

TO HAVE TO HOLD

A GLOBAL ANTIQUITIES SCANDAL EXPOSES FLAWED ACQUISITION POLICIES AT AMERICA'S ELITE MUSEUMS.

BY JESSICA L. DARRABY

Paros is a jewel of the Aegean, an island of sandy beaches bathed in golden light wedged among the Cyclades. Thirty euros and two and a half hours on a high-speed ferry transports Athenians and tourists from the Greek mainland to the island's crystal-clear waters. Cooled by a north wind, it's a traveler's delight of bright white villages, artisanal crafts, and archaeological sites, a haven for island hoppers and the fortunate elite who own

grand villas that cling to the rocky hillsides.

Paros would seem far removed from Courtroom VI of the Tribunale di Roma in Italy, and farther still from the Los Angeles boardroom of the J. Paul Getty Trust—considered the richest art institution in the world, with \$7.5 billion in net assets. Yet the three are linked by a storyline with more twists and turns than the winding, narrow streets of a Paros village—and by competing desires to have and to hold Greek and Roman antiquities.

Paolo Giorgio Ferri, the Italian prosecutor in Rome, alleges Getty officials and others satisfied those desires in ways both wrong and unlawful. Ferri is prosecuting Marion True, the former curator of antiquities at the J. Paul Getty Museum, and Robert E. Hecht Jr., an octogenarian American art dealer based in Paris. Each is charged under the Italian penal code with conspiracy to commit a crime and receiving stolen goods believed to be the result of a crime, punishable by imprisonment of two to eight years and a fine of up to €10,000. True and Hecht deny any wrongdoing.

Prosecutor Ferri's bold strike is a first-of-its-kind prosecution that involves True; a controversial collection of antiquities; and the Getty's evolving view of provenance—in the art world, an object's birth certificate and résumé. If Ferri succeeds, the case will have profound ramifications for individual collectors and institutions alike.

Regardless of outcome, Ferri's prosecution has created a sea change in operations at America's elite art institutions. The case has uncovered flaws in the way our nation appropriates cultural power and asserts ownership and control over antiquities and art objects. To the trustees and directors of America's boardrooms, it is a cautionary tale on corporate governance, compliance, and cultural responsibility. And like the ancient myths so aesthetically rendered on those coveted antiquities, the prosecution of Marion True offers a moral

Jessica L. Darraby is the principal in a national art law practice based in Los Angeles. She is the author of *Art, Artifact & Architecture Law* (Thomson West 10th ed., 2005) and is working on a new book on international law.

These acrolithic sculptures are said to be from the same heavily looted area of Sicily as a statue owned by the J. Paul Getty Trust in Los Angeles. Artifacts identified by Italian authorities as stolen are at the center of an international dispute over the Getty's acquisition policies.



Reuters/Landov



The Getty Villa reopened in January after extensive renovations.

about the high cost when hubris and greed—or simply extremely bad judgment—corrupt ethical values.

“CALL MARION”: PAPERING DEALS

Lawrence A. Fleischman vividly recalled the events of Valentine’s Day, 1995. Snow-blinded by gale-force winds in Manhattan, Fleischman said, he struggled across 57th Street in a blizzard to reach his office at the Kennedy Galleries. “I remember that day so well because it was my 70th birthday,” Fleischman said in a 1996 interview. He wondered if he would make it.

When Fleischman arrived at the renowned gallery he had owned and operated for decades, the first thing he did was call his wife. “So I said, ‘Barbara, I’m 70 today. Where shall it go?’”

“The Getty,” Barbara told her husband without pausing. “Call Marion.”

“It” was the couple’s collection of antiquities, conservatively valued at \$60 million to \$80 million, and Marion True was then curator at the Getty. The collection was one of the most important in the United States, including more than 300 Greek, Roman, and Etruscan sculptures, vessels, frescoes, archeological fragments, and jewelry pieces dating from 2600 BC to AD 400. What had struck Fleischman on 57th Street was a measure of the wind but also the call of his own mortality. He was going to donate the collection eventually; the gods were telling him the time was now.

