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How to Be a ‘Good’ Collector: Some Ethical Reflections on the Private Collecting of Cultural Heritage

Geoffrey Scarre 

Department of Philosophy, Durham University, 50 Old Elvet, Durham DH1 3HN
Email: g.f.scarre@durham.ac.uk

Abstract

This paper discusses some of the major ethical issues that arise in connection with the widespread holding of cultural heritage by private collectors. If, as many people believe, and UNESCO has affirmed, cultural heritage is, in some morally significant sense, *everyone’s* heritage, then the private acquisition of cultural heritage, although widely permitted in law, raises some significant ethical questions. I discuss the nature of the tension between public heritage and private ownership of heritage items and the possibility that more might be done by law to regulate the activities of private collectors before arguing the merits of a shift in the mindset of collectors from thinking of themselves as the unfettered owners of the heritage they acquire towards conceiving themselves primarily as stewards who protect and preserve that heritage on behalf of the wider community. There follows a detailed examination of practical ways in which collectors can discharge their stewardship role to the best effect, emphasizing, in particular, the fresh opportunities for doing so afforded to collectors by the new digital environment.

Keywords: Private collecting; cultural heritage; law of property; stewardship; UNESCO; John Henry Merryman; Joseph Sax

Introduction

When news emerged in 1978 that the long-unseen portrait of Sir Winston Churchill, painted by leading British artist Graham Sutherland in 1954, had been deliberately burned with the approval of the statesman’s wife, public indignation was intense. Many people thought that Lady Churchill had acted wrongly in destroying a major work of art, even though Churchill himself hated it (“it made me look half-witted, which I ain’t”) and the picture was indisputably the Churchills’ private property. “I don’t think it’s ever right to destroy a work of art,” said one typical interviewee for the *Times* newspaper; “it does not, finally, belong to the ostensible owner.” But Lady Churchill evidently took the view that, however great the public interest in the painting might be, she had the moral right – maybe even a duty – to destroy the work in order to spare her husband’s feelings from further pain.¹ Whether or not Lady Churchill was correct or mistaken in her reading of the moral landscape, this *cause célèbre* reminds us that private and public interests in cultural heritage do not always or

¹ Sax 2001, 37–38.

necessarily coincide and that conceptions of cultural property that emphasize its value and importance to the larger community can run into tension with notions of owners' moral and legal rights to do what they like with property to which they have legitimate legal title. Most owners and collectors of cultural heritage, fortunately, treasure the items in their possession and have no desire to destroy them, yet the private holding of cultural heritage remains ethically problematic on account of the exclusive and exclusionary rights accorded to owners to access, enjoy, and commercially exploit what many consider to be a common heritage that in some non-trivial sense belongs to all.

As Charlotte Woodhead recently argued, it is appropriate to think about how cultural heritage is to be cared for in terms of both legal and non-legal instruments.² Many countries have passed legislation or signed up to international conventions with the laudable aims of preventing the trading in unprovenanced antiquities, protecting archaeological sites against vandals and looters, regulating metal-detecting and treasure hunting, preserving a country's national treasures by export-licensing systems, repatriating objects stolen or otherwise dubiously acquired in the course of colonial wars, and maintaining buildings and monuments of historical or artistic significance. In many localities custodianship of cultural heritage is further assisted by the efforts of a variety of formal and informal national and local organizations, community associations, and private persons committed to the protection, restoration, study, and broadening of access to houses, monuments, landscapes, and other objects illustrative of history, tradition, or artistic achievement. If the question should be asked why cultural heritage needs to be cared *for*, the short answer is that it is because it is something that we care *about*. Cultural heritage is a precious legacy from the past that enriches our lives and invites our respect and affection. Allowing it to be destroyed, decay, or fall into oblivion thus becomes ethically unthinkable. Ethics should be at the root of all our practical thinking and decision-making, including that which goes into the making of law. Law that is ethically unsound is bad law, ill-suited to promote public welfare, and likely to be resented and disobeyed. This applies to the law concerning cultural heritage and its management as much as it does to any other. In the present paper I do not intend to add to the already extensive literature on the law relating to cultural property but, rather, to shift the focus to the ethical rights and responsibilities associated with its private collection.³ This, I believe, is an important investigation in its own right, there being considerable theoretical and practical interest in determining how the ethically sensitive private collector should think and act, irrespective of legal prescriptions. Of course, not all private collectors of cultural heritage are good collectors who are consistently honest and upright in their dealings. Where the promptings of conscience prove inadequate, the law may need to step in, as we shall see. But it would be unreasonable to suppose that, in the absence of law, collectors are generally liable to act badly.

What makes a "good," in the sense of a virtuous, collector of cultural heritage? And how should such collectors consider their relationships to the broader community who claim an interest in the objects they collect? Is it true, as the *Times* interviewee suggested, that a work of art "does not, finally, belong to the ostensible owner"? Or are the moral rights associated with private property robust enough to withstand all claims of that sort? The right to private property is itself a fundamental right according to the European Convention on Human Rights. Article 1 of the First Protocol declares that "Every natural or legal owner is entitled to the peaceful enjoyment of his possessions. No one should be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the

² Woodhead 2023, *passim*.

³ For recent comprehensive surveys of cultural heritage in relation to international and national law, see, e.g., Blake 2015; Lixinski 2019; Woodward 2023.

general principles of international law.”⁴ However, the Article’s reference to the potential suspension of normal property rights where the “public interest” demands this (the example given by the EHRC concerns the compulsory purchase of land that is needed to construct an essential public road) appears to offer some opening for the idea that private ownership of cultural heritage may not come with unlimited moral rights to destroy, alter, conceal, neglect, or dispose of it as the owner likes. It is not plainly out of moral order for the law to step in when private owners of cultural heritage abuse or overstep their ownership rights.

