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Edited by James Cuno: Who Owns Antiquity?

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INTRODUCTION



THE CRUX OF THE MATTER

Consciously or subconsciously, archaeological interpretation and the public presentation of archaeological monuments are used to support the prestige or power of modern nation-states.

—Neil Asher Silberman¹

For years, archaeologists have lobbied for national and international laws, treaties, and conventions to prohibit the international movement in antiquities. For many of these years, U.S. art museums that collect antiquities have opposed these attempts. The differences between archaeologists and U.S. art museums on this matter has spilled over into the public realm by way of reports in newspapers and magazines, public and university symposia, and specialist—even sensationalist—books on the topic.²

At the center of the dispute is the question of unprovenanced antiquities. In conventional terms, an unprovenanced antiquity is one with modern gaps in its chain of ownership. As it pertains to the United States, since in most cases we are an importer of this kind of material, this means there is no evidence that the antiquity was exported in compliance with the export laws of its presumed country of origin (these are always *modern* laws, hence the qualification above, *modern* gaps). Archaeologists argue that unprovenanced antiquities are almost always looted from archaeological sites or from what would become archaeological sites. But strictly speaking, since provenance is a matter of ownership and not archaeological status, and as

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some countries allow for the ownership of antiquities but not their export, it is possible to illegally export a legally owned, unprovenanced antiquity. (It would have to be either an excavated antiquity that could be legally owned, or a found or looted antiquity owned by someone, if not by its current owner, before the implementation of anti-looting laws.) For nationalist reasons, some countries—we will see this is the case with China—allow for the legal import and ownership of unprovenanced and even suspected looted antiquities, but not their export.

Because it can make complex matters appear simple, and attractively controversial, the public discourse around the acquisition of unprovenanced antiquities has focused largely on the legal aspect of their ownership: either they are owned legally or they aren't. This does not mean, of course, that legal disputes over ownership are easy to resolve. As is always the case in matters of law, everything turns on evidence. Is there convincing evidence that the unprovenanced antiquity was removed from its country of origin in violation of that country's laws? Indeed, is there convincing evidence that allows us to identify its country of origin? Just because an antiquity looks Roman, do we have any evidence that (1) it was unearthed within the borders of the modern state of Italy, as opposed to elsewhere in the former Roman Empire; and (2) that it was unearthed since the implementation of restrictive Italian export and ownership laws? And what would constitute convincing evidence? An eyewitness's testimony? A confession? Some kind of convincing documentation? Rarely does such evidence exist. And since unprovenanced antiquities, like all works of art in the collections of U.S. art museums, "belong" in fact or principle to the public, U.S. art museums are obliged to keep the unprovenanced antiquity until a preponderance of evidence convinces both parties that it should be turned over to the claimant party.

In a few recent cases, U.S. art museums have been charged by foreign state authorities with having in their collections unprovenanced antiquities alleged to have been illegally removed from their (presumed) country of origin. After a review of the evidence in three of those cases, and without going to court, the art museums either returned the antiquities in question or came to an agreement to

return some of them.³ In other cases, claims were made only through the press, with evidence hinted at but not shown to the charged museums. The museums rushed to deny the allegations and called for a review of the evidence. But by then the damage had been done: the public had read that the museums were in the possession of stolen property and that somehow, somewhere, a theft had occurred.⁴

Most often it falls to the museum to prove that it has the right to keep the questioned unprovenanced antiquity. A foreign authority—often a ministry of the government, such as the judicial or cultural ministry; rarely, if ever, the executive or legislative branches, what we might more accurately call the foreign *government*—makes a claim and implies that it has evidence to back it up. In the court of public opinion, the burden of proof falls to the museum to show that it has positive evidence to the contrary: that the unprovenanced antiquity entered its collection legally. And proving one's innocence in the blinding light of a public dispute can be very difficult, especially when “convincing” evidence is likely never to be found.

