
Correspondence

The Elsen/Walsh Controversy*
(reprinted from Artnews)

An Outrageous Anomaly
Albert Elsen

The art world has, over many years, witnessed a gradual change in the attitudes and laws affecting it, which have shifted from allowing secrecy to demanding full disclosure. Print legislation in many states now requires sellers to disclose full documentation on — or what they *don't* know about — the modern prints they sell. Auction houses must report which items have sold and which haven't found buyers. In New York City, galleries have to post prices for the works on display. Museums are expected — if not required — to have acquisitions policies in writing.

Are there any remaining bastions of secrecy in the art world blocking the public's right to know? One comes to mind: the refusal by certain museums to disclose the identity of a party from whom they have purchased

a work. The J. Paul Getty Museum's recent acquisition of a Greek marble of Aphrodite is a case in point. The background paper on the Aphrodite says nothing about the former owner's identity, and the museum's acquisitions policy is silent on the practice of full disclosure in terms of prior ownership. Though it's only an unwritten Getty policy to withhold the seller's identity, museum spokespersons invoke the rule whenever a work's previous ownership is questioned.

Why does a museum have such a policy? One reason may be to keep the source to itself for possible future purchases. Another could be that the vendor wishes to maintain privacy. Even suspending any disbelief that these are the actual intentions, do they outweigh the harm? Non-disclosure of the seller's identity guarantees full employment for forgers, grave or site robbers, smugglers, and other crooks.

Art museums are required to conserve art. Any practice of theirs that endangers or destroys art is inexcusable. The Getty's director, John Walsh, feels that if museums such as his did not protect the provenance when buying great antiquities, private sources and their works would

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The Getty Aphrodite:

Correspondence between Professor Albert Elsen, Stanford University, and Dr John Walsh, Director, J. Paul Getty Museum.

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be lost to scholarship. He forgets that not just antiquities but countless works of great art remain in private collections, from which museums may borrow and to which scholars often do have access. Ultimately, the great art in private collections is destined for the museum, often in the form of a donation. Trustees are sometimes as guilty as corporate directors, thinking only of short-term gain and not long-term benefits.

By not revealing the Aphrodite's seller, the Getty has not upheld the public's trust and its own mission. The museum argues that most antiquities lack documentation, and Walsh has been quoted as saying that those who demand full disclosure of provenance are naive. But even knowing there are gaps in the history of a work that is 2,500 years old, there are no obstructions to obtaining the name of the seller.

If all museums required disclosure of the seller's identity, documentation might improve. Walsh is naive if he thinks paying \$20 million for the Aphrodite will not fuel illegal excavations. The Getty has been defended on the grounds that it is only acting in the mainstream. But what serious museum uses unethical practice in the market to determine its acquisitions policy? Answer: the Metropolitan Museum of Art, formerly; the Getty, most recently.

The Getty boasts of having alerted the foreign governments of territories from which the Aphrodite may have come about its purchase, and says it will re-

turn the sculpture to any country that can prove itself as the place of origin. Absent any response from foreign government officials, archaeologists, or scholars, where could this great sculpture have come from but an unrecorded site? That no foreign government could prove that the Aphrodite came from its territory should have been enough to convince responsible and enlightened trustees not to acquire it.

Part of the smokescreen of the background paper is that it tells us only that the Aphrodite was licensed for export from England and declared at customs in this country. Removing works from unrecorded sites is against the law in the countries involved. Where is the export license from the country where the Aphrodite was found?

The Getty gives us no evidence that as much legal scholarship went into determining the modern ownership as went into the artistic history of the sculpture. The Getty knows the name of the seller. That seller knows the name of the source — good beginnings for a search of legal ownership. If the vendor had gotten the sculpture from a party that had held it long before patrimonial laws existed, then why keep this information a secret? And if the Getty is forced to return stolen as well as counterfeit art, and the trustees do not recover the purchase price, the California Attorney General should investigate the trustees for possible improper use of museum funds.

In the Getty's case, there is another compelling reason why it must adopt a policy of full disclosure of its sources: to protect itself from acquiring forgeries. Of all museums, the Getty should be particularly self-conscious about its history in this area, considering that its long-time curator of antiquities left the museum under suspicion of fraud a few years ago. Since then, the Getty's track record in acquiring antiquities has been a mother lode for reporters. Although the museum has complained about published misinformation on the Aphrodite, its secrecy is partly responsible.

It is time for the Getty trustees to consider the following choices, since their present policy, with its destructive implications, is unworthy. One choice is to declare that enough is enough: the museum has sufficient works of authenticity and quality and will stop buying antiquities and refocus funds and energies on the post-ancient periods. The second choice would be to require that the names of at least the last two previous owners be disclosed. While the result may be fewer acquisitions, there would be less question of their legitimate history of ownership and greater chance of their authenticity. This practice could spare the director, his staff, and his consultants further devaluation of their reputations.