Many collectors, and the dealers who serve them, are scrupulously honest. But not all are, and even the conscientious collector may sometimes find temptation hard to resist when offered an item obtained in dubious circumstances. Clearly, there is a need for laws to counter evils such as looting from archaeological sites, trading in stolen unprovenanced or fake antiquities, inappropriate treatment of human remains or sacred objects, and the illicit export of national cultural treasures. Besides, even the most conscientious collectors should welcome the existence of legal codes of practice which, by enforcing minimum standards of good practice, lessen their own chances of being hoodwinked or cheated. But genuinely conscientious collectors will normally be anxious to do the right thing because it is the right thing, and not because they fear incurring legal penalties for misbehavior.

According to the Council of Europe Framework Convention on the Value of Cultural Heritage to Society, as updated in its Faro meeting in 2005, “cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.”⁵ This is a very comprehensive definition and broader than is needed for present purposes. As Constantine Sandis has pointed out, taken in its widest acceptance, British cultural heritage might be considered to include, alongside the plays of Shakespeare, such disparate things as the Monarchy, Stilton Cheese, and the National Health Service.⁶ Here we need not be much concerned with the cultural heritage of the larger varieties (e.g., buildings, battlefields, landscapes) or with intangible heritage (ceremonies, customs, traditional tales, music) but only with the kinds of smaller objects that form the contents of the typical private collection: things such as paintings and drawings, sculptures, archaeological antiquities, pottery and porcelain, coins and medals, musical instruments, manuscripts and printed books, engravings and lithographs, postage stamps, antique furniture, scientific collections and collections of archives, postage stamps, handicrafts, and photographic and cinematographic heritage.⁷ All and any of these might appear to a private collector to be sufficiently interesting or meaningful to become an object of desire. Private collecting of what we nowadays frequently refer to as “cultural heritage” may be the oldest hobby known to humankind. As James Cuno says, “It is in the nature of our species to connect and exchange,” the desire for possession being an ancient trait is deeply ingrained.⁸ George Ortiz, an eminent collector of antiquities, after stressing the important role that private collectors have often played in “saving the past” where cultural heritage has been endangered by neglect or development, remarked succinctly that “Collecting is love.”⁹

⁴ EHRC 1950.

⁵ Faro 2005.

⁶ Sandis 2014, 11–12.

⁷ This list follows closely that provided in Article 1 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970).

⁸ Cuno 2008, 162.

⁹ Ortiz 2006, 16, 18.

The distinction between “public” and “private” is not unambiguous and different ways of marking the boundary divide the territory differently. While a national collection of antiquities such as those found in the British Museum can safely be considered a public collection and Joe Smith’s front-room collection of Victorian watercolors or rare coins a private one, some collections are harder to classify. Much turns on whether the public/private distinction is drawn in terms primarily of *ownership* or of *access*. If ownership by an individual person, family, trust, or foundation is taken to be the main distinguishing feature of a private collection, then even such collections as New York’s Pierpont Morgan Library or the J. Paul Getty Museum in California fall on the private side of the line. But a more intuitive and useful way of marking the difference is to treat ready accessibility to the general public as the primary hallmark of a public collection; by this criterion, the above-mentioned institutions are public rather than private given their openness to self-selecting visitors. The type of collections I shall chiefly be concerned with are those that possess some or all of the following characteristic features: they are the personal property of their owners and usually closed to casual or uninvited visitors; they are enjoyed by relatively few people (sometimes just one!); their holdings may not be recorded or cataloged in publicly accessible places (or cataloged at all); and they may lack the benefits of expert professional oversight regarding their preservation, conservation, storage, and cleaning (although this need not necessarily imply neglect). They may be static and complete or dynamic and expanding. Such collections range from small-scale assemblages of postage stamps, coins, or archaeological fragments to priceless picture galleries and museums owned by billionaires (the so-called “mega-collectors”).¹⁰

The plan of this paper is as follows. In the next section, I shall look in more detail at the reasons for supposing an ethical tension to exist between collectors’ assertion of property rights to cultural heritage and the commonly-heard claim that cultural heritage belongs in some morally significant sense to humanity as a whole. In “Private collectors as stewards of cultural heritage”, following a discussion of the role of law in regulating the activities of private collectors, I argue for the merits of a shift in the mindset of collectors from thinking of themselves as unqualified owners of the heritage they acquire towards seeing themselves instead as stewards who protect and preserve that heritage on behalf of the wider community. In “The duties and virtues of private collectors,” flesh is added to the bones of the theoretical discussion by examining a number of practical strategies that collectors might adopt to discharge their stewardship role to best effect, paying special attention to the new opportunities for the recording and publishing of collections made available by digital technology.

Cultural heritage and private ownership: An inevitable tension?

The collecting of cultural heritage on either a small or a large scale has numerous motivations and it has been widely practiced within many cultures by individuals keen to possess personal treasures of art or history.¹¹ The aesthetic and intellectual pleasure taken in acquiring objects of cultural significance may, indeed, be reckoned among the higher and better human pleasures. Even so, the pride and pleasure that private collectors have in looking at their collections as their own property can sit uneasily with the now widely accepted idea that cultural heritage is a public – even a universal – heritage.¹² Telling

¹⁰ See Calnek 2017.

¹¹ For some interesting reflections on the psychology of private collecting, see Muensterberger 1994. On the history of private collecting, see Thompson 2016.