By far most unprovenanced antiquities were acquired by museums long before the adoption of international agreements between nations and/or the implementation of those agreements by the U.S. government and before the U.S. courts enforced foreign patrimony laws under the U.S. National Stolen Property Act. The United States only signed on to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property in 1983, thirteen years after it was adopted. Before 1983—and even for some years after—it was enough for U.S. art museums to perform due diligence and make a good faith effort to ascertain whether or not an antiquity had been legally removed from its presumed country of origin. Without documentation testifying to its legal status—an export license, bill of sale, or some other kind of evidence of its being in a private or public collection outside the likely source country prior to the date of the relevant law in that country—a U.S. art museum had only to inquire of antiquities authorities in the likely source country as to any evidence they might have that the antiquity was illegally removed from their country, seek a review by IFAR and the Art Loss Register for any evidence that the antiquity

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might have been stolen, and consider the museum's relations with the donor or dealer offering the antiquity: was the donor's or dealer's reputation positive? had the art museum a long-standing relationship with him or her? did the art museum have reason to believe that the donor or dealer had the museum's best interest in mind, rather than his or her own? and ultimately, did the art museum *trust* the donor or dealer? If the art museum found no reason not to proceed with the acquisition, it could do so and then was obliged to publish and exhibit the antiquity for the public's benefit.⁵ By acquiring it, the museum brought the antiquity into the public domain for the delight and instruction of everyone. If it indeed had been removed illegally from its country of origin, this would more likely be determined by its being in a public museum than by its circulating in the private realm of dealers and donors.

Things changed in 2001, when the New York antiquities dealer Frederick Schultz was indicted for (and later convicted of) conspiring to receive stolen Egyptian antiquities that had been transported in interstate and foreign commerce in violation of U.S. law, with the underlying substantive offense of violating the National Stolen Property Act. His conviction on the latter charge was a marked departure from previous cases involving similar accusations. Schultz argued that the U.S. National Stolen Property Act, under which it is against the law to import or subsequently come into the possession of stolen property, did not apply to an antiquity removed in violation of a national patrimony law like Egypt's, since such an object was not "stolen" in the commonly used sense of the word in the United States. The court disagreed and found in favor of the 1983 Egyptian patrimony law, which declares all antiquities found in Egypt to be state property and thus owned by the Egyptian nation. Anyone, or any institution, coming into possession of such articles without state authorization is necessarily in possession of stolen property and in violation of the law.

Due diligence and good faith inquiries are no longer sufficient. When weighing the risks of acquiring an antiquity for which there is no positive evidence of its legal removal from its presumed country of origin, U.S. art museums have to be much more careful. It is not

simply that the antiquity might be returned. It may be that individuals within U.S. art museums will be held criminally liable.⁶ As a consequence, the acquisition of antiquities by U.S. art museums has declined dramatically over the past five years. This does not mean that illegal trafficking in antiquities or the looting of archaeological sites has declined; in fact, archaeologists claim that both have increased. It means only that unprovenanced antiquities are not being acquired by U.S. art museums to the extent that they were in the past. Instead, undocumented antiquities are going elsewhere in greater numbers, either remaining in the private domain of private collectors and dealers or being sold or donated to museums in countries that do not enforce foreign patrimony laws as the United States does.⁷ If undocumented antiquities are the result of looted (and thus destroyed) archaeological sites, that there is still a market for them anywhere is a problem. Keeping them from U.S. art museums is not a solution, only a diversion.

A second criticism of the acquisition of unprovenanced antiquities is that it is unethical: unprovenanced antiquities are likely to have been looted from a (now) damaged archaeological site and the destruction of archaeological sites and the loss of the knowledge they contain is bad and those who encourage it are bad as well. But archaeologists consider almost any context in which an old object is found an archaeological site. And they consider every archaeological site important, for it will likely tell us something we wouldn't otherwise know, and that is good.

Was every unprovenanced antiquity at some point in an archaeological site? It depends on the definition of an archaeological artifact, what I am calling an antiquity. The general, political definition of an antiquity (as it is used in political agreements and national laws) is an object that is more than 150 years old. Often they are included among all manner of things more properly called "cultural property." Recent requests by the governments of Italy and the People's Republic of China to have the U.S. government impose blanket restrictions on the import of a range of materials were based on the premise that such restrictions would protect archaeological sites, since they would not allow for the import of looted and illegally exported antiquities.

