Like land trusts or centers for the preservation of endangered species, museums are entrusted with the responsibility of preserving things – in the case of museums, objects of human cultural and artistic manufacture -- for all of time. And as with land trusts and centers for the preservation of endangered species, the museum’s responsibility is a moral one. To preserve the cultural and artistic diversity of humankind is good, and to reduce it by the elimination of a species of cultural and artistic manufacture through negligence or choice is bad. In the United States, the museum is given such responsibility as a matter of trust.

The origins of such trust lay with the founding of the British Museum. On his death in 1753, the physician and collector Sir Hans Sloane offered to the British nation his collection of natural and artificial things. Like his French contemporaries, the *encyclopédistes* Denis Diderot and Jean le Rond D’Alembert, Sloane held that access to the full diversity of human industry and natural creation would promote the polymathic ideal of discovering and understanding the whole of human knowledge and thus improve and advance the condition of our species and the world we inhabit. Drawing on the English common-law device of the trust, Sloane’s collection and the responsibility for
its preservation and advancement was given by Parliament to trustees, who in
turn held it in trust “…not only for the Inspection and Entertainment of the
learned and the curious, but for the general use and benefit of the Public…,”
and on the principle that “…free Access to the said general Repository, and to
the Collections therein contained, shall be given to all studious and curious
persons.”

Public museums in the United States are similarly held in trust. Their trustees
and members of professional staff are obliged to preserve and advance their
collections for the benefit of the public. They are expected to disseminate
learning and improve taste by encouraging refined and discriminating
judgments between what is true and what is false. A prerequisite for this is
access to objects representative of the world’s diverse cultures. The principle
that underlay the formation of the British Museum – that its collections are a
force for understanding, tolerance, and the dissipation of ignorance,
superstition, and prejudice -- underlies the purpose of U.S. museums. Any
policy that inhibits the collecting -- and through collecting the preserving -- of
antique works of art and cultural objects puts at risk the potential for good that
collecting represents, and calls into question whether such policies are the
result of judicious, scholarly caution or matters of political expediency

Since UNESCO adopted a Convention on the Means of Prohibiting and
Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural
Property in 1970, the legality and morality of U.S. museums’ collecting
antiquities has been hotly debated. Too often, archaeological artifacts
(antiquities, henceforth) have been confused with cultural property; the latter by definition is not limited to artifacts of antique origin, and may include even ceremonies, songs, language, and other forms of cultural expression. By including antiquities within the political construction “cultural property,” national retentionist cultural policies often claim all antiquities found beneath or on the soil of the lands within their borders as cultural property and of importance to their national identity and their citizens’ collective and individual identities. This is the case, for example, for Iraqis who are said to derive their identity in part from ancient objects found in the ground within their national borders, whether they be of Assyrian or Arab origin; or of Afghans, whether the ancient works are of Buddhist, Islamic, or Hindu origin; of Italians, whether they are of Greek, Roman, or Etruscan origin; or of Greeks, whether they were made under Athenian, Byzantine, or Ottoman rule.

Such nationalist interpretations of antiquities as cultural property, and such retentionist policies that restrict the international trade in antiquities, are counter to the principles on which museums in Britain and the United States were founded and are still held accountable. The legislation passed by the U.S. Congress in 1983 implementing the UNESCO Convention sought to preserve the right of U.S. museums to acquire antiquities under certain circumstances and for the benefit of U.S. citizens. Recent actions by the U.S. Department of State and the U.S. courts have further restricted the circumstances within which U.S. museums can acquire antiquities. These actions have been taken to enforce foreign nations’ retentionist cultural policies and have been taken at the expense of the
Enlightenment principles on which public museums in the United States were founded.

I should be clear. I am convinced of the values of the Enlightenment museum—call it the “Universal” museum, if you like--just as I am convinced of the humanist values of such recent scholars as Edward Said. In his preface to the 2003 edition of his groundbreaking work, Orientalism, Said wrote of “those of us who by force of circumstance actually live the pluri-cultural life as it entails Islam and the West” – but the same is true of those of us who live the pluri-cultural life as it entails any combination of cultures – “I think it is incumbent upon us to complicate and/or dismantle the reductive formulae and the abstract but potent kind of thought that leads the mind away from concrete human history and experience and into the realms of ideological fiction, metaphysical confrontation and collective passion…Our role is to widen the field of discussion, not set limits in accord with the prevailing authority.”

