

Virtual Collections & Private Curators: A Model for the Museum of the Future

Greg Stemm

Chief Executive Officer, Odyssey Marine Exploration, Tampa, USA

David J. Bederman

K.H. Gyr Professor of Private International Law, Emory University School of Law, Atlanta, USA

Many museum collections are today experiencing an unprecedented crisis in storing and curating enormous collections, a significant percentage of which often lie outside the remit of contemporary collecting strategies. Public funds for the acquisition, conservation, preservation, display and storage of such museum objects are becoming increasingly restricted.

On the basis of Odyssey Marine Exploration's extensive research into deep-sea shipwrecks, for which a robust commercial model is obligatory to enter and research this extremely expensive scientific arena, this paper proposes a new managerial tool: a Private Curatorship program ('PC'). The policy and legal implications of museums deaccessioning certain types of collections for private stewardship are discussed as well as the substantial qualifications and legal restrictions that would accompany private curatorship.

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1. Introduction

Many museum collections today are in a state of crisis unprecedented in the history of curatorship. Public funds for the acquisition, conservation, preservation, display and storage of museum objects (particularly archaeological or historical objects) are scarce and the costs for proper care and treatment of collections have been skyrocketing. Many museums today are placed in the unenviable position of choosing between various initiatives – such as infrastructure building, program development, visiting installations, new acquisitions or preservation of existing collections – recognizing that it is impossible to accomplish all of these objectives with the funds available from public agencies, member support or philanthropic institutions.

The time is ripe to propose a new paradigm for collections management, one that takes advantage of technological innovation, public/private partnerships, notions of individual stewardship for historical objects, and the ultimate objective of any museum: the preservation of knowledge for future generations. This paper discusses the policy and legal implications of deaccessioning certain types of collections by museums or governments for private stewardship, or conditioning acquisitions of new collections, based on the concept that a certain selection of objects in such collections can be owned, curated and stewarded by private individuals under a pre-determined set of legal restrictions.

The basic concept is that there are collections that consist (to a certain degree) of largely duplicative or fungible objects. In these situations, it is not always a preferable option for a museum to retain ownership, and thus assume the expensive and resource-intensive responsibility of conservation and curatorship over the entire collection. Instead, a museum might consider keeping a representative sampling of such a collection (perhaps around 10% of all objects comprising the collection or, at a minimum, the finest exemplars of objects) and designating the remainder for a Private Curatorship program ('PC'). The museum would then transfer title to the remaining objects (either individually or in sub-collection units) to private collectors.

Ownership would come with substantial qualifications under this PC concept. First, the private owners would agree to curate and conserve the artifacts under specified conditions and modalities as a condition of their acquisition. Second, the private owners would agree to pay for the expense of the artifacts being digitally imaged and catalogued in a database maintained by the museum for future researchers – creating a virtual collection and archive. Third, the private owner would agree to make their objects available for actual physical inspection, study and (non-intrusive and non-destructive) testing by researchers, qualified and approved by the museum, on reasonable terms of visitation. Fourth, these conditions would run with the objects in perpetuity, meaning that if a private owner sold

the artifacts to another collector, the transaction would be reported to the museum and the same restrictions would apply to all subsequent owners. In exchange for agreeing to these PC restrictions, the private owner otherwise receives fee simple title to the object(s), along with a guarantee of provenance and marketable title.

This paper will briefly explore this new collections management concept and will primarily focus on the policy and legal implications of collections derived from underwater cultural heritage (UCH) sources, in light of new international cultural heritage trade and collection management developments.

2. Museum Collections & Artifacts in Danger

It is beyond doubt that many collections of artifacts held by museums and libraries in the United States and throughout the world are disintegrating and degrading because of poor conservation, improper storage, and a lack of funds for curatorship. In the United States this is confirmed by a Heritage Preservation/Institute of Museum and Library Services/New York Public Library report issued on 6 December 2005 (Heritage Preservation, 2005). According to this survey of 3,370 museums, libraries and archives, many did not have the most basic environmental or climate controls to protect artifacts, only one in five had paid staff devoted to conservation, and only one in three had an up-to-date assessment of the overall conditions of their collections. Shockingly, nearly 65% already reported extant damage to their collections. The report estimated that 270 million books and journals, 189 million scientific specimens, 153 million photographs, 4.7 million works of art and 13.5 million historical objects were at risk and in need of immediate care.