¹² Tunbridge and Ashworth (1996: 21) contend that cultural heritage belongs always to particular communities and that the idea of a universal heritage is “essentially illogical”. It is true that communities evolve their distinctive

oneself, “This is *my* Etruscan vase/incunabula/Picasso” looks hard to square with the thought that other people have a stake in it too. Even private collectors who are most willing to allow others to enjoy their collections appear open to censure if they view this concession as an act of gracious condescension rather than as the fulfilment of a moral duty. Yet private collectors who take seriously their responsibilities to share can contribute much to the public welfare. Private collecting serves the public interest well where it preserves those less important items for which space could not be found in public collections and which would run a consequent risk of being lost or forgotten. Some types of cultural heritage objects (e.g., pictures, books, pottery, handcrafted items) are so abundant that for many individual items their best, and sometimes their sole, prospect of survival depends on their finding homes in private collections. Collectors are often very well-informed about the things they collect and many engage in fruitful partnerships with professional researchers.¹³ The downside of private collecting is that it deprives the world at large of the opportunity to access and appreciate significant heritage items. Objects may disappear for generations into closed collections and may long be unavailable for study or enjoyment except by privileged guests; sometimes their very existence is unknown by the world at large. Some collections (though “hoards” would be a better name for these) are acquired not for the love of their contents but for their commercial value as investments; these may lie for years sequestered in bank vaults, out of sight to everyone. Even where private collectors treasure their collections, not all have the knowledge, expertise, or financial resources to provide adequately for their security and conservation. Such collectors are risky custodians of cultural heritage.

I once heard a wealthy private collector dismiss talk of “cultural heritage” as “socialist nonsense.” If that sounds arrogant, it pinpoints the tension between the concepts of cultural heritage and private property. To be sure, other kinds of moveable private property have moral or legal strings attached to them too.¹⁴ Owning your motor car does not entitle you to drive it dangerously or park it wherever you want; nor may you play your music system so loudly that it upsets the neighbors or allow your bad-tempered dog to terrorize the local children. But there is no disputing that it is *your* car, your music system, and your canine friend. Normally the law permits us to do what we like with our own moveable property so long as we do not use it to harm, endanger, or annoy other people.¹⁵ If John breaks his Japanese vases in a fit of pique or Lucy allows damp and rodents to destroy her collection of rare books, the law will not normally interfere. Joseph L Sax spotlights the frighteningly limited protections accorded by property law to moveable cultural heritage held in private collections (buildings and other immovable structures, seemingly because they are more in public view, have generally fared better in many jurisdictions).¹⁶ If I own a Rembrandt self-portrait and use it as a dartboard, property law in most Western countries does not object. It may seem that the law is deficient in protecting what morally ought to be protected yet there is an evident tension between the propositions that collectors are the rightful owners of the things they collect and that culturally significant items are parts of a public heritage. Short of prohibiting the private collecting of cultural heritage, it seems that some risks just have to be accepted. As Karen J. Warren has remarked, the debate about collecting cultural

cultures, but cultures are rarely sharply-bounded static entities. Cultures constantly interact with and influence one another, sharing conceptions of what it means to be human. And while some cultural products remain chiefly of interest within their originating communities, the same is certainly not true of all.

¹³ SAA 2018; Pitblado, Shott, and Brosowske 2018; Thomas, Wessman and Pitblado 2022.

¹⁴ In many jurisdictions, buildings and non-moveable property (e.g., statues and monuments) have legal protections not afforded to moveable objects. For a detailed discussion, see Garrard 2013.

¹⁵ The ownership of animals forms a partial exception to this generalization in jurisdictions that protect animal welfare.

¹⁶ Sax 2001, 3f.

heritage is “essentially a debate about property,” with both sides making, in effect, conflicting ownership claims.¹⁷ It is all very well to say that the law should accord with ethical principles, but what exactly *is* the ethical course to follow in this context?

Many people will censure careless owners who mistreat or fail to protect their old master paintings or antique books. Such behavior is wasteful of good things as well as disrespectful to the people who created or earlier cared about those treasures. But is it also wrong because it deprives the world of cultural heritage in which other people besides the owners have stakeholders’ rights? It is commonly asserted that it is, but is that assertion anything more than a bluff? The Preamble to UNESCO’s World Heritage Convention of 1972 declared that “parts of the cultural or natural heritage are of outstanding interest and need to be preserved as part of the world heritage of mankind as a whole.”¹⁸ On this thinking, while nations, tribes, and communities originate their own distinctive creative traditions, their products belong to all who share a common humanity. (The Convention’s reference to “parts” only of cultural and natural heritage being of universal significance may be disputable since it is plausible to regard even the more lowly specimens of human art or ingenuity as throwing light on the creative and adaptive talents of our species.) An indigenous community may reasonably resist attempts by a powerful corporation to appropriate its art and craft traditions for commercial ends yet seek to exclude “outsiders” from enjoying the products of “our” culture and resenting any interest they take in it is ungenerous unless justified by very special reasons (e.g., scruples regarding the sharing of religious or sacred heritage). Kwame Anthony Appiah remarks on the controversy surrounding the return from Western museums of terracotta sculptures created by the Nok people of West Africa that, “While the government of Nigeria reasonably exercises trusteeship” over the surviving pieces, “the Nok sculptures belong in the deepest sense to all of us”; he cites in support the 1954 UNESCO Convention’s statement that “each people makes its contribution to the culture of the world.”¹⁹ Adopting a narrowly parochial view of one’s cultural heritage and refusing to permit the rest of the world to share in it does nothing to foster what Ortiz has called “a communicative understanding among all peoples” (Ortiz 2006, 28).^{20,21}

Sax proposes that because “the larger community has a legitimate stake” in many privately owned heritage objects, there should be “a [legal] bar on destruction and denial of access.”²² He quotes with approval David Sylvester’s robust assertion that we do not “have the right to feel we own the works of art we have ... Therefore, we should not kill them off just because we do not like them.”²³ It is true that a concept of heritage that carries with it no legally enforceable rights to access or to the safeguarding of that “heritage” appears singularly empty. Yet how far can the law go before private collecting becomes so freighted with legal risks as to cease to be rewarding? Even the keenest aficionados of the cultural heritage concept must acknowledge that private collecting is a fact of life and long has been, deplore it how they might. Indeed, it is rather the concept of cultural heritage that is the newcomer to the scene. This, while owing something to ancient (e.g., Roman) ideas of public patrimony,²⁴ is largely a post-1945 creation and itself something of a cultural artifact. Suiting well the social-democratic and welfarist tenor of the postwar world, the cultural

¹⁷ Warren 1999, 14.

