

An aerial, black and white photograph of a city square. In the background, a large classical building with a portico of columns is visible. The square is paved with a geometric pattern of lines. A large, dark, curved sculpture is positioned in the foreground, extending from the bottom left towards the center. Several cars and pedestrians are scattered throughout the square.

# Ethics and the Visual Arts

*Edited by  
Elaine A. King and Gail Levin*

## Calling for a Code of Ethics in the Indian Art Market

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Harvest Dance at Santa Clara Pueblo, New Mexico

Professor Gail Levin moderated *Ethics in the Art World* at the College Art Association Conference on February 22, 2002. "Calling for a Code of Ethics in the Indian Art Market" was the paper from which I expanded remarks as a panelist at that session. The United States was suffering the aftershocks of September 11, 2001. More than four

years have passed now, and we are confronted with a constitutional crisis and ethical dilemmas in a multitude of areas.<sup>1</sup> The following introduction was written in the spring of 2005 and serves as a preface for the inclusion of my paper in this anthology.

—November 2005

## Introduction

9 April 1954. She said to me today as I was leaving: "And now my dear, when are you going to start writing again?" I might have said, of course, that all this time I've been scribbling off and on in the notebooks but that is not what she meant. I said: "Very likely never. . . ."

"Why can't you understand that," I said, really wanting to make her understand, "I can't pick up a newspaper without what is in it seeming so overwhelmingly terrible that nothing I could write would seem to have any point at all?"

"Then you shouldn't read the newspapers."

I laughed. After awhile she smiled with me.

—From *The Golden Notebook*, Doris Lessing<sup>2</sup>

Being of the mind that sees the world through ethical-colored glasses, I am alarmed by the national changes we are witnessing; fundamental democratic rights are being dissolved without sober discourse. I am feeling more humbled than ever knowing that the American Indian peoples have known human rights abuses ever since Columbus' arrival, and I extend my gratitude to my American Indian friends for the poignant yet ironic reminder that I should not be surprised at the current state of affairs. After all, they have lived at the other end of injustice for a very, very long time—and survived.

That said, at this moment in time we are in dire need of ethical discourse and legal opinions that must include, but hardly be limited to, the significance of the compounded loss of rational thinking and democratic activism by the American public;<sup>3</sup> the significance of unethical, if not illegal, unchecked war-profiteering by the highest elected officials of this administration;<sup>4</sup> the significance of the utilization of electronic devices and ethnic profiling;<sup>5</sup> the significance of the deterioration of our

constitutional rights<sup>6</sup> under the Patriot Act;<sup>7</sup> the significance of the use of the self-proclaimed War on Terror to further the agenda of President George W. Bush and the religious far Right;<sup>8</sup> the significance that, by order of the highest national authorities, people are "disappeared" and men are categorized as enemy combatants to legitimize their being outsourced to countries where torture is legal;<sup>9</sup> the significance of the four years without due process and continual unchecked human rights violations of detainees in Guantánamo Bay;<sup>10</sup> the significance of [the then] House Majority Leader Tom DeLay's statement that "judicial independence does not equal judicial supremacy" in a videotaped speech at an ambiguously described "conservative conference" in Washington, D.C. but entitled "Confronting the Judicial War on Faith;"<sup>11</sup> and the significance of Senate Majority Leader Bill Frist's videotaped speech, simultaneously broadcasted to an estimated sixty million people in the United States the following day, for "Justice Sunday," organized by unnamed "Christian conservative groups" who condemned Democrats as being "against people of faith."<sup>12</sup>

The unchecked political power of the fundamentalist religious far Right, the acquiescence of our legislative branches, the war rhetoric fed to us by a compliant media and mainstream press could be the rain showers before a mighty hurricane if you can imagine the significance of President Bush's precedent of preemptive strikes combining with the fact that he is a born-again commander-in-chief who controls 2,000 intercontinental land-based hydrogen bombs, 3,456 nuclear weapons on submarines roaming the seas fifteen minutes from their targets, and 1,750 nuclear weapons on intercontinental planes ready for delivery. Of these 7,206 weapons, roughly 2,500 remain on hair-trigger alert, ready to be launched at the press of a button . . . enough explosive power in the combined nuclear arsenals of the world to "overkill" every person on earth thirty-two times.<sup>13</sup>

—May 1, 2005

## The Paper

What is art? I have been struggling with this rigorous question for more than a decade.