Put quite simply, the old museum model of a physical location where history and knowledge are stored and displayed forever, where collections are never deaccessioned, and where there are ostensibly endless resources (space, technology, money and time) for conservation and curatorship, is unsustainable. Intelligent and wise choices need to be made now as to the proper allocation of resources to collections management, and we need to consider the possibility that private stewards may be in a superior position to curate certain kinds of collections, under specified legal and technical conditions. This is not simply a matter of 'out-sourcing' what had previously been viewed as essential museum functions and services. Rather, it is imperative that we rethink the relationship between a museum and its public.



Figs. 1-2. Black glass beer bottles (H. 24.5cm & 20.3cm) and champagne-style bottles (H. 25.4cm and 30.8cm) from the SS Republic, wrecked in 1865 at a depth of 500m off southeast America. A sample of 8,529 glass and stoneware bottles of repetitive types was recovered, all of previously recognized forms. They are defined as trade goods due to a combination of their high-volume on the wreck and commonness within archaeology and antiques circles.



Figs. 3-4. The wreck of the Republic contained an extensive cargo of white ironstone china produced in Staffordshire, England, including mugs (H. 9.5cm) and slop jars (H. 31.5cm). Some 2,775 examples were recorded and recovered. Status: trade goods.

3. Policy Concerns with Deaccessioning Collections or Privatizing Collections Management

In America the deaccessioning of collections is no longer regarded as a breach of public trust by a museum, gallery or similar institution. Instead, it is considered an essential part of collections management. Among the criteria for deaccessioning objects and, indeed, of acquisitions policy, are considerations of the following factors: whether the object is no longer relevant to the museum's mission; the object has deteriorated beyond usefulness; the object is hazardous to other collections or staff; or the object is wrongly attributed or even potentially a fake. Perhaps the most significant factor is whether there are multiple examples of the same (or substantially similar items) in the collection (cf. Malero, 1998; Weil, 1998).

The US policies of relevant standard-setting and best-practices bodies for museums, libraries and archives have all recognized changes in deaccession policies which permit disposition of objects or artifacts into other museums or into private collections under appropriate circumstances. Moreover, it has been recognized that under certain conditions it may be entirely appropriate to privatize or transfer ownership to private individuals or private museum collections under certain aspects of collections curation and conservation. As long as acquisition/deaccession decisions are made consistently in light of relevant policies and guidelines, it would be permissible to assign to private ownership parts of museum collections that are redundant or duplicative, for which the cost of conservation and storage is prohibitive and in instances when the gains from curating and exhibiting the entire collection are limited.

The situation in the United Kingdom, by contrast, remains more stringent and rooted on a "strong presumption against disposal" (Besterman, 1992: 30), a term preferred in the UK to deaccession. Thus, the *Report of the Committee of Enquiry into the Sale of Works of Art by Public Bodies* (1964), chaired by Viscount Cottesloe (paragraph 30) stated that (Loynd, 1987: 122):

"When a work of art is given to a museum or gallery for general exhibition, the public thereby acquires rights in the object concerned and these rights cannot be set aside. The authorities of the museum or gallery are not the owners of such an object in the ordinary sense of the word; they are merely responsible, under the authority of the courts... If they attempt a sale in breach of trust it is the function of the Attorney-General to enforce the trust and protect the

rights of the public in the object by taking proceedings in the Chancery Division.”

This ‘law’ of trust is today incorporated into the annually published Museum’s Association Code of Practice for Museum Authorities and in the Museums and Galleries *Guidelines for a Registration Scheme for Museums in the United Kingdom* (1988). The Museum Authority’s Code of Practice outlines strict procedures to be followed where disposal is proposed (Ewles, 1991: 37).

