of intellectual property as either a form of enclosure or as a form of ethnic boundary.

¶140: Hearing Indigenous Voices, Protecting Indigenous Knowledge

¶141: In a rapidly globalizing world, indigenous knowledge is in mortal danger, and it will require new forms of intellectual property protection to save it. There are fundamental incongruities between Western intellectual property law and indigenous knowledge that prevent the current international intellectual property framework from fully comprehending or addressing the contexts and needs of indigenous knowledge. This article will review the history of international and regional initiatives to develop protection for indigenous knowledge. It will consider the geopolitical context that has informed discussions about protecting the intangible wealth of indigenous peoples, including the recent addition of articulate and impassioned indigenous voices to the conversation. Finally, this article will discuss some of the concerns that have been raised about subjecting indigenous knowledge to a system of formal legal regulation.

¶142: Intangible Cultural Property, Tangible Databases, Visible Debates: The Sawau Project

¶143: Intellectual property claims have long been sustained in a way that is now under severe scrutiny. Pacific Island countries continue to face unauthorized uses of their traditional knowledge and practices. In response, international agencies in collaboration with Pacific Island countries are promoting sui generis forms of protection. The Institute of Fijian Language and Culture's Cultural Mapping Programme looks beyond ongoing debates about indigenous collection and digitization of intangible heritage to promote sui generis protection measures in lieu of western intellectual property law. Supported by an Institute grant, the unfolding Sawau Project creates an archive of sites, stories, and shared memories of the Sawau people of Beqa, an island iconic in Fiji for its firewalking practice (*vilavilairevo*). Advocating a form of social intervention in situ, The Sawau Project has become a collaborative tool to encourage digital documentation, linkages, and institutional collaborations among Fijian communities and their allies to negotiate and promote alternative forms of protection.

¶144: Keeping Rong from Wrong: The Identification and Protection of Traditional Intellectual Property in Chuuk, Federated States of Micronesia

¶145: This discussion reviews the differences between traditional Micronesian principles regarding traditional knowledge, or 'esoteric' knowledge, and Western copyright laws, which have been used in the expropriation and legal alienation of traditional knowledge. We consider this conflict in relation to contemporary Native American intellectual property issues and tribal responses for the protection of such knowledge and to control research activities. This is compared with the recent international and Pacific Islands governments' concerns and actions regarding commodification and misappropriation of traditional knowledge, including the new Pacific Model Law. Finally, we review the nature of traditional knowledge in Chuuk State and its current status and recommend specific steps that the Federated States of Micronesia might take legislatively to protect traditional knowledge as part of its significant cultural heritage.

¶146: Kava Pirates in Vanuatu?

¶147: Cultural property activists have worried about the bioprospecting, or even biopiracy, of kava (*Piper methysticum*), a plant exchanged and consumed for many Pacific social and ritual purposes. By the 1990s, kava and concoctions made from the plant's component kavalactones were increasingly popular products within global markets for recreational and medicinal drugs. Starting in 2002, however, a number of European countries among others banned kava imports after initial reports that some heavy users suffered liver damage. This has complicated the kava story as producer efforts shifted from protecting rights to the plant to reopening blocked export markets. The difficulty is to both push kava into global markets while protecting local rights to the plant. A promising strategy may be developing consumer awareness of geographic indicators and "noble" kava varieties that Vanuatu's local producers may control yet globally market as "the best in the world."

¶148: The Dialectic of Creativity and Ownership in Intellectual Property Discourse

¶149: Ownership is often understood merely as a function of social relations, that is, it emerges merely because of the relations between people with respect to the things that they own. Concomitantly ownership is also seen as being dependent upon creativity to bring its force into motion. Far from dismissing such a view of ownership, it is acknowledged that such a view possibly comes from a world that is preoccupied with creativity. This discussion aims to show a particular kind of dialectic between creativity and ownership that underlies discourses about intellectual property especially in countries like Papua New Guinea. Through an ethnographic concern with personal names and their attendant claims to ownership and creativity, this paper aims to show how two trajectories of ownership co-exist in a Papua New Guinea society.

¶150: Who Owns Native Nature? Discourses of Rights to Land, Culture, and Knowledge in New Zealand

¶151: Michael Brown famously asked 'Who owns native culture?' This paper revisits that question by analyzing what happens to culture when the culturally defined boundary between it and nature becomes salient in the context of disputes between indigenous and settler populations. My case study is the dispute between the New Zealand government and Maori tribal groupings concerning ownership of the foreshore and seabed. Having been granted the right to test their claims in court in 2003, Maori groups were enraged when the government legislated the right out of existence in 2004. Though the reasons for doing so were clearly political, contrasting cultural assumptions appeared to set Maori and Pakeha (New Zealanders of European origin) at odds. While couching ownership of part of nature as an IPR issue may seem counter-intuitive, I argue that as soon as a property claim destabilizes the nature/culture boundary, IPR discourse becomes pertinent.

¶152: Māori Intellectual Property Rights and the Formation of Ethnic Boundaries

¶153: This article questions and contextualizes the emergence of a discourse of intellectual property rights in Māori society. It is argued that Māori claims regarding intellectual property function primarily to demarcate ethnic boundaries between Māori and non-Māori. Māori consider the reinforcement of ethnic boundaries necessary since they experience their society and distinctive way of life as endangered both by the foreign consumption or misappropriation of aspects of their authentic cultural forms and by the intrusion of foreign cultural elements. Following Simon Harrison (1999) it is argued that the first threat is often represented as an undesired form of cultural appropriation, piracy or theft, while the second threat is viewed as a form of cultural pollution. This argument is elaborated with a case-study of each so-called danger, namely a claim regarding native flora and fauna submitted to the Waitangi Tribunal, which is considered as an example of resistance

against cultural appropriation, and the increasing hostility of Māori to foreign interest and research in Māori culture and society, which is analysed as an example of opposition to putative pollution.

¶154: Epilogue: Anxieties About Culture and Tradition—Property as Reification

¶155: The articles in this special issue on intellectual property in the Pacific document anxieties about culture and tradition, and about the intrusion of ideas of property into previously uncommodified areas of peoples' lives. These include fears that traditional knowledge and skills are not being passed on to young people (Nason and Peter; Pigliasco); that migrants in a globalized world will take aspects of culture with them when they leave (Nason and Peter); that anthropologists and other scholars will wrongfully appropriate and use aspects of the cultures they study for their own benefit (Van Meijl); and that profits from the commercialization of traditional knowledge, practices, and products will not go to the people who consider themselves their owners and caretakers (Lindstrom). In addition, Jo Recht's contribution provides a discussion of attempts to protect culture and tradition through international conventions and national laws. Finally, Andrew Moutu and Michael Goldsmith describe claims of ownership over aspects of nature to reflect on fundamental aspects of intellectual property and ownership more generally.

¶156: ISSUE 4

¶157: Guidelines for the Establishment and Conduct of Safe Havens as Adopted by the International Law Association at its 73rd Conference held in Rio De Janeiro, Brazil, 17–21 August 2008

¶158: Tehran Declaration on Human Rights and the Environment

¶159: COUNCIL REGULATION (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (Codified version)

¶160: Final Document from the Regional Workshop: “The Protection and Safeguard of Cultural Heritage Property of the Church of Latin America and the Caribbean”

¶161: From 29th September to 1st October, a workshop was organized in Mexico City by UNESCO on the theme, “The Protection and Safeguard of Cultural Heritage Property of the Church of Latin America and the Caribbean.”

¶162: Accordo tra il Consiglio federale svizzero e il Governo della Repubblica Italiana sull'importazione e il rimpatriodi beni culturali

¶163: Holocaust (Return of Cultural Objects) Act 2009: 2009 CHAPTER 16

¶164: An Act to confer power to return certain cultural objects on grounds relating to events occurring during the Nazi era. [12th November 2009]

¶165: Report on the International Conference on Human Rights and the Environment (Tehran, May 13–14, 2009) and its Tehran Declaration

¶166: The International Conference on Human Rights and the Environment took place in Tehran in May 2009 and was attended by around 150 participants, including 10 international and five Iranian speakers. It was conceived as an opportunity to bring together leading international experts in this field to seek greater clarity on the important but, as yet, under-conceptualised question of the nexus between human rights and the environment. Both in the papers presented and in the resulting Declaration text, cultural heritage was seen as a key element in both aspects of this nexus and as fundamental to achieving a suitable accommodation between the two.

¶167: Salzburg Global Seminar: Achieving the Freer Circulation of Cultural Artifacts (Session 453, May 9–14, 2008)

¶168: From May 9–14, 2008, the Salzburg Global Seminar convened its 453rd session—and its annual arts and culture session—on “Achieving the Freer Circulation of Cultural Artifacts” at Schloss Leopoldskron in Salzburg. Sixty two participants from twenty-nine countries gathered for the five-day session, aimed at building consensus among cultural authorities and museum representatives from around the world on ways to overcome legal, political, and practical obstacles to the circulation of cultural objects. Participants worked together to identify and assess new and better ways to promote the sharing of art and artifacts—from virtual access to practical strategies for significantly expanding loan programs worldwide. Whereas there are many museum conferences worldwide, few strive to bring together a multi-disciplinary and truly global group of participants for an open, informal exchange of thoughts and ideas in a neutral setting. The gathering in Salzburg, generously supported by The Edward T. Cone Foundation, succeeded in providing an evaluative international forum of this type, which brought diverse experts from a range of national and professional contexts into dialogue and gave them the opportunity to reflect deeply and openly on ways to increase the international exchange of cultural artifacts.

¶169: The Cultural Heritage Law Committee of the International Law Association: Special Session, June 8, 2009, Geneva, Switzerland

¶170: In August 2008 the Seventy-third Conference of the International Law Association (ILA) in Rio de Janeiro adopted the Cultural Heritage Law Committee's “Guidelines for the Establishment and Conduct of Safe Havens for Cultural Material,” the text of which appears in this issue. The Committee, after discussing its on-going project concerning the relationship between international trade law and the protection of cultural heritage, decided to focus on national export controls.

¶171: Regional Seminar on the Protection and Safeguard of the Church's Cultural Heritage Objects Held in Mexico City September 29—October 1 2009

¶172: As an UNESCO initiative, Mexico was chosen as the country to host a seminar about the illicit trafficking of religious cultural objects. This problem is severe in the region and the idea was received with great enthusiasm by all.

Name: IJCP 2010 abstracts

¶1: IJCP 2010 abstracts

¶2: ISSUE 1

¶3: New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution

¶4: Alternative methods of dispute resolution are an important resource in matters of cultural heritage in addressing the return, restitution, and repatriation of cultural property. The purpose of this article is to analyze the situations in which such methods might be preferred to the classical judicial means and to examine the problems that might arise.

¶5: The article is in two parts. The first part describes the actors as well as the current methods used for the restitution and return of cultural property. The second part explores the types of property that lend themselves to alternative dispute resolution techniques and lists the—often original—substantive solutions that have been used in practice.

¶6: Alternative methods of dispute resolution enable consideration of nonlegal factors, which might be emotional considerations or a sense of “moral obligation,” and this can help the parties find a path to consensus.

¶7: Digital Technologies and Traditional Cultural Expressions: A Positive Look at a Difficult Relationship

¶8: Digital technologies have often been perceived as imperilling traditional cultural expressions (TCE). This angst has interlinked technical and sociocultural dimensions. On the technical side, it is related to the affordances of digital media that allow instantaneous access to information without real location constraints, data transport at the speed of light and effortless reproduction of the original without any loss of quality. In a sociocultural context, digital technologies have been regarded as the epitome of globalization forces—not only driving and deepening the process of globalization itself but also spreading its effects. The present article examines the validity of these claims and sketches a number of ways in which digital technologies may act as benevolent factors. It illustrates in particular that some digital technologies can be instrumentalized to protect TCE forms, reflecting more appropriately the specificities of TCE as a complex process of creation of identity and culture. The article also seeks to reveal that digital technologies—and more specifically the Internet and the World Wide Web—have had a profound impact on the ways cultural content is created, disseminated, accessed and consumed. It is argued that this environment may have generated various opportunities for better accommodating TCE, especially in their dynamic sense of human creativity.

¶9: Museums and the Return of Human Remains: An Equitable Solution?

¶10: Disputes over the retention of human remains in museum and other collections are further exacerbated by the common law's limited recognition of the human body and its parts as property. Equity has long recognised the rights of the personal representatives of the dead to possession of the corpse or its remains for decent disposal. This essay considers the possible application of equitable principles to applications for the return of human remains from museum and other collections.

¶11: Built Heritage Conservation and the Voluntary Sector: The Case of the Tung Wah Coffin Home in Hong Kong

¶12: Built heritage conservation is not easily achievable through the market, as it involves use of urban space and thus opportunity cost. The problem is more serious if there is no government support. This is the case in Hong Kong, where both the market and the state are not favorable to built heritage conservation. However, in 2005, through a local voluntary organization, a built heritage of Hong Kong—the Tung Wah Coffin Home—was conserved, and the project won one local and one regional conservation award. While conservation of built heritage by the voluntary sector has been common among developed countries, it is new in Hong Kong. This article first situates the issue in a general political-economy perspective and then analyzes the case of the Tung Wah Coffin Home, in particular, in the context of Hong Kong. The purpose is to examine what this case tells us about the role of the voluntary sector and its relationship with the government in providing built heritage conservation.

¶13: Von Saher v. Norton Simon Museum of Art at Pasadena: California's Temporary Suspension of the Statute of Limitations in Holocaust Art Cases Violates the Foreign Affairs Doctrine

¶14: In 2002, the California state legislature enacted a law temporarily suspending the statute of limitations in certain Holocaust art cases. In doing so, it removed a major procedural obstacle facing plaintiffs and effectively revived claims once considered time-barred. Seven years later, the U.S. Court of Appeals for the Ninth Circuit held in *von Saher v. Norton Simon Museum of Art at Pasadena* that this California law was unconstitutional under the foreign affairs doctrine, because it impermissibly intruded on the federal government's exclusive power to make and resolve war. In so holding, the Ninth Circuit became the first court in the United States to restrict the authority of the states to inject themselves into the realm of Holocaust art litigation.

¶15: Kulturgüterschutz—Künstlerschutz: Tagungsband des Zweiten Heidelberger Kunstrechtstages am 5. und 6. September 2008 in Heidelberg [Cultural Heritage Protection—Protection of Artists' Rights: Presentations of the Second Heidelberg Conference on Art Law on September 5 and 6, 2008, in Heidelberg],

¶16: ISSUE 2

¶17: Foreword

¶18: The Harvard Law School Symposium, “Spoils of War v. Cultural Heritage: The Russian Cultural Property Law in Historical Context,” was convened in February 2008 to bring together legal, historical, and other academic experts who might shed some light on the issues raised by Russia's 1998 law that essentially nationalized and declared Russian ownership of the great many works of art, books, and archives that were taken under orders by the Red Army to the Soviet Union at the end of World War II. The symposium was jointly sponsored by the Commission for Art Recovery, the Foundation for International Cultural Diplomacy, the Harvard Law School Arts and Literature Law Society, the Harvard Law School European Law Research Center, and the Davis Center for Russian and Eurasian Studies of Harvard University.

¶19: Introduction

¶20: World War II was the occasion of the greatest theft, seizure, loss, and displacement of art treasures, books, and archives (“cultural items”) in history. Since then, governments and others have attempted to justify either their right to keep or to claim the return of the cultural items displaced as a result of the war and its aftermath. Such issues have intensified on the Eastern Front since the

collapse of the Soviet Union and the opening of the Soviet secret depositories of long-hidden cultural items brought to Soviet territories at the end of the war. The principal protagonists in the public arena have been the Federal Republic of Germany (Germany), the Republic of Poland, and the Republic of Hungary, each claiming that the Russian Federation (Russia) has refused to negotiate adequately the return of cultural items displaced during and after the war that are now located in its territory.

¶121: Plunder, Restitution, and International Law

¶122: The Russian Federal Law on Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation purports to establish the legal basis for the Russian state to hold permanent title to the vast majority of the cultural valuables removed from Germany to the Soviet Union at the end of World War II. Russia claims that the cultural objects seized by the Soviet Union constitute “compensatory restitution” for the hundreds of thousands of cultural and artistic valuables seized or destroyed by the Nazis during the war. This article assesses the compatibility of the Russian claim with relevant international law. It does so by tracing the development of the international antiplunder legal regime. It then assesses the Russian claim with respect to three categories of cultural valuables, based on prewar ownership: property belonging to private persons and organizations, property belonging to nonenemy states, and property belonging to enemy states (Axis powers). “Compensatory restitution” does not exist as a category or principle in international law, so the analysis focuses on the legal concept that is most similar and therefore of potential relevance, restitution in kind. If restitution in kind is impermissible under international law, then the broader “compensatory restitution” is, with even greater force, also impermissible. The key finding is that international law does not permit “compensatory restitution,” nor does it permit unilateral seizures of cultural objects under some broader notion of compensation.

¶123: The Allied Struggle over Cultural Restitution, 1942–1947

¶124: This article discusses the Allied diplomatic and political impasse over restitution during and after World War II. The focus is on cultural restitution—the return of art, archives, and libraries looted by the Nazis. Serious Allied disagreements on general postwar policy for Germany inhibited the development of a coherent approach to the restitution of cultural property. Cultural restitution became lost in the maze of other greater political, economic, and ideological conflicts. Ultimately, the impasse was also fueled by the very complex issues involving cultural restitution itself. Issues including the scope of the entire effort, restitution in kind, returning property to refugees, and the fate of heirless Jewish property were intractable. The problems with cultural restitution reflected the clash of interests and ideologies. As a result, the four occupying powers had distinct approaches with radically differing results.

¶125: Stalin's Decrees and Soviet Trophy Brigades: Compensation, Restitution in Kind, or “Trophies” of War?

¶126: The article is dedicated to the official decrees issued by Joseph Stalin in 1945 ordering the Soviet removal of cultural property from Eastern European and German territories occupied by the Red Army. As opposed to popular belief dominant today in Russia, such decrees were few. Preparation for the removal of cultural property from enemy countries had started before the fate of the war was decided. In 1943 on the request of academician Igor Grabar, the Bureau of Experts was established with the task of composing lists of so-called “eventual equivalents,” which Soviet officials wanted to receive after the war as “restitution in kind,” to compensate for the cultural losses of the

USSR. The listed equivalents included art works from museums and private collections in the Axis countries. However, the projected provisions for “restitution in kind” were never approved by the Allies, in large part because during the last months of the war and immediately thereafter, the Soviet Union had already begun massive removal of cultural property from territories occupied by the Red Army. Different trophy brigades sent to the front lines were authorized or ordered to send back home whole collections of German museums and libraries. Only rarely were any of the ‘trophies’ labeled “compensation.”

¶127: Legalizing “Compensation” and the Spoils of War: The Russian Law on Displaced Cultural Valuables and the Manipulation of Historical Memory

¶128: This article analyses the historical and political background of the Russian law on cultural property displaced to the Soviet Union at the end of the Second World War (April 1998, with amendments in 2000). Following the 1990–1991 revelations about the extensive cultural treasures captured by Soviet authorities at the end of the Second World War, there was hope abroad for restitution, with a series of bilateral agreements with the countries of origin, but in spring 1994 the Duma blocked further restitution. We follow the fierce debates, the Constitutional Court ruling (1999), the amended law (July 2000), and its implementation under the Ministry of Culture.

¶129: We show the wide-scale Russian support of the law, with its concept of “compensatory restitution” that virtually nationalizes the spoils of war, with only scant provisions for restitution to those who fought against the Nazi regime and those victimized by it. What explanation emerges involves the manipulation of historical memory by the Stalinist regime, as the cultural trophies assume symbolic importance in the “myth and memory” of “victory” in the Great Patriotic War. Restitution to legal owners is to be considered only in exchange for equally substantial compensation for wartime loss and suffering of the population at large.

¶130: Why Can't Private Art “Trophies” Go Home from the War?: The Baldin-Bremen Kunsthalle Case: A Cause-Célèbre of German-Russian Restitution Politics

¶131: This article is dedicated to the collection from the Bremen Kunsthalle, comprising 1715 drawings, 50 paintings, and about 3000 prints found by Soviet troops in castle of Karnzow near Berlin in May 1945. The collection was not seized by Soviet trophy brigades but was looted by soldiers and officers of the 38th Field Engineers' Brigade of the Red Army.

¶132: After their return to the USSR and demobilization, some of the officers donated their loot to different museums around the Soviet Union. One of the most important parts of the collection, with 362 drawings and two paintings—among them works of Dürer, Rembrandt, Goya, and Van Gogh, was appropriated by Captain Viktor Baldin. In 1948 Baldin deposited his loot in the A. V. Shchusev State Research Museum of Architecture in Moscow. Later Baldin became the director of the museum and advocated return of the art to its rightful owners.

¶133: Since the days of Gorbachev's perestroika, these art works have frequently attracted public attention and provoked fierce debates. The Federal Law on Cultural Valuables adopted in 1998 did not cover art works looted by private individuals. Rather, such conflicts have to be solved within the framework of Russian criminal law.

¶134: In contrast, other works of art from the same Bremen Kunsthalle collection were restituted from the United States, Ukraine, and Estonia. Another 101 drawings and prints of the collection, seized by another member of Baldin's brigade, were returned from Russia to Bremen in 2000, but that was in “exchange” for an original mosaic from the legendary Amber Chamber. However, despite more than

20 years of efforts by German officials and endless negotiations, the Baldin Collection remains in the Russian Federation. The return of those stolen drawings any time soon now looks highly improbable. The case of the Baldin Collection became the most striking example of the Russian nonrestitution of cultural property looted during World War II.

¶135: Why Do Captured Archives Go Home? Restitution Achievements under the Russian Law

¶136: The return of captured French archives—not art—ignited debate in the Russian Duma in the spring of 1994, leading to the passage of the 1998 Federal Law “On Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation.” Yet, a decade since the law was signed, there have been five cases of captured archives from the Second World War returned to Western European countries, as explained in the recent book, *Returned from Russia*. The aim of this article is to examine major factors involved in the restitution of archives from Russia, and why amid the politics of restitution the return of archives has been more successful than art.

¶137: The article first successively examines the major factors involved, namely, foreign political pressure; the underlying support of international law, both in specific instruments and historical archival practice; the circumstances and Soviet aims of archival plunder; the present contrast with Soviet political ideology and alignments; the fact that Russian archivists were more willing to return their loot than museum directors; and that archival returns were easier to conform to the 1998 law, because the receiving countries were willing to offer the “compensation” Russian archivists were demanding. Country by country, first in Western Europe starting with France and now Austria and Greece, archives have been going home, but so far only a few symbolic files from Germany have been returned. A final section of the article briefly singles out the captured records from several other countries remaining in Moscow, including many Jewish records, even some representing Holocaust losses.

