

John Henry Merryman

## Collections as a Good

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## Il patrimonio culturale e le sue regole

### **Collections as a Good** [\*]

di [John Henry Merryman](#) [1]

This article deals with the issue of art collecting and art systems, where the latter is meant as a social construct that includes players (artists, collectors, dealers, museums, etc.), supporters (the interested public, patrons, foundations, corporations and the State), and a paradigm (i.e. the organizational structure and the set of assumptions and attitudes that direct the way players and supporters think and act). In particular, the authors examines the role of private collections in the American art system and the growing importance of the "New Cultural Policy", i.e. a set of international expectations based on three interrelated sources: cultural nationalism, the professional concerns of archaeologists and UNESCO's cultural program.

Art collections are a good. Art collections like the one built by Albert Barnes are a particularly good good. They are the heart, soul, bone and sinew of the unique American art system, which is a truly wonderful thing, as many of you already know. I will first say a few words about the role of private collections in our system. We will then consider what I call the New Cultural Policy and assess its growing threat to the American art system. I will be a little provocative and hope to stimulate discussion.

An "art system" is a social construct that includes players, supporters and a paradigm. Players are people and institutions whose lives are centrally concerned with works of art - artists, collectors, dealers, museums, art historians, critics and the art press. Supporters - the interested public, patrons, foundations, corporations and the State - provide moral and material support to the players. The paradigm is the organizational structure and the set of assumptions and attitudes that direct the way players and supporters think and act.

Two paradigms, which we can call "public" and "private," compete for domination of the world's visual art systems. In the public paradigm, the visual arts are a governmental responsibility. The State establishes, funds and controls museums. Museum professionals depend for their jobs on city, regional or state governments. Collectors and the art trade live and operate in a State regulatory environment.

In the private paradigm artists make, dealers and auctioneers sell, and collectors and museums acquire, enjoy and dispose of works of art, including major works of great cultural importance, without governmental supervision or assent. Art museums are private institutions founded and sustained by collectors and supporters.

No nation's art system is purely public or purely private, but each favors one or the other paradigm. Most of the world's art systems are in this sense public; the French, Greek and Italian art systems, with their Ministries of Culture, are familiar examples.

The United States is the most prominent, perhaps the only, true example of a fundamentally private art system. Most American art museums, including the great majority of the most important ones, are private institutions, typically founded by collectors and sustained by private donations and self-generated income. Their collections consist principally of objects donated by collectors or purchased with gifts and bequests from collectors and other supporters.

Collectors typically build their collections through art market transactions and in this sense are dependent on the existence of dealers and auction houses. Collectors, dealers and auction houses are free to trade in and export virtually all forms of art, including antiquities found on private land.

Our government has no ministry of culture. But, you may ask, how about the National Endowment for the Arts? Reading its self-description, one might assume that the NEA is a major player in the American visual art system. Actually, however, it is a minor force. Its role is trivial by comparison with the activity of collectors and the art trade in the primary and secondary art markets and the flow of charitable gifts to museums. The NEA's greatest impact

may be symbolic: it reassures a world accustomed to the public paradigm that the United States recognizes and supports the arts.

By encouraging individual donations to museums through the charitable deduction the United States Government indirectly subsidizes the private art system, with hugely significant effects. Decisions about how that "tax expenditure" shall be spent are not made by the government; they are made by art system players. Their power of decision is not centralized; it is totally dispersed among collectors, the art market and museums. As Karl Meyer, an insightful scholar, put it: "[T]he American art museum universe is more like the Milky Way than the solar system" [2]. Another radical thing about private American museums is that curatorial appointments are independent of government, and therefore curatorial beliefs about ownership and stewardship are allowably more diverse than in countries where there exist strong to coercive political norms.