In reality, the above opinion has never been tested in court. Although many museum professionals view these protocols as definitive statements of the legal basis on which they hold collections, they are not legally binding because only acts of parliament and statutory instruments have the absolute force of law. It should also be emphasized that the *Report of the Committee of Enquiry into the Sale of Works of Art by Public Bodies* is confined to gifts “for public exhibition” and thus does not cover material in museum storage.

The British Museum Act (1963) governing the British Museum and Natural History Museum permits exchange, gift or other disposal of duplicates, printed material after 1850 for which there is a photographic record and of material useless due to damage, physical deterioration or infestation. More general permission exists for Trustees to dispose of items that in their opinion are “unfit to be retained and when disposal would not be to the detriment of students.” Similar rules are in place under the National Heritage Act (1983) for the Victoria & Albert Museum, the Science Museum and via the Merseyside Museums & Galleries Order (1986). The Museum of London Acts (1965 and 1986) permit exchange, sale or other disposals of duplicates, or objects no longer required for museums purposes, but requires a two-thirds majority of the Museum’s Board (Babbidge, 1991a: 256). None of these Acts include controls over disposal that are as rigorous as those advised by the Museums & Galleries Commissions *Guidelines for a Registration Scheme for Museums in the United Kingdom*. Legally, only the National Gallery and Tate Gallery are expressly forbidden from disposal of items in collections within the UK (Babbidge, 1991a: 255).

Charitable trusts can protect collections by law, however (Babbidge, 1991b), and trustees in England and Wales wishing to dispose of assets need the consent of the Charity Commission or the courts (Ewles, 1991: 37). If permission is not sought, action can be taken by the Attorney-General. Overall, the UK situation has been termed a blunt and ineffectual instrument (Loynd, 1987: 122).



Fig. 5. A lead spigot (L. 11.7cm) from the wreck of the Republic (1865). Status: trade good.



Fig. 6. The 51,414 coins onboard the Republic (1865) are the archetypal trade good category. Every coin was fully recorded and the entire collection quantified by type, date and mint origin.



Figs. 7-8. A gold \$20 and silver 50-cent coin from the wreck of the SS Republic (1865). After conservation, every coin from this site was slabbed to protect it long-term from atmospheric pollution, wear and tear.

4. Case Study for Underwater Cultural Heritage

Objects derived from underwater cultural heritage (UCH) sources present special problems and opportunities for the policy of private curatorship presented in this paper. Collections derived from shipwreck resources may often be generally divided into two categories.

‘Trade Goods’ are those artifacts which are duplicative and fungible items carried on board vessels as freight before they were sunk, whether in the form of specie, bullion, ceramic wares, amphoras or shipping crates. These are typically characterized by large quantities of machine or handmade items that are nearly identical, and often reflect types of artifacts that are already widely collected by the private sector and are well published (Figs. 1-11).

‘Cultural Artifacts’ are artifacts that were part of the ship or its contents that reflect naval architecture and ship design, ship handling and seamanship, maritime life and the personal effects of crew and passengers (Figs. 12-21). This category may reflect more unique artifacts that are not necessarily duplicative or fungible. Obviously, some of these objects may be truly unique and would not be subject to a policy of subsequent deaccession or private curatorship considered here.

Relevant standards and best practices have evolved as to UCH collections management. The 1996 International Council of Monuments and Sites (ICOMOS) Charter for the Protection and Management of Underwater Cultural Heritage, takes a relatively uncompromising view of the subject. Article 13 of the ICOMOS Charter, on the curation of UCH collections, provides that:

“The project archive, which includes underwater cultural heritage removed during investigation and a copy of all supporting documentation, must be deposited in an institution that can provide for public access and permanent curation of the archive. Arrangements for deposition of the archive should be agreed before investigation commences, and should be set out in the project design. The archive should be prepared in accordance with current professional standards. The scientific integrity of the project archive must be assured; deposition in a number of institutions must not preclude reassembly to allow further research. Underwater cultural heritage is not to be traded as items of commercial value.”

While the prohibition of trade in UCH could be interpreted as absolute, it should be understood in the context of ensuring the integrity of collections and providing for a collection to be effectively studied by subsequent researchers in the future.

