

**Paper based on presentation for “Law and the Sacred: Native American Repatriation Conference”<sup>1</sup>**

**“Trafficking and Private Collectors”**

**October 24, 1997**

**The American Indian Ritual Object Repatriation Foundation**

**Mission Statement**

The American Indian Ritual Object Repatriation Foundation is a non-federally funded intercultural partnership committed to assisting in the return of sacred ceremonial material to their Nations of origin and educating the public about the importance of repatriation.

- we assist native people in strategies the return of spiritual materials from the private sector
- is a liaison and resource for museums and tribal representatives
- responds to the Senate Committee on Indian Affairs and the Department of the Interior
- is an advocate to Native Nations regarding their rights and responses to NAGPRA,
- educates the public, media, and academia about the importance of repatriation for the renewal and continuance of American Indian spiritual life.
- Three essential elements guide the Foundation toward these goals:
- the Board is a partnership balanced by equal numbers of Indian and non-Indian people, and of men and women
- we apply consensual decision-making processes from indigenous models and honor spiritual sensibilities before the pragmatic
- we view our place as the intersection where individuals from distinct or antipathetic cultures can meet, discuss, and share information to transform contrasting worldviews into harmonious working partnerships. The American Indian Ritual Object Repatriation Foundation Constitution and Bylaws reflects these guidelines.
- we are Provisionally Chartered by the State of New York Board of Regents.

The Repatriation Foundation’s Standards and Procedures:

- we are contacted by collectors, institutions or organizations by phone or fax

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<sup>1</sup> This paper is based on my panelist presentation for “Law and the Sacred: Native American Repatriation Conference, at the University of Chicago, IL.

- our repatriation advisor and associates assist in identifying tribe then clan or society
- we contact tribal representative
- we are told of their determination about repatriation
- we facilitate return

### **Ethics for Spoils of War:**

NAGPRA implicitly acknowledges the inappropriate holding of human remains, grave goods, cultural patrimony and ceremonial material by institutions. Acknowledges validity of oral history of material and culture.

The private sector is not bound by NAGPRA and relies wholly upon the ethics of auction houses, dealers, and the ethics, knowledge and sensitivity of collectors.

The fine arts' market has had an interesting recent history. In 1945 four Collecting Points were established by the Allies in Germany to house 16 million works of art stolen by Nazi's in World War II. Former (and first) Administrator Harry McBride, of the then nascent National Gallery of art in Washington D.C. ordered the United States Army to ship 200 masterpieces from Germany to Washington for 'safe keeping'.

Director of the Wiesbaden Collecting point (and my hero and inspiration) Walter Farmer responded to these orders crating the art for it's arduous journey along with a letter to President Harry Truman; known as the Wiesbaden Manifesto, it states, in part—

“We are unanimously agreed that the 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.”<sup>i</sup>

President Truman reviewed Farmer's protest and ordered the return of the paintings to Germany and repatriation status. Even still fine works were not returned to families, or even countries of original ownership.

Contemporary lawyer and historian, Willi Kort, has emphatically stated that the sale of stolen works of art have no place in the art market. This entire conundrum brings up questions of ethics and well as law: the sale/purchase of stolen art does not create legal title.

Where does the conquest of the Americas fit in?

First: recognizing conquest not discovery.

Where do spoils of war fit in?

What are spoils of war?

What about objects stolen from graves, the slaughtered, spiritual resting sights.

The Indian Art Market refers to spoils of war and ceremonial material created by Native Peoples as Fine American Indian Art. What defines spoils of war may be a gray area, or require familiarity with the complicated and often sordid history of contact and conquest - replete with epidemics, battles and massacres. Examples of spoils might include a pair of child's moccasins in an auction house catalogue with the provenance, "Collected by Captain Alfred Mason Fuller (1852-1902), while serving with the Second Cavalry in Montana and Wyoming between 1876 and 1882."<sup>ii</sup> Also, items at auction were described as "...a spectacular sale of important Custer, Indian War and Western memorabilia in which fine and historically significant Indian items...originally part of collections assembled by two individuals who were members of Lt. Col. George Custer's command on the Sioux Expedition of 1876." Sale items included a pair of Sioux moccasins recovered from Wounded Knee, circa 1890, and a Cheyenne par fleche recovered from the Custer battlefield, circa 1876. The two lots sold for a total of \$11,385.<sup>iii</sup>

Indian artifacts moved from curio and the archeological and anthropological "study" sector to the Indian Art Market that expanded during the 1970's and exploded in the 1980's. Although recognized as having aesthetic merit in the Western European tradition, distinctions between Fine Arts and religious items and spoils of war were also blurred. There are significant cultural differences between viewing aesthetically pleasing items as commodity or as physical manifestations of a spiritual way of life.