Museums have an important role to play in this regard. Those that include works of art from multiple time periods and cultures have the opportunity and obligation to present their visitors with experiences that encourage looking for connections between apparently disparate works and cultures rather than reaffirming distinctions which often are, as Said notes, the result of ideological fictions.

As Patrick Geary wrote in The Myth of Nations: The Medieval Origins of Europe, which explores the role the academic discipline of history has played in defining nations and substantiating their nationalist claims:
Modern history was born in the nineteenth century, conceived and developed as an instrument of European nationalism. As a tool of nationalist ideology, the history of Europe’s nations was a great success, but it has turned our understanding of the past into a toxic waste dump, filled with the poison of ethnic nationalism, and the poison has seeped deep into popular consciousness. Clearing up this waste is the most daunting challenge facing historians today.  

And facing museums, too, I would propose. At their best, museums do not affirm but complicate and challenge the easy and dangerous reliance on such simplistic definitions. They expand rather than narrow our view of the world and the history of its -- and our *common* -- artistic patrimony. And as Neil MacGregor, director of the British Museum, wrote recently: “All great works of art are surely the common inheritance of humanity…This is a truth that it is surely more important to proclaim now than ever before. In a world increasingly fractured by ethnic and religious identities, it is essential that there are places where the great creations of all civilizations can be seen together, and where the visitor can focus on what unites rather than what divides us.” As Said said, “Rather than the manufactured clash of civilizations, we need to concentrate on the slow working together of cultures that overlap, borrow from each other, and live together in far more interesting ways than any abridged or inauthentic mode of understanding can allow. But for that kind of wider perception we need time and patient and sceptical inquiry, supported by faith in communities of interpretation that are difficult to sustain in a world demanding instant action and reaction.”
Museums are, or should be, instruments for encouraging our skeptical inquiry into the simplistic notions of cultural identities. And national policies and laws should respect this all-important contribution by the world’s museums by encouraging a licit trade in antiquities and cultural property. Increasingly, in my view, such policies and laws are doing just the opposite.

* * *

Historically, the United States government takes an internationalist position with regard to culture. It presumes that exposing our citizens to works of art from the world’s many cultures is in their best interest and promotes cultural understanding. For similar reasons, the U.S. has made few laws restricting the export of our cultural property, limiting such laws to the protection of historically, architecturally, or archaeologically significant objects on land that is owned, controlled or acquired by the federal government. Even the Native American Graves Protection and Repatriation Act “vests title to cultural objects discovered on tribal lands in the individual descendent or tribe on whose tribal land the object was discovered, not in the U.S. government. Native American cultural objects found on federal land become the property not of the government but of the tribe which has the ‘closest affiliation’ with the object.”
Our government believes that citizens of other countries benefit from exposure to American works of art just as we benefit from exposure to works of art from other cultures. This is why I so forcefully disagree with the recent decision by the United States government to fund a special exhibition of American art to tour around the United States. At this time especially, when the United States is in military, political, and ideological conflict with high-profile elements in the Islamic world, when much of that world—its glorious past and present, its historic and current internal political and religious conflicts—is almost totally unknown, and certainly too-little understood, by almost all Americans, the Busch administration should be funding and touring across the United States exhibitions of Islamic art, not American art. We Americans do not need to celebrate more our identity as Americans. We need much more to better know and come to more fully appreciate the beauty, sophistication, subtleties, and complexities of the art and culture of that part of the world in which our government, in our name, is engaged in military conflict.12

* * *

Efforts to restrict the international trade in cultural property have been the subject of much debate over the past thirty years. In 1970, UNESCO adopted a Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.13 Only in 1983 did the U.S. Congress pass legislation implementing the Convention and committing U.S. museums to its principles. In debating the terms of our
enacting the UNESCO Convention, Congress was concerned that it might lead other countries to enact trade restrictions unilaterally. Congress wanted to make sure that U.S. interests in the international exchange of cultural property were maintained and that any restrictions on such trade were the result of multilateral and not unilateral action.\textsuperscript{14}

The 1983 legislation provides for a federal government review of requests from countries for U.S. import restrictions on cultural property. Such reviews are conducted by the President’s Cultural Property Advisory Committee, which makes recommendations to the State Department, which in turn makes decisions with regard to the requests and may enter into a cultural property agreement with the requesting parties. The Cultural Property Advisory Committee is meant to be representative of U.S. interests in this matter, from archaeologists, to museums, collectors, art dealers, and other interested citizens.\textsuperscript{15}

The Cultural Property Advisory Committee (CPAC) reviews each request bases its recommendations on four determinations: first, that the cultural patrimony of the requesting country is in jeopardy from pillage of archaeological or ethnological materials; second, that the requesting country has taken measures for the protection of its cultural patrimony; third, that import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage; and fourth, that the establishment of such import controls in the particular circumstances is consistent with the general interest of the international
community in the interchange of cultural property among nations for scientific, cultural and educational purposes.