I grew up around important French paintings and sculptures of the nineteenth and twentieth centuries, Ancient Iranian antiquities, Shang Dynasty ritual bronzes, Neolithic jades, and Ming furniture. All were

considered art. I neither questioned nor even thought about this grand, all-encompassing categorization.

Until 1991.

### *Native American Graves Protection and Repatriation Act*

In 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was passed by the Senate and signed into law by President George H.W. Bush. This legislation was the culmination of ten years of lobbying by American Indian activists, advocates, and lawyers. NAGPRA is a human rights act acknowledging the mostly unscrupulous means of acquisition—looting, grave robbing, and/or sale under duress—of American Indian ancestral human remains, grave goods, cultural patrimony, and ceremonial material. Explicitly, NAGPRA distinguishes the 556 Native American tribes currently recognized by the Bureau of Indian Affairs as sovereign nations and requires all institutions with Native American collections that have ever received federal funding to return items that fall under the above four categories. This has prompted changes in exhibition cases as well as acquisition guidelines in museums, historical societies, and libraries. NAGPRA does not apply to the private sector.

### *Sotheby's Auction House*

One of Sotheby's important and lucrative spring auctions was of "Fine American Indian Art." In May of 1991, more than 290 items were up for sale, including three "masks" consigned by a non-Indian collector; two from the Hopi and one from the Navajo Nations.<sup>14</sup> This often-used English descriptor, "mask," is a deceiving noun as it blurs the distinction between art and ritual objects. "Friends," as they are generally called by the Pueblo peoples of the Southwest, have individual names that indicate the clan or society who care for them or, sometimes, the spirit they hold. Their knowledge and power are activated in ceremonial dance.

Representatives from the Hopi and Navajo Nations came to know that the three were scheduled for sale and contacted Sotheby's, requesting that Koyemsii, Ahola, and Yebeiche, respectively, be removed. The persons who telephoned from Hopi and Navajo explained to the head of the Sotheby's Indian arts department that the "masks" are not art, but essential spirits needed for the continuity of their religious life—they are spiritual entities or

life-spirits. Sotheby's reply was brusque, accurate, and without ethical or moral concern: Auction houses are not bound by NAGPRA.

This "Fine American Indian Art" sale also offered nearly a dozen items (including Cheyenne leggings, a Sioux beaded tobacco bag, and a pair of child's moccasins, described as decorated "with tipis and chevrons") with provenance information reading, "Collected by Captain Alfred Mason Fuller (1852–1902) while serving with the Second Cavalry in Montana and Wyoming between 1876 and 1882."<sup>15</sup> Spoils of war have long been considered the prizes of the victor. Given the specific dates and locations in this instance, anyone even slightly familiar with American history would know that they were "collected" during the Westward Expansion and more than likely taken off dead victims' bodies, picked off a battleground, or confiscated during the Indian Wars.<sup>16</sup> It is doubtful that those particular items would have been sold under duress, as was often the case with jewelry and blankets.

Looking at them, and the provenance labels, at the presale exhibition, I was outraged that people would actually purchase or even want to own them.<sup>17</sup> I began to wonder if auction houses and potential buyers are unconscious, in denial, or basically apathetic about the importance of provenance information. I came to understand that for bottom-line-driven dealers and auction houses, the uninformed are their best customers. That may be so, but it is morally indefensible.

I attended that "Fine American Indian Art" auction the next day and purchased Koyemsii, Ahola, and the Yebeiche, and returned them. It is accurate to say that life changed, as repatriation, the movement, began.<sup>18</sup>

### *The American Indian Ritual Object Repatriation Foundation*

In 1992, I founded the American Indian Ritual Object Repatriation Foundation as a public foundation<sup>19</sup> to assist in the return of ceremonial material from the private sector and to educate the public about the distinction between art and sacred material.

