

**Lecture for Professor Thalia Vracholopoulos's class "Global Issues in Art Crime" at
the John Jay College of Criminal Justice
"Who is the Criminal, Where is the Justice?"
September 27, 2006**

When I received the invitation to speak to you here, at the John Jay College of Criminal Justice, about my work as an American Indian advocate and about the Native American Graves Protection and Repatriation Act, I felt an obligation to raise the most basic of questions to you: What is the crime and where is the justice? I hope to answer these questions by then end of this class.

At this moment in time, we are ripe with examples of criminal behavior—particularly with the current looting of cultural heritage from the Iraqi National Museum in Baghdad, and the recent looting of the Kabul Museum in Afghanistan. Objects are just now appearing for sale in the western art market. Who bears criminal responsibility? Those who didn't protect? Those who sell? Those who smuggle? Those who purchase and sell again at enormous profit? It's quite a line-up of criminal suspects.

During World War II, 16 million works of art and antiquity were confiscated, stolen, or pillaged by the Nazis from Jewish families, dealers, and collectors. To this day, only a fraction of these have been returned. Claims and restitutions have been front-page news for only a little decade now, as descendents of victims are identifying their family's art that is appearing in exhibitions or on sale, often seeing these items for the first time in sixty years.

The Parthenon Marbles is a longstanding, prime example sited when discussions of theft and restitution arise. But spoils of war and the international transport of stolen property from "source nations" have historically been an acceptable means of acquisitions for museums or for purchase and sale by dealers—morally questionable, but status quo nonetheless. Although the UNESCO Geneva Convention of 1970 outlawed international trafficking of stolen property, it is only over the last decade that ethical and legal concerns have been voiced. And only recently have museums and dealers been taken to task with international lawsuits that challenge the purported transport and purchase of art specific items of art.

Here, in the United States, it took ten years of effort by American Indian lawyers, activists, and spiritual leaders to usher in 1990 passage of legislation of NAGPRA—the Native American Graves Protection and Repatriation Act. NAGPRA requires all federally funded institutions with American Indian collections to prepare inventories and contact tribes and nations of origin with lists in the following categories: ancestral remains, associated and unassociated grave goods, ceremonial material, and cultural patrimony. The NAGPRA repatriation process is careful and explicit.

Think about how many millions of American Indian objects are in the thousands of museums, libraries, and historical societies across America and in Europe. These are, more often than not, the results of spoils of war or sales made in the nineteenth century under duress of starvation and disease. The Indian art market has long ignored provenance or touted evidently nefarious provenance as acceptable.

For example, in 1991, I went to the Sotheby's pre-auction viewing of their "Fine American Indian Art" auction. As I walked through the galleries of the auction house and looked at cases filled with "art," I became more and more uneasy. Children's moccasins, beaded vests, and personal items were alongside labels announcing provenance, such as the Cheyenne leggings and Sioux beaded tobacco bag "collected by Captain Alfred Mason Fuller (1852–1902) while serving with the Second Cavalry in Montana and Wyoming between 1876 and 1882." How could it be that such items—probably taken off children, women, and men after battles, possibly massacres—could be sold and purchased as art?

It has taken fifteen years, but today provenance has become a key to ethical codes and legal possession. Remember: A good faith purchase does not a right title make!

In 1992, the American Indian Ritual Object Repatriation Foundation (AIRORF) was founded to facilitate and liaise returns of ceremonial material from the private sector to their places of origin. AIRORF is a public foundation honored with an Absolute Charter from the State of New York. We have been assisting in returns from the non-Indian private sectors to Tribal representatives and clans across the country for more than fifteen years. Initially, our work was predominantly to introduce museum registrars and curators to tribal representatives. NAGPRA was nascent, tribes and nations were not

immediately organized with repatriation offices and trained representatives, and museums did not know how to contact the people whose material was in their collections.

Collectors, or people whose parents or relatives had died and who had found items in the basement or attic, would call and ask about an item's origin and whether or not it should be returned. We would contact our native advisors for assistance in ascertaining tribe of origin, authenticity, and determination about the need for repatriation. It was a slow process, but it has yielded wonderful, exceptional results.

AIRORF has been a model for organizations and countries developing repatriation processes. In 1996, AIRORF published *Mending the Circle: A Native American Repatriation Guide (Understanding and Implementing NAGPRA. The Official Smithsonian and other Repatriation Policies)*. It has become the definitive guide on the repatriation process as set forth by the Native American Graves Protection and Repatriation Act, the rights of American Indians under the law, and the obligations of federally funded institutions. Topics include: NAGPRA regulations, building a tribal repatriation program, Smithsonian Institution repatriation policies and procedures (including NMAI amendments), civil penalties, museum practices, and approaches for repatriating from the private sector.

The history of the United States is, of course, an entire term course on the conquest of the Western Hemisphere. But, in brief, it is the human loss, the wholesale slaughter upon which this country is built. Our history informs us and highlights the reasons to strive for moral conduct, a code of ethics, in the Indian art market. As a population, we have to react, respond, and redress actions of our government, our cavalry, our representatives, and our policies. We are the heirs and assigns of the horrors perpetrated against the first peoples of this land. This country was conquered, brutally. Those not killed by disease or famine were herded to reservations. Children were taken by force to boarding schools—hair cut, language stripped. Land not taken by force was taken by, ultimately disavowed, treaties. At this point the Senate and Congress talk about commitments to the Indian Peoples as if it were welfare—and not the international agreements between two governments that they are.

This lecture has been without PowerPoint or photographs. One of the first things I learned, nearly twenty years ago, was about American Indian objections over use of

certain images of ceremonial materials, regalia, dances, and the like. I also quickly learned about the inappropriate display of assembled ceremonial pipes on exhibition in museums. Fundamental, however, is the distinction between items that are appropriate for sale and those that are not.

This lecture speaks to my conviction of our guilt. Crimes against humanity were perpetrated against Indigenous Peoples—first by conquistadors and explorers in the name of church and monarchy, and then by the United States Federal Government and its citizens in the name of Manifest Destiny and liberty.

The John Jay School is dedicated to the investigation of crime and the implementation of justice. I implore, I challenge, each of you to learn the history of our country and to redress what can be redressed, to alter what can be altered, and to find justice and give The People their rightful due.

Thank you.