These are very serious considerations. They are intended to allow for the international exchange of cultural property within very specific terms: when a requesting country’s cultural patrimony is not in jeopardy from pillage and when import restrictions are in keeping with the interests of the international exchange of cultural property.

When acquiring antiquities, U.S. museums respect these principles and acknowledge that, in political terms, antiquities are considered cultural property, something I still think needs debated and de-coupled: antiquities from cultural property. In any case, U.S. museums acknowledge other countries’ interests in their cultural property and abhor the loss to knowledge that results from the pillaging of archaeological sites. Equally, and in keeping with the 1983 legislation, U.S. museums are opposed to the illicit trade in antiquities.

U.S museums practice “due diligence” when acquiring antiquities. This means, as set forth in Article 4 of the 1995 UNIDROIT Convention (of which the U.S. is not yet a signatory), that museums consider “the circumstances of the acquisition, including the character of the parties, the prices paid, whether the possessor consulted any reasonable accessible register of stolen cultural objects, and any relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible
agencies or took any step that any reasonable person would have taken in the circumstances.”

Certain parties believe that museums should go further and not acquire antiquities without clear evidence of their archaeological circumstances (their *provenience*) and positive proof of their having been legally exported from their country or origin. Unfortunately, there are times when such documentation and evidence are not known at the time of acquisition. What should an art museum do then?

U.S. law permits museums to acquire antiquities unaccompanied by such evidence. Professional practice allows the same after due diligence has been performed. Once acquired, museums are then obliged to preserve, exhibit, and further study the works of art in question. Such further study may uncover evidence that a work of art was taken illegally from an archaeological site or important monument and/or was illegally exported and that it belongs to another party, perhaps in its country of origin. This may result in the return of that work of art to its country of origin, something more likely to occur when a work of art is held openly in a museum’s collection than when it’s held in a private collection.

More and more, countries are seeking bilateral agreements with the U.S. that forbid the import of cultural property unless accompanied by a valid export license. Universal prohibition of import without a valid export license (or “embargo”) was proposed in the original draft of the UNESCO Convention
(“Secretariat Draft”) but was defeated. In the words of Paul Bator, then professor and Associate Dean of the Harvard Law School and a principle author of the U.S. legislation, “Prohibiting imports in this manner is a ‘blank check’ rule; it says to other countries, we will enforce your export laws whatever their content, without any judgment of our own whether these export rules are consistent with our substantive interests or those of the international community generally, and without any judgment of our own as to what material, political, and psychological resources should be devoted to the enforcement of the rules regulating the traffic in art.” The “blank check” rule is based on the presumption that responsibility for the ineffectiveness of export controls lies with art-importing countries rather than with art-exporting nations or “source countries.”

This could mean, however, that one could legally import into the United States cultural property, which may have been illegally exported from its country of origin. To this Bator replied

The fundamental general rule is clear: The fact that an art object has been illegally exported does not in itself bar it from lawful importation into the United States; illegal export does not itself render the importer (or one who took from him) in any way actionable in a U.S. court; the possession of an art object cannot be lawfully disturbed in the United States solely because it was illegally exported from another country.
Still, it is against the law to import or subsequently come into the possession of stolen art (National Stolen Property Act). How then should we regard foreign laws that claim all antiquities state property and the illicit exportation of such theft (this is the case, for example, in Mexico, Guatemala, Ecuador, and Costa Rica; in Italy, private individuals can own cultural property but can not export it)? Case law is building on this question, and is far too subtle and complicated for a non-lawyer like me to fully understand. It is enough for my purposes, however, to note simply that the 1977 case of *U.S. v. McClain* was different in fact and decision from the recent case of *U.S. v. Frederick Schultz*.