¶138: Art Loans and Immunity from Seizure in the United States and the United Kingdom

¶139: Some countries' laws favoring good-faith purchasers over the victims of theft make it difficult to recover stolen artworks. Nonetheless, the loan of such artworks for exhibition abroad may create opportunities to utilize the host country's legal system for recovery. This article examines representative cases illustrating legal options available to plaintiffs in the United States and the United Kingdom. In the United States, laws at the federal and state level may prevent the seizure of artworks loaned for temporary exhibition, but recent cases show that immunity is not absolute and that such artworks may be subject to suit in the United States. The United Kingdom recently enacted a similar law. That law, however, has been criticized, and future interpretations by U.K. courts will be needed before its true affect can be seen. The article also discusses the backgrounds against which the U.S. and U.K. laws were enacted, illustrating the link between the laws and Russian concerns about protecting cultural artifacts that were nationalized after the Russian Revolution or taken by Soviet troops during World War II.

¶140: Chabad v. Russian Federation: A Case Study in the Use of American Courts to Recover Looted Cultural Property

¶141: Displaced and nationalized cultural property remains hidden in the vast holdings of museums, libraries, and archives around the world. Some governments holding these “trophies” of war and conquest refuse to return such cultural treasures to their rightful owners even when their provenance has been identified. They assert that the collections were obtained through

expropriation and nationalization, and that divestiture of a museum, library, or archive would jeopardize the existence of these institutions and cause societal discord.

¶142: This article discusses the struggle of an orthodox Jewish organization to recover from the Russian Federation a collection of sacred, irreplaceable books and manuscripts seized in the aftermath of the Bolshevik Revolution and during World War II. The story of Agudas Chasidei Chabad's efforts to recover these core religious texts of its spiritual leaders has involved appeals by U.S. presidents, congress, and the U.S. Helsinki Commission, as well as lawsuits in the Soviet Union/Russia and United States.

¶143: After prolonged litigation in the United States, a federal court of appeals in Washington DC ruled in 2008 that American courts have jurisdiction over Chabad's suit against the Russian Federation to recover its religious texts. This ruling may pave the way for the resolution of this dispute and also lead to the filing of other suits in American courts seeking to recover looted cultural property, even if that property is located outside U.S. borders.

¶144: Trophy Art as Ambassadors: Reflections Beyond Diplomatic Deadlock in the German-Russian Dialogue

¶145: This article provides brief coverage of the Russian-German dialogue since 1991 and the search for solutions about looted art of German ownership seized at the end of the Second World War and still held in Russia. So far, while Russia and Germany regard themselves as partners and friends in political and economic realms, they have been unable to find agreement about the looted art. Germany seems no longer to retain Russian cultural goods plundered during the war, whereas Russia still possesses a significant amount of German cultural assets. On the basis of existing treaties and international law, Germany demands its restitution. Russia, on the other hand, has nationalized the confiscated goods in 1998 as compensation for its own war losses. Nevertheless, not a few citizens of both countries have been returning artworks and books privately, in some cases supported by the governments. A convincing solution for the general problem can only be found if the treasures, which in the past have been understood as trophies, could be transformed into cultural ambassadors, while dialogue and the search for new ways continue within the framework of a policy of reconciliation. This approach also includes further research and analysis of the Russian cultural losses resulting from the war, a project undertaken in the 1990s at the Forschungsstelle Osteuropa (Research Center for Eastern Europe) of the University of Bremen, as briefly described in an appendix to the article.

¶146: APPENDIX 1: Federal Law on Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation: Federal Law N 64-FZ of 15 April 1998 adopted by the State Duma on 5 February 1997; approved by the Council of the Federation on 5 March 1997; signed by President Boris Yeltsin on 15 April 1998. With the amendments of: Federal Law No. 70-FZ of 25 May 2000 and Federal Law No. 122-FZ of 22 August 2004, Article 155

¶147: APPENDIX 2: Russian Legal Instruments Relating to Cultural Valuables Displaced as a Result of the Second World War, 1990–2009

¶148: The following list is limited narrowly to post-1991 Russian legal instruments relating to cultural valuables of foreign provenance seized and transported to the Soviet Union from Germany and Eastern Europe at the end of the Second World War, or in the immediate postwar period. Widely known in Russia as the “trophy” valuables, officially those cultural objects (art, books, and archives) are usually referred to in Russia more euphemistically as “cultural valuables displaced [or relocated] to the USSR,” although most frequently translated in a European context as “displaced cultural

valuables.” The term “displaced” is used here, and may include some cultural property and archives that came to the USSR during the war itself, as well as those removed from Germany and Eastern Europe by Soviet authorities at the end of or immediately after the war. Many items involved were actually twice captured, or “twice saved,” as the saying goes in Russia, having been first captured by the Nazis, mostly from “enemies of the regime,” and then captured a second time and “safeguarded” by the Soviets.

¶149: ISSUE 3

¶150: Justifying and Criticizing the Removals of Antiquities in Ottoman Lands: Tracking the Sigeion Inscription

¶151: This article attempts to widen the debate on the removal of antiquities from the Ottoman Empire around 1800. The removals are often seen in an Anglo-French perspective with the result that other voices are erased, both those of the local populations and of other foreign observers. I show that objects that now neglected were once highly valued by both local inhabitants and collectors, and that their removals were repeatedly resisted. I suggest that a more subtle interaction occurred between collectors and the local populations than hitherto has been recognized. While the local populations were accused of various “superstitious” practices—often conveniently related to objects coveted by European collectors—I propose that the removers were not uninfluenced by these practices. By introducing testimonies from Swedish observers that were critical of the removals before such critiques became frequent, I also question the stereotype of a common European attitude toward the Ottoman Empire. I discuss how such critique was related to their status as third-party observers from a nation without power or museums. By investigating the arguments of both collectors and critics, I propose that many positions in the debate today were already present at the time of the removals. Following the history of a less famous object serves to highlight aspects of early European collecting and expansion in the Eastern Mediterranean that are often overlooked in the debate on ownership and restitution claims.

¶152: Intellectual Property for Mystics? Considerations on Protecting Traditional Wisdom Systems

¶153: Efforts to protect, if not revitalize, intangible cultural heritage in its traditional communities, cannot succeed without due attention to issues of ownership—cultural, environmental, intellectual, economic ... “intellectual property” categories in a wisdom system such as that of the Baul of Bengal show that Traditional Knowledge, Customary Law and Traditional Cultural Expressions are inseparable “property,” and that “ownership” should be understood on traditional terms. Within such an integrated continuum, knowledge itself is not limited to its modern meaning.

¶154: Is it possible to bring about a true and equitable dialogue between radically antagonistic intellectual property universes—the modern one driven by profit, and traditional ones rooted in complex systems of multiple values?

¶155: The death of a wise old one is the loss of a whole library

¶156: —L. S. Senghor

¶157: Law and the Politics of the Past: Legal Protection of Cultural Heritage in Greece

¶158: This article examines the main lines of Greek legislation on antiquities and on cultural heritage in general, in the course of its history, with an emphasis on the innovations and continuity of the current Law 3028 of 2002. It attempts to place the Greek case in the context of the relevant international experience and the broader debate about ownership of the past. It throws light on the

relationship between the legal framework of antiquities and the formation and fostering of national identity in Greece, and on their close connection with the state, while at the same time criticizing the view that opposes a “cultural internationalist” approach to heritage to the “cultural nationalism” of Greece and other source countries.

¶159: “IN DEFENSE OF PROPERTY”: AN EXCHANGE

¶160: Culture, Property, and Peoplehood: A Comment on Carpenter, Katyal, and Riley’s “In Defense of Property”

¶161: First, the good news: Carpenter, Katyal, and Riley make a compelling case that the venerable concept of property—long defined primarily by such principles as transferability and rights of exclusion and control—should be broadened to encompass a robust ideal of stewardship. In doing so, “In Defense of Property” (henceforth, IDP) renders property more compatible with the indigenous view of things. This significant contribution to ongoing global debates about the protection of indigenous heritage will be of great interest to readers of the IJCP.

¶162: Clarifying Cultural Property

¶163: Author Stephenie Meyer forever altered the cultural existence of Quileute Indians when she wrote them into her Twilight novels. Now a veritable global phenomenon complete with books, movies, and affiliated merchandise, the Twilight series depicts young, male members of the tribe as vampire-fighting werewolves who ferociously defend a peace and territorial treaty made with local bloodsuckers. In reality, the Quileute Tribe consists of approximately 700 Indians, many of whom live on a remote reservation in the Pacific Northwest, a tiny parcel of the once vast Quileute territory. Since Twilight’s unprecedented international success, the Quileute have been overwhelmed with fans and entrepreneurs, all grasping, quite literally in some cases, for their own piece of the Quileute.

¶164: BOOK REVIEW

¶165: The Restitution of Cultural Assets.

¶166: Cosmopolitan Archaeologies.

¶167: ISSUE 4

¶168: Salzburg Declaration on the Conservation and Preservation of Cultural Heritage: 31 October 2009, Salzburg, Austria

¶169: On the occasion of the Salzburg Global Seminar session on Connecting to the World’s Collections: Making the Case for the Conservation and Preservation of our Cultural Heritage, 60 cultural heritage leaders from the preservation sector representing 30-two nations around the world shared experiences to address the sustainability of cultural heritage.

¶170: Law No. 117 of 1983 as Amended by Law No. 3 of 2010 Promulgating the Antiquities’ Protection Law (Egypt): (Published in the Official Gazette on February 14, 2010)

¶171: The progress of countries is measured by their success in keeping hold of their culture and heritage, and I think Egypt is one of the very few countries in the world maintaining her cultural patrimony. We have been able, through a great effort led by Farouk Hosni, the Minister of Culture, to preserve and offer this heritage to the world as evidence of the magnificence of this great country, on whose land the most important civilization in existence was born. This civilization is in the heart of every human being on earth. The French newspaper, Le Figaro, published an article

some time ago commending the quality of restoration and maintenance of Egyptian monuments, as well as new discoveries made by an Egyptian team.

¶172: Adopted Text No. 455: To Authorize the Restitution of Maori Heads to New Zealand and Concerning Management of Collections: NATIONAL ASSEMBLY, Constitution of October 4, 1958, Thirteenth Parliament, 2009–2010 Ordinary Session, May 4, 2010

¶173: To authorize the restitution by France of Maori heads to New Zealand and concerning management of collections.

¶174: Heading Home: French Law Enables Return of Maori Heads to New Zealand

¶175: New Zealand claims for the return of preserved tattooed Maori heads held by foreign institutions have revisited complex legal, ethical, and cultural questions surrounding human remains in museum and other institutional collections worldwide. Recent legislation in France that facilitates the return of Maori heads in French museums represents a further stage in this ongoing story.

¶176: Connecting to the World's Collections: Making the Case for the Conservation and Preservation of Our Cultural Heritage: Session 466, October 28–November 1, 2009

¶177: Sixty cultural heritage leaders from 32 countries, including representatives from Africa, Asia, the Middle East, South America, Australia, Europe, and North America, gathered in October 2009 in Salzburg, Austria, to develop a series of practical recommendations to ensure optimal collections conservation worldwide. Convened at Schloss Leopoldskron, the gathering was conducted in partnership by the Salzburg Global Seminar (SGS) and the Institute for Museum and Library Services (IMLS). The participants were conservation specialists from libraries and museums, as well as leaders of major conservation centers and cultural heritage programs from around the world. As cochair Vinod Daniel noted, no previous meeting of conservation professionals has been “as diverse as this, with people from as many parts of the world, as cross-disciplinary as this.” The group addressed central issues in the care and preservation of the world's cultural heritage, including moveable objects (library materials, books, archives, paintings, sculpture, decorative arts, photographic collections, art on paper, and archaeological and ethnographic objects) and immoveable heritage (buildings and archaeological sites).

¶178: Heritage in Conflict and Consensus: New Approaches to the Social, Political, and Religious Impact of Public Heritage in the 21st Century: Amherst, Deerfield, & Annandale-on-Hudson, United States, November 9–14, 2009

¶179: The inaugural event for the newly established University of Massachusetts (UMass) Amherst Center for Heritage & Society, entitled “Heritage in Conflict and Consensus: New Approaches to the Social, Political, and Religious Impact of Public Heritage in the 21st Century,” was held in November 2009 at three locations in the northeastern United States. Workshop attendees participated in several organized sessions, day trips, informal discussions, and five plenary sessions with accompanying working sessions focused on four themes in international heritage practice: community; faith; diaspora; and burial, ancestors, and human Remains. The event was co-organized by two members of the UMass Amherst Center for Heritage & Society, Director Elizabeth Chilton and Coordinator of Projects and Policy Initiatives Neil Silberman, whose main goal was to establish a permanent working group of international representatives engaging with issues of heritage in conflict charged with setting research and policy agendas for the field.

¶180: Heritage 2010: 2nd International Conference on Heritage and Sustainable Development: Évora, Portugal, 22–26 June, 2010

¶181: Heritage 2010 was a state-of-the-art event regarding the relationship between forms of heritage and the conceptual framework for sustainable development. The four dimensions of sustainable development—environment, economics, society, and culture—were brought together in order to define a particular approach on how to deal with and go beyond the traditional aspects of heritage preservation and safeguarding. As heritage is no longer just a memory or a cultural reference, or even a place or an object, some deeper conceptualization is needed in order to place heritage in its present context. The concept of heritage is moving toward broader and wider scenarios, where it often becomes the driving force for commerce, business, leisure, and educational politics. Heritage is currently seen, or referred to, only through its cultural definition. However, sustainable development brings heritage concepts to another dimension, as it establishes profound relationships with economics, environment, and social aspects. Consequently, heritage preservation and safeguarding is facing new and complex problems. Degradation of heritage sites is not any more just a result of materials ageing or environmental actions. Factors such as global and local pollution, climate change, poverty, religion, tourism, commerce, ideologies, and war are now on the cutting edge for the emerging of new approaches, concerns, and visions on heritage. Thus, the “Heritage 2010: Heritage and Sustainable Development” conference was conceived to embrace a global view on how heritage is being contextualized with the four dimensions of sustainable development. Furthermore, heritage, governance, and education were brought into discussion as the key factors for enlightenment of future global strategies for heritage preservation and safeguarding.

¶182: The Cultural Heritage Law Committee of the International Law Association: General Session, August 16, 2010: The Hague, The Netherlands

¶183: Twenty-two members of the International Law Association's Committee on Cultural Heritage Law attended a working session in The Hague. The committee first reviewed the status of its past projects, focusing this time on the UNESCO Convention for the Protection of the Underwater Cultural Heritage, which resulted from the Committee's Buenos Aires Draft Convention on that subject. Now that the treaty is in force, the committee considered the actual and potential status of accession by maritime powers.

¶184: UTIMUT: Past Heritage—Future Partnerships,

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¶3: The Grading of Cultural Relics in Chinese Law

¶4: Legal systems which triage protection to cultural relics based on a relic grading system have been adopted by several countries. This article examines the implementation of such a relic grading framework by the People's Republic of China. The current state of the law is summarized, and a recent criminal trial is described to illustrate the role the grading system plays within the law. The factors involved in defining the grades of cultural relics are then discussed in context of a cultural relic structural framework, with emphasis to both the state values that they serve and their ability to promote the objective of cultural property protection. The analysis highlights the problems and general considerations with the use of relic grading systems as a means to protect a large number of relics with finite resources.

¶5: Intangible Heritage and Erasure: Rethinking Cultural Preservation and Contemporary Museum Practice

¶6: This article builds on recent discussions on intangible heritage following the adoption of the relevant convention by UNESCO in 2003. The emergence of intangible heritage in the international heritage scene is tied up with fears of cultural homogenization and the need to protect the world's diversity. For a number of critics, however, UNESCO's normative framework raises questions around the institutionalization of culture as a set of endangered and disappearing ways of life. The article reviews these institutional approaches to cultural preservation in relation to the politics of erasure, the creative interplay of heritage destruction and renewal. This is then further examined against the backdrop of indigenous identity politics played out in two contested public arenas: the National Museum of New Zealand Te Papa Tongarewa in Wellington and the Quai Branly Museum in Paris.

¶7: The Value and Valuation of Maritime Cultural Heritage

¶8: Maritime cultural heritage is made up of finite and nonrenewable cultural resources including coastal or submerged prehistoric and indigenous archaeological sites and landscapes, historic waterfront structures, the remnants of seagoing vessels, and the maritime traditions and lifeways of the past and present. To date, evaluative tools used to assess the social and economic "value" of this heritage are extremely limited, the lack of which often results in the loss of maritime cultural resources and unrealized socioeconomic opportunities. Market and nonmarket valuations, derived from ecological economics and ecosystem assessments, are viable techniques that may be integrated into existing U.S. environmental and historic preservation regulatory procedures to support resource significance determinations. In doing so, decision-making regarding maritime cultural heritage can include assessments of the short- and long-term trade-offs of human actions, and can examine the socioeconomic costs and benefits of heritage conservation projects.

¶9: Stepping Stones Across the Lihir Islands: Developing Cultural Heritage Management in the Context of a Gold-Mining Operation

¶10: Large-scale resource extraction projects often create obstacles for the protection, maintenance, and inheritance of indigenous cultural heritage. In this article we detail some of the challenges and opportunities arising from our collaborative partnership with the community of the Lihir Islands in

Papua New Guinea, which is seeking to establish, inform, and resource a formal cultural heritage management program in the context of a large-scale gold-mining operation. The general approach to this collaborative venture involves the application of a specific development tool, the Stepping Stones for Cultural Heritage program. This consultative process is innovative in both Melanesia and the context of resource extraction, but also more generally within the field of cultural heritage. We describe the outcomes of this process and some of the initial pilot projects, one of which was based on the recording of traditional Lihirian songs. We also argue that while the mine places greater pressure upon Lihirian cultural heritage, it also presents Lihirians with the opportunity to realize a vision of their cultural future that is beyond the reach of many other indigenous communities.

¶11: Winning Title to Land but Not to Its Past: The Toledo Maya and Sites of pre-Hispanic Heritage

¶12: The struggle for indigenous rights to pre-Hispanic cultural heritage parallels the struggle for indigenous land rights in Belize. By Belizean law, material objects and sites of activity older than 100 years in age are the property of the state. Similarly, land inhabited by indigenous communities in southern Belize is held in trust by the government. In 2007 the community of Santa Cruz in southern Belize won customary land tenure over their lands for the first time from the Belizean government. This change in land ownership presents new challenges to the definition of ownership of ancient places in Maya territory. In particular, the transfer of land rights to the community has potential implications for the ownership and management of the local pre-Hispanic site of Uxbenká that may ultimately serve as a paradigm for the future relationship between Maya peoples and ancestral remains throughout the nation.

¶13: People's Republic of China Provisional Regulations on Art Import and Export Administration

¶14: China's increased interaction with the global community has led to significant changes in art and artistic expression. The China art market is expanding by leaps and bounds, and artists are subject to an increasingly broad range of influences. Not least of these are the discourses of artistic criticism, with targets that range from international financial institutions to domestic policies. Art in China has for millennia been used as a vehicle for political criticism. Among early examples are the bamboo and landscape paintings of the Yuan dynasty that conveyed a sense of whimsical alienation from the affairs of formal society—implicitly a critique of Mongol rule. During the revolutionary period prior to 1949, the Communist insurgency encouraged painters like Shi Lu to enliven popular resistance to Japanese imperialism and against China's Goumindang rulers.

¶15: ISSUE 2

¶16: Power Relations in the Traditional Knowledge Debate: A Critical Analysis of Forums

¶17: An ongoing debate on the protection of traditional knowledge was prompted by the United Nations General Assembly declaration of the International Decade of the World's Indigenous Peoples in 1995 and the declaration of the Second International Decade in 2004. These two declarations challenged governments and the international community to address, nationally and internationally, issues that affect indigenous communities. One such issue is the protection of traditional knowledge. The three key international multilateral forums that are debating traditional knowledge issues are the World Intellectual Property Organization, the World Trade Organization, and the Convention on Biological Diversity. Using a political economy framework, this study analyzes the policymaking processes and mandates of the three multilateral forums in order to highlight stakeholders' levels of involvement in these processes. The study found that the multilateral forums' power structures, mandates, and decision-making processes disadvantage indigenous peoples and hinder their full participation in the forums' processes. The study recommends establishing a forum that would take

into account indigenous peoples' worldviews; otherwise policy outcomes from these discussions will probably disadvantage indigenous peoples.

¶18: Intangible Cultural Heritage in a Modernizing Bhutan: The Question of Remaining Viable and Dynamic

¶19: This article considers the measures being taken in Bhutan to support the cultural practices and traditions of weaving as Bhutan rapidly moves to modernize. Woven cloth is one of a number of artisan practices in Bhutan that contribute to a unique body of intangible cultural heritage, and a distinctive and instantly recognizable Bhutanese identity. Cloth and cloth production have come to have significant influence on the cultural, socioeconomic and political, as well as the ceremonial and religious life of the people of Bhutan. However with modernization and an increasingly global outlook, many socioeconomic transformations are taking place, challenging traditional cultural practices to remain relevant and viable to younger generations. Bhutan offers a unique case study as a country engaging only relatively recently with globalization after a long history of cultural isolation. Bhutan also offers up a unique policy response to modernization, its Gross National Happiness (GNH) measure, which attempts to embody a strong social, cultural, and environmental imperative within the development process. This article will analyze the various measures taking place to maintain cultural identity and cultural practices within the context of development policy and practice, and will link this discussion to measures and approaches taking place at an international level by agencies such as UNESCO.

¶20: The History of Canadian Immunity from Seizure Legislation

¶21: Perhaps surprisingly, a number of Canadian jurisdictions have been at the cutting edge of legal exemptions from seizure or attachment processes for artworks on loan. Starting with the curious case of Hermitage treasures displayed in Winnipeg in the mid-1970s and using other intriguing examples, this article traces the historical origins of Canadian legislation with particular regard to the international context. The current state of the law in Canada is summarized and compared to that of other international jurisdictions.

¶22: Rogers' Chocolates Ltd. and the Corporation of the City of Victoria: A Case Comment on Involuntary Designation and the Conservation of Heritage Buildings

¶23: The process adopted by the local government to protect the interior of an old building in Victoria, British Columbia, culminated in a significant compensation award in favor of the building's owner and highlights the shortcomings of a coercive regulatory approach to heritage conservation. This study focuses on the relationship between cooperative resolution of conflicts between the rights of the public to protect heritage buildings and the rights of private property owners to the use of their property without interference, on the one hand, and the long-term utility and conservation of historic buildings and the sustainability of local government heritage programs, on the other. Analysis includes discussion on (a) key issues arising out of an involuntary heritage designation, (b) flexible alternative conservation mechanisms and incentives available to local governments, (c) approaches to conservation of heritage buildings in other jurisdictions, and (d) opportunities for improvement in the local government heritage conservation program.

¶24: Massachusetts Museum of Contemporary Art Foundation v. Christoph Büchel: An Appellate Perspective on the Visual Artists Rights Act

¶25: When the U.S. Congress passed the Visual Artists Rights Act (VARA) in 1990, no legislator really anticipated that courts would be applying the act to art installations that were only half-finished. But

this was the very challenge that the U.S. Appellate Court for the First Circuit faced in *Massachusetts Museum of Contemporary Art Foundation, Inc. v. Christoph Büchel*. Deliberating over a failed football-field-sized art installation wryly entitled “Training Ground for Democracy,” the appellate court was asked to determine whether VARA protected Swiss artist Büchel's moral rights in his half-finished work that if completed would have given viewers “training to be an immigrant, training to vote, protest, and revolt, training to loot, training [in] iconoclasm, training to join a political rally, training to be the objects of propaganda, training to be interrogated and detained and to be tried or to judge, training to reconstruct a disaster, training to be in conditions of suspended law, and training various other social and political behaviors.”