¹⁸ UNESCO 1972.

¹⁹ Appiah 2009, 75; cf. UNESCO 1954.

²⁰ Ortiz 2006, 28.

²¹ For a fuller discussion of cultural appropriation see Brunk and Young (eds.) 2009; Scarre and Coningham (eds.) 2013.

²² Sax 2001, 9–10.

²³ Sax 2001, 39.

²⁴ Thompson 2016. See, too, Harrison 2013 for the development of the concept.

heritage concept has advanced apace in contemporary social thinking, although it has never lacked critics. Among other sins, more or less grievous, ascribed to it, it has been charged with being a tool of social manipulation, a shallow and demeaning response to a fading sense of self-confidence among modern nation-states, a self-indulgent exercise in a pleasing nostalgia (too often involving the distortion or “Disneyfying” of the past), and – last but not least – an engine for making money. For David Lowenthal, British cultural heritage has been blatantly dedicated to maintaining the social status quo: “British heritage ... seems an elite domain. Tory grandees hold most of it, decide what to save and display, and instruct others what to venerate.”²⁵ According to Tom Paulin, “The British heritage industry is a loathsome collection of heritage parks and dead values.”²⁶ Anthony Pace describes “cultural heritage” as a “catch-all phrase to define a modern phenomenon” that “selectively commodifies the past for immediate consumption” and is “now increasingly related to service sectors linked to modern visitor industries.”²⁷

However, the concept of cultural heritage does not deserve to be abandoned simply because it has sometimes been conscripted to serve some dubious purposes. A more appreciative approach was taken by the Council of Europe in its Framework Convention on the Value of Cultural Heritage for Society, which focused on the potential value of the cultivation of cultural heritage for assisting the “sustainable development and quality of life in a constantly evolving society.”²⁸ By emphasizing the role of cultural heritage in helping to integrate shifting populations and create mutual understanding and sympathies in a fast-changing age, the Convention arguably spoke more with the voice of the bureaucrat rather than that of the lover of art or history; nevertheless, considered as ancillary benefits of the creation and sharing of cultural heritage, the effects it identified are uncontroversially real and important. Historical artifacts and works of art do help us to ground our social and, more broadly, moral identities. Given our common humanity and the universal need to find creative solutions to the problems of living, little of what has been produced by human hands and minds is irrelevant beyond its originating community (which explains why the notion of a “heritage of humanity” is more than a rhetorical trope). When even a minor piece of cultural heritage is lost, a part of the past has died and the loss is everyone’s.

The contemplation of cultural heritage helps us to find our roots and to understand who we are by seeing where we have come from. At least as important, it brings us into contact with the best and most inspiring products of human art and ingenuity, enriching our experience and extending our understanding. This is why it ought not to be restricted to a privileged few. Graeme Davison notes that the idea of heritage “asserts a public or national interest in things traditionally regarded as private.”²⁹ One might almost say that the community is its heritage. Heritage, writes Derek Byrne, is “a resource in the ongoing project of creating our identity. ... Heritage is the very stuff of social identity and to this extent can be regarded as a form of social action.”³⁰ Laurajane Smith agrees, noting how in the heritage literature “material culture as heritage is assumed to provide a physical representation and reality to the ephemeral and slippery concept of ‘identity’.”³¹ If cultural heritage is essential to the formation of social identity, and if, as Byrne proposes, the creation of this identity is a continuous rather than a once-and-for-all process, then it is clear why what Smith calls its “physical representations” matter to all. Social identity exists

²⁵ Lowenthal 1998, 91.

²⁶ Quoted in Samuel 1996, 260.

²⁷ Pace 2012, 286.

²⁸ Faro 2005.

²⁹ Davison 2008, 36–37.

³⁰ Byrne 2008, 169.

³¹ Smith 2006, 48.

on different planes and most of us would deliver a complex answer to the question of who we were (“a member of the X family, a British citizen, a university teacher, a member of the species *homo sapiens*”). Cultural heritage contributes to the formation of our identity at all these levels – including, crucially, at the most general level our sense of what it is to be human. Because people care about their social identity (or identities), they naturally care about their physical props, reminders, and icons. These, as Woodhead reminds us, are valued because they are themselves expressions of the values that a community holds dear.³² Hence, to remove these from public view and secrete them in private collections where they can no longer play their social role is to deprive the public of its materials identity formation. And that is ethically problematic.

Private collectors as stewards of cultural heritage

Relying on the moral consciences of collectors of cultural heritage to preserve their property intact and secure from accidents appears to critics such as Sax to offer too many hostages to fortune.³³ Legislation to afford cultural property more secure protection might conceivably include prohibitions against destroying or neglecting to protect cultural objects, along with more positive provisions for their housing, recording, handling, and display. An obvious difficulty in extending the common law to the domain of private collections is precisely that those collections are private and, hence, normally out of sight. Unenforceable law is bad law, and while it would be relatively easy to pass laws that would forbid the destruction or mutilation of cultural property of more than a certain monetary value or age or impose conditions on its sale or disposal, such and similar regulations would remain dead letters in the absence of a robust and intrusive inspection regime armed with unprecedented powers of entry into private premises. In this regard, the situation of private collections is markedly different from that of museums that hold objects in public trust and whose discharge of their responsibilities is far simpler to monitor and enforce. In the USA, for instance, the legal doctrine of Public Dedication provides the basis for prohibitions against the destruction, neglect, or unauthorized disposal of objects held by museums that have been acquired through purchase, donation, or loan, but the doctrine does not transfer readily to private collections where no similar public dedication has been made.³⁴