In the former case, the court ruled “that ‘our basic standards of due process and notice preclude us from characterizing the artifacts as stolen’ if they were in fact exported before 1972.” In the Schultz case, the court ruled in favor of the 1983 Egyptian Law 117 that declares “all antiquities are considered to be public property…It is impermissible to own, possess or dispose of antiquities except pursuant to the conditions set forth in this law and its implementing regulations.” In other words, or so at least it seems to me, precedent is building in favor of U.S. law enforcing foreign retentionist cultural property --of which antiquities are all too often and too promiscuously, in my opinion, considered a part--with theft.

Of course, foreign countries do not have to wait for U.S. legal precedent to build on this question. They can, as some already have done, enter into a bilateral agreement with the U.S. that achieves the same end.
Three years ago, for example, the President’s Cultural Property Advisory Committee recommended that the U.S. enter into a memorandum of understanding with the Government of Italy that restricts the import of stone sculpture, metal sculpture, metal vessels, metal ornaments, weapons/armor, inscribed/decorated sheet metal, ceramic sculpture, glass architectural elements and sculpture, and wall paintings dating from approximately the 9th century BC to approximately the 4th century AD; that is, virtually every kind of object produced in or imported to the land we now call Italy over 1200 years of recorded human history. It is hard to accept that all of these objects are worthy of restriction because they are important archaeologically or as cultural property; unless, of course, one believes that every found old object is by definition of archaeological value, or that every found old object is culturally important to the people who now reside within the political boundaries of the land in which it was found. And this is more or less what the U.S.-Italy memorandum of understanding does: it subsumes archaeological artefacts under the category of cultural property and it assumes that everything -- or almost everything -- found in Italy, or likely to have been found in Italy (since it will almost always be a judgment call on this point and not a matter of fact), whether it was produced there or imported there, is cultural property and thus crucial to the national identity and self-esteem of the Italian people.

For example, the memorandum states that (1) “the value of cultural property, whether archaeological or ethnological in nature, is immeasurable…[and that] such items often constitute the very essence of a society and convey important
information concerning a people’s origin, history, and traditional setting’’; (2) “these materials are of cultural significance because they derive from cultures that developed autonomously in the region of present day Italy…[and] the pillage of these materials from their context has prevented the fullest possible understanding of Italian cultural history by systematically destroying the archaeological record’’; and (3) “the cultural patrimony represented by these materials is a source of identity and esteem for the modern Italian nation.” In other words, as the memorandum would have it, the destruction of the archaeological record in modern day Italy is problematic not because the world has lost vital information about humanity, about the way our human ancestors lived and ornamented their lives thousands of years ago, but because without it “the fullest possible understanding of Italian cultural history” is not possible and because the lost materials are “a source of identity and esteem for the modern Italian nation.” This line of reasoning runs counter to the intention of our 1983 legislation. It devalues the international exchange of archaeological artefacts and cultural property for the benefit of the world’s peoples and privileges instead the retention of cultural property (of which it determines archaeological artefacts to be but a part) by modern nation states for the benefit of local peoples.

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And then there’s the debate over the Parthenon Marbles, about which we will hear a lot more later this morning. Let me say now, from the perspective of the universal museum as I see it, that there is no compelling reason to return
the marbles to Greece unless one is convinced of the value of nationalist, retentionist cultural policy. The case for their return is – unless a more convincing legal case can be made on terms more convincing than have heretofore seen – more a matter of politics than of art and archaeology. If it were a matter of art and archaeology, one would argue that the sculptures have to be seen in their original context -- that is, on the pediment and frieze of the Parthenon – if their achievement, meaning, and significance are to be fully understood. But no one is making that argument. Instead, the argument is being made that the sculptures should be returned to Athens in order to be housed in a museum near the Acropolis; a museum, which, I gather, has run into all kinds of political problems of its own, being charged even with damaging archaeological evidence in its construction, causing, or significantly contributing to, the recent downfall of the Greek government that had championed it, and finally being halted altogether.24 In other words, this argument calls not for the marbles to be moved to their original location, but to be moved from one museum in England to another in Athens. It is an argument not of context but of proximity.

And then, even if such proximity were to approximate the original context, why privilege that content over any other? Now in the British Museum their context is the museum’s collection of Egyptian, Assyrian, Greek, Roman, early Indian, and ancient Chinese sculptures. If the Parthenon Marbles were to be moved to a museum near the remains of the Acropolis, their context would be only other Greek antiquities, and specifically those that remain from a single, 5th-century BC Athenian building. We should note too that only some
of the Parthenon sculptures still exist and are divided between ten museums in eight countries, more in Athens than in the British Museum.