¶126: ISSUE 3

¶127: Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage

¶128: This article explores the interplay between climate change and cultural heritage, in particular the intangible aspects of cultural heritage, in international legal frameworks, either existing or under development. The prime focus of the current climate change regime of the United Nations Framework Convention on Climate Change (UNFCCC) is the reduction of greenhouse gas emissions, leaving certain aspects of cultural heritage rather on the sidelines of debate and policy. However, where climate change combines with generally weak law and policy for culture and traditions, countries vulnerable to climate change may face significant cultural loss in the years to come.

¶129: In its inventory of present and contemplated legal protection options, this article draws particular attention to policymaking directed at shaping a “rights-based” system in the form of sui generis rights, to complement any existing intellectual property-based protection. If adequately motivated, indigenous people have a key role to play not only in observing change, but also in developing adaptive models to cope.

¶130: Archaeology and Autonomies: The Legal Framework of Heritage Management in a New Bolivia

¶131: The 2009 Bolivian Constitution significantly changed the structure of the state and paved the way for the creation of regional, local, and even indigenous autonomies. These autonomies are charged with the management of archaeological sites and museums within their territory. This article answers the question of who currently owns the Bolivian past, it stems from concerns raised at the 2011 renewal hearing of the Memorandum of Understanding preventing the import of illicit Bolivian antiquities into the United States. By combining an analysis of recent legal changes related to the creation of the autonomies and a short discussion of a notable case study of local management of a Bolivian archaeological site, this article offers a basic summary of the legal framework in which Bolivian archaeology and heritage management functions and some preliminary recommendations for governments and professionals wishing to work with Bolivian authorities at the state and local level.

¶132: Immortality in the Secret Police Files: The Iraq Memory Foundation and the Baath Party Archive

¶133: Shortly after the 2003 American invasion of Iraq, Kanan Makiya, a long time Iraqi dissident and professor of Middle East studies at Brandeis University, uncovered a major trove of documents belonging to Saddam Hussein's Baath Party and his security forces. The documents proved highly important in reflecting the inner workings of the Baath Party system in his final years in power. Soon after the discovery of the documents, the Iraq Memory Foundation (IMF), a private Washington, D.C.–based group founded by Makiya, took custody of the records, later depositing them with the

Hoover Institution at Stanford University to provide a safe haven for them. The deal ignited immediate international controversy and charges of pillage from some Iraqi officials, archival organizations, scholars, and others who also demanded their immediate return to the Iraq National Library and Archive in Baghdad. On the surface, these charges of theft and plunder appear plausible enough, but on examination, a different and complicated narrative emerges in light of the conventions of war, U.S. law, and the Iraqi penal code, as well as the chain of events surrounding their taking and removal by nonstate actors in the Iraqi theatre of war and occupation.

¶134: The Dual-Relationship Concept of Right-Ownership in Akan Musical Tradition: A Solution for the Individual and Communal Right-Ownership Conflicts in Music Production

¶135: There are apparently two legal systems of “rights ownership” in Ghana, which are (1) the individuals' rights—a system that overemphasizes the exclusive protection of the individual musicians' rights to ownership, and (2) the communal or governmental rights—a system that provides an exclusive protection of the government's (or community's) rights to ownership. Thus, for while the first are the inalienable rights that empower the autonomous musician universally, and are seen as a “private property” of mutually independent individuals; the second are the inalienable rights that empower the collective rights of the community/government, which are seen as a “public property” for a group, with cultural, communal or linguistic rights; systems that are contrary to the Akan systems of right ownership. My aim in this essay contest is to discuss the Akan “individual-communal” dual-relationship with respect to ownership that embraces these two seemingly unrelated concepts of “rights-ownership.”

¶136: The Repatriation of the G'psgolox Totem Pole: A Study of its Context, Process, and Outcome

¶137: In July 2006, after 77 years at the Museum of Ethnography in Stockholm, the 134 year-old G'psgolox totem pole was welcomed home to Kitimaat on British Columbia's northwest coast by the Haisla First Nation. The event was important not only because it was among the first voluntary repatriations by a foreign museum of a cultural artifact to a North American aboriginal community, but also because it marked the end of a negotiation process that had been long and challenging and yet ultimately, according to the parties involved, mutually beneficial and restorative.

¶138: U.S. Government Burdens on the Exercise of Traditional Religions: Two Cases Provide Conflicting Interpretations

¶139: Two court decisions highlight divergent opinions as to what constitutes a “substantial burden” on the practice of traditional indigenous religions in the United States. One decision, in the 9th Circuit Court of Appeals, effectively defines the term in such a way as to discriminate against indigenous religious practices; the other, by a district court in the 10th Circuit based on other holdings by that circuit court, gives much more latitude for protecting such practices and the landscapes they often involve.

¶140: International Law and the Protection of Cultural Heritage,

¶141: ISSUE 4

¶142: Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fifth session, held in Vienna from 18 to 22 October 2010: Resolution 5/7, Combating transnational organized crime against cultural property

¶143: “INALIENABLE” ARCHIVES: KOREAN ROYAL ARCHIVES AS FRENCH PROPERTY UNDER INTERNATIONAL LAW

¶144: In June 2011, France returned to South Korea nearly 300 volumes of Korean royal archives from the Joseon Dynasty. French forces had seized them in an 1866 military campaign, and the volumes had resided in the Bibliothèque nationale de France (BnF) ever since. The return is not a legally permanent restitution, but rather a five-year renewable loan. The compromise followed years of unsuccessful negotiations and a noteworthy decision of a French administrative tribunal that found that the seized Korean archives constituted inalienable French property. The legal debate over the Korean manuscripts illustrates the unique complexities of treating archives as a form of cultural property in armed conflict. In the end, the imperfect compromise satisfies neither side: The BnF is deprived of custody of items that have formed part of its collections for more than 140 years while technically, and perhaps uselessly, retaining formal legal title; South Korea, meanwhile, has physical custody of the archives while suffering the indignity of being denied ownership over its own national heritage.

¶145: Fundamental Modifications to Archaeological Heritage Protection Regulations in Hungary: A Brief Report

¶146: Continuous changes are happening in the legislation of preventive archaeology in Hungary. The protection of cultural heritage in Hungary is currently regulated by the Cultural Heritage Law Nr. LXIV of 2001, according to which, if an development project endangers an archaeological site and its replanning would raise the budget considerably, preventive excavation is needed. All the costs of the excavation should be covered by the investor, but the financing should be at least 0.9% of the total budget of the project. Normally, the archaeological works covered 1–5% of the overall cost of the constructions. This law made possible the complete excavation, documentation, deposition, and primary study of the finds endangered by the development.

¶147: The 16th Session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, 21–23 September 2010

¶148: The 16th Session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation was held in Paris at the UNESCO headquarters, 21–23 September 2010.

¶149: The Fight Against the Illicit Traffic of Cultural Property: The 1970 Convention: Past and Future, 15–16 March 2011: UNESCO, Paris

¶150: On 15 and 16 March 2011 UNESCO held a meeting on The Fight Against the Illicit Trafficking of Cultural Objects: The 1970 Convention: Past and Future at its Paris headquarters. The meeting served two purposes: an evaluation of the 1970 Convention, 40 years after its adoption, and a meeting of delegations to UNESCO who wanted to express their views on the problem of illicit traffic and how UNESCO should proceed to improve the present situation.

¶151: Increasing Europe's Competitiveness Through Cultural Heritage Research: An Initiative of the EU Project NET-HERITAGE, 24 March 2011

¶152: Whether from climate change, mass tourism, or decay of historical objects, cultural heritage researchers in Europe face many challenges. Common priorities became apparent at a conference about the EU project NET-HERITAGE on 24 March in Brussels. And among these and other important issues raised by the 170 participants were the economic and social value of cultural heritage for Europe.

¶153: “Legal Questions of Art Auctions” (Rechtsfragen der Kunstauktion): Seminar held by the Europe Institute, University of Zurich and the Center of Art and Law, Zurich, 13 April 2011: 13 April 2011

¶154: Directed by Professor Dr. Kurt Siehr, Professor Dr. Wolfgang Ernst, and Dr. Andrea F. G. Raschèr, the seminar exposed the legal fundamentals of art auctions and provided an overview of some underlying problems currently faced by practitioners and legal scholars. The seminar was followed by a panel discussion called the “Boon and Bane of Auction Houses for the Art Market,” gathering directors of auction houses as well as art market and art law experts.

¶155: “Illicit Traffic in Cultural Objects: Law Ethics and the Realities”: Workshop Co-organized by the Institute of Advanced Studies and the Law School of the University of Western Australia, Perth, 4–5 August 2011

¶156: Particularly in the 1980s and 1990s, universities and nongovernmental organizations, as well as UNESCO, have held innumerable meetings, workshops, and conferences on the subject of illicit traffic by. The “Illicit Traffic in Cultural Objects: Law Ethics and the Realities” workshop, however, is distinguished by two important elements. First, it emphasizes the importance of the issue for Asian and Pacific countries. Although there have been some meetings focused on the region of Asia—such as the meeting in Polonnaruwa, Sri Lanka, in 2003; one in Bangkok in 2004; and one specifically including oceanic countries in Brisbane in 1996—these are few compared to meetings held on illicit traffic in Europe and North America. The second aspect is the range of expertise of the participants. Though we are used to seeing dealers, archaeologists, and lawyers debate the subject, this workshop included on-the-ground managers, an expert in systems of detection, as well as specialists in particular fields such as underwater heritage, postconflict restoration, and criminology.

¶157: New Working Group on “Cultural Protocols” Convenes at New York University, 19 August 2011

¶158: Protocols in international law seem to be proliferating. Examples of official protocols at international law abound, from the 1967 Stockholm Protocol Regarding Developing Countries (amending the Berne Convention on copyright), to the 1997 Kyoto Protocol on climate change, to the recent Nagoya Protocol on Access and Benefit Sharing in 2010. But what exactly is a “protocol” compared to other international legal instruments, such as declarations and treaties? And why does there seem to be a flurry of new protocols today, in domains as vast as intellectual property and indigenous people's rights? On 19 August a new “working group” convened at the New York University School of Law to begin to study protocols, especially with an eye toward their use as a tool to protect indigenous cultural property—hence, the term “cultural protocols.” The working group is the brainchild of Dr. Jane Anderson of the University of Massachusetts and Professor Barton Beebe of the New York University School of Law.

¶159: Cultural Heritage Law Committee of the International Law Association: Special Session, Kohunlich, Mexico, 26–29 October 2011

¶160: In October 2011 the Cultural Heritage Law Committee of the International Law Association, under the chairmanship of Professor James Nafziger, met in Kohunlich, Quintana Roo, Mexico. The purpose of the meeting was to fuse culture with working sessions over a period of four days. The meeting took place amid fascinating Mayan ruins and the Kalakmul biosphere reserve near the Belizean border. It proved to be a great and successful venture.

¶161: Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects.

¶162: Cultural Law: International, Comparative, Indigenous.

¶163: Bibliography of Books Published in 2010 and of Some Books Published Earlier

¶164: Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (ed.). Report 2009. T

¶165: This is the last annual report of the Dutch Advisory Committee on Restitution. The report informs the public of 16 applications in which the return of art objects have been demanded in 2009. In about 50% of cases, the objects were returned. The applications of the other 50% were rejected.

¶166: The Unidroit Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects entered into force for Greece.

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¶3: Lifting the Lid on “The Community”: Who Has the Right to Control Access to Traditional Knowledge and Expressions of Culture?

¶4: This article explores some key considerations around determining who should have the right to control access to, and benefit from, traditional knowledge and intangible cultural heritage. It highlights the complexities involved in these considerations by examining in detail the different claims to control by different segments of the population in regard to two case studies: Samoan tattooing and the Vanuatu land dive. It uses insights from this analysis to problematize the assumptions about the use of concepts such as “community” in legislation designed to protect traditional knowledge and expressions of culture, and it also reflects on what effect such legislative developments may have on the cultural industries initiative and the implementation of the Convention on Intangible Cultural Heritage.

¶5: The Concept of “Cultural Affiliation” in NAGPRA: Its Potential and Limits in the Global Protection of Indigenous Cultural Property Rights

¶6: In the debate about indigenous cultural property, the Native American Graves Protection and Repatriation Act (NAGPRA) of the United States has developed and implemented an unorthodox concept of “cultural affiliation.” The act entitles Indian tribes and Native Hawaiian organizations to claim repatriation of their cultural property—comprising human remains, funerary objects, sacred objects, and objects of cultural patrimony—upon the establishment of a specific shared group identity and a cultural affiliation to an object. The concept of cultural affiliation in the act replaces proof of ownership, or proof that an object was stolen or illicitly removed. It thereby amends traditional standards saturated in notions of property and ownership that have perpetuated since Roman law and allows the evolution of a control regime over cultural property that takes into account the cultural aspects of the objects. On an international level, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 stipulates a similar emancipation of indigenous peoples' cultural property claims from notions of property and ownership. This article explores NAGPRA's cultural affiliation concept as it stands between private property and human rights law and brings into focus the concept's elements that go beyond traditional property law. It ultimately looks at the potential and limits of the concept from an international perspective as a standard for other countries that consider implementation of UNDRIP's provisions on indigenous, tangible, movable cultural property.

¶7: The Effects of Judicial Decisions and Patrimony Laws on the Price of Italian Antiquities

¶8: While practitioners of the legal and art and culture industries have traditionally believed their businesses to be independent of the other, the escalating battle over the repatriation of cultural property teaches otherwise. The antiquities market has flourished despite the increase in litigation surrounding some works and the number of works repatriated in recent years, making interdisciplinary study of the market more relevant and necessary than ever. This study establishes that the number of antiquities sold with legally-significant provenance information is steadily increasing as a result of the legal environment. Also, these objects are less risky and therefore sell for higher prices than works with no recorded history of ownership. Finally, evidence indicates that

the occurrence of a legal event causes a slight, short drop in the market, followed by a significant rise in prices for the objects with reliable provenance information. In the end, the auction market for Italian antiquities is inexorably linked to activities that have ramifications for the legality of collecting these works.

¶19: Protection of Cultural Goods— Economics of Identity

¶10: This article addresses the current international debate on the protection of cultural goods. Whereas some groups (such as indigenous peoples) are arguing for the creation of cultural property rights analogous to classic intellectual property rights such as patent and copyright, most industrialized countries advocate to keep cultural goods within the public domain. In this article, we develop an economic perspective based on identity and clarify the question of which cultural goods should be protected, regulated, or left in the public domain. We conclude that protection based on the concept of identity is required for a very limited scope of cultural goods.

¶11: “Good and Bad: I Defined These Terms, Quite Clear, No Doubt, Somehow” A Commentary on Stefan Claesson's “The Value and Valuation of Maritime Cultural Heritage”

¶12: In his article, “The Value and Valuation of Maritime Cultural Heritage”, Stefan Claesson discusses methods by which the relative or absolute value of submerged cultural sites like shipwrecks might be established, to provide rational bases for decisions about their management. He emphasizes systems used in ecosystem valuation, notably an average individual's projected “willingness to pay” (WTP) to preserve something and “willingness to accept” (WTA) its loss. He suggests that systems to apply such measurement devices be built into things like the procedures for addressing impacts on historic properties under Section 106 of the U.S. National Historic Preservation Act.

¶13: Cultural Heritage Issues: The Legacy of Conquest, Colonisation, and Commerce.

¶14: ISSUE 2

¶15: The Role of Photography in the Protection, Identification, and Recovery of Cultural Heritage

¶16: This article seeks to contribute to the study surrounding documentation and the illicit trade in cultural property by examining the uses of photography by the international community. Popular and academic literature, news reports, and online databases reveal three primary and interconnected relationships that exist between photography and the trade of cultural heritage. This article presents photography as, first, an aid for the protection and identification of cultural heritage and, second, as a form of evidence to support an ownership claim by a country calling for repatriation.

¶17: The Contribution of Islamic Waqf to Managing the Conservation of Buildings in the Historic Stone Town of Zanzibar

¶18: The conservation of historic buildings depends on their physical maintenance as much as it depends upon their protection against external threats resulting from economic forces, the political climate, and human interference. Although physical conservation is what keeps the buildings standing, protecting buildings from these external threats can be considered more important because, without such protection, the buildings might not survive for any maintenance to be performed. To achieve the envisaged protection, proper management techniques are required. This article draws management inspirations from the unique and long-enduring tradition of the Islamic waqf, as practiced in the historic Stone Town of Zanzibar, now a World Heritage Site. The structure of waqf management is examined, along with aspects of finance and building maintenance. It was

found that the ability of a management system to evolve according to prevailing conditions can be an effective shield against the external threats mentioned here.

¶119: U.S. Policy, Cultural Heritage, and U.S. Borders

¶120: This article situates the discussion of illicit trafficking in antiquities in the context of the relationship between the U.S. Departments of State and Homeland Security. The main argument is that U.S. cultural heritage policy is part of a broader agenda of political discourse that links matters of heritage to wider concerns of security. If the underlying goal of the U.S. State Department is mutual understanding through open dialogue, how can initiatives that focus on the criminal networks and security, efforts tackled by the Department of Homeland Security, contribute to building a positive image for the United States abroad? Here I explore strategic aspects of U.S. cultural policies and federally supported programs aimed at mitigating against the illicit trade in antiquities as part of building and maintaining cultural relations.

¶121: Protecting Culture and Marine Ecosystems Under the Law in Micronesia

¶122: Traditional culture and marine ecosystems are two important resources that are disappearing at alarming rates worldwide. Islands are places where culture and the marine environment are intertwined and offer the best locales to address this threat. Disasters such as shipwrecks and oil spills damage both culture and the environment, yet the legal system does not permit full recovery. This research advances a new tort theory of cultural and ecosystem damage to compensate victims in marine damage cases. Specifically this research investigates theories of recovery in the Federated States of Micronesia since Micronesia is in an ideal position to recognize this new damage theory. Micronesia can help establish precedents that other jurisdictions can follow to help preserve the culture and the marine ecosystems upon which they rely.

¶123: The Copyright Thing Doesn't Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana.

¶124: Heritage, Memory & Identity.

¶125: ISSUE 3

¶126: Intangible Property at the Periphery: Expanding Enclosure in the 21st Century

¶127: This issue aims to assess the state of claims over intangible forms of property, which have been expanding in recent decades enabled by Trade-Related Aspects of Intellectual Property and other international conventions. The articles examine the nature and limitations of intellectual property law and related property-like claims over intangible products and expressions, and present cases from the expanding margins of intangible property provisions including analyses of how these trends are playing out in the Global South and in areas outside of intellectual property law. The contributors show how both expansions of intangible property provisions and resistances to these expansions increase the terrain of experience that is enclosed by proprietary claims and suggest alternative strategies for responding to the contemporary intangible property regime.

¶128:

¶129: SECTION 1: The Relations Between Intellectual Property Law and Local Principles of Creation and Control

¶130: Taxonomy, Type Specimens, and the Making of Biological Property in Intellectual Property Rights Law

¶131: Despite remaining the most iconic and highly valorized metrical technology of the entire, now globally universalized, project of zoological and botanical taxonomy, very little attention has been given to highlighting the pivotal role that type specimens also play in constructing and disciplining contemporary relations to living property. Building on my earlier work on the relationship between biological classification and regulation, this article provides an overdue analysis of this technology's significance in introducing deposition, priority of publication, and authorship as the key conceptual and functional mechanisms not only of taxonomic classification, but also of the ascendant system for prosecuting rights to ownership of biological novelties in the contemporary era: the Euro-American system of intellectual property law.

¶132: Copyrighting Culture for the Nation? Intangible Property Nationalism and the Regional Arts of Indonesia

¶133: This article analyzes how intangible cultural expressions are re-scripted as national intellectual and cultural property in postcolonial nations such as Indonesia. The mixing of intellectual and cultural property paradigms to frame folkloric art practices as national possessions, termed “intangible property nationalism,” is assessed through consideration of Indonesia's 2002 copyright law, UNESCO heritage discourse, and the tutoring of ASEAN officials to use intellectual and cultural property rhetoric to defend national cultural resources. The article considers how legal assumptions are rebuffed by Indonesian regional artists and artisans who do not view their local knowledge and practices as property subject to exclusive claims by individuals or corporate groups, including the state. Producers' limited claims on authority over cultural expressions such as music, drama, puppetry, mythology, dance, and textiles contrast with Indonesian officials' anxieties over cultural theft by foreigners, especially in Malaysia. The case suggests new nationalist uses for heritage claims in postcolonial states.

¶134: The Entextualization of Ayurveda as Intellectual Property

¶135: This article documents the practices of pharmaceutical creativity in Ayurveda, focusing in particular on how practitioners appropriate multiple sources to innovate medical knowledge. Drawing on research in linguistic anthropology on the social circulation of discourse—a process called entextualization—I describe how the ways in which Ayurveda practitioners innovate medical knowledge confounds the dichotomous logic of intellectual property (IP) rights discourse, which opposes traditional collective knowledge and modern individual innovation. While it is clear that these categories do not comprehend the complex nature of creativity in Ayurveda, I also use the concept of entextualization to describe how recent historical shifts in the circulation of discourse have caused a partial entailment of this opposition between the individual and the collectivity. Ultimately, I argue that the method exemplified in this article of tracking the social circulation of medical discourse highlights both the empirical complexity of so-called traditional creativity, and the politics of imposing the categories of IP rights discourse upon that creativity, situated as it often is, at the margins of the global economy.

¶136: Cultural Heritage on the Web: Applied Digital Visual Anthropology and Local Cultural Property Rights Discourse

¶137: The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage specifies that communities are to be full partners in efforts to safeguard their intangible cultural heritage. Yet the notion of safeguarding has been complicated by the politics and mechanisms of digital circulation. Based on fieldwork in British Columbia and Thailand, I show that community-based productions of multimedia aimed at documenting, transmitting, and revitalizing intangible heritage

are productive spaces in which local cultural property rights discourses are initiated and articulated. I argue that digital heritage initiatives can support decision making about the circulation—or restriction—of digital cultural heritage while drawing attention to the complexities of safeguarding heritage in the digital age.

¶138: SECTION 2: Strategies for Protecting and Sharing

¶139: Patents, Biopolitics, and Feminisms: Locating Patent Law Struggles over Breast Cancer Genes and the Hoodia Plant

¶140: This article suggests three critical inquiries for formulating a feminist analysis of patent law. The first questions how patent law functions as a strategy within neoliberal, biopolitics. The second examines how patent law is structured through biopolitical techniques of governance by examining two conceptions of the public domain I call open public domain and protective public domain. The third inquiry, drawing upon feminist science studies, asks how women's reproductive and intellectual labor are valued and devalued in various different ways through new patent law technologies. In addition, two recent patent law struggles are examined. These include an American Civil Liberties Union case against the patenting of breast cancer gene sequences and Southern African San struggles against patents related to the Hoodia gordonii plant. In conclusion, I argue that patent law functions within gendered and ethno-racialized forms of neoliberal, biopolitics involving the patenting of women's reproductive and intellectual labor within new bioeconomics.