America's art museums compare favorably with those in other First World nations in their number and variety, in the richness of their collections, in the quality of their exhibitions and publications, in the extent of their outreach to the public and in the prodigality of their finances. We are blessed with some 3,500 art museums - with great institutions like the Metropolitan Museum, the Museum of Modern Art, the Chicago Art Institute, the Boston Museum of Fine Arts, the Getty, and an astonishing variety of such diverse jewels as the the Morgan Library, the Neue Galerie, the Kimbell and, of course, the Barnes Foundation. Our private art system seems to work well for us.

#### HOWEVER

Since the end of World War II and the creation of UNESCO, national art systems have come under growing pressure to conform to an evolving set of international expectations. I refer to the sum of these expectations as the New Cultural Policy. The energy that drives the New Cultural Policy has three interrelated sources: cultural nationalism, the professional concerns of archaeologists and UNESCO's cultural program.

Cultural nationalism is expressed in widely adopted national laws claiming State ownership and limiting or prohibiting the export of privately owned works of art and artifacts. These laws often govern entire categories of artworks and antiquities, the great majority of which could not by any objective measure be considered "national treasures:" the Van Gogh and Matisse paintings whose Italian owners were denied export permits are hardly "national." Nor were the Italian drawings and Yuan dynasty ceramics whose French owners vainly sought export permits. The tens of thousands of redundant antiquities languishing in Italian and Greek warehouses are hardly "treasures."

The American archaeological establishment understandably supports cultural nationalism. It also vigorously asserts a professional monopoly over the excavation of sites and the documentation of finds. Archaeological spokespersons do not love collectors of antiquities, about whom they employ a special language in which "looting" and "pillage" prominently appear, as in "Collectors are the real looters."

The 1970 UNESCO Convention on the international movement of art legitimates cultural nationalist legislation and its archeologist supporters. It encourages nations to hoard art and antiquities, as many do, although they prefer to call their retentive practices "protection of cultural heritage." UNESCO has little use for collectors, dealers and the art and antiquities market. The first candid expression of this antipathy appeared in 1976, in a seriously confused UNESCO Recommendation complaining that:

*"[T]he international circulation of cultural property is still largely dependent on the activities of self-seeking parties and so tends to lead to speculation which causes the price of such property to rise, making it inaccessible to poorer countries and institutions while at the same time encouraging the spread of illicit trading" [3].*

Much of the vast surplus of cultural objects hoarded by major source nations would be welcomed to the licit international market by museums, collectors, the art trade and the interested public. Instead, UNESCO has narrowly interpreted its constitutional mandate to support "international exchange":

*"International exchange' shall be taken to mean any transfer of ownership, use or custody of cultural property between States or cultural institutions in different countries..." [4].*

To an American reader, this interpretation of "international exchange" seems oddly divorced from reality. There is no place in it for collectors or an active art trade and no scope for a licit market in cultural property.

The 2001 UNESCO Convention on Protection of the Underwater Cultural Heritage takes UNESCO's anti-market bias to an extreme. Article 2 (7) of the Convention states in its entirety:

*"Underwater cultural heritage shall not be commercially exploited" [5].*

This startling provision is elucidated in Rule 2 of the rules annexed to the Convention:

*"The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods" [6].*

The New Cultural Policy impinges on the American art system in a number of ways, of which the most significant is a new and growing State regulatory presence in the importation of cultural property. The government of the United States has become the world's most enthusiastic enforcer of other nations' broadly retentive anti-market legislation and its restrictive implications for American collectors and museums.

As a consequence, the licit flow of antiquities and ethnographic objects from abroad to the United States has diminished to a trickle, and the licit flow of art is now similarly threatened. The foreign nationalizations and export controls that our government so eagerly enforces insure that American collectors and museums wishing to build or upgrade their collections, and the dealers who normally supply them, will find little new licit material.

