

INTERNATIONAL JOURNAL OF

# Cultural Property

VOLUME 19 2012 NUMBER 1



**CAMBRIDGE**

ISSN 0940-7391

**Subscription Information:** *International Journal of Cultural Property* (ISSN 0940-7391) is published quarterly in February, May, August, and November by Cambridge University Press for the International Cultural Property Society. Annual subscription rates for Volume 19 (2012): Institutional subscription rate, print and electronic: US \$373 in the U.S.A., Canada, and Mexico; UK £225 elsewhere. Institutional subscription rate, electronic only: US \$300 in the U.S.A., Canada, and Mexico; UK £180 elsewhere. Institutional subscription rate, print only: US \$354 in the U.S.A., Canada, and Mexico; UK £216 elsewhere. Individual subscription rate, print only: US \$71 in the U.S.A., Canada, and Mexico; UK £38 elsewhere. Single part rates, print only: US \$94 in the U.S.A., Canada, and Mexico; UK £58 elsewhere. Prices include surface postage.

**Publishing, Advertising, and Subscription Offices:** Cambridge University Press, 100 Brook Hill Drive, West Nyack, NY 10994-2133, USA (for USA, Canada, and Mexico); or Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, England (for UK and elsewhere).

**Society Inquiries:** General inquiries concerning the International Cultural Property Society should be directed to Stanley N. Katz, Director, Center for the Arts and Cultural Policy Studies, Woodrow Wilson School, 428 Robertson Hall, Princeton University, Princeton, NJ 08544. Phone: 609-258-5637; fax: 609-258-1235; email: snkatz@princeton.edu

**Rights and Permissions:** All rights reserved. No part of this publication may be reproduced, in any form or by any means, electronic, photocopy, or otherwise, without permission in writing from Cambridge University Press. General enquiries from the USA, Mexico, and Canada should be addressed to the New York office of Cambridge University Press <http://www.cambridge.org/us/information/rights/contacts/newyork.htm>; general enquiries from elsewhere should be addressed to the Cambridge office <http://www.cambridge.org/uk/information/rights/contacts/cambridge.htm>; permission enquiries from Australia and New Zealand should be addressed to the Melbourne office [http://www.cambridge.org/aus/information/contacts\\_melbourne.htm](http://www.cambridge.org/aus/information/contacts_melbourne.htm); enquiries regarding Spanish-language translation rights (only) should be addressed to the Madrid office <http://www.cambridge.org/uk/information/rights/contacts/madrid.htm>.

**Photocopying information for users in the U.S.A.:** The Item-Fee Code for the publication (0940-7391/10 \$15.00 + .10) indicates that copying for internal or personal use beyond that permitted by Sec. 107 or 108 of the U.S. Copyright Law is authorized for users duly registered with the Copyright Clearance Center (CCC) Transaction Reporting Service, provided that the appropriate remittance of \$15.00 per article is paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923. Specific written permission must be obtained for all other copying.

**Abstracting Information:** *International Journal of Cultural Property* is indexed and abstracted in Anthropological Literature; Art and Archaeology Technical Abstracts (Online Edition); ARTbibliographies Modern; Avery Index to Architectural Periodicals; Bibliography of the History of Art (BHA); British & Irish Archaeological Bibliography (Online Edition); IBZ—Internationale Bibliographie der Geistes- und Sozialwissenschaftlichen Zeitschriftenliteratur; Index to Foreign Legal Periodicals; Index to Legal Periodicals & Books; Internationale Bibliographie der Rezensionen Geistes- und Sozialwissenschaftlicher Literatur.

© International Cultural Property Society 2012

**Cover:** Ephraim Pectol and his daughters Golda and Devona hold three buffalo shields manufactured sometime between 1420 and 1640, according to radiocarbon dating, shortly after their discovery by Mr. Pectol in 1926 in what later became Capitol Reef National Park, Utah. The story of the shield's repatriation under NAGPRA features in Karolina Kuprecht's article in this issue on the concept of "cultural affiliation" and its impact. Photo reproduced courtesy of the E. P. and Dorothy Hickman Pectol Family Organization.