¶141: Protecting Traditional Knowledge Holders' Interests and Preventing Misappropriation—Traditional Knowledge Commons and Biocultural Protocols: Necessary but Not Sufficient?

¶142: The experience of the indigenous communities regarding access and benefit sharing under the national regimes based on provisions of Convention on Biological Diversity and Bonn Guidelines has not been satisfactory. The communities expect that noncommercial values should be respected and misappropriation should be prevented. Some academics and civil society groups have suggested that traditional knowledge commons and biocultural protocols will be useful in ensuring that while noncommercial values are respected, access and benefit sharing takes place on conditions that are acceptable to the communities. This proposal is examined in this context in the larger context of access and benefit sharing under the Convention on Biological Diversity and implementing prior informed consent principles in access and benefit sharing. This article examines knowledge commons, provides examples from constructed commons in different sectors and situates traditional knowledge commons in the context of debates on commons and public domain. The major shortcomings of traditional commons and bicultural protocol are pointed out, and it is suggested that these are significant initiatives that can be combined with the Nagoya Protocol to fulfill the expectations of indigenous communities.

¶143: SECTION 3: The Intangible Property Cordon Outside of Intellectual Property Law

¶144: Reconstructing the “Cradle of Brazil”: The Detachability of Morality and the Nature of Cultural Labor in Salvador, Bahia's Pelourinho World Heritage Site

¶145: This essay examines theories of value and property in relation to conceptions of morality, correct comportment, and their influences on Afro-Bahians subject to late twentieth- and early twenty-first-century cultural heritage initiatives in the Pelourinho neighborhood of Salvador, Bahia, Brazil. This urban space is the nation's most expressive site for the performance of Afro-Brazilian identity and the commemoration of tradition. In analyzing the role of morality in Pelourinho-based cultural property-making, I focus on popular critiques of heritage discourse to argue that, in

conjuring a particular form of cultural heritage that bears a distinct resemblance to UNESCO's immaterial patrimony programs, the Bahian state has piggybacked on social scientific evaluations of local people's moral comportments in order to put together an archive of everyday life that exists as a standing reserve for histories of Brazil and the marketing of cultural heritage. This data produced in an effort to regulate the historical center has revolved around the state's evaluation of the moral probity and everyday habits of the Pelourinho's overwhelmingly Afro-Brazilian populace. The result is a conceptualization of cultural labor that emanates not from the capacities and struggles of producers, but from a decentered or distributed view of production, which I tie to the existence of this archive. Consumers, or visitors to the historical center, as well as historical archives thus play a critical role in this form of constructing property and understanding the sources and fungibility of labor in a global economy for multicultural difference that depends on an emphasis on futurity and market reflexivity.

¶146: Recycling Texts or Stealing Time?: Plagiarism, Authorship, and Credit in Science

¶147: Scientific plagiarism is as sui generis as the author function in science. A study of the specificity of scientific plagiarism and the ways in which it diverges from appropriation in other disciplines allows us to question traditional definitions that focus on the copying of published copyrighted materials. The form of plagiarism that is most damaging to scientists does not involve publications, is largely outside the scope of copyright law, and is unlikely to be detected by textual-similarity algorithms. The same features that make this kind of plagiarism difficult to identify and control also provide a powerful window on the unique construction of authorial credit in science, the problems of peer review, and the limitations of plagiarism surveillance technologies.

¶148: ISSUE 4

¶149: Model Provisions on State Ownership of Undiscovered Cultural Objects Explanatory Report with model provisions and explanatory guidelines: Expert Committee on State Ownership of Cultural Heritage, UNESCO-UNIDROIT

¶150: This document contains model legislative provisions (the "Model Provisions") established by a group of experts convened by the UNESCO and Unidroit Secretariats which are intended to assist domestic legislative bodies in the establishment of a legislative framework for heritage protection, to adopt effective legislation for the establishment and recognition of the State's ownership of undiscovered cultural objects with a view, inter alia, to facilitating restitution in case of unlawful removal. They are followed by guidelines aimed at better understanding the provisions.

¶151: MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE HELLENIC REPUBLIC CONCERNING THE IMPOSITION OF IMPORT RESTRICTIONS ON CATEGORIES OF ARCHAEOLOGICAL AND BYZANTINE ECCLESIASTICAL ETHNOLOGICAL MATERIAL THROUGH THE 15TH CENTURY A.D. OF THE HELLENIC REPUBLIC

¶152: Agreement between the Federal Council of the Swiss Confederation and the Government of the Hellenic Republic on the import, transit and repatriation of cultural property: Concluded on May 15, 2007, Entered into force on April 13, 2011

¶153: The Swiss Federal Council and the Government of the Hellenic Republic (hereinafter 'the Parties') in application of the November 14, 1970 UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, to which both countries are a party, and in pursuit of relevant applicable provisions at the Parties, in consideration that theft, looting and the illicit import, export and transfer of ownership of cultural property

representing harm to the cultural heritage of mankind, endeavoring to make a contribution to maintain and secure cultural heritage and to prohibit and prevent the illegal transfer of cultural property, in the belief that cooperation between both countries may constitute an important contribution in this regard, endeavoring to ease the repatriation of illicitly imported, exported and having its ownership illegally transferred cultural property and to strengthen contacts between both countries with regard to cultural exchanges, have agreed as follows.

¶154: REPUBLIC OF MOLDOVA, THE PARLIAMENT, LAW No. 218 from 17.09.2010: ON THE PRESERVATION OF THE ARCHEOLOGICAL HERITAGE

¶155: The archaeological heritage is an essential element which defines the oldness and originality of culture, history and traditions of every nation, state or cultural space in relation to other nations, states or ethno-cultural spaces. Every nation has the obligation to preserve its cultural goods and to valorize it for the benefit of the entire humanity.

¶156: A New Law—A New Perspective for Archaeological Heritage Preservation in the Republic of Moldova

¶157: This article provides one of the first presentations of the Law of the Republic of Moldova on Archaeological Heritage Preservation recently approved by the Moldovan Parliament. Since 1993, Moldova has had a general law on monument preservation, but the part on archaeological heritage was poorly developed. The new law is the first of its kind in Moldova and was established according to the principles of the European and International Conventions signed in recent years by the Republic of Moldova. This law opens new avenues for Moldovan society to improve the situation in of its archaeological heritage, specifically to fight the black market in archaeology and illegal trafficking of antiquities.

¶158: ICOMOS Thailand International Conference: Asian Urban Heritage Phuket, Thailand 15–17 October 2011

¶159: An international conference on “Asian Urban Heritage,” organized by the International Council on Monuments and Sites (ICOMOS) Thailand Association, took place in the city of Phuket 15–17 October, 2011. The conference was organized and hosted in collaboration with Phuket Province, Phuket Municipality, the Thai Perankan Association, Phuket Old Town Community, Old Phuket Town Foundation, Department of Architecture–Chulalongkorn University and the Department of Architecture–Thammasat University. The conference invited papers on five subthemes: Heritage Management, Legal Protection and Incentives, Historic Urban Landscapes, Climate Change and Disaster Prevention, and Industrial Heritage.

¶160: 17th ICOMOS General Assembly, Paris, France: 27 November to 2 December 2011

¶161: The 17th General Assembly of the International Council on Monuments and Sites (ICOMOS) took place at the UNESCO Headquarters, Paris (France), from 27 November to 2 December 2011, under the high patronage of Irina Bokova, Director General of UNESCO, and Nicolas Sarkozy, President of the French Republic. The events included meetings of the Advisory and Executive Committees, the Scientific Council, International Scientific Committees (ISCs); the Scientific Symposium; and the General Assembly. According to the ICOMOS official report, this conference had a record attendance of 1200 registered participants, representing 106 countries and 77 National Committees. The generous grants offered to National Committees through the ICOMOS Victoria Falls Fund and the Getty Foundation made it possible for 63 professionals from 47 countries to attend the event.

¶162: Heritage Inc.: A Mini-Symposium on Heritage Protection and Private Actors. Held at the Faculty of Law, University of British Columbia, Vancouver, Canada, 16 March 2012

¶163: In response to the emerging phenomenon of the role of nonstate actors in heritage protection and preservation, a one-day symposium took place on 16 March 2012 in the new Allard Hall building of the Faculty of Law at the University of British Columbia in Vancouver, Canada. The conference was officially opened by Dean of Law, Professor Mary Anne Bobinski and received financial support from the University of British Columbia, Faculty of Law Conference Fund; the Pacific Northwest Canadian Studies Consortium; and Golder Associates Ltd. The conference brought together seven experts from both academia and practice to discuss contemporary practices and emerging legal and sociological trends in heritage protection by private actors.

¶164: Expert Meeting on the 20th Anniversary of UNESCO's Memory of the World Programme: Warsaw, Poland, 8–10 May 2012

¶165: The meeting of experts in Warsaw is one of the activities marking the 20th anniversary of the Memory of the World (MoW) program. The events started on 1 April and were held throughout 2012, including a MoW Exhibition at the UNESCO headquarters that focused on items that are listed on MoW Register (national, regional, and international) and an international conference held 26–28 September 2012 in Vancouver, Canada, on Memory of the World in the Digital Age: Digitization and Preservation. The challenges and solutions relating to the impact of the technological advances for the preservation and accessibility of the documentary heritage have occupied the attention of UNESCO for some time, culminating in the adoption of the Charter on the Preservation of the Digital Heritage by the 32nd session of the General Conference of UNESCO on 17 October 2003.

¶166: The International Law of Culture: Prospects and Challenges: 23–25 May 2012, University of Göttingen, Germany

¶167: The international law of culture is a broad field, which certainly goes beyond the United Nations Educational, Social and Cultural Organization (UNESCO), as the international organization entrusted with, among other things, cultural affairs. Indeed, if one considers the far-reaching definition of culture, then a vast number of institutions, rules of hard and soft law, and initiatives of different scope and shape exist, and new ones come into being. This institutional complexity and the ensuing rule fragmentation are indicative of multiple scenes of contestation, denoted by different actors, politics, dynamics, and often strong path dependencies, which make meaningful communication between them and a solution-oriented forward thinking difficult. In scholarship, too, there appears to be increasing specialization, which carves out topics and subtopics, such as the UNESCO versus the World Trade Organization (WTO) clash, cultural heritage preservation, or indigenous peoples' rights. This may, despite the deeper knowledge won, hinder pinpointing appropriate regulatory responses at the international level, which could address cultural rights comprehensively.

¶168: First Special Meeting of the States Parties to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects: Paris, 19 June 2012

¶169: Fourteen years after the 1995 UNIDROIT Convention came into force, the first special meeting as envisaged under Article 20 of the Convention was held at the UNESCO headquarters in Paris on 19 June 2012. Article 20 provides that “The President of the International Institute for the Unification of Private Law (UNIDROIT) may at regular intervals, or at any time at the request of five Contracting states, convene a special committee in order to review the practical operation of this Convention.” Appropriately, the first special committee meeting took place at UNESCO's head office, preceding by a day the second meeting of States Parties to the 1970 UNESCO Convention on the Means of

Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership Cultural Property, which convened in Paris on 20–21 June 2012. The UNIDROIT Convention was initiated at the request of UNESCO to fill the gap in the 1970 Convention relating to the private law aspects of the return and restitution of stolen or illegally exported cultural property.

¶170: Second Meeting of the States Parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: Paris, 20–21 June 2012

¶171: The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted in Paris on 14 November 1970. It came into force on 24 April 1972. It took over 30 years for the first Meeting of States Parties to the Convention to take place on 15 October 2003. The second meeting, the subject of this report, took place after a shorter period of about nine years, on 20–21 June 2012. A Meeting of States Parties to a treaty is primarily a forum to discuss and agree on measures that can be taken to improve its effectiveness and the realization of the aims and objectives of the instrument. Accordingly, the meeting was tasked with examining in depth the impact of the measures taken by States Parties to the Convention in order to optimize its implementation, and also to consider and approve whatever efficacious measures should be taken for its best functioning.

¶172: Chronicles

¶173: 1 January 2011–31 December 2011

¶174: In Russia a new statute entered into force according to which all confiscated objects of the Orthodox Church should be given back to the former owner.

Name: IJCP 2013 abstracts

¶1: IJCP 2013 abstracts

¶2: ISSUE 1

¶3: Legal Pluralism in the Pacific: Solomon Island's World War II Heritage

¶4: The country of Solomon Islands, like most Pacific island nations, has a legally pluralistic regime. That is, customary law operates in parallel with the common law, a legacy of Solomon Islands' colonial past. Legal pluralism raises significant difficulties, including in the way cultural heritage is protected and managed. To date, the courts have rarely been called on to deal with such issues, but in 2010 the High Court had to examine legislation designed to regulate the recovery and export of World War II relics. This seemingly innocuous case raised a number of issues concerning the rights of different stakeholders to this material. Moreover, it raised a foundational question as to whether these relics might be considered cultural heritage, and if so, just whose heritage it was. A consideration of this case and the legislation that applies to this heritage serves to illustrate some of the difficulties that arise in protecting cultural heritage within pluralistic legal systems.

¶5: A Grave Situation: An Examination of the Legal Issues Raised by the Life and Death of Charles Byrne, the "Irish Giant"

¶6: Charles Byrne was an eighteenth-century celebrity "Irish giant" who requested burial upon nearing death, but whose corpse was procured against his wishes by the surgeon John Hunter. Hunter reduced Byrne's corpse to its skeleton and exhibited it as the centerpiece of his vast anatomical collection. It has since remained on display in the Hunterian Museum, London. In 2011 it was announced that research conducted on the skeleton's DNA has revealed that several Northern Irish families share a common ancestry with Byrne. This article considers the legal issues raised by Byrne's story. The results of fieldwork undertaken by the author in Byrne's native townland are also discussed, where folk tradition suggests that Byrne wished to be buried foremost at a local site remembered today as "the Giant's Grave."

¶7: Modern Antiquities: The Looted and the Faked

¶8: This article discusses some of the issues regarding the acquisition of art and the different philosophical views of some of the main protagonists regarding the reclaiming of art by nation-states, following American museums' acceptance of the 1970 UNESCO Convention, using examples from the Getty Museum and the Metropolitan Museum of Art. The mediation of Native American Graves Protection and Repatriation Act (NAGPRA) claims by conservators is often an important component of the dialogue between museums and native communities. The philosophical and art-historical opinions regarding the value of copies and reproductions of works of art have oscillated from promulgation in the 1860s to outright rejection by the 1920s. In a modernist sense, points of view are once again open to reevaluation as host nations demand back more originals than ever before. Arguments against the claims of nationalist-retentionist countries and those advanced in favor of the claims of nation-states regarding the repatriation of their art are discussed. The problems created by looted art in association with the ever-increasing number of fakes is highlighted, with examples of the issues surrounding pre-Columbian art and some classical antiquities. The utility of copies in relation to the protective value of the authentic piece is discussed in the context of museum examples in which the concept of the utilization of copies for museum display has been accepted in certain cases as desirable.

¶19: Digitizing Pacific Cultural Collections: The Australian Experience

¶10: In the absence of specific policies that address the digitization of Pacific cultural collections, it is important to document the practices of Australian museum professionals and cultural experts who deal with close to one-fifth of Pacific cultural objects held in museums. Interviews with 17 museum professionals and cultural experts in Australia help advance reflective practice relating to digitizing Pacific collections. Drawing on principles enshrined in international, regional, and Australian policies and protocols relating to the management of indigenous collections, they favor responsible digitization based on consultation with source and diasporic communities. In order to consult across a region with multiple languages and cultures when time and resources are limited, they begin with areas they know best and when possible, work with curators of Pacific backgrounds. Some practicalities of publishing and protecting digitized images online revolve around validating information about the artifact and going beyond copyright to respect traditional knowledge.

¶11: ISSUE 2

¶12: The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage

¶13: The illicit antiquities trade is composed of a diverse population of participants that gives the appearance of complexity; however, using the network paradigm, a simple underlying structure is revealed based on specific geographical, economic, political, and cultural rules. This article uses a wide range of source material to chart interactions from source to market using a criminal network approach. Interchangeable participants are connected through single interactions to form loosely based networks. These flexible network structures explain the variability observed within the trade, as well as provide the basis behind ongoing debates about the roles of organized crime, terrorism, and the Internet in antiquities trafficking. Finally, a network understanding of trade's organization allows for anticipation, though not necessarily prediction, of antiquities trafficking and offers the opportunity to develop new strategies for combating the trade.

¶14: UNESCO and the Fate of the World Heritage Indigenous Peoples Council of Experts (WHIPCOE)

¶15: In December 2000, a World Indigenous Peoples Forum was held in conjunction with the 24th session of UNESCO's World Heritage Committee in Cairns, Australia. Representatives from Australia, Canada, and New Zealand harnessed the momentum of these events and their location to propose the formation of a new committee, the World Heritage Indigenous Peoples Council of Experts (WHIPCOE). The initiative was taken in response to concerns voiced by indigenous peoples to their lack of involvement in the development and implementation of laws, policies, and plans for the protection of their knowledge, traditions, and cultural values, which apply to their ancestral lands, within or comprising sites now designated as World Heritage properties. This article traces the fate of that proposal and underlines the intransigence of sovereign states during those short-lived discussions. It goes on to suggest alternate routes for indigenous representation and recognition within the World Heritage system.

¶16: Rescue or Return: The Fate of the Iraqi Jewish Archive

¶17: Shortly following the 2003 invasion of Iraq, an American mobile exploitation team was diverted from its mission in hunting for weapons for mass destruction to search for an ancient Talmud in the basement of Saddam Hussein's secret police (Mukhabarat) headquarters in Baghdad. Instead of finding the ancient holy book, the soldiers rescued from the basement flooded with several feet of fetid water an invaluable archive of disparate individual and communal documents and books

relating to one of the most ancient Jewish communities in the world. The seizure of Jewish cultural materials by the Mukhabarat recalled similar looting by the Nazis during World War II. The materials were spirited out of Iraq to the United States with a vague assurance of their return after being restored. Several years after their arrival in the United States for conservation, the Iraqi Jewish archive has become contested cultural property between Jewish groups and the Iraqi Jewish diaspora on the one hand and Iraqi cultural officials on the other. This article argues that the archive comprises the cultural property and heritage of the Iraqi Jewish diaspora.

¶118: Survival, Revival and Continuance: The Menglian Weaving Revival Project

¶119: Recent efforts to ensure the survival of cultural diversity in a globalized world have led to efforts to preserve, revitalize, and continue craft traditions in marginal communities. This article records an effort to support the distinctive Dai culture in the province of Yunnan, China, by first establishing an archive of documents, photographs, and oral records of the traditions of a Dai community in the county of Menglian and following that by reviving and expanding the traditional weaving carried out by Dai women. It shows the complexity of this kind of activity, the need to encourage younger members of the community to learn the distinctive techniques of weaving and to develop a niche market for its products. Group crafts and traditions have often developed and varied over centuries; further adaptations may be needed to restore viability. Reinstatement of quality improved its value by adopting wider looms, better dyeing techniques, higher quality thread, and by encouraging new creative efforts in the development of the final product, thus providing better economic returns to the weavers and the community in general. In providing an exemplary process for isolated and dispirited communities to improve their economic circumstances and reinvigorate their ethnic traditions, it demonstrates the significant contribution that nongovernmental organizations can make to this kind of work.

¶120: Reevaluating Art Crime's Famous Figures

¶121: This article seeks to demonstrate that the figures used to describe the size and scope of cultural property crimes—that it is a \$6 billion illicit industry and that it ranks among the third or fourth largest criminal enterprise annually—are without statistical merit. It underscores the ambiguities inherent in the figures and uses the 2003 theft of the Duke of Buccleuch's painting by Leonardo da Vinci, *Madonna of the Yarnwinder*, to illustrate the difficulties related to establishing monetary estimates for cultural property crimes. It calls for a more empirical approach to measuring the magnitude of the problem on the part of cultural property crime experts. Finally, it examines the reporting methods of the world's largest cultural property crimes law enforcement agency, the *Comando Carabinieri per la Tutela del Patrimonio Culturale*, in order to provide a model for others to follow in the effort to communicate the severity of the problem and to increase its financial, social, and political support.

¶122: ISSUE 3

¶123: The Coherence of the Concept of Cultural Property: A Critical Examination

¶124: This article asks a simple question: Is cultural property a coherent concept? It answers this question through a critical examination of the concepts of cultural and property that builds on the work of Alan Audi. The article examines concepts of property and culture as they have developed separately in political theory. It suggests that arguments about cultural property are shaped by the discursive structure of the public/private divide. On this basis, the structure of cultural property arguments are critically examined. Then conclusions are drawn about the role of the public/private

divide in structuring the tension between culture and property. It is concluded that this tension that defines the concept of cultural property.

¶125: A Presence of the Past: The Legal Protection of Singapore's Archaeological Heritage

¶126: Singapore is not well known for its archaeological heritage. In fact, chance finds in the early twentieth century and systematic archaeological excavations since the 1980s conducted at sites around the Singapore River have unearthed artifacts shedding light on the island's early history. In addition, the value of archaeology for a deeper knowledge of Singapore's British colonial past is increasingly being recognized. Nonetheless, Singapore law provides only a rudimentary framework to facilitate archaeological investigations and protect cultural artifacts. This article considers how the National Heritage Board Act (Cap. 196A, 1994 Rev. Ed.), the Planning Act (Cap. 232, 1998 Rev. Ed.), and the recent Preservation of Monuments Board Act 2009 (No. 16 of 2009, now Cap. 239, 2011 Rev. Ed.) may be strengthened in this regard.

¶127: Colonial Heritage in Paramaribo, Suriname: Legislation and Senses of Ownership, a Dilemma in Preservation?

¶128: In this article, the preservation of the monumental built environment from the colonial period is related to and discussed within the perspective of heritage ownership. It contributes to a debate in which heritage resource preservation is approached and connected to several heritage ownership issues. It argues that an effective built environmental preservation policy for colonial heritage is strongly related to and dependent on issues such as legal property ownership, legislation on listed buildings, enforcement of such legislation, and the willingness among different categories of potential owners to participate and support such preservation. Especially, when it comes to built colonial heritage as an imported alien resource from a colonial past, these issues are particularly interesting and sensitive. A good illustration of these issues is the case of Paramaribo, Suriname. The national government policy following the inscription of the historic inner city of Paramaribo on the World Heritage List of UNESCO in 2002 clearly demonstrates an area of tension and difficulty between and within the interested parties. It shows that monumental preservation and heritage management and interpretation are strongly affected and determined by concepts such as ownership, affinity, interest, economic priorities, and political will. By referring to the actual problems encountered in the preservation efforts relating to the built colonial heritage in Paramaribo and subsequently explaining these problems in relation to specific ownership issues, this article throws light on a number of dilemmas. Conclusions are drawn widening the argument and contributing to the ongoing debate on heritage ownership issues and monument preservation policies especially as it relates to the global issue of managing the relics of now defunct empires.