The 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (CPUCH) takes a far more nuanced approach to this subject. While article 2(7) states that “Underwater cultural heritage shall not be commercially exploited,” the term “exploit” has a wide range of meanings and so it needs to be placed in the context of other provisions. Article 18(4) notes that disposition of UCH artifacts should “be for the public benefit, taking into account the need for conservation and research; the need for reassembly of a dispersed collection; the need for public access, exhibition and education.” The Annex to CPUCH, which articulates rules concerning activities directed at underwater cultural heritage, has a number of provisions relevant to the policy discussed here. Rule 2 provides:

“The commercial exploitation of underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of underwater cultural heritage. Underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods.

This Rule cannot be interpreted as preventing:

...(b) the deposition of underwater cultural heritage, recovered in the course of a research project in conformity with this Convention, provided such deposition does not prejudice the scientific or cultural interest or integrity of the recovered material or result in its irretrievable dispersal; is in accordance with the provisions of Rules 33 and 34; and is subject to the authorization of the competent authorities.”

Rules 33 and 34 provide together that:

“project archives, including any underwater cultural heritage removed and a copy of all supporting documentation shall, as far as possible, be kept together and intact as a collection in a manner that is available for professional and public access as well as for the curation of the archives... The project archives shall be managed according to international professional standards, and subject to the authorization of the competent authorities.”

Neither the ICOMOS Charter, nor UNESCO’s CPUCH, are binding authority for a museum in the United States or for any country that is not a signatory to the Convention. Indeed, the United States Government has declared that it has no intention of ever signing the UNESCO Convention. Despite the Burlington House Declaration issued by various heritage managers in London in 2006 as a call for the government to sign CPUCH, and which resulted in an informal consideration of the Convention’s Annex as best practice, the government of the United Kingdom still shows no inclination to ratify the Convention.



Fig. 9. A spirits bottle (H. 26cm) from the mid-19th century Jacksonville Blue China wreck recorded at a depth of 370m off southeast America. Status: trade good.



Figs. 10-11. A blue shell-edged English soup plate and platter (W. 24.2cm and 34.7cm) from the Jacksonville Blue China shipwreck, whose cargo included soup plates, plates and platters. Status: trade goods.



Fig. 12. A porcelain male figurine from the SS Republic (1865), probably of French origin and the counterpart to a male/female matching pair, both without pigment or paint in the 18th-century Rococo style (H. 13.4cm). Although both were low value products in 1865 and remain inexpensive on today's antiques market, these objects are defined as cultural artifacts due to their low frequency on the wreck.



Fig. 13. One crate of 96 religious artifacts on the Republic (1865) included porcelain kneeling angels with the remains of its red paint still visible (H. 6.5cm). All seven examples of angels were retained for Odyssey's permanent collection. Status: cultural artifacts.

In any event, neither the ICOMOS Charter nor the UNESCO CPOCH would seem to preclude an underwater cultural heritage collections management policy of the type described here. As long as:

- A. Acquisition/deaccession policies are made with a view to the duplicative/fungible nature of certain classifications of UCH artifacts.
- B. A virtual repository is made for the entire collection.
- C. There is a means provided for researchers to examine all objects in a collection.
- D. The collection is not "irretrievabl[y] dispers[ed]."

Under these circumstances a system of Private Ownership Curation and Stewardship (PC) should be permissible, even under these very restrictive articulations of collections management policies and best practices.

Before a UCH collection is even considered for the PC model, a systematic decision will need to be made about the fungible/redundant nature of the objects comprising the collection. The collection as a whole will need to be catalogued and studied. Variations among different individual artifacts/objects in the collection or sub-collections will need to be analyzed. A statistical sampling of artifacts will need to be conducted in order to ascertain what number of retained artifacts would constitute a 'representative sampling' of the collection as a whole. Examples of the finest objects from the collection would have to be designated. Sub-collections reflecting representative groups of artifacts would need to be identified.

