

**Lecture for Professor Gail Levin's seminar titled "Ethics Across and Beyond the Curriculum" at Baruch College**

**"Ethics! What a Wonderful World"**

**February 27, 2003**

My life experiences—as an undergraduate philosophy student, a PhD candidate in public history, an Indian advocate for more than a decade, and a citizen in a world currently in crisis—provide the background from which I come. Professor Levin graciously invited me to explore ethics in the art world today. At first, the offer seemed absurd. It was far too broad a topic to cover in two hours. And even though Professor Levin suggested narrowing my presentation—first to a discussion of “ethics” and then specifically to the Indian art market—my instinctive response was a well-mannered smile, if not a mildly cheerful laugh. But I heeded Gandhi’s advice: Even though what we do probably doesn’t matter, we have to do it anyway. Because, with due respect to Gandhi’s unquestionable wisdom in the larger universe, I have found that what we do *can* make a difference, even if it is only for a nanosecond, so I therefore thank my colleague Dr. Levin for this opportunity.

I inarticulately expressed my bewilderment to a friend about where even to begin my remarks about the lack of ethics in the Indian art market—as I have, for the last year, in a most discouraged state, continually searched for an iota of ethics or ethical behavior throughout the entire world.

“And,” replied my friend, “Now you have to talk about shopping.”

I laughed sardonically; our country’s history was a wholesale grab bag and is precisely why questions of ethics arise in the Indian art market now. The hideously violent conquest of the Indigenous Peoples of this land and the continuing cultural genocide provide a backdrop for the ethical concerns I have been asked to address. The American Indian antiquities and human remains possessed by the public and private sectors are the litter—the physical manifestations—that is a result of heinous federal policies and the subsequent abuse of human rights. The acquisitions by theft or threat are what can be described, at the very best, as “sale under duress.”

The United States is certainly not alone in our unethical conduct. We never have been. I have come to believe that, since the dawn of human civilization, at every moment some horror was and is taking place somewhere.

As we gather today, 140 wars are raging worldwide. On one continent male children, upon pain of death, are forced to commit genocide and torture on adults, while young girls

(children, ages 9, 10, and 11) are put in rape camps for the pleasure of members of the armies. Meanwhile, another continent, this one, is poised for a first strike of war upon a country on yet a third continent whose leader should be tried for crimes against humanity and whose population demographic is 50% under the age of 18; which is to say, de facto, that we are poised to wage war against children. And, as if I am not already adequately overwhelmed, at an opening at the Metropolitan Museum of Art the night before last, I passed by Henry Kissinger with a bodyguard. Yet somehow, and as we all know, tenets of ethical behavior are fundamental to all cultures, if not the laws in most countries, and they could be described as the requirements of all spiritual and religious practices.

It is precisely these horrors that make for a good Kurt Vonnegut novel and I might add that after spending time last week with Tibetan Monk Geshe Tashi Tsering I'd say this planet is racking up some really bad karma.

### The Historic Background:

It has been estimated that about 100 million people populated the Western Hemisphere in 1492. Archeological evidence shows that visitors to and settlers of South and Central America came from Africa and the Far East many centuries before Columbus. Further, according to Buckminster Fuller's knowledge of mathematical history, Columbus knew full well that the world was round and so he came equipped with the newest armaments produced during the military build up in an economically depressed Spain. Columbus returned to the New World again in 1493, this time armed with the 1455 Papal Bull of Pope Nicholas and the 1493 Papal Bull of Pope Alexander V. Together, the documents positioned Christian nations as having "rightful" domination over non-Christian nations. The 1455 Bull granted Spain permission "to invade, search out, capture, vanquish, and subdue the Saracens, pagans, and other enemies of Christ [and] put them into perpetual slavery." And the 1493 Bull granted Spain "any lands that Christopher Columbus had discovered, and any lands that the Spanish might discover in the future, provided they were 'not previously possessed by any Christian owner.'"

After the 1823 land dispute, specifically the Johnson v. MacIntosh ruling by Supreme Court Justice John Marshall, the Papal Bulls became the legal foundation upon which all United States land claims now rest and became the just cause for private ownership.

The Indigenous Peoples of North, Central, and South America plummeted from the pre-conquest population of 100 million to 9 million in 1600 and then to 5.6 million in 1892. In the

continental United States alone, the Indigenous Peoples dropped from a pre-conquest population of 14 million to 2 million in 1840 and then to 250,000 in 1900. Meanwhile, the settler's populations increased from a few thousand in 1500 to 250,000 in 1700, to more than 5 million in 1800, and then to nearly 23 million in 1850.