The years since NAGPRA and the Repatriation Foundation's births have been heartening. Museums, historical societies, universities, and other institutions with American Indian collections have, for the most part, gone from shock and confusion to surrender and proactive participation. Nationwide, institutions have inventoried hundreds of thousands of objects in their collections. This process has required an increase in budgets for personnel and legal advice, but museum curators and registrars continue to report that they have emerged with a new knowledge and understanding of

their collections because of the wealth of information shared by visiting Native representatives. Human remains and sensitive material culture have been removed from displays and trustees have learned to balance the repatriation of assets with institutional fiduciary responsibilities. NAGPRA, for America, has been remedial for Natives and non-Natives, alike.

In the beginning, the Repatriation Foundation assisted museums with communications: how and who to contact at hundreds of Native Nations. The Foundation's publication of *Mending the Circle: A Native American Repatriation Guide*<sup>20</sup> in 1996 leveled the playing field and enhanced communications between museums and Native Nation Repatriation Offices. *Mending the Circle* is widely recognized as the definitive repatriation guide and is used, as well, by major law schools as a textbook and by scholars for research.

By the beginning of this year [2002], the Repatriation Foundation has assisted, both as conduit and facilitator, in scores of returns from the private sector, and contributed to last fall's termination of Sotheby's thirty-year-old Indian art department's annual auction.<sup>21</sup>

The foundation takes great pride in having created a new paradigm for museums in Europe as well being as a ray of hope to indigenous peoples around the world. The work of the foundation has inspired and encouraged collectors and individuals to participate in the return of sacred material to American Indians. The foundation has been embraced by the scholarly community and has been at the forefront of discussions about distinguishing ceremonial items from those appropriate for sale, indeed we have insisted that this distinction belongs in ethical dialogs.

### *Who Are These Things We Call Art?*

There is a significant difference between aesthetically pleasing items viewed as inanimate commodities and physical manifestations of life's spirit. "Friends," if you will, as well as many items, including ceremonial regalia, are central to a living culture's spiritual life and continuity—holding knowledge, instructions, and prophecy. This is an indigenous worldview, neither a singular belief system nor primitive superstition nor one with which people in Western cultures are necessarily familiar or comfortable.

For Native Americans, however, intuitive powers and the miraculous event are the very roots of communities and their relationship to the physical world and their spiritual truths.<sup>22</sup> Corn grows where there is no rain when planted in a hole made by a sacred cottonwood prayer stick; stories speak from sacred designs of quills on a belt (wampum) to those trained to

hear. The disintegration of totems on mountains and in caves releases spirits and prayers that preserve life's cycles—that is their purpose, the *raison d'être* of their existence.

To physically preserve sacred items in a museum case for viewing or to hold them in storage facilities for posterity is, in fact, to destroy them.

### *History and the Struggle for Human Rights*

The facts of the conquest of the Western hemisphere are not taught in most educational institutions, from grade to graduate school. This was not a vacant continent, but one inhabited by a hundred million human beings, and an estimated population of twenty million lived within the borders of what is now the United States. The people were sophisticated in matters of health and healing. They were expert practitioners of nutrition and sustainability, aware of the intricacies of botany and ecological diversity. The encyclopedic knowledge over thousands of years was, and to some extent still is, transmitted orally from one generation to the next. And their exceptional patience and understanding of the need to nurture children and bestow respect accorded their greatest asset—the elders—are still in evidence today.<sup>23</sup>

Before the arrival of Columbus, the people of this hemisphere had never known contagious disease; they were without immunities and scourged by epidemics that were carried by the explorers and conquistadors from the old world. Millions died hideous deaths in less than a century after the arrival of the first landing in the Caribbean. The population of Turtle Island (America) plunged from twenty million people in 1500 to two hundred thousand in 1900,<sup>24</sup> predominantly due to disease, then genocide.<sup>25</sup> It was this attrition, in fact, that ended the Indian slave trade and set the African slave trade in motion. And the first germ warfare began at the end of the eighteenth century when the federal government and United States cavalry distributed blankets contaminated with smallpox and measles to tribes along the East Coast.