¶129: In recent years an increasing interest can be detected in issues concerning the legal property ownership of heritage. This growth in interest focuses in particular on the legislation in relationship to property ownership issues. An important aim of national governments is to use legislation to safeguard their cultural property by embedding it in law, especially, when this cultural property has a high monetary or identity value (as stressed by Fechner, 1998). Additionally, the growing awareness and recognition of heritage as a valuable economic, sociopsychological and environmental asset is receiving increasing international attention. For example, the international acknowledgment that heritage resources are under pressure from all kinds of processes and impacts has encouraged the need for an extension of international legal measures. Consequently, this international interest, often expressed in conventions, charters, and treaties, encourages national and local initiatives (Techera, 2011). An interesting complication to this issue is the question that arises where it involves the monumental built environment from the colonial period that is being

preserved and restored, as it may be viewed as a heritage based on alien resources. In particular the acceptance, recognition, and role of what may be viewed as an imported colonial built environment in a multicultural and multiethnic context, may impact effective legislation. Although the discussion about the roles of heritage within a plural cultural and ethnic society has already begun (recently emphasized by Van Maanen, 2011; Ashworth, Graham, & Tunbridge, 2007), it is still an underresearched topic when it comes to legal property ownership as part of a management strategy for preserving built colonial heritage resources.

¶130: This article examines in particular the effectiveness of policies and laws pursued in Suriname as an instrument for the preservation of resources. It highlights the legal and administrative challenges facing the implementation, management, and enforcement of these strategies and measures. The first part of this article examines the debate about the approach and strategy in using law in conservation and preservation policies. Then the article proceeds to introduce Suriname as an instructive case study. It describes the existing multiethnic context of Suriname and the evolution of legislative policy for the historic inner city of the capital, Paramaribo, with its monumental built environment from the colonial period. By using field data, the article continues with an analysis of the effectiveness and impacts of this administrative and legal framework established in Suriname. It examines in detail the main problems encountered and the extent to which this strategy is supported by the key stakeholders.

¶131: Ko Aotearoa Tenei: Law and Policy Affecting Maori Culture and Identity

¶132: In July 2011 what is commonly known as the Wai 262 Report was released. After a protracted series of hearings, dating back to 1997, the New Zealand Waitangi Tribunal has at last reported on the some of the wide range of issues canvassed in those hearings. Three beautifully illustrated volumes contain a large number of recommendations in what is described as a whole-of-government report. This article notes earlier comments on Wai 262 in this journal and reframes what is often known as the 'Maori renaissance' from which this claim emerged in 1991. The Tribunal decided not to discuss historical aspects of the evidence presented, except for the Tohunga Suppression Act 1907, as this was not 'an orthodox territorial claim' allowing the Crown to negotiate with iwi for a Treaty Settlement. Of great significance for this readership, the Tribunal staunchly refused to entertain any discussion of 'ownership' claims to Maori cultural property. Rather, the Tribunal focussed on 'perfecting the Treaty partnership' between the two founding peoples of Aotearoa New Zealand. Its report is concerned with the future and with the Treaty of Waitangi when the nation has moved beyond the grievance mode that has dominated the last quarter century. The partnership principles are pragmatic and flexible. Very seldom indeed can Maori expect to regain full authority over their treasured properties and resources. The eight major topics of the chapters on intellectual property, genetic and biological resources, the environment, the conservation estate, the Maori language, Maori knowledge systems, Maori medicines and international instruments are briefly summarised. The author is critical of this Tribunal panel's timidity in refusing to make strong findings of Treaty breach as the basis for practical recommendations—the approach usually adopted in previous Tribunal reports on contemporary issues. The article then notes that the Wai 262 report featured significantly in 2012 hearings on Maori claims to proprietary rights in freshwater resources. It featured not to assist the freshwater claimants, however, but as a shield wielded by the Crown to try to deny Maori any remedy. The low bar of partnership consultations encouraged by the Wai 262 report was congenial for Crown counsel seeking to undermine Maori claims to customary rights akin to 'ownership' of water. The 2012 Tribunal panel, under a new Chief Judge, restrictively distinguished the Wai 262 report and found in favour of Maori rights to water. In conclusion, the article notes the irony of a government following neo-liberal policies in pursuing a privatisation

strategy and yet relying on ‘commons’ rhetoric to deny Maori any enforceable rights to water; and of indigenous people arguing for ownership property rights to frustrate that government's policies.

¶133: Recognizing Collective Cultural Property Rights in a Deceased—Clarke v. Takamore

¶134: The recent New Zealand Supreme Court decision in Clarke v Takamore raises issues about how Maori society views deceased tribal members as belonging to the extended family and tribal group collective. This conflicts with English common law understandings that a closer, legally protected individual relationship exists with an executor, if the decedent has left a will, or with a spouse, if there is no will. This note examines the conflict and suggests a solution that would be fairer to Maori than that unanimously reached by three of New Zealand's general courts.

¶135: Cultural Heritage and Development in the Arab World.

¶136: State Immunity and Cultural Objects on Loan.

¶137: ISSUE 4

¶138: The UNESCO Convention on Cultural Diversity: An Appraisal Five Years after Its Entry into Force

¶139: The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was agreed upon with an overwhelming majority and after the swiftest ratification process in the history of the UNESCO entered into force on 18 March 2007. Now, five years later and with some 130 Members committed to implementing the convention, not only observers with a particular interest in the topic but also the broader public may be eager to know what has happened and in how far has the implementation progress advanced. This is the question that animates this article. It seeks to answer it by giving a brief background to the UNESCO Convention, clarifying its legal status and impact, as well as by looking at the current implementation activities in domestic and international contexts. The article sets this analysis in the frame of international regime complexity insights.

¶140: How Participatory is Participatory Heritage Management? The Politics of Safeguarding the Alevi Semah Ritual as Intangible Heritage

¶141: This article addresses the shortcomings of UNESCO's intangible heritage program in developing effective mechanisms for community participation in heritage management. Contrary to its original intentions, by prioritizing national perspectives and interests on heritage, UNESCO's program inadvertently allows for strengthening the control of the state over the heritage of minorities and other marginalized groups. This article explores the complexities of state-led intangible heritage management, using the Semah ritual of Turkey's Alevi religious groups as a case in point. I first detail how Alevi voices were silenced during Semah's intangible heritage nomination process, despite those documents submitted by Turkey to UNESCO that claim Alevis' active engagement and full support. Then I discuss in what ways the heritage making of Semah plays into the ongoing efforts of the Turkish government to integrate Alevis into dominant Sunni majority. I conclude by arguing that UNESCO's intangible heritage program, though unintentionally, assists nondemocratic countries in their efforts to force marginalized groups to adopt the mainstream culture.

¶142: International Cultural Heritage Regimes, International Law, and the Politics of Expertise

¶143: The article examines the problematic politics of expertise in the formation of international legal rules in the field of heritage, looking specifically at international conventions made under the auspices of UNESCO. The article shows that, even within this seemingly small and cohesive universe, there is a lot of room for disagreement, and much of it can be traced back to what Laurajane Smith has called “the Authorized Heritage Discourse” (AHD). The AHD is responsible for the

dichotomization of heritage between intangible and tangible, as heritage professionals strive to hold on to and expand their self-created professional legitimacy and importance. Heritage professionals, in striving to maintain their relevance, tend to create self-referential regimes that exclude heritage holders and communities. I argue that lawyers, because of their own professional tendencies, might be in a position to offer a counterpoint to rule by experts in international cultural heritage management.

¶144: The Politics of Preservation: Privileging One Heritage over Another

¶145: Heritage preservation is distinctly political, often presenting a privileged elitist interpretation of historic sites, while denigrating or even destroying later significant built environments. Structures that are the emanation of subsequent cultures, but similarly tied to the place, are often undervalued, underinterpreted, and even purposely obliterated from the landscape. This article considers the politics of heritage related to privileging one type of historic structure to the complete detriment of the other. The example of Gurna, in Egypt, serves as a powerful case study for the loss of a living historic built environment solely for the simplified or “flattened” interpretation of a place. In highlighting the preferential protection and presentation of the World Heritage Site of the Theban Necropolis and ultimate demise of the historic hamlets of Gurna, the article builds on previous work in the field on interpretation, the impact of tourism, and the conflicting identities of historic sites.

¶146: About Sacred Cultural Property: The Hopi Masks Case

¶147: Beyond the Equator (Principles): A Forum on Community Benefit Sharing in Relation to Major Land Alteration Projects and Associated Intellectual Property Issues in Cultural Heritage Held at the Meeting of the Society for American Archaeology, Honolulu, 5 April 2013

¶148: UNESCO-BREDA Workshop on Capacity-Building and Awareness-Raising on the Fight against Illicit Trafficking of Cultural Property in West Africa: Dakar, Senegal, 17–19 September 2012

¶149: Extraordinary Meeting of States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: Paris, UNESCO Headquarters, 1 July 2013

¶150: First Session of the Subsidiary Committee of the Meeting of States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: Paris, UNESCO Headquarters, 2 and 3 July 2013

Name: IJCP 2014 abstracts

¶1: IJCP 2014 abstracts

¶2: ISSUE 1

¶3: Pondering Dysfunctions in Heritage Protection: Lessons from the Theft of the Codex Calixtinus

¶4: The Codex Calixtinus, the 12th-century manuscript at the heart of Spain's Camino de Santiago, was stolen, hidden for a year, and then found in a trash can wrapped in newsprint and plastic. The extraordinary theft highlights some dysfunctions in cultural heritage thought and practice. Explored here are questions about exemplars and copies, ambiguities in heritage protection law, problems of proprietorship and commercialization of heritage goods, and administrative negligence in the management of heritage assets. The focus is on Spain, but the questions have broad relevance. This article concludes that one way to better protect movable heritage assets like the codex is to recognize them as part of a broad heritage landscape in which their loss or mismanagement means damage to an entire ecosystem of culture and history.

¶5: Legislative and Administrative Implementation of 1970 UNESCO Convention by African States: The Failure to Grasp the Nettle

¶6: Managing Urban Archaeological Heritage: Latin American Case Studies

¶7: This article focuses on the idea that archaeology aids the revaluation of cultural properties within historical centers. At the same time, it holds that the application of the Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972 should imply the development of best management practices at inscribed sites. The handling of archaeological heritage in three Latin American cities is presented and discussed in this study, through the theoretical assumptions of preventive archaeology for the management of archaeological properties. It examines the different social contexts of World Heritage in these areas and concludes that the traditional vision of World Heritage impedes other historical readings of the past in these places. This conclusion is reached through a proactive vision defending the use of these UNESCO World Heritage Sites to improve management models with high public participation, the use of which should also be considered in the European community. There is, finally, a reminder of the desired objective: the improvement of archaeological management and, consequently, of urban historical discourses, whose outcomes enrich the lives of citizens.

¶8: Ardelia Hall: From Museum of Fine Arts to Monuments Woman

¶9: Ardelia Ripley Hall (1899–1979) served from 1946 until 1962 as the Fine Arts and Monuments Adviser to the U.S. Department of State. In this role she oversaw the recovery and restitution of movable cultural property that had been displaced during the Second World War. In spite of her vast accomplishments, almost nothing has been written on Ardelia Hall, and little is known about her life. She began her career at the Museum of Fine Arts, Boston, but personal circumstances led to her resignation in 1941. During the war, she was employed by the Office of Strategic Services. The expertise she established as an art historian working with the Roberts Commission at this time led to her appointment at the State Department in 1946. This essay traces for the first time Hall's remarkable journey from curatorial researcher to adviser on international art restitution.

¶10: Heritage under Siege. Military Implementation of Cultural Property Protection Following the 1954 Hague Convention. Volume 1 of Heritage and Identity: Issues in Cultural Heritage Protection.

¶11: The Old Bridge of Mostar and Increasing Respect for Cultural Property in Armed Conflict. Volume 40 of the International Humanitarian Law Series.

¶12: ISSUE 2

¶13: Redressing Historic Wrongs, Returning Objects to Their Rightful Owners or Laundering Tainted Objects? 21st-Century UK Remedies for Nazi-Era Injustices

¶14: The United Kingdom's Spoliation Advisory Panel hears claims for cultural objects held in museum collections of which their original owners lost possession during the Nazi era. The Panel aims to achieve "fair and just" solutions for the parties and was created in response to the strong impetus to return cultural objects lost by Jewish owners during the Nazi era. This article argues that understanding the rationale for this claims process and the choice of remedies is essential for achieving such just and fair solutions, specifically whether the Panel aims to redress the past injustices of Hitler's tyranny, return objects to their "rightful owners," or prevent the public's unjust enrichment from access to objects "tainted" by their Nazi association. If it aims to return cultural objects to their rightful owners or to strip museums of unjust gains, it is only a small step to allowing moral claims by other claimant groups whose cultural objects reside in national museums.

¶15: Immunity from Seizure and Suit in Australia: The Protection of Cultural Objects on Loan Act 2013

¶16: Australia has, like many other states over the past few years, introduced a statute that provides immunity from seizure for cultural objects on loan from abroad and immunity from suit for certain parties. This article explores the historical context that led to the adoption of this statute and comprehensively explores the legislative regime, highlighting its peculiarities.

¶17: The Osun-Osogbo Grove as a Social Common and an Uncommon Ground: An Analysis of Patrimonial Patronage in Postcolonial Nigeria

¶18: Whose World Heritage? Dresden's Waldschlößchen Bridge and UNESCO's Delisting of the Dresden Elbe Valley

¶19: This article examines the events leading up to, surrounding, and following UNESCO's controversial removal of Germany's Dresden Elbe Valley from the World Heritage List in 2009. At the heart of the controversy lay the construction of a new four-lane bridge, the Waldschlößchen Bridge, that would cut through scenic meadows, destroying long-protected vistas and changing the city's cultural landscape. Although supported by German court decisions and local public opinion polls, the bridge has been denounced by many as an eyesore and an affront to the ideals of World Heritage. Yet despite the bridge, Dresden supposedly maintains World Heritage worthiness, even if it no longer enjoys that title. The author attempts to make sense of these contradictions in order to discover lessons applicable to the World Heritage program as a whole.

¶20: Underwater Cultural Heritage and International Law.

¶21: THIRD DISCUSSION WORKSHOP ON THE RETURN OF HUMAN REMAINS OF ARCHAEOLOGICAL AND BIOANTHROPOLOGICAL INTEREST: 13 and 14 June 2013, Olavarría, Argentina

¶22: ISSUE 3

¶23: SPECIAL ISSUE: Thinking About Cultural Property: The Legal and Public Policy Legacies of John Henry Merryman

¶24: A Universalist: Fathering Fields

¶125: I have been asked to write personally of John [Merryman]. Not of him as scholar, educator, author, nor even as father of the fields of art and cultural property law, but as the person who did these things, and more. To present an inclusive, all-embracing picture of John, the universalist, both in himself and what he has done.

¶126: First, I owe my interest, career, and whatever contributions I have made as lawyer, teacher, and writer on art and cultural property law to John. Nearly 30 years ago, as a corporate litigator and neophyte collector interested in the connection between art and law, I read *Law Ethics and the Visual Arts*. In chapters entitled “Plunder, Destruction, and Reparation” and “An Artist’s Life,” I was taken by its commitment to culture, its questions—such as, Can art be more valuable than a life?—and its overarching ethical yet concrete approach to them. I became a fledgling in the fields of art and cultural property law. A few years later I met John at a conference in Amsterdam. He became a mentor, model, and friend.

¶127: Remarks in Honor of the Legal and Public Policy Legacies of John Henry Merryman: Cultural Property and Human Cells

¶128: It is an honor to be invited to speak at this symposium, both for the kind invitation to address this society, and for the opportunity to honor an esteemed scholar from my alma mater, Stanford.

¶129: I come to this symposium, not as an expert in cultural property, but as an inhabitant of the field of biotechnology and intellectual property law. Although the view from a distance can provide different perspectives, it lacks the layers of understanding and meaning that are accumulated by those who are steeped in the field. I cannot possibly hope to offer solutions to issues with which many brilliant minds have spent a lifetime grappling. Thus, I temper my comments with the caution appropriate for the exercise. What I can do is offer comparisons from the treatment of human cells, as well as observations I have suggested in that context.

¶130: Thinking about Antiquities: Museums and Internationalism

¶131: John Henry Merryman’s seminal writings established the twin poles of nationalism and internationalism, which have framed debates over cultural patrimony for three decades. He has long advocated a cosmopolitan ideal of sharing the world’s artistic heritage as the best course for preservation, knowledge, and public access. Although the tensions between national ownership and universal circulation frequently put countries and museums at odds, above all when it comes to ancient art and archaeological objects, a middle ground has been found that can bridge the gap. This article reviews several recent MOUs that U.S. museums and cultural ministries in Italy, Greece, and Turkey have established for exhibition loans and research collaborations. The J. Paul Getty Museum’s experiences in implementing four international cultural agreements illuminate how sharing works in practice, and the benefits (and costs) of an object-oriented approach to cultural diplomacy.

¶132: Immovable Cultural Heritage at Risk: Past – Present – Future

¶133: Immovable cultural heritage is still at risk of being neglected by the state responsible for heritage sites, by urban planning of big cities, and by armed conflicts around the world. Normally, because it is immovable, the international community cannot do very much. It can ban the trade of items that became movable property when detached from buildings or illegally excavated in certain protected sites. In other cases, it is the responsibility of the national state to care for cultural heritage and cultural objects. International conventions may furnish help and advice and provide for monitoring any risk to the cultural heritage of state parties.

¶134: Cultural Property, the Palermo Convention, and Transnational Organized Crime

¶135: The international community is concerned about criminal activity involving cultural property and is promoting the use of the United Nations Convention against Transnational Organized Crime to combat looting and trafficking of cultural property. This article discusses how the Convention may be applied, outlines some of the intentions of UN member states with regard to cultural property crime, and the role of the UN Office on Drugs and Crime. It is suggested that cultural property stakeholders should scrutinize this developing effort, particularly in the areas of UNTOC application to specific cultural property cases and the collection and analysis of data specifically to address the connections between cultural property and transnational organized crime.

¶136: Seven Years of Implementing UNESCO's 2003 Intangible Heritage Convention—Honeymoon Period or the "Seven-Year Itch"?

¶137: This article aims to examine how far our experience of implementing UNESCO's Intangible Heritage Convention, which was adopted in 2003 and entered into force in April 2006, over the last seven years has transformed our understanding of intangible cultural heritage and of its safeguarding. There have been, of course, both positive and negative impacts thus far as well as both unexpected and, thus far, unknown outcomes. The Convention broke new ground, introducing new terminology and new definitions of existing terms and requiring a reexamination of some approaches to international and national law making and policymaking. When considering the impact of the 2003 Convention internationally, we need to look, *inter alia*, at its impact on international policymaking (including cultural policy, the sustainable development agenda and indigenous rights), related developments in other areas of international law (including human rights and environmental law), and the way in which states treat shared heritage that crosses international frontiers. On the national level, we should consider how the Convention may have contributed to creating a new paradigm for identifying and safeguarding intangible cultural heritage (ICH), shifting the focus of significance, redefining the role of non-state actors *vis-à-vis* state authorities in this process and, even, moving the idea of national heritage away from a purely state-driven concept. Important questions to consider include whether the Convention has resulted in the development of new national policy strategies for (a) promoting the function of ICH in society and (b) integrating ICH into planning and development programs and how effectively Parties have managed to engage communities, groups, and individuals in the aforementioned activities.

¶138: Collecting "Tribal Art"—Sacred or Secular?

¶139: This article explores the history of collecting and dealing in non-Western cultural objects—primarily from the Pacific Islands—from the earliest explorers to the modern auction houses. It considers international and domestic laws relating to indigenous cultural material that might be seen as religious or sacred in character and concludes that while these rules clearly influence both private and institutional practices they fall short of legally impacting the functioning of otherwise lawful markets.

¶140: Archaeological Heritage Legislation and Indigenous Rights in Latin America: Trends and Challenges

¶141: The recognition of the rights of indigenous peoples has been on the political agenda in Latin America since the 1980s, although it has not always been reflected in the legal systems of the countries in the region. Most of them have passed laws that grant legal recognition to indigenous communities and have recognized their rights in the national constitutions. However, these rules do not always refer to some particular aspects of the indigenous culture, such as those related to their

cultural heritage. In general, the archaeological remains are ruled by specific laws that do not consider, or vaguely mention, the indigenous peoples' rights and their participation in the decision-making process. As a result of the lack of consistency between the indigenous and cultural heritage laws in most countries, the participation of indigenous peoples in heritage management is still exceptional.

¶142: Monumentalizing the Ruins of Korean Antiquity: Early Travel Photography and Itinerary of Seoul's Heritage Destinations

¶143: This study introduces the oldest photographs of Seoul's ruins, which have been recycled for more than a century in a wide variety of print sources, such as travelogues, postcards, museum catalogs, and guidebooks. Regardless of the medium, the aesthetic, disciplinary, and cultural biases practiced by the first generation of globe-trotters, diplomats, and commercial photographers to arrive in the Korean peninsula resulted in the mass distribution of the most "picturesque" monuments, such as Buddhist art and architecture, palaces, and fortress gates targeting the "tourist gaze." By analyzing a select number of stock images of architectural landscapes, which have served as the "scenic" backdrop for framing "native types," currently part of museum collections and photographic archives, the article will illustrate how such exoticized and romanticized visions of the conquered "Hermit Kingdom" trapped in time and space have continued to impact the trajectory of heritage management policies and the hierarchical ranking system of national treasures and famous places in postwar South Korea.

¶144: Global Cultural Law and Policy in the Age of Ubiquitous Internet

¶145: Digital technologies and the Internet in particular have transformed the ways we create, distribute, use, reuse, and consume cultural content; have impacted the workings of the cultural industries, and more generally the processes of making, experiencing, and remembering culture in local and global spaces. Yet, few of these, often profound, transformations have found reflection in law and institutional design. Cultural policy toolkits, in particular at the international level, are still very much offline and analog and conceive of culture as static property linked to national sovereignty and state boundaries. The article describes this state of affairs and asks the key question of whether there is a need to reform global cultural law and policy and if yes, what the essential elements of such a reform should be. The article is informed by the ongoing and vibrant digital copyright and creativity discourse but seeks to address also the less discussed, non-intellectual property tools of the cultural policy package. It thematizes the complexity and the interconnectedness of different fields of policymaking, as various decisions critical to cultural processes are made by institutions without cultural mandate. While this problem is not entirely new and is naturally triggered by the intrinsic duality of cultural goods and services, the article argues that the digital networked environment has only accentuated complexity, spillover effects, and unintended consequences. The question is how to navigate this newly created and profoundly fluid space, so as to ensure the preservation and sustainable provision of culture. The article hopes to contribute to the process of finding answers to this taxing question by identifying a few essential elements that need to be taken into consideration when designing future-oriented cultural policy.