The horrors that the Indigenous Peoples of this continent have suffered—at the hands of conquistadors, cavalry, missionaries, and microbes—cannot be overstated. Although it was the epidemics of European disease that extinguished 90% of the Indigenous population, the Indian slave trade, the westward movement, and federal policies of genocide were ferocious and unrelenting.

The systematic slaughter of 40 million buffalo was General Sherman's strategy: "Kill all the buffalo and the Indian will follow." The forced removal of children from their families to boarding schools continued well into the twentieth century. And when laws replaced guns as the weapon of choice, the Commissioner of Indian Affairs outlawed ceremonies under pain of punitive action, as they were ". . . obscene spectacles that needed to be stamped out."<sup>1</sup> Federal land allotments to the Indians replaced communal ownership values with private property practices, and the nearly 400 formal treaties made between 1700 and 1800, in conjunction with the forced relocation and division of hundreds of Indian Nations, were, and continue to be, violated.<sup>2</sup>

The historic facts upon which this country is built, the nerve fiber that surrounds us, is the context out of which—after ten years of lobbying by American Indian advocates, activists, religious leaders, and lawyers—the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) was passed.

History may be the polemic of the victor, but, as human rights legislation, NAGPRA recognizes the grievances of American Indians and offers redress to Indigenous cultures for the unethical actions of our forefathers.

NAGPRA requires all federally funded museums, universities, libraries, historical societies, and institution of any kind to return American Indian items in their possession that fall within the following four categories: human remains, grave goods, ceremonial material, and cultural patrimony.

NAGPRA required all museums to provide the following: first, by 1993, summaries of their collections to each relevant tribe whose objects were in their possession, and then, by 1995, complete inventories. Written extensions were and are granted to institutions unable to meet deadlines, although complete lack of compliance has occurred without penalty to date.

NAGPRA requires museums to welcome native representatives into their exhibition halls

and storage facilities to review all objects. NAGPRA recognizes oral tradition as equal to archeological or anthropological notes in museums files and requires museums—upon receipt of an itemized list of requested objects by the tribal repatriation departments and after publication of that list in the Federal Register, to allow for competing claims—to return those items.

There is no statute of limitations for the Native Nations or tribes.

The fear that many museum curators and registrars voiced in 1992 about the depletion of their collections has proved unfounded. It is estimated that, when all is said and done, less than 10% of an average institution's collection would be requested.

NAGPRA effectively transformed museum exhibition and collection guidelines and rattled the ethically codeless sale of “important American Indian fine art” in the private sector. NAGPRA has also changed the face of archeology and anthropology, has paved the way for dialogue and debate among scholars, historians, lawyers, and advocates, and has opened new fields of study for law students. In early 1990, there was a flurry of legal briefs with interpretations of the U.S. Establishment Act, forbidding federal funding from establishing any religion. These were soon dropped.

NAGPRA outlines the rights and responsibilities of Native nations. NAGPRA provides the First Peoples with the legal right to bring home grave goods, cultural patrimony, ceremonial material, and their ancestor's remains. The desecration of Indian graves was encouraged, according to an 1868 Congressional Report. The U.S. Surgeon General ordered Army field officers to transfer Indian skulls to Washington for the then-known “Cranial Studies” underway. The decapitation and boiling of American Indian's severed heads, which were taken from battlefields and burial grounds, is one of the most chilling federal policies of our country and it accounts for the tens of thousands of skulls and human remains currently in storage facilities of the Smithsonian's National Museum of Natural History, now awaiting return under their independent repatriation policy.

Most important to Native Peoples, is NAGPRA's inherent recognition of the sovereignty of Indian nations and tribes, which, if honored, has the potential to be a turning point in Indian–U.S. Federal Government history.

#### The Private Sector:

The Native American Graves Protection and Repatriation Act does not apply to the private sector. Hence, auction houses, art dealers, and traders are left to determine their own principles and policies. American Indian artifacts expanded from the curio, archeological, and

anthropological study sector to the Indian art market during the 1970s. This marked exploded in the 1980s. There is a significant disparity when one culture views an object as an aesthetically pleasing commodity and another views it as a physical manifestation of life spirit. As both fine art objects and spiritual items made by Indigenous Peoples have aesthetic merit in the Western European tradition, the distinctions between these two categories have been disastrously blurred. The spirit of NAGPRA has not been embraced universally in the private sector, leaving Native Peoples reliant upon ethical behavior, knowledge, or sensitivity.

The art market embraced Indian art as an investment opportunity in the early 1980s, as it proved to be a commodity with a price indicator. Sales figures doubled between 1980 and 1981, and Sotheby's profited an unparalleled total of \$685,000 at their auction of American Indian art in 1980. Indian artifacts have been traded and sold for centuries, but the speculative collector's eye did not roam to the Indian artifacts as an investment until relatively recently. Investment mentality has turned spiritual objects into commodity, distorting and distancing them from their sacred purpose and from the people who created them.