5. Modalities of Restrictive Covenants for Objects Subject to a PC Policy

Essential to any collections management scheme which relies on private curators is a set of restrictions governing the object. Such restrictions will fall into a few different categories. One general and undelegable obligation for the PC owner is to apprise the museum of any change in the ownership status of the object, contact information for the owner, location of the display or storage of the object, or condition of the object. Each object would be assigned a unique ID number and label (perhaps coupled with a RIF, radio frequency tag) to facilitate the management process.

1. First, the private owners would agree to curate and conserve the artifacts under specified conditions and modalities as a condition of their possession. It is intended that the conditions of curatorship would vary with different classifications of objects. For collections derived from

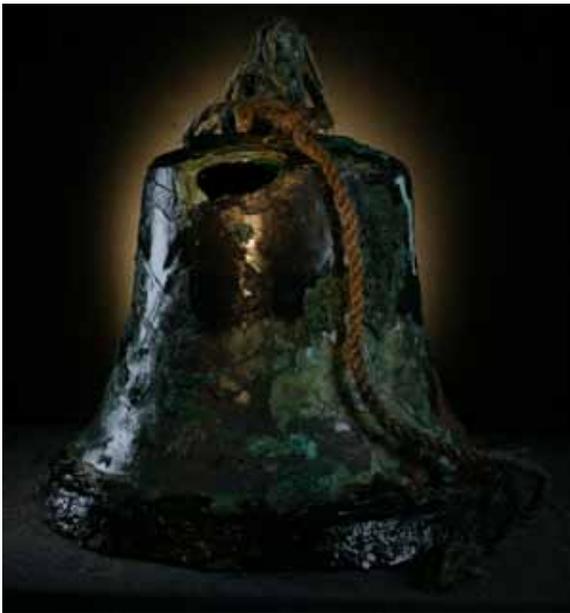


Fig. 14. The bronze bell from the Republic (1865)
(H. 46.5cm). Status: cultural artifact.



Fig. 15. A leather shoe from the Republic (1965)
(L. 26.1cm). Status: cultural artifact.

UCH, it would be safe to assume that before deaccession or allocation to a private owner under a PC plan, the object would have been successfully stabilized after its recovery from an aquatic environment (whether freshwater or saltwater), properly conserved, recorded and documented. Additionally, as has been discussed above and considered further below, the object would, as part of the documentation process, have also been preliminarily studied, catalogued, and imaged. Presumably the object will be in a condition (or nearly so) of being capable of display. Finally, the museum curators would need to have a sufficient understanding of proper curation techniques for the object concerned, so that it would be possible to effectively instruct a private curator about its proper handling and treatment. The PC deed of trust would specify the proper way in which the object must be displayed, stored and conserved.

Under the PC policy, a private curator would be under an obligation to take all necessary and reasonable steps to curate the object and conserve it properly to reasonable standards. Under the deed of trust, dependent on the significance of the artifact a PC owner may be required to file an annual report about the condition of the object in a format specified by the museum, with a photographic record (such might be accomplished by a web-based reporting system).

An additional requirement might be that every ten years (or within another specified time frame) the PC

owner would be obligated to take affirmative steps to have the condition of the object surveyed by a museum staff member (or a designated conservator or organization to undertake such a task), in what will be referred to here subsequently as 'sabbatical inspections'. Obviously, this will entail costs for the owner (such as arranging transport of the object to the museum or to reimburse the expenses of a party undertaking the inspection). Also, at regular intervals, the museum will have to update the owner about changes in knowledge or technology regarding the proper curation of the object.

2. *Second, as part of the purchase price of the piece, the private owners would pay for the expense of the artifact being digitally imaged and catalogued in a database maintained by the museum for future researchers, in what might be termed a virtual collection.* Part of the fee paid for the private owner to acquire a PC object (which will also reflect the market value for such objects, if ascertainable, as adjusted by the PC restrictions) would be to recapture the costs for the museum to establish a virtual database for the collection. The database will be publicly accessible through a user- and researcher-friendly interface through the web.

