

THE TRADE IN ANTIQUITIES: HERITAGE FOR SALE?

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REMARKS

It was an automobile accident on Italy's Autostrada del Sole—the highway of the Sun—that led to the largest restitution, ever, of stolen antiquities from United States museums to the Republic of Italy. The story is told in “The Medici Conspiracy,” a book published in 2006 that recounts the discovery of a small notebook recording acquisition and sale of antiquities that led to a much broader investigation and the proof that some of the prized antiquities of the Metropolitan Museum of Art, the J. Paul Getty Museum, the Boston Museum of Fine Arts, and the Princeton Museum were looted.¹ The investigation into other museum collections continues. Italy's success led the Greek government to go on its own campaign to recover antiquities that they could prove had been stolen. This was followed by the voluntary restitution of eight antiquities from the Royal-Athena Gallery in New York.² Just last January, Shelby White, who boasts one of the largest collections of antiquities in private ownership, returned nine antiquities to the Italian authorities.³

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1. See generally PETER WATSON & CECILIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES, FROM ITALY'S TOMB RAIDERS TO THE WORLD'S GREATEST MUSEUMS* (PublicAffairs 2007) (2006).

2. *Dealer Repatriates Art*, N.Y. TIMES, Nov. 7, 2007, at 2.

3. Elisabetta Povoledo, *Collector Returns Art Italy Says Was Looted*, N.Y. TIMES, Jan. 18, 2008, at 1.

The Italian and Greek efforts are characteristic of two simultaneous trends. Developed countries with strong economies, like Greece and Italy, are aggressively seeking restitution of stolen antiquities where they have sufficient proof that the objects were stolen. On the other hand, developing countries are just beginning to assert claims to antiquities stolen long ago by colonialist governments. The best example of this is the flood of articles written by art historian Dr. Kwame Opoku about the Benin bronzes, now on exhibition at the Art Institute of Chicago.⁴ They were stolen by the British when they invaded Benin (modern Nigeria), took the king prisoner, and looted vast quantities of Benin art.⁵

Why are these objects so important to these nations? The distinction between “cultural property” and “cultural heritage” is not merely semantic. The term “cultural property” is defined in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science”⁶ The Convention enumerates eleven categories of property, including such items as flora, fauna, elements of archaeological sites that have been dismembered, antiquities over one hundred years old, and objects of ethnological interest.⁷ In Article 2, the Convention speaks on broader terms and acknowledges that illicit import, export, and transfer of ownership of cultural property is one of the main causes of impoverishment of “the cultural heritage of the countries of origin of such property.”⁸

How, then, may we distinguish the term “cultural property” from “cultural heritage?” One expert has distinguished “heritage” as being essentially a collective and public notion, belonging by definition in the realm of public interest and held for the public good.⁹ Cultural “property” is “that specific form of property that enhances identity, understanding, and appreciation for the

4. *Ghana Investment Promotion Centre Strides On*, MODERN GHANA NEWS, June 29, 2004, at 1–2, available at http://www.modernghana.com/pdf/mg_news.pdf (last visited Feb. 26, 2009).

5. *Id.* at 6.

6. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 1, Apr. 24, 1972, 823 U.N.T.S. 231 [hereinafter UNESCO Convention].

7. *Id.*

8. *Id.* art. 2.

9. Randall Mason, *Conference Report: Economics and Heritage Conservation: Concepts, Values, and Agendas for Research*, Getty Conservation Institute, Los Angeles, 8 INT’L J. CULTURAL PROP. 550, 561 (1999).

culture that produced the particular property.”¹⁰ Thus, cultural “property” may be interpreted in a more limited sense as most often referring to an object or group of objects based on the significance of the object as one of archaeological, scientific, or historic importance. The importance of the object as a source of information, its aesthetic qualities, and age, are also factors in determining a definition of cultural “property.”¹¹

The most famous case where the definitions of cultural property and heritage intersect is that of the sculptures of the Parthenon, removed from the Temple of Athena on the Acropolis in Athens, shipped to England by Lord Elgin in the opening decades of the Nineteenth Century, and housed since 1816 in the British Museum.¹² To the Greeks, these sculptures are the quintessential symbol of the Greek nation and they have been fighting for their restitution for decades.¹³