The basis for the case being made for the return of the Marbles to Greece is this: they are, it is claimed, as part of the Parthenon, a vital part of Greece’s national patrimony. But what is the history of the Parthenon in this regard? Mary beard’s recent book on the Parthenon reminds us that the Parthenon was built as a pagan temple to Athena in the 5th century BC, was converted into a Christian church – the Cathedral of Our Lady of Athens – in the 6th century AD and then into a mosque nine hundred years later, and was only rededicated as an ancient monument in 1834 during the first blush of Greek nationalism following the Greek victory over the Ottomans and the establishment of the modern Greek state. The 1834 rededication was made by the recently named King of Greece, who in fact was Prince Otto of Bavaria and whose father’s architect, the neo-Grec stylist, Leo von Klenze – whose best work can be seen in Munich in the Glyptothek and Alte Pinakothek, and in St Petersburg in the New hermitage – delivered the speech of the day (in German with a translation provided for the Greeks in attendance) pronouncing the classical Acropolis reborn as the symbol of the new nation state: “Your majesty stepped today, after so many centuries of barbarism, for the first time on this celebrated Acropolis, proceeding on the road of civilization and glory, and this is and should be in the eyes of your people the symbol of your glorious reign…All the remains of barbarity will be removed, here as in all of Greece, and the remains of the glorious past will be brought in new light, as the solid foundation of a glorious present and future.”
And that’s indeed what happened. In 1835, the Acropolis passed into the care of the Greek Archaeological Service and over the next fifty years it was gradually stripped of its non-Pagan remains. Everything of the Turkish village (mosque and out buildings) was removed, as was the Frankish tower and much of the Christian apse. By 1890, the director of excavations was able to announce with pride that Greece had “delivered the Acropolis back to a civilized world, cleansed of all barbaric additions, a noble monument to the Greek genius.”\(^{27}\) In the name of archaeology, the Parthenon, which had been a church for as many years as it had been a pagan temple, and the site of a mosque for nearly as long, was transformed into a symbol of Ancient Greece, never again to function as a temple or a church or a mosque but to stand as a monument to the past the new, modern Greek state wanted to claim as its own. (A revival of the Olympic games was just a few years away.)

Clearly the call for the return of the Parthenon Marbles is about politics and not art or archaeology, and it is about politics of the most nationalistic kind. Whether they will ever be returned to Greece depends on how the British government feels about how the Greek government feels about their return and what it’s willing to offer in return. There is, or so it seems to me, no compelling art historical reason for their return. They are being treated well by the British Museum, under whose auspices, with the exception of the harm done them during their cleaning in the 1930s (still, less harm than would have been done them had they remained on the Parthenon in the polluted air of Greece for two hundred more years), they have been safely guarded, cared for,
researched, published, and presented to hundreds of millions of people from around the world for almost two hundred years and within the great, encyclopaedic context of that universal museum. In this respect, the British Museum has been a proper steward of the Marbles and even, as it turns out, of what the Greek claim as a significant part of their cultural legacy.

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The argument in favor of restricting free trade in antiquities is made on two counts: that antiquities are also cultural property and thus the inalienable property of the government and people of the modern nation in which they are thought or known to have originated; and that the free trade in antiquities only encourages looting and pillaging of archaeological site and results in the loss of the knowledge derived from them.

The latter is a serious charge. Museums abhor looting and the destruction of archaeological evidence and are opposed to the illicit trade in antiquities. But when an antiquity is offered to a museum for acquisition, the looting, if indeed there was any, has already occurred. The museum now must decide whether or not to bring the object into its public collection where it can be preserved, studied, enjoyed, and where its whereabouts can be made widely known. Museums are havens for objects that are already, and for whatever reason, already alienated from their original context. Museums do not alienate objects. They keep, preserve, research, and share them with the public, holding them in public trust for future generations and all of time. They
transfer objects from the private to the public domain and do so in order to protect the world’s cultural heritage and encourage appreciation and understanding of the world’s many cultures and our common artistic heritage.

Some parties hold that works of art about which we do not know their original circumstances -- do not know their archaeological find spot -- have little value and need not then be preserved through acquisition by a museum. The loss of that object, should it be damaged through movement in private ownership or lost from public view, is thus of little consequence. This is the argument against museums’ acquiring unprovenienced and unprovenanced antiquities: to acquire them only encourages looting and the destruction of archaeological sites, and the loss of the so-alienated object is no loss at all since such objects are meaningless.

