

1990

Protection of Cultural Property and Archeological Resources: A Comprehensive Bibliography of Law-Related Materials

James A.R. Nafziger

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

Recommended Citation

James A.R. Nafziger, *Protection of Cultural Property and Archeological Resources: A Comprehensive Bibliography of Law-Related Materials*, 22 Case W. Res. J. Int'l L. 117 (1990)

Available at: <https://scholarlycommons.law.case.edu/jil/vol22/iss1/5>

This Book Review is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

BOOK REVIEW

Protection of Cultural Property and Archaeological Resources: A Comprehensive Bibliography of Law-Related Materials. By Frank G. Houdek. New York: Oceana Publications, 1988. Pp. vii, 122.

*Reviewed by James A.R. Nafziger**

This bibliography offers the most comprehensive annotated listing of English-language materials in the field of cultural property law. Although there are bibliographies on such specific subjects as the celebrated UNESCO Convention, Professor Houdek's work is the first to provide a general listing. It covers material on the legal aspects of movable cultural property, including protection efforts in the United States and abroad, the law of treasure trove, and the work of non-governmental organizations in this field; nonmovable cultural property; and underwater cultural property. The bibliography includes extensive listings of state, federal and international legislation, as well as leading English-language case law.

The material is divided into three sections: "Books and Documents," including some legislative documents; "Periodical Articles," including case notes; and "Legislation." The scope of this bibliography is restricted to English-language sources, which are mostly from American and international, but not foreign publications. Thus, the listings are quite limited from a specialist's standpoint, but ample for the ordinary needs of a general American researcher. One of the bibliography's strengths is the quality of the annotations.

The section on "Periodical Articles" appears to be the most complete. However, it does not include a number of writings on "American Protection Efforts" that are not directly related to the two sub-categories of "Foreign Cultural Property" and "Native American Cultural Property." It is puzzling why issues of international significance related to illegal transfer and recovery or restitution of American art other than of

* Professor of Law, Willamette University College of Law; Chairman, Law and the Arts Section, Association of American Law Schools.

Native American origin are not included. For example, published writings about the celebrated domestic law case of *O'Keefe v. Snyder*¹ and surrounding issues of adverse possession, statutes of limitation, and so on, would seem to merit attention. Also, the category of "Foreign Cultural Property" might embrace writings about *Menzel v. List*² and surrounding issues.

The author includes some, but by no means all, of the many articles on law-related issues that have appeared in art and archaeology journals. It is not entirely clear why some have been included but others have not. Scholarly pieces from these journals, such as Sharon Williams' *Recent Developments in Restitution and Return of Cultural Property*³ would seem to merit inclusion even if a number of more journalistic pieces do not.

Some useful books and documents are also missing from this bibliography. For example, Ernestine L. Green's *Ethics and Values in Archaeology* contains essays on legal aspects of international trafficking, enforcement of cultural resource law in the United States and ethical issues of interest to lawyers and lawmakers. Another source that might have been included in this bibliography is *The Penal Protection of Works of Art*, published in 1983 by the International Institute of Higher Studies in Criminal Sciences. The book contains several useful original essays by leading experts.

A study by Prott & O'Keefe for UNESCO (in addition to their multi-volume study noted in the bibliography) also merits inclusion. This study, entitled *National Legal Control of Illicit Traffic in Cultural Property*, is a useful, tightly organized summary that has been cited in articles listed in the bibliography. Also, UNESCO studies such as *Protection of Mankind's Cultural Heritage* and a paperback compilation of the documents that are listed on pages 96-97 might have been listed, as well as the UNESCO Recommendations of 1962, 1976 and 1980.

A sub-section on case notes includes at least one note pertaining to each of the leading decisions. Other decisions as well as additional notes on the *Ortiz* case and some citations to the second phase of the *McClain* cases are, however, missing. Some legislative history, U.S. Department of State reports, Council of Europe reports, and *travaux preparatoires* also do not appear in the bibliography. A substantial amount of productive scholarship from other English-speaking countries, such as Canada and Australia, for example, on shipwreck legislation and aboriginal rights, is also missing.

¹ 83 N.J. 478, 416 A.2d 862 (1980).

² 49 Misc. 2d 300, 267 N.Y.S.2d 804 (Sup. Ct. 1966), *aff'd per curiam*, 28 App. Div. 2d 516, 279 N.Y.S.2d 608 (1967).

³ 3 INT'L J. MUSEUM MANAGEMENT AND CURATORSHIP 117 (1984).

Professor Houdek has shown great care in accurately citing materials. For example, he properly cited student authorship of the 1973 comment annotated on page 49 even though it has been frequently, indeed usually, attributed by others to the author of a brief foreword to the article.

A bibliography of this sort has been needed. On balance, the author has responded with a fairly thorough, though somewhat incomplete, listing of materials. Its impact will be substantial as an aid to librarians, students, general researchers, and practitioners.