True had been hired by the Getty in 1982 as an assistant to the antiquities curator. Four years later, with a Harvard doctorate in hand, she became curator. She said she first saw the Fleischman collection at the couple’s New York apartment in the late 1980s.

Under True’s direction, the Getty implemented an acquisitions policy in 1987 intended to keep the museum from repeating actual or perceived transgressions of previous years. Due diligence for acquisitions was to include

sending letters to foreign governments to source antiquities, and checking with international registries of stolen art.

Meanwhile the Fleischmans continued acquiring antiquities. According to True, “They had advisors from the Metropolitan Museum of Art and other museums, but they were very decisive.” Although the precise date is unclear, at some point, True said, she replaced the Met as the Fleischmans’ consultant, handpicking objects from antiquities dealers who were well known to her through her dealings at the Getty and Boston’s Museum of Fine Arts. “As we became close friends,” True said, “if the Getty wouldn’t bid on [a piece], Larry would, and if we [the Getty] wanted it, he wouldn’t bid.”

The *Art Newspaper* reported that Lawrence Fleischman also sold the Getty nine pieces from his collection in 1992–93, including rare signed, painted vases. The True-Fleischman connection grew even closer: The Getty exhibited the Fleischman collection in late 1994, published the accompanying catalogue, and cosponsored an exhibition of the collection at the Cleveland Museum of Art in 1995.

Later that year, in November 1995, the Getty announced a change to its acquisitions policy, devised by True, that became known as provenance-by-publication. “Proposed acquisitions must come from established, well-documented (i.e., published) collections,” the policy stated. “Publication must precede the date of adoption of these revisions, November 1995.” The new policy appeared to be significantly more rigorous than the museum’s earlier practice of seeking dealers’ assurances as to title, authenticity, and legitimate export—a form of “deal-papering” considered worthless by many in the trade.

In a December 1995 interview with the *Art Newspaper*, True explained the change. “In the past, we have always felt that the most important thing was to check with the governments to see whether they knew anything about a proposed purchase, because we sometimes found that when we asked the dealers for a provenance, we were given false documents,”

she said. “Now we would only consider buying from an established collection that is known to the world so that we do not have the issue of undocumented provenance.”

On its face the policy was simple. Publication under the right circumstances—with a lot of luck—can help sort out ownership claims or at least encourage claimants to come forward. The general idea is that publication of the origins of an object or collection disseminates information about its provenance—or gaps in provenance—that enables the legal owners to step forward.

But the premise of the 1995 Getty policy was fatally flawed, even before the Internet expanded the reach of publication exponentially. In fact, publication may lead to discovery of provenance, but the data do not support that it will. Print publication, as the handful of provenance rulings show, is an unreliable market informant. Its effectiveness depends on what was published, by whom, how it was published, where it was published, and to whom publication was disseminated.

Under 20th-century laws prevalent in artifact-rich nations, the country of origin may have ownership claims to objects in the ground, as well as prohibitions against their unauthorized excavation, sale, transfer, and export. Regardless of how objects are papered by dealers, judicial rulings in accordance with such laws have established a duty of inquiry—known as due diligence—to investigate an antiquity’s provenance, including the site-source of the object.

The 1995 Getty policy, however, failed to address the object’s location at its discovery, known as its find spot. “An antiquity does not exist without context,” says Richard Brilliant, professor in the art history and archaeology department at Columbia University. He is referring to *provenience*, the location of the object’s find spot in relation to other strata and surrounding objects. “Archaeological context is much broader than physical context,” Brilliant says. “In modern archaeology, the object must be seen through a historical, social, and cultural lens. There is no such thing as an innocent object.”