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But the requests were very broad. In Italy's case, it included stone sculpture, metal sculpture, metal vessels, metal ornaments, weapons/armor, inscribed/decorated sheet metal, ceramic sculpture, glass, architectural elements and sculpture, and wall paintings dating from approximately the ninth century B.C. to approximately the fourth century A.D.; that is, virtually every kind of object produced in or imported to the land we now call Italy over 1,200 years of recorded human history. In China's case, it was even more broadly defined, covering all manner of things from the Paleolithic period through the end of the Qing dynasty (A.D. 1911); by its own estimation, some 20,000 years of human artistic and material production, including everything from bronze, gold, and silver vessels to textiles, painting, calligraphy, lacquer, wood, and bamboo objects, and ceramics of all kinds. Clearly, these items are not all equally ancient in the common use of the term, nor are they all archaeological artifacts. Many of them were made for the trade and circulated in the trade for hundreds if not thousands of years. It is unlikely that each artifact was removed from an archaeological site. The promiscuous slippage between the terms "antiquities" and "cultural property" in the public and governmental discourse on the acquisition of unprovenanced antiquities is unhelpful, and, as I discuss below, is intended to support a nation's nationalist aspirations rather than the stated goal of protecting archaeological sites.

Why are archaeological sites looted and unprovenanced antiquities sold? Because, the archaeologists' argument has it, antiquities have commercial value. If they had no commercial value, they would not be looted and sold. They would remain in the ground for archaeologists to excavate, and would enter local site or national museums with knowledge of their archaeological context intact and would be there for people to enjoy as sources of inspiration and learning. But of course, until such time as antiquities have no commercial value, it is reasonable to assume that archaeological sites will be looted and unprovenanced antiquities sold. How to deprive antiquities of their commercial value, and thus how to protect archaeological sites and preserve the knowledge they contain? Stop buying them. Of course, people should also stop looting and selling them, but that falls to

source nations to enforce. And that is extremely difficult: they would have to police all known and suspected archaeological sites within their borders and fully police their borders to prevent illicit export of antiquities. It is unlikely that this can be done: there are too many sites, national borders are too porous, and the nations themselves are too poor. Rather, it should be up to the acquiring (sometimes called “collecting”) nations to enforce restrictions against importing and buying unprovenanced antiquities. And when these countries no longer allow for the import or purchase of unprovenanced antiquities, all other nations will follow; then there will no longer be a market for such artifacts and archaeological sites will no longer be looted. Of course there may still be people and institutions willing to risk looting and buying unprovenanced antiquities illegally. But one day even they will no longer take these risks, since all acquiring and source nations will enforce export, import, and ownership laws equally and the risks will be just too high (and the rewards too low). The market will finally dry up. What happens until then?

No museum has ever endorsed the looting of archaeological sites and the loss of the knowledge they contain. But in many respects, when faced with the choice whether or not to acquire an undocumented antiquity, the looting of the archaeological site has already occurred and the knowledge that may have been gained from the careful study of an antiquity’s archaeological context has already been lost. Now the museum is faced with the choice of acquiring a work and bringing it into the public domain for the reasons cited above, or not acquiring it.

It is a fact that the archaeological site will not be restored or the lost knowledge recovered by a museum’s decision not to acquire the antiquity. Then, putting aside the legal risks for a moment, why shouldn’t a museum acquire it? Critics of museums emphasize the benefits of a “clean hands” approach. Even if it were legal to acquire unprovenanced antiquities, and even though not acquiring them will not restore archaeological sites nor recover any loss of knowledge, a museum should not acquire such works but should instead set an example for others to follow. Although in the interim archaeological sites will be looted and knowledge lost, *eventually* that will no longer

be the case. It is more ethical, according to this argument, to allow looted antiquities from damaged or destroyed archaeological sites to remain unknown in private hands or in museums elsewhere in the world.⁸

Often, archaeologists argue that antiquities belong to the source nations where we presume they were found; they are their property and important to the identity and self-esteem of that nation and its citizens. If a foreign museum were to acquire them, it is only because it can afford to do so as an heir to an imperial and colonial past. The argument that acquiring nations should stop acquiring unprovenanced antiquities because they are rightfully one or another source nation's cultural property (important to its national identity) is, as I have heard it once said, a means of redressing the historical imbalance of power between first- and third-world nations.⁹ But power relations often have a long history. There are "source" nations in the first world (Italy, Greece, and increasingly China) and former colonizing empires in the third world (notably Turkey, as the heir to the Ottoman Empire, with its museums filled with antiquities from former imperial territories). There are even former imperial territories with rich remains of the empire's culture (Turkey, with its Greek and Roman remains; Egypt, Lebanon, Libya, Syria, and Tunisia, with their Roman remains).