To be sure, as works of art, objects have value as documents of their use by a certain culture, of that culture’s interest in specific decorative motifs and iconography, and/or of that culture’s ability to manufacture and work the materials of which the objects are made. But even if we cannot know the specific culture that produced the objects in question, we can examine the objects for their manufacture, form, style, iconography, and ornamentation, and place them in the larger context of all we know about such objects. A piece of Roman glass (identified by comparison to glass excavated from a Roman site) with a very peculiar decorative motif, or of a different size, color or shape, tells us a something about the range of Roman glass types we did not know before even if we do not know where that specific piece of glass came
from. Similarly, an object with an inscription may tell us something very important about its culture even if we have no knowledge of the circumstances in which it might have been found.

Works of ancient art have many meanings, some of them historical, others aesthetic and philosophical. How for example can one inquire into the question of beauty without examples of beauty? By definition, works of art manifest beauty. To great benefit, they can be studied on for this reason alone. But works of art need not be studied to have value in our culture. They can provide pleasure, inspiration, even spiritual or emotional renewal. And, in their great variety, identifiable as Korean, Mexican, Mali, Greek, English, or Native American, they can remind us that the world is a very large and great place of which we, our culture, are an important part.

It is for all of these reasons, and on the terms that I have described, that museums in our country acquire works of art. Acquiring, preserving, and exhibiting works of ancient art is a very great responsibility, something museums undertake with the greatest of care, always in our public’s best interest, and always within the context of our nation’s high regard for the international exchange of cultural property and of our profession’s insistence

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interest, and always within the context of our nation’s high regard for the international exchange of cultural property and of our profession’s insistence on best practices. Whether a work of art should be repatriated or not and on what terms depends, in our country, on the U.S. court’s interpretation of U.S. law and on the current state of relations between Congressional intent and U.S. Customs actions, and on the state of U.S. foreign policy; more, it seems, a matter for the Department of State than for Congress, which wrote and passed the original cultural property legislation.

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Recently, U.S. museums and the public they serve, as well as the fate of the ancient works of art that U.S. museums might be offered for acquisition, have suffered a serious setback.

I mentioned earlier the recent case of U.S. v. Frederick Schultz. As you will recall, this resulted from the arrest in 2001 of New York antiquities dealer, Frederick Schultz, who was subsequently indicted on one count of conspiring to receive stolen Egyptian antiquities that had been transported in interstate and foreign commerce in violation of U.S. law (18 U.S.C. #371), with the underlying substantive offense was a violation of the National Stolen Property Act (18 U.S.C. # 2315). Among Schultz’s defences was the claim that the NSPA does not apply to an object removed in violation of a national patrimony law, since such an object was not “stolen” in the commonly used sense of the word. As already mentioned, Schultz was convicted on the
grounds that the court interpreted the 1983 Egyptian Law 117—which declares “all antiquities are considered to be public property…[and thus] it is impermissible to own, possess or dispose of antiquities except pursuant to the conditions set forth in this law and its implementing regulations” as an ownership law, not an export-restriction law. In plain terms, the court concluded that the NSPA applies to property that is stolen in violation of a foreign patrimony law, clearing the way for U.S. law to be used to enforce foreign laws in contradiction of the spirit and the letter of the 1983 enabling legislation that allowed the U.S. to sign on to the 1970 UNESCO Convention.

In my mind, that’s bad. But what’s worse, is that during the course of Schultz’s trial, we all learned of the extent of his relations with a British agent, Jonathan Tokeley-Parry, and the extraordinary, dubious efforts undertaken by them to remove the object in question from Egypt, fabricating provenance, making up collections that never existed, and contriving false export and import papers. To the critics of museums—and worse, to the public they serve—the trade in antiquities was seen to be inherently devious and even criminal, implicating museums in the nefarious business of black market trading. The arguments that museums have been making for decades—that we protect alienated objects and advance knowledge of them, that we are committed to due diligence and abhor looting and the destruction of archaeological sites, and that we work on behalf of the public to advance their knowledge and appreciation of the ancient world and our historical relations to it, and do so by building universal collections in their name—all of these have been compromised by the accounts of this high-profile trial.
This, I fear, bodes ill for the U.S. museum community that seeks to comply with the mandate of its Enlightenment origins and the polymathic ideal of discovering and understanding the whole of human knowledge and into the bargain improving and advancing the condition of our human species and the world we inhabit. For it allows the nationalist retentionist cultural policies of foreign countries to maintain their parochial hold on “their” antiquities and restricts the potential such artifacts hold for all of us to understand our common past. These undermine the grounds for creating a future of greater understanding and tolerance for the differences between us that comprise the rich diversity of our common cultural legacy.\textsuperscript{31} All of the arguments of Edward Said that I quoted at the top of this paper, and that are embraced as the founding principles of the universal museum-- I think it is incumbent upon us to complicate and/or dismantle the reductive formulae and the abstract but potent kind of thought that leads the mind away from concrete human history and experience and into the realms of ideological fiction, metaphysical confrontation and collective passion…Our role is to widen the field of discussion, not set limits in accord with the prevailing authority.”—will be poorly served by sustaining nationalist, retentionist cultural policies.