Once plucked from a site, the objects are irreplaceable and context is lost. “Context is nice, but objects are better,” wryly observes William Pearlstein, of counsel to the New York firm of Golenbock Eiseman Assor Bell & Peskoe, whose practice includes international art cases.

This nexus of *terroir* and *objets* is the core of modern cultural patrimony claims. And today *terroir* is increasingly recognized as the primal cultural bond between objects and their putative or actual sources, superseding ownership claims by the possessor.

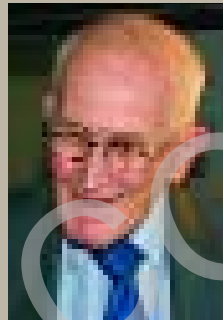
The policy limiting the Getty’s acquisitions to either published or “established” collections ignored the question of those with incomplete or tainted provenance. The Getty was in effect trying to quiet title unilaterally without confronting the underlying problem—an antiquities market in which looted objects are too often stock-in-trade.

THE PLAYERS



MARION TRUE

True joined the J. Paul Getty Museum as an assistant to the curator in 1982. In 1986 she was named curator of the Getty’s antiquities collection. She helped implement a revised acquisitions policy in November 1995, and less than a year later helped acquire the Fleischman collection.



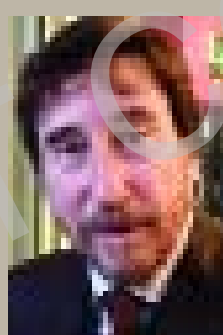
ROBERT E. HECHT JR.

An American art dealer based in Paris, Hecht sold New York’s Metropolitan Museum of Art a Euphronios krater and a 15-piece Hellenistic silver service from the third century BC—both to be repatriated to Italy in an agreement reached in February. Authorities seized a handwritten memoir from Hecht’s apartment that is being used as evidence against him.



GIACOMO MEDICI

A Roman antiquities dealer, Medici supplied a large number of Italian antiquities to Hecht in Paris. In 1995 authorities raided four of Medici’s warehouses in Geneva and seized thousands of artifacts and documents. Medici was arrested in 1995, indicted, and convicted in 2004 of trafficking antiquities; he remains free pending an appeal.



PAOLO GIORGIO FERRI

An Italian prosecutor in Rome, Ferri indicted Medici, True, and Hecht. True and Hecht have been charged with conspiracy, as well as with obtaining, receiving, or concealing goods known or believed to be the result of a crime. Italian authorities allege that at least 42 antiquities at the Getty were stolen or illegally excavated and smuggled out of Italy.

By sidestepping the due diligence investigation of an object’s provenance, the Getty institutionalized a system that facilitated continued trade in unprovenanced antiquities. More cynically, provenance-by-publication could be regarded as an attempt to confound potential ownership claims from art-rich nations.

But none of that seemed to matter ten years ago. The Getty's amended acquisitions policy was embraced by the media and hailed as a benchmark for collecting institutions. No museum with halls, walls, and storehouses lined with antiquities had ever taken itself to account so publicly for its acquisitions practices, and then changed course. Provenance-by-publication quickly became the gold standard of antiquities collection practice.

In 1996 the Getty announced that it had acquired the Fleischman collection. The couple sold 32 pieces to the Getty for \$20 million and made a tax-deductible donation of the rest of the artifacts, according to the *Los Angeles Times*. Many of the objects were unprovenanced. But two years earlier these same objects had been exhibited by the Getty and described in the exhibition catalogue it published. To critics in the art world, establishing provenance-by-publication for the Fleischman collection in this way seemed too convenient.

True insisted that the timing of the Getty's policy change and its acquisition were coincidental. In a 1996 story, the *Art Newspaper* reported, "Ms. True maintains there was never any agreement or understanding whatsoever, either formal or casual, that the Getty would eventually acquire all or part of the collection, or have the option of doing so." True also told the newspaper: "This acquisition is in line with exactly what we [the Getty] said we would do. We went out of our way to be clear that we were not saying we would not buy any more unprovenanced material."