The difficulty of knowing what goes on in private collections whose owners are publicity-shy is only one of the obstacles facing legislators inclined to favor the imposition of stricter statutory controls. Another is determining precisely which classes of collectibles should be protected and how rare, significant, or expensive an item has to be before it benefits from legal regulation. It might be suggested, for instance, that all works of graphic art should be protected by law. But if that means that every newspaper cartoon, advertising poster, child’s drawing, or decorative beer mat is to be treated as sacrosanct, its impracticality becomes evident. Presumably, not all examples of cultural production could qualify for legal protection, but which should count as too minor to bother about? And who would decide which these were, or appoint the guardians of the law? Who, besides, would pay to maintain the cultural-heritage inspectorate required to monitor the enormous quantity of cultural heritage held in private hands? And what penalties might appropriately be imposed on private owners who flout the law? Should Lady Churchill have been prosecuted for destroying the Sutherland portrait of her husband? How would you respond if an artist set out deliberately to ridicule or humiliate you, and did so with marvelous art? If the picture came

³² Woodhead 2023, 103–5.

³³ Sax 2001, 3–4.

³⁴ Comment 1981; Babock 2018, 672–76.

to be yours by gift or purchase, would you do wrong to destroy it and merit a legal punishment if you did? Such questions may divide opinions.

Less controversial, both morally and legally, is the proposition that the law is an appropriate instrument for controlling certain aspects of trading in cultural property. Legal regulation has an obviously useful role to play in regulating the commercial market in collectibles; e.g., by banning the import and sale of unprovenanced or looted antiquities; overseeing the operations of auction houses, high street dealers, and websites such as eBay; and instituting a licensing system for the export of items of rare or significant national or local cultural heritage. However, where the law is silent, much must be left to the conscience of individual collectors who should recognize that it does not follow from the legal fact of ownership that they have a *moral* right to destroy, mistreat, fail to protect, or refuse all public access to the cultural heritage in their possession. Some owners, no doubt, are too selfish, careless, or lazy to make dependable custodians of heritage. While the “good collector” is not just, as has sometimes been thought, a “fabulous beast,”³⁵ not all collectors are equally willing to subordinate their private ends to public interests. But it is to take too cynical a view of collectors to suppose that they will generally behave badly unless reined in by the law. The love that most collectors have for their collections provides a powerful incentive to look after them properly, and many proud owners are delighted when others request to view their collections. Inevitably there will be casualties where collectors shift or lose interest, or by reason of age, infirmity, or loss of means become less capable custodians of their collections, but these mishaps would be likely to occur even under a tighter legal regime.

As the concept of a public cultural heritage becomes ever more deeply embedded in contemporary consciousness, collectors are increasingly coming to see their collections less as their own exclusive preserve than as goods in which others also have a claim; relatedly, more and more collectors are content to forego the unqualified legal rights afforded to them by property law and conceive themselves as stewards of their collections on behalf of the broader public. This shift in mindset is warmly commended by Sax, who sees “the notion of the owner-steward” as the upcoming alternative to older conceptions of the owner as lord and master over all he possesses. Collectors who learn to see themselves as “the bearers of some special responsibility that transcends indulgence of their own fancies” advance in moral enlightenment and set an example to others.³⁶ Those collectors who fail, or are reluctant to make the transition, may find themselves suffering reputational damage for their pains in the future.

The concept of the private collector as steward is showing encouraging signs of acceptance even in quarters that have hitherto looked on collectors with disapproval or disdain. Collectors of antiquities, as Susan Keech McIntosh observed in 2000, were regarded by some as “heroes” who “rescue antiquities from almost certain destruction in the course of development,” but to many others they were simply “villains” who “through their insatiable desire to own, and their indifference to the provenance of the objects they crave, ... drive the market for looted antiquities that is responsible for the ongoing destruction of archaeological sites on a massive scale.”³⁷ However, by 2018 the Society for American Archaeology’s traditional suspicion of private collectors had assumed a much more muted form in its “Statement on Collaboration with Responsible and Responsive Stewards of the Past,” which acknowledged that collectors can be valuable collaborators in research and the protection of heritage and should not always be ranked with looters. Avocational archaeologists who are “responsible and responsive stewards” prepared to work alongside their professional

³⁵ Ascherson 2000.

³⁶ Sax 2001, 68–69, 197.

³⁷ McIntosh 2000, 73–74.

counterparts in a spirit of mutual respect benefit both of their communities and advance the sum of knowledge.³⁸

The definition of good stewardship has been keenly debated in recent years. In an influential formulation, John Henry Merryman argued that the duties of heritage stewards are threefold: to promote study and research, to preserve and conserve their holdings, and to display them or otherwise make them accessible to interested members of the public;³⁹ this is often referred to as “Merryman’s triad.” But as Andreas Pantazatos remarked, “traditional conceptions of stewardship” (of which Merryman’s is an example) “are shaped by Western and Christian ideals,” which may not transfer readily to “non-western, non-Christian contexts.”⁴⁰ Chip Colwell-Chanthaphonh asks, “Stewardship sounds great, but what to do when an archaeologist’s beliefs radically differ from a Native American religious leader about how to take care of an object?”⁴¹ In “Stewardship gone astray?” Leo Groarke and Gary Warrick note that some North American native traditions disfavor preserving certain ceremonial objects; the Haida of the Northwest Coast of Canada, for example, believe “that memorial totem poles should be permitted to complete their natural cycle – i.e., to rot and fall and decompose.”⁴² Hence a collector who “saved” a Haida pole from destruction, making it available for research, instruction, and admiration, would be a good steward according to Merryman’s formulation but a bad one from a Haida perspective.