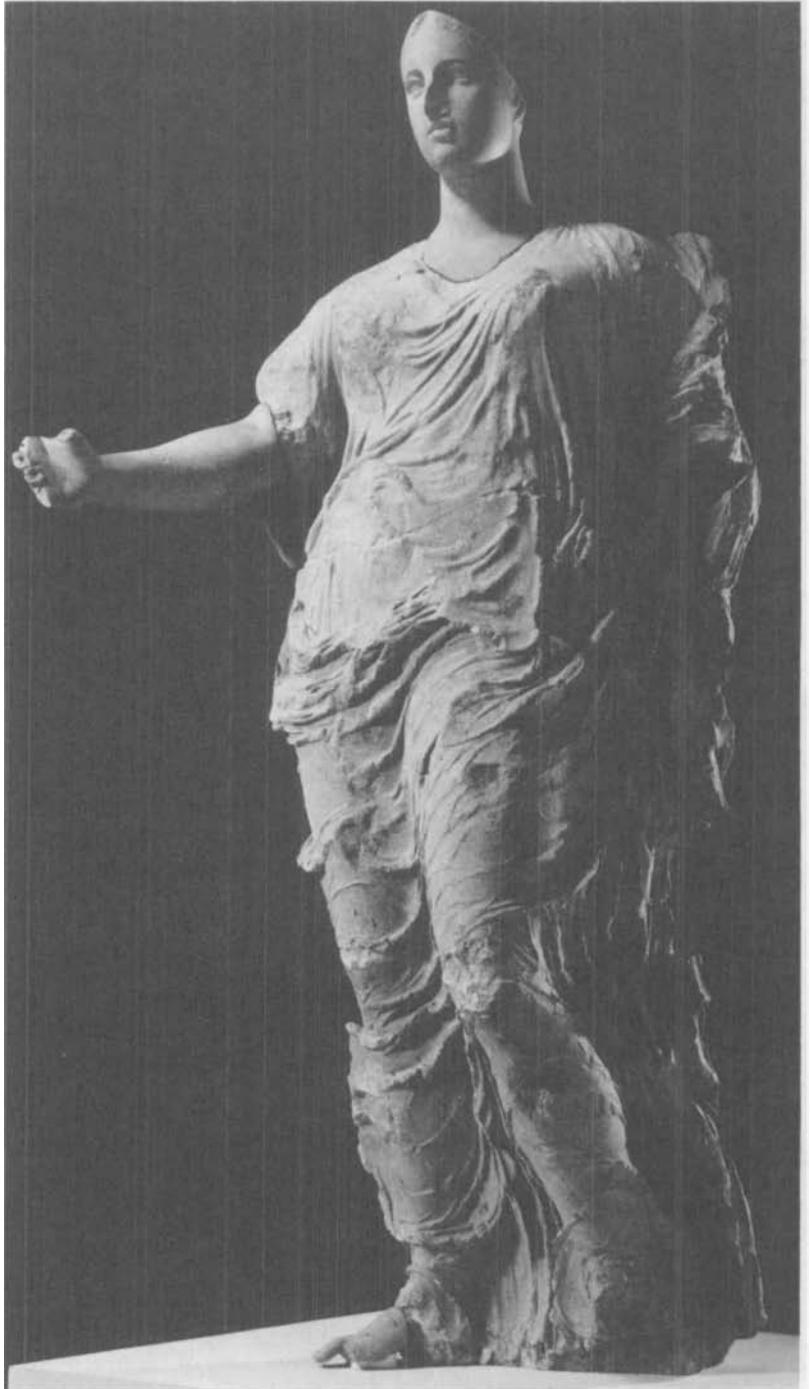
Reflecting the morals of our time, we have laws that insure full disclosure in lending, labelling, and selling. Anonymity for sellers to museums is an archaic, unjustified, and outrageous anomaly.

Nothing to Hide John Walsh

A productive debate over the ethics of collecting antiquities is continuing in the press and in professional meetings, such as a recent round-table in Berlin and a colloquium at the Getty. Museums are getting less fatalistic or cynical about the art market and the plunder of sites, and they are enacting or stiffening acquisitions policies.

To this debate Albert Elsen has made an unhelpful contribution ('An Outrageous Anomaly', 1989). What outrages him is that museums often preserve the anonymity of people who sell works of art. That's wrong, he says, for it blocks 'the public's right to know'. The changed art world of today demands 'full disclosure'. Elsen claims: laws now require dealers to give documentation for modern prints, auction houses to report unsold items, and New York galleries to post prices. Of course they do — but these laws were passed as a safeguard for buyers and are part of a general move to protect consumers. No law or custom obliges a buyer to disclose the name of the seller of a work of art, nor should it.

Museums often choose to give the previous owner's name in their publications if the terms of the sale permit them to. But sometimes sellers require confidentiality out of concern for their privacy, or the security of their remaining collection, or for many other perfectly legitimate reasons. The Museum of Modern Art recently bought a won-



Cult State of Goddess
(Aphrodite?) Credit: The
J. Paul Getty Museum,
unknown artist workin
gin Magua Greece,
425–400 BC,
limestone and marble,
2,2 mH.

derful van Gogh portrait from a Swiss who demanded anonymity under a legal agreement. In such a case, should the museum ref-

use to buy? The burden on the museum is not to reveal the seller but to make a good-faith effort to determine that he or she is

indeed the legal owner and that there are no claims on the object, including claims by foreign governments.