True's statements implicitly conceded that many objects had not been provenanced by the Fleischmans at the time they were acquired. The Getty acquisition now seemed to have reinvented, Hollywood style, the collection's provenance.

ARTIFACTS AND CONTEXT

Greek and Roman antiquities are irreplaceable cultural trophies, heritage medallions, aesthetic badges of the past. They are sought and longed for by looters, smugglers, dealers, collectors, and museums—virtually everyone in a chain of trade that brings many such objects from antiquity to market. The trade is often illicit because countries such as Italy, Greece, and Turkey—identified in cultural property parlance as "source" countries—have passed laws attempting to strictly regulate archeological sites. These nations have declared national ownership of embedded objects not yet excavated, and restricted or banned their unauthorized removal and export. Preserving sites makes it possible to compile an accurate and complete *provenience* through contextual documentation of objects at their find spots. Italy's main 20th-century antiquities law, for example, revised and updated in 1939, asserts state ownership of all artifacts discovered after 1902 and forbids their export without a permit.

"In light of the heightened vigilance by art-rich countries, a policy of 'don't ask, don't tell' carries with it increased risks," warns Howard N. Spiegler, cochair of the international art law group at the New York firm Herrick, Feinstein.

"It has become more and more difficult for anyone involved in collecting or dealing in antiquities to claim ignorance of the basic legal tenets that govern this area, and of the red flags that demonstrate that increased diligence is in order," Spiegler says. "If the object is from a source country, efforts should be made to ensure that it was exported with a valid certificate, or before the date of the source's cultural patrimony law."

In 1995, about the same time Larry Fleischman had intimations of mortality in New York, Swiss and Italian authorities launched a joint police action. Agents raided warehouses in Geneva owned by Giacomo Medici, an erstwhile antiquities dealer, and uncovered evidence reportedly linking dealers, the Metropolitan Museum of Art, and other museums to looted artifacts. A raid of Robert Hecht's Paris apartment in 2001 yielded additional materials, including a handwritten memoir that allegedly established connections between Medici, Hecht, and True.

When Ferri, the Italian prosecutor, traveled to Los Angeles in 2001 to take True's deposition, he showed her some of the photographs seized in the raid on Medici's warehouses. "During her examination, Marion True identified many archaeological items," Ferri says. "She was willing to help us and promised future declarations. But nothing in the future happened, so you have to question how sincere she was."

In 2003 Ferri began prosecuting Medici, Hecht, and True. Medici opted for an expedited trial and was convicted in December 2004 of antiquities trafficking. Sentenced to ten years in prison and held liable for €10 million, Medici is free pending appeal.

The joint trial of True and Hecht opened last September. Ferri is presenting evidence that includes thousands of photos of objects—some with the soil still clinging to them—allegedly taken from Italian archaeological sites. Among them are items from the Fleischman collection, the Met, and the Boston Museum of Fine Arts.

According to Ferri, "This is the first time that such [charges have been brought against] a curator of a museum. At the very beginning I couldn't envisage that persons in such responsibility [could be charged with] such crimes. Marion True was the first curator that came to my attention, so she was the first who surprised me for her callous dealing." The prosecutor adds, "What I've up to now 'discovered' is [only] a small part."

Franco Coppi, True's lead defense attorney in Rome, maintains that his client acquired the objects cited in the indictment in good faith. But to win his case Ferri does not have to prove that the Fleischmans' antiquities were stolen. He does not even have to prove ownership. He only needs to establish context—the nexus of the objects to Italian soil. This in essence is the merger of modern archaeology and modern patrimony law.