In the nineteenth century, the federal government outlawed American Indian ceremonies, and in 1823 Supreme Court Justice John Marshall's ruling, known as the Doctrine of Discovery,<sup>26</sup> in the *Johnson v. McIntosh* case, set the precedent for Indian/federal land disputes on which all private property transfer rests, to this day:

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>27</sup>

One of the most appalling exploits started in 1868 when the Smithsonian Institution anthropologists set out to “prove” the inferiority of American Indian people and began the cranial studies that resulted in decades of mass murders and grave robbing to decapitate the dead. The United States cavalry enthusiastically participated in brutal slayings, and the boiling and weighing of skulls to be sent by train to Washington, D.C.<sup>28</sup> In 1887, the General Allotment Act diminished communally held tribal lands and between the 1890s and the 1920s tribes were “forced to agree to land cessions.”<sup>29</sup>

During the first half of the twentieth century, Indian children were kidnapped and kept in boarding schools against their will, and the 370 treaties between the United States and Sovereign Indian Nations were, and continue to be, summarily ignored, despite their legal standing.<sup>30</sup> Spoils of war, once a curio in the archeological study sector, became part of the art market during the 1970s, blossomed into serious trading as commodities, began breaking records in sales in the Indian art market by the mid-1980s, and has become the lucrative business we know today.<sup>31</sup>

Endless brutalities have hammered away at these eco-oriented, aesthetically brilliant cultures. The Indian peoples’ slogan, “Surviving Columbus,” is that indeed they have, which in part speaks to the power of spiritual life in Indian communities.

And so it is that those who sell, collect, or study ancestral remains, ceremonial material, and grave goods continue to rob heritage and make precarious the future of Native Americans.

### *Ethics in the Art Market*

Is it inevitable that the creation of an art market, or more precisely the point at which art becomes commodity, results in a loss of ethics? Unfortunately, observations lead to a resounding “yes.”

The plundering of art and spoils of war is under scrutiny worldwide—by UNESCO, governments, attorneys, and astute museum directors.<sup>32</sup> Sites in South American countries, known as “source nations,” continue to be pillaged, but the acquisition of stolen property does not establish legal title, nor does the transfer of stolen property in a good-faith purchase.<sup>33</sup>

As we meet here today [February 22, 2002], Frederick Schultz, a Fifty-seventh Street ancient art dealer who was arrested by federal agents, is on trial for trafficking stolen property. Schultz allegedly baked a fake accession label and contrived a fictional 1920s Englishman’s sojourn to Egypt as provenance for a fourteenth-century BCE stone bust of Amenhotep III. This is certainly unsettling, but so is the position of other antiquity dealers who say that federal involvement in this case is contrary to American “notions” of private property. The Antique Art Dealers Association’s lawyer William Perlstein remarked, “I think the government is out to squelch the antiquities trade, and no one is taking into account the interest of the public it serves.”<sup>34</sup>

In Afghanistan, religious statues have been toppled, and cultural treasures from the country’s national museum, the Kabul Museum, have recently been reported as destroyed, melted down, or stolen for black market sale to the West. The latter is in the face of Afghanistan’s national laws prohibiting the sale of art from museums, but of interest to this discussion today is all participants’ patent disregard for international treaties.<sup>35</sup>

We must extend much gratitude to [co-panelist] Hector Feliciano<sup>36</sup> for his important book, *The Lost Museum*, and for raising awareness of one of the Nazi Party’s agendas of confiscation and theft of art belonging to Jewish dealers and families.

Recent legal battles between museums and descendants of Jewish victims of Nazi confiscation are now front-page news stories. These are solid victories for all repatriation efforts.<sup>37</sup> The lawsuits put faces on the reality of the Nazi “art program” and educate people about the law—good title, property rights, and the ethical issues surrounding the spoils of war.

### *The Wiesbaden Manifesto*

A cry of caution had emerged in 1946.

An estimated sixteen million works of art were confiscated and meticulously inventoried by the Nazis<sup>38</sup> from 1934 until the war’s end in 1945. The Allies established four “collecting points” in occupied Germany to assemble, inventory, and care for the stolen art in anticipation of restitution and repatriation to Jewish families, descendants, or countries of origin.

