



## Obama's War on Ivory Ownership

Cultural snobbery savages property rights.

By Doug Bandow  
February 24, 2014

The Obama administration is good at exuding moral righteousness and pandering to the cultural elite. It does both with its plan to effectively ban the sale of all ivory in America, including that purchased or inherited legally years, decades, or even centuries ago. If you can't prove its age, toss it in the trash or be arrested and have your property confiscated — unless you have a political exemption.

Elephants are being killed for their ivory. It's a tragedy, but one that has been going on for years. Conservationists are understandably frustrated, but most prefer not to reflect on the failure of their own prohibitionist policies. African governments are incapable of protecting the animals from highly armed poachers, who are responding to the high demand for ivory driven by Asians and especially Chinese. Unable to deal with those responsible for the elephant carnage, environmental extremists have found a more convenient target to attack: Americans who followed the law buying and selling old ivory objects which entered the U.S. lawfully long ago.

Ivory is a beautiful material used by craftsmen around the world to create a plethora of decorative and practical objects — canes, jewelry, beer steins, musical instruments, chess sets, netsukes, religious materials, games, sculptures, and much more. Often ivory supplemented or highlighted other items — keys for pianos, stocks for guns, accents for furniture. At the time people saw nothing wrong with the practice, and the elephants whose tusks provided the necessary raw ivory died long ago.

But advocates of banning the sale of antiques, and even destroying old *objets d'art*, seem more interested in punishing people who bought and sold ivory legally because they bought and sold ivory, not because doing so would prevent poaching. It is an exercise in moral vanity and political posturing, not practical conservation.

Some ban proponents complain of the difficulty of distinguishing between new and old ivory. Actually, European carving disappeared decades ago: even an untrained government bureaucrat

could distinguish between the ivory that filled 19<sup>th</sup> century Europe and tourist trinkets turned out today. Asian carving continues, but old and new differs in character, subject, wear, age, coloring, quality, and more. Nor do collectors of and dealers in antiques typically seek out poached ivory. Expanded prohibition might make a few activists feel good, but punishing people who followed the law and invested in perfectly legal objects won't save a single elephant today.

The traditional rules were easy to follow. Ivory imported prior to the completion of an international convention, known as CITES, in 1989 could be sold legally. Antiques with proper certification could be imported. You could be prosecuted for violating the law, but the government had to prove its case — as it normally does when charging people with a crime or other offense.

In mid-February the administration announced that it planned on changing the standards. If you were an average person who followed the law, played by the rules, invested your money in perfectly legal objects available without restriction and requiring no documentation, too bad. Now your collection or inventory is going to be essentially valueless.

Unless you are a member of the cultural elite, such as a museum or other non-profit. Or have enough money to try to comply with the expensive new rules.

The new guidance from the U.S. Fish and Wildlife Service indicates that most every auctioneer, collector, and dealer — and anyone else who has purchased or received something made of ivory — better chat with a lawyer before attempting to sell their ivory possessions. The Feds will be free to scour every antique show, auction, collectibles store, estate sale, flea market, and junk shop confiscating anything that the owner cannot prove to be old. Even if Washington does little to implement its policy, the impact on value will be substantial. Who wants to put something up for sale that could be seized by Uncle Sam if he noticed? Who wants to buy something that might be impossible to sell in the future if the Fish and Wildlife bureaucracy gets serious? You'll get a pittance for something that cost you thousands or tens of thousands of dollars.

Particularly striking is how the prospective rules are biased against average folks — with a middling collection or inventory of modestly priced items. It's as if the policy was drafted to have maximum impact on people who don't spend their time attending cocktail parties with the president.

Point one, no imports even of antiques will be allowed. Presumably no one really believes that today's highly restricted antiques trade encourages poaching. Shipments must be accompanied by a CITES certificate and are inspected entering the country, which I know from experience. U.S. collectors will be cut off from the rest of the world simply as punishment for being collectors.

However, the rules apparently will exempt “museum and educational specimens.” Only “commercial” sales are restricted. Of course, this exception is about influence, not conservation. Under the administration's reasoning, non-profit institutions will have a unique right to continue plundering ivory around the world and driving elephants to extinction. Perhaps I can start the

Bandow Ivory Collectibles Museum, allowing me to join the president's other important friends in their exempt status.

Point two, exports are banned, except antiques, which must be over 100 years old, in what the government calls "exceptional circumstances, as permitted under" the Endangered Species Act. It is unclear whether the administration simply intends to increase the administrative hassle and cost of certifying shipments, or limit what can be exported. In either case, "certain noncommercial items" will be allowed, so nonprofits and others with friends in government likely will be able to hurdle any new burdens in a single bound. Collectors of sufficient means can try hiring attorneys or lobbyists. The rest of us will just get to pound sand.

Point three, only antiques, proved through "documented evidence," will be eligible for sale across state lines. How many antiques in America have "documented evidence" attesting to their age? For some odd reason 19<sup>th</sup> century ivory carvers were not in the habit of providing notarized statements of provenance along with the objects they were making. Which means that most antiques will be impossible to transfer across state lines. Indeed, you might not be able to sell after moving, since doing so could be treated as legally equivalent to selling across state lines.