¶146: From Cultural Property to Cultural Data: The Multiple Dimensions of "Ownership" in a Global Digital Age

¶147: The global digital environment and the continuous expansion of digital information about cultural property necessitate a reevaluation of John Henry Merryman's tripartite typology of cultural property ideals. Merryman put forth those ideals, namely 1.) ensuring the physical preservation of

cultural property, 2.) protecting its even-handed interpretation, and 3.) offering public access to cultural property, as the main bases for the settlement of international cultural property disputes. However, new questions have arisen about the status of cultural property in an era when detailed virtual copies of cultural property are instantaneously available. For example, to what extent is digitized cultural property data should itself be regarded as cultural property? This paper will address some of the ethical issues related to the physical preservation, interpretation, and access to this digitized cultural property data. It will conclude with an examination of another type of cultural heritage data: the increasing use of behavioral data about cultural property consumers and audiences as a marketing tool by cultural institutions. This ominous new turn in the commodification of cultural property, it will be suggested, identifies items of cultural significance not only as objects of ownership and sale, but also as a marketable entertainment experience.

¶148: ISSUE 4

¶149: Territoriality and State Succession in Cultural Heritage

¶150: The international legal discourse on the topic of state succession in cultural property has long been dominated by the concept of territoriality—the territorial provenance (origin) of cultural assets. This traditional reasoning was essentially rooted in the idea of the European nation-state. In the last 50 years, the principle of territoriality has also become accommodated within the framework of the preservation of cultural heritage. Yet such territorial and protective approaches do not take into account the value of cultural heritage for society, that is, groups and individuals that have created or maintained a given heritage. This article attempts to explore the potential clash between the principles of territoriality and human rights, with respect to state succession in cultural heritage matters. In this context, it deals with some recent ongoing interstate negotiations on the allocation of and access to cultural property with respect to post–World War II developments in state succession among Poland, Germany, and Ukraine.

¶151: Protecting Holy Heritage in Italy—A Critical Assessment through the Prism of International Law

¶152: In Italy, churches, chapels, and monasteries are often rich in precious artifacts. However, these religious buildings cannot be easily protected from theft because either they have no antitheft measures or they are abandoned. This article examines the problematic state of the holy heritage in the Italian territory from a legal perspective. In particular, it looks at Italian legislation and the international instruments entered into by the Italian State. The article argues that this protective legal regime is affected by various shortcomings and loopholes that mostly relate to the implementation of existing legal standards. Notably, it appears that these problems originate from the fact that most of the holy heritage situated in Italy belongs to the Catholic Church, and at the same time, it constitutes the historical and artistic patrimony of the Italian State. The article calls for a more efficient management of such precious vestiges by the stakeholders involved and for a revision of the domestic legislation with a view of properly incorporating the achievements of international cultural heritage law.

¶153: South Carolina's Tidal Rice Fields: Consultation, Collaboration, and Cultural Landscapes

¶154: South Carolina's tidal rice fields are significant historic and cultural landscapes. A critical piece of the cultural significance is continuity in the process of using the land. This essay provides an overview of how collaboration among historic preservationists, archaeologists, biologists, federal and state agencies, consultants, and plantation managers resulted in new methods of permitting work in historic tidal rice fields and new understandings of rice fields as significant historic properties.

¶155: From Babylon to Baghdad: Cultural Heritage and Constitutional Law in the Republic of Iraq

¶156: The Constitution of the Republic of Iraq entered force in 2005, placing such “national treasures” as “antiquities, archeological sites, cultural buildings, manuscripts, and coins” under federal jurisdiction to be “managed in cooperation with the regions and governorates.” This provision may not immediately appear significant or controversial, but it is both. Federalism remains a heated and even deadly issue in Iraq, which is still balancing authority between its capital and other parts of the country. The Constitution’s handling of heritage—like its comparable treatment of oil and gas—therefore raises many questions. The answers to these have massive implications, as they not only determine who governs culture in Iraq but also could void much existing domestic law and unravel the country’s entire heritage management system. This study thus aims to clarify the Constitution’s treatment of antiquities and archaeology, resolving who controls one of Iraq’s most important historic, cultural, and economic resources.

¶157: “A Fracture in Time”: A Cup Attributed to the Euaion Painter from the Bothmer Collection

¶158: In February 2013 Christos Tsirogiannis linked a fragmentary Athenian red-figured cup from the collection formed by Dietrich von Bothmer, former chairman of Greek and Roman Art at New York’s Metropolitan Museum of Art, to a tondo in the Villa Giulia, Rome. The Rome fragment was attributed to the Euaion painter. Bothmer had acquired several fragments attributed to this same painter, and some had been donated to the Metropolitan Museum of Art as well as to the J. Paul Getty Museum. Other fragments from this hand were acquired by the San Antonio Museum of Art and the Princeton University Art Museum. In January 2012 it was announced that some fragments from the Bothmer collection would be returned to Italy, because they fitted vases that had already been repatriated from North American collections. The Euaion painter fragments are considered against the phenomenon of collecting and donating fractured pots.

¶159: The Draft Convention on Immunity from Suit and Seizure for Cultural Objects Temporarily Abroad for Cultural, Educational or Scientific Purpose

Name: IJCP 2015 abstracts

¶1: IJCP 2015 abstracts

¶2: ISSUE 1

¶3: Editorial: The Destruction of Heritage in Syria and Iraq and Its Implications

¶4: Nazi-Looted Art from East and West in East Prussia: Initial Findings on the Erich Koch Collection

¶5: The article contrasts long-suppressed details of German art seizures during the Second World War from Ukrainian state museums and Western Jewish dealers, ordered to Königsberg by Erich Koch, Gauleiter of East Prussia and Reich Commissar of Ukraine. While most of the art from Kyiv was destroyed by retreating Germans when the Red Army arrived (February 1945), here we investigate “survivors.” Initial provenance findings about the collection Koch evacuated to Weimar in February 1945 reveal some paintings from Kyiv. More, however, were seized from Dutch and French Holocaust victims by Reichsmarschall Hermann Göring and his cohorts, including Jewish dealers Jacques Goudstikker (Amsterdam) and Georges Wildenstein (Paris). Many paintings deposited in Weimar disappeared west; others seized by Soviet authorities were transported to the Hermitage. These initial findings draw attention to hitherto overlooked contrasting examples of patterns of Nazi art looting and destruction in the East and West, and the pan-European dispersal of important works of art.

¶6: The Rape of Kuwait’s National Memory

¶7: In the August 1990 invasion of Kuwait, Iraqi forces prosecuted a mass campaign of pillage and destruction. Under the coordinated direction of Iraqi curators who were well acquainted with Kuwait’s cultural treasures, occupying Iraqi troops plundered thousands of cultural objects from museums, libraries, and archives. Among the pillaged cultural spoils were Kuwait’s national archives, comprising the emirate’s historical memory. Until recently, Iraq was beholden to UN sanctions demanding the return of missing persons and property, including Kuwait’s archives. Although the United Nations Security Council for many years has facilitated efforts to search for the lost archives, these efforts have proved futile. This article explores the plausibility of the two most likely scenarios surrounding the cold case of Kuwait’s missing archives: 1) that the current search for the archives has overlooked the possibility that they were unknowingly seized by US forces in the 2003 invasion of Iraq and are currently being held by the Pentagon; and 2) that the archives may have been intentionally destroyed as part of Saddam Hussein’s aim to obliterate Kuwait’s national identity and annex the emirate as Iraq’s nineteenth province.

¶8: Reflecting Absence, or How Ground Zero Was Purged of Its Material History (2001–2010)

¶9: The development of the urban space of Ground Zero has been a long and difficult process, resulting in the removal of almost all of its material history. The material objects formerly present on the site had an important part and significant agency in the struggle between different stakeholders of Ground Zero. The Port Authority of New York and New Jersey and Larry Silverstein, owner and leaseholder of the sixteen acres that held the Twin Towers, intended to rebuild the ten million square feet of office space that was destroyed on 9/11. This force of production asserted itself over possible modes of consumption of the space, each championed and represented by overlapping groups of people. Some wished to see the space redeveloped as a site of mourning, others as a site fit for touristic consumption, as a space for residence, or as a site representing a material past older

than 9/11. It shall be argued that for these consumer groups the symbolic complexity of the site, and its potential power in political performances, was intricately connected to space and the material agency of objects remaining on Ground Zero post 2001.

¶10: Fighting against the archaeological looting and the illicit trade of antiquities in Spain

¶11: During the seventies, archaeological looting, of both land and underwater sites, not only was widespread in Spain, but also went unpunished. This situation stemmed from a lack of effective administrative and criminal legislation, human resources to combat the plague, and educational policies warning of how harmful such practices were, in spite of damning reports in the media and the social alarm raised in certain professional and political fields. The new political and social phase that began with the Constitution of 1978 has enabled the country to overcome this situation in three ways: first, by passing new, more appropriate administrative and criminal laws to help combat looting and illicit trade; second, through the creation of new regional governments (the autonomous communities) able to enforce these laws, and which have hired archaeologists specializing in cultural heritage management. The fight against the criminal aspect of looting and the illicit trade of antiquities has also been intensified by the creation of police and prosecuting bodies dedicated to the area of cultural heritage, among others. Last, educational policies have been put in place to help increase social awareness of the importance of our cultural heritage and the global loss its destruction represents. In this article we will present the first two points that have improved the initial situation as regards archaeological looting and the illicit trade of looted goods.

¶12: Indonesia's Implementation of Inventory Obligation under UNESCO's Intangible Cultural Heritage Convention: Problems in the Online Inventories

¶13: Article 12 of the Convention on the Safeguarding of the Intangible Cultural Heritage, 2003, provides that the States Parties are under obligation at the national level to draw up one or more inventories of the intangible cultural heritage present in their respective territories. Indonesia has been a State Party to the Convention since 2007, but until now, no specific law on intangible cultural heritage has been enacted. In 2010, the Indonesian Ministry of Education and Culture, jointly with UNESCO, published the Practical Handbook for Inventory of Intangible Cultural Heritage of Indonesia. With the legal vacuum, the Handbook became a source for guidelines on the implementation of the inventory obligation in Indonesia; it provides that there shall be a manual inventory and an online inventory. However, in practice, there are two web sites functioning as online inventories, and the contents of the two web sites do not seem to reflect one of the Convention's purposes, which is awareness. This article scrutinizes the contents of the publicly accessible online inventories and finds that the absence of statutory regulation has resulted in difficulties for those inventories to fulfill the purpose of awareness as mandated by the Convention.

¶14: Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage.

¶15: ISSUE 2-3

¶16: Cultural Co-Ownership: Preventing and Solving Cultural Property Claims

¶17: Cultural property claims are numerous and of very different nature. Some relate to recent trafficking of cultural property; some are based on ancient legal grounds which are contested today; others relate to past wars and colonial times; others, still, relate to mass spoliations in times of conflict. In general, though, the original owner seeks to recover what was taken from him, or at least to obtain some form of compensation. The present owner or possessor is as a matter of principle

interested in keeping his possession. These conflicting positions are often seen as irreconcilable and, indeed, litigation in a traditional manner will bring to the typical “either/or” solution: either I am the owner, or you are. There is no in-between solution.

¶118: Dealing with UK Museum Collections: Law, Ethics and the Public/Private Divide

¶119: In the UK, there is a public perception that, if a cultural object is given to a museum, it will remain in its collections forever. But does UK law reflect this? This article analyses UK law and discusses whether a commercial approach is not always well suited to serve the needs of the museum sector and whether there should be more thought given to the public nature of museums. It calls for law reform in order to ensure that UK law and ethical guidance relating to deaccessioning and disposals from collections is sufficient to maintain public trust, so that people continue to visit museums and to offer objects for their collections.

¶120: The Human Dimension of the Protection of the Cultural Heritage from Destruction during Armed Conflicts

¶121: The concept of the “cultural heritage of all humankind” is often summarily dismissed by scholars, possibly due to the aura of unscholarly idealism it appears to emanate. However, it has long been claimed that the special status of objects of cultural, historical, or religious value is a consequence of their importance to the whole humanity rather than their economic or aesthetic value. Global outrage provoked by destruction of unique symbols of our shared past is proof that such claims are not unfounded. Considering that cultural heritage faces increasing risk of intentional destruction for ideological reasons, and the discriminatory intent inherent in such devastations poses a threat to the entire international community, it is opportune to initiate a discussion on the adequacy of the existing legal mechanisms for the protection of cultural heritage in armed conflicts and the perspectives it offers to address these challenges in a comprehensive and informed manner.

¶122: The Changing Tide of Title to Cultural Heritage Objects in UK Museums

¶123: UK museums are required to present themselves as the ethical guardians rather than simply the owners of their collections (Museums Association Code of Ethics principles 1.0 and 1.3). Museums which are members of the International Council of Museums are required, when acquiring objects for their collections, to ensure that they obtain valid title, rather than simply strict legal title, to the object (ICOM Code of Ethics, principle 2.2). This notion of valid title focuses on the relationship between the current possessor (the museum) and the object. However, one can also see the concept of claimants having moral claims to cultural heritage objects developing in the context of the notion of the “rightful owner” which is a term increasingly deployed to signify the person who has a valid moral, rather than legal, claim to the cultural heritage object (Seventh Report of the Culture Media and Sport Select Committee 1999-2000 [193]).

¶124: Since 2000 the UK has introduced mechanisms to resolve, in limited circumstances, moral claims to cultural objects of which their owners were dispossessed during the Nazi era. This paper analyses the way in which a concept of moral title can be seen to have developed in the context of the resolution of Nazi era claims by the UK’s Spoliation Advisory Panel. To this end the paper analyses: how far the moral entitlement is linked with the legal title to the object; and whether moral title arises from the morally abhorrent dispossession that befell the claimant or his ancestor or whether it results from the recommendation of the Spoliation Advisory Panel. It is argued that the development of the notion of moral title poses challenges for the future, but an understanding of its role may also inform the resolution of disputes involving cultural heritage objects outside the context of the Nazi era.

¶125: Art Law & Balances. Increased Protection of Cultural Heritage Law vs. Private Ownership: Towards Clash or Balance?

¶126: Private ownership and cultural heritage protection are two interests in continuing tension. The traditional conception of property right is based on an absolute individual right to the peaceful enjoyment of possessions. However, interference in this right may restrict its exercise and impose charges on the owner, such as classification measures and conservation easements. This paper formulates a hypothesis about an increased protection of cultural heritage along with that of private ownership.

¶127: Against the background of a complex constitutional allocation of cultural powers, Belgian law provides a pertinent illustration of this development. At the one hand, Belgian governments have been adopting more extensive legislation protecting cultural heritage. On the other hand, Belgian courts, traditionally reluctant to recognize any compensation right when the protective measure only restricts the ownership, gradually appear to undertake a more thorough analysis of the fair balance between the conflicting interests, notably in favor of the owner.

¶128: The authors gauge the merits of a new model of cultural heritage protection.

¶129: State Immunity, Property Rights, and Cultural Objects on Loan

¶130: In the art field the centuries-old concepts of property and state immunity are interwoven in an ambivalent relationship. Immunity rules may constitute a shield for the works of art that have been temporarily sent abroad for exhibition purposes. The obverse of the same coin is that the same rules may thwart the legal actions filed by individuals against foreign states to retrieve art objects lost in the past as a result or in connection with grave violations of human rights and humanitarian law. This article examines this conundrum and argues that the relationship between property rights and immunity rules should be reconceptualised and aligned with the values and priorities of the international community, such as the protection of human rights, the reparation of massive and violent crimes and the respect for cultural heritage.

¶131: The Rescue, Stewardship, and Return of the Lysi Frescoes by the Menil Foundation

¶132: The return of works of art by museums to nations of origin has generated considerable scholarly response, yet there has been little engagement with the potential role museums could have as responsible stewards for works of art that are at risk. One important example can be seen in the actions of the Menil Foundation. The Menil, with the permission of the Church of Cyprus, conserved a series of frescoes and created a purpose-built gallery on the Menil campus in Houston to safely house them. It was a novel solution to the problems caused by the situation in Cyprus. Acquiring and saving these thirteenth century frescoes gives an important template for the rescue and conservation of works of art that are at risk, but also exposes similarly-situated actors to the moral dilemma of purchasing looted art with the consent of the original owner.

¶133: Syria and its Regional Neighbors: A Case of Cultural Property Protection Policy Failure?

¶134: Cultural property protection policy as implemented in Syria since 2011 is structured around standards and practices enshrined within the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (including its First and Second Protocols) and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Policy emphasis is on the in situ protection of cultural sites and the recovery and return of stolen or looted cultural objects. But policy initiatives have very obviously failed to stop the plunder and illegal trade of cultural objects in Syria, as they have failed

before for neighboring countries. This paper describes why policy initiatives aimed at site protection and object recovery have failed and how policy might be improved by a market reduction approach aimed at subduing demand.

¶135: Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America

¶136: Although on-the-ground preservation and policing is a major component of our international efforts to prevent the looting and trafficking of antiquities, the expectation placed on source countries may be beyond their capacity. This dependence on developing world infrastructure and policing may challenge our ability to effectively regulate this illicit trade. Using case studies generated from fieldwork in Belize and Bolivia, this paper discusses a number of these challenges to effective policy and offers some suggestions for future regulatory development.

¶137: For Better and For Worse: Evolving United States Policy on Cultural Property Litigation and Restitution

¶138: This article reviews the shift in cultural property litigation in the United States over the past twenty-five years from private replevin actions, in which the original owner sues the current possessor and must bear the costs as well as overcome procedural and logistical obstacles, in particular the statutes of limitation, to civil forfeiture actions instituted by the U.S. government to obtain restitution. The article then analyzes recent cases that arguably illustrate over-enforcement of the law through the use of unclear legal standards in civil forfeiture. It then turns to shortcomings in the effectiveness of U.S. law, in particular the difficulty in imposing emergency import restrictions in the cases of Iraq and Syria, and an over-emphasis on the use of civil forfeiture, which has largely replaced criminal prosecutions in the cultural property arena—but without which there is no true deterrent to trafficking in illegal cultural objects.

¶139: Fake or Fortune? Art Authentication Rules in the Art Market and at Court

¶140: This article analyzes the dichotomy between the practices of the art market and of court judges when it comes to the authentication of works of art. While judges very much rely on experts acting in the art market, they may not necessarily pursue the same examination methods and conclusions, which can have serious repercussions on the art object and for its owner. The dichotomy unavoidably leads to the questions of what the correct assessment is and whether court judges should be conducting such examinations.

¶141: Taking account of the difficulties judges and legislators face in attempting to interfere with established art market practices, it is suggested that courts are not an adequate forum to resolve authenticity disputes. Instead, scholars and art market actors should adopt improved authentication standards and, in the event of a dispute, refer to alternative means of dispute resolution.

¶142: Art Lawyers' Due Diligence Obligations: A Difficult Equilibrium between Law and Ethics

¶143: This article examines the duties of diligence of lawyers when handling art-related matters. Due diligence is paramount to any activity in the art market and a key element in ascertaining ownership, authenticity or provenance. In particular, it is a benchmark to help determine the existence of possible criminal activities, including money laundering, terrorism financing or document forgery, to which the art market is regularly exposed. The question arises as to the obligations incumbent to art lawyers who are privileged witnesses of the functioning of the art market. Such obligations include in particular the duty to enquire on the particularities of a transaction, the duty to terminate a mandate or the duty to report any suspicious transaction under threat of civil or criminal sanctions.

A survey has shown that art law specialists would welcome more guidance in the form of tailored regulations or professional guidelines.

¶144: Purchasing Art in a Market Full of Forgeries: Risks and Legal Remedies for Buyers

¶145: Since the first lawsuit against the Knoedler Gallery was filed for selling forgeries, the art world has been abuzz with stories of high-end fakes. However, forgeries are not a new phenomenon. The law of supply and demand dictates that there will be no end to the rising value of artworks done by the hands of “masters.” And with soaring market prices, art forgery will proliferate as forgers find incentive in skyrocketing sales. At the heart of forgery disputes is the determination of authenticity. Who makes these determinations? How does the market and legal world handle a battle of experts? Moreover, what remedies are available to disappointed buyers? The best method of protection is to complete due diligence; however, the process is often complex and expensive. Even after completing due diligence, it is possible for buyers to be left with sophisticated fakes. What legal remedies are available to buyers?

¶146: ISSUE 4

¶147: World Heritage Regionalism: UNESCO from Europe to Asia

¶148: UNESCO World Heritage regions are historically constructed categories that do not easily map onto global geographies, yet they still continue to have important political and ethical implications in the international arena. Since their inception, regional categories have been at the heart of debates over global representation and equity in the World Heritage Committee. We include the recent controversy over uneven regional representation in elections to the Committee and the measures adopted to remedy this for the future. Specifically, the “Europe and North America” regional group has historically been the most dominant region and, as we demonstrate, continues to be so despite measures such as the Global Strategy. In the last decade, however, the “Asia and the Pacific” regional group has exhibited a growing presence in many aspects of World Heritage. We go on to examine overall trends from annual sessions of the World Heritage Committee from its start in 1977 to 2014 in terms of site inscription on the World Heritage List, membership on the Committee and size of national delegations in order to look in greater detail at the rising profile of Asia. This leads to a discussion of the different forms and understandings of regionalism, whether for Europe or Asia, and how some Asian delegations see their increased role and visibility in World Heritage.

¶149: Cultural Patrimony, Political Identity, and Nationalism in Southwestern Nigeria

¶150: The convergence of Yoruba nationals and the intensification of nationalism in southwestern Nigeria for self-assertion, political brokerage, and power relations in colonial and post-colonial eras were reinforced by the projection of Yoruba cultural heritage and patrimony expressed both in person and literary productions. Using textual analysis and observation, this paper examines some aspects of cultural heritage and Yoruba nationalism and how cultural heritage created patrimony, the sense of a nation, established civic virtue, and formed local (re)publics in southwestern Nigeria. The present discourse further examines how cultural patrimony is used to echo Yoruba sense of marginalization and political superiority in Nigeria. The paper further argues that most of this cultural heritage addresses a fairly well-defined audience, most especially those sympathetic to Yoruba nationalism and politics. Thus, cultural heritage and patrimony are active agents of nationalism and political identity in southwestern Nigeria.

¶151: Pattern Recognition: Governmental Regulation of Tartan and Commodification of Culture

¶152: It is notoriously difficult to design and attach suitable legal rights to intangible cultural heritage (ICH), due to its nature as an evolving, living heritage. This article investigates the effects of government intervention relating to Scottish tartan in order to trace the relationship between formal proprietary rights, commodification, and cultural branding. The article proceeds in three steps: from (1) the historical context of the Jacobite rebellion and the subsequent Victorian assignment of the tartan to clans; to (2) the formation and function of the subsequent self-regulating community tartan registers; and (3) the 2009 governmental intervention with the establishment of a governmental tartan register, subsuming the community groups' role in self-regulating tartan. While past ICH protection efforts have focused primarily on developing countries, the example of tartan raises wider concerns about the social and economic impact of the subtle erosion or, conversely, the ossification of living heritages. Finally, some alternatives are considered within the IP regime, such as *sui generis* protection, while highlighting the challenges of reconciling the domestic regulation of diverse ICH.