At the same time that the late Walter Farmer was director of the Wiesbaden Collecting Point, Harry McBride was administrator of the new National Gallery of Art in Washington, D.C.<sup>39</sup> According to Farmer, McBride recommended, under the guise of security, that the Army transfer two hundred works of art “of the greatest importance” from Wiesbaden to the nascent National Gallery. It was so ordered, and the chosen masterpieces left Wiesbaden for Washington, D.C.<sup>40</sup>

Walter Farmer and his staff of 140 fine arts specialist officers, responsible for the packing and shipping of those great works, were so outraged they composed “the Wiesbaden Manifesto.” They sent their bold protest to the United States Senate, where the manifesto was accorded full agreement and a bill went to the Oval Office. President Truman signed orders for the priceless works of art to be returned to the Wiesbaden Collecting Point and their repatriation status.

An excerpt:

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>41</sup>

### Conclusion

The Wiesbaden Manifesto is an outstanding treatise in its call for integrity, ethical standards, and moral obligations when addressing the handling of spoils of war and commitments to restitution.

“It is no exaggeration to describe Paris as the art supermarket for the Nazis . . . [until] the Liberation in August 1944,” wrote David D’Arcy in a 1995 issue of *Art & Auction*.<sup>42</sup> I would add that it is not an exaggeration, in this regard, to describe the Wiesbaden Collecting Point as a perceived “art supermarket” by the United States when the war ended but arrested by Walter Farmer’s active moral conscience.

There is no conclusion yet for the spoils of war belonging to American Indians or the orphaned Nazi booty. Repatriation and restitution, in both

cases, may go on for a very long time but can only succeed with the vigilant rejection of financial and legal pressures. Our educational institutions must do their part to teach the history of our country. We cannot afford to hide behind reverence of unworthy heroes and legends of glory; indeed that fuels attitudes of superiority and bigotry. Exceptional and credible thinkers need to synthesize information, and strong, truthful voices, be they eloquent or raw, must rise above the clamor of the deceptive guile of those who would oppress.

It is essential to be steadfast—individuals must live and work in a conscious and conscientious manner, and the art market must rise above greedy apathy and accept sound ideals that move toward ethical conduct. If not, there is little to be learned, save that pockets can be lined with the gold of the dead and of the losses of the living.

### Endnotes

<sup>1</sup> David M. Potter, *Freedom and Its Limitations in American Life*, ed. Don E. Fehrenbacher (Stanford, CA: Stanford University Press, 1976). Published posthumously, this is an important collection of Dr. Potter’s papers on the nature of freedom and control.

<sup>2</sup> Doris Lessing, *The Golden Notebook* (New York: Simon & Schuster, 1962), 240.

<sup>3</sup> Paul Krugman, “Who Gets It?” Op-Ed, *New York Times*, January 16, 2004, A21. Referring to Lesley Clark, who is quoted: “I think we’re at risk with our democracy, I think we’re dealing with the most closed, imperialistic, nastiest administration in living history.”

Sebastian Haffner, *Defying Hitler* (London: Phoenix, 2002). This is a personal memoir recounting the rise of the Nazi Party and Hitler’s Germany.

<sup>4</sup> Margie Burns, “The Family’s Profiteering Goes Unobserved,” *Washington Spectator* 30, No. 3 (February 1, 2004): 1.

Jane Mayer, “Contract Sport: What Did the Vice-President do for Haliburton?” *New Yorker*, February 16–23, 2004, 80–91.

<sup>5</sup> Adam Liptak, “Citizen Watch: In the Name of Security, Privacy for Me Not Thee,” *New York Times*, sec. 4, November 24, 2002.

“The New Airport Profiling,” Editorial, *New York Times*, March 11, 2003, A4.

“What’s Wrong with the Patriot Act and How to Fix It,” Center for Democracy & Technology, [www.cdt.org](http://www.cdt.org).

<sup>6</sup> Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

<sup>7</sup> Patriot Act: "United and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism Act."

"Revising the Patriot Act," Editorial, *New York Times*, April 10, 2005, A20.

<sup>8</sup> "The Disappearing Wall," Editorial, *New York Times*, April 26, 2005, A18.

<sup>9</sup> Nina Bernstein, *New York Times*, April 8, 2005, B1.

