

Collections: A Journal for Museums and Archives Professionals
Provenance Research in American Museums

“A Former Director’s Perspective on Provenance Research and
Unprovenanced Cultural Property”[1]

Dr. Gary Vikan
Former Director, the Walters Art Museum

Provenance research for a fine arts museum is neither a luxury contingent on adequate staffing with appropriate training, nor is it one of those onerous tasks only to be undertaken when imposed and funded from without. Rather, provenance research is integral to the day-to-day work of any art museum committed to scholarship – a facet of the analysis of a work of art every bit as important to revealing its story as are its iconographic, stylistic, and technical analyses. Such research is especially important for the Walters Art Museum which, perhaps to a greater extent than any other comprehensive fine arts museum in the country, is the legacy of dealer-collector interaction, to the complete exclusion of works professionally excavated in archaeological context.[2] Researching and reconstructing the collection’s past has been central to the museum’s work since it was opened to the public in 1934.

My first project at the Walters when I arrived in 1985 as Assistant Director for Curatorial Affairs and Curator of Medieval Art was to oversee the research and publication of a scholarly exhibition catalogue, *Silver from Early Byzantium: The Kaper Koraon and Related Treasures* (by Marlia Mundell Mango). Its focus was a treasure (the “Hama Treasure”) of unprovenanced Byzantine liturgical silver acquired by Henry Walters from Joseph Brummer in Paris in 1929 which was part of a larger hoard that almost certainly emerged from a clandestine dig near the town of Kurin in northern Syria in late 1908. Had the Kaper Koraon Treasure, as it is now called, been scientifically excavated as part of an archaeological campaign, two things would be true:

first, the treasure's find spot and size would be easily and definitively known (facts that took the Walters' curator months of painstaking provenance research to hypothesize); and second, the objects themselves would today be in the Archaeological Museum in Istanbul – as are a few pieces that escaped the looters (illus. 1; author's photo). But that scientific excavation did not take place, so we at the Walters were obliged to deal with the challenging reality of a very important but completely orphaned (i.e., unprovenanced) hoard of Byzantine liturgical silver. From it, the museum was able to generate a significant body of new scholarship relating to the early Byzantine liturgy and votive practices, and especially, in the area of technical research, to the metal composition of such objects, and how they were made. Moreover, that research formed the basis of an archaeologist's-inspired contextual installation of a 6th-century Byzantine altar that is among the highlights of the museum's medieval galleries (illus. 2; author's photos).

Ironically, my last major project at the Walters, more than a quarter of a century later, was to oversee as Director the research, publication, and exhibition of another collection of unprovenanced antiquities, in this case that assembled from the later 1940s until the mid-2000s by John Bourne: *Exploring Art of the Ancient Americas: The John Bourne Collection* (by Dorie Reents-Budet). Again, much new scholarship was generated, specifically through technical research related to issues of authenticity (illus. 4: conservator Jessica Arista cleaning of Nayarit figure; courtesy of the Walters Art Museum Division of Conservation and Technical Research).

The world of 1929, when Henry Walters bought the (then) "Hama Treasure" in Paris, was very different from the world of 2000, when I first met John Bourne at his home in Santa Fe and proposed the Walters as a potential home for his collection. The public's attitude toward antiquities looting and the legal and professional guidelines governing the acquisition of unprovenanced antiquities had changed profoundly and certainly for the better. This change was

propelled in large measure by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership Cultural Property (ratified by the United States in 1972) [3], and by the U.S. legislation of 1983 implementing the 1970 UNESCO Convention (i.e., the Convention on Cultural Property Implementation Act).[4] The CPIA established procedures, to be given effect by the President’s Cultural Property Advisory Committee (CPAC), whereby art source countries can petition the United States to restrict, in concert with other countries, the import of specific cultural property.[5]

But even more significant for art museums like the Walters and collector/donors like John Bourne were the new guidelines adopted by the Association of Art Museum Directors in the summer of 2008 – “Standards Regarding Archaeological Material and Ancient Art” – which state that “AAMD members normally should not acquire a work unless research substantiates that the work was outside its country of probable modern discovery before 1970.”[6]

Conversations about possible gifting began with John Bourne in 2000, the collection was verbally offered to the Walters in late 2008, and I accepted it on behalf of the museum in May 2009 – ten months after the adoption and promulgation of the new AAMD Guidelines.