“Archaeologists,” conclude Groarke and Warrick, “have a duty to practice archaeology in a way that respects the rights of individuals and groups and societies affected by their work.”⁴³ Although determining rights can be difficult where interests conflict, the same principle plausibly goes for the private collector of cultural objects. A collector of sensitive material such as sacred or ceremonial items, human remains or grave goods, or objects obtained originally by force or exploitation in colonial days or wartime should ask themselves whether these are fit objects for acquisition and retention: even if the answer is yes, discretion may be called for in housing, displaying and researching them. What “good” stewardship means here is not adequately captured by Merryman’s trio of preservation, access, and research. Respectful stewardship may sometimes require limiting the exhibition of or access to what was once but is no longer considered ethically unproblematic (e.g., human remains, objects of religious significance, trophies taken in war).

In spite of these caveats, I suggest that Merryman’s triad provides a useful starting point for thinking about the nature of good stewardship, including the stewardship of private collections. Books, pictures, sculptures, coins, antiquities (of reputable provenance), silverware, pottery and porcelain, “antiques”, postage stamps, and the myriad other types of collectibles are relatively “ethics lite” by comparison with human remains, sacred objects or the fruits of former colonial rapacity. In what follows I shall, therefore, treat the triad of preservation, access/display, and study/research as providing a basic model of good stewardship while conceding that qualifications need to be made in special cases where respect for individuals (alive or dead), groups, societies, and alternative belief- and value-systems demands them.

³⁸ See <https://www.saa.org/quick-nav/saa-media-room/news-article/2018/08/01/statement-on-collaboration-with-responsible-and-responsive-stewards-of-the-past>. For a more detailed appraisal of this statement, see Marlowe 2022.

³⁹ Merryman, 1989, 1994.

⁴⁰ Pantazatos 2010, 99.

⁴¹ Colwell-Chanthaphonh, undated, 2.

⁴² Groarke and Warrick 2006, 173.

⁴³ Groarke and Warrick 2006, 176.

The duties and virtues of private collectors

So far, I have been speaking about stewardship in quite general terms. It is time now to put some more flesh on the bones and consider in greater detail how the private collector may be an effective and conscientious steward of cultural heritage. To structure the discussion, I shall do this under five sub-headings. Although I make no claim that this account is exhaustive, readers will no doubt have their own ideas about what might further be included.

Conservation

Private collectors have a moral duty to protect and conserve objects in their collections. Private collectors are morally responsible for playing the conservator's role, directly or via deputy (e.g., by engaging experts to deliver the care that they cannot provide themselves). To mistreat, neglect, or endanger a piece of cultural heritage they own is to fail the broader public that has a legitimate interest in its safekeeping and long-term fate. A prospective collector who is incapable of providing proper accommodation and protection for an item of cultural heritage ought not to acquire it in the first place.

Beyond these basic offices of good stewardship, good collectors may engage in activities of a more supererogatory sort. Some acquire at considerable personal risk or expense objects whose survival or integrity is under threat from natural forces or environmental disasters, iconoclasm, war, conflict, or simple neglect. The very survival of cultural heritage has frequently been due to the efforts of private collectors. Native-American scholar Angela J. Neller records her relief that “[much of] the prehistory of the Middle Columbia River resides in private collections, especially in light of the inundation of archaeological sites by hydroelectric dam reservoirs. The majority of the material was recovered by avocational archaeologists decades before professional archaeologists were on the scene.”⁴⁴ Private collectors may also fund conservation or restoration work that goes beyond the minimal requirements of preservation and encourage other private collectors to do the same. Leading by example, they remind the collecting world that cultural heritage is fragile, vulnerable, and irreplaceable. Often, too, they acquire and make available for study objects of minor importance that would fail to find display space or attract attention amidst the greater treasures of public museums or galleries. They are not merely collectors of cultural heritage but its champions.

Acquisition and provenance

It is commonly acknowledged that public museums and galleries ought not to purchase or accept as donations any objects that may be the fruit of theft, looting, or forcible requisition, at least in modern times (a museum might refuse to acquire a ceremonial dagger forcibly taken from an African chief by a British military officer in the nineteenth century but it is unlikely to reject a Viking treasure hoard that includes precious objects looted from an Anglo-Saxon noble). By February 2024, 143 States Parties had ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property; the consequent tightening of national and international law concerning the acquisition and trading in cultural property impacting the private collector as well as the public museum. Although private collections are not normally subject to public scrutiny, the conscientious collector will voluntarily abide by the UNESCO principles of good practice and not attempt to evade or circumvent them.

⁴⁴ Neller 2022, 12.

It is not enough to refuse to purchase items that are known or suspected to be stolen goods or to have come from looted heritage sites: the collector who prefers to stay in the dark about the provenance of some desirable article s/he wishes to buy is lacking in due diligence. Because the guiding maxim should always be, “When unknown, leave alone,” there is little room here to distinguish between dutiful and supererogatory behavior. Private collectors are ethically obliged to avoid not only stolen or looted items but also those deriving from exploitative trading situations, such as those “bought for a song” from vendors ignorant of their market value. They should also exercise discretion regarding such culturally sensitive goods as human remains, sacred items, and trophies acquired in war, whose possession or display by “outsiders” may offend the societies from which they emanate.⁴⁵ Arguably, they should make the provenance and history of objects available to visitors who view their collections; at the least, they should be clear about these themselves.