Distinguishing between powerful spiritual items and non-grave good older pieces that are appropriate for sale (such as jewelry, rugs, and pottery) is a first and important step. As well, there is an entire world of contemporary art to explore, enjoy and collect. Paintings, sculpture, beadwork,

pottery, and jewelry—exquisite and available, befit avid collectors of Indian Art as well as the occasional purchaser.

Cultural differences:

- worldviews
- ownership

How did ownership of land, objects, and people in the Western Hemisphere begin?

In 1823, three hundred and thirty-one years after Columbus's arrival, the Papal Bulls became the basis upon which United States Federal Indian Law would rest and set the legal precedent for all subsequent land, sacred site, and cultural property right disputes between Indigenous Nations and the Federal government.

In 1819, Joshua Johnson and Thomas J. Graham inherited two parcels of land from Thomas Johnson, which were originally purchased from Chiefs of the Illinois and Piankeshaw Nations. In 1818, William McIntosh purchased 11,560 acres of land from the federal government in the State of Illinois, which overlapped a portion of the Johnson land.<sup>iv</sup> Johnson and Graham sued to eject McIntosh from the lands they had inherited. At issue was whether a land title, sold by Indians under British rule was superior to a title obtained from the United States through a sale by a designated federal land officer. The case moved up to the Supreme Court, Chief Justice John Marshall presiding.

Justice Marshall reviewed the history of ownership of land in the United States and determined that, by *reason of discovery*, that neither the Chief nor their Nation was an owner of the land, as property rights had not been recognized by the Catholic Church, or by England. When the United States declared independence from England it inherited all land that had belonged to the Crown by virtue of the Papal Bulls.

Marshall's opinion reads:

“On the discovery of this immense continent, the great nations of Europe are eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity...So the

Europeans agreed on a principle of law that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments.”<sup>v</sup>

This decision, now called the Doctrine of Discovery, converted the *discovery* of the land to *legal dominion* over it. Dominion has rested with the federal government of the United States ever since.

What about preservation? Who determines, defines an aesthetic or what is art?

Arthur Amiotte (Lakota) historian, educator, and artist have said that art is one of the manifestations (“symbols”) of the sacred; a great work of art, Amiotte said, has a living presence.

With the advent and rise of the Art Market and the focus on art as commodity and investment, the sacred within art is often desecrated; ignored by collectors and pushed aside by artists. The Art Market, with few exceptions, exploits any item whose color, pattern, material and execution can fetch a good price. Medicine Bundles, for example, are not objects d’art but a synthesis of mythologies, songs and prayers.

Distinctions between Fine Arts (in the Western European tradition), artifacts, religious items and spoils of war, have become increasingly blurred. An economic art marketplace diminishes prayers, renders medicine bundles collectibles, and suggests that masks are wall hangings.

Trivializing human creations could be considered genocide of culture, of knowledge, of wisdom.

It would be good if the artist within each of us would call out a reminder that human inspiration sends forth an expression of the sacredness within each and every one of us,<sup>vi2vii</sup> and connections with the invisible. Those expressions of human existence ought to be welcomed with the integrity and respect they deserve.

### ***Completed Repatriations:***

1. The facilitation of the return of a child's arm with a bracelet which had been on display in a private collector's house, 1992
2. The facilitation of the gifting of eleven Anasazi pots to the Southern Ute Cultural Center from a private collector in Texas, 1993
3. The repatriation of three False Face masks to the Tonawanda Band of the Seneca Nation, from a private Connecticut collector, 1993
4. The facilitation of the return of a Gan headdress from a private collector to the White Mountain Apache, in Arizona, in 1994
5. The facilitation of a Horse Stick Effigy from a Long Island, New York private collector to the Cheyenne River Sioux tribe, 1995
6. The repatriation of two antler hair combs to the Iroquois Confederacy from a private New York collector, 1996
7. The repatriation of a Buffalo mask, from a New York insurance company to the Eastern Band of Cherokee, Oklahoma, 1997
8. Repatriation of Snake Dance regalia from a private donor in Massachusetts to the First Mesa, Hopi, 1997.
9. Repatriation of three Kachinas to the Hopi 1997

A total of 24 "items" returned and who knows how much power and knowledge, to date.

Thank you.

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<sup>i</sup> The Wiesbaden Manifesto. Protest written on 7 November 1946 by MFA&A Officers in the office of Walter Farmer in Wiesbaden, 24 signed and 8 agreed but did not sign. U.S. Forces, European Theater Germany.

<sup>ii</sup> Sotheby's Fine American Indian Art Catalogue. New York: May 21, 1991.

<sup>iii</sup> Harmer Johnson, "Auction Block" american indian art magazine. Autumn 1995. Items sold at Butterfield and Butterfield Auction House, California. 23.

<sup>iv</sup> Newcomb, 320.

<sup>v</sup> Oren Lyons, John Mohawk, Vine Deloria et al. Exiled in the Land of the Free. Democracy, Indian Nations, and the U.S. Constitution (Santa Fe: Clear Light Publishers, 1992), 299.