IN GOOD FAITH

Maverick oil billionaire J. Paul Getty understood the importance of context, even if he had to create it himself. He built

an improbable replica of a Roman villa, tucked into a canyon facing the Pacific Ocean, to house his collection of some 9,000 antiquities. When Getty died, in 1976, he bequeathed the bulk of his fortune to fund a museum complex, including the villa. In the mid-'90s the villa closed for extensive renovations intended to showcase the Fleischman collection. True was a coordinator of the project. Last January—nine years and \$275 million later—the villa reopened.

The villa, however, is dwarfed by the opulent Getty Center, which opened in 1997. A \$1 billion homage to the Acropolis in Athens, the Center was designed by Richard Meier and constructed on a 110-acre campus atop the Brentwood hills. It includes the Getty Museum and research, education, and conservation facilities, all administered by the Getty Trust. Its board of trustees—including wealthy philanthropists and civic, cultural, and industrial leaders—installed Barry Munitz as president and CEO in 1997. Larry Fleischman died that same year; in 2000 the board invited Barbara Fleischman to become a trustee.

Prosecutor Ferri's allegations that antiquities in the Getty's permanent collection had tainted provenance presented the trust with some uncomfortable facts. "The first responsibility of any nonprofit board is to comply with all laws, treaties, and international regulations," says Edward H. Able Jr., president and CEO of the American Association of Museums (AAM) in Washington, D.C. "Board members need to be certain that procedures are in place for whatever oversight is necessary to assure that the organization is acting in compliance with the laws."

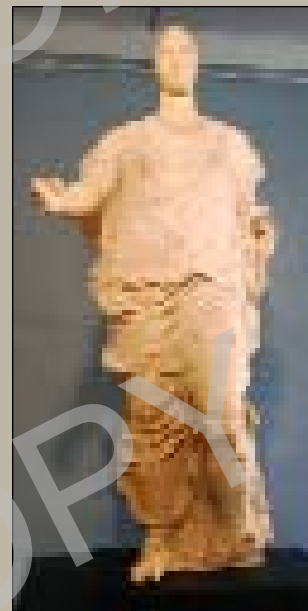
Regarding provenance, Able says, "A museum cannot legally own an object that has been illegally obtained or stolen, even if there is a paper trail and it believes the object was obtained in good faith."

To be accessioned into a museum's permanent collection, objects generally must be approved by the institution's board of trustees. Board policies must be informed by contemporary cultural ethics, as well as by laws reflecting the changing global awareness of how provenance

THE ANTIQUITIES



A 2,300-year-old krater, decorated by the Greek painter Asteas about 340 BC, was one of three antiquities returned to Italy by the J. Paul Getty Museum in November.



According to Italian authorities, this statue of a goddess—probably Aphrodite—may have been stolen. The Getty acquired the piece in 1988 for \$18 million.



(Left) A Roman sculpture titled "Head of the Young Dionysos," produced in the early first century, is among the disputed pieces in the Lawrence and Barbara Fleischman collection.



(Below) The provenance of this gold funerary wreath, made by a Greek artisan between 320 BC and 300 BC, also is in question.

should be ascertained and objects acquired. Yet trustees at the Getty seem to have approved major acquisitions with questionable provenance year after year, acquisition after acquisition, including the Fleischman collection.

The Getty trustees have had other concerns as well. Last October, the *Los Angeles Times* revealed that True had purchased an island villa on Paros in 1995. She paid for the villa using a \$400,000 loan from an associate of a London art dealer who had sold objects to the Getty. A year later, according to the *Times* story, True accepted a second loan of \$400,000 that she used to repay the first one. The second loan, which did not require True to secure it with the villa as collateral, came from Lawrence and Barbara Fleischman—just days after True had acquired their collection of antiquities for the Getty.

Under the AAM's code of ethics, adopted in 1993, "There is never a circumstance in which it is okay to take a loan [from a vendor, donor, or dealer], even if the loan is disclosed," says Able, who declined to address the specifics of the Getty matter. "Accepting loans from individuals or entities with which a museum does any kind of business ... constitutes self-dealing, conflict of interest, or self-inurement."