Concerns about the acquisition of unprovenanced items, as mentioned earlier, have been most intense and fiercely debated in connection with archaeological artifacts.⁴⁶ Archaeologists have often regarded collectors as ranking aesthetics above scholarly value caring little about where the objects came from, provided that they are beautiful or interesting. In rebuttal of these charges, McIntosh pointed out that “the Good Collector considers his or her collection to be principally a vehicle to open the eyes of others to the value and nobility of the maker culture”; a collector of this stamp takes pride not so much in “possession” as in “the employment of the collection for knowledge.”⁴⁷ In 2015, while Michael J. Shott and Bonnie Pitblado could still dream of “a perfect world” in which “only trained archaeologists picked up artifacts,” they readily conceded that collaboration between archaeologists and collectors was greatly preferable to a state of mutual warfare.⁴⁸ Subsequent evolution of the idea of the collector as steward has added further weight to McIntosh’s contention that collecting can be beneficial rather than destructive or anti-academic and while members of the archaeological profession might worry that collecting continues to have its dark side, there is growing recognition that the “responsive and responsible” collector, as defined by the Society for American Archaeology,⁴⁹ can be a valuable collaborator with the professional archaeologist. The important thing is to develop legal and professional protocols to ensure that professionals and collectors work together to “ensure that the collector-generated data becomes part of the formal scientific and humanistic record.”⁵⁰ Where this cooperation occurs, the results can be remarkable. One inspiring example showing how fruitful cooperation by metal detectorists, collectors, and professional archaeologists can be is provided by the British Museum’s Portable Antiquities Scheme, which, since its inception in 1999, has recorded on its database over 1.5 million items “from prehistoric-worked flint to post-medieval dress accessories” discovered “by everyday people by chance, most through metal detecting.”⁵¹ Many of these finds have entered private collections, but only after their details and images have been recorded and made accessible online. Although participation in the scheme remains voluntary and there is no legal requirement for every new find to be logged or subsequently made available for study; on the positive side, had recovery of these

⁴⁵ See Grimes 1992.

⁴⁶ The literature on the tensions between the archaeological and the collecting communities is by now so large as to render the selection of “key” texts difficult. But among other particularly salient contributions to the literature are Ascherson 2000; McIntosh 2000; Zimmerman, Vitelli, and Hollowell-Zimmer (eds) 2003; Robson, Treadwell, and Gosden (eds) 2006; Vitelli and Colwell-Chanthaphonh (eds) 2006; Cuno (ed.) 2009; Shott and Pitblado 2015; Pitblado, Shott, Brosowske *et al.* 2018; Thomas, Wessman, Pitblado *et al.* 2022; Marlowe 2022.

⁴⁷ McIntosh 2000, 74–75.

⁴⁸ Shott and Pitblado 2015, 13.

⁴⁹ See SAA 2018.

⁵⁰ Thomas *et al.* 2022, 246.

⁵¹ British Museum, <https://finds.ord.uk>.

items awaited their finding by professional archaeologists, most would never have been found at all.

Access and research

Merryman's triad represents sound stewardship of cultural heritage as involving, alongside conservation, the facilitation of research and access. Private collectors who refuse without good reason to allow interested members of the public to view the masterpieces in their collections deprive others of the chance to see and delight in what is their heritage too. Yet it is debatable what level and manner of access private collectors can reasonably be expected to provide. The connoisseur who never allows his/her Vermeer to be seen lays himself open to blame, but exactly how much access does the public have a right to demand? A *prima facie* moral entitlement to view so important a painting needs to be balanced against the owner's right to privacy if it hangs in domestic premises. The owner cannot be expected to open his/her doors to every casual visitor at any time. But maybe s/he should be prepared periodically to lend the painting to a gallery where it may be put on public display. Many collectors are prepared to do exactly that. Thomas Marks notes that around one in every fifty works displayed in UK museums is estimated to be on long- or short-term loan from a private collection.⁵² George Ortiz has not only digitized his entire extensive collection of classical and Near-Eastern antiquities but has loaned objects to over 100 major exhibitions.⁵³ In 2017, Chris Ingram, a collector of modern British art, showed a total of 435 items from his personal collection in public institutions in the UK.⁵⁴ Lending to public institutions has become much easier with the foundation of Vastari in London in 2013, an online service that enables private collectors to register their holdings on a secure anonymous database made available to reputable museum and gallery directors who can request and arrange for the loan of specific items. By greatly simplifying the processes whereby private collections and public institutions can be brought into contact, Vastari and similar online services make it harder for private collectors to profess themselves defeated by the practical difficulties of making their holdings more widely available for study, research, and enjoyment.⁵⁵

By allowing items from their collections to be displayed in public spaces, private owners can justly claim to be acting as good stewards. However, whether it would be right for private collectors to be legally compelled to lend items from their collections for public exhibition is a harder question. To make such a system work, the bureaucratic machinery required to monitor the contents of collections and enforce the demands of public institutions for loans would be massive, expensive, and highly intrusive, and it is doubtful whether any modern democratic state could countenance the "Big Brother" tactics it would involve. A more palatable alternative, both ethically and practically, could be to encourage collectors to provide digital information about their property in order that their holdings should not be allowed to fall entirely below the public radar. To allay the fears of owners that the publication of their collections might attract the attention of potential thieves, precise location information could be restricted to reputable public institutions that could be relied upon to keep it confidential. While the difficulties of establishing and funding a system of this kind would be considerable, the digital possibilities that modern technology increasingly makes available appear to offer some of the most promising solutions to the problems of making private collections more widely accessible.

⁵² Marks 2015.

⁵³ Robson *et al.*, 2006, vii.

⁵⁴ Baring 2017.

⁵⁵ Cadogan Tate 2013; cf. Barrett 2014.