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Let me conclude with a proposal. Art museums and archaeologists should join forces to protect the world’s artistic and cultural patrimony by opposing nationalist retentionist cultural policies and by calling for a return of the
*partage*. This was the practice, common early in the 20th century, by which local governments shared archaeological finds with excavating parties, whatever their country of origin. Since the middle of the 20th century, most “source” countries—those that host excavations, whether they be Greece, Turkey, Afghanistan, or Iraq—have passed legislation by which excavated objects are kept within their national borders as state property. Such laws restrict, indeed *forbid*, a licit trade in antiquities. And we know from decades of experience that restricting licit trade only creates and encourages an illicit one, and that an illicit trade only encourages looting and the destruction of archaeological evidence. *Partage* would itself be a licit trade and would serve to preserve archaeological evidence. It would assist the dispersal of archaeological artefacts around the world for the benefit of museums around the world and their publics. We see examples of this in our world’s greatest museums, whether in Paris, Berlin, London, New York, Boston, or Philadelphia, which to this day preserve finds from excavations undertaken elsewhere, not for the benefit of local audiences here or there but for the benefit of all of us everywhere.

The exhibition of two years ago, *Treasures from the Royal Tombs of Ur* from the University of Pennsylvania Museum of Archaeology and Anthropology, comprised objects excavated by the University of Philadelphia and the British Museum eighty years ago in what is now Iraq and acquired through *partage*.32 What would the fate of those objects have been had they stayed in Iraq? It is hard to know. But we do know that for much of the past quarter century they would have been inaccessible to most of the world and that most of the world
would not have the chance to learn more from them or to better appreciate their beauty and sophistication or the extraordinary achievement of their ancient makers. Today they likely would be lost altogether, destroyed or damaged, victims of the bomb blasts and chaotic circumstances of war.

This would like too have been the fate of many of the great objects in the University of Chicago’s Oriental Institute Museum, to which, as its directly recently remarked, very little has been added since Iraqi laws put an end to partage around 1970. If only partage were still in effect, archaeological knowledge would be advanced, excavated objects would be shared with the world, and fewer objects would be subject to damage, destruction, and looting. As we have learned recently in Iraq and Kabul, archaeological objects and excavation sites are not protected by nationalist, retentionist policies. All too often, they are put at risk.

Antiquities are not one nation’s cultural property. They are among the greatest contributions to our common, human heritage and we should all work together to preserve them for all of time, to be studied and enjoyed by everyone everywhere. Only internationalist cultural policies serve this purpose. Nationalist, retentionist policies work against it. This, at least, is the view from the universal museum as I see it.
I was given this title by the organizers of the conference. I had interpreted “universal museum” to mean the same as “encyclopaedic museum;” that a museums that aspires to building, presenting, and studying a collection of objects representative of the world’s many cultures. During discussion at the conference, questions were raised about the origin and implication of the term, “universal museum.” Most recently, the term was used by a group of museum directors who signed a “Declaration of the Importance and Value of Universal Museums” (eighteen museums from Europe and North America were represented by their directors who wrote and signed the declaration in the Autumn of 2003 on behalf of their museums). The declaration addressed the current movement for repatriation of objects long in museums back to the countries from which they came (the Parthenon Marbles being just one case). It included the sentences: “Calls to repatriate objects that have belonged to museum collections for many years have become an important issue for museums. Although each case has to be judged individually, we should acknowledge that museums serve not just the citizens of one nation but also the people of every nation. Museums are agents in the development of culture, whose mission is to foster knowledge by a continuous process of interpretation. Each object contributes to that process. To narrow the focus of museums whose collections are diverse and multifaceted would therefore be a disservice to all visitors.”