The argument not to acquire unprovenanced antiquities on these grounds—because they are meaningful to the identity of the source nation and its citizens and thus in a profound way "belong to them"—would require museums with collections of provenanced antiquities to return them to their known source countries. (I'm thinking of archaeological museums with collections deriving from excavations, like those at the University of Chicago and the University of Pennsylvania.) For these too would be meaningful to the identity of the source nation and its citizens and thus would equally redress the imbalance of power that not buying unprovenanced antiquities is said to do. One can compromise in legal matters and find acceptable compromises to resolve disputes, but how can one compromise on ethical matters? Politically, one can draw a line, say 1983, having passed legislation implementing an international agreement, and

behave differently going forward. But ethical reasoning would require going backward as well. Doing what is right is different than doing what is legal.

Sometimes archaeologists argue that antiquities have no meaning outside their archaeological context. If we don't know where they were found, antiquities are meaningless; of aesthetic value only. But of course antiquities have meaning outside their specific, archaeological context, all kinds of meanings: aesthetic, technological, iconographic, even, in the case of those with writing on them, epigraphic. Indeed, most of what we know about the Ancient Near East we know from unprovenanced cylinder seals and cuneiform tablets; the same is true as well of Mayan history, which we know primarily from unprovenanced ceramics. Antiquities also certainly have political meaning. They give modern nations a claim on an ancient past and legitimize politically dominant cultures as national cultures. The specifics of their archaeological contexts—of where precisely they were found, within which strata of their sites, and next to which other objects—are not necessary to these ends. Antiquities need only be claimed by one government as its cultural property. Of course, the claimant government needs to have the sovereign authority to regulate and enforce its claim. And that's the stuff of politics and political power.

Cultural property is a political construct: whatever one sovereign authority claims it to be (*property*, after all). Cultural property is presumed to have a special meaning to the powers that claim it (also to the people governed by those powers). It is said to derive from them and to be a part of them. It is central to their identity. And they are attached to it emotionally. But is that possibly true of antiquities? Antiquities are often from cultures no longer extant or of a kind very different from the modern, national culture claiming them. What is the relationship between, say, modern Egypt and the antiquities that were part of the land's Pharaonic past? The people of modern-day Cairo do not speak the language of the ancient Egyptians, do not practice their religion, do not make their art, wear their dress, eat their food, or play their music, and they do not adhere to the same kinds of laws or form of government the ancient Egyptians did.

All that can be said is that they occupy the same (actually less) stretch of the earth's geography.

But these differences didn't prevent the rise of "Pharaonism" in Egypt in the last decades of the nineteenth century. Until then, and despite easy contact with extraordinary remains of ancient, Pharaonic Egypt all around them, Egyptians were uninterested in their land's pagan past. Their country's significant history, so its people reasonably believed, began with the advent of Islam. Yet this all began to change with their increased awareness of outsiders' (Europeans') interest in Egyptian antiquities. In 1868, Rifā'a Rafī' al-Tahtāwī, an Egyptian scholar who had spent years in France, published a book on the history of Egypt from the beginnings to the Arab conquest. As Bernard Lewis has written, "[I]t was an epoch-making book, not only in the self-awareness of the Egyptian historiography, but also in the self-awareness of the Egyptians of themselves as a nation."¹⁰ Many books followed, adding thousands of years to what the Egyptians knew about their own history, and a new kind of history-teaching was introduced in the schools.