Cultural property merges with cultural heritage in many areas of the globe, especially among the indigenous peoples of North and South America, Australia, New Zealand, and increasingly, countries on the African continent. The destruction of the cultural record—whether through decay, destruction or pillage—can give rise to cultural “memories” that take on a greater power as a re-invention of the culture heritage. Thus, cultural artefacts serve to reify the past, whether the historical past or a re-invention of that past, to assert a cultural lineage connecting the present members of the society to their ancestors. This concept has recently found more formal expression in the UNESCO Universal Declaration on Cultural Diversity, which states that, “particular attention must be paid to . . . the specificity of cultural goods and services which, as vectors of identity, values, and meaning, must not be treated as mere commodities or consumer goods.”¹⁴ This tendency is in direct conflict with the co-modification of cultural objects and antiquities that is at the heart of most lawsuits;¹⁵ to recover not only antiquities, but art that was stolen from Jewish families during the Holocaust.

There has been in the last two years, I am happy to report, a great deal of progress in the relationships between museums and countries rich in antiquities.

10. Patty Gerstenblith, *Identity and Cultural Property: The Protection of Cultural property in the United States*, 75 B.U. L. REV. 559, 569 (1995).

11. Frank G. Fechner, *The Fundamental Aims of Cultural Property Law*, 7 INT’L J. CULTURAL PROP. 376, 380 (1998).

12. David Rudenstine, *The Legality of Elgin’s Taking: A Review Essay of Four Books on the Parthenon Marbles*, 8 INT’L J. CULTURAL PROP. 356, 356 (1999).

13. Mark Rose, *Special Report: Double Standards*, ARCHAEOLOGY MAG., May/June 2002, at 14.

14. Universal Declaration on Cultural Diversity art. 8, U.N. Doc. CLT-2002/WS/9 (Nov. 2, 2001).

15. See, e.g., *Gov’t of Peru v. Johnson*, 720 F.Supp. 810, 811 (C.D. Cal. 1989), *aff’d*, *Gov’t of Peru v. Wendt*, 933 F.2d 1013 (9th Cir. 1991).

As a result of the negotiations surrounding the restitution of antiquities to Italy, there is an agreement that Italy will be much more cooperative in lending antiquities to U.S. museums on a long-term basis. This, and other conditions, has been formalized through a bilateral agreement between Italy and the United States under the Cultural Property Implementation Act¹⁶ (a topic for a whole other talk).

Both the American Association of Museums (AAM) and the Association of Art Museum Directors (AAMD) have recently issued new policy statements on the acquisition of Antiquities. The American Association of Museum's Standards go beyond the requirement that museums comply with applicable U.S. law, including treaties, international conventions, and states; "*in addition*, the AAM recommends that museums require documentation that the object was out of the country of modern discovery by . . . 1970," the date of the UNESCO Convention.¹⁷ The Standards also include "beyond the requirements of U.S. law," museums should not acquire objects that have been illegally exported from the country in which it has been found.¹⁸ The Association of Art Museum Directors does not go as far as the AAM standards. Under the AAMD guidelines, the 1970 UNESCO Convention is the absolute terminus, and acquisition of objects that left their source countries before 1970—irrespective of how they left—may be acquired.¹⁹ Thus, it is up to the museum to decide whether to acquire an object without a clear provenance, although they do recommend weighing the financial and reputational consequences of such an acquisition.

16. See Convention on Property and Implementation Act, 19 U.S.C. § 2606; see also Cultural Property, 19 C.F.R. § 12.104(b) (2001) (including the State Parties to the Convention).

17. AMERICAN ASS'N OF MUSEUMS, STANDARDS REGARDING ARCHAEOLOGICAL MATERIAL AND ANCIENT ART 1 (2008), available at <http://www.aam-us.org/museumresources/ethics/upload/Standards%20Regarding%20Archaeological%20Material%20and%20Ancient%20Art.pdf> (last visited Feb. 26, 2009).

18. *Id.*

19. ASSOCIATION OF ART MUSEUM DIRS., REPORT OF THE AAMD TASK FORCE ON THE ACQUISITION OF ARCHAEOLOGICAL MATERIALS AND ANCIENT ART I(E) (2008), available at <http://www.aamd.org/newsroom/documents/2008ReportAndRelease.pdf> (last visited Feb. 26, 2009).