At a minimum, the database entries would include the ID information for the artifact, all standard cataloguing information (dimensions, a narrative characterization of the object, provenance data, etc.), as well as digital visual



Fig. 16. A unique c. mid-17th century wooden folding rule from Site 35F in the Western Approaches to the English Channel (L. 30.7cm). Status: cultural artifact.

images of the artifact taken from all angles, at the highest possible resolution specifications and performances, and any other imaging data. The database will also include references to the stabilization, conservation, and curation history of the artifact, including the annual and regular inspection reports for the object. Any researcher notes for the object will be included. Data concerning the current ownership and location of the object will generally not be publicly available through the database (for privacy and security concerns), but, as will be discussed in point 3 below, will be known to the museum. As 3D technology evolves, three dimensional recording might also be utilized as a mechanism for storing data.

3. *Third, the private owner would agree to make his/her objects available for actual inspection, study and (non-intrusive and non-destructive) testing by researchers, qualified and approved by the museum, on reasonable terms of visitation.* Most researcher inquiries about a collection will be answered either through study of the representative sampling of exemplary objects maintained on premises by the museum, or through consultation of the virtual collection through the database. On occasion, though, an accredited researcher may approach the museum with a study query that involves the actual viewing of objects in the possession of PC owners. In such circumstances, it may be incumbent on the museum to vet the research plan, subjecting it to peer review and evaluation. Only in the event of an approved plan by an accredited researcher would the museum make contact with the affected PC owners to arrange a visitation.

When such a visitation has been sought on reasonable terms of access, it would be incumbent for the PC owner to allow it. The researcher (or sponsoring institution) would bear the costs of the visitation. The researcher will be allowed to inspect, examine, study and handle the object. The researcher may not conduct any form of intrusive or destructive test on the object, unless firstly the museum has expressly approved such in the research plan and has expressly queried through the peer review process whether such testing is absolutely necessary for the accomplishment of the

research plan, and secondly the PC owner has consented to such in writing, after being fully informed of the risks and benefits of such testing through a process of consent.

The museum, and the affected PC owner(s), would receive the results of the research and copies of any published studies about the collection objects. Such notes and studies would be included as part of the collection database.

4. *Fourth, these conditions would run with the objects in perpetuity, meaning that if a private owner sold the artifacts to another collector, the transaction would be reported to the museum and the same restrictions would apply to all subsequent owners.* These restrictions and conditions would be reduced to terms in the bill of sale from the museum to the PC owner. Although technically a bill of sale, because it does convey title over the object to the PC owner, it will also be referred to here as a deed of trust. The restrictions in the bill of sale/deed of trust will run with the object in perpetuity. A current PC owner is free to sell, gift or bequeath the object to another owner (whether an individual or legal person: corporation, trust, foundation, or partnership), but the restrictions will follow the object along the chain. It will be required that any subsequent transaction involving the object include all of the PC restrictions.

The bill of sale might also contain a reversionary clause by which title will revert back to the museum under one of three extraordinary conditions. First, should a current owner (if an individual) die intestate and the object would otherwise escheat to the state, or (if a legal person) cease to exist, liquidate or wind-up without a legal successor, the object would be returned to the museum's ownership. Second, if a current owner is found to have legally abandoned the object, it would be returned to the museum's ownership. Third, should a court of competent jurisdiction find that any or all of the PC restrictions are unenforceable or unconstitutional in a *cy pres* action (used to challenge unlawful provisions of trusts and estates), then the artifact would be returned to the museum's ownership and the money paid presumably returned.

6. Legal Enforceability of Restrictive Covenants for PC Artifacts: the United States Law as a Case Study

The PC restrictions are, legally speaking, a restrictive covenant or equitable servitude that will run with ownership of the personal property. Such restrictions are usually disfavored in law because they obviously enough interfere with the free purchase and sale of goods. Nevertheless, in the case of the USA they have been upheld when narrowly tailored and where consistent with public policy: see *P. Lorillard Co. v. Weingarden*, 280 F. 238, 238-40 (W.D.N.Y. 1922). Public policy grounds have been broadly construed by courts: see *Nadell & Co. v. Grasso*, 175 Cal. App.2d 420, 346 P.2d 505 (1959). It is highly doubtful that any court would disagree that the public policy objectives of the PC restrictions – maintaining cultural heritage not only for the interests of a private owner, but also for the benefit of society at large – are anything but laudable.