This movement coincided with Egypt's separatist ambitions, as an increasingly independent province of the Ottoman Empire. It also marked a dichotomy in the Egyptian identity: between its Islamic, even Arabic language and culture, defined by its religious and communal life, and its imagined, descendent relationship from a Pharaonic past, which was defining itself in national and political terms. It also sparked opposition within the Arabic-speaking, Islamic world. The Arabic word for Pharaonism is *tafar'un*, which literally means pretending to be Pharaonic. Other Arabic countries denounced the movement as a separatist attempt to create an independent Egypt within the greater Arab or Islamic world. And religious elements criticized it as neo-pagan. Nevertheless, it encouraged newfound cults of antiquity in other Islamic countries, especially Iraq and Iran, where it reached its height in 1971. In that year, the Pahlavi shah held a great celebration in Persepolis to commemorate the 2,500th anniversary of the foundation of the Persian monarchy by Cyrus the Great. He was heavily criticized for both exalting the monarchy and proclaiming a common identity with a pagan past. As Lewis notes,

“For the shah’s religious critics, the identity of Iranians was defined by Islam, and their brothers were Muslims in other countries, not their own unbelieving and misguided ancestors.”¹¹ The shah was overthrown in an Islamic revolution eight years later and the Egyptian President Anwar Sadat was assassinated by a devout Muslim who declared afterward, “I have killed Pharoah.”¹²

To include antiquities within the political construct of cultural property is to politicize them. It is to make them part of modern, national cultural politics. What is a national culture in this modern age, when the geographic extent of so many cultures does not coincide with national borders, and when national borders are often new and even artificial creations with sovereignty over the cultural artifacts of peoples no longer extant or no longer in political power? What, we are reminded over and over again while reading reports of the war in Iraq, is Iraqi national culture? Some claim there is not one, but three: Shiite, Sunni, and Kurdish. Some even claim that there is not one Iraqi nation but a weak national authority trying to govern over three nations: of Shiite, Sunni, and Kurdish character. Whatever it is, Iraqi national culture certainly doesn’t include the antiquities of the region’s Sumerian, Assyrian, and Babylonian past.¹³

A Lebanese man was quoted as saying recently, in the midst of the sectarian violence within his country and the conflict between Hezbollah and Israel, “If you cut me, you see Lebanon. You see the prophet Muhammad, you see Imam Ali, you see the cedars. You see everybody in my country in my heart.”¹⁴ He didn’t say the ancient Roman ruins or antiquities within Lebanon’s borders. The stuff of his culture—*his* cultural property—does not include antiquities before the Muslim conquest. And his culture is not the same as a Lebanese Sunni’s or Christian’s culture. Culture after all is personal; it is not national. People make culture, nations don’t. And in particular parts of the world, especially the Middle East—including Lebanon—non-national aspects of identity, especially religion or membership in a religious community, are far more determining than national ones.

Just as national claims on identity are political claims, so are national claims on antiquities. They serve the purpose of the modern, claiming nation. When regimes change, the parameters of the claims

change as well. The claims of the Ottoman Empire were different than those of the Turkish Republic, just as the claims of Iran were different before and after its revolution of 1979. National, cultural identity claims are made by those in power and reflect the interests of the powerful over those of the powerless. I explore this in some detail in the following chapters; it is enough here to note that this is as true in the United States as it is anywhere in the world. If there were a single national, U.S. cultural identity, why have we been fighting culture wars for years? We can't agree whether the U.S. cultural identity descends from Europe or from many countries, includes only the English language or many languages, is Christian or of many confessions, allows for heterosexual unions or any or all sexual unions, is pro-life or pro-choice, stands for economic liberty or economic fairness.¹⁵ But we are clear about one thing: it does not include the antiquities found on the land within our modern borders. Those in power here over the two and one-quarter centuries we have been a nation have either ignored or dismissed these antiquities, considered them the artifacts of other, primitive cultures, or given them up to other sovereign entities within our borders: the nations of the Native American peoples.

National cultures are contested within and from outside a country. They are defined by and are meant to sustain the powerful elite within a nation, and they are defined by others as a way of distinguishing one national culture from another: ours from theirs. Antiquities play a role in this, either because the people of a modern nation feel a direct, racial link to those earlier peoples, or because more frequently a modern nation derives a particular (modern) benefit from them. That benefit may be financial, in terms of tourism, or political: important archaeological remains give a modern nation a place of prominence at international forums (such as UNESCO) that it might not otherwise have for its lack of political, economic, military, or strategic importance in the world's affairs. So, even if we agree that antiquities can play a role in the formation of a modern nation's identity, we should acknowledge that in by far the most cases it is a politically constructed role and not, as it is often argued or presumed, a "natural," indelible, almost mystical role, akin to race,

language, and religion; something “felt” by all of the citizens of that nation.