Equally important, under the New Cultural Policy every acquisition of a foreign antiquity, ethnographic object or work of art has become a potential disaster for the dealer, collector or museum. Museums are particularly vulnerable. In the words of Asif Efrat:

*"[A]cquisition today carries significant risks for museums, especially the risks of legal battles, either over civil claims for return or over criminal charges. The chilling effect of litigation has increased the reliance on loans and has made museums more cautious about accepting antiquities from collectors" [7].*

The chilling effect is compounded by the resulting increases in compliance costs and lawyers' fees, which consume museum resources that might be better used in other ways. The threat of litigation also has a distorting effect on acquisitions decisions: *"Connoisseurship has been displaced by other considerations, and the more desirable acquisition may be foregone out of an excess of caution" [8].*

Is America's embrace of the New Cultural Policy a good thing? Is it in our interest to support other nations' unbridled cultural nationalism? Are we wise to indulge the antipathy of UNESCO and establishment archaeologists to our collectors, dealers and the art market? What's in it for America?

At a different level, what kind of world art system should we support? The New Cultural Policy leads inexorably to a world of culturally parochial, retentive art regimes in which all Greek art treasures remain in or return to Greece, Italian masterpieces and antiquities to Italy, Egyptian antiquities to Egypt, and so on and on. While Greek museums would hold even more splendid collections of Greek works than they already do, they would contain little else. There would be no licit international art market. Private collections, if they were permitted, would be similarly restricted: collectors could only acquire and hold national art and artifacts.

Or should we favor the more cosmopolitan world art system implied by the preamble of the 1970 UNESCO convention:

*"[T]he interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations" [9].*

This leads to art systems in which collectors and museums acquire and show works from a variety of the world's cultures, as do the Louvre, the British Museum and The Metropolitan Museum, and many others, including the Barnes Collection. It also recognizes a reality neatly expressed by classicist Mary Beard: *"We may try to regulate the movement of cultural property, but - licit or illicit - we cannot stop it" [10].*

In the existing cultural property dialogue in the popular press and in the scholarly literature on cultural heritage, such questions and realities seldom receive serious attention. There is little evidence that ministers of culture in other nations or UNESCO officials in Paris understand the American art system or care about its welfare. They are comfortable with their own public art systems and the positions they hold within them. Nor do our own archaeologists show much sensitivity to the interests of American dealers, collectors and museums.

On the contrary, most of the current cultural property "dialogue" is actually a hermetic monologue in which unbridled cultural nationalism, the single-minded pursuit of archaeologists' professional goals, and the uncomprehending hostility to collectors and the art market expressed in UNESCO's cultural program combine to support each other. The major players in our art system are dismissed as "self-seeking parties" whose activities are "fundamentally incompatible" with the New Cultural Policy.

Clearly, this will not do. The American art system, founded and sustained by collectors, is itself a cultural treasure. Its encounter with the New Cultural Policy raises urgent questions that call for recognition and thoughtful consideration.

But for now, we can celebrate the arrival of Dr. Barnes's magnificent collection - imagine, 69 Cezannes - in its splendid new home, and we can wonder whether anything comparable could be achieved by an American collector today.

## Note

[\*] This talk was given on May 19, 2012, at the [Barnes Foundation](#), in Philadelphia, at the Symposium on "Collectors and Collecting".

[1] With *beaucoup* help from Derek Gillman and Stephanie Thorpe.

[2] Karl E. Meyer, *The Art Museum: Power, Money, Ethics-A Twentieth Century Fund Report* 58 (1979).

[3] UNESCO, *Recommendation Concerning the International Exchange of Cultural Property* (1976).

[4] *Ibid.*

[5] UNESCO, *Convention on Protection of the Underwater Cultural Heritage* (2001).

[6] *Ibid.*

[7] Asif Efrat, "Protecting Against Plunder: The United States and the International Efforts Against Looting of Antiquities," *Cornell Law School Working Paper Series* No. 47 (2009).

[8] Derek Fincham, "Why U.S. Federal Penalties for Dealing in Illicit Cultural Property are Ineffective, and a Pragmatic Alternative," 25 *Cardozo Arts & Ent. L. J.* 597, 598 (2007).

[9] UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export or Transfer of Ownership of Cultural Property* (1970).

[10] Mary Beard, "Sale or Return," *Times Literary Supplement*, 2 Oct. 2009 at 4.

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