In the wake of the *Times* investigation last fall, True abruptly resigned from the Getty. But according to records the *Times* obtained, the Getty's former museum director and the general counsel for the Getty Trust had known of the first loan since 2002.

Though compliance with the AAM code of ethics is voluntary, Able says he welcomes oversight of nonprofits by state attorneys general. Indeed, Gerald A. Rosenberg, chief of the charities bureau in the New York attorney general's office, says the AAM code is used by his staff, by other state attorneys general, and by private watchdog organizations.

Under California statutes covering nonprofit organizations, the Getty Trust's assets are "charitable assets" subject to specific limitations on their spending, allocation, and transfer. "Charitable funds belong to the people," says Belinda Johns, senior assistant attorney general in the charitable trusts section of the California attorney general's office. "The assets are restricted to use for charitable purposes and not for the benefit of any individual. Sometimes charities forget that."

Last summer Attorney General Bill Lockyer opened an investigation of the Getty Trust, including review of the compensation package and spending habits of CEO Munitz. Lockyer's office has statutory authority over how trust assets are managed under various provisions of the government code (Cal. Gov't Code §§ 12580–12599.7); the corporate code (Cal. Corp. Code §§ 5000–35302); and the probate code (Cal. Prob. Code §§ 15000–21700). In addition, changes in nonprofit law mandated by the Nonprofit Integrity Act of 2004 (SB 1262)—which requires charitable corporations to make available annual financial statements that have been independently audited (Cal. Gov't Code §

12585(e))—prescribes that executive compensation, including benefits, be "just and reasonable." (Cal. Gov't Code § 12586(g).)

The Washington, D.C.–based Council on Foundations also is investigating the Getty for allegedly allowing Munitz and True the "use of foundation assets for personal benefit ... and potential self-dealing." The council, meanwhile, has placed the trust on probation pending delivery and review of requested documents by an independent panel. Steve Gunderson, the council's president and CEO, advised the Getty's chair, John Biggs, that the council would work to help the trust "meet the standards for ethics and accountability appropriate to the public trust" and "rectify the protocols that led to these abuses."

NEW PROTOCOLS FOR OLD ART

Initially, Barbara Fleischman seemed unfazed by Marion True's resignation. "I have no intention of leaving the board," Fleischman told the *Los Angeles Times* in November. But in January, just days before her collection of antiquities was showcased at the villa's reopening, she too resigned. Michael Brand, the Getty Museum's new director, barely made the reception—he had just flown back from Rome the previous day after negotiating the museum's possible return to Italy of dozens of objects listed in Ferri's indictment.

The next month, in February, Barry Munitz stepped down as president and CEO of the Getty Trust. Board Chair Biggs had appointed a five-member committee to conduct an internal investigation, retaining Munger, Tolles & Olson partner Ronald L. Olson to run the probe.

As for the fate of the disputed antiquities, prosecutor Ferri says, "My job is to seek retribution on behalf of the State. Getting the objects back is for the Italian Ministry of Culture." In recent months, ministry officials have scored some dramatic results, reaching agreements with the Getty, the Met, and other museums for repatriation of some objects and long-term loans of others. Hard-edged American legal concepts of ownership are no longer necessarily the operative ones for determining who can have and hold cultural objects, be they paintings seized from private collections during the Nazi era or antiquities.

The Italian criminal case, diplomatic efforts, and voluntary repatriation in a legal environment that scrutinizes every type of corporate governance indicate there are new protocols for how artwork is exhibited, exchanged, loaned, and acquired. The AAM's Able and prosecutors Rosenberg of New York and Johns of California agree that those protocols must be formulated in the boardrooms of America's cultural institutions.

"Change of the current attitude will be the first step," Ferri writes from Rome. "Then all the countries must recognize that none [can] make physical violence against the cultural patrimony of the others without damaging their same heritage. A policy of mutual assistance, loans, and exhibitions will be the future of collecting." 