<sup>10</sup> Katharine O. Seelye, "Some Guantánamo Prisoners Will Be Freed, Rumsfeld Says," *New York Times*, October 22, 2002.

David Rose, *Guantánamo, The War on Human Rights* (New York: The New Press, 2004), 2, 60.

Anthony Lewis, "The Justices Take on the President," Op-Ed, *New York Times*, January 6, 2004, A21.

Jack Begg, "After the Terror Attacks a Secret and Speedy Rewriting of Military Law," *New York Times*, October 24, 2004, A1.

Neal Lewis, "Appeals Court Is Urged to Let Guantánamo Trials Resume," *New York Times*, April 8, 2005, A21.

<sup>11</sup> Carl Hulse and David D. Kirkpatrick, "DeLay Says Federal Judiciary Has 'Run Amok,' Adding Congress Is Partly to Blame," *New York Times*, April 8, 2005, A21.

"Schiavo as Prologue," Editorial, *The Nation* 280, no. 15, (April 18, 2005): 3.

<sup>12</sup> David Kirkpatrick, "In Telecast, Frist Defends His Effort to Stop Filibuster, Seeks Christian Support for Rule Change," *New York Times*, April 25, 2005, A14.

<sup>13</sup> Helen Caldicott, *The New Nuclear Danger: George W. Bush's Military-Industrial Complex* (New York: The New Press, 2002), 3. There are 28,000 nuclear weapons held by eight nation-states worldwide according to Worldwatch Institute, [www.worldwatch.org/press/news/2005/01/11](http://www.worldwatch.org/press/news/2005/01/11).

<sup>14</sup> Sotheby's, "New York, Sale 6181, Fine American Indian Art." May 21, 1991, Lots 40, 41, and 42.

<sup>15</sup> Ibid. Lots 126, 131, 270, 273, 282 (4), and 283 (5).

<sup>16</sup> Montana was declared a territory of the United States in 1864 and became a state in 1889. Wyoming became a territory in 1868 and received statehood in 1894. Indian peoples refer to the Indian Wars as the "Indian Massacres."

<sup>17</sup> They sold for a total just shy of \$15,000 according to "Sotheby's Sale Results, Fine American Indian Art, May 21, 1991, (Sale number 6181)."

<sup>18</sup> Media coverage included: "Buyer Vows to Return 3 Masks to Indians," *New York Times*, May 22, 1991, C11.

"Dancing with Masks," *New York Times* Editorials/Letters, Topic of the Times, May 26, 1991, E10.

"Ceremonial Masks Return Home," *Christian Science Monitor*, June 12, 1991, 14.

"Returning a Gift; One Not-So-Small Gesture to Right the Past," *Chicago Tribune*, sec. 6, July 28, 1991.

"Indian Art Auction Shows Market Strength—and One Buyer's Character," *Art-Talk*, August/September 1991, 51.

"Sackler Starts Foundation," *Art-Talk*, August/September 1991, 51.

"What's in a Name?" *ARTnews*, September 1991, 36.

"No More Auction Block for 'Life Spirit,'" *New York Newsday*, Interview, November 7, 1991, 113.

Rita Reif, "Antiques/1991; Baseball Cards and Beyond. It Was That Kind of a Year in the Art Market," *New York Times*, December 29, 1991, 33.

<sup>19</sup> The Repatriation Foundation received a New York State Board of Regents Provisional Charter on April 29, 1992, and their Absolute Charter in 1998.

<sup>20</sup> *Mending the Circle: A Native American Repatriation Guide* can be downloaded, all or in part, free of charge, at [www.repatriationfoundation.org](http://www.repatriationfoundation.org).

<sup>21</sup> Sotheby's resumed its American Indian art auctions in 2004.

<sup>22</sup> David Suzuki and Peter Knudson, *Wisdom of the Elders: Honoring the Sacred Native Visions of Nature* (New York: Bantam Books), 154–157, 168.

<sup>23</sup> Ibid. See also Jack Weatherford, *Indian Givers: How the Indians of the Americas Transformed the World* (New York: Crown Publishers, 1988), 79, 183.

<sup>24</sup> Statistics based on averages from Georges E. Sioui, *For an Amerindian Autohistory*, trans. Sheila Fischman (Montreal: McGill-Queen's University Press, 1992), 3.