I accepted the Bourne Collection after full consultation with my Board of Trustees, staff, and legal counsel, and with an eye toward Section II.F of the AAMD guidelines, which acknowledges that museums, after thorough provenance research (i.e., due diligence) might chose to accept works lacking full provenance documentation back to 1970, under two circumstances. First, if “an informed judgment” can lead to the conclusion that such pre-1970 provenance or legal export very likely exists; and second, if:

...the cumulative facts and circumstances resulting from provenance research, including, but not limited to, the independent exhibition and publication of the work, the length of time it has been on public display

and its recent ownership history, allow a museum to make an informed judgment to acquire the work....

The initial Bourne gift involved 70 works that had been displayed for several years in the New Mexico History Museum in the Palace of Governors, Santa Fe, and had been partially published in a small booklet.[7] The 230 promised gifts, along with those already gifted, would be quickly published in three formats: the Walters website, the AAMD Object Registry (see below), and the 2012 Bourne collection exhibition catalogue already cited, *Exploring Art of the Ancient Americas*. The gift acceptance was made in full conformity with the Walters Acquisition Policy as published on the museum's website.[8] That Policy, which incorporates the 2008 AAMD Guidelines (and as of this writing is being modified to incorporate the 2013 revisions to those Guidelines), is prefaced by the museum's three-fold commitment to: Due Diligence, Transparency, and Good Faith Engagement (i.e., responsiveness to potential claimants). Transparency includes first and foremost publication of all newly-acquired antiquities, and even those that are promised gifts, on the Walters website and on the AAMD Object Registry, which was created in 2008 to publicize to source countries AAMD-museum acquired works lacking pre-1970 documentable provenance. As of this writing (September 2013), the Walters Art Museum accounts for about 60% of the AAMD posted works, more than 40% of which are planned gifts, whose presence on the Registry is not required by the AAMD Guidelines.[9]

At this stage in my career there are a few things I can say from experience with absolute certainty:

- that much new knowledge and significant public value can be generated through scholarship (including provenance research) applied to unprovenanced antiquities;
- that we as a nation owe a huge debt of gratitude to collector/donors like Henry Walters and his successors, who have helped shape so many of our finest public museums;

- that there is no way that the United States, either unilaterally or in concert with any number of antiquities-acquiring countries, can put an end to antiquities looting, which ultimately is a policing and enforcement responsibility of the source countries, whose local demand is certainly sufficient to inspire local looting;
- that we as a society have come a long way in the last generation in our understanding of the issues surrounding looting and the antiquities trade, and the importance of controlled archaeological excavations.

But I am certain as well that much challenging work yet lies ahead – involving difficult conversations between and among collectors, museums officials, archaeologists, government leaders, and dealers – before we come to a shared understanding of how best the United States can play its appropriate role in helping to control the looting of archaeological sites while encouraging controlled excavation, object-based research, a legitimate national antiquities trade, antiquities collecting and museum donation, and effective public display of antiquities in order that all facets of their stories be told.

The most pressing issues – before we get to conjuring up utopian visions for the more distant future – are three.[10] First, the need to amend and clarify United States laws relating to import and ownership so that museum officials, collectors, and the antiquities trade generally will have clear parameters to guide them in antiquities acquisition and in establishing secure title.[11] Second, the administration of the Cultural Property Advisory Committee must be reformed to ensure transparency of deliberations and action, and to guarantee equitable empowerment of the competing perspectives of committee members, namely, archaeologists (who have long dominated the deliberations)[12], museum officials, dealers, and members of the general public. And third, that an all-encompassing digital database be created along the lines of

the AAMD Object Registry for the listing of privately-held unprovenanced antiquities now in the United States, in order to provide notice to source countries and thus facilitate rapid action on legitimated claims, and to enable the eventual donation of at least some among these so-called orphaned antiquities to public museums.