Elsen argues that museums should be required to disclose the seller and the seller's source so that there would be 'less question of [an acquisition's] legitimate history of ownership and greater chance of [its] authenticity'. If only he were right about authenticity! The trouble is that disclosing the seller and the seller's source does not ensure a greater chance of an acquisition's authenticity. Dozens of examples could be provided by museums and collections to show that provenance can be a frail support for authenticity.

As for requiring that museums disclose the seller and previous owner in order to demonstrate 'their legitimate history of ownership', even if this were reasonable it wouldn't have the good effect Elsen wants. Sellers can now produce dummy owners, not to mention documents of provenance (usually degraded xeroxes of letters by purported former owners). Large numbers of handsomely documented pieces have been bought by museums that invited being deceived in this way. The museum usually passes along the bogus provenance to scholars — a worse evil for scholarship than no information at all.

To cure the ethical pains of museums, Elsen prescribes either abstinence or else disclosure of sellers — remedies that would be worse than the disease. Instead, the healthy course is to adopt a clear written policy and to fol-

low it scrupulously. The Getty Museum has done so.

The Getty policy obliges the museum to send photographs and descriptions of important potential acquisitions to the possible countries of origin with requests for any pertinent information known to them. Photographs and information also go to IFAR (the International Foundation for Art Research) in New York, which maintains computerized listings of stolen art in cooperation with Interpol and other agencies. The curators also consult their colleagues at museums and universities here and abroad.

The Getty policy also requires prompt public announcement of important acquisitions to the press, further notification of foreign governments, exhibition of the objects as soon as they can be installed safely, listing in the next issue of the museum's Journal, and full publication as soon as possible. The purpose is simple: to give every opportunity, both before and after acquisition, for anyone who believe that he or she has a claim to come forward.

Furthermore, the Getty policy requires the seller to warrant that the object is authentic, that he or she has good title, that the object has been legally exported from the country of origin and subsequent countries, and that all other customs and patrimony laws of relevant countries have been adhered to. Finally, the policy acknowledges that if a valid claim is made by a foreign government within four years, the object is returned; after four years, when statutes of limita-

tion or the UNESCO exemption period expire, the museum will normally negotiate the return of the object.

The most dramatic test of the Getty's policy came last summer with the Aphrodite. How ironic that this should be Elsen's example of the Getty as one of the 'remaining bastions of secrecy blocking the public's right to know'! The public actually knows more about this purchase than any other private art transaction in years. The Getty has disclosed all the steps that were taken to notify foreign governments and to import the statue. When an unsubstantiated claim was reported in the press that the statue was dug up illicitly in Sicily, every effort was made to verify the claim, and these efforts were disclosed candidly and fully. The piece was put on exhibition immediately, and its likely original provenance of southern Italy was acknowledged.

The Getty buys antiquities to delight visitors and to advance scholarship. Great works of art that might deteriorate or remain invisible are cared for and made public. The Getty acquisitions policy is the outcome of a long struggle to find the right solution to two potentially conflicting objectives: to acquire works of art and make them accessible, and to be a responsible member of an international community devoted to the preservation and study of the past.

Smokescreens

John Walsh continues to spread smoke. The way the Getty seems

to have framed the post-Aphrodite acquisition debate is pure self-interest. A debate over the ethics of collecting antiquities that does not include the probable consequences of the Aphrodite acquisition and ways of discouraging or preventing illegal excavations and traffic is not worth contributing to. Abstinence in acquisition of antiquities was recommended only for the Getty. Withholding the identity of the former owner of the van Gogh acquired by MoMA (or that of any post-ancient work) does not foster illegal activity in that artist's market as compared to the Aphrodite's acquisition and its encouragement of illegal excavation of antiquities. Walsh's claim that his museum's burden is to determine who is the legal owner is true of all museums, but the smoke-screen he has set up hides the fact, that unlike American law, in all of Europe and South America the law is kinder to good-faith purchasers of stolen art than to its owners.

Clarity and consistency in a museum acquisition policy that does not discourage illegal international traffic in antiquities is meaningless... By its own policy the Getty limited its power to make full and meaningful disclosure. If the Getty requires that the seller warrant that 'the object has been legally exported from the country of origin', a fair question is why didn't the Getty require disclosure to itself and the public of the country's identity? How does such vital information compromise the secrecy

of the seller's identity? Warranties can be as bogus as provenances. The Getty has not violated any law by its secrecy, but it has not contributed to the ethical standards that are the basis of new and better laws.

Walsh does not answer, contradict, or challenge the crucial points in my editorial: 'Any practice of [museums] that endangers or destroys art is inexc-

usable...Non-disclosure of the seller's identity guarantees full employment for forgers...and other crooks... Where could this great sculpture have come from but an unrecorded site? That no foreign government could prove that the Aphrodite came from its territory should have been enough to convince responsible and enlightened trustees not to acquire it'.