Presumably museum transfers won't be considered commercial even if the institution is out to make as much money as possible to fund its operations and future acquisitions. Indeed, the new policy will encourage non-profits to engage in low-key extortion with the message: "So sorry you can't sell it since it lacks the proper documentation. But donate it to us and we can ensure a generous appraisal to get you a substantial tax deduction."

More serious collectors and dealers with more valuable items will at least have the option of going to the trouble and expense of finding an expert and procuring a CITES certificate, when appropriate. Everyone else will be bureaucratic road kill. If you have lots of cheaper items, you'd spend most of their value trying to provide "documented evidence" to the government. Too bad you didn't invest that money in campaign contributions to win better treatment!

Point four, only documented old ivory, imported before 1990, can be sold even within a state. Imagine you bought a bunch of ivory items as you moved across America during your career, and decided to settle in, say, Bozeman, Montana. Want to sell your old ivory? Too bad you're not a museum or educational institution. Go to the thriving antique metropolis of Helena and see what you can get for your collection.

More likely, of course, you won't have any evidence as to when the items were made or brought to America. Would every dealer in America attest that they were made decades ago? Who cares? That's not real proof. And if you can't prove an object's age, tough. You can't even take it — legally, at least — to the local flea market. Not that anyone would pay you much for something that is barely legal and could be banned at any time.

So Americans shouldn't be fooled by administration rhetoric about still allowing legal sales. That's only if you can provide the sort of proof that no normal person would have. Or are friends with the Interior Secretary, or a congressman feared by the Interior Secretary. Even if the Feds don't send swarms of inspectors across America confiscating anything and everything ivory they

find at the local church garage sale, the government will have crashed the price, preventing anyone from receiving anything close to what the items once were worth.

It will be expensive, but the better connected will at least have a chance of avoiding the rules. If you want to sell items that are old but not antiques in other states, you'll need to find a broker, well-connected but discreet antique dealer, or private collector network. If you want to sell items internationally without new U.S. restrictions, you'll need to procure a CITES certificate — it shouldn't be too hard to find someone to concoct the right documentation at a price — and carry or ship the item abroad, selling it there.

However, if you have some nice pieces that you picked up over the years or inherited from your parents, worth a few hundred or thousand dollars and would like to get some money out of them for your retirement, you're out of luck. If you were a middle-income collector or mid-level dealer who followed the law in amassing a modest amount of ivory goods that were evidently old but undocumented, too bad. After all, *you never knew it, but you are the reason tens of thousands of elephants are being killed every year!*

Ironically, the new policy will reduce genuine conservation efforts directed at elephants. Today the U.S. Fish and Wildlife Service investigates poachers and their allies. The administration could attempt to better support African countries seeking to protect elephants, find and interdict illegal ivory shipments, and prosecute those who sell new ivory. Instead, Fish and Wildlife will shift away from those linked to the killing of elephants and target thousands or tens of thousands of Americans who were so stupid as to follow the rules in purchasing legal ivory.

At a stroke the administration will have multiplied the amount of ivory considered contraband: every object with even trace amounts of ivory for which no documentation is available will be illegal to sell in any form at any point. Every piece of old ivory which cannot be proven to be a century old will be illegal to sell across state lines.

The number of people breaking the law facing arrest also will explode, as anyone trafficking in old, formerly legal ivory will be as much a criminal as operators handling large, ongoing flows of new, poached materials. Collectors with large collections and dealer with large inventories, all lawfully acquired, will stand in the same legal position as those who knowingly import and sell poached ivory from elephants killed last week. The Feds won't just have to monitor every antique shop and show in America. There is likely to be an explosion of "bone" and "faux ivory" sales on eBay, with most photos and conversations held offline. Uncle Sam will need informants and wiretaps to catch these ivory criminals.

Moreover, anyone whose investment in old ivory faces a wipeout in value by Washington's action will have no incentive to aid the government in its campaign against new ivory. The administration inadvertently will have turned collectors and dealers into potential accomplices of poachers, since those with old ivory to sell will be tempted to work with dealers who have experience operating illegally, that is, who today handle illicit ivory work.

While proponents of the administration's new policy are busily engaged in moral preening, more elephants will die. After which activists will look for new scapegoats. And more elephants will die.

Of course, if government can steal so much from so many, the rights to property and due process are not secure. Spend and invest in reliance on the law, and then face thousands or even millions of dollars in losses from one arbitrary rules change. But never mind so long as friends of the administration with special status find a way around the policy.

The administration should target poachers who kill elephants, not collectors and dealers who followed the law. If Fish and Wildlife does turn average Americans into criminals, Congress should refuse to fund implementation and enforcement of the rules. If necessary, members should withhold funding for agents spending their time harassing everyone except those who traffic in illicit ivory.

The campaign to save elephants should not become just another excuse to expand government power and curtail individual liberty. Doing so isn't fair to the American people — or helpful to African elephants.