The emotional, “national, cultural identity” card played by some proponents of nationalist retentionist cultural property laws is really a strategic, political card. It is used, together with the legal and ethical cards, to argue against the acquisition of unprovenanced antiquities for the reasons I have outlined above. But are these the right principles on which to regulate the acquisition and international movement of unprovenanced antiquities? The eminent legal scholar John Henry Merryman has proposed alternative principles, what he calls a “triad of regulatory imperatives.” The first and most basic is preservation. How can we best protect the object and its context from impairment? Second is the quest for knowledge. How can we best advance our search for valid information about the human past, for “the historical, scientific, cultural, and aesthetic truth that the object and its context can provide”? And the third is access. How can we best assure that the object is “optimally accessible to scholars for study and to the public for education and enjoyment”? He calls this triad “preservation, truth, and access.”¹⁶

Merryman’s triad shifts our attention from the “ownership” of antiquities to their stewardship. Does it really matter who owns a particular antiquity—whether it is a museum in the first world or a nation in the third world? Museums own antiquities (and all works of art in their collections) only insofar as they hold them in trust for the public they serve. They are not in the collections of the art museum *for* the art museum. They are there for the public. And that public, which of course in the first instance is local, ultimately comprises anyone and everyone who might in some way come into contact with the museum’s collections or with knowledge informed by those collections. This is why museums preserve antiquities.

So, does it mean that antiquities can best be preserved only in their presumed countries of origin? We have too many examples where that has proven not to be the case: Afghanistan and Iraq, only most recently. Critics, of course, will rightly point to the destruction of antiquities in Berlin museums during the Second World War. But is that an argument not to allow for the removal of antiquities from

their place of origin? Isn't it more reasonable to allow for the maximum dispersal of antiquities, along the lines of general risk management: disperse rather than concentrate the risk? For many decades in the late nineteenth and early twentieth centuries, archaeological finds were shared between the excavating party and the local, host country through *partage*. This is how the great Ghandaran collection got to the Musée Guimet in Paris (shared with Afghanistan), the Assyrian collection got to the British Museum in London (shared with Iraq, before the formation of the modern, independent government of Iraq), the Lydian materials from Sardis got to the Metropolitan Museum of Art in New York (shared with the Ottoman Empire, now Turkey), the Egyptian collection got to the Museum of Fine Arts in Boston, a number of collections got to the State Hermitage Museum in St. Petersburg, and of course how the great collections were formed at the university archaeological museums, like the Peabody Museums at Harvard and Yale, the Oriental Institute at the University of Chicago, and the University Museum at the University of Pennsylvania. But this principle is no longer in practice. With the surge in nationalism in the middle decades of the twentieth century, it has become almost impossible to share archaeological finds. All such finds belong to the host nation and are its property. Only the state can authorize the removal of an archaeological artifact to another country, and it almost never does. Even when one lends antiquities abroad, it is for severely restricted periods of time.¹⁷ Antiquities are cultural property, and cultural property is defined and controlled by the state for the benefit of the state.

Merryman's second principle—the quest for knowledge—would ask us to consider whether it serves our best interest in searching for knowledge to have the antiquity remain in its presumed country of origin, or to be housed elsewhere. In other words, is there a compelling reason, in terms of research and scholarship, why an antiquity should be in a particular place? One can imagine cases when it makes most sense for an antiquity to be with like things: similar artifacts from the same culture and time period. But of course this could mean that a newly discovered Ottoman ceramic ought to be in New York rather in Istanbul, or a Khmer sculpture in Paris rather than in Phnom Penh.

One can also imagine cases when it makes sense for an antiquity to be with similar artifacts from different cultures: Han Chinese ceramics with Roman and Mayan ceramics in London, and Greek classical bronzes with Han bronzes and even much later Benin and Italian Renaissance bronzes in New York. Why should we want to see an antiquity only within the country of its presumed origin? Why does it have its greatest meaning there? Why shouldn't we want to see the art and antiquities of China, for example, also in New Delhi, Athens, Rome, or Mexico City (or London or Chicago, for that matter) with examples of comparable cultural artifacts from India, Greece, Rome, and Mesoamerica?