Private owners who willingly cooperate with researchers and who welcome the attention of visitors to their collections act better than those who admit the public grudgingly and rarely. Special commendation is due to owners of collections who take pains to cultivate the interests of young people, helping them to value and enjoy their cultural heritage. The collector who allows young visitors to get “up close and personal” with valuable antiquities and artworks may stimulate a lifelong interest in cultural heritage and inspire a new generation of “responsive and responsible” collectors.

“Leaving as much and as good for others”

John Locke’s principle that when we acquire possessions by “mixing our labour” with them, we should ensure that we always leave as much and as good for others, can be reapplied in the field of collecting.⁵⁶ It is usually only very affluent collectors who are capable of cornering the market and buying up all or all the best goods of a certain type; their less wealthy counterparts must content themselves with the crumbs that fall from the rich man’s table. Perhaps the best-known instance of the engrossing of cultural heritage is the acquisition in the nineteenth century of no fewer than 82 copies of the 1623 First Folio edition of the plays of Shakespeare by the oil company executive Henry Clay Folger. Now held at the Folger Shakespeare Library in Washington DC, they represent approximately 29 percent of surviving copies of the book (another 12 being in the possession of Meisei University, Tokyo). Folger’s determination to purchase every First Folio that came up for sale, if conceivably excusable on the ground of monomania, undeniably deprived other collections, both public and private, of the chance to own a copy of this wonderful book. Whether or not we judge that Folger did *wrong*, his behavior was scarcely conspicuous for virtue. In fairness to the Folger Shakespeare Library, the institution warmly welcomes visiting scholars, and specialist students of the First Folio profit from being able to compare so many copies in one place. Whether this adequately compensates for the comparative scarcity of First Folios elsewhere must be a moot point. But even collectors who are not especially affluent should spare a thought for those who are less affluent; they should seek to leave as much and as good (or almost as good) for others. While engrossing on Folger’s scale may infringe the moral rights of others, lesser forms of engrossing in which collectors purchase cultural heritage without caring how little they leave for others show avarice and selfishness.

Posthumous disposal

Good private collectors look at themselves as temporary custodians of cultural heritage who must eventually hand on their collections to future generations. Collectors who are careless about what happens to them after their death misunderstand the stewardship role. Collectors should make suitable arrangements for the safe onward transmission of their collections, ensuring that their executors understand the nature and significance of the contents. A collector may decide to leave his/her collection to their heirs, bequeath it to an appropriate public institution, or return it to the market where it can be sold to new owners. All these options are acceptable so long as the collection’s future is safeguarded. A collector who because of illness, age, or incapacity can no longer play the steward’s role should likewise ensure that his/her collection is entrusted to safe hands.

Many public heritage collections are the legacies of prominent collectors or have benefited from bequests of individual works. Rich philanthropists have contributed large

⁵⁶ Locke 1946 [1689], 15.

sums to the building or maintenance of museums or exhibition spaces in which cultural heritage can be studied and displayed. To name just a handful of the best known, John D. Rockefeller, Andrew Carnegie, Andrew and Paul Mellon, Norton Simon, Isabella Stewart Gardner, J.P. Getty in the USA, and Henry Tate and Simon Sainsbury in the UK have made spectacular contributions to the cultural experience of their fellow citizens. If a pardonable desire to be remembered for their generosity may have influenced some donors, it would be churlish not to acknowledge in many a genuine desire to share their own good things with others. Andrew Carnegie believed that a man who dies rich without leaving his wealth to good causes dies dishonored. Isabella Stewart Gardner bequeathed her outstanding collections of artworks and the villa that housed them to the city of Boston in 1924 “for the education and enjoyment of the public forever.” And it is not only the richest mega-collectors who have a moral responsibility to ensure the safe transmission of their cultural property to the common stock after their death: even the small collector who will never name a museum or fund an exhibition should reflect on the options as the final duty of a good steward.

Some closing thoughts on practice

If the arguments in this paper are correct, then the private acquisition and retention of cultural heritage has weighty moral responsibilities attached to it. I have tried to show that private owners should see their ownership rights rather as rights to act as stewards of their collections on behalf of the wider public than as rights to treat their contents however they like. Cultural heritage is something in which we all have an interest on account of its role in creating and sustaining social identity, connecting us to the past, and providing opportunities to enjoy and appreciate human art, craft, and genius. Therefore, private collectors are not morally entitled to damage, neglect, or destroy the objects they possess but are responsible for handing them on intact to future generations. Like the custodians of public collections, they should also do their best to facilitate access and promote research.

The question arises whether, if private collectors indeed carry such heavy moral responsibilities, public policy needs to take greater cognizance of the fact. Should governments introduce legal measures to compel collectors to fulfil their stewardship duties? Legislation could, we have seen, be considered to prohibit the destruction or alteration of artworks of more than a certain monetary value. But governmental surveillance on any large scale of the activities of private collectors would be resource-heavy, difficult to organize, and exceedingly intrusive into private life. Probably the best contribution that governments can make towards assisting private collectors in the stewardship role is to encourage and support the development of facilities for the digital recording and publishing of the contents of collections. For domestic collectors who are unable to provide dedicated exhibition areas and are unwilling to admit unknown strangers into their homes to view their rare books, pictures, or coin collections, digitization their holdings (preserving owner-anonymity where desirable) is the ideal alternative; indeed, it may be more than a mere second-best where it enables instant remote access to those collections at the touch of a computer key. If nothing quite substitutes for the pleasure of encountering a piece of cultural heritage “in the flesh,” seeing the image of an object on a computer screen has the compensating advantage that it can be done at any time and place that is connected to the internet.

Every private collector must ultimately make a personal decision about how to be a dutiful and virtuous collector. All collectors, though, should recognize that the private collecting of cultural heritage has accompanying ethical responsibilities that may not be ignored. And the collector who recognizes that much has taken the vital first step to becoming a moral steward of cultural heritage.

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