The American Indian Ritual Object Repatriation Foundation was founded in 1992 to assist in the repatriation of ceremonial materials from the private sector. The Repatriation Foundation has been an outstanding model, creating the standards and procedures for ethical, legal, and culturally sensitive transfer of title.

### The Ethic of Collecting:

I have been unable to allow ethics to remain in the plural. To me, in a way, first and foremost is the singular: ethic.

Discussing the ethics of collecting Indian art since the passage of NAGPRA, scholars and anthropologists nationwide have debated for a decade the question of whether or not one can acquire a collection of Indian art that has curatorial or scholarly integrity and/or has been amassed "ethically." The question that seems to me to be more relevant is: What is, precisely, the *ethic* of collecting? I propose that collecting is a culturally based phenomenon. Collecting art is an activity that is derived from our Euro-centric heritage, that infuses contemporary American culture, and that parallels the foundations upon which a competitive, capitalist economy/culture rests.

Commodity is the food of the United States's most powerful educational vehicle—television. It is estimated that the average television viewer watches five hours each day. This means that every year an average viewer has watched 21,000 commercials. The message 21,000

times a year is to buy more, to have more. The relatively nascent Indian art market benefited from this consumer mentality. Once solely comprised of paintings, sculpture, and so forth, the art market expanded to include antiquity and artifact.

Even in the pre-NAGPRA year of 1989 debates about anthropological collecting were heated. *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*, edited by Phyllis Mauch Messenger, contains a foreword by Brian Fagan, who posed a series of provocative questions: Do people have the right to collect artifacts for personal profit and gratification? Who owns the archaeological record? Should all objects be deposited in museums for common enjoyment? The introduction by Karen J. Warren contains a reminder of differing worldviews:

For persons in a cultural context where “the past” is not viewed as property, perhaps not even as “past” (e.g., some Native American cultures), or where talk of property ownership, utility, and right do not capture important conceptions of the past (e.g., communal kinship with the “living past”) . . . parties to the debate must take enormous care not to see as inferior, irrelevant, or of less significance the sorts of concerns that indigenous peoples raise.

From an Indigenous worldview, collecting is unnatural and the conclusions deduced from the decontextualized of accumulated items are inaccurate. Additionally, the insatiable, passionate exploitation of American Indian culture is painfully offensive.

There is an innate intercultural tension around the ethic of collecting. It is but one of a long list of cultural differences between Western and Indigenous cultures: Separating spirituality from daily life versus integrating the two; regarding dead relatives as gone as opposed to being present; measuring time by machine rather than being aware of its presence; establishing private ownership, not communal ownership; viewing the environment as a resource rather than a source of deliberate subsistence; and amassing as opposed to giving and preserving. It is especially interesting that to the collector, curator, or scholar, the word “preservation” assumes protecting an object from the elements or deterioration. To the Indigenous person, an “object,” if you will, is created to preserve a life cycle or life spirit and is actually destroyed when it is in a case or in storage. It is in ceremony, or through disintegration in natural environs, that the item is able to fulfill its purpose, thus preserving the life spirit for which it was created.

Buckminster Fuller’s position in 1972 was as follows: “Why not completely restore the great cities and buildings of antiquity and send back to them all their fragmented treasures now

deployed in the world's museums? Thus, may whole eras be reinhabited and experienced by an ever increasingly interested, well-informed, and inspired humanity. Thus, may all the world regain or retain its regenerative metaphysical mysteries." This statement proposes cultural and ethical alignments.

And before that, after World War II the following model of integrity and revelation of agendas unfolded:

Collecting Points were organized by the United States in allied-occupied Germany in 1945, anticipating the repatriation to Jewish families or their descendents of an estimated 16 million works of art pilfered, stolen, assembled, and meticulously inventoried by the Nazis.

The late Walter Farmer was Director of the Wiesbaden Collecting Point and Harry McBride was the Administrator of the new National Gallery of Art in Washington, D.C. According to Farmer, under the guise of security, McBride recommended that the Army transfer two hundred works of art "of the greatest importance" from Wiesbaden to the nascent National Gallery. On November 6, 1946, the United States Army ordered that relocation. Two hundred masterpieces left high-security storage and undertook a precarious journey—on two trains northward through Europe, on a boat across the Atlantic, and on a train again, this time south—to the National Gallery of Art in our nation's capitol.

Walter Farmer and his outraged staff of Monuments, Fine Arts, and Archives Specialist Officers prepared the art for shipment, carrying out Army orders on November 7, 1946, but simultaneously he submitted a protest to the United States Senate.