The British Museum was not among the eighteen signatories to the declaration. Its director, Neil MacGregor, nevertheless issued a statement, which was posted on the museum’s website as a kind of preface to the declaration. MacGregor’s statement reads: “This declaration is an unprecedented statement of common value and purpose issued by the directors of some of the world’s leading museums and galleries. The diminishing of collections such as these would be a great loss to the world’s cultural heritage.”

See, [www.thebritishmuseum.ac.uk/newsroom/current2003/universalmuseums.html](http://www.thebritishmuseum.ac.uk/newsroom/current2003/universalmuseums.html) for both the declaration and MacGregor’s statement.

During discussion at the conference, questions were raised about the ideological implications of the term. Some suggested it raised the specter of a kind of monotheism, like the “universal church,” and noted that only museums from Europe and North America (i.e., from “collecting” and not “source” nations). Like all such issues around the collecting of antiquities and cultural property these days, the issue has become a political one. Geoffrey Lewis, Chair of the ICOM Ethics Committee, wrote an editorial opinion piece for ICOM News (no.1 2004) on this subject. He noted, “The concept of universality is embodied at the origin of museums. As we know them today, museums originated in the eighteenth century encyclopaedic movement of the so-called European Enlightenment…. The real purpose of the declaration was, however, to establish a higher degree of immunity from claims for the repatriation of objects from the collections of these museums. The presumption that a museum with universally defined objectives may be considered exempt from such demands is specious. The Declaration is a statement of self-interest, made by a group representing some of the world’s richest museums; they do not, as they imply, speak for the ‘international museum community’. The debate today is not about the desirability of ‘universal museums’ but about the ability of a people to present their cultural heritage in their own territory.”

One can disagree with Lewis’s statements. To my mind, the declaration does not imply that it speaks for the “international museum community.” The only such mention of such a community is in its opening line: “The international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged.” Surely Lewis agrees with this statement. Equally, it must be the case that the statement that the debate today is “about the ability of a people to present their cultural heritage in their own territory” is a statement of self-interest on the part of “source” nations and those who support their claims as represented by Lewis’s statement.
Lewis’s statement, and other statements by Peter-Klaus Schuster, General Director, State Museums of Berlin (in favor of the concept, “universal museum”) and George Abungu, Heritage Consultant and Former Director General of the National Museums of Kenya (opposed) can be found together with a statement by Neil MacGregor on the ICOM website, www.icom.org, under “publications”.


4 Keith Thomas, “Afterword,” in Anderson, et.al. eds., Enlightening the British, 186.


9 Said, Orientalism, xxii.


11 Brief of Amici Curiae American Association of Museums et. al. at 14, United States v. Steinhardt, 184 F.3d 131 (2d Cir. 1999) (No. 97-6319).

12 The touring exhibition will be part of the initiative, American Masterpieces: Three Centuries of Artistic Genius, announced on January 29, 2004 by Mrs. Laura Bush. The cost of the exhibition and accompanying education program is projected to be $15 million and would be paid for out of a requested increase of $18 million to the budget of the National Endowment for the Arts. The press release announcing the exhibition reads in part: “This ambitious three-year program will combine arts presentations with education programming to introduce Americans to the best of their cultural and artistic legacy. American Masterpieces will sponsor presentations of the great American works across all forms, and will reach large and small communities in all 50 states.” See the press release on “www.nea.gov/national/masterpieces/Press/AmericanMasterpieces1.html.”


14 See Paul M. Bator, The International Trade in Art 94-108 (1983) for an account of the UNESCO’s Convention’s legislative history, from drafting sessions to final approval.


17 Bator, supra note 4, at 52.

18 Id.

19 See id.

20 Id. at 11.

21 545 F. 2d 988 (5th Cir. 1977).

22 Id. at 74.

23 United States of America v. Frederick Schultz, Docket No. 02-13575 (2nd Cir 2003).

24 See Art Newspaper (April 2004)....


26 Id. At …

27 Id. at …


29 United States of America v. Frederick Schultz, Docket No. 02-13575 (2nd Cir 2003).

30 Id.

31 As I write this, the Association of Art Museum Directors, an organization of North America’s largest art museums, is drafting new principles for the acquisition of art and antiquities that complement and elaborate on AAMD’s Professional Practices in Art Museums (2001), taking into account recent U.S. legal and political developments in this area.