Merryman's third principle is access. Does it serve anyone's interest to limit access to antiquities? Of course, there are preservation reasons why one might impose restrictions: they are far too fragile or susceptible to sudden changes in environment to allow their being moved around the world. But, assuming that they can be moved safely, and that the place to which they are being moved is secure, doesn't it make sense to increase access to such artifacts? Does it serve anyone's best interest to have stockpiles of antiquities inaccessible to the public, as they are in Italy and China, among other places?

Possession is power, and notions of property include notions of control. Increasingly, that control lies in the hands of governments and governments have their own, nationalistic reasons for wanting to exercise control themselves. The international agreements into which nations have entered regarding antiquities (as control property) reinforce the principle of national control. Merryman has pointed out that the 1970 UNESCO Convention defines "cultural property" in Articles 1 and 4 as, in effect, anything the authorities of a state so designate, and that skeptics might conclude that in the name of cultural property internationalism, the Convention actually supports a strong form of cultural property nationalism, leaving states free to make their own self-interested decisions about whether to grant or deny export permission in specific cases. "In this way," he concludes, "the Convention condones and supports the widespread practice of over-retention or, less politely, hoarding of cultural property."¹⁸

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We live in a time of resurgent nationalism and sectarian violence. The United Nations was founded sixty years ago with fifty-one member nation-states. It now has 191. UNESCO grew out of a U.N. conference held in London in 1945, which was attended by forty-four countries. It now has 190 member nation-states and six associate members. A majority of these nations have either ownership laws, export laws, or some hybrid laws such as preemption rights. Nations with ownership laws, and many of those with hybrid laws, can bring charges of possession of stolen property against people and institutions holding objects covered by the relevant laws.

The world is increasingly divided: more nation-states than ever before, and more nation-states with laws that restrict the international movement in archaeological and cultural property found within their borders. The archaeological community is allying with the nationalistic programs of many of these nations, many of which are imposing tighter restrictions on the international movement in antiquities, including unprovenanced antiquities.



In the following chapters, I consider the political circumstances that inform the drafting of national and international laws and agreements governing the practice of archaeology and the international movement of antiquities. More often, one reads of such laws, agreements, and practices as if they were entirely free of politics: the stuff of objective science, reasoned best practice, and indifferent government regulations.

Nothing could be farther from the truth. Governments issue archaeological permits and regulate the ownership and export of antiquities, and they do this in their own interest. Which archaeological excavations are encouraged and which antiquities are deemed important to regulate and collect in national museums depends on the perspective of national governments. What keeps you and me from doing what we want with archaeological sites and antiquities is government.

And government always serves the best interest of those in power. This is as true in the United States as it is anywhere. What our government defines as worthy of regulation is what it believes to be important to the nation. Throughout this book, I use the terms country, nation, and state in the conventional sense. “Country” is used to mean a place, as in “country of origin,” to refer to where on earth an antiquity was found or presumed to have been found. “Nation” refers to both the sovereign authority governing a country and the group of people held together by their identification with the nation, whether they live in the particular country or not. And “state” is used to refer to the governmental apparatus of the nation; that which enforces and of course regulates the program of a nation, which in turn rules over a country.

Nations are made, not born. They are the result of the political ambitions of a powerful group of people who seek—and succeed in gaining—control over a certain territory and its population. Once in power, leaders have to breed loyalty among their subjects or citizens (power alone is never enough, for long). And loyalty comes in great part from identifying with the nation. Identity is where one’s loyalties lie. One can be a citizen of a nation for reasons of expediency (my job is good here, I prefer the educational opportunities for my children, I am dependent on its health-care system, etc.). But one can never, really, be *loyal* on those terms, and nations cannot last long on these terms. We have to believe in our nationality, and identify with nations if they are to survive. This is the source of nationalism: identity with and loyalty to a nation. And national culture is at once the means and manifestation of that belief, identity, and loyalty.

Of course, in this sense, I mean culture broadly stated: language and religion, for example, also patterns of behavior, dress, and artistic production. But I am particularly concerned with the way antiquities are used as cultural property to serve the purpose of the nation. How is it that antiquities—as artifacts of cultures no longer extant and in every way different from the culture of the modern nation—are used by the modern nation to substantiate its claim on power? On what bases and for what purposes can a modern nation claim an identity

with a nonexistent culture that only happened to have shared (and often only more or less) the same stretch of the earth's geography? What makes antiquities one nation's cultural property and not the world's common artistic and cultural legacy? There's only one answer: power. And power comes from a government's state authority. It's all a matter of politics.