An excerpt:

"We are unanimously agreed that transportation of those works of art to Washington, D.C., undertaken by the United States Army, upon direction from the highest national authority, establishes a precedent which is neither morally tenable nor trustworthy. . . . No historical grievance will rankle so long, or be the cause of so much justified bitterness, as the removal, for any reason, of a part of the heritage of any nation, even if that heritage be interpreted as a prize of war. . . . There are yet further obligations to common justice, decency, and the establishment of the power of right, not might, among civilized nations."

Shortly thereafter, President Truman ordered the masterpieces to be returned to the Wiesbaden Collecting Point to await repatriation. Unfortunately, the overwhelming majority of art is still in European museums awaiting a proactive movement to find descendants of the original owners. Nevertheless, this does not negate the aspirations of the authors of the

Wiesbaden Manifesto.

The ethical standards of this sixty-year-old statement ought be constructive to our contemporary art market. This manifesto is an outstanding document, demanding integrity in handling the of spoils of war, articulating the power of right, and addressing issues of ownership, restitution, and ethical obligations.

### Our Current Situation:

Newspapers and magazines are publishing news about the fate of Afghani and Iraqi antiquities. These thousands of items are becoming part of the Western art market stream, booty to the pillaging and theft of American Indian art and artifact, and more recent illicit smuggling from South American source nations. In November of 2001, the *New York Times* reported from Afghanistan that temples and property belonging to the Kabul Museum were being moved and sold underground, despite national laws and international treaties prohibiting the sale of art from museums. Currently, customs officials internationally are alerted about the illegal transport of items out of the Middle East.

There is a celebrated argument raging between former Getty Museum curator, Aston Hawkins, who is currently president of The American Council for Cultural Policy (ACCP), and legal scholar Patty Gerstenblith, who is a member of the Archeological Institute Association (AIA). Gerstenblith believes there to be a hidden agenda in ACCP's offering postwar financial and technical assistance to the National Museum in Baghdad and archeological sites under its aegis. "One has the strong sense that this group [the ACCP] is using this discussion as a pretext . . . to change Iraq's treatment of archeological objects," wrote Dr. Gerstenblith in the January 2003 issue of *Science*. The re-naming and categorizing of excavated objects could provide legal groundwork for its exportation and sale. This has, of course, been denied by Hawkins. But ACCP has historically labeled the restricting controls on Iraqi export laws as "retentionist." Patty, whom I personally know to be of strong ethical convictions, warns, "It's not for the people in the United States or Europe to tell Iraq what laws they should pass."

As I've been thinking about these things, synchronicity was at work, and so I would like to end this talk with the following thoughts:

This past Saturday I attended a concert at Carnegie Hall to hear cellist Steven Isserlis play with the Czech Philharmonic Orchestra. The program included pieces by Prokofiev and Shostakovich.

I was unprepared for a special appearance of the famous Russian poet Yevgeny Yevtushenko who, born in the 1930s, survived the brutal oppression of the Soviet government

during its height of power. He said, “Some say that it was a pity that Prokofiev and Shostakovich were born in Russia and during that time. I say it was a blessing. It is through their genius that we remember the truth and weight of oppression.”

Mr. Yevtushenko read his poem, “Dwarf Birches,” written in 1966:

We are dwarf birches.  
We sit firmly, like splinters,  
Under the nails of frosts.  
And the kingdom of eternal Freeze  
Engages in many shenanigans,  
To bend us down lower and lower.  
Are you astonished, Parisian chestnuts?  
Are you pained, haughty palms,  
That we seem to have fallen low?  
Are you embittered, pacesetters of fashion?  
That we are all such Quasimodos?

While safe and warm, though,  
You are pleased with our courage,  
And you send us, pompous and mournful,  
Your moral support.

You figure, dear colleagues of ours,  
That we are not trees but cripples,  
Yet our leaves—though ugly—  
Seem progressive to you, for the frost.

Thanks a million.  
Alone, if you please,  
We shall weather it under the sky.  
Even if savagely bent and twisted  
Without your moral support.

Of course, you command more freedom  
But, for all that, our roots are more strong.

Of course, we don't dwell in Paris,  
But we are valued more in tundra.

We are dwarf birches.  
We have cleverly made up our poses.  
But all this is largely pretense,  
Constraint bears the form of rebellion.

We believe, bent down forever,  
Eternal frost can't last.  
Its horror will yield  
Our right to stand upright will come."

He added, simply, "Conscience is the world's greatest wealth."

1 Crow Dog, Mary and Erdoes, Richard. *Lakota Woman*. (New York: Harper Perennial, 1990),  
p. 31.

2 Mander, Jerry. *In the Absence of the Sacred*. (San Francisco: Sierra Club Books, 1991), p. 199.