¶153: Reconstructing a Wartime Journey: The Vollard-Fabiani Collection, 1940–1949

¶154: In 1940, the British Admiralty detained a British passenger ship sailing from Lisbon to New York at the port of Hamilton, Bermuda, for a contraband search. Customs authorities seized four crates containing hundreds of artworks by leading European artists. Suspected of being sent to New York for sale by the French art dealer Martin Fabiani for the economic benefit of German-occupied France, the captured collection—originally the property of art dealer Ambroise Vollard—was confiscated as a prize of war and sent to Ottawa, Canada, for wartime safekeeping. The National Gallery of Canada stored the collection from 1940 to 1949, when British courts instructed the collection's Canadian custodian to release it to its rightful owners, Fabiani and the Vollard heirs. This essay reframes the wartime journey of the Vollard-Fabiani collection and challenges the long-held notion that it belongs to the narrative of Nazi-looted cultural property. This essay also highlights an important role played by the National Gallery of Canada during World War II.

¶155: Case Note: Another Chapter in the Cassirer Nazi-era Art Saga Focuses on Choice of Law

¶156: In June 2015, a United States district court in California found that the Madrid-based Thyssen-Bornemisza Collection Foundation had acquired ownership of a Camille Pissarro painting under Spanish adverse possession law. Unless overturned on appeal, the decision will end the long-running efforts by the heirs of Lilly Cassirer Neubauer to recover the painting, which was wrongfully taken by the Nazis. The decision to apply Spanish law determined the outcome of the case, and the court's discussion of choice-of-law issues is notable given the decisive effect that the applicable law often has in art and cultural property ownership disputes. After describing the background and reasoning of the case, this case note comments on two interesting aspects of the decision: its discussion of choice of law in the context of suits against foreign government entities and its treatment of a recent amendment to California law intended to make it easier to recover stolen art.

¶157: Mastering Art Law.

Name: IJCP 2016 abstracts

¶1: IJCP 2016 abstracts

¶2: ISSUE 1

¶3: The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations

¶4: This article comes as the conflict in Syria has entered its fifth year, bringing with it loss of life and the displacement of the Syrian people as well as extensive damage to, and destruction of, the country's cultural heritage. This article will first provide an overview and explanation of the national and international legal framework for protecting cultural property in conflict as it applies to the Syrian State and the non-State actors involved, using examples from the whole conflict, including the recent actions of Da'esh. Second, we demonstrate that the destruction of all types of cultural property, regardless of its importance, can be considered a prosecutable violation of these laws, and we examine the possibilities for prosecution. Following from this discussion, we question whether the existing framework can be considered effective and consider the role the international heritage community can play.

¶5: Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of Gourmet Bush Food Products

¶6: Indigenous groups and individuals may have different needs and aspirations in relation to their local plant foods ("bush foods"). Interests may reflect totemic relationships, customary rights and duties, social positions, political and economic motivations, and personal capacities. This article uses a systems method to identify strategies to support the diverse interests of Australia's Aboriginal and Torres Strait Islander peoples in the commercial development of gourmet bush food products. The aim is to identify possibilities for further consideration by Aboriginal and Torres Strait Islander peoples.

¶7: Replicating Elite Dominance in Intangible Cultural Heritage Safeguarding: The Role of Local Government-Scholar Networks in China

¶8: Since "intangible cultural heritage" (ICH) became the new focal point in the global heritage discourse, governments and scholars in many countries have begun to promote this new form of "immaterial" culture. The People's Republic of China has been one of the most active state parties implementing the new scheme and adapting it to domestic discourses and practices. Policies formulated at the national level have become increasingly malleable to the interests of local government-scholar networks. By conducting a comparative case study of two provinces, this article aims to identify the role of local elite networks in the domestic implementation of the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, focusing on the incentives of scholars and officials to participate in ICH policy networks. It finds that the implementation of the Convention has not removed the power asymmetry between elite and popular actors but, instead, has fostered an elite-driven policy approach shaped by symbiotic, mutually legitimizing government-scholar networks.

¶9: Perceptions, Legislation, and Management of Cultural Heritage in Ethiopia

¶10: The present article discusses perceptions of cultural heritage and the development of heritage management in Ethiopia against the background of various pieces of legislation. Compared to many colonized countries of sub-Saharan Africa, the enactment of laws for the protection and preservation

of cultural heritage is a recent phenomenon in Ethiopia. Even though archaeological research in Ethiopia dates back to the mid-nineteenth century, there have been no formal heritage laws or scientific restoration programs until 1966. However, living heritage, which is economically and spiritually beneficial to the local communities, has been protected and preserved with TMSs in communities such as Yeha, Konso, and Lalibela. Unlike Western management systems that emphasize the authenticity and integrity of physical features, the TMSs of Ethiopia have focused on the ideals and thoughts of the agencies that produce the cultural heritage. It had its own implications, to say, while retaining the ideological aspects, most built heritages in Ethiopia have been subjected to considerable physical interventions. Such physical interventions have disregarded structural authenticity and integrity of the monuments. Due to foreign invasions, continuous civil conflicts, and sporadic famines in the past, attention to cultural heritage and the implementation of heritage legislation has been negligent. However, Ethiopia has witnessed growing interest in the conservation and preservation of its heritage—cultural and natural; tangible and intangible—during the last twenty years. With the support of international collaborators, the Ethiopian government has initiated several measures to protect its heritage assets.

¶11: Private International Law, Art and Cultural Heritage.

¶12: ISSUE 2

¶13: Sustainability Concepts in Indigenous and Non-Indigenous Cultures

¶14: The concepts of sustainability, and of the more specific notion of sustainable development, have become entrenched in national and international policy making over the last half century. However, little attention has been paid to sustainability as it relates to indigenous communities. This article discusses sustainability concepts as understood in indigenous and non-indigenous societies, drawing a number of illustrations from the experiences and practices of the Aboriginal and Torres Strait Islander peoples of Australia. We point out that the two approaches to sustainability share many common concerns, although significant differences are evident. While the paradigm of sustainability can be seen as a universal concept that can be applied irrespective of social, political, or cultural context, it is argued that a fully realized model of sustainability for application in non-indigenous societies will only be possible if it acknowledges the importance of culture and incorporates the insights that have been accumulated over generations in indigenous knowledge systems.

¶15: The Devil in Nationalism: Indigenous Heritage and the Challenges of Decolonization

¶16: In 2006, Bolivians began living under their first indigenous president and undergoing an explicitly pro-indigenous “process of change,” alongside much rhetoric of indigenous autonomy and state “decolonization.” However, this article suggests that this same government’s twenty-first century policies regarding intangible heritage and “culture” hardly mark a departure from mid-twentieth-century mestizo-dominated liberal nationalist projects. Through the ethnography of disputed cultural claims to folklore, such as those with Peru involving the devil dance, this article examines how proprietary nationalism is experienced and expressed among certain Bolivians. For example, indignant internationally touring folklore workers imagine a hyperreal scarcity of specific expressions that have become framed as “cultural resources” for the nation. Indeed, it is common to hear propertied language employed when international disputes heat up, as cultural images circulate at high speeds through social networks and digital media. Within these media platforms, the visual sensory mode often overshadows aural and kinesthetic ones, as socially interwoven music and dance expressions fade into the background and stand-alone images of spectacular costumes move forward.

¶17: Revival, Recognition, Restitution: Indigenous Rights in the Eastern Caribbean

¶18: The idea that the indigenous peoples of the Caribbean islands became extinct has until recently dominated scholarly discourse and popular awareness. This “extinction” narrative served to justify the appropriation of indigenous lands during the colonial period, and its legacy continued into post-independence. In recent years, these misconceptions have been put under increasing scrutiny, not only by archaeological, historical, and ethnographic research but also, more importantly, by communities themselves. In Dominica, Saint Vincent, and Trinidad, communities are contesting negative stereotypes, reasserting their presence, and agitating for their human rights in the post-colonial islands states. This article discusses the acquisition of indigenous rights by descendant communities in the eastern Caribbean. It reveals the various degrees to which communities have gained state recognition and illustrates that while progress has been made in relation to recognition and cultural rights for communities in the islands, issues remain in relation to land security.

¶19: Cultural Heritage Development in China: A Contextualized Trajectory or a Global–Local Nexus?

¶20: This article investigates China’s heritage development from an evolutionary perspective. On the one hand, by situating the reception of the cultural heritage concept in a socio-cultural construct dimension, it reveals the unique dialogism between the two divergent epistemological paradigms of wenwu (cultural relics) and wenhua yichan (cultural heritage) that underline heritage appropriation and practice in China. On the other hand, it examines China’s cultural heritage development in relation to society, arguing that considerations of national heritage, though influenced by the international environment, are still largely determined by its national socio-cultural, economic, and political settings. The evolutionary approach reveals the way in which China’s heritage vision and practice are negotiated according to international forces and societal imperatives, implicating issues such as commodification and reconstruction in the debate of heritage conservation, which is relevant to, among others, the research on heritage tourism and urban development in contemporary China.

¶21: Revolt of the Saints: Memory and Redemption in the Twilight of Brazilian Racial Democracy.

¶22: International Law for Common Goods: Normative Perspectives on Human Rights, Culture and Nature.

¶23: ISSUE 3

¶24: What We Talk About When We Talk About Provenance: A Response to Chippindale and Gill

¶25: In an influential article published in 2000, David Gill and Christopher Chippindale devised a scale to assess the quality of the provenance information provided for the antiquities displayed in seven recent high-profile exhibitions or collections. This article critically reviews Chippindale and Gill’s provenance scale, arguing that the values it encodes legitimize some of the more intellectually harmful practices of dealers and curators. The scale also fails to differentiate between more intellectually responsible methods of hypothesizing provenance and those that merely generate houses of cards. An alternative model for assessing how antiquities are discussed in museum scholarship, focusing on epistemological precision and reflexivity, is offered.

¶26: Thinking About Collecting Histories: A Response to Marlowe

¶27: On Provenance and the Long Lives of Antiquities

¶28: Notes on Marlowe’s “What We Talk about When We Talk about Provenance”

¶129: Response to Responses on “What We Talk About When We Talk About Provenance”

¶130: With Love and Kisses: Nothing Lasts Forever: An Examination of the Social and Artistic Antiquation of Moral Rights

¶131: This article examines the social and artistic antiquation of moral rights law. Moral rights law developed, and was implemented, under the heavy influence of the French preference to put the rights of the author at the center of intellectual property protection (with Victor Hugo leading this charge). However, as artistic practice evolves in a continually rapid fashion, it is becoming increasingly clear that moral rights are unable to properly accord with modern art forms. An examination of the social construction of authorship, the emergence of unique contemporary art forms, and the role of technology as a catalyst to intellectual property law, reveals that the Western world’s legal moral rights scheme cannot survive its current form. Moral rights’ endurance hinges on its ability to reconcile with a social and artistic climate alien to its origins. Artistic expression does not exist in a vacuum and is inextricably linked to, and reflective of, the social climate it is born out of. As society evolves and shifts, so too does its art and so must the law.

¶132: The Functioning of Indigenous Cultural Protocols in Australia’s Contemporary Art World

¶133: In recent decades, cultural protocols have emerged as a non-judicial alternative to the inadequate legal protection of Indigenous cultural heritage. They are meant to protect Indigenous peoples from the misappropriation of their heritage by outsiders and enhance Indigenous peoples’ control over their own domain. This article examines the functioning of Indigenous cultural protocols within Australia’s contemporary art world. As we will demonstrate, cultural protocols have clear practical utility. They can raise awareness, instigate changes in behaviour, and operate as a conduit for correcting the unauthorized use of Indigenous cultural materials. Yet, a disjunction exists between codified ideals and a messy reality. Our analysis of two protocol transgressions shows that protocols do not automatically protect Indigenous individuals equally. Furthermore, although discussions about compliance are infused with rhetoric about the authority of “the Indigenous community,” Indigenous people with cultural connections to contested heritage objects do not always have a clear voice in decisions made about their use.

¶134: The Elephant in the Sales Room: Ivory and the British Antiques Trade

¶135: In March 2015, it was reported that His Royal Highness, the Duke of Cambridge would “like to see all the ivory owned by Buckingham Palace destroyed.” In May 2015, the Conservative Party’s manifesto stated that if elected the party would “press for a total ban on ivory sales,” and policy decisions made as part of President Obama’s National Strategy for Combating Wildlife Trafficking saw “all commercial imports of African elephant ivory, including antiques” being prohibited. In a changing international environment, the United Kingdom’s antique trade faces a threat to the legitimate sale of pre-1947 worked ivory without the extent of any illegal trade being clear. With only 15 convictions since 1992 for offences relating to the trade in ivory in the English courts, this article examines the two most recent cases, which came to court in 2014.

¶136: Three Important Works on Cultural Property Crime -

¶137: Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime, Australasian, European and North American Perspectives.

¶138: ISSUE 4

¶139: Editorial: Alternative Dispute Resolution in Cultural Property Disputes: Merging Theory and Practice

¶140: The Politics of Culture and the Culture of Politics: Examining the Role of Politics and Diplomacy in Cultural Property Disputes

¶141: This article constitutes the first systematic attempt to synthesize the role of politics as an affecting dynamic during the negotiation of cultural property disputes. The article limits its scope to disputes concerning the ownership of cultural artifacts between states and museums settled through negotiation and to the subsequent claims for the return of the contested objects. The discussion focuses on four ways in which the negotiation process is affected when states act as claimants, including the discourse and argumentation used, the available means to pressure the other party to negotiate, the possible political interventions, and the international political scene and its effect on the development of the dispute. Through the examination of multiple case studies, it is argued that in such disputes, several elements related to the role of politics are at interplay affecting the evolution of the negotiation process. Finally, it is also argued that the role of politics as an affecting dynamic during the negotiation process is multi-dimensional, consisting of many different interrelated dynamics that can potentially alter the course of the process.

¶142: Putting into Place Solutions for Nazi Era Disposessions of Cultural Objects: The UK Experience

¶143: Since 2000, the United Kingdom's Spoliation Advisory Panel has provided an alternative dispute resolution mechanism for resolving disputes surrounding Nazi era disposessions of cultural objects. This article analyzes the way in which the panel has reached its recommendations and how they have been implemented. While the panel's recommendations provide a means of resolving disputes in circumstances where litigation might fail a claimant, claimants may encounter difficulties should an institution fail to implement the recommended remedy because of the extra-judicial nature of the recommendations. This article therefore analyzes the effectiveness of the panel's work in overcoming some of the shortcomings of litigation and the way in which the parties have put into effect the panel's recommendations. Furthermore, suggestions are made for ways in which to ensure compliance with the recommendations even in the absence of judicial enforcement.

¶144: False Closure? Known Unknowns in Repatriated Antiquities Cases

¶145: Based on research into the confiscated photographic and document archives in the hands of the top antiquities dealers (Robin Symes-Christos Michaelides, Robert Hecht, Giacomo Medici, and Gianfranco Becchina), so far more than 250 looted and smuggled masterpieces have been repatriated from the most reputable North American museums, private collections, and galleries, mainly to the Italian and the Greek states. Most of these repatriations were advertised in the press as voluntary action by the institutions and the individuals who possessed them. However, this is far from true; the repatriations were the results of lengthy negotiations, where the presentation of evidence alternated with diplomatic tactics and legal threats in order for the two parties (in some cases, three) to reach an agreement. Among the much-celebrated repatriated antiquities are at least two cases that require further research regarding their legal owner. This article aims to analyze these two cases and to set out new questions. In the end, there is doubt that the state who finally received these antiquities is necessarily the one from which they have been looted and smuggled. Based on this analysis, the article aims to highlight alternative paths to the discovery of the truth, paths that might have been more effective, if they had been followed.

¶146: Alternative Dispute Resolution and Insights on Cases of Greek Cultural Property: The J.P. Getty Case, the Leon Levy and Shelby White Case, and the Parthenon Marbles Case

¶147: This article examines the pros and cons of alternative dispute resolution (ADR). It also examines two cases in which Greek cultural treasures were returned to their country of origin by a US museum and a US collector on the basis of negotiations: the J.P. Getty Museum and the Leon Levy and Shelby White cases respectively. The Parthenon Marbles case is also examined, especially in light of the UN Educational, Scientific and Cultural Organization's recent (2013) invitation to the United Kingdom (UK) to accept mediation on the matter and the UK's even more recent (2015) rejection of the invitation. In all three cases, the facts are set out and the author attempts an assessment of the ADR means used. Conclusions are drawn as to whether ADR is a feasible and beneficial option for the parties and whether, nowadays, it constitutes the norm in cases when cultural treasures are returned to their countries of origin.

¶148: The "Begram Ivories": A Successful Case of Restitution of Some Antiquities Stolen from the National Museum of Afghanistan in Kabul

¶149: This article details a successful case of restitution of important antiquities stolen from the National Museum of Afghanistan in Kabul during the Afghan Civil War (1992–94). These items had been excavated by the Délégation Archéologique Française en Afghanistan at the site of Begram during 1937 and 1939 and were allocated to the museum in Kabul when the excavated finds were divided between the National Museum of Afghanistan and the Musée Guimet (Paris). In Kabul, the most important objects were put on permanent display, but they were placed in storage in 1989 when the museum was officially closed and the capital threatened by war after the withdrawal of Soviet forces. Many objects were hidden, and some are now touring in an international exhibition hosted by the British Museum in 2011. However, most of the Begram ivories were stolen and entered different collections. The following article discusses how a group of 20 of these exquisite carvings were acquired, conserved, exhibited, and returned to Kabul as a direct result of the negotiations for the British Museum exhibition. This allowed the first scientific analyses of Indian ivories of this period, and the results provided important new evidence for the extent of polychromy as well as the scale of the different unrecorded conservation treatments previously applied to these highly fragile objects. The objects were returned safely to Kabul in 2012. This article also sets out some of the lessons learned from this chain of events and how it can provide an example for future restitutions.

Name: IJCP 2017 ABSTRACTS

¶1: IJCP 2017 ABSTRACTS

¶2: ISSUE 1

¶3: Obituary

¶4: Norman Palmer, CBE, QC, FSA 1948–2016

¶5: Frozen in Time: Orphans and Uncollected Objects in Museum Collections

¶6: The focus of this article is upon objects in museum collections where legal title is uncertain (“orphans”), where the owner is unknown (deposited objects), or where the owner cannot be found (uncollected loans). Museums may have little choice but to continue to care for these objects even where they are unsuitable to be retained within the permanent collections. It is argued that the current law in the United Kingdom prevents museums from managing their collections properly and rationalizing them where necessary. New legislation has been proposed that would assist Scottish museums. It is argued that all museums in the United Kingdom need new legislation that would enable them to manage their collections more effectively and to approach the review of collections and the disposal of unsuitable objects in a proper and balanced manner, acting for the benefit of the public.

¶7: Development versus Preservation Interests in the Making of a Music City: A Case Study of Select Iconic Toronto Music Venues and the Treatment of Their Intangible Cultural Heritage Value

¶8: Urban redevelopment projects increasingly draw on culture as a tool for rejuvenating city spaces but, in doing so, can overemphasize the economic or exchange-value potential of a cultural space to the detriment of what was initially meaningful about a space—that which carries great cultural community wealth, use-value, or embodies a group’s intangible cultural heritage. Development and preservation interests illustrate this tension in terms of how cultural heritage—both tangible and intangible—is managed in the city. This article will turn to Toronto’s “Music City” strategy that is being deployed as part of a culture-focused urban redevelopment trend and Creative City planning initiative in order to examine how the modern urban intangible merits of city spaces are valued and dealt with in light of the comparatively weak regard accorded to intangibility within the available heritage protection legal frameworks of Canada, Ontario, and, specifically, Toronto. The currently underdeveloped recognition for intangibility in the heritage protection equation not only fails to equally value non-dominant, unconventional, or alternative iterations of culture but also falls behind the key guiding documents in international law for the safeguarding and recognition of intangible cultural heritage as well as in accounting for intangibility in determining heritage value. Without diligent inclusive strategies to account for, and consult, the diverse spectrum of groups, cultures, and cultural spaces affected by urban heritage and cultural city planning processes, a city’s development initiatives risk counterproductively destroying the precise characteristics they are otherwise seeking to nourish, create, and, even, commodify.

¶9: Rights, Indigeneity, and the Market of Rastafari

¶10: This article is concerned with the ways in which discourses of rights serve to destabilize indigenous logics when used for gains in the market. It does so through examining a Rastafarian tour group who uses their participation in the tourism market to challenge what they believe are infringed cultural property rights. As a means of commercially defending these rights, the group

employs a discourse of indigeneity. In this process, they have gained partial recognition from the World Intellectual Property Organization and increasing acknowledgement from the Jamaican government. However, while the basis of indigeneity strongly supports the case of intellectual and cultural property rights, this recognition ultimately further identifies the group, and Rastafari in general, with Jamaica.

¶11: The New Unified Civil and Commercial Code and Cultural Heritage Protection in Argentina

¶12: The recent reform of the Unified National Civil and Commercial Code will bring about significant changes in the Argentine legal system. The aim of this article is to analyze their impact in relation to the area of cultural heritage, especially in regard to the public property status of archaeological and paleontological heritage. Changes adopted—in contrast to those proposed, which referred to the issues related to indigenous communities and the protection of collective rights—are also discussed. The latter is the most innovative aspect of the reform since it involves a change of approach regarding private property and strengthens the regulatory powers of the state over private property, which might be applied to the protection of cultural property.

¶13: Conference Report

¶14: Meeting of the Cultural Heritage Law Committee of the International Law Association: 10 August 2016, Johannesburg, South Africa

¶15: UNESCO on the Ground: Local Perspectives on Intangible Cultural Heritage.

¶16: Copyrighting Creativity: Creative Values, Cultural Heritage Institutions and Systems of Intellectual Property.

¶17: ISSUE 2

¶18: To Have and To Hold ... Or Not? Deaccessioning Policies, Practices, and the Question of the Public's Interest

¶19: Shockwaves echoed through the media and the arts community when the Delaware Art Museum chose to deaccession pieces from its collection and when the public learned that the Detroit Institute of Arts might be forced to do the same. Further concern arose when financial troubles compelled the Corcoran Gallery of Art to merge with the National Gallery of Art and George Washington University. An examination of the climate and legal battles surrounding these events shows how these institutions chose to cope with the financial adversity that put their collections at risk and illustrates the precarious position of works in a museum's collection when that museum experiences financial distress. This article explores the ethical, judicial, and legislative frameworks currently governing deaccessioning and ultimately advocates for new legislative solutions to guide the deaccession process in order to provide the opportunity to maintain these works in the public sphere.

¶20: Hunters, Crown, Nobles, and Conservation Elites: Class Antagonism over the Ownership of Common Fauna

¶21: Because of their status of *res nullius*—owned by no one—property theory is underdeveloped in regard to wildlife. In this article, wildlife is seen to be sometimes subject to a shadow ownership by class interests in society. Hunters accuse protected wolves of being the “pets” or “property” of an urban-based conservationist middle class. This phenomenon fragments the common fauna and undermines responsibility taking and policy compliance for wildlife that is seen as being owned by an oppositional social class. Using an empirical case study of Swedish hunters, we show how

responsibility for wildlife has become entangled with property rights. A historical materialist analysis reveals that hunters once experienced ownership of wildlife by the nobility as co-opting state coercive power. Today, however, aristocracy is replaced by a new elite class of conservationists. Noting the hunters' tendency to evoke quasi-aristocratic virtues of ownership, we advance recommendations for an alternative approach. We appeal to deliberative democracy to promote the "communing" of wildlife across classes in fora that withstand co-optation by class interests.