# INTERNATIONAL JOURNAL OF Cultural Property

VOLUME 19 (2012) NUMBER 1

## Editor

Alexander A. Bauer,  
*Queens College, CUNY, USA*

## Chronicles Editor

Kurt Siehr, *Universität Zürich, Switzerland*  
and *Max-Planck-Institut, Germany*

## Case Notes Editor

Robert K. Paterson, *Faculty of Law,*  
*University of British Columbia, Canada*

## Book Review Editor

Patrick J. O'Keefe, *University of*  
*Queensland, Australia*

## Associate Editors

Michael F. Brown, *Williams College, USA*

Haidy Geismar, *New York University,*  
*USA*

Sonia Katyal, *Fordham University School*  
*of Law, USA*

Thomas F. King, *Independent Writer/*  
*Consultant, USA*

Lyndel V. Prott, *University of Queensland,*  
*Australia*

## Editorial Board

Gregory J. Ashworth, *Rijksuniversiteit*  
*Groningen, Netherlands*

Márcia Bezerra de Almeida, *Universidade*  
*Federal do Pará, Brasil*

Janet E. Blake, *University of Shahid*  
*Beheshti, Iran*

Gregory Borgstede, *University of*  
*Pennsylvania Museum, USA*

Mira Burri, *World Trade Institute,*  
*Switzerland*

Chip Colwell-Chanthaphonh, *Denver*  
*Museum of Nature and Science, USA*

María Luz Endere, *Conicet and Universidad*  
*del Centro de la Provincia de Buenos*  
*Aires, Argentina*

Derek Fincham, *South Texas College of Law,*  
*USA*

Richard Handler, *University of Virginia,*  
*USA*

Claire Lyons, *Getty Museum, USA*

Stephanie Moser, *University of*  
*Southampton, UK*

Elina Moustaira, *Faculty of Law, University*  
*of Athens, Greece*

Dawson Munjeri, *Delegation of Zimbabwe*  
*to UNESCO, Zimbabwe*  
and *France*

Anila Naeem, *NED University of*  
*Engineering and Technology, Pakistan*

James A. R. Nafziger, *Willamette University*  
*College of Law, USA*

Hyung Il Pai, *International Research Center*  
*for Japanese Studies, Japan*

Jorge Sánchez Cordero, *Mexican Center of*  
*Uniform Law, Mexico*

Daniel Shapiro, *President Emeritus,*  
*International Cultural Property Society,*  
*USA*

Folarin Shyllon, *Faculty of Law, Olabisi*  
*Onabanjo University, Nigeria*

Samuel Sidibé, *National Museum of Mali,*  
*Mali*

Neil Asher Silberman, *University of*  
*Massachusetts, Amherst, USA*

Madhavi Sunder, *UC Davis School of Law,*  
*USA*

David Throsby, *Macquarie University,*  
*Australia*

Alison Wylie, *University of Washington,*  
*USA*

## Board Members Emeritus

Clemency Coggins, *Boston University, USA*  
David Lowenthal, *University College*  
*London, UK*

John Henry Merryman (Founder), *Stanford*  
*University Law School, USA*

Stephen K. Urice, *University of Miami*  
*School of Law, USA*

INTERNATIONAL  
**Cultural Property**  
SOCIETY

**BOARD OF DIRECTORS**

**President**

Derek Gillman  
*Barnes Foundation, USA*

**Treasurer**

Stanley N. Katz  
*Center for Arts and Cultural Policy Studies, Princeton University, USA*

**Secretary**

Stephen K. Urice  
*University of Miami School of Law, USA*

**Vice-President**

Stanley N. Katz  
*Center for Arts and Cultural Policy Studies, Princeton University, USA*

Stephen W. Clark  
*J. Paul Getty Trust*

Talat S. Halman  
*Center for Turkish Literature, Bilkent University, Turkey*

Marc-André Renold  
*Art-Law Centre, University of Geneva Law School, Switzerland*

Lawrence Rosen  
*Department of Anthropology, Princeton University, USA*

Kurt Siehr, Law School  
*Universität Zurich, Switzerland and Max-Planck-Institut, Germany*

President Emeritus  
Daniel Shapiro

# CONTENTS

## VOLUME 19 (2012) NUMBER 1

### ARTICLES

- Lifting the Lid on “The Community”: Who Has the Right to Control Access to Traditional Knowledge and Expressions of Culture?*  
Miranda Forsyth 1
- The Concept of “Cultural Affiliation” in NAGPRA: Its Potential and Limits in the Global Protection of Indigenous Cultural Property Rights*  
Karolina Kuprecht 33
- The Effects of Judicial Decisions and Patrimony Laws on the Price of Italian Antiquities*  
Cameron Semmes Stoll 65
- Protection of Cultural Goods—Economics of Identity*  
Marianna Bicskei, Kilian Bizer, and Zulia Gubaydullina 97

### RESPONSE

- “Good and Bad: I Defined These Terms, Quite Clear, No Doubt, Somehow”<sup>1</sup> A Commentary on Stefan Claesson’s “The Value and Valuation of Maritime Cultural Heritage”*  
Thomas F. King 119

### BOOK REVIEW

- James A. R. Nafziger and Ann M. Nicgorski (eds.). Cultural Heritage Issues: The Legacy of Conquest, Colonisation, and Commerce*  
Neil Brodie 125
- Instructions for Contributors 129