The essential element of all these rulings is that a subsequent purchaser had adequate notice of the restrictions at the time of purchase or transfer. See *In re Waterson, Berlin & Snyder Co.*, 48 F.2d 704, 708 (2d Cir. 1931) (“one who takes property with notice that it is to be used in a particular way receives it subject to something resembling an equitable servitude. Courts in the United States have enforced rights resembling an equitable servitude binding on a third party who has acquired personal property from one who is under a contract to use it for a particular purpose or in a particular way”). The PC restrictions outlined above would certainly be well known with the purchase and ownership of any historical artifact or museum-grade object.

Privity of contract is not necessarily required as an element in these equitable servitude for personalty (moveable private property) cases. See *Nadell*, 175 Cal. App.2d at 431; *Clairol, Inc. v. Sarann Co., Inc.*, 146 U.S.P.Q. 726, 734 (Pa. Common Pleas 1965); *Waring v. WDAS Station, Inc.*, 327 Pa. 433, 448-56, 194 A. 631 (1937). That means that the PC restrictions would notionally be enforceable, even if not expressly included in the bill of sale between a subsequent seller and subsequent purchaser. (Obviously, the PC restrictions would be embodied in the bill of sale from the museum to the first private owner. It should be a condition of the original sale that all subsequent transactions include all of the PC restrictions.)

These sorts of equitable servitudes in personalty have been upheld, or at least recognized, under Florida law. See *Tri-Continental Financial Corp. v. Tropical Marine Enterprises, Inc.*, 265 F.2d 619, 626 (5th Cir. 1959) (“Where



Fig. 17. One of nine copper manilla currency bracelets (L. 8.9cm) from the c. mid-17th century Site 35F in the Western Approaches to the English Channel. All have been retained in Odyssey's permanent collection. Status: cultural artifact.



Fig. 18. Ginger jars from Canton of c. 1840-60 from the mid-19th century Jacksonville Blue China wreck (H. 15.3cm). These low frequency objects on the site have been retained as cultural artifacts in Odyssey's permanent collection.



Fig. 19. English slip-decorated earthenware mugs (H. of large mug 11.4cm) from the Jacksonville Blue China wreck. Status: cultural artifacts.



Fig. 20. A 1st-2nd century AD amphora from a Roman wreck in the Western Mediterranean. Odyssey will sometimes recover a small sample of artifacts from ancient sites to aid in dating and identification. All are retained for study or donated to museums. Status: cultural artifacts.

restrictive covenant with respect to the use of property, real or personal, is valid, it may be enforced by injunction but only as against one under obligation not to violate the covenant. Since a purchaser with notice gets title subject to the restriction he may be enjoined from using the property in violation of the restriction”) (citing *Weissman v. Lincoln Corp.*, 76 So.2d 478, 481 (Fla. 1954)). Florida courts have certainly recognized covenants not to compete in regards to some sorts of personal property. *Rinker Materials Corp. v. Holloway Material Corp.*, 167 So.2d 875 (Fla. App.1964), cert. denied, 173 So.2d 145 (Fla.1965); *Kofoed Public Relations Associates, Inc. v. Mullins*, 257 So.2d 603 (Fla. App.1972), cert. denied, 263 So.2d 230 (Fla.1972).

A properly drafted restrictive covenant or equitable servitude, embodying the PC restrictions, should thus be enforceable under Florida law or in any state of the Union. In America the PC bill of sale/deed of trust would designate Florida law as the law of the contract, and designate a Florida court as the forum for resolution of any disputes. A judgment procured in any state of the Union would be enforceable elsewhere under principles of comity and full faith and credit. In anticipation that the artifact might be sold abroad, a clause could be added to the original bill of sale/deed of trust that, in the event a subsequent own-

er of the artifact is located outside of the United States, the PC restrictions would be enforced via international arbitration, designating an arbitral forum (such as the International Chamber of Commerce in Paris), as well as the applicable law of the contract.