¶122: Fifty Years of Collecting: The Sale of Ancient Maya Antiquities at Sotheby's

¶123: Pre-Columbian antiquities, particularly those from the Maya region, are highly sought after on the international art market. Large auction houses such as Sotheby's have dedicated pre-Columbian departments and annual auctions, for which sales catalogues are created. These catalogues offer insight into market trends and allow the volume of antiquities being bought and sold to be monitored. The following study records the public sale of Maya antiquities at Sotheby's over a period slightly exceeding 50 years from 1963 to 2016. More than 3,500 artifacts were offered for sale during this period, of which more than 80 percent did not have associated provenance information. The data suggests that the volume of Maya antiquities offered for sale at Sotheby's public auctions have been steadily decreasing since the 1980s, but their relative value has increased. Quantitative studies of auction sales such as this one can be useful in monitoring the market for illegal antiquities and forgeries.

¶124: Will the God Win?: The Case of the Buddhist Mummy

¶125: This article concerns the case of a stolen 1,000-year-old Buddhist mummy, known as the statue of Zhanggong-zushi, which caught the attention of the international community. The statue of Zhanggong-zushi is the embodiment of God in the eyes of the locals, and the treatment of human remains is controversial and sensitive. This case opens a discussion as to how Western courts should consider religious interests in the disputes of stolen cultural property. It is very important for the art world to understand how locals feel about the loss of their culture or religion.

¶126: UNESCO in Southeast Asia: World Heritage Sites in Comparative Perspective. *Studies in Asian Topics* no. 55.

¶127: Art Crime: Terrorists, Tomb Raiders, Forgers and Thieves.

¶128: Conference Report

¶129: Ethics and Cultural Heritage: Viewpoints (Éthique et patrimoine culturel: Regards croisés):

¶130: ISSUE 3

¶131: A Silver Service and a Gold Coin

¶132: The published history of a set of silver and gold objects acquired by the J. Paul Getty Museum in 1975 contains an unusual reference to a gold coin, supposedly found with the set but not purchased by the museum. The coin, which is both rare and well dated, ostensibly offers a date and location for the ancient deposition of the silver service. Almost five years of research into the stories of the Getty objects and the coin has revealed important information about these particular items, but it also offers a cautionary example for scholars who might hope to reconstruct the find-spot of antiquities that are likely to have been looted.

¶133: Who Moved My Masterpiece? Digital Reproduction, Replacement, and the Vanishing Cultural Heritage of Kyoto

¶134: In many temples in and around Kyoto, sets of wall and slide door paintings and folding screen paintings, which are designated either national treasures or important cultural properties of Japan, have been replaced in situ by high-quality digital reproductions. The original paintings, in turn, are now largely out of sight, placed in storage spaces within temples and museums. Vanguard projects of this nature were conducted in the mid-1990s. Since the mid-2000s, however, and without adequate review of the merits and demerits of such replacement, the practice has accelerated, and numerous sets of slide door paintings have been replaced by reproductions produced for the most part by two competing corporations. The process and implication of such digital replacement require far greater attention and discussion than has to date taken place. Accordingly, this article seeks to clarify the current status of, and problems arising from, the digitization projects taking place in and around Kyoto.

¶135: Bone Considerations: Archaeology, Heritage, and Ethics at Mamilla, Jerusalem

¶136: Mamilla cemetery was one of the largest and most important Muslim cemeteries in Jerusalem. The plans to build a “Museum of Tolerance” in it led to heated protests and a prolonged legal procedure in Israel’s Supreme Court of Justice. In 2008, the court approved the plans and many hundreds of graves were exhumed. Through the available sources, including the court’s archival files, we discuss political, legal, and archaeological aspects of this case, focusing on ethics about cemeteries and descendant communities. The discussion shows that the Israel Antiquities Authority breached the court orders and that the treatment of the archaeological remains was biased. “Their” graves were destroyed, and the bones reburied in secret, while “our” remains in the same areas were carefully excavated and preserved. Tolerance to “our” heritage at the expense of “theirs” is intolerance.

¶137: What Does It Take to Protect Cultural Property? Some Aspects on the Fight against Illegal Trade of Cultural Goods from the Greek Point of View

¶138: An overview of both the theoretical approach and the set of actions taken during the last decade by Greece – a country with a profound historical background and rich cultural heritage – to face the problem of the illicit trade of cultural goods. The article contains not only statistical data on recent cases of thefts, clandestine excavations, confiscations, and repatriations of cultural goods but also information on law enforcement and the effort to establish a network to fight the phenomenon on an international level. Aspects such as conforming to the international law, monitoring auctions of antiquities, raising people’s awareness, and reinforcing the current security status of museums and archeological sites are taken into consideration as successful methods for protecting the cultural heritage.

¶139: Take the Long Way Home: The Recovery of 32 Chinese Gold Foils from France

¶140: The rational and efficient recovery of Chinese archaeological objects from market nations is a crucial issue that is confronting the Chinese government. Although the 1970 UNESCO Convention was accepted in China in 1989, the destruction of Chinese archaeological sites through illicit excavations and illegal trade has increased, rather than diminished, in the nearly 30 succeeding years. For a better understanding of the challenges that confront the Chinese government, this article provides a case study approach to analyze the case of gold foils stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County in Gansu Province in the People’s Republic of China. The author identifies prominent issues that exist in relation to repatriation claims and offers some practical advice on the recovery of Chinese archaeological objects, which may assist the Chinese government in its decision making.

¶41:

¶42: Book Review

¶43: Art: Authenticity, Restoration and Forgery.

¶44: ISSUE 4

¶45: Armed Non-State Actors and Cultural Heritage in Armed Conflict

¶46: This article presents the preliminary findings of a scoping study that Geneva Call is conducting to understand the existing dynamics between armed non-state actors (ANSAs) and cultural heritage. Geneva Call is a Swiss-based non-governmental organization dedicated to promoting the respect of international humanitarian law by ANSAs. The study centres on three case studies—Syria, Iraq, and Mali—on which information has been obtained through desk and field research, interviews with ANSAs operating in those countries, and with leading organizations committed to the protection of cultural heritage, globally or regionally. The article first maps the various attitudes of ANSAs toward cultural heritage, highlighting both positive and negative examples from current practices. Then it analyzes the response of specialized organizations to the impact of ANSAs on cultural heritage and their level of engagement with these actors on cultural heritage issues. Finally, the conclusion offers some tentative recommendations to enhance the respect of cultural heritage by ANSAs in non-international armed conflicts.

¶47: The Protection of Cultural Property: Post-Colonial and Post-Conflict Perspectives from Sri Lanka

¶48: Cultural property is related to the evolution of a nation's identity. It forms a vital link to the past, wherefrom the present and future may be nurtured and enriched. However, objects related to cultural heritage have been the target of looting and pilfering, resulting in loss to the country concerned. The situation is worsened where these objects have been removed during an era where there were no laws and regulations to control such removal. This article focuses on the loss of cultural property with reference to two specific modes of loss of particular concern to Sri Lanka—the removal of cultural property during the colonial era and the loss of cultural property during the more recent ethnic conflict. Through an analysis of the relevant laws and regulations, this article evaluates Sri Lanka's rights to its cultural property and its efforts to regain, and preserve, its cultural heritage.

¶49: Caribbean Collections in European Museums and the Question of Returns

¶50: Since 2014, when the Caribbean Community officially launched its claim against former European colonial powers for reparations for slavery and native genocide, there has been a renewed interest in the question of cultural reparations and, more specifically, Caribbean cultural objects located in European museums. Yet information about such material remains scarce; there have been no formal claims for returns, and the legal status of Caribbean collections in European museums is anything but clear. This article aims to address these issues. First, we sketch the profile of Caribbean archaeological collections located in European museums to shed light on their nature and provenance. On this basis, we then move on to analyzing the legal status of such collections in light of international law, before discussing the broader political and ethical framework of returns and the role of cultural cooperation in reparatory justice for the Caribbean more generally.

¶51: "Purchased in Hong Kong": Is Hong Kong the Best Place to Buy Stolen or Looted Antiquities?

¶52: The looting of antiquities from archaeological sites has received widespread coverage in the media. Concerns about the loss of heritage have resulted in international multilateral and bilateral agreements intended to prevent the illicit trade in looted antiquities. China has suffered from the

looting of its archaeological sites for centuries, but the problem has been exacerbated in recent years because of the increased demand for Chinese antiquities and the consequent sharp increase in market prices. China has requested international assistance to combat the illicit trade in its heritage. It is strange therefore that one of China's special administrative regions—Hong Kong—also one of the world's major art markets, retains a “legal absurdity,” which may protect the buyer of stolen or looted goods from claims for the return of stolen items. This statutory provision may result in the bizarre outcome that goods stolen from a museum or looted from an archaeological site and then purchased from a shop or market in Hong Kong may be protected from claims for their return; this protection may apply even if the loser is the Chinese state.

¶153: Perceiving the Past: From Age Value to Pastness

¶154: According to the Austrian art historian Alois Riegl (1857–1905), cultural heritage possesses age value (Alterswert) based on the perception of an object's visible traces of age. His 1903 essay “The Modern Cult of Monuments” became a classic, and age value has ever since been constitutive for cultural heritage. Closer scrutiny, however, reveals that clever copies, reconstructions, and imaginative inventions can possess age value too. I therefore suggest “pastness” as a useful term for denoting the perception that a given object is “of the past.” Pastness is not immanent in an object but, rather, results from its appearance (for example, patina), its context (for example, in a museum), or its correspondence with preconceived expectations among the audience. In this article, I review the concept of pastness and discuss its implications for the global heritage sector. Age value emerges as being less universal than Riegl thought and was linked to a very particular intellectual and cultural context.

¶155: Book Review

¶156: The Sale of Misattributed Artworks and Antiques at Auction.

Name: IJCP 2018 abstracts

¶1: IJCP 2018 abstracts

¶2: ISSUE 1

¶3: Editorial: The Possibilities and Limitations of Rights-Based Approaches to Heritage Practice

¶4: Saving Hasankeyf: Limits and Possibilities of International Human Rights Law

¶5: This article explores the limits and possibilities of international human rights law in protecting cultural heritage from state-led destruction. It does so by focusing on two attempts by activists and non-governmental organizations to have the United Nations and the Council of Europe intervene to save the ancient city of Hasankeyf in Turkey's southeast region, which will soon be flooded by the reservoir waters of the Ilisu Dam. Adopting a heritage rights focus, these grassroots initiatives have argued that Hasankeyf's destruction would constitute a violation of human rights because it would deprive people of their right to participate in, and benefit from, cultural heritage. I suggest that, as powerful attempts to link cultural heritage and human rights, these cases demonstrate the need for more effective and legally binding international frameworks to protect heritage rights as an aspect of human rights.

¶6: At the Limits of Cultural Heritage Rights? The Glasgow Bajuni Campaign and the UK Immigration System: A Case Study

¶7: In 2003, the Convention for the Safeguarding of Intangible Cultural Heritage (UNESCO ICH Convention) formalized provision for forms of heritage not solely rooted in the material world. This expanded the scope and accessibility of cultural heritage rights for communities and groups. To much commentary and critique, the United Kingdom (UK) infamously decided not to ratify the UNESCO ICH Convention. This article examines the implications of the UK's decision not to ratify the Convention for the cultural heritage and human rights of an asylum-seeking group in Glasgow, Scotland, namely, the Glasgow Bajuni campaigners, members of a minority Somali clan. Based on participatory ethnographic fieldwork with the group and analysis of their asylum cases, this article makes two observations: first, that the UK's absence from the Convention establishes a precedent in which other state actors (that is, immigration authorities) are emboldened to advance skepticism over matters involving intangible cultural heritage and, second, that despite this, limitations in current provisions in the UNESCO ICH Convention would provide the group with little additional protection than they currently have. Developing these observations, we critique current UK approaches to intangible cultural heritage as complicit in the maintenance of hierarchies and the border. Finally, we consider the extent to which the current provisions of the UNESCO ICH Convention might be improved to include migrant and asylum-seeking groups.

¶8: Heritage, Land, Labor, and Competing Claims for Afro-Colombian Rights

¶9: This article examines the different meanings that rights to land and culture hold in San Basilio de Palenque, an Afro-Colombian community whose "cultural space" was declared by the United Nations Education, Scientific and Cultural Organization (UNESCO) to be intangible cultural heritage of humanity in 2005. I investigate how the language of rights—both communal and individual—operates simultaneously at various registers and is strategically put to work in distinct political spheres. Drawing from ethnographic field research conducted between 2009 and 2013, I argue that while communal rights are invoked to garner recognition from state and transnational organizations

like UNESCO, individual rights, conceived as exclusive prerogatives, serve to mark hierarchical distinctions between community members. I examine the paradoxical coexistence of two contradictory claims: one of cultural cohesion and another of social hierarchy. I conclude by questioning how a more nuanced examination of rights discourses in Palenque might contribute to understanding the multiple meanings of rights, not simply across time or space but also in relation to their perceived strategic purpose.

¶10: Approaching Human Rights at the World Heritage Committee: Capturing Situated Conversations, Complexity, and Dynamism in Global Heritage Processes

¶11: Social scientists are increasingly approaching the World Heritage Committee itself as an entry-point to understanding global heritage processes and phenomena. This article explores the subject of human rights in the operations of the World Heritage Committee—the decision-making body established by the 1972 UNESCO World Heritage Convention. It seeks to address the epistemological and methodological implications of approaching the World Heritage Committee as a point of departure for understanding global heritage and rights dynamics. It builds on an “event ethnography” undertaken by the authors to understand how rights discourse appeared in multiple contexts during the Thirty-Ninth World Heritage Committee session held in Bonn, Germany, in June 2015.

¶12: In this article, we discuss the methodological and ontological implications of studying rights discourses in the context of World Heritage events and processes. We have a particular interest in the interplay of formal and informal dynamics, revealing the entangled and multi-sited processes that shape and are shaped by the annual event. While much of the debate and analysis in heritage studies is understandably concerned with formal decision-making processes and position-taking, this work demonstrates the significance of a range of informal dynamics in appreciating future possibilities.

¶13: Human Rights-Based Approaches to World Heritage Conservation in Bagan, Myanmar: Conceptual, Political, and Practical Considerations

¶14: This article considers the role of recently adopted human rights-based policies in the context of preparations for the world heritage nomination of Bagan in Myanmar. Several conceptual, political, and practical factors influence the way in which such policies can be implemented. Conceptually, conflicting interpretations of the meaning of certain categories of human rights—most notably, cultural, development, and land rights—create ambiguity about who has rights to what. Politically, multilateral and bilateral negotiations between states parties inform whether and how human rights-based policies are enforced. On a practical level, implementation of such policies may be challenged by the low legal and administrative capacity of the state of Myanmar. Taking account of these factors, it is argued that human rights-based approaches can provide certain valuable insights but remain subject to serious limitations.

¶15: Heritage, Culture and Rights: Challenging Legal Discourses

¶16: ISSUE 2

¶17: Restitution Policies on Nazi-Looted Art in the Netherlands and the United Kingdom: A Change from a Legal to a Moral Paradigm?

¶18: This article considers the constant tension facing several national panels in their consideration of Nazi spoliation claims concerning cultural objects. It will argue that this tension results from a shift in paradigms in dealing with Nazi-related injustices—from a strictly legal paradigm to a new victim

groups-oriented paradigm, where addressing and recognizing the suffering caused by the nature of past crimes is central. While these national panels originate from this new paradigm and embody the new venues found for dealing with Nazi-looted art claims, this paradigm change at the same time presents these panels with a predicament. It seems impossible to abandon the legalist paradigm completely when remedying historical injustices in the specific category of cultural objects. Through a comparison between the Dutch and United Kingdom (UK) systems, this article will illustrate from both an institutional and substantive perspective that these panels seem to oscillate between policy-based, morality-driven proceedings (new paradigm) and a legal emphasis on individual ownership issues and restitution in kind (old paradigm). This article addresses this tension in order to provide insights on how we could conceptually approach and understand current restitution cases concerning Nazi-looted art in the Netherlands and the UK.

¶19: Afro-Cuban Folkloric Dance in the Age of Intellectual Property

¶20: This article analyzes drafts put forth by the World Intellectual Property Organization (WIPO) to examine the gaps that are created when institutions attempt to assign authorship of traditional knowledge and traditional cultural expressions to individuals and communities and how these gaps impact the use of folkloric dance in cultural institutions. The analysis produced via anthropological mappings of policy is underpinned with an examination of terminologies that circulate between fields of discourse, spiraling their way into public policies concerning marginalized peoples' rights, economies of art, and intellectual property. This is followed by ethnographic accounts of Afro-Cuban folkloric dance classes, for it is in the dancing bodies that gaps between policies of authorship and the reality of unstable streams of transmission and reception materialize. By reproducing and circulating these unstable streams, combined with various legal doctrines put forth by WIPO, cultural institutions appropriate Afro-Cuban folkloric dance to commodify individuals and communities.

¶21: Heritage, Crisis, and Community Crime Prevention in Nepal

¶22: Following Nepal's 2015 earthquake, there was speculation that sacred art would be looted from the ruins of severely damaged temples due to a breakdown in formal security. Although pillage did not immediately occur, the months following the earthquake have seen the theft of sacred heritage items. As Nepali sacred art remains under threat of theft, we explore the processes by which government intervention can be destructive of the community dynamic that maintains local crime prevention on an informal and unofficial level. Based on fieldwork conducted in Nepal shortly before and after the earthquake, we ask: can situational crime prevention measures, when imposed in a top-down fashion upon communities by state actors, be corrosive of collective efficacy and, therefore, ultimately self-defeating in crime prevention terms? The case of post-quake Nepal seems to suggest that the answer to this question is, in some circumstances, yes.

¶23: The F Words: Frauds, Forgeries, and Fakes in Antiquities Smuggling and the Role of Organized Crime

¶24: The phenomenon of antiquities smuggling is a complicated issue. The lack of official data makes it difficult to do an integrated analysis of the problem. The aim of this article is to present an accurate view of antiquities smuggling in the recent past. After gaining official permission from the Greek police, we examined 246 official arrests made by the Greek Department against Antiquities Smuggling (Athens Office) that occurred between 1999 and 2009. First and foremost, our results revealed that many arrests showed instances of fake antiquities. Moreover, it seems that there is a connection between organized crime and antiquities forgery. In addition, people with higher status are more often involved in antiquities forgery. With respect to the stolen objects, coins were by far

the most preferred objects when it comes to forgery, and forgers are also using mostly bronze when it comes to these forgeries. Antiquity looting seems to have many hidden aspects, and the varied nature of antiquities smuggling requires the cooperation of a range of competent authorities and an in-depth investigation of the data, which should be based on the principles of the scientific method.

¶125: Consensus Building, Negotiation, and Conflict Resolution for Heritage Place Management.

¶126: David Lowenthal (1923–2018)

¶127: Indigenous Peoples, World Heritage, and Human Rights

¶128: Indigenous peoples' emphasis on protecting their cultural heritage (including land) through a human rights-based approach reveals the synergies and conflicts between the World Heritage Convention and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This article focuses on how their insistence on the right to participate effectively in decision-making and centrality of free, prior, and informed consent as defined in the UNDRIP exposes the limitations of existing United Nations Educational, Scientific and Cultural Organization and World Heritage Convention processes affecting Indigenous peoples, cultures, and territories and how these shortcomings can be addressed. By tracking the evolution of the UNDRIP and the World Heritage Convention from their drafting and adoption to their implementation, it examines how the realization of Indigenous peoples' right to self-determination concerning cultural heritage is challenging international law to become more internally consistent in its interpretation and application and international organizations to operate in accordance with their constitutive instruments.

¶129: Returning Archaeological Objects to Italy

¶130: It has been more than 20 years since the raids on the premises at the Geneva Freeport were linked to Giacomo Medici. The seizure of photographic records led to a major investigation of acquisitions by museums and private collectors. This was expanded following the confiscation of archives from Robin Symes and Gianfranco Becchina. Over 350 items have been returned to Italy from North American public and private collections as well as auction houses and galleries. This article reviews the returns and identifies some of the major themes. It also notes some of the unresolved cases both in North America and in Europe and Japan.

¶131: The Rise of Safe Havens for Threatened Cultural Heritage

¶132: In light of the recent rise of destruction and looting of cultural property, a need for formalized heritage protection has arisen. Increasingly popular in the debate has become the instrument of international assistance known as "safe havens." These temporary refuges for at-risk cultural goods in a third country have recently been implemented by Switzerland, France, the United States, and the Association of Art Museum Directors. We assess the contributions and shortcomings of these four regimes using a comparative approach. Mainly, we find that, despite variations in their scope and structure, none of the models accounts entirely for today's major difficulties in protecting endangered cultural properties. We draw recommendations for future safe haven states against the backdrop of the existing models and hope to see the instrument used in practice as a way to safely isolate cultural property from destructive conflicts.

¶133: Politics of Repatriation: Formalizing Indigenous Repatriation Policy

¶134: This article will show how institutions and cultural values mediate changes in the governance of repatriation policy. By examining ownership paradigms and institutional power structures and analyzing the changing discourses before and after the passage of the Native American Graves Protection and Repatriation Act, it is possible to understand the ramifications of formalizing repatriation. The current binary of cultural property nationalism/cultural property internationalism in relation to Indigenous ownership claims does not represent the full scope of the conflict for Indigenous people within the Western legal interpretations of property ownership. Inclusion of a cultural property indigenism component into the established cultural property nationalism/internationalism ownership paradigm will more accurately represent Indigenous concerns for cultural property. Looking at the rules, norms, and strategies of national and international laws and museum institutions, this article will argue that there are consequences to repatriation claims that go beyond the possession of property and that a formalized process (or semi-formalized approach) can aid in addressing Indigenous rights.

¶135: Maritime Archaeology and Underwater Cultural Heritage in the Disputed South China Sea

¶136: China's broad geopolitical strategy and positioning for global influence includes its averred legal position in relation to its sovereignty and jurisdiction in the South China Sea. A response to this legal position was the Philippines' initiation of arbitral proceedings constituted under the United Nations Convention on the Law of the Sea. Despite the non-participation of China in these proceedings, the arbitral decision of 2016 clarified a number of legal provisions pertinent to the ongoing territorial and maritime disputes in the South China Sea. This decision impacted directly on China's assertion of sovereign and jurisdictional historical title or rights, which, in part, relies on evidence obtained from underwater cultural heritage and the associated maritime archaeology. This article critically evaluates China's maritime archaeology program and its policy with respect to underwater cultural heritage in light of the 2016 arbitral decision and the underlying international law of the sea. While recognizing that China's policy is not inconsistent with its broader heritage policy, and its national approach to the protection of underwater cultural heritage, this article argues that this cannot be used to support China's South China Sea claims and is not only misplaced, such as to pose a risk to the archaeological record, but also inconstant with international developments in the form of the 2001 United Nations Convention of the Protection of the Underwater Cultural Heritage.

¶137: Engaging the European Art Market in the Fight against the Illicit Trafficking of Cultural Property
UNESCO–European Union Capacity-Building Conference, Paris, 20–21 March 2018