In the chapters that follow, I offer a perspective on the politics of archaeology and antiquities. I begin with an account of the laws, agreements, and policies that govern the international movement in antiquities, especially those that regulate the acquisition of antiquities by U.S. art museums. Then I consider the larger question of the politics of archaeology, internationally and historically. In the third and fourth chapters, I consider two specific cases: Turkey and China. Archaeology and the regulation of antiquities are new to both countries, and have been regulated differently according to the changes in their national governments over the past 150 years. In Turkey's case, the once polyglot and multiethnic Ottoman Empire, in which the mix of past and current, different cultures were once celebrated and a defining characteristic of the empire itself, has given way to a republic struggling to come to terms with its Islamic past and secular ambitions and in the process become almost monolingual and monocultural. What does it mean, then, that its archaeological regulations and antiquities laws privilege certain past cultures over others? What role do these regulations and laws play in the formation of the modern Turkish national, cultural identity?

In China's case, the People's Republic of China is struggling to contain what it considers to be the separatist ambitions of minority ethnic populations by controlling (some would say diluting) their cultures. And with the rise of the Chinese economy and the newfound wealth of Chinese citizens and corporations, they are buying back "for China" antiquities—even unprovenanced antiquities—offered for sale abroad. Why does the People's Republic of China allow its citizens and corporations to purchase antiquities in ways it doesn't allow foreign citizens and corporations? And why does the archaeological community in the United States support the Chinese efforts in this regard, even when they so obviously contradict its stated

professional practices, those which it seeks to impose on U.S. art museums?

In the fifth chapter, I consider the question of nationalism and national and cultural identity. Much has been written on this topic recently by fiction writers, philosophers, literary critics, and university professors—and especially by those from countries we call the third world. Given that these countries comprise the primary theater for the debate over the acquisition of antiquities and the role of antiquities and archaeology in the formation of national, cultural identities, a review of these writings is of primary importance. I thus emphasize these writings, while I also consider the literature on the history and concept of nationalism itself, especially as it pertains to identity.

Finally, in an epilogue, I reflect back on identity politics and their implications for inhibiting our regard for the rich and fecund diversity of the world's culture. For this I believe is the true context in which to consider the current argument over antiquities. Nationalist retentionist cultural property laws conspire against our appreciation of the nature of culture as mongrel, overlapping, and a dynamic force for uniting rather than dividing humankind. And they dangerously reinforce the tendency to divide the world into irreconcilable sectarian, or tribal, entities. As the journalist and novelist Amin Maalouf has written:

If the men of all countries, of all conditions and faith can so easily be transformed into butchers, if fanatics of all kinds manage so easily to pass themselves off as defenders of identity, it's because the "tribal" concept of identity still prevalent all over the world facilitates such a distortion. It's a concept inherited from the conflicts of the past, and many of us would reject it if we examined it more closely. But we cling to it through habit, from lack of imagination or resignation, thus inadvertently contributing to the tragedies by which, tomorrow, we shall be genuinely shocked.¹⁹

Nationalist retentionist cultural property laws perpetuate this view of the world, and the preservation and access to antiquities is governed by them. This is the *real* argument over antiquities. And this is what

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we should be talking about. Sadly, instead we—museums and archaeologists and the governments of retentionist nation-states—have been arguing for years about the acquisition of unprovenanced antiquities, and whether or not this is a threat to the integrity of the archaeological record. I am arguing that this is not the real argument, but a diversion; a surrogate argument that will, even if settled in favor of archaeologists and nation-state governments, not protect the archaeological record but only preserve nation-states' claims of ownership over antiquities found or presumed to have been found within their jurisdiction. And it will do this just as the world is being increasingly divided along nationalist, sectarian lines. And that's the danger.

Antiquity cannot be owned. It is our common heritage as represented by and in antiquities and ancient texts and architecture. We should be working together to preserve and share it broadly as what is surely our common ancient heritage. That discrete antiquities have been found within the borders of a particular modern nation-state is a matter of chance. There is no natural and indelible connection between antiquities and modern nation-states. The battle over our ancient heritage today is over false claims of ownership. It is a matter simply of politics.