James W. Loewen, *Lies My Teacher Told Me* (New York: The New Press, 1995), 74.



Hans Koning, *The Conquest of America: How the Indians Lost Their Continent* (New York: Monthly Review Press, 1993), 26, 47, 54, 58.

Ronald Wright, *Stolen Continents: the "New World" through Indian Eyes* (New York: Houghton Mifflin Co., 1992), 14.

<sup>25</sup> Op. cit., Sioui, xxii–xxiii.

<sup>26</sup> Steven T. Newcomb, "The Evidence of Christian Nationalism in Federal Indian Law; The Doctrine of Discovery, *Johnson v. McIntosh*, and Plenary Power," *Review of Law & Social Change*, "The Native American Struggle: Conquering the Rule of Law, A Colloquium," Vol. XX, No. 2 (New York: New York University, Review of Law & Social Change, 1993), 303–341.

<sup>27</sup> Vine Deloria, Jr., John Mohawk, Oren Lyons, et al., eds. *Exiled in the Land of the Free* (Santa Fe: Clear Light Publishers, 1992), 299. The Doctrine of Discovery transformed the "discovery" of land into "legal dominion" over it and the rights of dominance. Dominion still rests with the federal government of the United States.

<sup>28</sup> Suzanne Harjo, "Introduction," *Mending the Circle: Native American Repatriation Guide* (New York: American Indian Ritual Object Repatriation Foundation, 1996), or at [www.repatriationfoundation.org](http://www.repatriationfoundation.org).

<sup>29</sup> Vine Deloria, Jr., *Behind the Trail of Broken Treaties* (Austin: University of Texas Press, 1974), 189.

<sup>30</sup> Jerry Mander, *In the Absence of the Sacred* (San Francisco: Sierra Club Books, 1991), 199. "Formal treaties with Indian nations follow[ed] the same procedure of congressional and presidential approval that was followed with France or Great Britain. There were no distinctions between Indian treaties and any other; all became the 'law of the land' as the Constitution requires." Op cit., Deloria, Jr., 250.

<sup>31</sup> Rita Reif, "Sales Records Set at Houses," *New York Times*, December 26, 1980, C28.

<sup>32</sup> Steven Vincent, "Who Owns Arts?" *Art & Auction*, January 1995.

<sup>33</sup> Thomas Kline, panelist, Bard Graduate Center for Studies Conference, "The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance & Recovery of Cultural Property," January 20, 1995. Richard Perez-Pena, "Guggenheim Presses Case on Ownership of a Stolen Painting," *New York Times*, December 27, 1993, B1.

<sup>34</sup> Celestine Bohlen, "Illicit Antiquities and a Case Fit for Solomon," *New York Times*, January 30, 2002, E1.

<sup>35</sup> Celestine Bohlen, "Afghan Art Dispensed by the Winds of War," *New York Times*, November 1, 2001, A1. Since then, the following article indicates a reversal of the previous news item: Carlotta Gall, "Afghan Artifacts, Feared Lost, Are Discovered Safe in Storage," *New York Times*, November 18, 2004, A7.

<sup>36</sup> Hector Feliciano, co-panelist at the *Ethics in the Art World* session (College Art Association, 2002), is the foremost authority on Nazi-era thefts.

<sup>37</sup> The United States is the only nation-state, including all third-world countries, without legal prohibition of the exportation of indigenous material culture; until such time as this is remedied, American Indian material will be sold or transferred to countries without laws such as the NAGPRA.

<sup>38</sup> Sol Chaneles, "The Great Betrayal," *Art & Antiques*, December 1987, 93.

<sup>39</sup> Philip Kopper, *America's National Gallery of Art: A Gift to the Nation* (New York: Harry Abrams, Inc., 1991), 170.

<sup>40</sup> Walter Farmer, panelist, Bard Graduate Center for Studies Conference, "The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance & Recovery of Cultural Property," January 20, 1995.

<sup>41</sup> Ibid.

<sup>42</sup> David D'Arcy, "France's War Art Losses: Missing in Inaction," *Art & Auction* XVII, no. 11, (June 1995), 80.