From my perspective as a former museum director, I begin with the third issue, because it is most easily and immediately addressed and because it is the most pressing for museum directors, boards, and supporters. Why? Because many, probably most, directors of the larger, historically comprehensive art museums in this country have at least one collector and potential donor – likely a long-standing friend of the museum – who has a private collection populated by unprovenanced antiquities. For the Walters, John Bourne was one, though there are others with similar characteristics. Such works fit my definition of orphans, insofar as they are unprovenanced antiquities privately collected over the last 40 years or so, mostly when documentation was generally not understood to be a pressing issue and when many transactions were, as I have been told, consummated with cash and a handshake.

Since the adoption of the new AAMD Guidelines in 2008, with its call for documentation back to 1970, the historically open and fluid channel connecting the collector/donor to the museum and, by extension, to the public, has been substantially frozen. This was the inevitable result of the Guidelines' transactional focus, which substantially ignores what is best for the object, scholarship, and the public. In at least partial acknowledgement of this problem (i.e., "in light of experience"), the AAMD in 2013 adopted "Revisions to the 2008 Guidelines on the Acquisition of Archaeological Material and Ancient Art." These revisions address, in an expanded reworking of Section II.F (now Section III.F), gift and estate plans in place but not

executed before the 2008 revisions to the Guideline, which are now “grandfathered.” The new text continues:

The 2013 revision also adds certain definitions and examples, and clarifies that if an acquisition must be posted on the AAMD Object Registry because it was acquired based on an exception to the Guidelines, the posting must explain how the acquisition fits one or more of the exceptions.

The “exemptions” (i.e., “facts and circumstances”) that might “allow it [a museum] to make an informed judgment to acquire the [unprovenanced] Work” are now elaborated with examples, including exhibition, publication, public display, *et cetera*, and, as item III.F.2.f, “communications regarding the Work between the country of modern discovery and the current owner, a prior owner, or the museum...”.

It seems to me that the next logical step, expanding further on Section III.F.2, is the creation of the comprehensive database I referenced above. Aggressively marketed to source countries (with adequate protection of privacy), this would be that “go to” place where potential claimants could find large numbers (eventually thousands) of searchable unprovenanced antiquities in the hands of collectors and dealers, and make whatever legitimated claims they might have for restitution. But inevitably, as time goes by and when no claims are forthcoming for the vast majority of posted works, there will, I believe, be a marked “thawing” of that channel connecting collector/donors to museums to the public – a *de facto* “repose” of title borne of transparency.

My own experience at the Walters provides an example. In 2011, a friend of the Walters, in honor of the John Bourne donation, decided to gift to the museum a group of unprovenanced Ancient Americas works. He chose, however, to make it a promised gift, and asked that we post the works on our website. His intent was to publicize the works to source countries, and should

there be a claim, to address the claim himself, before the museum would become directly involved. The effect of this act of informed and sympathetic philanthropy would be to use the Internet – and full transparency – to achieve a degree of repose for his title to the works, and for their transfer. What I am suggesting is that the issue of orphans can be addressed comprehensively with a tool that was not in anyone’s imagination in 1970 when the UNESCO Convention was adopted, or even in 1983 when the U.S. implementation legislation was passed, namely, the Internet. The museum’s hard work of provenance research, which must and will go on, will now be abetted by those (the source countries) with the strongest interest in helping to complete the story line.

Are there challenges? Certainly there are. Who decides what a “legitimate” claim for restitution is? How does one protect the identity of those who may wish to post their work anonymously? This database will hardly be the end of the journey, but from my perspective, it is the logical next step. Now, it is time for some of those difficult conversations.

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