The most reasonable means of legally enforcing the PC restrictions, in the event that a subsequent private owner fails to abide by them, is to secure an equitable injunction compelling compliance. This might be useful in the event that a subsequent owner is grossly uncooperative in any attempts to arrange visitation of the object by an accredited researcher. It may be a less useful legal mechanism in the event that a subsequent purchaser fails to record the transaction, file annual updates on the object, arrange for sabbatical (seven-year or 10-year) inspections or properly conserve or curate the artifact. Nonetheless, in extraordinary circumstances the museum – as the original owner of an artifact – might seek an injunction against a subsequent owner to seek compliance with one or more of the PC restrictions, and to prevent transfer of title in the artifact without being in compliance with the restrictions.

7. Inducements for Compliance with Restrictive Covenants: Provenance & Marketability

A far more credible and efficient means of enforcing the PC restrictions will be to rely on market mechanisms and enlightened self-interest, rather than the threat of injunctive proceedings. It is probably safe to assume that those parties that seek to become owners-curators-stewards of objects from a collection will be well meaning and public-spirited. Although they will be paying a market price for ownership, they will also be allowed to possess, display and conserve an object that usually would only be found in a museum or similar collection.

The primary reason why artifact owners will comply with the PC restrictions is that it will be in their own self-interest to do so. The reporting and sabbatical inspection provisions would actually enhance the value of an object by ensuring that it is kept in a fit condition, and that the latest knowledge of curatorship and conservation is available to the PC owner. Allowing a research visitation for the artifact likewise may increase the object’s value, if it is found to possess some unique characteristic that was not previously known or appreciated.

Moreover, having the artifact as part of a comprehensive collection database serves two vital functions for the PC owner. First, it establishes the provenance of the object. In today’s antiquities markets having a clear chain of

title/custody and an established provenance for an object (that proves that it was lawfully excavated, recovered and acquired) is vital and potentially significantly increases the value of the piece. International restrictions on the trade of illegally excavated artifacts are increasing. Just as importantly, US authorities are now starting to aggressively enforce these rules, including the application of foreign excavation restrictions on artifacts in the hands of US collectors. While such rules are not necessarily applicable to UCH-sourced collections now (at least those recovered from sites more than 24 nautical miles from shore or in international waters), there is always the risk that a UCH-derived object will be confused for one recovered on land or for material recovered illegally from another country's territorial waters. Entry of an object into a collection database would obviate such provenance concerns.

Similarly, a PC owner benefits from the marketability of title conferred by having an object of reputable pedigree in relation to the collection database. Although most PC owners will likely tend to keep their artifacts, there will undoubtedly be sales transactions. In such circumstances, an established provenance and clear chain of title will inure to the benefit of current and subsequent PC owners.

In short, it may be an effective mechanism for the enforcement of the PC restrictions for the museum to threaten the 'de-listing' of the object(s), rendering them not in good standing with the collection registry. Such should only be done in the most egregious of circumstances, such as willful refusals for an object to be subject to sabbatical inspections or research visitations, or with the knowledge that an artifact has been allowed to seriously degrade in condition owing to the neglect of the PC owner. Obviously, it is to be hoped that such events would be rare and that, instead, the vast majority of PC owners would care for, display, preserve and (dare we say) love the object as much as any museum curator.

8. Conclusion

This paper is intended to help chart a course for a new approach to collections management for museums, one that recognizes today's realities of museum operations and the possibilities of new public-private partnerships for the curation of certain types of objects. The concept of Private Curatorship (PC) of historic artifacts has the potential to revolutionize the relationship between museums and the



Fig. 21. A clay tobacco pipe from the mid-19th century Jacksonville Blue China wreck. Status: cultural artifact.

public. Through such a program, the public becomes an extension of the museum curation staff and allows them to invest resources and time in the long-term maintenance of a museum's collection – which in turn provides a solution to one of the most vexing problems confronting museums and cultural heritage managers in the world today.

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